The Babylonian Talmud

Translated by
MICHAEL L. RODKINSON
Volumes 1-10

1918

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Book 1 (Vols. I and II)

1903

Tract Sabbath

Volume I

Volume II

NEW EDITION

OF THE

BABYLONIAN TALMUD

Original Text Edited, Corrected, Formulated, and Translated into English

BY

MICHAEL L. RODKINSON

First Edition Revised and Corrected

BY

THE REV. DR. ISAAC M. WISE

President Hebrew Union College, Cincinnati, O.

Volume I.

TRACT SABBATH

SECOND EDITION, RE-EDITED, REVISED AND ENLARGED

BOSTON NEW TALMUD PUBLISHING COMPANY

100 BOYLSTON STREET

[1903]

EXPLANATORY REMARKS.

In our translation we adopted these principles:

1. *Tenan* of the original--We have learned in a Mishna; *Tania*--We have learned in a Boraitha; *Itemar*--It was taught.

2. Questions are indicated by the interrogation point, and are immediately followed by the answers, without being so marked.

3. When in the original there occur two statements separated by the phrase, *Lisna achrena* or *Waïbayith Aema* or *Ikha d'amri* (literally, "otherwise interpreted"), we translate only the second.

4. As the pages of the original are indicated in our new Hebrew edition, it is not deemed necessary to mark them in the English edition, this being only a translation from the latter.

5. Words or passages enclosed in round parentheses ( ) denote the explanation rendered by Rashi to the foregoing sentence or word. Square parentheses [ ] contain commentaries by authorities of the last period of construction of the Gemara.

TO

EDWIN R. A. SELIGMAN, PH.D.

PROFESSOR OF POLITICAL SCIENCE AT COLUMBIA UNIVERSITY

IN RECOGNITION OF

HIS WARM INTEREST AND VALUABLE SERVICES IN PROMOTING THE STUDY OF LITERATURE, AND HIS GREAT INSTRUMENTALITY IN ASSISTING YOUNG MEN AND WOMEN TO BROADEN THEIR MINDS, AND REACH A HIGHER SOCIAL PLANE, AND FOR HIS MANY WORKS FOR THE COMMUNAL WELFARE, ESPECIALLY THOSE IN BEHALF OF THE

EDUCATIONAL ALLIANCE

THIS VOLUME IS MOST RESPECTFULLY DEDICATED BY THE EDITOR AND TRANSLATOR

MICHAEL L. RODKINSON.

June 15, 1901.

New York City.

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PREFACE TO THE SECOND EDITION.

THE translator of the Talmud, who has now reached the thirteenth volume of his task, covering twenty-one tracts of this great work, certainly cannot point with any great pride to the fact that this is the second edition of his translation which first appeared in 1896, for he believes that the opening and bringing to light of a book so long withheld from the gaze of the curious, and even the learned, should have attracted more attention and deserved greater consideration than it has received. However, he is glad to see that thousands of readers have at last taken advantage of the opportunity of looking into the "sealed book," and to such an extent that second editions have become necessary, both of this volume and of the Tract Rosh Hashana of the fourth volume, which he has reëdited and enlarged upon, adding many historical facts and legends, so that they now appear as practically new works.

This is certainly an encouragement to him to continue his work, with the hope that in time it will gain the proper recognition and proper attention which he thinks this great work of the sixth century should receive at the hands of all scholars and even laymen.

In revising this volume the translator had in mind the many criticisms which have been passed upon his effort and which have appeared in various papers throughout different countries, but he gave his attention to those only which were not prompted by animosity and jealousy. He begs to call the attention of all critics to the dictum of the Talmud, "Kal Hat'haloth Kashoth" (all beginnings are difficult); for, bearing this in mind, they would no doubt have been more moderate.

The translator will be very grateful to critics who will call his attention to any mistakes made in the translation of the original text. However, he will positively ignore criticisms of the kind described above.

The translator further hopes that this and the succeeding volumes will meet with the favor and approval of the public, which will be sufficient reward to repay him for his efforts.

M. L. R.

NEW YORK, June, 1901.

EDITOR'S PREFACE.

[*To the first edition.*]

THE Hebrew edition of Rosh Hashana contains an elaborate introduction in three chapters, the translation of which does not appear as yet. Its contents include many important rules which we have followed in the entire work, but we do not feel called upon at this time to engross the time of the English reader by reciting them. We, however, deem it a duty to say a few words, so that the reader may understand our position and the reason why we have undertaken a work which will probably be productive of much adverse criticism in certain quarters.

The fate of the Talmud has been the fate of the Jews. As soon as the Hebrew was born 1 he was surrounded by enemies. His whole history has been one of struggle against persecution and attack. Defamation and deformation have been his lot. So too, has it been with the Talmud. At the beginning of its formative period, viz., the development of the Mishna, it was beset by such enemies as the Sadducees, the Boëthusians, and other sects, not to mention the Roman Government. 2 When its canon was fixed, the Karaites tried to destroy or belittle its influence, and since that time it has been subjected to an experience of unvarying difficulty. Yet, with remarkable truth, the words of Isaiah [xliii. 2] may be applied to both: "When thou passest through the waters, I will be with thee; and through the rivers, they shall not overflow thee; when thou walkest through the fire, thou shalt not be burned; neither shall the flame kindle upon thee." There is, however, one point concerning which this simile is not true. The Jew has advanced; the Talmud has remained stationary.

Since the time of Moses Mendelssohn the Jew has made vast strides forward. There is to-day no branch of human activity in

which his influence is not felt. Interesting himself in the affairs of the world, he has been enabled to bring a degree of intelligence and industry to bear upon modern life that has challenged the admiration of the world. But with the Talmud it is not so. That vast encyclopædia of Jewish lore remains as it was. No improvement has been possible; no progress has been made with it. Issue after issue has appeared, but it has always been called the Talmud Babli, as chaotic as it was when its canon was originally appointed. 1 Commentary upon commentary has appeared; every issue of the Talmud contains new glosses from prominent scholars, proposing textual changes, yet the text of the Talmud has not received that heroic treatment that will alone enable us to say that the Talmud has been improved. Few books have ever received more attention than this vast storehouse of Jewish knowledge. Friends and enemies it has had. Attack after attack has been made upon it, and defence after defence made for it; yet whether its enemies or its defenders have done it more harm it would be hard to tell. Not, forsooth, that we do not willingly recognize that there have been many learned and earnest spirits who have

labored faithfully in its behalf; but for the most part, if the Talmud could speak, it would say, "God save me from my friends!" For the friends have, generally, defended without due knowledge of that stupendous monument of rabbinical lore; and the enemies have usually attacked it by using single phrases or epigrams disconnected from their context, by which method anything could be proven. In both cases ignorance has been fatal. For, how many have read the whole Talmud through and are thus competent to judge of its merits? Is it right to attack or defend without sufficient information? Is it not a proof of ignorance and unfairness to find fault with that of which we are not able to give proper testimony?

Let us take the case of those persons in particular who attacked the Talmud and made it the object of their venomous vituperation. Is it possible that they could have believed it a work capable of teaching the monstrous doctrines so frequently attributed to it, when that work says, among other things, "When one asks for food, no questions shall be asked as to who he is, but he must immediately be given either food or money"? Could a work be accused of frivolity and pettiness that defines wickedness to be

[paragraph continues] "the action of a rich man who, hearing that a poor man is about to buy a piece of property, secretly overbids him"? (Qiddushin, 59*a*.) Could there be a higher sense of true charity than that conveyed by the following incident? Mar Uqba used to support a poor man by sending him on the eve of each Day of Atonement four hundred zuz. When the rabbi's son took the money on one occasion he heard the poor man's wife say, "Which wine shall I put on the table? Which perfume shall I sprinkle around the room?" The son, on hearing these remarks, returned with the money to his father and told him of what he had heard. Said Mar Uqba: "Was that poor man raised so daintily that he requires such luxuries? Go back to him and give him double the sum?" (Ketuboth, 7*a*.) This is not recorded by the Talmud as an exception; but it is the Talmudical estimate of charity. The Talmud is free from the narrowness and bigotry with which it is usually charged, and if phrases used out of their context, and in a sense the very reverse from that which their author intended, are quoted against it, we may be sure that those phrases never existed in the original Talmud, but are the later additions of its enemies and such as never studied it. When it is remembered that before the canon of the Talmud was finished, in the sixth century, [1] it had been growing for more than six hundred years, and that afterward it existed in fragmentary manuscripts for eight centuries until the first printed edition appeared; that during the whole of that time it was beset by ignorant, unrelenting, and bitter foes; that marginal notes were easily added and in after years easily embodied in the text by unintelligent copyists and printers, such a theory as here advanced seems not at all improbable.

The attacks on the Talmud have not been made by the enemies of the Jews alone. Large numbers of Jews themselves repudiate it, denying that they are Talmud Jews, or that they have any sympathy with it. Yet there are only the few Karaites in Russia and Austria, and the still fewer Samaritans in Palestine, who are really not Talmud Jews. Radical and Reform, Conservative and Orthodox, not only find their exact counterparts in the Talmud, but also follow in many important particulars the practices instituted through the Talmud, *e.g.*, New Year's Day, Pentecost (so far as its date and significance are concerned), the QADDISH, etc. The modern Jew is the product of the Talmud,

which we shall find is a work of the greatest sympathies, the most liberal impulses, and the widest humanitarianism. Even the Jewish defenders have played into the enemy's hands by their weak defences, of which such expressions as "Remember the age in which it was written," or "Christians are not meant by 'gentiles,' but only the Romans, or the people of Asia Minor," etc., may be taken as a type.

Amid its bitter enemies and weak friends the Talmud has suffered a martyrdom. Its eventful history is too well known to require detailing here. We feel that every attack on it is an attack upon the Jew. We feel that defence by the mere citation of phrases is useless and at the best weak. To answer the attacks made upon it through ludicrous and garbled quotations were idle. There is only one defence that can be made in behalf of the Talmud. Let it plead its own cause in a modern language!

What is this Talmud of which we have said so much? What is that work on which so many essays and sketches, articles and books, have been written? The best reply will be an answer in negative form. The Talmud is not a commentary on the Bible; nor should the vein of satire or humor that runs through it be taken for sober earnestness. [1] Nor is the Talmud a legal code, for it clearly states that one must not derive a law for practical application from any halakhic statement, nor even from a precedent, unless in either case it be expressly said that the law or statement is intended as a practical rule [Baba Bathra, 130*b*]. Further: R. Issi asked of R. Jo'hanan: "What shall we do if you pronounce a law to be a Halakha?" to which R. Jo'hanan replied: "Do not act in accordance with it until you have heard from me, 'Go and practice.'" Neither is the Talmud a compilation of fixed regulations, although the Shul'han Arukh would make it appear so. Yet, even when the Shul'han Arukh will be forgotten, the Talmud will receive the respect and honor of all who love liberty, both mental and religious. It lives and will live, because of its adaptability to the necessities of every age, and if any proof were needed to show that it is not dead, the attacks that are with remarkable frequency made on it in Germany might be given as the strongest evidence. In its day the Talmud received, not the decisions, but the debates of the leaders of the people. It was an independent critic, as it were, adapting itself to the spirit of the times; adding where necessary to the teachings of former

days, and abrogating also what had become valueless in its day. In other words, the Talmud was the embodiment of the spirit of the people, recording its words and thoughts, its hopes and aims, and its opinions on every branch of thought and action. Religion and Ethics, Education, Law, History, Geography, Medicine, Mathematics, etc., were all discussed. It dealt with living issues in the liveliest manner, and, therefore, it is living, and in reading it we live over again the lives of its characters.

Nothing could be more unfair, nothing more unfortunate than to adopt the prevailing false notions about this ancient encyclopædia. Do not imagine it is the bigoted, immoral, narrow work that its enemies have portrayed it to be. On the very contrary; in its statements it is as free as the wind. It permits no shackles, no fetters to be placed upon it. It knows no authority but conscience and reason. It is the bitterest enemy of all superstition and all fanaticism.

But why speak for it? Let it open its mouth and speak in its own defence! How can it be done? The Talmud must be translated into the modern tongues and urge its own plea. All that we have said for it would become apparent, if it were only read. Translation! that is the sole secret of

defence! In translating it, however, we find our path bristling with difficulties. To reproduce it as it is in the original is in our judgment an impossible task. Men like Pinner and Rawicz have tried to do so with single tracts, and have only succeeded in, at the best, giving translations to the world which are not only not correct but also not readable. If it were translated from the original text one would not see the forest through the trees. For, as we have said above, throughout the ages there have been added to the text marginal notes, explanatory words, and whole phrases and sentences inserted in malice or ignorance, by its enemies and its friends. [1] As it stands in the original it is, therefore, a tangled mass defying reproduction in a modern tongue. It has consequently occurred to us that, in order to enable the Talmud to open its mouth, the text must be carefully edited. A modern book, constructed on a supposed scientific plan, we cannot make of it, for that would not be the Talmud; but a readable, intelligible work, it can be made. We have, therefore, carefully punctuated the Hebrew text with modern punctuation marks, and have reëdited it by omitting all such irrelevant matter as interrupted

the clear and orderly arrangement of the various arguments. We have also omitted repetitions; for frequently the same thing is found repeated in many tracts; while in this translation each statement is to be found only once, and in the proper place for it. In this way there disappear those unnecessary debates within debates, which only serve to confuse and never to enlighten on the question debated. Thus consecutiveness has been gained, but never at the expense of the Talmud, for in no case have we omitted one single statement that was necessary or of any importance. In other words, we have merely removed from the text those accretions that were added from outside sources, which have proven so fruitful a source of misunderstanding and misrepresentation.

We continue our labors in the full and certain hope that "he who comes to purify receives divine help," and that in our task of removing the additions made by the enemies of the Talmud we shall be purifying it from the most fruitful source of the attacks made on it, and thereunto we hope for the help of Heaven. As we have already said, we feel that this work will not be received everywhere with equal favor. We could not expect that it would. Jewish works of importance have most usually been given amid "lightning and thunder," and this is not likely to prove an exception.

We are always ready to accept criticism, so long as it is objective, and we shall gladly avail ourselves of suggestions given to us, but we shall continue to disregard all *personal* criticism directed not against our work but against its author. This may serve as a reply to a so-called review that appeared in *one* of our Western weeklies.

At the same time we deem it our duty to render to *Dr. Isaac H. Wise*, the venerable President of the Hebrew Union College of Cincinnati, our heartfelt thanks for the several evenings spent in revising this volume, and for many courtesies extended to us in general.

THE EDITOR.

CINCINNATI, May, 1896.

Footnotes

ix:1 *Vide* Genesis, xliii. 32.

ix:2 In our forthcoming "History of the Talmud" the reader will find all details of the persecution, until the present time, in twenty chapters.

x:1 *Vide* Brief Introduction.

xi:1 According to others, in the eighth century. See our "History of the Talmud."

xii:1 See our article, "What is the Talmud?" in the prospectus.

xiii:1 In others of our works we have named some of these interpolators.

Next: Brief General Introduction to the Babylonian Talmud

BRIEF GENERAL INTRODUCTION

TO THE

BABYLONIAN TALMUD.

ON this, the appearance of our latest literary undertaking, we deem a few explanatory remarks necessary. The brief outline of the origin of the Talmud that follows may suggest the thought that we have departed from the usual manner of dealing with the questions here discussed, the more so since we have, for the sake of brevity, refrained from citing the authorities on which our statements are based. We wish, therefore, to declare here that we do not venture to make a single statement without the support of authorities well known in Hebrew literature. Our method is to select such views as seem to us the best authenticated in the historical progress of Judaism. As we have taken our choice from the numerous works on our subject, the student is entitled to adopt or to reject the views that we represent.

Most of the Mishnayoth date from a very early period, and originated with the students of the Jewish academies which existed since the days of Jehoshaphat, King of Judah [II Chron. xvii. 9].

The rabbinical students of ancient times noted the essence of the academical teachings in brief form, and, as a rule, in the idiom in which it was spoken to them, so that they could afterward easily commit it to memory. They have sometimes, however, added comments and extensive explanations in the form of notes, so that the mass of their learning, embraced in course of time, according to some authorities, as many as six hundred divisions.

The source of the Mishnayoth was the customs and regulations

practised by the authorities in their administration of religious and civil affairs: such as the Sabbath, Prayers, Cleanliness (considered actually Godliness), Permitted and Forbidden Foods, and controversies arising concerning Slavery. Indebtedness and corporal punishment are subjects of academical discussion, conducted with the aim of perfecting them into national statutes enforceable in all Jewish communities alike.

In course of time, however, when those Mishnayoth were noted down from earlier existing copies, many additions were made. Finally Rabbi Jehudah the Prince, generally called Rabbi, concluded to collect all the Mishnayoth in his college for proper arrangement. From these he selected six divisions, called according to the subject they deal with, viz.: Seeds, Feasts, Women, Damages, Sacrifices, and Purifications, and he proclaimed them holy for all Israel. Of the Mishnayoth so treated by Rabbi some were left entirely intact, and were reproduced in their

original form. To others he parenthetically added brief comments of his own, and there are still others that he changed in form completely, because already in his day old customs had changed and taken new forms.

Such of them as he desired to make final and indisputable national laws he incorporated into the Mishna without mentioning the names of their authors. Where, however, he could formulate no definite decision himself, or where they were well known to the public, he gave full information of their authors as well as the names of those opposed to their conclusions, without any decision on his part. In still others he mentioned no names, but contented himself with saying "A'herim," *i.e.*, "Anonymous teachers say," not wishing to specify their authority for certain reasons.

Rabbi did not seek the compliance and agreement of all his contemporaries in his arrangement of the Mishna, and many differed from his conclusions and even arranged Mishnayoth in accordance with their own views. Being, however, a man of great prominence, influence, and wealth, Rabbi succeeded in quelling opposition and in making his conclusions as acceptable as the Mosaic law itself; and his great pupils, seeing that his intentions

were only to prevent dissensions and his only aim the public weal, supported him nobly, until his teachings were accepted as the law of the nation.

Many Mishnayoth were rejected and destroyed by Rabbi, but, not being in possession of all those he wished to destroy, he went in search of them to colleges outside of his jurisdiction. There, however, he met with great opposition. Some of the Mishnayoth were hidden beyond his reach, others were secretly preserved and arranged within the very limits of his domain and promptly brought to light after his death. But Rabbi's pupils did not dignify them with the name MISHNA, implying "next to Mosaic law," [1] but called them TOSEPHTOTH, meaning "additions of a later period," or merely *additional*, not *principal*, matter. Some of them were also named BORAITHOTH (outsiders), *i.e.*, secondary, not academical matter. They spread, however, very rapidly after Rabbi's death, and to such an extent as to threaten the Mishnayoth of Rabbi with entire extinction. Such would actually have been the result, had not the pupils of Rabbi organized again colleges whose aim was to perpetuate the Mishnayoth of Rabbi, which they also accomplished. Colleges of that character were those of Rabh and Samuel in Babylon and Rabbi Janai and Rabbi Jo'hanan in Palestine. These colleges made strenuous efforts to explain and harmonize the Mishnayoth of Rabbi with the teachings of the Boraithoth, generally regarded as those of Rabbi Hyya and Rabbi Oshia, who were greatly admired by the public. At times the Mishna of Rabbi was abbreviated and replenished with the text of the Boraitha, or explained with an opposing opinion, so as to harmonize it with the latter or suit the new conditions and consequent changes of the custom that originally caused the conclusion of the Mishna. Where, however, they found no other way to suit their purpose, they inserted a new Mishna of their own composition into the text of Rabbi. [2]

The teachers mentioned in the Mishna of Rabbi or in the Boraithoth and Tosephta were called Tanaim (singular *Tana*) signifying Instructors, Professors. The teachings of the colleges, covering a period of some centuries, which also found adherents and became the traditional law,

were called GEMARA, signifying "conclusion." The intention was to harmonize Mishna and Boraitha, and, in most cases, to arrive at a final decision as to the theory of the law (as Rabbi the proper interpretation or Jo'hanan prohibited compliance with the Halakha unless it is mandatory). These Gemara teachers were called AMORAIM (interpreters), *i.e.*, they interpreted to the public the difficult passages in the Mishna. Being classified as interpreters only, they had no authority to deviate from the spirit of the Mishna unless supported by another Tana opposing the Mishna, in which case they could follow the opinion of the Tana with whom they agreed. Rabhina and R. Ashi, who lived at the end of the fifth century (third century of Amoraim), began to arrange the Gemara, but without success, and commenced a second time to arrange it. Unfortunately they died before accomplishing their task, and the Gemara had to undergo the chances of transmission from hand to hand until the appearance upon the scene of Rabana Jose, president of the last Saburaic College in Pumbeditha, who foresaw that his college was destined to be the last, owing to the growing persecution of the Jews from the days of "Firuz." He also feared that the Amoraic manuscripts would be lost in the coming dark days or materially altered, so be summoned all his contemporary associates and hastily closed up the Talmud, prohibiting any further additions. This enforced haste caused not only an improper arrangement and many numerous repetitions and additions, but also led to the "talmudizing" of articles directly traceable to bitter and relentless opponents of the Talmud. The time (Rabana Jose conducted his college only seventeen years) being too short for a proper and critical review of

each and every subject, many theories were *surreptitiously* added by its enemies, with the purpose of making it detestable to its adherents. Of such character is the expression, "That of R. Ashi is a fabrication," which is repeated numerous times throughout the Talmud and which could by no means have originated with the Amoraim, which as a rule were very guarded in their expressions and would never have dreamed of applying it or similar expressions to such Talmudical authorities as R. Ashi and Mar, his son, much less to the Patriarchs or the Prophets. This closing up of the Talmud did not, however, prevent the importation of foreign matter into it, and many such have crept in through the agency of the "Rabanan Saburai" and the Gaonim of every later generation.

The chief aim of the authors of the Gemara being to perpetuate the Mishna as the sole source of the Jewish religious and civil code after the Mosaic laws themselves, they not only directed all their energy to the discussion and perfecting of its deductions, but treated its very words and letters as inspired and as holy as the Bible itself, forming at times conclusions from a superfluous word or letter. Oftentimes, when they found the Mishna differing with an established custom in their days, they resorted to subtle inquiry and minute discussion, until they succeeded in establishing harmony between the differing points. All these efforts were directed to refute and disprove the assertions of the different sects who opposed the oral law and who were inclined to adhere to the written law solely. Therefore the Rabbis of the Gemara said "MINALAN?" (Wherefrom its source?) or "MINOH HANNE MILI?" (which means "Whence is all this deduced?") in the treatment of a subject not plainly specified in the Bible; and also the exclamatory remark "PESHITA!" (It is self-evident!) as regards subjects plainly enumerated in the Scriptures which do not admit of any other interpretation. Of the same origin is the question "LEMAI HILKHETHA?" (For what purpose was this Halakha stated?) with reference to an obsolete custom. So much for the general history of the Talmud.

Footnotes

xvii:1 See Mielziner's "Introduction to the Talmud," page 6.

xvii:2 This was done by Rabh and R. Jo'hanan, the heads of the colleges in Babylon and Palestine; and in many passages of the Talmud the latter exclaims: "This Mishna was taught in the time of Rabbi!" which means that Rabbi himself was not aware of it. See Weiss' "Traditions of the Oral Law," under the head "Mishna and Rabbi."

Next: Introduction to Tract Sabbath

INTRODUCTION TO TRACT SABBATH.

WITH this tract we commence the translation of the section of the Talmud called *Moed* (Festivals), containing the following tracts: Sabbath, Erubhin, Rosh Hashana, Yuma, Shekalim, Sukkah, Megillah, Taanith, Pesachim, Betzah, Hagigah, and Moed Katan. All these tracts are entirely devoted to precepts pertaining to the observance of the festivals and Sabbath, such as the performance of the different ritual ceremonies on feast-days, the manner of sanctifying the Sabbath, and the ordinances relating to mourning for the dead both on Sabbath and week-days.

The commandments on which these precepts are founded, or from which they are derived, are contained in various portions of the Pentateuch. The fourth commandment of the Decalogue enacts (Exod. xx. 8-11 and Deut. v. 12-15): "The seventh day shall ye keep holy." In various other parts of the Pentateuch the due observance of the Sabbath is repeatedly ordained; in some instances merely mentioning the day as one to be kept inviolate and holy; and in others employing greater emphasis, referring to the history of creation, and establishing the observance as a sign of the covenant between the Lord and Israel. Such texts are Exod. xiii. 12; xvi. 15; xxxi, 13-17; xxxiv. 21; xxxv. 1-3; Lev. xix. 29; xxiii. 32; Num. xv. 9, etc. While the general principle is thus frequently inculcated, its special application, however, and specific enactments as to what constitutes a violation of the Sabbath, are nowhere fully carried out in the Pentateuch, and thus but few texts of the Scriptures serve as a direct basis for the minute and numerous enactments of the rabbinical law.

The Mishna enumerates thirty-nine "Abhoth" or principal acts

of labor, the performance of any one of which constitutes a violation of the Sabbath. Every other kind of work becomes illegal only if it can be classified under one or any of these principal acts of labor. Thus, for instance, under the principal act of ploughing, every analogous kind of work, such as digging, delving, weeding, dunging, etc., must be classified. In addition to these thirty-nine principal acts and their accessories and derivatives, there are other acts which are especially prohibited by the rabbinical law as tending to violate the Sabbath rest (Shbhuth). For the violation itself various degrees of culpability are established, and various degrees of punishment awarded. All these subjects relating to the due observance of the Sabbath, and pointing out its violation in every possible way, form the contents of the treatise Sabbath.

In order properly to understand the Mishna, and to avoid tedious repetitions, it is necessary to commence with the explanation of certain general principles and technical expressions predominating in the text.

Wherever throughout the Mishna the expression guilty, culpable (Hayabh), or free (Patur) is used, the meaning of the former (guilty) is that the transgressor acting unintentionally must

bring the sin-offering prescribed in the law; of the second expression (free), that the accused is absolved from punishment.

If through the performance of an unprohibited act some other (prohibited) occupation is inadvertently entered upon, it constitutes no offence, providing the latter is not done intentionally nor the lawful occupation entered upon with the covert purpose of making it serve as a subterfuge to do that which is prohibited.

In the degrees of violation the nature of the occupation must be considered, as various kinds of labor may be required to perform and complete one act, and thus the offender may become amenable to several penalties. On the other hand, the rule is laid down that such occupations as only destroy, but do not serve an end in view, do not involve culpability (in the rigorous sense of the word); nor yet does work which is but imperfectly or incompletely performed involve culpability.

The prohibition to carry or convey any object from one place

to another, which in Chap. I., § 1, of this treatise is called "Yetziath (Ha) Shabbath" (which means transfer on the Sabbath) and forms the thirty-ninth of the principal acts of labor, requires particular attention and explanation from the complexity of cases to which it gives rise. All space was by the Tanaim divided into four distinct kinds of premises, explained in the Gemara of this chapter. When in the text of the Mishna the question is about carrying and conveying from one place to another, it does not apply to the "free place," as that is subject to no jurisdiction. Moreover, the open air above private property has no legal limitation, whereas that over public property or unclaimed ground (carmelith) only belongs thereto to the height of ten spans (see explanation of the Gemara). The carrying or conveying from one kind of premises to another does not constitute a complete or perfect act, unless the same person who takes a thing from the place it occupies deposits it in another place.

The tracts Sabbath and Erubhin will contain the laws for the observance of rest on Sabbath, and these laws can be divided into two separate parts. Firstly, the part prohibiting labor on the Sabbath day, at the same time defining what is to be termed labor and what does not constitute an act of labor; and secondly, the part ordaining how the day is to be sanctified and distinguished from a week-day in the manner of eating, drinking, dress, lighting of candles in honor of the Sabbath, and incidentally the lighting of candles in honor of the festival of 'Hanukah (the Maccabees).

It has been proven that the seventh day kept holy by the Jews was also in ancient times the general day of rest among other nations, [1] and was usually spent by the people of those days in much the same way as it is spent now, wherever local laws do not restrict buying and selling, namely: In the forenoon prayers were recited and the necessities of life for the day were bought, while

the afternoon was devoted to pleasure-seeking, merrymaking, visiting, and so forth. The Jews

living prior to the time of Ezra and Nehemiah, and even during the latter's régime, were wont to spend the Sabbath in the same manner as their pagan neighbors. It was this fact that caused the sages of Nehemiah's time to fear that should the Jews, who were always in the minority as compared with other nations, continue this method of keeping the Sabbath and join in the merrymaking and pleasures of their neighbors, mingling freely with their sons and daughters, assimilation was almost inevitable, especially as the Jewish race was scattered over all the known world and was nowhere in very large numbers.

The sages then devised means to keep the Jew from mingling with the Gentile and from participating in the pleasures and carousals of his neighbors. This can be seen from Nehemiah, xiii. 1-26: "In those days saw I in Judah *some* treading wine-presses on the Sabbath," etc. "In those days also saw I Jews that had married wives of Ashdod, of Ammon, and of Moab," etc. "Ye shall not give your daughters unto their sons nor take their daughters unto your sons, or for yourselves." Thus we see that Nehemiah began by prohibiting traffic and the carrying of burdens on the Sabbath [ibid. xiii. 19] and ended by prohibiting intermarriage with foreign women. About this time also another prophet, the second Isaiah--who, though not possessing the temporal power of Nehemiah, was gifted with that persuasive eloquence that appealed to the heart--preached against indulging in pleasures on the Sabbath day. He says [Isaiah, lviii. 13-14]: "If thou turn away thy foot from the Sabbath" (meaning if thou keep away from drinking-places, dancing-houses, etc., on the Sabbath and follow not the custom of other nations), "and call the Sabbath a delight" (meaning the *rest* on the Sabbath shall constitute thy pleasure), "the holy of the Lord, honorable; and shalt honor him, not doing thine own ways, nor finding thine own pleasure, nor speaking thine own words. Then shalt thou delight thyself in the Lord; and I will cause thee to ride the high places of the earth, and feed thee with the *heritage* of Jacob *thy father*; for the mouth of the Lord hath spoken it." (The inference is very

plain. The prophet wishes to impress the Jew with the fact that the Lord will reward those with the heritage of Jacob who have kept away from mingling with the pleasures of other nations. Read ibid. lvii., especially verses 10, 11, and 12.)

After the establishment of a permanent government among the Jews, however, it was found that the exhortations of the prophets after the manner of Isaiah were of no avail; the people still continued seeking pleasures on the Sabbath, after the manner of other nations, and were still wont to enjoy the pastimes of their neighbors. The enforcement of the prohibition of carrying burdens was then decided upon to act as a check upon the people by defining minutely the meaning of burdens, and the prohibition was interpreted to include not only heavy burdens, but all portable articles, such as money, trinkets, eatables, etc., while only necessary articles of clothing and apparel were permitted to be worn. To such an extent was the matter carried that even the wearing of rings, with the exception of such as had the name of the wearer engraved upon them, was not permitted. In fact, everything that could be converted into money was included in the definition of burdens. Beggars were not permitted to solicit alms on the Sabbath, contrary to the customs of other nations, so as not to afford any one an excuse for carrying money on that day.

The enforcement of such a law, however, was practically impossible in the case of people who remained in their houses, and certain modifications were made. These modifications were as follows: The laws were made to apply only on public grounds but were not valid on private

grounds, so that in a private house a person was permitted to carry whatever was necessary. Private grounds were also established by the institution of Erubhin, *i.e.*, where a street or a public place was inhabited by Jews alone a small amount of meal was collected from each household; from the meal a cake was made and hung conspicuously in that locality. The point where the street inhabited by Jews alone commenced and the point where it ended were joined by a piece of twine, and thus definitely marked. Thus public grounds were turned into private grounds, from the fact that each household

contributing a share of meal made them all in a manner copartners in one object. The walking of more than two thousand ells outside of the city limits was also prohibited. Within the city limits, be the city ever so large, walking was permitted.

The possibility of confinement in the house on the Sabbath becoming conducive to the performance of labor was offset by the establishment of a law prohibiting all the different modes of labor used in the construction of the tabernacle, besides all manner of agricultural labor. This again brought about the detailing of all the different modes of labor employed in the construction of the tabernacle and in agriculture, all of which is discussed in these treatises of Sabbath and Erubhin.

Naturally the institution of laws carries with it provisions for the penalties attending their infraction, and these penalties were divided into three classes:

First, the penalties for unintentional infractions.

Secondly, for intentional infractions.

Thirdly, for intentional violations where the violator had been previously forewarned of the penalty by two witnesses.

The penalty for the first class of infractions was simply the sacrificing of a sin-offering, which, however, involved a great many hardships, as the culprit had to bring the sin-offering to the temple in Jerusalem in person, and was frequently compelled to travel quite a distance in order to do so, besides sustaining the loss of the value of the offering.

For the second class, if two witnesses testified before the tribunal that the culprit had labored on the Sabbath, and the culprit admitted that he had done so intentionally, no penalty was inflicted by the tribunal, but the person was told that he would be punished by the heavenly power with the curse of Karath (shortening his allotted time of existence on earth). No penalty was inflicted, for the reason that, the culprit having made himself liable to severe punishment from superhuman sources, it served as an excuse to absolve him from human punishment. [1]

For the third class, however, when the culprit openly defied the existing authority and in spite of forewarnings; persisted in violating the law, he was considered a traitor to the government, to be

sentenced to death by stoning, as was the wood-gatherer [Numbers, xv. 32].

It is upon these laws that the discussions in the treatises Sabbath and Erubhin are based, and in addition the reader will find many ethical laws, legends, and the enumeration of such enjoyments as are permitted on the Sabbath day and the festivals.

In addition to the above we would make the following citations from the text of the Talmud, as a necessary feature of the introduction:

I. We find in the Tract Sabbath, 61*b* and 96*b*, the story of the mysterious scroll which Rabh claimed to have found in the house of his uncle, R. Hyya. This scroll referred to the principal acts of labor prohibited on the Sabbath, which were forty less one. Rabh discovered in this scroll the statement of R. Issi b. Jehudah to the effect that although thirty-nine principal acts of labor are enumerated, only one of them makes a man actually culpable. The Gemara then amends this statement and declares that it should read: "One of the thirty-nine does not involve culpability," but does not mention which one it is. Consequently it remains doubtful which act it is that does not involve culpability, and where a doubt exists as to whether an act is prohibited or not no punishment can be inflicted for its commission. From this, two things may be inferred: First, that these acts of labor were prohibited for political reasons, because the mystery was extant, and we find the term mystery applied to political cases only; and second, that the Gemara declares in the same passage that the carrying of an object from public ground into private ground is not one of the doubtful acts and a penalty is prescribed in the event of its being committed. Hence the object was to prevent the assimilation explained above.

II. We find in Yebamoth, 90*b*: "R. Eliezer b. Jacob said: "I have heard that a man was found riding a horse on Sabbath in the time of the Greeks, and being brought before the tribunal for

the crime was stoned to death.' This man was punished, not because his crime merited the penalty, but because the times made it necessary." The inference is therefore clearly established that the man was punished for political reasons, and that the violation of the Sabbath laws did not involve capital punishment.

III. In Yoma, 85*b*, it is written: "R. Jonathan b. Joseph said, 'The Sabbath is holy unto you,'" implying that the Sabbath is handed over to you and not you to the Sabbath. [1]

IV. R. Johanan states elsewhere that in Palestine, where the Jews were together, no public ground existed.

MICHAEL L. RODKINSON.

CINCINNATI, March, 1896.

Footnotes

xxiii:1 In a table compiled by Rev. A. H. Lewis, Alfred Centre, N. Y., 1884, in his work entitled "Biblical Teachings, concerning the Sabbath and the Sunday," it is shown that among nearly all nations the Sunday is the first and the Sabbath the seventh day of the week.

xxvi:1 Because it is a rule of rabbinical law that, of two punishments incurred by one act, the severer one is meted out Qâm lêh bid'rabba minêh.

xxviii:1 This is taken from Mechilta, an authority older than the Talmud, and stands in no connection with the Halakha. Furthermore, the mystic scrolls may in some instances have had reference to political necessities of the day, but by no means in all cases.--*The Reviser*.

Next: Synopsis of Subjects

SECTION MOED (FESTIVALS).

SYNOPSIS OF SUBJECTS

OF

VOLUME I.--TRACT SABBATH.

SYNOPSIS OF SUBJECTS.

SEVERAL requests have been received by the translator that an index should be made to the volumes of the Talmud, as is customary with all modern works. It would be an utter impossibility to give a complete index of everything contained in the Talmud. Were it like other scientific works, which treat each subject separately, this could easily be done; but with the Talmud it is different. On one page many different subjects may be discussed, and again a single subject may occupy several pages. The Talmud, therefore, has never had an index, not even the portions which have been translated.

After careful examination of the volumes, page by page, it has been decided to make a synopsis, *i.e.*, to give briefly the heads of the discussions and conversations upon each Mishna, indicating the page where the Mishna is to be found, and the Gemara of each one, which serves as a commentary. By this the reader should be able to refer to what he desires to know.

A synopsis is therefore given of every Mishna which discusses a single subject, with its accompanying Gemara; but when several short Mishnas cover the same subject, a single synopsis is given of the whole, including the Gemara of each one; and where a chapter is short and has but one subject, a synopsis of the whole chapter is made, without dividing it into Mishnas.

This is the best that can be done, and it is hoped that readers will find it satisfactory.

CHAPTER I.

may eat his midday meal; the

CHAPTER II.

inferred from a biblical passage. The first thing asked of a man

when standing before the divine judgment is, "Hast thou traded in good faith?" The "Fear of the Lord" is the chief principle. The wicked fear death, although mentioning it every day, 48-53

MISHNAS *VII*. AND *VIII*. The sins of women are passed upon when confined in childbirth, the sins of men while in danger, A good deed is committed through the agency of a meritorious person and a bad deed through the agency of the wicked; all who are about to die must repent of their sins; the defenders of man before divine judgment are repentance and good deeds. A thousandth part of one defender saves a man from the danger threatened him by a thousand accusers. The penalties imposed upon man for hating without cause; for robbery; for perverting or procrastinating justice; for destroying the law; for murder; for adultery; for idolatry; for using obscene language. The story of R., Simeon ben Johai, who remained in a cave for twelve years. The causes leading up to his concealment in the cave; his adventures after leaving the cave. The three things to be said by a man in his house on Friday eve; how they are to be said; when twilight takes place; how many signals of the horn were blown to remind the people of the advent of the Sabbath. Is there a difference between a shophar and a fife?, 53-62

CHAPTER III.

MISHNAS *I*. AND *II*. In which hearths or ovens victuals may be deposited on the Sabbath. The opinions of the school of Hillel and the school of Shamai concerning the same; the different opinions upon the teaching of the two schools. Victuals having once been taken out of an oven, would it be allowed to replace them? The law concerning a pot of victuals which had been forgotten and was thus cooked on the Sabbath. Usages of R. Jose on his way to Zipporah, and of R. Jehudah Hanassi when travelling. A narrative of R. Ishai while in the presence of R. Hyya the Great. The difference in law between an oven and a hearth; also, difference arising from an oven or a hearth being heated with straw or with wood, etc., 63-67

MISHNAS *III*. TO *VII*. Customs of the people of Tiberias relative to the heating of a pitcher of cold water. Is it allowed to place a pitcher of cold water into one filled with hot water in order to heat the water; or, *vice versa*, in order to heat the water? May one wash his body in the warm water of the Tiberius springs or in water warmed on the Sabbath eve? May the entire body be washed at once or each member separately? Customs in a bath-house. Are sweat-baths permitted on the Sabbath? Incidents occurring in the bath-house of the city of B'ni Brak. Why sweat-baths were prohibited. May one warm himself by a hearth-fire? Is bathing one's self in a washtub and anointing one's self with oils permitted on the Sabbath? Usages of Rabbi Jehudah Hanassi in this matter. Is swimming in a lake permitted on the Sabbath? Incidents attending R. Zera's witnessing R. Abuhu's swimming in a lake on a Sabbath. Concerning the permissibility of pouring cold water in a muliar or antikhi, the fuel of which had been removed; or in a kettle, the hot water of which had been poured out, and the prescribed quantity of such water. Concerning the addition of spices to a pot of victuals. Concerning the permissibility of placing a vessel under a burning lamp to receive its dripping oil or falling

CHAPTER IV.

CHAPTER V.

CHAPTER VI.

CHAPTER VII.

CHAPTER VIII.

CHAPTER IX.

CHAPTER X.

Next: Chapter I: Regulations Regarding Transfer on Sabbath

TRACT SABBATH.

CHAPTER I.

REGULATIONS REGARDING TRANSFER ON SABBATH.

MISHNA I.: There are two acts constituting transfer 1 of movable things (over the dividing line of adjoining premises, based on biblical statutes). The two acts are, however, increased to four on the inside and to a like amount on the outside of the premises (by the addition of rabbinical statutes). How so? A mendicant stands outside and the master of a house inside. The mendicant passes his hand into the house (through a window or door) and puts something into the hand of the master, or he takes something out of the master's hand and draws it back (toward him). In such a case the mendicant is guilty (of transfer) and the master of the house is free. If the master of the house passes his hand outside and puts a thing into the hand of the mendicant, or takes something out of the mendicant's hand and brings it into the house, the master of the house is culpable and the mendicant is free. 2 If the mendicant extends his hand into the house and the master takes something out of it, or puts something into it which is drawn to the outside by the mendicant, they are both free. If the master of the house extends his hand outside and the mendicant takes something out of it, or puts something into it which is drawn to the inside by the master, they are both free.

GEMARA: We were taught (Shebuoth, IV. 2): "The acts

of transfer on the Sabbath are two, respectively four." Why is this teaching here specified as two respectively four on the inside, and two respectively four on the outside, and there no such specification was made? Said R. Papa: Here the special subject of treatment is the Sabbath, and the Mishna enumerated the cases which involve guilt and those which do not involve guilt; while there the principal subject of treatment is a different one, and he mentions only the cases that involve guilt, leaving the cases that do not involve guilt untouched. But the cases that involve guilt are those by which acts of transfer are committed, and such are only two? Nay, there are two acts of transfer from within and two from without. But the Mishna says, "Yetziath" (which in a literal sense means transfer from within)? Said R. Ashi: The Tana calls transfer from without by the same term. And for what reason? Because every act of removing a thing from its place is called Yetziah. Said Rabbina: The Mishna also bears out this sense; for it speaks of Yetziath and immediately illustrates its remark by citing a case from without. This bears it out. Rabha, however, says: He (the Tana) speaks about divided premises (whose line of division is crossed), and in this case there are only two (in each of which there may be four acts of transfer).

Said R. Mathna to Abayi: Are there not eight, even twelve (instances of transfer over the line of division)? 1 And he rejoined: Such transfers as involve the obligation of a sin-offering are counted; but those that do not involve such an obligation are not counted.

"*They are both free*." Was not the act (of transfer) committed by both? Said R. Hyya bar Gamda: The act of removing the thing was committed by the joint efforts of both, and they (the rabbis) said: "It is written in the law, when a person did it" 2--*i.e.*, when one person commits the act he is culpable, but when an act is committed by the joint efforts of two persons, they are both free.

Rabh questioned Rabbi: If one were laden by his friend with eatables and beverages and carried them outside (of the house), how is the law? Is the removing of his body tantamount to the removing of a thing from its place, and therefore he is culpable, or is it not so?

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Said Rabbi to him: He is culpable. And this case is not like the case of removing his hand. Why so? Because (in the latter case) the hand was not at rest, while (in the former) the body (before and after removal) was entirely at rest. 1

Said Rabbi Hyya to Rabh: Descendant of nobles! Did I not tell thee that when Rabbi is engaged with a certain tract ask him not about a subject (that is treated) in another tract, for he may not have that subject in his mind! And if Rabbi were not a great man thou mightest cause him shame, for he would give thee an answer which might not be right. In this instance, however, he gave thee a correct answer; as we have learned in the following Boraitha: If one was laden with eatables and beverages while it was yet light on the eve of Sabbath, and he carried them outside after dark, he is culpable; for his case is not like that of removing the hand mentioned above.

Abayi said: From all that was said above it is certain to me that the hand of a man (standing on the street) is not treated as public ground. 2 And I also see that (if a man stands on private ground) his hand is not to be treated a-, private ground. Would it be correct, then, to regard the hand as unclaimed ground? If so, would the penalty imposed by the rabbis in such a case, namely, that one should not move his hand (containing a movable thing) back (during the Sabbath day), apply in this case or not?

Come and hear the following Boraitha: If a man has his hand filled with fruit and he extends it outside (of the premises where he stands), one said he is not permitted to draw it back, and another Boraitha says he is allowed to do so. May we not assume that this is their point of dispute: the former holds that the hand is treated as unclaimed ground, and the latter thinks that it is not like unclaimed ground? Nay, it may be that both agree that the hand (as spoken of in our Mishna) is like unclaimed ground, and yet it presents no difficulty. One of the Boraithas treats of a man who had extended his hand unintentionally, and the other one treats of a man who had put forth his hand intentionally. In the former case the rabbis did not

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fine him, and in the latter case they did. And if you wish, it may be said that they both speak of a case when the act was done unintentionally, and their point of differing is as to the varying premises, whether the hand may be drawn back to the ground where the man stands, or to other

(private) ground that adjoins it? As Rabha questioned R. Na'hman: If the hand of a man was filled with fruit, and he extended it outside, may he draw it back to the same ground where he stands? And he answered: He may. (And may he remove his hand) to other (private) ground? Nay. And to the question, "What is the distinction?" he said: If thou wilt measure a whole kur of salt and present me with it, I shall tell thee the answer. (See footnote, Erubin, p. 79.) In the former case his design was not accomplished; in the latter, however, his design was accomplished (and it is prohibited for fear that it should be repeated).

R. Bibi bar Abayi questioned: If one has put bread into the oven, is he allowed to take it out before (it is baked and) he becomes liable to bring a sin-offering, or not?

Said R. A'ha bar Abayi to Rabhina: What does the questioner mean? Unintentionally and without remembering (that it is Sabbath), then what does the expression "allowed" mean? To whom? He is still not aware of it. On the other hand, if he did it unintentionally and afterward he remembered of the Sabbath, how can he be liable to a sin-offering; did not a Mishna state that the liability to bring such a sacrifice applies only when the failing was begun and accomplished unintentionally? Should it be understood that the act was done intentionally, then it would not involve the liability of a sin-offering, but it would constitute a crime that involved capital punishment. 1

Said R. Ashi: Say, then, it is a crime that involves capital punishment. R. A'ha, the son of Rabha, taught so plainly. R. Bibi bar Abayi said: If one put bread into the oven, he is allowed to take it out before it may involve a case of capital punishment.

"*The mendicant extended his hand*," etc. Why is he culpable? (To complete the act) there must be a transfer from a place that is four ells square and a depositing into a place of the same area, and such was not the case here. Said Rabba: Our

[paragraph continues] Mishna is in accordance with R. Aqiba's opinion, who holds that as soon as the air of a place surrounds a thing it is equal to the thing being deposited in that place. But may it not be that depositing does not require four ells, for the reason stated above, but removing does? Said R. Joseph: The teaching of this paragraph agrees (not with the opinion of R. Aqiba), but with that of Rabbi, as we have learned in the following Boraitha:

If one threw an object from one street into the other, and there was a private ground between them, Rabbi declared him culpable, and the sages freed him. Hereupon R. Jehudah in the name of Samuel said: Rabbi declared the man guilty of two offences: one for having removed the thing from its place, and one for having deposited it in another place. Hence in both, the four ells in question are not required.

But with reference to this it was taught that both Rabh and Samuel said that Rabbi's declaration of culpability treated of a case where the private ground (that divided the two streets) was roofed, for the assumption is that a house must be regarded as a solid object that fills out all the space it occupies, but not when it was unroofed?

Therefore said Rabha: (All these views can be dispensed with, as) the hand of a man (because of

its value) is considered as a piece of ground four ells square. And so, also, was declared by Rabin, when he came from Palestine, in the name of R. Johanan.

R. Abhin in the name of R. Ila'a, quoting R. Johanan, said: If one threw a thing and it rested in the hands of another man, he is culpable.

Why the repetition--has not R. Johanan declared above, already, that the hand of a man is considered as a space of four ells square? Lest one say that this is only when he *intended* to put it into his hand (and the intention makes it valuable as the space in question), but not otherwise. Therefore the repetition.

The same said again in the name of the same authority: If one remains standing in his place when he receives a thing, he is culpable; but if he was moving away from his place when he received it, he is free. And so also we have learned in a Boraitha in the name of the anonymous teachers.

R. Johanan asked the following question: If one threw a thing and then moved from his place and caught it, is he culpable or not? How is this question to be understood? Said R. Ada bar Ah'bah: The difficulty is concerning the exercise

of two forces by one man, and the question was thus: If two forces were exercised by one man (in committing a prohibited act), should both parts of the act be accounted to the same, so that he should be declared culpable, or should each part of the act be considered separately, as if there were two individuals concerned, and then he is free? This question is not decided.

R. Abhin in the name of R. Johanan said: If one put his hand into the yard of his neighbor, got it full of rain water, and withdrew it, he is guilty. But to make one guilty of the act, it must consist of removing a thing from a place of four ells square, which is not the case here. Said R. Hyya b. R. Huna: It means that he took the water as it was running down a slanting wall, as Rabba taught elsewhere that removing a thing from a slanting wall made the man culpable. But (in speaking of removing an object from a slanting wall) Rabba treated on the question of removing a book, which is a stationary thing. Is it analogous to removing water that can never become stationary?

Therefore said Rabha: Our case treats when he dipped the water out of a cavity (in the wall) in question. Is not this self-evident?

Lest one say that water standing upon water is not considered stationary,, he comes to teach us that it is. And this is in accordance with his theory, as follows: Water standing upon water is considered stationary; a nut, however, lying upon the surface of water is not considered so.

The same said again, in the name of the same authorities: One who was laden with eatables and beverages, entering and going out the whole day, he is not culpable until he rests. Said Abayi: And even then only if he stops for the purpose of resting; but not when he stops merely to adjust his burden on his shoulders. Whence is this deduced? From what the master said: "he stopped within the limit of four ells to rest he is free, but if he stopped to adjust the load on his shoulders

he is culpable. Beyond four ells, if he stopped to rest he is culpable, but if he stopped to adjust the burden on his shoulder he is not culpable. What does this imply? It implies that one cannot be culpable unless his intention of removing was before he stopped.

The rabbis taught: If one takes anything from his store into the market through the alley-way (where the benches of market-men are situated), he is culpable; it makes no difference whether he carries, throws, or pushes it with his arm. Ben Azai, however,

said: If he carries it in or out he is not culpable, but if he throws or pushes it in or out he is culpable. The same we have learned in another Boraitha.

The rabbis taught: There are four kinds of premises as regards the Sabbath--viz.: private ground, public ground, unclaimed ground, and ground that is under no jurisdiction. What is private ground? A ditch or hedge that is ten spans deep or high and four spans wide--such are absolutely private grounds. What is public ground? A country road or a wide street, or lanes open at both ends--such are absolutely public grounds. [So that in these two kinds of premises nothing must be carried from one to the other; and if such was done by one unintentionally, he is liable to a sin-offering; if, however, intentionally, then he is liable to be "cut off," or to suffer the extreme penalty (at the hands of human justice).]

A sea, a valley of fields, the front walk (before a row of stores), and unclaimed ground are neither like public nor like private ground. [Nothing should be carried about there to start with; but if one has done it, he is not culpable. Nor should anything be taken out of these grounds into public or private ground, or brought in from the latter into these grounds; but if one has done so, he is not culpable. In adjoining courtyards of many tenants and alleys that are open at both ends, where the tenants have made it communal property, [1] carrying things is allowed; however, it is not allowed when such is not done. A man standing on the door-step [2] may take things from or give things to the master of the house; so also may he take a thing from a mendicant in the street or give it to him; but he must not take things from the master of the house and hand them over to the mendicant in the street, nor take from the latter and transmit to the former. Still, if this was done, all the three men are not guilty. Anonymous teachers, however, say that the door-step serves as two separate grounds: when the door is open it belongs to the inside, and when the door is closed it belongs to the outside. But if the door-step is ten spans high and four spans wide, it is considered as a premises in itself.]

The master said: "Such are absolutely private grounds."

What does he intend to exclude (by this emphatic declaration)? To exclude that which R. Jehudah taught about Erubhin (p. 25).

"These are absolutely public grounds." What does it mean to exclude? To exclude another instance of R. Jehudah's teaching, concerning the enclosure of wells. (Ibid., p. 40.)

Why does not the Boraitha count the desert also, for have we not learned in a Boraitha: Public ground is constituted by public roads, wide streets, alleys that are open at both ends, and the desert? Said Abayi: It presents no difficulty. There the law was expounded as it existed when Israel dwelt in the desert; here, however, the law is taught as it prevails at the present time.

The master said: "If one has brought in or taken out a thing unintentionally," etc. Is not this self-evident? He means to say that if the culprit did it intentionally, "he is liable to be cut off," etc. Also this is self-evident? He comes to teach, because of the following statement of Rabh, who said: "I found mysterious scrolls in the possession of my uncle, R. Hyya, which read: Aysy ben Jehudah says: There are forty less one principal acts of labor. A man, however, cannot be guilty of performing but one. And to the question, How is this to be understood? the answer was: It should be corrected and read: There is one of those acts of labor for which a man is not guilty. (In consequence, however, of the omission just what particular act of labor is excluded, all of the thirty-nine remained doubtful); and the Boraitha teaches that the labor mentioned is not one of the doubtful."

Again, the master said: "A sea, a valley of fields," etc. Is that so? Have we not learned (Taharoth, VI. 7) that a valley is, in summer time, to be regarded as private ground with reference to the Sabbath, and as public ground with reference to defilement; in the rainy season, however, it is private ground in all respects? Said Ula: As a matter of fact it is unclaimed ground, but by calling it private ground the Boraitha only means to distinguish it from public ground. R. Ashi, however, said: He speaks of a valley in which there are partitions. 1

"And unclaimed ground." Are not all the above-mentioned unclaimed ground? When R. Dimi came he said in the

name of R. Johanan: The mention of "unclaimed ground" in this case is required merely to imply a corner (of a private plot) that adjoins public ground; for although at times (when the street is crowded) many people are forced into this corner, it is considered as unclaimed ground, as the public use of it is not regarded with favor. He said also in the name of the same authority: The space between the pillars and the buildings (on the side of the street) is considered by the law as unclaimed ground. Why so? Because although many walk there, still, since one cannot make his way in such space freely (the row of pillars being irregular or in a broken line), it is like unclaimed ground.

R. Zera in the name of R. Jehudah said: The benches in front of pillars are regarded as unclaimed ground (even if they are ten spans high and four spans wide). The one who holds that the space between the pillars is considered as such, will so much the more agree that the benches in front of the pillars are considered such; but he who says that the benches are so considered, may hold that this is so because the encroachment upon them is not regarded with favor. The ground between the pillars, however, which is usually trodden by many people, is like public ground.

Rabba b. Shila in the name of R. Hisda said: If one throw or plaster (an adhesible) thing against the side of a brick that is standing up in the street, he is culpable; but if he throw or plaster a thing on top of it, he is not. Abayi and Rabha both said: Provided the brick is three spans high,

so that people do not step upon it; with bushes or briars, however, even if less than three spans high, one is not culpable. And Hyya bar Rabh said: Even a bush or briar must be three spans high. 1

Rabba, of the school of R. Shila, said: When R. Dimi came from Palestine, he said in the name of R. Johanan: No space can be considered unclaimed ground unless it has an area of four spans square, and R. Shesheth added that it holds good up to ten spans square. What does it mean? Shall we assume that only if it has a partition of ten spans it is unclaimed ground? Has not R. Giddell in the name of R. Hyya bar Joseph, quoting

[paragraph continues] Rabh, said: A house that is not ten spans high, but which is raised to that height by the ceiling, one may handle on the roof over its entire area; inside of the house, however, only within four ells square? Therefore we must say that the statement: "It holds good up to ten spans," implies that the law of unclaimed ground is valid when the height does not exceed ten spans. As Samuel said to R. Jehudah: "Ingenious scholar! treat not on laws of the Sabbath exceeding ten spans in height." And to what does it apply? To private ground it could not apply, as it is known that private ground is so considered to the sky; hence it is only to unclaimed ground that above ten spans does not exist, as the rabbis have invested unclaimed grounds with the lenient regulations pertaining to private ground--viz.: If the place have an area of four spans square, it is unclaimed ground; if it has a lesser area, it is not subservient to any jurisdiction. And with the lenient regulations of public ground--viz.: The place is regarded as unclaimed ground only to the height of ten spans; beyond that it ceases to be unclaimed ground.

The text says: "In a house the inside of which is not ten spans high," etc. Said Abayi: If, however, one has cut in it an excavation four ells square, so as to complete the height of ten spans, one may handle things freely in the whole house. Why so? Because in such a case the entire space of the house (around the excavation) would be considered like holes on private ground, and it has been taught that such holes are regarded the same as the private ground itself. As to holes on public ground, Abayi said: They are like public ground. Rabha, however, says that they are not. Said Rabha to Abayi: According to your theory, holes on public ground are to be considered the same as the ground itself. In which respect, then, does this case differ from what R. Dimi said above (p. 8) in the name of R. Johanan? Let, according to thy opinion, such a corner be considered as a hole in public ground. Nay, the use of the corner is not considered favorable by people, while no one objects to the use of a hole in the street.

R. Hisda said: If a person erected a pole on private ground and threw something at it, if that thing rested on top of the pole, and be that pole a hundred ells high, the person is culpable, for private ground is absolutely unlimited in height. Shall we assume that R. Hisda holds in accordance with Rabbi of the following Boraitha: "If one threw a thing (in

the street) and it rested upon the smallest cornice 1 (of a house), according to Rabbi he is culpable, and the schoolmen say that he is not." Said Abayi: In private ground all admit the decision of R. Hisda. The case, however, in which Rabbi and the sages differ was a tree that stands on private ground with its branches reaching out into public ground, and one threw a

thing which rested on a branch. Rabbi holds that the branch is part and parcel of the root, but the sages opine that we need not assume such to be the case.

Abayi said: If one threw a bee-hive which was ten spans high, but not six spans wide, into the street, he is culpable; if, however, the bee-hive was six spans wide, he is free (because it is considered a piece of private ground in itself). Rabha, however, said he is not, even if it be less than six spans wide. Why so? Because it is impossible for twined reed not to exceed the given height. [2] In case he threw the bee-hive [3] with its mouth down, even if the hive is a trifle over seven spans high, he is culpable; but if it is seven and a half spans high, he is not. R. Ashi, however, said: He is, even if it is seven and a half spans high. Why so? Because the enclosing rim of the bee-hive is made for the purpose of containing something within, and not to be attached to the ground; hence it is not included in the *Lavud* class. [4]

Ula said: A post nine spans high, which stands in the street, and people use it to shoulder (their burdens) on, if one threw a thing and it rested on the top of it, he is culpable. Why so? Because a thing that is less than three spans high is stepped upon by many; a thing between three and nine spans high is not used either to step or to shoulder a burden on; but if it is nine spans high, it is surely used to shoulder burdens on.

Abayi questioned R. Joseph: What is the law of a pit (of similar depth)? Said he: The same (as of the post). Rabba,

however, said: A pit of similar depth is not governed by the same law. Why so? Because the use (which is made of a thing) through compulsion is not called (a customary) use.

R. Adda bar Mathna objected to Rabha from the following Boraitha: If one intended to keep the Sabbath on public ground and deposited his Erubh in a pit less than ten spans (below the ground), his act is valid. "If he deposited it more than ten spans below the ground, his Erubh is of no value." Let us see how was the case. If the pit was more than ten spans deep, and by the saying "he deposited it less than ten spans below the ground" is meant that he raised the Erubh to a higher place, and by the saying "more than ten spans" is meant on the bottom of the pit, then, at all events, the Erubh could not be of any value; as he is in public ground, and his Erubh is in private, therefore we must say that the case was of a pit less than ten spans deep, and nevertheless the Erubh is valid; hence we see that the use of a place through compulsion can at times be considered as customary use.

The answer was that the Boraitha is according to Rabbi, who says that against things which are prohibited only rabbinically because of rest (Shebuoth) no precautionary measures are taken when they are to be done at twilight, and the prescribed time for depositing an Erubh is twilight; therefore, although the use of the pit which was less than ten spans deep was compulsory, the Erubh was nevertheless valid, because respecting twilight the rabbis are not particular.

R. Jehudah said: If one moves a bundle of reeds by raising one end and throwing it over, then raising the other end and throwing it over, he is not culpable, unless he lifts the entire bundle off the ground.

The master said: "A man standing on the door-step," etc. What is that step? If it is the step of the street, how may he "take from the master of the house"; does he not transfer from private ground into public ground? If it is the step of the house, how may he "take from the mendicant (standing in the street)"? Does he not transfer from public into private ground? And if it is unclaimed ground, how may he "take and give intentionally," since a direct prohibition to that effect exists?

Nay, the door-step is a place concerning which the law has no provision; as, for instance, it is not four spans square. It is said elsewhere by R. Dimi in the name of R. Johanan that such a thing is not under the jurisdiction.

The master said: "All three are not culpable." Would this not be an objection to Rabha, who said if one transfer an object (in public ground) from one to the other limit of four spans, even if he moves it over his head (*i.e.*, above ten spans from the ground), he is culpable? In the above-mentioned case, however, he is not.

Anonymous teachers say "a door-step," etc. Is such the case even if there is no side-beam to it? Has not R. Hamma bar Gorion in the name of Rabh said that if it is inside the door, and not even four spans square, there must still be a side-beam to make it a free place? Said R. Judah in the name of Rabh: Here the doorstep of an alley is treated of, the half of which is roofed, and the other half not roofed, and the roofing is toward the inside. In this case when the door is open it is considered like the inside, when it is closed it is like the outside. R. Ashi, however, said: The case was of a door-step of a house, but the door was topped by two beams, each of which was less than four spans wide, and between them the space was less than three spans wide, the door itself being in the middle, so that the law of Lavud applies only when the door is open, and not when it is closed; therefore when it is open the door-step is considered as the inside, and when it is closed the door-step is regarded as the outside.

"If the door-step is ten spans high," etc. This supports the theory of R. Isaac bar Abbimi, who said that R. Mair used to say: Wherever thou findest two distinct grounds belonging to the same premises (*i.e.*, to which the law of premises regarding the Sabbath applies equally), like a post in private ground, that is ten spans high and four wide, it is prohibited to shoulder (a burden) on it. As a precautionary measure (enacted by the rabbis), for fear that the same would be done with a rock of the same size that may be found in the street, and it is biblically prohibited to shoulder upon it.

MISHNA *II*.: One shall not sit down [1] before the hair-cutter at the approach of the time for afternoon devotion, [2] before

reciting his prayers. Nor shall he enter a bath-room or a tannery (the same is the case with any factory or large business), or sit down to eat, or start pleading a case (before a judge). But if he has started, he need not be interrupted. One must quit his work to read Shema, but he need not stop working in order to pray.

GEMARA: What time of Min'ha does the Mishna mean? Does it mean the high afternoon [1]

time? Why should a man not be allowed, since the day is still young? Does it mean the lesser time, and still hold that (if the man had started the work) he need not discontinue it? Shall this be taken as an objection to the opinion of R. Joshua ben Levi, who said: "When the time of afternoon prayer draws nigh, one must not partake of anything before performing his devotion"? Nay, he speaks here of the high time, and yet one shall not begin cutting his hair, as a precaution against accidents, lest his scissors break; a bath to sweat, lest he grow exhausted; a tannery, lest he notice some damage to his wares and become confused; nor shall he sit down to eat lest the meal be protracted; pleading a case of justice, lest argument be advanced that overthrows all previous arguments, and until all this is settled the. Min'ha prayer will be forgotten.

From what moment does the act of hair-cutting begin? Said R. Abhin: From the moment the barber's cloth is spread over him. The act of bathing begins from the moment the coat is pulled off; tanning begins from the moment the working-apron is tied around the shoulders; a meal begins from the moment the hands are washed, so said Rabh; but R. Hanina said, from the moment one takes off his girdle. And they do not differ. Rabh spoke of the custom of his country, and R. Hanina spoke of the custom of his country.

Abayi said: According to him who holds that the evening prayer is discretionary, our Babylon colleagues, as soon as they take off their girdle for the meal, they must not be troubled to pray before meal; however, according to him who holds that even this prayer is obligatory, they must be troubled. But is

not the afternoon prayer obligatory by all means, and nevertheless our Mishna teaches that "if he began (his meal) he need not be interrupted," to which R. Hanina said that the loosening of the girdle (is the beginning)? In the case of the afternoon prayer, since the time for it is fixed, (we assume) that the man will hasten and will not fail to pray in time, while for evening prayer, the time for which extends through the entire night, it is feared that he may not hasten, and neglect it.

R. Shesheth opposed: Is it so much trouble to put on one's girdle? Furthermore, cannot one stand up (without a girdle) and pray? Nay! As it is written: "Prepare thyself to meet thy God, O Israel!" [Amos, iv. 12]; and as Rabha b. R. Huna used to put on stockings when he stood up to recite prayers, saying: It is written: "Prepare thyself," etc. Rabha, however, used to throw off his mantle and fold his hands when he prayed, speaking as a slave before his master. R. Ashi said: I have observed R. Kahana. In times of trouble he threw off his mantle and folded his hands when he prayed, speaking like a slave before his master. In times of peace he dressed and fitted himself up carefully, saying: "It is written, Prepare thyself to meet thy God, O Israel." Rabha noticed that R. Hamnuna spent much time at his prayers. Said he: "Thus they quit eternal life and busy themselves with transient life." [1] He, R. Hamnuna, however, thought that the time spent in prayer is a thing by itself, and the time devoted to study is also a thing by itself. R. Jeremiah was sitting before R. Zera discussing a Halakha. The day was breaking and time for prayer came, and R. Jeremiah hastened for the purpose of praying. Said R. Zera to him: "When one turneth away his ear so as not to listen to the law, even his prayer becometh an abomination" [Prov. xxviii. 9].

At what moment does the work of dispensing justice commence? R. Jeremiah and R. Jonah--one said: "From the moment the judges put on their mantles"; the other said: "From the moment the

litigants begin pleading." And they do not differ. The former speaks of the instance of opening court; the latter of the instance when the court was in session and the judges were engaged in deciding other cases.

Up to what time should court be in session? R. Shesheth

said: "Up to meal time." Said R. Hama: From what scriptural passage have we this? From "Happy art thou, O land! when thy king is noble-spirited, and thy princes eat in proper time, for strengthening and not for gluttony!" [Eccl. x. 17]; *i.e.*, for the strength of the law and not for indulgence in wine.

The rabbis taught: The first hour (of the day) is the time the Lydians eat (the Lydians were cannibals); in the second hour robbers eat; in the third hour (rich) heirs eat; the fourth hour is eating-time for the people in general; in the fifth hour laborers eat; in the sixth hour scholars eat; from the last hour onward, eating is like throwing a stone into a barrel (rather injurious than beneficial). Said Abayi: This is the case only when one has tasted nothing in the morning; but if he did so, it does not matter.

R. Ada bar Ahba said: One may say his prayers in a new bath-room, which has not been used. R. Hamnuna said in the name of Ula: One is not permitted to call Shalom to another man in a bath-room, for it is written: "He called the Eternal Shalom" [Judges, vi. 23]. [1] If so, the saying of the word "faith" should also be prohibited, for it is written, "the faithful God" [Deut. vii. 9]. And lest one say so it is, has not Rabha bar Mehassia said in the name of R. Hama bar Gorion, quoting Rabh, that "faith" may be mentioned? In the latter case the name itself is not so designated, as it means as it is translated above. But in the former case it (Shalom) is a designation of the name itself.

The same says again in the name of the same authority: If one bestows a gift on his friend, he should let him know it; as it is written: "To know that I, the Eternal, made you holy" [Ex. xxxi. 13]. And there is a Boraitha which states as follows: "The Holy One, blessed be He, said unto Moses, I have a good gift in my storehouse; its name is Sabbath, which I wish to bestow on Israel; go and announce it to them." From this R. Simeon ben Gamaliel said: One who gives a child some bread should announce it to its mother. How shall he do this? Said Abayi: He should put some ointment around its eyes and stain it with dye.

Is this so? Has not R. Hama b. Hanina said: He who bestows a gift on his friend need not announce it to him, for it is written: "Moses knew not," etc. [Ex. xxxiv. 29]. This

presents no difficulty. The latter instance represents a thing that is to become known by itself; the former instance treats of a thing that cannot become known by itself.

But was not the Sabbath a thing that was to become known? Aye, but the reward (for keeping the Sabbath holy) that attends it was not to be known.

R. Johanan in the name of R. Simeon b. Yohayi said: All the commands that the Holy One, blessed be He, gave unto Israel, were given with publicity, excepting the Sabbath, which was given in privacy, for it is written: "Between me and the children of Israel it is an everlasting sign" [Ex. xxxi. 17]. If such is the case, the idolaters need not be punished for its sake. The Sabbath was made known, but the additional soul (a new impetus of life) which comes with the Sabbath was not made known to them. Thus R. Simeon b. Lakish said: "The Holy One, blessed be He, bestows an additional soul on man on the eve of the Sabbath, and takes it back again when the Sabbath departs." 1

R. Hisda held in his hand two gifts 2 from the flesh of an ox, and said: "I will give this to the man who will tell me some new teaching in the name of Rabh." Said Rabha b. Mehassia to him, thus taught Rabh: "He who bestows a gift on a friend should let him know it." And R. Hisda gave him the meat. Said the former again: Art thou so fond of the teachings of Rabh? "Aye, aye," he answered. Said he: This is like that which Rabh said: A silk garment is precious to the wearer. Rejoined R. Hisda: Did Rabh indeed say so? This second thing is even better than the first; if I had other gifts I would bestow them too.

Rabha b. Mehassia in the name of the same said again: One should never show preference for one child above his other children, as for the sake of two selas' weight of silk, which Jacob bestowed on Joseph in preference to his other sons, the brothers became jealous of Joseph, and the development brought about our ancestors' migration into Egypt.

Again he continued: One should always endeavor to seek a dwelling in a city of recent settlement, for the settlement being recent, the sins are few. As it is written: "Behold, this city is

near to flee thereunto, and it is little" [Gen. xix. 20]. What does it mean, it is near and small? Could not he see this himself? But it means its settlement is recent and therefore its sins are not many.

The same said again: A city whose roofs are higher than that of the synagogue will ultimately be destroyed, as it is written: "To raise high the house of our God," etc. [Ezra, ix. 9]. However, this refers only to the roofs of the houses, but as to the tops of towers and palaces, it does not concern them. Said R. Ashi: *I* have prevented Matha Mehassia from being destroyed (as he had made the prayer-house and the college higher than other houses). But was it not destroyed later? Yea, but not for this sin.

He also said: 1 It is better to be dependent on an Israelite than on an idolater; on an idolater than on a Persian; on a Persian schoolman 2 than on a scholar; on a scholar than on a widow or an orphan.

He also said: Rather any sickness than sickness of the bowels; rather any pain than pain of the heart; rather any disorder than a disorder in the head; rather any evil than a bad wife.

Again he said: If all the seas were ink, if all the swamps were producing pens, if the whole expanse of the horizon were parchment, and all the men were scribes, the (thoughts that fill the)

void of a ruler's heart could not be written in full. Whence is this deduced? Said R. Mesharsia: "The heavens as to height and the earth as to depth, and the hearts of kings cannot be fathomed" [Prov. xxv. 3].

"*To read Shema*," etc. Was it not stated before that they need not be interrupted? This sentence applies to study, as we have learned in a Boraitha: "Scholars that are engaged in studying the Law must stop for the reading of Shema, but they need not stop for prayer." Said R. Johanan: Such is the case with men like R. Simeon b. Yo'hai and his colleagues, for learning was their profession; but men like ourselves must stop for prayer also. But have we not learned in a Boraitha: "As (students) need not quit (their studies) for prayer, so they need not stop them for Shema"? This applies only to the study of

the establishment of leap year; as R. Ada b. Ahba, and so also the sages of Hagrunia in the name of R. Elazar b. Zadok, declared: "When we were engaged in fixing a leap year at Yabne, we did not quit (our work) either for Shema or for prayer."

MISHNA *III*.: A tailor shall not go out with his needle when it is nearly dark on Friday, lest he forget and go out (carrying it about with him) after dark; nor a scribe with his pen; nor shall one search for vermin in his garments or read before the lamp-light (Friday night). Of a verity it is said, an instructor may follow the children when they read, but he shall not read himself (before the lamp-light). In a similar manner it is said that one afflicted with gonorrhœa should not eat from the same plate with a woman that has the same disease, lest they become accustomed to one another and come to sin.

GEMARA: "*A tailor shall not go out*," etc. Does not the Mishna mean when the needle is stuck in the garment? Nay, it treats of the case when (the tailor) holds it in his hand.

Come and hear. "A tailor shall not go out with the needle sticking in his garment." Does this not treat of the eve of the Sabbath? Nay, it treats of the Sabbath itself.

But is there not another Boraitha: "A tailor shall not go out with the needle sticking in his garment on Friday when it is nearly dark"? This was taught according to R. Jehudah, who holds that a laborer (carrying a thing) after the manner of his profession is culpable; as we have learned in the following Tosephtha: "A tailor shall not go out with his needle sticking in his garment; nor a carpenter with his ruler behind his ear; nor a cloth cleaner with the spanning cord behind his ear; nor a weaver with the stuffing cotton behind his ear; nor a dyer with samples around his neck; nor a money changer with the dinar in his ear. If, however, they did so, they are free, though they ought not to start it; so is the decree of R. Mair. R. Jehudah, however, says: The laborer only (going out) after the manner of his profession is culpable; but not common men."

In the school of R. Ishmael it was taught: "One may go out with the phylacteries on his head at twilight on the eve of Sabbath." Why so? As Rabha b. R. Huna said: One must feel the phylacteries on his head at all times, and in consequence he will be reminded, through feeling the phylacteries, that he must remove them before the Sabbath.

There is a Boraitha: A man must examine his garments on Friday evening, when it is getting dark, to see whether there is

anything in them that must not be carried about on the Sabbath. Said R. Joseph: This is an important ordinance concerning the Sabbath.

"*One shall not search for vermin,*" etc. Does it mean one shall not search for vermin in the day-time (of a Sabbath) lest he destroy any; and he shall not read before a lamp-light lest he snuff (the wick); or are both ordinances connected with each other so as to make the ordinance prohibiting the snuffing of the wick binding? Come and hear. "One shall not search for vermin nor read before the lamp-light." What can we understand from this Boraitha better than from our Mishna? Come and hear another Boraitha: "One shall not search before the lamp-light; also, one shall not read before it." These two ordinances are among the other established Halakhas in the attic of Hananiah b. Hyzkiyah b. Gorion. From this is to be inferred that both cases were prohibited for the same reason, that they may entail snuffing the wick.

R. Jehudah in the name of Samuel said: One must not try to distinguish even between his own and his wife's garments (before the lamp-light). Said Rabha: This is said only for the inhabitants of Ma'hoza, [1] but among the dwellers of rural places the garments can easily be distinguished. And even among the inhabitants of Ma'hoza, only the garments of old women cannot easily be distinguished from those of the men, but not of young women.

The rabbis taught: One shall not search for vermin in the street out of self-respect. In the same wise, R. Jehudah or R. Ne'hemiah taught that one shall not vomit in the street out of self-respect. The rabbis taught: One who searches his garments and finds a louse shall not crack it, but simply rub it with his fingers and throw it away (on the Sabbath). Says R. Huna: This should also be done even on week days, out of self-respect.

We have learned, R. Simeon b. Elazar said: "One shall not kill vermin on the Sabbath." So said Beth Shamai; Beth Hillel, however, allowed this. R. Simeon b. Elazar used also to say in the name of R. Simeon b. Gamaliel: "One is not allowed to negotiate marriage engagements for children, nor to engage teachers or artisan masters for children, nor to pay visits of condolence to mourners, nor to visit the sick on the Sabbath. Such is the decree of Beth Shamai; Beth Hillel, however, allows all this.

The rabbis taught: If one comes to visit the sick on the Sabbath, he shall say: "It is Sabbath and we are not to cry, but relief is drawing nigh." R. Mair said, one should say: "The Sabbath (if respected) may bring mercy." Rabbi Jehudah said: "May the Omnipotent have mercy with thee and toward the sick of Israel." R. Jose said: "May the Omnipotent bestow mercy on thee *amongst* the sick of Israel." Shebhna the Jerusalemite when he entered (a sick-room on the Sabbath) said, "Shalom"; on leaving he said: "To cry! it is Sabbath; nevertheless, relief is nigh As His mercies are great," and "Rest ye in peace."

According to whom is what R. Hanina said: "He who has a sick person in the house should

include him (in his prayers) amongst the sick in Israel"? It was in accordance with R. Jose. R. Hanina also said that it was with difficulty that the rabbis allowed visits of condolence to be paid to mourners and to visit the sick on a Sabbath. Rabba b. b. Hana said: When I accompanied R. Eliezer while visiting the sick, I sometimes heard him say (in Hebrew): "May the Omnipotent mind thee in peace," and sometimes (in Aramaic): "May the Merciful remember thee in peace." How could he do this? Did not R. Jehudah say: "One should never pray for what he needs in the Aramaic language"? And also R. Johanan: "The angels of service do not listen to one's prayer in the Aramaic tongue, for they know not that language." The case of a sick person is different, as *Shekhina itself* is with him. (This will be explained in Tract Nedarin in the proper place.)

"*One shall not read before the lamp-light*." Rabba said: It is the same even if the lamp is placed two (men's) heights (from the ground); even two stories high, or even if it is on top of ten houses, one above the other. "*One* shall not read," but *two* may? Have we not learned, "Neither one nor two"? Said R. Elazar: This presents no difficulty. Our Mishna treats of two reading one subject; and there it treats of two reading different subjects. Said R. Huna: Around the hearth-fire even ten persons shall not read together. Rabba, however, said: A prominent man may read, as he would not degrade himself by stirring the fire.

An objection was raised from the following: One should not read before a lamp-light, lest he snuff the wick. Said R. Ishmael b. Elisha: "I will read and not snuff it." Once he actually read and was tempted to snuff the wick. And he exclaimed:

[paragraph continues] "How great is the saying of the sages, that one should not read before a lamp-light." R. Nathan said: He actually snuffed the wick and noted in his diary: "I, Ishmael b. Elisha, have read before the lamp on Sabbath, and have snuffed the wick. When the holy temple shall be rebuilt, I will bring a fat sin-offering." Said R. Aba: With R. Ishmael b. Elisha it is different, for while studying the Law he always considered himself common.

There is one Boraitha: A servant may examine cups and dishes (to see, if they are clean, before the lamp); and another, that he may not. This presents no difficulty. The former treats of a servant in permanent engagement; 1 the latter of one who performs occasional service. And if you wish, it may be said that both Boraithas apply to a permanent servant: the latter in the case of a lamp which is fed with oil, the former in the case where it is fed with naphtha. (Naphtha emits a bad odor; he will therefore not be tempted to touch it.)

The schoolmen propounded a question: May a servant that is not permanently engaged (examine his utensils) before a lamp fed with oil?

Said Rabh: The rule is laid down (that he may), but we do not practise it. R. Jeremiah b. Aba, however, said: So is the rule, and so we practise.

Once R. Jeremiah b. Aba took (his Friday night meal) at the house of R. Assi. His servant (R. Jeremiah's retainer, who was at the time doing occasional service in R. Assi's house) proceeded to examine (the dishes) before the lamp. Said the wife of R. Assi (to her husband): "You, my master, do not approve of this." "Let him be," answered R. Assi; "he acts according to the opinion of his master."

"*Of a verity they said, an instructor*," etc. Was it not said, "He may see"? For what purpose should he do this but to read? Nay; he should see in order to watch the sequence of paragraphs. So also said Rabba b. Samuel: "He may arrange the sequence of paragraphs." Consequently, may he not read the paragraphs through? Would this not oppose the statement of R. Simeon b. Gamaliel, who said: "Children in their rabbi's house used to arrange their paragraphs and read before the lamp-light"? With children the case is different; out of fear for their master they will not be led to adjust.

MISHNA *IV*.: And these are some of the regulations

enacted in the attic of Hananiah b. Hyzkiyah b. Gorion, when the rabbis came to visit him. They called the roll and found that the disciples of Shamai were more numerous than those of Hillel, and they enforced eighteen regulations on that day.

GEMARA: Said Abayi to R. Joseph: Does the expression "and these," etc., refer to the things that were mentioned, or is "these" used with reference to things to be mentioned farther on? Come and hear. "One shall not search for vermin or read before a lamp-light; *and these* are some of the regulations," etc. From this it is obvious that "and these" is the correct version.

The rabbis taught: The "Roll of Fasts" was written by Hananiah b. Hyzkiyah and his company, for they thought with fondness of the troubles (which their race had experienced). Said R. Simeon b. Gamaliel: We also think with fondness of the troubles; but what shall we do? If we were to record (all the troubles our race has experienced since that time) we would never finish. It may also be said: A fool never feels trouble, or (more pointedly) a dead member on a living body feels not the lancet. [1]

MISHNA *V*.: The Beth Shamai said: Ink, dye material, or fodder (for animals) shall not be put into water (on Friday) unless there is still time for them to soak through while it is day. The Beth Hillel, however, permits this. The Beth Shamai prohibits putting bundles of linen thread (to bleach) into the oven unless there is sufficient time left for them to become heated through while it is yet day, or wool into a dye-kettle unless there is still time for it to be soaked through the same day. The Beth Hillel permits this. The Beth Shamai says: Traps shall not be set for animals and birds, or nets for fishes (on Friday), unless there is still time for them to be caught before sunset. The Beth Hillel permits this. The Beth Shamai says: One shall not sell anything to a Gentile (on Friday) or help him load his animal, or help him shoulder a burden unless he (the Gentile) can reach (with his load) the nearest place while it is yet day. The Beth Hillel permits this. The Beth Shamai

says: Hides shall not be given to a tanner nor clothes to a Gentile washer (on a Friday) unless there is still sufficient time left for him (the Gentile) to finish it while it is day. The performance of all these acts of labor heretofore mentioned was permitted by the Beth Hillel (on Friday) while the sun was still shining. Rabbi Simeon b. Gamaliel said: At my father's house it was the custom to give out white clothes to a Gentile washer three days before the Sabbath. Both

schools, however, agree that the presses may be put on olives and grapes in the press-pits (as long as it is still daytime).

GEMARA: Who is the Tana that maintains that putting water on ink constitutes the final work on it? Said R. Joseph: (It is Rabbi of the following Boraitha: "If one put flour (in a vessel) and another one put water on it, the latter is culpable (of the act of kneading); so is the decree of Rabbi." R. Jose, however, says that one is not culpable until he kneads it.

The rabbis taught: At twilight on the eve of Sabbath one may make an opening in a spring, so that the water run into the garden the whole day (of the Sabbath). He may also put smoking incense underneath garments, so that they hold the fragrance the whole day. It is also allowed to put burning sulphur under enamelled vessels, so that its smoke work on the paints the whole Sabbath day. It is also allowed for one to put a balm on the eye and a plaster on a wound, so that the healing process continue throughout the Sabbath; it is prohibited, however, to put grain into a water-mill, unless there is yet enough daytime left for it to be ground. Why so? Said R. Joseph: Because one is obliged to give rest even to tools on Sabbath.

Now since it was said that the resting of tools is obligatory according to the decision of the Beth Hillel, why did they permit putting sulphur and incense to smoke, or linen thread to bleach during the Sabbath? Because no act was being done, and (the tools were practically) at rest. But do not traps set for animals, birds, and nets for fishes work? Why, then, did they allow these? Here, too, they treated only of fishers' rods and traps, which do no work (but into which animals work themselves).

Now, as R. Oshia has declared in the name of R. Assi, that only the Beth Shamai holds that there is a biblical obligation for the resting of tools, but not the Beth Hillel, all the acts enumerated above are permitted by the latter, even in the event of the tools performing work.

Who is the Tana of what the rabbis taught anonymously as follows: "A woman shall not put dried lentils and peas into the oven on Friday when it is getting dark and leave them there (to get soft); and if she needs them for after the Sabbath she shall not use them, unless she waits the length of time required to cook them afresh. In the same wise a baker shall not put a vessel with water in the oven on Friday when it is getting dark; and if he needs (the hot water) for after the Sabbath, he shall not use it unless he waits the length of time it would require to boil it afresh." Shall we assume that this is in accordance with the Beth Shamai, but not with Beth Hillel? It may also be in accordance with the Beth Hillel, as the prohibitions were made as precautionary measures lest one stir the coals. If such is the case, the burning of incense and sulphur (as mentioned in our Mishna) should also be prohibited for the same reason. There is to be feared that the coals might be stirred, while here is no fear of that, as when the coals are stirred smoke may arise and injure the enamel or the garments. In the case of the linen thread also, no precautionary measure was necessary, because the draught caused by the admission of air into the oven would prove injurious to the thread, and therefore one would not open the oven to stir the fire. Then let the placing of wool into a (dye) kettle be prohibited as a precautionary measure? The Mishna treats of a kettle that stands at some distance from the fire; so says Samuel. Still, the apprehension exists that he may stir the dye. Nay, we speak of a kettle whose cover is sealed with clay.

Now that the master said that the prohibitions (of the Boraitha) are only precautionary measures, to prevent one from stirring the coals, a cold pot may be put in the oven on Friday when it is getting dark. Why so? Because the victuals in it cannot be used the same evening, and he (the cook) will never think of stirring the coals.

"*One shall not sell a thing to a Gentile,*" etc. The rabbis taught: The Beth Shamai said: One shall not sell a thing to a Gentile, nor lend it to him, nor help him carry it, nor lend him nor present him with any money on Sabbath eve unless there is time enough for the recipient to reach his house before night comes on. The Beth Hillel said (all this may be done) if there is time enough to reach his house at the wall of the city where he lives. R. Aqiba, however, says: It is sufficient if there is time enough for the Gentile to leave the house of the Jew.

[paragraph continues] Said R. Jose b. Jehudah: "R. Aqiba contends that his teaching does not contradict that of the Beth Hillel, but merely explains the latter's real intent."

The rabbis taught: One may put down eatables on his own grounds for a Gentile (on the Sabbath). If the latter takes the eatables and carries them off, he need not prevent him.

The rabbis taught: One shall not hire out his tools to a Gentile on Friday, but he may do so on Wednesday or Thursday (even if he knows positively that the Gentile will use them on Sabbath). In the same manner, it is prohibited to transmit a letter by a Gentile on Friday, but it may be sent on Wednesday or Thursday. It was said of R. Jose the Priest, according to others the Pious, that his handwriting was never found in the hands of a Gentile (for fear that it might be carried on the Sabbath).

The rabbis taught: One shall not send a letter by a Gentile on Friday unless he stipulated a certain sum for the delivery. If such a stipulation was not made, the Beth Shamai says it must not be delivered, unless the messenger has time to reach the house in which it is to be delivered (before sunset); the Beth Hillel, however, maintains: He may do it if the messenger has time to reach the house nearest to the wall of the city where the letter is to be delivered. Was it not taught at first that "one shall not send" at all? This presents no difficulty. In the first part the case treats of a town which has no post-office; in the latter part the Boraitha speaks of a town which has one.

The rabbis taught: One shall not embark on a vessel less than three days before the Sabbath. This is the case if one goes (to sea) on private business, but if he goes for a meritorious act, he may do so. He may make a stipulation with the owner of the boat that it shall rest on Sabbath, although he is aware that he will not do so; so is the decree of Rabbi. R. Simeon b. Gamaliel, however, maintains that such a stipulation is not necessary. To travel from Tyre to Zidon (a journey of a few hours) one may embark even on Friday.

The rabbis taught: Siege shall not be laid to Gentile cities less than three days before the Sabbath, but when the siege is laid it need not be interrupted. So also Shamai used to say: It is written, "until it is brought down" [Deut. xx. 20], *i.e.*, even on a Sabbath day.

"*R. Simeon b. Gamaliel said*," etc. There is a Boraitha:

[paragraph continues] R. Zadok said: "It was the custom at the house of Rabban Gamaliel to give white clothes to the washer three days before the Sabbath, but colored clothes even on a Friday." From this we have learned that it is harder to wash white clothes than colored ones. Abayi gave colored clothes to the washer and asked: How much wilt thou take for washing them? "As much as for white clothes," answered the washer. Said Abayi: "The rabbis have preceded thee with their declaration" (that white clothes are harder to wash).

"*Both schools agree*," etc. Why did the school of Shamai enforce precautionary measures in all the previous cases, but in the case of wine and oil presses they did not do so? They prohibited the performance of such labor as involves the obligation of a sin-offering, if performed (unintentionally) on the Sabbath, or on a Friday when approaching darkness; but for the putting of press beams on grapes or olives, which does not involve the obligation of a sin-offering even if done on the Sabbath, the precautionary measure was not necessary.

From this it may be inferred that work which continues by itself may well be started (late on Friday). [1] Who is the Tana that holds so? Said R. Jose: R. Ishmael of the Mishna (Ediath, II. 7): "Garlic, unripe grapes, and green grain-stalks which were crushed (on Friday) while yet day, may be put under pressure at sunset; so is the decree of R. Ishmael. R. Aqiba, however, says: "It must not be done." R. Elazar (b. Pedath), however, said that the Tana in question is R. Elazar (b. Samoa) of the following Mishna: "Honeycombs that were crushed on Friday shall not be put in the press (at sunset), so that the honey run out by itself; R. Elazar, however, permits it." R. Jose b. Hanina has practised in accordance with the theory of R. Ishmael.

The oil and the covers of the small oil-presses Rabh prohibits to handle on the Sabbath. Samuel, however, permits it. The same is the case with reed-cloth; Rabh prohibits, and Samuel permits (to handle). Covers that are used on board of a vessel to cover the deck Rabh prohibits, and Samuel permits the handling of.

R. Na'hman said: "A goat that is kept for its milk, a sheep that is kept for its wool, a hen that is kept for its eggs, an ox

that is kept for the plough, and dates that are put up for the market, are prohibited for use at a biblical feast," according to Rabh; Samuel, however, said it was permitted. The point of their differing is the law of *Muktza*, in which R. Jehudah and R. Simeon differ. (It is explained farther on that, according to the latter, no *Muktza* exists.)

A disciple in 'Harta of Argis [1] decided cases according to R. Simeon's teaching, and R. Hamnunah put him under the ban. But have we not adopted the opinion of R. Simeon? Yea, but 'Harta was within the jurisdiction of Rabh, and he (the disciple) should not have done as he did against Rabha's teaching.

MISHNA *VI.*: Meats, onions, and eggs shall not be put to roasting on the eve of Sabbath, unless they can be done while it is yet day.

Bread shall not be put in the oven or a cake upon live coals, unless the crust can be formed while it is yet day. R. Elazar says it is enough if the bottom crust is formed. The Passover sacrifice may be turned around in the oven (on Friday) when it is getting dark. In the heating-house of (the sanctuary) the fire was fed at eventide. The fires in the rural districts may be fed until the flames envelop the greatest part (of the fuel). R. Judha says: "Where coals were already burning more fuel may be added, even when Sabbath is quite near at hand."

GEMARA: When should such victuals be considered done? Said R. Elazar in the name of Rabh: "When they are done like the victuals of Ben Drostai." 2 As we have learned in a Boraitha: Hananiah says all victuals that are done like the victuals of Ben Drostai may be left upon the hearth, even if the fire in the hearth is not stirred up and full of ashes.

"*Bread shall not be put*," etc. The schoolmen propounded a question: ("Does R. Elazar speak of) the crust that is formed near the wall of the oven, or the crust formed (on the side of the loaf, that is turned) to the fire?"

Come and hear. R. Elazar says: "It is sufficient if the surface is crusted, which lies close to the wall of the oven."

"*The Passover sacrifice may be turned*," etc. Why so? Because a company (when preparing a sacrifice in the temple) is very cautious.

But if this were not the case, would it not be allowed? Has not the master said: A (sacrificial) kid may be used, well done or not well done? Aye, but in that case it is cut in pieces; in our case it could not be cut in pieces. 1

"*The fire in the heating-house*," etc. Why so? Whence is this deduced? Said R. Huna: It is written [Ex. xxxv. 3]: "Ye shall not kindle any fire throughout your habitations upon the Sabbath day." *Your* habitations excluded the sanctuary. R. Hisda opposed: If it is so, then they may do so on Sabbath itself; therefore he explains thus: The cited verse excludes only the parts of the members which are already upon the altar, and the reason of our Mishna is because priests are very careful.

"*In the rural districts*," etc. What does "the greatest part" mean? According to Rabh: "The greatest part of each piece"; and according to Samuel: "Until no more small wood is needed to make the heap burn." R. Hyya taught the following Boraitha in support of R. Samuel: "The flame should continue rising by itself, and not by the assistance of anything else." And to only one log of wood? -until the fire catches most of its thickness; and according to others, the most of its circumference, was the decision of Rabh. Said R. Papa: To comply with both views just mentioned it is right that the fire should catch both, the most of its thickness and the greatest part of its circumference. However, regarding this law Tanaim of the following Boraitha differ. R. Hyya says: Until it is so burned that it is unfit for any carpenter's work. R. Judah b. Bathyra says: Until the fire catches both sides. And although this cannot be substantiated by evidence

(from Scripture), there is a hint of this--viz.: "Both ends are consumed by the fire and the inside is scorched; is it fit for any work?" [Ez. xv. 4].

It was taught: R. Kahana said: Reeds, if they are tied together, must (have enough daytime on Friday) to burn over half; if not tied together, less is sufficient. *Granum* must have enough time for the fire to catch their greater part; if they are put in a fire-pot, they need not. R. Joseph taught four substances

[paragraph continues] (used as fuel) need not (have time until the fire catches) the greater part--viz.: pitch, sulphur, cheese, and running fats. In a Boraitha it was taught that straw and (wood) shavings belong to the same category. R. Johanan said that the same is the case with fuel in Babylon. What does it mean? According to R. Joseph hast, and according to Rami b. Aba branches.

APPENDIX.

[Explanatory to p. 8, line 2 (Erubhin, p. 25).]

There is a Boraitha in addition to the last Mishna of Chap. IX., ibid., p. 226, as follows: "More than this said R. Jehudah: 'He who has two houses, one on each side of public ground, may add to each a beam or a side beam (for a sign), and this allows him to carry things from one house into the other.' To which the rabbis answered that such an *erubh* does not suffice for public ground." (The reason of R. Jehudah's statement is that biblically two partitions suffice to turn premises of public ground into private ground, with which the rabbis do not agree.) 1

Footnotes

1:1 See Jer. xvii. 21, 28, and Neh. xiii. 19. This Mishna treats of the prohibition, so strongly inculcated by the prophets, of transferring things over the line of division between various grounds or premises.

1:2 The difference between the violation of the biblical statutes and that of the rabbinical statutes is marked by the prescription of the penalties of sin-offerings, shortening of life and capital punishment for the first-named violation, while no penalties are attached to a violation of the last-named statutes. (See Introduction.)

2:1 Rashi explains at length how eight or even twelve instances of transfer could occur, but, not being essential to the subject, we omit the explanation.

2:2 Lev. iv. 27.

3:1 Students of the Talmud will remember that while it) the act of walking a man cannot be guilty of the transgression of carrying movable property. The body must be at rest. The removal of a thing by means of the hand implies a disturbance in the rest of the body.

3:2 As illustrated in our Mishna; for if he did not deposit the thing that he had passed from the street into the house, he was not culpable.

4:1 All the labors that were performed at the construction of the tabernacle in the desert, as is taught in a Mishna farther on, if done on the Sabbath intentionally, involved capital punishment. The intention becomes apparent when there are witnesses to warn the perpetrator of his wrong and he does not heed them.

7:1 The technical expression is "to make an Erubh," *i.e.*, to mix their possessions as if they were partners, as explained in Tract Erubin, I. 2.

7:2 A door-step is regarded as ground of which the religious law takes no cognizance.

8:1 According to Rashi, R. Ashi means to state that even when the capacity of the valley was more than two *saoth* and no dwelling was near, which is always considered as unclaimed ground in regard to this, nevertheless it is considered as private ground, and whoever carries from it into public ground is guilty.

9:1 Any space that is less than ten spans high from the ground is considered by the law as unclaimed ground, and there things may be handled on the Sabbath only as above, while on private ground things may be handled freely within the whole area over which it extends.

11:1 The cornice which is spoken of above should be like the branch in this instance.

11:2 The space above ten spans does not enter within the jurisdiction of public ground.

11:3 Here a bee-hive is spoken of which is not six spans in circumference, *i.e.*, less than four spans square.

11:4 There is a law of Mosaic origin determining that every object that is not farther from the ground than three spans must be considered "Lavud," *i.e.*, attached to the ground. In the above case, when a bee-hive seven spans or a trifle over seven spans high is thrown to the ground, it does not become positively "Lavud" when within three spans from the ground, and is thus considered ten spans in all. The margin is too small. It must be seven and a half spans high, and when reaching the ground within three spans the hive becomes "Lavud," and being positively over ten spans high is treated as a piece of private property.

13:1 The reference made here, that one should not sit down before the hair-cutter near the time for the afternoon prayer is a simple precaution. The exact specification for the time is to be found in Berachoth, Perek IV., M. 1.

13:2 The following discussions may seem to have no direct connection with the ordinances pertaining to the Sabbath; however, they are included in the tract on account of their connection with the succeeding Mishna, which commences: "A tailor shall not go out with his needle when it is nearly dark on Friday." Incidentally, the injunctions concerning the time for the Min'ha are given, in order that prayer time shall not be forgotten.

14:1 High afternoon (Min'ha) was the time when the regular afternoon sacrifice was offered at the temple, about an hour after midday. The lesser afternoon time was about an hour before sunset. Because the time for afternoon devotion was calculated by the offering of the "gift-sacrifice," the name of that sacrifice, "Min'ha," is used by the rabbis as a technical term to designate both the afternoon devotion and the time when it is to be performed.

15:1 The rabbi thus regarded prayer as a thing belonging to transient life, because it benefits only the individual. Study, on the other hand, is regarded as an object that concerns eternal life, for by its results future generations may be benefited.

16:1 Translated literally. Leeser, however, translates differently according to the sense, but his translation is not correct.

17:1 Transposed from Tract Betzah, p. 16*b*.

17:2 He was an Aaronite, and in his time they used to give the Aaronites their meat-offerings. In the time of R. Hisda the descendants of the priests still received their titles.

18:1 These somewhat abstruse distinctions are made for the reason that a dependent of a scholar, orphan, or widow is liable to incur greater punishment for an injury done his master than were his master an Ishmaelite, Persian, etc.

18:2 The title "Habher" is the exact equivalent of "fellowship" as a college position in our time; we translate it "schoolman."

20:1 Large cities where the men are effeminate and wear garments like the women.

22:1 A servant in permanent engagement is more careful about his dishes, for fear that he may lose his position. He is therefore more apt to adjust the wick.

23:1 The Gemara discusses here the eighteen precautionary measures which were enacted in the attic referred to, and tried also to find them out, as what they were is not mentioned in the Mishna at all. As none of them, except the two mentioned in the Mishna (which is not discussed at all), belong to Sabbath, we have omitted the whole discussion. However, we have named all of them in the appendix to this tract [Vol. II., pp. 381-390, *q. v.*], and we have shown that all of these enactments were political and of great necessity at that time.

27:1 Without requiring the labor of man when once started, as is the case with wine and oil presses, in which case the beams, once put on grapes or olives, force the fluids to run down of

their own accord.

28:1 Argis was the man who built the city of 'Harta and R. Hamnunah lived in that city. The cave in which he is buried is still in existence there. So I have found written in an answer of a Gaon. (Rashi.)

28:2 A notorious highwayman, who could never stay in one place long enough to cook his meals, and was wont to do only the third part of cooking they required.

29:1 See Ex. xii. 9, 46, where it is explicitly ordained that the paschal lamb should not be dismembered, and no bone should be broken.

30:1 This Boraitha was omitted in Tract Erubhin. Here, however, to render the above-mentioned passage clearer for the reader, we deem it necessary to translate it.

Next: Chapter II: Regulations Concerning The Sabbath And 'Hanukah Light

CHAPTER II.

REGULATIONS CONCERNING THE SABBATH AND 'HANUKAH LIGHT.

MISHNA *I*.: What shall and what shall not be used for lighting (the Sabbath light)? The light shall not be made with (wicks of) cedar hast, raw flax, silk fibre, weeds growing upon the water, and ship-moss. 1 Nor shall pitch, wax, cotton-seed oil, oil of rejected heave-offerings, 2 fat from the tail of a sheep, and tallow be used.

Nahum the Modait says melted tallow maybe used for lighting; the schoolmen, however, prohibit melted and raw tallow alike.

GEMARA: Rabbin and Abayi were sitting before Rabbanah Ne'hemiah, the brother of the Exilarch (after the death of his brother he became Exilarch under the name Ne'hemiah the Second), and they saw that he was dressed in a mantle of μεταξα (raw silk). Said Rabbin to Abayi: "This is called in our Mishna *khlakh*." 3 And he answered: "In our city it is called *Shira Peranda* (*ferandinis*)." The same (Rabbin and Abayi) happened to be in the valley of Tamruritha, and they saw a kind of willow, and Rabbin said to Abayi: "This is *edan* mentioned in our Mishna"; and he rejoined: "This is only common wood; how could a wick be made of it?" He peeled off one of them and showed him a kind of woolly substance between the bark and the stem.

The rabbis taught: All that which was prohibited for the Sabbath lamp may be used in fires that are kept up for heat or even for constant light, whether (such fires are built) upon the ground or in the hearth; as the materials are prohibited only for use as wicks for the Sabbath lamp.

Rabba said: The wicks which the rabbis forbade the use of in the Sabbath lamp are prohibited because they give a flickering light. The oily substances were prohibited because they do not adhere to the wick.

Abayi questioned Rabba: Would it be permitted to mix oil with these prohibited fats and then use them for the Sabbath lamp? Or is even that prohibited as a precaution lest one use those fats without the addition of oil? Rabba answered: It is prohibited. Why so? Because they do not give a right light.

Abayi objected to him from the following: "R. Simeon b. Gamaliel said: 'In my father's house they wound the wick around a nut and lighted it'; hence you see that it may be lighted." Said Rabba: "Instead of contradicting me with the saying of R. Simeon b. Gamaliel, support my view with the decision of the first Tana" (of our Mishna). This would not do, as the record of an act is

incontrovertible. *Still* the record of the master remains contradictory. The Mishna is not complete, and should read thus: "If one has wound a thing that may be used (as a wick) around a thing that may not be used, be is not permitted to light it. This is the case when the two (substances) are to serve the purpose of a wick, but if the prohibited substance is used merely to support the permissible (the combination) is allowed, as so said R. Simeon b. Gamaliel, 'In my father's house,'" etc.

But, after all, it is not so. Did not R. Beruna teach in the name of Rabh: To melted tallow or fish fat one may add some oil and use it for the Sabbath lamp? These substances adhere to the wick in themselves. But the rabbis had prohibited melted tallow or fish fat as a precaution, lest (if the melted substance be allowed) one use it raw also for light. Why did they not enact the prohibition to use these substances with the admixture of some oil as a precaution lest they be used without the admixture of oil? This itself is a precautionary measure; shall we enact another as a safeguard to it?

R. Huna said: The wicks and fats which the sages have prohibited for the Sabbath lamp cannot be used for the 'Hanukah lamp either on the Sabbath night or on week nights. Said

[paragraph continues] Rabba: The reason of R. Huna's theory is because he holds that if the ('Hanukah lamp) is extinguished (by accident) it must be relighted, and also that its light may be used to work by. R. Hisda, however, maintains that it can be fed (with these fats) on week nights, but not on the Sabbath night. Because he holds that if it is extinguished, one is not in duty bound (to light it again), and as long as it burns it may be used to work by.

R. Zera in the name of R. Mathna, according to others in the name of Rabh, said: The wicks and fats which the sages prohibited for the Sabbath lamp may be used for the 'Hanukah lamp, both during the week and on the Sabbath night. Said R. Jeremiah: The reason of Rabh's decision is because he holds that if it is extinguished he need not relight it, and its light is prohibited to be used." The rabbis declared this before Abayi, in the name of R. Jeremiah, and he would not accept it; when Rabbin came from Palestine he declared the same before Abayi in the name of R. Johanan, and he accepted it and said: "Had I been worthy, I would have accepted this teaching before."

It is said in the name of Rabh: "If it is extinguished, it is not needed to relight it." Is this not contradicted by the following: "The proper ordinance is for (the 'Hanukah light) to last from sunset until footsteps are no longer heard in the street"? [1] Does this not mean that if extinguished it must be relighted? Nay, the time appointed is only for the purpose of determining when the light is to be lit, or a light should be made which will last for the appointed time.

"Until footsteps are no longer heard," etc. Up to what time is this? Said Rabba b. b. Hana in the name of R. Johanan: "Up to the time when the steps of the Tarmudites [2] are heard no more."

The rabbis taught: The law of 'Hanukah demands that every man should light one lamp for himself and his household. Those who seek to fulfil it well have a lamp lit for every member of the household. Those who seek to fulfil the law in the best possible manner should light

according to Beth Shamai the first night eight flames, and every following night one flame

less. And according to Beth Hillel the reverse--the first night one lamp, and be increased by one on each succeeding night. Said Rabba b. b. Hana in the name of R. Johanan: "There were two sages in Zidon; one did according to the decision of Shamai's school, and gave the reason that the 'Hanukah lamp is to be lit in the same manner as the sacrifices of the feast were offered, [1] and the other according to the school of Hillel, with the reason that holy actions should show (emblemize) increase and not reduction.

The rabbis taught: It is a merit to put the 'Hanukah lamp on the outside door of the house; and he who lives in an attic puts it in a window that opens into the street. In time of danger, however, [2] it is sufficient if the lights are on the table. Said Rabha: In the latter case another light is required to work by; but if there is a hearth-fire in the house, it is not necessary. However, if the man is of high standing (and not in the habit of working by the hearth-light) he must have another lamp.

What is 'Hanukah? The rabbis taught: "On the twenty-fifth day of Kislev 'Hanukah commences and lasts eight days, on which lamenting (in commemoration of the dead) and fasting are prohibited. When the Hellenists entered the sanctuary, they defiled all the oil that was found there. When the government of the House of Asmoneans prevailed and conquered them, oil was sought (to feed the holy lamp in the sanctuary) and only one vial was found with the seal of the high priest intact. The vial contained sufficient oil for one day only, but a miracle occurred, and it fed the holy lamp eight days in succession. These eight days were the following year established as days of good cheer, on which psalms of praise and acknowledgment (of God's wonders) were to be recited.

R. Kahana said: R. Nathan b. Manyomi in the name of R. Tanhum lectured: "A 'Hanukah lamp becomes disqualified if it is put higher than twenty ells (from the ground), just like a Sukkah (booth) and like the side beam of an alley."

Rabba said: The merit of the 'Hanukah lamp is that it be put within a span of the house door. And on which side? R. A'ha b. Rabha said to the right, R. Samuel of Diphti said to

the left (of the entrance). And the Halakha prevails that it should be placed to the left of the entrance, so that the 'Hanukah light be on one side and the Mezuzah [1] on the other side of the door.

R. Jehudah in the name of R. Assi said: It is not allowed to count money by the 'Hanukah light. When this was cited before Samuel, he said: "Is there any holiness in the light?" R. Joseph retorted: Is there any holiness in the blood of an animal? and yet have we not learned in a Boraitha: It is written: "Then shall pour out the blood . . . and cover it" . . . [Lev. xvii. 13]. From this we infer that he must cover it with the same hand it was shed with, but not with his foot, in order that the fulfilment of the commandment should not be treated with lack of reverence. In our case, too, the light must not be used for anything, in order that the compliance with an ordinance should not evince a lack of reverence.

R. Joshua b. Levi was questioned: May the fruits, hung up in the Sukkah for ornamentation, be used during the seven days of the feast? He answered: Even to the 'Hanukah light a law was passed prohibiting the counting of money. Said R. Joseph: "Lord of Abraham!" Here he connected a law that was enacted (by the ancient masters) with one that was not discussed by them. The law concerning the Sukkah was biblical, that concerning 'Hanukah was not biblical but rabbinical. Therefore said R. Joseph: The precedent of all these cases is the law concerning the blood (which was cited above).

It was taught: Rabh said,: It is not allowed to light one 'Hanukah light with the other; Samuel permits this. Rabh prohibited Tzitzith (show-threads) to be taken out of one garment and put into another; Samuel permits also this. He also said that the Halakha does not prevail in accordance with R. Simeon regarding dragging across the floor (which will be explained farther on); and Samuel maintains it does. 2

Said Abayi: "My master followed the decisions of Rabh in all questions except the three mentioned above, which he decided according to Samuel."

One of the rabbis in the presence of R. Ada b. Ahba said:

Rabh's reason for prohibiting these acts was to prevent irreverence in the compliance with the law." Said R. Ada to the scholars present: "Hear him not; Rabh's reason was to prevent stinginess in the fulfilment of laws." And what is the difference between the two? It is in the lighting of one 'Hanukah lamp with another. He who says that irreverence was the reason cannot prohibit this; but he who holds stinginess to be the reason, prohibits even this rightfully.

How is this question to be decided? Said R. Huna b. R. Joshua: "Let us sec whether the act of lighting the lamp constitutes merit, or whether it is the act of putting it in its proper place"; this question having been already propounded by the schoolmen (the answer, when given, will serve for the above also).

Come then and hear the following: R. Joshua b. Levi says: "A lantern (that was lit for 'Hanukah on Friday night) and kept burning the whole following day must, at the close of the Sabbath, be extinguished and then relighted." Now if we say that the lighting constitutes compliance with the commandment, this teaching is correct; but if we say that the placing of the lamp in its proper place constitutes the merit, it should be said: "It should be extinguished, raised up, put in its proper place, and then lit." And also, since we pronounce the benediction, "Blessed art Thou, etc., who hast commanded us to light the 'Hanukah lamp," it becomes clearly apparent the lighting constitutes compliance. And so it is. Now that we come to the conclusion that the act of lighting constitutes the merit, it is understood that if this was done by a deaf-mute, an idiot, or a minor, the act is not valid; a woman, however, may surely light it, as R. Joshua b. Levi said: "Women are in duty bound to light the 'Hanukah lamp, for they were included in miracle."

R. Shesheth said: A guest (at a stranger's house) is obliged to light the 'Hanukah lamp. Said R. Zera: When I was studying at the school of Rabh, I contributed my share towards maintaining and lighting the lamp with mine host. Since I am married, I say, I surely need not light it now,

for it is lit for me at my house.

R. Joshua b. Levi said: "All fats are good for the 'Hanukah lamp, but olive oil is the best." Abayi said: "My master always sought for poppy-seed oil, because, said he, it burns slowly (and

the light lasts longer), but when he heard the saying of R. Joshua b.. Levi, he sought for olive oil, for that gives a clearer light."

Hyya b. Ashi in the name of Rabh said: He who lights the 'Hanukah lamp must pronounce a benediction. R. Jeremiah said: He who perceives it must pronounce a benediction. R. Jehudah said: He who perceives a 'Hanukah lamp on the first day must pronounce two benedictions, and the one that lights it on the first day, three; 1 after the first day, the one that lights it must pronounce two benedictions and the one that perceives it one.

What benediction would he omit? The benediction of time. But why not omit the benediction of the miracle? Because the miracle was continued every day (of the eight). And what is the (special) benediction? "Blessed be, etc., who hallowed us with His commands and ordained that we shall light the 'Hanukah lamp." But where did He ordain this? Said R. Avya: (This command is included in) "Thou shalt not depart," etc. [Deut. xvii. 11]. R. Nehemiah, however, from the following said: "Ask thy father and he will tell thee; thine elders, and they will inform thee" [ibid. xxxii. 7].

R. Huna said: A house that has two doors must have two lamps. Said Rabha: This is only in case when the two doors are in two different sides of the house; but if they both open on the same side it is not necessary. Why so? Because the townsmen may pass by the side which has no lamp and suspect the owner of the house of not having lit any at all. And where is it taken from that one must endeavor to avoid suspicion? From a Tosephtha in Peah, Chap. L, which states plainly that every one must do so.

R. Isaac b. Rediphah in the name of R. Huna said: "A lamp with two mouths (so that two wicks can be lit in it) is sufficient for two men."

Rabha said: If one has filled a dish with oil, put wicks all around the brim, and covered it with a vessel (so that each wick yields a separate flame), it is sufficient for many persons; but if he has not covered it, he makes it appear as one flame of fire, and it is not valid, even for one person.

The same said again: If one (possessing only means enough

to light one lamp) must choose between using this light for a house-light 1 (on Friday night) or a 'Hanukah light, he should use it for a house-light in order to preserve his domestic peace. If, again, his choice must be between (purchasing) the house-light and (the wine necessary for the celebration) of the holiness of Sabbath, the house-light is to be preferred and for the same reason; however, it is doubtful to me what must be chosen between the 'Hanukah light and the

goblet for qiddush. When one cannot afford both, which must he prefer?" "Is the latter to be preferred because it is of regular occurrence. 2 or is the 'Hanukah light preferable, in order to proclaim the miracle (which it commemorates)?" After deliberating he decided himself that the proclaiming of the miracle has the preference.

R. Huna said: he who makes a practice of lighting many lamps (which the law requires for festive occasions) will be rewarded with scholarly sons. He who is particular about his Mezuzah will be blessed with a fine dwelling. He who is particular about his show-threads (Tzitziths) will be blessed with fine garments. He who is particular to pronounce the benediction of Sabbath over a goblet of wine shall live to have his cellar well stocked.

R. Huna was wont to pass by the house of R. Abbin, the carpenter. He noticed that the latter lit a great many lamps on the Sabbath night. Said he: "Two great men will come forth from this house." And they were R. Jidi and R. Hyya b. Abhin.

R. Hisda was wont to pass by the house of the master (father or father-in-law) of R. Shezbi; he noticed many lights every Sabbath. Said he: "A great man will come forth from this house." This great man was R. Shezbi.

The wife of R. Joseph was accustomed to light her (Sabbath) lamp late. Said he unto her: There is a Boraitha: It is written: "The pillar of cloud did not depart by day nor the

pillar of fire by night" [Ex. xiii. 22]. From this we infer that the two pillars always closely followed each other. She then wanted to light up too early. Said a certain old man to her: "There is another Boraitha, however, that (whatever is to be done) should be done neither too early nor too late."

Rabha. said: "He who loves scholars, will have sons that are scholars; he who respects them, will have scholarly sons-in-law; he who fears scholars, will become a scholar himself, and if he is not fit for this, his words will be respected like those of an ordained scholar."

"*Oil of rejected heave-offering*," etc. What is that? Said Rabba: It means oil of heave-offering which became defiled. It is called oil for burning, because it must be destroyed in fire, and the Mishna speaks here of a Friday that happens to fall on a feast day, and the prohibition to light (the Sabbath lamp) with it is because consecrated things that have been defiled must not be burned on a feast day. Said R. Hanina of Sora: "This should be corrected in our Mishna: Why shall one not make a light with the defiled oil? Because defiled things must not be burned on a feast day. And so also we have learned in a Boraitha: All material which must not be used for lighting, on the Sabbath, may be lit on a feast day, save the oil for burning."

The schoolmen propounded a question: Should the 'Hanukah incident be mentioned in the benediction after meals? Shall we assume that because it is rabbinical it is unnecessary? or, for the sake of the proclamation of the miracle, it should? Said Rabba in the name of R. S'haura, quoting R. Huna: "It is not necessary; however, if one wishes to do it, he should incorporate it in the thanksgiving part."

R. Hunah b. Jehudah visited the house of Rabha. He was about to mention it in (the prayer part under the heading of) "the One who builds up Jerusalem." Said R. Shesheth: Nay; it should be mentioned in the thanksgiving part of the benediction after the meal, as it is mentioned in the same part in the prayer of the eighteen benedictions. [1]

The schoolmen propounded a question: Should the New-Moon day be mentioned in the benediction after meals? Shall we assume that the New-Moon day is more important than Hanukah because its observation is enjoined in the Scriptures,

or need it not be mentioned because manual labor is not prohibited on that day? Rabh maintains it may; R. Hanina maintains it may not. Said R. Zerika: "Hold to Rabh's opinion, for R. Oshia holds to the same; as R. Oshia taught: On the days on which additional sacrifices (Musaph) are offered in the sanctuary, like New-Moon days and the middle days of a feast, one must at evening, morning, and afternoon services recite the regular eighteen benedictions and insert in the thanksgiving part of the day's service a passage referring to the subject of the day. And if he has failed to do so, he should be made to repeat them; however, no benediction over a goblet of wine, though a remembrance of their significance must be made in the prayer after meals. On days requiring no additional sacrifice, like the first Monday, Thursday and Monday (after a biblical feast), fast days, and the days (devoted to prayer by) commoners, [1] one must recite the eighteen benedictions at evening, morning, and afternoon services, and insert a paragraph referring to the subject of the day in the prayer division; and if he forgot the latter he need not repeat them, nor any remembrance of them in the benediction after meals. The Halakha, however, does not prevail with all that was said above. It remains as decreed by R. Joshua b. Levi: If the Day of Atonement happens to fall on a Sabbath day, mention of the Sabbath must be made even in the Neilah prayer (the last of the four different prayers of the Day of Atonement). Why so? Because the Sabbath and the Day of Atonement are now one, and four prayers are indispensable to the services of the day.

MISHNA *II*.: The lamp used on a (biblical) feast-night shall not be fed with oil of rejected heave-offerings. R. Ishmael said: The Sabbath lamp shall not be fed with tar, out of honor for the Sabbath. The sages, however, allow all fatty substances for this purpose: poppy-seed oil, nut oil, fish oil, radish oil, wild-gourd oil, tar, and naphtha. R. Tarphin said: It shall be lighted with nothing but olive oil.

GEMARA: "*R. Ishmael said*, "etc. Why so? Said Rabha: Because it emits a bad odor (and the Tana prohibits it) as a precaution,

lest one light it and leave the house. Said Abayi: Let him go (what harm is there in that?). Rejoined Rabha: Because I hold that the Sabbath light is a duty, as R. Na'hman b. R. Zabda or b. Rabha said in the name of Rabh. The (enjoyment of) Sabbath light is an obligation. The washing of hands and feet in warm water toward evening (on Friday) is optional. And I say it is a meritorious act. Why so? Because R. Jehudah said in the name of Rabh: "It was the custom of R. Jehudah bar Ilayi to bathe his face, hands, and feet in warm water, that was brought to him in a trough every Friday toward evening; after that he wrapped himself in a pallium with Tzitzith

(show-threads) and thus assumed an angelic appearance."

It is written: "My soul was deprived of peace" [Lam. iii. 17]. What does this mean? Said R. Abuhu: It means (being deprived of the pleasure of) lighting the Sabbath lamp. "I forgot the good." [ibid.]. What does this mean? Said R. Jeremiah: This refers to (the deprivation of) a bath. R. Johanan, however, said: It refers to the washing of hands and feet with warm water. R. Isaac of Naph'ha said: It refers to a good bed and comfortable bedding. R. Aba said: It refers to an arranged bed and an elegantly robed wife for scholarly men.

The rabbis taught: "Who may consider himself rich?" One who enjoys his riches, is the opinion of R. Meir. R. Tarphon says: He who has a hundred fields, a hundred vineyards, and a hundred slaves at work in them. R. Aqiba said: He who has a wife adorned with good virtues. R. Jose said: He who has a place for man's necessity in his house. 1

We have learned in a Boraitha: R. Simeon b. Elazar said: "The Sabbath lamp shall not be fed with aromatic balsam." Why so? Rabba said: Because it yields a fine fragrance, it was feared lest one use it (taking it out while the lamp is burning). Said Abayi to him: "Why does not the master say because it is volatile?" Aye, he means this and the other also; the balsam is prohibited because it is volatile, and also for fear lest it be used.

There was a mother-in-law who hated her son's wife, and told her to perfume herself with aromatic oil. When the daughter-in-law had done this, she ordered her to go and light the candle. While complying with this order, she caught fire and was burned.

The rabbis taught: A lamp shall not be fed with defiled

[paragraph continues] "Tebhel" 1 even on week days, and the less so on the Sabbath. In a similar manner, white naphtha shall not be used to feed a lamp with on week days, much less on Sabbath, because it is volatile.

In the Boraitha it was said that aromatic balsam shall not be used; so also did R. Simeon b. Elazar teach: Aromatic balsam is nothing but resin, that comes forth from aromatic trees.

R. Ishmael said: The (Sabbath) lamp shall not be fed with anything that comes from the trunk of a tree. R. Ishmael b. Beroqa said: It shall be lighted only with such substances as come from fruit. R. Tarphon, however, said: It shall be fed only with olive oil. R. Johanan b. Nuri then arose and said; "What shall the people of Babylonia do, who have nothing but poppy-seed oil? What shall the people of Media do, who have nothing but nut oil? What shall the people of Alexandria do, who have nothing but radish oil? and what shall the people of Cappadocia do, who have no oil of any kind, nothing but tar?" Nay; we have no choice but to accept the decree of the masters as to substances which should not be used. Even fish oil and resin maybe used. R. Simeon Shezori said: Oil of wild gourds and naphtha may be used. Symmachos said: No animal fat save fish oil may be used.

MISHNA *III*.: No substance that comes from a tree shall be used (as a wick) save flax. In like

manner no substance that comes from a tree becomes defiled when serving as a tent (in which a dead body lies) save flax.

GEMARA: Whence do we know that flax is called a tree? Said Mar Zutra: From what is written: "She took them up to the roof, and hid them in the flax trees" [Josh. ii. 6].

"*No substance*, etc., *save flax*." Whence is this deduced? Said R. Elazar: From the analogy of expressions "tent," which is mentioned in the case of the tabernacle, and in the case of death [Ex. xl. 19 and Numb. xix. 14]. As the tent of the tabernacle was made only of flax, so also in our case, if a tent is made of flax only, it is also called a tent, and is liable to become defiled.

MISHNA *IV.*: A piece of cloth that was rolled together, but not singed, said R. Eliezer, becomes defiled (when it is in the same tent with a dead body), and shall not be used (as a

wick) for Sabbath. R. Aqiba, however, said: It remains pure and may be used.

GEMARA: What is the point of their differing? Said R. Elazar in the name of R. Oshia, and so also said R. Ada b. Ahba: The piece of cloth in question is exactly three fingers square, and the lighting is to be done on a feast day, which happens on a Friday. All agree with the opinion of R. Jehudah, who said that (on a feast day) fire may be made with good cloth (or vessels), but not with such as have been spoiled (the same day). Again, all agree with the opinion of Ula, who said that the lighting must be on the largest part of the wick that protrudes from the lamp. Now R. Eliezer holds that the rolling up (of the piece of cloth) does not improve the position (*i.e.*, it is still an object to which the term "cloth" or vessel applies); as soon as it is slightly burned it becomes spoiled material; fire, being applied further, is naturally generated with spoiled material (which is prohibited). R. Aqiba, on the other hand, holds that folding *does* improve the condition and the cloth is no longer a vessel; hence he puts fire to a simple piece of wood (which is allowed).

Rabha, however, said: The reason of R. Eliezer's (prohibition) is that the Sabbath lamp is not allowed to be lighted with a wick or rag that has not been singed.

R. Jehudah in the name of Rabh said: Fire may be made (on a feast day) with vessels, but not with broken vessels. So is the decree of R. Jehudah. R. Simeon permits it. Fire may be made with dates, but after having eaten them fire is not to be fed with their *granum*. A fire may be made with nuts, but after having eaten the kernel one must not feed the fire with the shells, according to R. Jehudah; R. Simeon, however, permits both.

The statement credited to Rabh in the foregoing paragraph was not made by him plainly, but was merely implied from the following act. While in Palestine, one day Rabh was eating dates and threw the pits into the fireplace, upon which R. Hyya said to him: "Descendant of nobles, on a (biblical) feast day this would be prohibited!" Did Rabh accept this or not? Come and hear. While in Babylonia, one feast day Rabh was eating dates and threw the pits to some cattle (for food). Must we not assume that these dates belonged to the class known as "Parsiassa" (a ripe, delicious, free-stone fruit), and if Rabh fed cattle with the pits of this fruit, it was because

they may be used for fuel also, and thus the statement of R. Hyya is contradicted? Nay; it may be the pits that fed the cattle by Rabh were from dates known as "Armiassa" (an inferior fruit, the pits of which cling to the meat). The pits of this latter class of dates, in consequence of the meat still clinging to them, are regarded as dates themselves, and may be handled on the Sabbath. Hence it is obvious that they may also be fed to cattle, and Rabh therefore does not contradict R. Hyya.

MISHNA *V.*: One shall not bore a bole in an egg-shell, fill it with oil, and put it upon the (Sabbath) lamp, so that the oil drip into it; and even if it was a clay one. R. Jehudah permits it. If, however, the potter had attached it to the lamp when he made it, it is allowed to do this, for (together with the lamp) it forms one vessel. A man shall not fill a dish with oil, put it beside the lamp, and dip the (unlighted) end of the wick into it, in order that it should draw. R. Jehudah permits also this.

GEMARA: "*If the potter had attached it,*" etc. A Boraitha in addition to it states: If he himself has attached it with mortar or clay, it is allowed. Does not our Mishna say "the potter" (from which it may be inferred that if the owner did it, is it not allowed for use)? Nay; "the potter" means in the manner of the potter.

We have learned in a Boraitha, R. Jehudah said: "Once we kept Sabbath in the attic of Beth Nitza in Lydda. We procured an egg-shell, filled it with oil, and placed it on the lamp. R. Tarphon and the aged scholars were there, and they made no objection to our action." They answered him. "Wilt thou prove by this (that this is allowed)? Beth Nitza is quite a different case, for the men there were very careful."

Abhin of Ziphoris dragged a chair (along the floor on a Sabbath) in the marble hall in the presence of R. Itz'hak b. Elazar. Said the latter: "If I should be silent toward thee (although this floor being marble, no depression can be made by the chair, and thou art not guilty of wrongdoing) as the colleagues were silent toward R. Jehudah, my silence might be misconstrued (and people might think that this can be done on any floor; therefore I say that) this is prohibited in the marble hall as a precautionary measure, lest one do it in any other hall." The head man of the assembly room of Bazra dragged a chair in the presence of Jeremiah the Great. Said the latter to him: "According to whose decision dost thou this?" "According to R.

[paragraph continues] Simeon." "R. Simeon, however, allowed large things only (to be dragged) if they could not be lifted; but we have never heard from him that he would allow this also with small ones?" This teaching, however, differs with Ulla's theory, who says the dispute was only concerning small things, for as to large ones there was no objection from any one.

MISHNA *VI.*: If one extinguishes a lamp because he is afraid of the officers of the government, 1 or of robbers, or of an evil spirit, 2 or in order that a sick person may be able to sleep, he is free. If he does this, however, to prevent damage to the lamp, or to save the oil or the wick, he is culpable. R. Jose declares the man free even in the latter cases, excepting (if he extinguished the lamp to save the wick), for in that case he caused a cinder to be formed.

GEMARA: From the fact that the second part of the Mishna declares the man (who had extinguished the lamp to prevent damage, etc.) culpable, it is evident that this regulation was made by R. Jehudah. [3] Now, how is the first part to be understood? If it speaks of a sick person, whose illness is dangerous, it should not say (that the man who extinguishes the lamp to afford him rest) is "free," but should say that he is "allowed to do it" (even intentionally). And if it speaks of one whose illness is not dangerous, (the one who extinguished the lamp for him) ought to be declared in duty bound to bring a sin-offering? Of a verity, the Tana speaks of a case of dangerous illness, and should have said "it is allowed to do so," but he used the term "free" merely (for the sake of euphony), because in the latter part (of the Mishna) the expression "culpable" was necessary; therefore he taught in the first part of the Mishna, also free. But have we not learned, R. Oshia said, that "in order that a sick person may be able to sleep, one should not extinguish (the lamp on the Sabbath); and if he did so he is not held culpable, though it is not allowed (to be done intentionally)"? The teaching of R. Oshia refers to sickness that is not dangerous, and is in accord with the opinion of R. Simeon.

The question, "Is it allowed to extinguish a lamp for the

sake of a sick person on the Sabbath?" was propounded to Tan'hum of Navi.

He began thus: [1] "O thou Solomon! Where is thy wisdom? Where is thy folly? Thy words contradict not only the words of thy father, but also thine own utterance. Thy father David said, 'The dead do not praise God' [Ps. cxv. 17], and thou sayest, 'I praise the dead that died long ago' [Eccl. iv. 2] and then again, 'A living dog fareth better than a dead lion' [ibid. ix. 4]. [This presents no difficulty. That which David said, 'The dead do not praise God,' means this: One must always occupy himself with study and with meritorious acts before his death; for as soon as he dies he is free of both, and the Holy One, blessed be he, receives no more praise from him. And the saying of Solomon, 'I praise the dead,' etc., means: When Israel sinned in the desert, Moses stood up before the Lord and offered many prayers and propitiating invocations; but he received no answer. As soon, however, as he said: 'Remember Abraham, Isaac, and Israel, Thy servants' [Ex. xxxii. 13], he was answered forthwith. Now did not Solomon say well: 'I praise the dead that have died long ago'? In another way (this can be explained as follows): The custom is, if a man of flesh and blood issues a decree, it is doubtful whether the people will comply with it or not. If they comply with it while he lives they may disregard it after his death. Moses, our master, on the other hand, has issued many decrees and established many enactments, which stand unshaken forever and aye, Now, did not Solomon say well: 'I praise the dead,' etc.? Another explanation to the above verse may refer to the following legend, which was told by R. Jehudah in the name of Rabh: It is written [Psalms, lxxxvi. 17]: 'Display on me a sign for good, that those who hate me may see it, and be ashamed.' So said David before the Holy One, blessed be He: 'Lord of the Universe, forgive me the certain sin (with Bath-Sheba', II Samuel, xi. 3). And the Lord said: 'It is forgiven.' He prayed again: 'Display on me a sign to make it known.' And the Lord said: 'This will not be done while you are alive, but it will be made known in the time of your son Solomon.' After Solomon had built the Temple and was about to enter the ark into the Holy of Holiness, the doors shut. Solomon had prayed twenty-four

prayers with song, and was not answered. He then began [Psalms, xxiv. 7]: 'Be raised wide . . . and let the King of Glory enter!' The doors then ran after him and wanted to swallow him, saying: 'Who is the King of Glory?' And he said: 'The Lord strong and mighty.' He then said: [ibid., ibid. 9, 10]. And still was not answered. Then he said [II Chron. vi. 42]: 'O Lord God! . . . remember the pious deeds of David thy servant'; he was answered at once, and the faces of his enemies became as black as the outside of a pot; and Israel and all the people were then certain that the above-mentioned sin was forgiven to David. Hence did not Solomon say well: 'I praise the dead,' etc.? And this is what is written [I Kings, viii. 66]: 'On the eighth day . . . and they went unto their tents joyful,' etc.] And as to the above question, [1] I say this: A lamp is called 'Ner,' and the soul of man is called 'Ner.' [2] Let rather the Ner which man has made (the lamp) be extinguished, than the 'Ner' (the soul) which belongs to the Holy One, blessed is He."

It was said in the name of Rabh: The sages wanted to conceal the Book of Ecclesiastes because of its contradictory sayings. And it was not so done, because it begins with sound religious teachings and ends with similar teachings. It begins with the words: "What profit hath man by all his toil under the sun?" [Eccl. i. 3]. Whereupon the school of R. Janai said, "*Under* the sun" there is no profit, but there surely is "*beyond* the sun." And it ends with the words: "The conclusion of the matter is, Fear God and observe his commands, for this is all (there is) for man" [Eccl. xii. 13]. What does it mean? Said R. Elazar: (It means) the whole world was created only for the sake of his fear of God. R. Aba b. Kahana said: The God-fearing man outweighs (in importance) the whole world. Simeon b. Azai, others say b. Zoma, said: The whole world was created only to provide him with assistance.

"I praise mirth" [Eccl. viii. 15]. This means the righteous man rejoices when he performs a meritorious act. "And of joy, what doth this do?" [Eccl. ii. 2] alludes to rejoicing that comes not through a Heaven-pleasing deed. This teaches that the divine presence (Shekhina) comes not by sadness, by indolence,

by hilarity, by levity, by gossip, or by senseless talk, but through rejoicing in a meritorious deed; as it is written: "Now bring me a minstrel; and when the minstrel played, the power of the Lord was upon him" [II Kings, iii. 15]. Rabba said: The same (should be done) in order to enjoy good dreams. R. Jehudah says: The same (should be done) to predispose one's self for legislative work, as Rabba did: Before commencing to expound a Halakha he introduced it with a simile and caused the masters to become joyful; afterward, he sat down in the fear of the Lord and began to expound the Halakha.

It was taught that in the same time they also wanted to conceal the Book of Proverbs on account of its contradictory sayings. And it was not done, because, they said: "Have we not scrutinized the Book of Ecclesiastes and found the meaning (of its contradictory sayings)? Let us then search deeply here (in the Book of Proverbs) also."

Which are the contradictory sayings? It says: "Answer not the fool according to his folly" [Prov. xxvi. 4]; and then again: "Answer the fool in his folly" [ibid. v. 5]. Yet this is no contradiction; the latter refers to a subject of learning, the former saying to a subject of indifferent talk. How is the subject of learning here to be understood? In the following manner. R. Gamaliel lectured: In the future, woman will bear a child every day, for thus it is written: "She conceived and gave

birth at a time. [Jer. xxxi. 7]. A disciple laughed at this and said: "There is no new thing under the sun" [Eccl. i. 9]. Said R. Gamaliel: Come, I will show thee such a thing in the world; and he showed him a hen. The same rabbi lectured: In the future trees will bear every day, for it is written: "It will produce branches and bear fruit" [Ezek. xvii. 231. "As branches are produced for every day, so also will fruit be brought forth every day." Again the disciple laughed and said: "There is no new thing under the sun." Said the master to him: "Come, I will show thee a thing of this kind in the world; and he showed him a caper tree." He lectured also: "The land of Israel will in the future produce ready cakes and garments," explaining the first part of verse 16 of Psalm lxxii. to that effect.

The disciple again laughed at him; but he showed him that ready meats are produced in the shape of mushrooms, and ready garments grow in the shape of many-colored fibres that cover the young date trees.

The rabbis taught: A man should always be as modest as Hillel, and not as impulsive as Shamai. It once happened that two men laid a wager of four hundred zuz, which would be won by him who could provoke Hillel to anger, but lost if he failed in the attempt. This happened on Friday, while the sage was bathing his head. The man who undertook the task went to Hillel's door and cried: "Who is Hillel here? Who is Hillel here?" [1] The rabbi threw a mantle over his shoulders and went out to meet him. "What desirest thou, my son?" he asked. "I have a question to ask," the man replied. "Ask, my son, ask," said the rabbi. "Why are the Babylonians round-headed?" asked the man. "This is an important question, my son. The reason is that they have no skilled midwives in Babylon," answered Hillel. An hour later the man came again calling: "Who is Hillel here? Who is Hillel here?" The rabbi came out again and said: "What desirest thou, my son?" "I have a question to ask," the man said. "Ask, my son, ask," said Hillel. "Why have the Tarmudites oval eyes?" "This is a very important question, my son. (The Tarmudites) live in a sandy land and must always keep their eyes half closed." An hour later the man came again in his insolent manner, and said again that he had a question to ask. Hillel in his quiet manner again encouraged him. "Why do the Africans have large feet?" he asked. "Because they live in a swampy land," answered Hillel. "I have many more questions to ask, but I am afraid lest thou get angry," continued the man. Hillel wrapped himself in his mantle and sat down, saying: "Ask, my son, all the questions thou desirest." "Art thou Hillel, who is titled a prince in Israel?" asked the man. "Yes, my son," answered the rabbi. "If thou art the man, may there not be many like thee in Israel?" "Why so, my son?" "Because thou makest me lose four hundred zuz." Said Hillel to him: "Take care of thy temper. A Hillel is worthy that twice that amount be lost through him; a Hillel must not get excited."

The rabbis taught. A Gentile once came before Shamai and asked: "How many laws have you?" "Two laws: the written and the oral law," answered Shamai. "I believe thee as regards the written law, but I do not believe thee as to the oral

law," said the Gentile. "I will be converted to Judaism on condition that thou teach me the written law." Shamai rebuked him and drove him away.

He then came to Hillel with the same plea, and Hillel accepted him. He began teaching him the alphabet in regular sequence. The next day he taught him the letters backward. "You did not teach me so yesterday," the man objected. "Aye, aye, my son; must thou not repose confidence in me? Thou must likewise repose confidence in the oral law (which appears at first sight different from the written law)."

Another Gentile came to Shamai saying: "Convert me on the condition that thou teach me the whole Torah while I stand on one foot." Shamai pushed him away with the builders' measure he held in his hand. He thereupon came to Hillel, and the latter accepted him. He told him: "What is hateful to thee, do not unto thy fellow; this is the whole law. All the rest is a commentary to this law; go and learn it."

Another Gentile once heard a Jewish teacher instructing his class about the vestments of the high priest. He took a fancy to that, and thought he would accept Judaism in order to be made a high priest. Thus he appeared before Shamai and said: "Convert me on the condition that I be made a high priest." Shamai pushed him away with the builders' measure he held in his hand. He came to Hillel (with the same request), and the latter accepted him. Said Hillel to him: "Do people select a king unless he knows the laws of their government? Thou must study the laws of our government (if thou wilt become a high priest)." The convert began studying Torah. When he came to the passage: "A stranger who comes near (to the vessels of the sanctuary) shall die" [Numb. i. 51], he asked: "To whom does this passage refer?" Hillel answered: "To any one (who is not a descendant of Aaron the high priest), even if he would be David, the king of Israel." Then the proselyte made the following deduction: If the people of Israel, who are called the children of the Lord, so that out of love to them the Omnipotent said: "My first-born son is Israel" [Ex. iv. 22]--if of them it is written, "a stranger that comes nigh shall die," the more so must it be with an insignificant stranger, who is come (within the pale of Judaism) merely with his staff and his bag. He went before Shamai and said: "Am I qualified to become a high priest? Is it not written [Numb. iii. 10]: 'A stranger that comes nigh shall die'?" He then appeared before

Hillel and said: "For thy equanimity of temper, O Hillel! may blessings be upon thy head, for thou hast gathered me in under the wings of the Shekhina." The three converts met some time later, and said: "The impulsiveness of Shamai came near sending us adrift in the world (outside of the pale of religion); Hillel's equanimity of temper gathered us in under the wings of the Shekhina.

Resh Lakish said: What does the verse, "The trust of thy times shall be the strength of salvation, wisdom, and knowledge," etc. [Isa. xxxiii. 6]--what does this mean? (I think that this can be a biblical support to the six divisions of the Mishna which we possess. [1]) "The trust" comes within the section of "Zeraim" (seeds); "thy times" in "Moed" (festivals); "strength" in "Nashim" (women); "salvation" in "Nezikin" (jurisprudence); "wisdom" in "Qodoshim" (holiness), and "knowledge" in section "Taharith" (purity). And yet "the fear of the Lord is his treasure"(*i.e.*, all these do not avail where there is not the fear of the Lord). [2]

Rabha said: When a man comes before the (divine) judgment, he is asked: "Hast thou traded in good faith? Mist thou apportioned regular times for study? Hast thou produced children? Didst thou hope for salvation? Hast thou discussed subjects of wisdom? Hast thou formed (logical)

conclusions from the things thou hast learned?" After all this (if he can affirm all these questions), if he possessed the fear of the Lord, it was well; if not, it was not so. This is like a man who ordered his agent to store a measure of wheat in the attic. The agent did so. Then the man asked him whether he had mixed some dry dust with the wheat (for protection against weevils), and he answered nay. "It were better," said the merchant, "if thou hadst not stored it."

Rabba b. R. Huna said: "A man who possesses learning,

but has no fear of Heaven, is like the manager (of a palace) who has the keys to the inside apartments, but lacks the one which opens the outside gate. How can he enter?"

R. Janai proclaimed: "Alas for him who has no dwelling, yet strives to make the door of a dwelling!" R. Jehudah said: The Holy One, blessed be He, created the world only for the purpose that man should fear Him, for it is written: "God hath so made it, that (men) should fear him" [Eccl. iii. 14].

R. Simon and R. Elazar were sitting together as R. Jacob b. Aha came passing by. Said one of them: "Come, let us arise before him, for he is a man that fears sins." Said the other: "Aye; let us arise before him, for he is a son of enlightenment (a scholar)." Said the former: I tell thee that he is a man that is afraid of sins, and thou sayest he is a scholar. Thou shouldst be mindful of what R. Elazar said: The Holy One, blessed be He, has nothing better in the world than (men who possess) the fear of Heaven, for thus it is written: "And now, Israel, what doth the Lord thy God require of thee, but to fear the Lord thy God" [Deut. x. 12].

R. Ulla lectured: What does the passage mean, "Be not wicked over much" [Eccl. vii. 17]. Is it allowed to be wicked at all? Nay, but the passage means this: If one has eaten garlic and has acquired a bad odor, he must not eat more garlic because the bad odor is (about him) already. Rabba b. R. Ulla lectured: It is written: For there are no fetters in them, but their strength is firm [Psalms, lxxiii. 4]. The Holy One, blessed be He, said: "It is not enough that the wicked do not trouble for nor fear the day of their death, but that their heart within them is as strong as a strong fortress." Which is similar to Rabba's explanation of the passage: "This is their way; their folly" [ibid. xlix. 14]. The wicked know that their manner (of living) leads them to death, and still their kidneys wax fat (implying their blindness to the fact). Perhaps thou wilt attribute this to their forgetfulness? Therefore it is written: "What will happen after their lives is the subject of their sayings," whence we conclude that while they do not repent, they continually speak of their death.

"*To spare the lamp*," etc. With whom does R. Jose agree? If he agrees with R. Jehudah, he should declare culpable even these; and if he agrees with R. Simeon, he should declare free even (the man who extinguishes the lamp) for the purpose of saving the wick. Said Ulla: By all means R. Jose agrees with

[paragraph continues] R. Jehudah, but he holds that if one destroys in order to rebuild in the same place, he is guilty (of the act) of breaking; but if one destroys, not intending to rebuild in the

same place, he is not (guilty of) breaking. R. Johanan, however, maintains that he holds as R. Simeon; but in the case of this wick it is different, as R. Hamnunah or R. Ada b. A'haba interpreted our Mishna that it reads "from a wick which needs singeing," and it is such a case. R. Simeon also agrees that it is prohibited because it is considered that he repairs a vessel. Said Rabha: It seems that this explanation is right, as the Mishna states "*to be* formed," and not a cinder *is* formed (already).

MISHNA *VII*.: For three sins women die of childbirth: for negligence (of the laws) during their menstruation, neglect of separating the first dough, and for neglecting to light the (Sabbath) lamp.

GEMARA: Why so? Thus a Galilean master lectured before R. Hisda: The Holy One, blessed be He, says: I have created you with power of blood; I have warned you concerning blood; I have called you "the first produce" [Jer. ii. 3], and charged you to sacrifice the "first of your dough" [Numb. xvi. 21]; the soul that I gave you is called a light, and I have charged you concerning the (Sabbath) light. If you observe these things, it is well; if not, I shall take your souls. But why should this happen at the time of childbirth? Said Rabha: When the ox falls or is felled, it is time to sharpen the knife. 1

And when are the sins of men passed upon? Said Resh Lakish: When they pass a dangerous place that is like a bridge (which is unsafe). Rabh would not embark on a ship that carried an idolater. Said he: "His time to be punished may come, and I (being on the same vessel) may have to suffer with him." Samuel, however, would go to sea only on a vessel which carried idolaters, saying: "Satan hardly ever metes out punishment to two people" (of different beliefs). R. Janai always examined a vessel before he embarked. This he did in conformity with his own theory elsewhere, for thus he taught: "A man should never place himself in danger, expecting that a miracle will be wrought for him; for it may be that no such miracle will be wrought, and if a miracle is wrought for him, it will be deducted from the reward due his merits in the

world to come." And R. Hanin said: "Where is this to be found in the Scripture?" From the verse: "I am not worthy of all thy kindness and of all thy truth" [Gen. xxxii. 11]. R. Zera would never walk under date trees in stormy weather. R. Itz'hak b. R. Jehudah said: A man must always pray that he should not become sick, for if sickness befall him, he must be possessed of special virtues in order to get well again. And to the question of Mar Uqba: Is this to be found in the Scripture? He was told that the school of R. Ishmael maintains the passage in question is to be taken from Deut. xxii. 8--viz.: "Peradventure one may fall down from there." The word "Hanofel," which is in the past tense and implies that he has fallen down, although such a case had not happened as yet, is simply a matter of conjecture on the part of this school, which considered a predestined thing as a matter that had already occurred, because the fall was already predestined for the guilty person; as it is said: The reward of virtue is, however, brought about by a meritorious person, while the chastisement for sin is dealt out through a sinner (and his not making a railing around his roof constitutes him a guilty person). [See Deut. xxii. 8.]

The rabbis taught: He who becomes sick, death approaching should be told to confess his sins, for all those who are to suffer the death penalty must make a confession. When a man goes out to a market (where there are always dangerous people in the crowd), he should consider himself like one arrested by a sergeant. When his head aches, he should consider himself as one put in

prison. If he cannot rise from his bed, he should consider himself as one indicted before Gardom (a criminal court); if be has good advocates to defend him, he may go free; if not, he cannot be saved. The defending attorneys of a man (before divine justice) are penitence and good deeds. If there should be nine hundred and ninety-nine accusers against him and only one to plead in his favor, he is saved, as it is written: "If there be a messenger with him, an interpreter, one among a thousand to show unto man his uprightness, then He is gracious unto him," etc. [Job xxxiii. 23]. R. Eliezer b. R. Jose the Galilean said: Even if only one thousandth part of one advocate out of a thousand plead in the man's favor, although the rest speak against him, he is saved; because it is said "one" defender out of a thousand suffices.

There is a Boraitha: R. Simeon b. Gamaliel said: "The laws of holy offerings, heave-offerings, and tithes are integral

parts of the Torah, and yet their observance was intrusted to the common people."

There is another Boraitha: R. Nathan says: For the sin of vows one's wife dies, as it is written [Proverbs, xxii. 27]: . . . why should he take away thy bed from under thee?" 1

Another Boraitha states: R. Nehemiah said: The penalty for the sin of hating without cause is strife at home, the wife (of the sinner) gives birth before her time, his sons and daughters die young.

R. Elazar b. Jehudah says: The penalty for the sin of neglecting the first dough is: no blessing in the harvest, high prices (for necessities), the consumption of the seed by strangers; but if this portion is given, blessings will surely follow, as it is written: "The first of your dough shall you give to the priest, to cause a blessing to rest on thy house" [Ez. xliv. 30]. The penalty for the sin of neglecting heave-offerings and tithes is: the sky withholds rain and dew; dearth comes on, there are no profits, and men run about to earn a livelihood, but they do not succeed. But if these offerings are given, blessings will come, as it is written: "Bring ye all the tithes into the storehouse, etc., and prove me but herewith, saith the Lord of Hosts, if I will not open for you the windows of heaven, and pour out for you a blessing until there be more than enough" [Mal. iii. 10]. The penalty for the sin of robbery is: locust pestilence, famine comes, and the people feed on the flesh of their children, as it is written [Amos, iv. 1-7, q. v.] For the sins of curbing, perverting, and polluting justice, and of neglecting the law, the sword comes on, (enemies take) much spoil, the people eat and are never satisfied, and they must weigh the bread they eat (*i.e.*, eat in small portions, for fear that nothing be left for the next meal), as it is written [Leviticus, xxvi. 25]: "Avenging the quarrel of my covenant," and covenant is synonymous with the Law, as it is written [Jeremiah, xxxiii. 25]: "Thus hath said the Lord," etc. For the sins of unnecessary and false swearing, perjury, blasphemy, and desecration of the Sabbath, many wild beasts come and domestic cattle are destroyed, the population decreases, and the roads are bare (without travellers), as it is written [Lev. xxvi. 18 to the end of the paragraph].

[paragraph continues] For the sin of bloodshed the sanctuary is laid waste and Shekhina departs from Israel, as it is written [Numbers, xxxv. 34]: "And ye shall not render unclean the land which ye

inhabit, in the midst of which I dwell; for I, the Lord, dwell in the midst of the children of Israel"; which signifies that if ye render it unclean, the Shekhina will depart from the land. For the sins of adultery, idolatry, and disregard of (the laws of) the Sabbatic and jubilee years exile comes, and (other nations) take up the place (of the exiles), as it is written [Lev. xviii. and xxvii.]. For the sin of defiling the mouth (speaking indecent things), great oppressions and evil decrees are (constantly) renewed, young men die, orphans and widows cry (for help), but are not answered, as it is written [Isaiah, ix., end of verse 16]: "For all this his anger is not turned away and his hand still remaineth stretched out," which is explained by R. Hanan b. Ahba as follows: "All know for what purpose a bride marries; still, he who defiles his mouth (by speaking of its details), even if a happy life of seventy years is decreed for him, the decree is turned aside." Rabba b. Shila in the name of R. Hisda says: Gehenna is made deep for him who defiles his mouth, as it is written [Proverbs, xxii. 14]. R. Na'hman b. Isaac says: It is made deep even for the one who listens to (indecent talk) and does not protest against it [ibid. 15]. R. Oshia says: He who abuses himself (by masturbation) becomes afflicted with wounds and boils; not only this, but he is punished with dropsy. [1] R. Na'hman b. Itz'hak says dropsy is an evidence of sin. Samuel the Little took sick with it, and he said: "Lord of the Universe! Who will prove (that I am not guilty, of immoral conduct)?" Hereupon he got well again. Abayi took sick with it. Said Rabha: "I know that the Nahmanite (son of Na'hman) starves himself."

The rabbis taught: There are four evidences: an evidence of sin is dropsy; an evidence of hate without cause is jaundice; an evidence of pride is poverty; an evidence of calumny (spreading evil reports about others) is croup. The sickness of croup becomes epidemic for (the sin of neglecting to give) tithes; but R. Elazar b. Jose said, only for the sin of calumny.

R. Jehudah, R. Jose, and R. Simeon were sitting and Jehudah, the son of proselytes, sat before them. R. Jehudah opened the conversation, saying: "How beautiful are the

works of this nation (the Romans). They have established markets, they have built bridges, they have opened bathing-houses." R. Jose said nothing, but R. Simeon b. Johai said: "All these things they have instituted for their own sake. Their markets are gathering-places for harlots; they have built baths for the purpose of indulging themselves in their comforts; they have built bridges to collect tolls from those who cross them." Jehudah, the son of proselytes, went and reported this conversation, and it came to the ears of the government. Said (the rulers): "Jehudah, who has praised (our doings), shall be promoted; Jose, who said nothing, shall be exiled to Sophoris; Simeon, who spoke disparagingly, shall be put to death." R. Simeon and his son then went and hid themselves in the college, and their wives brought them every day some bread and a pitcher of water, and they ate. When the decree became imperative, he said to his son: "Women are of a pliant disposition. They (the government agents) will perhaps trouble them, and they (the women) will reveal our whereabouts." They then went and hid themselves in a cave. A miracle occurred, that a date tree and a spring of water came out for them. They stripped themselves naked and sat down covered with sand up to their necks. Thus they sat all day studying; only at the time of prayer they put on their garments, and after performing their devotion they took them off again for fear they might wear them out. In this wise they spent twelve years in their cave. Elijah then came to the opening of the cave and said: "Who will inform the son of Johai that the Cæsar (governor) is dead and his decree is annulled?" Hereupon they left the cave. They then went forth and saw men who were ploughing and sowing grain. Said R. Simeon: "These people leave the works which lead to everlasting life and occupy

themselves with worldly things." After this every place where they chanced to turn their eyes was burned. Suddenly a "Bath-kol" (heavenly voice) was heard, which said unto them: "Have ye come to destroy my world? Go, return to your cave." They returned and stayed in the cave another twelvemonth, saying the punishment of the wicked in Gehenna only lasts twelve months. At the end of that time came again the heavenly voice and said: "Go out of the cave," and they came out. And R. Simeon said to his son: "It is enough for this world that I and you are occupied with the study of the Torah and with good deeds." This happened on a Friday near

sunset. They saw a man hurrying with two bunches of myrtle in his hand. "What are they for? they asked him. "To honor the Sabbath," was the reply. "Would not one bunch be enough?" "Nay; one is for the command 'remember,' [1] the other for the command 'observe,'" said the man. Said R. Simeon to his son: "Behold, how Israel loves the commands (of God)." This reassured them.

R. Simeon's father-in-law, R. Pinhas b. Yair, heard (that they were coming) and went to meet them. He took them to the bath-house. While R. Simeon was cleaning his (own) body, R. Pinhas noticed that it was full of blisters; tears ran from his eyes when he saw this, and (the tears falling upon the flesh of his son-in-law) caused R. Simeon pain. Said R. Pinhas: "Woe unto me, that I see thee in this state." R. Simeon rejoined: "Well unto thee, that thou seest me so, for if thou hadst not seen me in this state thou couldst not find in me (all the learning) that thou canst find in me now."

MISHNA *VIII*.: One must say three things in his house on Friday, when it is getting dark.--viz. "Have you set aside the tithes (from the fruit, which is to be eaten on the Sabbath)?" "Have you put up the Erubh?" and "Light ye the lamp." When one is in doubt whether darkness has set in, he must not separate tithes from (fruit of which he is) certain (that tithes had not been set aside), and he shall not put vessels under process of lavation, [2] and he shall not light a lamp any more. But he may set aside tithes from (fruit of which he is) not certain (that tithes have been set aside), and he may put up the Erubh and also put his victuals into the stove for the purpose of keeping them warm.

GEMARA: Whence is this deduced? Said R. Joshua b. Levi: from [Job, v. 24] "Thou shalt know that peace is in thy tent, and shalt examine thy dwelling, that thou mayest not sin." Rabba b. R. Huna said: Although the masters have taught that "one must say three things," etc., yet he ought to say them quietly, in order that (his family) should accept them from him (in good grace). Said R. Ashi: "I have not heard of this

saying of Rabba b. R. Huna before, yet I have always done so as a matter of common sense."

Does not the text contradict itself? It states: "One must say three things, etc., when it is getting dark." This implies that if he is in doubt whether it is getting dark or whether darkness has already set in, he cannot say it any longer. In the latter part, however, it says "if he is in doubt, etc., he may put up an Erubh."

Said R. Aba in the name of R. Hyya b. Ashi, quoting Rabh: "It presents no difficulty. In the first part it speaks of an Erubh of Techum (that marks the boundary of two thousand ells around the city, where it is allowed for one to walk on Sabbath); in the latter part it speaks of an Erubh by which the neighbors of adjoining courts make common cause."

Rabba said: The rabbis have prohibited putting victuals among things (that preserve but) that do not increase the heat after dark, for fear lest one find them too cold and be tempted to make them boil. Said Abayi to him: "If such is the case, why did they not enact the same prohibition for (the time) when it is twilight also?" Answered Rabba: "At that time the pots are generally boiling hot."

Rabba said again: "Why was it said that one must not put victuals among things that increase the heat, when it is yet day, for fear lest one put them in cinders where there are yet live coals?" Said Abayi to him: "What harm is there? let him do so." And he answered: "It may be feared lest he be tempted to stir the burning coals." The rabbis taught: "Which is the time of twilight?" When the sun sets and the eastern sky is red; when the lower (edge of a cloud) is dark, while the upper part is not yet dark; but when the upper edge (of such a cloud) is as dark as the lower, night has set in. So says R. Jehudah. R. Nehemiah says: (The duration of twilight) is the time one takes to walk half a mile from the moment the sun sets. R. Jose says: Twilight is like the twinkling of an eye; the one (day) goes out, the other (night) comes in, and it is impossible to determine it. And each of them is in accordance with his theory elsewhere; as it was taught: What is the duration of twilight? Rabba in the name of R. Jehudah, quoting Samuel, said: (The time it takes to walk) three-quarters of a mile; and R. Joseph said in the name of the same authority: Two-thirds of a mile. The difference between them is half a danka. (The contrary is the case when a bee-hive is concerned;

in that case Rabba said: A bee-hive of two kurs 1 one may move on the Sabbath; of three, one shall not. R. Joseph, however, said that one may move even a hive of three kurs, but one of four is forbidden. Said Abayi: I have inquired of the master at the time of the deed, and he did not even permit me to move one of two kurs.)

Rabha saw that Abayi was (one Friday) looking toward the east (to calculate the duration of twilight). Said he to him: "Dost thou think the masters spoke of the sky in the *east*? They spoke of an object in the east that reflects the red sky (of the west), like a window (placed eastward of the setting sun).

"It takes one to walk half a mile." Said R. Hanina: "If one wishes to know the time according to R. Nehemiah's calculation, he should leave the sun (see it set) on the top of Karmel (a certain mountain peak on the sea-coast), go down, dive into the sea, and go up (the mountain) again; this will give him the exact time." R. Jehudah, however, in the name of Samuel said: (To know the exact time of twilight may be fixed thus:) "If only one star (can be seen in the sky), it is yet day; if two stars, it is twilight; three stars, it is night." And so also we have learned plainly in a Boraitha with the addition: Said R. Jose: The stars mentioned do not mean the big stars, that can be seen in daytime, and not the small stars, which cannot easily be seen at night, but stars of medium size.

R. Jose b. R. Zebhida said: If one (unintentionally) performs work on both times of twilight (Friday and Sabbath), he must certainly bring a sin-offering (because at one of both times it was certainly Sabbath).

Rabba said to his servant: "You, who are not an expert in the scholarly calculation of time, must light the Sabbath lamp when you see the (last rays of the) sun on top of the trees. In cloudy weather how shall it be? (The lamp must be lit) in the city when the hens go to roost; in the field, when the ravens fly to roost or when the mallow shrub 2 (inclines its head to the west).

The rabbis taught: Six times was the signal blown on Friday: the first time to stop work in the field, the second to

stop it in the city and in the stores, the third time to light the lamps. So said R. Nathan. R. Jehudah the Prince says that the third time is sounded to take off the phylacteries. Then (the beadle) waits about as long as is required to bake a small fish, or for bread to cleave to the oven, and he sounds again the three tones 1 of the signal in succession for the Sabbath (that is already come). R. Simeon b. Gamaliel said: "What shall we do with the Babylonians? They sound the signal first, and then blow the trumpet; from the moment the trumpet is sounded they cease work." They do so because it is with them a matter of inherited custom.

R. Jehudah taught his son, R. Itz'hak: "The third (sounding was a signal) to light the lamp." This agrees with the ruling of R. Nathan.

At the school of R. Ishmael it was taught: Six times the signal is sounded on Friday. When the first sounding begins, those who are in the field stop ploughing and harrowing and all field work. At the entrance to the city those who are near must wait until the distant (farmers) come, so that they enter the city all together. The stores are yet open, and the stalls (upon which wares are laid out) are as yet in their places. As soon as the second sounding begins, the stalls are cleared and the stores closed. The warm victuals (prepared for the Sabbath) and the pots are as yet upon the hearth. As soon as the third sounding begins the pots are taken off the hearth, the warm victuals are put in the stove, and the lamps are lighted. Then (the beadle) waits about as long as it is required to bake a small fish or for bread to cleave to the oven, and he sounds trumpets and sounds the signal again and rests. Said R. Jose b. R. Haninah: "I have heard that if one wants to light up after the six signals he may do so, for the rabbis have allowed some time to the beadle to take his Shophar (horn) to the house (after the six signals). Said the schoolmen to him: "If such were the case, the subject would depend on various measurements of time." Nay, but the beadle has a concealed place upon the roof (where he sounds the Shophar) and puts away his instrument (as soon as he has used it); because neither a Shophar nor a fife may be handled (when the Sabbath is come).

But have we not learned that a Shophar may be handled,

but a fife may not? Says R. Joseph: This is not contradictory. Our case is that of a Shophar belonging to the community; the case adduced treated of one that belongs to a private party

(therefore it is permissible).

Said Abayi: "Why may a Shophar that is private property be handled? Because it is sometimes used for taking up water, to give a child drink; let one that is public property also be allowed to handle, because it may be used in the same manner." Furthermore, was it not taught: "As a Shophar may be handled, so also may the fife be handled?" According to whose ruling is this? There is no contradiction in all this. The one (that a Shophar may be handled, but not a fife) is according to the ruling of R. Jehudah. The other (that both may be handled) is according to the ruling of R. Simeon. The third (that neither should be handled) is according to the ruling of R. Nehemiah. "And what is a Shophar?" The same as a fife, as R. Hisda says: "Since the sanctuary was destroyed the names have become changed; a Shophar is called a fife, and a fife is called a Shophar."

Footnotes

31:1 Moss springing up on the hulk or boards of a ship.

31:2 The text reads "oil for burning," the full explanation of which is given in the Talmud farther on. We have paraphrased the term to convey the sense to the English reader.

31:3 The terms in the Mishna, with which it must not be lighted, are expressed in a mixture of Hebrew, Greek, and Roman names. The Gemara then discusses what is meant by the names, and, probably, some of the Babylonian Amoraim did not understand Greek or Roman, as is seen from the fact that Rabbin did not know of the name *metaxa* when he saw it on the body of Ne'hemiah, and exclaimed only, "This is meant by the expression *khlakh*"; and Abayi answered in broken Roman, *Paranda*. We, as we have translated the names into English, have omitted the whole discussion in the first edition. In this second edition, however, we are disposed not to omit ant least the historical facts.

33:1 The ceasing of footsteps in Talmudical language implies the time when people have already retired.

33:2 Vendors of shavings and small wood, which are bought for the hearth-fire in the evening.

34:1 The sacrifices of the Feast of Booths were decreased in number each succeeding day. See Numbers xxix. 13, 17, 23, 25, 29, 32.

34:2 Time of danger is used here to designate the time when a prohibitive order against lights is issued by the local government.

35:1 "Mezuzah," door-post, technical name for the writing which was to be placed on the door-post by the command of Deut. vi. 9 and elsewhere. The rabbis decreed that this was to be placed to the right of the entrance.

35:2 The different contentions given above may seem somewhat out of place; however, they are cited merely to show the differences of opinion existing among the different schools and sages.

37:1 The three benedictions here referred to are: 1st, for the privilege of lighting the 'Hanukah lamp; 2d, for the miracle which the lamp commemorates; and 3d, for the continuance of life until the season of 'Hanukah. The second benediction is technically designated as that of the "miracle" and the third as that of "time."

38:1 "The light for a house-light." The text does not specify on what night, but Rashi's commentary adds Friday night, *i.e.*, Sabbath eve. In our opinion that is not the intent of Rashi; for even on workdays the light used by the household should have preference. Proof is: the reason given is for the sake of domestic peace; were it only to apply to Sabbath eve, the reason given would have been in honor of the Sabbath.

38:2 In all the ordinances to be observed, the rabbis have adopted the rule that if the choice stands between one that recurs at short intervals and one that occurs more seldom, the former is always to be preferred. ("Tadir, vesheaino tadir, tadir kodom.")

39:1 The principal elements of all Hebrew prayers are: 1st, Shebhah, *i.e.*, praise; 2d, Hodayah, *i.e.*, thanksgiving; 3d, Tephilah, *i.e.*, prayer; and 4th, Ta'hanun, *i.e.*, propitiation.

40:1 A division of the people had always to be present at the temple to witness the services. The men of such a division were called "commoners" because there was a special place assigned to them in the temple. All of them not being able to attend, they sent their delegates to represent them, but they assembled in their various cities and villages to perform their devotion. The days on which this was done were designated as those of "commoners "--"Ma'amadoth." See Mishna, Ta'anith.

41:1 Toilet rooms were not in vogue at that time, and for their necessity they had to go far out into the field or forest.

42:1 "Tebhel" is the designation of the produce of the field and the garden from which the Levitical gifts or tithes were not separated.

45:1 Like the Persians, says Rashi, who had certain nights on which they allowed no lights to burn anywhere but in their sacred shrines.

45:2 The evil spirit here referred to is explained by the commentators to mean "melancholia."

45:3 The inference is made on the strength of a rule laid down by R. Jehudah elsewhere, that every unintentional breach of the Sabbath, which is made not out of personal necessity or habit, must be atoned for by a sin-offering. (Rashi.)

46:1 This apparently far-fetched introduction to an answer to a question of religious legalism illustrates most beautifully how the ethical principle predominated in the rabbinical discussions.

47:1 The liberality of the rabbinical law is evinced by the fact that it regards an act done for the sake of alleviating sufferings on the Sabbath day not wrongful. Every comfort may and should be provided for the sick on the Sabbath day.

47:2 "Ner" is the Hebrew word for candle; the soul is the candle of God.

49:1 Hillel, being the president of the Sanhedrin, should have been addressed according to his rank, but by addressing him thus, it seems, the man thought he could provoke him to anger.

51:1 The six departments enumerated here are those of the Mishna, into which the rabbis have divided all the subjects touched upon in the Bible.

51:2 "Trust" comes within the department of "Seeds" because the tithe due the priests and Levites by the farmers was not fixed legally as to quantity, but was trusted to the honesty of the donor. "Thy times" comes within "Festivals" for self-evident reasons. "Strength" comes within "Women," for the reason that the Hebrew word, "chosen," also means inheritance, and heirs are naturally produced by women (this is the opinion of Rashi). "Salvation" in "Jurisprudence": all laws pertaining to the saving of life and property. "Wisdom" in "Holiness": the holy sacrifices requiring the exercise of much wisdom. "Knowledge" in "Purity": the determining of pure and defiled things necessarily demanded thorough knowledge of the subject.

53:1 When the ox is felled the knife should be ready, lest he rise again and cause more trouble; thus it is stated that women die at time of childbirth because, while they are in danger, the punishment for transgressions is also inflicted!

55:1 The text continues with the punishment of death for different sins, which are repeated in other tracts, but we have omitted them here, as they will be translated in the proper place.

56:1 The text refers also to verses in the Scripture, but as there is no direct proof, we have omitted them.

58:1 In the Decalogue of Exodus the fourth commandment begins with the word "Zakhor" (remember); in Deuteronomy it begins with the word "Shamor" (observe).

58:2 All new vessels must undergo a process of lavation before they can be used [Num. xxxi. 23].

60:1 Kur was an ancient measure and cannot be determined at the present time; it may have been about three gallons. See Schoenhak's "Hamashbir." A danka is a twelfth or a half of a sixth part.

60:2 The mallow (*Adana* or *Harna*, see Arukh), more than any other plant, was believed to incline its head toward the sun, like our own sunflower.

61:1 The three tones of the Shophar are technically designated a "Tekyah" (a long simple note): "Teruah" (a slow trill), and "Tekyah" again. See note to Rosh Hashana, p. 63, first edition.

Next: Chapter III: Regulations Concerning Stoves, Hearths, and Ovens

CHAPTER III.

REGULATIONS CONCERNING STOVES, HEARTHS, AND OVENS.

MISHNA *I.*: Cooked victuals may be put on a stove that was heated with straw or stubble. If the stove was heated with the pulp of poppy seed (*i.e.*, poppy seed from which the oil was pressed out) or with wood, (cooked victuals) may not be put upon it, unless the (live) coals were taken out or covered with ashes. Beth Shamai says: (The latter instance) is permissible only in the case of victuals that are to be kept warm, but not of such as are improved by continued cooking. Beth Hillel says: Both alike are permitted. Beth Shamai says: (Victuals) may be taken off the stove, but not put back upon it; Beth Hillel permits it.

GEMARA: The schoolmen propounded a question: "As for the expression 'shall not be put,' does it (referring to a pot that has been taken off the stove) mean 'one shall not put it back,' but if it has not been taken off, it may be left there, even if the live coals were not cleared away or covered with ashes? Or does it mean that the pot should not be left there (even if it was standing there before) unless the live coals have been cleared out or damped, so much the more should it not be put there if it was once taken off?" Come and hear. There being two parts in our Mishna, if the point of controversy is the leaving (of the victuals on the stove, if they were there before), the Mishna is to be explained thus: On the stove that was heated with straw or with stubble the victuals may be left; on a stove that was heated with pressed poppy seed or with wood, the victuals may be left only if the live coals were taken out or covered with ashes. What kind of victuals may be left there? According to Beth Shamai such as are to be kept warm, but not such as improve by cooking. And according to Beth Hillel both. Thus the point of controversy is the leaving of the victuals (that had been on the stove before). And as the (two schools) differ in this matter, so do they also differ in their opinions concerning putting them back upon the stove if they were once taken off. But if you interpret the Mishna to make the

returning of the victuals to the stove the point of their differing--viz., what kind of victuals should be returned (to the stove), according to the former such as are to be kept warm, but not such as improve by cooking, and according to the latter, both. (If you put such a construction upon the text of the Mishna,) to what purpose is it repeated? "Beth Shamai says," etc. It may be said even that they differ concerning putting back, and nevertheless there is no difficulty, as the Mishna is not complete, and should read thus: "If the stove was heated . . . but if they stood there before, they may be left there, even if the live coals are not taken out or covered with ashes." And what may be left? Beth Shamai says only such as are to be kept warm, and Beth Hillel says even victuals requiring cooking; but even in the case of returning (the victuals to the stove, if they have been removed) there is still a difference of opinion between the two schools, for according to the former they may be only taken off, and according to the latter they may be returned also.

Come [1] and hear. R. Helbo in the name of R. Hama b. Gorion, quoting Rabh, said: "The Mishna speaks only about putting the victuals upon the stove, but as to putting them into the stove it is surely prohibited." Now, if thou sayest the dispute is about returning (the pot to the stove), this remark is correct, for there is a difference to what place it is returned, whether into the stove or upon it; but if the question were about keeping it on the stove while it is there, what difference would it make?

Do you think R. Helbo's report refers to the first part of the Mishna? It refers to the second part, in which Beth Hillel allows it to be returned; and to this he says, even in this case, upon the stove it is permissible, but not into the stove.

The schoolmen propounded a question: "May (a pot with victuals) be placed so as to touch the side of the stove? Does the prohibition which holds good for putting it into or upon the stove apply also here, or is touching its side a different case?" Come and hear. "A stove that was heated with pressed poppy seed or wood may (be used) to put a pot alongside of, but not on, unless the live coals were taken out or covered with ashes." If the coals get dim or fine hurds were put upon them, they are considered as if their fire was damped with ashes. R. Itz'hak

b. Na'hmani in the name of R. Oshia says: If the fire was damped and still it got a-glowing, victuals that are sufficiently warm, and cooked meats that require no more cooking, may be left standing upon it.

Is it to be inferred from this that, if victuals are improved by shrivelling (upon the fire), they may be left there? This is a different case, for the fire was damped. If such is the case, what came R. Itz'hak to teach? "Lest one say that if the fire got to glowing again, it is to be considered as a fire originally started?" R. Itz'hak lets us know that, when once a fire has been damped, we need have no further scruples about letting the victuals remain on it.

R. Shesheth said in the name of R. Johanan: Victuals that require additional warming or additional cooking may be left upon a stove that was heated with pressed poppy seed or with wood; but if they were once removed, they shall not be replaced unless the live coals were taken out or covered with ashes. He was of the opinion that our Mishna (treats) of replacing (a removed pot), but allows (a pot that was not removed) to be left on the stove, even if the live coals are not taken out or covered with ashes. Said Rabha: "Were not both (propositions) expounded in the Boraithoth (that were cited)?" Aye, but R. Shesheth merely, wishes to exhibit his construction of the text of the Mishna.

R. Samuel b. Jehudah in the name of R. Johanan said: Upon a stove that was heated with pressed poppy seed or wood, victuals may be left standing, if they are sufficiently warmed and sufficiently cooked, even if shrivelling improves them. Said one of the schoolmen to him: "Did not Rabh and Samuel both say that if shrivelling improves them, it is not allowed? And he answered: "I said this in the name of R. Johanan and not in the name of the above mentioned, as I am aware of it." R. Uqba of Mishan said to R. Ashi: "You, who cherish the teachings of Rabh and Samuel, may follow their regulation, but we will follow the regulation of R. Johanan."

Abayi questioned R. Joseph: May victuals be left (on the stove)? And he answered: Did not R.

Jehudah leave (victuals on the stove), and eat them afterward? Rejoined Abayi: The case of R. Jehudah cannot be taken into consideration. He was stricken with a dangerous disease, and for him even (the cooking of victuals) on the Sabbath was permitted; but I ask about (healthy men like) you and me. R. Joseph answered: "In

[paragraph continues] Sura they do leave. As R. Na'hman b. Itz'hak, who was exemplary in following religious ordinances, was wont to leave and to eat."

R. Ashi said: "I was standing before R. Huna and observed that fried fish was kept (warm) for him and he ate it; but I know not whether (he did it) because he thought that victuals which improve by shrivelling are allowed, or whether he thought that, because there was flour on his fish, continuous warming did not improve it.

R. Na'hman said: (Victuals) that improve by shrivelling must not (be left on the stove); such as deteriorate may. The rule is that all victuals which contain flour deteriorate by continuous warming.

R. Hyya b. Ahba was questioned: "If one forgot his pot and left it upon the stove, and the victuals were thus cooked on the Sabbath, may he eat them or not?" The master gave no answer. The next time he lectured: Victuals cooked on the Sabbath unintentionally may be eaten; intentionally not, but (as regards the pot that is forgotten on the stove) it makes no difference.

What does (the phrase) "it makes no difference" mean? Rabba and R. Joseph both say that the phrase implies that it may be eaten, for one who cooks acts intentionally; but when forgotten there was no act, and therefore he may eat it. But R. Na'hman b. Isaac says the above phrase of "it makes no difference" implies a prohibition. In the case of cooking there is no fear of craft; therefore if he has done it unintentionally, he is not fined; but in the case of forgetting (the pot in the fire) craft may be feared (it means that he may put it in intentionally saying that he forgot), and therefore even if he actually forgets he is not allowed to eat the victuals.

The schoolmen propounded a question: "What about one who had intentionally left (his victuals upon the stove)? Do the rabbis fine him or not?" Come and hear. Samuel b. Nathan in the name of R. Hanina said: "When R. Jose went to Ziporis, he found warm meats that had been left upon the stove, and he did not prohibit their use, but shrivelled eggs that had been left upon the stove he prohibited. Shall we not assume that he forbade their use even on that Sabbath as a fine? Nay, he forbade their use for the following Sabbath."

From this is to be inferred that shrivelled eggs improve by continuous heating. As R. Hama b. Hanina said: "Rabbi and

[paragraph continues] I were once stopping at a certain place. We were treated with eggs shrivelled like wild pears, and we ate many of them."

"*It may also be put back*." R. Shesheth said: The Tana who holds that the pot may also be put back (upon the stove) allows this (to be done) even on the Sabbath. R. Oshia is also of the same opinion, for thus he said: "We were once standing before R. Hyya the Great; we served him with a bowl of warm (soup), which was brought from the lower floor (of the house), and we mixed a cup of wine for him, and (afterward) we returned it (the bowl) to its place, and he said nothing." And R. Hyya in the name of R. Johanan said: Even if (the warm pot taken off from the stove) was put upon the ground, it may (still be put back on the stove). Said Hyskiyah in the name of Abayi: "According to them who hold that if he puts it on the floor it may not be returned, it is said only when it was not his intention to return it. But if it was, he may. And from this it is to be inferred that if it was still in his hand, although his intention was not to place it again, he may do so on reconsideration."

MISHNA *II*.: (Victuals) shall not be put either inside or on top of an oven that was heated with straw or with stubble; a firing-pot that was heated with straw or with stubble is (considered by the law) as a stone, but if it was heated with pressed poppy seed or with wood it is considered as an oven.

GEMARA: A Boraitha teaches: If an oven was heated with straw or with stubble, (a pot with victuals) shall not be put close to it (so that it touch the oven), the less so upon it, and still less so into it; so much the less shall (a pot) be put (alongside of an oven) that was heated with poppy-seed pulp or with wood. If a firing-pot was heated with straw or with stubble, (a pot) may be put close to it, but not upon it; with poppy-seed pulp or with wood it must not be put close to it. Said R. Aha b. Rabha to R. Ashi: "How shall the firing-pot be considered? If it is like a stove, even if heated with poppy-seed pulp or with wood (a pot shall be allowed to be put close to it); and if it is like an oven it should not, even if it is heated with stubble or straw?" Answered he: It contains more heat than a stove and less heat than an oven.

What is a firing-pot and what is a stove? Said R. Jose b. Hanina: "A firing-pot has an opening on the top upon which only one pot can be set; a stove has openings upon which two pots can be set at a time."

MISHNA *III*.: An egg shall not be put close to a boiler to

get it settled, nor must it be wrapped in a hot cloth. R. Jose permits it; also it must not be put into hot sand or in the (hot) dust of the road that it be roasted (by the heat of the sun). It once happened that the inhabitants of Tiberias had laid a pipe of cold water through the arm of their hot springs. But the sages explained to them that on the Sabbath this water is considered like any other warmed on the Sabbath, and must not be used either for washing or drinking; and should this be done on a feast day, it is like water heated by fire, which may be used for drinking only, but not for washing.

GEMARA: The schoolmen questioned: How is it if one has done so with an egg? Said R. Joseph: He is liable for a sin-offering. Said Mar b. Rabhina: This is to be understood also from the following Boraitha: Everything that was in hot water before the Sabbath may be soaked in hot water on the Sabbath; things that were not in hot water before the Sabbath may only be rinsed in it, excepting old herrings and Spanish (salted) fish, because with these, rinsing

completes their preparation. (The same is the case with an egg; the settling completes.)

"*Nor shall it be wrapped*," etc. Now, the Mishna which states: "Cooked victuals may be put into a pit for preservation; drinking water into cold bad water to cool; cold victuals in the sun to warm." Shall we assume that it is in accordance with R. Jose and not with the sages? Said R. Na'hman: As to the heat of the sun, all agree that it is allowed; the outcome of heating by fire, all agree that it is prohibited. The point of their differing is the outcome of sun-heating. The one master holds that the use of such heat is prohibited for fear lest one use also the heat that is generated by fire; the other master does not impose such a precautionary measure.

"*It happened that the inhabitants of Tiberias*," etc. R. Hisda said: With the prohibition by the rabbis of the act of the Tiberians they have also abolished the permission to heat on Friday, even when it is yet day, in such places as increase heat. Said Ulla: "The Halakha prevails according to the Tiberians." Rejoined R. Na'hman: "The Tiberians themselves have already destroyed their pipes." "Washing with warm water," how is this to be understood? The whole body? Is this prohibited only with water that was warmed on Sabbath? Is it not the same even when it was warmed on the eve of Sabbath? As the following Boraitha states: "With water which was warmed on the

eve of Sabbath, on the morrow one may wash his face, hands, and feet, but not the whole body. And if it means the face, etc., how is the latter part to be understood? If it was warmed on a feast day," etc.

Shall we then assume that our Mishna states in accordance with Beth Shamai, as they so state plainly elsewhere, to which the Beth Hillel opposed and permitted? Said R. Iyqa b. Hanina: Our Mishna treats of washing the entire body, and it is in accordance with the Tana of the following Boraitha: "One shall not rinse his entire body (on the Sabbath) either with warm or with cold water." So is the decree of R. Mair, but R. Simeon permits this. R. Hisda says their dispute concerns only (water that is) in the ground; but water contained in a vessel is strictly prohibited.

Rabba b. b. Hana in the name of R. Johanan said: "The Halakha prevails according to R. Jehudah." Said R. Joseph to him: "Didst thou hear this explicitly, or dost thou derive it by inference (from a similar teaching)?" "I have heard it explicitly," he answered.

It was taught: If water was warmed on Friday, Rabh said one may wash his entire body in it on the next day, every member separately (*i.e.*, not plunge into it at once). Samuel, however, said: It was not allowed but of the face, hands, and feet. And the following Boraitha supports Samuel: "If water was warmed on Friday, one may wash his face, hands, and feet with it on the following day, but not his entire body, even member by member; and so much less with water warmed on a feast day."

Said R. Joseph to Abayi: "Did Rabba not act according to the decisions of Rabh?" "I know not," he answered.

The rabbis taught: A bath-house, the openings of which were stopped up on Friday (so that the heat should not escape), may be used for bathing immediately after the Sabbath is over. If its

openings were stopped up on the eve of a feast day, one may, on the next day, enter it to have a sweat, but he must leave it and rinse his hands in an adjoining room. R. Jehudah said: It happened in a bath-house of the city of B'nai Beraq, that its openings were stopped up on the eve of a feast day. The next day R. Eliezer b. Azariah and R. Aqiba entered it and took a sweat; then they left it and rinsed their bodies in the adjoining room; but the warm water in it had been covered with boards. When the report of this reached the masters they

said, even if the warm water had not been covered with boards, they were also allowed (to do so). However, since transgressing began to increase, they began to prohibit. In bath-houses of large cities one may walk about without fear of people's saying that he went to take a sweat.

What does the expression "transgressing" mean? As R. Simeon b. Pazi in the name of R. Joshua b. Levi, quoting bar Qapara, said: In former times the people were accustomed to bathe (on the Sabbath) in water that was warmed on Friday. The bath-keepers then began to warm the water on the Sabbath, and to tell the people that it had been warmed on Friday. Hereupon they prohibited bathing in warm water, but still they placed no restriction upon taking a sweating (in the bath-room). The people then would come and bathe, but pretend to merely take a sweating. Then sweating was also prohibited, but washing in the hot spring water of Tiberias was still allowed. The people, however, would come and wash themselves in water that was warmed by the fire and say that they washed in the hot spring water. Subsequently warm water was prohibited for bathing altogether, but bathing in cold water was allowed. Seeing that people could not stand the last prohibition, it was therefore revoked, and bathing in the hot spring water of Tiberias was allowed. The prohibition of the sweating bath, however, remained. The rabbis taught: One may warm himself by a hearth-fire and afterwards rinse himself with cold water, but not bathe first in cold water and then warm himself by a hearth-fire, because he warms the water that is on him.

The rabbis taught: One may warm a sponging-cloth and put it upon his bowels (on the Sabbath), but he must not do so with a boiling hot vessel, for this is dangerous even on week days.

The rabbis taught: One may put a pitcher of water before a blazing fire, not to warm it, but to temper the coldness of the water. R. Judah said: A woman may put an oil flask before a blazing fire, not to boil it, but merely to temper it. R. Simeon b. Gamaliel says: A woman may unhesitatingly put oil on her hand, warm it before the fire, and anoint her little son with it without any fear.

Said R. Judah in the name of Samuel: Whether it be oil or water, if the hand is spontaneously withdrawn from it (feeling the scald) it is prohibited, but not otherwise. And what extent of heat is meant by it? Said Rabba: If the belly of a child is scalded by it.

R. Itz'hak b. Abhdimi said: "I once followed Rabbi into the bath-house (on the Sabbath). I wanted to put a bottle of oil for him into the tank (that contained hot spring water). Said he unto me: "Take out some warm water from the tank and put it into another vessel (to warm the oil in). From this we have inferred three things--viz.: First, that oil improves by warming, and it is a

prohibited act; second, that if anything is put into a second vessel (not directly into the boiling vessel) it is not considered cooking; third, that the mere tempering of oil is analogous to cooking it.

Said Rabhina: From this story it may be inferred that if one cooks in the hot spring water of Tiberias on the Sabbath he is culpable, for the case happened after the rabbis had imposed the precautionary measure, and yet Rabbi would not allow him (R. Itz'hak) to put the oil directly into the tank. Is that so? Did not R. Hisda say that he who has cooked in the hot spring water of Tiberias is not culpable? The *culpability* to be inferred (from the case of Rabbi) extends only as far as blows of correction 1 are concerned.

R. Zera said: "I have seen R. Abuhu swimming in a tank, and I know not whether he raised (his feet from the ground) or not. Is it not self-evident that he did not raise them, as there is a Boraitha: One shall not swim about in a pond, even if (that pond) is stationed in a yard. This presents no difficulty. In a pond it is prohibited, because it is similar to a river, while in a tank it is allowed, because it is similar to a vessel. 2

R. Zera once found R. Jehudah in the bath. He (R. Jehudah) ordered his servant (in the Hebrew Aramaic tongue): "Bring me the comb; hand me the soap; open your mouths, and exhale the warm air from within you; drink of the (warm) water of the bath." Said R. Zera: "If I had not come but to hear *this*, it were enough for me."

It is correct that he ordered things in the Hebrew language, as private affairs may be said in the same language. The same is with the second order, for Samuel said that heat (from without) drives out heat (from within). But what good is in the order, "Drink of the water of the bath"? It is also correct, as we have learned in the following Boraitha: "If one washed

himself with warm water and did not drink of it, he is like an oven that was heated from without but not from within."

MISHNA *IV.*: The hot water contained in a "Muliar" (caldron), the live coals of which have been cleared away before the Sabbath set in, may be used on the Sabbath; but the hot water contained in an "Antikhi" (another kind of kettle), even if cleared of live coals, is not to be used on the Sabbath.

GEMARA: What is a Muliar? A Boraitha states: "It is a vessel provided with an attachment for live coals, used for keeping water"; as for an Antikhi, Rabba says it is a Bekiri (a vessel similar to a Muliar, but of heavier construction and continually in use). R. Na'hman b. Itz'hak says: It is a Bedude (a large kettle with an attachment underneath for live coals). There is a Boraitha in support of the opinion of R. Na'hman: "The hot water in an Antikhi, even if the coals thereof are cleared away or damped, is not permitted to be used, for the heavy bottom keeps the heat."

MISHNA *V.*: Into a kettle, the hot water of which has been spilt out and which has been removed from the fire, cold water is not permitted to be poured, for the purpose of heating; but it is permitted to pour water into the kettle, or into a cup, for the purpose of making such water lukewarm.

GEMARA: How is this to be understood? Said Abayi: It means thus: "Into a kettle, the fire of which has been removed, which still contains hot water, a small quantity of cold water may not be poured, for the purpose of warming; but a large quantity, to make the hot water lukewarm is, however, permitted. Into a kettle, the hot water of which has been entirely removed, no cold water at all may be poured, because it tempers the vessel. And it is in accordance with R. Jehudah, who holds that an act which pleases one, if done even unintentionally, is prohibited.

Said Rabh: "Even the above-mentioned large quantity is allowed only to make the water lukewarm; but not such a quantity as will entirely neutralize the hot water and tend to temper the vessel." Samuel, however, permits any quantity.

Shall we assume that Samuel is in accordance with R. Simeon (who opposes the above theory of R. Jehudah), but did he not say that it is permitted to extinguish live dross on public ground (to prevent injury), but not charcoal? And if he agrees with R. Simeon, this also should be permitted? As regards labor tending to the accomplishment of a work (prohibited on the

Sabbath), he holds with R. Simeon; but as to the performance of labor, not for its own sake, he sides with R. Jehudah. Said Rabina: "Since it is permitted to perform labor (prohibited by rabbinical law), in order to prevent injury, it is also permitted to remove thorns from public ground, little by little, in distances of less than four ells at a time (in order to prevent injury); but upon unclaimed ground it may be done in greater distances."

"*But it is permitted*," etc. The rabbis taught: One may pour hot water upon cold, but not cold upon hot water, so is the decree of Beth Shamai; Beth Hillel, however, allows both ways, provided a cup is used; but in a bathing-tub hot water upon cold is permitted, but cold water upon warm is not. But R. Simeon b. Menassiah forbids it. And Na'hman said that so the Halakha prevails. R. Joseph was about to say that a bucket is under the same ruling as a bathing-tub. Said Abayi to him: "So taught R. Hyya, that a bucket is not in this category."

Said R. Huna b. R. Joshua: "I observed that Rabha was not scrupulous with regard to the use of vessels, because R. Hyya taught, one may put a pitcher of water into a bucket of water; it makes no difference whether it be hot water into cold o r *vice versa*." Said R. Huna to R. Ashi: "Perhaps this was a different case altogether, it being that there was a vessel within a vessel!" But the latter retorted: "It says: 'To empty'; as it was taught: It is permitted to empty out a pitcher of water into a bucket of water, be it either warm water into cold or *vice versa*."

MISHNA *VI*.: In a saucepan or a pot that was removed from the fire, no spices shall be put after dusk (on Friday); but spices may be put into a plate or a bowl. R. Jehudah is of the opinion that spices may be put in all vessels or cooking utensils except in such as contain vinegar or fish brine.

GEMARA: The schoolmen propounded the following question: Does R. Jehudah refer to the first part of the Mishna, which is lenient, or does he refer to the latter part, which is rigorous? Come and hear. We have learned in a Boraitha that R. Jehudah says: "One may put (spices) into all saucepans and cooking-pots, except such as contain vinegar and fish brine."

R. Joseph was about to say that salt comes under the same ruling as spices, because in his opinion salt becomes cooked in a

first vessel (*i.e.*, the vessel used for cooking), but not in a second vessel. Said Abayi to him: R. Hyya distinctly taught that salt does not come under the ruling applicable to spices, because it does *not* become cooked, even in a first vessel. This is corroborated by R. Na'hman, who said: There is a saying that the dissolving of salt requires thorough boiling, the same as beef.

MISHNA *VII.*: It is not permitted to place a vessel under a lamp so that the oil of the lamp drip into it. If a vessel was placed under a lamp before the Sabbath set in, it may remain there; but the use of such oil on the same Sabbath is not permitted, as it was not previously prepared.

GEMARA: Said R. Hisda: "Although it was said that the placing of a vessel under a hen (laying on sloping ground) to receive the egg is forbidden, yet to cover the egg so as to prevent it from being crushed is permitted."

Said Rabba: The reason of R. Hisda is because he holds that hens being in the habit of laying eggs on level ground, in order to prevent the egg from being stepped upon, it is permitted to cover it with a vessel; but as liens are not in the habit of laying eggs on *sloping* ground, the placing of a vessel under the hen to receive the egg was not allowed.

Abayi objected to this, stating: "Were we not taught in the Mishna that it is permitted to place a vessel under a lamp in order to take up the (dropping) sparks?" (This seldom occurs and therefore it is permitted.) He was told that the dropping of sparks by a lamp is also of frequent occurrence.

R. Joseph, commenting on the statement of R. Hisda, gave another reason--viz.: That the vessel (placed under a hen to receive an egg) is made useless for that same Sabbath.

Abayi raised the same objection, (intending to) prove by it that the vessel placed under a lamp is also made useless on that same Sabbath, and R. Huna b. R. Joshua answered: "Sparks have nothing substantial about them (therefore the vessel containing them is not made useless on the same Sabbath)."

R. Itz'hak said: In the same manner as it is not permitted to place a vessel under a laying hen, so is it also not permitted to cover the egg laid; for the reason that a vessel must not be handled on the Sabbath except for the use of such things as are themselves permitted to be handled on the Sabbath.

All the objections of Abayi being raised against R. Itz'hak's statements, he answered: "In that case there was a lack of space." (If the space occupied by a vessel is needed, that vessel

may be removed, and while being removed may be used for any purpose.)

Come and hear (another objection). An egg laid on the Sabbath or a festival, to prevent it from being (accidentally) cracked, may be covered with a vessel? Here the case is, also, when the space where the vessel is placed is needed.

Said R. Shesheth (to his disciples): Go ye and tell R. Itz'hak that the above doctrine has already been interpreted by R. Huna in Babylon as follows: It is permitted to make a partition on the Sabbath, to (isolate) a corpse for the sake of the living, but it is not permitted to make a partition for the sake of the corpse. How is the latter clause to be understood? R. Samuel b. Jehudah and also Shila Mari taught: In the case of a corpse lying in the sun (on the Sabbath), (to prevent the corpse from decomposing) two persons are brought to sit on the floor, each on one side (in order to bring about the making of a screen). When the ground underneath them becomes hot, each of them is to bring a cot bed to sit upon, and when the heat above them becomes excessive, they are to bring a sheet and spread it over their heads (leaving part of the sheet loose); both now raise their cots (which take up the loose part of the sheet) and move to their former positions; thus a screen (canopy) is formed of itself.

It was taught: "A corpse lying in the sun." R. Jehudah in the name of Samuel says: The same must be turned over from one bed into another, until it arrives at a shady place. R. Hinna b. Shalmi in the name of Rabh said: A loaf of bread or an infant should be put on the corpse and then the corpse may be moved. There is no difference of opinion as to the removal of a corpse (on the Sabbath), which is permitted when a loaf or an infant is put upon it; they differ only where there is none. One holds that indirect transportation must be considered transportation, and the other opines that indirect transportation is not transportation (and therefore permitted).

Shall we assume that on this point the following Tanaim differ? "It is not permitted to save a corpse from a fire." R. Jehudah b. Lakish, however, says: "I have heard that it may be done." How is the case if there was a loaf of bread or an infant? Why should the first Tana prohibit it? And if there was none, what is the reason of Lakish's decision? Do they not differ in the point of transportation stated above? Nay; all agree that such a transportation is considered; the

reason, however, of Ben Lakish is that usually one is concerned about his dead, and if it would not be permitted to remove it, he will extinguish the fire. Said R. Jehudah b. Shilah in the name of R. Ashi, quoting R. Johanan: The Halakha prevails according to Ben Lakish concerning a corpse.

MISHNA *VIII*.: A new lamp maybe handled on the Sabbath, but not an old one; R. Simeon, however, says all lamps are permitted to be handled except such as are still burning.

GEMARA: The rabbis taught: A new lamp may be handled, but not an old one; such is the decree of R. Jehudah.

R. Mair, however, says that all lamps may be moved, except a lamp which was lit for the Sabbath (though the light is extinguished); but R. Simeon says, except a lamp which is still burning. If extinguished, it may be moved; but a goblet, bowl, or lantern (used as lamps, must

not be removed from their respective places). R. Eliezer b. R. Simeon, says: It is permitted to make use of an extinguished lamp and of the oil dripping, from it, even while the lamp is burning.

Said Abayi: R. Eliezer b. Simeon holds in one case to the opinion of his father, but differs with him in the other. He holds with his father in disregarding Muktza (designation), [1] and differs with him in the other case, for his father is of the opinion that when a lamp is extinguished it may be moved, but not while it is burning; but he is of the opinion that even a burning lamp may be moved. "But a goblet, bowl, or lantern must not." Wherein do these things differ from the others? Said Mar Zutra: R. Simeon allows a small lamp (to be handled), because one will wait until it is extinguished (and then it may be used for another purpose); but these are large, and not apt to become extinguished for some time. R. Zera said: All the schoolmen agree on prohibiting the handling of a candelabrum which had been lit up on Sabbath, but the handling of the candelabrum which was not lit up on the Sabbath is unanimously permitted.

R. Jehudah in the name of Rabh said: "It is not permitted to handle a bed that has been designated as a place to put money in, if the money had already previously been placed upon it (on Friday during twilight even if on the Sabbath *no money*

was on the bed). If the money, however, had not previously been deposited on the bed, the handling is permitted. If a bed was not designated for the keeping of money, but contained money, it must not be handled. If it contained no money, it may (providing no money was deposited on the bed during twilight of the preceding Friday). And Rabh says this because he holds with R. Jehudah concerning Muktza.

And it seems that so is the case, as Rabh said one may place a lamp upon a palm tree at any time while it is yet day on Friday, in order that it may burn on the Sabbath; but one may not put a lamp upon the same on a biblical feast day. (It is permitted to place a lamp on a palm tree on the Sabbath because there is no fear of the tree, which is Muktza [designated], being used; but on a biblical feast day it is prohibited for fear that one while depositing or removing the lamp will also use the palm tree; and that is prohibited.)

And this is correct only in accordance with the theory of R. Jehudah; but should Rabh hold with R. Simeon, why does he make a distinction between the Sabbath and a biblical feast day? The law of Muktza does not exist at all according to R. Simeon.

Is that so? Did not Rabh decide, when he was questioned whether one may remove an extinguished 'Hanukah light on the Sabbath for fear of the Magi (this has already been mentioned in a previous connection), that it may be done? The time of danger is different. [1] R. Kahana and R. Assi then questioned him: "Does the Halakha so prevail?" and he answered: "R. Simeon is worthy to be relied upon in times of danger."

Resh Lakish questioned R. Johanan: "May wheat that has been sown but that has not yet sprouted, or eggs that are still under the hen, be eaten on the Sabbath? Does he (R. Simeon) disregard the law of Muktza only in such cases where the objects were put aside with no intention of ever being used again, or does he disregard Muktza under all circumstances?" He

(R. Johanan) replied: "There is no Muktza in his theory but the oil in a burning lamp, because if poured in a lamp for the purpose of keeping the Sabbath-light commandment it is designated for that express function, and as it is not permitted to extinguish that light, the intention not to use the oil for any other purpose is self-evident. But does not R. Simeon hold that the

same is the case with other things which were designated for their religious purposes? Is it not a fact that the ornaments of the tabernacle on that festival must not be used, even in accordance with R. Simeon's theory? As R. Hyya b. R. Joseph taught in the presence of R. Johanan: "One must not remove wood from a booth on any biblical feast day, but he may remove it from any place near by? R. Simeon, however, permits this to be done. Still, they *all* agree that wood must not be removed from a booth built expressly for that feast, on all the seven feast days. However, if there was a stipulation it may be done accordingly" (because the wood is set aside for the ritual purpose). Hence even according to him the designation for ritual purposes must not be used. Why, then, is this different from the oil in question? The Boraitha is to be understood thus: All the ornaments of the booth in question are prohibited so far as all things bearing similitude to the oil in the burning lamp are concerned. And so also it was taught by R. Hyya b. Ahba in the name of R. Johanan, that there is no Muktza in the theory of R. Simeon, but in cases which are similar to the oil of the lamp while burning, being designated for the ritual purpose, they are also designated not to be used. Said R. Jehudah in the name of Samuel: "In the opinion of R. Simeon no law of Muktza exists except in the case of raisins and dates which were placed on the roof to be dried." (In such a case there certainly was no intention to use them on the same Sabbath.) Said Rabba b. b. Hana in the name of R. Johanan: "It was said the law remains in accordance with R. Simeon. When R. Itz'hak b. R. Joseph, however, came from Palestine, he said in the name of R. Johanan that the law (of Muktza) according to R. Jehudah prevails, and R. Jehoshua b. Levi said the law prevails with R. Simeon. Said R. Joseph: Now is understood what Rabba b. b. Hana said in name of R. Johanan, it was said that the Halakha. prevails according to R. Simeon, which means that R. Johanan himself did not agree with their decision. Said Abayi to R. Joseph: "Didst thou not know before this that R. Johanan holds with the opinion of R. Jehudah? Is it not a fact that when R. Abba and R. Assi met in the house of R. Abba of the city of Heifa, and a candelabrum fell upon the coat of R. Assi, he (R. Assi) did not remove it? Was it not because he was a disciple of R. Johanan and acted according to the opinion of his master?" Answered R. Joseph: "Thou art speaking of a candelabrum. A candelabrum is a

different matter altogether, for R. Ahai b. Hanina in the name of R. Assi said: Resh Lakish has decided in Zidon, a candelabrum which can be removed with one hand may be handled, but if it has to be removed with both hands it may not; and R. Johanan said: We only hold with R. Simeon in the matter of a lamp; but as for a candelabrum, whether it can be removed with one or both hands, it is prohibited. And why so? Both Rabba and R. Joseph said: Because a separate place must be designated for it.

Said Abayi to R. Joseph: "Have we not observed the case of a baldaquin prepared for a bride and groom, for which a place must be designated? And yet Samuel said in the name of R. Hyya that such may be put up and taken apart on the Sabbath." Said Abayi: The prohibition to handle the candelabrum holds good only in a case where the same is made of several parts. If this be the case, what reason has R. Simeon b. Lakish for allowing this? Say: Not a candelabrum *made* of

various parts, but if it looks *like* a candelabrum of various parts. Therefore a candelabrum made of several parts, be it large or small, must not be handled. The handling of a large candelabrum, even if not made of several parts, is also prohibited on account of its marked lines, for fear one may handle such as *are* made of several parts. And the point of their differing is: With a small candelabrum which looks as if made of several parts, one takes the precautionary measure lest one handle that which is really made of several parts, while the other does not care for such a precaution.

R. Malkia chanced to be in the house of R. Simlai and handled a candlestick, the light in which had been extinguished, and R. Simlai became angry on that account. R. Jose the Galilean happened to be in the town of R. Jose b. Hanina and did the same, whereupon R. Jose b. Hanina became angry. R. Abuhu, however, when he happened to be in the place of R. Jehoshua b. Levi, handled, but when he came to the place of R. Johanan he did not handle a candlestick in question out of respect to R. Johanan. R. Jehudah said: A lamp which has been filled with oil may be handled after the light has been extinguished (because it emits no bad odor), but one which contained naphtha may not be handled (on account of its bad odor). Both Rabba and R. Joseph also permit this.

R. Avia once came to the house of Rabha with muddy shoes and sat on the bed in the presence of the latter. This made

[paragraph continues] Rabha angry, and he tried to disconcert R. Avia with questions. Said he (Rabha): "Can you tell me why Rabba and R. Joseph both said that a lamp filled with naphtha may be handled?" Answered R. Avia: "The reason of their decision is because the lamp is fit to cover a vessel with after being extinguished." And he rejoined: "If this is so, one may also handle shavings scattered in the yard, because they also can be used to cover a vessel with." Answered R. Avia: "A lamp, being a vessel itself, can be used to cover other things with, but shavings are not vessels in themselves and therefore cannot be used singly as covers" (and brought a Boraitha which states that nose jewels, rings, etc., are considered among the vessels which may be handled on Sabbath, and Ulla explained the reason why, because they are considered as vessels). Said R. Na'hman b. Itz'hak: "Praised be the Lord that Rabha did not put R. Avia to shame."

Abayi pointed out to R. Joseph the following contradiction: "Did R. Simeon say that a light may be handled only when extinguished, but if burning it must not be handled? For what reason? Because there is a chance of extinguishing it while it is being handled?" Have we not learned that R. Simeon said: "An act which is committed unintentionally is permissible." Such is the decision of R. Simeon? (This presents no difficulty.) One must not take chances with an act which, if done intentionally, would cause a violation of a biblical ordinance; but if the violation would be only that of a rabbinical ordinance, chances may be taken.

Objected Rabha: "We have learned: Dealers in clothing may sell clothes made of wool and cotton mixed. They are permitted to try on such clothes or to carry them (temporarily) on their shoulders, provided the intention to use them as a protection against the sun and rain does not exist. Now, the wearing of a mixture of wool and cotton is biblically prohibited, still R. Simeon permits it to be done temporarily. Therefore said Rabha: "Discard the case of the lamp, oil, and wick; there is another reason entirely--viz., because one becomes a basis of a thing the handling

of which is in itself prohibited (*i.e.*, the light in itself cannot be handled)."

Said R. Zera in the name of R. Assi, quoting R. Johanan, who said in the name of R. Hanina that he was told by R. Romnas: "Rabbi permitted me to handle a pan containing glowing ashes."

And R. Zera himself was deliberating: Did indeed R. Johanan say so? Have we not heard that Rabba b. b. Hana said in his (R. Johanan's) name, referring to our Mishna, which states that a man may handle a box containing a stone: "He may do so providing the box also contains fruit." "How, then, could R. Johanan permit a pan with glowing ashes to be handled?" R. Assi was astounded for some time, but finally answered: "The pan referred to still contained some grains of incense."

But Rabha said: While we were in R. Na'hman's house we handled a fire-pot on account of its ashes (the ashes were needed for some purpose, therefore the pot was allowed to be handled), although there were some broken sticks of wood upon it.

The schoolmen raised the following objection: R. Simeon and R. Jehudah agree that if there are broken pieces of wick in a lamp, it is prohibited to handle the lamp. Said Abayi: "This was taught in Galilea" (Galilea is a state where linen cloth is scarce, for which reason the broken pieces of wick are valuable, and the lamp, being the receptacle of prohibited valuables, is not permitted to be handled on the Sabbath).

Levi, the son of Samuel, met R. Abba and R. Huna the son of Hyya standing at the entrance of R. Huna's house; and Levi questioned: "Is it allowed to fold the beds of travelling coppersmiths on a Sabbath?" They answered: "Yea." In allowing this the two rabbis held with (the opinion of R. Simeon b. Gamaliel in a) following Boraitha: It is not permitted to put together a bed which has been taken apart; but if one did so, he is not culpable. One must not fasten the bed with pegs, but if he did so he only lays himself liable to bring a sin-offering. R. Simeon b. Gamaliel, however, said: "If the bed was loose it may be fastened."

R. Hama had a folding-bed in his house. He put it together on a biblical feast day, and one of the young rabbis questioned Rabha: "What reason is to be found for this act? Is it because of indirect building; granted that there is no biblical prohibition to this effect, there surely is a rabbinical?" Answered Rabha: "I think that the reason is the decision of R. Simeon b. Gamaliel (with whom I agree) that it is permissible to put a bed together if the bed is loose."

MISHNA *IX*.: One may put a vessel underneath a lamp for the purpose of receiving the sparks falling from the lamp, but he shall not put water into the vessel, because thereby the sparks would become extinguished.

GEMARA: Would this act not render the vessel useless? Said R. Huna the son of R. Jehoshua: "The vessel is not made useless, because sparks do not amount to anything."

"*He shall not put any water into it*," etc. Shall we assume that this anonymous Mishna is in accordance with R. Jose, who said that it is prohibited even to cause light to be extinguished? How can you explain this in this way? R. Jose spoke of the Sabbath itself; have you heard him saying so about the eve of Sabbath? And should you say that here is also meant on Sabbath itself, there is a Boraitha which states plainly: A vessel may be put under the lamp to receive sparks on Sabbath, and so much the more on the eve of Sabbath; but water must not be put in, even on the eve of Sabbath, and much less on the Sabbath itself. Therefore said R. Ashi: "It may be said that it is in accordance even with the rabbis, who do not mind the causing of light to be extinguished through indirect means on the Sabbath. In this case, however, the sparks are extinguished (through direct means, *i.e.*) by placing water underneath the lamp."

Footnotes

64:1 Here the disciple who advanced the later construction of the Mishna turns the tables on his interlocutor and brings forward an argument in favor of his suggestion, introducing it with the same words as the previous speaker in his argument.

71:1 "Blows of correction" were inflicted by the rabbis not for an actual sin, but for disobedience to the laws enacted.

71:2 We have translated in accordance with Rashi's second view, as it seems to us to be correct.

76 :1 Muktza (designation) refers to such objects as are set aside and designated for non-use on the Sabbath. Thus, all materials that are used in the performance of manual labor (prohibited on the Sabbath) are called Muktza. R. Simeon, however, holds there is no such thing as Muktza.

77:1 The Talmud here refers to Persian festivals, when the burning of lights was prohibited except in sacred shrines.

Next: Chapter IV: Regulations Concerning Victuals, Where They May or May Not Be Deposited to Retain Their Heat for the Sabbath

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CHAPTER IV.

REGULATIONS CONCERNING VICTUALS, WHERE THEY MAY OR MAY NOT BE DEPOSITED TO RETAIN THEIR HEAT FOR THE SABBATH.

MISHNA *I.*: Wherein may hot vessels be deposited (to retain the heat) and wherein may they not? Depositing in Gepheth (olive waste), dung, salt, lime, and sand, either wet or dry, is not allowed. In straw, grape-skins, wool-flocks, or grass it is permitted, provided they are dry, but not when they are still wet.

GEMARA: A question was propounded: "Is the use of olive waste only prohibited, but the use of the oil-cakes allowed; or does the Mishna allude to oil-cakes and still more so to olive waste (for it produces more heat)?" For the purpose of depositing in, both kinds are not allowed; (but if the victuals have been deposited in a permissible thing and were subsequently placed on oil-cakes no wrong was done, because) oil-cake does not produce heat; olive waste produces heat.

Rabba and R. Zera once met at the Exilarch's house; they saw there a servant putting a can (with warm water) on top of a kettle (containing cold water), and Rabba rebuked him. Said R. Zera to him: "In what particular does this case differ from that of putting one pan on top of another?" Answered Rabba: "Here heat is produced, but there it is only preserved." Another time they saw (the servant) spreading a turban over a pitcher and putting a cup on top of it. Again Rabba rebuked him. R. Zera asked for the reason, and Rabba answered: "You will soon see him wringing [1] the turban," which he did. R. Zera again asked: "In what particular does this case differ from that of a spread cloth?" Answered Rabba: "Here he is particular (lest it become wet and he will wring it), while there he is not."

"*In straw*." R. Adda b. Masna questioned Abayi: "May wool-flocks, in which (victuals) were deposited, be handled on Sabbath?" Abayi answered: "Because of a lack of straw,

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would a man sacrifice a valuable lot of wool-flock?" (When placing victuals in straw no intention to make further use of the straw exists, and it becomes part of the pot itself; with wool-flocks the case is different, for they are intended for further use and therefore must not be handled on Sabbath.)

R. Hisda permitted the replacing of waste (fallen out) of a pillow on Sabbath.

R. Hanan b. Hisda objected to him from the following: "Untying the opening (for the neck) of a shirt is permitted on Sabbath, but cutting it is prohibited, and waste must not be placed into a pillow or bolster on a biblical feast day, much less on a Sabbath."

This presents no difficulty. Placing new waste in a pillowcase is not allowed, but replacing old waste is allowed. And so also we have learned plainly in a Boraitha, that when they fall out they may be replaced even on Sabbath, and much the more on a feast day.

R. Jehudah in the name of Rabh said: "Whosoever makes an opening (for the neck in an unfinished shirt) on Sabbath is liable to a sin-offering."

R. Kahana opposed, saying: What is the difference between an opening for the neck and a bunghead (in a barrel)? Rabha answered: A bunghead is not attached to the barrel (*i.e.*, it forms no part of it), but an opening for the neck is made by an incision in the shirt, and hence is part and parcel of same. In Sura the following doctrine was taught in the name of R. Hisda, and in Pumbeditha the same was taught in the name of R. Kahana or Rabha: "Who was the Tana in whose name the sages taught that the part and parcel of a thing is on a par with the thing itself?" Said R. Jehudah in the name of Rabh: "It is R. Meir (of the Mishna, Kelim, VIII.) who holds that the attachment built on a hearth is on a par with the hearth itself and becomes unclean when touched by an unclean thing."

"*When wet*." A question was propounded: Naturally or artificially wet? Come and hear. The Mishna says: "Not with straw, nor with grape-skins, nor with wool-flocks, nor with grass when wet." It is right only if we accept the theory that they became wet, but should we venture to think them naturally wet, how is this to be imagined? Can wool-flocks be naturally wet? The sweaty wool under the hips may be meant. Did not R. Oshia teach we may deposit in dry cloth and dry fruit, but not in wet cloth or wet fruit? How is naturally wet

cloth to be imagined? This may also mean cloth made from the sweaty wool under the hips of the sheep.

MISHNA *II*.: It may be deposited in cloth, fruit, pigeon feathers, shavings, and fine flaxen tow. R. Jehudah forbids the use of fine, but permits the use of coarse flaxen tow.

GEMARA: "*Shavings*." A question was propounded: Does R. Jehudah forbid the use of fine *shavings* or fine flaxen tow? Come and hear. We have learned in a Boraitha, R. Jehudah says: Fine flaxen tow is the same as dung, which increases heat; therefore the conclusion is that he means flaxen tow.

MISHNA *III*.: It may be deposited (wrapped) in skins, and they may be handled; in shorn wool, and must not be handled. How can this be done? The lid is raised and it (the shorn wool) falls down. R. Elazar b. Azarya says: The vessel is bent sideways lest it be taken out and cannot be replaced, but the sages say it may be taken out and replaced.

GEMARA: A question was propounded by R. Jonathan b. Akhinayi, R. Jonathan b. Elazar, and R. Hanina b. Hama: Does the Mishna allude to skins belonging to private men only, hence skins belonging to an artisan, who is particular with them, may not be handled under any circumstances; or perhaps the Mishna allows even an artisan's skins? Answered R. Jonathan b. Elazar to them: It is reasonable to accept that it applies only to those belonging to private men

but not to artisans, because they (the artisans) are particular. Said R. Hanina b. Hama to them: Thus said R. Ishmael b. Jossi: "My father was a tanner, and he said, 'Bring some skins here to sit on.'"

An objection was raised: Boards of private men may be handled, but not those of artisans (if, however, the intention is to serve a meal on them for guests both kinds may be handled)? With boards it is different. Even private men are particular with boards.

On this point the following Tanaim differ: Skins belonging to private men may be handled, but not those of artisans. R. Jossi says both kinds may be handled.

While they were sitting together another question was propounded by them: The forty less one principal acts of labor on Sabbath, where are they taken from? Said R. Hanina b. Hama: "From the acts of labor performed at the tabernacle." R. Jonathan b. Elazar, however, said: Thus said R. Simeon b. Jossi b. Laqunia: From the thirty-nine times the words "work," "his work," and "work of" are to be found in the Pentateuch.

R. Joseph questioned Rabba: Is the term "his work" which is found in the passage "and Joseph came into the house to do his work" [Gen. xxxix. 12] also of the number or not? Abayi answered him: "Let us bring the book and count," and he rejoined: "I am in doubt whether the verse 'and the work was enough' [Ex. xxxvi. 7] is of the number, and the former verse is to be explained 'he came in to do his business,' or whether the former is of the number and the latter is to be explained 'the task was completed.'" (Both verses cannot be counted among the thirty-nine, because if they are there will be forty in all.) This question remains unanswered.

It is proven by a Boraitha that the adduction of the thirty-nine acts is made from the acts performed at the tabernacle, for we were taught: One is culpable only for the performance of such work as was done at the building of the tabernacle. They have sown, but ye must not sow; they have harvested, but ye must not; they have loaded the boards from the ground upon wagons, but ye must remove nothing from public into private ground; they have unloaded from the wagons to the ground, but ye must not remove from private into public ground; they have transferred from one wagon into another, but ye must transfer nothing from private into private ground. "From private into private ground." What wrong is committed by that? Both Abayi and Rabha, and according to others R. Adda b. Ahabha, said: "From private into private ground by way of public ground."

"*In shorn wool and may not be handled*." Rabha and Rabhin in the name of Rabbi (Jehudah Hanassi) said: "It is only taught, when not designated for the purpose of depositing in them, but if designated for that purpose they may be handled." Rabhina says that the teaching of the Mishna is applicable to shorn wool taken from stock (of a store).

The following Boraitha is in support of this: Shorn wool taken from stock is not to be handled, but if prepared by a private man for a purpose it may be handled.

Rabba b. b. Hana taught before Rabh: Palm branches, if cut off for use as fuel and finally intended for sitting purposes, must be tied together (before the Sabbath). R. Simeon b. Gamaliel

said it needs not tying. He who taught this has himself declared that the Halakha prevails in accordance with R. Simeon b. Gamaliel.

It was taught: (In relation to sitting on palm branches cut

off for use as fuel) Rabh said (it must be) tied. Samuel said: The intention on the eve of Sabbath suffices; and R. Assi said: Sitting (on them before the Sabbath), even if not tied nor previously intended for sitting purposes on the Sabbath, is sufficient. It is clear that Rabh holds with the first teacher and Samuel holds with R. Simeon b. Gamaliel, but whom does R. Assi's opinion agree with? He is in accordance with the Tana of the following Boraitha: It is permitted to go out (on Sabbath) with a flax or wool plaster (on a wound) when dipped in oil and tied with a string, but it is not permitted when the plaster is not dipped in oil or tied with a string; but if one went out with it only a little before the Sabbath, even if not dipped in oil and tied, it is permissible. Said R. Ashi: "We were also taught in a Mishna in support of this; but who is the teacher that does not agree with R. Simeon, b. Gamaliel?" It is R. Hanina b. Aqiba, for when R. Dimi came from Palestine he said in the name of Zera, quoting R. Hanina: R. Hanina b. Aqiba once went with his disciples to a place and found some palm branches tied together to be used as fuel; he said to his disciples: "Make up your minds to sit on them tomorrow." I do not know whether there was to be a wedding or a funeral that following day, but the inference from this narration is: Only in the case of a wedding or funeral, when people are busy (and could not tie them up), the intention is sufficient, but otherwise tying together is necessary.

R. Jehudah said: "One is permitted to carry in a box of sand on the Sabbath for the purpose (of covering up an unclean place) and use the remainder for any purpose whatever. Mar Zutra, in the name of Mar Zutra the Great, interpreted this--providing he singled out a corner for it. Said the rabbis before R. Papa: "Is this teaching (of the great Mar Zutra) in accord only with the opinion of R. Simeon b. Gamaliel, but not with that of the rabbis who require action rather than intention?" R. Papa answered: It may even be in accord with the rabbis, who require action only where it is possible, and this action (tying together or sitting on sand) is impossible (as reserving a corner for them is not considered an act, but an intention only).

R. Jehudah permits the use of the dust of incense on the Sabbath. R. Joseph permits poppy-seed waste. Rabha permits pepper dust and R. Shesheth *Barda*, to wash the face with. What is Barda? Said R. Joseph: A powder of one-third

aloe, one-third myrrh, and one-third violet. R. Nehemiah b. Joseph also permits Barda, provided it does not contain more than a third part of aloe.

R. Shesheth was asked if it was permitted to crush olives on Sabbath? He answered: "Is it permitted on week days?" He is of the opinion that the spoiling of food is not allowed.

Barda was brought to Ameimar, Mar Zutra, and R. Ashi. Ameimar and R. Ashi washed themselves with it, but Mar Zutra did not. They asked him: "Do you, Master, not hold with R. Shesheth, who permits the use of it?" Said R. Mordecai to them: Leave out the master in this

question, for he does not even use Barda on week days. He holds with the following Boraitha: "One is permitted to scratch off crust of excrement and of wounds only for the purpose of relieving pain, but not for the purpose of beautifying the person." And the above-mentioned rabbis agree with the teaching of the following: One should wash his face, hands, and feet daily out of respect for his Creator, as it is written [Prov. xvi. 4]: "Every thing hath the Lord wrought for its destined end." 1

"*The vessel is bent sideways*," etc. Said R. Aba in the name of R. Hyya b. Ashi, quoting Rabh: If the cavity formed by the vessel got out of shape it is not permitted to replace (the vessel). There is an objection from our Mishna: "And the sages say it may be taken out and replaced." How shall this be understood? If the cavity remained intact the rabbis did well by telling us that the replacing of the vessel was allowed; but if the cavity got out of shape, is it not self-evident that replacing is not permitted? Nay; they still maintain that the cavity did not get out of shape, and the controversy (in the case) is as regards precaution. One maintains that this precaution is to be taken (lest we replace the vessel when the cavity is out of shape), while the others contend this is not necessary.

R. Huna said: "A fragrant plant used after meals in place of burnt spices, if it was taken out of and replaced in the flower-pot before Sabbath, it may be taken out, used, and replaced on Sabbath, but not otherwise. Samuel said that the same is the case with a knife that was preserved between the bricks. Mar Zutra, according to others R. Ashi, said that a knife may be preserved between the branches of the root. And

[paragraph continues] R. Mordecai said to Rabha that R. Qatina has objected to the above rabbis, who said that if it were not replaced before Sabbath it must not be used, from a Mishna (Kilaim, I. 9), which states plainly that it may be taken out on Sabbath. This question remains.

MISHNA *IV.*: (A vessel) not covered during daylight must not be covered after dark. If, after having been covered, it became uncovered, it is permitted to cover it again. A pitcher may be filled with cold victuals and put under a pillow (to keep it cool).

GEMARA: R. Jehudah in the name of Samuel said: "It is permitted to store cold victuals (to protect them from the sun)." Said R. Joseph: "What news came he to teach? Have we not learned this in the above Mishna?" Abayi answered: "A great deal! From the Mishna I would infer that only such things as are not usually stored are permissible (for in that case no precaution lest one put warm victuals under a pillow or bolster for the purpose of generating heat is necessary); he informs us, however, that even such things as are usually stored are permissible also." R. Huna in the name of Rabbi, however, says: "It is prohibited." Were we not taught that Rabbi has permitted this? This presents no difficulty. In the former instance he did so when he was not as yet aware of the following decision of R. Ishmael b. Jossi. Rabbi at one time decided that it is forbidden to store cold victuals. Said R. Ishmael b. Jossi to him: "My father permitted it," whereupon Rabbi said: "If this sage has once permitted it, so shall it be done." Said R. Papa: Come ye and note the mutual respect: Had R. Jossi been alive, he would have had to show respect to Rabbi; as R. Ishmael, who succeeded his father in every respect, also has acknowledged Rabbi's superiority. Still Rabbi accepted his decision.

R. Na'hman said to his slave Doru: "Store some cold victuals for me and bring me warm water from a Gentile cook-shop." R. Ami heard this and was angry. Said R. Joseph: "What was the reason of his anger? Did not R. Na'hman act in accordance with the teachings of the great masters, Rabh and Samuel?" R. Jehudah in the name of Samuel said: It is permitted to store cold victuals, and R. Samuel b. R. Itz'hak said in the name of Rabh: Anything that may be consumed raw is not included in the prohibition relating to cooking by a Gentile; he (R. Ami), however, was of the opinion that, although it is

allowed, a man of note should not practise it (because the layman seeing such things of the scholar he might allow himself still more).

The rabbis taught: "Although the sages said it is not allowed to deposit (warm victuals) after dark, even in such receptacles as do not increase the heat, still, if already deposited, it is permitted to add more cover. How can this be done? R. Simeon b. Gamaliel says: "In cold weather the covering sheet may be taken off and a blanket substituted; in warm weather the blanket may be taken off and a sheet substituted." Furthermore said the same: "The sages prohibited (to deposit warm victuals) only in the same pan in which they were cooked, but if emptied into another pan it is permitted; and there is no fear of one coming to cook (on the Sabbath); for (the act of) emptying (the victuals) from the cooking-pan (into another) proves (that there is no such intention).

If one deposited a pot (containing victuals) in material that may be handled on the Sabbath, and covered it with the same, or even deposited it in non-permissible material, but covered it with permissible, he may take out the pot and replace it; but if he deposited it in non-permissible material and. covered it with the same, or even deposited it in permissible, but covered it with non-permissible material, he may take out the pot, but can replace it only if the pot was but partly covered. Otherwise, he must not replace it at all.

It is permitted to put one cooking-pan upon another, and also one earthen pot upon another, but not an earthen pot upon a cooking-pan, or a cooking-pan upon an earthen pot. (Even on Sabbath) the cover of a pot may be fastened down with dough (kneaded on Friday before dusk). In the case of putting one pan or pot upon another, this may be done only to preserve the heat, but not for the purpose of heating the upper pot by means of the lower one.

The same as it is forbidden to store warm (victuals), so it is also forbidden to store cold (victuals) on the Sabbath; but Rabbi permitted the latter to be done. Even so is it prohibited to chop ice on Sabbath in order to obtain cold water, but ice may be put into a vessel or a pitcher without fear of the consequences.

Footnotes

83:1 Wringing (in Hebrew, Se'hitah) is prohibited on the Sabbath.

88:1 The expression in Hebrew is *lema'anehu*; literally, "for his own purpose." Leeser translates for the purpose of the things created; the Talmud, however, takes it literally.

Next: Chapter V: Regulations Concerning What May and May Not Be Worn by Animals on the Sabbath

CHAPTER V.

REGULATIONS CONCERNING WHAT MAY AND MAY NOT BE WORN BY ANIMALS ON THE SABBATH.

MISHNA I.: What gear may we let animals go about in and what not? 1 The male camel in a bridle; the female cannel with a nose-ring; Lybian asses in a halter, and a horse in a collar. All (animals) that are used to collars may go out in and may be led by the collar. Such gear (when it becomes defiled) can be sprinkled and submerged without being removed from its (proper) place (on the animal).

GEMARA: R. Jehudah in the name of Samuel said: "Rabbi was asked, How is it when the reverse is the case? *i.e.*, when the female camel is bridled and the male camel is invested with a nose-ring? May they be allowed to go about? There is no question as to a bridle on a female camel, for it is considered a burden; as to a nose-ring on a male camel, shall we assume that it is merely an additional safeguard, and thus becomes permissible, or is it an unnecessary safeguard and hence not allowed?" R. Ishmael b. Jossi answered: "Thus my father said: Four animals may go about with a bridle on--the horse, the mule, the camel, and the ass." A Boraitha states: Lydda asses and camels may go about with a bridle on. The following Tanaim, however, differ as to this point (whether a superfluous safeguard is a burden or not): one maintains that no animal may go about burdened with a chain; but Hananya says a chain or anything else that is intended as a safeguard is permitted.

Said R. Huna b. Hyya in the name of Samuel: "The Halakha prevails according to Hananya."

Levi b. R. Huna b. Hyya and Rabba b. R. Huna once travelled together; arriving at an entrance, the former's ass ran ahead of the latter's. Rabba b. R. Huna became dejected (at the lack of respect shown him, supposing it to have been done intentionally). Thought Levi to himself: "I will pacify him

with the following question: Is it permitted to put a halter on an unmanageable ass like mine on the Sabbath?" Rejoined Rabba: "So said your father in the name of Samuel: 'The decision of Hananya prevails.'"

At the school of Menashyah it was taught: A goat with a bridle fastened to his horns is permitted to go about on Sabbath (but not if the bridle was simply tied to the horns, as it may slip off and a man may be forced to carry the bridle).

An objection was raised: "Were we not taught in a Mishna that it is not allowed to let a cow go

about with a strap tied between her horns?"

Said R. Irmya b. Aba: On this point Rabh and Samuel differ; according to one it is prohibited at any rate, and according to the other, if for an ornament it is prohibited, but as a safeguard it is permitted. Said R. Joseph: "It seems that Samuel was the one who permitted it as a safeguard, as R. Huna said in his name the Halakha prevails according to Hananya." Said Abayi to R. Joseph: "On the contrary, it may be that Samuel is the one who forbids it at any rate, as R. Jehudah said above in his name: Rabbi was asked: How is it when the reverse is the case," etc. Does this not mean to exclude a nose-ring from a camel? But why should you prefer this latter saying to the former one? Because it was taught: "R. Hyya b. Ashi said in the name of Rabh that it is forbidden at any rate; and R. Hyya b. Abhin in the name of Samuel said: It is permitted as a safeguard."

An objection was raised from the following: If the owner tied the (red) heifer with a halter, she may nevertheless be used. Should you assume that this (halter) is a burden (how could she be used)? (Do not) the Scriptures say [Numbers, xix. 2]: "Upon which there was no yoke"? Answered Abayi: "(It is to be understood) when the owner leads her from one town to another, (the halter is a necessary safeguard, hence no burden)." Rabh said: "There is quite a difference in the case of the red heifer," as she is very valuable (and must be guarded). Rabhina said: "She must have a halter on account of her stubbornness."

"*The horse with a collar*." What is meant by "go about" or led? R. Huna said: "It makes no difference whether the strap hangs loose on the animal's neck or is used as a rein; but Samuel said they may go about if led (by the strap) but not (with the strap) hanging loose.

A Boraitha teaches: "They may go about with the halter tied round their necks in order that they may be led whenever necessary." Said R. Joseph: "I have seen the calves of R. Huna going out on a Sabbath with their halters round their necks." R. Samuel b. Jehudah, when coming from Palestine, said in the name of R. Hanina that Rabbi's mules also went out on a Sabbath with their halters tied around their necks.

"*And are sprinkled*," etc. Is this to say that they are subject to defilement? Does not a Mishna state [Kelim, XII. 8] that only rings worn by human beings are subject to defilement, but harness and all other rings are not? Said R. Itz'hak of Naph'ha [1]: The collar-ring having at one time been used by men for personal purposes and become defiled, still retains its defiled character; R. Joseph, however, maintains it is not necessary to claim this. The fact that the collar-ring is used by man for the purpose of guiding the animal lays it open to becoming defiled, as we have learned in the Boraitha which taught us: A metal whip is subject to defilement, for the reason that man uses it to manage the animal with.

"*And submerged without removing it from its place*." Would this not constitute a case of "Chatzitzah" (intervention). [2] Said R. Ami: "(Intervention of the bridle between the neck and the water) is avoided by loosening the bridle." A Boraitha teaches: "Intervention is avoided by the size of the bridle."

MISHNA *II*.: The ass may go out with a rug fastened around him; rams may go out with leather

bandages tied around their privates; sheep may go out with their tails tied up or down and wrapped (to preserve the fine wool); she-goats may go out with their udders tied up. R. Jossi forbids all this except sheep wrapped up. R. Jehudah says: She-goats may go out with their udders tied up to stop the lactation, but not to save the milk.

GEMARA: Said Samuel: The Mishna means: "Only when the (rug) is fastened on Sabbath eve." Said R. Na'hman: It seems to be so from the following Mishna: "An ass may not

go out with a rug unless fastened." How should this be understood? Shall we say that (the rug) is not fastened at all? Then it would be self-evident, lest it fall off and will have to be carried by a man. We must, therefore, assume that the Mishna's meaning of "not fastened" signifies "not fastened before the Sabbath." Hence Samuel's opinion has a good reason.

And it is also supported in the following Boraitha: "The ass may go out with a rug fastened before the Sabbath, but not with a saddle, even though fastened before." R. Simeon b. Gamaliel says: "Even with a saddle, if fastened before the Sabbath, provided, however, no stirrups are attached to the saddle and a crupper under the tail."

R. Assi b. Nathan questioned R. Hyya b. R. Ashi: "Is it permitted to put a rug on all ass on the Sabbath?" "It is," was the answer. And to the question: "What is the difference (in the Law) between these two?" He was silent. (Misinterpreting the silence,) R. Assi objected: "A Boraitha teaches: It is not allowed to remove the saddle from the ass directly, but one may move it to and fro until it falls off; if you say it is forbidden to handle the saddle, is there any question as to putting it oil?" Said R. Zera to him: "Leave him alone! He is of the opinion of his teacher (Rabh), in whose name R. Hyya b. R. Ashi related that he (Rabh) permitted putting a feed-bag on all animal on Sabbath." A feed-bag, which is nothing but an accommodation, is permitted; so much the more a rug, which is a relief! Samuel, however, permitted a rug, but prohibited a feed-bag. R. Hyya b. Joseph reported the opinion of Rabh to Samuel, whereupon the latter said: "If so said Abba, he knows nothing of the laws of Sabbath."

When R. Zera came (to Palestine), he heard R. Benjamin b. Japheth stating in the name of R. Johanan that it is permitted to put on a rug. He thanked him for it and, continuing, remarked: "Thus has the Arioch (King of Laws) in Babylon decided." Who is meant by the title (Arioch)? Samuel.

From the foregoing it is evident that all agree that it is permitted to cover an ass with a rug on Sabbath. But what is the point in which a saddle differs from the rug? It differs therein that a saddle may drop off (and involve the necessity of handling). R. Papa gave another reason: "To cover an ass with a rug is an act of relief, for it is said that an ass feels cold even in summer, but to remove a saddle from an ass's back in order to cool off the ass is not necessarily an act of relief."

An objection was raised. We have learned: "The horse shall not go out with a fox-tail (for a pompon) and calves with the feed-bags on public ground." Shall we not assume that (in the case

of the calves) they may not go out on public ground, but they may on private ground, and it refers even to large calves (whose necks are long enough to reach the ground with their mouths easily); thus feed-bags are merely an accommodation? Nay; the permission to carry feed-bags applies only to small calves (whose necks are short and legs long, and to which reaching down to the ground with their mouths would entail a hardship) and must be considered as a necessary relief.

The master said: "She-goats must not go out with a bag attached to their udders." Is there not a Boraitha which teaches that they *may*? Said R. Jehudah: "This presents no difficulty. In the former case the bag is *not* tied fast, in the latter it *is* (and there is no reason for apprehension lest it drop off and will have to be carried)." Said R. Joseph: "Why, you have entirely done away with the teachers of our Mishna. There *is* a difference of opinion between the teachers in this very Mishna: 'She-goats may go out with a bag tied to their udders.'" R. Jossi forbids all except sheep with covers on to protect the wool. R. Jehudah says: "She-goats may go out with their udders tied up for the purpose of preventing lactation, but not for the purpose of saving the milk."

We have learned in a Boraitha: R. Jehudah related the case of she-goats which he saw in Antioch. Their udders were so large that bags had to be made for them in order to prevent their dragging on the ground and becoming mutilated. (These bags were worn also on the Sabbath.)

The rabbis taught: "It happened with one man whose wife died and left him a nursing child, he was so poor that he could not pay a wet-nurse. A miracle happened to him; his breasts opened and he nursed his child." Said R. Joseph: Come and see how great the man must have been that such a miracle was wrought for him. Said Abayi to him: On the contrary, Behold how bad the man must have been that the nature of mankind changed in him and nothing occurred to enable him to earn enough money to pay a nurse. Says R. Jehudah: Come and see how hard it is for heaven to change the fate of a man concerning his livelihood, that the nature of the world was changed, but not his fate. Said R. Na'hman: It is proven by this fact that

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a miracle occurred, but he was not provided with means for paying a wet-nurse.

The rabbis taught "It happened once that a man wedded a woman with a mutilated hand, and did not discover it until she died." Said Rabh: "Behold how chaste this woman must have been, for even her husband did not discover it." R. Hyya retorted: "This is nothing! It is natural with women to hide their defects, but note the modesty of the man, who did not discover it in his wife."

"Rams may go out with (leather) bands around their privates." What kind of bands? Said R. Huna: "Hobbles." Ulla said they were leather bands tied around their breasts to prevent them from the attack of wolves. Do wolves attack only the males and never the females? It is because the males always go ahead of the flocks. Do wolves attack only the advance of a flock and never the rear? It is because the males are usually fat. Are there no fat sheep among the females? Moreover, how can the wolves know which is which? It is because the males generally lift their heads and look around cautiously. R. Na'hman b. Itz'hak said they wore leather bands tied around their privates to prevent them from having coition with the females. Whence this

inference? From the last clause of the Mishna, "The sheep may go out with their tails tied up," in order that the males may have coition with them; hence we infer that the first clause is for the purpose of preventing them.

"She-goats may go out with a bag tied around their udders." It was taught: Rabh said that the Halakha prevails in accordance with R. Jehudah; and Samuel held it to be in accordance with R. Jossi. Others taught: Rabh and Samuel did not directly cite the opinions of the Tanaim just mentioned, but they themselves decreed as follows: Rabh held that she-goats may go out with their udders tied up for the purpose of preventing lactation, but not to save the milk. Samuel, however, prohibited this in both cases. Others again say: R. Jehudah b. Bathyra long ago decided the same as Rabh, but added that on account of the impossibility of determining what purpose the tying up of the udders would serve, it is entirely prohibited. Thereupon Samuel decided that the Halakha prevails with him. Rabbin upon his arrival in Babylon said that R. Johanan said that the Halakha prevails in accordance with the first Tana.

MISHNA *III*.: And what must (animals) not go about in? The camel with a crupper, nor with hobbles on both legs, nor with the front leg hobbled with the hind. This law is applied to all other animals. It is not allowed to tie camels together with a rope and then lead them; but one is permitted to hold in his hand the several ropes on the camels and lead them, provided the ropes are not twisted into one.

GEMARA: A Boraitha in addition to this Mishna states: "If the crupper is fastened to the hump as well as to the tail of the camel, it may go about." Rabba b. R. Huna says: A camel may go about with a pad under its tail (to prevent friction).

"*One is not to tie camels*." What is the reason? Said R. Ashi: Because it looks like leading them to market.

"*But one is permitted to hold in his hand*," etc. Said R. Ashi: This law was stated only concerning (Kilaim), and hence the teacher means to say, provided he does not tie or twist them. Samuel said: And provided the cords do not protrude from his hand as much as the length of a span. Was it not taught at the school of Samuel, two spans? Said Abayi: From the difference between Samuel himself and his school we infer that Samuel came to teach us how to practise. But did not a Boraitha state: Provided he lifts (the cords) from the ground one span (but there is no restriction as to the quantity protruding from his hands)? The non-restriction of the quantity of cord applies only to the amount of cord used for the distance between the animal and the man's hand. (In that case the quantity is unlimited. The quantity of cord, however, protruding from the man's hand must not exceed one span; so also the distance from the ground to the cords must be at least one span.)

MISHNA *IV*.: The ass is not to go out with a rug, unless fastened, neither with a bell that has been muffled, nor with a collar on his neck, nor with ankle-boots. The hens are not to go out with cords tied to them, nor with straps on their feet. Rams are not to go out with carts tied to their tails; nor sheep with sneezing-wood; the calf with the reed yoke, nor the cow with the skin of a hedgehog (tied to the udder), nor with a strap (between her horns). The cow of R. Elazar b. Azarya went out with a strap between the horns against the approval of the rabbis.

GEMARA: "*Neither with a bell that has been muffed*." For it looks like bringing it to market.

"*Nor with a collar on his neck*." Said R. Huna: With a collar underneath his jowls. What was the collar intended for? To prevent irritation of any wounds that may have been on the neck.

"*Nor with ankle-boots*." To prevent injury from kicking one foot against the other.

"*The hens with cords*." As a distinguishing mark.

"*Nor with straps on their feet*." To prevent damage arising from jumping.

"*The rams with carts*." To prevent the ends of their tails from damage through trailing on the ground.

"*Nor sheep with sneezing-wood*." (What is it?) Said R. Huna: "In seaports there is to be found a kind of tree called 'Hanun, which produces sneezing-wood, which when held under a sheep's nose produces sneezing, and while sneezing such vermin as may have lodged in the sheep's head are expelled. If such be the case, may rams not go out with it either? For rams sneezing-wood is not used at all. They butt with their heads, therefore vermin drops out of its own accord.

"*Nor the cow with the skin of the hedgehog*," etc. To prevent leeches from sticking to the udder.

"*Nor with the strap between the horns*." Why not? Either in accordance with Rabh, who forbids it at any rate, or in accordance with Samuel, who forbids it as an ornament.

"*The cow of R. Elazar b. Azarya*," etc. Had he only one cow? Did not Rabh, or R. Jehudah in the name of Rabh, say that R. Elazar b. Azarya gave yearly as tithes from his herds as many as twelve thousand calves? We have learned (in a Boraitha): The cow in question was not his, but a neighboring woman's. It is only ascribed to him because he did not protest against it.

Rabh, R. Hanina, R. Jonathan, and R. Habiba [in the whole Section of Festivals, where the four names stand together, R. Jonathan must be read instead of R. Johanan] all said: He who has the power to protest against wrong in his house and does not do so, is responsible for (the transgressions of) every one in his house. In the city (where his protest would be recognized), he is responsible for the transgressions of every one of the inhabitants of the city; and if he is such a great man that his word would be respected in the whole world, he is punished for (transgressions of all) mankind. Said R. Papa: "And the Exilarchs are punished for the sins of all Israel." As R. Hanina

said: It is written: "The Eternal will enter into judgment with the elders of his people and with the princes thereof" [Isaiah, iii. 14]. If the princes sinned, what have the elders to do with it? The intent is to say: Because the elders did not protest against the princes.

R. Jehudah sat before Samuel, when a woman came in complaining, and Samuel paid no attention to her. Said R. Jehudah to him: "Is Master unaware of the passage: Whosoever stops his ears at cry of the poor, he also shall cry himself and not be heard"? [Prov. xxi. 13]. Samuel retorted: "Ingenious scholar! Your head-master (meaning himself) is on safe ground, but our Chief is responsible," Mar Uqba, being at that time Chief of the judges (it was his affair), for it is written [Jerem. xxi. 12]: "O House of David! Thus hath said the Lord: Exercise justice on (every) morning, and deliver him that is robbed out of the hand of the oppressor, lest my fury go forth like fire, and burn so that none can quench it, because of the evil of your doings."

Said R. Zera to R. Simon: "Let Master reprove the Exilarch's retainers." He answered: "They care not for me." Rejoined R. Zera: Even if they do not care, reprove them anyhow; for R. Aha b. Hanina said: The Holy One, blessed be He, never issued a benevolent decree, which He subsequently reversed into malevolence, except in this sole instance, which is written [Ezekiel, ix. 41]: "And the Lord said unto him, Pass through the midst of the city, through the midst of Jerusalem, and inscribe a mark upon the foreheads," etc. Thus said the Holy One, blessed be He, to Gabriel: "Go and set the mark (the Hebrew letter Tabh) in ink upon the foreheads of the righteous, that the angels of destruction have no power over them; and the same mark in blood upon the foreheads of the wicked, that the angels of destruction may have power over them." The Party of Prosecution pleaded before Him in these terms: "Lord of the Universe, what is the difference between the two?" He answered: "Those are perfectly righteous and these completely wicked." Again the Party of Prosecution pleaded: "Lord of the Universe! It was in their power to protest (against wickedness), and they did not." And the Lord answered: "It is known to me that, had they protested, their protest would have been of no avail." But they pleaded once more: "Lord of the Universe! It is known to Thee; but was it known to them?" And thus it is written: "Slay utterly

old and young, both maids, little children, and women, and at my sanctuary shall ye begin." Then they began with the old men who were before the house" [Ezek. ix. 6]. And R. Joseph taught: "Do not read 'my sanctuary,' but 'my sanctified,' which means the men who have performed all the laws prescribed in the Torah, which begins with all the letters of the alphabet. And it is also written [ibid., ibid. 2]: "And behold, six men came from the direction of the upper gate . . . . beside the copper altar." Was, then, the copper altar at that time? Was it not hidden already in the time of Solomon? It means that the Holy One, blessed be He, told them they shall begin from that place where they used to sing hymns before Him. And who are the six men (messengers)? Said R. Hisda: "Anger, wrath, rage, destruction, devastation, and ruin."

Why just the letter Tabh? Said R. Simeon b. Lakish: "The Tabh is the last letter on the seal of the Holy One, blessed be He; for R. Hanina said (the inscription on) the seal of the Holy One, blessed be He, is Emeth (truth) (and the last letter of the Hebrew word Emeth is a Tabh).

It being evident from the verse [Ezek. ix. 2] that Zechuth Aboth [1] no longer existed, at what time shall we assume that it ceased?

Said Rabh. From the time of the prophet Hosea b. Beëri, as it is written [Hosea, ii. 12]: "And no man will deliver her out of my hand," meaning that even the righteousness of the ancestors will be of no avail.

Samuel said: From the time of the King Chazael of Syria, as it is written [II Kings, xiii. 23]: "And the Lord became gracious unto them, and had mercy on them, and turned his regard unto them, because of his covenant with Abraham, Isaac, and Jacob, and would not destroy them, and he cast them not off from his presence until now." Thus, He will remember his covenant only "until now," but not after that.

R. Jehoshua b. Levi said: From the time of Elijah the prophet, as it is written [I Kings, xviii. 36]: "Elijah the prophet came near and said, O Lord, God of Abraham, of Isaac, and of Israel, *this day* let it be known that thou art God in Israel,"

etc., and means to infer that only "this day" the Lord will remember Zechuth Aboth, and not after this day.

R. Johanan says: From the time of Hezekiah the King, as it is written [Isaiah, ix. 6]: "To establish it and to support it through justice and righteousness, from henceforth and unto eternity: the zeal of the Lord of Hosts will do this," implying that after that the favors of the Lord will not be bestowed by virtue of Zecbuth Aboth, *but through* His zeal.

R. Ami said: Death is the result of sin, and affliction the result of transgression: death the result of sin, for it is written [Ezekiel, xviii. 20]: "The soul that sins, it shall die," etc.; affliction the result of transgression: for it is written [Psalms, lxxxix. 33]: "And I will visit their transgressions with a lash and their iniquity with stripes."

An objection was raised: One of the teachers said: The angels (once) said to the Holy One, blessed be He: "Lord of the Universe! Why didst Thou punish Adam with death?" The Lord answered: "Because I gave him a light commandment, and he failed to observe it." The angels again said unto Him: "Why did Moses and Aaron die.? Did they not observe all the laws of the Torah?" And He answered [Eccl. ix. 2]: "The same fate befalls the righteous as the wicked." Hence death is not the result of sin! He (R. Ami) is in accordance with the Tana of the following Boraitha: R. Simeon b. Elazar said: Even the death of Moses and Aaron was the result of their sins, for it is written [Numb. xx. 12]: "Because you had no faith in me"; (and the inference thereof is) if they had had faith, they would not have died.

Another objection was raised: (There is a tradition:) Only four men died in consequence of original sin. They are Benjamin ben Jacob, Amram, the father of Moses; Jesse, the father of David; and Kilab ben David. Whose opinion does this Boraitha agree with? The Tana who related the legend of the angels holds that Moses and Aaron also died in consequence of original sin. So must be then in accordance with R. Simeon b. Elazar, as said above. Thus we see that although Moses and Aaron died on account of their own sins, still death without sin and affliction without transgression are possible; hence R. Ami's theory is objected to.

R. Samuel b. Nahmeni in the name of R. Jonathan said: "Whoever says that Reuben (the patriarch Jacob's son) sinned with his father's wife is in error, because it is written [Gen. xxxv. 22]:

[paragraph continues] "Now the sons of Jacob were twelve." This proves to us that they were all equal (in righteousness); but what does the verse [ibid., ibid.] which states that he *did* lie with Bilha, etc., signify? That Reuben deranged his father's bed, and the Scripture considers this equal to his having sinned with her. There is another Boraitha: Simeon b. Elazar said: That righteous man (Reuben) is innocent of the crime. The act with his father's wife was never consummated; as, is it possible that a man whose descendants will stand on the Mount Ebol and proclaim: "Cursed be he who lies with his father's wife" [Deut. xxvii. 20], would commit such a crime? But what does the above-cited verse mean? He (Reuben) resented the injustice done his mother and said: "When my mother's sister lived and proved a vexation to my mother, it was bearable; but to have my mother's servant prove a vexation to her, this is unbearable!" Therefore he removed the bed of Bilba from his father's bedroom (which the verse holds tantamount to lying with her). R. Samuel b. Nahmeni in the name of R. Jonathan said: He who maintains that the sons of Eli have sinned is nothing but in error, as it is written [I Samuel, i. 3]: " . . . two sons . . . priests of the Lord." (And if they would have sinned, the verse would not elevate them with such an honor.) [He holds with Rabh's theory farther on; however, he differs from him concerning 'Haphni, for the reason that he is mentioned together with Pinhas in the verse cited.]

Rabh said. Pinhas did not sin, as it is written: "And Ahiya, the son of Ahitub, Ichabad's brother, the son of Pinhas, son of Eli, was priest of the Lord at Shilah" [I Samuel, xiv. 3]. Is it possible that the Scriptures would describe minutely the pedigree of a sinner? Is it not written: "The Lord will cut off, unto the man that doeth this, son and grandson," etc. [Mal. ii. 12]. That was explained to mean, if he be simply an Israelite he shall have here no master among the teachers and no scholar among disciples, and if he is a descendant of priests, he shall have no son who may bring the offering. From this we must conclude that Pinhas is innocent of guilt. Is it not written, however, "sons of Belial" (and thus Pinhas is included)? It was because he should have protested against it, and did not, the Scripture considers it as if he had also sinned.

The same said again: He who thinks the sons of Samuel sinned, is also in error. It is written: "And they did not walk in his ways" [I Sam. viii. 3]. True, they did not walk in His

ways, but they sinned not. How, then, is the passage to be upheld: "And they but turned aside after lucre and took bribes"? [ibid., ibid.]. They did not act as their father; for Samuel the righteous travelled through all Israel and dispensed justice in every city, as it is written: "And he went from year to year in circuit to Beth-El and Gilgal and Mizpah, and judged Israel" [ibid. vii. 6]; but they did not act in this way. They dwelt in their respective places in order to increase the fees of their messengers and scribes.

On this point the following Tanaim differ. R. Meir says: They (who were Levites themselves) claimed their priestly allowance personally (and thereby deprived the poor priests and Levites of their shares, for being also judges they were never refused). R. Jehudah says: They had commercial relations with private people (and were sometimes compelled to pervert justice). R. Aqiba says: They took tithes (to a greater extent than they were allowed to do) by force. R. Jossi says: They took by force the (priests') portions (shoulder-blades, jowls, and stomachs of a slaughtered animal).

He said again: "The same error is made concerning David." Said Rabh: Rabbi, who is a descendant of the house of David, endeavored to interpret favorably the passage: "Wherefore hast thou despised the word of the Lord *to do* what is evil in his eyes?" [II Samuel, xii. 9]. He said: This evil deed is different (in words and language from other evil deeds whereof mention is made in the Scriptures). In all other instances it says, "and *he has* done," but here it says, "*to do*." This implies that he "wanted to do" (but did not do). "Uriah the Hittite thou hast slain with the sword" [ibid., ibid.]. (As a rebel) he should have had him *tried* by the Sanhedrin, which he did not. "And his wife thou hast taken to thee for a wife." He had a right to her, for R. Samuel b. Nahmeni in the name of R. Jonathan said: Whoever went to war with David divorced his wife previously. "Him thou hast slain with the sword (used) for the children of Amon." As he will not be punished on account of the children of Amon, so will he also not be punished for the death of Uriah. What is the reason? He (Uriah) was a rebel.

Said Rabh: "Note well the life of David, and you find nothing blamable save the affair of Uriah, as it is written [I Kings, xv. 5]: "Save only in the matter of Uriah the Hittite."

Abayi the elder has contradicted the above statement of

[paragraph continues] Rabh from his own statement elsewhere that David accepted slander? This difficulty remains. What was it? That which is written [II Samuel, ix. 4]: "And the king said unto him, Where is he? And Ziba said unto the king, Behold, he is in the house of Machir, the son of 'Ammiël, in (*b'*) Lo-debar"; farther on it is written [ibid. 5]: "And David the king sent, and had him taken out of the house of Machir, the son of 'Ammiël, from (*m'*) Lo-debar." 1 Thus, when David found him "doing something (good)," whereas Ziba informed the King that he was "doing nothing (good)," hence David was convinced that Ziba was a liar; why, then, did David give heed to his slander afterwards, for it is written [ibid. xvi. 3]: "And the king said, And where is thy master's son? And Ziba said unto the king, Behold, he remaineth at Jerusalem; for he said, To-day will the house of Israel restore unto me the kingdom of my father." But whence the adduction that David accepted slander? From what is written further [ibid. 4]: "Then said the king to Ziba, Behold, thine shall be all that pertaineth to Mephibosheth. And Ziba said," etc.

Samuel said: David did not accept slander. He (himself) saw in Mephibosheth's conduct that which corroborated Ziba's calumny, as it is written [ibid. xix. 25]: "And Mephibosheth the (grand-)son of Saul came down to meet the king, and he had not dressed his feet, nor trimmed his beard, nor washed his clothes." (This was considered disrespect); further, it is written [ibid. 28]: "And he slandered thy servant unto my lord the king," etc. and further [ibid. 31]: "And Mephibosheth said unto the king, Yea, let him take the whole, since that my lord the king is come (back) in peace unto his own house." Now, this last verse (read between the lines) really means: "I have anticipated your safe arrival home with anxiety, and since you act toward me in such a manner, I have nothing to complain of to you but to Him who brought you safely back."

R. Jehudah in the name of Rabh said: "Had David not given heed to slander, the kingdom of the house of David would never have been divided, neither would Israel have worshipped idols, nor would we have been exiled from our land."

The same rabbi said: He who believes Solomon guilty of

idolatry is in error. This theory agrees with R. Nathan, who points to a contradiction between the two following passages in the very same verse [I Kings, xi. 4]: "And it came to pass, at the time when Solomon was old, that his wives turned away his heart," etc.; and farther on [ibid., ibid.] it says: "Like the heart of David his father." While his heart was not as perfect as that of his father David, still he did not sin. Therefore it must be said that it means, his wives turned away his heart toward idolatry, but still he did not practise it. This is supported by the following Boraitha: R. Jossi said: It is written [II Kings, iii. 13]: "And the high places that were before Jerusalem, which were to the right of the mount of destruction, which Solomon the King of Israel had built for Ashthoreth, the abomination of the Zidonians," etc. Is it possible that neither Assa nor Jehosophath had cleared them out before Josiah? Did not Assa and Jehosophath abolish idolatry in Judæa? It follows, then, that as Josiah is given credit by the verse in the Scripture for having abolished the worship of Ashthoreth, the abomination of the Zidonians, although at his time it had been out of existence for a long time, this was done merely because he (Josiah) had abolished other later forms of idolatry; the same rule is followed in the case of Solomon; while he himself did not build the Ashthoreth of the Zidonians, the fact that he did not prevent his wives from doing so makes him responsible in the same measure as if he had committed the deed himself. But is it not written [I Kings, xi. 6]: "And Solomon did what is evil in the eyes of the Lord"? This is also written merely because it was in his power to prevent the actions of his wives, and he did not do so; hence the Scripture ascribes the deed to him, as if he himself had committed it.

Said R. Jehudah in the name of Samuel: It would have been better for him (Solomon) to have been an actual hireling to idolatry than to be accused of doing what is evil in the eyes of the Lord.

Again R. Jehudah said in Samuel's name: At the time Solomon took in wedlock the daughter of Pharaoh, she brought to him about a thousand different musical instruments. Each of these was used for separate idols, which she named to him, and still he did not protest against it.

The same said again in the name of the same authority: At the time Solomon took in wedlock Pharaoh's daughter (the angel) Gabriel came down and planted a cane in the sea; on the

sand that accumulated around the cane a great city was afterward built; but in a Boraitha we were taught that the miracle occurred on the day that Jeroboam introduced the two golden calves, one each in Beth-El and Dan, and that great city was Italia of Greece. [1]

R. Samuel said: Whoever says Josiah sinned is also in error. It is written [II Kings, xxii. 2]: "And he did what was right in the eyes of the Lord and walked in the ways of David his father and turned not aside to the right or to the left." Is this not contradictory to the verse [II Kings, xxiii. 25], "that returned to the Lord with all his heart." How is the "returned" to be understood? He must have sinned in order to return? Nay; from this it must be inferred that after Josiah attained the age of eighteen, he refunded from his private purse all amounts paid by such as he had declared guilty (bound to pay) from the time be was eight years old (when he became king).

This is the interpretation of "returned to the Lord."

However, this differs from Rabh's following statement: "None is greater among penitents than Josiah in his time and one in our own time. And who is *he*? Aba, the father of Jeremiah b. Aba. Others say Aha, the brother of Aba, father of Jeremiah b. Aba, for the aforesaid teacher said Aba and Aha were brothers. Said R. Joseph: There is yet another in our own time, and he is Ukban b. Ne'hemiah, the Exilarch. 2 "Once while studying," said R. Joseph, "I dozed off and saw in a dream an angel stretching out his hands and accepting his (Ukban's) repentance."

Footnotes

91:1 See Exodus xx. 10 and Deut. v. 14, where it is prohibited to have cattle perform work on the Sabbath. The Mishna considers the carrying of burdens work and defines what gear constitutes a burden for cattle and what does not.

93:1 Naph'ha is Aramaic for "smith." According to the opinion of Dr. I. M. Wise, the reviser of this Tract in the first edition, Naph'ha refers to the city whence R. Itz'hak came. This was criticised, but we found the same was said by Frankel and many others.

93:2 When any article of apparel, worn by a person or animal while bathing, intervenes between the body and the water, *i.e.*, bars the admission of the water to the body, it constitutes a case of "Chatzitzah."

100:1 Zechuth Aboth is a term implying the benefits bestowed upon men in consideration of the virtues and righteousness of their ancestors, and is based upon the passage in the Bible: "Keeping kindness unto the thousandth generation," etc. [Ex. xxxiv. 7]; and also upon the verse Ex. xxxii. 13.

104:1 The literal translation of the Hebrew word Blo-debar is: he does nothing (good); of Mlo-debar: he is very busy (doing something good). Upon the difference in the two literal meanings of the two words Rabh bases the untruth of Ziba's statement.

106:1 Rashi added to this that the Romans took away this city from the Greeks, and therefore the Roman kingdom is called Italy; we, however, deem it an error, as we have found that such a city is in Greece.

106:2 The text states: "And that is Nathan of Zuzitha and Rashi tried to explain the word Zuzitha "with sparks," or because the angel took him by the Zizith (locks) of his head. We have omitted this because it is proved by Abraham Krochmal in his "Remarks to the Talmud," article "The Chain of the Exilarch," that Ne'hemiah the Exilarch and Nathan the Exilarch were of two different times, many generations apart. (See there.)

Next: Chapter VI: Regulations Concerning What Garments Women May Go Out With On the Sabbath

CHAPTER VI.

REGULATIONS CONCERNING WHAT GARMENTS (SERVING AS ORNAMENTS) WOMEN MAY GO OUT WITH ON THE SABBATH.

MISHNA *I.*: In what (ornamental) apparel may a woman go out, and in what may she not go out? A woman is not allowed to go out (even in private ground) either with woollen or linen bands or with straps on her head to keep her hair in tresses (as a precaution lest she enter public ground and take off the bands to show to her friends, thereby becoming guilty of carrying movable property for a distance of four ells or more). Nor is she to bathe herself with the bands on unless loosened. Nor is she to go out with either Totaphoth or Sarbitin on, unless they are fastened; 1 nor with a hood in public ground, nor with gold ornaments, nor with nose-rings, nor with finger-rings that have no seal, nor with pins. But if she did go out with these things, she is not bound to bring a sin-offering (as they are ornaments and not burdens).

GEMARA: "*Bathing*." Where is bathing referred to (and what has it to do with the Sabbath)? Said R. Na'hman b. Itz'hak in the name of Rabba b. Abuhu: The Mishna means to say: What is the reason that a woman is not allowed to go out with either woollen or linen bands? Because the sages have decided that she is not to bathe herself with them on, even on week days, unless loosened; therefore she shall not (go out with them on) on the Sabbath at all, lest it happen that she become in duty bound to bathe herself, 2 and, while untying her hair, be forced to carry the bands in public ground for a distance of four ells or more.

R. Kahana questioned Rabh: "What about a hair-net?--Answered Rabh: "You mean to say a woven one? Everything woven has not been restricted." This was also taught in the name of R. Huna b. R. Joshua. According to others the same said: "I have seen that my sisters were not particular to take it off while bathing." And the difference between the two versions is when it was dirty; according to the first version, it does not matter, as everything woven was not restricted; and the second version, where particularity is the case, if they were dirty, they would certainly be particular to take them off.

An objection was raised from Mishna [Miqvaoth, IX. 8]: "When a person bathes, the following objects cause 'intervention' (Chatzitzah): Woollen and linen bands and headstraps (used by maidens)." R. Jehudah says woollen and hair bands do not cause "intervention," because water soaks through them. (Now we see that although woollen and linen bands are woven, yet they are an intervention.) Said R. Huna: "All this concerns only maidens." (And they are an intervention only because they are particular about it.)

R. Joseph in the name of R. Jehudah said that Samuel said that the Halakha prevails according to R. Jehudah in the case of hair bands only. Said Abayi: From the expression "the Halakha

prevails" we must infer that there is a controversy between R. Jehudah and the Tana of the above Boraitha. (The Tana said nothing about hair bands.) Shall we assume that because R. Jehudah declares hair bands not to be objects of "intervention," he must have heard the previous Tana mention them? Even if such be the case, it is not probable that R. Jehudah heard that the Tana agrees with him on that point, and hence he says: "If he agrees with me on this point, why not in the other instances also?" Said R. Na'hman in the name of Samuel: Read, The sages agree with R. Jehudah with respect to hair bands.

This is supported by a Boraitha. Woollen bands cause intervention, but hair bands do not. R. Jehudah, however, said: "Neither of them causes intervention."

Said R. Na'hman b. Itz'hak: It seems to be so from the expression of our Mishna: "A woman may go out with hair bands, be they her own or her friends'." Whose opinion does this Mishna represent? Can we say R. Jehudah's? He permits even woollen bands. We must say it is in accordance with the above rabbis; hence they do not differ as regards hair bands.

"*Nor with Totaphoth*." What are "Totaphoth"? Said R. Joseph: "A balm bandage for sanitary use (*Humrate diqetiphta*)." 1

Said Abayi to him: "Then let it be permitted as an amulet made by a reliable expert." (During Abayi's time this difficulty was not solved.) R. Jehudah, however, in the name of Abayi said: 2 "It is an Absayim"(a gold ornament). This is supported in the following Boraitha: "A woman may go out with a gilded hair-net, and Totaphoth or Sarbitin when fastened to the hair-net." What are Totaphoth and what Sarbitin? Said R. Abuhu: "The former are bands that reach from ear to ear, and the latter bands that reach from temple to temple." R. Huna said: "The poor make them of all kinds of colored material, and the rich make them of gold or silver."

"*Nor with a hood*." Said R. Yanai: "I cannot understand what kind of a hood the Mishna means; is it a slave's hood that it prohibits and permits a woollen hood, or does it prohibit woollen hoods and so much more slaves' hoods? Said R. Abuhu: It seems that a woollen hood is meant. And so we have learned plainly in the following Boraitha: "A woman may go out with a hood and head ornament in her yard." R. Simeon b. Elazar says: With a hood even in a public ground. "It is a rule," said he, "that anything below the 'Shebha'ha' (hairnet) is permitted to be worn, but anything above it is not. Samuel, however, said the Mishna alludes to the slave's hood.

Did, indeed, Samuel say so? Did he not say the slave may go out with the mark (he wears) around his neck, but not with the mark on his clothes? This presents no difficulty. The former applies to the mark made for him by his master (in which case there is no fear of the slave removing and carrying it), while the latter applies to the mark made by himself. What meaning do you attach to Samuel's statement? If he permits the wearing of the mark on the slave's neck because the master made it and the slave will fear to remove it, could not the master also make the mark on the slave's clothes? Yea, but the slave might lose the mark, and for fear of his master he will fold up his coat and carry it on his shoulders (in public ground). And according to R. Itz'hak b. Joseph it is prohibited. This is also

supported by a Boraitha, which teaches us distinctly that the slave may go out with the mark on his neck, but not on his clothes. In like manner Samuel once said to R. Hanina b. Shila: "None of the rabbis that call on the Exilarch should go out with their insignia on their clothes (on the Sabbath) save you. He would not be angry with you were you to go to him without them (hence, not being a necessary burden, you may wear them or not, as you choose)."

The master said: "Not with a bell," etc. Why not? Lest it break off and one may carry it. Then why should the same not be feared in regard to a bell attached to his clothes? Here a bell is treated of that was made by an expert and was woven right in with the cloth. This is also in accord with what R. Huna b. R. Joshua said: "Everything that is woven they did not restrict."

"*Nor with a golden ornament*." What was this golden ornament? Said Rabba b. b. Hana in the name of R. Johanan: "A golden (ornament with an engraving of the city of) Jerusalem on it," such as R. Aqiba made for his wife.

The rabbis taught: A woman shall not go out wearing a golden ornament; but if she did so, she becomes liable to bring a sin-offering. So is the decree of R. Meir, but the sages say: She must not go out wearing it; if she did, however, she is not culpable. But R. Eliezer said: A woman may go out wearing a golden ornament to commence with. Wherein do they differ? R. Meir holds it to be a burden, and the rabbis hold it to be an ornament; then why should she not wear it to commence with? Lest she take it off to show it to her friends and thus happen to carry it; but R. Eliezer reasons differently. Who generally go out with such valuable golden ornaments? Prominent women; and prominent women will not remove them for the purpose of exhibiting them to friends.

Rabh prohibits the wearing of a crown-shaped ornament, and Samuel permits it. Both agree that the wearing of a crown-shaped ornament is permissible, as there is no fear that the woman will remove it; where they do differ, however, is as to a golden and jewelled ornament. The former holds that there is fear of her removing it in order to exhibit it, and thus probably happen to carry it, while the latter contends that as only prominent women wear such costly ornaments no fear need be entertained on that score.

Said R. Samuel b. b. Hana to R. Joseph: You distinctly

told us in the name of Rabh that an ornament in the shape of a crown may be worn. [1]

Levi [2] lectured in Neherdai that a crown-shaped ornament may be worn; whereupon twenty-four women in Neherdai went out with crown-shaped ornaments on.

Rabba b. Abuhu lectured the same in Mehutza, and eighteen women went out of one alley wearing those ornaments.

R. Jehudah in the name of Samuel said: "A belt may be worn." Some one said a leather belt (even if jewelled). Said R. Saphra: "Why! Even a golden belt jewelled, for is it not equal to a

golden garment?" Said Rabhina to R. Ashi: "How is it with a belt worn over a sash?" Answered R. Ashi: "By this you mean two belts" (and this is prohibited). R. Ashi, however, said: "A sash may be worn only when it is securely fastened, but not otherwise."

"*Nor with a nose-ring*." What is a nose-ring? It is a nose-band.

"*Nor with finger-rings*," etc.; but if the ring have a seal it is prohibited, as it is not an ornament. Is this not contradicted from Kelim, XI. 8? The following ornaments of women are subject to defilement: Chains, nose-rings, rings, finger-rings either with or without a seal, and nose-bands. Said R. Na'hman b. Itz'hak: "You quote a contradiction in the laws of defilement as against the laws of Sabbath. As for defilement, the Torah requires an utensil [Numbers, xxxi. 20], and such it is; but as for Sabbath, it refers to a burden; hence a ring without a seal is an ornament, with a seal it is a burden (for women)."

"*Nor with a pin*." For what purpose can a pin be used? R. Ada from Narsha explained it before R. Joseph: Women part their hair with it. Of what use is it on Sabbath? Said Rabha: On week days they wear a golden plate on their heads; the pin is used for parting the hair and holding down the plate; but on Sabbath the pin is put against the forehead.

MISHNA *II*.: One is not to go out with iron-riveted sandals, nor with one (iron-riveted shoe) unless he has a sore on his foot, nor with phylacteries, nor yet with an amulet unless made by a reliable expert, nor with a shield, helmet, or armor for the

legs; but if he has gone out (with either of these) he is not liable for a sin-offering.

GEMARA: "*Iron-riveted sandal*." What is the reason of its being prohibited? Said Samuel: "It happened toward the close of the persecutions (of the Jews) that a party of men hid themselves in a cave with the understanding that after once entering no one was to go out. Suddenly they heard a voice on the outside of the cave, and thinking the enemies were upon them, they began crowding each other into the farthest recesses of the cave. During the panic that ensued more men were trampled to death by the iron-riveted sandals worn by the party than the enemies would have killed. At that time it was enacted that a man must not go out (on Sabbath) with iron-riveted sandals." If this be the reason, let it also be prohibited on week days? Because it occurred on a Sabbath! Then let it be allowed on a festival; why then is it stated that on a festival *it* must not be sent (Betzah, 26, Mishna)? And furthermore, why is it forbidden on Sabbath? Because the people usually assemble on that day; and the same is the case with a festival. But do they not assemble on a congregational fast--why then should it not be prohibited also then? When the above-mentioned happened it was a prohibited assembly, but all these assemblies are permitted. And even according to R. Hanina b. Aqiba, who said concerning defilement that this prohibition is only in the Jordan in a boat, as the case happened, it is because the Jordan is different in width and depth from other rivers; but Sabbath and a festival are alike as regards labor.

Said R. Jehudah in the name of Samuel: This (the prohibition of the sandals in question) is only with regard to such as are riveted for the sake of durability, but not with regard to such as are riveted for the sake of decoration. How many (rivets are considered to be for the latter purpose)?

R. Johanan said five in each. R. Hanina said seven in each. Said R. Johanan to R. Samon b. Aba: "I will explain to you the difference between my opinion and that of R. Hanina. I mean two rivets on each side of the sandal and one in the centre, while he means three on each side and one in the centre. The Gemara declared that R. Hanina is in accordance with R. Nathan, who permits seven; and R. Johanan is in accordance with R. Nohorai, who permits only five. And Aipha said to Rabba b. b. Hana: "Ye who are the disciples of R. Johanan may act according to him; we, however, are acting in accordance with R.

[paragraph continues] Hanina." R. Huna questioned R. Ashi: "How is the law if there were five?" And he said: "Even seven is permitted." "And how is it if there were nine?" And he rejoined: "Even eight is prohibited. A certain shoemaker asked of R. Ami: "How is it if the sandal is sewed from the inside?" He answered: "I have heard that it is permitted, but I can give you no reason." Said R. Ashi: "Does master not know the reason? Being sewed from the inside, it is no longer a sandal but a shoe; and the rabbis' precaution was against the riveted sandal, but not in regard to shoes."

There is a Boraitha: One must not go out with an iron-riveted sandal and shall not walk in them from one room to another, not even from one bed to another (in the same room); but it may be handled to cover vessels with or to support one of the bed-stands with. R. Elazar b. Simeon prohibits even this, unless the majority of rivets fell out and but four or five remain. Rabbi limits the permission to seven (rivets). If the soles are made of leather and the uppers are riveted, it is permitted. If the rivets are made like hooks, or are flat-headed, or pointed, or pierce through the sandal to protect the sole, it is permitted.

R. Massna, others say R. Ahadboy b. Massna in the name of R. Massna, said: "The Halakha does not prevail in accordance with Elazar b. Simeon." Is this not self-evident? When one individual opinion conflicts with a majority, the opinion of the majority prevails. Lest one suppose that, because R. Elazar b. Simeon gave a reason for his statement, should it be accepted, he comes to teach us that it is not so.

Said R. Hyya: "Were I not called a Babylonian, who permits what is prohibited, I would permit considerably more. How *many*? In Pumbeditha they say twenty-four, and in Sura they say twenty-two." Said R. Na'hman b. Itz'hak: "It seems by your remark that on the road from Pumbeditha to Sura you lost two."

"*Nor with one*," etc. But if his foot is sore he may go out. On which foot may he wear the shoe? On the foot that is sore (for protection).

The rabbis taught: When one puts on his shoes he should commence with the right shoe; when he takes them off he should commence with the left. When one bathes he should wash the right side first; when he anoints himself he should anoint the right side first, and whoever anoints the whole body

should commence with the head, for the head is the king of all the members (of the body).

"*Nor with phylacteries*;" but if he went out with them on, he is not liable for a sin-offering. Said R. Saphra: This is not only in accordance with him who holds Sabbath is a day for (wearing) phylacteries, but it is even in accordance with him who holds that it is not. What is the reason? Because phylacteries are put on in the same manner as a garment.

"*And not with an amulet*," etc. Said R. Papa: "Do not presume that both the maker and the amulet must be reliable; it is sufficient if the maker only is reliable." So it seems to be from the statement in the Mishna: "And not with an amulet that was not made by a reliable expert." It does not say with a reliable amulet.

The rabbis taught: Which are to be considered such? If they have cured three times, no matter whether they contained inscriptions (of mystic forms) or (certain) medicaments. If the amulet is for a sickness, be it serious or not, or if it is for one afflicted with epilepsy, or only serves as a preventive, one may fasten or unfasten it even in public ground, provided he does not fasten the amulet to a bracelet or a finger-ring, to go out with it in public ground, lest those who see it think that it is being worn as an ornament. Did not a Boraitha state that only such amulets as cured three different parties are reliable? This presents no difficulty. Here we are taught as to the reliability of the expert who made the amulet, while in the latter Boraitha we are taught as to the reliability of the amulet itself.

Said R. Papa: It is certain to me that where three different amulets were given to three different (human) sufferers at three different times (and a cure was effected), both the amulets and the expert who made them are reliable. Where three different amulets were given to three different sufferers only once, the expert is reliable, but not the amulets. Where one and the same amulet was given to three different sufferers, the amulet is reliable, but not the expert; but how is it with three different amulets given to one man for three different diseases? Certainly, the amulets are not reliable (for each cured only once), but how is it with the expert? Should he be considered reliable or not? If we say that the expert cured him, perhaps it was only the fate of the sufferer that he should be cured by a script? This question remains.

The schoolmen propounded a question: Is there any sanctity

in an amulet or not? For what purpose are we to know this? In order to enter a privy; if there is any sanctity in the amulet this would not be allowed, otherwise it would.

Come and hear. We have learned in a Mishna: "Not with an amulet unless made by a reliable expert." From this we see that if made by a reliable expert one may go out with it. Now, if we say that there is sanctity in the amulet, how can we say that one may go out with it? Perhaps he shall be compelled to enter a privy, he will have to take it off, and thus be forced to carry it four ells or more in public ground.

MISHNA *III*.: A woman shall not go out with an ornamental needle (with a hole in), nor with a ring that has a seal, nor with a Kulear, nor with a Kabeleth, nor with a perfume bottle. And if she does, she is liable for a sin-offering. Such is the opinion of R. Meir. The sages, however, freed her in the case of the two latter.

GEMARA: Said Ulla: "With men it is (concerning a finger-ring) just the reverse." That is to say, Ulla is of the opinion that what is right for women is not right for men, and what is right for men is not right for women. Said R. Joseph: "Ulla is of the opinion that women form a class of their own." Rabha, however, says it often happens that a man gives his wife a ring with a seal on, to put away in a box, and she puts it on her finger until she comes to the box; again, it happens that a wife gives her husband a ring without a seal for the purpose of having him give it to a jeweller to repair, and until he comes to the jeweller he puts it on his finger. Thus it happens that a woman may wear a man's ring and a man a woman's (temporarily).

What is Kabeleth? Cachous (for purifying the breath). The rabbis taught: A, woman must not go out with Kabeleth, and if she did so she is liable for a sin-offering. This is the opinion of R. Meir, but the sages say she should not go out with it, yet if she does she is not liable. R. Eliezer, however, says she may go out with it to commence with. Wherein do they differ? R. Meir holds that it is a burden, the sages that it is an ornament; and the reason that she should not go out with it is lest she take it off to show to her friends, and thus perchance carry it in her hand. R. Eliezer, however, permits it to be carried to commence with, because, said he, who generally carry such? Women whose breath emits a bad odor, and surely they will not take them off to show them, hence there is no apprehension that they will carry them four ells or more on public ground.

There is a Boraitha: "A woman must not go out with a key in her hand, nor with a box of cachous, nor with a perfume bottle; and if she goes out with them, she is liable for a sin-offering." So is the decree of R. Meir, but R. Eliezer freed her, provided the box contains *cachous*, and the bottle perfume; but if they are empty, she is liable (for then there is a burden). Said R. Ada b. Ahaba: "From this we may infer that one carrying less than the prescribed quantity of food in a vessel on public ground is culpable, as it states if there was no cachou or perfume, which is equal to a vessel containing less than the prescribed amount of food, she is liable. Hence it makes her liable even if less than the prescribed quantity. Said R. Ashi: Generally one may be freed, but here it is different; the box and the bottle themselves are considered a burden.

We read in the Scripture [Amos, vi. 6]: "And anoint themselves with the costliest of ointments." Said R. Jehudah in the name of Samuel: "This signifies perfumery."

R. Joseph objected: "R. Jehudah b. Baba said that after the destruction of the Temple at Jerusalem the sages prohibited even the use of perfumes, but the rabbis did not concur in the decree. If we say perfume used only for pleasure, why did not the rabbis concur?" Abayi answered: According to your mode of reasoning, even drinking wine from bowls (bocals) is prohibited, for it is written further [ibid., ibid.]: "Those that drink wine from bowls." R. Ami said, *that* certainly means bocals, but R. Assi claimed that it means they clinked glasses one with another. Still Rabba b. R. Huna once happened to be at the house of the Exilarch and drank wine out of a bocal, but was not rebuked. It is, therefore, thus to be understood: The rabbis restricted only such pleasures as were combined with rejoicing, but not pleasures unaccompanied with rejoicing.

Said R. Abuhu: Others say we were taught in a Boraitha: "Three things bring man to poverty: Urinating in front of one's bed when naked; carelessness in washing one's hands; and permitting

one's wife to curse him in his presence." Said Rabha: "Urinating in front of one's bed should be understood to signify 'turning around so as to face the bed and then urinating,' but not turning in the opposite direction; and even when facing the bed it signifies only urinating on the *floor* in front of the bed and not in a urinal.' Carelessness in washing one's hand signifies "not washing one's hands at all," but not insufficient washing, for R. Hisda said: "I washed my hands well

and plentifully and am plentifully rewarded." Permitting one's wife to curse him in his presence implies "for not bringing her jewelry," and *then* only when one is able to do so but does not.

Rahava said in the name of R. Jehudah: The trees of Jerusalem were cinnamon trees, and when used for fuel the odor extended over all the land of Israel; ever since the destruction of the second Temple the cinnamon trees disappeared; but a morsel as big as a barleycorn is still to be found in the treasury of the Kingdom of Zimzimai.

MISHNA *IV*.: One must not go out with a sword, nor with a bow, nor with a triangular shield, nor with a round one, nor with a spear; if he does so he is liable for a sin-offering. R. Eliezer says they are ornaments to him, but the sages say they are nothing but a stigma, for it is written [Isaiah, ii. 4]: "They shall beat their swords into ploughshares and their spears into pruning-knives; nation shall not lift up sword against nation, neither shall they learn war any more." Knee-buckles are clean and one may go out with them on the Sabbath. Stride chains are subject to defilement, and one must not go out with them on the Sabbath.

GEMARA: "*R. Eliezer says they are ornaments*." There is a Boraitha: The sages said unto R. Eliezer: If the weapons are ornaments to man, why will they cease to exist in the post-messianic period? He answered: "They will exist then also." This is in accordance with the opinion of Samuel, who said there will be no difference between the present time and the post-messianic period save the obedience to temporal potentates, for it is written [Deut. xv. 11]: "For the needy will not cease out of the land."

Said Abayi, according to others R. Joseph, to R. Dimi or to R. Ivia, and according to still others, Abayi said directly to R. Joseph: What is the reason of R. Eliezer's theory regarding weapons? It is written [Psalms, xlv. 4]: "Gird thy sword upon thy thighs, O Most Mighty, with thy glory and thy majesty."

Said R. Kahana to Mar, the son of R. Huna: Is not this passage applied to the study of the Law (Torah)? And he answered: "Anything may be inferred from a passage; at the same time, the passage must not be deprived of its common sense." Said R. Kahana: "I am fourscore years old and have studied the six sections of the Mishna with their explanations through, and did not know until now that a scriptural passage

has first to be interpreted in its plainest form!" What information does he mean to convey to *us* by this assertion? That man has to study the Law through first, and then reason upon it.

R. Jeremiah in the name of R. Elazar said: Two scholars who debate in the Law (not for

controversy's sake), the Holy One, blessed be He, causes them to prosper; moreover, they become exalted, for it is written [Psalms, xlv. 5], "be prosperous." But lest one say that this would be the case even if they (debate), not for the purpose (of studying the Law), therefore it says further [ibid., ibid.], "because of truth." Again, one might say that the same would be the case even if one became arrogant and conceited. Therefore it says further [ibid., ibid.], "and meekness and righteousness." And if they act humbly they will be rewarded with (the knowledge of) the Law, which was given with the right hand (of God), as it is further written [ibid.], "and thy right hand shall teach thee fearful things."

R. Na'hman b. Itz'hak says they will be rewarded with the knowledge of what is said of the right hand of the Law, for Rabha b. R. Shila, according to others R. Joseph b. Hama in the name of R. Shesheth, said: How is to be explained the passage [Proverbs, iii. 16]: "Length of days is in her right hand; and in her left riches and honor"? Shall one say that in the right hand is only length of days, but not riches and honor? Common sense does not dictate so; therefore it must be interpreted thus: For those who study the Torah in the right way there is long life, and so much the more riches and honor; but for those who study it *not* in the right way, riches and honor there may be, but not long life.

Said R. Jeremiah in the name of R. Simeon b. Lakish: Two scholars who quietly discourse on the Torah among themselves, the Holy One, blessed be He, hearkens unto them and listens to their desires, for it is written [Malachi, iii. 16]: "Then conversed they that fear the Lord one with the other," etc. Conversed means conversed quietly, as it is written [in Psalms, xlvii. 4]: "He will subdue (quiet) people under us." (Subdue and converse are expressed by the same terms in the two passages, hence the similitude. 1) What is meant by the words "that thought upon His name"? Said R. Ami: "Even when

one intended to observe a commandment, but was accidentally prevented and could not accomplish it, it is credited to him as if he had actually observed it." Thus the passage "thought upon His name" is interpreted.

Said R. Hanina b. Ide: Whosoever observes a commandment as prescribed, will not be the recipient of bad tidings, for it is written [Eccl. viii. 5]: "Whoso keepeth the commandment will experience no evil thing." R. Assi, others say R. Hanina, said: "Even if the Holy One, blessed be He, has so decreed it (that he shall experience evil things) the decree is annulled through the prayers of this man, as it is written [ibid. 4]: "Because the word of a king is powerful, and who may say unto him, what doest thou?' and this immediately followed by the passage: 'Whoso keepeth the commandment will experience no evil thing.'"

R. Aba in the name of R. Simeon b. Lakish said: Two scholars who mutually instruct themselves in the Law, the Holy One, blessed be He, hearkens to their voices, for it is written [Song of Solomon, viii. 13]: "Thou that dwellest in the gardens, the companions listen for thy voice; oh, let me hear it"; but if they do not do so, they cause the Shekhina to move away from Israel, for further it is written [ibid. 14]: "Flee away, my beloved," etc.

The same in the name of the same authority said: The Holy One, blessed be He, *loves* two scholars who combine to study the Law, for it is written [Solomon's Song, ii. 4]: "And his

banner over me was love." Said Rabha: "Provided they know something of Law, but have no instructor to teach them at the place where they reside."

The same said again: "The man who lends his money is more deserving than the charitable man, and the most deserving of all is he who gives charity surreptitiously or invests money in partnership (with the poor)." Furthermore he said: "If thy teacher is jealous (for thy welfare) and as spiteful as a serpent (if thou neglect thy studies), carry him on thy shoulders (because from him thou wilt learn), and if an ignoramus plays the pious, do not live in his neighborhood."

R. Kahana, according to others R. Assi, and according to still others R. Abba in the name of R. Simeon b. Lakish, said: "Whoso raises a vicious dog in his house prevents charity to proceed therefrom (for the poor are afraid to go in as it is written [Job, vi. 14]: "As though I were one who refuseth kindness

to a friend." ("As though *I* were one who refuseth" is expressed in Hebrew by one word, viz., lamos; in Greek λα μ ος means dog, [1] and hence R. Simeon's inference.) Said R. Na'hman: "He even forsaketh the fear of the Lord," for it is written at the end of the verse [ibid., ibid.]: "And forsaketh the fear of the Lord."

Once a woman went into a certain house to bake, and a dog, through barking at her, caused her to have a miscarriage. Said the landlord of the house "Fear him not, I have deprived him of his teeth and claws"; but the woman answered: "Throw thy favors to the dogs, the child is already gone!"

Said R. Huna: It is written [Eccl. xi. 9]: "Rejoice, oh young man, in thy childhood, and let thy heart cheer thee in the days of thy youthful vigor, and walk firmly in the ways of thy heart and in the direction in which thy eyes see; but know thou that concerning all these things God will bring thee into judgment." (Does not this passage contradict itself? Nay.) Up to the words "and know" are words of the misleader, and from there on are words of the good leader. Resh Lakish said up to "(and) know" the theoretical part of the law is meant, and from there on it speaks of good acts.

"*Knee-buckles are clean,*" etc. Said R. Jehudah: This (birith) means arm-bandages. To this R. Joseph objected: "We have learned that a birith is (virtually) clean, and one may go out with it on the Sabbath. If it is an arm-band, how can that be? The latter is subject to defilement." It means that the birith is worn on the same part of the leg as the arm-bandage on the arm.

Rabbin and R. Huna sat before R. Jeremiah, who slumbered, and Rabbin said: "A birith is worn on one of the thighs and kebalim on both shins." But R. Huna said both are worn on both shins, but the chain attached to the birith on both shins is called kebalim, and the chain makes them a perfect vessel. At this point of the argument R. Jeremiah awoke and said: "I thank you. Even so I heard R. Johanan say. "When R. Dimi came to Neherdai, he sent to tell the sages: My former information in the name of R. Johanan that the Tzitz was a woven thing was an error, as so was said in his name. Whence the adduction that any ornament is subject to becoming defiled? From the Tzitz, the golden plate on the

forehead of the High Priest. And whence the adduction that textile fabrics are also subject to becoming defiled? From the passage [Lev. xi. 32], "or" raiment, which includes any textile fabrics whatsoever.

The rabbis taught: "Any piece of textile fabric or any trifle of an ornament is subject to defilement." But how is it with an article which is half texture and half ornament? It is also subject to defilement. As for an ornament which is carried in a bag, the bag being of woven material becomes defiled and with it the ornament, but if the ornament was carried in a piece of cloth, the cloth remains undefiled. Is a piece of cloth not a textile fabric? Yea, but by that is meant that the bag, even if not made of textile fabric, becomes defiled, because it is attached to the garment. What is a bag used for? Said R. Johanan: Poor people use them for the purpose of putting some trifles in them and then hang them on the necks of their daughters.

It is written "And Moses was wroth with the officers of the host" [Numb. xxxi. 14]. Said R. Na'hman in the name of Rabba b. Abuhu: "Thus said Moses unto Israel: 'Have ye then returned to your first sin (that ye have let the females live)?'" They answered him [ibid. 49]: "Thy servants have taken the sum of the men of war who have been under our command, and there lacketh not one man of us" (implying that none had sinned). Said Moses again: "If such be the case, why need ye atonement?" They answered: "Though we have strengthened ourselves to keep aloof from sin, we could not put it out of our minds. We have therefore [ibid. 50] brought an oblation unto the Lord." On this the school of R. Ishmael taught: Why did the Israelites of that generation require forgiveness? Because they had feasted their eyes on strange women.

MISHNA *V.*: A woman may go out with plaits of hair, be they made of her own hair or of another woman or of an animal; with Totaphoth or Sarbitin if fastened. 1 With a hood or with a wig in her yard (private ground); with cotton wadding in her ear or in her shoe; or with cotton wadding prepared for her menstruation; with a grain of pepper or of salt, or with whatever else she may be accustomed to keep in her mouth, provided she does not put it in her mouth on the Sabbath to

commence with; if it fell out of her mouth she must not replace it. As for a metal or golden tooth, Rabbi permits a woman to go out with it, but the sages prohibit it.

GEMARA: It has been taught: "Provided a young woman does not go out with (plaits of hair belonging to) an old woman; nor an old woman with plaits of hair belonging to a young woman." So far as an old woman is concerned, it would be nothing but right, for the plaits of a young woman would be a source of pride to her (and there is fear of her taking them off to show to others); but why should a young woman be prohibited to go out with plaits belonging to an old woman? They are a disgrace to her (and surely she would not take them off for exhibition)! The teacher while treating on plaits with respect to an old woman also makes mention of the case of a young woman (for the sake of antithesis).

"*With a hood or a wig in her yard*." Said Rabh: "Everything prohibited by the sages to be worn on public ground must not be worn in the yard, save a hood and a wig." R. Anani b. Sasson in

the name of R. Ishmael said: "Everything may be worn in the yard like a hood. But why does Rabh discriminate in favor of these objects?" Said Ulla: "In order that she may not become repulsive to her husband."

"*And with cotton in her ears or in her shoes*." Romi b. Ezekiel taught only when tied to her ears or her shoes.

"*And cotton wadding prepared for her menstruation*." "In this case," said Rabha, even if it is not tied it may be worn, because, being disgusting, it will not be handled." R. Jeremiah b. R. Abba questioned Rabha: "How is it if the same was prepared with a handle?" And he answered: "Then it is also allowed." And so also it was taught by R. Na'hman b. Oshia in the name of R. Johanan.

R. Johanan went to the college with cotton wadding in his ears on Sabbath, and his colleagues objected to it. R. Joni went into unclaimed ground with it against the opinion of all his contemporaries.

"*With a grain of pepper or a grain of salt*." The former to take away any bad odor of the breath and the latter as a remedy for toothache.

"*Or with whatever else she is accustomed to keep in her mouth*," meaning ginger or cinnamon.

"*A metal or a gilt tooth*," etc. Said R. Zera: They differ concerning a gold tooth only, for a silver tooth is unanimously

permitted. And so we have learned plainly in a Boraitha. Said Abayi: Rabbi, R. Eliezer, and R. Simeon b. Elazar, all three agree to the opinion that anything provoking disgust (or ridicule) a woman will not wear for show: Rabbi, as just cited; R. Eliezer, as he freed a woman bearing a box of cachous or a perfume bottle; R. Simeon b. Elazar, as we have learned in the following Boraitha: "Anything below the hair-net is permitted to be worn outside."

MISHNA *VI.*: Women may go out with a coin fastened to a swelling on their feet; little girls may go out with laces on and even with screws in their ears. Arabians may go out in their long veils and Medians in their mantillas; so may even all women go out, but the sages spoke of existing customs. She may fold her mantilla around a stone, nut, or a coin (used as buttons), provided she does it not especially on the Sabbath.

GEMARA: "*Little girls may go out with laces*." The father of Samuel did not permit his daughters to go out with laces nor to sleep together; he made bathing-places for them during the month of Nissan, and curtains during the month of Tishri. "He did not permit them to go out with laces?" Were we not taught that girls may go out with laces? The daughters of Samuel's father wore colored (fancy) laces and (lest they, take them off to show to others) he did not permit them to go out with them.

"*Fold her mantilla around a stone*," etc. But did not the first part (of the Mishna) say that she may fold it, etc.? Said Abayi, the last part of the Mishna has reference to a coin (which is not

permitted). Abayi questioned: May a woman fold her mantilla on Sabbath shrewdly around a nut for the purpose of bringing it to her little son? And this question is according to both; to him who permits subtilty in case of fire, and also according to him who forbids it. According to him who permits it, it may be that only in case of fire he permits, as if it were not allowed, he would extinguish it; but this is not the case here. And according to him who prohibits it, it may be that he does so because the clothing seller usually so bears the clothes; but here, as it is not the custom to bear it so, it may be that it is permitted? The question remains.

MISHNA *VII*.: The cripple may go out with his wooden leg; such is the decree of R. Meir, but R. Jossi prohibits it. If the wooden leg has a receptacle for pads, it is subject to

defilement. Crutches are subject to defilement by being sat or trodden upon; 1 but one may go out with them on Sabbath and enter the outer court (of the Temple). The chair and crutches of a paralytic are subject to defilement, and one must not go out with them on the Sabbath nor enter the outer court (of the Temple). Stilts are not subject to defilement, but nevertheless one must not go out with them on Sabbath.

GEMARA: Rabha said to R. Na'hman: How are we to accept the teaching of the Mishna? Did R. Meir permit the cripple to go out with a wooden leg on the Sabbath and R. Jossi prohibit his doing so, or *vice versa*? Answered R. Na'hman: "I know not." "And how shall the Halakha prevail?" Answered R. Na'hman again: "I know not." It was taught: Samuel and also R. Huna begin the Mishna: "A cripple shall not," etc. And R. Joseph said: "As both sages read the Mishna so, we shall do the same." Rabha b. Shira, however, opposed: "Was he not aware that when R. Hanon b. Rabha taught so to Hyya, the son of Rabh, the father showed him with the movement of his hands to change the names? In reality Samuel himself has also receded from the former teaching, and has corrected: "A cripple may go out," so is the decree of R. Meir. [Hamoth, 101*a*.]

"*And must not enter the outer court*," etc. A Tana taught before R. Johanan that one *may* go in with them in the outer court. Said R. Johanan to him: I teach that a woman may perform the "Chalitza" 2 with them (hence they are considered shoes), and you say he may go in with them to the outer court. Go and teach the contrary.

MISHNA *VIII*.: Boys may go out with bands and princes with golden belts; so may every one else, but the sages adduce their instances from existing customs.

GEMARA: What kinds of bands? Said Ada Mari in the name of R. Na'hman b. Baruch, who said in the name of R. Ashi b. Abhin, quoting R. Jehudah: "Wreaths of Puah roots." Said Abayi: "My mother told me that three of such wreaths give relief (in sickness), five of them produce a complete cure, and seven of them are even proof against witchcraft."

Said R. Aha b. Jacob: "And this only if they (the wreaths)

have never seen sun, moon, or rain; never heard a hammer fall or a cock crow or the fall of footsteps."

Said R. Na'hman b. Itz'hak: "Thy bread is cast upon the deep" (meaning the remedy is an impossibility). 1

The rabbis taught: (Women) may go out with a Kutana stone (to prevent miscarriage) on the Sabbath. It was said in the name of R. Meir that they may even go out with the counterpoise of a Kutana stone, and not only such (women) as have already once miscarried, but even as a preventive to miscarriage, and not only when a woman is pregnant, but lest she become pregnant and miscarry. Said R. Jemar b. Shalmia in the name of Abayi: But the counterpoise must be an exact one and made in one piece.

MISHNA *IX*.: It is permitted to go out with eggs of grasshoppers or with the tooth of a fox or a nail from the gallows where a man was hanged, as medical remedies. Such is the decision of R. Meir, but the sages prohibit the using of these things even on week days, for fear of imitating the Amorites. 2

GEMARA: The eggs of grasshoppers as a remedy for toothache; the tooth of a fox as a remedy for sleep, viz., the tooth of a live fox to prevent sleep and of a dead one to cause sleep; the nail from the gallows where a man was hanged as a remedy for swelling.

"*As medical remedies*," such is the decision of R. Meir. Abayi and Rabha both said: "Anything (intended) for a medical remedy, there is no apprehension of imitating the Amorites; hence, if not intended as a remedy there *is* apprehension of imitating the Amorites? But were we not taught that a tree which throws off its fruit, it is permitted to paint it and lay stones around it? It is right only to lay stones around it in order to weaken its strength, but what remedy is painting it? Is it not imitating the Amorites? (Nay) it is only that people may see it and pray for mercy. We have learned in a Boraitha: It is written [Leviticus, xiii. 45]: "Unclean, unclean, shall he call out." (To what purpose?) That one must make his troubles known to his fellow-men, that they may pray for his relief.

Rabhina. said: The hanging up of a cluster of dates on a date

tree (as a sign that the tree throws off its fruit) is in accordance with the above-mentioned teacher.

If one says: "Kill this cock, for he crowed at night; or kill this hen, for she crowed like a cock; or I will drink and leave a little over," because of superstition, there is apprehension that he imitate the Amorites; but one may put a splinter of "Tuth" 1 or a piece of glass in a pot, that it may boil the quicker. The sages, however, prohibited pieces of glass as being dangerous. The rabbis taught: One may throw a handful of salt in a lamp that it may burn the brighter, or loam and fragments of earthenware that it may burn more slowly. The saying "to your health" at wine-drinking is no imitation of the customs of the Amorites. It happened that R. Aqiba gave a banquet in honor of his son, and at every cup that he drank he said: "To the wine in the mouth

and to the health of the sages and their disciples."

Footnotes

107:1 In the Mishna the Hebrew word for "fastened" is "Tephurim," literally meaning "sewed" or "embroidered"; *i.e.*, the Totaphoth and Sarbitin as worn by the wealthy were ornaments made of gold or silver with inscriptions engraved on them, but the poor made them of various colored materials (as explained in the Gemara farther on) and embroidered the inscriptions on them. The prohibition of the Mishna therefore refers only to the wearing of such ornaments before the inscriptions were either engraved or embroidered on them. Such is our explanation in our History of Amulets," pp. 11-15.

107:2 After menstruation. See Leviticus, xv.

109:1 For the explanation of *Humrate diqetiphta* see our "History of Amulets," p. 14.

109:2 This R. Jehudah is probably R. Jehudah of Diphta, for the R. Jehudah generally cited died on the day of Abayi's birth. See our "History of Amulets," etc.

111:1 R. Joseph passed through a severe illness and at times forgot his own teachings hence it sometimes occurred that he was reminded of them by his disciples.

111:2 Here is omitted the legend about Levi, as the proper place for it is in Kethuboth, 103*b*, and it will be translated there.

118:1 The words *conversed* and *subdue* in the two passages are expressed in Hebrew by "Nidberu" and "Yadber." Both are derived from the root Dibur = to speak quietly.

120:1 R. Simeon b. Lakish was a Palestinian and knew the Greek language.

121:1 See note to preceding Mishna.

124:1 Wherever the expression "subject to defilement by being sat or trodden upon" occurs in the Talmud it refers to being sat or trodden upon by a person afflicted with venereal diseases.

124:2 See the law of Chalitza [Deut. xxv. 9].

125:1 The text continues with different quack remedies for sickness, melancholy, and other things which are neither important nor translatable, and therefore omitted.

125:2 See Leviticus, xviii. 3 and 30, where the imitating of the customs of the Canaanites and

Amorites is forbidden.

126:1 *Zilla*, according to the commentary of Malkhi Zedek, which means "a smooth shrubby herb, of the mustard family."

Next: Chapter VII: The General Rule Concerning the Principal Acts of Labor on Sabbath

CHAPTER VII.

THE GENERAL RULE CONCERNING THE PRINCIPAL ACTS OF LABOR ON SABBATH.

MISHNA *I.*: A general rule was laid down respecting the Sabbath. One who has entirely forgotten the principle of (keeping) the Sabbath and performed many kinds of work on many Sabbath days, is liable to bring but *one* sin-offering. He, however, who was aware of the principle of Sabbath, but (forgetting the day) committed many acts of labor on Sabbath days, is liable to bring a separate sin-offering for each and every Sabbath day (which he has violated). One who knew that it was Sabbath and performed many kinds of work on different Sabbath days (not knowing that such work was prohibited), is liable to bring a separate sin-offering for every principal act of labor committed. One who committed many acts all emanating from one principal act is liable for but one sin-offering.

GEMARA: What is the reason that the Mishna uses the expression "a general rule"? Shall we assume that it means to teach us a subordinate rule in the succeeding Mishna, and the same is the case with the Mishna concerning the Sabbatical year, where at first a general rule is taught and the subsequent Mishnas teach a subordinate rule? Why does the Mishna relating to tithes teach *one rule* and the succeeding Mishna another, but does not call the first rule a "general rule"? Said R. Jose b. Abbin: Sabbath and the Sabbatical years, in both of which there are *principals* and *derivatives*, he expresses a general rule; tithes, however, in which there are no principals and derivatives, no general rule was laid down. But did not Bar Kapara teach us a general rule also in tithes? It must be therefore explained thus: The subject of Sabbath is greater than Sabbatical, as the first applies to attached and detached things, while the Sabbatical applies only to attached ones. The subject of the latter, however, is greater than tithes, as it applies to human and cattle food; while tithes applies only to human food. And Bar Kapara teaches a general rule in tithes also,

because it is greater than peah (corner tithe), as the former applies also to figs and herbs, which is not the case with peah.

It was taught concerning the statement of the Mishna: He who forgot, etc., that Rabh and Samuel both said: Even a child that was captured by idolaters or a proselyte who remained among idolaters is regarded as one who was aware of the principle, but forgot it and is liable; and both R. Johanan and Resh Lakish said that the liability falls only upon him who was aware, but *subsequently* forgot; the child and the proselyte in question are considered as if they were never aware, and are free.

An objection was raised from the following: A general rule was laid down concerning the observation of the Sabbath. One who had entirely forgotten the principle of Sabbath, and had

performed many kinds of work on many Sabbath days, is liable for but one sin-offering. How so? A child which was captured by idolaters and a proselyte remaining with idolaters, who had performed many acts of labor on different Sabbaths, are liable for but *one* sin-offering; and also for the blood or (prohibited) fats which he has consumed during the whole time, and even for worshipping idols during the whole time, he is liable for only one sin-offering. Munbaz, however, frees them entirely. And thus did he discuss before R. Aqiba: Since the intentional transgressor and the unintentional are both called sinners, I may say: As an intentional one cannot be called so unless he was aware that it is a sin, the same is the case with an unintentional, who cannot be called sinner unless he was at some time aware that this is a sin (it is true, then, the above must be considered as never having been aware of it). Said R. Aqiba to, him: "I will make an amendment to your decree, as the intentional transgressor cannot be considered as such unless he is cognizant of his guilt *at the time of action*, so also should not the unintentional transgressor be considered as such unless he is cognizant *at the time of action*." Answered Munbaz: "So it is, and the more so after your amendment." Thereupon R. Aqiba replied: "According to *your* reasoning, one could not be called an unintentional transgressor, but an intentional." Hence it is plainly stated: "How so? A child," etc. This is only in accordance with Rabh and Samuel, and it contradicts R. Johanan and R. Simeon b. Lakish. They may say: "Is there not a Tana Munbaz, who freed them? We hold with him and with his reason, namely: It is written [Numb. xv. 29]: "A law shall be for you, for him that acteth through ignorance,"

and the next verse says [ibid. 30], "but the person that doeth aught with a high hand." The verse compares then the ignorant to him who has acted intentionally; and as the latter cannot be guilty unless he was aware of his sin, the same is the case with the ignorant, who cannot be considered guilty unless he was at some time aware of the sin.

Another objection was raised from a Mishna farther on: "Forty less one are the principal acts of labor." And deliberating for what purpose the number is taught, said R. Johanan: For that, if one performed them *all* through forgetfulness, he is liable for each of them. How is such a thing (as utter forgetfulness) to be imagined? We must assume that although cognizant of the (day being) Sabbath, one forgot which acts of labor (were prohibited). And this is correct only in accordance with R. Johanan, who holds: "If one is ignorant of what acts of labor constitute (sin punishable with) Karath (being 'cut off'), and commits one of those acts even intentionally, he is bound to bring a sin-offering only." And such an instance can be found in case one knows that those acts of labor were prohibited, at the same time being ignorant of that punishment which is Karath. But according to R. Simeon b. Lakish, who holds that one must be totally ignorant of both the punishment of Karath and what acts are prohibited on Sabbath, how can the above case be found? He was aware that Sabbath must be kept. But what was he aware of in the observance of Sabbath? He only knew of the law governing the going outside of the boundaries of the city.

But who is the Tana of the following Boraitha? The scriptural passage, "Him that acteth through ignorance," refers to one who was ignorant both of the (principle of) Sabbath and the prohibition of the acts of labor. One who was cognizant of both is referred to by the Scriptures as "the person that doeth aught with a high hand." If one, however, was cognizant of the (principle of) Sabbath, but not of the prohibition of the acts of labor, or *vice versa*, or even if he knew that the acts of labor were prohibited, but did not know that they involved culpability requiring a sin-offering (while he is not the scriptural man "that acteth through ignorance"), still he is culpable of a transgression requiring a sin-offering? It is Munbaz mentioned above.

R. Huna said: One who has been travelling in a desert and does not know what day is Sabbath, must count six days from the day (on which he realizes) that he has missed the Sabbath,

and observe the seventh. Hyya b. Rabh said: He must observe that very day and then continue his counting from that day. And what is the point of their differing? The former holds that one must act in accordance with the creation (which commenced six days before the Sabbath), while the latter holds that one must be guided by Adam's creation (on the eve of Sabbath). An objection was made: "If a man while travelling in a desert forgot when the Sabbath arrives, he must count 'one day to six' and then observe the seventh. Does this not mean he must count six days and then observe the seventh?" Nay; it may be said that it means that very day, and continue his counting from that day. If this be the case, why are we taught "he must count one to six"? It should be taught (plainly) he must observe a day and continue counting from that day. Moreover, we were taught in a Boraitha: "If one while travelling in the desert forgot when the Sabbath arrives, he must count six days and observe the seventh." The objection to R. Hyya b. Rabh is sustained.

Rabha said (referring to the traveller who forgot the Sabbath): "On every day, except the one on which he realizes that he has missed the Sabbath, he may perform enough labor to sustain himself." But one that should do nothing and die (of hunger)? Nay; only in case he provided himself with his necessaries on the preceding day. Perhaps the preceding day was Sabbath. Therefore read: he may labor even on that day to sustain himself. In what respects is that day, then, to be distinguished from other days? By means of Kiddush and Habhdalah. 1

Said Rabha again: "If he only recollects the number of days he has been travelling, he may labor all day on the eighth day of his journey, in any event" (for he surely did not start on his journey on a Sabbath). Is this not self-evident? Lest one say that one would not only not start out on the Sabbath, but also not on the day before Sabbath; hence, if he went out on the fifth day of the week, he is permitted to work on both the eighth and ninth days of his journey. Therefore he comes to teach us that only on the eighth day of his journey would he be permitted to work, for frequently one comes upon a caravan on Friday and starts out even on that day.

"*One who has entirely forgotten,*" etc. Whence is this deduced? Said R. Na'hman in the name of Rabba b. Abuhu: "There are two verses in the Scripture, viz. [Exod. xxxi. 16]: 'And the children of Israel shall keep the Sabbath,' and [Lev. xix. 3]: 'And my Sabbaths shall ye keep.' How is this to be explained?" The first means the observance of the commandment of Sabbath generally, and the second means one observance of the commandment for each Sabbath.

"*One who knew (the principle of) Sabbath*." What is the reason of a difference between the former and the latter part of the Mishna? Said R. Na'hman: For what transgression does the Scripture make one liable for a sin-offering? For what is done through ignorance? In the former part of the Mishna the case of one who was not aware that it was Sabbath is dealt with, and hence only one sin-offering is imposed, while in the latter the case dealt with is of one who was aware that it was Sabbath, but ignorant as to the acts of labor, hence a sin-offering for each act is prescribed.

"*Liable for a sin-offering,*" etc. Whence do we deduce the distinction between acts of labor? Said Samuel: It is written [Exod. xxxi. 14]: "Every one that defileth it shall be surely put to death." We see, then, that the Scripture has provided many deaths [1] for defiling the Sabbath. But does not the verse refer to one who violates the Sabbath wantonly? As it cannot be applied to an intentional violator, for it is already written [Exod. xxxv. 2]: Whosoever doeth work thereon shall be put to death"; therefore apply it to an unintentional sinner. How, then, will you explain the words "put to death"? That is only the pecuniary equivalent (of being put to death) (viz., he shall bring a sin-offering which costs money). Why not advance the distinction between the acts of labor, as R. Nathan (does elsewhere)? Samuel is not of the opinion of R. Nathan, but of R. Jossi, who says that the additional commandment not to kindle a fire on the Sabbath was taught additionally for the special purpose of conveying to us that one who does kindle a fire is not to be punished either with Karath or stoning; for we have learned in a Boraitha: The additional commandment not to kindle a fire on the Sabbath was taught additionally for the special purpose of conveying to us that one who kindles a fire on the Sabbath is not to be punished either with Karath

or stoning. Such is the opinion of R. Jossi. R. Nathan says it is written for the sake of separation (from other acts). Let then the separation of acts of labor be adduced whence R. Jossi adduces them--in the following Boraitha: It is written [Lev. iv. 2]: "And do (of) any (one) of them," as follows: Sometimes one is only bound to bring one sin-offering for all transgressions, and sometimes one is bound to bring a sin-offering for each and every transgression separately.

Said R. Jossi b. Hanina: "Why does R. Jossi explain that passage thus? The verse should read 'one of them' (Achath mehenoh), but in reality it reads 'of one of them' (Meachath mehenoh), or it should read 'of one them' (Meachath henoh), but it reads 'of one of them.' Therefore he explains that 'sometimes one is equal to many and sometimes many equal one.'" [1]

Rabha questioned R. Na'hman: "How is it if one is ignorant of both (of the day being Sabbath and the prohibition of the acts of labor on that day)? Answered R. Na'hman: "Take one instance at a time. You say he was ignorant of the day being Sabbath; then he is bound to bring a sin-offering. How would it be if, on the contrary, I had said that he was ignorant of the prohibition of the acts of labor *first*? Would you say that he becomes liable to a sin-offering for each and every act performed?" Said R. Ashi: "Let us see from the man's actions. How would it be if one came to him and reminded him of its being Sabbath (without calling his attention to the fact that he was working)? If the man *immediately* stopped his work, it is clear that he had actually forgotten that it was Sabbath. If, however, the man was reminded by a third party that he was working (without having his attention called to the fact that it was Sabbath), and he immediately quit his work, it is evident that he was not cognizant of the prohibition of the acts of labor; hence he would become liable to bring a sin-offering for each and every act performed. Said Rabbina to R. Ashi: "What difference does it make? If one is reminded that it is Sabbath and he quits work, he becomes aware that it is Sabbath, and if he is reminded of his working he also becomes aware that the day is Sabbath; hence it makes no difference."

Rabha said (supposing the following case happened: "One reaped and ground the equivalent (in size) of a fig on a Sabbath,

without knowing that it was Sabbath, and on another Sabbath did the same thing, knowing it was Sabbath, but not knowing that such acts of labor were prohibited; then remembered that he had committed a transgression on the Sabbath through ignorance of the day being Sabbath, and took a sheep and set it aside for a sin-offering. Suddenly he recollected that he had also committed a transgression on the other Sabbath, through his ignorance of the prohibition of the acts of labor. What would the law be in such a case? I can say that the sheep set aside for a sin-offering for the first transgression suffices also for the second, although in reality two sin-offerings were required to atone for the second transgression. The one sin-offering would suffice, because it is in truth not brought for forgetting the Sabbath, but for reaping and grinding; the reaping in the first instance carries with it the reaping in the second, as also the grinding in the first instance carries with it the grinding in the second, and one sin-offering atones for all.

Assuming, however, that in the second instance (when he forgot about the prohibition of the acts of labor) he (at some later time) recollected only having reaped (but forgot that he also ground), and having set aside the sin-offering he became liable for on account of his transgression in the first instance (when he forgot about the Sabbath), he atones for the reaping and grinding on the first Sabbath and for the reaping on the second Sabbath, but not for the grinding on the second Sabbath; hence (after also recollecting that he had ground) he must bring an additional sin-offering. Abayi, however, says: The one sin-offering atones for all, because the grinding, which he atones for in the first instance, also carries with it the grinding in the second instance. Why so? For the reason that in both instances the acts atoned for are analogous. (When a sin-offering was brought, a confession was made. In citing the sin committed in the first instance grinding was mentioned and applies also to the grinding in the second instance. Therefore no additional sin-offering is necessary.)

It was taught: If one has eaten tallow (which is prohibited) on two different occasions, and at both times the tallow was the equivalent (in size) of an olive (or larger); and afterward he was reminded of the first occasion, and later on of the second occasion also, what is the law in his case? R. Johanan says: He must bring two sin-offerings. Why so? Because he recollected the transgressions at different times. Resh Lakish,

however, says: He need bring only one sin-offering. What is R. Johanan's reason? Because it is written [Lev. iv. 28]: "For his sin, which he hath committed," and he adduces therefrom that for every sin committed one must bring a separate sin-offering, and Resh Lakish holds according to the passage [ibid. 26], "Concerning his sin, and it shall be forgiven him," and claims that it being one and the same sin, only one sin-offering is sufficient. But what will Resh Lakish do with the verse, "For his sin which he hath committed"? That refers to the sin-offering which had already been brought, and therefore could not apply to a later sin. And what about R. Johanan and the passage, "Concerning his sin, and it shall be forgiven"? R. Johanan explains this as follows: If a man ate tallow equivalent (in size) to an olive and a half, and later ate another piece the size of half an olive. Afterward he recollected having eaten tallow, but thought that it was the size of one olive, might some not say that the remaining piece eaten in the first instance should be added to the piece eaten in the second instance, and thus constitute another piece the equivalent (in size) to an olive, and make him liable for another sin-offering? Therefore the passage which

means: After once having obtained forgiveness for the transgression on the first occasion the second cannot be counted in with the first.

It was taught: If one intended to pick up a thing detached (for instance, a knife that had fallen in a row of vegetables), and while doing so (accidentally) cut off one of the growing vegetables, he is free. [1] If, however, he intended to cut something lying on (but not attached to) the ground, and instead cut off something growing out of (attached to) the ground, Rabha

declares him free, because no intention to cut off the growing object existed in the mind of the man; but Abayi declares him culpable for the reason that, while the man did not intend to cut off what he really did, still the intention to cut was prevalent in the man's mind, and he really did cut; hence he is that the Scriptures refer to as "one who acteth unintentionally."

It was also taught: One who intended to throw (from private ground into public) only for a distance of two ells, but threw four, is freed by Rabha, for the reason that the original intention was to throw within a permissible distance (throwing for a distance of two ells only was permitted); but Abayi held him culpable, for the reason that the act originally intended was accomplished. If one threw in public ground mistaking it for private, Rabh holds him free (for the same reason as before), and Abayi holds him culpable (also for the same reason as he gave in the previous case). Both instances though analogous are necessary. In the first instance (of cutting), where Rabh holds the offender not culpable, the intention to cut off what was prohibited did not exist, but in the second instance (throwing four ells), it could not be accomplished without (carrying out the intention of) throwing for two ells, and passing the two ells (the object landing at a distance of four). Now, lest one might say that Rabha coincides with the opinion of Abayi, and from the latter instance it might be assumed that the offender intended to throw two, but threw four ells, hence Rabha holds him not culpable, for the intention to throw four ells did not exist; but if one threw four ells in what he thought was private ground, and which turned out to be public ground, the intention was carried out, for the object thrown reached its desired destination, and therefore lest one say that in *this* case Rabha coincides with Abayi, the two instances are illustrated, and we are informed that not even in this case does Rabha agree with Abayi.

MISHNA *II*.: The principal acts of labor (prohibited on the Sabbath) are forty less one--viz.: Sowing, ploughing, reaping, binding into sheaves, threshing, winnowing, fruit-cleaning, grinding, sifting, kneading, baking, wool-shearing, bleaching, combing, dyeing, spinning, warping, making two spindle-trees, weaving two threads, separating two threads (in the warp), tying a knot, untying a knot, sewing on with two stitches, tearing in order to sew together with two stitches, hunting deer, slaughtering the same, skinning them, salting them, preparing the

hide, scraping the hair off, cutting it, writing two (single) letters (characters), erasing in order to write two letters, building, demolishing (in order to rebuild), kindling, extinguishing (fire), hammering, transferring from one place into another. These are the principal acts of labor--forty less one.

GEMARA: For what purpose is the number (so distinctly) given? (They are enumerated.) Said R. Johanan: If one labored through total ignorance of the (laws governing the) Sabbath, he must bring a sin-offering for every act of labor performed.

"*Sowing, ploughing*." Let us see: Ploughing being always done before sowing, let it be taught first, The Tana (who taught as in the Mishna) is a Palestinian, and in his country they sow first and then plough. Some one taught that sowing, pruning, planting, transplanting, and grafting are all one and the same kind of labor. What would he inform us thereby? That if one performs many acts of labor, all of the same class, he is liable for but one sin-offering.

Said R. Aha in the name of R. Hyya b. Ashi, quoting R. Ami: "One who prunes is guilty of planting, and one who plants, transplants, or grafts is guilty of sowing." Of sowing and not of planting? I mean to say of sowing also.

Said R. Kahana: One who prunes and uses the branches for fuel is liable for two sin-offerings, one for reaping and one for planting. Said R. Joseph: One who mows alfalfa (hay) is guilty of mowing and planting both. Said Abayi: One who mows clover hay (which sheds its seed when mowed) is liable (for a sin-offering) for mowing and sowing.

"*Ploughing*." There is a Boraitha: Ploughing, digging, furrowing, are one and the same kind of labor. R. Shesheth said: One who removes a knoll of earth in a house becomes liable for building, and if in a field he is liable for ploughing. Rabha said: Filling up a hole in the house makes one liable for building, and in the field for ploughing. R. Aba said: Digging (the same hole) on Sabbath for the purpose of making use of the earth alone is free even according to R. Jehudah, who said that the performance of an unnecessary act of labor makes one culpable. He refers to labor that improves an object and not to that which spoils it.

"*Mowing*." There is a Boraitha: Reaping, vintaging, selecting dates, olives, and figs are all one and the same kind of labor.

"*Binding into sheaves*." Rabha said: One who gathers salt from salt works is guilty of the act of binding into sheaves. Abayi, however, said that binding into sheaves applies only to produce of the soil.

"*Threshing*." There is a Boraitha: Threshing, carding, and hackling belong to one and the same class of labor.

"*Threshing, winnowing, fruit-cleaning*," etc. Is not winnowing, fruit-cleaning, and sifting one and the same class of labor? Abayi and Rabha both said: "Acts of labor executed during the construction of the tabernacle are enumerated separately, though they are of an analogous nature." Let pounding then also be enumerated (as labor, inasmuch as the spices for incense had to be pounded). Said Abayi: (It is true! This is also one of the acts of labor performed at the construction of the tabernacle.) But as the poor people do not pound their grain, generally using it in its natural state, it is not included in the principal acts of labor. Rabha, however, said: "The Mishna should be understood in the sense Rabbi expounded it: The principal acts of labor are forty less one. Should pounding be included, there would be forty even." Let then one of the

principal acts (enumerated in the Mishna) be stricken out and substituted by pounding. Hence it is best to accept Abayi's reason.

The rabbis taught: If there are several kinds of food before a man on the Sabbath, he may select such as he desires and even set it aside, but he must not separate the good from the spoilt. If he does this, he is liable for a sin-offering. How is this to be understood? R. Hamnuna explained it thus: "One may select the good from the spoilt for immediate or later consumption, but he must not pick out the spoilt, leaving the good for later consumption. If he does this, he is liable." Abayi opposed: "Is there anything mentioned (in the Mishna) about separating the good from the spoilt?" He therefore explained the Boraitha as follows: "Food may be selected for immediate consumption and setting aside, but not for later consumption. If this is done, it is considered the same as storing it, and involves the liability." This was reported to Rabha by the rabbis, and he said: Na'hmeni (Abayi) has explained it correctly.

When two kinds of food were before a man and he selected part of one kind and ate it, then selected part of the other kind and set it aside, R. Ashi learned in the Boraitha that the man is free, but R. Jeremiah of Diphti learned that he *is* culpable.

[paragraph continues] Is there not a Boraitha which teaches that he is? This presents no difficulty. R. Ashi refers to food served in a basket or a bowl, but R. Jeremiah learned that the man sifted the food in a sieve.

When R. Dimi came to Babylon he related: It happened on a Sabbath, when R. Bibhi's turn came to entertain the disciples, that R. Ami and R. Assi arrived. R. Bibhi placed before them a basket filled with fruit (together with the leaves and sprigs), and I am not aware what his reason was. Was he of the opinion that it is forbidden to separate food from trash, or was it his liberality?

Hyzkiyah said: "One who shells pressed lupines (on the Sabbath) is culpable." Does this mean to say that it is forbidden to separate food from trash? Nay; there is quite a difference where pressed lupines are concerned; they must be scalded just seven times and immediately shelled, for if they are not immediately shelled they become putrid; therefore to shell them is equal to separating trash from good food.

"*Grinding*." Said R. Papa: To chop beets is the same as to grind. Splitting wood for kindling is the same as grinding. Said R. Ashi: Splitting leather is the same class of work as cutting by measure (if he is particular about it).

"*Kneading, baking*." R. Papa said: "The Tana of the Mishna omitted the cooking of spices that took place in the tabernacle and instead of that taught about baking." It is because the Tana follows the order of baking (first comes kneading, then baking, and cooking is included in the latter).

"*Wool-shearing, bleaching*." Rabba b. b. Hana in the name of R. Johanan said: Spinning wool from a live animal on the Sabbath makes one liable for three sin-offerings; one for shearing, one for carding, and one for spinning. R. Kahana, however, said: This is not the way shearing,

carding, and spinning are done (hence he is not at all culpable).

If one plucked quills, cut off their tops, and singed them on both sides, the rabbis taught that he is liable for three sin-offerings.

"*Tying, untying*." What kind of tying and untying was done at the construction of the tabernacle? Rabha, others say R. Ilayi, said: This is the way of the (snail) fishers; to untie their nets from one load and tie them on another.

"*Sewing on with two stitches*." But two stitches do not hold (hence it cannot be called work)? Said Rabba b. b. Hana

in the name of R. Johanan: Provided two knots are made, one at each end.

"*Tearing in order to sew together with two stitches*." Was there any tearing done at the tabernacle? Both Rabba and R. Zera said: When a curtain became moth-eaten, they tore out the moth-eaten part and sewed it together.

R. Zutra b. Tobiah in the name of Rabh said: "To rip a seam on the Sabbath makes one liable; to learn from a magician is a sin involving capital punishment; one who knows the science of astronomy and does not make use of it, is not worth being spoken of." What is a magician? Rabh says a "wizard." Samuel says a "blasphemer." R. Simeon b. Pazi in the name of R. Joshua b. Levi said: Whoever knows the science of astronomy, and does not occupy himself with it is the party alluded to [Isaiah, v. 12]: "But the deeds of the Lord they regard not and the works of his hands they behold not." Said Samuel b. Na'hmeni in the name of R. Jonathan: "Whence the adduction that we are bound to learn astronomy?" From the passage [Deut. iv. 6]: "Keep, therefore, and do them, for this is your wisdom and your understanding before the eyes of the nations." And what kind of wisdom is before the eyes of the nations? You must say that it is astronomy.

"*Hunting deer*." The rabbis taught: To catch a slug and squeeze it so that it bleed is a transgression involving only a sin-offering. R. Jehudah says, involving two sin-offerings, for R. Jehudah holds that squeezing comes in the class of threshing, but the rabbis told him that squeezing is not threshing. What reason do the rabbis give for their opinion? Said Rabha: Their reason is that threshing can only be applied to produce of the soil.

"*Slaughtering*." Under which category? Rabh said "dyeing," and Samuel said "taking life." Said Rabh: "I said something which may seem absurd, and so as to prevent future generations from deriding me I will give a reason for what I said: Butchers are in the habit of coloring the throat of the carcasses with blood, in order that people may see (that the meat is still fresh) and be induced to buy."

"*Salting the hide*," etc. Is not salting a hide preparing it? Both R. Johanan and Resh Lakish said: "Strike out one of them in the Mishna and substitute it with 'marking.'

"*Scraping the hair off*," etc. R. Aha b. Hanina said: To polish a floor on the Sabbath is a transgression of the same

order as scraping off the hair of the hide. Said R. Hyya b. Abba: R. Ashi told me three things in the name of R. Joshua b. Levi: Sawing rafters on the Sabbath (that they may be equal in size and pointed) makes one liable the same as "cutting." Daubing a plaster on a piece of cloth makes one liable the same as "scraping hair off." Smoothing a stone makes one culpable of "hammering." R. Simeon b. Kisma in the name of R. Simeon b. Lakish, said: Painting pictures on vessels or blowing out glassware makes one culpable the same as hammering. R. Jehudah said: Removing a border from cloth also makes one as culpable as hammering; but only in case one is particular about having the border remain on his cloth.

"*Writing two letters*." The rabbis taught: "If one wrote one large letter instead of two small ones, he is not guilty of any transgression; but to erase a large letter, in the place of which two small letters can be written, makes one liable for a sin-offering (for the erasing is done with the intent to write, and two small letters are evidently needed). Said R. Mena'hem b. Jossi: "This is the only case where the law is more rigorous with erasing than with writing."

"*Building, demolishing*," etc. Both Rabba and R. Zera said: All work which is done in the last stages is considered the same as hammering (which is generally the finishing work).

"*These are the principal acts of labor*." "These," to exclude a derivation of the same kind as the principal when it is done with the principal together, and as to which R. Eliezer makes one liable for the derivation also.

"*Less one*," to exclude the extension of the warp or the woof, which R. Jehudah added to the principal acts; but the rabbis said: Extending the warp is included in warping and extending the woof is included in weaving.

MISHNA *III*.: And there is also another rule which was laid down: Whosoever carries out on the Sabbath such things as are fit and proper to be stored and in such a quantity as is usually stored, is liable; but whatever is not fit and proper to be stored, nor in such a quantity as is generally stored, only he who would store this is liable (because the storing shows that for him it is valuable).

GEMARA: "*Whatever is not fit and proper*." Said R. Elazar: The latter part of the Mishna is not in accordance with R. Simeon b. Elazar, who said in the following Boraitha: "There is a rule that all which is not fit and proper to be stored nor in

such a quantity as is generally stored, if held by one man fit and another man has carried it out, the latter becomes liable for the intention of the owner."

MISHNA *IV*.: It is forbidden to carry about chopped straw in quantities of a cow's mouthful,

stalks in quantities of a camel's mouthful, stubble in quantities of a lamb's mouthful, herbs in quantities of a kid's mouthful, leek and onion leaves, if fresh, equal in size to a dried fig, and if dry in quantities of a kid's mouthful. The different kinds of fodder are, however, not to be counted together, as the prescribed quantities are not equal for all.

GEMARA: "*Chopped straw*." What kind? Said R. Jehudah: "Pease stalks." When Rabhin came to Babylon he said thus: There is no diversity of opinion concerning the carrying out of straw in quantities of a cow's mouthful for a camel, as all agree that in such a case one is liable; the point of their differing is concerning the carrying out of stalks (which is not fit food for a cow) in quantities of a cow's mouthful for a cow. R. Johanan frees him, as he holds that unfit food cannot be regarded as nutrition; and Resh Lakish makes him liable, as he holds that even such is considered nutrition.

"*Stubble in quantities of a lamb's mouthful*." But does not a Boraitha state "the size of a dried fig"? Both quantities are equal.

"*Leek and onion leaves, if fresh*," etc. Said R. Jossi b. Hanina: Inferior food is not to be counted in with superior (in order to make out the prescribed quantity). Superior food, however, may be counted with the inferior (in order to complete the prescribed quantity).

MISHNA *V*.: The carrying out of an article of food the size of a dried fig makes one liable. And the different kinds of them are to be counted together, for the prescribed quantity is the same for all kinds, with the exception of husks, kernels, and stalks; likewise bran, both coarse and fine. R. Jehudah says that the husks of lentils are not excepted, because they are boiled with the lentils and are counted in the same (as food).

GEMARA: "*Except bran*," etc. Is not fine as well as coarse bran to be counted in (the same as food)? Is there not a Mishna concerning the separation of the first dough, that one is bound to separate the first dough made of flour mixed with its fine or coarse bran? Answered Abayi: "This is no contradiction. Poor people only generally use such mixed flour (when Sabbath is concerned something possessing real value is always spoken of)."

"The husks of lentils are not excepted," etc. Husks of lentils only, and not of beans? Did not a Boraitha state that R. Jehudah said, "husks of beans and lentils"? This presents no difficulty. The Mishna refers to husks of new lentils and the Boraitha refers to old lentils and beans. And why not old ones? Said R. Abuhu: Because they (the husks of lentils and beans) are black and when dished up look like flies in a bowl (they are not eaten with the food and therefore are not counted in).

Footnotes

130:1 Kiddush and Habhdalah are the benedictions recited at the commencement and termination of the Sabbath, the former over wine or bread and the latter only over some

beverage.

131:1 The literal translation of the passage Exod. xxxi. 14 is "Every one that defileth it [the Sabbath], death shall he die."

132:1 In that passage there is a superfluous Mem (the Hebrew prefix meaning *of* or *from*). Hence its literal translation is "of one of them."

134:1 In the Tract Kriroth the reason of the man's non-culpability is explained as follows: it is written [Lev. iv. 23], "if now his sin wherein he has sinned come to his knowledge," and this should be supplemented with "but not the sin which he had not in mind to commit at all." Whence we see plainly that the Scriptures designate as an unintentional sinner only one who knows wherein he has sinned; for instance, if he became aware that it was Sabbath, or that the acts performed by him were prohibited. In our case, however, where a man intended to pick up a thing but accidentally cut a thing, it is evident that no intention to cut existed in the man's mind, and the intent of the "wherein he has sinned" in the Scriptures does not apply to him. Rabha goes further and says that even if one actually accomplished an act he had in mind and which was permissible on the Sabbath, but at the same time accidentally committed a prohibited act (as illustrated in the above instance), even in such a case the scriptural "wherein he has sinned" cannot apply, nor can he be accounted the scriptural unintentional sinner who is liable for a sin-offering. Abayi, however, differs with him, as will be seen farther on.

Next: Chapter VIII: Regulations Concerning the Prescribed Quantities of Victuals and Beverages Which Must Not Be Carried About on the Sabbath

CHAPTER VIII.

REGULATIONS CONCERNING THE PRESCRIBED QUANTITIES OF VICTUALS AND BEVERAGES WHICH MUST NOT BE CARRIED ABOUT ON THE SABBATH.

MISHNA *I.*: The prescribed quantities (of victuals and beverages) prohibited to be carried about on the Sabbath (are as follows): Sufficient wine in a goblet, which with the addition of a certain quantity of water would make a full goblet of wine (fit to drink); 1 milk to the quantity of a mouthful, honey sufficient to cover a wound with, oil sufficient to anoint a small limb with, and water in quantities sufficient for a medical bath for the eyes. For all other liquids and also of whatever can be poured out, the prescribed quantity is a quarter of a lug (about a quart). R. Simeon says: The prescribed quantities for the liquids enumerated in this Mishna are also a quarter of a lug, and the various prescribed quantities specified apply only to those who store such liquids.

GEMARA: A Boraitha, in addition to this Mishna, states: "The quantity which suffices for a good goblet of wine." What is to be understood by a good goblet? The goblet used in benediction 2 after meals.

R. Na'hman in the name of R. Abuhu said: "A goblet used at benediction after meals must contain no less than a fourth of a quarter lug (of pure wine), so that when mixed with water the prescribed quantity (a quarter lug) will be made." Said Rabha: We have learned this in our Mishna: "Sufficient wine in a goblet, which with addition of water would make a full goblet"--commented on by the Boraitha to mean "which would make a good goblet." From the close of the Mishna we learn: "For all other liquids the prescribed quantity is a quarter of a lug." [And] he is in accordance with his theory elsewhere, that wine which is not strong enough to be mixed with three parts of water is not

considered wine at all. Said Abayi: "There are two objections to this: Firstly, there is a Mishna that wine fit to drink is such as has been mixed with two-thirds water, like the wine of Sharon; secondly, do you think that the water in the pitcher (intended for mixing with the wine) is counted in?" Rejoined Rabha: The first objection does not hold good, as Sharon wine is an exception, which although weak is nevertheless good; or it may be that there the particularity is the color, which is not changed by an addition of two-thirds; but concerning taste, I say that only one which can bear three-fourths of water is considered. As to the second objection, concerning water in the pitcher, it is also nothing as concerning Sabbath. The quality and not the quantity is considered, and the wine in question is of that quality.

There is a Boraitha that the prescribed quantity for the extract of wine is the size of an olive. So said R. Nathan. And R. Joseph said that R. Jehudah agrees with him in a Mishna, Tract Nidah

(which will be translated there).

The rabbis taught: The prescribed quantity for animal milk is the equivalent of a mouthful; for human milk and the white of an egg, as much as is used for the preparation of a salve for a sore eye; when mixed with water, the prescribed quantity is as much as is used to bathe both eyes with.

"*Honey sufficient to cover a wound with.*" A Boraitha states: "Sufficient to cover the mouth of a wound with."

Said R. Jehudah in the name of Rabh: The Holy One, blessed be He, has created nothing useless in the world. He created the snail as a remedy for a sore, the fly for the sting of a wasp, the mosquito for the bite of a serpent, the serpent for the mange, and the lizard for the bite of a scorpion.

The rabbis taught: There are five terrors through which the strong succumb to the weak. The Maphgia terrorizes the lion, [1] the mosquito the elephant, the lizard the scorpion, the swallow the eagle, and the kilbith (a small fish) the whale. Said R. Jehudah in the name of Rabh: Is any similarity to be found in the Scripture? [Amos, v. 9] That causeth wasting to prevail against the strong."

R. Zera once met R. Jehudah standing at the door of his (R. Jehudah's) father-in-law in a very cheerful mood, and disposed to answer a whole world full of questions. He asked

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him: "What is the reason that (in a flock) the she-goats generally go ahead of the sheep?" And he answered: "In accordance with the Creation: At first darkness, then light" (she-goats are generally dark and lambs [or sheep] white). "Why are she-goats not covered with a tail?" asked the former again. And he answered: "Those who cover us are (in turn) covered, and those that do not cover us are not covered." (Because sheep provide us with wool, they are also provided with cover.) "Why has a camel a short tail?" "Because it feeds on thorns (in order that the thorns may not catch in its tail)."

And "Why has an ox a long tail?" "Because he grazes in plains and must protect himself from the gnats." "Why are the feelers of a locust soft?" "Because the locusts swarm in fields; were their feelers hard, the locusts would be blinded by losing them in knocking against trees, for Samuel said, all that is necessary to blind a locust is to tear off his feelers." "What is the reason that the lower eyelids of a hen are turned up (and cover the upper eyelids)?" "Because a hen soars to her roost and (in a house full of smoke) she might be blinded by the smoke from below."

The rabbis taught the following: "Three creatures grow stronger as they grow older, viz.: Fishes, serpents, and swine."

"*Oil sufficient to anoint a small limb with,*" *i.e.*, a little finger. At the school of R. Janai it was thus explained: "It means the smallest limb of a one-day-old infant." And the same was said by R. Simeon b. Elazar.

"*Water sufficient for a medical bath for the eyes*." Said Abayi: Let us see! Of an article which is very often used for one purpose and seldom for another, the rabbis always leniently permitted the maximum quantity to be used, as the prescribed quantity, of the article much in use. Again, when an article is used alike for several purposes, the rabbis restrict the prescribed quantity to its minimum: (to be more explicit) wine is frequently used as a beverage and only at times as a medicament; hence the rabbis regard it solely as a beverage (and determine the maximum quantity); the same is the case with milk; honey, however, which is used to a greater extent as a medicine than for nutritive purposes, is regarded as a medicine and therefore restricted to the prescribed quantity for medicines (which is a smaller quantity than a beverage). What is the reason, then, that the rabbis restrict water, which is certainly more of a beverage than a medicament, to the minimum quantity? Rabha answered: They

hold with the opinion of Samuel, who declared that all liquids used as medicine for the eyes inflame and blind, except water, which soothes and does not blind (and in this case the Mishna has reference to one who carried about water on the Sabbath as a medicament for the eyes).

"*For all other liquids, the prescribed quantity is a quarter of a lug*." The rabbis taught: For blood and all other liquids the prescribed quantity is a quarter of a lug. R. Simeon b. Elazar said the prescribed quantity for blood is as much as is used to apply to one eye; because that quantity is used when the eye is afflicted with a cataract.

All these prescribed quantities apply only to those who carry (the victuals or beverages) about. To those, however, who store them (the victuals or beverages) the carrying of even the least imaginable quantity is prohibited (because from his storing them we see that he considers them valuable); but R. Simeon says all these prescribed quantities apply to such as stored (victuals and beverages and hence considered them valuable); but as for persons who only carried them out, for all beverages (whether used also for medical purposes or not) if carried out in any quantities less than a quarter of a lug there is no culpability.

The former teacher said that "those prescribed quantities only refer to those who carry out," but to "those who store them the carrying of even the least imaginable quantity is prohibited." Is the one who stores not also a carrier (he is culpable for carrying and not for storing)?

Answered Abayi: The Boraitha treats of a case where a master ordered his retainer to clear off the table. If the retainer removed something of value to everybody from the table, it constituted a quantity which must not be carried about on the Sabbath. If the thing was of value only to the master and the retainer carried it out, he (the retainer) is culpable, in spite of the fact that the thing was of value to his master alone. (Hence he is called one who stores, and not a carrier) for it signifies that the thing is worth storing.

Again, the former teacher said: "And the sages agree with R. Simeon that the prescribed quantity of slops is a quarter of a lug." Of what use are slops? Said R. Jehudah: "To prepare mortar with." But were we not taught that the prescribed quantity for mortar is only as much as suffices to make the mouth of a bellows-pipe with? Aye, but for the purpose of preparing mortar, a man would not trouble himself to carry out so small

a quantity as is sufficient to make a mouth of a bellows-pipe, hence a quarter of a lug would be the least that would be carried out to make mortar with.

MISHNA *II*.: The prescribed quantity for rope is as much as suffices to make a handle for a basket; for reeds, as much as suffices to hang a fine or coarse sieve thereon: R. Jehudah says: As much as is sufficient to take the measure of a child's shoe; for paper, as much as suffices to write a toll-bill on--a toll-bill itself must *not* be carried out; the prescribed quantity for paper that has been erased is as much as will wrap the top of a perfume bottle. The prescribed quantity for vellum is as much as suffices for the covering of an amulet; for parchment, as much as suffices for the writing of the smallest portion of the phylacteries, which is "Hear, O Israel for ink, as much as is necessary for the writing of two letters (characters); for paint, as much as will paint one eye. The prescribed quantity for (bird) lime is as much as will suffice to put on a lime twig; for pitch or sulphur, as much as will cover a hole (in a quicksilver tube); for as much as will fill up a small leakage (in a utensil); for loam, as much as suffices to make all orifice for a pair of bellows used by goldsmiths; R. Jehudah says the prescribed quantity for loam is as much as will make a stand for a goldsmith's crucible; for clay, as much as will cover the mouth of a goldsmith's crucible; for lime, as much as will cover the little finger of a maiden; R. Jehudah says for lime the prescribed quantity is as much as will cover the temple of a maiden; R. Nehemiah says as much as will cover the back part of a maiden's temple.

GEMARA: "*For paper, as muck as suffices to write a toll-bill on*." There is a Boraitha: "The legal size of a toll-bill is a piece of paper large enough to contain two letters." Is this not contradictory to the Boraitha which says that the carrying out of a piece of blank paper large enough for two letters of ordinary size to be written on makes one liable? Answered R. Shesheth: "The two letters referred to by the Mishna are the letters used by the toll-master (usually extra large letters). Rabha, however, said that the piece of paper referred to is large enough for two letters and has a margin by which it can be held.

The rabbis taught: If one carry out on the Sabbath an unpaid promissory note he is liable, but not so for a paid one. But R. Jehudah said: The same is the case with a paid-up note, for its value lies therein, that the owner may show it to a prospective creditor in order to prove promptness of former payments. What

is the point of their differing? Said R. Joseph: "They differ if it is allowed to preserve a paid note. According to the rabbis it is prohibited, and according to R. Jehudah it may be done. [1]

"*For vellum is as much as suffices to make a cover for an amulet*." Rabha questioned R. Na'hman: "Of what size?" and the latter answered: "As we were taught in the Mishna, as much as will suffice to make a cover for an amulet." And what is the size in regard to tanning? The same quantity. And where do you take this from? From the Mishna farther on, that gives the same quantity for wool preparing to be woven and for already woven. The same is here as it is for tanning; the quantity is the same as if already tanned. (The further discussion is repeated in many places, and each is translated in its proper place.)

"*Parchment as much as suffices to write thereon the smallest portion*," etc. Is this not a contradiction to the Boraitha which teaches that the prescribed quantity for parchment and double parchment (δο-ξ•στος) is as much as suffices to write a Mezuzah (inscription on the door-posts) on? The Mezuzah mentioned in the Boraitha refers to the Mezuzah contained in the phylacteries. Does the Boraitha call phylacteries Mezuzah? Yea, it does elsewhere. But since the latter part of the Boraitha teaches explicitly that the prescribed quantity for parchment is as much as is required for writing the smallest portion of the phylacteries, which is "Hear, O Israel," is it not to be assumed that in the former part of the Boraitha a Mezuzah proper is meant? Read: What is the prescribed quantity for parchment and double parchment? For the latter as much as is required for the writing of a Mezuzah; and the former, for the writing of the smallest portion of the phylacteries, which is "Hear, O Israel."

Rabh said: "Double parchment is the same as parchment. The same as we may write the portions of the phylacteries on parchment, so may we also write them on double parchment." Were we not taught "*parchment* sufficient," etc., which certainly does not mean double parchment? Nay, it is only a better observance to write on parchment than on double parchment.

"*For ink*," etc. A Boraitha adds: The prescribed quantity for dry ink is as much as will suffice for the writing of two letters; for prepared ink as much as a quill or stub will require to write the two letters with. Said Rabha: For carrying out sufficient

ink for two letters and writing the two letters while carrying the ink, one is culpable; for the writing is equivalent to depositing a thing in a place. But for carrying out sufficient ink for one letter only, and writing that letter while carrying the ink, afterward carrying out another quantity of ink sufficient for one letter and writing the other letter while carrying the ink, one is not culpable; for by the time the second letter was written (the ink of the first letter dried out and) the prescribed quantity of ink was not visible. Again Rabha said: For carrying out food to the size of one-half of a dried fig, laying it down, and then carrying out another quantity of like size (one is not culpable), for it is considered as if the first quantity had been consumed by fire. But why should it be thus considered? Is it not lying there yet? He means to say: If one picked up the first before he laid down the second, the first is to be considered as if consumed by fire, and hence one is not culpable.

"*For paint*," etc. Is it not a fact that people never dye one eye only? Said R. Huna. Modest women veil one eye and only paint the other. To this explanation some one objected, viz.: For paint as a remedy the prescribed quantity is as much as will dye one eye, said R. Simeon b. Elazar, but as a means for beautifying the prescribed quantity is as much as will dye two eyes. Hillel, the son of R. Samuel b. Nahmeni, explained it by saying that R. Simeon b. Elazar referred to country damsels who dye both eyes.

"*For bird lime as much as is sufficient to put on a lime twig*." There is a Boraitha: As much as is sufficient to put on a twig for the purpose of catching birds.

"*For pitch and sulphur*," etc. A Boraitha states: Sufficient to fill up a hole in a quicksilver tube.

"*For loam*," etc. A Boraitha states: Sufficient to fill up the cracks in a small stove.

"*For clay*," etc. The rabbis taught: It is prohibited to carry out hair for the purpose of mixing it with clay used to cover a goldsmith's bellows-pipe with.

"*For lime*," etc. A Boraitha states: To cover the smallest finger of a damsel. Said R. Jehudah in the name of Rabh: Daughters of Israel, when they become of age, and they have not yet developed the signs of puberty, the poor smear their bodies with lime, the rich ones with fine meal, and princesses with myrrh oil. What is myrrh oil? στακτη. And R. Jeremiah b. Aba said: Olive oil from olives which were only one

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third ripe. There is a Boraitha: R. Jehudah said: It is called (in Menachoth) *anphiknun* (ο μ φανιον); and why do they anoint with this? Because it removes the hair and makes the complexion clear. R. Bibi had such a daughter and he anointed her with the same, each member of her body separately; and finally one of the prominent men paid him four hundred zuz and married her. He had a Gentile neighbor who also had such a daughter, and he anointed her whole body at one time, and she died; said he: "R. Bibi has murdered my daughter." Said R. Na'hman: "R. Bibi, who used to drink beer, his daughter needed the anointing, but our daughters do not need it, for we do not drink beer."

"*As much as is sufficient to cover*," etc. What is meant by Kalkub and Andiphi? Said Rabh: The temple, and the hair between it and the ear. Are we to understand from the Mishna that the prescribed quantity permitted by R. Jehudah is larger than that of the rabbis? Is it not a fact that the rabbis allow the larger prescribed quantity? Aye; R. Jehudah allows a larger quantity than R. Nehemiah, but still a smaller quantity than the rabbis. Or it is possible that an Andiphi means a forehead, from the following narration: "It happened that a Galilean once came to Babylon and was requested to lecture on metaphysics. The Galilean consented and began: I will interpret to you something in the style of R. Nehemiah. Meanwhile a wasp flew out of the wall, stung him on the Andiphi (forehead) and the Galilean died on the spot. It was said that he died a merited death." [1]

MISHNA *III*.: For sealing-wax the prescribed quantity is as much as is required for the sealing of a bale of goods, so is the decree of R. Aqiba; the sages, however, say for the sealing of a letter. For dung or fine sand as much as is required to fertilize (the soil around) a cabbage stalk, according to R. Aqiba, and to the sages as much as is required to fertilize (the soil around) a leek stalk. For coarse sand as much as is required to fill a trowel, for reed as much as is required to make a writing-pen from, or should it be thick or split, as much as is required to fry the softest beaten egg with, (which) mixed with oil, (lies) in a hot shell.

GEMARA: "*Sufficient to fill a trowel*." A Boraitha states: (For coarse sand the prescribed quantity is) as much as is required

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to fill the trowel of a plasterer. Who is the Tana that holds that sand is an improvement on plaster? Said R. Hisda: R. Jehudah of a Boraitha (Baba Bathra, 60*b*); Rabha, however, said it may be also in accordance with the rabbis, as they hold that the spoiling (of the whiteness) of the

plaster (through the admixture of sand) is an improvement of its durability.

"*For reed as much as is required to make a writing-pen*." A Boraitha teaches: A pen that reaches the joints of the fingers.

"*Or should it be thick*." A Boraitha teaches: To fry a beaten egg mixed with oil. Said Mar b. Rabhina to his son: "Didst thou ever hear what is understood by the softest egg?" He answered that R. Shesheth said it was a hen's egg, Why does the Mishna call it a light (soft) egg? Because the sages found that no eggs are cooked as quickly as pullets' eggs. Why is it that all other prescribed quantities prohibited to be carried out on the Sabbath are of the size of a dried fig, and here the quantity is of the size of an egg? Answered R. Na'hman: "Even here is meant the quantity of a dried fig from an egg."

MISHNA *IV*.: The quantity of a bone is that large enough to be made into a spoon--R. Jehudah says large enough to be made into a key; glass of sufficient size to be used for scraping off the points of a weaver's spindles; a splinter or a stone large enough to throw at a bird--R. Elazar b. Jacob says to throw at an animal.

GEMARA: Is it to be understood from the Mishna that the prescribed quantity allowed by R. Jehudah is larger than that allowed by the rabbis? Is it not a fact that the rabbis allow the larger? Said Ulla: (R. Jehudah refers to) the tooth of a key.

"*Glass of sufficient size*," etc. A Boraitha states: Sufficient glass to cut two threads at once.

"*A splinter*," etc. Said R. in the name of R. Johanan: "Provided it is large enough to hurt." But how large should it be? R. Elazar b. Jacob teaches in a Boraitha: The weight of ten zuz.

Zunin once entered the college and questioned the teachers. "What is the prescribed quantity for gravel used in privy for toilet purposes?" He was answered: "The equivalent in quantity to the size of an olive, a nut, or an egg." Said he: "It would then be necessary to carry along a scale." So they deliberated, and decided that the quantity should be a handful.

Rabba b. R. Shilla asked of R. Hisda: "Is it permitted to carry up gravel to the roof (for the purpose cited above, as it is

extra trouble, which is prohibited on the Sabbath)?" He answered: "Precious is the honor of man. For honor's sake, even a direct scriptural commandment may be circumvened!"

Said R. Johanan: It is forbidden to use fragments of earthenware for toilet purposes (after doing one's necessities) on the Sabbath. What is the reason? Is it to say because it is dangerous, then it should be forbidden also on week days; or is it to say because of witchcraft, it would also be prohibited on week days? What then is the reason? Is it because it may remove the hair (from the posterior)? Would this not be an act performed without intention (and work done unintentionally, he is of the opinion is permissible)? R. Nathan b. Ashia answered: A great man made the assertion; we have to find, therefore, a reason for it. There is no doubt whatever that

fragments of earthenware are prohibited to be used on week days, when some other things can easily be obtained; but on Sabbath, if nothing else happens to be on hand, nor may be bought, the fragments might be considered as utensils; and, lest one might be inclined to think that for this reason they would be permitted to be used, he informs us that they are not. Can witchcraft be exercised through the agency of fragments? Aye; for the following proves it:

R. Hisda and Rabba b. R. Hana once travelled in a ship, and a matron who wanted to go on the same ship asked their permission to sit down near them, which they refused. She pronounced a certain word and the ship stood still, but they in turn pronounced a certain word and the ship moved on. She then said: "It grieves me sorely that I cannot inflict some punishment on you, seeing that you use no fragments for toilet purposes, nor do you kill the vermin in garments, nor do you pull out vegetables from a bundle (but cut the bundle first)." (Hence it may be seen that fragments can be used as a means for the exercise of witchcraft.)

R. Huna said to his son Rabba: Why do you not go more frequently to R. Hisda, who expounds the law so pointedly? Answered the son: "Of what use would it be? He never taught me but mere worldly knowledge, such as, for instance: Not to sit down to excrementize with a jerk nor to force myself too much, lest the intestines come out and endanger life." R. Huna then rejoined: "Thou sayest 'mere worldly knowledge.' He is interested in the life of the people, and you call it mere worldly knowledge. So much the more should you go to him."

R. Hisda and Rabhina differ as to the consequences of one withholding to perform his necessities. One is of the opinion that foul breath is the result, while the other holds that the entire body assumes a bad odor. The opinion of the latter is supported by the following Boraitha: "He who takes nourishment while in need of performing his necessities is compared to a stove in which a fire was built without previously removing the ashes, which is invariably the cause of a bad smell. One who feels like performing his necessities, but cannot do so, R. Hisda advises that he keep on sitting down and getting up until able. R. Hanan from Neherdai advises him to look for another place, but the rabbis say the sole remedy is to think of nothing else."

The rabbis taught: One who is about to eat a hearty meal should walk ten times four ells or four times ten ells, then perform a (natural) necessity, and after that go in and sit down to the meal.

MISHNA *V.*: The prescribed quantity of fragments (of earthenware) is the size of such as are placed between two boards, is the decree of R. Jehudah. R. Meir says, of a size sufficient to stir a fire with. R. Jossi, of a size to receive (hold) a quarter of a lug. Said R. Meir: Although no positive proof for my assertion can be found in the Scripture, still a vague reference can be deduced from the passage [Isaiah, xxx. 14]: "So that there cannot be found among their fragments a sherd to rake fire from a hearth." Said R. Jossi: "Therefrom you would adduce your proof? It says immediately after that [ibid., ibid.], 'and to draw water from a pit.'"

GEMARA: We must assume that the prescribed quantity allowed by R. Jossi is larger than that allowed by R. Meir; but the scriptural text shows that R. Meir allows the larger; because, is it possible that the prophet will curse them with a larger object after having cursed them with a smaller? Said Abayi: R. Meir also means a fragment used to stir a big fire with; hence his fragment is larger than R. Jossi's.

"*Said R. Jossi*," etc. Is not R. Jossi's answer correct? What could R. Meir rejoin? R. Meir might say that the prophet intends to convey that not only shall they not have anything of the least value left, but they shall not even have anything that is as valueless as a piece of fragment big enough to contain a drop of water.

Footnotes

143:1 The wines used in Palestine were so strong that they had to be mixed with water in order to make them fit to drink.

143:2 At the benediction after meals a goblet possessing certain qualities and which is called a goblet of benediction must be used, as ordained in the Tract Benedictions.

144:1 Maphgia is a species of insect, unknown to us at the present day, of which Rashi said that it was a small animal whose voice was so strong that when a lion hears it, he is afraid of it, taking it for a very great animal.

148:1 Abayi and Rabba also discuss the same note, but this is repeated in the Third Gate, in whose translation we are now engaged, and is, therefore, omitted here.

150:1 A Mishna teaches elsewhere that it is a sin to lecture on metaphysics, outside of the university.

Next: Chapter IX: Rabbi Aqiba's Regulations On Different Subjects

CHAPTER IX.

RABBI AQIBA'S REGULATIONS ON DIFFERENT SUBJECTS.

MISHNA *I*.: R. Aqiba said: Whence do we deduce that one who carries an idol is as unclean (ritually) as a woman suffering from menstruation? From the passage [Isaiah, xxx. 23]: "Thou wilt cast them away as a filthy thing. 1 'Get thee hence!', wilt thou say unto them." Thus, in the same manner as a woman suffering from menstruation causes (ritual) uncleanness, so does also an idol.

GEMARA: Rabba said: The passage mentioned in the Mishna should be interpreted thus: "Estrange 2 them from thyself as a stranger; Get thee hence, say unto him, but tell him not to come in!" Further Rabba said: It is unanimously conceded that the carrying of idols causes (ritual) uncleanness and hence it is compared to menstruation, but there is a dissenting opinion among the rabbis concerning a stone (used as a pedestal for an idol or upon which a woman suffering from menstruation chanced to sit) beneath which there were utensils. R. Aqiba holds that idols are regarded the same as menstruating women and the vessels beneath the stone become defiled (for the reason that the stone is the basis of the idol, and the former becomes part of the idol, and hence everything beneath it becomes defiled), but the rabbis regard an idol as a reptile, *i.e.*, as a reptile lying upon a large stone (in which case any utensils chancing to be beneath the stone do not become defiled). This decree is unanimously conceded.

R. Ahadbou b. Ami asked: What about an idol smaller in size than an olive? R. Joseph objected to this question: What is the purpose of the query? Does it refer to the prohibition of idolatry? Even an idol the size of a fly, like the idol of the

[paragraph continues] Ekronites, which was called Zebub 1 (fly) is also prohibited; for we are taught it is written in the passage [Judges, viii. 33]: "And they made themselves Baal-berith for a god"; by Baal-berith is meant the Zebub (fly) idol of Ekron, and every idolater (at that time) made an image of his idol in miniature in order to keep it constantly at hand and to be able at any time to take it out, embrace, and kiss it; hence there is no question as to size. Nay, the query of R. Ahadbou is in regard to causing defilement? Either it is regarded as a reptile and defiles, even if only of the size of a lentil, or it is considered as a corpse and causes defilement if it is the size of an olive. (A part of a corpse the size of an olive causes the person touching it to become defiled.) Answered R. Ivia, and according to others Rabba b. Ulla: "Come and hear the following Boraitha: 'No defilement is caused by idols smaller than olives, for it is written [II Kings, xxiii. 6]: "And cast its powder upon the graves of the children of the people."'" (The adduction is) that as a corpse cannot cause defilement by a part less than the size of ail olive, the same is the case with idols, which are regarded as corpses.

MISHNA *II*.: (R. Aqiba says again:) Whence the adduction that a ship, though a wooden vessel, is not subject to defilement? From the passage [Prov. xxx. 19]: "The way of a ship is in the heart of the sea."

GEMARA: It is certain 2 that R. Aqiba intends to convey to us that the reason the passage cited in the above Mishna informs us of a fact known to all is because the sense is to be construed thus: In the same manlier as the sea is not subject to defilement, so also a ship call never become defiled.

There is a Boraitha: Hananyah said: We make the adduction from a sack (which is subject to defilement) that everything which can be carried after the manner of a sack, sometimes full and at other times empty, is subject to defilement, except a ship, which cannot be carried at all, full or empty. What are the points of difference in the two adductions (of R. Aqiba and Hananyah)? They are concerning a small (river) boat. One holds that all boats (ships) must be regarded as the sea itself (hence not subject to defilement), while the other is of the opinion that a small (river) boat must be regarded as a sack because it is

carried to the place whence it is launched and hence is subject to defilement; as R. Hanina b. Aqa'bbia said: Why did the rabbis say that a small (river) boat is subject to defilement? Because it is usually loaded in the dry dock and then carried into the river.

Rabbi Johanan in the name of Rabbi said: "One should not absent himself from the college even for one hour. Behold, this teaching (concerning a river boat) has been taught in the schools for many years and no one knew the reason for it until R. Hanina b. Aqa'bbia came and explained it."

R. Jonathan said: One should never absent himself from the house of learning or abstain from learning the law, even when at the point of death, for it is written [Num. xix. 14]: "This is the law, when a man dieth in his tent"; (*i.e.*) even at the point of death man must occupy himself with the study of the law. Resh Lakish, however, adduces from the same verse that one does not retain (in memory) the law, unless he is ready to die for it.

MISHNA *III*.: (R. Aqiba said:) Whence do we adduce that in a patch of ground six spans long by six spans wide five different kinds of seed may be planted--one kind each in each of the four corners and one in the centre of the patch? From the passage [Isaiah, lxi. 11]: "For as the earth bringeth forth her growth, and as a garden causeth what is sown therein to spring forth." (We see then) it is not written "as a garden causeth *its seed* to spring forth," but *what is sown therein*.

GEMARA: How is this to be understood from that passage? Said R. Jehudah: The passage cited in the above Mishna is to be thus explained: "The earth *bringeth forth* her growth." "Bringeth forth" (which is in the singular) can be counted for "one" (kind of seed). Her "growth" (also singular) can also be counted for "one." (Now we have two.) "What is grown therein" (evidently plural) can be counted for two more (making four), and "to spring forth" (in the singular again) can be counted as one, making five in all; and (as far as the six spans square are concerned) the rabbis are quite certain (through tradition) that five different kinds of seed in a patch six spans square do not interfere with one another. But whence do we know that the assurance of the

rabbis can be depended upon? Answered R. Hyya b. Aba in the name of R. Johanan, from the passage [Deut. xix. 14]: "Thou shalt not remove the landmark of thy neighbor, which they of old time have set," which is to be explained: "Thou shalt not go beyond what is limited by those

of old." But what have those of old limited? Answered R. Samuel bar Na'hmeni in the name of R. Jonathan: "It is written [Gen. xxxvi. 20]: "These are the sons of Seir the Chorite, who inhabited the land." Only they inhabited the land? Did the rest of mankind inhabit heaven? It simply means to state that they made the earth inhabitable by their knowledge of agriculture and their experience as to what ground is adapted for the planting of olive trees, vines, date trees, etc.

R. Assi said: "The teaching of R. Aqiba in the Mishna refers to a patch of ground six spans square, excluding the corners.

Rabh said: "The above Mishna has reference only to an isolated patch (or furrow) of ground, but in a furrow surrounded by others one can *not* sow five kinds of grain, (as it is necessary to have a space of three spans dividing one kind from the other). Are there not corners, however, (to the furrow)?" The school of Rabh explained, in the name of Rabh, that reference is made to furrows into the corners of which grain had been sown.

Samuel, however, said, even in a furrow surrounded by other furrows. But will not the seeds interfere one with another? Samuel refers to furrows which are planted alternately from north to east and from south to west. [1]

MISHNA *IV*.: (R. Aqiba says again): Whence the adduction that a woman, from whom seed of copulation [2] escapes only on the third day (after lying with her husband), is unclean? From the passage [Exodus, xix. 15]: "And he said unto the people, Be ready against the third day. Approach not unto a woman." Whence the adduction that a child may be bathed on the third day of its circumcision, even if that day fall on a Sabbath? From the passage [Gen. xxxiv. 25]: "And it came to pass on the third day, when they were sore." Whence the adduction that a string of crimson wool must be tied on the head of the goat that was to be sent away? [3] From the passage [Isaiah, i. 18]: "Though they should be red like crimson, they shall become (white) like wool." Whence do we adduce that anointing one's self on the Day of Atonement is equal to drinking? Although no positive proof is apparent, still a reference

can be adduced from the passage [Psalms, cix. 18]: "And it cometh like water on his body and oil into his bones."

GEMARA: The first part of the Mishna (treating of a woman) is not in accordance with the opinion of R. Elazar b. Azaryah, who declares her (the woman) clean in that case; the second part of the Mishna, however, (treating of bathing on the third day after circumcision) is in direct accord with his own words (as will be seen in Chapter XIX.). Therefore some rabbis claim that the first part of the Mishna reads clean instead of unclean, *i.e.*, that the whole Mishna is according to the opinion of R. Elazar b. Azaryah, but other rabbis claim that the first part of the Mishna is according to the opinion of other Tanaim, who differ with Elazar b. Azaryah (and the

word unclean is correct).

"*And they shall be ready against the third day*" [Ex. xix. 11]. R. Ada b. Ahbha said: "Moses went up (to the Mount Sinai) at daybreak, and descended the following break of day." He went up at break of day, as it is written [Ex. xxxiv. 4]: "And Moses rose up early in the morning and went up unto Mount Sinai." He descended on the following daybreak, as it is written [ibid. xix. 24]: "Go, get thee *down*, and then shalt thou come *up*, thou, and Aaron with thee." We see that the Scripture compares the descending to the ascending, and as the ascending was early in the morning, so was also the descending early in the morning.

The rabbis taught: The decalogue was given to Israel on the sixth day of the (third) month, but R. Jossi said on the seventh day.

Said Rabba: All agree that on the first day of the (third) month the Israelites arrived at the wilderness of Sinai. It is adduced from the analogy of the word "this"; [Ex. xix. 1] "on *this* day they arrived at the wilderness of Sinai," and [Ex. xii. 2] "*this* month to be to you the first of months." As in the latter instance the "this" referred to the first, so does it also in the former; furthermore (he said), all agree that the law was given to Israel on a Sabbath; this is to be adduced from the analogy of the word "remember" [Ex. xx. 8]: "*Remember* the Sabbath day to keep it holy"; and [ibid. iii. 3]: "*Remember* this day on which ye came out from Egypt." As in the latter instance the very day of their coming out of Egypt is referred to, so is it also in the former instance. Where the rabbis do differ is what day was the first of the month. R. Jossi holds

that the first of the month was set on the first of the week, and on that day no commandments were given, because the children of Israel were tired from their long journey. On the second day (of the week) the Lord said to them: "Ye shall be unto me a kingdom of priests" [Ex. xix. 1]. On the third of the week he commanded them to keep away from the mountain. On the fourth to separate themselves from their wives. The rabbis, however, hold that the first of the month was set on the second of the week; that on that day nothing was commanded the Israelites, they being tired; on the third the cited passage [Ex. xix. 1] was said; on the fourth day they were to keep away from the mountain, and on the fifth to separate themselves from their wives.

An objection was raised: It is written [Ex. xix. 10]: "Go unto the people, and sanctify them to-day and to-morrow." Is this not contradictory to the statement of R. Jossi (in whose opinion the sanctification lasted three days)? R. Jossi may explain this thus: "Moses added one day upon his own authority," as we have learned in a Boraitha: "Three things were done by Moses upon his own authority, and the Holy One, blessed be He, agreed thereto. They are: He added one day (to the period of sanctification), he separated himself from a woman, and he broke the tablets into pieces." "He added one day upon his own authority." What was his object? The Lord said unto him: "To-day and to-morrow," and he construed the words as follows: "To-day must be equal (in duration) to tomorrow; as to-morrow includes the might, so must to-day; the night, however, having already passed, another day must be added in order to make up for the lost night." Whence do we know that the Lord agreed to this? Because the Shekhina did not appear on Mount Sinai until the Sabbath morn. What was the object of Moses in separating himself from a woman? He applied the order given the Israelites (to separate themselves from their wives) to himself in a so much larger degree (*i.e.*, the order having been issued to the Israelites for the reason that they would shortly hear the word of the Lord, it would be so much more proper for

him, who frequently was spoken to by the Lord, to separate himself *entirely* from a woman). And whence do we know that the Lord agreed to this also? It is written [Deut. v. 27 and 28]: "Go, say to them, Return you unto your tents. But as for thee, remain thou here by me." And what was his object in breaking the tablets? He thought: "As concerning the

[paragraph continues] Passover sacrifice, which is only one of the six hundred and thirteen commandments, it is written [Ex. xii- 43]: 'No stranger shall eat thereof,' how can I give the tablets, which contain all the commandments, to the children of Israel, who are now all renegades?" And whence do we know that the Holy One, blessed be He, agreed even to this? It is written [Ex. xxxiv. 1]: "And the Lord said unto Moses, Hew thyself two tables of stone like unto the first; and I will write upon these tables the words which were on the first tables which thou didst break." Said Resh Lakish: "'Which thou didst break' really means, 'which thou didst break rightfully.'"

Another objection was raised: It is written [Ex. xix. 11]: "And they shall be ready against the third day." According to R. Jossi it should be the fourth day. This is no objection! as it is said above that Moses added another day upon his own authority. Come and hear another objection: "The sixth means the sixth of the week and of the month." Is this not contradictory to the statement of the rabbis, who say: "The first of the month was the second day of the week?" Yea, (it may be that) this Boraitha holds to the opinion of R. Jossi.

Come and hear: On the fourteenth day of the month of Nissan, during which (month) the Israelites went out of Egypt, they killed the Passover sacrifice and on the fifteenth day they went out. On the night before that the first-born of the Egyptians were beaten. That day (the fifteenth) was the fifth of the week. Now, if the fifteenth of Nissan was the fifth of the week, we must certainly say that the first of the next month (Iar) was Sabbath and the first day of the following month (Sivan) was the first day of the week. Is this not contradictory to the statement of the rabbis, that the first day of the month was the second day of the week? The rabbis might have assumed that the month of Iar was an intercalary month.

Said R. Habibi of 'Huzunah to R. Ashi: Come and hear: It is written [Ex. xl. 17]: "And it came to pass in the first month in the second year, on the first of the month, that the tabernacle was reared up," and a Boraitha teaches that this day was crowned tenfold, viz.: "That day was the first of the six days of the creation; the first of the days on which the first prince presented his offering before the altar; the first of the days on which the priests (Aaron and sons) did their work in the sanctuary; the first day on which the children of Israel brought their sacrifices into the tabernacle; the first of the days

on which the heavenly fire descended upon the altar; the first of the days on which the priests were permitted to eat the sacrifices in the tabernacle; the first of the days on which the Shekhina appeared in the tabernacle; the first day on which Aaron the High Priest blessed the Israelites in the tabernacle; the first of the days on which sacrifices were no more permitted to be brought on the high places outside of the tabernacle, and the first day of the first of the months." Now, if the first day of this year was the first day of the week, we must say the first of Nissan of the preceding year fell on the fourth day of the week, because we have learned in another Boraitha:

"Anonymous teachers say that there can be not more than four days' difference between one New Year's day and another." If a leap year intervened, then there may be a difference of five days. Is this not contradictory to the opinion of both the rabbis and R. Jossi? According to R. Jossi there were seven short months (of twenty-nine days) in that year, but according to the rabbis there were eight such months, (consequently the difference from the last year was only in two days,) as this year was an extraordinary one. (And the first day of the month Iar of the last year was on Friday.)

Another objection was raised: We have learned in the Tract Seder Aulim that on the fourteenth day of the month of Nissan, during which (month) the Israelites went out of Egypt, they killed the Passover sacrifice; on the fifteenth they went out, and that day was Friday. Now, if the first of the month of Nissan of that year was Friday, we must say that the first day of the following (Iar) month was on the first day of the week and the first of the succeeding month (Sivan) was on Monday. Is this not contradictory with R. Jossi? R. Jossi will then say that this Boraitha is in accordance with the opinion of the rabbis.

Come and hear another objection: R. Jossi says: "On the second day Moses went up on the Mount Sinai and came back. The same he did on the third day, but on the fourth day, when he came back, he remained." Came back and remained? Whence did he come back--it does not say that he went up at all? Say, then, on the fourth day he went up, came back, and remained. On the fifth he built an altar and offered a sacrifice. On the sixth he had no time. Shall we assume that he had no time because on that day the Israelites received the Torah? (If we say that the second refers to the second day of the week,

it must be a fact that the Torah was given on Friday, and would this not be a contradiction to his [R. Jossi's] own opinion?) Nay; he had no time because the Sabbath was at hand.

A Galilean lectured in the presence of R. Hisda: Praised be the merciful God, who gave a triple law (the Pentateuch, Prophets, and Hagiographa) to a triple people (Kahanites, Levites, and Israelites) through a man who was the third child of his parents (Miriam, Aaron, and Moses), on the third day of sanctification and in the third month. We see from this that the Galilean held in accordance with the teachings of the rabbis.

It is written [Ex. xix. 17]: "And they placed themselves at the foot of the mount." Said R. Abhdimi b. Hama b. Hassa: "It appears from this passage that the Holy One, blessed be He, inclined the mountain toward the children of Israel and gave them the choice of either accepting the Torah or being buried right under the mountain." Said R. Aha b. Jacob: "This would accord us the right to protest against any punishment inflicted upon us for violating the law. (For we were compelled to accept it.)" Said Rabha: Although (at that time they were compelled to accept it), at the time of Ahasuerus (King of Persia) they accepted it voluntarily. For it is written [Esther, ix. 27]: "The Jews confirmed it as a duty, and took upon themselves and upon their seed." And it is to be explained: "They took upon themselves voluntarily what at one time they were compelled to accept." R. Simai lectured: "At that time, when Israel answered to the information of Moses, 'We will do and we will obey,' six hundred thousand angels had furnished to every one of Israel two crowns: one for the answer 'We will do,' and one for the answer 'We will obey.' Thereafter when Israel sinned (with the Golden Calf) twelve hundred thousand destroying angels descended and took them away; as it is written [Exodus, xxxiii. 6]: 'The

children of Israel then stripped themselves of their ornaments (they wore) from (the time they were at) Mount Horeb.'" Said R. Hami b. R. Hanina: "For in the same passage it may be deduced that in the same place where they were furnished they were taken away from them." Said R. Johanan: All of them were given as a reward to Moses, as immediately after the verse cited it is written: "And Moses took the tent," etc. Said Resh Lakish: We hope, however, that the Holy One, blessed be He, will return them to us, as it is written [Isaiah, xxxv. 10]: "And the ransomed of the Lord shall return, and come to Zion with song, with everlasting joy upon their

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head." The expression everlasting means that it was already upon their heads at the time of reception of the Torah.

R. Elazar said: At the time the Israelites said "We will do" and afterward "We will obey" a heavenly voice (Bath-kol) was heard, which said unto them: "Who unfolded unto my children this mystery known only to the angels?" For it is written [Psalms, ciii. 20]: "Bless the Lord, ye his angels, mighty in strength, that execute his word, hearkening unto the voice of his word," and from this we see that only angels can execute first and then obey.

A Sadducee once noticed Rabha studying and observed that he in his absent-mindedness held his (Rabha's) finger underneath his knee and pressed it so hard that blood spurted from the finger. Said the Sadducee [1]to him: "Impetuous people, whose mouths precede your ears! Ye are still of the same vehemence! Ye must first hear the Torah before you accept it and not accept without knowing its prescriptions!" Answered Rabha: We who are upright men trusted Him, as it is said of us [Proverbs, xi. 3]: "The integrity of the upright guideth them," but to those men who are continually fault-finding the latter part of the same verse [ibid., ibid.] can be applied, viz. "But the cunning of the treacherous destroyeth them."

R. Samuel b. Na'hmeni in the name of R. Jonathan said: It is written [Solomon's Song, iv. 9]: "Thou hast ravished my heart, O my sister, (my) bride! thou hast ravished my heart with one of thy eyes." This means: When thou didst but receive the Torah, it was with one of thy eyes. When thou wilt obey it, it will be with both of thy eyes.

R. Johanan said: It is written [Psalms, lxviii. 12]: "The Lord gave (happy) tidings; they are published by female messengers, a numerous host." This implies that every word emanating from the mighty God was heralded in seventy languages. The school of R. Ishmael, however, (adduced the same from another passage): It is written [Jeremiah, xxiii. 29]: "Is not thus my word like the fire? saith the Lord, and like a hammer that shivereth the rock?" As the hammer that strikes emits a multitude of sparks, so, is every word emanating from the Holy One, blessed be He, heralded in seventy different languages.

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R. Hananel b. Papa said: It is written [Proverbs, viii. 6]. "Hear! for of noble things will I speak." Why are the words of the Torah compared to a noble? To inform us that inasmuch as a noble has in his power the disposal over life and death, so have also the words of the Torah. This is similar to what Rabha said: To those who walk in the right ways of the law, it is an elixir of life, but to those who pursue not the right way, it is the poison of death.

R. Jehoshua b. Levi said: It is written [Solomon's Song, i. 12]: "A bundle of myrrh is my friend unto me, that resteth on my bosom." Said the Congregation of Israel: "Lord of the Universe! Although my friend chastiseth [1] me, still he resteth on my bosom!"

The same rabbi said: "It is written [Solomon's Song, v. 13]: "His cheeks are as a bed of spices, as turrets of sweet perfumes." Every word emanating from the Holy One, blessed be He, fills the whole world with the aroma of spices. If the world was filled with the aroma arising from the first word, where could the second word go? The Holy One, blessed be He, sent forth a wind from His store, which cleared off the aroma of each word, as it is written [ibid.]: "His lips like lilies, dropping with fluid myrrh." Do not read Shoshanim (lilies) but Sheshonim (learned men). The same said again that from each word which came from the Holy One, blessed be He, the soul of Israel was going out, as it is written [ibid., ibid. 6]: "My soul had failed me while he was speaking." But the Holy One, blessed be He, has let down the dew with which He will in the future make the resurrection and bring them to life; as it is written [Psalms, lxviii. 10]: "Rain of beneficence didst thou pour down, O God!"

He also said: When Moses ascended into Heaven, said the angels before the Holy One, blessed be He, "Lord of the Universe! What has one born of a woman to do among us?"

The Lord answered: "He came to receive the Torah." Said the angels again: "Wouldst Thou give a precious thing that Thou hast preserved since nine hundred and seventy-four generations before the creation of the world to a being of flesh and blood? (It is written [Psalms, viii. 5]): What is the mortal, that thou rememberest him? and the son of man, that thou thinkest of him?" Said the Holy One, blessed be He, unto

[paragraph continues] Moses: "Give thou them an answer!" Answered Moses before the Lord: "Lord of the Universe! What is written in the law, which Thou gavest unto me?" [Ex. xx. 2]. "I am the Lord, thy God, who have brought thee out of the land of Egypt." Moses then said to the angels: Were ye in Egypt? Have ye served Pharaoh? Of what use can the Torah be unto you? Further, what is written in the Torah [ibid. 3]: "Thou shalt have no other gods before me." Are ye among the nations that worship idols? And furthermore, what is written in the Torah? [ibid. 8]: "Remember the Sabbath day to keep it holy." Do ye any labor on the week-days? [Ibid. 7]: "Thou shalt not take the name of the Lord thy God in vain." Are ye merchants, that ye must swear? [Ibid. 13]: "Honor thy father and thy mother." Have ye fathers and mothers to honor? [Ibid. 12]: "Thou shalt not kill," etc. Is there any jealousy among you? Have ye any evil intent?

Then the angels confessed and praised the Holy One, blessed be He, as it is written [Psalms, viii. 10]: "O Eternal One, our Lord, how excellent is thy name on all the earth!" but the ending of the verse [ibid. 2], "Thou who hast set thy majesty above the heavens," is not cited in this verse. Then every one of the angels befriended Moses and each of them disclosed some mystery to him, as it is written [Psalms, lxviii. 19]: "Thou didst ascend on high, lead away captives, receive gifts among men," which means that because at first the angels called Moses one born of a woman (man), they at the close gave him gifts, and even the Angel of Death disclosed a mystery to him, as it is written [Num. xvii. 12 and 13]: "And he put on the incense, and made an atonement for the people. And he stood between the dead and the living." Now if the Angel of Death had not disclosed unto Moses this mystery, how could he have imparted it to Aaron?

Said R. Jehoshua b. Levi again: When Moses descended from Heaven, Satan came before the Holy One, blessed be He, and said: "Lord of the universe! Where is the Torah?" And the Lord answered: "I have given it to the earth." Satan descended to earth and said to it: "Where is the Torah?" And the earth answered [Job, xxviii. 23]: "God (alone) understandeth her way, and he knoweth her place." Satan then went to the sea, and the sea said: "She is not with me." He then went to the deep, and the deep answered: "Not in me is she," as it is written [ibid. 14]: "The deep saith, Not in me is she;

and the sea saith, She is not with me." [Ibid. 22]: "Perdition and death say: With our ears have we heard a report of her." Satan then ascended before the Holy One, blessed be He, and said: "Lord of the Universe! I have looked for the Torah on the whole earth and could not find it." Then said the Lord unto him: "Go unto the son of Amram." And Satan went to Moses and said to him: "Where is the Torah which the Holy One, blessed be He, gave unto thee?" And Moses answered: "Who am I, that the Holy One, blessed be He, should give me the Torah?" Said the Lord unto Moses: "Moses, art thou a liar?" Said Moses before the Lord: "Lord of the Universe! Shall I claim that Thou hast given unto me a precious thing which Thou didst fondle every day?" Said the Holy One, blessed be He, unto Moses: "Because thou hast humbled thyself, the Torah shall bear thy name," as it is written [Malachi, iii. 22]: "Remember ye the law of Moses my servant."

The same rabbi said again: When Moses ascended unto Heaven (and he was silent), the Lord said unto him: "Moses, is there no peace in thy city?" And Moses answered: "Is it then proper that a slave should salute his Master?" Said the Lord: "Still thou shouldst have wished me well." Then said Moses before the Lord [Numbers, xiv. 17]: "And now, I beseech thee, let the greatness of the power of the Lord be made manifest as thou hast spoken."

"*A string of crimson wool,*" etc. Did not the passage say (Kashanim) 1 "like years" and not like crimson, for were it like crimson it would read Kashani? Said R. Itz'hak: "The passage is thus to be explained: The Lord said unto Israel: If your sins all lie before me as the years that have passed since the creation, they shall nevertheless become white as snow."

Rabha lectured: It is written [Isaiah, i. 18]: "Go now, 2 and let us reason together, said the Lord." It should not read "go now" but "come now," and not "saith the Lord" but "said the Lord." The passage should be explained: In the future the Lord will say unto Israel: Go to your ancestors and they shall rebuke you; and Israel will say before the Lord: Lord of the

[paragraph continues] Universe, to whom shall we go? Shall we go to Abraham, to whom Thou hast said: "Know of a surety that thy seed shall be a stranger in a land which is not theirs, and they will make them serve," and he did not pray for us? Shall we go to Isaac, who, when blessing Esau, said [Gen. xxvii. 40]: "And it shall come to pass that when thou shalt have the dominion thou canst break his yoke from off thy neck," and he also did not pray for us? Shall we go to Jacob, to whom Thou didst say [Gen. xlvi. 4]: "I will go down with thee into Egypt," and not even he prayed for us? To whom shall we go now? Then the Lord will say unto Israel:

"Inasmuch as ye have attached yourselves to me, though your sins should be as scarlet, they shall become white as snow."

Said R. Samuel b. Na'hmeni in the name of R. Jonathan: It is written [Isaiah, lxiii. 16]: "For Thou art our Father; for Abraham knoweth nothing of us, and Israel recognizeth us not; Thou, O Lord, art our Father, our Redeemer from everlasting is thy name." In the future the Holy One, blessed be He, will say to Abraham: "Thy children have sinned before me," and Abraham will answer: "Let them be wiped off (the face of the earth) for the sake of the holiness of Thy name." The Holy One, blessed be He, will then say: "I shall tell this to Jacob, who had trouble in rearing his own children; perhaps he will pay for the present generation." The Lord said to Jacob: "Thy children have sinned before me," and Jacob gave the same reply as Abraham. Then said the Lord: "Not with the aged can feeling be found, nor with the young wise counsel." The Lord then said to Isaac: "Thy children have sinned before me." Then said Isaac before the Lord: "Creator of the universe! Thou sayest my children, are they not Thine? When they answered before Thee, 'We will do,' and (then) 'obey,' Thou calledst them 'My son, my first-born,' and now they are my children and not Thine! And furthermore, how long a time have they sinned before Thee? Let us see; what is the duration of a man's life? Only seventy years. Take off the twenty years that Thou dost not punish for sin and only fifty remain. Take off the nights and only twenty-five full years remain. Deduct again twelve years and six months spent in praying, eating, and in the performance of other necessities, only twelve and one-half years remain. If Thou wilt bear the whole it is well, but if not let me bear half and Thou the other half. If Thou wilt say that I must bear the whole, did I not sacrifice myself for Thee?"

[paragraph continues] Then Israel said (unto Isaac): "For thou (alone) art our father." Said Isaac unto them: "Instead of praising me, praise ye the Holy One, blessed be He," and he pointed them on high with his finger. "There is the Lord!" Then they lifted up their eyes unto Heaven and said: Thou, O Lord, art our Father, our Redeemer from everlasting is Thy name.

R. Hyya b. Aba said in the name of R. Johanan: "Jacob deserved to go down into Egypt in iron shackles (because that is the usual way of going into exile), but his merits precluded such a thing, as it is written: "With human cords I ever drew them forward, with leading-strings of love; and I was to them as those that lift off the yoke from their jaws, and I held out unto them food" [Hosea, xi. 4].

MISHNA *V.*: The prescribed quantity for wood is as much as suffices. to cook an (easily boiled) egg; for spices as much as would suffice to spice such an egg--and the different spices are counted together; nut-shells, pomegranate peel, isatis, and cochineal, as much as suffices to dye the edge of a small piece of cloth; alum, native carbonate of soda, Cimolia chalk, vegetable soap, as much as suffices to wash the edge of a small piece of cloth. R. Jehudah says as much as will suffice to remove a blood stain.

GEMARA: Have we not learned this already? Reeds, split, as much as will suffice to cook an egg? In that case we must assume that the reeds could not be used for any other purpose, but wood which can be put to a multitude of uses, as, for instance, to make the handle for a key, (should be limited to a smaller quantity). He comes to teach us that the same quantity also applies in this case.

"*Nut-shells*," etc. Is this not a contradiction to what we have learned elsewhere, that dyes may not be carried in quantities sufficient to exhibit a sample of the color in the market? Said R. Na'hman in the name of Rabba b. Abuhu: "Because one will not take the trouble to make dye sufficient only for a sample."

"*Native carbonate*," etc. A Boraitha in addition to this states, that coming from Alexandria but not from Anphantrin.

"*Vegetable soap*" (Ashleg). Said Samuel: "I have inquired of a number of seafaring men and they have told me that the name for it is Ashalgoh; it is found in the shells of a pearl-oyster and it is extracted with iron needles."

MISHNA *VI*.: The prescribed quantity for (aromatic) pepper

[paragraph continues] (pimento) is the least possible amount; for tar it is the same; for different kinds of spices and metals it is also the same; for the stone and the earth of the altar, torn pieces of the scroll of laws or its cover, it is also the same, because such things are generally preserved by men. R. Jehudah said: The same quantity applies to everything pertaining to the worship of idols, because it is written [Deut. xiii. 18]: "And there shall not cleave to thy hand aught of the devoted things."

GEMARA: To what use can such a small quantity of pepper be put? It may be used by one whose breath is foul.

"*For tar*." For what purpose can tar in so small a quantity be used? It may be used by one who has the sickness Tzilchathah (an illness where only one-half of the head aches).

"*For different kinds of spices*." The rabbis taught: The prescribed quantity both for aromatic spices as well as for ill-smelling oils is the same (least possible quantity); for purple dye also the same, and for roses only one rosebud.

"*And metals*." Of what use are they? We have learned, R. Simon b. Elazar said: They can be used to make a goad.

"*The torn pieces of the scroll of laws*." Said R. Jehudah: Book-worms, silk-worms, vine-worms, date-worms, and pomegranate-worms are all dangerous to human life. There was a disciple sitting before R. Johanan eating dates, and the disciple said to him: "Rabbi, there are thorns in the dates." Said the rabbi: "The date-worm (Pah) has killed this man."

MISHNA *VII*.: One who carries the chest of a spice dealer is liable for one sin-offering only, although there may be many spices in the chest. The prescribed quantity for garden seeds is the equivalent in size to a dried fig. R. Jehudah b. Bathyra said. Five different seeds. The prescribed quantity for cucumber seeds are two, for pumpkin seeds the same, for Egyptian beans the same; a living locust (which may be eaten), be it ever so small, must not be carried, but dead locusts may be carried in quantities less than a dried fig. The prescribed quantity for vineyard birds [1]

living or dead is the smallest possible quantity, because they were preserved for medicinal purposes. R. Jehudah said: One must not carry out a living locust, (which must *not* be eaten), be it ever so small, because such locusts were kept as playthings for small children.

GEMARA: "Cucumber seeds." The rabbis taught: The

prescribed quantity for seeds used for planting is two, but for seeds used for food it is the equivalent of a pig's mouthful. How much is a pig's mouthful? The seeds of one cucumber. For cucumber seeds used as fuel the prescribed quantity is as much as will suffice to cook an egg; for cucumber seeds used as counters (for figures) only two. Anonymous teachers say five.

The rabbis taught: One who carries two hairs from the tail of a horse or a cow is culpable, because the hairs are always preserved for making nets. The prescribed quantity for hog bristles is only one; for willows (used for wickerwork) two; for tree-bark [1] one strip.

"*R. Jehudah says: A locust (which must not be eaten)*," etc. Why did not the first Tana of the Mishna mention this? Because in his opinion it is forbidden to carry it even on week-days, lest one eat it. If such is the case, why should an eatable locust be allowed to be carried? Did not R. Kahana stand before Rabh and a small locust lighted on his lips: Rabh said to him. (R. Kahana), Take it away, lest people say that thou hast eaten it and thou hast violated the commandment [Leviticus, xi. 43]: "Ye shall not make yourselves abominable with any creeping thing that creepeth"? Nay; there was no fear that the locust would be eaten alive, but they apprehended lest it die and then be eaten. (An eatable locust would not matter, but an uneatable locust would be a violation of the law.) If that is the case, why does R. Jehudah permit this? R. Jehudah holds that there is no fear of the locust being eaten when dead, as the child will mourn its death.

Footnotes

154:1 The Hebrew term used for "filthy thing" in the passage is "Davah," and in Leviticus, xx. 18, Davah is translated, "a woman suffering from her separation (menstruation)."

154:2 The word "Tizrom" (cast them away) Rabba holds to be a derivation from the word "Zar" (strange) and not from "Zarah" (cast away).

155:1 See II Kings, i. 2.

155:2 The term "it is certain" (peshitah) is generally used by the Gemara in the sense of the question, "Is it not self-evident?" In the above case, however, it is intended for an explanation of the reason for R. Aqiba's adduction. See Rashi.

157:1 Rashi declares this to be the best possible explanation of Samuel's opinion, and says that many others offered many different explanations, none of which are comprehensible.

157:2 See Leviticus, xv. 16, 17, 18, and ibid. xxii. 4.

157:3 See Lev. xvi. 21.

163:1 It is not meant a real Sadducee, as they did not yet exist in Rabha's time, but one of the other sects which opposed the oral law; and the name may be here a correction of the censor instead of *Akum*, as there are many such corrections of the censor. It may also be another sect for which the name Sadducee was borrowed.

164:1 The Hebrew term for bundle is Tzror, and for oppressor is Tzoror; hence R. Johanan interprets Tzror as if it were Tzoror.

166:1 *Shanah* in Hebrew means year (*Shanim*, plural, years). *Shany* means crimson, but the latter is used only once (Prov. xxxi. 21) in plural; the former, however, is generally used in plural, as, *for many years*. As here it is in plural (*Kashanim*) he declares it like years.

166:2 In Isaac Leeser's translation of the Bible, which we use in Biblical citations, this passage is rendered "Come now," but the literal translation is "Go now."

169:1 None of the commentators can explain what kind of birds is meant.

170:1 Rashi declares in his commentary that he does not know what it is nor for what purpose it is used. See Aruch.

Next: Chapter X: Further Regulations Concerning The Prescribed Quantity of Things To Be Stored

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CHAPTER X.

FURTHER REGULATIONS CONCERNING THE PRESCRIBED QUANTITY OF THINGS TO BE STORED.

MISHNA *I*.: One who had stored anything for planting, sampling, or medicinal purposes (before the Sabbath) and carried some of it out (into public ground) on the Sabbath, be it ever so small a quantity, is liable for a sin-offering. Any one else, however, is culpable only then if (he carried out) the prescribed quantity. Even the one who had stored is culpable only for the prescribed quantity, if he brought the thing carried out by him back (to private ground).

GEMARA: For what purpose is it said in the Mishna, "One who stored anything"? Would it not be sufficient to say, "One who carried out things intended for planting, sampling, or medicinal purposes, be the quantity ever so small, is culpable"? Said Abayi: The Mishna treats of the case of a man who, after storing the thing, forgot for what purpose he had stored it, and then carried it out into the street for any purpose whatever. Lest one say that the original intention (to store it) is abolished, and now the thing carried out has for him only the same value as for others, and he would be culpable only for carrying out the regularly prescribed quantity, it comes to teach us that one who commits a deed executes his original intention.

R. Jehudah said in the name of Samuel: R. Meir declares one who carried out only a single wheat grain, intended for sowing, culpable. Is this not self-evident? The Mishna taught: "Be it ever so small." One might presume that the term "be it ever so small" denotes something smaller than a dried fig but not smaller than an olive. R. Meir therefore informs us (that it refers even to one wheat grain). R. Itz'hak, the son of R. Jehudah, opposed this: "(We see that) the Mishna declares one culpable for an act originally intended to be performed, but now, supposing a man intended to carry out his entire household at once; is he then not culpable until he had accomplished the entire task, even if he had carried out part of it?" The answer

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was: If a man has an absurd intention it is abolished by the law, and he is culpable for carrying out the prescribed quantity.

"*Any one else, however*," etc. Our Mishna is not in accordance with that of R. Simeon b. Elazar (on page 145).

Rabha in the name of R. Na'hman said: "If one carried out a thing the size of a dried fig with the intention of eating it, but changed his mind in the meantime and then intended to sow it, or, on the contrary, first intended to sow it and then to eat it, he is culpable. Is this not self-evident? The prescribed quantity for both eating and sowing was carried. Lest one say that the removing and the depositing of a thing must be done with the very same intention in order to make one

culpable, which is not so in this case, he comes to teach us that *he is* culpable.

"*If he brought the thing*," etc. Is this not self-evident? (for he did not sow it, we then see that his original intention is abolished). Said Abayi: "The Mishna speaks of a case where the man took the thing brought from his house, and threw it into the place where his full supply was kept, and the place where he threw it remained conspicuous. Lest one say, if the place is conspicuous, his original intention is not yet abolished, because he took the same thing again, it comes to teach us that the throwing of the thing among his other supplies annulled his original intention.

MISHNA *II*.: If one intended to carry out victuals and deposited them on the doorstep, whether he afterward carried them out (into the street) himself, or this was done by some one else, he is not culpable, because he did not accomplish the deed at one time. If one deposited a basket of fruit on the outside doorstep, even if the bulk of the fruit was on the outside (in the street), he is not culpable, unless he carried out the entire basket (into the street).

GEMARA: What kind of a doorstep does the Mishna have reference to? Should we assume that the doorstep was public ground, how can the man be not culpable? He carried out from private into public ground. Should we assume that the doorstep was private ground, why does the Mishna teach that if *he* carried it out (into the street), or any one else, he is not culpable? It is again a case of carrying out from private into public ground? We must therefore assume that the doorstep was unclaimed ground, and it comes to teach us that only when the victuals were deposited on the unclaimed ground the man is not culpable, but if they had been carried out from private

into public ground, even by way of unclaimed ground, he is culpable. And the Mishna does not agree with the opinion of Ben Azai, of the following Boraitha: "One who carries out from his store into the market by way of the alley is culpable, but Ben Azai says he is not."

"*If one deposited a basket of fruit*," etc. Said Hyzkiyah: The case in question treats only of a basket filled with cucumbers and beets, but if full of mustard seeds he is culpable. From this we see that Hyzkiyah considers a vessel no support [1] (*i.e.*, the cucumbers are encircled by the basket and need no support), but the mustard seeds, which are heaped up, are outside of the basket proper and not supported by it; therefore, when the basket with mustard seeds is carried outside, part of the mustard seeds are already on the outside and the carrier is culpable. R. Johanan, however, says, even if the basket contained mustard seeds, he is also not culpable. Thence we see that R. Johanan *does* consider a vessel a support. Said R. Zera: "How is it with the Mishna? It is neither of the opinion of Hyzkiyah nor of R. Johanan." Hyzkiyah may explain it in accordance with his theory and R. Johanan with *his* own. Hyzkiyah explains the Mishna, which said "unless he carries out the entire basket." This is the case if the basket is filled with cucumbers and beets, but if filled with mustard seeds it is equal to putting out the entire basket into the street, and he is culpable, but R. Johanan explained the Mishna thus: Although the bulk of the fruit is on the outside, or even if all the fruit were on the outside, the man would not be culpable unless the entire basket was put on the outside. So also said Rabha: The Mishna treats only of a basket filled with cucumbers and beets, but if filled with mustard seeds the man is culpable. Whence we see that he does not consider a vessel a support. Abayi, however, said: Even if the basket contained mustard seeds, the man is also not culpable. Whence we see that he

does consider a vessel a support. Shall we say that Abayi adopted the system of Rabha and Rabha of Abayi, or Abayi contradicts himself and Rabha does the same? As it was taught: One who carried out fruit into public ground, Abayi said, is culpable only if he carried it out with his hand (although the body remained in public ground), but if in a vessel he is not culpable. (Why? Because Abayi does not consider the body a support to the hand, in spite of the fact that the

hand is attached to the body, but if he carried out the fruit in a vessel and part of the vessel still remained in private ground, he is not culpable.) And Rabha says, on the contrary: If he carried the fruit out in his hand he is not culpable (because he considers the body a support and the hand is part of the body), but if he carried it out in a vessel he is culpable (because, although the vessel is still in private ground, some of the fruit is in public ground). The answer is: Reverse the case. (Say Abayi's statement should be Rabha's and Rabha's Abayi's).

MISHNA *III*.: One who carries out anything in the right or in the left hand or in his bosom or on his shoulder is culpable, as so was the manner in which the sons of Kehath carried (their burdens). [1] But one who carries out a thing on the back of his hand or with his foot, with his mouth, with his elbow, with his ear, with his hair, with his waist bag, the opening of which is at the bottom, or between his belt and his shirt, with the edge of his shirt, with his shoe or sandal, is not culpable, because he carries it in an unusual manner.

GEMARA: R. Elazar said: "One who carries out a burden ten spans above the ground [not on his shoulder, but in the air] is culpable, because in this manner the sons of Kehath carried their burdens." Whence do we know that the sons of Kehath carried their burdens in this way? It is written [Numb. iii. 26]: "Which is by the tabernacle and by the altar round about." Hence he compares the tabernacle to the altar. As the tabernacle was ten ells, so was also the altar ten ells; and whence do we know that the tabernacle itself was ten ells? Because it is written [Ex. xxvi. 16]: "Ten ells shall be the length of the boards." Or we may say that we know that the sons of Kehath carried their burdens in this manner from the ark, as the Master said: The ark was nine spans high, and with the cover, which was one span higher, it was ten. Experience is to the effect that when a burden was carried on the shoulders by means of poles, one-third of the burden was above the poles and two-thirds below; then as the ark was ten spans high and one-third of it was carried above the shoulders, it was certainly more than ten spans above the ground.

But let it be inferred from Moses himself, of whom it is said elsewhere that he was very tall. With Moses the case is different;

as the Master said elsewhere that the Shekhina does not rest upon a man unless he is a scholar, a strong, rich, or tall man.

It was taught: One who carries a burden on his head is not culpable. And if one will say that the inhabitants of the city of Hutzal do so, we may assume that their deed is abolished by the rest of mankind, who do not carry burdens on their heads.

MISHNA *IV*.: One who intends to carry something in front, but the thing moved to his back, is not culpable, but if he intends to carry it on his back and it moves to the front he is. Of a truth it was said: A woman who wears a girdle, whether she carries something in the front or in the back of it, is culpable, because the girdle invariably turns around. R. Jehudah says the same rule applies to letter-carriers.

GEMARA: Where is the difference? The main object (here is the intention). And in either case his intention was not carried out; why is he not culpable if the thing, moved from the front to the back and culpable if it moved from the back to the front? Said R. Elazar: "Divide the Mishna into two parts. The second part was not taught by the same Tana as the first." Said R. Ashi: "This is no question at all. Perhaps the Mishna may be explained thus: Not only did the man intend to carry it on his back and did so, which would make him culpable, because his intention was carried out, but even if he intended to carry it on his back and it moved to the front, in which case his intention was not carried out, lest one say that then he is not culpable, it comes to teach us that when one intends to preserve the thing with little safety, and it occurs that he has done so with a proper safety, he is benefited by it; hence he is culpable."

"*Of a truth it was said*." There is a Boraitha: Wherever it is said "Of a truth it was said," it is to be considered that so the Halakha prevails.

"*R. Jehudah says the same rule applies to letter-carriers*." A Boraitha in addition to it states that so it is because the carriers of the government usually do so.

MISHNA *V*.: One who carries out a large loaf of bread into public ground is culpable. If two persons do this together they are both innocent, provided it could be done by one of them; if, however, they did so because it could not be done by one, both are culpable. R. Simeon, however, declares them not culpable.

GEMARA: Said R. Jehudah in the name of Rabh, according to others Abayi said, and still others say that it was learned in a Boraitha: "If of both men who carried the loaf, either was able

to carry it himself, R. Meir makes them both culpable, but R. Jehudah and R. Simeon declare them both innocent. If, of the two, neither was able (to do it himself), R. Jehudah and R. Meir declare them culpable and R. Simeon declares them free. If one of the two, however, was able, and the other unable, all agree that the able man is culpable." Whence is all this deduced? From what the rabbis taught: It is written [Lev. iv. 2]: "If any person sin," etc., *i.e.*, if he committed the whole deed but not a part of it. How so? If two persons held one pitchfork and threw grain with it, or a weaver's spindle and wove with it, or a quill and wrote with it, or a reed and carried it into public ground, one might say that they are culpable. It is written [ibid.]: "If any person sin," etc. But if two persons held a date-press, or a log, and carried them out into public ground, R. Jehudah says, if one of the two was not able to carry it himself and they both carried it, they are both culpable, but if either of them was able, both are not culpable. R. Simeon says, even if one alone is not able to carry it and they carried it out together, they are also free. For only referring to such an instance the Scriptures say: "If *any* person," etc., and it is plain that one is culpable if he performs work alone, but if two persons did one thing they are both free.

The master said: If one of the two was able to perform the work alone and the other unable, all agree that he is culpable. Which of them was culpable? R. Hisda said, the one who was able. As to the one who was unable, why should he be so? What did he? Said R. Hamnuna to R. Hisda: "Why not? Did he not assist the one who was able? Answered R. Hisda: Assisting is not of consequence (because if he alone is not able to perform the work himself, his assistance is of no value). Said R. Zbid in the name of Rabha: "We have also learned in a Boraitha in support of this argument: If one suffering from a venereal disease rides an animal, the feet of which are encased in four pieces of cloth, the pieces of cloth are not subject to defilement, for the reason that the animal is able to stand on three feet." Why are they not subject to defilement? Was not one foot a help to the other three? Hence we must assume that one of the feet must be regarded as a help to the other three; a mere help, however, not having any legal consequence cannot become defiled, and as it is impossible to determine which one of the three feet is to be regarded as a help, all four pieces of cloth encasing them are not subject to defilement.

Again the master said: If either of the two were able, R.

[paragraph continues] Meir holds them both to be culpable. The schoolmen propounded a question: "Must the object carried out by them be of double the prescribed size, *i.e.*, a prescribed size for each of them, in order to make them culpable, or does the prescribed size for one man suffice to make them both culpable? R. Hisda and R. Hamnuna (both answered): One of them held that one prescribed size suffices, and the other that it must be double in order to make them culpable, (and it is known which of them held to the former opinion and which to the latter). Said R. Ashi: "We have also learned in a Boraitha: 'Two men who carried out a reed used by a weaver (into the street) are both culpable.' Why so? Was not double the prescribed quantity necessary in order to make both culpable? Hence we must assume that the Boraitha holds one prescribed quantity to be sufficient." Said R. Aha, the son of Rabba, to R. Ashi: "What proof do you derive from this Boraitha? Perhaps it refers to a reed that was of sufficient size to cook an egg for one and another for the other?" R. Ashi answered: If such were the case, the Boraitha would say merely a "reed" and not a "reed used by a weaver." Said R. Aha again: "Perhaps the Boraitha refers to a reed of sufficient size to weave a napkin each for both of them? Therefore it were better to say that from this Boraitha we can derive no support either for one opinion or the other."

A certain scholar taught in the presence of R. Na'hman: "Two men who carried out a reed used by a weaver (into the street) are both not culpable." R. Simeon, however, declares them culpable. How can this be? (Is this not contrary to R. Simeon's usage?), Read then (on the contrary), the scholars said they are culpable and R. Simeon said they are not.

MISHNA *VI.*: If one carry victuals of less than the prescribed quantity in a vessel (out into the street) he is not culpable even of (carrying) the vessel, for the vessel is of no consequence to the victuals. If he carried a person on a litter he is not culpable even of (carrying) the litter, because the litter is of no consequence to the person. If he carried a corpse on a cot he is culpable. The same is the case if (he carries) a part of the corpse of the size of an olive or of a carcass the size of an olive and of a reptile the size of a lentil. R. Simeon declares all of them free.

GEMARA: The rabbis taught: "If a man carry out victuals of the prescribed quantity in a vessel, he is culpable of carrying the victuals, but not of (carrying) the vessel, because the vessel is of no consequence to the victuals; but if the victuals are such that

they cannot be carried otherwise than in a vessel, he is culpable of (carrying) the vessel also." Shall we assume from this teaching that if one ate two pieces of tallow each the size of an olive at different times through forgetfulness (and was not reminded of his sin between both times of eating), he is bound to bring two sin offerings? Said R. Ashi: In the case of the man who is culpable of (carrying) both the victuals and the vessel, it must be assumed that he carried them through forgetfulness and was subsequently reminded of having carried only one of them (but forgot about the other); later he was reminded of having carried the other also, and according to the opinion of the teacher of this Boraitha, he is culpable and bound to bring two sin-offerings, one for each time he was reminded. The same difference of opinion exists here as we have seen existed between R. Johanan and R. Simeon b. Lakish (in the chapter concerning the general rule of Sabbath).

"*If he carried a person in a litter*," etc. Shall we assume that the Mishna is in accordance with R. Nathan and not with the rabbis of the following Boraitha? "If one carried out an animal or a bird (into the street), whether alive or slaughtered, he is liable." R. Nathan, however, says: "For (carrying out) a slaughtered (animal or bird) he is culpable, but not for one that is alive, because a live creature carries itself." Said Rabha: "It may be said the Mishna is in accordance with the rabbis of the Boraitha cited, as they differ with R. Nathan only concerning animals or birds, which usually struggle to get loose and thus become a burden; but concerning a person, who is carried and agrees to being carried, and virtually carries himself, the rabbis yield to R. Nathan."

Said R. Ada b. Ahba to Rabha: How will, in your opinion, the statement in our Mishna be made plain: "Ben Bathyra permits the selling of a horse to a Gentile, and a Boraitha, in addition to this, states that the reason that Ben Bathyra permits this is because the Gentile will not perform any work with the horse on a Sabbath that would involve the liability of a sin-offering (for a horse is used for riding only, and when a person rides a horse the person virtually carries himself, and hence is no burden to the horse), and R. Johanan says that Ben Bathyra and R. Nathan said (practically) the same thing." Now, if in your opinion the rabbis differ with R. Nathan only in the matter of animals and birds, because when carried they struggle for freedom, but agree with him in the matter of a person, why does R. Johanan say that only Ben Bathyra and R. Nathan say the same thing? Did not the

rabbis also admit this? (The answer was:) R. Johanan said that Ben Bathyra in permitting a horse to be sold to a Gentile referred to one which was used only for carrying falcons. Are there then such horses? Yea; they are to be found at the Zaidons'. 1

R. Johanan said: Even R. Nathan holds a man culpable if he carries a person, animal, or bird that is bound.

"*If he carried a corpse*," etc. Said Rabba b. b. Hana in the name of R. Johanan, and the same was said by R. Joseph in the name of R. Simeon b. Lakish: R. Simeon frees one, even if he carries out a corpse for burial. Said Rabha: "Even R. Simeon concedes that if one carry out a spade to dig a grave with, or a scroll to read from, he is culpable." Is this not self-evident?

Should we then assume that according to R. Simeon's opinion even this kind of labor is not labor for its own sake, how can we find any labor for its own sake which in the opinion of R. Simeon would involve the liability of a sin-offering? Lest one say that R. Simeon does not hold a man culpable for carrying a thing unless the work done with the thing is both for the man's sake and also for the sake of the thing itself--for instance, if the spade was needed for digging and also had to be sharpened, or the scroll had to be examined and used for reading--hence he informs us that such is not the case.

There was a corpse in Drokra 2 and R. Na'hman b. Itz'hak permitted it to be carried out into unclaimed ground. Said R. Johanan, the brother of Mar, son of Rabhina, to R. Na'hman b. Itz'hak: "According to which Tana's opinion do you act? According to R. Simeon? Did R. Simeon allow this? He only stated that the act does not involve the liability of a sin-offering, but he did not permit it to start with?" R. Na'hman answered: By the Lord! You yourself, and even R. Jehudah, would allow this to be done the same as I did; did I say that it was to be carried into public ground? I said unclaimed ground! Do not forget that this was also for the sake of the honor due a human being, of which it is said: "*Precious is the honor of man, and for its sake even a direct commandment of the Scripture may be circumvened*!"

MISHNA *VII.*: One who pares his finger-nails, either by

means of his nails or by means of his teeth; also one who plucks hair from his head, beard, or lip,; also a woman who braids her hair, or paints her eyebrows, or parts her hair, is, according to R. Eliezer, culpable. The sages, however, declare this to be (prohibited only by rabbinical law) as a precautionary measure.

GEMARA: Said R. Elazar: "The difference of opinion exists only in the case of paring the finger-nails by means of the nails, but if taken off with an instrument (all agree) that he is culpable." Is this not self-evident? Is it not plainly written in the Mishna, if he pares his finger-nails, one by means of the others? One might think that the difference of opinion is also concerning an instrument, and the reason the Mishna does not mention an instrument is only to show the firmness of R. Eliezer in prohibiting the paring of finger-nails even with one's own nails. He informs us that the difference of opinion is concerning the nails only. R. Elazar said furthermore: "The difference of opinion is only concerning a man's paring his own finger-nails, but if he pared another's all agree that he is not culpable. (The reason for this is because when paring one's own finger-nails a man can make them look as if trimmed with an instrument, but when trimming another's this is not possible.)" Is this not self-evident? Did not the Mishna say plainly: "His own finger-nails"? Nay. One might think that according to the opinion of R. Eliezer the trimming of another's finger-nails also makes one culpable, but the Mishna, stating plainly "his own finger-nails," intends only to show the firmness of the rabbis in making not culpable even those who pare their own nails; therefore he informs that such is not the case.

"*Also one who plucks hair from his head*," etc. There is a Boraitha: "One who cuts off a scissorsful of hair from his bead on the Sabbath is culpable." How much is a scissorsful supposed to be? Two hairs. R. Eliezer says: "One." The rabbis agree with R. Eliezer that in case one gray hair is plucked from a number of black hairs a man is culpable even for one, and not only on Sabbath but even on week days it is also prohibited, as it is written [Deut. xxii. 5]: "And a man shall not put on a woman's garment."

We have learned in a Boraitha, R. Simeon b. Elazar said: "If a finger-nail become separated from the finger of its own accord, a man may remove the adhering part, providing the greater part of the nail was separated. He may do this with his fingers, but not with an instrument. If he did it, however, with an instrument,

he is not liable for a sin-offering. If the smaller part only was separated, he may not remove it. If he did so, however, with his fingers, he is not culpable, but with an instrument he is. Said R. Jehudah: "The Halakha prevails in accordance with R. Simeon b. Elazar." Said Rabba b. b. Hana in the name of R. Johanan "Provided the nail was bent upward and was troublesome."

"*Also a woman who braids her hair*," etc. In what category can her work be counted? Said R. Abuhu: "It was explained to me by R. Jossi b. Hanina: 'Painting the eyebrows comes in the class of work enumerated as dyeing, braiding, and parting the hair in the class of building.'" Is this the manner of building? Yea; as R. Simeon b. Menassia taught: It is written [Gen. ii. 22] "And the Lord God formed [1] the rib which he had taken from the man." From this maybe adduced that the Holy One, blessed be He, braided the hair of Eve and brought her to Adam. For in the seaports hair braiding and dressing is called building.

We have learned in a Boraitha, R. Simeon b. Elazar said: "Braiding the hair, painting the eyebrows, and parting the hair, if done for herself, does not make her culpable (because it cannot be properly termed building); but if done for another it does make her culpable." Furthermore, R. Simeon b. Elazar said in the name of R. Eliezer: "A woman shall not put red dye on her face, because that constitutes painting."

The rabbis taught: If one milked a cow and then made cheese of the milk to the size of a dried fig; if he swept a floor or dampened a floor (to lay the dust); or if he removed honeycombs from a beehive, his case is as follows: If he performed these acts unintentionally on Sabbath, he is bound to bring a sin-offering, and if he did all this intentionally on a biblical feast-day, he shall receive forty stripes. Such is the opinion of R. Eliezer, but the sages said: "All this is only prohibited by rabbinical law as a precautionary measure." (Says the Gemara:) Now the ordinance having prevailed according to the opinion of R. Simeon, all these acts are not prohibited at all.

MISHNA *VIII.*: One who plucks something from a perforated flower-pot is culpable; from a flower-pot that is not perforated he is not culpable. R. Simeon held him not culpable in both cases.

Abayi put a contradictory question to Rabha, according to others R. Hyya b. Rabh to his father Rabh: "The Mishna states

that R. Simeon holds one not culpable in either case. From this we see well that to R. Simeon a perforated or a solid flower-pot is one and the same thing. We have learned in another Boraitha:

R. Simeon said that there is no difference between a perforated and a solid flower-pot except to make the seeds grown in the flower-pot subject to defilement (*i.e.*, in a solid flower-pot the seeds are not accounted as seeds). Hence there is a difference between the pots in the opinion of R. Simeon." The answer was: In all cases except defilement R. Simeon regards seeds in either a perforated or a solid flower-pot as loose (*i.e.*, detached from the ground). In the case of defilement, however, it is different, because the Scriptures themselves added a special provision regarding defilement of seeds, as it is written [Lev. xi. 37]: "And if any part of their carcass fall upon any sowing-seed which hath been sown, it shall be clean."

END OF VOLUME I.

Footnotes

173:1 The Talmudical term for" support" is "Agad," literally "bind." In the above the sense demands its rendition by "support."

174:1 Numb. iv.

179:1 The text reads *Vaidon*; Luria corrects this to read Zaidon, as we have adopted, which means a falconer's horse. Hai, the Gaon, however corrects it Bazaidon, because a falconer in the Persian language is Baz, and one who occupies himself by hunting for birds is called Bazaidon.

179:2 Name of a city.

181:1 The Hebrew word for "formed" is "Vayiven," literally "built."

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NEW EDITION

OF THE

BABYLONIAN TALMUD

Original Text Edited, Corrected, Formulated, and Translated into English

BY

MICHAEL L. RODKINSON

First Edition Revised and Corrected

BY

THE REV. DR. ISAAC M. WISE

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Volume II.

TRACT SABBATH

SECOND EDITION, RE-EDITED, REVISED AND ENLARGED

BOSTON NEW TALMUD PUBLISHING COMPANY

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EXPLANATORY REMARKS.

In our translation we adopted these principles:

1. *Tenan* of the original--We have learned in a Mishna; *Tania*--We have learned in a Boraitha; *Itemar*--It was taught.

2. Questions are indicated by the interrogation point, and are immediately followed by the answers, without being so marked.

3. When in the original there occur two statements separated by the phrase, *Lisna achrena* or *Waïbayith Aema* or *Ikha d'amri* (literally, "otherwise interpreted"), we translate only the second.

4. As the pages of the original are indicated in our new Hebrew edition, it is not deemed necessary to mark them in the English edition, this being only a translation from the latter.

5. Words or passages enclosed in round parentheses ( ) denote the explanation rendered by Rashi to the foregoing sentence or word. Square parentheses [ ] contain commentaries by authorities of the last period of construction of the Gemara.

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xlvii:1 We would call the attention of the reader to the appendix of this volume, which will prove interesting to the general reader and present something heretofore unpublished to the student of the Talmud.

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TRACT SABBATH.

CHAPTER XI.

REGULATIONS CONCERNING THROWING FROM ONE GROUND INTO ANOTHER.

MISHNA: One who throws a thing from private into public or from public into private ground is culpable. From private into private ground, by way of public ground, R. Aqiba holds him to be culpable, but the sages declare him free. How so? If two balconies face each other across a street, one who transfers or throws something from one into the other is free; if the two balconies, however, are in the same building, he who transfers a thing from one into the other is culpable, but he who throws is free; because the work of the Levites (in the tabernacle) was as follows: From two wagons facing each other in public ground boards were transferred, but not thrown from one into the other.

GEMARA: Let us see! Throwing is but the offspring of transferring. Where is transfer itself mentioned in the Scriptures? Said R. Johanan: "It is written [Ex. xxxvi. 6]: 'And Moses gave the command and they caused it to be proclaimed throughout the camp,' etc. Where was Moses sitting? In the quarters of the Levites. The quarters of the Levites was public ground (because all the people were received there by Moses). And Moses said unto Israel: 'Ye shall not transfer anything from your quarters (which was private ground) into these quarters.'" We have found, then, transfer from within, but where do we find transfer from without? It is a logical conclusion, that transfer from within is the same as transfer from without. Still he calls transfer from within the principal act and transfer from without but the offspring. Now, if transferring from within and transferring from without involve the same degree of culpability, why does he call the one

a principal and the other all offspring? For the following reason: If one commit two principal acts of labor, or two offsprings of two different acts of labor, he becomes bound to bring two sin-offerings; but if he commits one principal act and one offspring of the same act of labor, he becomes bound to bring only one sin-offering.

Whence do we know that if one throw a thing four ells in public ground he is culpable? All that is said about four ells in public ground is traditional.

R. Jehudah said in the name of Samuel: The wood-gatherer's sin [mentioned in Numbers xv. 32-35] consisted in carrying four ells in public ground. We learned in a Boraitha, however, that he pulled out sticks growing in the ground. R. Aha b. R. Jacob said: He gathered the sticks and bound them into bundles. What difference is there in the acts? (Why this dissension?) The

difference is, as we were taught in the name of Rabh, who says: "I found a mysterious paper in the possession of my uncle, R. Hyya, upon which was written: 'Aissi ben Jehudah said: The principal acts of labor are forty less one. One of them does not involve culpability. R. Jehudah holds, that carrying in public ground is not this one act and the Boraitha holds that pulling out of the ground is not that one, and R. Aha b. R. Jacob holds that binding into bundles is not the act which involves culpability.' Each one of these three was certain that if a man committed any of the acts mentioned by each he was undoubtedly culpable."

The rabbis taught: The name of the wood-gatherer was Zelophchad, and so it is written [Numb. xv. 32]: "And while the children of Israel were in the *wilderness* they found a man," etc., and further on [ibid. xxvii. 31 it is written: "Our father died in the *wilderness*," etc., etc., "but in his own sin he died," etc., an analogy of the word *wilderness*. As by "our father" is meant Zelophchad, so also the name of the wood-gatherer was Zelophchad. So said R. Aqiba. Said to him R. Jehudah b. Bathyra: "Aqiba! Whether your statement be true or false, you will have to answer for it at the time of the divine judgment; for if it be true, you disclosed the name of the man whom the Scriptures desired to shield, and thus you brought him into infamy, and if it be false you slandered a man who was upright." The same case occurred in the following: It is written [Numb. xii. 9]: "And the anger of the Lord was kindled against them," etc. From this we learn that Aaron also became

leprous. So said R. Aqiba. Said to him R. Jehudah b. Bathyra: "Aqiba! Whether your statement be true or false, you will have to answer for it at the divine judgment; for if it be true, you disclosed a thing the Scriptures desired to conceal, and thus you brought infamy upon Aaron, and if it be false, you slandered a man who was upright." But the Scriptures say: "And the anger of the Lord was kindled against *them*." This signifies *only* that Aaron was included among those against whom the anger of the Lord was kindled.

We have learned in a Boraitha according to the opinion of R. Aqiba: "Aaron also became leprous, as it is written: 'And Aaron turned toward Miriam, and behold she was leprous,' which implies that at the moment when he turned toward Miriam he was cured of *his* leprosy and perceived it in Miriam."

Said Resh Lakish: He who suspects an innocent man is punished in the flesh, as it is written [Ex. iv. 1]: "But behold, they will not believe me," and it was known to the Holy One, blessed be He, that Israel will believe, and the Lord said unto Moses: "They are believers and they are children of believers, but thou, I know, wilt finally not believe." They are believers, as it is written [ibid. iv. 3 1]: "And the people believed." They are children of believers, as it is written [Gen. xv. 6]: "And he believed in the Lord." Thou wilt finally not believe, as it is written [Numb. xx. 12]: "Moses and Aaron, because ye have not confided in me;" and whence do we know that he was punished in the flesh, as it is written [Ex. iv. 6]: "And the Lord said furthermore unto him, Do put thy hand into thy bosom; and he put his hand into his bosom; and when he took it out, behold, his hand was leprous, white as snow."

Rabha said, according to others, R. Jose b. Hanina: Reward for merit, destined for a man, comes to him more quickly and in a greater degree than retribution for wickedness, for in the case of Moses we see it written [Exod. iv. 6]: "And he put his hand into his bosom; and when he took it out, behold, his hand was leprous, white as snow." But the reward was, as it is written [ibid. 7],

"And when he pulled it out of his bosom, behold, it was turned again as his other flesh." The reason that the verse repeats "pulled it *out of his bosom*," is to show, that the hand had become cured while in the bosom (and thus the reward was given more quickly and effectively). It is written [Ex. vii. 12]: "Aaron's staff swallowed up their staves." Said R. Elazar: "This was a miracle within a miracle, for Aaron's staff

did not swallow up the staves (of the Egyptian magicians), which had become serpents, while it was itself a serpent, but after it was become a staff again."

"*From private ground into private ground*," etc. Rabha propounded a question: "Shall we assume that the point of difference is in the opinion relating to whether the surrounding of a thing by the atmosphere of a certain place makes the thing equal to being deposited in that place or not?" And if this is the point of difference, it must follow that the Mishna treats of a case where the object thrown was at no time above ten spans from the ground (because above ten spans no public ground exists). Those who deem it a culpable act, do so, because they hold that the object, being surrounded by the air of the public ground, through which it passed, makes it equal to being deposited therein, while those who do not deem it a culpable act are not of this opinion; but if the object thrown was above ten spans from the ground, do both sides agree that the thrower is not culpable? Or shall we assume that both sides do not differ as to the object thrown being equal to being deposited in the place, the atmosphere of which surrounded it, agreeing that such is the case; but their point of difference is as to whether throwing is equal to transfer or not? He who holds that the thrower is culpable does so because he considers throwing equal to transfer by hand, and as transfer makes a man culpable, even if it was accomplished above ten spans from the ground, it also applies to throwing; but he who holds that the thrower is not culpable, does so because he does not consider throwing equal to transfer by hand. And the case treated of by the Mishna is one where the throwing was done above ten spans from the ground? Said R. Joseph: This question was also propounded by R. Hisda, and R. Hamnuna decided it from the following Boraitha: "From private into private ground, by way of public ground *itself*, R. Aqiba makes him culpable, but the sages declare him free." Now, if he says, "by way of public ground *itself*," it implies that it was below ten spans from the ground. Let us then see wherein was the difference of opinion. Shall we say that it was a case of transfer by hand and still the one who holds him culpable does so because it was below ten spans, but if it was above ten spans he would concede that he was not culpable? How can this be? Did not R. Elazar say: "He who transfers a burden above ten spans from the ground is culpable, because thus were burdens transferred by the sons of

[paragraph continues] Kehath"? Therefore we must assume that the Boraitha treats of a case of throwing and not of transfer by hand, and hence one holds, that an object surrounded by the atmosphere of a certain place below ten spans from the ground is equal to an object deposited in that place, while the other holds that such is not the case. Conclude then from this that the Mishna treats of a case where the throwing was done below ten spans from the ground.

The above teaching, however, is not in accord with the opinion of R. Elazar, for he said: R. Aqiba makes the thrower culpable even when the throwing was done above ten spans from the ground; but for what purpose does the Boraitha state "public ground *itself*"? Merely to show the

firmness of the rabbis in declaring one free, even when he transferred a thing by hand through public ground.

All that was said above is contrary to the opinion of R. Helkiah b. Tubhi, because *he* said: "If the throwing was below three spans from the ground, all agree that the thrower is culpable; if above ten spans, all agree that he is not culpable; but if the throwing was done between three and ten spans above the ground, then the difference of opinion between R. Aqiba and the sages arises." We have learned in a Boraitha in support of R. Helkiah: "Below three all agree that one is culpable; above ten all agree (that only a rabbinical prohibition exists) as a precautionary measure (because no Erubh was made). [1] If the two premises belonged to the thrower, he may throw to start with. From three to ten spans is where the point of difference between R. Aqiba and the sages arises.

It is certain, that if it is one's intention to throw eight ells and he throws only four, one is culpable; because it is equivalent to the case where one intends to write the name Simeon and only writes Sim (for Sim alone is also a name, and four ells is the prescribed distance for throwing); but what is not certain is, If one intended to throw only four ells and threw eight, what is his case? Shall we assume that he threw the prescribed distance and is thus culpable, or, because the object did not reach the desired destination, he is not culpable? The answer was, that according to this question Rabhina asked R. Ashi, and the latter answered that no culpability can exist unless he intended that the object should remain wherever it happened to alight, *i.e.*, if

the man intended to throw eight ells and threw only four he is also not culpable, and the assertion that the last-named act is equivalent to writing Sim when the intention was to write Simeon, which according to the succeeding Mishna is an act involving culpability, does not hold good; for he cannot write Simeon without first writing Sim, but surely he can throw eight ells without previously throwing four ells.

The rabbis taught: If one threw from public into public ground and private ground was in between, and the four ells commenced and ended in the two public grounds, including the private ground, he is culpable; but if he threw less than four ells he is not culpable. What news does this convey to us? It is to inform us, that the different premises are counted together and that the culpability arises not from the fact that the atmosphere of the private ground, having surrounded the object thrown, makes that object equal to having been deposited in that private ground; because that ordinance does not hold good, and the culpability arises merely from throwing four ells in public ground.

R. Samuel b. Jehudah, quoting R. Abba, who quoted R. Huna in the name of Rabh, said: If one transferred an object for four ells in a roofed public ground, he is not culpable. Why so? Because this public ground is not equal to the public ground under the standards in the desert traversed by the Israelites. This is not so! We know that the wagons which carried the boards of the tabernacle were roofed, and Rabh said in the name of R. Hyya that the ground beneath the wagons, between them, or alongside of them, was all public. Rabh means to state that the wagons were not actually covered, but that the boards were placed crossways on them in layers, and between every layer there was uncovered space, and that space was, in the opinion of Rabh, public ground.

The rabbis taught: The boards used at the tabernacle were one ell thick and sloped gradually until they attained the thickness of one finger at one end, as it is written [Ex. xxvi. 24]: "And they shall be closely joined together on top by means of one ring," and in another passage [Joshua iii. 16] it is written, "failed, were cut off." 1 So said R. Jehuda. Hence it is evident that on top the boards were only one finger thick. R. Nehemiah says: "They were also one ell thick on top, as it is

written [ibid. ibid.], 'joined *together*,' and the 'together' means that they were to be the same on top and on the bottom. But it says "joined" (Tamim)! The Tamim here signifies that they must be whole, unbroken.

The school of R. Ishmael taught: To what can the tabernacle be compared? To a woman going to market, whose dress hangs down and drags on the ground (*i.e.*, the curtains were hanging down and dragging on the ground).

The rabbis taught: The boards of the tabernacle came to a point and the thresholds contained sockets on which the boards were fitted. The hooks and fillets of the curtains appeared like stars in the sky.

The rabbis taught: The lower curtains were of blue, purple, and scarlet yarn and of twisted linen thread, and the upper curtains were of goats' hair, and more skill was necessary to make the curtains of goats' hair than of the first-named materials, for concerning the lower curtains it is written: "And all the women that were wise-hearted spun with their hands, and they brought that which they had spun of the blue, and of the purple, and of the scarlet yarn, and of the linen thread"; but concerning the upper curtains it is written [ibid. 26]: "And all the women whose hearts stirred them up in wisdom spun the goats' hair." And we have learned in the name of R. Nehemiah, "The goats' hair was woven right from the goats' backs without being shorn."

"*If the two balconies*," etc. Said Rabh in the name of R. Hyya: "The space between the wagons, beneath the wagons, and alongside of them is public ground." Said Abayi: "The space between two wagons was the length of another wagon? What is the length of a wagon? Five ells. Rabha said the sides of the wagon (*i.e.*, the width between the sides) was the width of a wagon. What is that width? Two and one-half ells. Now, we know that the width of a way in public ground is sixteen ells. Whence do we adduce this? If we adduce this from the case of the tabernacle, it should only be fifteen ells; (for the width of two wagons together with the space between them was fifteen ells). The answer is: There was another ell additional between the two wagons where the Levite walked in order that he might watch the wagons and adjust anything that might come out of place."

MISHNA: One who takes anything from, or places anything upon a sand-heap, dug out of a pit or a stone that is ten spans

high and four spans wide, is culpable. If the sand-heap or the stone is below that height, he is

free.

GEMARA: Why does the Mishna say a sand-heap, dug out of a pit, or a stone? Why not the pit or the stone itself? (Then we would know both the height and depth which must not be used for the placing of a thing.) This was said in support of the statement of R. Johanan, viz.: That the sand-heap dug out of a pit is counted in with the depth of the pit as to height to complete the ten spans. We have also learned thus in a Boraitha: One must not draw water from a pit in public ground which is ten spans deep and four spans wide, unless he has made a railing round the pit that is ten spans high. He must also not drink from the pit unless he put his head and the larger portion of his body into it. The pit and the sand-heap dug out of the pit are counted in with it to complete the ten spans.

R. Mordecai asked of Rabha: What is the law regarding one who threw a thing on a post ten spans high and four spans wide, standing in public ground? Shall we assume that he is culpable because he removed the thing unlawfully and also deposited it unlawfully (*i.e.*, from public ground into private), or that he is not culpable because the object which lighted on the post came from ground which is under no jurisdiction, being above ten spans from the ground? (If the man had the intention to throw the object on top of the post, he must have thrown it high up into the air, and before lighting on the post it passed through space above ten spans from the ground, and that space is regarded as ground under no jurisdiction, therefore he is not culpable?) Rabha answered: "This is explained in the Mishna." R. Mordecai then went to R. Joseph and asked the same question. He received the same answer: "It is explained in the Mishna." Thereupon he came to Abayi with the same question, and again received the same answer. Said R. Mordecai to Abayi: "Do ye all spit with the same spittle?" Answered Abayi: Dost not *thou* think that the Mishna explains it? Did not the Mishna say, "One who takes from or places upon"? Rejoined R. Mordecai: "Perhaps the Mishna treats of a needle which can be placed on a level with the ten spans height." Said Abayi: "A needle must also be lifted above the level." Said R. Mordecai again: "It can be placed without being lifted above the level, because every stone has some crevices that are lower than the surface of the stone and the needle can be placed in one of the crevices."

R. Johanan propounded a question: "What is the law regarding a man who throws a cake of earth (four spans square and one span deep) into a pit exactly ten spans deep and four spans square? Shall we say, that he is culpable because he threw the cake of earth into the pit, which was still ten spans deep and therefore private ground, or that he is not culpable because as soon as the cake reached the bottom of the pit it lessened the pit's height to nine spans, and thus made the pit unclaimed ground?" Let R. Johanan decide this question himself by what he said in the following Mishna: "If one throw a thing from a distance of four ells against the wall, and it strikes the wall at a height of over ten spans from the ground, he is free, but if below ten spans from the ground he is culpable, because one who throws a thing to the ground at a distance of four ells is culpable." We have investigated the case; how can he be culpable if the object thrown did not adhere to the wall? And R. Johanan answered: "The case was one of a soft date, which did adhere to the wall." Now, if the conclusion is that the cake of earth lessened the depth of the pit, the date which adhered to the wall also lessened the distance of four ells from where the date was thrown, and he says that the man is culpable? The answer was: In the case of the date the thrower did not intend that the date should adhere to the wall permanently, while in the case of the pit the cake of earth remained in the pit permanently, as intended by the thrower.

Abayi said: If a man throw a mat into a pit ten spans deep and eight spans wide in public ground he is culpable. If he, however, placed the mat into the pit so that the pit was divided into two equal parts, he is not culpable. (The latter decree informs us of two facts: Firstly, that although the mat was placed in the pit, while the pit was still of sufficient size to constitute it private ground and was only diminished at the time the mat was placed into it, the man is not culpable, and secondly, that the mat takes up sufficient space to make the two pits caused by division less than four spans wide each.) Now, if, according to Abayi, it is a certainty that the mat is sufficient to nullify the enclosures necessary for the designation of private ground, so much the more is this the case with the cake of earth previously mentioned, but according to R. Johanan, to whom it is even questionable whether the cake of earth can produce that effect, surely a mat cannot.

Abayi said again: If a man throw an object into a pit ten

spans deep and four spans wide, filled with water and standing in public ground, he is culpable, but if the pit was filled with fruit, he is not culpable; because water does not annul the enclosures necessary for the designation of private ground, while fruit does (the reason is that an object thrown into a pit of water falls to the ground in spite of the water [viz.: a stone or iron], while in a pit filled with fruit it rests on top). 1 We also learned the same in a Boraitha, in the name of R. Simeon: "Water does not annul the enclosures necessary for the designation of private ground."

MISHNA: If one throw a thing (a soft date) from a distance of four ells against the wall, and it strike the wall at a height of over ten spans from the ground, he is free; but if it strike the wall below ten spans from the ground, he is culpable; because one who throws a thing to the ground at a distance of four ells is culpable.

GEMARA: Said R. Jehudah, quoting Rabh in the name of R. Hyya: If one throw a thing at a distance of four ells against a wall, and the thing rested in a hole in the wall above ten spans from the ground, the law in his case is decided differently by R. Meir and the sages, viz.: R. Meir holds, that any object (like a hole) capable of being enlarged, must be looked upon as having been already enlarged, and therefore the man is culpable. The sages, however, hold that such is not the case; everything must be regarded in its actual condition.

R. Jehudah said in the name of Rabh: If a man throw a thing upon a sand-heap four ells wide and sloping up to a height of ten spans, he is culpable, provided the thing rested on the highest point of the heap, because the heap is regarded as being ten spans high in its entire length. The same we have learned in a Boraitha in the name of R. Hanina ben Gamaliel.

MISHNA: If one threw an object within four ells (in public ground) and the object rolled to a greater distance, he is free; if he threw a thing outside of four ells and it rolled back within four ells, he is culpable.

GEMARA: Why should a man be culpable in the latter clause of the Mishna; the object thrown did not rest outside of four ells if it rolled back within the prescribed limit? Said

[paragraph continues] R. Johanan: The Mishna treats of a case where the object thrown came in contact with an obstacle by means of which it rolled back, and therefore it rested for a moment outside of four ells.

Rabha said: "In the opinion of the sages, who differ with R. Aqiba concerning his decree, that an object surrounded by the atmosphere of a certain place makes the object equal to having been deposited in that place, a man who threw a thing from private into private ground by way of public ground, even below three spans from the ground, is not culpable unless the thing thrown rested for a moment at least on the public ground." Mareimar sat and repeated the above decree. Said Rabhina: "Does not our Mishna say the same, through the declaration of R. Johanan, who decrees that the Mishna holds a man culpable only if the object thrown by the man rests at its destination for a moment?" Answered Mareimar: Thou speakest of a rolling thing (which is carried along by the wind and it is not known when it will stand still). Such a thing cannot be regarded as resting, although it is below three spans from the ground, but in our case it is different. The thing was thrown (and was not rolled by the wind); so we might assume that when it reached a distance of less than three spans from the ground, it must be considered as resting on the ground; he informs us (that such is not the case).

MISHNA: If one throw a distance of four ells on the sea, he is free; if there happen to be shallow water, through which a public thoroughfare leads, where he threw the four ells, he is culpable. What must be the maximum depth of such shallow water? Less than ten spans; for one who throws four ells in shallow water, through which only occasionally a public thoroughfare leads, is culpable.

GEMARA: Said one of the schoolmen to Rabha: "The Mishna mentioning a public thoroughfare twice is justified in doing so, because we might presume that a thoroughfare used only in cases of necessity cannot be regarded as a *public* thoroughfare, and hence the Mishna informs us that while in other cases use from necessity is not to be regarded as customary, in this case it is different. But why is shallow water mentioned twice?" Answered Abayi: We might presume that the shallow water was *not* four ells wide, in which case it would be used a thoroughfare; but if it was four ells, people would circumvene it, and thus it would not be considered a public thoroughfare;

therefore it is repeated to inform us that there is no difference between shallow water less than four ells wide or more.

MISHNA: One who throws from the sea into land, from land into the sea, from the sea into a ship, from a ship into the sea, or from one ship into another, is free. If ships are bound together, one may transfer an object from one into the other; but if the ships are not bound together, even though they lie alongside of one another (and meet), one must not transfer a thing from one into the other.

GEMARA: We have learned: If one desires to draw water from the sea into the ship, he must make a small (board) attachment to the side of the ship, and then he can draw the water. So said

R. Huna, because he holds that unclaimed ground commences from the bottom of the sea and ends with the surface. The atmosphere above the sea is considered as ground under no jurisdiction, and hence the making of the attachment was really not necessary; but it being Sabbath, this should be done to distinguish the Sabbath from week-days. R. Hisda and Rabba bar R. Huna said: "The attachment made should be four ells wide," because they hold that the unclaimed ground commences from the surface of the water, and the water itself is considered as ground, and if the attachment were not made, it would constitute carrying from unclaimed ground into private ground, and this is not allowed to commence with.

R. Huna said: "On the small boats, that are not four spans wide down their entire depth, a man must not carry anything only for four ells (because it cannot be considered private ground), unless at a distance of three spans from the ground the boat is four spans wide. If there be sticks or refuse at the bottom of the boat, the bottom of the boat commences from the top of such sticks or refuse, and if the boat be ten spans high, according to that calculation one may carry in it." R. Na'hman opposed this: "Why should a man not be permitted to carry in a boat the bottom of which is not strewn with sticks and refuse?" Have we not learned in a Boraitha that R. Jose b. R. Jehudah said: "If one placed in public ground a stick (ten spans high), on top of which was a trough, which was four spans wide, a person throwing anything on top of the trough is culpable, because, while the trough was not ten spans high itself, the height of the stick upon which it rests is considered as included in its own." Why should this not also refer to the case of the boat, and the place where it *is* four spans wide be considered

as if it reached down to the bottom? R. Joseph opposed R. Na'hman as follows: "Did not R. Na'hman hear that R. Jehudah, in the name of Rabh, according to others, in the name of R. Hyya, said, that the sages did not agree with Jose b. R. Jehudah and exonerated the man?" Hence we see that the Boraitha, treating of the boat, holds with the opinion of the rabbis.

"If ships are bound together," etc. Is this not self-evident? Said Rabha: "The Mishna wishes to inform us, that one is permitted to carry from one ship into another, even if a small boat is between them, *i.e.*, one may carry from one ship into the boat and thence into the other ship, even though the small boat is not tied to either ship." Said R. Saphra to him: "Moses! [1] How canst thou say such a thing? Does not the Mishna state explicitly that one may carry from one ship into another? No boat between them (was mentioned)." R. Saphra, however, explained the Mishna thus: The Mishna, by saying one may carry from one ship into another, means to say that an Erubh maybe made between the two ships, just as between two houses, and then things may be carried from one into the other, as we have learned in a Boraitha: An Erubh may be made between ships that are tied together and things may be carried from one into the other. If the rope by means of which the ships were lashed to each other became torn, carrying to and from one ship to the other is not allowed; but if the ships were lashed together again, either intentionally or unintentionally, through compulsion or through an error, the original permission again holds good.

The same is the case with mats of which tents were made, whereby the ground enclosed by the mats becomes private; and if many such tents were made, carrying from one tent into another is permitted, provided an Erubh is made. If the mats were rolled up, however, such carrying is not permitted. Were the mats rolled down again, intentionally or unintentionally, through compulsion or through error, the original permission again holds good.

It was reported in the name of Samuel: If the ships were tied together with a mere thread, permission to carry from one into the other holds good.

MISHNA: If one threw a thing, and after the thing had

passed out of his hand, he recollected that it was Sabbath; if another person caught the thing thrown; if a dog caught it or if the things thrown was consumed by fire (before reaching its destination), the man is free. If one threw a thing for the purpose of injuring a man or a beast, and before such injury was inflicted recollected (that it was Sabbath), he is free. (For) this is the rule: Only such are culpable and, bound to bring a sin-offering as commit an act through error from beginning to end; if the act, however, was committed through error only at the start, and at the close was committed consciously, or *vice versa*, the perpetrator is free until the beginning as well as the end of the act is committed through error.

GEMARA: What would be the case, if the thing, after passing out of the thrower's hand, had rested (outside of four ells in public ground)? Would he be culpable? Why! Did he not recollect (that it was Sabbath) before the thing rested? And our Mishna (distinctly) states that one cannot be culpable unless an act were committed through error from beginning to end! Said Rabha: The 'Mishna teaches us two facts: Firstly, if one threw a thing, and after the thing had passed out of his hand he recollected (that it was Sabbath); or secondly, even if he did not recollect (that it was Sabbath), but another man, or a dog, caught the thing, or it was consumed by fire before it rested, he is not culpable.

"*This is the rule*." We have learned: If one threw a distance of six ells, two ells through error, the next two consciously, and the last again through error, Rabba declares him free. (How can that occur? As soon as the object had passed out of his hand and had not yet reached farther than two ells, he became conscious that it was Sabbath, and before it had passed the next two ells he forgot again that it was Sabbath.) Rabha, however, declares him culpable. Rabba declares him free, even according to the opinion of R. Gamaliel (in the last Mishna of Chapter XII.), who does not consider the consciousness during the time intervening between the perpetration of the two acts (each of which only executed one-half the prescribed deed) as being of any consequence (but considers the two unfinished acts as one prolonged act done unintentionally and making the perpetrator culpable). For what reason? Because in the case treated of in the cited Mishna nothing was done during the period of consciousness (of the Sabbath) intervening between the two unfinished acts to neutralize the erroneous character of

the two unfinished acts, and thus they became one finished act and made the perpetrator culpable. In this case, however, Rabha assumes that during the time intervening between the passing of the first two ells and the last two ells, the man carried the thing, and did so fully conscious (of the Sabbath), and thus neutralized the erroneous character surrounding the throwing for the first two and last two ells. Rabha, however, declares him culpable, even according to the rabbis, who hold contrary to the opinion of R. Gamaliel (in the cited Mishna) and consider the consciousness (of Sabbath) during the period intervening between the two

unfinished acts as a neutralization of the unintentional character of the unfinished acts, thus making the perpetrator not culpable. In this case, however, the man is culpable. (Why so?) Because in the case cited in the same Mishna the entire act could have been committed, but was not, for after the man became conscious (of its being Sabbath) he stopped; hence the unfinished act was not counted. Later he again forgot that it was Sabbath, but again recollected, before the entire act was committed; so the second unfinished act was not counted, and the man is free. In this case, however, the thing having been thrown could not be stopped when the man became conscious of its being Sabbath before it reached its destination! Thus the act was committed, and the fact that the thrower became conscious (of its being Sabbath) in the mean time is of no consequence. (Now, the conclusion is that there is really no difference between the rabbis and R. Gamaliel or between Rabba and Rabha, because all agree that if the thing was thrown the man is culpable, but if carried by hand he is not.)

Rabba said: If one threw a thing and it rested in the mouth of a dog or in the opening of an oven, he is culpable. Did we not learn in the Mishna that if a dog caught it, or if it was consumed by fire, he is not culpable? Yea; but the Mishna refers to a case where the intention was to throw it elsewhere and accidentally a dog caught it or it was consumed by fire; but Rabba means to say that a man is culpable if he intentionally throw it into the dog's mouth or into the oven. Said R. Bibhi b. Abayi: We have also learned elsewhere that the intention to have a thing rest in a place makes that place a fit one for the thing.

Footnotes

193:1 The law concerning Erubhin, will be explained in Tract Erubhin.

194:1 The Hebrew term for "cut off" in that passage is Tamu, and for "joined" in the previous passage it is "Tamim" hence the comparison by analogy.

198:1 So explains Rashi (Isaakides); we think, however, the reason that water does not annul the enclosures is, because water belongs to the public and any one can draw it out, and therefore it is equal to not being there; but, fruits must belong to a private individual and this makes it private ground.

201:1 The word Moses was used as a title to a great teacher.

Next: Chapter XII: Regulations Concerning Building, Ploughing, etc., On the Sabbath

CHAPTER XII.

REGULATIONS CONCERNING BUILDING, PLOUGHING, ETC., ON THE SABBATH.

MISHNA: (Among the forty, less one, principal acts of labor, building was enumerated.) What is the least amount of building which will make a man culpable? The least possible amount. The same applies to stone-masonry, smoothing with a hammer (at the close of the work); as for planing, he who planes the least bit, and for drilling, he who drills ever so little, is culpable. For this is the rule: He who performs any act of labor which is of permanent value is culpable. R. Simeon ben Gamaliel said: He who during his work strikes the anvil with his sledge is culpable, because he virtually brings about labor.

GEMARA: Of what use is so small an amount of building? Said R. Aha bar Jacob: "So small an amount of building is usually done by a householder who discovers a hole in the wall of one of his rooms and fills it up (with wood or cement). And the instance of such work having been performed at the (construction of the) Tabernacle is: When one of the boards contained a hole produced by worms, a little molten lead was poured into it and it was thus filled."

Samuel said: "One who places a stone in the street for the purpose of paving the walk is culpable." An objection was made. We have learned elsewhere: If one furnish the stone for paving and another furnish the mortar, the latter is culpable? [Says the Gemara:] If you base your objection to Samuel's decree upon this Boraitha, why do you not also cite the latter decree of the Boraitha which reads: R. Jose says: "One who picks up a stone and places it upon a row of stones is also culpable"? Hence we see that there are three different kinds of building. Building at the base, in the centre, and on the top. Building at the base only requires a solid foundation in the earth. Building in the centre requires mortar. Building on top needs only proper placing without the use of mortar.

"Stone-masonry." In what category of labor can stone-masonry

be placed, that its performance should make one culpable? Rabh said it comes under the category of building, and Samuel said under the category of smoothing with a hammer. The same difference of opinion exists between Rabh and Samuel in the case of one who bores a hole in a chicken-coop that was not previously perforated. The former holds this to be building, while the latter regards it the same as smoothing with a hammer. (It makes no difference to one who performs such labor unintentionally, for in either event he must bring a sin-offering, regardless of what class of labor he performed, if he does only *one* act; but when he performs two acts there is a difference. If they are both of *one* category, he is bound to bring only *one* sin-offering, but if they are of different categories, he must bring *two*; but in the case of one who performed such work with intention, even if he does only *one* act it does make a difference. The witnesses

to his deed when warning him--of his wrong-doing--must inform him just what class of labor he is engaged in executing. Should they tell him incorrectly, he cannot be held guilty. This applies to all cases where the Gemara asks as to the category of labor performed.) The same difference of opinion also exists in the case of one who affixed a handle to a pickaxe, Rabh classing such work as building, and Samuel as smoothing with a hammer.

A question was propounded by R. Nathan bar Oshiya to R. Johanan: "Under what category of labor is stone-masonry to be placed?" R. Johanan answered him by making the sign of hammering with his hand.

"*For this is the rule*." What additional significance does the statement "for this is the rule" contain? It applies to the hollowing out of a block of wood capable of holding a Kabh (about four lugs), a cavity a good deal smaller.

"*R. Simeon ben Gamaliel said,*" etc. What labor is performed by striking an anvil with a sledge? The Tosephta in this chapter explains it as follows: "Said R. Simeon ben Gamaliel: He who during his work strikes the anvil with the sledge is culpable; because at the construction of the Tabernacle those that covered the boards with metal-plate would strike the plates with their hammers."

MISHNA: One who ploughs, grubs, weeds, or prunes ever so little is culpable. One who gathers wood for the purpose of using the space occupied by the wood is culpable if he gathers ever so little; but if he gathers it for the purpose of lighting a

fire with it, he is culpable only if he gathered as much as is required to cook (an easily boiled egg). If one gathered grass for the sake of the space occupied by it, he is culpable for gathering even ever so little; if for the purpose of feeding cattle, he does not become liable unless he gathered as much as a goat's mouthful.

GEMARA: Of what use is a place where a man ploughed ever so little? It may be used to plant one seed of a cucumber in. This was also done at the Tabernacle, where one root was all that was necessary (for dyeing) and was pulled out of the ground, thereby making a hole. (This is not contradictory to what we have learned previously, that the minimum prescribed quantity for cucumber seeds was two, because a man will not take one cucumber seed out for sowing; but when sowing a separate hole is made for each seed and thus the prescribed quantity in this case is limited to one.)

"*One who ploughs, grubs, weeds, or prunes*." The rabbis taught: One who tears out herbs (which when damp are good for human food) for the purpose of eating them is culpable if the quantity equals or exceeds the size of a dried fig. For cattle the prescribed quantity is that of a goat's mouthful. If for the purpose of using for fuel, the prescribed quantity is as much as is used to cook an easily boiled egg with; if for the purpose of cleaning (weeding) his place, he is culpable even for ever so little. Is all this kind of work not done for the sake of cleaning the place? [1] Said Rabba and R. Joseph: The Mishna treats of a case where even if the man was not standing in a garden belonging to an individual, but even if be did it in a public field (if his intention is to clean the place he is culpable). Abayi said: (The same is the case) even if he did it in a private

field and had no intention to clean the place, as it did not belong to him but to some one else.

MISHNA: One who writes two letters, with the right or with the left hand, be they of one denomination or of different denominations, or be they written with different inks or be they letters of different languages (alphabets), is culpable. R. Jose said: The only reason that one is declared culpable for writing two letters, is because they can serve as marks; for thus the boards used at the Tabernacle were marked in order to be able to tell which fit together. Rabbi (Jehuda Hanassi) said: We

also often find a short name which forms part of a long name, as Sam for Simeon and Samuel, Noah for Nahor, Dan for Daniel, Gad for Gadiel.

GEMARA: It would be right if the Mishna were to say that if one write with his right hand he is culpable, because writing with the right hand is the general way; but writing with the left is entirely out of the ordinary. Why should he be culpable? Said R. Jeremiah: "The Mishna also refers to a left-handed man." A left-handed man? His left is his right and his right his left hand. Let him then not be culpable if he use his right hand! Said Abayi: In the case of the Mishna a man is referred to who has equal strength in both hands; but R. Jacob, son of the daughter of Jacob, said: The Mishna stands according to the decree of R. Jose that the reason of a man's culpability is because of the letters standing for marks, and the making of marks with either the right or the left hand is prohibited. How can the first part of the Mishna be according to the opinion of R. Jose--it teaches further, "R. Jose said"? If the latter part is explicitly attributed to R. Jose, the first part cannot be in accord with him. Nay; the entire Mishna is in accord with R. Jose (say then *because* R. Jose said).

"*Rabbi said: We also often find a short name*," etc. What does Rabbi mean by this teaching? Shall we assume that one is culpable only if he wrote two letters representing two different names, but if the two were merely an abbreviation of one name he is not culpable? Did we not learn in a Boraitha: "It is written [Lev. iv. 2]: And do (of) any (one) of them." One might assume from this verse that the man is not culpable unless he wrote the entire name, or wove the entire cloth, or he finished the whole length of the seam, therefore it is written "of any (one) of them." Now, if we take "of any (one) of them" literally, the writing of even one letter or the weaving of even one thread should make one culpable! Therefore it is written: "Of any (*one*) of them." How should this be understood? One is not culpable until he writes a short name which forms part of a long name, like Sam for Simeon or Samuel, Noah for Nahor, etc., etc. Rabbi (Jehudah) said: The two letters need not be part of a long name, but even if the two form a name (of a thing) in themselves like: Shesh, teth, red, gag, choch. (shesh--lion, teth--to give, red--go below, gag--roof, choch--nose band.) Said R. Jose: Is then the man culpable because of writing? It is only because of making a mark, for thus were

the boards of the Tabernacle marked in order that one mil tell which fit together. Therefore if one made but one scratch on two boards or two scratches on one board, he is culpable. R. Simeon quotes the same verse: "And do (of) any (one) of them." One might assume that the man is not culpable unless he wrote the entire name, etc. How should this be understood? One is not culpable until he has performed labor which is permanently fixed. Now in the Boraitha we see

that R. Jehudah said the two letters need not be part of a name, but even if the two form a name. (Does not R. Jehudah contradict himself?) This presents no difficulty. In the above Mishna he gives his own opinion, while in the Boraitha he cites his master's opinion, because we have learned in another Boraitha: R. Jehudah said in the name of R. Gamaliel: "Even if the two letters are not part of a long name, but form a name in themselves, he is culpable. For instance: shesh, teth, etc."

Did not R. Simeon say the very same thing as the first Tana? Perhaps one might say that R. Simeon refers to one who wrote two letters that have no meaning and are part of a long word. For instance, Aa from Aazreko (I assisted you). In such a case R. Simeon would be the stricter and the first Tana the more lenient. Is this not contrary to R. Simeon's wont, as we have learned in a Tosephta further on: "If one bore a hole with a drill, be the hole ever so small, he is culpable," etc.? R. Simeon however declares him free until the hole made was as large as it was originally intended to be. Answer and interpret R. Simeon's words thus: One might say that one is not culpable until he writes the whole verse; therefore it is written "of any one," signifying that one word is sufficient.

"*Rabbi said: We also often find*," etc. How can the name of Sam be equal to Simeon? The (letter) Mem in Sam is an end (closed) letter, while the Mem in Simeon is an open (middle) Mem. 1 Said R. Hisda: From this we may infer that if one write by mistake an open Mem instead of a closed Mem in the scroll of laws, the scroll may be used.

The rabbis said to R. Jehoshua ben Levi: There were some young men at the schoolhouse to-day, and they related such wonderful things as were never taught before even in the time of Joshua the son of Nun. These are they: Aleph, Beth

means Oliph Bino (go and teach knowledge). Gimmel, Daled means Gmol (be bountiful) Dalim (to the poor), Why is the foot of the Gimmel pointed toward the Daled? Because so should be the feet of those who are bountiful--ever ready to seek beneficiaries. Why is the foot of the Daled pointed back toward the Gimmel? In order that the poor man may know that he must not conceal himself from his benefactor. Why does the Daled turn its face from the Gimmel? In order to teach us that the benefactor should give to the poor without ostentation and that the poor man be not abashed. Hey, Vav, Zayin, Cheth, Teth, Iod, Khaf, Lamad means: Hey Vav, which is the name of the Holy One, blessed be He; (Zayin) Zon--He will feed thee; (Cheth) Cheyn--will be gracious unto thee; (Teth) Tov--will be good to thee; (Iod) Ierushah--He will make thee inherit in the world to come; (Khaf) Khesser--He will give thee a crown; (Lamad) Leaulim haboh--in the world to come.

Mem open (middle) and Mem closed (end) means Meimar (sayings) Pathuach (open) [implying that there are such sayings of God as are open to every one]; but Meimar (sayings) Sathum (closed) [implying that there are sayings of God which are hidden to most men]. Noon curved (middle) and Noon straight (end) means Neamon (an upright man); Khaph (curved) [should be (curved) bowed down, modest in this life, and in the life hereafter he will become a Neamon] (an upright man) Pashut (straight). Samach means Smohch (assist). Ayin means aniim (the poor). Peh round (middle) and Peh straight (end) means Peh (a mouth) Pasuach (shall be open [to teach]); and Peh (mouth) Sasum (shall be closed [to slander]). Tzadi round (middle) and Tzadi straight (end) means Tzadik (a righteous man) should be modest and fearless (straight).

Quph means Qodosh (holy), implying who does all, that has been mentioned, is holy. Resh means Roshoh (wicked), implying, who does the contrary is wicked. Why does the crown of the Quph look down upon the Resh? just as the Qodosh (Holy One, blessed be He) looks down upon the Roshoh (the wicked), saying: Turn from thy ways and I shall also give thee a crown. Why does the foot of the Quph hang unsupported? In order to admit of the wicked entering into the Qudoshim (holiness) if he turn from his ways. Shin means Sheqer (a lie) and Thaph means Emeth (truth). Why are the letters of Sheqer so near to one another (the order of sequence in the alphabet is Resh, Quph, Shin) and

[paragraph continues] Emeth so far from one another (being the first, middle, and last letters of the alphabet)? Because lies are very frequent, while truth is very scarce. Why have the letters in Sheqer but one foot while those in Emeth have so many? Because lies will finally totter, while truth will stand supreme.

MISHNA: One who through forgetfulness at onetime wrote two letters is culpable. He may have written with ink, paint, dye, gum, or vitriol, or with anything making a permanent mark. Further, one who wrote on two walls forming a corner, or on two covers of an arithmetical book, so that the two letters can be read together, is culpable. One who writes on his own body is culpable. One who tattooes letters in his flesh R. Eliezer holds him culpable for a sin-offering, and R. Jehoshua holds him to be free. If one write with dark liquids, with fruit-juice, or in road-dust, in fine sand, or in anything that does not retain the writing, be is free. If one write with the back of his hand, with his feet, with his mouth, with his elbow; or if one write one letter to another letter (that had already been written), or writes over letters that had been written before; or when one's intention was to write a Cheth and wrote two Zayins; or if one write one letter on the ground and another on the wall, or on two separate walls, or on two separate pages of a book, when the two letters cannot be read together, he is free. If one wrote one abbreviated letter, R. Jehudah ben Bethyra holds him culpable and the sages hold him free.

GEMARA: "*Or with anything making a permanent mark*," etc. What other additional things does the Mishna mean to express by this? R. Hananyah taught: It means if one wrote with berry-juice or with gall-nuts, he is also culpable. R. Hyya taught: "If one wrote with graphite, soot, or black ink, he is culpable."

"*One who tattooes two letters on his flesh*," etc. We have learned in a Boraitha: Said R. Eliezer to the sages: "Did not the son of Sattadai [1] bring witchcraft out of Egypt, through tattooing on his flesh?" Answered the sages: "He was a fool and we do not cite single instances of fools."

"*If one write one letter to another letter*," etc. According to which Tana's opinion is this? Said Rabba bar R. Huna: "This is not according to the opinion of R. Eliezer, for R. Eliezer said that if one add another thread to one already

woven, he is culpable." We have learned in a Boraitha: "If one wrote one letter at the end of any scriptural book, thereby finishing that particular book, or if one added another thread to one already woven, he is culpable." According to which Tana's opinion is *this*? Said Rabba bar R.

Huna: "This is in accordance with the opinion of R. Eliezer, who said that if one add another thread to one already woven he is culpable." R. Ashi said: We may assume that the opinion of the sages does not conflict with this opinion, because the case of finishing a book differs from that of adding another thread; hence, according to their opinion, one is also culpable (for finishing a book by adding one letter).

We have learned in a Boraitha: "If one corrected one letter in the Scroll of laws, he is culpable." How can this be? One is not held culpable for writing one letter; how can the Boraitha hold one culpable for merely correcting one letter? Said R. Shesheth: "Here a special case is treated of; *i. e.*, if one take off the top bar of the Cheth and make two Zayins out of it." Rabha said: The same is the case if, for instance, one remove the square portion of a Daled and form a Resh therefrom.

"*If one wrote one abbreviated letter*," etc. R. Johanan said in the name of R. Jose ben Zimra: "Whence do we know that there are abbreviated letters in the Scriptures? As it is written [in Gen. xvii. 5]: Khi Ab Hamaun Goyim Nsathicha (For the father of a multitude of nations have I made thee). In the word Ab the Aleph is the abbreviation of Ab--father, and the Beth stands for bachur--selected; Hamaun stands for haviv--lovely, Melech--king, vathig--modest, neamon--upright. All this I have made thee among the nations." R. Johanan declares of his own accord: "The ten commandments commence with Anauchi when it could be Ani (meaning I am). The Anauchi is an abbreviation for Ano (I), Naphshi (my soul), Kthovith (I have written), Yehovith (and have given)."

MISHNA: If one, through forgetfulness at two different times, write two letters, say one in the morning and the other toward evening, R. Gamaliel holds him to be culpable and the sages declare him free.

GEMARA: On what point do R. Gamaliel and the sages differ? R. Gamaliel does not consider the consciousness (of its being Sabbath) during the time intervening between the perpetration of the two acts (each of which executed only half the

prescribed deed) as being of any consequence (but considers the two unfinished acts as one prolonged act done unintentionally and making the perpetrator culpable). The sages, however, consider the consciousness (of Sabbath) during the period intervening between the two unfinished acts as a neutralization of the unintentional character of the unfinished acts and thus make the perpetrator not culpable.

Footnotes

206:1 This means that taking the things away cleans the place even unintentionally.

208:1 The five Hebrew letters Khaf, Mem, Nun, Peh, and Tzadi are written differently at the end and in the centre of words.

210:1 As to who Ben Sattadai was, see the works of Prof. Derenbourg.

Next: Chapter XIII: Regulations Concerning Weaving, Tearing, Hunting, etc., on the Sabbath

CHAPTER XIII.

REGULATIONS CONCERNING WEAVING, TEARING, HUNTING, ETC., ON THE SABBATH.

MISHNA: R. Eliezer said: One who weaves (on the Sabbath) is culpable, as soon as he has woven three threads at the beginning of the web, and with a web already begun the addition of one thread suffices to make him culpable. The sages said: Both at the commencement of a new web, as well as at the continuation of one already begun, the prescribed quantity (making one culpable) is two threads. One who attaches two threads to the web, either to the warp or to the shoot, to the fine or to the coarse sieve, or to the basket, is culpable. Also one who sews two stitches, or tears asunder, in order to sew (together with) two stitches.

GEMARA: When R. Itz'hak came to Babylon, he taught that R. Eliezer said "two threads and not three," as stated in the Mishna. But we learned three! This is no contradiction. R. Itz'hak refers to thick threads and the Mishna to thin.

"*One who attaches two threads,*" etc. Said Abayi: This means, one who attached two threads *to* the web and one *in* the web.

"*One who sews two stitches,*" etc. Was this not taught in the Mishna treating of the principal acts of labor? Because in the succeeding Mishna the rule is taught concerning one, who tears while in a rage, or through grief at the death of a near relative, sewing and tearing is repeated in this Mishna.

"*Or tears asunder in order to sew together with two stitches*." How is this to be imagined? (If by tearing the thing one means to spoil it, he may tear even as much as will require any number of stitches and not be culpable, but if he tears in order to sew together with two stitches and thus improve the thing, how can that be done?) This can be done in the case of a piece of cloth protruding from a garment, which one would tear off, and then sew up the remaining rent.

MISHNA: One who tears a thing while enraged, or through

grief on account of his dead, and, in general, all who spoil a thing are *not* culpable. If, however, one destroy a thing with the intention to mend it, the prescribed quantity (making him culpable) is determined according to the prescribed quantity of the act by which it is mended. The prescribed quantity of wool when being washed, carded, dyed or spun is a thread the length of a double sit; [1] in the weaving the prescribed quantity for wool is the breadth of one sit.

GEMARA: There is a contradiction: We have learned in a Boraitha: One who tears a thing

while in a rage, or through grief, or through mourning for the dead, is culpable, and although he desecrates the Sabbath, the duty of tearing (ordained in cases of mourners for the dead) is fulfilled. This presents no difficulty. The Boraitha treats of the case of a man who tore his garment on account of the death of one on whose account it was his duty to tear his garment, while the Mishna treats of the case of a man who did not do so for duty's sake, but on account of a death of a stranger, and this not being his duty, he merely spoiled his garment. How can you say, that the Mishna treats of a man who tore his garment on account of the death of a stranger; it says distinctly *his* dead? Yea, it says his dead, but he has such relatives, on whose account he need not tear his garment; (though it may be his duty to bury them, he being the nearest living relative; and tearing one's garment becomes a duty only in the event of the death of a father, mother, son, daughter, brother, or sister). Now, there is no contradiction then as far as mourning for the dead is concerned, but there surely is as regards one who is enraged? In the Boraitha he is held culpable and in the Mishna he is not? Here also there is no difficulty: The Mishna's statement is in accord with R. Simeon's decree, who holds, that one is not culpable of performing a deed not for its own sake, while the Boraitha is in accord with the opinion of R. Jehudah, who holds one culpable of performing work even *not* for its own sake. But you have heard that R. Jehudah's opinion only applied to an act by which a thing was mended? Did you also hear that he decreed thus in the case of where a thing was destroyed? Said R. Abhin:

This is also a case of mending, because it relieves the man's

mind; and while he may spoil the garment at the same time he abates his fury." Is such action permitted? Have we not learned that R. Simeon ben Elazar said in the name of 'Hilpha bar Agra, quoting R. Johanan ben Nuri: "He who tears his garments in his fury, or he who breaks his vessels, or he who throws away his money while in a rage, shall be regarded in your eyes as a worshipper of idols, because such is the custom of the misleader: To-day he says to one, 'Do *so*,' to-morrow 'Do something else,' until he tells one to go and worship idols and the man does so." R. Abhin added to this: "Where can a Scriptural passage be found prohibiting this? [Psalms lxxxi. 10]: 'There shall not be among thee a foreign god; nor shalt thou bow thyself down to any strange god.' This means that no foreign god (misleader) shall be in thy heart, because it says Becho (in thee). The latter part of the verse infers, that if he allows the misleader to dwell in his heart it will bring him to bowing down to idols." Such action is permitted only when a man is not in an actual fury, but wishes to appear as if enraged in order to command obedience (from his family), as R. A'ha bar Jacob used to do; viz.: "When he wanted to show displeasure at the deeds of his family, he would take up a broken vessel and shatter it, making his family believe that he was furious and was breaking whole vessels."

Said R. Simeon ben Pazi in the name of R. Jehoshua ben Levi, quoting Bar Qapara: [1] The tears shed by a man on account of the death of an upright man are counted by the Holy One, blessed be He, and stored in His treasury, as it is written [Psalms lvi. 9]: "My wanderings hast Thou well numbered: put Thou my tears into Thy bottle, behold they are numbered by Thee." R. Jehudah in the name of Rabh said: "One who is slow to mourn the death of a scholar deserves being buried alive, as it is written [Joshua xxiv. 30]: 'And they buried him on the border of his inheritance at Thimnah-serach, which is on the mountain of Ephraim, on the north side of Mount Ga'ash.' Ga'ash signifies storm, and from this it is inferred, that because the people did not mourn the death of Joshua the mount stormed and tried to bury them alive."

Said R. Hyya bar Aba in the name of R. Johanan: "One

who is slow to mourn the death of a scholar will not have long life. This is in retaliation; (because he did not mourn the death of the scholar, his own death will be hastened), as it is written [Isaiah xxvi. 8]: 'In measure, by driving him forth, thou strivest with him.'" R. Hyya bar Aba objected and said to R. Johanan: How canst thou say, that one who is slow to mourn the death of a scholar will not have long life? Is it not written [Judges ii. 7]: "And the people served the Lord all the days of Joshua, and all the days of the elders, that lived many days after Joshua, who had seen all the great deeds of the Lord, which he had done for Israel"? R. Johanan answered: "Thou Babylonite! Does the verse say, that lived many years? It only says many days!" Now, according to R. Johanan's argument, does the verse [Deut. xi. 21]: "In order that your days may be multiplied, and the days of your children," etc., also mean days and not years? In this verse it is different. Where a blessing is conferred days *and* years are meant.

R. Hyya bar Aba said again in the name of R. Johanan: "If one brother die, let the remaining brothers take care that *they* do not die. Or if a member of a society die, let the other members take care that *they* die not." This means: if the best one among them die; another says, on the contrary, if the least one among them die.

"*The prescribed quantity of wool*," etc. R. Joseph showed the extent of a double sit as being twice the distance between the fore and the middle finger when spread out, and R. Hyya bar Ama showed its extent as being the distance between the thumb and the forefinger when spread out.

MISHNA: R. Jehudah said: "One who chases a bird into a bird-tower or a deer into a house is culpable." The sages said: "One who chases a bird into a bird-tower, a deer into a house, yard, or into a menagerie, is culpable." Said R. Simeon ben Gamaliel: "Not all menageries are equal. Following is the rule: Where another chase would be necessary (to catch the deer) one is not culpable; where no further chase is necessary, one is culpable."

GEMARA: The rabbis taught: One who caught a blind or a sleeping deer is culpable, but if the deer is lame, sick or old he is not culpable. Said Abayi to R. Joseph: "What difference is there between the two?" Answered R. Joseph: "A blind or a sleeping deer, as soon as touched, would attempt to escape, whereas. a lame or a sick animal could not do this." Have we

not learned in a Boraitha, that one who caught a sick deer is culpable? This presents no difficulty. The rabbis refer to a deer sick with fever (when it was impossible for it to move), while the Boraitha refers to sickness arising from overexertion.

MISHNA: If a deer run into a house and one lock (the doors) behind the deer, he (the man) is culpable. If two men lock (the doors) both are free. If one of them could not lock (them) himself and *both* did so, they are both culpable. R. Simeon declares them free. If one sit down at the entrance of the house without filling it up and another sit down beside him, thus filling up the gap, the latter is guilty. If the former sat down at the entrance and filled it up, and another came

up and sat beside him, the former, even if he got up and walked away, is culpable, and the latter free; for this is the same as if one locked his house to preserve its contents and a deer were on the inside.

GEMARA: R. Jeremiah bar Aba in the name of Samuel said: One who catches a lion on the Sabbath is not culpable until he brings him into his cage.

R. Aba said in the name of R. Hyya b. Ashi, quoting Rabh: "If a bird flew under a man's coat-skirt, the man may keep it there until dark." R. Na'hman b. Itz'hak objected: From the above Mishna, "If a man sat down at the entrance and filled it up, and another came up and sat beside him, the former, even if he got up and walked away, is culpable and the latter is free," would we not assume, that the man is free (*i.e.*, he need bring no sin-offering) but he should not have done it in the first place? Nay; it means he is free and may do so to commence with. This seems to be borne out by the latter part of the Mishna, viz.: "For this is the same as if one locked his house to preserve its contents and a deer were on the inside." It is certainly allowed to close the house on a Sabbath and hence, being the same as locking the house, it is allowed in the first place.

Said Samuel: "At all times when it is taught, that one is not culpable of performing work on the Sabbath, it is meant that, while he is not culpable, he must not perform such work to commence with, excepting in the three following instances: One of the three has just been mentioned (concerning the deer); the second is, when one lances a wound on the Sabbath; if the intention is to extract the pus contained in the wound, he is not

culpable, and may do so in the first place; as we have learned in a following Mishna, that a sewing needle may be used to remove a splinter from the flesh; the third is, when one catches a snake on the Sabbath and he did so in order to escape being bitten, he is not culpable and may do so to commence with, as we have learned in a preceding Mishna, that one may put a vessel over a serpent, in order to escape being bitten."

Footnotes

214:1 The length of a sit is the distance between the first and middle finger of the hand when stretched taut. A double sit is the distance between the thumb and forefinger when stretched farthest apart.

215:1 Because mourning for one's dead is treated of in the last paragraph, the following discussions relating to mourning for upright men in general are held and the opinions of the different teachers cited.

Next: Chapter XIV: Regulations Concerning the Catching of Reptiles, Animals and Birds

CHAPTER XIV.

REGULATIONS CONCERNING THE CATCHING OF REPTILES, ANIMALS AND BIRDS.

MISHNA: One who catches or wounds any one of the eight kinds of reptiles enumerated in the Scriptures (Lev. xi. 29-30, viz.: the weasel, the mouse, the tortoise, the hedgehog, the chameleon, the lizard, the snail and the mole) is culpable; one who wounds worms or any other kind of reptiles (not enumerated above) is free. One who catches them for a purpose is culpable; he who does so without the intention (to use them) is free. He who catches such animals or birds as are within his domain is free, he who wounds them is culpable.

GEMARA: From the teaching of the Mishna that the reptiles (enumerated above) must not be wounded, it is evident that such reptiles must be possessed of a skin (which can be wounded). According to whose opinion is this? Said Samuel: "This is according to the opinion of R. Johanan ben Nuri; for he so stated (in Tract Chulin). Rabba bar R. Huna, however, in the name of Rabh said: It may also be assumed that the Mishna is in accord with the rabbis, who disagree with R. Johanan ben Nuri only where defilement is concerned, but who agree with him as to Sabbath. And as regards the Sabbath they (the rabbis) do not disagree with R. Johanan. Have we not learned in a Boraitha, that one who caught one of the eight kinds of reptiles enumerated in the Scriptures, or who wounds them, is culpable and that this applies only to such reptiles as have skins, and only such a wound is called incurable which has been produced by the blood clotting in the skin and remaining there, even when no blood came to the surface? R. Johanan ben Nuri, however, states, that all the eight reptiles enumerated in the Scriptures have skins (and therefore one who wounds any of them is culpable; we see that they, disagree even as regards the Sabbath). Said R. Ashi: The first Tana of the mentioned Boraitha, at variance with R. Johanan, is R. Jehudah, who stated, that there are among the eight such as have no

skin; but the other rabbis, who differ with R. Johanan, where defilement is concerned, do *not* disagree with him in regard to Sabbath. Then why is it stated, that "R. Johanan ben Nuri, however, states, etc.," as if he opposed the rabbis? Read: "Thus states R. Johanan ben Nuri and his opponents."

"*Or any other reptiles*." How is it, if one kills them? Is he culpable? The Mishna must be understood that if one only wounds them he is *not* culpable, but if he kills them he *is* culpable? According to whose opinion is this? Said R. Jeremiah: "This is according to the opinion of R. Eliezer, as stated in the first chapter" (page 22). R. Joseph opposed this: "Thou sayest, according to the opinion of R. Eliezer? The rabbis only differ with R. Eliezer when such reptiles as are incapable of breeding are concerned (for then they are not considered as actual living beings); but as to reptiles that are capable of breeding, they also agree, that one who kills them (on the Sabbath) is culpable (because that would be taking life, and taking life is prohibited on the

Sabbath).

"*One who catches them for a purpose is culpable; he who does so without any intention (to use them) is free*." According to whose opinion is this teaching? Said R. Jehudah in the name of Rabh: It is according to the opinion of R. Simeon, who states, that any work not committed for its own sake does not make one culpable.

Samuel said: "One who takes a live fish out of the water, is culpable as soon as a part of the fish as large as a Sela has become dry (because then the fish cannot live)." Said R. Jose bar Abhin: Samuel means to say, that he is not culpable unless a place as big as a Sela become dry under its fins, and not on its body.

Mar bar Hamduri in the name of Samuel said: "If one thrust his hand into the entrails of an animal and displaced a fœtus, that may have been there, he is culpable." Why so? Said Rabha: Mar bar Hamduri explained this to me as follows: Did not R. Shesheth say, that if a man tore out flax from among the thorns surrounding it, he is culpable, because he removed a thing whence it grew? So also in this case he is culpable because he displaced the fœtus whence it grew. Said Abayi: The same is the case with one who tore out a mushroom which grows near a vessel filled with water, because he removed an object whence it grew. R. Oshiyah objected: Did we not learn that one who tears out a thing from a flower-pot, which is

not perforated, is not culpable, but from a perforated flower-pot he is culpable. Why should he be culpable in this case? Because a thing does not grow in a flower-pot which is not perforated, as a rule; but in this case it grows in its usual way.

"*He who catches such animals or birds as are within his domain,*" etc. R. Huna said: "It is allowed to write Tephillin on the skin of a bird which is ritually clean." Said R. Joseph: "What would be inform us? That a bird has a skin? This is taught in the Mishna, for it says, he who wounds a bird is culpable." Said Abayi to R. Joseph: "He informs us of a very important matter. From the Mishna we would simply know that the bird, having a skin, must not be wounded, but we might think, that such a skin, being porous, must not be used for Tephillin. Hence he informs us, that it may also be used for Tephillin, as it was said in Palestine that pores which do not permit of ink soaking through cannot be considered as pores.

Mar the son of Rabhina asked of R. Na'hman bar Itz'hak: "Is it allowed to write Tephillin on the skin of a fish which is ritually clean?" R. Na'hman answered: "This can only be decided by Elijah; when he comes again, he will decide whether it is allowed or not."

Samuel and Qarna were sitting on the banks of Lake Malka. Samuel noticed that a ship was struggling with the rough waters and a man was suffering in consequence. Said Samuel to Qarna: "It seems to me, that a great man is coming from Palestine and that he is sick at the stomach. Go and see what ails him." He went and found Rabh on the ship, and asked him: "Whence do we know that Tephillin may be written only upon the skin of a ritually clean animal?" Rabh answered: "It is written [Exod. xiii. 9]: 'In order that the law of the Lord shall be in thy mouth,' which means, that the Law shall be written only on such a thing as thou mayest take into thy mouth." Qarna asked him again: "How do we know that blood is red?" Rabh

answered again: "Because it is written [II Kings iii. 22]: 'The Moabites saw the water at a distance as red as blood.'" (In the meantime Rabh felt that Qarna was quizzing him.) He asked him, "What is thy name?" He answered: "Qarna." Said Rabh: "A Qarna (thorn) be in thy eyes!" Finally Samuel took Rabh to his own house, gave him barley-bread, small fishes, milk and such things as tend to produce looseness of the bowels, but did not show him the place to excrementize in. So

[paragraph continues] Rabh cursed him and said: "May the one who wishes to make me suffer, not be able to rear his children." So it was.

The rabbis taught: It is allowed to write Tephillin on the skins of (ritually) clean animals and creatures, also upon the skins of such as died a natural death and were not slaughtered, and it is an ordinance (instituted) by Moses at Sinai, that the Tephillin are wound in the hairy hide of such animals, whence the skin may be taken, and are sewed with the veins of such animals; but it is not allowed to write Tephillin on the skins of (ritually) unclean animals and creatures, whether such animals were slaughtered or naturally expired. This question was asked by a Bathusee of R. Joshua of the city of Garsi. "Whence do we know that Tephillin must not be written on the skin of an unclean animal?" "From the passage [Lev. xiii. 9]: 'In order that the law of the Lord shall be in thy mouth,' which means, that the Law shall be written only on such a thing as a man may put into his mouth." "According to thy, argument," said the Bathusee, "Tephillin should not be written on the skin of a (ritually) clean animal, that died a natural death (because it must not be eaten also)." Answered R. Joshua: "I will give thee an instance of two men, who incurred the death penalty. One was duly executed, while the other died at the moment that he reached the gallows. Which is preferable? Certainly the natural death. In this case also, why should the skin of the animal that died a natural death not be used for writing the Tephillin thereon?" "According to that, then," said the Bathusee, "why should it not be eaten also?" Answered R. Joshua: "It is written [Deut. xiv. 21]: 'Ye shall not eat anything that dieth of itself,' and thou wouldst that it should be eaten." Answered the Bathusee: "*Kalos*" (Greek Κ•λος = nice, well).

MISHNA: It is prohibited to prepare brine on Sabbath, but the making of salt water, in order to dip one's bread into it, or to use for seasoning other dishes is permitted. Said R. Jose: Is this not brine? (What is the difference?) be it more or less salted? Only the following kind of salt water may be made: If oil is first put into the water or into the salt.

GEMARA: How should the Mishna be understood? Said R. Jehudah. in the name of Samuel: "It is not permitted to make a great deal of salt water, but a little may be made."

"*Said R. Jose: Is this not brine? Be it more or less salted*." The schoolmen asked: "Does R. Jose, by making that statement,

mean to say that both should be prohibited or that both be allowed?" Said R. Rabba and also R. Johanan: "R. Jose meant to say, that both should be prohibited." We have also learned this in a Boraitha: "One shall not make a great deal of salt water in order to put it into a Gistar (a large

vessel) filled with things requiring a soaking; but he may make a little salt water to dip his bread into it or use it for seasoning other dishes. Said R. Jose: 'Because one is more and the other less salted the former should be prohibited and the latter should be permitted; then one might say that a greater act of labor should be prohibited and a smaller one permitted? Therefore, I say, both are not allowed, but it becomes permissible, if oil is put into the water or into the salt, the main thing is that one should not mix water and salt to commence with.'"

R. Judah bar Haviva taught: "One shall not make salt water very strong." What does he mean by "very strong"? Rabba and R. Joseph bar Aba both said: "If one put an egg into the water and the egg float it is strong salt water." How much salt must be used for such water? Said Abayi: "Two-thirds salt and one-third water." For what purpose can that be used? For fish-brine.

The same Judah b. Haviva taught: "One must not salt pieces of radishes and eggs on the Sabbath." R. Hizkyah in the name of Abayi said: "Salting radishes is not allowed, but salting eggs is."

The same Judah b. Haviva taught: "If citrons, radishes and eggs are eaten without the peel (in the case of an egg, the yolk without the white), they remain in the stomach."

Rabhin walked behind R. Jeremiah on the banks of the sea of Zidon. Rabhin asked R. Jeremiah: "Is it allowed to wash one's self in this water on Sabbath?" R. Jeremiah said: "Yes, it is." Asked Rabhin again: "How is it if a man who is bathing in this water, opens and closes his eyes, so that the water has access to the eyes?" Answered R. Jeremiah: "I never heard of just such a case, but of one similar to it. I heard R. Zera say at one time in the name of R. Mathne, another time in the name of Mar Uqba, both of whom said, that the father of Samuel differed with Levi and that one of them said, that pouring wine on the eyes as a remedy is allowed but pouring wine *into* the eyes is not allowed, while the other said that the saliva of a man who had not broken his fast is a remedy for the eyes and must not even be put on the eyes; but Mar Uqba in the name

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of Samuel said: A man may soak a medicament for the eyes on Friday in water and may then use the water on Sabbath with impunity."

Bar Levayi was standing before Mar Uqba, and saw the latter opening and closing his eyes, so that the medicinal water may have access to them. Said he to Mar Uqba: "So much Mar Samuel did *certainly* not permit!"

R. Yanai sent to Mar Uqba a request: "Let master send his the eye-salve prescribed by Samuel for sore eyes." Mar Uqba answered: "I send it to you, so that you do not think me parsimonious, but Samuel said, that bathing the eye in cold water in the morning and bathing the hands and feet in warm water at night is better than any medicine for the eye in the world." The same we have learned in a Boraitha: by R. Muna in the name of R. Jehudah.

The same R. Muna used to say: "As soon as a man rises and his hand touches his eye, nose, mouth, ear or a vein, it had better be chopped off. The same should be done with a hand that touches a pitcher used for beer, before it (the hand) is washed, because such a hand causes blindness, deafness and bad odors."

We have learned: R. Nathan said: "The eye is (like) a princess and it hurts her to be touched by a hand that has not been washed three times." R. Johanan says: "Puch (a precious stone or a certain kind of paint [1]) applied to the eye, stills its wrath, dries its tears and causes its lashes to grow."

Mar Uqba said: "One who (accidentally) injured his hand or foot so that blood flowed (on the Sabbath) may steep them in wine in order to stop the flow, with impunity." The schoolmen asked: "May he do this, in vinegar also?" Said R. Hillel to R. Ashi: "When I attended the school of R. Kahana, it was said, that it is not allowed in vinegar." Said Rabha: "And the, men of the city of Me'hutza, who are very delicate, are generally cured by wine the same as other people are by vinegar."

It happened, that Rabhina came to the house of R. Ashi and saw the latter, having had his foot trodden upon by an ass, soaking it in vinegar. Said Rabhina to him: "Does not the Master coincide with R. Hillel, who said, that soaking in vinegar is not allowed?" R. Ashi answered: "With a wound on the instep

of the foot and the back of the hand it is different, because R. Ada b. Mathne said in the name of Rabh, that a wound on the back of the hand and on the instep of the foot is equal to an internal wound and the Sabbath may be desecrated on its account."

The rabbis taught: "One may wash his body in the waters of Gror, Chamtan, Essia and Tiberias (all of which are salt waters), but it is not allowed to bathe one's self in the Great Sea and not in water used for soaking flax, also not in the sea of Sodom." Is this not contradictory to what we have learned in the Boraitha, viz. "One may bathe in the Tiberias and in the Great Sea, but not in water used for soaking flax and in the sea of Sodom." This presents a difficulty; for in the Boraitha bathing in the Great Sea is permitted, while the rabbis prohibit it. Said R. Johanan: There is *no* difficulty. One Boraitha is in accordance with the opinion of R. Meir, while the other is in accord with the opinion of R. Jehudah (who differ in Tract Mikva'ath, Chapter V., Mishna 6). R. Na'hman bar Itz'hak opposed this, and said: "They differ only as regards defilement, but have ye heard that they also differ concerning the Sabbath?" Hence R. Na'hman bar Itz'hak explained this otherwise. He said, that the Boraitha which does not permit bathing in the Great Sea refers to one who stays in the water some length of time (and it is obvious that this is done on account of his health). Now, if we say, that the one Boraitha refers to a man who stays in the water for some time, we must assume, that the other Boraitha refers to one who does not stay long, and if this is so, why should not the one (who does not stay long) be permitted to bathe even in the water used for soaking flax? Have we not learned in another Boraitha: "One may bathe in the Tiberias, in flax-water or in the sea of Sodom, even if his head be scrofulous, provided he does not stay long in the water"? Therefore we must explain, that the difficulty existing between the two former Boraithas concerning the Great Sea is: that the one prohibiting bathing in the Great Sea refers to bad water which is not usually used for bathing, while the other refers to the good water generally used by bathers and in both the case refers to one who stays in the water for some time.

MISHNA: It is not allowed to eat Greek hyssop (a remedy for worms) on the Sabbath, because

it is not food for healthy people. It is allowed, however, to eat yoeser (wild rosemary) and to drink shepherd-blossom (tea, an antidote for poisonous

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beverages). It is permitted to partake of all usual eatables and beverages on the Sabbath as medicaments with the exception of tree-water (water of a certain spring) and root-tea (a compound of gum, herbs, and powdered roots), because the two latter serve only as a remedy for jaundice. At the same time it is permitted to drink tree-water to quench one's thirst, and one may anoint himself with root-oil but not as a remedy.

GEMARA: "*It is allowed, however, to eat wild rosemary*," etc. For what purpose is it eaten? To drive out worms in one's liver. What is it eaten with? With seven white dates. What does the illness (requiring this remedy) arise from? From the eating of meat broiled over live coals and the drinking of water immediately after the eating on an empty stomach or from eating fat meat, beef, nuts or Rapa-twigs when eaten on an empty stomach and immediately washed down with water.

The mother of R. A'hadboy b. Ami made a remedy for a man who had imbibed poison of an adder by cooking laurel leaves in a cupful of beer, giving it to the man to drink, then clearing out the coals from a burning hearth, placing a brick on the hearth and making him sit on that brick until the poison left the man in the shape of a green fern. R. Ivia said, that she did not cook the laurel leaves in beer but in a quarter lug of milk of a white goat.

One who swallowed a (small) snake should eat kostos (an Indian root of which a precious salve was made, called in the Bible onycha) in salt and should run three miles. R. Simeon b. Ashi once saw a man who had swallowed a snake, so he disguised himself as a Persian horseman, called to the man, compelled him to eat kostos with salt, then chased him for three miles. In consequence of fright the man then vomited the snake piece by piece.

One who was bitten by a snake should get a bearing (female) ass, tear her open, take out the fœtus, and apply it to the wound.

One who was encircled by a snake should run to the water, take a basket, place it over the snake's head, and as soon as the snake winds itself around the basket, throw it into the water and escape.

One who is pursued by a snake should, if he is in company of a friend, jump on the friend's back and have the friend carry him at least four ells so as to hide the scent of his footsteps, or, if alone, should jump over a stream or pond of water. At

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night he should place his bed on four empty casks, then tie four cats to the casks, and sleep in an unroofed space. He should also place a lot of twigs and dry branches in front of his bed, so that if the snake glide among them they will rustle, in which event the cats will hear the noise and devour the snake. If one is pursued by a snake, he should run to a sandy place, where it is hard for a snake to glide.

"*It is permitted to partake of all usual eatables,*" etc. What does the Mishna mean to add by the word "all"? A milt, which is good for the teeth (although it is bad for a weak stomach), or bran, which is good for the stomach (but bad for the teeth). What does the Mishna mean to add by the word "all," referring to beverages? Water of Izlat (Kaffir-corn) boiled with vinegar.

"*With the exception of tree-water*." We have learned in a Boraitha: "With the exception of prickly water." One who teaches prickly water does so because the water pricks the gall, and one who teaches tree-water refers to water running out of two trees? What does he mean by this? Said Rabba bar Brona: "There are two date-trees in Palestine that are called Thalai, and between them is a spring of water; the first cup of this water produces a weak sensation in the stomach, the second cup purges and the third leaves the stomach as clear as when imbibed." Said Ula: "I drank the Babylonian beer with better effects than that tree-water, but it is only then effective if drunk for the first time in forty days. R. Joseph said: "The water called prickly water above is Egyptian beer, which is one third barley, one third wild saffron, and one third salt." R. Papa said: It is one third wheat, one third wild saffron, and one third salt, and it should be drunk between Passover and Pentecost, when it will relieve constipation and stop diarrhœa.

"*And root-tea*." What is root-tea? Said R. Johanan: It is made of Alexandrian gum, alum, and garden saffron, each the weight of one Zuz, and ground together. To one who suffers with too frequent menstruation, three cups of this tea should be given in wine, and she will not be barren. For jaundice two cups are to be administered, in beer, but the patient will be barren ever after. May this be done? Have we not learned in a Boraitha: Whence do we know that castrating a man is prohibited? From the passage [Lev. xxii. 24]: "And in your land shall ye not make the like." Which means, ye shall not do this on your own bodies. So said R. Hanina?

[paragraph continues] This is said only in reference to one who has the intention of making one a eunuch, but not with reference to one who administers the remedy for jaundice, and incidentally makes one impotent; as R. Johanan said: "One who wishes to castrate a cock shall cut his comb, and thus the cock will become impotent." Did not R. Ashi say, that a cock whose comb is cut off is not rendered impotent thereby, but, being very proud, will have no more coition with hens on that account? Were he actually rendered impotent, it would not be allowed to remove his comb, for it is written [ibid.]: "And in your land shall ye not make the like." It is allowed to give a man two cups of root-tea for jaundice, providing he was already impotent. But even this is prohibited (in Menachoth 56)! Say rather it may be given to a woman who is not subject to the command of bearing children.

MISHNA: One who suffers with toothache must not gargle vinegar for it, but he may dip something in vinegar and apply it, and if the pain is relieved t hereby, he need have no fear of the consequences. One who has pains in his loins must not rub them with wine or vinegar, but may anoint them with oil; not with rose-oil, however. Children of princes may anoint their wounds even with rose-oil, because it is their wont even on week-days to anoint themselves with rose-oil. R. Simeon said: "All Israelites must be considered as children of princes."

GEMARA: R. Aha bar Papa asked R. Abuha concerning the following contradiction: "The Mishna teaches, that one who has a toothache must not gargle with vinegar, implying thereby,

that vinegar is a remedy for toothache, and still we find in the passage [Proverbs x. 26]: 'As vinegar is to the teeth, and as smoke is to the eyes.'" This presents no difficulty. The Mishna refers to an injured tooth, whereas the passage refers, to sound teeth, which are put on edge by vinegar.

"*Must not gargle vinegar*." Have we not learned in a Boraitha, that it is not allowed to gargle vinegar and then spit it out, but if swallowed afterwards gargling is allowed? Said Abayi: Such is also the intent of the Mishna, meaning, if he spit out after gargling.

"*One who has pains in his loins*," etc. Said R. Aba b. Zabhda in the name of Rabh: The law according to the opinion of R. Simeon prevails. Shall we assume that Rabh holds with R. Simeon? Did not R. Simi bar Hyya say in the name of Rabh, that a bung-head tied around with a piece of cloth must not be hammered into a barrel on a festival (because the barrel being

full of wine, the cloth will absorb some, and by being pressed into the hole the wine absorbed will run out, and wringing a thing is not allowed), although the wine runs out of its own accord, and not through the intention of the man; but according to R. Simeon this would be permitted? Where an act is concerned which will most certainly be consummated, even without the agency of man, as the head of a creature being removed, death must surely follow, R. Simeon also admits, that it is not allowed. We have learned elsewhere, however, explicitly, that Hyya bar Ashi said, that Rabh holds according to R. Jehudah, and Samuel according to R. Simeon? (How can it be said that Rabh holds with R. Simeon?) Said Rabba: I and the lion of our society (*i.e.*, R. Hyya bar Abbin) explained this as follows: The ordinance prevails according to R. Simeon, that (rose-oil) is allowed, but not for the reason advanced by R. Simeon. R. Simeon says, that all Israelites are considered as princes, and therefore, even in such places where rose-oil is very costly, one may also anoint himself with it; but Rabh says it is allowed, because, where *he* (Rabh) resided, rose-oil was very cheap (but where it is costly it is not allowed).

Footnotes

224:1 See II Kings ix. 30, Isaiah liv. 11 and I Chronicles xxix. 2.

Next: Chapter XV: Regulations Concerning the Tying and Untying of Knots on the Sabbath

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CHAPTER XV.

REGULATIONS CONCERNING THE TYING AND UNTYING OF KNOTS ON THE SABBATH.

MISHNA: Following are the knots for the tying of which one becomes culpable. The knot of the camel-drivers (made on the guiding-ring) and the knot of the seamen (made on the bow of a ship); just as one becomes culpable for tying them, so also one becomes culpable for untying them. R. Meir said: "One does not become culpable for any knots that can be untied with one hand."

GEMARA: What is the meaning of a knot of the camel-drivers and a knot of seamen? Shall we assume, that by such a knot is meant the one that is tied in attaching the guiding-line suspended from the nose-ring of a camel to something else, and also the knot made in attaching the hawser of a ship to a capstan on the dock? (Such knots are not permanent, why should the tying of them be prohibited?) Nay; by that knot is meant the one made in attaching the guiding-line to the nose-ring and the hawser to the ship itself (both of which are permanent knots).

MISHNA: There are knots on account of which one does not become culpable, as in the case of a camel-driver's or seaman's knot. A woman may tie the slit of her chemise, the bands of her hood, the bands of her girdle, the straps of her shoes and sandals; also the bands of leather flasks (filled) with wine or oil, and of a pot of meat. R. Eliezer, the son of Jacob, says: "One may tie a rope in front of cattle, in order that they may not escape." One may tie a bucket (over the well) with his girdle, but not with a rope. R. Jehudah permits this to be done with a rope also. For a rule was laid down by R. Jehudah: One is not culpable for any knot which is not permanently fastened.

GEMARA: Is there not a difficulty in understanding the Mishna itself? The first part states, that there are knots on account of which one does not become culpable, etc., implying,

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therefore, that, while one who ties them does not become liable for a sin-offering, at the same time he must not do it to commence with. The latter part, however, says, that a woman *may* tie the slit of her chemise, etc., implying, then, that she may do it in the first place? The Mishna means: There are some knots for the tying of which one does not become culpable, as in the case of the knots of the camel-drivers, etc., and they are: The knots by means of which the guiding-line is attached to the nose-ring, and the knots by means of which the hawsers are attached to the ship itself. For tying such knots one does not become liable for a sin-offering, but he must not make them to commence with (because at times the knot is left on the nose-ring or on the ship for some time), and there are other knots which *may* be tied in the first place, such as the slit of a woman's chemise, etc.; what would he inform us? Is it not self-evident, that a woman must tie the slit in her chemise. The case treated of is where a chemise has two slits, an upper and a

lower, and it can be put on (over the head) even if the lower one is tied. We might assume, then, that only the upper one of the slits would be permitted to be tied; he therefore informs us, that both the upper and the lower may be tied and untied.

"*The bands of her hood*." Is this not self-evident? The case is, that the bands of the hood are always tied, and the woman slips on the hood without untying or tying the bands, and we might assume that for this reason the knot is considered permanent; he therefore informs us, that if a hair become entangled in the hood, the woman may tie and untie the bands.

"*The straps of her shoes and sandals*," etc. R. Jehudah, the brother of R. Sala the Pious, had a pair of sandals, which were sometimes worn by him and sometimes by his child. He came to Abayi and asked him whether he might tie and untie them (on Sabbath). Said Abayi: "He who does this unintentionally becomes liable for a sin-offering." Said R. Jehudah to him: "If thou hadst said, that one is not culpable for doing this, but that it must not be done to commence with, it would seem strange to me; thou sayest now, that one is liable for a sin-offering." Asked Abayi: "Why so?" Answered R. Jehudah: "Because on week-days I sometimes also wear the sandals, and (if my child wishes to use them) I untie them and adjust them to the child's foot." Answered Abayi: "If such be the case, they may be tied or untied (on the Sabbath) to commence with."

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R. Jeremiah was walking behind R. Abuha on unclaimed ground, and the band of his sandal having been torn off, he asked R. Abuha what to do. R. Abuha told him to take damp seaweeds, which an animal can eat (and which may therefore be handled on Sabbath), and tie his sandal.

Abayi stood before R. Joseph in private ground, and the band of one of his sandals becoming torn off, he asked R. Joseph what to do. Said R. Joseph: "Leave thy sandal here and walk without it." Asked Abayi: "Wherein does my case differ from that of R. Jeremiah?" Answered R. Joseph: "R. Jeremiah's sandal was torn off in unclaimed ground, where, had he left it, it would have been lost, but thine is in my yard and will be safe." Said Abayi: "But the sandal is a perfect vessel; for I can put it on my other foot and then it will not fall off. Why should I not be permitted to handle it?" R. Joseph answered: "Because we learned elsewhere in regard to Chalitzah that R. Johanan interpreted a Boraitha in accordance with R. Jehudah, who says, that if the band of a sandal was torn off, the sandal cannot be regarded as a vessel. We must assume, therefore, that the ordinance according to R. Jehudah prevails."

"*Also the bands of leather flasks filled with oil or wine*," etc. Is this not self-evident? The case treated of is where the flasks had two mouths, and lest we assume that only one of them may be tied and untied, he informs us that both may be tied.

"*And of a pot of meat*." Is this not self-evident? The Mishna means to state, that even if the pot have an opening at the bottom it might be assumed that the knot tied around the mouth of the pot is permanent and should not be untied. We are informed that it may be untied, nevertheless.

"*R. Eliezer, the son of Jacob, said*," etc. Is *this* not self-evident? The case treated of is where there were two ropes, one tied higher up and the other lower. We might assume, that because the lower one is tied permanently one may not untie it; therefore he informs us that both may be tied

and untied. Said R. Jehudah in the name of Samuel: "The Halakha prevails according to R. Eliezer ben Jacob."

"*One may tie a bucket with his girdle, but not with a rope,*" etc. What kind of a rope is not permitted? Is it an ordinary rope? Why does R. Jehudah permit it? It remains permanently tied? Shall we assume that it refers to the rope of a weaver? Why is it not permitted? It will surely be removed, because the weaver will need it? Or is it prohibited simply as a precautionary

measure, lest some one tie the bucket with an ordinary rope, and R. Jehudah does not entertain this apprehension? Then it is contradictory to the following Boraitha: "A rope fastened to a bucket which became torn, should not be tied into a firm knot, but simply tied into a loop." R. Jehudah says: "It should be joined together with the owner's girdle, but it must not be tied into a loop." This would be a case of where both the rabbis and R. Jehudah contradict themselves. There is no contradiction at all. As for the rabbis, they hold, that an ordinary rope may be mistaken for the rope of a weaver, because both are called ropes, but a loop cannot be mistaken for a knot, because they have different names. As for R. Jehudah, he prohibits a loop to be made, not because he holds that a loop may be mistaken for a knot, but because the loop in this case is equal to a knot.

R. Aba in the name of R. Hyya b. Ashi, quoting Rabh, said: "One may bring a rope from his house and can tie it to the cow, and then fasten it to the crib."

R. Johanan asked of R. Jehudah bar Levayi: "May weaving utensils, either upper or lower, be handled on the Sabbath?" Answered R. Jehudah: "Nay; they may not." "Why so?" "Because on week-days they are also never used for any other purpose (being too heavy); hence they are always used for weaving alone (and therefore must not be handled on Sabbath)."

MISHNA: One may fold his clothes (just removed) even four or five times (on the Sabbath). On the eve of Sabbath one may prepare his beds for use on the Sabbath, but not at the close of Sabbath for use after the Sabbath is gone. R. Ishmael says: "One may arrange his clothes and prepare his beds on the Day of Atonement for the Sabbath; further, the sacrificial tallow left over from the Sabbath may be offered up on the Day of Atonement (if the two succeed one another, before the Jewish calendar was arranged); but not such as is left over from the Day of Atonement on the Sabbath." R. Aqiba said: "Neither that (tallow) left over from the Sabbath may be offered up on the Day of Atonement, nor that of the Day of Atonement on the Sabbath."

GEMARA: The school of R. Yanai said: The Mishna only permits the folding of clothes by one man, but not by two, and also only in case the clothes are new, but not if they are old (because old clothes are better preserved by folding). New clothes must only be folded if they are white clothes, but not if

they are colored. White clothes may be folded only if they constitute all the garments possessed by the man; but if he had others, he must not fold even those, as we have learned in a Tosephta: "The family of R. Gamaliel did not even fold white clothes, because they had others for a

change."

R. Huna said: "If one have a change of clothes for the Sabbath, he should change them; if not, he should at least let them down." 1 R. Saphra opposed this: "If one let down his garments, he will be considered as a vain man." If he does this only on the Sabbath and not on week-days, he will not be considered vain but simply as one desirous of keeping the Sabbath with due respect, as it is written [Isaiah lviii. 13]: "And honor it by not doing thy usual pursuits." "Honor it" is meant to imply that, by wearing different clothes on the Sabbath, the Sabbath should be honored, for R. Johanan calls clothes signs of honor, and through clothes a man is honored. "By not doing thy usual pursuits" means that the walk on the Sabbath should not be as on week-days [ibid. ibid.]: "By not following thy own business," means to say, that only thy own business is not allowed, but heavenly business is. "And speaking (vain) words": the mode of speaking on Sabbath should not be like that on week-days. Speaking is not allowed, but thinking is. (All this is perfectly proper, not to dress as on week-days, nor to speak as on week-days); but what does a different walk on the Sabbath signify? It signifies, that one should not make long strides on the Sabbath, as Rabbi asked of R. Ishmael b. R. Jose: "May one make long strides on the Sabbath?" Answered he: "May one do so even on week-days? For I say, that a long stride deprives a man of a five hundredth part of the light of his eyes. A remedy for this is, however, the drinking of the wine over which the benediction is made on the eve before the Sabbath."

It is written [Ruth iii. 3]: "Therefore bathe and anoint thyself, and put thy garments upon thee," by which, said R. Elazar, is meant the Sabbath garments.

It is written [Proverbs ix. 9]: "Give to the wise (instruction), and he will become yet wiser." Said R. Elazar: By that is meant Ruth the Moabite and the Prophet Samuel of

[paragraph continues] Ramah. Naomi said to Ruth: "Therefore bathe and anoint thyself, and put thy garments upon thee, and go down to the threshing-floor," but Ruth did as it is written further [ibid. 6]: "And she went down unto the threshing-floor, and did in accordance with all that her mother-in-law had commanded her," which means, that she first went down to the threshing-floor and then dressed herself, in order not to soil her clothes. As for Samuel, when Eli said unto him [I Samuel iii. 9]: "Go, lie down; and it shall be, if he call thee, that thou shalt say, Speak, Lord; for thy servant heareth," he did at the time as it is written [ibid. 10]: "And the Lord came, and placed himself, and called as at previous times, Samuel, Samuel. And Samuel said, Speak, for thy servant heareth, "but did not say, "Speak, Jehovah," as he was told to do by Eli (because, not knowing who was speaking, he did not want to speak the Lord's name in vain).

It is written [Ruth ii. 3]: "And she went, and came, and gleaned in the field after the reapers." Said R. Elazar: She went and came to and fro until she found such men as were fit company for her. "Then said Boaz unto his young man that was appointed over the reapers, Whose maiden is this?" [ibid. 5]. Was it proper for Boaz to inquire whose maiden she was? We have learned in a Boraitha: He (Boaz) noticed that she was very modest, for when gleaning from the sheaves, she did so standing if the sheaves were also standing, and if the sheaves were on the ground, she did not stoop, lest she reveal some of her form, but sat down and gleaned in that position.

"But keep close company with my own maidens" [ibid. 8]. Was it proper for Boaz to say "my

own maidens"? Was it his custom to mingle with the women? Said R. Elazar: "Because Boaz saw that 'Orpah kissed her mother-in-law; but Ruth cleaved unto her' [ibid. i. 14] he thought, that if she were such a woman it would be proper for him to associate with her."

"And Boaz said unto her, At mealtime come near hither (halom)" [ibid. ii. 14]. Said R. Elazar: "By the word 'halom' (near hither) Boas hinted to her that from her would spring the kingdom of David, who used the expression 'halom,' as it is written in [II Samuel vii. 18]: 'Then went King David in and sat down before the Lord, and he said, Who am I, O Lord Eternal? and what is my house, that thou hast brought me as far as hitherward (halom)?

"And eat of the bread, and dip thy morsel in the vinegar" [Ruth ii. 14].

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[paragraph continues] "From this it can be inferred, that vinegar is good for (relieving excessive) heat," said R. Elazar. But R. Samuel ben Na'hmeni said: "This was also a hint to Ruth, that from her would spring forth a son, whose deeds would be sour as vinegar, and that was King Menasseh."

"And she seated herself beside the reapers" [ibid. ibid.]. Said R. Elazar: "Beside the reapers and not between them, was also a hint that the kingdom of David would eventually be divided."

"And he reached her parched corn, and she ate, and was satisfied, and had some left." Said R. Elazar: (This is a reference to the kingdom of David) "Ate at the time of David, was satisfied in the time of Solomon, and had some left in the time of King Chizkyah." Others say: "Ate during the days of David and Solomon, was satisfied during the days of Chizkyah, and had some left in the time of R. Jehudah Hanassi (a descendant of David), whose coachman even, according to the teaching of the Master, was said to be richer than the Shahur (king, shah) of Persia." In a Boraitha, however, we have learned: (This passage does not refer to the kingdom of David but to Israel in general). It means: "Israel ate in this life, will be satisfied in the times of the Messiah, and shall have some left in the world to come."

R. Hyya bar Aba said in the name of R. Johanan: "Whence do we know that a change of clothes is a biblical prescription?" Because it is written [Lev. vi. 4]: "And he shall take off his garments, and put on other garments, and carry forth the ashes to without the camp, unto a clean place." This was commented upon by the school of R. Ishmael to mean, that the clothes worn while cooking for one's master should not be worn when serving the master at table.

The same teacher said again: A scholar (Talmud-Chacham), upon whose clothes a stain can be found, deserves to be put to death, for it is written [Proverbs viii. 36]: "All those that hate me love death." Do not read, "those that hate me" (mesanai), but "those that cause others to hate me" (masnii) (implying that if a stain is noticed on a scholar's clothes, the whole law is held lightly). Rabhina said: "In the Boraitha was taught not 'upon whose clothes *a stain* can be found,' but 'upon whose clothes *grease* (Rebhad) 1 is found." They do not differ, however.

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[paragraph continues] The former refers to an over-garment, while the latter to an under-garment.

R. Johanan said: Who can be called a scholar trustworthy enough to be believed when claiming a lost article, without identification, but simply by seeing the article lost and claiming it as his own? A scholar who is so particular that, if he happen to put on his night-robe wrong side out, he will take the trouble to take it off again and adjust it properly.

R. Johanan said again: "Who is the scholar worthy of being made the president of a congregation?" The one who, when asked concerning an ordinance bearing on any subject, knows exactly what to answer, even such ordinances as are contained in the Tract Kalah (Kalah is a supplement to the Talmud, which is not generally read, and treats of a bride).

He said again: "Who is the scholar that is deserving of having his work performed by his fellow-citizens? The one who neglects his own affairs to attend to religious affairs." This refers, however, only to one who has lost his subsistence on account of his congregational duties.

Again, R. Johanan said: "Who can be called a scholar (Talmud-Chacham)? One who can give the interpretation of any ordinance in whichever chapter (or tract) that may be shown him." What difference does that make? The difference is this: If a man is familiar only with the ordinances of a certain tract, he may only be competent to be the presiding officer of one community, but if he understand them all, be may be made the chief of the house of learning in a whole district.

"*R. Ishmael said: 'One may arrange his clothes,'*" etc. The rabbis taught: It is written [Numb. xxviii. 10]: "This is the burnt-offering of the Sabbath." From this we learn, that we may offer up the tallow left over from the Sabbath on the Day of Atonement; but one might say, that the fat left over on the Day of Atonement may be offered up on the Sabbath also; therefore the passage says [ibid. ibid.]: on every Sabbath." So says R. Ishmael, but R. Aqiba says, 'This is the burnt-offering of the Sabbath on every Sabbath,' implies, that the fat left over from the Sabbath may be sacrificed on a biblical feast-day; but one might say, that it may be done also on the day of Atonement; therefore the passage says 'on every Sabbath.'"

The point of difference between R. Ishmael and R. Aqiba is as follows: R. Ishmael contends that vow-offerings and voluntary offerings may be brought on feast-days, and therefore the

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term "every Sabbath" cannot refer to feast-days, but *does* refer to the Day of Atonement, whereas R. Aqiba contends that such offerings must not be brought on feast-days, and hence "every Sabbath" implies that the fat left over from the Sabbath may be offered up on a feast-day.

R. Zera or R. Aba said in the name of R. Huna: "If the Day of Atonement fall on a Sabbath, herbs for cooking must not be selected on that day." Said R. Mana: This we have learned in a Boraitha as follows: "Whence do we know that if the Day of Atonement fall on a Sabbath herbs must not be selected? Because it is written [Exod. xvi. 23]: 'A rest, a holy rest is unto the Lord to-morrow.'" Why is the word "rest" repeated? Shall we assume, that no other labor must be performed? This is ordained (in Chapter xx. 10): "Thou shalt not do any work." It must therefore refer to such work as is not really labor, as "selecting herbs" (and the passage must refer to a Sabbath on which the Day of Atonement happens to fall, because on ordinary Sabbaths no

additional prescription is necessary; but it being the Day of Atonement, on which, were it not also Sabbath, such work would be permissible, on account of alleviating the sufferings caused by fasting, we might assume that it would be allowed also on a Day of Atonement, which occurs on a Sabbath; therefore the passage refers to a Sabbath upon which the Day of Atonement happens to fall). R. Hyya bar Aba, however, in the name of R. Johanan said: Selecting herbs on a Sabbath concurrent with the Day of Atonement is permissible, and the repetition of the word "rest" *is* on account of the prohibition of actual labor, and as for there being another ordinance to that effect, it is for the purpose of signifying that the transgressor of this commandment will be punished for the violation of both the positive and the negative commandments.

We have learned in a Boraitha in support of R. Johanan: Selecting herbs on a Day of Atonement concurrent with a Sabbath is permissible. Nuts may be cracked and pomegranates cleaned after the afternoon prayer, for the purpose of alleviating the suffering of the fasting. In the house of R. Jehudah, cabbage was prepared, and in Rabba's house, pumpkins were cleaned. Later on Rabba noticed that this was being done even before the afternoon prayer; so he told them that a message was received from R. Johanan of Palestine that this was prohibited.

Footnotes

234:1 The poor of those days, when at work--*i.e.,* on week days--used to roll up their long garments in order not to be hindered by them while at work. The rich used to wear long garments at all times; hence the above decree of R. Huna.

236:1 Rashi interprets the word Rebhad to mean "semen."

Next: Chapter XVI: Regulations Concerning Articles Which May be Saved From a Conflagration on Sabbath

CHAPTER XVI.

REGULATIONS CONCERNING ARTICLES WHICH MAY BE SAVED FROM A CONFLAGRATION ON SABBATH.

MISHNA: All sacred scriptures may be saved from a conflagration (on the Sabbath); be such scriptures allowed or not allowed to be read on Sabbath. The Scriptures written in any language whatsoever must be considered sacred, and brought to a safe place, even on a week-day. Why are some (sacred scriptures) not allowed to be read (on Sabbath)? In order that one might not miss the sermons at the school-house. One may save the case of the book with the book, the case of the Tephillin with the Tephillin, even if money is contained therein. Where must such things be taken (for safety)? In a closed space surrounded by walks. Ben Bathyra says: "Even in a space that has one side open."

GEMARA: It was taught: If the Scriptures wore written in Aramaic (Targum), or in any other language, they need not be saved from a conflagration. So says R. Huna. But R. Hisda says: "They must be saved." According to the Tana who holds, that all of the scriptures may be read on Sabbath, there is no difference of opinion between R. Huna and R. Hisda, for the Scriptures must be saved. But, according to the Tana who holds, that some scriptures may and others may not be read on the Sabbath, R. Huna says, that the latter need not be saved, while R. Hisda says they must, in order not to disgrace the Scriptures. An objection was made: "Our Mishna says, that all scriptures, whether allowed to be read on the Sabbath or not, or even if written in whatever language, must be saved. We must assume, that the readable part of the Scriptures is the Prophets and the non-readable part is the Hagiographa, and if written in other languages, which are naturally non-readable, they must nevertheless be saved. How, then, can R. Huna say, that the non-readable need not be saved?" R. Huna might say: How can this explanation of the Mishna correspond with the further ordinance that they "should be brought to a safe

place"? If it says that they must be saved from the conflagration, it is self-evident that they must be brought to a safe place? What is the correct interpretation of the Mishna? R. Huna interprets it according to his understanding thus: "The readable part of the Scriptures is the Prophets, the non-readable part is the Hagiographa, providing they are written in the holy language (Hebrew), but if written in other languages they need *not* be saved; but although they need not be saved on the Sabbath, if they lie in an unfit place even on week-days, they must be brought into a safe place." R. Hisda interprets the Mishna according to his understanding thus: "The readable part is the Prophets, the non-readable part is the Hagiographa, and although written in other languages they must also be saved, and the term 'should be brought to a safe place' refers even to torn pieces of such Scriptures although written in other languages."

Another objection was made: We have learned in a Boraitha: "If they (the Scriptures) are written

in Aramaic or any other language, they must be saved from a conflagration? Is this not contradictory to R. Huna's opinion? Nay; R. Huna may say that the Tana of the Boraitha holds the Scriptures written in other languages to be readable. Come and hear: Scriptures written in Coptic, Median, old Hebrew, Elamite or Greek, although not permitted to be read, must be saved from a conflagration." This is surely a contradiction to R. Huna? R. Huna might say: There is a difference of opinion among the different Tanaim, as we have learned in the following Tosephta: If the Scriptures are written in Aramaic or in any other language, they must be saved from a conflagration, but R. Jose says, that they must not. Said R. Jose: It happened that Aba 'Halafta went to R. Gamaliel the Great in Tiberias, who sat at the table of Johanan the Nazuph (also called Ben Nazuph), and held in his hand the book of job in Aramaic, which he was reading. Said Aba 'Halafta to R. Gamaliel: "I remember having at one time come to thy grandfather R. Gamaliel, who stood on the steps of the corridor of the Temple when a Book of Job in Aramaic was brought to him. He told the mason to take the book and immure it underneath the stairway." Whereupon the later R. Gamaliel also ordered the book he was reading to be immured.

The rabbis taught: The benedictions, which are written in Hebrew, or amulets although containing letters of the Holy Name and many passages of the Scriptures, must not be saved

from a conflagration, but may be burned up together with such letters and passages. From this it was said, that one who writes benedictions commits an act equal to burning up the Scriptures, as it happened in Zidon: One wrote benedictions, and it was told to R. Ishmael. R. Ishmael set forth to investigate the matter. As soon as the man saw R. Ishmael approach, he threw the writings into a bowl of water. Said R. Ishmael to him the following words: "The punishment thou wilt receive for this latter deed will be greater than that for writing the benedictions."

The Exilarch asked of Rabba bar R. Huna: If the Scriptures were written with paint or with dyes and in the holy language, may they be saved from a conflagration or not? I ask thee, taking in consideration the differences of opinion existing between the different Tanaim, for those who hold that Scriptures written in Aramaic or any other language must not be saved, what is their opinion regarding such as are written in the holy language and not with ink? Whereas those who hold that the Scriptures in any language must be saved, do they not refer to such as are written in ink only, but those written with paint or dye, even if written in Hebrew, should also not be saved? Answered Rabba bar R. Huna: "No, they must not be saved." Rejoined the Exilarch: "R. Hamnuna taught, in a Boraitha, that they may?--Answered Rabba: "If such was taught in a Boraitha, it must be so!"

The rabbis taught: Before the passage [Numb. x. 35]: "And it came to pass when the ark set forward, that Moses said, etc.," and at the close of the next verse, the Holy One, blessed be He, made signs (the inverted letter Nun, which must be inserted in the Scroll) in order to signify that this is not the proper place for the two passages; but Rabbi says, that this is out of the question, and that the two verses form a valuable book in themselves. We have heard from R. Samuel ben Na'hmeni in the name of R. Jonathan, that we have not a Pentateuch but a Septateuch [1] (*i.e.*, we have not five books of Moses, but seven). Would this imply that R. Samuel holds with Rabbi and declares that there are seven (because the two verses, which form a book in themselves, divide Numbers into two books)? Who is the Tana, however, that differs with Rabbi? He is R. Simeon ben Gamaliel, for we have learned in a Boraitha:

[paragraph continues] R. Simeon ben Gamaliel says, that these two passages will in the future be removed and put in their proper place. Why were they put here, then? In order to make a separation between the two scourges that befell the Israelites. Which was the second scourge? The one that follows immediately afterwards [Numb. xi. 1]: "And it came to pass, that, as the people complained in a manner displeasing to the Lord," etc., etc. And which was the first? The first was as it is written [ibid. x. 33]: "And they set forward from the mount of the Lord, which, according to R. Hama b. Hanina, means "and they departed from the ways of the Lord." Which is the proper place for the two passages? Said R. Ashi: In Numbers ii. (where it is decreed how every man should walk in the wilderness, and the end of the chapter stating that every, man did as he was commanded, should be followed by those two verses).

The schoolmen asked: May the blank pieces of the Scroll of Laws which had become detached from the Scroll be saved from a conflagration on Sabbath or not? Come and hear: The Gilyonim (blank pieces of the Scroll) and the Sadducean books need not be saved from the conflagration. They, together with the holy names contained in them. Does not the word Gilyonim have reference to the blank pieces of the Scroll? Nay; the blank pages of the Sadducean books. How can it mean the blank pages of the Sadducean books. Why, it is not even allowed to save the Sadducean books themselves? Perhaps the Boraitha means, that the Sadducean books are considered as blank pages, and hence must not be saved.

The text of the Boraitha says further: The Gilyonim and the Sadducean books must not be saved from a conflagration; R. Jose says, that on week-days the Holy Name must be torn out wherever it appears and preserved, and the remainder must be burned; but R. Tarphon says: May I bury my children, if I would not burn such books together with the Holy Name, whenever they reached my hands; for when a man is pursued by murderers or by a snake, it were better for him to seek refuge in the temple of an idol than to enter the houses of such people; for the idolaters serve their idols because they know not God, but the others know God and deny him; they (the latter) are referred to by the verse [Isaiah lvii. 8]: "And behind the doors and the doorposts hast thou placed thy remembrance" (implying that they remember the Lord very well, but nevertheless place their memory behind the doors and doorposts).

Said R. Ishmael: In the Scriptures it is even allowed to erase with bitter water the Holy Name of God, which was written in a holy cause in order to bring about peace between man and wife, *a fortiori* it should be allowed in the case of those people who cause discord and enmity between Israel and the Heavenly Father. To them David had reference [in Psalms cxxxix. 21, 22]: "Behold those that hate thee, I ever hate, O Lord! and for those that rise up against thee do I feel loathing. With the utmost hatred do I hate them: enemies are they become unto me." So, as they must not be saved from a conflagration, they must also not be saved from the waters, or anything that might destroy them.

Joseph bar Hanin asked of R. Abuha: "May the books of Be Abhidon be saved?" Answered R. Abuha: Yea, nay, I really cannot tell. Rabh never went to the Be Abhidon, and all the more not to the Be Nitzrephe. [1] Samuel, however, never went to the Be Nitzrephe, but did go to the Be Abhidon. Mar bar Joseph said: "I am of their society and do not fear them." Still it happened at

one time that he was in danger on their account.

Ema Shalom, the wife of R. Eliezer, who was also a sister of R. Gamaliel the Second, encountered a philosopher in her neighborhood who was a judge, and had the reputation of being inaccessible to bribery. R. Gamaliel and his sister wished to ridicule him and prove that he *was* accessible to bribery. Ema Shalom brought him a golden candle. He asked her what she wanted, so she answered: "My father is dead, and I wish to inherit some of his possessions." The judge said: "Go, I will order that you be given your share." Said she: "Thou canst not order it so, because our law decrees, that wherever there is a son a daughter cannot inherit." Answered the judge: "Since you Israelites are in exile, your law given you by Moses has been revoked, and a new law was given you by which daughters may inherit equally with sons." On the morrow came R. Gamaliel and brought him a Libyan ass, and told him that he did not wish to let his sister inherit. Said the judge: "After thy sister left I consulted the law again, and found that the new law said: 'I did not come to abolish the Mosaic law, neither to increase nor

to diminish it.' Hence it must remain as in the old law, that where a son is left a sister must not inherit." Said Ema Shalom to the judge: "May God make thy light as bright as a candle." Said R. Gamaliel to her (in the presence of the judge): "An ass came along and extinguished thy candle."

"*Why are some (sacred Scriptures) not allowed to be read (on the Sabbath)*?" etc. Said Rabh: "It is not allowed to read such Scriptures only during the time of the sermons at the school-house, but at any other they may be read." Samuel, however, said, that even at any other time they must not be read, because he holds with R. Nehemiah as we have learned in the following Boraitha: "Although it was said that the Hagiographa should not be read, still they may be discussed and lectured upon, and when a quotation must be made, the book maybe referred to and the quotation read." Said R. Nehemiah: "Why was it prohibited to read the Hagiographa on the Sabbath? In order that it might be said: As it is forbidden to read the Hagiographa, it is all the more so forbidden to read ordinary papers."

"*In a closed space surrounded by walls*." What is to be understood by the term "closed space"? Said R. Hisda: "This refers to a lane surrounded on three sides by walls and having on the fourth side two beams. If the lane have three walls and two beams it is a closed space, if it have only one beam on the fourth side it is an open place, and the Tana of the Mishna as well as Ben Bathyra hold in accordance with the opinion of R. Eliezer, who decided to that effect elsewhere." Said Rabba to R. Hisda: "Dost thou call a space surrounded by three walls and one beam an open place? If this be so, according to the sages, why cannot victuals and beverages also be brought there, not alone Scriptures? In *my* opinion, two walls and two beams, one on each side, form a closed space, and two walls with only one beam constitute an open space. And the two Tanaim of the Mishna are not in accord with R. Eliezer, but with R. Jehudah, who opposes him (in Tract Erubin)."

Said Abayi to Rabba: "And why should not, according to thy explanation, victuals and beverages be brought there (for safety) in conformity with the opinion of the sages?" Said R. Ashi, however, "The two Tanaim of the Mishna are of the opinion of R. Eliezer, and a closed place is formed by three walls and one beam, while an open place is made by three walls without any beam at all; and even according to R. Eliezer, who

requires two beams, it is only for the bringing thither of victuals; but for the safe keeping of the Scriptures, R. Eliezer holds even one beam to be sufficient."

MISHNA: One may save enough victuals to last for three meals (on the Sabbath in the event of a conflagration). Such food as is fit for human beings may be saved for the use of human beings, and such as is fit for cattle may be saved for cattle. How so? If a conflagration happen on the eve of Sabbath, one may save enough victuals for three meals. If it occur in the forenoon of Sabbath, one may save enough for two meals, and if it occur in the afternoon of Sabbath one may only save enough for one meal. R. Jose, however, says: "One may at all times save enough for three meals."

GEMARA: Let us see! Why should it only be allowed to save three meals, or two, or one? (It says, further on, that the victuals for the meals are to be brought into such a place as is covered by an Erub. In such a place things may be carried, and the things themselves may also be handled, then why should one not be allowed to save more than enough for three meals?) Said Rabha: Because a man is anxious for his possessions, he might, if allowed to save as much as possible, forget about the Sabbath and extinguish the fire altogether. Said Abayi to him: "We have learned previously, that a man upon whose roof a barrel filled with victuals becomes broken, may bring another vessel and put it underneath the barrel in order that the contents of the barrel fall into the vessel, but may not bring another barrel and transfer the contents of the broken one into the new, nor may he place a new barrel alongside of the other and remove the contents of the broken one into the new one by keeling over the former and letting its contents drop into the latter. Why should he not be allowed to do this? (He is on private ground, and the barrel with its contents may be handled?) If it is prohibited as a precautionary measure in the manner of the previous case, where does the precaution arise?" This latter case is also a precautionary measure; for were he allowed to remove the contents from one barrel into another, there is fear of his carrying it through public ground. The text of the Boraitha, how ever, teaches further, that if the man had guests in his house, he may remove the contents of the broken barrel into a new one, etc. But he may not first remove the contents and then call guests, but first call guests and then remove the things; nor may he pretend (to call guests), but must actually desire their

company. In the name of R. Jose bar R. Jehudah it was said, that even calling guests as a pretext is also allowed.

The rabbis taught: If one had saved (from the fire) fine bread, he must not return and save coarse bread, but if he first saved the coarse he may return and save the fine. One may also save enough on the Day of Atonement in the event of a fire (when that day is succeeded by Sabbath) to last him through the Sabbath also, but on a Sabbath it is not permitted to save enough for the Day of Atonement (if the Sabbath falls on the day before), and all the more so is it not allowed if the Sabbath precedes a feast-day; nor is it allowed to save on one Sabbath for the following Sabbath.

The rabbis taught: If one forgets bread in an oven, and in the meantime the Sabbath sets in, it is allowed to save enough bread to last for three meals; and one may say to bystanders, "Come and

take out as much as ye need"; and when taking out the bread it should not be done with a baker's shovel, hut with some other utensil. R. Hisda said: A man should see that everything should be prepared on Friday for the Sabbath as early as possible, as it is written [Exodus xvi. 5]: "And it shall come to pass, on the sixth day, when they prepare what they shall have brought in," etc., and this means, that as soon as the sixth day sets in, preparations for the Sabbath should be begun.

R. Aba said: "A man must pronounce the benediction over two loaves on the Sabbath," for it is written [ibid. xvi. 5]: "Double bread." Said R. Ashi: "I noticed the manner in which R. Kahana did this: He would hold two loaves, but would cut only one, because it is written [ibid. xvi. 18]: 'Every man according to his eating had he gathered.'" R. Zera used to cut off the loaf sufficient to last him for the entire meal. Asked Rabhina of R. Ashi: "Does this not seem gluttonous, to hold so large a piece in one's hand?" Answered R. Ashi: "Because on week-days such was not his wont, it does not appear gluttonous on Sabbath, and R. Zera did this only in honor of the day." R. Ami and R. Assi, if happening to have the same bread used in making an Erub, for use on Sabbath, would pronounce the benediction over the bread, for they said that because one religious duty had been fulfilled with that bread, it should be used to fulfil another religious duty."

"*How so: If a conflagration*," etc. The rabbis taught: How many meals should a man eat on the Sabbath? Three. R. 'Hidka said four. Said R. Johanan: Both the rabbis and R.

[paragraph continues] 'Hidka adduced their opinions from the same passage, as follows [Exodus xvi. 25]: "And Moses said, Eat it to-day; for a Sabbath is this day unto the Lord: to-day ye will not find it in the field." R. 'Hidka holds that, day being mentioned three times, three meals should be eaten during the day and one at night, and the rabbis hold that the day includes the night and only *three* meals are required. Our Mishna, however, which decrees that only enough for three meals should be saved, does therefore not agree with R. 'Hidka. According to whose opinion, however, will the following Mishna be? (Tract Peah): "If a poor man have sufficient for two meals, he must not apply for another at the public kitchen (where food is distributed), but he may apply to the general charity fund. If he have, however, sufficient for fourteen meals (for the week) he must not even apply to the general charity fund!" If the Mishna were of the opinion of R. 'Hidka, he should have had sufficient for sixteen meals, so as to afford him four meals on the Sabbath, and, according to the rabbis, for fifteen meals in order to have three meals on the Sabbath? It is therefore neither in accord with R. 'Hidka nor with the rabbis. Nay; it is in accord with the rabbis, and the poor man should eat his Sabbath-night meal on the Sabbath day, so with his Friday-night meal it will make three meals on the Sabbath. It may also be said that the Mishna holds with R. 'Hidka, and that the poor man should leave his Friday meal for the Sabbath. Shall we make the poor man then fast on Friday? It would therefore be better to hold the Mishna's opinion to be in accord with R. Aqiba, who says, that the poor man should make Sabbath equal to a weekday in order not to be forced to rely upon charity. Thus fourteen meals are sufficient, and he may eat only two on Sabbath.

But according to whose opinion is the Mishna (Tract Peah): "If a wandering mendicant come to a town, he must be given a loaf which can be bought for a Pundian (one forty-eighth of a Sela) when the price of flour is one Sela for four Saahs (and the sages calculated that such a loaf is sufficient for two meals). If he remain over night he must be given lodging, and if he remain

over Sabbath he must be given three meals for Sabbath." Shall we assume, that this Mishna holds with the rabbis and not with R. 'Hidka? It might also be in accord with R. 'Hidka if the mendicant happen to have one meal with him, he is told to eat the one he has and is given three more. Should the mendicant then depart empty-handed? Nay; he is also given a meal

to take along on the way. What must he be given for lodging? Said R. Papa: Enough to hire a bed and a pillow.

The rabbis taught: The dishes used on the eve of Sabbath may be cleansed for the Sabbath-morning meal. The dishes used in the morning may be cleansed for the mid-day meal, and those of the mid-day meal for the afternoon; but those of the afternoon must not be cleansed until the Sabbath is over. All this is said concerning dishes; but glasses, cups, and all drinking utensils may be cleansed at any time, because there are no fixed times for drinking.

R. Simeon ben Pazi in the name of R. Jehoshua ben Levi, quoting Bar Qapara, said: One who keeps the commandment to eat three times on the Sabbath will be rid of three punishments, viz.: "The tribulations (at the time) of Messiah; the punishment of Gehenna, and the war of Gog and Magog." From the tribulations of Messiah, because the Sabbath is always mentioned as the day, and it is written [Malachi iii. 23]: "Behold, I send unto you Elijah the prophet before the coming of the day of the Lord, the great and the dreadful." From the punishment of Gehenna, because it is written [Zephaniah i. 15]: "A day of wrath is that day," etc., meaning the Gehenna. From the war of Gog and Magog, because it is written [Ezekiel xxxviii. 18]: "On the day of Gog's coming."

R. Johanan said in the name of R. Jose: One who makes the Sabbath pleasant will be rewarded with a boundless inheritance, as it is written [in Isaiah lviii. 14]: "Then shalt thou find delight in the Lord; and I will cause thee to tread upon the high places of the earth, and I will cause thee to enjoy the inheritance of Jacob thy father; for the mouth of the Lord hath spoken it." Not the inheritance of Abraham, concerning whom it is written [Genesis xiii. 17]: "Arise, walk through the land in the length of it and in the breadth of it," etc., and not as in the case of Isaac, as it is written [ibid. xxvi. 4]: "And I will give unto thy seed all these countries," but as it is written of Jacob [ibid. xxviii. 14]: "And thy seed shall be as the dust of the earth, and thou shalt spread abroad to the west and to the east, and to the north and to the south."

R. Na'hman bar Itz'hak said: (The man who makes the Sabbath pleasant) will also be saved the pain of exile, because it is written [Isaiah lviii. 14]: "And I will cause thee to ride upon the high places of the earth," and [Deut. xxxiii. 29]: "And thou shalt tread upon their high places." Said R. Jehudah in the

name of Rabh, "He who makes the Sabbath pleasant is given everything his heart desires," because it is written [Psalms xxxvii. 4]: "And delight thyself in the Lord, and he will give thee the wishes of thy heart." What is meant by "delight"? From the passage [Isaiah lviii. 13]: "If thou call the Sabbath a delight," we can adduce that the delight means Sabbath.

Wherewith should the Sabbath be made pleasant? Said R. Jehudah, the son of R. Samuel bar Shilath, in the name of Rabh: "With a mess of beets, large fish, and garlic-heads." But R. Hyya bar Ashi said in the name of Rabh: "Even with any dish whatever prepared especially for the Sabbath." What does "any dish whatever" mean? Said R. Papa: "Even small fish fried in oil."

R. Jehudah said in the name of Rabh: "If the Israelites had kept the first Sabbath (after the commandments were given) properly, no nation or race on earth could have harmed them. For it is written [Exodus xvi. 27]: 'And it came to pass on the seventh day that there went out some of the people to gather; but they found nothing.' And not long afterwards Amalek attacked the Israelites."

R. Johanan said in the name of R. Simeon ben Jochai: "If the Israelites were to keep two Sabbaths in succession as they should, they would immediately be released from exile, for it is written [Isaiah lvi. 6]: 'Also the sons of the stranger, that join themselves unto the Lord, to serve him, and to love the name of the Lord, to be unto him as servants, every one that keepeth the Sabbath by not violating it, and those who take hold of my covenant,' and immediately afterwards it is written [ibid. ibid. 7]: 'Even these will I bring to my holy mountain.'

R. Jose said: "May my share in the world to come be with those who eat three meals on the Sabbath." Again he said: "May my share in the world to come be with those who recite Hallel [1] every day." This is not so. The Master says, that he who recites Hallel every day is a blasphemer. Nay; R. Jose does not mean Hallel, but Hallelujah.

R. Jose said again: "May my share in the world to come be with those who perform their morning devotion as soon as the sun begins to rise." Again said he: "May my share be with those who die of abdominal disease, for the Master said, that most of the righteous die of bowel troubles." He also said:

[paragraph continues] "May my share be with those who die when about to fulfil a commandment; also with those who receive the Sabbath in Tiberias and see it out in Zipporias (Tiberias was in a valley and Zipporias on a hill); also with those who remain in the houses of learning, and not with those who attempt to draw scholars away from their studies; also with those who solicit alms but not with those who dispense alms; also with those who are suspected but are not guilty." Said R. Papa: "I have been suspected but was not guilty." Said R. Jose: "I have gone in unto my wife five times and have planted five cedars in Israel." Who are they? R. Ishmael, R. Eliezer, R. 'Halafta, R. Aftiles, and R. Mena'hem, all sons of R. Jose. But he also had a son called Vradimos? Nay; Vradimos is the same as R. Mena'hem, and the reason he was called Vradimos was because his face was as beautiful as a rose (Vrad is Aramaic for rose).

Said R. Jose again: "In all my days the ceiling of my house never saw the seam of my undershirt." Again said be: "I never acted contrary to the advice of my colleagues. I know well that I am not a descendant of priests, but when my colleagues asked me to pronounce a benediction usually said by priests, I did so." Again he said: "I never said a thing that I afterwards repented having said."

R. Na'hman said: "May it be accounted to me (for my reward), that I have observed the three

meals (in honor of the) Sabbath." R. Jehudah said: "May it be accounted to me, that I have given my prayers preliminary consideration." 1 R. Huna, the son of R. Jehoshua, said: "May it be accounted to me, that I have never walked four ells with uncovered head." R. Shesheth said: "May it be accounted to me, that I have observed the commandment of Tephillin," and R. Na'hman said again: "May it be accounted to me, that I have observed the commandment of Tzitzith (showthreads)."

Said R. Joseph to R. Joseph the son of Rabha: "Canst thou tell me which commandment thy father observed most punctually?" The answer was: "The commandment of Tzitzith. For it happened one day that my father was ascending the stairway, and a thread of his Tzitzith becoming torn off, he would not leave his place until a new thread had been brought to him and the Tzitzith were mended."

Said Abayi: "May it be accounted to me, that whenever I

noticed a young scholar (of my college) had finished a Tract of the Talmud, I gave a feast to all the sages of the day." Said Rabha: "May it be accounted to me, that whenever a young scholar and another man came before me for judgment, I did not put my head on the pillow (rest) until I exhausted every to find the scholar's words prove the justice of his claim." Said Mar, the son of R. Ashi: "I am unfit to judge a young scholar because I love him as well as I do myself, and no man call see himself unjust."

R. Hanina used to wrap himself in a cloak on the eve of Sabbath and say: "Come with me, and let us go toward Sabbath the queen." R. Yanai used to clothe himself in his holiday clothes on the eve of Sabbath and say: "Come, bride; come, bride."

Rabba, the son of R. Huna, came as a guest to the house of Rabba the son of R. Na'hman. At the table three cakes steeped in the fat of the ram (which were only served on special occasions) were placed before him. Said he to his host: "Didst thou know that I would come to visit thee?" Answered the host: "Art thou then better than the Sabbath? (We prepare it usually for every Sabbath, as it is written: 'And thou shalt call the Sabbath a pleasure.')"

R. Aba used to buy on the eve of every Sabbath thirteen Isteris' (six and a half Dinars) worth of meat from thirteen different butchers, and would hand them the money immediately upon their entering his door 1 and delivering the meat, saying to them: "Make haste, make haste and deliver your orders to others." R. Abuha used to sit on an ivory stool and make fire in honor of the Sabbath. R. Anan used to don a black apron in order to show that this day (the eve of the Sabbath) was a day of preparation, and that work had to be performed for the Sabbath. R. Safra used to singe a cow's head himself for the Sabbath, and Rabha would salt fish himself. R. Huna would light candles himself. R. Papa would prepare the wicks for the lamps. R. Hisda would cut herbs himself. Rabba and R. Joseph would chop wood for Sabbath. R. Zera would light the kindling wood. R. Na'hman bar Itz'hak would shoulder all burdens

to be carried in and out of the house himself on the eve of Sabbath, saying: "If R. Ami or R. Assi

would come to visit me, would I not do the same for them?" Others say that R. Ami and Assi did this on the eve of every Sabbath, saying: "If it should happen that R. Johanan were to visit us, would we not do the same for him?"

Joseph, who honored the Sabbath, had a rich Gentile for a neighbor. The astrologers told the Gentile that all his goods and possessions would eventually be eaten up by Joseph, his neighbor. He went and sold out all his goods, and with the proceeds bought a precious pearl. This pearl he had set in his turban. While crossing a lake one day, the wind blew off his turban and it fell into the water. A fish swallowed it. Subsequently the fish was caught by fishermen late on the eve of Sabbath. Said the fishermen: "Who will buy this so late in the evening?" They were told by some people to go to Joseph, who honored the Sabbath, and that he usually bought such things. They carried it to Joseph, who bought it, and upon opening the fish he found the pearl, which he sold for thirteen [1] boxes of golden Dinars. A certain old man met this Joseph, and said to him: He who lends to the Sabbath is repaid by the Sabbath itself.

Rabbi (Jehudah Hanassi) asked of R. Ishmael the son of R. Jose: "By what acts did the rich men of Palestine, so wealthy, merit their wealth?"

He answered: "Because they gave tithes, as it is written [Deut. xiv. 22]: 'Thou shalt truly give tithes.'" [2] "By what acts did the rich men of Babylon merit their wealth?" asked Rabbi again. "Because they keep the law honorably," was the reply. "And what about the rich men of other lands?" "Because *they* honor the Sabbath," as R. Hyya bar Aba related: "It happened that I was a guest in the house of a man in the city of Ludkai and a golden table was brought for me, which required sixteen men to carry, and sixteen silver chains were fastened to it, and bowls, pitchers, goblets, and glasses were hung on those chains, and on the table were all kinds of food and

beverages and spices, and when the table was set down they said: 'Unto the Lord belongeth the earth, with what filleth it' [Psalms xxiv. 1], and when the table was taken away, they said: 'The heavens are the heavens of the Lord; but the earth hath he given unto the children of men.' [Psalms xcv. 16.] I said to my host, 'My son, how didst thou merit all this?' Said he, 'I used to be a butcher, and whenever I came across a good animal, I would keep it for Sabbath.' Said I to him: 'Well is unto thee, that thou hast merited this, and praise be to God, who hath rewarded thee.'"

Said the Exilarch to R. Hamnuna: "It is written [Isaiah lviii. 13]: 'The holy day of the Lord, honorable.' What does this 'honorable' signify?" R. Hamnuna answered: "It means the Day of Atonement, on which day there is no eating and no drinking, and hence the Thora says, thou shalt honor it with clean clothes." Further, it says [ibid.]: "Thou shalt honor it" (this evidently does not refer to the Day of Atonement, which is called honorable, but must again refer to the Sabbath; how, then, should it be honored?) Said Rabh: "Thou shalt make the usual time of thy meals earlier," and Samuel said, "Thou shalt postpone the ordinary meal-hour." The children of R. Papa bar Aba asked R. Papa: "How shall we, who have meat and wine every day, distinguish the Sabbath day?" He answered: "If ye usually have your meals at a late hour, have them earlier, and if at an early hour, have them later."

R. Shesheth (who was blind) in the summer used to seat his pupils, who came to hear him

lecture on Sabbath, in a place where the sun shone earliest, in order that they might become warm and leave, and in the winter used to seat them where the sun could not reach them, that they might become cold and leave the sooner.

R. Zera, when seeing his pupils standing in pairs and discussing the Thora on the Sabbath, used to say to them: "I pray ye, go home, eat, drink, and be merry. Do not violate the Sabbath! (It is made for pleasure and not for learning.)"

Rabha, according to others R. Jehoshua ben Levi, said: "Even a man who prays singly on the Sabbath eve must recite the prayer commencing with 'Thus were finished,' etc. [Genesis ii. 1-3]; for R. Hamnuna said, that he who prays on the Sabbath eve and recites that prayer is considered by the verse as being a collaborator in the creation of the world."

R. Eliezer said: "Whence do we know that speaking is

equal to acting, as it is written [Psalms xxxiii. 6]: 'By the word of the Lord were the heavens made.'"

R. Hisda in the name of Mar Uqba said: "He who on the Sabbath recites the prayer commencing with, 'Thus were finished,' etc., has the hands of the two angels who accompany each man laid on his head, and they say to him [Isaiah vi. 7]: 'And thy iniquity is departed and thy sin is forgiven.'"

We have learned in a Boraitha: R. Jose bar Jehudah said: "Two angels accompany a man on the Sabbath eve on his way home from the house of prayer; one is a good angel and the other an evil one; and when the man comes home and finds the candles lit, the table set, and his bed made up, the good angel says: 'May it be the will of God that the next Sabbath shall be the same,' and the evil angel answers 'Amen' involuntarily. If, however, the man does not find everything in order, the evil angel says: 'Mayst thou find it so on the next Sabbath also,' and the good angel answers against his own will: 'Amen.'"

R. Elazar said: "A man should set his table on the Sabbath eve, although he may not be hungry and can eat not more than the size of an olive." R. Hanina said: "A man should set his table on the eve following the Sabbath, though he may not be hungry and can eat but the size of one olive. (This is also in honor of the. Sabbath and is like the accompanying of a king at his departure.) Warm water at the close of the Sabbath day is wholesome. Warm bread at that time is also wholesome."

R. Abuha used to have a calf which was the third calf of its mother (and hence the best) killed for him at the close of the Sabbath day, and he ate only one of the entrails of the calf. When his son Abhimi grew up, he (Abhimi) said, "Why kill a whole calf for the sake of one of its entrails? Let us leave one of the entrails of the calf killed for the Sabbath for father, that he may eat it at the close of the Sabbath." This was done, but a lion came and killed the calf that was spared.

R. Jehoshua ben Levi said: "He who answers 'Amen. The Name of the Eternal be blessed,' with

all his heart, has any ill fate which has been predestined for him nullified in heaven, as it is written [Judges v. 2]: 'When depravity had broken out in Israel, then did the people offer themselves willingly; (therefore) praise ye the Lord.' Why had depravity broken out in Israel? Because they had not praised the Lord." R. Hyya bar Abba in the name of R. Johanan said: "Even if

that man have amongst his sins aught of idolatry, he is also forgiven."

Said Resh Lakish: "He who answers 'Amen,' etc., with all his might has the gates of Paradise opened for him, as it is written [Isaiah xxvi. 2]: 'Open ye the gates, that there may enter in the righteous nation that guardeth the truth.'" (The truth in Hebrew is called "Emunim," and Resh Lakish said, "Do not read Emunim but Amenim, the plural for Amen.") What is Amen? Said R. Hanina: "Amen is the abbreviation for El (God), Melech (king), Neamon (truth)." (Meaning that by saying Amen a man certifies that his Creator is the God and king of truth.)

R. Jehudah, the son of R. Samuel, in the name of Rabh said: "A fire seldom occurs in a place unless there is a violation of the Sabbath, as it is written [Jeremiah xvii. 27]: 'But if ye will not hearken unto me to hallow the Sabbath day, and not to bear a burden, and to enter in at the gates of Jerusalem on the Sabbath day; then will I kindle a fire in its gates, and it shall devour the palaces of Jerusalem, and it shall not be quenched.'" What does "it shall not be quenched" signify? Said R. Na'hman bar Itz'hak: "The fire shall occur at a time when men are not around, as a rule."

Abayi said: "Jerusalem was destroyed solely on account of the violation of the Sabbath, as it is written [Ezekiel xxii. 26]: 'And from (the violations of) my Sabbaths do they turn away their eyes, so that I am profaned among them.'" R. Abuha said: "Jerusalem was not destroyed until they had abolished the reading of the Shema in the morning and in the evening, as it is written [Isaiah v. 11-13]: 'Wo unto those that rise up early in the morning, that they may run after strong drink, that continue until late in the twilight, till wine inflame them! And there are harp and psaltery, tambourine and flute, and wine, at their drinking feasts; but the deeds of the Lord they regard not, and the works of his hands they behold not. Therefore are my people led into exile, for want of knowledge.'" R. Hamnuna said: "Jerusalem was not destroyed until the children were kept away from school, as it is written [Jeremiah vi. 11]: '(I must) pour it out over the child in the street'; and it may be explained thus: Why must I pour it out? Because the child is in the street and not at school."

Ula said: "Jerusalem was destroyed because the people were devoid of shame, as it is written [ibid. 15]: 'They should

have been ashamed because they committed an abomination; but they neither felt the least shame, nor did they know how to blush; therefore shall they fall among those that fall.'"

R. Itz'hak said: "Jerusalem was destroyed only because no distinction was made between great and small, as it is written [Isaiah xxiv. 2, 3]: 'And it shall be the same with the people as with the

priest, etc. Empty, emptied out shall be the land.'" R. Amram, the son of R. Simeon bar Aba, in the name of his father, quoting R. Hanina, said: "Jerusalem was destroyed only because the people did not admonish one another, as it is written (Lamentations i. 6): 'Her princes have become like harts that have found no pasture.' As the harts in a herd travel head to rump, so would the men of Jerusalem not dare face each other with admonitions, but followed from behind in silence."

R. Jehudah said: "Jerusalem was destroyed because they insulted men of learning, as it is written [II Chronicles xxxvii. 16]: "But they mocked at the messengers of God, and despised his words, and scorned his prophets, until the fury of the Lord arose against his people, till there was no remedy." What does "till there was no remedy" signify? Said R. Jehudah in the name of Rabh: "He who insults a man of learning, can find no panacea for his affliction."

R. Jehudah in the name of Rabh said again: "It is written [I Chronicles xvi. 22]: 'Touch not my anointed, and do my prophets no harm.'" By "touch not my anointed" is meant the children of the school (for children are usually anointed), and "do my prophets no harm" refers to the scholars. 1

Resh Lakish said in the name of R. Jehudah the Second: "The world is sustained solely through the exhalation of the children" (because they are pure and without sin). Said R. Papa to Abayi: "What about thy and my exhalation?" Answered Abayi: "The difference lies therein, that thou and I might have sinned, but children are incapable of committing sin." Resh Lakish said again in the name of the same authority: "The children should not be withheld from attending school, even while the new temple shall be in process of construction."

Said Resh Lakish to R. Jehudah the Second: "I have heard

a tradition coming from thy parents which says, that the city which has no school for children shall be destroyed; but Rabhina says, the tradition is to the effect that the high court shall put the city under a ban (until a school is built for children)."

Rabha said: Jerusalem was destroyed solely because there were no more trustworthy men there, as it is written [Jeremiah v. 1]: "Roam about through the streets of Jerusalem, and see now, and notice, and search in its broad places, if ye can find one man, if there be one that executeth justice, that searcheth for truth: and I will pardon it." What is meant by trustworthy men? Such as can be trusted in business.

MISHNA: Further, one may save a basket full of loaves (of bread), be it even enough for a hundred meals, a fig-cake, and a cask of wine; and one may also call to others: "Come ye and save for yourselves!" If those who do so understand their advantage, they make a settlement with the owner after the Sabbath is over. Where may such articles be taken to (for safety)? To a court that is joined to the other (court of the house burning) by an Erub. Ben Bathyra says: "Even to one that is not joined by an Erub."

There all utensils (dishes) may be brought, that are used on the same day; one may (in the event of a conflagration on the Sabbath) put on as many clothes as possible, and may wrap himself in

whatever is possible. R. Jose says: "One may only put on eighteen pieces of ordinary apparel, but he can come back as often as he chooses and put on the same quantity and carry them off." One may also call to others: "Come ye and save with me (whatever ye can)!"

GEMARA: Have we not learned, in the preceding Mishna [page 245], that only (enough victuals for) three meals may be saved (and in the above Mishna sufficient for a hundred meals is permitted)? Said R. Huna: "This presents no difficulty. Our Mishna refers to one who comes to save the food with only one basket (when he may fill it with any quantity, whereas the preceding Mishna refers to one who brings several baskets, and in such a case it is not permitted to put in each basket more than sufficient for three meals)." But R. Aba bar Zavda in the name of Rabh said: "Both Mishnas refer to one who comes even with several baskets, but still no difficulty arises. This Mishna speaks of one who does not carry the food beyond the same court, while the other refers to one who carries it into another court.

"*A fig-cake*," etc. Why does the Mishna say, that if those who save for themselves know their advantage they will make a settlement with the owner after having saved the things from the conflagration? Are they not entitled to it under any circumstances, by virtue of the owner having made it public property when saying, "Come ye and save for yourselves"? Said R. Hisda: "This refers to pious people who would not take advantage of a man who is compelled to sacrifice his property." Said Rabha: "Can they be called pious, who accept remuneration for their time on the Sabbath? Nay; the Mishna does not refer to pious men, but to God-fearing men, who, while they would not take anything not belonging to them, would not care to trouble themselves gratuitously. By stating, therefore, that those who know their advantage will settle accounts with the owner afterwards, the Mishna means to say that their prudence consists in their knowing that they will not receive any remuneration for their time on Sabbath, but will only receive their own property as their due."

"*Come ye and save with me*." Why does the first part of the Mishna permit the saying of "Come and save for yourselves," and in the last part the permission is given to say: "Come and save with me"? Because the first part of the Mishna refers to victuals, and a man cannot save more than sufficient for three meals, while the last part of the Mishna refers to clothing; and as a man can change his clothing as often as he pleases, he may call to others to come and help him save whatever is possible.

"*One may put on as many clothes as possible*." The rabbis taught: One may dress himself, go out and undress, come back and dress again, and so on as often as he chooses. So said R. Meir. R. Jose, however, said, that one may put on only eighteen pieces of ordinary apparel. These were: 1. and 2. *Macturen* and *Unqly*, a mantle with a head-hold; 3. *Funda*, pocket for money; 4. *Kalbus*, a dress without sleeves; 5. *Chaluk*, a kind of shirt; 6. *Apiliute*, cover or overcoat; 7. *Maopareth*; 8 and 9. Drawers and pantaloons and cap for the head; 10. and 11. Shoes; 12 and 13. Socks; 14 and 15. *Pargud*, striped suit; 16. Girdle; 17. Hat; 18. Neckties.

MISHNA: R. Simeon, the son of Nanas, says: "One may spread a goat-skin over a chest, a box, or a cupboard, which lips caught fire, so that they only become singed. One may also form a partition with any, utensil (or vessel), be it full of water

or not, in order to keep the fire from spreading. R. Jose forbids the making of such a partition with new earthenware vessels filled with water, because such vessels cannot stand heat, but burst and extinguish the fire."

GEMARA: R. Jehudah said in the name of Rabh: "When one side of a garment has caught fire, the other side may be put in water, and if thereby the fire is extinguished it makes no difference." An objection was made: We have learned in a Tosephta, that if a garment has caught fire one may wrap it around him, and it makes no difference if the fire is thereby extinguished. One may also unroll the Sacred Scrolls, if the covering has caught fire on one side, and it does not matter if thus the fire is quenched. (This Tosephta then simply permits the unfolding or the folding of a garment that has caught fire, but says nothing about soaking the undamaged part in water.) Rabh holds with R. Simeon, the son of Nanas, in the above Mishna (who permits the prevention of the fire). R. Simeon, however, restricts his permission so that, while preventing the fire, it is not extinguished, but simply singes the objects (when the article, however, is soaked in water the fire will certainly be quenched, and did R. Simeon permit this also?) Yea, he did; for the last part of the Mishna relates, that R. Jose forbids the making of a partition with new pottery filled with water, because such vessels are liable to burst and extinguish the fire; and if R. Jose forbids this, surely R. Simeon (the first Tana) must have permitted it in the first part of the Mishna.

The rabbis taught: If a candle fall on the table, the table board may be raised and the candle dropped to the floor, and if it become extinguished, it matters not. Another Boraitha taught, that if a candle burn behind a door, the door may be opened and closed as usual, regardless of whether the candle is thus extinguished. Rabh scolded the one that thus decreed. Said Rabhina to R. A'ha the son of Rabha, according to others R. A'ha the son of Rabha to R. Ashi: "Why did Rabh scold the one who made that decree? Shall we say that it was because he holds with R. Jehudah (who says that an indirect act is also prohibited), and the Boraitha holds with R. Simeon, who permits the performance of an indirect act; is it possible that Rabh will scold every one who holds with R. Simeon?" he answered: "In this matter R. Simeon would also agree that this is prohibited, as it would be like decapitating a man without killing him."

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R. Jehudah said: "One may open a door opposite a hearth-fire." Abayi scolded the one that decreed thus. Of what circumstances do we treat here? If the door is opened when there is an ordinary wind blowing, what reason had the one to prohibit it; and if there be an extraordinary wind blowing, why did the other permit it? The case here treated of is that of an ordinary wind, and the one prohibits the door being opened as a precautionary measure, lest this be done when a high wind is blowing, while the other does not regard a precautionary measure necessary.

"*One may also form a partition*," etc. Shall we say that the rabbis hold the indirect bringing about of an extinction to be permissible and R. Jose holds to the contrary? Have we not heard the case to be the reverse? We have learned in a Boraitha: One may make a partition with empty vessels, and with vessels filled with water that are not liable to burst, and such are iron vessels. R. Jose, however, says, that the vessels made of pottery in the villages of Shihin and Hananiah are also proof against bursting. Thus we see that R. Jose is even more lenient than the rabbis? This presents no difficulty, for the above Boraitha is altogether in accordance with R. Jose; but it

is incomplete, and should read thus: "One may make a partition with empty vessels, and with such as are filled with water but are not liable to burst; and such vessels are iron vessels and vessels made of pottery in the villages of Shihin and Hananiah," as R. Jose says that the vessels made of pottery in these villages are proof against heat.

MISHNA: If a non-Israelite comes near to extinguish (the fire), one must neither say to him: "Extinguish (it)," nor "Do not extinguish it," and for the reason, that one is not obliged to make him rest (on Sabbath). If a minor, however, desires to extinguish the fire, one must not allow him to do so, because one is obliged to see that he (the minor) rests (on Sabbath).

GEMARA: R. Ami said: "During a conflagration one may proclaim: 'Whoever will come and extinguish the fire, will lose nothing by it.'"

The rabbis taught: It happened that a fire broke out in the court of Joseph ben Simai in the town of Shihin, and the men of the fortress of Sepphoris came to extinguish the fire, because Joseph was an official of the government; but he would not allow them to do so, in honor of the Sabbath. A miracle occurred, and it commenced to rain, and the fire was extinguished. That

evening he sent to each man in the fortress two selah and to their officer fifty selah. When the sages heard this, they said: "It was not at all necessary to do this, because the Mishna says, that when a Gentile comes to extinguish a fire on Sabbath, one need not tell him to do it, or not to do it."

"*If a minor, however, desires to extinguish the fire*," etc. Could we conclude from this, that if a minor is detected eating forbidden food it is the duty of the court of justice to prevent his doing so (and we know such is not the case)? Said R. Johanan: "Yea; if the minor does this with his father's knowledge. We must say, then, that the same case applies to the Gentile, who does the work with the knowledge of the Israelite whose house is burning. Is this permitted? Yea, it is; for the Gentile does it of his own volition, and it makes no difference whether the Israelite knows it or not (because he, the Gentile, knows he will be rewarded)."

MISHNA-. One may cover the top of a lamp with a vessel in order that the ceiling may not catch fire, and also cover the ordure (of poultry [1]) on account of the children (in the house). (One may also place a vessel) over a scorpion in order to prevent him from biting. R. Jehudah said: "A case of this kind happened once in the presence of R. Johanan ben Zakai in Arab, and he said, 'I am not certain whether (the man) is not culpable (and bound to bring a sin-offering).'"

GEMARA: R. Jehudah, R. Jeremiah b. Aba, and R. Hanon b. Ram happened to be the guests of Abin of Nishikia. The two former were furnished with beds, and the last one was not. At the same time, he noticed him teaching his son that the ordure of a child is to be covered, in order that the child should not touch it; and he said, "Abin the fool is teaching foolishness to his children. Is not the ordure of a child useful for dogs? What can you say? It was not prepared from yesterday. But this makes no difference; for we have learned in a Boraitha, that running rivers and springing wells are to be considered as the feet of every man." And Abin asked, "How, then, shall we teach?" And Hanon answered, "Over the ordure of poultry, that the child shall not touch it."

"*Over a scorpion in order to prevent him from biting*." R. Jehoshua ben Levi said: "All dangerous creatures may be killed on Sabbath." R. Joseph raised an objection: "We have

learned in a Boraitha, that five creatures may be killed on Sabbath, and they are: the fly of Egypt, the wasp of Nineveh, and the serpent of Hadaiev, and the snake of Palestine, and a mad dog from any region." According to whose opinion is this Boraitha? It is not according to the opinion of R. Jehudah, who holds, that the performance of an act not in itself necessary makes one culpable? We must say, then, that the Boraitha agrees with R. Simeon. If this is so, is it allowed to kill only these five, and not others? Said R. Jeremiah: "Who can tell us that this Boraitha is a correct one? It may be erroneous." Said R. Joseph: "I have studied the Boraitha. The same objection was made before me, and I defended it by stating, that the Boraitha refers to the case where the creatures pursued the man in order to harm him, and under these circumstances even R. Jehudah permits the killing of these creatures."

A certain disciple related before Rabha, the son of R. Huna, quoting a Boraitha: "One who kills serpents and snakes on the Sabbath does not find favor in the eyes of the pious." Answered Rabha: "And these pious men do not find favor in the eyes of our sages." Thus he differs with R. Huna, for it happened that R. Huna, seeing a man killing a snake on Sabbath, said to him: Hast thou killed the last of them (if thou hast only killed one, of what use is it to violate the Sabbath? From this we see that R. Huna differs from the opinion of his son.)

The rabbis taught: If a man met snakes on the road and killed them, it was decreed above that he should kill them (thus, removing danger for others, because a good deed is performed through a righteous man); if, however, he did not kill them, it was decreed above that he should be killed by them (that is, he is a sinner and deserving of death), but through the mercy of the Lord a miracle was performed, and he was saved. Said Ula, according to others Rabba bar bar Hana, in the name of R. Johanan: "Only in case the snakes prepared to strike at the man, can it be said that it was decreed that the man should be killed."

R. Aba bar Kahana said: "It happened that a snake was found in the school-house, and a man of the city of Neiety killed it." Said Rabbi: "He met his equal." The schoolman asked: "Did Rabbi mean, that the man was right in his deed, or on the contrary?" Come and hear: R. Aba, the son of Hyya b. Aba, and R. Zera were sitting in the hut of R. Janai, and they resolved to ask R. Janai if one might kill snakes and

serpents on the Sabbath. And he answered: "If a bee should annoy me, I would kill it; *a fortiori*, snakes and serpents."

Aba the son of Marta, who is Aba the son of Minyumi, was indebted in a sum of money to the Exilarch's house. He was brought there and was worried. While standing in the room, Aba spat on the floor. This happened on the Sabbath, and the Exilarch ordered his servants to bring a dish and cover up the spittle. Said Aba to him: "This is not necessary, for R. Jehudah says, that one may put his foot on spittle and thus clear it off." Thereupon the Exilarch remarked: "This proves

to me that the man is a young scholar; let him go in peace."

Aba bar Kahana said in the name of R. Hanina: "The lamps of the house of Rabbi may be handled on the Sabbath." R. Zera asked him: "Which lamps do you refer to, the lamps that can be handled with one hand, or those that require both hands"? and he answered: "The same as can be found in your father's house (those were small lamps)." The same Aba said in the name of the same authority, that the carriages of the house of Rabbi might also be handled on the Sabbath. R. Zera asked him which he referred to, those that one man can pull, or those that require two men, and the answer was: "The same that your father possesses." Aba bar Kahana said again, that the same R. Hanina permitted the house of Rabbi to drink wine that was scaled with but one seal, in the markets of the heathens, and he states, that he does not know whether R. Hanina holds with R. Eliezer (who held that one seal only was necessary) or whether he permitted this out of respect to the house of the Nassi (for fear that if he prohibited this, they would become angry [1]).

MISHNA: If a non-Israelite lit a lamp on the Sabbath, the Israelite might make use of the light. If he (the non-Israelite) did so (especially) for the Israelite, the latter must not use it. If the non-Israelite filled up (a trough) with water, to water his (own) cattle, the Israelite may water his cattle after him; if he did so for the Israelite (especially), the latter must not water his cattle with it. If a non-Israelite made a stairway in order to descend upon it from a ship, the Israelite might descend after him; if he made it (especially) for the Israelite, the latter must not descend. Once R. Gamaliel and several elders arrived on a ship (on Sabbath) and a non-Israelite made a stairway upon which

to descend (from the ship), whereupon R. Gamaliel and the elders also descended.

GEMARA: And it is necessary for the Mishna to mention the above cases separately, because if we were taught only concerning a lamp, we would say, that a lamp only may be used because a lamp will give light for a hundred men as well as for one; but as for water, we might say, that the water should not be used, in precaution lest the non-Israelite replenish the trough especially for the Israelite. For what purpose, however, is the stairway mentioned? That was only for the purpose of relating what happened to R. Gamaliel and the elders.

The rabbis taught: With grass which a Gentile mowed for his own cattle, an Israelite may feed his cattle, but if the grass was mowed especially for the Israelite, he may not. The same rule applies to water for watering the cattle. This applies only where the Gentile and the Israelite are not acquainted; but if they are, it is not allowed, under any circumstances. This is not so! For R. Huna said in the name of R. Hanina, that a man may allow his cattle to graze on the Sabbath, but must not feed them on grass which he designated previously for some other purpose (it matters not whether the grass is still uncut or cut). (Now, we see that things which have been designated for another purpose must not be fed to cattle on the Sabbath; how then is it allowed to feed one's cattle on the Gentile's grass which was cut on the Sabbath, and surely designated for some express purpose?) This presents no difficulty; for the permission to feed one's cattle on the Gentile's grass only holds good if the cattle feed themselves, and the man may stand by and prevent them from invading another pasture (but does not allow the man to feed them by hand).

It is said above: "This applies only where the Gentile and the Israelite are not acquainted," etc. Is this so? Did not R. Gamaliel descend on the stairway, although he and the Gentile were acquainted? Said Abayi: "The Gentile made the stairway when R. Gamaliel did not see him." But Rabha said: "It may be that the stairway was made in the presence of R. Gamaliel, but this case would be the same as that of a lamp. A lamp for one is a lamp for a hundred."

An objection was made to the teaching of Rabha: We have learned in a Tosephta: R. Gamaliel said to the elders: "As the Gentile made the stairway while we were not looking, we may descend on it." Answered Rabha: "Read simply, that R.

[paragraph continues] Gamaliel said, 'because the Gentile had already made it, we may use it.'"

Samuel happened to arrive at the house of Abin in Touron on a Sabbath. A Gentile came and lit a candle. Samuel turned his face away from the light; but after seeing that the Gentile brought a paper and commenced to read by the light of that candle, he said: "I see now that the Gentile lit the candle for his own use," and he then made use of it himself.

Footnotes

241:1 In the Hebrew introduction to Tract Rosh Hashana this entire argument is explained, and we do not deem it advisable to translate it at present.

243:1 We render these names without translations, as we also do in the case of Gilyonim, because of the incessant discussions concerning them among Hebrew theologians, and we do not desire to decide the definite meaning.

249:1 Hallel is called the section of the Psalms from Chapter cxiii. to cxix.

250:1 It is stated elsewhere (in Tract Rosh Hashana) that R. Jehudah prayed only once in every thirty days.

251:1 Rashi interprets this passage somewhat differently, namely: R. Aba did not hand the money to the butchers immediately upon their entering the door, but would hand the meat to his servants at the door, saying: "Make haste and cook this while I go and bring more," showing that he went himself for the meat and brought each piece from each butcher home separately.

252:1 Rashi explains that his teacher Levi taught, that the number thirteen was usually used by the sages for a general sum and must not be taken literally as the above thirteen butchers, etc.

252:2 The literal verse reads "Asser teasher," which is here applied in the sense, that thou shalt give tithes in order that thou mayst become rich, the word "osher" also meaning riches.

256:1 Rashi justifies this reference by basing it on the verse in Psalms xc. 12, which he interprets: "A prophet has a heart endowed with wisdom"; although Isaac Leeser translates the verse, "That we may obtain a heart endowed with wisdom," the Hebrew word Navi meaning both "prophet" and also "we may obtain."

261:1 According to the explanation of the Gemara. See also translation of the Mishna by De Sola and Raphall.

263:1 Rashi gives this a different explanation, but the above seems correct to us.

Next: Chapter XVII: Regulations Concerning Handling of Utensils and Furniture on the Sabbath

CHAPTER XVII.

REGULATIONS CONCERNING THE HANDLING OF UTENSILS AND FURNITURE ON THE SABBATH.

MISHNA: All utensils (and furniture) which may be handled on the Sabbath, their doors (lids) may be handled with them, even when their lids had been removed; for such lids cannot be considered as house-doors, which are not intended to be removed. One may take a hammer on the Sabbath for the purpose of cracking nuts, an axe to chop fig-cake, a hand-saw to saw cheese, a shovel to gather up dried figs, a fan and a fork to place a thing (food) before a child, a spindle and a shuttle to pick fruit, a sewing-needle to remove a splinter (from the flesh), and a packing needle to open a door.

GEMARA: "*All utensils which may be handled on the Sabbath, their doors (lids) may be handled with them, even when their lids had been removed*." *Removed* when, on Sabbath? and if removed on a week-day they certainly may be handled? Why, on the contrary. On Sabbath the lids being attached to the utensils, they were intended for use with the utensils; but if removed on week-days, they did not form part of the utensils on the Sabbath, hence not intended for simultaneous use, and should not be handled! Said Abayi: The Mishna means to say, that the lids may be handled with the utensils on the Sabbath *even* if the lids had been removed *on a week-day*.

The rabbis taught: "The doors (lids) of a drawer, chest, or cage, may be taken down on the Sabbath, but not replaced. The (door of a chicken-coop (which is built in the ground) must not be removed nor replaced on the Sabbath." It may be right to prohibit the removing or replacing of the door of a chicken-coop (built in the ground), because removing it would constitute the act of tearing down, and replacing it would constitute building, but as for the doors of a drawer, chest, or cage, what is the opinion of the rabbis? Do they hold that the acts of building and tearing down apply also to utensils? If so, why do they permit the removing of the doors (lids); and if not, why do they

prohibit replacing them? Said Rabha: "The act of building does not apply to utensils, but replacing is prohibited more as a precautionary measure, lest one drive the door in with a stick (and this would constitute the act of hammering)."

"*One may take a hammer*," etc. Said R. Jehudah: This refers to a hammer intended only for nut-cracking, and such a hammer may be used to crack nuts, but a smith's hammer must not be used for that purpose; [for R. Jehudah holds, that a thing which is intended only for an act prohibited on the Sabbath, must not be used even for a permissible act]. Rabba, however, says, that a smith's hammer may be used to crack nuts [for he holds that a thing which is intended only for a

prohibited act, *may* be used for a permissible act].

It was taught: R. Hyya bar Aba in the name of R. Johanan said: "We have learned, that a hammer which is intended for hammering gold may also be used for cracking nuts." R. Shoman bar Aba said: "We have learned, that the hammer referred to is intended to be used for spices."

The one who teaches that a spice-hammer may be used certainly permits a gold-hammer; but the one permitting a gold-hammer to be used, does not allow a spice-hammer, because a spice-hammer must be kept perfectly clean, and is laid away for non-use during the Sabbath.

"*A spindle and a shuttle to pick fruit*," etc. The rabbis taught: A date which was not quite ripe, and was put in straw which was intended for use in clay-making, might be taken out. providing it was, not completely covered by, the straw, but enough to take hold of was left uncovered. The same applies to a cake which was taken out of the oven not quite done, and was put in glowing cinders to be cooked; but R. Eliezer ben Tadai said, that both the date and the cake might be taken out even when completely covered, providing this is done with a prong, and then the straw or the ashes respectively fall off of themselves. Said R. Na'hman: "The Halakha prevails according to R. Eliezer ben Tadai."

From this we see that R. Na'hman holds, that handling in an unusual manner is not considered handling at all; but did not R. Na'hman say, that if a radish is deposited in earth with its roots downwards and its head upwards and protruding from the earth, it may be taken out; but if deposited head downwards, it must not be taken out (and thus we see that R. Na'hman regards handling in an unusual manner the same as handling

proper)? The answer is, that R. Na'hman afterward retracted his decision concerning the radish.

"*A sewing-needle to remove a splinter*." Rabha the son of Rabba sent a request to R. Joseph: "Let the master teach us the law regarding a needle, the eyelet or the point of which had been broken off." R. Joseph answered: "We have learned this in our Mishna: 'A sewing-needle to remove a splinter.' What difference would it make to the splinter whether the needle has an eyelet or not?" Rabha objected: "We have learned, that a needle, the eye or the point of which had been broken off, is not subject to defilement." Said Abayi: "Thou confusest Sabbath with defilement? As for defilement, a vessel must be complete in order to be subject to defilement; but for Sabbath use, anything which can be used is in itself sufficient, and with this needle I can remove a splinter."

R. Na'hman forbids the straightening of the limbs of a child at birth on the Sabbath, and R. Shesheth permits it.

MISHNA: The hollow olive-cane is subject to defilement if it has a knot; if not, it is not subject to defilement. In any event, it may be handled on the Sabbath.

R. Jose [1] saith: "Any utensil may be handled on the Sabbath, with the exception of the large wood-saw and the plough-share."

GEMARA: The rabbis taught: Previously only three utensils were permitted to be handled on the Sabbath, and they were: a knife to chop pressed dates, a skimmer, and a small table-knife. Subsequently more was allowed, and then still more, and then more again, until finally any utensil was allowed with the exception of the wood-saw and the ploughshare.

What is meant by "subsequently more was allowed, and then still more," etc.? Said Rabha: They allowed a thing which was intended for use in a permissible act, whether it was needed for another purpose, or whether the room it occupied was needed; then still more was allowed, namely: to shift a thing out of the sunshine to a shady place; then more *again* was allowed, namely: a thing that was intended for use in a prohibited act (*e.g.*, a smith's hammer) was permitted to be used for another purpose or when its room was needed; but it was not permitted to be moved from the sunshine into the shade, and all this was

allowed to be done by only one person, but not by two, until finally all utensils might be handled even by two persons.

Abayi raised an objection to this: "We have learned, that a mortar which contained garlic may be handled, but if it did not contain garlic it must not be handled." The answer was this: It is meant, to remove from the sunshine to the shade. R. Hanina said: This Mishna was taught in the times of R. Nehemiah ben Hahalyah, as it is written [Nehemiah xiii. 15]: "In those days I saw in Judah some treading wine-presses on the Sabbath, and bringing in sheaves, etc." (and because in those times there was great laxity in keeping the Sabbath, strict laws were made as a precaution, and even a mortar was not allowed to be handled unless it contained some eatables). Said R. Elazar: The Mishnas relating to the pieces of wood for the showbreads in Tract Menahoth, the sticks used by the priests for the Passover sacrifice in the Tract Pesachim, the bolts in the Tract Kelim, and the above Mishna relating to the mortar (all of which prohibit the handling of such things on Sabbath) were all taught *before* it was allowed to handle all vessels.

MISHNA: The utensils may also be handled with intent to use them or without such intent. R. Nehemiah saith: "They may be handled only if intended for use."

GEMARA: What is meant by "with intent to use them," etc.? Said Rabha: "'With intent to use them' means to use a thing which was intended for use in a permissible act, whether it was needed for its intended use, or whether the room it occupied was needed; and 'without such intent' means even to shift a thing from the sunshine into the shade, and a thing that was intended for use in a prohibited act was permitted to be used for its intended use or when its room was needed, but it was not permitted to move it from the sunshine into the shade. Now R. Nehemiah comes to say, that even if a thing was intended for a permissible act, it may be used only for its intended use and if the room occupied by it were needed, but it was *not* permitted to shift it from the sunshine into the shade.

R. Sapa, R. Aha b. Huna, and R. Huna bar Hanina were sitting together. The latter asked R. Sapa, according to Rabba, who explains Nehemiah's teaching (that even a permissible thing must not be removed for the purpose of occupying its place): "How can we remove dishes after eating?" Said R. Sapa: "It is equal to a dirty thing (standing on a clean place), which may be removed at any time."

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R. Mari bar Rahel had several leather bolsters that lay in the sun (on a Sabbath). He came to Rabha and asked him if he might move them. Rabha told him it was allowed. Said R. Mari again: "I have other bolsters besides these." Answered Rabha: "This makes no difference. Thou mightst need those too if guests should call." Said R. Mari again: "I have sufficient for guests also." Said Rabha to him: "This proves to me, then, that thou art of the opinion of Rabba, who prohibits the moving of things from the sunshine into the shade on Sabbath. Hence everybody else may do this, but thou must not."

Said R. Aba in the name of R. Hyya bar Ashi, quoting Rabh: Whisks may be handled on the Sabbath to sweep the tables, but the brooms made of date-palms (which are only intended for floor-sweeping) must not be used for sweeping the tables. This was also stated by R. Elazar.

MISHNA: Of all utensils which may be handled on the Sabbath, fragments may also be handled, but it must be with a purpose, viz.: the pieces of a kneading-trough to cover the bunghole of a cask, the pieces of a glass to cover the mouth of a pitcher. R. Jehudah says: "They must be fit for the same use (as the whole utensil), viz.: the parts of a kneading-trough to hold a brew, and the pieces of a glass to hold oil."

GEMARA: Said R. Jehudah in the name of Samuel: "The first Tana of the Mishna and R. Jehudah differ only as to fragments which were broken off on the Sabbath; for the former holds that the fragment is part and parcel of the utensil, and fit for the same use, while R. Jehudah holds, that the fragment is a newly created thing; but if the fragments were broken off before the Sabbath set in, all agree that they may be handled because they were prepared for use while it was yet (week) day."

We have learned, in one Boraitha, that fire maybe made with utensils, but not with fragments; and in another Boraitha we have learned, that as we may make fire with utensils, so we may also use fragments for the same purpose. In a third Boraitha, however, we were taught, that we must not make fire with either utensils or fragments. We must say, then, that the first Boraitha is in accordance with the opinion of R. Jehudah (who holds, to the theory of "Muktza" and Noled (a newly created thing), the second Boraitha is in accordance with the opinion of R. Simeon (who holds to neither of the two theories), and the third Boraitha is in accordance with R. Nehemiah (who holds that

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every utensil must be used for its particular purpose and not for other purposes).

R. Na'hman said: "Bricks left over from a building may be handled, because they can be used as seats; but if the bricks were piled up one on top of the other, they were evidently designated for building, and must not be handled." R. Na'hman said in the name of Samuel: A fragment of a piece of pottery may be handled in private ground, but not in unclaimed ground (because in private ground other vessels can generally be found and the fragment may be used as a lid or cover, but in unclaimed ground there are no other vessels and the fragment cannot be used in that manner); but R. Na'hman himself declares, that the fragment may be handled in unclaimed

ground also (because in unclaimed ground there may also be. some things which can be covered), but not in public ground; and Rabha, however, says, it may be handled even in public ground (because having been once regarded as a utensil in private ground it remains such everywhere).

This theory of Rabha's is borne out by his action; for it happened that he was walking on the street Ritka in the city of Mehuzza on a Sabbath, when his shoe became soiled with dirt. His servant came and cleaned it off with a fragment of a piece of pottery. The rabbis who went behind him scolded his servant for this act, whereupon he (Rabha) remarked: "It is not enough that they have not learned (what is permissible and what is not), but they also want to teach others. If this fragment were in private ground, it would have been a useful article because a vessel could be covered with it, and here in public ground it is useful to me."

R. Jehudah in the name of Samuel said: "The bung-head of a broken barrel may be handled on Sabbath." We have also learned this in the following Boraitha: "The bung-head and the pieces of a broken barrel may be handled on Sabbath, but it is not allowed to break off a piece of the fragments and cover a vessel with it or put it under the legs of a bedstead." If the bung-head and pieces, however, were thrown away among the garbage before the Sabbath, they must not be handled at all.

R. Hamdura said in the name of Samuel: "The waste of a mat may be used on the Sabbath." Why so? For what purpose can it be used? Said Rabha: "Bar Hamdura explained this to me as follows: What is a mat used for? To prevent the dust from settling upon an object, and the waste can also be used

for covering up dirt." R. Zera said in the name of Rabh: "Remnants of silken togas must not be handled on the Sabbath." Said Abayi: "This is said of remnants that measure less than three fingers square and are of no value to either rich or poor."

The rabbis taught: Fragments of an old oven are equal to any other vessels that may be handled on Sabbath. So said R. Meir; but R. Jehudah said they may not be handled. R. Jose testified in the name of R. Eliezer ben. Jacob, that fragments of an oven may be handled on the Sabbath and the covers of in oven may be handled even if their handles are broken off. Said Rabhina: "According to whose opinion do we handle to-day the covers of the ovens used in the city of Mahassia, which have no handles? It must be according to the opinion of R. Eliezer ben Jacob."

MISHNA: One may dip water with a hollow pumpkin to which a stone is fastened, providing the stone will not fall off; otherwise, one must not dip water with it. One may dip water with a jug to which a vine branch is fastened.

"For a window-blind," says R. Eliezer, "a thing may only then be put up, if it be fastened and hang down; otherwise, it must not." The sages say it may be put up in any manner.

GEMARA: We have learned in another Mishna: "If a stone lie at the opening of a barrel, the barrel may be bent over, so that the stone fall down." Said Rabba in the name of R. Ami, quoting R. Johanan: "The case applies only when the stone lying at the opening of the barrel was

left there unintentionally; but if placed there on purpose, the barrel becomes a base for a prohibited thing (and must not be moved)." R. Joseph in the name of R. Assi, quoting R. Johanan, said, on the contrary: "If the stone was left there unintentionally the barrel must be bent over, so that the stone fall down; but if placed there intentionally, it serves as a lid to the barrel, and may be removed." On what points do R. Ami and R. Assi differ? One holds, that an act must be accomplished in order to be an act, while the other holds the intention to be equivalent to the deed, and their respective theories are borne out by their opinions which follow:

For when R. Dimi, and according to others R. Zera, came from Palestine, he related in the name of R. Hanina: It happened that Rabbi once went to a certain place on a Friday, and finding a pile of stones said to his disciples: "Go and have it in your minds that we intend to sit on these tomorrow." Thus

[paragraph continues] Rabbi did not order them to act, but merely to think. R. Johanan, however, said, that Rabbi ordered his disciples to act. And what, according to R. Johanan's opinion, were the disciples to do? R. Ami said, that Rabbi ordered them to place the stones in position for them to sit on, but R. Assi said, that Rabbi ordered them not only to place the stones in position, but also to clean them (because, in the latter's opinion, changing the position of an object does not constitute an actual deed).

It was taught: R. Jose b. Saul said it was not stones but a pile of building wood. R. Johanan b. Saul, however, said it was not building wood but poles with which the depth of the water is sounded.

"*One may dip water with a hollow pumpkin to which a vine-branch is fastened*." If it is fastened one may, and if not, one may not. Shall we assume that our Mishna is not in accordance with the opinion of R. Simeon ben Gamaliel? as we have learned in a Boraitha: Branches of a tree which were intended for kindling, if subsequently used for sitting purposes, must be tied together, but R. Simeon ben Gamaliel said, they need not be tied together. [1] Said R. Ashi: It may be said, that this Mishna is not at variance with the opinion of R. Simeon ben Gamaliel, but is merely a precautionary measure, for fear that a branch, being brittle, might be broken by the man if not tied together.

"*For a window-blind*," etc. Rabba bar bar Hana in the name of R. Johanan said: All agree that it is not permitted to put up even a temporary tent [2] to begin with on a biblical festival, and decidedly not on the Sabbath, but as for adding (that is, if part of the blind was already up) a blind to a temporary tent that had already been put up, R. Eliezer said, that it is not permissible on a festival and much less so on the Sabbath, and the sages declare, that it is permitted on the Sabbath and so much the more oil a festival.

"*The sages say it may be up in any manner*." What is meant by "in any manner"? Said R. Aba in the name of R. Kahana: "By that is meant, that it makes no difference whether the blind was fastened or not, providing it was prepared for its purpose since the day before." Said R. Jeremiah to him:

[paragraph continues] "Why wouldst thou assume that the sages would be more lenient in this matter? Say rather that they meant to state, that it made no difference whether the blind hung down or not, providing it had been previously fastened." R. Aba answered: "Because I hold with the Tana of the following Tosephta: A stick, prepared by the master of a house for the opening and locking of a door, may be used on Sabbath, providing it was fastened and hung to the door; otherwise, it must not be used. R. Simeon ben Gamaliel, however, declared, that as long as it was prepared for that purpose, it was of no consequence whether it was fastened and hung to the door." (Thus it may be seen that R. Aba held with R. Simeon ben Gamaliel.)

R. Jehudah bar Silas in the name of R. Assi, quoting R. Johanan, said: "The Halakha according to R. Simeon ben Gamaliel prevails." Did R. Johanan say this in reality? Have we not learned in a Mishna, that all covers of vessels having handles attached may be handled on Sabbath? Referring to this, R. Jehudah b. Shila in the name of R. Assi, quoting R. Johanan, said, that such would be the case only if the covers could be made use of as independent vessels. (How, then, can R. Johanan hold with R. Simeon ben Gamaliel, who says, that the stick which was not fastened to the door may be used on Sabbath, surely it is not an independent vessel?) Shall we assume, that R. Johanan holds with R. Simeon ben Gamaliel only in the case where the stick could also be used for other purposes and thus could be called an independent vessel? Then how can it be said that R. Johanan holds with R. Simeon ben Gamaliel, for the latter does not require the stick to be an independent vessel, as we have learned above in the matter of the branches (see page 273), where R. Simeon ben Gamaliel declares, that they need not be tied together? R. Johanan is in accordance with him only in the matter of the stick being prepared for its particular purpose without being fastened to the door, but disagrees with him as regards an independent vessel.

R. Itz'hak of Naph'ha 1 proclaimed at the door of the Exilarch's house, that the Halakha according to R. Eliezer prevailed. R. Amram raised an objection: "We have learned in the last Mishna of this Tract as follows: 'Thence we learn that it is permitted to put up a window-blind, to measure and to tie on the Sabbath.'" (How, then, could R. Itz'hak say, that the

[paragraph continues] Halakha according to R. Eliezer prevailed?) Said Abayi to him: Upon what is thy objection concerning R. Itz'hak based? The Mishna just mentioned gives the opinion of the sages only, who are at variance with R. Eliezer in our Mishna, and thou mightst say, that because no contention is mentioned, the Halakha according to the sages prevails; then thou knowest of another Mishna (in Erubin), concerning the hinge of a cupboard door, no name is mentioned, and still the Mishna appears to be in accordance with the opinion of R. Eliezer only (thus R. Itz'hak can accept R. Eliezer's opinion). Saith the Gemara: (Although Abayi justified R. Itz'hak) an *act* of the sages (as is related in the last-mentioned Mishna) is sufficiently decisive to establish the Halakha.

MISHNA: All lids of utensils may be removed (on the Sabbath), provided they have handles. Said R. Jose: What does this apply to? To lids of vessels fastened in the ground, but lids of vessels in general may be removed at all events.

GEMARA: Said R. Jehudah bar Shila in the name of R. Assi, quoting R. Johanan: "The lids of utensils may be handled only if they can be made use of for other purposes as independent

vessels." Saith the Gemara: "All agree, that covers of utensils (fixtures) fixed in the ground must be handled only if they have handles attached, and lids of other utensils not fixed in the ground may be handled even if they have no handles, but the point of the divergent opinions is as regards the covers of ovens, the one side contending, that ovens must be regarded as fixtures in the ground and the other side contending that they are ordinary utensils."

Footnotes

268:1 In the Mishna of Yost and De Sola and Raphall, R. Jehudah was credited with the saying, but in our original R. Jose is named, as is proven in Erubhin 35 a.

273:1 Compare page 90, in this tract.

273:2 By a temporary tent, says Rashi, is meant principally a sheet put up on four poles to serve as a roof, but screens on the sides are not considered a tent. The putting up of a window-blind in a building, however, is regarded by R. Eliezer as an addition to the building.

274:1 See note to page 96, in this tract.

Next: Chapter XVIII: Regulations Regarding the Clearing Off of Required Space, the Assistance To Be Given Cattle When Giving Birth To Their Young and To Women About To Be Confined

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CHAPTER XVIII.

REGULATIONS REGARDING THE CLEARING OFF OF REQUIRED SPACE, THE ASSISTANCE TO BE GIVEN CATTLE WHEN GIVING BIRTH TO THEIR YOUNG AND TO WOMEN ABOUT TO BE CONFINED.

MISHNA: One may even clear off four or five chests of straw or grain, in order to provide room for guests, and to remove obstacles to instruction; but one must not clear out a whole barn. Further, one may clear off: heave-offerings, grain (of which it is not certain that the tithes have been set apart), first tithes of which the heave-offering has been taken off, second tithes and consecrated things which have been redeemed, and dried broad-beans, which serve the poor (others say, the goats) for food. But one must not clear off mixed grain (of which tithes have not yet been separated), nor first tithes. of which the heave-offering had not yet been taken off, nor second tithes nor consecrated things which had not yet been redeemed, nor arum (wake-robin) nor mustard. R. Simeon ben Gamaliel permits arum (wake-robin) to be cleared off, because it serves the (house) raven for food.

Bundles of straw, bundles of stalks, and bundles of reeds may be handled, provided they are designed for cattle-fodder, otherwise they must not be handled.

GEMARA: The Mishna says, "four or five chests." Why say four or five? If five may be cleared off, surely four may! Said Samuel: This is said only as a customary saying; but in reality it means to say that any number maybe cleared off; but by saying "one must not clear off a whole barn," the Mishna means to state, that all the straw should not be removed for fear lest pits be noticed in the ground, and the man might fill them up. Even if the whole barn be full and as yet untouched, one may commence to remove as much as is necessary, and the Mishna is in accordance with the opinion of R. Simeon, who disregards the law of Muktza.

The rabbis taught: One may not commence on a full barn, but one may remove enough, when entering, with his feet, to

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provide an entrance, and when going out to make a way of egress.

The rabbis taught: A sheaf of grain, if commenced prior to the Sabbath, may be used on the Sabbath; but if not, it must not be used on Sabbath, so saith R. A'ha, but R. Simeon permits this to be done. How large should the sheaf be? We have learned in a Boraitha that it should measure one Lethach. [1]

The schoolmen propounded a question (not having heard Samuel's explanation): "How is the

term 'four or five chests' to be understood? Should a man clear off only four or five chests, even if that be not room enough for his guests; or should he do so in proportion to the number of his guests? If according to the number of his guests, does it mean to say, that one man should clear off sufficient for all, or every man for himself?" Come and hear: Rabba told in the name of R. Hyya: It once happened that Rabbi went out on a Sabbath to a certain place, and saw that the place assigned to him for lecturing was too small; so he went out into the field, and found the whole field full of sheaves. He cleared off the field, and provided sufficient room." Thence we see that he did so in proportion to the number of his guests; but this narration decides only one part of the schoolmen's question, viz.: the one relating to the number of sheaves to be cleared off, but not the one relating to whether one man may clear off sufficient for all, or every man for himself. Come and hear: "Rabbi cleared off the field," etc. (that is, one man for all). And what think you, that Rabbi did this himself? he certainly must have ordered this to be done, so it is not known whether one man did it, or each man for himself.

"*For guests*," etc. R. Johanan said: "The reward for hospitality is equal to that for visiting the house of learning, for the Mishna saith for guests and for obstacles to instruction, thus putting the two causes on a par." Said R. Dimi: "Hospitality is even a greater virtue, for it is given the precedence over instruction."

R. Jehudah said in the name of Rabh: Hospitality is even a greater merit than receiving the Shekhina, as it is written [Genesis xviii. 3]: "And he said, My Lord, if now I have found favor in thy eyes, pass not away," etc. (showing that Abraham let the Lord wait while he went to receive his guests). Said R. Elazar: Come and see how the custom of the Holy One,

blessed be He, is unlike that of human beings. An insignificant man cannot say to a great man: "Stay here until I come back again," whereas to the Holy One, blessed be He, Abraham said as mentioned above.

Said R. Jehudah bar Shila in the name of R. Assi, quoting R. Johanan: "There are six things, the interest on which a man consumes on earth, while the principal is given him in the world to come. They are: Hospitality, visiting the sick, contemplation before prayer, attending the house of learning, educating children in the Law, and charity in judging others." Is this so? Have we not learned in a Mishna: These are the things the interest of which a man consumes on earth and the principal of which is given him in the world to come? "Honoring father and mother, doing favors to neighbors, peace-making among men, and, above all, the study of the Law." Now, if the Mishna says "these are the things," it means no others! Nay; the six things previously mentioned are included in those subsequently enumerated (hospitality and visiting the sick are included in doing favors to neighbors; contemplation before prayer is a favor to one's self, as it is written [Proverbs xi. 17]: "The man of kindness doth good to his own soul"; attending the house of learning and educating children in the Law is included in the study of the Law; charity in judging others is included in peacemaking among men, and R. Johanan does not dispute the Mishna, but merely expounds it).

The rabbis taught: One who exercises charity in judging others is charitably dealt with when judged above. It once happened that a man came from upper Galilee and hired out to a master in southern Palestine for three years. On the last eve of the Day of Atonement (when his term was up) he asked his master for his wages, so that he could return to his wife and children. The

master replied that he had no money. Said the man: "Then give me my money's worth in grain." And the master answered: "I have it not." Said the man again: "Give me my money's worth in land," and again the master replied: "I have it not." "Then give me my money's worth in cattle." "I have it not," was the reply. "I will take my money's worth in bolsters or bed-clothes," Pleaded the man, but the answer was still the same. The poor man shouldered his bundle and sorrowfully went away. After the holidays the master took the hired man's wages and, besides, three asses; one laden with victuals, the second with beverages, and the third

with spices, and went to his hired man's house in Galilee. After having partaken of a meal together, the master paid him his wages, and asked him: "When I told thee that I had not the money to pay thee thy wages, what didst thou suspect me of?" The man answered: "I thought that perhaps thou hadst come across a bargain and hadst paid out all thy ready money." "And when thou askedst me for cattle and I refused thee, what didst thou think then?" "I thought that thou hadst hired out thy cattle on some other farm, and thou couldst not give me any at the time." "And when thou askedst me for grain and I refused?" "I thought perhaps thou hadst not yet paid thy tithes and hence thou couldst not give me any." "And when I refused thee land?" "I thought perhaps thou hadst rented it out." "And when I refused thee bed-clothes?" "Then I thought that thou hadst devoted all thy possessions in honor of the Lord." "I swear to thee, then, that such was really the case. I had made a vow to give away all my possessions for charitable purposes, because my son Hurkenes did not want to study the Law. Afterwards, when I came to my comrades in the South they released me from my vow, and as thou didst judge me in kindness, so may God judge thee in kindness."

The rabbis taught: A pious man once ransomed a Jewish maiden from captivity. When they came to a lodging-place at night, he laid her down at his feet. On the morrow he bathed, and then went out to teach his disciples. During the lesson, he asked his disciples: "When I laid the damsel down at my feet last night, what did you suspect me of?" And they answered: "Perhaps there may be one among us who has not yet been tried and thou couldst not trust him, so thou laidst her near thee." "And when I went in the morning and bathed, what did you suspect?" "Perhaps, on account of the hardships on the way, thy seed of copulation ran out from thee and thou wert compelled to bathe." "By the Lord," said the master, "so it was; and as ye have judged me in kindness, so may the Lord judge you in kindness."

The rabbis taught: It happened that the sages had business with a Roman matron to whom all the great men of Rome came for advice, and they could not decide who should go to her. Finally R. Jehoshua volunteered to go, and so he and his disciples went to her. Four ells from the door of her house, R. Jehoshua removed his phylacteries and went in, locking the door behind him. When he came back he bathed, and then went

back and taught his disciples. During the lesson he asked: "When I removed my phylacteries, what did ye suspect? "And they answered: "The phylacteries are holy, and thou didst not wish to bring them into a profane place." "And when I locked the door behind me, what did ye suspect?" "We thought perhaps thou hadst a secret political affair to transact and didst not wish us to enter." "And when I came out and bathed, what did you suspect?" And they replied: "We thought perhaps some of the matron's spittle had accidentally dropped on thy garments and thou

hadst to bathe." "By the Lord," said R. Jehoshua, "so it happened; and as ye judged me in kindness, so may the Lord also judge you in kindness."

"*Further, one may clear off heave-offerings*," etc. Is this not self-evident? It might be assumed that the heave-offerings being in possession of a plebeian who is not allowed to partake of them, they must not be handled; but the Mishna comes to teach us, that because a priest is allowed to eat them, they may be handled by everybody. 1

"*And dried broad-beans*." The rabbis taught: Hatzav (a certain plant the roots of which grow deep into the ground but do not spread) may be handled on the Sabbath, because it is food for deer. Mustard may be handled, because it is food for doves. R. Simeon ben Gamaliel said that pieces of glass may be handled, because ostriches eat them. Said R. Nathan: "In this case twigs may be handled, because they serve elephants for food." What did R. Simeon answer R. Nathan? Ostriches are more frequently owned by men than elephants. Said Ameimar: "R. Simeon ben Gamaliel means to say, that only one who possesses ostriches may handle pieces of glass?" Said R. Ashi to Ameimar: "If this is so, what did R. Nathan question? If one possesses elephants, he may surely handle twigs. So R. Nathan means to say, that because twigs serve as food for elephants, anybody may handle them; and the same applies to pieces of glass, because they serve ostriches for food, everybody may handle them (on the Sabbath)."

"*Bundles of straw*," etc. The rabbis taught: "Bundles of straw, bundles of stalks, and bundles of reeds may be handled, provided they are designed for cattle-fodder; otherwise, they must not be handled." R. Simeon ben Gamaliel said: "If the

bundles can be lifted with one hand they may be handled, but if not they must not be handled."

Bundles of satureia, abrotanum, and thyme, if prepared for fuel, must not be used on Sabbath, but if prepared for cattle-food may be used. Grain from an ear (of wheat, etc.) may be taken by hand only, but not with a vessel. One may even take a few grains from growing ears with his fingers, and eat them, but must not take them with a vessel, so saith R. Jehudah; but the sages say, that one may do this with his fingers, but not with both hands, as usually done on week-days. The same ordinance holds good for any other spices.

It was taught: Salt meat may be handled on Sabbath, but fresh meat must not be handled, according to R. Hisda; but R. Huna permits this.

The rabbis taught: Salt fish may be handled, but not stale unsalted fish, and meat may be handled, be it fresh or salt.

The rabbis taught: Bones may be handled, because dogs eat them; putrid meat may be handled, because beasts of prey eat it. Uncovered water 1 may be handled, because cats drink it. R. Simeon ben Gamaliel, however, said, that all these things should not be kept in the house even on week-days, because they are dangerous.

MISHNA: One may set a basket on end for chickens, in order that they may climb up or down

upon it. A runaway hen may be chased until she goes back again. One may lead about calves or young asses to exercise them. A woman may lead her son about to give him exercise. R. Jehudah says: "When (may she do) this? If the child lifts one foot and sets down the other; but if it trails (its leg) behind, she must not."

GEMARA: Said R. Jehudah in the name of Rabh: "If a cow fall into a lake, it is allowed to throw into the lake bolsters, bundles, vessels, etc., in order to give the cow a foothold and enable her to get out." An objection was made: We have learned in a Boraitha: "If a cow fall into a lake, food may be brought to her in order that she may not starve to death." So it refers only to food, but nothing is said in reference to bolsters, etc. This presents no difficulty. Where food can be brought it may be done, but when the cow cannot be reached, bolsters, etc., may be brought. But a vessel that is prepared for other

purposes is thereby destroyed? That is simply a rabbinical ordinance, but pity for creatures is a Mosaic law and has precedence.

"*A runaway hen may be chased*," etc. The hen may be chased, but not led. This is a similar teaching to that of another Boraitha, wherein we have learned, that all animals and birds may be led about in private ground with the exception of a hen. Why not a hen. Said Abayi: "Because a hen, when led, will not walk, but will jump and fly, and the man leading her will be forced to carry her."

MISHNA: On a feast-day one must not deliver cattle, about to give birth, of their young, but may be of assistance to them in any other manner. One may give a woman (about to give birth to a child) all assistance possible, even call a midwife from a distance; one may violate the Sabbath on her account and tie the navel-string. R. Jose says: One may also cut the string. Lastly, one may accomplish anything necessary for the circumcision on the Sabbath.

GEMARA: What is meant by "being of assistance"? Said R. Jehudah: "To hold up the young, that it may not fall," and R. Na'hman said: "To pull out the young by pressing the sides." R. Jehudah's explanation is supported by the following Boraitha: "How is an animal assisted in giving birth to her young? By holding up the young, blowing air into its nostrils, and leading it to its mother's breast, so that it may suck."

R. Simeon ben Gamaliel said: "When a clean animal (one that may be eaten) gave birth to her young on a festival and would not take to it, we would coerce her into taking to her offspring." How would this be done? Said Abayi: "They would bring a handful of salt, lay it in the mother's womb, and the pain that would be caused thereby would remind the mother of her young, and she would immediately take to them, and they would pour the water discharged by the mother on the young, so that the mother would scent it and seek her young. This was done, however, only with a clean animal, but not with ail unclean animal. Wily so? Because usually an unclean animal will not cast off her young, and should she do so, she will never take to them again."

"One may give a woman (about to give birth to a child) all assistance possible." Let us see! The Mishna says, that one may call a midwife even from a distance, and then, that one may violate the Sabbath on her account. What is the object in

particularizing what may be done? The Mishna means to tell us, what the rabbis taught, viz.: "If a woman lying in is in need of a light, another woman may light a candle for her; and if she needs oil, the waitress may bring her oil through public ground in her hands; should that not be sufficient she may bring it in her hair, and if that does not suffice she may bring it in a vessel."

The master said: "If a woman lying in is in need of a candle, another woman may light it for her." Is this not self-evident? He means to tell us, that even if the woman lying in be blind, and one might say, that being blind she needs no candle, hence it should not be lit; the candle should her at all events, for she may need a thing that others could not see without a light, while, by aid of the light, they would find it and hand it to her.

Further, it says, that a woman may bring her oil in her hair. This would be worse still, for the hair would have to be wrung, and that would make the woman (who brought the oil) guilty of wringing (on Sabbath). Rabba and R. Joseph both said, that wringing hair does not constitute wringing within the meaning of the law. R. Ashi said: "Even if wringing the hair would constitute wringing within the meaning of the law, the woman should bring the oil in a vessel which should be placed on the hair (head); for any work which must of a necessity be performed on a Sabbath, should be performed in as far different a manner from that done on a week-day as possible."

R. Jehudah said in the name of Samuel: "As long as the womb of a woman lying in is still open, whether she says she must have it done or not, the Sabbath may be violated for her. As soon, however, as the womb is closed, the Sabbath may be violated only if she says she must have it done; otherwise, it must not be violated, so taught Mar Zutra." R. Ashi, however, taught in the name of the preceding authority, that as soon as the womb is closed, even if the woman says she must have it done, the Sabbath must not be violated on her account.

Said Rabhina to Mareimar: "Mar Zutra is more lenient in his teaching, and R. Ashi the stricter; according to whom does the Halakha prevail?" Answered Mareimar: "The Halakha according to Mar Zutra prevails, for it is the general rule, that wherever human lives are concerned, the more lenient teaching is always accepted as final."

At what time is the womb considered to be open? Abayi

said: "From the time the woman commences to give birth." R. Huna the son of R. Jehoshua said: "From the time blood commences to flow", and others say, from the time that she becomes helpless and her attendants lay her on the bed.

How long is the womb considered to be open? Abayi said, for three days after birth, and Rabha in the name of R. Jehudah said, for seven days, and others say for thirty days. The scholars of Neherdai divide the time of a woman lying in into three periods of three, seven, and thirty days each. During the first period, whether the woman says she must have it done or whether she says it need not be done, the Sabbath may be violated for her. During the second period, if she says it

must be done, the Sabbath may be violated; but if she says it need not be done, it must not be violated; and during the third period, even if she says she must have it done, the Sabbath must not be violated by Israelites, but it may be done by Gentiles. This is according to R. Ula the son of R. Ilai, who says, that everything which must be done for a sick person on the Sabbath should be done by Gentiles, and also according to R. Hamnuna, who said, that all things which are to be done for a person who is not dangerously ill, should be ordered done by a Gentile. As it happened with the daughter of R. Hisda (the wife of Rabba), who took a bath in her husband's absence, before the thirty days were up, and caught cold, and friends were compelled to bring her, still lying in bed, to Rabba in Pumbaditha.

Said R. Jehudah in the name of Samuel: "A woman lying in should be given thirty days." For what law should she be given thirty days? The men of Neherdai said, for bathing (that is, she should not bathe for thirty days, in order that she may not catch cold). Said Rabha: This rule applies to women whose husbands are not at home, for when the husband is at home, he can take care of his wife and prevent any bad consequences.

R. Jehudah in the name of Samuel said again: One may kindle a fire for a woman lying in, on the Sabbath, and not only for a woman lying in, but also for a sick person; not only in the winter but also in the summer-time, as R. Hyya bar Abhin said in the name of Samuel, that one, who was bled and caught cold, may have a fire made for him on Sabbath not only in the winter, but also in the summer-time. Samuel once was bled and caught cold, so a chair made of elm-wood was chopped up and a fire made for him (on Sabbath). The same thing happened to

[paragraph continues] R. Jehudah; so a table of cedar-wood was chopped up and a fire made for him. Rabba had the same experience and a stool was used to make a fire, and when told by Abayi that he was, guilty of destroying a useful article said My personal welfare is dearer to me than the article."

Said R. Jehudah in the name of Rabh: "A man should sell even the roof of his house and buy shoes for himself if in need of them; but if he had recently been bled and feels hungry, he should sell even these shoes and buy food with the proceeds." What kind of food should he purchase? Rabh said meat, and Samuel, wine. Rabh said meat, as being a substitute for flesh lost through bleeding, and Samuel said (red) wine, as a substitute for (red) blood.

When Samuel had himself bled, a dish made of milt was prepared for him, and R. Johanan would drink wine until it could be smelt through his ears. R. Na'hman would drink wine until his spleen would float in wine. R. Joseph would drink wine until his veins would swell so that the lancet would be forced out, and Rabha would drink only wine that was three years old.

Said R. Na'hman bar Itz'hak to his disciples: I beg of you, that on the day on which you have yourselves bled, you should go home and say that Na'hman will come to visit you. (In consequence a good meal and wine will be prepared, and you can partake of it.) Deceit is not permitted under any circumstances, but those mentioned as follows:

One who is bled, and has not the money to buy wine, should take a mutilated Zuz and go to seven wine-dealers. When asking for wine he will be given some to taste, and when offering his

money, it will be rejected. He will then proceed to another dealer, and keep on until he will have drunk a quarter of a lug. One who cannot even do this, should eat at least seven black dates and should put oil on his temples, then lie down in the sun and go to sleep.

Abhlat (a Persian official) found Samuel sleeping in the sun and said to him: "Thou leader of Jews! Can a good thing emanate from a bad one?" Samuel answered: "This is my bleeding-day." In reality this was not so, but there are days when sleeping in the sun is healthful; for instance, on the day when the Tamuz (July) equinox falls, but Samuel, who was a physician, would not tell this to Abhlat.

Rabh and Samuel both said: "The man who eats a light

meal on the day when he is bled, has light earnings decreed for him in heaven for the following year, because if he himself has no pity for his own body, he is not worthy of being pitied by the heavenly host." The same two authorities also said, that one who was bled should not sit where the wind blows; for it may be that the surgeon who bled him allowed too much blood to escape, and the wind might force still more blood from him, and thus become dangerous. Samuel was always bled in a house the walls of which were of seven bricks' thickness, and at one time it happened that he felt weak; he looked up, and noticed that a brick was missing from the wall.

Rabh and Samuel also said, that a man who was bled should not go out into the street without having partaken of something. If he does and meets a corpse, his face turns yellow, and if he should happen to meet a murderer he will die himself, and if he meets a pig he will become scabby. They also said, that after bleeding a man should not rise immediately, but should rest a while and then get up; for the master said, that five things are more conducive to death than to life. They are: Eating and arising immediately, drinking and arising, sleeping and arising, being bled and arising, and having sexual intercourse and arising immediately afterwards.

Samuel said: "A young man should be bled every thirty days until he is forty years of age. From fort), to sixty, he should be bled every two months, and after sixty he should be bled every three or four months."

Samuel said again: The fourth day of the week, if falling on the fourth, fourteenth, or twenty-fourth day of the month, or if it is a Wednesday after which there are less than four days to the end of the month, is a dangerous day for bleeding. Bleeding on the first and second of every month produces weakness, and on the third day it is dangerous. Bleeding on the eve of any biblical festival produces weakness, and on the eve of Pentecost it is dangerous, in consequence of which the rabbis instituted the precautionary measure, that no man should be bled on the eve of a festival, for fear that he might have it done on the eve of Pentecost.

Again Samuel said: "One who had eaten heartily of wheaten food is not wholly benefited by being bled, but is simply cased for the time being." This means to say, then, that one who has a heavy feeling can ease himself temporarily by being bled after a meal, but is not permanently benefited thereby. After being

bled one may drink immediately, but should not eat until the time in which he could walk half a mile had elapsed.

(On a day when nothing profitable had been performed) Rabh used to proclaim (the following simile): If one bled a hundred persons, he earned a Zuz for each; if he cut the hair of a hundred persons, he earned a Zuz for each; but if he trimmed the mustaches of a hundred men, he labored in vain. 1 (There was no charge made for trimming mustaches when done in conjunction with hair-cutting or bleeding.) Said R. Joseph: We learned at the college of R. Huna, that a day on which the disciples did not study was called a mustache-day, and I did not understand the meaning of the term; but now I can see the significance of the expression, for it means to say that the day was lost.

"*And tie the navel-string*." The rabbis taught: "One may tie the navel-string," and R. Jose said: "One may cut it also on the Sabbath and deposit the afterbirth, which is supposed to be a remedy to keep the child warm." R. Simeon ben Gamaliel said: "Daughters of kings would deposit the afterbirth in a bowl of oil and rich men's daughters would deposit it in carded wool. Poor people would deposit it in feathers." Said R. Na'hman in the name of Rabba bar Abuha, quoting Rabh: "The Halakha according to R. Jose prevails."

R. Na'hman said again, quoting the same authorities: "The rabbis agree with R. Jose, that when two children were born, both attached to one navel-string, the latter may be cut, because otherwise it would be dangerous." He also said again, in the name of the same authorities: All that is contained in the sermon of Ezekiel may be done for a woman lying in on Sabbath, as it is written [Ezekiel xvi. 4]: "And as for thy birth, on the day thou wast born thy navel was not cut, nor wast thou washed in water to be cleansed; and thou wast not rubbed with salt, nor wrapped in swaddling clothes." "And as for thy birth," from this we may infer, that one may assist in the birth of a child on Sabbath. "Thy navel was not cut," from this we infer, that the navel may be cut on Sabbath. "Nor wast thou washed in water to be cleansed." This teaches us that the child may be washed on Sabbath. "Thou wast not rubbed with salt." From this we know, that a child may be rubbed with salt on Sabbath. "Nor wrapped in swaddling clothes." This teaches us, that we may wrap a child in clothes on the Sabbath.

Footnotes

277:1 A measure of grain spoken of in Hosea iii. 2, and presumably a half of a Kur.

280:1 The discussions concerning the mixed grain and all the other subjects enumerated in the above Mishna appear again in Tract Berachoth, where we shall render them in the course of our work.

281:1 Water was never kept uncovered in the Orient for fear of snakes, and any water that was found uncovered was immediately thrown out.

287:1 This explanation is the one given by the commentary of Tosphath, which seems to us to

be more to the point than the one given by Rashi.

Next: Chapter XIX: Regulations Ordained by R. Eliezer Concerning Circumcision on the Sabbath

CHAPTER XIX.

REGULATIONS ORDAINED BY R. ELIEZER CONCERNING CIRCUMCISION ON THE SABBATH.

MISHNA: R. Eliezer saith: If the knife used for circumcision was not brought on the day preceding the Sabbath, one is to bring it publicly on the Sabbath; in times of danger (during persecutions) one may conceal it (about the person) before witnesses. Further, R. Eliezer saith: One may even cut wood to be burnt into charcoal, in order to forge an iron instrument (knife for circumcision). The following rule was laid down by R., Aqiba: All work (necessary in aid of circumcision) which *could* have been performed on the day before (Sabbath) does not supersede (the observance of) the Sabbath, but such work as could *not* have been performed on the day before, *does* supersede (the observance of) the Sabbath.

GEMARA: A question was propounded by the schoolmen: "What does R. Eliezer mean by saying, 'one is to bring it *publicly* on the Sabbath'? Does she mean to say, that the man thereby demonstrates how dear a commandment (of the Lord) is to him, that he is ready to violate the Sabbath for its sake, or is it rather, because the man would be suspected of carrying a prohibited thing oil the Sabbath, if he did so surreptitiously?" What difference does it make what R. Eliezer meant? The difference is this: "If the man does it in order to allay suspicion, it would be sufficient to have two witnesses see him conceal the knife about his person and then carry it even in times of peace; but if the man does it in order to demonstrate his love of God's commandments, he must carry it publicly even if he have two witnesses." What is the conclusion? It was taught that R. Levi said: "R. Eliezer meant only for the man to demonstrate his veneration of God's commandments." This is supported by a Boraitha, which plainly states, that a man should carry it publicly, and not have it concealed, such are the words of R. Eliezer. Said R. Ashi: All this is unnecessary. Our Mishna plainly teaches us the same, for it says, that only in

times of danger the knife should be concealed, and it is easily understood that only in times of danger is this to be done, but not under ordinary circumstances, and for what purpose? Only to show that a commandment should be venerated. It follows, therefrom, that the argument is accepted.

We have learned in another Boraitha: "One is to bring it publicly," and not have it concealed, such are the words of R. Eliezer; and R. Jehudah said in the name of R. Eliezer, that in times of danger the custom was to conceal it about the person before two witnesses.

"*Further, saith R. Eliezer*," etc. The rabbis taught: In the place where R. Eliezer resided, wood was cut and burnt into charcoal, in order to forge an instrument (knife for circumcision) on

Sabbath. In the place where R. Jose of Galilee lived, fowls were eaten with milk. R. Itz'hak said: There was a city in Palestine where R. Eliezer's teaching was carried out, and there were no premature deaths in that city; and not only this, but at one time when the government prohibited circumcision in the entire land, that city was not included in the decree.

We have learned in a Boraitha: R. Simeon ben Gamaliel said: "Every commandment of the Lord which was received by the children of Israel with joy, for instance circumcision, concerning which it is written [Psalms cxix. 162]: 'I am rejoiced over thy promise, 1 as one that findeth great spoil,' is even now observed with joy; but every commandment which was received with protest, for instance the law of incestuous marriages, concerning which it is written [Numbers xi. 10]: 'And Moses heard the people weep according to their families,' meaning the case (of intermarriage) among the families, is even now observed reluctantly, for there are no marriages celebrated without some discord among the families."

We have learned, that R. Simeon ben Elazar said: "Every commandment for the observance of which the Israelites were ready to lay down their lives, as for that prohibiting idolatry and commanding circumcision, is observed punctually even to this day; but such commandments as they would not sacrifice themselves for are even now lightly regarded, as is the case with the commandment concerning Tephillin." As R. Yanai said:

[paragraph continues] "Tephillin require a clean body, such as Elisha the man of doves possessed." What is meant by a clean body? Abayi said: "A body that emits no odor when clothed with Tephillin," and Rabha said: "A body that will never become drowsy while wearing Tephillin." Why was Elisha called "the man of wings"? It once happened that the government promulgated a decree by which all Israelites who would use Tephillin (phylacteries) were to be decapitated. This Elisha donned his phylacteries and went out into the market. He was seen by a casdor (quæstor), and the latter pursued him. Seeing that he could not escape, Elisha took the phylacteries from his head and carried them in his hand. When questioned by the quæstor what he carried in his hand, he replied: "Wings of doves." When opening his hand, he really found doves' wings, 1 and was therefore called the man of wings ever afterwards.

R. Aba the son of R. Ada said in the name of R. Itz'hak: "It once happened, that having forgotten to bring the knife for circumcision on the day before Sabbath, a man brought it on Sabbath, by way of the roof and private ground, against the will of R. Eliezer." R. Joseph opposed this: "How canst thou say, that this occurred against the will of R. Eliezer? It was R. Eliezer himself who permitted bringing the knife on Sabbath? Thou wouldst infer, then, that bringing the knife by way of private ground, and not publicly, was against his will, because he

insists that the knife should be brought publicly through public ground only. In accordance with whose will was it done? If thou wilt say, it was done in accordance with the decree of the rabbis, who prohibit bringing the knife through public ground, and permit it through private ground and roofs, did the rabbis indeed permit this? Have we not learned in a Boraitha, that in the same measure as it is not allowed to bring the knife through public ground, it must also not be brought through roofs and private ground?" Therefore R. Ashi supplemented the statement of R. Aba by

adding, that the knife was brought against the will of R. Eliezer and *his opponents*; but in accordance with the decree of R. Simeon, who permits the carrying of everything through private ground and roofs, even if they were not combined by an Erub (in Tract Erubim).

R. Zera once found R. Assi sitting and saying: R. Simeon ben Lakish said in the name of R. Jehudah Hanassi as follows: It once happened that they forgot to bring a knife for circumcision on the eve of Sabbath, so they brought it on Sabbath. This angered the sages very much, for the reason, that the decree of the former sages had been set aside and that they had acted according to the decree of R. Eliezer. Firstly, because R. Eliezer was an adherent of the school of Shamai; and secondly, because where one man is opposed to a number the majority should prevail, and the majority was against R. Eliezer; and R. Osiah answered the sages, who were angered, that the case was not as it appeared to them. "For," said he, "I asked R. Jehudah the circumciser, and he told me, that the knife was brought through an alley which was not combined by an Erub, from one end to the other, but not through public ground."

R. Zera then said to R. Assi: "Does the master hold, that things may be removed in an alley which was not combined by an Erub?" R. Assi answered, that they might. Said R. Zera again: "Did I not ask thee once before and thou gavest me another answer? Was it because thou wast engaged in other matters and this Halakha escaped thee?" and the answer was: "Such was the case."

R. Hyya bar Aba said in the name of R. Johanan: "The rule laid down by R. Eliezer, that for everything pertaining to circumcision the Sabbath may be violated, does not apply also to other duties of the day which should happen to fall on the Sabbath; because, where the preparations necessary for the

bringing of the two loaves on Pentecost are concerned, R. Eliezer permitted them to be made on Sabbath merely through deduction by analogy, although this was also a duty of the day based on a biblical ordinance." Which other duties of the day does R. Johanan intend to except from this rule? We know, that in preparing the booth, the palm-branch, and all their accessories (for the feast of Booths) the Sabbath may be violated. The same is the case with Lulab, with Matza, and with Shofar, as it is stated in other Boraithas. Such is the dictum of R. Eliezer. Said R. Ada bar Ahabha: "R. Johanan intended to except Tzitzith (show-threads) for a garment and a Mezuzah (door-post inscription) for a house (although both of these are duties of the day, for if a man wear a garment he must have Tzitzith, and if he enter a house he must have a Mezuzah.)" This we have also learned in a Boraitha: "They all agree (even R. Eliezer), that if one made a show-thread for his garment, or a Mezuzah for his door, on the Sabbath, he is liable for a sin-offering." Why so? Said R. Joseph: "Because no specified time is set for the accomplishment of these duties." Said Abayi to him: "On the contrary, just because no specified time was set for the accomplishment of that duty, every moment is the time for performing it (so, if he have the garment on Sabbath, or enter the house On that day, he should perform those duties, and hence it must be considered a duty of the day)." Therefore said R. Na'hman in the name of R. Itz'hak, and according to others R. Huna the son of R. Jehoshua The reason is, because one is enabled to abandon these things for the time being (and hence the duty does not devolve upon him for that day)."

From what we have learned above, we see, that for the circumcision itself and all its necessary

accessories the Sabbath may be violated, according to the dictum of R. Eliezer. Whence does he deduce this? This is the reasoning of R. Eliezer: It is written [Leviticus xii. 3]: "And on the eighth day shall the flesh of his foreskin be circumcised." Thus, as it says distinctly the eighth day, it makes no difference what (Jay the eighth falls on, whether it be Sabbath or not. Let us see: The rabbis and R. Eliezer differ only as far as the preparations for circumcision on the Sabbath are concerned, but not as to the circumcision itself. If, then, they do not regard the text quoted as does R. Eliezer, they should not even permit the violation of the Sabbath on account of circumcision itself. What source

do they base their permission on? Said Ula, and also R. Itz'hak: "This is traditional."

An objection was raised: We have learned that the Sabbath may be violated in order to save life. Whence do we know this? Said R. Elazar ben Azariah: "Why! if it be permitted when circumcision is concerned to violate the Sabbath, where but one of the many members of the body is concerned, it should certainly be permitted in so much greater a degree when the whole body is to be saved. If thou sayest, then, that the permission to perform circumcision on the Sabbath is only traditional, how is it possible that thou shouldst derive an *a fortiori* assumption from a traditional institution?" Therefore R. Johanan saith, that the permission to perform the rite of circumcision on Sabbath is not based upon tradition, but is derived from the word "day," as the verse quoted above reads: "And on the eighth day," etc.; whereas it could read simply, "And on the eighth"; for in the preceding verse we read "seven days," etc.

Said Resh Lakish to R. Johanan: "The word 'day,' however, is also necessary, that we may know that the rite must be performed during the day and not at night!" This can be inferred from another passage [Genesis xvii. 12], where it expressly says: "And at eight *days* old shall every man-child in your generations be circumcised," etc.

R. A'ha bar Jacob said: As far as the rite of circumcision itself is concerned, the rabbis also hold that the permission to perform it is based on the passage quoted, "and on the *eighth* day"; but as for the preparations necessary for circumcision, they claim to find no justification for violating the Sabbath on that account. But it is absolutely necessary that "the eighth" be mentioned, for otherwise how would we know that the rite should not be performed on the seventh? That is also definitely settled by the other passage, as stated above: "And at eight days old," etc. Still, both passages are necessary, in order to prove that the eighth day is the day for circumcision; because, if it did not state expressly "on the eighth day," it might be presumed that the seventh day would do, and if it did not state "at eight days old," it might be presumed that after the child is eight days old any other later day, *e.g.*, the ninth, would do. Hence R. Johanan's explanation is the most acceptable; and we have learned in a Boraitha in support of R. Johanan's explanation, and not of that of R. A'ha bar Jacob, as follows: "On

the eighth day shall he be circumcised, even though it be Sabbath." How, then, is it possible to keep the commandment in Exodus xxxi. 14? "And ye shall keep the Sabbath, for it is holy unto you: every one that defileth it shall surely be put to death." This refers to other labor, but not to that of circumcision. How, then, do we know that circumcision is not included in the prohibited labor, and that the eighth day does not refer to all other days except Sabbath? To this end it

reads "the eighth *day*," and "day" means, even on Sabbath.

The rabbis taught: Although it is written [Deut. xxiv. 8]: "Take heed in the plague of leprosy," which signifies, that the leprous spot must not be cut; but if the white spot (the symptom of leprosy) show itself on the member to be circumcised, it may be cut off, whether the member be circumcised at the prescribed time or afterwards.

A biblical festival must not be violated on account of circumcision, unless it happen to be the eighth day (precisely the prescribed time). Whence do we adduce these two ordinances? From the teaching of the rabbis, as follows: The first one is based on the verse [Leviticus xii. 3]: "And on the eighth day shall the *flesh of his foreskin* be circumcised." The order is imperative, regardless of whether the member be leprous or not. Whence do we know this? Perhaps it means to say, that only the healthy flesh of the foreskin be circumcised? Nay; it could say merely the foreskin, but it says expressly the *flesh* of the foreskin, meaning that even if the flesh be leprous it should also be circumcised. What need is there of a special verse for this purpose? During circumcision no intention to cut leprous flesh exists; hence, if it be done, it is done unintentionally, and an unintentional act does not involve culpability? Said Abayi: "The verse is used here to counteract the opinion of R. Jehudah, who holds, that an act committed unintentionally also involves culpability." Rabha said: "The verse must be used, even if the opinion of R. Simeon be adhered to, who holds, that an act committed unintentionally does not involve culpability. For in this case it is different; the act committed here is like the one where a man would behead another and still claim no intention to kill him (and when circumcising the flesh of the foreskin, if there be a leprous sore, one cannot help but cut it)This, even R. Simeon admits, would involve culpability, were it not for that exonerating verse." Does Rabha alone hold thus? Have we not learned elsewhere that Abayi and Rabha both

agree, that R. Simeon declares even an unintentional act, which is, however, like the case of one beheading another without the intention to kill him, to be prohibited? After Abayi had heard Rabha's explanation, he accepted it.

The second ordinance mentioned is, according to Rabha, based upon the verse [Exodus xii. 16]: "No manner of work shall be done on them, save what is eaten by every man; *that only* may be prepared by you." "That" stands for circumcision only in its prescribed time, but not for the preparation for it and "only" stands as a prohibition not to perform the rite unless it be the prescribed time. R. Ashi, however, said: "No special verse is needed for this, for a festival is referred to [in Leviticus xxiii. 32] as "a sabbath of rest shall it be unto you." Hence it is a positive commandment, and the verse stated (immediately before this) is a negative commandment; thus a festival is covered by both a positive and negative commandment, while circumcision is covered by a positive commandment only, and one positive commandment cannot supersede a joint positive and negative commandment.

"*A rule was laid down by R. Aqiba*." Said R. Jehudah in the name of Rabh: "The Halakha according to R. Aqiba prevails." We have learned also in the matter of Passover sacrifices to the same effect, that every act of labor that can be performed on the day before Sabbath must not supersede the (due observance of) Sabbath, but the killing of the sacrifice, which cannot be done on the day before Sabbath, *does* supersede (the due observance of) Sabbath; and R. Jehudah declared also, in the name of Rabh, that the Halakha according to R. Aqiba prevails. It is

necessary that he should so instruct us at both times, because, if he instructed only as concerns circumcision, we might assume that where sacrifices for the Passover are concerned, the preparations which could have been made on the day before Sabbath, but were not, would supersede the due observance of the Sabbath; because failure to bring that sacrifice would involve the punishment of Karath (being cut off), while failure in circumcision would not involve Karath, if not performed at the right time; and, on the other hand, had he instructed us only as concerns sacrifices for the Passover, we might assume that the Sabbath could be violated if the acts necessary for circumcision which could have been performed on the day before, were not; for the reason, that the covenant regarding circumcision is mentioned thirteen times in the Thora,

and is in consequence regarded as a thirteenfold commandment, which must under all circumstances be observed. Hence the necessity for the twofold instruction.

MISHNA: One may perform everything necessary for circumcision on the Sabbath, as circumcising, tearing open, sucking out the blood, applying a plaster or caraway seed. If the latter had not been ground before the Sabbath, one may masticate it with the teeth and then apply it. If one had not mixed wine with oil before the Sabbath, he may apply each separately. One must not prepare an actual bandage (on the Sabbath), but may apply an old piece of linen; and if such had not been prepared before the Sabbath, the circumciser may bring it with him tied around his finger and even from another court (yard).

GEMARA: Let us see: The Mishna enumerates all the acts necessary for the performance of the rite of circumcision; why, then, does it commence by saying, "everything necessary" for circumcision, and then proceed to detail "everything"? What act is there that has not been enumerated? The Mishna means to include what was taught us by the rabbis, as follows: "The circumciser, while engaged in finishing the circumcision, if noticing that excrescences still remain on the gland, whether they are of a nature which make the circumcision invalid or such as do not make it invalid, may remove them. But if he had already finished (and put up his instruments), if excrescences which make the circumcision invalid remain, he may remove them; but if they do not make the circumcision invalid, he must not remove them." (Hence by stating "everything that is necessary," etc., the Mishna means to include, that it is permitted even to remove excrescences which do not make the circumcision invalid, provided the operator had not already finished and put up his instruments.) Who is the Tana who holds, that if the circumciser had already finished he must not return and remove the excrescences? Said Rabha bar bar Hana in the name of R. Johanan, it was R. Ishmael the son of R. Johanan ben Berokah, as we have learned in a Boraitha: "If the fourteenth of Nissan fall on a Sabbath, the animal used for the Passover sacrifice may be skinned only as far as the breast, so saith R. Ishmael the son of R. Johanan ben Berokah; but the sages say, that the whole animal may be skinned." (Now, we see that R. Ishmael holds, that after the work had been completed as far as was necessary no more may be done; hence he is the one who says, that the circumciser must not return to remove the excrescences.) This

is not conclusive evidence! It may be that R. Ishmael in the case of the sacrifice holds, that because it is not necessary that the commandment be beautified. [1] But in the case of

circumcision, where the beautifying of the commandment is necessary (as is taught in Tract Sakkah), we might say, that R. Ishmael is of a different opinion; therefore the sages of Neherdai say, that the Tanas who hold, that after having finished the circumcision the operator must not commence anew, are in reality the rabbis who differ with R. Jose in Tract Menachoth concerning the law of the showbreads. 2

The rabbis taught: "If excrescences remain on the gland after circumcision, and are such as make the circumcision invalid, they must be removed; and failure to do so involves the punishment of Karath." Who becomes liable to be punished by Karath? Said R. Kahana: "The circumciser." (If he performed the circumcision on Sabbath and did not finish it, he simply made a wound and did not perform a commandment; hence he becomes amenable to Karath. R. Papa opposed this: "The circumciser might say, 'I have performed one half of a commandment; come ye and complete the other half. Why should I be punished by Karath?' Therefore if the circumcision was performed on an adult who, excrescences which make it invalid having remained, will not permit them to be removed, he becomes amenable to Karath." This was opposed by R. Ashi: "As for an adult, what news does that impart to us? It is expressly stated [Genesis xvii. 14]: 'And any uncircumcised male, who circumciseth not the flesh of his foreskin, that soul shall be cut off from his people'? Therefore *he* says nay; it really refers to the circumciser, and only then if he came late on Sabbath, near twilight, and was told that it would be impossible to finish the operation before night, but persisted in performing it. If in consequence he left excrescences which make the circumcision invalid, he simply made a wound without performing a commandment, and thus he becomes amenable to Karath."

"*Sucking out the blood*." R. Papa said: "The circumciser who does not suck out the wound places the child in danger, and should be discharged from office." Is this not self-evident?

[paragraph continues] It certainly must be dangerous not to do this, or the Sabbath would not be violated in order to perform that duty! We might assume, that the blood having already come to the surface it would run out of itself, and hence by sucking it out the Sabbath is not violated; hence we are given to understand that this is not so: the blood is moved only by the suction, and the Sabbath is violated; but failure to do this would involve danger for the child and hence it is permitted, and is regarded the same as applying a plaster or caraway seeds (mentioned further on in the Mishna), the omission of which would also involve danger to the child.

"*Applying a plaster or caraway seeds*." Abayi said: "My mother told me, that the most effective plaster for all ills is made of seven different kinds of fat and one kind of wax; and Rabba said: "The best plaster for all ills is one made of wax and resin." Rabha stated this publicly in a lecture in the city of Mehuzza, and two brothers the sons of Minyumi, who were physicians, tore their clothes in anger; for they had known of it and made capital out of the secret, until Rabha came and revealed it. Said Rabha to them: "I will tell you of something that I shall not proclaim publicly, and that is, Samuel said, that one who washes his face and does not dry it thoroughly, becomes afflicted with scabs, and the remedy for such is the fluid extract of mangold."

"*If the latter (caraway seeds) had not been ground before the Sabbath*," etc. The rabbis taught: "In preparing for circumcision, such things as must not be done on Sabbath, may be done on a festival. One may grind the seeds and mix wine with oil." Asked Abayi of R. Joseph: Why may the caraway seeds be ground on a festival? because they may be utilized for cooking: then why

should it not be permitted to mix wine with oil on Sabbath? It may be utilized for a sick person who is not dangerously ill. As we have learned in a Boraitha: "Wine and oil must not be mixed for a sick person on the Sabbath," but R. Simeon ben Elazar in the name of R. Meir said, that it may be. Said R. Simeon ben Elazar: It once happened, that R. Meir was sick with stomach trouble, and we wanted to mix wine with oil for him (on the Sabbath), but he would not permit us to do this. So we asked him whether he wished his own words to be made void during his lifetime, and he answered: "Nay; it is allowed to mix wine with oil on Sabbath, but I cannot bring it over me to act contrary to the decree of my colleagues."

[paragraph continues] Thus we see, that it is at all events allowed to mix wine with oil on the Sabbath. Why, then, does the Mishna say, that if this was not done on the day before the Sabbath, each should be applied separately? The difference lies therein, that when giving it to a sick person, it is merely mixed, but when used for a balm (at circumcision) it must be thoroughly stirred and requires a good deal of labor. Let it be given (applied) just mixed. That is just what the Mishna prescribes, each to be applied separately; *i.e.*, it should not be stirred.

Abayi said: "My mother told me, that if a child appears red all over it is a sign that the circulation is imperfect, and hence circumcision should be postponed until the circulation is perfect. If a child has a greenish cast it is a sign that the blood is impoverished, and circumcision should then be postponed until the blood is richer." This we have also learned in a Boraitha, as follows: "R. Nathan said: 'I once went to a city by the sea, and there met a woman whose first and second child both died in consequence of circumcision. The third child she brought to me, and I noticed that it was quite red. I told her to wait until the blood had settled and then circumcise it. She did so and then circumcised it, and the child lived. The child was then named after me, Nathan the Babylonian. At another time I came to the country of Cappadocia, and a woman came to me telling me that she had had two children circumcised, both of whom had died in consequence of circumcision. The third she brought to me, and I noticed that it had a greenish cast. I also noticed, that if it were circumcised no blood would flow; so I told her to wait until the circulation of the blood was in order. She did so, and the child was circumcised, and lived. She named it also after me, and called it Nathan the Babylonian.'"

MISHNA: One may bathe the child both before the circumcision as well as after (on Sabbath), by sprinkling water over it with the hand, but not by pouring water over it from a vessel. R. Eliezer ben Azariah says: One may bathe a child on the third day (after the circumcision), even if it fall on a Sabbath; for it is written [Genesis xxxiv. 25]: "And it came to pass on the third day, when they were sore." On account of a doubtful child (a child about which there is a doubt whether it was born in the eighth month of its gestation, and is therefore not expected to live) or an hermaphrodite, the Sabbath (-rest) must not be desecrated. R. Jehudah permits this in the case of an hermaphrodite.

GEMARA: The Mishna commences by saying: "One may bathe the child," and then goes on to say that it may only be sprinkled by hand. *That* is not bathing! Said Rabha: "The Mishna means to state, that a child may be bathed as usual on the day of circumcision, either before or after the performance of the rite; but on the third day after circumcision, if that day should be a Sabbath, one may only sprinkle the child by hand, and not bathe it in a vessel." R. Elazar ben Azariah,

however, said, that even if the third day fall on a Sabbath the child may be bathed as usual, as it is written [Gen. xxxiv. 15]: "And it came to pass on the third day, when they were sore."

When R. Dimi came from Palestine, he said in the name of R. Elazar, that the Halakha prevails according to R. Elazar ben Azariah. In the West the question was discussed whether R. Elazar ben Azariah meant that the whole body of the child might be bathed, or whether the part circumcised only might be bathed. Said one of the rabbis, whose name was R. Jacob: "It seems to me that the whole body is meant, because if the wound only was meant, wherein does the wound caused by circumcision differ from any other wound? Any wound may be bathed on the Sabbath in water and oil, according to Rabh's opinion." This was opposed by R. Joseph: "Is it immaterial whether the water was warmed on the Sabbath or before the Sabbath?" This was again opposed by R. Dimi: "Whence dost thou know that the Mishna refers to water that was warmed on Sabbath, perhaps they (the sages and R. Elazar) differ even as to water warmed before the Sabbath set in?" Said Abayi: "I was prepared to answer this question myself, but R. Joseph preceded me and said, that of a necessity the water must have been warmed on Sabbath, because the precariousness of the child demanded it."

We were also taught, that when Rabhin came from Palestine, he said in the name of R. Abuha quoting R. Elazar, and according to another version, in the name of R. Abuha quoting R. Johanan, that the Halakha prevails according to R. Elazar ben Azariah, whether it be with water that was warmed on the Sabbath or before the Sabbath, or whether the whole body or only the circumcised part is concerned, because it would be dangerous not to bathe the child on that day.

It was said above in the name of Rabh, that every wound may be bathed on the Sabbath with water or oil; but Samuel said that water may be poured to one side of the wound and it may

run down into the wound. An objection was made: "We have learned, that oil or water must not be put on a piece of cotton to place on a wound?" This is prohibited on account of the necessity to wring the piece of cotton. We have been taught by a Boraitha in accordance with Samuel's opinion; viz.: "Water must not be placed directly on the wound, but near it, that it may run down into the wound."

The rabbis taught: "Dry cotton and dry sponge, but not dry papyrus or dry cloth, may be placed on a wound." This presents a contradiction. Is not dry cotton the same as dry cloth? This is no difficulty. By cloth is meant new cloth, which must not be used, whereas old cloth may be. Said Abayi: "From this we see, that pieces of cloth heal a wound."

"*On account of a doubtful child or an hermaphrodite*," etc. The rabbis taught: It is written [Leviticus xii. 3], "*his foreskin*"; so, on account of a foreskin which *must* be circumcised, the Sabbath may be violated, but on account of one which is doubtful the Sabbath must not be desecrated. Such also is the case with the circumcision of the foreskin of a true male, but not with that of an hermaphrodite. R. Jehudah, however, says, that the Sabbath may be violated on account of an hermaphrodite, and if the latter is not circumcised he becomes amenable to Karath. The Sabbath may also be violated on account of a child who was born at a certain time, but not on account of one who was born at twilight (and it is not known whether it was born on Sabbath or on the following day). It is not allowed to violate the Sabbath on account of a child

who was born without a foreskin, because the school of Shamai (only) contends, that even if a child is born without a foreskin, some blood must be drawn in commemoration of the covenant. The school of Hillel, however, says, "That is not necessary." Said R. Simeon ben Elazar: "The school of Hillel and the school of Shamai did not differ as to a child born without a foreskin; both agree that blood must be drawn from it, because the foreskin is not wholly missing, but is merely ingrown. They differ only as regards a proselyte who was born without a foreskin. When seeking conversion, the school of Shamai contends that blood of the covenant must be drawn from his gland, whereas the school of Hillel does not require this to be done.

The Master said: "On account of a doubtful child, the Sabbath must not be desecrated." What does he mean by "doubtful"? He means to say, what we learned from the rabbis;

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viz.: A child born in the seventh month may have the Sabbath violated for it, but if born in the eighth it must not. If it is doubtful whether it was born in the seventh or in the eighth month, the Sabbath must not be violated on its account. Not only this, but a child born in the eighth month must not even be carried on the Sabbath, because it is like a stone (and cannot live). It is allowed, however, for the mother to stoop down and suckle the child, because it is dangerous for the mother to carry too much milk.

We were taught that Rabh said (referring to a child born without a foreskin): The Halakha prevails according to the unknown Tana, while Samuel said, the Halakha prevails according to R. Simeon ben Elazar. R. Ada bar Ahabha had a child that was born without a foreskin; so he carried him to thirteen circumcisers, until the child was maimed and made impotent. Said he: "I deserve this fate, because I did not follow the dictum of Rabh." Said R. Na'hman to him: "Thou hast not only disobeyed Rabh, but also Samuel, for Samuel said, that a child born without a foreskin should be bled only if it was born on a week-day, but not on a Sabbath; and thy child was born on a Sabbath." R. Ada bar Ahabha, however, held, that he had only disobeyed Rabh, because, he was certain that the foreskin of a child is never wholly missing, but is merely ingrown and should be lanced even on Sabbath, as we were taught: Rabba said, that there is fear lest it be an ingrown foreskin; but R. Joseph said, that we were certain that it is so. Said R. Joseph: "Whence do I know this? From the following Boraitha: R. Elazar Hakappar said, that the school of Shamai and Hillel do not differ as to a child that is born without a foreskin. Both agree that the blood of the covenant must be drawn from the gland. The school of Shamai, however, contends that this may be done on the Sabbath, while the other holds that the Sabbath must not be desecrated on that account. If, then, R. Eliezer Hakappar holds, that they differ only as to the desecration of the Sabbath, the first Tana must hold, that both schools agree that the Sabbath may be desecrated on that account, and in consequence must also hold, that the foreskin is not wholly missing but is merely ingrown (hence I am certain that it is so)."

Whence do we know that the first Tana holds, as above, and not that both schools agree to the contrary; viz.: that the Sabbath must *not* be desecrated? If such would be the case, for what reason would Hakappar tell us that Beth Shamai holds

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that the Sabbath *should* be violated? The Halakha would not prevail thus? Nay! Perhaps R. Eliezer means to tell us, principally, that both schools hold, that if a child is born without a

foreskin on a week-day he must have his gland lanced (and incidentally mentions that if a difference existed, it was concerning the Sabbath).

R. Assi said: If a child be born of a woman who, after giving birth, must keep the law mentioned in Leviticus xii. 2, the child must be circumcised on the eighth day; but ill a case where the woman need not keep the law mentioned (for instance, if the child was taken out through the sides by means of instruments), or if the woman was a Gentile on the day of giving birth to the child and became a convert to Judaism on the day following (and hence need not observe that law), the child need not be circumcised just on the eighth day (but at any time), as it is written [ibid. ibid.]: "If a woman have conceived seed, and born a male child: then shall she be unclean seven days," etc., etc.; [ibid. 3]: "And on the eighth day shall the flesh of his foreskin be circumcised." Said Abayi to him: "What about the generations before the Law was given? The women knew nothing of the law of uncleanness, and still the children had to be circumcised on the eighth day?" Answered R. Assi: "Since the Law was given, a new Halakha has been in force." Nay; this is not so! Have we not learned, that if a child was taken through the side of a woman, or if it had two foreskins, R. Huna and R. Hyya bar Rabh entertained different opinions as to whether it should be circumcised on the Sabbath or not? one claimed that it should, and the other that it should not. Now we see that they differed only as to a desecration of the Sabbath, but nothing is said about the non-necessity of the child's being circumcised on the eighth day? One is dependent upon the other. (He who holds that the Sabbath should be violated, does so because he also holds that the child must be circumcised oil the eighth day; while he who holds that the Sabbath must not be violated, does so because he holds that such a child need not be circumcised on the eighth day.)

We have learned in a Boraitha: Rabbon Simeon ben Gamaliel said: Every human child that has lived for thirty days cannot be called a miscarriage, as is written [Numbers xviii. 16]: "And those that are to be redeemed from a month old shalt thou redeem"; and any young of an animal that has attained the age of eight days, cannot be called a miscarriage, as it is written

[paragraph continues] [Leviticus xxii. 27]: "When a bullock, or a sheep, or a goat is brought forth, then shall it remain seven days by its mother; and from the eighth day and henceforth shall it be favorably received," etc. And how is it, if the child has not yet attained the age of thirty days, is it still a doubtful child? How then is it allowed to circumcise any child on the Sabbath? (perhaps it is a miscarriage, and in that event it would be wrongful to inflict a wound in vain). Said R. Ada bar Ahabha: "We may do so at all events. If it is a regularly born child, the commandment is fulfilled; and if not, no wound is inflicted, but merely a piece of flesh is cut."

Now, then, we have learned in the above Boraitha, that if it be doubtful whether the child was born in the eighth or in the seventh month the Sabbath must not be violated on its account. Why should this be so? Let it be circumcised at all events. If then it proves to be a regularly born child, it was right to circumcise it; and if not, no labor was performed, but merely an incision in the flesh was made. Said Mar the son of Rabhina: "I and R. Nehumi bar Zacharias have explained it thus: 'The child should be circumcised, but the injunction of the above Boraitha not to violate the Sabbath refers to the preparations which are necessary for circumcision, and this is in accordance with the decree of R. Eliezer.'"

The schoolmen propounded a question: Do the rabbis differ with R. Simeon ben Gamaliel, or do

they not? If they do, does the Halakha remain according to R. Simeon, or not? Come and hear: R. Jehudah said in the name of Samuel, that the Halakha prevails according to R. Simeon ben Gamaliel. Now if he says that the Halakha prevails according to R. Simeon, there must be some who differ with R. Simeon.

Abayi said: "If a child was killed by accident, either through falling off a roof or through being killed by a lion before it had lived thirty days, all agree, that it must be presumed that it was a regularly born child. A point of difference arises concerning a child that had lived less than thirty days and during its lifetime was very weak and merely breathing. Some say that it was a miscarriage and others that it was a regularly born child." What difference does it make? It makes a difference where the levirate marriage [1] is concerned. (If the child is presumed to be a regularly born child, it exempts a man from the levirate

marriage; but if it is presumed to be a miscarriage, it does not exempt a man.)

Let us see! It is said above, that if the child die by accident, all agree, that it is a regularly born child; yet we know that it happened to R. Papa, and R. Huna the son of R. Jehoshua, who were the guests of R. Idi bar Abin, that the latter prepared for them a calf, which was the third in birth of its mother, in the seventh day of its life, and they said to him: "If ye had waited to kill this calf until evening we would eat of it (because it would then have been in its eighth day); but now we will not eat of it." Hence we see, that although this was a healthy calf and met its death violently, they regarded it as doubtful whether it was a miscarriage or not. Hence say, rather, that on the contrary, if the child was weak and barely breathing prior to its death, all agree, that it must be presumed to be a miscarriage; but they differ as to a child which had met its death by accident. Some say, that it must be regarded as a regularly born child, and others, that it was a miscarriage.

The son of R. Dimi bar Joseph had a child born to him which died inside of thirty days, so he went into mourning for it. Said his father to him: "What wouldst thou? Eat delicacies [1] (that thou sittest in mourning)?" And he answered: "I am positive that the child was a regularly born child."

"*R. Jehudah permits this in the case of an hermaphrodite*." Said R. Shezbi in the name of R. Hisda: "Not in every case does R. Jehudah hold an hermaphrodite to be a male; for if we would say that in all cases he considers him to be a male, the hermaphrodite would come under the law of estimations [Leviticus xxvii. 2-15], and in the Tract Erachim (estimations) we may learn, that according to R. Jehudah he is exempt. Why is he considered a male as concerns circumcision? because it is written [Genesis xvii. 10]: "Every man child among you shall be circumcised" (and "*every*" includes also hermaphrodites).

MISHNA: If one have two children to be circumcised, one after the Sabbath and the other on the Sabbath, and through forgetfulness circumcised the former on the Sabbath, he is culpable. If one of the children, however, was to be circumcised on the day before Sabbath and the other on the Sabbath, and through forgetfulness one had the former circumcised on the

Sabbath, R. Eliezer declares him liable for a sin-offering and R. Jehoshua declares him free.

GEMARA: R. Huna learns the Mishna literally; in the first case, "he is culpable." R. Jehudah, however, learns to the contrary, that "he is *not* culpable." R. Huna learns "he is culpable," from what we have learned in a Boraitha; viz.: Said R. Simeon ben Elazar: "R. Eliezer and R. Jehoshua do not differ as to the case where a man has two children to be circumcised, one *after* the Sabbath and the other on the Sabbath, who through forgetfulness circumcised the former on Sabbath. They both declare him culpable. Their point of difference is, if one of the children was to have been circumcised on the day *before* Sabbath and the other on the Sabbath, and through forgetfulness the former was circumcised on the Sabbath, the former declares him culpable and the latter free. Both of them derived their decrees from the law concerning idolatry (all sin-offerings are based upon the sin-offerings incidental to the laws of idolatry). R. Eliezer holds, that as in idolatry so also it is with the Sabbath. If the commandment is, "Thou shalt not do so," and the man did so, he is liable for a sin-offering; and R. Jehoshua says: "Here it is different. The intention was to fulfil a commandment, and if accidentally it was not done he should be free."

And R. Jehuda learns the Mishna "not culpable," deriving his support from the following Boraitha: R. Meir said: "R. Eliezer and R. Jehoshua do not differ as to the case where a man has two children to be circumcised, one before the Sabbath and the other on the Sabbath, and through forgetfulness circumcised the former on Sabbath. They both declare him not culpable. Their point of difference is, if one of the children was to be circumcised on the day after Sabbath and the other on Sabbath, and through forgetfulness the former was circumcised on the Sabbath, R. Eliezer declares him culpable and R. Jehoshua declares him free. Both of them derived their decrees from the law concerning idolatry, as is said above."

MISHNA: A child may be (legally) circumcised on the eighth, ninth, tenth, eleventh, or twelfth day (after its birth), but neither before nor after. How so? Usually (it may be circumcised) on the eighth; one born at (the evening) twilight, on the ninth; one born at (the evening) twilight before Sabbath, on the tenth; if a feast day follows that Sabbath (it may be circumcised) on the eleventh; if both New Year feast-days follow that

[paragraph continues] Sabbath, on the twelfth. A sick child must not be circumcised until it is thoroughly recovered.

GEMARA: Said Samuel: "After the fever has left the child, seven days should be allowed to elapse until the child get well, before the circumcision is performed." The schoolmen propounded a question: Must every day be of twenty-four hours' duration, or may the last of the seven days be counted if only a few hours have passed? Come and hear: Luda taught, the last day of the child's convalescence is more important than the day of its birth; for a child may be circumcised on the eighth day after its birth, even if only one hour of that day be passed; but the seventh day of its convalescence after a sickness must be one of fully twenty-four hours, before circumcision is permitted.

MISHNA: The following principal excrescences (knobs) make the circumcision invalid: Flesh that covers the larger part of the gland (of the organ). A man so circumcised must not (if he be a

priest) partake of Terumah (heave-offerings). If the child be very fleshy and (such imperfect circumcision) is caused thereby, the knobs must, for appearances' sake, be cut away. One who was circumcised without having had the skin torn open, is considered as uncircumcised.

GEMARA: R. Abbina in the name of R. Jeremiah bar Aba, quoting Rabh, said: "By stating 'flesh, that covers the larger part of the gland,' the Mishna means to say the 'upper part of the gland.'"

"*If the child be very fleshy*." We have learned in a Boraitha: "R. Simeon ben Gamaliel said: 'If the gland of the child be surrounded by a fleshy coating, and when erect the gland appears to be circumcised, the coating need not be cut away; but if it does not appear to be circumcised, the coating should be cut away.'

"*One who was circumcised without having had the skin torn open*," etc. The rabbis taught: The benediction to be pronounced by the circumciser (before performing the rite) should be as follows: "Praised art Thou, Lord, our God, King of the Universe, who hast sanctified us with Thy commandments and hast commanded us the circumcision." The father of the child should pronounce the following benediction (in the interval between the circumcision and the tearing open of the skin): "Who hast sanctified us with Thy commandments and hast commanded us to enter the child into the covenant of Abraham our father." The

bystanders must respond: "As he hath been entered into the covenant, so may he also be entered into the Law, into the bridal canopy, and into good deeds." The man who makes the benediction (over the goblet of wine) should say as follows: "Blessed art Thou, etc., who hast sanctified Thy favored one (meaning the patriarch Isaac, see Genesis xxii. 2) even in the womb (as it is written in Genesis xvii. 19: 'And I will establish my covenant with him'), who hath made a sign in his body, and hath scaled his children with the sign of the holy covenant. Therefore as a reward for this we pray Thee, Thou living God, to command that our children be saved from the grave because of the covenant that is scaled in our flesh. Blessed art Thou, O Lord, who hast made the covenant." One who circumcises proselytes must say: "Blessed art Thou, etc., and hast commanded us the circumcision." The one who pronounces the benediction (over the goblet) must say: "Blessed art Thou, etc., and hast commanded us to circumcise the proselytes, and to draw from them blood of the covenant. For were it not for the blood of the covenant, heavens and earth would not exist, as it is written [Jeremiah xxxiii. 25]: 'If not my covenant by day and night, I would not have instituted the ordinances of heaven and earth.' Blessed be Thou, O Lord, who didst make the covenant." One who circumcises slaves pronounces the same prayer as is used for proselytes, inserting "slaves" where "proselytes" is used; and the one making the benediction does likewise.

Footnotes

289:1 Promise stands for the Hebrew "Imrothecho," literally "thy word," and the word here referred to signifies the first commandment given to Abraham, which was the commandment of circumcision. Hence the deduction, that the commandment of circumcision was received with

joy.--*Rashi*.

290:1 This seeming miracle is explained at length in our History of Amulets, pp. 24-26, and the gist of the explanation is as follows: The government referred to above and in power at the time of Elisha was Greek and not Roman, a fact demonstrated by the late Dr. Krochmal in his "Eyon tephilah." The Greeks, being at that time at war with the Egyptians, sought to destroy any ties of affinity existing between the Jews and the Egyptians, and to that end promulgated the decree prohibiting the wearing of Tephillin by the Jews, for those Tephillin bore close resemblance to the totaphoth (amulets) worn by the Egyptians. As a matter of fact, all amulets worn at that time by the different nations bore a symbol of their gods or idols, and was also a mark of nationality; hence the government in power desired that all its vassals wear its own amulets. The Talmud elsewhere relates that the Samaritans worshipped as their idol the form of a dove, for on Mount Gerizim, which is in Samaritan territory, an idol of that kind was found, which had been worshipped by them. Elisha knew of this, and, mindful of the fact that the Greeks were at peace with the Samaritans, carried along with him amulets in the form of doves' wings (which was the amulet of the Samaritans) in order to substitute them for his Tephillin, whenever the necessity for the deception arose. When closely pressed by the quæstor, and not considering the commandment of wearing Tephillin sufficiently important to sacrifice his life on their account, he, while endeavoring to escape, changed his Tephillin for the doves' wings, to which the quæstor could raise no objection.

297:1 The Hebrew word "Veanvehu" is interpreted by the Talmud to signify "and I will beautify him," while in the translation of the Bible, by I. Leeser, it is translated, "I will sing his praise," and the reference made to the verse by the Talmud accepts the term in its Talmudical sense.

297:2 This will he explained in the Tract Menachoth.

304:1 Concerning the law of levirate marriage, see Deut. xxv. 5-11.

305:1 It is a custom amongst Jews, that the first meal eaten by a mourner after the burial of his dead must be given him by friends or strangers, and usually some delicacy is brought to him.

Next: Chapter XX: Regulations Concerning Certain Acts of Labor Which Must be Performed Differently on a Sabbath and on a Festival

CHAPTER XX.

REGULATIONS CONCERNING CERTAIN ACTS OF LABOR WHICH MUST BE PERFORMED DIFFERENTLY ON A SABBATH AND ON A FESTIVAL.

MISHNA: R. Eliezer says: One may stretch a wine-filter (of cloth) over a vessel on a feast-day, and on the Sabbath one may pour wine into it, if it was already fastened (to the vessel). The sages say: One must *not* stretch it (over a vessel) on a feast-day, and on Sabbath one must not pour (wine) into it, but the latter act is allowed on a feast-day.

GEMARA: How is it possible that R. Eliezer should decide, that one may stretch a wine-filter, etc., on a festival, if he does not even allow a window-blind to be added to a temporary tent, as is explained by Rabba bar bar Hana in the name of R. Johanan [Chapter XVII., p. 272]. In that case he does not even allow the addition of a blind, and here he permits the stretching of a filter to commence with? R. Eliezer holds as R. Jehudah, as we have learned in a Boraitha: There is no difference between the Sabbath and the festival, except that the preparation of food is permitted on the latter. R. Jehudah, however, even permits the arrangements for the preparation of food. What arrangements for the preparation of food are we aware of, that R. Jehudah permits? Such as cannot be made at any time before the festival; but did we hear of his permitting the arrangements for the preparation of food that could be made before the festival, to be made on the feast-day? In this respect R. Eliezer is more lenient than R. Jehudah, for he permits all arrangements for the preparation of food to be made on the festival.

"*The sages say: One must not stretch it*," etc. The schoolmen propounded a question: What if a man *did* stretch the filter over a vessel on a festival? Is he culpable? Said Abayi: "This is only a rabbinical prohibition, that one should not do on a festival such things as one does on a week-day."

Abayi collected all the rabbinical prohibitions to be found in the Boraithas, and taught as follows. A leather bag, a wine-filter,

a baldachin, and a folding-chair as used in the city of Galin, must not be spread; but it one does so, he is not culpable. Tents, however, which are permanent, must not be put up, and if a man does this he is culpable. One way, however, set up an ordinary bed, a chair, a tripod, and a stool with impunity.

"*One must not pour wine into it*," etc. The schoolmen asked: "What if a man *did* pour wine into it? Is he culpable?" Said R. Kahana: "Yea; he is liable to bring a sin-offering." R. Shesheth opposed this: "Have ye ever seen that R. Eliezer should permit a certain thing to be done to commence with, which the rabbis hold would make one liable for a sin-offering?" R. Joseph

interposed: "Why not? Have we not learned (p. 114), in the case of a woman who went out with a golden ornament, that R. Meir held her liable for a sin-offering and R. Eliezer permitted her to go out with it to commence with?" Said Abayi to him: "Dost thou think that R. Eliezer opposes *R. Meir* in the above passage? Nay; he merely opposes the sages, who said that a woman must not go out wearing the ornament, but if she do so, she is not culpable; whereas he says, that she may do so to commence with."

How should a man be warned not to pour wine into the filter? (*i.e.*, in what category of labor is that act to be classed, so that the man can be warned that he is performing a certain prohibited principal act of labor? 1). Rabba said: "He is to be warned against fruit-cleaning." R. Zera said: "Against sifting." Said Rabba: "It seems to me that my decision is more in conformity with reason, for as in fruit-cleaning the good fruit is separated from the bad, so it is also in this case: he separates the clean wine from the lees." Said R. Zera: "It seems to me that my decision is more in conformity with reason, because as in sifting the good falls to the bottom and the bad remains in the sieve, so it is also in this case: the good wine falls into the vessel, while the lees remain in the filter."

Rami the son of Ezekiel taught: "A folded garment should not be spread on poles to serve as a sun-shade; but if a man do. this, he is free. If, however, a string or a hanger was already attached to the garment with which it could be fastened to the poles, this may be done to commence with."

R. Kahana asked of Rabh: "What is the law regarding a baldachin?" and he answered: "Even a bed is not permitted."

R. Kahana then inquired: "What is the law regarding a bed?" and Rabh answered: "Even a baldachin is allowed." "What is the law regarding a bed and a baldachin?" "A bed is allowed but a baldachin is not allowed." In spite of this, there is no difficulty. In not permitting even a bed, Rabh had reference to a folding-bed as used by the Karmanites, and where he said, "Even a baldachin is allowed," he had reference to a baldachin as described by Rami bar Ezekiel; *i.e.*, one which had strings attached to it. In saying, "A bed is allowed and a baldachin is not allowed," he meant to say, that an ordinary bed, such as is generally used, may be set up, but a baldachin, that had no strings or hangers attached, must not be set up. Said R. Joseph: "I have seen the baldachins in the house of R. Huna; at night (on Sabbath eve) they were folded up and in the morning they were all set up."

Rami bar Ezekiel sent to R. Huna and asked him to impart to him some of the good sayings of Rabh, two concerning the Sabbath and one concerning the Law. So R. Huna sent him the following sayings: Concerning what we have learned in a Boraitha, that a leather-bag which had strings already attached may be spread on poles on Sabbath, Rabh said, that this may be done jointly by two men but not by one. 1 Said Abayi: "A baldachin which must not be set up must not even be set up by the joint efforts of ten men." What was the other good saying of Rabh concerning Sabbath? Concerning what we have learned in a Boraitha, that if an iron stove had one leg missing it may be handled, but if two legs were missing it must not be handled, Rabh said, that it must not be handled even if one leg was missing, as a precaution lest one might be tempted to fasten the missing leg, and that would constitute building, What was the good saying

of Rabh concerning the Law? Rabh said: There will be a time when the Law will be forgotten by Israel, as it is written [Deut. xxviii. 59]: "Then will the Lord render wonderful thy plagues," etc., and I could not understand what is meant by "wonderful plagues"; but it is written [Isaiah xxix. 14]: "Therefore, behold, I will do yet farther a marvellous work, doing wonder on wonder, so that the wisdom of their wise men shall be lost, and the understanding of their prudent men shall be hidden."

The rabbis taught: When our teachers went into the vineyard at Jamnia, they said that the Law would be forgotten by Israel, as it is written [Amos viii. 11]: "Behold, days are coming, saith the Lord Eternal, when I will send a famine in the land, not a famine for bread, nor a thirst for water, but to hear the words of the Lord"; and [ibid. 12]: "And they will wander about from sea to sea, and from the north even to the cast, they will roam about to seek the word of the Lord; but they shall not find it." By the word of the Lord is meant: Halakha, the end of exile (*i.e.*, the coming of the Messiah), and also the prophecies. 1

In another Boraitha we have learned: R. Simeon ben Jo'hai said: "May God forbid that the Law be forgotten by Israel. It is written [Deut. xxxi. 21]: 'For it shall not be forgotten out of the mouth of their seed.' How then can the previous passage, 'And they will roam about to seek the word of the Lord, but they shall not find it,' be verified? It means they shall not find a perfect Halakha (which shall be incontestable), nor a Mishna (which shall be beyond refutation) anywhere on earth."

We have learned in a Boraitha: If thou shouldst live in a generation in which there is much trouble (persecution), go and investigate amongst the judges of Israel; for most of the trouble that happens in this world happens only on account (of the corruption) of the judges, as it is written [Micah iii. 9-11]: "Hear this, I pray you, ye heads of the house of Jacob and ye princes of the house of Israel, that abhor justice and make crooked all that is straight. They build up Zion with blood-guiltiness and Jerusalem with wrong; her heads judge for bribes, and her priests teach for reward, and her prophets divine for money, and yet will they lean upon the Lord," etc. They are all wicked, and yet they all lean upon the One who spoke and the world was created; and therefore the Lord will bring upon them three troubles for the three sins of which they were guilty as mentioned above (judging for bribes, teaching for reward, and divining for money), as it is written [ibid. 12]: "Therefore for your sake shall Zion be ploughed up as a field, and Jerusalem shall

become ruinous heaps, and the mount of the house, forest-covered high-places"; and the Holy One, blessed be He, will not permit his Shekhina to rest again amongst Israel until the corrupt judges shall be removed and the guardians of the peace shall be abolished from Israel, as it is written [Isaiah i. 25 and 26]: "And I will turn my hand against thee, and purge away as with lye thy dross, and remove all thy tin. And (then) I will restore thy judges as at the first, and thy counsellors as at the beginning."

Ula said: "Jerusalem will not be redeemed except through charity (righteousness), as it is written [Isaiah i. 27]: 'Zion shall be redeemed through justice, and her converts through righteousness.'"

R. Papa said: When the proud men will be destroyed, then also will the men who slander and cause us to be hated be destroyed, as it is written: "and purge away as with lye thy dross." And when the corrupt judges will be removed, the bailiffs will also become extinct, as it is written [Zephaniah iii. 15]: "The Lord hath removed thy punishment; he hath cleared away thy enemy."

Melai in the name of R. Eliezer ben R. Simeon said: "It is written [Isaiah xiv. 5]: 'Broken hath the Lord the staff of the wicked, the sceptre of the rulers.' The staff of the wicked refers to the judges who made of themselves a staff upon which their servants (scribes) should lean (*i.e.*, they gave them all the opportunities to extort money, of which they took a share). The sceptre of rulers refers to the judges who made their relatives rulers."

Mar Zutra said: "The above verse refers to the teachers who turn out ignorant men and allow them licenses to be judges (and through ignorance they were incapable of judging rightfully)."

R. Elazar ben Melai said in the name of Resh Lakish: "It is written [Isaiah lix. 3]: 'For your hands are defiled with blood, and your fingers with iniquity: your lips have spoken falsehood, your tongue uttereth deception.' 'Your hands are defiled with blood' refers to the judges, your fingers with iniquity' refers to the scribes of the judges, your lips have spoken falsehood refers to the lawyers, 'and your tongue uttereth deception' refers to the litigants themselves."

R. Melai said again in the name of R. Itz'hak of Magdala: "From the day that Joseph left his brethren, he tasted not wine, as it is written [Genesis xlix. 26]: 'These shall be on the

head of Joseph, on the crown of the head of him that was separated [1] from his brothers.'" R. Jose bar Hanina said, that the brothers of Joseph also did not taste wine, because it is written [ibid. xliii. 34]: And they drank, and were merry with him" (because it says "with him," the inference is, that without him they did not drink).

R. Melai said again: "The reward due Aaron for what is written [Exod. iv. 14]: 'And when he seeth, he will be glad in his heart,' was given him in the breastplate of judgment" [see ibid. xxviii. 15].

The inhabitants of the city of Bashkar sent a query to Levi, as follows: "What is the law concerning a baldachin, what is the law concerning flax sown in a vineyard, does it come under the head of Kelaim or not, and what is the law concerning one who dies on a festival?" While the messenger was on his way, Levi died. Said Samuel to R. Menasseh: "If thou wouldst be wise, answer thou these queries." So R. Menasseh answered as follows: "As for a baldachin, we have investigated on all sides and found no permission (for setting it up). As for flax sown in a vineyard, it constitutes a case of Kelaim. As for a man that had died on a festival, the corpse should be kept until after the second day of the festival, and it should not be interred, neither by Israelites nor by Gentiles." This is not so! Rami bar Ezekiel found permission for a baldachin as previously said! R. Tarphon decided that flax sown in a vineyard does not constitute Kelaim, and Rabha decreed, that a corpse may be interred on the first day of a festival by Gentiles and on the second day even by Jews? However, because the men of Bashkar were ignorant, R. Menasseh gave them the stricter decrees, lest they take advantage of the more lenient.

R. Abin bar R. Huna said in the name of R. Hama bar Gurya: "A man can wrap himself in the canopy that has not been fastened to the poles, together with its fringes, and go out into public ground with impunity." In what respect does this decision differ from that of R. Huna, who said in the name of Rabh, that one who went out into public ground wearing a Talith (toga) without Tzitzith (show-threads) is culpable and liable for a sin-offering? In the case of a Talith, the showthreads, being the most important part of that garment, are

valuable, and without them the Talith is simply a burden; whereas the fringes of a canopy are not an essential part of the canopy, and having used the latter for a garment it may be worn even with fringes.

Rabba bar R. Huna said: "A man may with cunning stretch a wine-filter over a vessel and say, that he intends to use it as a receptacle for pomegranates, but when it is already stretched he may filter wine through it." Said R. Ashi: "He may do this only if he had previously placed pomegranates in the filter." In what respect does this decision differ from the following Boraitha: During the intermediate days of a festival (either Passover or the Feast of Tabernacles) a man may brew Leer for consumption on those days but not for use on other days, be it beer made of dates or of barley; and although he have stale beer still on hand, he may with cunning brew new beer and drink it. (Should he have any left over he may keep it for other days; hence we see that it is not necessary to dissemble by doing something else before performing the act really intended.) In the latter case it is not known whether the man have any stale beer on hand or not, and hence it might be presumed that he has none and must brew more; but in the former case, when the wine-filter is stretched and wine is being immediately filtered through it, the presumption would be that it was stretched for that purpose only.

Said the disciples to R. Ashi: "We would call the attention of the master to this young scholar, R. Huna bar Hyvan or Heluvan by name, who takes the clove of garlic and stops up a hole in a wine-barrel with it, saying, that he intends merely to preserve the clove of garlic. He also goes and lies down on a ferry, presumably to sleep; in the meantime he is ferried across the river, and on the other side he watches his fields, saying, however, that he merely intended to sleep." Answered R. Ashi: "Ye speak of cunning (trickery). All the acts mentioned by you are prohibited by rabbinical laws only, and in the case of a scholar, there is no danger that he will commit them publicly (without resorting to cunning)."

MISHNA: One may pour water on yeast in order to thin the latter; and one may filter wine through a cloth or an Egyptian wine-basket. One may put a beaten egg in a sieve. One may also make honey-wine on Sabbath. R. Jehudah says: "On Sabbath this may be done only in a cup, on feast-days even in a lug, (pitcher), and on the intermediate days

even in a barrel." R. Zadok says: "At all times it should be made according to the number of guests."

GEMARA: Zera said: "A man may pour clear wine or clear water into a filter with impunity." May clear wine only, and not dimmed wine, be poured into a filter? Have we not learned, that R.

Simeon ben Gamaliel said: "A man may stir up a cask of wine, with the lees, on the Sabbath and pour it through a filter with impunity"? Zera explained the decree of R. Simeon ben Gamaliel to the effect, that the latter spoke of wine that was just being pressed, when it is customary to drink the wine with the lees (hence the wine is not improved, as it can be drunk without filtering).

"*One may filter wine through a cloth*." R. Simi b. Hyya said: "Providing the cloth is not turned into a funnel (that the cloth should not subsequently be wrung)."

"*An Egyptian wine-basket*." Said R. Hyya bar Ashi in the name of Rabh: "Providing the wine-basket is not lifted above the bottom of the vessel to the height of one span."

"*One may put a beaten egg in a mustard sieve*." R. Jacob Kar'hah explained this as follows: "Because the yolk is used only for coloring; the white of the egg is nevertheless as much an article of food as the yolk (hence no sifting takes place)."

It was taught: Mustard which had been prepared before Sabbath may be ground on the Sabbath, either by hand or with a vessel. Honey may also be placed in the mustard on Sabbath; it must not be thoroughly mixed, however, but merely stirred. Cresses which had been cut up before the Sabbath may be mixed with oil and vinegar on the Sabbath, and one may also add mint; it must not be thoroughly mixed, however, but merely stirred. Garlic which had been ground before the Sabbath may be mixed with broad-beans and peas, but must not be ground together; mint may also be added. Said Abayi: "We see, that mint is good for the spleen."

"*One may make honey-wine on the Sabbath*." The rabbis taught: "One may make honey-wine on the Sabbath, but not an oil-wine salve." The difference between honey-wine and oil-wine salve is that the former is made of honey, wine, and pepper, while the latter is made of old wine, clear water, and aromatic balsam to be used as a lotion after a bath.

Said R. Joseph: "Once I went with Mar Uqba to a bathhouse. When we came out, he gave me a cup of wine which, when drinking, I felt all over from the roots of my hair to the

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nails of my feet; and had he given me another, I am afraid that the reward due me in the world to come would have been lessened in proportion." Mar Uqba drank this wine every day? He was accustomed to it.

MISHNA: One must not put laserpitium in tepid water for the purpose of softening the former, but one may put it in vinegar. One must not soak bran nor grind it, but may put it in a sieve or in a basket. One must not sift feed-straw through a winnow, nor lay it in a high place so that the chaff fall out, but one may take it up in a winnow and then pour it into the crib.

GEMARA: The schoolmen asked: "What if one did put laserpitium in tepid water?" Said Abayi: "This is only a rabbinical prohibition, that it should not be done as on a weekday."

R. Johanan asked of R. Yanai: "Is it allowed to put laserpitium in cold water (on Sabbath)?" and he answered: "It is not." Said R. Johanan: "We have learned in the Mishna, that it is not allowed

to put it in tepid water, but in cold water it should be allowed." Answered R. Yanai: (If thou askest me concerning a Mishna) what difference is there between me and thee? The Mishna is according to the opinion of one man, and the Halakha does not prevail according to his opinion, as we have learned in a Tosephta: Laserpitium must not be put in either cold or tepid water. R. Jose said: "It is not allowed to put it in tepid water, but it may be put in cold water." For what purpose is it used? For a heavy feeling in the chest.

R. Aha bar Joseph had a heavy feeling in the chest, so he came to Mar Uqba, and was told to drink laserpitium to the weight of three shekels in three days. He drank some on Thursday and Friday, and on Sabbath he came to the house of learning to inquire whether he might drink it. He was told, that the disciples of Ada, others say of Mar bar R. Ada, taught, that one may drink, even a Kabh or two Kabhs with impunity. He then said to them: "I am not asking whether I may drink it. That I know is allowed, but I should like to know whether I may put the laserpitium in water in order to drink it. How shall I do?" Said R. Hyya bar Abin to them: "The same thing happened to me, so I went to R. Ada bar Ahabha and asked him, but he did not know; so I asked R. Huna, who said, that Rabh decided that first it should be put in cold water and then it may be put in warm water."

R. A'ha bar Joseph leaned on the shoulders of his nephew, R. Na'hman bar Itz'hak, and went out into the street, and told him, when they came to the house of R. Safra, to lead him in. When they got there, they went in, and R. A'ha asked of R. Safra: "May a shirt that had been laundered too stiffly be rubbed and softened by hand on the Sabbath? Shall we assume, that it is only intended to soften the shirt and is therefore permissible, or that it is intended also to bleach it and is hence prohibited?" R. Safra answered, that it might be done, and asked him: "Why dost thou ask about a shirt, why not ask also about a turban?" "I have already asked concerning a turban of R. Huna, and he said, that it is not permitted." "Why, then, didst thou come to ask about a shirt? Thou couldst have inferred, from the turban, that the other was also not permitted?" Answered R. A'ha: "A turban is bleached by unfolding and rubbing, but a shirt is not."

R. Hisda said: "If a shirt had been hung up to dry by means of a stick drawn through the armholes, it should be taken down from the stick, but the stick should not be taken down alone (because the stick is not a vessel and hence must not be handled)." Said Rabha: "If the stick was one that may be used by a weaver, it may be taken down (because it is regarded as a vessel)."

R. Hisda said again: "A bundle of herbs, if suitable for cattle-food, may be handled on the Sabbath. If not, it must not be handled." Said R. Hyya bar Ashi in the name of Rabh: "Dried salt meat may be handled on Sabbath (because it can be eaten uncooked), but dried salt fish must not (because it cannot be eaten uncooked)."

R. Hisda said again: "A man who attends school, and has not sufficient bread, should not eat herbs, because it creates hunger. I myself have never eaten herbs, neither when I was poor nor when I was rich. When I was poor I did not want to stimulate my appetite, and when I was rich I rather ate meat and fish in place of herbs." Again he said: "A young pupil who lacks food should not eat a little at a time. He should wait until he can accumulate sufficient for a hearty meal, and then eat. When I was poor I never ate until I could put my hand in the basket and find sufficient to satisfy my hunger."

The same R. Hisda said to his daughters: "Be chaste in the eyes of your husbands. Do not go about eating in the presence of your husbands. Do not eat herbs at night (for fear of bad

breath). Do not eat dates at night. Do not drink beer at night, and use not the same toilet that men do. When some one knocks at your door, do not ask 'Who is it?' in the masculine, but in the feminine."

"*One must not sift feed-straw through a winnow*." This Mishna is not in accordance with the opinion of the Tana of the following Boraitha: R. Eliezer ben Jacob said: "A winnow must not be touched at all."

MISHNA: One may clean out (the crib) for the (stalled) ox and throw (the superfluous fodder) over the side, so that it does, not become unclean, so says R. Dosa. The sages declare this to be prohibited. One may remove the fodder in front of one animal and place it before another, on the Sabbath.

GEMARA: The schoolmen propounded a question: Do the sages dissent from the first part of R. Dosa's decree, from the last part, or from both? Come and hear: "We have learned in a Boraitha: 'The sages said: "Neither one nor the other may be thrown over the side."'" Said R. Hisda: "The sages differ with R. Dosa only when the crib was a separate vessel, but if it was part of the stall and fixed to the ground, all agree that it is prohibited to clean it out."

"*One may remove the fodder from in front of one animal*," etc. In one Boraitha we learned, that one may remove the fodder from cattle with healthy snouts and place it before cattle with diseased snouts; and in another Boraitha we learned the contrary, that fodder may be removed from cattle with diseased snouts and placed before cattle with healthy snouts. Said Abayi: "According to both Boraithas, the fodder of an ass may be placed before an ox, but the fodder of an ox must not be placed before an ass. The first Boraitha refers to fodder placed before an ass who does not emit phlegm from the mouth, and which may be placed before a cow who does emit phlegm; and the other Boraitha, which permits the placing of fodder of animals with bad snouts, also refers to an ass, and calls the snout of an ass bad (diseased) because he feeds on all manner of things, like thistles, etc. The cow is referred to as having a healthy snout because she is very particular as to what she feeds on (hence the two Boraithas do not differ)."

MISHNA: Straw on a bed must not be shaken up with the hand, but it may be moved with the body. If it be designed for fodder, or a pillow or cloth lie over it, it may be shaken up by hand. A clothes-press which is kept in the house may be

opened, but must not be used for pressing. The clothes-presses of the professional washers must not be touched. R. Jehudah says: "If the press was partly open before the Sabbath, it may be entirely opened and drawn out (others say, the clothes may be drawn out)."

GEMARA: R. Jehudah said: "It is permitted to triturate pepper seed with the handle of a knife

one by one, but not two together (on Sabbath)." But Rabha said, that as a man usually triturates pepper in a mortar on a week-day, he may on Sabbath triturate as many together as he chooses with the handle of a knife.

R. Jehudah said again: "(On the Sabbath) a man who bathes should first dry himself standing in the water and then go out; otherwise he carries water into unclaimed ground for four ells." If that is so, what about the man going into the water? By entering he pushes the water forward four ells (into the lake or river) by mere motion? Motion has not been provided for in the prohibitions of unclaimed ground.

Said Abayi, according to another version R. Jehudah: "If a man stepped into loam, he should wipe his feet on the ground and not on a wall." But Rabha said: "Why should he not do that, because it might be presumed that he plasters the wall and is engaged in building,? Nay; this is not ordinary building (but more like field-work). On the contrary: If he wipe his feet on the ground he may perchance smoothen out an incavation, hence he should rather wipe his feet on the wall. For the same reason, he should not wipe his feet on the side of an incavation, lest he smoothen it out."

Rabha said again: "One should not cork a bottle with a piece of cotton or cloth, lest he wring it." R. Kahana said: "The dirt on a garment should be removed by rubbing the cloth on the inside and not on the outside, lest it seem like washing." R. Abuha in the name of R. Elazar, quoting R. Yanai, said: "One may scrape off dirt on an old shoe, but not a new one. With what should it be scraped off? With the back of a knife," said R. Abuha. Said a certain old man to him: "Withdraw thy teaching before that of R. Hyya: One must not scrape off dirt on an old nor on a new shoe. One must also not rub his foot with oil, while it is still in the shoe. He may, however, rub his foot with oil and then put on his shoe or his sandal. He may also anoint his whole body with oil and lie down on a skin, although the skin is benefited by the oil." Said R. Hisda:

[paragraph continues] "Providing the oil dripping from the body on to the skin is only sufficient to polish the skin, but if there is enough to soften the skin one must not lie down on it."

The rabbis taught: A small man should not wear a large shoe (lest it fall off and he be forced to carry it on the Sabbath). He may, however, wear a large shirt (as there is no fear of his taking that off and carrying it). A woman should not go out with a torn shoe on the Sabbath (lest she be laughed at and carry the shoe). She also must not accept Chalitza in such a shoe; but if she did so, the Chalitza is valid. She also should not wear a new shoe, that she had not tried on before the Sabbath (lest it be too large and she take it off and carry it). Such is the explanation of Bar Qappara.

In one Boraitha we have learned, that one may remove the shoe of a statue, while in another we were taught that it must not be removed. This presents no difficulty. The one Boraitha is in accordance with the opinion of the rabbis, who differ with R. Eliezer, while the other is in accordance with the opinion of R. Eliezer; as we have learned in another Boraitha: R. Jehudah said in the name of R. Eliezer, that if the shoe was loose and easily removed it might be taken off.

Footnotes

310:1 See Chapter VII., note to page 138.

311:1 Rashi remarks that, although some explanation for this passage was ventured upon by the Gaonim, still he does not understand it himself, and hence can give no satisfactory explanation.

312:1 Rashi explains the above passage as follows: That by the word of the Lord is meant Halakha, may be derived from the verse [Deut. v. 5], "To announce to you the word of the Lord," which is synonymous with Halakha. As for the end of exile also being part of the word of the Lord, I do not know what verse that can be based on. That by the word of the Lord is also meant the prophecies, can be inferred from the verse [Hosea i. 1]: "The word of the Lord that came unto Hosea."

314:1 "Separated" is expressed by the word Nazir, which means also one who has vowed to drink no wine.

Next: Chapter XXI: Regulations Concerning the Pouring Out of Wine From Vessels Covered With a Stone (Which Must Not Be Lifted), and the Clearing Off of Crumbs, etc., From the Table

CHAPTER XXI.

REGULATIONS CONCERNING THE POURING OUT OF WINE FROM VESSELS COVERED WITH A STONE (WHICH MUST NOT BE LIFTED), AND THE CLEARING OFF OF CRUMBS, ETC., FROM THE TABLE.

MISHNA: One may lift up a (petted) child, that has a stone in its hand, also a basket in which there is a stone; one may also handle unclean Therumah (heave-offerings), together with clean and with ordinary grain. R. Jehudah saith: "One may also take out Therumah from mixed grain in proportion of one to the hundred."

GEMARA: Rabha said: "If a man carried out a child to whose neck a purse of money was fastened, he is culpable of carrying the purse; but if he carried out the corpse of a child which had a purse of money fastened to it, he is free." Why is the man culpable in the first instance, for the carrying of the purse and not for carrying the child? He holds with R. Nathan, who said, that a living thing carries itself. Why not say, that the purse is an accessory to the child? Have we not learned in a Mishna (p. 182), that if a man carried out a person on a litter he is not culpable of carrying even the litter, because it is of no consequence to the person? A litter is regarded as of no consequence to the person, but a purse is not held to be part of a child. Why, in the second instance, is the man not culpable for carrying the corpse of the child? Rabha holds, with R. Simeon, that every labor which is not performed for its own sake does not make a person culpable (and he is not culpable for carrying the purse, because in his sorrow he does not think of the purse that the child was wont to play with).

An objection was made (to Rabba's teaching by virtue of the above Mishna): One *may* lift up a child with a stone in its hand? The disciples of R. Yanai explained this as follows: "A child is referred to that yearns for its father, and if it were not carried it would become sick." The stone is no hindrance to its being carried. If that is the case, why is a stone mentioned? why not money? Did not Rabha say, that the child may be carried if it

have a stone in its hand, but not money? That is simple. If the stone fall to the ground the father will not pick it up, but if money falls he will pick it up. We have been taught by a Boraitha in support of Rabha: If one carry his clothes, folded, on his back, or his sandals or his rings in his hand, he is culpable; if he wear them, however, he is free. If he carry out a man dressed in clothes, sandals, and rings, he is also free; but if he carried the clothes, sandals, or rings alone, he would be culpable.

"*A basket in which there is a stone*," etc. Why should a man not be culpable for carrying it? Is not the basket a basis for a prohibited thing? Said R. Hyya bar Ashi in the name of Rabha: "Here a basket is spoken of which is broken, and where the stone fills in the gap, making the basket

whole."

"*One may also handle unclean heave-offerings*." Said R. Hisda: "When may unclean heave-offerings be handled? If the clean heave-offering be at the bottom and the unclean on top, the unclean may be removed; but if the clean be on top, it may be removed, and the unclean must remain untouched." If the unclean *be* on top, let it be thrown off until the clean is reached! Answered R. Ilai, Rabh said: "Here fruit is spoken of, that would be spoiled by being thrown off."

An objection was made: We have learned in a Boraitha: "Unclean heave-offerings may be handled with clean and with ordinary grain; it makes no difference where it lies: on the top or at the bottom." This is a refutation of R. Hisda? R. Hisda might say, that our Mishna treats of a heave-offering that is needed for food, while the Boraitha treats of a heave-offering when the space it occupies is needed. What impels R. Hisda to explain the Mishna in that manner? Said Rabha: "From the latter part of the Mishna it seems to be in the sense explained by him, for that part of the Mishna says, that if money lie on a bolster, the bolster may be turned so that the money shall fall down; and Rabba bar bar Hana in the name of R. Johanan explained, that such is the case only if the bolster itself be needed; but if the space occupied by the bolster is required, one may lift the bolster, with the money, and deposit it elsewhere. Now, if this part of the Mishna refers to the demand for the object itself, the first part does likewise."

"*R. Jehudah saith: 'One may take Therumah from mixed grain in proportion of one to the hundred*.'" How can this be done? In doing it, one would make a useless thing useful, and that is not permitted? R. Jehudah holds with R. Simeon ben

[paragraph continues] Elazar, who declares, that one may look upon one side of a mixed-grain pile and consider it Therumah, and eat from the other. How can it be said, however, that R. Jehudah holds with R. Simeon ben Elazar, for have we not learned in a Boraitha, that they differ on this question, the former holding that one may take a measure of grain from the pile, of one to the hundred, set it aside as Therumah, and use the remainder, while the other says, that one should look upon one side of it and eat from the other? R. Jehudah is even more lenient; for he permits all of it to be used after a measure had been set aside, while R. Simeon permits only part of it to be used.

MISHNA: If a stone lie at the opening of a barrel, the barrel may be bent over, so that the stone fall down. If the barrel stand amongst other barrels, it may be lifted and then bent over, in order that the stone fall down. If money lie on a bolster, the bolster may be turned, so that the money fall down. If dirt be found on the bolster, it maybe cleaned off with a rag; and if the bolster be of leather, water maybe poured on it until the dirt is removed.

GEMARA: Said R. Huna in the name of Rabh: "The Mishna refers to a case where the stone lying at the opening of the barrel was left there by accident. If it was placed there purposely, the barrel becomes a basis to a prohibited thing and must not be handled."

"*If the barrel stand amongst other barrels*," etc. Who is the Tana who holds, that where there are both a permissible and a prohibited thing we must engage ourselves only with the

permissible thing and not with the prohibited? Said Rabba bar bar Hana in the name of R. Johanan: "That is R. Simeon ben Gamaliel, who said in Tract Betza, that if the waste was in a larger quantity than the eatable portion, the eatable portion might be taken, but the waste must not be touched. In the case of the barrel, the useful portion is certainly in a larger quantity than the useless (why, then, should he not remove the stone?). If a man should wish to remove the wine, it would necessitate his lifting the barrel at all events; with the barrel the stone would also be lifted, and in that case the useless would surpass in quantity the useful."

We have learned in a Boraitha: R. Jose said: "If a barrel stood in a cellar amongst other barrels, or among glassware (and there is danger that if the barrel is lifted and bent over the stone covering it will fall upon another barrel, or upon some of

the glassware and break it), it may be lifted, carried to another place, bent over so that the stone roll off, its contents removed to the quantity required, and returned to its former place."

"*If money lie on a bolster*," etc. Said R. Hyya bar Ashi in the name of Rabh: "The Mishna here refers to a case where the money was accidentally left on the bolster; but if it is laid there on purpose, the bolster becomes a basis to a prohibited thing and must not be handled."

Hyya the son of Rabh of Diphti taught the same as Rabba bar bar Hana in the name of R. Johanan, viz. (page 323), that if the space occupied by the bolster is required, the bolster together with the money may be moved.

R. Oshea said: "If a purse of money was accidentally left in private ground, one may put a loaf of bread or a child on it and take it back to the house." R. Itz'hak said: "This rule applies not only to a purse of money, but also to a brick that is needed for any purpose."

Said R. Jehudah bar Shila in the name of R. Assi, that a box of money was once forgotten in the market and R. Johanan was asked what was to be done. He ordered them to place a loaf of bread or a child on it, and take it in. Said Mar Zutra: "All these rules are laid down in the case of where the things referred to were left by accident." But R. Ashi said, that such is not the case, and that a child or a loaf of bread can be used to move a corpse only.

When Abayi had to bring in stalks of grain, he would put on them some article of food (or some vessel) and bring it into the house; and when Rabha had to bring in (an uncooked) dove, he would put a knife on it and bring it into the house. When R. Joseph heard of this, he said: "How sagacious are the minds of these young scholars! When did the rabbis permit this to be done? When the things to be brought were forgotten on the outside; but they did not permit their being moved to commence with." Abayi answered: "(I have done right.) For were I not a trustworthy man, I would not have used those means to bring in the grain at all. Stalks of grain are a useful thing to sit on, and may be handled." And Rabha said: "(I have also done right.) For were I not a trustworthy man, I would not have placed a knife on the dove at all, as there are some people who eat it raw (hence it may be handled on the Sabbath)." Shall we say, that Rabha holds that the raw dove may be handled only because it is eaten (raw) by some people,

and were it not so it could not be handled (on Sabbath), hence be holds as R. Jehudah in Tract Betza? Did not Rabha say to his servant on a festival: "Fry a duck for me and throw the entrails to the cat"; and we see thence that he permitted his servant to handle the entrails because they were food for a cat? The entrails would have spoiled if left over for the next day, and we must assume therefore that they were designed as food for the cat from the day preceding.

MISHNA: The school of Shamai teaches: "Bones and husks may be removed from the table." The school of Hillel, however, teaches: "One may only lift the whole table board (or cloth), and shake off what is left over." All crumbs smaller than an olive may be removed from the table; also the hulls of beans and lentils, because they may serve for fodder. It is allowed to use a sponge for wiping, providing it has a handle made of leather; otherwise, it is not allowed. At all events, one may handle a sponge on the Sabbath, and it is not subject to defilement.

GEMARA: Said R. Na'hman: We know that the school of Shamai holds to the opinion of R. Jehudah (who accepts the theory of Muktza), and that the school of Hillel holds to the opinion of R. Simeon (who disregards the law of Muktza). (Hence the order of the Mishna should be reversed.) The dictum of the school of Shamai should be credited to the school of Hillel, and *vice versa*.

"*Hulls of beans*," etc. The permission to remove the hulls of beans, etc., is certainly in accordance with R. Simeon, who disregards the law of Muktza; and the latter clause of the Mishna referring to a sponge, which must not be used for wiping off the table unless it have a handle (because without the handle it would be wrung and that is prohibited, although the intention to wring it did not exist), is in accordance with the opinion of R. Jehudah, who holds, that one must not perform an act even unintentionally. In this case R. Simeon also agrees with R. Jehudah, because it again presents a parallel case to the beheading of a creature where no intention to kill it exists.

The pits of dates (Armiassa) to which some of the meat adheres maybe handled, and those of Parsiassa [1] must not be handled. Samuel used to handle the latter with bread, holding to his opinion that anything at all may be done with bread (while

others hold that bread should not be put to any uses except for food). Rabba would hold them with a pitcher of water. R. Shesheth would throw them out by means of his tongue, and R. Papa would throw them underneath the bed. It was told of R. Zacharias ben Abkulos, that he would turn his face towards the back of the bed and throw them out with his tongue.

Footnotes

326:1 For explanation of the terms Armiassa and Parsiassa, see Vol. I., p. 45.

Next: Chapter XXII: Regulations Concerning Preparation of Food and Beverages

CHAPTER XXII.

REGULATIONS CONCERNING PREPARATION OF FOOD AND BEVERAGES.

MISHNA: Should a cask break open, sufficient may be saved for three meals. The owner may also call to others: "Come and save for yourselves (whatever you can)." No portion of the leakage, however, may be sponged up (soaked up with a sponge). One must not press fruit in order to extract the juice; and if it ooze out by itself, it must not be used. R. Jehudah said: "If the fruit is for eating, the juice which oozes out may be used; but if it is for beverage, it must not be used. If honeycombs be broken on the eve of Sabbath and the honey ooze out, the honey must not be used." R. Eliezer, however, permits this.

GEMARA: We have learned, that wine must not be soaked up with a sponge, and oil must not be dipped with a spoon, in the same manner as it is done on week-days (there must be a slight change).

The rabbis taught: If fruit becomes scattered in a courtyard (private ground) it may be gathered up and eaten, but this must not be done as on a week-day; *i.e.*, gathered in a basket.

"*One must not press fruit*," etc. Said R. Jehudah in the name of Samuel: "R. Jehudah (of the Mishna) agrees with the sages in the case of olives and grapes." Why so? Because this class of fruit is intended only for pressing, and the juice which must of a necessity ooze out might be calculated upon by the owner for a beverage. Ula said, that R. Jehudah differed with the sages even in the case of olives and grapes. R. Johanan said, that the Halakha prevails according to R. Jehudah as far as other fruit is concerned, but not as regards olives and grapes.

Said R. Aba in the name of R. Jehudah, quoting Samuel: "R. Jehudah subsequently agreed with the sages as regards olives and grapes, and the sages also agreed with him later concerning other fruit." Said R. Jeremiah to R. Aba: "Wherein *do* they differ?" and R. Aba answered: "Go and seek, and thou wilt find it!" Said R. Na'hman bar Itz'hak: "It seems to me

that they differ concerning berries and pomegranates, for we have learned in a Boraitha: The juice of olives or grapes, which after having been pressed and brought into the house had oozed out by itself, must not be used, whether the fruit had been brought in for eating or beverage. If a man squeezed out the juice of berries and pomegranates and brought the pressed fruit into the house to eat, if any more juice oozed out, he might drink it; but if he brought the fruit expressly for eating purposes or for beverage, or without any express design, he must not drink the juice that had oozed out, so said R. Jehudah. The sages, however, prohibit the use of the juice under any circumstances."

Said R. Jehudah in the name of Samuel: "A man may squeeze out a bunch of grapes directly into a pot, but not into a bowl. (Why not? Because if he squeezed it into the pot it is proof positive that it will be used for food, but if squeezed into the bowl it might be used as a beverage.) Said R. Hisda: "From the decree of our master we can learn, that a man may milk a goat right into the pot, but not into a bowl." Thus we see that Samuel holds, that beverages when mixed with eatables are also regarded as eatables.

Said R. Zera in the name of R. Hyya bar Ashi, quoting Rabh: "A bunch of grapes must be squeezed directly into the pot, but not into a bowl, but the oil of fish may be pressed out even into a bowl." R. Dimi repeated this decree. Said Abayi to him: "Ye teach this in the name of Rabh, hence ye have no objection; but we learn this in the name of Samuel, hence we have the following objection: 'Can Samuel say that the oil of a fish may be squeezed out even in a bowl? Were we not taught, that if a man squeezed out herbs which were soaked in wine and vinegar, it is, according to Rabh, permitted to commence with, if the herbs were to be eaten; but if the juice only was to be used, the man would not be liable for a sin-offering, but he should not do it to start with? If the herbs, however, were cooked, whether the man wished to eat them or only use the juice, he might squeeze them out into a bowl. Samuel, however, decreed, that be the herbs cooked or raw, one may do this only if he intends to eat the herbs, but not if he only intends to use the juice; if he does, however, he is not liable for a sin-offering.'"

R. Dimi answered: "By the Lord! My eyes have seen it, and not as a stranger, that I heard this decree from R. Jeremiah,

he from R. Zera, he again from R. Hyya bar Ashi, and the latter from Rabh's mouth."

In regard to the quoted Boraitha concerning the herbs that one had squeezed out (we have heard the opinion of Rabh and Samuel), R. Johanan said: "Be they cooked or raw herbs, he may do so to commence with, if he intends to eat the herbs; but if he only desires the juice he must not do so, and if he does he is liable for a sin-offering." All this however, is opposed by the following Boraitha: One may squeeze out herbs which were soaked in wine and vinegar on the Sabbath for use on the same day, but not for later use; but one must not press olives or grapes, and if he does, he is liable for a sin-offering." Now, this is in opposition to all three: Rabh, Samuel, and R. Johanan. Rabh could explain this in accordance with his teaching; viz.: The herbs may be pressed on the Sabbath, for use on that day and not later, providing he uses the herbs for eating; but if he wishes to use the juice he must not do so, but if he does he is not liable for a sin-offering; and cooked herbs he may squeeze out, whether he requires the herbs or the juice, olives and grapes he should not press: if he does, he is liable for a sin-offering. Samuel could explain it according to his own opinion: A man may squeeze out herbs on Sabbath for that same day, but not for later use; and the same law applies to cooked herbs, provided they are used for eating, but if the juice is wanted they must not be pressed, etc. R. Johanan could explain the Boraitha in accordance with his teaching, as follows: Be the herbs cooked or soaked, they may be squeezed out if intended for eating; but if the juice is required he must not, and if he did so it is equal to pressing olives or grapes, and he is liable for a sin-offering.

Said R. Hyya bar Ashi in the name of Rabh: "According to biblical law one cannot be culpable except for pressing olives and grapes. So have taught the disciples of Menasseh. Also according

to biblical law, a witness that testifies from hearsay must not be accredited, with the exception of a case where he testifies to having heard that a woman's husband had died."

"*If honeycombs be broken on the eve of Sabbath*." When R. Hosea came from Neherdai he brought a new Boraitha; viz.: "If olives and grapes were crushed before the Sabbath, and the juice oozed out, it must not be drunk; but R. Eliezer and R. Simeon both permit it." Said R. Joseph: "He just tells us of another man in addition to R. Eliezer!" Said Abayi to him:

[paragraph continues] "He taught us a great deal; for from our Mishna I would say, that honeycombs were eatables before being crushed and also afterwards; therefore R. Eliezer permits the use of the honey, but in the case of olives and grapes which were previously eatables and subsequently became beverages, it might be presumed that even R. Eliezer would not permit their use. Hence we were instructed by R. Hosea to the contrary."

MISHNA: Whatever has been dressed with hot water on the eve of Sabbath, may be soaked in hot water on the Sabbath; and whatever has not been dressed with hot water on the eve of Sabbath, must only be passed through hot water on the Sabbath: excepting only stale salt fish and Spanish kolias (a kind of fish which was generally cured to make it eatable), for passing these through hot water is all the dressing required for them.

GEMARA: What does the Mishna refer to? For instance, the hen of R. Aba! He would cook a hen, then soak it in water, and when it would fall to pieces he would eat it. Said R. Safra: "I was there at one time and R. Aba served me with some of that dish, and had he not given three-year-old wine immediately after it, I would have been forced to vomit."

R. Johanan would spit every time be was reminded of Babylonian Kutach (a dish made of small salt fish boiled in milk). Said R. Joseph: "Yea, and let us spit when we think of R. Aba's hen." And R. Gaza said: "I was in Palestine at one time, and made that same dish (kutach); so they begged me to give them some for all the sick in Palestine."

"*And whatever has not been dressed with hot water*," etc. What is the law concerning one who had passed kolias or stale salt fish through hot water? Said R. Joseph: "He is liable for a sin-offering." Said Mar the son of Rabhina: "We have understood it so from the Mishna, because the last clause is 'for passing these through hot water is all the dressing required for them,' and the finishing of a certain kind of labor is equivalent to hammering.

R. Hyya bar Aba and R. Assi once sat in the presence of R. Johanan, and R. Johanan dozed off. So R. Hyya bar Aba asked R. Assi why the fowls of Babylon were so fat. R. Assi answered: "Go to the desert of Aza in Palestine, and I will show thee fatter ones." "Why are the Babylonians so merry during the festivals?," asked R. Hyya again. "Because they are poor (and during the entire year they have no pleasures, so they take

advantage of the festivals)," was the answer. "Why are the scholars of Babylon so well dressed?" queried R. Hyya. "Because they are ignorami" (and must wear good clothes in order

to command respect), answered R. Assi. At that moment R. Johanan awoke, and said to them: "Youngsters! Did I not tell you, that it is written [Proverbs vii. 4]: 'Say unto wisdom, Thou art my sister,' which means: If a thing is as certain to thee as the fact that thou canst not marry thy own sister, then say it? Otherwise, thou shalt not say it. (Then why speak such foolishness?)" Then said they: "Let Master tell some things (which would benefit us)!" Said R. Johanan: "The fowls of Babylon are fat because they were never driven away from home, as it is written [Jeremiah xlviii. 11]: 'Moab was ever at ease from his youth, and he was resting on his lees, and was not emptied from vessel to vessel, and had not gone into exile: therefore had his taste remained in him and his scent was not changed.' Whence do we know that the fowls of Palestine were driven from home? It is written [ibid. ix. 9]: 'Both the fowls of the heavens and the beasts are fled; they are gone away.'--[R. Jacob said in the name of R. Johanan, that the fowls and the beasts and all else came back to Palestine with the exception of the Spanish kolias (the reason will be explained in Tract Bechorath.]--'Why are the Babylonians merry during the festivals?' Because they were not included in the curse of [Hosea ii. 13]: 'And I will cause to cease all her mirth, her festival, her new moon, and her Sabbath, and all her appointed feasts.'"

Said R. Itz'hak: "(Indeed it was so.) There was not a single feast in Palestine, that the military did not come to Sephoris"; and R. Hanina said: "There was not a single feast in Palestine, that captains, guards, and supervisors did not come to Tiberias."--"Why are the scholars of Babylon so well dressed?" "Because they are all strangers. As the saying goes: In a city where a man is known, he may wear whatever he chooses; but where he is not sufficiently known he should dress well."

R. Joseph taught: It is written [Isaiah xxvii. 6]: "In the future shall Jacob yet take root: Israel shall bud and blossom; and shall fill the face of the world with fruit." What is meant by "bud and blossom"? The scholars of Babylon, who wind blossoms and wreaths around the Thorah.

MISHNA: A man may break open a cask, to eat dry figs therefrom; provided, he does not intend using the cask afterwards

as a vessel. He must not pierce the bunghole of a cask, such is the decree of R. Jehudah (or R. Jose); the sages permit this to be done. And one must not bore a hole in the side of it; but if it was already perforated, he must not fill it up with wax, because he would smoothen the wax thereby. Said R. Jehudah: "Such a case was brought before R. Johanan ben Sachai, at Arab, and he observed: 'I doubt whether that act does not involve liability to bring a sin-offering.'"

GEMARA: Said R. Oshea: "When may a man hold a dirk to open a cask of figs? If the figs are very tightly packed, for then he would have to use a knife or a dirk to get the figs out; but if they were packed loose he must not use a knife to open the cask."

An objection was raised: We have learned, that R. Simeon ben Gamaliel said: "A man may bring in a cask of wine, cut off the bung-head with a knife, and serve it to the guests with impunity." This Boraitha is in accordance with the opinion of the sages, while our Mishna is in accordance with the decree of R. Nehemiah (who holds that no vessel may be used for any other purpose but that for which it was originally intended). What impelled R. Oshea to make the entire Mishna conform with the dictum of R. Nehemiah? Let him say, that the cask may be

opened with a knife even if the figs are loose, and thus be in accord with the sages? Answered Rabha: "The reason is, that R. Oshea could not quite comprehend why the Mishna specified figs: it could have said fruit, and on that account he reasoned as stated."

In one Boraitha we have learned: Palm-leaf baskets containing dried figs and dates may be untied, taken apart, or cut; and in another Boraitha we were taught, that they may be untied, but not taken apart or tied. This presents no difficulty; for one Boraitha is in accordance with the opinion of the sages, and the other is in accord with R. Nehemiah.

A question was asked of R. Shesheth: "May a cask be bored with an auger on the Sabbath? Shall we assume, that one intended to make an opening in the cask and hence it is prohibited, or that he intended merely to make a larger space for the flow of the wine and it is therefore permitted?" The answer was: "The intention was to make an opening, and it is prohibited." An objection based upon the teaching of R. Simeon ben Gamaliel previously mentioned was raised, and the answer was: "There the intention certainly was to make the space

larger, while here it is obvious that the intention was to make an opening; otherwise, he would have broken open the cask with a knife."

"*One must not pierce the bunghole of a cask*." Said R. Huna: "They differ only in reference to the top of a bunghole of a cask; but as for the side, all agree that it is not allowed, and this is carried out by the later clause in the Mishna; viz.: 'And he must not bore a hole in the side of it.'" R. Hisda, however, said: "They differ only as far as boring a hole in the side of the bunghole is concerned, but as for the top, all agree that it is permitted; and the later clause of the Mishna means to state that one must not bore a hole in the side of the cask itself."

The rabbis taught: One must not bore a new hole on Sabbath, but if it was already made he may enlarge it; and others say, that he must not enlarge it; but all agree, that if the hole was merely stopped it may be reopened. The first Tana prohibits the boring of a new hole, because thereby an opening is made. Does not enlarging a hole improve the opening? Said Rabba: According to biblical law, an opening through which one cannot enter or go out is not considered a door, but the rabbis made this a precaution on account of chicken-coops, the holes of which are made for the purpose of admitting fresh air and emitting the foul. (Therefore making a hole in a coop is equivalent to making a whole coop, for without holes it is of no value.) Enlarging a hole, however, is permitted, because one would enlarge a hole in a chicken-coop, lest an ichneumon should enter and kill a chicken. Why do some say, then, that holes should not even be enlarged? Because it might be that one did *not* make the hole in a chicken-coop large enough, and *would* enlarge it. R. Na'hman taught in the name of R. Johanan, that the Halakha remains according to the last dictum.

All agree, that a hole which had been stopped up may be reopened. Said R. Jehudah in the name of Samuel: This was said only in the case of where a hole had been stopped to preserve the aroma of the wine. If, however, the hole was stopped up in order to strengthen the cask, it must not be reopened. What is meant by preserving the aroma and by strengthening the cask? Said R. Hisda: "If the hole was on top of the cask and was stopped up, it was for the purpose of preserving the aroma; but if at the bottom, it was for the purpose of strengthening the cask."

Rabha said: "If it was at the bottom, it was also only for the purpose of preserving the aroma; and only if

the hole was stopped up right underneath the lees of the wine, it was for the purpose of strengthening the cask."

Rabh prohibits the inserting of a faucet into a cask, and Samuel permits it. All agree, that cutting a hole in the cask for the purpose Of inserting a faucet is prohibited, and that replacing the faucet, if once removed, is permitted. They differ, however, only when a hole had already been made in the cask before the Sabbath, but it was not quite fit for the faucet. Those who say, that it is prohibited, do so as a precaution lest one cut a fresh hole, while those that permit this to be done say no precautionary measure is necessary.

This is like the following difference between Tanaim: We have learned that a screw must not be fitted on a festival, much less on a Sabbath; but if it fall out it may be replaced on Sabbath, and so much more on a festival; and R. Yashia makes the ordinance more lenient. What does R. Yashia make more lenient? Shall we assume, that he refers to the first part and permits a screw to be cut? In that event, he would be improving a vessel, and that is certainly not allowed! Shall we assume, on the other hand, that he refers to the second part; the first Tana alone permits this? We must say, therefore, that the screw was already cut, but did not quite fit, and he permits the fitting of it. (Hence the same difference exists here as between the previous Tanaim.) R. Shesheth the son of R. Idi in the name of R. Johanan said: "The Halakha prevails according to R. Yashia."

"*But if it was already perforated*," etc. To fill it up with oil is, according to Rabh, prohibited, as a precaution lest he fill it with wax; and according to Samuel it is permitted, as the latter does not deem a precautionary measure necessary. Said R. Samuel bar bar Hana to R. Joseph: "Thou hast said distinctly in the name of Rabh, that oil is permitted." Answered R. Joseph: "Thou hast caught me in a trap." [1]

Said Samuel: "The leaf of myrtle must not be put in the bunghole of a cask, so that the wine flow over it." Why so? R. Yimar of Diphti said: "As a precaution lest a groove (channel) be made." R. Ashi said: "As a precaution lest the leaf be broken off (from its stem)." What difference is there? The difference is in the case of a leaf that had already been broken off (from its stem). (The precautionary measure of R. Yimar remains, while that of R. Ashi falls to the ground of itself.)

Is it permitted to wrap one's self in a bolster in public ground and bring it into private ground? Rabh prohibits this and Samuel permits it. If the bolster were soft and could be folded, they do not differ, all agreeing that it is permitted. If it were hard and could not be folded, all agree that it is prohibited. They differ only concerning a bolster that was neither soft nor hard, but a medium between the two. One says, that it appears like a burden and should not be carried, while the other holds that it is not a burden and may be carried; and the opinion just ascribed to Rabh was not stated by him expressly, but was merely inferred from the following incident:

"Rabh came to a certain place and found that he lacked room; so he went out into a lane (unclaimed ground), and when a bolster was brought to him he would not sit down on it. Those who saw this inferred therefore that he did not hold it to be permissible." As a matter of fact, this was not so. Rabh had it proclaimed that a bolster was allowed to be used, but in honor of the masters who were with him he would not sit down on that bolster. Who were those masters? R. Kahana and R. Assi.

MISHNA: One may put cooked victuals into a cave (or cellar) for the purpose of preserving them; also put clean water (contained in a vessel) into water that is not drinkable, in order to keep it (the former) cool; likewise cold water (in a vessel) into hot water, in order to warm the former. One whose clothes have dropped into the water while on the road, may unhesitatingly go on with them. As soon as he arrives at the outmost court (of the city or village), he may spread his clothes in the sun to dry, but he must not do this publicly.

GEMARA: Is this not self-evident? One might say, that there should be a precaution against grading (smoothening) any incavations that might be in the cave; hence we are told that such is not the case.

"*Clean water into water that is not drinkable*," etc. Is this not self-evident? Yea; but this is taught on account of the later clause in the Mishna, *i.e.*, putting cold water into hot. Is this also not self-evident? One might say, that this should be prohibited, as a precaution lest one also put a vessel containing cold water into glowing cinders to warm; so we are told, that such a precaution is not necessary.

"*One whose clothes have dropped into the water*," etc. Said R. Jehudah in the name of Rabh: "All things which were forbidden on account of causing suspicion among the people (that

one is committing a wrongful act) should not be done, not only publicly, but even in the innermost recesses of one's rooms." Is this not contradictory to our Mishna, which says, that one may spread his clothes in the sun, but *not publicly*? This is a difference between Tanaim, for in reference to this Mishna we have learned in a Boraitha, that both R. Eliezer and R. Simeon hold, that it is prohibited even when not done publicly.

Said R. Huna: "He who dusts his clothes on a Sabbath is liable for a sin-offering. This refers only, however, to a new garment, but not to an old one, and the new garment only when it is black; but garments of other colors *may* be dusted. Referring to a black garment, it is only then prohibited to be dusted if its possessor is particular about it (to such a degree, that he never puts it on without dusting it)."

Ula once came to Pumbaditha and he saw the rabbis dusting their clothes on a Sabbath, so he said: "The rabbis are violating, the Sabbath!" So R. Jehudah said to his disciples: "Dust your clothes right before his eyes: we are not particular."

Abayi stood before R. Joseph. R. Joseph said to him: "Give me my hat." And seeing that the hat was very dusty, Abayi hesitated to give it to him. So R. Joseph said: "Take hold of it and dust it: we are not particular."

We have learned in a Boraitha: Those who deal in clothes, and carry them folded on their shoulders on Sabbath, are liable for a sin-offering: this refers not only to clothes-dealers, but also to others; clothes-dealers, however, are mentioned, because that is their usual custom. The same is the case with a merchant who carries out a bag of money. He is liable for a sin-offering; and not only a merchant, but also others; but merchants are mentioned because it is their wont to carry money in that manner.

Said R. Jehudah: "It once happened that Hyrcanos the son of R. Eliezer ben Hyrcanos went out on Sabbath with a kerchief folded on his shoulder and tied to one of his fingers with a piece of twine (in order that it might not fall down); and when the sages heard this, they said that the twine was unnecessary, for he could have carried the kerchief without it."

It happened that Ula came to the house of Assi bar Him, and he was asked whether it was allowed to make a groove of the clothes on Sabbath. (The Babylonians wore long garments, and by turning them up at the bottom a quasi-groove was made.) Ula answered: "So said R. Ilai: It is prohibited to make a

groove on Sabbath." What is a groove? Said R. Zera: "A groove made of the clothes of the Babylonians." Said R. Papa: "Bear this rule in mind: If the clothes are turned up for the purpose of preventing their becoming soiled, it is prohibited; but if they are turned up to improve their appearance, it is allowed, as R. Shesha the son of R. Idi would always arrange his cloak (toga) tastefully (on a week-day, hence it is customary and may also be done on Sabbath)."

When R. Dimi came from Palestine, he related: It once happened that Rabbi went out into the field, and both ends of his toga hung on his shoulders. Said Jehoshua the son of Ziruz, the son of R. Meir's father-in-law before Rabbi: "Did not R. Meir say, that in a case of this kind one is liable for a sin-offering?" Said Rabbi: "Was R. Meir so particular, that he determined just how far down the ends of one's toga should reach?" Still he (Rabbi) let down his toga; and when Rabhin came from Palestine he said, that it was not Jehoshua ben Ziruz who made that remark, but Jehoshua ben Bepusai the son-in-law of R. Aqiba; and not that R. Meir said what has just been cited, but that R. Aqiba had said that. Also, that Rabbi had inquired whether R. Aqiba was so particular; and lastly, that Rabbi let down his toga. When R. Samuel ben R. Jehudah came from Palestine he said, that Rabbi was only asked concerning such a case (but not that he himself was the party referred to).

MISHNA: One who bathes in the water of a cavern or in the hot springs of Tiberias, though he wipe himself with ten towels, must not carry them off in his hand; but if ten persons wiped themselves, their faces, their hands, and their feet, with one towel, they might carry it off in their hands.

One may anoint and rub the stomach with the bands, but not so as to cause fatigue. One must not brush the body with a flesh-brush or descend into a kurdima. [1] One must not take an emetic, or stretch the limbs of an infant, or put back a rupture; one who has strained his hand or foot must not pour cold water on it, but he may wash it in the usual way: if he thereby becomes cured, it is Well.

GEMARA: The Mishna teaches, "the water of a cavern," in connection with the hot springs of Tiberias; hence it must be, that the water of a cavern is also hot. And again it says, "one

who bathes," and not "one may bathe," from which we see, that to commence with, bathing in those waters is not allowed; but merely to rinse one's self is permitted, even to commence with. This is according to the opinion of R. Simeon.

"*Though he wipe himself with ten towels*," etc. The first part of this clause in the Mishna imparts something new and unexpected in that it teaches, that, although if one man wipe himself with ten towels, there will be very little water contained in the towels, still he might through thoughtlessness wring them; and the latter part of the clause also imparts something new and unexpected, stating, as it does, that if ten men wipe themselves with one towel, although the towel will contain a great deal of water, they will mutually remind each other that it must not be wrung.

The rabbis taught: "A man may wipe himself with a towel and leave it at the window of a house that is nearest to the wall of the bathhouse; but he must not give it to the bathhouse employees, because they are suspected of wringing it on the Sabbath." R. Simeon, however, says: "A man may wipe himself with one towel and carry it in his hand to his house." Said Abayi to R. Joseph: "How is the law?" and he answered: "Did not R. Hyya bar Aba in the name of R. Johanan say, that the law prevails according to R. Simeon?" Did R. Johanan say this indeed? Did he not say elsewhere, that the Halakha prevails according to the anonymous teachers in the Mishna, and the Mishna teaches, that even if one man wiped himself with ten towels he must not carry them off in his hand? R. Johanan teaches, that the Mishna concludes with, "So said the son of Hakhinai." (hence it is the teaching of one individual).

R. Hyya bar Aba in the name of R. Johanan said: "The bathhouse employees may carry the sheets with which the women wipe themselves in the bathhouse on the street by wrapping them around their bodies; provided they wrap them over their heads and the greater part of their body."

R. Hyya bar Aba said in the name of R. Johanan: "A large veil which is worn by women should have the two ends that hang down in the back tied." And he said again, that they should be tied underneath the shoulders.

Rabha said to the inhabitants of Mehuzza: "If ye must carry clothes for the military on Sabbath, wrap them around you underneath the shoulders."

"*One may anoint and rub his stomach*." The rabbis taught:

[paragraph continues] "The stomach may be rubbed and anointed on the Sabbath, provided it is not done the same as on week-days." How should it be done? R. Hama bar Hanina said: "He should first anoint it and then rub it"; but R. Johanan said, that he might do both at the same time.

"*But so as not to cause fatigue*," etc. Said R. Hyya bar Aba in the name of R. Johanan: "It is not allowed to stand on the bed of Lake Deumseth, because the loam at the bottom is saline and immersion in the lake causes fatigue." Said R. Jehudah in the name of Rabh: "The days on which a cure in that lake (for bodily ills) may be effected are only twenty-one, and Pentecost occurs during those twenty-one days." The school-men asked: "Does Pentecost fall at the beginning of the twenty-one days or at the end?" Come and hear: Samuel said, that all waters taken for a cure are effective only from Passover to Pentecost. As for waters taken internally, Samuel may be right (because during cool weather one takes more exercise and thus the waters are effective), but for bathing it would seem that Pentecost should be the commencement.

Said R. Helbo: "The wine of the land of Purgaitha and the waters of the lake Deumseth robbed Israel of ten tribes (because indulgence in these pleasures are detrimental to spiritual welfare)." R. Elazar ben Aroch happened to be there, and indulged in those luxuries to such an extent that he forgot his learning, and afterwards the sages had to pray for his return unto the Law. This is as we have learned elsewhere (Aboth): R. Nehurai said: "Go into exile only in a place of learning and think not that the Law will follow thee, or that thy comrades will preserve it in thy hands, and do not depend upon thy acquired knowledge." This R. Nehurai is, according to some, the same Elazar ben Aroch, and he was called Nehurai, because this signifies (in Hebrew) "light of the eyes"; for he enlightened the eyes of many scholars with his interpretations.

"*One must not brush the body*," etc. The rabbis taught: One must not brush the body with a flesh-brush on Sabbath. R. Simeon ben Gamaliel said: "If one's feet were soiled, he might brush them the same as on week-days unhesitatingly." The mother of Samuel the son of Jehudah made her son a silver brush.

"*Or descend into a kurdima*." Why so? Because the bottom of a kurdima is slippery (and one might fall and wet his clothes, and thus be tempted to wring them).

"*One must not take an emetic*." Said Rabba bar bar Hana in the name of R. Johanan: "One must not take a medicament as an emetic, but may thrust his finger down his throat and thus cause vomiting."

"*Or stretch the limbs of an infant*." Said Rabba bar bar Hana in the name of R. Johanan: "To swathe a child on Sabbath is allowed."

"*Or put back a rupture*." Said R. Hana of Bagdad in the name of Samuel: "The Halakha prevails, that it may be done." (Samuel learns in the Mishna, instead of "it is *not* allowed," "it *is* allowed.")

Rabba bar bar Hana once came to Pumbaditha, but did not go into the college of R. Jehudah. So R. Jehudah sent for Ada, the officer of the college, and said to him: "Go and take a pledge of Rabba bar bar Hana." The officer went and did so. Afterwards Rabba bar bar Hana came to the college. When he came he heard R. Jehudah teach, that a rupture must not be put back on the Sabbath. Said he to him: "So said R. Hana of Bagdad in the name of Samuel, that the Halakha prevails permitting this to be done." Answered R. Jehudah: "It is our Hana and our Samuel. Yet we never heard of this before. Now thou canst see that I was right in demanding a pledge for thy

appearance. Hadst thou not come, we would never have heard this."

"*One who has strained his hand or foot*," etc. R. Ivia sat in the presence of R. Joseph, and he dislocated his hand. Said he to R. Joseph, making a motion to replace it: "May I replace it thus?" "Nay," said R. Joseph. "And thus may I?" asked R. Ivia, making another motion. "Nay," was the answer again. Thus questioning, he finally succeeded in replacing his hand. Said R. Joseph to him: "What didst thou ask me for? It is expressly stated in our Mishna, that if one strained his hand or his foot, he must not pour cold water on it, but he may bathe it in the usual way. If he thereby becomes cured, it is well."

"Did we not learn in the same Mishna that a rupture must not be put back, and still Samuel permitted it to be done?" asked R. Ivia. Answered R. Joseph: "Canst thou weave everything into one garment? What we have learned, we may follow; but what we have not learned, we cannot."

Footnotes

335:1 See note to page 114 of this tract.

338:1 A bathing place with a loamy bottom, into which it is easy to descend, but from which it is quite an exertion to ascend.

Next: Chapter XXIII: Borrowing, Casting Lots, Waiting for the Close of the Sabbath, and Attending to a Corpse

CHAPTER XXIII.

REGULATIONS CONCERNING BORROWING, CASTING LOTS, WAITING FOR THE CLOSE OF THE SABBATH, AND ATTENDING TO A CORPSE.

MISHNA: A man may borrow of an acquaintance jugs of wine or oil (on Sabbath), provided he does not say to him: "Lend (them to) me." A woman may also borrow bread from her acquaintance. If the man is refused (by his acquaintance), he may leave his upper garment (as a pledge) with the lender, and settle his account after Sabbath. Thus, also, in Jerusalem, the custom was, if the eve of Passover fell on a Sabbath, a man might leave his upper garment with the vender, take his paschal lamb, and settle his account after the holiday.

GEMARA: Rabha bar R. Hanan said to Abayi: "What is the difference between saying: 'I want to borrow' and 'Lend me'?" Answered Abayi: "The difference is, if a man says, 'I want to borrow,' he usually returns what he has borrowed and the lender will not be compelled to write it down; but if he says, 'Lend (trust) me,' the lender generally writes down what he has lent." Said Rabba again: "During the week it makes no difference, the lender is not particular whether one says, 'I want to borrow,' or 'Lend me.' He writes it down just the same-, then why should a distinction be made on Sabbath?" And Abayi answered: "The saying of 'I want to borrow,' on Sabbath, is a reminder to the lender that the sages said, that one must not say 'lend me,' and thus prevents him from writing it down."

The same said again to Abayi: "Let us see! The sages said, that everything done on a festival which can be done in a different manner from that on a week-day should so be done. Now, why do we not see women, who go for water with jugs, perform that work differently from their manner on a week-day?" He answered: "Because that would be impossible! For how should they do? Shall we say, that one who carries a large jug should carry a small one? That would necessitate her going twice. Or that one who carries a small jug should carry a larger

one? Then she would have a heavier burden to carry. Should she cover it with a cloth? Then she might wring it. Should she cover it with a lid? Then she might have to untie it. Hence it is impossible." 1

"*A woman may also borrow bread from an acquaintance*," etc. From the Mishna we see, that only on Sabbath a woman must not say, "Lend me," when borrowing bread, and on weekdays that would be permitted. Would this not be against the decree of Hillel, who prohibits this on account of possible usury (as explained in Tract Baba Metzia)? Nay; we can say that the Mishna is in accordance with Hillel's decree, but here it refers to such places where bread has a fixed value, while Hillel refers to places where bread has not a fixed value.

"*If the man be refused*," etc. It was taught: "A loan on a festival is, according to R. Joseph, uncollectable by law, and Rabba say it *is collectable*." R. Joseph says, that it is uncollectable, because otherwise the lender will write it down; and Rabba says, if we say that it is uncollectable, the lender will not trust the borrower and the latter will not have the means of celebrating the festival. Is this not a contradiction to our Mishna, which teaches, that if the man be refused trust, he may pledge his garment, etc.? If the loan be uncollectable, the pledging is quite right; but if it be collectable by law, why should the borrower pledge his garment? The lender can sue him by law? The lender might say, that he does not care to be troubled by lawsuits and judges. R. Ivia would take pledges, and Rabba bar Ula would trick the borrower (by in turn borrowing something from him after the holiday and holding that for a pledge).

MISHNA: A man may count the number of his guests and also of his extra dishes verbally, but not from a written list. He may let his children and household draw lots at table (as to who is to have one dish, and who is to have another), provided he does not intentionally stake a larger portion against a smaller one. They may also draw lots for the holy sacrifices on a festival (as to which priest is to have one sacrifice and which is to have another), but not for the eatable portions of the sacrifices (to whom one piece belongs, and to whom another piece belongs).

GEMARA: Why should a man *not* read from a written list

[paragraph continues] Said R. Bibhi: "Lest he might strike out a guest's name or an extra dish from the list." Abayi said: "This is a precautionary measure against reading of business papers on Sabbath." What is the point of difference between them? If the list is engraved on the wall! In that case there is no fear of striking out a name, but the precaution against reading business papers still remains, and the Amoraim differ in this case with the Tanaim in the following Tosephta, as we have learned: "A man must not look into a mirror on Sabbath (lest he trim his hair with scissors), but R. Meir permits looking into a mirror which is attached to a wall." Now, why may a man look into a stationary mirror; because by the time he goes to fetch scissors, he will be reminded that it is Sabbath? Why not say, that the same is the case with another mirror, which he holds in his hand? By the time he lays down the mirror and goes for scissors, he will also be reminded that it is Sabbath? The mirror prohibited to be used by the first Tana of the Tosephta is one that is attached to an instrument which can be used to trim hair, and that is in accordance with the dictum of R. Na'hman as stated by Rabba bar Abuha in his name: "Why did the sages prohibit the use of an iron mirror? Because a man might use it to trim his superfluous hair."

The rabbis taught: An inscription at the foot of pictures of beasts or men must not be read on. the Sabbath; and gazing, on the picture of a man is prohibited even on week-days, because it is written [Leviticus xix. 4]: "Ye shall not turn unto the idols." With what tradition do you supplement this verse, that you may infer therefrom the prohibition to gaze at a picture? Said R. Hanin: "Ye shall not turn to the idols which your imagination alone hath created."

"*He may let his children and household draw lots*," etc. It says, "his children and household": we must assume, that strangers are not to be included; if not, why not? As R. Jehudah said in the name of Samuel: A party of men eating on a festival, where the portions distributed to each are exactly alike in size and quantity, are guilty of the following prohibited acts; viz.: measuring, weighing, counting, borrowing and lending [1] (all of which acts are prohibited on a festival).

According to Hillel's opinion, they are guilty of usury also. If that is so, why

should it be allowed for his children and household? Here the reason is as related by R. Jehudah in the name of Rabh, who said: "It is allowed to borrow or lend from and to one's children and household and charge interest, in order to exemplify the evils of usury." If that is so, why is it not allowed, according to the Mishna, to stake a larger portion against a smaller? As a matter of fact, it is allowed; but the Mishna is defective and should read: "He may let his children and household draw lots at table, and *even* stake a larger portion against a smaller." Why so? As R. Jehudah said in the name of Rabh above: He may let his children and household draw lots, but not strangers. Why so? As R. Jehudah said in the name of Samuel above: A larger portion must not be staked against a smaller one even on week-days for strangers. Why so? On account of Kubeia. [1]

"*They may also draw lots for the holy sacrifices*," etc. What is meant by "but not for the eatable portions"? (Why should that not be done? The eatable portions of the sacrifices must be eaten on a festival.) Said R. Jacob the son of the daughter of Jacob: "That prohibition is only applicable to the eatable portions of the sacrifices left over from the preceding day. Is this not self-evident? I would say, that because it is written [Hosea iv. 4]: 'And thy people are contentious equally with the priests,' that the priests are contentious, and hence they should be permitted to cast lots for the eatable portions of the sacrifices (for the sake of peace); therefore we are taught, that the sacrifices of the day may be drawn for, but not those of the preceding day."

The same R. Jacob said: "A man on whose account another man has been punished, either through divine or human judgment, is not admitted into the abode of the Holy One, blessed be He." Whence is this adduced? Shall we assume that it is -from the verses [I Kings xxii. 20-22]: "And the Lord said, Who will persuade Achab, that he may go up and fall at Ramoth-gil'ad? And one said, In this manner, and another said, In that manner. And there came forth a spirit, and placed himself before the Lord and said, I will persuade him. And the Lord said unto him, Wherewith? And he said, I will go forth, and I will be a lying spirit in the mouth of all his prophets. And He said, Thou wilt persuade him, and also prevail: go forth and

do so." And it was asked who the spirit was, and R. Johanan said, it was the spirit of Naboth; and Rabh said that by saying, "Go forth," the Lord meant to expel the spirit from within His abode. Perhaps the reason for expelling the spirit was because it is written [Psalms ci. 7]: "He that speaketh falsehoods shall not succeed before my eyes." Therefore we must say that the basis for R. Jacob is the following. It is written [Proverbs xvii. 26]: "To punish the just with a fine even is not good." (This is explained to signify, that even punishment through a just man is not good.) What is not good is certainly evil, and it is written [Psalms v. 5]: "For thou art not a God that hath pleasure in wickedness: evil cannot abide with thee"; and this means, that "because Thou, God, art righteous, evil cannot remain in Thy abode."

"*They may draw lots*," etc. How do we know that the word "Choloshim" [1] means lots? It is written [Isaiah xiv. 12]: "How art thou fallen from heaven, O morning-star, son of the dawn! how art thou hewn down to the ground, crusher of nations!" ("*Crusher*" is expressed by the word

"*Cholesh*," and the inference is made from the supposition that lots were cast which nation was to be crushed first.)

It is written [Daniel iv. 33]: "And additional greatness was added unto me." What was that additional greatness? Said R. Jehudah in the name of R. Jeremiah bar Aba: "From this we can infer, that he (Nebuchadnezzar) rode a male lion and twisted a snake round the lion's head, to verify what is written [Jeremiah xxvii. 6]: 'And also the beasts of the field have I given him to serve him.'

MISHNA: One must not hire laborers on the Sabbath, nor may he commission another man to hire them for him. One must not stand at the extreme limit of the "techoom" 2 and wait for dusk (the end of Sabbath), in order to hire laborers (beyond the techoom), or gather fruit beyond it; but if watching fruit beyond the techoom, he may await the dusk at its extreme limit, and in that case bring the fruit back with him. Abba Saul laid down the rule: "Whatever I am permitted to prepare for the day following the Sabbath, *on* the Sabbath, I may get ready for at dusk."

GEMARA: What is the difference between a man and his neighbor? The Mishna teaches he should not hire laborers on Sabbath nor commission another man to hire them for him? Is this not self-evident? His neighbor is also a Jew. Said R. Papa: "That refers to a Gentile neighbor." R. Ashi opposed this, and said: "The prohibition to commission a Gentile to do something on a Sabbath is merely rabbinical, for the sake of the Sabbath rest (Shbhuth), 1 and to hire laborers on the Sabbath is also prohibited only by rabbinical law. How then can one rabbinical law be supplemented by another of the same character? Hence I may say, that the Mishna refers to a Jewish neighbor and should be explained thus: A man must not commission him to hire laborers on Sabbath, but he may say to him, 'Come to me after dusk and we will do something together.' The Mishna is in accordance with the opinion of R. Jehoshua ben Kar'ha, as we have learned elsewhere: A man must not say to his neighbor, 'I would like to see thee after dusk for the purpose of talking business,' and R. Jehoshua ben Kar'ha says he may do so, and Rabba bar bar Hana in the name of R. Johanan taught, that the Halakha prevails according to R. Jeshoshua ben Kar'ha."

Rabba bar bar Hana in the name of R. Johanan said again: "What reason did R. Jehoshua ben Kar'ha have for saying so? Because it is written [Isaiah lviii. 13]: 'By not following thy own business, and speaking vain words.' It is not allowed to speak, but surely thinking is permitted!"

R. A'ha bar R. Huna asked Rabha concerning the following contradiction: "How can we say, R. Johanan states, that though it is not allowed to speak it is allowed to think; did not Rabba bar bar Hana say in the name of R. Johanan, that everywhere it *is* allowed to think, excepting in a bathhouse and a toilet-room, for where it is not allowed to speak of the Law it is also not allowed to think of it?" "In that case it is different, for it is written [Deuteronomy xxiii. 15]: 'Therefore shall thy camp be holy,' and a bathhouse and a toilet-room cannot be holy; hence thinking of the Law in those places is not allowed." Speaking of other things except the Law is not permitted (on Sabbath). Did not R. Hisda and R. Hamnuna both say, that it is allowed to count up charitable disbursements on Sabbath; and R. Elazar say, that one may figure out amounts to be distributed among the poor (on Sabbath); and R. Jacob bar Idi say

in the name of R. Johanan, that all things pertaining to the saving of human beings or the affairs of the community maybe discussed on Sabbath, and that it is allowed to go to the schoolhouses and call meetings for deliberation upon the community's business; and R. Samuel bar Nahmeni say in the name of R. Johanan, that even halls may be visited for the purpose of calling business meetings together; and the disciples of Menasseh say, that betrothal of daughters may be discussed and the advisability of choosing a profession for a child may be deliberated upon, on the Sabbath? The passage cited in the Law states, that "following thy business" is prohibited, but affairs sanctioned by Heaven may be discussed (and all the above affairs are pleasing to the Lord).

R. Jehudah said in the name of Samuel: "Accounts concerning which advice is requested by others and which have no bearing upon one's own business may be figured on the Sabbath." The following Boraitha is cited in support of this: "Accounts of disbursements in the past and of future expenditures must not be calculated on the Sabbath; but such as are of no importance, and concerning which advice was asked, may be calculated. Is the following Boraitha not contradictory to the one cited? Accounts which are of no importance at all may be calculated on Sabbath, but not such as are of importance." How so? A man may say to his neighbor, "I have hired so much labor to cultivate a certain field," or "I have expended so many Dinars on such a dwelling," but be must not say, "I have expended so much and must expend so much more." (The contradiction arises from the fact that in the previous Boraitha it is prohibited to calculate disbursements made in the past, while in the last Boraitha it is permitted.) But according to your opinion, why not cite the contradiction occurring in the previous Boraitha itself; viz.: Firstly, it is said that disbursements of the past must not be calculated, and then, that accounts of no value may be figured? This presents no contradiction at all (neither in the previous Boraitha itself, nor from one to the other). If the disbursements of the past have already been made and nothing is owing, then the accounts of same are of no value and may be spoken of on the Sabbath; but if any amount of such expenditures is still due, then it becomes an important account and must not be discussed.

"*One must not stand at the extreme limit of the 'techoom*,'" etc. The rabbis taught: It once happened that the fence of the

field belonging to a pious man was broken, and noticing it on a Sabbath, he was about to mend it, when he recollected that it was Sabbath; so he left it. A miracle occurred, and kaffir-corn began to sprout in the place of the broken fence and furnished him and his family with their sustenance. R. Jehudah said in the name of Samuel: "A man may say to his neighbor, 'Tomorrow I intend to go to a certain town.' Why may he say this? Because, if there are huts on the road to that town at distances of seventy ells apart, he may even go on Sabbath; hence, though there be no huts on the road, he may say that he intends going on the morrow."

An objection was made, based upon our Mishna; viz.: "One must not stand at the extreme limit of the techoom and wait for dusk in order to hire laborers or gather fruit." It would be quite right, if the hiring of laborers only was concerned; for a thing which must not be done on Sabbath must not be waited for at the techoom; but as for gathering fruit, if there were walls around the town, that would be permitted? Why, then, should it be prohibited to wait at the

techoom until dusk? This may refer to fruit which was still attached to the ground (and could not be gathered on Sabbath even if the town had walls). How can this be said? Have we not learned that R. Oshea taught: "One must not wait at the techoom to bring straw and chaff." It would be correct concerning straw which is still attached to the ground; but how can this apply to chaff? This may refer to chaff which is used to mix with loam, and hence was designated for building purposes.

Another objection was made! Come and hear: We have learned in the succeeding Mishna, that nightfall may be awaited at the techoom in the case of a bride and corpse; hence for other purposes one must not await nightfall at the techoom. It would be quite right if it said, in the case of things pertaining to a bride, for instance to cut off a myrtle-branch; but what things can be done pertaining to a corpse? Only the bringing of the coffin and the shroud? Why, then, should a man not be allowed to bring things which are the equivalent of the necessaries pertaining to a corpse? for if there were walls surrounding the town, he would be allowed to bring them. Why, then, should he not be permitted to wait at the techoom for the purpose of bringing them? Because the case may be, that things (as shrouds) pertaining to the corpse were not already prepared, but must be cut.

"*But if watching fruit beyond the techoom, he may await the dusk*," etc. May he do this even if he had not yet recited the Habhdalah prayer? Why! R. Elazar ben Antignous said in the name of R. Elazar ben Jacob, that a man must not transact his business at the close of Sabbath, before reciting the Habhdalah prayer. And if it be that he said the Habhdalah prayer while reciting the evening prayer, did not R. Jehudah in the name of Samuel say, that even if a man included the Habhdalah prayer in the evening prayer, he must say it again over the goblet of wine? Should it then be said, that he said the prayer over the goblet also; how could he have done that in a field? This case refers to the time of wine-pressing (when it is possible to obtain a goblet of wine even in the field); such is the explanation of R. Nathan bar Ami to Rabh. Said R. Aba to R. Ashi: "In the West (Palestine) we simply say the benediction, 'Blessed be he, etc., who distinguishes between holy and ordinary days,' and go right to work." And R. Ashi said: "When we were in the house of R. Kahana, he would pronounce the same benediction, and we would go and chop wood."

"*Abba Saul laid down the rule*," etc. Concerning what clause of the Mishna does Abba Saul lay down this rule? Shall we assume that he refers to the first clause of the Mishna, which decrees, that one must not stand at the extreme limit of the techoom and wait for dusk, and thus applies his rule? Then, instead of saying, "Whatever I am permitted to prepare," etc., he should have said in the negative, "Whatever I am not permitted to say to another man he should do for me, I must not wait at the techoom to do myself." If we assume, however, that the rule refers to the latter clause of the Mishna, namely, "but if watching fruit, he may await the dusk," etc., then Abba should have applied his rule to the contrary; viz.: "Whatever I am permitted to wait for at the techoom, I may tell another man to do for me." Abba Saul applies his rule to the latter clause of the Mishna, and he refers to the following dictum of R. Jehudah in the name of Samuel, viz.: "A man may say, to his neighbor: 'Watch my fruit which is in your vicinity, and I will watch such of yours as is in my vicinity.'" This is commented upon by Abba Saul, addressing the first Tana as follows: "You certainly admit that a man may say to his neighbor, 'Watch my fruit in thy vicinity and I will watch thine in my vicinity.' Now, say, 'Whatever I am permitted to tell my neighbor to do, I am also permitted to wait for at the techoom

to do it myself.'" What does Abba Saul intend to supplement by laying down a rule? He means to add what was taught by the rabbis, as follows:

One must not wait at the techoom to bring home a stray animal; but if it is seen from the limits of the techoom, it may be called, so that it will come to within the techoom by itself. To this Abba Saul applied the rule, that if one may call to the animal, he may also wait at the techoom limits until dusk and bring it in himself. A man may also wait at the techoom limits to forward what is necessary for a bride; and also what is necessary for a corpse, to bring a coffin and shrouds for him; and we may say to him: "Go to a certain place and take it; and if thou dost not find it in that place, go to another place; and if thou canst not buy it for one hundred Zuz buy it for two hundred." R. Jose the son of R. Jehudah said: "One must not specify the amount the necessaries are to be bought for, but merely say, 'If thou canst not get it for little money, get it for more.'"

MISHNA: One may await the dusk at the limits of the techoom, to furnish what is necessary for a bride and for a corpse, and to bring a coffin and shrouds for the latter. If a Gentile brought mourning fifes on the Sabbath, an Israelite must not play (mourn) on them, unless they be brought from the vicinity. If a coffin had been made and a grave dug for him (on the Sabbath), an Israelite may be buried therein; but if it was done on purpose for an Israelite, he must not at any time be buried therein.

GEMARA: What does the Mishna mean by saying, "unless they be brought from the vicinity"? Rabh said: "By that is meant a place within sight, where one is positive that it was within the limits of the techoom." Samuel said: "Even if it is not positively known that they came from within the limits of the techoom, but where it is presumed that such is the case, the fifes may be used." Our Mishna seems to be in accord with Samuel's explanation, because it says in the next clause, "If a coffin had been made and a grave dug for him, an Israelite may be buried therein," and it does not say positively that the two things were done for a Gentile; hence we see, that where an object is doubtful, we may presume that it is allowed. Thus in the case of the fifes, if there *is* a doubt as to whence they were brought, they may nevertheless be used by an Israelite. We have learned in a Boraitha, however, a support to Rabh's opinion; viz.:

A city which contains both Israelites and Gentiles, and there is a bathhouse there which is heated on the Sabbath, if the majority of the inhabitants are Gentiles an Israelite may go there immediately after sunset on the Sabbath. If there are more Israelites than Gentiles there, the Israelite must wait the length of time required to heat water afresh before going to the bathhouse; and the same is the case in a city where there is an equal number of Jews and Gentiles. (This is a support to Rabh, because, though it is doubtful whether the bath was heated for a Jew or a Gentile, still, the Israelite must wait.) R. Jehudah. said: "If the capacity of the bath be limited (so that water be heated quickly) and a notable man be present, the Israelite need not wait." What is meant by a notable man? Said R. Jehudah in the name of R. Itz'hak the son of R. Jehudah: "If there was a man present who had ten servants, who could heat ten jars of water at the same time, an Israelite might go and bathe himself." [1]

"*If a coffin had been made and a grave dug for him*," etc. Why should we not wait until the length of time in which a new grave can be dug elapses? Said Ula: "This refers to a paved way, where a grave is seldom dug for an Israelite (hence it must have been dug for a Gentile)." What can be said in reference to the coffin? Said R. Abuha: "If the coffin lie on the same grave."

MISHNA: One may do all that is necessary for a corpse (on Sabbath), anoint and wash it, provided he does not dislocate its limbs. The pillow may be moved from under its head; the corpse may be put on sand, in order to keep it (from putrefying) the longer; its jaws may be tied, not for the sake of bringing them together more closely, but to prevent them from dropping lower. In like manner, a beam that had been broken may be upheld by a stool or bedstead, not in order to make it erect again, but to keep it from breaking still more.

GEMARA: Did not R. Jehudah. in the name of Samuel say, that it once happened that a disciple of R. Meir, while entering behind his master into the bathhouse, wished to rinse off a place for his master to sit down, and his master would not permit it; so he wanted to grease the steps with oil, but the master said that the floor must not be oiled? Hence we see, that a thing which must not be handled must not be anointed or

washed. How then is it permitted to wash and anoint a corpse? If the floor of a bathhouse be allowed to be washed, there is fear lest another floor will be washed also (and thus smoothen any holes which may be in the floor); but a corpse and a floor cannot be confounded, and it is allowed to wash and anoint a corpse out of respect to the dead.

What is meant to be supplemented by "all that is necessary for a corpse"? They meant to add what was taught by the rabbis; viz.: One may bring vessels for cooling the corpse, or iron vessels may be put on the belly of the corpse to keep it from swelling, and one may stop up any holes in the corpse to keep the air from entering."

MISHNA: One must not close the eyes of the dead on the Sabbath, nor (even) on the week-day, while he is expiring. Whoever closes the eyes of a dying person the instant he expires, is equal to the man who sheds blood ('like a murderer).

GEMARA: The rabbis taught: Who closes the eyes of a dying man is like a murderer, for it is the same as a candle which is about to go out. If a man lays a finger on the flame, it immediately becomes extinguished, but if left alone would still burn for a little time. The same can be applied to the case of an expiring man; if his eyes were not closed, he would live a little longer, and hence it is like murder.

We have learned in a Boraitha: R. Simeon ben Gamaliel said: "One who wishes that the eyes of a corpse should close, should inject wine into the nostrils of the corpse and anoint the eyelids with a little oil, and then pull the big toes of the feet, when the eyelids will close of themselves."

We have learned in another Boraitha: "One should violate the Sabbath even for a child of one day, if it still have life; but for a corpse, even be it that of David, King of Israel, the Sabbath must not be violated." The reason for this is: For a child of even one day, the Sabbath should be violated, saith the Thorah, in order that it may keep many Sabbaths in the future; but David,

King of Israel, when dead, can keep no more commandments. This is in accord with the saying of R. Johanan; viz. It is written [Psalms lxxxviii. 6]: "Free among the dead," etc. which means, that when a man is dead, he is free from keeping any commandments.

We have also learned in a Boraitha: R. Simeon ben Elazar said: A child of a day need not be guarded from the attacks of cats and dogs, but even when Og the King of Bashan is dead he

must be guarded, as it is written [Genesis ix. 2]: "And the fear of you and the dread of you shall be upon every beast of the earth," etc. Hence, as long as a man lives, the beasts are in dread of him; but as soon as he is dead, the fear is destroyed.

We have learned in another Boraitha: R. Simeon ben Elazar said: As long as thou canst, practise charity: as long as thou hast the opportunity and as long as it is in thy hands. For Solomon said in his wisdom [Ecclesiastes xii. 1]: "But remember also thy Creator in the days of thy youthful vigor, while the evil days (meaning old age) are not yet come, nor those years draw nigh of which thou wilt say, I have no pleasure in them." By that is meant, the days of the Messiah, because at that time there will be neither rich nor poor: all will be rich (and no opportunity for charity will present itself). This differs with the teaching of Samuel, who says, that there is no difference between the present time and the days of Messiah, only that one is subject to the government at the present time, while then it will not be so, as it is written [Deut. xv. 11]: "For the needy will not cease out of the land."

We have learned in a Boraitha: R. Elazar Hakappar said: A man should always pray for deliverance from poverty, although if he himself will not eventually come to poverty, his children or his grandchildren will, as it is written [Deut. xv. 11]: "For the needy will not cease out of the land, *therefore* do I command thee," etc. (The Hebrew term for "therefore" is "Biglal," and the school of Ishmael taught that Biglal is the equivalent of Galgal, meaning a "wheel," thus inferring, from that word, that poverty is like a wheel, always turning from one to the other.)

R. Joseph said: "There is a tradition extant, that a diligent young scholar will never become poor." But we see that he sometimes does become poor? Still, we have never seen one so poor that he had to beg his bread from house to house.

Said R. Hyya to his wife: "If thou seest a man about to beg bread from thee, hasten to give it to him, that he might at some other time do likewise for thy children." Said she to him: "Art thou cursing thy children?" "Nay; I am simply quoting the verse above, as interpreted by the school of Ishmael, that poverty is a wheel continually turning."

We have learned in a Boraitha: Rabbon Gamaliel the Great [1]

said thus: "It is written [Deut. xvii. 18]: "And grant thee mercy and have mercy upon thee, and multiply thee," etc. This means to say, that one who hath mercy upon creatures will be granted mercy from above, but one who hath not mercy upon other creatures will not be granted mercy from above.

It is written [Ecclesiastes xii. 2]: "While the sun, and the light, and the moon, and the stars are not yet darkened." The sun and the light are compared to the brow and the nose, the moon to the soul, the stars to the cheeks; and further, the verse reads: "And the clouds return not again after the rain," which means, that after weeping the eyes become dim. (The entire verse is, according to this interpretation, not applicable to the end of the world but to a human life.)

Samuel said: "Up to forty years of age, the eyes of a man which have become dim through tears may yet be restored by different remedies, but beyond that age there is no remedy for them"; and R. Na'hman said: "The dye used for the eyes makes them brighter until a man is forty years of age; after that age, however, it may preserve the eyes, but does not help them, even if the eyes are filled with dye." What are we given to understand by this statement? We are told that, the larger the brush used for applying the dye to the eye, the better it is for the eyes.

One of R. Hanina's daughters died, and he did not weep over her death. Said his wife to him: "Was a hen carried out of thy house?" "Is it not sufficient that our child died; wouldst thou have me lose my eyes through weeping?" replied R. Hanina; and he is of the opinion of R. Johanan, who said in the name of R. Jose ben Katzartha: "There are six kinds of tears in the eyes, three of which are good for the eyes and three bad. Tears generated by smoke, weeping, or disorder of the bowels are bad for the eyes; but those that are caused through laughing, acrid fruits (such as mustard), and medicaments which are applied to produce tears, are good for the eyes."

It is written [Ecclesiastes xii. 3]: "On the day when the watchmen of the house will tremble": this refers to the bowels and the sides which protect the bowels; "the men of might will bend themselves," meaning the legs of the man; "and those be darkened that look through the windows," refers to the eyes.

Cæsar asked of R. Jehoshua ben Hananiah: "Why didst thou not come to the debating rooms?" and he answered: "The mountain is covered with snow" (meaning his head was

gray),"the surrounding paths are icy" (meaning his beard was gray),"the dogs do not bark any more" (meaning his voice was inaudible)," and the millstones grind no more" (meaning his teeth were decayed).

The school of Rabh would say of an old man: "He hath lost nothing and is constantly seeking" (meaning that he was always bowed down).

We have learned in a Boraitha: R. Jose bar Kisma said: "Two are better than three" (referring to two legs, instead of two legs and a stick). "Woe is to the One who goeth away and doth not return," so said he. What does he mean by it? Said R. Hisda: "Youth."

When R. Dimi came from Palestine, he said: "Youth is a crown of roses, and old age a crown of thorns."

We have learned in the name of R. Meir: Be heedful of thy teeth and thou wilt show it in thy

step, as it is written [Jeremiah xliv. 17]: "When we had plenty of food and fared well and saw no evil." Said Samuel to his disciple R. Jehudah: "Thou sagacious man! When thou goest to eat, untie thy stomacher and bring in thy bread! Before the age of forty, eating is more wholesome; but after that, drinking is better."

A eunuch (who was a Sadducee) said to R. Jehoshua, was bald-headed, with the intent to tease him: How far is it from here to Bald city?" and he answered: "Just as far as from here to Castrate city." The eunuch said again: "I noticed that a bald goat only cost four Zuz"; and R. Jehoshua said: "Yea! and I noticed that the privates which were cut away from a he-goat cost eight Zuz." The eunuch noticed that R. Jehoshua did not wear shoes, and said: "He who rides a horse is a king, he who rides an ass is a nobleman, he who wears shoes is at least a man, but he who does not even wear shoes is worse off than a corpse in his grave." Said R. Jehoshua: "Thou eunuch! Thou hast told me three things, and three things thou shalt presently hear from me: The beauty of the face is a beard, the joy of the heart is a wife, and God's inheritance is children. Blessed be the place that has kept thee from all these joys." The eunuch retorted: "Thou bald-head! Wouldst thou quarrel with me!" and R. Jehoshua replied: Thou eunuch! Thou earnest to tease *me*."

Rabbi said to R. Simeon the son of Halaphta: "Why did we not have the pleasure of thy company on the festivals, as our parents had the pleasure of thy parents' company?" and he

answered: "The hills have become mountains, those who were near have become distant, two have become three, and the peacemaker of the house is gone" (meaning, "I have become old, can make but short steps, must have a cane to lean on, and my teeth are gone").

It is written [Ecclesiastes xii. 4]: "And when the two doors on the streets will be locked, while the sound of the mill becometh dull, and man riseth up at the voice of the bird"; and means, that in old age a man's stomach refuses to digest and he cannot excrementize, and he becomes so weak that the least sound, such as piping of a bird, will awaken him from his slumbers. Even so said Barzillai the Gileadite to King David [II Samuel xix. 36]: "I am eighty years old this day; can I discern between good and evil?" which proves to us that the mind of an old man changes; and further, it says: "Or can thy servant taste what I eat or what I drink?" From this we see that an old man's sense of taste is lost; and further, again: "Or can I listen yet to the voice of singing men and singing women?" which proves to us that old men become hard of hearing. Said Rabh: "Barzillai the Gileadite was a liar; for the servant who was in the house of Rabbi was ninety-two years old, and she would taste all the dishes that were being cooked." Said Rabha: "Barzillai was a lascivious man, and a man of that kind ages very rapidly and loses all his senses."

We have learned in a Boraitha: R. Ishmael bar R. Jose said: "The older scholars become, the more wisdom comes to them, as it is written [Job xii. 12]: 'So is with the ancients wisdom, and with those of length of days understanding.' With ignorant men, however, it is different. The older they become, the more ignorant they are, as it is written [ibid. 20]: 'He removeth the speech from trusty speakers and taketh away the intelligence of the aged.'"

It is written [Ecclesiastes xii. 5]: "Also when men will be afraid of every elevation." To an aged man, even a little hillock appears as a high mountain; "and are terrified on every way," and they are afraid of everything on their way; "and the almond-tree will refuse (its blossom)," meaning

that the joints of the limbs will refuse to do their duty; "and the locust will drag itself slowly along, and the desire will gainsay compliance," means that the desires of old men wane.

Said R. Kahana: "What is written [Psalms xxxiii. 9]: 'For

he spoke, and it came into being,' refers to a woman; and 'he commanded, and it stood fast,' refers to children."

It is written [Ecclesiastes xii. 5]: "Because man goeth to his eternal home." Said R. Itz'hak: "This proves that every righteous man is given a dwelling in the world to come according to his merit, and this is like a king with his slaves entering a city. They all enter through one gate, but when night comes every man is given a berth in accordance with his rank."

R. Itz'hak said again: "It is written [Ecclesiastes xi. 10]: 'For childhood and the time when the head is black [1] are vanity,' and means to say, that the deeds committed in youth blacken the reputation in old age."

R. Itz'hak said again: The worms are as disagreeable to a corpse as pricks of needles are to a man, even if an excrescence only is pricked, as it is written [Job xiv. 22]: "But his body on him feeleth pain, and his soul will mourn for him." R. Hisda said: "The soul of a man mourns for him the first seven days after his death, and that is based upon an analogy of expression; viz.: It is written [Genesis l. 10]: 'And he made for his father a mourning of seven days'; and the verse in Job previously quoted also contains the word 'mourn,' hence the analogy."

R. Jehudah said: "If a corpse has left none to mourn him, ten men should go to the place where he died and mourn his death." A stranger, who had none to mourn him, died in the neighborhood of R. Jehudah; so every day R. Jehudah took ten men, went to the place where the stranger died, and mourned for him. After seven days, the spirit of the stranger appeared to R. Jehudah in a dream, and said to him: "May thy heart be as light as thou hast made mine."

Said R. Abuha: "All that is said in the presence of a corpse is known to the latter, until he is buried and the earth is thrown on top of him." R. Hyya and R. Simeon bar Rabbi differ concerning this: One says, until the corpse is buried, and the other, until the flesh is decomposed. He who says until the flesh is decomposed, bases his assertion on the previously cited verse: "But his body on him feeleth pain, and his soul will mourn him." The other, who says "only until he is buried," bases his assertion upon the verse [Ecclesiastes xii. 7]: "When the

dust will return to the earth as it was, and the spirit will return unto God who gave it."

The rabbis taught: "Return the soul to the Lord as clean as He gave it to thee." This is illustrated by a parable of a king who once gave to his attendants suits of clothes. The wise among them took care of them, kept them clean and folded, and used them on special occasions only. The fools put them on and performed their work in them. Naturally, the clothes became dirty. All at

once, the king demanded the clothes back again. The wise men returned them clean and whole, but the fools returned them in a dirty and dilapidated condition. The king was well pleased with the wise men, and told them to depart in peace, and had their clothes stored; but the clothes of the fools he ordered to be sent to the washers, and the fools were sent to prison. So does also the Holy One, blessed be He. Concerning the bodies of the righteous men, He saith [Isaiah lvii. 2]: "He shall come in peace: they shall repose in their resting-place"; and concerning the souls he saith [I Samuel xxv. 29]: "Yet will the soul of my lord be bound in the bond of life with the Lord thy God." Concerning the bodies of the wicked, He saith [Isaiah lxviii. 22]: "There is no peace, saith the Lord, unto the wicked"; and concerning the souls of the wicked, He saith [I Samuel xxv. 29]: "And the soul of thy enemies will he hurl away, as out of the middle of the sling."

We have learned: R. Eliezer said: "The souls of righteous men are deposited underneath the throne of honor, as it is written: 'Yet will the soul of my lord be bound in the bond of life'; and the souls of the wicked are crowded together until they are crushed, as it is written: 'The souls of thy enemies will he hurl away.'" "How is it with the souls of men who are neither righteous nor wicked?" asked Rabba of R. Na'hman. He answered: "If I were dead, ye would not know it." Samuel said: The souls of the righteous, of the ordinary men, and of the wicked are given over to the angel whose name is Domah, who has charge of all souls. The souls of the righteous are given their resting-place soon; the others are not given rest until they come before the divine judgment.

Said R. Mari: "The bodies of righteous men also decompose, as it is written: 'When the dust will return to the earth, as it was.'"

Diggers were digging some earth belonging to R. Na'hman. They came to the grave where R. Achai bar Yashia was buried,

and the corpse scolded them. The diggers came to R. Na'hman, and told him that a man who was buried on his ground had scolded them. So R. Na'hman went himself to the grave, and asked: "Who art thou, Master?" and the man in the grave answered: "I am called Achai bar Yashia." Said R. Na'hman to him: "Did not R. Mari say, that the bodies of the righteous shall turn to dust?" and the corpse replied: "Who is this Mari? I know him not." But R. Na'hman persisted: "It is written: 'When the dust shall return to the earth, as it was.'" And the corpse retorted: "He who taught thee Ecclesiastes, did not teach thee Proverbs, where it is written [Ch. xiv. 30]: 'Jealousy is the rottenness of the bones'; and if thy teacher had explained this to thee, thou wouldst have known, that he who hath jealousy in his heart, his bones shall rot after death, but he who hath no jealousy in his heart, his bones shall not rot." Thereupon R. Na'hman felt the dead man's bones, and truly they were sound. So he said to him: "Let the Master arise and go home with me for a while." And the dead man answered: "By this remark thou hast proven to me that thou hast not even studied the prophets, for it is written [Ezekiel xxxvii. 13]: 'And ye shall know that I am the Lord, when I open your graves, and when I cause you to come up out of your graves' (for this would tell thee, that only the Lord can make me arise, and still thou askest me to go with thee)." "Yea," quoth R. Na'hman; "but there is another passage [Genesis iii. 19]: 'For dust thou art, and to dust thou shalt return.'" "This will, however, be only one hour before the final resurrection," answered the corpse.

A certain Sadducee said to R. Abuha: "Ye say that the souls of the righteous are deposited

underneath the throne of honor. How, then, could the woman of the familiar spirit whom King Saul consulted, 1 bring up the soul of Samuel?" R. Abuha answered: "That happened during the first twelvemonth after the death of Samuel, as we have learned in a Boraitha, that during the first twelvemonth the souls of the deceased come up and down; but after that period the soul ascends to heaven and does not return."

Said R. Jehudah, the son of R. Samuel bar Shila, in the name of Rabh: "From the funeral sermon held over the remains of the deceased, it may be observed whether they will enter the

kingdom of Heaven or not." (If the funeral sermon is in the form of a eulogy and the deceased was much beloved, it can be presumed that he will have a happy time in the beyond.) This is not so! For did not Rabh say to R. Samuel bar Shila: "See that thou makest my funeral oration exceeding touching, for I shall be there." R. Jehudah meant to say, that when the sermon is touching, and elicits a responsive chord in the breasts of the audience; for some orations may be made ever so touching but if the deceased was not deserving, it will produce no effect whatever. Said Abayi to Rabba: "Thou, Master, who hast not a single friend in Pumbaditha, who will mourn thy death?" "Thou and Rabba bar R. Hana will suffice," answered Rabba.

R. A'ha asked Rabh: "Who is the man that will live in the world to come?" He answered by quoting the verse [Isaiah xxx. 21]: "And thy ears shall hear the word behind thee, saying, This is the way; walk ye in it, when ye turn to the right hand and when ye turn to the left." 1 R. Hanina said: "The man who gives satisfaction to our masters."

It is written [Ecclesiastes xii. 5]: "And the mourners go about the streets." The Galileans said: "Do such things as will be spoken of to thy credit in thy funeral sermon"; and the Judæans said: "Do such things as will be spoken of after thy burial." There is no difference in the two statements, for in Galilee the funeral sermon was held before burial, and in Judæa after burial.

We have learned (in the Mishna Abhoth): "One day before thy death, thou shalt repent of thy sins," said R. Eliezer; and his disciples asked him, "Can a man know on which day he will die?" and he answered: "For just that reason, he should repent to-day, lest he die to-morrow. Thus all his days will be spent in repentance. So also hath Solomon said in his wisdom [Ecclesiastes ix. 8]: 'At all times let thy garments be white, and let not oil be wanting on thy head.'" Commenting upon this, R. Johanan ben Zakkai said: "This is illustrated by a parable about a king who invited his retainers to a banquet, but did not state the time; the wise among them dressed and were ready, standing in front of the palace, for they said: 'In a king's house nothing is wanting. Perhaps the banquet takes place to-day.' The fools, however, went about their business,

saying: 'Can a banquet be given without preparation?' Suddenly the king called in his retainers to the banquet. The wise went in becomingly attired, while the fools went in in their working clothes. The king was well pleased with the wise, and angry with the fools, and said: 'Those that are prepared and attired for the banquet shall sit down, eat, drink, and be merry; but those that are not, shall stand and look on, but shall receive nothing.'" Said the son-in-law of R. Meir, in the latter's name: Then it would appear as if those standing were waiting upon those who were

sitting (and they would not be ashamed). They were also to sit down, but while the others ate they would be hungry, and while the others drank they would remain thirsty, as it is written [Isaiah lxv. 13 and 14]: "Therefore, thus hath said the Lord Eternal, Behold, my servants shall eat, but ye shall be hungry; behold, my servants shall drink, but ye shall be thirsty; behold, my servants shall rejoice, but ye shall be made ashamed; behold, my servants shall sing for joy of heart, but ye shall cry out from pain of heart, and from a broken spirit shall ye howl"; and on this account it is written: "At all times let thy garments be white," etc.

Footnotes

343:1 The additional quotations of Rabha bar Hanan to Abayi concerning festivals will appear in Tract "Festivals," where they properly belong.

344:1 Guilty of borrowing and lending can only be explained by presuming that, if one received a smaller portion than another, the host would promise to make up for the deficiency on another day.

345:1 From the Greek κ{! 0x79 y !}yβεια = dice. The above prohibition is a precautionary measure against the possibility of casting lots degenerating into a game of hazard.

346:1 The term "casting lots" is expressed in the Mishna by the word "Choloshim," and the root of the word "Choloshim" is "Cholosh," and has a variety of meanings.

346:2 By "techoom" is meant the distance of 2,000 ells which a man may traverse on the Sabbath, and refers to the limits of that distance.

347:1 See Introduction to Tract Sabbath, p. xxii.

352:1 Others say that this above Boraitha really supports Samuel on account of R. Jehudah, and Rashi remarks that he finds that the more plausible supposition.

354:1 This means Gamaliel the Second, who was the Nassi in Jamnia, and he is entitled "the Great" in many places.

358:1 The Hebrew expression for "the time when the head is black" is "Shachrus," meaning blackness.

360:1 See I Samuel xxviii.

361:1 The significance of the verse is explained by Rashi as follows: When we hear of a man who has died, and we are told to walk in his ways and to do as he did, such a man will live in the world to come.

Next: Chapter XXVI: Regulations Concerning a Man Who is Overtaken by Dusk on the Eve of Sabbath While Travelling, and Concerning Feeding of Cattle.

CHAPTER XXIV.

REGULATIONS CONCERNING A MAN WHO IS OVERTAKEN BY DUSK ON THE EVE OF SABBATH WHILE TRAVELLING, AND CONCERNING FEEDING OF CATTLE.

MISHNA: One who (on the eve of Sabbath) is overtaken by the dusk on the road must give his purse to a Gentile (while it is yet day). If there is no Gentile with him, he must put it on the ass. As soon as he arrives at the outmost court (dwelling of the first town or village he reaches), he must take off all such things as may be handled on the Sabbath; and as for the things which must not be handled he must loosen the cords, so that they fall off themselves.

GEMARA: Why was it allowed for a man to give his purse to the Gentile accompanying him [he (the Gentile) acts for him]? Because it was known to the rabbis that a man is anxious about his money, and if it were not allowed, he might carry it himself in public ground. Said Rabha: "He may do this with his own purse; but if he found something, he must not have it carried for him." Is this not self-evident? Did we not learn in the Mishna, "his purse"? We might assume that the same would apply to something found, and the Mishna says only "his purse," because that is the usual occurrence; hence Rabha teaches us as mentioned. Even in the case of something which was found, the prohibition applies only if the man had not yet had it in his hand; but if he had, it is regarded the same as his purse.

"*If there is no Gentile with him*," etc. If there *is* a Gentile with him, he must give his purse to the Gentile. Why not put it on the ass in the first place? Because concerning the ass there is a commandment to let it rest, but no such commandment exists for a Gentile. How is the case if the man had accompanying him an ass, a deaf-mute, 1 an idiot, and a minor? To whom must he give his purse in that event? He must put it on

the ass. Why so? Because the deaf-mute and the minor are human beings, and he might by accident give it to an Israelite who was not a deaf-mute or a minor. "How is it if he had with him a deaf-mute and an idiot only? He must give it to the idiot (because a deaf-mute has more sense than an idiot). How is it with an idiot and a minor? He must give it to the idiot. All this has been finally decided, but the question that presented itself to the schoolmen was, to whom the purse must be given if the man had with him a deaf-mute and a minor. Some say he should give it to the deaf-mute, and others, to the minor.

How is it if the man have nobody along, no Gentile, no ass, no deaf-mute, no idiot, and no minor? What should he do then? Said R. Itz'hak: "There was another mode of procedure, which the sages would not reveal." What was that? He should carry it less than four ells at a time (i.e., carry it a little less than four ells and stop, then start and carry it on again for less than four ells, and so on). Why would the sages not reveal this? Because it is written [Proverbs xxv. 2]: "It is

the honor of God to conceal a thing; but the honor of kings is to search out a matter." Where is the honor of God concerned in this matter? Perhaps the man will not stop, but go on and carry, it over four ells.

We have learned in a Boraitha: R. Eliezer said: "On the day when the eighteen precautionary measures were instituted in the attic of Hananiah ben Hizkyah ben Garon (this measure concerning the purse of the traveller was also instituted, viz., that he should not carry it but give it to the Gentile), and the measure of laws was made heaping full." R. Jehoshua, however, says, that the measure was smoothened in too great a degree, [1] and we have learned that R. Eliezer meant to say what his simile illustrates; viz.: There was a basket filled with cucumbers and beets to the brim; and if a man put in mustard-seed, there is an addition, without, however, forcing out anything else. Thus the measure was full, but not overflowing. R. Jehoshua, however, compares it as follows: There was a tub filled with honey, and nuts were thrown into it, in consequence of which the honey overflowed and some was spilled. (This means, that by the institution of those precautionary measures the Mosaic laws were undermined.)

The Master said: "If there was no Gentile with him, he

should put it on the ass?" How is it that he may do this? If he put it on the ass, he will be compelled to drive the ass, and surely this is also labor, which is prohibited on the Sabbath, as it is written [Exod. xx. 10]: "On it thou shalt not do any work." Said R. Ada bar Abha: The man must put the purse on the ass, while the latter is walking along; in that case, no transfer from one fixed point takes place (because while both are walking it cannot be said that the purse is resting in one particular place). It is, however, impossible that the ass should not rest at some place for a little while? When the ass rests, the man removes the purse; and when it commences to walk again, he puts it back. If that is so, it would be the same if he would transfer his purse to a fellow-Israelite while walking, and he would never be guilty of the act of transferring from one (fixed) place and depositing in another? Said R. Papa: An act which, if committed by one man unassisted, would make him liable for a sin-offering (*e.g.*, if he, while running or walking, should pick up something off the ground even without stopping, he would become liable for a sin-offering), he must not commit *with* the assistance of a companion; but if he did so, he is not liable for a sin-offering (*e.g.*, if he picked up a thing and placed it on his companion while the latter was walking, in that event neither is culpable, for the one did not deposit it in a fixed place, and the other did not remove it from a fixed place). Such acts, however, as must not be committed with the aid of a companion may be done with the assistance of an ass in the first place.

R. Ada bar Abha said again: "If a man has a bundle on his shoulders before dusk on the Sabbath while on the road, he may run with the burden until he reaches home, but he must not walk his usual gait." Why so? Because, if he walks in the usual manner, he might stop (and by stopping carry out the prohibited transfer from one fixed point and depositing in another). When he reaches home, however, he must stop for some time, and thus he would bring a thing from public ground into private ground? The remedy for this is, to throw the bundle from his shoulders backwards, and not in the usual manner.

Rabha the brother of R. Mari bar Rachel taught the following decree in the name of R. Johanan: "One who drives cattle on the Sabbath (even if they are burdened) is free." Why so? If he did so

unintentionally, he cannot be liable for a sin-offering, because Sabbath laws are identical with those of idolatry. In like manner, as a man cannot be guilty of idolatry unless he

worship with his own body, so it is with the Sabbatical law. If he perform labor through the medium of his cattle, without doing any himself, he cannot be guilty. Even if he did it intentionally, he is also not guilty. Why so? Because we have learned in a Mishna (Tract Sanhedrin): "Among those who are subject to capital punishment (by stoning) is he who violates the Sabbath by an act which, if done intentionally, carries with it such punishment (stoning), and which, if done unintentionally, makes one liable for a sin-offering." Hence, if the unintentional performance of such an act does not carry with it liability to bring a sin-offering, its intentional performance cannot carry with it the punishment of stoning, nor the punishment of stripes; because, where the penalty for the violation of a negative commandment is death, stripes cannot be inflicted; and even according to the Tana who holds that stripes can be inflicted for such violation, in this case it could not be done, because, were the verse to be read, "Thou shalt not do any labor, nor thy cattle," it would be right; but the verse distinctly says, "Thou shalt not do any labor, neither thou, etc., nor thy cattle." Hence, when the work was not done jointly by the man and his cattle, he cannot be punished in any manner for a violation of the Sabbath.

"*As soon as he arrives at the outmost court,*" etc. Said R. Huna: "If the ass was laden with glassware, he may bring cushions and place them on the ground, so that when he loosens the cords the glassware may fall on the cushions and escape being broken." We have learned, however, that such vessels as may be handled on the Sabbath may be removed from the ass; and why may not the glassware be handled? R. Huna refers to glassware which belongs to a surgeon, and being dirty (bloody) is unfit for use in a household. In that case, then, the man would render the cushions which he places on the ground to receive the falling glassware unfit for their proper use, and this is prohibited on the Sabbath? The cushions are only to be used in order to break the fall of the glassware, and after the glassware rolls off on to the ground, the cushions can be used as before.

We have learned in a Boraitha: R. Simeon ben Jochai said: "If a sheaf of grain (the tithes of which had not yet been separated) is on the back of the ass, the man may push it off with his head, so that it fall to the ground." The ass of R. Gamaliel was once laden with honey, and, the Sabbath having set in, R. Gamaliel would not allow the ass to be unloaded until the Sabbath

was over. This proved too much for the animal and it dropped dead.

We have learned in the Mishna, that such things as *may* be handled on Sabbath may be removed from the animal; why was not the honey removed? The honey had become spoiled. If the honey was spoiled, why was it brought? It was intended to be used for the bruises on camels. Then the cords should have been loosened and the honey allowed to fall off? The honey, was in (inflated) skins, and would have burst if allowed to fall. Then cushions should have been placed on the ground to receive them? The cushions would have become soiled, and thus rendered unfit for use. Pity should have been taken on the animal, and it should not have been allowed to stand laden all day? Pity for animals is only a rabbinical institution according to R. Gamaliel, and thus he could not observe it lest he violate the Sabbath.

Abayi once saw Rabba playing with his little son, and setting him on the back of an ass, so he said to him: "Why! Does Master use an animal on Sabbath!" and Rabba answered: "This cannot be called using an animal in the regular manner, but just incidental use, and that was not prohibited by the rabbis."

Abayi objected: "Have we not learned that if two walls of a booth (to be used on the Feast of Tabernacles) were made by hand, and the third wall was already made by a tree, the booth might be used for ritual purposes; but it is not allowed to ascend to the roof of the booth on a festival, because the tree serves as a support to the roof, and by ascending the roof the tree would be used, which is prohibited? Hence we see that, although that would be incidental and not direct use, still it is prohibited?" Rabba answered: "In the case cited by thee, a tree is referred to, the branches of which were also part of the roof." The Mishna seems to have this meaning attributed to it by Rabba, for in a later clause it is stated, that should the tree (which partly supports the booth) be removed, and the booth can stand by itself, one may ascend it; hence the tree is regarded as an independent wall.

MISHNA: One may untie bundles of straw for cattle, also strew stalks for them, but one must not undo tied bundles of Zirin. 1 Herbs used as fodder, and carob-pods, must not be cut

up for cattle, large or small. R. Jehudah permits the cutting up of carob-pods for small cattle.

GEMARA: Said R. Huna: "There is no difference between bundles of straw and stalks, except that the former are tied twice while the latter are trebly tied, and by Zirin is meant the young branches of a cedar-tree (which when young are still tender and are eaten by cattle); and the Mishna should be explained thus: One may untie bundles of straw for cattle, and also strew them, and the same may be done with stalks, but not with Zirin; the latter must neither be untied nor strewn." Said R. Hisda: "What reason has R. Huna for explaining the Mishna in this manner? He means to say, that on account of such things as are already proper fodder for cattle one may trouble himself on Sabbath, but on account of such as must first be prepared as fodder, one should not trouble himself." R. Jehudah, however, says, that bundles of straw and Zirin are identical, except that the former were tied twice and the latter trebly, but stalks signify cedar boughs; and he explains the Mishna thus: We may untie bundles of straw for cattle, but not strew them; stalks may also be strewn; the Zirin, however, may be untied, but not strewn." Said Rabha: "What is the reason for R. Jehudah's explanation? He holds, that we may prepare things for the use of cattle, but we must not trouble ourselves on account of such things as are already fit fodder for cattle."

An objection was made to the foregoing (based on the latter clause of the Mishna): "Herbs used for fodder and carob-pods must not be cut up for cattle." As herbs are mentioned in conjunction with carob-pods, we must assume, that as the herbs were soft, so were also the carob-pods; and, it being prohibited to cut them up, we see that with such things as are already proper fodder we must not trouble ourselves, and this is contrary to the dictum of R. Huna? R. Huna might say to the contrary, that as the carob-pods are hard, so also are the herbs. Where do we find that herbs should be cut up for cattle, they generally eat them as they are? This refers to young calves and mule-colts.

(Another objection was raised.) Come and bear: One may cut up pumpkins for cattle and carrion for dogs. Then we may say, that as carrion is soft, so also are the pumpkins; and hence we see, that we may trouble ourselves even with such articles as are already fit fodder for cattle, and this is contradictory to R. Jehudah's opinion? R. Jehudah might say to the contrary, that as the pumpkins were hard, so was also the carrion. How

can that be? Supposing it was the carcass of an elephant, or the dogs were young and could not eat carrion without having it cut up for them.

MISHNA: A camel must not be crammed (to fatten it), nor may it be forced to eat: but the food may be put into its mouth. Calves must not be crammed, but the food may be put into their mouths. Poultry may be fed and crammed; water may be poured on bran, but the bran must not be kneaded. One must not put water before bees, or before doves in a dove-cot; but one may put it before geese, before poultry, and before house-pigeons.

GEMARA: What is meant by "must not be crammed"? Said R. Jehudah. "By that is meant, that the stomach of the camel should not be turned into a feed-bag." Can such a thing be done? Said R. Jeremiah of Diphti: "Yea; I saw with my own eyes, that an itinerant merchant fed his camel a measure of grain, and when it had consumed that, he forced another measure down its throat."

"*Calves must not be crammed, but the food may be put into their mouths*," etc. What is the difference between cramming and putting food into the calf's mouth? R. Jehudah said, that cramming is accomplished when the food is stuffed down into the calf's mouth so that it cannot eject it, and putting food into its mouth is merely as is implied by the term; and R. Hisda said, that in both cases the food is forced down so far that the calf cannot eject it; but in cramming, some instrument is used, and the other is done by hand.

R. Joseph objected: We have learned in a Boraitha, that poultry may be crammed, and so much the more food may be given to the poultry a little at a time. The contrary is the case with doves. Food must not be given them even a little at a time, and much less may they be crammed. Now what is the difference between cramming and forcing them to eat a little at a time? Shall we assume that by cramming is meant, forcing the food down by hand, and by giving them food a little at a time is meant, throwing it to them? If so, why should doves not be fed in that manner? Is it then prohibited to throw them food? We must therefore say, that in both cases the food is given by hand, but in cramming the food is forced down so that it cannot be ejected, while in the other case it can be ejected. If this applies to poultry, then we must certainly assume that, as for calves, cramming is done by forcing the food down with an instrument,

and this would be contradictory to R. Jehudah? R. Jehudah might say, that by feeding poultry is meant, throwing food to them; and the reason that one must not feed doves is because they do not belong to him, whereas poultry belongs to him and must be fed by him, as we have learned in a Boraitha, that one may give food to a dog but not to a pig; and the reason is, that a man is in duty bound to feed his dog, but a pig that he does not own he need not feed. Said R. Ashi: "This

we also learn from our Mishna: 'One must not put it before bees, or before doves in a dove-cot; but we may put it before geese, poultry, and house-pigeons.'" We must assume the reason of the Mishna to be because one is not obliged to take care of the bees and doves, but must take care of those which he owns. According to this, then, why is water only spoken of, why not wheat or barley? We must say, that water is easily obtainable, and hence there is no necessity to trouble one's self on that account.

R. Jonah taught at the door of Nassi: It is written [Proverbs xxix. 7]: "The righteous considereth the cause of the indigent." The righteous, synonymous with the Holy One, blessed be He, knoweth that a dog hath not much food, and hath thus ordained, that the food in his stomach remains undigested for three days, as we have learned in a Mishna: How long must the food (carrion) remain in the stomach, that it may still be considered unclean? In the stomach of a dog three days, but in the stomach of a bird or a fish only as long as it would take it to burn up if thrown into the fire.

Said R. Hamnuna: "From what was said above, it may be implied that one may throw food before a dog." How much? Said R. Mari: "A small piece, and the dog should immediately be driven off." This refers to a dog in the field, but within the city a strange dog should not be fed at all, lest he run after the man; however, a dog belonging to him may be fed.

Said R. Papa: "There is nothing poorer than a dog, and nothing richer than a pig (meaning that a dog is very fastidious about food, while a pig will eat anything)."

We have learned in a Boraitha, in support of the dictum of R. Jehudah: What is the difference between cramming and putting food into the mouth of a calf? Cramming is accomplished by laying the calf down, forcing open its mouth, and stuffing it with soaked grain; and putting food into its mouth is merely feeding and watering it separately, while the calf is standing.

"*Poultry may be fed and crammed*," etc. Said Abayi: "I asked my master, with whose opinion was the Mishna in conformity, and he told me with that of R. Jose bar Jehudah, as we have learned: Water must not be poured on bran, said Rabbi, but R. Jose bar Jehudah said that it may be done."

The rabbis taught: "When water is poured on parched corn the corn must not be kneaded on Sabbath, but others say that it may be kneaded." Who is meant by "others"? Said R. Hisda: "R. Jose bar Jehudah." Such is the case, however, only when it is done differently than on a week-day. How can it be done differently? By kneading a little at a time and not in a lump. All agree, however, that Shthitha [1] may be kneaded on the Sabbath, and that Egyptian beer may be drunk. Was it not said, that kneading was not allowed on Sabbath? This presents no difficulty. Fine corn may be kneaded, but coarse must not; and even then it must be kneaded differently than on a week-day. How can this be done? On week-days the vinegar is first put in and then the Shthitha, and on Sabbath the latter should be put in first.

Levi the son of R. Huna bar Hyya once found the herder of his father's cattle pouring water on bran and giving it to the cattle. He scolded him. Afterwards R. Huna met his son, and said to him: Thus said the father of thy mother in the name of Rabh (meaning R. Jeremiah bar Aba): "It

is allowed to pour water on bran but not to put the mixed bran into the mouth of the cattle (but young cattle, that cannot eat themselves, may be fed by hand)." And this may be done, providing it is done differently than on a week-day. How should that be done? The bran should only be stirred once lengthwise and once crosswise. It will not mix well, however, in this manner. Said R. Jehudah: "Then it should be poured into another vessel."

We found in the diary of Zera: "I asked of my Master R. Hyya, whether kneading was permitted on the Sabbath, and he said, 'No.' I asked him whether transferring from one vessel to another was permitted, and he said it was." Said R. Menasseh: "It is allowed to give one animal a measure of grain, and two measures for two animals, but one must not give three measures for two animals." R. Joseph, however, said that a whole Kabh, or even two Kabhs, may be given for one or two or three animals, and Ula said that even a Kur or more may be given.

It was written in the diary of Levi: "I related in the presence of my master, who was Rabbi the Holy (Jehudah Hanassi), that in Babylon they were kneading Shthitha on Sabbath and Rabbi protested against it; but no one paid attention to it, and he had no power to prohibit it, because R. Jose bar Jehudah once permitted it (as mentioned previously)."

It was written in the diary of R. Jehoshua ben Levi: "One who is born on the first day of the week will be a man, and not one thing will be in him." What does that mean? That there will not be any one good thing in him? Did not R. Assi say that he was born on the first day of the week? Shall we say, that not one bad thing will be in him? R. Assi said: "I and Dimi bar Kakusta were both born on the first day of the week, and, behold! I am a prince and he is a leader of robbers!" What, then, is meant by "not one thing will be in him"? This means, that he will be either wholly bad or wholly good. "A man who was born on the second day of the week will be a man of violent passion." Why so? Because on the second day the water was separated. "A man born on the third day will be rich and lascivious." Why so? Because grass was created on the third day. "A man born on the fourth day will be wise and have a good memory." Why so? Because on the fourth clay the lights were created. "A man born on the Fifth day will be a charitable man." Why so? Because on that day the fishes and fowls were created. "A man born on the sixth clay will be a very devout man." [R. Na'hman bar Itz'hak said: "He will be zealous in the fulfilment of commandments."] "A man born on the Sabbath will also die on the Sabbath, because on his account the great day of Sabbath was violated." Said Rabba bar R. Shila: "He will, however, be called a great and pious man."

Said R. Hanina to the men who related what was written in the diary above: "Go and tell the son of Levi, that the fortune of a man does not depend upon the day, but upon the hour he was born in. One who is born in the hour of sunrise will be a bright man; he will eat and drink of his own, but he will not be able to keep secrets and will not be successful in stealing. One who is born under Venus will be a rich man, but will be lascivious, because fire is generated under Venus. One who is born under Mercury will be bright and wise, because that star is the scribe of the Sun. One who is born under the Moon will be sickly or troubled. He will build and demolish, will not eat and

drink his own, but will keep secrets, and will be successful m stealing. One who is born under

Saturn will have all his thoughts and aims come to naught; and others say, to the contrary, all aims against him will come to naught. One who is born under Jupiter will be a righteous man, and R. Na'hman bar Itz'hak said he will be very devout. One who is born under Mars will be a man who will shed blood. He will either be a surgeon or a robber, a butcher or a circumciser, said R. Ashi. Rabba said that he was born under Mars. Said Abayi to him: "Thou, Master, reprovest men, and whom thou reprovest, he dieth; hence thou, also, sheddest blood."

It was taught: R. Hanina said: "One who is born under a lucky star may be either rich or wise, and the same thing applies to Israelites also." R. Johanan said: "An Israelite does not come under this fate"; and R. Johanan says this in accordance with his dictum elsewhere; viz.: Whence do we know that the Israelites are not subject to fate? Because it is written [Jeremiah x. 2]: "Thus hath said the Lord, Do not habituate yourselves in the way of the nations, and at the of the heavens be ye not dismayed, although the nations should be dismayed at them." So the nations may be dismayed at the signs of the heavens, but not the Israelites; and Rabh holds likewise, that the Israelites are not subject to fate. R. Jehudah said in the name of Rabh: Whence do we know that the Israelites are not subject to fate? Because it is written [Genesis xv. 5]: "And he brought him forth abroad." Abraham said before the Holy One, blessed be He: "Creator of the Universe, lo, one born in my house will be my heir"; and the Lord answered: "He that shall come forth out of thy own bowels shall be thy heir" [Gen. xv. 4]. And Abraham said again: "Creator of the Universe! I have consulted my horoscope, and have found that I am not capable of having a son"; so the Lord said to him: "Away with thy horoscope! An Israelite hath no fate!"

Of Samuel it is also known, that he thought the Israelites had no destiny, for Samuel and Ablat were once sitting together, and some men went past a meadow. Ablat (who was an astrologer) said to Samuel, pointing to one of the men: "That man will not return. A snake will bite him, and he will die." Said Samuel: "If he is an Israelite, he will come back." While they were talking, the man came back; so Ablat arose and examined him, and he found a snake cut in on the man's clothes.

[paragraph continues] Said Samuel to the man: "What didst thou do to-day, that thou hast escaped death?" The man answered: "It is our custom, when going out with a party of men, that we all contribute our share of victuals, and then have our meal in common. I knew that one of our party had no (bread) victuals, and not wishing to make him ashamed, I secured the basket to gather the food; and when coining up to him I pretended to put in his share, but in reality put in mine, and thus he was not ashamed." "Then thou hast committed an act of charity," said Samuel; and when he went out he preached that charity maybe the cause of saving a man's life, and not only from a violent death, but also from death which otherwise would have overtaken a man naturally.

Of R. Aqiba it is also known, that he did not believe the Israelites to be subject to fate, for R. Aqiba had a daughter, and the soothsayers predicted that on the day on which she should enter the garden a snake would bite her and she would die. He was very much troubled on that account. One day his daughter took off her headdress in the garden, and the needle protruding from it stuck on the side of the fence where a snake happened to be, and piercing the eye of the snake, the latter was killed. When R. Aqiba's daughter went back to the house the snake dragged after her. Asked R. Aqiba: "What didst thou do today, to escape death?" and she answered: "At dawn a man came to the door begging bread. Everybody, however, was at the table, and no one heard him but myself. I took my own meal, that thou gavest me, and gave it to him." Said R.

Aqiba: "Thou didst an act of charity, and this saved thee from death." He then went forth and preached, that charity may be the cause of saving a man's life, and not only from a violent death, but also from one that was to have come naturally.

R. Na'hman bar Itz'hak is also known to discountenance the theory of the Israelites being subject to fate; for the mother of R. Na'hman was told by astrologers that her son would turn out to be a thief, so she would not let him go out bare-headed, saying: "Always keep thy head covered, that thou mayest fear the Lord, and pray to Him for mercy"; and he did not know why she always told him this. One day he sat underneath a tree studying, when his head-wear fell off, and looking up, he saw the tree filled with delicious dates. He was very much tempted to take some of the fruit, although the tree did not belong to him, and accordingly climbed the tree, and bit off a branch with his teeth.

MISHNA: Pumpkins may be cut up for cattle, and carrion for dogs. R. Jehudah saith: "If the carrion was not yet carrion (if the beast had not yet died) before the Sabbath, it must not be cut up; because, in that case, it is not part of what had been provided (for consumption on Sabbath)."

GEMARA: It was taught: Ula said, the Halakha prevails according to R. Jehudah, and of Rabh it is also known that he agrees with R. Jehudah, as may be seen from his decree concerning covers of a vessel (on page 29). Levi also admits. that the Halakha prevails according to R. Jehudah; for when a carcass was brought to him for decision as to its fitness for use, or unfitness, on a festival, he would not inspect it unless it had lain in the dirt; because, should he hold it to be fit, it would forthwith become carrion and not even be fit for dogs, by reason of its turning into carrion on the festival (and thus not having been provided on the day before for consumption on the festival).

Samuel, however, said, that the Halakha prevails according to R. Simeon, as also does Zera, because a Mishna elsewhere, which teaches, that if an animal died (on Sabbath or on a festival) it must not be removed, was explained by Zera to refer only to such an animal as was designated for a sacrifice and which must not be made use of at all; but any ordinary carcass may be removed. R. Johanan also said, that the Halakha according to R. Simeon prevails.

Is it possible that R. Johanan said this? Have we not learned that R. Johanan always holds Halakhas to be in accordance with the abstract decrees of the Mishna, and in another Mishna we have learned that the wood of a beam that had been broken on a festival must not be used on the festival? R. Johanan claims, that the Mishna above was taught in the name of R. Jose bar Jehudah.

Come and hear (another objection): "It is permitted to commence taking from a heap of straw on a festival for use as fuel, but not from wood designated for another purpose." This is also taught abstractly (and is certainly contrary to the opinion of R. Simeon). This above teaching refers to cedar beams intended for building purposes, and being very expensive should not be used as fuel, even according to R. Simeon.

Come and hear (another objection based upon another abstract Mishna): "It is not permitted to water or to slaughter animals living in their wild natural state, but it is allowed as regards

domestic animals." (This is also contrary to R. Simeon?)

[paragraph continues] R. Johanan, however, found an abstract Mishna that was in accord with R. Simeon; viz.: That Mishna concerning bones and husks which may be removed from the table (page 326), and R. Johanan holds as R. Na'hman (did later), that all decisions rendered by the school of Shamai are in accordance with the opinion of R. Jehudah, while those rendered by the school of Hillel agree with those of R. Simeon.

It is related of R. A'ha and Rabhina, that one said that all laws pertaining to Sabbath remain as decreed by R. Simeon, with the exception of one thing, that had been set aside on account of causing disgust, namely, an old candlestick that had become soiled with the dripping tallow; and the other said, that even in this instance the Halakha prevails according to R. Simeon, but the one thing that does not remain as decreed by R. Simeon is the case of a candlestick which had been used on the same Sabbath. (Both admit, however,) that as for the theory of designation where expensive articles are concerned, R. Simeon accepts it in that case, and declares, that they may not be used on Sabbath, as we have learned in a Mishna (page 268) concerning the large wood-saw and the ploughshare, which, according to R. Simeon, also must not be handled, because they are expensive (and being used only by mechanics should not be handled by others).

MISHNA: A man may annul vows (of his wife or daughter) [1] on the Sabbath, and consult (a sage) as to vows (relating to objects) required for the Sabbath. Window-light may be shut out by blinds; a piece of stuff may be measured, and also a Mikvah (plunge-bath), to ascertain whether it be of legal size. It happened in the days of R. Zadock's father, and in the days of Abba Saul ben Botnith, that they closed a window with an earthen jar, and then tied another vessel to a pole with papyrus, in order to ascertain whether, in a covered vessel, there was an opening one span high or not. From them we learn, that (in certain cases) it may be permitted to close, to measure, and to tie on the Sabbath.

GEMARA: The schoolmen propounded a question: Does the term, "required for the Sabbath," in connection with vows, apply to both clauses of that sentence; and if it does not, neither may be done on the Sabbath, whence we shall learn, that the time in which a man may annul the vow of his wife

or daughter does not expire with the day, but continues for twenty-four hours; because, if the vows do not relate to the Sabbath and neither of the above two clauses may be executed, the man can annul the vow at night after the Sabbath; or shall we say that the term, "required for the Sabbath," applies only to the latter clause, that of consulting as to vows, and not to the first clause, that of annulling the vow, which would establish the fact that the time for annulment expires with the day and does not continue for twenty-four hours? Come and hear: R. Zoti, one of the disciples of R. Papi, taught, that only such vows as relate to the Sabbath may be annulled on the Sabbath; thence we may learn, that the time for annulment of vows does not expire for twenty-four hours? Said R. Ashi: "Did we not learn (in a Mishna of Tract Nedarim), that the time for annulment of vows continues for one day only?" Concerning this, there is a difference of opinion among the Tanaim (as will be explained in Tract Nedarim).

"*And consult as to vows*," etc. The schoolmen propounded a question: "Does this mean to say, that the man had not time before Sabbath (*i.e.*, that he made the vow on the Sabbath), or even if he had time before Sabbath, but wishes to be released from his vow at once?" Come and hear: The rabbis complied with the wish of R. Zutra the son of R. Zera, and released him from his vow on a Sabbath, although he had plenty of time to have this done before Sabbath. 1

R. Jose wished to state, that, as to vows, a man may consult on Sabbath only a man who is a competent authority (Chacham), but he must not consult three ordinary men, because that would appear as a judgment on business affairs. Abayi said to him: "Whereas three men may be consulted standing, or even if they are of kin, or even at night, it will not appear as an ordinary judgment."

When a man wishes to annul the vow of his wife on the Sabbath, he must not say to her, as on a week-day: "Thy vow is annulled," or, "I release thee from thy vow"; but merely: "Go and eat," or, "Go and drink," and this releases her from her vow. Said R. Johanan: "The man must, however, think at the time that he is annulling her vow."

We have learned in a Boraitha: The school of Shamai said:

[paragraph continues] "On Sabbath a man must annul the vow in his mind only, but on a week-day he must proclaim it by word of mouth." The school of Hillel said, however, that be it Sabbath or a week-day, it is sufficient if the man annul the vow in his mind without proclaiming it.

"*They closed a window with an earthen jar*," etc. Said R. Jehudah in the name of Rabh: "There was a small bridge between two houses, and underneath the bridge lay a part of a corpse, and a cracked tub stood on top of the two houses; but it was not known whether the crack in the tub was large enough to admit of the penetration of the uncleanness arising from the corpse. So, first of all, all holes which were in the walls of the two houses were stopped up with towels; then another vessel (a small jar) was tied with papyrus to a pole and laid on the tub, in order to see whether the crack was one span deep or not." 1

"*From them we learn that (in certain cases) one may close, measure*," etc. Ula once came into the house of the Exilarch on Sabbath, and saw Rabba bar R. Huna sitting in a tub of water and measuring it. Said Ula to him: "The rabbis only permitted the measuring of a plunge-bath for ritual purposes; but did they permit it to be done for no purpose?" Rabba bar R. Huna answered: "I am doing this merely to while away the time (I have nothing else to do, and must not think of the Law while bathing, so it makes no difference)."

END OF TRACT SABBATH.

Footnotes

363:1 A deaf-mute is exempt by law from keeping any commandments.

364:1 See Appendix.

367:1 This term will be explained in the Gemara farther on.

371:1 Shthitha is the name of a dish prepared from parched corn.

376:1 See Numbers xxx. 2.

377:1 All this is originally part of Tract Nedarim. We have in consequence omitted it, but a part of that passage being necessary for the elucidation of the above text, we have incorporated it in the Tract Sabbath.

378:1 This explanation is taken from Rashi. The other commentary by Tosphath differs with Rashi, but the explanation is even more complicated than the above. Hence we have chosen the former.

Next: The Prayer at the Conclusion of a Tract

THE PRAYER AT THE CONCLUSION OF A TRACT.

"*Abayi said: "May it be reckoned to me (for my reward in the world to come), that whenever I noticed a young scholar (of my college) had finished a tract of the Talmud, I gave a feast to all the sages of the day*." (Pages 250 and 251 of this tract.)

[Bearing the above motto in mind and as a matter of peculiar interest, we shall translate below the laudatory prayer published in every edition of the ancient Talmud at the conclusion of each tract, and in justification of this our digression from the actual text would state the following:

With all pious Israelites who were exclusively engaged in the study of the Talmud, and even with those who made it an incidental feature of their lives, it has since time immemorial been the custom to celebrate as a happy event the completion of the study of each tract. So marked was the degree of gratification at this frequent occurrence, that it became customary for the first-born sons in Israel, who in commemoration of one of the plagues sent by the Lord upon the Egyptians were in the habit of fasting on the eve of Passover, to complete the study of a tract of the Talmud on that day, and, thanks to the feast given in honor of the occasion, escape the rather onerous duty of fasting; and even in the nine days of penance occurring before the Fast of the Ninth of Abh, when the Temple was destroyed, when meat was not to be eaten and wine was not to be drunk, the same subterfuge would be resorted to, in order that a feast might be given and thus break the fast of the nine days. Apart from this, the prayer is rich in sentiment, and deserves to be rendered at the end of this volume once for all.]

We shall return to thee, Tract Sabbath, [1] and mayest thou return to us! We shall bear thee in mind, Tract Sabbath, and mayest thou bear us in mind! May we not be forgotten by thee, Tract Sabbath! and thou shalt not be forgotten by us on this earth nor in the world to come!

[This is to be repeated three times, when the following is to be recited:]

May it be Thy will, O Lord, our God and God of our fathers, that Thy Law may be our pursuit in this world and in the world to come! May there be together with us, in the world to come, Haninah bar Papa, Rami bar Papa, Na'hman bar Papa, Ahayi bar Papa, Abba Mari bar Papa, Raphram bar Papa, Rakhesh bar Papa, Sur'hab bar Papa, Ada bar Papa, and Doro bar Papa. [2]

Make sweet, O Lord, our God, the words of Thy Law in our mouths, and in the mouth of Thy people the house of Israel; and may we, our children, and the children of Thy people the house of Israel, all know Thy Name and learn Thy Law.

Wiser than my enemy doth Thy commandment make me; for it is perpetually with me. Let my

heart be entire in the statutes, that I may not be put to shame. Never will I forget Thy precepts; for with them Thou hast kept me alive. Blessed art Thou, O Lord! teach me Thy statutes. Amen, Amen, Amen. Selah, Vaed (Forever)!

We thank Thee, O Lord, our God and God of our fathers, that thou hast cast our lot amongst those that dwell in the houses of learning, and not amongst the occupants of the markets. For we arise early, and they arise early. We arise to the words of Law, and they arise to words of vanity. We strive, and they strive. We strive and receive our reward, while they strive in vain. We run, and they run. We run towards everlasting life, and they run towards death, as it is written: "But Thou, O God! Thou wilt bring them down into the pit of destruction; let not the men of blood and deceit live out half their days; but I will indeed trust in Thee!"

May it be Thy will, O Lord my God, that as Thou hast assisted me in the conclusion of Tract Sabbath, so mayest Thou assist me in the commencement of other tracts and books of Law, and in their conclusion: that I may live to learn and teach, to observe and to do and to keep all the words of the teachings of Thy Law with affection. And may the merits of all the Tanaim and Amoraim and other scholars uphold me and my children, in order that the Law may not escape from my mouth, from the mouths of my children and children's children forever, and may it be verified in me (all that is written): "When thou walkest, it shall lead thee; when thou liest down, it shall watch over thee; and when thou art awake, it shall converse with thee. For through me shall thy days be multiplied and the years of thy life shall be increased unto thee. Length of days are in her right hand, in her left are riches and honor. The Lord shall give strength unto His people; the Lord will bless His people with peace."

[Revised July 22, 1896, and found all correct.--ISAAC M. WISE.]

Footnotes

379:1 At the conclusion of another tract, name it instead of Tract Sabbath.

379:2 At the close of a learned work, entitled "Answers and Questions," by Rabbi Moses Iserles, and also in the work entitled "Sea of Solomon," by Solomon Lurie, Tract Baba Kamah, may be found the reasons why the above ten names must be mentioned in the prayer.

Next: Appendix

APPENDIX.

PAGE 24 of Volume I. of this tract contains a Mishna commencing with the statement: "And these are some of the regulations enacted in the attic of Hananiah ben Hizkyah ben Garon," and concluding, "they enforced eighteen regulations on that day." At the same time, the Mishna fails to enumerate in the place mentioned, or elsewhere, these eighteen regulations. The Gemara, however, conjectures upon their character and cites them in a scattered and incoherent manner. As a matter of course, this is not done without the adduction of numerous and varied opinions; but the conclusion is, that the eighteen regulations are those which we shall enumerate farther on.

In another section of the Gemara it is related, that three hundred jars of wine and a like number of jars of oil were taken up into that attic in order to afford the sages no opportunity to leave their places until their deliberations concerning the regulations were finally concluded.

Among these regulations there are, however, only two or three concerning Sabbath, the rest being dispersed throughout the Talmud in their proper departments and merely mentioned as regulations enacted during that session, but they are not enumerated in regular order either of sequence or time of enactment. Hence we, in consistency with our method of translation--viz., to place everything in its proper department--have omitted in this tract the enumeration of these regulations, together with the diverse opinions concerning the reasons for their institution, which reasons as cited by the Gemara are very abstruse and for the most part untenable.

In the last chapter of this tract, however, mention is again made of the eighteen regulations, and it is declared, that their measure was made "heaping full," while elsewhere in the Gemara the assertion is made, that the day on which they were enacted was as grave in its consequences for Israel as the day on which the golden calf was made. It is these two statements that have impelled us at the last moment to embody these eighteen

regulations in an appendix at the end of this volume, and state as best we can, after careful study and consideration of the subject, the most potent reasons for their enactment.

With this purpose in view, we shall divide the eighteen regulations into five classes, as follows: Those pertaining to Therumah (heave-offerings), Tumah (uncleanness), Chithon (mingling with other nations), Mikvah (legal bath), and Sabbath.

Therumah is rendered useless when brought into contact with any one of the following ten subjects: First: With a man who eats a thing that had been contaminated by a parent of uncleanness [1] and had thus become unclean in the first degree. Second: With a man who had eaten a thing unclean in the second degree (*i.e.*, had been touched by a thing unclean in the first degree). Third: With a man who had drunk unclean beverages. Fourth: With a man who had

bathed his head and the larger portion of his body in water that had been pumped up (drawn or scooped), and not in a legal bath. Fifth: With a clean person (*i.e.*, one who had already taken a legal bath, but was subsequently drenched with three lugs of drawn water). Sixth: With the sacred scrolls of the Holy Writ, either in part or in its entire form. 2 Seventh: With hands of which one was not quite certain that they had been kept clean the whole day. Eighth: With one who had taken a legal bath, if the Therumah was touched before sunset. Ninth: With eatables and utensils which had become unclean through beverages (as will be explained in Tract Yodaim). When brought in contact with any one of these nine subjects, Therumah is rendered useless. Tenth: The crop raised from Therumah (seed) is of the same character as the seed; if the latter was clean when planted the crop is clean, but if the seed was unclean the crop is the same. Nevertheless, it is still considered Therumah, and subject to the

laws of Therumah. Thus we have ten regulations concerning Therumah.

Concerning uncleanness, there were four regulations enacted: First: All movable things bring uncleanness on a man by means of a tent, not larger even than a span, covering a corpse, even if the space between the corpse and the tent was but an awl's width. (For explanation, see Tract Ahaloth.) Second: The daughters of the Samaritans are considered unclean (as women suffering from their menstruation) from the day of their birth. Third: A child of a heathen is considered unclean, because it is considered as one afflicted with venereal disease. Fourth: One who presses grapes or olives renders the vessels used to receive the must or the oil susceptible to uncleanness. (This is explained in detail in Tract Kelim.)

Concerning Chithon, but one regulation was enacted, covering four subjects: It was prohibited to partake of the bread, oil, or wine of other nations in order to prevent intermarriage with their daughters.

Concerning Mikvah, one regulation only was enacted; viz.

If the water running out of a rain-gutter flow directly into a Mikvah, the Mikvah is not invalidated; but if the water was intercepted by a vessel from which it flowed into the Mikvah, the latter becomes invalid; or even if three lugs of drawn water were poured into the Mikvah, they render it useless (see Tract Mikvaoth).

Concerning Sabbath, two regulations were enacted: First: One shall not search for vermin or read before lamplight (on Friday night). 1 Second: One who was overtaken by dusk on the Sabbath eve while on the road must give his purse to a Gentile.

The learned reader who is not familiar with the intricate teachings of the Talmud, and even the student of the Talmud who has delved in its labyrinths of lore for the sake of probing into the ordinances and discussions contained in its volumes, will be quite amazed at the seeming unimportance and triviality of the above regulations, unless thoroughly comprehensive of the spirit of the Talmud and the object of the sages in their day.

At the time when these regulations were enacted and enforced,

there appeared no reasonable grounds for their enactment; and even the reasons advanced by the Gemara itself in a faltering, groping manner are in many instances quite absurd. Entirely contrary to their usual custom, the sages themselves did not base these regulations upon any inference, analogy, passage, or ordinance contained in the Holy Writ, a very remarkable occurrence indeed. Furthermore, at a casual glance, the student will not find in any one of the regulations a motive based even on common sense.

Strange to say, it has also occurred that our excellent Hebrew poet L. Gordon, in a poem pungent with deepest sarcasm and pointed ridicule, commented upon these eighteen regulations, saying, amongst other things: "Not for political purposes, not for the improvement of the government moral or material, did our sages seclude themselves in their attic, but merely to prohibit matters as trivial and absurd as that of reading by lamplight on the eve of Sabbath," etc.

Had the poet, however, devoted deeper study and closer research to the environments, influences, and conditions prevailing in the days of these sages, he would readily have discovered that the greatest political import, the gravest questions of government both moral and material, actuated the institution of these apparently ridiculous regulations, all culminating and leaning towards the accomplishment of one great object; viz., that of keeping the small nation of Jews intact and guarding it from the dangers menacing it not only from the exterior world but from its interior vampires and oppressors.

It should not be overlooked that when the deliberations anent these regulations were about to be commenced, the hall used for the session was closely guarded by men armed with keen-edged swords, under instructions to permit all who desired to enter to do so, but to instantly thrust their swords through any one endeavoring to retreat; and what was the discussion commenced with? Merely an argument determining the uncleanness of certain vessels, which the priests could not approach (as will be seen farther on). Still, Hillel the Prince, the mighty sage, sat before his old-time opponent Shamai, and listened to him with the most profound attention and reverence, just as if he were the least among his disciples.

This historical fact was but another item in inducing us to digress from our established method and insert the eighteen regulations, together with the explanation of their importance; for

had we not done so, it is highly probable that we would have called down the criticism of many scholars who could not overlook such an omission.

At no period in the history of the Jewish race do we find so much deliberation, profundity of thought, and depth of calculation in evidence as at the time when the sages secluded themselves in the attic of Hananiah ben Hizkyah. *There* it was, that means were devised to keep the nation of the Jews--whose friends were always in the minority, and whose enemies, not only abroad but in their very midst, were as the sands of the sea--intact and proof against annihilation.

All of the literature current among the masses was carefully scanned and revised. The ethical

code was reënforced, and wherever necessary purged of objectionable matter. This censorship was carried to such an extent that it was attempted to reject even Proverbs, Ecclesiastes, and Ezekiel as undesirable; and it was only with great difficulty that those in authority were prevailed upon to let them remain. The records of ancestry, however, tracing the descent of every existing family, which were the pride of the people, as well as all works treating of medical science and the art of healing, were buried and hidden beyond recovery. Even the Apocrypha were eliminated from the Holy Writ and declared ordinary literature, and many other writings unknown to us even in this day, as well as all secret scripts, were thoroughly revised and made adaptable to the existing times and circumstances. All this, and more, was done with the sole purpose of preserving the integrity of the Jewish race and preventing its absorption by other nations.

Thus it was commenced to accustom the Jew to study and thought, and as an outcome of this period of virtual renaissance the eighteen regulations were enacted with two prime objects in view, as follows:

Firstly, to diminish as far as possible the constantly growing domination of the priests; for the high-priestdom, with which the supreme governing power was identical, could be purchased with money, and more especially because the number of priests in the last century prior to the destruction of the Temple had grown to such a vast proportion that those in actual service alone numbered little short of twenty thousand. Apart from these were those who did not perform actual service, while enjoying all the immunities and privileges of their rank as priests, and they were: Priests who had the least blemish on their bodies;

those whose descent or even whose wives' descent left the least room for doubt; and the wealthy and influential priests who would not perform the menial duties of priests, but left them to the less fortunate and more insignificant of their number. (See "Die Priester und der Cultus," by Dr. Adolf Büchler, Vienna, 1895.)

Of such men was the party in power composed, and they made but too free a rise of their authority. As a matter of course, restrictions had to be provided wherewith to relieve the oppressed.

Secondly, the object was to prevent the amalgamation of the Jews with the other nations with whom they were in daily and constant association.

Now for the manner in which the first object was about to be accomplished.

Quite some time previous to the time of which we are treating, the laymen had, after a hard struggle, succeeded in divesting the priests of their spiritual power (*i.e.*, the right to decide all questions pertaining to religious and ritual matters, whether a thing was allowed or forbidden, clean or unclean, etc.), by proving that the priests were far too ignorant to be competent judges. [1] This struggle had been going on since the days of Nehemiah, for prior to his day the priests were the sole judges both in spiritual and in temporal affairs, claiming their privilege in accordance with the passage [Deut. xxi. 5]: "And after their (the priests') decision shall be done at every controversy and every injury." Having wrested the spiritual power from the priests, the

supervision of all religious and ritual matters was conferred upon the Pharisees, who henceforth were the recognized authorities in the interpretation of the Law. This accomplished, the next step decided upon was to limit as much as possible the temporal power of the priests: it was decided not to do this in too precipitate a manner, but cautiously and unostentatiously, using as a medium regulations seemingly unimportant, but the hidden motives of which were far-reaching in their consequences.

The time of Hananiah ben Hizkyah was the more opportune for such a *coup d'état*, as by that time the Pharisees had obtained the upper hand of all other existing sects, notably the Sadducees.

Now, inasmuch as it proved to be an easy matter to enact laws by means of which the Jews would be prevented from amalgamating with other nations, such as the prohibition of partaking the bread, oil, etc., of Gentiles, the proclamation declaring the children of heathens unclean (to prevent the children of Jews from joining them at play and thus forming attachments), and the women of the Samaritans, the deadliest enemies of the Jews, unclean (in order to prevent their employment as servants by Jews), it was but little more difficult to devise laws which would forever break the oppressive domination of the priests in a mild but nevertheless effective manner.

The first step necessary for the accomplishment of this desirable end was to completely destroy the system of espionage practised by the priests, and which was carried on to such an extent that spies were constantly prying into actions and even utterances in the houses of the laymen. This was, however, by no means an easy task, from the very fact that the priests were virtual shareholders in all the possessions of the laymen. One fiftieth of all grain raised by the peasants was their share as Therumah; one tenth of such grain comprised the tithe, and one tenth of the tithe belonged to the priests individually; the first of the dough, the first of shorn wool, the parts of slaughtered cattle, the firstlings of cattle, the firstfruits of trees and produce, all belonged to the priests; and it was but natural that they were to be found in the houses of the laymen at all times, whither they would come not to humbly ask for their donations, but to demand it as the rightful possessors and shareholders. Nor were they at all backward about taking a hand in the management of all other affairs of the layman, under the plea of guarding their own interests; and thus at times willingly, sometimes unwillingly, they were the spies of the higher authorities of the government.

The question then arose how to find a place where the deliberations for the suppression of this constantly growing evil could be held without the presence of the spying priests; and to meet the exigencies of the case, an old decree that had been promulgated in the early days of the existence of the Temple was again called into being and made effective. The decree was the one enacted in the time of Jose ben Joezer Ish Izreda and Jose ben Johanan the Jerusalemite, and read: "All the lands outside of Judæa are unclean" (*i.e.*, all eatables and beverages containing any degree of sanctity whatever are rendered unclean by coming

in contact with the soil of those lands outside of Judæa, but aside from such eatables and beverages nothing was rendered unclean). Now, the only eatables and beverages containing any sanctity whatever, which could be found outside of Jerusalem, where the sacrifices and other

sanctified articles were brought, were the gifts and the Therumah set aside for the priests. Thus we see that the declaration of uncleanness, ostensibly directed against all eatables containing any degree of sanctity, was in reality directed against the Therumah of the priests, while the priests themselves were flattered by the elevation of the Therumah to the degree of highest sanctity, and its object will be apparent from the following argument:

The Therumah is invested with sanctity only when it is separated from the bulk, but while still a part of the entire crop it is regarded as ordinary grain. If the Therumah were separated from the bulk in any land outside of Judæa, the moment it comes in contact with the soil it becomes unclean and unfit for use. This fact made it necessary to separate the Therumah in Judæa. The transportation of the entire crop to Judæa for such a purpose involving too much labor and expense, part of the crop was set aside in the field, and from that part a sufficient quantity was separated and sent to the holy land. There the quantity of the Therumah (which according to biblical ordinance could have been only one grain, but according to established custom amounted to one fiftieth of the entire crop) was separated from the quantity sent. The consequence of this mode of procedure was, that the presence of the priest at the place where the crop was harvested was no longer required, as he could not demand his share outside of Judæa. Thus it was rendered possible to hold a convocation where the presence of the priest was no longer to be dreaded. [1] It seems that up to the time of Hananiah ben Hizkyah this decree had been evidently disregarded or not sufficiently effective, [2] for we see that eighty years

prior to the destruction of the Temple it was again promulgated, and this time reënforced with the declaration that even the atmosphere of all lands outside of Judæa was unclean and all articles containing any degree of sanctity were rendered unclean by contact with such atmosphere.

The eighty years before the destruction of the Temple correspond with the time of Hananiah ben Hizkyah, and it is quite possible that the sages called by the Talmud "the sages of the eighty years" were the same that took part in the deliberations in the attic, and that, in order to secure at least one place where they could hold a convocation undisturbed by the priests, they declared even the atmosphere of the lands outside of Judæa unclean.

The Talmud relates, also, that in the city of Usha the decree was reënforced for the third time with the declaration that all articles rendered unclean by the atmosphere of such lands were not only to be rendered useless, but were to be immediately burned, as a precaution lest a priest might accidentally make use of them.

Still, the decree was not as effective as it should have been, as long as the priest could come and announce that he would use his share of the Therumah for seed or dispose of it as seed, and to meet this exigency the sages of the attic first of all decreed that the crops raised from clean or unclean Therumah, used as seed, were clean or unclean respectively.

Again, means had to be devised to rid the laymen residing in Judæa proper from the obnoxious presence of the priests at all times; for at harvest-time, or when the grain was brought from the lands outside of Judæa, the ever-watchful priest was on band. To this end the subsequent regulations concerning Therumah were enacted and gradually reënforced. Thus at first a man

who had eaten a thing unclean in the first degree rendered Therumah useless; then a man who had eaten a thing of the second degree of uncleanness, until finally even a sacred scroll, or even a hand that had come in contact with a sacred scroll, and last of all a hand that was not known to be positively clean, rendered Therumah useless. All this was done with the sole object of keeping the priests out of the houses of the laymen, and rather bring the Therumah to them than have them come to demand it. Should they come in spite of this, it was not difficult to find a pretext for calling the Therumah unclean. In order, however, not to make the purpose of these regulations

too apparent, and thus give offence to the priests, other regulations were enacted in conjunction with these, which, while of no value whatever in themselves, acted as screens for the actual intentions.

It is now not difficult to explain the historical sensation caused by the deference shown by Hillel to Shamai at the commencement of these deliberations, and the reasons which prompted the posting of an armed guard at the entrance of the hall. Hillel, in his capacity as a prince of Israel, was somewhat too timid to proceed against the priests in too harsh a manner; but the masses were so much incensed against their oppressors, and so deeply conscious of their grievances, that he could not stem the popular tide against them. In this emergency it was Shamai, under ordinary circumstances of lesser consequence than Hillel, that proved to be the champion of the popular cause; and in order to insure for him a telling majority when the question came up for a final vote, the doors of the hall were guarded so that none could leave, while all were allowed to enter. Seeing the patriotism and popularity of Shamai, the prince could not help bowing to popular sentiment and showing respect to the favorite of the hour.

It would require a volume of many, many pages to demonstrate how each one of the regulations instituted was directed against the priests, how deeply it injured them, and in what measure it curtailed their previous unlimited sphere of action; also, especially, how the dispute between Hillel and Shamai concerning the susceptibility to uncleanness of vessels used at grape and olive pressing concerned the priests. Even then, a person not thoroughly imbued with the spirit of those times could scarcely understand it; but we would request that the eighteen regulations be again carefully perused, and it will readily be observed by even the casual reader, from the hints given, that the ten ordinances [1] relating to Therumah were directed entirely against the priests, and the four concerning uncleanness were in part against the priests and in part against mingling with other nations; as for the regulation against mingling, that goes without saying, while the regulations concerning the Mikvah and Sabbath were but incidental and trivial matters intended as a screen for the grave importance of those mentioned.

Footnotes

382:1 By a "parent of uncleanness" is meant any object that had come in direct contact with a corpse. See explanation in Tract Shekalim.

382:2 Why contact with the Holy Writ should render Therumah unclean can in our opinion be explained only as follows: When the priests came to demand their share of the Therumah, it is highly probable that they did this with a correspondingly impressive ceremony and read the part of the Law referring to the Therumah before the donors. If such was really the case, they no doubt carried the scrolls with them wherever they went, and in consequence the regulation was enacted which rendered the Therumah unclean when brought into contact with the scrolls or book containing the Holy Writ. Our basis for this assertion is the ordinance to be found in Tract Yodaim, which proclaims that the scrolls or books containing the Holy Writ render hands unclean when coming in contact with them, and doubtless the hands of the priests, which were afterwards to handle Therumah, are meant.

383:1 There are differences of opinion in the Gemara as to the division of the regulations. Some hold that they should be grouped, while others would count them separately. The matter is of no importance, however, and hence we have grouped them in conformity with the number stated by the Mishna.

386:1 See Haggai ii. 13 and 14.

388:1 At the same time that the decree declaring all lands outside of Judæa unclean was promulgated, glassware was also declared unclean, while prior to that time glassware had not even been susceptible to uncleanness. We cannot state positively whether this was done in order to render the first decree less conspicuous or to prevent the priests from being present at the places where glassware was manufactured, which were all outside of Judæa. Be that as it may, it can safely be assumed that the measure was another political ruse.

388:2 It was not sufficiently effective because, in order to circumvene the decree, the priests brought chests to the lands outside of Judæa in which to store the bulk of the grain before separating the Therumah, and thus prevent the contact of the latter with the soil. This we presume from a hint of Rashi to that effect.

390:1 We have not enumerated the ordinances in their regular order of sequence as to the time, for they are scattered in the Talmud without any order, but arranged them more in accordance with their importance and severity, according to the commentary of Rashi.

Errata

page xvi: 'enforcible'->'enforceable'

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page xvi: 'communites'->'communities'

---

page 11: 'postively'->'positively'

---

page 55: 'parargaph'->'paragraph'

---

page 59: 'twlight'->'twilight'

---

page 80: 'whch'->'which'

---

page 85: 'beloning'->'belonging'

---

page 101: 'sign'->'sin'

---

page 109: 'probaby'->'probably'

---

page 110: 'Sabath'->'Sabbath'

---

page 133: 'occason'->'occasion'

---

page 138: 'separting'->'separating'

---

page 170: 'prescrbed'->'prescribed'

---

page 270: 'ceated'->'created'

---

page 288: 'Doe'->'Does'

---

page 333: 'previousy'->'previously'

The Babylonian Talmud

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MICHAEL L. RODKINSON

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Tract Baba Kama (First Gate), Part II and Tract Baba Metzia (Middle Gate)

Tract Baba Kama (First Gate, part II)

Tract Baba Metzia (Middle Gate), Part I

Tract Baba Metzia (Middle Gate), Part II

NEW EDITION

OF THE

BABYLONIAN TALMUD

Original Text, Edited, Corrected, Formulated, and Translated into English

BY

MICHAEL L RODKINSON

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EXPLANATORY REMARKS

In our translation we adopted these principles:

1. *Tenan* of the original--We have learned in a Mishna: *Tania*--We have learned in a Boraitha; *Itemar*--It was taught.

2. Questions are indicated by the interrogation point, and are immediately followed by the answers, without being so marked.

3. When in the original there occur two statements separated by the phrase *Lishna achrena* or *Waïbayith Aema* or *Ikha d'amri* (literally, "otherwise interpreted"), we translate only the second.

4. As the pages of the original are indicated in our new Hebrew edition, it is not deemed necessary to mark them in the English edition, this being only a translation from the latter.

5. Words or passages enclosed in round parentheses denote the explanation rendered by Rashi to the foregoing sentence or word. Square parentheses [ ] contain commentaries by authorities of the last period of construction of the Gemara.

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Footnotes

iii:1 Continuation of previous volume.

Next: Synopsis of Subjects

SYNOPSIS OF SUBJECTS

OF

TRACT BABA KAMA (THE FIRST GATE). 1

CHAPTER IX.

MISHNAS *I*. TO *III*. If a change on the face of an article gives title to the possessor and if it is biblically? Would all the above-mentioned Tanaim trouble themselves to teach us a Halakha of the Beth Shammai? Robbers and usurers, if they make a restitution of their own accord, it should not be accepted, etc. There are three cases in which the increase is appraised and the payment is with money. I and the King Sabura are brothers in regard to court cases. (See foot-note.) Did not I tell you, You shall not change names? R. Joseph bar Hama used to compel slaves of his debtors to labor for him, etc. What were the coins of Jerusalem and what were the coins of Abraham the patriarch? Labor which cannot be recognized on the body of the animal as damaging, the civil court cannot make him liable for. Is a germon considered a direct pecuniary loss? May the court decide a case of a goring ox in its absence? If a specialist took a thing to repair it and he spoiled it. A builder who undertook to take apart a wall, and he broke the stones or bricks, A butcher specialist, if he has spoiled the meat he is a tort-feasor, and is also considered wilful, etc. Why so many reasons?" I think your brain is not in regular order." "Rabh did two good things regarding you. He prevented you from using a doubtful thing, and also restrained you from possible robbery." There was a woman who showed a coin to R. Hyya, etc. Resh Lakish showed a dinar to R. Elazar, and he told him it was a good one. He said then: "See, I rely upon you," etc., 211-228

MISHNAS *IV*. TO *VII*. If one gave wool to the dyer, and it was spoiled. To be dyed red, and it is dyed black, or conversely. To make a chair of it, and he has made a bench. Is the color of the dyes to be considered as existing upon the wool or not? In one tract is the order of the Mishna not to be taken in consideration, but in two different tracts it must be considered? The whole of Section Damages is considered as one tract. If one has given money to his messenger to buy wheat, and he buys barley. If one buys a field in the name of his neighbor. Kahana paid money for flax. In the mean time

the flax became dearer and the seller sold it (for Kahana's benefit). One who has stolen the value of a coin swears falsely and afterwards confesses. The same is the case in a deposit. If one has robbed one of five persons, and he does not know which of them. It happened with one pious man who bought of one of two persons, and he did not know from which of them. A messenger must not be made in his absence. It happened with R. Abba, who was the creditor of R. Joseph bar Hama, and the former asked R. Safra to bring, etc. "My master, do you mean to deduce from

CHAPTER X.

Footnotes

iv:1 Continuation of previous volume.

Next: Chapter IX

CHAPTER IX

THE LAWS RELATING TO THE CHANGE OF THE NAME AND NATURE OF STOLEN ARTICLES, AND WHEN AN ARTICLE BECOMES USELESS. ABOUT SKILFUL MECHANICS WHO SPOIL WORK INTRUSTED TO THEM, AND AS TO THE PLACE TO WHICH A STOLEN ARTICLE MUST BE RETURNED.

MISHNA *I.*: If one has stolen wood and made utensils of it, or wool and made garments of it, he must pay only for the cost of the material at the time it was stolen. If one stole a gravid cow and it brought forth young, or a sheep with its wool and he sheared it, he must pay the value of a gravid cow in its last month, or the value of a sheep ready to be sheared; if, however, the cow became gravid or the sheep grew its wool after the robbery, their value at the time they were stolen is to be paid. This is the rule: All robbers must repay the value of the article as it was at the time of the robbery.

GEMARA: The Mishna states: *Utensils* of wood or garments of wool, from which it is to be inferred that when the utensils were not as yet made, but only planned, or the garments not yet bleached, the law is otherwise. Then there is a contradiction in the following Boraitha: "If one has stolen wood and planed it, stones and cut them, wool and bleached it, flax and cleansed it, the payment for it is to be taxed, as when stolen"? Said, Abayi: "The Tana of our Mishna states that not only an irremediable change makes the robber the owner of it so that he must not return the same, but the value of the material when it was stolen, which is biblical; but even a removable change, *e.g.*, planed wood of which he made utensils that can be taken apart in such a way that the wood may remain in the same condition as when stolen, or spun wool, which can also be taken apart, etc., which change is only rabbinical. The Mishna comes to teach us, that even in such a case the robber acquires title by the change and must pay only the value of the material." R. Ashi, however, said: "The Tana of our Mishna speaks also of a change that is biblical. For instance, by utensils

is meant even a planer with which he has only planed the wood, and by garments is meant unbleached felt-spreadings (which he has only bleached) which change is irremediable." If bleaching is considered an irremediable change, it would be contradictory of the following Mishna, which states: "If one had no time to give it to the priest until it was dyed, then he is free; but when it was only bleached, he must give it to the priest"? Said Abayi: "This presents no difficulty, as our Mishna is in accord with R. Simeon, and the other with the rabbis of the following Boraitha: If he has the wool from five sheep, a quantity of about a pound and a half, a part of it would go to the priests. If some of this quantity was already woven, it does not count. If, however, some of it was only bleached, according to the sages it counts, and according to R. Simeon it does not." Rabha said: "Both statements may be explained in accordance with R. Simeon, and there is no difficulty, as one of them speaks of it when it was only scattered, and the other one speaks of it when it was combed before bleaching." R. Hyya bar Abin said: "The

one speaks when it was only bleached and the other when it was sulphurated." Now, then, how can bleaching be considered a biblical change, when even dyeing is not considered a change, according to R. Simeon; as is stated in the Boraitha concerning the gift of the first shearing to the priest, in the case mentioned above: "Do not exclude from the quantity even wool that was already dyed"? Said Abayi: "This presents no difficulty. The statement of R. Simeon, given by R. Simeon ben Jehudah in his name, that dyeing wool counts, is opposed to the rabbis, who declare that R. Simeon said it does not count (consequently, one Boraitha is in accord with R. Simeon ben Jehudah's statement and the other is in accord with the declaration of the rabbis)." Rabha, however, said: "It is not necessary to say that the rabbis oppose R. Simeon ben Jehudah, for dyeing is different, because it can be removed by οαπων, and the above statement, that when it was dyed he is free, speaks when it was dyed by σαπωγ, which is not irremediable."

Said Abayi: All the following Tanaim agree with R. Simeon's statement explained above, that a change does not give title: Namely, Beth Shammai, as stated above (Ch. VII. p. 150). R. Eliezer ben Jacob of the following Boraitha: R. Eliezer ben Jacob said: If one had stolen a saah of wheat and had ground, kneaded, and baked it, and separated the heave of it, how can

he make a benediction; it would be not a benediction but a blasphemy, as it is written [Psalm, x. 3]: "The robber blesses . . . despises the Lord." Simeon b. Eliezer, of the following Boraitha, declares the following rule: Every increase that was made by the robber is subject to his disposal: He may keep it for himself, or return it to its owner, saying: Here is your property. How is this to be understood? (If he may say to the one robbed, "Here is yours," then it belongs to the owner-how, then, is it at the robber's disposal?) Said R. Shesheth: He means to say, if there is an increase the robber may retain it; but if there is a decrease, he can say to the one robbed, "It is yours," because a change in the property does not give title. If so, why not the same when there is an increase? This is only an enactment of the sages for the benefit of those who repent. R. Ishmael, of the following Boraitha: The positive commandment to separate the corner tithe is to be performed by putting aside from the standing corn; if that has not been done, he may put aside from the sheaves; if he had neglected also from this, he may do it in the granary before the corn was threshed; but afterwards he separates first the Levitical tithe and then the corner tithe. In the name of R. Ishmael, however, it was said: "He may separate the corner tithe and give it to the poor even from the dough."

Said R. Papa to Abayi: "Would all the above-mentioned Tanaim trouble themselves to teach us a Halakha of the Beth Shammai (which does not prevail?)," and he answered: "All they mean to say, is that Beth Shammai and Beth Hillel do not differ in this regard." Said Rabha: Why, then, (what compels you to teach that all the Tanaim hold that a change is of no avail)? Perhaps R. Simeon ben Jehudah's statement has reference only to a case of dyeing, as the color can be removed as stated above; and the Beth Shammai, because it is not clean enough for the altar, and R. Eliezer ben Jacob could not accept it to pronounce a benediction upon it, as such a meritorious act should not be caused by a transgression; and R. Simeon ben Elazar also, because it can again become fat; and, finally, R. Ishmael's statement was made only on the corner tithe as there is a superfluous word in the expression "Thou shalt leave it" (but in any other case they all may agree that a change is of value). And lest one say, that it can be inferred from this for all the other cases, it would not be correct, because charity affairs are different, as R. Jonathan questioned: "What is the

reason of it?" Shall we assume that R. Ishmael's theory is correct, because he holds that a change does not give title, or perhaps he holds it here only to be in accord with the superfluous word stated above, which must be only for the purpose that this rule applies only here as there is not known any other purpose for it? And he questioned also, What will the rabbis who opposed R. Ishmael say in regard to the superfluous expression in question? It can be said, It is needed; for we have learned in the following Boraitha: If one has renounced his ownership of a vineyard, and then in the morning he plucked the grapes, he is exempt from cleaning the vineyard and gathering every grape, forgotten sheaf, and corner tithe (because of the above-mentioned expression or something similar to it being applicable to all these gifts). It is, however, exempt from tithe. Said R. Jehudah in the name of Samuel: "The Halakha prevails in accord with R. Simeon ben Elazar." Abayi taught the same as follows: R. Jehudah said in the name of Samuel: It was said that the Halakha prevails according to R. Simeon b. Elazar, but he did not accept it.

R. Hyya bar Abba said in the name of R. Johanan: According to the Scripture a stolen thing is to be returned whatever its condition (although it is changed), as it is written [Lev. v. 23]: "He shall restore what he has taken away violently," no matter how it is now; and there is no wonder at the statement of our Mishna, for it is only for the benefit of those who repent. The rabbis taught: Robbers and usurers, if they make restitution of their own accord, it should not be accepted; and be who does accept it, acts contrary to the sages. Said R. Johanan: This Mishna was taught in the time of Rabbi, as we have learned in the following Boraitha: It happened that one intended to repent, but his wife told him, "If thou wilt do so, then even thy girdle will not belong to thee," and so he was kept back from repenting. At this time the statement of the above Mishna was made. Come and hear: "The repentance of shepherds, commissioners, and the contractors of duties is hard (because they do not know to whom to return the stolen goods); and when they nevertheless do repent, they have to return to those whom they know. (Hence we see that they must return?) We can say: Yea, they must return, but it should not be accepted. Then what is the use of their returning? To satisfy the Heavenly Will. If so, in what point is the difficulty of their repentance? And also, how would the last part of this

[paragraph continues] Boraitha be understood: "And the remainder, which they do not know to whom to return, shall be used by them in providing for the needs of the community"? And R. Hisda explained it that it means, *e.g.*, wells, excavations, etc. Hence we see that it should be accepted? Therefore we must say: The above Boraitha was taught before the above-mentioned enactment of the sages was made. According to R. Na'hman, however, who said that this enactment was made in reference to stolen articles which no longer exist, it may be explained that both Boraithas were taught after the enactment, and there is no contradiction, as one speaks of stolen articles that exist, and the other of such stolen articles as no longer exist. But was, then, not the above-mentioned enactment made in reference to the statement about the girdle, although it was in existence? Nay, it must not be taken literally. It means the value of the girdle. But was not the enactment made even in reference to an article that exists; for there is a Mishna that when a stolen beam was used for the building of a house, the one robbed could collect its value only, for the benefit of him who repented, although the beam still exists? This case is different, as the robber would suffer great damage by taking it out, and therefore the rabbis consider it as if it did not exist at all.

"*If one has stolen a gravid cow*," etc. The rabbis taught: If one had stolen a sheep and he had shorn it, or a cow and she brought forth, he must pay for the animal itself, and also for the wool or the young. This is the decree of R. Meir. R. Jehudah said: "A stolen thing must be returned as it is" (and the value of the wool or the young as they were, at the time of the robbery, but not the increase during the time they were under his control). R. Simeon, however, said. The value of the stolen article in money when it was robbed must always be considered. The schoolmen propounded a question: What is R. Meir's reason? Does he hold that a change is never of any avail, or, in other cases, agree that a change gives title, but here it is only a fine which should be inflicted on the robber, and the difference (between the two suppositions would be) when the cow becomes thin (in the house of the robber)? Come and hear: If one has given wool to dye it red, and it was dyed black, or *vice versa*, said R. Meir: He must pay him the value of the wool. Hence only the "value of the wool," but not for the increase? Now, if R. Meir is of the opinion that a change does not give title, the value of the wool and the increase

should be paid? Hence it is to be inferred that he holds that everywhere a change acquires title, and here is only a fine for the robber. According to others, the schoolmen did not propound the above question, because Rabh has changed the names in the following Mishna. If one has stolen a cow or slaves, and they become old while under his control, he must pay according to their value when they were stolen. This is the decree of R. Meir. The sages, however, say as to slaves, he may say: "Yours is before you." Hence we see that, according to R. Meir, a change gives title, and here is only a fine, and if there was any question by the schoolmen it was this: Is the fine only for an intentional act or only for an unintentional? Come and hear the Mishna mentioned above concerning the dyeing of wool, that he must pay only for the wool and not for the increase, because there was no intention, from which it is to be inferred that without intention there is no fine. "R Jehudah said the stolen property," etc. What is the difference between R. Jehudah's and R. Simeon's statement? Said R. Zbid: They differ when the increase is still in the stolen thing. According to R. Jehudah, it belongs to the one robbed, and according to R. Simeon to the robber. R. Papa said: Both agree that such an increase belongs to the robber (as even R. Jehudah meant only it should be returned as it was at the time it was stolen), and the case here held when it was customary in the country to take cattle for improvement for the reward of half, third, or a quarter. According to R. Simeon, the robber gets only the customary reward, but according to R. Jehudah the whole improvement belongs to him. There is a Boraitha which states plainly as R. Papa explained. Said R. Ashi: When we were in the college of R. Kahana, we were in doubt regarding R. Simeon's theory as to the payment of half, etc., for improvement, whether he shall be paid in money or with its meat? Afterwards we concluded from R. Na'hman's statement in the name of Samuel that it means in money: There are three cases in which the increase is appraised and the payment is with money, and they are: A first-born pays the increase after the death of his father to the other brothers; the same the creditor to the buyer, or to the heirs (for the increase after the time the estates were bought or after the death of the lender). Said Rabbina to R. Ashi: How could Samuel here state that the creditor must pay to the buyer for the increase? Did he not say that the creditor collects even the increase? And he answered:

[paragraph continues] This presents no difficulty, when we take into consideration that there is a difference between an increase which is not yet ripe (that in such a case a creditor collects it)

and an increase which is already ripe for harvest (which a creditor cannot collect). He objected: But was it not a fact that Samuel's court collected every day even from crops that were ripe for harvest? He answered: This also presents no difficulty when the claim is equal to the amount of the field together with the increase (then the creditor collects the increase also). When the claim is, however, only for the value of the estate (then the creditor must pay for the increase). Rejoined the former: This is right according to him who holds that even when the buyer has money he cannot pay the creditor with money; but according to him who holds that when the buyer has money, he can pay the creditor with money (why is it stated that the creditor pays with money for the increase?) why should not the buyer (have the right to) say: If I had money, I would make you leave the estate entirely. Now, when you take it for your debt, you have the right to take it for your debt only; but as for the increase, would it not be right to leave for me a part of the estate? And he answered: The case was when the field was hypothecated to the creditor, *i.e.*, when the loan was issued, he told him: You have to collect your debt from this estate only.

Rabha said: If one has stolen an article, and after improving it sells or bequeaths it, the sale or the bequest is valid for the improvement. He questioned, however, in case it was improved by the buyer, How is the law? After he questioned it, he decided: What else, then, had the first sold to the other, if not every right that he might have in this estate (so that the buyer has the same share of the improvement as the seller himself).

R. Papa said: He who stole a date tree and cut it down, did not acquire title, although he removed it to his own field. Why so? Because it has even then the same name as before--date tree. It is the same if he cut it in pieces, for they are still called pieces of a date tree. If, however, he has stolen pieces and made beams of them, title is acquired; if he has stolen beams and made short ones of them, title is not acquired; but if he has made boards of them, title is acquired.

Rabha said: If one stole a palm branch and has torn it in single leaves, title is acquired, because it is no more called palm,

but leaves; for the same reason, title is acquired when he has stolen leaves and made a broom of them. If, however, he has stolen a broom and made a rope, title is not acquired, because it can be taken apart and a broom again made of it. R. Papa questioned: If the double leaf of the same was divided (so that it cannot be restored), how is the law? Come and hear: R. Mathun said in the name of R. Jehoshua ben Levi: If the double leaf is divided, it is considered as if taken away, and it is invalid (for use of that day). Infer from this that such a change gives title.

R. Papa said: "If one has stolen clay and made bricks of it, title is not acquired, because it can be reduced again to clay; conversely, however, title is acquired, because, even if he will again convert it into bricks, it will have another appearance and will be no more the same as it was before. The same is the case if he has robbed bullion and coined it into money. If. however, he stole old coins and had cleaned them that they look like new ones, title is not acquired; but conversely it is, because, even should he clean them again, they will still be recognized as the old ones.

"*This is the rule*," etc. What does it mean to add? Such a case as that of which R. Ilai said:

"When one has stolen a sheep and it becomes a ram, or a calf and it becomes an ox, the change is considered as being made while in the possession of the thief, and title is acquired so that, if he has slaughtered or sold it, it is considered he has done it with his own. It happened that one had stolen a pair of oxen, and he ploughed and sowed his field with them. Finally, he returned them. When the case came before R. Na'hman, he said: Go and appraise the increase he has made with them. Said Rabha to him: Is the increase of the field caused only by the oxen, and not by the field also? And he answered: Did I say the whole increase shall be collected? I mean half of it only. And he rejoined: After all, it is no more than a robbery of which the rule is, "It shall be returned as it is." He answered again: Did I not tell you that when I am sitting in the court you shall say nothing to me; for Huna, my colleague, has said that I and the King Sabura are brothers in regard to court cases. 1 This man is known as an old robber and I want to fine him.

MISHNA *II*.: If one has stolen cattle or slaves, and they become old, he must pay their value at the time stolen. R. Meir, however, says: Concerning slaves he may say: "Yours are before you." If he has stolen a coin and it broke, fruits and they became rotten, wine and it became sour, it is to be paid as at the time robbed; a coin which afterward became invalid, heave-offering and it became unclean, 1 or leaven which was in the hand of the one robbed during Passover, a cow and it was used for sodomy, or it: became invalid for the altar or it was condemned to be stoned, he may say: "Yours is before you."

GEMARA: Said R. Papa: It means not only when it became old, but even when it becomes thin. But is it not stated plainly old? This expression is used to teach that only when it is incurable, as in the weakness of old age. Said Mar, the older son of R. Hisda, to, R. Ashi: It was said in the name of R. Johanan that when one steals a sheep and it becomes a ram, or a calf and it becomes an ox, such a change gives title; and if he slaughters or sells it, it is considered as his own. And he answered: Did not I tell you, you shall not change names? This was said not in the name of R. Johanan, but of R. Ilai. "*R. Meir said*," etc. R. Hanina bar Abdimi said in the name of Rabh: The Halakha prevails according to R. Meir. But why did Rabh desert the majority in this decision? The reason is because in the Boraitha the names are changed. Why, then, has Rabh given preference to the Boraitha, and not to the Mishna, which ought to be better authority? Yea, when there is one Mishna against one Boraitha; but there are two Boraithas against one Mishna (and therefore he prefers to change the names in our Mishna, that it shall correspond with them). The other Boraitha is as follows: If one has exchanged a cow for an ass, and the cow has brought forth young; or if one has sold a female slave and she has given birth (to a child), and one of the parties said it was born when it was in his control, and the other keeps silent, the first acquired title to it; when each of them says he does not know, then the value is to be divided.

[paragraph continues] But if each of them claims that it occurred when it his control, then the seller has to take an oath that it while under his control (and not the buyer, as there that all those to whom a biblical oath is applied, they s do not pay). So is the decree of R. Meir. The sages, however, say: There is no oath, as an oath is not to be ordered in cases of slaves or real estate. Hence, here also, is the opinion, of R. Meir that slaves are not considered real estate. But if he changes the names in the Mishna, his statement ought to be, that the Halakha prevails according to the rabbis? He meant to say so: According to you who have changed the names, the Halakha prevails as R. Meir. But how could Rabh state that a slave is considered real estate? Did not R.

Daniel bar R. Ktina say in his name: If one has compelled a slave of his neighbor to do labor for him, he is free from charges? Now, if you bear in mind that a slave is considered real estate, why shall he not be charged? Is not the slave yet under the control of his owner? The case was when not in time of labor (that one has the benefit when the other loses nothing, and there is a decision above that in such a case he is free from charges). But would the owner of the slave be satisfied that his slave should become tired, so that it would do harm to his usual work? It can be explained (that his owner has no work for his slave), and so it is agreeable for him that his slave shall not become used to idleness. R. Joseph bar Hama used to compel slaves of his debtors to labor for him. Said Rabha, his son, to him: Why does the Master so? And he answered him: Because R. Na'hman said that the labor of a slave is not worth even the food he consumes. Said Rabha: R. Na'hman said so because of his slave Daru, who was dallying about the shops and doing nothing, but not of slaves who are working. And he answered: I hold with the statement made by R. Daniel, who in the name of Rabh stated above. And his son said again: This is said in case the compeller has not any claims against the owners of the slaves; but you, Master, who claim money from their owners, it looks like usury, as R. Joseph bar Miniumi said in the name of R. Na'hman: Although it is said of one who lives on the property of another without his knowledge is not obliged to pay rent therefor, but when he has lent money to the owner of the property he must pay him rent (that it shall not be considered as usury). Rejoined his father: (You are right.) I will not do it again.

It was taught: If one takes possession of another's ship and makes use of it. Said Rabh: The owner may collect either the usual price of loaning it, or, if it was damaged and the amount of repairing surpasses the amount of hiring, he may collect even this. Samuel, however, said: If the amount of the hiring surpasses the amount of the repairing, he takes only the latter. Said R. Papa: They do not differ. Rabh speaks of a case where the intention of the sailor was to pay the value of the ship, and Samuel speaks of a case where the intention was to steal (and a stolen article is to be returned as it was when stolen, without any increase, for the benefit of those who repent). "If one has stolen a coin," etc. Said R. Huna: The expression "broke" is to be taken literally; the expression "it became invalid" means that the government abolished it. R. Jehudah, however, said: It would be the same as if broken, but the expression "invalid" means that it became invalid in *this country*, but has still a value in another one. Said R. Hisda to R. Huna: According to your theory, it was abolished by the government. Is that not equivalent to those who stole fruits which became rotten or wine which became sour, for which the value at the time it was stolen is to be paid? And he answered: There is a change in taste and smell, which is not the case here. Said Rabba to R. Jehudah: According to your theory abolished by the government is the same as broken. Is that not equivalent to the case of heave-offering, of which it is stated that he may say: "Yours is before you"? And he answered: Nay, it cannot be equivalent; for in the case of the heave-offering, it remains the same as it was before, and no one can recognize any change in it; but here every one can recognize that the coin is of no value. It was taught: If one has given credit, to be repaid with coin which had the full value at that time, and afterwards this coin was abolished? Rabh said: He must pay him with coin of the time of payment. Samuel, however, said: The debtor can say, "I give you the coin according to our agreement, and you must take the trouble to use it in the city of Mishon, where it has a value. Said R. Na'hman: It seems that Samuel's theory can be applied in the case of a creditor, who intends to go to that place, but not otherwise. Rabha objected to R. Na'hman, from the following Boraitha: The second tithe cannot be changed with coins which are not circulating in the market, as the coins of Cachba, or of the government of Jerusalem, or of the kings of the ancient times. As

the expression, "kings of the ancient times," does not imply the coins of the later kings, which have not any value here, but still have a value in other countries, they may be changed (although the changer has not any intention to go there, as he has to take this money for use in Jerusalem)? And he rejoined: The case was when the governments were not particular when foreign coins were used. According to you (said Rabha again), Samuel means to say that even when the governments are particular; but if they are, how can he bring the coins there? It can be explained that they can be smuggled in, as the government does not search for them, but if found they confiscate them.

The rabbis taught: What were the coins of Jerusalem? David and Solomon were engraved on one side, and Jerusalem the holy city on the other side; and what were the coins of Abraham the patriarch? An old man and woman on one side and a young man and woman on the other side. Rabha questioned R. Hisda: If one has given credit, to be paid with a certain coin, and in the mean time the coins increased in weight, what is the law? And he answered: He must give him coins which are used at the time of payment. And he questioned again: Even if there is a large increase in size and weight? [1] And he said: Yea. But on account of the larger coins, the fruits become cheaper (as we get more produce for a larger coin than a smaller one, and so it would look like usury). Said R. Ashi: It must be discovered whether the fruits become cheaper on account of increase of the coins in question, then the payment is to be reduced accordingly. But if the fruits become cheap on account of great production, then no reduction is to be made. But (even in the latter case), at any rate, is there not then an increase in the metal of the coin which looks like usury? Therefore the question must be decided in accordance with the following act of Papa and R. Huna the son of R. Joshua, who have in such a case examined the different coins of the merchant Argdimus, and have found that eight of the new

ones are equal to ten of the old ones (and then they decided that the borrower must pay accordingly). Rabha said: If it happened that one had pushed another's hand, and a coin fell down from his hand into the sea, he is free, as he may say: I did it unintentionally, and the coin is before you; you may take it. This is the case only when the water is so clear that the coin is to be seen, but not otherwise. [1] Rabha objected from the following Mishna: The second tithe cannot be charged upon money which is not under one's control at the time, *e.g.*, when he placed his money in custody or in the king's treasury (which he cannot reach without great difficulty), or when the purse with money fell into the sea, so that the tithe cannot be charged on such money. (Hence we see that such money is not considered under his control.) And Rabha answered: This case is different, as the verse plainly states "and bind up the money in thy hand." And Rabha said again: If one has defaced coins belonging to others, he is free, because he did not take away anything, and it is considered as if he had done nothing. This is only by striking with a mortar upon the effigy (so that it disappears), but not when he has filed it, as then the weight of it is lessened. And Rabha said again: If one cuts off the ear of his neighbor's cow, which by such an act becomes unfit for the altar, he is free, because the cow is afterwards as good as before and he has done nothing, as not all cattle are prepared for the altar. Rabha objected from the following Boraitha: "If one has labored with the red cow or with its ashes, he is free from the lower court, but he is nevertheless responsible in the divine court." We see then that labor which cannot be recognized on the body of the animal as damaging, the civil court

cannot make him liable for; but by taking off the car, which is recognized on the body, he should be responsible even before the civil court? Nay, the case is the same, and the above Boraitha comes to teach us that even in a case where the change is not to be recognized on the body, he is nevertheless responsible before the divine court. The same said again: Ii one has burnt a note of his neighbor, he is free, because he can say, "I have only burned a piece of paper." Rami bar Hama opposed: Let us see. If there are witnesses who know what

was written in the note, let them draw another good note for him (and there would be no damage at all); and if there are no witnesses, how can we know the amount of the note? Said Rabha: The rabbis' decision may hold even when the burner trusts the owner of the note as to its amount. R. Dimi bar Hanina said: The above statement of Rabha is discussed by R. Simeon and the rabbis, namely: According to R. Simeon, who holds that a germon is considered a direct pecuniary loss, then in the case of Rabha there is a liability; but to the rabbis, who hold that a germon is not considered such, then in the case of Rabha there is no liability. R. Huna, the son of R. Joshua, however, opposed: You have heard R. Simeon so declaring only in a case where the origin was money, in the following case stated by Rabha: If one has stolen leavened bread before passover, and another has burned it in the middle days of the feast, he is free, because there is an obligation on every Israelite to destroy it. If the case occurs after passover, there is a difference of opinion; according to R. Simeon, by whom it is held a germon for a direct pecuniary damage, there is liability, and according to his opponents there is not; but in a case where the origin is not money, did you hear them differ? Said Amemar: In the courts where they summon for causing damage by germon, the full value of the note is to be collected from the destroyer. In the courts, however, where they do not, in such cases there is to be collected only the value of the piece of paper. Such a case happened, and Raphram compelled R. Ashi to pay from his best estates.

"*Leavened bread*," etc., "*he can say, 'Yours is before you*.'" Who is the Tana who holds that in prohibited things, from which no benefit is to be derived, one may nevertheless say: "Yours is before you." Said R. Hisda: It is R. Jacob of the Boraitha stated above (p. 103). R. Jacob said: Even when it is already decided that the ox shall be killed, and the bailee has returned it to its owner, the act is valid, and we must assume the point of their difference is this: R. Jacob holds that of things from which no benefit is to be derived he may nevertheless say: "Yours is before you," and the rabbis hold that such is not the case? Said Rabha to him: Nay, all agree, in the case stated above, that one may say, "Yours is before you." For if such is not the case, let them differ also in case of leaven on passover (stated above). The point of their difference here, however, is this: Whether the court may decide the

case of the goring ox in its absence. The rabbis hold that the decision must be in the presence of the ox, and therefore the owner can claim that if it should be returned to him before the decision of the court, he could drive it away to a meadow, but after the decision he could do nothing; so that no decision could be rendered; and R. Jacob holds that the presence of the ox is not necessary, and the bailee can say to the owner: "What is the difference, when the ox would be returned to you; the court would decide the case in any event, and as the ox is yours, I have nothing to do with it."

"*Fruits, and they became rotten*," etc. But we have learned in a Mishna that in such a case one

must pay their value at the time they were stolen? Said R. Papa: The Mishna just quoted speaks of a case when all the fruit had become rotten, and our Mishna speaks when only a part of them had become so.

MISHNA *III*: If a specialist took a thing to repair it and he spoiled it, he must pay. The same is the case if a carpenter took a box, a trunk, or a cage to repair and he has spoiled it--he must pay. A builder who undertook to take apart a wall, and he broke the stones or bricks, or spoiled them, he must pay. If, however, by taking it apart from one side, it fell down from another side, he is free; provided, however, it did not fall down by reason of the stroke.

GEMARA: Said R. Asi: The Mishna speaks only when the things were given solely for repairing, *e.g.*., to put nails on it; but if wood were given to one to make the above articles new ones and he broke them, he has to pay only for the wood, and not for the vessels, because the carpenter acquires title in the increase of the wood by having made a vessel of it. There is an objection from our Mishna: If a specialist took something to repair it, he is liable. Shall we not assume that he took wood? Nay, it means when he took vessels. But does not the second part speak of vessels, of which it is to be inferred that the first part speaks of wood? Nay, the Mishna itself explains in the latter part the meaning of the first part, and it is to be read thus: If he has spoiled. How so? If he has given it to specialists for repairing, and they have spoiled it, they are responsible; *e.g.*, if he gives to a carpenter a trunk, etc. And it seems also that the latter part is only an explanation. Then (if such is not the case) the latter case would be entirely superfluous, as it is stated already in the first part that, even if he took wood he must pay; it is self-evident, when he took vessels

and spoiled them? (Says the Gemara:) This conclusion is not strong enough, as it can be said that the statement of the second part was necessary to declare the meaning of the first part, lest one say that the first part treats of vessels, but with wood the case would be different, it expresses in the second part the different vessels, to infer from it that the first part treats of wood, and, nevertheless, he is responsible. There is another objection from the following Mishna: Come and hear: If a specialist took a garment and made it ready, and informed the owner he should take it and the owner did not care to do so, the negative commandment of Lev. xix. 13, "There shall not abide," etc., does not apply here. If, however, he has delivered it to him in the middle of the day, and it is not paid by sunset, the above commandment is applied. Now, if some would bear in mind that the master acquires title on the increase, then why should the above commandment be applied? Must not the garment be considered as the property of the master? Said R. Mori the son of R. Kahana: This Mishna speaks of an old garment that was given to be cleaned and to comb the wool, where there is no increase. But, finally, if given to him to put in order, *e.g.*, to make it soft, or to clean it so that it shall look like a new one--is this not to be considered an increase? The case was that he hired him on time, then he must pay him for his time and not for the garment, and, therefore, if he had not paid him, the above passage applies. Samuel said: A butcher (even), a specialist, if he has spoiled the meat (by slaughtering the cattle not in accordance with the law) he must pay, he is a tort-feasor, and is also considered wilful in doing this damage, as he has slaughtered it not in the place where it ought to have been done, and his mission of slaughtering is not fulfilled. Why so many reasons? If it stated a tort-feasor only, one may say that the case is only when he was hired to slaughter, but if he has done it gratuitously he should be free; therefore the addition.

"His act is considered wilful." R. Hama bar Guria objects from the following Boraitha: If one has given his cattle for slaughter and they are spoiled so that they become (unfit for eating), if the butcher was a specialist, there is no liability; but if he was a layman, there is. Both, however, if they were hired, then are they liable. Samuel's answer was: I think your brain is not in regular order. The same objection was raised to it by another of the rabbis, and Samuel said to him: (Stop objecting,)

as thou wilt receive the same answer as thy colleague. I taught this in accord with R. Meir, and you questioned me in accordance with his opponents. Why did not you give a careful consideration to my statement? Did I not say he is a tort-feasor, and considered wilful, etc., and whose theory is it that such a consideration should apply in such cases? There is only R. Meir. [Where did R. Meir state this?] In the following Mishna: If one's jug was broken (in the public street), and he did not remove it, or his camel fell down and he did not raise it (and damage was caused), R. Meir said: He must pay. The rabbis, however, say: This damage cannot be collected by the civil court; the divine court, however, makes him responsible for it. And it is declared that they differ in the case of stumbling, whether it is considered wilfulness or not. Rabba bar Hana in the name of R. Johanan said: A professional slaughterer is always responsible for his act, and even if he were expert as they of Ziphrus. Did R. Johanan, indeed, say so? Did not Rabba bar bar Hana himself say that such a case happened for R. Johanan in the congregation of Moun, and R. Johanan said to him: "Go and bring witnesses that you are a specialist in slaughtering cocks, and I will take off the responsibility from you"? This presents no difficulty. The latter was a gratuitous act, and the first case speaks of hire. As R. Sera used to say: One who likes to be sure of the responsibility of his slaughterer, he shall advance him a dinar. It happened that a case of *egressum* (in slaughtering) came before Rabh, and he declared it unlawful for use, and at the same time he absolved the slaughterer from payment. When R. Kahana and R. Asi met the owner of the cattle, they said to him: Rabh did two good things regarding you. He prevented you from using a doubtful thing, and also restrained you from possible robbery (as, if he had made the butcher pay, it would have been a robbery). It was taught: Suppose one gave a coin to a banker for examination, which was approved by him, and afterwards it was found to be of no value? If he was a specialist, he is free; but if a layman, he is responsible. So is the statement of one Boraitha. Another one, however, states that in any case the banker is responsible. Said R. Papa: The statement that he is free speaks of experts like Danki and Esau, who do not need any more experience, but they erred in the picture of the coin, which was a new one in this country, and they took it for an old one of another country, and they did not know that in this

country such a coin was just made. There was a woman who showed a coin to R. Hyya, and he told her: It is a good one. The next day she came and told him that when she showed it to other people she was told it was of no value, and she could not give it out. Then R. Hyya said to Rabh: Give her a good dinar, and write in my account book that this was a bad business (to lose money for nothing, as I should not have given a decision upon it). But why--was not R. Hyya an expert in such cases, as Danki and Esau mentioned above, of whom it was said they had not to pay for their error? R. Hyya did not go to the extreme of the law, but acted on the teaching that a generous man should always moderate the law when it is against poor people (as will be explained in the Second Gate (Chap. II.) by R. Joseph). Resh Lakish showed a dinar to R. Elazar, and he told him: It is a good one. He said then: I rely upon you. And the former rejoined:

What do you mean by relying upon me--that if it will be found of no value I should change it? Are not you he who said that the decision of this Halakha is in accordance with R. Meir, who decided that laws of germon (damages which are done indirectly) shall be put in practice? Consequently the Halakha does not so prevail. "Nay, rejoined Resh Lakish, "I meant that it is according to him and so the Halakha prevails." [And where did R. Meir stated it? In the following Boraitha. The name of R. Meir is not mentioned here, and Tosphatt declares that it was known to the Gemara that this is his decision.] "If the partition which was placed between the vineyard and corn was broken, the court has to order him twice to repair it. If he, however, did not care to fulfil the order, then the products are prohibited, and the owner of the partition has to suffer the damage."

MISHNA *IV.*: If one gave wool to the dyer, and it was spoiled in the kettle, the value of the wool is to be paid. If it was poorly dyed, by reason of the kettle not being clean, if the increase in value of the wool is more than the expense, then he pays the expense only; and conversely, the increase only. If one has given wool to be dyed red, and it is dyed black, or conversely, R. Meir says: The value of the wool is to be paid. R. Jehudah says: It must be seen which was greater, the increase or the expense.

GEMARA: The rabbis taught: If one has given wood to the carpenter to make a chair of it, and he has made a bench, or conversely, the value of the wood is to be paid. So is the

decree of R. Meir. R. Jehudah says: "If the increase is more than the expense," etc. (as stated in the Mishna). R. Meir, however, agrees that such a decision applies if the agreement was to make a nice one and he made it unsightly. The schoolmen propounded a question: Is the color of the dyes to be considered . as existing upon the wool, or not? How is it to be understood if one has stolen the wool and the dyes of the same man, and has dyed the wool with the same, and then returns the wool? Now, if it is considered as existing, then he has returned all he has stolen from him; and if not, he has returned him only the wool? But even suppose not, is not the price of the wool increased by that? Nay! The case was that the dyed wool became cheaper after it was stolen. Rabbina said: The question is in case the wool belongs to one and the dyes to another, and a monkey came and dyed this wool with these dyes. Shall we then assume that the dyes are considered as existing upon the wool, and the owner of the dyes can say: "Pay me for my dyes which are upon your wool"? Or, perhaps can the other say: "There is nothing that belongs to you, as the color of your dyes is not taken into consideration." Come and hear: A garment which is dyed with the rinds of fruits grown in the sabbatic year must be burned. Hence it is to be inferred that the color of dyes is considered as existing? There is a difference, as the Scripture uses the expression, "It shall be," which means: It shall always be considered as existing.

"*R. Jehudah says*," etc. R. Joseph was sitting behind R. Abba, before R. Huna, and R. Huna said: The Halakha prevails in accord with R. Joshua ben Karcha and also with R. Jehudah. R. Joseph then turned his face, and said: It is necessary to say that the Halakha prevails in accord with R. Joshua ben Karcha, lest one say that, as there is a rule where an individual and the majority differ, the Halakha prevails as the majority; therefore he comes to teach us that here the Halakha prevails according to the individual. [What is the case of R. Joshua ben Karcha? The case of the following Boraitha, where it is said that before the pagans' holidays there should be collected from them only such debts as are not known by any writing; but if there is a note, it must not be collected.] But for what purpose was it necessary to state: The Halakha prevails

according to R. Jehudah? Is this not self-evident? Is there not an anonymous Mishna after the Mishna in which they differ,

and there is a rule that in such a case the Halakha prevails in accordance with the anonymous Mishna--namely, in this First Gate, R. Meir and R. Jehudah differ in our Mishna stated above, and in the Second Gate there is an anonymous Mishna that he who has changed the order must suffer the damages, which is certainly in accordance with R. Jehudah's theory? [Said the Gemara:] R. Huna holds that his statement was necessary, because at a first glance one may say that the order of the Mishnayoth is not to be taken into consideration; and, consequently, there is not an anonymous Mishna after the Mishna which was discussed. If so, what, then, is the rule? R. Joseph may say: We can say to every anonymous Mishna which comes after a discussion that there is no order in the Mishnayoth. And what would R. Huna say to this? He might say that only in one tract is the order of the Mishna not to be taken into consideration, but in two different tracts it must be considered. And R. Joseph? He maintains that the whole of Section Damages is considered as one tract. And if you prefer, it may be said that, even to him who does not consider the whole section as one tract, the anonymous Mishna in the Second Gate, which is placed among decided Halakhas without any change, prevails.

The rabbis taught: If one has given money to his messenger to buy wheat and he buys barley, or *vice versa*, there was taught in one Boraitha that the decrease as well as increase is accounted to the messenger; and in another one, the decrease only, but the increase must be divided. Said R. Johanan: The different opinions of the Boraithas present no difficulty: one is in accordance with R. Meir, who holds that change gives title, and the other one is in accord with R. Jehudah, who holds it does not. R. Elazar opposed: How can we infer that according to R. Meir even the increase belongs to the messenger? Perhaps R. Meir spoke only of an article that one needs for his own use, but not for the market (as there is a difference which article he buys as soon as there is profit on it). And, therefore, said R. Elazar, both Boraithas are in accord with R. Meir, and present, nevertheless, no difficulty. The first means when it was bought for eating, and the other for the market. In the West they ridiculed Johanan's explanation according to R. Jehudah, for who had informed the man of the wheat that he shall pass title to the man of the money (and why should the sender get a share of the increase)? R. Samuel bar Sasarti thus opposed this: If it is so, then even when the messenger has bought the same

article he was ordered to buy, then the profit should not belong to the sender? Said R. Abuhi: Then there is a difference, because the messenger fulfilled what he was ordered, and he is considered as the owner himself.

The rabbis taught: One who buys a field in the name of his neighbor, he for whom it was bought, is not to be compelled to sell it; but if he bought it under this condition, then he may be compelled. How is this to be understood? Said R. Shesheth: It means to say the following: If, *e. g.*, one has bought a field in the name of the Exilarch, the Exilarch cannot be compelled to sell it again; but if he bought it under this condition that the Exilarch shall transfer it, he may be. Now we see that he acquires title in any case. Shall we assume that this Boraitha differs with those of the West, which said above, that title without information cannot be acquired? This question could be answered that the buyer has informed the seller, and the witnesses also, that he buys it

for himself; but the latter part, which stated that the Exilarch may be compelled to sell it again, presents a difficulty. Why should not the Exilarch say: I do not want to be honored (by you in buying things in my name), and to be despised afterwards (in making me a seller of property). Therefore, said Abayi, it means thus: If one buys a field in the name of his neighbor, the seller is not compelled to write him another bill of sale upon his own name unless he bought it under this condition; but is it, then, necessary for the Boraitha to state that the seller has not to give two bills of sale in two different names--is it not self-evident? Lest one say, the buyer could claim that the seller was well informed that the bill of sale in the other's name was only a πινακος ("for fear that my creditors shall not claim this estate); and certainly, as I would not give money for nothing, it was with the intention I should get another bill of sale in my name." He comes, therefore, to teach us that the seller can say to the buyer: "Go and get your bill of sale from him in whose name you have bought." But where is the need of the latter part, "if he bought it under this condition," etc.? Is this not self-evident! The case was when the buyer said to the witnesses in the presence of the seller: "Observe that I want to get another bill of sale." Lest one say, the seller could claim: "I meant another bill of sale from him in whose name it was, bought"; he comes, therefore, to teach us that the buyer may claim that, only for the purpose of getting another bill of sale from the seller, he

informed him in the presence of witnesses; as if not, there would not be any necessity for the seller to know this. R., Kahana paid money for flax. In the meantime the flax became dearer and the seller sold it (for R. Kahana's benefit). Then R. Kahana questioned Rabh if he had a right to take the money. And he answered: If in selling the flax it was said that it is Kahana's flax, go and take it; but not otherwise. Now, Rabh's decision is in accordance with the theory of the rabbis of the West, stated above. But did, then, R. Kahana give four (with the intention to get) eight? The flax was his, and it became dearer by itself, so that the seller who had sold it without the knowledge of R. Kahana is to be considered as a robber, of whom it is stated in the Mishna: He must pay the value when it was stolen, and the flax was already dearer. The case was that R. Kahana had not given to the man flax at all, but money to buy it at the lowest price, and he had confidence in him; and when the seller did not mention that he sold the flax of R. Kahana, the increased price of the flax, which was not as yet the property of Kahana, if he had taken it, was to be considered as usury. Rabh, however, in his decision is in accord with his theory that a trust may be made for fruit, to pay for it now and to get it when it will be dearer. He must, however, take the fruit itself, but not the money for it (as it would be like usury).

MISHNA *V.*: One who has stolen the value of a coin, even the smallest in the country, and he swears falsely that he did y not take it, and afterwards confesses, he shall return it to the owner where he is to be found, even when he is in Madai. He cannot return it to his son or a messenger. He may, however, return it to the messenger of the court. In case the one robbed is dead, he may return it to his heirs. If he has returned the principal amount, but not the fifth part (that he must add) [see Lev. v.], or if the one robbed had renounced the principal amount but not the fifth part, or he had renounced both except the value of less than a *parutha* of the principal. amount, he is no more obliged to go to him (for the sake of returning the part he still owes him). If, however, the fifth part only is paid or renounced, or even when both are renounced less than a *parutha* of the principal amount itself, he must go to him to return it. If he has paid the principal amount, and he took an oath that he had returned him the fifth part also, and then he confesses, he must then add a fifth part to the fifth, etc., till the part sworn off will be less than a *parutha*. The same is the case in

a deposit, as it is said [Lev. v. 21-24]: "If any person sin and commits a trespass against the Lord; if he, namely, lie unto his neighbor in that which was delivered to him to keep, or in a loan, or in a thing taken away by violence, or if he has withheld the wages of his neighbor, or if he has found something which was lost and lies concerning it and swears falsely in any one of all these which a man can do to sin thereby. Then shall it be when he has sinned and is conscious of his guilt, that he shall restore what has been violently taken away, or the wages which he has withheld, or that which was delivered to him to keep, or the lost thing which he has found, or any one thing about which he may have sworn falsely, and he shall restore it, in its principal, and the fifth part thereof shall be added thereto: unto him to whom it appertains shall he give it on the day when he confesses his trespass."

GEMARA: (If he has sworn) but how is it when he has not sworn--he must not pay? then the Mishna is not in accord with R. Tarphon nor with R. Aqiba of the following Mishna: "If one has robbed one of five persons, and he does not know which of them, and each of them says he was robbed, he shall place the robbed amount among them and he is free, so is the decree of R. Tarphon." R. Aqiba, however, says: "Such is not the way to prevent one from sinning, and he is not free unless he pays the amount to each of them." Now, according to R. Tarphon, even when he swears, he may nevertheless get free by placing the robbed amount among them; and according to R. Aqiba, even when there was no oath he must pay to each of them? Our Mishna can be explained in accord with R. Aqiba and his statement, he shall pay to each of them is only in case he has sworn, because it is said [Lev. v.]: ["Unto him to whom it appertains shall he give it on the day when he confesses his trespass."] R. Tarphon, however, maintains: "The rabbis have made an enactment even in case there was an oath, as stated in the following Boraitha: R. Elazar b. Zadok says: There was a great enactment by the rabbis that in case the travelling expenses for returning it should exceed the robbed amount, he may pay the principal amount and a fifth part of it to the court, and he may bring the trespass offering and an atonement will be made for him. Concerning this statement R. Aqiba may say that such enactment applies only when he knows whom he has robbed; but in our case, where he does not know who of the five was robbed by him (so that he cannot

return the robbed article to the right owner), the above enactment does not apply." Rabha objected from the following: "It happened with one pious man who bought of one of two persons, and he did not know from which of them, when he then came before R. Tarphon, he told him to place among them the value of the goods bought and he will then be free. When he came to R. Aqiba he told him: 'You cannot make good this act unless you will pay to each of them the full amount.'" Now if you bear in mind that R. Aqiba's statement is only when he has sworn falsely--would then a pious man swear falsely? And if one may say, that this person has become pious after he has sworn falsely--is there not a rule that everywhere the expression, "It happened with a pious one," etc., is used, it means always R. Jehudah ben Rabba or Jehudah b. Ilai, and both were always pious? Therefore said Rabha: The case in our Mishna is entirely different, it was known to him whom he has robbed, and he has confessed to him, and because at the time of the confession the robbed one did not demand he shall return him the robbed articles immediately, it is considered as if he would say, "Keep it for me," and this can only be when he has not sworn and did not need any atonement; but when he has sworn, although the robbed one would say to him plainly, "Keep it for me," he still needs an atonement, and this cannot take

place until the robbed articles are returned in the hands of the robbed one.

"*He cannot give it,*" etc. It was taught, a messenger who was instructed by the creditor in the presence of witnesses. R. Hisda said: "He is considered a good messenger, so that if an accident happens to him after he received the money, it is to be charged on account of the creditor and not of the debtor, for the reason that the creditor took the trouble to appoint this messenger in the presence of witnesses, so that as soon as the messenger receives the money the debtor shall be acquitted." Rabba, however, said: "The creditor has only introduced the messenger as a man who is worthy to be trusted, and if you wish, you can send with him, but I am not responsible until the money reaches me." An objection was raised from our Mishna: "He shall not give it to his messenger." What kind of a messenger is meant? If he was not instructed before witnesses, how do we know that he is a messenger? Hence, we must say that he was nominated in the presence of witnesses (and nevertheless it is said he shall not give it to him)? R. Hisda explained that

the Mishna speaks of the robbed one's employee. But how, if the same would be appointed to receive this thing in the presence of witnesses--may then the robber give it to him? Then why does not the Mishna make this distinction, instead of the statement that he can give it to the messenger of the court? It may be said that the Mishna prefers to speak of a messenger who is to be respected at any rate, no matter through whose influence appointed, whether of the robbed one or of the robber, which is not the case with a private messenger. And with this statement the Mishna also intends to contradict R. Simeon ben Elazar of the following Boraitha, who said: A messenger of the court when nominated by the robbed one without the consent of the robber, or when even by the robber, and the robbed one has sent another messenger and took the robbed article, and before it was returned to the robbed one an accident happened, the robber has done his duty. R. Johanan and R. Elazar both said that a messenger appointed in the presence of witnesses is a good messenger, and regarding the above stated objection from our Mishna, we may say: Our Mishna speaks of a case where the robbed one has only advised a man to tell the robber that he can give him the articles robbed to deliver; for he thought that the robber had nobody to send him.

R. Jehudah, in the name of Samuel, said: "A messenger must not be made in his absence, namely: If the creditor writes to the debtor, 'Send me the money through so and so, and I take the responsibility for it'--even when he had signed this letter with his signature and with witnesses it is of no value." R. Johanan, however, said: "If it was signed and witnessed, the order may be executed."

But what is to be done according to Samuel's theory? The creditor shall pass the title of the money to the messenger, and the messenger shall be able to give a receipt in his own name; as it happened with R. Abba, who was the creditor of R. Joseph bar Hama, and the former asked R. Safra to bring it when he returned. And when R. Safra demanded the money, said Rabha the son of R. Joseph to him: "Did R. Abba give you a receipt for the amount?" and he answered, "No." Then he said: "Go and take from him a receipt first." Finally, after reconsidering, he said to him: "Even if you would have a receipt, I would not give you the money, for the reason that perhaps until you will reach him, he will be dead, and this money will belong to his orphans, so that the receipt of R. Abba would be

of no value." And when R. Safra questioned what then should be done, he replied: "Let him rather assign the amount to you with real estate, and you will give us a receipt," in your own name; as it happened that R. Papa had to collect twelve thousand zuz from one in the city of Husai, and he assigned them to R. Samuel bar Abba with the threshold of his house, and when the latter returned, R. Papa went forth to meet him even to the city of Toach.

"*If he has paid*," etc. From this is to be inferred that the fifth part is not considered a fine, but an addition to the principal; and if the robbed one dies, it must be paid to his heirs; and so it seems from the latter part of our Mishna: "He has to add a fifth part to the fifth part." And so also it is plainly stated in the following Boraitha: "If one has robbed and has sworn falsely and then he dies, the heir must pay the principal amount and the fifth part, but they are free from the trespass offering." So we see, then, that the heirs are subject to the payment of the fifth part for their father. Is there not a contradiction from the following Boraitha: "It is written 'which *he* robbed,' which signifies that only of *his* robbery a fifth must be added, but not of that of his father's"? And in addition to this, the Boraitha states: "Still one may say that so it is when neither the father nor the son has sworn falsely; but if both or one of them has sworn, the fifth must be paid. Therefore it is written [Lev. v. 23]: 'What he has taken violently away, or the wages which he has withheld'; and here the son did nothing of the kind." (Hence we see that the fifth part is considered a fine for the false oath, and not an addition to the amount? Said R. Na'hman: "This presents no difficulty. Our Mishna speaks of a father who confessed the robbery, and the Boraitha speaks when he did not." If he did not confess, then the principal amount also should not be paid? And lest one say it is indeed so, why then speak about the fifth part only? from which it is to be inferred that the principal part is to be paid, and aside of this the Boraitha cited above states: "And still one may say, the son has to pay the principal amount for the father's robbery only when both the son and father have sworn. Where we know, however, that the same is the case, when both or one of them did not swear? From the four distinct expressions of robbery, wages, lost things, and deposit from which we deduce it?" [When R. Huna had repeated this Halakha in the presence of his son Rabba, the latter

questioned: "My master, do you mean to deduce from this scripture that it must be paid, or you say is it common?" And he answered: "I said it is to be deduced from the above expressions mentioned in the scripture.] But let us see what did R. Na'hman mean by his expression, "he has not confessed"?" That the father had not confessed, but the son did; then that the son pay the fifth part for his own guilt." It may be said that the robbed article is no more in existence, and in such a case the son is no more obliged to pay even the principal amount (explained further on in Chap. X.). If so, even the principal amount should not be paid? The case was there one of real estate left by the father.) But even then this is only a loan without a note, which is not to be collected, either from the buyers or heirs? It may be said that the case was after it was already in the court. If so, even the fifth part should be paid? Said R. Huna, the son of R. Joshua: "It is because the money in question is not to be paid upon a disavowal which is to be collected from real estate only." Rabha said: "The case was that the robbed article was deposited somewhere of which the son had no knowledge when he swore. The principal is to be paid because it is still in existence; the fifth part, however, he must not pay, because the oath was not false, as he was not aware of it."

"*Except less than the value of a parutha*." Said R. Papa: "There is no difference if the robbed article exists or not; he is not obliged to travel after him for the purpose of returning, as the fear that it may become dearer is not to be taken into consideration." Rabha said: If one has robbed three bunches of the value of three *paruthas*, and then the bunches became cheaper, three for two, even when he had returned two bunches to him, he must return the third also; and this can be proved from our Mishna where it is stated, that when he robbed leavened bread before passover, etc., he may say: "Yours is before you." From which it is to be inferred that it is so only when the robbed article exists still in the same form as it was before; but if it does not exist, he would be obliged to pay him the full amount, although it is now of no value at all. The same is the case here; although it has now no more the value of a parutha, he must nevertheless pay for it because it had this value before. He was in doubt, however, in the following case: If one has robbed two bunches of the value of a *parutha*, and had returned one of them, how is the

law? Shall we say: There it is no robbery, or perhaps because he has not returned all he has robbed, he must return it? Afterwards he decided that although it is not considered robbery any more, the commandment to return it is not yet fulfilled. (He must therefore return it.) Rabha was still in doubt in the following case: Where one robbing leaven before passover, etc., our Mishna states that he may say: "Yours is before you." How is now the law, when the robber, after the leaven became prohibited, has sworn that he does not possess it, and that he did not rob it; and after he confesses? Shall we assume that in case the leaven should be stolen, he would be obliged to pay for it, although in that time it was of no value? Consequently he has denied a case of money, and therefore he must repay. Or as the article is still in existence and of no value whatever, his denial is not to be considered a false one. (Said the Gemara:) This Halakha in which Rabha was doubtful to Rabba was certain, for he said elsewhere: If the plaintiff claims the defendant has stolen an ox from him and he denies it, and on the question, how then is the ox in your house, he answers: "I am a gratuitous bailee of it," and afterwards he confessed he is liable because this oath would make him free in case it would be stolen or lost; the same is the case when he swore that he was a bailee for hire, because it would make him free in case the ox should break a leg or die; and, finally, the same is the case when he swore that he had borrowed it to do labor with it, as this oath would make him free in case it should die while laboring. Hence we see that, although the article is before us, it is considered as if he had denied money, because so would be the case should it be stolen. The same is also here with the leaven. Although it is now only dust, it is nevertheless considered as money for the reason stated above. When Rabha was repeating the above stated Halakha, Amram objected from the following Boraitha: It is written [Lev. v. 22]: "And he lies concerning it," it meant to exclude, if he confesses the principal amount. How so? If the plaintiff claims you have stolen my ox, and the defendant denies, and on the question, "How, then, is my ox on your premises?" he answered: "You sold it, you have given it to me as a present, or your father sold or gave it to me as a present, or the ox ran after my cow, came by itself, or I found it wandering on the way, or I am a gratuitous, or bailee for hire, or I have borrowed it;" and he swore so, and after confessed; lest one say he

is liable for a trespass offering; therefore the above-cited verse. Hence the Boraitha contradicts Rabba's statement, and he answered: *Tardus*. This Boraitha speaks of a case that he said, "Here it is, take it." It had reference to a case that the ox was still in the meadow. The Boraitha states: "Thou hast sold it." What confession of the principal claim is then to be found in such an answer

or in the answer of the defendant, "You or your father gave it to me as a present"? In case of selling he told him at the same time that he bought it and did not yet pay, or "that you or your father gave it to me under the condition I should do something for him, which I did not do, and therefore take your ox and go." But what answer is this to "I have found it wandering on the way"? should not the plaintiff claim, "If so, was not your obligation to return it to me?" Said the father of Samuel: "The answer was, I swear that I have found it as a lost thing, and I did not know it is yours."

We have learned in a Boraitha: Ben Azai said: "There are three different oaths concerning the testimony of a witness regarding a lost thing; namely, (*a*) I knew that it was a lost thing, but I do not know who found it; He knew the finder; (*b*) I know the finder some, but I do not know what he found; and (*c*) I know the finder and the article lost." To what purpose did Ben Azai state it? R. Ami in the name of R. Hanina said: "He said it to make the witness free from a trespass offering." Samuel, however, said: "To make him liable." And these two Amoraim differ in the same as the Tanaim of a Boraitha elsewhere differ, and the point of their difference is whether a germon is to be considered as pecuniary damage or not. (Explained above, p. 224.)

R. Shesheth says: "One who denies a deposit trusted to him is considered as a robber of it, and is liable even for an accident." And this can be proved from the following Boraitha: "And lie concerning," etc. In that passage we read of the punishment of telling a lie, but where is the warning against it? Therefore it is written [ibid., ibid. xx. 21]. "Neither shall he deny." Is it not to be assumed that the punishment is for the denying, even without an oath? Nay, the punishment is for false swearing. But if so, how is it to be understood the later part of the same Boraitha? It is written [ibid. v. 21]: "And swear falsely." In this passage we read the punishment, but where is the warning? Therefore it is written [v. 22]: "Nor

lie." Now as the later part speaks of swearing, is it not to be inferred that the first part speaks without swearing? It may be said in the first part also, an oath is meant which was found false by witnesses, and in such a case he is liable even for an accident; the later part, however, speaks when it was found to be false by his own confession, and in such a case he must add the fifth part to the principal amount and a trespass offering.

R. Huna said in the name of Rabh: "If the plaintiff claims a hundred zuz, and the defendant denies and takes an oath, he is free even when witnesses testify against him, because it is written [Ex. xxii. 20]: "And the owner of it shall accept this, and he shall not make it good." From this it is deduced that as soon as the owner has taken an oath, he has not to pay any more money. Said Rabha: "Rabh's theory seems to be correct in the case of a loan, as the money was taken for spending; but in the case of a deposit which ought to be returned as it was, it is still considered under the control of the owner, wherever it is." In reality, however, Rabh had said this even in case of a deposit, as the verse of the Scripture refers to such a case. R. Na'hman was sitting and repeating this Halakha. R. A'ha bar Minyumi, from R. Na'hman, objected to it from the following Boraitha: "Where is my deposit?" and the other answered: "It is lost," and the first said: "Do you swear (and so may God help you)?" And he answered: "Amen." Witnesses testified, however, that he had consumed it, he must pay its value only; but if he himself confessed, he must add a fifth part and a trespass offering. (Hence there is a payment after swearing?) And R. Na'hman answered; "The case was when the oath was taken out of court, which is not considered legal." Said the former again: "If it is so, how is the later part of the

same Boraitha to be understood: 'Where is my deposit?'" And he answered: "It is stolen; do you swear," etc., and he said "Amen." And witnesses testified that he himself had stolen it, he must pay double; if, however, he confessed, he must add only a fifth part, etc., to the principal and a trespass offering. Now if it is as you say that the oath took place out of the court, can there be a double payment without the court? And R. Na'hman rejoined: "I could explain to you that the first part speaks of an oath without and the later in the presence of the court. I don't like, however, to give you an incomprehensible explanation. It may be explained that the oath was taken in the court, and it presents

nevertheless no difficulty, as the Boraitha speaks of a case when the defendant took the oath of his own volition (before he was ordered by the court to do so, in which case the oath does not make him free from payment). And Rabh speaks when the defendant took the oath by the order of the court." Said Rami bar Hama to R. Na'hman: "Let us see; the theory of Rabh seems to be not acceptable to you, why then the trouble to explain the Boraitha in accord with his theory?" And he answered: "It is only to interpret Rabh as he would explain the Boraitha." But did not Rabh deduce his theory from the above verse? It may be said, this verse is needed, that all those who must take an oath biblically swear and do not pay; and the verse is to be interpreted thus: He who has to pay, must swear, and the plaintiff must accept it. Rabha objected from the following Boraitha. "If one declares that the deposit confined to his care was stolen, and he had sworn falsely, and then he confessed and witnesses testified also against him; if his confession was before the testimony of the witnesses, he must add a fifth part and a trespass offering, but if the witnesses testified first, the double amount must be paid and an offering. Now, either explanations of an oath out of the court or without the order of it, cannot apply here because of a double payment which cannot be paid without a legal oath, and yet he must pay." Rabha therefore said: "In case of a confession, no matter if he claims it was lost or stolen, he must always add the fifth part and trespass offering, even in accord with Rabh, for he cannot deny the verse. 'And he confessed [1] what he has sinned' [Lev. v. 5]; and also if he claims it was stolen, and witnesses are against him, he must pay the double amount even in accord with Rabh, as this is also written plainly in the Scripture. His theory, then, is only when he claims 'lost' and swears, and witnesses testify against him without a confession on his part."

R. Hyya bar Abba, in the name of R. Johanan, said: "One who claims 'stolen' on a deposit, or of a lost article he has found, must pay double, and if he has slaughtered or sold must pay four and five fold; because he is considered as if he himself had stolen." He himself, however, objected to it from the following Boraitha: "Where is my ox?" and he answered, "Stolen." "Do you swear by God?" and he said, "Amen." Witnesses, however, testified that he consumed it; then he pays double. Now, could he then eat meat without

previous slaughtering it and nevertheless he pays only double, but not four and five fold only." It may be said that he had eaten it when it was a carcass (*i.e.*, it was killed by another one). The same said again in the name of the same authority: "If one claims stolen of a lost article which he found, he must pay double. Why so? Because it is written [Ex. xxii. 8]: 'Or for any manner of lost things, of which he can say,' etc." He said again in the name of R. Johanan: That he who claims "stolen" on a deposit is not liable for a biblical oath until he admits a part of it. Why so? Because it is written [ibid., ibid.]: "This it is," which means that a part of it is admitted; and he

differs with R. Hyya bar Joseph, who says that the verse applies to the case of a creditor, and was inserted here through an error. Rami bar Hama taught: The four bailees--a gratuitous, a borrower, a bailee for hire, and a hirer--are not liable to a biblical oath until they admit a part. Said Rabha: "His reason is because in the case of a gratuitous bailee, it is plainly written [ibid.]: 'Thus it is,' and for a bailee for hire there is an analogy of expression, 'giving,' which reads in both cases. A borrower is also included in the word [ibid., ibid. 13] 'and,' which means that this case shall be equal to the former. And concerning a hirer, according to him who declares him equal to a gratuitous bailee, then the law of latter applies to him also, and the same is the case with him who declares him a bailee for hire." Said R. Abbin, in the name of R. Elia, quoting R. Johanan: "If one has claimed that a bailment is lost and swears afterwards he claimed it was stolen, and swears again, he is free from the amount, even when witnesses testify against him; because the first oath makes him free towards the owner (and the second oath, which would not be ordered by the court, must not be taken into consideration)." R. Shesheth said: If one claims of a bailment "stolen," as soon as he has made use of it, he is free; and the reason is because the Scripture reads [Ex. xxii. 2]: "Then shall the master of the house be brought unto the judges (to swear) that he had not stretched out his hand"; from which it is to be deduced that if he *had made* use of it, he is free (from the double amount). [1] Said R. Na'hman to him: "Is not the three oaths: first, that I have done all my duty in taking care of it; second, that I did not make use of it; and third, that it is not under my control? Now, is it not to be assumed

that the second oath is equal to the third? As by the third, when thereafter it was known that it is under his control he must pay, the same is the case when it was known that he had made use of it?" And he answered: "Nay, the second is equal to the first, as by the first he is free from the double amount, when it was found that he was careless with it; so is the same in the case when he had made use of it."

Rami bar Hama questioned: "Is it the payment of the double amount that makes him free from the fifth part, or is it the oath which makes hi, m liable for the double amount that frees from the same payment?" What should be the difference (between both suppositions) thus, *e.g.*, if one claims "stolen," and swears falsely, and thereafter he claims on the same "lost," and swears again and witnesses testify regarding the theft and he himself confesses regarding it, "lost"? Now, if the claim "theft," which causes the double amount, makes him free from the fifth part, in that case he was already liable for the double amount; and if the oath that causes the double amount absolves him from the fifth part, then the second oath, which did not cause the double payment, should make him liable for the fifth part? Said Rabha: Come and hear: "If one said to somebody in the market: 'Where is my ox which you have stolen?' and he says: 'I have not'; 'Do you swear,' etc., and he says, 'Amen,' and witnesses testify that he did steal, he must pay the double amount; if, however, he has confessed without witnesses, he pays the principal and the fifth part and an offering. Now, in this case the witnesses are the cause of the double amount, and if he should confess after the witnesses appear, he would not be absolved from the double payment, but from the fifth part. Now, if the oath which causes the double payment absolves him from the fifth part, why is he absolved from it even if he has confessed after the witnesses appear? Let us see. The last oath was not the cause of double payment; let it make him liable for the fifth part; we must therefore say that the money which causes the double amount makes him free from the fifth part." Infer from this.

Rabbina questioned: "If there is a case of the fifth part and the double amount with two different

persons in the very same case, *e.g.*, one has given his ox for care to two persons and both claimed 'stolen,' one has sworn and thereafter confessed; and one has sworn and was denied by witnesses. How is it? Shall we assume that with one person is the Scripture

particular that both the fifth part and the double amount shall not come together; but with two persons one shall pay the double amount and one the fifth part, or the law is particular that in one and the same case the above both fines shall not occur?" This question remains unanswered. R. Papa questioned: "If there is a case of two-fifths part or two double amounts with one man, how is it?" *E.g.*, if the claim was "lost," and he swore and confessed and then he repeated again the claim "*lost*," and swore and confessed again, in which case, according to the law, he should be liable for two fifth parts and one principal amount, and the same question is, if the claim was "stolen"; he was denied by witnesses after he swore and this was done twice. Shall we assume that the Scripture is particular only that two different kinds of fines should not be paid in one and the same case, and here it is only one kind; or perhaps the Scripture is particular that no two fines shall take place in the case? Come and hear. Rabha said [Lev. v.]: "And the fifth parts thereof." [1] Hence we see that the Scripture has added many fifth parts to one principal. Infer from this.

"If a gratuitous bailee swore it was 'stolen,' and nevertheless he paid the full amount and then the thief was found, to whom is the double amount to be paid?" Abayi said: "To the owner, because, as the bailee did not pay until he was summoned and ordered by the court to pay or swear, although he did both, the owner did not pass the title of the double amount to him." Rabha, however, says, "To the bailee who has paid the amount, no matter before or after swearing." [2] If the bailee was summoned, and he has sworn and then thief was found, and when he was asked by the bailee he confessed; when, however, the thief was summoned by the owner he denied, but witnesses testified to the theft. Should the thief be absolved from the double payment on account of his confession to the bailee or not (because at that time the bailee had nothing more to do with this)? Said Rabha: "If the bailee has sworn to the truth, it is to believe that the owner has confidence in him still, and it is considered that the ox is still under his control, and therefore the confession of the thief to the bailee is to be taken in

consideration. But if he has sworn falsely (the consequence of which is that the owner loses confidence in him), then the confession of the thief to the bailee is of no value." It was taught: "If the bailee claims the article was stolen by accident and then the thief was found." Said Abayi: "If he was a gratuitous bailee, the chance is given to him either to swear or to pay. If it was accidentally and the owner collects the double amount from the thief, or he (the bailee) pays the principal, the double amount shall belong to him, and if he is a bailee for hire, he must pay to the owner, and the trouble with the thief he must take upon himself." Rabha, however, says: "There is no difference what kind of a bailee he was. The prosecution of the thief is always upon the bailee (and for his trouble he collects the double amount, but no oath is to be ordered)."

Rabba Zuti [1] questioned thus: "If it was stolen by accident and the thief had returned it to the bailee, and then it dies in his house by negligence, what is the law? Shall we assume that from the moment it was stolen by accident he ceased to be the bailee of it (and so he is no more responsible), or perhaps he became its bailee again as soon as it is returned to him." This

question remains unanswered.

MISHNA *VI.*: "Where is my bailment?" And he answers *lost*! Do you swear by God? etc., and he says "Amen." Witnesses testified that he had consumed it, and he must pay the amount. [If, however, he has confessed without witnesses, he must add a fifth part and an offering.] Where is my bailment? "It was stolen." "Do you swear?" and he says "Amen." Witnesses testified that he himself had stolen it, he pays the double amount. By self-confession, however, he must add a fifth part to the principal amount, and bring a trespass offering. If one robbed his father and swore falsely, and after his death he confessed and desired to return the robbed articles, he pays the principal and the fifth part to his brothers or to his father's brothers. If he does not want to pay his share, or he has not with what he may borrow from his friends, and the creditors will collect it from his part of the estate; *e.g.*, if there are three brothers, they collect from the estate a third

part of the robbed articles and the remainder from himself. If one says to his son: "I swear you shall not have any benefit from my estate"; if he dies, he may inherit; if the oath was neither in his lifetime nor after his death, then he does not inherit. He may, however, transfer his part to his sons or brothers, but if he has nothing to eat, he may borrow from his friends, and they will collect it from the inheritance.

GEMARA: [1] Whence do we deduce all this? From what the rabbis taught. It is written [Ex. xxii. 6]: "If the thief be found." The verse here treats of one who claims that it was stolen from him. Thou sayest so, but perhaps the verse treats of the thief himself? From the fact that the verse states further [ibid. 7]: "If the thief be *not* found," it is to be inferred that that verse treats of one who claims that it was stolen. We have learned in another Boraitha: It is written: "If the thief be found," the verse treats of the thief himself. Thou sayest so, but perhaps it treats of one who claims that it was stolen? If it states further on, "If the thief be not found," which plainly means one who claims that it was stolen, how then is the verse, "If the thief be found," to be construed? hence it refers to the thief himself.

Now, then, all agree that the verse, "If the thief be not found," refers to one who claims that it was stolen. Whence is this deduced? Said Rabha: The verse is to be interpreted thus: "If it should be found out that it is not as he claimed (that it was stolen by somebody else), but that he himself stole it, then he shall pay double."

Whence do we deduce that it is so only when he was put under oath? From what we learned in the following Boraitha. It is written [ibid., ibid. 7]: "Then shall the master of the house be brought to the judges"; that means, to put him under oath. Thou sayest so, but perhaps it means only for payment? It states further on [ibid. 10] "that he have not stretched out his hand," and it states the same thing above [ibid. 7], as there it means under oath (for it states so plainly), so also here it means under oath. It would be right according to the Tana who says that one verse treats of the thief himself and the other one treats of one who claims that it was stolen; therefore it is necessary to have two verses; but according to the Tana who holds that both verses treat of one who claimed

that it was stolen, why *two* verses? It may be said that one is to exclude, when he claimed that it was lost. But according to the Tana who says that one treats of the thief himself and the other of one who claims that it was stolen; and therefore both verses were necessary. Whence does he deduce as to the claim of having been lost? From the fact that it states "*the* thief" instead of "thief."

"*If one robs his father*," etc. Said R. Joseph: "In case there are no heirs but him, he must give it for charity." Said R. Papa: "He must mention (in returning it) that this is the money he robbed from his father." Let us see (in case there are no heirs but him) why he shall not be allowed to relinquish the property to himself. Did not we learn in the Mishna stated above: "If he has relinquished the principal amount, but not the fifth part," of which it is to be inferred that it can be relinquished? Said R. Johanan: "This presents no difficulty, as the cited Mishna is in accord with R. Jose the Galilean, and our Mishna is in accord with R. Aqiba of the following Boraitha: 'It is written [Numb. v.]: But if the man has no kinsmen to whom restitution could be made for the trespass.' Could there be an Israelite that has no relatives or kinsmen? We must therefore say that the Scripture speaks of a proselyte who was robbed by an Israelite. If one robbed a proselyte and swore falsely and afterwards he repented, having heard that the proselyte was dead, he was about to bring the money and trespass offering to Jerusalem (according to the law), where he met the proselyte, who was still alive, and settled with him to keep the robbery as a loan, and afterwards the proselyte died, he acquires title on what he holds in his hands." This is the decree of R. Jose the Galilean. R. Aqiba, however, says: "There is no remedy for him (until the robbed article is out of his hand)." According to R. Jose the Galilean, he may relinquish to others as well as to himself; and according to R. Aqiba, however, neither to others nor to himself. And in the above illustration, where the robber had settled with the proselyte to count it as a loan is used only to make known the strength of R. Aqiba's theory, that even if the robbed one himself permits the robber to keep it as a loan, nevertheless he has no remedy until the robbery is out of his hand. Rabha, however, maintains that both Boraithas are in accordance with R. Aqiba's statement, that a relinquishment cannot be made when it concerns only himself, as illustrated above, but to others he may. [Said the

[paragraph continues] Gemara:] "Let us see: in accordance to both R. Johanan and Rabba, the theory of R. Jose the Galilean is that he may relinquish even for himself. If so, how would be the case in the robbery of a proselyte [Numb. v. 8] (which, as explained above, means of a proselyte), which must be returned to the priest? How can it be found?" Said Rabha: "It may be that the confession was after the proselyte's death, and this confession passes title of the robbery to the priest (when he confesses, however, when the proselyte is still alive, the robbery remains a loan as long as the proselyte is alive, and therefore after his death he may excuse it to himself)." Rabbina questioned: "If a female proselyte was robbed, how is it? It is written 'a man'; should a woman be excluded, or is it only the custom of the verse to mention a man, and the same is the case with a woman?" Said R. Aaron to Rabbina: "Come and hear the following Boraitha: It is written a man, where do we know that the same is with a woman? As it is written further (to whom restitution . . . which is restored, etc.) there are two restitutions, to include a woman (or a minor). Why, then, is mentioned a man? to teach that if it was a man one must investigate if he has some kinsman, but if a minor the investigation is not necessary (because it is self-evident that a minor, who is a proselyte, has no kinsman)."

MISHNA *VII*.: If one robbed a proselyte and swore, and afterward the proselyte died, he must

add a fifth part to the principal for the priest, and a trespass offering to the altar, as it is written: (But if the man have no kinsman, etc., as quoted above [Numb. v. 8]). If, however, while bringing the money and the trespass offering to Jerusalem the robber dies, the money may be transferred to his children, and the trespass offering shall be fed until it gets a blemish, and then it shall be sold, and the money shall be used for a voluntary offering. If, however, he dies after the money was transferred to the priest of that week, his heirs cannot collect it from them, as it is written [ibid., ibid. 10]: "Whatsoever any man gives to the priest shall belong to him." If he has given the money to the department of Jehayary, and the offering to that of Jadaiah in the next week, he has fulfilled his duty. If, however, he has transferred the trespass offering first, and the next week he has given the money to the other department, if the consecrated animal is still in existence the priest of the second week may offer it; and if not, he has to bring another trespass offering, as the law

is that if he had returned the robbery before the trespass offering he has done his duty, but not otherwise. If he has returned the principal only without the fifth part, the latter does not prevent the offering of the trespass offering (but he must afterwards add the fifth part).

GEMARA: The rabbis taught: It is written "Asham" (the debt), it means the principal amount; "which is restored" means the fifth part. (But perhaps the word "Asham" means the ram [What is the difference? To exclude Rabha's theory, who said elsewhere: The robbery of a proselyte, when it was restored in the night-time or it was returned in halves, the duty is not fulfilled. Why so? Because the Scripture names it "*Asham*," and as an Asham cannot be brought during night-time, or in halves, for the same is the case with the returned robbery.] of the offering, as it is frequently so called. As at the end of the same verse it is written: "Beside the ram of the atonement," etc., hence the former word must be explained (the amount) as stated above.)

Rabha said again: "The robbery of a proselyte which contains not the value of a *parutha* to every priest who is in divine service at that week, the duty is not fulfilled." Why so? Because it is written [ibid., ibid.]: "The Asham which is restored," of which is to be inferred that a restore of any value may be made to each priest. He said again: (If there were two robberies of two proselytes, which were restored to the priests) they have no right to say: "A part of us will take the one restored robbery against the other restored robbery. *You* may take." Because in the Scripture it is called *Asham*, it cannot be divided.

Rabha questioned: "The priests who receive the robbery of the proselyte, are they considered heirs or only receivers of a donation?" What is the difference? If one has robbed leaven of which the passover was passed (which has no legal value), if they are considered heirs, then they must take it as their inheritance; but if they are only receivers of a donation, this cannot be called a donation, as it has no value and they must not receive it. Come and hear: "There are twenty-four gifts of the priesthood given to Aaron and his sons (this Mishna will be translated in Tract Hulin), and then the robbery of a proselyte is mentioned, hence it is considered a donation."

"*If, however, he dies after the money was delivered*," etc. Said Abayi: "Infer from this that the robbed money when returned atones for the half, because if this would not be the

case, it would state that the money must be returned to the heirs. Why so? Because when he has returned the money, he has not had in mind to leave it there without offering the trespass offering." "If so, let a sin-offering, which remains after its owner is dead, be considered as a common animal, because when he has separated it for a sin-offering, he did not bear in mind that he will die before offering it." (This is no question) as there is a tradition that when the owner dies after separating a sin-offering, the animal is to be put to death; and the same tradition is in case of a trespass offering, that when a sin-offering is put to death, the trespass offering is to be fed until it becomes a blemish.

APPENDIX TO PAGE 253.

"*R. Ashi the first*." There is a mark in the text by Boaz: "Perhaps R. Ashi the first or the expression 'R. Johanan was astonished' was said by R. Ashi himself." The second supposition, however, does not hold good, as farther on the Gemara adds: "R. Jose b. Hanina accepted," etc.; and the latter, who was a Tana, was certainly many generations before author of this paragraph, unless this also would be the continuation of the author's declaration; but then he would add: "and R. Jose," etc. Hence the first is correct.

Footnotes

218:1 Rashi says: "It means Samuel, who was the greatest authority in court cases." Abraham Krochmal, however, maintains that R. Na'hman meant to say that Huna the Exilarch had granted him the power to impose fines as he thought necessary, p. 219 just as could be done by the king; and it seems to be so, because R. Na'hman did not claim that he had done it according to the law, but only as a fine; and if this Seburmalka meant Samuel, then it shows nothing. See Krochmal's remarks on the Talmud (p. 263).

219:1 Which according to the law, has no more any value. See Appendix to Tract Sabbath.

222:1 The text reads "Khi Naphia" and "Khi Tratia." The dictionaries translate the former expression as "a sieve" and the second as "a third of the weight or size." It seems to us, however, that the translation of the former is not correct, as the spelling of Nopha (a sieve) is always with an *h* and not with an *i*; and aside from this, the text shows that "tratia" was still larger than Naphia, and according to the dictionaries the first would be larger than the second. We have therefore given the real meaning, omitting the Chaldean expressions, which are not known to us.

223:1 All this applies when the coin was dropped from the owner's hand by one unintentionally pushing the same; but if he took it out of his own hand and dropped it, it is a robbery, and must be returned.

241:1 Leeser translates "he shall confess"; the Talmud, however, takes it literally.

242:1 Because he is guilty of a falsehood.

244:1 In the Bible it is written in the plural, which the Talmud takes literally.

244:2 The Gemara explains that both Amaraim made their conclusion from a Mishna in the Middle Gate, which each of them explains according to his theory, one of the first part of the Mishna and one of the second part, and as it is both too complicated and not of great importance, we have omitted it.

245:1 He was a contemporary of R. Ashi, many generations after Abba bar Na'hmany, who is generally named "Rabba." The name, however, of the former is unknown. Some maintain that his name was Zuti, and Rabba was only his title, and some say that Zuti means "little," and he was so named to distinguish him from the former.

246:1 Transferred from the seventh chapter of this tract from the Gemara belonging to the First Mishna there. The proper place is, however, here.

Next: Chapter X

CHAPTER X.

REGULATIONS REGARDING ROBBED ARTICLES WHICH REMAIN AFTER THE DEATH OF THE ROBBER.--IF ONE RECOGNIZES HIS STOLEN ARTICLES AT THE PREMISES OF SOME ONE.--REGARDING ROBBED ESTATES, AFTERWARDS THE GOVERNMENT TOOK IT AWAY, ETC.

MISHNA *I.*: If one has robbed an edible article and used it for his family, or he left the article as it was, his heirs are free from payment. If, however, it was an article of responsibility, they are obliged to pay. (The Gemara will explain the meaning.)

GEMARA: Said R. Hisda: "If one has robbed an article of which the owner did not renounce the hope of gaining it, and another one came and took it away from him, the owner may collect it from any one of them he chooses. Why so? Because as long as the owners did not renounce their hope, it is considered as it were still under their control." [And our Mishna, which states that the heirs are free from payment, is in case that the hope of regaining was already renounced.]

"*Or he left the article,*" etc. Said Rami bar Hama: "From this statement is to be inferred that the control of an heir is the same as the control of a buyer (*i.e.*, as the Mishna speaks of a case where the hope of regaining it is renounced, the change of control gives title, and the control of the heirs after the death of the robber is also considered a change as if it would be bought by somebody else)." R. Rabha, however, said: "It is not so, and our Mishna, which makes them free, treats of a case where the heirs have already consumed the article after the death of their father." But from the latter part of our Mishna, which states that "if there was a responsibility," etc., it must be said that the first part treats of the robbed article still in existence. Said Rabha: "When I will die, R. Oshiah will come to thank me, for I always try the Mishnayoths (edited by Rabh) with the Boraithas taught by him, and our Mishna also is in accordance with the following Boraitha of R. Ashiah: "If one has robbed and used the article for his family, the heirs are free from payment. If, however, the article remains, they have

to return it; if the article is no more in existence--*i.e.*, they have consumed it--they are free, unless their father left them real estate, in which case they must pay at any rate." R. Ada bar Ahaba taught: The difference of opinion between Rami bar Hama and Rabha in connection with the following Boraitha: "If one left money made by usury for his heirs, although they know of the case, they are not obliged to return it." And the above statement of Rami bar Hama was deduced from this. But Rabha is of the opinion that nothing is to be inferred from this case, which is entirely different, as the verse reads: "*Thou* shalt not take of him any usury or increase." The Torah, advises him he shall return the usury to him for the purpose he shall stand in favor with him, and this is only said to the usurer himself, but not to his children.

One who taught the statement of Rami bar Hama and Rabha in connection with this Boraitha, the same is to apply furthermore in connection with our Mishna, and according to them who taught it in connection with our Mishna, it can be said that in the case mentioned in the Boraitha Rami bar Hama agrees with Rabha.

The rabbis taught: "If one robbed an edible article and he used it for his children, the children are free from payment; if, however, the article is yet in existence after the death of the robber, and the children are grown up, they must pay; but if they are still minors, they are free; and even when they are grown up, if they say: 'We know the accounts of our father with you, and he owes you nothing,' they are free." (This Boraitha was corrected so by Rabha.) We have learned in another Boraitha: "The children are free only when the robber used it for his family; but if a robbed edible article is in existence, his heirs, whether grown up or minors, are obliged to return it." Rabha said: "If their father left for them a cow borrowed for labor, they may use her for the time she was borrowed; if she dies even by an accident (and not while laboring), they are free. If they thought that she was the property of their father, and they slaughtered and consumed her, they have to pay the value of her meat in low prices. If, however, their father left real estate, they have to pay anyhow."

The rabbis taught: It is written [Lev. v. 23]: "He shall restore the robbed article which he has robbed." [1] Why the repetition "which he has robbed"? To teach that he shall

restore it in the same manner it was robbed; and from this the sages said: "When he has robbed an edible article, and he makes use of it for his family, they are free from payment; but if still in existence, grown up as well as minors are obliged to return it." In the name of Symmachos, however, it was said that if the heirs were still minors, they are free.

The brother-in-law of R. Jeremiah (who was a minor) shut the door in the face of R. Jeremiah (who wanted to inherit it for himself). When the case came before R. Abbin, he declared that the minor has a right to do so, because he demands *his* property. Rejoined R. Jeremiah: "But I have witnesses that I have used this room while my father-in-law was yet alive, as he had transferred it to me." Rejoined R. Abbin: "But can, then, the testimony of witnesses be taken in the absence of the other party (your opponent is yet a minor)?" And R. Jeremiah said again: "But have we not learned that minors as well as grown up, etc., must return?" And he rejoined again: "Is not Symmachos, who said that minors are free, your opponent?" R. Jeremiah objected, saying: "Are you ignoring the opinion of the sages, and agree with Symmachos only for the purpose that I shall lose my case?" This case was talked about by the people until it came to the ears of R. Abuhu, who said: Did you not hear what R. Joseph bar Hama declared in the name of R. Ashiah: "If a minor compelled his slaves to take away a field from another, claiming it belongs to him, we must not wait until he will be of age to sue him, but immediately the field must be returned, and when he will be of age he shall then bring evidence"? (Said the judge:) "What comparison is this to our case? There the minor was the plaintiff and took possession of an estate against the law, but here the minor is the defendant, and he is in the right possession of his estate which was occupied by his father."

R. Ashi the first said in the name of R. Shabathai: "The testimony of witnesses can be taken even in the absence of the parties." R. Johanan (when he heard this) was astonished, saying: "How is it possible to accept witnesses not in the presence of the parties?" R. Jose bar Hanina,

however (his disciple, who was a judge), had accepted this theory in case one of the parties or witnesses was sick, or the witnesses had to go to the sea-countries, or it was sent by the court after him and he did not appear. R. Jehudah said in the name of Samuel: "Witnesses may be accepted even not in the presence of the

parties." Said Mar Ukba: "Samuel explained it to me that this is in case issue was already joined for the hearing of the case, and he was sent for and he did not appear; but if he was only summoned by the court and his case was not yet opened, he may say: 'I will go to the Supreme Court (in Jerusalem).' But if such a claim be listened to he may claim it even when the court was opened for his case?" Said Rabbina: "It means when an order from the Supreme Court was already issued that this case should be decided by the Supreme Court."

Rabh said: "A document may be approved even not in the presence of the party." R. Johanan, however, says: "It must not." Said R. Shesheth to R. Jose bar Abuhu: "I may explain to you the reason for R. Johanan's statement as follows: It is written [Ex. xxi.]: *And warning, has been given to his owner, and he has not kept him in*. The Scripture means that the owner of the ox must come to the court and be present when his ox will be judged." Rabha, however, says: "The Halakha prevails, that a document may be approved even in the absence of the party, and even if he is objecting, but if he asks to suspend the case for a certain time, that he should be able to bring evidence against the document, the court may allow it. If he appears in time, then it is good; if not, the court suspends it -for the three next sittings; and if he does not appear, the court shall give him ninety days' time before his estate shall be sold for this debt. The first thirty days we do not sell his estate, to give him time to get cash. The second thirty days we give him time to sell his goods himself, and the third thirty days also when he claims that he has a buyer for his estate, but the buyer is not yet ready with cash. After the above time a warrant is to be given to the plaintiff, that he may sell the estate of the defendant. All this is done only when the defendant desires time, but if he says, 'I will not go to the court any more,' a warrant is given immediately. And this is only by a creditor, but in case of a deposit, a warrant is issued immediately, but only when the debtor possesses real estate, not upon personal property; and the reason is, if the creditor would have a right to take the personal property immediately under his control, he may sell it, so that in case the defendant afterwards will bring evidence that the document was of no value, his property could not be returned to him in case the creditor does not possess real estate; but if he does, a warrant may be issued even in this case." (Says the Gemara:) "In practice it is not so; a

judgment is not issued on personal property, even when the creditor possesses real estate, as in the meantime he can sell his real estate, as it will go down in price."

It is also an obligation on the court to give notice to the defendant that his property will be sold, if he is near by; but not if he is far away and there are no relatives; but if there are, or there is a caravan by whom he can be notified, he is notified that this will occur after twelve months, until the caravan should make its tour and return. As Rabbina did in case of Mar Aha, where he postponed the selling for twelve months, the time which it takes for the caravan to tour and retour from the country of Husia. [Also this was not produced] as the above case is different; the defendant was a mighty man, and if the warrant would appear before him, it could not be

collected from him, and therefore he was only notified that a warrant would be issued (and it was issued in such a moment that he could do nothing); but in another case the warrant was to be suspended only until a messenger had time to return with the answer of the defendant, about three or four days.

Rabbina said: "A messenger of the court should be trusted as two witnesses in case of putting a man under the ban; but if he testifies, in such a case where the man must be notified that, if he will not follow the order, he will be put under the ban, he may not be listened to unless the scribe is paid for issuing it."

Rabbina said again: "If a summons was sent with a woman or with his neighbor, who are going to the city where the defendant resides, and he does not appear, he may be put under the ban (as generally the above have fulfilled their promise to bring him the summons). But this is only when he lives out of the town; but if he is in the city, he is not to be put under the ban, because the former, through whom the summons was sent, may rely upon the court that it will send its own messenger, unless he was summoned by the messenger of the court."

Rabha said: "If one was notified that he will be put under the ban if be will not appear before the court, this writing must not be destroyed until he appears (even if he says *he will do so*), and if such was issued for not obeying the order of the court, it shall not be destroyed until he follows the order." [The latter case is not practised, but it is destroyed as soon as he promises to follow the order.]

R. Hisda says: "A note concerning putting under ban is to be used only when he was summoned for the three days when

the court was sitting (Monday, Thursday, and Monday again), and only the following Thursday to be issued."

R. Asi happened to be in the court of R. Kahana, and saw, that a woman was summoned in the afternoon, and on the morrow, when she did not appear, he issued a notification that she would be put under the ban. Said the former to him: "Does not the master hold the decision of R. Hisda stated above?" And he answered: "This was said only when the man is not in the city, but for this woman, who is sure to be in the city and summoned, it is a contempt of the court and must be punished." R. Jehudah said: "One must not be summoned by the court on the eve of a Sabbath or a festival (or when he is a student), not in the days of the months Nison and Tishri (as then the college examination took place), but a summons may be issued in these days to appear after the above months. On the eves of Sabbaths and festivals, however, even to appear after Sabbath or festival is not to be issued, because he is then busy to prepare for the following day and the summons may escape his mind." R. Na'hman said: "One must not be summoned verbally to appear on Monday, on the Sabbath before it when he comes to hear the lecture, and also on the day when he comes to hear the lecture of the coming festival. (It was usually lectured thirty days before each festival.) He shall appear on some day afterwards (for fear they will restrain from coming to the lecture). When people used to come to R. Na'hman in the days mentioned above with claims against some of the assembled people, he used to say to them: "Did I assemble them for your benefit?" [Said the Gemara: "Now when the time is changed and

swindle is used, no attention may, be given to all the terms said above."]

"*If, however, it was an article of responsibility*," etc. Rabbi taught his son Simeon: "Not only real estate, but even an animal which they use for labor, they are obliged to return for the honor of their father." R. Kahana questioned Rabh. "How is it with a bed or a table which they are using?" And he answered [Prov. ix. 9]: "Give to the wise (instruction) and he will become yet wiser." (It means the same is the case with all other things.)

MISHNA *II*.: Money must not be changed from the treasury of duties, and not from the treasury of the treasurers for charity, and also charity must not be taken from them; it may, however, be done with the private money of the above treasurers, or when it is in market charity may be accepted.

GEMARA: A Boraitha, an addition to the above statement, teaches: "He may take change from a dinar if be has to pay a part of it." "Treasury of duties." Why not? Did not Samuel say: "The law of the government must be respected as the law of the Torah." Hence the duties must not be considered robbery? Said R. Hanina bar Kahana in the name of Samuel: "The Mishna treats of a contractor who paid the government the duties of the inhabitants, and he collects from them as much as he desires, and in such a case it is considered robbery." The disciples of R. Janai say: "The Mishna treats of a duty not established by the government (but by some mighty people of the city)." According to others, the above statements of Samuel and R. Janai were delivered in connection with the following Boraitha: "Vows may be made before murderers or contractors of duty concerning the heave-offering or concerning the royal treasure (*i.e.*, if one vows it shall be forbidden to consume any fruits, if these fruits do not belong to one of the above-mentioned)." And when it was questioned: "Why the contractor of duty is counted among murderers," etc., the above explanations of Samuel and Janai were given. R. Simeon said: "R. Aqiba when he came from Zefiru lectured as follows: "Whence do we deduce that the robbery of a heathen is prohibited?" It is written [Lev. xv. 48]: "After he has sold himself, shall he have the right of redemption" (the verse treats when a Jew has sold himself for a slave to a heathen), which means that even when the Jewish court has the might to get him free without money, they must not do so unless the heathen is paid the full amount, as it is written [ibid., ibid. 50]: "And he shall reckon with him that bought him," etc.

R. Ashi happened to be on the road and saw a vineyard in which some grapes were ripe, and he said to his servant: "Go and see, if it belongs to a heathen, bring me some; and if it belongs to a Jew, do not." The owner of this vineyard, who was a heathen, heard this, and questioned him: "Are the goods of a heathen allowed to be robbed?" And he answered: "I meant, if the owner is a heathen, he will take money for it, but a Jew would not take money from me; and I do not want to have it for nothing." The text states: Samuel said: "The law of the government is to be respected," etc.

Said Rabha: "This is proved by the fact that we pass the bridges which the government made, although they take beams of the estate belonging to private estates." Said Abayi to him:

[paragraph continues] Perhaps we do so because the owners of the beams in question have renounced their hope to regain it." And he answered: "If the law of the government should not be respected as the law of the Torah, why should the owners of the beams renounce their hope? The officers of the government do not usually do as they are ordered. The order is, they shall cut off trees of all the *pagus* (*e.g.*, one owner shall not suffer too much and the other nothing), and the officers cut off from one *pagu* which is more prehensible to them. All beams they need, and nevertheless we pass the bridges which were made of such beams; and this is because the officers of the government are considered as the government itself, which needs not to take the trouble searching any other *pagus*, where the beams in question are to be found, and it is only the fault of the citizens, who have not prepared the necessary material for the bridges from the *pagus* where such material can be obtained, and take money for it from the government."

Rabha said again: "If there were four partners to a barn, three of them took out the grain of it, and when the collector of duties came he found only the share of the fourth partner. He may take from it for all the four partners, and it is not considered robbery, even if the collector was a contractor of the government. The case, however, is when they were partners; but if some of them were only gardeners, who took for their trouble a share of the grain, the collector has not to take the duties for them who are absent, because the gardeners only took what belonged to themselves."

The same said again: "A contractor of the government has the right to pledge a fellow-citizen for the duty of another citizen of the same city (who stands with him in business connections), as so the law of the government is in case it is a duty from the fruits of the land or from this year; if, however, it is from the last year, for which the contractor has paid already to the government, he must not do so." The same said again: "Heathens who live in the limit of a Techum [1] of the city, who possess cattle and they are hired to dung the fields, one may not buy an animal from them, for fear it may be Jewish cattle, as they usually feed the Jewish cattle together; but if they live out of the limit of the Techum, it is allowed." Said Rabbina: "If some Jews of the city are claiming that their cattle are among the cattle of the heathens, even out of the limit, is also

prohibited." Rabha, according to others R. Huna, publicly announced: "It shall be known to all who are going down to Babylon or going up to Palestine that an Israelite who is testifying for the sake of a heathen, without being invited as a witness, when the defendant is an Israelite he may be put under the ban. Why so? Because the heathen collects money by the testimony of one witness (and the Scripture requires two witnesses). This is only in case when he is the only witness; but if there are two, they must testify even when they are not called up; and this is also only when the case is brought up in a court of violence, but in the court of a *Dower* (a Persian prince) they may testify, as they also in such a case order only an oath." Said R. Ashi: "When I was in the court of R. Kahana [1] we were questioned: "A respectable man upon whom the above court would rely, as upon the testimony of two, and he is the only witness, should he not testify, because the money would be collected upon his testimony, or because he is a respectable man it would be against his conscience if he does so? This question remained unanswered.

MISHNA *III*.: If the contractors took away his ass, (and after complaining) they returned him instead of his another one, or he was robbed of a garment, and another one was returned to him instead by the robbers, he may take it, as usually in such cases the owners renounced the hope of regaining it. If one saved an estate from the stream or from robbers, if the owners of it have

renounced the hope, he may keel) it. The same is the case also with a swarm of bees. R. Johanan ben Broka, however, says: "A woman or a minor is trusted when they show the place whence this swarm was coming. One may also run through the field of his neighbor to save the above; if, however, he causes damage, he must pay; but one has no right to cut up a branch of a tree, although he pays for it." R. Ishmael his son, however, allows even this.

GEMARA: A Boraitha, however, states (that if he takes a stranger's ass from the contractor, and he is afraid it may be considered robbery, he has to return it to the first owner and not to the contractor, although the title is acquired as soon as the hope of regaining is renounced; here with a contractor it is different (and the title does not pass to the contractor).

Said R. Assi: "The statement of the Mishna applied only when the robber was a heathen, but not if he were an Israelite,

because he thinks of summoning him to the court." R. Joseph opposed: "It seems to be, on the contrary, that as the heathen courts are very powerful, they do not renounce their hope because they think of summoning him." But if the robber were an Israelite, whose courts are not so powerful, he usually renounces hope. Therefore if this statement was made by R. Assi, it was on the latter part of the Mishna: "If they renounced their hope, it is his." Upon this it was that R. Assi said: "This applies only to a heathen. But if the robber were an Israelite the same is the case even if it were not certain that they had renounced their hope."

There is a Mishna [Kelim, xxvi. 8] about skins when they were stolen or robbed. In the first case the intention of the thief is not to be considered, because in such a case usually the owners do not renounce their hope; and R. Simeon is of the opinion that in case of a theft the owners do renounce their hope, but not in the case of a robbery; and Ula said that they differ when there is a supposition only, but if it is *certain* that the owners have renounced, all agree that title is acquired.

Rabba, however, says that they differ even when it is certain. Said Abayi to Rabba: "You may not differ with Ula in this case, because the quoted Mishna which states 'that usually the owners do not renounce their hope, of which it is to be inferred that only when it is supposed so, but if it is certain that they have renounced their hope, title is acquired.'" And he answered: "We read in the above quoted Mishna not as stated, but 'because the renunciation of hope is of no avail.'" There is an objection from our Mishna if the contractor took his ass, etc., which states *he may keep it because usually the owners renounce their hope*. Now, according to whom should be our Mishna? If in accordance with the opponents of R. Simeon, then the robbery mentioned in the quoted Mishna would be a difficulty; and if in accordance with R. Simeon, the theft mentioned there would be a difficulty, too. Still it would be correct in accordance with Ula's theory, who says that when it is certain all agree, etc., then our Mishna could be explained that it means when it was certain; but according to Rabha's theory, in accordance with whom is our Mishna? Our Mishna can be explained that it treats when the robber was armed, and in accordance with R. Simeon. But is this not the same robbery as by a contractor? The Mishna mentions two cases of robbery, one who is protected by the government, and one who is

persecuted by the government. Come and hear: "A thief, a robber, and an oppressor (who takes an article and pays for it against the will of the owner), if they have consecrated the article in question, or if they have separated heave-offering from the robbed grain, it remains so. Now, according to whom would be this Boraitha: "If with the rabbis, robbery would be a difficulty," etc? This Boraitha is in accordance with Rabbai, who says elsewhere that there is no difference between a thief and a robber, and it is explained further on that Rabbai means the kind of a robber mentioned by R. Simeon, who acquires title, and not of the robbers who do not. "A swarm of bees," etc. What means the Mishna with the expression "also"? It means to say that although a swarm of bees is only an enactment of the rabbis, that one can claim he is the owner of it, to prevent quarrels, and one may say that while it belongs to him only rabbinically, he renounces his hope immediately; it comes to teach us that the same is the case here also.

"*Said R. Johanan ben Broka*," etc. Are, then, a woman and a minor qualified to be witnesses? Said R. Jehudah in the name of Samuel: "This case was when they ran after it, and the two in question had showed him the place whence the swarm of bees was coming, but they were not called as witnesses." R. Ashi, however, said: "One who relates a thing without intention of testifying has a value only in case of a widow, who needs evidence that her husband is dead." Said Rabbina to him: "Is it not just mentioned that such a relation is valued also in the case mentioned above?" And he answered: "A swarm of bees is different, as the owner of it is only made rabbinically." [And in case where it is biblically, is it not valid?] Did not R. Jehudah say in the name of Samuel: "It happened with a man who was talking without any intention as follows: I recollect when I was a child, upon the shoulders of my father I was taken from the school, and they dressed me and put me in a legal bath, so that I should be able to partake of heave-offering at the night meal." And R. Hanina added this tale: "My comrades reported themselves from me and called me Johanan the cater of cakes." And Rabbi established him as a priest for this tale. In the time of Rabbi (after the destruction of the temple) heave-offering was only rabbinical. And still in a biblical case such is not valid? Did not R. Dimi say in the name of R. Hana or Aha of Carthagena: "It happened in the court of R. Joshua ben Levi, according to

others in the court of Rabbi, with a child who was telling: 'It happened that my mother and I were prisoners among the heathens, and I did not turn away my eyes from my mother. When I was going to draw water, or to gather some wood, I did not stop thinking of her,' and upon this telling Rabbi married her to a priest (to whom it is prohibited to marry a suspicious woman). In the case of a woman prisoner they dealt leniently."

"*He shall not cut up a branch*," etc. We have learned in a Boraitha R. Ishmael ben R. Johanan ben Broka said: "It was decided by the court that one may descend in his neighbor's field, or cut up a branch of his neighbor's tree, for the purpose to save his or somebody else's swarm of bees, and the value of the branch shall be paid from the swarm of bees; and there was also another decision of the court, that if for the purpose of saving one's honey he must spill out his own wine, he must do so, and the value of his wine he shall collect from the honey he has saved; and the same is the case when he has wood on his wagon and he sees that one's flax is in danger, he must throw off his wood to place the flax instead, and the value of the wood be may collect from the flax, because under this condition Joshua to our ancestors inherited the land."

MISHNA IV.: If one recognizes his utensils or hooks by another, and it was announced that such things were stolen, the defendant must swear how much he has paid and collect it by

returning the articles. If, however, it was not announced that such articles were stolen, he is not trusted to say so, as it can happen that he himself sold it, and the buyer sold it again to the defendant.

GEMARA: And even when it was announced that there was a theft, what is it? There may be still a suspicion that he sold it and then he announced it was stolen. Said R. Jehudah in the name of Rabh: "The case was that in the same night, when the theft happened, visitors were coming to him and found him crying that his articles were stolen. But still (if he is a suspicious man) it can be said that seeing that men are coming to him, he began to claim of the recent theft." R. Kohana completed the above statement of Rabh, that the case was that men who were staying over night in his house, it was found afterwards they were robbers, and they took with them packages with utensils, and it was murmured that his articles were stolen. Said Rabba: "All what is said above is to be feared in

case the plaintiff was known that he used to sell his utensils, but not otherwise. But cannot it happen that even when it was not his custom to sell out when he was in need, he nevertheless did sell all his articles?" Said R. Ashi: "Therefore the Mishna states that it was known in the city that his utensils were stolen."

It was taught: "If a thief has sold out the stolen articles and after it was recognized that he is the thief, Rabh in the name of R. Hyya said that the plaintiff may deal with the thief only." And R. Johanan in the name of R. Janai said that he may deal with the buyer only (*i.e.*, he can take the stolen things without any payment). Said R. Jose. "They do not differ: the one who says that he has to do with the buyer means, in case he bought it before the owner of the article has renounced his hope of regaining it, and the one who says that he has to do with the thief only, means that the sale was after the hope was renounced, and both agree with the theory of R. Hisda"(*supra*, p. 251). Abayi, however, said: "They do differ, as we find elsewhere concerning the gifts of cattle belonging to the priest, which must be considered always that the hope of regaining is not renounced, and they differ there also." But what is the point of their difference? They differ about the statement of R. Hisda just quoted. R. Zebid, however, said: "The point of their difference is this: In case the hope of regaining was renounced when it was already in the hand of the buyer, one holds that when the hope was renounced after the control was changed it does not give title, and the other one holds that it is no difference." R. Papa says: "All agree that the articles must be returned to the owner, and they also agree with R. Hisda, that the plaintiff may summon him who is more convenient for him, and the point of their difference is, if the enactment which is made for the benefit of one who buys a thing publicly in the market, without knowing that it is a stolen article, shall come to his money if the article is found to be a stolen one. According to Rabh this enactment does not apply here, and the buyer must look for his money from the thief; and his above statement, *he has to do with the thief*, means the buyer and not the owner. And R. Johanan holds the above enactment applies here, and he may look for his money from the owner. Is Rabh, then, of the opinion that this enactment does not apply here? Did not R. Huna, who was the disciple of Rabh, say to the plaintiff who claimed the article from the buyer

who bought it from Hanan the bad, who stole it, Go and redeem it? With Hanan the bad it is

different; as he possessed nothing, it is considered as if the thief would not be recognized at all."

Rabba said: "If the thief was a notorious one, the above enactment does not apply." But was not the above Hanan the bad a known one, and nevertheless the same enactment was enforced? He was known for a bad one, but not for a thief. It was taught: "If a thief has paid his debt with a stolen article the above enactment does not apply, because the creditor did not give him the money with the intention of collecting it from such articles. When, however, he lends upon this article to the half of its value, the above enactment may apply; when, however, he lent the full value, Amemar said: "The enactment in question does not apply." Mar Zutra said: "It does." If he has sold it for the full value, the enactment applies; if for half the value, R. Shesheth maintains: "It does not"; and Rabha maintains: "It applies." And the Halakha prevails, that in all cases the same enactment is to be practised, except when the thief pays his debt with it. One man lent four zuz from Abimi bar Nazi, the father-in-law of Rabbina; afterwards he stole a garment and brought it to his creditor, and be lent him four more zuz; finally it was recognized that the garment was stolen, and Abimi came to ask the law of Rabbina, and he said: "The first four zuz he cannot collect, as you have collected it already from the stolen garment (for which no enactment is made). The latter four zuz, however, you may collect, and return the garment." R. Kahen opposed. "Why shall we not assume that the first four zuz he had collected from the garment, which are not to be returned, and the last four zuz he (Abimi) trusted the thief without any pledge as he did before?" The case was not decided until it came before R. Abuhu, and he decided that the Halakha prevails in accordance with R. Kahen. One of the city Narsha stole a book and sold it to a citizen of Pepunian for eighty zuz; the latter sold it to a citizen of Mehuza for a hundred and twenty zuz. Said Abayi: "The owner of the book shall pay eighty zuz to the Mehuzan man and shall take his book, and the forty remainder the Mehuzan man shall collect of the Pepunian." Rabha opposed: "When the enactment was made, even when he bought from the thief himself, shall it not apply to him who bought it from the buyer?" Therefore he decided that the owner shall pay to the Mehuzan one hundred

and twenty, and he shall take his book, and then he shall collect the eighty from the Narshian and forty from the Pepunian.

MISHNA *V.*: If one has emptied his barrel which was filled with wine, and saved in it the honey of his neighbor's broken barrel, he receives only the value of his barrel and for the labor he has done; if, however, he told the man of the honey, "I will save yours in case you will pay me for my wine," be must do so. The same is the case when a stream has overflowed two asses, one of one hundred and one of two hundred, and the owner of the one hundred saved the two hundred one, he has to be paid for his trouble only, unless he has made this condition with his neighbor before saving.

GEMARA: But why so? Let him (the man of the wine) say: "Was not your honey at the time I saved it ownerless? If I had not saved it, it all would be lost, consequently I may take at least for my wine." The case was when the owner of the honey could save it only with great trouble.

"*If, however, he told,*" etc. But cannot the man of honey say, I was only jesting? Is not the case similar to the case of the following Boraitha: "If one runs away from prison and he says to the boatman, 'I will give you a dinar if you will pass me,' he shall pay him only what is due to him"; hence he can say, what I said a dinar was only jesting, why not the same in our case? Our case is

to be compared with the later part of the same Boraitha; namely, "If, however, he says: Here is a dinar, take it and pass me, he may keep the whole dinar for his job" (and so in our case when he gives him the honey for the purpose of saving it, it is considered as if he had paid him in advance). But what is the reason for this statement? Said Rami bar Hama: "The case is when the man of the boat has caught fish at the same time he was waiting for passengers, and he may claim that he could make the same money catching fish."

"*With a stream*," etc. And both cases were necessary to teach; namely, if the first only would be stated, one may say, because it was so spoken of, that he shall lose his own wine for the purpose of saving the other's honey. But in the other case, which was accidental, it is not so; and if the latter only would be stated, one may say because it was an accident he gets only for his trouble when it was not arranged otherwise; but in the first case, when he has destroyed his property for the benefit of the other he must be paid, even when it was not spoken of; therefore both are stated. R. Kahana questioned Rabh: "If

the condition was made, he shall save the two hundred one, and for his one hundred ass, which would be lost, he shall be paid; and he descended and did so, and in the meantime it happened that his own ass was saved by itself, what is the law?" And Rabh answered: "The agreement shall be fulfilled nevertheless, and the saving of his ass is heavenly favor. As it happened with R. Safra, who was going with a caravan and a lion had followed them, and every night the caravan used to throw an ass for the lion; when the time arrived that R. Safra should throw his ass he did so, but the lion did not touch it, and on the morrow he took it back and acquired title of it." R. Aha of Difti questioned Rabbina: "Why was it necessary for R. Safra to acquire title to it? It is true he renounced his ownership of it, but it was done only for the sake of the lion, but not for the sake of others." R. Safra did so to prevent murmur of those who are not thoroughly acquainted with the law.

Rabh questioned Rabbi: "What is the law when upon the above condition he descended to save the ass, but did not succeed?" And he answered: "Is this a question? Certainly his trouble only is to be paid." Rabh objected from the following Boraitha: "If one was hired to deliver some medicine to a sick one, and he finds him dead or cured, the messenger gets his full payment?" And Rabbi answered: "What comparison is this? There the messenger has fulfilled his mission, but here he did not."

The rabbis taught: "A caravan in the desert which was in danger of being destroyed by robbers, and they paid for their redemption, the sum must not be collected equally from each person, but proportionately to the amount each of them possessed. If, however, they have hired a guide, each of them should pay his share equally. At any rate, it must be done according to the custom of the caravan. The drivers are allowed to make a condition with the proprietors, that in case an ass will be lost, they shall furnish them another ass. If, however, the ass was lost by wilful negligence, they are free. But if he says: "Give me the money for the lost one and I will buy me another one myself," he is not to be listened to (because he may not buy, and will neglect to take care of the other asses). Is this not self-evident? The case is even so when he has another ass. Lest one say he will not neglect to take care of the asses of the caravan, as his own ass is among them; he comes to teach us that the taking care of one is not equal to that of two.

The rabbis taught: If a ship upon the open sea, when it was necessary to decrease the weight, the weight of the loading must be counted (*i.e.*, to throw away the same weight of the loading of each passenger without any consideration of the value); however, the law of the ship must be observed. The owners of the ship (who are sailing together) may make a condition among themselves, that if one ship will be lost another shall be furnished. If there were wilful carelessness, however, or he departed himself and sailed on a place where the other ships usually did not go, the conditions are of no avail. "Is this not self-evident?" It means even when usually in the month of Nissan they go the distance of one cord, and in the month of Tishri *on* the distance of two cords, and the ships in question did go in Nissan, when they usually go in Tishri. Lest one say that this is not to be considered wilfulness, he comes to tea h us that it is not so.

The rabbis taught: "A caravan that was attacked by robbers, and one of them succeeds in saving some goods from them, this must be divided among the passengers; if, however, he said to them, 'I will try to save for myself,' it is of avail." Let us see how was the case. If each of them could do the same, but he preceded them even if he has said, "I will save for myself," he must not do so. (It is not of avail because all of them have not renounced the hope of regaining it.) And, on the other hand, if it was impossible for them to save their goods, and the one succeeded nevertheless in saving some, why must he divide among the caravan? (They have already renounced their hope of regaining.) Said Rami bar Hama: "It means when they were partners, and in such a case a partner may separate himself against the will of his partner; therefore if he said, *I will do so*, he is separated; but not if he did it silently." R. Ashi, however, says: "The case was that they could save only with great trouble. If he did it silently, he must divide; but if he said, *I will take the trouble on myself*, it is of avail."

MISHNA *VI.*: If one has robbed a field and it was taken away from him by land robbers, when the land robbers were a plague of this country, the robber may say: The land is in the same place, and take it if you can; if, however, it was robbed because of the robbers, he must buy another field for him.

GEMARA: "*Because of the robber*." How was the case? If it was taken only from him and not from others, this is already stated in the first part. "If it was a plague of the

country," etc. The case was that the government compelled him to show such land of which they could take possession, and he was going and showed it to them, it is considered as if it was robbed by himself. There was a man that in such a case showed to the contractor a heap of wheat belonging to the Exilarch, and when the case came before R. Na'hman, he made him pay for the same. At the same time R. Joseph was sitting behind ' R. Huna bar Hyya, and the latter behind R. Na'hman and, questioned him: "If the decision was in accordance with the law, or is it only a fine?" And he answered: "This is in accordance with our Mishna, which states: *If because of the robbers*, etc., and it was explained that it means that he has showed," etc. When R. Na'hman went out, said R. Joseph to the above R. Huna: "What difference was it to you if it is, law or fine?" And he answered: "If it is a law, then we will take the same for practice; and if a fine, we will not." R. Huna bar Jehudah happened to be in the house of Ebioni (the debate house of the apostate Jews), when after he came to tell Rabba of his misfortune, he asked him: "Do you feel some wrong action you have done?" And he said: "There was a case when one Israelite

compelled by the heathen showed them the property of his neighbor and I made him responsible." And he said to him: "Go and fix your wrong act, as we have learned in the following Boraitha: An Israelite who was compelled by heathens and showed the property of his neighbor, he is not responsible, unless he took it with his own hands and gave it to the heathens." Said Rabba: "If, however, he showed it to them without having been compelled to this, it is to be considered as if he took it with his own hands." There was a man whom the heathens compelled, and he showed them the ass of R. Mary ben R. Pinchas ben R. Hisda. The heathens said to him, Take the ass and follow us, and he did so. Afterwards he was summoned before R. Ashi, and he acquitted him. Said the rabbis to R. Ashi: "Have we not learned in the above Boraitha: 'That when he took it with his hands he is responsible'?" And he answered: "The Boraitha means when he was not told to take it with his hand, but here he was compelled to do so by their command." R. Abuhu objected to R. Ashi from the following: "If a mighty man (of whom one is in fear) says to one, 'See that this branch of grapes or a bunch of grain shall reach me,' and he did so, he is responsible for it." And he answered: "It means that they were standing on either side of a stream."

[paragraph continues] [And it seems to be so, as the Boraitha states: See it shall reach me, and not Give it to me.] There were two men who had quarrelled about a net, each of them saying, "It belongs to me." One of them then took it and delivered it to an officer of the government. Said Abayi: "He may say, 'It was mine' and I could do with it what I pleased.` Said Rabha to him: Must he then be trusted? he ought to be put under the ban until he gets it back, and then to leave it to the court to decide to whom it belongs. It happened that a man showed to the government the μεταξα of R. Aba. R. Abuhu, R. Hanina bar Papi, and R. Itz'hak of Naf'ha were discussing what should be done with him. R. Ilai, who was sitting among them, said to them: "So said Rabh, that he is responsible only when he himself took it and gave it to the government." They said to him: "Go to R. Simeon ben Elyakim and R. Elazar ben Pdoth, in whose courts cases of germon are tried." He did so, and they made the man responsible on the basis stated in our Mishna: "If because of the robber and it was explained when he showed it."

There was a man by whom a silver goblet was deposited, then when robbers attacked him he presented them with the goblet, and they left him alone. When the case came before Rabha, he made him free. Said Abayi to him: "Has not the man saved himself with the property of his neighbor?" Therefore said R. Ashi: "Such a case must be investigated. If he is a wealthy man, the robbers were coming to rob him because of his own wealth; and if he is not wealthy, they came only because of the deposited silver." It happened also with a man to whom the treasury for redeeming prisoners was deposited, and when robbers attacked him he presented it to them. When the case came before Rabha, he made him free; when Abayi remarked to him the same as he has remarked before to Rabha, Rabha answered: "There is not a greater redeeming of prisoners than this case itself. There was a man who led his ass to a boat before men came in; after it was crowded, it was too heavy and it was dangerous, lest the boat sink, and one of the passengers pushed the ass into the river, and it was drowned; after which Rabba made him also free." Abayi remarked to him as above, and he said: "It was only self-defence, then if not for the ass he himself would drown." This decision of Rabba is according to his theory, elsewhere, that one who runs after a man to kill him, and on the way he breaks vessels, no difference if they belong to the

persecuted man or to others, he is free from payment, because he is guilty of a capital crime; and the persecuted one, if he breaks the vessels of the persecutor, is free, because the property of his persecutor must not be dearer to him than his own body. And if, however, they belong to others, he is responsible, as it is not allowed to save himself with the goods of his neighbor. But if one was going after the persecutor to save the persecuted man, and while running he breaks vessels, he is free no matter to whom they belong. This is not because the law is so, but if he should be responsible, no one would be willing to save a man from persecution.

MISHNA *VII.*: If a stream has overflowed the robbed field, he may say to him: "Yours is before you."

GEMARA: The rabbis taught: "One who robbed a field and it overflowed, must deliver up another. So is the decree of R. Elazar." The sages, however, maintain: "He may say to him: 'Yours is before you.'" What is the point of their difference? R. Elazar based his theory upon the exclusions and inclusions of the verse [Lev. v. 21]: "If he namely lie unto his neighbor," which includes everything. "That which was delivered to him to keep," it excludes other things; and further on [ibid., ibid.]: "Or any one thing about which he may have sworn falsely." It is again an inclusion of everything, and there is a rule that when the Scripture includes, excludes, and again includes, everything is included. The rabbis, however, do not consider this as inclusions and exclusions, but as a general and special. "If he namely lie" is general; "Which was trusted to him" is special; and "Or any one thing" is again general, and there is a rule that when there is a special between two generals, it must be judged similar to the special only; namely, as the special is a movable thing and it has a value in money, so all articles which are movable and have a value, excluding real estate, which is immovable, and bondsmen, who are compared to real estate, and also documents, although they are movable, they themselves have no value of money. But have we not learned in another Boraitha: "The very same is the case with the robbed cow, which was overflooded (which is a movable thing, and has a value of money)? He must furnish him with another cow, so is the decree of Elazar; the sages, however, say: He may say: 'Yours is before you.' In what is the point of their difference then?" Said R. Papa: "It means in a case where the robbed cow was lying on the robbed field,

and it was overflooded with the field, (and the robber did not yet acquire title) on the robbed cow." R. Eliezar is so in accord with his theory and the rabbis with their theory.

MISHNA *VIII.*: If one robbed, borrowed, or deposited an article when they were in an inhabited land, he must not return it when he is in a desert, unless he took it for the purpose of going into a desert.

GEMARA: There is a contradiction: "A loan is payable everywhere, a bailment and a lost article are not to be delivered only in their right places (hence a loan may be returned at any place?)." Said Abayi: "The quoted one means this: A loan may be demanded at any place, but a lost thing and deposit are to be demanded at the right places only."

"*For the purpose to go*," etc. If so was the condition, is it not self-evident? The case is, if he said, let be this bailment with you as I go to the desert, and the bailee said to him, I also intend to go there, and if my wishes will be to return it to you there, I may do so.

MISHNA *IX*.: If one says, I have robbed you, or borrowed from you, or you have deposited with me, and I don't know if I have returned it to you, he must pay; however, if he says, I am in doubt whether I have robbed, etc., he is free.

GEMARA: It was taught: If the plaintiff claims a mana (100 zuz), and the defendant says, I don't know; R. Huna and R. Jehudah say, "He must pay," because certainty has preference to uncertainty. R. Na'hman and R. Johanan say, "He is free," because they hold that the money in possession of the defendant must be considered his until evidence is brought. An objection was raised from our Mishna, which states that if he says, "I am in doubt if you have borrowed it to me, he is free." Now let us see how was the case. If there is no plaintiff, then even the first part in the case, "I am certain I have borrowed, but doubtful if it was returned," must also speak when there is no plaintiff; why, then, must he pay? We must, therefore, say that the whole Mishna treats when there IS a plaintiff, and nevertheless in the second part it states he is free from payment. (And this is an objection to Huna and Jehudah.) Nay, the Mishna treats when there was no plaintiff, but the man likes to satisfy the heavenly will. (If he is certain that he has borrowed, it is the heavenly will he shall pay; but if he is in doubt whether he has borrowed, he is free at any rate.) It was taught also by R. Hyya bar Aba in the name of R. Johanan:

"If one claims a mana and the defendant says, 'I don't know,' he is obliged to pay if he would satisfy the heavenly will.

MISHNA *X*.: If one steals a sheep from the flock and returns it, and it dies or it was stolen again, he is responsible; if, however, the owner did not know either of the theft or of its returning, and when they came to number the flock they found it right (and after it died or was stolen), he is free.

GEMARA: Rabh said: "If the theft was known, the returning must also be announced (and if he did not so, he is still responsible for it, even after the owner had numbered the flock), and the numbering makes him free only when he did not have any knowledge of the theft." Samuel, however, said: "The numbering makes him free at any rate." As he explains it, the last sentence of the Mishna applies to the whole of it. R. Johanan said: "If they have knowledge of the theft, the numbering after it was returned makes him free; but if they have not any knowledge of the theft, the numbering does not matter at all, as he is free even without it." And he explains that the last sentence of the Mishna applies only to the first part of it. R. Hisda, however, said: "Only when they have knowledge does the numbering make him free; but if not, he is responsible even after the numbering. And the statement of our Mishna. holds good only when they had knowledge of the theft also, and Rabha explained the reason of R. Hisda's statement thus: The theft accustomed the sheep to separate themselves from the flock, and it may do so again; but if he has notified the owner, he will take care of them. Did Rabha, indeed, say so? Has he not said: "If one has seen that a thief had picked up sheep of the flock with the intention of stealing them, and he alarmed him and the thief threw them away, and the man was not certain if the sheep were returned, and the sheep then died or are stolen, he is responsible. Is it not to assume that the thief is responsible even when the owner has numbered them? Nay, it means when it was not numbered. But did Rabh say as it is stated above? Did he not state: 'If he has returned it to another flock, which the same owner has on another place, he is free (and there was neither knowledge nor numbering)'?" Said R. Hanan bar Aba: Rabh agrees when the sheep were

speckled, and in such a case the owner knows that it was stolen in his absence, and the shepherd recognizes it by the speckle. Shall we assume that the following Tanaim differ in this case: "If one has stolen a sheep from the flock or a coin from the

pocket, he has to return it to the same place he took it from"? So is the decree of Ishmael. R. Aqiba, however, says: "It is necessary that the owner know the facts in the case." The schoolmen thought that usually a man knows the amount in his pocket, and he counts it whenever he takes a coin out, so he has knowledge of the theft; and R. Ishmael holds that the numbering makes him free, and R. Aqiba that the numbering does not make him free, unless he was notified of the returning. (Hence R. Ishmael and R. Aqiba differ in both, a sheep when it was not notified, in which Rabh and Samuel differ, and also in the case in which R. Johanan and R. Hisda differ.) Said R. Zebid in the name of Rabha: "If a bailee has stolen from the premises of the owner, all agree with R. Hisda; but here they speak of a case where the bailee has stolen it from his own premises." R. Aqiba holds that his function as a bailee has ceased (and he must notify the owner of the theft and returning). R. Ishmael, however, holds: "He is still a bailee, and when he returns it to the place he took it from his own knowledge suffices."

MISHNA *XI.*: One must not buy from the shepherds kids of goats, wool, or milk, and not from fruit watchmen wood and fruits. One may, however, buy from the women of Jehudah woollen garments (which usually were manufactured by them), and flax garments from those of Galilee, and also calves from the women of the city of Sharon. If, however, the sailors like to do it secretly, it is prohibited. Eggs and poultry are allowed to be bought at any place.

GEMARA: The rabbis taught: "One must not buy from the shepherds goats, kids, sheared or plucked off; garments of wool, however, are excluded, because it belongs to them; milk and cheese may be bought in deserts, but not in inhabited places. Four or five sheep or fleeces of wool together may be bought, but not two." R. Jehudah said: "Domestic sheep (which are brought home at night-time) may be bought, but not of deserts." This is the rule concerning buying of shepherds, an article which the owner of it perceives may be bought, but not articles which are not.

"*The Master says, 'Four or five sheep,'*" etc. If four may be bought, so much the more five? Said R. Hisda: "Four from a small flock and five from a large one." But is not this text contradicting itself? It states four or five, from which it is to be inferred but not three; and immediately it states but not

two, from which one may infer that three is allowed. This presents no difficulty. If the three are of the best sheep, they may; and if from the lean ones, they *may not be bought*. The schoolmen propounded a question: "R. Jehudah, who says that domestic ones," etc., made his condition of the first part; namely, that for the four or five in question, and he is more rigorous than the first Tana of the above Boraitha, or his condition is for the second negative part, which states but not two sheep, and he, R. Jehudah, comes to teach that only from outside, but domestic, even two may be bought, and he is lenient. Come and hear the following Boraitha: R. Jehudah said: "Domestic ones may be bought of them, but not others; in any place, however, four or five sheep together may be bought." Hence his decision was lenient.

"*And not from the fruits watchmen*," etc. Rabha bought a bunch of branches from an ο•ρος (a laborer who gets for his labor a part of the products). Said Abayi to him: "Did not our Mishna state 'Not from the fruit watchmen, wood or fruits.'" And he answered: "It means of a watchman who is hired for money, but of such who takes for his labor a part of the products, may be bought, as he usually sells his own part."

The rabbis taught: It may be bought from the fruit watch. men when they sell publicly and the scale is before them; if however, they try to do it secretly, it is prohibited. It may be bought from them at the gate of the garden, but not at a place which is behind it.

It was taught: "When is allowed to buy from a robber?" Rabh holds: "When it is known that the greater part of the goods is his own." Samuel, however, maintains that even when the smaller part only is known to be his own. R. Jehudah's decision to Ada Daila was in accordance with Samuel's theory.

Property which belongs to a denouncer, R. Huna and R. Jehudah differ; one says, "It may be destroyed intentionally," and the other says, "It may not." The one who says, "It may," speaks thus because his money must not be dearer than his body. And the one who says, "It may not," speaks thus because, perhaps, he will have good children, and it is written [Job, xxvii. 17]: "He may prepare, but the righteous will clothe himself (therewith)." R. Hisda had an ο•ρος who used to take exactly the half of the products for himself. Thereupon R. Hisda discharged him, and read with reference to himself the

verse [Prov. xiii. 22]: "But the wealth of the sinner is treasured up for the righteous."

R. Johanan said: One who robs his neighbor even the value of a *parutha* (half a cent) is considered as if he would take away his life; as it is written [Prov. i. 19]: "So is the path of every one that is greedy after (unlawful) gain; it takes away the life of those that own it." And also [Jeremiah, v. 17]: "And they shall consume thy harvest and thy bread; they shall consume thy sons and thy daughters." And also [Joel, iv. 19]: "Because of the violence against the children of Judah." And also [II Samuel, xxi. 1]: "On account of Saul and on account of the house of blood, this because he has slain the Gibeonites." To what purpose is the second verse cited? One may say that it speaks only of his life, but not of the life of his children; hence the other verse. And still one may say that it treats only of a robber who does not pay for the robbery, but not if he does; hence the third verse, which treats of violence, which is even when he gives money. And, finally, one may say: It is only when he did it with his hands, but not when he was only a germon; hence the last verse, which reads, "Who has slain the Gibeonites"; and where is it to be found that Saul had slain them? We must say, therefore, that he was a germon because he had slain Nob the city of the priests, the supporters of the Gibeonites, who lost their lives by the death of their supporters. And the Scripture considers Saul as he himself had slain them.

"*But it may be bought from the women,*" etc. The rabbis taught: "It may be bought from woman (the articles mentioned in the Mishna), but not wine, oil, or fine meal, and also not from slaves and not from minors." Aba Saul, however, said: "A woman may sell for four, five dinars for the purpose of buying a cap for herself." They all mentioned if they told the buyers to be careful

about the bargain, then it is prohibited. Charity may be taken from them by the treasurers only a small quantity, but not a large one. From the women of the men who are engaged in the oil press may be bought a measure of olives or oil, but not small quantities. R. Simeon ben Gamaliel, however, said that in the upper Galilee even a small quantity may be bought (as this article is very dear there), and it may be the men are ashamed to sell small quantities in his house, and they give it to their wives to do so. Rabbina, who was a treasurer of charity, happened to be in the city of Mehuza, and the women gave him for charity golden chains and rings, and

he accepted. Said Rabba Tosphah to him: "Did not the Boraitha state that a large quantity must not be accepted from the women by the treasurers of charity?" And he answered: "For the Mezuzath this is considered a small quantity."

MISHNA *XII.*: Flocks of wool which came out by washing belong to the washman, but what came out by the carder belongs to the owner. If three threads only come out by the washing, the washman may keep it; if more, be must not; if, however, there were black threads in a whole piece, he may keep all of them for himself. The remaining threads of sewing, and stuff of the size of three fingers square, belong to the owner, not to the tailor. The splinters which fall off from the carpenter's bench with the plane belong to him, but what with the hatchet are the owner's; if, however, he labored at the owner's house, even of the plane belongs to the owner.

GEMARA: The rabbis taught: "One may buy flocks from! the washman, because it is his. The washman may take the two upper threads for himself. By stretching the garment out for combing he can stitch the loops on the garment only by three stitches. One shall not comb the garment to its shoot, but to its warp, and he shall cut up the fringes to its length but not to its width; if by completing it be has to cut up in the width also, he may do so, the size of a span." [1]

The rabbis taught: "One shall not buy from the carder flocks, because they are not his property, unless in such places where it is customary that the carder keeps it for himself. A cushion, however, or a pillow filled with this stuff may be bought from him at any place." Why so? Because the change gives title to him.

The rabbis taught: "One must not buy from a weaver (who is laboring for others) all the stuff in connection with the weaving; he may, however, buy from him a garment even made of different colors (although it is to be presumed that the different colors were the remainder of threads given to him for garments, and did not previously belong to him, as the weaving it to a garment is considered a change and title is acquired). The same is the case with a dyer: one must not buy from him stuffs in connection with dyeing, but a whole dyed garment, for the reason stated before."

The rabbis taught: "If a tanner takes skins to prepare them, the rubbish belongs to the owner; the wool, however, of the skins which was taken out from the water belongs to the tanner."

"*If they were black*," etc. Said R. Jehudah: "If such was taken off by the washman, it counts for the size which is needed for putting zithzoths in it; however, my son Itzchak is particular with it

and cuts it up."

"*But not the tailor*." How much, however, may the tailor keep for himself? Said R. Assi: The size of a needle's square.

"*The splinter which fall out by the carpenter*," etc. Is there not a contradiction from the following: "What the carpenter takes off with the hatchet and what is cut up with the saw belongs to the owner, but what falls off from the bore or plane or the splinter by the saw belongs to the carpenter"? Said Rabha: "There is no contradiction. At the place of our Tana there were two kinds of planes, a big one and a small one. The big one is called •ξινη, and the small one is called plane. The Tana of the Boraitha, however, had knowledge of the big one only, and named it also plane."

"*If, however, he was working at the owner's house*," etc. The rabbis taught: The stone-cutters may keep the rubbish; branches, however, which fall off from the trees by fixing them, or of wineyards or other plants and herbs, if the owner is particular with them, it is considered a robbery when taken without permission, but not if they are not particular. Not any robbery applies to onycha and grass, unless the places where they are particular. So said R. Jehudah. Said Rabba: "The city of Sirian in Babylon is one of the places where they are particular with it."

END OF TRACT BABA KAMA.

Footnotes

252:1 Leeser translates the sense of it. The Talmud, however, takes it literally.

258:1 Sabbath limit. See Erubin, page 100.

259:1 The text reads Huna, but by the correction of Asher it is Kahana.

276:1 Here in the text comes a discussion, how many threads the laborer takes for himself, and then some Boraithas contradicting each other in this respect, questions which are not decided, and terms of laboring which cannot be understood now without the knowledge of the machinery of that time, and therefore we have omitted it.

Errata

page 216: 'acording'->'according'

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page 3: 'Eijah'->'Elijah'

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page 16: 'Iraelites'->'Israelites'

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page 68: 'Johnanan'->'Johanan'

---

page 82: 'seperately'->'separately'

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page 90: '(above, p.)'->' '

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page 106: 'above, page ,'->' '

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page 108: 'page '->' '

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page 136: ', as explained in First Gate, page '->' '

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page 143: 'probibited'->'prohibited'

---

page 207: '[*supra*, p. 00]'->' '

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page 251: '(in First Gate, p. 00)'->' '

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page 315: 'Msihna'->'Mishna'

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OF

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it for his own creditor, may the returning take place or not? From what time may the creditor use the products of an appraised estate? If one has hired a cow and he loaned it to some one else. It can happen that the hirer has a right to require several cows from the owner of one cow. How so? A bailee who has transferred the bailment to another bailee, how is the law? The Halakha prevails, that a bailee who has transferred the bailment to another bailee of any kind is responsible. If doubtful money is to be collected or not (illustrated in Mishna III.)? Do you want to contradict a case of deposit with a case of robbery? A robber must be punished. If there was an uncertainty of both the plaintiff and the defendant, how is the law? If one deposits fruit at his neighbor's? If one becomes a prisoner, may his property be transferred to his nearest relatives or not? The difference between forsaken, abandoned, and a prisoner's properties. The estate of a prisoner must not be transferred to a minor relative, and not the estate of a minor to any relative.

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be cursed. It happened that one gave money for poppy, meanwhile the poppy increased in price. Tabuth or Samuel b. Zutra was such kind of a man that he would not change his word, even if all the goods of the world were delivered to him, and he told: The above case of poppy happened to me. Cheating, which according to law makes the sale null and void, is in case where the sum of which he was cheated counts four silver dinars. Until what time the retraction may take place? The law of fraud applies to the buyer as well as to the seller, to a private as well as to a merchant. There is no cheating concerning a specialist who knows the value. If one is doing business with his neighbor in trust. (See foot-note, p. 127). How much less of the quantity of a sala should be effaced, that the law of fraud could not be claimed? The prescribed quantity for cheating is four silver dinars to each sala, 110-132

MISHNAS *VI*. TO *X*. There are five fifth parts which must be added to the principal amount. The things to which the law of cheating does not apply. Does the law of cheating apply to a hire? The laws of usury and cheating apply only to commoners, not to the sanctuary. A gratuitous bailee does not swear. If one bought wheat and sowed it in the field, how is the law? If there was fraud to more than a sixth of the value, how is the law? As cheating is prohibited in buying or selling, so it is in words. Cheating in words is more rigorous than cheating in money.

To what thing do the western people pay more attention? One should always be careful with the honor of his wife. The noted legend of the oven of the Akhina. The law is not in the heavens. We do not care for a heavenly voice. Regarding cheating, there are three negative commandments. One must not mix together fruits from two separate fields. A merchant may buy grain from five barns, and place it in one storeroom. The embellishment of articles which are to be sold is forbidden, 132-144.

Next: Chapter I

TRACT BABA METZIA (MIDDLE GATE).

CHAPTER I.

RULES AND REGULATIONS REGARDING FOUND ARTICLES, DOCUMENTS, ANIMALS, AND IF ONE APPOINTS A MESSENGER TO PICK UP A FOUND ARTICLE.

MISHNA *I*.: Two persons, who hold a garment, and each of them claims that he has found it, or that the whole belongs to him, (in such a case) each of them shall take an oath that no less than a half belongs to him, and then its value shall be divided. If, however, one claims the whole and the other half of it, then the oath for the first must be for no less than three quarters, and for the second no less than a quarter, and it is to be divided accordingly. The same is the case with an animal, if both are riding; or, if one is riding and one leading, each of them must take an oath that no less than a half belongs to him, if both claim for the whole, and so they divide. If, however, there are wit. nesses, or they admit the fact, then it is to be divided without any oath.

GEMARA: Why is it stated: "Each of them claims he has found it, or the whole garment belongs to him"--is not one of them sufficient? R. Papa, according to others R. Shimi bar Ashi or Kadi, says: The first part speaks about a found article, and the last one about a transaction, and both cases are necessary. For when the case of a found only, only a found article should be stated, one may say that the rabbis ordered an oath, because it is only a found article, of which each of them may say: My neighbor would lose nothing even if I claim the whole and get half of it, which is not the case in a transaction (as the buyer paid for it, and if it would not be necessary for him he would not do so). On the other hand, if the last part only should be stated, one may say: "The rabbis have given an oath to both of them,

because each of them may say: As the same money my neighbor claims that he has given, I also have given, therefore I have a right to keep it for myself, and my neighbor shall go to the trouble to buy another, which is not the case with a found article, and therefore in the former case an oath would not be ordered." Hence both cases are necessary.

"Transaction!" Let us see from whom the money was taken. The case was, that both paid the money, one with the consent of the seller and the other against the seller's will, but the seller does not recollect to which of them he had given the consent (hence the order of the oaths).

Shall we assume that our Mishna is not in accord with Ben Nanas, who says: "An oath cannot be ordered to both, as one I of them would surely swear falsely"? The Mishna can be explained even in accord with Ben Nanas, as he speaks of a case where one of them would surely swear falsely. Here, in case of a found article, it may happen that both of them has picked it lip at the

same time?

Shall we then assume that our Mishna is not in accord with Symmachus, who says: "That money which is doubtful is to be divided without an oath"? (See First Gate, page 3.) With whom, then, is the Mishna in accord? With the rabbis who are the opponents of Symmachus; do they not say that it is always incumbent on the plaintiff to bring evidence? What comparison is there? In the case where one of them is a plaintiff, and the other a defendant, the rabbis say that it is incumbent on the plaintiff to bring evidence. Here, however, when they both held a thing, they ordered an oath. But according to the theory of Symmachus, even in the case where there is a plaintiff and defendant, it is to be divided without an oath. Moreover, here, as both are holding it, it can be said that even Symmachus would agree with our Mishna, as the oath mentioned is rabbinical only, for R. Johanan says that the oath is an enactment of the sages to prevent one from going out and taking hold of his neighbor's property, claiming it as his.

At any rate, our Mishna is not in accord with R. Jose, who says (Chapter III., Mishna 106): "If so is the case, what can the defrauder lose? therefore, the whole amount must be deposited until there will be evidence." Let us then see if our Mishna can be explained in accord with the rabbis, the opponents of R. Jose, who say that the part in doubt should be deposited until Elijah will come." Is not the case in our Mishna similar

to the case there, as both claims are doubtful? What comparison is it?

It does not belong to both parties, but to one of them; the rabbis ordered it should be deposited "until Elijah will come." Here, however, there is a possibility that the article belongs to both parties, so they ordered an oath; but R. Jose maintained that even where it is certain that both parties have a share in the money in question, he nevertheless decided that the money should be deposited "until Elijah will come." Moreover, here, it is probable that the article belongs to one party. (Therefore our Mishna is in accord with the rabbis and not with R. Jose.)

According to both the rabbis and R. Jose, how should the following Mishna be understood: "A storekeeper upon his credit-book (if it is found that he has given something by the order of the employer to his working-men, and they deny having received anything), both take an oath, and collect the money from the employer"? Now, one of them has surely sworn falsely; why should it not be here the same also, that the money should be collected from the employer and deposited "until Elijah will come," as one of them is surely a defrauder? It can be said there is another reason. The storekeeper may say to the employer: I have followed your order, and I have nothing to do with your working-men, whom I would not believe even with an oath, and it was your fault that you did not order me to give the goods only in the presence of witnesses or to take a receipt from him. The working-man can say to the employer: You must pay me for my work, and I have nothing to do with your storekeeper, whom I would not believe even with an oath; and therefore both collect the money from the employer after they have sworn.

R. Hyya taught: If the plaintiff says that the defendant owes him a hundred zuz and the defendant denies owing him anything, and witnesses, however, testify that they only know that he owes him fifty, he must give him fifty, and take an oath for the remainder. The reason is that the admission of the defendant himself shall not be stronger than the testimony of witnesses, [1]

and this I have concluded by drawing an *a fortiori* conclusion, and also our Mishna supports me by its statement:

"*When two are holding a garment*," etc. We are the witnesses

that each of them holds what he claims to be his, without any admission by his opponent, and, nevertheless, it is stated that each of them must take an oath.

Why was it necessary to draw an *a fortiori* conclusion for the above statement? Lest one say that a biblical oath is given only when there is an admission in part from the defendant, and the reason is, as Rabba declared elsewhere: "Why do the Scriptures decide that one who admits to a part of the claim must take an oath? Because usually one is not so bold as to deny the whole in the face of his creditor, and therefore he admits partly, even had he intended to do so before his creditor appeared, and therefore he only denies a part of it; and it may be that even their denial is only to gain time for the investigation, thinking that in the meantime he will get cash, and will pay the whole claim; and, therefore, the Scripture prescribes an oath in such a case, which is to be believed, that a man with such intention will refuse to swear falsely, and would rather admit the debt of the whole amount. But in case he denies, and witnesses testify against him, in which case the intention above cannot be supposed? No oath is prescribed, he must pay according to the testimony of the witnesses, and shall be acquitted. Therefore it was necessary for him (R. Hyya) to deduce it, by drawing an *a fortiori* conclusion, as follows:

The admission from his own mouth, which does not cause fine, nevertheless causes an oath; witnesses who cause fine, so much the more they should cause an oath. 1

Let us see, then, what R. Hyya means in saying that he has support from our Mishna? How can the case in the Mishna be compared to his case? In the case of R. Hyya the creditor had witnesses, and the borrower had none at all; then if he would have witnesses who would testify that he owes him nothing, R. Hyya certainly would not order an oath. But in our Mishna, as we are witnesses for one party, we are also witnesses for the other party, and nevertheless an oath is ordered. (Consequently the Mishna orders an oath, not because of admission in part, in which case a biblical oath would be necessary, but only a rabbinical oath as stated above.) Therefore, if it was taught that R. Hyya had said he had a support from our Mishna, it was said in regard to

another statement of his as follows: "If the plaintiff claims a hundred and the defendant says only fifty, and here they are, he is, however, obliged to take an oath upon the remainder. Why so? Because "here they are" is considered an admission in part; that is, although "here they are" *means that "your claim is now settled*, and I owe you nothing," it is nevertheless considered an admission in part. And the support of the Mishna is this: As they both hold the garment, we are witnesses that each of them says, "Take what you hold, and the remainder is mine," and this is equal to the claim "here they are," and nevertheless an oath is ordered.

R. Shesheth, however, says: "When he says, 'here they are,' there is no oath. Why? Because 'here they are' is considered as if the money is already in the hands of the plaintiff. Consequently the

claim for the other fifty is denied entirely without any admission. But according to R. Shesheth the decision of our Mishna would be embarrassing to him. He may say that the oath in our Mishna is only an enactment of the sages.

But does not R. Hyya also agree that so it is? Yea, but if "here they are" is equal as an admission in part, and the oath is ordered biblically, the rabbis have the right to order an oath similar to the biblical one. According to R. Shesheth's theory, however, that in such a case no biblical oath should be ordered at all, how could the rabbis arrange an oath which has no analogy in the Scripture?

An objection was raised from the following Boraitha: If there was a note for Sellahs or Dinars without number, the lender claims five and the borrower says three, there must be an oath, because the third one by the borrower is an admission in part. As he could say that the plurality in the note means only two, so is the decree of R. Simeon Elazar. R. Aqiba, however, says: "The admission of the third one is to be considered as if he had returned a lost thing, and he is acquitted. Now, how the case would be if he would say only two (which would not be denied after the note is recognized), an oath would be ordered, even ac. cording to R. Aqiba's theory. Is not the note (which can be collected from his real estate) considered as "here they are," and, nevertheless, an oath would be necessary? Infer then from this that such is the law with all claims which are defended with here they are."

Nay, it can be said that even when he admits only two, there is no oath, and the expression "three" is mentioned only to

deny the theory of R. Simeon, who takes three for an admission in part, for which the law prescribes an oath. And so also seems to be common sense that, according to R. Aqiba, even if he would say only two, he is free from an oath. Then if not so, how can he make him free, when he admits three? It could be a trick on his part to admit three and to be free from any obligation, as he would know that when, if he should claim only two, an oath would be given to him. Infer from this, that so it is. But if it is so, then it contradicts R. Hyya, who says that "here they are" does not prevent an oath. Nay, here in our case of the note, "here they are" is not the reason, but because the note is a support to his assertion, or it can be explained the note implies a mortgage on real estate, and there is no oath in a case where real estate is claimed.

Come and hear (another objection): We learned that the father of R. Aputriki had taught in the first case of R. Hyya just "the reverse of R. Hyya, viz.: "If one claims a hundred, and the other denies all, and there are witnesses for fifty, lest one say there should be given an oath, because the testimony of the witnesses should be considered as an admission in part; therefore it is written [Ex. xxii. 8]: 'For any manner of lost things, of which he can say, *this it is*,' which means the liability is only when he admits with his own mouth, but not by the testimony of witnesses." (Hence it contradicts R. Hyya.) How can you contradict R. Hyya with a Boraitha? R. Hyya is a Tana, who is authorized to differ with it. But is not the Boraitha supported by a verse of Scripture? R. Hyya may say that the question is needed for the law of an admission in part. And the Tana of the above Boraitha may say that "*this it is*" has one word which is superfluous. We therefore deduce from both of them, viz.: that to an admission in part an oath is necessary, and that no oath is given when witnesses testify.

There was a shepherd to whom cattle was given always in the presence of witnesses. It happened, however, one day, that it was given to him without witnesses, and he denied, and witnesses testified that he had eaten two of them. Said R. Zera: "If it I is to agree with the first case of R. Hyya, he must take an oath", for the others." Said Abayi to him: "Even should we agree, could then an oath be given to him? Is he not a robber (to whom an oath is not given)?" Rejoined R. Zera: "I mean to say, that an oath should be given to the plaintiff that he had delivered to him such, and he may collect the money."

But even if we do not agree with R. Hyya's decision, we should nevertheless give him a rabbinical oath, according to R. Na'hman's enactment concerning the following Mishna: "When one claims hundred and the other denies, he is free." Said R. Na'hman: "He is free from a biblical oath, but he must take a rabbinical oath?" Nay, that an oath which cannot be given to the defendant the plaintiff shall swear, etc., is also only an enactment of the sages, and an enactment to an enactment cannot be made.

"Why," said Abaye, "he is a robber? Even if a shepherd only, an oath could not be given to him according to R. Jehudah, who says: 'A shepherd who is not known to be trustworthy, is unfit as a witness?'" This presents no difficulty. If the shepherd keeps his own cattle, he is not fit for an oath; but if he keeps the cattle of others, he is fit; because if it would not be so, how could we confide the cattle to a shepherd? Is it not written [Lev. xix. 14]: "Nor put a stumblingblock before the blind." But we go with the rule: A man will not sin for others' benefit.

"*Each of them swears*," etc. What shall the oath contain? The part that he claims to have in it, and he swears that he has half of it, or he swears that he has not *less* than a half in it? (The difference between the two expressions is this. In case he swears to an affirmative statement, if he has not, he has sworn falsely. When, however, he swears to the negative statement, the oath is not false, even if he has nothing, as he only swears that he has *not* in it *less* than so and so, and in case he has nothing in it, he has not sworn falsely. The expression in the Mishna, however, is in the negative, and therefore the question.) Said R. Huna: "He swears both. 'I have some claim in it, and not less than a half.'" But why not in an affirmative manner: "I swear that I a half belongs to me"? Then he would contradict his claim that the whole garment belongs to him. And even in the negative manner, does he not contradict his claim? If he says: "According to my knowledge, the whole is mine, but at all events I swear that at least no less than a half belongs to me. But, after all, as they both hold the garment and the oath is ordered to both equally, why the oath at all? Let them divide without an oath?" Said R. Johanan: "This oath is not biblically at all, it is only an enactment of the sages, for the purpose that one shall not take possession of his neighbor's property, claiming that it is his, or he has a share in it; therefore the oath. But if he is suspected in the case of money, why should he be trusted in an oath?"

[paragraph continues] Nay, the "theory of because" (because he is suspected in the, case of money, should he be also suspected in an oath?) we do not act upon. And a support to it we can find in the Scripture, which ordered an oath in an admission in part; and if it would be customary that whoever is suspected in a case of money, should be also suspected of swearing falsely, why then the oath? This above support, however, can be dismissed thus: In the case of an admission in part, there is no suspicion at all. The defendant merely had not the whole amount in cash, but

only a part of it, and he taught: I will admit now only the part I have in cash, and the remainder I will give afterwards. And it is as Rabba stated before, p. 238. This can also be proved from the statement of R. Idi bar Abin in the name of Hisda: "One who denies falsely a money loan is nevertheless qualified to be a witness, but whoever denies a deposit (which was given to him only to,, take care of, and he falsely denies it) is disqualified to be a witness." But why shall we not say if he denies a deposit, that merely he could not find it then, and therefore he denies it, intending, however, to return it when it will be found? He is disqualified only in the case where there are witnesses that the deposit was in his house when he denied it, and he had knowledge of it, or the witnesses testified that he was holding it in his hand. But did not R. Shesheth say: "For the following three things: (a) That I have not neglected it, (b) I have not made use of it, and (c) I am positive it is not under my control, the oath was given"? (This is the case of a gratuitous bailee, who is not liable when it is stolen.) Now, why then should he be trusted with the oath? Let "the theory of because" he is suspected in a case of money, he should also be suspected in an oath, also be applied here. Say, then, that such a theory we do not practise. Abayi, however, says that the reason for the statement in our Mishna, to make them both swear, is not as R. Johanan explains, because in such a case an oath would not be trusted to him, but we suppose that his claim is because he has an old loan of money, which is forgotten by the other, and therefore he takes possession of the garment claiming it is his, because in reality all personal property is a security for the loan. If it is so, let them take the garment without an oath? We are not supposing a certain loan, but that he is in doubt about it. But when he is doubtful, and he nevertheless takes possession of his neighbor's property, let him be suspected, that he will also swear in such a case? Said R. Shesheth, the son of R. Idi: Usually men restrain themselves

from taking an oath on a doubtful thing, although they are not averse to taking possession of property doubtfully, because money can be returned, which is not the case with an oath.

R. Sera propounded a question: "When one of the two holders overcame the other and took it away, what is the law?" Let us see how was the case? If the other party keeps silence, then he admits; and if he objects, what more could he do, when his opponent is stronger than he? The case was, that previously he was silent, and afterwards he objected, and the question is: Shall we assume that because he was silent he has admitted, or perhaps the reason he kept silent previously was because it was done in the presence of the rabbis, who could testify in the case? Said R. Na'hman: Come and hear (in addition to our Mishna, there is a Boraitha, as follows): "All this is said only when both are holding the garment; but if only one holds it, and the other claims the ownership of it, the rule that the plaintiff is to bring evidence applies here also." Now, let us see; if one would claim ownership of personal property which is in the possession of another, the statement of the Boraitha would be entirely superfluous, as it is self-evident. We must say, then, that the case was as R. Zera stated it. Nay; this can be explained as follows: They appear before the court when one took possession of the whole garment, and the other put only his hand upon a small piece of it. In such a case an oath is necessary, even according to the theory of Symmachus, who says that doubtful money is to be divided without an oath; he would agree, however, in this case, because the laying of one's hand upon a piece of it counts for nothing.

If the law were that of one overcome, and took possession in the presence of the court, and the court decided that it should be taken away from him, and in the meantime he had consecrated it, there is no question but that such an act at that time cannot be considered. But if the court would

decide to leave it in his possession, should he have overcome the other, and he as yet not taking possession of it, consecrated it, what is the law? Shall we say, because the master says elsewhere: "The consecration by word of mouth only is equivalent to delivering to a common person," in our case shall his mere word of mouth be considered as equivalent to his overcoming and taking it away (and then the thing is certainly consecrated), or perhaps it is not so, because it is not yet in his possession, and it is written [Lev. xxiv. 14]: "And if a man sanctify *his* house," of which it is to be inferred that, as his house is under his control, so he can consecrate it, so

everything which is under his control, but not otherwise, can be consecrated, and in our case it is not yet under his control? Come and hear: There was a bath-house about which two parties quarrelled, each of them claiming it was his property. Then one of them arose and consecrated it. And R. Hanania and R. Aushia and other rabbis did not use this bath any more. And R. Aushia said to Rabba: "When you go to see R. Hisda in Kopri, question him about this case." When Rabba went to Kopri, he passed by Sura, and he questioned R. Hamnuna, and the latter answered him thus: It is decided in a Mishna [Thaharoth, Chap. IV., 12], which states: "If there is a doubt about a first-born, be it of a human being or of an animal, clean ones (which are allowed to be eaten) or unclean ones, the rule that the plaintiff must bring evidence is applied to it." And a Boraitha, in an addition to this Mishna, states: "They are nevertheless prohibited from shearing their wool and to use them for labor." Now, it is certain that if the priest took it away, the court would not compel him to return it, because then he would be the defendant, and the other party must bring evidence. And still, even when the priest did not yet take it away, it is said that it must not be used for labor, as stated above. (Hence we see that even when it is doubtful, it is nevertheless consecrated.) Rejoined Rabba: "You compare this with the consecration of a first-born! There is a difference, as its consecration comes by itself without being consecrated by a human being, and therefore it must be used for labor, no matter under whose control it is."

But what is the law in the above case of the bath-house, after all? Come and hear: R. Hyya bar Abin said: "A similar case happened to R. Hisda, and he questioned R. Huna, and his decision was based upon R. Na'hman's following decision: That such property which must be replevined by the court, even if it is f'; consecrated by one of the parties, it is not holy." But how is it if it could be replevined? The consecration would be valid, although he did not as yet take possession thereof. Did not R. Johanan say: "If one has robbed a thing, and the owner has not yet resigned the hope to regaining it, it cannot be consecrated by one of them? (See First Gate, page 155.) Do you think the bath-house in question was a movable property, to which the rule that the plaintiff must bring evidence applies? This was a real estate, that, if he can replevin it by the decision of the court, it is considered as if it were already under his control."

R. Thalifa of Palestine taught in the presence of R. Abbahu:

[paragraph continues] "If two appear before the court, both holding one garment, each of them gets the part he holds in his hand, and the remainder they divide equally." Remonstrated R. Abbahu: But not without an oath. (Asked the Gemara): If it is so, how is our Mishna to be explained, which states: It shall be divided, and it does not state that, 'only the part that he holds in his hand.' How is the case to be explained? Said R. Papa: When both hold only the χερχοξ (the

fringes). Said R. Mesharshias: "Infer from this that a *sudarium*, which usually the buyer must take in his hand when he wishes to consummate his agreement, [1] is enough when he takes in his hand the size of three fingers square, as this piece which he holds is considered as if cut off, and the expression [Ruth, iv. 7], "and gave it to the other," is applied.

Rabha said: "The case in our Mishna, even when the garment was covered with gold (on some places), it is nevertheless to be divided. Is this not self-evident? Rabha means to say that the gold cover was placed in the centre of the garment. But even this is self-evident? The case was that the gold covering was nearer to the hand of one of the parties. Lest one say, that the garment shall be divided so that the gold shall remain his share, he comes to teach us that the other party has the right to demand that the gold shall also be divided.

The rabbis taught: When two hold a note (the lender and the borrower), the lender claims: "The note is not yet paid, but I dropped it, and it was found by the borrower"; and the borrower says: "The note is paid, and it is mine now"; the note is still in force, if the signature is certified to by the court. So is the decree of Rabbi. R. Simeon ben Gamaliel, however, says: "The value of it must be divided." If, however, the note falls into the hands of the judge, nobody can compel him to give it away. R. Jose, however, says: "Even then the note is in full force."

The master says: "It is in force if the signature," etc. And what is then-does the lender collect the whole amount? which contradicts the statement of our Mishna. Said Rabba in the name of R. Na'hman: "If the note is approved by the court, all of them (the Tanaim who are named in the above Boraitha) agree

that the value of it must be divided (because it is considered as money or a garment, the law of which is stated in our Mishna). They differ, however, when the note is not approved by the court. "Rabbi holds that even when the borrower admits that it is his note, it must be nevertheless approved by the court." If they do so, the value is divided; but if they do not, it is not to be divided. Why so? Because the note would not have any value whatever. Who then makes it a valid note? The borrower, by the admission of his signature, but in the same time he claims that the note is paid. R. Simeon ben Gamaliel, however, is of the opinion that when the signature is admitted, it need not be approved by the court, and therefore it has a positive value, which must be divided. The text above says: "If it falls in the hands of the judge," etc. Why? Is the judge not a human being as any other? Said Rabha It means thus: If a stranger has found a note, on which the certification of the court is to be seen much less when there is no certification by the court, neither of the parties mentioned in the note can make use of it. (Therefore it must not be returned to any of them), for fear that either was written by the borrower, and he has not received any money as yet, or (if it was certified to by the court) perhaps it was paid. But R. Jose holds that, so long as it is not marked that the note is paid, it is in force, and there is no fear that it is a paid note."

R. Elazar said: "R. Simeon ben Gamaliel and Rabbi differ when both parties hold the text of the note, or both hold the signatures of the witnesses or court; but when one holds the text and the other the signatures, each of them may keep what he holds." R. Johanan, however, said: "It makes no difference what they hold, it must always be divided." But is it not stated: "Each takes what he holds"? The case was, when the certification of the court or signatures to the note were in the centre of it. If it is so, what is there new in that he comes to tell us? The case was, that the

signatures were nearer to one than to the other. (This is to be explained, as in the above case, when covered with gold.) Said R. Aha of Diftha to Rabbina: "According to R. Elazar, who says that one takes the text and one the signatures, for what purpose do the parties need it, to use it as a cover for a utensil?" Rejoined Rabbina: "It means its value, namely: The difference in value is to be appraised between the text and the signatures; and the explanation is thus: A note which is certified to by the court, and the date is stated, has more value, as such can be collected even from property that was mortgaged

after the date of certification, which is not the case with a note in which the date of certification is not stated. In this case the one who holds the certification gets the amount, which is as mortgaged after the date of certification. And also the case in which it must be divided, also means its value; because if not so, how would you explain the case in our Mishna, where the garment is to be divided? Should it be cut in pieces and damaged? Surely not, but it means the value of it should be divided, and the same is the case here." [1]

Rami bar Hama said: "From the decision of our Mishna (that when both claim to have found a garment, which means that both picked it up, both are entitled to it, and it is to be divided), it is to be inferred that if one sees an article upon the ground, and tells his companion to pick it up for him, the latter acquires the title. For if it could be borne in mind that it is not so, the case of our Mishna when both picked it up, for the purpose that they should get title to it, each half that belongs to one of them was also picked up by the other, and consequently both should not get title to it, and it should still be considered as it is still upon the ground, so that any other may take it out of their hands, and acquire title for himself. Infer from this, that so it is." Rabha, however, says: "This is no support at all. It may be said that one cannot get title to a found thing through another, even when the other does not intend to keep it for himself. The case in the Mishna, however, is different, because each of them intends to get title to it, and in the same time, when he gets title for himself, he acquires title to the other half for his companion. And a support to it is to be found in the following: If one commands his messenger he shall steal something, and he did so, the sender is free; but if they were partners and had stolen something together, both are liable. And why? Is it not because at the same time that he bears the guilt for himself, he bears it also for his neighbor?" Infer from this, that so it is.

The same said again: Now that we are coming to the conclusion that we can use "the theory of because," if a deaf and

healthy man picked up a found article together, neither of them gets title to it, because, as the deaf man cannot get title for himself, the healthy one cannot get title to it. And lest one say, why should the healthy one be considered worse off than if he too were deaf, for in such a case when both are deaf, both get title to it? The reason is, that in such a case it is only an enactment of the sages, that they shall not come to blows; but here, when the healthy one does not acquire title, the deaf one will say: "If the healthy one does not get title of it, how should I get title to it?"

"*If two are riding*." R. Joseph said: R. Jehudah told me as follows: "I have heard from Mar Samuel two things, in the case when one is riding and the other is leading. In one case he

decided that he acquires title to it and in the other that he does not, and I cannot recollect in which case it is and in which not." Let us see what was the case! Shall we assume that if one was riding on a found animal and somebody came and took it away from him, and in the same way was the case with the leader, that one was leading a found animal and somebody took it away from him, is it possible that Samuel could declare in the latter case r that the leader did not get title to it? (The law is that leading gives title.) Consequently if Samuel declared in one case that he had not, it is riding only.) And R. Jehudah would not doubt it.) When, however, he was in doubt, it must be the following case, when one was a-riding, and the other was the leader of the same animal, and in this case Samuel declared that one had acquired title to it and the other not; and his doubt was if the rider had the preference because he held the animal, or the leader because the animal was going by his leading? Said R. Joseph again: "R. Jehudah told me, let us find out the meaning of Samuel from the following Mishna: If one was sitting in a wagon of Kelaim and another was leading it, each of them gets the forty stripes. R. Meir, however, sets free the sitting one" [Kelaim, VIII., 4]. Samuel, however, changed the names and declared that the sages made him free, and this was because so the Halakha prevails.

Infer from this that, riding, one does not acquire title even when there is no leader, and much less when *there* is another one who leads it. Said Abayi to R. Joseph: "How can the master decide the case of riding from the case of sitting? The riding one holds the bridle, which is not the case with the sitting one." And he answered: "So taught Idi: A bridle does not give any title."

It was taught, also, by R. Helbou in the name of R. Huna, that a bridle gives title only when it is given hand to hand; a found animal, however, or if it was from the inheritance of a proselyte who dies without heirs, it does not. For what purpose is the bridle termed *Mussira*? 1 Said Rabha: "Idi explained to me that this expression was used because it contains in it delivery." And, therefore, if his neighbor delivers to him the bridle of the animal, he has bought it, and he acquires title. Of a found animal or of the inheritance stated above, in which there is no one who can deliver it to him, title cannot be acquired.

An objection was raised from our Mishna. "When two were riding upon an animal," etc., according to whom would be this statement? Certainly not according to R. Meir, who declared that even sitting gives title, so much the more riding. It must be, therefore, that it is according to the rabbis, from which it is to be inferred that riding gives title. Nay, the Mishna may treat of a case when the riding one leads the animal by striking her with his feet. But if it is so, he is the leader? Yea, there are two kinds of leaders. Lest one say, that the riding one has the preference, because he does both, holds and leads it, the Mishna therefore comes to teach us that both are equal.

(Another objection was raised.) Come and hear: "Two who were pulling a camel or leading an ass, or one of them was pulling and the other leading, by such an act the title is recognized." R. Jehudah, however, says: "Title is not recognized unless one is pulling a camel or leading an ass." We see, then, that the Boraitha states "pulling and leading" only, but not riding. The same is the case in riding, and when it states pulling and leading, it is only to deny the theory of R. Jehudah, who says that the title to a camel is acquired by pulling and an ass by leading, and it teaches that title is acquired even in the reverse. But if it is so, let the Boraitha teach both when two were pulling or leading either a camel or an ass? There is one who does not acquire title. Some say that pulling an ass and others say leading a camel. According to others, the objection was raised

from the latter part: "By such an act," etc. Does not this expression mean to exclude riding? Nay, it means to exclude when the reverse was done. If so, it is only a repetition of R. Jehudah: "There is a difference between them, that with both mentioned animals

one of the two things in question does not give title; some say pulling an ass and others say leading a camel."

Come and hear: "If one was riding upon a found ass and another was holding the bridle, the former has acquired title of the ass, and the other one of the bridle. Hence we see that riding does give title? Here is also the case, when he leads it with the feet. If it is so, why does he not acquire title to the bridle also? Read: The riding one acquired title to the ass and half of the bridle, and the other to the other half of the bridle. This would be correct if the riding one does acquire title to the bridle by picking it up through an agent intentionally; but the one who was only holding it, why should he have any right? Read, then: The one has acquired title to the ass and the whole bridle, and the other only to the piece which he holds in his hand. What answer is this? Even if you would say that when an agent picks up a found article for his principal, the principal acquires title, this is only in the case when the agent was willing to do so; but here the holder of the bridle picked it up with the intention to keep it for himself, and when you say that he has not any right for himself, how should he acquire title for the other? Said R. Ashi: "The riding one has a right to the ass and the part of the bridle which is upon the head of the ass, and the holder of it the piece which he holds in his hand, and the remainder does not belong to either of them." Come and hear (again): R. Eliezer says that riding gives title in the field and leading in the city. (Hence we see that riding gives title?) Here is also meant when he leads it with the feet; then it is leading? There are two kinds of leading, as explained above. But if it is so, why does not riding give title even in the city? Said R. Kahna: "Because it is not customary for men to ride in the city." Said R. Ashi to him: "According to your theory, if one picked up a Persian coin on Sabbath, which is not the custom with Israelites on Sabbath, should he also not acquire title to it? You also admit that such an act is good enough to give title. The same should be the case with riding in the city?" Therefore we must say that R. Eliezer speaks not of a found article, but of a regular sale, at which the buyer was told: "Go and acquire title in it, as it is customary." If it was a public ground where men are usually riding, title is acquired; and if he was a respectable man who used to ride even in the city, the title is acquired. The same is the case when it was a woman. And (on the contrary, if he was a commoner, who is not ashamed to ride anywhere,) title is acquired. (And the title is not acquired

only by such people who are accustomed to riding in the city.)

R. Elazar questioned: "If one says to a person: Pull this animal and acquire title on the utensils which have been placed upon it, what is the law? Does the pulling of the cattle suffice to give title on the utensils or not?" Said Rabha: "Even if he should say to him, acquire title on both things in question, would it be sufficient for the utensils also? Is not the animal considered as a movable court, which does not give title in the utensils placed on it? And lest one say it means when the animal stops, is there not a rule that when the title is not acquired by moving, it does not even when it was standing or sitting?" The Halakha, however, prevails, that when the animal was tied. Said R. Papa and R. Huna the son of R. Joshuah to Rabha: "According to your theory,

if one was going in a boat and fish fell into the boat, would we also consider the boat as a moving court, that title in the fish would not be acquired?" And he answered: The boat is resting, but the water is moving and bears it along."

MISHNA *II*.: If one rides on an animal and sees an article on the road, and says to his neighbor, Bring it to me, and the latter picks it up and says, I myself have acquired title to it, he has done right. If, however, after delivering it he says: I have acquired title to it first, his claim is not to be considered.

GEMARA: We have learned a Mishna [Peah, IV., 9]: If one has gathered the corner tithe, saying, I take it for a poor so and so, R. Eliezer says that the poor ones get title to it. The sages, however, say that he may give it to the first poor man he may meet. Said Ula in the name of R. Joshua b. Levy: "They differ only when the one who took it was not poor. R. Eliezer holds, that because he can renounce his ownership of all he possesses so that he himself would be poor, would be then entitled to it, the same is the case even if he had not done so. And "because" he himself is entitled to it, he may do so for any one else. The rabbis, however, hold, that the "theory of because" can be applied only *once*. In this case, however, "Because" is used twice, therefore their decision. If, however, the man in question was poor himself, all agree that he can take it for another poor man, as here only one "because" is to be used; namely, because be has a right to acquire it for himself, he may do the same for another. Said R. Na'hman to Ula: "Let the master say, that even if they were both poor, they still differ. As regarding a found article, all are considered as poor, and nevertheless our

[paragraph continues] Mishna stated that if the one who picked it up said: I myself have acquired title to it, his act is correct. Now if in the quoted Mishna they differ, in that one poor for another, our Mishna would be in accord with the rabbis." (That is, in the first part, "because" the one who picked it up was entitled to it for himself, he has also a right to transfer it to another although he was directed by the rider; and the latter part teaches us that, when he has not acquired title to it before he has given it to the rider, we do not apply the above "theory of because," if he want it for himself.) But if you will say that the recited Mishna speaks only of a rich for a poor, but when both were poor all agree that the title is acquired for the other, then our Mishna is neither in accord with the rabbis nor with R. Eliezer? And he answered: "The Mishna treats of a case when the man who picked it up says to the rider: Although you have seen it first, nevertheless by picking it up I intended to acquire it for myself." And it seems that this explanation is correct from the latter part, which states: "If he says I have acquired title on it first," etc., which is superfluous, as it is self-evident that he means at the time when he picked it up, which certainly he was the first, even if he would not assert it so plainly. Therefore, we must say that it comes to teach us that even in the first part his claim was that he acquired title *first*. R. Na'hman, however, may say that the expression "first," mentioned in the latter part, was with design to show that in the first part this word was not used.

R. Na'hman and R. Hisda both said: "If one picks up an article for another, the latter does not acquire title. Why so? Because this would be similar to one who takes possession, without any order, of goods or money of his neighbor for the purpose of settling his account with so and so, although the same is a debtor to other persons, which is certainly unlawful, and his act cannot be taken into consideration." Rabha objected to R. Na'hman's statement from the following: A thing found by an employee who was hired by the day, belongs to himself. When is this the case?

When the employer has hired him to clean or plough the field; but if he was hired for any kind of work for the day, the found article belongs to the employer. (Hence we see that one can acquire title for another.) Said R. Na'hman: In the case of an employee is different, for his hand is considered as the hand of his employer for the whole day. But did not Rabh say that an employee can retire from his agreement in the middle of the day though he was hired for the whole day? And R.

[paragraph continues] Na'hman rejoined: "Yea, but so long as he has not retired, his hand is considered as the employer's hand." And the reason why an employee may retire from his agreement, even in the middle of the day, is because it is written: "For unto me are the children of Israel servants" [Lev. xxv. 55], which means my servants but not servants to other servants. (So one cannot make another one a slave even for one day.)

R. Hyya b. Aba, however, says in the name of R. Johanan, that "if one picked up an article for another, the latter acquires title; and if you should object to it from our Mishna, I would say that the Mishna speaks of a case when he said: 'Bring it to me and not acquire title for me.'"

MISHNA *III*.: If one has seen an article and he fell upon it, and at the same time another came and took hold of it, the latter has acquired title.

GEMARA: Said Resh Lakish in the name of Aba Kahna Bardala: "The four ells of a man gives title to him at every place. Why so? The rabbis made this enactment to prevent quarrels." (This sentence will be explained in the following discussion.) Said Abaye: R. Hyya bar Joseph objected to this from the following Mishna [Peah, IV., 3]: "If one took a part of the Peah and threw it on the remainder, he lost his share in it entirely." If one of the poor fall upon the Peah, or he spreads his garment upon it (with the intention of acquiring title to it), his act is ignored, and the garment must be removed. The same is the case with the forgotten sheaf [Peah, IV., 3]. Now if the statement of Resh Lakish is correct, why does he not acquire title to it with his "four ells" (when he has fallen upon it)?

The case was that he did not say: "I intend to acquire title to it." But if the above enactment of the sages exists, even if he did not say anything, what is it? With his falling he convinces us that only with this act he wishes to acquire title to it, but not with the four ells in question. R. Papa, however, said: The enactment of the sages regarding the four ells had reference only to a public place, but not on a private field; and although the Merciful One has privileged him to go in and to gather the Peah, he is entitled only to do that, but he is not privileged to consider it as his own property.

Said Rabha: "R. Jacob bar Idi objected the above saying of Resh Lakish from the Law of Damages stated in our Mishna: 'If one falls upon a found article and another took hold of it at the same time, the latter acquires title to it.' Now if Resh Lakish's

statement is correct, did not the former acquire title with his four ells?" This objection is answered in the very same manner as Abaye's objection. R. Shesheth, however, says: "The

enactment of the sages is only in a *semita* (a kind of sidewalk where it is not so crowded), but not in the public street, where there is always a crowd and many have the same four ells." But did not Resh Lakish say: "In every place?" With this expression he means to include the sidewalks of the public streets.

Resh Lakish said again in the name of the same authority: "A minor female has not the right to acquire title in her property, and also the law of the four ells does not apply to her." R. Johanan, however, in the name of R. Janai said: That both of the above laws apply also to her. The two sages, however, do not differ--the former speaks of a divorce, the law of which will be explained in Tractate Gittin (Divorces); and the latter treats about a found article, which was in her four ells or on her property, she does acquire title.

MISHNA *IV*.: If one has seen people running after a found article which was on his field, or after a lame stag, or after unfledged pigeons, and he says: "My property shall give me title to it," his saying is correct. If, however, the stag was not lame, or the pigeons were fledged, his saying counts for nothing.

GEMARA: Said R. Jehudah in the name of Samuel: "The Mishna treats only of a case when he was standing upon his field." But let his property give him title, even if he was not standing upon it, did not R. Jose bar Hanina declare that the property of one gives title to him, even without his knowledge? Yea, but this is said only of a closed yard in which things are preserved; but in an open field, in which things are not, the title is acquired only when he is standing upon it, but not otherwise, as we learned in the following Boraitha: "If one was in the city and said: It is known to me that my employees have forgotten a sheaf in my field (I myself, however, did not forget it), it shall not be considered a forgetfulness as mentioned in the Scripture, lest one say it is not called forgotten; therefore it is written: 'And thou forgettest a sheaf in the field.' There it is considered a forgetfulness, but not if he has recollected it when he was already in the city." How shall the Boraitha be understood?

It is said, first: "Lest one say it is not called forgetfulness, by which we see that the Boraitha would state that it is considered as forgotten, and afterwards is proved the contrary, that it is not considered as forgotten."

We must, therefore, say that when he was still in the field it first escaped his mind, and then the minds of his employees; but if he kept it in his mind, and the employees forgot it, it is not considered as forgetfulness. And why so? Because when he was standing upon it, his property gives him title to it, even if afterwards it escaped his mind. But when he was in the city, even if he was aware of it, and afterwards it escaped his mind, it is called forgetfulness; because he was not on his field, his property does not give him title. And so it is, as Ula and also Rabba bar bar Hana explained our Mishna, that the case was only when he was standing upon his field.

R. A'ha, however, objected to Ula's statement: "There is a Mishna (Maaser Sheni, V., 9): It happened that Raban Gamaliel, with the Elders, were sailing on a boat, and R. Gamaliel said: The tithe, which I am going to measure, should be delivered to Joshu, and the place where it is now is leased to him. Another tithe for the poor should be delivered to Aqiba ben Joseph; he should take possession of it for the poor, and the place where it is now found is also leased to

him." Now, were then R. Joshua and R. Aqiba standing upon R. Gamaliel's field, and, nevertheless, we see that they acquired title to it? And Ula answered him: This question fit coming from a man who never studied. When R. Abba came to Sura, he told the students of the college that so said Ula, and so I objected (and I did not get a satisfactory answer from Ula), said one of the students to him: "R. Gamaliel assigned to them movable property through real estate." R. Zera accepted this explanation. R. Abba did not. Said Rabha: "R. Abba is right in opposing it." Then was there not a *Sudarium* through which usually title is acquired in consummating a sale? But as the grain, which was already tithe, would not be considered as R. Gamaliel's property, and he had only the benefit of choosing the men whom he likes to give it, and such a benefit is not considered as money, that it shall be sold by *Sudarium*, the same is not considered as money to acquire it through real estate. (But R. Gamaliel renounced his ownership) and to ownerless property every one can acquire title. And for this purpose, R. Gamaliel leased his property to them, that it should belong to them for a certain time. So it is considered their property, and they acquire title to it. (Said the Gemara:) In the reality it is not as Rabha said, because the gifts that belong to the priest, it is written, you shall give to him, and therefore title cannot be acquired through a *Sudarium*, which is only an act of buying and selling.

[paragraph continues] But to assign movable things as real estate, it can be called a valid gift.

R. Papa, however, said: "In the above case of R. Gamaliel the title was acquired through his property, and nevertheless there is no contradiction to Ula's theory, because in this case the things of tithe which were assigned to the two persons named were not ownerless, but belonged to R. Gamaliel, and he transferred them through his property, and this suffices even if they were not standing on the property assigned to them." Said R. Shimi to R. Papa: "Let us see the case of a divorce, [1] where also a third person transfers it to her, and nevertheless, said Ula, the divorce is valid only when the woman is standing upon her property." In a case of divorce it is different, as the laws permit that it be delivered to her against her will. R. Shesheth, the son of R. Idi, opposed: "Is this not an *a fortiori* conclusion? namely, a divorce which is permitted to be delivered to her against her will, nevertheless it is necessary that she should be standing upon her property; so much the more, a gift the title of which is acquired only by the acceptor's will, it should be necessary that he should stand upon property." Therefore said R. Assi: "The theory of the *a fortiori* conclusion would not be applied here, as the reason why the property gives title is because her property is considered as her hand, and cannot be less in value than her messenger, who acquires title of a gift for her, even when she did not appoint him to do so, for the reason that it is self-evident she would not refuse to accept a gift." In the case of a divorce, however, which is not for her benefit, a messenger without her consent cannot accept for her in a matter which is supposed to be against her will; and there is a rule that a messenger cannot accept anything which is not beneficial to his principal. And the same is the case with her yard.

"If we have seen them running," etc. Said R. Jeremiah in the name of R. Johanan: "The case is, when the owner was running after them, and overtook them." He, however, propounded a question, what would the law be in the case of a gift, and R. Aba bar Kohana received the decision afterwards, that even if he had not overtaken them, he acquired title, because a third person transferred it to him.

Rabha propounded a question: When one throws a purse of money through an open door, and (after passing through the

house) it came out through another opening, what is the law--has the owner of the house acquired title to it or not? Shall we say that, although the purse did not rest in the house, it is considered as if it had rested? Rejoined R. Papa, according to others R. Ada bar Mathna or Rabbina, to Rabha: "Is it not a similar case as in our Mishna, where it is said: 'When he sees them running,' etc., where R. Jeremiah said in the name of R. Johanan that he only acquires title when he ran after them and overtook them; and then he propounded the question, what is the law in the case of a gift, from whom afterwards R. Aba bar Kahana heard that by a gift he acquired title through his property even when without overtaking them?" In the case of our Mishna the animals were also only running through the field without resting there, and nevertheless it is said that the property gave title to him. The same is therefore even in our case. So Rabha rejoined: "Both these cases are different, as there, although the animals did not rest upon the field, still they ran upon it, and touching the ground may be considered as if they had rested upon it, which is not the case with the purse, which did not touch the ground at all."

MISHNA *IV*.: When a thing was found by the minor son or daughter of a man or by his man or maid servant, or by his wife, the found article belongs to him. When, however, it was found by his son or daughter of age, or by his Jewish man or maid servant, or by his divorced wife, although he had not yet paid the amount due according to her marriage contract, the found article belongs to the finder.

GEMARA: Said Samuel: "Why did the rabbis say that the found article of a minor son belongs to his father? The reason is that, as soon as he finds it, he runs with it to his father without any delay. (He picked it up, therefore, specially for his father, and so it belongs to the parent.) (Kethuboth gives another reason why the found article of his minor daughter or his wife belongs to him, and therefore here the question is only of the minor son.) Shall we say that Samuel is of the opinion that a minor cannot acquire title for himself, according to biblical law? (for if the minor could acquire title for himself, the rabbis would not say that the found article should always belong to his father, even in the case where the son is independent of his father and supports himself). Did we not learn: "When a man hires a workman to labor in his field, it is allowed for the son of the workman to gather the forgotten sheaves in the same field (in

case the son is poor)? When, however, the workman was working (as a partner) for a half or a third or a quarter of the products of the field, then his son is not allowed to gather." (As then the workman is considered as the owner of the field. The son is, therefore, not allowed to gather in the same field.) R. Jose, however, said: "Even in the latter case his son and his wife are allowed to gather in the same field (as R. Jose is of the opinion that the son even can keep that which he gathers for himself, and so he can do it even when his father is the owner of the field, when the son himself is poor)." And Samuel said that the law is according to R. Jose's theory. This would be right when we say that Samuel is of the opinion that a minor can acquire title in himself, for the reason that we say the minor gathers it for himself, and the father afterwards acquires title to it from his son (and therefore he said that the law is according to R. Jose). But when Samuel was of the opinion that a minor cannot acquire title for himself at all (how could Samuel say that the law is according to R. Jose, that the son may gather in the same field?), as the son can only acquire title to it for his father, and his father is a rich man; how is it allowed that the son as well

as his wife may gather in the same field? Nay, this presents no difficulty, as Samuel only gives the reason of the Tana of our Mishna, but Samuel himself did not accept the theory. But does R. Jose really hold that a minor had a right to acquire title according to biblical law--is there not a Mishna in Tract Gittin, in which his opinion there contradicts his opinion here? Therefore Abaye said: "It is, however, allowed that the son may gather in the same field for the following reason (the rabbis consider this field as a field in which the gatherers after the youth were already in the field, in which case the sheaves are allowed to be gathered even by rich people, because the poor had already renounced their ownership in the field, and the same is the case with this field), that the poor (at the start) renounce their right to gather in this field, as they know that the son of the workman will gather in there where the father is working." R. Ada b. Mathna, however, objected to Abaye's statement: "Is it allowed for a man to put a lion in his field, that the poor men shall be frightened to run away when seeing it? (It means if the son has no right to gather in this field it should not be allowed for him to be there at all, and then the poor will not renounce their right to gather in this same field?)" Therefore says Rabha: "In this case they gave him the right to acquire title, although he cannot do so in other cases, because the other

poor men would be satisfied with this; for when they themselves will be hired as workmen, their sons also would be allowed to gather in the same field."

And he differs (*i.e.*, Samuel, with his above-stated reason of the Mishna) with the opinion of R. Hyya bar Aba in the name of R. Johanan, who said (about the expression "of age" and "minor" in our Mishna) that it is no matter if the son is of age or a minor; but even if of age, if he lives with his father and depends upon him, he is considered as a minor. On the other hand, even a minor, if he is independent of his father, is considered as of age.

"*The found article of his Jewish man or maid servant*," etc. Why? Suppose he would be only hired as a workman, we have learned: "When a thing is found by a workman, it belongs to him. This is only the case when the employer has said to him, Clean my field or dig it to-day; but when he has hired him for any work for the day, the found belongs to the employer." (And why, then, should not the case in our Mishna be the same?) Said R. Hyya bar Aba in the name of Johanan: "The Mishna treats of a case where the servant was working at a labor similar to piercing pearls, and his employer did not want him to interrupt his ordinary work with any other work, not even to pick up a found article, and therefore (even when it happened that he had found a very precious thing) it belonged to himself." Rabha said: "The case here is that he picked up the found article without interrupting his work (and therefore it belongs to himself)." R. Papa, however, said: "The case in the Boraitha, where it is said that the found article belongs to the employer, means only when the working-man was hired to gather found articles for him; *e. g.*, when his field was flooded, and he hired him to gather the cast-up fish."

(In such a case only any other found article belongs to the employer, but not in any other case.)

"*The found article of his wife*," etc. If she was divorced, is it not self-evident? The case was where it was doubtful if the divorce reached her legally, and in such a case the husband is still bound to support her; lest one say that for that reason her found article belongs to him, it comes to teach us that the reason why her found article belongs to the husband is only to prevent animosity, which cannot apply here, as here there is already animosity.

MISHNA *V.*: When one has found a note which secures real estate, he shall not return it, because it can be collected by the court; but if not, he shall return it, as it cannot be collected.

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[paragraph continues] So is the decree of R. Meir. The sages, however, say: "He must not return (to the parties), as at any rate the case will come before the court and the money will be collected."

GEMARA: How is the case? Shall we assume that the debtor admits, even in the first case, why he shall not return to the lender, and if he does not admit, why shall he return it, even when there is no security, the note cannot be collected only from encumbered property, but from free property? The case is when the debtor admits, and the reason why it must not be returned is this: It is to be feared, perhaps, the note was written in Nisan, but he did not receive the money in question before Tishri. And if it will be returned to the lender, he will take possession of goods sold in the mean time against the law. If so, then why is it not to be feared in the case of all the notes which come before the court? In all the notes there is no weak point; but this note, because lost, has a weak point. R. Elazar said: "They differ when the debtor does not admit. R. Meir holds that a note without security cannot be collected even from unencumbered property, and the rabbis hold that it can be collected; but when there is an admission, all agree it must be returned without any fear that perhaps it is paid, and his admission is a χοινωνια (a sort of conspiracy.)" R. Johanan, however, said: "They differ only when there is an admission, and the point of their difference is this: R. Meir holds that a note without security is collected from unencumbered property only; the rabbis, however, hold, that from encumbered property also. But in case there is no admission, according to all it must not be returned, because it is to be feared that the note is paid."

There is a Boraitha in support of R. Johanan objecting to R. Elazar's statement in one point and to Samuel's in two: "When one has found a note, if there is security, although both admit it shall not be returned to one of the parties; if, how. ever, there is no security, when the borrower admits, it shall be returned to the lender; but if there is no admission, it must not be returned to either of them. So is the decree of R. Meir, as he used to say that notes to which there are security can be collected even from encumbered property; but if there is no security, it can be collected only from free property. The sages, however, say any note can be collected even from encumbered property." Hence there is a contradiction to R. Elazar's statement in one point, for he says: R. Meir holds that a note with. out security is not to be collected from any property, and he says,

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also, that according to both R. Meir and the rabbis there is no fear for a *Kainunia*, and the Boraitha states that a note without security can be collected from unencumbered property, and it is also too plain to see that according to all, the Boraitha fears a *Kainunia*, in that it states that even when they both admit, it must not be returned. [But is this not two points in which R. Elazar is contradicted by the Boraitha? Nay, it is counted only one, because there is only one reason for both the theories, namely: As he interpreted it, the difference between the Tanaim of the Mishna in case there is no admission, he was compelled to say that such a note is not to be collected even from free property; and when, according to his interpretation when there is an admission, all agree that it must be returned, he was compelled to say that there is no fear for a Kainunia.] And there is a contradiction to Samuel in two points; the first one is the same as to R.

Elazar's statement, as he also interpreted the Mishna when there is no admission; and the second is to Samuel's statement elsewhere, that if one has found a bill of sale he must return it to the owner without fear that it is a paid one, and the above Boraitha, which states that even if they both agree, it must not be returned to either of them, contradicts directly Samuel's statement, as we see that the Boraitha fears that it is paid even when they both agree; and so much the more in the case of Samuel, when the debtor does not admit. Samuel said: "The reason why the sages hold that a note without security is to be collected from all kinds of properties is, because that according to their supposition the mistake, in not mentioning the security, is made by the scribe, but there is no doubt that the lender who took the note had intended that the amount should be secured by all the property of the borrower." Said Rabha bar Ithi to R. Idi bar Abin: Did Samuel indeed say so-did he not declare elsewhere that the scribe must be advised by the owner regarding the increment to the field in case it is mortgaged, and will be taken away from him, and also that in such a case he shall have the right to collect his money from the best estate, and that all his estates are mortgaged to this sale, but he must not write such things without advice in the matter? Shall we assume that the one who said, in the name of Samuel, the above statement does not hold, that Samuel stated the last one, or both contradictory statements can be reconciled? There is no difficulty in explaining. The first statement of Samuel is in case of a money loan, in which usually one who gives money is very careful in securing all

the borrower's property, and if it was not so mentioned in the note it must be a mistake of the scribe's; and the other one is by a regular sale, in which it can happen that one needs an estate only for a short time and he does not care if it will be taken away from him afterwards, as it happened that Abuha bar Ihi bought the best estate of his sister. Afterwards it was taken away by one of her creditors, and he complained before Mar Samuel. The latter questioned him: Is it mentioned in the bill of sale that her property is security? And he answered "No." Then Samuel said: "You can go in peace." He questioned: "Did not the master say that the omission of security was only a mistake of the scribe?" And the answer was: "This is only in the case of notes on money loans; but in a case of a bill of sale, it can happen that the buyer needs the real estate only for a short time."

Rabha said: "If Reuben sold a field to Simeon with security, and the creditor of Reuben came and took it away, this is the law, that Reuben has a right to summon him before the court, and the creditor cannot say, I have nothing to do with you, because Reuben may claim that finally the debt will return to him for payment. According to others, the same is the case even if the field was sold without security, because Reuben may say: I dislike to have Simeon incensed against me."

Rabha said again: "If Reuben sold a field to Simeon without security, and before he took possession of it there were claims against it, he can retract; but not when the claims arose after he had taken possession, because the seller can say, You have bought a cat in a bag (without looking to see what there was in it), and therefore you must keep it." What act of the buyer is considered sufficient as a Hazaka (occupation)? When he has improved the borders of the field. According to others, the same is the case even when the field was sold with security, because the seller can say to him, Show me the warrant by which the field will be taken away from you, and I will repay the money to you, but not before. It was taught: "If one sold a field and it was found that it was not his, Rabh said: The money as well as the increase must be returned." Samuel, however, said: "The money only." The schoolmen asked R. Huna: "When the increase in

question was stated plainly in the bill of sale, what is the law? Shall we assume that Samuel's reason rested on the theory that the increase was not stated, then in our case the seller is obliged to return; or that Samuel's reason rested on the theory that in reality he did not

possess any estate, and if the money paid would be returned with any increase, it would appear usurious?" R. Huna answered: "Yea and nay," as he himself was in doubt. It was taught, however, by R. Na'hman in the name of Samuel, that "the increase does not belong to him, even if it were in the bill of sale, for the reason just mentioned." Rabha objected to R. Na'hman from the following Mishna [Gittin, V., 1]: "Encumbered property is not liable either for the used fruits, for the increase of the estate, or for the support of the wife and daughters; for the benefit of humanity." (For if this would be practised, nobody would buy a field, for fear it might be taken away from him.) Now, from the expression "encumbered," it is to be inferred that free estate is liable even for the increase; and is this not the same case as when it was bought from one who did not possess any estate? Nay, a creditor may be meant. If it is so, how is the first part of the same Mishna to be understood, that "of the used fruit"? If there is a creditor, has he the right to use the fruit at all? Did not Samuel say: "The creditor has the right to collect from the field of its increase, but not of the fruits." We must, therefore, say that in this part the case of a robbery arises and, consequently, the latter part also treats of a robbery--why, then? Is it not customary in a Mishna that the first part should treat of one case and the other part of another? But is it not otherwise explained in the following Boraitha: "What is meant by the expression 'for the increase of the estate'? If one has robbed a field and it is to be taken away from him; the amount of the field is to be collected even from encumbered property; the increment, however, from unencumbered only." Now, how was the case? If we assume that it is from a robber, why should the robber get any benefit? It must, therefore, treat of a case where the robber had sold the field to another, and the other has increased its value, and nevertheless it is said that it must be paid for the increment also? Answered R. Na'hman: "And without your objection, could, then, the Boraitha be taken as it reads? It must be corrected; correct it, also, that it treats of a creditor." The Gemara raised another objection from the further explanation of the above Boraitha: Come and hear: "What is meant by the expression 'of the used fruits,' etc.?" '

Here, also, it cannot be interpreted to mean that it was taken away from a robber, for the reason explained above; and it must treat of a case as explained above, and nevertheless it is said that for the used fruits is to be collected. (Are, then, not the fruits to be

considered as an increment?) Said Rabha: "The case was that one had robbed a field full with fruits, and he had consumed the fruits and digged excavations in it. When, then, the robbed one came to complain, he collected for the field even from the encumbered property of the robber, but for the fruits of his free estate only." Rabha bar R. Huna said: "It means that it was taken away from Gentiles for debt. The robbed one, then, when he complains, collects as above." Rabha did not explain as Rabha bar R. Huna, because the expression, "and it is to be taken away from him," is to be interpreted by the court. Rabha bar R. Huna did not explain as Rabha, because the same expression means that the field is to be taken away in good condition, and not when it was spoiled by digging. R. Assi, however, said: "The Boraitha is to be corrected, and it speaks of two different parties in the case as follows: If one robbed a field full with fruit, and he consumed the fruit and sold the field, then the buyer collects his money from the encumbered

property of the robber, and the robbed one for the fruit from the free estate only."

Let us see: according to both Rabha and Rabha bar R. Huna, is this not a debt without any written document, the law of which is, that it cannot be collected from encumbered property? The case arose after it was decided by the court, which is equal in strength to a note. If it is so, why not the fruit also? The case was that the decision was for the principal estate, but not for the fruit. What compels you to interpret the Boraitha with such an explanation? Because usually men claim of the court first for the estate and after for the fruits.

Did Samuel indeed say that the buyer does not collect for the increase--did not Samuel say to R. Huna bar Shilath: "Be careful, in writing a bill of sale or a mortgage, to mention that it should be collected from the best estate, and the increase and the fruit?" Now, what case is referred to? If a creditor, has he then a right to the fruit? Did not Samuel say: "The creditor collects the increase, but not the fruit?" It must, therefore be said that Samuel means to say that there is a suspicion that the seller is a robber? Said R. Joseph: "Samuel speaks of a case where such was the condition, that he should be responsible also for the increase, with the same legal formality." Said Abaye to him: "Is it then allowed to lend a saah of grain to get back the same measure (although the price of it may be then higher, seeming usurious), when it was in accord with the legal formality?" and

he answered: "There is a difference between a loan and a sale. Here it is a loan, and therefore it is allowed."

The text reads: "Samuel said: 'The creditor,'" etc. Said Rabha: "From this it is to be inferred that the seller shall write the bill of sale as follows: I, the first party, assign the goods to you, and I will discharge all claims which may arise against the sold property, and am responsible for the trouble and increase you may have made, and it shall also be testified to in this bill of sale that the transaction was consummated with good will, etc." Said R. Hyya bar Abin to Rabha: "If it is so, how would it be with a gift, in which case such a bill of sale is not made, as the donor would not care to take such a responsibility on himself? Does this affect the case so that the donor is not bound to pay for the increment?" And he said, "Yea, it is." "But if so, does then a gift give more right than a sale?" And he rejoined: "Certainly it has, because the buyer gets it returned from the seller, which is not the case with a gift."

R. Na'hman said: "The following Boraitha supports the statement of Mar Samuel, but my colleague, Huna, interprets it for other purposes, namely: 'When one sold a field to another, and finally it is to be taken away from him, he collects for the estate from encumbered property, but for the increment from free estate only. (Hence there is a support to Samuel's theory.) Huna, however, interprets that the Boraitha speaks of when it was bought from a robber.'"

We have learned in another Boraitha: When one sells a field and the buyer has improved it, and a creditor takes it away, then, when the buyer collects his money, if the value of the increase was more than the expenses, he collects the expenses from the creditor, and the difference between the expenses and the value of the increase from the owner of the field; when, in reverse, he collects from the creditor the value of the increase only, how would Samuel himself explain the above Boraitha? If the case is when it was bought from a robber, in the first part there will be a

difficulty, as, according to his theory, no increment must be paid to a robber; and if it speaks of a creditor, then the whole Boraitha would not agree with him, as, according to his theory, a creditor collects the increment of the field (without being obliged to return the expenses?). The Gemara explains this: "If you choose, it speaks either of a case of where it was bought from a robber who possessed real estate, or when the increment was mentioned in the bill of sale with the legal formality.

[paragraph continues] And if you choose to explain that the Boraitha speaks of a creditor, here also it presents no difficulty, if you take into consideration that there is a difference between an increment that is not yet ripe, where in such a case a creditor can collect it, and an increment of grain, which is already ripe for harvest, which a creditor cannot collect. But is it not a fact that Samuel's court collects every day even from grain that is ripe for harvest? This presents no difficulty. When the claim is equal to the amount of the field with its increment (then the creditor collects the increase also). When, however, the claim is only for the estate, then he pays for the increment and takes the estate."

If one buys an estate knowing that the seller is not the real owner of it, and, nevertheless, he has paid money for it, then the money must be returned to him, but not the increment. So is the opinion of Rabh. Samuel, however, said: "Even the money is lost." In what point is their difference? According to Rabh the money was given by the buyer as a deposit, and the reason why he did not plainly say so was because he was afraid he would not accept it. Samuel, however, means that knowing that the property did not belong to the seller, he gave his money as a gift; and the reason why he did not say so is because he was afraid he would be ashamed to accept it. But let us see: According to both he has not bought the estate; how then did he take possession of it and consume its fruit? The buyer thought so: I, meanwhile, will work the estate and use its fruit as the robber did till now, and when the real owner of it will come, then the money shall be, according to Samuel, lost; or, according to Rabh, returned. Rabha said: "In case an estate is bought from a robber, the Halakha prevails that he collects both the amount and the increment, although the latter was not spoken of. In case the buyer had knowledge that the estate did not belong to the seller, and nevertheless he paid money and has improved the estate, the Halakha prevails that he loses the increase but not the money, and also that not mentioning the security in a bill of sale or a note given for a loan is to be considered as a mistake of the scribe, and not, as Samuel said, that the scribe must not do it without advice."

Samuel questioned Rabh: "If the robber, after he has sold it, bought it from the real owner, can he be substituted for the real owner, to take it away from his buyer?" And Rabh. answered: Nay, because before the sale the intention of the (so-called) robber was to buy it from the owner; consequently, he

sold to the buyer the right which he would acquire afterwards. What is the reason for ascribing to him such an intention? Mar Sutra says: "Because it would be disagreeable for him to be called a robber." R. Ashi, however, says: "It is agreeable to one that he shall remain an honest man." What is the difference between these two opinions? There is a difference in case the robber has given the robbed field as a gift, according to him who says that it is agreeable to remain an honest man; the same is the case also in a gift; but according to him who says that he would not

like to be called a robber, with a gift it is different, as he could not be called a robber even if the gift would be taken away from the donor.

It is self-evident that when (before the robber bought it from the owner) he sold it again to another man or bequested it, or gave it as a gift, then certainly his intention was to remove the goods from his possession, he sold it first; the same is the case when he inherited this estate; after he sold it, he may rescind the sale by returning the money, as here cannot apply the supposition that he intended to remain an honest man, as the estate came to him not through his effort; but in case he took possession of the field afterward as a creditor of the robbed one, then it is to be seen whether the latter possesses other estates; and the creditor insisted on having this field, then it is to be inferred that it is to remain in the possession of the buyer; but if not, then his intention is not certain and the buyer cannot insist upon this estate; but when he received it after it was sold as a gift, then R. A'ha and Rabbina differ: one maintains a gift is the same as an inheritance; the other, however, says that a gift is equal to a sale; for if he would not trouble himself to please the robbed one, he would not get this gift, and the intention to remain an honest man in the eyes of the buyer is applied here. At what time did he buy it from the robbed one, so that the above intention can be applied that the buyer can insist upon this sale? R. Huna said, when the robber bought it before he was summoned by the buyer to the court (but when he was summoned and he appealed to the court, then we see that the above intention was not in his mind, and he bought the field only for himself). Hyya bar Rabh said: "Before the judgment was in his hands." R. Papa said: 'The time did not expire until the days of the proclamation began." [1]

Rami bar Hama opposed, saying: "Let us see what was the act by which the buyer acquired title to the estate; with the bill of sale? Is that not to be considered as a piece of broken clay vessel, as the estate was not his?" Said Rabha to him: "The theory of Rabh's statement can be explained, that when the buyer said to him, 'I trust upon your word that you will see that the estate shall remain in my possession without any trouble,' and for this satisfaction that his word was trusted, the intention mentioned above is to be applied here." R. Shesheth, however, objected from the following Boraitha: "If one says, 'I sell to you my inheritance from my father, or what I will catch with my net,' he says nothing. If, however, he said, 'I sell you what I will inherit from my father, who is dying, or what my net will catch this day,' the transaction is valid. Hence we see that the sale of property which is not yet in possession is of no value?" Answered Rami bar Hama: "Here I see a great man with a wonderful objection." Rabha, however, answered: "I see the great man, but I do not see the wonderful objection, as the two cases have no comparison at all. In the case of Rabh, the buyer said to him, I rely upon you, therefore he troubles himself to make his sale good so that he shall not be called a robber afterwards; but here the buyer cannot rely upon him (because it was not known to him if he will inherit anything or not)." The above objection of R. Shesheth was sent to R. Abba bar Zabda, and he answered: "It would be of no use to bring this objection before the students, as it seems to me that they will not be able to answer it." Rabha, however, said: "It ought to be brought before the students of the higher class, for it seems to me they will understand the difference between the two cases as stated above. A similar case happened in Pumbeditha (and the court decided on Rabh's theory, and objection was made from the above Boraitha, and R. Joseph said then, as Abba bar Zabda and Abaye, the same as Rabha."

But what is the reason that in the latter part of the Boraitha the sale is of value? Said R. Johanan: In the latter part, when his father is dying, the sale is of value for the honor of his father (as it

may be that he needs money for the expense of burial, and he sells it beforehand not to disgrace his father in delaying the burial). And what about the net? that is also an enactment of the sages to make the sale valid, as perhaps he needs food for the day.

R. Huna said in the name of Rabh: "If one says that the

estate which I am about to buy now shall be transferred to you at the same time that I acquire title to it, the title is acquired and it cannot be rescinded any more." Said Rabha: "It seems to me that Rabh's statement applies only when he said any field which I am about to buy, as the donee relies upon him; but if he mentioned a certain field, then the donee does not rely upon it, as he may think perhaps this field is not for sale at all (the Gemara said) by God, Rabh said even when he specified a field, as Rabh's theory is in accord with R. Meir [Kedushin II., 43*b*] that a man can grant a thing which is not yet in existence in a case of marriage, and our case is equal to that."

Samuel said: "If one finds in the market a note, made for a loan, which contains the legal formality that it should be collected even if the loan did not take place, it is to be returned to the creditor; for if it was written for the purpose of making a loan which did not as yet take place, yet the note is valid, as his promise was to pay at any rate, and there need be no fear that it was paid, because if so it would be torn." Said R. Na'hman: "When I was about six or seven years old, my father was among the scribes of Mar Samuel's court, and they used to proclaim that a note of the above-mentioned kind, if found, should be returned to the creditor." Said R. Amram: "This is also supported from the last Mishna. 'All documents signed by the court are to be returned.' Hence we see that there is no fear that perhaps it is paid." Said R. Sera to him: "The Mishna may speak of documents in which it is testified that, according to the order of the court, the creditor had already taken possession of the estate, or judgments against debtors who at that time had no property, and both kinds are not to be paid with money." Said Rabha: "Are these kinds of notes not payable? Did not the court of Nahardayi say that even an estate the value of which was ascertained and assigned to the creditor is to be returned till twelve months elapsed, and Amemar of the same place testified that he, as one of the judges of the, above city, had declared there is always time it should be returned if paid." Said Rabha: "In those cases there is another reason, for, according to the law, the creditor would not be obliged to return the estate, and it is only an enactment of the sages to return it on account of the verse [Deut. vi. 6]: 'And thou shalt do that which is right and good in the sight of the Lord.' Therefore, when he took possession of the estate, it was considered as a regular sale, and also the debtor had either to tear the note made for a loan when

paid, or take from him a bill of sale; and by not doing so, he harmed himself, which, however, in the case of a common credit note, the above reason cannot be applied, for the following reason: It may happen that the creditor, when he got the money, promised him to return the note afterwards, as at this time it was not at hand, or he kept it back for the expenses of the scribe."

R. Abuha said in the name of R. Johanan: "If one finds a note on the street, although approved by the court, it shall, however, not be returned to the creditor, because it may be feared that the note is paid, and much less when such was not approved." R. Jeremiah, however, objected from

the above mentioned Mishna: "All documents, etc." Said R. Abuha to him: "Jeremiah, my son, all cases are not equal! The Mishna may be explained so that it speaks of a debtor who was already known as a liar." Said Rabha: "And even in such a case, must it be taken as a rule that such a man never pays his debts?" "Therefore," says Rabha, "the Mishna in question explains as R. Sera said above." And as the case of a liar is mentioned, we may say thus: R. Joseph bar Minumi said in the name of R. Na'hman: "When one was ordered by the court to pay, and he claimed afterwards he had done so, he may be trusted (with a rabbinical oath). If, however, the court had only decided and the order was not yet issued, and the debtor claimed he had paid it, he is not to be trusted, and the creditor can get a judgment (when he takes a rabbinical oath)." R. Zebid, however, in the name of R. Na'hman said: "In both cases he is to be trusted; and when the creditor claims a judgment, it is not to comply with his request; therefore, if there is some difference in the above cases, it may be as follows: When he was ordered by court to pay his debt and afterwards he said he had done so, and there were witnesses that he had not, then he is considered a liar in regard to this money that he is not to be trusted when he says again he has paid it; if, however, it was only decided, but the order was not yet issued, and the witnesses contradicted him, he may be, nevertheless, trusted, if he says again he had paid, because his first statement was only to gain time, and he thought that until the judges would consider the matter that an order be issued the money would be paid."

Rabba bar bar Hana said in the name of R. Johanan: "If one claims hundred zuz and the other denies, but witnesses, however, testify for the whole amount; afterwards he says, I have paid it, he is considered a liar in this case." A similar case arose

with Shabbathai, the son of Mrinus, who assigned a silk garment to his daughter-in-law in her marriage contract, and she accepted it. Afterwards the marriage contract was lost, and he denied that such a thing was written in the contract; witnesses, however, testified that he had written; then he declared he had given her the garment, and when the case came before R. Hyya, he decided that the above Shabbathai is to be considered a liar in this case. R. Abin in the name of R. Ilaa, quoting R. Johanan: "If it was decided that the defendant take an oath, and afterwards he said he did so against the testimony of witnesses that he had not, he is considered a liar in regard to this oath." When this statement was reported to R. Abuhu, he said: "It seems that such a statement holds only when he was ordered by the court, but not when he declared himself willing to take an oath, as then it may happen that he had after reconsidered, and therefore he cannot be considered a liar." When this statement was reported again to R. Abin, he said: "So, too, was my declaration. And so it was taught elsewhere plainly." R. Asi said in the name of R. Johanan: "If one finds a note made for a loan which was approved by the court, dated the same day on which it was found, it must be returned to the creditor, because there is no fear that the loan did not take place, as it was approved by the court, and also there need be no fear that it was paid, as the loan was made only that day." Said R. Zera to R. Asi: "Did R. Johanan say so--did you not state in his name that if the loan was paid, one cannot use the same note for another loan, as its strength to collect from encumbered property ceased (from the moment it was paid)? Now, then, on what date does it mean that it cannot be taken for another loan? If for a later date, then this note cannot be used at any rate, as the note is of an earlier date. We must then say that it means it cannot be used for another loan on the same day." [1] And he rejoined: "Did I say that it can never happen? I said only it is not usual." R. Cahana said. "The statement of R. Johanan treats only when the borrower admits that the note was not yet paid. If so, what comes he to tell us? Lest one say the note is paid, and the reason the debtor admits that it was not paid is only

because he wants to take another loan, and save the expense of writing another note, he comes therefore to teach us that it is not so, as in such a case the creditor himself would oppose, for the reason that if this would be heard in the court it would cancel the note."

R. Hyya bar Abba said in the name of R. Johanan: "If one claims to have done what was enacted by the court to do, he says nothing; for the enactment of the court is good as if one held a note in his hand." And the same, when he heard this, asked R. Johanan: "Is this not said in the [Kethuboth] Mishna: When a woman shows her divorce without the marriage contract, she nevertheless collects what is written in the marriage contract?" Answered R. Johanan: "If I would not take away the broken vessel which had covered the pearl, thou hadst not found it." Said Abaye: "Why, then, this Mishna may treat of such places where it is not customary to write a marriage contract at all, and so the document of divorce is considered as if she had the contract in her hand; but where the above contract is customary, she cannot collect without it. After consideration he retracts the former statement, and said what I said above cannot be the reason; for if such is the case, that where the contract is written she cannot collect it without the contract, how should she collect when she becomes a widow after betrothal (with a ring, as the custom was then, and from that time she was already considered a married woman; the marriage contract, however, was written after the official marriage)? You can say that she collects it when she brings witnesses that her husband is dead; then this would count nothing, as the heir could nevertheless say that he had paid already; and lest one say that it is so, then to what use would be the enactment of the sages that the woman shall get support."

MISHNA *VI.*: When one finds documents of divorce, of enfranchisement of a slave, of presents, or of receipts, he should not return them (to the person for whom they were made), because it may be that the person who had written the documents had changed his mind not to give them for whomever they were written.

GEMARA: Rabba bar bar Hana lost a document of divorce (which he had to deliver to the women as a messenger) in college, and when it was found he said: "If you require signs to identify the document, I have them; and if I am trusted by you to recognize it, then I recognize it" (and he had done both, he had told what were the signs and also recognized it by sight). When it was returned to him he said: "I cannot tell if they did it on account of the signs, as they hold that the biblical law requires only signs; or signs only would not be sufficient, and it was returned only by sight, in which only a scholar is trusted, but not a common

man." (There is an objection to our Mishna from the following Mishna:) "If one has found in market a document of divorce, and if her husband admits that he wrote such a divorce he shall return it to her; and if not, he must not return it to either of them." Now then, it states that when the husband admits, it may be returned. Why then: let it be feared that perhaps the husband wrote the divorce to deliver it in the month Nissan, and he had not given it to her until Tishri, and in the meantime he had sold (legally) the fruit of her property, which was produced from Nissan to Tishri, and afterwards when the woman would collect with the same divorce, she would take away from the buyers the products from the time it was written illegally. This, however, would be correct according to him who holds that as soon as the husband has decided to divorce her, he has no more right to use her products; but according to him who holds that he

has a right until the divorce is delivered, what can be said? When she comes to collect, it can be said to her, Bring evidence at what time the document was delivered to you. But why should this be different from the note made for a loan stated above, where he must not return it, even when the debtor admits, for the same reason stated above by the divorce, let him there also return it to the creditor, and when he will come to collect, evidence shall be required at what date the note made for the loan was delivered to him? It may be said, in the case of a divorce the buyer can say that the rabbis had decided to return the divorce to her only for the purpose that she should be able to remarry; but regarding the collecting, she must bring evidence when the divorce was delivered to her, but by a creditor the buyer cannot say anything. Now is it obvious that the purpose the robbers had in returning to him the note was for collecting.

The rabbis taught: "If one finds a document of enfranchisement on the market, if the owner admits, it may be returned to the slave; and if not, it must not be returned to either of them." It states, however, that when the owner admits, it may be returned to the slave. Why should it not be feared here the same as above, that the document was written in Nissan and was not delivered to him until Tishri, and meanwhile the slave had bought property for himself, and the owner (who had not yet delivered the document) sold out, and when the slave came with his document of enfranchisement, which was written in Nissan, he will certainly collect it illegally? The above answer can also

apply here, that evidence will be required from the slave at what time the document was given to him.

"*Wills or presents*," etc. The rabbis taught: "What is to be considered a will? if it is written, the property so and so shall belong to so and so after my death; and what is considered a note for a gift, a present? if it is written, the property so and so belongs to so and so from this date, but he cannot sell it or use its fruit until I die. Is it to be assumed that if it was written it shall belong to so and so from to-day without the above explanation, the donee did not acquire title of it! (he certainly acquires title to sell it and to use it from that day)." Said Abaye: "The Boraitha means to say thus: When is the note for a gift to be considered equal to a will? If it is explained that he shall not take possession of it before his death."

Now let us see, after all the discussion above, the reason for our Mishna that it shall not be returned because the testator did not consent to return it; but if he does, it may be returned; is that not contradictory to the following *Boraitha*: "If one has found documents of wills, of hypothecation, or presents, although both admit, it is not to be returned to either of them?" Said R. Zebid: (It is not as Abba bar Mamal tried to explain the above contradiction that one speaks of a healthy man and one of a sick man, but) "both speak of the latter case, and nevertheless there is no contradiction, as our Mishna treats of a case where the testator himself, who can change his mind to assign it to anybody, said, Give to another; so that if it would be returned to whom it was first assigned, he would not acquire title to it, but the last one would: and the Boraitha which states that it shall not be returned speaks of the son of the testator, and the reason is, it is to be feared that perhaps the testator has not given it to him because he has decided to assign it to another; and, therefore, he did not deliver it to him, and the son, after the death of the father, to whom the intention of his father was known, assigned the estate to another and already delivered the document to him, and afterwards he decided to give it to the one to whom it was previously assigned by his father, but as the document was already given to the second, and he

could not retract it, he declared that the father's will was, to deliver it to whom it was first assigned with the intention that the latter should summon the party to whom the son had delivered his document, so that finally the estate should be divided among them. The court, therefore, may say it will not be returned for the reason explained

above; but if you wish that the man in question should get the estate, go and draw up another document and deliver it to him and then the will of your father will be complied with.

The rabbis taught: "If one finds a receipt (of a marriage contract), it is to be returned to the husband when the woman recognizes it, but not otherwise." Now then, why should it not be feared the same as above? Perhaps she wrote it to deliver it in Nissan and she had not delivered it before Tishri, and in the meantime she had assigned to somebody else her marriage contract for the benefit of the products in the interim from Nissan to Tishri, and afterwards if the goods would be collected by her receipt, it would be illegal." Said Rabha: "Infer from this, that the Boraitha is in accord with Samuel, who says: 'When one sells a note made for a loan and afterwards he relinquishes the debt mentioned in the note, it is relinquished, and even his heir can do so (so that the debtor must pay nothing and the money taken for the note is to be returned).'" Abaye, however, said: "Even if we should say that Samuel's decision is not to be considered, the case in question is to explain when the marriage contract is in her possession and she brought it before the court. According to Rabha's theory, however, the marriage contract is not to be considered, for she may have had two." Abaye, however, rejoined: "First, it is not to be feared that there may be two; and secondly, the collection on account of the receipt takes place from the date it was signed, no matter when it was delivered." The last statement of Abaye is in accord with his theory elsewhere, that witnesses with their *signature* give title to whomever the document was written.

MISHNA *VII.*: One who found documents in which was assigned by the court the property of the defendant in benefit for the plaintiff, or obligations of supporting (his step-daughter, or) documents of Haliza or such where the annulment of a marriage of a female minor is expressed, documents of a claim and of arbitration, and other documents made by the court, are to be returned to whomever they belong. When one finds a note in a καψα or bag or a roll or a bunch of notes, it must be returned. What is to be considered a bunch? Three bound together. R. Simeon ben Gamaliel says: "When three notes of the same debtor and different creditors are found, they should be returned to the debtor; but if three different debtors from one creditor, then to the creditor. If one finds a note among his own notes and he does not know to whom it belongs, it shall be placed in court

until Elijah will come. If there is a συ μ φωνια, he shall act according to it."

GEMARA: What is meant, claiming documents? In the college of Babylon they used to explain it as documents of plaintiff and of the defendant. R. Jeremiah, however, said: Documents of the arbiters taken by the parties."

"And all documents made by the court." There was found a divorce which was written in the

city of Shevéré, which was situated on the river Rackth, and it was brought in the court of R. Huna. Said R. Huna: "It is to be feared that there are two cities of such a name (therefore it is doubtful if it may be returned)." Said R. Hisda to Rabba: "Look up this matter, for in the evening R. Huna will inquire about it of you." Rabba did so, and found the quotation stated above in our Mishna. Said R. Amram to Rabba: "How can you, master, decide the matter of a legal marriage from a money case?" And he answered: "Tardus! Did not the Mishna state documents of Haliza, etc. (are these not documents of legal marriage)?" In the meantime the pillar of the college broke, and each of the above sages claimed that this happened as a punishment for the disgrace of his honor (Rabba because he was insulted by the expression of R. Amram, and the latter because he was ashamed of being called Tardus).

"A roll or a bunch of notes." The rabbis taught: "What is called a roll?" If there were no less than three; and a bunch must contain the same number, but in this case they must be tied together. Shall we infer from this that such a knot is to be considered as a sign of identification? Said R. Hyya: "It treats of a case where the notes of the bunch were also rolled, one in the other." If it is so, then it is a roll (already mentioned above). A roll means that each of the notes was rolled separately in it; and a bunch means they were rolled together. What shall be proclaimed: the number? Why, then, no less than three: must he not proclaim it even when there were two? As Rabbina said elsewhere, that if one finds a number of coins he must proclaim that he found money without mentioning the number and without explaining what kind of money, the same is the case here, he shall proclaim: "I have found documents," without any explanation (and the loser must explain their condition and how many).

"*R. Simeon ben Gamaliel*," etc. If they belong to the creditors, how could they be together? But perhaps they were

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lost by the creditors while going to register them. The case was when they were already registered. But perhaps they were lost from the hand of the register. It is not usual for one to leave his registered note with the register.

"When three borrowed from," etc. For if they were lost by debtors, how could they be found together? But perhaps they were lost on the way from the scribe's. The case was when three different handwritings were found. Perhaps they were lost on the way to the register's? Usually the creditor registers the note, but not the borrower.

"If there is," etc. R. Jeremiah bar Abba said in the name of Rabh: "A συ μ φωνια that is in the hand of the creditor is invalid even when it was written by himself, as it may be that he prepared it in case the debtor would give him the money at a time when it would not be easy for him to make a receipt, and much less when it was written by a scribe, as it may be that he expected money from the debtor, and while waiting for it, it happened that the scribe called upon him. Does not our Mishna, which states he shall do accordingly, contradict Rabh? As R. Saphra said elsewhere, if it were found between torn notes, so also can be explained our Mishna. An objection was raised. Come and hear: "A συ μ φωνια in which was proved by witnesses (and the creditor denies that he received the money), it is sufficient if the witnesses admit their signatures." Read: The witnesses must be questioned if they saw the payment. There is another objection: "A συ μ φωνιαwhich is proved by witnesses is valid." It means that the payment was

approved by the court, and this explanation seems to be right, as the latter part states that if there are no witnesses it is invalid, and it cannot mean that no witnesses at all, as this would be self-evident. Hence it must be explained that when it was not approved by the court, it is considered as if there were no witnesses. In addition to the text mentioned above, we learn: "If there were no witnesses, but it was in the hands of the depository, or it was placed below the signatures, it is valid: and the reasons are that a depository was trusted by the creditor; and below the signatures, because if it would not be paid, he would not permit them to spoil the note."

Footnotes

3:1 The law is that if one denies all, there must be no oath, biblically; but if there is an admission in part, a biblical oath must be taken for the remainder. If, however, there are witnesses, although he denies, he must pay the full amount.

4:1 The text here is very complicated, and Rashi and Tosphat with great difficulty interpret it differently. It seems to us, however, that our explanation is the exact sense of the text.

11:1 In ancient times, and even now in our day in those places where the Jews use their own law, all transactions and even marriage contracts are conclusive only when the buyer or the husband takes in his hand a garment which belongs to the other party to the agreement. This is called *Kabboloth Kinyan*, which means the taking possession of what he has bought. And this is based upon the Scripture [Ruth, iv. 7].

13:1 The text of this page is so complicated that it is difficult to explain its exact meaning, for we cannot understand the meaning of Rabbina's explanation, and also the difference between holding the text of a note, or the certification of the same, as the court certifies only that the text is legal. We could not find any one of the commentators who was able to interpret this clearly. Still, according to our method, we could not omit it, and, therefore, we have translated it almost literally.

15:1 "Mossar" in Hebrew means "deliver."

22:1 The law of it is explained in Tractate Gittin.

33:1 The custom was that, after a judgment was issued that the estate should be transferred from one to another, this act was to be proclaimed in public places.

37:1 Hence we see it may happen that a loan may be paid on the same day?

Next: Chapter II

CHAPTER II.

LAWS RELATING TO FOUND ARTICLES, WHICH MAY OR MAY NOT BE KEPT WITHOUT PROCLAMATION, AND HOW FOUND ARTICLES SHALL BE CARED FOR, ETC.

MISHNA *I.*: There are found articles which belong to the finder without any proclamation; namely, scattered fruits or scattered money in a public thoroughfare, small sheaves, strings of pressed figs, bread of a baker (as all bread of the baker is alike; home bread, however, differs, and is recognizable), strings of fish, pieces of meat, and shorn wool from the country where it was shorn, cleansed flax, and stripes of scarlet wool--all these belong to the finder (when it was found in such a place where people pass). So is the decree of R. Meir. R. Jehudah, however, maintains: If there is a change in the found article, which usually ought not to be, as, *e.g.*, he found a fragment of a clay vessel in pressed figs, or he found a coin in a loaf of bread, he must proclaim. R. Simeon b. Elazar says: All stew vessels which are for sale he need not proclaim.

GEMARA: How much of the scattered fruit belongs to him without proclaiming? Said R. Itzhak: "If in a distance of four ells there were scattered fruits the measure of kab." Let us see in what condition did he find it. If it was placed in such a way as dropped unintentionally, why only a kab? Even if there are more, it should be his; and if it was placed in such a manner that it can be supposed they were placed intentionally, even less he should proclaim. Said R. Uqba bar Hama: "It treats of a place where the grain is gathered from the barns, and if he found the size of one kab scattered within four ells, which it is too much trouble to gather, the owner of it usually would not take such trouble and renounce his ownership, but if it were scattered within a shorter distance, he may think, 'I will take the trouble to pick it up afterwards,' and he does not renounce his ownership." It was taught: "The renouncing of hope in regaining a lost article, which it is not yet certain is lost (*i.e.*, the article was found before the loss was known to the owner, but usually, becoming aware of its loss, he will not try

to regain it). According to Abayi such must not be taken in consideration, and Rabha, however, maintains it may." They, however, do not differ when the article has a mark that in such a case it must be supposed that when he will become aware of it, he will not renounce his hope to regain it because of the mark; and even if thereafter it was heard that he had renounced his hope, still the finder has not acquired title, because at the time he found it, it cannot be considered that the hope should be renounced when the owner becomes aware of its loss, because there is a mark, and he will certainly think, "I will try to search for it by identifying the mark." The same also do not differ when the article was found at the seashore or near a waterfall, that it belongs to him, even if it has a mark, because the law allows it, as will be explained further on; the point of their difference, however, is in case the article has no mark. Abayi is of the opinion that the finder cannot acquire title to it, because the owner is not yet aware of his loss. Rabha, however, maintains that he does, because it is certain when the owner becomes aware of it that he will renounce his hope. Come and hear. Our Mishna states: "Scattered fruit, it is his." Although he

did not know whose it was? Said R. Uqba: b. Hama: "The Mishna means a case in the season of gathering the grain from the threshing floor, which is considered an intentional loss." Come and hear. Scattered money belongs to him, and certainly the loser of it was not aware when he lost it (as if he were, he certainly would pick it up), and nevertheless it belongs to the finder. This can be explained as R. Itzhak said elsewhere: "Usually a man inspects his purse frequently (and the loss of his money was already known to him when the finder picked it up)." Come and hear the other part of the Mishna: "*Pressed figs and bread of a baker, it is his*." Why, the owner was not aware of it? It also can be said because such are of great value he must have been aware of the loss. [The same was objected to, based on further expression of our Mishna, "Stripes of scarlet wool," and the answer was the same as above.] Come and hear (another objection). "χασσια which were found in a public thoroughfare, although they were near the field where they grew, and also a fig tree the branches of which were bent toward the street, and one found figs beneath, the people are allowed to eat these, and it is not considered robbery; they are free from tithe." Now the Boraitha would not contradict Abayi, as the cassia are of great value, and it is known where the fruit of the

fig tree would drop; but the latter part of the same Boraitha states that if it were an olive tree or carob, it is prohibited. Would not this be a contradiction of Rabha's statement? Said R. Abbahu: "It is different with an olive tree, as the color of the olives is the same as that of the tree, and they can be recognized wherever they are found [1] (and therefore the owner of them does not renounce his ownership, thinking that any one will recognize that they are his). If so, why should it be the same with the fig tree mentioned above? Said R. Papa: When figs drop, they become soiled (therefore their owner does not care for them any more). Come and hear. A thief or a robber who took an article from one and gave it to another, or an article falls into the Jordan and is washed up at another place, and some one Picked it up, the latter is entitled to it. Now this would be correct concerning a robber or the Jordan, where the owner sees his article lost, and renounces his hope of regaining it; but with the case of a thief, has then the owner seen him, that he should renounce his hope? R. Papa interprets the Boraitha, saying that it treats of an armed robber; but is it not the same as a robber, which case has already been mentioned? It treats of two kinds of robbers. Come and hear: "If the river has flooded one's beams, wood, or stones, and carried them away to another field, the latter may use them, because their owner has lost his hope." We see that the reason is because it was certain that the one had renounced his hope already, but when uncertain it is not to be used (and this would contradict Rabha). The case was that the owners could have saved the articles; if so, how is the latter part of the same to be understood? If the owner came to get them, he is obliged to return them. Now, why going to get them? If he could save them he should be obliged to return, even if he had not come to get them, etc. The case was that he could save them with great trouble. If he came to get them, we see that he had not renounced his hope; and if not, it is to be supposed that hope is renounced. Come and hear (another objection). How can a case be where one shall separate heave-offering without the knowledge of its owner, and nevertheless the heave-offering

shall be valid? Thus, if one goes to the field of his neighbor and gathers grain, and has separated the heave-offering without knowledge of the owner, if robbery can be suspected, the heave-offering is not valid; and if not, it is; and how does he know that there is no robbery? When the owner appears while his neighbor is on his field engaged in the above-stated work, and said to

him, You should separate for the priest from the better ones; then, if better ones are found, the heave-offering is valid, but if not it is invalid (because the remark of the owner was but ironical, as there *were* no better ones). If, however, the owner had added to the heave-offering, it is valid, although better ones were not to be found. We see, then, if there were better ones the heave-offering is valid, though the separator did not know of it while doing so (let it be the same with regard to renouncing hope, that, even when it comes afterwards, the finder shall acquire title even before the renouncing was known?). Rabha explained this in order that the Boraitha shall agree with Abayi's theory: "The owner, with his remark, appoints his neighbor to be his messenger." (Said the Gemara:) It seems that Rabha's explanation is correct, for if he would not become his messenger, how can his act be of any value? Is it not written [Numb. xviii. 28]: "Thus shall ye also offer," etc., and from the word "also," which is superfluous, it is declared that it includes a messenger, and it is also declared there that as the word "ye" means "it shall be done intentionally," so also if this is done by the messenger the intention is necessary? (hence we see that only a messenger has the right to separate heave-offering), and the above Boraitha must therefore be explained that he appointed him as a messenger, saying, "Go and separate"; but he did not determine of which grain he should separate. And usually the owners separate from the middle one; the messenger, however, does so from the better one; now when the owner comes and says, "Why did you not separate from the better one?" if there is to be found still better than he had separated, his act is valid; but if not, the saying of the owner must be considered ironical, and the messenger's act is of no avail.

Amaimar, Mar Zutra, and R. Ashi happened to be in the garden of Mari bar Issak, and the gardener placed before them dates and pomegranates. Amaimar and R. Ashi partook. Mar Zutra, however, did not; meanwhile the host came and said to his gardener: "Why did you not serve the rabbis with the best

ones?" Said both Amaimar and R. Ashi to Mar Zutra: "Why does the master not partake of it now? Have we not learned if better ones are to be found the heave-offering is valid?" And he answered: "So said Rabha, that this expression is to be cited in case of heave-offerings only, because it is a meritorious act, and it may be assumed that the owner made his remark with good intentions; but here, it can be said that he said so to the gardener only not to be ashamed (to be considered niggardly)." Come and hear. R. Johanan said in the name of R. Ishmael b. Jehouzadok: "Whence do we know that a lost article, which was flooded, is allowed to be used by one? Because it is written [Deut. xxii. 3]: 'In like manner shalt thou do with his ass, and in like manner shalt thou do with his raiment, and in like manner shalt thou do with every lost thing of thy brother's which may have been lost by him, and which thou hast found.' From which it is deduced that when it is lost to him, but not to others; exclude, then, the flooded article, which is lost to him and also for every one; and as in the case of flooding the article is allowed for use, no matter whether it had a mark or not, the same is the case with an article which is not allowed for use, when it is not certain that the owner of it has renounced his hope. No matter whether the article has a mark or not, it is prohibited, even in case where the hope would be renounced by the owner immediately after he became aware of his loss." Hence Rabha's statement is objected to, and the Halakha prevails according to Abayi, as this is one of the six things. (See Baba Kama, p. 163.) [1] Said R. Achi' the son of Rabha to R. Ashi: "Now as it is decided that Rabha's statement is objected to, how then do we eat dates which the wind blows away to the highway?" And he answered: "Because there are insects which consume them; the owners of the dates therefore renounce their hope of such." The former questioned again: "In case the trees belong to orphans, who are disqualified to renounce their hope, let therefore all

fallen dates not be used." And he rejoined: "Must we then consider that the whole valley belongs to orphans?" The former said again: "But if it be known that such is the case, how is the law?" And he rejoined: "Then it is prohibited."

"*Small sheaves*," etc. If the mark on the article in question

was of such a nature that it could be effaced by stepping on it, Rabba said: "That such a mark is not to be considered." Rabha, however, said: "It is." An objection was raised from our Mishna. Small sheaves in public thoroughfare may be used without proclamation, but if they were found on private ground he may take it provided he proclaims. Now how was the case?

If it treats of such that have not a mark, what shall he proclaim? We must, therefore, assume that although they have a mark they are his if found in public thoroughfares, because the mark is usually effaced by stepping upon it; hence it is an objection to Rabha. He may say that the Mishna treats of such that have not a mark, and your question, What shall he proclaim if on private ground? is to be answered that he shall proclaim the place where it was found, as it was taught that both sages mentioned above differ concerning the place. Rabha maintains that it is a mark, and Rabba says it is not. [1]

Said R. Zbid in the name of Rabha: "The rule concerning a lost article is this, as soon as the owner exclaims, 'Woe, the damage I have had!' he does not care to search for it any more (it is considered renouncing of hope, etc.)." The same said again, in the name of the same authority: "The Halakha prevails that sheaves on public ground belong to the finder in all cases; however, in private thoroughfares, if it was found in such a manner indicating that it was dropped, it can be used, and if indicating that it was placed so intentionally, he may take it providing he proclaims; and in both cases it is only when it has no distinguishing mark; but if there were, no matter in which place, and how they were placed, he must proclaim."

"*Strings of fish*," etc. Why? Let the knot be the required mark? It means, *i.e.*, that it was found in the way as fishermen usually tie it; but let the number be the required mark. Such a number is used by all fishermen.

R. Shesheth was questioned whether a number is considered a distinguishing mark or not, and he answered: "We have learned this in the following: 'If one found silver or copper vessels, a cassiteron of tin, or any other metal vessel, the finder need not return it, unless the owner of it identify it by a mark

or the exact weight of it.' Now, as the weight is a mark, the same is the case with the size and number."

"*And pieces of meat*," etc. Why let the weight be a mark? when the weight was as customary with all butchers. But let the kind of the piece be a mark, *e.g.*, leg or shoulder, etc. Have we not learned in the following Boraitha: If one found pieces of fish or a bitten fish, he must proclaim;

barrels of wine, oil, grain, dry figs, and olives are his? It treats of a case when there was a distinguishing mark in cutting it, as Rabba bar R. Huna used to cut it in the form of a triangle. It is so also to be inferred from the statement "a bitten fish" (and this is certainly a distinguishing mark, so also pieces of fish mean which were cut differently). The master says barrels of wine, etc.; but have we not learned in a Mishna further on: Pitchers of wine or oil he must proclaim? Said R. Zeira in the name of Rabh: "The Mishna treats of a case when the pitchers were sealed and marked. If it is so, then the Boraitha treats of a case when they were found open: must it not be considered an intentional loss (*i.e.*, when open it would be spoiled by reptiles, vermin, etc.)?"

Said R. Houshea: "It treats of a case when it was covered with a cork, and not smeared with clay." 1 Abayi, however, said: "It may treat also of sealed ones, and nevertheless it does not contradict the Mishna, as the Mishna speaks of a case when the market for wine was not yet opened, and the barrel found was of one who had sealed it with a mark which could be recognized. The Boraitha, however, speaks of a case after the market was opened, and usually the marks on the barrels were all alike, and could not be distinguished from each other, as it happened with Jacob bar Abba, who found a barrel of wine after the market was open, and he questioned Abayi and was told that he may keep it for himself."

R. Bibi questioned R. Na'hman: "Is the place (where it was found) considered a mark or not?" And he answered: "This we have learned in the above Boraitha: 'If one found barrels of wine, etc., they are his'; now if the place would be considered a mark, then why should he not proclaim the *place*?" R. Zbid, however, said: "This is no support, as it may treat

of a case that when he found it on a dock where many barrels were placed."

R. Mari said: "The reason why the sages decided that the place is not to be considered as a mark, was because it can be said to him who claims that the article was lost by him in this place, that there were men passing the same, and another one may have lost it there."

It happened that one found unripe dates 1 near the winepress room, and questioned Rabh, and was told that he may keep it for himself; the man, however, hesitating, and Rabh said to him: "You may give a part of it to my son, Hyah." Shall we assume that Rabh holds that a place is not to be considered as a mark?

Said R. Abba: "Rabh's reason was, it was seen on this article that the owner had renounced his hope in it, as it was already mouldy."

"*R. Simeon b. Elazar said*," etc. What does he mean by the expression new vessels? Said R. Jehudah in the name of Samuel: "By the word new he means that the eye was not acquainted with it." How was the case if the vessels had a mark? What is it if the eye *was* not yet acquainted with them, and if there was no mark? What use is it that the eye should be acquainted with them? It can be used to return it to a young scholar who claims that he recognized them by seeing. If the eye was acquainted with them, we do so; if not, we do not. As R. Jehudah said in the name of Samuel in the following three things. The rabbis 'hesitate to tell the truth when being questioned in a tractate (*e.g.*, if some one asked, can you repeat the tractate so and so by heart, they answer no, although it is not true, out of modesty), and in conversation between him

and his wife, and also about the hospitality of a private one, they usually answer in the negative, although it is not so (because people should not abuse his liberality and bring the man to poverty). And when it was questioned to what purpose did Samuel declare the above, Mar Zutra answered: "It was said with regard to returning a lost thing to one of the rabbis, if he recognized it with his eye, if we know that only in the

above three things he hesitates to tell the truth, but in all other things he speaks the truth, then the article in question is to be returned to him, but not otherwise."

It happened that a silver goblet was stolen from Mar Zutra the pious, when he was in a *hospes*; in the mean time he saw a young man who dried his hands, after washing, with the garment of another, and he thought, this man does not care for his neighbor's money, and he accused him until he confessed that he stole the goblet. We have learned in a Boraitha: R. Simeon b. Elazar admits that new vessels, in case the eye was familiar with them, that he must proclaim them; however, the following new vessels which were not familiar to the eye he need not: namely, strings of needles, spinning instruments, and strings of hooks, but only when he found single strings; if, however, he found a pair of each, he must proclaim. The same R. Simeon used to say: "If one saved something from a lion, a bear, a tiger, or a bardalas, or from the sea, or if he found it on a dock or in one of the great markets, and in any place where it is crowded, he may keep it for himself, as the owner of it has surely renounced hope. [1] It happened that one found four zuz tied up in a rag, and was dropped in the river Biron, and he came before R. Jehudah and was told to proclaim. Why so; is it not equal to the depth of a sea, as stated above? With the river Biron is different, because it was frequently cleaned, and there were stones and fences for fishing, the loser may not renounce his hope in regaining it; furthermore that the majority of the fishers and the cleaners of that river were Israelites, and the loser may think that in case an Israelite finds it he may return it.

R. Jehudah was walking behind Mar Samuel in the market, where wheat prepared for fermenting was sold, and R. Jehudah questioned him: How would be the case if some one should find a purse here? And he answered: It would belong to the finder. But how if an Israelite would come and give the mark of it? (the former questioned again). And Mar Samuel answered, then he would be obliged to return. The former rejoined: Are not the two decisions contradictory? And he answered: I mean not according to the exact law, but by moderating the

same, as it happened to my father, who found certain asses in a desert and returned them to the owner after an elapse of twelve months; though he was not obliged to do so in accordance with the strict law, he nevertheless did so by moderating the same. Rabha happened to walk behind R. Na'hman in the market of tanners, according to others in the market where the rabbis used to assemble, and he questioned him: How if one would find here a purse? And he answered: It would belong to him. And how if an Israelite would claim that it is his by giving a mark? And he answered it counts for nothing; but if he claims with a certainty that it is surely his, Rabha said again. And the latter rejoined, it would be equal to him who cries for his collapsed house or for his sunken ship (as the ownership of it is lost with the losing).

There was a vulture which captured meat in the market, and put it between the trees of Bar Marian, and when Bar Marian came to question Abayi, he was told to keep it for himself. Although the majority of the inhabitants were Israelites, hence infer from this that the Halakha prevails in accordance with R. Simeon b. Elazar of our Mishna, even in case the majority are Israelites? With the vulture it is different, as it may be just as the depth of the sea. But did not Rabh declare that meat which was hidden from the eye must not be eaten for fear it is not legally slaughtered? It may be said that Bar Marian saw the vulture taking it from a place where legal meat was sold. R. Hanina found a slaughtered goat on the way from Tiberias to Ziporus, and he was allowed to use it. Said R. Ami: It was allowed as a found article in a crowded place, in accordance with R. Simeon b. Elazar; and also as a legal slaughter in accordance with R. Hananiah b. R. Jose the Galilean of the following Boraitha: If one has lost his goats or hens, and thereafter he found them slaughtered, R. Jehudah prohibited their use, and R. Hananiah b. R. Jose the Galilean allowed it. Said Rabbi: It seems that the opinion of R. Jehudah is correct when he found it in rubbish, and the opinion of R. Hananiah is correct when he found it in a house. Infer from all this that if one finds an article in a crowded place it is his, even when the majority of the inhabitants are Israelites. Said Rabha: Such meat may be used even when the majority of the inhabitants are heathen, but the majority of the butchers are Israelites. R. Ami found slaughtered pigeons on the way from Tiberias to Ziporus, and he questioned R. Assi, according to others R.

Johanan, and according to still others he questioned the college, and was told to keep it for himself. R. Itzhak of Naph'ha found a ball of cord, of which nets were made, and he came before R. Johanan or in the college, and was told to keep it for himself.

MISHNA *II*.: The following articles he must proclaim: When he found a vessel containing fruit or an empty one, money in a purse or an empty one, heaps of fruit or heaps of money, or even three coins which were one upon another, sheaves in private ground and bread made in a household, and shorn wool which looks as if it was already in the hand of a master, pitchers of wine or oil, all these he must proclaim.

GEMARA: The Mishna treats of a case when the fruit was found *in* the vessel, and the money *in* the purse; but how is it if the vessel was empty and fruit was scattered near by, or the purse was empty and the money was near it? It would be his without any proclamation, and the rabbis taught the same plainly in a Boraitha, with the addition that if a part of it was in the vessel or in the purse, and another part on the ground near by, he must proclaim. Does this not contradict the following: If one has found an article which has no mark, near an article which has a mark, he must proclaim; and if the owner comes declaring the mark, and takes the article, he is also entitled to the other one which was without a mark (hence the vessel and the fruit in question should be proclaimed)? Said R. Zbid: This presents no difficulty. The Boraitha which states it is his treats of, *e.g.*, an empty vat and near it flax (it is not to be supposed that the flax fell out of the vat, as some would remain there, and the same is the case with an empty purse and money near it), and the Boraitha which states it should be proclaimed treats of an empty basket, and fruit which is supposed to have fallen out of the basket. R. Papa, however, maintains that both Boraithas may treat of a basket and fruit, but one speaks of a case where some was left in the basket, and the other one treats when it was entirely empty; and if you wish, it may be said that both treat of a case when nothing was left, but in one case the face of the vessel was turned toward the fruit, and in the other case the vessel was with a rim (so if the fruit which was found

near it would fall from the vessel, some of it would remain there because of the rim).

"*Heaps of fruit*," etc. Infer from this that the number is a mark? Perhaps the plurality stated in the Mishna is not

correct, as it ought to be singular. If so, infer from it that "place" is a mark? Perhaps the plurality *is* correct. 1

"*Three coins one upon the other,*" etc. Said R. Itzhak of Magdahl: 2 Only when they were like a steeple. The same we have learned in the following Boraitha: If one found scattered coins, they are his; if, however, they were lying in a steeple-like manner, he must proclaim. And what is to be understood as steeple-like manner? Where three coins were lying one upon another.

Does not the Boraitha contradict itself? It begins "scattered money," of which it is to be inferred that if it was not entirely scattered, but in the condition where a part overlapped another, and the other part was on the ground, it must be proclaimed; and immediately after it states that it was in a steeple-like manner, etc., of which it is to be inferred that if they were not so but overlapped, it is his? The Tana is of the opinion that if they were not placed in a steeple-like manner it is considered scattered.

Said R. Hanina: "The case in question speaks of coins of three different rulers; but if they were of the: very same, ruler, they are his." How is this to be understood? If they were placed in a steeple-like manner, he must certainly proclaim, no matter of what ruler they are; and if scattered, even if they are from three rulers; what is it? Therefore if the statement was made by R. Hanina, it is as follows: The case is only when the three coins were placed as if they were of three rulers: viz., the larger one at the bottom, the middle one, which was a little smaller, upon it, and the third, a still smaller one, on the top, which indicates that some one placed it so intentionally; but if the coins were of one ruler and of one kind, that all were alike, even if they were one upon the other, it is his, as it may happen that they were lost by the owner in such a manner. R. Johanan, however, is of the opinion that even if they were from one ruler he must proclaim.

What shall he proclaim? If the number, why then three; even two should be the same. Said Rabbina: He proclaims the kind of coin. R. Ashi questioned: If they were placed like the stones of *Markullus* (an idol of ancient times which was worshipped by putting stones one upon the other), what is the law? Come and hear. There is a Boraitha: Scattered money, it is his; however, like the stones of Kullis, he must proclaim. And how were the above stones placed? Two on either side and one on top of both. The rabbis taught: If one finds a sala in the market, and his neighbor claims it is his, giving a mark that it is new, it is a coin of Nero or of another ruler, he says nothing; and even if he says my name is written upon it, it counts for nothing, because on a coin no mark is to be considered, as he may nevertheless have given it away to some one and it was lost by the latter.

MISHNA *III*.: If one found under a wooden wall, or a brick one, pigeons tied one to the other, or

if they were placed on a thoroughfare of a private field, he must not touch them. The same is the case with a covered vessel found in rubbish; if, however, it was uncovered, he may take it and proclaim.

GEMARA: Why shall it not be touched? Because it may be that some one has hid it, but it has no mark on it (so if it would be taken away he could not regain it), therefore it must be left until the owner will come and take it. But why should not the tying be a distinguishing mark? Said R. Abba b. Zabda in the name of Rabh: It means that they were tied, as usually, at the wings, but let then the place be a mark. Said R. Uqba bar Hama: When they were jumping; if jumping, then it may be that they were coming from some other place, and should be allowed. Yea, it may be so, and it may be also that one hid them purposely, and in such a doubtful case R. Abba. b. Zabda declared, in the name of Rabh, that it should not be taken from the very first; but if one nevertheless took it, he is not to be compelled to return it.

"*If he found a covered vessel*," etc. This contradicts the following: If he found a vessel hidden in rubbish, he may take it and proclaim, because usually the rubbish will be removed and some one else may take possession of the vessel (hence you see that he may take it, and our Mishna states it shall not be touched?). Said R. Zbid: This presents no difficulty. The Mishna treats of Kuva and Goblets, and the Boraitha treats of small. knives and double-pronged zincked forks which were mixed

unintentionally with the rubbish. R. Papa, however, says: In both, goblets were meant, but the Mishna treats of rubbish which is not to be removed, and the Boraitha of that which is to be; but if it is to be removed, the article which is there was certainly put there intentionally (it means that the owner does not intend to make use of it any more), therefore we must say that the rubbish in question was of a kind which is not to be removed, but afterwards it was decided that it should be. According to R. Papa's theory it is correct what the Boraitha adds, "as usually rubbish will be removed," but according to R. Zbid's theory, how is this additional expression to be understood? Read "as usually small vessels are thrown away with rubbish."

MISHNA *IV.*: If one found anything in a heap of rubbish or in an old brick wall, it is his; if, however, in a new wall, in the outer part, it is his; if in the inner part, it belongs to the owner. If, however, the house was rented, if even he found it in the *house* it is his.

GEMARA: It was learned that the reason was that the finder may say, that this article was hidden by the Amorites. But only the Amorites hide things, and the Israelites not? It means when the vessel seemed to be antique.

"*If it was a new one*," etc. Said R. Ashi: If the article was a knife, and the handle was from the outside, it is supposed it was placed there by some stranger; and if it was from the inside, it is to be supposed that it was put there by the owner of the house. The same is the case with a purse: it must be investigated whether the opening of the purse is outside or inside. If so, why does our Mishna state, "if from the outside it is his," without any distinction whether the handle or the opening of the purse was placed outside or inside? Our Mishna treats of round or roundish articles, which on all sides are alike. There is a Boraitha in addition to it, that if the articles were found on both sides, they are to be divided between the finder and the owner.

"*If it was rented,*" etc. Why so? Let us see who was the last tenant. Said Resh Lakish in the name of Bar Kapara: It speaks of a case when it was rented to three men. Infer from this that the Halakha prevails in accordance with R. Simeon b. R. Elazar stated above, page 51. Therefore, said R. Menashia bar Jacob, it speaks when it was an inn with three heathen. R. Na'hman in the name of Rabba b. Abuhu, how-

ever, said: "There is no difference who the guests were, even Israelites, if one of them lost something, he may say, 'There were no others, but my two neighbors. If they found it they would return it to me, as I had mentioned several times to them that such a thing was lost by me; and when they did not return it, it indicates that they would steal it, and there is no use arguing with them.'" (Consequently he renounced his hope of regaining it.) And R. Na'hman said, in accordance with his theory elsewhere, as follows: "If one has seen that a sala was dropped by one of two who were standing there (but he does not know to which of the two it must be returned). Why so? Because only two of them occupied the place, and the loser will think, 'As there was no other besides my neighbor, I will tell him, Only you could have found it, and you must return.' But if there were two others besides him, the finder of the sala may keep it for himself, as the loser would think, 'My sala is lost at any rate. If I claim it of one of my neighbors he would deny, and so, too, would say the other one' (consequently the hope of regaining is renounced)." Said Rabha: "If there were three, he must not return it only in case the coin has not the value of one *perutha*; but if it has the value of two *peruthas*, he must return. Why so? Perhaps they are partners, and one of them relinquishes his share to the other without renouncing any hope." The same said again: "If one has seen a sala dropped, and he took it before the owner renounced his hope, with the intention to rob it, he transgresses the three following commandments: [Lev. xix. 13] 'Nor rob him,' [Deut. xxii. 1] 'Thou shalt surely bring them back again,' etc., and [ibid., ibid. 3] 'Thou art not at liberty to withdraw thyself'; and even if reconsidering, he returned it, it is considered a gift; the transgression, however, remains. If, however, he took it with the intention of returning it, and after the owner renounced his hope he reconsidered to rob it, he transgresses the second commandment mentioned above. But if he was waiting until the owner renounced his hope, and then took it, he transgresses only the commandment of the last verse stated above." He said again: "If one has seen money dropped in sand, and afterwards found and took it, he is not obliged to return it, although the loser sifted the sand; for it may be supposed that the purpose of sifting the sand was because he thought, as it happened to me it also may happen to some one else, and perhaps I might find, if not mine, something of another loser."

MISHNA *V.*: If one found something in a store, it is his; if, however, between the counter and the storekeeper, it belongs to the latter; if before a money changer, it is his; if, however, between the chair where he usually sits and the table, it belongs to the money changer; if one has bought fruit or one sent him such, and he found money in it, it is his; if, however, he found it tied in a package he may take it, but proclaim.

GEMARA: Said R. Elazar: "Not only on the ground before the money changer, but even if he found it on the table, it is his." Whence did the same get such a law? Said Rabha: "From the expression of the Mishna, 'between the chair and the table,' etc.; let it state even on the table, or

if he finds in the table, as it states in the first part. If he found in the store? Infer from this that even the money was on the table (and the money changer being absent), it is his (as it may be supposed some one else forgot it, as the money changer is usually very careful)."

"*If one has bought fruit*," etc. Said Resh Lakish in the name of R. Janai: "It treats of a case where he bought of a merchant, but if of a private person, he must return; and so also taught a scholar in the presence of R. Na'hman. Said the latter to him: Did, then, the private person thresh it himself (though the expression in the Mishna is *fruit* it means also *grain*)? and the former answered, Then ignore the Boraitha. Rejoined R. Na'hman: It is not necessary to ignore it, as it could be explained that the case was where the owner threshed it by means of his male or female heathen slave (and if even they lost the money in question, it belongs nevertheless to the owner)."

MISHNA *VI.*: A garment is also included (in the verses concerning lost articles). Why, then, is it mentioned separately? To teach that all other articles should be equal to it; as a garment usually has marks and claimants, so also any article which has marks and claimants, he must proclaim.

GEMARA: In what verse is it included? Said Rabha: "In [Deut. xxii. 3] 'With *every* lost thing.'" He said again: To what purpose does the Scripture mention ox, ass, sheep, and a garment separately? (Is it not included in the cited verse above?) They are all needed, for if the Scripture would mention the garment only, one might say that it must be returned when witnesses testify that it belongs to the claimant, or when the claimant gives the mark which is on the material of it; but

if, *e.g.*, an ass, and witnesses or marks can be given of the saddle only, the ass is not to be returned; therefore ass is mentioned, and ox was also necessary to signify that a mark indicating that its tail was cut was sufficient, and the same is with sheep, that the mark, the wool shorn, suffices. But would it not be sufficient if the ox only, without the sheep, were mentioned, as it would be self-evident that the wool of sheep which was shorn is a sufficient sign for returning, as the same is the case with an ox with its tail cut? The answer to this (see Baba Kama, p. 127, the quotation *if an ox fall in* at the end).

The rabbis taught: It is written [ibid., ibid.], "Which may be lost to him," means to exclude a loss which has not the value of a *perutha*. R. Jehudah, however, says: "The words further on, 'which thou hast found,' signify this."

The schoolmen propounded a question: The returning, according to marks given, is biblically or rabbinically. What is the difference? Regarding the returning of a written divorce, by proclaiming the marks on it, if it is biblically, it must certainly be returned; if, however, rabbinically, it may be said that the sages made their enactment concerning money matters, but not concerning a biblical prohibition (for if an error would occur in such a case, a married woman would be allowed to marry again). Shall we assume that the Tanaim of the following Boraitha differ in that case; namely, testimony of witnesses must not be accepted on suppositions (*e.g.*, if witnesses came to testify that they suppose, by seeing the body of so and so, that he was killed, unless they testify that they had seen his face and his nose attached). Elazar b. Mahbai, however, said: "It may." Should we not assume that the point of their

difference is that the first Tana holds that signs are rabbinical, and Elazar holds that they are biblical? Said Rabha: "All agree that signs are biblical, and the point in which they differ is, one holds that the suppositions of such a case by his comrade may be relied upon, and one holds it may not (because an error may occur also in a case of a comrade)." He said again: "The fact that we return lost articles according to signs given, proves that it is biblically; for if not, how could the sages make such an enactment in a case of doubtful money? Should we assume that the finder is pleased to return the article according to signs, only because if it should happen that he himself lost an article, the same would be done to him?" Said R. Saphra to him: "What do we care for the pleasure of the finder, when the loser

is not pleased (*e.g.*, the man who claims and gives signs, and yet it is not the real ones)? Is it, then, usual that one should desire to do good to himself *in futuro* (which it is doubtful if it will happen) with money which does not belong to him?" Therefore said Rabha: [1] "All the losers would be pleased by giving signs that the articles should be returned to them, as they know that witnesses are not always to be found; and, on the other hand, the signs on the articles are not known to every one who would like to claim them, and only the loser, who knows the exact mark, will proclaim them and come in possession thereof" (and therefore it is possible that such an enactment was made by the sages, and it is not biblically). Finally said Rabha: "That the marks in question are biblically is to be deduced from the following verse [Deut. xxii. 2]: 'And it shall remain with thee until thy brother inquire after it.' Could, then, one bear in mind that it should be returned before it is inquired about? We must, therefore, say that the inquirer must be examined whether he is not a swindler, and by what means he can be identified if not by the exact marks; hence infer from this that they are biblically." He says again: "If it is your decision that the marks in question are biblically." "[If it is your decision." Did not Rabha just deduce it from averse? Yea, but still one can say that the examination mentioned above should be by means of witnesses.] If there were two persons who gave the very same marks, it must be reserved (until proper evidence is brought); if there were marks and witnesses contradicting each other, the witnesses have the preference. If there were marks and marks from two parties, and there was a third one who brought one witness, the third one must not be taken in consideration, and the article must be kept in reserve. If there were witnesses testifying that the ownership of the article by this man was when it was woven, and other witnesses the ownership of another man when it was lost, the latter has the preference, as it may be that the first one sold it and it was lost by the buyer. If one party testifies to the length, and another

party to the width, the length has preference, as the width can be assumed by seeing the article when it was used. If one testifies to the length and the width, and another one testifies to the square, the former has the preference; the square and the weight, the latter has the preference. If the husband claims that the written divorce was dropped by him before it was delivered to his wife, and proclaims certain marks, and she claims it was dropped by her after she received it (consequently she is single and can marry), she has the preference (because if she had not received it, how could she know the marks?). However, the marks must be not in length and width, as she could see it before it was given to her, but a mark such as a hole in such and such letter of it. If the marks were the very same given by him and her concerning the length of the thread upon which the divorce was put, she has the preference. If both claim that it was in the χαψα (a kind of small case), he has the preference, because it is well known to her that the

entire contents of it he has placed there.

MISHNA *VII*.: Until what time is he obliged to proclaim? Until his neighbors are aware of it; so is the decree of R. Meier. R. Jehudah, however, says: "All the three festivals (Passover, Pentecost, and Tabernacles), and after the latest festival seven days, that the loser should be able to go home three days and return three days, and one day for the proclaiming of his loss."

GEMARA: A Boraitha in addition to the Mishna, which states "the neighbors of the lost article." How is it to be understood? Does it mean that the neighbors knew who lost the article? Let them go and return. Therefore it must be said that it means the neighbors of the place where the lost thing was found.

"*R. Jehudah said*," etc. There is a contradiction in the following: On the third of Mar Cheshvan they pray for rain. R. Gamaliel said: "On the seventh of it, which is the fifteenth after the festival, for the purpose that the last of the inhabitants of Palestine shall have reached Euphrates."

(Hence we see that *seven* days were needed for each tour.) Said R. Joseph: "This presents no difficulty. The cited Boraitha speaks of the first temple, of which it is written [I Kings, iv.]: 'Judah and Israel were numerous as the sand which is by the sea in multitude,' then fifteen days were needed; in the second temple, however, of which it is written [Ezra, ii. 64]: '*The* whole congregation together was forty and two thousand

three hundred and sixty,' etc., seven days are sufficient." Said Abayi to him: "Is it not written [Nehemiah, vii. 73]: 'So the priests and the Levites,' etc., and also [Ezra, ii. 70]: 'And the singers and the gatekeepers . . . in their cities'? and as it was so, the reverse of your theory should be held. In the first temple, then the people were very numerous, and caravans were going to and fro, day and night; not so much time was necessary as in the second temple, when caravans were not so frequently travelling and not in night-time." Said Rabha: "There is no difference between the first and second temple concerning a lost thing. The rabbis did not like to cause too much trouble to anyone." Said Rabbina: "Infer from this that the finder must proclaim the kind of the. garment he has found, for if he has only to proclaim a lost article, one day would be added to the loser for searching for his garments, to see what was missing. Infer from this that so it is." Rabha, however, says: "Nothing is to be inferred from this. The rabbi did not like to cause too much trouble, as stated above." The rabbis taught: "The first festival, the proclaimer must say: This is the first feast for my proclamation, and on the second he must say this is the second, and on the third he need say nothing (and this will mark that it is the third time)." The rabbis taught: "Formerly each finder used to proclaim on all three festivals, etc., as stated above; however, since the destruction of the Temple [which we hope will be rebuilt soon in our days], the sages enacted that it shall be proclaimed in the synagogues and houses of learning, and since oppressors have increased, it was ordered that the finder should notify his neighbors and friend, and he is quit." What is to be understood by the expression "oppressors"? They who claim that all lost articles belong to the government.

R. Ami happened to find a purse with dinars in the presence of a Roman, and he was afraid to take it. The Roman, however, said to him, You may take it for yourself; we are not Persians,

who say that a lost article belongs to the government. The rabbis taught: "A certain stone was in Jerusalem, and every one who had lost anything would go there, and the same did the finders. The one used to proclaim, and the loser would give the marks of the article lost, and if correct, he took it; and this is what we have learned in Tract Taanith concerning Chouna, who said, Go and see if the certain stone is covered by rain.

MISHNA *VIII*.: If one identifies the article, but not its marks, it must not be delivered to him; and if the claimant is known to be a swindler, even if he gives marks, as it is written [Deut. xxii. 2], "until thy brother inquire after it," which means until you shall investigate whether he is thy brother or a swindler.

GEMARA: It was taught: R. Jehudah said: An article, but not the kind of it, must be proclaimed, as swindle is to be feared. R. Na'hman, however, said: He proclaims also the kind of article, for if swindle is to be feared, there will be no end of the matter. An objection was raised from our Mishna, which states, "if he identifies the article without its marks," etc.; this would be correct if an article but not the kind is proclaimed. Then the Mishna comes to teach that even if he identified the article, it must nevertheless not be delivered until he gives the marks; but if, as you say, he proclaims the kind of article, is it not self-evident that without given marks it would not be returned? Said R. Saphra: "It may be said that he proclaims the kind of article, and the claimant gives marks, but not the essential marks, it is not to be returned, and the Mishna with the expression 'marks' means the essential ones."

"*And he who is known as a swindler*," etc. The rabbis taught: Formerly, if one lost an article he would give the marks and it was delivered to him. But since swindlers have increased, it was enacted that the claimant was obliged to bring witnesses that he was not a swindler; as it happened with the father of R. Papa, who lost an ass and thereafter found it at some one's place. When the case came before Rabba bar Huna, he said to him, Bring witnesses that you are not a swindler; and he did so, and Rabba questioned them: Do you know that this man is a swindler? And he answered: Yea. Said the claimant: *I* am a swindler? The witnesses rejoined: We meant to say you are not, and Rabba decided that it be returned, because one would not bring witnesses who would testify against him.

MISHNA *IX*: If the found article is of such a kind that it labors for its food, it shall be fed and labored with,; and if of such a kind which does not labor and must be fed, it shall be sold, as it is written [ibid., ibid.]: "And then thou shalt restore it," which means, deliberate how the restoration should be made. But what shall be done with the money? According to R. Tarphon he may use it, and therefore if be loses it, he is responsible. According to R. Aqiba, however, it must not be used, and therefore if it is lost, he is not responsible.

GEMARA: (The Mishna does not state any definite time.) Is it for eternity? Said R. Na'hman in the name of Samuel: "It means until twelve months have elapsed. We have learned the same in the following Boraitha: Each article which is subject to labor for its food, as, *e.g.*, a cow or an ass, he may keep it until twelve months have elapsed, and when this time has passed it may be appraised and the value of it deposited. Calves and colts he may keep three months, geese and hens thirty days, and after this time has elapsed it should be appraised," etc. R. Na'hman bar

Itzhak, however, says: "A hen (which lays eggs) should be kept twelve months (as it is equal to a cow which labors for its food), and the same is plainly stated in a Boraitha."

"*And if of such a kind which does not labor*," etc. The rabbis taught: "It is written: 'Thou shalt restore it to him,' which means you must see that the restoration is made; viz., if you have found several calves, colts, geese, or hens, you must not sell one of them for the purpose of feeding the remainder (for if so, it can happen that all of them should be sold for their food), but sell all at once and deposit the money."

"*But what shall be done with the money*," etc. We see that the sages mentioned in the Mishna differ only in case where the money was used, but if it was not, and it was lost, all agree that he is free. Shall we assume that our Mishna is an objection to R. Joseph's statement, who said (Baba Kama, p. 134): "That the bailee of a lost thing is equal to a bailee for hire"? R. Joseph may say that when the article was stolen or lost (by carelessness), all agree that he is responsible, and the point of their difference is, it was lost through an accident for which only a borrower is responsible. According to R. Tarphon, who permits the money to be used, he is considered a borrower, and is responsible; and according to R. Aqiba, who does not permit the use of it, he is not considered a borrower, and therefore not responsible for an accident. If so, to what purpose does R. Aqiba use the expression "therefore"? He did it because R. Tarphon used the same expression, and with him it was necessary, as he meant to teach thus: As the use of the money was permitted, although he did not, he is nevertheless responsible, because he is considered a borrower. But does not R. Tarphon say it was lost, which means even if not accidentally? As Rabba said elsewhere: "That where the expression 'it was stolen' occurs, it means by an armed robber; and where the

expression 'lost' occurs, it means accidentally, as, *e.g.*, the ship sunk in the sea, so also is to be explained here." Said R. Jehudah in the name of Samuel: "The Halakha prevails in accordance with R. Tarphon. Bid Ra'hba was in the possession of money belonging to orphans, and he questioned R. Joseph whether he may use it, and he answered: "So R. Jehudah declared in the name of Samuel, that the Halakha prevails in accordance with R. Tarphon." Said Abayi to him: "But was it not taught in addition: R. Helba in the name of R. Huna said that the case holds only with money obtained for a found article, he may use it for his trouble; but if the money was found, of which he had no trouble, it must not be used; and this money of the orphans which is in possession of the questioner came to him without any trouble?" R. Joseph said to the questioner: "Go, people do not allow I shall permit you." 1

MISHNA *X*.: If one found books, then he may read them once within thirty days; if he is unable to read, then he must unroll them once in thirty days (to air them). He is, however, not allowed to study in them for the first time; and, furthermore, no other one shall assist him. If the article was a garment, it must be shaken once within thirty days, and he may spread it out for its own sake, but not for his honor. Vessels of silver and copper may be used if for the sake of the articles, but not so often that they may become worn. If, however, the utensils are of gold or of glass, they must not be touched until Elijah will come. If, however, the article found was unfit for the finder to carry, he may leave it.

GEMARA: Samuel said: "He who finds Tephilin (Phylacterien) in market, he may appraise their value and use them immediately." Rabbina objected from our Mishna: "If one found books. . . .

he may unroll," etc.; hence it is not mentioned that he may appraise and use them. Said Abayi: "With Tephilin it is different, as they are always to be found for sale at the scribe's, as, *e.g.*, Bar Habu; written books, however, are very seldom articles which can be bought." The rabbis taught: "One who borrows the Holy Scrolls of his neighbor, must not lend them to another; he may open and

read in them provided he does not begin to study in them for the first time, and also he must not invite another to study with him. The same is the case if one deposits Holy Scrolls at his neighbor's: the bailee must unroll them (for airing) once in twelve months, and in the meantime he may read in them; he must not, however, open them for the purpose of reading only." Symmachus, however, says: "If they were new ones, he may air them once in a month; and if old, once in twelve months." R. Elazar b. Jacob says: "It makes no difference, once in twelve is sufficient."

The master said: "He must not lend them to another." Does this law apply only to Holy Scrolls? Is it not the same with anything else? Did not Resh Lakish say (in regard to a Mishna in Tract Gittin): Here taught Rabbi that a borrower must not lend an article to another, and the same is the case with a hirer? Lest one say that usually one is pleased that a meritorious deed be done with his property, he comes to teach us that he must not do so, even with the Holy Scrolls without permission. To what purpose, then, does the master teach, He opens them, etc.? Is this not self-evident, as for this purpose they were borrowed? Because he means to tell that he must not begin his study for the first time, etc., he mentioned also the above. 1 But how is to understand the latter part? R. Elazar b. Jacob says: "Once in twelve." Is it not the same as the first Tana said? Read, R. Elazar b. Jacob said in both cases they must be unrolled once in thirty days.

"*To study in them*," etc. There is a contradiction in the following: "One shall not read a paragraph and repeat it or translate it into another language; he must not open more than three folios of them, and three men must not read in one and the same volume." Is it not to be understood from this that three must not, but two may? Said Abayi: "This presents no difficulty. In one and the same paragraph even two are not allowed, but in two different paragraphs each of them may read separately."

"*If the article was a garment*," etc. Is it, then, good for the garment to shake it frequently? Did not R. Johanan say that whoever has a specialist weaver in his house (who may weave for him new garments), may shake his garments every day; hence we see that frequent shaking spoils the garment?

[paragraph continues] Yea. Every day it would spoil it, but once in thirty days is good for it; and if you wish, it may be said that R. Johanan treats of a woollen garment (which can be torn by shaking), and the Mishna treats of linen ones.

R. Johanan said: 1 "It is better to drink a goblet from the hand of a witch than to drink a goblet of lukewarm water when the goblet is of metal, and was not boiled previously, and it is ordinary

water without any spices in it." He also said: "He to whom his father bequeathed too much money, and he desires to lose it, shall dress himself in Roman linen garments (which are very dear and are spoiled in a short time), and shall use glass utensils of great value, and shall hire others to do the work necessary in his vineyards while he is absent."

"*Vessels of silver and copper*," etc. The rabbis taught: "If one finds wooden vessels, he may use them in order that they may not decay. Copper ones he may use for warm liquids, but not put them on the fire, because the vessels may be worn off; silver ones he may use for cold liquids, but not for warm, for they may lose their brightness; spades or axes he may use for soft materials, but not for hard, for they may be diminished; however, golden ones or glass ones must not be touched until Elijah will come. The same law applies also to deposited articles. If so, to what purpose was it deposited? Said R. Ada b. Hama in the name of R. Shesheth: "It was deposited for saving only, as, *e.g.*, the owners had departed for the sea-countries."

"*If, however, the article found, . . . he may leave it*." Whence do we deduce it? From that which the rabbis taught: "It is written [Deut. xxii. 1]: 'And withdraw thyself from them,' which means that there are cases in which you may withdraw, and others in which you may not. How so? If, *e.g.*, he was a priest, and the found article was on a cemetery, or he was a sage, and it is not fit for him to carry the found article, or if his labor at that time should have more value than the value of the found article, he may leave it, as in such cases the verse cited above applies." Let us see in what case the above verse is needed. If to a priest who saw a found article in a cemetery, is then a verse needed? Is it not self-evident, as there is a negative and positive commandment concerning a priest, who must not defile himself by the dead [Lev. xxi. 1],

and the positive commandment, "Ye shall be holy" [ibid. xix. 2], and to return a lost thing is one positive commandment only; and aside from this it must not be ignored, a bodily prohibition for money matter even if it is meritorious, and if the above-cited verse is needed, because his loss of time has more value than the lost article. This is also inferred from the saying of R. Jehudah in the name of Rabh, as follows: "It is written [Deut. xv. 4]: 'There shall be no needy man among thee,' [1] which signifies that yours has preference over that of another; it must therefore be said that the verse in question is needed for the case of a sage, for whom the found article is unfit for his honor." Rabba said: "If he has seen an animal, and struck it (and it ran away), he must return it." It happened that Abayi was sitting in the presence of Rabba, and goats came near him, and he took a clot of dirt and threw it at them, and they ran away. Said Rabba to him: "If they will be lost You will be responsible; go and bring them back to the owner."

The schoolmen propounded a question: If the man is so respected that in the city it is not nice for him to drive cattle, but in the field he usually does so, what is the law? If he has seen his neighbor's cattle astray in the field, must he return them to the city only, or, as the Scripture requires that they shall be returned to their proper place, and as it is not fit for him to lead them in the city, he need not do so even in the field? On the other hand, it may be said because it is fit for him to do it in the field, it is his duty to lead them to the city, and when it is already there return them to the proper place. This question remains unanswered. Rabha said: "(This is the rule.) If it would be his own article, he would trouble himself to put it in the proper place; then he must do the same with that of others. The same is the case with loading and unloading a wagon. If he is accustomed to do so for himself, he must do so for another if he is in need [Ex. xxiii. 5]."

R. Ismail b. Jose was on the road, and met a man carrying a bundle of wood, who put it down to take a rest; thereafter he asked R. Ismail to help him lift it on his shoulder, and he asked him the value of it, and the man answered a half zuz. R. Ismail then bought it for a half zuz, and renounced his ownership to it. The man, however, had acquired title to it by drawing it. Then R. Ismail bought it from him again by adding

another half zuz, and renounced his ownership again. When he had seen that the man intended to draw it again to acquire title again, he said: "I have released my ownership for the whole world, but not for you." And was not R. Ismail a sage for whom it was not fit to do such a thing? He was acting to moderate the law, as R. Joseph taught: It is written [Ex. xviii. 20]: "And thou shalt make them know," etc. "To make them know" means how to make a living; "the way" means bestowing of favors; "wherein they must walk" signifies to visit the sick and bury the dead; "and the work" means the exact law; "they must do" means to moderate the law. The master says: Wherein they must walk to visit the sick. Is this not included in bestowing of favors? It was necessary to name this separately, in case when the sick one was his comrade, and the master says elsewhere that by visiting a sick one, if he is his comrade, a sixtieth part of the sickness goes over to him, and notwithstanding this he must do so. But is not the burying of the dead included in bestowing of favors? It was necessary to teach that even if he was a sage, and it is beyond his dignity, he must nevertheless do so in such a case. "To moderate the law," as R. Johanan said that Jerusalem was destroyed because they used the exact law only and never moderated it.

MISHNA *XI.*: What is to be considered a lost thing? *E.g.*, if he found an ass or a cow feeding in a public thoroughfare, it is not to be considered a loss. If, however, the packing material of the ass was turned over wrongly, or the cow was running between the vineyards, it is to be considered a loss which must be returned. If he has returned it, and it runs away again, even four or five times, he must return it, as it is written [Deut. xxii. 1]: "Thou shalt surely bring them back." If his loss of time was worth a sala, he must not say, Give me a sala, but he may take the reward as a laborer would usually take for such work. If there were three persons (who constitute a Beth Din of common men), he may make the condition before them (my loss of time in this case is worth so and so much, and I will collect from the owner); but if there were not such three persons, before whom could he make such a condition? Hence his own time has preference.

GEMARA: How is the first part of the Mishna to be understood, which states it is not to be considered a loss when it were lost to the owner? Why not? Said R. Jehudah: It means to

say, what the rule of a lost thing is which one is obliged to trouble himself. If the articles mentioned were fed in a public thoroughfare, it is not considered such that the finder need trouble himself, unless he finds them in such condition as mentioned in the Mishna further on. But how is the second part to be understood, which states it is to be considered a loss, etc.? Does it mean for eternity? Said R. Jehudah, in the name of Rabh: "If he has seen them three days in succession at the same place." How was the case, if in night-time even one hour is sufficient, and if in the daytime even more than three days should not be considered? The Mishna treats of

a case where he had seen them in the morning or at sunset; if only three days in succession, it may be supposed that it is only mishap, and they will come out soon; but if more, it is certainly a lost thing. We have learned the same in the following Boraitha: "If one found a garment or an ox in the market, or a cow running in the vineyard, it is considered a loss; but if the articles mentioned were lying on the side of a partition, or the cow was fed between the vineyards, it is not considered a loss, unless he has seen them three days in succession. If one has seen that his neighbor's field is about to be overflowed, he may prevent it if it is within his power." Rabha said: "It is written [Deut. xxii. 3]: 'With every lost thing,' it means to add a loss of real estate." Said R. Hananiah to him: "The following Boraitha should support you: If he has seen water going to overflow, he may prevent it by making a dam." And Rabha answered: "This teaching may not support me, as it may be that it treats of a case when there were sheaves in the field (hence it is not real estate). If it is so, what does the Boraitha teach us? Is it not included in the verse cited above? It may be said that there were sheaves which were still attached to the ground, and the use of the ground was yet necessary. Lest one say because they still need the support of the earth, it should be considered as the earth itself, it comes to teach us that this is not so."

"*If he returned it, and it runs away again*," etc. Said one of the scholars to Rabha: "Why so? The Scripture reads *Hoshéb* (which means, 'thou shalt return'), once, and then *Thisbibém* ('thou shalt return them'), twice." And Rabha answered: The first word means even hundred times, and the second word is needed lest one say that he is only obliged to return to his house, but not to his garden or ruined building,

hence the second word *Thisbibém*." 1 How was the case? If the article would be saved in the garden or ruins, then it is self-evident that he must return it, and if it was not saved there, why should he return? It may be said that it is to be saved there, and it comes to teach us that the knowledge of the owner is not necessary, and this is in accordance with R. Elazar, who said, in everything between man and man, the knowledge of the owner is needed, except concerning the return of a lost thing, in which the knowledge of the owner is not needed (*i.e.*, he may put the found article on the owner's property, where it may be saved without notifying him that he has done so), and this is deduced from the superfluous word in the Scripture mentioned above. The same is the case with the word [ibid., ibid. 7] which also reads *Shalach Téishalach* (literally, "sending, thou shalt send"). "I would say Shalach once, Téishalach twice," (said the above scholar to Rabha, and he answered:) "Shalach means even hundred times, and Téishalach signifies that even if the mother was needed for a meritorious purpose (*e.g.*, to cleanse a leper [Lev. xiv. 4]), it must be, nevertheless, sent away." The same scholar said again to him: It is written [Lev. x. 17]: *Hakhéach Toucheach* (literally, 'rebuke, thou shalt rebuke'); say the first word means one, and the second two." And Rabha answered: "The first word means even hundred times, and the second means that not only the master must rebuke his pupil (when seeing him acting wrong), but even the pupil must do so to his master. The same is the case with the word [Ex. xxiii. 5] *Ozob Tahsob* (literally, 'help, thou shalt help'), which means you must give your assistance, even not in the presence of the owner; and the same means the word [Deut. xxii. 4] *Hokem Tokim* (literally, 'load, thou shalt load'). But why does the Scripture repeat the same concerning unloading [Ex. xxxiii.] and loading [Deut. xxii.]? It is needed. For if it would say the first case only, one might say that because a living thing is inflicted and damages also he must assist, but in the other case of loading, in which both things do not exist, it is not so; and if it would be mentioned in the last case loading, one might say that he must do so, because he has a right to charge for his loss of time, but in unloading, which must be done gratuitously, he is

not obliged, therefore both are written." [But according to R. Simeon, who holds that even loading

must be done without any compensation, what can be said? He may say that the Scripture does not indicate which verse is to be explained for loading and which for unloading. But could not the trouble about a lost article be deduced from the above-cited verses? Why is it mentioned separately? It is necessary because one might say that in both cases above there is an infliction on a living being and an infliction on the owner also (therefore the Scripture prescribes support), but concerning a lost article, in which there is an infliction on the owner only and not on the lost thing, the Scripture would not prescribe support, and the former cases also cannot be deduced from the latter one, because in this case the owner is not present (and therefore support is necessary), which is not so with the former cases, hence all of them were necessary.] The same is with the repetition of [Numb. xxxv. 17] *Moth Yoomot* (literally, "dead, he shall die"), which means that if it is impossible to kill him by the prescribed death, he may be killed in any manner; the same is with [Deut. xiii. 16] *Hahkie Thakki* (literally, "smite, thou shalt smite"), which means if you cannot smite it as prescribed, you must do so in any manner; the same is with [ibid. xxiv. 13] *Hohsheb Tohshib* (literally, "return, thou shalt return"), which means that even when the pledge was taken without permission of the court, it must nevertheless be returned; so also [Ex. xxii. 23] *Choboul Tahchboul* (literally, "pledge, thou shalt pledge"), which means the same as above [if so, to what purpose is it repeated? one for a day dress and the other for a night dress]; so it is also [Deut. xv. 8] *Pathoach Tiptahch* (literally, "open, thou shalt open"), which means that not only to the poor of your city you are obligated, but also to those of other cities; and also [ibid., ibid. 10] *Nauthon Teetén* (literally, "giving, thou shalt give"), which means both great and small gifts. The same is [ibid., ibid. 14] *Hahnék Theahnek* (literally, "donate, thou shalt donate"), which means that you must do so even if thy house was not blessed through him [but according to R. Elazar b. Azaria, who holds that if it was not blessed, he is not obliged to donate, what can be said? Nothing; but the Scripture usually speaks like a human being]. So also is with [ibid., ibid. 8 [1]] *Ha'bêt Taabitanov* (literally, "lend, thou shalt lend "), which means that not only to him who possesses nothing and

refuses donations, but even to him who possesses but does not want to use his property for his livelihood, you must also act the same. [But according to R. Simeon, who denies any obligation upon a person of the latter case, what does the repetition signify? Nothing; the Scripture speaks as stated above.]

"*When the loss of time was the value of a sala,*" etc. How is this to be understood? Said Abayi: "The loss of time must be appraised according to his loss in his special trade."

"*If there were three men,*" etc. Issur and R. Saphra were partners in business. Subsequently R. Saphra divided in presence of two witnesses. Finally he came before Rabba bar R. Huna, and was told to bring three men, or two of them, before whom he divided the goods, or even two witnesses that he has done so in presence of other three men, and he said to him: "From what source do you take your decision?" And he rejoined: "From our Mishna, which states, 'If there were three men,' etc." Rejoined R. Saphra: "What comparison is this? The Mishna treats of collecting money from one to give it to another, and therefore a Beth Din of three men was

necessary; but in my case I took that which belongs to me only. Why do not two witnesses suffice? And my theory may be supported from a Mishna elsewhere, which states that a widow may sell for her support the goods of her late husband, even not in the presence of a Beth Din (but before two witnesses)." Said Abayi to him: "But was it not taught in addition to your Mishna thus, R. Joseph bar Minyumi in the name of R. Na'hman said: It means, she does not need a court of special judges, but a Beth Din of three common men is nevertheless necessary."

MISHNA *XII*.: If he has found the animal in a stable, he is not obliged to trouble himself. In a public thoroughfare, however, he is. If it was in a cemetery (and he was a priest), he must not defile himself. If he was told by his father to defile himself, or not to return it, he must not listen to him. If he has unloaded, and reloaded, and again even four or five times, he is obliged to do so, as it is written [Ex. xxiii. 5]: "Thou shalt surely help him." 1 If, however, the owner went away and sat down, saying: "You are obliged by Scripture to assist me, do so if you want in my absence," he is not obliged to do anything, as it is written *Eemou* (literally, "with him"). If, however, he was old or sick, he is free. The commandment

of the Scripture is for unloading, but not loading. R. Simeon, however, maintains loading also; R. Jose the Galilean said: "If the animal was overburdened more than it could carry, there is no liability, as it is written [ibid., ibid. 5], 'under his burden,' which signifies under such a burden which it can bear."

GEMARA: Rabha said: "The stable mentioned in the Mishna means that it was of such a kind where the animal was not afraid to stay, and also was not locked in, and if it wanted to leave it could do so; and this is to be inferred from the expression, 'He is not obliged.' It is only in case it is not afraid to stay there, and from the same is also to be inferred that the stable was not locked, as if it were so, would it be necessary to teach that he is not obliged; is it not certain that when he finds it on the street, he is obliged to place it in such a stable, should he then be obliged to take it out? Hence infer that such was the case."

"*In a public thoroughfare, however, he is*," etc. Said R. Itzhak: "It means when the thoroughfare was placed two thousand ells from the town, not otherwise, and from this is to be inferred that the stable in question, even if it was placed beyond the stated limit, there is no liability."

"*In a cemetery*," etc. The rabbis taught: Whence do we deduce that he must not listen to his father in the above-mentioned cases? It is written [Lev. xix. 19]: "Ye shall fear every man his mother and his father, and my Sabbath ye shall keep; I am the Lord," which means that ye all are obliged to preserve my commandments (says the Gemara); but were it not written here, "and my Sabbath ye shall keep," you would say that he must listen to his father? Why? In case of a lost thing there is a positive and negative commandment (*supra*, p. 68, 69), and honoring his father is a positive commandment only, and there is a rule that one positive commandment does not contradict a case wherein are a positive and a negative commandment? It was necessary lest one say because the honor of parents is equal to the honor of Omnipotent, from an analogy of expression "honor" [Ex. xx. 12] and [Prov. iii. 9], "he shall listen to his father," (although it is against a commandment), which teach us that it is not so.

"*But not loading*," etc. How is this to be understood? Shall we assume not loading at all? Is it

not written [Deut. xxii. 4]: "Thou shalt surely help him? Therefore we must explain that the Mishna means thus: The commandment is

to unload without any compensation, but not Loading without any." R. Simeon, however, says: "The same applies to the latter, and this explanation is as the rabbis taught plainly: 'Unloading without a compensation, and loading with.' R. Simeon, however, says: 'Both are equal.' What is the reason of the rabbis? Because, if it would be according to R. Simeon, the Scripture would be loading only, and the unloading would be deduced by drawing an *a fortiori* conclusion, as above (p. 73), and R. Simeon may answer as said above."

Rabha said: "From the decision of both we learn that a living being must not be inflicted is so biblically, as even according to R. Simeon the above *a fortiori* conclusion is not to be drawn, because in the Scripture loading or unloading is not clearly mentioned, but if it were, this *a fortiori* conclusion would be drawn; hence the infliction in question is so biblically, even in accordance with R. Simeon (for if not, how could an *a fortiori* conclusion be drawn?); but perhaps the same would be drawn not from the infliction, but from the damage; thus, in case of loading, wherein there is not any damage, he is obligated so much the more in case of unloading, wherein there is damage? Does, then, the Scripture treat only of a case wherein there is no damage? How, then, is it if, *e.g.*, when the man is going to a fair and is prevented from reaching it by some occurrence, or if in the mean time all his goods are stolen (is one not obliged to help him)? And one more support,, that the infliction in question is so biblically, is to be found in the latter part. R. Jose the Galilean says: "If he was overloaded," etc., from which is to be inferred that the first Tana holds even in such a case one is obliged to help, and this only because of the infliction of the animal. But perhaps they (first Tana, R. Jose) differ only in that verse from which R. Jose deduces his decision, and the rabbis do not care to deduce it (not be cause the infliction in question is biblically); furthermore, it may be deduced that it is not so biblically from the first part, which states that in absence of the owner one is not obliged to help; and if the infliction in question is biblically, what difference is it whether the owner is present or absent (he is biblically obliged to redeem the animal of its infliction at any rate)? Nay, the infliction is so biblically, and the decision that in the absence of the owner he is free, is not to be understood as meaning entirely free, but free to do it without compensation; but in the absence of the owner he must do for compensation. This is supported by the

following Boraitha: "An animal belonging to a heathen, he must trouble himself with it as it were an Israelite's." This is correct. If the infliction is biblically there is no difference to whom the animal belongs; but if it is not biblically, why must he trouble himself about a heathen's animal? It may be said he must do so not to cause animosity, and so it seems from the latter part, which states: "If it was loaded with prohibited wine, he need do nothing with it." And this can apply only when the infliction is *not* biblically; for if it is, what difference is it with what material the animal was loaded? Nay, the Boraitha means to say that if there was prohibited wine to load, he should have nothing to do with it. Come and hear (another objection). If his friend was needed to unload, and his enemy was needed to load, it is a meritorious act to help the enemy for the purpose of overcoming his wicked nature. Now if the infliction is biblically, his friend should have the preference, because his animal is inflicted? Notwithstanding this, the overcoming of his wicked nature has the preference. Come and hear. The enemy in question is

meant an Israelite and not an enemy, an idolater. Now if the infliction would be biblically, what difference is it who the enemy was? (The animal is inflicted.) Do you think the enemy in question means the enemy mentioned in the Bible [Ex. xxiii. 5]? it means the enemy mentioned in the Boraitha (who needs help in loading). Come and hear. The word lying, in the just cited verse, means that the lying occurred through the burden, but not when his habit was to lie down while under burden, "lying" and not when it was standing, "under his burden" and not when it was unloaded, "his burden" such as it could stand, but not otherwise. Now if the infliction is biblically, what difference is it between lying and standing? The Boraitha is in accord with R. Jose the Galilean, who holds that the infliction is not biblically, and it seems to be so from the statement "under such a burden which it could stand," and such a theory was heard from R. Jose only.

The rabbis taught: "It is written [ibid., ibid. 5] "if thou see"; one may say that even when he was far away; therefore it is written [ibid. 3] "if thou meet"; and lest one say that only by an exact meeting (but not when he happened to be near him), therefore it is written "if thou see," to indicate that his seeing was when it was possible to meet him; and the conjecture of the sages was a seventh and half part of a mile distant, which

was known as a *riss*. A Boraitha in addition to this states that he must accompany him the distance of a *pazsa*. Said Rabba bar bar Hama: "Provided he is paid."

MISHNA *XIII*.: If one lost a thing as did his father before, his own has preference. The same is the case with his master. If, however, his father and his master have lost an article at the same time, his master has preference because his father brought him only into this world, while his master, who taught him wisdom, brings him into the world to come; if, however, his father was a sage, he has the preference (*i.e.*, to trouble himself for him). If his father and his master were overburdened, he should unload his master first, and after his father. If both were in prison, his master has preference to be redeemed; if, however, his father was a sage, he has the preference.

GEMARA: Whence is this deduced? Said R. Jehudah in the name of Rabh: "It is written [Deut. xv. 4] 'No needy man among thee' [1] (above, p. 69), which means that yours has the preference always." The same said again in the name of the same authority: "Although the law is exactly so, he who always acts accordingly will finally need the support of others." (Rashi explains this that he who is always particular that he shall have the preference absolves himself of charity, of bestowing favors, and is not respected, and therefore he stands alone and will finally need support.)

"*If his father and his master were overloaded*," etc. The rabbis taught: "The master in question is meant one who has taught him the wisdom of Gemara" (*i.e.*, the reasons of the decisions of the Mishna and that they do not contradict each other, and some sense for allowed and not allowed obligations and absolutions of the Scripture.--Rashi); "but not who taught him Scripture, exact Mishnayoth," is the dictum of R. Meir. R. Jehudah says: He who taught him the greater part of his wisdom only is considered his master. R. Jose, however, maintains: "That even if he enlighted his eyes in only one Mishna, he is to be considered his master." Said Rabha: "As, *e.g.*, R. Sh'orah, who explained to me the word Zuhma with the word Listrum." [2] Samuel tore his garment at the death of one of the

rabbis who had explained to him only one expression in the Gemara. Said Ula: "The Babylonian sages arise one before another, and tear their garments, for the death of one of their colleagues; however, concerning a lost thing of which the master has preference, they do not consider only the master of whom he had learned the greater part of his wisdom."

R. Hisda questioned R. Huna: How is it with a disciple whom his master needed? And he answered: "Hisda, Hisda, I have not any need for you; you, however, need me for forty years more." They both became angry, and did not visit each other any more. R. Hisda, however, fasted forty days for the disgrace of R. Huna, and R. Huna did the same because he suspected that R. Hisda with his question meant him. "It was taught: R. Itzhak b. Joseph in the name of R. Johanan said: The Halakha prevails in accordance with R. Jehudah. R. Aha b. R. Huna in the name of R. Shes'heth said: The Halakha prevails according to R. Jose." Could R. Johanan say so? Did he not say elsewhere that the Halakha prevails in accordance with an anonymous Mishna, and our Mishna states his master, who taught him wisdom? By the word wisdom, *i.e.*, the greater of his wisdom.

The rabbis taught: "They who occupy themselves with the study of Scripture are not to be blamed, but, on the other hand, not to be praised. With the Mishnayoth, however, they are to be praised, and will be rewarded; but with the Gemara there is not a better custom. However, look to occupy thyself with the Mishnayoth better than with the Gemara." Does not the Boraitha contradict itself? It states there is not a better custom than the Gemara, and immediately it states, Occupy thyself with the Mishna. Said R. Johanan: "In the time of Rabbi the above Mishna was taught; in consequence all the disciples left the Mishna and started the Gemara; he therefore lectured again, "Occupy thyself better with Mishnayoth," etc., and subsequently his above lecture was added to the Mishna. [1] What

was the basis of the above-mentioned lecture? R. Jehudah b. Ilayi lectured as follows: "It is written [Isaiah, xvi. 5]: 'Hear the word of the Lord, ye that tremble of his word. Your brethren that hated you, that cast you out for the sake of my name, said, Let the Lord be glorified, but he will appear to your joy, and they shall be made ashamed.'" "Tremble of his word" means the scholars who study Gemara; "your brethren" means those who study the Scripture; "that hated you" means the students of the Mishnayoth (the students of the Mishnayoth, says Rashi, hated the students of the Gemara, because the latter had decided that the students of the Mishnayoth, without Gemara, are the destroyers of the world, because they act according to the Mishnayoth without knowledge of their sources and bases, and very often the Halakha does not prevail according to their decisions); "that cast you out" means the common people. But lest one say their hope has ceased, therefore it is written: "He will appear to your joy"; and may one say that Israel will be ashamed, therefore it is written: "And they (the idolaters) shall be ashamed, and Israel will rejoice." [1]

Footnotes

46:1 The text here is complicated, and some of the commentators try to correct it; nevertheless, Rashi's opinion and Tosphat's opinion concerning it differ; the commentators after them, such as Lurie and Meier of Lublin, and also Edlias (Marsha), discuss it also. We, however, have translated as best we could, so as to make it understood.

48:1 In Tract Sanhederin the six cases will be named.

49:1 In the text here similar questions are continued from the Mishna and Boraithas concerning marks and articles which are destroyed by stepping upon them, and also about places, whether it should be considered a mark for proclamation or not. Objections and answers are made to the opinions of the above sages in the same manner as above, which is already translated, and therefore we have omitted them.

50:1 Rashi explains it thus: In their time the barrels were of clay, and also the cork, and they usually put glue around the cork to save the smell. In the month of Shebat or Nissan, when usually the wine merchants would sell to the store-keepers several barrels at once, they would open each of them, to taste, and to again cover it.

51:1 The text reads Kufra, and Rashi explains it to mean pitch. We, however, cannot agree with such an explanation, as the place where it was found, and also that Rabh told him to give a part of it to his son, could not be with such an article. We find the same word Kufra in Baba Kama, p. 140, which is translated as we have it here.

52:1 In the text the discoursing continues on what places must be considered always crowded, and what not; if the synagogues and houses of learning are among them, and what kind of people, Israelites or heathen, all of which is of no importance, and therefore we have omitted it.

55:1 Such a discussion or question and answer occurs very seldom, if this be not the only one, in the whole Talmud, and it shows that the sages of the Gemara were doubtful whether the Mishna was transmitted to them correctly; in other words, they did not know exactly whether the paragraph submitted to them was a correct translation from the original. Mark this.

55:2 The literal translation of the word "Magdahl" is steeple, or turret; and Itzhak of Magdahl means the Itzhak who delivered the Halakha of Magdahl. See Hacha'hlutz by Schur, in the chapter where he discusses about the names of the Tanaim and Amouraim, who were named according to the Halakha they taught.

61:1 In the text it is not mentioned that Rabha is the author of this phrase, but it is the continuation of R. Saphra. Rashi, however, has corrected Rabha, for a reason which is not known to us; we see, however, some more corrections of Rashi, in this so complicated a discussion; and notwithstanding this, it is very difficult to find out the real meaning of it. We have tried to make it in some way understood to the reader; still we are not sure whether it is correct, and would be very glad if some one should translate it in a better way; to omit this all, would be against our method.

66:1 Luria (Rashall) in his remarks says: "I have not found in any commentary an explanation

why money belonging to orphans should be equal to found money, that the decision of R. Tarphon should apply also to it. It seems to me, therefore, that the case was where he found the money, and thereafter it was known to belong to orphans not yet of age, which should be returned to them."

67:1 The text here discusses the bailee of Holy Scrolls and finally explains it as we have just translated; therefore the omission.

68:1 Because it is stated here what R. Johanan said regarding worldly affairs, it mentions here the other things he said in the same matter. (Rashi.)

69:1 The Scripture reads *Bekha*, which means literally *in thyself*; hence the significance of the text. Leeser, however, translates *among*, according to the sense.

72:1 Leeser translates according to the sense, Thou shalt surely return; the Talmud, however, is particular as to the words which we have translated literally in our text.

73:1 In all repetitions cited the Talmud takes the matter literally, though the translators, especially Leeser, whom we follow in our work, translate differently, according to the sense. Cf. Leeser's Bible.

74:1 See foot-note p. 72.

78:1 The Scripture reads *Bekha*, literally *in thee*, which the Talmud explains, there shall be no needy in thyself.

78:2 In Section Jaharot (Keilim, XXV., 3) this word is to be found, and Rabha said: "It was known to me that it is a vessel but I did not know what kind, and he explained to me that it means a soup strainer" (Rashi).

79:1 This remarkable statement is interpreted by Rashi thus: When the disciples of Shamai and Hillel increased to a great number (about three generations before Rabbi), differing and quarrelling so, that it looked as if there were two Torahs. In addition to this, persecution by the government was increased daily, and new disagreeable decisions were renewed day by day, so that they could not give the proper attention to revise the point of their differences, until the days of Rabbi. When the Almighty gave him grace in the eyes of Antoninus Cæsar of Rome, who abolished all the disagreeable decisions, and Rabbi had the opportunity to compile the Mishnayoth, which was oral until his time. He assembled all the disciples p. 80 of Palestine, and each of them had to report a Halakha which he had heard from a great man, which was written down in the name of each author, and only then the sections of the Mishnayoth were classified; *i.e.*, the Halakhas which belong to damages, women, festivals, etc., were selected, separated in sections. Rabbi, however, omitted from some Mishnayoth the name of their author for the purpose of establishing the Halakha accordingly, which probably could not be done if it were taught in the name of individuals, and when this was done, the Mishna mentioned in the text was said, *i.e.*, "there is not a better custom than to study the Gemara," which means, to understand the sources and reasons of the decisions of the Mishnayoth. But when Rabbi saw that all had

occupied themselves with the study of Gemara, without repeating the Mishnayoth itself, he was afraid that the name of the sages and the obligation would be changed, so he lectured again: "Occupy thyself with Mishnayoth." See our brief general introduction, Section Festivals, Vol. I., p. xv, in which we give the history of the Mishnayoth differently, the basis of our opinion being the majority, who differ with Rashi, and say that the Mishnayoth was written down many generations before the time of Rabbi. In our periodical "Hakol," Vol. VI., No. 2, we published an article pointing out all the names of them who agree with Rashi and all those who are contrary, also the opinion of the late famous Dr. Gellenik. See also "Dour Dour Vedourshow," by I. H. Wise. All details of this matter for the English reader will be found in our forthcoming history of the Talmud.

80:1 We have followed Leeser in the translation of the verse. It seems, however. that the verse was different before the Talmudist, as the end mentioned in the text is not to be found there, and also the translation, "he will appear to your joy," is not in accordance with the Talmud, which translates, "and we will see your joy," and Rashi explains that the prophet says, "I and all your brethren mentioned above will see your joy." It may be, however, that the end of the verse was added only because it is the end of this chapter, and their custom was to finish with a good word.

Next: Chapter III

CHAPTER III.

LAWS RELATING TO BAILMENTS, HIRERS, LOSSES ON DEPOSITED ARTICLE AS TO THEIR QUANTITY AND THEIR QUALITY, AS TO THE CARE TO BE BESTOWED ON DEPOSITED ARTICLES BY THE DEPOSITARY, AND OF MONEY WHETHER IT MAY BE USED.

MISHNA *I.*: If one has deposited an animal or vessel with his neighbor, and they were stolen or lost, and he paid, because he refused to take an oath [according to the law that a gratuitous bailee must swear and is acquitted], and thereafter the thief was found, who must pay the double amount, or in case he has slaughtered or sold, four and five fold, to whom shall he pay? To him who has kept the bailment. If, however, the bailee took an oath, because he refuses to pay, and the thief was found, he must pay the above-mentioned amount to the owner.

GEMARA: "*He has paid, because he refused*," etc. Said R. Hyya bar Abba in the name of R. Johanan: "The expression 'paid' is not to be understood that he has done so already, but if he said, 'I will pay,' it is to be considered paid." And there is a Boraitha in accordance with his statement, viz.: "If one has hired a cow of his neighbor, and it was stolen, and the hirer said, I will pay rather than take an oath (that it was not an accident), and thereafter the thief was found, the double amount belongs to the hirer."

R. Papa said: "A gratuitous bailee, when he said, 'I have neglected my duty' (which makes liable for payment), acquires title of the double amount because he could be acquitted if he should claim it was stolen. The same is the case with a bailee for hire, when he claims 'stolen,' because he could be acquitted by claiming it was crippled or died (in which case he is not responsible); and also a borrower, if he said, I am ready to pay, he acquires title for the double amount, as he could acquit himself by claiming the animal had died while laboring." Said R. Zbid to him: "So said Abayi: A borrower does not acquire title of the double amount, unless he has already paid. Why so? for all the benefit he has derived was only upon his word, without any

actual payment. It is not sufficient his saying, I am ready to pay." And there is a Boraitha supporting him: "If one borrowed a cow of his neighbor, and it was stolen, and the borrower hastened and paid, and thereafter the thief was found, the double amount belongs to the borrower." Shall we assume that the Boraitha is an objection to R. Papa's statement? He may say, has, then, the Boraitha more strength than our Mishna--does not the Mishna state, "and he paid," and nevertheless it was interpreted that the same is the case if he says, "I will pay"? Why should not this same explanation apply to the Boraitha? But what comparison is it? The Boraitha states, "he hastened and paid," which is not the case in the Mishna. But why should it not be explained he hastened to *say*, "I will pay"? Nay, the same Boraitha expresses in the case of a hirer, "he *said*," and in the case of a borrower, "hastened," hence the Boraitha was particular as to its word. But whence do we know that the Boraitha's statements were taught together--

perhaps each statement was taught separately, consequently no special attention must be paid to the wording? The disciples of R. Hyya and R. Oshia were questioned, and the answer was, that all the statements of the above Boraitha were delivered at one time.

It is certain that if he previously said, "I will not pay," and afterwards he declared, "I will," it is a reconsideration and must be counted; but how is it if it is *vice versa*? Shall we assume this also a reconsideration, or perhaps he intended to pay, but as he had no cash, he only postponed payment? Also how is it if he promised to pay, and dies, and his heirs refuse, or he dies without saying anything, and his heirs pay, does the double amount belong to them, or can he say to them, "If your father would promise to pay I would be pleased to transfer the double amount to him, but with you I have nothing to do, as probably you were aware of the double amount, and, therefore, you paid"? These questions are not decided. R. Huna said: "In all cases an oath is given to the bailee that at that time the article is not in his possession, for fear, perhaps, he would prefer to keep the article for himself, and, therefore, he paid for it." 1

There was a man who deposited a nose jewel with his friend, and when being required to return, he said, "I do not know where I put it," and when the case came before R. Na'hman, he

said: "Such an answer shows a neglect of duty, and you must pay." The man did not submit to R. Na'hman's decision, unless R. Na'hman made him pay by force. Finally, the article was found, and was increased in value. Said R. Na'hman: "Return it to its owner and have your money refunded." Said Rabha: "I was sitting before R. Na'hman when he decided the above case, and our study was in this chapter, and I questioned him, Is not this case equal to the statement of our Mishna: If he paid and refused to swear, etc., and R. Na'hman did not answer, (and thus deliberating this matter I came to the conclusion that) it was right in him not to answer, because the case in our Mishna does not treat of a case where he was troubled by the court, as in this case." (Says the Gemara:) "Shall we assume that R. Na'hman holds that property appraised by the court, for the sake of the creditor, and delivered to him, should be returned to the defendant when he brings cash? Nay! The above case of the nose jewel is different; as the article was in his possession, no appraisement could be made; hence the appraisement itself was an error. (However, when the court appraises by examining the article, no change is to be made.) The sages of Nahardea, however, hold that even a correct appraisement by the court is to be returned in twelve months (when the defendant brings cash). Said Amemor: "I myself am a Nahardean, and I hold that an appraisement is always to be returned." (Said the Gemara:) "So the Halakha prevails, because it is written [Deut. vi. 18]: "And thou shalt do that which is right and good," etc. 1

It is certain, when it was appraised for the sake of a creditor, and the latter appraised it for his own creditor, the returning may take place, because it may be said to the latter creditor, You cannot be entitled to any more privilege than this defendant. The reverse is the case when the creditor sold it, or gave it as a present, because the intention of the people was given to the estate but not to the value of it. The same is the case if it was appraised for a widow (according to her marriage contract) and she remarried, and the same is also when the estate was appraised for the sake of a creditor of a widow, and after she remarried and died her husband cannot require for returning, as he is considered a buyer (and not an heir), to whom the law prescribes no returning

shall take place, neither by nor to him. As R. Jose said: "It was enacted in the city of Usha that if a woman sold her estate, called mulgeo [1] (*i.e.*, an estate in which her husband has the usufruct, the use of the products and the principal estate remain hers) while her husband is yet alive and she dies, the husband may take it away from the hands of the buyer." If, however, the creditor took the estate for his debt without appraisement, but with the admission of his creditors, it may be returned or not. R. A'ha and Rabbina differ; according to one it may not, because it was a correct sale, as the debtor had given it with his good will; and according to the other it may, because the sale is not to be considered a good one, as the debtor did it only because he was ashamed to go to court, but not with his good will.

From what time may the creditor use the products of an appraised estate? According to Rabba, as soon as the warrant reaches him; and according to Abayi, from the time the warrant was signed by the court. Rabha, however, says: "The warrant that the estate shall be sold for his debt does not suffice even when it is in the hands of the creditor, provided the time of heraldry had elapsed." (The previous products, however, belong to the debtor.)

MISHNA *II*.: If one has hired a cow and he loaned it to some one else, and it died a natural death, the hirer takes an oath that the death was natural, and the borrower must pay to the hirer. Said R. Jose: "How could the hirer do business with the cow, which did not belong to him? Therefore the cow, or the value of it, must be returned to the owner."

GEMARA: Said R. Idi b. Abin to Abayi: "Is not the oath the only reason for acquiring title? Let then the owner say: Keep aloof from this case with your oath, and I will summon your borrower (as it did not die while in your possession). It will be better for me to summon the borrower (who is responsible even for an accident)." And Abayi answered: "Do you think that the oath is the only reason for the title? It is not so. The title is acquired with the death of the animal, the title of its value is acquired to the hirer, and the oath is only to please the owner."

R. Zera said: "It can happen that the hirer has a right to require several cows from the owner for one cow. How so? (As the explanation of this queer proposition is so clearly illustrated

by Rashi, we omit the explanation given in the Gemara, and we append it in a foot-note. [1]) Said R. A'ha of Difta to Rabbina: "Let us see. It was only one animal which was going from borrowing to hiring, and *vice versa*. Why then should he furnish him with four--is it not sufficient he should furnish him with two, one of them to remain the property of A and the other for the remaining labor days"? And Rabbina answered: "Is then the animal yet alive, that it could be said so? The animal is dead, and there were two cases of hiring and two cases of borrowing, and he has a right to receive compensation for each case, also for each hiring of the labor days." Mar bar R. Ashi, however, maintains: "A is entitled to two cows only, one for both cases of hiring, and one for both cases of borrowing; as the cases under one name cannot be considered two, because all this occurred with only one animal (as explained above)."

It was taught: "A bailee who has transferred the bailment to another bailee, according to Rabh the first bailee has the same responsibility as if he would take care of it himself, (*i.e.* he is free from accident). According to R. Johanan, the first one is responsible even for an accident." Said

Abayi: "According to Rabh's theory, not only a gratuitous bailee who transferred to a bailee for hire, who has increased the responsibility of it, is not responsible any more than the prescribed law of such a bailee, but even if he was a bailee for hire and he transferred it to a gratuitous bailee, that the responsibility was decreased; the same is the case, because he transferred it to one who was able to take care of it (consequently he did not neglect his duty); and according to R. Johanan's theory, not only a bailee for hire who transferred it to a gratuitous bailee, in which the responsibility was decreased, but

even a gratuitous bailee who transferred it to a bailee for hire, in which the responsibility was increased, he is nevertheless responsible for all that occurs, because the owner may say, "I have trusted the bailment to you, not to any one else, as I did not want the bailment to be under the control of some one else." Said R. Hisda: "Rabh's statement was not made by him directly, but it was inferred from an act which happened, namely: There were gardeners who had deposited their spades at a certain old woman's; one day, however, one of them gave it for safekeeping to his comrade, and when the latter heard voices from a wedding procession and wanted to accompany it, he transferred the spade of the above to the old woman, and when he returned, he found it was stolen. When the case came before Rabh, he acquitted him. Those who have heard this decision thought that it was because of the law that a bailee who transfers the bailment to another bailee is free; in reality, however, Rabh acquitted him because the depositor himself used to deposit his articles with the same old woman; consequently he could not claim that he would not trust her with his bailment. R. Ami was sitting and declaring the just stated Halakha, and R. Abba bar Mammal objected to his statement from our Mishna: "One hired a cow," etc. Now if the above statement is correct, why could not the owner of the animal claim, "I did not want that my bailment should be under the control of another one"? And he answered: The Mishna treats of a case where the owner gave him permission to loan it to some one. If so, the owner has a right to the value of the cow? The owner told him, You can do so to whomever you like (and so he cannot claim any more that he does not want his bailment to be under another's control).

Rami bar Hama objected to this from Mishna VII., in this chapter, which states that if he transferred them to his little children, etc., of which it is to be inferred that if he would transfer them to his big children, he would be free. Why so? The owner could claim, "I do not want my bailment to be under another's control." Said Rabha: "Usually, when one deposits an article for safekeeping with any one, he intends that he may ask his wife and children to take care of it, and the sages of Nahardea said: "That it seems the cited Mishna is rightly explained so, as it states, 'his little children,' of which it is to be inferred that if he would give it to the care of the big ones, he would be free."

However, the case is only with his children, not with strangers, for if he would transfer them to strangers, he would be responsible

at any rate, for the reason that the bailee can claim that he did not want it in the control of another, as stated above." Rabha said: "The Halakha prevails, that a bailee who has transferred the bailment to another bailee of any kind is responsible. Why so? Because the owner may say, that you alone are trusted by me with an oath, but not the man to whom you have transferred it."

It was taught: "If the bailee has neglected his duty, and the animal was going out to the rushes and dies a natural death, Abayi in the name of Rabba makes him liable, and said: That any judge who would decide to the contrary is not worthy to be a judge, as not only according to him who holds that if an accident follows a neglect, there is a liability, he is responsible, but even according to him who holds that in such a case there is no liability, in this case he would admit that he is responsible. Why so? Because it may be said that the air of the rushes killed it (hence it is not the accident, but the neglect, which caused the death)." Rabha, however, in the name of Rabba said: "He is free, and every judge who decides to the contrary is not worthy to be a judge, as not only according to him who holds that if an accident follows a neglect there is no liability, but even according to him who holds to the contrary, would admit that in this case he is free. Why so? Because there was a natural death, and there is no difference to the Angel of Death where his subject is placed." Rabha, however, admits that if it was stolen from the rushes, although it dies a natural death in the house of the thief, the bailee is nevertheless responsible. Why so? Because if it were alive, not he, but the thief, would possess it (consequently, before he dies the liability came simultaneously with the theft).

Said Abayi to Rabha According to your theory, that there is no difference to Angel of Death where it is placed, the answer of R. Ami to R. Aba stated above, p. 86, that it treats of a case where the owner has permitted the hirer to borrow it, etc., would not be satisfactory, as also in their case a natural death occurred and he could claim that it is no difference to Angel of Death where it was placed." Rejoined Rabha: "According to you the objection was: That the owner could claim, 'I do not want that my bailment should be under the control of another,' your objection could be sustained; but I said that the claim of the owner was that the first bailee only is trusted by him with an oath, but not any one else; hence your objection cannot be sustained."

Rami bar Hama objected from the following Boraitha: "If he brought the animal to a steep hill, and it falls and dies, it is not to be considered an accident, and he is liable." Of which it is to be inferred that if a natural death would occur while yet on the steep hill, it would be considered an accident. Why? Let him say that the mountain air or the labor of ascending such a high altitude has killed it? The Boraitha treats when it was brought to a good fat pasture.

"*Said R. Jose*," etc.: Said R. Jehudah in the name of Samuel: "The Halakha prevails in accordance with R. Jose." Said R. Samuel b. Jehudah to R. Jehudah: "You declared to us in the name of Samuel that Jose differs also with the first Mishna (in case of double payment); does the Halakha prevail according to him against the first Mishna also or not"? And he answered: "Yea, so it is!" The same was taught in the name of R. Elazar. R. Johanan, however, said: "R. Jose agrees with the first Mishna, in case he has already paid." Already paid! Did not R. Hyya b. R'Aba declare in his name (above, p. 81) that even if he said, "I am ready to pay," suffices? Say then, R. Jose agrees with the first Mishna in case the defendant declared already, "He is ready to pay."

MISHNA *III*.: If one said to two persons, I have robbed one of you the value of a manna (100 zuz) but I do not know which of you, or the father of one of you deposited with me a manna, but I do not know whose father, he must pay a manna to each of them, as he himself admitted his debt.

If two persons have deposited with one person one hundred zuz and the other two hundred, and each of them claims that the two hundred are his, the depository must pay to each of them one hundred, and the remaining hundred should be deposited until Elijah will come. Said R. Jose: If so, what does the swindler lose? Therefore, the whole sum should be deposited. The same is the case with two utensils: one of them was worth hundred zuz and the other thousand, and each of them claimed that the better one was his; then one of them must get the hundred one, and the other get hundred zuz in cash from the value of the utensils, and the remainder is deposited until Elijah will come. R. Jose, however, objected as said above, and maintained that both utensils should be deposited until Elijah will come.

GEMARA: We see then, from the beginning of the Mishna, that doubtful money is to be collected, and we do not say leave the money with its present possessor, in accordance with the law

of occupancy (Hasaka). Is there not a contradiction in the second part, in case of a deposit, where the doubtful hundred zuz must be deposited? The answer was: "Do you want to contradict a case of a deposit with a case of robbery?" A robber must be punished, but not a depositor.

There is, however, contradiction of both robbery and deposit. In case of a deposit it is stated in the first part: The father of one of you has deposited, etc. He must pay a manna to each of them. And in the second part, in case of the deposits of one and two hundred, it states that the doubtful hundred shall remain, etc. Said Rabha: "The first part is to be compared to two men who have deposited separately, one in the absence of the other, two bundles, where it is the duty of the depository to be very particular with the bundles and to mark on each of them to whom it belongs (so he ought to know whose father deposited with him). And the second part treats of a case where both persons deposited together the above sum, and it is to be compared as if they would put their moneys in one bundle, in which case the depository may say: You yourself were not particular in separating the sum to whom it belongs; then shall I be more particular than you? The contradiction of a case of robbery to the other case of the same is as follows: There is a Mishna (First Gate, p. 233): "If one robbed one of five persons and does not know the one, and each of them claims, 'He was robbed,' the robber may place the sum among them, etc., and depart, so is the decree of R. Tarphon."

We see, then, that we do not collect money in case of doubt because of the law of occupancy, and our Mishna, however, states that the robber must pay a manna to each of them (hence doubtful money is to be collected?). Are you then certain that our Mishna is in accordance with R. Tarphon? Yea! As in addition to the cited Mishna it is said that R. Tarphon admitted that if one said to two persons, "I have robbed one of you of a manna and I do not know who is the one," he must pay a manna to each of them. (Hence the contradiction is clear.) Nay! There is no contradiction. R. Tarphon speaks of a case when both persons summoned him; and our Mishna treats of a case when the robber repents and would like to satisfy the heavenly will, and it seems that our Mishna must be so explained, as A closes with the expression that he himself admitted his debt. Infer from this that so it is.

The master says: "When both parties summon him." But

what does the defendant claim?" R. Jehudah in the name of Rabh said: "He kept silence." And R. Mathnah said in the name of the same: "He denies knowing either of them. According to him who says he denies, if he keeps silent it would be counted as an admission, and according to him who says he kept silent, this silence is not counted as an admission, as he may declare, 'I kept silent before each of them because I thought, perhaps he is the one who deposited the greater sum.'"

The master said: "The robber may place the sum thus robbed and depart." And what shall be then? Shall the five take the sum? Did not R. Aba b. Zabda declare in the name of Rabh "Every doubt," etc.

Said R. Saphra: "The expression 'departed' means this: He is to place the sum *before the court* in presence of the five men, saying, 'Who of you is robbed shall bring evidence'; and as they could not do so, he may depart with the money, 1 and it shall remain with him until evidence is brought." Said Abayi to Rabha: "Did not R. Aqiba say that such a way would not keep him from transgression, but he must pay the sum robbed to each of them? Hence we see that on account of doubt money is to be collected, and not to leave the money with the possessor in accordance with the law of occupancy (and in Tract Baba Bassra, 155*b*, we heard him saying that the law of occupancy has the preference)? And he answered: There was an uncertainty of both the plaintiff and the defendant, and here it is only an uncertainty of the plaintiff, but the defendant is certain that he has robbed one of them. But is not the case in our Mishna also, an uncertainty of both the plaintiff and the defendant, as the latter says to each of them, "I do not know whether *you* were robbed"? It is already explained above that our Mishna treats of a case where he repents and would satisfy the heavenly will. Said Rabbina to R. Ashi: "How could Rabha say, if there were two bundles he ought to be particular to know to whom each bundle belongs. Did not Rabha or R. Papa say elsewhere: That all agree in case where two men have deposited with a shepherd, one two sheep, and one one sheep, in the presence of both, and thereafter each claims the two sheep are his, the shepherd must place three sheep before them and depart? And he answered, There the case was where they deposited in his flock in his absence."

The same is the case with two utensils, etc. Why the repetition? Is this case not the same as the previous? To teach us that even in the case of utensils, which may involve a loss by selling the better one, the rabbis are nevertheless of the same opinion.

MISHNA *IV.*: If one deposits fruit at his neighbor, he must not touch it, even when should they be lost (destroyed by mice or by decay). R. Simeon b. Gamaliel, however, maintains, that he must sell it by order of the court, as this is similar to returning a lost thing.

GEMARA: What is the reason of the first Tana of our Mishna? Said R. Kahana: "Usually one is pleased with his own goods, be it a ninth part, as with the goods of a stranger, be it multifold." R. Na'hman b. Itzhak, however, said: "Because it is to be feared, 1 perhaps the owner of it has separated it for heave-offering or tithe." Said Rabba b. b. Hana in the name of R. Johanan: "The Tanaim of the Mishna differ only when the fruit becomes diminished as usual (further on is explained the measure of usual loss of each kind of grain and fruit); but if the loss would be

more than usual, all agree that he may sell it by order of the court." An objection was raised from the following: If one has deposited fruit at his neighbor's, and it decays; or wine, and it becomes sour; or oil, and it creates a stench; or honey, fermenting, one must not touch it; such is the decree of R. Meier. The sages, however, say: "He may try to prevent the loss and sell it by order of the court, provided he does not buy it for himself. Similarly, holders of charity funds, when there is no poor to whom to distribute, may change the money to any one, but not to themselves. Officers who are appointed to distribute food to the poor, if there is none, they may sell it, provided they do not buy it for themselves." Now the Boraitha states: "Fruit, and became rotten"; does it not mean even more rotten than usual? Nay, it means as usual. It states: "If wine becomes sour," etc., which certainly means that it is entirely spoiled for consumption? With beverages it is different, as there is no remedy (this would be correct with wine that becomes sour, and then has yet a value as vinegar, but oil and honey) when spoiled, what use can be had of them? Oil to smear the heels of footwear, and honey to use as salve for the camel wounds. The Boraitha states: "According to the sages he may try to

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prevent the loss." What should he do? Said R. Ashi: "He can save the pitchers which contained the spoiled articles; for if anything remains within, the pitchers may also become spoiled. What is the point of their difference? According to one, care should be taken only for a great loss, but not for a trivial loss; and according to the other, care must be taken even for a trivial loss.

"*R. Simeon b. Gamaliel said*," etc. It was taught, R. A'ba b. Jacob in the name of R. Johanan said: "The Halakha prevails in accordance with R. Simeon." And Rabha in the name of R. Na'haman said: "The Halakha prevails in accordance with the sages." But did not R. Johanan declare conclusively that when R. Simeon b. Gamaliel is mentioned in the Mishna the Halakha prevails in accordance with him--why then the repetition? There are Amoraim who differ concerning R. Johanan's decision; according to some of them the decision was conclusive, and according to others the decision was rendered not for all time (*i.e.*, in some instance the Halakha does not prevail according to Raban Simeon).

It was taught: "If one becomes a prisoner, according to Rabh his property must not be transferred to the nearest relative; and according to Samuel, it may." If there was a rumor that the man was dead, all agree it may be done; but if there is no rumor about his death, Rabh maintains: "It may not, because the relative may spoil his property"; and Samuel maintains it may, because the master decided that when the owner of the. property returns, the man who kept his property for him may be rewarded, as usually gardeners take a share for tilling the ground (*i.e.*, that from each property he receives his share), he would not spoil it. An objection was raised from the following Boraitha: R. Elazar said: "It is written [Ex. xxii. 23]: 'My wrath shall wax hot, and I will slay you with the sword,' etc. From this it is understood that their wives remained widows and their children orphans. For what purpose, then, does the verse add, 'and your wives shall be widows and your children fatherless'? To indicate that their wives would wish to remarry, but would not be allowed, and their children would beg that the property of their father should be transferred to them, and it will not be granted (*i.e.*, they will be prisoners, hence the property of a prisoner is not to be transferred to his relatives)." Said Rabha: "It was taught that it may be transferred to them, but they may not sell it. Such a case happened in Nahardea, and R. Shesheth

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did not allow the transfer of the property to his relative to be made, basing his decision upon the just quoted Boraitha." Said R. Amram. to him: "Perhaps the Boraitha is taught as Rabha amended it." And he rejoined: "Are you not a Pumbadithan, who tries to pass an elephant through the eye of a needle? Does not the Boraitha make the wives equal to their children? As the wives are entirely forbidden to marry, so are the children entirely from their father's property."

Says the Gemara: However, in the case in question the Tanaim of the following Boraitha differ. If one took possession of the estate of a prisoner, he must not be compelled to give it up; furthermore, if he was informed that the prisoner was about to be liberated, and he hastened to use the products of the estate, he is considered diligent, and rewarded. And the following are considered property of prisoners. If his father, brother, or one of his grantors went to the sea-countries, and there was a rumor that they were dead, whoever takes possession of their abandoned property, he must be compelled to give it up. And the following is considered abandoned property. "If the owners went to the sea-country, and no rumor of their death was heard." [R. Simeon b. Gamaliel, however, said: "I have heard that the latter's property is equalled to the prisoner's.] The same is the case with him who takes possession of forsaken property. And what is called forsaken property? If its owners are somewhere in the neighborhood, but cannot be found. Why, then, is the former called abandoned and the latter forsaken? Abandoned means, he was compelled to leave it; as it is written [Ex. xxiii. 11]: "But the seventh year shalt thou let it rest and lie still," [1] which is a decree of the Lord, and the latter means that he has forsaken it willingly, as it is written [Hosea, x. 14]: "The mother was dashed in pieces upon her children." The Boraitha adds, it was declared that all those who take possession of such land, their compensation must be appraised as if they were hired as gardeners.

Now let us see in which case this addition applies? It cannot be applicable to the case of prisoners, as it was stated above that

he is considered diligent; and also not in the case of forsaken property, as it is stated that he must be compelled to give it up; consequently it applies only to the case of abandoned property. But according to whom? Shall we assume that it is in accordance with the rabbis? Did they not declare that also in such a case the possession must be given up; and if in accordance with R. Simeon b. Gamaliel, did he not declare that he heard that this case must be decided as the case of prisoners? Yea! As in the case of prisoners, but not in all respects. It is equal only in case the possessor need not give it up, but not in case that he should be considered diligent, as his compensation is to be appraised as that of a gardener.

But why is this case different from that in the Mishna (Kethuboth, Chap. VIII., Mishna 3), which states that all he has done must be recognized? Nay! It is similar to the following case only, in which case it was said by R. Jacob in the name of R. Hisda, that if one incurred expense for the estate of his wife who is not yet of age, it is to be considered as if he incurred the expense for the estate of a stranger, which does not belong to him (*i.e.*, for which he may never be reimbursed). Why so? The rabbis enacted in such a case a rule to prevent the possessor from spoiling the estate, and the same is made here in our case for the same purpose.

But did not the Boraitha state "all of them, their compensations must be appraised," etc.? What

does the expression mean? "All of them"? To add to what R. Na'hman said in the name of Samuel, that if one became a prisoner, his estate may be transferred to his relatives, and if he left his estate willingly, this is not to be done. R. Na'hman, however, declares his own opinion to be that if he was compelled to run away, he should be considered as a prisoner. Because of what does he run away? If for the reason that he has not paid his duty, is it not the same as if he abandoned his estate willingly; therefore, it must be explained that R. Na'hman means that he ran away because of some crime. Said R. Jehudah in the name of Samuel: "A prisoner who left ripe stalks for cutting, or grapes, dates, or olives for pressing, the court should appoint a guardian who shall do all work necessary, and then transfer it to his relative. But why should the garden not remain until his return? For adults, full-grown men, no guardians are appointed."

R. Huna said The estate of a prisoner must not be transferred to a minor relative, and not the estate of a minor to any relative, and also not to a relative of his relative (*e.g.*, a minor

who has a brother of his father, and this brother has a brother of his mother, who is a perfect stranger to the minor). It must not be transferred to a minor relative, because he may damage the estate; and also not to a relative, and a relative of relatives, because in the course of time they may possess it without any protest; they would keep it for themselves permanently, basing their pos. session upon the law of Occupancy."

Said Rabha: "It is to be inferred from R. Huna's statement above, that possession is not taken of the estate of a minor, no matter whether he is an uncle on his father's or mother's side; no matter whether it was land or houses, and also no matter whether the division among the brothers took place or not."

There was an old woman who had three daughters. Together with one of them she was taken to prison, and of the remaining two, one died and left a child. Said Abayi: "What shall we do? Should we transfer the estate to the remaining living daughter, who is here, then perhaps the old woman will die, and the minor will become an heir; and there is a rule that the estate of a minor must not be transferred to a relative in trust. Should we transfer the estate to the child, then perhaps the old woman will not die; and there is a rule that no minor can be appointed as guardian to the estate of a prisoner. Therefore, the half of the estate should be given to the sister, who is here; and a guardian shall be appointed for the other half for the sake of the child." Said Rabha: "When there is no other way but the appointment of a guardian for the half, then he shall be appointed rather for the whole estate." Finally, it was heard that the old woman was dead. Said Abayi: "Now, one-third of the estate should be given to the sister, and one-third transferred to the child, and the remaining third should be divided one-half to the sister, for safekeeping, and for the other half a guardian shall be appointed for the sake of the child." (Rashi explains thus: One-third certainly belongs to her, as she is an heir; the same is the case with the other third of the minor; the remaining third, however, belongs to the sister who is a prisoner, whose existence is doubtful. Now, the half of her inheritance must surely be transferred in trust to her sister, as the law allows a relative to be a guardian; and, at any rate, her sister may take possession of it, if she is dead, as she is the heir; and if she is still alive, she is to be considered a guardian. The other half, however, if she is dead, the minor is an heir; but if she is alive, she cannot be a guardian, because of age; and, therefore, a guardian must be appointed.) Said

Rabha: "If a guardian, then he must be appointed for the whole third."

A brother of Mari b. Isk, who was born in Hoozai, came to him and demanded a share of the inheritance of his father, and he said: I do not know you. The case came before R. Hisda, and he said: Mari is right: as it is written [Gen. xlii. 8]: "And Joseph recognized his brothers, but they recognized not him." And the reason was, because Joseph had departed when he was not yet bearded, and when they saw him he was; therefore it is for you to bring evidence that you are his brother. And he answered: I have witnesses, but they are afraid to testify, because Mari is a powerful man (and they are afraid of being injured by him). Said R. Hisda to Mari: "Then you must go and bring witnesses that he is not your brother." Rejoined Mari: "Is this the law? Is it not a rule that the plaintiff must bring evidence?" And R. Hisda answered: "So is my decision to you and to all powerful men like you." And he rejoined: "What is the use of my bringing wit. nesses, they will certainly testify for my sake, as they will be afraid to testify against me." Rejoined R. Hisda: "I do not suspect that the witnesses will do two wrong things for fear of you; what they may do is, not to appear before the court, but they are not suspected that they should come and testify falsely." Finally, witnesses appeared, and testified that *he* is his brother. And the brother claimed Mari should give him a share from the vineyards and gardens cultivated by Mari, and R. Hisda said that his claim was right, as there was a Mishna, Chap. ix., in the Third Gate, which stated so. Said Abayi to him: "What comparison is this? The Mishna there treats of a case where were brothers of age and minors, and those of age cultivated the estate; the Mishna states, therefore, the improvement must be divided (*i.e.*, as they know of the existence of their minor brothers, they relinquish the forth. coming share of their labor for the sake of the minors). But here, did Mari know that a brother existed, that he should relinquish his labor for him?" The case was not decided in this court, and came before R. Ami, and he said: "Was it not decided in a case of greater importance, namely, of a relative who took possession of the estate of a prisoner, and improved it, his compensation must be appraised as a gardener; and in this case, as R. Hisda decided, he should take an equal share of the improvement made by Mari, without any compensation even as a gardener, and the case was returned to R. Hisda, and he said: How can it be compared? The case cited by R. Ami was, that the court appointed the relative

to take care of the estate, and certainly a compensation must be given him; but here, did Mari do so with the permission of the court? and, moreover, the court could not appoint him as a guardian, because his brother was a minor then, and, as said above, no relative can be appointed guardian of the estate of a minor." The case was referred again to R. Ami, and he said: "I was not aware that his brother at that time was a minor."

MISHNA *V.*: If one deposits fruit, the depository may account to him losses as follow: To wheat and rice, nine half *cabs* to one *coor*; to barley and millet, nine whole cabs; to spelt and flax, three *saahs* to one *coor*; however, all must be appraised according to the measures and circumstances of the time. Said R. Johanan b. Nuri: What do the mice care? they consume all the same, whether more or less; therefore he must account the loss to him for one *coor* only. R. Jehudah, however, says: If there was a large quantity, he may account for no loss at all, because it increases.

GEMARA: Is it not a fact that with rice there is more loss? Said R. bar bar Hana in the name of R. Johanan: "The Mishna treats of shelled rice."

To spelt and flax, etc. Said R. Johanan in the name of R. Hyya: "The Mishna treats of flax which is yet in the stalk, and so we have also learned in the following Boraitha: To spelt and to flax in the stalk, and to rice not shelled, three *saahs* to one *coor*."

All must be appraised, etc. In a Boraitha it was taught so accordingly to each *coor* and circumstance of the season.

R. Johanan, etc. There is a Boraitha which adds as follows: It was said to R. Johanan, Is it not a fact that much of it undergoes a loss, and much of it is scattered?"

Another Boraitha, concerning our Mishna, states: All this is said in case he has mixed it with his own, but if he has assigned a corner, for him to put his grain, then he may say: "Yours is before you, take it as it is."

But why should it not be the same, even if he has mixed it with his own? He may take his own, and for the remainder he shall say: Yours is before you? The case was, when he used this grain. But even then let him take the remainder of his own? The case was when he did not know how much he had used of it.

R. Jehudah said, etc. What is to be considered a large quantity? Said Rabba bar bar Hana in the name of R. Johanan: Ten *coors*; and so we also learned in a Boraitha.

A disciple taught before R. Na'hman that all this was said in

case the depositor measured the grain of his barn, and the depository returned the grain also from his barn; but if he returned the grain from his house he needs not to account to him any loss at all, because it usually increases. Said R. Na'hman to him: "Does the Mishna treat of fools who give a large measure and take in return a small one? Perhaps your Boraitha teaches as follows: All this is said when the depositor has given it to him at harvest time, and it was returned to him at the same season; but if he deposited it in the harvest, and it was returned to him in the rain season, he needs not to account any loss, as it increases." Said R. Papa to Abayi: "If it is so, why should not the pitcher full of grain crack in the rain season? It happened that such a pitcher cracked. According to others, the grain which was in a closed pitcher does not increase, for lack of space."

MISHNA *VI*.: The loss of wine counts one-sixth--R. Jehudah, however, says one-fifth--of oil, three *lugs* of each hundred, namely, one and a half for yeast, and one and a half for the absorption of the vessel. [1] If, however, the oil was already purified, there is no loss for yeast, and if the vessels were old ones, then nothing is to be accounted for the vessels. R. Jehudah, however, says that even if one sells purified oil the buyer bears the loss of one and a half to each hundred *lugs*, for waste [2] yearly.

GEMARA: And they do not differ. The one of them treats of waxed barrels, as the custom was in his place, which do not absorb much; and the other treats when they were smeared with pitch,

as the custom was in his place, and absorbed more. Some say that in some places barrels were made of such kind of clay that did not -absorb much. In the place where R. Jehudah used to live, there was usually put forty-eight pitchers into one barrel, and they were sold for six *zuz*. R. Jehudah, however, when he became a storekeeper, sold every six pitchers for one *zuz*, so that for thirty-six pitchers he obtained six *zuz*, and twelve remained for him; counting the loss of eight pitchers for absorption by the vessels, he nevertheless had for his profit four pitchers. But did not Samuel say that one must manage that his profit should not exceed a sixth of the amount? Hence a sixth is allowed? Why, then, did not R. Jehudah manage to have a sixth profit? Because of the barrels and the yeast, which, aside from the four

[paragraph continues] *lugs*, remained for him. If so, then R. Jehudah profited by more than a sixth? He took this for his trouble, and for the commission which he had to give to the barrel sellers.

"*If it was purified oil*," etc. But even if there were old ones, it is impossible that they should not absorb some? Said R. Na'hman: The case was when they were waxed. Abayi, however, says, even when they were not waxed, if they were old ones they had already absorbed all they could, and nothing more from the new stuff.

R. Jehudah says, etc. Said Abayi: "In accordance with R. Jehudah's theory, one may mix yeast with the oil he is selling; and that is the reason that the buyer must accept a *lug* and a half for yeast, as the seller may say, If I would like to mix yeast with it you would have to accept; do the same even when I give it to you pure. But why should not the buyer say, If you would put yeast in it, I would sell it with the oil; but now, even if you would furnish me with the yeast separately, what should I do with it, as I cannot sell it separately? The Mishna treats of a private person who prefers clear oil.

And, according to the theory of the rabbis, one must not mix yeast with oil, and therefore one may not accept any loss for yeast, as the buyer may say, As it is not allowable for you to mix the yeast with the oil, I need not accept any loss for yeast. Said R. Papa to Abayi: It seems to be the contrary. According to the sages, he is allowed to mix yeast, and therefore the buyer need not accept any loss for it, as he may say, Because you have not mixed it, you have relinquished it for my sake. And, in accordance to R. Jehudah's theory, the mixing is not allowed, and therefore he must accept the loss of a *lug* and a half, and the seller may say, To mix any yeast with the oil by one is not permitted, and if you were not to accept any loss, where is my profit? Shall I be a business man for buying and selling without deriving any profit from it? There is a Boraitha which states that a buyer or a depository, concerning the offscouring, is equal in law. How is this to be understood? Shall we assume as the buyer does not accept the offscouring, the same is the case with the depositor? Why? The depository may say: What have I to do with your offscourings? Therefore it must be explained in the reverse. As the depositor must accept the offscouring, the same is the case with the buyer. Is that so? Have we not learned in a Boraitha, R. Johanan said that the loss of unpurified oil is to be accounted to the seller only, but not to the

buyer, because he accepts a *lug* and a half for yeast, without offscouring? This presents no difficulty. It treats of a case when the money for the oil was paid in Tishri, and he delivered it in Nissan, with the same measure as at the time it was bought (then the buyer must accept the loss,

as the oil in Nissan is usually already purified), and R. Johanan speaks of a case when it was paid and delivered in Nissan with the usual measure of the season.

MISHNA *VII.*: If a barrel is deposited for safe-keeping with some one without the owner assigning a separate place for it, if the depository has handled it and it broke while yet under his hand, if his act was for his own advantage he is responsible. If for the sake of the article, he is not. If, however, it broke after it was replaced, there is no responsibility at any rate. If a separate place was assigned by the owner, and the depository handled it and it broke, he is responsible for it at any rate, provided he has replaced it for the sake of the article.

GEMARA: This Mishna, which states that there is no responsibility if it broke after he replaced it, even if it was for his own advantage, is in accordance with R. Ismael, who said elsewhere that no knowledge of the owner is necessary for the return of a lost article; but if so, why then only when a separate place was not assigned to it? The same should be the case even when it was assigned? Yea! but it is to be explained thus: Not only when a place was assigned by the depositor, and the depository put it into the same, he is free;. but even if no place was assigned, if only the depository returned it to the place where it was before, he is also free; but if so, how is to be understood the latter part of our Mishna in case a place was assigned by the depositor? This is in accordance with R. Aqiba, who said that the knowledge of the owner is needed. And the same interpretation of the first part is to be used here also; that is, not only if a place was not assigned, but even if it were assigned, he is nevertheless responsible. But is it right that the first part should be in accordance with R. Ismael and the latter part with R. Aqiba? Yea! as R. Johanan said: "He who will interpret to me our Mishna in accordance with one of the two above Tanaim, I will carry his clothes for him to the bath-house." R. Jacob b. Abba, however, explained it before Rabh that he took the same with the intention of robbery, and R. Nathan b. Abba, before the same, that he took it with the intention of using a part of it, (and although he has not used it as yet) it is nevertheless

considered already his property and he is responsible for it. 1 In which point do Jacob and Nathan differ? In the law of "stretching his hand" (Ex. xxii. 10): If using a part of it is needed, or the intention alone makes him liable, although he has not touched it as yet. According to Jacob he is not liable unless he has used some, and according to Nathan the intention only suffices. R. Shesheth opposed (both statements). "Does then the Mishna state he took it? It states he handled it only." Therefore he explained it that the handling was for the purpose of reaching pigeons, which were on a higher place, by standing upon the barrel, and he holds that borrowing an article without permission of the owner is considered robbery; hence he acquired title to it. And by such an interpretation the whole Mishna can be explained in accordance with R. Ismael, and the latter part, in case the place was assigned by the depositor, treats when the depository has replaced it not in its assigned place. R. Johanan, however, maintains that, from the expression of the Mishna, replaced is to be understood that he put it at the very same place (and therefore his above statement). It was taught: "Rabh and Levi, one of them holds that stretching his hands means that he used a part of it already, and the other one holds that the intention only suffices, and from the explanation of Rabh in a Boraitha, further on, it may be understood that Rabh is the one who holds that the intention only suffices. The Boraitha states as follows: "A shepherd, who left his flock, and in the meantime a wolf or a lion damaged it, he is free (provided it was not a neglect of duty). If, however, he placed his cane or his bag upon the animal, which was damaged by the above wild beast he is responsible; and in the discussion, why such a law? It

was explained in the name of Rabh that he struck it with his cane and it ran away." Now, did he take anything away from the animal? Hence it is to be inferred that he holds that the liability of stretching his hands needs not any using or diminution of the article. But perhaps Rabh means that he struck it so hard with his cane that it becomes lean (hence it is considered a diminution), and it seems so from the expression, he struck it with his cane; hence Rabh holds that to the above liability using is needed, and Levi is the one who holds it needs not. Said R. Johanan in the name

of R. Jose b. Nehoraï: Peculiar is the stretching of hands, which reads in regard to a bailee for hire in connection from the same expression, which reads in regard to a gratuitous bailee. But I say that it is not peculiar. (Says the Gamara:) According to R. Jose, What is the peculiarity? He maintains this expression should not be written in the case of a bailee for hire, and it should be deduced from the case of a gratuitous bailee thus: A gratuitous bailee, who is not responsible for theft and loss, is responsible for stretching of hands. A bailee for hire who is responsible for the former also, so much the more should he be responsible for the latter act. Why then is it written separately? The peculiarity is that he is responsible, even for the intention. And R. Johanan, who said: I say it is not peculiar, bases his theory on the ground that the above *a fortiori* conclusion is to be controverted thus: A gratuitous bailee is in some respects more rigorously held in a case where he claims stolen, and must pay the double amount if thereafter it was found that it was not so, which is not the case with the bailee for hire. He, however, who does not use the objection, maintains that the principal amount without an oath (which the law prescribes to a bailee for hire) is more rigorously held than the double amount with an oath.

Rabha says: "If the expression of stretching hands would not be written in the both above-mentioned cases, it could be deduced from the case of a borrower. A borrower who has stretched his hands on the article with the permission of its owner is, nevertheless, responsible, even for an accident; both the above-mentioned cases, which treat of those who have stretched their hands without the permission of the owner, so much the more should they be responsible. Why, then, is it written, one of them, to teach that the intention of stretching hands without using suffices; and the other one, that one shall not say that the rule: it is sufficient for a deduction, to apply the law of the case from which it is deduced, in the very same manner, but not more rigorously? And as a borrower is not responsible when it happened in the presence of the owner, so also should be with both mentioned bailees, that if they have done so in the presence of the owner, they should be free (therefore the repetition, to teach that in this case it is not so).

MISHNA *VIII*.: If one has deposited money for safe-keeping, and the depository tied it and carried it on his shoulder, or he gave it to his son or daughter, who were not as yet of age, or he

did not lock it safely, he is responsible for carelessness. If, however, he was careful with it, as it is required of a bailee (and nevertheless an accident happened), he is free.

GEMARA: It is correct in all cases mentioned in the Mishna, that he is responsible for carelessness, but in the case that he tied it and carried it on his shoulder, why is this considered careless? What better could he do? Said Rabha in the name of R. Itshak: It is written [Deut. xiv. 25], "and bind up the money in thy hand," which means, although it is "bound up," it shall

nevertheless be in his hands. R. Itshak said again: That the above cited verse intimates that one shall manage so that his money shall always be in his hands. And he said again: It is advisable for one that he shall divide his money in three parts, one of which he shall invest in real estate, one of which in business, and the third part to remain always in his hands (as it may happen that he will need cash for a profitable transaction). The same said again: Usually blessing does not occur but in things which are not before the eyes, as it is written [Deut. xxviii. 8]: "The Lord will command upon thee the blessing in thy storehouses" (which are not continually before the eye). Similar to this, it was taught by the disciples of R. Ismael. The rabbis taught: "He who is going to measure the grain in his barn, he may say, It shall be thy will, O Lord our God, Thou shalt send blessing to the labor of our hands. When he begins to measure, he may say: Blessed may be He Who sendeth blessings upon this heap. If, however, he prayed after measuring, his praying was in vain, because blessing does not occur on things which are weighed, measured, or counted, but on things which are not before the eyes, as it is written (as the above cited verse)."

Samuel said: "Nothing is considered safety with money, unless it is hidden in the ground." Said Rabha: "Samuel admits that if it was in the twilight of the eve of Sabbath, that the rabbis would not trouble him to do so. If, however, after the Sabbath departed, and he had time to hide it, and he did not do so (and in the meantime something occurred), he is responsible, unless he was a young scholar who thought, probably, I will need money for the benediction of the Habhdala. It happened that one deposited money with his neighbor, who hid it in a hut made of branches, and it was stolen. When the case came before R. Joseph, he said: "Although concerning fire, it is a wilful carelessness; concerning thieves, it is considered safe; and there is a rule that if, finally, it was an accident, although it was started in

neglect, there is no responsibility. The Halakha, however, prevails, that in such a case there is responsibility."

It happened that one deposited money with his neighbor, and when he demanded the money, the depository said: I do not know where I put it; and Rabha made him pay, declaring that such an answer is considered wilfulness. It happened also that one deposited money with his neighbor, and he gave it to his mother for safe-keeping. She put it in a χαρταλος (a kind of box), and it was stolen. When the case came before Rabha, he was considering how to decide: Should we make him pay, he may say, he who gives an article for safe-keeping does so with the condition that the depository may save it by means of his family. Shall we make his mother pay, she may say, my son did not inform me that the money was not his. If I were aware of it, I would have buried it; and shall we make him pay because he did not tell his mother? He may say, on the contrary, I have done so, because I thought if she would think it is my money, she would take more care of it; therefore, he decided that he shall swear that he gave it to his mother; and she shall swear that she put it in the above-named box, and it was stolen, and then both shall be free. There was a guardian of orphans, who bought an ox for the orphans and transferred it to the shepherd. The ox had no teeth and could not eat, and finally it died. And Rami b. Hama considered how to decide: Shall we make the guardian pay, he may say, I transferred it to the shepherd, what could I do more? And shall we say the shepherd shall pay, he may say, I did my duty. I have put it between the oxen, and food was given to it; how could I know that it could not eat? [Let us see: the shepherd is considered a bailee for hire of the orphans, was it not his duty to investigate? If there would be a damage to the orphans, it would indeed be decided so; but the case was, that the orphans did not suffer any damage, as they found the owner of the ox

and collected the money which was paid to him for it. Who, then, is now the plaintiff? The owner of the ox, who claims that he was not informed of the case. Of what should he be informed (did he not know that his ox had no teeth and the act of selling was a fraud)? It speaks of a speculator whose business is to buy and sell oxen.] The decision of Rami b. Hama was, that the speculator should swear that he was not aware of it, and then the shepherd must pay the value of cheap meat. 1

It happened one deposited a bundle of hops with his neighbor, who owned a similar bundle of the same, and told his employee to put the hops in the beer, from his own bundle, but the employee took them from the other one. When the case came before R. Amram, he was considering how to decide this case. Shall the depository be made to pay? He may claim, I told my employee to take from my own. Then should the employee be made to pay? He may claim, my employer did not tell me not to touch the other bundle, and I thought that he only showed me that he owned hops, and it was no difference from which bundle I would take. [But what damage did the depository sustain? Even if he paid for the hops used, he has in exchange his own. Said R. Sama b. Rabha: "The case was, that the beer was spoiled by the bad hops." And R. Ashi said: "The hops were good, but mixed with thorns, and the beer was not improved as it should be." And the employer claimed the damage was caused by the bad quality of the hops, and wanted the difference of the value for not improving, and it was decided he should get it.]

MISHNA *IX.*: Money deposited for safe-keeping with a money-changer, if it was tied up, he must not use it, and therefore, if lost, he is not responsible. If open, he may use it, and is responsible if lost. With a private person, however, he may not use it under any circumstances, and is therefore not responsible for loss. A storekeeper is considered in this respect a private person, according to R. Meier. According to R. Jehudh, however, he is considered a money-changer.

GEMARA: If the depositor names the sum contained in each bundle, why then shall the money-changer not use it? (Every one knows that a money-changer needs always money for his business, and one who deposits money with him does so usually with the intention that it shall be used.) Said R. Assi in the name of R. Jehudh: "Read in the Mishna that it was both tied up and scaled." R. Mari questioned: "How is the law, when it was tied up with an unusual knot? (Should it be considered as a seal or not?)" This question remains undecided.

"*If open, he may use it,*" etc. Said R. Huna: "Even if it was robbed." [But did not the Mishna state *for loss*? as Rabha explained that loss means such an accident as, *e.g.*, his ship was lost at sea.] R. Na'hman, however, maintains that in such case he is not responsible. Said Rabha to him: "According to your theory we see that the money-changer is not considered a borrower (who is responsible even for an accident); then must he not be considered also as a bailee for hire (hence he should not be responsible for theft) And he answered: "I agree with you, that because he has a right to use the money for business, to derive benefit from it, this makes him a bailee for hire." R. Na'hman objected to R. Huna's statement from the following Tosephta: "'Money deposited with a money-changer, if tied up, must not be used, and in case the money was from the sanctuary and the money-changer used it, the transgression is not imputed to the treasurer of the sanctuary. If, however, open, it maybe used, and if the money-changer used it, the transgression

falls upon the above-named treasurer.' Now, according to your theory that the money-changer is responsible, even if it was robbed by force (consequently, with the act of depositing, it goes from under the control of the treasurer, and is from now on under the control of the money-changer, hence the transgression was already done by depositing). Why then does the Tosephta state that only when the money-changer used it, the transgression falls upon the treasurer?" And R. Huna answered: "Indeed, the same is the case even when the money-changer has not used it, and the expression used in the latter part is not to be taken in particularity, but it is mentioned because of the same expression in the first part?"

MISHNA *X*.: A depository who stretches his hand for the bailment, the school of Shamai makes him liable from the time he touched it for increase and decrease, so that if, thereafter, it becomes lower in price the depository must suffer; and the same if it increases, he must transfer the increase to the owner. The

school of Hillel makes him liable from the time he used it. R. Aqiba, however, maintains that he must pay the value at the time he is summoned.

GEMARA: Rabba said: "If one robbed a barrel of wine, the value of which was one zuz at that time, and thereafter it increases to four zuz; if he breaks it or drank its contents, he must pay four zuz. If, however, it breaks accidentally, he must pay one zuz only. Why so? Because, if it would still be in existence, he would be obliged to return it; consequently, the guilt came with the drinking or breaking, when the value was already increased; and there is a Mishna that all robberies must be counted from the time they were perpetrated; but if it was broken without his fault, so that after its increase he had done nothing, he pays one zuz only, as his liability begins from the time he took it, and then it was worth only one zuz. An objection was raised from our Mishna: The school of Hillel makes him liable, etc. What is meant by the expression, *from the time he used it*? Shall we assume that by the word *used* is meant that he had given it away, and at that time the value of it was decreased? Is there one Tana in the whole college that holds so? Is it not stated in the Mishna that all robberies must be paid at the time they were perpetrated, and if increased at the time, then Beth Hillel's decision would be the same as Beth Shamai? Hence the expression, "at the time it was used," means when it was taken from the owner. And the above schools differ in case of an increase. According to Beth Shamai, if it increased at the time he had given it away, he must pay the increase also; and according to Beth Hillel, it must be appraised only at the time it was robbed; and if so, then Rabba's decision is in accordance with that of Beth Shamai? Rabba may say that the schools do not differ with an increase, but with decrease. And the point of difference is this: The Beth Shamai holds that the liability comes with the stretching out of his hands, although he has not used it as yet; consequently, the decrease occurs while under his control. And the Beth Hillel holds that using is necessary; consequently, it is considered under the control of the owner until the depository makes use of it, and if a decrease occurs while it was not as yet used by him, it is counted under the control of the owner.

Then Rabha's decision above (page 101), that stretching out the hands needs not the *using*, would be in accordance with the Beth Shamai; therefore this point of their difference must be explained thus: The Beth Shamai holds that the increase of a

robbed article belongs to the owner, and according to Beth Hillel, it belongs to the robber. (And the Mishna treats of a case, *e.g.*, a gravid cow or a sheep unshorn, according to Beth Shamai, it belongs to the owner; and according to Beth Hillel, it belongs to the depository.) R. Meier and R. Jehudah differ in the same case (Baba Kama,), and it seems to be so, as the Mishna states that the school of Shamai holds that he must suffer increase and decrease; and the school of Hillel, at the time it was used. (From the expression increase and decrease, and not dearer and cheaper, it is to be inferred that it treats of a case similar to the above-mentioned explanation--Rashi.) Infer from this that so it is.

R. Aqiba, however, maintains, etc. Said R. Jehudah in the name of Samuel: The Halakha prevails according to R. Aqiba. He, however, agrees that in case there were witnesses at the time of robbery it must be paid. Why so? Because it is written [Lev. v. 24]: "To whom it appertaineth shall he give it, on the day when he confesseth his trespass." And as there were witnesses, the trespass is counted from the time it was done. Said R. Oshia to R. Jehudah: "Rabbi, thou sayest so! So said R. Assi in the name of R. Johanan: R. Aqiba insists in his decree even if there are witnesses, and his reason is taken from the same verse cited, as only the court made him know of his trespass." Said R. Zeira to R. Abba b. Papa: "When you will ascend to Palestine, make thy way around the steps of Zur and visit R. Jacob b. I'di and question him whether he heard from R. Johanan about R. Aqiba's decision above, and if so, the Halakha prevails." (He did so) and the answer was: "So said R. Johanan, the Halakha prevails in accordance with R. Aqiba always."

What is meant always? Said R. Ashi: "It means even when there were witnesses. It can also be said that it means the Halakha prevails in accordance with him, even when the depository returned it to its former place and then it broke: against R. Ismael's theory that the knowledge of the owner is not necessary (*i.e.*, that R. Aqiba makes him responsible if it breaks, while the owner was not as yet aware that the article was returned), and so the Halakha prevails. Rabha, however, said: "The Halakha prevails in accordance with Beth Hillel."

MISHNA *XI*.: If one intends to use a bailment deposited in his control and said so in presence of witnesses, the liability follows immediately; so according to Beth Shamai. Beth Hillel, however, maintains he is not liable unless he has acted so, as it

is written [Ex. xxii. 10]: "That he has not stretched out his hands against his neighbor's goods." If he has bent the (deposited) barrel, and took of it a quarter of a *lug*, and in the meantime it broke by accident, he must pay only for the quarter of a *lug*. If, however, he picked up the barrel and took the above-mentioned measure, and in the meantime it broke, he must pay for the whole barrel.

GEMARA: Whence is all this deduced? From the following, as the rabbis taught: "It is written [ibid., ibid. 8]: 'For all manner of trespass.'" From this the Beth Shamai deduces that he is liable for the intent as well as for the act itself. The Beth Hillel, however, maintains that there is no liability unless he stretches out his hands, as the above-cited verse (10) reads. Said the Beth Shamai to the Beth Hillel: Is it not written, "for all trespasses"? And they answered: But is it not written, "if he had not stretched out his hands"? The verse, however, cited by you is to be explained thus: Let one say that he is liable only when he himself committed this act, but not if

he did so through his slave or messenger; therefore it is written, of all trespasses.

If one bent the barrel, etc. Said Rabha: "It is so in case it breaks. If, however, the wine became sour, he must pay for the whole. Why so? Because his act causes the damage (for if it were full, no air could enter to spoil it)."

If, however, he picks it up, etc. Said Samuel: "The expression, and he took of it, is not to be taken literally, for it means with the intention of taking out, and he is liable even if it broke before he did take." Shall we assume that Samuel holds that "using" is not needed for the liability of stretching hands? It may be said this case is different, as one-quarter of a *lug* may cause the spoiling of the whole wine, as explained above.

R. Ashi questioned: "If one picked up a deposited packet with the intention of taking out of it one *dinar*, what is the law? Shall we assume that wine only is saved when it is full, but money can be saved at any rate, or a full packet of money is safer than one which is not filled up (as from a packet full of money a coin cannot easily drop)? This question remains unsettled.

Footnotes

82:1 There are objections and answers concerning oaths, which are repeated in Tract Shebuoth (Oaths), therefore omitted here.

83:1 Of which it is to be deduced that if it is possible to moderate the strict law without any trouble it must be done.

84:1 *Mulgeo* means milking, and it is used in a case where the milk is always drawn away, and the cow, the principal, loses nothing by the operation.

85:1 A hired an animal of B that he should labor with it one hundred days, and then B asked A, as a favor, he should loan it to him for ninety days of the hundred, and subsequently he should return it to A for the remaining ten days, and if death occurred during the time it was yet borrowed, B, although he is the owner, is now considered a borrower only, who is responsible. But if A after he had loaned the hired cow to B, the owner, hired the same again for eighty days, B is considered a borrower of the animal, who hired it to another one for labor. Now if the animal dies while under the control of A he has only to take an oath that the death was natural and B must furnish him with another cow instead. If, however, B has borrowed it again for seventy days out of the eighty of the second hiring, and death occurs while under B's control, then A has only to take an oath for the natural death, and B, the borrower, has to furnish A with four cows--two for the two times he has borrowed from him, *i.e.*, as the time of his borrowing is not yet elapsed it is considered as if he had loaned him *two animals* and two deaths occurred, and the other two he must furnish him for the remaining labor days he hired from him.

90:1 In the text only one word, *Veyonêach*, was Saphra's answer, and the explanation is translated by us from Rashi.

91:1 It means to state that this law was an old one, in time when heave-offering and tithes were observed.

93:1 The Hebrew word for it is *Nietooshim*, which means literally "abandoned"; and the second, *Retooshim*, which means split, and thus according to the meaning of the verse. It is translated by Leeser as in the text, which certainly also means unwillingly. Rashi, however, explains from the beginning of the verse, which is literally a tumult, that for fear enemies will rob the land the inhabitants ran away and left the land desolate; and the Gemara considers it as if it were done willingly.

98:1 Rashi explained above that all vessels at that time were of clay, and therefore a new one absorbed.

98:2 The text uses the word "schmarim," which means literally yeast. Here, however, it refers to waste material.

101:1 This complicated paragraph is explained by Rashi at length, but notwithstanding his interpretation it remains complicated and seems to us of no importance. We, therefore, have translated almost literally without any explanation, as every student should be able to interpret it according to his own understanding.

104:1 Rashi says: I wonder where Rami's decision is taken from. The shepherd was surely not the bailee of the speculator. It seems, however, to him, that p. 105 [paragraph continues] Rami based his decision upon the Mishna II. in this chapter, where R. Jose declared that the cow must be returned to its owner, although the owner has not any business with the borrower, and so was the Halakha decided. Now, as in that case the hirer suffered nothing, as the law makes him free of an accident, nevertheless, because he has a claim against the borrower, it is decided that the owner of the cow may substitute the hirer and collect the money for his claim from the borrower. The same is the case here; for if the orphans would suffer any damage, they would surely collect it from the shepherd, who was their bailee. Now, when they did not suffer any damage, the speculator substitutes them. However, such moderation could not be made if the orphans would suffer any damage, as the orphans, who are not yet of age, could not relinquish what is due to them; but now when the speculator substitutes them, and the claim of wilful carelessness could not be made by the speculator directly, because the shepherd claims that he had done all his duty, etc. (see text); hence the moderation, he shall pay the value of cheap meat and the skin shall be returned to him. Tosphat, however, maintains in the name of R. Tam, that this decision was not a moderation at all, but a strict law, for if the speculator would be informed, he would have slaughtered the ox immediately, as he could not wait with it for the market-day and sell the meat at a low price.

Next: Chapter IV

CHAPTER IV.

LAWS RELATING TO TITLE, REAL AND PERSONAL; FRAUD, WHAT CONSTITUTES FRAUD AND THE CIRCUMSTANCES SURROUNDING FRAUDULENT TRANSACTIONS, ETC.

MISHNA *I.*: If one bought gold and silver coins together and made a drawing on the gold ones, title is also given to the silver ones, but not *vice versa*. The same is the case with copper and silver coins: the drawing on copper ones gives title to the silver, but not *vice versa*. If one has drawn coins which are out of circulation, having bought them together with good money, the sale is valid for both; if, however, he took possession of the good money, which was bought together with those out of circulation, the latter are not considered his unless he takes possession of them also. The same is the case if one buy uncoined with coined money, to acquire title to both he must take possession of the uncoined. If, however, he did so with the coined money, the uncoined is not considered bought. Movable articles give title by drawing them, also for the coins bought with them, which is not the case with drawing the coins only. All movable articles give title by drawing one of them. How so? If one made a legal drawing of the article, although he has not Paid the money as yet, he cannot rescind. If, however, he paid the money, and did not make a drawing of the article, he may rescind. But it was said that He who has punished the generation of the flood and the generation of the scattered, whose tongues were confused (Gen. xi. 7), He will punish him who does not keep his promise. R. Simeon, however, maintains that he who has the money in his hand has the preference (even in the former case).

GEMARA: Rabbi taught his son R. Simeon: "Gold coins give title to the silver." And the son rejoined: "Rabbi, in your youth you taught us that the silver ones give title to the gold ones, and now in your old age you teach that only the gold ones give title, but not the silver ones." [The Gemara questioned what was the reason then? In his youth he taught that because gold is more valued it is considered a circulating coin, and silver, which is not so valued, is considered an article of trade, and,

therefore, if he took possession of the article, title to the gold one is acquired; and in his old age he came to the conclusion that because silver is a circulating coin used all over the world, it is considered a coin, and gold, which is not so much in circulation, is considered an article of trade: so that by drawing it the silver coins are bought.]

Said R. Ashi: "It seems to me that his opinion while in his youth is more correct, as our Mishna states that copper gives title to silver; now if you are of the opinion that silver in comparison with gold is considered an article of trade, it is correct when it states that copper gives title to the silver, as it is considered an article of trade only in comparison with gold, but in comparison with copper it is considered a circulating coin. But if you say that silver is considered a circulating coin, even in comparison with gold, is it then necessary to teach that it be considered

so in comparison with copper? Is this not self-evident? (Hence his opinion while in his youth is more correct.)" The Gemara, however, maintains that this statement cannot be considered an evidence, as the teaching that copper gives title to silver was needed in case where silver is considered a circulating coin, even in comparison with gold, because it may be said that in the places where copper coins are used they are more in circulation than silver; hence they cannot be considered articles of trade in comparison with silver; therefore he comes to teach us that although in some places it is as stated above, in the majority, however, silver is more in circulation than copper, and is considered a circulating coin everywhere. And R. Hyya is also of the opinion that silver is always considered a circulating coin, and this is to be understood from the following: "It happened that Rabh borrowed dinars from the daughter of R. Hyya; thereafter the dinars increased in value, and when Rabh came to question R. Hyya, he was told to pay with the best dinars, and this decision shows that he held that silver is the right circulating coin; for if it would be considered an article of trade in comparison with gold, it should be considered as if one had borrowed a *saah* of fruit when it was cheap, and returned the same measure when it was dearer, which is not allowed because it appears usurious." (Says the Gemara:) This also cannot be considered as a real support for the above statement, as Rabh at the time he borrowed the dinars from R. Hyya's daughter possessed his own dinars, and in such a case it is analogous to the case stated in a Boraitha: "If one says, Lend me a *saah* of grain, I shall return it to you when

my son will arrive home, as he has the key to my granary, he may return to the lender the same measure, even if it became dearer, because the lender acquired title to it at the same time that he delivered to him the required articles."

Rabha said: "The Tana of the following Mishna holds that gold is considered the right circulating coin. The coin *parutha* mentioned in the Talmud is one-eighth of an Italian *Issar*. [To what purpose is it stated? Concerning the law of marriage, that less than a parutha is not considered.] An *Issar* is one twenty-fourth of a silver dinar. [To what purpose is this? Concerning general transactions, that a silver dinar must be of this value, as it is stated further on. And a silver dinar is one-twenty-fifth of a gold one. This is taught concerning the law of redeeming the first-born son [Ex. xiii. 13].]"

Now, if the gold dinar is considered a coin which is always of the same value, it is correct to say that the Tana named this coin for the purpose of redeeming, but if it would be considered an article of trade which increased and decreased in price, would the Tana then name it for this purpose? Is it not a fact that at the time of increasing the priest would give him change of it, and at the time of decreasing the father would have to add the difference? Hence it is inferred from this that it is considered a standard coin.

It was taught: Rabh and Levi: One holds that the law of exchange applies to a coin also, and the other holds that it does not (*i.e.*, although it is said above by drawing the coin, the article is not considered sold unless by drawing the article itself, this is only when it was done in the way of buying and selling, but if it was done in the way of exchange, *e.g.*, if one says: I have an article of so and so, and would like to exchange it for this coin, as soon as he takes possession of the coin, title is acquired to the article by the other party). Said R. Papa: "The reason given by him who holds that a coin cannot be exchanged is that the face of the coin is changeable by the government, and to acquire title by Sudarium, a standard coin is needed. An objection was raised from our Mishna, gold coins give title to the silver one. Is it not to be assumed that it

means in exchange? Hence we see that the law of exchange applies to a coin also. Nay, it means in the way of buying and selling for money. If so, it should be stated that one who has drawn the gold one is liable for the silver one? Why the expression, gives title? Read, then, he is liable, etc. And it seems that so is the correct explanation from the latter part, which states that silver coins do not give title to the gold

ones; and this is correct only when it treats of selling for money, as it was said that gold is considered an article of trade, and silver a circulating coin, and the drawing of a coin does not give title to the article; but if you will say that it treats of exchange, then both articles should give title, each to the other. And also from the following Boraitha: "Silver does not give title to gold; also, if one sold twenty-five silver dinars for one gold dinar, although he made a drawing on the silver, the gold is not considered his, unless he draws the gold." And this also is correct only by selling; but if an exchange, title ought to be given. But if it treats for money, how is to be understood the first part of this Boraitha? Gold gives title to silver; also, if one has sold a golden dinar for twenty-five silver ones, the silver belongs to the seller anywhere it may be found, provided the buyer made a drawing of the gold. This would be correct if it treated of exchange, but when it speaks of an ordinary sale, it should state that the *buyer is liable* for it instead of "the silver belongs, etc." Said R. Ashi: "It treats of a sale for money, and the expression, wherever it is to be found, means the place where the coin was made; *e.g.*, if he promised to furnish new coins, he cannot finish the old ones, although they are more valuable, because the buyer may say, I need them for safe-keeping, and new ones will preserve their surface better than old ones." R. Papa said again: "Even according to him who holds that the law of exchange does not apply to a coin, means that with the coin itself exchange cannot be made, but nevertheless title can be acquired to it by drawing the exchanging article, similar to articles of fruit, in accordance with R. Na'hman's theory, which is, that although exchange cannot be done with themselves, title, nevertheless, can be acquired to it by drawing the exchanging article, and the same is the case with a coin also. This statement was objected to from a Mishna (Maassar Sheni, IV., 5), and the conclusion was that the law of exchange does not apply to a coin under any circumstance; and R. Papa himself retracted from his statement (cf. Baba Kama, p. 236). And so also said Ula, R. Assi, and Rabba b. b. Hana in the name of R. Johanan, that the law of exchange does not apply to a coin. R. Abba objected to Ula's statement from the following: "He whose drivers and employees were summoning him for their wages, and he said to a money-changer, Give me change for a dinar, and I will give you from the money I have at home a good dinar and a *tressith*; if he really possesses money at home, this maybe done, but if he has not, it is prohibited, as it appears usurious. Now, if it is borne in mind that there is an exchange with a coin,

then this act is a loan only, and should be prohibited?" Ula was silent. Said R. Abba to him: "Perhaps the money of which the Boraitha speaks was uncoined, so that they are considered articles of trade, which may be acquired by exchange." Said Ula to him: "You are right, and this is to be inferred from the expression, a *good dinar*, and not *a* dinar and a *tressith*, which means, from uncoined money I have at home I will give you the *value* of a *dinar* and a *tressith*." R. Ashi, however, said: The Boraitha treats of coined money, and, nevertheless, it does not contradict the above statement, for as soon as he has the money home, it is to be like the case where one said, Lend me until my son will come with the keys, stated above.

"*All movable articles*," etc. Said Resh Lakish: "Even a purse filled with money may be acquired with another one equal to it." And R. Ah'ha explained his statement, that he speaks of dinars in one purse which were abolished by the ruler. and in the other purse, which were by the country; and both cases are needed, for if he would speak of those which were abolished by the ruler, one might say, because they are useless anywhere, they may be exchanged; but that of the country, which can be used in another country, they are still considered coins in circulation, and the law of exchange does not apply. And if he would speak of the latter, one might say, because they are useless at any rate in this country, they are not considered any more as circulating coins; but if prohibited by the ruler, but privately still circulated, they are yet considered coins; therefore both statements.

Rabba in the name of R. Huna said: "If one were holding some coins in his hand and said: Sell me your articles for the money I have in my hand, and the other agrees, and accepts the money, without asking the amount of it, the buyer acquires title to the article; and if, however, the article was in value a sixth less than the amount, the sale is null and void, because it is fraudulent. The title is acquired to the article because the seller was not particular as to the money; it is considered as an exchange, and the law of fraud applies here, because of the expression, 'sell me,' which means it shall be the value of the amount I hold in my hand." R. Abba in the name of the same authority, however, said: "If one said, Sell to me for the money I have in my hand, no cheating can be claimed."

It is certain that when the seller is not particular as to the amount, the buyer acquires title to the article, even before he drew it, as it is considered an exchange, in which the drawing of

one article suffices for the others also. But what is the law if it is an exchange, and they are particular as to the values--is the drawing needed in both articles or does one of them suffice? Said R. Ada b. Ah'ba: Come and hear: If one was holding his cow in the market, and his neighbor questioned him, Why are you holding the cow here? He answered, I need an ass. Replied the other, I have an ass, and can furnish you with it, but would like to know the price of your cow. The price is so-and-so. And what is the price of your ass? So-and-so; and they agree. Then the owner of the ass made a legal drawing of the cow, but the ass died before the owner of the cow made the drawing; the title to the cow is not acquired by the owner of the ass; hence we see that, although in a case of exchange, as soon they are particular as to the value, title is not acquired unless the drawing of both articles occurs. Said Rabha: "Does then the law of barter apply to fools who are not particular as to the value? All exchanges are very particular, and nevertheless title is acquired by drawing of one of the exchanged articles, and the above Boraitha treats of a case where the exchange was made of an ass for a cow and a sheep, and the owner of the ass made a drawing on the cow only, but not of the sheep, which cannot be considered a legal drawing."

The Master said: "If one said: Sell me for this amount, title is acquired, and nevertheless the law of fraud applies. Shall we assume that R. Huna holds that coins maybe exchanged? Nay! R. Huna holds with R. Johanan, who says that, biblically, money gives title, but for what purpose was it so stated that drawing gives title? This was enacted for the purpose that one might say, Your property was destroyed by fire in my attic." (*I.e.*, that R. Huna holds that there can be no exchange with coins, and his above statement is made on the basis that with the money he acquired title, by using the word "sell me," and there is not any need of drawing, because the

drawing was enacted by the sages to prevent damage to buyers, who pay the money without taking possession of the article; and if a fire may happen while it is yet in the house of the seller, he will not care to save it, as it does not belong to him any more, therefore the sages enacted that the seller is responsible for the property unless the buyer has made a drawing of it.) And the enactment was made only for a usual selling and buying, but for such a sale as R. Huna stated, which is unusual, this enactment does not apply. Said Mar Huna, the son of R. Na'hman, to R. Ashi: "You taught so;

we, however, have taught plainly, and so said R. Huna, that no exchange is to be made with a coin. How should an exchange of coins be confirmed? Rabh says, with the property belonging to the buyer, 1 because it is more pleasing to the buyer that the seller shall receive a present from him 2 for the purpose that he shall decide to transfer the property to him with a good will; and Levi said, with the garment of the seller, as will be explained further on." Said R. Huna of Daskarta to Rabha: According to Levi's theory, that it must be done with the garment of the seller, for he may transfer previously to him real estate with this garment, which shows that the title to real estate can be acquired with personal property, and there is a Mishna which states the contrary: Personal property can be transferred with real estate. And he answered: If Levi would be here, he would strike your face with fiery lashes. Do you think that the garment gives title? For the pleasure he feels on being presented with the article, he concludes to transfer the goods to the other.

The former Amoraim are in accordance with the Tanaim of the following Boraitha (who differ also on this point): It is written [Ruth, iv. 7]: "Now this was formerly the custom in Israel at a redeeming and at an exchanging, to confirm anything, that a man pulled off his shoe and gave it to the other, and this was the manner of testimony in Israel." "Redeeming" means selling, and so it reads [Lev. xxvii. 20]: "It shall not be redeemed any more." "An exchanging" means taken literal, as it reads [ibid., ibid.]: "He shall not alter it nor change it." "To confirm. . . . pulled off his shoe and gave it to the other." Who has given to whom? Boaz gave to the redeemer. R. Jehudah, however, says: "On the contrary, the redeemer gave to Boaz." There is a Boraitha: "This ceremony can be done with any article, even if its value is less than a parutha." Said R. Na'hman: "It must be a utensil, but not fruit." R. Shetheth, however, maintains that this may be done with fruit also. What is the reason for R. Na'hman's statement? Because in the Scripture one reads "shoe," which is a utensil. R. Shetheth, however, bases his opinion upon "confirming anything." And

what would R. Na'hman say to this? To confirm anything, which was done by the ceremony with the shoe. But according to R. Shetheth, what does the word "shoe" signify? As the shoe is a complete article, so all other articles with which this ceremony is to be performed must be completed, to exclude fruit, which is not fit for a Sudarium.

R. Shetheth b. R. Idi said: According to whom do we write in our legal papers, 'with an utensil which is fit to confirm with'? In accordance with the opponents of R. Shetheth, who said that the ceremony may be done with fruit also, and the opponents of Samuel, who said that a vessel made of *maroka* (baked ordure) may be used for this purpose, and also to deny Levi's theory, which is "with the property of the seller"; we say to confirm "with," but not to give title with it. 1

R. Papa, however, said: "The expression, with a vessel, means to exclude a coin, which is fit." Said R. Zbid, and according to others R. Ashi: "To exclude such vessels of which no benefit must be derived (as, *e.g.*, devoted to idolatry), there is no necessity of excluding *maroka*, which all agree it is not fit for that purpose."

"*Uncoined money*," etc. How is this to be understood? Said R. Johanan: "*I.e.*, a coin which is counterfeit." And he is in accordance with his theory elsewhere, that R. Dossa and R. Ismael said one and the same thing. R. Dossa in a Mishna (Idioth, I., 2): Second tithe must not be exchanged for a counterfeit coin. And R. Ismael of the following Boraitha: It is written [Deut. xix. 25]:,Then shalt thou turn it into money, and bind up the money in thy hand"; to include all the money which can be bound in the hand, so is the dictum of R. Ismael. R. Aqiba said that it includes all coins which have an imprint of the ruler's face on them.

"*How so, if one made a legal*," etc. Said R. Johanan: "Biblically, money paid gives title; why, then, was it said that drawing is needed? For fear that a fire may occur in the house of the seller, where the bought article is placed; and if it is still considered under his control he will trouble himself to save it, but if it would be considered under the control of the buyer he will not care to save it. Resh Lakish, however, said that the drawing is prescribed by the Scripture, viz.: It is written [Lev. xxv. 14]: "And if thou sell aught unto thy neighbor, or buy aught

of thy neighbor's *hand*," signifies a thing which goes from hand to hand. R. Johanan, however, says that "hand" excludes real estate, that the law of fraud does not apply to it. Resh Lakish, however, maintains that if it would be as R. Johanan said, the Scriptures would read in the case of selling only. Why is then the case of selling repeated? To verify my statement. An objection was raised to Resh Lakish's statement from our Mishna: "R. Simeon, however, said that he who has the money in his hand has the preference," which means that the seller may retract, but not the buyer; and this is correct only when money paid gives title biblically, therefore the preference is given to the seller that he may retract, in case the article will become dearer for his purpose he should save it from an accident, thinking it is still considered mine, as I may retract and probably the price will be increased; but not the buyer, as the title is acquired with paying the money. But if the money does not give title biblically, why should not the buyer also have the right to retract? Resh Lakish may say, I have nothing to do with R. Simeon's theory, and my explanation is in accord with the rabbis' theory. There is, however, an objection from the latter part. But it was said: He who punished, etc., which would be correct only when money gives title; but if it does not, why should he be punished? Because he retracts his words. Is that so? Have we not learned in a Boraitha: R. Simeon said, although it was said that a garment gives title to a gold dinar, and not *vice versa*, so only is the strict Halakha; but in addition to it, however, it was said that He who took revenge on the generation of the flood. . . . and the people of Sodom and Gomorrah, and on the Egyptians in the sea, He will take revenge on him who retracts his words. And he who is doing business with words only (without money), to him title is not given; however, the spirit of the sages does not please him, and Rabha adds that this is the only punishment for such people, hence we see that word retractors; do not stand under the punishments stated above? Yea! They are not under punishment when there were words only, but if there were words with money they are. Said Rabha: "The Scripture and a Boraitha support Resh Lakish. The Scripture, as it is written [Lev. v. 21]: "If he, namely, lie unto his neighbor in that which was delivered to him to keep, or in a loan, or in a thing taken away by violence, or if he had withheld the wages of his neighbor." "A loan"--said R. Hisda, *i.e.*, that the borrower has

pledged an article for

his loan (which is then equal to a deposit). "Withheld the wages"--said R. Hisda: This is also in case the employer has separated the amount due to the employee, or the value of it, and told him, from this you will collect your wages. Now, concerning repentance the Scripture reads [ibid., ibid. 23]: "That he shall restore what he had taken violently away, or the wages which he hath withheld, or that which was delivered to him to keep." But a loan is not mentioned. Is it not because there was not a drawing on the article pledged (which was still in the hands of the borrower), and therefore he had not yet acquired title? Said R. Papa to Rabha: "Perhaps it is not repeated because wages is repeated, and this is to be deduced from it as the case is similar?" Answered Rabha: "It treats of a case when the employer already took the amount which was assigned to him and thereafter deposited it again." But is it not the same as a deposit? It tells us of two kinds of deposits. If so, should' the Scripture repeat also a loan, and should it be explained similarly that the pledge was returned and again assigned?

If it would be so, then it would, be no objection and no support; but as the Scripture did not repeat it, it may be considered a support. But is it indeed not repeated? Have we not learned in a Boraitha that R. Simeon said: "Whence do we know that the verse quoted applies to all that was mentioned in the previous verse? Therefore it is written [ibid., ibid., 24]: 'Or any one thing about which he may have sworn falsely.'" And R. Na'hman in the name of Rabba b. Abuhu, quoting Rabh, said that it intends to add that a loan shall also be returned? It may be, but nevertheless the Scripture did not repeat it plainly, and the Boraitha is as follows: If one has given a coin belonging to the sanctuary unintentionally to a bath-house keeper (for using the bath), he has committed a transgression, although he did not use it as yet. And Rabh explained the Boraitha, that the expression bath-house keeper signifies that only in a similar case, where the giver of the coin has nothing to receive in exchange; but in case he has, he committed no transgression, unless a drawing was made on the receiving article. And so also is R. Na'hman's opinion, that money gives title biblically. And Levi searched in the Boraithas which he compiled himself, and found one which stated that if one gave a coin belonging to the sanctuary to a wholesale dealer as a deposit for goods which he should take later, a transgression is committed (hence we see that money gives title without any drawing). But then the Boraitha contradicts Resh Lakish's above

statement? He may say that this Boraitha is in accordance with R. Simeon of our Mishna.

"*But it was said that He who had punished*," etc. It was taught: According to Abayi, if he retracts, he ought to be notified that he will be punished by Heaven, and according to Rabha the Mishna means he shall be cursed. He who had punished, etc., shall punish you. Said Rabha: "I base my statement upon the following act. R. Hyya b. Joseph accepted money as a deposit for salt to be delivered afterwards. In the meantime the price of it went up, and he questioned R. Johanan what he had to do, and was told that he must deliver the salt, otherwise he must take the punishment stated in the Mishna. Now, if the Mishna means that he should be notified only, is then R. Hyya b. Joseph among those who must be notified (was he not aware of it)? But even according as you say, that he was to be cursed, is it possible that R. Hyya b. Joseph would take for himself a curse from the rabbis? The case with him was thus: He thought that he had to

deliver to him the salt according to the sum of the deposit, but not for the whole amount of the sale, and was told by R. Johanan that with the deposit they had acquired title for the whole amount bought. It was taught: A deposit, according to Rabh, gives title only for the sum it contains; and according to R. Johanan, it gives title for the whole article or articles he had bought. An objection was raised: If one has given a deposit to his neighbor, with the condition that if he should retract, the deposit shall be relinquished; and the other said to him, in case I will retract, I shall double the amount of the deposit. These conditions are to be followed, so is the decree of R. Jose. [And R. Jose is in accordance with his theory elsewhere, that the presumption is that it is a good sale.] R. Jehudah, however, maintains that it is sufficient that he should deliver to him the value of his deposit. Said R. Simeon b. Gamaliel: "This is in case he gave him the money as a deposit, but if it was given to him as a part of the payment, as, *e.g.*, if one sold a house or a field for a thousand zuz, and he paid five hundred zuz as a part of it, title to the article sold is acquired, and he must pay him the balance even after a lapse of many years." Is it not to be assumed that the same is the case with movable property, that the deposit gives title to all the movable property he has bought (so if one of them has retracted, he must accept the above curse "of him who had punished," etc.)? Nay! To movable articles title is acquired only for the sum the

deposit contains, and the difference between them and real estate is, that with the latter title is acquired by money only; the deposit gives title to the whole of it; but to movable articles, with which drawing is required, and even if he would pay for the whole, without any drawing, the possessor of the money has the right to retract (as said above), but he must take the curse in question. Hence title is acquired with the condition that the curse will be borne by him. Then this curse can apply only to the article in value as much as the deposit contains, but not for the amount it was bought (*i.e.*, that if he had delivered it to him for the amount of the deposit, the above said punishment does not apply).

R. Kahana had accepted money for flax which he was to deliver thereafter. In the meantime flax became dearer, and he questioned Rabh what to do, and was told, deliver to them for the sum you have in your hand, as the balance was bought relying on words only, for which a loss of confidence is not to be considered, as it was taught: "'Words,' Rabh said, 'if they are not kept, loss of confidence is not to be considered.' And R. Johanan says it may." An objection was raised from the following: R. Jose b. Jehudah said: Why is repeated [Lev. xxi. 36] "just hin," is this not included in the word "just ephah," ibid., ibid., to instruct you that your Yea (which is the literal translation of *hin*) shall be just, and your Nay shall be just (hence we see that words must be kept)? Said Abayi: "The cited verse signifies one shall not talk with his mouth differently from what he thinks in his heart." (An objection was raised from the Boraitha, "R. Simeon says," etc., p. 118, and the answer was that on this point Tanaim differ.)

But did R. Johanan indeed say so? Did not Rabba b. b. Hanna say in his name that if one said to his neighbor, I will make you a present, he may retract thereafter. Said R. Papa: "R. Johanan agrees that if one promises to make a present of a small amount, no retraction can take place, as the other party relies upon it. It happened that one gave money for poppy, meanwhile the poppy increased in price, and the seller retracted, and told him, I have no poppy, take your money back; and he did not. Meanwhile the money was stolen, and the case came before Rabha. He said: "Because he was told to take his money back, the seller is not responsible, not only as a bailee for hire, but he cannot even be considered a gratuitous bailee." Said the rabbis to Rabha: "Must not the retractor at least take upon

himself the above curse as his punishment?" And he said: "Yea; if he will not give the poppy, he must bear this punishment." Said R. Papi: "I was told by Rabbina that the case was not so, as he was told by one of the rabbis, who was named R. Tabuth, and according to others Samuel b. Zutra was his name, and he was such kind of a man that he would not change his word, even if all goods of the world were to be delivered to him, and he told me: The above case of poppy happened to me. On one Friday I was sitting in my house, when a man came and questioned me whether I have poppy to sell, and I said no; said the man to me, let then this money I have be deposited with you, as it is nearly twilight; and I said my house is yours, put it wherever you like; he did so, and finally the money was stolen, and when he came to complain before Rabha, he was told that by my words, "my house is yours," I did not take any responsibility even as a gratuitous bailee. And when he was asked, did not the rabbis say to Rabha that this man should take the curse of punishment, etc.? he rejoined: This never occurred.

"*R. Simeon said*," etc. We have learned in a Boraitha (in addition to our Mishna), R. Simeon said: "This is in case both the article and the money were in the hands of the seller; but when the money was in the hands of the seller and the article in possession of the buyer, he cannot retract, because he already received the value for the money." Is that not self-evident? Said Rabha: "The case was that the attic of the buyer was hired by the seller, and the article was placed there. In such a case no drawing is needed, as the enactment of drawing was for the purpose that the seller shall trouble himself in case of a fire to save it, which does not apply in this case, as the article was under the control of the buyer, and if a sudden fire would happen the buyer would do all things possible to save it." It happened that one paid for an ass, and before he got hold of it he learned that this ass would be taken away by Parsek the *rufuli*. He demanded the return of his money, claiming he had no need for the ass any more. The case came before R. Hisda, and he decided as it was enacted that the seller may retract, so long as the buyer did not make a drawing of the bought article, so it was enacted that the buyer can also retract, so long as he has made no drawing on it,

MISHNA *II*.: Cheating, which according to law makes the sale null and void, is in case where the sum of which he was cheated counts four silver dinars from the amount of twenty-four silver dinars, which makes a *salah*; *i.e.*, a sixth of the whole

amount. Until what time may the retraction take place? Up to the time that the buyer can show his article to a merchant or his relatives. R. Tarphon decided in the city of Luda that to avoid a fraudulent sale of eight silver dinars from twenty-four, *i.e.*, a third of the whole amount; and the merchants of Luda were pleased with this decision. When, however, they heard his further decision, that the retraction may take place during the whole day, they requested R. Tarphon that he should leave them with the old decision of the sages, and so they returned to the decision of the sages.

GEMARA: It was taught: Rabh said: "The Mishna means the sixth of the correct price of the article." Samuel says: "It means also a sixth of the amount" (the illustration further on). (Says the Gemara:) If one has sold an article of six dinars for five, or for seven, both agree that the price is to be considered; and in both cases there is a cheating of a sixth. If, however, he sold an

article of five dinars for six, or seven for six, according to Samuel, who said that the sum of the money must also be taken in consideration, it is considered cheating, as the price was six, and there was cheating in one dinar. According to Rabh, however, who says that the correct price of the article must be considered, if he took six for five, then the cheating was of a fifth, and the sale is void; and if seven for six, then the cheating on the part of the seller was less than a sixth, the sale is valid, and the dinar is considered relinquished. The reason of Samuel's statement is that the sale is considered void only when there is more than a sixth both in the price of the article and in the money paid; and the same is the case with relinquishing, that there is less than a sixth of both; but if there is a sixth part of one of the two, it is considered cheating, and the money which was paid in excess, or less, must be returned by the parties.

There is a Boraitha which supports Samuel, as follows: "He who was cheated has the preference. How so? If one sold an article which was worth five for six, who was cheated? The buyer; he had the preference of choosing; if he likes he may say, return to me my money, or, if he wishes, he may say, give me the dinar of which I was defrauded." And if one has sold the value of six dinars for five, who was cheated? The seller; then he has the preference; he may choose to demand the return of the article, or he shall give him one more dinar, of which he was defrauded. (Hence it is considered a cheating either in price or in the money.) The schoolmen propounded a question: "If

there was a cheating less than a sixth, which, according to the rabbis is considered a relinquishment, does it take place immediately, or does the buyer have time to show it to a merchant or his relatives; and if you would say that so it is, what then should be the difference between a sixth or less? Shall we assume that if a sixth he has the preference, if he likes to make void the sale, or to demand the money he was defrauded of; and if it was less than a sixth the sale is valid, but the sum obtained by, cheating must be returned?" Come and hear the last words stated in our Mishna: "and so they returned to the decision of the sages." (That is, that time for showing it to a merchant, etc., was always granted.)

Said Rabha: "The Halakha prevails as follows: If cheating was less than for a sixth of its value, the sale is valid; more than a sixth, the sale is void; and if, however, an exact sixth, the sale is valid, but the amount must be returned to him who was cheated, and in all such cases the time for showing to merchants, etc., is granted." There is a Boraitha supporting Rabha, viz.: "Cheating in less than a sixth, the sale is valid; more than a sixth, the sale is void; an exact sixth, the sale is valid, but the cheating must be returned." So is the decree of R. Nathan. R. Jehudah the prince, however, maintains: "The seller always has the preference; if he likes he may require the price which was agreed, or that the amount of which he was cheated should be returned; in both cases, however, time for showing it to a merchant must be granted to the buyer."

"*Until what time the retraction may take place*," etc. Said R. Na'hman: "This decision applies to the buyer only, but the seller may retract at any time." Shall we assume that the last words of our Mishna support R. Na'hman, as they are correct only when the seller has the right to retract at any rate; and, therefore, they were not benefited by R. Tarphon's decision; but if you would say that the seller has no more right than the buyer, then they could be benefited by R. Tarphon's decision, in case they have erred in the price of sale. Why, then, have they returned to the decision of the sages? (This is not to be considered a support, as it is not usual that the merchants of Luda should make an error in the sale.)

The host of Rami b. Hama sold an ass and erred in the price, and Rami found him dejected, and questioned him why, and he answered, because of the sale; and Rami told him to retract, but he rejoined that the time for showing it to a merchant, etc., had

already elapsed; then Rami advised him to go into the court of R. Na'hman, and he decided according to his theory stated above (in the beginning of the paragraph). His reason was that the buyer always carries the article with him, and so can show it to all, if there were an overcharge or not; but the seller, who is not in possession, must wait until a similar article is again in his possession to show it, and therefore he may retract. There was a man who had to sell pearls, which were worth five dinars each, and he demanded six. When, however, he was offered five and a half, he accepted it. A buyer who wanted to get the same for five dinars said to himself, if I would give him five and a half I could not sue him any more, as the half-dinar would be considered a relinquishment, as it is less than a sixth; I will, there. fore, give him all he demands, and then I will sue him for cheating me of an exact sixth; and he will be compelled to return one dinar. When the case came before Rabha, he said that the law in question applied only to him who buys from a merchant, but of a private person no cheating is considered. A similar case came before R. Hisda, and he decided the same as Rabha did; and R. Dimi, who was present, said to him: "Even so; you have decided righteously." And so did R. Elazar also say: "Even so!" But is there not a Mishna which states, as the law of fraud applies to a layman it applies also to a merchant; now, is not a layman the same as a private person? Said R. Hisda: "The Mishna speaks of a private person who sells hemp articles; but if he sells the utensils which were used by himself, if not at a good price, he would not sell them."

MISHNA *III*.. The law of fraud applies to the buyer as well as to the seller, to a private person as well as to a merchant. R. Jehudah, however, maintains that there is no cheating concerning a merchant. The cheated one has the preference; he may demand his money should be returned; or, if he likes, the amount of which he was cheated.

GEMARA. Whence is all this deduced? As the rabbis taught, it is written [Lev. xxv. 14]: "Ye shall not overreach one another"; from this we learn in case the buyer was cheated, but whence do we know that same is the case with the seller? There. fore it is written [ibid., ibid.]: "Or buy aught of thy neighbor"; and both cases were necessary, for if the Scripture would mention the seller only, one might say that, because he is aware of the value of his stock, the cheating is a crime to him, but the buyer, who is not aware of the exact price, the law of fraud does not

apply; and if the Scripture would mention the buyer only, one might say, because he received for his money a valuable article which remains with him permanently. The law of fraud applies here, but the seller, who loses his article and takes money, which is not stationary, "as people say if you sell an article it is lost to you," one might say that the above law does not apply to him, therefore both are mentioned.

"*There is no cheating concerning a merchant*," etc. Because he is a merchant, no cheating should be considered? Said R. Na'hman in the name of Rabh: "R. Jehudah speaks of a specialist who knows the value, and the reason why he sold it below the price is to be considered that he

needed money at that time to buy another bargain and, therefore, he relinquished the greater value of the article sold, and the retraction took place afterwards (therefore it must not be considered). R. Ashi, however, says: "R. Jehudah's decree may be explained thus: Concerning a merchant the prescribed kind of cheating is not to be considered, as he may retract even if it were other than the prescribed kind." There is a Boraitha supporting R. Na'hman, viz.: "R. Jehudah maintains no cheating exists in regard to a merchant, because he is experienced."

"*The cheated has the preference*." According to whom is our Mishna? Not with R. Nathan, and also not with R. Jehudah the prince, of the Boraitha cited above. For our Mishna states, "if he likes," and R. Nathan's decision is strictly; and R. Jehudah mentioned in his decision "the seller," while our Mishna mentioned "the buyer"? Said R. Elazar: "I, indeed, do not know who taught our Mishna." Rabba, however, said: "The Mishna is in accordance with R. Nathan, and the Boraitha is to be corrected with the addition, 'if he likes.'" Rabha, however, maintains that the Mishna is in accordance with R. Jehudah, and that which was omitted in the Mishna concerning the seller the Boraitha explains. Said R. Ashi: "It seems to be that this explanation is correct, as the Mishna begins, 'to the buyer as well to the seller,' and thereafter it mentions only the buyer, of which is to be seen that something is omitted, and that was the seller." Infer from this that so it is.

It was taught: "If one says, I sell this article to you with the condition you shall not claim any cheating of me, Rabh says that he nevertheless may claim cheating, if there were any, and according to Samuel he may not. Said R. Anan: "Mar Samuel has explained to me his decree as follows: If one says,

with the condition you shall not claim of me any cheating, no claim must be considered; if, however, he say, with the condition that no cheating with the article should be claimed, if there was a cheating the claim must nevertheless be considered."

Said Abayi: "Rabh's decree is in accordance with R. Meier, who holds (in Tract Kedushin) that no condition can be made concerning a law which is plainly written in the Scripture, and Samuel's decree is in accordance with R. Jehudah, who holds that this rule holds only concerning prohibited things, but not in money matters." Rabha, however, maintains that both (Rabh's and Samuel's) statements are in accordance with both mentioned Tanaim, and notwithstanding present no difficulty, as the above Amoraim speaks of a case where the seller did not mention to the buyer that he is certain that the price is higher than the real value of the article, and the Tanaim of the above cited Mishna speak of a case where such was mentioned, as so we have learned in addition to our Mishna in the following Boraitha: "This is only in case where the seller says, I do not think that you will be cheated, but even if you should, you shall not claim cheating; if, however, a condition was plainly made, as, *e.g.*, the seller says to the buyer, this article which I am about to sell you for two hundred, I am aware has a value of only one hundred, and it will be yours for my price, with the condition that you shall not claim cheating; and the same is when the buyer says to the seller, this article I am about to buy from you for one hundred, I know is worth two hundred, and with the condition that no cheating shall be claimed, I give you the money, then no claim of cheating is to be considered."

The rabbis taught: "If one is doing business with his neighbor in trust, [1] he must not furnish him with bad articles in trust and with good articles according to their value, but both should be

equal (if, for instance, there are two kinds of wine, good which can easily be sold wholesale, and bad which can be sold only in retail, the possessor must not offer the good to the agent for the full value, with the condition he shall sell for him the bad to storekeepers at any price he may obtain, and the money for both shall be returned to him after all is sold; that is, that for his trouble he should use the money obtained for the good until the

bad be sold in retail, as this would be indirect usury), and for his. trouble he should pay him the usual price. The commissioner, however, may charge him for carrying on his shoulder, for the hiring of a camel, and for storage and hotel, but not separately for himself, as he has been paid already for his trouble in full."

What does it mean that he shall pay for his trouble separately? Said R. Papa: "As, *e.g.*, the sellers of hemp articles get four per cent. 'as their commission.'"

MISHNA *IV.*: How much less of the quantity of the *Sala* should be effaced, that the law of fraud could not be claimed? According to R. Meier, four *issars*, which is one *issar* to each *dimar*; and according to R. Jehudah, four *pundiuns*, one *pundiun* to each *dinar*. According to R. Simeon, however, eight pundiuns; two pundiuns (which are four issars) to one dinar (and it means an exact sixth of its value). What time is to be given for retracting? In the large cities, time for showing it to a money-changer must be granted; and in villages, until the eve of Sabbath. If, however, there was a sale, even after an elapse of twelve months, he must accept its return without any claim, but he may be angry with him. Such a sala may be expended for second tithe without any fear, as he who does not accept circulating money is considered a bad man.

GEMARA: There is a contradiction to our Mishna from the following Boraitha, which states: How much should the *sala* be effaced that the law of fraud should apply? (the same quantity as in our Mishna is given; hence, according to the Boraitha, the law of fraud applies to such quantities, and according to our Mishna it does not?) Said R. Papa: "This presents no difficulty. The Tana of our Mishna comes from the bottom to the top (*i.e.*, an effaced sala until what quantity it may be circulated until it reaches the quantity mentioned; but if such a quantity is already reached, it is not any more considered in circulation, and the law of fraud applies); and the Tana of the Boraitha comes from top to the bottom (*i.e.*, if the effaced coin has lost the quantity in question, it is not more fit for circulation, etc., hence both statements have the same meaning)."

Why, then, do the Tanaim differ concerning a *sala* and not with another article, in which all agree that a sixth is the prescribed kind of cheating? Said Rabha: The Tana who holds a sixth is the prescribed kind is R. Simeon, who points to the same kind in a sala. Abayi, however, maintains that one usually relinquishes if he was cheated in value less than a sixth; as people say, pay

dearer for the necessity of your dressing, but for your stomach look that you are not overcharged. The text of the Mishna says: How much of the quantity, etc. A Tosephta in addition to this Mishna states that if it was effaced more than the above quantity, he may sell it

for its value. What is the prescribed quantity of a diminished coin which one is still allowed to keep? If it was a *sala*, he may keep it if it still contains the value of a shekel; and if it was a dinar, he may keep it when a quarter of the quantity was diminished. If, however, it was less than one issar it is prohibited, and he must not sell it to a merchant, and not to a powerful man, or to a robber, as they may cheat some other persons with it, and therefore it is advisable he shall bore a hole in it, and put it around the neck of his son or daughter.

The master says: "A sala of the value of a shekel, which counts a half; and from a dinar only a quarter; why the difference?" Said Abayi: "The quarter concerning an issar means a quarter of a shekel, which counts a half of a dinar." Said Rabha: "It seems to me so, because it is not stated a quarter of it, 'but a quarter,' which generally means 'of a shekel.'" But why should the prescribed quantity of a dinar be dependent upon a shekel? Herewith he teaches us, by the way, that there is a kind of dinar which came from a shekel (*i.e.*, that the quantity of the shekel was diminished to a halo, and this is a support to the statement of R. Ami, who says that a dinar which came from a shekel may be kept for circulation (as every one could recognize that it is only a half of the quantity); but a dinar which came from a sala (*i.e.*, that the sala was diminished to the value of three quarters), it may not be kept in circulation even at the value of a dinar, because it is still a large coin, and can easily be taken for a shekel. The Boraitha states, if, however, it was less than an issar, then it is Prohibited. How is this to be understood? Said Abayi: "It means to say, if the sale in question was diminished more than the value of an issar, it is prohibited to be kept." Said Rabha to him: "Why an issar? If the sala in question was diminished even only a trifle of the above quantity, it is also prohibited to be kept? Therefore," says he, "it means if a sala were diminished in quantity as an issar to a dinar, it is prohibited to be kept, and it is in accordance with R. Meier's opinion." An objection was raised: Until what quantity may it be diminished, and still allowed to be kept? If it was a sala, until the quantity of a shekel. Is it not to be assumed that it was diminished little by little, and still it was allowed to be kept until it became of the size of a shekel? Nay, it means that it was

dropped into the fire and diminished all at once. The master says: "He may bore a hole in it and put it around the neck," etc. There is a contradiction from the following: "An uncirculating coin must not be used as a weight, and also he must not use it for an ornament, and also he must not perforate it, and put it on the neck of his son or daughter; but he shall grind or melt it, or cut it in pieces, or throw it away into the Dead Sea" (so that it could not be used by swindlers, hence it states he must not perforate it, etc.). Said R. Elazar, and, according to others, R. Huna in his name: "This presents no difficulty. The statement that he may bore a hole in it means, in the middle of the coin, which spoils; it entirely; and the statement that it may not means, on the side" (as a swindler could fix it).

"*What time is to be given for retracting*," etc. Why concerning a *sala*, it makes a difference between large cities and villages, which is not the case with another article? Said Abayi: "The statement of our Mishna concerning an article means also in the large cities." Rabha, however, maintains "that every one is aware of the value of a common article, but to understand the value of a sala one must be a money-changer; therefore, in large cities, where money-changers are to be found, such time is prescribed; in the villages, however, where money-changers are not to be found, time is given until the eve of Sabbath, when usually people go to the market to buy supplies for Sabbath.

"*If, however, there was a sala*," etc. Where? If in the large cities, there is a money-changer; and if in villages, it is said, "until the eve of Sabbath"? Said R. Hisda: "It is not the strict law, but a meritorious act for pious men is taught here." If so, how is to be understood the latter part, "but he may be angry"? Who should be angry--the pious one? Let him not accept it, and not be angry, or the one who returned it should be angry, why it was accepted? It means to say thus: "That even if he who is not pious, and does not accept it, the one who possesses the coin may be angry, but cannot sue him."

"*Such a sala may be expended for second tithe*," etc. Said R. Papa: "Infer from this that he who is too particular with the examination of money is considered a bad man, provided he can circulate it easily. Our Mishna may be a support to Hiskiyah, who said that if one came to change a coin of a second tithe for small money, he may take change only for its value; but if he would exchange the second tithe for it, he may take as much of the second tithe as if it would be a good one. How is this to be

understood? He means to say that, although, when changing it for small money, he cannot take more than its value, he may nevertheless take the second tithe for the full value of such a coin.

MISHNA *V*.: The prescribed quantity for cheating is four silver dinars to each sala; for a claim of which one of the parties must take an oath, no less than the value of two silver dinars. For admitting a debt, which makes him liable for a biblical oath of denying the claim of the plaintiff, a *perutha* is sufficient. In five cases the value of a perutha is prescribed--one just mentioned; second, a case of betrothal, for which the value of a perutha suffices; third, the one who benefits himself from the goods belonging to the sanctuary, with the value of one perutha, he has committed a transgression; fourth, who finds an article worth only a *perutha*, he is obliged to proclaim; and fifth, he who has robbed his neighbor for the value of one perutha, and has sworn falsely, and after repented, he must return it to him personally, even should the robbed one be at that time in Madai.

GEMARA: Was this not stated already in Mishna II? It is repeated because of the perutha of admission; but even this is already stated in a Mishna (in Kidushin, etc.)? It is repeated here also because of the new statement about the five peruthas.

"*In five cases the value*," etc. Let it teach, also, that there is one more perutha of cheating (*i.e.*, that when he sold an article for six peruthas, and it was worth only five). Said R. Kahana: "From this is to be inferred that the law of cheating does not apply to peruthas; it means that to less than a silver coin no claim of cheating can be made." Levi, however, maintains it does apply, and so he taught in his Boraitha. There are five *peruthas*--cheating, admitting, betrothal, robbing, and the warrant of the judges. Why does not the Tana of our Mishna mention that a warrant can be issued for a perutha? Is not robbery the same case, and it is mentioned? But notwithstanding that it mentioned robbery, it does mention a loss worth a perutha (which also must be decided by the court)? This was necessary to state, owing to the peculiarity of both. The robbed article must be returned, even if the owner is in Madai, and one must proclaim a lost article even if it was worth only one perutha, and after finding it is decreased in value. Why, then, does not Levi mention a lost article in *his* Boraitha? Because he mentioned robbery. But why does he mention the warrant for a perutha-is it not the same as robbery? This was necessary to deny R. Ktina's

statement, who maintains that a warrant can be issued even for less than a perutha. Rabha objected to R. Ktina's statement from the following: "It is written [Lev. v. 16]: And that in which he hath sinned against the holy thing, he shall pay." That means to include, that even when the value was less than a perutha, it must be returned; hence it is only of the sanctuary, but not of common property; therefore if it was taught in the name of R. Ktina, it was as follows: If the court found it necessary to take up the claim of the value of a perutha, it may issue a warrant even for less than a perutha, as the court does not start a case less than a perutha; but if it *was* started, the decision may be even for less.

MISHNA *VI*.: There are five fifth parts (which must be added to the principal amount) and they are: (1) who eats heave-offering; (2) the heave-offering of tithe (*the tenth part* of which the Levites must separate from the tithe [Num. xviii. 26]); (3) the same which was separated when the grain was bought from a suspicious man; (4) the first dough [Num. xv. 20]; and (5) the first-fruits [Lev. ii. 14]. The same is also the case if one redeems his plants in the fourth year (after planting), he must add a fifth part, or he exchanges his second tithe. The same is also the case if one redeems from the sanctuary the article he has sanctified, and also who had any benefit of the things belonging to the sanctuary, the value of a *perutha*, and also if one robbed his neighbor of the value of a *perutha* and swore falsely, all of them must add a fifth part to the principal amount.

GEMARA: Said Rabha: It was a difficulty to R. Elazar, the statement of our Mishna that a fifth must be added to the heave-offering which was separated when bought from a suspicious man, thus: Is it possible that the sages have given weight to their decision equal to the Scriptures? (The law that heave-offering must be separated when bought from the man in question is only rabbinically--would it not be enough that one should pay the principal amount only, if consumed?) Said R. Na'hman in the name of Samuel: This Mishna is in accordance with R. Meir, who says elsewhere (Erubin, p. 181) that the sages usually do so.

MISHNA *VII*.: To the following things the law of cheating does not apply: Bondmen, documents, real estate and property belonging to the sanctuary; and also the law of paying the double amount and of four and five fold does not apply to them. A gratuitous bailee does not swear (if lost), and a bailee for hire

does not pay (as they would do on movable common property). R. Simeon, however, says: If one is responsible for the property belonging to the sanctuary, the law of cheating does apply, but not when he is not responsible. R. Jehudah said that there is no cheating to him who sells holy scrolls, animals, or pearls (the reason why will be explained further on in the Gemara), but he was told that there is nothing to add to the things enumerated above.

GEMARA: Whence is this deduced? From what the rabbis taught: It is written [Lev. xxv. 14]: "And if thou sell aught unto thy neighbor or buy aught of thy neighbor's hand," which means things going from hand to hand; excludes real estate, which is not movable, and also bondsmen, who are equalled to real estate; excludes also documents, because it reads, "and if thou sell

aught," which means that their body can be sold and bought; excludes documents, which are made only for the eye and of which the contents are for sale, but not their bodies [from this it was said that if one sells his documents for actual use (*i.e.*, for wrapping), the law of cheating does apply. Is this not self-evident? It was said to deny R. Kahana's theory that there is no cheating as to articles of which the value is only a *perutha*]; and things belonging to the sanctuary, because the verse reads, "From *thy brother*," to exclude the sanctuary. Rabba b. Mammal opposed: Is, then, the word *hand* everywhere mentioned in the Scripture literally? Is it not written [Num. xxi. 26]: "From his hand," which is certainly not literally, but from his control? On the other hand, can we then explain the word hand everywhere it is written not literally? Have we not learned in the following Boraitha: "It is written [Exod. xxii. 3]: 'If the thing stolen be actually found in his hand,' etc. From this we know when it was found *in his hand* only. Whence we deduce that the same is the case when it was found upon his roof, yard, or his veranda? Therefore it is written *Himatzeh Timatzeh*, (literally, 'found was found' 1), to include the above." We see then, that if it were not for the superfluous word "Timatzeh" the word *hand* would be taken literally, provided that in such places (as cited above) where it is impossible to take it literally it is explained *control*.

R. Zera questioned: Does the law of cheating apply to a hire? Shall we assume that the Scripture reads *sale* but not *hire*, or

there is no difference? Said Abayi to him: Is it mentioned in the Scripture "a sale for ever"? Sale is mentioned anonymously, and a hire can also be called a sale for the time hired. Rabha questioned: If one bought wheat and sowed it in his field, how is the law? Is it to be compared to putting it in a vessel, and the law of fraud does apply, or, as it is in the earth, is it compared to real estate, to which the law of fraud does not apply? (Says the Gemara: Let us see how was the case? If the buyer said to the seller: "You shall sow six measures," and witnesses testify that he has sown only five, did not Rabha say elsewhere that everything with a measure, weight, or number, even in a quantity to which the law of fraud does not apply, the cheated may retract? The case was that the buyer bought a quantity of wheat needed for his field, with the condition that the seller should sow it, and thereafter it was found that he had not given the quantity needed. Hence the doubt to what case stated above it is to be compared. This question remains undecided.

Rabha in the name of R. H'assa said: R. Ami propounded the following question: The articles mentioned in the Mishna to which the law of cheating does not apply, how is the law if there was fraud to more than a sixth of the value, where in other cases the sale is abolished? Is it the same with the things of the Mishna, or not? Said R. N'ahman: Thereafter the same R. Hassa said that R. Ami resolved his question, and decided that only the law of fraud does not apply, but the law of abolishing the sale applies. R. Yonah, however, concerning things of the sanctuary, and R. Jeremiah concerning real estate, both in the name of R. Johanan, declared that the law of fraud does not apply, but the law of abolishing does. [He who applies Johanan's statement in regard to things of the sanctuary, applies it also in regard to real estate, and he who applies it in regard to real estate, to the things of the sanctuary, however, does not apply it, as Samuel said that things belonging to the sanctuary, if of the value of a *manah*, were exchanged for one *perutha*, the act is valid.]

An objection was raised from the following Mishna: "A blemished animal belonging to the

sanctuary, if it was exchanged for an animal of a commoner, the exchange is valid and the blemished animal becomes ordinary; but if its value was more than its exchange, the money must be added to the sanctuary." And R. Johanan in explaining this Mishna said: It becomes ordinary biblically; the money of its value, however, which is said to be added, is rabbinically only. Resh Lakish, however,

maintains that the money in question is also biblically. Now let us see how was the case? If the exchanging animal was less in value than the prescribed quality of cheating, how could Resh Lakish say that the money must be added biblically? Does not our Mishna state that there is no cheating in sanctuary, and if it was less in value than a sixth, how could R. Johanan say that the money added is rabbinically? He himself said that the law of abolishing applies to it? There is a case of cheating, and they differ if the explanation of the statement, "the law of cheating does not apply." Should it be explained as R. Hisda interprets it, that the Mishna, with the expression "there is no cheating," means the prescribed quality of it does not apply, even if it were less than the prescribed quality it may also be abolished.

Another objection was raised: "The laws of usury and cheating apply only to commoners, but not to the sanctuary?" Should this Boraitha have more weight than our Mishna, which was explained that it means the prescribed quality of it? Interpret, then, this Boraitha in the same manner, namely: Usury and the prescribed quality do not apply to the sanctuary. If so, how should the latter part of it be understood? This is more rigorous in the case of a commoner than in the case of the sanctuary (and as you interpret, then the reverse is the case). This statement applies to usury only. But then it should state: Regarding cheating, however, the reverse is the case? What question is it? It is correct to say that this is more rigorous in case of a commoner, etc., as this is the only case; but regarding the sanctuary, is, then, this the only case in which it is rigorous? All cases of the sanctuary are rigorous.

"*Double amount*," etc. Whence is this deduced? As the rabbis taught: It is written [Exod. xxii. 8]: "For all manner of trespass"--that is, generally; "for an ox, for an ass, for a lamb, for raiment"--that is, *partis* (a special part); "or for any manner of lost thing"--it is again general. And there is a rule that when there is in the Scripture a general, a *partis*, and again a general, it must be judged similar to the *partis*, as the *partis* mentioned is a movable thing, and its body is of value. So also all movable things the bodies of which have a value; excluded being real estate, which is not movable, and also bondmen, who are equal to real estate, and also documents, of which, although they are movable, the bodies are of no value. And concerning the sanctuary there is another verse, which reads, "his neighbor," and the sanctuary cannot be considered a neighbor.

"*And of four and five fold*," etc. Why so? Because the Merciful One says payment of four and five fold, but not the payment of three and four (*i.e.*, as the double amount is excluded, it would be for a sheep threefold and for an ox fourfold

[paragraph continues] Jehudah, however, maintains that the above-named things better answer this purpose. But in respect to what quality cheating is not to be considered? Said Ameimar: To the double amount of its value (but no more). There is also a Boraitha: R. Jehudah b. Bathyra says

that also with him who sells a horse, a sword, and a shield *in war-time*, no cheating is considered, as there is a question of life.

MISHNA *VIII*.: As cheating is prohibited in buying or selling, so it is in words. (How so?) One must not ask the price of a thing when he does not intend to buy it. To a person who has repented one must not say, Remember your former acts. To a descendant from proselytes one must not say, Remember the acts of your parents. As it is written [Exod. xxii. 20]: "And a stranger 1 thou shalt not vex, nor shalt thou oppress him."

GEMARA: The rabbis taught: It is written [Lev. xxv. 17]: "And ye shall not overreach one the other"--this means, in words. But perhaps it means in business? It is already written [ibid., ibid., 14] concerning business. Hence this verse must apply to words only. How so? To a person who has repented one must not say, Remember your former acts. To a descendant of proselytes one must not say, Remember the acts of your parents. If a proselyte comes to learn the Torah, one shall not say, The mouth that hath eaten carcasses, etc., should utter the words Torah, which was pronounced by the mouth of the Almighty. To a person who suffers from chastisements, sickness, or burying his children, one must not say, as Job's colleagues said to him [Job, iv. 6, 7]: "Is not, then, thy fear of God still thy confidence, thy hope equal to the integrity of thy ways? Remember, I pray thee, who ever perished, being innocent? or where were the righteous destroyed?" Also, one must not send people to any one, telling them that he is a grain seller, who never was so. R. Jehudah says: One must also not inquire the price of an article, having no money to pay, as all that refers to his heart, and in such a thing it is said, "Thou shalt fear thy God."

Said R. Johanan in the name of R. Simeon b. Johai: Cheating in words is more rigorous than cheating in money. As to the former, it is written, "Thou shalt fear thy God," and as to the latter it is not written so. And R. Elazar says: The former is to his body and the latter to his money. R. Samuel b. Na'hmeni

says: The latter can be returned, but the former cannot, A disciple has taught before R. Na'hman b. Itzhak: One who abuses his neighbor publicly is compared to a shedder of blood. And he answered: Your statement is correct, as we see in the man who becomes ashamed, the red color of his face disappears and he becomes white.

Said Abayi to R. Dimi: To what thing do the Western people pay more attention? And he answered. To make pale the face (*i.e.*, putting people to shame). As R. Hanina said: All descend to Gehenna, except three. All! Is it possible? Say, All who descend to Gehenna return thence, except the following three, who descend and do not return: An adulterer, one who makes pale the face of his neighbor in public, and one who applies vile names to his neighbor. But is it not the same as making pale his face? *i.e.*, even when he was already used to be named so.

Said Rabba b. b. Hana in the name of R. Johanan: It is rewarded more leniently that one commit a doubtful adultery than to make pale the face of his neighbor. Whence is it taken? From Rabha's lecture, thus: It is written [Psalms, xxxv. 15]: "But in my downfall they rejoiced, and gathered themselves together . . . they did tear me, and ceased not." Thus said David before the Holy One, blessed be He: "Lord of the Universe, it is known before thee that if they would tear

try flesh the blood would not run. Even when they are occupied in the study of *Negaim* and *Ahaloth* they said to me, David, who is an adulterer, with what kind of a death must he be punished? And I answered them, He is to be hanged: he, however, has a share in the world to come, but he who makes pale the face of his neighbor publicly has no more any share in the world to come."

Mar Zutra b. Tubia in the name of Rabh, according to others R. Hana b. Bizna in the name of R. Simeon the Pious, and still to others R. Johanan in the name of R. Simeon b. Johai, said: It is better that one throw himself in a burning furnace than to make pale the face of his neighbor publicly. And this is taken from the act of Tamar, as it is written [Gen. xxxviii. 25]: "When she was led forth, she sent to her father-in-law," etc.

Rabh said: One should be careful with his wife, not to deceive her even in words, for often her tears hasten the punishment. R. Elazar said: Since the destruction of the Temple the gates of prayer are closed. As it is written [Lamentations, iii. 8]: "Also when I cry aloud and make entreaty, he shutteth out my prayer."

[paragraph continues] However, the gates of tears were not closed. As it is written [Psalms, xxxix. 13]: "Be not silent at my tears."

Rabh said again: He who follows the advice of his wife falls into Gehenna. As it is written [I Kings, xxi. 25]: "But indeed there was none like unto Achab . . . to which his wife incited him." Said R. Papa to Abayi: Is that so--do not people say: "If thy wife is little, bow thyself and listen to her advice?" This presents no difficulty. Rabh speaks about worldly affairs, and the people's saying is about house affairs. According to others, Rabh speaks of heavenly affairs and the others about worldly affairs. R. Hisda said: All gates are closed for prayers except for him who cries upon cheating. As it is written [Amos, vii. 7]: "Behold, the Lord was standing upon the wall of *Anach*, and in his hand was an Anach." [1] Said R. Elazar: All sinners are punished through a messenger, except the cheater, who is punished by the Lord himself, as it reads: "And the Anach is in *His* hand." R. Abuhu said: For the following three the petition of the Shekhina is not shut: Cheating, robbery, and idolatry. Cheating, as mentioned above--"Anach in His hand;" robbery, as it is written [Jer. vi, 7]: "Violence and robbery are heard in her; in my presence there are continually disease and wounds;" and idolatry, as it is written [Isaiah, lxv. 3]: "The people that provoke me to anger to my face continually."

R. Jehudah said: One should always be careful about grain in his house, as the quarrel in the house comes often about the grain. As it is written [Psalms, cxlvii.]: "He who bestoweth peace in thy borders, who satisfieth thee with the best of wheat." Said R. Papa: This is what people say, "When the barley is out of the barrel, the quarrel knocks at the door." And R. Hinna b. Papa also said: One should always be careful about grain in his house, as Israel was called poor only because of grain. As it is written [Judges, vi. 3-6]: "And it was when Israel had sown, etc. . . . And they encamped against them . . . and Israel was greatly impoverished."

R. H'albo said: One should always be careful with the honor of his wife, as the blessing in the house usually comes for the sake of the wife. As it is written [Gen. xii. 16]: "And he did well to Abram *for* her sake." And this is what Rabha used to say to the inhabitants of his town, Mahuza:

Revere your wives, for the purpose of becoming rich.

There is a Mishna (Keilim, V., 10) which treats of an oven which R. Eliezer makes clean and the sages unclean, and it is the *oven of a snake*. 1 What does this mean? Said R. Jehudah in the name of Samuel: It intimates that they encircled it with their evidences as a snake winds itself around an object. And a Boraitha states that R. Eliezer related all answers of the world and they were not accepted. Then he said: Let this carob-tree prove that the Halakha prevails as I state, and the carob was (miraculously) thrown off to a distance of one hundred ells, and according to others four hundred ells. But they said: The carob proves nothing. He again said: "Let, then, the spring of water prove that so the Halakha prevails." The water then began to run backwards. But again the sages said that this proved nothing. He again said: "Then, let the walls of the college prove that I am right." The walls were about to fall. R. Joshua, however, rebuked them, saying: "If the scholars of this college are discussing upon a Halakha, wherefore should *ye* interfere!" They did not fall, for the honor of R. Joshua, but they did not become again straight, for the honor of R. Eliezer [and they are still in the same condition]. He said again: Let it be announced by the heavens that the Halakha prevails according to my statement, and a heavenly voice was heard, saying: Why do you quarrel with R. Eliezer, who is always right in his decisions! R. Joshua then arose and proclaimed [Deut. xxx. 12]: "The Law is not in the heavens." [How is this to be understood? said R. Jeremiah: It means, the Torah was given already to us on the mountain of Sinai, and we do not care for a heavenly voice, as it reads [Exod. xxiii. 2]: "To incline after the majority." R. Nathan met Elijah (the Prophet) and questioned him: "What did the Holy One, blessed be He, at that time?" (when R. Joshua proclaimed the above answer to the heavenly voice), and he rejoined: "He laughed and said, My children have overruled me, my children have overruled me."] It was said that on the same day all the cases of purity, on which R. Eliezer decided that they were clean, were brought into the college and were destroyed by fire. And they cast a vote, and it was decided unanimously to *bless* him (to place him under the ban). The question arose, then, who should take the trouble to inform him, and R. Aqiba said: "I will do so immediately, for one who is not fit for such a message may go

and inform him suddenly, and he will destroy the world." What did R. Aqiba? He dressed himself in black and wrapped himself with the same color, and sat at a distance of four ells from R. Eliezer. And to his question: "Aqiba, what is the matter?" he answered: "Rabbi! it seems to me that your colleagues have separated themselves from you." The rabbi then tore his garments, took off his shoes, and sat on the floor, and his eyes began to flow. The world was then beaten a third in olives, a third in wheat, and a third in barley. According to others, even the dough which was already in the hands of the women became spoiled. A Boraitha states that that day was the severest of all days, as every place on which R. Eliezer had set his eyes was burned. And also Rabban Gamaliel, who had at that time been sailing, was in danger of drowning by a tempest, and he said: "It seems to me that this storm is because of R. Eliezer b. Hurkanus." He then arose and prayed: "Lord of the Universe, it is open and known before thee that not for the sake of my honor or the honor of my parents I acted so, but for thy glory, to prevent a quarrel in Israel." And the sea then became quiet.

Eima Shalum, the wife of R. Eliezer, was a sister of Rabban Gamaliel, and since that time she prevented her husband from falling upon his face. 1 It happened, however, in a day which was

the last of the month, and she erred, thinking that this day was the first of the month (in which the falling upon the face is not customary). According to others, a poor man knocked at the door and she was going to give him some bread, and when she returned she found her husband falling on his face, and she said to him: "Arise, you have already killed my brother!" In the meantime it was heralded by the house of Rabban Gamaliel that he was dead, and to the question R. Eliezer asked her: "Whence did you know this?" she answered: "I have a tradition from the house of my grandfather that all gates are closed for prayers, except for him who cries upon cheating."

The rabbis taught: "He who cheats a stranger transgresses three negative commandments, and he who oppresses him transgresses two." Let us see. Regarding cheating there are three negative commandments [Exod. xxii. 20, Lev. xix. 33 and ibid. xxv. 17], as the expression "the other" includes a stranger also. Then there are three negative commandments concerning oppression

also-namely, Exod. xxii. 20, xxiii. 9, and ibid. xxii. 24--which include also the stranger. Hence there are three negative commandments in oppression also? Read, then, in both cases: He transgresses three negative commandments.

We have learnt in a Boraitha: R. Eliezer the Great said: Why does the Scripture in thirty-six, according to others in forty-six places, warn concerning strangers? Because they are of a mischievous nature. 1 Why is there added [Exod. xxii. 20], "for strangers ye were in the land of Egypt"? There is a Boraitha: R. Nathan says: Do not rebuke your neighbor for a similar blemish to that you have on your body; and this is what people say: To him who has had a hanged one in his family, do not even mention *hang up* a fish.

MISHNA *IX*: One must not mix together fruits from two separate fields, if the seller has named the field of which the fruits were to be issued; and even when the fruits of both are new, much less old with new. In reality, it was said of wine that it is allowed to mix old with new, when the new was sold, because the old improves the new. However, one must not mix the yeast of one wine with another wine, but he may give him the yeast of the same. If the wine was mixed with water, he must not sell in his store, provided he informed the buyers; not to a merchant, however, even if he informed him, for he buys only for the purpose of cheating. In the places where it is customary to mix water with wine, he may do so. A merchant may buy grain from five barns and place it in one store-room; he may also buy wine from five presses and put it in one cask, but not with the intention of mixing it.

GEMARA: The rabbis taught: "It is not necessary to state, if the new was sold four measures for one *sala* and the old three measures only that they must not be mixed (if he sold him old ones), as this would be plain cheating; but even when the reverse is the case, he must also not do so, as usually one buys it to keep for a long time (the new becomes old and the old-spoiled)."

"*In reality, it was said*," etc. R. Elazar said: Ada was the one who said that wherever the expression "in reality" is stated, it means that so the Halakha prevails. Said R. Na'hman: The Mishna treats of a case in which it was done in the time of wine-pressing, as in that time the wine is fermenting, and therefore it is improving; but after the time is over, it spoils. But now it is customary to mix it, even not at that time. Said R. Papa: It is

because people are aware of it, and relinquish their right. R. Aha b. R. Ika said: They do in accordance with R. Aha of the following Boraitha, who permits to mix beverages which are to be tasted, as the buyer recognizes if mixed.

"*But he may give him the yeast of the same*," etc. But is it not stated in the first part that it must not be mixed at all? And lest one say that the Mishna means he shall inform him, this would not hold good, as is stated in the latter part, he shall not sell it in his store provided he informed the buyer, from which it is to be inferred that the first part treats even when not informed. Said R. Jehudah, it means to say thus: One must not mix the yeast of yesterday with the wine of to-day, and *vice versa*; he may, however, give him the yeast of the same. We have also learnt this in the following Boraitha: "R. Jehudah said: He who pours wine for his neighbor must not mix wine from yesterday with that of to-day, and *vice versa*, but he may do so with the wines of the same day."

"*If water was mixed*," etc. It happened that wine was brought to Rabha from a store; he mixed it, tasted, and it was not sweet, and he returned it to the store. Said Abayi to him: "Did not our Mishna state that he must not furnish it to a merchant, even if he was informed" (how, then, did you return the mixed wine to the merchant)? And he answered: "The wine which I mixed is easily distinguished (because I make it very weak), and lest one say that the store-keeper would add wine to it so that the water will not be recognized, then it would be prohibited to sell even plain water to a wine-merchant, lest he mix it with wine."

"*In the places where it is customary*," etc. A Boraitha in addition to our Mishna states that he may mix a half, a third, or a quarter, as is customary in that city. Said Rabh: The Mishna, however, treats of the time of wine-pressing (but not otherwise).

MISHNA *X*: R. Jehudah said: A store-keeper must not furnish little children with presents of nuts, etc., because he accustoms them to buy all their needs at his place. The sages, however, permit this. He also prohibits to lower the prices, for the above reason. The sages, however, say that people may be grateful for such an act. A store-keeper must not take off the shells of beans, in order to raise the price more than if they remained in the shells. The sages, however, permit (as the buyer usually knows the difference of the prices). They, however, agree that one must not do so with the top of the measure

only, for he deceives the eye (as the buyer may think that the contents of the whole measure is so). The embellishment of articles which are to be sold, *e.g.*, slaves, animals, or vessels, is forbidden (further on, the meaning).

GEMARA: What is the reason of the rabbis who permit to give presents to children? Because the store-keeper may say to his competitor: "I distribute nuts; you may do so with plums."

"*To lower the prices*," etc. For what reason do the rabbis permit this? Because he influences the wholesaler to lower his prices also.

"*To take off the shells,*" etc. Who are the sages mentioned in the Mishna? R. Aha of the Boraitha, who permits to do so with visible things.

"*The embellishment of,*" etc. The rabbis taught: "One must not brush up an animal's hair to give it a delusive appearance of fatness, or make it drink water of bran-flour, which causes its hair to be so." 1

It is also not allowed to blow up entrails (for sale, to give them a delusive appearance), also not to soak meat in water (for the purpose of increasing the weight). Samuel has permitted to put silk fringes on a mantle (so as to make it appear more woolly). R. Jehudah did so with fine clothes, to gloss them by rubbing with a substance. Rabba permitted to press hemp garments, and Rabha to paint arrows, and R. Papa baskets (*i.e.*, to give them a better appearance). But does not our Mishna state that embellishment for slaves and animals is not allowed, This presents no difficulty: new ones are to be embellished, but old ones are not allowed, as they may get a new appearance (and the buyer will be cheated).

Concerning slaves, what embellishment can be done? As it happened, one old slave painted his hair and beard and came to Rabha that he should buy him. And Rabha answered him: "Let thy house be open for the poor" (*i.e.*, I have the service of the house done by poor men). When he came to R. Papa b. Samuel, he bought him. One day he told him to bring a drink of water, and he washed away the paint and told him: "See, I am older than your father;" and R. Papa read to himself the following verse [Proverbs, xi. 8]: "The righteous is delivered out of distress, and *another* cometh in his stead."

Footnotes

116:1 It was already explained above that in ancient times the custom of buying and selling was that either the buyer or the seller would take a garment in his hand, and the other party would grasp the size of a span of it with his hand, which is known under the expression *Sudarium*--hence the question in the text.

116:2 The ceremony signifies that the holder of the garment gives it as a present to the other.

117:1 As it is explained above, the buyer makes a present of it to the seller, etc., which cannot apply to the seller.

127:1 He gives articles to his neighbor to sell, as he trusts him on his word. Rashi Tosephath, however maintains that it means, if one is furnishing his neighbor with money to buy articles for him. In accordance with Rashi's explanation, the law of cheating could not be applied.

133:1 Leeser translates according to the sense, but the verse reads as we have translated.

136:1 The Hebrew expression for this word is "Gher," which has two meanings *proselyte* and

stranger.

139:1 The term for cheating in Hebrew is *Onaah*, hence the analogy of *Anach*.

140:1 The expression in text is the oven of *Akhnai*, which means in Chaldaic snake. Thosphat, however, maintains that the man who made the oven was named *Akhna*.

141:1 There was a custom of falling upon the face at a certain prayer daily, except on half-holidays, as Chanukah, Purim, and New-moon.

142:1 An explanation to this will be found in Tract Hrajoth.

144:1 The term in the Boraitha is *mesharbtin*, and as to the question of its meaning, Zera in the name of R. Kahana gives the former, and some other the latter.

NEW EDITION

OF THE

BABYLONIAN TALMUD

Original Text, Edited, Corrected, Formulated, and Translated into English

BY

MICHAEL L RODKINSON

SECTION JURISPRUDENCE (DAMAGES)

TRACT BABA METZIA (MIDDLE GATE, PART II.)

Volume IV. (XII.)

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EXPLANATORY REMARKS

In our translation we adopted these principles:

1. *Tenan* of the original--We have learned in a Mishna: *Tania*--We have learned in a Boraitha; *Itemar*--It was taught.

2. Questions are indicated by the interrogation point, and are immediately followed by the answers, without being so marked.

3. When in the original there occur two statements separated by the phrase *Lishna achrena* or *Waïbayith Aema* or *Ikha d'amri* (literally, "otherwise interpreted"), we translate only the second.

4. As the pages of the original are indicated in our new Hebrew edition, it is not deemed necessary to mark them in the English edition, this being only a translation from the latter.

5. Words or passages enclosed in round parentheses denote the explanation rendered by Rashi to the foregoing sentence or word. Square parentheses [ ] contain commentaries by authorities of the last period of construction of the Gemara.

TO HIM

WHO HAS EVER BEEN AMONG THE FIRST TO GIVE HIS FREE-WILL OFFERINGS
IN BEHALF OF THE DOWNTRODDEN-A LIBERAL DONOR
TO ALL PHILANTHROPIC INSTITUTIONS -A STAUNCH
FRIEND AND ADVOCATE OF ISRAEL'S PUREST
IDEALS, TRADITIONS, LITERATURE
AND RELIGION--AN ILLUSTRIOUS
EXEMPLAR

LEONARD LEWISOHN, ESQ.

THIS TRACT--BABA METZIA (VOLS. XI. AND XII.)--WHICH TREATS OF ZEDAKAH
(JUSTICE-CHARITY) AND MISHPOT (JUDGMENT), IS MOST
RESPECTFULLY DEDICATED

BY THE EDITOR AND TRANSLATOR

MICHAEL L. RODKINSON

New York, in the month Ziv 5661, April 25. 1901.

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v:1 Continuation of previous volume.

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OF

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the price of thirty dinars in case it should die, etc. May money belonging to orphans be lent for usury or not? One who lends money for a business which is very likely to bring profit with little chance of loss is wicked; for one which is likely to bring loss and far from profit, is pious, etc. An iron sheep must not be accepted from an Israelite, etc. (for explanation see Mishna *VII*.). An Israelite may lend to his race money belonging to non-Israelites for usury, etc. The interpretation of verse 8, Prov. xxviii. The meaning of verse 24, Ex. xxii. He who takes usury will lose all his possessions. What is to be done with the usury promised by or to a heathen, after he has been proselyted. A quote in which usury is mentioned the lender must not be allowed to collect even the principal, which he must forfeit as a fine. Articles for delivery during the year must not be bought for a certain price before the market price is fixed. If one travelled with stock from one place to another, and while on the road his neighbor asked him to sell to him at the price of the place he intends to go to, etc. What Samuel ordered the grain dealers, who used to advance money for grain to the farmers, to do. Also the order of Rabha to the watchmen. Are the rabbis consuming "usury" by paying in *Tishri* for the wine they will choose in *Teveth* when it is already in good condition? I call your attention, master, to the rabbis, who pay head-tax charges for those who cannot pay them, etc. Seuram used to compel doubtful characters to carry the palanquin of Rabha. If one of a company of three partners has given money to a messenger to buy some. thing, it is to be considered as for the company, and not as for himself. If the grain was to be finished with two kinds of labor only, one may fix the price, but not if he require three kinds of labor. There was a man who paid a stipulated amount for an outfit to be delivered at the house of his daughter's father-in-law, in the meantime the value of the equipment was reduced, etc. One may lend his gardeners wheat to be returned in the harvest-time the same measure, etc. (for meaning see p. 184). Hillel (the First) says: A woman must not lend a loaf of bread to her neighbor unless a price is stipulated for it, for fear wheat may become dearer, and then the return of the loaf (of the same quality) will appear usurious. The Halakha, however, does not so prevail. One may say to his neighbor: Help me in weeding or digging to-day and I will help you on some other day, etc. There is a kind of usury which may be called preceding usury, and another kind which may be named succeeding usury. How so? If one owes his neighbor money and it was not customary for him to greet him first, before the loan, he must not do so after the loan took place. If one is aware that his debtor has nothing with which to pay he must not pass him by. There are three who cry for help and are not heard 166-187

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one hires a field and it was a dry place, or a group of trees, and thereafter the spring ceases to flow, etc. If the hirer told him: Rent to me this dry field, etc. If one has undertaken to work up a field and he has neglected to do so. Mair, Jehudah, Hillel, Jehoshua, and Jose, these considered the language of the common people legal (although it was not in accordance with the enactment of the sages). If one lends money to some one, he has no right to pledge him through the court for more than he owes him. Rabina used to double the amount in the marriage contract, etc. There was one who undertook to work up a field, and he said: Should I neglect, I will give you one thousand zuz, etc. There was a man who undertook a field for poppy, sowing with wheat, and finally the wheat was worth more than poppy. If one has given articles for business without any stipulation, and took from him two notes, etc. If the gardener did not want to weed the field, saying: I will give you your due, he must not be listened to. 273-279

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CHAPTER X.

ground, unless it is immediately taken away by those who want to use it. If a hewer of stones has transferred them to the polisher, and they cause damage while under his control, the latter is responsible. When two gardens were placed one above the other, and some herbs were grown between them, the upper one may use that which he can reach with his hand, provided he does not exert himself to reach them. This was reported to the King Sabura. 307-316

Next: Chapter V

TRACT BABA METZIA (MIDDLE GATE).

CHAPTER V.

RULES AND REGULATIONS CONCERNING USURY IMPRISONMENT, RENTING HOUSES, INSTALMENTS, LOANS FOR HALF PROFIT, APPRAISING, ETC.

MISHNA *I*.: What is considered usury, and what is considered increase? If one lends a "sela" (four dinars) to get five, or two "saahs" wheat for three, this is prohibited, because it is biting. And what is considered increase? One buys wheat, a "kur" for a golden dinar (twenty-five silver dinars), which is the market price, and the price of wheat advances to thirty silver dinars; the buyer then requires his wheat, which he desires to sell, and buy wine for it. The seller said: "I accept the wheat for thirty dinars, and you shall have to get wine from me according to the present market price," but he has not wine ready for delivery; this is an unlawful increase.

GEMARA: In leaving out usury, which is biblical, and explaining increase, which is rabbinical only (which is the matter of an exchange), it may be deduced that, biblically, "usury" and "increase" are one and the same thing; and yet both expressions are mentioned in the same sentence [Deut. xxiii. 20]: "Usury of money, and increase of victuals?" Said Rabha: There is indeed not a case of "usury" without an "increase," and *vice versa*. The Scripture, however, mentioned purposely Neshekh (biting) and Tarbeth (increase), to teach us that there are two negative commandments for usury. The rabbis taught: It is written [Levi., xxv. 37]: "Thou shalt not give him thy money upon usury, nor lend him thy victuals for increase." There is mentioned only usury of money, and an increase of victuals; whence we know that even the negative commandment of usury is to be applied on victuals also? There it is said [Deut., xxiii. 20]: 145

[paragraph continues] "Usury of victuals." Whence the negative commandment of increase on money? It is therefore said [*ibid*., *ibid*.], "usury of money." This expression is superfluous, as it is said at the beginning of the same sentence: "Thou shalt not lend upon usury to thy brother," etc., which includes any kind of usury; therefore this superfluous expression is to be applied for the negative commandment of increase (tarbeth) on money. As this verse speaks of the borrower only, whence do we know that the same is the case with the lender? From the analogy of expression, "usury," which is used in both cases, we deduce that, as in the former case, there is no difference between money, victuals, usury, or increase. Whence, however, is to be deduced, that any increase is prohibited? From [*ibid*., *ibid*.] "usury of anything that is lent upon usury."

Rabbina, however, said: The analogy of expressions would be needed if the Scripture would read: "Thou shalt not give him thy money upon usury, and thy victuals," etc.; but as it is written: "Thou shalt not give him thy money, and upon increase," etc., it is not necessary, because we read: "Thou shalt not give him thy money upon usury and increase," and we also read: "With

usury and increase thou shalt not give thy victuals." But says the Gemara: Did not the Tana of the Boraitha deduce analogy of expressions! How then can Rabbina, as an (Amoroi) oppose the statement of a Tana? There is no opposition, as he means to say, that if it would not be plainly written in the Scripture, it could be deduced from the above analogy of expression. The above analogy, however, is needed to include every kind of usury which is not mentioned in the Scripture, concerning a lender. Rabha said: Why does the Scripture mention separately a negative commandment regarding usury, robbery, and cheating? (Are they not all of one and the same character?) It is necessary, for if it were written concerning usury, only, one might say it is something peculiar, as the borrower (who needs the money) is also forbidden to give usury; hence, robbery and cheating could not be deduced (as there is a rule that nothing is to be deduced from a peculiarity). If concerning robbery only, one might say because there is an act of violence, of which cheating cannot be deduced. And if it were stated concerning cheating only, one might say that because he was not aware of the cheat, and could not relinquish even if he would like to do so, therefore the above could not be deduced. Let us see. If even one from another cannot be deduced, why, then, should not

one of them be deduced from the two others? Which of them! Suppose it should not be written concerning usury, and therefore be deduced from the others. One may say that in both the above cases it was done against his will, which is not the case with usury, as the borrower agrees. And should it be deduced concerning cheating from above two, one might say that buying and selling matters cannot be deduced from a case of violence, etc. But let the Scripture leave robbery, which could be deduced from the above, as what would be the objection? "Usury is a peculiarity!" cheating would prove; and if there would be an objection that in the case of cheating no relinquishment could be made, as it was not known, usury would prove. The same discussion will revolve indefinitely, and though the points of each are different, they are equal, however, in one point: that their acts are considered a robbery; hence, robbery could be deduced? It may be said: That so it is, and the commandment of robbery applies to him who withholds the wages of an employee. But is this not plainly written [Deut., xxiv. 14]: "Thou shalt not withhold," etc.? It is written to show that two negative commandments shall be applied to any act of unjust keeping of wages. If so, why then is theft mentioned? (Could it not be deduced from above?) It is needed, as it is stated in the following Boraitha: "Thou shalt not steal," even with the intention to vex a short time, and returning; "Thou shalt not steal," even with the intention to please your neighbor with the due double amount (instead of charity, which he would probably not accept). R. Yimar questioned R. Ashi: (After all that is said above,) is not the commandment superfluous concerning right weight? And he answered: The commandment applies to him who hides his scales in salt that they should become heavier. But is this not a direct robbery? I mean to say that the transgression comes just with the act (although he had not used it as yet).

The rabbis taught: It is written [Lev., xix. 35]: "Ye shall do no unrighteousness in judgment, in mete-yard, in weight, or in measure." Mete-yard means measuring real estate; one should not measure with the same rope for two heirs, for one in the summer season and for the other in the winter (because the rope, if dry, is shorter). "In weight" means, one should not hide the weight in salt (explained above). A small liquid measure one shall not fill up in a manner to make foam; and from this the following *a fortiori* conclusion is to be drawn: Of a small measure which contains only a thirty-sixth part of a lug, the

[paragraph continues] Thora is particular that the liquid should not be measured with foam; of a hin or a lug, or a half, third, or quarter of a lug, so much the more the measure must be full without foam.

Rabha said: Why is the redemption from Egypt mentioned in the Scripture in conjunction with usury, zizith, and weight? The Holy One, blessed be He, said: It was I who distinguished in Egypt between a first-born and another one, and it is also I who will punish one who lends money upon usury to an Israelite with the pretext that the money belongs to a heathen; and also him who hides his weights in salt, and finally him who puts thread of χαλαιγος in his garment and saying: it is purple-blue prescribed in Scripture for Tshitstits; as in these three things human beings can easily be deceived.

R. Huna happened to come to Sura of Euphrates. On that occasion Hanina of the same place questioned him: Why did the Scripture mention the redemption from Egypt in conjunction with the eating of reptiles? And he answered. "So said the Holy One, blessed be He: I who have distinguished in Egypt, etc., will punish one who mingles the inwards of unclean fishes with the inwards of clean ones and sells them to an Israelite. And he rejoined: What I do not understand is, why is here mentioned "who brought you up," which is not the case in the other place where the redemption from Egypt is mentioned?

Said Rabbina: To that was taught by the school of R. Ismael: The Holy One, blessed be He, said: If the only reason why Israel should be redeemed from Egypt would be that they should not defile themselves with the consummation of reptiles, it would be sufficient [*i.e.*, the expression, Who brought you up, is in the Hebrew *Hamnaleh*, which means also, a higher standing]. To the question, however, Is then the reward for not eating reptiles greater than that of the three things mentioned above (to which the expression, I brought you up, is not used)? he rejoined: The question here is not about reward, as the Scripture means they were brought up in such a manner that they felt disgust to defile themselves with reptiles.

What is considered increase, etc.? Is then all that mentioned before in the Mishna not increase? Said R. Abuhu: The cases of the first part are biblically prohibited, and those of the latter rabbinically only. And so also said Rabha, with the addition that to the first part the verse [Job, xxvii. 17]: "He may prepare it, but the just shall put it on," applies (*i.e.*, that the children, even being upright, are not obliged to return usury taken by their

wicked fathers). But why not so much the more in the second part, which is rabbinical? Say then: The above cited verse applies to the first part also, although the first part treats of direct usury and the second of indirect. R. Elazar said: Direct usury is to be replevied by the court, which is not the case with indirect usury. R. Johanan, however, maintains that even the former is not to be replevied. Said R. Itzhak: The reason of R. Johanan's decision is the following verse [Ezekiel, xviii. 13]: "Hath given forth upon usury, and hath taken increase, shall he then live? He shall not live; he has done all these abominations." Hence such a man is charged with a crime of capital punishment, from whom damages are not collected.

R. Adda bar Ahaba says of the following [Lev., xxv. 36]: "Take thou no usury of him or increase, but fear thy God." Hence nothing is mentioned here about the restoration (as is mentioned in the case of theft or robbery).

Rabha, however, said: It is to be deduced from the first part of the above cited verse itself [Ezekiel, xviii. 13]: "He shall surely die: his blood shall be upon him." Hence the usurers are equalled to blood-shedders; as bloodshed cannot be restored, the same is the case with usury. R. Nachman bar Itzhack said: "The reason for R. Elazar's theory stated above is because it treats in the latter part of the verse mentioned before [Lev., *ibid*., *ibid*.], that he may live with thee, which means, return him the usury taken, that he may live. R. Johanan, however, applies this verse to the case mentioned in the following Boraitha: "If two were on the road (in the desert), and one of them has a pitcher of water which is sufficient for one only until he may reach an inhabited place, but if both would use it both would die before reaching a village;" and Ben Patturo lectured that in such a case it is better that both should drink and die than one should witness the death of his comrade. (And so it was practised) until R. Aqiba came and taught: It is written: "That thy brother may live *with thee*" (but shall not die with thee, *i.e.*, the life of thyself is preferred to the life of thy brother).

R. Saffra said: Promised usury, which, according to the Persian Law, is collected from the borrower for the lender, according to our Law must be collected from the lender for the borrower; and that which, in accordance with the Persian Law, is not to be collected, is also not to be collected from the lender, according to our Law. Said Abayi to R. Joseph: Is this to be considered a standing rule? Are not then two saahs of grain promised for one

saah, that the Persian court collects from the borrower for the lender, and we do not return such to the borrower? And he answered: They do not collect it because of usury, but because they consider it as a deposit in the hand of the borrower when the grain was dear, and now, as it is cheaper, they collect the value of the deposited grain, which may amount to the extent of two saahs (according to our Law, however, it is prohibited, because it appears usurious). Said Rabbina to R. Ashi: Let us see. A pledge without account (*i.e.*, if one has borrowed money for a vineyard and the creditor used the fruit of it without deducting anything of the debt, but for usury of the money), if the borrower used the fruit for himself, the Persian court collects from the borrower for the lender; and according to our law in such a case we do not collect from the lender for the fruit he has used (as it is not considered direct usury, because it may happen that the vineyard should be sterile)? And he answered, that this also is not because of usury, but because they consider it a regular sale. (The lender paid money for the vineyard, and it is considered his until the borrower repays the amount, which is considered another sale.) Then how is R. Saffra's statement to be understood? His statement is concerning money matters only, direct usury, which is allowed by the Persians, and such a promise is collected by their court; in accordance with our Law, if the lender has already taken charge, it is to be collected from him by a court, and this is in accordance with R. Elazar's theory stated above, and also his further statement that what the Persians do not collect from the borrower speaks of usury which was not fixed with the loan, but taken previously or after it (as will be explained in the last Mishna of this chapter).

If one buys wheat, etc. And if he has no wine, is this to be considered increase? Have we not learned in the following Boraitha: "A price must not be fixed on fruit before the market prices

are announced; but when already announced, one may sell it for this price even if it is not in his possession as yet?" Said Rabba: Our Mishna treats when he came to take it for his debt, as is illustrated in the following Boraitha: "If one claims a hundred zuz, and goes to the barn of his debtor, saying: 'Give me my money, as I intend to buy wheat for it,' and he says: 'You can buy it from myself at the existing market price, and I will deliver it to you in monthly instalments during this year,' it is prohibited (although it would be allowed if he would advance him cash now), as the old debt is not considered for cash at the time

of this agreement." (Hence the statement of our Mishna that when he has no wine at the time it is considered an increase, which is prohibited.) Said Abayi to him: If so, then even when he possesses the wine it should be considered an unlawful increase (as the wheat which he claims is an old debt)? Therefore, said Abayi, the Mishna is to be explained as R. Saffra illustrated the law of usury taught in the school of R. Hyia: "There are things which in reality ought not to be considered usury, and nevertheless they are prohibited because they *appear* usurious." How so? (Illustrates R. Saffra:) If one said: "Borrow me a mana" (which is twenty-five selas), and he answered: "I have no money in cash, but I can furnish wheat for a mana," and he accepted, and thereafter the lender buys it from him for twenty-four selas, this is lawful, but nevertheless it is prohibited to be practised, as it appears usurious. And similar to this case may be the case in our Mishna illustrated; namely, if one said: "Borrow me thirty dinars," and he said: "I have no cash, but I can furnish you wheat for this amount," and he accepted, and thereafter the lender bought from him for a golden dinar (which is twenty-five silver dinars) as the market price at that time, but before delivering it to him the price increased to thirty, and when the lender came to require his wheat the borrower said: "I have no wheat, but wine for thirty dinars," then, if he possesses it he may do so, as he took from him a trade article and repays him with a trade article, but if not he will be compelled to give him the value of the wheat at the increased price (*i.e.*, thirty dinars), and this appears usurious. Said Rabha to him: If so, why does the Mishna state, Give me my wheat (the value of which when he bought it was only a golden dinar; the borrower of the wheat is considered now a seller and the buyer has not made a drawing or paid any money for it that he should acquire any title to it, hence the seller may retract and give him back twenty-five dinars; we must then say that the lender claims thirty dinars, the value of the wheat he sold him first): [1] then let the Mishna state, Give me the value of my wheat? Read, then, "The value of *my* wheat." But does not the Mishna state: "Which he desired to sell," and according to your theory it should state: "Which he sold"? Read, "Which I *sold*." But the further expressions: "I accept it for thirty," "so is the

market price," could not be explained in accordance with your theory? Therefore said Rabha: When I will die, R. Oshia will come to meet me, as I try always to explain his Boraithas in accordance with the Mishnayoth. And there is a Boraitha taught by the same, as follows: "If one claims a mana and stands at the barn of his debtor, saying, Give me money, as I desire to buy wheat for it, and he answers: I possess wheat and can furnish it to you at the market price (and the lender accepts it), then, when the time to sell the wheat arrived, and he required his wheat for sale, as he wants to buy wine to sell it in season, and he says: I possess wine, buy it from me at the market price (and he again accepted), and when he came, in season, requiring the wine for the purpose of selling it to buy oil for the season, and he says: I have also oil and you can buy it from me at the existing market price--in all these cases, if he possesses the articles, it is allowed;

if not, it is prohibited, because it appears usurious." And the expression in our Mishna: "If one buys wheat," means that he bought it for his previous loan.

Rabha said: From the above cited Boraitha three things may be inferred: (*a*) That with a loan articles may be bought at the existing price to deliver in instalments although the price may be increased, and it is considered as though he would give him cash--not in accordance with R. Hyia's statement above, that it is not so considered; (*b*) provided the article is ready by the debtor for delivery; and (*c*) R. Janai's statement [1] that there is no difference between the article and the money; as it is allowed to accept an article bought at the existing price even if afterwards the price increased, so is it also allowed to accept the difference in money.

The same said again: As the above theory is correct, there is no difference even if the article is not ready for delivery by the seller to buy of him at the existing market price, provided he takes the money now (as he can buy the article everywhere, it is considered as if it were ready for delivery).

R. Papa and R. Huna b. R. Joshua raised an objection to his statement (*supra*, p. 151): "In all cases, if he possesses; . . . if not, it is prohibited." And he answered: (What comparison is it?) There is a loan and here a sale.

Rabha and R. Joseph both said: The rabbi's decision that one may buy articles to deliver them in instalments at the existing

market price (in the larger cities, without fear that it appear usurious [1]) is because the buyer may say: I do not consider it favorable even should the price increase during the year, as for the cash I have forwarded to the seller I could buy in the cities of Hini and Shili, at a lower price than in the larger cities, all I need for this year. Said Abayi to R. Joseph: According to thy theory, it should be allowed to lend a saah of grain in the time when it is cheap, to return the same measure to him when it is dear, as the lender can say: I do not see any favor in this, as I could keep the wheat in my store until that time (and it is said above that this is not allowed, as it appears usurious). And he answered: There is a loan, but here is a sale. Said Ada b. Abba to Rabha: After all, it is still an advantage to the buyer, as he would have to pay the broker (*i.e.*, has he not the advantage of saving the broker's fee?). And he rejoined: It treats when he pays the same to the seller. R. Ashi, however, said: A man's money does the brokerage for him (*i.e.*, dealers come to the wholesaler directly).

Rabba and R. Joseph both said: One who buys grain in the time when it is ripe, but before it was harvested (when the market price is not yet fixed, and it is said above that, from him who possesses, it is allowed to buy even before the price is fixed), he must convince himself by seeing the grain at the barn of the seller. (Asks the Gemara:) To what purpose? If to acquire title, the seeing would not do (without drawing it)? And if in case of retracting by the seller he should be classified with those who have to accept the curse (mentioned in Chap. iv., Mishna I.), is the same not the case if he has not seen? Yea, it is for that purpose; but, usually, he who buys grain in the above-mentioned time buys it of two or three farmers; and then, if the farmers have seen him at their barns, they are sure that the buyer relies upon them. But otherwise the farmer may say: I thought you found better ones and you did not care any more to take mine, therefore I sold

it out. Said R. Ashi: Now, coming to the conclusion that the relying upon him is the reason of the above statement, it is sufficient even if he had told him: I rely upon you at any other place.

R. Nahaman said: The rule of usury in transactions is:

[paragraph continues] If he sells him the article cheaper because it is not yet in his hand, it is forbidden. He said again: If a wax dealer says to the buyer: "I need money and you can get now five wax cakes for a zuz instead of the fixed price, which is four," if these cakes are ready for delivery he may do so, but not otherwise. Is this not self-evident? Lest one say that the same is the case when the wax dealer has to gather his cakes placed with others' in the city, as this is similar to the case: "Lend me . . . until my son will return with the keys," mentioned above, he comes to teach us that this case, that they are not collected as yet, is not to be considered if they would be in his hand.

The same said again: If one found a surplus in the small coins he borrowed, he must return him the surplus, provided such an error is usual. If, however, it could not be supposed as an error, he may consider it a present of his friend. What error is to be considered usual? Said R. Aha b. R. Joseph: To the number of tens and fives (*e.g.*, if he had to give him two score and he found twenty-one or twenty-two, or he had to give him twenty-five and he found twenty-six or twenty-seven; but not if he found twenty-five instead of twenty). Said R. Ahab. Rabha to R. Ashi: But if the lender was a miser, so that a present from him is unimaginable, how then? And he answered: Then it can be supposed that with this he returned him the sum which he robbed him of so me time ago, as we have learned in the following Boraitha: "If one has returned robbed money with an account of other money he had to give him, he has done his duty." The former questioned again: But how is it if he never did any business with him? And he rejoined: Even then it may be supposed that another one who robbed him of the same amount told him to do so, when it will occur that he will require a loan from him.

R. Kahana said: I happened to be at the college when Rabh I had finished his lecture and I heard him saying: "Melons, melons," and did not know what he said about them. After Rabh left, the college men told me that he had said as follows: If one advanced money to a gardener for melons, to deliver to him thereafter, and his melons usually were the size of a span, the price of which was ten for a zuz, and he promised to give him the same number at the size of an ell for the advanced money, this agreement is of avail. Is this not self-evident? Lest one say that because they are growing from themselves it is allowed, he comes to teach that even then it is only when he possesses such. And according to whom is it? To the Tana of

the following Boraitha: "If one goes to milk his goats, to shear his sheep, or to take out honey and wax from his hives, and he offers to sell the products by the advance of money for a cheaper price, it is allowed. If, however, he says: 'I will sell you the above products to a certain quantity which will be produced in the future, it is prohibited.'" Hence, we see that although they grow from themselves it is, nevertheless, prohibited. Rabha, however, said the articles are not similar to the case of melons, as the same melons which are now small will become big by growing themselves, but milk, wool, or honey of the bees is not grown at all, as he takes the milk out to-day and on the morrow there is other milk instead, and the same is with the shorn wool and the

honey. Therefore, the above-mentioned case of the melons is permissible.

Abayi said: One may say to his comrade: "Take four zuz for a barrel of wine you possess, with the condition that if it should become sour you should be responsible, but if it becomes dearer or cheaper it should be charged on my account." Said R. Shrabia to him: Is this not a case in which the profit is to be very likely expected, and little loss from damage (*i.e.*, the increase in price is usual, and its becoming spoiled unusual, and there is a rule that in such cases it must not be done)? And Abayi answered: This would be correct if he would not accept in case it became cheaper, but since he accepted this also, both chances, of profit and damage, are alike.

MISHNA *II*.: A lender must not dwell in his debtor's house for nothing, or even for decreased rent, as it is usury.

GEMARA: Said R. Joseph b. Menjumi in the name of R. Nahaman: Although it was decided that one who occupies the court of his neighbor without his knowledge need not pay any rent (First Gate, p. 40; if, however, he said to him: Borrow me some money and dwell in my house, he must pay him rent. If however, while dwelling there for nothing he lent him any money, he need not pay. Why so? As the loan was not made previously for this purpose, it does not matter.

Abayi said: If a debtor who sold grain, four measures for one zuz, had to pay a zuz usury, and furnished to his creditor five measures for the same, then the court that levies the usury levies only four measures, as the fifth may be considered a present. Rabha, however, says: All the five must be levied, as all the five together came to hand by usury.

Abayi said again: If a debtor who owes four zuz usury has

furnished a garment to his creditor, when the court levies the usury it levies only four zuz, but not the garment. Rabha, how. ever, maintains that the garment is to be levied, for the reason that people may say that the garment he wears is of usury.

Rabha said: If one claimed thirteen zuz usury, and at the same time he hired a court of his debtor for the same price which is worth only ten, when the usury is levied all the thirteen zuz are to be collected. Said R. Aha of Difti to Rabbina: Why should not the creditor claim: "Because the money was of a profit I did not care to give him three zuz more than the value, but now, when they levy the money, why should I be charged more than others?" And he answered: The owner of the court may say: "There is no difference, as so was my agreement and you accepted it."

MISHNA *III*.: Hiring may be increased, but not sale. How so? The owner may say to the hirer: "You can have this court for ten selas a year, if you give me the money in advance, but if in monthly instalments you have to pay one sela a month." It is, however, not allowed for the owner of a field to say: "If you advance me a thousand zuz you can have this field, but if by instalments, you have to pay twelve hundred."

GEMARA: Why are the two cases so different? Rabba and R. Joseph both said: Hiring is usually paid afterwards, and so if he pays him monthly he pays only what was due the last day

of the month, as during the month he did not owe him anything, consequently there is no reward for waiting for the payment; and the lower price which he offered him, for paying in advance the money for all the year, must also not be considered usury, as the owner has a right to reduce the price for occupying his property. With sale, however, it is different, because the money must be paid with the act of the sale, and he acquires title immediately. Consequently, the increase of 200 for the instalments is usury. Said Rabha: The rabbis have investigated this matter to find its basis in the Scripture, and finally based it upon the verse [Lev. xxv. 53]: "Hired from year to year," which signifies that the hiring of this year is paid at the beginning of the next.

But if by installments, etc. R. Nahaman said: It is allowed to increase the price of an article when the money, is to be paid a certain time after delivering (provided he does not say: "If for cash, you will have it cheaper"). And Rami, according to others Uqba b. Hama, objected to him from the last part of our Mishna; and he answered: There he said plainly: "If you advance me

the money you will have it cheaper" (which certainly appears usurious). Said R. Papa (who was a brewer): I do so with my customers. I sell them on Tishri at the price of Nissan, thinking that to me it is undoubtedly allowed, as my beer would not get spoiled until Nissan and I am never in need of money (so that I should sell cheaper for cash), and I do only a favor to my customers by crediting them. Said R. Shesheth b. R. Aidi to him: Why should the master take the example of yourself and not of your customers? You should consider these circumstances, that if they would have money they would pay you at the price existing in Tishri? Said R. Hama: I do so in my business, and to me it is allowed beyond any question (Rashi explains that he was a wholesale dealer in many articles, and he sold them to the travellers at the market price of the large cities, with the condition that they should pay him when they returned, and he was also responsible for his goods on the way until sold; they, however, were allowed to buy articles for the money obtained and to sell them in other places), as they are pleased that I take all the responsibility of the goods until sold, and also that they are free of duty because the goods bear my name (the Persians used to free the rabbis of duties), and furthermore that my goods have the preference for sale, as it is announced in the market that no one can sell the same goods until mine are sold, because they bear my name. [1] The Halakha prevails in accordance with R. Hama, with R. Elazar (who says that usury is levied), and also with R. Yanai, who said above (p. 152) that there is no difference between the articles and the money.

MISHNA *IV*.: If one sold his field, taking a deposit and saying: "You may take possession of the field belonging to you from to-day, when you will bring the balance," such an act is not allowed. If, however, one has borrowed money on his estate with condition that if he will not repay within three years it shall belong to the lender, it belongs to the lender if not paid; and so did Baitus b. Zunin under the supervision of the sages.

GEMARA: But who uses the fruit in case he sold his field by a deposit? According to R. Huna, the seller; and according to R. Anan, the fruit must be deposited until the remainder is paid. And they do not differ. R. Huna speaks in case the seller told him he shall acquire title when he will bring the balance, and

[paragraph continues] R. Anan speaks in case he said, When the balance will be paid in time title shall be acquired by you from to-day.

R. Saffra learned in the Boraithas, treating upon usury, taught in the school of R. Hyia, concerning the statement of our Mishna: There are cases in which the use of the fruit is permitted to both, prohibited to both, permitted to the seller only.

And Rabha illustrated it thus: The first case applies when the agreement was that he shall acquire title for the amount of the deposit only; the second applies when he was told that if he will pay the balance in time, title to the property shall be given to him from to-day; the third applies, if he was told, A title will be given to you at the time when you will bring the balance; and the fourth applies if he was told, Title is given to you from now and the balance you owe me should be considered a loan.

According to whom is the statement of our Mishna that both are prohibited? Said R. Huna b. R. Joshua: At any rate, it is not in accordance with R. Jehuda, who said: If there is only one side of usury (*i.e.*, if, for instance, the buyer should not keep his promise, there would be no usury if the seller used the fruit) it does not matter. (The other parts of the above Boraitha, how. ever, are in accordance with R. Jehuda also, as there is a certain usury without any doubt).

If one has pledged his house or field, and the lender said to him: "You may sell it to me for such and such amount, but if you sell it to another, you will have to add such and such an amount to my loan," this is usury. But if he says: "Should you wish to sell for its value, I shall have the preference," it is allowed. The same is the case if one has sold a house or a field with the condition that if he should have money thereafter, the estate should be returned to him; it is considered usury (as the money is considered a loan for which the lender uses the estate until the money is returned). If, however, the *buyer* says: "I will return it to you when you will have money," such an agreement is allowed. [And the above-mentioned R. Huna said that these two Boraithas also are not in accordance with R. Jehuda, as there is only one side of usury (*i.e.*, that should the seller or bor. rower not have the money necessary, there would be no usury) which is allowed according to his theory.] But what difference is there if the seller made the condition of returning when he will have the money, or the buyer made it? Said Rabha: That is, if the buyer said, "I will do so not as a condition but by my good will."

There was a man who bought an estate without any security--*i.e.*, that the seller did not take the responsibility to return him the money should the estate be taken away from him by the seller's creditors. Seeing, however, that the man looked downhearted, the seller said to him: "Why art thou grieved? Should it be taken away from you I will collect for you the fruit and the improvement." Said Amimar: This is only a gossip. Said R. Ashi to him: Your reason is, because this condition should be made by the buyer and not by the seller; does not the above Boraitha state that if the seller said, "I will return it to you, etc.," it is allowed, because such a condition ought to be made by the seller and not by the buyer? And Rabha explained this that only when the buyer says: "It is not a condition, etc.," from which it is to be inferred that if he did not add this it would not be considered as a gossip? And Amimar rejoined: Rabha means to say thus: As this condition should have been made by the seller, and it was not, then when the buyer says, "I will do it," it is to be considered as though he would add: "from my good will."

It was taught: It happened that a sick man wrote a divorce to his wife and she heard him sigh. Then she said to him: "Why do you sigh? If you will live I am yours." Said R. Zebid: It is to be considered a gossip only. Said R. A'ha of Difti to Rabina. And should it not be considered so, what harm could there be? Does it then depend upon her to make a condition in the divorce? That depends on the husband only. (And he rejoined:) Lest one say that, hearing her statement, the husband resolved to give the divorce upon this condition, he comes to teach us that it is not so.

If one has borrowed money on his estate, etc. Said R. Huna: The case is if the condition was made at the time the money was paid. If, however, it was made thereafter, title is acquired according to the amount paid only. R. Nahaman, however, maintains that even then title is acquired on the whole estate; and R. Nahaman acted accordingly in a case of the Exilarch. R. Jehuda, however, tore the document, and the Exilarch told this to R. Nahaman, and he said: (It does not matter;) a boy tore it as, concerning jurisprudence, all are considered boys in comparison with me. Afterwards, R. Nahaman retracted from this statement, and said that even when the condition was made at the time the money was given, it is of no avail. And Rabha objected to him from our Mishna: "If he will not repay within three years . . . it is his." And R. Nahaman answered: I say that an

[paragraph continues] *asmakhta* 1 gives title. Minjumi, however, maintained that it does not. But then our Mishna contradicts Minjumi? He interprets our Mishna as treating of when the seller said: Title should be acquired by you from now. Said Mar the Senior and the junior, sons of R. Hisda, to R. Ashi: So said the sages of Nahardai in the name of R. Nahaman: An *asmakhta* gives title only in time but not thereafter. And R. Ashi rejoined: This would not be correct, as there is a rule that a thing which gives title in time gives also thereafter. Perhaps you mean to say thus: If the borrower sought him within the time of the loan and told him: Acquire title on it, as I will not redeem it any more, then title is acquired; but if he said the same to him after the time has elapsed, it counts nothing, as it is to be considered that he said so only because he was ashamed for the delay of the payment. (Says the Gemara:) In reality, title is not acquired even within the time, as the saying of the borrower is to be considered as a postponement of time only, as he would not like to be troubled when the time of payment arrived.

R. Papa said: The *asmakhta* sometimes gives title and sometimes does not. If, *e.g.*, he finds his debtor on the day of payment drinking beer, and not caring about the payment of his debt, it is to be considered that the debtor does not intend any more to redeem his pledge, and then title is acquired by the lender; but if he found him on that day searching for money, title is not acquired. Said R. A'ha of Difti to Rabina: Even in the first case title should not be acquired, as it may be the debtor drinks only to drown his grief, or he relies upon some one who assured him that he would furnish him money. Therefore said Rabina: If we see that the debtor does not care to lower the price of his goods for the purpose of collecting the money due, it must be considered that he does not care any more for the pledged estate, and title is acquired. And the above R. A'ha rejoined: Even this proves nothing, as it may be he does not want people to know his circumstances, which would cause a reduction in value of his estate. Therefore it may be assumed that R. Papa's statement was thus: "If the debtor was particular on that day with his estate not to have it sold, even for its value, it is certain that he does not care

for the estate pledged, and title is acquired. R. Papa said again: Although it is decided by the rabbis that an *asmakhta* gives no title, it is nevertheless considered a hypotheca of which he should collect his money. Said R. Huna b. R. Nathan to him: Has then the debtor at the time pledged said: "Acquire title on the estate to the amount of my debt"? Said Mar Zutro bar R. Mari to Rabina: And even if he said so, would the title be acquired? The stipulation of the pledge was that if he does not repay him within three years then he may collect from this estate, and this is again only an *asmakhta*, which gives no title. Therefore the hypotheca mentioned by R. Papa is to be explained, that the stipulation was thus: "From this estate you shall collect your money within three years (*i.e.*, I shall sell out from it for your money). However, should the money not be collected within that time, all the estate shall belong to you after the elapse of above-stated time."

There was a man who sold an estate with security, and the buyer questioned: "Should this estate be taken away by your creditors, will you then repay me from the very best of your estates?" And he answered: "From the very best of my estate I will not, as I need it for myself; your money, however, will be collected of other best estates I possess." Finally it was taken away, and the very best estate of the seller was overflooded. R. Papa (before whom this case was brought) thought to collect the buyer's money from the best estate still left in his possession. (The seller, however, claimed that the agreement was, he should repay him from the best but not from the very best; and as now the very best is overflooded, this next best is now the very best, which he needs for himself, so he has a right to repay him from the estate lower in value.) Said R. Papa to him: "This estate which was secured is still in your possession, and you have to repay from it."

Said R. A'ha of Difti to Rabina: "The claim of the seller (just explained) is a just one, as this estate which is not overflooded is now his very best, which according to the agreement was not security." Rabi b. Shiba was a creditor of R. Kahana, who said to him: "Should I not pay you at a certain time, you may collect your money from this wine." Finally the wine became dearer, and R. Papa was about to say, that the law of *asmakhta*, which gives no title, applies only to real estate which was not for sale. This wine, however, which was for sale, is considered money. Said R. Huna b. R. Jehoshua to him: "So

was said in the name of Rabba: 'Everything made with a stipulation, gives no title.'" R. Nahaman said: "As the rule that an *asmakhta* gives no title is accepted by the rabbis in case of a loan with pledged estate for three years, if the lender took possession of it and used the products he must return both."

(Said the Gemara:) "Shall we assume that R. Nahaman holds that a relinquishment by an error is not to be considered? Was it not taught concerning one who sold out the products of his tree, that, according to R. Huna, he may retract from the sale before the fruits were produced, but not afterward; and according to R. Nahaman he may, even in the latter case?" He, however, said: I admit that if the buyer used already the products in question, it is not to be collected from him (hence we see that a relinquishment by an error is considered?). (The answer was:) There was a sale, but our case is a loan, and the lender used the products for the interest of his loan, which is considered direct usury, which is to be collected by the court. [1] Rabha said: I was sitting before R. Nahaman at the time he said, "I admit, however," etc. (just quoted), and was about to object

to his statement from the law of cheating mentioned above, that the amount cheated must be returned, although it was done willingly. (*Supra*, p. 126.) He, however, looked at me and understood my intention, and he therefore brought as a support to his statement the following Mishna (Kethuboth ii., Mishna 6): "She who refuses to cohabit with her husband, etc., is not entitled to her marriage contract." (The compensation for usufruct, etc.), from which it is to be inferred that although her husband has not any right to use the fruit belonging to her, it is not to be collected from him if he has done so. (Says the Gemara:) In reality, however, both the objection and the support do not hold; there is no objection from cheating of which the cheated one was not aware that there is such, that he should relinquish it; and there is no support from the woman in the Mishna cited, that each of the women mentioned in the cited Mishna would be pleased to be counted among the married ones.

There was a woman who said to a certain man: "Go and buy for me an estate from my relatives." He did so. The seller, however, said to him: "I sell it to you with the stipulation that

when I shall have money, I shall repay you and take back my estate." And the messenger answered him: "You and Navla [1] are brother and sister and you can settle this matter between you." Said Rabba b. R. Huna: "Such an answer may be considered satisfactory, that the seller should rely upon it, and therefore he doesn't give title." (Questioned the Gemara:) "According to this decision, the estate certainly must be returned; but how is the law with the products if she used them? Is it considered direct usury, which is levied by the court, or indirect, which is not?" Said Rabba to R. Huna: "It seems that it is considered indirect," and so also said Rabha. Said Abayi to Rabba: "How is the law with an estate pledged without any stipulation, when the lender has used the fruit? Shall we assume that the reason, in the above case, which was considered indirect, is because it was not determined at the sale she should use the fruit, and the same is the case here? or it is not to be compared, because there was a sale, and here it is a loan?" And he answered: "This reason holds good, in this case also." Said R. Papi: Rabina acted in his court not in accordance with Rabba b. R. Huna's statement, but has reckoned the value of the fruit used and collected. Mar b. R. Joseph, in the name of Rabha, said: "In places where it is the usage for the lender to use the fruit from a pledged estate without any deduction of the debt, and the borrower has a right to return the money at any time, then is the law as follows: If the lender has used the products to the extent of the amount of his loan, he may be ejected from the estate; if, however, he has used more than the amount of the loan, the court may not collect from him, neither may it be deducted from another debt which the debtor owes him. If, however, the estate belongs to orphans, then if he has used more than the amount due, it is to be collected, or deducted from another debt they owe him." Said R. Ashi: "As you came to the conclusion that in case he has used more than the amount due we do not collect from him, we do not eject him even if he has collected the amount of the money loaned, unless he is paid the money issued; because the ejecting is the same as if it would be *collected* for the product consumed by means of sale, and not by means of deducting from his loan, and this is not to be done with indirect usury." And R. Ashi

acted accordingly in a case of orphans irrespectively of age. Rabha R. Joseph, in the name of Rabha, said: In the places where it is the usage to pledge estates without stipulations, it is advisable that one shall not use the fruit unless by way of deducting something of the debt, as

then it is considered as if he would sell him the products for the amount deducted, and it appears not usurious. A scholar, however, must not do even this, but he must determine at the time of the loan how much he may use. But this would be correct only to him who holds that a determined quantity is allowed; but to him who holds that even this is not allowed, what can be said? [And it is known that R. Aha and Rabina are the two who differ on that point.] Let us then see. What kind of a determination is meant? If, *e.g.*, the lender stipulated, "I will use the fruit during five years without any deduction; at the elapse of that time, however, I will credit you with all products." Such a determination, however, is opposed by some sages, who maintain that as soon he uses the products without any deduction it is direct usury; we must therefore say that the determination mentioned by Rabha means, if he said: "During the first five years I will deduct from the amount due so-and-so; at the elapse of this time, however, I will credit you with all products." R. Papa and R. Huna b. Yehosha both said: "The pledged estates in question, a creditor of the lender has no right to collect from in case he dies" (because the deceased has nothing in the body of the estates, and the using of their products is considered movable property, which is not secured to a creditor after the death of the debtor, although it may be collected from him as long as he is alive; and the reason is that as long as he is alive, although movable properties are not secured to the creditor, the court has a right to levy on them for a debt for which the debtor has promised to repay, even from the garment of his body; but after his demise his orphans are not obliged to repay their father's personal debt if it were not secured by real estate). And also a first-born of the lender can not claim the double amount prescribed to him biblically, for the above reason, and the Sabbatical year makes the debtor free, as it is not considered a pledge, since the borrower has a right to eject the lender from the estate after the product was used to the extent of the amount due. In places, however, where it is not customary to eject the lender from the estate in question, a creditor and a first-born may claim their right on it, and the Sabbatical year does not make it free. And Mar Sutra, in the name of R. Papa, said that, as to the estate in question,

where it is the usage to eject the lender, he may be ejected even from using dates that were blown down by wind on the rush mats. If, however, the lender has already picked them up from the rush mats, and put them in his vessels, title is acquired. And according to him who says that when the vessels of a buyer are placed in the care of the seller for the purpose of putting in them the things bought it gives title to the buyer even in his absence, if the dates in question were put in the vessels of the lender by some one they give title to him even if he himself has not picked them up. It is certain that in countries where ejection is the usage, and the lender stipulates that he shall not be ejected, it is of avail; but how is it when the lender made the stipulation that he may be ejected, in places where ejection is not the usage--is it then necessary to enforce this by the ceremony of a *sudarium* or not? According to R. Papa it is not necessary, and according to R. Shesheth b. R. Aidi it is, and the Halakha so prevails.

If the borrower says to the lender: "Stop using the fruit, as I am about to furnish the money due," he must do so immediately (in places where ejection is usage). If, however, he says: "Stop using the fruit, as I am making efforts to get the money"--according to Rabina, the lender may not listen to him, and according to Mar Sutra, the son of R. Mari, he has to, and so the Halakha prevails.

R. Kahana, R. Papa, and R. Ashi did not use the fruit even by deduction; Rabina, however, used to do so. Said Mar Zutra: "The reason of him who does so is, because he compares this to the

biblical case [Lev. xxvii. 16], that although the fruits of the field mentioned there are of great value, he may redeem it for the sum of four zuz a year, [1] and the same is the case here (he may do so because he is not certain that there will be any products of the estate, consequently, he may buy it for a small price). However, he who does not allow this to be done holds that this case is not similar to the biblical case mentioned above--there is a sanctification for which the Merciful One allows it to be redeemed for such a trifle, but here it is a loan, and it appears usurious. R. Ashi said: "I was told by the elders of M'tha Mechasia (Suria) that an anonymous pledge holds good one year only; *i.e.*, that the borrower can eject the lender only after the elapse of a year, but not earlier." He said again: I was told by the same

authorities that a pledge is called *mashkhantha*, as the lender is considered from that time a neighbor (shakhan) to the borrower; so that if the borrower has to sell his estate, and the lender is willing to give the same price as offered by others, he has the same privilege as the preëmptor of an estate attached to that seller, to whom the laws give privileges to obtain it for himself in case he offers the same price as others.

Rabha said: The Halakha does not prevail, as the inhabitants of Papuna, who sell their goods on instalments for the same reason as R. Papa mentioned above (p. 156), and not as the inhabitants of Mahuza, who used to write in their notes the profit which they supposed the borrower would derive from the money taken on half profit, as who can assure that such a profit would be derived? Said Mar b. Amaimar to R. Ashi: "My father used to do so, and nevertheless when they claim that such a profit was not derived, he trusted them;" and he answered: This holds good only when they came to *him* with that claim; but how would it be in case he should die and the note falls into the hands of his heirs? [R. Ashi's talk was like an error which proceedeth from the ruler (Eccles. x. 5), and Amaimar died.] And also not as the farmers of the city of Narshah, who used to lend money to poor farmers on their land, and thereafter rented it to them for so-and-so many kurs yearly, and so they wrote in their contracts; "So-and-so has pledged his field to so-and-so, and afterwards he rented it for so-and-so many kurs." Had, then, the lenders acquired title on the field to be justified to rent it out? It is then direct usury. However, now that they write in their agreements: "I have bought from so-and-so such a field for so-and-so, and it was under my control such length of time, in which I have used the fruit and have deducted from the money paid, and thereafter I rented it to the former possessor for so-and-so many kurs yearly"--this is allowed, for the purpose not to shut the door for borrowers. (Said the Gemara:) After all, it is direct usury, as it can happen that the field should not yield so much product as agreed, and the lender takes the kurs of grain as interest for his money.

MISHNA *V.*: One who possesses articles for sale must not give them to a retail dealer to sell, with the stipulation to receive half profit from the sale, charging him the articles at wholesale market price. One must also not furnish some one with money in order to buy and sell articles for it, for half profit, provided he pays him separately as a laborer for his trouble. It is also not,

allowed to hatch hens for half profit, and also not to appraise calves and foals, according the value after two years, and making a half of it a compensation for the raising of them. Should it happen, however, that they die (the raiser must suffer half of their loss), provided the raiser is paid separately for his trouble and food. One, however, may accept the above animals without

any stipulation for half profit. And then they shall be kept calves until they become threefold and an ass until it is fit for carrying burdens.

GEMARA: A Boraitha in addition to this Mishna states "as a laborer," and Abyi explains "as a laborer of this profession."

The rabbis taught: "How much should he be paid separately? According to R. Meier: More or less, but it must be stipulated between them; according to R. Jehuda, it is sufficient even if he gives him a meal or some fruit. R. Simeon b. Johai, however, maintains that he should receive the amount a laborer is entitled to."

The rabbis taught: "Goats, sheep, and all other animals which are fed but do not labor, must not be appraised for the half. R. Jose b. R. Jehuda, however, says: Goats and sheep may, as the raiser has the milk and the wool for use, and they yield wool by being shorn, by passing through water, and by being plucked (in passing bushes, etc.); and also a hen, because she is laboring for her food (as she lays eggs)." (Says the Gemara:) And according to the first Tana (of the Boraitha), their milk and wool are not sufficient for his trouble and food? If agreement was that the raiser shall use milk and wool for himself, all agree that it is sufficient; the point of their differing is if it was agreed that the raiser should use only the whey of the milk, and whey and refuse of wool; the first Tana holds in accordance with R. Simeon b. Johai, who demands the full payment of a laborer, and R. Jose holds in accordance with his father, R. Jehuda, who says above, that one meal suffices.

The rabbis taught: "A woman may say to her neighbor who has eggs, 'You may give me four eggs and I'll let my hen sit on them for two little chickens she will hatch.' If, however, she says, 'I have the hen and you the eggs, let us divide the little chickens,' it is not allowed according to R. Simeon. R. Jehuda, however, allows this."

The rabbis taught: "In the places where it is the usage to pay the raiser for carrying the calves on his shoulder, it may be appraised, and it is not necessary to act differently to the custom of the country." R. Simeon b. Gamaliel said. "A calf and a

foal may be appraised with their mother and without any separate payment, even in those places where they pay separately for carrying calves (as the mothers are with them, there is no trouble in carrying them, and they are also fed by their mothers)." Said R. Nahaman. "The Halakha prevails in accordance with R. Jehuda, with R. Jose his son, and with R. Simeon b. Gamaliel." The sons of R. Ilish were summoned for a note which was issued by their father for half profit and half loss. Said Rabha: "R. Ilish was a great man, and he would not have issued a prohibited document; the note, therefore, may be explained that if his partner desired to obtain the half profits, then he had to suffer two-thirds of the loss, and if R. Ilish would have to suffer the half of the loss, then his partner would take two-thirds of the profit for his trouble." Said R. Kahana: "I told this to R. Zebid of Nehardae, and he rejoined: (It is not necessary to give the above explanation) about the note of R. Ilish, as it may be R. Ilish had some benefit from his partner, and it is in accordance with R. Nahaman, who said that the Halakha prevails with R. Jehuda; and I answered him: It was not taught by R. Nahaman, 'the Halakha prevails,' but the system of the above-mentioned sages is one and the same, and it seems to be so from his expression, 'R.

Jehuda, R. Jose his son, etc.' Should he desire to state that the Halakha prevails according to them, he would teach the Halakha prevails in accordance with R. Jehuda, who is more lenient than all others."

Rabh said: 'If one gives a calf for raising, with the stipulation that the profit and loss shall be equally divided, and besides a third increase of the present value should belong to the raiser, it is allowed." Samuel, however, maintains: "How would be the case if there should be no increase? Should then the man labor for nothing? Therefore he must fix a dinar for his labor." But Rabh himself is also of this opinion, as he said that the head of the calf belongs to the raiser. Is it not to assume that the head is an additional compensation to the third increase, said above? Is it not for the purpose that, should there be no third increase as agreed, he takes for his labor the head; hence here is the fixed dinar which Samuel desires? Rabh's decision that a third increase suffices without any other compensation means when the raiser has his own cattle to raise, as people say: "It is the same trouble to feed one as many."

R. Elazar of Hagruniah bought a cow which he gave to his gardener for raising, and gave him besides the half interest also

the head for his trouble. Said his wife to him: "If he would be an equal partner to you by giving the half money of the half cost he would give you the •••• 1 in your share." Afterwards they bought one in partnership and divided the •••• and R. Elazar said: "Let us divide also the head." Said his gardener: "When you issued the whole amount for the animal, I took the whole head to myself, and now when I have the half money in it, I shall take a half only?" R. Elazar answered: "When the money was my own, if I would not add a little to your share it would appear usurious; but now we are equal partners, and if you claim you had more trouble than I, the food for it was used from my garden, and while you were engaged therein, there was not much trouble feeding it."

The rabbis taught: Until what time must the raiser trouble himself with the appraised animal given to him for raising? Symmachos said: "With mules eighteen months, with asses twenty-four months, and if one desires to divide within that time, his partner may prevent him, for the years are not equal; as in the second year the trouble of feeding is more than in the first." There is another Boraitha: "Until what time must one trouble himself with the offspring of the appraised animal? With little animals, as goats and sheep, thirty days, and big animals, fifty days." R. Jose, however, said: "With little animals, three months, as their teeth are small, and he has to see what food is fit for them, and from that time further on the raiser takes a half of his value and a half of the increase belonging to his partner (as he takes the same of the mother)."

R. Menasya b. Gadah took his half and half of the increase of his partner; when he came before Abayi, he said to him: Who was the appraiser? [Perhaps the appraisement was not correct, and, secondly, this city is counted among those where it is customary to raise the offspring until grown tip, and there is a Mishna that where the custom is to do so no change is to be made.]

There were two Samaritans who had done business with each other. Afterwards one of them divided the money without knowledge of his partner, and the case was brought before R, Papa, and he decided that his act was correct, as R. Nahaman

said that cash money may be considered as divided. The next year they bought wine in partnership, and one of them divided without knowledge of his partner, and the case came again before R. Papa, who asked Who has appraised for you? Said the plaintiff to R. Papa: It seems to me that the master is partial" (as last year he decided in his favor, and also in this case). Said R. Papa: "Why then? Last year you did not complain that your partner took the better coins and left you the worse ones, and as there was cash, which need not any appraisement, he had the right to divide without your knowledge; but in this case, everybody knows that there is a difference between one kind of wine and another. How could you do it without knowledge of your partner and without any appraisement by a specialist?" It is mentioned above, R. Nahaman said money is considered as if it would be divided; however, this is only if the coins were equal, as, *e.g.*, all of them were circulating ones, or if old coins, which have more weight but are not in frequent circulation; but if they were of both kind, it must not be done without knowledge of the partner.

R. Hama used to rent zuzes daily for the smallest coin for each zuz, and he lost his money. [He thought that because he had not given it as a loan, but as a lease, it is allowed to do so as with another erub; in reality, however, it cannot be compared, as the same erub is to be returned, and if it was spoiled it is recognized; but here the same zuz is not returned, as he took it for business and returned him another one, and therefore it is considered a usurious loan.]

Rabha said: One may say to his neighbor: "I will lend you four zuz to keep for a longer time with the stipulation that you shall lend to so-and-so a zuz;" as the law has prohibited only usury that came direct from the borrower to the lender. The same said again: One may pay money to any one for giving a good reference to the money broker in order to borrow money from him. As Abba Mar, the son of R. Papa, used to take wax vessels from the wax dealers for reference to his father, that he should lend them money; and when the rabbis told R. Papa that his son took usurious money, he answered thus: Such a usury he may take; the law has forbidden only usury which comes from the borrower to the lender. Here, however, he is paid for his reference, and this is allowed.

MISHNA *VI.*: A cow, an ass, and all animals which are laboring for their food may be appraised, that the increase shall

be divided equally. In the places where it is customary to divide the offspring while they are yet small, it should be so done; and where it is customary to raise the offspring until they arc grown up, it should be so done. R. Simeon b. Gamaliel said: "That a calf and a foal may be appraised with their mothers." One may say to a farmer: If you would lend me some money which would enable me to manure your field, I shall give you twelve kur of grain for it, instead of the ten you demand; and the farmer may accept it without fear of usury (as the kurs added are considered for the use of a manured field).

GEMARA: The rabbis taught: This which is said above is allowed only with a field, but not with a store, and not with a boat; *i.e.*, the hirer must not increase the price for rent, in case the owner lends him money to buy stock for sale, or to buy a cargo for his boat. Said R. Nahaman, in the name of Rabba b. Abuhu: It may happen that the same should be allowed to be done also

with a store if he lends money to paint and decorate it, in order to draw customers; and also with a ship, in order to improve it with masts of which the hirer has the benefit in that it will sail faster; and if he borrows money for this purpose, he may increase the rent of the above-mentioned, and it is not considered usury, as the owner may raise his rent for a decorated store and an improved boat.

Rabh said: "One may rent a boat with the condition that, should it break, the hirer is made responsible." Said R. Kahana and R. Asi to him: "If he takes rent, he, the owner, must be responsible for damage, and when the hirer is responsible for it, then he must not pay rent." Rabh was silent. Said R. Shesheth: Why was Rabh silent? Was he not aware of the following Boraitha, although it was said that an iron sheep must not be accepted from an Israelite, *i.e.*, one must not both be responsible for the article hired, in case it becomes injured while laboring, and at the same time pay rent for it; but he may do so with a non-Israelite. It was said, however: One may say: I take your cow for the price of thirty dinars in case it will die; but all the time it will be alive in my hands I will pay you monthly a salah for her labor. This is allowed, because the appraisement of the cow was in case she is dead, but not when alive. Said R. Papa: The Halakha prevails that a ship may be hired for rent and at the same time the hirer should be responsible, and the custom of the sailors was that they pay rent when they take possession of the boat, and pay the value of the damage in case such occurs. Is

this then depending upon custom (as he must pay for the whole boat in case it breaks, then it is a sale, and the rent paid should be considered usury for awaiting of payment)? Because it was said in the above Boraitha that it may be done with a cow, as the appraisement was after death, the same is the case here. And as this law was accepted, it became customary.

R. Annan, in the name of Samuel, said: Money belonging to orphans may be lent for usury. Said R. Nahaman to him: Be cause they are orphans should we permit prohibited things for them? Orphans who are consuming that not belonging to them may go to their bequeather; but as you said the Halakha in the name of Samuel tells me the fact, you have seen that Samuel did so (as it cannot be that Samuel would declare that such an unlawful Halakha should be practised). And he answered: There was a copper kettle belonging to the orphans of Mar Uqba, which was under the control of Mar Samuel, who used to weigh it at the time of giving it to the hirer, and did the same at its return; and in case of the weight diminishing, got paid for it besides the payment for using it. Hence if it would not be allowed to lend the money of orphans for usury, how could he demand both to be paid for the diminished weight and at the same time to take rent for using it? Said R. Nahaman: "Such a thing maybe done even with bearded orphans, as the copper of the kettle decreased in value by using it, for which the orphans get no separate payment, as they take the value for the diminished copper only." Rabba b. Chila, in the name of R. Hirda, according to others, R. Joseph b. Hama, in the name of R. Shesheth, said: "Money belonging to orphans may be used for a business that is very likely to bring profit, and with small chance of loss."

The rabbis taught: "One who lends money for a business which is very likely to bring profit with little chance of loss, is wicked; for one which is likely to bring loss and far from profit, is pious. Equal to both, this is the custom of every just business man. Said Rabba to R. Joseph: How, then, should be done with money belonging to orphans? And he answered: "It shall be deposited in court, and the court shall furnish them with means for livelihood from time to time, according to their need." But if so, then the whole amount will be consumed? Said R. Ashi: "We look for a

man who is rich, trusted, listens to the Law, and never accepts a rebuke from the rabbis, and we give the money to him by the court for use in a business which is likely to bring profit with small chance of loss."

MISHNA *VII.*: An iron sheep must not be accepted from an Israelite (*i.e.*, to lend money with the understanding that the debtor shall always be responsible for it, and at the same time he shall pay the half profit it brings), as it is direct usury. This, however, may be done with non-Israelites, as it is allowed to lend them, and borrow from them, for usury. This is also allowed to be done with a proselyte who obligated himself not to worship idols, but did not obligate himself to observe the Hebrew laws. An Israelite may lend to his race money belonging to non-Israelites for usury, provided the latter are aware of it, but not otherwise.

GEMARA: Is it to be assumed that the iron sheep in question is considered under the control of the acceptor? Then it would be a contradiction to the following Boraitha: "If one accepted 'iron sheep' from a heathen, the offspring are free from the law of first-born; *i.e.*, that if for the money in question was bought cattle, which brought young ones, the first-born must not be given to the priest, although it was in the hand of an Israelite (hence we see that it is considered under the control of the lender and not of the acceptor, for if it were under the control of the latter, why should the first-born of the half belonging to the Israelite be free from the above-mentioned law?). Said Rabha: The reason is, because, should he not repay the money, the heathen would take possession of the cattle, and if even this would not be sufficient he would also take the young ones; and so it is considered that the hand of a heathen rests in this case, and under such circumstances the law of the first-born does not exist.

It is written [Prov. xxviii. 8]: "He that increaseth his wealth by interest and usury, will gather it for him, that will be kind to the poor." What is meant by the expression, "that he will be kind to the poor"? Said Rabh: For example, as the King Sabura, who collects money from the Israelites for the purpose of distributing it among the poor of the Persians. Said R. Nahaman: Huna told me that not only usury-taking from an Israelite is meant, but also from a heathen; and Rabha objected this statement from [Deut. xxiii. 21]: "From an alien thou mayest take interest", and he answered: The expression in Hebrew is *tashikh*, which means you may give him interest if you need money and you cannot get it without; but to your brother (an Israelite) you must not do so under any circumstances. But is it not written plainly further on: "But from thy brother thou shalt not take interest?" It is written to show that he who does so transgresses both a positive and a negative commandment.

[paragraph continues] He objected again from our Mishna, which states that with a non-Israelite it is allowed. Said R. Hyya b. R. Huna: The Mishna allows to do so only for the need of his livelihood, but not more than he needs, as the rabbis had prohibited the taking of usury from all mankind.

There are some who applied the above statement of R. Huna to the following: R. Joseph taught: It is written [Ex. xxii. 24]: "If thou lend money to my people to the poor by thee," which signifies, if there is one of thy people, and an alien, the former is to be preferred. If there were a poor and a rich man, the poor is to be preferred; poor of thy city and poor of another one, the

former has the preference. And to the question, Is it not self-evident that an Israelite is to be preferred? said R. Nahaman: Huna told me that it means that an Israelite should be preferred even if he can take usury from a heathen, and to the Israelite he must give it for nothing.

There is a Boraitha: R. Jose said: Come and see how the usurers are blind. If one calls his neighbor "wicked," his neighbor tries to take revenge on him as soon as he is able to do so, and the usurers bring witnesses, a scribe, a pen and ink, and write and sign that so-and-so reasons away the God of Israel (who has prohibited the taking of usury).

There is another Boraitha: R. Simeon b. Elazar said: One who has money and lends it without usury, to him applies the verse [Psalm xv. 5]: "That putteth not out his money for interest and taketh no bribe against the innocent. He that doeth these things shall not be moved to eternity." Which signifies that he who takes usury will lose all his possessions. But is it not a fact that they who do not take usury are also stricken with poverty? Said R. Elazar: The latter are to be raised again, but those who take money, if they fall will never rise again.

The rabbis taught: It is written: "Thou shalt not take of him usury or increase" [Lev. xxv. 36], but thou mayest be a surety for him. A surety for whom? For the lender 1 who is an Israelite? Is there not the following Mishna: The following transgress a negative commandment: the lender, the borrower, the surety, and the witnesses?--*i.e.*, to an alien. But is it not a fact that the aliens summon the surety first? Hence it should be considered that the surety takes usury from him. Said R.

[paragraph continues] Shesheth: It speaks of when the alien has promised that in case of a suit he shall obey the decision of the Jewish court. But if so, then usury should not be taken from him at all. Said R. Shesheth: He promised only to obey the decision of the Jewish court in case of a suit, but not to observe the law of usury.

An Israelite may lend money belonging, etc. The rabbis taught: One may lend money belonging to an alien with his knowledge, but not otherwise. How so? If an Israelite borrowed money from an alien for usury, and when he was about to return it another Israelite said to him: Give the money to me and I will pay you the usury you have to pay to the lender;--this is prohibited. If, however, he takes him to the lender, he may do so; and the same is the case if an alien has borrowed from an Israelite for usury, and when he is about to return it to him, another Israelite meets him, and asks to have the money lent to him for the same interest he has to give to the Israelite, it is allowed; if, however, the alien takes him to the lender, it is prohibited. The prohibition of the last part is correct; but why is it allowed in case the Israelite takes the money belonging to the Israelite and pays usury? Is it not a fact that in the case of an alien no messenger is to be considered? Hence, even with the knowledge of the heathen, it should be considered that one Israelite takes direct usury from another Israelite? Said R. Papa: It means, he takes him to the alien that he may hand him the money personally. Is this not self-evident? Lest one may say that as the alien does it through the Israelite it is not allowed, he teaches us that it does not matter.

The rabbis taught: An Israelite who borrowed money from an alien for usury, and afterwards added the usury money to the principal amount, and then took a note from him for the whole

sum and then the lender became a proselyte: he may collect the whole amount. If, however, the note was taken after he became a proselyte, he collects the principal amount, but not the usury. The same is the case with an alien who borrowed money from an Israelite, and became a proselyte; if the note for the principal amount including the usury was given by him while he was yet an alien, the whole amount is to be collected; but if after he became a proselyte, the principal amount only is to be collected. R. Jose, however, maintains that even then the whole amount may be collected; and Rabha, in the name of R. Hisda, quoting R. Huna, said: So the Halakha prevails; and he himself declared that the reason of R. Jose's statement is that people

shall not say that he became a proselyte on account of this money only.

The rabbis taught: "For a note in which usury is mentioned the lender must not be allowed to collect even the principal amount, which he must forfeit as a fine. So is the decree of R. Meier. The sages, however, maintain that the principal amount *is* to be collected." What is the point of their differing? R. Meier holds that the permissible amount may be imposed as a fine for that of the prohibited one, and the rabbis hold that it may not.

There was a man who had pledged his vineyard to a lender, who kept it for three years, and afterwards said to the owner: If you sell it to me, good; but if not, I will hide the document of the pledge, and claim that the vineyard was *bought* by me (and as it is in my possession already three years, I will be trusted according to the law of (*Hasaka*) occupancy. The owner then assigned his vineyard in presence of witnesses to his minor son, and afterwards gave a bill of sale to the lender. This sale is certainly not valid; but the money which the lender has given for the bill of sale, is it to be considered as a loan with a note which is to be collected from an encumbered estate, or is it considered a loan without a note which is not to be collected from such estate? Said Abayi: Is this not the case of which R. Assi said above that when one admits his signature to the note, it is not necessary to have it approved by the court, and it is to be collected also from an encumbered estate? Said Rabha to him: What comparison is it? In the case of R. Assi, where the borrower admits that he owes the money with a note, another note can be written even if the original is lost; in this case, however, the bill of sale was written unwillingly, and another one cannot be written. Mrimar repeated Rabha's statement in the presence of Rabina, who cited to him then the statement of R. Johanan on the explanation of the Mishna, "that notes which were written with a previous date are of no avail"; and to the question, Why should it not be collected from the later date? R. Johanan answered: It is to be feared that he will collect from an encumbered estate at the previous date. Let him then say that the bill of sale is invalid because, if lost, it cannot be rewritten from the date of the first writing. And he answered: What comparison is it to our case? There it cannot be rewritten from the original date, but it can be rewritten with a later date; here, however, it cannot be rewritten at all for the reason said above.

MISHNA *VIII*.: One must not buy articles to deliver during the year, for a certain price before the market price is fixed. He may, however, do so afterwards--even when the seller does not possess as yet the articles bought--for the price he pleases, as, if he does not possess them, he can buy them from another. If the seller was first in the harvest, the buyer may stipulate the price with him for the sheaves, crop of grapes, vat of olives, clay balls of a potter, and lime

when it was already in the kiln, and also for manure of the whole year. R. Jose, however, maintains that he must not do so with manure unless he has it ready for delivery; the sages allow it. For all mentioned above he may make the stipulation that if the price will decrease he shall deliver them for the lower price. R. Jehuda says that to this effect no stipulation is necessary, as the buyer may claim in such a case the existing price or the return of his money.

GEMARA: R. Assi said in the name of R. Johanan: The price for the whole year must not be stipulated for at the existing price of the large cities, as these prices are changeable.

The rabbis taught: "One must not buy articles to deliver during the year before the market price is fixed. If, however, the new articles were four for a salah and the old ones three, the price must not be fixed until it will be a standing price for both of them. If mixed grain from different fields sold four measures for a salah, and from a single one three, the price must not be fixed until the market price will be fixed for both." Said R. Nahaman: A price may be fixed for the mixed one, as the existing market price for such grain. Said Rabha to him: Why should this differ from grain from a private field? You may say that, if the seller does not possess the mixed grain, he can borrow from another seller of mixed grain; is it not the same with private men? And he answered: A private man would consider that it is humiliating for him to borrow from a dealer of mixed grain, or, if you wish, I may say that one who gives money to a private man intends to get from him the best in the market.

R. Shesheth, in the name of R. Huna, said: "One must not lend money with the understanding that if it is not returned at a certain time the borrower shall furnish him articles at the existing price (*i.e.*, although this is allowed to be done in the manner of buying and selling, with a loan it is not allowed, as it appears usurious). Said R. Joseph b. Hama, according to others, R. Jose b. Abba, to him: Did, indeed, R. Huna say so? Was he not questioned whether it was allowed to be done as the students

of the college did, who borrowed money in Tishri and repaid with fruit in Tebeth at the price of Tishri? And he answered: There is wheat ready for sale in the cities of Hini and Chili which is always at a low price, and they can buy and repay their debt with that. We see then that he has allowed such a loan? He was previously of the opinion that it must not be so done; after. wards, however, when he heard that R. Samuel b. Hyya said in the name of R. Elazar that this may be done, he retracted from his previous opinion and decided that it may be done.

The rabbis taught: If one travelled with stock from one place to another, and while on the road his neighbor asked him to sell it to him at the price of the place he intends to go to (I will sell it here and will use the money until a certain time)--if the seller takes the responsibility of the stock while on the road it is allowed, but otherwise it is not (because it is considered a loan, and the increase in price appears usurious). If one was about to deliver his fruit to a certain city in which the price of it was higher, and some one told him that he has the same fruit in the above-mentioned city and he will deliver it to him there in exchange for the fruit in his possession here, then, if he really possesses the same in the above-mentioned city at the time he takes the exchange, it is allowed (because the fruit of that city is considered from now under the control of him who gives the exchange for it here). But if the one who offers the exchange has it not ready for delivery as yet, it is not allowed. For the grain dealers, however, it is allowed to borrow money with the understanding to repay it with grain for a lower price than the existing

one in that city, without fear that this appears usurious. Why so? R. Papa says: Because with his money he opens the door for them to buy grain at the lowest price at every place it is to be found; so he enables them to repay him with the grain at a lower price, even immediately after the loan, and therefore it is not to be considered usury for the prolongation of time for repayment. R. A'ha b. Iqa, however, says: It is favorable to them for the wholesale grain dealers to know that they sold their grain at a low price, so that the dealers will make the price of their grain still lower, so as not to lose their custom. What is the difference between these two reasons?' If the grain seller was a new one who was unknown as yet to the country grain sellers, then, according to R. A'ha b. Iqa's theory, it is not allowed for him to do so. In Sura four measures of grain could be bought for one zuz; in Kahfri there were sold six for one zuz; and Rabh had given money to the grain dealers in Sura

to buy grain for him in Kahfri at the rate of five measures for a zuz, taking the responsibility of the grain while on the road. But if he was responsible for them while on the road, why didn't he take six, as was the existing price in Kahfri? With such a prominent man as Rabh it is different (he allowed them one measure for their trouble). R. Assi questioned R. Johanan: May this be done with other articles besides grain? And he answered: Rabbi was about to do so with frippery, and R. Ismael b. R. Jose restrained him from this. With regard to a vineyard (*i.e.*, to buy the products of it, when they are not as yet ripe, at a low price, by advancing money for the same), Rabh did not allow this, because the price of the ripe fruit will be higher, and it appears as if he were taking usury for his money. Samuel, however, permitted this, as the buyer takes the risk of his money in case the vineyard may not yield the products, or in case they may become spoiled. Said R. Shima b. Hyya: Rabh, however, admits that this may be done with calves [1] (*i.e.*, to buy the offspring of the cattle for next year), and there is a great risk of miscarriage and other accidents. Samuel said to the grain dealers who used to give money to the farmers for the products of the next year: "I order you to help the farmer in his labor on the field, in order that you may acquire title to the body of the field, as, if you will not do so, your money will be considered as a loan, which is not allowed." And Rabha also said to the watchmen of the crops (who used to receive their payment from the grain when ready for delivery): "I order you to help the farmer in his labor all the time he is laboring, until harvest, as if you were hired for this purpose; for according to the law you would have to be paid only after all the labor is done, and then, when you receive a larger quantity of the grain than your trouble was worth, it would be considered that the farmer lowered the price for you, which is allowed. (If, however, you will not follow my order, the larger quantity would be considered as arising from waiting for the money which ought to be paid to you every day for watching, and appears usurious)." The rabbis said to Rabha: "You, master, consume usury, as usually the farmers hire their fields for the quantity of four kurs for each field, with the understanding they shall harvest it in Nissan, and you wait until Eyor and take six kurs." And he answered: "Your acts are unlawful, as the field is hired to the gardener, and if you compel

him to harvest in Nissan you are injuring him in many kurs, as the grain is not ripe as yet; but I am awaiting until Eyor and benefit him, and the two kurs more I take is for hiring the field and not for awaiting the payment of the money." There was a certain alien who pledged his house to R. Mari b. Rachel, [1] and afterwards he sold the same to Rabha. At the elapse of one year after the pledging took place R. Mari submitted the rent for the next year to Rabha, saying: The

reason why I did not submit the rent to you for the first year is because a pledge without a fixed time is a year, and if the alien would like to repay me within the year, he could not do so without my consent; but now, when the time is over, I have to submit to you the rent for your house. And Rabha rejoined: "I did not know that the house was pledged to you, and if I were aware of it, I would not buy it; but now we have to act according to the Persian law, which dictates that the buyer has not to collect the rent until he pays the whole amount, and I will also act so. I will not take the rent from the house until the debt on the house will be paid to you by the seller.

Said Rabha of Barnish to R. Ashi: "I call the attention of you, master, that the rabbis are consuming usury, as they pay for wine in Tishri and choose it in Teveth when it is already in good condition, and this appears usurious, as, if they would take it in Tishri, they would suffer the damage if spoiled; but by advancing the money, the responsibility rests on the seller." And he answered: They advance the money for wine and not for vinegar, and the wine which becomes sour during that time was so already in the beginning of the season, but it could not be so recognized it is, therefore, lawful for them to take the wine for which they have advanced their money. Rabina used to give money to the inhabitants by the shore of Shanwatha before the time of wine-pressing, that they should deliver him the wine thereafter, and they delivered him a barrel or two more than he bought. He came to question R. Ashi whether he could accept it or not, as it appeared usurious. And he answered: You may; as it is only a gift. Said Rabina: But I am afraid this should be considered robbery, as the estates they possess were occupied by

them after the owners of them escaped for not paying taxes, and the possessors paid the taxes to the Government (and as it is a law that estates cannot be considered robbed, they still belong to the previous owners; consequently the products are robbery). And R. Ashi rejoined: The estate is pledged for the taxes, and the Government says that the estate on which taxes were not paid is to be pledged to him who pays; consequently their occupation is lawful.

R. Papa said to Rabha: I call the attention of you, master, to the rabbis, who pay head-tax charge for those who cannot pay them, and they are laboring with them more than ought to be. And he rejoined: If I were to die a day previous you would not be aware of what R. Theshsth said, namely: The surety for these people lies in the archives of the king, and the king has ordained that he who pays no *charge* shall be made the servant of him who pays (for him).

R. Seuram, the brother of Rabha, used to compel doubtful characters to carry the palangin of Rabha, and Rabha approved his act from the following Boraitha: "Whence do we deduce that one, whose habit is not in accordance with the law, may be made to labor?" From the verse [Lev. xxv. 46]: "You may hold them to service forever, and [1] over your brethren, the children of Israel." Lest one say, however, that the same may be done with one who is acting rightly, therefore it is written: "But over your brethren . . . ye shall not rule with rigor."

R. Hama said: If one gave money to his comrade to buy wine for him, and he neglected to do it, the latter must deliver to him wine at the price current at the dock of Zulschafat (a place where the wholesale wine dealers brought their stock for sale). Said Amimar: I repeated this Halakha to R. Zbid of Nahardea, and he said: R. Hama's decision holds good only when he ordered him to buy any wine for him; but when the order was to buy a certain kind of wine, the messenger has no responsibility, as who can be sure that the wine ordered could be gotten easily? R. Ashi, however, maintains that even if the order was for any wine, he is not to be made responsible, as

it is only an *asmachta* . . . which gives no title. But why should this case be different from the Mishna in Chapter IX of this tract, that if one hired a field for sowing purposes, and did nothing, he must pay according to

the appraisement of the products it would yield when cultivated? Then it was in his power to cultivate the field, and therefore he is responsible; but here it may be that he could not find the wine required.

Rabha said: If one of a company of three partners has given money to a messenger to buy something, it is to be considered for the company, and not for himself. However, this is only in case their money is kept in one sum; but if the money of each partner is tied and sealed separately, the things bought are only for him who gave the money.

R. Papi, in the name of Rabha, said: "The mark which is usually placed on each barrel of wine when sold gives title to the buyer" (even without any drawing). To what purpose was this decision made? According to R. Habiba, to give title so that the seller should have no right to retract; and according to the rabbis, if the seller has retracted, the sale is invalid, but he has to accept the curse of "who has punished the generation of the flood," etc., mentioned in the above Mishna. And so the Halakha prevails in places where it is customary to make such a mark a final act of the sale.

If the seller was first in the harvest, etc. Said Rabh: If the grain was to be finished with two kinds of labor only, he may fix the price; but if he requires three kinds, he must not. Samuel, however, maintains that if the finishing depends upon the efforts of a human being, even if there were a hundred kinds of labor for finishing, he may; but if he depends upon Heaven (as, *e.g.*, rain or sunshine), even if there is only one kind of finishing, he may not. But did not the Mishna state that one may fix the price on sheaves, although he must dry, thresh, and winnow them (hence there are three kinds of labor before it is finished)? It may treat of when the sheaves were already spread in the sun for drying. But according to Samuel, that the price must not be fixed even if one depends upon Heaven, and there is the winnowing which cannot be done without an extraordinary wind. This:, also can be done with sieves.

Clay balls of a potter, etc. The rabbis taught: "The price must not be fixed on the clay balls of a potter unless they are made." So is the decree of R. Meier. Said R. Jose This is in the case of white earth, which is not so frequently in the market; but of i black earth, as from the village of Hanania or Shihin and neighborhood, he may do so even before they are made, as, if he does not possess the material, he may find it in the market. Amimar

used to give the money when the earth was brought to the pottery. According to whom did he act? If according to R. Meier, it must not be done until ready; if according to R. Jose, it may be done even before the earth was brought? His act was in accordance with R. Jose's decision. But in the place of Amimar the earth was dear, and not so frequently found; when the earth was brought he relied upon the sellers and gave the money; otherwise, he did not.

And also manure of the whole year, etc. Is not the statement of the sages the same as that of the first Tana? Said Rabha: They may differ concerning the rain-season, in which is allowed to be done, in accordance with the decision of the first Tana; and according to the sages, it may be done only in the sun-season, but not in the rain-season.

For all mentioned above, etc. There was a man who paid a stipulated amount for an outfit to be delivered at the house of his daughter's father-in-law; in the meantime the value of the equipment was reduced (and the father-in-law refused to receive it for the value stipulated), and when the case came before R. Papa he decided that if the price was stipulated at the rate existing when the goods were to be delivered, then he must give for it the existing price, and if this stipulation was not made, he has to accept it at the previous price. Said the rabbis to R. Papa: And even then why should he pay him the higher price? The money paid does not give title? And he answered: My decision also was only concerning the curse mentioned in the Mishna. If it was stipulated, and the seller retracted, *he* has to accept the above curse; and if it was not stipulated, and the buyer retracts, then the above curse applies to the latter.

MISHNA *IX*: One may lend his gardeners wheat to return him in the harvest-time the same measure, for the purpose of sowing, but not for consuming. (This was stated because) Raban Gamaliel used to do so with his gardeners, but if afterwards the price changed to a higher or a lower one, he always took the lower price to benefit the gardener, not because so was the Halakha, but because he wanted to act rigorously for himself.

GEMARA: The rabbis taught: "One may borrow his gardener's wheat, etc., for sowing, if he has not started work, but not if he has." Why did not the Tana of our Mishna make a difference, when the Tana of the Boraitha did? Said Rabha: R. Aidi explained to me thus: The Tana of the Mishna speaks of a place where the gardener usually sows the field with his own wheat, and there is no

difference whether he started to work or not. As long as he did not furnish the seed the owner may eject him; consequently, if he lends him his wheat, it is not considered a loan, but as a stipulation that he shall work for the owner of the field, and the owner shall receive from the share of the gardener that measure of grain which was advanced to him (and therefore, no matter if afterwards the price was raised, it is not usury). And the Tana of the Boraitha speaks of a place where usually the owner of the estate furnished the seed, and he (the owner) has changed the custom of his place; because his field was in good condition he made the gardener furnish the seed. Then, if the gardener has not started his work as yet, so that the owner may eject him, the above stipulation may be made, as it is considered a business matter, not a loan; but if his work is already begun, for which reason he cannot be ejected by the owner, and then the gardener is compelled to borrow the seed from the owner, it is considered a loan; and if the grain becomes higher, if he returns him the same measure it appears usurious.

The rabbis taught: "One may be asked by his neighbor for a loan of grain, to return the same at a certain time if the price will not be lower; but if it will, then he shall be paid in money at the price now existing. If, however, such stipulation was not made, if it became lower, he may return him with grain; if higher, he has to pay him in money at the price existing at the time borrowed, according to the explanation of R. Shesheth.

MISHNA *X.*: One must not lend a kur of wheat that it shall be returned to him from the barn (for fear it may become dearer). He may, however, lend him until his son came with the key. Hillel, however, forbids even this, as he used to say: A woman must not lend a loaf of bread to her neighbor, unless a price is stipulated for it, for fear wheat may become dearer, and then the return of the loaf will appear usurious.

GEMARA: Said R. Huna: "The statement of the Mishna that one may borrow wheat until he found the key: it is allowed only to borrow as much as he possesses; if he possesses a saah, he may borrow one; if two, two." R. Itzhak, however, said that even if he possesses only one saah, he may borrow many kurs (as the title of this saah is not secured to the lender and he may use it for himself; consequently the borrowed grain is to be returned from that of the market, and this saah he possesses remains free; on which he may borrow many saahs). Taught R. Hyya to support R. Itzhak: ("One must not borrow wine or oil if he does not possess)

a drop of wine, a drop of oil." From which it is to be inferred that if he possesses one drop he may borrow upon it many drops.

Hillel forbids, etc. Said R. Nahaman in the name of Samuel: The Halakha prevails in accordance with Hillel. (The Gemara, however, says:) The Halakha does not prevail in accordance with R. Nahaman's statement.

As he used to say, etc. Said R. Jehuda in the name of Samuel: Hillel stands alone with his statement, as the majority of the sages hold that it may be borrowed and repaid anonymously (without any stipulation). The same said again in the name of the said authority: Society men transgress who are not very particular with each other regarding the size, weight, and number of things borrowed and returned (if they borrow from one another, and do not care to make return in kind and in the same manner, they transgress the commandment, "Thou shalt not cheat thy brother in measure, etc.," as they accept more or less than was borrowed). And also as regards violence, Sabbaths, and festivals, if they lend to each other on these days, according to Hillel, they are also accused of usury. The same said again in the name of the said authority: Scholars who know the law of usury may lend each other for interest (as they know the law, they give the interest by means of a present). Samuel said to Abuhu b. Ihi: Lend me a hundred peppus; I will return you a hundred and twenty, and it will be right (not as usury, but as a present). R. Jehuda, in the name of Rabh, said: One may lend to his sons or family for usury, to give them an idea how hard it is to pay usury and to understand the great punishment of it. (Said the Gemara:) This, however, must not be practised, as they may get accustomed to it, and afterwards lend money for usury.

MISHNA *XI.*: One may say to his neighbor: Help me in weeding or in digging around my vineyard to-day, and in return I will help you on some other day, but he must not say: "Help me in weeding and I will help you in digging, or *vice versa*. All the days of the rainy season are considered alike, and the same is the case with the days of the sunny season; but one must not say: "Help me in the sunny season and I will help you in the rainy season," or *vice versa*.

Raban Gamaliel says: There is a kind of usury which may be named preceding usury, and also another kind which may be named succeeding usury. How so? If one is to borrow money from

another, and he sends him a present previously for this

purpose, it is a preceding usury; if one has kept the money of his neighbor for a certain time, and on repaying he sends a present, saying: "This is for the favor you did in leaving the money in my hand for such a time"--this is succeeding usury. R. Simeon says: There is also usury of talk. One must not say: I inform you that such and such a man, whom you are anxious to see, has arrived (and for this information you shall favor me with a loan). The following transgress the negative commandment of usury: The lender, the borrower, the surety, and the witnesses. The sages add also the scribe. They transgress the following commandment [Lev. xxv. 37; also *ibid*. 36, and Ex. xxii. 24, and in the verse: "Ye shall not lay upon him usury;" and finally, Lev. xix. 114]: "Ye shall not put a stumbling block before the blind, but thou shalt be afraid of thy God. I am the Lord."

GEMARA: There is a Boraitha: R. Simeon b. Joa'ling said: Whence do we deduce that, if one owes his neighbor a hundred zuz, and it was not customary for him before the loan to greet him first, he must not do so after the loan took place? From [Deut. xxiii. 20]: "Interest of anything, etc.," *i.e.*, that even a word must not be given as interest.

And the following transgress, etc. Said Abayi: "The lender transgresses all the commandments mentioned; the borrower transgresses the commandments of Deuteronomy mentioned above and of Leviticus, xix. 14. The witnesses, however, transgress the commandment of Exodus, xxii. 24."

We have learned in another Boraitha: "The usurers lose more than they profit (as said above, finally they lose all they possess); furthermore, they make Moses our master a fool, and his law untrue, saying: If he knew that usury brought great profit, he would not have written that it is prohibited."

When R. Dimi came from Palestine, he said: Whence do we deduce that if one is aware that if one is aware that his debtor has nothing with which to pay, he must not pass him by? From the verse [Ex. xxii. 24] cited above. R. Ami and R. Assi both said: One who does so is as if he caused his debtor to suffer from fire and water; as it is written [Psalm lxvi. 12]: "Thou hast caused men to ride on our head; we entered into fire and into water." R. Jehuda said, in the name of Rabh: Who lends money to any one without witnesses transgresses the commandment: "Ye shall not put a stumbling block before the blind." Reish Lakish adds that he who does so draws a curse upon himself, as it is written

[paragraph continues] [*Ibid*. xxxi. 19]: "Let the lying lips be made dumb which speak hard things against the righteous." (Rashi explains this as meaning that in case the debtor denies the entire claim of his creditor, people usually believe the debtor and curse the creditor.)

The rabbis said to R. Ashi: Rabina adheres strictly to all that the rabbis ordained. (And to try whether it is so,) R. Ashi sent to him on one eve of Sabbath: Let the master send me ten zuz, as I have a chance to get a bargain. And he answered: Let the master appoint witnesses or write a note. And R. Ashi sent to him: Do you demand this also from *me*? And he answered: In much

the more from you, master, who are always engaged in your study. It can easily escape your mind, and I would draw a curse on myself.

The rabbis taught: "The following three cry for help without being heard: Who lends money without witnesses, who buys a lord to himself, and he over whom his wife rules." What is meant by "who buys a lord to himself"? Who assigns his possessions to his children while he is still alive. Other number among the cries for help which are not heard, that of him who suffers in one city and does not try to find his livelihood in another.

Footnotes

151:1 The text here is both very short and complicated. The commentators are silent. We therefore were compelled to give our own explanation.

152:1 See also First Gate, p. 232, before Mishna V., Rabhi's statement.

153:1 This also is our own explanation, as without this there is no meaning. Meyer of Lublin tries to give some explanation to this paragraph, but he makes it still more complicated.

157:1 This was usually done by the Jewish courts when a scholar came to their city with his trade, and with references from other courts.

160:1 The term *asmakhta* is very difficult to translate into English with a term of the same meaning. The literal translation of *asmakhta* is "relying upon," which is to be understood: "He acquires title because he relies upon it"; and therefore we use the term *asmakhta* in the text without explanation. Jastrow tries to explain this term at length in his dictionary. See there, Part I.

162:1 This is the explanation of Rashi. Tosephath, however, objects, saying "that using fruit is not considered direct usury, but indirect, which is not to be collected," and therefore they give another explanation to this paragraph. See there.

163:1 Rashi says that he has seen in the answers of the Gaonim that Navla is an Aramaic expression, which was used in brotherhood; he, however, maintained that so was the name of the woman who sends the messenger to buy the estate.

165:1 It is according to the estimation prescribed in the Scripture in this paragraph the Talmud counts it according to the money used at that time.

169:1 The term in text is *alitha*. Rashi explains *aliah*, which means the fat of the tail. However, it seems to us this is correct only of a sheep, but not of a cow; it may be, however, that they bought a sheep in partnership.

174:1 *I.e.*, the lender shall not collect more than is due to him in case the debt is paid his time.

179:1 This is in accordance with the explanation of Hananal in Tospheth. Rashi, however, explains otherwise, which is not understood easily.

180:1 Rachel was the daughter of Mar Samuel, who was captured by heathens, married a heathen who afterwards became a proselyte, and his name was Issur the Proselyte. Her pregnancy began while be was yet a heathen, and therefore R. Mari was named after his mother, *Rashi*. (There was another Mari b. Rachel mentioned in Sabbath. p. 111, and his father Rabba. See there).

181:1 The Scripture reads *ubachiecham*; literally, "and with your brothers." Leeser translates according to the sense, "but." The Talmud takes it literally, and makes this word correspond both to the former and the latter sense, as explained in the text.

Next: Chapter VI.

CHAPTER VI.

REGULATIONS CONCERNING HIRING LABORERS, CATTLE, OR TRANSFERRING GOODS, THE RESPONSIBILITIES OF THE DRIVERS, ETC.

MISHNA *I.*: He who hired servants (for the daytime), and they deceived one another, there is nothing but resentment. (The explanation is given farther on.) If one hired a driver or a carrier to bring trumpets, flutes for a wedding or funeral, or day laborers to take out flax from its steeping, or to do things which, if not done on the day of hiring, would cause damage, and they retracted: if there were no others to be hired for the same price, the employer may increase the amount of their hire, or deceive them (*i.e.*, promise an increase, but pay only according to the first agreement). If one hired servants, and they retracted, they have to suffer; if, however, the employer retracted, he has to suffer. (This is the rule:) Whoever changes or retracts his words, has to suffer for the injury caused.

GEMARA: The Mishna does not state that the servants have retracted, but that they have deceived one another, which is to be understood, the servants have deceived one another. How was the case? The employer appointed one of his servants to hire laborers for him, and he deceived them. (Let us see.) How was it? If the employer told him to hire men for four zuz a day, and he hired them for three, they have agreed for the price, and what has resentment to do here? On the other hand, if the employer told him to hire men for three zuz, and he promised four, then, if he told them that they would receive their payment from himself, let him pay the difference from his own pocket, as we have learned in the following Boraitha: "If one hires a laborer to do his work, and thereafter instructed him to do the work of another, he must pay him the full payment, and the reward for his labor he may demand from the employer?" The case was, he said to the laborer that the employer will pay, *i.e.*, he has not fixed any price. But let them see how the price for a day for laborers stands? The case was that there were some employers who paid three, and some who paid four, and the laborers may claim: "If

we did not understand from your words that we were to get four, we would take the trouble to look for other employers who pay four." And if you wish, it may be said that the Mishna treats of servants who possess their own fields (and they do not hire themselves unless for a higher price than the ordinary), and they may claim: "If we did not understand that we were to get four, it would be a humiliation for us to hire ourselves for a lower price." It can also be explained that the Mishna treats of laborers who are doing work only for others, and nevertheless they may claim: "Because we understood that we were to get four zuz, we troubled ourselves to make a good job." But, then, their work should be examined? The case was, they were engaged in digging a trench which was filled with water, and could not be examined. And if you wish, it may be said that the employer told the servant to hire laborers for four zuz a day, and he hired them for three; and although they agreed to work for the price, they may be angry with the hirer, saying: "Do you not hold to the verse [Proverbs, iii. 27]: Withhold not a benefit . . . when it is in

the power of thy hand to do it'?" After all, it may be said that the Tana of our Mishna by the expression "deceived" means also "retracted" (and he treats of a direct agreement between the employer and the servants), as we have learned in the following Boraitha: "If one has hired laborers, and they have deceived the employer, or *vice versa*, they have nothing but resentment, provided they did not go to work at all. But if the drivers went for grain and did not find any, or field laborers went to work and found that the field was as yet wet, they get the full payment. However, the hire of a driver who loads his wagon and delivers it to the proper place is not to be the same as the hire of one who did not find any load; and the same is the case with laborers who are engaged in work all day compared with those who are idle the whole day. All this, however, relates to when they had not yet begun the labor; but if they began, their labor must be valued for what they have done. How so? If they agreed to cut stalks or to weave a garment for the price of two salas, and they left their work, having done the half of it, the work done must be appraised; if, *e.g.*, their work was worth six dinars, they may be given one sala (which is eight dinars), or they may be let finish their work, and take two alas. And if it was worth only, one sala, they get a sala. R. Dossa, however, says the *remaining* work must be appraised, and they get the difference; *e.g.*, if the *remaining* work can be done for less than six, they get only one-half a sala (although they have

done the half of the work), or they may be let finish their work, and take two; but if the remaining work could be done for a sala, the laborer who has done the half gets a full sala. However, all this is said of such things as do not become spoiled if the work is,, done later; but in cases in which the work may become spoiled, he may hire other laborers on their account, or he may deceive them. How so? He may say to them: "I made the agreement with you to work for one sala; now, however, I raise it to the amount of two." To what amount *may* he increase the hire? To the amount of forty to fifty zuz, provided there are no other laborers to hire for a lower price; but if there are, and the retracting laborers tell him to get his work done by them, he has nothing but resentment.

A disciple taught before Rabh that the full amount must be paid, but Rabh said: My uncle (R. Hyga) said: "If I were the hirer, I would pay only for the loss of time," and thou sayest that, he must pay the full amount. The Gemara questioned: Does the above Boraitha not add. The hire of a driver who loads his wagon, etc., is not to be the same as the hire of one who did not find any load? (Why, then, did not Rabh refer him to this Boraitha, and not to his uncle?) Rabh was not aware of the above addition. According to others, he was aware of it; and concerning this Boraitha he says: My uncle said: "If I were the hirer, I would pay nothing," and thou sayest that loss of time must be paid. But, if so, there is a difficulty. It might be said that R. Hyga speaks of laborers that he appointed yesterday to come to work early in the morning, and rain made the field wet at night,, so that it was unfit for work; and in such a case the laborers ought to know it, and not come to work at all. The Boraitha treats of a case where both the employer and the laborers were not aware of the fact that the field was unfit for work at that time. And so also declared Rabh. elsewhere: If one hired laborers to dig a trench, to begin their labor on the morrow, and at night rain filled the trench with water, then, if at the time he hired them he notified them of the place where the trench was to be found, the laborers have to suffer the loss (seeing the rain, they ought not to come to work); but if at the time he hired them he did not notify them of the place where the trench was to be found, be must pay for the loss of time (as they may say: How were we to know that the trench was placed where it was raining?). The same said again: If one hired laborers to wet his fields, and in the meantime rain came, the laborers suffer the damage. If, however, they become

wet by the overflow of a river, the employer must pay them for the loss of time. He said again: If one hired laborers to wet his fields, and in the middle of the day the river from which the water was to be taken ceased to flow, if this was an accident the laborers have to suffer. If, however, this happens with the river frequently, the employer must suffer; provided the laborers were strangers and did not know the nature of this river. He also said: If the work for which the laborers were hired for a day was finished at the middle of the day, he may engage them with other similar or easier work, but not with harder. And if he has not such, he nevertheless must pay them the full amount. Why so? Let him pay them for the loss of time only? Rabha speaks of carriers of Mahuza (his city), who used to become weak when they had nothing to do (in the daytime).

The master said: The labor already done must be appraised, and if it was worth six dinars, they get a sala (eight dinars). Hence the rabbis hold that the laborers always have the preference.

"Or let them finish their work, and take two salas." Is this not self-evident? The case was that the labor became dearer, and the laborers and the employer became reconciled. Lest one claim that the laborers may say: "We accepted your reconciliation with the intention that you will raise our wages" (and as, according to the rabbis, the laborers always have the preference, their claim should be taken into consideration), he comes to teach us that the employer may say: "My intention in becoming reconciled was to give you a good meal."

"If the labor were worth one sala, they get it." Is this not self-evident? The case was, that at the time he hired them the labor was cheaper. He, however, promised to raise one zuz. Thereafter the labor became a zuz higher: lest one say that the laborers may claim that they were promised a zuz over the existing price, consequently they have to get two zuz more, he comes to teach us that the employer may say: "I was aware that the labor is worth a sala, and it will be increased to this extent sometime. I therefore promised to pay you the proper price, but not to add a zuz above the proper price." [1]

"R. Dossa said," etc. As he holds, the employer has the preference. But to what purpose does he add: "Or let them finish the work and take two salas"? Is this not self-evident?

[paragraph continues] He treats of a case where the labor became cheaper and the employer locked them out, and afterwards the laborers became reconciled to him: lest one say that the employer may claim that he accepted the reconciliation with the intention to lower the price, he comes to teach us that the laborers may say they have become reconciled to him with the intention of making a good job. But to what purpose does he continue, that if a sala, etc.? Is this not self-evident? Said R. Huna b. R. Nathan: He speaks of a case where the laborers have lowered the price a zuz, and thereafter the labor became a zuz cheaper: lest one say that the employer may claim: "My agreement was to give a zuz less than the current price, consequently I have now to pay two zuz less," he comes to teach us that the laborers may claim: "We were aware that the labor may become cheaper, and were willing to work for the proper price, but not lower than that."

Said Rabh: The Halakha prevails in accordance with R. Dossa. Did, indeed, Rabh say so? Has he not said that a day laborer may retract even in the middle of the day? And lest one say that R. Dossa makes a difference between a day laborer and a pieceworker, the following Boraitha shows that he makes no difference, namely: "If one hired a laborer, and in the middle of the day the latter heard that one of his relatives died, or he became ill from sunstroke, whether be was a day laborer or a piece-worker be gets the full payment." Now, according to whom is it? Shall we assume it is according to the rabbis? Why, then, need it to be said that it was accident? Even without this the rabbis hold that the laborer always has the preference. It must therefore be in accordance with R. Dossa; hence he makes no difference between the above two kinds of laborers?

Said R. Nahaman b. Itzhak: The Boraitha treats of a case where the work would be lost if not finished in the same day, and therefore only in case of an accident does he get the full payment in accordance with all of them; but in other cases there is a difference between the two kinds of laborers mentioned above (according to R. Dossa). And if you wish, it may be said that the statement of our Mishna, that "he who retracts his word must suffer the damage," is to be interpreted as we have learned in the following Boraitha: "Whoever retracts." How so? If one sold a field for a thousand zuz, and the buyer gave him a deposit of two hundred, if the seller retracts, the buyer has the preference; he may insist upon the return of his money, or he shall furnish him with the best estate for the value of his deposited money. If,

however, the buyer retracts, the seller has the preference; he may return him the money, or give him the worst estate he has for the value of his money. R. Simeon b. Gamaliel, however, says (that in case one buys an estate by instalment), an agreement must be written to prevent any retraction. How so? The seller writes: "I, so-and-so, sold such-and-such a field to so-and-so for one thousand zuz, of which two hundred were paid, and the balance of eight hundred is to be paid afterwards," then the agreement is in full force even for many years.

The master said: "Or best estates for his money." At the first sight it is to be understood the best estate the seller possesses. Why so? Let him be considered a creditor, of whom a Mishna states that he has to collect from the middle one; and, secondly, he has given the money for a certain estate which is still in existence? Said R. Nahaman b. Itzhak: The Boraitha means to say, in both cases, from the best and the worst of the field in question. R. Aha Aiga, however, says: There is no contradiction even when it means from the best estate he possesses, as usually a poor man who buys an estate for a thousand zuz has to sell out his personal property or small estates for a cheap price, so that if the seller retracts the buyer suffers damage, and there is a Mishna that all damages must be appraised from the best estate.

R. Simeon b. Gamaliel said: "The seller writes," etc. We see, then, that the buyer acquired title only because of the agreement, and not otherwise; but did not a Boraitha state: "If one gave a deposit to his neighbor, and said: Should I retract, my deposit shall be relinquished to you, and the seller said: Should I retract, I shall return you the deposit in double, the stipulations are of avail; so is the decree of R. Jose." [R. Jose is in accordance with his theory that an *asmakhta* gives title.] R. Jehuda, however, said: It is sufficient that the buyer should acquire title to the amount of his deposit. Said R. Simeon b. Gamaliel: All this is only in case the buyer said: My deposit shall give me title. If, however, there was sold to him a field for a thousand zuz, and in

payment thereon he gives him five hundred zuz, title is given to the buyer to the whole field, and he has to give him the remainder even during many years (hence we see that according to him title is acquired even if it was not so written as stated above). This presents no difficulty. The Boraitha speaks of when the seller agrees to wait for the remainder, and the Mishna speaks of when the seller was in need of money, and insisted upon immediate payment (which shows that he sold him the article only because he

was in need of money, and would not like to give him title until the whole amount was paid; as Rabha said elsewhere: If one has sold an article, when he was in need of money, and received a deposit from the buyer, title is not acquired unless the whole amount is paid; but when the seller was not in need of money, and did not insist upon immediate payment of the remainder, title is acquired).

Rabha said again If one lends a hundred zuz to his neighbor, and he returns the sum in instalments by single zuzes, although it was not so stipulated, the payment is valid, and the lender has nothing but resentment, as he may say that the borrower had harmed him, for he could have done business with the money if it were paid to him in one payment.

There was a man who sold an ass while he was in need of money, and the buyer paid him the whole amount less one zuz. R. Ashi was deliberating if in such a case title is acquired or not. Said R. Mordechai to him: So said Abimi of Hagrunia in the name of Rabha, that one zuz is considered the same as many, and title is not acquired. Said R. A'ha b. R. Joseph to R. Ashi . But we have heard in the name of Rabha that title is acquired; and he answered: The Halakha you have heard in the name of Rabha must be interpreted, in case it was certain that he has sold his field on account of its infertility, and the insisting upon the payment of the remainder was only because he was afraid he shall retract.

It is certain that if one was in need of a hundred zuz, and could not find any one to buy an estate for this amount, and sold out for two hundred (and received a deposit of one hundred zuz), and insisted upon the immediate payment of the remainder, then title is not acquired. But how is it when, if the same would trouble himself to find a buyer for one hundred zuz, he could get one, but he did not, and sold out for two hundred zuz, and was insisting upon the immediate payment of the remainder? Shall we assume that this case should be considered as the case of selling a field on account of infertility, stated above; or is it not because, after all, he sold out this field unwillingly, owing to the need of money? This question remained undecided.

If one hired a driver . . . or he may deceive them. But to what amount may he hire others on their account? Said R. Na'hman: To that amount which the employer owes them for the labor done already. Rabha objected to this statement from

the Boraitha stated above (p. 190), that he may hire on their account to the sum of from forty to fifty zuz; and R. Na'hman answered: The above Boraitha speaks of a case where the laborers place their instruments to such an amount in the house of the employer.

MISHNA *II*.: If one hired an ass for use on a mountain, and he used it in a valley, or *vice versa*, although the distance for which it was hired was equal in both ways (as, *e.g.*, ten miles), and the ass dies, the hirer is responsible. If he hired it to use it on the mountain, and he used it in a valley instead, and the ass slipped, he is free (because this could surely occur on the mountain, upon which such a case is more frequent); if, however, it was overheated, he is responsible. The reverse is the case when he used it on the mountain instead of in the valley: if it slipped, he is responsible; and if it is overheated, he is free. If, however, it was overheated because of the ascending to the top of the mountain, he is responsible. If one hired an ass and it became blind, or it was taken for an *angaria* (*i.e.*, taken by the Government for labor), the owner may say: "Yours (which you have hired) is before you." If, however, it dies, or broke a foot, he must furnish him with another ass.

GEMARA: Why does the Mishna make a difference in the second part between slipping and overheating, and does not do so in the first part? In the school of R. Yanai was said: Because in the first part the plaintiff may claim the animal dies owing to the air of the mountain; (if it was hired for a valley,) he may say that it was not used to the air of a mountain, and if for a mountain, he may claim it was not used to the air of a valley. R. Jose b. Hanina, however, said: The Mishna treats of when it dies owing to overwork, and Rabba says: The Mishna treats of when it dies from the bite of a snake (so the plaintiff may claim: If you had used it for the place hired, such would not have occurred). R. Hyya b. Abba, in the name of R. Johanan, said: The Mishna is in accordance with R. Meier, who holds that one who has done contrary to the agreement with the owner is considered a robber, and is responsible. Where is to be found such a statement by R. Meier? In the following Boraitha: "If one has given a dinar to a poor man for the purpose of buying himself a shirt, he must not buy a garment, and if for the purpose of a garment, he must not buy a shirt, because this would be contrary to the intention of the donor."

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But perhaps there is another reason; namely, people shall not say: "So-and-so has promised to furnish a garment for the poor so-and-so," and did not keep his promise? Then R. Meier should state: Because of suspicion. Why, then, his reason, "because it is contrary to the intention," etc.? Hence he holds that every change of the intention of the owner is considered robbery. Infer from this that so it is.

Or it was taken, etc. Said Rabh: The case is only when it is an angaria which is to be afterwards returned; but if it is an angaria which is not to be returned, he must furnish him with another ass. Samuel, however, maintains: There is no difference what kind of an angaria it was; if it was taken for using to the same place where the hirer intends to go, the owner may say to him: "Yours is before you." If, however, it was taken in a contrary direction, then the owner must furnish him with another ass. An objection was raised from the following: If one hired an ass, and it became blind or mad, the owner may say: "Yours which you have hired is before you." If, however, it dies, or it was subject to an angaria, he must furnish him with another ass. This would be correct in accordance with Rabh's theory, as the Boraitha may treat of an angaria which is not to be returned; but Samuel's statement it contradicts. And lest one say that the Boraitha speaks of when it was taken away in a contrary direction, so that it could agree with Samuel's statement also, it cannot hold good, because of the latter part of the same Boraitha, which states: R. Simeon b. Elazar said that if it was taken away for use in the same direction, the owner may say: "Yours is before you"; and if in a contrary direction, he must furnish him with another ass. Now, from the statement of the latter it is to be inferred that it makes no difference

to the first Tana in what direction it was taken? Samuel may say: Is there not a Tana who is in accordance with my theory? I hold with R. Simeon b. Elazar, and if you wish, it may be said that the whole Boraitha is in accordance with R. Simeon b. Elazar, but it is not complete, and should read thus: If one hires an ass, which becomes blind or mad, the owner may say: "Yours which you hired is before you." If, however, it dies or becomes subject to an angaria, he must furnish him with another ass. This, however, was said if it was taken away in another direction; but if it was taken away in the same direction be intended to go, the owner may say: "Yours is before you" (you may accompany this one until the officers of the

[paragraph continues] Government will meet another ass, and yours will be returned to you). So is the decree of R. Simeon b. Elazar, as he used to say that only if it was taken in another direction must he furnish him with another ass, and not: otherwise. But how can you interpret the Boraitha in accordance with him? Have we not heard him stating that if one has hired an ass for the purpose of riding upon it, and it becomes blind or mad, the owner must furnish him with another one, which contradicts the statement of the Boraitha in question? Said Rabba b. R. Huna: For the purpose of riding, it is different (as he cannot ride upon a blind or mad animal, but as for carrying burdens, he can do so even with the same). Said R. Papa: If he had hired the ass for the purpose of carrying glassware, the case is the same as if he hired it for riding.

Rabba b. Huna, in the name of Rabh, said: "If one has hired an ass for the purpose of riding, and it dies while in the middle of the way, he has to pay the half of the agreed price, and he has nothing but resentment." Let us see. How was the case? If the carcass of this ass would pay for delivering the burden to the place to which it was hired, what had resentment to do here? Let him sell the carcass, and deliver the goods, and if this is not the case, why should not the owner deliver the goods to the place? The case was such that one could not be found, to be hired for delivery; and the owner may claim payment from the place from which it was taken, to the place directed. But let us see. How was the agreement? If it was for any ass to carry the goods, then certainly he must furnish him with another one, and if for this ass, then let him sell the carcass for the purpose of carrying his goods. This was when the sale of the carcass would not yield the amount needed. But even if the carcass would pay, may he do so? (Did, then, the owner *sell* him this ass? The decision of the Mishna is that he shall furnish him with another ass; consequently he has not given him any title for this one?) Rabh is in accordance with his theory who said elsewhere that the principal amount must not be totally consumed, as it was taught: "If one has hired an ass, and it dies while in the middle of the way," Rabh said, that if the carcass would pay to buy another one instead, he may do so; but if it would pay only to hire another one, he must not. Samuel, however, maintains he may, and the point of their differing is the total consumption of the principal amount of the thing hired. According to Rabh, it must not be consumed

[paragraph continues] (and the statement of the Mishna, that he must furnish him with another ass, is in case it dies while yet under the control of the owner, so that if he sells the carcass he adds to this amount and buys another ass, and so the principal amount is not wholly consumed as in case of selling the carcass for the purpose of hiring another one); and according to Samuel, even the total consuming of the principal amount is allowed.

The rabbis taught: "If one hires a boat, and it sinks in the middle of the way, R. Nathan said: If

he has paid, the money remains with the same owner; but if he has not paid, he has nothing to pay." Let us see. How is the case? If the agreement was "for this boat in which I shall carry wine to a certain place," why, then, should he not collect what he paid for? He should claim for another boat for delivering wine, and if it was for any boat, for delivering *this* wine, why should he not pay, even if he has not done so until now? Let the owner claim for the wine he has agreed to deliver, and he will furnish another boat; and if the wine is lost, and the hirer cannot keep his agreement, let him pay. Said R. Papa: R. Nathan's decision can be explained only in case the agreement was "for this boat and this wine," but if the agreement was "or *any* boat and *any* wine," the loss must be divided.

The rabbis taught: "If one hires a boat for a certain place, and has unloaded it while in the middle of the way, he has to pay for the half way, and the owner has nothing but resentment." How is the case? If the owner has the opportunity to let it, why then resentment? And if not, why should he not get pay for the whole way? The case was, the owner had an opportunity to let it. He claims, however, that the loading and unloading, which must be done twice, damages the boat. But if so, the claim is a just one, and he has to be paid. Read in the Boraitha thus: In the middle of the way he loads more, and the agreement was that he may load as much as he likes, and shall be paid according to the weight of the load; and if he adds more in the middle of the way, he has to pay him for this loading for the half way only. But, then, what is the resentment for? For the losing of time.

The rabbis taught If one hires an ass for the purpose of riding, the hirer may place on it his garment, his bottles with beverages, and food for himself for that day. More than this, however, the driver may prevent. The driver may also place hay and barley and food for himself for this day only.

[paragraph continues] More than this, the hirer may prevent." How is it? If on the way, food can be bought, why should not the driver prevent the hirer from placing more food than for one day? And if it could not be bought, why should the driver be prevented from taking food for more than one day? Said R. Papa: The case was, that food could be obtained at the inn only, and for a driver it is customary to trouble himself, in the city, to find out who is selling food for the ass and himself, which is not the case with the hirer.

The rabbis taught: "If one hires an ass for the riding of a male, the same must not be used for a female; if for a female, a male may ride on it. There is, however, no difference whether the female was tall or short, pregnant or nursing." If you say that a woman nursing a child, which are two bodies, may, is it not self-evident that a pregnant woman, which is only one body, may? Said R. Papa: It means even when she was both pregnant and nursing.

MISHNA *III*. If one hires a cow for the purpose of ploughing on the mountain, with all the implements belonging to it, and he plough in a valley, if the plough-handle breaks he is free; if *vice versa*, and it breaks, he is responsible. If to thresh pulse, and he threshes grain, he is free; but if to thresh grain, and he threshes pulse, he is responsible, because pulse becomes slippery (and thus the plough-handles can easily break).

GEMARA: But how is it if the plough-handle breaks without any change of the agreement: who

has to pay for it? Said R. Papa: He who holds the handle of the plough (because it breaks owing to his carelessness); and R. Shesha b. R. Idi says: He who manages the handle in such a manner that the plough digs deeper in the ground than it ought to, and so the Halakha prevails. In a place, however, which was known to them as strong ground, etc., both the holder of the plough-handle and the manager are responsible.

R. Johanan said: If one sells a cow to his neighbor, saying: "This cow is a gorer, a biter, a kicker, lying down while laboring," and in reality it was afflicted with only one of these defects, the sale is invalid (as the buyer, on examining it, may not find one or two of the defects he was told of, and thinks the seller is only jesting, and the cow has no defects at all). If, however, he says: It is afflicted with one of the defects mentioned above, and it has also some other defects, although it was afflicted with only this one, the sale is valid (because it was the buyer's duty

to search for such defects as were mentioned to him). So, also, we have learned in the following Boraitha: "If one sells a female slave, telling the buyer that she is an idiot, epileptic, and becomes confounded, and she was afflicted with only one of these, the sale is invalid (for the reason stated above). If, however, he says she is afflicted with one of the defects mentioned above, and she has also other defects, the sale is valid." R. A'ha b. Rabha questioned R. Ashi: How is it, if she has indeed all those defects (and the buyer claims that because the seller mentioned all the defects separately, he thought he was jesting, but if he had been aware that she was afflicted, he would not have bought her)? Said R. Mordechai to R. Ashi: So was it said in the name of Rabha, that in such a case the sale is valid.

MISHNA *IV.*: If one hired an ass for carrying wheat, and he used it for barley (of the same weight as the wheat he had spoken of, and the ass becomes injured), he is responsible. For grain, and he used it for straw, he is responsible, because an increase of volume makes the load harder for the animal. If for half a kur of wheat, and he used it for half a kur of barley, there is no responsibility. If, however, he has increased the size (although it was equal in weight to the half kur of wheat), he is responsible. How much must the load be increased to make him responsible? Symmachos, in the name of R. Meier, said: One saah for a camel, and three kabs for an ass.

GEMARA: It was taught: Abayi said: We read in the Mishna: "The volume of the load is *like* the weight (*i.e.*, loads of the same volume are considered of the same weight as regards the stress on the animal, and if he added these kab to the volume bargained for, he is responsible for any injury to the ass). Rabha, however, said: We read in the Mishna: It is as hard *for* loading--*i.e.*, weight is weight, and the volume is an addition, and if he changed the load for a more voluminous one, although of the same weight, he is responsible for the additional volume.

There is an objection from our Mishna if it were hired to carry half a kur of wheat, and he used it for half a kur of barley: "If he has increased the size, etc., is it not meant three kabs" (as the explanation of Abayi)? Nay; it means a saah (and the Mishna is interpreted thus: If for carrying a half kur of wheat, and he used it for a half kur of barley, he is free, although he changed the article, as the change was lighter; if, however, he had increased the barley to the weight of wheat, he is responsible,

owing to the increase of size). But does not the Mishna state further on: "How much must the load be increased . . . a saah for a camel," etc.? This is not a continuation of the former, but a separate statement; thus, when there was no change in the article, and weight was added to the usual load, how much should be added in order to make him responsible? Symmachos says, etc.: Come and hear (another objection): "If it were for carrying a half kur of wheat, and he used it for sixteen saahs of barley, he is responsible." From which is to be inferred that if he added only three kabs he is free? Abayi explained that this Boraitha speaks of a load counted by stricken measures; according to others, reduced in weight by being worm-eaten. 1

The rabbis taught: "An addition of one kab makes one responsible when he has hired one to carry a burden on his shoulders. A *lethakh* (a half kur) is an addition to a skiff, one kur for a larger boat, and three kurs are an addition for a ship (*i.e.*, if the above were added to the usual loading of the vessels named, the one who hires is responsible for damage)."

The master says: One kab for him who carries on his shoulders: but if he is a man with sense let him throw it off if it is too heavy? Said Abayi: For example, when he became sick soon after he was loaded with his burden. And Rabha said: Even if it has not occurred so, as the Mishna's statement is for the purpose of an additional payment also--*i.e.*, for this addition he has to pay him separately. R. Ashi maintains that the carrier need not throw it off, because he may have thought: "I am too weak now, but I will become stronger, and able to carry the usual weight for which I am hired," as he was not aware that the size of a kab was added. It was said above: "One kur for a larger boat," etc. Said R. Papa: Infer from this that the usual weight for a large boat is thirty kurs. To what purpose is it stated? For the purpose of business--*i.e.*, if one has hired a boat for carrying without any stipulation, thirty kurs is the usual load.

MISHNA *V.*: All specialists are considered bailees for hire. If, however, they have notified the owners that the work is ready and they may take it, and the payment should be made thereafter, they are considered from that time gratuitous bailees. If one

says: "Guard for me this article, and I will guard yours," the depositary is considered a bailee for hire. If one says: "Guard for me this article," and the depositary answers: "Leave it with me," he is a gratuitous bailee. If one has lent money on a pledge, he is considered a bailee for hire. R. Jehudah, however, said that if he has lent him money on a pledge (without interest)he is considered a gratuitous bailee; if, however, he has lent fruit on the pledge, he is considered a bailee for hire. Aba Saul said: "One may let out a pledge of a poor man, and the money he takes for it he shall deduct from the debt of the pledger, because this is considered as if he would return a lost thing."

GEMARA: Shall we assume that our Mishna is not in accordance with R. Meier 1 of the following Boraitha: If one hired a cow, how shall he pay in case it is lost? (The question is asked because the law of a gratuitous bailee, a bailee for hire, and a borrower is to be found in the Scripture. A hirer, however, is not mentioned; hence the question: To whom of the above named shall he be compared?) R. Meier says: To a gratuitous bailee (as he pays for the labor done by the animal, and takes no compensation for guarding it). R. Jehudah, however,. says: To a bailee for hire. (As he hired the animal for his benefit, although he pays for the labor, he is considered

a bailee for hire. Now, a specialist who takes the article for his own benefit is compared to a hirer, and R. Meier considers him a gratuitous bailee.) It can be said as Rabba b. Abuhu, who has changed the names in the above Boraitha and taught: R. Meier said, To a bailee for hire; and R. Jehudah said, To a gratuitous bailee.

If, however, they have notified, etc. There is a Mishna (in Chapter VIII. of this tract): "If the borrower told the lender to send through a messenger, and he did so, he is responsible for an accident; and the same is the case when he returns it in that way." Said R. Na'h'man b. Papa: We have learned the same in our Mishna; if they all said: "Take yours, and the money you may pay afterwards," it is considered a gratuitous bailment. Is it not to be assumed that the same is the case if he has notified the owner that the work is ready (without adding something to it)? Nay; "Take yours" is different.

Huna Mar b. Mrimar, in the presence of Rabina, raised a contradiction between the two Mishnayoth mentioned above,

and afterwards explained them as follows: In our Mishna it is stated: If they said, "Take yours," etc., they are considered from that time bailees for hire; and the same is the case if they have notified the owners that the work is ready for them. Is it not a contradiction from the above-cited Mishna that if the borrower told him to send, etc., he is responsible? (Hence we see that it is considered under the control of the borrower even when he returned it, and this contradicts the statement in our Mishna, which is, that as soon as the specialist has notified the owner of the article that it is ready for delivery it is considered under the control of the owner.) And he himself answered that Raphram b. Papa said, in the name of R. Hisda, that the cited Mishna treats of when the borrower has returned the loan through his messenger before the agreed time has elapsed (consequently it was under his control unquestionably); but if he did so after the elapse of the agreed time, he is free.

The schoolmen propounded a question: What is meant by the expression "free"? Is it meant free of the responsibility of a borrower (who is responsible for an accident also), but that he is still responsible as a bailee for hire (who must pay for theft and loss), or does it mean entirely free from any charge? Said Amimar: It seems that he is free only from the responsibility of a borrower, but not from the responsibility of a bailee for hire; as he has derived benefit from it, he is considered such.

There is a Boraitha supporting Amimar as follows: "If one bought utensils from a specialist to send to the house of his father-in-law, with the understanding that if they are accepted he will pay their value, if not, he will pay according to the benefit he shall derive from the pleasure they will give to the house of his father-in-law because of their being sent as presents: if an accident happens to the utensils while on the road thither, the buyer is responsible. If, however, the accident occurred while the utensils are being returned, he is free, for he is considered a bailee for hire (for he derives them from the benefit mentioned above), who is not responsible for an accident (and this is in accordance with the theory of Amimar).

There was a man who sold wine to his neighbor, and the buyer said: "I shall carry it to such a place: if I sell it there, you will be paid; if not, it will be returned to you"; and an accident

occurred while returning it. When the case came before R. Na'hman, he made him responsible. Rabha objected from the above-cited Boraitha, which states that if an

accident occurred while on the road thither, he is responsible, and while returning, he is free; and R. Na'hman answered: "This returning is to be considered as if it were on the road still for sale, because common sense says that if he could sell it while returning he would certainly do so."

Guard for me, etc. Why so? Is this not to be considered a guard in the presence of the owner (as at the: same time the article guarded was stolen, the owner of it was caring for the article entrusted to him in return, and the Scripture plainly reads [Ex. xxii. 14]: "But if the owner thereof be with it," etc.; and this is explained further on to mean, if the owner is with him in the same labor)? Said R. Papa: The Mishna means to say You guard for me to-day, and I will do so for you tomorrow.

The rabbis taught: If one say: "Guard for me this article, and I will guard yours to-morrow; or, lend me, and I will lend you"; "guard for me, and I will lend you," or *vice versa*, all are considered bailees for hire, one to the other.

There were sellers of spices who agreed that each one of them should be engaged one day in each week in preparing food for the whole company. One day they said to one of their number: "Go and bake bread for us," and he replied: "Then guard for me my garment." They, however, neglected to do so, and the garment was stolen; and when the case came before R. Papa, he made them responsible. Said the rabbis to R. Papa: Why should they be responsible? Was not the neglect in the presence of the owner? And he was embarrassed. Finally it was learned that, at the time the garment was stolen its owner was not occupied in baking, but was drinking beer (consequently the decision of R. Papa was a just one). But why was R. Papa embarrassed? There is a different opinion between the Tanaim in such a case. According to one, he is free; and according to the other, he is not. Could not R. Papa say that he agreed with the latter? The case was, the day on which he was told to bake for the company was not the day appointed for him, and he was asked to do this as a favor. He, however, says: "For this favor you will favor me by guarding my garment," and it was not owing to wilful neglect that it was stolen. And R. Papa made them responsible according to the law of a bailee for hire; and the rabbis told him that the company ought not to be held responsible, because of the law concerning a guard in the presence of the owner, to which all agree that there

is no responsibility, and therefore he was embarrassed; but finally it was learned that his decision was correct as stated above.

There were two men on the road; one was tall and the other was short. The tall man was riding an ass, and had with him an ironed sheet for a covering, and the short one was covered with a cloak (a woollen one). When they came to cross a stream, the short man placed his cloak upon the ass, and instead of it took the sheet of the tall man and wrapped himself up in it, and the water carried it away. When the case came before Rabha he made him responsible. Said the

rabbis to Rabha: Why should he be responsible? Was it not in the presence of his owner (*i.e.*, at the same time the sheet was lost, the lender was crossing the stream with the borrower's cloak; is this not equal to the case, "guard my article, and I will do so with yours," of which it is said above that if it was at the same time there is no responsibility)? And Rabha was embarrassed. Finally, it was learned that the short man took it without the consent of his comrade, and he also placed his cloak upon the ass without consent.

There was a man who let his ass to his neighbor, and told him: "See that you do not take the way by the river of Paqud, owing to its marshy road; take the way of the city of Narsh, which is dry." The man, however, took the way by the river of Paqud, and the ass died; when he returned he said: "It is true I took the way by the river mentioned, but there was no marsh." And when the case came before Rabba he said: This man may be trusted, as, if he were to tell a lie, he would say, "I took the way of Narsh." Said Abayi to him: Such a supposition cannot hold good when there are witnesses (*i.e.*, it is known to all that the way by the mentioned river is marshy).

Guard this, etc. Said R. Huna: If the depositary said: "Leave it here for you," he is not a gratuitous bailee and not a bailee for hire (*i.e.*, he has no responsibility whatever, as it can be understood to mean: "You, yourself can guard it in this place"). The schoolmen propounded a question: If he said: "Leave it anonymously," how is the law? Come and hear: "Guard it for me," and he answered, "Leave it here for me," he is considered a gratuitous bailee; from which is to be inferred that, if an anonym, he is not considered a bailee at all. On the other hand, from the above decision of R. Huna, that

the one who said "Leave it for you" is not considered as any bailee, it is to be inferred that if he said "Leave it" only, he is considered a gratuitous bailee. Therefore, nothing is to be inferred from the cited Boraitha. But shall we assume that on this point the Tanaim of the following Mishna differ? If he has brought him his things with the permission of the owner of this court, the owner is responsible. Rabbi, however, maintains that in all mentioned cases the owner is not responsible unless he accepted it for the purpose of guarding. Nay, perhaps the reason for the decision of the rabbis is because a court is usually a place where things are safe, and when the owner gave the permission to bring in the things, he did so with the intention of guarding them but in our case, which concerns a public place, the expression "Leave it" may be understood to mean, "Leave it and guard it yourself." On the other hand, the reason for the rabbis' decision may be because usually one must have permission to enter a court belonging to a private person, and when he asked leave to place his things in the court, he answered, "Enter"--*i.e.*, "enter and guard your things yourself"; but in a public place the expression "Leave it" may be understood to mean, "Leave it and I will take care of it," as, otherwise, does the man have to ask permission from him to leave it there?

On a pledge, he is a bailee for hire, etc. Our Mishna is not in accordance with R. Eliezer of the following Boraitha: "If one lends money on a pledge, and the pledge was lost, he may take an oath that there was no wilful neglect in guarding it, and collect his money from the borrower; so is the decree of R. Eliezer." R. Aqiba, however, maintains the defendant may claim, "You have lent me the money only on this pledge, and as the pledge is lost, so is your money." But if he lends a thousand zuz on a note, and also added a pledge, then all agree that he loses his money in case the pledge is lost (as then the pledge is not for any other purpose than to collect the money *from it* in case of default; otherwise the note would be sufficient even from an

encumbered estate. Hence we see that R. Eliezer considers the possessor of the pledge a gratuitous bailee, contrary to our Mishna).

Shall we assume that the above-mentioned Tanaim speak of a case in which the pledge was not worth the amount lent upon it, and their point of differing is in a case which is similar to Samuel's following theory: "If one lends to his neighbor a

thousand zuz, and pledges for them the handle of a scythe only, if the handle is lost, the thousand zuz are lost (as he accepted it as a pledge for his money, he intends to collect his money only from it)? Nay, when the pledge was not worth the amount lent, none of them agrees with Samuel, as they speak of a pledge worth the amount lent, and the point of their differing is R. Itzhak's following decision: Whence do we deduce that a creditor acquires title to the pledge? From [Deut. xxiv. 13]: "And unto thee shall it be as righteousness before the Lord thy God." Now, if the lender does not acquire title to the pledge, what righteousness is there? But how can you understand it in this way? Was, then, R. Itzhak's decision in a case where the article was pledged at the time the money was lent? The above verse cited by him treats of a pledge taken by the court (as explained elsewhere). Have you ever heard that he said the same when it was pledged at the receipt of the money? Therefore, we must say, that all agree with R. Itzhak, and they speak of a case where it was pledged at the time of receiving the money, and the point of their differing is in regard to a guardian of a lost thing, of which R. Joseph's decision was that he is a bailee for hire.

But is it to be assumed that as to the above decision of R. Joseph the Tanaim differ? Nay; all agree with his decision. Here, however, they differ in case the lender uses this pledge for the purpose of deducting from the debt. According to one, a meritorious deed was done by him by lending the money (for which he will be rewarded), and he is therefore considered a bailee for hire; and according to the other, the using of the pledge is for his own sake, and there is no meritorious deed, and therefore he is considered a gratuitous bailee.

Aba Saul said, etc. Said R. Hannan b. Ami in the name of Samuel: The Halakha prevails in accordance with Aba Saul; and he also decided so only for a hoe; a stone-cutter's chisel and a hatchet, which are frequently used, pay, the wearing off of them being very little.

MISHNA *VI*.: If one carries a barrel from one place to another, and breaks it, whether he was a gratuitous bailee or for hire, he must swear (that there was no neglect), and is free. Said R. Eliezar: I have also heard that in both cases he has to take an oath, but was wondering how such a decision could hold good.

GEMARA: The rabbis taught: If one carries a barrel from

one place to another for his neighbor and breaks it, whether he was a gratuitous bailee or for hire, he must swear; so is the decree of R. Meier. R. Jehudah, however, says: If he was a hired man, he must pay.

R. Eliezar said, etc. Shall we assume that R. Meier holds that stumbling is not considered wilful neglect? Have we not learned (First Gate, p. 62) that if one has not removed his broken pitcher or his fallen camel from a public thoroughfare, and upon it some one is injured, R. Meier makes him responsible. And the sages, however, maintain that he is free in civil court, but responsible in heavenly court, and we are aware that the point of their differing is whether stumbling is considered a wilful neglect? Said R. Hyya b. Aba in the name of R. Johanan: This oath is an enactment of the sages, as, if it would not be made, no one could find a man to carry a barrel for him.

What shall he swear? Said Rabha: "I swear that I broke it unintentionally"; and R. Jehudah comes to teach us that the oath is only for a gratuitous bailee, but that a bailee for hire must pay, each according to the law applicable to them (as in my opinion stumbling is not considered a wilful neglect, but between a neglect and an accident, therefore it must be compared with the law of stolen or lost, and there was no enactment of the sages at all); and R. Eliezar (of our Mishna) comes to teach that he has a tradition that R. Meier is right in his decision, but I do not understand how an oath could be given to both kind of bailees, as an oath is correct only concerning a gratuitous bailee, who has to swear that he has not neglected (as I also agree with R. Jehudah that stumbling is not considered neglect). But what should a bailee for hire swear? That he has not neglected? He must pay even then. And also concerning a gratuitous bailee, an oath would do if in the place where he had to pass was a declivity in the middle of the alley; but if not, how can he swear that he has not neglected, when he was stumbling on an even way? (and this, as said above, "is considered between neglect and accident"). And finally, in case of a declivity also, an oath should be given only when there are no witnesses that such was in the way; but if there are witnesses, why an oath? Have we not learned in the following Boraitha: Aissi b. Jehudah said, The Scripture reads [Ex. xxii. 10, 11]: "No man seeing it, then shall an oath of the Lord be between them both." But if there was a man who had seen it, then he must testify, and the defendant is acquitted.

There was a man who carried a barrel of wine on the main street of the city of Mahuza, and broke it on a beam projecting from a wall. When he came before Rabha he said: In the main street many people are passing; go and bring witness that there was no neglect on your part and you will be acquitted. Said R. Joseph, his son, to him: Is your decision in accordance with Aissi (mentioned above)? And he answered: Yea; as I hold with him.

There was a man who sent a messenger to buy for him four hundred barrels of wine, and he did so, but thereafter he informed the sender that the contents of all of them became sour. When the case came before Rabha, he said: If such a considerable quantity of wine became sour, people would talk about it, and become aware of where the barrels were placed, and what was the reason the wine became sour. You are therefore responsible, unless you bring witnesses to show that at the time you bought it the wine was good, and was spoiled by an accident. Said R. Joseph, his son, to him: Is your decision in accordance with Aissi? And he answered: Yea; as so the Halakha prevails.

R. Hyya b. Joseph enacted in the city of Sikhra that the carrier who carries his burden by means of carrying poles, if he carries barrels of wine, and they break, he has to pay half damages only. Why so? Because with a burden which is too heavy for one and too light for two, it is to be considered between neglect and accident. They, however, who carry by means of trimmer

beams must pay the whole (because taking such a heavy burden, which needed the strength of two, is considered a wilful neglect).

There were carriers who broke a barrel of wine belonging to Rabba b. b. Hana, while in his service, and he took their garments for the damage caused; and they came to complain before Rabh, who commanded Rabba b. b. Hana to return their garments. And when the latter questioned him: Does the law prescribe so? He answered: Yea; as it is written [Prov. ii. 20]: "In order that thou mayest walk in the way of good men." Rabba b. b. Hana did so. The carriers, however, complained again: "We are poor, we were working the whole day, we are hungry and have nothing to eat." And Rabh told Rabba he must pay them for their labor. And he asked again: Is so the law? And he answered: Yea; as it is written [*ibid*., *ibid*.]: "And observe the path of the righteous."

Footnotes

191:1 Rashi explains this passage in another manner, which is somewhat complicated. Our translation seems to us to be the right one.

201:1 This is the explanation of the Goanim, but Rashi does not agree, because it does not lessen the increase of size; he therefore interprets this in the first explanation; both, however, are too complicated, and it is difficult to understand the real meaning without a correct knowledge of the custom, weight, and measure used at that time.

202:1 Elsewhere it is explained that all anonymous Mishnayoth are in accordance with R. Meier, and this Mishna being anonymous, hence the question.

Next: Chapter VII

CHAPTER VII.

REGULATIONS CONCERNING THE TIME A LABORER HAS TO WORK, WHAT HE MAY OR MAY NOT CONSUME OF THE ARTICLE HE IS WORKING, AND ABOUT MUZZLING AN OX WHILE LABORING.

MISHNA *I.*: One cannot compel his; employees to come earlier or depart later than is customary at a place, although it was agreed upon. Where it is customary for the employees to get food, the employer must do so. In places where it is customary to furnish them with vegetables, he must do so, and all according to the custom of that country (although it was not stipulated in the agreement).

It happened with R. Johanan b. Mathia, who said to his, son: Go and hire laborers for us. He did so, with the understanding that they should be fed; and when he came to his father, he said to him: "My son, if you should provide them with meals like the banquets of King Solomon at his time, you are not sure that you have done your duty, as they are children of Abraham, Isaac, and Jacob. Therefore, go and tell them, before they begin their labor, that they are to be fed with bread and pulse only." Said Rabban Simeon b. Gamaliel: It was not necessary at all, as all must be done according to the custom of the country.

GEMARA: Is this not self-evident? The Mishna means to say, that even when he has increased their wages he cannot say that he did so that they should begin earlier and depart later than customary, as the employees may claim that the increase of wages was for the purpose of making a good job.

Resh Lakish said It is advisable for a laborer that when he departs from his labor he should relinquish a little of his time for the employer (*i.e.*, that if the custom was to work from morning until dark, he shall not manage to come home at twilight, but to stay at his work until dark). In the morning, however, he has not to leave his home before sunrise (*i.e.*, that from the time of leaving home to his place of labor he should be considered as laboring).

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But to what purpose was this statement? Let them observe the custom of that city? He alludes to a new city. But even then let him observe the custom where they come from? He means when the laborers were hired from different cities with different customs. And if you wish, he speaks in case the agreement between the employers and employees was that they shall do their work as a laborer mentioned in the Scripture [Psalm civ. 22, 23]: "The sun ariseth. . . . Man goeth forth unto his work and to his labor until the evening."

R. Zera lectured; according to others, R. Joseph taught: "It is written [*ibid.*, *ibid.* 20]: "Thou causest darkness, and it becometh night, wherein creep forth all the beasts of the forest." This

world is compared to the darkness of night. All the beasts, etc., means the "wicked," who are compared to wild beasts. "The sun ariseth in the world to come," means to the upright. "They withdraw to their lairs," means the wicked to Gehenna. "And lie down in their den," means the upright, as each upright one has a dwelling in the world to come, according to his honor. "Man goeth forth unto his work," means the upright are going to receive their reward. "And to his labor until the evening," means he who has completed his work, while alive, until the day of death.

R. Eliezar b. R. Simeon met the chief of police who was engaged in capturing thieves, and said to him: How can you capture them? Are they not compared to wild beasts (according to others, he quoted to him the following verse [*ibid*. x. 9]: "He lieth in wait in a secret place like a lion in his den," etc), and perhaps you capture respectable men, and the wicked remain at large? And he answered: What can I do? I am so ordered by the king. Then he rejoined: I will instruct you how to do. Enter a wine-house at the fourth hour of the day (first meal-time), and if you will see a man drinking wine, holding his goblet and slumbering, make an investigation about him. If he is a scholar, he was certainly engaged in his studies at night; if he is a laborer, it may be he was engaged in his labor at night; and if he was a night laborer, and it was not heard that he was working at night, still it must be investigated-perhaps he has done such labor that causes no noise; but if this man is nothing of this kind, he is surely a thief, being engaged the whole night in his miserable work, and you may capture him. This advice was heard in the ruler's house, and it was decided *that the reader of the letter himself should be the messenger*. (This

was the parable at that time, which means that the adviser himself should be engaged for the same purpose.) R. Eliezer was brought and appointed to capture the thieves, and so he did. Sent to him R. Jehoshua b. Kar'ha: "Vinegar descending of wine" (this parable was also applied to men of reputable origin who turn to bad habits), "how long will you deliver people of the Lord for slaying?" And he answered: "I weed the thorns of the vineyard." And the above R. Jehoshua sent to him again: "Leave it for the owner of the vineyard; he himself will weed the thorns." One day he was met by a washman, who called him "Vinegar descending of wine"; and he thought, because the man was so brazen he must be wicked, and gave orders to capture him, which was done. When his wrath abated he tried to release him, but he could not, and he applied to himself the verse [Proverbs, xxi. 23]: "Whoso guardeth his mouth and his tongue, guardeth his soul against distresses." Finally the prisoner was to be hanged, and R. Eliezer stood under the gallows and wept. Said the prisoner to him: "Rabbi, do not be sorry; I and my son have committed adultery on the Day of Atonement." The rabbi, placing his hand on his abdomen, said: Rejoice mine entrails; if your doubts are so, how is your certainty. I am sure that no worms shall consume you after death. The same case happened with R. Ismael b. R. Jose, that he was ordered by the Government to capture thieves. Elijah met him and said: "How long will you deliver the people of the Lord for slaying?" And he answered: "What can I do? So is the order of the king!" And Elijah rejoined: "Your father escaped to Assia; you can do the same to Ludqia."

[Both R. Ismael b. R. Jose and R. Eliezer b. R. Simeon were so big-bellied that when they were standing face to face a yoke of oxen could pass under them.] R. Johanan said: I am a remainder of the beauties of Jerusalem.

He who would like to see a beauty similar to that of R. Johanan shall take a silver goblet just out of the worker's hands, with the mark of the flame still to be seen on it, and shall fill it with the

germs of scarlet "rumna," put on its top a crown of red roses, and place it between the sun and the shadow; and in the reflection from it one may see but a part of R. Johanan's beauty.

Is that so? Did not the master say that the beauty of R. Kahana is similar to R. Abuhu? The latter beauty is likened to that of Jacob the patriarch, and his is likened to the beauty

of Adam the first; hence R. Johanan was not mentioned among the beauties? Because he had no beard.

R. Johanan used to sit by the gate of the bath, so that when the daughters of Israel would return from taking their legal bath, they should meet him, and bear children like to him in beauty and scholarship. And when the rabbis questioned him: Are you not afraid of an "evil eye"? he answered I am a descendant of the children of Joseph, and no "evil eye" can do harm to them; as it is written [Genesis, xlix. 22] "Joseph is a fruitful bough, a fruitful bough by the eye." [1] And R. Abuhu said: Do not read "by the eye," but "above the eye" (which means that no eye can do harm to him). R. Jose b. Hanina said: He infers this from the following verse [*ibid*. 48]: "And let them grow into a multitude" (like fish, etc.). [2] As the water covers the fish in the sea, so that the eye can do no harm to them, so is it with the descendants of Joseph.

One day R. Johanan was bathing himself in the Jordan. When Resh Lakish saw him, he jumped into the Jordan, and came to him. Said R. Johanan to him: Your strength shall be devoted to the study of the Torah. Rejoined Resh Lakish: Your beauty is fit for women. Said R. Johanan: If you will repent (and leave your profession), I will give you my sister, who is still more beautiful than I am. Resh Lakish accepted this proposition [and when he was about to jump for his garment, he could not do so (Rashi explains this by saying that because he accepted the yoke of the Torah he lost his strength)]. R. Johanan then instructed him and made a great man of him. One day there arose a dispute in college about: the time at which different new iron weapons, as swords, knives, etc., became subject to defilement. R. Johanan said: From the time they were taken from the furnace; and Resh Lakish said: From the time they are taken out of the cooling water. Said R. Johanan: The former robber understands his handicraft (knows the nature of deadly weapons). Rejoined Resh Lakish: And what good have you done me? When in my old profession, I was also called master, as in my new profession. Rejoined R. Johanan: I have done much good to you, as I brought you under the

wings of the Shekhinah. R. Johanan was nevertheless dejected, and Resh Lakish became ill. The wife of Resh Lakish, who was the sister of R. Johanan, came to the latter and wept, saying: Pray for his health, for the sake of my son. And in response he cited the following verse: "Leave thine orphans to me, I will give them their livelihood" [Jerem. xlix. 11]. She continued weeping: Do pray, for my sake, that I am not left a widow. And he cited to her in answer the end of the same verse. Finally, R. Simeon b. Lakish's soul went to rest, and R. Johanan grieved very much after him. And the rabbis of the college were searching for a man who would be able to soothe him, and decided that R. Elazar b. Pdath, whose decisions are original, would be fit for this task. And he went to R. Johanan's college and sat before him, and when R. Johanan said anything, he used to say: There is a Boraitha which supports you. Then R. Johanan exclaimed: Is it you who

desires to replace bar Lakish? In his time, when I said anything, he raised twenty-four objections, and I had to make them good with twenty-four answers, so that the discussion became very animated. You, however, say to everything: There is a Boraitha which supports you. Am I not aware that my saying has a good basis? Finally, R. Johanan tore his garments, wept, and cried: "Where art thou, bar Lakish? Where art thou, bar Lakish?" He continued crying until he became demented, and the rabbis prayed for his death, and his soul went to rest everlasting.

Notwithstanding that R. Simeon b. Eliezar said above that he is sure all his deeds were just, he was not satisfied, and prayed for mercy from Heaven, and invoked upon himself chastisements, and became so afflicted that in the night they had to spread under him sixty felt spreadings, and in the morning they removed from him sixty basinfuls of blood. In the morning his wife used to make for him sixty kinds of pap, which he ate, and became well. His wife, however, would not allow him to go to the college, in order that he might not be troubled by the rabbis; and so he used to say every evening to his afflictions: "Come, my brothers," and in the morning, "Go away, for I do not want to be prevented from studying." One day his wife heard him call the afflictions, and she exclaimed: You yourself bring these afflictions upon you! You have exhausted the money of my father (through your illness). She left him and went to the house of her father. In the meantime it happened

that sailors made him a present [1] of sixty slaves, each of them holding a purse with money; and the slaves prepared for him daily the sixty kinds of pap he used to eat. One day his wife told her daughter: Go and see what your father is doing. And she went. Her father then said to her: Go and tell your mother that we are richer than her parents. And he applied to himself the verse [Prov. xxxi. 14]: "She is become like the merchant ships, from afar doth she bring her food." Finally he ate, drank, became well, and went to the college, and there he was questioned about sixty kinds of blood of women, and he purified all of them. [2] The rabbis murmured, saying: Is it possible that of such a number there should not be a doubtful one? And he said: If it is as I have decided, all of them shall bring forth male children; if not, then there shall be at least one female among them. Finally, all of the children were born males, and were named Eliezar after him. [There is a Boraitha, Rabbi said: "Woe to the wicked Government which has prevented R. Eliezar from attending the college, and, because of this, the multiplying of Israel."] When he was about to die, he said to his wife: I know the rabbis are angry with me (for I have captured many of their relatives as thieves), and they will probably not attend my funeral as they ought to do. You shall therefore leave me in my attic, and you shall not be afraid of me. Said R. Samuel b. R. Na'hmani: I was informed by the mother of R. Jonathan that she was told by the wife of R. Eliezar that no less than eighteen and no more than twenty-two years after his death she kept him in his attic. She used to ascend every day to examine his hair, and found nothing, and when it happened that one hair fell out, blood was visible. One day she found a worm in his ear, and she was dejected. But he appeared to

her in a dream, telling her: It is nothing to be dejected for, as this is a punishment for allowing a young scholar to be insulted in my hearing, and not protesting against it, as I ought to have done. When two parties had a law-suit, they used to come and stand by the door, and each of them would explain his cause. Thereafter a voice was heard from the attic: You, so-and-so, are just

with your claim; or, You, so-and-so, are unjust. It happened one day that his wife was quarrelling with a neighbor, and the latter exclaimed: It may occur to you, as to your husband who is not buried. And when the rabbis heard this, they said: When this conduct goes to such a length, it is an insult to the deceased. According to others, R. Simeon b. R. Jo'hai, his father, appeared to one of the rabbis in a dream, and said: There is my little dove among you, and you do not care to bring it to me. And the rabbis decided to employ themselves with his funeral. However, the inhabitants of Akhbria would not let them remove R. Eliezar from his attic, because during all the years R. Eliezar slept in his attic not a wild beast had come to their city. On one eve of the Day of Atonement the inhabitants of the city mentioned were troubled, and took away the guard from R. Eliezar's house; and the rabbis hired some men of the village of Biri, and they took the corpse with the bed and brought it to the rabbis, who removed it to the cave of his fathers. They, however, found the cave surrounded by a snake, and said: Snake, snake, open thy mouth, and let the son enter to his father. And it did so. Rabbi then sent a message to the widow that he would like to marry her, and she answered: An object which was used by a holy man should not be used by an ordinary man. There is a parable: Should the hook which was used by the hero to hang up his weapon be also used by Kulba the shepherd to hang up his knapsack? Sent Rabbi to her: Let it be granted that he was greater than myself in wisdom. Was he also greater than I in meritorious acts? And she answered: You admit, then, that he was greater in wisdom than you, of which I was unaware. I am, however, aware that in meritorious acts he was greater than you, as he submitted to chastisements, which you did not.

Where is it known that R. Eliezar was greater in wisdom than Rabbi? When Rabban Simeon b. Gamaliel and R. Jehoshua b. Kar'ha were sitting in the college on benches, R. Eliezar and Rabbi were sitting before them on the floor, objecting and answering (discussing the Halakhas taught). And once the

sages said: We are drinking the water of the two young men, and we let them sit on the floor! They prepared benches for them, and they occupied them. Said R. Simeon b. Gamaliel to Rabbi: I possess only one little dove (only one son), and you want me to lose it (he was afraid of an "evil eye," as Rabbi was then too young). And they made him descend to his former seat on the floor. Then R. Jehoshua b. Kar'ha said: Is it right that he who has a father shall live, and he who has not shall die? (*i.e.*, because R. Eliezar was an orphan, we shall leave him on the bench without fear of an "evil eye," even though he was of the same age as Rabbi). They therefore made R. Eliezar also take his former seat on the floor. Eliezar became dejected, saying: They compare me to him. Until that time, when Rabbi said anything, R. Eliezar used to support him; from that time, however, when Rabbi used to say: I have to object, R. Eliezar would say to him: You mean to object from this and this; here is the answer to your objection, and also to an objection you intend to raise from this and this, and so you are surrounding us with lots of objections which are of no value. Rabbi became dejected, and came to complain before his father, who answered: You should not be angry, as he (Eliezar) is a lion, the son of a lion, and you are a lion, the son of a fox. And this is what Rabbi said elsewhere: There were three modest men, my father, the children of Bathyra, and Jonathan the son of Saul. My father, as said above, that he compared himself to a fox; the Beni Bathyra, as it is said (Passover, p. 127), that they who were princes themselves have left their places to Hillel, as he was greater in wisdom than they; and Jonathan b. Saul, as it is written [I. Samuel, xxiii. 17]: "And thou wilt be king over Israel, and I will be next unto thee." [But perhaps Jonathan said so because he had seen that the whole world was sympathizing with David; and also the Beni Bathyra, because they were compelled to do so, as they could not answer the questions submitted to them; therefore R.

Simeon b. Gamaliel was certainly one of the modest men of the world.]

Said Rabbi: I see that chastisements are favored. And he accepted for himself afflictions for thirteen years, six of them with cold chills, and seven of them with scurvy.

The riding-master of Rabbi was wealthier than King Sabur. When he used to feed the animals of Rabbi, the voices of the animals were heard for three miles. And he used to do this at the time Rabbi was doing the necessary of men, and he was

crying so from pain that his voice was heard all over the neighborhood; and notwithstanding the voice of the animals, his voice was heard farther, so that even the sailors on the sea heard him. (Says the Gemara:) Nevertheless, the afflictions of R. Eliezar b. R. Simeon were of more value than Rabbi's, as the former's were caused by love, and went away for the same reason; and Rabbi's were caused by an act, and went away also in the same manner. Caused by an act, as follows: There was a calf which was about to be taken for slaughtering, and it ran away, and put its head under the garment of Rabbi, and cried. And Rabbi answered: Go; you are created for this purpose. Then it was said by Heaven that, as he has no mercy with creatures, he shall be afflicted with chastisements. And the afflictions also disappeared because of the following act: One day his female servant was about to dispose of kittens, and Rabbi said to her: Leave them alone; it is written [Psalm cxlv. 9]: "And his mercies are over all his works." Then it was said by Heaven: Because he has mercy with creatures he shall be dealt with mercifully and relieved from his chastisements.

During all the years R. Eliezar was suffering from his afflictions, men were not dying before mature age; and during all the years Rabbi was suffering from his illness, it never happened that the country was in need of rain. It chanced that Rabbi came to the place where R. Eliezar used to dwell, and asked whether that upright man had left a son. And he was told that there was a son, and every prostitute whose price was two dinars paid *to him* four dinars. And Rabbi sent for him, surrendered him to R. Simeon b. Aissi b. Lqunia, the brother of his mother, and left for him a diploma as rabbi, against the time that he should be able to graduate. The first few days the youth used to say: I will return to my place. And his uncle tried to persuade him to give his attention to study, saying: People want to make you a scholar, and you will be rewarded with a golden candlestick, and named Rabbi, and you say you will return to your former place. He persuaded him so much that he swore never to mention it again. When he grew up he went to the college of Rabbi, and when the latter heard his voice he said: The voice of this young man is similar to the voice of R. Eliezar b. R. Simeon. And he was told that this youth was his son. Rabbi then applied to him [Prov. xi. 30]: "The fruit of the righteous is the tree of life, and the wise draweth souls to himself." "The fruit of the righteous means R. Jose b. R.

[paragraph continues] Eliezar, and the wise, etc., means R. Simeon, his uncle." When this R. Jose died, they brought him to the cave of his father, and found it encircled by a snake. The rabbis said Akhna, akhna (snake), open thy mouth, and let the son enter to his father. But it did not listen to them. They thought it was because his father was a greater man. A heavenly voice, however, was heard: Not because the father was greater than the son, but because the father was

suffering with his father in the cave, 1 which was not the case with R. Jose b. Eliezar.

It happened once that Rabbi came to the city where R. Tarphon used to dwell, and asked whether the same, who used to swear by his children (I shall bury my children if it is not so-and-so), left a son. And he was told that he left no son, but a grandson of his daughter, and he is such a beauty that the prostitutes paid him. He sent for him, and told him: If you will repent I shall give you my daughter. And he did so. According to some, he married Rabbi's daughter, and thereafter divorced her; and according to others, he did not marry her at all. People should not say that he repented only for the sake of this woman. [But what was the reason that Rabbi troubled himself so much in such cases? It was because it was said by R. Jehudah, in the name of Rabh; according to others, R. Hyya b. Abba, in the name of R. Johanan; and still according to others. R. Samuel b. Na'hmani, in the name of R. Jonathan: He who teaches the law to the son of his neighbor is rewarded by becoming a member of the heavenly college; as it is written [Jeremiah, xv. 19]: "Behold, thus said the Lord: . . . Thou shalt stand before me, and if thou bring forth the precious from the vile, thou shalt be as my mouth." And he who teaches the law to the son of a commoner, even if there was an evil heavenly decree against the world, it is abolished for the sake of this meritorious act, as it is written in above-cited verse.

R. Parnakh, in the name of R. Johanan, said: He who is a scholar himself, and also his son and also his grandson, the Torah does not depart from his children for everlasting; as it is written [Isaiah, lix. 21]: "And my words which I have put in thy mouth shall not depart out of thy mouth, nor out of the mouth of thy children, nor of the mouth of thy children's children, said the Lord, from henceforth and unto all eternity." The repetition, "said the Lord," in the same verse signifies that the Holy One,

blessed be He, says: "I am the surety that so it will continue." What is meant by eternity? Said R. Jeremiah: In the later generations the Torah returns to its old inn.

R. Joseph fasted forty days, and he heard a heavenly voice: "It shall not depart out of thy mouth." He fasted another forty days, and heard: "It shall not depart out of thy mouth and out of thy children." He fasted then forty days more, and he heard: "Also out of the mouth of thy children's children." He then said: For the later generations I have no more to fast, as the Torah usually returns to its old inn.

R. Zera, when he ascended to Palestine, fasted one hundred days in order to forget the Gemara of the Babylonians, to the end that he should be no longer troubled by them. Then he fasted another hundred days, that R. Eliezar might not die during his life, as then he would have to bear all the troubles of the congregation. Then he fasted another hundred days more, that the fire of Gehenna might not affect him. Every thirty days he used to examine himself by a heated oven, and the fire did not affect him. It happened, however, one day, that the rabbis gave their eyes to this, and he burned his hips, and henceforth he was named "the little one with the burned hips."

R. Jehudah said in the name of Rabh: It is written [Jeremiah, ix. 11, 12]: "Who is the wise man that may understand this? And who is he to whom the mouth of the Lord hath spoken, that he may declare it; for what is the land destroyed?" etc. The beginning of the verse was questioned by the wise, but without a result. The continuation of the verse was questioned by the prophets,

and also without any result, until the Holy One, blessed be He, explained it himself in the succeeding verse: "And the Lord said: Because they forsook my law, which I had set before them."

Said R. Jehudah in the name of Rabh: "The words which I have set before them" (which are superfluous, as it is written above, "my law") signifies that even when they were occupied in the study of the law, they have not pronounced the prescribed benediction for it (and with this they have shown that the law is not respected by them as it ought to be).

R. Hama said: It is written [Prov. xiv. 33]: "In the heart of the man of understanding resteth wisdom," which means "a scholar a son of a scholar"; "but (the little which is) in the bosom of fools is made known" means "a scholar the son of a commoner." Said Ula: This is what people say: A single issar

in a pitcher makes kish-kish. (A single coin in a pitcher proclaims its presence.) Said R. Jeremiah to R. Zera: What is the meaning of [Job, iii. 19]: "The small with the great is there, and the servant free from his master"? Are we ignorant that the great and small are there? It must therefore be interpreted thus: He who makes himself little for the purpose of studying the Law in this world, he becomes great in the world to come; and also he who hires himself for a slave to the Law in this world, he becomes a lord in the world to come.

Resh Lakish used to mark the caves of the rabbis (to the end that priests might not step on them, as it is prohibited to them to defile themselves by graves). When he was about to do so with the cave of R. Hyya, it was concealed before him, and he became dejected and said: "Lord of the Universe! Have I not occupied myself with the discussions of the Torah like R. Hyya?" And a heavenly voice answered him: Yea, thou hast occupied thyself as much as R. Hyya, but thou hast not multiplied the Torah as much as he did.

When R. Hanina and R. Hyya were quarrelling, said the former to the latter: Are you quarrelling with me, who am able to renew the Torah, should it be forgotten, by means of my ingenious discussions? And he answered him: Are you quarrelling with me, who have caused that the Torah should not be forgotten in Israel? I did thus: I have sown flax, prepared nets of it, caught deer, made of their skins parchment, and with their meat I fed orphans. I wrote on the parchment the five books of the Pentateuch, each on a separate roll, and used to go to a city, taking five little boys, instructing each of them in one of the above books until they knew the contents by heart. I took also other six boys, and instructed each of them in a different section of the Mishnayoth, saying to the boys, "Until I return, each of you shall teach the others the book which is known to one of you and not to the other"; and so I have caused the Torah not to be forgotten in Israel. And this is what Rabbi exclaimed: How great are the acts of Hyya! Said R. Ismael b. R. Jose to him: Are they then greater than yours, master? And he answered: Yea! Greater also than my father's? (Questioned R. Ismael again.) And he said: Nay! No one could bear such in his mind.

R. Zera said: Yesterday night R. Jose b. Hanina appeared to me in a dream, and I questioned him: Where are you placed in

the heavenly college? And he answered: By the side of R. Johanan. And where is R. Johanan placed? By the side of R. Janai. And where is R. Janai placed? By the side of R. Hanina. And R. Hanina? By the side of R. Hyya. I then said: Is not R. Johanan worthy to be placed by the side of R. Hyya? And he answered: To a place which is illuminated and from which rays come forth, who will dare to bring into it the sun of Napha? R. Habiba said: I was told by R. Habiba b. Surmkhi, who has seen one of the rabbis to whom Elijah frequently appeared, that in the morning his eyes were nice and in the evening they were red, as if burnt by fire. And to the question, What is the matter? he told me: I have asked Elijah to show me the rabbis while ascending to the heavenly college. And he rejoined: At all of them you may look, but toward the palanquin of R. Hyya you must not look. And how shall I recognize it? All the rabbis are accompanied by angels when ascending and descending, except the palanquin of R. Hyya, which does so of itself. I, however, could not restrain myself, and gazed upon it. Then two rays blinded my eyes. On the morrow I went to the cave of R. Hyya, fell upon it, and prayed, saying: I am studying the Boraithas of you, O master! and I occupied myself with their explanations; then I was cured.

Elijah used to appear frequently in the college of Rabbi. On one of the days during new-moon, it was a bright day, and Elijah did not appear; and when he questioned him thereafter the reason why, he rejoined: It takes time until I awake Abraham, wash his hands, await until he prays, and bring him afterwards to sleep again. The same I do with Isaac, and the same with Jacob. Rabbi questioned him again: Why do you not awake all of them at the same time? "This I am not allowed, as it is to be feared then, if they should all pray together, they would bring the Messiah before his time." And Rabbi asked him: Is their equal to be found in this world? And he said: Yea! There are R. Hyya and his sons. Rabbi then ordered a fast-day, and placed R. Hyya and his sons on the altar, and when they came to the benediction, "He who causes the wind to blow," a wind came, and when they came to the words, "He who causes rain," rain came. When, thereafter, they were about to say the benediction of "resurrection," the world began to tremble, and in heaven it was questioned, "Who has revealed the secret to mortals?" And Elijah was found guilty,

and they punished him with sixty fiery lashes. He then appeared on the altar as a fiery bear, and scattered them.

Samuel of Ir'hina was the physician of Rabbi. When Rabbi had sore eyes, he was about to inject some medicine into them, and Rabbi said: I cannot endure it. He then wanted to apply salve to the eyes, but Rabbi prevented him, as even this he would not endure. He then poured some medicine into a tube under his head in bed, and he was cured. Rabbi troubled himself to invest Samuel with the title "Rabbi," but never had the opportunity, and Samuel said to him . Let the master not be so sorry. I have seen the book which was shown to Adam the first, and there it is written: "Samuel of Ir'hina will be named a sage, but not a rabbi, and Rabbi will be cured through him." It is also written there: "Rabbi and R. Nathan are the finishers of the Mishnayoth. R. Ashi and Rabina will be the finishers of the Gemara." 1

R. Kahana said: I was told by R. Hama, the son of Hassa's daughter, that R. b. Na'hmani's death occurred by conspiracy, namely: It was denounced to the Government that there was a man

among the Jews who prevented thirteen thousand Jews from paying head-tax one month in summer and one month in winter time (*i.e.*, that in the months of Nissan and Tishri about thirty thousand men went to hear Rabba's lectures for the holidays, and the officers of taxes could not find them at home to collect the taxes. The Government sent an officer to take him, but could not find him at home. He went in search of him from Pumbaditha to the cities of Aqura, Agina, Ch'him, Tripha, and Eina Damim, and from Eina Damim back to Pumbaditha. It happened that the officer took the same inn in which Rabba was concealed. There was a set table for the officer, and after he drank two goblets of wine the table was taken away, and it happened that the face of the officer was turned backwards. The host came to Rabba, and questioned him what to do, as he was

afraid of trouble because of the misfortune which happened to the officer of the king; and Rabba ordered that a table should be set again with one goblet of wine, and thereafter to take the table away. They did so, and the man was cured. Then the officer said: I am now certain that the man I want is here. And he searched for him and found him, saying: I will go from here and report that I could not find him. Should they put me to death, I will not disclose it; but should they torture me, I will tell the truth. He then took Rabba, locked him up in a chamber for men, and took the key with him. Rabba prayed, and the wall fell miraculously; he ran away and went to Agina, sat down on a *crudum* of a tree, and was starving. In the meantime there was a dispute in the heavenly college about a case of purity, in which some of them decided that it is impure and some of them pure, and it was decided that R. b. Na'hmani should decide the case, as he used to say that he was the only one who knew the law of Nagaim and the only one who knew the law of Oh'loth. They sent the angel of death for him, but he could not touch him, as he did not cease studying one moment. In the meantime a wind blew and made noise with the trees of the forest, and Rabba thought that the officers were after him and said: It is better for me to die than to be taken by the Government. And when he was dying, he was questioned about the dispute in the heavenly college, and he decided it was pure. Then a heavenly voice came forth, saying: Well is it with thee, R. b. Na'hmani, that thy body is pure, and that thy soul left thy body while thou wast saying "pure." A *pitiacium* (writing) fell in the city of Pumbaditha: "Rabba b. Na'hmani was taken to the heavenly college." Then Abayi, Rabha, and all rabbis of the college went to occupy themselves with his funeral; but they did not know where to find his body, and they went to Agina, and they saw a swarm of birds which made a shade under them, and they remained so, without moving, and the rabbis understood that this was the place where the dead was to be found. And they lamented for him three days and three nights. Another *pitiacium* was found: "He who will separate himself will be put under the ban." And they lamented for him seven days more. Then another *pitiacium* (from heaven) fell: "Go to your houses in peace.

On that day that Rabbi died a storm arose and threw a certain merchant who was riding on a camel on one side of the River Papa to the other side of the same. Being astonished, and asking,

[paragraph continues] What is it? he was answered: Rabba b. Na'hmani is dead. He then arose and said: "Lord of the Universe! The whole world is thine, and Rabba b. Na'hmani is also thine. Thou dost love Rabba, and Rabba loveth thee--why, then, shouldst thou destroy the world?" And the storm abated.

R. Simeon b. Halaphta was a fat man. 1 On one hot day he ascended to the top of a mountain to cool himself, with his daughter, telling her to fan him, promising her therefor a talent's worth of nard. In the meantime a wind began to blow, and he said: How many talents' worth of nard is to be given to the Lord of the winds?

And all according, to the custom of the country, etc. What does the Mishna mean by adding the word "all"? It means in places where it is usually the custom to give the laborers, after their meal, a certain measure of beverage, so that the hirer had no right to say to the laborers to bring vessels for this purpose, but provide for them himself.

It happened with R. Johanan b. Mathia, etc. Is not this fact a contradiction to the Mishna's statement? The Mishna is not completed, and must read thus: If, however, the hirer has promised them food in such places as it is customary to furnish them with food without any promise, it must be considered that he has to furnish them with something better than customary, as it happened with R. Johanan b. Mathia, who said to his son: Go and hire laborers for us. He did so, with the understanding that they should be fed, and when he came to his father, be said to him: "My son," etc., ... "as they are children of Abraham, Isaac, and Jacob."

Shall we assume that the meals of Abraham were better than those of Solomon? Is it not written [I. Kings, iv. 22, 23]: "And Solomon's provision for one day was thirty kors of fine flour and sixty kors of meal, ten fatted oxen, and twenty pasture oxen, and a hundred sheep, besides harts, and roebucks, and fallow deer, and fatted fowl." And Gurion b. Astirin, in the name of Rabh, said that the fine flour and meal were only for skimming the foam; and R. Itz'hak said, that each wife of the thousand Solomon had, used to prepare such a meal, thinking that he would come to partake his meal with her. And concerning Abraham it is written [Gen. xviii. 7]: "And Abraham ran unto the herd, and fetched a calf tender and good." And R.

[paragraph continues] Jehudah said in the name of Rabh: A "calf" is one; "tender," two; and "good," three? Abraham took three oxen for three men (which makes an ox for each man). And concerning Solomon there were for the many people of Israel and Judah, as it is written [I. Kings, iv. 20]: "Judah and Israel were numerous as the sand which is by the sea," etc.

What is meant by fatted fowl? Rabh said: Crammed fowl. And Samuel said: They were fat without cramming. And R. Johanan said: An ox fed without doing any labor, and a hen that is not occupied with hatching.

R. Johanan said: The best of cattle is an ox, and the best of fowls is a hen. Said Ameimar: R. Johanan meant a black hen that feeds herself in the vineyard with the seeds of grapes.

It is written [Gen. xviii. 7]: "And Abraham ran unto the herd," etc. Said R. Jehudah, in the name of Rabh: A "calf" is one; "tender," two; and "good" is three. [Why not say one, as people say tender and good? Then it should be written, a "good, tender calf." Why "and good"? To signify that it was another one. But then there are only two? As the words "and good" signify another one, so signifies also the word "tender."] Rabba b. Ula, according to others R. Hoshia, and still according to others R. Nathan b. Hoshia, objected. Is it not written [*ibid*., *ibid*.]: "And gave him to a young man, and he hastened to dress him"? 1--*i.e.*, that each of them he gave to a separate

man for dressing. Farther on it is written: "And he took cream and milk, and the calf which he had dressed," *i.e.*, that each which was ready first, he placed before them. But why were three necessary. Was not one sufficient? Said R. Hanan b. Rabha: He wanted to give to each of them a whole tongue with mustard. 2 Said R. Tan'hum b. R. Huilar: One must not change the custom of that place where he abides, as Moses, when he ascended to heaven, did not eat; and the angels of heaven, when they descended to earth, ate and drank. Ate and drank! Have they then a stomach? Say: it seemed as if they were eating and drinking.

R. Jehudah said in the name of Rabh: All that Abraham did for the angels by himself, the Holy One, blessed be He, did for his children by himself; and what Abraham did through a messenger, the Holy One did the same for his children through a

messenger: "And *Abraham* ran unto the herd"; "and a wind went forth from the *Lord*" [Numb. xi, 31]. "*He* took cream and milk"; "*I* will let rain for you bread from heaven." "And he stood by them"; "*I* will stand before thee " [Ex. xvii. 6]. "And Abraham went with them" [Gen. xviiii. 16]; "And *the Lord* went before them" [Ex. xiii. 21]. "*Let* a little water"; "and *thou* shalt smite the rock" [Ex. xvii. 6]. And the same (Rabh) differs with R. Hama b. Hanina, who said that in reward for three things which Abraham had done his children got three things; namely, for the cream and milk they were rewarded with *mannah*; for that "he stood by them" under the tree, his children were rewarded with the pillar of cloud; and for "let a little water," etc., they were rewarded with the well of Miriam.

"*Let a little water*," etc. Said R. Janai b. Ismael: The angels said to Abraham: Do you suspect us to be Arabs who bow themselves to the dust of their feet? Thou hast a son, Ismael, who is doing so.

"And the Lord appeared unto him in the grove of Mamre . . . in the heat of the day" [Gen. xviii. 1]. What does this signify? Said R. Hama b. Hanina: This day was the third of Abraham's circumcision, and the Holy One, blessed be He, made him a sick call; and to the end that Abraham should not trouble himself with guests, the Lord caused the day to be intensely hot, so that no one should go out. He, however, sent out his servant, Eliezer, in order to search for guests. He went, but found none. Abraham said: I do not trust you (this is what people say, there is no trust in slaves), and went out himself. Seeing the Lord, blessed be He, standing by the door, for that it is written: "Pass not away, I pray thee, from thy servant" [Gen. xviii. 3] (and to favor him, the Lord sent three angels), and for that it is written: "And he lifted up his eyes and looked," etc. [*ibid*., *ibid*. 2]. "He ran to meet them." But is it not written, he stood near them? Why, then, did he run after them? Previously they were standing near him, but seeing that he was afflicted with pain, they withdrew, and be ran after them.

Who were these three men? Michael, Gabriel, and Raphael. Michael came to give the message to Sarah, Raphael to cure Abraham, and Gabriel to destroy Sodom. But is it not written [*ibid*. xix. x]: "And two angels came to Sodom"? Michael accompanied Gabriel, in order to rescue Lot, and so it seems to

be as it is written: "And *he* overthrew," etc. [*ibid*., *ibid*. 25]. It is not written they have done so. Why is it written concerning Abraham: "So do as thou hast spoken"? [*ibid*. xviii. 5]; and concerning Lot it is written, "and he pressed upon them"? [*ibid*. xix. 3]. Said R. Elazar: Infer from this, you may decline an offer from a person inferior to yourself, but not from a superior. It is written: "And I will fetch a morsel of bread"; and after this it reads: "And Abraham ran unto the herd." Said R. Elazar: Infer from this, that the upright promise little and do much, and the wicked promise much and do nothing. And where do you take it from? From Ephron [*ibid*. xxiii. 15]: "A land . . . what is between me and thee"; and farther on it reads: "And Abraham understood the meaning of Ephron . . . four hundred shekels of silver current with the merchant" [*ibid*. xix. 16]. Hence they did not take any other money but such as was current with merchants.

"And they said unto him, Where is Sarah thy wife," etc? Said R. Jehudah, in the name of Rabh, according to others in the name of R. Itz'hak: Did the angels not know that Sarah was in her tent? Why did they ask for her? In order to increase her grace in the eyes of her husband. R. Jose b. Hanina, however, said: For the purpose of sending her a goblet of benediction.

It was taught in the name of R. Jose: Why are the letters A j v of the word •••• pointed in the Holy Scrolls? The Torah teaches us to be kind in worldly affairs, that when one comes as a guest, he may make inquiries of the host for the health of his wife.

"After I am waxed old," etc. [Gen. xviii. 12]. Said R. Hisda: After her body was wrinkled, and the folds increased, the body was again made smooth, the wrinkles of age were straightened out, and beauty returned. It is written [ibid.]: "My lord being old"; and farther on it is written: "I am old." Hence, the Holy One, blessed be He, did not refer to Abraham, as she said. From that the disciples of R. Ismael said: Great is the peace, as even the Lord changed her words for the purpose of peace, as it is written She said my lord is old . . . since I am old."

It is written: "Who would have said unto Abraham that Sarah should have given children suck?" [Gen. xxi. 7]. How many children did Sarah suckle? There was only one. Said R. Levi: That day on which Abraham weaned Isaac, he made a

great banquet; and his neighbors of all nations murmured, saying: Behold, an old man and an old woman took a child from the market, proclaiming him for their own son. And this is not enough for them, but they are giving banquets, to convince people that it is as they say. What did our father Abraham? He had invited all great men in his generation, and Sarah our mother invited their wives, and every one of them brought her child along, but without their nurses, and a miracle occurred to Sarah, that her breasts opened like two springs, and she nursed all the children there. But it was still murmured and said: As Sarah was only ninety years old, it is possible that she had borne a child miraculously; but Abraham, who is over a hundred years, how is it possible that he should be able to beget children? Then the face of Isaac at once changed, and became of the appearance of Abraham, so that every one proclaimed that Abraham begot Isaac. Until the time of Abraham there was no mark of old age, and he who wanted to talk to Abraham spoke to Isaac (when he was grown up), or *vice versa*; then Abraham prayed, and the mark of old age was visible, as it is written [*ibid*. 47]: "And Abraham was old." Until the time of Jacob there was no sickness (and death occurred suddenly); and Jacob prayed that sickness would come before death; as it is written [ibid. xliii. 1]: "Behold, thy father is sick."

Until the time of the prophet Elisha there was no one who became cured from sickness; but Elisha, however, prayed and was cured; as it is written [II. Kings, xiii. 14]: "Elisha was sick of the sickness whereof he had to die," which signifies that previously he was sick and cured.

The rabbis taught: Three times was Elisha sick. First at the time he discharged Gekhsee from his service, and secondly when he set the bears on the children [II. Kings, ii. 24], and the third time when he died.

With bread and pulse only. Said R. A'ha b. R. Joseph to R. Hisda: Does the Mishna state bread of pease or bread and peas? And he answered: By God the letter "Vahv" (which means "and") is required to be as large as a rudder of the Labroth.

Rabban Simeon b. Gamaliel, . . . all must be according, etc. What does he mean by the word "all"? This was learned in the following Boraitha: "If one hires a laborer, to pay him in accordance with the custom of this city, he may pay him according to the smallest scale of wages; so is the decree of

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[paragraph continues] R. Jehoshua. The sages, however, say the payment must be at a middle rate, neither too high nor too low."

MISHNA *II*.: The following laborers have a right, according to the law of Scripture, to partake of the fruits of their laboring: They who are engaged with the growing of produce may partake of that which is ripe, but is still attached to the ground, and also of the produce which is already cut off from the ground, but not yet ready for delivery. However, the above must be produced from the ground. They must not, however, partake of the fruits of their laboring if the produce is attached to the ground, but not ripe, and also if it is cut off and ready for delivery; neither may they partake of the fruits of labor of which the products do not grow in the ground (as, *e.g.*, the milking of cattle or the making of cheese).

GEMARA: Whence is all this deduced? It is written [Deut. xxiii. 25]: "When thou comest in thy neighbor's vineyard, thou mayest eat," etc. This is only concerning a vineyard. Whence do we know that the same is the case with other places? We infer it from the case of the vineyard, thus: As in a vineyard, the products of which come forth from the ground, a laborer may eat of its fruits when they are ripe, the same is the case with other things brought forth from the ground, when they are ripe. But it can be said that this law is only concerning a vineyard, because the law of gleaning [*ibid*., *ibid*. xxiv. 21] applies only to gleaning; therefore we may infer this from stalks [*ibid*. xxiii. 26]: "When thou comest into the standing corn of thy neighbor, thou mayest pluck," etc. But even to this there is a separate law, which applies to stalks only; namely, to separate the first dough. Then we turn again to the vineyard, and to the former question it is answered that there is a separate law of gleaning; we turn again to the stalks, and the conclusion is that both cases have separate laws which apply each to itself specially, and one to the other specially. In one thing, however, they are alike, the products of both are brought forth from the ground, and when ripe a laborer may partake of them. The same is the case with all products that are brought forth from the ground, and when they are ripe the laborer engaged in producing them may partake of them. But their likeness is further seen in that they are brought to the altar (wine to the offerings, and fine meal to meal-offerings)? Therefore, olive trees may also be

inferred from this, as oil from the olives is also brought to the altar with the meal-offering. [Is it, then, necessary to

infer olives from vineyards and stalks? Are the olives themselves not called a vineyard; as it is written [Judges, xv. 5]: "And burnt up both shocks and standing corn, as also oliveyards"? 1 Said R. Papa: It is named a vineyard of olives (Kerm Zayith), but not indefinitely a "vineyard," which does not include olives. And the above-cited verse reads, "when thou comest in the vineyard," therefore olives are to be inferred from above.]

But, after all, whence do we deduce about all other products which cannot be inferred from what is mentioned above, as all are distinguished by separate laws applying only to them? Therefore said Samuel: We infer all from the words of above-cited verse [Deut. xxiii. 26]: "But a sickle shalt thou not move," which means that to all products under a sickle the same law applies. But is this verse not needed to teach that one may partake of them as long as the sickle is used, but not thereafter? Nay; this is inferred from the previous verse [25]: "But into thy vessel shalt thou not put it." But according to Samuel's theory, whence do we deduce about products which are not under the sickle (as, *e.g.*, dates, etc.)? Said R. Itz'hak: It is to be inferred from the words "standing corn" that the same is the case with all products which are standing. But was it not previously said that this cannot be inferred from stalks, as they are distinguished with the law of the first dough? This was said before it was learnt that it may be inferred from the words "under the sickle"; but after it was learnt of all products which go under the sickle, the same is said of all standing products.

If so, to what purpose is written the above-cited verse 25? Could it not be deduced from the 26th? Said Rabha: It is needed to infer from it the Halakhas of the following Boraitha: It is written *Khe Th'bhau* (when thou comest), and in xxiv. 15 is written *Lou Th'bhau*, as there the verse applies to a laborer. So the verse xxv. 23 applies also to a laborer. It reads, "in thy neighbor's vineyard"; but not in a vineyard of the sanctuary. "Thou mayest eat grapes," but not drink the wine of them (*i.e.*, one shall not take the grapes, make wine, and drink it). Grapes only, but not with something else (*i.e.*, one shall not mix them with something else which might increase the appetite for them). "At thy own," *i.e.*, as if thou wouldst be the owner of

them: as the owner may partake of them before the tithe is separated, so may the laborer also. "Till thou have enough," but not more; "but into thy vessels thou shalt not put"--*i.e.*, that at the time you put them in the vessels of the owner you may eat, but not when you are not so engaged.

Rabbina, however, said: There is no necessity to deduce from verses in the Scripture concerning a laborer when he is engaged with the products when they are already cut off from the ground, and also for an ox that it may eat from the attached products of the ground, because it is written [Deut. xxv. 4]: "Thou shalt not muzzle the ox when he thresheth out the corn." Now let us see! This law applies to all animals, as it is stated in First Gate (p. 127). It ought to read: "Thou shalt not thresh with a muzzled ox." Why, then, is ox mentioned? To compare the muzzled with the muzzler (*i.e.*, the man who muzzles the cattle). As the muzzler may eat of the attached article when it is ripe, the same is the case with the muzzled animal; and as the muzzled one may eat all

that which is not still attached to the ground, so also may the muzzler.

The rabbis taught: It is written "threshing" [Lev. xxvi, 5] as the threshing is only upon products brought forth from the ground, of which the laborer may eat, the same is the case with all products of the ground, excluding him who milks, and makes cheese and butter, which are not products from the ground, and of which a laborer must not eat.

Was it not deduced already from the verses stated above? Why then this Boraitha? Lest one say that because all the products which are standing were included, as stated above, therefore the products not brought forth by the ground should also be included, it comes to teach us that it is not so. There is another Boraitha: "As threshing applies only when the product of which a laborer may eat is ready, the same is the case with other products which are ready, excluding those who lop garlic and onions (for the purpose of making more room for the good plants to grow)--a laborer may not eat of these, as they are not yet ripe." And still another Boraitha: "A threshing applies to grain which is not yet fit for separating tithe, and a laborer may eat of it; the same is the case with other things which are not yet fit for separating tithes, excluding those who separate dates and dry figs, which are fit already for separating tithes--the laborer must not eat thereof." But did not another Boraitha state that a laborer who does so may eat thereof? Said

[paragraph continues] R. Papa: That Boraitha speaks of unripe dates which are taken off the trees in vessels made of palms, and are soaked in oil until they become ripe, and at that time they are not yet fit for separating tithes. There is still another Boraitha: "As threshing applies to such things as are not yet ready for separating the first dough, a laborer may eat thereof; but he who kneads or bakes must not eat of that which he handles, because it is already fit for the first dough; and this Boraitha speaks of countries which are out of Palestine, to which the law of tithe does not apply."

The schoolmen propounded a question: May a laborer roast the grain on fire and eat it? Shall we say that this is the same as grapes with something else, which is not allowed, or is this different? Come and hear! It is allowed for the owner of a vineyard to give to his laborers wine, that they do not eat too many grapes; and the laborers also may soak their bread in herring-pickle, that they may eat more grapes thereafter (hence we see that such things are allowed). (Says the Gemara:) The schoolmen did not question whether the men prepare *themselves* to eat more or less; their question was only whether it was allowed to prepare the fruit by sweetening it, that it might become better for eating? Come and hear! Laborers may wait until the sun warms the grapes before eating of them; they are not allowed, however, to heat grapes over fire (hence it is not allowed). From this nothing is to be inferred, as it may be it is not allowed because of the loss of time, and the question of the schoolmen refers to when he has with him his wife or children, who may heat the grapes for him? Come and hear! A laborer who is engaged in separating spoiled figs, dates, grapes, or olives may eat of them, though tithe is not yet separated; to eat them with their bread, however, they are not allowed, unless they do so with the consent of the owner. Neither may they use salt in eating them (hence to heat over fire is all the less allowed). (Says the Gemara:) Neither from this is anything to be inferred, as salt is certainly equal to grapes with something else, which is not allowed, as stated above.

The rabbis taught: Cows which are engaged in separating the shells from barley that has been dried in an oven, or which are threshing grain of heave offering or of tithe, there is no

transgression when one muzzles them. However, that people who are not aware the grain is of such a kind may not be misled, a handful of the grain may be taken and put in a sack and

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hung on their necks. R. Simeon b. Johai, however, said: He may put spelt in sacks and hang them on their necks, as spelt is better for the cow in every instance. There is a contradiction from the following: "Cows that are engaged in shelling grain when they are muzzled, there is no transgression; if, however, they are threshing heave offering or tithe, there is transgression if they are muzzled. The same is the case when an Israelite does the threshing with the cow of a Gentile; if, however, a Gentile threshes with the cow of an Israelite, there is no transgression." Hence there is a contradiction in the statements of the Boraithas in the case of heave offerings and tithes? It presents no difficulty. One Boraitha treats of the heave offering of the tithe, which is not doubted; and the other treats of a suspicious one (De Mai).

The schoolmen questioned R. Shesheth: "How is the law if the animal is sick and the consuming of grain injures it? May it be muzzled?" Shall we assume that, when commanded not to muzzle the animal, it is because what it may consume is good for it, so that, in the case questioned, muzzling is allowed; or is the above commandment because of the suffering of the animal on seeing the grain and not being able to eat of it, in which event the muzzling is prohibited even in the case mentioned? And he answered: This we have learned in the Boraitha mentioned above, as Simeon b. Johai said: "He may bring spelt, etc., because spelt is better for the cow." Hence we see that the reason for prohibiting muzzling is because the grain is good for the cow.

The schoolmen propounded a question: "May one say to a Gentile: Muzzle my cow and thresh with it? Shall we assume that the rabbinical prohibition to do through a Gentile what is prohibited for an Israelite to do himself is only concerning Sabbath, the violation of which is a crime, but that the prohibition of muzzling, which is only a negative commandment, does not exist in such a case, or is there no difference?" Come and hear! "When a Gentile threshes with the cow of an Israelite, the Israelite does not transgress if the animal was muzzled." Is it not to be inferred that he does not transgress the commandment, but that, nevertheless, the muzzling is prohibited? Nay; from this expression nothing is to be inferred, as it may be that it is used only because of the same expression in the case of an Israelite threshing with the cow of a Gentile, in which it was necessary to state that he commits a transgression. (Then) come and

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hear! A message was sent to the father of Samuel with the following question: When Gentiles steal bulls and castrate [1] them, and return them to the owners, may the Israelites use them or not? And his answer was: "There is craft used in doing this thing. Use the same with the owners, and make them sell the animals" (to Gentiles, so that the owners may not use them for ploughing. Hence we see that the violation of even a negative commandment, which is not a crime, must not be committed through a Gentile). R. Papa, however, said: "The people of the west, who sent the above question, hold with R. Hidga, who maintains that the children of Noah (*i.e.*, others than Jews) are warned biblically against castration, and the owners of the above-mentioned castrated oxen transgressed the commandment [Lev. xix. 14]: "Thou shalt not put a stumbling-block before the blind." Rabbi meant to say that the answer of the father of Samuel, "Make them sell them," meant that they were to be sold for slaughtering, so that no one should use them any more. Said Abayi to him: "It is sufficient fine for the owner that he must sell them

for any purpose, and to any one, Israelite or Gentile."

There is no doubt that a son of full age is considered a stranger to his father that he may sell to his son; but how is the law with a minor son? R. A'hi prohibits, and R. Ashi allows. Maremar and Mar Zutra, according to others, two certain pious men, used to exchange between themselves the oxen in question for other ones. Rami bar Hamai questioned: "Does one transgress if he has placed the young one of the cow on the outside of her for the purpose of keeping the cow from consuming the grain while threshing, or if he has engaged it while it is thirsty, or if he has spread a καταβολ• on the grain?" One of the questions at least may be resolved from the following Boraitha: The owner of the cow is allowed to make it hungry that it may eat more while threshing; he may also give it sufficient food beforehand, that it may not consume much while threshing (and this can be compared to spreading a *katabole*, hence it is allowed).

R. Jonathan questioned R. Simai: "How is the law if he has muzzled the animal outside of the field? Shall we assume that the Scripture prohibits muzzling it while threshing only, or

does the Scripture mean that grain shall not be threshed with a muzzled animal?" And he answered: "This can be deduced from [*ibid*. x. 9]: "Wine or strong drink shalt thou not drink, . . . when you go in unto the tabernacle"; from which it could be inferred that this is prohibited when you go in, but not previously. However, it reads [*ibid*., *ibid*. 10]: "So that you may be able to distinguish between the holy," etc., which means you must not go in while drunk (no matter when you have used the strong drink). The same is the meaning here: there shall be no muzzling while threshing.

The rabbis taught: "He who muzzles a cow and he who pairs two kinds of animals in one wagon is exempt from the punishment of stripes, as it applies only to the threshers and the leader of them."

It, was taught: "If one has muzzled a cow only with his voice (*e.g.*, when the animal is about to eat of the grain he stops it with his voice), or if one leads the two kinds of animals with his voice only (without holding the bridle), according to R. Johanan he is guilty, because his voice is considered an act, and according to Resh Lakish he is free, as the voice is not considered an act. R. Johanan objected to the decision of Resh Lakish from the following Mishna (Themura): "One is not allowed to exchange; but if he has done so, the exchange is valid, and he is punished with forty stripes"(hence we see that though it was done by mouth only, it is considered an act, for which he is punished with stripes). And he answered: This Mishna is in accordance with R. Jehuda, who holds that one is to be punished with stripes for violation of a negative commandment, even if there is no *physical* act; but how can this Mishna be explained in accordance with R. Johanan? Did not the same state in its first part that the law of exchange applies to every one, male as well as female? And to the question: What does it mean by adding the expression "to every one" (would not "he" be sufficient for male or female)? The answer was: To include an heir, and this is certainly not in accordance with R. Johanan, as he holds that an heir cannot exchange, and also has no right to lay his hands upon an offer? The Tana of the Mishna cited holds with R. Johanan in one thing, but differs from him on the other point.

The rabbis taught: He who muzzles the cow while threshing is punished with stripes, and pays for the cow four kabs, and for an ass three kabs of fodder. But how is it possible that one

should be punished for one crime with two punishments? We are aware that if, *e.g.*, one deserves stripes for one crime, and for another, death, the stripes must be omitted, and the same is the case with a crime for which he has also to pay for the damage he has done when the crime was committed; the first punishment only must be imposed, and he is free from payment? This Boraitha is in accordance with R. Meir, who says that both are imposed. Rabha, however, said: There are many cases in which, although one is not obliged to pay the damages, he nevertheless has to pay, from a moral standpoint; and my support is from the Scripture, which forbids the hire of a harlot to be used in the temple, even if she was a relative, for which crime one is to be stoned (hence the hire is considered a payment), although it is not collected by the court. R. Papa said: The reason he has to pay in this case, despite his punishment with stripes, is because the obligation to pay was incurred before the crime for which he is to be punished with stripes was committed; he has to feed the animal as soon as he takes possession of it, and he cannot be punished with stripes until he has done work with it.

R. Papa said: The following two things were questioned of me by the disciples of R. Papa bar Abba, and I decided one of them in accordance with the law, and the other differently; namely, May one knead dough with milk or not? And my answer was: "Nay," according to the law [see Psachim, p. 45]; and the other question was, May one enter two kinds of animals in one stable? And I prohibited this, not in accordance with the law, as Samuel allows it. R. Jehuda said: One may gender one kind of animals with his hands without any fear even for immorality, as his mind is occupied with the expected product. R. A'hdbui b. Amui objected: There is a Boraitha: If the Scripture read [Lev. xix. 19]: "Thy cattle shalt thou not let gender," only, I would say that one must not gender any kind of animal at all; but as it is added, "with a diverse kind" (*kilaem*), it signifies that only *kilaem* is prohibited. But with one kind of cattle one may gender; and also, in that case, he may only hold it for this purpose. Hence we see that only to take hold is allowed, but not to gender? The expression, "to take hold," means to gender; and it was used only because of its being a nicer expression.

R. Ashi said: I was questioned by the disciples of R. Nehemia the Exilarch as follows: "Is it allowed for one to enter in

one stable two kinds of animals with their females? Shall we assume that because there are male and female of the one kind it does not matter about the presence of another kind, or is even this not allowed?" And I have answered them in the negative, not in accordance with the law, but because of the immorality of the Exilarch's slave.

MISHNA *III*.: The labor of a workingman entitles him to consume the fruit of that with which he is laboring, no matter with which member of his body he is doing the work; so that if he has worked with his shoulder, without occupying his hands or feet, it is sufficient. R. Jose ben R. Jehudah, however, maintains that he is entitled only when he employs his hands and feet in the work.

GEMARA: What is the reason of this statement? It is written [Deut. xxiii. 25]: "When thou comest into thy neighbor's," etc., signifies that it suffices when he enters to labor with any member of his body. And what is the reason of R. Jose's statement? He maintains that the muzzler shall be equal to the muzzled one; as the latter is entitled only when it is occupied in its labor with its hand and feet, the same is the case with the muzzler.

Rabbi bar Huna questioned: If one threshes with geese and cocks, how is the law according to R. Jose's theory? Does R. Jose mean that one is entitled to eat only when he works with all his strength? And if so, then the geese and cocks which are working with all their strength are entitled to eat. Or does he mean, literally, the hands and feet, and as in this case they have none they are not entitled to eat? This question remains undecided.

R. Na'hman, in the name of Rabbi bar Abuhu, said: Laborers who enter the wine-press are entitled to eat grapes, but not to drink wine; however, they are entitled to both if they cross the whole length of the wine-press while laboring.

MISHNA *IV.*: If one is occupied with pressing dates, he must not consume grapes, and *vice versa*; however, he may wait until he reaches the places where the good ones are to be found, and eat from them. In all cases it is said that he may consume only while he is laboring. In order not to waste the time of the owner, it was enacted that the laborers may consume when they are going from one place to another, and also when they are returning from the wine-press; and also an ass is entitled to consume while unloading.

GEMARA: The schoolmen propounded a question: If one was occupied with one vine, may he take a bunch of grapes from it to consume while laboring on another vine? If we assume that a laborer is entitled to consume of that kind which is to be put in the vessel of the owner, then he certainly may do so, or he is entitled to consume only from those which are to be put in the vessel of the owner; and as the grapes of the first vine were not to be put in the owner's vessel, he may not eat of them; and lest one say that he may not, then there would be difficulty in understanding why the ox, while laboring at things which are attached to the ground, may eat of them, because those attached to the ground are not to be put in the vessels of the owner. Said R. Shesheth b. R. Aidi: This case cannot prove anything, as it may mean that a branch with fruit reaches the laboring ox, but not otherwise. Come and hear. Our Mishna states that if one is occupied with dates he must not consume grapes; from which we infer that he may consume of one kind of fruit. Now, if it be not allowed to take fruit from one vine when he is going to labor on another, how could such a case be found? Said R. Shesheth b. R. Aidi: This proves nothing, as the Mishna may treat of a case where the dates were resting on the vine, or *vice versa*; and it came to teach that although he cannot occupy himself unless he takes of the dates resting upon the grapes, and one may say that in such a case he is considered to be occupied with both, the Mishna teaches that is not so (and so it is not safe to infer from this that if he is occupied with one kind of fruit in one place he may partake of it while laboring on another of the same kind). Come and hear! The latter part, "One may wait until he reaches the place where the good ones are," etc. Now, if one would be allowed to eat of the fruit on which he is not occupied, at another place where he is occupied, then why should he *wait* until he reaches the place of the good ones? Let him immediately bring and eat of it. Nay; it may be that he is not allowed to do so because of wasting time. However, if so, the question may arise: How is it if he has somebody--*e.g.*, his wife or his children who are not laboring there--and they can bring him the

good ones, so that there is no waste of time; may it so be done or not? Come and hear the other statement of our Mishna: "In all cases. . . . however, in order not to waste time," etc. And the schoolmen, in explaining the reason for this statement, were about to say that because, biblically, walking is not considered labor,

one, biblically, is not allowed to eat in that case. Therefore the enactment in question was necessary, from which it is to be inferred that when one is laboring he may consume even biblically, and it may be decided that he may do so. However, it may be said that walking is considered labor, and yet according to the Bible walking is not considered labor, and yet according to the Bible one may not do so, and therefore the enactment was necessary; hence the question may be decided negatively.

An ass is entitled, etc. While unloaded! From what, then, shall it consume? Correct the Mishna so that it reads, "until it is unloaded"; and this is the same as the rabbis taught elsewhere, that an ass and a camel may consume from the load which is upon them. However, one may not take of the load with his hands and give them to eat.

MISHNA *V*.: The laborer may consume of cucumbers or dates with which he is working, even to a dinar's worth. R. Elazar b. Hasma, however, said: A laborer must not consume more than his wages; but the sages allow even this. Nevertheless, a man should be instructed that he must not be greedy, so that the doors of mankind should not be shut against him.

GEMARA: Are not the sages' statements the same as the first Tana? The point of difference can be found in the following saying of Rabh: I have found hidden scrolls in the house of R. Hyya, in which it was written as follows: "Aisi b. Jehudah says: The verse written [Deut. xxiii. 25]: 'When thou comest in the vineyard of thy neighbor,' means not only a laborer, but anybody." And Rabh himself added: "Aisi's theory does not allow any one to make a living" (*i.e.*, if it would be allowed for every one to enter the vineyard of a stranger, and to consume, as much as he likes, then nothing would remain for the owner). So that the first Tana does not agree with Aisi, and the sages do. Said R. Ashi: I have repeated this Halakha before R. Kahanah, and questioned him whether it meant laborers who are doing their work for their meal only; and he answered me: That even then one would prefer to hire men to cut off the trees of his vineyard than to have people enter and consume all it contains.

The schoolmen propounded a question: Are we to interpret the command of the Scripture, that a laborer may eat in addition to his wages (*i.e.*, the Scripture has added to his wage the consuming of the fruit he is engaged with, consequently it is a part of his wages; or is it only a kind of charity which the

[paragraph continues] Scripture commands to give him)? And the difference is, if the laborer says: "Give this that I am entitled to to my wife and children." If it is a part of his wages, this could be done; but if it is only a kind of charity, it may be said that the Merciful One has rewarded only the laborer himself, but not his wife and children. What is the law? Come and hear! R. Elazar b. Hasma said: A laborer must not consume more than his wages allow. Are we not to assume that

the point of their differing is that one holds that this is a part of his wages, and the other holds that it is a kind of charity? Nay, all agree that this is a part of his wages; and the point of their differing is the explanation of the word *knaphshkha*, [1] which is mentioned in the Scripture [*ibid*., *ibid*.]. One holds that this word may be interpreted, "a thing which you get with danger to your life" (*i.e.*, if one undertakes to ascend to the top of the tree in order to get the fruit), and the other interprets this word, "as thy soul" (*i.e.*, as for thy soul thou likest to muzzle thyself not to partake, thou mayest do so; the same is the case with the laborer, in some instances thou mayest prevent him from consuming). Come and hear! "A laborer who was a Nazarite, if he said, Give the grapes or wine that I am entitled to to my wife and children, he must not be listened to." Now, if this is a part of his wages, why should be not be listened to? Nay; there is another reason. People say, it must be said to a Nazarite, Go around, go around, so that you shall not meet a vineyard (*i.e.*, the things which are forbidden to him should not be found near him). Come and hear another Boraitha: If a laborer said the same, he also must not be listened to; hence if this is a part of his wage, why should he not be listened to? Nothing is to be inferred even from this, as the expression, "a laborer," may be interpreted to mean a Nazarite. But is there not a separate Boraitha which says plainly "a Nazarite"? This is no question, as the Boraithas were taught separately. One plainly states a Nazarite, and the other named a laborer, which means also the same. Then come and hear another Boraitha: From this we deduce that a laborer must not be listened to when he asks that that which he is entitled to shall be given to his wife and children, from the verse [*ibid*., *ibid*.]: "But into thy vessel thou shalt

not put any." And lest one say that this Boraitha also means a Nazarite, then this verse would be used as a reference, because for a Nazarite there is another reference given above? Yea; it may mean a Nazarite, but the verse belonging to a laborer is brought because one has named him a laborer.

Come and hear another Boraitha: If one hires a laborer to cut dates, he may eat of them and he is free from tithe. But if he was hired with the stipulation that "I and my son shall partake of it," he may and is free from tithe; his son, however, may eat only when the tithe is separated. Now, if this is a part of his wages, why, then, should his son not be free from tithe? Said Rabbina: Because the fruit used by his son is considered bought, as the son has nothing to do with it, and only consumes because of the stipulation of his father, who gave his word for it. Consequently, it is as if he had bought and sold it. Come and hear the next Mishna, which states that a stipulation can be made for all his family except the little children, etc. Now, if this is considered a charity, it is right that no stipulation should be made for his little children, if they have not reached the age of reason; but if it is a part of his wages, why should not the stipulation be of value for the children also? It may be said that it means when he does not feed them. But did not R. Hoshua teach that "one may make a stipulation for himself and for his wife, but not for his cattle; for his sons and daughters who are of age, but not for those who are not yet of age; however, for his male or female slaves whether they are of age or not"? From this we infer that all the Boraithas mentioned mean when he feeds them all; and the point of the difference is that the Tanaim of the above Boraithas and also of the cited Mishna hold that it is only a kind of charity, and R. Hoshua holds that it is a part of his wages.

MISHNA *VI.*: A laborer has the right to make a stipulation that he shall not eat what he is entitled to and take money for it instead. He has also a right to do the same for his grown son and daughter, for his wife, and for his grown-up male and female slaves, but not for his minor

children or slaves, and not for his cattle, because these have no reason. If one hires laborers to work in his vineyard when it is in its fourth year (of which the fruit is prohibited), the laborers must not partake of it. If, however, he didn't notify them of the case, he must redeem the fruit and let them eat. If the round cakes of his dry figs became open, or his barrels of wine became ready for

use, so that they are fit for separating tithe from them, the laborers must not eat; but if, however, he didn't notify them at the time he hired them, he must separate the tithe and let them eat.

Watchmen of fruits are permitted to eat, according to the custom of the country, but not according to the law of the Scripture.

GEMARA: (Concerning the watchmen:) Said Rabh: The Mishna treats only of watchmen who guard vineyards, the fruit of which is still attached to the tree, and therefore, according to the Scripture, they are not to eat of it when it is not yet ripe. But they who guard wine-presses and heaps of grain are permitted to eat even in accordance with the law of the Scripture; for the reason that guarding is considered a labor. Samuel, however, maintains that the Mishna treats of those who guard wine-presses and heaps of grain; but they who guard vineyards are not entitled even in accordance with the law of the country, for the reason that guarding is not considered labor according to his opinion. R. Aha bar Huna objected to this from the following: "He who guards the red cow defiles his garments." Now, if guarding is not considered an act of labor, why should his garments be defiled? Said Rabba bar Ulah: It was enacted to be so for fear he would touch one of its members. R. Kahana objected from the following: If one guards cucumber fields, he must not fill up his belly from one garden bed, but he may eat some from each bed. Now, if guarding is not considered labor, why is he entitled to eat at all? Said R. Shimi bar Ashi: The Boraitha treats of those that were already cut off. But if so, then they are already fit for tithe? It treats in case the blossoms are not yet removed. Said R. Ashi: It seems to me that Samuel is right in his theory, and he can be supported from Mishna II. in this chapter: "The following laborers have a right to partake according to the law of Scripture," etc. From which it is to be inferred that there are such who eat not in accordance with law of the Scripture, but in accordance with the law of the country. How, then, should the latter part of the same be explained: "They have not to partake," etc.? What does the expression "not to partake" mean? If we say that they are not to partake in accordance with the law of the Scripture, but that they may partake in accordance with the law of the country, then it would be the same as in the first part; we must, then, say they are not to partake even in accordance with

the law of the country. And what is this? One who is engaged on that which is still attached to the ground and is not yet ripe, and, furthermore, the watchmen of the vineyards.

MISHNA *VII.*: There are four kinds of bailees: a gratuitous bailee, a borrower, a bailee for hire, and a hirer. (In case of loss,) the first is acquitted on taking an oath that he has not neglected his duty; the second has to pay under all circumstances; the third and fourth are acquitted in case the property entrusted to them has been broken, confiscated, or has died, but not when it has been lost or stolen.

GEMARA: Who is the Tana who states that there are four kinds of bailees? Said R. Na'hman, in the name of Rabba h. Abuhu: It is R. Mair. Said Rabba to him: Is there one who does not hold the theory of the four bailees? R. Na'hman rejoined: I mean to say that the only one who holds that a hirer and a bailee for hire are equal in law is R. Mair.

Is this so? Has not R. Mair said the contrary in the following Boraitha? For what loss must a hirer pay? R. Mair said: For the same that a gratuitous bailee must pay. R. Jehudah, however, said: For the same loss as a bailee for hire. (Hence R. Mair holds that a hirer is the same as a gratuitous bailee?) Rabba b. Abuhu has changed the names (in the quoted Boraitha). If so, then there are three, not four, kinds of bailees. Said R. Na'hman b. Itzhak: There are four kinds; the laws concerning them, however, are only three.

There was a shepherd who pastured his cattle on the shores of the River Papa. One of the cattle slipped and fell into the water. When the case was brought before Rabba he acquitted him, saying: What could he do? He has guarded them as is usual with shepherds. Said Abayi to him: In accordance with your theory, if the shepherd entered the city at the usual time, is he also acquitted? And he answered, "Yea." And what if he sleeps at the usual time, is he also freed? And the answer was, "Yea."

Then R. Abye objected to him from the following: The accidents for which a bailee for hire is not responsible are, *e.g.* [Job, i. 15], "When the Sabeans made an incursion and took them away." (Hence we see that he is responsible only for such things as he could prevent, but not otherwise. And Rabha answered: The Boraitha treats of the watchmen of the city who were hired to watch all night, so that their employers might rely upon them to prevent all accidents. Abye raised

another objection from the following: What is the extent of the duty of a bailee for hire, as, *e.g.* [Gen. xxxi. 40]: "(Where) I was in the day the heat consumed me," etc.? And he answered: This Boraitha also means the watchmen mentioned above. Abye rejoined: "Was Jacob the Patriarch a watchman of the night?" And he rejoined: "Yea; Jacob promised Laban that he would watch his (Laban's) cattle, as city watchmen watch the property entrusted to them." Abye then raised another objection from the following: "If a shepherd entered the city while his cattle were pasturing, and a wolf seizes a sheep, he must not be accursed. He must only be held responsible if it be adjudged by the court that his presence could have prevented the occurrence." Are we not to assume that the Boraitha means that the shepherd went to the city at the time that shepherds usually went there, and that even if this was the case he is held responsible for the accident? Said Rabha: "Nay; it means if he left the cattle at an unusual time."

Then, since he has neglected his duty, why should he be acquitted even if his presence could not have prevented the accident? The Boraitha treats of a case in which he (the shepherd) heard the voice of the wild beasts and fled. If so, why is it necessary to adjudge; what could he do under such circumstances? It would have been his duty to frighten the beast away by throwing stones and sticks. If so, why should only a bailee for hire do this; does not the same hold good for a gratuitous bailee? Was it not you, master, who said that if a gratuitous bailee could put the beast to flight with sticks and stones he is responsible?

Yea, I did say so; but this would only be the case if he could do this without incurring any expense; while the bailee for hire must do so even if he should incur expense. How much is it his duty to spend for this purpose? The amount that the article is worth. But where is it to be found that a bailee for hire is to be responsible for an accident, so that he is obliged to pay his own expenses? He is obliged to save them even when he must spend money, which, however, is returned by the owner.

Says R. Papa to Abye: If so, what good is it to the owner to have the property saved? And he rejoined: It saves him the trouble of buying others; besides, it is more pleasant for him to have the cattle which he is used to.

R. Hizda and Rabba b. R. Huna do not agree with the

above theory of Rabha, that if a bailee for hire has not neglected his duty he is not responsible for any accident; and the owner may say that he has paid for guarding the cattle in order that they may be guarded better than is usual.

Bar Adda of Sabula led cattle across the bridge of Narash, and one of them pushed the other into the water. When this case was brought before R. Papa, he held him responsible. When the defendant objected, saying: "What could I do?" he answered: "You could lead them across one by one." At this the defendant, however, exclaimed: "Does not the master know his people sufficiently well to know that they have not the time to lead them over one by one?" The judge then rejoined: Such claims have often been brought before the court, but they could not be taken into consideration.

Abu placed flocks at Rumnia, and Shabu, who was an errant robber, took them away. Although Abu proved that this was the case, R. Na'hman held him responsible. Shall we assume that R. Na'hman differs with R. Huna b. Abuhu, who sent a message, that if an article was thereafter stolen by accident ,and the thief was identified, the depositary, if he be a gratuitous bailee, may choose either to take an oath or summon the thief. But if he was a bailee for hire he must pay and summon the thief. (Hence, as R. Na'hman made Runia, who was a gratuitous bailee, responsible, he certainly does not agree with the above theory of R. Huna?)

Said Rabha: This proves nothing. As there was military in the city where Runia was, if he called for help they would have come to his assistance.

MISHNA *VIII.*: A single wolf coming among the flock, it is not considered an accident, while two constitute one. R. Jehudah maintains that at a time when there are visitations, a single wolf is also considered an accident.

Two dogs are not considered. Jeddna d. Babylon, in the name of R. Mair, said: If both come from one side it is not, but if they come from two different sides it is. A robbery is considered an accident. A lion, a bear, a leopard, a panther, and a snake are accident when they come suddenly; but if one has led his cattle where wild beasts or robbers abound, it is not considered an accident. A natural death is an accident, but not if it is caused by cruelty. If cattle fall from a steep rock where they have gone of their own accord, it is an accident, but if they are led there, it

is not.

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GEMARA: But have we not learned in a Boraitha that even a single wolf is considered an accident? Said R. Na'hman b. Itzhak: The Boraitha treats of a visitation, and it is in accordance with R. Jehuda.

A robbery is considered an accident. If there is only one robber, is there not only one man against one man? Said Rab: It means if the robber was armed. The schoolmen propounded a question: "If the robber and the shepherd were both armed, what is the law? Shall we say that as there was one against one, then it is not to be considered an accident? Or shall we say that as the robber risks his life, which is not the case with the shepherd, it is? Common sense says that it is so.

Said Abye to Rabba: If a shepherd meet a robber and say to him: "You ill-reputed thief, remember that we are located in such and such a place, where we have so and so many men, so and so many dogs, and so and so many archers with us, and if you venture to come to us you will be killed"; and if, in spite of this warning, the thief ventured to do so, how is the law? And he answered: Informing the thief of the location of the pasture is equal to the statement of our Mishna about leading the cattle to the place of robbery, etc.

MISHNA *IX*.: A gratuitous bailee has the right to make a stipulation that in case of loss he shall be freed from taking an oath. A borrower may do the same so as to be freed from payment. A bailee for hire and a hirer may likewise do the same, so that they may be freed from both an oath and from payment.

A stipulation made contrary to that which is written in the Scripture is of no avail. A stipulation which is made on condition that a certain act be done in advance is of no avail. If, however, the stipulation was that a certain act be done afterwards, and it is possible to fulfil the condition, the stipulation is of avail.

GEMARA: Why can a stipulation of this kind be made? Is it not contrary to what is written in the Scripture, and therefore ought it not to be unavailable? Our Mishna is in accordance with R. Jehudah, who said that in money matters a stipulation of this kind is of avail; as we have learned in the following Boraitha: "If one says to a woman: You shall be betrothed to me on condition that I will neither support nor dress you," the betrothal is valid, but the stipulation is to be abolished. So is the decree of R. Mair. R. Jehudah, however, maintains that in regard to money matters the stipulation is valid.

But how can we interpret the statement of our Mishna in

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accordance with R. Jehudah, when in the latter part it plainly states that a stipulation made contrary to the Scripture is of no avail, which is certainly in accordance with R. Mair? This presents no difficulty, as the latter may treat of other than money matters. But still, if so, how would you interpret the last part of the Mishna, which states that "a stipulation which has an act

in advance," etc., and such a theory was heard from R. Mair only, as stated in the following Boraitha: Aba'ha Laphtah, the man of the village of Hananya, said in the name of R. Mair that a stipulation which is to be fulfilled before an act is valid; but if the act is to be performed afterwards it is invalid? Therefore we must say that the whole Mishna is in accordance with R. Mair; and the reason the stipulation is valid is because he freed himself from all obligations before he became a bailee.

There is a Boraitha which says that a bailee for hire may stipulate that he shall be equal to a borrower. But how shall a stipulation of this kind be made verbally only? Said Samuel: It treats of when it was made with the ceremony of a sudarium. R. Johanan, however, maintains that even when a sudarium is not necessary--as the benefit which he derives is from the reputation he earns among the people of being a trustworthy man--he makes up his mind to take all responsibility.

And it is possible to fulfil, etc. Said R. Tabla, in the name of Rabha: This is in accordance with the decree of R. Jehudah b. Tama: The sages, however, maintain that even in such a case the stipulation is of avail. As we have learned from the following Boraitha: Here is your divorce, with the stipulation that you shall ascend to heaven, or shall descend to hell, or you shall swallow a stick a hundred ells long, or you shall cross the ocean on foot. If such a stipulation is fulfilled the divorce is valid; but if not it is invalid. R. Jehudah b. Tama, however, said that such a divorce is valid. Such is the rule: a stipulation which is impossible to be fulfilled should be considered a jest, and the divorce remains valid.

Said R. Na'hman, in the name of Rabba: The Halakha prevails in accordance with R. Jehudah b. Tama. Said R. Na'hman bar Itzhak: It seems to be so, as the last expression from our Mishna agrees with him. 1

Footnotes

213:1 The term in the Scripture is •••, which has two meanings, "eye" and "spring." Leeser translates it by "spring"; the Talmud, however, takes it literally.

213:2 The expression in the Scripture is *Veyidgoo*. Dag in Hebrew means fish, hence the analogy in text. Leeser, however, translates it according to the sense.

215:1 Rashi explains that while sailing they were in danger of being wrecked by violent storms, and they prayed to be saved because of the merits of Eliezar, and they were saved miraculously, and therefore they made him this present.

215:2 There is a custom even now among the orthodox Jews, that when a blood-stain is found on the sheet of a married woman, it is carried to the rabbi to determine if it is that kind of blood for which the woman must be separated for two weeks, and after that time to take a legal bath; or whether the stain is not that kind of blood for which she must be separated; as there is a Mishna [in Tract Nida, Chap. 11.] that five colors of blood are considered unclean (*i.e.*, for which she must be separated), and the other kinds are not considered blood, and she may have

intercourse with her husband without taking the prescribed legal bath. Hence the sixty kinds of blood mentioned in this legend. The number "sixty" seems to be a favored number with them for exaggeration.

219:1 See Sabbath, p. 58.

223:1 Rashi explains this, that until their time the Gemara was not in any order, as in the colleges a Mishna was discussed only in relation to money matters, food, etc., the Halakha thereof being questioned in a college; and then there was discussion, and each gave a reason for his opinion, and the same was done if some one questioned the reason of such and such a Mishna, without a practical act; and so the whole Gemara was mixed together, without any order in sections or tracts, and Rabina and R. Ashi were the first who gathered all the discussions of the colleges until that time, and also at that time arranged them into sections and tracts in accordance with the Mishnayoth ordained by Rabbi in sections and tracts. See footnote, Chap. II., pages 79, 80.

225:1 Because in the beginning of this legend it was spoken of fat was also brought in (Rashi).

226:1 The expression in Scripture is *Outhou*, and means "him," which is singular. The translators of the Bible translate "it," according to the sense.

226:2 Rashi explains that such a meal was only prepared for kings.

231:1 The term in Hebrew is *Kerm Zayith*, literally, a vineyard of olives; hence the question.

235:1 Castrating is prohibited to Israelites biblically, and the Gentiles, who were friends of the Israelites, used to steal the bulls for this purpose, and return them afterwards. Hence the question.

241:1 *Nephesh*, in Hebrew, means "soul"; *knaphshkha*, literally, "as thy soul." Hence the expression "soul." R. Elazar maintains: "When thy soul is in danger," and the sages interpret this as: "You can do with your soul." Leeser, however, translates it according to the sense, "as thy pleasure."

248:1 *Thspth*. What news did R. Na'hman come to tell? This was already stated by Rabha, to which they answered in various ways. We have therefore translated R. Na'hman b. Itzhak in support of Rabha, that the anonymous Mishna agrees with him, and consequently the Halakha must so prevail.

Next: Chapter VIII.

CHAPTER VIII.

RULES AND REGULATIONS CONCERNING THE SALE AND HIRING OF ANIMALS, THE EXCHANGE OF THEM, THE SALE AND LEASING OF REAL ESTATE.

MISHNA *I.*: If one borrows a cow, and at the same time hires or borrows its owner, or if he does so before borrowing the cow, and the cow dies while they were laboring, the borrower is free from payment, as it is written [Ex. xxii. 13]: "And if one borrow aught of his neighbor, and it be hurt or die," etc. If, however, he has borrowed a cow, and has borrowed or hired its owner afterwards, and it dies, he is responsible; as it is written [*ibid.*, *ibid.* 13]: "The owner thereof not being with it, he shall surely make it good."

GEMARA: As in the latter part the Mishna states, "if he borrowed the cow afterwards," we may infer that in the first part it means that he has borrowed or hired its owner at the very time that he borrowed the cow. How, then, can there be a case in which the cow is borrowed by being led only, and its owner by words? And if the owner of the cow says to the borrower: "I and my cow are borrowed for your service," *he* is already considered borrowed, but the cow is not considered so until it is led off by the borrower. And so the owner was borrowed *before* the cow? If you wish, we may say that the stipulation was made that the owner shall not be considered borrowed until the leading of the cow takes place; and if you like, it may be said that the cow was already placed in the yard of the borrower, and in such a case leading it off is not necessary. We have learned in the Mishna that "there are four kinds of bailees," etc. Whence do we deduce all this? From what the rabbis taught. The first paragraph [*ibid.*, *ibid.* 6] treats of a gratuitous bailee; the second [*ibid.*, *ibid.* 9] treats of a bailee for hire; the third [13] treats of a borrower.

Says the Gemara: This is correct concerning a borrower, as it is so plainly written [verse 13]. But how do we know that the first and the second paragraph mentioned above are not the reverse? Common sense shows that the second paragraph

means a bailee for hire, as he is responsible for loss and theft. But perhaps the contrary may be said. The first paragraph may mean a bailee for hire, since he is responsible for the double amount if he claims theft. (This is no question.) It is more rigorous to pay the principal amount without an oath than the double amount with an oath. The evidence for this can be inferred from the case of a borrower who has all the benefit without any expense, and nevertheless he pays only the principal amount. But has not the borrower to feed it and also to guard it consequently he has some expenses? It can be said that the borrower keeps it in a grazing place, which is also secured from thieves; or that he borrows vessels for which he has no expenses at all. It is stated in the same Mishna "that a bailee for hire and a hirer take an oath in case the borrowed thing breaks, is confiscated, or dies, but they pay for loss and theft." This is correct in case of theft, as it is written plainly [*ibid.*, *ibid.* 12]: "But if it be stolen he shall make restitution unto the owner

thereof." But whence do we know that the same is the case with loss? Therefore the word "stolen" is repeated [1] to include loss.

But this would be correct according to him who holds that the Torah does not talk as men talk. (Therefore, as there is a repetition, loss may be deduced.) But according to him who holds that the Torah talks like men, what can be said? It was said in the west that an *a fortiori* conclusion is to be drawn thus: For theft which is almost an accident one must pay; for loss which is almost a neglect, so much the more he must pay. Whence do we deduce that a borrower is responsible for any kind of loss? It is plainly written that he is responsible for anything broken or for death. But how do we know that he is responsible in case of confiscation also? And lest one say that this can be inferred from the case of broken or death, it may be objected that cases could be borne in mind which are not so in case of confiscation. It is from what R. Na'hman said in the following Boraitha: Since it is written in verse 13 [*ibid.*, *ibid.*], "hurt or dies," confiscation may be included. But is not the word "or" needed for itself? Because if it were not, one might say that the restitution must be made only if the article be both hurt and dead, but not if it were broken only.

Nay, there could be no error, in either case, because common sense dictates that there is no difference to the owner if it were entirely or only half killed. Whence do we deduce that a borrower is responsible for theft or loss? And lest one say that this is to be inferred from the cases of damage or death, then it may be objected that the above cases are different, as they cannot be returned. But in case of theft or loss it can sometimes be returned if he troubles himself. Therefore it must be said that this is deduced from the word "and" in verse 6, which means that what is written above also belongs to this, and also that this corresponds with the above.

It was taught: In case of neglect in the presence of the owner, R. A'ha and Rabuna differ. One makes the borrower responsible, because he holds that a verse can be used only with that matter which was written previously in conjunction with it; and as verse 14 frees the one who has neglected his duty in the presence of its owner, it is not written concerning a gratuitous bailee, which begins with *ibid.*, verse 6 (although the law about neglect is mentioned there, and it is not mentioned concerning a bailee for hire and a borrower); therefore the responsibility of a neglect, just mentioned by the two, is to be deduced by drawing an *a fortiori* conclusion from a gratuitous bailee. However, to free one from the consequences of neglect done in the presence of the owner cannot be deduced, because verse 14, which freed them, does it only on the responsibility mentioned there. And the one who frees him holds that the law of a verse can be used in conjunction with that preceding it and that written before. Consequently, verse 14 refers also to a gratuitous bailee in verse 6.

An objection was raised from our Mishna, which states: "He who has borrowed the cow and the owner at the same time," etc.; but a gratuitous bailee is not mentioned there? (Hence there is an objection to him who says that a gratuitous bailee is free in case of neglect committed in the presence of the owner?)

But even according to your theory is there mentioned in the Mishna a bailee for hire? Therefore we must say that the Mishna teaches only things which are plainly written, but not things which are deduced.

R. Hamnuna said: There is no responsibility when the owner works together with the borrowed article--*e.g.*, when the owner of the borrowed ass works with it, and also when he is present

from the time the article is borrowed until it is broken; but not otherwise. (Says the Gemara:) From this statement it is to be inferred that he interprets verse 14, "that the owner must be with it the whole time." Rabha then objected from the following: "If one has borrowed or hired a cow and its owner at the same time, or borrowed the cow and hired the owner, although the owner did his work at some other place, the borrower is free from payment in case the cow dies." May we not assume that the same is the case even if the owner was engaged with another kind of work? Nay; it means the same work. What, then, is the meaning of "at another place"? *E.g.*, he digs after it the earth which it ploughs to make it ready for seed. But as the latter part of this Boraitha states plainly: "If one hired or borrowed a cow, and thereafter he borrowed or hired its owner, although the latter were engaged with his cow *in the very same work and at the same time*, the borrower is not responsible in case the cow dies." Consequently, the first part must speak of a separate kind of work he was engaged in? It can be explained that both parts of the Boraitha speak of one and the same labor, and by the change of expressions it was intended to add something unexpectedly new in the first part as well as in the last; namely, in the first part, that although he was engaged at another work, the borrower is free in case of the cow's death; and in the latter part, that even if he were working together with his cow there is a responsibility. But can such an explanation hold good? To be unexpectedly new it must be only if the cow were laboring at a separate work, and its owner at another kind of work; but if both are at the same work, it is very easy to be seen that he is free. Aside from this there is another Boraitha which states as follows: Because it is written [Ex. xxii. 14]: "But the owner thereof be with it," etc. Why, then, was there need to state, "the owner not being with it," etc.? Is the first not sufficient? It is only written to teach that if the owner were with it at the time of borrowing, there is no necessity for him to be also with it at the time it dies; however, if he were with it at the time it was dying or breaking, but not at the time it was borrowed, the responsibility remains. And there is also another Boraitha, similar to this, which objects to R. Hamnuna's statement, and so it remains. However Tanaim differ in the interpretation of the Scripture, in the following Boraitha it is written [Lev. xx. 9]: "For every man . . . that curses his father and mother shall be put to death,

that his father and his mother hath he cursed," etc. Now, from this it is known that when he curses both father and mother he is guilty; whence do we know that the same is the case when he cursed only one of them? Therefore the repetition, "his father and his mother," to teach that one of them is sufficient to put him to death. So is the decree of R. Jashia. R. Jonathan, however, maintains that from the repetition one cannot understand more than from the first sentence, as for both it could be explained that the two are meant or only one is meant. However, the law is correct as R. Jashia said, for if the verse would mean both *only*, it would state so plainly.

Abye, who agrees with the theory of R. Jashia, interprets the verses in question in this manner. From the verse [13] it is to be understood that when the owner was not present at both times mentioned above, but if he was present at one of the times only, he (the borrower) is free; and from verse 14 it is understood that when he was present on *both* occasions he is free, but if on

one occasion only he is responsible. Therefore it must be concluded that if the owner was present at the time the animal was borrowed, there is no necessity for him to be present at the time of its death. But if *vice versa*, there is a responsibility. Rabha, however, agrees with the theory of R. Jonathan, and interprets the verses in question thusly: From verse 13 it may be understood that if he were present at both times, and also if he were only present at one of them, and the same may be understood from verse 14, and therefore we conclude that the law remains as Abye said (although I do not agree with his reasons).

However, whence do we know that the owner's presence at the time of borrowing is the main thing--perhaps the occasion of the accident is the main thing? Common sense shows that the former is the main thing, as this act only brings the article under the control of the borrower. On the contrary, common sense shows that death is the main thing, as a borrower is responsible for an accident? Nay; after all, the first is the main thing, as this act obliges him to feed it. Said R. Ashi: From the expression, "And if a man borrow aught of his neighbor" [*ibid*., *ibid*.], it is to be inferred that he is responsible only when he borrowed *from* his neighbor, but not if his neighbor is with him. Then the continuation of the above-cited verse and what follows would be all superfluous? Nay; if not the following,

one may say that such expressions are customary in the Scripture.

Rabina questioned R. Ashi: If one tells his messenger that he shall substitute him in service to his neighbor together with his cow, how is the law if the cow breaks or dies while laboring? Is the word "owner" in the Scripture to be taken so particularly that no one can stand in his stead; or in such a case is the messenger of one considered as if it were himself? Said R. Aha b. R. Iwia to R. Ashi: "Concerning a husband who used the cow of his wife." R. Jonathan and Resh Lakish differ in regard to his responsibility, and concerning a messenger R. Jonathan and R. Ashi differ.

Said R. Eylish to Rabha: If one borrows another's slave and cow, how is the law? This question is to be considered according to the theory of both the Tanaim who differ in the case of the law regarding a messenger, whether he is considered a substitute or not. To the one who holds that he is considered a substitute, the question is the same as is the case with a slave, for the reason that the slave is free from the obligations of the law, and therefore he cannot substitute; on the other hand, according to him who holds that a messenger is not considered a substitute, it may also be questioned if the same is the case with a slave or if the latter is different, as he may be considered as the hand of his master (consequently he may stand for him?). And Rabha answered: "Common sense dictates that the hands of a slave are considered as his master's."

Rami b. Hama questioned: "A husband who uses the estate of his wife, what should he be considered, a borrower or a hirer?" Said Rabha: "Only a man of such genius is fit to make such an ingenious error. What difference is there if he is considered a borrower or a hirer? In both cases it must be considered that the owner of the property is with him; consequently there is no responsibility." The question, however by Rami bar Hama could be raised in case one has hired a cow of a woman and thereafter married her. If the husband is considered a borrower, then he is not responsible, as the owner of the article borrowed is with him; or if he is considered a hirer, the law of a hirer consequently remains. But what is the difference? Is it not a fact that now the owner of the hired article is with him, and this should supersede the previous act which was

without the hirer; as we say the same in case he is considered a borrower?

Therefore, if Rami raised a question it must be thus: If a woman has hired a cow from any one, and afterwards she married, then, in accordance with the rabbis, who hold that the borrower has to pay to the hirer, there is no question, as the owner of the borrowed article is considered to be with him. However, according to R. Jose, who holds that in such a case the cow must be returned to its first owner--now, if after the woman has married, her husband uses the cow and it breaks, what is he considered, a hirer who must pay, or a borrower who is not responsible for an accident in the presence of its owner? Said Rabha: The husband is considered neither a borrower nor a hirer, but (a buyer of the estate of his wife), as said in the First Gate, p. 197.

The schoolmen propounded a question: If the body of the animal becomes lean because of the labor, how is the law? Said one of the rabbis, named R. Hylqia b. R. Ovia: As the schoolmen questioned in case of leanness and not in case of death, they must be sure that in the latter case one is surely responsible. Why, then, has he borrowed it, to put it under a canopy? Said R. Rabha: Not only if it become lean, but even if it dies while laboring, there is no responsibility, for the reasons said above by R. Hylqia.

There was a man who borrowed an axe from his neighbor and it broke, and he came before Rabh, who told him to bring witnesses that he used it as an axe is usually used, and then he would acquit him. (Questioned the Gemara.) But how is it when there are no witnesses? Come and hear! There was one who borrowed an axe and it broke, and Rabh had decided that he must buy him another one. Said R. Kahana and R. Assi to Rabh: "Does the law prescribe so?" Is it not stated that the defendant has only to pay the damage, but not to buy another? And Rabh kept silence. The Halakha, therefore, prevails in accordance with R. Kahana and R. Assi, that he must return the broken one and must give the difference in money.

There was one who borrowed a pitcher and it broke, and R. Papa told him to bring witnesses that he used it as a pitcher is usually used, and he would acquit him. There was a man who borrowed a cat, which had overeaten itself with mice and died, and R. Ashi, before whom the case was brought, was deliberating (whether this is considered a case in which it dies while laboring or not). Said R. Mordecai to him: "So said Abimi

of Hagrunia, that a man whom a woman has killed must not be taken into consideration." 1

Rabha said: "If one wants to borrow something from his neighbor, and so that he shall not be held responsible if it be damaged, he may say to the borrower: You may give me water to drink (*i.e.*, that the giving of water will be considered a labor, so that he borrowed the article with its owner). However, if the lender is clever, he may say to him: First borrow what you need, and afterwards I will give you the water."

Said Rabha: A teacher who teaches infants, a planter, a butcher, a barber, and the scribe of the city--all these, when they do their work, are considered, in case one borrows an article from them, as if he has borrowed also the owner of it.

Said the rabbis of Rabha's college to Rabha: "According to your theory you, master, are borrowed to us" (*i.e.*, that if we were to borrow something from you and should spoil it we should be free from payment). And Rabha became angry, saying: "You want to benefit yourselves with my money? On the contrary, you, as my disciples, are borrowed to me, since I have the right to engage you in any tract of the Talmud I like, and you have no right to prevent me or refuse to study what I explain to you." (Says the Gemara: In reality it is not so.) In the days before the festivals he is borrowed to them, as then he must teach the laws of the coming festivals; they (the disciples), however, are borrowed to him on all other days.

It happened that Maraimar b. Hanina hired mules from Huzai, and the former overworked them and they died; Rabha made him responsible. Said the rabbis to Rabha: "Was it not a neglect in the presence of the owner, and Huzai used to support them in their work? Rabha was embarrassed; finally it was learned that Huzai was not supporting them in their labor, but, on the contrary, was there to see that they were not overloaded. (Consequently Rabha was right in his decision.) This is correct in accordance with him who holds that a neglect in the presence of the owner is to be freed, but there is one who holds that in such a case the borrower is not free. Why, then, the embarrassment? (He may have agreed with the latter.) The case was that the mules were stolen, and died in the house of the thief; and when Rabha made him responsible the rabbis

questioned him: "Was it not stolen in the presence of the owner? Why, then, should Maraimar be responsible for the theft?" And therefore Rabha was embarrassed. Finally, it was learned that Huzai came only to see that they should not be overloaded.

MISHNA *II*. If one borrowed a cow for a half a day, and for the other half a day he hires it, or he borrows it for to-day and hires it for to-morrow, or there were two of them, one of which he borrowed and the other he hired, and it dies, the lender claims that it dies in the time for which it was borrowed, and the borrower says, "I don't know," then the latter is responsible. If the reverse, the hirer says: "It dies while laboring when it was hired," and the owner says, "I don't know," then the former is free. If, however, they contradict each other, and one says that it died while borrowed, and the other says it died while hired, then the hirer has to take an oath that it is as he said, and he is acquitted. But if both say they don't know how the case was, then the damage is divided.

GEMARA: From this statement it is to be understood that if one claims a mana, and the defendant says, "I don't know," he must pay. Shall we assume this should be an objection, as it was taught that R. Na'hman and R. Johanan hold the defendant free in such a case? R. Huna and R. Jehudah hold him responsible (the reason of R. Na'hman's statement is, as R. Ashi explains, because the plaintiff cannot collect any money without evidence; and therefore the money remains with the defendant, in accordance with the law of hazakah). Nay; as R. Na'hman said elsewhere that this is only in case the defendant has to take an oath (the illustration will follow further on). The same can be explained in the case in our Mishna. How was the case? Rabha illustrates it thus: If one claims a mana, and the defendant says, "I am sure of fifty zuz, but not of a hundred," then as he cannot take an oath he must pay. However, in the cases brought in our Mishna, such a case can be found in the first part, when there were two cows. The plaintiff claims, "I have forwarded to you two cows for one day, a half of it as a loan and the other half as

a hire, or for two days, one day as a loan and the other as a hire," and both die in the time for which they were borrowed. The defendant claims, "I am sure that one of them died in the time of borrowing, but I am not sure of the other one," and as he cannot swear, he must pay. The second part is to be explained that there were three cows, and the

plaintiff claims that two of them died in the time for which they were borrowed. The defendant claims that he is sure only of one of them, and as to the others, he does not know whether that which was borrowed died, and that which is still alive is the one which was hired, or *vice versa*. As he cannot swear, he must pay. And according to Rami bar Hama, who holds that all the four kinds of bailees are liable only when they admit a part and deny a part, the first part of the Mishna is to be explained that the claim was for three cows for half a day, or a day as a loan and the other as a hire; and the plaintiff claims that all the three died at the time when they were borrowed. The defendant, however, denies one of them altogether, and for the remainder he claims that only one of them died in the time for which it was borrowed, and concerning the other, he is doubtful; and in the second part the plaintiff claims that he has given him four cows: three of them as a loan and the one as a hire, and the three which were borrowed died. The defendant denies one altogether, and admits that one died in the time for which it was borrowed, and as to the remainder he is doubtful. As he cannot take an oath, he must pay.

One says it died while borrowed, etc. But why? In the claim of the defendant we do not see any admission, even in part, as to the claim of the plaintiff (since the plaintiff claims that that which was borrowed died, and the defendant says that it is still alive, but that the other which was hired is dead; consequently he is not obliged to take an oath at all. Said Ula: As the defendant must take an oath that the cow in question died a natural death, the plaintiff may desire that in that oath shall be included a statement that the hired cow, and not the borrowed one, died (such a desire must be listened to, as it is explained elsewhere that this is a biblical law).

But if both say they don't know, etc. This statement is in accordance with Symachos, who holds that doubtful money must always be divided.

MISHNA *III*: If one has borrowed a cow, and the owner sends it to him by his son, slave, or messenger, or even by the same persons of the borrower, and it dies while on the road, the borrower is free. If, however, the borrower orders him to send it through his son, slave, or messenger, or even through the same persons of the owner, or even if the owner says to him, "I will send it through the persons mentioned above, of my own or of yours," and the borrower says, "Do so," then the

borrower is responsible for the death while on the road, and the same is the case with the return.

GEMARA: Was it not said above that the hand of a slave is considered as the owner's? Why, then, should the borrower be responsible if it was sent with the slave of the owner? Said Samuel: It treats of a Jewish bondman, whose body does not belong to the owner. Rabh, however, said: The Mishna can be explained that it treats even of a heathen bondman; but the order of the borrower is to be considered, as if he would say: Strike it with a stick and it will come to me. [1]

As the borrower told him to send it in that manner, his intention was that as soon as he shall forward it to the above-mentioned persons, the control of the owner ceases.

An objection was raised from the following: If one borrows a cow and it was sent to him with the son of the owner, or with his messenger (with the consent of the borrower), the borrower is responsible for an accident on the road. If, however, it was sent by his slave, he is free. Now this would be correct in accordance with Samuel's theory, as the Boraitha may treat of a heathen slave, and our Mishna of a Jewish one; but according to Rabh's theory it contradicts? Say, then, Rabh explained the case of the Mishna, that the borrower is not as explained above, "it is considered," but Rabh says that the Mishna treats of which it was said plainly, "Strike it with a stick and it will come to me." As it was taught: "Lend me your cow. Through whom shall I send it to you? Strike it with a stick and it will come." Said R. Na'hman in the name of Rabba bar Abuhu, quoting Rabh: As soon as it was out of the control of the owner the borrower is responsible for an accident.

There is a Boraitha which states plainly, as it is above, in the name of Rabh. Shall we assume that it shall be a support to him? Said R. Ashi: Nay; as the Boraitha may treat in case that the courtyard of the borrower was behind that of the owner, so that the borrower was sure that if the owner would strike the animal with a stick, while turning it to the yard of the borrower, it will come to it (but not otherwise). But is not such a case self-evident? The case was that there was another corner in

the yard of the owner, and the animal could turn there while running. Lest one say that in such a case the borrower was not sure, it is necessary to teach us that he was.

R. Huna said: "If one borrows a hatchet, if he has done some work with it he acquires title to it for the time borrowed, but not otherwise." (According to his theory drawing does not give title to a bailee.) To what purpose was this stated? Did he mean to say that he is not responsible for an accident? Why should this case be different from the case of the cow mentioned above? He meant to say that the owner has the right to retract as long as the borrower has not used it, but not after he has. And he differs with R. Elazar, who said that at the same time the enactment of drawing was made concerning buyers, it was also enacted concerning bailees, and so also we have learned in a Boraitha, with the addition that as real estate may be bought with money, with a note, and with hazakah, the same is the case with hiring. With hiring! What has a note and a hazakah to do with hiring? Said R. Hisda: When real estate is hired (*e.g.*, if one hires a house, if he has paid the rent, or has given a note, or taken possession, hazakah, of it) the owner has no right to retract.

Samuel said: If one steals a bunch of pressed dates, which contains fifty dates--and usually when they are sold together a bunch contains only forty-nine, but if single he sells out the whole fifty--then, when the robber repents and wants to make amends, if the dates belong to a common man he has to repay only for forty-nine, but if they belong to the sanctuary, he must repay fifty, with the addition of a fifth part. However, if one spoils the same, he is free from the additional fifth part; as the master said elsewhere: It is written [Lev. xxii. 14]: "If a man *eat* a holy thing unwittingly," etc.; it excludes if he spoiled it.

R. Bibi bar Abye opposed: Why shall he pay to a common man only forty-nine? Let the owner say: I would sell them singly. Said R. Huna bar Jehoshua: There is a Mishna (in the First Gate, p. 131): "It is appraised at how much the measure of the land required for planting a saah was worth before, and how much it is worth after."

Hence we do not appraise the value of that which was consumed, but of that which was diminished. Shall we assume that Samuel holds that the law concerning an ordinary man is not equal to that of the sanctuary? Are we not aware that elsewhere R. Abuhu, in the name of Samuel, declares that there

is no difference? Samuel had retracted that statement. But how do you know that Samuel retracted from *that* statement? Perhaps he had retracted from *this* statement. We are aware of this from Rabha's following statement: "That if some one took something from the sanctuary unintentionally or by an error, he transgresses, as if he did the same from an ordinary man intentionally." (Hence we see that there is a difference between a sanctuary and ordinary goods, and Rabha would not teach such a law if it were against Samuel.) Rabha said: Carriers who break a barrel of wine, the price of which on a market day is five zuz and on an ordinary one four, on the market day they have to return another barrel of wine, but on another they have to pay in cash four zuz. This, however, is said if the wine dealer has no other wine for sale. But if he has other wine, and he does not sell it, they may return him a barrel of wine, as we see that he intends to keep the wine for the season; and also in case they pay him, he has to deduct the money for their labor, and also what he has to pay for making a hole in the barrel (which was of clay).

MISHNA *IV*.: If one exchanged an ass for a cow, and it brought forth young ones, or one has sold one's female slave and she gives birth, and the seller claims that this happened before the sale, and the buyer thereafter, the value of it is to be divided. If one possesses two male slaves, a large one and a small one, or two fields, one large and one small, and the buyer claims, I bought the large one, and the seller, I doubt it, the buyer's is to be considered. If the seller claims: I sold the small one, and the buyer doubts it, the claim of the seller must be considered. If, however, they contradict each other, the seller must take an oath that he has sold the smaller one; if both doubt it, the difference is to be divided.

GEMARA: Why should it be divided? Let us see who possesses it. It should be the obligation of the plaintiff to bring evidence. Said R. Hyya bar Abba in the name of Samuel: The Mishna says: When the articles in question are still in the *semita* (a corner near a public thoroughfare where articles for sale are placed). But why should it not be considered still under the control of the owner, and the buyer the plaintiff who should have to bring evidence? The Mishna is in accordance with Symachos, who said that doubtful money ought to be divided without a note. But was Symachos's decision in a case where both claim that they are certain? Symachos's decision was

only in cases where both doubted. Said Rabba b. R. Huna: Yea, Symachos made his decision, even in a case where both claim certainty. Rabh, however, said: Symachos's decision was only when both claimed that they are doubtful, but not when both claimed certainty. But the Mishna

is to be corrected, that both of them claimed that they were doubtful; and therefore the article in question must be divided. However, the Mishna is correct only with Rabh's correction, because part of it speaks plainly in case both are in doubt. Therefore the first part must also be interpreted in the same way. But according to Rabba bar R. Huna's theory, who says that Symachos's decision was even when both claim certainty, the last part would be entirely superfluous, since even when they claim certainty it is to be divided. Is it so much the more when both claim doubt? Nay; this cannot affect, as it may be said that the last part was taught only to make clear the meaning of the first part; lest one say that it speaks only when they both claim doubt. Therefore it teaches plainly the claims of doubt in the last part to signify that the first part speaks when both claims were of certainty, and nevertheless it must be divided. An objection was raised from the decision in our Mishna that the seller must take an oath that he has sold the smaller one, and this is correct only in accordance with Rabha, who says that Symachos's decision does not apply to a case of certainty. But, according to Rabba bar R. Huna's theory, it does. Why, then, should he take an oath; let them divide?

Symachos admits that in such a case where the oath is to be taken biblically, the law that it should be divided does not exist, as will be explained further on.

If one possesses two slaves, etc. What has an oath to do here? In the claim of the defendant we do not see any admission at all, as the plaintiff claims that he sold another person, which the defendant does not contradict; and, secondly, the seller says: "Here is your bought article; take it." Such a case is not considered a part admission, as said above; and aside from this there is no rule that no oath must be given concerning slaves. Said Rabh: It treats when he demands the value of the articles sold, but not themselves, as, *e.g.*, the value of the slave or the field in question. Samuel, however, says: The Mishna treats concerning the garments of a slave and the sheaves of a field; the seller claims: I sold you the smaller ones; the buyer says: The larger ones. But then the claims are

not of one and the same article, and the axiom, There is no admission by the defendant, mentioned above, applies also to this. As Rabh Papa declares elsewhere that it speaks not of a ready-made garment, but of the stuff to a garment, which is still attached, and one claims: You have sold me measure for a large garment, and the other says: For a small one, the same is to be explained here.

It was difficult for R. Hoshea to accept this explanation, as the Mishna states a slave, and not a garment. Therefore he tried to explain thus--that the Mishna treats that the plaintiff claims that he sold him a slave with his garments or a field with its sheaves. And to the objection that there is no admission at all to the claim of the plaintiff that he has sold him a garment with the slave, the explanation of R. Papa mentioned above may be used here also, that the dress was attached to the slave (*i.e.*, that he was dressed in it); and as an oath has to be given to him for the dress, the oath about the slave may also be included.

It was difficult for R. Shesheth to accept this explanation, as according to it the main thing the Mishna teaches is that the oath for encumbered estate, for which an oath is not given when the claim is only about it, is nevertheless to be included in the oath given for unencumbered estate; and this is plainly stated in several places elsewhere. This, however, presents no difficulty, since, lest one say that the garment which the slave wears is equal to himself, or the sheaves of

the field which are still attached to it are equal to the field, it comes to teach us that it is not so.

If both doubt it, etc. This is certainly in accordance with Symachos's theory, who says that doubtful money is to be divided. How, then, is the second part to be explained, which states that if the seller claims that it was born under his control, the seller must swear that so it was? Did not Rabba bar R. Huna declare above that Symachos's theory applies also to the claims of a certainty? Why, then, an oath? Let them divide in this case also. Symachos admits that in such a case, where the oath is to be taken biblically, the law that it should be divided does not exist. As Rabha explained that it treats of a case in which he has cut off a woman's hand, and of a field in which he has digged pits, excavations, and caves, to which the theory, "Here they are," does not apply, as it is not acceptable. Concerning the admission in

part, it may be considered that her hand is considered a part of her. 1

MISHNA *V*.: If one sold out his olive trees for fuel, and there were still bad olives on them, the oil of which was less than a quarter of a lug from the measure of a saah, they belong to the buyer. If, however, there was such a quantity or more, the buyer claims it is produced from his trees, and the seller claims it was produced from his estate, the products are too be divided.

Olive trees which were overflooded (by a stream), taken out by the owner, and planted in another's field, and the two quarrel about the fruit borne: one claims, My trees, and the other, My ground brought it. It is to be divided.

GEMARA: Let us see how the case was. If the seller told the buyer to cut it off immediately, and he didn't, then even if there was less than that quantity, it belongs to the seller. If he told him: You can cut it off whenever you like, then, even if it was more, it belongs to the buyer. The case was that he sold it without any stipulation; then less than a quarter of a lug people do not care about. But when more than this, they do. Said R. Simeon b. Paze: The quarter in question must be measured after what is lost in pressing it.

Olive trees which were overflooded, etc. Said Ula, in the name of Resh Lakish: The law holds good only when they were torn out with lumps of earth in which they were planted. (In such a case the trees in question are free from the law Arlah; that is, the first three years) and even then only when three years have elapsed from the time he had planted them in the other field. Otherwise the fruit belongs to the owner of the trees; as be may say to the owner of the estate: If you, *e.g.*, would plant new trees you could not use them in the first three years, as they would be Arlah. But why should not the owner of the estate claim: "If I should do as you say, I would use all of them after the lapse of three years, and now you take half of it." Therefore we must accept, as Rabin has reported that Resh Lakish said, thus: The law holds good when they were torn out with the lumps of earth and during the first three years, but after the lapse of three years all of them belong to the owner of the

estate, because of the reason stated above. But why should not the owner of the trees claim: If you should plant it you would not use it for three years, and now you consume half of it every

year? Because the owner of the estate may answer: If I were to plant it, they would be small and would not afford much, so that I could use the ground near them for vegetables (which need sunshine), which is not the case now, as you planted your trees in that place.

There is a Boraitha: If the owner of the trees says, "I will take back my plant from your field," he must not be listened to (although after three years it will all belong to the other one), but the owner of the estate has to pay the value of trees for planting, and not the value for fuel. Why so? Said R. Johanan: Because of the occupancy of the land of Israel. Said R. Jeremiah: To such an explanation we need such an authority as R. Johanan.

It was taught: If one has planted trees in a field belonging to another, without the consent of the owner. Said Rabh: His word must be appraised, but not to his benefit (*i.e.*, if the expenses were more than the improvement, he gets nothing, and if the improvement was worth more, then he gets paid for the improvement). Samuel, however, maintains that the appraisement should be as much as one has to pay for planting such a field. And R. Papa said.. They (*i.e.*, Rabh and Samuel) do not differ, as one speaks of a field which is better for trees and the other of that which is better for vegetables. And the statement of Rabh was not heard from him plainly, but was so inferred from the following: There was a man who came to Rabh with such a complaint, and he told him to appraise his work. He objected, saying, I do not want my field to be planted at all, and Rabh said: Go and appraise his work, not to his benefit. And the man said: I don't want to do even that, as he spoilt my field. Thereafter it was learned that the owner of the field had fenced it, and Rabh said: From this we see that his work satisfies you; go and appraise his work so that he may be benefited.

It was taught: "If one has rebuilt a ruin of one's neighbor without his consent, and to the owner's claim has said: I will take back my wood and stones," R. Na'hman is of the opinion that he must be listened to, and R. Shesheth maintains that he must not. An objection was raised. R. Simeon b. Gamaliel said that in such a case the Beth Shamai hold that he should

be listened to, and the Beth Hillel say not. Shall we assume that R. Na'hman holds in accordance with the Beth Shamai? R. Na'hman holds with the Tana of the following Boraitha: In such a case his claim should be taken into consideration; so is the decree of R. Simeon b. Eliezar. But R. Simeon b. Gamaliel said that so was the decree of the Beth Shamai. The Beth Hillel's verdict, however, is contrary. How, then, should the law be decided? Said R. Jacob in the name of R. Johanan: If this happened with a house, his claim may be considered, but not with a field--for the reason the earth became deficient.

MISHNA *VI*.: If one rents a house (without appointing the time) in the rain season, he has no right to make the tenant move from the Feast of Tabernacles until Passover; and in the summer season for a period of thirty days. In the large cities, however, there is no difference at what time; he must keep him twelve months; and the same is the case with stores or shops at any place. R. Simeon b. Gamaliel maintains that the term of the shops of bakers and dyers is three years.

GEMARA (Let us see): In the rain season why must he keep him for the whole season? Because usually when a man rents a house it is for the whole season. Why should not the same be said of

the summer season? And if you should say that the reason is that because during the rain season it is not easy to find a house to rent, then how is it that in the large cities the term is fixed for twelve months? Now if the twelve months terminate in the rain season, and the owner makes the tenant move, why it is not easy to find a house for rent? Said R. Jehudah: All the terms are fixed only for giving notice; *i.e.*, thus: If one lends a house to some one anonymously, one cannot make the tenant move from the Feast of Tabernacles until Passover, unless one had given him notice thirty days before, And so, also, we have learned in the following Boraitha: The terms thirty days and twelve months are for giving notice; and this notice is to be given by the owner of the house as well as by the tenant, as the owner may say, If you had given me notice, I should have troubled myself to find a man who would have taken it for the whole season. Said R. Assi: If he has dwelt even only one day in the rain season, the owner loses the right to make him move until Passover. But was not thirty days the term? He means to say if one day of the thirty days in question had passed without any protest of the owner. Said R. Huna: The owner, however, has the right to increase the

rent. Said R. Na'hman to him: This would be if he would hold him (χεβιοις 1) (in his pocket) until the tenant would lose his last garment. (Rejoined R. Huna:) I mean if the rent in general becomes dearer. It is certain, if the house of the owner where he dwells falls, he may make the tenant remove from that house (if the term is at an end) even without a notice before, as he may say, You are not better than myself, as I also cannot so easily find a house, and I was not aware that my house will fall. If the tenant sold out his lease, loaned, or made it a present, the same may be done, as the owner may say, You are not better than the man from whom you took it. If, however, the tenant has given it for the wedding of his son, then it must be investigated; if it was possible for the owner to notify him, he should do so; and if not, he may say, You are not better than myself.

There was a man who bought a lot of wine and couldn't find a place to keep it in, and he asked a certain woman if she had a place for hire; and she said no. Then he betrothed her and she gave him a place. He went home, wrote a divorce, and sent it to her. She then took carriers, paid them with the same wine for taking it out, and put it in the street. When the case was brought before R. Huna b. R. Jehoshua, he said: As he has done, so it was done to him; he was rightly rewarded, and not only from a yard which was not for rent she had the right to do so, but even if it was for rent, as she may say I would like to let it to some one, but not to you, as you are in my estimation equal to a spy.

R. Simeon b. Gamaliel maintains, etc. A Boraitha states that the reason is because they usually give very much of their goods in debt to the people in the neighborhood.

MISHNA *VIII*.: The owner of the house is obliged to give to the tenant a door bolt, a lock, and all other things belonging to the house which is to be done by a specialist. However, the things which can be done by any one the tenant has to furnish himself. The manure of the house belongs to the owner; the tenant has a right only to the ashes which he takes out from the ovens.

GEMARA: The rabbis taught: The owner of the house is obliged to put in doors, to open windows, to repair the ceiling,

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and to support it with a beam; and the tenant is obliged to make for himself a ladder, a battlement, a gutter, and to plaster the roof with clay.

R. Shesheth was questioned: Whose duty is it to furnish a Mezuzah? [1] But did not R. Mesharshia say that the obligation is the tenant's? The question was that if the door-post was of stone, whose is it to furnish a place for the Mezuzah? And R. Shesheth answered thus: We have learned in our Mishna, which states that things which need not a specialist the tenant must prepare; and this is also to be considered among these things as he can fix it himself.

The rabbis taught: The tenant has to buy a Mezuzah, but when he removes he must not take it with him, unless he is aware that a Gentile will occupy the house after him. And it happened that one took it out while removing, and buried his wife and two children.

The manure belongs to the owner, etc. How is the case if the cattle were the tenant's? Why, then, should the manure belong to the owner of the house? And if the yard was not rented to him, and the cattle belong to the owner, then it is self-evident that it belongs to him? The court was not rented, and the manure was not of the owner's cattle, but of cattle which were in the court to load or unload things belonging to the tenant. And this statement may be a support to R. Jose bar Hanina, who said that a courtyard acquires title for its owner even without his knowledge. An objection was raised from the following: If one said all articles found in my courtyard to-day, it shall give title to me. He said nothing. Now if the theory of R. Jose is correct, why should his words be disregarded? It speaks of an open court where the articles are not secure. If so, how is to be understood the latter part of the same Boraitha, which states: If, however, there was heard a voice in the city that in the yard of so and so is found an article (Rashi explains this as, *e.g.*, that it was heard in the city that a lame ram happened to come to his field, or that the river overflowed and left some fish in his yard) his word is to be considered. Now, if it speaks of a court where the things are not secure, why should his word be considered, even in this case? If such a thing was heard in the city, one would not dare to take it, and therefore it is considered as if the yard were secured

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[paragraph continues] Another objection was raised from the following: Ashes of the ovens and dust from the air belong to the tenant, but that from the stable and in the yard belongs to the owner. Now if the theory said above by R. Jose is correct, why should dust of the air belong to the tenant? Is it not the air of the owner's court? Said Rabha: Air which cannot reach the ground because of some obstacle must not be considered as if it were on the ground. But was the decision certain to him? Did not he himself question as follows: If one has renounced his ownership of a purse of money, and has thrown it into one open door, and it passes out through another open door, and falls outside of the house, did the contact of the purse with the air of the house in its passage through give title to the purse to the owner of the house, or, because it has not rested in the house, has the house-owner no title? (Now if he were certain in his above decision, he would not ask such a question?) In the case questioned by him there was no obstacle, as in the case mentioned above.

That which is in the stable and in the yard, etc. Why both? Is not one sufficient, as it speaks of a

yard which was not rented to the tenant? Said Abye: It means to say that even if the courtyard was rented. still that which is in the stable belongs to the owner. And R. Ashi said: From this it may be inferred that if the yard was rented without any stipulation, the stable in it is not to be considered included.

MISHNA *VIII*.: If the year was made a leap-year, the tenant reaps the benefit of the intercalation. However, if he rented him the house monthly, the intercalation belongs to the owner. It happened in Ciphorius, that one rented a bath-house for twelve golden dinars a year. The payment should be one dinar monthly, and thereafter the year was made leap intercalary. When the case came before R. Simeon b. Gamaliel and R. Jose they decided that the payment of intercalation shall be divided.

GEMARA: Does the Mishna bring a fact to contradict its previous statement? (As there is no mention of a division, but belongs either to one or to the other.) The Mishna is not completed, and should read thus: If he has rented it to him for twelve months to be paid monthly, then the payment for the added month is to be divided, and it happened also in Ciphorius, etc.

Said Rabh: If I were there I would decide that this month belongs altogether to the owner. What was the intention of Rabh to teach us? That the last expression must be considered.

[paragraph continues] Has he not taught the same elsewhere; namely, R. Huna said that in the school of Rabh it was taught that if one says I sell you this article for an istera (hundred mahas), then he has to pay him a hundred mahas in good money, and if *vice versa* he may give him an istera? (The difference between an istera and a hundred mahas is that an istera contains also a hundred mahas, but not in current money.) From that statement we can infer nothing, as one may say that the last expression was only an explanation to the preceding one. (In our case, however, there is no explanation. The owner rented the tenant the house for a year for twelve golden dinars. The payment should be a dinar monthly; consequently it was two conditions, and not an explanation.) Samuel, however, said: The decision was so made because they came to the court in the middle of the month, but if they had appeared in the beginning it would be entirely the owner's; and if they would come in the end of the month, it would be the renter's (because they doubted as to which expression should be considered, the first or the last; and if they came in the beginning of the month, and he required payment or removal, then his claim is to be considered, since the house is his. And if they came at the end of the month, there is no claim for removal, but for the past month. Such a debt cannot be collected by the court, and therefore the money remains with the renter. But if they came in the middle of the month, and the owner demands payment or removal, he is to be paid for the future, but not for the time past.

But did not Samuel also hold that the last expression must be considered? Is it not stated elsewhere: If one said, I sell you a kur of wheat for thirty salahs, the seller may retract even at the last saah, because the buyer does not acquire title until he has taken the last one (and he had sold him the whole kur and not every saah separately). If, however, the seller said, I sell you a kur for thirty salahs, each saah for a salah, then he cannot retract from that which was already measured (as the last expression, one saah for a salah, is the one taken into consideration). So said both Rabh and Samuel. (Hence we see that Samuel also agrees to the theory of the last expression.) Nay, the reason in that case was, because he took possession of it already, and in our case also for the same reason that it is doubtful, whether the first or the last expression is to

be considered. He does not pay for the time occupied, but for the future. R. Na'hman, however, maintains that the estate is

always considered in the occupancy of the owner, and therefore there is no difference at what time in the month they came to the court. His rent must be paid; and not only when the last expression was a salah a month, but even if it was the reverse, a "salah a month, twelve for a year."

R. Janai was questioned: If the renter says I have paid, and the owner claims I have not received it, who of them must bring evidence? (Let us see.) The following Mishna in (Tract B'khorad) answers this question: Either it was for time past or for the present, namely: If the father dies within thirty days of his first-born son's birth, he must be considered unredeemed as yet (*i.e.*, when he is grown up, then the obligation of redeeming would remain to him all his life). If, however, his father dies after thirty days, he is to be considered redeemed, unless neighbors assure him that he was not. (From which it is inferred that within the time the renter must bring evidence, and after the time the owner must bring evidence, as according to the Jewish law rent is paid at the end of the month.) The question was, at the very same day when the term is ended, the renter says I paid you in the morning, and the owner says you did not. Said R. Johanan to them: This we have learned in the following Mishna: A laborer who claims in the last day of his employment, that he did not receive as yet his salary has to take an oath and collect the money. And that the laborer must take an oath and not the employer is enacted by the rabbis only there; as the employer has to deal with many laborers, it may happen that he has given to another one instead, and then he will swear falsely; but in your case the renter is trusted, if he takes an oath that he has paid.

Rabha, in the name of R. Na'hman said: If one has rented out a house for ten years, and has signed a lease without a date, and thereafter he claimed that the tenant has already had the house for five years, he is to be trusted. Said R. A'ha of Difti to Rabina: According to this theory, if one has loaned a hundred zuz and has taken a note, should the debtor also be trusted if he says, I have paid you the half? And he answered: What a comparison is this? A note is written for collection; and if he would pay, he would insist that it should be written on the note or he would take receipt. In this case, however, the owner may claim that he has made the lease, so that the tenant shall not be able afterwards to claim hazaka (occupancy).

R. Na'hman said: If one borrows at his neighbor's an article

for the time it may be fit for work, he may take it as often as he requires it as long as it exists. Said R. Mari, the son of Samuel's daughter: This holds good only if it was done with the ceremony of a sudarium. And R. Mari b. R. Ashi said: That in case it breaks, he is obliged to return him the pieces, as it was only borrowed, but not sold.

Rabha said: If one borrows a hoe to dig this vineyard, he may dig with it the whole vineyard. If he says *a* vineyard, it may be any vineyard he likes, and if he says *vineyards*, then he may dig as many as he possesses, and if it breaks he must return the pieces.

R. Papa said: If one says lend me this well, and it becomes ruined, the borrower has no right to rebuild it. If, however, he said a well, if it becomes spoilt, the borrower may rebuild it. If, however, he said to him, Allow me your estate to dig a well, he may dig at any place in it until he finds water. However, all this holds good only with the ceremony of a sudarium.

MISHNA *IX*.: If a man rents out a house and it falls he must build another house in the same condition as the first was; if it was a small one, he must not build it larger, and *vice versa*. If it was two houses he must not make one, and *vice versa*; he must not increase or decrease the number of windows, unless the renter agrees.

GEMARA (How was the case): If the owner rented him *this house*, then why should he build another one when it falls; and if he rented him anonymously a house, then why can he not make any change in the building, *e.g.*, two or one, or a large instead of a small? When Rabin came from Palestine he said, in the name of Resh Lakish, that the Mishna treats: When the owner said to the tenant, I rent out to you a house like this. If so, what does the Mishna teach us? Is this not self-evident? The case was if the house was standing on a shore of a river, and lest one say, that it means a house which is placed in the same position, therefore the Statement of the Mishna.

Footnotes

250:1 The term in the Scripture is *Ganub yganubh*; literally, stolen, to be stolen. Hence the repetition of the word theft. Leeser, however, translates according to the sense.

256:1 This is an ancient parable, and it means that such carelessness must not be considered.

259:1 His reason is that the slave who was appointed for this message is to be considered hired, as his master has a right to hire him out, and therefore it is as if he hired out two cows. And the statement above, that the band of the slave is considered as that of his master's, holds good only when the master himself lends or hires, Then the slave may substitute for him, but not otherwise.

264:1 The text is so complicated that it is very difficult to understand the real meaning of it. The Achri has omitted this from his compendium: the commentaries also have tried to explain this, but did not succeed. However, according to our method we could not omit this, so we did the best we could to translate it.

267:1 We have translated according to Schoenhack's Dictionary. Rashi, however, explains it differently, which is not translatable; the meaning, however, is the same.

268:1 The "amulet" for the door-post (Deuteronomy, vi. 9).

Next: Chapter IX

CHAPTER IX

RULES AND REGULATIONS CONCERNING THE HIRING OF FIELDS; PAYMENT OUT OF THEIR PRODUCTS OR IN MONEY; THE NEGLECT OF THE HIRER; WHAT HE MAY OR MAY NOT SOW IN THEM.

MISHNA *I.*: If one hires a field (no matter under what condition, for a half, third, or a quarter, or for so and so many kurs a year) he must do as it is customary in that country: to scythe, to turn it out, or to plough, to weed after them. (When they come to divide) the grain, they have also to divide the hay and straw. If the stipulation was made on wine, then they divide the vine and sticks. They must also prepare together the sticks needed for the vineyard for the next year.

GEMARA: There is a Boraitha: If the custom was to scythe, he must not tear out, as the owner of the estate may say it is better for me that some of the straw remains, which will serve me to prepare manure next year. Or if the custom was to tear it out, he must not scythe, although one might say I would like the garden to be clean, and the other says, I would like to have the straw of it, and the reason is because each of them has a right to prevent the other.

To weed after them he may. Is not this self-evident? The case was in such a place where the custom was not to weed, and he, however, did so while still growing, saying, I do so now in order that I shall not have to do it after the grain is taken off. It teaches us that such a stipulation is not to be considered.

All must be done according, etc. What does it mean to include in the word "all"? That what the rabbis taught: Where it was customary to let the trees with the earth he may do so, and in the places where it is not customary he must not do so. Is this not self-evident? The case was in places where it was customary to let it for a third of the products, and he let it for a quarter, lest one say that the owner may say, I have reduced the price for the purpose of saving the trees for myself. It comes to teach us that this cannot be done unless so stipulated.

Where it is customary not to let it, etc. Is this not self-evident?

[paragraph continues] The case was in places where it was customary to let for a quarter, and he took it for a third, lest one say that the hirer may claim, I have increased the price for the purpose that you should give it to me with the trees. It comes to teach us that this cannot be done unless so stipulated.

R. Joseph said: In Babylonia there is a custom that the gardener is not given any straw. To what purpose does he say this? Because if it happened that some are doing so, it shall not be

considered as a custom, but attributed to their goodness. The same said again: The first earth upon the trench, the second, and the third, and also the sticks for the thorns must be furnished by the owner; the thorns themselves, however, by the gardener. This is the rule. All things which are considered the most necessary for preserving the garden must be furnished by the owner, but extraordinary things by the gardener. (As this benefits him only as this saves him time and trouble.) He said again: The hoe, the dung-fork, the pail, and the bag for water is to be furnished by the owner; the gardener, however, has to dig the channels for water.

As they divide the wine, etc. What have sticks to do here? In the school of R. Janai it was said, *i. e.*: The peeled sticks on which the vine is usually supported.

They must also, etc. Wherefore this addition? This corresponds to the former, and it means thus: Why should the sticks be divided? Because the preparation of them is to be done by both.

MISHNA *II*.: If one hires a field and it was a dry place (so that it has to be artificially watered), or a group of trees and thereafter the spring ceased to flow, or the trees were cut off, the hirer has no right to deduct from the price stipulated. If, however, at the time hired the hirer said to him: Rent me this dry field, or this field in which there are a group of trees, and it happened that the spring dried up or the trees were cut off, the right of deduction is granted.

GEMARA: How was the case? If the general river from which all water their fields become dry, why then shall nothing be deducted from the agreement; let him claim that this is a plague to the whole country (further on it is taught that in such a case the hirer may deduct)? Said R. Papa: *I. e.*, that the channel from the river to the field only became dry, and then the owner of the field may say, you could water it by means of pails. R. Papa said again: The statement of the two Mishnayoths

applies to both cases, either he took it in partnership for half or third of the product, or he hires for a certain amount of kurs. The statement of the following Mishnayoths of this chapter, however, are different, as the law which applies to an undertaking for half of the products does not apply to a hiring and *vice versa*, as it will be explained further on.

If the hirer said to him: Rent me this dry field, etc. But why? Let him say, I only gave you the name without any particular intention; have we not learned in the following Boraitha that if one says, I sell you the estate which contains a kur of earth, and there is no more than a half, or, I sell you a vineyard and there are no vines, or, I sell you a fruit-yard, and there are nothing but pomegranates, all these sales are valid as they are so called. And the same should be the case here. Said Samuel: This presents no difficulty, as in all cases of the Boraitha the owner says it to the buyer, therefore the name is considered. From the case stated in our Mishna, however, we see that he wanted that particular field upon which he was then standing, as he said *this*. Rabina, however, said: It does not matter who says so, the case in the Mishna is different, because in spite of the fact that he mentions *this*, of which it is to be inferred that he was standing upon, he nevertheless mentioned dry field also, which shows that only that particular dry field suits him, because of the circumstances.

MISHNA *III*.: If one has undertaken to work up a field, and he has neglected to do so, it must be

appraised at how much it would produce if worked, and the defaulter has to pay, as it is customary for an agreement to be so written, that should it be neglected, I will pay from my best estate.

GEMARA: R. Mair, R. Jehuda, Hillel the first, R. Jehoshua b. Kar'ha, and R. Jose, all these considered the language of the common people legal (although it was not in accordance with the enactment of the sages); R. Mair, in the last sentence in our Mishna, which is stated in his name elsewhere, R. Jehudah in the following Boraitha: One has to bring the offer that is prescribed for the present of a rich man to his wife. (The difference between the offering of rich and poor is explained in Lev. xiv. 21.) Because in the marriage contract he writes: I will take upon myself all the responsibility you have had before our marriage--*i.e.*, from the time he marries her he takes upon himself to make good all her obligations to

the sanctuary, even those contracted before marriage. 1 Hillel the first in the following Boraitha: The inhabitants of Alexandria used to betroth their wives, but at the time they were prepared to go under the canopy (Chupha) other people used to come and take them away; and the sages were about to proclaim their children bastards. Said Hillel the first to them: Bring me the marriage contract; and finding that it is written there: You shall be my wife when you enter the canopy, therefore the children were not proclaimed such. R. Jehoshua b. Kar'ha in the following Boraitha: If one lends money to some one, he has no right to pledge him through the court for more than he owes him, as is written in the agreement: You may pledge me for all I owe you. [Was this, indeed, because of the written agreement? Did not R. Johanan say: If one has pledged his debtor, and thereafter he has returned him his pledge for a short time, and meanwhile the debtor dies, the lender has a right to take it away from his heirs? (Hence we see that even without an agreement the lender acquires title to the pledge.) The agreement benefited the lender, in case the debtor has used the pledge and diminished its value, to collect it from their other estate.] R. Jose in the following Boraitha: In the places where it was customary to consider the dowery prescribed by the father of the bride, as a loan, the husband has a right, in case the marriage contract was not fulfilled to collect it from his father-in-law as a creditor. In the places, however, where it was customary to write in the marriage contract to double the amount, the husband collects the half. The inhabitants of Nahardai used to collect only the third of the amount written. Maremar, however, used to collect the whole amount. Said Rabina to him: Have you not learned where it is customary to write double he collects the half only? This presents no difficulty, as the cited Boraitha treats when it was not made with the ceremony of a sudarium, and Maremar treats when it was.

Rabina used to double the amount in the marriage contract, and when asked to strengthen this with the ceremony sudarium, he would say: One of the two, either a sudarium or

the double amount. There was one who said when on his dying bed: Give four hundred zuz to my daughter in her marriage contract, and R. A'ha b. R. Ivia questioned R. Ash,: Does he mean to give four hundred in cash, so that the marriage contract should be written eight hundred; or does he mean that it should be so written in the contract, which in reality means only two hundred? It must be investigated how he expressed himself. If he said, Give her four hundred too her marriage, then it is evident that he meant cash, and it must be written eight hundred; but

if he said, Give her in the *marriage* contract four hundred, it means only two hundred. (Said the Gemara:) In reality it is not so. There is no difference if he said to her marriage, or in her marriage contract, it must be considered that he intended two hundred, unless he said give her four hundred without any addition.

There was one who undertook to work up a field, and he said: Should I neglect I will give you one thousand zuz. Finally he neglected to work up a third of it, and the sage of Nahardai decided he shall pay him 333 1/3 zuz. Rabha, however, said the whole thing was only an asmakhta, which gives no title. But why should this be different from that which is stated in our Mishna: If it will be neglected I shall pay with my best estate? In the Mishna there was no exaggeration; here, however, when he said he will give a thousand it was merely an exaggeration.

There was another man who undertook to work up a field for poppy and had sowed it with wheat. The wheat, however, became dear, so that the price was equal to poppy (so that the owner of the estate suffered no loss). R. Kahna, nevertheless, was about to deduct from the agreement the value of the fertility which was used less for wheat than it should have needed for poppy. Said R. Ashi to R. Kahna: People say it is better for one that his earth should become meagre than he himself.

There was a man who undertook a field for poppy, sowing with wheat, and finally the wheat was worth more than poppy, and Rabina was about to say that the hirer shall take the value of the increase. Said R. A'ha of Difti to him: Was the increase from the grain only; was it not also from the fertility of the earth? The sages of the Nahardai said: If one takes an article to sell in places where it is dearer, for the half profit, the enactment of the sages was that half shall be considered a loan and the other half a deposit; and they did so to benefit both. The borrower is benefited, as he has the right to use the half for his

own expenses, and the lender, because the half, which is considered a deposit, collects it from his heirs in case he dies, as it becomes no personal property of theirs. This is in accordance with R. Ida bar Rabin.

Rabha, however, said: It is therefore called business that first one must not use it for himself; and, secondly, that if he dies it should not be considered personal property of his heirs.

Rabha said: If one has given articles for business without any stipulation (the law of which is that the owner takes three-quarters of the profit, and suffers half if damage occurs), and took from him two notes, *e.g.*, if he sold him two bundles of goods for two hundred zuz, and took a note for each of them for a hundred zuz, and the borrower had sold out one bundle for one hundred and thirty zuz and the other for seventy, then if there were only one note, it would be considered no profit nor loss. But now, as there are two, to one there is a profit of thirty zuz, of which the lender takes two-thirds or twenty, and the other one is considered thirty zuz loss, of which the lender suffers half. If, however, it is the reverse (*i.e.*, he took two loans in two days on one note), then in such a case as stated above, the borrower suffers (five zuz), not the lender. He said again: If one took money for business, and has had a loss, and thereafter he exerts himself and regains the loss, but failed to notify the lender both of the gain and the loss, he cannot claim that the lender shall suffer any loss, because the lender may say to him: You have exerted

yourself for your own benefit to regain it, that people shall not say that you are a poor business man. The same said again: If two persons took money from one lender for business, they shall do it together, and one of them profits and wants to separate himself from his partner, he has no right to do so if his partner protests and says: Let us be partners until the time appointed for returning the money. And if one claims: I would take half the profit for my share, the other may prevent him, saying he cannot take out the profit because of the possibility of future loss. And even if one of the partners claims the half profit and half of the principal amount, the other can prevent him by saying: We cannot divide, as the whole money belongs to the business. And if he promised his partner that in case of loss he shall suffer his share, his partner can prevent him by saying that the fate of two is better than of one.

MISHNA *IV.*: If the gardener did not want to weed the field, saying: I will give you your due, he must not be listened

to, as the owner may claim, To-morrow you will leave this field, and I will have to weed it myself.

GEMARA: And even if the gardener says: I will weed it afterwards, the owner may say: I want good wheat, and if it is not weeded the wheat cannot be as good as when weeded. And if he says: I will buy you good wheat from the market, he may say: No, I want the wheat from my estate, and even if he claim: I will weed out that share of it which belongs to you only, he may say that by doing so you will spoil the reputation of my field. But did not the Mishna give only one reason, *that I will have to weed it, etc*.? All these claims are included in the one reason given by the Mishna, that finally he will have to weed it. (The statements of this Mishna apply only to a hirer, but not to one who took it in partnership.)

MISHNA *V.*: If one took a field in partnership, and it was not productive, he must not leave it as long as there is hope of bearing even only one heap. R. Jehudah says that there is no appraisement as to the contents of a heap, he therefore maintains that he must not leave it if there is hope of the products being at least as much as was sowed.

GEMARA: The rabbis taught: If one took a field in partnership and it was not productive, if there is grain sufficient to make one heap, he is obliged to work it up; as the usual written agreement of such a partnership is as follows: I will plough, sow, weed, make sheaves, thresh, blow, and will make a heap of it for you, and then you will take half and I for my labor the other half. What should be the quantity of the heap? To cover the winnow--*i.e.*, that if put in it should be completely covered.

The schoolmen propounded a question: How is it if both edges of the winnow are still visible? Come and hear. R. Abuhu said: R. Jose bar Hanini explained to me, when the right side of the winnow cannot see the sun. It was taught: That quantity of the heap is three saahs according to Levi, and according to the disciples of R. Janai two. Said Resh Lakish the saahs in question must remain after it was cleaned out.

But how much is it? Said R. Ami in the name of R. Johanan, four saahs for one kur, and R. Ami himself maintains eight for a kur. There was a certain old man who said to R. Huna b. Rabba bar

Abuhu: I will explain to you the reason of their statements. In the year of R. Johanan the earth was fertile, and four for a kur was sufficient, but in years of R. Ami

the earth was already meagre. There is a Mishna (Peah XV.): If the wind has spread the sheaves it must be appraised how much gathering for the poor there would be if this had not occurred. R. Simeon b. Gamaliel said: He may give to the poor as much as was sowed, and what a quantity does he mean? When R. Dimi came from Palestine he said: In the name of R. Eliezar or R. Johanan four kabs to a kur.

R. Jeremiah questioned, Is it meant for a kur seed (*i.e.*, for a kur sown in the field), or for the field where a kur grain can be gathered; and if you should mean for a kur seed, there is still a question whether it means for sowing by hand or with oxen? (As to the last one the quantity is larger.) Come and hear. When Rabin came he said in the name of R. Abuhu, quoting R. Eliezar or R. Johanan, four kabs for a kur seed; the question, however, whether with bands or oxen remains undecided.

MISHNA *VI.*: If one hires a field, and the locusts destroyed it or it was burned, if this was a general plague in the country he may deduct from the agreement, but not otherwise. R. Jehuda, however, maintains that if he has hired it for money, he must deduct under any circumstances.

GEMARA: What is to be understood by a plague of the country? Said R. Jehudah as, *e.g.*, the majority of the valley, where there were many fields, was destroyed. Ulah, however, said: If four fields, on all its sides.

If the owner had told him to sow it with wheat, and he had sowed it with barley, and the fields of the majority of the valley were destroyed and also his barley, may the owner of the field claim that if he had sowed it with wheat, according to the agreement, it would not have been destroyed, as I have prayed that I should succeed in wheat, not in barley? Common sense dictates that his claim is right. If it happened that all the fields of the landlord were destroyed, and which was hired included, but the majority of the valley was not destroyed, may the hirer claim that since all your estate was destroyed, it is your fate that this field was also destroyed? The landlord, however, claims that if you hadn't hired it some of my field should have been left to me, consequently it is your fate. Common sense dictates that the claim of the landlord is right. If all the estates of the hirer were destroyed, and also the majority of the valley, may the hirer claim that because the majority of the valley was destroyed he has not to pay, or the landlord may

say: As all your estate was destroyed, it was your fate that this was also destroyed? Common sense dictates the claim of the landlord is right. But why should not the hirer claim that if it were my fate something would be left to me, as it is said above concerning above? As the landlord may say that if Providence would favor you, some of your own fields would have been left to you. An objection was raised from the following: If that year was a year of destruction, or a year which was like the years of Elijah (without rain), it must not be counted among the years of redeeming. We see then that he compares a year of destruction to the years of Elijah, when there

was no grain at all, but where grain is to be found it is not to be considered a plague of the country.

Said R. Na'hman bar Itz'hak: There it is different, as it is written [Lev. xxv. 15]: "According unto the number of harvest years," etc., which signifies that as long as there is some grain in the country it is called a harvest year.

Said R. Ashi to R. Kahana: According to your theory, let the Sabbatic year be counted, as there is grain out of Palestine where the Sabbatic year is not observed, and he answered: The Sabbatic year is a decree of the king, and must not be considered at all.

Samuel said: The statement of our Mishna applies only when he has sowed it and it was grown, and then the locusts have destroyed it. But if he has not sowed it at all because of the locusts, the hirer is responsible, as the landlord may claim that if you would sow it the verse of Psalm, xxxvii. 19 would apply to me.

There is one Boraitha which states that if this happened once, he has to sow it the second time and also the third, but not if it happened the third time also. And another Boraitha states that he has to sow it even after the third time, but not after the fourth. This presents no difficulty. As one Boraitha is in accordance with Rabbi, who holds that two times is to be considered a hazaka, and the other Boraitha is in accordance with R. Simeon b. Gamaliel, who holds that it must not be considered so unless it happened three times. Resh Lakish said: The Mishna treats: In case it was sown, grown, and then was destroyed by the locusts; but if he has sown and it didn't grow, the owner of the estate may claim he shall sow it again and again, until the sowing time is past. But when is it considered past? Said R. Papa: When the gardeners come from the field in the month Adar.

An objection was raised from the following: R. Simeon b. Gamaliel in the name of R. Mair and also R. Simon b. Mnasia said: That the latter half of Tishri Mar Cheshvan and the first half of Kislev is the time for saving, the latter half of Kislev Tabeth and the half of Shbat is winter; the latter half of Shbat, Adar, and the half of Nisan is cold; the half of Nisan, Iyar, and the half of Sivan is harvest; the latter half of Sivan, Thamuz, and the half of Ab is summer, and the half of Ab, Ellul, and the half of Tishri is heat. (Hence we see that the time of sowing is only until the half of Kislev.) R. Jehudah counts from Tishri. R. Simeon, however, counts from Cheshvan. But even then, who is more lenient? R. Simeon, who counts from Cheshvan, does not even count the sowing-time until Adar. This presents no difficulty. The one speaks of a case when he took the fields for sowing wheat and corn, which are usually sown in the beginning of the winter, and the other speaks of barley and peas, which are usually sown in Adar.

If he hired for money, etc. There was one who undertook an estate to sow garlic on the shore of the river of the old king; and it happened that the river was stopped. When the case came before Rabha, he said that it is not usual for this river to be stopped up, and consequently it is therefore considered a plague of the country, and you may deduct. Said the rabbis to him: Have we not learned in our Mishna that R. Jehuda said if he took it for money, he must pay under all circumstances, and he answered: There is no one who cares for his decision.

MISHNA *VII*.: If one hires a field for ten kur wheat per annum, and the products are poor, he may pay him with the same. The same is the case if the wheat was good, he cannot say: I will pay you with the best of the market, but must furnish him with the same.

GEMARA: There was a man who took an estate for pastio (pasture; such a field is usually sown many times a year) for one kur of barley. First he used it for pasture, and afterward he sowed barley in it, and the barley was bad. R. Habiba of the city of Sura, on the shores of the Euphrates, then sent a message to Rabina, asking: How should such a case be decided? Is it equal to the statement of our Mishna, which says that he must pay with the products of the estate, or as he hires it for pasture, and uses it for barley, it is different? And Rabina answered: What comparison is this? In the case of the Mishna the earth was sown according to the agreement, and the payment

has to be with its products; but here he has not conformed to the agreement, hence he has to pay him with the good barley of the market.

There was a man who hired a vineyard for ten barrels of wine, and thereafter the wine became sour. R. Kahana was about to say that this case is equal to the case stated in the Mishna, that if the field becomes stricken and produces bad barley, he may pay him with its products. Said R. Ashi to him: What comparison is this? In the case of our Mishna the earth failed to give what was expected of it; here, however, the earth did fulfil the expectation, and the *wine* became sour thereafter. However, R. Ashi admits that when the grapes become wormy, and also in case the sheaves of the field became spoilt, that he has to repay him with the same.

MISHNA *VIII*.: If one takes a field for sowing barley, he must not sow wheat in it; but if for wheat, he may sow barley. R. Simeon b. Gamaliel forbids this: he must not sow peas in that which was taken for grain, but he may sow grain in that taken for peas. R. Simeon b. Gamaliel forbids this also.

GEMARA: Said R. Hisda: The reason of R. Simeon's statement is, because it is written [Zephaniah, iii. 13]: "The remnant of Israel shall not do injustice or speak lies, and there shall not be found in their mouth a deceitful tongue."

An objection was raised from the following: That which was collected for the poor on Purim must be distributed at the same time without any particulars. However, the poor must not buy with the donation a strap for the shoes, unless it was so stipulated by the elders of the city. So is the decree of R. Jacob in the name of R. Mair. R. Simeon b. Gamaliel, however, was lenient (permitting this). Hence we see then that he was lenient in his decision, and in our Mishna, however, he is rigorous. Said Abye: R. Simeon's reason is as my master (Rabba) said: He who likes his earth to bring forth good fruit, should sow in it one year wheat and the other barley; one year in the length and the second in the width. This, however, is the case if he does not sow in time, but if in time it does not matter.

He must not sow peas, etc. R. Jehudah taught to Rabin: If for grain, he may sow peas. Said Rabin to him: But did not the Mishna state he must not? And he answered: My statement is not contradictory, as the Mishna speaks of Palestine, which is mountainous, and the leanness of the

earth is taken into consideration; and I talk of Babylon, which is

situated in a valley, and there is no fear of this. Said R. Jehudah to Rabin b. Na'hman, Rabin, my brother: Cresses growing among flax may be used without fear that there is robbery (because the owner is benefited by their removal, as they do more harm than good). If, however, they are placed outside of the flax-beds, then it is robbery, and the same is the case even if they grow among the flax, but are already grown up as much as the flax, and so do no more harm. The same said again: Rabin, my brother, in our fields, which are closely attached, there are some among my trees, the branches of which are bent toward yours, and *vice versa*. In such cases, however, the custom is that the fruit belongs to the side to which the branches incline. As it was taught: A tree which stands on the boundary of two estates belonging to two different persons, where the branches are inclined there should the fruit be used. So said Rabh. But Samuel maintains that it is to be divided. An objection was raised from the following: A tree which is placed on the boundary is to be divided, and this contradicts Rabh. In order that the cited Boraitha should not contradict Rabh, Samuel explains that it speaks of a case in which the tree in question occupies the whole boundary; but, then, it is self-evident? It means even when all the branches are inclined to one side. However, even then it is self-evident? Lest one say that then one's neighbor has a right to say. You may take of the fruit of those branches which are inclined to your field, and I will take the remainder, it comes to teach us that our neighbor may say, We must share equally.

The same said again: Rabin, my brother, see that you do not buy an estate close to the city, as R. Abuhu in the name of R. Huna quoting Rabh said: One is not allowed to stand and consider his neighbor's field when the fruit is nearly ripe because of an evil eye. Is that so? Did not R. Abba meet the disciples of Rabh, asking them what has Rabh to say to the following verses [Deut. xxviii. 3-6]? And they answered: Rabh said thus: "Blessed shalt thou be in the city," means your house shall be near the synagogue; and "Blessed shalt thou be in the field," means that your estate should be nearer to thy city; "Blessed shalt thou be at thy coming in," means you shall find your wife and family ready to please you; and "Blessed shalt thou be at thy going out," means that your offsprings shall be equal to you. And R. Abuhu answered: R. Johanan interpreted them differently-namely: "Blessed thou

shalt be in the city," means that the closet of man's necessity shall be near his house [but not a synagogue, as the one who goes further is rewarded for his walk]; "Blessed shalt thou be in the field," means that thy estate shall be thirded, one third in grain, one in olives, and the other in wine; and "Blessed shalt thou be in thy coming in and in thy going out," means that your departing from this world shall be equal to your entering, as your entering was without any sin, so shall be your departing. (Hence we see that it is a blessing if the estate is near the city?) This presents no difficulties. When it is fenced it is a blessing, but not when it is not.

It is written [Deut. vii. 15]: "And the Lord will take away from thee all sickness." Said Rabh: It means an evil eye. And Rabh is in accordance with his theory, as it happened once that Rabh was at the cemetery, and he did what he did, and said thereafter: I see that ninety-nine of the dead were killed by an evil eye, and only one died a natural death. But Samuel said: All sickness is from the air, and as he said elsewhere, that every sickness and death came from the air. But

are there not some who were killed by the government? Also these, if not the air, a medicine could be prepared that would restore them. R. Hanina, however, says that the verse means cold, as it is written [Proverbs, xxii. 5]: "Thorns and snares," etc., 1 from which we infer that everything is in the hands of Heaven but cold. R. Eliezar said, *i.e.*, the gall; and so also have we learned in the following Boraitha: The word ma'hlah 2means the gall. And why is it called ma'hlah? Because it makes sick the whole body of the man. According to others it is called ma'hlah, because there are eighty-three kinds of sicknesses to which the cause is only the gall (and the letters of the word ma'hlah number eighty-three), and all these sicknesses are abolished by consuming bread with salt and a pitcher of water early in the morning.

The rabbis taught: Thirteen advantages can be gained by taking the early morning meal--namely: prevention from heat, cold, winds, evil spirits, and also the brightening of the fool, the winning of a law-suit (Rashi explains this, that the early meal brightens his mind so that he can explain his case clearly to the court), to learn, to teach, his words are listened to, his

learning is retained, his flesh does not give too much heat, and he does not lust for a strange woman, and the meal also kills the parasites in the intestines, and according to others it removes jealousy and brings love.

Said Rabba to Rabha bar Mari: Where is it from that people say, Sixty racers cannot reach the man who takes his meal early in the morning; and also the rabbis say, Get up early in the morning and eat, in the summer because of the heat and in the winter because of the cold? And he answered: Because it is written [Isaiah, xlix. 10]: "They shall not be hungry nor thirsty, and neither heat nor sun shall smite them," etc., which is to be explained that they shall not be smitten by heat and cold, because they were not hungry in the morning. And he rejoined: You infer this from this; I, however, from the following [Ex. xxiii. 25]: "And ye shall serve the Lord your God," means the reading of shemah and praying; "and he will bless thy bread and thy water," means the bread and salt and the pitcher of water taken in the morning; (and this will do that:) "I will remove sickness from the midst of thee."

R. Jehudah said to R. Ada, the land-surveyor: You should be very particular in your business. Bear in mind that every inch of the earth is fit for sowing saffron. And he said again to the same: When you are measuring the trench from the river to the fields, you should not be particular with the four ells near the trench which the owners are forbidden to sow. However, that which remains on the shore for anchoring, do not measure at all, but leave it so that it should be conspicuous enough; and this advice is in accordance with his theory, that the four ells of the trench belong only to those who are benefited by them, but that of the shore belongs to every one.

R. Ami proclaimed: A forest or any other group of trees placed on the shore must be cut off at the width of a shoulder (*i.e.*, to leave space for the towmen of the boats on both sides of the river). R. Nathan b. Hoshea had cut off sixteen ells, and the inhabitants of Mashrunia beat him bloody. He thought sixteen ells were needed for a public thoroughfare. For the towmen, however, is only required sufficient space for the managing of ropes bound to the boat.

Rabba b. R. Huna possessed a forest on the shore of the river, and when he was asked to cut it

off, he answered: Let the forests which are before and behind mine be cut off, and then I will cut off mine. But how could he answer so? Is it

not written [Zephaniah, ii. 1]: "Gather yourselves together." And Resh Lakish said: That is, Correct thyself first, and then others? The forests before and behind him belonged to a governor of the Persians, Parzak, and Rabba was aware that he would not care to cut off his, and no one can compel him, consequently the carriers of the boats could not pass anyhow; what, then, would be the use of his cutting? Rabba bar R. Na'hman was sailing in a boat, and had seen a forest on a shore, and to the question, Whose is it? he was told that it was Rabba b. R. Huna's, and he applied to him the verse [Ezra, ix. 2]: "And the hand of the princes and the rulers hath been the first in this trespass," and he then commanded his people to cut it off. (He was not aware of that which was said above.) Rabba b. R. Huna came and found them cutting, and said: Who has cut this, his branches shall be cut off; and it was said that all the years of the existence of Rabba b. R. Huna the children of Rabba b. Na'hman were not preserved.

R. Jehudah said: All the inhabitants, even orphans, of the city must contribute to the repairing of the wall of the city if it is destroyed, but not scholars, as they need no guard (Rashi explains that their wisdom guards them); but if the spring was spoiled the scholars must also contribute (as they also require water). This applies only in the case of contribution of money, but when the contribution means to dig themselves, then the rabbis are to be freed, as it would be a humiliation for them to do this work. He said again: When there is a stop in the river, the people behind it have to contribute to the repairing of it, but not those who live before it; with rain-water, however, it is the reverse. The illustration is in the following Boraitha: If five gardens, one behind the other, which are watered from one spring, and the spring becomes spoiled, all of them are obliged to support the people of the highest one. Hence the very lowest one has to support all those above it; and if it happens that only the entrance of the lowest is spoiled, then the above are not obliged to support it. Reverse is the case with five courtyards which pour their unclean waters to one sewer, and if the channel was spoiled at the last one, all of them must support it (and also all that are above the yard have to support the lower ones, but the highest has to shift for itself).

Samuel said: If one takes possession of a dock he is a rascal, but he cannot be removed by law (Rashi explains this to mean that at the time of the Persians the estate was ownerless, and

he who paid the duty to the government acquired title, as he who took possession of the dock is given title, but this act is considered rascality, as the dock is for loading). Now, however, as the Persians write in their deed: "You may acquire title on this estate as far as the measure of a neck of a horse from the water," if any one takes possession of a dock, he is to be removed.

R. Jehudah in the name of Rabh said: If one takes possession of a field which was placed between two brothers or partners, it is considered a piece of assurance, but he cannot be removed by law. R. Na'hman, however, Pays that he may be removed also. But if there is no other right than preëmption, he is not to be removed. The N'hardais, however, maintain that even for this he is to be removed, as it is written [Deut. vi. 18]: "And thou shalt do that which is right and good in the eyes of the Lord."

In case the buyer asked advice from the preëmptor, and the latter advised him to buy, is his word sufficient, or must it be done with the ceremony of a sudarium? Rabbina says the sudarium is not necessary, and the N'hardais say it is; and so the Halakha prevails.

Now, as it was concluded that the sudarium is necessary, if it was not done, and the land became greater or less in value, it is considered under the control of the preëmptor, so that the buyer has to pay the prevailing price. If, *e.g.*, he bought it for one hundred and it was worth two hundred, it must be investigated. If the owner has lowered the price for every one, then the preëmptor has to pay him only one hundred, as he could buy it from the owner at the same price; if, however, the price was lowered only for him, then he has to pay the two hundred. If, however, he had bought for two hundred, and it was worth only one hundred, the schoolmen were about to say that the preëmptor may say to the buyer: My message to you was for my benefit not for my loss. [1] Said Mar the elder b. R. Hisda to R. Ashi: The N'hardais have declared in the name of R. Na'hman that there is no cheating concerning estates. If one bought a field which was placed in the centre of others

it is to be investigated; if this field is distinguished to be the best or the worst of all his other estates then the sale is valid; and if not, it is to be feared that that was craftiness on his part, as he may have bought it for the purpose of claiming the preemption to all fields around him.

To a presented estate the right of preëmption does not apply. Amemar, however, maintains that if the donor obliged himself in writing to be responsible for it, this law applies.

If one had sold out all his estate to one buyer preëmption cannot be claimed, and the same is the case if be returns his estate to its first owner from whom he bought it. The same is the case with an idolater. If bought, the buyer can say: Am I worse than your first neighbor? You ought to be grateful to me that I have driven a lion out from your neighborhood. If sold, the law of preëmption does not exist, as it applies only to the buyer, and he, the idolater, is not under the obligation of the above-cited verse ("do right and good"). To the seller, however, this does not apply, as he may say: No one can compel me to sell my estate. However, the seller is to be put under ban until he obliges himself to be responsible for any harm done by this buyer to the preëmptor.

To a pledged estate the law of preëmption does not apply, as R. Ashi declared that he had heard from the elders of the city of Suria that therefore is a pledge called Mashkhantha, because the one to whom it is pledged is a neighbor. (See above.)

If one wishes to sell out his estate because it is placed at too great a distance, and to buy one near him, preëmption cannot be claimed; and the same is the case if he wishes to sell out the estate near him because it is bad and to buy good ones. (The above-cited verse means to "do right and good" to one as long as he does no harm to another.) If it is sold for taxes or for the support of a widow or for burial, this law does not apply. The N'hardais said that in such cases the estate may be sold out without any proclamation; the same is the case if he sold it to a woman, to orphans, or to his partners. If he has neighbors in the city and neighbors in the field which are not considered preemptors, the former have the preference. A scholar has the

preference to a neighbor and even to a relative. The schoolmen questioned: How is it if he was both a neighbor and a relative? Come and hear what is written [Proverbs, xxvii. 10]: "Better is a near neighbor than a distant brother."

If the buyer is about to pay with current money, and the preëmptor wishes to pay with money which is of greater value but is not current, he loses his right. If the preëmptor sends money sealed (and the owner of the estate fears to open it, as it, may not be the full value), and the buyer sends it open, he also loses his right. If the preëmptor says: I am going to try to get money, it is not to be taken into consideration; if, however, he says: I have money, and I am going to bring it, if he is a wealthy man the same may be postponed, but not otherwise. If the lots belong to one and the houses to another, the former has a right to prevent the sale of the latter, but not *vice versa*. The same is the case if the field belongs to one and the trees thereon to another.

If the preëmptor wants the lots for sowing, and the buyer wants it for houses, the latter has the preference. If there was a stone or a group of trees separating the two fields, if the preemptor can in spite of this make one bed for sowing, attaching the two estates, preëmption may be claimed, but not otherwise.

If there were four preëmptors, one on each side, and one of them hastened and bought it, the sale is valid, but if all four appear at the same time, the estate must be divided diagonally.

MISHNA *IX.*: If one hires a field for a few years (less than seven) he must not sow flax in it; and he has also no right to cut branches off the sycamore tree for building purposes. If, however, he took it for seven years, he has a right in the first year to sow flax, and also to cut from the above-mentioned branches.

GEMARA: Said Abye: He has no right to the branches of the sycamore, but he has a right to the improvement of it. Rabha, however, maintains that he has no right even to this. An objection was raised from the following: When the term of his agreement to this field is at an end, the contents of the field must be appraised. Is it not as, *e.g.*, the improvement of the sycamore? Nay; it is meant the vegetables and herbs. If so, why then the appraisement? Let him take it out and go. If it happens before the market-day arrived? Come and hear. If the sabbatical year arrived, when the term of this field was not yet up, it must be appraised. [Does, then, the sabbatical year abolish the agreement? Read then the jubilee year; but even then the jubilee year abolishes only sales, but not hirings.] Read then: If the jubilee year arrived while the agreement is not yet up, it must be appraised. Now that the vegetables

should be appraised, does not apply here as in the jubilee year they are ownerless? You must therefore say that, *i.e.*, the improvement of the sycamore. Hence it is contrary to the statement of Rabha. Abye, in order that this shall not contradict Rabha, explains it thus: A jubilee year is different, as it is written [Lev. xxv. 33]: "Then shall the house that was sold," etc. The "house" which is sold . . . to be free, which signifies that a sale is to be returned, but not an improvement. Then let this law be inferred as a standard. Nay, there was a right sale, and the jubilee year is a

command of the Lord, of which a hired article cannot be inferred.

R. Papa hired fields for pasture, and some trees sprouted in them, and when his term ended he demanded the improvement of them. Said R. Shesheth b. R. Idi to him: Would you also demand for the increase in thickness of a tree if there should be one? And he answered: Then it would be altogether different, as it is not usual to hire a field for this purpose, but I have hired this estate with this intention.

(Says the Gemara:) Is this in accordance with Abye, who said above that he has a right to the improvement of the sycamore? Nay, this may be explained also in accordance with Rabha, as there the hirer suffered no damage from the improvement of the sycamore. Here, however, there is damage, as the place where the tree grows he could not use for pasture. Said R. Shesheth to him: Then I have damaged you this little space, here is the value of it and go. And he answered: Nay, I would sow saffron in this place. Rejoined R. Shesheth: With your claim that you would sow saffron, you have made clear your intention that you did not wish to improve this estate with plants which should remain forever, but with such as you could take off at will; consequently your claim is for the value of the trees for fuel; then take this value and go.

R. Bibi bar Abye hired a field, and they surrounded this field with an embankment, and some trees grew up from it, and when his term was at an end he asked for this improvement. Said R. Papa to him: Because you are descendants of frail people you speak frail words; even R. Papa demands it (in the above) only because he has had damage, but here, what damage have you had?

R. Joseph had a planter who planted all his trees for half product, and he died and left five sons-in-law, all planters. Said R. Joseph: Hitherto I have had only one to rely upon,

and now I have five; each of them may rely upon the other, and my gardens may be neglected. Therefore he said to them: If you want to take the improvement of this year and resign, it is all right; if not, I will discharge you without any reward, as R. Jehudah--according to others R. Huna or R. Na'hman--said: If a planter dies his heirs may be discharged without reward. (Says the Gemara:) In reality it is not so.

There was a planter who said: If I do any damage I will be discharged. Finally he did. Said R. Jehudah: He may be discharged without any reward. R. Kahana., however, maintains he may be discharged, but he must be rewarded for what he has done. R. Kahana, however, admits that if it was so stipulated, then he is not to be rewarded. Rabha, however, says: Even then his saying was only an asmakhta, which gives no title. But why is this different from what we have learned above: If I neglect, etc. . . . I will pay with my best estate? There is no difference, as in both cases only the amount of the damage is paid; there he pays cash for the damage done, and here is deducted the amount of the damage, and the remainder must be paid to him for his reward.

Runia, the planter of Rabbina, did damage and was discharged; and he came to complain to Rabha, who answered him: He has done right; you have so deserved. And he rejoined: But he has not given me any notice. And Rabha said: That was not necessary at all. This decision is in accordance with his theory elsewhere, that an infant, teachers, planters, butchers, barbers, and

the scribes of a city may be discharged without any notice; as there is the rule that damage which cannot be repaired annuls the agreement; and damage done by such people is counted under that category.

There was a planter who said: Give me what I am entitled to of the improvements, as I want to go to 'Palestine. When the case came before R. Papa b. Samuel, he decided that so should be done. Said Rabha to him: Was this improvement wholly due to his effort; did not the earth do its share? And the planter, said, I don't ask for the whole improvement, but only for half; and Rabha rejoined: Until now the gardener took the half for his labor, but now when he leaves, the owner is compelled to hire another man and to pay him from his pocket. And R. Papa answered: I mean he shall take a quarter of the improvement and a quarter shall remain for future labor.

R. Ashi taught that the above decision that he shall take a

quarter means a quarter from the two-thirds profit that the owner of the vineyard takes for himself, which makes a sixth of the entire improvement (*e.g.*, if the improvement was worth six dinars, two of them are for the gardener, three for the owner, and one for the planter--as Minyumi bar R. Nehumi said: In the places where the planter takes half and the gardener a third, the planter who wishes to leave the work, his reward must be appraised, so that the owner shall not suffer damage; and therefore if the quarter in question means a sixth, as explained above, it is correct, but if it should be explained literally, a quarter of the whole improvement, then the owner would suffer a half-dankha damage. Said R. Aha b. R. Joseph to R. Ashi: Let the planter say to the owner: You give your share to the gardener, and with my share I will do as I please (*i. e.*, I will sell out to some one my share, and he will do his work without paying the gardener). And R. Ashi answered him: Leave thy objections for the section Holiness, which is so complicated that your objections will best fit there. Said R. Minyumi b. R. Nehumi: If an old group of vines, which do not bear fruit, remains in the vineyard, the planter has to receive half of it, as it is considered equal to those branches of the vineyard of which the planter takes half. If, however, a vineyard was flooded, and the vines were taken out or planted in another place, the planter gets only a quarter of it.

There was one who pledged his vineyard for ten years, and it became old in eight years. Abye said: The old vines are considered improvement, so that it belongs to the lender, and Rabha said: This is to be considered the principal amount which is to be sold, and for the amount to buy another vineyard with improvement, so that the lender shall use the fruit. (Come and hear an objection:) If a married woman inherits old vines and olives, they are to be sold for fuel and for the value estate is bought, and the husband loses the fruit. (Hence we see that it is considered principal amount, and this is an objection to Abye.) This Boraitha treats of a case, that where the woman inherited trees without estate, and if it would be allowed for the husband to consume them all, then nothing would remain from the principal amount, and this is against the law, as the principal amount of the woman must always remain to her benefit; so was it explained in Tract Khthubet.

There was a note in which was written years without a number. The landlord claims it means three, and the lender

claims it means only two; meanwhile the lender hastened and took the fruit from the third year also. Now the court has to decide who should be trusted. According to R. Jehudah the estate must be considered under the hazakah of its present possessor, and he should be trusted. According to R. Kahana, as the fruit there was already consumed by the lender, they must be considered under his hazakah, so that he must not pay for it, and so the Halakha prevails. But is it not decided elsewhere that the Halakha prevails in accordance with R. Na'hman, who holds that the estate must always be considered under the hazakah of its possessor? There was a case which could not be proved which of them was right; but here it can be proved by the witnesses who signed the note, and we do not care to trouble the court twice, *i.e.*, that if the court would now compel the lender to pay, and after he will bring witnesses that he was right, they would have to replevin from the borrower. If in case the broker claims for five years and the borrower claims three, and the note was lost, according to R. Jehudah the lender is trusted, *because* should he intend to make a wrong claim, he would say, I bought it, and as there is no note he could do so. Said R. Papa to R. Ashi: R. Zebid and R. Avira do not agree with the theory of R. Jehudah. Why so? Because this note, which was for collection, was undoubtedly taken good care of, and he has only concealed it, thinking, I will meanwhile use the fruit two years more.

Said Rabbina to R. Ashi: According to this theory the pledges of Sura, to which they usually write as follows: At the elapse of the time for which it is pledged this estate should become free without any payment. Now, if the lender should conceal the document and say, I bought it, should he also be trusted according to R. Jehudah's above theory? Is it possible that the rabbis should make such enactments by which the borrower should easily suffer? And he answered: There was the enactment of the sages, where the owner of the land should pay taxes and dig a trench around it. Now if this land was bought without a trench, and the taxes were unpaid, what could the buyer do? And he answered: He has to protest, in order that people shall know that it is a pledge only, and by not doing so he has done harm to himself.

If the gardener claims: For the half I worked, and the owner says for a third, who should be trusted? According to R. Jehudah, the owner; according to R. Na'hman, however, the custom

of the country must be considered. The schoolmen were about to say that the above do not differ, as R. Jehudah speaks of a place where the gardener takes only a third. Said R. Mari, the son of Samuel's daughter, to them: So said Abye, Even at the place where the gardener takes half they differ, as according to R. Jehudah, even then the owner is trusted, as, should he like to make a wrong claim, he could say the gardener was hired for money for a certain time.

If orphans claim: *We* have made the improvements of this estate (and so no creditor has anything to do with it), and the creditor claims: It was improved by your deceased father, for whom is it to bring evidence? R. Hanina was about to say that the estate is to be considered under the hazakah of the orphans, consequently the creditor has to bring evidence. Said a certain old man to him: So said R. Johanan, that the orphans must bring evidence, because an estate which is to be taken away for debt is to be considered as if already done, and therefore *they* are considered the plaintiffs.

Said Abye: We have also learned the same in the Third Gate concerning a tree which was placed

within fifty ells of the city, and it was doubted whether the city was built first or the tree was planted first. It was decided that the tree must be cut off at any rate. Hence, we see that because the tree is to be cut off it is considered as if already cut, and the evidence is only for the money (this will be explained in Third Gate in this case). The same is the case here; the note upon the estate is for collection, and it must be considered as if already collected, and the plaintiffs are the orphans. But how is it if the orphans have brought evidence? Again R. Hanina was about to say, that we give them estate for their claim. In reality, however, it is not so, as they get money, not estate for their claim; and this is to be inferred from the statement of R. Na'hman in the name of Samuel, who declares in the First Gate, page 216, that there are three to whom the improvement must be appraised, and they take money not estate for their claim. (See there.)

MISHNA *X.*: If one hires a field for the whole sabbatic season (*i.e.*, seven years, from the first year until the sabbatic year is past) for seven hundred zuz, the sabbatic year is included; but if for seven *years* the sabbatic year is to be excluded. A day-laborer has to collect his money the whole night after that day; for a night-laborer the whole day after it; if he was hired for a few hours, the night and day after. For a week,

month, year, or for the whole sabbatic season, if his term expired during the day, collects in the same day, and if at night, that night, and the whole day after.

GEMARA: The rabbis taught: Whence do we deduce that a day-laborer has to collect the whole night after? From Lev. xix. 13: "There shall not abide with thee the wages of him that is hired, through the night until morning." And whence that a night-laborer collects the whole day after? From Deut. xxiv. 15: "On the same day shalt thou give him his wages," etc.; but perhaps it means the reverse? Wages are paid only at the end.

The rabbis taught: As it is written: "There shall not abide with thee . . . through the night" it is self-evident that, *i.e.*, until morning. Why, then, is it repeated? To teach the transgression of this commandment comes and ceases with the first morning. But what does he transgress after that time? Said Rabh: He transgresses, You shall not keep wages. Said R. Joseph: Where is such a verse to be found? [Proverbs, iii. 28]: "Say not unto thy neighbor . . . when thou hast it by thee," etc.

The rabbis taught: If one told his neighbor to hire laborers for him, neither of them transgresses the above-cited verses. The owner, because he *himself* has not hired them; and the hirer, because they have not worked with him. However, this is only in case the hirer told the laborer: You shall get your payment from the owner. But if he told him: I will pay you, the transgression rests upon him. Jehudah b. Maramar told his servant: Go and hire laborers for me, and tell them that they will get their payment from the owner. Maramar and Mar Zutra, when they required laborers, hired one for the other, with the stipulation that they should get the payment from the owner. Said Rabba bar R. Huna: The inhabitants of Sura, who usually get their money on the market-day, do not transgress if they postpone the wages of their laborer until the market-day, as the laborers are aware of this. However, if they have money and do not pay, they transgress that of the Proverbs cited above.

For a few hours, etc. Said Rabh: If he was hired for hours of the day, he collects the whole day,

and if for the night, he collects the whole night. Samuel, however, maintains that of the day collects at daytime, and that of the night collects at night and the whole day after. But does not our Mishna state "for a few hours, the night and day after," and also further

on, "for a week, month," etc., "if his term expires during the day, collects in the same day," etc., which is an objection to Rabh's statement? Rabh may say that in this case the Tanaim differ, as we have learned in the following Boraitha: A laborer of a few hours of the day collects the whole day; of the night, the whole night. So is the decree of R. Jehudah. R. Simeon, however, maintains that of the night collects the whole night and the day after. From this it was said that one who withholds wages transgresses the commandments of the following five verses: [Lev. xix. 13,] "Thou shalt not withhold anything from thy neighbor," [and *ibid*.,] "nor rob him"; [Deut. xxiv. 14,] "Thou shalt not withhold," etc., and in the above cited verse, "There shall not abide," etc.; and from [Deut. 15,] "On the same day," etc., and finally, that "the sun may not go down upon it." The laborers who finish at daytime, the night does not apply to them, and they who finish at night, to them the day does not apply.

Said R. Hisda: The Boraitha does not mean that one transgresses all the five negative commandments cited above, but the case of hiring is subject to them, that some of them transgress when the day is past, and some when the night is past. What is considered withholding and what robbery? Said R. Hisda: Come again, come again, is withholding; but if one says: "I have the wages, but do not want to give them to you, '" that is robbery.

R. Shesheth opposed from the following: What is considered withholding? That to which the Law prescribed an offering, which is equal to that, as, *e.g.*, to him who denies a money-deposit. (Hence "call again" is not under that category, as he does not deny.) Therefore, says Rabha, withholding and robbery are one and the same. And why is it written separately? That one, by doing this, transgresses two negative commandments.

MISHNA *XI*.: The commandment: "In the same day you shall give his wage," and also the negative, "there shall not abide . . . until morning," applies to men, cattle, and vessels; however, the transgression is only when the laborer demanded it, but not otherwise. If the owner has transferred him to the storekeeper or money-changer (and he does not pay him immediately) there is no transgression.

A laborer who claims his wages when his time for collection is not yet elapsed, collects his money with an oath (in case the owner says, You were paid already), but not after the lapse of

time. If, however, there are witnesses that he has demanded his money in due time and did not get it, he may collect it with an oath even thereafter.

To a proselyte who promised not to worship any more idols, and not to commit adultery, but not to conform to all other Jewish laws, the commandment, "Thou shalt pay him the same day," applies. However, not the negative commandment, "There shall not abide," etc.

GEMARA: According to whom is the statement of our Mishna? Not to the first Tana, nor according to R. Jose bar Jehudah of the following Boraitha: It is written [Deut. xxiv. 14]: "Of thy brethren," means to exclude idolaters; "or of thy strangers," means a real proselyte; 1 "that are in thy land," means a proselyte who has only promised not to worship idols. This all treats of the wages of man; whence do we know that cattle and vessels are to be included? Therefore it is written, "in thy land"--*i.e.*, all which is in thy land--and for all of them the transgressions of the five cited verses apply. From this it was said that there is no difference between the wages of man, of cattle, and of hired vessels; the verse, "in the same day," etc., applies, and also the verse, "there shall not abide . . . until morning." R. Jose b. Jehudah, however, said, that to a proselyte of the second kind mentioned above, the first verse, "in the same day," applies, but not the other one; to cattle and vessels neither applies, but "Thou shalt not withhold" does apply.

Now if the Mishna would be in accordance with the first Tana, then the proselyte in question would be a difficulty; and if with R. Jose, then the cattle and vessels stand in the way. Said Rabha: Our Mishna is in accordance with a Tana of the disciples of R. Ishmael, who taught elsewhere the very same as our Mishna does.

What is the reason of the first Tana of the above Boraitha? He takes into consideration the analogy of the expression "hired," which is written in Deut. xxiv. 14 and Lev. xix. 13. As in the former case the law of robbery applies to a proselyte, cattle, and vessels, the same is the case there with wages. And R. Jose b. Jehudah does not take this analogy into consideration. But even then, why should not the law of in the same day,"

etc., apply to cattle and vessels also? Taught R. Hanina: Because it is written [Deut. xxiv. 15]: "That the sun may not go down upon it, for he is poor." This signifies that this law applies only to those who can become poor or rich, excluding cattle and vessels, to which such conditions cannot apply. The first Tana, however, needs this verse, because of the law that if there were two laborers, a poor one and a wealthy one, and he has cash at that time to pay only one of them, the poor has the preference. And R. Jose maintains that this is deduced from *ibid*. 14. The first Tana, however, maintains that both of the above-cited verses are needed; one to give preference to the poor over the rich, and the other to give preference to the poor over the mendicant; and there is a necessity for both, as we could not infer one from the other. *E.g.*, if it were written that the poor laborer has preference over the mendicant, one might say that because the mendicant is not ashamed to demand it, and because the rich laborer is ashamed to make demand, the poor laborer is not to be preferred; and if it were written concerning a wealthy laborer and a poor one, one might say that because the wealthy man does not need it, and a mendicant needs it as much as the poor laborer, the latter is not to be preferred; therefore both are written.

What does R. Jose deduce from the words, "with thee," from the above-cited verse? That which R. Assi said: That even if he was hired only to press one cluster of grapes, if he was not paid in time, there is a transgression of "there shall not abide . . . till morning." The first Tana, however, maintains that this can be deduced from [Deut. xxiv. 15] "his soul longeth," etc., which signifies that the law applies to all things for which "his soul longeth."

It was said: From the words, "the soul longeth," etc., is to be inferred that one who withholds wages is considered as if he would take out the soul. And R. Huna and R. Hisda differed in the explanation of it. According to one it means the soul of the withholder himself, and according to

the other the soul of the laborer. The reason of the former is [Proverbs, xxii. 22, 23]: "Rob not the poor . . . and despoil the life of those that despoil them"; the reason of the latter is [*ibid*. i. 19]: "It taketh away the life of those that own it."

Is only when the laborer demanded it, etc. The rabbis taught: One might say that he is guilty even when the laborer does not demand. Therefore it is written, "with thee," which means

with thy knowledge. (And if he does not demand, how should he know that he needs it?) And lest one say that he is guilty even if he has no cash at that time, therefore it is written, "with thee"; and lest one say that he is guilty even if he has transferred him to a storekeeper or money-changer (with his consent), therefore it is written "with thee."

The schoolmen propounded a question: If the storekeeper or the money-changer failed to pay him, may he return his claim to the owner or not? According to Rabha he may, and according to R. Shesheth he may not. Said Rabha: My statement is based upon the teaching of the Mishna, which states "there is no transgression," from which we infer that the transgression does not apply, but the obligation remains. R. Shesheth, however, interpreted this expression, that he is no more subject to that law.

R. Shesheth was questioned: Is piece-work subject to that law or not? Shall we assume that the master acquires title to the improvement of an article given him, and therefore when he returned it and was not paid, it is to be considered as a loan, for which there is no transgression; or that the master does not acquire title and it is considered labor? And R. Shesheth answered, It is subject. But there is a Boraitha that it is not. The Boraitha treats if he has transferred him to a storekeeper or money-changer.

Collects his money with an oath. For what purpose have the rabbis enacted the oath? Said R. Na'hman in the name of Samuel: These enactments were made to serve as a rule forever; in such cases as are biblical, the oath is to be taken by the employer, and the rabbis have removed the oath from him to the laborer for the sake of his livelihood (*i.e.*, that he should be able to take an oath immediately and collect the money).

But is it correct that for the sake of the laborer the right of the employer should be taken away? With this his right is not taken away, as it is more pleasant for the owner that the oath shall be given to the laborer, so that laborers shall not say that he pays his laborers with oaths. But why can you not say the reverse, that it may be more pleasant for the laborer if the employer takes the oath, that the employers shall not say that he is an unjust claimant? Therefore it must be said that the reason is, that because the owner has many laborers, it is easy for him to make a mistake in giving to one man instead of the other and swear falsely. But if so, why should not the laborer

be paid without any oath? To quiet the mind of the employer. But why should it not be enacted that the owner shall pay in the presence of witnesses? This would be too much trouble. But why should it not be enacted that it shall be paid in advance? Because it is convenient to both to have the payment after (for the owner, as perhaps he has not yet prepared it, and for the laborer, as he

may lose it while laboring). If so, why should not the law be the same concerning a stipulation; and there is a Boraitha that if the specialist says: Your stipulation was to pay me two dinars for this my work, and the employer says only one, the plaintiff has to bring evidence (and if he has none the defendant takes an oath)? Stipulations are different, because they are usually borne in mind. But if the reason is because the owner is liable to make a mistake, why should not the same law apply even if the time has elapsed, and the statement of our Mishna is not so? It is because usually one would not easily transgress the law, "There shall not abide," etc. But was it not said that the owner is liable to make a mistake, as he has many laborers? This is before the time elapsed, but thereafter one is reminded of his duty. But is then the laborer suspicious of robbery? Concerning the owner there are two hazakahs; one that it is not likely that he would transgress by not paying, and the other that the laborer would not leave his wages without any claim. The laborer, however, has only one hazakah, that he would not demand robbery; therefore the preference is given to the employer.

If there are witnesses, etc. But is he not demanding now? Said R. Assi: The witnesses are that he did so in time. But perhaps he has paid him afterwards? Said Abye: The witnesses are to testify that he had demanded in time, and afterwards was not paid. But does this hold good forever (*i.e.*, that the laborer must always bring witnesses when he demands wages)? Said R. Huna bar Uqba: It means one day after time is elapsed, it was granted that he shall take it with an oath.

MISHNA *XII*.: If a creditor has to pledge his debtor, he may do so only by court; and even then he has no right to enter his house, as it is written [Deut. xxiv. 11]: "In the street shalt thou stand." If he had mortgaged him two vessels, he may take only one; he also has to return a pillow for the night and the plough for the day. If the debtor dies, however, he has not to return it to his heirs. R. Simeon b. Gamaliel, however, said that even to the debtor himself he is not obliged to

return only the first thirty days; thereafter he may sell it out in the presence of the court.

GEMARA: Said Samuel: Even the messenger of the court has a right only to take away from him in the street, but not to enter his house.

But does not our Mishna state that he shall pledge him in the court, of which it is understood that the court may pledge him even in his house? In this case Tanaim differ, as we have learned from the following Boraitha: The messenger of the court who came to pledge a debtor must not enter the house, but stand on the street; and the debtor has to bring the pledge out to him, as it is written: "In the street shalt thou stand, and the man"(which may be interpreted the messenger of the court and the creditor). And another Boraitha: If the creditor himself comes to pledge him he must stand outside, and the debtor has to bring him the pledge, but if this is to be done by the messenger of the court, he may enter the house; however, he has no right to pledge cooking utensils, and he also must leave two beds, and a feather-bed for a wealthy man, and a bed and a mat of reeds for the poor one; for him, but not for his wife and children, as the cases of estimation and creditor are equal, concerning the essentials of the debtor, that it must be left to him.

The master said: Two beds, etc. For whom? It is not for his family, as it is stated "for him only."

Why, then, are two beds necessary? One for eating and one for sleeping? And this is according to Samuel, who said: That to all sicknesses I know a remedy except to the following three: if one eats unripe dates on an empty stomach, if one wraps himself with a wet μεϑοιον on the naked body, and if one takes his meal and immediately goes to sleep without walking four ells.

A disciple taught in the presence of R. Na'hman: We have to leave for the debtor if he owes to an ordinary creditor. The same essentials which are left by the collector in case of an estimation must be left also in case of a common creditor.

Said R. Na'hman to him: According to the law all his goods are sold out for the sake of the creditor, as, according to R. Simeon b. Gamaliel, after thirty days even the pillows must be sold out, and you say that here shall be applied the law of estimation.

But whence do we know that the Halakha prevails in accordance with R. Simeon b. Gamaliel? Perhaps it prevails in accordance

with the first Tana of our Mishna. The disciple who taught in the presence of R. Na'hman said that so is the law, even in accordance with R. Simeon, and therefore R. Na'hman's objection. But perhaps even R. Simeon b. Gamaliel means to say that only things which are not absolutely necessary are sold, but not that which is. If it were borne in mind that so is the decree of R. Simeon, then all the things would be considered absolutely necessary for him, as Abye said that R. Simeon b. Gamaliel, and R. Simeon, R. Ishmael, and R. Akiba--all of them hold that in this respect all Israel are equal to princes. R. Simeon b. Gamaliel and R. Simeon in Tract Sabbath (pp. 228, 276), and R. Ishmael and R. Akiba in the following Boraitha: If one owed a thousand zuz and wears a stola worth almost the same price, it is to be removed and replaced by another one according with his dignity; however, it was taught in the name of Ishmael and R. Akiba that all Israel are fit for such a stola. But according to that which was borne in mind first, that we sell out only what is not necessary, it is correct with a pillow and a cover that they can be sold out, and cheaper ones bought. But a plough, to what purpose should it be sold, as all the ploughs are alike? Said Rabha b. Rabba, *i.e.*, in case his plough was a silver one. R. Haga opposed. Let the creditor say: Is it my duty to support you? Said Abye to him: Yea, it is so, as it is written [Deut. xxiv. 13]: "And unto thee shall it be as righteousness before the Lord thy God."

The schoolmen propounded a question: If things belonging to a debtor are to be sold out, has the court to consider which should be sold and which left to him, or is all sold out? Come and hear. Rabbin sent a letter: I have questioned this from all my masters, but there was no reply. The question, however, was as follows: If one vowed a mana for the preparation of a temple, and the treasurer came to collect this money from his property, does he take all that belongs to that man, or are the essentials to be left him? And to this question R. Jacob in the name of R. Pada and R. Jeremiah in the name of Ilpha said that it must not, because an *a fortiori* conclusion is to be drawn fro-m a creditor who is obliged to return necessary things. Nevertheless, when, selling out, nothing is left, so much the more as in the case of the sanctuary, which has not to return, that nothing should be left. R. Johanan, however, maintains concerning estimation [Lev. xxvii.]: It is said, "a particular vow," to

the estimated value, and in case of estimation necessary things are left; the same is the case with the sanctuary.

Rabba bar Abuhu met Elijah at a cemetery of idolaters, and questioned him about the law in question in regard to a creditor, and he replied: There is an analogy of the expression "poor" used in both estimation [*ibid*., *ibid*. 8] and creditor [Lev. xxv. 35], from which we infer that the same law is to be applied in both. Rabba then questioned him: Is not your master a priest, a descendant of Aaron? Why then do you stand on a cemetery? And he answered: It seems that you have never studied Section Tabarot (purifications), in which there is a Boraitha: R. Simeon b. Johe said graves of idolaters do not defile, as it is written [Ezek. xxxiv. 31]: "And ye, my flock, the flock of my pasture, are men," which signifies that ye are called men, but not idolaters. Rejoined Rabba: My circumstances hardly allow me to study the four necessary sections (Festivals, Damages, Women, and Holiness); should I undertake to study the remaining two, which are not used at the present time? Elijah then asked, What does he mean? And he answered: I cannot make my livelihood. He then took him to paradise, and told him to take from the leaves lying on the floor in the garden, and he did so. While going out he heard some one saying: Who else has consumed his share in the world to come as Rabba did? He then shook his garment, and the leaves fell out. However, his garment retained the smell of them, and be sold it for three thousand dinars, and be donated them to his sons-in-law.

The rabbis taught: It is written [Deut. xxiv. 13]: "And if he is a poor man, thou shalt not lie down with his pledge," from which it is to infer that if he was rich he may. How is this to be understood? Said R. Shesheth, *i.e.*, if he is a poor man you must not lie down while his pledge is in your house, but if he is wealthy it does not matter.

The rabbis taught: If one lends money to his neighbor, he has no right to pledge him, is not obliged to return, transgresses all the commandments which are in the Scripture concerning (pledging). What does it mean? Said Rabha: He must not pledge, and if he did so, be must return in case the pledge be taken thereafter; but if he took the pledge at the time the money was lent, he is not obliged to return; however, he transgresses the above commandments.

R. Shizby taught in the presence of Rabba: It is written

[paragraph continues] [Ex. xxii. 25]: "Thou shalt restore it unto him by the time the sun rises" 1--a garment used by day and pledged at night, and [Deut. xxiv. 13]: "Thou shalt punctually deliver him the pledge again, when the sun goeth down," means a garment which is used at night and was pledged in the daytime.

R. Johanan said: If the pledge was returned and the borrower died, the lender has a right to take it away from his children. An objection was raised. R. Mair said: Since it was pledged, why then the returning and pledging again? For the purpose that the sabbatic year should not make it free and it should not be considered personal property of his children in case of death. We see, then, that only in case it was pledged again this law holds good, but not if it is already in the possession of his children. Said R. Ada b. Mathna: Have you not tried to explain the curiosity of pledging and returning in some way? Explain it then thus: If it is to be returned, why then the pledging altogether? For the purpose that the sabbatic year shall not free it, and it shall *never* be

considered the property of his children.

The rabbis taught: The verse [Deut. xxiv. 10]: "Thou shalt not go into his house to take his pledge," signifies that in his house only you shall not go; you may, however, go into the house of his surety, and it is so written [Proverbs, xx. 16]: "Take away his garment because he has been surety for a stranger." And it is also said [*ibid*. vi. 1-4]: "My son, if thou hast become surety for thy friend," which means, if you were surety, then give him what you have assured, and if you have no money, see some friend, who shall ask him to favor you. "Into his house you must not go" to regain money loaned, but you may do so, for the payment of your work (with your shoulders), for your ass, for your man, or your pictures if you have not made this as a loan to him.

MISHNA *XIII*.: A widow must not be pledged whether she is rich or poor, as it is written [Deut. xxiv. 17]: "Thou shalt not take in pledge the raiment of a widow."

GEMARA: The above is the decree of R. Jehudah. R. Simeon, however, said that only a poor one must not be pledged,

because it must be returned (daily), and she would get a bad name among her neighbors, but to a rich one it does not matter. (The reason of that statement will be explained in the Third Gate in its proper place.)

MISHNA *XIV*.: One who pledged a nether and upper millstone transgresses a negative commandment and is guilty for two articles, as it is written [*ibid*., *ibid*. 6]: "No man shall take to pledge the nether or the upper mill-stone" (and not this only, but all other articles which are for the preparation of food), "for he taketh a man's life to pledge."

GEMARA: R. Huna said: He who has pledged the nether in question is punished with stripes prescribed for a negative commandment twice, for two negative commandments, for the nether and for man's life; both the nether and the upper millstone, he is to be punished thrice. R. Jehudah, however, maintains for each part of them, but not for man's life, as that verse signifies that all other working instruments are under the same law.

There is a Boraitha in accordance with R. Jehudah: If one has pledged a pair of scissors, or a team of cows, he is guilty for two crimes. If, however, he pledge only one of them, he is guilty for one; and another Boraitha states: Lest one say that he is guilty for one crime even if he pledge a pair, therefore it is written: "He shall not pledge the nether or the upper mill-stone." As these are separate instruments used together, one is guilty for each of them separately; so also is the case with all other instruments of such a kind.

There was a man who pledged a butcher knife from his debtor, and Abye told him to return it, as it is an instrument used for preparing food; and for his debt he shall summon the butcher. Rabha, however, maintains that this is not necessary, as the pledger could claim, I bought it. Therefore the whole value of this pledge can be collected for his debt. But did not Abye hold the same theory? Why should this be so different from the case which happened in Nahardai, that goats have consumed peeled barley, and the owner of the barley took the goats for pledge, and has

claimed more than the value of it, and the father of Samuel decided that he could collect from them the whole value? There it was different, as the barley was not for hire and loan, but the knife was for loan and hire. And R. Huna b. Abin sent a message: That all things which are for loan and hire, the one who claims that he has bought it is to be

trusted. But did not Rabha hold this theory? Has he not taken away from orphans a pair of scissors and a book of Hagada because they were for loan and hire? Rabha may say that a knife which became spoilt by frequent use one is particular not to lend.

Footnotes

276:1 We have translated this from the text, and according to the commentary of Thosphath. Rashi, however, says that he could not explain this paragraph, and, therefore, he brings another text of *Thorath Kohanim*, which is exactly the contrary to this text. It is remarkable, however, that in the Tract Yebamoth, 35 B., where the same is brought, Rashi explains it exactly as Thosphath did, without any remark, and Thosphath brings the text which Rashi used here.

285:1 The Hebrew term for this is ziria, *i.e.*, cold, for which the Talmud takes it; Lesser, however, translates it differently, according to the sense further on.

285:2 The Hebrew term for sickness is "ma'hlah."

288:1 The Ashri maintains that this claim is not meant that he may give him only one hundred zuz, and the buyer shall lose one hundred, as this would not correspond with the verse cited, "right and good." As if the estate would remain with the buyer it may be he would lose nothing, or to him it was worth double; but this is meant that the sale shall be considered invalid.

298:1 The Hebrew term for this is Garkho, literally, "thy coinhabitant." The word Gar, however, means also a proselyte. The Talmud explains it thy proselyte, *i.e.*, one who promised to keep the whole Jewish law.

305:1 Bo Hashemesh is the Hebrew term, which can be explained "the sun rises and also it goes down." (See Isaiah, Ix., Gen. xxvii.; in both places the word Bo is used.) Hence, Shizby explains, the first the sun rises and the second it goes down.

Next: Chapter X

CHAPTER X.

RULES CONCERNING HOUSES, GARDENS, AND OTHER REAL ESTATE OWNED IN PARTNERSHIP, AND WHAT MAY OR MAY NOT BE DONE IN PUBLIC THOROUGHFARES.

MISHNA *I.*: If one owns a house, the upper chamber of which belongs to another, and it falls, the wood, stones, and all other materials are to be divided accordingly (*i.e.*, he who has had a greater share in this building takes more). If some stones or bricks are still saved, an investigation is to be made, from which part of the building the stones were most liable to break; then the saved ones belong to that part which was not liable to break. If, however, one of them recognizes some of his stones, he may take them, provided he reckons them to his account.

GEMARA: From this statement it is to be investigated which part was more liable to break. We may infer that the cause of the ruin was known; then let us see if it was ruined because of the lower, which could not hold the upper part any longer; then the materials which lie in that place where the lower part was placed belong to its owner, and the materials beside it belong to the upper part; and if it was ruined by a storm or a stroke so that the upper part fell first, then there can be no doubt that the upper bricks are the broken ones. Why then the above statement? The Mishna treats in case the material was removed immediately after the falling occurred by the street cleaner, who paid no attention to the cause and the manner of its falling. If so, let us see under whose control they are now, and for the other party who is the plaintiff it is to bring evidence? Partners usually are not particular in such a case where the materials are placed.

Provided he reckons them to his account. Rabha was about to say that it must be divided according to the value, *i.e.*, that he must get broken ones for the amount of his partner's saved ones. Hence he is benefited by his claim that he recognizes the stones belonging to him. Said Abye to him: On the contrary,

this will not benefit him, but damage, as according to his claim he recognized all that belongs to him; consequently all other stones do not belong to him, but to his partner. Therefore he said the Mishna meant that his partner shall take other saved stones according to the number he took by recognizing, and the benefit of such a claim is that if his bricks were of more value than the others his partner has nothing to say against the quality.

MISHNA *II.*: If the attic was ruined and the owner of the house declined to repair it, the tenant has a right to take his residence down in the house until his attic be repaired. R. Jose, however, said the owner has to repair the roof, and the tenant the rain leaders.

GEMARA: Does the Mishna mean entirely ruined, so that it is impossible to live in, or even if it was ruined in part, *e.g.*, four ells? According to Rabh, as he may use the lower part instead of

the ruined, the greater part is meant, and according to Samuel, even a small part; it is disagreeable for one to live in two places. But let us see bow the case was. If he hired *this* chamber, he may claim that so is his fate; if any chamber, let him hire another one for his tenant. Said R. Ashi: The case was that the owner said: "This upper chamber of *this* house is rented to you," and with such an expression he subjects the house to the chamber. This is as Rabin b. R. Ada reported in the name of R. Itzhak: It happened that one said to his neighbor, "I sell you this vine which is placed upon the persicum." Finally the latter was thrown out, and the case came before R. Hiye, who decided that the owner must furnish him with another persicum as long as the vine exists.

R. Abba b. Manuel questioned: When the tenant goes to, dwell in the lower apartment, must the owner vacate it for the tenant, or should they dwell together; as the owner may say, "I have not rented it to you, that I should be put out"? Should you decide that it is so, there would be another question: If there were two upper chambers, one above the other, and the lower became spoiled, should we say the tenant shall go to dwell in the upper one? Or he may claim: "I have rented to ascend one story, and am obliged to ascend two"? This question remains.

There were two who used to live in two upper chambers, one above the other, and the topmost became spoilt, and when the rain came through it did damage. Who is to make the repairs?

[paragraph continues] R. Hiye b. Abba said the occupant of the upper chamber, and R. Ilai, in the name of Hya b. Jose, said the occupant of the lower one. Shall we assume that the above differ the same as R. Jose and the rabbis of our Mishna differ (*i.e.*, R. Jose holds that the party doing the damage must remove the cause of it; and therefore he maintains that the tenant has to repair the rain leaders, and the rabbis hold that the injured party has to remove the cause of damage, and therefore they say that the owner has to repair even this). How could it be borne in mind that the sages of our Mishna differ in the case cited above? Are they not contrary to this opinion in the case of removing a tree (Baba Batra, p. 256)? It can only be said that the above Amoraim differ the same as the above Tanaim differ in the place cited. However, the point on which the Tanaim of our Mishna differ is this: Who must strengthen the roof? The rabbis hold, the smearing with clay of the roof and the rain leaders strengthens, hence, it is the obligation of the owner, and R. Jose holds that the above is only for straightening the roof? There shall not be any holes, and therefore it is the duty of the tenant to make the walking upon it more convenient.

But did not R. Ashi declare, when he was at the place of R. Kahana, that we all have decided that R. Jose admits that one is responsible for damage done to his fellow by things which come directly from him (though it is the obligation of every one to keep aloof from damaging things, so that the owner of it is not responsible for the carelessness of the injured one)? This is only as, *e.g.*, if one has planted a tree that did no harm when planted, but thereafter when the roots spread; but, *e.g.*, if one pours water, and while going downward it injures, he is responsible. Hence R. Hya's statement above that in such a case the lower one has to repair is not in accordance with R. Jose's, theory. The case mentioned above was not direct, as he washed his hands at another place on the roof and the water rested there, and afterwards it flowed down from another place.

MISHNA *III.*: A house with an attic belonging to two persons which becomes ruined: the owner of the upper one requires the rebuilding and the owner of the house refuses; the former may

rebuild the house and dwell in it until the latter returns him the expenses. R. Jehudah, however, maintains that even in such a case he is considered a tenant who must pay his rent (as

he has not his own house); therefore the owner of the attic rebuilds the house and attic, roofs it, and then he may make his dwelling down in the house until the expenses are paid.

GEMARA: Said R. Johanan: At three different places R. Jehudah teaches us that it is forbidden for one to derive benefit from the property of his neighbor, although the latter loses nothing; namely, in the case of our Mishna, also in case of changing the color by dyeing (First Gate, p. 216), and finally in case of the payment of a part of his debt, that R. Jehudah decrees that the note for collection loses its former force even if so stipulated. (Baba Batra.)

(Says the Gemara:) After all these statements we are not sure of such a decree by R. Jehudah, as all the three have their reasons; here because of spoiling the house while used, hence the owner loses by paying as for a new one; in the case of dyeing, because of changing of the agreement, and there is a Mishna above, p. 188, that he who does so must suffer; and also concerning the payment of a part of his debt, because it is only an asmakhta, which according to his theory above, p. 160, gives no title; but in cases where one does not suffer at all, and the other derived some benefit, may be that he (Jehudah) does not object.

R. A'ha b. Ada in the name of Ula said: If the owner of the lower part wants to rebuild his house with unhewn stones instead of hewn ones, his partner cannot protest (because the building with them is stronger than of the hewn ones), but if *vice versa*, he may prevent him. The same is the case with half bricks instead of whole ones (Rashi explains that between two half bricks, little stones and cork were laid, so that the wall became thicker by a span), and so it is with cedars instead of sycamores. To diminish the number of windows, and also the height of the building, his partner has no right to protest; if, however, the owner wanted to rebuild him the attic, just the reverse is the case, as the lower part may protest against a heavier attic which may damage his house. But how should the law be decided if both of them have no money to rebuild it? As R. Nathan of the following Boraitha: The owner of the lower part takes two shares and the upper one a third, and according to anonymous teachers the lower one takes three-quarters and the upper one one-quarter. And Rabba said: Practise as R. Nathan said, as he was a judge and always went into the deepness of the law. He reasoned that the upper building damages a third of the

lower (*i.e.*, that if the upper one were not upon it, it would hold a third more), therefore a third he must take.

MISHNA *IV*.: The same is the case with an olive-press which was placed under a garden. (Rashi explains that it means of two brothers who inherited them, one took the olive-press, the other the garden), and the roof of the press-house became ruined, the owner of the garden may descend and work up the bottom of the press-house for seed, until the roof of it will be repaired.

A wall or a tree which falls suddenly on a public thoroughfare, and causes damage, the owner is

not responsible. If, however, time was given to him for cutting off the tree or the wall, and it fell after the time elapsed, he is responsible. If one's wall is placed at a neighbor's garden, and it falls (into his neighbor's garden), and he insists that the stones should be removed, the owner of them, however, says: "They are yours (as I renounce my ownership of them)," he is not to be listened to. If, however, the owner of the garden accepted his offer, and after a reconsideration he offers him his expenses for the removing, and repairs his stones, he is also not to be listened to.

The same is the case with a laborer who was hired to work with straw and hay, and when he demanded his pay, if the employer said to him: Take the articles in which you were engaged, for your payment, he must not be listened to. If, however, the laborer accepted, and after reconsideration the employer told him: Take cash for your hire and leave the articles to me, he must not be listened to.

GEMARA: Rabh said that the Mishna meant that the greater part of the roof was spoilt, but if only a small part, *e.g.*, four ells, he may work up his garden, and for the space spoilt he should use the bottom of the press-house. But Samuel said: It means even four ells, as it is disagreeable for one to sow in two places; and both cases of their differing were necessary to state; as if the former only, one might say that only concerning a dwelling Samuel disagreed with Rabh, and concerning sowing he agrees; and if the latter, one might say concerning sowing Rabh agrees with Samuel; therefore both were taught.

If time was given. What time is fixed for such a case by the court? Said R. Johanan: "Thirty days."

If one's wall was placed, etc. From the expression, "he offered him his expenses," it is to be understood that after the gardener has already removed; but if the reconsideration had

been before the removal, the owner of the wall has still the right to them, even if it was accepted by the gardener; why, then, let his estate give him title as R. Jose said above (p. 195). R. Jose's statement holds good when the former owner of that article agrees to give him title; here, however, he does not, as his former proposition was made only to win time for removing.

The same is the case with a laborer, etc. It was necessary for the Mishna to teach both cases, as in the former case only, one might say: It is because the gardener has nothing to demand from the owner of the wall; but in the latter case, where the laborer has to demand his money from the employer, he may be listened to, as people say: From a debtor of thine accept even bran in payment; and of this case only, one might say, as soon as he accepted, he acquires title, because he had money at his employer's, but in the former case the gardener does not acquire title, even if he accepted, as he has nothing to claim from the wall man; therefore both were necessary.

He must not be listened to. But have we not learned in a Boraitha that he may be listened to? Said R. Na'hman: This presents no difficulty. The Boraitha speaks of an ownerless article (which some one hired a laborer to remove without notifying him that it is such; and after he was through, he said, "Take this for your labor"), he may be listened to; and our Mishna treat of his own work. Rabha objected to R. Na'hman from the Boraitha above (p. 20), which states that

if a laborer who was hired for the whole day finds an article, it belongs to his employer, from which it is easily understood that in our case, when he was hired to remove an ownerless article, the one who hired him acquired title to it, hence the drawing of the labor gives no title to him. Why then should the employer be listened to if he tells him to take it for his work? Therefore said R. Na'hman, both the Mishna and the Boraitha speak of ownerless articles; however, the cases are different, as the Mishna speaks of lifting (*i.e.*, that the laborer has removed the article), and the Boraitha speaks of looking (*i.e.*, that the laborer was hired to guard it by looking), so that there was no act on the part of the laborer which could give him title, and so neither of them has as yet acquired title; therefore the employer is listened to.

Said Rabba: If looking gives title to an ownerless article or not, the Tanaim of the following Mishna differ: The watchmen appointed to watch aftergrowth (of barley for omer) in the sabbatical

year, receive their wages from the treasure of the sanctuary. R. Jose, however, maintains, if one likes to do this for nothing he is allowed. Said the sages to him: According to your theory the omer would be brought from the donation of an individual. Is it not to assume that the point of their differing is whether looking gives title? According to the first Tana it does, and therefore if the watchman did it for nothing, he acquires title to it (as growth is ownerless in a sabbatical year); and R. Jose holds that looking does not give title, and the congregation acquires title on them when delivered to them The saying of the sages is to be explained thus: According to your decision, that one can watch without any payment, in accordance with our theory that looking gives title, the omer could be brought by an individual?

Said Rabha: All agree that looking gives no title, and the point of differing is whether it is to be feared for mighty men, who would take possession of the aftergrowth, being ignorant that it belongs to a sanctuary. The first Tana holds that such is to be feared, and therefore the sages enacted that the watchmen shall get four zuz, so that it shall come to the ears of the above that the sanctuary laid its hand on it, and they will keep aloof from it. R. Jose, however, holds that such an enactment was not made, and the sages said to him: According to your decision the watchman remits his four zuz to the congregation (as we are sure that four zuz were enacted), and so his four zuz in which they had no share will always be considered his, and if the congregation buys daily offerings for it or other things, it is considered from an individual (which is not allowed), and so said Rabin when coming from Palestine, that R. Johanan is also of the opinion that the above is the point of their differing.

MISHNA *V.*: One must not place his manure upon a public ground, unless it is immediately taken away by those who want to use it. Clay must not be soaked or bricks made upon a public thoroughfare; however, one may knead clay if needed for building, but not for bricks. For a building at a public place they must use the material as soon as it is brought, that it shall not be left there a long time, and even then, if they cause damage, the owner is responsible. R. Simeon b. Gamaliel maintains that one may prepare material for his building during thirty days.

GEMARA: Our Mishna is not in accordance with R. Jehudah, who said (First Gate, p. 66) that one may do so in the season.

[paragraph continues] Abye said: R. Jehudah with his decision just quoted, R. Simeon b. Gamaliel with his decision in our Mishna, and R. Simeon with his decision (First Gate, p. 145), that if damage was done there is no responsibility, are teaching that as soon as one placed his property with the permission of the court, he is not responsible for damage done by it.

The rabbis taught: If a hewer of stones has transferred them to the polisher, and they cause damage while under his control, the latter is responsible; the polisher to the drier, the latter to the carrier, and the latter to the builder, the builder to the architect; all of them are responsible if damage was done through the stones while under their control only, but as soon as one transfers them to the other, his responsibility ceases. If, however, the stones fall from the line they were placed upon, all of them are responsible. But have we not learned in another Boraitha that the very last one is responsible, while all others are free? This presents no difficulty. The first one speaks of a case where all of them undertook to build this building in partnership, and the second of a case where they were hired day laborers.

MISHNA *VI.*: When two gardens were placed one above the other, and some herbs were grown between them, according to R. Mair the herbs belong to the higher garden, and according to R. Jehudah to the lower one. Said R. Mair: (My decree is correct;) if the higher would remove his earth, there would be no herbs. Answered R. Jehudah: If the lower one would care to fill up his garden with earth to make it alike with the higher one, the same would be the case. Rejoined R. Mair: As either of them can prevent the other, we have to investigate from what sources the herbs exist. R. Simeon, however, maintains that the upper one may use that which he can reach with his hand, and the remainder belongs to the lower one.

GEMARA: Said Rabha: The sages of our Mishna do not differ concerning the rest of the herbs, that they belong to the upper one; they, however, do differ concerning the branches. R. Mair holds that the branches must go with the roots, and R. Jehudah does not agree with his theory, as we have learned in the following Boraitha, that that which comes out of the roots and the branches belongs to the owner of the estate. So is the decree of R. Mair. R. Jehudah, however, says that the branches belong to the owner of the tree. This is concerning business, and the same we have learned concerning Arla (the third year

of planting, of which the fruit is forbidden for use), and both cases were necessary to teach, as if only one case, one might say that they differ only concerning business, but not concerning prohibited things, and *vice versa*.

R. Simeon maintains, etc. Said the school of R. Janai: Provided he does not exert himself to reach them. Ephraim the scribe, the disciple of Resh Lakish, said in the name of his master, that the Halakha prevails in accordance with R. Simeon. This was reported to the King Sabura, [1] and he said: We are grateful to R. Simeon for his decision.

END OF BABA METZIA AND VOLUME XII.

Footnotes

316:1 Rashi explains that the King Sabura was acquainted with the Jewish law, as well as with the Persian, and Thosphoth agree with him.

The Babylonian Talmud

Translated by
MICHAEL L. RODKINSON

Book 2 (Vols. III and IV)

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Tracts Erubin, Shekalim, Rosh Hashana

Tract Erubin

Tract Shekalim

Tract Rosh Hashana

NEW EDITION

OF THE

BABYLONIAN TALMUD

Original text, Edited, corrected, Formulated, and translated into English

BY

MICHAEL L. RODKINSON

SECTION MOED (FESTIVALS)

TRACT ERUBIN

Volume III.

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EXPLANATORY REMARKS.

In our translation we adopted these principles:

1. *Tenan* of the original--We have learned in a Mishna; *Tania*--We have, learned in a Boraitha; *Itemar*--It was taught.

2. Questions are indicated by the interrogation point, and are immediately followed by the answers, without being so marked.

3. When in the original there occur two statements separated by the phrase, *Lishna achrena* or *Waïbayith Aema* or *Ikha d'amri* (literally, "otherwise interpreted"), we translate only the second.

4. As the pages of the original are indicated in our new Hebrew edition, it is not deemed necessary to mark them in the English edition, this being only a translation from the latter.

5. Words or passages enclosed in round parentheses () denote the explanation rendered by Rashi to the foregoing sentence or word. Square parentheses [] contained commentaries by authorities of the last period of construction of the Gemara.

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Next: Introduction to Tract Erubin

INTRODUCTION TO TRACT ERUBIN.

THIS Tract, virtually the third of the Sabbath series, treats of subjects similar to those discussed in the first two. The main point of. difference is, that most of the laws laid down in the preceding two volumes are founded on biblical behests, while those instituted in the present volume are of purely rabbinical origin, notwithstanding the assertion of a solitary individual who appears in the course of a debate and declares that the legal-limit branch of the Erub is a biblical enactment.

A remarkable feature of the Tract is the exposition of the manner in which the shrewd sages circumvene the rigorous prohibitions contained in the Tract Sabbath and how they take advantage of every loophole afforded them through imperfections in the law, at the same time avoiding any palpable infraction of the law itself.

As already explained in the introduction to Volume I., the restrictions with which the Sabbath was surrounded had their unquestionable political import, but their very rigor made the sages, than whom none knew the people better, doubt whether enforcement and still less voluntary observance could ever be possible. It became necessary, therefore, to find some way of modifying the law, not directly, but by the institution of other in a measure counteracting laws. The solution for this problem presented itself in the "Erub" (literally "commixture") ordinances, the first results of which were to bring about a distinction between the different kinds of ground inhabited by man. Lines of demarcation between public, unclaimed, and private ground and ground which was under no particular jurisdiction were strictly drawn. Whatever ground, however, could be made by hook or crook to come under the category of private ground was eagerly included, as in the latter things could be carried about at will. In order, therefore, to have as much private ground as possible, each man having an interest in public ground would relinquish or transfer his right to his neighbor and thus make it communal or private property. Of course, this could be

done only among Israelites, and where a Gentile had an interest in a piece of coveted ground, his share had to be bought outright.

It was this desire to be in the same neighborhood, yea, even on the same grounds, that laid the foundation of the subsequent Ghettos, still flourishing in most of the large cities of the world. How this communal living was fostered may be readily understood, when it is stated that the sages permitted the execution of a written instrument in Palestine an the Sabbath, under ordinary circumstances a grave offence, where a piece of property had to be purchased from a Gentile for communal purposes. (See Gitin, 8b, and Schulchan Aruch Orach Chaym, 306, §11.)

The name of this Tract may be said to have a certain significance. The Hebrew word "Erub" has

a variety of meanings, among them "commixture," as stated, "agreeable," "secure," and "safeguard." As the discussions in the Tract will demonstrate, either one of these meanings may be applied to the appellation of the Tract and still express the purpose of the laws ordained. By those laws the observance of the Sabbath was made "secure," they proved a "safeguard" against "amalgamation" or "mingling" with other nations, and by virtue of the modification to the laws of Sabbath which was brought about, the observance of the Sabbath was made more "agreeable." Several other meanings might be utilized in the same manner, but lest they seem far-fetched they are omitted.

Another peculiarity of this Tract is that under no circumstances and on no occasion is the derivation of a law enacted in this particular Tract inquired into, and unlike other tracts there will not be found a single query as to where the Mishna derives the law. For want of other sources the institution of the Erub has been attributed to King Solomon, *vide* page 51.

The main subjects of discussion in the following pages will be how this Erub shall be effected, what materials shall be used to bring about a commixture, how entries (by which is meant the entry to a court or a yard where an aggregation of families reside) are to be arranged, and the like.

Altogether there are four kinds of Erubin, only three of which will be discussed in this treatise. They are: The combining of courts, the combining of limits, and the combining of streets, also known as junction. The other commixture is called combining of cookery, which will be treated at length in Tract Yom Tob.

The combining of courts deals with the regulations by the observance of which various houses standing in one court are joined together into one common ground, thus enabling the householders to carry and convey articles to and from one another. The combining of limits treats of the regulations through which the distance of two thousand ells, beyond which no Israelite is allowed to travel on the Sabbath, may be legally extended.

The combining of streets treats of the rules to be observed in the case of narrow streets and public places which can be turned into private ground under certain conditions.

Finally, it may be well to add that, of all the difficult and complicated treatises in the Talmud, the Tract Erubin is by far the most difficult, and in a great many places almost incomprehensible to other than the most careful students.

THE EDITOR.

NEW YORK, *September*, 1897.

Next: Synopsis of Tract Erubin

SYNOPSIS OF SUBJECTS

OF

VOLUME III.--TRACT ERUBIN [1]

CHAPTER I.

MISHNA I. treats: If an entry be higher than twenty ells. The size of the height is based upon the door and the porch of the pillars of the temple, or palaces of kings. If the cross-beam was partly above twenty ells, and partly below. The ell used at a booth and an entry measures five spans, but the ell used at Kilaim is six spans. The several prescribed quantities, the intervention of articles, and the ordinances concerning the walls of entries and booths were given by Moses at the Mount Sinai, and also Gud, Lavud, and crooked walls. About Kal Vochomer (*à fortiori*), which comes very often in the Talmud. The people there were ignorant, and had to be given a liberal interpretation of the ordinance. How must entries facing public around be combined by an Erub? May the rigorous ordinances of two Tanaim be applied to one case? What was decided about a village of a shepherd, where was an entry which opened into a vacant yard. May the space underneath the cross-beam be used? The law about an entry which was provided with a number of side-beams (with the illustration). The law about a missing portion of the wall, perceptible from the inside or from the outside (with their illustrations). Whether an entry measuring twenty ells could be reduced to thirteen and a third if built as illustrated? What R. Jehudah taught to R. Hyya, the son of Rabh, and how Rabh corrected. How an apparent door is to be made, 1-22

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TRACT ERUBIN.

CHAPTER I.

REGULATIONS CONCERNING THE WIDTH AND HEIGHT OF AN ERUB CONSTRUCTED IN STREETS INHABITED SOLELY BY ISRAELITES, AND REGULATIONS CONCERNING THE CONSTRUCTION OF AN ERUB BY A CARAVAN.

MISHNA: If an entry [1] be higher than twenty ells, it should be lowered. R. Jehudah said: "This is not necessary." If it be wider than ten ells, it should be made narrower, but if it have the appearance of a door, even though it be wider than ten ells, it need not be made narrower.

GEMARA: We have learned in a Mishna [Sukkah, I. a] that a booth which is higher than twenty ells is unfit for use, and R. Jehudah said, that it maybe used. Why does the Mishna in the case of an entry decree, that it should be remedied by lowering, while in the case of a booth it declares it unfit for use? Because in the case of a booth a number of other defects are mentioned in connection with the excessive height and each of those would require a special explanation as to how they were to be remedied, whereas in the case of an entry only two things are to be corrected, and the remedy for them is taught.

R. Jehudah said in the name of Rabh: The difference of opinion between the sages and R. Jehudah is based upon the door and the porch of pillars in the temple. We have learned in a Mishna, that the door of the Temple was twenty ells in height and ten ells in width and that the porch was forty ells in height and twenty ells in width. The sages compare the entry with the door and R. Jehudah compares it with the porch of the Temple, which was also more or less a door; and why does R. Jehudah say, that the porch is also a door, because it is written [Ezekiel

xv. 48], "the porch of the house," and that is equivalent to the door of a house. Why do not the sages hold the porch to be a door? Because, were it written, "the door of the porch," the porch might also be considered a door; but as it is written, "the porch of the house," it means the porch which opens towards the house, but not a door to the house.

How can it be that R. Jehudah bases his dictum on the porch of the house? The porch was twenty ells in width, and when the Mishna decrees that if the entry be wider than ten ells it must be made narrower, he does not dissent? (Why did he not say, that it was not necessary to lessen its width?) Said Abayi: In the following Boraitha he does dissent as we have learned: "If the width of the entry exceed ten ells it should be made narrower, but R. Jehudah says, it is not necessary." Why is this omitted in the Mishna? He disputes with the sages concerning the height, hence it is evident that he also disputes as to the width.

Again: How can it be that R. Jehudah bases his dictum upon the porch of the house? Have we not learned in a Boraitha, that if an entry exceed twenty ells in height, it must be lowered? R. Jehudah, however, says, that it may be made even forty or fifty ells in height, and Bar Kappara taught, that it may be even one hundred ells high. As for Bar Kappara, it is assumed to be an exaggeration; but as for R. Jehudah it cannot be considered merely an exaggeration, because he bases his dictum upon the porch of the house, and that was only forty ells in height. Why does he say "or fifty"? Whence his basis for such an assertion? Said R. Hisda: Rabh erred on account of the following Boraitha: "We have learned, an entry which is higher than twenty ells, thus exceeding the height of the door of the Temple, should be lowered." Now Rabh assumed, that if the sages base their teaching upon the door of the Temple, R. Jehudah bases his dictum upon the porch of the Temple, but this is not so! R. Jehudah does not consider the Temple at all, but uses as a basis the palaces of kings, the doors of which attain excessive heights.

What is the law concerning an entry, the cross-beam of which was partly above twenty ells in height and partly below, and also concerning the covering of a booth, part of which was over twenty ells in height and the other part lower than twenty? Said Rabba: "An entry is made invalid by it but a booth is not affected." Why does he say that a booth is not affected by it?

[paragraph continues] Because we assume that part of the covering of a booth, which is above twenty ells, to be so frail that it does not matter. Cannot the same thing be said concerning the cross-beam of an entry? If this were said with reference to a cross-beam, then it will seem as if there is no foundation for the cross-beam, and it is suspended in mid-air. Is this not the same with a booth? If it be said, that that part of the covering of the booth is so frail that it amounts to nothing, it cannot serve as protection against the sun and there will be more sunshine than shade, and this would make the booth invalid? But, as such is not the case and the frailty of the covering is as a matter of fact only imaginary, it does cause more shade than sunshine, and the booth is not made invalid, why should it not also be the same with the cross-beam, the frailty of which is also only imaginary while in reality it is as firm as if fastened with nails? Said Rabha of Parzekaia: "If such a defect occur in a booth, which is intended for the personal use (of a man), it will be remedied through the thoughtfulness of the man (who is bound to keep the commandment properly), but a cross-beam of an entry which is intended for public use will be neglected, because one man will rely upon another to remedy the defect, as the proverb goes, that a pot used in common is never warm nor cold" (one relies upon another to keep it in its proper condition). Rabhina said: The booth being a fulfilment of a biblical commandment needs no further safeguard, for it will be kept under any circumstances; but the entry being a purely rabbinical institution must not leave any loopholes, by which the entire law may eventually be circumvened.

What *is* the law, finally? Rabba bar R. Ula said, "Both are invalid," and Rabha said, "Both are valid," why? Because the twenty ells refer to the *space* between the ground and the crossbeam or covering, respectively, and even if part of either be above twenty ells, the space is not changed in volume. Said R. Papa to Rabha: I know of a Boraitha confirming this statement: "An entry which is more than twenty ells high and thus is higher than the door of the Temple should be lowered, and the space between the ground and the ceiling in the Temple itself was twenty ells high." R. Shimi bar R. Ashi objected to this: "We have learned further on, how should we remedy the defect in the entry? The cross-beam should be laid below the limit of the twenty

ells!" Do not learn in the Boraitha, "below" but "above" the limit of the twenty ells. The Boraitha, however,

distinctly teaches "below"? This "below" refers to a booth which was less than ten spans high and which must be made higher so that the space between the ground and the ceiling should be no less than ten spans, in the same manner as it must not be higher than twenty ells.

Abayi said in the name of R. Na'hman: "The ell used at a booth and at an entry measures five spans, but the ell used at Kilaim is six spans." For what legal purpose does R. Na'hman relate this? This is taught for the purpose of determining the height of an entry and for measuring a breach in the wall of an entry. (If the breach be over ten ells wide, the entry is invalid, and the ell used for measurement is the one of five spans only.) Why is the width of a breach and the height of the entry *only* mentioned? There is also width to be considered in an entry, for did not R. Na'hman state, that an entry must not be less than four ells wide? What ells are these? If they are four ells of the lesser standard, R. Na'hman makes the ordinance more lenient? The ells in an entry, as a rule, are those of the lesser standard, but as for the width, those of the greater standard are used. Further, R. Na'hman said, that the ell used at a booth also measures five spans. For what purpose did he state this? For the measurement of the height of the booth and the crooked walls [1] of the booth. There is also the width of the booth to be considered, however, and that should be four ells? Will not the ordinance regarding the width be made more lenient thereby of twenty spans only? The ells of a booth generally are of five spans, but as for width the ells measuring six spans are used. What does R. Na'hman intend to specify, by stating that the ells used at Kilaim measure six spans? He refers to seeds planted in the superficies of a vineyard and to a barren spot in a vineyard (as explained in Tract Kilaim). But there is a vineyard in which the vines are planted at less intervals than four ells and the opinions of the sages differ as to whether such a vineyard is called a vineyard in a legal sense (and if the ells be measured according to the statement of Na'hman it is made more lenient? Because if the four ells be of the lesser standard the commandment of Kilaim is not applied.) The statement of R. Na'hman is made for a rule but did not include the above vineyard. The ells of a vineyard are generally used of six spans, but not for the width. But Rabha said in the name of R.

[paragraph continues] Na'hman: All ells measure six spans, but in Kilaim are measured with long spans and in entry and booth with short spans to make it more rigorously.

R. Hyya bar Ashi in the name of Rabh said: The several prescribed quantities (as mentioned in Tract Sabbath), the Chatzitzah (intervention of articles at bathing), and the ordinance concerning the walls of an entry and of a booth are ordinances given by Moses at the Mount Sinai. How can it be said, that these are Sinaic laws, they are biblical laws? For it is written [Deutr. viii. 8]: "A land of wheat and barley, and of the vine, and the fig-tree and the pomegranate; a land of the oil-olive and of honey." And R. Hanan said, that the whole verse refers to prescribed quantities: "By wheat is meant, what we have learned elsewhere in a Mishna [Negaim xiii. 9]: If a man clad in garments and shoes entered a house where leprosy was prevalent, he immediately becomes unclean, but his garments, shoes, etc., do not become unclean, until he remains there a length of time sufficient for the consumption of bread of the quantity of two eggs, wheaten bread but not barley-bread, and when eaten in a reclining position with some other dish. By barley is meant,

what we have learned elsewhere [Ohaloth ii. 3]: If a bone of a corpse is the size of a (grain of) barley, it makes a body unclean, when touched or carried, but it does not make unclean the contents of a tent, if found therein. By vine is meant: If a Nazarite drink a quarter of a lug of wine he ceases to be a Nazarite and must bring a sin-offering. By fig-tree is meant, that one is guilty of carrying on the Sabbath, if he carries anything of the size or quantity of a dried fig. By pomegranate is meant, what we have learned elsewhere [Khelim xvii. 1]: Any vessel belonging to a household, if it have a hole as large as a pomegranate, is not subject to defilement any more. By a land of the oil-olive is meant a land where all prescribed quantities are of the size of an olive. [All prescribed quantities? What about those just mentioned? Say, a land where the majority of the prescribed quantities are of the size of an olive.] By honey is meant, that if a man ate anything the size of a fresh date on the Day of Atonement, he is guilty."

How can the passage be understood in this manner? No prescribed quantities are mentioned in the passage? We must say, therefore, that those laws are Sinaic, but the passage is merely a mnemotechnical basis for them. And Chatzitzah, is that not also biblical law? It (as) is written [Leviticus xv. 16]:

[paragraph continues] "Then shall he bathe all his flesh in water." By all his flesh is meant, that nothing should intervene between his flesh and the water? The Sinaic law was necessary in order to stipulate, that there should even be no intervention between the hair and the water (not only between the flesh and the water). As was said by Rabba bar R. Huna: "If there was a knot in a single hair, there was certainly an intervention; but if three hairs were tied in a knot, there was certainly no intervention; but if two were tied together, the matter is doubtful to me." But even the ordinance concerning the hair is also biblical? For we have learned in a Boraitha, that by "all his flesh" is meant all attached to the flesh, and that includes the hair. The Sinaic law was necessary in order to stipulate the ordinances concerning the greater and lesser part of the hair, one who is particular with his hair and one who is not, as was said by the dictum of R. Itz'hak: "According to biblical law Chatzitzah is constituted only if the greater part of his hair was encrusted with loam or blood, etc., and the man is particular about his hair, but if he is not, it does not constitute intervention." The rabbinical laws, however, ordained as a precautionary measure, that if the larger part of his hair be encrusted even though he be not particular, it would constitute Chatzitzah, lest one who is particular would not consider it so, and they also ordained, that if the smaller part of his hair was encrusted and he is particular about his hair, it would constitute Chatzitzah, as a precautionary measure, for the sake of the one who has the larger part of his hair encrusted and is also particular about his hair.

The ordinances concerning the walls of a booth and an entry are also biblical? For the master said: "It is written, that the ark was nine spans high and the cover was one span thick, so the ark and cover combined were ten spans high, and this serves as a prescribed height for all walls." The Sinaic laws are necessary for the stipulation of the ordinances concerning Gud, [1] Lavud, [2] and crooked walls.

If the entry was higher than twenty ells and is to be lowered,

how much lower should it be made? How much lower? As much as is necessary. The question here is, how much of the space below the cross-beam must be diminished in order to make the space only twenty ells high. R. Joseph said: "One span underneath the cross-beam is sufficient"; but Abayi said, four spans, and they differ merely as to the precautionary measure involved; the latter claiming, that one span may be impaired through stepping upon it, while the former holds that there is no danger of such a thing happening.

How is it if the entry was less than ten spans high and sufficient ground had to be excavated in order to make it the prescribed height? How much ground should be excavated? How much? As much as is necessary? The question, therefore, is not as to how much must be excavated in height, but in the width of the entry. R. Joseph said: "For the width of four spans," and Abayi said, "For four ells." (The reason R. Joseph says four spans in this case, while only requiring one span in the above case, is because in the first instance a wall for the entry already existed, and merely the space had to be diminished, but in this instance, if the wall is less than ten spans high, it cannot be considered a wall and by excavating the ground the wall will be made; hence four spans at least must be excavated in order to constitute such a wall, the wall of an entry. Abayi, however, holds that in this case four spans would be insufficient, and at least four ells are necessary, because an entry is not considered such, unless it is four ells wide.)

Said Abayi: "Whence do I know that four ells are required? From the statement of Rami bar Hama in the name of R. Huna, that if a beam protrude from one of the walls of the entry for a distance of less than four ells, it may serve as the side-beam of such entry and be valid, although it was not intended to serve for that purpose. If such a beam protrude for a distance of four ells or more, it is considered as part of the wall and cannot serve as a side-beam, but a new side-beam must be made in order to make the entry valid." (If a beam protrude from a wall of an entry and was even not intended to serve as a side-beam, it may be ever so small, it is considered as a side-beam for the entry and is valid. If it protrude, however, for a distance of four ells or more, and was not originally intended for a side-beam, it cannot serve the purpose, because the entire width of the entry is only supposed to be four ells and for that reason the protruding beam is considered part of the wall. Hence in order to make the entry

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valid, another side-beam must be constructed. From this it may be seen, that Abayi bases his opinion concerning the width of the entry upon the dictum of Rami bar Hama, that an entry must be four ells wide.) R. Joseph, however, declares, that the decree of Rami bar Hama does not conflict with his own decision; for it is true that a beam, if it be four ells wide is not considered a side-beam, because it has not the appearance of a side-beam; still the reason for this is not because the width of the entry itself should be four ells, but because the side-beam is too large, and, as for the entry itself, it is sufficient, if it be only four spans wide.

Again, Rami bar Hama said, that if the beam be four ells wide, another side-beam is necessary. Where should the latter be put? Should he add the side-beam to the original beam, the size will be increased (and it will not look anything like a side-beam)? Said R. Papa.: "It can be put on the other side of the entry." R. Huna bar R. Jehoshua, however, said, that the side-beam may be added to the original beam, but it should be made either higher or lower than the original beam (in order that it may appear as if it were added). The same R. Huna said also: "All this is said in a case of where the entry was eight ells in width (so that the protruding beam and the entry arc of equal width), but if the entry was only seven ells wide and thus the width of the entry is less

than the protruding beam, even according to Rami bar Hama, the entry is valid without the addition of another beam, because the entry being narrower than the beam is considered the same as a door." This ordinance is made lenient from an inference of a rigorous ordinance, 1 viz.: the ordinance concerning a court: If in a court one of the walls is entirely destroyed, nothing! may be carried therein on the Sabbath, and neither a cross-beam nor a side-beam placed at the remaining walls alters its character. However, if the wall destroyed was only partially ruined and the remaining portion is larger than the breach, things may be carried therein. Hence in the case of an entry where a side or cross beam suffices for the entire wall, if the wall is wider than the space of the entry proper, in so much

greater a degree is the entry valid for all purposes. R. Ashi, however, says, that even if the entry was eight ells wide, no additional side-beam is necessary, no matter in which way the case is assumed: If it be assumed that the closed part of the entry is wider than the entry itself (through some inaccuracy in construction), then the entry is valid because of that fact, and if it be assumed that the space of the entry is wider, then the closed part which is constituted by the beam may be regarded as a legal side-beam and then the entry is certainly valid; but it might be assumed, that both the closed part and the space were exactly equal; in that event it would constitute a doubtful case based on a rabbinical law, and such a case is always decided with leniency.

Said R. Hanin bar Rabha in the name of Rabh: "If the wall of an entry was broken for a distance of less than ten ells at the side the entry is valid; but if the front of the wall was broken for four ells (assuming that the entry was originally twenty ells wide and in order to make it valid, ten ells had been closed up, and of the ten ells of the new wall, four had been broken) the entry is not valid." Why is the entry valid if the wall was broken for a distance of ten ells on the side, because the breach can be regarded as a door? Why should not the same case apply to the breach in the front? Say that can also be regarded as a door? Said R. Huna bar R. Jehoshua: "In this case the breach is supposed to be in the corner, and a door is not generally made in the corner." R. Huna, however, said, that the same distance applies to both the side and the front of wall. In either case if the breach exceeds four ells, the entry is not valid. And thus said R. Huna to R. Hanan bar Rabha. "Do not dispute with me, for it happened that Rabh came to the city of Damharia and he acted there in accordance with my decree." R. Hanan bar Rabha answered: "This is not sufficient evidence for me, because in that case Rabh acted in a manner that precluded the possibility of doing wrong (*i.e.*, the people there were ignorant and had he given them a liberal interpretation of the ordinance, they would have taken advantage of it and disregarded the law in the future)."

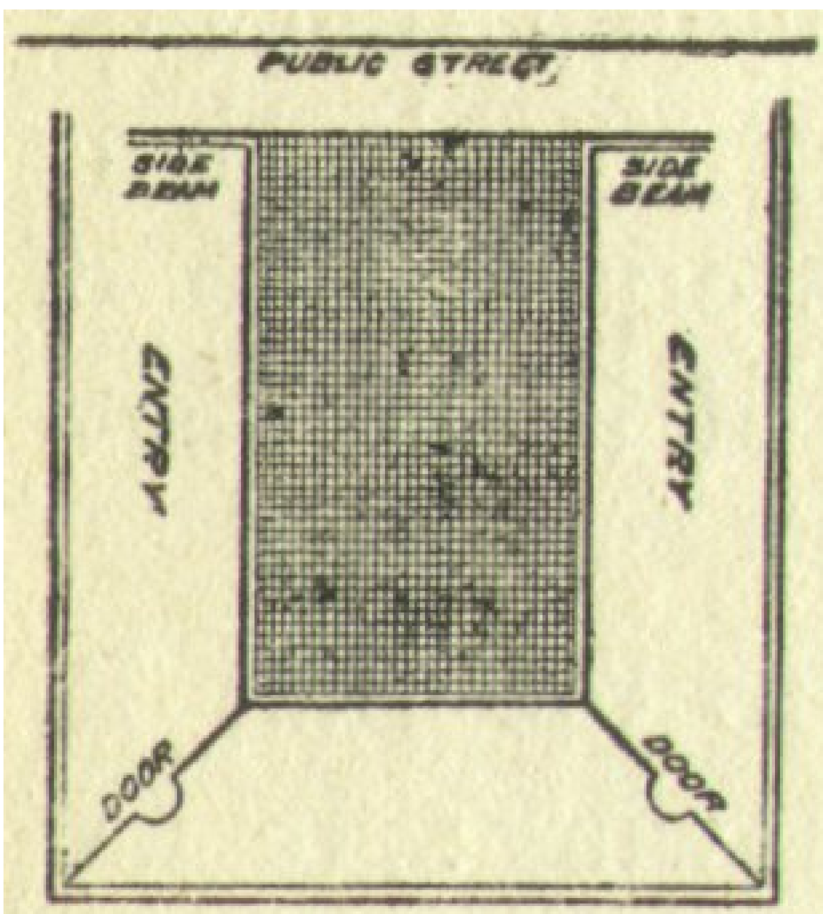
Said R. Na'hman bar Itz'hak: "It seems to me that R. Huna was correct in his opinion from the following: It was taught: An entry made in the form of a right angle should, according to Rabh, be considered as an ordinary entry which is open on both sides and requires an apparent door on one side and

a cross or side beam on the other side, but according to Samuel it must be considered as a closed entry (and at both sides needs only a side-beam). Now, let us see! Shall we assume, that even if the entry was wider than ten ells, Samuel still regards it as a closed entry, and only requires a

side-beam at each side; (and this being impossible, therefore we must rather assume, that the entry was only ten ells wide, and still Rabh regards it as an open entry and declares, that it requires an apparent door; hence we see that the breach on the side of the wall must also not exceed four ells in order that it may be regarded as a door. (According to Rabh then, not even ten ells in front can be regarded as a door until an apparent door is added. How can it be said that if a breach measure ten ells at the side it is regarded as a door?) What rejoinder will R. Hanan bar Rabha make? R. Hanan will claim, that an entry made in the form of a right angle is used so much, that it appears like public ground (hence an apparent door must be made, but as for a court, which is not used as a thoroughfare, even ten ells may appear like a door).

The Rabbis taught: How are entries facing public ground combined by an Erub,? On one side an apparent door should be made and on the other a cross and side beam should be put up. Said Hananiah: The school of Shamai said, that doors should be made at both entries where they face the street, and when going out or entering, the man should close the door. The school of Hillel, however, said, that at one side a side and a cross beam should be made and at the other a door should be made. Commenting upon this, Rabh said, that the Halakha prevails according to the first Tana, and Samuel said, that it prevails according to Hananiah.

The schoolmen propounded a question: "Is a man, according to the opinion of Hananiah, quoting the school of Hillel, obliged to close the door or not?" Come and hear. R. Jehudah said in the name of Samuel, that he is not obliged to close the door. R. Mathna added: I was placed in that position at one time and Samuel said to me, that it must not be closed.



There was an entry (as shown in the illustration) at the city of Neherdai, to which the rigorous

ordinances of both Samuel and Rabh were applied and doors were ordered to be made. The rigorous ordinance of Rabh is the one pertaining to an entry which was made in the form of a right angle, and was

declared by him to be regarded as an open entry and in this case there were two openings towards the street. [Did not Rabh say above that the Halakha prevails as the first Tana? In this case the rigorous ordinance of Samuel was applied, who said, that the Halakha prevails according to Hananiah. But did not Samuel say, that an entry made in the form of a right angle is to be considered as a closed entry, and requires only side-beams? In this instance again the rigorous ordinance of Rabh was applied and it was regarded as an open entry, and at an open entry, according to Hananiah, quoting the school of Hillel, doors are also required.]

May, then, the rigorous ordinances of two Tanaim be applied to one case? Have we not learned in a Boraitha, that at all times the Halakha prevails according to the school of Hillel, but he who wishes to act in accordance with the school of Shamai, may follow that school exclusively both in the lenient and the rigorous ordinances, and he who wishes to act in accordance with the school of Hillel may follow that school exclusively in both lenient and rigorous ordinances. He who only follows the more lenient ordinances of both schools is a sinner, and he who follows only the more rigorous ordinances of both schools is referred to by the passage [Ecclesiastes ii. 14] as "the fool walketh in darkness."

Said R. Na'hman bar Itz'hak: The entry made in Neherdai was made in accordance with the decision of Rabh solely, but did not Rabh say, that the Halakha prevails according to the first Tana? R. Huna said in the name of Rabh, that the Halakha in theory remains according to the first Tana, but it should not be carried out in practice. But according to R. Ada bar Ahabha, who said in the name of Rabh, that the Halakha prevails according to the first Tana and should be carried out accordingly, was not the entry in Neherdai made according to the more rigorous decisions of both schools of Shamai and Hillel? Said R. Shezbi: It is not allowed to act in accordance with too rigorous ordinances of two schools only when they conflict with one another (*e.g.*, the ordinances concerning the back and the head as will be explained in Chulin). Wherever they do not conflict, however, they may be applied in one and the same case.

R. Joseph was sitting in the presence of R. Huna, and said: "R. Jehudah said in the name of Rabh, that the first Tana and R. Hananiah differed only when the entry faced a market on both sides; but if on one side there was public ground and on

the other was a valley which was considered unclaimed ground, all agree that an apparent door should be made on one side and a cross or side beam on the other side." R. Joseph then continued in the name of R. Jehudah alone and stated, that if the entry opened on one side into a vacant yard which in turn opened into public ground, nothing need be made at either end of the entry.

Said Abayi to R. Joseph: What R. Jehudah is supposed to have said himself was in reality a decree of Samuel, because were it a decree of Rabh, he would contradict himself in either of two

instances; for R. Jeremiah bar Abba said in the name of Rabh: "If the wall of an entry opening into a courtyard be entirely destroyed, and the wall between the courtyard and the street was broken only for a distance of less than ten ells, the courtyard is not invalidated but the entry is." Why! Say rather that the entry in this case is equal to one that faces a vacant yard, and, according to R. Jehudah, needs nothing at either end. (Where the contradiction in either of the two instances occurs is as follows: If R. Jehudah means to state, that the entry needs nothing at either end because it is an open entry, that would contradict Rabh in one instance, as R. Jeremiah bar Abba relates, that the entry is invalidated because it is made an open entry. If we assume, however, that R. Jehudah holds an entry, opening into a vacant place, to be valid even if nothing is made at either end, because the place was vacant and there were no inhabitants who could invalidate the entry by refusing to combine in an Erub, but, if there were inhabitants in that place, the entry would have been invalid unless provided with the necessary appliances. Here, however, Rabh, according to R. Jeremiah bar Abba, invalidates the entry because it is an open entry and not because of the inhabitants, and hence there would be contradiction in the other instance.)

Said R. Joseph to Abayi: "I know not whose decree R. Jehudah cited, but it happened in the village of a shepherd, that there was an entry which opened into a vacant yard and R. Jehudah was asked whether it was necessary to provide the entry with an apparent door or beams, and R. Jehudah answered that it was not. If this is contradictory to the opinion of Rabh, then let it be attributed not to him but to Samuel, and there will be no contradiction." Now what R. Shesheth said to R. Samuel bar Abba or, according to another version, to R. Joseph bar Abba, namely: I will explain to you, that the decree of

Rabh is not permanent. There are times when Rabh himself holds that the entry is valid, and this occurs, if the inhabitants of the courtyard and the entry made a joint Erub (common cause); but when such was not the case, he holds the entry to be invalidated, which proves to us, that the decree of R. Jehudah concerning the entry in the village of the shepherd may have also been in conformity with the opinion of Rabh, because the vacant yard had no inhabitants with whom the inhabitants of the entry could have made an Erub; for the decree of R. Jeremiah bar Abba in the name of Rabh does not invalidate the entry because it is made an open entry, but because there were no inhabitants in the vacant place with whom the inhabitants of the entry could combine in an Erub.

R. Joseph said: "When R. Jehudah declared, that an entry which opens into a vacant yard is valid even when nothing had been made at either end, he intended to state, that such was the case if the entry opened into the centre of the vacant yard, but if it opened into one side of the yard it is not valid." Said Rabba: "Even if the entry opened into the *centre* of the vacant yard, it is only then valid, provided it is not exactly opposite the opening of the yard into the street; if it is directly opposite, however, the entry is invalid. Said R. Mesharshia: "Even if the entry is not opposite the opening of the vacant place into the street, it is valid only if the vacant place was public property, but, if belonging to an individual (who might build on it and rent it to others), it will become equal to an entry which faces the sides of a vacant place and is not valid. Whence do you know, that there is a difference between public property and individual property? This is known from the narrative of Rabhin bar Ada concerning an entry which faced the sea (see Chapter X., Mishna 4).

There was another entry made in the form of a right angle and a mat was placed at the angle. R. Hisda said in reference to this: "This is neither in accordance with Rabh nor with Samuel. According to Rabh, who considers an entry of this kind as an open entry, an apparent door would be necessary, and according to Samuel, who considers it as an entry closed at one end, a side-beam would be necessary; and this mat is neither one nor the other, because it might be blown away by the wind and would leave nothing behind." If, however, the mat was fastened with a nail so that it could not be blown away, it is sufficient.

It was taught: An entry made in the form of a centipede (*i.e.*, an entry containing a number of smaller entries which on one side faced a street and the principal entry also faced a street) should, according to Abayi, be provided with an apparent door, and the smaller ones should be provided with a side and cross beam where they face the street. Said Rabha to Abayi: "According to whose opinion is this? According to Samuel's, who holds, that such an entry is to be regarded as a closed entry; then why is an apparent door necessary? Secondly, we know that in the case of the entry made in the form of a right angle at Neherdai, the decision of Rabh was also respected." Therefore the decree of Rabha is, that apparent doors should be made at the smaller entries where they face the large entry, and the sides facing the street only need a side or cross beam. [1]

Said R. Kahana bar Tachlipha in the name of R. Kahana bar Minyumi in the name of R. Kahana bar Malchiyu, quoting R. Kahana the master of Rabh [according to others, R. Kahana bar Malchiyu himself was the master of Rabh]: "An entry, one side of which was wide and the other narrow, should, if the wider side be less than four ells, be provided with a cross-beam laid obliquely, but if it measured fully four ells, the cross-beam should be laid on the narrow side." Rabha, however, said, that in either case, the cross-beam should be placed on the narrow side. "And," he continues, "I will state the reason for my opinion, and the reason for the previous opinion: In my opinion a cross-beam is necessary merely to serve as a sign, and if laid obliquely it cannot be seen and thus would not be a sign. According to the opinion of the previous teachers, the crossbeam serves as a wall, and if such is the case, a wall can be a wall even if placed obliquely." Said R. Kahana: "This being a decree by Kahanim, being myself a Kahan I will also venture to say something: The cross-beam must be placed obliquely if the oblique part does not measure more than ten ells." If it was more than ten ells, however, all agree that it must be placed on the narrow side only.

The schoolmen propounded a question: "May the space underneath the cross-beam be used?" Rabh, R. Hyya, and R. Johanan said, that it may be used. Samuel, R. Simeon ben Rabbi, and Resh Lakish said, that it must not be used. Said

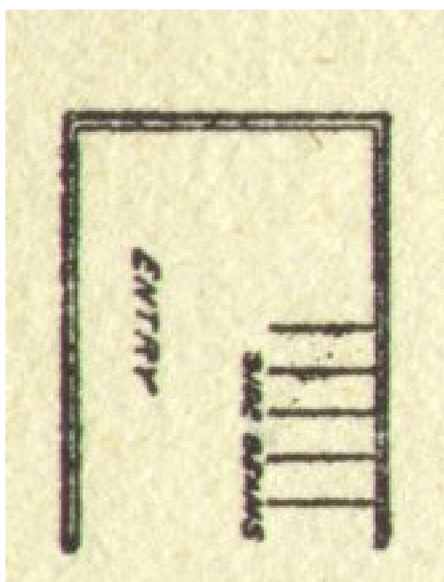
[paragraph continues] R. Hisda: All agree that if a side-beam is used, the space opposite [1] the side-beam must on no account be used.

Rami bar Hama asked R. Hisda: "If one drove two posts on the outside of an entry and placed a cross-beam on top of them, how is the law concerning the entry?" He answered: According to those who hold that the space underneath the cross-beam may be used, the entry is invalid, but

according to those who hold, that the space underneath the cross-beam must not be used, the entry is valid (*i.e.*, those who hold that the space underneath the cross-beam must not be used regard the inside edge of the cross-beam as if it made a solid wall to the entry; hence the entry is valid because it is considered a closed entry, and if the posts and cross-beams are on the outside, the entry is nevertheless closed and valid; but those who hold that the space underneath the cross-beam must not be used, regard the outside edge of the cross-beam as the closing wall of the entry; hence there will be an open space between the entry and the outside posts and cross-beam, and the entry is made invalid). Rabha, however, said that even according to the opinion of those who hold that the space underneath the crossbeam must not be used, the entry is invalid because the crossbeam must be recumbent upon the entry proper and not upon the outside.

R. Zakai taught in the presence of R. Johanan: The space underneath the cross-beams and alongside of the side-beams is considered unclaimed ground (*i.e.*, that one must not carry things in that space on Sabbath). Said R. Johanan to him: "Go and teach such things outside of the college." Said Abayi: "It seems to me. that R. Johanan's opposition to R. Zakai was only as far as the space underneath the cross-beam is concerned, but alongside of the side-beams it is prohibited to carry." Rabha, however, said: Even alongside of the side. beams it is also allowed to carry.

Said R. Huna bar R. Jehoshua to Rabha: "Thou dost not think, that it is prohibited to carry things alongside of the side-beams?" Did not Rabba bar bar Hana say in the name of R.



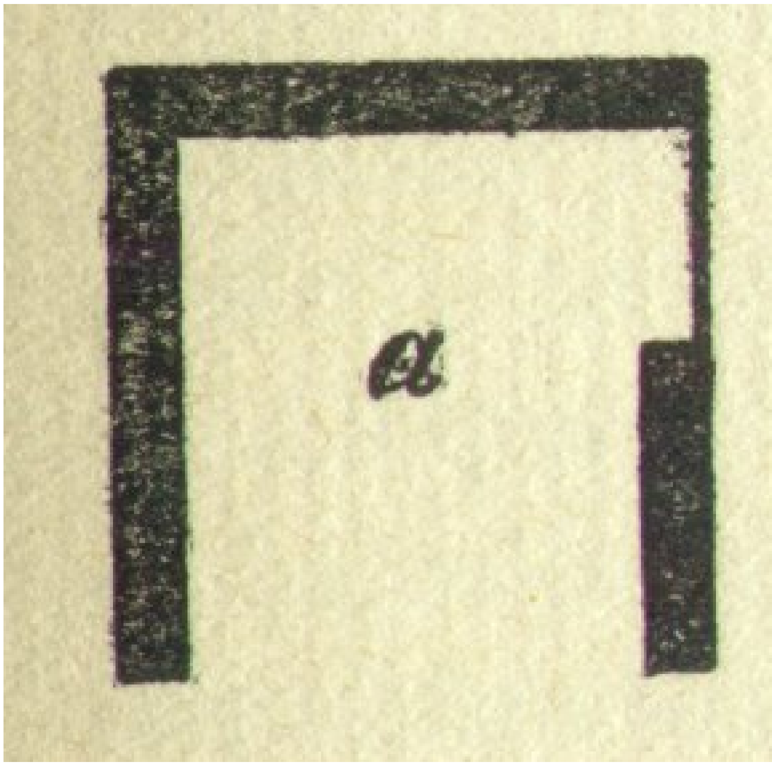
[paragraph continues] Johanan, that an entry which was provided with a number of side-beams the space between each of which did not measure four spans, causes a difference of opinion between R. Simeon ben Gamaliel and the sages. According to R. Simeon, an object becomes "lavud" (attached) to another object even when the distance between them is four spans, but according to the sages, the distance must not exceed three spans. Hence in the case just mentioned (see illustration) according to R. Simeon all the beams are regarded as one by virtue of their being "lavud" to each other, and a man must not carry anything beyond the space alongside of the inside edge of the beam farthest from the opening of the entry, while, according to the sages, who regard only the beam nearest the opening of the entry essential and the others

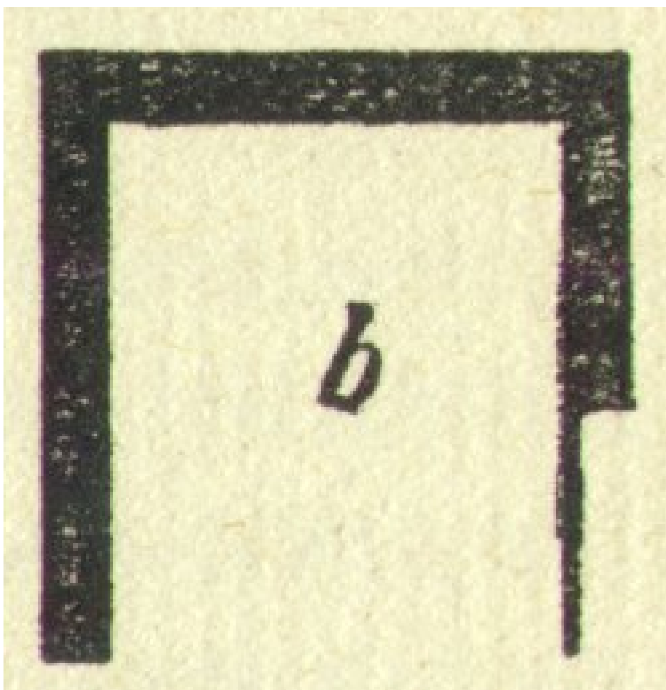
unnecessary, a man may carry things as far as the space alongside of the inside edge of the beam nearest the opening of the entry. In the space between the side-beams all agree that it is prohibited to carry. Now, if R. Johanan permitted the carrying of things alongside of the side-beams, how could he state the difference of opinion between R. Simeon and the sages in this case? For whether all the beams were considered as one or each separately, what difference would it make as long as things may be carried in the space between them? Hence we must say, that R. Johanan does not permit the carrying of things alongside of the beams? In this instance, Rabha might declare, that the entry is presumed to be one that opens into unclaimed ground. How would the case be if the entry opened into public ground? Would it be allowed according to R. Johanan to carry things between the side-beams? Shall the native remain on earth and the stranger be lifted up to the highest heaven? [1] Yea; objects of like character assimilate, *i.e.*, the space between the side-beams being unclaimed ground and the entry opening into unclaimed ground, the two are virtually combined, and as carrying in unclaimed ground is not allowed to commence with, it is also not allowed in the space between the beams.

R. Ashi said, however: The case referred to, viz., the entry containing many side-beams, is assumed to be one where the side-beams were erected for a distance of four ells and were less

than four spans apart. If, according to R. Simeon, the beams are all "lavud" to each other, they would constitute a separate entry ill the principal entry, and in order to carry things in the space between the beams another side-beam would have to be erected for the newly made entry; but according to the sages, who do not consider the beams "lavud" to each other, another side-beam is not necessary. (This means to say: R. Johanan holds, that under any circumstances the space between the side-beams may be utilized (for carrying) and the difference caused by such an entry between R. Simeon ben Gamaliel and the sages is not as to whether things may be carried in the space between the beams or not, as stated before, but whether another side-beam is required in addition to those already erected or not.)

It was taught: If a side-beam was made to an entry which on the inside of the entry could be plainly seen but on the outside seemed to be on a par with the wall and hence not recognizable, it is regarded as a proper side-beam, but if it could be plainly seen on the outside, but on the inside it seemed to be part of the wall and could not be distinguished from the wall, it gives rise to a difference of opinion between R. Hyya and R. Simeon the son of Rabbi. One holds, that it may be regarded as a proper side-beam, and the other, that it cannot be so regarded.





It is correctly ascertained that R. Hyya is the one who holds that it may be regarded as a proper side-beam, from his decision as follows: "If one of the walls of an entry was partially removed (see illustration a), so that the lacking portion could be perceived from the inside of the entry but not from the outside of same, or if part of the wall was missing (see illustration b), so that it could be readily perceived on the outside of the entry but not on the inside, in either case the impaired wall is regarded as a side-beam."

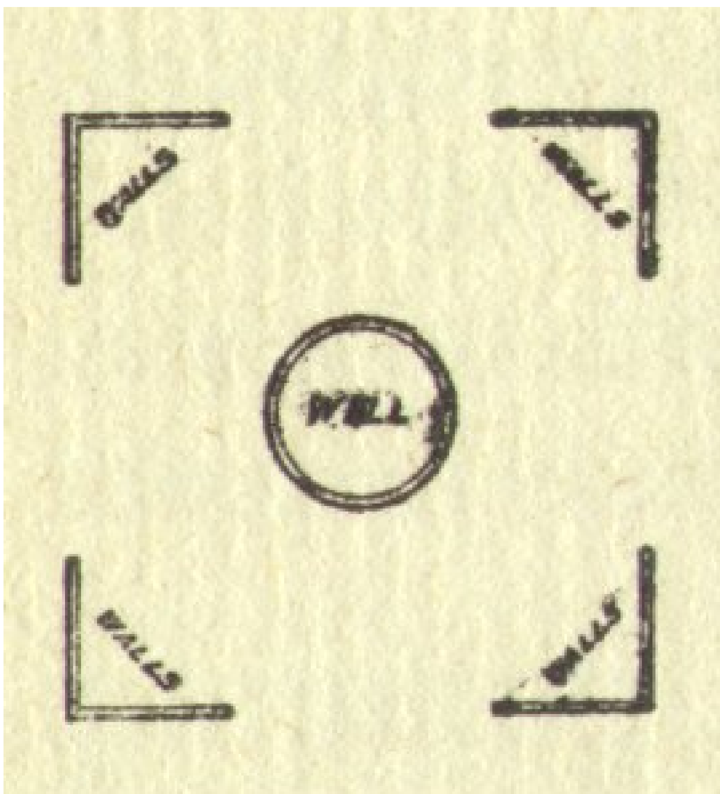
Rabba bar R. Huna taught the same: "If a side-beam was recognized on the outside of an entry but could not be distinguished on the inside it is nevertheless regarded as a side-beam." Said R. Joseph to him: "I never heard such an ordinance proclaimed by thy father." Said Abayi to R. Joseph: "Didst thou not thyself teach this ordinance when we learned the following: Rami bar

Abba said in the name of R. Huna, that a side-beam, which was affixed to the end of a wall so that it could

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be seen from the outside but seemed to be a continuation of the wall from the inside, is regarded as a side-beam, if measuring less than four ells and the entry may be used from the inside edge of such beam, but if the side-beam measured four ells, it is regarded as a separate entry, and thus the entry proper, not having any side-beam, is made invalid. Thou didst comment upon this and say, that from this teaching we may adduce three things. Firstly, that the space alongside of a side-beam must not be used; secondly, that four ells is the minimum measure of an entry; and, thirdly, that if a side-beam can be recognized on the outside but not on the inside of the entry, it is a proper side-beam." Finally, the Halakha concerning a side-beam recognizable from without but not within the entry prevails: that the side-beam is valid because such was the decision of R. Hyya, as is mentioned above.

"*Should it be wider than ten ells, it must be made narrower*." Said Abayi: We have learned in a Boraitha concerning this teaching, that R. Jehudah regarded this as unnecessary.



How much narrower should it be made? R. A'ha wished to state, in the presence of R. Joseph, that if the entry measured twenty ells, it should be reduced to thirteen and a third ells. He wished to infer this lenient measure from the more rigorous in the case of a well. The wells were built as illustrated, and the distance between the two enclosures on the same side was thirteen and a third ells; *i.e.*, large enough to permit of the entrance and exit at the same time of two teams of oxen and was larger than the space occupied by the enclosures on the same side. Now, if in that case it was permitted to have the space larger than the space occupied by the enclosures, and thirteen and a third ells only were allotted to such space, an entry where the space must not be more than

the enclosure should certainly not be over thirteen and a third ells wide? How can the two be compared? Perhaps the reason, that no more than thirteen and a third ells were allowed for the space of the wells was because a concession had already been made in permitting the space to be larger than the walled part and no further leniency was expedient. In the case of the entry, however, where no concession had as yet been made, let it be allowed to increase the width of the space beyond thirteen and a third ells (because it serves the purpose of a door)? Or on the contrary! A concession having been made in the case of the

well, but no concession having been made concerning an entry, lot the law of the entry be enforced without any concession and make the prescribed width ten ells only. (Thus the question remains undecided.)

Levi taught a Boraitha as follows: "In an entry which is twenty ells wide it is sufficient if a stick be placed in the centre of such entry." He himself however decreed, that the Halakha does not prevail according to the Boraitha. What then should be done? Samuel said in the name of Levi: "A pole should be erected in the centre of the entry ten spans high and four ells wide, and a cross-beam placed on top of it parallel with the walls of the entry, which would then serve as a partition in the centre." Or it should be done as R. Jehudah declared: In an entry fifteen ells wide a pole should be erected two ells from one of the walls and a cross-beam extending three ells into the centre of the entry should be placed on top of the pole. (Thus the width will be lessened five ells, the two between the wall and the pole being regarded as a closed door. In the case of an entry twenty ells wide this may be done on both sides of the entry, or the pole maybe erected four ells from the wall and the cross-beam extended six ells.) If the people who make use of the entry, however, should use the space of two ells between the wall and the pole in preference to the wider opening of the entry, will not the principal entry be invalidated by the lack of a side-beam? Said R. Ada bar Mattue: It is an established fact that people will not use the smaller entrance in preference to the larger. Why is this case different from the one taught by R. Ami and R. Assi, for we have learned in a Boraitha: If there was a breach in the side of a wall close to the entry, it was taught in the name of R. Ami and R. Assi (page 5*a* in the original text), that if the strip of wall left was four ells wide, it matters not if the breach was ten ells; but if the strip is less than four ells, the breach must not exceed three ells, otherwise the entry is invalid. (Now if the strip is four ells, and the breach ten, the breach is regarded as a door, and it might be used in preference to the main entrance. In the former case, only such as will be nearer the side entrance will use it, but in this case, the main entrance will be used exclusively, because one will not unnecessarily go in a roundabout way.)

"*But if it have the appearance of a door, even though it be wider than ten ells it need not be made narrower*."

Now we see that an apparent door may be used where the

entry is too wide and a cross-beam if it be too high, what would be the law if the reverse were made? Come and hear: We have learned: "If an entry be higher than twenty ells, it should be reduced, but if it have the appearance of a door, this is not necessary." What is the law concerning a cross-beam when the width of the entry was excessive? Come and hear: We have

learned: "If an entry be higher than twenty ells it should be lowered and if it be wider than ten ells it should be reduced, but if it have an appearance of a door it is not necessary and if it have a cross-beam it is also not necessary." Could we not assume, that the cross-beam refers to the latter clause of that teaching (the excessive width of the entry)? Nay; it refers to the first clause of the teaching (the height).

R. Jehudah taught Hyya the son of Rabh in the presence of Rabh: "It is not necessary to reduce (the width of an entry if it have a cross-beam)." Said Rabh to R. Jehudah: "Teach him, that it should be reduced." Said R. Joseph: From this teaching of our Master we can learn, that a courtyard, of which the greater part of the walls consists of doors and windows and one of the walls contained a breach of over ten ells, the appearance of a door would not make it valid (*i.e.*, things could not be carried in the courtyard on Sabbath). Why so? Because we see, that width exceeding ten ells makes an entry invalid, and space in excess of that occupied by the walls makes a courtyard invalid; now, we compare an entry which is wider than ten ells and is held by our Master to be invalid even if it have the appearance of a door, to a court which has a breach exceeding ten ells, and is also not made valid by an apparent door.

R. Johanan also holds in accordance with the teaching of Rabh, for Rabhin bar R. Ada in the name of R. Itz'hak said: It happened that a man of the valley of Beth Hurtan placed four piles in the four corners of his field and connected the four piles with branches at the top for the purpose of circumvening the law of Kilaim. When this was told to the sages, they allowed him to do so for the purpose intimated (*i.e.*, the field was regarded as if surrounded by a wall, and he could sow other seeds on the outside of the seeming wall), and Resh Lakish said: "In the same manner as the sages permitted the man to do this for the purpose of circumvening the law of Kilaim, so also did they allow him to do it for the purpose of the Sabbath law. R. Johanan, however, said, that this was allowed only for Kilaim purposes but not for Sabbath." (Whence we see that R.

[paragraph continues] Johanan holds with Rabh that an entry over ten ells in width is not remedied by a seeming door.)

R. Hisda said: "If a man made a seeming door in the side of a wall, it counts for nothing." And he said again: "A seeming door must be firm enough to be able to contain an actual door, even though it be only a door of straw."

Resh Lakish said in the name of R. Janai, that an apparent door must have a place fit for the attachment of hinges. What is meant by a place fit for the attachment of hinges? Said R. Ivia: A receptacle for same.

R. A'ha the son of R. Ivia found once the disciples of R. Ashi, and he asked them: "Did the master say anything about apparent doors?" and they answered him: "Nay; he said nothing."

A Boraitha stated: "By an apparent door is meant simply two poles set up perpendicularly one on each side and a pole across the top of the two." Must the pole above be attached to the two perpendicular poles, or is it sufficient if it is suspended above them? R. Na'hman said, they need *not* be attached, but R. Shesheth said they must be. R. Na'hman did in accordance with his own decision at the house of the Exilarch (R. Na'hman was a son-in-law of the Exilarch). Said R.

Shesheth to his servant, R. Gada: "Go, take it down and put it away." He went, took it down, and put it away. The servants of the Exilarch found him doing so and arrested him for it. Then R. Shesheth went and stood on the outside of the prison and called out: "Gada, come out!" Gada came out and went with R. Shesheth.

R. Shesheth met Rabba the son of Samuel on the street; and he asked him: "Did the master teach anything concerning an apparent door?" Rabba answered: "Yea! We have learned concerning an arch, R. Meir decreed, that a Mezuzah (sign on the door-post) must be fastened to it, but the sages say, that it is not necessary." (The reason the sages say, that a Mezuzah is not necessary is because the zenith of the arch is not four spans wide, and no door is properly a door that is not at least four spans wide.) All agree, however, that if the arch is ten spans wide at its base (*i.e.*, before the curve commences, then it is certain that for at least ten spans upwards the arch has a width of four spans), a Mezuzah is necessary, and Abayi said: "All agree, that if the arch is ten spans high and the base is less than three spans wide, or if the base is three spans wide but the arch is less than ten spans high, no Mezuzah is necessary (because a door cannot be

less than ten spans high), but wherein do they differ? In a case where the base of the arch was less than four spans wide, and the arch itself ten spans high, but at the top of the arch the width could, by hollowing. out the wall, be increased to four spans' width, R. Meir holds that a Mezuzah is necessary, because the possibility of increasing its width renders it equivalent to having been increased, but the sages hold that a Mezuzah is not necessary, because it had not yet been increased in width." (Thence we see that R. Meir holds that the possibility of accomplishing an act renders it equivalent to having been performed, and, in consequence, he holds that if a pole was merely suspended above two poles it is the same as if it were placed on top of the poles.) Said R. Shesheth to him: "If thou shouldst meet the members of the house of the Exilarch, tell them nothing of the Boraitha concerning the arch."

MISHNA: To legalize (the carrying within) an entry, Beth Shammai hold that a side and cross beam are required, but Beth Hillel hold, that either a post or a beam is sufficient. R. Eliezer said, "Two side-beams are necessary." In the name of R. Ishmael, a disciple stated before R. Aqiba: "Beth Shammai and Beth Hillel do not differ as to an entry less than four ells in width, for both agree, that such an entry becomes legalized either through a cross-beam or a side-beam." Wherein do they differ? Concerning entries of more than four and up to ten ells in width. Regarding these, Beth Shammai hold, that both a side and cross beam are necessary, and Beth Hillel hold, that either a side or a cross beam is sufficient. R. Aqiba, however, said: "They (the two schools) differ in both instances."

GEMARA: According to whose opinion is the Mishna? It is neither according to the opinion of the first Tana nor to that of Hananiah (see page 10). Said R. Jehudah: The Mishna means to state the following: "To legalize a closed entry (one enclosed on three sides) Beth Shammai hold that a side and cross beam are necessary, while Beth Hillel hold, that either one is sufficient." Shall we assume that in order to constitute a private ground from a biblical point of view, according to Beth Shammai, four walls are necessary (because the entry by the addition of a side and cross beam would be turned into a seeming wall)? Nay; throwing to or from public ground in ground enclosed by three walls, makes one culpable from a biblical point of view, but carrying is permitted only in ground enclosed by four walls by the rabbinical law, according to Beth Shammai.

[paragraph continues] Shall we assume that Beth Hillel hold, that three walls, according to biblical law, are necessary? Nay; from a biblical point of view, throwing to or from public ground in ground enclosed by two walls makes one culpable, but carrying is not permitted in ground unless enclosed by three walls by rabbinical law, according to Beth Hillel.

"*R. Eliezer said, 'Two side-beams are necessary*.'" The schoolmen propounded a question: "Did R. Eliezer mean to state, that two side-beams *and* a cross-beam are necessary or two side-beams alone?" Come and hear: It happened that R. Eliezer was going to R. Jose ben Preida, his disciple, in the city of Ublin, and he found him sitting in an entry provided with only one side-beam. Said R. Eliezer to him: 'My son, erect another side-beam.' Said his disciple to him: 'Must I then close the entry?' and he answered: 'Close it; what matters it if it be closed?' Now, from the words of the disciple, "Must I then close it?" we can infer, that it was already provided with a cross-beam, and, therefore, the disciple asked what more he must do, close it entirely? Then, if we assume that there was only a side-beam, why should the disciple have said, "Must I close it entirely?" Nay; the disciple may have simply meant to ask, must he close it up entirely with side-beams; and it may be, that there was no cross-beam there at all.

(In the same Tosephta) we are taught so: R. Simeon ben Gamaliel said: "Beth Shammai and Beth Hillel do not differ as to an entry that was less than four ells in width." According to both schools, for such an entry nothing at all need be provided. Wherein they do differ is an entry that is more than four ells wide and up to ten; Beth Shammai hold, that a side and cross beam both are necessary, and Beth Hillel hold, that either is sufficient. Did not our Mishna state that a disciple in the name of R. Ishmael stated before R. Aqiba: "Beth Shammai and Beth Hillel do not differ as to an entry less than four ells in width, for both agree, that such an entry becomes legalized either through a cross-beam or a side-beam"? Said R. Ashi: "R. Simeon ben Gamaliel means to state, that a side *and* cross beam are not necessary according to the opinion of Beth Shammai, nor two side-beams according to the opinion of R. Eliezer, but one of the two, either a side or cross beam according to the opinion of Beth Hillel" (*i.e.*, by saying that for such an entry nothing need be, provided, R. Simeon ben Gamaliel means to state, that nothing *added* by Beth Shammai or R. Eliezer need be provided).

[paragraph continues] An entry of how much less than four ells in width? Said R. A'hlai, according to another version R. Ye'hiel: "An entry of less than four spans need have nothing (and from four spans up to four ells, the side or cross beam is necessary)."

Said R. Assi in the name of R. Johanan: "A courtyard must have two enclosures." Said R. Zera to R. Assi: "Did R. Johanan indeed say so. Didst thou not thyself state in the name of R. Johanan, that the enclosures of a courtyard must measure at least four ells? And if thou wouldst explain R. Johanan's dictum to signify, that the enclosures would have to be four ells on each side of the angle, did not R. Ada bar Abhimi state before R. Hanina or before R. Hanina bar Papa, that a small courtyard need only have enclosures to the extent of ten ells all around and a large courtyard to the extent of eleven ells." (Now, if eleven ells are divided by four, that would make each of the four enclosures only two and three-quarter ells?) When R. Zera came from his sea-voyage he explained this in the following manner: If an enclosure was made straight on one

side it must be four ells wide, but if made at an angle in the corner it is sufficient if ever so small a part be on each side. As for Ada's bar Abhimi statement above, it is in accordance with the decree of Rabbi (and not R. Johanan), who holds in accordance with R. Jose (that every side-beam must be three spans wide), as will be seen further on.

R. Joseph said in the name of R. Jehudah, quoting Samuel: "A courtyard need have but one enclosure." Said Abayi to him: "Did Samuel indeed say this? We know that Samuel said to R. Hananiah bar Shila: 'Thou shalt not perform any work in a courtyard that has not the larger part of a wall or two enclosures!'" Said R. Joseph: "I do not know whether Samuel said so or not, but I do know, that it happened in the village of the shepherds, that an arm of the sea flowed into a courtyard, and when R. Jehudah was asked what the law was concerning that courtyard, he replied: 'Only one enclosure is necessary.' 'Then Abayi rejoined: "Thou speakest of an arm of the sea; that is altogether different! The sages were very lenient with all things pertaining to water, as R. Tabla asked Rabh: 'What is the law concerning a ruin that had one suspended partition? May things be carried within it on Sabbath or not?' and Rabh answered: 'A hanging partition legalizes a place only where water reaches, because the sages were very lenient with all things pertaining to water.'"

In any event this would be a contradiction to R. Jehudah's statement in the name of Samuel, and to Samuel's statement to Hananiah. When R. Papa and R. Huna the son of R. Jehoshua carne from college, they explained Samuel's decree thus: "On one side the enclosure must be at least four ells, but when made on a corner, ever so small a part of the enclosures on each side of the angle is sufficient." (Thus both statements may be correct. R. Jehudah's one enclosure refers to a straight enclosure and Samuel's two refer to an enclosure at each corner.)

The Rabbis taught: From an arm of the sea, which enters a courtyard, water must not be taken on Sabbath unless a partition has been made at the entrance at least ten spans in height. This is the case if the breach in the wall (where the sea entered) is more than ten ells in width, but if it was only ten ells, no partition is necessary.

Thus, you say, that water must not be taken from the arm of the sea, but things may be carried within the courtyard? Did not the breach in the wall open into ground that would invalidate the courtyard (*i.e.*, unclaimed ground)? In this case fragments of the wall were left beyond the breach and they were inundated by the sea (but were originally ten spans high).

It was taught: R. Jehudah said: "An open entry which is not suitable for the purpose of combining in an Erub, if it was provided with a side-beam, anyone throwing a thing into it from public ground is culpable, but if the entry was provided at one end with a cross-beam, one who throws a thing into it from public ground is not culpable." (R. Jehudah holds, that from a biblical point of view three partitions are necessary to enclose a private ground, and a side-beam at the end of an entry is equivalent to a partition.) Hence R. Jehudah holds, that a side-beam is equivalent to a partition, and a cross-beam is only put up for appearance's sake. So is also the opinion of Rabba; but Rabha said that both are erected only for appearance's sake.

R. Jacob bar Abba made an objection to Rabha based on the following Boraitha: "If one throw a thing into an entry he is culpable, if the entry is provided with a side-beam, but if it is not

provided with a side-beam, he is not culpable." This is explained thus: If the entry (was a closed one and) needs only a side-beam (for appearance's sake) one is culpable if he throws a thing into it; but if a side-beam alone would not legalize the entry, and something more is necessary, the thrower is not culpable.

Said R. Jehudah in the name of Rabh: "An entry that was equal in length and width cannot be legalized by a side-beam of small proportions," and R. Hyya bar Ashi in the name of Rabh said, that an entry as wide as it is long cannot be legalized with a cross-beam measuring only one span. Said R. Zera: "How well the decisions of the old sages agree! The reason for the above decision is, that an entry of equal length and breadth is not regarded as an entry at all, but is in reality a courtyard, and a courtyard cannot be legalized by a side or cross beam but must have a partition of at least four ells." Said R. Zera again: "If there is a difficulty in this decision the following would be the difficulty: Why do they not consider a side-beam a partition of *some* extent, and thus make it a medium of legalization?" It evidently slipped the memory of R. Zera, that R. Assi said in the name of R. Johanan: "The enclosures of a court must not be less than four ells."

Said R. Na'hman.. "There is a tradition to the following effect: Which is the entry that can be legalized by a side or cross beam? One, the length of which exceeds its width, and houses and courts open into it. Which is the court that cannot be legalized with a side or cross beam, but must have an enclosure which is not less than four ells? One that is square." Only if it be square, but if round is it not a court? He means to state this: If the length exceeded the width, although it be a court, it should not be considered such but must be regarded as an entry, and as such may be legalized with a side or cross beam. If the length, however, did not exceed the width? Then, no matter what its appearance was, it must be considered as a court. By how much must the length exceed the width? Samuel intended to state, that the length should be double the width. Said Rabh to him: "So said my uncle, 'Even if the length exceeded the width by a trifle.'"

R. Aqiba said: "They differ in both."

What does R. Aqiba teach us hereby? Is it not the same as the teaching of the first Tana? The difference between them is as stated by R. A'hli, according to another version R. Yekhiel, viz.: An entry of less than four spans need have nothing. But they did not specify who was of R. A'hli's opinion and who was not.

We have learned in a Boraitha: R. Aqiba said: "R. Ishmael never made such a statement, but the disciple said this upon his own authority and the Halakha prevails according to the disciple."

[paragraph continues] Is this not a contradictory assertion? First, he says, that R. Ishmael could not have made such a statement, *i.e.*, that the Halakha is not so, and then that the Halakha prevails according to the disciple? Said R. Jehudah in the name of Samuel: "R. Aqiba said this only in order to encourage his disciples, that they may pronounce decrees upon their own authority." R. Na'hman bar Itz'hak said: "R. Aqiba really said that R. Ishmael made no such statement, but the decree of the disciple was correct and should stand."

It was taught: R. Jehoshua ben Levi said: "In every case, where it is stated that a disciple said in the name of R. Ishmael before R. Aqiba, that disciple is R. Meir, who was a disciple of both R. Ishmael and R. Aqiba."

R. A'ha bar Hanina said: It is known to Him, Who said one word and the world was created, that in the generation of R. Meir there was not one who was his equal; but why do not the Halakhas prevail according to his decisions? Because his colleagues could never arrive at the conclusion of his decrees. If he decided that a thing which was unclean was clean, he proved it to them by a reason, and *vice versa*. We have learned in a Boraitha, that his name was not Meir but Neherai. Why was he called Meir? Because he *enlightened* 1 the eyes of his colleagues in Halakhas. Where the name R. Neherai is mentioned, it refers to R. Nehemiah or to R. Eliezer ben Arach. Why do they call them Neherai? Because they *clarified* the vision of their colleagues in the Law.

Rabbi (according to some it was Rabh) said: Why am I more sagacious than my colleagues? Because I once saw the back of R. Meir, and if I could look upon his face I would be more sagacious still, as it is written [Isaiah xxx. 20]: "But thy eyes shall see thy teachers."

Said R. Abbahu in the name of R. Johanan: "R. Meir had one disciple, and his name was Symniachos, who could give forty-eight reasons for the uncleanness of unclean things and the same number of reasons for the cleanness of clean things."

Said R. Abba in the name of Samuel: Three years the school of Shammai and the school of Hillel disputed. One school said that the Halakhas prevail according to their opinion,

and the other claimed that their decrees should stand. Finally a heavenly voice was heard to the effect that both schools disputed as to the words of the living God, but the Halakhas prevail according to the school of Hillel.

Now if it be true that both schools dispute as to the words of the living God, why should the school of Hillel be thus favored? Because the members of the school of Hillel were modest and patient, and would always repeat the words of the school of Shammai. Not alone this; but they also always gave the school of Shammai precedence when citing their teachings, as we have learned (in Tract Sukkah): Said Beth Hillel to Beth Shammai: "Did it not happen, that the eldest of the school of Shammai and of the school of Hillel went together to visit R. Johanan the son of Hachoranis, etc. (whence we see that the eldest of the school of Shammai were given precedence over those of the school of Hillel)." Thence thou canst learn, that everyone who maketh himself humble is raised up by the Holy One, blessed be He, and one who is arrogant is humbled by the Holy One, blessed be He. He who pursueth greatness, the greatness escapeth him, and he who avoideth greatness is sought by greatness. He who forceth time (*i.e.*, he who perforce would become rich though fortune be against him), time oppresseth him, while he, who awaiteth his time, is assisted by time.

The Rabbis taught: Two years and a half Beth Shammai and Beth Hillel disputed amongst themselves. One school declared, it were better that man had not been created as he was, while the other declared it was better that man had been created as he was, than not to be created at all.

Finally they came to the conclusion, that it were better had man not been created, but since that had happened, a man should always examine his actions, and according to another version, a man should always consider the deeds he is about to perform.

MISHNA: The cross-beam in question must be wide enough to hold a half of a brick, three spans in length and in width. It is, however, sufficient, if the cross-beam be only one span wide, so as to hold the half of a brick lengthwise. The crossbeam must be wide enough to hold a half of a brick and sound enough to bear it. R. Jehudah saith: It must be wide enough, even if it be not sound enough.

If the cross-beam be of straw or reed, it is (legally) regarded as if it were of metal; if it be crooked, it is (legally) regarded as straight; if it be cylindrical, it is (legally) regarded as square.

[paragraph continues] Anything (measuring) three spans in circumference, is one hand width.

GEMARA: Why does the Mishna say, that it is sufficient if the cross-beam be only one span wide; it should be one and a half, which is the width of a half brick? Because if the crossbeam be one span wide the other half span which it should measure, can be added by the addition of a little loam on each side.

Said Rabba bar R. Huna: The cross-beam alone must be sound enough to bear a half brick, but the supports upon which it rests need not be sound enough to bear both the cross-beam and the half brick (*i.e.*, if the cross-beam was put up on sticks, the sticks need not be sound enough to support both the crossbeam and a half brick; for the cross-beam being the sign of the entry, it is only essential that it be sound enough to *support* a half brick, although in reality it never serves the purpose, while the sticks are not part of the sign and need not be put to such a test). R. Hisda, however, states, that the cross-beam must be sound enough to bear half a brick, and its supports must be sound enough to bear both the cross-beam and the half brick.

R. Shesheth said: If one put up a cross-beam over an entry, and hung a mat upon it, and this mat was distant from the ground three spans or more, it is considered, that there is neither a cross-beam nor a partition at the entry; no cross-beam, because it is covered up, and no partition, because goats can go through it.

The Rabbis taught: If a cross-beam was put up over an entry, but did not reach the opposite wall, or if two cross-beams were put opposite each other, but did not meet, should the distance between the cross-beam and the wall in the first instance, or between the two cross-beams in the second instance, be three spans or over, another cross-beam must be erected. If it be less than three spans no other cross-beam is necessary. R. Simeon ben Gamaliel, however, said, "If the distance be less than four spans, another cross-beam is not necessary, but if it be four spans or more, another cross-beam must be erected."

The same is the case with two cross-beams that were laid parallel, neither one of which was sound enough to bear a half brick: If both together measured one span in width, which is sufficient to bear a half brick, another cross-beam is not necessary, but if the two together measured less, another cross-beam must be erected. R. Simeon ben Gamaliel, however, said,

that if the two cross-beams were sound enough for the length of

three spans to bear a half brick, another cross-beam is not necessary; otherwise, it is necessary.

"If two cross-beams were put up across an entry, one of which was higher than the other, they are regarded as being on a level, provided the higher beam is not over twenty ells above ground and the lower one not less than ten spans above ground." Thus said R. Jose bar R. Jehudah. Said Abayi: "R. Jose bar R. Jehudah holds with his father in one instance only, that the two beams are regarded as being on a level, but he differs with him in the other, namely: that the higher beam must not be over twenty ells above the ground; for R. Jehudah declared in a previous Mishna, that even if it were over twenty ells in height, the entry is valid."

"*R. Jehudah saith: It must be wide enough, even if it be not sound enough.*" R. Jehudah taught Hyya bar Rabh in the presence of Rabh: "It is sufficient, if the cross-beam be wide enough even if it be not sound enough." Said Rabh to him: "Teach him: 'It should be wide and strong enough.'" Did not, however, R. Ilai say in the name of Rabh: "It is sufficient, if it was four spans wide, even if it be not sound enough"? Four spans' width makes a difference.

"*If the cross-beam be of straw or reed*," etc. What does the Mishna mean to teach us by this decree? That we regard certain things in a different light? This has already been taught us previously. In the former teachings, however, one certain kind of cross-beams was dealt with, namely, of wood; hence we might assume, that with straw or reed it might be different. For this reason we are given to understand that straw or reed may be regarded as metal.

"*If it be crooked, it is regarded as straight*." Is this not self-evident? The Mishna wishes to impart to us the teaching of R. Zera as follows: "If the cross-beam was crooked only outside of the entry across which it was laid, or was crooked above twenty ells from the ground; or again, if the cross-beam was ten spans above the ground and the crooked part of it below the ten spans, the validity of the entry depends upon whether, if the crooked part of the cross-beam were removed, the straight part left would be distant three spans from the wall. If the distance is less than three spans the entry is valid, but if it be over three spans another cross-beam must be erected." Is this teaching also not self-evident? Nay; it is necessary that we be instructed to this effect, lest we presume that the crooked

part on the outside of the entry carry with it the straight part on the inside and thus the entry is invalidated; hence we are given to understand, that such is not the case.

"*If it be cylindrical, it is regarded as square*." For what purpose was it necessary to add this? This was taught us on account of the last clause in the Mishna, which states, that anything, measuring three spans in circumference is one hand in width.

MISHNA: The side-beams in question must be ten spans high, be their breadth and thickness whatever they may. R. Jose saith: "They must be three spans wide."

GEMARA: Shall we assume that the Mishna, which is rendered anonymously, is in accordance with the opinion of R. Eliezer, who holds that two side-beams are necessary? Nay; the side-beams in question refer to side-beams necessary for all entries. If this be the case, why did not the previous Mishna state cross-beams instead of "the cross-beam"? The above Mishna means to state, that the side-beams concerning which there is a difference of opinion between the sages and R. Eliezer should be ten spans high, be their breadth and thickness whatever it may. How much is meant by "whatever it may"? R. Hyya taught: Even the breadth and thickness of a thread of a Saraball." 1

A Boraitha states: "If one made a side-beam in one half of an entry, he has only a half of an entry." Is this not self-evident? We might presume that because one must not use the whole entry, hence the half must also not be used, and we are taught, that the half may be used.

Rabha said: "If one made a side-beam for an entry and it was three spans distant from the ground or three spans away from the wall, it does not count; and even according to R. Simeon ben Gamaliel who holds an object to be 'lavud' (attached) although four spans distant, the side-beam is of no use, because R. Simeon ben Gamaliel's opinion applies to an object which is four spans distant at the top; but at the bottom, where goats can pass through, a trifle less than three spans is the maximum distance."

"*R. Jose saith: 'They must be three spans wide.*'" Said R. Jehudah the son of R. Samuel bar Shila in the name of Rabh: "The Halakha does not prevail according to R. Jose either where brine is concerned 2 or where a side-beam is in question."

[paragraph continues] Said the schoolmen to him: "Dost thou confidently assert this?" and R. Jehudah answered: "Nay." Said Rabha: "By the Lord! He said this of a certainty, and we accepted it from him." Why then did he say "nay"? Because, we have learned elsewhere, that wherever R. Jose made an assertion, he always had good reason for it (and R. Jehudah did not wish to dispute with R. Jose).

Said Rabha bar R. Hana to Abayi: "According to whom, however, does the Halakha prevail concerning the side-beams?" He answered: "Go and observe the custom of the people" (which is as much as saying, that the breadth and thickness of a side-beam can be whatever it may).

It was taught: A side-beam, that was standing of itself, *i.e.*, that had not been especially erected, is, according to Abayi, valid, and, according to Rabha, not valid. If the side-beam was not depended upon to serve the purpose on the preceding day (before Sabbath), all agree, that it is not valid; but if it was depended upon for that purpose, Abayi declares, that it may be utilized, because it was depended upon on the preceding day, while Rabha holds that not having been erected for that purpose it must not be used. As for a partition, standing of itself, there is no difference of opinion, and all agree that even if it was not intended to serve as a partition, it may be used, and the reason they differ in the case of a side-beam is because each holds to his own theory: Abayi regards a side-beam as a partition, and a partition may be utilized under any circumstances, while Rabha regards a side-beam merely as a sign, and as such it must be especially prepared for the purpose before it may be used.

An objection was made: "Come and hear: If stones protruded from the fence around an entry and they were less than three spans apart, another side-beam for the entry is not necessary; but if they were three spans apart, another side-beam must be erected." Here the case is also, if the stones were so arranged purposely to commence with. If such be the case, is this not self-evident? We might assume that the stones were arranged in that manner with the intention of adding more to them, hence we are given to understand that this may be done.

Another objection was made: Come and hear: Rabh was sitting in a certain entry and R. Huna was sitting before him. Said Rabh to his servant: "Go and bring me a pitcher of water." Before his servant returned, the side-beam at the entry fell, and Rabh motioned to his servant to remain where he was.

[paragraph continues] Said R. Huna to him: "Did not Master hold, that the tree standing in the entry may be regarded as a side-beam?" and Rabh answered: "That scholar is as a man who never understood a Halakha. Did we depend upon that tree to serve as a side-beam yesterday?" Now, we see, that according to Rabh, had the tree been depended upon on the preceding day to serve as a side-beam, it would have been valid. Shall we assume, that Abayi and Rabha differ concerning a side-beam standing of itself even if it was not depended upon on the preceding day, but if depended upon, both agree that it may be used. Nay; we cannot say this; because there was a pillar in the house of Bar Habo concerning which Abayi and Rabha differed all of their lives. (This is one of the six Halakhas that prevail according to Abayi, for generally Rabha is given precedence, as will be seen in the maxims of the Talmud.)

MISHNA: Side-beams may be made out of anything, even of such as are possessed of life. The latter, however, is prohibited by R. Meir. A living animal tied to the mouth of a grave in order to close it up communicates uncleanness (even after it has been removed). R. Meir, however, declares the animal clean. A letter of divorce for a woman may be written on a living animal, but R. Jose, the Galilean, pronounces the letter of divorce null and void (not legal). 1

If a caravan encamp in a valley and a fence be made around the camp out of the cattle's gear, it is permitted to carry things inside of the fence (on Sabbath), providing the fence be ten spans high and the open spaces therein do not exceed in extent the fence proper. Every open space which is ten spans wide is permitted (to be used as an entry), for it is considered as a door, but such open spaces as are more than ten spans wide must not be used.

GEMARA: It was taught: If the open spaces of the fence equalled in extent the fence proper, R. Papa said: "The fence is valid." R. Huna bar R. Jehoshua however said, "It is not valid." R. Papa held it to be valid because so was Moses taught by the Merciful One: "The *larger* part (of a partition) must not be broken." R. Huna bar R. Jehoshua held it *not* to be valid because the Merciful One taught Moses thus: "The *larger* part must be *fenced* in."

An objection was made: Our Mishna states that "the open spaces must not exceed in extent the fence proper" but if the space was equal in extent to the fence it should be valid. This question remains.

Another objection was made. Come and hear: "If a caravan encamped in a valley and a fence was made with camels, with saddles, with the baggage, or with sticks, or with bundles of herbs, things may be carried inside the fence, providing the space between each camel does not exceed the size of another camel or the space between each saddle does not exceed the size of another saddle, etc." (Whence we see that if the space equals in extent the actual fence, the fence is not valid.) Here the case is, that the space between two camels should be large enough for a camel to go in and out, but not the exact size of a camel.

Another objection was made: "Walls of which the greater part consists of windows and doors are valid, providing the wall proper is larger in extent than the space." If, however, the space and walls are equal, the walls are not valid; this would be contradictory to R. Papa's opinion. It is contradictory, but the Halakha remains according to R. Papa. How can it be, that there should be a contradiction and still the Halakha should prevail according to R. Papa? It is possible, because our Mishna states, that the open space should not exceed the fence proper, hence if space and fence are *equal,* the fence is valid. Consequently the Halakha prevails according to R. Papa.

MISHNA: A fence may also be constructed with three ropes, one above the other; providing the space between each rope be less than three spans, and the measure (width or thickness) of the three ropes together exceed one span, so that the entire (fence) attain (the height of) ten spans.

A fence may also be made of cane-laths, providing the space between the canes be less than three spans. All these regulations apply to a caravan only. So saith R. Jehudah, but the sages maintain, that the caravan (in the preceding Mishna) is particularly spoken of in order to adduce therefrom that which is generally done. Any partition which is not constructed on the principle of warp and shoot is not a (lawful) partition. Such is the dictum of R. Jose bar Jehudah; but the sages hold, that constructing it according to either one of the two principles is sufficient.

GEMARA: Said R. Hamnuna in the name of Rabh: "It

was said, that the solid part of the partition must exceed the space of the partition when constructed on the principle of the shoot in order to make it valid; the question, however, arises by me concerning a partition constructed on the principle of the warp. What is the law?" Said Abayi to him: "Come and hear: Our Mishna states, that the width or thickness of the three ropes together must exceed one span in order to make the entire fence ten spans. If it were the same with a fence constructed on the principle of the warp as with one constructed on the order of the shoot, why does the Mishna specify one which, including all the ropes, will bring the total up to ten spans." How can such an assertion be made? Where should the space of four spans be placed? Should it be placed at the bottom, *i.e.,* between the ground and the first rope, then the space will be large enough to permit of goats passing through and the fence will be of no use. Should it be placed at the top, *i.e.*, between the second and third rope, then the space between the two ropes, together with the space above the third rope, will nullify the third rope entirely, because the third rope will have no connection whatever with the two lower. Should it be placed in the center, *i.e.*, between the first and second rope, then there will be only a quasi-solid partition at the bottom and the same at the top, but between the two there will be virtually an empty space of four spans; should it be assumed that such a partition can also be accounted lawful where the solid parts are disconnected, and an empty space exists between them? (This

question is not decided.)

"*Cane-laths*." How can R. Jehudah say, that all these regulations apply to a caravan only, and not to individuals? Have we not learned elsewhere, that R. Jehudah said: "It is not allowed for an individual to construct a partition for the Sabbath around a piece of ground, wherein more than two saahs of grain could be planted." Hence if the piece of ground is only so large that two saahs of grain can be planted therein, he may make the partition. (How then can he say in the Mishna, that these regulations apply only to a caravan?) This can be explained in the same manner as R. Na'hman, and according to others R. Bibhi bar Abayi, explained the last clause of our Mishna, viz.: "Any partition, which is not constructed on the principle of warp and shoot, is not a (lawful) partition. Such is the dictum of R. Jose bar Jehudah." The question was made, whether such could be the dictum of R. Jose bar Jehudah.

[paragraph continues] Did we not learn in a Boraitha, that "no difference is made as far as a fence constructed with ropes is concerned between a caravan and an individual except that the space enclosed by the fence must not for one man or even for two exceed that in which two saahs of grain could be planted. For three men, however, who are regarded as a caravan, a space in which six saahs of grain can be planted is allowed. So said R. Jose bar Jehudah; but the sages maintain, that there is absolutely no difference made between a caravan and an individual, and that they may enclose all the space they require, providing they do not enclose superfluous ground to the extent that two saahs of grain could be planted in such an empty space." How can R. Jose bar Jehudah state that a fence must be constructed according to the principles of warp and shoot; does he not allow a fence made with ropes, which is only on the principle of the warp? And R. Na'hman, according to others R. Bibhi bar Abayi, answered and said, that R. Jose bar Jehudah requires a partition to be constructed on both principles only in order to allow even an individual all the space necessary. Now, the same can be said in answer to the question made concerning the contradictory statements of R. Jehudah.

R. Na'hman related in the name of our master Samuel: "An individual or even two men are allowed to enclose as much space as would permit of the planting of two saahs of grain therein, but three men, who are regarded as a caravan, may have all the space necessary." How is this? The first part of this teaching is in accordance with R. Jose bar R. Jehudah, and the last according to the sages? Yea; Abbahu is also of the same opinion.

R. Gidel in the name of Rabh said: "There are instances when three men must not occupy space so large that five saahs of grain can be planted therein, and again, there are instances when they may occupy space in which even seven saahs of grain maybe planted." (The instances were not quoted, however.) "Is it possible that Rabh should have said this?" queried the sages, and R. Gidel answered: "I swear by the Law of Moses and by the prophets, and by the Hagiographa, that Rabh said this." Said R. Ashi: "What difficulty is there in this? Let us suppose, that the three men needed a space of six saahs' capacity, and enclosed one so large, that seven saahs could be accommodated. (Then only a space is empty where one saah of grain could be planted.) Hence they may use the entire

space. But supposing, that they needed only a space large enough to accommodate but five saahs

of grain, and enclosed one large enough for seven, (then a space large enough for the planting of two saahs is vacant) and they must not use even the space large enough for five saahs." Did not the same Boraitha teach us, however, that a space large enough for the planting of two saahs must not be vacant, and thereby meant to state, that each man should be allowed a space large enough for two saahs, and then if a space for two saahs is vacant the entire space must not be used; hence, when there are three men, they should not be allowed the use of a space large enough for the planting of eight saahs, but one accommodating only seven should be allowed them? Nay; the Boraitha meant to state, that the space allowed to the men should be only as much as they need for the accommodation of all their belongings.

"*But the sages hold that constructing it according to either one of the two principles is sufficient*." Is this not a repetition of what the first Tana stated in opposition to R. Jose's bar R. Jehudah dictum? There is a difference of opinion concerning an individual between the first and second sages as regards an inhabited place (and not the desert).. According to the first sages who maintain that the regulations apply not only to a caravan but to all individuals in general, this refers to individuals who are on the road, but when in inhabited places the regulations do not apply to them, while the second sages who oppose R. Jose bar Jehudah hold, that it makes absolutely no difference, be it caravan or an individual, in an inhabited place or in the desert.

MISHNA: Four privileges have been granted to warriors in camp: They may bring wood from any place (without respecting the rights of ownership); they need not wash their hands before meals; they may eat of Damai (grain of which it is not certain that the legal dues, tithes, etc., have been set aside); and they are exempt from the obligation of making an Erub.

GEMARA: The rabbis taught: If an ordinary war [1] is in progress, it is permitted for the warriors to appropriate dry wood without respecting the rights of ownership. R. Jehudah ben Thima said: "They may also encamp wherever they choose,

and wherever one is killed there may he also be buried, although the ground does not belong to him."

"*They are permitted to appropriate dry wood*." This has also been ordained even by Joshua! Joshua ordained, that wood may be cut and appropriated by the warriors, but later even cut and dry wood was allowed to be taken.

"*Where one is killed, there may he also be buried*." Is this not self-evident? The killed were strangers and had no one to secure a burying ground for them. The law also states, that whenever a man dies without leaving sufficient means for the acquirement of a place of burial, he may be interred in the place where he dies. This case refers to warriors who even left sufficient means to secure a burying ground.

"*They need not wash their hands before meals*." Said Abayi: "This refers only to washing the hands before meals, but after meals it is even then necessary, because R. Hyya bar Ashi said: 'Why did the sages ordain the washing of hands after meals? Because among the salt used at the table there may be salt of Sodom, and when a hand which had touched salt of Sodom comes in contact with the eyes it blinds them.' There is only one grain of salt of Sodom in a whole kur of

ordinary salt," said Abayi.

Said R. A'ha the son of Rabba to R. Ashi: "How is the law, concerning one who had measured salt?" and he answered: "So much the more must he wash his hands."

"*They may eat of Damai*." As we have learned in another Mishna: "Beth Hillel said, that a poor man and a warrior may partake of Damai."

"*They are exempt from the obligation of making an Erub*." The disciples of R. Janai said: They are exempt from the obligation of making an Erub as far as courts and entries are concerned, but not where the limit of the distance of two thousand ells (techoom) is concerned, because R. Hyya taught: "One who is guilty of transgressing the law of techoom should be punished with stripes as for any other biblical negative commandment." R. Jonathan opposed this: "Can a man be punished with stripes for a negative commandment which commences with the word Al?" 1 This was again opposed by R.

[paragraph continues] A'ha bar Jacob: "According to thy theory then the man who transgresses the commandment in [Leviticus xix. 31], 'Turn not unto them that have familiar spirits and unto wizards' (which also commences with 'Al'), should also not be punished with stripes?" R. Jonathan puts his question in the following sense: The violation of a commandment which involves the death penalty when committed intentionally cannot be punished with stripes at all, and the violation of the Sabbath is certainly a capital offence (how then can R. Hyya hold that it can be punished with stripes?). Answered R. Ashi: It is written [Exod. xvi. 29], "Let no man go out of his place on the seventh day," but it does not state, that a man should not carry things on that day. (Consequently the transgressing of the law of techoom is not a capital offence, and is on a par with all other negative commandments.)

Footnotes

1:1 For explanation of this term, see Introduction

4:1 The crooked walls will be explained in Tract Sukkah.

6:1 In many places of the Talmud the expression Gud is used to signify, that where a wall or a curtain is supposed to reach the ground or to reach the ceiling, and comes within three spans of doing so in either case, they are considered as if they were on a level with the ground or with the ceiling, the expression for the former being Gud Achith and for the latter Gud Assik; literally, "consider it bound down" and "consider it bound up," respectively.

6:2 Lavud, attached. See note §, page 12, Vol. I.

8:1 This is a case of where the peculiar Talmudical expression of Kal Vochomer appears in the

text. The literal translation is "light and heavy," *i.e.*, from the lighter to the heavier or from minor to major. In the "Introduction to the Talmud" by Prof. Dr. Mielziner an entire chapter is devoted to the explanation of this term (pp. 130-141). However, no general term can be found to express its meaning, and the expression must be varied according to the demand of the text.

14:1 According to another version the apparent doors should be made where the entries face the street, but we cite the opinion of Rashi as usual.

15:1 In the text is written "Bain," "between" the side-beams. Rashi, however, declares that here it does not mean *between* the side-beams, but *opposite*, as between the side-beams cannot be possible, because every entry must have only one side-beam, and Rashi says the reason that the text states "between" is, that the text mentions the side-beams in plural, meaning many entries, and the word Neged in Hebrew, which means "opposite," cannot be said in plural.

16:1 An expression used to signify astonishment at an unnecessary or superfluous question, the answer to which is self-evident.

27:1 Meir in Hebrew means, He makes light. Nehorah in Chaldaic is the same as our (light) in Hebrew; consequently Neherai in Chaldaic is the same as Meir in Hebrew.

31:1 A Saraball was an article of apparel similar to the modern Turkish trousers.

31:2 See Tract Sabbath, Chapter XIV., Mishna 2.

33:1 The Gemara pertaining to this Mishna will be found in Tract Gittin, as it does not belong to or treat of Erubin.

37:1 By an ordinary war is meant a war carried on by the people without the direct commandment of God as distinct from the wars carried on by Joshua by divine commandment.

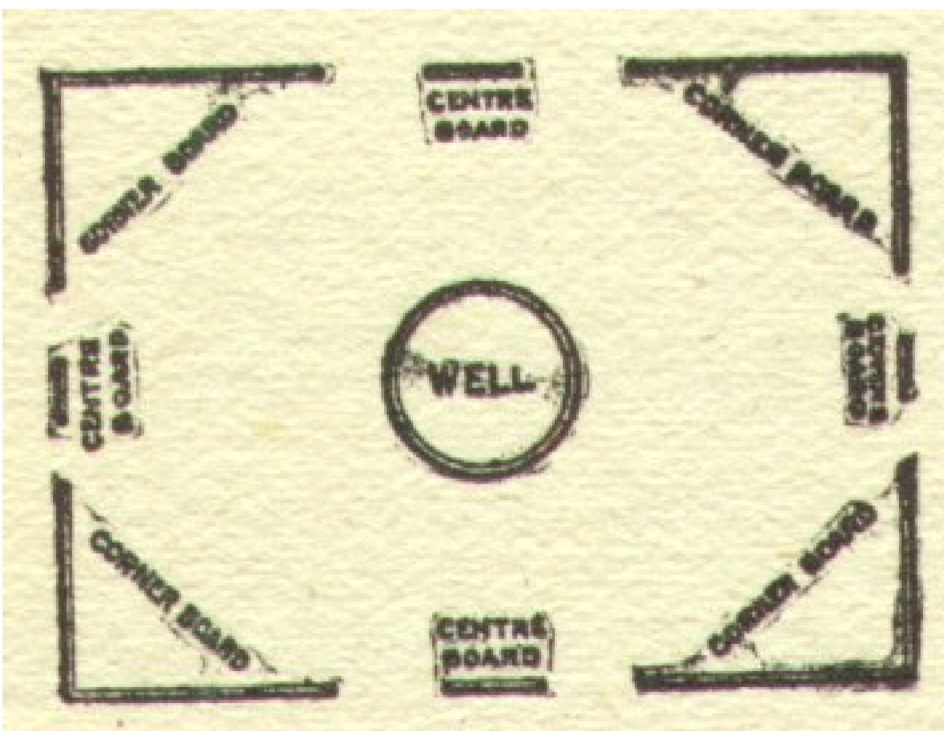
38:1 Al and Lo both mean "not" in Hebrew, and R. Jonathan means to say, that only such negative commandments as commence with "Lo" involve, if transgressed, the punishment of stripes, but not such as commence with "Al."

Next: Chapter II: Use of Wells and Gardens on the Sabbath

CHAPTER II.

REGULATIONS CONCERNING THE USE OF A WELL AND A GARDEN ON THE SABBATH.

MISHNA: Enclosures (partitions) must be made around wells. They must be made of four boards, placed at an angle (of forty-five degrees) at the corners of the well, so that the four boards appear like eight (see illustration). Such is the dictum of R. Jehudah; but R. Meir saith: Eight boards must be used which will appear as twelve, namely, four boards placed at an angle at the corners which appear as eight, and four boards placed between the corner boards. The height of the boards must be ten spans, the width six spans, and the thickness whatever it may be. The space between the two corner boards on the same side must not be wider than to permit of the passing through of two teams of cattle, each team of three animals abreast. Such is the decree of R. Meir. R. Jehudah, however, maintains, that each team may be of four animals abreast, meaning of cattle yoked together in a team, but not walking unyoked, so that one enters as the other passes out.



It is permitted to bring the enclosure quite close to the well, providing, that the head and greater part of the body of the animal be within the enclosure while it drinks. It may also be placed at some distance from the well, providing that more boards be used.

R. Jehudah said: The maximum distance from the well at which the enclosure may be placed is a

space large enough for the planting of two saah of grain, but the sages said to him: "This size (sufficient for the planting of two saah of grain) is only applicable to a garden or a wood-shed, but as regards a cattle-pen, a fold, a bleaching-ground (behind the house), or a courtyard (in front of the house), even though it be large enough to permit of the planting of five kur of grain therein, yea, or even of ten kur, it is lawful (to carry things therein on

the Sabbath)." It is also permitted to place the enclosure at any convenient distance from the well, provided more boards be used.

GEMARA: Shall we assume, that our Mishna is not according to Hananiah, as we have learned in a Boraitha, viz.: "Boards may be put up at a well and *ropes* for a fence of a caravan, but Hananiah said, that ropes for a well are permitted but not boards"? Nay; we may say, that our Mishna agrees with Hananiah; but a well containing rain-water is one thing and one containing spring-water is another. Our Mishna treats of spring-water and Hananiah refers to rain-water. To make an enclosure around a well of rain-water is permitted only during the time of the pilgrimage to Jerusalem.

"*R. Jehudah said: The maximum distance*," etc. We have learned in a Mishna (Damai i. I): R. Jehudah also said: "All bad (inferior) dates are not suspected of being Damai, with the exception of the fruit known as double-fruit (δι-ωπορα {Greek *di-wpora*})." Said Ula: The tree bearing this fruit bears twice a year (and the ignorant people might object to acquit the legal dues thereof).

R. Jeremiah ben Elazar said: Adam the first (man) had a dual face, as it is written [Psalms cxxxix. 5]: "Behind and before hast thou hedged me in, and thou placest upon me thy hand."

It is written [Genesis ii. 22]: "And the Lord God formed the rib which he had taken from the man into a woman." Rabh and Samuel both comment upon this. One declares, that the Lord simply divided Adam, who had a dual head, while the other holds, that Adam had a tail and the Lord made the woman out of that tail. So according to the one the passage "Behind and before," etc., is correct, but, according to the other, how should it be explained? It may be explained as R. Ami said: "By 'behind' is meant that last of (behind) all was man created, and by 'before,' that before (first of) all others did he receive his punishment." The first part of this explanation is correct because man was created last of all on the eve of Sabbath, but the second part is not true; for was not the serpent cursed before Eve, and Eve before Adam? The punishment refers to the flood, concerning which it is written [Genesis vii. 23]: "And it swept off every living substance which was upon the face of the ground, both man, and cattle, etc.," and man is mentioned before all else. Further, it is written, that the Lord brought Eve to Adam, *i.e.*, that the Lord was sponsor

to them. Whence we learn, that a man, be he ever so great, should not refuse to be sponsor to a lesser man.

R. Meir said: Adam the First was very pious, for when he saw, that on his account the human race was made mortal, he fasted one hundred and thirty years, separated himself from woman,

and wore leaves of a fig-tree on his body for the same length of time.

R. Jeremiah ben Elazar said: If a man is to be praised to his face only a small part of the praise due him should be given him, but his entire share may be bestowed upon him in his absence, as it is written [Genesis vii. 1]: "For thee I have seen righteous before me in this generation," and [ibid. vi. 9]: "Noah was a just, perfect man in his generations." Thus we see that to his face the Lord merely called Noah righteous, whereas in his absence the verse called him "a just, perfect man."

The same said again: A house, where the words of the Law are also heard at night, shall never more be destroyed, as it is written [Job xxxv. 10]: "But man saith not, 'Where is God my maker, who bestoweth joyful songs even in the night,'" and the verse is explained thus: If man would have sung joyful songs even in the night, he would not have been compelled to ask: "Where is God my maker?"

The same said again: Since the destruction of the temple it is sufficient for man to use only two letters in place of the four forming the name of the Lord (*i.e.*, Yod and Heh instead of Yod, Heh, Vav, and Heh), as it is written [Psalms cl. 6]: "Let everything that hath breath praise Jah (the Lord). Hallelujah."

He said again: When Babylon was cursed, it was a curse to the neighbors also; but when Samaria was cursed, the neighbors rejoiced. Speaking of Babylon, it is written [Isaiah xiv. 23]: "I will also make it a possession for the hedgehog and pools of water," and speaking of Samaria, it is written [Micah i. 6]: "Therefore will I change Samaria into stone-heaps on the field, into vineyard plantations."

He said again: Come and see how the custom of the Holy One, blessed be He, differs from that of mortal man: When a man is about to be executed, a gag is placed in his mouth in order that he may not curse the king; but if a man transgresses against the Lord, the man is silenced, as it is written [Psalms lxv. 2]: "For thee praise is waiting, O God, in Zion." Not only is the man who transgresses against the Lord silent (waiting) but he also praises him, and the punishment given man for

the transgression is regarded by him as a sacrifice unto the Lord, as it is written, "and unto thee shall vows be paid" [ibid.].

This is similar to the saying of R. Jehoshua ben Levi as follows: It is written [Psalms lxxxiv. 7]: "Passing through the valley of weeping, they will change it into a spring; also the early rain covereth it with blessings." "Passing" refers to the man who has trespassed against the will of the Holy One, blessed be He, "the valley" refers to hell which is made deeper, "weeping" signifies that they are weeping and shedding tears equal to the spring of Shitin, and "the early rain covereth it with blessings" denotes that the trespassers themselves bless the Lord, saying: "Creator of the Universe, Thou hast judged rightly, finding the righteous just and the wicked full of iniquity, (and blessed be Thou) that Thou hast ordained hell for the wicked and paradise for the righteous."

Is this statement not contradictory to the saying of Resh Lakish to the effect that the fires of hell cannot gain access to the bodies of the sinners in Israel, which is derived from the *a fortiori* conclusion that inasmuch as the gold which was only of the thickness of one golden dinar covering the ark of the covenant, was not touched by the perpetual light, although but one commandment was being fulfilled, so much more will the sinner in Israel who has fufilled as many commandments as a pomegranate has seeds escape the fires of hell (as it is written [Solomon's Song vi]: "Like the half of the pomegranate is the upper part of thy cheek," etc. And Resh Lakish said: Do not read "the upper part of thy cheek," but read "thy vain, wicked men" [1]). Nay; even Resh Lakish admits that the sinners descend into hell; but our father Abraham, seeing that they are circumcised, rescues them.

R. Jeremiah ben Elazar said again. "Hell has three gates: One in the desert, one in the sea, and one in Jerusalem." "In the desert," as it is written [Numbers xvi. 33]: "And they went down, they, and all they that appertained to them, alive into the pit (Sheol-Gehenna)." "In the sea," as it is written [Jonah ii. 3]: "Out of the depth of the grave have I cried, and thou hast heard my voice." "And one in Jerusalem," as it is written [Isaiah xxxi. 9]: "Who hath a fire in Zion, and a furnace in Jerusalem." And the disciples of R. Ishmael taught, that by a

fire in Zion is meant Gehenna, and by the furnace in Jerusalem is meant the gate of Gehenna.

R. Jehoshua, ben Levi said, that hell has seven names, viz.: Sheol, Abadon, Baar Shachath, Bor Sheon, Tit Hayavon, Tzalmoveth, and Eretz Hathachthith. [1]

Where is the gate of Paradise? Said Resh Lakish: "If the gate of Paradise is in the land of Israel it is in the city of Beth Sheon. If it is in Araby it is in the city of Beth Gerem, and if it is between the rivers it is in Damaskanun."

In Babylon, Abayi would praise the fruit growing on the other side of the Euphrates and Rabha would praise the fruit of the city of Harphania (so it may be that the gate of Paradise is situated in one of these two places).

"*Cattle yoked together in a team, but not walking unyoked*." Why does the Mishna say "yoked together but not unyoked"? It is self-evident, that if they must be yoked they cannot be unyoked? We might assume, that if it said only "yoked together" we might think that apparently yoked would be sufficient, so it is repeated in order to make it more emphatic.

"*So that one enters as the other passes out*." That means, that one team can enter while another passes out. This was taught in a Boraitha.

The Rabbis taught: How much (in size) must the larger part of a cow be reckoned? Two ells. What is the breadth of a cow? One and two-thirds of an ell. Thus six cows abreast will measure about ten ells. So said R. Meir, but R. Jehudah said: "About thirteen or fourteen ells." Why does R. Meir say "about ten ells"? It is exactly ten ells? Because he must teach later "about thirteen ells," so he also approximates it in this case, and says "about ten ells." Now, why does R. Jehudah say "about thirteen ells"? According to his opinion it should be more? Because he wishes to say "about fourteen" he generalizes it and says "about thirteen or fourteen." How can

he say about fourteen? It is less than fourteen? Said R. Papa: "He means to say more than thirteen and less than fourteen" (*i.e.*, the measure of two teams of four cows each abreast is more than thirteen and less than fourteen ells),

R. Papa said: For a well that measures not more than eight

ells in circumference, all agree, that no centre-boards are necessary. For a well of twelve ells in circumference, all agree that they are necessary. Where they differ is concerning a well that is between eight and twelve ells in circumference. According to R. Meir centre-boards are necessary, and according to R. Jehudah they are not. What would R. Papa inform us? We have learned this in our Mishna; for R. Jehudah says two teams of four animals each and R. Meir two teams of three each, so the difference is the size of two animals but not the size of one. R. Papa did not know of the Boraitha stating the size of a cow, so he came to teach us the measure.

Abayi asked Rabba: "What is the law if a man make the enclosures wider; must, according to R. Meir, centre-boards be put up nevertheless or not?" and Rabba answered: "This was taught us in the Mishna, 'providing that more boards be used.' Can we not assume that centre-boards are necessary?" Rejoined Abayi: "Nay! it may mean that the corner-boards should be increased in length." It seems to us that the opinion of the latter is the intention of the Mishna. This decides the argument.

Abayi asked Rabba again: "What is the law according to R. Jehudah if the space between the corner-boards on the same side exceeded thirteen and one-third ells? What should a man do then? Should he increase the length of the corner-boards or put up centre-boards?" Answered Rabba: This was taught us in a Boraitha as follows: What is meant by "they are near each other"? If they are only apart a space as large as the greater part of a cow. What would be called "they are far away from each other"? If the space between them is so large that a kur or even two kurs of grain can be planted therein. R. Jehudah, however, said, that only a space large enough to permit of the planting of two saahs of grain is permitted, but no more. The sages said to R. Jehudah: "Dost thou not admit that a cattle-pen or a fold, a bleaching-ground or a courtyard, even though they be large enough to accommodate five or even ten kurs of grain, are permitted?" R. Jehudah answered: "Here the case is different; for here we have partitions, while in the case of a well we have only enclosures." Now, if the length of the corner-boards should be increased, then R. Jehudah would say that the boards around a well also constitute a partition. Rejoined Abayi: Around a cattle-pen or a fold, a bleaching-ground or a courtyard, according to R. Jehudah, the law of a

partition is applied and that must not contain a space larger than ten ells, and it matters not whether that space have a capacity large enough to permit of planting one or five kur of grain; but the space between the corner-boards was fixed at thirteen and one-third ells because the law of enclosures is applied, hence it should not have a capacity larger than would permit of the planting of two saahs of grain, even if the length of the boards be increased.

Abayi asked Rabba again: "Can a sandheap four ells wide and sloping up to a height of ten

spans take the place of the corner-boards at a well?" Answered Rabba: "This is taught in a Tosephta: 'R. Simeon ben Elazar said: If there was a square rock standing at the corner of a well, which if divided would form an angle, each side of which would be one ell, it may take the place of corner-boards, otherwise it cannot.'" R. Ishmael the son of R. Johanan ben Berokah said: "Even if the rock was round and when made square and divided would form an angle each side of which would be one ell, it may also take the place of the corner-boards." On what point do they differ? According to the former Tana there is only one supposition allowed regarding the rock, whereas according to the latter, even two suppositions concerning the rock are permitted.

He asked him again: "May a bush take the place of corner-boards?" and Rabba answered: "We have learned this in a Boraitha: If there was a fence, a tree, or a number of cane-laths on the spot, they may serve as corner-boards." What is meant by cane-laths? In all probability a bush. Nay; we might assume, that they were really cane-laths and less than three spans apart? Then, by application of the law of "lavud" it would be a fence, and the Boraitha mentions a fence in the first place; why should the repetition be made? If it is a bush, it is the same as a tree; why the repetition in this instance? It might be said, then, that two kinds of a tree are mentioned; why should not two kinds of fences be mentioned?

Abayi asked him again: May things be carried from a courtyard opening into the enclosure around a well and *vice versa*? Rabba answered: "They may." "How is it if there were two adjoining courtyards opening into the enclosure?" "Then one must not carry from the courtyards into the enclosure." Said R. Huna: "If there were two courtyards, even an Erub will not make it lawful to carry things from the courtyards into the enclosure as a precaution, lest it be said, that the law of Erub

applies also to enclosures." Rabha, however, said: "If an Erub was made, it is lawful." Said Abayi: "I know of a Boraitha, which supporteth thy opinion, viz.: If a courtyard opened into an enclosure around a well, things may be carried to and from the courtyard and the enclosure, but if two courtyards opened into the enclosure, this is not allowed, provided an Erub was not made. If an Erub *was* made, it is lawful."

Abayi asked Rabba again: "What is the law concerning the enclosures of a well which had gone dry on Sabbath?" and he answered: "Were not the enclosures made merely for the sake of the water? If the water gave out, the enclosures are void." Now asked Rabin of Abayi: "What is the law if the well went dry on the Sabbath and was filled again on the same day?" Answered Abayi: Concerning the law of a well that had gone dry I asked Master and he told me that the enclosures were void; hence if the well filled up again on the same day the enclosure must be regarded as one constructed on the Sabbath and it was decided that [in Tract Sabbath, page 200] a partition constructed on the Sabbath is valid.

R. Elazar said: "If one throw something (from public ground) within the enclosures around a well, he is culpable." Is this not self-evident? If the enclosures were not regarded as a partition, how would it be allowed to draw water from the well on Sabbath? R. Elazar means to tell us, that if such enclosures were erected in public ground without having a well, it also makes one culpable to throw a thing within the enclosures. Is this not self-evident? If such enclosures were not regarded as a partition elsewhere, how could they be thus considered when erected around a well? He lets us know, that even if the space surrounded by the enclosures is used as a public

thoroughfare, it is nevertheless regarded as private ground. Then he means to tell us, that the public who pass through the enclosures do not nullify the validity of the enclosures? This we have also been taught [in Tract Sabbath, page 10]. The ordinance there is derived from his dictum above.

"*It is permitted to place the enclosures quite close to the well*." We have learned in a Mishna [Sabbath, xi.]: A man must not, standing in private ground, drink in public ground, nor, standing in public ground, drink in private ground, unless he place his head and the greater part of his body within the place in which he drinks. Such is likewise the law regarding a vine-press. Shall we assume, that it is sufficient for a man to have his head and

the greater part of his body in the place in which he drinks, but does this also apply to cattle or not? If the man hold the vessel from which the cattle drink and holds also the cattle (so that they cannot turn around), there is no question but that it is sufficient if they have their heads and the larger part of their bodies within the enclosures; but if the man hold the vessel only, and not the cattle, what is the law? Replied one of the schoolmen to the questioner: We have learned this in our Mishna, viz. "Providing the head and the greater part of the body of the animal be within the enclosure while it drinks." Must we not assume, that in this case the man holds only the vessel and not the animal? Nay; he holds both the vessel and the animal and the law seems to apply to the latter instances; for had he not held the animal also, how could this be allowed? Did we not learn in a Boraitha: A man must not fill a vessel with water to give to his cattle, but he may fill up the vessel and let his cattle drink of their own accord. (This was taught concerning the enclosures around the well.) Now, then, if we should say, that this Boraitha applies to a man who holds both the vessel *and* the cattle, why should he not water the cattle out of the vessel? We must therefore assume, that he did not hold the cattle, and consequently it is obvious that one must hold both the vessel and the cattle.

Have we not learned, that Abayi explains the mentioned Boraitha as follows: The case was, where a crib, ten spans high and four spans wide (forming in itself a private ground), and opening into the enclosures surrounding the well, stood in public ground and the animal stood in private ground? The Boraitha ordains, that the man should not fill a vessel with water and carry it to the animal, but pour it into the crib, *i.e.*, he should not lift the vessel with water over the crib and carry it through public ground to the animal, lest he notice that the crib is broken and he will carry the crib into the place where the animal stands to mend it, thus carrying a thing from public into private ground?

Even if he did so, can the man be held culpable? Did not R. Saphra say, in the name of R. Ami, quoting R. Johanan: "If one moved a certain thing from one corner into another in private ground and then carried it into public ground, he is not culpable, because his original intention was not to carry it into public ground?" Abayi means to state, that the man might mend the crib where it was standing and then carry it into private ground.

Come and hear (another objection): "A camel, whose head and greater part of the body was within the enclosures around a well, may be crammed." Now, in such a case, the man certainly holds the animal and the vessel, and still it is necessary that the head and larger part of the body of the animal be within the enclosures? Said R. A'ha bar R. Huna in the name of R. Shesheth: "With a camel it is different; the neck of a camel being very long, if the camel turned its head

around it would be in public ground."

We have learned also in a Boraitha, that R. Eliezer also prohibits this to be done with a camel, because its neck is very long.

R. Itz'hak bar Ada said: "The enclosures around wells are not permitted to be used by any but the pilgrims while going to Jerusalem for the festivals." Did we not learn in a Boraitha that the enclosures are allowed only for cattle? By cattle is meant the cattle of the pilgrims, but what should a man who wishes to drink do? He should hold on to the walls of the well and drink there. [This is not so! Did not R. Itz'hak in the name of R. Jehudah quoting Samuel say, that the enclosures are permitted to be made only around wells containing spring-water but not rain-water? If the wells were only allowed for cattle, why should this distinction be made? The water must be fit for human use also (because the enclosures are erected for the sake of the water, the latter should be good water).] If the walls of the well were very wide and a man could not climb over them, he may draw water from the well and drink it.

R. Jeremiah bar Abba said in the name of Rabh: The laws of a road that had huts built on it at seventy ells apart and of enclosures around wells do not hold good in Babylon or anywhere outside of Palestine. The first law does not apply to Babylon on account of the frequent floods and to other lands on account of thieves who would steal the huts, and the second law does not apply to Babylon because of the abundance of water and to other lands because there are no colleges of learning.

Said R. Hisda to Mari the son of R. Huna the son of Jeremiah bar Abba: "I have heard, that ye, men of Barnash, go to the synagogue of Daniel on the Sabbath, a distance of three miles. Upon what grounds do ye do this? Do ye depend upon the law of huts? Was it not said by thy grandfather in the name of Rabh, that this law does not apply to Babylon?" R. Hisda was shown by Mari demolished buildings scattered over

the entire road, at about seventy ells apart, which at one time formed part of the city itself.

Said R. Hisda: Mari bar Mar related: It is written [Jeremiah xxiv. 1]: "The Lord caused me to see, and, behold, there were two baskets of figs placed before the temple of the Lord," etc., and [ibid. 2]: "The one basket had very good figs, like the figs that are first ripe; and the other basket had very bad figs, which could not be eaten, from being so bad." The good figs represent the strictly righteous and the bad figs the grossly wicked, but if you mean to say, that for the grossly wicked there is no more hope, therefore it is written [Solomon's Song vii. 14]:

The mandrakes [1] give forth their smell."

Rabha preached: "By the passage 'The mandrakes give forth their smell' is meant the young men of Israel who have not yet tasted of the fruit of sin, and by 'at our doors are all manners of precious fruits' is meant the virgins of Israel who are modest before their marriage, and by the passage 'new and also old, O my friend! these have I laid up for thee' is meant what the congregation of Israel said to the Holy One, blessed be He, namely: 'Creator of the Universe! Even more than thou hast ordained for us, have we ordained for ourselves and have faithfully

observed.'"

Said R. Hisda to one of the scholars who read legendary matter before him: "Hast thou not heard what is meant by new and also old' (in the passage quoted)?" He answered: "'The old' refers to biblical ordinances and the 'new' to rabbinical."

Rabha preached: "It is written [Ecclesiastes xii. 12]: 'But more than all these, my son, take warning for thyself: the making of many books would have no end; and much preaching is a weariness of the flesh.' This means: 'My son, be careful in the observance of the rabbinical commandments (even more than in the biblical); for while the biblical commandments are for the most part positive and negative (*i.e.*, not always involving the death-penalty if violated), the rabbinical commandments, if infracted, would involve capital punishment. Lest one might say, that if such be the case, why were not the rabbinical commandments written down, the answer is provided, 'The making of many books would have no end.' The end of the passage

[paragraph continues] 'Much preaching is a weariness of the flesh,' signifies, that one who devotes much thought and reflection to the rabbinical commandments, acquires a taste as if he had eaten an excess of meat."

The Rabbis taught: It happened that when R. Aqiba was in prison R. Jehoshua of Garsi served him every day. Water was given R. Aqiba in a measure. One day the warden of the prison said to R. Jehoshua: "To-day thy measure of water is too large. Perhaps it is thy intention to undermine the prison." So he poured out half the water and returned the remainder. When R. Jehoshua came to R. Aqiba the latter said to him: "Dost thou not know, that I am an old man and that my life is dependent upon thee?" R. Jehoshua then related what had happened. Said R. Aqiba: "Give me the water and I will wash my hands prior to eating," and he answered: "There is hardly enough water to drink, and thou wouldst use it to wash thy hands?" Rejoined R. Aqiba: "What can I do? I must follow the rabbinical commandment, which if violated would involve capital punishment. It were better for me that I die of hunger, than to act contrary to the opinion of my colleagues." And it was said that R. Aqiba would not taste anything until water was brought to him to wash his hands. When the sages heard of this, they said: If he was so careful in his old age how was he in his youth, and if he was so particular in prison how was he when at liberty!

R. Jehudah said in the name of Samuel: In the time that Solomon the king ordained the law of Erubin and that of washing the hands (before meals) a heavenly voice was heard, which said [Proverbs xxiii. 15]: "My son, if thy heart be wise, my heart shall rejoice, even mine," and [ibid. xxvii. ii]: "Become wise, my son, and cause my heart to rejoice, that I may give an answer to him that reproacheth me."

Rabha preached again: It is written [Solomon's Song vii. 12-13]: "Come, my friend! let us go forth into the field; let us spend the night in the villages; let us get up early to the vineyards; let us see if the vine have blossomed, whether the young grape have opened to the view, whether the pomegranates have budded: there will I give my caresses unto thee." "Come, my friend! let us go into the field." Thus said the community of Israel before the Holy One, blessed be He: "Creator of the Universe! judge us not by the inhabitants of the large cities; for there is robbery,

rapine, false-swearing, and swearing in vain

among them. Come into the field and we will show Thee many scholars who study the Law although they are in poor circumstances." "Let us spend the night in the villages." 1 This means: Come with us and we will show Thee so many, to whom Thou hast shown so much mercy and still they deny Thee. "Let us go up early into the vineyards," refers to the synagogues and the houses of learning. "Let us see if the vine have blossomed," refers to those who study the Holy Writ. "Whether the young grape have opened to the view," refers to those who study the Mishna. "Whether the pomegranates have budded," refers to those who study the Gemara. "There will I give my caresses unto thee," signifies: We will show Thee our children who honor and revere us by studying the Law and walking in Thy ways.

Said R. Hamnuna: It is written [I Kings v. 12]: "And he spoke three thousand proverbs and his songs were a thousand and five." From this it is inferred, that Solomon said three thousand proverbs for every one of the biblical commandments and gave one thousand and five reasons for each of the rabbinical commandments.

Rabha preached: It is written [Ecclesiastes xii. 9]: "And in addition to this that Koheleth was wise, he continually also taught the people knowledge, and he probed, and searched out, and composed many proverbs." "He continually also taught the people knowledge" signifies, that he supplied the Holy Writ with the Massoretic text and explained the different passages with parables and proverbs. "And composed many proverbs." Ula said in the name of R. Eliezer, that prior to the time of Solomon the Scriptures were like a basket without handles, that could not be grasped, and when Solomon came, he provided the Holy Writ with all the precautionary measures necessary for its preservation.

R. Hisda said in the name of Mar Uqba: "It is written: 'His head is bright as the finest gold, his locks are like waving foliage, and black as a raven.'" (Locks are expressed by the Hebrew word "Taltalim," also meaning heaps.) The inference can be made from this passage, that upon every letter contained in the Scriptures a heap of ordinances can be based, and further, that the one wishing to find all the beauties contained in the

[paragraph continues] Holy Writ must devote himself to its study until he becomes black as a raven." Rabha said not "until he becomes black as a raven," but until he becomes as hard-hearted towards his family as a raven is towards its young.

As it happened that R. Ada bar Mattna wished to go and seclude himself in the house of learning and his wife said to him: "What shall I do with thy little ones?" and he answered: "There are still herbs in the field."

It is written [Deuteronomy vii. 10]: "And repayeth those that hate him to their face, to destroy them. He will not delay, to him that hateth him he will repay him to his face." Said R. Jehoshua ben Levi: "Were it not for this passage, it would be impossible to make such an assertion; for this is like a mortal who would rid himself of a burden which had become too heavy to carry." 1

The last part of the passage implies, that while punishment is not delayed to the wicked, the reward to the strictly righteous is delayed. So said R. Aila and it is similar to the dictum of R. Jehoshua ben Levi: "It is written [ibid. ii.]: 'The ordinances which I command thee this day, to do them,'" and signifies, that the commandments are to be fulfilled this day, but the reward for so doing is put off for a future day, *i.e.*, will be given in the world to come."

"*R. Jehudah said: 'The maximum distance,*'" etc. The schoolmen propounded a question: Does R. Jehudah mean to exclude the space occupied by the well in the maximum distance or does it refer to the enclosures plus the space between the enclosures and the well? Come and hear: We have learned: What is meant by "the enclosure may be quite close to the well"? That the head and greater part of the body of the animal be within the enclosures, and what is meant by "it may be placed at some distance from the well"? That the space between the well and the enclosure may be of sufficient size to permit of the planting of one or even two kurs of grain therein. R. Jehudah, however, says, that it may be only of two saahs' capacity, but not more. The sages said to him: Wilt thou not grant us that as regards a cattle-pen, fold, bleaching-ground, or a courtyard, a capacity of five or even ten kur is permissible? He answered them: "Yea; but in the latter cases we have a

partition whereas in the case of a well there are only enclosures." R. Simeon ben Elazar, however, said, that in the case of a well, the square of a space sufficient for the planting of two saahs of grain is allowed, and by "it (the enclosure) may be placed at some distance from the well" is meant such a square plus the two ells necessary for the accommodation of the head and larger part of the body of the animal. Now, then, if R. Simeon ben Elazar means to permit the two ells in addition to the square space permitted, it is evident, that R. Jehudah, who differs with him, means to include them in that space.

Nay; this is not so, after all! R. Jehudah also means to allow the two ells in addition to the permitted space, but he differs with R. Simeon ben Elazar in the measurement of the space. The latter holds, that the space should be square, *i.e.*, if it be one hundred ells long it must be one hundred ells wide, whereas according to R. Jehudah it may be one hundred ells long and only fifty ells wide (for such was the measure of the court of the tabernacle). [The end of the Boraitha is.] A rule was laid down by R. Simeon ben Elazar: Every space used for a dwelling of any description, *e.g.*., a pen, a fold, a bleaching-ground, or a courtyard, may be of a size large enough to permit even of the planting of ten kurs of grain therein; but a roofed dwelling such as the huts in a field must not exceed two saahs' capacity.

MISHNA: R. Jehudah said: If a public thoroughfare passes through the enclosure, it must be closed up with boards at the sides facing the thoroughfare; but the sages hold, that it is not necessary.

GEMARA: Said R. Itz'hak bar Joseph in the name of R. Johanan: "There is no such a thing as public ground in Palestine. " [1] R. Dimi sitting in his college repeated this Halakha. Said Abayi to him: "What is the reason of this assertion? Shall I assume, that it is because the rocks of the mount Tyre surround Palestine on one side and a canal on another side? Does not the river Euphrates on the one side and the river Diglat on the other side surround Babylon and in like manner the ocean surrounds the world, then there should be no public ground at all. Perhaps R. Johanan meant to say, that the path ascending the mountain and the other descending from the

mountain is not public ground?" Answered R. Dimi: I see

thou hast a wise head, and it seems to me as if thou wert among the pillars of R . Johanan's college, when he pronounced this Halakha.

When Rabhin came from Palestine, he said in the name of R. Johanan, and according to another version in the name of R. Abbahu quoting R. Johanan: The paths by which the mountains in Palestine are ascended and descended do not come under the head of public ground, because they were not encountered on the journey through the wilderness (the pillar of cloud removing all hills and mountains from the path of the children of Israel).

MISHNA: Be it a public cistern, a public well, or a private well, such an enclosure of boards must be made for it; to a private cistern, however, a partition ten hands high must be made. Such is the dictum of R. Aqiba; but R. Jehudah. ben Babah said: An enclosure of boards must be made only for a public well; for all others it is sufficient to make a rope fence ten hands high.

GEMARA: Said R. Joseph in the name of R. Jehudah quoting Samuel: "The Halakha prevails according to R. Jehudah ben Babah." And he said again in the name of the same authority: "It is allowed only to make an enclosure around a well containing spring-water." The reason this latter saying of R. Jehudah ben Babah is quoted is, because in the Mishna he states, that an enclosure must be made only for a public well and we might assume that even if the well contained rain-water, providing it be only a public well, an enclosure may be made around it: therefore we are taught, that even though it be a public well it must contain spring-water.

MISHNA: Furthermore, R. Jehudah. ben Babah said: "In a garden or wood-shed over seventy ells square and encompassed by a wall ten hands high, it is lawful to carry things, provided there is a watch-box or dwelling of some kind (within the garden or shed), or they are close to town." R. Jehudah, however, said: Even though there be nothing else within them than a cistern, a reservoir, or a cave, it is lawful to carry things (in the garden or shed). R. Aqiba said: Even if the garden or wood-shed contain none of these objects mentioned, one may carry things within them (on Sabbath), provided they do not measure much over seventy ells square. R. Eliezer said: "If the length of such a garden or wood-shed exceed its width by even one ell, it is not permitted to carry things therein." R. Jose, however, said: Even if its length be twice its width, it is lawful to carry things therein.

R. Ilai said: I heard from R. Eliezer, that even though the garden or wood-shed be large enough to permit of a whole kur of grain being planted within it, it is permitted to carry things therein on Sabbath. I also heard from him, that if one of the householders of a court had forgotten and not combined in the erub, he must not carry anything out of or into his house, but the other inmates of the court may do so. Furthermore, I heard from him, that a man can fully acquit himself of the duty (of eating bitter herbs) on the Passover by using hart's-tongue (scolopendrium). I inquired among all his disciples seeking a colleague who had also heard him pronounce these opinions, but I could not find one.

GEMARA: "*R. Aqiba said: Even if the garden*," etc. Is this not the same as was said by the first Tana? There is a difference in a trifling matter between the two, as we have learned in the following Boraitha: "There is a trifle over the seventy ells and something, which the sages failed to specify, and that is the difference between the space of two saahs' capacity (which is 100 by So ells) and the square of seventy ells and something (two saahs' capacity is equal to 100 by 50 ells, or 5,000 square ells, and 7 2/3 by 70 2/3 ells is equal to 4,994 2/3 square ells, hence the difference, 5 7/9 square ells). Whence do we adduce this? Said R. Jehudah: "It is written [Exodus xxvii. 18]: 'The length of the court shall be one hundred cubits and the breadth fifty-by fifty.' This means to say, that the fifty cubits of length exceeding the breadth should be apportioned to the breadth, so as to make the whole seventy cubits and four spans square." [1] What is the correct interpretation of the passage? How can one hundred ells in length by fifty by fifty in breadth be understood? Said Abayi: "The passage implies that the tabernacle must be placed immediately beyond where the court is fifty ells in length, and being itself thirty ells long and ten wide, it will have a frontage of fifty ells and twenty ells on each remaining side."

"*R. Eliezer said: 'If the length,'*" etc. Did we not learn in a Boraitha: R. Eliezer said: "If the length exceeded double the width of the garden or wood-shed by one ell, things must not be carried in them"? Said R. Bibhi bar Abayi: Our Mishna must also be read *not* "if the length exceed the width,"

but "if the length exceed *double* the width." If such be the case, then is this not the same as said by R. Jose? The difference between them is the one square ell which R. Eliezer adds as a proviso but which R. Jose does not incorporate in his dictum, for the former says (according to the above Boraitha): "Even if the length exceed double the width by one ell," while the latter says, "even if the length be double the width (exactly)."

"*R. Jose, however, said*," etc. It was taught: R. Joseph in the name of R. Jehudah, quoting Samuel, said: The Halakha prevails according to R. Jose's dictum in that a square is not essential. R. Bibhi, also, in the name of R. Jehudah, quoting Samuel, said: "The Halakha prevails according to R. Aqiba, who says, that the garden or wood-shed need not contain any of those objects." Samuel found it necessary to make both statements in order to make the ordinance more lenient, *i.e.*, that neither was it essential that the garden or wood-shed be square nor that it contain a watch-box, dwelling, etc.

If a wood-shed of more than two saahs' capacity was fenced in for a dwelling, and the larger part of it was used to sow grain therein, it is like a garden and things must not be moved therein, because the fact that it was used for the purpose of sowing grain nullifies the original intention to use it for a dwelling. If, however, trees were planted in the greater part of it, things may be carried therein, because it is considered as a yard or court adjacent to a house. What is the law, however, if only in the smaller part of such a wood-shed grain was sown? Said R. Huna the son of R. Jehoshua: If the wood-shed was of two saahs' capacity, it is allowed to carry things therein under those circumstances, but if it was of a larger capacity, it is not allowed (to carry things therein). This will be in accordance with R. Simeon, whose opinion will be cited later (Chapter IX., Mishna i.). If trees were planted in the wood-shed: according to R. Jehudah in the name of Abhimi, things may be carried only if benches were made between the trees, but according to R. Na'hman, this is not necessary, and R. Huna the son of Jehudah is of the same opinion as R. Na'hman.

Said R. Na'hman in the name of Samuel: A wood-shed of over two saahs' capacity, which was not fenced in for a dwelling, stood near a house which was subsequently built adjoining it. What is to be done in order to make it lawful for the occupants of the house to carry things to and from the wood-shed and the

house on the Sabbath? First, a breach of more than ten ells should be made in the wall of the wood-shed (thereby rendering the walls useless); then the breach should be filled up so as to make it ten ells only. This will be regarded as a door, and will make it lawful to carry things between the house and the' wood-shed.

The schoolmen asked: "How is it, if the man tore down and rebuilt the walls of the wood-shed piecemeal, *i.e.*, ell by ell until more than ten ells were torn down and then by rebuilding just ten ells of the breach were left. (Must over ten ells be demolished at once in order to render the wall useless or does it suffice if eventually such a breach was made even if it was done ell by ell)"? The answer was: Is this not the same as we have learned in a Mishna (in Tract Kelim), that the vessels of householders which contain a hole larger than a pomegranate are not subject to defilement; and Hezkyah asked, what the law was if a hole the size of an olive was made in the vessel and stopped up and this was repeated until the hole became the size of a pomegranate. R. Johanan answered him and related that Rabbi taught this in another Mishna concerning a sandal, one ear of which had become torn and was mended when the other became tom and was also mended, the sandal after the second mending is not subject to defilement. Rabbi was asked why he had ordained thus, for after the second mending, the same condition existed in the sandal as after the first. He answered: Nay; when the other ear was broken off the sandal was virtually destroyed and after it had been mended it assumed a different appearance. This statement can also be applied to the wall, which with each successive breach of one ell assumed a different appearance. The answer was: Such explanations are superhuman (and can only be made by an angel). According to another version, the answer was: "This is a man (who has knowledge)." [1]

Said R. Kahana: "In a bleaching-ground (behind a house) things must not be carried except for a distance of four ells." Said R. Na'hman: "If a door was erected in the bleaching-ground, things may be carried over its entire extent; because the door renders this lawful."

If a wood-shed of over two saahs' capacity which had been

intended for a dwelling was filled with water it is considered as if planted with trees, and things may be carried over its entire extent. Said Ameimar: Provided the water was fit to drink; but if not fit for drinking purposes, things must not be carried within the wood-shed.

There was a bleaching-ground in the city of Pumnahara, one side of which opened into the city and the other side into a path leading to a vineyard, which in turn opened into the banks of a lake. Said Rabha: A side-beam should be erected on the side of the bleaching-ground facing the city, and if this is of use as an entry to the city, it will also be a valid entry for the bleaching-ground. This makes it lawful to carry things both in the entry and in the bleaching-ground; but

as for carrying from the entry into the bleaching-ground or *vice versa*, there is a difference of opinion between R. Aha and Rabhina. One permits this because the bleaching-ground is uninhabited. The other prohibits this, lest the bleaching-ground become at some time inhabited and things will be carried to and fro nevertheless.

A wood-shed of over two saahs' capacity which was not fenced in for a dwelling and was made smaller by planting trees therein, is not considered diminished in size. If, however, a pillar was erected within it, ten spans high and four wide, it is considered diminished. If the pillar was less than three spans wide, all agree, that it is of no account; but if it be over three spans and less than four, Rabha said, that the wood-shed is thereby diminished because a thing which is over three spans wide does not come within the law of "lavud" (attachment), and is hence considered an independent subject; Rabha, however, maintains that it is not diminished, for a subject which is less than four spans is of no account.

If a partition was made in the wood-shed four spans distant from the wall, things may be carried over the entire wood-shed. If the partition was less than three spans from the wall, all agree that this would be unlawful. If over three and less than four, Rabba said it is lawful, and Rabha said it is not. R. Shimi, however, taught this ordinance in a more lenient form, namely: If the partition was over three and less than four spans from the wall, all agree, that it is lawful; but if it was less than three then there is a difference of opinion.

Rabba bar bar Hana propounded a question: "If the bottom part of a partition was swallowed up by the earth and the top part remained, can it be accounted a lawful partition or

not?" What was the object of this question? If it refers to a partition which was erected on the estate of a deceased proselyte, then this question is identical with that of Jeremiah of Bira, which is decided in Tract Baba Bathra; and if it refers to the Sabbath-law, *i.e.*, if a partition was made on Sabbath, then the question has already been decided previously (page 47).

Concerning a wood-shed of three saahs' capacity which was provided with a roof of only one saah capacity Rabha said: The atmosphere of the unroofed portion of the wood-shed nullifies the roof which has been erected and things must not be carries within it. R. Zera, however, said: The atmosphere of the unroofed portion does not interfere with the roof which is considered as attached to the part of one saah's capacity and things may be carried within the roofed part with impunity. I admit, however, that if a wall of the wood-shed facing a courtyard was entirely demolished, the atmosphere of the adjoining courtyard renders the remaining walls void and makes the woodshed one of over two saahs' capacity.

There was a garden on the estate of the Exilarch containing a pavilion. On a Friday R. Huna bar Hinana was told to go out there and make the pavilion suitable so that things could be carried and meals taken within it on the morrow. He went and placed some sticks of less than three spans in height in the ground around the pavilion. Rabha then went out and tore down the sticks. R. Papa and R. Huna the son of R. Jehoshua even went and hid the sticks so that R. Huna bar Hinana could not obtain them again (because all three held, that the sticks would have been of no account whatever). So the Exilarch applied to them the verse [Jeremiah iv. 22]: "Wise are they to do evil, but how to do good they do not know."

"*R. Ilai said: I have heard from R. Eliezer, that even though a garden or wood-shed be large enough to permit of the planting of a whole kur*," etc. This Mishna is not in accordance with the opinion of Hananiah, who said, that even if they have a capacity of forty saahs, as a parade ground for soldiers in front of the king's palace, things may be carried within them, so it was taught in a Boraitha. Said R. Johanan: Both R. Eliezer and Hananiah adduced their opinions from the same passage, viz. [II Kings xx. 4]: "And it came to pass, before Isaiah was gone out into the middle court," etc., while subsequently city is mentioned and hence the inference that a parade ground be it even as large as a medium-sized town is still called a court provided

it be in front of the king's palace. Their point of difference is, that one holds a medium-sized town to have a capacity of one kur while the other holds that it has a capacity of forty saahs.

"*I also heard from him*," etc. Did we not learn in another Mishna, that neither the householder himself nor the other inmates of the court (yard) may carry anything to and from his house? Said R. Huna the son of R. Jehoshua in the name of R. Shesheth: This presents no difficulty. The Mishna is in accordance with R. Eliezer, who holds, that if one had resigned his right to the use of the court he also resigned his privilege of the use of his house, but according to the opinion of the rabbis it may be said that, if he had resigned his right to the court, he did not thereby resign his privilege of the use of his house. Is this not self-evident? (Why should we say, it may be said?) They cannot differ on any other point. Said Rahabha (Rabha): I and R. Huna bar Hinana have explained this as follows: The case was, where there were five inmates of one court, and one of them forgot to combine in the erub; according to R. Eliezer, at the time that he resigns his right to the use of the court in favor of all the other inmates he need not do so to each one individually also, and he at the same time resigns the privilege of using his house to the other inmates, while according to the Rabbis, he must do so to each one of the inmates individually and must also bear in mind to resign his privilege of using his house.

Footnotes

43:1 "The upper part of thy cheek" is expressed in Hebrew by "Rakothech," and Resh Lakish reads instead "Rikothech," which signifies "thy vain or wicked men."

44:1 These names can be found in the following passages: Jonah ii. 3; Psalms lxxxviii. 12; ibid. xvi. 10; ibid. xi. 2; ibid. cvii. 10; the last name is traditional and not mentioned in the Scriptures.

50:1 The Hebrew term used for baskets and for mandrakes in both passages is "Dudaim," hence the inference by analogy.

52:1 The Hebrew term for "in the villages" is "bakphorim," and if read "bakophrim" through transposition of the vowel would signify: "Among the infidels."

53:1 This expression is rendered in Hebrew by the term a literal translation for which cannot be

found. The implied meaning of the term, however, is: When speaking of God, the assumption is made, that if He were a concrete body, this or that could be said of Him.

54:1 *Vide* Introduction to Vol. I., p. xxviii, § iv.

56:1 These figures are approximate and the correct figures depend upon whether the cubit measured 5 or 6 spans.

58:1 The Gemara has evidently omitted the names of the different sages who carried on the above argument.

Next: Chapter III: Location of Erubin and Limits on Sabbath Travel.

CHAPTER III.

REGULATIONS CONCERNING WHEREWITH AND WHERE AN ERUB MAY BE MADE. WHEREBY AN ERUB BECOMES INVALID. THE ERUB OF LIMITS, WITH ITS CONDITIONS. WHEN A FESTIVAL OR NEW YEAR PRECEDES THE SABBATH.

MISHNA: The Erub may be effected with all kinds of victuals excepting water and salt. All kinds of victuals may be bought with the proceeds of the second tithe except water and salt. One who has vowed to abstain from food, may partake of water and salt. The Erub maybe made for a Nazarite with wine and for an ordinary Israelite with heave-offering. Symmachus said: Unconsecrated things only may be used for the Erub of an ordinary Israelite. The Erub of a priest may be placed on a spot which had formerly been used as a cemetery. R. Jehudah said: It may even be placed in an actual burying-ground, since the priest may make a partition between himself and the burying-ground and then eat the Erub.

GEMARA: R. Johanan said: "We must not accept all the Mishnaoth that commence with a general rule as final, even such as are supplemented with an exception." Said Rabhina, according to another version R. Na'hman: We can infer this from our Mishna above. It is stated therein, that with all kinds of victuals an Erub may be effected, excepting water and salt, and there are certain mushrooms with which an Erub cannot be effected also. Consequently we may assume from this Mishna, that all those commencing with a general rule, even such as are supplemented with exceptions, need not be accepted as final.

"*All kinds of victuals*," etc. One of the two sages, R. Eliezer or R. Jose bar R. Hanina, taught as follows: The Mishna means to state, that an Erub must not be made with either water or salt, but with the two together it is allowed," and one of them taught the same with reference to second tithes, viz.: With the proceeds of the second tithes salt or water must not be bought; but the two together maybe bought. The one who applies this opinion to second tithes does so even to a greater

degree in the case of the Erub; but the one who applies this to an Erub does not do so in the case of the second tithes; because some fruit must be bought therewith. When R. Itz'hak came from Palestine, he taught this to apply to second tithes also.

An objection was made: R. Jehudah ben Gadish testified in the presence of R. Eliezer, that his father's house used to buy fish-brine with the proceeds of the second tithes. Said R. Eliezer to him: "Perhaps thou didst not observe, that there were pieces of fish in the brine." Now, R. Jehudah ben Gadish himself testifies that fish-brine was bought and that is at least an article of food; but he certainly would not permit salt and water.

Said R. Joseph: "R. Itz'hak in permitting water and salt to be bought with the proceeds of second tithes refers to a case where the water also contained some oil." Said Abayi: "If such be the case, why does he say water and salt, it would be virtually buying the oil?" The answer is: "If the money was paid for the oil and incidentally also for the water and salt." Is it allowed to buy it indirectly? Yea; it is allowed, as we have learned: Ben Bagbag said: It is written [Deut. xiv. 26]: "And thou shalt lay out that money for whatsoever thy soul longeth after, for oxen, or for sheep, or for wine, or for strong drink, or for whatsoever thy soul asketh of thee." "For oxen" signifies for oxen together with the hide, "for sheep" with the wool, for wine "together with the barrel," or for strong drink even if it turned sour.

R. Johanan said. "The man who will explain to me the dictum of Ben Bagbag concerning the oxen, I will carry his clothes after him to the bath-house." Why is this so? Wherein does he find a difference between the oxen and the sheep? Because if we infer from the verse, that the sheep may be bought together with their wool, which can be shorn, it is self-evident that an ox must be bought with the hide, for how can it be bought otherwise? Hence the inference taken by Ben Bagbag from the oxen is superfluous.

Wherein do R. Jehudah ben Gadish, R. Eliezer, and the following Tanaim differ? R. Jehudah ben Gadish and R. Eliezer interpret an extension and a limitation thus: "Thou shalt lay out that money for whatsoever thy soul longeth" is an extension then; "or oxen, or for sheep, for wine or for strong drink" is a limitation; "or for whatever thy soul asketh of thee" is again an extension. Thus we have an extension, a limitation and another extension. What is the extension? "For every.

thing." But what is the limitation? According to R. Eliezer, it is fish-brine, and according to R. Jehudah ben Gadish it is water and salt, and the other Tanaim do not refer to extension and limitation but to the effect of general and particular terms, as we have learned in a Boraitha: "Thou shalt lay out that money for whatsoever thy soul desireth" is a general term, "for oxen, for sheep, etc.," is a particular term, and again "or for whatsoever thy soul asketh of thee" is a general term; hence we have a general term, a particular term and another general term, and wherever there is a particular term in the midst of two general terms the particular term determines the rule. Thus the particular thing to be bought with the proceeds of second tithes is fruit of fruit (*i.e.*, a calf born of a cow or oil of olives) and everything generated above the ground; but salt and water or fish-brine is not included.

In another Boraitha however we were taught, that as the particular term refers to something born on or growing out of the ground, so does also the general term refer to subjects of this kind. What is the point of difference between the two Boraithas? Said Abayi: "Concerning fish." According to the Boraitha which holds, that the particular term refers to fruit of fruit and everything generated above the ground, fish is also included as it derives its sustenance from the earth; but according to the Boraitha which holds, that only something born on or growing out of the ground is meant, fish is excluded because it is generated in the waters.

Said R. Jehudah in the name of R. Samuel bar Shilas quoting Rabh: "An Erub may be made with lettuce, Halaglugoth (a certain edible plant) and clover but not with green rye-stalks and bad figs." How can he say that clover may be used? Have we not learned, that clover maybe eaten only by those who have many children but not by such as have none? Have we not learned that

for a Nazarite an Erub may be made with wine and for an ordinary Israelite with heave-offering? Although neither of these two are allowed to partake of those things, there are others who may do so and the same case can be applied to clover, while there are some who are not allowed to eat it, there are others who may; hence all may use it for the purpose of making an Erub.

With green rye-stalks it is not allowed? Did not R. Jehudah say in the name of Rabh, that hops and green rye-stalks may be used to make an Erub and the benediction to be pronounced

over these is "Blessed be He, etc., who hath created the fruits of the earth"? This presents no difficulty; for Rabh said, that rye-stalks were not permitted to be used, before he came to Babylon, not knowing that it was used for food, but when he learned that such was the case, he allowed its use.

With bad figs it is not allowed? Have we not learned, that palm-tops may be bought with the proceeds of second tithes and that they are not subject to defilement incidental to eatables, and bad figs may also be bought with the proceeds of second tithes but they *are* subject to the defilement? R. Jehudah, however, said that palm-tops were considered the same as trees under all circumstances with the exception that they may be bought with the proceeds of second tithes and that bad figs are considered the same as other fruit except that they are not subject to tithing? Thou sayest, they are subject to defilement? That is a different matter. The reason of that is, as R. Johanan stated in another case, that they can be made good through cooking over a fire and therefore they are subject to defilement, but they must not be used for making an Erub.

The text states, that hops and green rye-stalks may be used for making an Erub, etc. What quantity of hops should be used? As R. Yechiel said elsewhere, that a handful is sufficient, so it is also in this case; a handful will suffice for two meals. What quantity of green rye-stalks must be used? Said Rabba bar Tuvia bar Itz'hak in the name of Rabh: A bundle of the same size as that made by the peasants.

R. Helkyah bar Tuvia said: An Erub may be made with a Kalia (a certain root as hard as a piece of dry wood). How is that possible? Can it be eaten? He means to say when the root is young and tender. What quantity should be used? Said R. Yechiel: "A handful."

R. Jeremiah went out into the villages and was asked whether an Erub may be made with bean-pods. He did not know what to answer. When he came back to the college, he was told, that R. Janai said, "It was allowed," and as to the quantity R. Yechiel said, "A handful."

R. Hamnuna said: "An Erub must not be made with raw mangold. Because R. Hisda said that raw mangold can kill a man." But we see, that some people do eat it and it does not harm them? Yea; but they eat marigold which is partially cooked and is not quite raw.

R. Hisda said: "Cooked mangold is good for the heart, for

the eyes and above all for the stomach." Said Abayi: Such is the case if the mangold was cooked over the centre of a big fire so long that it sizzled.

Rabha said at one time: I feel, that I am at present in the same condition as Ben Azai was in the markets of Tiberias. [Ben Azai used to lecture in the markets of Tiberias and in his time was the most sagacious among all the sages, so that he once said: All the sages of Israel are as the peel of garlic compared to me except the bald-head (meaning R. Aqiba).] So one of the scholars came to Rabha and asked him, how many apples it would take to make an Erub? He answered: "Art thou then certain that an Erub may be made with apples?" With apples it is not allowed? Have we not learned in a Mishna, that a quantity of mixed eatables equal to two eggs is sufficient to make the body of a man incapable of touching heave-offerings? 1 If there is sufficient of those mixed eatables for two meals they maybe used for making an Erub. If there is a quantity of those mixed eatables equal to one egg, they arc subject to the defilement incidental to eatables. Why this question? 'Tis true that the Mishna mentions all eatables, but have we not learned, that wherever a general rule is laid down, even when supplemented with exceptions, it need not be accepted as final? Consequently apples may be excluded? This question is not based upon the statement that all eatables may be used, but upon the fact that a quantity of mixed eatables equal to two eggs may be used for an Erub, and if equal to one egg it is subject to defilement incidental to eatables. And if apples are subject to defilement, why should they not be used for an Erub? What should be the quantity of apples used? Said R. Na'hman: "A Kabh."

An objection was raised: R. Simeon b. Elazar said: A measure of spices, a litter of herbs, ten nuts, five *persicum* (apricots), two pomegranates, one citron. (This was a prescribed quantity for giving charity by the owner of a vineyard.) And Ghurseck bar Dori in the name of R. Menashiah bar Shegublick quoting Rabh said: The same quantity is sufficient for an Erub. Now why shall not apples also be equal to apricots and only five should be sufficient for an Erub? The *persicums* are more valuable, hence five are sufficient, but apples not being so valuable, therefore a Kabh is required.

Said R. Joseph: May the Lord forgive R. Menashiah bar Shegublick.

[paragraph continues] I said this to him in reference to the following Mishna and he said this in reference to the above Boraitha. This is the Mishna (mentioned above). Nothing less than a half a Kabh of wheat and a Kabh of barley should be given to a poor man by the owner of a barn. R. Meir, however, says a half a Kabh of barley and one Kabh and a half of Kusmin, 1 a Kabh of three or the weight of a maneh 2 of pressed figs; R. Aqiba said a half of a maneh; and a half a lug of wine; R. Aqiba said a quarter of a lug; and a quarter of a lug of oil; R. Aqiba said an eighth of a lug. Concerning other fruits, however, said Abba Saul: A measure of fruit, the sale of which would realize sufficient for the purchase of two meals; and to this Mishna I added in the name of Rabh that the same quantities are needed for an Erub.

The text said: If there is sufficient of mixed eatables for two meals they may be used for an Erub. R. Joseph meant to say: "If there is enough of each kind for one meal." Said Rabba to him: "Nay; it is sufficient if there was enough of each kind for a half, a third or even a quarter of a meal."

Rabh said: "One may make an Erub with wine of the quantity of two quarters of a lug." Must we have so much? Did we not learn that R. Simon ben Elazar said: "With sufficient wine necessary for the eating of two meals," and by that he means boiled wine in which bread sufficient for two meals is soaked.

Rabh said again: "One may make an Erub with vinegar sufficient for the soaking of food for two meals." R. Gidel said in the name of Rabh: "By that is meant enough vinegar to soak herbs sufficient for two meals"; and according to others R. Gidel said in the name of Rabh (not two meals of herbs only but) sufficient wine to soak the herbs which are usually eaten in two meals.

R. Zera said in the name Of Samuel: "It is allowed to make an Erub with beer, but if three lugs of it be poured into a Mikvah, the Mikvah becomes invalid." How much beer is necessary for an Erub? R. Ahu the son of R. Joseph wished to

state in the presence of his father, that two lugs were necessary, *i.e.*, one lug for each meal. Said R. Joseph: This is not so. There are men who drink only one goblet-full in the morning and another in the evening (a goblet-full is supposed to be a quarter of a lug); hence two goblets-full are sufficient for an Erub.

What is the quantity of dates sufficient for an Erub? Said R. Joseph: "One Kabh." What is the quantity of Sheshitha (a dish made of parched corn and honey)? Said R. A'ha bar Pinhas: Two spoons-full. What is the quantity of roasted ears (of corn)? Said Abaja: Two bunis (measures used in the city of Pumbaditha).

Abayi said again: "My mother told me, that roasted ears are good for the heart and drive away care." He said again: My mother told me, that one who has heart-disease should take the meat from the right shoulder of a ram, bring some willow branches, burn them, and roast the meat on the coals. Then he should eat the meat and drink wine thinned with water.

Said R. Jehudah in the name of Samuel: "Of all things that are eaten with bread it is sufficient to use a quantity eaten with bread at two meals; but of such things as are eaten by themselves sufficient for two meals must be used for an Erub. Of raw meat sufficient for two meals if eaten by itself must be used, but of cooked meat Rabba said it is sufficient to use as much as is eaten with bread at two meals, and R. Joseph said as much as is eaten at two meals by itself should be used, and he said: "Whence do I adduce this? Because I saw that the Persians eat roasted meat without bread." Rejoined Abayi: Are the Persians the majority of the whole world?

R. Hyya bar Ashi said in the name of Rabh: "An Erub may be made with raw meat." R. Simi bar Hyya said: "An Erub may be made with raw eggs." And how many should be used? Said R. Na'hman bar Itz'hak: "Sinai [1] said, two eggs should be used."

R. Huna in the name of Rabh said: If one vowed, that he would not eat this loaf of bread, an Erub may nevertheless be made for him with that loaf; because though he must not eat it, others may. If he says, however, that this loaf is on him, *i.e.*, he devotes this loaf of bread (in honor of the Lord), it must not be used for an Erub.

An objection was made: If one vowed concerning a certain loaf of bread, an Erub may nevertheless be made with it. Shall we not assume that he said: "This loaf of bread is on me"? (*i. e.*, he devoted that loaf of bread in honor of the Lord). Nay; be said: "I vow not to eat this loaf of bread," and such seems to be the case; because the latter part of the Boraitha states distinctly, that he said: "I vow not to taste any part of this loaf." What is the law, however, if the man said that the loaf is on him? It must not be used for an Erub? If that is so, why was it taught in the latter part of the Boraitha: "If he said the loaf is consecrated, an Erub must not be made with it, because it is not allowed to make an Erub with consecrated things." Why should this whole argument be repeated? Could it not be simply stated, that if the man vows not to eat the loaf an Erub may be made with it; but if he declares the loaf to be on him, an Erub must not be made with it? But as it does not say, that the loaf is on him in the first part of the Boraitha, there is a contradiction to R. Huna? R. Huna said the same thing as R. Eliezer said elsewhere. Did R. Eliezer indeed say so? Did we not learn, that R. Eliezer said: "If a man said: 'This loaf of bread is on me,' an Erub may be made with it, but if he said, 'This loaf is consecrated,' it must not be used for an Erub, because an Erub must not be made with consecrated things"? There are two Tanaim who report the dictum of R. Eliezer in different ways.

"*An Erub may be made for a Nazarite with wine*." This Mishna is not in accordance with the opinion of Beth Shammai, as we have learned in the following Boraitha: An Erub must not be made for a Nazarite with wine, nor for an ordinary Israelite with heave-offering. So said Beth Shammai; Beth Hillel, however, said: "This may be done." Said Beth Hillel to Beth Shammai: "Will ye not admit, that an Erub may be made for a man who is obliged to fast on the Day of Atonement, although he must not eat it?" They answered: "Yea." "Then," rejoined Beth Hillel, "as we are permitted to make an Erub for a man fasting on the Day of Atonement, so may we also make an Erub for a Nazarite with wine, and for an ordinary Israelite with heave-offering." What reason have Beth Shammai for prohibiting this? They give as their reason the fact, that a man may eat the Erub while it is yet day (before the eve of the Day of Atonement); but a Nazarite must not at any time drink wine nor an ordinary Israelite eat heave-offering.

This whole Boraitha is not in accordance with the teachings of Hananiah, as we have learned in the following Boraitha: "Beth Shammai do not recognize an Erub unless a man carries out his bed and all the utensils he intends to use to the place where he proposes to make the Erub, so taught Hananiah."

According to whose opinion is the Boraitha which states, that a man who deposits his Erub while wearing a black garment must not go out on the morrow dressed in a white garment, and *vice versa*? Said R. Na'hman bar Itz'hak: This is in accordance with the opinion of Beth Shammai as interpreted by Hananiah.

"*Symmachus said: 'Unconsecrated things only may be used*,'" etc. Consequently Symmachus does not dissent as regards making an Erub for a Nazarite with wine, but does dissent as regards heave-offering for the Erub of an ordinary Israelite. Why is this so? Because a Nazarite may go to a sage and be declared free from his vows as a Nazarite. As regards heave-offering for the Erub of an ordinary Israelite, he holds with the Rabbis, who decreed, that all things which are prohibited by rabbinical law on account of the Sabbath-rest are also prohibited for the time of

twilight, and as regards heave-offering, an ordinary Israelite must not handle it on Sabbath on account of Sabbath-rest.

According to whose opinion is the following Mishna? There are sages who hold, that the prescribed quantities, which are dependent upon the size of a man, should be measured accordingly. And the two meals which must be constituted by the Erub, should be two meals sufficient for the man who deposits the Erub? Said R. Zera: "This is according to Symmachus, who holds, that an Erub must be according to the requirements of the man for whom it is made."

"*The Erub of a priest may be placed on a spot which had formerly been used as a cemetery*." R. Jehudah bar Ami said in the name of R. Jehudah, that a spot which had formerly been used as a cemetery becomes clean of itself if trodden down by people.

"*R. Jehudah said: 'It may be placed in an actual burying-ground.'*" It was taught: Because the priest can go there in a wagon; for R. Jehudah holds, that a temporary tent is sufficient to intervene between a man and uncleanness. Furthermore we have learned that for a ritually clean priest, clean heave-offering may be placed as an Erub even in a grave and for the same reason as above, in spite of the fact that the heave-offering becomes unclean and the priest is at no time allowed to eat it.

MISHNA: For the Erub doubtful grain (Damai) (of which it is not known whether the legal dues like tithes, etc., have been acquitted) may be used; first tithes, from which the heave-offerings have been taken; and second tithes and consecrated things that have been redeemed. For priests, the first of the dough and heave-offerings may be used. It is not lawful however to use unseparated grain (from which it is certain that the legal dues have not been separated), or first tithes from which the heave-offering had not been taken, or second tithes and consecrated things which had not been redeemed.

GEMARA: [The reasons for the above Mishna and the discussions appear several times throughout the Talmud. We shall render them, however, but once and that in Tract Berachoth (benedictions), which contains the complete and identical version.]

MISHNA: Should a man send his Erub by the hand of a deaf and dumb person, an idiot, a minor or one who does not acknowledge the legal necessity of an Erub, it is not a valid Erub; if, however, he had commissioned another proper person to receive it from his messenger, it is a valid Erub.

If a man puts the Erub in a tree higher than ten spans above ground, it is not valid; but if he puts it lower than ten spans, it is. If he had put it into a pit, even though it be a hundred ells deep, the Erub is valid.

GEMARA: By the hand of a minor it would not be a valid Erub? Did not R. Huna say, that a minor may collect the Erub? This presents no difficulty. R. Huna's dictum refers to an Erub of courts (where only the meal is to be gathered in order to make common cause), but our Mishna refers to an Erub of limits (where a man must go and declare his intention of making that his resting-place for the Sabbath).

"*One who does not acknowledge the legal necessity of an Erub*." Who is meant thereby? Said R. Hisda, a Samaritan.

"*If, however, he had commissioned another person*," etc. Why! Perhaps the above messenger will not deliver it! As R. Hisda said elsewhere, that he should stand and see the messenger depart, so must he also do in this case. Still there is fear that the person commissioned to receive it from the messenger will not receive it? As R. Yechiel said elsewhere, that it is an established rule, that if a messenger has been intrusted with an errand, it is presumed that he will perform the errand and this must also be assumed in the case under consideration. Where did R. Hisda and R. Yechiel make these statements? Concerning

the following Boraitha, which teaches, that if a man sent his Erub through a trained elephant or a trained monkey and they deposited the Erub, ii is not valid, but if he had commissioned a person to receive it from them and deposit it, it is valid. The same question arose here which led to the statements of R. Hisda and R. Yechiel as stated above.

R. Na'hman said: The established rule, that a messenger will perform his errand, holds good where rabbinical laws are concerned, but not where biblical commandments are to be executed.

R. Shesheth, however, said: There is no difference. This rule holds good even where biblical commandments are concerned.

"*If a man put his Erub in a tree*," etc. R. Hyya bar Abba, R. Assi and Rabha bar Nathan sat together, and R. Na'hman sat near them. They were deliberating upon the question of where the tree spoken of in the Mishna was situated. Should we assume that it was standing in private ground, what difference does it make whether the Erub was put lower or higher; for private ground reaches even to the sky? Should we assume, that the tree was in public ground, where was the man's intention to rest on this tree; if on the top, why was the Erub which was placed above ten spans not valid? The man and the Erub would be in one place? We must say, that the man's intention was to rest at the foot of the tree (and if the Erub was placed above ten spans from the ground it is not valid, because at that height the tree becomes private ground by virtue of its being over four spans wide, while the foot of the tree is still public ground and consequently, the man would have to carry his food from private into public ground on Sabbath and that is prohibited). Still, will he not make use of a tree on the Sabbath and that is also prohibited? We must therefore assume, that the Mishna means that the tree was standing in public ground and it is according to Rabbi, who holds, that all rabbinical ordinances enacted on account of the Sabbath-rest (Shvuth) have no significance during twilight (before or after the Sabbath). Said R. Na'hman: "I thank ye, for so also did Samuel say." And they rejoined: "Was it so difficult for you to understand the Mishna, that you thank us for our opinion. [Did they not themselves argue and discuss the matter? Nay; they spoke thus to R. Na'hman.] Would you insert our opinion in the Gemara explaining this Mishna?" He answered: "Yea."

Rabha maid: All this refers to a tree, which was standing outside

of the addition (of 70 2/3 ells square) to a town; but if the tree was standing inside of the addition to the town, it makes no difference where the Erub was placed on it, even at a height of over ten spans, because the atmosphere of a town pervades all the trees and it makes no difference where the man takes his rest.

Where is the opinion of Rabbi and the sages to be found concerning the twilight as mentioned above? In the following Boraitha.. If a man placed his Erub on a tree ten spans above the ground, the Erub is not valid. If placed lower than ten spans it is valid, but must not be taken down; if it was placed within three spans from the ground it is valid and may also be taken down. If the Erub, however, was placed in a basket and then hung on the tree even at a height of over ten spans it is valid; such is the dictum of Rabbi; the sages however say, that where an Erub must not be taken down, it is also not valid. (Hence the difference of opinion between Rabbi and the sages.) Concerning what part do they differ? Shall we say, that they differ concerning the last part (*i.e.*, where the Erub was placed in a basket and hung up on a tree at a height of over ten spans, and the sages say therefore, that such an Erub is invalid because the tree will have to be used on Sabbath and that is prohibited), can we say, that incidental use of the tree is also prohibited? (We know that is not so.) Shall we say, that they differ concerning the first part (*i.e.*, where the Erub was placed at a height of over ten spans and must not be taken down), we must first see what kind of a tree is under consideration. If it be a tree of less than four spans' width, it is a free place (not subject to jurisdiction), then why should the Erub not be taken down? If it be a tree that was four spans wide, it is regarded as private ground, then of what benefit is the basket which contains the Erub (it must also be taken down from private into public ground); said R. Jeremiah: "With a basket it is different. It need not be taken down at all, but can be bent over and the Erub may be removed." (Although the tree is private ground, when the basket is bent over so that it is below ten spans it is no longer in private ground.)

R. Papa sat in the college and repeated the above Halakha. Rabh bar Shva raised an objection: "We have learned in a following Mishna: "But how must this be done? One carries out the Erub, where he means to deposit it on the eve of the first day of rest and remains with it until dusk, when he carries it back with him." If thou sayest then, that it is sufficient if he

hangs up a basket on the tree, because he can bend over the basket and bring it lower than ten spans, why should the Mishna quoted order, that the man must carry out the Erub, etc., and remain with it until dusk; it may just as well say, that as he can remain until dusk and carry it back, that it is sufficient, if he deposits it and carries it back with him at once.

Said R. Zera: This is only a precautionary measure for a case where a festival follows a Sabbath. (If it were said, that the man need not go out and deposit his Erub, wait until dusk and carry it back, then go out again on the next day and wait until dusk and eat the Erub, but that he may leave it there because he could have done as the Mishna states and the capability of performing an act is equivalent to its performance,--it would be wrong; for the day being Sabbath he would not have been permitted to carry it out again. Hence the precautionary measure was made to apply to all similar cases.)

"*If he had put it into a pit,*" etc. Where is the pit supposed to be situated? If in private ground it

is self-evident? For in the same manner as private ground has no limit as to height it also has none as to depth. If in public ground, the question arises, where the man intended to take his Sabbath-rest? If he intended to take it outside of the pit, he would be in one place and his Erub in another, and if he intended to take his rest inside of the pit, it is self-evident that he may deposit his Erub therein. We must say then, that the pit was situated in unclaimed ground (in a valley) where he intended to rest. The pit however being over ten spans deep is private ground, and as for carrying from private into unclaimed ground the opinion of Rabbi again prevails, that such acts as are prohibited on the Sabbath are not prohibited for twilight on account of the Sabbath-rest.

MISHNA: If the man should put the Erub on top of a cane or pole, that does not actually grow out of the ground, but is merely stuck in the ground, even though it be a hundred ells high, it is a valid Erub.

If one put it into a cupboard which he locked and then lost the key, the Erub is nevertheless valid. R. Eliezer said: If he does not know where the key is, the Erub is not valid.

GEMARA: R. Ada bar Massne propounded a contradictory question to Rabha: If the man should put his Erub on top of a cane, that does not actually grow out of the ground, it is valid; but if the cane were a growing one, the Erub would not be valid, because the tree would be handled thereby and that is not permitted;

then this would be in accordance with the opinion of the sages; while the previous Mishnaoth were according to Rabbi's opinion? This was already asked by Rami bar Hama of R. Hisda and the latter answered, that the previous two Mishnaoth were in accordance with Rabbi's opinion, while this Mishna is in accordance with the opinion of the sages.

Rabhina, however, said, that this Mishna is also in accordance with Rabbi's opinion, but here the precautionary measure is enacted, lest the man might break down the cane if it grew out of the ground, while a tree is too stout to be broken down, and in this case Rabbi concurs with the sages.

One Friday, a military garrison came to Neherdai and occupied the city, so that there was no room for the college of R. Na'hman. Said R. Na'hman to his disciples: "Go out into the field and incline the growing bushes towards each other, so that we have room enough to study in to-morrow." So Rami bar Hama, according to another version, Uqba bar Ada objected: "Did we not learn in this Mishna, that an Erub must not be put on growing stalks or cane?" Answered R. Na'hman: The Mishna refers to brittle (withered) cane, but as for healthy (moist) bushes it is not prohibited.

"*If one put it into a cupboard, etc., and lost the key*." Why should the Erub be valid? The man is in one place and the Erub in another? He cannot even obtain it without a key. Rabh and Samuel both said, that the Erub is valid only when the cupboard is not firmly immured but is loosely built, so that the bricks maybe removed and the Erub taken out, and that the Mishna is according to R. Meir's opinion, who holds, that this may be done on a festival to commence with and that the Mishna refers to a festival only, and not on a Sabbath. If this be so, how will the following

clause of the Mishna be explained: "R. Eliezer said: If the key be lost in the city, the Erub is valid, but if lost in the field, it is not valid." If the Mishna refers to a festival, what difference does it make where the key was lost. Carrying is not prohibited on a festival? The Mishna is not complete and should read thus: If one put it into a cupboard, which he locked and then lost the key, the Erub is nevertheless valid, providing it was a festival. On Sabbath, however, it is not valid. If the key was subsequently found, whether in the city or in the field, the Erub is nevertheless not valid. R. Eliezer, however, said: If it was found in the city, the Erub is valid, because he holds to R. Simeon's opinion, who said, that

all the courts and wood-sheds in the city are as one ground and the key could be brought through them; but if found in the field it could not be carried.

Rabba and R. Joseph both said: "Our Mishna treats of a wooden cupboard and the Tana who holds that if the key was lost, the Erub was valid, considers the cupboard the same as a vessel which may be taken apart on the Sabbath and the Erub taken out, while R. Eliezer considers the cupboard the same as a tent which must not be taken apart on the Sabbath." How can they differ as to its being a vessel or a tent? If it was large all agree, that it is a tent, and if it was small all agree, that it is a vessel? Therefore Abayi and Rabha both say, that the Mishna treats of a case where the key was tied to the lock by a string, which could not be undone by hand. The first Tana holds according to R. Jose, that all vessels may be handled on the Sabbath for any purposes whatever (hence a knife used for cutting bread may be used to cut the string), whereas R. Eliezer holds according to the opinion of R. Nehemiah, who decrees, that all vessels may be handled on Sabbath only for the purposes for which they are intended.

MISHNA: Should the Erub roll (or be moved) out of the limit of the Sabbath distance, should a heap of mould fall on it, or should it be burned, or if the heave-offering (used for the Erub) became unclean, and any or all of this take place while it is yet day (*i.e.*, before the Sabbath set in) the Erub is not valid. If it take place, however, after dusk (when it is already Sabbath) the Erub is valid. If the time when it took place is doubtful, R. Meir and R. Jehudah both say: This is (like driving) an ass and (leading) a camel (meaning, that a man is hemmed in on all sides). R. Jose and R. Simeon say: A doubtful Erub is valid? R. Jose further said: Abtolymus attested upon the authority of five elders, that a doubtful Erub is valid.

GEMARA: Said Rabha: (If the Erub rolled outside of the limit of the Sabbath distance) for a distance of over four ells it is not valid; but if it rolled for less than four ells, the man who deposited the Erub is allowed four ells to move in, outside of the limits, consequently the Erub is valid.

"*Should a heap of mould fall on it*," etc. At a casual glance it was assumed, that the Erub could have been extracted from under the heap of mould by hand, and accordingly the Mishna was in conformity with the opinion of Rabbi, that at twilight such acts as are prohibited by rabbinical law on account of the

[paragraph continues] Sabbath-rest may be performed; subsequently, however, the conclusion was

arrived at, that the Mishna is in accordance with Rabbi's opinion, and that the Erub in this instance could not be extracted by hand but by means of a hoe.

It was necessary to insert both clauses (concerning the rolling of the Erub and its being buried beneath a heap of mould) in the Mishna and for the reason; that, were the first clause only inserted, one might say: "If the Erub rolled out beyond the limits, it was no more in its place and hence it is invalid; but if it was simply buried beneath a heap of mould it is still in its proper place and why should it not be valid?" If the latter clause only had been inserted, one might say: "In this case the Erub was buried and could not be seen, hence it is invalid, but if it merely rolled out and can be seen, the same wind might bring it back, why should it not be valid?" For this reason it was necessary to mention both cases.

"*Or should it be burned, or if the heave-offering (used as an Erub) became unclean*," etc. The ordinance referring to an Erub which was burned up is taught in order to show the firmness of R. Jose, who declares, that (if a doubt existed whether the Erub was burned before or after dusk) although the Erub is no longer in existence, it is still valid, and the ordinance referring to heave-offering which became unclean was taught to show the firmness of R. Meir, who maintains that although the heave-offering was still there and only a doubt existed as to whether it became unclean before or after dusk, the Erub is nevertheless invalid. Is it possible, that R. Meir holds a doubtful case based upon rabbinical law to necessitate the more rigorous decision? R. Meir holds, that the law pertaining to Sabbath-limits is biblical. Does R. Meir indeed hold thus? Have we not learned in a Mishna further on (Chapter V., Mishna 3), that R. Meir maintains, when measurements are made to determine the Sabbath-limit and mountains are encountered that it is permitted to cut straight through the mountains (in an imaginary sense or figuratively speaking), and such subterfuges are certainly not allowed where biblical laws are concerned?

The latter opinion while credited to R. Meir is not in reality his own, but the opinion of his teacher, while the former is his own conviction and the proof is, that the Mishna quoted states distinctly: R. Dostai ben Janai said: I have *upon the authority* of R. Meir, etc.

We have learned in a Boraitha: How should the dictum of

R. Jose to the effect, that "a doubtful Erub is valid" be explained? Thus: If an Erub was made with heave-offering concerning which there was a doubt whether it became unclean while it was yet day, or after dusk, or with fruit concerning which there was a doubt whether the tithes had been acquitted while it was yet day or after dusk, it constitutes a doubtful Erub, which is nevertheless valid; if, however, the Erub was effected with heave-offering concerning which there was a doubt whether it was clean or unclean to commence with, or with fruit concerning which there was a doubt whether tithes had been acquitted at all, it does not constitute a doubtful Erub, which *is* valid.

Let us see! Why is it said, that heave-offering, concerning which there was a doubt whether it became unclean before or after dusk, would constitute a doubtful Erub which was nevertheless valid, because the heave-offering is presumed to be in its original condition and that was certainly clean, why should not the same case apply to the fruit concerning which there was a doubt, whether tithes had been acquitted thereof or not, let the fruit also be presumed to be in its

original condition and that is unseparated (of which tithes had *not* been acquitted)? Do not say, therefore, that the fruit was doubtful as to its having been separated but say: there was a doubt whether it had not subsequently been mixed with other (unseparated) fruit before or after dusk.

R. Samuel bar R. Itz'hak asked of R. Huna: If there were two loaves of bread before a man, one of which was clean and the other unclean and he said: "Make an Erub for me with the clean loaf wherever it may be"; but did not know which was which. [If both loaves which were heave-offerings, were used in making the Erub; for if they were ordinary and even (ritually) unclean they may be eaten by an ordinary Israelite], what is the law according to the diverse opinions? According to R. Meir, who pronounced a doubtful Erub invalid in a case where the entire Erub would have been unclean, it may be said, that in this case, where one of the loaves was positively clean, he may hold the Erub to be valid; or according to R. Jose, who pronounces a doubtful Erub valid in a case where if it *is* clean, he can distinguish it, it may be said, that in this case the Erub, would in his opinion be invalid because although part of it is clean, he cannot distinguish it from the unclean?

R. Huna answered: According to both R. Meir and R. Jose, when the Erub is deposited (while it is yet day) it must be

fit to eat and in this case it could not be eaten to commence with, because, the clean could not be distinguished from the unclean, how then could an Erub be made therewith?

Rabha asked of R. Na'hman: If a man say: "This loaf of bread is to-day ordinary but to-morrow it shall be consecrated. Nevertheless make me an Erub therewith." What is the law? (Does it become consecrated at twilight and, as it is not permitted to make an Erub with consecrated things, it is not valid as an Erub, or does it become consecrated after twilight?) "The Erub is valid," was the answer. What is the law, however, if the man say: "To-day this loaf is consecrated, but tomorrow it shall be ordinary (*i.e.*, it shall be redeemed by a sum of money representing its value); nevertheless make me an Erub therewith?" "The Erub is not valid," was the answer. What is the difference between the two cases? Said R. Na'hman to Rabha: "If thou wilt measure a whole Kur of salt and present me with it, [1] I shall tell thee the answer: If the loaf of bread was ordinary when it was deposited as an Erub, the fact, that at twilight it becomes doubtful, whether it is consecrated or not, does not destroy its validity as a legal Erub, but if the loaf of bread was deposited while yet consecrated, the doubt existing at twilight whether it had already become ordinary does not nullify its sanctity as a consecrated object, and as a consecrated object cannot be deposited as an Erub, the validity of the Erub, is impaired."

MISHNA: A man may make his Erub, conditional and say: If foes come from the east, my Erub shall be valid for the west; should they come from the west, my Erub shall be good for the east; should they come from both sides, I am at liberty to go in what direction I please; should they not come from either side, I am like the rest of my townsmen. Should a sage come from the east, my Erub shall be valid for the east; should one come from the west, my Erub shall be valid for the west; should one come from each side, I am at liberty to go in which direction I please; should none come from either side, I am like the rest of my townsmen. R. Jehudah. said: If one of the two sages (should they come at the same time) had been the man's teacher, he must go to meet his teacher; if both had been his teachers, he may go in which direction he pleases.

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GEMARA: "*R. Jehudah said: 'If one of the two sages*,'" etc. What is the reason of the dissension of the sages from R. Jehudah's opinion? Because it frequently happens, that a man has a greater fondness for his colleague than for his teacher.

Rabh said: This part of the Mishna (wherein R. Jehudah states, that "if both sages had been the man's teachers, he may go in whichever direction he pleases") does not hold good, because Ayo taught: R. Jehudah said: "A man cannot make an object conditional upon two contingencies and in this case of the Erub he may make it conditional upon the arrival of a sage from either the west or the east, but not upon sages arriving from opposite directions." Why can he not make it conditional upon the arrival of sages from opposite directions? Because R. Jehudah does not admit of the theory of premeditated choice (*i.e.*, he does not consent to a man deciding upon a certain thing on one day and declaring that it had been his intention to decide in that manner since the day before), hence if two sages come from opposite directions, the man cannot say, that he had intended to meet the sage towards whom he went at the time he deposited the Erub, *i.e.*, on the day before.

If R. Jehudah does not hold to the theory of premeditated choice why does he consent to a man making an Erub and saying: "If the sage come from the east, my Erub shall be good for the east, and if from the west, for the west." His choice is certainly dependent upon two conditions; first the condition, that the sage will come from either one of two directions, and second, that he may not come at all, in which case his Erub is of no account. If the sage arrived on the morrow, and the man will go forward to meet him, he (the man) will be compelled to claim a premeditated choice saying, that he had intended when depositing his Erub to go in that direction and that would be incorrect; for it may be, that at the time the Erub was made, the sage himself did not know from which direction he would come.

Said R. Johanan: The statement of Ayo in the name of R. Jehudah, that a man may make his Erub conditional upon the arrival of a sage from the east or west holds good, only if the sage had already started on his way and was no more than four thousand ells away from the man [*i.e.*, if he or his Erub was at the time when the man deposited his Erub already within the legal limit established through the deposition of his (the sage's) own Erub]. Hence it was not a premeditated choice on the

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part of the man dependent upon the two conditions cited, for the sage was already on his way and his coming from a certain direction was an accomplished fact.

Why does Rabh say, that the Mishna does not hold good because of Ayo's statement? Let him say on the contrary, that Ayo's statement does not hold good, because the Mishna opposes it? Nay; it would not be proper; for we have learned elsewhere, that R. Jehudah does not hold to the theory of premeditated choice. Ula, however, declares, that Ayo's statement should be discountenanced on account of the Mishna (and as for the report, that R. Jehudah discards the theory of premeditated choice, Ula declares, that on the contrary, he holds it to be good).

Said Rabha to R. Na'hman: Who is the Tana, who holds, that the sages also discountenance the

theory of premeditated choice? For we have learned as follows: If one man said to five others: "I will make an Erub for any one of you whom I may choose, and if I desire, he shall be permitted to go within its limits, and if not, he must not do so." If he made his decision, while it was yet day (before the Sabbath set in) his Erub is valid; but if he made his decision after dark, his Erub is not valid, (because it was not known at twilight which man he had chosen). R. Na'hman was silent and did not answer.

Should he have said, that this was according to the school of Ayo? He had not heard of Ayo's decree. Said R. Joseph: Wouldst thou ignore the other Tanaim? There are other Tanaim who dispute the above decision, as we have learned: If a man said: "I will make an Erub for all the Sabbaths of the ensuing year. If I then choose to go, I shall do so, and if not, I shall not." If he made his decision while it was yet day on the day preceding Sabbath, he may go, but if he made his decision after dusk, R. Simeon says, his Erub is still valid, and the sages say, it is not. (Hence there are sages who do not hold to the theory of premeditated choice.)

Have we not heard elsewhere, that R. Simeon does not hold to the theory of premeditated choice? This would be a contradiction made by R. Simeon to himself? Therefore learn to the contrary: (R. Simeon says, the Erub is not valid, and the sages say it is.) Why this question? Can it not be, that R. Simeon does not hold the theory of premeditated choice to be good where biblical laws are concerned but does hold the theory good for rabbinical laws? R. Joseph maintains, that one who admits

of the theory of premeditated choice does so for both biblical and rabbinical laws, and one who discountenances the theory does so for *both* kinds of laws.

MISHNA: R. Eliezer said: When a festival precedes or succeeds a Sabbath (by one day), a man should prepare two Erubin and say: My first Erub is to be valid for the east and my second for the west; or my first for the west and the second for the east. My Erub is valid for the first day and the second day I am like the rest of my townsmen, or my Erub is good for the second day and the first day I am like my townsmen. The sages however hold, that one may prepare his Erub for one direction only; otherwise it is not valid at all; also that he must prepare his Erub for both days, or it is not valid at all. But how must this be done? One carries out the Erub to the place, where he means to deposit it on the eve of the first day of rest and remains with it until dusk, when he carries it back with him. He then brings the Erub out again on the second day, remains with it till dark and then cats it and goes away. It is obvious, that in this manner he gains his walk beyond the Sabbatical limit and he gains by eating his Erub. Should his Erub have been eaten on the first day, it is a legal Erub for the first day only; but not for the second day. R. Eliezer said to them: "Thus ye acknowledge to me that they are two distinct holidays (*i. e.*, that the sanctification of one day is not equal to that of the other)."

GEMARA: What do the sages mean to tell us: If a man prepares his Erub for one direction, it is good for both days and if he prepares it for both days it is good for one direction? What need is there of this repetition, is it not one and the same thing? Nay; the sages mean to say to R. Eliezer: "Wilt thou not acknowledge, that it is not permitted to make two Erubin for one day, one of which shall be good for the South for one half of the day and the other be good for the North for the other half of the day?" and he answered: "Yea." "Then," rejoined the sages, "in the same manner as *this* is not permitted, it is also not allowed to make Erubin good for both days,

which should in addition be also good on one day for the east and on the other for the west." [What answer could R. Eliezer make to this? He might say, that in the case of the two Erubin for one day, the sanctification of that one day continues throughout the entire time of the validity of the Erub, whereas in the case of the Erubin for both days, the sanctification of the one day (Sabbath) is not the same as that of the other day (the festival);

therefore a separate Erub may be made for each sanctification in a different direction.] Said R. Eliezer to the sages again: "Let us suppose now, that a man did not make an Erub, but on the eve of the first day went to the place, where he should have made it, personally and declared that he would take his Sabbath-rest there. Would this hold good also for the second day? Nay, he would have to return on the following day and again declare his intention of resting there the next day, and then it would be lawful? The same theory applies to an Erub. If he deposited it on the eve of the first day, and it had been eaten when deposited, he would have to make another Erub for the second day?" and they answered, "Yea." "Now will ye not acknowledge that the two days have each a separate degree of sanctification?"

[What reply can the sages make to this? They may declare that the fact of there being a distinct degree of sanctification for each day is rather doubtful to them and for that reason they desire to enforce the more rigorous interpretation of the ordinance both ways, namely, that an Erub must not be made for each of the two directions, lest there be but one degree of sanctification for both days and that one Erub cannot serve for both days, lest there be a different degree of sanctification for each day.]

Again the sages said to R. Eliezer: "How is it, if no Erub at all was made on the eve of the first day? Thou wilt acknowledge that a man cannot go and make an Erub on the eve of the second day?" and he answered, "Yea." "Then," rejoined the sages, "thou thereby dost admit, that there is but one degree of sanctification for both days." [What will R. Eliezer say to this? He will say, on the contrary, that there *are* two degrees of sanctification and just for that reason one must not make the Erub on the eve of the second day, because one must not prepare for a festival on the Sabbath or *vice versa*.]

The Rabbis taught: "If one made an Erub on the eve of the first day by means of his feet (*i.e.*, by standing at the place where he intends to rest) he must do so again on the eve of the second day. If he made an Erub (of victuals) on the eve of the first day and the Erub was consumed, it does not hold good for the second day. Such is the dictum of Rabbi. R. Jehudah, however, said. "This is like driving an ass and leading a camel" (*i.e.*, R. Jehudah means to say this: If the two days have but one degree of sanctification and the Erub was made for both days,

the maker loses the two thousand ells in the opposite direction from that towards which his Erub was made, and merely gains two thousand ells in the one direction towards which his Erub was made. If the two days have different degrees of sanctification and hence the Erub is valid only for one day, the maker of the Erub should on the second day be on a par with the rest of his townsmen, but in reality he only has two thousand ells on the way back to the town and no more). R. Simeon ben Gamaliel and R. Ishmael the son of R. Johanan ben Berokah, however, both say, that if a man made an Erub with his feet on the eve of the first day it suffices for the

second day and if he made an Erub (of victuals) on the eve of the first day and it was consumed, he is exempt from making it on the eve of the second day. Said Rabh: "The Halakha prevails according to the opinion of the four old sages and in conformity with R. Eliezer, who says, that the two days have different degrees of sanctification; and the four old sages are: R. Simeon ben Gamaliel, R. Ishmael the son of R. Johanan ben Berokah, R. Elazar ben R. Simeon and R. Jose ben R. Jehudah. The last of these is generally quoted by Rabbi anonymously wherever his opinion seems to be justifiable and according to another version, one of the four sages is R. Elazar ben Samua instead of R. Jose ben R. Jehudah. Rabh's information on this point was derived from a tradition, which was to the effect, that those four sages held in accordance with R. Eliezer concerning the two degrees of sanctification for both days.

R. Jehudah said: If one made an Erub on the eve of the first day with his feet, he must do likewise on the eve of the second day, and if he made an Erub on the eve of the first day with bread, he must make it in like manner on the eve of the second day. If he made an Erub on the eve of the first day with bread which was lost, he may make it on the eve of the second day with his feet, but if he made it with his feet in the first instance he must not make it with bread in the second instance, because making an Erub with bread to commence with on Sabbath or on a festival would be an infraction of the law prohibiting the preparing on a Sabbath for a festival or *vice versa*. If a man made an Erub with bread on the eve of the first day, he must make it with bread on the eve of the second day also and, according to Samuel, he should use the same bread in both cases (for if he uses new bread in the second instance it will be a case of preparing on a Sabbath for a festival). Said R. Ashi: We can adduce

this also from our Mishna, which teaches: "But how must this be done? One carries out the Erub to the place, where he means to deposit it on the eve of the first day of rest and remains with it until dusk, when he carries it back with him; he then brings the Erub out again on the second day, remains with it until dusk, then eats it and goes away." (The fact that it says, "he carries it back with him and then brings it out again," is proof that it must be the same Erub.) The sages that differ with Samuel and assert that new bread may be used on the eve of the second day maintain, that the Mishna merely administers good advice and tells us, that we need not trouble ourselves to make a new Erub in case the first one is lost.

MISHNA: R. Jehudah said: "If a man apprehend that the new year will be celebrated two days, he must prepare two Erubin." He then says: My Erub of the first day shall be valid for the east and of the second day for the west; or of the first day for the west and of the second day for the east. My Erub shall be valid for the first day, and on the second I am like my townsmen; or my Erub shall be valid for the second day and on the first I am like my townsmen. The sages however did not coincide with him.

R. Jehudah further said: "A man may conditionally separate (the heave-offering from) a basket of fruit on the first day of the new year and eat it on the second day; likewise an egg which is laid on the first day of the festival may be eaten on the second. The sages however do not coincide with him.

R. Dosa ben Harchinas said: He who stands before the pulpit to pray on the first day of the new year must say: Strengthen us, O Lord our God, on this day of the new moon, whether to-day or

to-morrow (be the true day). And on the morrow he says the same prayer with the variation "whether this day or yesterday be the true one." The sages, however, do not agree with him.

GEMARA: Who are the sages, that do not coincide with R, Jehudah? Said Rabh: That is R. Jose, as we have learned in a Boraitha: The sages agree with R. Eliezer that "if a man apprehend that the new year will be celebrated two days, 1 he

should prepare two Erubin. He then says: My Erub of the first day shall be valid for the east and of the second day for the west; or of the first day for the west and of the second day for the east. My Erub shall be valid for the first day and on the second I am like my townsmen; or my Erub shall be valid for the second day and on the first I am like my townsmen." R. Jose, however, does not consent to this. (He holds that if the witnesses come before the high court in the afternoon of the first day that had been kept holy and declare that the next day is New Year, both days are nevertheless holy and are of one degree of sanctification.)

We have learned in a Boraitha: How does R. Jehudah explain his dictum, that "a man may conditionally separate (the heave-offering from) a basket of fruit on the first day of the New Year and eat it on the second?" Thus: If there were two baskets of unseparated fruit before a man on the first day of the New Year he may say: "If to-day is the ordinary day and to-morrow is the holy day, let the heave-offering separated from this basket of fruit also serve for the other, and if to-day is the holy day and to-morrow the ordinary, then I have said nothing." He then designates the fruit which he calls heave-offering and lets it remain. On the morrow again he may say: If to-day is an ordinary day, let the heave-offering of this basket also serve for the other, but if to-day be a holy day I have said nothing. He may then designate part of the fruit in the one basket and call it heave-offering and eat the remainder in both baskets. R. Jose however prohibits this not only for the two days of the new year but for the two days of every other festival, which is celebrated in exile. 1

It happened that a stag was caught on the first day of a holiday (in exile) at the house of the Exilarch and on the second day it was slaughtered. R. Na'hman and R. Hisda partook of the stag, but R. Shesheth would not do so. Said R. Na'hman: "What shall we do with R. Shesheth who does not eat venison?" Rejoined R. Shesheth: "How can I eat this venison; for did not Issi teach in a Boraitha [or a Boraitha taught, that Issi said],

that R. Jose would not permit this to be done even during the two days of a holiday in exile?"

Once R. Shesheth met Rabba bar Samuel and asked him: "Did master teach anything regarding the sanctification of the holidays?" Answered Rabba: "Yea, I taught in a Boraitha, that R. Jose coincides with the sages, as far as the two days of a holiday in exile are concerned." Rejoined R. Shesheth: "If thou shouldst meet any of the Exilarch's household, say nothing to them about this Boraitha."

It once happened that herbs were brought to the city of Mehuzza on a festival. Rabha went out and noticed, that the herbs were somewhat withered. He permitted the herbs to be bought,

saying: "It is obvious, that these herbs were not gathered on this day, and the only objection that might be made to their being purchased can be, that they were brought from beyond the techoom (legal limits)." The law, however, ordains, that if things are brought for one Israelite from without the techoom, another Israelite may use them, and in this case, where the herbs were brought even for the Gentile inhabitants they can in so much greater a degree be used by Israelites. Subsequently, however, he observed, that herbs were brought in large quantities, so he prohibited the purchase of them on a festival.

The men whose occupation was to prepare baldachins for marriages once cut off branches of myrtle on the second day of a holiday in exile. The moment it became dark, Rabhina permitted the people to smell the myrtle. Said Rabha bar Tachlipha to Rabhina: Master should have prohibited this, for these people are ignorant (and if thou wilt permit this, they may ignore the second day of the festival entirely). R. Shmaya opposed this: "Thou sayest, because they are ignorant, and even were they intelligent men, would it be allowed? Is it not necessary to allow sufficient time after the Sabbath to expire until the branches can be cut off afresh?" They finally went and asked Rabha and he decided that it was necessary to allow sufficient time to expire until the branches could be cut anew.

"*R. Dosa ben Harchinas said*," etc. Said Rabba: When we were in the college of R. Huna, a question was propounded by us as follows: "Must the reference to the day of the new moon be added to the prayers recited on the day of the New Year?" Shall we assume, that because there are separate additional sacrifices for each, that the reference to the day of the new moon shall be

added to the prayers of the New Year, or because the New Year is mentioned in the prayer as the "day of Remembrance" such mention will suffice for both occasions? R. Huna answered us by quoting the Mishna: R. Dosa ben Harchinas said: He who stands before the pulpit to pray on the first day of the New Year must say: "Strengthen us, O Lord our God, on this day of the new moon, etc." Does not R. Dosa state this in order to demonstrate that the day of the new moon must be explicitly mentioned? Nay, he simply means to make the prayer conditional but not because special mention must be made of the day of the new moon. It seems to us, that such is truly the case, because further on the Boraitha states, that so did R. Dosa act on all the days of the new moon throughout the year; but the sages did not coincide with him.

Now, if it be said, that the prayer was made conditional it is correct, (because there was a doubt concerning the exact day at each recurring new moon) but if it be said, that the new moon must be mentioned in the prayer *especially*, why should the sages not agree with him?

An objection was made: When New Year falls on a Sabbath, Beth Shammai say, ten benedictions are to be recited during the prayer and Beth Hillel say "only nine." [The first three are benedictions of praise, the last three benedictions of thanks; the Sabbath benediction, and the three pertaining to New Year, viz., the one in which God is proclaimed King (Malkhioth), the one referring to God's remembrance of his creatures (Zikhronoth) and the one referring to the sounding of the cornet (Shophroth), but according to Beth Hillel the Sabbath benediction is included in those pertaining to the New Year, hence there are only nine.] Now if we say, that the benediction for the new moon must be especially mentioned in the Musaph (additional prayer) then according to Beth Shammai, there should be eleven benedictions in all.

Said R. Zera: "With the benediction of the new moon it is different; because if the new moon fall on a Sabbath no separate benediction is made, but it is included in the Sabbath benediction at the morning and evening prayer; the benediction of the, new moon is also mentioned in the Musaph-prayer in conjunction with the new year benediction." Do Beth Shammai indeed maintain, that if the new moon fall on a Sabbath the benediction pertaining to it is included in that of Sabbath? Have we not learned, that if the new moon fall on Sabbath, Beth Shammai

hold, that eight benedictions must be recited in the prayer and Beth Hillel only seven? This question is not decided.

Rabba said: "When I was at the college of R. Huna the question arose, whether the benediction of the time [1] should be recited in the New Year and Day of Atonement prayers. Shall we say, that because these holy days only come from time to time, the benediction of time should be made, or, because the Bible does not classify them as festivals, no such benediction need be made? R. Huna could not answer the question but when I subsequently came to R. Jehudah's college, the latter said he made such a benediction even over a new pumpkin. I then said to him, that I did not question the right to pronounce this benediction over anything whatever, but I wished to know whether it was compulsory to do this on the New Year and the Day of Atonement. He then answered: Rabh and Samuel both said, that the benediction of time must be recited only for each of the three festivals."

An objection was made: It is written [Ecclesiastes xi. 2]: "Give a portion to seven, and also to eight." R. Eliezer said that by "seven" is meant the seven days of the creation and by "eight" is meant the eight days of the circumcision. R. Jehoshua said: "By 'seven' is meant the seven days of Passover, by 'eight' is meant the eight days of the feast of Tabernacles and by 'also' is meant Pentecost, New Year and the Day of Atonement." May we not assume, that by this is meant, that the benediction of time must be pronounced on all these festivals? Nay; this simply means to state, that benedictions should be recited but no special benedictions are specified. It seems to us, that this is the correct explanation; for the benediction of time is certainly not recited on every one of the days of the festivals but only the first day. This is not the question, because the benediction of time must be recited in the course of the festival; if not on the first day, on the second and so on. At any event this benediction must be made over a goblet (of wine)? Shall we assume, however, that the above is in support of the dictum of R. Na'hman, who holds that the benediction of time may be recited even in the market and without a goblet? This is not the question either; for if a man does not recite this benediction

on one day, he may do so on the next when he might come across a goblet. This would be feasible where the three (main) festivals and New Year are concerned, but how would it be with the Day of Atonement? What should the man do? Should he pronounce the benediction over the goblet on the day preceding the Day of Atonement before dusk, he would then and there usher in the Day of Atonement, and as is well known, he must not eat or drink on that day. Should he pronounce the benediction and let the goblet stand until after the Day of Atonement? Have we not learned that one must drink the contents of the goblet immediately after pronouncing the benediction; otherwise he must not make the benediction at all? Should he pronounce the benediction and then give the goblet to a child? In that case, there would be fear, lest the child

be accustomed to drinking on that day, and will continue to do so when grown and therefore the Halakha according to R. A'ha does not prevail. How, then, does the Halakha concerning the benediction of time on the New Year and the Day of Atonement prevail? The Rabbis sent the elder R. Yeimar to R. Hisda with instructions to observe how the latter proceeded on the eve of the New Year, and then to return and report what he had seen. When R. Hisda saw R. Yeimar (and upon questioning him as to his mission was told that he just called to see him) he said: If a wet piece of wood is lifted, it is obvious, that either the wood or its space is needed. (If thou camest thou certainly didst so with an object.) At about that time a goblet of wine was brought to R. Hisda and he pronounced the benediction of the day and also that of the time over it.

The Halakha prevails, that the benediction of time must be recited on the New Year and on the Day of Atonement and the Halakha also prevails that if a man forgot to recite it and was reminded of his negligence even in the market, he may recite it then and there.

Rabba said again: "When I was at the college of R. Huna, the question arose whether a young scholar, who fasted on the day preceding Sabbath must fast until night or in honor of the Sabbath break his fast earlier. R. Huna could not answer the question. I went to R. Jehudah and he could not answer this either." Said Rabha: "Let us see if we cannot decide this question ourselves from what we have learned in the following Boraitha: If the fast-day of the ninth of Abh fall on a Friday, bread may be brought to a man just before twilight of the size

of an egg, and he should eat it, in order that he may not enter upon the observance of the Sabbath while still in pain."

We have learned in a Boraitha: R. Jehudah said: It once happened that we were sitting before R. Aqiba on the fast of the ninth of Abh, which fell on a Friday, and just before dusk a soft-boiled egg was brought to him which he swallowed without even salting it, and not because he desired to eat it in that manner; but because he wished to show his disciples how the Halakha was carried out. R. Jose, however, said, that a man must fast through the entire day until dusk.

R. Jose said to the sages: "Will ye not admit, that if the ninth of Abh fall on the day after Sabbath, a man must stop eating while it is yet day on Sabbath?" and they answered "Yea." "What difference is there then between entering in upon the observance of the Sabbath while still in pain and finishing the Sabbath under the same conditions?" asked R. Jose. They answered: "In the first instance he fasted all day; but in this instance he had been eating and drinking all day and was surely not in pain." Finally, however, Ula said that the Halakha prevailed according to R. Jose.

Do we then act according to the opinion of R. Jose? Have we not learned, (concerning the Boraitha in Tract Taanith which teaches) that Rabbon Gamaliel said: "On a Friday the fast need not be completed," that upon the death of Rabbon Gamaliel, R. Jehoshua came and sought to nullify his decree and R. Johanan ben Nouri arose and declared: "We see that the body always follows the head. As long as Rabbon Gamaliel lived, we abided by his decisions. Now that he is dead, thou wouldst abolish them. Jehoshua! We will not listen to thee. The Halakha prevailed according to R. Gamaliel and so must it remain," and there was none to contradict R. Johanan ben Nouri. (Thus we see, that the decree of R. Gamaliel was accepted and not that of R. Jose.)

(This is no question!) In the generation of R. Gamaliel his decree was followed and in the generation of R. Jose, R. Jose's opinion prevailed.

And did they really act in accordance with R. Gamaliel's opinion during his generation? Have we not learned that R. Elazar ben Zadoc (who was certainly of R. Gamaliel's day) said: I am a descendant of Sanab of the tribe of Benjamin and it once happened that the ninth of Abh fell on a Sabbath, so we postponed it until the following day and we did not complete the fast because it was our holiday. Thus we see, that the fast was not

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completed because the tenth of Abh was a holiday and besides the fast-day was a postponed one. Had the ninth of Abh however fallen on a week-day, which for them would have been the eve of a festival, they would have completed the fast nevertheless and this is not in conformity with the decree of R. Gamaliel? Said Rabhina: How can ye compare that festival to our festivals. Their festival was not biblical and on a festival which is not biblical one may fast for three or four hours if he chooses. On a biblical festival, however, it is not allowed to complete the fast.

R. Joseph said: "I did not hear of this Halakha." Said Abayi: Thou didst relate this to us thyself, in reference to the Boraitha, that a fast-day must not be ordered on the days of the first of the month. (The occasion when R. Joseph related this is mentioned in Tract Taanith.) Mar Zutra related in the name of R. Huna: The Halakha prevails, that one may complete the fast until dusk.

Footnotes

66:1 Vide appendix to Tract Sabbath, Part II.

67:1 There is a difference of opinion between the commentators of the Mishnas. Some maintain that it is a species of pease and is used as fodder for cattle, and some maintain that it is a species of grain. See Maimonides' commentary on the Mishna Sabbath, Chap. XX. See also Hamashbir, Vol. V., Note cxxiii.

67:2 Weight mentioned in Bible, I Kings, chap. x. 17, and is equal to 100 drachms.

68:1 Sinai is another name for R. Joseph, who was well versed in Mishnas and Boraithas.

79:1 This expression is generally used in a joking sense when the question is a difficult one to answer.

85:1 The Israelites living in exile were dependent for their information concerning the date of the New Year entirely upon the messengers sent out by the high court in Palestine, which in turn fixed the date upon the testimony of witnesses who would announce when the new moon appeared (as explained in Tract Rosh Hashana). Thus the exiled people did not know whether the 30th or 31st day from the first day of p. 86 Elul would be proclaimed the first day of Tishri

(the New Year), and both were kept holy in consequence. For this reason the Mishna cites the ordinances referring to such as apprehend that the New Year will last two days.

86:1 In exile the Israelites celebrated two days each for the holidays of Passover, Tabernacles, and Pentecost, besides the New Year, and these are called the holidays in exile.

89:1 The full text of this benediction reads: "Blessed art Thou, Lord our God, King of the Universe, who hast allowed us to live and hast preserved us and hast allowed us to reach this time."

Next: Chapter IV: Sabbath Travel

CHAPTER IV.

REGULATIONS CONCERNING THE OVERSTEPPING OF THE LEGAL LIMITS ON THE SABBATH, AND MEASUREMENTS OF THE SABBATH-DISTANCE.

MISHNA: If foes, or an evil spirit (a fit of insanity?), caused one to go beyond the Sabbath limit, he after recovering his freedom must not move further than four ells; if the foes or the fit have carried him back within the limit, it is as if he had not gone beyond it. If they have carried him into another town, or into a pen or a fold for cattle, he according to Rabbon Gamaliel and R. Eliezer ben Azariah, may go about throughout the entire extent (of the town, pen or fold). R. Joshua and R. Aqiba maintain, that he must not move further than four ells. It once happened that these four sages came together from Parendisim (Brundusium, or Brindisi) and their vessel was still at sea on the Sabbath. Rabbon Gamaliel and R. Eliezer ben Azariah walked about throughout the whole vessel; but R. Joshua and R. Aqiba did not move beyond four ells, as they wished to take upon themselves the rigid observance. Once these four sages were on board a vessel and did not enter the harbor until after dark (on the eve of Sabbath); so they inquired of Rabbon Gamaliel: "What are we to do as to descending from the vessel?" He answered them: Ye may descend; for I observed, that we had already entered the limits of the Sabbath-distance before dusk.

GEMARA: The Rabbis taught: "There are three things, which cause a man to commit deeds against his own will and against the will of his Creator, viz.: Idolatry, and evil spirits and stress of poverty." [For what purpose do the Rabbis tell us this? In order, that we may pray God to deliver us from those evils.]

Three persons will never come to Gehenna: He who suffers from extreme poverty, he who suffers with a diseased stomach and one who is oppressed by the government, and others add also the man who is afflicted with a bad wife. [Why was the

latter not mentioned in the first place? Because if one has a bad wife he should divorce her. Those however who declare that one who has a bad wife will not see Gehenna refer to those, who cannot afford to make a settlement upon their wives, or to those, who have children and cannot divorce their wives. For what purpose did the Rabbis tell us this? In order, that a man, who is subject to these misfortunes, should accept them with resignation.]

Three classes of human beings die in the possession of their power of speech, viz.: "A man who is suffering from a diseased stomach, a woman lying in and a man suffering with dropsy." [For what purpose are we taught to this effect? In order that shrouds may be prepared for such people.]

R. Na'hman said in the name of Samuel: If one went out beyond the Sabbath-limit and foes or an evil spirit brought him back within the limit, he must not move more than four ells from where he stands. Have we not learned this in our Mishna, which says, if foes or evil spirits carried him out and then brought him back it is as if he had never gone out at all; now is it not self-evident that if he went out of his own accord, he has only four ells of space in which to move? We might assume that the Mishna teaches us, if foes or evil spirits carried him out and he returned of his own accord, he has no more than four ells of space, but if he went out of his own accord and foes or evil spirits brought him back it would be as if he never went out at all, hence this teaching of Samuel.

Rabba was asked: "How is the law regarding one, who only had four ells to move in and was compelled to go out to obey nature's call?" and he answered: "Great is the honor of man, which supersedes even a biblical negative commandment."

The men of Neherdai said: If the man in question is prudent, he will enter the legal limits, perform his necessities and then go on.

Said R. Papa: "If fruit was carried beyond the legal limits and then even purposely brought back, the right to move it within the limits is not forfeited, because the fruit certainly did not go out beyond the limits of their own accord." R. Joseph bar Shmaya objected to this statement: "R. Nehemiah and R. Eliezer ben Jacob both said: The fruit which was carried out must not be handled when brought back unless this was done unintentionally, but if intentionally, they must not be handled?" Concerning this, there is a difference of opinion between Tanaim

in a Boraitha elsewhere (and R. Papa holds with the Tana, who permits it).

Said R. Na'hman in the name of Samuel: "If one went out and did not know the legal distance he could traverse, he may walk on for a distance of two thousand medium steps. This will constitute the lawful limit of the Sabbath." He said again quoting the same authority: If one took his Sabbath-rest in a valley, and Gentiles made an enclosure around the valley on the Sabbath, he may go two thousand ells, but he may throw things over the entire extent of the valley." R. Huna said: "He may go two thousand ells, but may carry only for a distance of four ells." The reason R. Huna prohibits throwing is in precaution, lest the man throw a thing outside of his two thousand ells and go after it.

Hyya bar Rabh, however, said: He may go two thousand ells and may carry things inside of that limit.

Said R. Na'hman to R. Huna: "Do not refute the dictum of Samuel; for we have learned in a Boraitha in support of Samuel."

R. Huna said: "If one measured the legal distance on a Sabbath and his measurement came to an end in one half of a court, he may avail himself of that half of the court only." Is this not self-evident? If he ended his measurement in one half of a court, why should he not avail himself of that half? We might assume, that if the one half is permitted he might be tempted to use the other half also, so we are told that this precaution is not necessary.

R. Na'hman said: "Huna agrees with me, that if in measuring the Sabbath-distance, the measurement end in the edge of a house, one may throw things into the house although he must not go into it himself, for the edge of the house is a fixed sign for him and will remind him, that he must not enter the house." Said R. Huna the son of R. Nathan: "The necessity for a precautionary measure to prevent the man from entering the house forms the subject of a discussion between Tanaim as follows: If foes or an evil spirit have carried the man into another town, or into a pen or a fold for cattle, he may, according to Rabbon Gamaliel and R. Elazar ben Azariah, go about throughout the entire extent (of such a place); R. Joshua and R. Aqiba, however, maintain, that he must not move further than four ells." Now, we must assume that those who permit the traversing of the entire extent of such places do so because

they do not fear that the man will traverse the whole valley where those places are situated, and those who only allow four ells, do so, because they regard this precautionary measure necessary. The same argument applies also to throwing, viz.: Those who have no fear that the man will traverse the entire valley, permit throwing throughout the pen or fold where the man Is ensconced and those who allow him only four ells hold the same precautionary measure necessary where throwing and going after it is concerned.

Rabh said: "The Halakha prevails according to R. Gamaliel. where a pen, fold or ship is concerned," but Samuel said: "Only as far as a ship is concerned, but not as regards a pen or a fold." Thus we see that, as to a ship, all agree the Halakha prevails according to R. Gamaliel. What is the reason therefor? Said Rabba: "Because already before the Sabbath set in, the man is within the confines of the ship and although the ship was involuntarily carried out beyond the legal limits, the man had prepared his Sabbath-rest there." R. Zera said, however: "The reason is: that the man on board of the ship did not have four ells to move in, for the ship moves more than four ells every time it lurches foward, consequently he does not come under the law of four ells and may go throughout the entire extent of the ship." Rabba rejoined: "Thou referrest to a man who entered the ship while in motion. Concerning this, there is no difference between any of the Tanaim; even R. Aqiba permits the traversing of the entire ship, but they differ concerning a man who entered the ship while it was anchored."

Said R. Na'hman bar Itz'hak: From the Mishna itself we may infer, that there was no difference concerning a ship while in motion, because it states, that R. Joshua and R. Aqiba did not move beyond four ells, as they wished to take upon themselves the rigid observance. Were it not permitted at all, why should it say, that they wished to take upon themselves the rigid observance, they would have to obey the law?

Said R. A'ha the son of Rabha to R. Ashi: "The Halakha prevails according to R. Gamaliel where a ship is concerned." Then, there must be some who maintain that the Halakha does not prevail according to R. Gamaliel. Yea, there are, as we have learned in the following Boraitha: Hananiah the son of R. Jehoshua's brother said: "The whole day that R. Gamaliel and R. Aqiba were on board the ship they disputed concerning this Halakha, and yesterday my uncle affirmed the Halakha to the

effect, that as regards a ship at anchor it prevails according to R. Gamaliel and as for a pen or a fold it prevails according to R. Aqiba."

R. Hananiah propounded a question: Is there such a thing as a legal limit above ten spans from the ground or not? Concerning a pillar ten spans high and four spans wide one side of which was outside of the legal limit there is no question; for it is equal to the ground itself, but concerning a pillar, that was ten spans high and less than four spans wide or a man who went on board of a ship, does the law of legal limits apply or not? R. Hosea answered: "Come and hear! It once happened that four sages came together from Parendisim, etc. (see Mishna). If we say, that the law of legal limits applies to objects higher than ten spans, then it can be understood why R. Joshua and R. Aqiba took upon themselves the rigid observance (for concerning a ship in motion they do not disagree with the other sages), viz.: on account of the law of legal limits, but if this law does not apply to a ship, what rigid observance could they have taken upon themselves?" Rejoined R. Hananiah: "It may be that their ship was passing through shallow water, as related elsewhere by Rabha, and was not over ten spans from the ground."

Come and hear! The seven Halakhas related on a Sabbath morn in the presence of R. Hisda at Sura were related on the same evening in the presence of Rabha at Pumbaditha. Who could have decreed them? No one, but Elijah? Hence we see, that there is no such thing as legal limits above ten spans from the ground? Nay. It may be that those Halakhas were transmitted from one school to the other by Joseph the evil One, who did not observe the Sabbath.

Come and hear! If one say: I wish to be a Nazarite at the coming of the Messiah, he may drink wine on a Sabbath or on a festival but must not do so during the week-days. (For Messiah is liable to come at any time.) The Boraitha would be correct if we assume, that there *is* a legal limit above ten spans from the ground, because Messiah will then not come on the Sabbath or on a festival, but if there is no legal limit above ten spans, the man should not drink wine even on those days, because the Messiah might come. In that case it is different: for it is written [Malachi iii. 23]: "Behold, I send unto you Elijah the prophet before the coming of the day of the Lord, the great and the dreadful." Hence, if Elijah did not come on the day preceding

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[paragraph continues] Sabbath, he may drink on the Sabbath. If this is so, then he may drink on a week-day also providing Elijah did not come on the preceding day. It might be assumed, however, that Elijah had already come and appeared before the high court and for that reason the man should not drink on any day, lest Elijah had already come, then this would apply also to the Sabbath? There is a tradition among Israelites that it is an assured fact, that Elijah will not come on the eve of a Sabbath or a festival. If that is so, why should the man not be permitted to drink wine on the eve of Sabbath? Because although Elijah will not come, the Messiah himself might come.

Thus it must be assumed, that if there *is* a legal limit above ten spans, a man who wishes to be a Nazarite on the day of the coming of the Messiah should be permitted to drink wine not only on Sabbath and the festivals but also on the day following Sabbath, because Elijah cannot come on the Sabbath? The sages who prohibited a man of that kind to drink wine on a weekday were themselves in doubt as to the validity of a legal limit above ten spans and only made it more rigid for the man on general principles.

"*And did not enter the harbor until after dark,*" etc. It was taught in a Boraitha, that R. Gamaliel had a telescope, through which he could see for a distance of two thousand ells on land and on sea. If a man wishes to measure the depth of a valley, he should use one of those telescopes and if he should wish to measure a tree, he should observe his shadow, measure himself and his shadow and the shadow of the tree and calculate the proportion.

Nehemiah the son of R. Hanilayi was engrossed in thinking about a Halakha and inadvertently stepped out beyond the legal limits. Said R. Hisda to R. Na'hman: "Thy disciple Nehemiah is in trouble," and R. Na'hman answered: "Make him a partition with men and let him come back."

R. Na'hman bar Itz'hak sat behind Rabha who sat in the presence of R. Na'hman. Said R. Na'hman bar Itz'hak to Rabha: "How was the case when R. Hisda asked R. Na'hman concerning Nehemiah who had overstepped the legal limits? Shall we say, that there were sufficient men on hand who had made an Erub at the limits and could therefore go out to Nehemiah then the question was merely whether the Halakha prevailed according to R. Gamaliel, who said, that where there is a partition, even if a man had not declared his intention to rest there on the Sabbath,

he may avail himself of it and traverse its entire extent, or that there were not sufficient men who had made an Erub who could reach Nehemiah and the question presented itself, whether the Halakha prevailed according to R. Eliezer, that if a man went out two ells beyond the limits he may return, and Nehemiah did not go out further than that." Is this not self-evident? For if there were sufficient men to reach Nehemiah, why did R. Hisda ask R. Na'hman? Rabh had already decided that the Halakha mentioned prevailed according to R. Gamaliel and for R. Hisda Rabh was the final authority? The question was merely then, whether R. Hisda could make a partition with men who had not made an Erub, at the end of two ells beyond the limit, which according to R. Eliezer was free to everybody, so that Nehemiah who had gone further than two ells beyond the limit could avail himself of that partition and return.

R. Na'hman bar Itz'hak objected to the above, addressing Rabha: "Have we not learned in a Boraitha: 'If the wall of a booth fell in on a festival, one must not use a man, or an animal or vessels or put up a bed and cover it with a sheet in order to fill in the gap, because a temporary tent must not be erected on a festival to commence with and so much less on a Sabbath?'" Answered Rabha: Thou quotest this Boraitha but I can quote another which states: "A man can make a wall of his comrade, that he may be able to eat a meal or drink or sleep in a booth (the wall of which had fallen in); he may also put up a bed and cover it with a sheet to keep the sun off from a corpse or from food."

These two Boraithas are contradictory to each other? This .presents no difficulty. One of them is according to the opinion of R. Eliezer and the other according to the opinion of the sages.

It happened once, that some baldachin-makers brought in water through a partition formed by men. Samuel punished them, saying: "This was done in an emergency where a man had overstepped the legal limits accidentally but ye do this 'purposely.'"

It once happened that flasks of wine were thrown out of Rabha's house on the road in the city of Mehuzza. When Rabha came from his college, a number of men followed him as usual, and thus relying upon the partition formed by them, someone carried the flasks back into the house. Next Sabbath, the same thing happened, but Rabha would not permit the flasks to be carried back to the house, saying, that this time it might seem as

if it were done on purpose. In like manner straw was brought into the house of Levi, hay to the house of Zera, and water into the house of R. Shimi bar Hyya.

MISHNA: One who is authorized to go beyond the prescribed limit on important business pertaining to public or private safety and is told, that "it is already done," is at liberty to go two thousand ells in any direction. If he was still within the prescribed limit, it is as if he had not gone out at all, for all those who go forth on an errand of safety, are permitted to return to their homes on Sabbath.

GEMARA: What is meant by "if he was still within the prescribed limit"? Said Rabha: "This means to impart to us, that if he had not gone out beyond the limit, it was as if he had not left his house. Is this not self-evident? I would say, that if he had gone out of his house he forfeits his right to go two thousand ells in any direction he chooses, and we are told, that such is not the case." R. Shimi bar Hyya however said: "This means to state, that if the man had already gone beyond the usual limit but had not yet gone out of the additional limit allowed him by the sages for the errand, it is regarded as if he had not overstepped his own ordinary limit." Upon what point do they differ? Upon the permissibility of one end of a limit including another established limited distance adjoining it. The latter holds, that this point may be depended upon, while the former holds that it cannot.

"*For all those who go forth on an errand of safety*, "etc. Even such as go beyond four thousand ells? In the first part of the Mishna it is stated that they only have two thousand ells in each direction? What question is this? This is a case of where a man goes forth on an errand of safety, and on such an errand it may be permitted to go beyond four thousand ells. If there is a question it can be made upon the following Mishna: "Those who go to assist others in case of conflagration, or of an attack of robbers, or of flood, or of rescuing people from the ruins of a falling building are considered for the time being as inhabitants of that place, and may go thence on the Sabbath, two thousand ells in every direction." Thus here it is stated, that they may go only two thousand ells and our Mishna does not limit the distance? Said R. Jehudah in the name of Rabh: Our Mishna means to imply, that they may even return to their homes with all their implements of war, as we have learned in a Boraitha: In former times, they used to deposit their arms in a house nearest

to the fortifications of the city. Once it happened, however, that the enemy was informed of the fact, that the Israelites had stored their arms, so they pursued them and in endeavoring to enter the house to gain possession of their arms, the Israelites trampled more of their own to death than were killed by the enemy. Since that time it was ordered to carry their arms back to their homes.

R. Na'hman bar Itz'hak however said: This presents no difficulty: If the Israelites are victorious, they have only two thousand ells in which they may go in every direction, but if they are defeated, they may escape as far as possible.

R. Jehudah said in the name of Rabh: If enemies besieged cities inhabited by Israelites, the latter must not go outside of the cities with their arms and must not violate the Sabbath, providing the enemies were there on account of money-matters; but if they were there for the purpose of slaughter, the Sabbath may be violated and arms be carried on Sabbath. If a city near the boundary of the country is besieged even on account of a trivial business matter such as straw or hay, arms may be carried and the Sabbath may be violated. Said R. Joseph bar Minyumi in the name of R. Na'hman: "Babylon is considered as a city near the boundary," and this dictum was explained to mean the city of Neherdai (which was surrounded on one side by Gentile neighbors and on the other side by Israelites).

MISHNA: If a man sit down by the road-side (towards dark on the eve of Sabbath), then gets up and observes, that he is near a town, he must not enter the town; for it had not been his intention to do this. Such is the dictum of R. Meir; but R. Jehudah permits him to enter. R. Jehudah said: "It once happened that R. Tarphon entered a town although it was not his intention to do so."

One who falls asleep on the eve of Sabbath while on the road and thus knows not that night has set in, is permitted (upon awaking) to go two thousand ells in any direction. Such is the decree of R. Johanan ben Nouri; but the sages hold, that he has only the right to move four ells. R. Eliezer said: "And he himself forms the centre of the four ells." R. Jehudah however said: He can go four ells in whichever direction he pleases. Still R. Jehudah admitted, that if the man had made his choice (which direction to take) he must not afterwards (change his mind and) go in another direction. Should there be two persons so situated (*i.e.*, form the centre of the four ells they are allowed to

move in), and part of the four ells permitted to one is within the limits of the other, they may meet and take their meals together in the centre of their joint space, provided that neither exceed his own limits by going into those of his neighbor. If there are three persons so situated and part of the four ells occupied by the middle one forms part of the space belonging to each of the other two, the one situated in the middle is at liberty to meet each of the others, or each of the others may meet him; but the two on each side of him must not meet each other. Said R. Simeon: What can this be compared to? Three courts opening into each other and also opening into public ground. If the two outer courts have combined in an Erub with the middle one, one is at liberty to carry things between the middle court and each of the outer ones, but between the two outer courts one must not carry or convey anything.

GEMARA: We have learned in a Boraitha: R. Jehudah said: It once happened that R. Tarphon while on the road was overtaken by dusk on the eve of Sabbath and stayed outside of the town over night. In the morning the cattle-herders met him and said: "Rabbi, the town is not far distant. Enter." So he entered the town, went into the college and lectured all day. Said R. Aqiba to R. Jehudah: Wouldst thou cite this as an example? Perhaps it had been the intention of R. Tarphon to enter the town previously (*i.e.*, he was within two thousand ells of it) or the college was included with the legal limits allowed R. Tarphon.

"*Such is the decree of R. Johanan ben Nouri*." Rabba propounded a question: What is the intent of R. Johanan's decree? Does he hold that things having no particular owner, if situated at a certain place on the Sabbath, acquire the right to their resting-place (*i.e.*, may be carried for a distance of two thousand ells in any direction)? And the Mishna should have commenced by citing an instance of this kind. Why does it give the instance of a man who had fallen asleep, whom the sages consider the same as a thing having no particular owner? In order to show the firmness of the sages, who, though agreeing that the man when awake, is entitled to two thousand ells in each direction, whence we might assume that he is entitled to the same privilege when asleep, we are told that such is not the case; or, in order to show that R. Johanan ben Nouri does not hold, that a thing having no particular owner acquires the right to be carried for a distance of two thousand ells in every direction, but

that a man when *asleep* is entitled to this privilege, merely because he is entitled to it when awake.

Said R. Joseph: "Come and hear: We have learned that if rain had fallen on the eve of a festival, the rain-water acquires the right of (being carried) two thousand ells in every direction; but if rain had fallen *on* a biblical festival, the rain-water has the same right (of being carried for the same distance) as the inhabitants of the place where it had fallen (have the right of walking)." Now, if we say, that R. Johanan holds, that a thing having no particular owner, if situated at a certain place on Sabbath, acquires the right of (being carried) two thousand ells in every direction, then the Boraitha is in conformity with his opinion; but if we say, that he does not hold to that effect, according to whose opinion is the Boraitha, certainly not according to that of the sages?

Said R. Jacob bar Idi in the name of R. Jehoshua ben Levi: "The Halakha prevails according to R. Johanan ben Nouri." Said R. Zera to R. Jacob: "Didst thou hear R. Jehoshua himself declare this, or dost thou merely infer this from another ruling made by him?" And he answered: "I heard him declare it." What ruling could R. Zera have referred to, which R. Jehoshua ben Levi had made? The ruling made by R. Jehoshua ben Levi elsewhere, that the Halakha always prevails according to the Tana, who makes the laws regarding Erubin more lenient. Why was it necessary for R. Jehoshua to make both statements? Said R. Zera: It was necessary; for had he said merely, that the Halakha prevails according to R. Johanan ben Nouri, we might assume that it always prevails thus, whether it be more lenient or more rigorous than another; hence we are told, that the Halakha prevails according to the one who is the more lenient regarding the laws of Erubin.

Let him say then, that the Halakha prevails according to the one who is the more lenient with the laws of Erubin, and that will cover the case of R. Johanan who is more lenient. Nay; it was also necessary to make the statement regarding R. Johanan exclusively; because it might be assumed that the Halakha prevails according to the more lenient interpretation where one opinion is opposed by the opinion of another individual, or where the opinion of a number (of sages) is opposed by the opinion of another number (of sages), but if the opinion of one is opposed by that of a number, the latter opinion prevails whether it be lenient or rigorous; hence we are told that the opinion of R.

[paragraph continues] Johanan ben Nouri prevailed although opposed by a number of sages, and from this the rule is adduced that as far as the laws of Erubin are concerned the more lenient Halakha prevails even if the opinion of one is opposed by a number (of sages).

R. Papa, however, said: "Both statements made by R. Jehoshua ben Levi are necessary, because, had he simply stated, that the Halakha of the more lenient Tana only prevails, we might have assumed that he referred only to Erubin of courts and not to Erubin of legal limits; therefore he also stated the case of R. Johanan ben Nouri in order to demonstrate that he referred also to Erubin of legal limits."

R. Ashi said: "Both statements made by R. Jehoshua ben Levi are necessary because, had he only made the statement concerning the Halakha of the more lenient Tana, it might have been assumed that he referred to an Erub that had been made for a number of Sabbaths and had gradually dwindled, but not to such Erubin as had been made afresh; hence he also made the statement concerning R. Johanan ben Nouri in order to emphasize the fact that the more lenient Halakhoth prevail even in the instances of newly made Erubin." 1

R. Jacob and R. Zreiqa both said: "In all instances where R. Aqiba differs with an individual the Halakha prevails according to R. Aqiba. In all instances where R. Jose differs even with a number of sages the Halakha prevails according to R. Jose, and in all instances where Rabbi differs with an individual, the Halakha prevails according to Rabbi." For what purpose is this statement made? Shall we act accordingly or is this merely a vague statement? R. Assi said: "Yea; we must act accordingly. Where R. Aqiba differs with an individual we must act in accordance with R. Aqiba's opinion; where R. Jose differs with a number of sages we must act in conformity with R. Jose's opinion." R. Hyya bar Abba, however, said: R. Jacob and R. Zreiqa, did not mean to establish the rule, that the Halakha prevails according to the opinions of R. Aqiba, R. Jose and Rabbi, but that they should be given preference wherever possible over their opponents (*i.e.*, if, for instance, a man asks

concerning a decree of R. Jose, it may be declared valid, but it should not be taught as a rule in the colleges that when a number of sages decide against R. Jose the Halakha nevertheless prevails according to his opinion). R. Jose bar R. Hanina, however, said: (Not even this should be done.) R. Jacob and R. Zreiqa, merely assert, that it seems to them that the Halakhas should prevail as stated, but not that this should be maintained as a general rule (and if one inclined to their opinion, he cannot be accounted wrong).

In the same manner as there is a divergence of opinions concerning the statement of R. Jacob and R. Zreiqa, so is there also a dispute concerning the following statement of R. Jacob bar Idi in the name of R. Johanan: In all instances where R. Meir and R. Jehudah differ, the Halakha prevails according to R. Jehudah, wherever R. Jehudah and R. Jose differ the Halakha prevails according to R. Jose, and so much more when R. Meir and R. Jose differ the Halakha prevails according to R. Jose, for if R. Jehudah is given preference over R. Meir, and R. Jose over R. Jehudah, then certainly R. Jose has preference over R. Meir.

Said R. Assi: "From this I can infer, that where R. Jose and R. Simeon differ, the Halakha prevails according to R. Jose, for R. Abba said in the name of R. Johanan, that wherever R. Simeon and R. Jehudah differ, the opinion of R. Jehudah prevails." As a matter of course if R. Jehudah is given preference over R. Simeon, R. Jose is certainly more competent authority than R. Simeon.

The schoolmen propounded a question: "How is it, when R. Meir and R. Simeon differ?" This question is not decided. 1

R. Mesharshia said: All these rules are of no account (*i.e.*, decisions should be made according to the dictates of one's own understanding); for Rabh never acted according to such rules. 2

[paragraph continues] R. Jehudah. said in the name of Samuel: "Things belonging to non-Israelites, if situated at a certain place on the Sabbath, do not acquire the right to their resting-place." According to whose opinion is this statement? Shall we say, according to the opinion of the sages? This is self-evident; for they hold, that even things having no particular owner do not acquire the right to their resting-place, and so much more things belonging to a Gentile, which accordingly possess an owner. Hence we must say, that this is even in accordance with the opinion of R. Johanan ben Nouri, who says, that things having no particular owner do acquire the right to their resting-place (but those, which have an owner, unless he be an Israelite, do not).

An objection was made: R. Simeon ben Elazar said: "Vessels which an Israelite borrows from a Gentile on a festival, or which he has lent to a Gentile and receives in return on a festival, also vessels and treasures which were within the legal limits on the eve of Sabbath, may be carried two thousand ells in every direction; but if a Gentile brought fruit on a Sabbath from beyond the legal limits, it must not be moved from its place." Now if it be said, that R. Johanan ben Nouri holds, that things belonging to a Gentile acquire a right to their resting-place, then R. Simeon ben Elazar's statement is in accordance with the opinion of this R. Johanan; but if the latter holds, that things belonging to a Gentile do *not* acquire a right to their resting-place, according to whose opinion is the statement of R. Simeon; not according to that of R. Johanan nor to that of the sages? Nay; R. Johanan may hold, that things belonging to a Gentile do acquire the right to their resting-place and still Samuel quoted the opinion of the sages; but as for this being self-evident, it is not so, for it might be assumed that a precautionary measure should be made in the case of a Gentile owner in order to put them on a par with vessels of an Israelite owner; therefore we are told that such a precautionary measure is not necessary. R. Hyya bar Abhin, however, said in the name of R. Johanan, that things belonging to Gentiles *do* acquire the right to their resting-place, as a precautionary measure for things belonging to Israelites.

It once happened that rams were brought into the city of

Mabrakhta on a festival. Rabha allowed the inhabitants of the city of Mehuzza (which adjoined the other city) to buy them and take them home. Said Rabhina to Rabha: "Why didst thou permit this; because thou holdest to the opinion of Samuel, that things belonging to Gentiles do not acquire the right to their resting-place, but the rule is, that where Samuel and R. Johanan differ,

the opinion of R. Johanan prevails and R. Johanan holds, that things belonging to Gentiles do acquire the right to their resting-place on Sabbath?"

Thereupon Rabha said: "Let the rams be sold to the inhabitants of Mabrakhta; for that city is to the rams as four ells (being equal to the case of where a man was brought into a pen or a fold against his will and may in consequence traverse the entire extent of the pen or fold, as if they were only four ells)."

R. Hyya taught: "If the legal limits of two cities terminated in the water and a partition was made to denote the place where they met, by means of a fishing-net, it is not sufficient; for an iron partition is necessary in order that the water of both limits should not mingle." R. Jose bar Hanina laughed at this teaching. Why did he laugh at it? Because Rabh decreed, that the sages were very lenient with all things pertaining to water (see page 24).

"*But the sages hold, that he has only the right to move four ells*." Is R. Jehudah not of the same opinion as the first Tana? Said Rabha: Nay; they differ to the extent of eight square ells. The sages hold that he may go four ells in every direction, that is, in all, eight square ells; but R. Jehudah says, that he may go only four ells in one direction. We have also learned to this effect in a Boraitha: "He may move in eight square ells, so saith R. Meir." Said Rabha: "They differ as to the extent that the man may traverse, but as for carrying things all agree, that he may do so only for a distance of four ells."

The questions seem to be centred in four ells. Whence do we derive these four ells? As we have learned in a Boraitha: From the passage [Exodus xvi. 29]: "Remain ye, every man in his place," etc. By "his place" is meant the size of his body. What is the size? Three ells, and one ell additional in case he wishes to stretch his limbs. So said R. Meir. R. Jehudah, however, said: "Three ells are allowed for the size of the body and an additional ell in case he wishes to take a thing at his feet and place it underneath his head." What is the point of variance between the two? According to one, the four ells

must be exactly measured, and according to the other, an approximate distance only is necessary.

R. Mesharshia said to his son: "When thou goest to see R. Papa, ask him whether the four ells are measured proportionately to the size of the man concerned or whether they are the holy ells (*i.e.*, ells measuring six spans). If he should tell thee, that the holy ells are meant, what should a man do who is as tall as Og, King of Bashan, and if he should tell thee, that the proportionate ells are meant, why were the four ells not included in the Boraitha, which teaches, that all things should be reckoned according to the proportionate ells."

When the son of R. Mesharshia came to R. Papa he was told: "If we were to learn the Talmud in this manner (*i.e.*, if we were so particular as to details) we would never be able to learn anything. Certainly proportionate ells are meant, and the reason the Boraitha does not mention them, is because it was not quite certain, and there may chance to be a dwarf, whose legal four ells the Boraitha did not feel justified in diminishing."

"*But between the two outer courts one must not carry anything*." Why should this not be

permitted? If both of the outer courts and the middle one have combined in one Erub, they are regarded as one court? Said R. Jehudah: "In this instance a case is referred to, where the middle court deposited an Erub in each of the outer courts; hence the two outer courts have no connection with each other." R. Shesheth, however, said: "Even if the two outer courts had deposited their Erubin in the middle court but had each done so in a separate house, they have no connection with each other. Had they deposited their Erubin in the same house, they would have been regarded as one court." According to whose opinion would this be? Shall we assume, that it was according to the Beth Shammai as we have learned in the following Boraitha: "If five persons conjoined their Erubin and deposited them in two vessels the school of Shammai hold them to be of no value, but the school of Hillel say they are of value." Nay; this latter opinion is even in conformity with the school of Hillel who, while maintaining, that if the Erubin had been deposited in separate vessels the connection would be consummated, may hold, that if this was done in separate houses the connection is not valid.

R. Jehudah said in the name of Rabh: "All the foregoing is according to the dictum of R. Simeon; the sages, however, hold, that from the two outer courts things may be carried into the

middle court, but from the middle court, things must not be carried into the outer courts; provided no Erub had been made, for one court may serve for two others, but two must not be utilized by one." And R. Jehudah goes on to state: "When I made this statement before Samuel, he said: 'Even this is in accordance with the dictum of R. Simeon; but the sages hold, that neither of the three courts may be made use of.'"

The following Boraitha is in support of the dictum of Samuel as quoted by R. Jehudah: R. Simeon said, "What can this be compared to? Three courts opening into each other and also opening into public ground. If the two outer courts had combined in an Erub with the middle one, a man is at liberty to carry victuals from either of the outer courts into the middle court and eat them, then remove the remainder (but a man of the middle court must not carry things into the outer courts);" the sages however said: "No connection is permitted between the three courts."

Samuel in making this statement holds to his theory advanced elsewhere: If there is a court between two entries, and an Erub was made by the court with both entries, connection between the court and both entries is nevertheless prohibited (but in each entry separately things may be carried); if, however, no Erub was made by the court with either of the two entries, the court acts as a bar so that carrying in either entry is prohibited even by the inhabitants of the entries. If the court, however, made more frequent use of one entry to the neglect of the other, it acts as a bar only to the one frequently used, but the inhabitants of the neglected entry *may* carry therein.

Said Rabba bar R. Huna: If the court made an Erub with the entry used only on rare occasions (it is evident, that henceforth, the court intends to make more frequent use of this entry and to abandon the other entry) then the other entry becomes separated and the inhabitants thereof may carry therein.

Rabba bar R. Huna said again in the name of Samuel: If the entry more frequently used by the court made an Erub for its own use, and the court itself as well as the neglected entry did not

make any Erubin for their own use, the court is relegated to the neglected entry, but cannot prove a bar to the entry having an Erub, because that were otherwise as the manner of the Sodomites, *i.e.*, if an act is perpetrated which is neither beneficial nor injurious to the perpetrator but solely in order to injure another, the perpetrator is compelled to desist. (The comparison

is made to the case in question as follows: Neither the inhabitants of the court itself nor of the entry may carry within their precincts nor even within the entry provided with an Erub, and hence it would not be just, if, because they were not permitted to carry, they should prove a bar to those who by virtue of their Erub are allowed to do so.)

R. Jehudah said in the name of Samuel: "The Erub of a man who is particular about it that his fellow (with whom he had joined in the Erub) should not eat it, is of no account. Why so? Because the word Erub signifies commixture, *i.e.*, those who make the Erub can individually do with it as they see fit, and if one man is particular about it, its intent is abolished." R. Hanina however said: The Erub is valid; but a man of that kind is like the men of Vardina (who were notoriously penurious).

R. Jehudah said again in the name of Samuel: "An Erub which is divided by a man in two parts or deposited by him in two separate vessels is of no account." Then Samuel's dictum is in accordance with Beth Shammai, as stated in the Boraitha (page 108): We may assume that Samuel's teaching may be also according to Beth Hillel; for the latter hold, that the Erub is valid only then, if one vessel was filled with it and the remainder had to be put into another vessel, but if it was originally divided and then deposited, it is not valid.

Samuel said: "The virtual intent of the Erub is, that by mutual interchange of articles, the right to the ground is bought and sold." Why then are eatables necessary; could it not have been permitted to make an Erub with money? Because, as a usual thing on the eve of Sabbath money is scarce. (If that is so, then why should an Erub that had been made with money not be valid? This is merely a precautionary measure, lest it should be said that the main principle of an Erub is money, and in the case of a lack of money, eatables will not be used in its stead, and thus the law of Erubin will sink into oblivion.) Rabba, however, said, that the Erub signifies, that wherever the victuals have been deposited, there the man resides, *i.e.*, wherever a man's bread is, there is also his domicile. What is the point of difference between Samuel and Rabba? The points of difference are as follows: A vessel of any value, victuals worth less than a Prutah (a coin of minimum value) and a minor. (According to Samuel a vessel having a market value may be used, but according to Rabba it does not follow that if it is

deposited in a certain place the owner resides there, hence it must not be used. Victuals worth less than a Prutah, according to Samuel, not having a market value, must not be used, but according to Rabba, being eatables, may be deposited. A minor, according to Samuel, cannot be commissioned to act because no money consideration can be intrusted to him, and according to Rabba where he only gathers the material for the Erub, he may be commissioned to act.)

Said Rabba in the name of R. Hama bar Guria, quoting Rabh: The Halakha prevails according to

R. Simeon.

MISHNA: Should a man, when overtaken by dusk on the road (on the eve of Sabbath), single out a tree or a hedge and say: "I will take my Sabbath-rest underneath it," (*legally*) he has said nothing, but if he says: "I will take my Sabbath-rest at its base," he may go from the spot on which he stands to the base of the tree or hedge two thousand ells and thence to his domicile two thousand ells more; thus it may be seen, that a man may go four thousand ells after dark (on Sabbath). If he cannot single out a tree or a hedge or is not conversant with the Halakha (covering his case) and says: "I will take my Sabbath-rest on the place where I stand," the spot upon which he stands (virtually) gives him two thousand ells in any direction; in a circle, according to the dictum of R. Hanina ben Antignous; but the sages hold, that he has two thousand ells in a square, so as to enable him to take advantage of the angles. This rule is explanatory to the saying (of the sages): "The poor prepare their Erubs with their feet." R. Meir said: "This rule is applied only to the poor," but R. Jehudah replied: It applies to poor and rich both; inasmuch as the Erub to be made with bread was only decreed in order to render its observance easier for the wealthy, so that they should not be compelled to go out and prepare the Erub with their own feet.

GEMARA: What is meant by "legally he has said nothing"? Said Rabh: "It means literally that he has said nothing and must not move from his place; (because where he stands, he did not acquire the right to rest on Sabbath, his intention having been to rest underneath the tree. Underneath the tree he acquired no right, not having specified the spot where he would rest, and although the space underneath the tree is within two thousand ells from his position at the time, as long as he did not specify the exact spot he must not go there)." Samuel, however, said: It means, that he said nothing concerning

the distance from the tree to his domicile but he may traverse the distance from where he stands to the tree (because the entire space underneath the tree is within two thousand ells of his position at the time, and the distance from his domicile is only two thousand ells to the base of the tree, but to the entire space underneath the tree it is more than two thousand ells); hence this entire space is like driving an ass and leading a camel, for it is not known from which side the distance to his domicile is two thousand ells. If it be measured from the north, chances are that it should be measured from the south, and *vice versa*.

Said Rabba: (Samuel's opinion is feasible, for he says, that the man acquired the right to two thousand ells from where he stands; but not having determined the exact spot underneath the tree, he loses the further two thousand ells to his domicile) but what grounds has Rabh for his opinion? Rabh holds, that if two intentions, one consequent upon the other, are expressed in one assertion, the inability to carry out one intention destroys the other also (and in this case as the man cannot proceed from the tree to the domicile it invalidates his right to go from his place to the tree). What is the difference between the two opinions? The difference is if one says, "I will take my rest in the four ells of the eight ells underneath the tree," according to those who hold that the place of rest must be exactly determined, it is of no value, but he who holds that if two intentions, one consequent upon the other, are expressed in one assertion, the inability to carry out one intention destroys the other also, in this case when he determines four ells it may be called the exact spot, and is valid.

Said R. Huna the son of R. Jehoshua: The case in the Mishna mentioned "he legally said nothing" applies only if the space underneath the tree is eight ells or more; but if it measures only seven ells the man may proceed to the tree and from the tree to his domicile (because he is entitled at any rate to four ells and no matter from which side the distance to his domicile is measured, part of his domicile will be within two, thousand ells).

We have learned one Boraitha in support of Rabh and another supporting Samuel: The one upholding Rabh is as follows: If one, while on the road, was overtaken by dusk, and, singling out a tree, said: "I will take my Sabbath-rest underneath it," he has said nothing. If he said, however, that he would rest in a certain place, he can proceed to that place and,

arriving there, may traverse the entire extent of that place and two thousand ells outside of it. When may he do so? If he designated a particular place, *i.e.*, if he designated a sand-heap ten spans high, or a valley ten spans deep, and from four ells to two saahs' capacity wide; but if he did not previously designate the place or there was no such place in existence, he may only move four ells from where he is situated at the time. If there were two men, one of whom could designate the place and the other could not, the latter may invest the former with the right to select the place for him and he (the former) may act accordingly. This is the case only if the man designates the four ells where he desires to rest, but if he does not, he must not move from his place.

The Boraitha upholding Samuel is as follows: If a man made an error and deposited his Erub in two directions, or if a man thought that it was allowed to make two Erubin and go in one direction in the morning and in another in the afternoon, or if a man said to his servants: "Make an Erub for me," without specifying the place for it, and one of them made the Erub in the north and the other in the south, the man may go south for a distance of two thousand ells minus the distance from his house to the Erub on the north or may go north for a distance of two thousand ells minus the distance from his house to the Erub on the south. If the house was midway between the two Erubin, however, *i.e.*, the two Erubin were placed equidistant from the house two thousand ells, he must not move beyond his house.

"*If he says, 'I will take my Sabbath-rest at its base,'*" etc. Said Rabha: "Being overtaken by dusk" signifies, that if the man walked slowly he could not reach the tree before dusk, but if he ran speedily he could reach the base of the tree.

Rabba and R. Joseph were on the road: Said Rabba to R. Joseph: "We will rest underneath the tree that tolerates good fellowship." And according to another version he said: "We will rest underneath the tree, that honorably acquits itself of its dues (*i.e.*, that bears quantities of fruit and thus pays its dues)." Said R. Joseph: "I know not of such a tree." Answered Rabha: Depend upon me, as a Boraitha stated, R. Jose said: If there be two men, one of whom could designate the place and the other could not, the latter may invest the former with the right to select the place for him and he (the former) may say: "There shall we rest." In truth this is not so. R. Jose

never said this; but Rabba asserted this in the name of R. Jose so that R. Joseph should listen to

him; for it was known that R. Jose was final authority and that the Halakhas prevailed according to his opinion.

"*If he cannot single out a tree or is not conversant with the Halakha*." From what biblical passage is all this talk about two thousand ells adduced? We have learned in a Boraitha: It is written [Exod. xvi. 29]: "Remain ye every man in his spot, let no man go out of his place on the seventh day." "On his spot" means four ells, and "out of his place" refers to two thousand ells. Whence does the Boraitha adduce this assertion? Said R. Hisda: "Because it is written [Numbers xxxv. 5]: 'And ye shall measure from without the city on the east side two thousand ells,' etc. (Thus from the verse it is seen, that the city was in the centre and they measured two thousand ells on every side and from this the legal limits were derived.)

"*Two thousand ells in any direction in a circle*," etc. What grounds has R. Hanina ben Antignous for the statement? If he agrees to the interpretation of the passage quoted, he should have said in a square, for so the passage determines, and if he does not hold to the passage at all, whence does he adduce two thousand ells in general? He holds to the interpretation of the passage quoted, but the end of the same verse reads, "*This* shall be to them the open spaces of cities," and he declares, that for the purpose of the verse it should be in a square, but for Sabbath it should not be in a square. Whence do the sages adduce that the two thousand ells should be in a square? The sages hold with Hananiah, who taught, that "*this* shall be to them," should read "*as this*," and as this should be all the legal limits of the Sabbath.

Said R. A'ha bar Jacob. One who carries four ells in public ground is not culpable unless he carries in a diagonal of four ells. [1]

Said R. Papa: "Rabha wished to examine us and asked the following question: 'Is it necessary that a pillar ten spans high and four wide standing in public ground, should contain a square so that a diagonal can be drawn?' We answered: Is this not the same as the teaching of R. Hananiah which states '*as this* should be all the legal limits of Sabbath.'

"*R. Meir said: 'This rule is applied only to the poor,'*" etc.

[paragraph continues] Said R. Na'hman: "The point of difference between R. Meir and R. Jehudah is where a man says: 'I will rest in my place' (where I am standing). R. Meir holds, that the principal thing to be used for an Erub is bread; and for the poor man, who has no bread with him, it is made easier; the rich man, however, has no right to do so; but R. Jehudah holds, that the principal way to make an Erub is to make it with one's feet, whether the man be poor or rich, but concerning the designation of a tree or a certain place for a Sabbath-rest while travelling, all agree, that it is allowed for a poor man but not for a rich man." The statement in the Mishna "This rule is explanatory to the saying," means to say that the saying is that of R. Meir, and what does it refer to? To the previous clause in the Mishna, "If he cannot single out a tree or is not conversant with the Halakha." The teaching "for the poor man who has no bread with him, it is made easier," is that of R. Jehudah.

R. Hisda, however, said: On the contrary. R. Meir and R. Jehudah differ only as to the designation of a certain place for the Sabbath-rest, the former holding, that for a poor man this is

allowed, but not for a rich man, and the latter holding that it is permitted for both; but all agree that as for resting in one's place where he stands it is allowed to both rich and poor, because the principal way of effecting an Erub is with one's feet. The statement of the Mishna, "This rule is explanatory to the saying," refers to a man who was overtaken by dusk, while the teaching "for the poor man who has no bread, it is made easier," is according to the opinion of all.

We have learned a Boraitha in support of R. Na'hman: Be it a poor man or a rich man an Erub should be effected with bread. A rich man should not go out to the legal limits and say: "Here will I take my Sabbath-rest" because this is allowed only to one who was overtaken by dusk on the road, so saith R. Meir. R. Jehudah, however, said: Be it a poor man or a rich man the Erub should be effected with the feet and a rich man may go out to the legal limits and take his Sabbath-rest there, because the principal manner of effecting an Erub is with the feet. To the householder, however, the sages allowed to send a servant, a son, or any other messenger, to make the Erub in his stead, in order to make it easier for him, and R. Jehudah said again: It happened to the men of the house of Mamel and of the house of Gurion in the city of Aruma who would distribute figs and raisins during years of famine, that the poor of the villages

of Shihin and Hananiah would come on the eve of Sabbath to the legal limits, remain there over night, and on the morrow would enter the city of Aruma and receive their share.

R. Hyya bar Ashi taught Hyya the son of Rabh in the presence of Rabh: "Be he a rich man or a poor man." Said Rabh to him: "Add to this teaching, that the Halakha prevails according to R. Jehudah."

Rabba bar R. Hanan generally went on the Sabbath from Artibna to Pumbaditha. Once, while on the way he said: "I will take my Sabbath-rest in Tzintha (a small hamlet between the two towns)." Said Abayi to him: Why dost thou say this, because thou knowest, that where R. Meir differs with R. Jehudah the Halakha prevails according to R. Jehudah and besides, thou art of the opinion of R. Hisda, who holds, that they differ only concerning the designation of a certain place for the Sabbath-rest; but did not R. Na'hman explain to the contrary and have we not a Boraitha in support of R. Na'hman?

Answered Rabba bar R. Hanan, "Henceforth I shall not do this again."

Rami bar Hama asked: "It was said, that one who made an Erub by means of his feet, has four ells for himself besides the two thousand allowed him. What is the law concerning one who had sent bread to make the Erub? Has he the extra four ells or not?" Said Rabha: "Come and hear: The Mishna states that the Erub was to be made with bread only to make it easier for the wealthy. If we should say, that he has not the four ells, it will not be made easier for the wealthy, but on the contrary stricter?" It will not be stricter? For he would rather lose the four ells and be enabled to send a messenger in his stead than to go himself.

MISHNA: If a man (on the eve of Sabbath) had been despatched by his townsmen to combine by an Erub a town (or village in the vicinity) and was subsequently induced by a neighbor to go back (before completing his errand) he is permitted to go to the place in question (nevertheless); all his townsmen, however, are forbidden (to go thither). Such is the dictum of R. Jehudah; but

R. Meir said: One who can prepare an Erub and does not prepare it, is (like one driving) an ass and (leading) a camel (at the same time).

GEMARA: What difference is there between the man and his townsmen? Said R. Huna: "This is a case of where a man possessed two houses which had two legal limits between them,

i.e., they were four thousand ells apart and the man went out on the road without taking bread along. He is then considered as a poor man; (and in consequence made his Erub wherever he was with his feet) but his townsmen who sent him to make the Erub are regarded as wealthy and their Erub not having been effected are not allowed to go out."

We learned a Boraitha supporting this teaching: "One who has two houses between which there are two legal limits makes the Erub valid as soon as he starts out on the way from one to the other, such is the dictum of R. Jehudah. Moreover, said R. Jose the son of R. Jehudah, even if his comrades meet him and tell him to stay over night where he is, because it is too hot or too cold, he may arise in the morning and continue on his way (for his intention was originally to make his Erub at the end of his journey)."

Said Rabba: "All agree that a man may continue his journey after remaining at a certain place over night, if he had been persuaded to interrupt his journey by another, but if he did so of his own accord, he must not continue on his way, because he may have changed his original intention. Wherein they differ is, if the man was persuaded to remain at a certain place before commencing his journey. According to one, his Erub is invalid as long as he had not yet started, and according to the other, it is valid because the intention originally existed."

R. Joseph, however, said: "All agree that one must start on the journey, otherwise his Erub is not valid; but they differ in a case of a man having been persuaded to stop over at a certain place or doing so of his own accord. One holds, that if he stopped over of his own accord, he may have changed his original intention and hence his Erub is not valid, while the other maintains, that as long as he had started, it does not matter."

R. Jehudah bar Isht'tha brought a basket of fruit to R. Nathan bar Oshiya on the eve of Sabbath (and the distance from his house to that of R. Nathan was four thousand ells). He started to return and R. Nathan let him go as far as the first step and then said to him: "Remain here over night." On the morrow, he arose and returned to his home.

"*But R. Meir said: 'One who can prepare an Erub,'*" etc. Have we not learned already in a Mishna (of the third chapter) that R. Meir and R. Jehudah both said: "If (an Erub) is doubtful, this is (like driving) an ass (and leading a) camel." Said R. Shesheth: It might be assumed that the reason of R. Meir's

opinion is that only in the case of a doubtful Erub, it is a case of an ass and a camel, but if it is known to a certainty that no Erub was made, such is not the case (but it is positively forbidden); hence we are given to understand that even where it is certain that the Erub was not made it is

also a case of an ass and a camel; because the Mishna cites a case where it is certain that no Erub was made.

MISHNA: If one went beyond the legal limit even a single ell, he must not go back the entire distance. R. Eliezer said: If he went two ells beyond the limit he may go back; but if three ells, he must not.

GEMARA: Said R. Hanina: "If a man had one foot within the limit and the other foot outside he may enter, because it is written [Isaiah lviii. 13]: 'If thou restrain thy feet for the sake of the Sabbath' and we read 'thy feet' and as one foot was still within the limit, it cannot be said, that he had restrained his feet." We have learned, however, in another Boraitha, that he must not enter? R. Hanina holds according to the opinion of the anonymous teachers, who maintain in still another Boraitha, that wherever the greater part of the body of a man is situated, there is his place.

"*R. Eliezer said: 'If he went two ells,'*" etc. Did we not learn in a Boraitha, that R. Eliezer said: If he went one ell beyond the limit he may go back; but if he went two ells, he must not? This presents no difficulty; our Mishna refers to a case where he had overstepped one ell and remained exactly two ells beyond, while the Boraitha refers to one who had overstepped two ells and was already in the third. Did we not learn in another Boraitha, that R. Eliezer said: "Even if he had stepped out one ell, he must not reënter?" This Boraitha refers to the one who measured the legal distance (as is stated in the last Mishna of the next chapter, which will be explained then and there).

MISHNA: One who was overtaken by dusk one ell outside, of the legal limit must not reënter the town; R. Simeon, however, said: Even if one was fifteen ells beyond the limit, he may go back, as the land-surveyors who establish the limits, are not very exact in their measurements and allowance is made for those who might err.

GEMARA: We have learned in a Boraitha: "It sometimes happens that the land-surveyors forget their mark and go beyond the distance."

Footnotes

104:1 The following paragraphs in the original Gemara are devoted to arguments of R. Papa and R. Ashi concerning the adduction of the differences quoted by the two Rabbis in the preceding paragraphs and quote the Boraithoth further on. Hence we have omitted them, and the reader will understand this from what follows. This rule is made by us for the benefit of the Hebrew scholar and will apply to all such omissions later.

105:1 Wherever a question remains undecided in the Talmud, the letters Taph, Iod, Quph, Vav, are inserted, and some scholars maintain, that this means "Theiqu," *i.e.*, "So shall it remain." Others, however, maintain that the letters stand for: "Tishbi = Elijah the prophet, Ietharetz = will answer, Qushiuth = contradictions, Veabaioth = and questions.

105:2 This statement of R. Mesharshia applies to the whole Talmud from the fact that, although the authorities quoted above are among the greatest of the Mishna and the Gemara, the interpretation of all Halakoth should be based upon common sense, and in connection with this we would wish to call the attention of the reader to the assertion made in our article, "What is the Talmud?" contained in our "The Pentateuch, Its Languages, Character, etc.," and in our article entitled "Two Questions concerning the Talmud and Schulchau Aruch," published in the *American Israelite*, 1894, that "no one has any right to establish a code based upon Halakhoth of the Talmud."

114:1 Rashi explains this to mean 4 ells and 8/5 or 1 3/5 of an ell additionally. It is difficult to understand just how this is meant or how the diagonal can be derived without the square.

Next: Chapter V: Town Boundaries and Legal Limits

CHAPTER V.

REGULATIONS CONCERNING THE BOUNDARIES OF A TOWN AND THE MEASUREMENTS OF THE LEGAL LIMITS.

MISHNA: How can the boundaries of a town be extended? If one house recede from the city wall and another project, or if a ruin recede or project, or if fragments of a wall ten spans high lie beyond the walls, or if there be any bridges or cemeteries, with dwelling-houses thereon, the measurement of a town is commenced on a level with them; and the whole is formed into a (quasi) square, in order to gain the angles.

GEMARA: R. Johanan said: For eighteen days I lived with Oshiya the Great and did not learn but one thing concerning this Mishna, namely: The Mishna should not read "How can the boundaries of a town be extended, but how can they be districted." [1] This is not so! Did not R. Johanan once assert, that during his stay with Oshiya the Great for eighteen days he learned to know the heart and wisdom of each one of Oshiya's twelve disciples? He says only that he learned but one thing *concerning this Mishna*, but aside from that, he learned many other things.

R. Johanan said again: "When we were studying the Law at Oshiya's we sate four men to one ell." Rabbi said: "When we studied at R. Elazar ben Shamua's college we sate six men to one ell."

R. Johanan said once more: As R. Meir was in *his* generation so was R. Oshiya the Great in his day. As with R. Meir, the colleagues of his day, could never arrive at his final decisions, so was it also with Oshiya. His colleagues could also never fathom his ultimate conclusions.

R. Johanan said again: The hearts of the first sages were as broad as the porch of the Temple and those of the later sages were as broad as the gates of the Temple, but our hearts are as

narrow as the eye of a sewing-needle. Whom does he refer to as the first sages? R. Aqiba. Whom as the later sages? R. Elazar bar Shamua, and according to another version he refers to R. Elazar ben Shamua and Oshiya the Great respectively.

Said Abayi: We are as a nail driven in a hard wall as far as explanations are concerned (*i.e.*, we understand but little of what we hear, and that with difficulty). Said Rabha: We are also like a finger pushed into a cake of wax (meaning we are so dull of comprehension where comparisons are concerned, that but as little remains with us as with the finger that has been pulled out from the wax). Said R. Ashi: "And we may say, that it is as easy for us to forget what we have learned as it is to put our finger in the hole of a well."

R. Jehudah said in the name of Rabh: The children of Judæa who paid strict attention to the words of their masters and propounded many questions retained all they learned. The Galileans, however, who did not pay strict attention to the language of their masters, and did not question them, did not retain anything. The Judæans learned from one master, hence they remembered what they learned; but the Galileans had many teachers and in consequence they did not retain anything.

Rabhina said: The Judæans taught every tract they had themselves mastered to others; hence they retained their knowledge; because teaching others improves one's own learning; the Galileans, however, did not do this and in consequence their knowledge forsook them. Of David who taught others it is said [Psalms cxix. 74]: "Those that fear thee will see me and be rejoiced," but of Saul, who did not teach others, it is said [I Samuel xiv. 471: "And whithersoever he turned himself, he caused terror."

Said R. Johanan: "Whence do I know, that the Lord forgave Saul for the sin of massacring the priests of the city of Nev?" Because Samuel's spirit said unto him: "On the morrow, thou and thy children shall be with me." What is meant by "with me"? (That means in the same place as Samuel and as Samuel was a righteous man and certainly in Paradise, so Saul must have been forgiven in order to share Samuel's abode.)

R. Jehoshua ben Hananiah said: "I was never disconcerted in my life except by a woman, a boy, and a little girl. The instance of the woman occurred in this wise: I at one time resided at the house of a widow. At table she set before me a

plate of beans and I ate it up leaving nothing. On the second day she gave me the same dish which I also consumed entirely. on the third day she made the dish too salt and after tasting it I naturally stopped and left it alone. Said she to me: 'Rabbi, why dost thou not eat?' and I answered, that I had already eaten during the day; she then rejoined: 'Thou shouldst have eaten less bread,' and continued: 'Perhaps because thou didst not leave any Peah 1 on the first two days, thou dost leave it now to serve for all three; for have not our sages decreed, that no Peah need be left in the cooking pot, but some should be left in the plate on which the dish is served?'"

The instance of the little girl happened as follows: Once I was travelling on a road and seeing a beaten path leading across a meadow I took that path. Said a little girl to me: "Rabbi! is this not a meadow that thou art crossing?" and I answered: "Is this not a beaten path?" and she answered: "Yea; such robbers as thou art have made it a beaten path." As for the affair with the little boy it happened thus: Once while on the road I noticed a child sitting at a cross-road. I asked him, which road led to the city, and he answered: "This road is the shorter but at the same time the longer, and this one is long but nevertheless short." I took the shorter road that was at the same time the longer. When I came to the city I saw the entrance to the city at that point was surrounded by gardens and vineyards, so that I had to retrace my steps. Said I to the child at the cross-road: "Didst thou not say that this was the short route?" and he answered: "Did I not also tell thee that it was a long route?" I then kissed him on the forehead and remarked: "Well is thee, Israel, that all thy children are wise, both great and small."

R. Jose the Galilean was travelling on the road. He met Brurih (the wife of R. Meir) and asked her: "Which way must we take to the city of Lud?" She answered: "Thou Galilean fool! Did not our sages say, that thou shouldst not converse much with a woman? Thou shouldst have asked, which way to Lud?"

The same Brurih once found a young scholar learning quietly to himself. She scolded him and said: "It is written [II Samuel xxiii. 5]: 'Firm in all and sure,' which signifies, that if the Law

is firmly imbedded in all the two hundred and forty-eight members of the body it can remain with the man, otherwise it can not." We have learned that there was a disciple of R. Eliezer, who learned quietly to himself and in the course of three years he forgot all he had learned.

Said Samuel to R. Jehudah: Thou sagacious one. Open thy mouth, when thou readest and also when thou learnest and then may it come to pass, that thou shalt live long, as it is written [Proverbs iv. 22]: "For they are life unto every one of those that find them, and to all his body a healing." Do not read "that find them," but "that make them a find for others," that is by pronouncing them with the mouth others will hear them and be benefited.

Samuel said again to R. Jehudah: Thou sagacious one! As long as thou hast any money, eat and drink; for the world which we leave behind is like a wedding-feast, it is soon over (and in the next world, thou wilt not be able to do this).

Rabh said to R. Hamnana: My son! If thou hast the wherewith to do thyself good, do so, for in the grave there is no pleasure and there is no fixed time for death, and if thou shouldst wish to say: "I will leave my children sufficient to live on when I am in my grave," who can assure thee, that they will keep it; for men are like grass in the field--some spring up and have everything prepared for them while others fade and have nothing.

R. Jehoshua ben Levi said: One who travels on the road and has no companion, should study the Law, as it is written [Proverbs i. 9]: "For a wreath of grace are they unto thy head, and chains for thy throat." If a man have a headache, he should study the Law for it is "a wreath of grace" unto his head. If his throat be sore, he should study the Law for it is "a chain" for his throat. If thy stomach hurt thee, do likewise, for it is written [ibid. iii. 8]: "It will be healing to thy travel" (body), and also if thy bones ache, for it says further [ibid.], "and marrow to thy bones." Likewise one who has pains in any part of his body should study the Law, for it is written [ibid. iv. 22]: "And to all his body a healing."

Said R. Jehudah ben R. Hyya: Come and observe how the custom of the Lord differs from that of man! If a man pre scribes a remedy, it may benefit one and injure another, but the Holy One, blessed be He, gave the Law to all Israel as a remedy for all and for the whole body as it is written: "And to all his body a healing."

R. Ama said: It is written [Proverbs xxii. 19]: "For it is a pleasant thing if thou keep them within thy bosom, if they be altogether firmly seated upon thy lips." Which signifies: "When are the

words of the Law a pleasant thing? If thou canst keep them within thy bosom, and when canst thou keep them in thy bosom? If thou canst pronounce them well with thy lips."

R. Zera said: It is written [ibid. xv. 23]: "A man hath joy by the answer of his mouth; and a word spoken at the proper time, how good is it." Which signifies: When hath a man joy by the answer of his mouth, if at any time that he is asked concerning the Law, he can make proper reply.

R. Itz'hak said: It is written [Deut. xxx. 14]: "But the word is very nigh unto thee, in thy mouth, and in thy heart, that thou mayest do it." When is the word nigh unto thee? If it is in thy mouth, and in thy heart thou meanest to do it.

Rabha said: It is written [Psalms xxi. 3]: "The longing of his heart hast thou given him, and the request of his lips hast thou not withholden. Selah." Which means: When was the longing of his heart given him? If the request of his lips was in accordance with the Law.

Rabha inferred a contradiction from the verse just quoted: It says, "The longing of his heart hast thou given him," and immediately afterwards, "and the request of his lips hast thou not withholden." If the longing of his heart was given him, what need was there of the request of his lips? And explained this seeming contradiction thus: If the man had merited it, the longing of his heart was granted him without request, but if he did not, he first had to make a request for it, before it was granted.

The disciples of R. Eliezer ben Jacob taught: In every instance, where the words "Netzach," "Selah," or "Voëd" form the conclusion of the passage it signifies, that it will be forever without interruption. As for the word "Netzach" it is written [Isaiah lvii. 16]: "For not to eternity will I contend, neither will I be forever wroth"; "forever" is here expressed by "Netzach." As for the word "Selah" it is written [Psalms xlviii. 9]: "As we have heard, so have we seen it in the city of the Lord of Hosts, in the city of our God: God will establish it forever. Selah." Concerning "Voëd" it is written [Exod. xv. 18]: "The Lord will reign for ever and ever" and the expression used is "Voëd."

R. Elazar said: The term quoted in the verse [Proverbs i. 9]:

"Chains for thy throat" means to signify, that as a chain is loose around the neck and is not seen when a man bows his head, so it is with a scholar. If he is not seen constantly in the markets, or oppresses not his neighbor, but sits quietly and studies the Law, he retains his knowledge; otherwise he does not.

R. Elazar said again: The verse [Solomon's Song v. 13]: "His cheeks are as a bed of spices" means "If a man makes himself as a bed (of plants) upon which everyone treads (*i.e.*, is extremely modest) and also conducts himself as a man who held spices in his hand, which even after leaving the hands, still make them fragrant, he retains the knowledge he has acquired, otherwise he does not."

He said again: It is written [Exod. xxxi. 18]: "Tables of stone" (tables are in this verse expressed

by the Hebrew term "Luchoth" and Lechi also means cheek). This refers to a man who hardens his cheeks until they are like stone and when trodden upon are not defaced, meaning a man who constantly studies and in the same manner as the stone is not impaired by wear, the constant study does not injure the man: such a man retains knowledge, otherwise he does not.

Again R. Elazar said: It is written [Exod. xxxii. 16]: "Engraved upon the tables," which means, that if the tables had not been broken the first time, the Law would never have been forgotten by Israel, for a thing that is engraved cannot be obliterated, and R. Aha bar Jacob added, "that no nation on earth could have got them in their power," because: do not read "Charuth" (engraved) but "Cheiruth" (liberty).

R. Mathna said: It is written [Numbers xxi. 18]: "And from the wilderness to Mattanah," 1 which signifies, that if the man makes himself as a wilderness, upon which everybody treads, and does not mind it, the knowledge he gains remains with him as a present.

R. Huna said: It is written [Psalms lxviii. 11] Thy assembly dwelt therein: thou didst prepare it with thy goodness for the afflicted people, O God! ("Thy assembly" is expressed in the Hebrew by "Chaiothcha" and Chaiah means a wild beast.) If a scholar is in the manner of learning as a wild beast which devours its prey immediately after killing it, *i.e.*, as soon as he learns a thing he repeats it again and again until he knows it thoroughly, he retains his knowledge, otherwise he does not. If

he does this, however, the Holy One, blessed be He, Himself, prepares a meal for him, as may be seen from the end of the passage quoted.

R. Hyya bar Abba said in the name of R. Johanan: It is written [Proverbs xxvii. 18]: "Whoso guardeth the fig-tree will eat its fruit." Why are the words of the Law compared to a fig-tree? As a fig-tree yields its fruit whenever it is shaken, so does the Law always yield new teachings whenever it is repeated.

R. Samuel ben Na'hmeni said: It is written [Proverbs v. 19]: "Let her bosom satisfy thee abundantly at all times." Why is the Law compared to a bosom? Because as at all times when the child desires to suck, the bosom yields its milk, so does the Law yield its teachings every time it is perused. Further, it is written [ibid.]: "With her love be thou ravished 1 continually." This means to imply as was said of R. Elazar ben P'dath, that when he was studying the Law in the lower market of Sepphoris, his clothes were frequently found in the upper market; so engrossed was he in his studies, that he did not even miss his clothes. Said R. Itz'hak ben Eliezer: "Once a man attempted to steal the clothes of this R. Eliezer and found an adder lying on top of them."

The disciples of R. Anan taught: It is written [judges v. 10]: "Ye that ride on white asses, ye that sit in judgment, and ye who walk on the way, utter praise!" "That ride on white asses" refers to scholars who go from town to town and from country to country to teach the Law and who make it clear as daylight. "That sit in judgment" refers to those who give a just verdict which is truly just. "Who walk" refers to those who study the Bible, "on the way" refers to the students of the Mishna, and "utter praise" refers to the students of the Talmud, whose every utterance is

concerning the Law.

R. Shezbi said in the name of R. Elazar ben Azariah: It is written [Proverbs xii. 27]: "The indolent roasteth not that which he hath caught in hunting." This signifies, that one who studies the Law superficially merely to delude people but does not study it thoroughly and repeat it often, will not retain the knowledge nor will he live long. R. Shesheth, however, said: "A man of that kind is not wicked, but merely foolish; on the other hand a prudent man, who studies many things and

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makes marks, so that he will not forget what he had learned, retains his knowledge and will have long life."

When R. Dimi came from Palestine he said: The verse quoted is a simile to a man who catches birds. If he pinions the wings of those he catches, he can proceed and catch more, otherwise they will escape. The same applies to a man who studies the Law. If he reviews his learning constantly, he retains it and can proceed; if he does not, however, he cannot retain it.

Rabha in the name of Sechorah quoting R. Huna said: "It is written [Proverbs xiii. 11]: "Wealth gotten by vain deeds will be diminished; but he that gathereth by close labor will increase it." Which means: If a man groups the ordinances he has learned, he cannot retain them; but if he gathers them slowly and deliberately, he will constantly increase them." And Rabha said: "The Rabbis know of this and yet they pay no attention to it." Said R. Na'hman bar Itz'hak: "I have acted accordingly and in consequence I have retained my knowledge."

The Rabbis taught: "How was the method of teaching the Law in the days of Moses?" Moses learned the Law from the might of God. Then Aaron entered and Moses taught him a chapter. When Aaron had finished he sat down to the left of Moses and his children came in, when Moses would teach them the chapter again. When they had finished, Elazar would sit down to the right of Moses and Ithamar to the left of Aaron. R. Jehudah, however, said, that Aaron would always sit to the right of Moses after his children had finished. Following the sons of Aaron would come the elders of Israel and Moses would repeat the chapter to them. After the elders had finished, the rest of the Israelites who wished to learn would enter and would learn the same chapter. Thus we see, that Aaron heard the same chapter four times, his sons three times, the elders twice, and the rest of the people once. After the last reading Moses would depart and Aaron would again repeat the chapter to the others; then he would depart and his children would teach the chapter; after them the elders would do so, so that no one heard it less than four times. From this R. Eliezer deduced, that every teacher should recite his teaching to his disciples four times, holding that as Aaron who learned from Moses, who in turn learned from the might of God, had to learn one thing four times so much more ought an ordinary man to do so when learning from another.

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R. Aqiba, however, said: Whence do we adduce, that a teacher should teach his disciple until the latter knows the lesson thoroughly? From the verse [Deut. xxxi. 19]: "Now therefore write ye for yourselves this song, and teach it the children of Israel," and whence do we infer, that a

disciple must be taught until he can impart the teaching to others? From what is written further [ibid.]: "put it in their mouth," and whence do we know, that if the reasons for the teaching can be given, this must be done? From the verse [Exod. xxi. 1]: "And these are the laws of justice which thou shalt set before them," and by setting before them is meant that they must be thoroughly explained.

Why did not all learn directly from Moses? In order to show honor to Aaron, his children and the elders. If that be so, let Aaron learn it from Moses, Aaron's children from Aaron, and the elders from the children, then the people from the elders? Because Moses learned from the might of God, all wished to hear it from him.

R. Preida had a disciple, whom he would teach a thing four hundred times and then the disciple would understand it. One day R. Preida was invited to attend the celebration of a circumcision and as he was just teaching his disciple, he finished the teaching for the four hundredth time but still the disciple did not understand. So he asked him: "What is the difficulty?" and the disciple replied, that from the moment the master was invited to the celebration, he could not pay proper attention, thinking that every moment he would be going away. So R. Preida said: "Pay proper attention and I will teach thee again," and he accordingly repeated the teaching another four hundred times. A heavenly voice was heard at that time which said: "What wouldst thou rather, that thou live another four hundred years, or that thou and the entire generation in which thou livest should be given a share in the world to come." R. Preida answered: "I would rather accept the latter proposition." Said the Holy One, blessed be He: "Give him both."

R. Hisda said: The law cannot be retained except through signs, as it is written (as quoted previously): "Put it in their mouth." Read: "Put it with signs in their mouth." R. Tachlipha of Palestine heard this and on his arrival home repeated it in the presence of R. Abbahu. Said R. Abbahu: Ye learn this from that verse, but we derive the same from the verse [Jeremiah xxxi. 21]: "Set thyself up way-marks," meaning,

set up way-marks to the Law; this is in accordance with the dictum of Abhdimi bar Hama bar Dosa, viz.: It is written [Deut. xxx. 12], "It is not in heaven," meaning if it were even in heaven, one would have to get it from there, and [ibid. 13], "Neither is it beyond the sea" implies that even were it beyond the sea, one would have to go after it there. Rabha, however, said: "It is not in heaven" means, that knowledge cannot be found in a man who holds himself as high as heaven; and "Neither is it beyond the sea" means, that knowledge cannot be found in a man who considers his opinions as vast as the sea. R. Johanan said the first statement refers to those who are great in their own estimation, and the last statement to those who ply the seas and are constantly engaged in traffic.

The Rabbis taught: How are the boundaries of a town extended? A town that is oblong remains as it is. A town in the form of a circle is provided with corners. One that is in the form of a square need not be made equiangular. If it was narrow on one side and wide on another it must be made even all around (through the formation of a parallelogram). If a house or row of buildings protruded from one of the walls of the town, a straight line is drawn from the extreme end of such protruding buildings parallel to the wall and thence two thousand ells are measured. If the town was in the form of an arch. or a right angle it should be considered as if the entire space enclosed by the arch or right angle were filled with houses and two thousand ells should

be measured from the extreme ends.

R. Huna said: If a town was in the form of an arch and the distance between the two ends of the arch was less than four thousand ells, the enclosed space is considered as filled with houses and two thousand ells may be measured from the extreme ends. If the distance was more than four thousand ells, the two thousand ells must be measured from the centre of the arch. What distance should a man have from his house to the end whence the two thousand ells are measured. Rabba bar R. Huna said: "Two thousand ells" and Rabha the son of Rabba bar R. Huna said: "Even more than two thousand ells." Said Abayi: "It seems to me that the latter opinion is correct, because, if the man chose, he could go through all the houses in the arch to that end, then why should he not be permitted to cross over the space between his house and the end of the arch?"

Or if fragments of a wall ten spans high, etc. What is

meant by this? R. Jehudah said: "This means, if there were three partitions without a roof." A question was propounded: How was it if there were two partitions with a roof? Come and hear: These are the things that are counted in together with the town: A monument covering four square ells, a bridge, a mausoleum, a synagogue that has a dwelling for an attendant, a church with a vestry, stables, and barns that have a dwelling attached for the keeper, huts in the field and houses built on islands of a lake, which are not more than seventy and two-thirds ells away from the town. All these are counted in together with the town, and following are the things that must not be counted in with the town: A monument partly demolished on both sides, a bridge, a burying ground without a dwelling on it, a synagogue or church that has no dwelling for the sextons, a stable or barn that has no dwelling for the keeper, a pit, a cavern, a fence, a dove-cot, and a boathouse; all these are not counted in with the town." We see then, that a monument which had been partially destroyed on both sides, must not be counted in with the town? Must we not assume that it still retained its roof? Nay, this refers to a monument that did *not* retain its roof. Of what use is a house built on an island? Said R. Papa. "Those houses are used to unload the utensils of a ship." It is said "a cavern is not to be counted in with the town"? Did not R. Hyya teach that it should? Said Abayi: "R. Hyya refers to a cavern, that has a building above it." If that is the case, why mention the cavern? The building itself must be counted in? Here the meaning is, if a building was above the cavern, no matter how far the cavern extended, it is regarded as a foundation for the house and should be counted in.

R. Huna said: Those who live in huts made of twigs may measure the limit only from their doors (even if there are a number of those that extend for over one hundred ells). Said Hinana the son of R. Kahana in the name of R. Ashi: If in the street where the huts stood there were three courts each containing two ordinary buildings, the huts are given the privileges of a town.

R. Jehudah said in the name of Rabh: Those who dwell in huts and those who travel in the deserts do not enjoy life and their wives and children are not their own. We have also learned the same in a Boraitha: Eliezer the man of Biria said: Those who live in huts are the same as those in a grave and concerning their daughters it is said [Deut. xxvii. 21]: "Cursed be

he that lieth with any manner of beast." Why is this so? Said Ula: Because they have no bathhouses (and when the men go away to some distant bathhouse no one is left to take care of the women). R. Johanan said: "Because, when the women go to take their ritual bath, they are afraid to go alone so long a distance; hence they go in company with other women and arc followed by evil men who lead them astray." What is the point of difference between Ula and R. Johanan? If there is a lake in the vicinity, the statement of R. Johanan falls to the ground, but according to Ula even then, the women, if left alone by their husbands, are led to sin.

R. Huna said: "In a town where there are no herbs, a scholar should not live (because herbs are cheap and good food and a scholar can thus live economically)." Shall we assume, that herbs are such a good thing? Have we not learned in a Boraitha, that three things cause much waste, cause a man's body to stoop, and deprive a man of one five-hundredth of his eyesight? Those three things are: coarse bread, newly brewed beer, and herbs? This presents no difficulty: R. Huna refers to onions, garlic, and fine herbs, which are necessary, while the Boraitha refers to bad herbs.

R. Jehudah said in the name of Rabh: In a town that is hilly and where there arc many steps to ascend and descend, both man and beast become prematurely aged. Said R. Huna bar R. Jehoshua: "The towns of Bebiri and Benaresh, two adjoining cities, that had may hills between them caused their inhabitants to become prematurely aged."

The Rabbis taught: "If one comes to make a town square, he must make it as the square of the earth, *i.e.*, the north must be towards the north of the earth, the south towards the south, and his signs shall be: the zodiac of the capricorn in the north and that of the scorpion in the south." Said R. Jose: If he does not understand how to make it as the square of the earth, he should be guided by the equinox. How so? Where the sun rises during the long days and sets during the long days, it is north of the equator, and during the short days, where it rises and sets it is south of the equator, but during the Nissan and the Tishri equinox, it rises half (*i.e.*, directly) east and sets half (*i.e.*, directly) west, as it is written [Ecclesiastes i. 7]: "Going toward the south" during the day, "and turning around toward the north" during the night "the wind moveth round about continually," meaning east and west; at times it goes through them

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and at other times it passes them. Said R. Mesharshia: All these rules are of no account, for we have learned in a Boraitha that the sun never rose in the northeast nor set in the northwest and the sun never rose in the southeast nor set in the southwest.

Samuel said: The equinox of Nissan can only take place during one of the four quarters of a day, either at sunrise, sunset, noon, or midnight, and the equinox of Tamuz cannot take place except at one and one-half hours after sunrise or sunset or seven and one-half hours after either. The equinox of Tishri takes place only at three or at nine hours after either sunrise or sunset, and the equinox of Tebeth takes place only four and one-half hours or ten and one-half hours after either sunrise or sunset. There is not more than ninety-one days seven and one-half hours between each equinox, and they occur in the first and second half of the same hour respectively. [1]

The Rabbis taught: One who comes to measure the city should first make it square in the form of a board. Afterwards he makes another square of the legal distance of two thousand ells also in

the form of a board. When he comes to measure the legal limits from the town, he should not commence at the centre of a side because then he would lose the corner, for, if the diagonal distance from one corner to another is two thousand ells the distance from the one side to the opposite will be 1,428 ells. Hence he should make the square two thousand ells from one opposite side to the other, and in that event he will gain four hundred ells on each side. Then the two legal limits together will gain eight hundred ells on each side, and, in consequence, the town together with the limits will gain twelve hundred ells on each side. Said Abayi: "This can be proven by calculating on a city exactly two thousands ells square."

MISHNA: An allowance of seventy and two-thirds ells of space must be made to the town. Such is the dictum of R. Meir; but the sages hold, that such an allowance is to be made

only if two towns be so close to each other, that each only requires seventy and two-thirds ells to bring them within the legal limits; in that case an allowance is made to both, so that they become as one. Thus also, if three villages form a triangle, and the two outer ones require 141 1/3 ells, a double allowance to bring them within legal distance of each other, the middle one between the two makes all one, so that the three villages, become as one.

GEMARA: Whence do we adduce, that an allowance should be made to the town? Said Rabha: Because it is written, [Numbers xxxv. 4]: "From the wall of the city and outward," which implies, first leave a part outward and then commence to measure.

"*But the sages hold*," etc. It was taught: R. Huna said: An allowance should be made to each of the two cities, and R. Hyya bar Rabh said: "Only one allowance is made for both." We have learned in the Mishna, however, that the sages hold, such an allowance is to be made only, etc., whence we see that only one allowance is spoken of and this would be contradictory to R. Huna? R. Huna may say, that by the allowance is meant the law of the allowance, and if the law of allowance is given at all, it should be given to each of the two cities. It seems to us, that the explanation of R. Huna is correct, because further on the Mishna states, that each only requires seventy and two-thirds, *i.e.*, one town requires seventy and two-thirds ells and the other requires seventy and two-thirds ells, hence the law of allowance applies to each of the two.

An objection was made based upon the last clause of the Mishna: If three villages form a triangle and the two outer ones require 141 1/3 ells, the middle one between the two makes all one; thus if there were no middle one the allowance for the two outer ones would not hold good, and this would be contradictory to R. Huna, who says, that the law of the allowance should be applied? R. Huna might reply: It was taught, however, that Rabba in the name of R. Idi quoting R. Hanina said: The Mishna does not mean to state that there must absolutely be three villages in a triangle, but even if the third is some distance off and between the two there is sufficient space which would permit of the third village being placed there, and the distance from that third village to one of the outer ones be 141 1/3 ells, *i.e.*, the quantity of two allowances of seventy and two-thirds ells each, this third village makes the other two as one. Then

[paragraph continues] Rabha asked of Abayi: "How far must the third village be from the other two,

that it may be counted in with them?" and he answered: "Two thousand ells." Said Rabha to Abayi: "Didst thou not say previously, that thou art of the opinion of Rabha bar R. Huna, who said that it may be even more than two thousand ells distant?" Rejoined Abayi: "How canst thou compare the two? In the former instance there were inhabited houses, while here there is only empty space."

Rabha asked Abayi again: "What must the distance between the two outer villages be?" and he answered: "What is the difference? Thou hast heard, that if the village standing at a distance is placed between the two there would be a distance of 141 1/3 ells to each of the outer ones." "According to that," rejoined Rabha, "it would not matter if there were four thousand ells between the two outer ones?" "Yea," answered Abayi, "so it is."

MISHNA: One must not measure the legal distance except with a line exactly fifty ells long, no more and no less; and one must not measure in any manner except from the breast. If during the measurement a deep dale (cleft) or heap of stones is encountered, the line is passed over it and the measurement resumed; if a hillock is encountered, the line is passed over it (also) and the measurement resumed, provided the legal limit is not overstepped while this is being done. If the line cannot be passed over the hillock on account of its height, R. Dostai bar Janai said: I have heard on the authority of R. Meir, that those who make the measurement cut straight through the mountain (in an imaginary sense).

GEMARA: Whence do we adduce that the line must be exactly fifty ells long? Said R. Jehudah in the name of Rabh: It is written [Exod. xxvii. 18]: "The length of the court shall be one hundred ells, and the breadth fifty by fifty," and thus the verse means to say, that the line should be fifty ells. Is this verse not necessary in order to teach us that the excess of fifty ells of length over the breadth should be apportioned so as to make the court seventy ells and four spans square? (See page 73.) If such were the case, the verse could read "fifty and fifty," but from the fact that it reads "fifty by fifty" we assume that both teachings may be adduced.

"*No more and no less*." It was taught in a Boraitha: "No less," because when the line is taken up (by the surveyor) it may be stretched a trifle (and it, should be only fifty); and "no

more," for should it be longer, it might become entangled and be shortened accordingly.

Said R. Assi (according to another version R. Ami): "The line must be made only of Apaskima." What is an Apaskima? Said R. Abba: "A Nargila," and what is a Nargila? Said R. Jacob: "The fibre of walnut-trees."

We have learned in a Boraitha: R. Jehoshua ben Hananiah said: There is nothing better to measure with than an iron chain; but what can be done, when it is written [Zechariah ii. 5]: "There was a man with a measure-*cord* in his hand." It is written, however [Ezekiel xl. 3]: "There was a man, etc., and a measuring rod." The verse quoted refers to the measurement of the gates of the Temple.

R. Joseph taught: "There are three kinds of cord: One made of rushes, one made of willows, and one made of flax. The first kind of cord was used to tie the red heifer (because it was not subject

to defilement and all things used in connection with the red heifer had to be *not* subject to defilement) as we have learned (in Tract Parah): "She was tied with cord made of rushes and was laid on the spot where she was to be burned." The second kind was used for tying a woman who was to stand the bitter water test as we have learned in a Mishna (Tract Sotah): Then an Egyptian rope was tied above her breast (an Egyptian rope was made of willows). The third kind was used for measuring.

"*If during the measurement a deep dale, etc., was encountered*," etc. From the statement of the Mishna that after passing over it the measurement is resumed, we must assume, that if the surveyor cannot pass over it with a line fifty ells long, he must go to a place where it is possible for him to do so, and after passing over it, should resume the measurement at the original place as nearly as possible on a level with the place where he had left off at the other location.

This is identical with the teaching of the Rabbis as follows: "If during the measurement the surveyor come to a cleft, and *can* pass over it with a line fifty ells long, he should do so. If, however, he *cannot* do this, he should go to another place where this would be possible and resume his measurement at the original place as nearly as possible on a level with the place where he had left off at the other location. Should, however, the cleft be sloping so that he can cross over it without difficulty he should measure it by drawing an imaginary line straight across

the cleft and do this successively both up hill and down. If he come to a wall, he must not cut through the wall but must estimate its thickness, and after allowing sufficient distance for it, he should resume his measurement." We have learned, however, that he should cut through it (in an imaginary sense), why do they say that he should estimate its thickness? In the former instance the case referred to is where the wall was impassable, while in this instance the surveyor can circumvene it.

Said R. Jehudah in the name of Samuel: "Under what circumstances are these rules concerning passing over (a cleft) or cutting straight through to be applied? If the line with a weight attached to one end, will *not*, when dropped, reach bottom. If, however, the line *will* reach bottom, the actual measurement of the cleft must be counted." What must the depth of the cleft be in order that it may be passed over? Said R. Joseph: "Even if it be more than two thousand ells deep." According to whose opinion is this teaching of R. Joseph? Have we not learned in a Boraitha, that if the cleft is one hundred ells deep and fifty wide it may be passed over but not if it be more? while the anonymous teachers hold, even if it be two thousand ells deep. Then R. Joseph's teaching coincides neither with that of the first Tana nor with that of the anonymous teachers? The Boraitha refers to a case where the depth of the cleft cannot be sounded with the sounding line, while R. Joseph refers to a case where the sounding line can be dropped straight down. If the sounding line cannot be used, what distance may he go to find another location for measuring? Said Abimi and also Rami bar Ezekiel: "Four ells."

"*If a hillock is encountered*," etc. Said Rabha: "This refer to a hillock with a base of five ells and a peak of ten spans; but a hillock with a base of four ells and a peak of ten spans should be merely estimated and the measurement resumed."

"*Providing the legal limit is not overstepped*," etc. What is the reason therefor? Said R. Kahana:

In order that it may not be said, that the legal limit commences at the spot where the hillock had already been passed over (*i.e.*, if the hillock was too wide to be passed over in the line of the legal limit and another place had to be selected for passage, it serves as a precautionary measure, in order not to appear as if the legal limit commenced at the point on the other side of the hillock, which, by virtue of its accessibility, had been selected for passage).

"*If the line cannot be passed over the hillock*," etc. The Rabbis

taught: "What is meant by cutting straight through the mountain?" The man at the foot of the mountain should hold the line to his breast and the man at the summit should hold it to his feet. Said Abayi: There is a tradition to the effect, that the mountain must not be cut through (measured) except with a line measuring four ells.

Said R. Na'hman in the name of Rabba bar Abbahu: "The law of cutting through the mountains does not apply in the case of the heifer, which must have its neck broken (see Deut. xxi. 1-9), and not to the cities of refuge (see Deut. xix. 2-10; and Numbers xxxv. 6).

MISHNA: The measurement must be undertaken only by one who is an expert (in measuring land). If the legal limit was carried farther to one place than to another, the farther limit is held to. If *one* surveyor carried the limit farther than another, the farther measurement is abided by. Even a bond-man or bond-woman must be credited if testifying, that "Until here is the Sabbath-limit"; for the sages do not intend to enforce a more rigorous observance (of the law) but to make it more lenient.

GEMARA: What is meant by, "the farther limit is held to"? What about the shorter limit? Is that not within the limit? The Mishna must be read: Even the farther limit is also held to.

"*If one surveyor carried the limit farther than another*," etc. Said Abayi: "Provided the difference in the distance does not exceed the diagonal measurement of the town."

MISHNA: If a town (originally the property) of a single individual, becomes (property) of the public, all the householders residing therein may combine in preparing the Erub. If the town originally was public property and becomes the property of an individual, all the householders must not join in the Erub, unless a number of dwellings outside of the city was not included in the Erub made by the town proper, which number was equal to the new town in Judæa; *i.e.*, containing fifty dwellings. Such is the dictum of R. Jehudah; R. Simeon, however, holds, that it is sufficient if three courts each containing two houses were not included.

GEMARA: The Rabbis taught: What is meant by originally the property of a single individual, and become property of the public? Said R. Jehudah: "For instance, the district of the Exilarch." Rejoined R. Na'hman: "Why dost thou mention the district of the Exilarch, because many people come there

and it thus becomes like public ground; but the seat of government being there, it will serve as a reminder, that there is a law against carrying on the Sabbath? Still even in a place where many Israelites congregate on the Sabbath, even if the seat of government is not there, they will remind each other of the law? Therefore," continued R. Na'hman, "(it is not necessary that the district be the property of the Exilarch) it may be like the district of Nathazai, who owned a whole town."

The Rabbis taught: In a town, originally the property of an individual, which had become public property, containing a wide street, how should an Erub be made? Either a side-beam or a cross-beam must be erected at each end of the street (providing the town was not surrounded by walls) and it is permitted to carry throughout the street. It is not permitted, however, for one half of the town to combine in an Erub (because the city, having at one time been the property of an individual, the other half will prove a bar to those who have combined in the Erub). Either the whole town must combine an Erub, or each entry must make an Erub for itself. If, however, the entire town was at all times public property, and have but one exit, an Erub may be combined for the whole town.

Who is the Tana who holds, that even for the wide street an Erub may be effected? Said R. Huna the son of R. Jehoshua: This is according to R. Jehudah, as we have learned in a Boraitha: "Moreover, R. Jehudah said: 'A man having two houses, one at each end of a wide street, may make a cross or a side beam at each end of the street and is allowed to carry throughout the street,' and the sages rejoined: 'Such an Erub is not sufficient for a wide street.'"

The Master said: "It is not permitted for one half the town to combine an Erub." Said R. Papa: This prohibition refers to an Erub made lengthwise in half the town but in the breadth of half the town (which contained one of the two exits of the whole town) it is allowed.

The Master said: "Either the whole town must combine an Erub or each entry must make an Erub for itself." Why should an Erub not be effected in one half of the town, because the other half might prove a bar? Why should one entry then not prove a bar to another? Each entry may erect a door for itself, which will signify that there is no connection with the others. This is identical with the statement of R. Idi bar Abin in the name of R. Hisda, viz.: If one of the inhabitants of an entry

made a door to his court, he demonstrates thereby that he has no connection with the other inhabitants and consequently does not make the Erub of the others invalid.

"*If the town was originally public property and became the property of an individual,*" etc. R. Zera made an Erub in the city where lived R. Hyya, that included the whole city and did not leave out any part thereof. Asked Abayi: "Why did Master do this? Why did he not leave out a part of it?" Answered R. Zera: "The elders of the city told me, that R. Hyya bar Assi once combined an Erub for the entire city, so I thought that at one time the city was individual property and then became the property of the public." Rejoined Abayi: "The same elders told me, that at one time a pile of dirt blocked one of the entrances so that only one remained; hence R. Hyya bar Ashi made the Erub for the entire city. Now, however, the dirt has been removed and the city never was individual property"; and R. Zera answered: I did not know this.

R. Ami bar Ada of Harphan asked Rabba: "What is the law concerning a town that had one entrance by means of a door and another by means of a ladder?" He answered: "Rabh said, that a ladder is in law accounted the same as a door." Said R. Na'hman to them: "Do not heed him; for thus said R. Ada in the name of Rabh: 'A ladder combines within itself the two uses, that of a door and that of a partition.' The latter if it is on the outside of the city and is hence not accounted as a door and when it stands between two courts it can be accounted as a partition, thus enabling the courts to make separate Erubin, or it can be accounted as a door and both courts may combine in effecting one Erub."

R. Jehudah in the name of Samuel said: "If an entire wall was made of ladders even though it be wider than ten ells, it is nevertheless a lawful partition." R. Brona contradicted R. Jehudah, standing at the wine-cellar of R. Hanina's house: How canst thou say, that Samuel held the ladders to constitute a partition, did not R. Na'hman say in the name of Samuel: "If the people living in attics of courts, which contain balconies, and who are obliged to descend by means of ladders to the court, had forgotten to combine an Erub with the people below, they do not render the Erub of the people below invalid, providing their ladders have apertures at least four spans high?" This is the case if the balconies were not over ten spans high. If the balconies were not over ten spans of what use are the apertures?

[paragraph continues] If the balconies were provided with railing and ten ells were left vacant and a small door was erected in that vacant space, it signifies, that there is no connection between the inhabitants of the attics and those of the court; hence they do not prove a bar to each other.

The inhabitants of Kakunai came before R. Joseph and asked him to give them a man to effect an Erub for them in their city. He accordingly said to Abayi: "Go and make an Erub for them, but see that it provoke no comment from the college." He went and saw that some houses of the city faced a lake and had no other entrance. "I will make an Erub, but will exclude these houses," said he. Subsequently it occurred to him, that an Erub must not be made for the entire city, at the same time it was possible to do this; with these houses, however (that faced the lake), it was an impossibility. Consequently he desired that apertures be made in those houses facing the streets, thereby making it possible for them to make an Erub and then to exclude them, in which event the Erub for the entire city would be valid. Then he concluded that even those apertures were unnecessary, because Rabba bar Abbahu made an Erub for the entire city of Mehuzza, which was composed of several rows of entries and between each row there was a ditch used for the storing of kernels of dates to be used as fodder. He made an Erub for each row and permitted the carrying of things in each entry and from one entry into another without erecting either cross or side beams. He did this on account of the ditches between the rows, which ditches prevented crossing over from one row to the other and the town having been originally public property and subsequently having become the property of an individual, in which case part of the town must be excluded from participation in the Erub, he held that by virtue of the inaccessibility of one row to the other on account of the intervening ditches, one row became the excluded part to the other, and *vice versa*.

Suddenly it occurred to him again, that the rows of entries might have had protruding roofs, which would make communication with each other possible, hence they were enabled to make an Erub; but in the case of those houses that could not make an independent Erub, he again

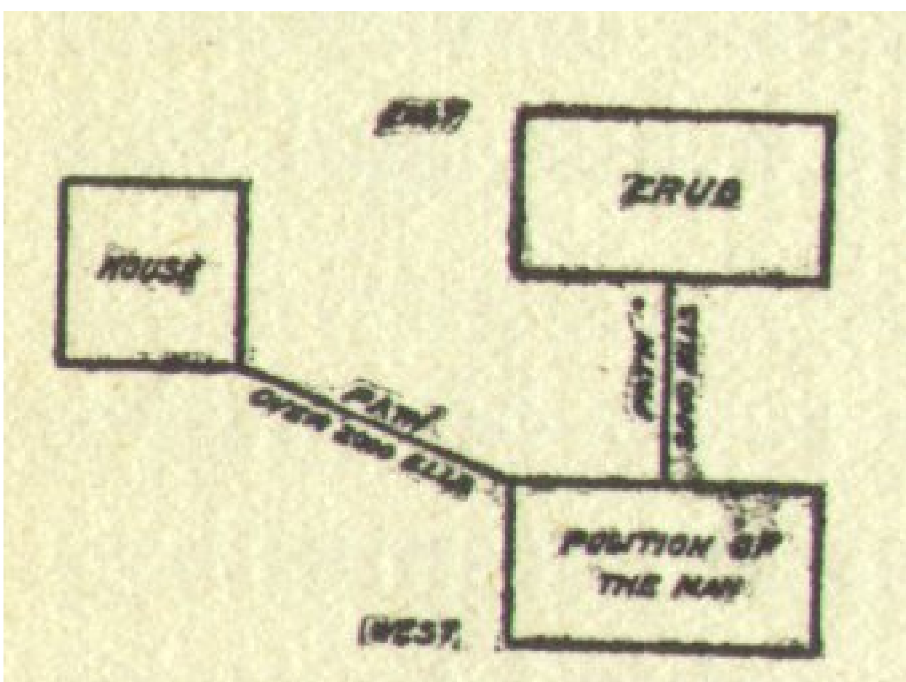
concluded that apertures were necessary. Finally, however, he recollected, that Mar the son of Pipidatha of Pumbaditha made an Erub for the entire city of Pumbaditha and merely excluded his straw-shed underneath the

city. Hence he again concluded, that no apertures for the houses were necessary. In conclusion he said: "I see now, after all this trouble, why my master cautioned me against provoking the comment of the colleges."

"*R. Simeon, however, holds, that it is sufficient, if three courts*," etc. Said R. Hama bar Guria in the name of Rabh: "The Halakha prevails according to R. Simeon." R. Itz'hak, however, said, that one house in one court is sufficient.

Asked Abayi of R. Joseph: "Whence does R. Itz'hak adduce his statement? From a tradition or an opinion?" Answered R. Joseph: What is the difference? (The Halakha prevails according to R. Simeon?) Rejoined Abayi: Shall we learn the Gemara as we do a song?

MISHNA: Should a man (on the eve of Sabbath) be at the east of his domicile and say to his son: "Place my Erub towards the west," or being at the west of his domicile say to his son: "Place my Erub towards the east": if the distance from the place where he stands to his domicile be within two thousand ells and to his Erub farther than that, he must take his Sabbath-rest at his domicile, but must not take it where his Erub is deposited; if the distance to his Erub, however, be within two thousand ells, and to his domicile farther than that, he must take his Sabbath-rest where his Erub is placed and not at his domicile. If a man has deposited his Erub within the limits (allowance of seventy and two-thirds ells) of a town, he has (legally) accomplished nothing and it counts for nothing; if he, however, deposited the Erub outside of the legal limit, be it but a single ell, whatever ground he gains in one direction, he loses in the opposite direction.



GEMARA: What is meant by "towards the east"? "Towards the east of his son" said R. Itz'hak, "and towards the west also of his son." Rabba bar R. Shila, however, says, that both "towards the east" and "towards the west" refer to the house, but the question will arise how will it be possible for the house to be farther than the Erub, because if he told his son to make an Erub there, the son must have stood between the house and the Erub? In this case, the house was diagonally opposite the place where the son stood while the Erub was directly opposite (as shown in illustration).

"*If he, however, deposited the Erub outside of the legal limit*,

etc. Is it possible to assume, that he really overstepped the legal limit? Read: "If he placed the Erub outside of the seventy and two-thirds ells allowed the town."

"*Whatever ground he gains in one direction, he loses in the opposite*." He loses only what he gains, no more? Have we not learned in a Boraitha: "If he placed his Erub within the allowance (of seventy and two-thirds ells) of the city, he has accomplished nothing and it counts for naught; if, however, he placed his Erub outside of such allowance even one ell, he loses (his right to) the whole city, because the measure of the city will be counted to him in the legal limit effected by the Erub"?

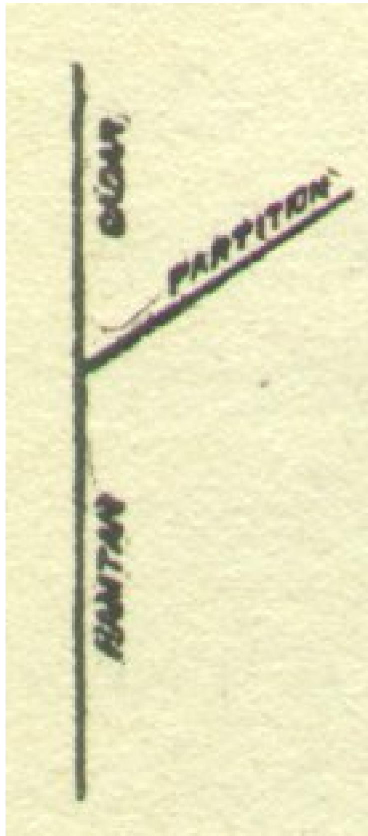
This presents no difficulty. According to the Boraitha, he loses the whole city only when the two thousand ells of his limit terminate in the centre of the city; but if they terminate at the end of the city, which is the case in our Mishna, he loses nothing, as R. Idi said in the name of R. Jehoshua ben Levi: If he measured the limit and it terminated in the *centre* of a town, he has only half the town; but if it terminated at the *end* of the town, the whole town becomes as four ells and he may complete his entire limit of two thousand ells outside of the town." R. Idi said, however: "This is merely a prophetic assertion! For what is the difference whether it terminate in the centre of the city or at the end!" Said Rabha: "This is by no means a prophetic assertion. Thou wilt learn this in the succeeding Mishna."

R. Joseph said in the name of Rami bar Abba quoting R. Huna: "If a town was standing on the steep banks of a lake and there was a partition made on the brink of the banks four ells high, the measurement of the legal limits may be commenced from that partition. If there was no partition, however, the measurement must be commenced from the entrance of the house (nearest the lake)." Said Abayi: "Why dost thou require in this case a partition four *ells* high? Generally four *spans* are sufficient!" Because usually, no fear is entertained as to the use of the place, while in this case there is constant fear of falling over the banks (hence that place cannot be taken into consideration and the measurement must be made from the houses).

Said R. Joseph: Whence do I adduce this teaching? From the following Boraitha: "Rabbi permitted the inhabitants of Gadar to descend to Hamtan but forbade the people of Hamtan to ascend to Gadar." Why did Rabbi decree thus? We must

assume, because the inhabitants of Gadar (who lived above the people of Hamtan on the slope of

a mountain) made a partition at the foot of their city while the inhabitants of the city of Hamtan did not make a partition at the foot of their city; hence Gadar which had a partition was safe from falling, and the legal limit, which was measured from any part of the city included Hamtan, but the people of Hamtan, which had no partition and was consequently not safe, could measure their legal limits only from their houses and thus it did not include the city of Gadar.



When R. Dimi came from Palestine, however, he assigned a different reason for the above Boraitha, saying: "Rabbi decreed thus, because the Gadarites would maltreat the Hamtanites; hence he prohibited the latter to ascend to Gadar on a Sabbath." Why on Sabbath, why not also on a week-day! Because on Sabbath there is more drunkenness (and in consequence more brutality). Why did he then permit the Gadarites to descend to Hamtan? Cannot they maltreat the Hamtanites even there? Because a dog that has no home will not bark even in seven years (meaning that in their own homes the Hamtanites could better protect themselves). Is there not danger, however, that the Hamtanites will maltreat the Gadarites? The Hamtanites would not dare do this (because they were in the minority).

R. Safra said: There is a different reason for the Boraitha, viz.: The city of Gadar was built in the form of an arch and the two ends of the arch were more than four thousand ells apart. We have learned in connection with this that the legal limits must be measured from the houses of the individuals; hence when the inhabitants of Gadar measured their limit, it included the city of Hamtan, but when the people of Hamtan, who were opposite the space of the arch, measured their limit, it terminated in the empty space between the two sides of the arch, and that space being over four thousand ells, could not be counted as part of the city.

R. Dimi bar Hinana said: (There is another reason for the Boraitha.) The city of Gadar was a large city whereas Hamtan was a small town and the laws concerning this will be explained in

the following Mishna.

MISHNA: The inhabitants of a large town may traverse the whole of a small town (within or adjoining their legal limits); but the inhabitants of the small town must (not) traverse the

whole extent of the large town. How then? If an inhabitant of the large town place his Erub in the small town, or an inhabitant of the small town place his Erub in the large town, each may traverse either town and proceed two thousand ells beyond its boundaries. R. Aqiba said: "One has only the right to proceed two thousand ells from the place where he deposited his Erub." Said R. Aqiba to the sages: "Will ye not admit, that in the case of one who deposits his Erub in a cavern, that he has not the right to proceed further than two thousand ells from the place where he has deposited his Erub?" They replied: "True; but when is this the case? If there are no dwellings in the cavern; but if there are dwellings within it, he may not only traverse the whole extent of the cavern, but also proceed two thousand ells outside of it." (Hence, it may be seen) that the ordinance is less rigid as to the interior of a cavern, than to the space above it.

Concerning one who measures (previously mentioned) he is only allowed to carry the legal limits two thousand ells from the place whence he started, even though the end of his measurement terminate in a cavern.

GEMARA: Said R. Jehudah in the name of Samuel: If one took his Sabbath-rest in an abandoned city, he may traverse the entire extent of the city and two thousand ells besides; but if he deposited his Erub in that city, he only has two thousand ells from that Erub. R. Elazar, however, said, whether he merely took his rest there or deposited his Erub, he may traverse the entire extent of the city and two thousand ells outside of it.

An objection was made based upon the statement of R. Aqiba addressed to the sages: "Will ye not admit, that in the case of one who deposits his Erub in a cavern, that he has not the right to proceed further than two thousand ells from the place where he has deposited his Erub?" and their reply: "True; but when is this the case? If there are no dwellings in the cavern." Thus we see, that if there arc no dwellings within it, the sages agree with R. Aqiba? (How then can R. Elazar say, I that one may traverse the whole extent of the city and two thousand ells beyond?) By the statement "if there are no dwellings in the cavern" the sages mean to say, if there is no *room* for dwellings in the cavern.

Mar Jehudah observed that the inhabitants of Mabrachta placed their Erub in the synagogue of the city of Agubar, so he

said to them: "Why do ye not place the Erub a little further? Ye will have more space to the two thousand ells?" Said Rabha to him: Thou quarreller! (Thou disputest the opinion of the sages!) Concerning the law of Erubin no attention is paid to R. Aqiba (because it had been decided long ago, that the more lenient decrees concerning Erubin prevail).

Footnotes

119:1 The question here arises whether the Hebrew term "Meabrin," which we render with "extended," is spelled with an Aleph or an Ayin. If with an Aleph it signifies extended, and if with an Ayin it means districted.

121:1 Peah signifies the comers of the field, the crops of which must be left over for the widows, orphans, etc.

124:1 Mattanah is the Hebrew term for a present.

125:1 The Hebrew term for "ravished" in the verse is Tishgeh, which means also thou shalt err."

131:1 This is calculated by the ancient astronomers as follows: There are seven planets, which change with every hour; *e.g.*, in the first hour we have the planet Mercury, in the second the Moon, in the third Saturn, in the fourth Jupiter, in the fifth Mars, in the sixth the Sun, and in the seventh Venus. Thus at the end of the 91 days and 7½ hours of the first equinox (of Nissan), if Mercury is in the ascendant the second equinox (that of Tamuz) will fall in the second half-hour of the planet Mercury, the third equinox (of Tishri) will occur in the first half-hour of the Moon, and the last equinox (of Tebeth) will fall in the second half-hour of the Moon, etc.

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CHAPTER VI.

REGULATIONS CONCERNING THE ERUBIN OF COURTS AND PARTNERSHIPS.

MISHNA: To one who dwells in the same court with a Gentile, or with one who does not acknowledge the laws of Erub, the latter prove a bar (to his carrying in the court). R. Eliezer ben Jacob, however, said: "At no time can such a prohibition be caused, unless there be two Israelites, who prevent each other."

R. Gamaliel related: "It happened that a Sadducee dwelt with us in one alley (entry) in Jerusalem, and my father said to us (on the eve of Sabbath): 'Make haste and bring all the vessels into the alley, lest the Sadducee bring out his, and thus make it unlawful for you to carry out yours.'" R. Jehudah related the same circumstance with a variation in the language, viz.: "Make haste and do what you require done in the alley, lest he come out and make it unlawful for you to do so."

GEMARA: Abayi and R. Hinana, both sons of Abin, were sitting along with Abayi. The two brothers said: "The Mishna would be correct according to the opinion of R. Meir, who holds that the dwelling of a Gentile as far as the laws of Erubin are concerned is regarded as a dwelling; but what about R. Eliezer ben Jacob? If he regards the dwelling of a Gentile as a dwelling, then it should prove a bar even to one Israelite, and if he holds that it is not regarded as a dwelling, then it should not interfere even with two Israelites." Said Abayi to them: "Does then R. Meir hold, that the dwelling of a Gentile is regarded as a dwelling where the laws of Erubin are concerned? Have we not learned in a Boraitha, that R. Meir holds the dwelling of a Gentile to be like a vacant house, where things may be moved at will? Therefore I say, All agree that the dwelling of a Gentile is not considered as a dwelling as far as Erubin are concerned and that the intent of the Mishna is simply to prevent the Israelite from falling into the ways of the Gentile and disregard the Sabbath entirely, and to this end R. Meir holds, that a

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[paragraph continues] Gentile proves a bar even to one Israelite, but R. Eliezer ben Jacob maintains, that it is so rare an occurrence for one Israelite and one Gentile to live in one court, that such a precaution is in that case superfluous."

The text of the above Boraitha is as follows: "The dwelling of a Gentile is, as far as the laws of Erubin are concerned, to be regarded as a vacant house and things may be moved and carried to and from his house and the court; but if an Israelite also dwelt in the same court, the Gentile proves a bar to the Israelite." Such is the dictum of R. Meir; R. Eliezer ben Jacob, however, said, that the Gentile does not interfere, unless there are two Israelites who prevent each other."--Have we not learned in our Mishna that if one dwells in the same court with a Gentile, the Gentile proves a bar? This presents no difficulty: The Mishna refers to the Gentile who is on the

spot, while R. Eliezer ben Jacob refers to one who is not at home.

What does R. Eliezer mean to express? Does he hold, that a dwelling without the occupant is also a dwelling, then he should state, that even one Israelite is prevented by it; if he holds, that a dwelling without its occupant is not considered a dwelling, then why does he mention a Gentile, he could say, if there be two Israelites and one is absent from home, he does not prove a bar to the other? Nay; a dwelling without its occupant is not considered a dwelling; but in the case of the Israelite who was absent, if he had proved a bar when at home, the precaution is also enforced when he is not at home, but in the case of a Gentile, no such precaution is necessary for the reason, that he himself does not prove a bar to the Israelite and his interference is merely due to the fact that the Israelite might fall into his ways and disregard the Sabbath. When the Gentile is absent, however, such apprehension does not exist.

If the Gentile is absent he does not prevent the Israelite? Have we not learned in a Mishna, that "if a person quits his house, and he goes to take his Sabbath-rest in another town, whether he be a Gentile or an Israelite, he proves a bar to the other inmates of the court, such is the decree of R. Meir"? This refers to a case of where there is fear that the person will return on the same day.

R. Jehudah said in the name of Samuel: "The Halakha prevails according to R. Eliezer ben Jacob." R. Huna, however, said: "It is customary to hold to the opinion of R. Eliezer, *i.e.*, it is not taught in the colleges that the Halakha prevails

according to R. Eliezer ben Jacob, but when a man asks concerning this law, he may be told to follow that dictum." R. Johanan however said: "The people act in accordance with R. Eliezer's decree, but it should not be decided so when the question arises."

Abayi asked R. Joseph: "It is known to us, that all the Mishnaoth taught by R. Eliezer ben Jacob are clean and thorough. Here also R. Jehudah said in the name of Samuel, that the Halakha prevails according to R. Eliezer ben Jacob. Now then, if a disciple of a certain master live in the same town as his master and is asked concerning a Halakha established by R. Eliezer ben Jacob (which is therefore correct) may he decide it himself or must he as usual refer the case to his master?" R. Joseph answered: "R. Hisda (who was a disciple of R. Huna) would not even decide the question whether eggs may be eaten with kutach (a dish made principally of milk) as long as R. Huna was living."

R. Jacob bar Abba asked Abayi: "May a disciple decide in the place where his master resides a Halakha, contained in the scrolls of Fast-days?" Abayi replied: R. Joseph decided this question as stated above.

R. Hisda *did* decide legal questions, during the lifetime of R. Huna, in Khafri. [1]

R. Hamnuna [2] decided questions in the city of Hartha, which belonged to Argaz in the days when R. Hisda lived. (Hartha was not far from Pumbaditha, the residence of R. Hisda.)

Rabhina would examine the slaughtering-knives in Babylon during the lifetime of R. Ashi (who

was the head of the college). R. Ashi asked him: "Why does Master do this?" Rabhina answered: "Did not R. Hamnuna decide questions in Hartha during the lifetime of R. Hisda?" Said R. Ashi to him: "On the contrary! We have learned, that R. Hamnuna did *not* do this." Rejoined Rabhina: "We have learned both, that he did and that he did not, and the case seems to be thus: As long as R. Huna the master of R. Hisda lived, R. Hamnuna did not decide any questions, but upon the death of R. Huna when R.

[paragraph continues] Hisda became the head of the college, R. Hamnuna began to decide questions also, because he was virtually a disciple (and) comrade of R. Hisda and I am also a disciple comrade of Master."

Rabha said: "If a slaughtering-knife is brought to a young scholar for examination, he may examine it, providing he intends to use some of the meat himself."

Rabhina 1 came to the city of Mehuzza (and stopped at an inn). The inn-keeper brought a slaughtering-knife to him for examination, and Rabhina told him to take it to Rabha. Said the inn-keeper: "Dost thou not hold with Rabha, that a young scholar may examine a slaughtering-knife if he intends to use the meat himself?" Rejoined Rabhina: "Yea; but the meat is thine and I merely buy the meat of thee as others do."

R. Elazar of the city of Hagronia and R. Abba bar Tachlipha (R. Aha) were the guests of R. Aha the son of R. Iqua in the city presided over by R. Aha bar Jacob. A calf, which was the third of its mother, was to be prepared and the slaughtering-knife was brought to them for inspection. Said R. Aha bar Tachlipha: "Must we not respect the elder (meaning R. Aha bar Jacob)?" Said R. Elazar to him: "Thus decided Rabha: A young scholar may examine the slaughtering-knife if he intends to use the meat himself." Accordingly R. Elazar examined the knife but was afterwards punished for it.

Why was R. Elazar punished for it? Rabba had really allowed it? Because R. Aha bar Jacob was an exceptionally wise and extremely old sage.

Rabha said: A disciple has no right to decide questions of law. If, however, he sees a person committing a prohibited act, he may even in the presence of his master correct such a person.

Rabhina while in the presence of R. Ashi (his master) observed a man tying an ass to a tree on Sabbath. He admonished him and told him that it was not allowed; but the man paid no attention to him, whereupon Rabhina said to him: "Thou art under a ban for this." Then he (Rabhina) said to R. Ashi: "Can this action of mine be construed as disrespectful to thee because it was done in thy presence?" R. Ashi answered: "It is written [Proverbs xxi. 30]: 'There is no wisdom nor understanding nor counsel against the Lord,' and that means, where the honor of

the Lord is concerned, the respect due a teacher is not to be considered."

Rabha said: "If a disciple decide a point of law in the presence of his master, it is considered as a capital offence; but if he does this in the absence of his master while the master is still in the same city, it is not a *capital* offence, but is nevertheless prohibited." Zera said in the name of R. Hanina: It is not a capital offence, but he is nevertheless called a sinner, as it is written [Psalms cxix. ii]: "In my heart have I treasured up thy saying, in order that I may not sin against thee." (This signifies that if one did not treasure up his knowledge but uttered it in the presence of his master, he commits sin.)

R. Hamnuna propounded a contradictory question to the above verse, viz.: It is written [Psalms xl. 10]: "I announce thy righteousness in the great assembly," and himself explained it by saying: "The former verse was proclaimed by David when Ira the Yairite, who was his master, was still living and the latter when Ira was dead."

R. Abba bar Zabhda said: "He who sends his gifts to one particular priest to the exclusion of all others brings famine into the world, as it is written [II Samuel XX. 26]: "And Ira the Yairite was a priest unto David." Why a priest unto David? Was he not also a priest to the rest of Israel? The inference then is, that David presented him with all his gifts and immediately following this verse, it is written [ibid. xxi. 1]: "And there was a famine in the days of David three years."

R. Elazar said: A disciple who decides a point of law in the place of his master, if intrusted with a position of importance, is eventually deposed, as it is written [Numbers xxxi. 21-24] that Elazar the priest quoted a law and although he quoted it in the name of Moses, still he was deposed from office on that account; for although Joshua was ordered to stand before Elazar [Numbers xxvii. 21], we do not find one instance where Joshua ever availed himself of Elazar's services.

R. Levi said: He who decides a point of law in the presence of his master will die childless, for it is written [Numbers xi. 28], that Joshua, the son of Nun said, "My lord Moses, forbid them," and [Chronicles vii. 27] it merely states, "Now his son, Jehoshua his son," whence we see that Joshua had no children.

There was an entry in which a man by the name of Lachman bar Risthak resided. He was asked to rent his right to the

ground occupied by him to the other inmates; but he would not do this. So the matter was brought to Abayi for decision and he told them as follows: "All of you, resign your rights to your grounds to one man in the entry and thus it will constitute a case of where one Israelite and one Gentile occupy the same entry; when one Gentile occupies the same grounds with one Israelite he does not interfere with the Israelite." How can this remedy us? Why was it decreed, that one Gentile does not interfere with an Israelite, because it is of rare occurrence, that they should occupy the same court, but in our case it is different. We all live there? Said Abayi: "In your case there is also an unusual occurrence; for it seldom happens, that all the inmates of one entry should resign their rights to one man."

Subsequently R. Huna the son of R. Jehoshua related this statement of Abayi to Rabha. Said Rabha: "If so, then the entire law of Erubin was made void in that entry." Nay; they mad can E

rub between themselves also. Rejoined Rabba: "This is still worse. In that case it will be said that an Erub may be made where a Gentile lives." Answered R. Huna: "It will be proclaimed, that the carrying is not done on account of the Erub, but because every inmate has resigned his right to the ground to one man and hence it is private ground." "To whom will ye proclaim this? To the children?" continued Rabha. "I have a better plan. Let one man go and ask Lachman bar Risthak to permit him to deposit something in his (Lachman's) yard, which will then be considered as rented for an entire year, and R. Jehudah said in the name of Samuel, that if ground had been rented by an Israelite from a Gentile or *vice versa* for one year or even for one season when the crops are harvested, in fact if any dealings at all have been had on this order with the Gentile, an Erub may be placed in the entry where he lives with impunity."

Abayi asked of R. Joseph: "How is it, if there are several who had rented apartments from a Gentile and one of them forgot to make an Erub. Would he prove a bar to the others or not?" Answered R. Joseph: "The statement of R. Jehudah in the name of Samuel was made in order to make the law more lenient and not to make it more rigid."

When R. Na'hman heard the dictum of R. Jehudah in the name of Samuel quoted above, he said: "How fine is this Halakha!" Then he heard another dictum of R. Jehudah in the name of Samuel stating, that one who had imbibed a quarter of

a lug of wine, must not decide any legal questions. Said R. Na'hman: "This Halakha is preposterous! I know that my head is not quite clear until I drink a quarter of a lug of wine." Said Rabha to him: "Why should master say this? Has he not heard the dictum of R. A'ha bar Hanina, viz.: it is written [Proverbs xxix. 3]: 'He that keepeth company with harlots wasteth his wealth,' and this means, that one who declares one Halakha to be fine and another to be bad loses the beauty (wealth) of the Thorah." Answered R. Na'hman: "Thou art right. I shall do this no more."

Rabba bar R. Huna said: One who is tipsy should not pray; but if he had done so his prayer is nevertheless acceptable. One who is intoxicated, however, and prayed, his prayer is considered as a blasphemy. What is meant by tipsy? If a man were compelled to speak to the king and had still sense enough to do so, he is merely tipsy; but one who would not be able to do this is considered intoxicated.

Said Rami bar Abba: "One who after drinking had walked a mile or slept a little is again considered sober." Said R. Na'hman in the name of Rabba bar Abbahu: This is the case if he had drunk only a quarter of a lug of wine; but if he drank more, then the walk tires him still more, and the interrupted doze inebriates him still more.

Will a walk of one mile then neutralize the effects of the wine? Have we not learned, that Rabbon Gamaliel while travelling at one time rode upon an ass from the city Akhu to Khazib and was followed by R. Ilayi. R. Gamaliel noticed some loaves lying on the road, so he said to Ilayi: "Take the loaves up," and meeting a Gentile later said to him: "Mabgai, take the loaves away from Ilayi." Ilayi then asked the Gentile: "Whence art thou?" and he answered: "From the cities of Burganin." "What is thy name?" asked Ilayi again. "I am called Mabgai," was the answer. "Dost thou know R. Gamaliel?" was the next question, "or does R. Gamaliel know

thee?" "Nay," answered the Gentile. Thus it is obvious, that R. Gamaliel knew the name of the Gentile by inspiration [and three things may be deduced from his actions, viz.: "Firstly, that bread must not be passed by (but should be gathered up); secondly, that we must be guided by the majority of wayfarers (*i.e.*, on account of the majority of wayfarers being Gentiles, the bread is presumed to belong to them and hence R. Ilayi was told to give it to the Gentile); and thirdly, that leavened bread

belonging to a Gentile, even if remaining over from the Passover, may be made use of by Israelites after the Passover."]

Upon his arrival at Khazib, R. Gamaliel was asked by a man to nullify a vow. Said R. Gamaliel to his companions: "Have we drunk a quarter of a lug of Italian wine?" and they answered: "Yea, we did." "Then," quoth R. Gamaliel, "let us walk on, the man following us until the effects of the wine wear off," and they walked on for three miles. When they came to the steps leading up to the city of Tyre, R. Gamaliel dismounted, wrapped himself in a robe, sat down and nullified the man's vow, and from these actions we have learned many things; namely: "A quarter of a lug of Italian wine inebriates a man; when a man is inebriated, he must not decide any legal questions; a walk neutralizes the effects of wine; and a vow must not be nullified while riding, standing, or walking, but in a sitting position."

Thus we see, that a three miles' walk is required to destroy the effects of wine, how can it be said, that one mile is sufficient? In a case of inebriation through Italian wine it is different, because that wine is very strong, but for ordinary wine a walk of one mile is all that is necessary.

The master said: "One must not pass by bread." Said R. Johanan in the name of R. Simeon ben Jochai: This was said in the earlier generations when the daughters of Israel had not yet resorted to witchcraft, but in the latter generations when they began to practise it, bread may be passed by, lest it be bewitched.

We have learned in a Boraitha: Whole loaves of bread may be passed by, because they may be bewitched, but pieces of bread should not, as there is no fear of their being bewitched.

R. Shesheth said in the name of R. Elazar ben Azariah: "I could exempt the entire world from divine judgment since the destruction of the Temple to the present day; for it is written [Isaiah li. 21]: "Therefore, hear now this, O thou afflicted, and drunken, but not with wine." (Hence if all the world is drunken, they should not be judged.)

An objection was made: "We have learned, that a drunken man's purchase is a valid purchase, his sale is a valid sale; if he has committed a capital offence, he should be executed; if he committed a crime involving the punishment of stripes, he must be given the stripes. The rule is, that he is in all respects considered as a sober man with the exception that he is absolved

from prayer." R. Shesheth means to say by stating that he can absolve the entire world from divine judgment, that he can exempt the world from the judgment concerning their prayers. Said R. Hanina: All this is said concerning a man whose drunkenness does not equal that of Lot's, but if it is of the degree of Lot's drunkenness, he is exempt from all judgment.

R. Hyya bar Ashi said in the name of Rabh: "One whose mind is not thoroughly at ease must not pray, as it is written: "In his affliction shall he not judge." 1

It was the custom of R. Hanina to omit saying his prayers on a day when he was in a bad humor, and Mar Uqba would not take his seat on the judge's bench on a day when a hot south wind would blow, saying, that it was too hot to judge with a clear mind. R. Na'hman bar Itz'hak said: When a Halakha is to be decided by a man, his head should be as clear as it is on a day when a north wind which drives away all dark clouds is blowing and the sky is clear and the weather fine.

Abayi said: "When my mother would tell me to hand her some kutach, it so confused me, that I could not study that whole day." Rabha said: "If a flea bit me, I could no longer learn."

The mother of Mar, the son of Rabhina, made her son seven suits of clothes, one for each day of the week.

R. Jehudah said: "The night was made only for sleep." R. Simeon ben Lakish, however, said: "The moon was made only in order to facilitate study at night."

R. Zera was told that all his conclusions were very sagacious, and he replied, that they were all studied during the day.

The daughter of R. Hisda said to her father: "Why does Master not sleep a while?" and he answered: "Very long days will yet come, when study will be impossible" (meaning the days in the grave).

R. Na'hman bar Itz'hak said: "We are all day-laborers." R. A'ha bar Jacob would borrow hours from the day and repay them at night.

R. Eliezer said: One who travelled on the road should,

upon his return, not recite his prayers for three days, as it is written [Ezra viii. 15]: "And I gathered them together to the river that runneth into the Ahava, and we encamped there three days: and I looked about among the people." (Which signifies, that one should deliberate for three days and then pray.)

The father of Samuel when on the road would not pray for three days. Samuel himself would not pray in a room where there was any beer, saying, that the odor of the beer confused him. R. Papa would not pray in a house where there was Harsena (a dish made of fish and vinegar) saying, that the odor disturbed him.

R. Hanina said: A man who is angry with another and when under the influence of liquor can be persuaded to a reconciliation possesses one of the qualities of his Creator, as it is written

[Genesis viii. 21]: "And the Lord smelled the sweet savor," etc.

R. Hyya said: "One who drinks wine and is not excited thereby, has some of the qualities of the seventy sages in the days of Moses." The inference of R. Hyya is based upon the word Yaïn (wine), which according to the Hebrew method of counting, namely, Yod = 10 and another Yod = 10 and Nun = 50, altogether 70; and also upon the word Sod (secret) Samach = 60, Vav = 6 and Daled = 4, altogether 70; hence when the wine enters, the secrets escape and the man who does not become excited through wine and can retain his secrets, possesses the wisdom of the seventy sages.

R. Hanan said: "Wine was created only to comfort the mourners and to pay the wicked their reward for any good they may have done, on this earth, as it is written [Proverbs xxxi. 6]: "Give strong drink unto him that is ready to perish, and wine unto those who have an embittered soul." (By "one that is ready to perish," is meant the wicked and by "those who have an embittered soul," are meant the mourners.)

R. Hanin bar Papa said: A house where wine does not flow like water cannot be classed among those that are blessed, as it is written [Exod. xxiii. 25]: "And he will bless thy bread and thy water." The bread referred to is that which can be bought with the proceeds of the second tithes and the water which cannot be bought with such money really means wine. If, then, wine is so plentiful in the house, that it flows like water, the house is counted among the blessed.

R. Ilayi said: By means of three things a man's character

may be ascertained: "By his wine-cup, by his purse, and by his anger," and others say also by his play (for money).

R. Jehudah said in the name of Rabh: There was a case, where an Israelite and a Gentile occupied an inner court and another Israelite occupied the outer court and it was referred to Rabbi for decision. He decided that the outer court must not be used to carry therein. It was then referred to R. Hyya and he decided likewise.

Rabba and R. Joseph both sat in the presence of R. Shesheth, when he finished his lecture, and R. Shesheth concluded by saying, that Rabh decided the above Halakha in accordance with the opinion of R. Meir. Rabba shook his head. Said R. Joseph: Is it possible, that two such great men (as R. Shesheth and Rabba) should be mistaken? If Rabh's dictum were according to R. Meir, why was it necessary to state, that the outer court was occupied by an Israelite? (R. Meir holds, that even one Gentile and one Israelite are sufficient to make it unlawful to carry in one court.) If we assume, that Rabh merely related the circumstance as it occurred, without making a decision, is it not a fact that when Rabh was asked whether, if the Gentile was at his home, the Israelite may carry from the inner court to the outer, he answered that he may, hence we see that the Gentile does not prevent the Israelite occupying the same court from carrying therein; but that the two Israelites prevent each other. Shall we then assume, that Rabh held in accordance with R. Eliezer ben Jacob? Why should it be prohibited for the Israelite to carry from one court to the other? Further on we shall learn, that, according to R. Aqiba, a foot (meaning a man) which is allowed to carry in its place cannot interfere with the right of another place (and in this

case each Israelite may carry in his own court, for one of them has the court to himself and the other has but one Gentile in his court, who, according to R. Eliezer ben Jacob, does not interfere with his right to carry), why then should it be prohibited for them to carry between the courts? It might be then, that Rabh holds with R. Aqiba, who says, that a foot which is allowed to carry in its own place nevertheless interferes with the right of another place, then why should the Gentile be mentioned? Each Israelite will prevent the other?

Said R. Huna, the son of R. Jehoshua: It may be assumed that Rabh agrees either with R. Eliezer ben Jacob or with R. Aqiba; but in this case the two Israelites combined in an Erub,

and on account of the interference of the Gentile, he prohibited both.

Resh Lakish and the disciples of R. Hanina met in an inn where lived two Israelites and a Gentile, who rented his place from another Gentile. The tenant was not at home but the owner was. The question then arose whether the place of the tenant could be rented from the owner for the Sabbath. Where the tenant had a perfect lease and could not be dispossessed for that day, it is entirely out of the question. If, however, the tenant's lease was conditional, *i.e.*, if the owner could at any time dispossess him, the question arises whether, because of the fact, that he had not yet been dispossessed the tenant retains his right to the place and it cannot be rented, or from the fact, that it is optional with the owner to dispossess the tenant at any time, the place may be rented.

Resh Lakish said: In the meantime, let us rent the place, and afterwards, when we come to our sages in the South, we will ask their opinion. Subsequently, when they came to R. Ephes and asked him, he told them that they had done rightly.

R. Hanina bar Joseph, R. Hyya bar Abba, and R. Assi met at an inn, the proprietor of which was a Gentile and who arrived on the Sabbath. The question then arose, whether his place could be rented from him for the Sabbath or not. If renting a place is equal to making an Erub, then, of course, it would not be permitted on Sabbath, but if renting a place was merely the resigning of it by one man to another, then it may be done, because that is allowed *on Sabbath*. R. Hanina advised renting it but R. Assi objected. Said R. Hyya bar Abba to them: Let us depend upon this elder (meaning R. Hanina) and rent it and then we will ask R. Johanan. When they asked R. Johanan he told them, they had done what was right.

The men of Neherdai when hearing of this were surprised, saying: "Did not R. Johanan say at another time, that 'renting a place for the Sabbath was equivalent to making an Erub,' hence, as the Erub must be effected on the preceding day, the renting must be done likewise." Nay; R. Johanan means to state that as an Erub may be effected with anything, no matter how little in value, a place may also be rented for any amount, be it ever so small; and as one man may combine an Erub for five others occupying the same court, so may one rent also for others.

Samuel said: "There is no such thing as resigning the right

of one court to another court, nor resigning the right to the space of a ruin. (This signifies, that if two courts opened into an entry or into the street and besides had a door between them, there is no necessity for them to combine an Erub, and, in consequence, they are not benefited if the right of one court is resigned to the other.) And as for a ruin, it means, that if there were two houses opening into a ruin between them, neither can use the ruin, unless they combine an Erub; but the space enjoyed by each cannot be resigned by one to the other. R. Johanan, however, said that both in the case of the court and of the ruin the right to the space may be resigned by one to the other.

It was necessary for us to be told of both instances wherein they differ; for if we had been told, that Samuel only prohibited the resigning of the space by one court to the other, we might have assumed, that he did so because each court had a right in itself without combining a joint Erub, but as for a ruin, he might have held, that as an Erub must be effected by the two houses on each side, if the use of the ruin is desired, the resigning of the space was *permitted*. If the difference concerning the ruin only were related, it might be said, that R. Johanan permits the resigning of the space of the ruin only; because an Erub must be effected by the houses desiring its use, whereas in the case of the court, he agrees with Samuel. Hence both instances are quoted.

Abayi said: The prohibition of Samuel regarding the resigning of the space by one court to another refers only to two courts that had a door between them. If, however, one court was contained within the other and did not have a separate entrance to the street, they may mutually resign their space, because they are bound to combine an Erub. Rabha said: In such a case, they at certain times may do so and at other times they must not (and this will be explained at the end of this chapter).

When R. Hisda met R. Shesheth his lips would tremble; for knowing that R. Shesheth was so well versed in Mishnaoth and Boraithoth, he was afraid to render a decision lest R. Shesheth would contradict him with another Mishna or Boraitha. On the other hand R. Shesheth's whole body would tremble when he met R. Hisda, for knowing that the latter was very shrewd, he was afraid of R. Hisda's sagacity.

R. Hisda propounded the following question to R. Shesheth:

"If there were two houses on each side of a wide street (public ground) and some Gentiles made a partition around the street on the Sabbath, what is the law? According to those who maintain, that it is not allowed for one court to resign its space to another, there is no question; because if the two courts had desired to make an Erub on the preceding day they could have done so and still they are not allowed to resign their spaces to each other; so much the more in our case, where the two houses could not have combined an Erub on the preceding day on account of the intervening public ground which had not yet had a partition, they are not allowed to resign their space to each other. I am asking, however, considering the Tana who maintains, that the two courts may resign their space to each other. Shall I assume, that it is permitted in the case of the two courts because they could have made an Erub on the preceding day, but in the case of our two houses which could not have made an Erub on the preceding day, it is not permitted or, as there is a partition around the intervening public ground, they may do so?"

R. Shesheth answered: "Nay, it is not permitted." R. Hisda queried again: "How is it, if two Israelites living in the same court with a Gentile and not having made an Erub or rented the place of the Gentile, the latter died on the Sabbath? May they mutually resign their space to each other? According to the Tana who holds, that one may rent a place on the Sabbath, there is no question, because if they did not make an Erub they may rent the place from the Gentile and then resign their places to each other; thus if two things may be done on the Sabbath, one certainly may be done. I ask thee according to the Tana who prohibits renting on the Sabbath. May the two Israelites in this case where the Gentile is dead and they need not rent his place resign their places to each other or not?" Rejoined R. Shesheth: "I say that they may; because if they had chosen to rent the place yesterday and then effect an Erub they could have done so, but Hamnuna does not allow them to do this."

R. Jehudah said in the name of Samuel: "If a Gentile have in his court a door, four spans wide and four ells high, opening into a valley, even should he lead cattle, camels, and wagons through the entry to the court all day long, he does not interfere with the Israelites inhabiting the court, because his door is of more use to him than the common entry, and serves to separate him from the others."

The schoolmen asked: "How is the law, if the door of the Gentile opened into a woodshed?" R. Na'hman bar Ami said in the name of some learned men: "Even if the door of the Gentile open into a woodshed and the common entry into the street, he also does not interfere with the Israelites inhabiting the court." Rabba and R. Joseph both say: "If the woodshed was not more than of two saahs' capacity, the Gentile *does* interfere with the Israelites, because he cannot derive as much comfort from the woodshed as he can from the street, but if the woodshed was larger than that the Gentile does not interfere. With Israelites it is the reverse: if the woodshed, into which the separate door opens, be *no* more than of two saahs' capacity and the Israelite had not combined in the Erub with the others, he does *not* interfere with them, because a woodshed of that size may be used by him on the Sabbath; but if the woodshed be larger, he *does* interfere with the other Israelites."

Rabha bar Haklayi asked of R. Huna: "How is the law if a Gentile have a door opening into a woodshed?" and R. Huna answered: "The sages have already decided this. If the woodshed be of two saahs' capacity, he interferes with the Israelites, but if of more than two saahs' capacity he does not."

It happened that some warm water was spilled and more was needed for a child on the Sabbath. So Rabba said: "Let some warm water be brought from my house." Said Abayi to him: "Why! no Erub has been made!" Rejoined Rabba: "Let us depend upon the combine made in the entry (of this court)," but Abayi persisted: "We have no part even in the entry. "Finally Rabba said: "Let a Gentile be told to bring it." Subsequently Abayi said: "I had a mind to dispute even this last order of my master, but R. Joseph would not permit me to do this; for R. Joseph said in the name of R. Kahana: 'Where a biblical ordinance is in question the case should be discussed before the act is committed, but in the matter of rabbinical ordinances the deed may be accomplished and then the decision may be asked for.'"

Then R. Joseph asked Abayi: "Upon what grounds dost thou desire to dispute this last order of the master?" and he answered: Upon the teaching we have learned in a Boraitha, viz.: While the

sprinkling of an unclean man (with the ashes of the red heifer) by a clean man is only a rabbinical ordinance, the Sabbath should not be violated by the performance of this rite even if it be necessary for the fulfilment of a commandment,

and in the same manner requesting a Gentile to per. form an act on the Sabbath being also against the rabbinical ordinance, it should not be done on the Sabbath. Rejoined R. Joseph: "Canst thou discriminate between the performance of an *act* which is against the rabbinical ordinance and a case where no act at all was committed? The Gentile was not told by Rabba to warm the water but merely to bring it from his house through the entry, and this is certainly not prohibited."

Said Rabba bar R. Hanan to Abayi: "How is it possible, that in a court where two such great men as Rabba and thou reside, no Erub was made either in the court or in the entry?" Answered Abayi: "How can I help it? The master does not usually pay attention to such trifles; I am engaged all the week long in study, while the inmates of the court do not trouble themselves about it. Should I make up my mind to present them with the bread in my basket, it would be merely a sham, for if they were to demand it, I could not in reality part with it as I cannot spare it; hence even if I should have this in mind, it would be useless; for we have learned in a Boraitha, that if one of the inhabitants of the entry demanded wine or oil and was refused, the combine is made invalid." Rejoined Rabba bar R. Hanan: "Then thou couldst have in mind to give them a quarter of a lug of vinegar from the cask thou hast in the house, and thou surely wouldst not use up *that* on the Sabbath." Abayi replied: "We have learned in another Boraitha, that it is not allowed to combine an Erub with material which is in bulk because it might be, that the very part which was intended for the Erub may be used." "But," insisted Rabba bar R. Hanan, "we have learned in another Boraitha that this may be done." Said R. Oshiya: "Concerning this, there is a difference of opinion between Beth Shammai and Beth Hillel." It happened again that some warm water needed for a child was spilled. Said Rabha: "Let the mother be asked whether she is in need of warm water, and, if so, a Gentile may be told to warm it and bring it to her and it will serve for the child also." R. Mesharshia remarked: "The mother has been eating dry dates for some time (then she certainly does not need any warm water)." Rejoined Rabba: "She is not quite herself and knows not what she eats."

Another case of this kind happened with a child. So Rabba said: Let the belongings of the men be taken from the men's room into the women's apartment; I shall then resign my place

for the benefit of others and the warm water may be brought from my house.

Said Rabhina to Rabba: "Did not Samuel say, that it is not allowed to resign the space of one court to another?" and Rabba answered: "I hold with R. Johanan who permits this to be done." Rejoined Rabhina: "If thou dost not hold with Samuel, why then didst thou order the belongings of the men to be transferred to the women's apartments? Thou shouldst have resigned thy place to them and they their place to thee, then all of you will be enabled to carry, which according to Rabh is also permissible." Rabba replied: "In this respect I hold with Samuel in order that it should not appear as a farce if I resign my place to the others and they their place to me."

The text states, that Rabh permits the mutual resigning of places and Samuel prohibits it. Said R. Ashi: Rabh and Samuel differ in the same point as R. Eliezer and the sages (in Chapter II., last Mishna, where R. Eliezer forbids the inmate of a court who had forgotten to join in the Erub to carry and permits the other inmates to do so).

"*R. Gamaliel related: It happened that a Sadducee,*" etc. Whence this reference to a Sadducee? The Mishna is not complete and should read thus: A Sadducee is considered the same as a Gentile, and R. Gamaliel said: "He is not considered as a Gentile," and then relates the incident: "It happened, that a Sadducee dwelt with us in one alley in Jerusalem, and my father said to us: 'Make haste and bring out all your vessels into the alley, before the Sadducee can do this and thus prevent you from doing so.'" We have also learned to this effect in a Boraitha, viz.: "An Israelite who lives in the same court with a Gentile, a Sadducee, or a Bathusee, is prevented by, them (from carrying therein). R. Gamaliel, however, said this does not apply to a Sadducee or a Bathusee, and it happened that a Sadducee lived in the same alley with him in Jerusalem, so he said to his children: "Make haste and carry out all your vessels into the alley, before that unworthy one can come out and prevent you from doing so; for so far he has resigned his place to you (but later he may change his mind)." So said R. Meir. R. Jehudah, however, gave another version of the affair, viz.: Make haste and do what is necessary for you in the alley, before it becomes dark; for after dark the Sadducee will prevent you from doing so (meaning that the Sadducee, like a Gentile, cannot resign his place to the Israelites). Shall we assume then,

therefrom, that if the Israelites do a thing before the Sadducee that he cannot prevent them later? Have we not learned in a Mishna?" One who, after resigning his place, carries out intentionally or inadvertently into the court, prevents the others from doing so. So said R. Meir?" Said R. Joseph: "Say, that he does not prevent the others." Abayi says: There is no difficulty. The Mishna by stating that he prevents the others means to say, if he had previously carried out things (before the others did so) as we have learned in a Boraitha: If after resigning his place, a man carried out things into the court, either intentionally or inadvertently, he prevents the others from doing so, so said R. Meir. R. Jehudah said "only if he did so intentionally." All agree, however, that such is only the case, if the other inmates of the court had not carried out things before he did, but if they had done so, he does not prevent them at all, whether he had carried out things intentionally or unintentionally.

The master said: "R. Jehudah, however, gave another version of the affair. Then R. Jehudah holds, that the Sadducee is considered as a Gentile, and in the Mishna we have learned, that R. Gamaliel said: "Lest the Sadducee bring out *his* vessels," etc. This presents no difficulty. There are two kinds of Sadducees. One who publicly violates the Sabbath is considered as a Gentile, and one who does so secretly, is not considered as a Gentile. According to whose opinion will the following Boraitha be: "One who publicly violates the Sabbath, cannot resign his place?" According to the opinion of R. Jehudah.

Once a man went out on the Sabbath with a bundle of spices in his hand, and seeing the approach of R. Jehudah the Third, he concealed it. Said R. Jehudah the Third: According to R. Jehudah a man of this kind may resign his place, as we have learned in another Boraitha: An apostate who does not violate the Sabbath in the markets may resign his place, but one who does violate the Sabbath in the markets cannot do so; for it was said, that only an Israelite may resign his place or accept ground resigned to him by another, but from a Gentile the place must be

rented. How may a place be resigned by Israelites? One says to the other: My place is sold to thee or my place is resigned to thee, and no token of acceptance is necessary.

MISHNA: Should one of the householders of a court forget, and not join in the Erub, neither be nor the other inmates of the court are allowed to carry anything into or out of his house,

but he *and* they may carry into or out of their houses. If the other inmates have resigned to him their common right to the court, he is permitted to carry therein, but they must not do so. Should there be two persons who have neglected to combine in an Erub, they mutually prevent each other; for one individual can resign his right to the court or can acquire that right; but two persons, though permitted to jointly resign their right, cannot jointly acquire the right to the exclusive use of the court.

From what time is the right to be conferred? Beth Shammai hold, "While it is yet daylight," but Beth Hillel maintains "even from dusk (on the eve of Sabbath)." Whoever resigns his right (to the court) and afterwards either intentionally or inadvertently carries within it, prevents (renders it unlawful for) the others from doing so. Such is the dictum of R. Meir. R. Jehudah, however, said: If he carries (within the court) intentionally, he prevents them, but if inadvertently, he does not.

GEMARA: Is it unlawful only to carry into and out of his house, but carrying into and out of the court it is lawful? How was the case? If he resigned his right to the house why should it be unlawful (to carry into) the house; if he did not resign his right to the house, why should they all have a right to the court? In this case, the man had resigned his right to the court alone but not to his house, and the sages maintain, that by resigning his right to the court he did not also resign his right to his house, and there are men who live in houses that have no court. Why then is it lawful for him to carry in and out of their houses? Because he is considered as a guest.

"*If the other inmates have resigned to him*," etc. Will they then be considered as his guests? One man can be the guest of five, but five men cannot be considered the guests of one. Can we adduce from this clause in the Mishna that this resigning of the right (to a place) can be repeated mutually several times? The Mishna may mean to state that the other inmates had already previously resigned their rights to the one man, in which case it becomes lawful for him, but not for them.

"*Should there be two persons*," etc. Is this not self-evident? The case is, if after having forgotten to join in the Erub, one of the two persons resigned his right to his house and also the right to the part of the court renounced to him by the others. We might assume that this could be lawfully done. We are therefore told that the other inmates having resigned their rights to

the two persons jointly, one of them individually cannot resign his right, because he had not an individual right at that time.

"*For one individual can resign his right*," etc. This was just stated in the Mishna, what need is

there of the repetition? We have learned both concerning resigning and acquiring a right? The latter part of the clause, which teaches that two persons may resign their right, but must not acquire it, is essential. This, however, is also self-evident? We might assume, that a precautionary measure is necessary prohibiting two to resign their right, lest one resign his to two; therefore we are told, that such a precaution is not necessary.

"*Two persons cannot jointly acquire the right*." Why this repetition again? Here we are told, that two persons must not acquire the right even when presented with the ground in question outright, so that they have the privilege of transferring it to others.

Abayi asked of Rabba: "If five men inhabited one court and one of them had forgotten to join in the Erub, must he resign his right to each of the others individually or can he do so collectively?" Rabba answered: "He must do so to each individually." Rejoined Abayi: "We have learned, that one who had not joined in an Erub, may resign his right to another that had, and two persons who had joined in an Erub may resign their right to one who had not; two who had not joined in an Erub may also resign their right to two others who had not, but one who had not joined in an Erub must not resign his right to another in the same condition nor may two who had not joined in an Erub resign their right to two others, who were similarly situated. It says, then, that one who had not joined in an Erub, may resign his right to one who had. The one who had, certainly must have had another person to combine an Erub with him, then it seems to be sufficient if he (who had not joined) resigned his right to the one man only and not to the other also?" Rabba replied: "Yea, he certainly had a companion in the Erub, but it may be the case, that the companion died and he was left alone."

Rabha asked R. Na'hman: "May an heir (whose father died on the Sabbath) resign his right or not? Shall I say, that because he could not prepare the Erub, on the preceding day, not having his own property, he cannot resign his right on the Sabbath; or that he, being a descendant of his father, has also inherited his father's right?" Answered R. Na'hman: "I

hold, that he may, but the disciples of Samuel maintain, that he must not." Rabha objected: We have learned: This is the rule: A thing that had been permissible on part of the Sabbath is permissible for the entire Sabbath, and that which was prohibited for part of the Sabbath was also prohibited for the entire Sabbath. What is meant by "had been permissible on part of the Sabbath?" *e.g.*, a door which was used for making the Erub and had become closed up during the Sabbath, and "by prohibited for part of the Sabbath" is meant, *e.g.*, two houses, each one of which stood on the opposite sides of a wide street and a partition was made by Gentiles on the Sabbath. The exception is as regards one who resigned his right, *i.e.*, although a man had forgotten to join in an Erub before the Sabbath, he was not permitted to carry on part of Sabbath, still he may on the Sabbath resign his right to the place and carry. It says, however, that only the man may carry but not his heir? Replied R. Na'hman: "Learn: instead of 'the exception is as regards one who resigns his right,' the exception is the law pertaining to the resigning of a right."

Rabha raised another objection: We have learned: "If one of the householders of a court died and left his right to the ground to one living in the market, if the death took place while it was yet day before the Sabbath, the man living in the market impedes the inmates of the court; but if the death took place after dusk, he does not. If a man, however, living in the market, was possessed of a house and having died left his right to his place to one of the inmates of the court,

then the reverse is the case, *i.e.*, if he died before Sabbath set in, the inmate of the court does not impede the others, (because he could have joined in an Erub); but if the man died on the Sabbath, he does impede the others." Now if thou sayest, that the heir may resign the right, let him do so, why should he impede the others? Answered R. Na'hman: "This means, that he impedes the others only until he resigns his right."

R. Johanan said: The above Boraitha is according to Beth Shammai, who hold, that it is not allowed to resign a right on Sabbath as we have learned in our Mishna: From what time may the right be resigned? Beth Shammai hold "while it is yet daylight," and Beth Hillel maintain: "From dusk."

Said Ula: Why do Beth Hillel hold, that it may be done on Sabbath? The reason of Beth Hillel is based upon an instance where a man was about to separate heave-offerings for

another without being told to do so. In the meantime this other man came along and saw that the heave-offerings were being separated for him, whereupon he said to the man: "Separate it from the finer grain." In that case the heave-offering is valid. Why? Because by the statement "separate it from the finer grain" he demonstrated his approval of the man's action and his intention to have done this at all events. The same is the case with a man who resigns his right on the Sabbath; for he demonstrates that his intention had been to join in the Erub on the preceding day, but he had forgotten.

Said Abayi to him: If this be the reason of Beth Hillel, what about the case of a Gentile who lived in the same court with two Israelites and happened to die on the Sabbath? The Israelites are permitted in that event to resign their rights to each other, but can it be said that their intention dated from the preceding day? Hence the reason of Beth Hillel is simply this: While Beth Shammai prohibit the resigning of the right to a place because they hold, that it is equal to selling the place and selling or buying is prohibited on the Sabbath, Beth Hillel however hold, that resigning the right to a place is simply abandoning the place, and that is permissible on the Sabbath.

MISHNA: Should a householder be in partnership in wine with two of his neighbors (residing in the same alley), they do not require an Erub; if he be in partnership with one in wine and with another in oil, they do require an Erub. R. Simeon said: Neither in one case nor in the other do they require an Erub.

GEMARA: Said Rabh: "Such is the case if the wine was contained in one vessel." And Rabha said: "This may be inferred from the Mishna itself; for the latter clause of the Mishna states, that if the householder be in partnership with one in wine and with another in oil, they require an Erub. It would therefore be correct if in the first clause the wine is contained in one vessel and in the second clause there are two separate vessels; but were there two vessels in the first clause also, what difference would it make whether one vessel was filled with oil and the other with wine, or both with wine?" Rejoined Abayi: This is no argument. Wine can be mixed with wine (hence, even if it be in two vessels it can be mixed and an Erub made with it is valid), but oil and wine cannot be mixed, and even though there are two separate vessels the Erub cannot be made therewith.

R. Simeon said: "Neither in one case nor in the other do they require an Erub." Is it possible that R. Simeon holds, that even where one vessel contains wine and the other oil, no further Erub is necessary? Said Rabba: "The case referred to applies to a court between two entries (alleys) and R. Simeon holds to his theory, as we have learned in the case of the three courts opening into each other and also into the street, that communication between the middle court and the two outer or between the two outer ones and the middle one is permissible; thus in this case R. Simeon means to imply, that the court made an Erub with one of the entries by means of wine and with the other by means of oil, hence no additional Erub is necessary, and communication between the court and both entries is permissible."

Abayi objected: "How canst thou compare the two instances? In the case of the three courts communication between the two outer is prohibited, whereas here it is said that no additional Erub whatever is necessary?" Learn also here, that no additional Erub is necessary to allow of communication between the court and the entries, but if the inmates of either of the entries desire to carry in the other they must make an additional Erub.

R. Joseph, however, said: "R. Simeon and the sages differ in the same point as R. Johanan ben Nouri and the sages in another Mishna as follows: 'If oil floated on wine and a man who had bathed before sunset (and hence was not yet ritually clean) touched the oil, the sages hold, that the oil becomes unclean, but the wine is not affected. R. Johanan ben Nouri, however, maintains, that the wine and the oil are attached to each other and therefore both become unclean.'" In our Mishna, the sages hold with the sages of the Mishna quoted, and R. Simeon holds with R. Johanan ben Nouri.

We have learned in a Boraitha: R. Elazar ben Tadai said: "In either case they require an additional Erub." Even if both vessels contain wine an additional Erub is necessary? Answered Rabba: The case is thus: If two men each bring a jug of wine and pour the wine together, there is no question but what that constitutes a legal Erub, but in this instance R. Elazar ben Tadai means to state that if two men bought a cask of wine jointly and had not yet separated their shares, the Erub is not valid because it cannot be made with anything owned in partnership, and he holds thus for the reason that he does not accept the theory of premeditated choice. The sages, however,

permit this mode of procedure, because they accept the theory of premeditated choice.

R. Joseph said: "R. Elazar ben Tadai and the sages differ on another point, namely: The question whether the inmates of the court can depend upon the combine made in the entries." All agree that carrying in the entries is permissible if the Erub has been made there, but R. Elazar ben Tadai holds, that this is not permitted in the court because the combine made in the entries cannot be depended upon, while the sages hold that it may be depended upon.

R. Joseph continued: "Whence do I know, that this is the point of difference? From the statement of R. Jehudah in the name of Rabh, to the effect that the Halakha prevails according to R. Meir, and the subsequent statement of R. Brona in the name of Rabh, that the Halakha

prevails according to R. Elazar ben Tadai. Therefore, we must assume, that R. Meir and R. Elazar have one and the same reason." Said Abayi: "This may be so; but why did Rabh say at one time that the Halakha prevails according to R. Meir and at another time according to R. Elazar ben Tadai? Would it not be sufficient to state, that the Halakha prevails according to one of the two?" (And R. Joseph answered:) "Rabh desires to inform us that wherever the laws of Erub are concerned and two Tanaim differ as to the details, but agree as to the main issue of the Halakha, and we say that the Halakha prevails according to both, we need not abide by the more rigorous decisions of each but, on the contrary, should accept the more lenient decrees of both."

Which R. Meir is referred to by Rabh? The one figuring in the following Boraitha: In courts an Erub must be made with bread, but it is not allowed to do so with wine. In the entries a combine must be effected with wine, but if the inmates desired to do so with bread, it is permissible. An Erub must be made in the courts and a combine in the entries in order that the growing children should not forget the laws of Erub and say, "Our parents did not make an Erub." Such is the decree of R. Meir; the sages, however, say: Either an Erub or a combine must be effected (*i.e.*, if one was omitted the other can be depended upon). [1]

R. Jehudah in the name of Rabh said: "The Halakha prevails

according to R. Meir." R. Huna said: "The custom prevails according to R. Meir," and R. Johanan said: "The masses only act in accordance with the dictum of R. Meir." [1]

MISHNA: Should five different companies take their Sabbath-rest in one hall (triclinium), Beth Shammai hold, that each company requires a separate Erub, but Beth Hillel hold, that one Erub suffices for all of them. The latter school admit, however, that if any of these companies occupy distinct chambers or attics, each company requires a separate Erub.

GEMARA: Said R. Na'hman: "The two schools differ only as regards a low centre-partition, but if there was a partition ten spans high between each of the companies, all agree that each company requires a separate Erub." According to another version, R. Na'hman is supposed to have said: "They differ not only as regards a low centre-partition, but also concerning partitions between each company."

R. Jehudah the Sagacious said: The schools of Shammai and Hillel do not differ where partitions that reach to the ceiling of the hall are concerned, they agree that in that event each company requires a separate Erub. Wherein they do differ, however, is if the partitions do not reach the ceiling. Said R. Na'hman in the name of Rabh: The Halakha prevails according to R. Jehudah the Sagacious.

R. Na'hman bar Itz'hak said: We can infer this from the Mishna itself. The latter clause of the Mishna states, that Beth Hillel also agree with Beth Shammai if the companies each dwell in distinct chambers or attics. What is meant by distinct chambers and attics? Shall we say, that they are really chambers and attics? Then it would be self-evident. We must say, then, that they are similar to chambers and attics, *i.e.*, that the reference is to partitions which reach to the ceiling. Hence the deduction that the decree of R. Jehudah the Sagacious is correct.

We have learned in a Boraitha: The difference of opinion between the two schools centres in the question whether the companies deposited their Erubin elsewhere. But if the Erub is deposited in the hall occupied by them, all agree that one Erub is sufficient for all. According to whose opinion will be the statement of the following Boraitha, that if five men combined an Erub, one Erub is sufficient for all of them? This is in accordance with the opinion of Beth Hillel.

MISHNA: Brothers (or associates) who take their meals at their father's (or at one) table, but sleep each in his separate house (in the same court), must each one prepare a separate Erub. Therefore if one of them had forgotten and not prepared an Erub, he must resign his right (to the common court). When is this the case? When the Erub had been deposited in some other place; but if the Erub has been placed with them, or if there are no other inhabitants in the court, they need not prepare any Erub whatsoever."

GEMARA: From this Mishna it may be adduced, that an Erub should be made in the place where a man sleeps and not where he takes his meals (and further, we will observe, that Rabh holds, that an Erub must be made where the man takes his meals). Said R. Jehudah in the name of Rabh: The Mishna means to say, that the brothers did not actually eat at their father's table but merely received from their father the means with which to obtain their meals.

The Rabbis taught: One who had a vestibule, a gallery, or a balcony in the court of another, and did not join in an Erub with the other inmates of the court does not impede the other inmates. If he had a hay-loft, a cattle-pen, a woodshed, or a granary in the court of another and did not join in an Erub, he does impede the others. R. Jehudah, however, said: "Nothing except a dwelling-house can prove an interference," and he continued: "It happened that an inhabitant of Naph'ha, [1] who had five courts in Usha, did not join in an Erub with the inmates of those courts and the question was laid before the sages whether this was an impediment to their carrying within the courts and the sages replied: 'Nothing but an actual dwelling-house can prove an impediment.'"

What is meant by a dwelling-house? A house occupied as a dwelling. What is to be understood by "occupied as a dwelling"? Rabh said: "The house where a man takes his meals," and Samuel said: "The house wherein a man sleeps."

An objection was made: The shepherds, those that guard the fig-trees, the inhabitants of huts in the country and the guards of the fields, when passing the night in a town have the same rights as the townsmen, but when passing the night at their posts, they have only the right to two thousand ells from the place where they are situated. (From this we can see, that the place where one passes the night is considered as his abode?)

[paragraph continues] This is no proof! For we can testify, that those men would be much better satisfied if their meals were brought to them at their posts (hence their posts are not only their places of abode but also their eating-places, and as for those who pass the night in the town, they evidently also take their meals in the town for the time being).

The Rabbis taught: Concerning five women who receive from their husbands the means for securing their food and five slaves who receive the means from their masters to procure their sustenance and who live in separate houses in the court, R. Jehudah ben Bathyra permits the women to carry within the court and prohibits the slaves to do so; but R. Jehudah ben Babba on the contrary allows the slaves to carry but prohibits the women to do so.

Said Rabh: "What reason has R. Jehudah ben Babba for his decree? Because it is written [Daniel ii. 49]: 'Daniel remained in the gate of the king,' the inference is, that in the same manner as Daniel did not always remain in the gate of the king, but his office being such that his place was there, so it is also with slaves who, while in the service of their master, are considered as being always at their master's side." It is self-evident that if a son eat and dwell with his father, he need not make an Erub as stated previously. As for a woman who has a husband and a slave who belongs to a master there is a difference of opinion between R. Jehudah ben Bathyra and R. Jehudah ben Babba. How about a disciple, however, who dwells in the same court with his master and derives his sustenance from his master?

Come and hear: When Rabh still dwelt with R. Hyya he said: "We need not join in an Erub because we depend upon the table of R. Hyya," and when R. Hyya still dwelt with Rabbi he also said: "We need not make an Erub because we derive our sustenance from Rabbi."

R. Hyya bar Abhin asked of R. Shesheth: "What about the disciples of the college, who eat in the inns of the valley and pass the night at the college? When the legal limit of two thousand ells is measured where must the starting point be? The college or the inn where they take their meals?" R. Shesheth answered: "The college."

Rami bar Hama asked of R. Hisda: If a father and son, or a master and his disciple, lived in two courts, one inside of the other, and the outer court opened into an entry, what is

the law concerning them? Are they to be considered as if they were two distinct individuals who cannot mutually impede each other because each one of them has a right to carry in his own court and a man who is permitted to do so in his own court cannot interfere with a man in another place; hence both father and son, or master and disciple, may carry each in their respective courts; or, shall we consider them collectively because the son or the disciple who lives in a separate court but eats at his father's table has a certain right to his father's court. Thus the father or the master is not in sole possession, but shares it with another. The consequence is that the father or the master is in duty bound to make an Erub in his own court and, on account of this, he becomes one who can interfere with the right of another, and prevents his son from carrying in his own (the son's) court? Then again if they are considered as distinct individuals, are they in duty bound to combine an Erub covering the two courts? Finally if the two courts had separate openings into the entry, are they considered as separate courts and thus the entry becomes valid by the addition thereto of a cross and side beam, or they are considered as one court, and if one court only opens into an entry, the entry cannot be made valid by the addition of a cross and side beam?

Answered R. Hisda: We have learned this in a Boraitha: A father and his son or a teacher and his disciple, providing there are no other inmates in the court occupied by them, are considered

as individuals, and need not make an Erub at any place. Nevertheless the entry into which their court opens becomes valid by the addition thereto of a cross or side beam.

MISHNA: If (the householders dwelling in) five courts that open into each other and also open into one common alley (entry) have joined in an Erub for the courts, but have not combined the alley, they are permitted to carry (things) in the courts, but must not do so in the alley; if they did combine the alley, however, they are permitted to carry both in the courts and in the alley. If they had combined both the courts and the alley, but one of the householders forgot and did not join in the Erub, they arc nevertheless permitted to carry both in the courts and in the alley. Should one of the householders (dwelling) in the alley have forgotten to join in the Erub, it is permitted to carry (things) in the court but not in the alley, inasmuch as the alley (bears the same relation) to the courts as the court (does) to the houses within it.

GEMARA: According to whose opinion is our Mishna? We must say that it is in accordance with R. Meir, who holds that an Erub is needed in the court, and a combination in the alley. How, then, could that part of the Mishna be explained, which states that if a combination in the alley is made it is allowed to carry both (in the courts and in the alley); and this is certainly according to the opinion of the Rabbis, who hold that one of the two is sufficient (*i.e.*, either an Erub in the courts or a combination in the alley)? Are then the two parts of the Mishna based on different opinions? This presents no difficulty. The latter part of the Mishna refers to a case where a combination had already been made in the alley; hence it is according to R. Meir's opinion. Now, then, what is the reason of R. Meir in stating that if one of the householders in the court forgot and did not join in the Erub, it is nevertheless permitted to carry both in the courts and in the alley? R. Meir may hold as follows: The most essential feature of this case is to make an Erub in the courts and a combine should also be made in the alley for the benefit of the growing children in order that they may not forget the laws of Erubin. Hence if the combination has been made both in the courts and in the alley, in which the majority participated, there is no fear of the children forgetting the laws.

R. Jehudah said: "Rabh does not learn in the Mishna that the five courts opened into each other but merely that they all opened into one common alley." This was corroborated by R. Kahana. What reason did Rabh have to learn thus? He holds, that if several courts open into one common alley, a cross and side beam suffice to make that alley valid. If, however, only one court open into the alley, a cross and side beam do not suffice. Samuel, however, said: "Even if only one court or one house open into an alley, a cross and side beam suffice for the alley." R. Johanan said: Even if a ruin open into an alley, a cross and side beam suffice.

Abayi asked of R. Joseph: "Does R. Johanan hold, that even if the path leading to a vineyard open into an alley, a cross and side beam suffice for the alley?" R. Joseph replied: "Nay; R. Johanan meant to say a ruin which (in an emergency) could be inhabited; but a path which could not under any circumstances be inhabited, is out of the question."

Said R. Huna bar Hinana: R. Johanan's statement concerning a ruin is but in accordance with his theory expressed in

his decision regarding the Mishna (Chapter IX., Mishna I, of this tract)where R. Simeon says that roofs as well as courts and woodsheds constitute the same kind of premises for the carrying of all utensils contained therein when the Sabbath-rest began," etc. This was commented by Rabh as follows: "The Halakha prevails according to R. Simeon provided no Erub was combined by the inmates of each separate court," meaning, thereby that if no Erub was combined, the inmates will not carry out any vessels from their houses into the court. Samuel and R. Johanan, however, declare that the Halakha prevails according to R. Simeon, even if an Erub was combined, as there is no apprehension that the inmates will carry out any vessels from their houses into the court, and as in this case there is no apprehension that the vessels will be carried out of the houses, so also in the case of a ruin, R. Johanan holds, that there is no fear of the inmates carrying vessels from the court into the ruin by way of the alley.

R. Brona sate and repeated the Halakha decreed by Samuel (to the effect that even if one court or one house opened into an alley, a cross and side beam was sufficient for the alley). Said R. Eliezer, one of the schoolmen, to R. Brona: "Did Samuel indeed say this?" and R. Brona answered: "Yea." R. Eliezer then asked to be shown where Samuel resided, and R. Brona showed him. R. Eliezer then came before Samuel and said: "Did master decree thus?" and the answer was "Yea." Rejoined the schoolman: "Didst thou not state previously that where the laws of Erubin are concerned, we must hold strictly to the literal text of the Mishna and the Mishna distinctly teaches: 'The alley bears the same relation to the courts as the court (does) to the houses within it.'" Samuel remained silent.

Does the silence of Samuel signify, that he accepted R. Eliezer's view or that he did not care to reply? Come and hear: A certain Aibuth bar Ihi dwelt in an alley and erected a side-beam therein. Samuel told him that this complied with the legal requirements. After the death of Samuel, R. Anan came and destroyed the side-beam. Said Aibuth: "In an alley where I live by the direct permission of our master Samuel, a mere disciple like R. Anan dares to come and destroy my side-beam." Hence we see, that Samuel did not accept the opinion of R. Eliezer! This is not conclusive evidence! The case of the alley could be explained as follows: The sexton of the synagogue took his meals with this Aibuth bar Ihi, but lodged in the synagogue.

[paragraph continues] Aibuth was of the opinion that the residence is determined by the place where he takes his meals, hence the sexton and he were the occupants of one house; (and Samuel declared his alley to be valid in conformity with his original decision, that if one court or one house opened into an alley a cross and side beam is sufficient for the alley) but Samuel, who held that the residence of a man is determined by his lodging-place, may have accepted the opinion of R. Eliezer, and taking into consideration that there were two dwellings in the alley, that of Aibuth and that of the sexton, he made the alley valid by the addition of a side-beam.

MISHNA: If two courts be one within the other, should the inmates of the inner court prepare an Erub and those of the outer court fail to do so, the inmates of the inner court may carry within it, but those of the outer court must not carry within their (own) court. If the inmates of the outer court prepare an Erub, but those of the inner court fail to do so, neither are allowed to carry within their respective courts. If each have prepared a separate Erub, they are permitted to carry within their own limits. R. Aqiba holds, however, that the inmates of the outer court are prohibited to carry within it and that the right of thoroughfare possessed by the inner court

renders the outer court prohibited; but the sages hold, that the right of thoroughfare does not render it so.

Should one of the inmates of the outer court forget to join in the Erub, it is permitted to carry within the inner court, but carrying within the outer court is prohibited. If one of the inmates of the inner court forget to join in the Erub, carrying in either court is prohibited. If the inmates of both courts deposit their Erub in one place, and one of the inmates of either the outer or inner court forgot and did not join in the Erub, carrying, in either court is also prohibited. Should each court be the property of an individual (or inhabited by only one household), neither require an Erub.

GEMARA: When R. Dimi came from Palestine, he said in the name of R. Janai: The latter clause of the Mishna stating, that if one of the inner court forget to join in the Erub, carrying in either court is prohibited, is merely a continuation of the dictum of R. Aqiba, who holds, that a foot (*i.e.*, a man) which is allowed to carry in its own place nevertheless interferes with the right of another place. The sages, however, hold, that as a foot which is allowed to carry in its own place does not interfere

with the right of another place, so also a foot which is not allowed to carry within its own place does not interfere with the right of another place and thus the inmates of both courts may carry within their own limits.

An objection was made based upon a previous clause in the Mishna, which states that if the inmates of the outer court prepare an Erub, but those of the inner court fail to do so, neither are allowed to carry within their respective courts, and this is certainly not in accordance with the opinion of R. Aqiba, because even had the inmates of the inner court made an Erub he would still prohibit the outer court to carry within their own court. (Hence we must assume, that this is in accordance with the opinion of the sages, who hold that a foot which is allowed to carry within its own place does not interfere with the right of another place, but one which is not allowed *does* interfere.) Therefore we must rather accept the statement of Rabhin in the name of R. Janai: There are three different opinions concerning this subject, viz.: The first Tana of our Mishna holds that a foot which is allowed to carry within its own place does not interfere with the right of another place, but a foot which is prohibited does interfere with the right of another place. R. Aqiba holds that even a foot which is allowed, also interferes with the right of another place; but the last sages of our Mishna maintain, that as a foot which is allowed does *not* interfere with the right of another place, so also a foot which is prohibited does also not interfere.

"*If the inmates of both courts deposit their Erubin in one place,*" etc. What is meant by "one place"? Said R. Jehudah in the name of Rabh: This refers to the outer court and is called "one place," because it is designated for the use of both courts (as the inmates of the inner court must pass through the outer).

We have also learned in a Boraitha (in support to R. Jehudah): "If the Erub was placed in the outer court, but one of the inmates either of the outer or inner court forgot to join in the Erub, carrying in either of the courts is prohibited. If the Erub was deposited in the inner court, but one of the inmates of that court forgot to join in the Erub, carrying in either court is also prohibited.

If one of the inmates of the outer court forgot to join in the Erub, carrying in either court is prohibited. Such is the dictum of R. Aqiba; the sages, however, maintain that in the last instance carrying is permitted within the inner court, but prohibited within the outer court."

Rabba bar Hanan asked Abayi: "Why do the sages permit carrying within the inner court, because they can close their door and say all the inmates of our court have joined in the Erub? Why should R. Aqiba not take the same view, let him also say, that they can close their door and assert their right to carry within their own court?" Abayi answered: "The Erub deposited in the outer court accustoms the inmates of the inner court to make use of the outer." Said Rabba bar Hanan again: "And the sages, do they not hold that the Erub of the outer court accustoms the inmates of the inner court to walk in the outer?" The sages may maintain, that the inmates who have deposited their Erub can say to the one who forgot to join: We have included thee in our combination for thy convenience, but not to our detriment. Why can they not do this according to R. Aqiba also? According to R. Aqiba, the inmates who have joined in the Erub may say to the one who had forgotten: "We will resign our right to the place in thy favor." Why can this not be said according to the sages? Because the sages do not admit of the resigning of one's right to a place in one court in favor of one who resides in another court.

"*Should each court be the property of an individual*," etc. Said R. Joseph: "Rabbi taught, that if there was a third court between the two also belonging to an individual, it is not permitted to carry in either of the three." Said R. Bibhi (to the schoolmen): "Do not listen to R. Joseph! Rabbi did *not* teach this; for I myself said it in the name of R. Ada bar Ahabha and gave as a reason that the outer court will be traversed by (the inmates of) three (courts); therefore I also prohibited carrying within the middle court, lest a mistake be made and things be carried in the outer court also." R. Joseph then exclaimed: "Lord of Abraham! I confounded the word 'Rabbim' (many) with Rabbi; for before I was ill I heard from R. Bibhi that the outer court will become a court for many (three) and when recovered from my illness I quoted the Boraitha in the name of Rabbi." Samuel, however, said: "It is always allowed to carry within courts for many (even if there be four or five) provided there is only one household in each court, but if there be two in one court it is not permitted."

Said R. Elazar: According to Samuel, if a Gentile live in one of the courts he is considered as many others and he impedes the outer courts.

R. Jehudah in the name of Samuel said: "If there were ten

houses one within the other and the house on the outside opened into the court it is not necessary for the inmate of each house to combine in an Erub with the other inmates of the court, but it is sufficient if the inmate of the innermost house, who must pass through all the others, do so," but R. Johanan says that, each inmate must combine; even the one living in the house opening directly into the street. Even the one living in the uttermost court? Is not the uttermost court to be regarded as a vestibule? By uttermost he means to say the one next to the uttermost.

Upon which point do Samuel and R. Johanan differ? Their point of difference is regarding the

definition of a vestibule. Samuel holds, that all the houses leading to the innermost are considered as vestibules hence they require no Erub, while R. Johanan maintains that only the uttermost house, through which all the other inmates must pass, can be considered a vestibule, but even the one next to the uttermost through which the eight other inmates must pass is also not a vestibule.

R. Na'hman in the name of Rabba bar Abahu quoting Rabh said: There were two courts between which stood three houses opening into each other and the two houses on each side of the middle house opened into their respective courts. If the inmates of the courts desired to place their Erub in the middle house, they used the houses opening into the courts as thoroughfares to the middle house. Thus the house at one court becomes as a vestibule to the inmates of that court and the house at the other court becomes a vestibule to the inmates of the other court, while the house in the centre being used to deposit the Erub therein, it need not be combined in the Erub itself. Consequently none of the three need combine in the Erub of the courts.

Footnotes

147:1 Rashi states, that Khafri was a town near Pumbaditha, but in our opinion Khafri is the plural of Khfar--Hebrew for village--and it seems that R. Hisda decided legal questions in the villages where the inhabitants could not reach R. Huna (Tosphath).

147:2 This R. Hamnuna is not to be confounded with the disciple of Rabh previously mentioned.

148:1 This Rabhina is also not to be confounded with the Rabhina previously mentioned.

153:1 This verse is not to be found in the entire Bible. Rashi, however, says that it may be found in the part of the Apocrypha called Ben Sira, but to our knowledge it cannot be found even there. Tosphath says, that a number of verses cited in the Talmud are to be found in Ben Sira, while quite a number cannot be found anywhere in the Scriptures or in the Apocrypha. Concerning the above verse, Tosphath states, that it should read as quoted in Job. xxxvi. 19.

168:1 The explanation to this Boraitha, as given by Rashi, will be embodied in the text throughout this Tract.

169:1 See pages 146 and 147.

170:1 In the Tosephta this narrative is told of the son of a prince.

CHAPTER VII.

REGULATIONS CONCERNING THE PREPARATION OF ERUBIN FOR COURTS SEPARATED BY APERTURES, WALLS, DITCHES, AND STRAW-RICKS. COMBINATION OF ERUBIN IN ALLEYS.

MISHNA: If there be an aperture, four spans square, and less than ten spans high (from the ground), between two courts, the inmates of each court may prepare two separate Erubin; or if they prefer it, may combine in one Erub. If the aperture be less than four spans square or over ten spans from the ground, they are each obliged to prepare a separate Erub, and must not combine in one.

GEMARA: Shall we say that this anonymous Mishna, is in accordance with R. Simeon ben Gamaliel, who holds that the law of "lavud" (attached) applies for a distance of less than four spans and not for a distance of less than three spans as maintained by the sages? Nay; this Mishna may be even in accordance with the opinion of the sages, for the question of "lavud" does not arise here. It is merely a case of an aperture which is less than four spans square, hence it is not considered a door and this is admitted by the sages also, who hold that if an aperture is four spans square or more, it is considered a door, but if less than four spans square it is not.

"*If the aperture be less than four spans square*," etc. Why this repetition? Is this not self-evident? The first clause of the Mishna states, that if there be an aperture four spans square and less than ten spans high from the ground, the inmates of the courts may either prepare separate Erubin or combine in one. Hence if the aperture be less than four spans square and more than ten spans high, it is obvious that they cannot have their choice? The Mishna means to teach us, that if the aperture was partly less than ten spans high from the ground and partly more than ten spans high the inmates of the court still have their choice of either making separate Erubin or combining in one, and only if the entire aperture was over ten spans high

from the ground, they are obliged to make each a separate Erub.

This explanation of the Mishna has reference to the following teaching of the Rabbis, viz.: If the entire aperture, with the exception of a small part, was higher than ten spans from the ground (*e. g.*, if the aperture was twelve spans square and was eight spans high from the ground, thus two spans of the aperture were within ten spans from the ground and ten spans were over ten spans from the ground), or if the entire aperture with the exception of a small part was less than ten spans from the ground (*e.g.*, if it was twelve spans square and only two spans were over ten spans from the ground), the inmates of the courts may either each make a separate Erub or combine in one. If the entire aperture with the exception of a small part was higher than ten spans from the ground the inmates have their choice; why is it necessary to state, that if the

entire aperture with the exception of a small part was within ten spans from the ground, the inmates have their choice, is this not self-evident? After having stated the law in the former case, it applies the more to the latter.

R. Na'hman said: "The case of where the aperture is less than four spans square or over ten spans from the ground, applies *only* to courts, but as for houses, the aperture may be at any distance from the ground, even over ten spans, and, nevertheless, the inmates are permitted to join in an Erub." Why so? Because a house is considered solid, and every portion is regarded as occupied.

R. Abba asked of R. Na'hman: "If in the attic of a house there was a hole for the purpose of fastening a ladder therein, may the inmate of the attic join in the Erub regardless of whether there was a ladder fastened in the hole of the attic or not, *i.e.*, should the house be considered solid and occupied and no ladder is necessary, or is the house only considered solid as far as the walls are concerned but not the interior, and a ladder is essential?" and he answered: "A ladder is not necessary." R. Abba understood R. Na'hman to say, that a permanent ladder was not necessary, but for the time that the Erub was to be combined it was necessary. It was taught, however, by R. Joseph bar Minyumi in the name of R. Na'hman that neither a permanent nor a temporary ladder was necessary.

MISHNA: If there be a wall ten spans high and four spans wide between two courts, the inmates of each must prepare separate

Erubin and must not join in one. If fruit happen to lie on the wall, they may ascend from their respective sides and partake thereof, provided they do not bring any of it down with them. Should there be a breach in the wall, not wider than ten ells, they may prepare separate Erubin or if they prefer it join in one, because the breach is considered as a door. Should the breach, however, be wider than ten ells they must both join in one Erub but must not prepare two separate Erubin.

GEMARA: How is it, if the wall did not measure four spans in width? Said Rabh: "In that case, the atmosphere of two separate premises predominates at the wall and one must not handle anything even the size of a hair lying on the wall." R. Johanan, however, says to the contrary: "In that case the inmates of both courts may lay down fruit on the wall (or even take it down from the wall because it is regarded as ground under no jurisdiction)." R. Johanan will therefore explain the Mishna thus: "If the wall was four spans wide it is permitted to ascend on either side and partake of fruit lying on the wall, but it is not permitted to bring up any. If, however, the wall was less than four spans wide, one may carry fruit up on the wall and eat it there." This statement of R. Johanan is but in accordance with his own theory, as related by R. Dimi upon his arrival from Palestine in the name of R. Johanan, viz.: "An object less than four spans square, standing between public and private ground, may be used by both the occupants of the public and private ground as an aid on which to shoulder a burden on the Sabbath, but they should be careful not to confound the burdens placed on the object so that a burden placed by an occupant of public ground be taken up by an occupant of private ground and *vice versa*."

Can Rabh dispute this assertion of R. Dimi? Is it not identical with the Boraitha concerning a

man standing on the doorstep and passing things to a mendicant in the street or to the master of a house (see Tract Sabbath, p. 8)? Rabh does not dispute the Boraitha in that instance, because it concerns a biblical law, but in this case where rabbinical law is dealt with, the Rabbis assume the privilege of reënforcing ordinances so as to preclude the possibility of transgression.

Rabba bar R. Huna in the name of R. Na'hman said: If between two courts there was a wall, which was ten spans high from the ground of one court, but on a level with the ground of

the other, [1] the wall is ceded to the latter court and considered part of its ground, but to the former court it is an ordinary wall ten spans high. Why so? Because the use of the wall is more convenient for the latter than for the former, and where an object is more convenient for one than for another it is generally ceded to the former.

Said R. Shezbi: "R. Na'hman rendered the same decision concerning a ditch that was situated between two courts and was on a level with the ground on one side."

If a man comes to diminish the size of the wall referred to in the Mishna (either by heaping up earth at the bottom or by erecting posts or benches at its side; such was the original definition of the manner by which the size of the wall was diminished) and this was done to the extent of four spans, or more, he may make use of the entire wall, but if less than four spans he can use only as much of the wall as has been diminished. What do you mean to say? In either case there is an objection. If by diminishing the wall to the extent of less than four spans the wall is actually diminished, why should it not be allowed to use the entire wall, and if this does not constitute a diminution at all, why should it be allowed to use that part (where the earth was heaped up or the posts erected to the extent of less than four spans)?

Said Rabhina: In this case the Mishna does not mean to say, that the wall was diminished by heaping up earth or erecting posts but simply that a part of the wall was removed at the top. If the breach made in this manner exceeded four spans it is considered as a door, and the entire wall may be used, and if it was not quite four spans the entire wall must not be used, but that part of the wall containing the breach may, because its height is lessened.

R. Yechiel said: "If a basin was set down (bottom side up) at the bottom of the wall, the wall is diminished thereby. How can a basin serve to diminish the wall? A basin may be handled on the Sabbath, and is it not a fact that any vessel which may be handled on Sabbath cannot serve to diminish a wall because it can be removed? R. Yechiel means to say, if the basin was fastened to the ground. And if it is fastened to the

ground may it not be removed nevertheless? By the statement "it was fastened to the ground," is meant if it was fastened so that a hoe or a pick-axe was required to remove it.

An Egyptian ladder does not diminish a wall but a ladder of Tyre does. What is meant by an Egyptian ladder? One that has not four rungs. So said the school of R. Janai.

Said R. A'ha the son of Rabha to R. Ashi: "Dost thou know why an Egyptian ladder does not diminish a wall?" and R. Ashi answered: "Didst thou not hear the statement of R. A'ha bar Ada in the name of R. Hamnuna, quoting Rabh, to the effect that it was an article which may be handled on the Sabbath and any article which may be handled on the Sabbath cannot serve to diminish a wall?" If such be the case, why can a ladder of Tyre serve to diminish a wall, may it not also be handled on Sabbath? A ladder of Tyre can serve because it is so heavy that it would require the efforts of several men to remove it.

Abayi said: If a wall ten spans high was between two courts and a ladder four spans wide was placed at each side of the wall: if the ladders were placed so that they are three spans apart, *i.e.*, the ladder placed on the other side was three spans further up or down alongside of the wall than the other ladder, the wall is not diminished; but if they are not three spans apart the wall is diminished. If the wall, however, was four spans deep so that a man can walk on it, it makes no difference how far apart the ladders are.

R. Bibhi bar Abayi said: "If one erected two benches one above the other at the foot of a wall, and the lower one was four spans wide while the upper was less, the wall is thereby diminished. If the lower bench however was less than four spans wide and the upper four, or more, the wall is also diminished thereby, providing the two benches were less than three spans apart." R. Na'hman said in the name of Rabba bar Abahu, that the same rule applies to a ladder where there is empty space between the rungs (*i.e.*, where one side of the ladder is not closed with boards).

R. Na'hman said again in the name of Rabba bar Abahu: If a cornice four spans square protrude from a wall and a ladder, no matter how narrow, has been placed against the cornice, the size of the wall is thereby diminished, provided the ladder was placed directly against the cornice, but if placed underneath the cornice against the wall, the cornice was merely

enlarged but the wall was not diminished. R. Na'hman says again in the name of the same authority: a wall which is nineteen spans high must have an additional cornice (a ladder which should be placed in the centre of the wall so that the space should not attain ten spans at the top or at the bottom). If the walls, however, measure twenty spans two cornices are needed to make them valid. (One cornice a trifle less than ten spans from the ground and another above that also a trifle less than ten spans from the lower.)

Said R. Hisda: "Providing the cornices are not exactly opposite each other (to prevent a ladder being placed on the bottom cornice)." R. Huna said: "If a peg be placed on a pillar in public ground ten spans high and four spans wide (which is legally private ground) the pillar is diminished." Said R. Adha bar Ahaba: "Providing the peg is three spans high." Abayi and Rabba both said: "Even if it is not as high as three spans." Why so? Because the peg makes the pillar useless. R. Ashi, however, said: "Even if the peg be three spans high it does not diminish the pillar and does not make it private ground because a peg of that kind can be used as a hanger."

R. A'ha the son of Rabha asked R. Ashi, "What is the law if several pegs be placed on the pillar in question?" and he answered: "Did you not hear what R. Johanan said concerning a well, that its enclosures of earth are counted in with the ten spans (makes it a legal private ground), why

then should they be counted, are they not useless?" We must assume that, because one can place an object upon the enclosures and thus use them. The same is the case with the peg, one might also place something upon it also.

R. Jehudah said in the name of Samuel: "If a wall be ten spans high it requires, in order to become a valid wall, a ladder fourteen spans in height, because the ladder must be placed against the wall at an angle and the distance from the foot of the ladder to the wall being four spans, the ladder loses that much before it reaches the top of the wall." R. Joseph said: "Even if the ladder be a trifle over thirteen spans high it may be used (because should it lack one span of reaching the top of the wall the deficiency is not taken into consideration)." Abayi, however, said: It matters not if the ladder be even a trifle over eleven spans high (because should it lack three spans of reaching the top of the wall, it is considered as being at the top, for the law of "lavud" is applied in all cases where there is a

deficiency of three spans or less). R. Huna the son of R. Jehoshua, however, said: The ladder may be only a trifle over seven spans in height (because it is not compulsory to place the ladder at an angle, and if placed straight at the wall, together with the three spans allowed by the law of "lavud," it reaches the top. Should the ladder even be placed at an angle it may be considered as straight at the wall and the same rule applies).

Rabh said: "I have a tradition, that a ladder standing straight against a wall also diminishes its size, but I know no reason for it." Said Samuel to him: "Does Abba not know the reason for this? Why should a ladder be worse than two benches placed one above the other? Surely it is more difficult to scale a wall by means of benches than by means of a ladder."

Rabha in the name of R. Hyya said: "Trunks of Babylonian fig-trees when placed against a wall need not be fastened, because their weight is so great, that it is very difficult to remove them, although they may be handled on Sabbath." R. Joseph in the name of R. Oshiya said: "The same applies to Babylonian ladders, which are so heavy, that there is no fear of their being removed."

R. Joseph asked Rabba: "If a man had a ladder which he desired to place against a wall and the ladder being too narrow, *i.e.*, less than four spans wide, be hewed out in the wall itself, steps on each side of the ladder, how far up should those steps be hewn out?" Rabba answered: "For a distance of ten spans." Asked R. Joseph again: "How is it if a man hews out steps four spans wide in the wall itself? How far up must he do this?" and the answer was: "The entire height of the wall." "What is the difference between the case of the ladder where steps had to be hewn out additionally and this case where the steps were all hewn out of the wall?" "In the first instance the ascent of the wall is so much easier because the ladder can be placed against the wall at an angle, while in this instance the ascent is much more difficult; hence the steps should reach the entire height of the wall."

R. Joseph asked Rabba again What is the law if a man used a tree, which grew right at the wall, for a ladder? I ask thee, taking into consideration the difference of opinion between Rabbi and the sages. According to Rabbi, who holds, that rabbinical ordinances were not surrounded with precautionary measures for the sake of twilight, it may be said, that in this

case, where the tree will be used during the whole Sabbath day, even Rabbi might decide that it would not be allowed to make use of the tree; and on the other hand, even according to the sages, who disagree with Rabbi as regards the precautionary measures for the sake of twilight, it may be said, that the tree might be considered as a door; which, however, cannot be used because it is regarded as if a lion lie across it; nevertheless, it is a door, and being such, the wall may be used. Now, shouldst thou decide, that the wall may be used if a tree grow at its side, how would it be if a grove such as is used in idolatrous Worship, grow alongside of the wall? I ask thee in this instance taking into consideration the difference of opinion between R. Jehudah and the sages. We are aware that R. Jehudah permits the depositing of an Erub even in a grave, notwithstanding the fact that no benefit must be derived from a grave, but for the reason that after the Erub has been deposited for the moment of twilight the grave is of no further use as the Erub need not be watched. In this case, however, R. Jehudah might prohibit the use of a grove, because it serves a distinct purpose, namely, that of a walk to the wall, and it is a law that no benefit must be derived from a grove used for idolatrous worship. On the other hand, even according to the sages, who prohibit the use of a grave for the depositing of an Erub, it might be permitted to use the grove because it is virtually a door to the wall and is merely regarded as if a lion were lying across it, which temporarily makes it unfit for use."

Rabba answered: "A tree may be used but a grove must not." R. Hisda opposed this: "On the contrary," said he, "the lion lying across the tree which renders it unfit for use temporarily is the rabbinical ordinance concerning the Sabbath-rest, *i.e.*, the tree must not be used on account of the Sabbath, while the grove must not be used for another reason altogether hence it should be permitted to use the grove and the use of the tree should be prohibited."

It was also taught, that when Rabhin came from Palestine, he said in the name of R. Elazar, according to another version R. Abahu said in the name of R. Johanan: (This is the rule:) Whenever the prohibition is based upon the Sabbath-rest laws, such prohibition must stand, but whenever the prohibition is based in some other law, it need not hold good. A R. Na'hman bar Itz'hak taught: "Concerning a tree the same divergence of opinion as exists between Rabbi and the

sages remains, and concerning a grove the same difference of opinion as exists between R. Jehudah and the sages remains."

MISHNA: If two courts be separated by a ditch, ten spans deep and four wide, the inmates of each court should prepare separate Erubin and must not join in one, even though the ditch be filled with stubble or with straw. Should it however be filled with earth or pebbles, the inmates must join in one Erub and not prepare two separate ones. If a board four spans wide had been put across the ditch, and likewise, if two projecting balconies, one opposite the other, have been connected by means of such a board, or plank, the inmates of the courts may prepare separate Erubin, or if they prefer it, they may join in one; if the board, however, was less (than four spans) wide, they must each prepare a separate Erub, and not join in one.

GEMARA: The Mishna states, that if the ditch was filled with stubble or straw, the inmates of each court must make a separate Erub, because the straw is not considered firm enough to afford

a safe passage over the ditch, *i.e.*, it does not constitute a solid filling for the ditch, but in the succeeding Mishna we learn, that if there be between two courts a straw-rick, the inmates of each court must prepare a separate Erub, thereby demonstrating that straw can form a solid partition? Answered Abayi: As for a partition all agree that a straw-rick can form a partition, but as for straw serving as a filling for a ditch it depends upon whether the owner has devoted it entirely for that purpose. If he did and will not remove it, it may constitute a solid filling for the ditch, but if he did not and intends to subsequently remove it, it cannot be considered such.

"*Should it however be filled with earth or pebbles*." Even if the man who did this, does not declare that he has devoted the earth or the pebbles for that purpose entirely? Have we not learned in a Mishna, that if a man filled a room (which had contained a corpse) with straw or pebbles and declared that he does not intend to make any further use of either the straw or the pebbles, the room is regarded as filled up and is not considered a tent, but if no such declaration was made, the room is still considered a tent. Thus we see, that one must declare the straw and pebbles to be devoted for such purpose only, and our Mishna does not state anything in regard to this? Said R. Assi: This Mishna treating of Erubin is in accordance with the opinion of R. Jose in a Tosephta (in Tract Oholoth) who holds, that in the case of straw no express declaration is necessary.

R. Huna, the son of R. Jehoshua, however, said: Thou wouldst prove a contradiction from a law pertaining to uncleanness to a Sabbath-law? Leave out the prohibition of Sabbath; for a thing which must not be handled on Sabbath is at all events sacrificed even if it be a purse of money; because it must not be handled on Sabbath. (With straw it is different, because that is food for animals, and hence may be handled on Sabbath.)

R. Ashi, however, said: Thou wouldst base a contradiction on an ordinance concerning a room to that concerning a ditch. A ditch was made to be filled up, but is then a room also made to be filled up?

"*If a board four spans wide had been put across the ditch*." Said Rabha: "When must the board be four spans wide? If it was laid crosswise across the ditch, but if it was laid lengthwise across the ditch it makes no difference how wide the board is, because the width of the ditch was decreased to less than four spans.

"*If two projecting balconies, one opposite the other*," etc. Said Rabha: The statement in the Mishna, "one opposite the other," might be construed to signify, that if they were not directly opposite each other, no connection could be made; such is the case, however, only if they are three spans or more distant one from the other. Should they be less apart than three spans, it matters not whether they are directly opposite, diagonally so, or even one above the other, a connection may be made and it is simply considered a crooked balcony, but a balcony nevertheless.

MISHNA: If there be between two courts a straw-rick, ten spans high, the inmates of both courts must prepare separate Erubin, and must not join in one. Cattle maybe fed from each side of the rick (and no fear need be entertained, that it will become less than ten spans high). Should the rick become less than ten spans high, the inmates must join in one Erub and not prepare two.

GEMARA: Said R. Huna: "(Cattle may be fed from each side of the rick), providing the straw is not removed by a man and placed in the crib of the cattle (because the straw was designated as a partition since the preceding day, hence it must not be handled)." Did we not learn in a Boraitha: "If a house which was filled with straw stand between two courts, the inmates of each court must make a separate Erub, but must not join in one, and may remove the straw from the house to their

respective courts and place it in the crib for the cattle?" Thus we see, that it is allowed for the inmates of each court to remove the straw to their respective courts and place it in the crib; why does R. Huna prohibit this? I will tell thee: In a house, on account of the roof, it will become noticeable if the heap of straw becomes lower than ten spans, but a straw-rick standing in the open air might be overlooked as to its height.

(The above Boraitha continues as follows:) "If the heap of straw contained in the house became less than ten spans high, neither of the inmates of either court are permitted to carry unless the inmates of one court resign their right to the place in favor of the inmates of the other." Thus, if the heap of straw *was* ten spans high, it still serves the purpose of a partition, even though it does not reach the ceiling. We may adduce therefrom, that any partition if it be only ten spans high, though it should not reach the ceiling, is valid. From the statement in the Boraitha, that neither of the inmates of either court are permitted to carry we can also infer, that any dwellings which may have been added on the Sabbath are included in the prohibition? This is not conclusive evidence! It may be that the Boraitha refers to a case where the heap of straw was diminished to less than ten spans' height before the Sabbath set in.

The Boraitha continues further: "The one wishing to make use of his court should lock up the house and resign his right to the ground." What, do both? Lock the house and resign his right to the ground? Yea; both are necessary, for the man is accustomed to use the house on Sabbath, [1] and he might perchance, if he leave it unlocked, come and use it.

Continuing, the Boraitha states: "If he did so, he must not carry, but his neighbor may." Is this not self-evident? We might assume that the man's neighbor must also do as he did, hence we are told, that the Tana holds repeated resignation of the ground to be prohibited.

MISHNA: How are alleys (entries) to be combined? A man places a cask of wine (in the alley) and says: "This shall be for all the inmates of the alley," and he may transfer the right of possession (which he has in the cask) to them either through his adult son or daughter, or through his Hebrew man-servant

or maid-servant, or through his wife; but he cannot transfer his right of possession through his minor son or daughter, or through his Canaanitish bond-man or bond-woman, because their hand is virtually the same as his.

GEMARA: Said R. Jehudah: The person that accepts the transfer of ownership should lift the

cask of wine at least one span from the ground at the time of acceptance (saying, I have accepted this for the other inmates). Said Rabha: These two things were said by the old sages of Pumbaditha, namely: This statement of R. Jehudah just quoted and the other one is: When a man pronounces the benediction over a goblet of wine, if he tastes a whole mouthful he has acquitted himself of the duty properly, otherwise he does not.

An objection was raised: We have learned in a Boraitha: How are alleys to be combined? A cask of wine, oil, dates, or figs, or any other fruit, is brought, and if belonging to the one who brought it, he should transfer his right of possession to the other inmates; but if the others have a share in it to commence with, he need only inform them (that he has combined the Erub for them). While transferring the right of possession, the cask should be lifted off the ground a trifle? By a trifle the Boraitha also means a span.

It was taught: At the combining of alleys, the right of possession need not be transferred. So said Rabh; but Samuel maintains, that this must be done. At the combining of the legal limits, however, Samuel declares that the right of possession must be transferred, while Rabh holds, that it is not necessary.

Samuel may be right in his opinion, because he holds in accordance with our Mishna, which teaches, that at the combining of alleys, the right of ownership must be transferred, and at the combining of legal limits nothing is said about transfer, but upon what does Rabh base his opinion? There is a difference of opinion among Tanaim concerning this ordinance as R. Jehudah said in the name of Rabh: "It happened that the daughter-in-law of R. Oshiya went to the bath-house, and not returning before dusk, her mother-in-law made an Erub for her. When this was told to R. Hyya, he declared it unlawful. Said R. Ishmael bar R. Jose to him: Thou Babylonian! So strict art thou with Erubin. Then said my father: Whatever can be made more lenient with regard to Erubin, should so be made."

Said R. Zera to R. Jacob, the son of the daughter of Jacob:

[paragraph continues] When thou goest to Palestine, go out of thy way and pass through Tyre and ask of R. Jacob bar Idi how the case was: Did the mother-in-law make an Erub with her own material, and on account of not transferring her ownership to her daughter-in-law, R. Hyya held it to be unlawful, or did she make it with material belonging to her daughter-in-law and R. Hyya held it to be unlawful because the daughter-in-law was not informed?" R. Jacob bar Idi answered, that it was on account of the ownership not having been transferred.

R. Na'hman said: "We are in possession of a tradition which teaches us, that whether Erubin of legal limits or Erubin of courts or combinations of entries are concerned, a transfer of ownership must be effected. Now the question arises as to Erubin of cooked articles, [1] whether a transfer of ownership is necessary or not." Said R. Jose: "What question is this? Did R. Na'hman not hear the dictum of R. Na'hman bar R. Ada in the name of Samuel, that in the case of Erubin of cooked articles a transfer of ownership must also be effected?" Replied Abayi: "Assuredly he did not hear this dictum or he would not have asked." Rejoined R. Jose: "Did not Samuel say that in the case of Erubin of courts a transfer of ownership is not necessary and still R. Na'hman maintains that it is?" Abayi then said: "How can this be compared? In the case of Erubin of

courts and legal limits there is a difference of opinion between Rabh and Samuel, while R. Na'hman accepts the more rigorous decrees of each, but in this instance how could R. Na'hman override the absolute decree of Samuel alone?"

There was a guard of the arsenal living in the neighborhood of R. Zera. His neighbors asked him to rent them his place for the Sabbath, but he refused. So R. Zera was asked whether the place may be rented from the man's wife, who was willing to do so. He answered them: "Thus said Resh Lakish in the name of a great man, *i.e.*, R. Hanina: A man's wife may effect an Erub without the man's knowledge (or against his will)."

The same case occurred in the neighborhood of R. Jehudah

bar Oshiya, and when asked concerning the law in the matter, he did not know. R. Mathna could not solve the problem either. When R. Jehudah, however, asked, he answered in the name of Samuel the dictum attributed above to R. Hanina.

An objection was raised: We have learned in a Boraitha: "If women made an Erub or combined in an alley without the knowledge of their husbands, the Erub and the combination are both unlawful." This presents no difficulty. The Boraitha refers to a case, where the husbands distinctly forbid their wives to do so, whereas Samuel refers to a case, where the husbands did not forbid them. Such seems to be the case, for were it not so Samuel would contradict himself as he said elsewhere: If one of the inmates of the alley who, as a rule, combined with the others, refused to do so at one time, the other inmates may enter his house and take his share against his will. Thus we see, that only if the man, *as a rule*, combined but (out of spite) refused in one instance, then and then *only* the other inmates may take his share by force; but if he was not in the habit of combining, this would not be allowed. Hence this bears it out.

Can we assume that the following Boraitha is in support of the decree of Samuel? (It teaches:) "It is permitted to compel a man to take a share in the erection of a side and cross beam to an entry, if he refuses to do so voluntarily." In the case of an entry it is different, because there were no partitions (hence it was difficult to watch the entry). According to another interpretation, Where an act is committed out of spite, with the intention to injure another, it is different (*i.e.*, a man may be compelled to desist as explained in Chapter IV., page 109). [1]

it was taught: R. Hyya bar Ashi said: "A side-beam may be made of a grove." R. Simeon ben Lakish said: "A crossbeam may be made of a grove." One who says, that a crossbeam may be made of a grove certainly permits a side-beam also to be made of a grove; but he who says, that a side-beam may be made thus, does not permit a cross-beam. Why so? Because a cross-beam must be sound enough to hold a brick one span thick, and as a grove (being used for idolatry) must be burned, it is considered as if it were already burned, hence not sound enough to hold a brick of the prescribed thickness.

MISHNA: If the quantity of food (required for the combination) become diminished, one may (himself) add thereto and transfer his right of possession without notifying the other inmates (to

that effect). If, however, new inhabitants have (since) arrived in the alley, he adds sufficient to make up the required legal quantity, transfers his right of possession to them and notifies them to that effect. How much is this legal quantity (of food required for the combination of alleys)? If those who join therein are numerous, it must be sufficient for two meals for all of them; but if they be few, the size of a dried fig for each is sufficient.

R. Jose said: "To what does this regulation apply? To the original (first) preparation of the Erub; but to extend the Erub (for later use) any quantity, however small, is sufficient. Nor did the sages direct that (where the combinations of an alley had been effected) an Erub should be prepared for the several courts (contained in the alley) except that the children might not forget about the law of Erub.

GEMARA: What food does the Mishna refer to as having become diminished? Shall we assume, that it was but one kind of food, then even had it been totally destroyed, it was not necessary to notify the other inmates; if on the other hand there were two kinds of food, then, even, if it became diminished, the man was in duty bound to notify the other inmates, as we have learned in a Boraitha: "If the food was all of one kind and was totally destroyed, one need not notify the other inmates; but if the food was of two different kinds, one must notify the other inmates." (It was assumed that the same law applied to food

that had merely become diminished, but the Gemara answered:) "The Boraitha refers to food that had been totally destroyed, but with food that had become diminished, it is different."

"*How much is this legal quantity?*" etc. What does the Mishna mean to say by "numerous"? Said R. Jehudah in the name of Samuel: "Eighteen persons." Eighteen and not more? Say, from eighteen on and upwards. Then why state eighteen in the first place? Said R. Itz'hak the son of R. Jehudah: My father explained this to me thus: If the food were divided equally amongst all and the share of each for two meals would not amount to the size of a dried fig, then those who took part were "numerous," and it is sufficient if the share of each did not amount to the size of a dried fig; but if the share of each amounted to more than the size of a dried fig, those who took part are considered few, and even if each received but the size of one dried fig, it is sufficient. (Thus both are the more lenient constructions of the law.) Incidentally we are told by R. Jehudah that eighteen dried figs are sufficient for two meals.

MISHNA: The Erub (of courts) or combination (of alleys) maybe effected with all kinds of nutriment except water and salt. Such is the dictum of R. Eliezer. R. Jehoshua, however, said: Only a whole loaf of bread is a lawful Erub. Should even a whole saah of flour be baked into one loaf, and that be broken, it must not be used for an Erub, while a small loaf of the value of an Eesar (a small coin; probably the Roman "as") if it be whole, may be used for an Erub.

GEMARA: Have we not already learned the first clause of this Mishna (in Chapter III., Mishna i), that the Erub or combination may be effected with all kinds of nutriment except water and salt? Said Rabba bar bar Hana: This Mishna repeats the ordinance solely on account of R. Jehoshua, who maintains, that only a whole loaf is a lawful Erub, but not a broken loaf. Hence we are taught that with *all kinds* of nutriment it may be effected, including a broken loaf.

What reason has R. Jehoshua for his assertion? Said R. Jose ben Saul in the name of Rabbi: "In order to prevent enmity (lest one say he deposited a whole loaf and another a broken loaf, etc.)." Said R. A'ha the son of Rabba to R. Ashi: "How is it if all deposited broken loaves?" and R. Ashi answered: "There is fear that the next time the Erubin are deposited there will be the same strife. One will deposit a whole loaf and another a broken one, etc."

R. Johanan ben Saul said: "If from a whole loaf of bread the legal first dough (offering) has been removed or from a whole loaf of bread made of Therumah and ordinary flour the legal one-hundredth part had been removed, the loaf is still considered whole, and an Erub may be effected therewith." Did we not learn in a Boraitha, that the loaf remains whole, and may be used for an Erub if the legal one-hundredth part had been removed, but if the quantity of the legal first dough had been removed it does not remain whole and must not be used for an Erub? This presents no difficulty. R. Johanan refers to the loaf of a baker who must remove only a small piece for the first dough, while the Boraitha refers to a loaf of a householder as we have learned in a Mishna (Tract Chalah): "The prescribed quantity for the first dough is one twenty-fourth. One who prepares the dough for his own use or for the wedding (feast) of his son must also give one twenty-fourth; but a baker, or even a woman who prepares the dough for sale in the market, need only give one forty-eighth as the legal first dough."

R. Hisda said: "If a man made a loaf whole again by joining the broken pieces with a stick of wood, so that it appeared like an unbroken loaf, he may use it for an Erub."

Said R. Zera in the name of Samuel: "It is permitted to make an Erub with bread made of rice or millet." Said Mar Uqba: "Samuel the Master explained to me that rice-bread may be used for an Erub but not millet-bread." R. Hyya bar Abbin in the name of Rabh said: It is also permitted to make an Erub with lentil-bread.

MISHNA: A man may give money to the wine-seller or baker in order to acquire the right to join in the Erub. Such is the dictum of R. Eliezer; but the sages hold, that money cannot acquire the right for a person to join in the Erub. They admit, however, that if a man give money to another person (with the commission to effect the Erub for him) it will acquire for him the right to join in the Erub, since no Erub can be effected for a man without his knowledge. Said R. Jehudah: To what do these (preceding) regulations apply? To the Erubin of limits; in the Erubin of courts, however, a man may be included with or without his knowledge; for advantages may be conferred on a person, even though he be not present, whereas, he must not be deprived of his right in his absence.

GEMARA: What reason has R. Eliezer for his dictum? The person giving the money to the wine-seller or the baker

did not draw his purchase toward him, hence no sale or purchase was effected. [1]

Answered R. Na'hman in the name of Rabba bar Abahu: "R. Eliezer makes this case analogous with the case mentioned in the Mishna (Tract Cholin, Chapter V., Mishna 4) concerning a man

who purchases one dinar's worth meat and the butcher is compelled to slaughter for him an ox worth one thousand dinars. The question there is propounded by the Gemara: 'How can the sale be effective? No drawing towards himself was accomplished by the purchaser?' and the answer was that the Meshi'kha (drawing) was dispensed with for the sake of the advantage which was to be conferred on the purchaser on the four days or periods enumerated. In this case of our Mishna the Meshi'kha is also dispensed with and for the same reason, or according to the reason of another sage in the mentioned Tract (Cholin) who said that according to biblical law a sale is effective when the money for the purchase is paid."

"*They admit, however, that if a man give money to another,*" etc. What is meant by "another person"? Said Rabh: "A householder," and Samuel agrees with him, meaning, that this other person must be a householder and not a baker (or a wine-seller). Samuel added, that only if the man gave *money* to the baker he cannot acquire the right to join in the Erub, but if he gave him a vessel he does acquire the right. Also if when giving him the money, he does not say to him: "With this money thou shalt give me bread sufficient to make an Erub," but says: "For this money thou shalt go and effect an Erub for me," then it is as if he merely commissioned him to effect his Erub and he acquires the right to join in the Erub.

"*Said R. Jehudah: To what do these ordinances apply?*" etc. R. Jehudah in the name of Samuel said: "The Halakha prevails according to R. Jehudah, not only in this case, but in all instances where R. Jehudah decrees concerning Erubin, the Halakha prevails in accordance with his dictum." Said R. Hana of Bagdad to him: "Does Samuel hold, that even in the case where R. Jehudah declares an entry, from which the side and cross beams had been removed, valid, the Halakha prevails

accordingly?" Answered R. Jehudah: "Did I not state particularly concerning Erubin, but not concerning partitions?"

Said R. A'ha the son of Rabha to R. Ashi: "If it is said, that the Halakha prevails according to R. Jehudah, then there must be some who disagree with him?" Did not R. Jehoshua ben Levi say, that whenever we find in a Mishna the statement: "Said R. Jehudah. 'When is this the case?' or 'When do these regulations apply?'" it is not to be accepted as a refutation of previous decrees, but merely as a further explanation of the decree of the sages? [How can it be said, that it is not to be accepted as a refutation? Did we not learn in a previous Mishna, that if additional inhabitants came into the alley, the right of possession must be transferred to them and they must be notified, whereas R. Jehudah states, that no notification is necessary? The previous Mishna refers to a court between two alleys when the inhabitants newly arrived must be notified that the Erub was effected in one of the alleys (and R. Jehudah would agree to this also). Did not R. Shezbi say in the name of R. Hisda, that the previous Mishna distinctly states, that the colleagues of R. Jehudah differ with his dictum in this last Mishna?] Answered R. Ashi (the previous question of R. A'ha): Wouldst thou make a contradiction from one man to another? Samuel may hold one thing and R. Jehoshua ben Levi another.

Referring again to the statement of R. Jehoshua ben Levi, R. Johanan said, that whenever R. Jehudah says: "When is this the case?" he means to explain the previous teachings, but whenever he says, "When do these regulations apply?" he means to differ from the foregoing opinions.

Footnotes

182:1 Rashi explains the term "on a level with the ground" to signify, that it was less than ten spans higher than the ground, in which case it is considered as level with the ground.

189:1 Rashi asserts, that the Tana of this Boraitha maintains, that all those who resign their right to the ground of their houses should also lock them, but Tosphath does not agree with Rashi.

191:1 Erubin of cooked articles, called in Hebrew "Erubin Thabhshilin." When a Sabbath follows a festival, no food must be cooked on the festival for the Sabbath, but in order to circumvene this ordinance the Rabbis decreed that two different kinds of food be set aside on the eve of the festival to serve for the Sabbath and thus enable the people to cook, in addition to the food set aside, on the festival in order to provide for the Sabbath.

192:1 What we have rendered above with "Where an act is committed out of spite, etc., it is different," is expressed in the Hebrew original with but two words, viz.: "Metzad Sheäni," literally, "from the side it is different." The marginal notes in the original also state that no explanation for the two words can be found, and in the monographs printed in Venice and Saloniki some two centuries ago, this other version is omitted entirely. In a manuscript of the Talmud, examined by R. N. Rabinowicz, it is also not to be found. According to our method, always to render the other version, because it is invariably more reasonable than the first, we should have omitted the first here also, and more especially so, as it is very abstruse. How ever, the other version is even more so if read as written. After considerable speculation, however, as to its meaning, we found that it is merely a and instead of "Metza*d* Sheäni" should read "Métzar Sheäni." The misprint is the more excusable because of the extreme similarity of a Hebrew Daled • {Hebrew *D*} and a Resh • {Hebrew *R*} Métzar Sheäni means "With one who wishes to injure another, it is different" and this was just the case referred to by Samuel, who, according to Rashi, refers to one p. 193 who, out of spite, would not combine, so that the other inmates of the alley would be prevented from carrying on the Sabbath; hence, in this instance no further explanation by Rashi was necessary.

196:1 A sale or a purchase was not binding or effective unless the purchaser at the time of the purchase drew the object bought towards him, and this act of drawing towards him is called in the Talmud Meshi'kha, based upon the passage, Exod. xii. 21.

Next: Chapter VIII: Erubin of Limits, Food Required for Erubin, Erubin of Courts

CHAPTER VIII.

REGULATIONS CONCERNING THE ERUBIN OF LIMITS. THE QUANTITY OF FOOD REQUIRED FOR SUCH ERUBIN, AND FURTHER REGULATIONS CONCERNING ERUBIN OF COURTS.

MISHNA: How are the (legal) limits to be combined? A man places a cask (of wine) and says: "This is for all my townsmen or for all who go to the house of mourning, and for all who go to the house of feasting." Whosoever joins in the combination while it is yet day (on the eve of Sabbath) is permitted to do so; after dusk, however, it is prohibited, because an Erub must not be deposited after dark.

GEMARA: Said R. Joseph: "Legal limits should not be combined except for religious duties." Is this not expressed in the Mishna? It says for all who go to the house of mourning or the house of feasting? R. Joseph teaches that the limits should not be combined except for religious duties, lest it might':, be assumed, that the Mishna merely makes this a general assertion; because people are wont to go to such places on the Sabbath.

The Mishna states "while it is yet day." Shall we adduce, therefrom that the Mishna holds, there is no such thing as, the theory of premeditated choice? 'For were it said, that the Mishna accepts the theory, the fact that the man would make, use of the legal limits on the Sabbath would demonstrate that he had the intention to do so on the previous day. Said R. Ashi: By "while it is yet day" is meant if the man was notified, of the combination while it was yet day, even though he did not' agree to it until after dusk; but if he was not notified while it was yet day, he could have no intention to do so previously, and hence he cannot join in the combination.

R. Assi said: "A child that is only six years old may go out in the legal limits which have been combined by its mother." An objection was made based upon a Boraitha stating: "A child still dependent upon its mother may go out in the limits combined

by its mother; but if it is no longer dependent upon its mother it must not." Said R. Jehoshua the son of R. Idi: "R. Assi means to say still more, that even if the father had combined him in his Erub towards the north and his mother combined an Erub for herself towards the south, a child even six years old prefers to go with its mother."

Another objection was made: We have learned in another Boraitha: A child which is dependent upon its mother may go out with her in the limits which she has combined until it reaches the age of six years. (Hence when it is six years old it must not?) R. Assi might say that *until* six years includes six years.

We have learned in a Boraitha: A man should not combine an Erub for his adult son or daughter or for his Hebrew man or maid servant, or for his wife, unless he notifies them to that effect. He may however combine an Erub for his Canaanitish bond-man or bond-woman or for his minor son or daughter even without their consent because their hand is virtually the same as his. If, however, all those mentioned in the Boraitha have combined an Erub for themselves in one direction, and the master combined an Erub for them in another, they must all make use of the one which the master combined, excepting only his wife, because she can object.

Why should the wife only be excepted? Cannot the other persons mentioned in the first clause of the Mishna also object? Said Rabba: "The wife and those equal to her (mentioned with her) are meant to be excepted, and by 'all those mentioned in the Boraitha' is meant the persons enumerated in the *latter clause* of the Boraitha."

The master said: "Excepting only his wife, because she can object." Shall we say, that only if she objects she may use her own limits, but if she does not, she may go out in the limits combined by her husband? Does not the Boraitha mean to state that he must notify them and obtain their consent? (Then why must she object if she previously did not give her consent?) Nay; the Boraitha means to state that he must merely notify them, and if they make no answer it is the same as if they agreed to it.

The Boraitha states again, however, that if they made an Erub for themselves and the master made another one for them they must utilize that of the master; this must have been the case where they did not object when notified that the master would combine the Erub for them. "Excepting only the wife

who can object?" How is this consistent? Said Rabha: "Is the fact of their making a separate Erub not sufficient objection?"

MISHNA: How much is the legal quantity (of food required to effect the combination of limits)? Sufficient food for two meals for everyone who joins therein; for work-day meals but not for Sabbath-meals. Such is the dictum of R. Meir; but R. Jehudah said: For Sabbath-meals, but not for work-day meals. Both (sages), however, intend to render the observance of this regulation more lenient. R. Johanan ben Berokah said: It is sufficient to effect the combination if the loaf used therefor be worth a Pundian, when the price of flour is one selah for four saah. R. Simeon said: Two-thirds of a loaf (is sufficient), such as go three to one kabh of flour. (The time it takes to eat) half (of such a loaf, is the prescribed time for remaining) in the house of a leper, [1] and the half of a half of such a loaf (which were it unclean) would make the body unclean. [2]

GEMARA: How much food constitutes food for two meals? Said R. Jehudah in the name of Rabh: "Two loaves as used by the peasants in the field." R. Ada bar Ahabha said: "Two loaves as baked by the inhabitants of N'har Pepitha (Papa)."

R. Joseph said to R. Joseph the son of Rabha: "In accordance with whose opinion does thy father hold concerning the two meals. Doubtless with that of R. Meir? I also hold with R. Meir; for if the opinion of R. Jehudah were accepted, why do people say, that the stomach always has

room for sweet things?"

"*R. Johanan ben Berokah said*," etc. We have learned in a Boraitha, that there is not much difference between the quantity prescribed by R. Johanan and that prescribed by R. Simeon. How can this be said? According to R. Johanan one kabh will provide four meals, and according to R. Simeon one kabh will produce nine meals? Said R. Hisda: "Deduct one-third as the profit of the dealer." Then according to R. Johanan one kabh will provide six meals and according to R. Simeon nine. Say in accordance with the dictum of R. Hisda at another time, that one half should be deducted as the profit of the dealer. Then

according to one a kabh contains sufficient for eight meals and according to the other, nine. [1] Hence we have already heard that there was *not much* difference between R. Simeon and R. Johanan.

Now there is a contradiction in two of R. Hisda's statements? This presents no difficulty. One of his statements referred to a case where the wood for the baking was furnished while the other refers to a case where the purchaser had to furnish it himself.

The Rabbis taught: It is written [Numbers XV. 20]: "As the fruit of your doughs shall ye set aside a cake for a heave-offering," which signifies, that the first of the doughs that were prepared at that time should be set aside. How much was the dough prepared in the desert? It is written [Exodus xvi. 36]: "But the omer is a tenth of an ephah." They usually prepared an omer for each person (and an ephah is three saahs), whence they adduced that three saahs being equal to seventy-two lugs, an omer is equal to seven and one-fifth lugs, and when dough measures that quantity it is subject to the first dough offering. These seven and one-fifth lugs, according to Babylonian measure, are only six lugs in Jerusalem, and five in Sepphoris. From this it was also adduced that one who eats that much in a day is healthy and blessed. One who eats more than this is a glutton and one who eats less than that has a weak stomach.

MISHNA: If the inhabitants of a court and the inhabitants of a balcony should have forgotten to combine an Erub, whatever is above ten spans from the ground is considered as belonging to the balcony, and whatever is less than ten spans high from the ground is considered as belonging to the court. If the earth dug out of a ditch, or a stone, be ten spans high, they belong to the balcony; but if less than ten spans high they belong to the court. When is this the case? If the earth (heap) or the stone be close to the balcony, but if some distance away from the balcony, even though they be ten spans high, they belong to the court. What is considered close? Whatever is less than four spans distance.

GEMARA: If the object standing between the court and the balcony is easily accessible to both the same as a door, it is considered as if it were an aperture between two courts. If it is not easily accessible but both the inmates of the courts and of the balcony can throw things on it with equal facility it is equal to a wall between two courts. If both the inmates of the court and the balcony can with equal ease deposit things upon that object it is considered as a ditch between two courts; but if the object be easily accessible to one but was not as easily reached by the

other, it is the same as the ditch mentioned by R. Shezbi in the name of R. Na'hman, which was level with the ground of one court. If the object was easily accessible to one but could only be reached by throwing by the other, it is the same as the wall mentioned by Rabba bar R. Huna in the name of R. Na'hman, which was level with the ground of one court. The question, however, is concerning an object which by the inmates of the court could only be reached by throwing and by the inmates of the balcony could only be reached by letting down an article upon it. Rabh said: "It must not be used by either"; but Samuel said: "It is given to those who can reach it by letting down something upon it because that is the easier way of reaching it; and it is a rule that whoever can reach an object the more easily is entitled to it."

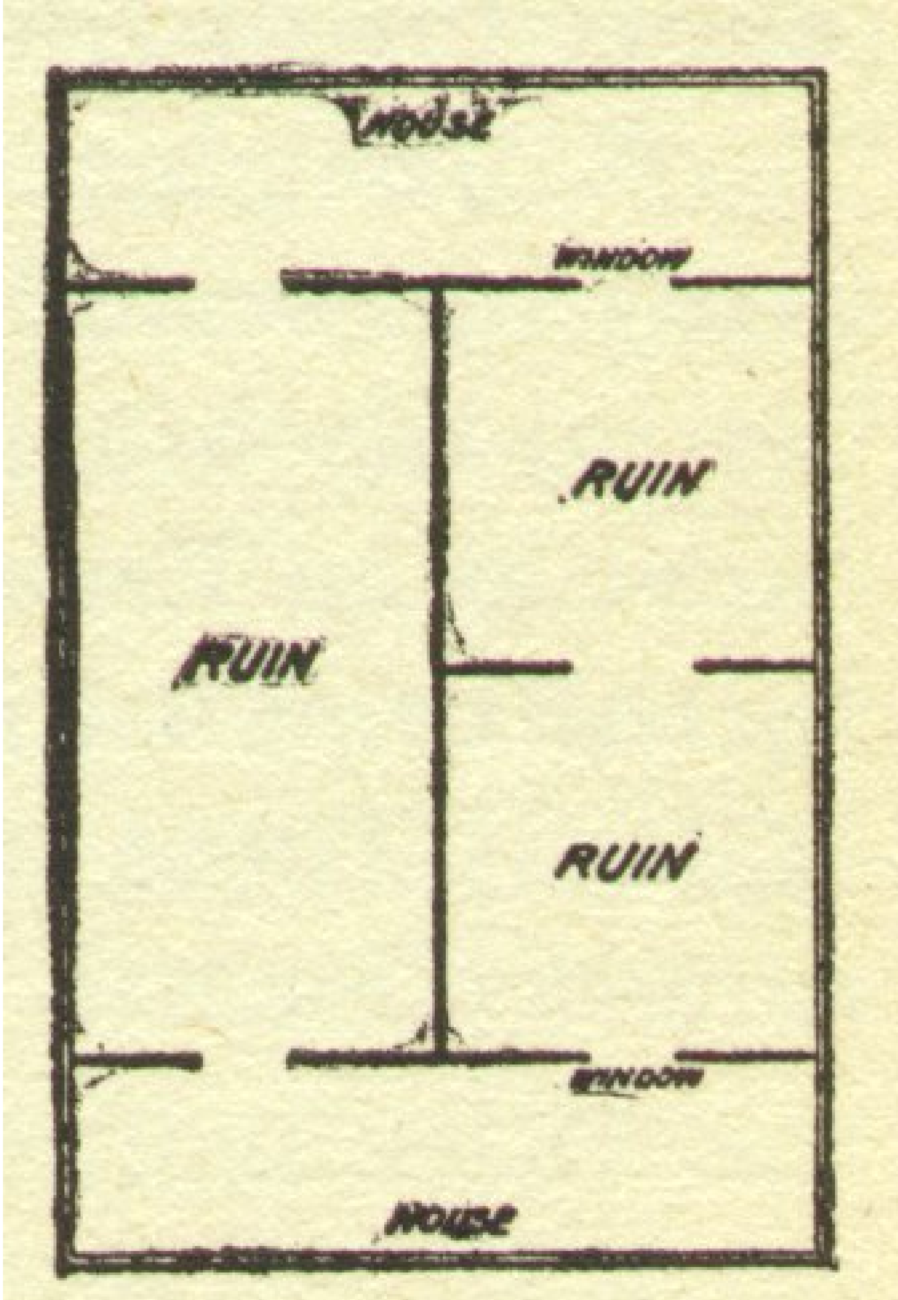
An objection was made: Come and hear: If the inhabitants of a court and the inhabitants of an attic had forgotten to combine in an Erub, the inhabitants of the court may utilize the lower ten spans and the inhabitants of the attic may use the upper ten spans. How so? If a cornice project from the wall at a distance of less than ten spans from the ground it may be used by the inhabitants of the court, but if it project at a distance of less than ten spans below the attic, it may be used by the inmates of the attic. If, however, the cornice was just between the ten spans above the ground and the ten spans below the attic it appears that neither can make use of it, and this would be in accordance with the opinion of Rabh and an objection to Samuel. Said R. Na'hman: "The case treated of by the above Boraitha is where the entire wall was only nineteen spans high and if the cornice was less than ten spans high from the ground it was easily accessible to the court-inhabitants the same as a door would be, but not so easily reached by the inhabitants of the attic (hence the court is entitled to it). If the cornice was above ten spans from the ground it was easily accessible

to the inmates of the attic but not so to the court-inhabitants, who would have to throw in order to reach it (hence the attic is entitled to it)."

R. Jehudah in the name of Samuel said: "If between two courts there was a small alley, into which the doors of the courts did not open, but which contained a well four spans distant from the wall of each court, the inhabitants of each court may put up a projecting board no matter how small on top of the wall, and draw water from the well through their windows. (In reality this was unnecessary, because the alley was not used as a thoroughfare, but as the two courts had not joined in an Erub and used the well in common the boards were erected as a sign)." R. Jehudah himself continued: "A projecting board is not necessary, for even any small stick is sufficient."

Said Abayi to R. Joseph: "The statement of R. Jehudah on his own account was also made in conformity with the opinion of Samuel, for according to Rabh, where a place is not used as a thoroughfare it cannot prove an impediment to the adjoining grounds."

Said R. Na'hman in the name of Rabba bar Abahu, quoting Rabh: If there were three ruins between two houses, each house may use the adjoining ruin by throwing therein, but the middle ruin must not be used by either of the two houses.



R. Brona was sitting and proclaiming this Halakha. Said R. Eliezer, one of the schoolmen, to him: "Did Rabh indeed say this?" and he answered: "Yea; he did." So R. Eliezer requested that he be shown where Rabh resided. This was done, and coming before Rabh he inquired: "Did Master indeed say this?" and he answered, "Yea." Said R. Eliezer: "Did Master not say, that if an object is not easily accessible to both, it must not be used by either?" Answered Rabh: "Dost thou then think, that I had reference to three ruins, that stood one after the other between two houses? I was speaking of ruins that stood two on one side and one of the size of both on the other (as shown in accompanying illustration). Now as regards the ruins into which the windows open, from the fact that access is gained by means of windows, or in other words through the atmosphere, they are permitted to be used in accordance with the opinion previously rendered that a place where there is no thoroughfare

does not prove an impediment to adjoining ground. Even in this case, where the ruins being naturally broken it might be said that the atmosphere of one mingling with the other renders both unlawful for use, I have already decided, that atmosphere cannot produce such a condition. As for the other ruin, which both can reach by means of the small opening at the bottom it is not as if they were reached through the atmosphere but by actual contact. Hence the ruin being directly between the two houses cannot be used unless an Erub had been combined."

MISHNA: If a man deposit his Erub (for the combination of courts) in a vestibule, gallery, or balcony, it is not a lawful Erub. Should a man reside in any such place, who has not joined in the Erub, he cannot prevent the other inmates of the court (from carrying therein). If a man deposit his Erub in a hay-loft, or in a stable, or in a woodshed, or in a granary, it is a legal Erub, and one who dwells there (if he had not joined in the Erub) impedes the other inmates of the court. R. Jehudah said: If the householder has reserved the right of access thereto (to such a loft, stable, shed, or granary), he who dwells there does not impede the other inmates of the court.

GEMARA: Said R. Jehudah the son of R. Samuel bar Silas [1]: In all cases where the sages decree that if a man reside in a certain place (and had forgotten to join in the Erub) he does not impede the others, an Erub which he might deposit in such a place is not legal, excepting only in the case of a vestibule belonging to an individual, and in all cases where the sages decree that an Erub must not be deposited in a certain place, it is permitted to effect the combination of alleys in such a place, excepting only the atmosphere of an entry (that is, in the air above the ground of the entry).

R. Jehudah again said in the name of Samuel: "If a company was seated at table on the eve of Sabbath and the Sabbath set in, the bread lying on the table may be depended upon to serve as an Erub and according to another version it may serve as the combination of the alley." Said Rabba: "They do not differ. Those who say that the bread serves for an Erub (of the court) refer to a case where the table was situated in the house,

and those who say that it may serve as a combination of alleys refer to a case where the table was in the court." Said Abayi to him: I know of a Boraitha, which will bear out thy opinion, viz. 'Erubin of courts must be made in the courts, combinations of alleys must be effected in the alleys.' After deliberating upon this Boraitha we decided that it could not be so, for we have learned in our Mishna that if a man deposit his Erub (of courts) in a vestibule, gallery, or balcony, it is not a lawful Erub, and the conclusion was that the statement of the Boraitha to the effect that the Erubin must be made in the courts in reality means, that they should be made in the houses contained in the courts, and the combination of alley should be made not in the alleys proper but in the courts opening into the alleys."

"*R. Jehudah said: If the householder has reserved the right of access*," etc. What is meant by the right of access? The privilege as held by Bunayis ben Bunayis (according to the Aruch Ben Nanas), who was a very wealthy man and would loan his houses for the use of the other inhabitants, but would reserve the right to store his utensils in such houses. At one time he came before Rabbi; said Rabbi: "Make room for a man who has a hundred golden minas." [1] Later another man came along and (thinking that he was the wealthier) Rabbi said: "Make room for a man who has two hundred golden minas." Said R. Ishmael the son of R. Jose to Rabbi: "Rabbi,

the father of this (first) man (Bunayis) hath a thousand ships in the sea and a thousand cities on land." Said Rabbi to him: "When thou shouldst see his father, tell him, not to send his son to Rabbi dressed so poorly, because it is Rabbi's wont to honor rich men."

R. Aqiba would also honor rich men, as Rabha bar Mari preached: "It is written [Psalms lxi. 8]: 'May he abide forever before God: ordain that kindness and truth may guard him,' which signifies: When can he abide forever before God? If rich men guard him with kindness and truth so that he know not want."

Rabba bar bar Hana said: "What is meant by the right of access? If a man have in the house (any utensil) even a plough-share." Said R. Na'hman: "The disciples of Samuel said on the contrary: Only an utensil which may not be handled on the Sabbath gives a man the right of access to a house, but an utensil

which may be handled on Sabbath does not, because he might come and remove it." The same was also taught in a Boraitha.

MISHNA: If a man leave his house and goes to take his Sabbath-rest in another town (without previously joining in the Erub), be he a Gentile or an Israelite, he thereby prevents the other inmates of his court from carrying within it. Such is the dictum of R. Meir. R. Jehudah saith: "He does not prevent the others." R. Jose saith: "A Gentile prevents the others, but an Israelite does not, as it is not usual for an Israelite to return on the day of rest." R. Simeon saith: Even if the man left his house and had gone to take his Sabbath-rest with his daughter, in the same town, he does not prevent the other inmates, since he has in thought renounced his abode for the time being.

GEMARA: Said Rabh: The Halakha prevails according to R. Simeon, but only if the man went to take his Sabbath-rest with his daughter; if, however, he went to take his Sabbath-rest with his son he does not renounce his own abode for the time being; for people say: "If thou hearest a dog bark in a house thou canst enter without fear; but if thou shouldst hear little pups squeal and their mother bark at thee, do not enter" (meaning that a father is not apt to quarrel with his daughter and return to his abode, but he may do so with his daughter-in-law and be compelled to return to his own home).

MISHNA: If there be a well between two courts it is not lawful to draw water therefrom (on Sabbath), unless a partition be made ten hands high either below (within the water) or at the edge of the well. R. Simeon ben Gamaliel said: "Beth Shammai hold, that the partition must be made below; but Beth Hillel maintain that it must be made above." Said R. Jehudah: The partition is not more effective than the wall which is between the two courts.

GEMARA: Said R. Huna: "By saying that the partition must be made below, Beth Shammai mean, that it should be within the well but not so as to touch the water, and Beth Hillel by maintaining that it should be made above, mean, that it should be erected over the well. Both agree, however, that the partition must not be outside of the well proper, but within its enclosures." Beth Hillel's reason for the decree is that wherever water is concerned the ordinances are to be construed in as lenient a manner as possible, as we have learned from R.

Tabla's question and Rabh's answer (see page 24).

"*Said R. Jehudah: The partition is no more effective*," etc. Said Rabba: R. Jehudah and R. Hananiah ben Aqabia said virtually the same thing. R. Jehudah said what we have learned in the Mishna and R. Hananiah ben Aqabia as we have learned in the Boraitha, viz.: "In a balcony four ells square a hole four spans square may be cut out and water may be drawn through that hole (and although there were no partitions surrounding the balcony, it is considered as if it reached the ground by the application of the law of Gud Achith [1]). So said R. Hananiah ben Aqabia." (This is virtually the same as the opinion of R. Jehudah in our Mishna.) Said Abayi to Rabba: "Perhaps this is not so! R. Jehudah, who says, that no separate partition is necessary, does so because he holds, that the wall between the two courts suffices as a partition for the well also; consequently he considers the wall as reaching down as far as the well; but, in the case of the balcony, where there is no partition at all to commence with, the balcony must first be inclined into a standing position and then be considered as reaching down as far as the well. Now while R. Jehudah may hold that the wall may be considered as if it reached down to the well, it does not follow that he also permits of a previous imaginary inclination of the balcony in addition to the supposition that it reaches down to the well and thus forms a valid partition. On the other hand, R. Hananiah ben Aqabia, who permits of both the imaginary inclination of the balcony and the supposition that it reaches down as far as the water, may have applied this only to a balcony which was erected above the sea of Tiberias, which is surrounded by cities, banks, and woodsheds, but in the case of a balcony erected above any other waters he might not have permitted even as much as R. Jehudah."

Said R. Huna the son of R. Jehoshua: If the well stood in a corner between two courts, the partition to be erected on the other side of the well (which is not between the two walls) should be ten spans high and a span and a trifle wide on each side (and when applying the law of Lavud to the partition on both sides a partition will be effected on every side of the well, providing the well was only four spans square).

MISHNA: If a canal runs through a court, it is not lawful to draw water therefrom (on Sabbath), unless there be a partition ten spans high where the canal flows into the court and

another where it flows out again. R. Jehudah said: "The wall above is to be considered a partition." R. Jehudah further, said: "It happened, that water was drawn from the canal around, the walls of a town (the moat) on the Sabbath with the sanction of the elders," but the sages replied: "That was done, because, the canal was not of the legal size (of four spans width)."

GEMARA: The Rabbis taught: If a partition was made where the canal flowed into the court but not where it flowed out of the court, or if it was made where the canal flowed out: but not where it flowed in, it is not lawful to draw water therefrom on the Sabbath unless there was a partition both where the canal flowed into and out of the court. R. Jehudah, however, said: "The wall above the canal may serve as the partition.

Said R. Jehudah: "It happened that water was drawn from "the canal flowing into the city of

Sepphoris from the walls, around it [1] (the canal flowing from the moat) with the sanction of the elders," but the sages said to him: "Wouldst thou place this in evidence? In that case the canal was not ten spans deep nor four spans wide."

We have learned in another Boraitha: "A canal which flows between two walls which contained apertures, if it was less than three spans wide, a bucket may be let down from the apertures and water drawn from the canal; but if it was over three spans wide this must not be done (on Sabbath). R. Simeon ben Gamaliel, however, says, that if the canal was less than four spans wide, water may be drawn therefrom, but if over four spans, this must not be done." In which class of legal ground can such a canal be placed? Shall we say: in the class of unclaimed ground? Then the statement of R. Dimi in the name, of R. Johanan to the effect that there is no unclaimed ground less than four spans will not be in accordance with the opinion of all the sages but merely with that of part of them; for according to the sages of the above Boraitha, even three spans may constitute unclaimed ground? Zera said: "The sages of the Boraitha *do* differ with R. Simeon ben Gamaliel concerning this

point whether unclaimed ground maybe three spans or four, and the statement of R. Dimi is merely in accordance with the opinion of part of the Tanaim."

Why should a canal between two walls containing apertures not be considered as the holes in unclaimed ground; for prior to its entering the space between the two walls it was undoubtedly over four spans wide, and hence unclaimed ground (as holes in public or private ground are considered as part of public or private ground respectively, see Tract Sabbath, p. 11)? Abayi bar Abhin and R. Hanina bar Abhin both declare, that this theory (of holes being equal to the ground) does not exist where unclaimed ground is concerned.

R. Ashi, however, said: Even if the theory does apply to unclaimed ground it applies only then, if the ground is near to the hole (in a wall of the ground), but if it is a distance off as it must be in the case of this canal, the theory can under no circumstances be applied. Rabhina, however, said: The three, respectively four spans discussed in the Boraitha do not apply to the canal, but to partitions which were erected at the entrance and outlet of the canal at each end of the alley, and both parties to the dispute merely adhere to their respective theories concerning Lavud, one side maintaining that three spans constitute "Lavud," and the other that even four spans accomplish this object.

MISHNA: If there be a balcony above the water, it is not lawful to draw water therein on the Sabbath, unless a partition be made ten hands high, either above or below the balcony. Thus, also, if there be two balconies, one above the other: Should a partition have been made for the upper and not for the lower, it is unlawful to draw water through either, unless they have been combined by an Erub.

GEMARA: Our Mishna is not in accordance with the opinion of Hananiah ben Aqabia, who holds, that in a balcony four ells square, a hole may be cut out four spans square, etc., as, related previously (page 207), but R. Johanan in the name of R. Jose ben Zimra said: "Hananiah ben Aqabia permitted this to be done only in the case of a balcony erected above the waters of the sea of Tiberias for the reason as stated previously, but not above other waters."

The Rabbis taught: Three things were allowed by R. Hananiah ben Aqabia to the inhabitants of Tiberias, viz.: To draw water through a balcony on Sabbath; to deposit fruit in pea-stalks

(although, while in the field, dew had settled on the fruit it is not considered as being wet, and hence not subject to defilement); and to wipe themselves with a towel when emerging from the bath (as there is no fear of their wringing the towel).

Rabba bar R. Huna said: "Do not say, that the imaginary hanging partition of the balcony makes it lawful, only to draw water through the balcony but not to pour out water through it, for it is also permitted to pour out superfluous water through. that balcony." Said R. Shezbi: "Is this not self-evident? For is this not identical with a sewer mentioned in the next Mishna?" From the succeeding Mishna, where the sewer is supposed to absorb the water, it is allowed to pour water into it even if it be full and run over into the street because the intention was to have the sewer absorb the water, but in this case, where the waters are not stationary, we might assume that it is not allowed to pour out more water to commence with; hence we are told by Rabba bar R. Huna that this may be done.

"*Thus, also, if there be two balconies, one above the other*," etc. Said R. Huna in the name of Rabh: (The Mishna states, that if a partition had been made for the upper and not for the lower, it is unlawful to draw water through either.) When is this the case? If the balconies were not quite four spans apart, but if they were four spans apart it is allowed to draw water through the upper. This is merely in accordance with the mentioned theory of Rabh, that one man cannot impede (the actions of) another through atmosphere.

Rabba said in the name of R. Hyya and R. Joseph made the statement in the name of R. Oshiya, as follows: The law concerning robbery is applicable also on Sabbath. What is meant thereby? If there was a ruin belonging to a man and another man made use of it during the week, it might be assumed that he had acquired the right to it for the Sabbath and may carry therein (for under ordinary circumstances, if a man robbed another of an article and such article is in his possession it is considered as belonging to him until the victim of the robbery reclaims his right to it by law); but we are given to understand that in this case as soon as the Sabbath sets in the property reverts to its rightful owner (without his recovering same by law).

Said Rabba: "This above statement (that the law of robbery is applicable also on Sabbath) would be contradictory to our Mishna, which says that if there were two balconies one above the

other, and a partition was made for the upper, it is prohibited to draw water through either, etc., and for this reason: During the week the upper balcony undoubtedly makes use of the lower and thereby acquires a temporary right to it. If, then, by using the lower balcony during the week the upper balcony does so wrongfully, and on Sabbath the lower balcony reverts to its rightful owners, to the exclusion of the inmates of the upper balcony, how can the upper balcony prove an impediment to the lower, which it cannot use?" [1] Said R. Shesheth: "The Mishna refers to a case, where the partition made for the upper balcony was joint property of both upper and

lower." If the partition was made jointly, of what benefit would a partition made to the lower be to the upper; as long as a share in the partition of the upper balcony is owned by the lower, the upper cannot be used until both combine an Erub? As soon as the lower balcony erects a partition for itself, it exposes its intention to sever all connection with the upper and thus either balcony may draw water through their respective grounds.

MISHNA: If a court be less than four ells square, it is not permitted to pour water therein on Sabbath, unless a sewer is made, which has a capacity of two saahs exclusive of the walls, either outside or within the court. If the sewer has been made outside it must be covered up (with boards), while on the inside it need not be covered up. R. Eliezer ben Jacob said: "Into a gutter, which is covered up to the extent of four ells in public ground, it is permitted to pour water on the Sabbath"; the sages, however, hold, that even though the court or roof be one hundred ells long, it is not permitted to pour water down the gutter (direct); but the water may be poured out on the roof, so as to drop down into the gutter. (In computing the four ells) mentioned in the first clause of this Mishna, the hall may be added. Thus, also, if there be two habitations facing each other (in one court) and the inmates of one have made a sewer, but were not joined in making it by the inmates of the other habitation, those who made the sewer are permitted to throw water into it, but those that did not make it, are not permitted to do so.

GEMARA: What is the reason that water must not be poured into a court less than four ells square? Said Rabba:

[paragraph continues] "A man generally consumes two saahs of water every day. If his court be four ells square or more he pours out the water in order to lay the dust; but if it be less than four ells square, he merely would throw out the water in order to have it run out into the street (and that is prohibited as a precaution, lest he should pour out the water into the street direct)."

R. Zera said: "A court of four ells square absorbs two saahs of water, hence, even should part of it run out into the street, it was not the intention of the man who poured it out that it should, but if the court is less than four ells square it does not absorb that quantity of water and part of it must needs run out into the street, hence it is prohibited to pour it out." Wherein lies the difference between Rabba and R. Zera? Said Abayi: "If the court was oblong, say eight ells by two. It absorbs the water undoubtedly, but as for laying the dust in a court of that size a man would not trouble himself to pour out water for that purpose." An objection was made based upon our Mishna, which states in computing the four ells square of the court the hall may be added. Would this not prove that the reason is according to R. Zera? "According to Rabba," explained R Zera, "the Mishna might refer to a hall which, surrounding the court, made it in the form of a square, *e.g.*, if the court was four ells long by two wide, and the hall added two ells to the width."

"*R. Eliezer ben Jacob said: 'Into a gutter,'*" etc. Our Mishna is not in accordance with the opinion of Hananiah, for we have learned in a Boraitha: "Hananiah said: 'Even if the roof be one hundred ells long, it is not permitted to pour water on it, as it is not made for the purpose of absorbing the water, but for the purpose of throwing it off into the street.'"

It was taught in a Boraitha: "All these regulations concerning the pouring of water apply only to

summer but during the rainy period one may pour as much water as he chooses into the court." Why is this so? Said Rabha: "Because it is the intention of the man to have the court absorb the water." Said Abayi to him: "Unclean water is certainly intended to be absorbed by the ground, still it is not permitted to pour it down the gutter." Rejoined Rabha: "Why should this not be permitted during the rainy season? Can it be the intention of the man that the water should run out into the street in order that his court should not become muddy? It is already muddy. Then the reason might possibly be in the manner of a precaution,

lest the man pour the water into the street direct or others seeing water running out of a court, might assume that it is allowed to pour out such water into the court even during the dry season? The precaution is unnecessary. Those who see water running out of the court will naturally conclude that it is rain-water, because of the rainy season of the year, and there is no fear of the man pouring out the water into the street, because his court being already muddy, he will not mind pouring more water into it." Said Abayi: "According to thy explanation, then, during the rainy season the quantity of water is immaterial, even if it be a kur or two it may be poured out nevertheless."

"*If there be two habitations facing each other*," etc. It was taught: Rabba said: "They must not pour water into the sewer, provided they did not combine an Erub, but if they did combine an Erub, they may pour water into the sewer." And if they did not combine an Erub, why should it not be allowed? They merely throw the water down the sewer! Said R. Ashi: "This is merely a precautionary measure, lest they fill some vessels with water and then carry them to the sewer."

Footnotes

200:1 One who remains in the house of a leper the length of time required to eat half of such a loaf, renders his clothes unclean and must wash them (as explained in Tract Negayim).

200:2 One who eats a fourth of such a loaf which has become unclean, renders himself unclean arid cannot partake of any consecrated thing until he has bathed (as will be explained in Tract Oholeth).

201:1 In order to explain this problem mathematically it must be borne in mind that a Kabh is equal to 2 Saah and a Pundian is equal to 1/4 Selah. Hence if 1/3 be allowed the dealer for baking the loaf, according to R, Johanan the loaf will be equal to ½ of a Kabh minus 1/3 of ½ or in other words 1/3 of a Kabh, while, according to R. Simeon, a loaf is 2/3 of 1/3 of a Kabh or 2/9. If 2/9 of a Kabh constitute sufficient for 2 meals, then 1 Kabh provides 9 meals, and according to R. Johanan 6.

204:1 At times the name Silas is also called Shila in the Talmud, and while the same person is meant, still we render it according to the manner in which it appears in the original.

205:1 A mina was at one time of the value of 100 Zuz, but later its value was increased to 60 Shekel or Sela, which is equal to 240 Zuz.

207:1 For explanation of Gud, see note to page 7.

208:1 The term in the Mishna which we render with "walls around the city" is "Ebal," and in a translation of the Mishna by De Sola and Raphall, Ebal is called the "town of Ebal." This seems to be inconsistent with the text, however, as further on in the Gemara we find "Me-Ebal le-Sepphoris," and were Ebal a town it is not reasonable that a canal from one city to another should not be ten spans deep and four wide. Aside from this, the Mashbir of Schoenhak and the dictionary of Levy define the term Abuloh (Greek •υβολ• {Greek *e?ubolh'*}), "walls around a town."

211:1 The explanation of this paragraph of the Gemara is according to the commentary of Rabbena Hananel, as Rashi reverses the case from the lower balcony to the upper and presents an incomprehensible explanation.

CHAPTER IX.

REGULATIONS CONCERNING THE COMBINING OF ROOFS ON SABBATH.

MISHNA: All the roofs of a town are considered one private ground (although the houses underneath are occupied by several), provided there be not one roof ten hands higher or ten hands lower than the rest. Such is the dictum of R. Meir; the sages, however, hold, that each roof constitutes a separate private, ground. R. Simeon said: Roofs, as well as courts and wood-stores, constitute one private ground, for the carrying of all such utensils as were actually situated there when the Sabbath set in, but not for the carrying of such utensils as were still in the house, when the Sabbath set in.

GEMARA: Abayi bar Abhin and R. Hanina bar Abhin were sitting alongside of Abayi, and were conversing between themselves: "It is right according to the sages, who hold, that, in the same manner as the houses are separated below, so are also the roofs above; thus, unless an Erub is made between the houses, it is not permitted to carry from one roof to the other; but what is the opinion of R. Meir? Does he hold, that as the houses are separated so are also the roofs, why does he state, that all the roofs constitute *one* private ground; or if he holds that above ten spans there is nothing but private ground, what difference does it make to him, whether a roof be ten spans higher or lower than the rest?" Said Abayi to the two brothers: "Have ye not heard the dictum of R. Itz'hak bar Abhdimi to the effect, that R. Meir said thus: 'Where there are two distinct premises both of which, however, are legally private ground, *e.g.*, a pillar, ten spans high and four spans wide standing in private ground, and which must not be used to shoulder burdens thereon on the Sabbath, lest a heap of the same size standing in public ground be used for the same purpose,' so it is also in this case, where a roof is ten spans lower or higher than the rest the same precautionary measure applies."

The two brothers hearing this from Abayi thought, that according to R. Meir the same case applied to a mortar or kettle,

ten spans high; said Abayi to them: "My master told me, that R. Meir said, this precaution applied only to a pillar and a millstone because for these two objects special places are designated, but as for other utensils, even if they be ten spans high, the precaution is unnecessary."

"*The sages, however, hold, that each roof constitutes a separate private ground*." It was taught: Rabh said: "On every roof things must not be handled except within a limit of four ells," but Samuel said: "They may be handled in the whole extent of the roof." If the roofs are separated and the separation is apparent, all agree, that carrying things on those roofs is permissible (because in this case the walls underneath are considered as if they reached up to the tops of the

roofs) but they differ concerning roofs that are separated, where the separation is not apparent. Rabh holds that things must not be carried on those roofs (where the separation is not apparent) except for a distance of four ells, because he does not admit, in this case, the theory of Gud Assik (possibility of the walls reaching up to the tops of the roofs), while Samuel, who does admit the theory, holds, that carrying is permitted in the entire extent of the roofs (because he admits of the possibility of the walls reaching the tops of the roofs).

An objection was made based upon our Mishna: The sages hold, that each roof constitutes a separate private ground. This is in accordance with Samuel's opinion but is contradictory to the opinion of Rabh. The disciples of Rabh said in his name, that the statement, "things must not be handled except within a limit of four ells," meant to signify, "two ells in each adjoining roof" (but in the one roof things may be handled throughout its entire extent).

Abayi said: "If a man erected an attic on top of his house and provided it with a small door four spans wide, he may carry things in all the roofs." (The reason for this statement is, that the fact of the man having made an attic and provided it with a door is proof, that the other inmates had resigned their right to the use of the roof in his favor.) Said Rabha: "It may happen, that the small door with which the attic was provided may prevent the man from using the other roofs" (even according to R. Meir). How so? If the door in the attic faced a garden below and the partition made by the attic separated his roof from the others, it might be said, that he made that door merely so as to be able to watch his garden and renounced his right to the use of the roofs.

(It was taught:) Roofs, level one to the other in which, according to R. Meir, it is permitted to carry things, and a single roof which may be used according to the sages, may according to Rabh be used throughout their whole extent, while according to Samuel, it is only allowed to use them for an extent of four ells. Would not this be a contradiction by Rabh to his previous statement and by Samuel to *his* own former dictum? This can be explained thus: Rabh's previous statement referred to a case, where the separation between the roofs was not apparent while in this case the separation is apparent and Samuel's former dictum referred to a roof that had less than two saahs' capacity, while in this case it refers to a roof that has a capacity of more than two saah. Why should a roof of that size not be allowed to be used? The possibility of the walls reaching the tops of the roofs is not admitted, for the reason that partitions which enclose dwellings are made downwards and are not supposed to extend upwards, and of a space which is not enclosed by partitions of dwellings and has a capacity of over two saah, only four ells may be used.

It was taught: Concerning a ship, Rabh said, one may carry things throughout the whole extent of the ship, because the space of a ship is enclosed with partitions, and Samuel said, one may carry only to the extent of four ells. Why so? Because the partitions were not made for the purpose of making the space inhabitable but merely to keep out the water. Said R. Hyya bar Joseph to Samuel: "According to whose opinion does the Halakha prevail? According to thy opinion or according to Rabh's," and Samuel answered, "The Halakha prevails according to Rabh."

R. Giddel in the name of R. Hyya bar Joseph said: "Rabh agrees with Samuel's opinion, concerning a ship that was in dry dock and turned over, that it was only permitted to carry things

for a distance of four ells." For what purpose was the ship turned over? If people lived within it, why should it not be allowed to carry things throughout its whole extent? Is the bottom of the ship not equal to a roof, when the ship was turned over? Nay; the ship was turned over for a coating of tar.

R. Jehudah said: When we shall arrive at the final conclusions of R. Meir we shall find that all roofs are considered as one private ground in their own right, *i.e.*, that carrying from one roof to the other is permissible; also that all courts are considered as one private ground and likewise all woodsheds, but

from the final conclusions of the sages we shall learn, that roofs and courts constitute one private ground, *i.e.*, that it is permitted to carry things from the roof to the court and *vice versa*, which, according to R. Meir is not allowed. The woodsheds, however, are considered according to the sages a separate private ground, *i.e.*, things may be carried from one woodshed to another but not from a woodshed into a court. The final conclusions of R. Simeon denote, that all roofs, courts, and woodsheds are considered as one private ground.

We have learned one Boraitha in support of Rabh and another in support of R. Jehudah. The one supporting Rabh reads as follows: "All roofs of the town are considered as one private ground; but it is prohibited to carry things from the roofs to the courts, and *vice versa*." Vessels which were situated in the court before the Sabbath set in, may be carried in all the courts, and those situated in the roofs before the Sabbath set in may be handled in all the roofs, provided there is not a roof ten spans higher or lower than the rest. Such is the dictum of R. Meir; but the sages said: Every roof constitutes a separate ground and things must not be carried in it for a distance of over four ells. This bears out the statement of Rabh in which he says that when the separation between the roofs is not apparent one must not carry except in a limit of four ells.

In support of R. Jehudah we have learned the following Boraitha: Rabbi said: "When we learned the Law at R. Simeon's in the city of Thequa, we would carry towels and oil from one roof to another, from that to the court, and from that to another, and from the other court to a woodshed, and from that to another, until we would come to the springs where we would bathe."

Said R. Jehudah: "It happened in a time of danger, that we brought up the sacred scrolls from a court to a roof, from the roof to another court, and from that to a woodshed in order to read therein." The sages answered: "Acts committed during a time of danger do not serve as evidence."

"*R. Simeon said: 'Roofs as well as courts and woodsheds,'*" etc. Said Rabh: "The Halakha prevails according to R. Simeon, providing no Erub was made, but if an Erub was effected, it is not so, because there is fear, lest the utensils from the houses be carried out on the Sabbath and are then carried about in all the courts." (R. Simeon himself admits, that they form one private ground for the carrying of such utensils as were actually

within the courts or roofs when the Sabbath set in but nor for such utensils as were within the

house.) Samuel, however, as well as R. Johanan, said: "There is no difference whether an Erub was made or not."

R. Hisda opposed this: According to Samuel and R. Johanan there will be two kinds of vessels in the court, one kind, which had already been situated in the court when the Sabbath set in, and the other, which was brought out from the house during; Sabbath. Is then not the precautionary measure decreed by Rabh really necessary? Simeon holds to his theory that precautionary measures are not necessary.

Come and hear: "Five courts which opened into each other. and also opened into one alley, the inmates of which had all forgotten and not combined an Erub, (the inmates) are prohibited to carry in or carry out from the court into the alley, or from the, alley into the court. The utensils which were situated in the courts when the Sabbath set in may be carried in the courts, but the utensils which were situated in the alley must not be carried even in the alley. R. Simeon, however, permits this to be done (even to carry the utensils of the court into the alley) because he used to say: as long as many people lived there and had forgotten to combine an Erub, the roof, the court, the balcony, the gallery, the woodshed, and the alley are all considered the same legal premises." Thus we see that R. Simeon makes this decree only if no Erub was made, but if an Erub was made he would not do so; hence he contradicts Samuel and R. Johanan? Nay; R. Simeon states this merely to supplement the statement of the sages and says to them: "As far as I am concerned it makes no difference whether an Erub was made or not, but according to your opinion, grant me, that when no Erub was made the courts, the roofs, etc. all constitute the same legal premises." The sages, however, answered: "Nay; according to our opinion, each constitutes separate premises."

Said Rabhina to R. Ashi: "Is it possible that R. Johanan said this? Did not R. Johanan say, that the Halakha prevails according to an anonymous Mishna, and we have learned previously (Chapter VII., Mishna 2) concerning a wall between two courts, if there was fruit on the wall, the inmates of both courts may partake of the fruit providing they do not carry any of it down with them? Hence we see that it is not permitted, according to that Mishna, to carry things from one court into another even if an Erub was made by each court!" (R. Ashi answered:)

By carrying it down is meant carrying it down into the houses, but carrying it down into the courts is permitted.

Asked Rabhina again: "Did not R. Hyya teach (in addition to the quoted Mishna), 'providing the inmates of each court do riot take it down into their respective courts and eat it'?" Said R. Ashi: "If Rabbi did not teach this in the Mishna, whence does R. Hyya adduce that explanation (I think that my interpretation of the Mishna is correct)?"

It was taught: "If there were two courts, which had a ruin between them and the inmates of one court combined an Erub, while the inmates of the other did not, R. Huna said that the court that had not the Erub is entitled to the ruin (*i.e.*, the vessels situated in their court may be transferred to the ruin) but the court that had combined the Erub is not entitled to the ruin for fear that they might carry out vessels, which were situated in their houses on the Sabbath, into the court, and thence into the ruin."

Hyya, the son of Rabh, however, said: (I heard from my father) that even the court that had an Erub combined may be entitled to the ruin and I explain my father's dictum to signify, that the utensils contained in either court may be transferred to the ruin. If thou shouldst explain my father's dictum to signify, that neither of the courts may make use of the ruin, because he understood R. Simeon's decree to mean "if they had made an Erub they became separate premises," hence, in this case, one of the courts having combined an Erub interferes with others also, I will answer it by saying, that such would be the case if there were an occupied court between them, in which event there might be vessels which were situated in the court when the Sabbath set in and also vessels which had been carried out of the houses, so that it would be impossible to distinguish which could and which could not be carried throughout all the courts. When, however, as is the case here, a ruin is between the two courts where there are no vessels which are actually situated there, the danger of confusion is removed and hence my explanation is, that it is permitted for both courts to transfer their vessels to the ruin.

MISHNA: If a large roof adjoin a small one, the owners of the large roof are permitted to carry things thither from the house, but the owners of the small roof are prohibited to do this. If a large court opens into a small one, through a breach in the wall, the inmates of the large court are permitted to carry things through the breach, but the inmates of the small court

are prohibited to do so, because the smaller court is considered as an entry to the larger.

GEMARA: Why does the Mishna teach both cases, concerning a roof and a court? According to Rabh, the object is to demonstrate that in the same manner as courts are divided by partitions so should the partitions between roofs be apparent. According to Samuel, the object is to show, that a roof is on a par with a court, *i.e.*, as the latter is used by many, so also is the former.

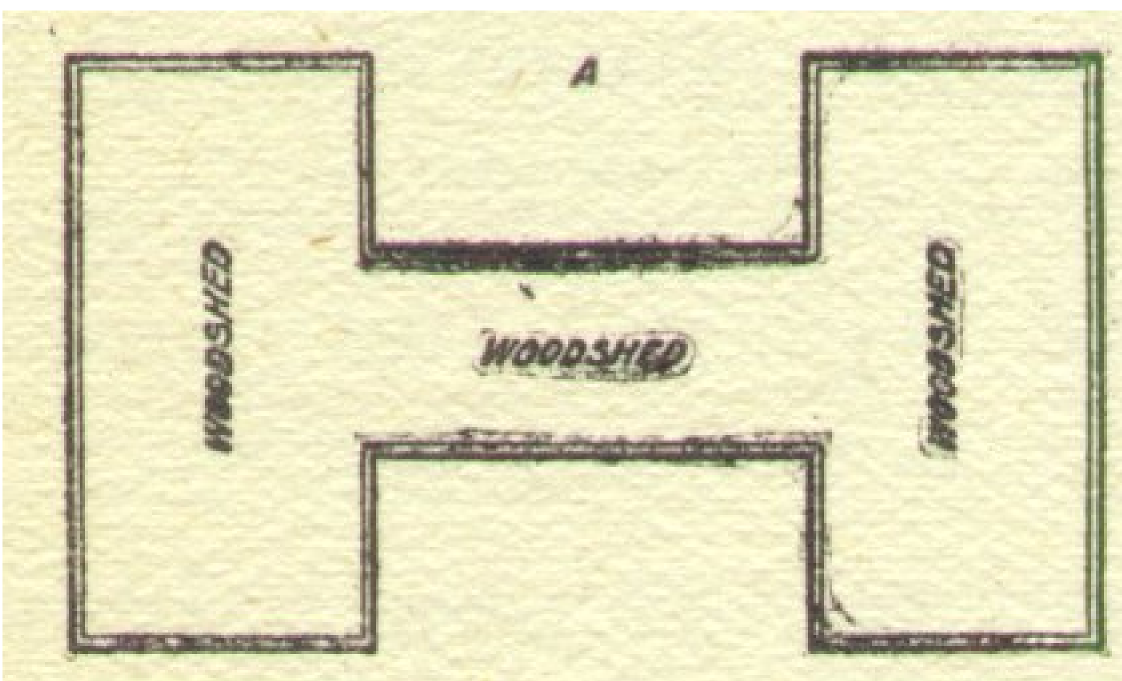
Rabba, R. Zera, and Rabba bar R. Hanan were sitting together and Abayi sate close by. They said: "From this Mishna we may adduce, that the inmates of the larger court control the actions of the smaller, whereas the inmates of the smaller court exert no influence over those of the larger. How so? (For instance:) If vines were planted in the larger, other seed must not be planted in the smaller; but if the vines were planted in the smaller, any other seed may be planted in the larger. If a woman who was to be divorced stood in the smaller court and the bill of divorce was thrown to her from the larger court, she is thereby legally divorced, but if she stood in the larger and the bill was thrown to her from the smaller court, she is not legally divorced. If the congregation assembled for prayer stood in the larger and the reader who was to recite the prayer for them was in the smaller, they have acquitted themselves of their duty; if they were in the smaller court, however, and the reader was in the larger, they have not. If there were nine men in the larger court and one man in the smaller, that one man is counted in with the nine and it constitutes a legal assembly for prayer or for the commission of religious acts, but if there were nine men in the smaller and one in the larger that one man cannot be counted in. If there was a filthy thing in the smaller court (on account of which the Shema prayer could not be recited) the larger court may nevertheless recite the prayer; but if the filthy thing was in the larger court the inmates of the smaller are not allowed to do so."

Said Abayi to them: "According to this then, a partition, which under ordinary circumstances should facilitate the observance of laws, would prove a detriment; for were there no partition

between the larger and smaller court and vines were planted anywhere within the two courts, a man would simply be obliged to measure off four ells whence the vines grew and could then plant whatever he chose."

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Rabha, through R. Shmaiah ben Zera, sent the following query to Abayi: "Do we not find as a matter of fact that a partition at times proves a detriment? Did we not learn in a Boraitha, that concerning the partitions of a vineyard there are instances where they make the observance of laws more lenient and on the other hand there are instances where they make it more rigorous." How so? If the vines are planted hard by the partition, one may on the other side of the partition plant whatever he chooses. If there were no partition, however, he would have to measure off four ells whence the vines grew and then plant whatever he chose. This is an instance of leniency caused by the partition. When does it make the law more rigorous? If the vines were planted to within eleven ells of the partition, it is not allowed to plant other seed anywhere within those eleven ells; but if there were no partition, four ells would suffice between the vineyard and the place where other seed was to be planted. Rejoined Abayi: "Why base thy query upon a Boraitha, if in thy opinion the partition is the main issue? Why not cite the following Mishna? (Kilaim, Chapter IV., Mishna 2:) 'If the space between the vineyard and the fence which surrounds it be less than twelve square ells, no other seed may be sown therein; but if it measure that superficies, a vacant space must be allowed for the cultivation of the vines growing near it, and the rest of the ground may be used for saving (other seed).'" We must say, that because in the Mishna the partition is not the issue, but it is a question of the space between the four ells allowed for the cultivation of the vineyard and the four ells allowed to the hedge or fence, and if such space is four ells wide (*i.e.*, if the whole is twelve) other seed may be sown therein, but if less than four, it is abandoned. Hence we might say, that the same issue is treated of in the Boraitha?



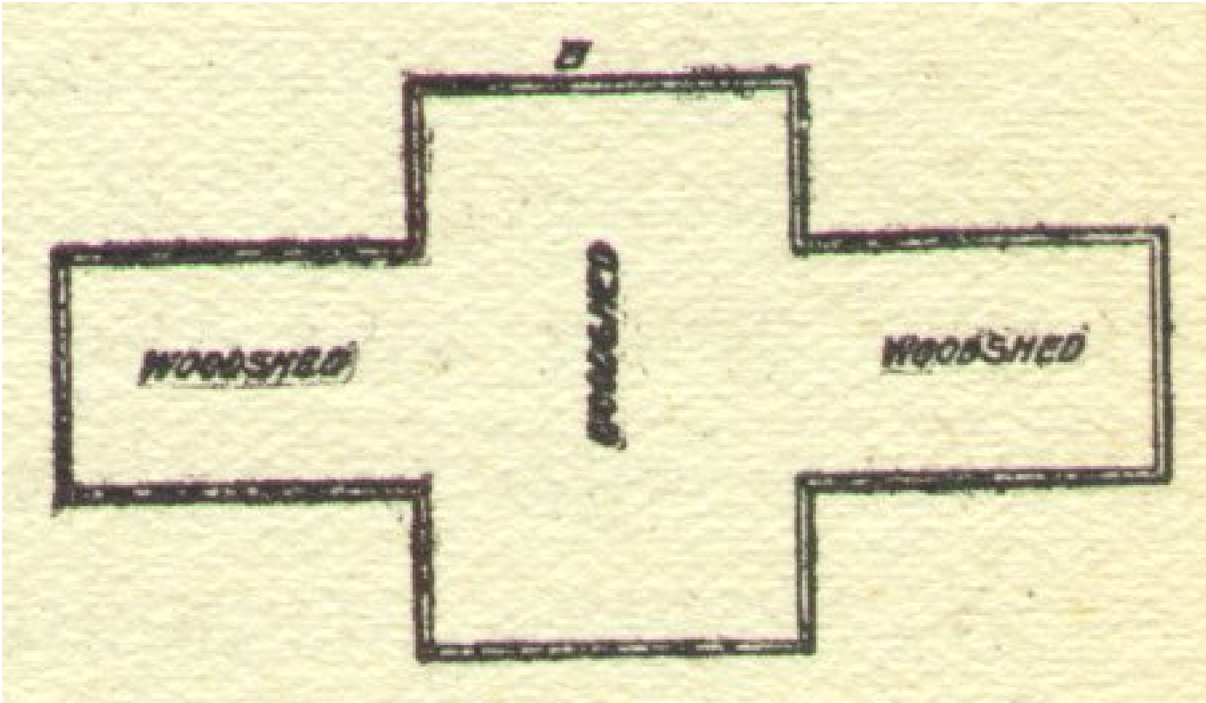


illustration A   illustration B

R. Jehudah said: "If there are three woodsheds opening into each other, of which the two outer are enclosed while the middle one is not (see illustration *A*), and there is a man in each of the wood sheds, the men are considered as a caravan and are entitled to as much room as they desire. If the middle one, however, was enclosed, but the two outer ones were not (see illustration *B*), and there was a man in each of the three woodsheds, they are entitled to a space of six

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saahs' capacity, *i.e.*, two saahs to each man. (For the reason, that in the first instance the middle woodshed is smaller than either of the two outer ones and is virtually absorbed by them, while in the latter case, the middle woodshed is the larger, but cannot absorb the two outer ones, hence the men cannot be considered as a caravan.)"

The schoolmen propounded a question: "How is it if (in the latter instance of the woodsheds, illustration *B*) there were two men in the middle woodshed and one each in the outer sheds? Shall we assume that the two men of the middle shed, having a right to either shed, are considered as being in either one of the two outer sheds, and three persons being in one place, thereby form a caravan, or shall we say, that as there are two men in the middle woodshed, each one of them can occupy either court, in which event there would be two people each in the outer courts and no caravan is formed--consequently they are entitled only to a space of two saahs' capacity for each man? If the latter instance should apply, how would it be if there were two men in each of the outer sheds and one man in the middle shed? Whichever court he might occupy, there would be three men, and thus a caravan would be formed, or, because there is doubt which he would occupy, having a right to either, it would not be considered as a caravan?" The answer was: "All ordinances pertaining to Erubin should be construed in their most lenient form."

Said R. Hisda: "If a court was five spans higher at the edges than in the centre and a partition of five spans height was added to the edges, it does not constitute a valid partition; for either the edges must be ten spans high to commence with or the partition must be made ten spans high." Mareimar, however, maintained, that the two may be counted together and constitute a legal partition.

Rabhina met R. A'ha the son of Rabha and asked him: "Does the master teach anything pertaining to partitions?" and he answered: "Nay." The Halakha prevails, that the edges of the court and the partitions are counted together and constitute a legal partition.

R. Oshiya propounded a question: "How is it if new habitations are added to a court on the Sabbath (*i.e.*, if a wall between two courts had become broken and thus new dwellings were added); do they impede the inmates of that court or not?" Said R. Hisda: Come and hear: (We have learned this in our

Mishna:) "If a large court opens into a small one, through a breach in the wall, the inmates of the large court are permitted to carry things through the breach, but the inmates of the small court are prohibited to do so." Rejoined Rabba: "Perhaps the Mishna refers to a breach that was made before the Sabbath set in." Said Abayi: "The Master should not say 'perhaps'; it is certain, that the breach was caused on the eve of Sabbath; because didst not thou, Master, say thyself at one time, that thou didst ask of R. Huna and of R. Jehudah concerning an Erub which was made through an aperture or a door which had accidentally become closed up on the Sabbath and they told thee, that if that happened after the Sabbath set in, the Erub is valid for the whole Sabbath, having been valid at the beginning (and they certainly would not contradict a Mishna)!"

It was taught: If a wall between two courts was destroyed on the Sabbath, Rabh said, that it is not permitted to carry things in either of the courts for a distance of over four ells, but Samuel maintains, that the inmates of each court may carry as far as the ruins of the wall. The statement herein attributed to Rabh was not made by him outright, but was inferred from the occurrence as follows. Rabh and Samuel were both sitting in one court on Sabbath and suddenly the wall of the court caved in. Said Samuel to the other inmates of the court: "Take a garment and hang it up in place of the wall." Rabh turned away his face from Samuel. Said Samuel: "If Abba (Rabh) is angry let him take his girdle and fasten the garment with it to the wall." If according to Samuel it is allowed to carry as far as the ruins of the wall, why did he order that a garment should be fastened as a partition? Samuel did not order this to be done in order to make a partition but merely to prevent outsiders from peering into the court. And Rabh! if he holds that it is not allowed to carry he should have said so? It was Samuel's domain, and he could not contradict him at that time. Why then did he turn away his face? (Surely he is not responsible for Samuel's actions.) In order to show that he did not agree with Samuel's opinion but still adhered to his own.

MISHNA: If a court (through an incavation of its walls) is laid open to public ground, whosoever brings anything from private ground into such a court, or from the court into private ground, is culpable. Such is the dictum of R. Eliezer, The sages hold, however: Whoever brings anything from the court into public ground, or from public ground into the court. is

absolved; since the court (through the incavation of its walls and consequent opening) has become like unclaimed ground.

GEMARA: Does R. Eliezer hold, that if a court by reason of the incavation of its walls is laid open to public ground, it becomes public ground? Yea! He holds to his theory as expressed elsewhere (Baba Bathra), that if the public had taken a certain path through a meadow (although there was no path) and used it constantly, it remains a path (and the same is the case with this court; if it was laid open into public ground it becomes the same as public ground). This is not so! Did not R. Giddel say in the name of Rabh, that R. Eliezer (in the passage quoted) referred to a case where the original path had been lost and could not be found, and if we would assume that in the case of the court he holds, that only the space which had been lost to the public, *i.e.*, where it is not apparent that the wall had been standing, becomes as public ground, but the whole court is certainly not to be considered such; did not R. Hanina say, that the sages and R. Eliezer differ as to the entire space up to where the wall was standing? Hence we must say, that R. Eliezer holds the entire court to have become as public ground! The statement of R. Hanina should be modified to the effect, that they differ only as to the space that had been occupied by the wall and not up to the wall; thus R. Eliezer does not consider the entire court as public ground. If you wish, I may say, that (the place where the wall stood is still apparent, and) the sages differ with R. Eliezer merely as to the adjoining places to public ground. R. Eliezer holds them to be the same as public ground, while the sages say that, as there had at one time been a court there, it is now not public ground.

MISHNA: In a court (the corner walls of which had fallen in on Sabbath so) that (it) has been laid open to public ground on two sides; also in a house (which by a similar accident) was laid open on two sides; or in an entry the cross and side beam of which had been removed, it is permitted to carry things on that *same* Sabbath; but it is not permitted to do so on the *succeeding* Sabbaths. Such is the dictum of R. Jehudah; but R. Jose said: If it were permitted for that particular Sabbath, it would also be permitted for the future; but since it is prohibited for the future, it is also prohibited on that same Sabbath.

GEMARA: How is the case with the-walls treated of in the Mishna? If the breach caused by the incavation does not exceed ten ells, (it is regarded as a door) so what difference does

it make upon how many sides the court has been laid open? If the breach, however, exceeded ten ells, then it would be the same even if one side only were laid open. Said Rabh: The breach does not exceed ten ells but in a corner it is not customary to make a door.

"*A house which was laid open on both sides,*" etc. How would it be if the house were laid open only on one side? We would say, that the edge of the roof is supposed to reach down to the bottom and thus serve as a substitute for the wall by application of the law of "Gud Achith." Cannot the same rule apply to two sides of a house? Let the edge of the roof on both sides be supposed to reach down to the bottom? Said the disciples of Rabh in the name of their master: "The Mishna refers to a house where the corner walls had fallen in and where the roof was not flat but slanting, so that with the walls it also fell."

Samuel said: "In the case of a court the Mishna does refer to an instance where the breach exceeded ten ells, but it also states that the walls had caved in on both sides because further, when treating of a house, it must specify two sides, hence it does so also when courts are in question." Why must two sides be mentioned in the instance of a house? Cannot the edge of the roof be supposed to reach down to the bottom of both walls? Then again does Samuel hold to the supposition, that the edge of the roof reaches to the bottom of the wall? Was it not taught that concerning a gallery in a valley, Rabh said, it is permitted to carry throughout the whole extent of the valley, because the edges of the gallery are supposed to reach down to the ground and thus form a partition for the entire valley, whereas Samuel maintained that this supposition cannot be considered and hence it is only permitted to carry for a distance of four ells? This would not present a difficulty, for in *that* case Samuel maintains, that the edges of the gallery must not be supposed to reach down to the ground because there must be four distinct partitions, but where only three are necessary he would admit the feasibility of such a supposition. The difficulty concerning the two sides of the house where the breach measured over ten ells still remains! In the same manner as the disciples of Rabh referred to a house where the corner walls had fallen in together with their slanting roof, Samuel may refer to a house, the corner walls of which had sustained a breach four ells in width on each corner, or eight ells in all, and five ells in length

on one side, and five ells and a trifle on the other side, or slightly over ten ells in all. Hence it would be necessary to suppose that the edges of the roof reach down on four sides of the breach two in width and two in length and that would be contrary to the theory of Samuel!

Why does Samuel not hold with Rabh? Because the Mishna does not mention a slanting roof and Rabh does not hold with Samuel because he (Rabh, as we have seen in the instance of the gallery in the valley) permits of the supposition, that the edges of a gallery or a roof can reach down on four sides.

"*R. Jose said: If it were permitted for that particular Sabbath*," etc. The schoolmen propounded a question: "How is R. Jose's dictum to be construed? Does he mean to permit it entirely or to prohibit it entirely?" R. Shesheth as well as R. Johanan said: "He means to prohibit it entirely." We also learned to this effect in a Boraitha, viz.: R. Jose said: As they are not permitted to carry on subsequent Sabbaths, so are they also prohibited to do so on that particular Sabbath.

It was taught: R. Hyya bar Joseph said, the Halakha prevails according to R. Jose, and Samuel said: "The Halakha prevails according to R. Jehudah. Did Samuel indeed say so?" Did not R. Jehudah reply to R. Hana of Bagdad that Samuel decreed: "The Halakha prevails according to R. Jehudah in all cases pertaining to Erubin, but not where partitions are concerned?" Said R. Anan: "Samuel himself explained to me that if the courts were laid open towards unclaimed ground the Halakha prevails according to R. Jehudah but if they were laid open towards public ground the Halakha prevails according to R. Jose."

MISHNA: If an attic be built over two houses, also if bridges are open at both ends, it is lawful to carry things underneath on the Sabbath. Such is the dictum of R. Jehudah; but the sages prohibit it. Moreover, R. Jehudah further said: It is lawful to combine, by means of an Erub, an alley that is open at both ends, but the sages prohibit it.

GEMARA: Said Rabba: Do not say that the reason of R. Jehudah is because a private ground requires according to biblical law only two partitions, but because he holds (Gud Achith) that the ends of the roofs (in this case of the attic or the bridge) are supposed to reach down to the bottom.

Next: Chapter X: Sundry Sabbath Regulations.

CHAPTER X.

SUNDRY REGULATIONS CONCERNING THE SABBATH.

MISHNA: If a man (on Sabbath) find tephilin (on the road), he should match them and bring them (into the nearest town or village) in single pairs (*i.e.*, one for the head and one for the arm). Rabbon Gamaliel said: "He may bring in two pair at a time." To what does this rule apply? To old tephilin (phylacteries), but if they be new, he need not bring them in (at all). If he find them tied up in pairs, or all tied together, be should remain with them till dark and then bring them in. In times of danger (religious persecutions), however, he covers them up and passes on. R. Simeon said: He should hand them to his companion (*i.e.*, the man standing next to him), who in turn hands them to his companion, and so on from hand to hand until the outmost court is reached. So, likewise, his child, he should hand it to his companion, who in turn hands it to his companion and so on from hand to hand, even (if it have passed through the hands of) an hundred (men), R. Jehudah said: "In like manner, a man may pass a cask of wine (which he has found on the road on the Sabbath) to his companion, and he in turn to his companion (and so on from hand to hand) even beyond the legal limits; the sages, however, objected: "The cask cannot be conveyed further than its owners have the right to walk."

GEMARA: He may only carry them in *single* pairs? Shall we assume that this anonymous Mishna is not in accordance with R. Meir, who decrees (Tract Sabbath, page 257) that a man may clothe himself in as many garments as he chooses? Said Rabba: In both instances the decree of R. Meir is based upon the custom of the week-days (when a man may also put on as many clothes as he chooses), and as the above-mentioned Mishna treats of "saving from fire" the Rabbis permit a man to wear as much clothing as he chooses. In this instance, however, where there is no danger, (and as a man only wears one pair of tephilin on a week-day, hence he may wear only one pair

on a Sabbath). Thus this Mishna can also be in accordance with the decree of R. Meir.

"*Rabbon Gamaliel said: He may bring in two pair*." What is the reason of R. Gamaliel's dictum? Does he hold, that on Sabbath also tephilin should be worn? Then he should only have permitted one pair to be brought in? If, however, he holds that on Sabbath tephilin should not be worn and it is merely to save the tephilin that it was permitted for a man to wear them on his head and arm, why does he only permit two pair at a time; he could have permitted more? Said R. Samuel bar R. Itz'hak: "On the head there is only room for two." On the hand, however, there is room for but one? As there is room for two on the head, according to R. Samuel, there is room for two also on the arm.

Shall we say that the first Tana of the Mishna differs with Rabbon Gamaliel upon the point

advanced by R. Samuel bar R. Itz'hak maintaining that there is only room for one on the head or arm while R. Gamaliel holds there is room for two? Nay; all agree that there is room for two, but they differ as to the legality of wearing tephilin on the Sabbath. The first Tana holds that they should be worn on Sabbath, while Rabbon Gamaliel holds that they must not.

Who of the Tanaim ever held, that on Sabbath tephilin must be worn (in order that it might be said the first Tana of the Mishna is in accordance with his opinion)? That was R. Aqiba; as we have learned: It is written [Exod. xiii. 10]: "And thou shalt keep this ordinance in its season from year to year." And elsewhere [Tract Menachoth] where there is a dispute between R. Jose the Galilean and R. Aqiba, it concludes with the statement that R. Aqiba holds the wearing of tephilin on Sabbath to be legal. Does R. Aqiba indeed hold that Sabbath is (also) a proper time for the wearing of tephilin? Have we not learned in another Boraitha as follows: R. Aqiba said: "Lest we should assume that it is required to wear tephilin on Sabbath or on festivals, it is written [ibid. 9]: 'And it shall be unto thee for a *sign* upon thy hand,' which means, that tephilin should be worn, when a sign is required, but Sabbath and festivals being signs in themselves, it is not necessary to have another. "Therefore we must say, that the first Tana of our Mishna does not hold according to R. Aqiba but in accordance with the Tana of the following Boraitha: "He who stays awake at night may either wear tephilin or not, so said R. Nathan; Jonathan Qitoni,

however, said: 'It is not allowed to wear tephilin at night.'" If R. Nathan, then, holds that tephilin may be worn at night, he also holds, that they may be worn on Sabbath. This is no evidence! It may be that he holds that they *may* be worn at night, but not on Sabbath; for have we not learned that R. Aqiba held the night to be a proper time for wearing tephilin, but not so the Sabbath?

We must say, therefore, that the first Tana of our Mishna is in accord with the opinion of the Tana of the following Boraitha: "Michal the daughter of Qushai used to wear tephilin, and the sages did not object to it; the wife of Jonah would go to Jerusalem for the festivals and the sages did not object to that" [whence we see that the duty of wearing tephilin is a (positive) commandment which is not dependent upon the time, *i.e.*, if it said, that they must not be worn at night or on Sabbath, the law would be dependent upon the time, and that duty which is dependent upon time need not be performed by women. If such were the case then the sages would have prevented Michal from wearing tephilin because of the commandment: "Thou shalt not add to the law"]. Hence we see that tephilin may be worn on Sabbath, according to the sages.

It may be, however, that the sages hold to the opinion of R. Jose, who said, that while the laying of hands upon sacrificial offerings is only obligatory for men, still, women, when bringing their offerings, may, if they choose, perform that duty, and the proof that the sages hold thus is that when the wife of Jonah would go to Jerusalem for the festivals, a duty which no one disputes is entirely dependent upon the time, the sages had no objection. Therefore we must say that the first Tana of our Mishna is in accord with the opinion of another Tana, viz.: the Tana of the following Tosephta: "One who finds tephilin on the Sabbath should bring them in single pairs, whether the finder be a man or a woman, whether the tephilin be old or new. Such is the dictum of R. Meir. R. Jehudah, however, prohibits new tephilin to be brought in but permits old." Now we see that they differ only as regards new and old tephilin, but not as to whether a man or woman may bring them in, whence we see that the duty of tephilin is not dependent upon the time. Then the question again arises, "does not this Tana hold in accordance with the opinion of R. Jose?" This would not be consistent; for neither R. Meir nor R. Jehudah are in accord with R.

Jose. R. Meir is not in accordance with R. Jose as we have

learned in a Mishna (Tract Rosh Hashana): "One must not prevent children from blowing the cornet." From this we see that only children are not to be prevented, but women are, and as the above Mishna is anonymous and it is traditional that all anonymous Mishnaoth are in accordance with R. Meir, we see that he (R. Meir) is not in accordance with R. Jose, and that R. Jehudah is not in accordance with R. Jose is to be seen in the following Boraitha in Siphra: It is written [Levit. i. 4]: "And he shall lay his hand upon the head of the burnt-offering," this is a law which applies to a man but not to a woman. For the reason that this dictum is by anonymous teachers we, in accordance with what we have learned elsewhere, ascribe it to R. Jehudah.

R. Elazar said: If a man found whole strands of wool dyed purple-blue, the same as is used for show-threads (*vide* Numbers xv. 38) in the market and it is not known whether they were intended for the preparation of show-threads, they are not suitable for such purpose, but if he found *threads* of that kind of wool they are suitable for that purpose. Why should the strands not be suitable, because it is possible that they were intended for other purposes, *e.g.*, for garments? Why not assume the same to be the case with threads? The threads are referred to as being already twisted into the form required for show-threads. Even so, it might be that they were intended for fringes on a garment? Nay; the threads mentioned were already cut to a size suitable for show-threads and a man would not go to the trouble of preparing them so carefully if they were to be used for any other purpose.

Said Rabha: And what about tephilin? The Mishna distinctly states, that only old tephilin may be brought in, because of the certainty that they are actually tephilin, but as for new ones, even though they be made exactly like tephilin, they must not be brought in for fear that they be only ordinary amulets. Hence we see that they apprehended lest a man take the trouble to prepare amulets exactly like tephilin (why should he not do so with the blue thread for show-threads)? Said R. Zera to his son Ahabha: "Go and tell them, that I have found another Boraitha which explicitly teaches that if the threads were found cut off to the required size of the show-threads, they are suitable for that purpose, for a man will not go to the trouble of cutting off the threads for any other purpose." Rejoined Rabha: "And if Ahabha taught that Boraitha, did he then encircle it with jewels? Our Mishna states explicitly, that only old tephilin,

but not new, may be brought, which is proof that there is fear, lest a man go to the trouble of making amulets exactly like tephilin." "Therefore," he continued, "whether a man would take the trouble (to cut off the threads) or not is merely a difference of opinion between Tanaim as we have already learned in the Boraitha above: 'R. Meir permitted the bringing in of both new and old tephilin, while R. Jehudah permitted only old tephilin to be brought,' for the latter held that a man would take the trouble to make amulets exactly like tephilin while the former held that he would not."

Now, if the father of Samuel and the son of R. Itz'hak explained the terms in the Mishna "old tephilin" to signify that the straps of the tephilin had already been attached and the legal knot made therein, and "new tephilin" to signify that the straps had already been attached but the legal knot had not yet been made, the question whether a man would take the trouble to imitate

the genuine tephilin falls to the ground, and the issue is merely: One holds, that if the tephilin were already fit to be worn they may be brought in, while the other holds, that even if they were not quite prepared they may also be brought in.

R. Hisda said in the name of Rabh: "If one buys tephilin of a man who is not an expert, he must examine two tephilin used for the arm and one used for the head or two of the head and one of the arm (and if he finds them suitable, he may purchase more). "Now, then, let us see! If he purchases the tephilin of one man, what reason is there in examining two used for the arm and one used for the head; why not examine three for the arm or three for the head? And if he purchases the tephilin of several men, he should examine three of each man!

R. Hisda refers to a man who buys tephilin from *one* expert, but he must examine the tephilin for both head and arm in order to see that both kinds are properly inscribed and it matters not whether he examine two for the head and one for the arm or one for the head and two for the arm.

Did R. Kahana, however, not teach, that he should examine only one each for the head and arm? This is in accordance with the opinion of Rabbi, who holds, that in order to firmly establish (the fact) that the man is an expert or where any other proof must be brought, two only are necessary. If this is according to Rabbi, how shall we explain the final clause of the Boraitha stating, that so shall the second bunch of tephilin

be examined and likewise the third? According to Rabbi why is a third required? When bunches of tephilin are concerned, Rabbi also admits that they should all be examined, because the expert probably receives the bunches from different makers and for that reason two of each bunch, one for the head and one for the arm, should be examined. Then why only three? Four or five should be examined? Such is really. the case, any amount should be examined but three only are mentioned as a rule, that in this instance the theory of *Hazakah* [1] does not apply.

"*He should remain with them till dark and then bring them in*." Why not bring them in in single pairs? Said R. Itz'hak the son of R. Jehudah: "My father explained the Mishna thus: If the man can bring them all in, pair by pair, before darkness sets in, he may do so, but if he cannot, *i.e.*, if some would still remain, by the time it gets dark, he should rather remain with them until it becomes dark and then bring them all in at once."

"*In times of danger, however, he covers them up*," etc. Have we not learned that in times of danger he should carry them less than four ells at a time? Said Rabh: "This presents no difficulty. Our Mishna treats of times of danger arising from religious persecutions by the Gentiles while in the Boraitha the danger is supposed to be that arising from robbers." Said Abayi [2] to him: "Thou sayest that our Mishna treats of danger arising from religious persecutions, how then will the latter clause of the Mishna correspond with this? R. Simeon said: 'He should hand them to his companion,' etc. Would this not involve still greater danger?" Answered Rabh: "The Mishna is not complete and should read thus: 'In times of danger, however, he covers them up and passes on.' When is this the case? When the danger arises from religious persecutions, but if it be dangerous on account of robbers he should carry them for a distance of four ells at a time." R. Simeon, however, said: "(In the latter case), he should hand

them to his companion," etc.

Upon what point do R. Simeon and the first Tana differ? The first Tana holds that the method adopted by R. Simeon would be too ostentatious and would seem like a violation of the

[paragraph continues] Sabbath, whereas carrying for a distance of less than four ells is by no means objectionable. R. Simeon, however, holds, that when a man is obliged to carry things for a distance of less than four ells at a time, he might forget and carry for a distance of four ells or more, whereas handing the things from one man to another is perfectly safe.

"*So, likewise, his child*," etc. How came his child on the field or on the road? The disciples of Menasseh taught: "This refers to a child that was born on the road (or in the field)." What does R. Simeon mean to say by "even if it pass through (the hand of) an hundred?" He means to tell us, that although passing it through many hands is not good for the child, still it is preferable to carrying it for less than four ells at a time.

"*R. Jehudah said: In like manner a man may pass a cask*," etc. Does not R. Jehudah hold in accordance with the Mishna elsewhere [Tract Beitza] that an animal may be led or vessels may be carried only as far as the owner thereof is entitled to walk? Said Rabha: R. Jehudah in the Mishna refers to a cask which had acquired the right to its Sabbath-rest at the place where it was situated, but the contents of which had not acquired such right, and the cask becomes of no consequence to the contents.

R. Joseph objected: We have learned in a Boraitha: R. Jehudah said: "When a caravan was encamped a man may hand a cask to his companion, he in turn to his companion, and so on." Thus we see, that this is said only of a caravan but not under ordinary circumstances? Hence R. Joseph explained, that the dictum of R. Jehudah in the Mishna also applies to a *caravan* only.

MISHNA: If a man reads in a scroll (of sacred scriptures) on the threshold of the house, and the scroll slips out of his hand, he may draw it back again. If a man reads in a scroll of the scriptures on the roof of his house and the scroll slips out of his hand, he may, if it has not rolled down for a distance of ten spans (from public ground), draw it up again; 1 but if it reached down to a distance of ten spans (from public ground) he should turn the written side over (downwards to the wall), and leave it there till nightfall. R. Jehudah said: "If the scroll be but the breadth of a needle from the ground, the man may roll

it back again to himself." R. Simeon said: Even though it be completely on the ground, the man may roll it back to himself, for no ordinance regarding the Sabbath-rest supersedes the veneration due to sacred scriptures.

G E MARA: What was the threshold? Shall we say that the threshold was private ground and the space before it public ground, and no precautionary measure is ordained which would forestall his picking up the entire scroll if it fell into that public ground? Hence we must assume, that this is in accordance with the opinion of R. Simeon, who holds that no ordinance regarding

the Sabbath-rest supersedes the veneration due to sacred scriptures. If, then, the first clause of the Mishna is according to R. Simeon, then comes the dictum of R. Jehudah, then again the dictum of R. Simeon, it is obvious, that the first and last clauses of the Mishna are in accordance with the opinion of R. Simeon, while the intervening clauses are R. Jehudah's? Said R. Jehudah: "Yea, so it is." Abayi, however, said: "The threshold referred to, was not private ground but unclaimed ground, and the space before it was public ground. If the scroll had rolled out into that public ground entirely but for a distance of four ells only, the man would not be culpable even if he picked it up and brought it back to the threshold, hence in this case it was allowed him to bring it back to commence with; but if it fell for a distance of more than four ells, he would, should he bring it back, be culpable, because he would have carried more than four ells in public ground; hence it was not allowed under those circumstances to bring it back in the first place."

"*If a man reads, etc., on the roof*." The Mishna teaches, that he should turn the written side of the scriptures over! Is this then allowed? Have we not learned in a Boraitha, that the scribes who write scriptures, tephilin, or Mezuzoth were not permitted to turn over the vellum in order to prevent it from becoming dirty, but must cover it up with a cloth? Where this can be done it should be done, but where it is impossible, rather than desecrate the sacred scriptures, they should be turned over.

If it fell from the roof and remained hanging alongside of the wall, it did not rest in any place because the wall is perpendicular, and it is necessary that it should actually rest on some object? The Mishna is in accordance with the opinion of R. Jehudah and is not complete but should read thus: He should turn the written side over. When is this to be done? If the wall was a slanting wall; but if it was straight, he may draw it back even if it bc

less than three spans from the ground, because R. Jehudah said: "If the scroll be but the breadth of a needle from the ground, the man may roll it back again to himself." Why so? Because it is necessary, that it should rest on some object.

MISHNA: On a ledge outside a window it is permitted to place vessels and to remove them therefrom on the Sabbath.

GEMARA: Where does the ledge project? Shall we assume, that it projects into public ground? Then there is fear, lest they fall to the ground and the man might bring them back into the house. Or shall we say that it projects into public ground, then it is self-evident, that it is permitted. Said Abayi: The ledge is supposed to project into public ground, but the vessels which may be placed are brittle, and hence, should they fall, they will be broken and there is no fear that they will be brought back into the house.

We have also learned to this effect in a Boraitha.. On a ledge outside a window, which projects into public ground, may be placed bowls, goblets, jugs, and glasses, and the whole wall down to within ten spans from the ground may be used, and if there be another ledge underneath (but over ten spans from the ground) the wall underneath the lower ledge may be used entirely, but the upper ledge must only be used to the extent that it faces the window.

MISHNA: A man may stand in private ground and move things that are in public ground; or he

may stand in public ground and move things that are in private ground, provided, that he does not move them beyond four ells. A man must not, standing in private ground, make water in public ground on (Sabbath), nor may he standing in public ground make water in private ground. In like manner he must not, standing in one (kind of) ground spit into another. R. Jehudah said: He who (when coughing) has brought up phlegm into his mouth, must not go four ells before expectorating.

GEMARA: Said R. Joseph: If he did so (meaning if he expectorated, etc.) he is culpable and liable for a sin-offering. But is it not necessary in the first place, that there be a transfer from a certain fixed place and that the article transferred rest in another fixed place of four ells square? Yea, the intention of the man, however, brings about that condition. For if this were not so, how could Rabha have said elsewhere, that if a man threw a thing and it fell into the mouth of a dog or into a furnace, he is culpable? Is it not necessary that it rest in a space

of four ells? Therefore we must say, that the intention of the man is equal to the deed and such is also the case in this instance.

"*R. Jehudah said.: He who has brought up phlegm*," etc. Said Resh Lakish: If a man expectorated in the presence of his master, he deserves to be killed, for it is written [Proverbs viii. 36]: "All those that hate me, love death." Do not read "All those that hate me" but "All those who make me hateful" (see Sabbath, page 236).

MISHNA: A man must not, standing in private ground drink in public ground, nor may he, standing in public ground, drink in private ground, unless he places his head and the greater part of his body, within the place in which he drinks. Such is also the law regarding a wine-press.

GEMARA: Is the first part of the Mishna preceding our Mishna in accordance with the opinion of the sages, and our Mishna in accordance with R. Meir? Said R. Joseph: The preceding Mishna refers to objects which are not of absolute importance while this Mishna refers to objects which are a necessity to the man; hence the precautionary measure forestalling the probability of the man's carrying them into the other ground is instituted.

The schoolmen propounded a question: "What is the law regarding unclaimed ground, *i.e.*, if the man stood in private or public ground and drinks out of unclaimed ground and *vice versa*?" Said Abayi: "The same law applies to unclaimed ground." Rejoined Rabha: This ordinance is merely a precautionary measure! Shall we then institute one precautionary measure as a safeguard to another?" Answered Abayi: "I deduce this from the further teaching of the Mishna stating, 'Such is also the law regarding a wine-press'; for the winepress must needs be considered unclaimed ground, as in the event of its being private ground, why should the repetition be made?" and Rabha replied: "The law regarding a wine-press is not for the sake of the observance of the Sabbath; but it means to imply, that a man may drink the wine made at the press without waiting for the tithes to be acquitted thereof." Thus also said R. Shesheth, as we have learned in a Mishna: A man may drink from a wine-press, whether he mix the must with warm or cold water, and need not first acquit the tithes thereof. Such is the dictum of R. Meir; but R. Elazar ben Zadok prohibits this, if the man mixes the must with water,

because by that act he turns it into a beverage. The sages, however, hold that if he mix it with warm water he turns it into a beverage and is culpable, but if he mix it with cold water he is not culpable as it is not considered a beverage, for he can, after quenching his thirst, pour it back into the press.

MISHNA: A man may catch water dropping from a spout on the roof, within ten hands from the ground; but from a projecting spout he may drink in any manner (he chooses).

GEMARA: He may catch it with his hands but with the mouth it is not allowed! Why so? Said R. Na'hman: This is the case if the spout was less than three spans from the roof, in which it is considered as the roof itself, and consequently it is private ground. If he should catch the water with his mouth it is like carrying things from private into public ground.

We have also learned to this effect in a Boraitha: A man may stand in private ground, raise his hand upwards of ten spans to the spout which is less than three spans from the roof and drink the water out of his hand; but he must not place a cask or his mouth underneath the spout.

"*But from a projecting spout, he may drink in any manner*." We have learned in a Boraitha, that if such spout was four spans square he must not do this; for it is regarded as carrying from one (kind of) ground into another.

MISHNA: Should a well standing in public ground have an enclosure ten spans high, it is lawful to draw water therefrom (on the Sabbath) through an aperture (window) that is above it. On a dunghill, ten spans high, standing in public ground, it is lawful to pour water through any aperture above it.

GEMARA: Where is the well supposed to be situated? Is it near the wall, why are ten-span-high enclosures necessary? Said R. Huna: "A well is referred to that is more than four spans distant from the wall, in which case a ten-span-high enclosure is necessary, otherwise the water would be carried from private into private ground byway of public ground."' R. Johanan, however, said: The well might have been even near the wall, but the Mishna intends to teach us, that the well with its enclosures together are accounted to be ten spans (and hence a partition which legalizes the private ground).

"*On a dunghill, ten spans high*," etc. Is there no apprehension that the dunghill will be decreased (by removing part of it, in which case it will be less than ten spans and still they will continue to pour water on it)? Did not Rabhin bar R. Ada

say in the name of R. Itz'hak: "It happened that concerning an entry which opened into the sea and into a dunghill Rabbi would neither declare the entry lawful nor unlawful. He would not declare it lawful, because it might occur, that the sea should recede and leave the land dry and also that the dunghill might be removed; yet he would not declare it unlawful because the sea and the dunghill were still partitions for the time being"? This presents no difficulty. In the case quoted by Rabhin the dunghill was the property of an individual and he could have removed it,

but in the case treated of in the Mishna the dunghill is public property and there is no fear of its being removed. Mareimar erected partitions for all the entries in Sura facing the sea out of fish-nets, saying: There is danger lest the sea recede and leave the land in front of the entries dry. 1

MISHNA: Beneath a tree, the branches of which droop and cover the ground so that the tips of its twigs be within three spans from the ground, it is lawful to carry things (on the Sabbath). Should the roots of the tree project three spans high out of the ground it is not permitted to sit upon them.

GEMARA: R. Huna the son of R. Jehoshua said: "If the space occupied by the tree is of more than two saahs' capacity, it is not permitted to carry things therein." Why so? Because an abode beneath a tree is not considered an actual abode but is merely used by such as wish to avail themselves of the fresh air, and wherever such is the case it is not permitted to carry within a space of more than two saahs' capacity.

"*Should its roots project three spans*," etc. It was taught: If the roots of a tree projected more than three spans and sloped to a lesser height, Rabba permits their being used because the ends of the roots are less than three spans from the ground and hence equal to the ground itself, whereas R. Shesheth prohibits their use because he claims, that the beginning of the roots being over three spans from the ground cannot be used and the ends being part and parcel of the beginning are still subject to the same prohibition."

If the roots, however, grew in the shape of a rolling sea, those protruding highest are according to the opinion of all prohibited to be used. Those growing lowest are in everybody's opinion allowed to be used; but concerning the roots that grew

between the two there is a difference of opinion between Rabba and R. Shesheth. The same note applies to a tree growing out of a water-ditch and to a tree growing in a corner between the two walls of a court.

The Rabbis taught: Roots of a tree projecting out of the ground three spans or between which there was a space of three spans must not be used, though one side of them be level with the ground, because it is not allowed to climb, hang on to, or lean upon a tree (on Sabbath). One must not climb a tree on the eve of Sabbath and remain there during the entire Sabbath. The same rule applies to animals, *i.e.*, one must not climb upon the back of an animal on the eve of Sabbath and remain there the following day. One may, however, ascend to (respectively) descend into a pit, well, cavern, or fence by scaling or holding to the walls thereof even though they be an hundred ells long. (The reason for the prohibition regarding a tree is because there is fear, lest a man might tear off a twig on Sabbath, while in the case of a pit, well, etc., there is no possibility of such a thing.)

We have learned in one Boraitha, that if a man climbed up a tree (inadvertently) on Sabbath he must not descend, while in another, we have learned, that he may! This presents no difficulty. One Boraitha holds, that it should not be allowed to descend for the sake of a precaution, lest the climbing had been done with intention, while the other Boraitha maintains, that as long as it had been done unintentionally the man is permitted to descend.

In one Boraitha we were taught, that be the tree green or dried, it is not permitted to be used, while in another it is said, that only if it is green it is prohibited, if it be dry, however, it may be used. This presents no difficulty. The Boraitha that permits the tree to be used refers to one which during the summer had lost all its fruit and leaves, while it prohibits a tree to be used in the rainy season when it is full of fruit and leaves.

Rami bar Abba said in the name of R. Assi: A man must not walk on the grass on the Sabbath, for it is written [Proverbs xix. 2]: "He that hasteneth with his feet is a sinner."

One Boraitha teaches, that a man is not allowed to walk on grass on the Sabbath and another teaches that he may! This presents no difficulty. One Boraitha refers to wet grass which is easily torn, while the other refers to dry grass. At this time, however, when we hold in accordance with the opinion of Simeon,

that an act one has no intention of performing does not make one culpable, it is permitted to walk on any kind of grass.

MISHNA: The shutters of a bleaching ground or thorn bushes (as are used) to fill up breaches in a wall or reed mats must not be used to close up avenues unless they be placed a trifle above the ground.

GEMARA: The following presents a contradiction to the Mishna: We have learned: Portable shutters, reed mats, and plough-handles, if already hanging in their places, may be used to close up (avenues) on Sabbath and so much more on festivals? Said Abayi: "Providing they have hinges," and Rabha said: "Even if they have no hinges at the time but at one time did have, they may be used."

An objection was made: "We have learned: Portable shutters, reed-mats, and plough-handles if already banging in their places and but one hair's breadth removed from the ground, may be used to close up avenues?" Abayi explains this, in accordance with his former dictum, as follows: "Providing they either have hinges or are removed from the ground even one hair's breadth," while Rabha explains this, according to *his* former statement, namely: "Providing they at one time had hinges or were one hair's breadth distant from the ground."

The Rabbis taught: Thorn bushes, or bundles of thorns, which were prepared for filling up a breach in a wall, may, if they were tied together and already hung up, be used to close up avenues on the Sabbath and so much more on a festival.

R. Hyya taught: "A movable widow-door may not be used to close up avenues on the Sabbath." What is meant by a widow-door? Some say if it had only one board (which appears to be as a part of the wall) while others say that it may be even a two-board door but had no joints.

R. Jehudah said: Bonfires may be made on a festival provided they are ignited from the top, but they must not be ignited from the bottom, (because the flames would envelop the fuel and make

it appear like a tent of fit, The same rule applies to eggs, pots, folding-beds used in the field, and casks (*i.e.*, they must not be piled up in the form of tents and in the case of eggs they must not be cooked over a fire which has the appearance of a tent).

A Sadducee said to R. Jehoshua ben Hananiah: "Ye, (all Israelites) are compared to thorns, because it is written concerning

you [Micah vii. 4]: 'The best of them is like a brier.'" Replied R. Jehoshua: "Look further into the verse, thou fool, where it is written [ibid.]: 'The most upright is sharper than a thorn hedge,' which signifies, that as a thorn-hedge is used to fill up a breach in a wall, so do the upright among us shield us from all evil."

MISHNA: A man must not, standing in private ground, unlock with a key something in public ground, nor may he, standing in the public ground, unlock with a key something in private ground, unless he had previously made a partition ten hands high (round the spot on which he stands). Such is the dictum of R. Meir; but the sages said to him: "It was the custom in the poultry-dealers' 1 market, at Jerusalem, to lock up the shops, and place the key in the window (aperture) above the door." R. Jose said: "This was done in the wool-market."

GEMARA: The sages object to the dictum of R. Meir. who speaks of public ground, by citing an instance in Jerusalem which is unclaimed ground. Did not Rabba bar bar Hana say in the name of R. Johanan that Jerusalem, if the gates were not closed at night, would be considered public ground as far as Sabbath is concerned?

Said R. Papa: Our Mishna treats of Jerusalem after its fortifications had been razed to the ground when it became public ground, but Rabha said: The sages did not object to the dictum of R. Meir as quoted in the Mishna, but to another statement of his referring to gates of gardens, and the Mishna should read thus: "Nor may he, standing in private ground, open with a key something in unclaimed ground, or *vice versa*, unless he had made a partition ten spans high." Such is the dictum of R. Meir; but the sages objected: "It was the custom in the poultry-dealers' market, etc., etc."

The Rabbis taught: The doors of the gates of gardens if leading into a porter's lodge on the inside may be locked from the inside. If the porter's lodge was outside of the door, the doors may be locked on the outside, and if there were lodges on both sides of the doors they may be locked on either side, but if there were no lodges at all, the doors must not be locked at all, because they are situated in private ground and the key must

necessarily be brought from public ground. The same rule applies to shops that opened into public ground. If the lock of, the door was less than ton spans from the ground, the key should be brought on the eve of Sabbath and deposited on top of the door, and on Sabbath he may take it down, lock the door, and put the key back in its place. If there was an aperture above the door, he can place the key in that aperture providing the aperture was not four spans square, for if it be four spans square it constitutes a separate ground in itself, and the man would carry from one

(kind of) ground into another.

MISHNA: A loose bolt with a knob to it, is prohibited to use on Sabbath. Such is the dictum of R. Eliezer; but R. Jose permits its use. R. Eliezer said: In the synagogue of Tiberias it was customary to use such a bolt, until Rabbon Gamaliel and the elders came and prohibited it. But R. Jose replied: On the contrary, they refrained from using it as unlawful, until Rabbon Gamaliel and the elders came and permitted it.

GEMARA: If the bolt was fastened to a cord (rope) and when holding the cord the bolt was also held, all agree, that it may be used, but they differ as to a bolt that was not fastened to a cord. One master holds that if it had a knob on top it is regarded as a vessel and may be used, while the other master said: "As it cannot be held with the cord it cannot be considered a vessel and must not be used."

MISHNA: A loose bolt, that is fastened to a rope (and hangs down towards the ground) may be used to fasten with in the Temple only, but not in the country; but a bolt that is fixed to the building itself must not be used in either place. R. Jehudah said: A fixed bolt may be used in the Temple and a loose bolt in the country.

GEMARA: The Rabbis taught: What is called a loose bolt, which may be used to fasten with in the Temple and not in the country? If it be fastened to a rope, hangs down, and one end reaches the ground. R. Jehudah, however, says, that a bolt of that kind may even be used in the country, but a bolt which must not be used except in the Temple, is one that is not fastened to a rope and hangs down, but which is fixed to the building itself and when taken out is placed in a corner.

R. Jehudah in the name of Samuel said: "The Halakha prevails according to R. Jehudah concerning a loose bolt in the country but as for a fixed bolt which is not the outcome of a rabbinical law but against an actual biblical law, namely: that

prohibiting building, it is not allowed to be used even in the Temple." Said Rabha: "A loose bolt is prohibited even in the country unless it be fastened by a rope to the door." This is not so! Do we not know, that it happened when R. Tabhla came to Mehuzza and saw a bolt fastened by a rope but not attached to the door, he did not object to its use? In that case it was a rope that was amply firm to hold the bolt without being attached to the door.

R. Ivia came to Neherdai and saw a man fastening a bolt with papyrus, whereupon he said, that a bolt fastened in that manner must not be used.

R. Nahumi bar Zachariah asked Abayi: "How is it if a man made a handle to the bolt?" and he answered: "Thou askest then concerning a pestle and it was taught in the name of R. Nahumi bar Ada that if he made a handle to a bolt and it looked like a pestle, it may be used."

Rami bar Ezekiel sent a request to R. Amram: "Let master tell us some of the good sayings, which he at one time related in the name of R. Assi concerning the canopies of boats." And R. Amram replied: "R. Assi said thus: If the poles upon which the canopies were put up be one

span thick, or if they be less than one span thick, but are less than three spans apart, one may, on the Sabbath, bring a mat and form a tent out of such poles, because they were already at one time tents, and for the time being were also temporary tents, and it is permitted to add to a temporary tent in order to make it useful."

R. Huna had some rams which at night required fresh air and in daytime required a shady place, so he came to Rabh and asked him what to do on the Sabbath. Rabh answered: On the eve of Sabbath, when thou removest the covering of the stalls which the rams occupied during the day, do not quite remove all the covering, but leave about a span closed. Thus on Sabbath thou wilt have a temporary tent, and thou mayest then cover up the stalls entirely; for it is permitted to add to a temporary tent on the Sabbath.

Rabh in the name of R. Hyya said: One may unfold and fold up a curtain on the Sabbath.

R. Shesha the son of R. Idi said: "It is permitted to wear a black, broad-brimmed hat on Sabbath." Did we not learn in a Boraitha that it is not permitted to wear such a hat on Sabbath? This presents no difficulty. The Boraitha refers to a hat, the brim of which was one span in width. If that be the

case, then it would not be allowed to let down any garment more than a span? Therefore we must say, that the Boraitha prohibits the wearing of such a hat only if it is not tied to the head and not because of its similarity to a tent, but for fear that the wind might blow it off and one would be forced to carry it more than four ells in public ground, while R. Shesheth refers to a hat that is tied to the head and there is no fear of its being blown off.

MISHNA: In the Temple the lower hinge of a cupboard-door may be refitted into its place (on the Sabbath), but this must not be done in the country. The upper hinge must not be refitted either in the Temple or in the country. R. Jehudah said: The upper hinge may be refitted in the Temple and the lower one in the country.

GEMARA: The Rabbis taught: The lower hinges of a door of a cupboard or a chest or a tower may be refitted into their places in the Temple, but in the country they may only be temporarily replaced, but not refitted. If the upper hinges had become unfastened it is not allowed to even temporarily replace them as a precaution lest they be refitted with tools, for should this be done the act involves liability to bring a sin-offering. The doors of cellars, vaults, or gables must not be refitted, and if this was done, the man is liable for a sin-offering.

MISHNA: They (priests who minister) may replace a plaster on a wound (which plaster had been taken off to perform the service) in the Temple; but this must not be done in the country. To put the first plaster on a wound on Sabbath is prohibited in either place.

GEMARA: The Rabbis taught: "If a plaster became removed from a wound it may be replaced on Sabbath." R. Jehudah said: "If it was moved up it may be moved down and if it was moved down it may be moved up, and it is permitted to remove part of the plaster and cleanse the exposed portion of the wound, then replace the plaster, remove another part, cleanse the exposed wound and again replace the plaster, but it is not permitted to cleanse the plaster because by so

doing one would rub the plaster and if this was done it involves liability for a sin-offering."

Said R. Jehudah in the name of Samuel: "The Halakha prevails according to R. Jehudah."

R. Hisda said: The statement of the first Tana to the effect that a plaster may be replaced applies only to a plaster

that had fallen on a vessel but a plaster that had fallen to the ground must not be replaced.

Mar the son of R. Assi said: "It happened once that I was standing before my father and a plaster which he had on a wound fell on a cushion and he replaced the plaster. Said I to him: 'Does master not hold in accordance with the opinion of R. Hisda, who said that the first Tana and R. Jehudah differ only as to a plaster that had fallen on a vessel, and Samuel said that the Halakha prevails according to R. Jehudah. How then could master have replaced it?' and my father answered that he did not agree with R. Hisda."

MISHNA: They (the Levites performing on musical instruments) may tie a string (of an instrument which had burst, on Sabbath) in the Temple; but this must not be done in the country. To put a new string on the instrument (on Sabbath) is in either place prohibited.

GEMARA: There is a contradiction! Have we not learned that if a string of an instrument had burst, they only made a loop but did not tie it into a knot? This presents no difficulty. This latter is the opinion of R. Simeon, while the Mishna is in accordance with the opinion of the Rabbis, as we have learned in the following Boraitha: If a Levite had burst the string of an instrument he may tie it; R. Simeon, however, said: He may only make a loop in the string. Said R. Simeon ben Elazar: If he merely makes a loop, the sound will be affected; hence he should loosen the string at the top and draw it down to the bottom or loosen it at the bottom and draw it taut to the top.

MISHNA: They (the priests who minister) may remove a wart from an animal on Sabbath in the Temple, but this must not be done in the country; by means of an instrument it is prohibited to do so in either place.

GEMARA: There is a contradiction. We have learned: Concerning the paschal lamb, which must be carried on the shoulders or brought from without the legal limits and the blemish of which must be removed, these acts must not supersede the due observance of the Sabbath.

R. Elazar and R. Jose bar Hinana differ: One holds, that the Mishna and the Boraitha both treat of a case where the wart is removed merely by hand and not with an instrument, but the Mishna, which permits such removal, refers to a wart which had dried and is easily crumbled, while the Boraitha treats of a suppurating wart which involves a deal of trouble to remove. The

other, however, maintains, that the Boraitha refers to the removal of the wart with an instrument.

R. Joseph said: Both the Mishna and the Boraitha treat of a case where the wart was capable of being removed by hand, and they do not differ. The Mishna maintains, that any rabbinical prohibition which applies to the service of the Temple may be disregarded *in* the Temple, while the Boraitha holds, that any act pertaining to the service of the Temple which is generally prohibited must not be performed in the country (outside of the Temple).

Abayi was sitting and repeating the Halakha decreed by his master R. Joseph, and R. Saphra objected, saying: "Have we not learned in a Mishna [Tract Sabbath, p. 30]: that the Passover sacrifice may be turned around in the oven (on Friday) when it is getting dark, and the Passover sacrifice was not roasted in the Temple itself; hence we see, that the rabbinical prohibition was disregarded even outside of the Temple?" Abayi was silent. Subsequently he came to R. Joseph and told him R. Saphra's objection. Said R. Joseph to him: "Why didst thou not answer, that in that case the Passover sacrifice was prepared by an aggregation of men and an aggregation of men is generally very cautious?" [Why did Abayi not answer R. Saphra to that effect? Because he heard only, that the priests were very cautious, but never heard anything about an aggregation of men.]

Rabha, however, said: Our Mishna is in accordance with the opinion of R. Eliezer, who holds, that any preparation for the fulfilment of a commandment supersedes the observance of the Sabbath (but the reason that the Mishna prohibits the use of an instrument for removing the wart, is because even R. Eliezer admits, that whatever it is possible to do on Sabbath in a manner different from a week-day, should so be done). Whence do we adduce that R. Eliezer admits this? From the following Boraitha: "If a priest should suddenly discover a wart on his person on the Sabbath, his companion should remove it by means of his teeth." Hence we see that the wart must be removed by means of the teeth and not by instruments, and again that the priest himself must not do it but it must be done by his companion. According to whose opinion is this? Shall we say, that it is according to the opinion of the sages and it occurred in the Temple, why should his companion be obliged to do it? He could, according to the opinion of the sages, do it himself,

because a rabbinical prohibition may be disregarded in the Temple; therefore we must say, that it is in accordance with the opinion of R. Eliezer, who holds, that if an ordinary Israelite did this, he would be liable for a sin-offering, but because this is an act pertaining to the fulfilment of a commandment it may be done, but if it is possible to accomplish it in a manner different from that on a week day it should so be done.

MISHNA: A priest (ministering) who hurts his finger, may bind it up with reeds in the Temple (on the Sabbath), but this must not be done in the country. Squeezing out the blood is, in either place, prohibited. It is permitted to strew salt on the stairs of the altar (on Sabbath), in order to prevent the ministering priests from slipping. It is also permitted to draw water from the well Gola and from the large well by means of the rolling wheel on the Sabbath and from the cold well (on festivals).

GEMARA: R. Ika of Pashrunia propounded a contradictory question to Rabha: In our Mishna it is stated, that it is allowed to strew salt on the stairs, whence we see, that this may be done in the Temple only but not in the country; but have we not learned that if a court had become deluged

by rain it is permitted to strew straw on the ground (so as to make it passable)? Answered Rabha: "With straw it is different! For he can eventually remove the straw and use it for another purpose.

Rabha related: "If a court had become deluged by rain, one may bring straw and spread it out on the ground (of the court)." Said R. Papa to him: "Have we not learned, however, that he should not spread the straw in the same manner as he does on a week day, *i.e.*, through a basket, or crate, but through the sides of a *broken* basket." Whereupon Rabha procured an interpreter (crier) and proclaimed: What I told you previously was a mistake! Thus was it taught in the name of R. Eliezer: When he comes to spread out the straw on the ground he should not do it by means of a basket or a crate but through the sides of a broken basket.

"*It is also permitted to draw water from the well Gola*," etc. Ula was a guest in the home of R. Menasseh. A man happened to come along and knocked at the door. So Ula asked: "Who is it that is violating the Sabbath?" Said Rabba to him: "It was prohibited only to produce a sound by means of an instrument, but not to knock on the door." Abayi objected: "We

have learned that it is permitted to draw wine by means of a siphon or drip it through a colander for a sick person on the Sabbath (and it is known that both produce a sound)." So we see, that this is only permitted for a sick person but not for a. healthy person. What purpose would it serve in the case of a sick person? To arouse him from slumber? Hence it is not: permitted to produce a sound for a healthy person? Nay; dripping wine through a colander is supposed to produce a sound similar to that of a cymbal and it is done in order to induce sleep in the case of a sick person who had dozed off in slumber.

Is not, however, the prohibition to draw water form the well Gola or from the large well instituted on account of the sound produced by the rolling wheel? Nay; it is prohibited as a precaution, lest a man take water from such a well and sprinkle his garden or his ruins (to lay the dust).

Ameimar permitted water to be drawn from the wells in Mehuzza by means of a rolling wheel, saying: "The sages prohibited it as a precaution, lest a man sprinkle his garden or his ruin with that water, but here in this city there are no gardens and no ruins." Afterwards he observed that the people used that water for the purpose of soaking flax during the week, so he prohibited the drawing of that water on Sabbath.

"*And from the cold well (on festivals)*." What is meant by the cold well? Said R. Na'hman bar Itz'hak: "That well was filled with spring-water." Whence does R. Na'hman adduce this? From the passage [Jeremiah vi. 7]: "As a well sendeth forth its waters." [1]

We have learned in a Boraitha: It was not permitted to draw water from all cold wells but only from the one mentioned; because when the Israelites returned from exile they together with their prophets who lived in that day drank therefrom and made it lawful to draw water from that well on Sabbath forever. The prophets would not have done this either, if it t for the fact that they knew it to be an ancient custom of their ancestors.

MISHNA: Should (the carcass of) a dead reptile be found in the Temple on the Sabbath, the priest shall move it out with his belt, as an unclean thing must not remain within the Temple.

[paragraph continues] Such is the dictum of R. Johanan ben Berokah; but R. Jehudah said: It should be removed with wooden pincers, in order that the uncleanness spread not further. From which (parts of the Temple) should it be removed? From the inner Temple, from the hall, and from the interspace between the hall and the altar. Such is the dictum of R. Simeon ben Nanos; but R. Aqiba said: It should be removed from every place (in the Temple) which, if entered by an unclean person intentionally, lays him liable to the punishment of Kareth (being cut off), and if entered inadvertently, makes him liable for a sin-offering. In all other parts of the Temple, the carcass of the reptile should be covered with a (copper) cooling-vessel (ψυχτ•ρ {Greek *psuxth'r*}) till the Sabbath is over and then be removed. R. Simeon said: Whatsoever the sages permit thee to do is (not an infraction of biblical law, but) a right which is thine own; inasmuch as whatever they permit could at all events become unlawful only on account of their own enactments for the sake of the Sabbath-rest.

GEMARA: R. Tabhi bar Kisna said in the name of Samuel: "One who brings a thing, which had become unclean through a reptile into the Temple (if he does it intentionally), he becomes amenable to the punishment of Kareth (being cut off) [1] and (if he does it inadvertently) is liable for a sin-offering; but one who brings in the carcass of a reptile itself, is not culpable." Why so? Because it is written [Numbers v. 3]: "Both male and female shall ye send out," and this refers to such as have become unclean, but by taking a legal bath (Mikvah) can become clean. The reptile itself can never be clean, however, hence one is not culpable, if he brings it into the Temple.

Shall we assume that the point of variance between R. Johanan ben Berokah and R. Jehudah in our Mishna is based upon the above Halakha of Samuel, *i.e.*, R. Johanan, when stating, that an unclean thing must not remain in the Temple means to say, that if a man brought in a reptile, he is culpable, while R. Jehudah, who states that the reptile should be removed on account of the possibility of its spreading uncleanness, means to signify that a man who brings in a reptile is not culpable, and the reptile itself is merely a means of spreading uncleanness? Nay; both agree that a man is culpable, but R. Johanan means to assert, that the remaining of an unclean thing in the Temple is a far more grievous condition than the possibility of its

spreading uncleanness, while R. Jehudah claims, that the spreading is of more consequence, hence he advises that wooden pincers be used but not the belt of the priest.

Thus we see, that whether a man is culpable or not is not the point of variance between the two teachers of the first clause in the Mishna but between the Tanaim of the second clause commencing: From which parts (of the Temple) should it be removed? He who says, that it should be removed only from the inner Temple, from the hall, etc., holds, that if a man brought in a reptile into the Temple, he is not culpable, but R. Aqiba, who says that it should be removed from every place, etc., holds that the man who brings in the reptile is culpable.

R. Johanan said: Both Tanaim, R. Simeon ben Nanos and R. Aqiba, adduced their teaching from one and the same passage, viz., II Chronicles xxix. 16: "And the priests went into the inner part of the house of the Lord to cleanse it; and they brought out everything unclean which they found in the temple of the Lord into the court of the house of the Lord; and the Levites received it, to carry it out abroad unto the brook Kidron." R. Simeon ben Nanos means to say, that because the Levites received the unclean things from the priests for further conveyance, it is evident, that only as far as the place where the transfer was made to the Levites, it is important that no uncleanness be found, and a rabbinical ordinance may be violated in order to remove such uncleanness, but from that place and further it is not of sufficient consequence to permit of the infraction of an ordinance instituted for the sake of the Sabbath-rest. R. Aqiba, however, means to say, that the finding of uncleanness in any part of the Temple is of sufficient importance to permit of the infraction of a rabbinical ordinance, and the reason that the priest transferred the unclean things to the Levites was because where Levites could carry it, the priests are exempt, but up to the place of transfer, although the priests were not permitted under ordinary circumstances to traverse the space except for ministerial duties, in that case the matter was of such importance that they were allowed to disregard that regulation.

The Rabbis taught: It is permitted for anyone to enter the Temple for the purpose of building, repairing, and also for the purpose of removing an unclean thing. It is a better fulfilment of that religious duty if a priest does so, and in lieu of a priest a Levite; but if there is no Levite on hand, an ordinary

[paragraph continues] Israelite may go. All of them, however, must be (ritually) clean (notwithstanding the fact that they are about to become unclean).

"*R. Simeon said: Whatsoever the sages permit*," etc. What does R. Simeon refer to with this dictum? He has reference to, or in fact supplements his dictum in the fourth chapter of this tract (last Mishna) to the effect that "if a man was even fifteen ells beyond the legal limits he may nevertheless go back," and referring to this he states, that this is merely the man's own right, as the land surveyors are liable to err in the measurement.

"*As whatever they permit could at all events become unlawful*," etc. What would R. Simeon refer to with this part of his statement? This latter part of his dictum refers to his statement in the Boraitha concerning a new string for an instrument (previously mentioned) when he decrees, that if the string is broken the Levite may tie it into a loop, and here he supplements it by saying, that whatever the sages permitted was only such an act as could not involve liability for a sin-offering; but any act which could involve liability for a sin-offering was not permitted by the sages to be performed.

END OF THIRD VOLUME.

Footnotes

232:1 The explanation of the Hazakah will be found in section Jurisprudence.

232:2 This Abayi is presumably Abayi the elder, as the Abayi generally quoted lived at a later period than Rabh and could not have seen him.

233:1 It must be borne in mind that the scrolls were rolled on two separate rollers, and were unwound from one and wound on the other as the reading progressed.

238:1 This passage is transferred to this place from page 8a in the original, as it is more pertinent to this discussion.

241:1 The Hebrew term which we render "poultry-dealers" is Patmim. Rashi translates it "butchers." The Aruch and the Alphasi, however, interpret the term "poultry-dealers." In Tract Beitza, 296, Rashi explains the word Patam "one who feeds poultry."

248:1 The Hebrew term for "sendeth forth" is "hokir," and the term for "cold well" is "Bor hak'ar," whence R. Na'hman adduces that as a well which sendeth forth waters must necessarily be a spring, so this well called Bor Hakar was also a spring: a deduction by analogy.

249:1 See Numbers xix. 13.

Errata

page 72: 'Sabbth'->'Sabbath'

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page 84: 'anonymousy'->'anonymously'

---

page 194: 'awful'->'lawful'

---

page 197: 'drecree'->'decree'

---

page 200: 'kahb'->'kabh'

---

page 200: 'it'->''

NEW EDITION

OF THE

BABYLONIAN TALMUD

Original text, Edited, corrected, Formulated, and translated into English

BY

MICHAEL L. RODKINSON

SECTION MOED (FESTIVALS)

TRACTS SHEKALIM AND ROSH HASHANA

Volume IV.

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EXPLANATORY REMARKS.

In our translation we adopted these principles:

1. *Tenan* of the original--We have learned in a Mishna; *Tania*--We have, learned in a Boraitha; *Itemar*--It was taught.

2. Questions are indicated by the interrogation point, and are immediately followed by the answers, without being so marked.

3. When in the original there occur two statements separated by the phrase, *Lishna achrena* or *Waïbayith Aema* or *Ikha d'amri* (literally, "otherwise interpreted"), we translate only the second.

4. As the pages of the original are indicated in our new Hebrew edition, it is not deemed necessary to mark them in the English edition, this being only a translation from the latter.

5. Words or passages enclosed in round parentheses () denote the explanation rendered by Rashi to the foregoing sentence or word. Square parentheses [] contained commentaries by authorities of the last period of construction of the Gemara.

TO

ERASMES GEST, ESQ.

OF CINCINNATI, OHIO

MOST RESPECTFULLY DEDICATED BY THE

EDITOR

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PREFACE TO TRACT SHEKALIM.

AMONG the treatises contained in the Section Moed of the Babylonian Talmud is to be found that of Shekalim, which consists, however, only of Mishnas, the Babylonian Talmud having no Gemara. The Palestinian Talmud contains a Gemara for this tract also, and there is an additional commentary by Maimonides. While we are translating only the Babylonian Talmud, we would not care to omit Shekalim, which is of peculiar historical value and may prove quite interesting to the reader. But the Mishna, without any explanation whatever, would naturally seem obscure, and in some instances would be absolutely incomprehensible; and, the Gemara of the Palestinian Talmud, as well as the commentary of Maimonides, consisting of very complicated and intricate series of arguments, inferences, and explanations, which would be not only difficult of translation but also immaterial to the subject, the insertion of which would be a deviation from our method, and unnecessary, as would explanations of Barthanora, Tosphath-yomtabh, etc., we were forced to provide the text with a commentary of our own, drawn from the most authentic sources. This, we trust, will serve to elucidate any obscure passages not quite comprehensible to the general reader. Accordingly, every sentence or word in the Mishna requiring an explanation is distinguished by a number or an asterisk, and has a corresponding reference in the commentary printed below the text. We may add that, for our personal satisfaction and to guard against any possible errors, we have given this tract for revision to some noted Russian scholars who are competent to judge upon it, and they find it very intelligible.

As stated above, we have taken our commentary from the most authentic sources we could find. We do not, therefore, solicit leniency on the part of worthy critics, but ask them to restrain their criticisms until they shall have carefully studied the commentaries mentioned, as well as our commentary, with proper consideration; for ours is derived from the Palestinian Talmud, Maimonides, etc. Conscientious critics will do so without our

solicitation; and as for others, who are ready to criticise everything impromptu as soon as it leaves our pen, such a request would be of no avail. We nevertheless will be grateful to any one who will call our attention to things which arc not comprehensible in the commentary, this being our first venture of the kind, more especially as we think we shall be compelled to do the same with other Mishnayoths to which the Babylonian Talmud has no Gemara. A separate introduction to Tract Shekalim we think unnecessary, as the contents of this speaks for itself. We nevertheless will return to this when we come to Tract Midoth (Measures).

In compliance with our promise in our prospectus, we add to this volume the Hebrew text of the Tracts Shekalim and Rosh Hashana of our new edition, for the benefit of students and scholars who may desire to compare the translation with it.

M. L. RODKINSON.

NEW YORK, May, 1897.

Next: Tract Shekalim: Synopsis of Subjects

SYNOPSIS OF SUBJECTS

OF

VOLUME IV.--TRACT SHEKALIM. 1

CHAPTER I.

MISHNA *a* treats of: What were the duties of the Beth Din in the month of Adar in the time of the second Temple. When the Megillah (Book of Esther) was to be read in the fortified cities. For what purpose messengers were sent out, and what were the things to be heralded.

MISHNA *b* treats of: What was the punishment for not obeying the commandments of Kelayim in the former times and later.

MISHNA *c* deals with: When the money-changers, with their tables, began their work in the countries of Judea and in Jerusalem. The time for pledges which were taken for not paying the Shekalim. From what persons the pledges were to be taken. If a father might pay the Shekalim for his children.

MISHNA *d* treats of: What ordinance Ben Buchri proclaimed in Jamnia in behalf of the priests, and what R. Johanan b. Zakkai rejoined. The defence of the priests, with their interpretation of biblical passages, which was accepted only for the sake of peace.

MISHNA *e* treats of: The voluntary payment of Shekalim from women, slaves, and minors being accepted, but not from the heathens or Samaritans. Bird-offerings not accepted from persons affected with venereal diseases or from women after confinement. Sin and vow offerings, however, were accepted from the Samaritans. The vow-offerings were also accepted from heathens. The general rule concerning this.

MISHNA *f* deals with: The premium one had to pay in addition to the half-shekel. Who was obliged to do so? The different opinions of the sages and R. Meir. How much one had to pay if given one Selah and taking a shekel in exchange,

MISHNA *g* treats of: The law concerning one who pays for a poor man, for a neighbor, and for a countryman. Law concerning brothers and partners paying together; also, law regarding cattle-tithe. How much was the premium.

CHAPTER II.

MISHNA *a*. One may put together the Shekalim and exchange them for a gold coin called Darkon. Concerning the chests which were given to the collectors in the country and at Jerusalem. What is the law if money were stolen or lost by the messengers of a city, when a portion of the Shekalim was already expended; what is the law if not expended.

MISHNA *b*. Concerning the law when one gives his shekels to another to pay his head-taxes for him; if he pays his shekels from the money of the second tithes or from the money of the fruit of the Sabbatical year. Concerning how he shall replace it and use it for the same purpose.

MISHNA *c*. The law concerning one who gathered single coins little by little and said: "With this money I shall pay my shekels." The different opinions of the schools of Hillel and Shamai in this matter. Concerning the same case when one gathers money for sin-offerings. What shall be done with the eventual remains of such money.

MISHNA *d*. Concerning the explanation of R. Simeon of the teachings of the school of Hillel. The discussion of the former with R. Jehudah. The claims of the latter that the coins of the Shekalim were also changed in times and places. The rejoinder of R. Simeon to this.

MISHNA *e*. The law concerning the remainder of money intended for Shekalim when considered to be ordinary. Regarding the remainder of the tenth part of an ephah, bird-offerings, and guilt-offerings: what shall be done with it. A rule concerning this matter. Also, regulations concerning the remainder of Passover sacrifices, Nazarite offerings, the remainder of moneys for the poor in general and individuals, of money for prisoners, for burial of the dead, and R, Meir and R. Nathan's opinions regarding this matter.

CHAPTER III.

MISHNA *a*. Regarding the appointed periods of the year when the money was drawn from the treasury. The different opinions, concerning this matter, of R. Aqiba b. Asai, R. Eliezer, and R. Simeon. The same time appointed for cattle-tithes.

MISHNA *b*. Concerning the ceremony of drawing the money at all periods of the year. The law regarding measures of the boxes in which the coins of the Shekalim were filled, and the numbers of the chests in which the money was drawn from the boxes for the expenses of the Temple. Which box must be opened first, and which last. What garments the person drawing the money must wear. How a man must stand unblemished before his fellow-man and before his God.

MISHNA *c*. Concerning the custom of the house of Rabban Gamaliel, when the members of the house had paid their Shekalim. The law regarding

one who drew money did not commence until he had said to the bystanders, "I will now draw," and they answered, "Draw, draw, draw," three times.

MISHNA *d*. Concerning the covering of the boxes after drawing the money. For which

countries the drawings were performed in the first period, the second, and the third.

CHAPTER IV.

MISHNA *a*. What was done with the money drawn? Concerning the watchmen that were sent out to guard the after-growth of the Sabbatical year, of which the Omer and two loaves were taken for sacrifice. The opinion of R. Jose in this matter, and what the rabbis answered.

MISHNA *b*. Concerning the red heifer, the goat that was to be sent away, the strip of scarlet, the bridge for the cow, the bridge for the goat, the canal, the city wall, the towers, and other necessities of the city: all were paid for out of the Shekalim money. What Abba Saul said.

MISHNA *c*. What was done with the balance of the money left over in the treasury. The discussion of R. Ishmael and R. Aqiba in this matter. Some of the many things which are enumerated in the Palestinian Talmud and which were done with this money. Among them was the hiring of teachers for priests to teach them the laws of the sacrifices.

MISHNA *d*. What was done with the remainder of the moneys of the chest. The different opinions of R. Ishmael, R. Aqiba, and R. Hanina, the assistant chief of the priests, concerning profit: if it might be raised from the remaining money or not, and of what money the gold plates for the decorations of the Holy of Holies were made. Also, concerning the benefit of the altar.

MISHNA *e*. What was done with the remainder of the incense (as the incense of the New Year must be bought with the new Shekalim money). The sanctification of the incense on hand then transferred to that money, and then redeemed with the money of the new revenue.

MISHNA *f*. Concerning the law when one devoted his entire possessions in honor of the Lord: what should be done with them. The discussions of R. Aqiba and Ben Asai regarding this matter.

MISHNA *g*. Concerning the law when one devoted his possessions, and among them were cattle, male and female, fit for the altar. The discussions of this matter between R. Eliezer and R. Jehoshua. R. Aqiba is inclined to the opinion of R. Eliezer, which seems to him to be more proper, but adds that he had heard that both opinions were right according to circumstances.

MISHNA *h*. If one devote his possessions, and among them are things fit for the altar, such as wines, oils, and birds, what should be done with them. R. Eliezer decreed it, and no one opposed him.

MISHNA *i*. Contractors, for the delivery of all things for the altar and the improvements of the Temple, were appointed every month; but if the

prices changed during the thirty days, the Sanctuary must not suffer any injury. Such was the agreement made between them. The illustration of this.

CHAPTER V.

MISHNA *a*. Concerning some names of the offices and the heads of them in the Sanctuary during the entire period when the second Temple was in existence. What were the officers' duties, and how they officiated.

MISHNA *b*. Concerning the order of the head officers; namely, the king, the high priest, his assistant, two catholicoses, and seven chamberlains, not less than two officers being put in charge of public moneys.

MISHNA *c*. Regarding the seals that were in the Sanctuary, serving for the beverages and meat-offerings which must be brought, according to the Bible, with every sacrifice. Concerning the inscription on the seals and their usage. Ben Azai added one seal for the poor sinner. The names of the officers, of the seal-keeper and the officer who sells the above offerings.

MISHNA *d*. The date must be put on every seal. The law regarding surplus money being found in the treasury of the seal-keeper: to whom it belongs; and if a deficit, who must supply it.

MISHNA *e*. The law concerning one who lost his seal; what must be done.

MISHNA *f*. Concerning the two chambers in the Sanctuary, of which one was called "Chamber of Silence" and the other "Chamber of Utensils." What was done there, during what time they were investigated, and what was done with the presented utensils which were useless for the Temple.

CHAPTER VI.

MISHNA *a*. Concerning the thirteen covered chests and thirteen tables which were in the Sanctuary. How many prostrations took place in the Sanctuary. How R. Gamaliel and R. Hanina, assistant chief of the high priest, added one in the place where the ark was hidden.

MISHNA *b*. Relates how a blemished priest who was engaged in selecting and peeling wood had noticed the place where the ark was hidden, but before he had time to tell it to the others he expired.

MISHNA *c*. Concerning the directions where the prostrations were made. How many gates were in the Temple: their names, and why they were so named; also, different opinions of the sages concerning this. There were two gates which were nameless.

MISHNA *d*. Of what material the thirteen tables were made, where they stood, for what purpose they were used. Concerning the golden table in the Temple itself, upon which the showbreads were constantly lying.

MISHNA *e*. Concerning the inscriptions on the thirteen covered chests in the Sanctuary, and what was done with them. The different opinions of R. Jehudah and the sages as to using certain money put in some chests.

MISHNA *f*. Concerning the amount of articles to be furnished in payment of a vow one made, who did not explain how much he intended to give; for instance, wood, incense, gold coins, etc. A rule that was made concerning this. The hides of all sacrifices belong to the priest.

CHAPTER VII.

MISHNA *a*. If money was found in between the differently marked chests, to which chest the money belonged. Concerning this the rule was: One must be guided by the proximity, even in the case of the less important, etc.

MISHNA *b*. Concerning money found in Jerusalem, in the court of the Temple, in the times of the Festivals and in the ordinary times'.

MISHNA *c*. Concerning meat found in the court of the Temple, in the city, and any place where Israelites resided and where Gentiles and Israelites together resided.

MISHNA *d*. Concerning cattle found between Jerusalem and Migdal Eder, and in the vicinity of the city in all directions: what the law prescribes. The different opinions of some sages.

MISHNA *e*. Relates how, in former days, the finder of such cattle was pledged to bring drink-offerings, and how afterwards the high court decreed to furnish them from the public moneys.

MISHNAS *f* and *g*. R. Simeon named seven decrees which were promulgated by the high court, and the above decree was one of them. R. Jehudah, however, does not agree on some points with him. R. Jose has also something to say about this.

CHAPTER VIII.

MISHNA *a*. Concerning streets in which people must walk during the time of the Festival in Jerusalem, for, the sake of cleanness. The different opinions, in this matter, of R. Meir and the sages.

MISHNA *b*. Regarding utensils found on the way towards the plunge-baths: if they are clean or not, and the different opinions of R. Meir and R. Jose.

MISHNA *c*. Regarding the butcher-knife, if it was found in the street on the 4th of Nissan; and what is the case if the 14th falls on a Sabbath.

MISHNA *d*. Concerning where the curtain of the Sanctuary must be submerged if it become defiled. The first time it was submerged it was spread out for the people to admire the beauty of the work.

MISHNA *e*. What Rabban Simeon b. Gamaliel had to tell in the name of Simeon, the son of the

assistant high priest. How the curtain was made: the great amount of the cost and how many hundred priests were required to submerge it.

MISHNA *f*. If meat of the Holy of Holies became defiled, where it must be burned. The different opinions of the schools of Shamai and Hillel on this point.

MISHNA *g*. The different opinions of R. Eliezer and R. Aqiba concerning anything that had become defiled through a principal uncleanness.

MISHNA *h*. The joints of the daily sacrifices, where they were laid down; the sacrifices of the new moon, where they were placed, The payment of Shekalim, if it was obligatory after the destruction of the Temple. The same law regarding cattle-tithe, tithes of grain, and deliverance of the firstlings. The law if one sanctified Shekalim or firstlings after the destruction of the Temple.

Footnotes

xiii:1 See introduction to synopsis in Tract Sabbath, Vol. I., p. xxix. This tract has no Gemara. The synopsis contains the Mishnas, with their commentaries.

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p. 1

TRACT SHEKALIM.

UNDER this heading the payment of a head-tax is treated of, which amounted to one-half of a shekel (in the Mishna always referred to as a *shekel*) and which had to be paid by every Israelite (see Exodus xxx. 12) upon the completion of his twentieth year. In the times of the existence of the Temple, the proceeds of this tax were applied for communal sacrifices and for the needs of the capital. The manner of collection, investment, and application of this money forms the subject of this treatise. It contains, in addition, many other historical regulations, most of which, however, only held good during the existence of the second Temple.

CHAPTER I.

MISHNA: (*a*) On the first day of the month of Adar, warnings are heralded (from Jerusalem) concerning Shekalim a1 and Kelayim a2 (the prohibition concerning the use, for ploughing together,

p. 2

of an ox with an ass, and the sowing together of different kinds of seeds). On the fifteenth day of that month the Megillah Esther a3 is read in the fortified cities; and the same day the improvement of country roads, a4 market-places, and legal plunge-baths is proceeded with. Public affairs are again taken up a5; at the same time, graves are marked with lime, a6 and messengers are sent out on account of possible Kelayim. a7

p. 3

(*b*) R. Jehudah says: At one time the messengers used to pull out the Kelayim (illegally mixed seeds) and throw them at the feet of the owners! The number of the transgressors, however, being constantly on the increase, the Kelayim were pulled out and thrown into the roads. Finally, it was determined that the entire fields of such law-breakers were to be confiscated. b1

(*c*) On the fifteenth of this month (Adar) the money-changers outside of Jerusalem seated themselves at their tables. c1 In the city of Jerusalem, however, they did not do this until the twenty-fifth of the month. c2 As soon as the money-changers seated themselves also in the city, the taking of pledges from

p. 4

the tardy ones commenced. c3 But from whom were pledges taken? From Levites, Israelites, proselytes, and freedmen; but not from women, slaves, and minors. If a father, however,

commenced to give a pledge for a minor, he was not allowed to stop. From priests no pledges were taken, for the sake of peace (and the dignity of the priests themselves). c4

(*d*) Said R. Jehudah: Ben Buchri proclaimed the following ordinance in Yavne (Jamnia): "Any priest paying his shekel commits no wrong." R. Johanan ben Zakai, however, rejoined: "Not so! (The ordinance should read:) 'Any priest not paying his shekel, commits a sin.'" d1 But the priests used to interpret the following passage to their advantage: It is written [Leviticus vi. 16]: "And every meat-offering of a priest shall be wholly burnt, it shall not be eaten." (They said therefore:) Were we obliged to contribute (our shekels) how could we eat our d2 Omer

(first sheaves harvested) and the two loaves and the showbread (which were procured with the shekels of the head-tax)?

(*e*) Although it was ordained that no pledges were to be taken from women, slaves, and minors, if they offered to contribute, their money was accepted. From heathens and Samaritans it was not accepted. Nor were bird-offerings, for men or women afflicted with venereal disease and for women who had recently been confined, accepted; nor sin and guilt offerings. e1 Vowed and voluntary offerings, however, were accepted. e2 The following is the rule: Everything which was vowed as an offering and all voluntary offerings were accepted. Anything not vowed for offering or given voluntarily was not accepted from them (heathens and Samaritans). So it is explicitly declared in Ezra, for it is written [Ezra iv. 3]: "It is not for *you* and us (both) to build a house unto our God."

(f) The following are obliged to pay a premium f1 (in addition

to the half-shekel): Levites, Israelites, proselytes, and freed. men; but not (priests,) women, slaves, and minors. If one pay (the half-shekel) for a priest, woman, slave, or a minor, he is exempt (from paying the premium); if he pay for himself and another, however, he must pay a premium for one. R. Meir says: "(He must pay) two premiums. One who pays a Sela (whole Bible shekel) and receives in return a half (Bible) shekel must pay two premiums." f2

(g) If one pay for a poor man, for a neighbor, or for a countryman, he is exempt from a premium (because it is charity); if he only advances them the money, he is not exempt. Brothers who (after dividing their inheritance) have their business in common, or partners, when they become obliged to pay a premium, are exempt from cattle-tithe. g1 As long, however, as they must pay cattle-tithe, they are exempt from a premium. How much does the premium amount to? According to R. Meir, to one silver Meah (one twenty-fourth of a shekel); but the sages say, to one-half of a Meah.

Footnotes

1:a1

CHAPTER I.

MISHNA *a*. Warnings were heralded from Jerusalem concerning Shekalim on and after the first of Adar, in order to prepare for the first of Nissan, before which day the final settlement of Shekalim had to be made. This was inferred by the Palestinian Talmud from the following passage [Exodus xl. 17]: "And it came to pass in the first month in the second year, on the first of the month, that the tabernacle was reared up." This was commented upon by a Boraitha, which stated, that on the day on which the tabernacle was reared up, the entire sum of the Shekalim collected was ready for disbursement.

1:a2 Warnings were also heralded concerning Kelayim, because that month was the time when ploughing and sowing commenced in Palestine.

2:a3 The Megillah (Book of Esther) was read on the fifteenth day of this month only in such cities as were fortified since the time of Joshua the son of Nun; but in such as were fortified after his day, and in the open cities, it was read on the fourteenth of the month. No mention is made in the Mishna concerning the reading on the fourteenth, because, the majority of the cities being open, or fortified since the time of Joshua ben Nun, it was generally known, and there was no fear of it being forgotten. In the few fortified cities, however, it was necessary to remind the inhabitants that the day on which they were to read the Megillah was the fifteenth. The Palestinian Talmud (Chapter I., Halakha 2) states, that we are taught by this Mishna that all commandments which are to be fulfilled on a leap year in the second Adar should not be fulfilled in the first Adar; but we cannot see how that can be inferred from this Mishna, although some commentators have tried to explain it.

2:a4 The rainy season ended by the first of Adar, and in consequence of the heavy rains the country roads and market-places were in bad condition. In the month of Nissan, travel towards Jerusalem was very heavy; hence the warning to improve the roads, etc., was heralded, The public plunge-baths were also injured by the rains and had to be repaired, for the sake of the public, to whom the law prescribes the taking of a legal bath on or before the holidays.

2:a5 The Palestinian Talmud states, that at that time the courts of law (Beth-din) would meet in session for the trial of civil suits, criminal cases, and crimes involving the punishment of stripes; for the redemption of such as had devoted all their possessions in honor of the Lord, and such as had given the estimated value of their person, etc.; also for the performance of the rite of the bitter water (see Numbers v. 12-31), and for the performance of the rite of breaking the calf's neck (see Dent. xxi.), and for the rite of the red heifer (see Numbers xix.), and for the ceremony of piercing a serf's ear (see Exodus xxi.). For all this, and any other matters that came up before them, the courts of law assembled in that month.

2:a6 Such graves as had been injured during the rainy season, and were not marked, had to be restored and marked, in order that a man be saved the annoyance of becoming unclean by stepping on a grave. The Palestinian Talmud infers this from the passage [Leviticus xiii. 46]: "Unclean, unclean, shall he call out," and interprets it to signify that the uncleanness itself

should call out "unclean" and keep men away from its vicinity. For this reason it was heralded, that the graves were to be marked in order to be a warning to passers-by that such places were unclean.

2:a7 On account of the severity of the law concerning Kelayim and the frequency with which that law was infracted, it was deemed insufficient merely to herald the prohibition, and messengers were sent out to see the law enforced (Maimonides).

3:b1 MISHNA *b*. R. Jehudah's dictum does not intend to dispute the foregoing, but merely supplements it with the statement that the messengers sent out were for the purpose of punishing the infractors of the law of Kelayim. The Palestinian Talmud adduces the right of the Beth-din to confiscate property from the passage [Ezra x. 8]: "And that whosoever should not come within three days, etc., all his substance should be devoted." Whence it may be seen, that a Beth-din has such power.

3:c1 MISHNA *c*. It was the custom for money-changers in those days to carry their tables with them, and hence they were called "the men of the tables." The Mishna relates, that on the fifteenth of the month the money-changers were ordered to go out into the rural districts with their tables, in order to provide the people with the necessary half-shekels; for the tax had to be paid in half-shekels only.

3:c2 On the twenty-fifth, when it was high time for payment and the people commenced flocking into the city of Jerusalem, the moneychangers returned and sat in the court of the Temple.

4:c3 The taking of pledges commenced immediately upon the departure of the money-changers from the rural districts, because, if a man had not paid his half-shekel while the money-changers were still within his reach, it was obvious that he either would not or could not pay it, and in consequence a pledge was taken.

4:c4 According to law, the priests were also in duty bound to pay the half-shekels, the collection of which was mainly intended for the purchase of communal sacrifices, and the priests were naturally included in the community. They, however, found a defect in the law, and held themselves exempt. In consequence of their being in authority during the existence of the second Temple, they were not forced to pay or give pledges, for the sake of harmony.

4:d1 MISHNA *d*. The difference of opinion between Ben Buchri (who was a priest himself) and R. Johan ben Zakai is, as can be plainly seen, that Ben Buchri holds, that according to law the priests are not in duty bound to pay the half-shekel; but if they do it, they may nevertheless partake of their Omer, two loaves, and showbread, while R. Johan ben Zakai says, that they are in duty bound to pay the half-shekel.

4:d2 The priests claim, that if they were to pay the half-shekel with which the Omer, etc., is bought, they would naturally have a share in it, and they would eat their share, which, as a priest's offering, must not be eaten by any one. This is, however, an unjust claim; for the majority is considered, and the priests were by far in the minority. As the priests, however, were in charge of the affairs of state, they interpreted the law to suit themselves, and for the sake of

peace they were not disturbed.

5:e1 MISHNA *e*. This clause of the Mishna refers, according to the Palestinian Talmud and Maimonides, to Samaritans only and not to heathens, while the sin and guilt offerings were accepted from Samaritans but not from heathens, because the latter had not the same laws as the Israelites as regards sin-offerings. The Samaritans, however, claiming to be Israelites, were allowed to bring their sin and guilt offerings. The reason, however, that bird-offerings were not accepted from the Samaritans was because, in the first place, an offering for a person afflicted with venereal disease had to be brought in the form of a sheep; but if the person could not afford a sheep, birds answered the purpose. The Samaritans, however, were not considered trustworthy, and it was feared that they might bring a wrong offering (*i.e.*, an offering of less value than they could afford).

5:e2 These were accepted from heathens also, because such offerings were for forgiveness of sins in general, and in that respect all men are equal.

5:f1 MISHNA *f*. The shekel mentioned in the Bible is equivalent to the Sela mentioned in the Mishna, and is worth two shekels of the Mishna. The half-shekel of the Bible was worth (according to Maimonides) the weight of 192 grains of barley in silver, and, for fear that the shekel of the Mishna of that time was perhaps a trifle less than the above weight, a small coin was prescribed to be paid in addition to the above shekel, and which was named from the Greek Colobbus (χ•λλ•βος {Greek *xóllu~bos*}) He who gave the half-shekel voluntarily, and not because he was obliged to pay it, was exempt from paying the above "Colobbus." Those of the priests who, regardless of the p. 6 claim that they were not obliged to pay the half-shekel, paid it nevertheless, were exempt from the above premium for the sake of peace.

6:f2 One in addition to the half-shekel and one for the exchange.

6:g1 MISHNA g. Cattle-tithe must be paid by a man only from such young as his own cattle calve, but not from the calves which he purchases elsewhere. If two brothers inherit cattle or calves from their father, they must pay cattle-tithe, because the cattle are regarded as still their father's. If they have divided their inheritance, even though they shared alike, they are both exempt from payment, because it is regarded as if one brother had bought the cattle from the other. (The same refers to partners. As long as they are in partnership they are liable for cattle-tithe from such young as is calved by their own cattle, but if the partners dissolve even after the cattle had calved, they are exempt, because it is regarded as if one partner had purchased his share from the other.) Now, it is obvious that when the two brothers are still partners and liable for cattle-tithe they are regarded as one, and by paying one Sela for both are exempt from premiums, because the money is still considered as their father's. (This explanation is taken from Rashi in Tract Chulin.) As soon, however, as they are exempt from cattle-tithe., they have nothing more in common, hence must pay a half-shekel each, and thus must also pay the premium.

Next: Chapter II.

CHAPTER II.

MISHNA: (*a*) One may put together the Shekalim and exchange them for Darkons a1 (Greek coins of permanent value), in order to be able to carry them more readily. just as the money-chests were on the order of horns in the city of Jerusalem, so were they also in the country. a2 If the inhabitants of a town sent their Shekalim (to the city of Jerusalem) by messengers, and the money was stolen from them or was lost by accident, if the treasurers had already drawn their share (from the communal Shekalim), the messengers of the city must swear to the fact before the treasurers. If the share had not yet been drawn, they (the messengers) must swear to the facts before the inhabitants of the town, and the latter must make the amount good. a3 If the money was recovered or returned by the

thieves, both amounts are considered as Shekalim, and nothing is credited to next year's account.

(*b*) If one give his shekel to another to pay (his head-tax) for him, and the man appropriates it to pay his own tax, he (the latter) commits embezzlement if the share had already been drawn; the same is the case with one who pays his shekel with sanctified money, after his share had been drawn and an animal was sacrificed for it. b1 If he took the money from the second tithes or from the Sabbatical year fruit, he must eat the full value of same in the city of Jerusalem. b2

(*c*) If one gather together single coins and say: "These shall serve for my Shekalim," the eventual remainder is, according to the school of Shamai, a voluntary gift; according to the school of Hillel, it is not sanctified. If the man say, however: "Out of these I shall pay my Shekalim," the eventual remainder is, according to both schools, not sanctified. If he say: "These shall serve me for a sin-offering," the eventual remainder is, according to both schools, a voluntary offering. If he say: "Out of these will I bring a sin-offering," the eventual remainder is, according to both schools, not sanctified. c1

(*d*) R. Simeon says: "What difference is there here between the Shekalim and the sin-offerings? Shekalim have their fixed value, but sin-offerings have not." d1 R. Jehudah says: "Even Shekalim have no fixed value; for when Israel returned from captivity, (half-) Darkons were paid; later (half-) Selas were paid; again, Tabas (half-shekels) were current (but not accepted), and finally people would only pay with Dinars." d2 Rejoined R. Simeon: "Nevertheless, the Shekalim were all of like value at one and the same time, while as for sin-offerings, one brings one Sela's worth, another two, and a third three Selas' worth." d3

(*e*) The remainder of moneys intended for Shekalim is not

sanctified. e1 The remainder of moneys intended for the offering of the tenth part of an ephah [Lev. v. xi.] (sin-offering of the poor), for bird-offerings of men or women afflicted with venereal disease and of women that had been recently confined, and for sin and guilt offerings, are considered voluntary offerings. Following is the rule: The remainder of everything designated for sin and guilt offerings is considered as a voluntary offering. e2 The remainder of whole-offerings is applied to whole-offerings, e3 of food-offerings to food-offerings, of peace-offerings to peace-offerings; that of the Passover- offerings to peace-offerings, and that of Nazarite-offerings to Nazarite-offerings. The remainder of such (offering) as is designated for a certain Nazarite is a voluntary offering. The remainder of moneys for the poor in general, belongs to the poor; of money collected for a certain poor man belongs to that same poor man. The remainder of ransom moneys for prisoners is applied to (the ransom of) other prisoners; of moneys collected for a certain prisoner belongs to that prisoner. The remainder of burial moneys is applied to (the burial of) other dead; of money collected for a particular dead (man) belongs to

tile legal heirs. R. Meir says: "The remainder remains intact until Elijah comes again" (as the herald of the resurrection). e4 R. Nathan says: "It should be applied to the building of a gravestone for the departed."

Footnotes

7:a1

CHAPTER II.

MISHNA *a*. The Darkon (Greek Δαρεικ•σ {Greek *Dareikós*}; or *drachm*, biblical term, Ezra viii. 27) was a Persian gold coin worth two Selas, or four half-shekels.

7:a2 The money-chests were narrow on one side and broad at the bottom, and had a slot through which a Darkon on edge only could be passed, and were given to the messenger locked.

7:a3 If a portion of the amount of Shekalim collected had already been spent for sacrifices or for the improvement of the Temple, all the Israelites who were bound to pay their Shekalim had a share in such disbursement, and the amount sent by the town, although lost or stolen, was counted as if it had been included in the amount spent, because it was the express understanding that in every shekel spent for sacrifices, etc., all Israelites had a share, in order that they might have a share in the sacrifices. Therefore, the messengers of the city had simply to swear that they had taken the money, and it was considered received by the treasurers. If, however, no portion of the Shekalim had yet been expended, the share of the inhabitants of the town, whose money had been stolen or lost, was not included in the amount on hand, and hence the

representatives of the city were obliged to make it good (Maimonides).

8:b1 MISHNA *b*. 'The same reason as stated in note 3 of the preceding Mishna applies also to this clause; and, besides, everybody had a share in the sacrifice of the animal, even if the sacrifice were made on the strength of future receipts, for pledges were on hand insuring the payment by the delinquents.

8:b2 If the money was taken from the second tithes, the value of which had to be consumed in the city of Jerusalem, he must replace it by an equal amount and proclaim that this money is in exchange for the money taken from the second tithe, and then consume it accordingly. If the money was taken from the Sabbatical year fruit, he must replace it and proclaim the same as above and make it public property, as is the law of Sabbatical years.

8:c1 MISHNA *c*. The meaning of this Mishna is as follows: If a man gathered money little by little, with the express intention of paying his shekalim tax out of such money, and separated it from other moneys, any remainder which he may have left over after such payment is, according to the school of Shamai, to be devoted for a voluntary offering, because it was separated; and according to the school of Hillel, it is ordinary money, that may be used at will, because it was gathered only for the purpose of paying the amount due, which was already paid. If a man, however, had a sum of p. 9 money, and declared that he would use *this* sum for the payment of his shekalim tax, the remainder which he may have after such payment is, even according to the school of Hillel, to be devoted for a voluntary offering. With money devoted for a voluntary offering, whole-offerings only were to be bought.

9:d1 MISHNA *d*. By his teaching in this Mishna, R. Simeon wishes to explain the reason of the decree of the school of Hillel concerning the remainder of money which had been gathered little by little for the purpose of paying the Shekalim, or for the bringing of a sin-offering, and says: "Because it is written [Exodus xxx. 15], 'The rich shall not give more, and the poor shall not give less, than the half of a shekel,' a man when gathering money for the payment of Shekalim knows exactly how much he will need; hence, although he separated the amount gathered, the remainder is ordinary money; but if he gathered money for a sin-offering, which has no fixed value, and for which he did not know exactly how much he would have to pay, his intention in separating the money was evidently to use the entire amount for such purpose, and hence the eventual remainder, which cannot be used for a sin-offering, as it is already sacrificed, should be used for a voluntary offering."

9:d2 R. Jehudah differs with R. Simeon, and states, that the reason given by the latter for the decree of the school of Hillel cannot be correct, for even Shekalim had not always a fixed value, and when a man commenced to gather money for the payment of his Shekalim he also may not have known how much he would have to pay when the time came, because the value of the coin might be changed in the meantime.

9:d3 R. Simeon answered R. Jehudah very properly: "Even if the value of the coin was changed, the man knew well that he would pay a certain sum equal to that paid by all others, and the entire amount p. 10 that he had gathered would not be consumed; as for a sin-offering, however, he never knew exactly just what amount he would need for its purchase, because it had no fixed value; therefore, when he separated the money from other moneys his intention was to use the entire amount."

10:e1 MISHNA *e*. After explaining the opinions of both schools (Shamai and Hillel) in the preceding Mishna, and the Halakha, as usual, prevailing according to the school of Hillel, this Mishna states the final Halakha anonymously, and then cites the subsequent ordinances, concerning which there is no difference of opinion.

10:e2 The reason for this rule is: A sin or guilt offering must be brought for each sin separately. If money was designated for one sin-offering, the remainder cannot be applied to another offering for the same sin, nor for another sin which one might commit in the future, hence the remainder must be a voluntary offering.

10:e3 The remainder of whole-offerings may be used for more whole-offerings, because the quantity of whole-offerings, which are voluntary, is not limited. The same applies to food and peace offerings. The remainder of Passover-offerings, however, which cannot he used for the same purpose again, and should, however, be used for an eatable sacrifice, cannot be used for a voluntary offering, which is a whole-offering, but for a peace-offering, which is eatable.

11:e4 The reason for R. Meir's dictum is: He holds, that if money is collected for a certain dead man, the remainder belongs virtually to him, *i.e.*, should be applied only for the use of the corpse; hence the heirs have no share in it. R. Nathan, however, says, that the setting up of a gravestone is for the use of the corpse, it being in his honor and not of any benefit to the heirs.

Next: Chapter III.

CHAPTER III.

MISHNA: (*a*) At three periods of the year money is drawn from the treasury (of the Shekalim); viz.: Half a month before Passover, half a month before Pentecost, and half a month before the Feast of Booths. The same dates are also the terms for the obligation of cattle-tithing, so says R. Aqiba. Ben Azai says: "The dates for the latter terms are the twenty-ninth of Adar, the first of Sivan, and the twenty-ninth of Abh." R. Eliezer and R. Simeon both say: "The first of Nissan, the first of Sivan, and the twenty-ninth of Elul." But why do they say the twenty-ninth of Elul why not the first of Tishri? Because that is a feast-day, and it is not allowed to tithe on a feast-day; therefore they ordained it for the preceding day, the twenty-ninth of Elul. a1

(*b*) The money drawn from the treasury was brought in three chests, each of three Saahs' capacity. On these chests was written: Aleph, Beth, Gimmel. R. Ishmael says: "They were marked in Greek: Alpha, Beta, Gamma."--The one that drew the money was not allowed to enter (the treasury) with a turned-up garment, nor with shoes nor sandals, nor with Tephillin, nor with an amulet, in order that, in the event of his becoming impoverished, it should not be said that he was thus punished on account of transgression against the treasury; or if he became rich, that he enriched himself by means of money drawn from the treasury. For a man must stand as unblemished before his fellowman as before his God, as it is written [Numbers xxxii. 22]:

[paragraph continues] "And ye be thus guiltless before the Lord and before Israel"; and [Proverbs iii. 4]: "So shalt thou find grace and good favor in the eyes of God and man." b1

(*c*) The members of the family of R. Gamaliel used to enter, each one with his shekel between his fingers, and throw it before the one who drew the money from the treasury, and the latter immediately placed it into the chest (which he took out).--The one who came in to draw the money did not proceed before he had said to the bystanders: "I will now proceed to draw," and they had answered: "Draw, draw, draw," three times. c1

(*d*) After the man had completed the first drawing, he covered the balance with a cover (of fur); the same was done after the second drawing; after the third drawing the balance remained uncovered; for (the covering in the first two instances) was done only in order not to draw by mistake again what had already been drawn from. The first drawing was performed in the name of the whole land of Israel, the second in the name of the cities near the boundaries, and the third in the name of the inhabitants of Babylon, Media, and all distant lands in general.

Footnotes

12:a1

CHAPTER III.

MISHNA *a*. The dates of the time for cattle-tithing have nothing to do with the time for drawing the money; for as to that time, all agree upon the dates stated in the Mishna, and the difference of opinion concerning the time of cattle-tithing is explained in the Palestinian Talmud and in Tract Rosh Hashana of the Babylonian Talmud.

13:b1 MISHNA *b*. In this Mishna the manner of drawing the money from the treasury is described: how it was accomplished, that the Shekalim for which communal sacrifices were bought should be taken from the treasury in such a manner that all the contributors should have a share in them. The mode of procedure was as follows: About the middle of the month of Nissan, when the money from all Israel had been collected, the treasurers, amid great ceremony, would open the rooms where the boxes in which the money had been deposited by the collectors were situated, and bring out all the boxes contained in the rooms. These boxes were in turn opened, and their contents thrown into three cases, each of which had nine Saahs' capacity, and were covered with a cover. The remainder, after filling the three cases, was called the remainder of the room (and what was done with this will be told later). After the performance of this ceremony one man was selected, while the others withdrew, and he was to transfer the money to be expended, from the cases into three small chests, each having three Saahs' capacity and marked with three letters: Aleph, Beth, Gimmel; or, Alpha, Beta, Gamma.

13:c1 MISHNA *c*. After this ceremony, the man, being almost nude--for he had no garments on in which he could conceal a coin, no shoes, no sandals, no hat, no hose; in fact, nothing that would afford a hiding-place for money--would take the chest marked Aleph and bring it up to the first case, and fill it up, after which he would cover the case. Then he would take the chest marked Beth, fill it from the second case, cover the case, and proceed in the same manner with the chest marked Gimmel, from the third box, which contained nine Sa ahs' capacity; but in the last instance he would leave the case uncovered, as a sign whence to commence filling the chests at the second drawing of money in the same order as before, using the third case first, then the second, and lastly the first. This was done in order that the money should be thoroughly intermingled p. 14 and everybody have a share in the sacrifices bought with it. The first drawing took place on the fifteenth of Nissan, and sacrifices were purchased for the Passover. The next drawing was held fifteen days before Pentecost; and Pentecost only lasting one day, not so many sacrifices were needed, and the money lasted until fifteen days before the Feast of Booths, when the last lot of money was withdrawn from the cases and placed in the chests. The expenditure of the money was also made in the order of chests, chest Aleph being emptied first, etc.; and the intention was to place Jerusalem first, the surrounding territory next, and all the other places where Israelites dwelt last.

Next: Chapter IV.

p. 15

CHAPTER IV.

MISHNA. (a) What was done with this money drawn? The daily sacrifices, the additional sacrifices, and the drink-offerings belonging to them were bought therewith; also the Omers a1 (sheaves), the two loaves, the showbreads, and communal sacrifices in general. The watchmen who had to guard the after-growth on the Sabbatical year were paid out of this money. R. Jose says: "One who so desired could undertake the guarding (of the after-growth on Sabbatical years) without pay." a2 The sages answered him: "Thou wilt admit thyself, that the sacrifices (from the after-growth on Sabbatical years) must be brought only from communal property." a3

p. 16

(*b*) The red heifer, the goat that was to be sent away (on the Day of Atonement), the strip of scarlet, were paid for out of this money. The bridge for the cow, the bridge for the goat that was to be sent away, and the scarlet strip tied between the latter's horns, the canal (at the Temple), the city wall, the towers and other necessities of the city, are paid for out of the remainder of the treasury-money. b1 Abba Saul says: "The costs of the building of the bridge for the red heifer were defrayed by the high priests themselves."

(*c*) What was done with the balance left over in the treasury (after all the things in the preceding Mishna had been procured)? Wines, oils, and fine meal were bought with it to the profit of the sanctuary (for the purpose of selling it again to those who brought sacrifices). c1 So said R. Ishmael. R. Aqiba, however, says: "Sanctified moneys or contributions for the poor are not dealt with for profit."

(*d*) What was done with the remainder of the money (taken from the chests)? It is used for gold plate for the decoration of the Holy of Holies. R. Ishmael says: "The mentioned fruit (profit of the wines, oils, and fine meal sold in the Temple) was for the benefit of the altar, and the remainder of the money drawn was for service-utensils." R. Aqiba says: "The remainder of the money drawn was for the benefit of the altar and that of the drink-offerings was for service-utensils." R. Hanina, the assistant chief of priests, says: "The remainder of the drink-offerings

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was for the benefit of the altar and that of the money drawn was for service-utensils." The two latter would not admit of the alleged gain from fruit d1 (profit).

(*e*) What was done with the remainder of the incense? e1 At first the remuneration of the preparers of the incense was set aside from the treasury; the sanctification of the incense on hand was then transferred to that money, and the former was then given to the preparers in lieu of compensation e2; it is then bought back from them with the money of the new revenue:

providing the new revenue was on hand in time, it was bought back with such money; otherwise, the old revenue was used for that purpose.

(*f*) If one devote his entire possessions in honor of the Lord, and among them are things which are fit for communal sacrifices (*e.g.*, incense), the preparers of the incense should be paid therewith. So teaches R. Aqiba. Ben Azai answered him f1: "Such is not the right mode of procedure. The compensation

of the preparers must first be separated from such possessions, then the sanctification of those possessions transferred to money; then give the separated things to the preparers for compensation; and, finally, buy them back from them with money of the new revenue."

(*g*) If one devote his possessions, and there are among them cattle fit for the altar, male or female, the male, according to R. Eliezer, shall be sold for whole-offerings and the female for peace-offerings to such as are in need of them; and the proceeds of such sale, together with the other possessions, shall be devoted to the treasury for the maintenance of the Temple. R. Jehoshua says: "The male are sacrificed as whole-offerings, the female are sold to such as are in need of peace-offerings, and the proceeds used for the sacrifice of whole-offerings. The balance of the possessions is devoted to the maintenance of the Temple." g1 Said R. Aqiba: "The opinion of R. Eliezer seems to me to be more proper than that of R. Jehoshua; for R. Eliezer has an even procedure, whereas R. Jehoshua divides it." g2 R. Papeos says: "I have heard that it is done according to both teachers; viz.: According to R. Eliezer if the owner who devotes his possessions explicitly mentions his cattle, and according to R. Jehoshua if he silently includes his cattle in his possessions." g3

(*h*) If one devote his possessions, and there are among them things fit for the altar, such as wines, oils, and birds, says R. Eliezer, the latter things should be sold to such as need offerings of these kinds, and the proceeds used for the sacrificing of whole-offerings; the balance of the possessions goes toward the maintenance of the Temple. h1

(*i*) Every thirty days the prices paid by the treasury are determined. If one contract to furnish flour at the rate of four Saah (for one Sela), and the price is raised to three, he must nevertheless furnish the same at four Saah (for one Sela). i1 If he contract at the rate of three and the price fall to four, he must in that case furnish four, for the Sanctuary always has that prerogative. If the flour become wormy, it is the loss of the contractor; and if the wine become sour it is also his loss, and he does not receive the money for his wares until the purchased wares have been favorably accepted as sacrifices at the altar. i2

Footnotes

15:a1

CHAPTER IV.

MISHNA *a*. 'The Omers and the two loaves, which had to be made of Palestinian grain and of the new crop only, were bought out of the Shekalim during the six ordinary years, but in the Sabbatical year, where neither sowing nor reaping was done, where were they obtained? Men were sent out to discover where grain was growing as an after-growth, that had not been sown, and then watchmen were placed there to see that no one disturbed the crop; for it being public property, the possessor of the soil where the grain grew could not prevent its being taken. The men who discovered the grain and the watchmen were paid for their services out of the Shekalim, and such payment was regarded as the price of the grain, so that the grain again became communal property.

15:a2 R. Jose, in making this statement, holds, that one may present the community with a thing intended for a voluntary offering, and thus the man who guards the after-growth gratuitously, thereby acquiring a right to it, may donate it to the community for a communal sacrifice.

15:a3 The sages mean to say that the Omer, the two loaves, the showbreads, and the communal sacrifices must be taken from articles that were communal property from the beginning, while other sacrifices may be offered from things donated by a man who does so with a good will. (See Rosh Hashana.)

16:b1 MISHNA *b*. The remainder of the Shekalim, left over after the three cases had been filled, which was called "remainder of the room," was stored in a high place, access to which was very difficult, no ladder being permitted to be used. Out of this money all the accessories for the sacrifices, as enumerated in the Mishna, were procured. The details of these accessories are explained in Tracts Para and Yuma.

16:c1 MISHNA *c*. It is known that all those who brought sacrifices were obliged to purchase wine, oil, and fine meal for meal-offerings, and all this was purchased in the court of the Temple. In the Palestinian Talmud many things are enumerated, for which purposes the balance of the money was used; for instance, the hiring of teachers to instruct the priests in the art of slaughtering, in the halakhas pertaining to such matters, etc., also for the payment of those who investigated blemishes in the sacrifices, and a great many other things to be found in that chapter (Halakha 4).

17:d1 MISHNA *d*. In the preceding Mishna, R. Ishmael declares, that the balance of the money in the treasury is used to purchase wines, oils, and fine meal, to be resold to those bringing sacrifices, and in this Mishna he relates what is done with the profits accruing from such sales. R. Aqiba, however, who would not permit of selling the things mentioned for profit, declares that the money for the altar is taken directly from the balance left over in the treasury; and R. Hanina holds, that the balance of the money drawn is used for the service-utensils.

17:e1 MISHNA *e*. The remainder of the incense refers to the amount of incense left over at the end of the year. A quantity of incense was prepared for the whole year, and every priest would use a handful at a time; but, as handfuls are not all alike, no fixed amount could be prepared:

hence the remainder.

17:e2 Compensation for labor must not be made with sacrificed articles, for the sanctification cannot be transferred to labor that had already been performed; it can be transferred, however, to actual money, and in consequence the subterfuge for the payment of the preparers of the incense was resorted to as stated in the Mishna.

17:f1 MISHNA *f*. R. Aqiba and Ben Azai differ in this Mishna as to whether sanctification can be transferred to labor or not. R. Aqiba holds, that labor can be compensated with sanctified articles; but Ben Azai holds, that it cannot. According to Maimonides the Halakha prevails according to Ben Azai, because in the previous Mishna there is a concurrent opinion.

18:g1 MISHNA *g*. The point of difference between R. Eliezer and R. Jehoshua is this: The former holds, that if a man devoted all his possessions, his intention was to devote them for the maintenance of the Temple only; while the latter holds, that the intention was to devote the possessions according to their adaptability. Hence if, among the possessions, there were objects adapted for the altar, they should be devoted to the altar; if, however, these were female cattle, which could not be brought as a whole-offering, nor, by reason of the absence of the owner, even as a peace-offering, such cattle should be sold and the proceeds applied to the purchase of whole-offerings.

18:g2 R. Aqiba holds with R. Eliezer, because, in his opinion, a man who devotes all his possessions does so with but a single intention; and this is what he terms an even procedure.

18:g3 R. Papeos said, that if the man devoted all his possessions to the honor of the Lord, R. Jehoshua would be correct, for his possessions can be used in honor of the Lord in various ways; but if he explicitly stated that he devoted his possessions for the maintenance of the Temple, R. Eliezer's opinion is proper.

19:h1 MISHNA *h*. The reason that R. Eliezer decrees that wines, oils, and birds should be sold, and whole-offerings brought in their stead, is because the articles mentioned cannot be redeemed with money.

19:i1 MISHNA *i*. Every month, bids were received from contractors for the furnishing of the necessaries for the Temple and altar for one month. The lowest bidder received the contract, and it was distinctly understood that, even if prices were raised during the month, his prices were to remain as originally contracted for.

19:i2 The Palestinian Talmud states, that the money due the contractors was paid them by the priests immediately upon the latter receiving the wares, for the priests were very careful, and never allowed flour to become wormy or wine to spoil.

Next: Chapter V.

CHAPTER V.

MISHNA: (*a*) The following were the heads of offices a1 in the Sanctuary: Johanan, son of Pinchas, keeper of the seals a2; A'hia, (superintendent) of drink-offerings; Mathia, son of Samuel, (superintendent) of the casting of lots a3; Petha'hia, (superintendent) of bird-offerings. a4 Petha'hia is Mordecai, but why do they call him Petha'hia? Because he used to expound and interpret scriptures, and was master of seventy languages. Ben A'hia was (superintendent) of the cures of priests suffering with abdominal diseases. a5 Ne'huniah was master of the well. a6

Gebini was herald. a7 Ben Gabhar was turnkey of the gates. a8 Ben Bebai was master of the temple-guard. a9 Ben Arzah was master of the kettledrums (which were beaten as a signal for the Levites to commence their chant). Higros, son of Levi, was (leader) of the singing. The family of Garmo (superintended) the making of the showbreads. a10 The family of Abtinos (superintended) the preparing of the incense. a11 Elazar (superintended) the making of the curtains. a12 Pinchas superintended the vestments. a13

(*b*) No less than three treasurers and seven chamberlains must be appointed, b1 and no less than two officers were put in charge of public moneys. Exceptions were made in the cases of Ben A'hia, superintendent of the cures of the sick, and Elazar, superintendent of the preparation of curtains, because they were unanimously elected by the community.

(*c*) There were four seals in the Sanctuary, inscribed with the words Egel (calf), Sachar (ram), Gdi (kid), and 'Houte (sinner, meaning here one covered with sores). Ben Azai says, that there were five (seals), and the inscriptions were in Aramaic, meaning: calf, ram, kid, poor sinner (one afflicted with sores), and rich sinner (one afflicted with sores). The one inscribed with "calf" was used for drink-offerings brought with offerings of the herds, large or small, male or female; the one inscribed with "kid" was used for drink-offerings brought with offerings of the flocks, large or small, male or female, with the exception of rams; the one inscribed with "ram" served for drink-offerings brought only with rams; the seal inscribed with "sinner" served for drink-offerings brought with the three cattle-offerings of those afflicted with sores. c1

(*d*) One who desired to bring drink-offerings, for instance, went to Johanan, who was keeper of the seals, paid his money, and received a seal; he then went to A'hia, who had charge of the drink-offerings, gave him the seal, and received the drink-offering. In the evening the two

officers came together, when A'hia turned over the seal and received instead the money. If there was too much money, it belonged to the Sanctuary; if too little, Johanan had to supply the deficit: for the sanctuary had that prerogative.

(*e*) One who lost his seal had to wait until evening. If there was a surplus sufficient to cover the seal, e1 he was given the drink-offering for that amount; otherwise, he did not receive it. The date of the day was on the seal to prevent fraud.

(*f*) There were two chambers in the sanctuary. One was

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called chamber of the silent, the other chamber of utensils. In the former, devout men secretly gave charitable gifts, and the poor of good family received there secretly their sustenance. In the other chamber, every one who desired to offer a utensil voluntarily, laid it down. Every thirty days the treasurers opened the chamber, and every utensil found to be fit for the maintenance of the Temple was preserved, while the others were sold and the proceeds went to the treasury for the maintenance of the Temple. f1

Footnotes

20:a1

CHAPTER V.

MISHNA *a*. The list of officers enumerated by the Mishna were not all officers at the same time, but served at different periods, and the Mishna merely names the most important and pious among them.

20:a2 See Mishna *d*, same chapter.

20:a3 Lots were cast for the determination of the turn of the priests for each particular service. The superintendent would keep a record of such as were eligible for duty, and then cast lots for the priest who was to serve.

20:a4 Petha'hia was superintendent-in-chief of all those who had charge of the bird-offerings; these bird-offerings were brought by women who had recently been confined; and there were so many of them that a record had to be kept, who came first, whose time was nearly expired, and how much was to be charged for the offerings. Besides this, it often happened that the birds became mixed and required great wisdom to separate them and recognize to whom every bird belonged, as the changing of the birds would make the offering invalid. (See commentary of Israel Lipshuetz.)

20:a5 Such diseases among priests were of very frequent occurrence and inevitable; for they were dressed during services very lightly, being allowed to wear only four articles of apparel; viz., a linen shirt, linen pantaloons, a linen cap, and a girdle. Besides, they had to walk barefoot on the marble floor, and were constantly eating meat of the sacrifices, which had to be eaten during a specified time. Hence they needed many attendants, in order that, as soon as one priest took sick, a substitute was brought in his place and he was removed to the sick ward. Ben A'hia was the superintendent-in-chief of these matters.

20:a6 On account of the immense influx of people into Jerusalem three times a year, the wells for the supply of water, both on the roads and in the city, had to be looked after, and Ne'huniah had charge of this.

21:a7 The commencement of all services had to be heralded, and many heralds were employed. Gebini was herald-in-chief, and his duty was mainly to call out in the morning: "Priests, to your duties! Levites, to your chants! Israelites, to your places!" He had so powerful a voice that it could be heard eight miles.

21:a8 He had charge of the keys of the gates and of the men who stood at the gates.

21:a9 The gates of the Temple had to be guarded day and night, even in times of peace. To properly care for the guard and to punish all negligence in guarding the gates was the duty of Ben Babai.

21:a10 For showbreads, twelve loaves had to be made every week, and had to be made so that they would keep fresh the entire week. For further details, see Tract Tamid. The family of Garmo had charge of this work for generations.

21:a11 The incense, which was used twice a day, had to be prepared with especial skill from many different spices, and in proper proportions. Further details are also to be found in Tract Tamid. The family Abtinos had charge of this branch for many generations.

21:a12 The curtains, which were frequently changed, had to be inspected as to workmanship, cleanliness, etc., and this duty devolved upon Elazar.

21:a13 The vestments of the priests had to be carefully examined as to cleanliness, and had to be sent out to be laundered regularly. Many rooms in the Temple were devoted to those vestments, and Pinchas had charge of them all.

Much has been said as to the character of the men enumerated in the Mishna, whether they were priests themselves, Levites, or ordinary Israelites. For particularized information regarding this subject, we would refer to "Die Priester und der Cultus," by Dr. Adolf Büchler, Vienna, 1895. It is estimated that the priests in Jerusalem approached the enormous number of twenty thousand. Besides, there were numbers of Levites.

22:b1 MISHNA *b*. The officers of the Temple ranked as follows: The king, the high priest, the assistant high priest (Sagan), two catholicoses, seven chamberlains (Amarkolins), three

treasurers (Gisbars), and, finally, many smaller officials; *e.g.*, inspectors, officers of the guard, etc. (See "Die Priester und der Cultus," pp. 90-117.) The duties of each officer are described in Tamid and Yuma.

"Catholicos" is here used in the sense of patriarch or head, which term still retains a similar meaning in the "Ecclesiastical History of the Armenian Church," deriving its original meaning from the Greek καθολικ•ς {Greek *kaðolikós*}--general or universal. In the latter sense it was adopted at a very early period by the Christian church, In the exclusive sense of denoting the church as the "depository of universally received doctrine in contrast with heretical sects" it is still improperly retained by the Roman Catholic Church. I am surprised to find no mention of the officers of this name and function under the appropriate title anywhere in the "Encyc. Brit."

22:c1 MISHNA *c*. With every sacrifice that was offered, wine and meal p. 23 were brought in accordance with the biblical commandment to that effect, and in quantities prescribed by the ordinances. As the drink and meal offerings were bought in the Temple, the person bringing the sacrifice would receive a seal from the priest which he would exchange for the necessary quantity of wine and meal. The drink-offerings with goats and sheep were the same, hence the seal inscribed "kid" served for both. One 'who brought a ram, however, which required a larger quantity of wine and meal, would receive a separate seal, inscribed "ram." As for offerings of the herds, they were all equal, small or large, male or female; hence the seal inscribed "calf" sufficed for all. Those who were afflicted with sores, and had to bring two rams and one sheep, received a seal inscribed "sin" (which had the hidden purpose of signifying that sores were the consequence of sin). The poor sinners, who had only to bring one sheep, two doves, and one-tenth of an ephah of meal and one lug of oil, without any wine, were, according to the opinion of the sages, not in need of a seal, because the seal inscribed "kid," which they received when bringing the sheep, was sufficient for the other purpose. Ben Azai, however, says, that another seal was necessary, and that an extra seal marked "poor sinner" was given, which was intended as a sign that no wine was necessary. The tradition of Ben Azai, that the seals were inscribed in Aramaic characters, is also true, because, prior to the introduction of the Greek language, all the writing in the Temple was done in Aramaic. (See the mentioned work of Büchler.)

23:e1 MISHNA *e*. Providing only the surplus amounted to exactly the amount paid for the seal.

24:f1 MISHNA *f*. In the Palestinian Talmud in this chapter (Halakha 25), many legends are related illustrating this Mishna.

Next: Chapter VI.

CHAPTER VI.

MISHNA: (*a*) There were thirteen curved chests a1 and thirteen tables in the Sanctuary, and thirteen prostrations took place in the Sanctuary. The family of R. Gamaliel and of R. Hananiah, chief of the priests, made fourteen prostrations; this extra prostration was made towards the wood-chamber, a2 because, according to an ancestral tradition, the ark was hidden there.

(*b*) Once a priest b1 was engaged there, and he noticed that one of the paving-stones on one place appeared different from the others. He went out to tell others of it; but he had not yet finished speaking, when he gave up the ghost; thereby it was known to a certainty that the ark of the covenant b2 was hidden there.

(*c*) In what direction were the prostrations made? Four towards the north, four towards the south, three towards the east,

and two towards the occident; *i.e.*, towards the thirteen gates. c1 The southern gates were near a corner of the western. These were: The upper gate, the fire gate, the firstling gate, and the water gate. Why is it called water gate? Because a glass of water was carried through it for the sprinkling of the altar on the Feast of Booths. R. Eliezer son of Jacob says: At that gate the waters (flowing from the Holy of Holies) commence to flow rapidly downwards, until they again flow out under the threshold of the Temple. Opposite there were the northern gates, near the other corner of the western. These were: The door of Jekhaniah, the gate of sacrifice, the women's gate, and the music-gate; and why is the first one called the gate of Jekhaniah? Because Jekhaniah went through it, when he went into exile. In the east was the gate Nikanur, which also had two small doors, c2 one to the right and the other to the left; lastly, there were two in the west, which were nameless.

(*d*) Thirteen tables were in the Sanctuary: Eight marble ones in the slaughter-house, on which the entrails were washed. Two to the west of the altar-sheep, one marble and one silver: on the marble one the sacrificial pieces were placed, and on the silver table the utensils were placed. Two in the corridor on the inside of the Temple entrance, a marble table and a golden one: on the marble one the showbreads were placed at the time they were brought in, and on the golden one when they were taken out; because the principle is, that the veneration of the

sacred must be heightened and not lessened. d1 Lastly, there was one golden table in the Temple itself, upon which the showbreads were constantly lying.

(e) Thirteen curved chests were in the Sanctuary. e1 On them was written: *Old* shekalim, *new* shekalim, bird-offerings, doves for whole-offerings, wood, incense, gold for the cover of the Holy of Holies. Six were for donations in general. e2 The term *new* shekalim is used for those paid annually. *Old* shekalim were those which were paid by men who had failed to pay them in the year when they were due, and paid them in the following year. "In those marked 'bird-offerings,' the money for turtle-doves was deposited; in those marked 'doves,' money for young doves was deposited: but they were all whole-offerings." So says R. Jehudah. The sages say: "In the former, money for both sin-offerings and whole-offerings was placed, and in the latter only for whole-offerings." e3

(*f*) If one vow, "I will furnish wood for the altar," he must not furnish less than two cords. If one vow (to furnish) incense, he must not furnish less than a handful. If one vow (to furnish) gold coin, he must not furnish less than a Dinar. f1 Six (chests) were for voluntary offerings. What was done with these? Whole-offerings were bought for these, the meat of which was sacrificed to God, but the hides belonged to the priests. f2 The following explanation was made by Jehoiada the high priest, of the expression [Lev. v. 19]: "It is a trespass-offering; be hath, in trespassing, trespassed against the Lord": The rule is: With everything coming in under the name of sin or guilt offering, whole-offerings arc bought, the meat of which is offered up to God and the hides of which belong to the priests; hence the two expressions: A guilt-offering for God and a guilt-offering for the priests, as it is written [II Kings xii. 16]: "The money for trespass-offerings and the money for sin-offerings was not brought into the house of the Lord: it belonged to the priests."

Footnotes

25:a1

CHAPTER VI.

MISHNA *a*. The thirteen chests were used as explained in Mishna *e*, and they were shaped like horns, so that a hand could not be inserted from the top. This Mishna places the number of everything at thirteen (on account of the thirteen kinds of mercy attributed to God). R. Ishmael composed the thirteen rules with which the Law is expounded.

25:a2 The location of the wood-chamber can be determined in Tract Midoth.

25:b1 MISHNA *b*. The priest was a man of blemish (deformed), and could not take part in the sacrifices, but was allowed to select and peel the wood used at the altar.

25:b2 The ark was hidden during the existence of the first Temple in order to save it from the Babylonians, after all hope had been abandoned, and its hiding-place was underground. The

priests who subsequently took charge probably noticed some sign made by the former generation when the ark was hidden, and this particular priest died as a consequence of his attempt to reveal the secret.

26:c1 MISHNA *c*. That there were thirteen gates in the Temple is vouched for by Abba Jose ben Johanan; but the sages declare, that there were only seven gates and that the thirteen prostrations were made in the direction of the twelve breaches made by the Greeks in the walls of the Temple at the time of the Maccabees, and towards the altar; the twelve breaches had been repaired, and each prostration was a mark of gratitude for the good fortune. From the fact, however, that the Mishna cites nine of the gates by their names and describes their location, it seems that Abba Jose ben Johanan was correct, and had his knowledge of the matter from tradition.

26:c2 Concerning the gate Nikanur, it is said that the two doors were made in the gate proper, because the gates were very heavy and it required a number of priests and Levites to open them (as explained in Tract Tamid). Hence, in order to facilitate entrance and egress, the two doors were added.

27:d1 MISHNA *d*. Because the showbreads were lying on a golden table in the Temple, they were not to be placed on marble tables when taken out.

27:e1 MISHNA *e*. When a man paid his half-shekel in Jerusalem, he would go to the Temple and throw his half-shekel into the chest marked *new* shekalim. Into the chest marked *old* shekalim, such as had not given pledges for the payment of the Shekalim, and came voluntarily to pay same, would throw their half-shekel. One who wished to donate money for specific purposes, *e.g.*, for bird-offerings, etc., would deposit the money in the respectively marked chests.

27:e2 Only one of these chests was for donations in general. The other five were marked as follows: One, "For the remainder of a sin-offering," *i.e.*, money left over from a sum originally intended for the purchase of a sin-offering, was thrown into this chest and was used only for sin-offerings; the second, "for the remainder of guilt-offerings"; the third, "for the remainder of bird-offerings of women who had been confined and of persons suffering fro m venereal diseases"; the fourth, "for the remainder of Nazarite-offerings"; and the fifth, "for the remainder of offerings of those afflicted with sores." If any one had money left over from such offerings, he deposited it in the respectively marked cases. The contents of the chest marked "for donations in general" were used for the maintenance of the Temple. (Maimonides.)

27:e3 R. Jehudah means to say, that a man who throws money into the chest marked "for bird-offerings" intends that his offerings p. 28 should be for the altar only, and not for the benefit of those who eat sacrifices, while the sages differ with him, as stated in the Mishna.

28:f1 MISHNA *f*. In the preceding Mishna the remainder of offerings is treated of, and it made no difference how little the remainder was, it could be thrown into the chest. In this Mishna, the case of a man who vows to bring an offering is spoken of, and a minimum value is placed.

28:f2 Incidentally we are told that the meat of the sacrifices belonged to the Divinity, while the

hides belonged to the priests; and what immense sums were realized from the sale of such hides may be gleaned from the mentioned "Priester und Cultus," by Büchler.

Next: Chapter VII.

CHAPTER VII.

MISHNA: (*a*) If money is found between the chest marked "Shekalim" and that marked "voluntary offerings," it belongs to the chest marked "Shekalim" if it lies nearer to the same, and to the one marked "voluntary offerings" if it be nearer *that*. So also does it belong to the voluntary offerings if it be found midway between the two chests. Money found lying between the chests marked "wood" and "incense" belongs, if it be nearer the former, to the former; if nearer the latter to the latter, and also to the latter if found midway between the two. Money found lying between the chest marked "bird-offerings" and the one marked "doves" for whole-offerings belongs to the former if it be nearer the former; and if nearer the latter to the latter, and also to the latter if midway between the two. Money found between ordinary moneys and the moneys of the second tithes belongs, if nearer the former to the former; if nearer the latter to the latter, and also to the latter if found midway between the two. a1 The rule is: One must be guided by the proximity, even in the case of the less important; but in the event of equidistance, (one must be guided) by the greater importance (of the moneys).

(*b*) Money found (in Jerusalem) on the place of the cattle-dealers is regarded as second tithe. b1 Money found on the Temple-mount

is ordinary. b2 Other money found in Jerusalem generally, during the festivals, is regarded as second tithe; at other times of the year as ordinary. b3

(*c*) Meat found in the outer court (of the Temple) is considered whole-offering if in complete joints; if cut in pieces it is sin-offering. c1 Meat found in the city is considered peace-offering. c2 All such meat must be laid aside for putrefaction, and then be burned in the crematory. Meat found anywhere else in the land is prohibited (to be used) as carrion, if found in whole joints; if found cut in pieces, it may be eaten; and during the festivals, when a great deal of meat is on hand, even whole joints may be eaten. c3

(*d*) Cattle found all the way from Jerusalem to Migdal Eder, and in the same vicinity in all directions, are considered, if male, as whole-offerings, and if female as peace-offerings. R. Jehudah

says: "If they are fit for Passover-offerings they may be used for such purpose, providing Passover is not more than thirty days off." d1

(*e*) In former days, the finder of such cattle was pledged until he brought the drink-offerings

belonging to such sacrifices; every finder, however, letting such cattle stand and going on his way, the high court decreed, that the costs of the drink-offerings belonging thereto be defrayed out of the public money.

(*f*) R. Simeon says: Seven decrees were promulgated by that court, and the latter was one of them. Further: If a non-Israelite send whole-offerings with the necessary drink-offerings from over the sea, they are offered up; but if sent without the necessary drink-offerings, the costs of the latter are defrayed from public money. If, again, a proselyte died and left offerings, the drink-offerings, if also left by him, are offered up with the others; if not left, the costs of same are defrayed out of public money. It was also a decree of the court, that in the event of a high priest dying, the necessary meat-offering [Leviticus vi. 13] should be paid for out of the public treasury. R. Jehudah, however, declared, that this should be done at the expense of the heirs. In both cases a tenth of an ephah should be offered.

(*g*) Further, that the priests may (at the sacrificial meals) make use of the salt and the wood (from the sanctuary); that the priests do not commit a breach of trust when misusing the ashes of the red heifer g1; lastly, that the public treasury reimburse

for paid bird-offerings that had become unfit. g2 R. Jose, however, says: "He who contracts for the furnishing of the bird-offerings must reimburse for the spoilt."

Footnotes

29:a1

CHAPTER VII.

MISHNA *a*. There are different degrees of sanctification attached to the several kinds of offerings, some greater and some lesser. In order not to appropriate money belonging to an offering of a greater degree of sanctification to one of a lesser degree, it was decided that proximity of the stray coins should govern the disposition of such money. Where, however, the money was equidistant, it was appropriated to the offerings of a greater degree of sanctification, and the degree may be determined from the Mishna itself.

29:b1 MISHNA *b*. Because it was rare for priests to visit the cattle-market, but the Israelites who at any time came to buy cattle for p. 30 sacrifices generally bought the same with the money exchanged for their second tithes.

30:b2 Money found on the Temple-mount was presumably dropped there by priests. It never occurred that a priest should carry money belonging to the treasury about with him; for even if he drew some money for the purpose of purchasing necessaries, he immediately turned it over to

the vender. Hence, any money which a priest may have lost was his own, and ordinary.

30:b3 During the festivals, when all the Israelites congregated in Jerusalem, they brought money only to expend for their second tithes, hence money found in any place is considered as second tithes.

30:c1 MISHNA *c*. Because whole-offerings were sacrificed in complete joints, but sin-offerings, which were eaten by the priests, were usually cut in pieces. Neither must be eaten, because it might be that the latter had been left over from the preceding day and should be burned; but the distinction is made simply in case one had eaten of the meat that was cut up. If he had eaten of the complete joint, he was certainly guilty, but if he had eaten of the cut meat, it could not be said positively that he was guilty.

30:c2 This must also not be eaten, because it may have lain more than two days and a night; but if it is eaten, no one is guilty.

30:c3 Incidentally the rule is laid down as to meat found anywhere in Palestine. If the meat is found in whole joints, it is presumed to be carrion left for dogs, and must not be eaten. During the festivals, when meat is plentiful, it is presumed to be slaughtered meat, and may be eaten.

31:d1 MISHNA *d*. R. Jehudah states, that if the animal found was a yearling and a male, it is considered a Passover-offering, but may be sacrificed only as a peace-offering, because a Passover-offering must be intended for a stipulated number of persons. (See Exod. xii. 4.) The sages, however, say, that on account of the number of whole-offerings which were brought at the time, the animal found must not be eaten, for fear lest it be intended for a whole-offering and a grave offence be committed. Hence it should be sacrificed as a whole-offering only.

31:g1 MISHNA *g*. It was not allowed to appropriate any part of a sacrifice designated for some special use for any other purpose. If this was done, however, (unintentionally,) it was considered a trespass, and a trespass-offering had to be sacrificed as expiation for the sin. The ashes of the red heifer did not come under the above ruling previously (for reason, see Siphri), but on account of the frequent misuse of those ashes a decree was promulgated placing them under the same ruling as other parts of sacrifices, which were not to be misappropriated. Subsequently, this Mishna teaches that, there being no further necessity for the precautionary measure, the decree was reversed and the ashes restored to their former insignificance. This was included among the seven decrees.

32:g2 A special decree had to be promulgated to cover this case. Had this not been done, contractors would have refused to furnish birds for offerings, because there were very many birds used, and it was burdensome to properly care for them. Still, R. Jose does not agree to this, claiming that the contractor might use it for other purposes and thus save the Sanctuary the loss. According to Maimonides, the Halakha prevails according to R. Jose.

Next: Chapter VIII.

CHAPTER VIII.

MISHNA: (*a*) All spittle a1 to be found in Jerusalem is considered clean, except such as is found at the upper market (for this place was secluded and those afflicted with venereal diseases were in the habit of going there). Such is the teaching of R. Meir. The sages say: In the middle of the street it is at ordinary times unclean, and at the sides of the streets, clean. During the festivals, spittle found in the middle of the street is clean; at the sides it is unclean, because such as are unclean on account of their minority usually walk at the sides of the street.

(*b*) All utensils found on the way towards the plunge-bath, in Jerusalem, are unclean; those found on the way from the plunge-bath are clean: for they were not carried down to the plunge-bath the same way that these were carried up from the plunge-bath. So teaches R. Meir. R. Jose says: "All are clean, with the exception of such baskets, spades, and pickaxes as are used for the bones of the dead." b1

(*c*) If a butchering-knife be found on the fourteenth day of Nissan, a Passover-offering may be slaughtered with it forthwith. If it be found on the thirteenth, it must be again submerged. c1 A severing-knife must be submerged both if found on the thirteenth or fourteenth. If the fourteenth, however, fall on a Sabbath, it may be used for slaughtering forthwith; so also if it be found on the fifteenth: if it be found together with a butchering-knife, it is treated just like the latter.

(*d*) If a curtain in the Sanctuary become defiled through some minor uncleanness, d1 it is submerged on the inside of the outer court, and may be put back in its place; if it become defiled through a principal uncleanness, it must be submerged on the outside and then stretched on the rampart, because sunset must be awaited. At the time it is submerged for the first time (when new), it should be spread out on the roof of the gallery, in order that the people may see the beauty of the work.

(*e*) R. Simeon, son of Gamaliel, says in the name of R. Simeon, son of the assistant high priest, that the curtain was one

span thick, woven on seventy-two warp-cords, each cord twisted out of twenty threads; it was forty ells long and twenty ells wide, and made (worth) of eighty-two myriads (Dinars). e1 Two such curtains were made yearly: three hundred priests were required to submerge it.

(*f*) If meat of the Holy of Holies f1 became defiled, be it through a minor or a principal

uncleanness, in the corridor or on the outside, according to the school of Shamai it must all be burnt in the court (in a place appointed for that purpose), except such as had been defiled by a principal uncleanness on the outside (of the court); according to the school of Hillel, everything is burnt on the outside except such as had been defiled by a minor uncleanness on the inside.

(*g*) R. Eliezer says: "Anything that has become defiled through a principal uncleanness, on the outside or on the inside, is burnt on the outside; anything that has become defiled through a minor uncleanness, either on the inside or the outside, must be burnt on the inside." R. Aqiba says: "In the place where a thing became defiled, there must it also be burnt."

(*h*) The joints of the daily sacrifice were laid down underneath the half of the altar-stairs on the westerly (according to others on the easterly) side; those of the additional offerings on the easterly (others say oil the westerly) side. The sacrifices of the new moon were placed above the railing (others say beneath) on the altar. h1 The payment of Shekalim was only obligatory during the time that the Temple stood; the tithes from grain, cattle, and the deliverance of the firstlings were in force during the existence of the Temple and even after the Temple. h2--If

one sanctify Shekalim or firstlings, they are considered sanctified. R. Simeon says: "If one say, firstlings shall be holy, they are not sanctified (because no Temple exists)."

APPENDIX TO CHAPTER VI., MISHNA *a*.

FROM the teaching of this Mishna, we may conclude that the number system of Pythagoras was known and prevailed in the times of the Sages of the Mishna, and accordingly the number, 13 was deemed inauspicious even in the earliest days.

Therefore many religious ceremonies were established with the express view of convincing the people of the absurdity of their belief.

It also seems probable that the Sages themselves entertained the superstition, and that they adopted the number 13 in the religious ceremonies as a cure for the mischief believed to have, been produced by the inauspicious number.

Footnotes

33:a1

CHAPTER VIII.

MISHNA *a*. Concerning this spittle, see Leviticus xv. 8. It being impossible that, of all the people congregated in Jerusalem at the times of the festivals, there should not be some who had

running issues and whose spittle was unclean, regulations were made where such men were to walk and where not. These regulations are cited by the Mishna. R. Meir said, that the upper market was the place designated for them, but the sages differ with him, and say, that the regulation was for the healthy men to walk in the middle of the street and the unclean at the sides during the festivals; but the whole year, the order was reversed. It is therefore self-evident, that, wherever the unclean walk, one is liable to contract uncleanness.

33:b1 MISHNA *b*. This Mishna is explained by Maimonides and translated by Yost in a different manner than we have rendered it; namely: "All utensils found wrong side up on the way to the plunge-bath are unclean, and those found right side up are clean." This p. 34 explanation is very complicated, and not in accordance with the literal text and other sources of explanation. Hence we simply translated the literal text and deem it correct. As for the last three articles, they are always unclean, on account of being used for bones of the dead; hence, in our opinion, they were never submerged. (See also commentary of Israel Lipshuetz, who also interprets it according to our explanation.)

34:c1 MISHNA *c*. A butchering-knife, being in constant use, is always considered clean, and hence there is no necessity of submerging it. If, however, it be found on the thirteenth, when there is still one day's time, it should be submerged for the sake of precaution. A severing-knife, however, is considered the same as any other vessel, and is treated accordingly.

34:d1 MISHNA *d*. For the explanation of the term "minor uncleanness," as used in this Mishna, it is necessary to state the different degrees of uncleanness, which are as follows: A corpse is called "the grandparent of uncleanness." One who touches a corpse becomes "a father of uncleanness"; anything touching the latter is, in turn, "a child of (or first of) uncleanness"; anything touched by this latter is a "second of uncleanness"; and so forth, "a third" and "a fourth." (See Tract Taharoth.) In this Mishna a minor uncleanness refers to a first of uncleanness, and a principal uncleanness to a father of uncleanness.

35:e1 MISHNA e. The Palestinian Talmud asserts, that the amount of the cost of and the number of priests required to submerge the curtain is somewhat exaggerated; but, according to Dr. Büchler's "Priester und Cultus," the number of priests is not an exaggeration; and as for the cost, if the smallest existing coin be used for calculation (as in former times the sou in France, so also was the myriad mentioned in the Mishna), not even the sum will be exaggerated.

35:f1 MISHNA *f*. For instance, the meat of the sacrifice mentioned in Leviticus vii. 6.

35:h1 MISHNA h. This will be explained in Tract Midoth.

35:h2 Because the Levites received their sustenance from this source, and having inherited no land from their ancestors, they were p. 36 supported even after the destruction of the Temple by the same means. The details will be found in Tracts Becharath, Maasroth, etc.

TRACT ROSH HASHANA

(NEW YEAR).

Contents

CHAPTER III.

CHAPTER IV.

Next: Introduction to Tract Rosh Hashana (New Year's Day)

INTRODUCTION TO TRACT ROSH HASHANA (NEW YEAR'S DAY).

NOTWITHSTANDING the fact that in the history of every nation, especially such as has ever attained to an established form of government, the calendar is a matter of great importance, the Scriptures do not in any manner treat of the Jewish calendar. There cannot even be found a fixed time whence the commencement of the year should be reckoned, although there is this passage in Exodus (xii. 2): "This month shall be unto you the chief of months: the first shall it be unto you of the months of the year." Doubtless this may be assumed to point to the month of Nissan (about April), as not only the most important month, but also as the beginning of the year.

In another passage (Exod. xxiii. 16), however, we find it written: "And the feast of ingathering (Tabernacles), at the conclusion of the year." This would be a palpable contradiction to the previous passage, were it not for the fact that the words "*Betze'th Hashana*" (rendered as "at the conclusion of the year") in the quoted passage can be, with perfect accuracy, translated "during the year." While such a translation would clear away all doubt as to Nissan being the beginning of the year, it could under no circumstances be applied to the Feast of Tabernacles, which is neither "at the conclusion" of the year nor "during the year" (in the sense "when the year has advanced"), if the beginning of the year be Tishri (about September). Hence the passage should be translated: "And the feast of the ingathering, which had been completed at the conclusion of the year"; *i.e.*, in the months preceding the month of Tishri.

In the face of these contradictory terms, we must revert to historical facts which would support one or the other of the above assertions, and we find, that not only the Egyptian rulers, but also the Jewish kings since the time of Solomon, counted the beginning of the year of their accession from the month of

Nissan, while other Eastern potentates, such as the Armenian and Chaldean kings, counted the commencement of their year of accession from Tishri.

It is not certain whether the Israelites, after their conquest of Canaan, computed their calendar in conformity with that of the country whence they came or with that of the country they had conquered; but it is plain that in the Mishnaic period, or after the erection of the second Temple, they counted the beginning of the year from Tishri. It may be, however, that their kings, following the example of their predecessors, commenced counting the year of their accession from Nissan, and in all civil contracts and state documents, according to the existing custom, used dates to agree with Nissan as the first month of the year.

On the other hand, the priestly tithes, during the days of the erection of the second Temple, were

payable in Elul (about August), which was considered the expiring season of the year, in order to prevent the confusion which might arise from mixing one year's tithes with those of the other. The priestly tithing of fruits was, however, delayed until Shebhat (about February), the time when the fruits had already matured on the trees, in order that the various tithes should not be confused and to prevent the priests and Levites from unduly interfering with the affairs of the people.

The prehistoric Mishna, which always formed the law, in conformity with the existing custom, and not *vice versa*, 1 found four different New Year's days in four different months, and, with the object in view of making the custom uniform in all Jewish communities, taught its adherents to observe four distinct New Year's days, at the beginning of the four respective months in which certain duties were accomplished. Thus the text of the opening Mishna of this tract, prior to its revision by Rabbi Jehudah Hanassi, read as follows: "There are four different New Year's days; viz., the first day of Nissan, the first of Elul, the first of Tishri, and the first of Shebbat." The different purposes for which these days were established as New Year's days were well known at that time, and it was therefore deemed unnecessary to specify them. At the time

of the new edition of the Mishna, by Rabbi Jehudah Hanassi (the Prince), when the Temple was out of existence, and consequently tithes were no more biblically obligatory (the authority of the priests having been abrogated and reverted to the house of David, the great-grand father of the editor), the latter referring to the first day of Nissan and the first day of Elul as New Year's days, added, by way of commentary, the words, "for kings and cattle-tithe."

He also cited the opinions of R. Eliezer and R. Simeon, that the New Year's Day for cattle-tithe should not be celebrated separately, but on the general New Year's Day; viz., on the first day of Tishri, as under the then existing circumstances there was no necessity to guard against the confusion of tithes accruing from one year to the other. From this it may be concluded that R. Jehudah Hanassi, in citing the above opinions, alluded to them as being in conformity with his own opinion. To that end he also cites the opinions of the schools of Shamai and Hillel respectively.

From the statement in the Mishna to the effect that "there are four periods in each year on which the world is judged," it appears that in the Mishnaic period the New Year's day was considered a day of repentance; and since the principal features of repentance arc devotion to God and prayers for forgiveness of sin, Rabbi states, in the Mishna, that devotion is the only requirement during the days of penitence, *i.e.*, the days between New Year's Day and the Day of Atonement. The legend relating that on the New Year's day books (recording the future of each person) were opened was yet unknown in Rabbi's time.

The story told by R. Kruspedai in the name of R. Johanan, that "on New Year's Day books are opened," etc., is taken from the Boraitha which teaches: "Three books arc opened on the day of judgment." This Boraitha, however, does not refer to the New Year's day, but to the day of final resurrection, as explained by Rashi, and that R. Kruspedai quotes his story in the name of R. Johanan proves nothing; for in many instances where teachers were desirous of adding weight to their opinions, they would quote some great teacher as their authority. R. Johanan himself permitted this method.

After Rabbi Jehudah Hanassi had completed the proper Mishnaic arrangement regarding the number of New Year's days,

making the principal one "the Day of Memorial" (the first of Tishri); after treating upon the laws governing the sounding of the cornet in an exceedingly brief manner-he dwells upon the custom in vogue at the Temple of covering the mouth of the cornet or horn with gold, and declares the duty of sounding the cornet properly discharged if a person passing by the house of worship can hear it.

He arranges the prayers accompanying this ceremony in a, few words, and then dilates at great length upon the Mishnayoth treating of the lunar movements by which alone the Jews were guided in the arrangement of their calendar, upon the manner of receiving the testimony of witnesses, concerning the lunar movements, and upon the phases of the moon as used by Rabban Gamaliel. He then elaborates upon the tradition handed down to him from his ancestors (meaning thereby the undisputably correct regulations), and also upon the statutes ordained by R. Johanan ben Zakkai, enacting that the sages of each generation are the sole arbiters of all regulations and ordinances, and may. themselves promulgate decrees even though the bases for such be not found in the Mosaic code.

He also confirms the right of the chief Beth Din (supreme court of law), but not of a lower Beth Din, of each respective period, alone to arrange the order of the holidays, on account of the already apparent discontent of the masses, who were bent upon taking the management of these subjects into their own hands.

Thus he dilates upon this feature with the minutest exactness and supports his assertions with the decision of his grandfather Rabban Gamaliel, as well as with the decisions of Rabbi Dosa ben Harkhinas and Rabbi Jehoshua, to the effect that each generation has only to look for guidance to the Beth Din existing in its own time, and that the opinion rendered by such a Beth Din is as binding and decisive as that of Moses, even though it appear to be erroneous.

Such are the contents of this tract, certainly most important from an historical and archæological point of view. Proceed, then, and study!

Footnotes

xx:1 Facts corroborating this statement will be found in our periodical *Bakay*, Vol. II., p. 20 *et seq*.

Next: Synopsis of Subjects of Tract Rosh Hashana

SYNOPSIS OF SUBJECTS

OF

TRACT ROSH HASHANA [1]

CHAPTER I.

MISHNA I. The first Mishna ordains New Year's Days, viz.: For kings, for the cattle-tithe, for ordinary years, and for the planting of trees. A king who ascends the throne on the 29th of Adar must be considered to have reigned one year as soon as the first of Nissan comes. The Exodus from Egypt is reckoned from Nissan. When Aaron died Sihon was still living. He heard that Aaron was dead and that the clouds of glory had departed. The rule about Nissan only concerned the kings of Israel; but for the kings of other nations, they reckoned from Tishri. Cyrus was a most upright king, and the Hebrews reckoned his years as they did those of the kings of Israel. One is guilty of procrastination. Charity, tithes, the gleanings of the field, that which is forgotten to be gathered in the field, the produce of corners of the field.

One is culpable if he does not give forthwith that which he has vowed for charity. In the case of charity it must be given immediately, for the poor are always to be found. The Feast of Weeks falls on the fifth, sixth, or seventh of Sivan.

How the law against delay affects a woman. In which month is grain in the early stage of ripening? Only in the month of Nissan. It is also the New Year for leap-year and forgiving the half-shekels. Congregational sacrifices brought on the first of Nissan should be purchased with the shekels raised for the New Year. He who lets a house to another for a year must count (the year) as twelve months from day to day; but if the lessee says (I rent this house) "for *this* year," even if the transaction takes place on the first of Adar, as soon as the first of Nissan arrives the year (of rental) has expired. The first of Tishri is the New Year for divine judgment. At the beginning of tile year it is determined what shall be at the end of the year. The Supreme Court in Heaven does not enter into judgment until the Beth

[paragraph continues] Din on earth proclaims the new moon. Israel enters for judgment first. If a king and a congregation have a lawsuit, the king enters first. From New Year's Day until the Day of Atonement, slaves used not to return to their (own) homes; neither did they serve their masters, but they ate and drank and rejoiced, with the crown of freedom on their heads. R. Eliezer says, that the world was created in Tishri. R. Joshua says, that the world was created in Nissan. Says R. Joshua, God grants the righteous the fulfilment of the years of their life to the very month and day. Sarah, Rachel, and Hannah were visited on New Year's Day. Joseph was released from prison on New Year's Day. On New Year's Day the bondage of our fathers in Egypt ceased. The

Jewish sages fix the time of the flood according to R. Eliezer, and the solstices according to R. Joshua; but the sages of other nations fix the time of the flood also as R. Joshua does. Whoso vows to derive no benefit from his neighbor for a year must reckon (for the year) twelve months, from day to day; but if he said "for this year," if he made the vow even on the twenty-ninth of Elul, as soon as the first of Tishri comes that year is complete. The New Year for giving tithes is for a tree from the time the fruits form; for grain and olives, when they are one-third ripe; and for herbs, when they are gathered. R. Aqiba picked the fruit of a citron-tree on the first of Shebhat and gave two tithes of them, 1-20

MISHNA II. At four periods in each year the world is judged. All are judged on New Year's Day and the sentence is fixed on the Day of Atonement. R. Nathan holds man is judged at all times. God said: "Offer before Me the first sheaf of produce on Passover, so that the standing grain may be blessed unto you. Recite before Me on New Year's Day the Malkhioth, that you proclaim Me King; the Zikhronoth, that your remembrance may come before Me, for good, and how (shall this be done)?" By the sounding of the cornet. Three circumstances cause a man to remember his sins. Four things avert the evil decree passed (by God) on man; viz., charity, prayer, change of name, and improvement, Some add to these four a fifth--change of location. Three books are opened on New Year's Day: one for the entirely wicked, one for the wholly good, and one for the average class of people. The school of Hillel says: The most compassionate inclines (the scale of justice) to the side of mercy. Who are those who inspire their fellowmen with dread of them? A leader of a community who causes the people to fear him over-much, without furthering thereby a high purpose. The legend how R. Joshua fell sick and R. Papa went to visit him. The Holy One, blessed be He, wrapped Himself, as does one who recites the prayers for a congregation, and pointing out to Moses the regular order of prayer, said to him: "Whenever Israel sins, let him pray to Me after this order, and I shall pardon him." Prayer is helpful for man before or after the decree has been pronounced. The legend of a certain family in Jerusalem whose members died at eighteen years of age. They came and informed R. Johanan ben Zakkai. The Creator sees all their hearts (at a glance) and (at once) understands all their works, 20-28

MISHNA III. Messengers were sent out in the following six months: in Nissan, Abb, Elul, Tishri, Kislev, and in Adar. The legend of the king

(of Syria who had earlier) issued a decree forbidding the study of the Torah among the Israelites, or to circumcise their sons, and compelling them to desecrate their Sabbath. Judah b. Shamua and his friends cried aloud: "O heavens! Are we not all brethren? Are we not all the children of one Father?" etc. Samuel said: "I can arrange the calendar for the whole captivity." Rabha used to fast two days for the Day of Atonement. Once it happened that he was right, 29-34

MISHNAS IV. to VII. For the sake of (the new moon), of the two months Nissan and Tishri, witnesses may profane the Sabbath. Formerly they profaned the Sabbath for all (new moons), but since the destruction of the Temple they instituted that (witnesses) might profane the Sabbath only on account of Nissan and Tishri. It once happened that more than forty pair (of witnesses) were on the highway (to Jerusalem) on the Sabbath. Shagbar, the superintendent of Gader, detained them, and (when) R. Gamaliel (heard of it, he) sent and dismissed him. It once happened, that Tobias the physician, his son, and his freed slave saw the new moon in Jerusalem. The explanation of the passage Exodus xii. 1, by R. Simeon and the rabbis. Who are

incompetent witnesses? Gamblers with dice, etc., 34-36

CHAPTER II.

MISHNAS I. to IV. If the Beth Din did not know (the witness), another was sent with him to testify in his behalf. It once happened that R. Nehorai went to Usha on the Sabbath to testify (to the character) of one witness. The legend how the Boëthusians appointed false witnesses. Formerly bonfires were lighted (to announce the appearance of the new moon); but when the Cutheans practised their deceit it was ordained that messengers should be sent out. There are four kinds of cedars. The whole country looked like a blazing fire. Each Israelite took a torch in his hand and ascended to the roof of his house. Great feasts were made for (the witnesses) in order to induce them to come frequently. How were the witnesses examined? The sun never faces the concave of the crescent or the, concave of a rain bow. (If the witnesses say) "We have seen the reflection (of the moon) in the water, or through a metal mirror, or in the clouds," "their testimony is not to be accepted." The chief of the Beth Din says: "It (the new moon) is consecrated," and all the people repeated after Him: "It is consecrated, it is consecrated." Pelimo teaches: "When the new moon appeared at its proper time, they used not to consecrate it," 37-42

MISHNAS V. and VI. R. Gamaliel had on a tablet, and on the wall of his upper room, illustrations of the various phases of the moon. Is this permitted? Yea, he had them made to teach by means of them. It happened once, that two witnesses came and said: "We saw the moon in the eastern part in the morning and in the western part in the evening." R. Johanan b. Nuri declared them to be false witnesses. Two other witnesses came and said: "We saw the moon on its proper day, but could not see it on the next evening." R. Gamaliel received them; but R. Dosa b. Harkhinas said: "They are false witnesses." R. Joshua approved his opinion. Upon this,

[paragraph continues] Gamaliel ordered the former to appear before him on the Day of Atonement, according to his computation, with his staff and with money. What R. Joshua did, and what R. Aqiba and R. Dosa b. Harkhinas said about it. What R. Hiyya said when he saw the old moon yet on the morning of the twenty-ninth day. Rabbi said to R. Hiyya: "Go to Entob and consecrate the month, and send back to me as a password, 'David the King of Israel still lives.'" The consecration of the moon cannot take place at a period less than twenty-nine and a half days, two-thirds and .0052 (*i.e.*, seventy-three Halaqim) of an hour. Even if the commonest of the common is appointed leader by a community, he must be considered as the noblest of the nobility. A judge is to be held, "in his days," equal in authority with the greatest of his antecedents. Gamaliel said to R. Joshua: "Happy is the generation in which the leaders listen to their followers, and through this the followers consider it so much the more their duty (to heed the teachings of the leaders)," 42-44

CHAPTER III.

MISHNA I. If the Beth Din and all Israel saw (the moon on the night of the thirtieth day), but there was no time to proclaim, "It is consecrated," before it has become dark, the month is intercalary. When three who formed a Beth Din saw it, two should stand up as witnesses and substitute two of their learned friends with the remaining one (to form a Beth Din). No greater authority than Moses, our master, yet God said to him that Aaron should act with him. No

witness of a crime may act as judge, but in civil cases he may, 45-46

MISHNAS II. to IV. Concerning what kind of cornets may be used on New Year's and jubilee days. Some words in the Scripture which the rabbis could not explain, until they heard the people speak among themselves. The cornet used on the New Year was a straight horn of a wild goat, the mouthpiece covered with gold. The jubilee and the New Year's Day were alike in respect to the sounding (of the cornet) and the benedictions, but R. Jehudah's opinion was different. R. Jehudah holds that on New Year's Day the more bent in spirit a man is, and on the Day of Atonement the more upright he is (in his confessions), the better; but R. Levi holds the contrary. "On the fast days two crooked ram's-horns were used, their mouthpieces being covered with silver." According to whom do we nowadays pray: "This day celebrates the beginning of thy work, a memorial of the first day"? It is unlawful to use a cornet that has been split and afterwards joined together. If one should happen to pass by a synagogue, or live close by it and should hear the cornet, he will have complied with the requirements of the law. If one covered a cornet on the inside with gold it might not be used. If one heard a part of (the required number of) the sounds of the cornet in the pit, and the rest at the pit's mouth, he has done his duty. If one blew the first sound (Teqia), and prolonged the second (Teqia) as long as two, it is only reckoned as one. If one who listened (to the sounds of the cornet) paid the proper attention, but he that

blew the cornet did not, or *vice versa*, they have not done their duty until both blower and listener pay proper attention. If special attention in fulfil ling a commandment or doing a transgression is necessary or not. As long as Israel looked to Heaven for aid, and directed their hearts devoutly to their Father in Heaven, they prevailed; but when they ceased to do so, they failed. All are obliged to hear the sounding of the cornet, priests, Levites, and Israelites, proselytes, freed slaves, a monstrosity, a hermaphrodite, and one who is half-slave and half-free. One may not say the benediction over bread for guests unless he eats with them, but he may for the members of the family, to initiate them into their religious duties, 46-52

CHAPTER IV.

MISHNAS I. to IV. Regarding if the New Year fall on Sabbath. Where the shofer (cornet) should be blown after the Temple was destroyed. What was the difference between Jamnia and Jerusalem? Once it happened that New Year's Day fell on the Sabbath, and all the cities gathered together. Said R. Johanan b. Zakkai to the Benai Betherah: "Let us sound (the cornet)!" "First," said they, "let us discuss!" R. Johanan b. Zakkai ordained that the palm-branch should everywhere be taken seven days, in commemoration of the Temple. Since the destruction of the Temple, R. Johanan b. Zakkai ordained that it should be prohibited (to eat of the new produce) the whole of the day of waving (the sheaf-offering). Once the witnesses were delayed in coming, and they disturbed the song of the Levites. They then ordained that evidence should only be received until (the time of) the afternoon service. Concerning what songs the Levites had to sing every day from the Psalms. What did the Levites sing when the additional sacrifices were being offered on the Sabbath? What did they sing at the Sabbath afternoon service? According to tradition, a corresponding number of times was the Sanhedrin exiled. The witnesses need only go to the meeting place (of the Beth Din). Priests may not ascend the platform in sandals, to bless the people; and this is one of the nine ordinances instituted by R. Johanan b. Zakkai, 53-57

MISHNA V. Regarding the order of the benedictions on New Year's Day at the morning prayer, additional prayers, and at what time the cornet must be blown, etc. What passages from the Scriptures are selected for additional prayers on New Year's Day. To what do the ten scriptural passages used for the Malkhioth correspond? How many passages must be recited from Pentateuch, Prophets, and Hagiographa? We must not mention the remembrance of the individual (in the Zikhronoth), even if the passage speaks of pleasant things. What are the passages which must be said in the benediction of Malkhioth, Zikhronoth, and the Shophroth? R. Elazar b. R. Jose says: "The Vathiqin used to conclude with a passage from the Pentateuch." "Hear, O Israel, the Lord our God is our Lord," may be used in the Malkhioth. The second of those who act as ministers of the congregation on the Feast of New Year shall cause another to sound the cornet on days when the Hallel (Service of Praise, Ps. cxiii.-cxviii.) is read.

[paragraph continues] We are permitted to occupy ourselves with teaching (children) until they learn (to sound the cornet), even on the Sabbath. The order, and how many times it must be blown; also, the different sounds and the names of them. How all this is deduced from the Bible, and the difference of opinions between the sages. Generally the soundings of the cornet do not interfere with each other, nor do the benedictions, but on New Year's Day and the Day of Atonement they do. R. Papa b. Samuel rose to recite his prayers. Said he to his attendant, "When I nod to you, sound (the cornet) for me." Rabha said to him, that this may only be done in the congregation. A man should always first prepare himself for prayer, and then pray. R. Jehudah prayed only once in thirty days, 57-66

Footnotes

xxiii:1 See introduction to synopsis of Tract Sabbath, Vol. I., p. xxix.

Next: Chapter I.

"NEW YEAR."

CHAPTER I.

THE ORDINANCES ABOUT THE NEW YEARS OF THE JEWISH CALENDAR--THE MESSENGERS THAT WERE SENT OUT FROM JERUSALEM--AND AT WHICH PERIOD OF THE YEAR THE WORLD IS DIVINELY JUDGED.

MISHNA *I*.: There are four New Year days, viz.: The first of Nissan is New Year for (the ascension of) Kings and for (the regular rotation of) festivals; 1 the first of Elul is New Year for the cattle-tithe, 2 but according to R. Eliezer and R. Simeon, it is on the first of Tishri. The first of Tishri is New Year's day, for ordinary years, and for sabbatic years 3 and jubilees; and also for the planting of trees 4 and for herbs. 5 On the first day of Shebhat is the New Year for trees, 6 according to the school of Shammai; but the school of Hillel says it is on the fifteenth of the same month. 7

GEMARA: "*For kings*." Why is it necessary to appoint such a day? (Let every king count the day of his ascension to the throne as the beginning of his year.) Said R. Hisda: "On account of documents." So that in the case of mortgages, one may know which is the first and which is the second by means of

the year of the king's reign mentioned in the documents. The rabbis taught: A king who ascends the throne on the 29th of Adar must be considered to have reigned one year as soon as the first of Nissan comes, but if he ascends the throne on the first of Nissan he is not considered to have reigned one year until the first of Nissan of the following year. From this we infer, that only Nissan is the commencement of years for kings (or the civil New Year); that even a fraction of a year is considered a year; and that if a king ascends the throne on the first of Nissan, he is not considered to have reigned one year until the next first of Nissan, although he may have been elected in Adar. The Boraitha teaches this lest one say that the year should be reckoned from the day of election, and therefore the king would begin his second year (on the first of Nissan following).

The rabbis taught: If a king die in Adar, and his successor ascend the throne in Adar, (documents may be dated either) the (last) year of the (dead) king or the (first) year of the new king. If a king die in Nissan, and his successor ascend the throne in Nissan, the same is the case. But if a king die in Adar, and his successor does not ascend the throne until Nissan, then the year ending with Adar should be referred to as the year of the dead king, and from Nissan it should be referred to as that of his successor. 1 Is this not self-evident? The case here mentioned refers to an instance where the new king was a son of the deceased, and, while ascending the

throne in Nissan, had been elected in the month of Adar, and being the king's son, it might be assumed that he was king immediately after his election, and thus the following first of Nissan would inaugurate the second year of his reign. He comes to teach us that such is not the case.

R. Johanan says: Whence do we deduce that we reckon the commencement of years (for the reign) of kings, only from Nissan? Because it is written [I Kings, vi. 1]: "And it came to pass in the four hundred and eightieth year after the going forth of the children of Israel out of the land of Egypt, in the fourth year of the month Ziv, which is the second month of the reign of Solomon over Israel." Thus the Scriptures establish an analogy between "the reign of Solomon" and "the Exodus from Egypt." As the Exodus from Egypt is reckoned from Nissan,

so also is the reign of Solomon reckoned from Nissan. But how do we know that the Exodus even should be reckoned from Nissan? Perhaps we should reckon it from Tishri. This would be improper, for it is written [Numb. xxxiii. 38]: "And Aaron, the Priest, went up into Mount Hor at the commandment of the Lord, and died there, in the fortieth year after the children of Israel were come out of the land of Egypt, on the first day of the fifth month." And it is written [Deut. i. 3]: "And it came to pass in the fortieth year, in the eleventh month, on the first day of the month, Moses spake," etc. Since he mentions the fifth month, which is certainly Abh, and he speaks of (Aaron's death as happening in) the fortieth year (and not the forty-first year), it is clear that Tishri is not the beginning of years (for kings). This argument would be correct as far as the former (Aaron's) case is concerned, for the text specifically mentions (forty years after) the Exodus; but in the latter (Moses') case, how can we tell that (the fortieth year) means from the Exodus? Perhaps it means (the fortieth year) from the raising of the Tabernacle in the wilderness. From the fact that R. Papa stated further on, that the twentieth year is mentioned twice for the sake of a comparison by analogy, we must assume that the analogy of expression "the fortieth year" (mentioned in connection with both Aaron and Moses) signifies also; 1 as in the former case it means forty years from the time of the Exodus, so also in the latter case. But whence do we know that the incident that took place in Abh (the death of Aaron) happened before (the speech of Moses) which is related as happening in Shebhat? Perhaps the Shebhat incident happened first. It is not reasonable to suppose this, for it is written [Deut. i. 4]: "After he had slain Sihon the king of the Amorites," and when Aaron died Sihon was still living. Thus it is written [Numb. xxi. 1]: "And the Canaanite, the king of Arad, heard." What did he hear? He heard that Aaron was dead, and that the clouds of glory had departed (and he thought that a sign that permission was given from heaven to fight against Israel). 2 How can we make any such comparison? In the one place it speaks of the Canaanite,

and in the other of Sihon. We have learned in a Buraitha that Sihon, Arad, and the Canaanite are identical. This opinion of R. Johanan is quite correct, for we find that a Boraitha quotes all the verses that he quotes here, and arrives at the same conclusion.

R. Hisda says: The rule of the Mishna--that the year of the kings begins with Nissan--refers to the kings of Israel only, but for the kings of other nations it commences from Tishri. As it is said [Neh. i. 1]: "The words of Nehemiah, the son of Hakhaliah. And it came to pass in the month of Kislev, in the twentieth year," etc. And it is written [ibid. ii. 1]: "And it came to pass in the month Nissan, in the twentieth year of Artaxerxes the king," etc. Since Hanani stood before

Nehemiah in Kislev, and the Bible speaks of it as the twentieth year, and since Nehemiah stood before the king in Nissan, and the Text calls it also the twentieth year, it is clear that the New Year (for the non-Jewish king, Artaxerxes) is not Nissan (or in the latter case he would have spoken of the twenty-first year). This would be correct as far as the latter quotation is concerned, for it specifically mentions Artaxerxes, but in the former verse how do we know that it refers to Artaxerxes? Perhaps it refers to another event altogether. Says R. Papa: Since in the first passage we read "the twentieth year" and in the second we read "the twentieth year," we may deduce by analogy that as in the one case Artaxerxes is meant, so is he meant also in the other. But how do we know that the event, recorded as having occurred in Kislev, and not the Nissan incident, happened first? This we know from a Boraitha, where it reads: The same words which Hanani said to Nehemiah in Kislev, the latter repeated to the king in Nissan, as it is said [Neh. i. 1, 2]: "The words of Nehemiah, son of Hakhaliah. And it came to pass in the month of Kislev, in the twentieth year, as I was in Shushan the capital, that Hanani, one of my brethren came, and certain men of Judah . . . and the gates thereof are burned with fire." And it also said [Neh. ii. 1-6]: "And it came to pass in the month of Nissan, in the twentieth year of Artaxerxes the king, that wine was before him . . . so it pleased the king to send me; and I set him a time."

R. Joseph raised an objection. It is written [Haggai, ii. 10]: "In the twenty-fourth day of the sixth month, in the second year of Darius." And it is also written [ibid. I]: "In the second year, in the seventh month, in the one-and-twentieth

day of the month." 1 If the rule is that Tishri (the seventh month) is the beginning of years for non-Jewish kings, should not the Text read "in the third year of Darius" instead of the second year? R. Abbahu answered: Cyrus was a most upright king, and the Hebrews reckoned his years as they did those of the kings of Israel (beginning with Nissan). R. Joseph opposed this. First: If that were so, there are texts that would contradict each other, for it is written [Ezra, vi. 15]: "And this house was finished on the third day of the month Adar, which was in the sixth year of the reign of Darius the King." And we have learned in a Boraitha: At the same time in the following year Ezra and the children of the captivity went up from Babylon, and the Bible says about this [Ezra, vii. 8]: "And he came to Jerusalem in the fifth month in the seventh year of the king." But if the rule is (that for Cyrus the year began with Nissan and not Tishri) should not the Text say "the eighth year" (since the first day of Nissan, the beginning of another year, intervenes between the third of Adar and the month of Abh)? Secondly: How can these texts be compared? In the one place it speaks of Cyrus, and in the other of Darius. We have learned in a Boraitha that Darius, Cyrus, and Artaxerxes are all one and the same person.

"*And for festivals*." Do then the festivals commence on the first of Nissan? Do they not begin on the fifteenth of that month? R. Hisda answered: (The Mishna means that Nissan is) the month that contains that festival which is called the New Year for festivals (viz., Passover).

What difference does it make (in practice)? It makes a difference to one who has made a vow, because through this festival he becomes culpable of breaking the law, "Thou shalt not slack to pay." 2 And this is according to the opinion of R. Simeon, who says: That (before one is guilty of delay) the three festivals must have passed by in their regular order, with Passover as the first (of the three). Thus was also the dictum of R. Simeon ben Jochai, who stated that the law against procrastination

may be violated at times only when five festivals had passed by in their regular order; at other times when four, and again when three festivals had passed; *i.e.*, if the vow was made before the feast of Pentecost he becomes guilty of procrastination only when Pentecost, Tabernacles, Passover, and again Pentecost and Tabernacles had passed by; if the vow was made before Tabernacles then he becomes guilty.

The rabbis taught: As soon as three festivals have passed by and the following duties (or vows) have not been fulfilled one is guilty of procrastination; and these are: The vow of one who says, "I will give the worth of myself (to the sanctuary);" or, "I will give what I am estimated to be worth (in accordance with Lev. xxvii.);" or the vow concerning objects, the use of which one has forsworn, or which one has consecrated (to the sanctuary), or sin-offerings, guilt-offerings, burnt-offerings, peace-offerings, charity, tithes, the firstlings, the paschal offerings, the gleanings of the field, that which is forgotten to be gathered in the field, the produce of the corner of the field. [1] R. Simeon says: The festivals must pass by in their regular order, with Passover as the first. And R. Meir says: As soon as even one festival has elapsed and the vow has not been kept the law is infringed. R. Eliezer ben Jacob says: As soon as two festivals have elapsed the law is infringed, but R. Elazar ben Simeon says: Only the passing of the Feast of Tabernacles causes the infringement of the law (whether or not any other festivals have passed by between the making and the fulfilling of the vow). What is the reason of the first Tana? Since in [Deut. xvi.] the Text has been speaking of the three festivals, why does it repeat, "On the Feast of Unleavened Bread, on the Feast of Weeks, and on the Feast of Tabernacles?" This signifies that when Tabernacles, Passover, Pentecost, and again Tabernacles had passed, but if the vow was made before Passover, then the man becomes guilty if he allows the *three* festivals to pass by in their regular order. Infer from this that the festivals must pass in the order just mentioned before one is guilty of procrastination. R. Simeon says: It was not necessary to repeat "on the Feast of Tabernacles," because the Text was speaking of that festival (when it mentioned the names of the three festivals). Why, then, does it repeat it? To teach us that Tabernacles shall be the last of the three festivals. R. Meir

arrives at his opinion because it is mentioned of each festival "Thou shalt come there (to Jerusalem), and ye shall bring there" (your vows; and this being said of each festival, if one elapses and the vow is not brought, then the law against delay is infringed. The reason of R. Eliezer ben Jacob is, that the passage [Numb. xxix. 39] runs: "These shall ye offer to the Lord on your appointed feasts," and the minimum of the plural word "feasts" is two. On what does R. Elazar b. Simeon base his opinion? We have learned in the following Boraitha: "The Feast of Tabernacles" should not have been mentioned in [Deut. xvi. 16], since the preceding passages (of that chapter) were treating of that feast. Why, then, was it mentioned? To indicate that that particular feast (Tabernacles) is the one that causes the infringement of the law.

What do R. Meir and R. Eliezer ben Jacob deduce from the superfluous passage "on the Feast of Unleavened Bread, on the Feast of Weeks, and on the Feast of Tabernacles"? They use this verse, according to R. Elazar, who says in the name of R. Oshiya, who said: Whence do we know that the law of compensation [1] applies to the Feast of Weeks (although the feast is only one day)? For this very reason the Bible repeats the three festivals, and he institutes a comparison between Pentecost and Passover; and as the law of compensation applies to

Passover for seven days, so also does it apply to Pentecost for seven days. Why, then, do the Scriptures find it necessary to repeat the words, "In the Feast of Tabernacles"? To compare it with the Feast of Passover, as during Passover it was obligatory to stay over night (in Jerusalem), so was it also necessary during the Feast of Tabernacles. But how do we know that it was obligatory during the Feast of Unleavened Bread? It is written [Deut. xvi. 7]: "Thou shalt turn in the morning (after staying over night), and go unto thy tents." Whence do we deduce this? The rabbis taught: It is written [Deut. xxiii. 22]: "When thou shalt vow a vow unto the Lord thy God, thou shalt not delay to pay it." Perhaps these words only apply to a vow. How do we know that they may also be applied to a voluntary offering? In the passage just quoted we read "vow," and in another place [Lev. vii. 16] we find "but if the sacrifice of his offering be a vow or a voluntary offering";

as in the latter instance the "voluntary offering" is included, so is also the former; "unto the Lord thy God," *i.e.*, offerings expressed by "I will give the value of myself," etc., and other objects mentioned above; "thou shalt not slack to pay it"; *i.e.*, the object promised must be given and not anything in exchange for it; [1] "for he will surely require it," *i.e.*, the sin, guilt, burnt, and peace-offerings; "the Lord thy God," these words refer to offerings of charity, tithes, and firstlings; "of thee," this refers to the gleanings, that which is forgotten in the field and the produce of the corner of the field; "and it would be sin in thee," *i.e.*, in thee and not in thy sacrifice (which is not thereby invalidated).

The rabbis taught: It is written [Deut. xxiii. 24]: "What is gone out of thy lips," this refers to the positive commandments (of the Law); "thou shalt keep," refers to the negative commandments; "and perform," is a warning to the Beth Din (that they should enforce the laws); "according as thou hast vowed," refers to vows; "to the Lord thy God," refers to sin, guilt, burnt, and peace-offerings; "voluntarily," means just what it is; "which thou hast spoken," refers to the sanctified objects devoted to the Temple for repairs, etc.; "with thy mouth," refers to charity. Says Rabha: One is culpable if he does not give forthwith that which he has vowed for charity. Why so? Because there are always poor people (needing immediate help). Is this not self-evident? One might suppose that, since the law prohibiting delay is found in connection with the duty of giving charity and also of bringing the various voluntary offerings, it would apply to both, and it would not be infringed until the three festivals had elapsed, he comes to teach us (that charity and sacrifices are different); in the latter case the infringement of the law depends on the festivals, but in the case of charity it must be given immediately, for the poor are always to be found. And Rabha said again: As soon as three festivals have passed (and one has not brought his offering), he daily transgresses the law against delay. An objection was raised. As soon as a year, containing three festivals or not, has passed (he that does not bring his offering), be it a firstling or any of the holy offerings, transgresses daily the law against delay. It is quite possible that the three festivals may elapse and yet a year may not go by (*i.e.*, from Passover till Tabernacles is only

seven months), but how can it happen that a year may pass and the three festivals should not occur (in that time)? It may happen according to those who say (that the three festivals must elapse) in their regular order, but according to those who do not say (that the three festivals must go by) in their regular order, how can such a case occur? This would be correct according to

Rabbi (who holds that the intercalary month 1 is not a part of the year), and it occurs in a leap year, when one consecrates anything (to the Temple) after the Feast of Passover; for when the end of the second Adar has arrived, a year (of twelve months) has elapsed, yet the three festivals have not passed by in their regular order. But how can such a case occur according to the rabbis? It can happen as R. Shemaiah teaches: Pentecost falls on the fifth, sixth, or seventh of Sivan. How is this possible? In a year when the months of Nissan and Iyar have thirty days each, Pentecost falls on the fifth of Sivan; when they each have twenty-nine days, Pentecost falls on the seventh of Sivan; but when the one has twenty-nine days and the other has thirty days, Pentecost falls on the sixth of Sivan.

R. Zera asked: How does the law against delay affect an heir? Shall we argue that the Law says [Deut. xxiii. 22]: "When *thou* shalt vow" (*i.e.*, the testator has vowed), but the heir has not vowed (consequently the law does not apply to him), or shall we infer from the passage [Deut. xii. 5, 6]: "And thither shalt thou come . . . and ye shall bring," that the heir (who is obliged to come) is also in duty bound to bring with him (the objects vowed by the testator)? Come and hear. R. Hyya taught: It is written in this connection [Deut. xxiii. 22]: "Of thee" (*i.e.*, from the one who vowed) and this excludes the heir. But did we not say above that these words refer to the gleanings, etc.? The Text uses the word Me'immokh ("of thee"), which we can explain to mean both the successor and the gleanings, etc. (*i.e.*, all that comes "of thee").

R. Zera also asked: How does the law against delay affect a woman? Shall I say that since she is not obligated to appear (in Jerusalem) the law does not apply to her? or perhaps it is her duty to go there because she is included in the law "to rejoice"? "Certainly," answered Abayi, "she is bound by this law because it is her duty to rejoice."

The schoolmen asked: From when do we count the beginning of the year for a firstling? Answered Abayi: From the moment it is born; but R. Aha b. Jacob said: From the moment it is acceptable as an offering (*i.e.*, when it is eight days old, Lev. xxii. 27). They do not differ, for the former Rabbi refers to an unblemished animal and the latter to one with a blemish. May, then, a blemished animal be eaten (on the day of its birth)? Yes, if we are sure it was born after the full period of gestation.

The rabbis taught: The first of Nissan is the new year for (arranging the) months, for (appointing) leap years, for giving the half shekels, and, some say, also for the rental of houses. Whence do we know (that it is the new year) for months? From the passage [Ex. xii. 2] where it is written: "This month shall be unto you the beginning of months; it shall be the first month of the year to you." It is also written [Deut. xvi. 1]: "Observe the month of Abib" (early stage of ripening). In which month is grain in the early stage of ripening? I can say only Nissan, and the Law calls it the first. Could I not say Adar (when the grain begins to shoot up)? Nay, for the grain must be ripening during the major portion of the month (and in Adar it is not). Is it then written that the grain must be ripening the major portion of the month? Therefore, says Rabhina, the sages do not find (the rule of calling Nissan the first month) in the Pentateuch, but in the Book of Esther, where it is clearly stated [Esther, iii. 7], "In the first month, that is, the month Nissan."

"*For leap years*." Do we, then, count leap years from Nissan? Does not a Boraitha teach us that Adar only is the intercalary month? Answered R. Na'hman b. Itz'hak: The words "FOR LEAP

YEARS" mean here the termination of leap years, [1] and our Tana speaks of the beginning of the leap year and not the end.

"*For giving the half shekels*." Whence do we deduce this? Said R. Yoshiah: In Numb. xxviii. 14: "This is the burnt-offering of the new moon throughout the months of the year." The Scriptures say "*proclaim it a new month*," and also bring a sacrifice from the new products. We make a comparison between the words "year" used in this passage and in Ex. xii. 2,

[paragraph continues] "it shall be the first month of the year to you," and deduce that they both refer to Nissan.

R. Jehudah says in the name of Samuel: It is required that the congregational sacrifices [1] brought on the first of Nissan should be purchased with the shekels collected for the new year; but if the sacrifice was bought with the funds obtained from the former year's funds, it is acceptable, yet the law was but imperfectly complied with. We have also learned the same in a Boraitha with the addition that, if an individual offers from his own property (proper objects for the congregational sacrifices), they are acceptable, but he must first present them to the congregation. Is this not self-evident? Nay, it may be feared that one will not give them to the congregation with a free will, and this, he teaches us, is not worthy of consideration. And the reason that our Tana does not mention that Nissan is a new year for the giving of shekels also, is because it is said above that if one has brought an offering (from the old funds) he has done his duty, therefore he could not make Nissan absolutely binding as a new year for the sacrifices.

It is said above: "And some say also for the rental of houses." The rabbis taught: He who lets a house to another for a year, should count (the year) as twelve months from day to day; but if the lessee says (I rent this house) "for this year," even if the transaction takes place on the first of Adar, as soon as the first of Nissan arrives, the year (of rental) has expired. Can you not say Tishri (is the beginning of the year for such transactions)? Nay, it is generally understood that if a man rents a house in the autumn he rents it for the whole of the rainy season (winter). And the Tana of the first part of the above Boraitha (who does not fix Nissan as the month for rentals), and also our Tana both are of the opinion that in Nissan, too, bad weather sometimes prevails (and therefore Nissan and Tishri are alike in this respect).

"*On the first of Elul is the new year for the cattle-tithes*." According to whose opinion is this? Says R. Joseph: It is according to Rabbi's own opinion which he formed in accordance with the opinions of different Tanaïm. With regard to the festivals he holds with R. Simeon and with regard to the cattle-tithe he holds to the opinion of R. Meir. If that is so, are there not

five beginnings of years instead of four? Rabha answered that the Mishna mentioned only the four, which are not disputed by any one. According to R. Meir there are four, if that "for the festivals" be excluded, and according to R. Simeon there are four, if that "for the cattle-tithes" be excluded. R. Na'hman bar Itz'hak, however, says: (No such explanation is needed); the Mishna means that there are four (months) in which there are (or may be) many beginnings of years.

"*According to R. Eliezer and R. Simeon it is on the first of Tishri*." R. Johanan says: Both of them deduce their opinion by (various interpretations of) the same scriptural passage. It is written [Psalms, lxv. 14]: "The meadows are clothed with flocks; the valleys also are covered with corn; men shout for joy, they also sing." R. Meir thinks (this is the interpretation) of these words: When are the meadows clothed with flocks? At the season when the valleys are covered with corn. And when are the valleys covered with corn? About (the time of) Adar. The flocks conceive in Adar and produce their young in Abh; consequently the beginning of the year (for the cattle-tithe) is Elul. R. Eliezer and R. Simeon, however, say: When are the meadows clothed with flocks? At the season when they shout and sing. When do the ears of corn (seem to) send up a hymn of praise? In Nissan. Now, the sheep conceive in Nissan and produce in Elul, consequently the beginning of the year (for their tithe) is Tishri. But Rabha says: All agree that only Adar is the time when the meadows are clothed with flocks, and the valleys are covered with corn. But they differ about this passage [Deut. xiv. 22]: "Thou shalt truly tithe" (*literally*, "Thou shalt tithe in tithing"), and we see that the text here speaks of two tithes-viz., of cattle and of grain. R. Meir thinks that the following comparison may be instituted between the two: just as the tithe of grain must be given in the month nearest to the time it is reaped, so that of cattle must be given in the month nearest to the one in which they are born (Elul). R. Eliezer and R. Simeon, however, are of the opinion that another comparison may be instituted between these tithes--viz., just as the beginning of the year for giving the tithe of grain is Tishri, so also is Tishri for that of cattle.

"*The first of Tishri is the New Year's Day for ordinary years*." For what purpose is this rule? Answers R. Zera, to determine the equinoxes (and solstices); and this agrees with the opinion of R. Eliezer, who says that the world was created

in Tishri; but R. Na'hman says (it is the new year) for divine judgment, as it is written [Deut. xi. 12]: "From the beginning of the year till the end of the year," *i.e.*, at the beginning of the year it is determined what shall be at the end of the year. But whence do we know that this means Tishri? It is written [Psalms, lxxxi. 3]: "Blow on the new moon the cornet at the time when it (the new moon) is hidden [1] on our solemn feast day." What feast is it on which the moon is hidden? We can only say Rosh Hashana (New Year's Day), and of this day it is written [ibid. v. 4]: "For it is a statute unto Israel, a judgment (day) for the God of Jacob."

The rabbis taught: "It is a statute unto Israel," whence we infer that the Heavenly Court of judgment does not enter into judgment until the Beth Din on earth proclaims the new moon. Another Boraitha states: It is written: "It is a statute unto Israel." From this it appears that (New Year's Day is a day of judgment) only for Israel. Whence do we know it is so also for other nations? Therefore it is written: "It is the day of judgment of the God of Jacob" (the Universal God). Why, then, is "Israel" mentioned? To inform us that Israel comes in for judgment first. This is in accordance with the saying of R. Hisda: If a king and a congregation have a law suit, the king enters first, as it is said [I Kings, viii. 59]: "The cause of his servant (King Solomon) and the cause of his people." Why so? Because it is not customary to let a king wait outside.

"*For the computation of sabbatic years*." On what scriptural passage is this based? On Lev. xxv. 4, which reads: "But in the seventh year there shall be a sabbath of rest unto the land," and he deduces (that it means Tishri) by analogy from the word "year" in this passage and in the following: "From the beginning of the year" [Deut. xi. 12], which surely refers to Tishri.

"*And jubilees*." Do, then, jubilees begin on the first of Tishri? Do they not begin on the tenth, as it is written [Lev. xxv. 9]: "On the Day of Atonement shall ye make the cornet sound throughout all your land"? Our Mishna is in accordance with R. Ishmael the son of R. Johanan ben Berokah of the following Boraitha: It is written [Lev. xxv. 10]: "Ye shall sanctify the year, the fiftieth year." Why was it necessary to repeat the word "year"? Because in the same connection it

is said [ibid. 9]: "On the Day of Atonement shall ye make the cornet sound," and one might suppose that the jubilee is sanctified only from the Day of Atonement (and not before). Therefore the word "year" is repeated to teach us that by the words "ye shall sanctify the fiftieth year" is meant, that from the very beginning of the year the jubilee commences to be consecrated. From this R. Ishmael the son of R. Johanan b. Berokah says: From New Year's Day until the Day of Atonement slaves were not wont to return to their (own) homes, neither did they serve their masters, but they ate and drank and rejoiced with the crown of freedom on their heads. As soon as the Day of Atonement arrived the Beth Din ordered the cornet to be blown and the slaves returned to their own homes, and estates reverted to their (original) owners.

We have learned in another Boraitha: "It is a jubilee" (Jobhel hi). What is meant by (these superfluous words)? Since it is said [Lev. xxv. 10]: "And ye shall sanctify the fiftieth year," one might think that, as at the beginning of the year the jubilee commences to be sanctified, the sanctification should be extended to the (Day of Atonement) after the end of the year; and be not surprised at such a teaching, since it is customary to add from the non-sanctified to the sanctified. Hence the necessity of the words in the passage (next to that quoted above) [Lev. xxv. 11]: "A jubilee shall that fiftieth year be unto you"; *i.e.*, the fiftieth year shall be hallowed, and not the fifty-first, But the rabbis, whence do they derive the regulation that the fifty-first year is not sanctified? Because it is plainly written the fiftieth year and not the fifty-first. This excludes the opinion of R. Jehudah who holds that the jubilee year is added at the beginning and end. [1] The rabbis taught "Jobhel hi (it is a jubilee)," even if the people have not relinquished (their debts), even if the cornet is not sounded; shall we also say even if slaves are not released? Hence the word "hi" is used (to indicate that only when the slaves are released it is a jubilee), so says R. Jehudah. R. Jose says: "It is a jubilee," even if debts are not relinquished and slaves are not released; shall we also say even if the cornet is not sounded? Hence the word "hi" is used (and means the sounding of the cornet). Since one passage includes (all that is prescribed) and the other

passage exempts (certain regulations), why should we say it is a jubilee even if they have not released slaves, but that it is not a jubilee if they failed to sound the cornet? Because it is possible that sometimes (a jubilee may occur) and yet there are no (Hebrew) slaves to release, but a jubilee can never occur without the sounding of the cornet (for a cornet can always be found). Another explanation is, that (the sounding of the cornet) is the duty of the Beth Din (and it will never fail to perform it), while (the releasing of slaves) is the duty of the individual, and we cannot be sure that he will perform it. (Is not the first explanation satisfactory) that he gives this additional explanation? (It may not be satisfactory to some who might say) that it is impossible that not one (Hebrew) slave should be found somewhere to be released. Therefore (the Boraitha adds) that the blowing of the cornet is the duty of the Beth Din (and they will not

fail to perform it).

R. Hyya b. Abba, however, said in the name of R. Johanan: The foregoing are the words of R. Jehudah and R. Jose; but the masters hold that all three conditions may prevent the fulfilment (of the law), because they hold that the word "hi" [Lev. xxv. 10] should be explained as to the subjects mentioned in the passage in which it occurs, and in the preceding and the following passages also, (and in the passage immediately following the "hi" is said, "fields reverted to their original owners." This, then, also constitutes one of the three conditions). But is it not written, "a jubilee," which certainly means to add something not mentioned previously? This additional word refers to the lands outside of Palestine, where the jubilee must also be enforced. If so, what then is the intent of the words "throughout the land"? (They lead us to infer) that at the time when (under a Jewish government) liberty is proclaimed throughout the land (Palestine) it should be proclaimed outside the land; but if it is not proclaimed in the land, it need not be proclaimed outside the land.

"*And also for the planting of trees*." Whence do we deduce this? From Lev. xix. 23, where it is written: "Three years shall it be as uncircumcised," and also [ibid. 24]: "But in the fourth year." We compare the term "year" used here with that of Deut. xi. 12, "from the beginning of the 'year,'" and deduce by analogy that they both mean Tishri.

The rabbis taught: For one who plants, slips or grafts (trees) in the sixth year (the year before the sabbatic year), thirty days

before the New Year's day (as soon as the first of Tishri arrives), a year is considered to have passed, and he is permitted to use, during the sabbatic year (the fruits they may produce), but less than thirty days are not to be considered a year, and the fruits may not be used, but are prohibited until the fifteenth of Shebhat, whether it be because they come under the category of "uncircumcised" or under the category of "fourth year planting" [Lev. xix. 23, 24]. Whence do we deduce this? R. Hyya bar Abba said in the name of R. Johanan or R. Janai: The verse says [Lev. xix. 24, 25]: "And in the fourth year. . . . And in the fifth year," *i.e.*, it may happen that in the fourth year (from the planting, the fruit) is prohibited because it is still "uncircumcised," and in the fifth year (from the planting) because it is still the product of the fourth year.

We have learned R. Eliezer says: In Tishri the world was created, the patriarchs Abraham and Jacob were born and died; Isaac was born on the Passover; on New Year's Day Sarah, Rachel, and Hannah were visited with the blessing of children, Joseph was released from prison, and the bondage of our fathers in Egypt ceased; in Nissan our ancestors were redeemed from Egypt, and in Tishri we shall again be redeemed. R. Jehoshua, says: In Nissan the world was created, and in the same month the patriarchs were born, and in Nissan they also died; Isaac was born on the Passover; on New Year's Day Sarah, Rachel, and Hannah were visited, Joseph was released from prison, and the bondage of our fathers in Egypt ceased. In Nissan our ancestors were redeemed from Egypt, and in the same month we shall again be redeemed.

We have learned in a Boraitha R. Eliezer says: Whence do we know that the world was created in Tishri? From the scriptural verse, in which it is written [Gen. i. 11]: "And God said, 'Let the earth bring forth grass, the herb yielding seed, and the fruit tree,'" etc. In what month does the

earth bring forth grass, and at the same time the trees are *full* of fruit? Let us say Tishri, and that time of the year (mentioned in Genesis) was the autumn; the rain descended and the fruits flourished, as it is written [Gen. ii. 6]: "But there went up a mist from the earth," etc. R. Jehoshua says: Whence do we know that the world was created in Nissan? From the scriptural verse, in which it is written [Gen. i. 12]: "And the earth brought forth grass, and herb yielding seed, and the tree yielding fruit," etc. In which month is the earth covered with grass (and at the same

time) the trees bring forth fruit? Let us say Nissan, and at that time animals, domestic and wild, and birds mate, as it is said [Psalms, lxv. 14]: "The meadows are clothed with flocks," etc. Further says R. Eliezer: Whence do we know that the patriarchs were born in Tishri? From the passage [I Kings, viii. 2]: "And all the men of Israel assembled themselves unto King Solomon at the feast, in the month Ethanim" (strong), which is the seventh month; *i.e.*, the month in which Ethanim, the strong ones of the earth (the patriarchs), were born. How do we know that the expression *ethan* means strength? It is written [Numb. xxiv. 21] *ethan moshabhekha*, "strong is thy dwelling-place," and it is also written [Micah, vi. 2]: "Hear ye, O mountains, the Lord's controversy, and (*ve-haëthanim*) ye strong foundations," etc.

R. Jehoshua, however, says: Whence do we know that the patriarchs were born in Nissan? From I Kings vi. 1, where it says: "In the fourth year, in the month Ziv (glory), which is the second month," etc., which means in that month in which the "glorious ones" of the earth (the patriarchs) were already born. Whether the patriarchs were born in Nissan or Tishri, the day of their death occurred in the same month as that in which they were born; as it is written [Deut. xxxi. 2]: Moses said, 'I am one hundred and twenty years old to-day.' The word "to-day" implies "just this day my days and years are complete," for the Holy One, blessed be He, grants the righteous the fulfilment of the years of their life to the very month and day, as it is said: "The number of thy days will I make full" [Ex. xxiii. 26].

Isaac was born in Nissan. Whence do we know this? It is written [Gen. xviii. 14]: "At the next *festival* I will return to thee, and Sarah will have a son." What festival was it when he said this? Shall I say it was Passover, and he referred to Pentecost? That cannot be, for what woman bears children after fifty days' gestation? If I say it was Pentecost, and he referred to Tishri, a similar objection might be raised, for who bears children after five months' gestation? If I say it was Tabernacles, and he referred to Passover, a similar objection may be made, for who bears children in the sixth month of gestation? This last objection could be answered according to the following Boraitha: We have learnt that that year was a leap year, and Mar Zutra says that although a child born after nine months' gestation is never born during the month (but

only at the end of the required time), still a seven months' child can be born before the seventh month is complete, as it is said [I Sam. i. 20]: "And it came to pass, *li-tequphath ha-yamim* (when the time was come about)"; the minimum of *tequphoth* [1] is two and of *yamim* is also two (*i.e.*, after six months and two days' gestation, childbirth is possible).

Whence do we know that Sarah, Rachel, and Hannah were visited on New Year's Day? Says R.

Elazar: By comparing the expression "visit" that occurs in one passage with the word "visit" that occurs in another passage, and also by treating the expression "remember" in the same way. It is written concerning Rachel [Gen. xxx. 32]: "And God remembered Rachel," and of Hannah it is written [I Sam. i. 19]: "And God remembered her." He institutes an analogy between the word "remember" used in these passages and in connection with New Year's Day, which is called [Lev. xxiii. 24] "a Sabbath, a memorial (*literally*, a remembrance) of blowing of cornets." It is also written concerning Hannah [I Sam. ii. 21]: "And the Lord visited Hannah," and of Sarah it is written [Gen. xxi. 1]: "And the Lord visited Sarah," and by analogy all these events took place on the same day (New Year's Day).

Whence do we know that Joseph was released from prison on New Year's Day? From Psalm lxxxi., in verses 4, 5, it is written: "Blow on the new moon the cornet at the appointed time on the day of our feast, for this is a statute for Israel." In verse 5 of the same Psalm it is written: "As a testimony in Joseph did he ordain it, when he went out over the land of Egypt." On New Year's Day the bondage of our fathers in Egypt ceased. (Whence do we know this?) It is written [Ex. vi. 6]: "I will bring you out from under the burdens of the Egyptians," and it is written in Psalms, lxxxi. 6: "I removed his shoulder from the burden" (*i.e.*, I relieved Israel from the burden of Egypt on the day spoken of in the Psalm; viz., New Year's Day). In Nissan they were redeemed, as previously proven. In Tishri we shall again be redeemed. This he deduces by analogy from the word "cornet" found in the following passages. In Psalm lxxxi. 4, it is stated: "Blow the cornet on the new moon (*i.e.*, on New Year's Day), and in Isa. xxvii. 13, it is written: And on that day the great cornet shall be

blown" (and as it means New Year's Day in the one place, so does it also in the other). R. Jehoshua says: "In Nissan they were redeemed, and in that month we shall be redeemed again." Whence do we know this? From Ex. xii. 42, which says: "It is a night of special observance;" *i. e.*, a night specially appointed since the earliest times for the final redemption of Israel.

The rabbis taught: The Jewish sages calculate the time of the flood according to R. Eliezer, and the solstices according to R. Jehoshua, but the sages of other nations calculate the time of the flood also as R. Jehoshua does.

"*And for herbs*." To this a Boraitha adds "tithes and vows." Let us see. What does he mean by "herbs"? The tithe of herbs. But are not these included with other "tithes"? (Nay, for the tithe of herbs) is a rabbinical institution, while the others are biblical. If so, should he not teach the biblical commandment first? (This is no question), because it was pleasing to him (to have discovered that, although the tithe of herbs is only a rabbinical institution, yet it should have a special New Year to prevent the confusion of tithes from year to year) he, therefore, gives it precedence. And the Tana of our Mishna teaches us the rabbinical institution (viz., the New Year for herbs), leaving us to infer that if that must be observed, so much the more must the biblical law be followed.

The rabbis taught: If one gathers herbs on the eve of New Year's Day before sunset, and gathers others after sunset, he must not give the heave-offering or the tithe from the one for the other, for it is prohibited to give the heave-offering or tithe from the product of the past year for that of the present, of *vice versa*. If the second year from the last sabbatic year was just ending and the third year was just beginning, then for the second year he must give the first and second tithes, [1]

and for the third year he must give the first and the poor tithes. Whence do we deduce that (in the third year no second tithe was to be

given)? R. Jehoshua ben Levi says: In Deut. xxvi. 12, it is written: "When thou hast made an end of the tithe of produce in the third year, which is the year of the tithing," *i.e.*, the year in which only one tithe is to be given." What is to be understood (by one tithe)? The first and poor tithes, and the second tithe shall be omitted. But perhaps it is not so (that the first and poor tithe are one tithe), but that the first tithe shall be also omitted. This cannot be so, for we read [Numb. xviii. 26]: "The tithe which I have given you from them, for your inheritance," etc. (From this we see that) the Scripture compares this tithe to an inheritance, and as an inheritance is the perpetual property of the heir, so also is the first tithe an uninterrupted gift for the Levite.

"*And for vows*." The rabbis taught: Whoso vows to derive no benefit from his neighbor for a year, must reckon (for the year) twelve months, from day to day; but if he said "for this year," if he made the vow even on the 29th of Elul, as soon as the first of Tishri comes, that year is complete, for he vowed to afflict himself and that purpose (even in so brief a period) has been fulfilled. But perhaps we should say Nissan (should be regarded as the new year in such a case)? Nay, in the matter of vows we follow the common practice among men (who generally regard Tishri as the New Year).

We have learned (Maasroth I., 3): We reckon the year for giving the tithe: "for carob as soon as it begins to grow; for grain and olives as soon as they are one-third ripe." What is meant by "as soon as it begins to grow"? When it blossoms. Whence do we know that we reckon the tithe on grain and olives when they are one-third ripe? Said R. Assi in the name of R. Johanan, and the same was said in the name of R. Jose of Galilee: It is written [Deut. xxxi. 10]: "At the end of every seven years, in the solemnity of the year of release, in the Feast of Tabernacles." What has the year of release to do with Tabernacles; it is already the eighth year (because the Bible says "at the end of every seven years")? It is only to tell us that all grain which was one-third ripe before New Year's Day must be regarded even in the eighth year as the product of the sabbatic year. And for this we find support in the following Boraitha: R. Jonathan b. Joseph says: It is written [Lev. XXV. 21]: "And it shall bring forth fruit for three (*lishlosh*) years." Do not read *lishlosh* "for three," but in this case read *lishlish* "for a third" (*i.e.*, it is considered produce when it is a third ripe). But this

verse is required for its own particular purpose. There is another verse [ibid. ibid. 22]: "And when ye sow in the eighth year, then shall ye eat of the old harvest; until the ninth year, until its harvest come in, shall ye eat of the old store."

We have learned in a Mishna (Shebeith, II., 7): Rice, millet, poppies, and lentils which have taken root before New Year's Day come under the category of tithes for the past year, and therefore one is permitted to use them during the sabbatic year; but if they have not (taken root), one is forbidden to use them during the sabbatic year, and they come under the category of tithes of the following year. Says Rabha: Let us see. The rabbis say that the year (for giving tithes) begins as follows: "For a tree from the time they blossom, for grain and olives when they are one-third ripe, and for herbs when they are gathered." Now under which head are the above

(rice, etc.) classed? After consideration Rabha remarked: Since these do not all ripen simultaneously, but are gathered little by little, the rabbis are right when they say they are tithable from the time they take root.

We have learned in a Boraitha: R. Jose of Galilee says: It is written [Deut. xvi. 13]: "When thou hast gathered in thy corn and thy wine." We infer that as corn and wine, now being gathered, grow by means of the past year's rains, and are tithed as last year's (before New Year's Day) products, so every fruit that grows by the rain of last year is tithable as the last year's produce; but herbs do not come under this category, for they grow by means of the rains of the new year, and they are tithable in the coming year. R. Aqiba, however, says that the words "when thou hast gathered in thy corn and thy wine" lead us to infer that as corn and grapes grow chiefly by means of rain, and are tithed as last year's products, so all things that grow chiefly by rain are tithed as belonging to the past year; but as herbs grow even by watering, they are tithed as the next year's products. In what case is this difference of opinion applicable? Said R. Abbuha: In the cases of onions and Egyptian beans; for a Mishna says: Onions and Egyptian beans which have not been watered for thirty days before New Year's Day are tithed as last year's products, and are allowed to be used during the sabbatic year, but if they have been watered, then they are prohibited during the sabbatic year and are tithed as next year's products.

"*On the first of Shebhat is the New Year for trees*." Why

so? Said R. Elazar, in the name of R. Oshyia, because at that date the greater part of the early rains have fallen, although the greater part of the Tequpha is yet to come. The rabbis taught: It once happened that R. Aqiba picked the fruit of a citron tree on the first of Shebhat, and gave two tithes of them, one according to the school of Shammai and one in accordance with the school of Hillel. Says R. Jose b. Jehudah: Nay, Aqiba did not do this because of the school of Shammai or the school of Hillel, but because R. Gamaliel [1] and R. Eliezer were accustomed to do so. Did he not follow the practice of Beth Shammai because it was the first of Shebhat? Said R. Hanina, and some say R. Hanania: The case here cited was one of a citron tree, the fruit of which was formed before the fifteenth of last Shebhat, and he should have given the tithe of it even before the present first of Shebhat, but the case happened to be as cited. But Rabhina said: Put the foregoing together and read the (words of R. Jose) as follows: It did not happen on the first of Shebhat, but on the fifteenth, and he did not follow the regulations of the school of Hillel or the school of Shammai, but the custom of R. Gamaliel and R. Eliezer. Rabba bar Huna said: Although R. Gamaliel holds that a citron tree is tithable from the time it is picked, as is the case with "herbs," nevertheless the new year for tithing it is in Shebhat. R. Johanan asked R. Janai: "When is the beginning of a year for (the tithe on) citrons?" And he said, "Shebhat." "Dost thou mean," said he, "the month Shebhat as fixed by the lunar year or by the solar year (from the winter solstice)?" "By the lunar year," he replied. Rabha asked R. Na'hman, according to another version R. Johanan asked R. Janai: "How is it in leap years (when there are thirteen lunar months)?" And he said: "Shebhat, as in the majority of years." It was taught: R. Johanan and Resh Lakish both say that a citron that has grown in the sixth year and is unpicked at the entrance of the sabbatic year is always considered the product of the sixth year. When Rabhin came (from Palestine) he said, in the name of R. Johanan: A citron that was as small as an olive in the sixth year, but grew to the size of a (small) loaf of bread during the sabbatic year, if one used it without separating the tithe he is culpable because of *Tebhel*. [2]

The rabbis taught: A tree whose fruits formed before the fifteenth of Shebhat must be tithed as the product of the past year, but if they formed after that, they are tithed during the coming year. Said R. Nehemiah: This applies to a tree that looks as if it bore two crops; *i.e.*, whose fruits do not ripen all at once, but at two times. But in the case of a tree that produces but one crop, as, for example, the palm, olive, or carob, although their fruits may have formed before the fifteenth of Shebhat, they are tithed as the products of the coming year. R. Johanan remarked that in the case of the carob people follow the opinion of R. Nehemiah. Resh Lakish objected to R. Johanan: Since white figs take three years to grow fully ripe, must not the second year after the sabbatic year be regarded as the sabbatic year for them? R. Johanan was silent. R. Abba the priest said to R. Jose the priest: I am surprised that R. Johanan should have accepted this query of Resh Lakish without comment.

MISHNA: At four periods in each year the world is judged: on Passover, in respect to the growth of grain; on Pentecost, in respect to the fruit of trees; on New Year's Day all human beings pass before Him (God) as sheep before a shepherd, as it is written [Psalms, xxx. 9]: "He who hath fashioned all their hearts understandeth all their works"; [1] and on Tabernacles judgment is given in regard to water (rain).

GEMARA: What grain (does the divine judgment affect on the Passover)? Does it mean the grain now standing in the field (about to be reaped)? At what time, then, were all the accidents that have happened to it until that time destined (by divine will)? It does not mean standing grain, but that just sown. Shall we say that only one judgment is passed upon it? Have we learned in a Boraitha: If an accident or injury befall grain before Passover it was decreed on the last Passover, but if it happen (to the same grain) after Passover, it was decreed on the immediately preceding Passover; if an accident or misfortune befall a man before the Day of Atonement, it was decreed on the previous Day of Atonement, but if it happened after the Day of Atonement it was decreed on the preceding Day of Atonement? Answered Rabha: Learn from this that judgment is passed twice (in one year, before the sowing and before the reaping). Therefore said Abayi: When a man sees that the

grain which ripens slowly is thriving, he should as soon as possible sow such grain as ripens quickly, in order that before the time of the next judgment it may already have begun to grow.

With whose opinion does our Mishna agree? Not with that of R. Meir, nor with that of R. Jehudah, nor with that of R. Jose, nor with that of R. Nathann, nor with the teaching of the following Boraitha: All are judged on New Year's Day, and the sentence is fixed on the Day of Atonement. So says R. Meir. R. Jehudah says all are judged on New Year's Day, but the sentence of each is confirmed each at its special time--at Passover for grain, at Pentecost for the fruit of trees, at Tabernacles for rain, and man is judged on New Year's Day, and his sentence is confirmed on the Day of Atonement. R. Jose says man is judged every day, as it is written [Job, vii. 18]: "Thou rememberest him every morning"; and R. Nathan holds man is judged at all times, as it is written [ibid.]: "Thou triest him every moment." And if you should say that the Mishna agrees with the opinion of R. Jehudah, and that by the expression "judgment" it means the "confirmation of the decree," then there would be a difficulty about man. Said Rabha: The Tana of our Mishna is in accordance with the school of R. Ishmael of the following Boraitha: At

four periods is the world judged: at Passover, in respect to grain; on Pentecost, in regard to the fruit of trees; on Tabernacles, in respect to rain, and on New Year's Day man is judged, but the sentence passed upon him is confirmed on the Day of Atonement, and our Mishna speaks of the opening of judgment only (and not the final verdict).

R. Hisda asked: "Why does not R. Jose quote the same passage as R. Nathan in support of his opinion?" Because "trying" is not judging. But does not "remembering" also convey the same idea? Therefore said R. Hisda: R. Jose bases his opinion on another passage; viz. [I Kings viii. 59]: "That God may maintain the cause of His servant and the cause of His people Israel *every day*. Said R. Joseph: According to whom do we pray nowadays for the sick and for faint (scholars) every day? According to R. Jose (who maintains that man is judged every day).

We have learned in a Boraitha: R. Jehudah taught in the name of R. Aqiba. Why does the Torah command [Lev. xxiii. 10] a sheaf of the first fruits to be brought on the Passover? Because Passover is the period of judgment in respect to grain, and the Holy One, blessed be He, said: "Offer before Me the

first sheaf of produce on Passover, so that the standing grain may be blessed unto you." And why the two loaves [Lev. xxiii. 17] on the Pentecost? Because that is the time when judgment is passed on the fruit of trees, and the Holy One, blessed be He, said: "Bring before Me two loaves on the Pentecost, so that I may bless the fruits of the tree." Why was the ceremony of "the outpouring of water" (on the altar) performed on the Feast of Tabernacles? Because He said: "Perform the rite of 'the outpouring of waters,' that the rains shall fall in due season." And He also said: "Recite before Me on New Year's Day the Malkhioth, Zikhronoth, and Shophroth; [1] the Malkhioth, that you proclaim Me King; the Zikhronoth, that your remembrance for good may come before Me." And how (shall this be done)? By the sounding of the cornet.

R. Abbahu said: "Why is the cornet made a ram's horn?" The Holy One, blessed be He, said: "Sound before Me on a cornet made of a ram's horn, that I may remember, for your sake, the offering of Isaac, the son of Abraham [*vide* Gen. xxii. 13], and I shall consider even *you* as worthy, as if ye had shown an equal readiness to sacrifice yourselves to Me."

R. Itz'hak said: A man is judged only according to his deeds at the time of sentence, as it is written [Gen. xxi. 17]: "God heard the voice of the lad, as he *then* was," and the same rabbi also remarked: Three circumstances cause a man to remember his sins; viz., when he passes by an insecure wall, when he thinks deeply of the significance of his prayer, and when he invokes divine judgment on his neighbor, for R. Abhin says: Whoso calls down divine judgment on his neighbor is punished first, as we find in the case of Sarah, who said [Gen. xvi. 5] to Abraham: "I suffer wrong through thee, may the Lord judge between me and thee." And shortly after we read (that she died): "And Abraham came to mourn for Sarah and to weep for her" [Gen. xxiii. 2]. (Naturally this only applies to cases where appeal could have been made to a civil court, and the invocation of divine judgment was not necessary. [2]) R. Itz'hak

preached: Four things avert the evil decree passed (by God) on man--viz.: charity, prayer,

change of name, and improvement.

Charity," as it is written [Prov. x. 2]: "Charity delivereth from death. Prayer," in accordance with [Psalms, cvii. 19]: "They cry unto the Lord when they are in distress, and He saveth them out of their afflictions." "Change of name," as it is written [Gen. xvii. 15]: "As for Sarai, thy wife, thou shalt not call her name Sarai, but Sarah shall her name be," and the text continues by saying [ibid. 16]: "Then will I bless her, and give thee a son also of her." "Improvement," we deduce from Jonah, iii. 10: "And God saw their works that they had turned from their evil ways," and immediately adds: "And God bethought Himself of the evil He had said He would do unto them, and He did it not." Some add to these four a fifth, change of location, as it is written [Gen. xii. 1 and 2]: "And God said to Abraham, get thee out from thy land" (and afterwards), "I will make of thee a great nation."

R. Kruspedai said in the name of R. Johanan: Three books are opened on New Year's Day: one for the utterly wicked, one for the wholly good, and one for the average class of people. The wholly righteous are at once inscribed, and life is decreed for them; the entirely wicked are at once inscribed, and destruction destined for them; the average class are held in the balance from New Year's Day till the Day of Atonement; if they prove themselves worthy they are inscribed for life, if not they are inscribed for destruction. Said R. Abhin: Whence this teaching? From the passage [Psalms, lxix. 29]: "Let them be blotted out of the book of the living, and they shall not be written down with the righteous."

We have learned in a Boraitha: The school of Shammai said: There are three divisions of mankind at the Resurrection: the wholly righteous, the utterly wicked, and the average class. The wholly righteous are at once inscribed, and life is decreed for them; the utterly wicked are at once inscribed, and destined for Gehenna, as we read [Dan. xii. 2]: "And many of them that sleep in the dust shall awake, some to everlasting life, and some to shame and everlasting contempt." The third class, the men between the former two, descend to Gehenna, but they weep and come up again, in accordance with the passage [Zech. xiii. 9]: "And I will bring the third part through the fire, and I will refine them as silver is refined, and will try them as gold is tried; and he shall call on My name, and I will answer him."

[paragraph continues] Concerning this last class of men Hannah says [I Sam. ii. 6]: "The Lord causeth to die and maketh alive, He bringeth down to the grave and bringeth up again." The school of Hillel says: The Merciful One inclines (the scale of justice) to the side of mercy, and of this third class of men David says [Psalms, cxvi. 1]: "It is lovely to me that the Lord heareth my voice"; in fact, David applies to them the Psalm mentioned down to the words, "Thou hast delivered my soul from death" [ibid. 8].

Transgressors of Jewish birth and also of non-Jewish birth, who sin with their body descend to Gehenna, and are judged there for twelve months; after that time their bodies are destroyed and burnt, and the winds scatter their ashes under the soles of the feet of the righteous, as we read [Mal. iii. 23]: "And ye shall tread down the wicked, for they shall be as ashes under the soles of your feet"; but as for Minim, informers and disbelievers, who deny the Torah, or Resurrection, or separate themselves from the congregation, or who inspire their fellowmen with dread of them, or who sin and cause others to sin, as did Jeroboam the son of Nebat and his followers, they all descend to Gehenna, and are judged there from generation to generation, as it is said

[Isa. lxvi. 24]: "And they shall go forth and look upon the carcases of the men who have transgressed against Me; for their worm shall not die, neither shall their fire be quenched." Even when Gehenna will be destroyed, they will not be consumed, as it is written [Psalms, xlix. 15]: "And their forms wasteth away in the nether world," which the sages comment upon to mean that their forms shall endure even when the grave is no more. Concerning them Hannah says [I Sam. ii. 10]: "The adversaries of the Lord shall be broken to pieces." R. Itz'hac b. Abhin says: "Their faces are black like the sides of a caldron"; while Rabha remarked: "Those who are now the handsomest of the people of Me'huzza will yet be called the children of Gehenna."

What is meant by Jews who transgress with their *body*? Says Rabh: The *Qarqaphtha* (frontal bone) on which the phylacteries are not placed. 1 And who are meant by non-Jews who

transgress with the *body*? Those guilty of the sin (of adultery). Who are those who inspire their fellowmen with dread of them? A leader of a community who causes the people to fear him overmuch without furthering thereby a high purpose. R. Jehudah said in the name of Rabh: No such leader will ever have a learned son, as it is said [Job, xxxvii. 24]: "Men do therefore fear him: he will never see (in his family) any wise of heart."

The school of Hillel said above: He who is full of compassion will incline the scale of justice to the side of mercy. How does He do it? Answered R. Eliezer: He *presses* on (the side containing our virtues), as it is said [Micah, vii. 19]: "He will turn again, he will have compassion upon us, he will suppress our iniquities." R. Jose says: He *lifts off* (the sins), as it is said [ibid. 18]: "He pardoneth iniquity and forgiveth transgression." And it was taught in the school of R. Ishmael that this means that He removes each first sin (so that there is no second), and this is the correct interpretation. "But," Rabha remarked, "the sin itself is not blotted out, so that if one be found in later times with more sins (than virtues), the sin not blotted out will be added to the later ones; whoso treats with indulgence one who has wronged him (forms an exception to this rule), for he will have *all* his sins forgiven, as it is said [Micah, vii. r8]: "He pardoneth iniquity and forgiveth transgression." From whom does He remove iniquity? From him who forgiveth transgression (committed against him by his neighbor).

R. Huna ben R. Jehoshua fell sick, and R. Papa went to visit him. The latter saw that the end was near, and said to those present: "Make ready his provisions (shrouds)." Finally he recovered, and R. Papa was ashamed to see him. "Why did you think him so sick?" said they. "He was so, indeed," he replied, "but the Holy One, blessed be He, said that since he was always indulgent (with every one), he shall be forgiven," as it is written: "He pardoneth iniquity and forgiveth transgression." From whom docs He remove iniquity? From him who forgiveth transgression.

R. A'h the son of Hanina said: The phrase "of the remnant of his inheritance" [Micah, vii. 18] is like unto a fat tail (of an Arabian sheep) with a thorn through it (that will stick those that lay hold of it); (for He forgives) the *remnant* of His inheritance, and not all His inheritance. What is meant by

remnant? Only those who deport themselves like a remnant (*i.e.*, modestly). R. Huna points out

a contradiction in these passages. It is written [Psalms, cxlv. 171: "The Lord is *just* in all his ways," and in the same passage, "and *pious* in all his works." It means, in the beginning He is only *just*, but in the end He is *pious* (when He finds that strict justice is too severe on mankind He tempers justice with piety or mercy). R. Elazar also points out a contradiction. It is written [Psalms, lxii. 12]: "Unto thee, O Lord, belongeth *mercy*;" and again, "thou renderest to every man *according to his work*." This can be explained as the above: In the beginning He rewards every man according to his works, but in the end He is merciful. Ilphi or Ilpha points out a similar contradiction in [Ex. xxxiv. 6], where it is written "abundant in *goodness* and *truth*," and gives a similar explanation.

It is written [Ex. xxxiv. 6]: "And the Lord passed by before him and proclaimed." R. Johanan said: Had this Passage not been written, it would have been impossible to have said it, for it teaches us that the Holy One, blessed be He, wrapped Himself, as does a minister who recites the prayers for a congregation, and pointing out to Moses the regular order of prayer, said to him: Whenever Israel sins, let him pray to Me, after this manner, and I shall pardon him.

"The Lord, the Lord," (these words mean) I am the same God before a man sins as I am after he sins and does repentance. "God, merciful and gracious." R. Jehudah said (concerning these words): The covenant made through the thirteen attributes [Ex. xxxiv.] will never be made void, as it is said [ibid. 10]: "Behold I make a covenant."

R. Johanan said: Great is repentance, for it averts the (evil) decreed against a man, as it is written [Isa. vi. 10]: "Obdurate will remain the heart of this people. . . . nor hear with their ears, nor understand with their hearts, so that they *repent* and be *healed*." R. Papa asked Abayi: Do not these last words, perhaps, mean before the (evil) decree has been pronounced? It is written, he replied, "be healed." What is that which requires healing? I can only say that against which judgment has been pronounced. An objection was raised from the following Boraitha: He who repents between (New Year's Day and the Day of Atonement) is forgiven, but if he does not repent, even though he offered the choicest sacrifice, he is not pardoned. This presents no difficulty; in the one case it refers to

(the sins of) an individual, and in the other to (those of) a community. Another objection was raised. Come and hear. It is written [Psalms, cvii. 23-28]: "They that go down to the sea in ships, that do business in great waters; these see the works of the Lord . . . for he commandeth, and raiseth the stormy wind, which lifteth up the waves thereof, they reel to and fro, and stagger like a drunken man, . . . then they cry unto the Lord in their trouble, and he bringeth them out of their afflictions; oh, that men would praise the Lord for his goodness," etc. Signs are given, such as the words "but" and "only" in the Scriptures (which intimate limiting qualifications), to indicate that if they cried before the decree was pronounced, only then would they be answered; but if after, they are not answered. (Would not this be a contradiction to the words "to those of a community"?) Nay, for those on a ship are not a community (but are considered as individuals).

Come and hear. The proselyte Beluria (a woman) asked R. Gamaliel (concerning the following apparent contradiction): It is written in your Law [Deut. 17]: "The Lord who regardeth not persons" (*literally*, who lifteth not up countenances); and it is also written [Numb. vi. 26]: "May the Lord lift up his countenance." R. Jose, the priest, joined her, and said to her: "I will tell thee a parable. To what may this be compared? To one who lent money to his neighbor, and set a

time for its repayment before the king, and (the borrower) swore by the king's life (to repay it on time). The time arrived, and he did not pay, and he came to appease the king. Said the king to him, 'I can forgive you only your offence against me, but I cannot forgive you your offence against your neighbor; go and ask him to forgive you.'" So also here; in the one place it means sins committed by a man against Himself (the Lord), but in the other it means sins committed by one man against another. As to the decree pronounced against an individual, the Tanaim differ, however, as we may see from the following Boraitha: R. Meir used to say, of two who fall sick with the same sickness, and of two who enter a tribunal (for judgment) on similar charges, one may recover and one not, one may be acquitted and one condemned. Why should one recover and one not, and one be acquitted and one condemned? Because the one prayed and was answered, and one prayed and was not answered. Why should one be answered and the other not? The one prayed devoutly and was answered, the other did not pray

devoutly and therefore was not answered; but R. Elazar said it was not because of prayer, but because the one prayed *before*, and the other *after* the decree was pronounced. R. Itz'hak said: Prayer is helpful for man before or after the decree has been pronounced. Is it then so that the (evil) decree pronounced against a congregation is averted (through the influence of prayer)? Does not one scriptural verse [Jer. iv. 14] say: "Wash thine heart from wickedness," and another states [ibid. ii. 22]: "For though thou wash thee with nitre, and take thee much soap, yet would the stain of thine iniquity remain before me." Shall we not say in the one case it means *before*, and in the other *after* the sentence has been pronounced? Nay, both refer (to a time) after the decree has been pronounced and there is no contradiction, for in one case it refers to a decree issued with an oath, and in the other to a decree pronounced without an oath, as R. Samuel b. Ami said in the name of R. Jonathan: Whence do we know that a decree, pronounced with an oath, cannot be averted? From the passage [I Sam. iii. 14]: "Therefore I have sworn unto the house of Eli, that the iniquity of Eli's house shall not be purged with sacrifice nor meat-offering forever." Rabha, however, said: Even in such a case it is only through *sacrifices* that sin cannot be purged, but by (the study of) the Law it may be; and Abayi said: With sacrifice and offering it cannot be purged, but by (the study of) the Law, and by active benevolence it can. (Abayi based this opinion on his own experience, for) he and (his master) Rabba were both descendants of the house of Eli; Rabba, who only studied the Law, lived forty years, but Abayi, who both studied the Torah and performed acts of benevolence, lived sixty years. The rabbis tell us also: There was a certain family in Jerusalem whose members died at eighteen years of age. They came and informed R. Johanan ben Zakkai of their trouble. Said he: "Perhaps you are descendants of Eli, of whom it is said, 'all the increase of thy house shall die in the flower of their age'" [I Sam. ii. 33]; "Go, then, study the Law, and live." They went and studied, and they lived, and they called that family R. Johanan's after his name. R. Samuel ben Inya says in the name of Rabh: Whence do we know that if the decree against a community is even confirmed, it may nevertheless be averted? From [Deut. iv. 7] where it is written: "As the Lord, our God, in *all* things that we call upon him for;" (but how can you harmonize that with the passage) [Isa. Iv. 6]: "Seek ye the Lord

while he may be found"? The latter passage refers to an individual, the former to a community. When is that time that He will be found even by an individual? Answered Rabba bar Abbahu: "During the ten days, from New Year's Day till the Day of Atonement."

"*On New Year's Day all the inhabitants of the world pass before him, Kibhne Maron (like sheep)*." What does the Mishna mean by these last two words? "Like sheep," as they are translated in Aramaic, but Resh Lakish says they mean "as the steps of the Temple" (*i.e.*, narrow, so that people ascended them one by one). R. Jehudah, however, said in the name of Samuel: (They mean) "like the armies of the house of David" (which were numbered one by one). Said Rabba bar Bar Hana in the name of R. Johanan: "Under any circumstances they are mustered at a glance. And R. Na'hman bar Itz'hak said: Thus also we understand the words of our Mishna: "He that fashioned all their hearts alike" [Psalms, xxxiii. 15], *i.e.*, the Creator, sees all their hearts (at a glance) and (at once) understands all their works.

MISHNA: Messengers were sent out 1 for the following six months: for Nissan, on account of the Passover; for Abh, on account of the fast; for Elul, on account of the New Year; for Tishri, on account of appointing the order of the (remaining) festivals; 2 for Kislev, on account of the Feast of Dedication; for Adar, on account of the Feast of Passover; also for Iyar, when the Temple was in existence, on account of the minor (or second) Passover. 3

GEMARA: Why were they not, also sent out for Tamuz and Tebheth (in which months there are also fasts)? Did not R. Hana bar Bizna say in the name of R. Sin-peon the pious: What is the meaning of the passage [Zach. viii. 19]: "Thus saith the Lord of hosts; the fast of the fourth, and the fast of the fifth, and the fast of the seventh, and the fast of the tenth shall become in the house of Judah joy and gladness," etc., that they are called fasts, and also days of joy and gladness? Are we not to understand that only in the time of peace (cessation of persecution) they shall be for joy and gladness, but in the time when there was not peace they shall be fasts? Said

[paragraph continues] R. Papa: It means this: When there was peace, these days should be for joy and gladness; in the time of persecution they shall be fasts; in times when there are neither persecution nor peace people may fast or not, as they see fit. If that is so, why then (should messengers have been sent out) on account of the fast of Abh? Said R. Papa: The fast (ninth day) of Abh is different, since many misfortunes occurred on that day, as the master said: "On the ninth of Abh, the first and second Temples were destroyed, Bether was captured, and the city of Jerusalem was razed to the ground."

We have learned in a Boraitha: R. Simeon said: There are four matters that R. Aqiba expounded, but which I interpret differently; "the fast of the fourth" means the ninth of Tamuz, on which the city was broken in, as it is written [Jer. Iii. 6, 7]: "In the fourth, in the ninth day of the month . . . the city was broken in." What does he mean by fourth? The fourth of the months. "The fast of the fifth," means the ninth of Abh, on which the Temple of our Lord was burnt; and what does he mean by calling it fifth? The fifth of the months. "The fast of the seventh" means the third of Tishri, the day on which Gedaliah, the son of Ahikam, was slain (and we fast), because the death of the righteous is equal to the loss of the house of our Lord. And what does he mean by calling it the seventh? The seventh of the months. "The fast of the tenth," means the tenth of Tebheth, the day on which the king of Babylon set himself against Jerusalem, as it is written [Ezek. xxiv. 1, 2]: "Again in the ninth year, in the tenth month, in the tenth day of the month the word of the Lord came unto me saying, Son of man, write thee the name of the day, even of this same day; the king of Babylon set himself against Jerusalem." And what does he mean by calling it the tenth? The tenth of the months, and actually this last event should have been placed first (since it

occurred first). And why is it placed here last in order? To mention the months in their regular order. Said R. Simeon: I, however, do not think so, but thus: "The fast of the tenth" means the fifth of Tebheth, on which day the news came to the exiles that the city was smitten, as it is written [Ezek. xxxiii. 21]: "And it came to pass in the twelfth year of our captivity, in the tenth (month), in the fifth day of the month, that one that bad escaped out of Jerusalem came to me, saying, The city is smitten," and they held the day on which they received the news equal to the day (on which the

Temple) was burnt. And it seems to me that my opinion is more satisfactory, for I speak of the first, first, and of the last, last; while he speaks of the last, first, and of the first, last; he mentions them in the order of the months, while I mention them in the order in which the calamities occurred.

It was taught: Rabh and R. Hanina say: The Rolls of Fasts (which contained the names of minor holidays on which it was prohibited to fast) is annulled, but R. Johanan and R. Jehoshua ben Levi say: "It is not." When Rabh and R. Hanina say that it is annulled they mean: In the time of peace the (fast) days are days of joy and gladness, but in the time of persecution they are fast days, and so also with other (days mentioned in the Rolls of Fasts); and when R. Johanan and R. Jehoshua ben Levi say it is not annulled (they mean) that those (four fasts mentioned in Zachariah) the Bible makes dependent on the rebuilding of the Temple; but those (mentioned in the Rolls of Fasts) remain as they are appointed.

R. Tobi b. Matana objected: In the Rolls of Fasts it is said that on the twenty-eighth of (Adar), the good news came to the Jews that they need no longer abstain from studying the Law, for the king (of Syria had earlier) issued a decree, forbidding them to study the Law, or to circumcise their sons, and compelling them to desecrate their Sabbath. What did Jehudah b. Shamua and his friends do? They went and took counsel of a certain matron, whose house the celebrated people of the city frequented. Said she to them, "Go and cry aloud at night." They did as she advised and cried aloud, "Oh, heavens! Are we not all brethren? Are we not all the children of one Father? Are we not All the children of one mother? Why should we be treated differently from other nations, and from all people who speak other languages inasmuch as ye issue such cruel edicts against us?" The decrees were annulled, and the day (on which this happened) they appointed a holiday. Now if it be true that the Rolls of Fasts has been annulled (*i.e.*, the former [feasts] have been all abrogated), may then new ones be added? There is a difference of opinion among Tanaim on this question, as we have learned in the following Boraitha: The days recorded in the Rolls of Fasts, whether during or after the existence of the Temple. are not permitted (to be kept as fasts), so said R. Meir; R. Jose, however, said, so long as the Temple stood it was not permissible (to fast on them) because they were days of joy, but since the Temple fell it is allowed because they are

days of mourning. One rule says that they are abrogated, but another rule says they are not abrogated. There is a question here caused by one rule contradicting the other. In the latter case it refers to the Feasts of Dedication and Esther (which are never to be abrogated), and in the former case to all other (minor feast) days.

"*For Elul on account of New Year's Day, and for Tishri on account of appointing the order of the (remaining) festivals.*" Since (the messengers) were sent out on account of Elul, why need they go again on account of Tishri? Shall we say because (the Beth Din) desired to proclaim Elul an intercalary month? (That cannot be) for did not R. Hanina bar Kahana say in the name of Rabh: Since the time of Ezra we have not discovered that Elul was an intercalary month? We have not discovered it, because it was not necessary (to make it so). But if it should be necessary, shall we make it an intercalary month? This would disturb the position of New Year's Day. It is better that the position of New Year's Day alone should be disturbed than that all the holidays should be disarranged. And it seems to be so, for the Mishna says that the messengers were sent for Tishri on account of appointing the order of the festivals.

"*And for Kislev on account of Hanuka, and for Adar on account of the Feast of Esther*." But the Mishna does not say if it be a leap year, that the messengers were sent out in the second Adar on account of Purim. From this we learn that the Mishna is not in accordance with Rabbi of the following Boraitha: Rabbi says: "In a leap year messengers are sent out also in the second Adar on account of the Feast of Esther."

When Ula came (from Palestine) he said: They have made Elul an intercalary month, and he also said: "Do my Babylonian comrades know the benefit we have gained through it?" Because of what is this a benefit?" Because of herbs," 1 said Ula. R. A'ha bar Hanina, however, said: "Because of dead bodies." 2 What difference is there between them? They

differ concerning a holiday that falls immediately before or after the Sabbath (on the sixth or first day of the week). According to the one who says "because of herbs" we may add an intercalary day, but (it is not necessary) according to him who says "because of dead bodies," for we can employ non-Jews (to bury the dead for us on the holidays). If this is the case, why is this a benefit only for us (in Babylon); is it not also to the advantage of them (in Palestine)? Our climate is very hot, but theirs is not.

Is this really so? Did not Rabba bar Samuel teach: One might suppose that as we intercalate the *year* when necessary, so we intercalate the *month* when necessary? Therefore it is written [Ex. xii. 2]: "This month shall be unto you the first of the months," which means as soon as you see (the new moon) as on this occasion, you must *consecrate* the month (whether or not it is necessary to *intercalate* it). (How, then, could they intercalate Elul, which had always only twenty-nine days?) To intercalate it (when necessary) was permitted, but to *consecrate* it was not permitted, and Rabba's words should read: One might suppose that as it is permitted to *intercalate the year and the month* when necessary, so we may *consecrate the month* when necessary. Therefore it is written [Ex. xii. 2]: "This month shall be unto you," etc., which means only when the moon is seen as on this occasion, may you *consecrate* it.

Samuel said: "I can arrange the calendar for the whole captivity." Abba, the father of R. Simlai, said to him: "Does the master know that which a certain Boraitha teaches concerning the secret of the intercalary day; viz., whether the new moon appears before or after midday?" Answered he, "No." "Then, master," said he, "if thou dost not know this, there may be other things which thou dost not know." When R. Zera went (to Palestine) he sent back word to his comrade (saying): The evening and the morning (following) must both belong to the month (*i.e.*, when

the old moon has still been seen after dark on the twenty-ninth day of the month, the thirtieth evening and following day belong to the closing month). And this is what Abba, the father of R. Simlai, meant: We calculate only the beginning of the new moon; if it began before midday, it is certain that it was seen close upon the setting of the sun, but if it did not begin before midday, it is certain that it did not appear close upon the setting of the sun. What difference does it make (in practice)? Answered R. Ashi, "to refute witnesses."

R. Zera said in the name of R. Na'hman, in every case of doubt (about the holidays), we post-date, but never ante-date. 1 Does this mean to say that (in a case of doubt concerning the exact day on which Tabernacles begins) we observe the fifteenth and sixteenth, but not the fourteenth. Let us keep the fourteenth also. Perhaps Abh and Elul have each only twenty-nine days? Nay, if two consecutive months should each have twenty-nine days, this would be announced.

Levi went to Babylon on the eleventh of Tishri. Said he: "Sweet is the food of Babylon on the great Day (of Atonement now being held) in Palestine." They said to him, "Go and testify." Answered he, "I have not heard from the Beth Din the words, 'It is consecrated' (and therefore I cannot testify)."

R. Johanan proclaimed: In every place that the messengers sent in Nissan reached, but that the messengers sent in Tishri cannot reach, they must observe two days for the holidays; and they make this restriction for Nissan lest people would do in Tishri as in Nissan. 2 Rabha used to fast two days for the Day of Atonement. 3 Once it happened that he was right (because the Day of Atonement fell one day later in Palestine than in Babylon). R. Na'hman was once fasting on the Day of Atonement, and in the evening a certain man came and said to him, "To-morrow will be the Day of Atonement in Palestine." He angrily quoted, "Swift were our persecutors" [Lam. iv. 19].

R. Na'hman said to certain sailors, "Ye who do not know the calendar take notice that when the moon still shines at dawn (it is full moon, and if it happens to be Nissan) destroy your leaven bread (for it is then the fourteenth day)."

MISHNA: For the sake of (the new moon) of the two months, Nissan and Tishri, witnesses may profane 1 the Sabbath, because in these months the messengers went to Syria, and the order of the festivals was arranged; when, however, the Temple 2 was in existence, they might profane the Sabbath in any month, in order to offer the (new moon) sacrifice in its proper time.

GEMARA: For the sake of these two months and not more? This would be a contradiction to the Mishna above, which states: "For the sake of six months messengers were sent out"? Said Abayi: "This is to be explained thus: For all new moons the messengers were sent out while it was still evening, but for Nissan and Tishri they were not sent out until they heard from the lips of the Beth Din the words, 'It (the new moon or month) is consecrated.'"

The rabbis taught: Whence do we know that for them we may profane the Sabbath? From [Lev.

xxiii. 4], which reads: "These are the feasts of the Lord, which ye shall proclaim in their seasons." Might not one suppose that as (witnesses) were permitted to profane the Sabbath until the new moons had been consecrated, so were messengers permitted to profane the Sabbath until (the festivals) were introduced? This the Law says: Therefore it is written: "Which ye shall proclaim," *i.e.*, you may profane the Sabbath in order to proclaim them, but not to introduce them.

"*When, however, the Temple was in existence*," etc. The rabbis taught: Formerly they profaned the Sabbath for all (new moons), but after the destruction of the Temple, R. Johanan b. Zakkai said to them: "Have we any (new moon) sacrifice to offer? They then instituted that (witnesses) might profane the Sabbath only on account of Nissan and Tishri.

MISHNA: Whether the new moon had appeared clear to all or not (the witnesses) were permitted to profane the Sabbath on its account. R. Jose says: If it appeared clear to every, one, 3 the Sabbath should not be profaned (by witnesses). it once happened that more than forty pair (of witnesses) were on the highway (to the Beth Din) on the Sabbath, when R. Aqiba

detained them at Lydda. R. Gamaliel then sent word saying, "If thou thus detainest the people, thou wilt be the cause of their erring in the future" (*i.e.*, they may refuse to come and testify).

GEMARA: The rabbis taught: It is written [Eccles. xii. 10]: Koheleth sought to find out acceptable words," which signifies that Koheleth sought to enforce decrees without the aid of witnesses or warning. A heavenly voice was heard saying [Eccles. xii. 10]: "And that which was written uprightly, even words of truth" (which meant that) as it is written [Deut. xx. 15]: "Upon the evidence of two witnesses, etc., must a case be established," so should words of truth also be established by two witnesses.

"*It once happened that more than forty pair (of witnesses) were on the highway (to Jerusalem) and R. Aqiba detained them*," etc. We have learned in a Boraitha: R. Jehudah said: It would be a sin to say that R. Aqiba should have detained them. It was Shazpar, the superintendent of Gadar, who detained them, and (and when) R. Gamaliel (heard of it, he) sent and dismissed him.

MISHNA: When a father and son have seen the new moon, they must both go to the Beth Din, not that they may act together as witnesses, but in order that, should the evidence of either of them be invalidated, the other may join to give evidence with another witness. R. Simeon says: Father and son, and relatives in any degree may be accepted as competent witnesses to give evidence as to the appearance of the new moon. R. Jose says: It once happened that Tobias, the physician, his son, and his freed slave saw the new moon in Jerusalem (and when they tendered their evidence), the priests accepted his evidence and that of his son, but invalidated that of his freed slave; but when they appeared before the (Beth Din) they received his evidence, and that of his freed slave, but invalidated that of his son.

GEMARA: Said R. Levi: What is the reason for R. Simeon's decree? It is written [Ex. xii. 1]: "And the Lord spake unto Moses and Aaron saying, This month shall be *unto you*," which means, this evidence shall be acceptable from you (although you are brothers). And how do the rabbis interpret it? They explain it as follows: This testimony shall be placed at your disposal (*i.*

e., the Beth Din's). Says Mar Uqba in the name of Samuel, the Halakha prevails according to R. Simeon.

MISHNA: The following are considered incompetent to be witnesses: gamblers with dice, usurers, pigeon breeders, 1 those who deal with the produce of the sabbatic year, and slaves. This is the rule: All evidence that cannot be received from a woman cannot be received from any of the above. One who has seen the new moon, but is unable to go (to give evidence), must be brought (if unable to walk) mounted on an ass, or even in a bed. 2 Persons afraid of an attack by robbers may take sticks with them; 2 and if they have a long way to go, it will be lawful for them to provide themselves with and carry their food. 2 Whenever (witnesses) must be on the road a day and a night, it will be lawful to violate the Sabbath to travel thereon, to give their evidence as to the appearance of the moon. For thus it is written [Lev. xxiii. 4]: "These are the feasts of the Lord, the holy convocations, which ye shall proclaim in *their appointed seasons*.

Footnotes

1:1 This refers to the law concerning vows. If one made a vow it had to be fulfilled before the three festivals elapsed in the order of Passover, Pentecost, and Tabernacles, as will be explained further on.

1:2 A date had to be appointed in order to keep the tithes of animals born and products of the earth, distinct from year to year.

1:3 Vide Lev. xxv. and Deut. xv.

1:4 With regard to the prohibition of eating fruit of newly planted trees [Lev. xix. 23-25].

1:5 So as not to mix the tithe of herbs from year to year.

1:6 With regard to the tithe due on fruit trees.

1:7 The Gemara fully discusses the reasons for these institutions, but we deem it wise to anticipate, for the sake of clearness.

2:1 No reference should be made after the first of Nissan to the reign of the king just deceased. For instance: it was not permitted to speak of the year beginning with Nissan, as the second year after the death of the king.

3:1 The statement of R. Papa is quoted here, because it is a rule of the Talmud that no comparisons by analogy may be cited unless they emanate from a tradition or teaching known to the master making such a comparison, and this rule applies throughout the Talmud.

3:2 Because the life of the righteous is a protection for the whole people.

5:1 The Rabbis of the Talmud must have had a different version of the book of Haggai from that existing at present. In the second passage quoted, namely Haggai ii. 1, the words "in the second year" cannot be found. There is, therefore, a great difficulty in understanding the discussion. Even Rashi is unable to enlighten us on this point.

5:2 This law of "Thou shalt not slack to pay," is known as "BAL TE'AHER"; *i.e.*, the law against procrastination or delay.

6:1 Lev. xxiii, 22.

7:1 The privilege of bringing on one of the later days of a festival a sacrifice that should have been offered on the first day.

8:1 Lev. xxvii. 32.

9:1 Leap year occurs seven times in a cycle of nineteen years. On such occasions one month, the second Adar, is added to the twelve lunar months.

10:1 As soon as Nissan had been consecrated, there could be no further debate about making the past year intercalary, for once the new month had been called Nissan, it was forbidden to call it by any other name.

11:1 The TAMID or daily offering could not be presented to the Temple by an individual.

13:1 This is the literal translation of the verse in Psalms; the free translation is "at the appointed time," according to Isaac Leeser.

14:1 *i.e.*, the jubilee year is, at the same time, the fiftieth year of the last and the first of the coming series.

18:1 TEQUPHA--Solstice or equinox; hence, the period of three months, which elapses between a solstice and the next equinox, is also called TEQUPHA. Mar Zutra reads the biblical term Tequphoit in the plural.

19:1 Tithes must be given even to-day, according to the Rabbinical law, throughout Palestine and Syria.

It was the duty of the Israelite to give of his produce the following offerings and tithes: (1) THERUMA, a heave-offering, to be given to the priest every year; the measure was not fixed by the Bible; (2) MAÄSER RISHON, or first tithe, to be given every year to the Levite; (3) MAÄSER SHENI, or second tithe, was to be taken in the second year to Jerusalem and eaten

there, or to be converted into money, which was to be spent there; (4) MAÄSER ANI, or the poor tithe, to be given in the third year.

22:1 The opinion of R. Gamaliel is stated a little further on.

22:2 Produce of which the levitical and priestly tithe has not been yet separated, and which must not be used.

23:1 Vide Introduction.

25:1 These are the divisions of the Additional Service for the New Year's Day. The Malkhioth consist of ten scriptural passages in which God is proclaimed King. The Zikhronoth consist of an equal number of scriptural passages in which Divine remembrance is alluded to. The Shophroth are a similar series of selections in which the Shophar (cornet) is referred to. In Chapter IV. of this tract there is a discussion as to the composition of these selections. We retain the Hebrew names, because we feel that no translation or paraphrase will adequately express what they mean.

25:2 This is taken from Tract Baba Kama.

27:1 There were sects at that time who did not wear the phylacteries on the frontal bone, but on other places. The people here referred to are those mentioned in Mishna Megillah III. 5. Those who do not wear phylacteries at all are, under no circumstances, included under the head of these transgressors. (*Vide* Tosaphoth, ad loc.) For fuller information the reader is referred to our "The History of Amulets, Charms, and Talismans" (New York, 1893).

32:1 See Slekalim I. i.

32:2 *e.g.* Tabernacles. This was necessary since the Beth Din might have made the month intercalary.

32:3 *Vide*, Numb. ix. 10, 11.

35:1 By adding an intercalary day to Elul, the holiday (New Year or Atonement Day) was prevented from falling on Friday or Sunday, the intention being to separate the holiday by an intervening day from the Sabbath. Thus, herbs that were to be eaten fresh, and other foods, would not spoil, as they might, if kept from Thursday till after the Sabbath.

35:2 A similar practice was followed with regard to the keeping of a dead body over the Day of Atonement and a Sabbath. Since it was impossible to keep the dead body two days, the Sabbath and the Atonement Day were separated by the means of the intercalated day.

37:1 *i.e.* if there be a doubt about which day is the Passover or the feast of Tabernacles, the festival should be kept for two days; not, however, by *ante-dating* and keeping the *fourteenth* and fifteenth (of Nissan or Tishri) but by *post-dating* and keeping the fifteenth and *sixteenth* of

either month.

37:2 In Tishri, messengers might be delayed reaching distant places, to which they were sent to announce the date of the festival (Tabernacles), on account of New Year's Day and the Day of Atonement, on which they could not travel more than a short distance. in Nissan, however, they could, without delay, reach those places, and having announced the date of the festival, only one day was hallowed. Fearing that people might do, in regard to the Feast of Tabernacles, what they did with regard to Passover (*i.e.*, keep one day, even when in doubt about the date), the Rabbis instituted that both Tabernacles and Passover should have two days hallowed instead of one.

37:3 He was in doubt whether the Beth Din in Palestine had made Elul intercalary or not, and as the messengers did not arrive until after the Day of Atonement, he fasted two days.

38:1 To travel to Palestine in order to inform the Beth Din might have necessitated walking more than the distance permitted on the Sabbath.

38:2 The Temple in Jerusalem.

38:3 It might then be presumed that every one had seen it, and it was therefore unnecessary for any one to go to Palestine to announce it to the Beth Din.

40:1 Those who breed and train pigeons for racing.

40:2 Even on the Sabbath, when under ordinary circumstances this might not be done.

Next: Chapter II.

CHAPTER II.

ORDINANCES ABOUT THE WITNESSES CONCERNING THE NEW MOON, THE HOISTING OF THE FLAGS AND HOW IT WAS CONSECRATED BY THE BETH DIN.

MISHNA: If the witness was unknown another was sent with him to testify to his character. In former times they would receive evidence (about the appearance of the moon) from any one; but when the Boëthusians commenced to corrupt the witnesses the rule was made, that evidence would only be received from those who were known (to be reputable).

GEMARA: What is meant by "another" (in the above Mishna)? Another pair (of witnesses). It seems also to be so from the statement of the Mishna. "If the witness was unknown? Shall we assume that it means one (witness)? Surely the evidence of one was not received, for this transaction was called "judgment" [Psalms, lxxxi.] (and two witnesses are necessary)? What, then, does "the witness" mean? That pair; so also here, "another" means another pair. Is, then, the evidence of one not accepted? Have we not learned in a Boraitha: It once happened that R. Neherai went to Usha on the Sabbath to testify (to the character) of one witness? He knew that there was one witness in Usha, and he went to add his evidence (and thus make two witnesses). If that is so, what does it tell us? One might suppose that, as there was a doubt (that he might not meet the other witness), he ought not to have profaned the Sabbath (by travelling to Usha as a single witness); therefore he comes to teach us (that even in such a case of doubt the Sabbath might be violated).

When Ula came (to Babylon, from Palestine), he said: They have already consecrated the new moon in Palestine. Said R. Kahana: (In such a case) not only Ula, who is a great man, is to be believed, but even an ordinary man. Why so? Because men will not lie about a matter that will become known to every one.

"*In former times they would receive evidence from any one, etc.*" The rabbis taught: How did the Boëthusians corrupt the

witnesses? They once sought to deceive the sages, and they bribed, with four hundred zuz (silver coins), two men, one belonging to their party and one to ours. The former gave his evidence and went out, to the latter they (the Beth Din) said, "Tell us what was the appearance of the moon?" "I went up," replied he, "to Maale Adumim, 1 and I saw it crouching between two rocks. Its head was like a calf, its cars like a goat, its horns like a stag, and its tail was lying across its thigh. I gazed upon it and shuddered, and fell backwards; and if you do not believe me, behold, here I have two hundred zuz bound up in my cloth." "Who induced you to do this?" they asked. "I heard," he replied, "that the Boëthusians wished to deceive the sages; so I said to myself, I will go and inform them, lest some unworthy person may (accept their bribe), and come and deceive

the sages." Then said the sages: "The two hundred zuz may be retained by you as a reward, and he who bribed you shall be taken to the whipping-post (and be punished)." Then and there they ordained that testimony should be received only from those who were known (to be of good character).

MISHNA: Formerly bonfires were lighted (to announce the appearance of the new moon); but when the Cutheans 2 practised their deceit, it was ordained that messengers should be sent out. How were these bonfires lighted? They brought long staves of cedar wood, canes, and branches of the olive tree, and bundles of tow which were tied on top of them with twine; with these they went to the top of a mountain, and lighted them, and kept waving them to and fro, upward and downward, till they could perceive the same repeated by another person on the next mountain, and thus, on the third mountain, etc. Whence did these bonfires commence? From the Mount of Olives to Sartabha, from Sartabha to Grophinah, from Grophinah to Hoveran, from Hoveran to Beth Baltin; they did not cease waving the burning torches at Beth Baltin, to and fro, upward and downward, until the whole country of the captivity appeared like a blazing fire.

GEMARA: The rabbis taught: Bonfires were only lighted to announce the new moon that appeared and was consecrated at the proper time (after twenty-nine days). And when were they lighted? On the evening of the thirtieth day. Does this

mean to say that for a month of twenty-nine days the bonfires were lighted, but not for a month of thirty days? It should have been done for a month of thirty days, and not at all for a month of twenty-nine days. Said Abayi: That would cause the people a loss of work for two days (because they would wait to see if the bonfires would be lit or not and thus lose a second day). 1

"*How were these bonfires lighted? They brought long staves of cedar wood*," etc. R. Jehudah says: There are four kinds of cedars: the common cedar, the Qetros, the olive tree, and the cypress. Qetros says Rabh is (in Aramaic) Adara or a species of cedar. Every cedar, said R. Johanan, that was carried away from Jerusalem, God will in future times restore, as it is written [Isa. xli. 19]: "I will plant in the wilderness the cedar tree," and by "wilderness" He means Jerusalem, as it is written [Isa. lxiv. 19]: "Zion is (become) a wilderness." R. Johanan says again: Who studies the law, and teaches it in a place where there is no other scholar, is equal to a myrtle in the desert, which is very dear. The same says again: "Woe to the Romans, for whom there will be no substitution," as it is written [Isa. lx. 17]: "Instead of the copper, I will bring gold, and for iron I will bring silver, and for wood, copper, and for stones, iron." But what can He bring for R Aqiba and his comrades (who were destroyed by Rome)? Of them it is written [Joel, IV. 21]: "I will avenge (but for) *their* (Aqiba's and his comrades') blood I have not yet avenged."

"*And whence did these bonfires commence?*" From Beth Baltin. What is Beth Baltin? "Biram," answered Rabh. What (does the Mishna) mean by the captivity? Said R. Joseph, "Pumbeditha." And how was it that the whole country looked like a blazing fire? We learn that each Israelite took a torch in his hand and ascended to the roof of his house.

MISHNA: There was a large court in Jerusalem called Beth

[paragraph continues] Ya'azeq, where all the witnesses met, and where they were examined by the Beth Din. Great feasts were made there for (the witnesses) in order to induce them to come frequently. At first they did not stir from there all day (on the Sabbath), 1 till R. Gamaliel, the elder, ordained that they might go two thousand ells on every side; and not only these (witnesses) but also a midwife, going to perform her professional duties, and those who go to assist others in case of conflagration, or against an attack of robbers, or in case of flood, or (of rescuing people) from the ruins (of a fallen building) are considered (for the time being) as inhabitants of that place, and may go (thence on the Sabbath) two thousand ells on every side. How were the witnesses examined? The first pair were examined first. The elder was introduced first, and they said to him: Tell us in what form thou sawest the moon; was it before or behind the sun? Was it to the north or the south (of the sun)? What was its elevation on the horizon? Towards which side was its inclination? What was the width of its disk? If he answered before the sun, his evidence was worthless. After this they introduced the younger (witness) and he was examined; if their testimony was found to agree, it was accepted as valid; the remaining pairs (of witnesses) were asked leading questions, not because their testimony was necessary, but only to prevent them departing, disappointed, and to induce them to come again often,

GEMARA: Do not the questions (asked by the Mishna), "was it before or behind the sun?" and "was it to the north or to the south?" mean the same thing? Answered Abayi: (The Mishna asks) whether the concave of the crescent was before or behind the sun, and if (the witness said) it was before the sun, his evidence was worthless, for R. Johanan says: What is the meaning of the passage [Job, xxv. 2]: "Dominion and fear are with him; he maketh peace in his high places?" It means that the sun never faces the concave of the crescent or the concave of a rainbow.

"*What was its elevation on the horizon? Towards which side was its inclination?*" In one Boraitha we have learned: If (the witness) said "towards the north," his evidence was valid, but if he said, "towards the south," it was worthless; in another Boraitha we have learned the reverse. It presents no difficulty;

in the latter case it speaks of the summer, while in the former it refers to the winter.

The rabbis taught: If one (witness) said its elevation appeared about as high as two ox-goads and another said about as high as three, their testimony was invalid, but either might be taken in conjunction with a subsequent witness (who offered similar testimony). The rabbis taught (If the witnesses say): "We have seen the reflection (of the moon) in the water, or through a metal mirror, or in the clouds," their testimony is not to be accepted; or (if they say we have seen) "half of it in the water, and half of it in the heavens, or half of it in the clouds," their evidence carries no weight. Must they then see the new moon again (before their testimony can be accepted)? Said Abayi: "By this is meant that if the witnesses testify that they saw the moon accidentally, and they then returned purposely and looked for it, but they saw it not, their evidence is worthless." Why so? Because one might say they saw a patch of white clouds (and they thought it was the moon).

MISHNA: The chief of the Beth Din then said: "It (the new moon) is consecrated," and all the

people repeated after him: "It is consecrated; it is consecrated." Whether the new moon was seen at its proper time (after twenty-nine days) or not, they used to consecrate it. R. Elazar b. Zadok said: If it had not been seen at its proper time it was not consecrated, because it had already been consecrated in heaven (*i.e.*, of itself).

GEMARA: Whence do we deduce this? Said R. Hyya b. Gamda quoting Rabbi, in the name of R. Jose b. Saul: It is written [Lev. xxiii. 44]: "Moses declared unto the children of Israel the feasts of the Lord," from which we deduce that (as Moses, who was the chief in Israel, declared the feasts to Israel, so also) the chief of the Beth Din should announce the words, "It is consecrated."

"*All the people repeated after him: It is consecrated; it is consecrated*." Whence do we deduce this? Said R. Papa: It is written [Lev. xxiii. 2]: "Shall proclaim." "Othom" (them). Do not read "Othom," but Athem (ye)--*i.e.*, which ye, all the people, shall proclaim. R. Na'hman b. Itz'hak, however, said: We know it from the words [ibid.]: "*These* are my feasts," *i.e.*, (*these people*) shall announce my feasts. Why are the words "It is consecrated" repeated? Because in the scriptural verse just quoted we find it written "holy convocations"

(*literally*, announcements, and the minimum of the plural expression is two).

"*R. Elazar b. Zadok said: If it had not been seen at its proper time it was not consecrated*," etc. We have learned in a Boraitha, Pelimo 1 said: If the new moon appear at its proper time it was not customary to consecrate it, but if it appeared out of its proper time they used to consecrate it. R. Eliezer, however, said: In neither case would they consecrate it, for it is written [Lev. xxv. 10]: "And ye shall consecrate the fiftieth year;" *years* should be consecrated, but not *months*. Said R. Jehudah in the name of Samuel: "The halakha prevails according to R. Elazer b. Zadok. Said Abayi: There can be a support to this from the following Mishna, viz.: "If the Beth Din and all Israel saw the new moon (on the thirtieth day) and if the examination of the witnesses bad already taken place, and it had become dark before they had time to announce 'It is consecrated,' the month (just passing) is intercalary." That (the month) is intercalary is mentioned (by the Mishna), but not that they said "It is consecrated." It is not clear that this is a support for Abayi's argument, for it was necessary to say that it was intercalary, or we would not have known that the next day was the intercalary day. One might have thought that, since the Beth Din and all Israel saw the new moon, it was apparent to all, and that the month does not become intercalary; therefore he teaches us that (nevertheless the month becomes intercalary).

MISHNA: R. Gamaliel had on a tablet, and on a wall of his upper room, illustrations of the various phases of the moon, which he used to show to the common people, saying: "Did you see the moon like this figure or like this?"

GEMARA: Is this permitted? Have we not learned in a Boraitha that the words "Ye shall not make anything with me" [Ex. xx. 20] mean, ye shall not make pictures of my ministers that minister before me, such as the sun, moon, stars or planets? It was different with R. Gamaliel, for others made it for him. But others made one for R. Jehudah, yet Samuel said to him: "Thou, sagacious one, destroy that figure!" 2 In the latter case the figure was embossed, and he was afraid that one might suspect the owner (of using it as an idol). Need one be

afraid of such suspicion? Did not that synagogue in Shephithibh of Neherdai have a statue (of the king), yet Rabh, Samuel and Samuel's father and Levi went there to pray and were not afraid of being suspected (of idolatry)? It is a different case where there are many. Yet R. Gamaliel was only one. Yea, but he was a prince, and there were always many with him; And if you wish you may say that he had them made for the purpose of instruction, and that which is written [Deut. xviii. 9], "thou shalt not learn to do," means but thou mayest learn, in order to understand and to teach.

MISHNA: It happened once that two witnesses came and said: We saw the moon in the eastern part of the heavens in the morning, and in the western part in the evening. R. Jo'hanan b. Nouri declared them to be false witnesses; but when they came to Yamnia, Rabbon Gamaliel received their evidence as valid. (On another occasion) two other witnesses came and said: We saw the moon on its proper day, but could not see it on the next evening of the intercalary day. R. Gamaliel accepted their testimony, but R. Dosa b. Harkhenas said: They are false witnesses; for how can they testify of a woman being delivered (on a certain day) when on the next day she appears to be pregnant? Then R. Jehoshua said unto him: I approve your opinion. Upon this R. Gamaliel sent him (R. Jehoshua) word, saying: "I order thee to appear before me on the Day of Atonement, according to *your* computation, with your staff and with money." R. Aqiba went to him (R. Jehoshua) and found him grieving. He then said to him: I can prove that all which R. Gamaliel has done is proper, for it is said: "These are the feasts of the Lord, holy convocations which ye shall proclaim," either at their proper time, or not at their proper time, only *their* convocations are to be considered as holy festivals. When he (R. Jehoshua) came to R. Dosa b. Harkhinas, the latter told him: "If we are to reinvestigate the decisions of the Beth Din of R. Gamaliel, we must also reinvestigate the decisions of all the tribunals of justice which have existed from the time of Moses till the present day; for it is said [Ex. xxiv. 9] Moses, Aaron, Nadab, Abihu, and seventy elders went up (to the Mount)." Why were not the names of the elders also specified? To teach us that every three men in Israel that form a Beth Din are to be respected in an equal degree with the Beth Din of Moses. Then did R. Jehoshua take his staff and money in his hand, and went to Yamnia, to

R. Gamaliel, on the very day on which the Day of Atonement would have been according to his computation, when R. Gamaliel arose and kissed him on the forehead, saying: "Enter in peace, my master and disciple! My master--in knowledge; my disciple--since thou didst obey my injunction."

GEMARA: We have learned in a Boraitha that R. Gamaliel said to the sages: "Thus it has been handed down to me from the house of my grandfather (Zamalill the elder) that sometimes the new moon appears elongated and sometimes diminished. R. Hyya saw the old moon yet on the morning of the twenty-ninth day, and threw clods of earth at it, saying: 'We should consecrate thee in the evening, and thou art seen now? Go, hide thyself!'"

Said Rabbi to R. Hyya: "Go to Entob and consecrate the month and send back to me as a password [1] 'David, the King of Israel, still lives.'"

The rabbis taught: Once it happened that the heavens were thick with clouds and the form of the moon was seen on the twenty-ninth of the month (of Elul), so that the people thought that New Year's Day should be then proclaimed, and they (the Beth Din) were about to consecrate it. Said R. Gamaliel to them: Thus it has been handed down to me by tradition, from the house of my grandfather, the consecration of the moon cannot take place at a period less than twenty-nine and a half days, two-thirds and .0052 (*i.e.*, seventy-three 'Halaqim),of an hour. On that self-same day the mother of Ben Zaza died and R. Gamaliel delivered a great funeral oration, 2 not because she specially deserved it, but in order that the people might know that the new moon had not yet been consecrated by the Beth Din.

"*R. Aqiba went to him, and found him grieving*." The schoolmen propounded a question: "Who found whom grieving?" Come and hear. We have learned in a Boraitha: "R. Aqiba went to R. Jehoshua and found him grieving, so he asked him: 'Rabbi, why art thou grieving?' And he answered: 'Aqiba, I would rather lie sick for twelve months than to have this order issued for my appearance.' Rejoined R. Aqiba: 'Rabbi, permit me to say one thing in thy presence which thou thyself hast taught me.' R. Jehoshua granted him permission,

and R. Aqiba proceeded: 'It is written [Lev. xxiii. 2, 4 and 37]: Three times 'shall proclaim Othom (them), which should, however, not be read Othom (them), but Athem (ye), which would make the verse read, "Ye shall proclaim." Now the threefold "*ye*" signifies that even if *ye* were deceived by false pretences and changed the day of the festivals, or even if *ye* did it purposely, or even if *ye* were held to be in error by others--once the dates had been established they must so remain.' With the following words R. Jehoshua answered R. Aqiba: Aqiba, thou hast comforted me; Aqiba, thou hast comforted me.'"

"*When he (Rabbi Jehoshua) came to R. Dosa b. Harkhenas*," etc. The rabbis taught: The reason that the names of those elders are not mentioned, is, in order that one should not say: Is So-and-so like Moses and Aaron? Is So-and-so like Nadabh and Abihu? Is So-and-so like Eldad and Medad? (And how do we know that one should not ask thus?) Because, it is written [i Sam. xii. 6]: "And Samuel said unto the people the Lord that appointed Moses and Aaron "and in the same connection it is written [ibid. 11]: "And the Lord sent Jerubaal and Bedan and Jephtha and Samuel." [Jerubaal is Gideon; and why is he named Jerubaal? Because he strove against Baal. Bedan is Sampson; and why is he named Bedan? Because he came from Dan. Jephtha means just what it is (*i.e.*, he had no surname or attribute).] And it is also written [Ps. xcix. 6]: "Moses and Aaron among his priests, and Samuel among those who called upon his name." The sacred text regards the three common people equal with the three noblest, to teach us that Jerubaal was in his generation like Moses in his; Bedan in his generation was like Aaron in his; Jephtha in his generation was like Samuel in his generation. From all this one must learn that if even the commonest of the commoners is appointed leader by a community, he must be considered as the noblest of the nobility, for it is said [Deut. xvii. 9]: "And thou shalt come unto the priests, the Levites, and unto the judge that shall be in his days." (Why does the passage say "in those days"?) Can you imagine that one could go to a judge who was not in his days? (Surely not! But by these words Scripture teaches us that a judge is to be held "in his days" equal in authority with the greatest of his predecessors.) We find a similar teaching in Eccles. vii. 10: "Say not thou that the former days were better than these!

"*He took his staff,*" etc. The rabbis taught: (R. Gamaliel said to R. Jehoshua): Happy is the generation in which the leaders listen to their followers, and through this the followers consider it so much the more their duty (to heed the teachings of the leaders).

Footnotes

42:1 The name of a place between Jerusalem and Jericho.

42:2 Samaritans.

43:1 The thirtieth day from the last New Moon was always New Moon, but in intercalary months the thirty-first day was also New Moon (second day). In the latter case the thirtieth day (first day of New Moon) belonged to the passing month, and the second day of New Moon was the first day of the new month. Bonfires were always lighted on the night of the thirtieth day, *i. e.*, on the night after New Moon; and if no bonfires were lighted then there were two days New Moon. In the case of the month of Elul they would, after twenty-nine days, observe New Year's Day. Now, if that month happened to be intercalary (*i.e.*, have thirty days) and bonfires would have been lighted, the next day would have had to be observed as New Year's Day again, and the people would consequently have lost a second day.--*Rasht*.

44:1 For if they had already traveled two thousand ells, they were prohibited from journeying more than four cubits more.

46:1 The name of a Tana, a contemporary of Rabbi.

46:2 Literally "put out the eyes of that figure!"

48:1 This device was resorted to, because in the days of Rabbi, the Romans had prohibited the Jews, under penalty of death, to consecrate the moon.

48:2 No funerals or funeral orations were or are permitted on the holidays.

Next: Chapter III.

CHAPTER III.

REGULATIONS CONCERNING THE INTERCALATING OF THE MONTH--THE CORNET, AND OF WHAT IT IS TO BE MADE--AND THE PRAYERS OF THE NEW YEAR'S DAY.

MISHNA: If the Beth Din and all Israel saw (the moon on the night of the thirtieth day), or if the witness had been examined, but there was no time to proclaim "It is consecrated" before it had become dark, the month is intercalary. If the Beth Din alone saw it, two of its members should stand up and give testimony before the others, who shall then say "It is consecrated; it is consecrated." When three who formed a Beth Din saw it, two should stand up and conjoining some of their learned friends with the remaining one, give their testimony before these, who are then to proclaim "It is consecrated; it is consecrated," for one (member of a Beth Din) has not this right by himself alone.

GEMARA: "*If the Beth Din alone saw it*," etc. Why so? Surely hearsay evidence is not better than the testimony of an eye-witness! Said R. Zera: "It refers to a case where they saw it at night (and on the next day they could not consecrate the new moon until they had heard the evidence of two witnesses)."

"*When three who formed a Beth Din, saw it, two should stand up and conjoining some of their learned friends with the remaining one*," etc. Why so? Here also we may say, surely hearsay evidence is not better than the testimony of an eye-witness! And if you would say that this also means where they saw it at night, is this not, then, the same case? The case is the same, but the above statement is required because of the concluding words, "one (member of a Beth Din) has not the right by himself alone;" for it might be assumed, since in civil cases three (are required to constitute a Beth Din), but where he is well known (as a learned authority) one judge may act alone, so here we may consecrate (the new moon) on the authority of one judge; therefore, he teaches us (that three are required). Perhaps I should, nevertheless, say here (that one learned authority

is sufficient)? Nay, for there is no greater authority than Moses, our master, yet God said to him that Aaron should act with him, as it is written [Ex. xii. 1, 2]: "And the Lord spake unto Moses and Aaron, in the land of Egypt, saying: This month shall be unto *you* the beginning of months."

Does this mean to say that a witness may act as judge? And shall we assume that the above Mishna is not according to R. Aqiba, as on following Boraitha: If the members of the Sanhedrin saw a man commit murder, part of them may act as witnesses and part as judges, according to R. Tarphon; but according to R. Aqiba all of them are witnesses, and no witness (of a crime) may act as judge. It may be said that the Mishna is even according to R. Aqiba. In the latter instance

R. Aqiba only refers to capital cases, for it is written [Numb. xxxv. 24, 25]: "Then the congregation shall judge . . . and the congregation shall deliver," and since they saw him commit murder, they will not be able to urge any plea in his favor; but here (concerning the new moon) even R. Aqiba assents (that a witness may act as judge).

MISHNA: Every kind of cornet may be used (on New Year's Day) except those made of cow-horn, because they are called "horn" (*qeren*), and not "cornet" (*shophar*). R. Jose said: Are not all cornets called "horn?" for it is said [josh. vi. 5]: "And it came to pass that when they made a long blast with the horn of the Jobhel."

GEMARA: How comes it that the word Jobhel means ram? A Boraitha teaches: R. Aqiba says: When I went to Arabia I found they called a ram "Yubla."

The rabbis did not know the meaning of the word *Salseleho* in the passage [Prov. iv. 8]: "Salseleho and she shall exalt thee." One day they heard Rabbi's maidservant say to a certain man who was (conceitedly) playing with his hair, "How long wilt thou *mesalsel* (hold up) thy hair?" The rabbis did not know the meaning of the word *yehabhekha* in the passage [Ps. iv. 23]: "Cast yehabhekha (thy burden) upon the Lord." Said Rabba bar Bar Hana: "One day I went with a certain Arabian caravan merchant, and I was carrying a burden. Said he to me: 'Take down *yehabhekha* (thy burden) and put it on my camel.'"

MISHNA: The cornet used on the New Year was a straight horn of a wild goat; the mouth-piece was covered with gold. The two trumpets were stationed one on each side. The sound

of the cornet was prolonged, while that of the trumpet was short, because the special duty of the day was the sounding of the cornet. On the fast days two crooked ram's horns were used, their mouth-pieces being covered with silver, and the two trumpets were stationed in the middle between them. The sound of the cornet was shortened, while that of the trumpet was prolonged, because the special duty of the day was the sounding of the trumpets. The jubilee and New Year's Day were alike in respect to the sounding (of the cornet) and the benedictions, but R. Jehudah says: "On the New Year we blow (a cornet) made of ram's horn, and on the jubilee one made of the horn of a wild goat."

GEMARA: R. Levi said: It is a duty on New Year's Day and the Day of Atonement to use a bent cornet, but during the rest of the year a straight one. But have we not learned that the cornet used on the New Year must be the "*straight* horn of a wild goat?" He (R. Levi) said as R. Jehudah of the following Boraitha: On New Year's Day they used to blow (a cornet) made of a straight ram's horn, and on the Jubilees one made of wild goat's horn. What is their point of variance? R. Jehudah holds that on New Year's the more bent in spirit a man is, and on the Day of Atonement the more upright he is (in his confessions) the better; but R. Levi holds the more upright a man is on New Year's Day and the more bowed in spirit on the Fast Days, the better.

"*The mouth-piece was covered with gold*." Does not a Boraitha teach, however, that if one covers the place to which the mouth was put the cornet may not be used; but if (he covers) another place it may be used? Answered Abayi: "Our Mishna also means a place to which the mouth was not put."

"*The two trumpets were stationed one on each side*." Could the two sounds be easily distinguished? Nay; and therefore the sound of the cornet was prolonged, to indicate that the special duty of the day was the sounding of the cornet.

"*On the Fast-Days two crooked ram's horns were used, their mouth-pieces being covered with silver*." Why was the cornet used in the one case covered with gold and in the other with silver? All (signals for) assemblies were blown on horns made with silver, as it is written [Numb. X. 2]: "Make unto thee two trumpets of silver . . . that thou mayest use them for the calling of the assembly," etc. R. Papa bar Samuel was about to follow the practice prescribed by the Mishna. Said Rabha to

him: "That was only customary so long as the Temple was in existence." A Boraitha also teaches that this applies only to the Temple; but in the country (outside of Jerusalem) in a place where they use the trumpet, they do not use the cornet, and *vice versa*. Such was the wont of R. Halaphta in Sepphoris and also of R. Hanina b. Teradion in Si'hni. When the matter was brought to the attention of the sages they said: "That was the custom only at the eastern gates or the Temple Mount." Rabha, according to others R. Jehoshua ben Levi, asked: "From which passage is this deduced?" From the passage [Psalms xcviii. 6]: "With trumpets and sound of cornet, make a joyful noise before the Lord, the King;" *i.e.*, before the Lord, the King (in the Temple) we need both the trumpets and the cornet, but not elsewhere.

"*The Jubilee, and the New Year were alike in respect to the sounding (of the cornet), and the benediction*." R. Samuel bar Itz'hak said: According to whom do we nowadays pray: "This day celebrates the beginning of thy work, a memorial of the first day?" According to R. Eliezer, who says: The world was created at Tishri. R. Ina objected. Did we not learn in our Mishna that the Jubilee and New Year are alike in respect to the sounding (of the cornet), and the benedictions, and now how can that be so if we say "This day celebrates the beginning of thy work, a memorial of the first day," which is said on New Year, but not on the Jubilee? (That which we have learned in our Mishna that they are alike means) in every other respect but this.

MISHNA: It is unlawful to use a cornet that has been split and afterwards joined together; or one made of several pieces joined together. If a cornet had a hole that had been stopped up, and prevented (the production) of the proper sound, it must not be used; but if it does not affect the proper sound it may be used. If one should blow the cornet inside a pit, a cistern or a vat, and the sound of the cornet was (plainly) heard (by one listening to it) he will have done his duty (to hear the cornet on the New Year), but not if he heard only an indistinct sound. Thus also, if one should happen to pass by a synagogue, or live close by it, and should hear the cornet (on the New Year) or the reading of the Book of Esther (on the Feast of Esther), he will have complied with the requirements of the law, if he listened with proper attention, but not otherwise; and although the one heard it as well as the other, yet the difference (on which everything

depends) is that the one listened with proper attention and the other did not.

GEMARA: The rabbis taught: If a cornet was long and was shortened, it is valid; if one scraped it and reduced it to its due size it is valid; if one covered it on the inside with gold it is invalid; if on the outside and it changed the tone from what it originally was, it is invalid, but if not it is. If a cornet had a hole in it and it was closed up, and thereby prevented (the production) of the proper sound, it is invalid, but if not it is valid; if one placed one cornet inside another and the sound heard (by a listener) was produced from the inner one, he has fulfilled his duty, but if from the outer one, he has not.

"*Or one made of several pieces joined together*." The rabbis taught "If one added to a cornet ever so small a piece, whether it be of the same kind of horn or not, it is invalid. If a cornet had a hole, whether one stopped it up with a piece of the same kind (of horn) or not, it is invalid. R. Nathan, however, said (only when repaired with material) not of the same kind it is invalid, but otherwise if of the same kind it is valid. (To which) R. Jehudah added: "That is, if the greater part of a cornet was broken." From this we can infer that if repaired with material of the same kind, although the greater part was broken, it is, nevertheless, valid.

"If one covered a cornet on the inside with gold it is invalid; if on the outside, and it changed the tone from what it originally was, it is not valid, but if not it is." If a cornet had been split lengthwise it is invalid, but if crosswise, yet enough remained with which to produce the sound, it is valid, but if not it is invalid. (And how much is that? R . Simeon b. Gamaliel explains it to be as much as we may hold in our closed hand, and yet on either side a portion is visible). [1] If its tone was thin, or heavy, or harsh, it is valid, for all tones were considered proper in a cornet. The schoolmen sent a message to the father of Samuel: ("One has fulfilled his duty if he bored a hole in a horn and blew it. That is self-evident! for in every cornet a hole must surely be bored." Said R. Ashi: "If one bored a hole through the bony substance inside the horn (which ought to be removed), are we to suppose that one substance causes an

interposition with another of the same nature (and that therefore it must not be used)?" Therefore they sent to say that this is no objection.

"*If one should blow the cornet inside a pit or a cistern*," etc. R. Huna said: They taught this only in the case of those who stood at the pit's mouth, but those who were in the pit itself fulfill their duty. If one heard a part of (the required number of) the sounds of the cornet in the pit, and the rest at the pit's mouth, he has done his duty; but if he heard a part before the dawn of day, and the rest after the dawn, he has not. Said Abayi to him: Why in the latter case (should he not have done his duty, because he did not hear the whole of the sounds at the time when the duty should be performed), yet in the former case (he is considered to have done his duty) under similar circumstances? How can these cases be compared? In the latter case, *the night is not* the time of performing the obligation at all, while in the former case, *a pit* is a place where the duty may be performed for those who are in it! Shall we say that Rabba held: If one heard the end of the sounding (of the cornet) without having heard the beginning he did his duty, and from these words we must understand that if he heard the beginning without the end he has also done his duty? Come and hear. If one blew the first sound (Tekia) and prolonged the second (Tekia) as long as two, it is only reckoned as one; and (if Rabba's opinion is correct) why should he reckon it as two? (This is no question)! If he heard half the sounds he has done his duty, but when one blows one sound on the cornet we cannot consider it two halves.

Rabha says: One who vows to receive no benefit from his neighbor may nevertheless blow for him the obligatory sounds (of the cornet); one who vows refusal of any benefit from a cornet may blow on it the obligatory sounds. Furthermore, said Rabha: "One who vows to refuse any benefit from his neighbor may sprinkle on him the waters of a sin-offering in the winter, but not in the summer. One who vows to receive no benefit from a spring may take in it a legal bath in the winter, but not in the summer.

The schoolmen sent a message to the father of Samuel: "If one had been compelled to eat unleavened bread (on the first night of Passover, *i.e.*, he had not done so of his own accord) he has also done his duty." Who compelled him? Said R. Ashi: "Persians." Rabha remarked: From this statement we

can prove that if one plays a song on a cornet he does his duty. Is this not self-evident? The cases are similar. One might suppose that in the former case the law commanded him to *eat* (unleavened bread) and he *ate* it, but in the latter case the Torah speaks of "a *remembrance* of blowing the cornet" [Lev. xxiii. 241, and (when he plays a song he does not *remember* his duty for) he is engaged in a worldly occupation. Therefore he teaches us that even under such circumstances he *does* his duty.

To this an objection was raised. We have learned: If one who listened (to the sounds of the cornet) paid the proper attention, but he that blew the cornet did not, or *vice versa*, they have not done their duty until both blower and listener pay proper attention. This would be correct in the case where the blower, but not the listener, pays the proper attention, for it is possible that the listener imagines he hears the noise of an animal; but how can it happen that the listener should pay due attention, and the one who blows (the cornet) should not, except he was only playing a song (by which he does not do his duty)? (It is possible) if he only produced a dull sound (*i.e.*, and not, for example, a Tekia).

Said Abayi to him: "But now, according to thy conclusion (that a duty performed without due attention is the same as if performed with due attention) wilt thou say that he who sleeps in a tabernacle on the eighth day of the Feast of the Tabernacles shall receive stripes (because he had no right to observe the law for more than seven days)?" Answered Rabha: "I say that one cannot infringe a command except at the time when it should be performed." R. Shamen b. Abba raised an objection: Whence do we know that a priest who ascended the platform (to pronounce the priestly benediction) must not say: Since the Torah has given me the right to bless Israel, I will supplement (the benedictions, Numb. vi. 24-26) by one of my own, as, for example [Deut. i. ii]: "May the Lord God of your fathers make you a thousand times so many more as ye are?" From the Torah which says [Deut. iv. 2]: "Ye shall not *add* unto the word." And in this case as soon as he has finished the benedictions the time for performing that duty has gone by; still if he add a blessing of his own he is guilty of infringing the law, which says, "Ye shall not add." This refers to a case of where the priest had not yet finished the scriptural benediction. We have learned, however, that he had finished the scriptural benediction. The Boraitha means to say that he

had finished only one of the (three) benedictions. We have learned in another Boraitha, however, that even if he had completed all three benedictions, and then supplemented one of his

own, he is also guilty of a transgression. In this case it is different, for it might be that the priest would come to another assembly where prayer was held and be called upon to again pronounce the benedictions. Hence it must be assumed that there is no specified time for the priest to pronounce his benedictions, but all day can be considered as the proper time, and thus the priest, by supplementing a benediction of his own, becomes guilty.

R. Shamen bar Abha, however, does not admit that the whole day is the proper time, because the priest is not in duty bound to pronounce the benediction in another assembly. Nevertheless he *is* guilty if he should supplement an additional benediction of his own; whence we see that even if the proper time has passed, guilt is nevertheless incurred, and this is contradictory to Rabha's dictum. Therefore, said Rabha: (I mean), To fulfill the requirements of the law one need not pay attention; to transgress the law against supplementing, at the time prescribed for performing it, also does not require one's special attention; but to transgress the law against supplementing, at the time not prescribed for performance, needs one's special attention. Hence the priest, after completing the scriptural benediction, who says: "Because the law gives me authority I shall supplement a benediction of my own, demonstrates thereby that he does this with special attention, and consequently incurs guilt, even if the prescribed time had passed.

R. Zera said to his attendant: "Pay attention, and sound (the cornet) for me. Do we not thus see that he holds that to fulfill the requirements of the law the act is not enough, and one must pay attention? This is a disputed question among the Tanaïm, for we have learned in a Boraitha: One who hears (the blowing of the cornet) must himself listen in order to perform his duty, and he who blows (the cornet) blows after his usual manner. R. Jose said: "These words are said only in the case of the minister for a congregation; but an individual does not do his duty unless both he that hears and he that blows pay proper attention."

MISHNA: (It is written in Ex. xvii. 11 that) "When Moses held up his hand, Israel prevailed," etc. Could then the hands of Moses cause war to be waged or to cease? (Nay); but

it means that as long as Israel looked to heaven for aid, and directed their hearts devoutly to their Father in heaven, they prevailed; but when they ceased to do so they failed. We find a similar instance also in [Numb. xxi. 8]: "Make unto thee a fiery serpent and set it on a pole, and every one that is bitten, when he looketh upon it shall live." Could, then, the serpent kill or bring to life? (Surely not.) But it means when the Israelites looked (upward) to heaven for aid and subjected their will to that of their Father in heaven they were healed, but when they did not they perished. A deaf mute, an idiot, or a child cannot act in behalf of the assembled congregation. This is the general rule: "Whosoever is not obliged to perform a duty cannot act in behalf of the assembled congregation" (for that duty).

GEMARA: The rabbis taught: All are obliged to hear the sounding of the cornet, priests, Levites and Israelites, proselytes, freed slaves, a hermaphrodite, and one who is half slave and half free. A sexless person cannot act in behalf of those like or unlike itself, but a hermaphrodite can act in behalf of those of the same class, but not of any other.

The Master said: It is said, All are obliged to hear the sounding of the cornet, priests, Levites and Israelites. This is self-evident, for if these are not obliged, who are? It was necessary to

mention priests here, for one might have supposed that since we have learnt "the jubilee and New Year's Day are alike with regard to the sounding of the cornet and the benedictions," that only those who are included under the rule of jubilee are included in the duties of New Year's Day; and as the priests are not included in the rule of jubilee (for they have no lands to lie fallow, etc.), might we not, therefore, say that they are not bound by the duties of New Year's Day? Therefore he comes to teach us (that they must hear the sounding of the cornet).

A'hbha, the son of R. Zera, teaches: "With regard to all the benedictions, although one has already done his duty he may nevertheless act for others, with the exception of the blessings over bread and wine; concerning which, if he has not yet done his duty, he may act for others, but if he has done his duty he must not act for others."

Rabha asked: What is the rule in the case of the benediction of the unleavened bread, and the wine used at the sanctification of a festival? Since these are special duties, may one act for

others, or perhaps the (duty is only the eating of the unleavened bread and the drinking of the sanctification wine); but the benediction is not a duty, and therefore he cannot act for others? Come 'and hear. R. Ashi says: When we were at the home of R. Papa, he said the blessing of sanctification for us, and when his field laborer came from work later he said the blessing for him also.

The rabbis taught: One must not say the benediction over bread for guests, unless he eats with them, but he may do so for the members of the family, to initiate them into their religious duties. With regard to the Service of Praise [Hallel Ps. cxiii.-cxviii.] and the reading of the Book of Esther, although one had already done his duty, he may, nevertheless, act for others.

Footnotes

55:1 The opinion of the editor is that this parenthesis is a fair illustration of the interpolations in the Talmud. The term *Piresh* is not Talmudical and was only used in later times. It has only been left here because the explanation happens to be correct.

Next: Chapter IV.

CHAPTER IV.

REGULATIONS CONCERNING THE NEW YEAR'S DAY WHEN IT FALLS ON SABBATH, AND THE PRAYERS THEREON--THE ORDINANCES OF THE BENEDICTIONS, ETC.

MISHNA: When the feast of New Year happened to fall on the Sabbath, they used to sound (the cornet) in the Temple, but not outside of it. After the destruction of the Temple R. Jo'hanan b. Zakkai ordained that they should sound (the cornet) in every place in which there was a Beth Din. R. Elazar says that R. Jo'hanan b. Zakkai instituted that for Yamnia alone; but they (the sages) say the rule applied both to Yamnia. and every place in which there was a Beth Din. And in this respect also was Jerusalem privileged more than Yamnia, that every city from which Jerusalem could be seen, or the sounding (of the cornet) could be heard, which was near enough, and to which it was allowed to go on the Sabbath, might sound the (cornet) on the Sabbath; but in Yamnia they sounded (the cornet) before the Beth Din only.

GEMARA: Whence do we deduce all this? Said Rabha: The rabbis took a precautionary measure concerning them, as said: Although the duty of sounding (the cornet) is obligatory upon all, yet all are not skilled in sounding (it); therefore they feared lest one might take (the cornet) in his hand, and go to an expert and carry it more than four ells in public ground. The same rule applies to the palm branch (*Iulabh*) and also to the scroll (on which is written the) Book of Esther.

"*After the destruction of the. Temple, R. Jo'hanan b. Zakkai ordained*," etc. The rabbis taught: Once it happened that New Year's Day fell on the Sabbath, and all the cities gathered together. Said R. Jo'hanan b. Zakkai to the Bne Bathera: [1] "Let us sound (the cornet)." "First," said they, "let us discuss." "Let us sound it," replied he, "and then we will discuss." After they had sounded (the cornet) they said to him: "Now let us discuss." He answered: "The cornet

has now been heard in Yamnia, and we cannot retract after the act has been performed."

"*But they (the sages) say the rule applied both to Yamnia and everyplace in which there is a Beth Din*." Said R. Huna: That means in the presence of the Beth Din. Does this preclude people from sounding (the cornet) out of the presence of the Beth Din? And, when R. Itzhak bar Joseph came (from Yamnia) did he not say: When the officiant ministers appointed by the congregation in Yamnia had finished sounding (the cornet) one could not hear his own voice on account of the sounds (of the cornets) used by individuals? (Even individuals) used to sound (the cornet) in the presence of the Beth Din. It was also taught: Rabbi said, "We may only sound (the cornet) during the time that the Beth Din is accustomed to sit."

"*Jerusalem was privileged more than Yamnia*," etc. (When the Mishna speaks of) "Every city from which Jerusalem could be seen," it means with the exception of a city located in the valley (from which it could be seen only by ascending to an elevated spot); by "the sounding (of the cornet) could be heard," it means to except a city located on the top of a mountain; by "which was near enough," it means to exclude a city outside the prescribed limit (of a Sabbath journey); and by "and to which it was allowed to go," it means to exclude a city (even near by) but divided (from Jerusalem) by a river.

MISHNA: Formerly the palm branch (lulabh) was taken to the Temple seven days, but in cities outside (of Jerusalem) it was taken (to the synagogue) one day. Since the destruction of the Temple, R. Jo'hanan b. Zakkai ordained that the palm branch should everywhere be taken seven days, in commemoration of the Temple, and also it should be prohibited (to eat the new produce) the whole day of waving (the sheaf-offering; *vide* Lev. xxiii. 11-15).

GEMARA: Whence do we know that we do things in commemoration of the Temple? It is written [Jer. xxx. 17]: "For I will restore health unto thee, and I will heal thee of thy wounds, saith the Lord, because they called thee an outcast, saying, This is Zion whom no man seeketh after." By implication (we see) that it (Zion or the Temple) needs being sought after (or commemorated).

"*And that it should be prohibited to eat . . . on the whole day of waving (the sheaf-offering),*" etc. R. Na'hman b. Itzhak remarked: R. Jo'hanan b. Zakkai says this according to the

system of R. Jehudah, for it is written [Lev. xxiii. 14]: "And ye shall eat neither parched corn . . . until the self-same day," *i.e.*, until the very day itself, and he holds that whenever the expression "until" (ad) occurs it is inclusive. How can you say the above according to (R. Jehudah); surely he differs from R. Johanan ber Zakkai? As we have learnt in a Mishna: Since the destruction of the Temple R. Johanan b. Zakkai *ordained* that it should be prohibited (to eat of the new produce) the whole of the day of waving (the sheaf-offering). Said R. Jehudah: Is this not prohibited by the passage which says: "Until the self-same day"? R. Jehudah was mistaken; he thought that R. Johanan b. Zakkai taught that (the prohibition) was rabbinical, and it was not so, for R. Johanan also said it was biblical. But does the Mishna not say "he ordained"? Yes; but what does it mean by "he ordained"? (It means) he explained the ordinance.

MISHNA: Formerly they received evidence as to the appearance of the new moon the whole (of the thirtieth) day. Once the witnesses were delayed in coming, and they disturbed the songs of the Levites. They then ordained that evidence should only be received until (the time of) the afternoon service, and if witnesses came after that time both that and the following day were consecrated. After the destruction of the Temple, R. Johanan b. Zakkai ordained that evidence (as to the appearance) of the new moon should be received all day.

GEMARA: What disturbance did they cause to the songs of the Levites? Said R. Zera to A'hbha, his son: Go and teach to them (the Mishna) thus: "They ordained that evidence as to the appearance of the new moon should not be received, only that there might be time during the day to offer the continual and the additional sacrifices and their drink offerings, and to chant the (daily) song without disturbing the order."

We have learned in a Boraitha: R. Jehudah said in the name of R. Aqiba, What (song) did (the Levites) chant on the first day of the week? "The earth is the Lord's and the fulness thereof" [Ps. xxiv.], because He is the Creator, the Providence and the Ruler of the Universe. What did they sing on the second day? "Great is the Lord and greatly to be praised" [Ps. xlviii.], because He distributed His works and reigned over them. On the third day they sang, "God standeth in the congregation of the mighty" [Ps. lxxxii.], because He, in His wisdom, made the earth appear and prepared the world for its

occupants. On the fourth day they sang, "O Lord, to whom retribution belongeth" [Ps. xciv.], because (on that day) He created the sun and moon, and (determined) to punish in the future those who would worship them. On the fifth day they sang, "Sing aloud unto God our strength" [Ps. lxxxi.], because (on that day) He created birds and fish to praise Him. On the sixth day they sang, "The Lord reigneth, He is clothed with majesty" [Ps. xciii.], because (on that day) He finished His works and reigned over them. On the seventh day they sang, "A Psalm or Song for the Sabbath Day" [Ps. xcii.], for the day that is a perfect rest.

Said R. Nehemiah: "Why did the sages make a distinction between these sections (for the last refers to a future event, while all the others refer to the past)? It should have been said that they sang that Psalm on the Sabbath day because He rested!"

What did the Levites sing when the additional sacrifices were being offered on the Sabbath? R. Hanan bar Rabha said in the name of Rabh: Six sections of Deut. xxxii. [1] R. Hanan bar Rabha also said in the name of Rabh: "As these sections were divided (by the Levites), so they are divided for the reading of the law (on the Sabbath on which they are read)." What did they sing at the Sabbath afternoon service? Said R. Jo'hanan: A portion of the Song of Moses [Ex. xv. 1-10]; the conclusion of that song [ibid. 11-19], and the Song of Israel [Numb. xxi. 17].

The schoolmen asked: Did they sing all these on one Sabbath, or did they, perhaps, sing one section on each Sabbath? Come and hear! A Boraitha teaches: During the time that the first choir of (Levites who sang at the time of the additional sacrifice) sang their sections once, the second choir (that sang at that time of the afternoon sacrifice) had sung theirs twice; from this we may deduce that they sang but one section on each Sabbath.

R. Jehudah b. Idi said in the name of R. Jo'hanan: According to the rabbinical explanation of certain scriptural passages the Shekhinah made ten journeys, and according to tradition a corresponding number of times was the Sanhedrin exiled, viz.: from the cell of Gazith (in the Temple) to the market-place,

from the market-place to Jerusalem, from Jerusalem to Yamnia from Yamnia to Usha, from Usha (back again) to Yamnia, from Yamnia (back again) to Usha, from Usha to Shapram, from Shapram to Beth Shearim, from Beth Shearim to Sepphoris, from Sepphoris to Tiberias, and Tiberias was the saddest of them all, as it is written [Is. xxix.]: "And thou shalt be low, and shalt speak out of the earth."

R. Elazar says they were exiled six times, as it is written [Is. xxvi. 5]: "For he bringeth down them that dwell on high; the lofty city he layeth low; he layeth it low even to the ground; he bringeth it even to the dust." Says R. Jo'hanan: And thence (from the dust) they will in future be redeemed, as it is written [Is. lii. 2]: "Shake thyself from the dust; arise, and sit down," etc.

MISHNA: R. Joshua b. Kar'ha said: This also did R. Jo'hanan b. Zakkai ordain: That it mattered not where the chief of the Beth Din might be, the witnesses need only go to the meeting-place (of the Beth Din).

GEMARA: A certain woman was summoned for judgment before Ameimar in Neherdai. Ameimar went away to Me'huzza, but she did not follow him, and he wrote a letter to put her in the ban. Said R. Ashi to Ameimar: "Have we not learned that it mattered not where the chief of the Beth Din might be, the witnesses need only go to the meeting place (of the Beth Din)?" Answered Ameimar: "That is true in respect to evidence for the new moon; but with regard to my action, in which case she has been summoned for debt, 'The borrower is servant to the lender,' and she must come to the place where the chief court is" [Prov. xxii. 7].

The rabbis taught: Priests may not ascend the platform in sandals to bless the people; and this is one of the nine ordinances instituted by R. Jo'hanan b. Zakkai; six are to be found in this chapter, one in the first chapter; another one is, if one become a proselyte nowadays, he must pay a quarter of a shekel for a sacrifice of a bird (so that if the Temple should be rebuilt the authorities would have a contribution from him towards the daily sacrifices). R. Simon b. Elazar, however, said that R. Jo'hanan had already withdrawn this regulation and annulled it, because it easily led to the sin (of using the money for different purposes). And what is the ninth (ordinance of R. Jo'hanan)? R. Papa and R. Na'hman b. Itz'hak dispute about this. R. Papa says it was with regard to a vineyard of the

fourth year's crop; but R. Na'hman b. Itz'hak says it was with regard to the crimson-colored strap (displayed on the Day of Atonement (on the scapegoat).

MISHNA: The order of the benedictions (to be said on New Year is as follows): The blessings referring to the patriarchs (Abhoth), to the mighty power of God (Gebhuroth), and the sanctification of the Holy name; to these he adds the selection in which God is proclaimed King (Malkhioth), after which he does not sound the cornet; then the blessing referring to the sanctification of the day, after which the cornet is sounded; then the biblical selections referring to God's remembrance of His creatures (Zikhronoth), after which the cornet is again sounded; then the biblical selections referring to the sounding of the cornet (Shophroth), after which the cornet is again sounded; he then recites the blessings referring to the restoration of the Temple, the adoration of God, and the benediction of the priests. So is the decree of R. Johanan b. Nouri. Said R. Aqiba to him: If the cornet is not to be sounded after the Malkhioth, why are they mentioned? But the proper order is the following: The blessings referring to the patriarchs (Abhoth), to the mighty power of God (Gebhuroth), and the sanctification of the Holy name; to this last the biblical selections referring to the proclamation of God as King (Malkhioth) are joined, and then he sounds the cornet; then the biblical selections referring to God's remembrance of His creatures (Zikhronoth), and he then sounds the cornet; then the biblical selections referring to the sounding of the cornet (Shophroth), and he again sounds the cornet;

then he says the blessings referring to the restoration of the Temple, the adoration of God, and the priestly benedictions.

GEMARA: The rabbis taught: Whence do we know that we should recite the Malkhioth, Zikhronoth, and Shophroth? Said R. Eliezer: From the passage [Lev. xxiii. 24] in which it is written: "Ye shall have a Sabbathon, a memorial of blowing cornets, a holy convocation," the word "Sabbathon" refers to the consecration of the day; "a memorial" refers to the Zikhronoth; "blowing of cornets" refers to the Shophroth; "a holy convocation" means the hallowing of the day in order to prohibit servile work. Said R. Aqiba to him: Why is not the word "Sabbathon" construed to mean the prohibition of servile work, since the passage (quoted above) begins with that? Therefore, let the passage be interpreted thus: "Sabbathon" means the hallowing of the day and the prohibition of servile work; "memorial"

refers to the Zikhronoth; "blowing of the cornets" refers to the Shophroth "a holy convocation" means the consecration of the day.

Whence do we know that we should recite the Malkhioth? From the following Boraitha: Rabbi said: The words, "I am the Lord your God"; and "in the seven month" (stand together) [Lev. xxiii. 22, 24], which may be interpreted to refer to the proclamation of God as King. R. Jose b. R. Jehudah says it is not necessary to cite this passage; for it is written [Numb. x. 10] "that they may be to you for a memorial before your God: I am the Lord your God." These concluding words "I am the Lord your God" are entirely superfluous, but since they are used, of what import are they? They form a general rule, that in every selection in which (God's) remembrance of His creatures is mentioned there should also be found the thought that He is the King of the Universe.

MISHNA: Not less than ten scriptural passages should be used for the Malkhioth, ten for the Zikhronoth, and ten for the Shophroth. R. Jo'hanan b. Nouri says: If by three of each class, one will have done his duty.

GEMARA: To what do the ten scriptural passages used for the Malkhioth correspond? Answered Rabbi: To the ten expressions of praise used by David in the Psalms. But there are more expressions of praise found? Only those are meant, in conjunction with which it is written "praise him with the sound of the cornet" [Psalm ci. 3]. R. Joseph says: "They correspond to the ten commandments that were proclaimed to Moses on Sinai." R. Jo'hanan said, they correspond to the ten words with which the universe was created.

"*By three of each class, one will have done his duty*." The schoolmen asked: "Does he mean three from the Pentateuch, three from the Prophets, and three from the Hagiographa, which would make nine, and they differ about one (passage)? or perhaps one from the Pentateuch and one from the Prophets and one from the Hagiographa, which would make three, and they differ about many passages?" Come and hear! We have learned in a Boraitha: Not less than ten scriptural passages should be used for the Malkhioth, ten for the Zikhronoth, and ten for the Shophroth; but if seven of them all were recited, corresponding to the seven heavens, the duty has been fulfilled. R. Johanan ben Nouri remarked: He that recites less (than ten of each) should not, however, recite less than seven; but if he recited but three,

corresponding to the Pentateuch, Prophets, and Hagiographa, according to others corresponding to the Priests, Levites, and Israelites, it is sufficient. Said R. Huna in the name of Samuel: The Halakha prevails according to R. Jo'hanan b. Nouri.

MISHNA: We do not cite scriptural passages for the above three series that contain predictions of punishment. The passages from the Pentateuch are to be recited first, and those from the Prophets last. R. Jose, however, says "if the concluding passage is from the Pentateuch one has also done his duty."

GEMARA: Passages, proclaiming the kingdom of God that should not be used (because of the above), are such as the following [Ezekiel, xx. 33]: "As I live, saith the Lord God, surely with a mighty hand, and with a stretched out arm, and with fury poured out, I will rule over you," and although as R. Na'hman says (of this passage): Let Him be angry with us, but let Him take us out of captivity, still, since it refers to anger, we should not mention "anger" at the beginning of the year. An example of the same idea being found in conjunction with the Zikhronoth is to be read in [Ps. lxxviii. 39], "For he remembered they were but flesh;" in conjunction with the Shophroth an example is found in Hosea, v. 8: "Blow ye the cornet in Gibeah," etc.

We must not mention the remembrance of the individual (in the Zikhronoth) even if the passage speaks of pleasant things, as, for example [Ps. cvi. 4], "Remember me, O Lord, with the favor that thou bearest unto thy people." However, passages that contain the expression of "visiting" may be used in the Zikhronoth, *e.g.*, "And the Lord visited Sarah" [Gen. xxi. 1] or "I have surely visited you" [Ex. iii. 16], so says R. Jose; but R. Jehudah says, they may not. But even if we agree to what R. Jose says (shall we say that) the passage "and the Lord visited Sarah" speaks of an individual (and therefore it should not be used)? Nay; since many descended from her, she is regarded as many and therefore that passage, though speaking of one only, is regarded as though it spoke of many.

(In the Malkhioth, they used Ps. xxiv. 7-10, which is divided into two parts.) The first part can be used as two of the required passages, and the second as three, so said R. Jose; but R. Jehudah said: The first part can be used only for one, and the second for two. [1] So too [Ps. xlvii. 7, 9], "Sing praises to God, sing praises, sing praises to our king, sing praises; for God is the

[paragraph continues] King of all the earth." R. Jose said: This may be used for two of the Malkhioth; but R. Jehudah said: "It is to be reckoned as one only." (He rejects one, because the words "our king," referring to one people only, was not a sufficiently broad expression of praise for Him who is the King of the universe.) Both, however, agree that the next verse of the same Psalm, "God is King over the nations; God sitteth upon the throne of his holiness," is to be used for one only. A passage containing a reference to God's remembrance of His creatures and also to the cornet. as for instance [Lev. xxiii. 24], "Ye shall have a Sabbath, a memorial of blowing of cornets," may be used in the Zikhronoth and the Shophroth; so said R. Jose; but R. Jehudah said: It can only be used in the Zikhronoth. A passage in which God is proclaimed King, containing also a reference to the cornet, as for instance [Numb. xxiii. 2 1], "The Lord his God is with him, and the shout (*Teruath*) of a king is among them," may be used in the Malkhioth and in the

Shophroth, said R. Jose; but R. Jehudah said: It may only be used in the Malkhioth. A passage containing a reference to the cornet, and nothing else, as for instance [Numb. xxix. 1], "It is a day of blowing the cornet," may be used for the Shophroth, so said R. Jose; R. Jehudah, however, said: Must not be used at all.

"*The Passages from the Pentateuch are to be recited first and those from the Prophets last*." R. Jose said: "We should conclude with a passage from the Pentateuch, but if one concluded with a passage from the Prophets, one has done his duty." We have also learned: R. Elazar bar R. Jose says: "The Vathiqin [1] used to conclude with a passage from the Pentateuch. It is correct as far as Zikhronoth and Shophroth are concerned, for there are many such passages; but as for the Malkhioth there are but three in the Pentateuch, viz.: "The Lord his God is with him, and the shout of a King is among them" [Numb. xxiii. 21]; "And he was king in Yeshurun" [Deut. xxxiii. 5]; and "The Lord shall reign forever" [Ex. xv. 18], but we require ten and there are not so many? Said R. Huna: We have learned that, according to R. Jose, the passage, "Hear, O Israel, the Lord our God is one" [Deut. vi. 4], may be considered as Malkhioth, but R. Jehudah said, it may not; so also they differ with regard to the passages, "Know, therefore, this day, and consider it in thine

heart, that the Lord, he is God; there is none else" [Deut. iv. 39], and "Unto thee it was shewed, that thou mightest know that the Lord, he is God; there is none else beside him" [Deut. iv. 35]. According to the one they are considered Malkhioth, but according to the other not.

MISHNA: The second of those who act as ministers of the congregation on the feast of New Year shall cause another to sound the cornet; on days when the HALLEL (Service of Praise, Ps. cxiii.-cxviii.) is read, the first (minister) must read it. In order to sound the cornet on New Year's Day it is not permitted to go beyond the Sabbath limit, to remove a heap of stones, to ascend a tree, to ride on an animal, to swim over the waters, nor to cut it (the cornet) with anything prohibited either by the (Rabbinical) laws against servile work or by a Biblical negative commandment; but if one wishes to put water or wine in a cornet (to cleanse it) he is allowed to. Children must not be prevented from sounding the cornet, but on the contrary we are permitted to occupy ourselves with teaching them until they learn to sound it; but one who thus teaches, as also others who listen to sounds thus produced, do not thereby fulfil their duty.

GEMARA: What is the reason of the above prohibitions? Because the sounding of the cornet is a positive commandment; now, the observance of a festival involves both positive and negative commandments, and the one positive cannot supersede two (negative and positive.)

"*Children must not be prevented from sounding the cornet,*" etc. But women are to be prevented? Have we not learned in a Boraitha: Neither women nor children may be prevented from sounding the cornet on the New Year's Day? Said Abayi: "It presents no difficulty, the one is according to R. Jehudah and the other is according to R. Jose and R. Simeon, who say that as women are permitted (in the case of sacrifices) to lay their hands on the animals, so here, if they desire to sound the cornet, they may.

"*Until they learn*." Said R. Elazar: Even on the Sabbath; so also we have learned in the following Boraitha: We are permitted to occupy ourselves with teaching (children) until they

learn (to sound the cornet) even on the Sabbath: (and if we do not prevent them doing this on the Sabbath) how much less do we, on the feast (of New Year). Our Mishna says, "We do not prevent them" (from this we may infer that we do not start to tell to a child: Go and sound the cornet)? It presents no difficulty: a child already initiated in the performance of religious

may be told also: Go and sound! but not a child not yet initiated; however, we do not prevent him.

MISHNA: The order of sounding the cornet is three times three. The length of a TEQIA is equal to that of three TERUOTH, and that of each Terua as three moans (YABABHOTH). If a person sounded a Teqia and prolonged it equal to two, it is only reckoned as one Teqia. [1] He who has just finished reading the benedictions (in the additional service for the New Year) and only at that time obtained a cornet, should then blow on the cornet the three sounds three times. As the Reader of the congregation is in duty bound (to sound the cornet) so too is each individual; R. Gamaliel, however, said the Reader can act for the congregation.

GEMARA: But have we learned in a Boraitha, that the length of a Teqia is the same as that of a Terua? Said Abayi: The Tana of our Mishna speaks of the three series, and means that the length of all the Teqioth is the same as that of all the Teruoth. But the Tana of the Boraitha speaks of only one series and says that one Teqia is equal to one Terua (which is the same thing).

"*Each Terua is (as long, as) three moans*." But we have learned in a Boraitha, a Terua is as long as three broken (staccato) tones (SHEBARIM). Said Abayi: About this they do indeed differ, for it is written [Numb. xxix. i], "It is a day of blowing the cornet," which in the (Aramaic) translation of the Pentateuch is, "It is a day of sounding the alarm (YABABA). Now it is written concerning the mother of Sisera [Judg. V. 28], "The mother of Sisera . . . . moaned" (VAT'YABEB); this word, one explains to mean a protracted groan, and another to mean a short wail.

The Rabbis taught: Whence do we know (that one must sound) with a cornet? From the passage [Lev. xxv. 9], "Thou shalt cause *the cornet* . . . . to sound, etc." Whence do we know that (after the Terua) there should be one Teqia? Therefore it is said (later in the same verse), "Ye shall make the cornet sound." [2] But perhaps this only refers to the jubilee? Whence do we know that it refers also to New Year's Day? Therefore it is written (in the same verse) "in the seventh month." These

words are superfluous; for what purpose then does the Torah use them? To teach us that all the sounds of the cornet during the seventh month should be like each other. Whence do we know that the sounds are to be three times three? From the three passages, "Thou shalt cause the cornet . . . to sound" [Lev. xxv. 9]; "A Sabbath a memorial of blowing of cornets" [Lev. xxiii. 24]; "It is a day of blowing the cornet" [Numb. xxix. i]. But the Tana of the following Boraitha deduces it by analogy of expression from (the rules given in) the wilderness [Numb. x, 1-10]. As we have learned, the words "When ye sound an alarm" [Numb. x. 5] mean one Teqia and one Terua. Whence do we know that they shall be separated, perhaps it means that both together

should be sounded? Since it is written [ibid. 7]: "But when the congregation is to be gathered together, ye shall blow but ye shall not sound an alarm," we may infer that they must be separated, a Teqia by itself, and a Terua by itself. But whence do we know that there should be one Teqia before the Terua? From the words [ibid. 5]: "When ye sound an alarm" (*i.e.*, first a "sound," or Teqia, and then an "alarm," or Terua). And whence do we know that there should be one after the Terua? From the words [ibid. 6]: "An alarm shall they sound!" R. Ishmael, the son of R. Jo'hanan bar Berokah, however, says: It is not necessary, as it is written: "When ye sound an alarm the second time" [ibid. 6]. The words "a second time" are unnecessary, and to what purpose are they used? To form a general rule that on every occasion on which "alarm" (Terua) is mentioned, a sound (Teqia) must be used with it as a second (or following) tone. Possibly all this only refers to the practices followed in the wilderness, but how do we know that they refer to New Year's Day also? Therefore it is written: Terua twice to make us infer by an analogy of expression, and as concerning the New Year Terua is written thrice in the three passages, [Lev. xxiii. 24]: "A sabbath, a memorial of cornets"; [Numb. xxix. 1]: "It is a day of blowing of cornets"; and [Lev. xxv. 9]: "Thou shalt cause the cornet . . . to sound"; and for each Terua there are two Teqioth, we therefore learn that on New Year's Day must be sounded three Teruoth and six Tekioth.

R. Abbahu enacted in Cæsarea that the order should be first a Teqia 1 then three single staccato sounds, or Shebharim, then a

[paragraph continues] Terua and then again a Teqia. At all events it is not right: If by Terua is meant "a protracted groan" then he should have instituted the order to be a Teqia, a Terua, and then a Teqia; and if it means "a short wail," then he should have instituted the order to be, a Teqia, then Shebharim (three single broken sounds), and then again a Teqia? He was in doubt whether it meant one or the other (and therefore he enacted that both should be sounded).

"*If a person sounded a teqia and prolonged it equal to two*," etc. R. Jo'hanan says: If one heard the nine sounds at nine different hours during the day, he has fulfilled his duty. The same we have learned in the following Boraitha: "If one heard the nine sounds at nine different hours of the day it is sufficient, and if he heard from nine men at one time, a Teqia from one and a Terua from another, etc., he has also done his duty, even if he heard them intermittently, and even during the whole day or any part of the day." The rabbis taught: (Generally) the soundings of the cornet do not prevent each other (if one can blow a *Teqia*, but not a *Terua*, or pronounce one benediction and not another, it might be said he should not blow or pronounce any benediction at all. We are taught that the one does not prevent the other on the fasts of the congregation and other occasions when these are needed), nor do the benedictions; but on New Year's Day and the Day of Atonement they do.

"*He who has just finished reading (the additional service) and only at that lime obtained a cornet shall sound on the cornet the three sounds three times*." This means, only when he did not have a cornet at the beginning (of the service): but if he had one at the beginning of the service when the sounds of the cornet are heard, they must be heard in the order of the benedictions of the day.

R. Papa bar Samuel rose to recite his prayers. Said he to his attendant, When I nod to you sound (the cornet) for me. Rabha said to him: "This may only be one in the congregation." We have

learned in a Boraitha in support of this: "When one hears these sounds, he should hear them both in their order and in the order of the benedictions (in the additional service of the New Year)." This only applies to a congregation, but one should hear them in the order of the benedictions only, if he is not in a congregation; and a private individual who has not sounded the cornet (or heard it sounded) can have a friend sound

it for him; but a private individual who has not recited the benedictions cannot have a friend say them for him; and the duty to hear the cornet sounded is greater than that of reciting the blessings. How so? If there be two cities (to which a person may go) and in one city they are about to sound the cornet and in the other to recite the benedictions, he should go to the city in which they are about to sound the cornet; and not to that in which they are about to recite the benedictions. Is this not self-evident, because the sounding is Biblical and the benedictions are only Rabbinical? The case is when the reciting of the benedictions in one city was certain; sounding the cornet in the other city was doubtful. He must nevertheless go to the city where they are about to sound the cornet.

"*Just as the reader of the congregation is in duty bound (to sound the cornet) so too is each individual*." We have learned in a Boraitha: The schoolmen said to R. Gamaliel, Why according to thy opinion should the congregation pray? Answered he: In order to enable the Reader of the congregation to arrange his prayer. Said R. Gamaliel to them: "But why, according to your opinion, should the Reader act for the congregation?" Answered they: "In order to enable those who are not expert to fulfil their duty." And he rejoined: "Just as he enables the illiterate, so too he causes the literate to fulfil their duty." Rabba bar bar 'Hana said in the name of R. Johanan: The sages later accepted the opinion of R. Gamaliel; but Rabh said there is still a difference between them; could (the same) R. Jo'hanan say this? Did not R. 'Hana of Sepphoris say in the name of R. Jo'hanan: "The Halakha prevails according to R. Gamaliel; "from these words ("the Halakha prevails according to R. Gamaliel") we see that there must have been some that differed from him! Said R. Na'hman b. Itz'hak: "By the words, "*the sages* accept the opinion of R. Gamaliel," R. Meir is meant, and the rule arrived at through those who differed from him (was arrived at) through other rabbis; for we have learned in the following Boraitha: R. Meir holds that with regard to the benedictions of New Year's Day and the Day of Atonement, the Reader can act for the congregation; but the sages say: "Just as the Reader is in duty bound, so too is each individual." Why only for these benedictions (and no other)? Shall we assume it is because of the many Biblical selections used? Does not R. 'Hananel say in the name of Rabh: As soon as one has said (the passages beginning with) the words, "And in thy law it is written,"

he need say no more? It is because there are many (more and longer) benedictions (than usual).

It was taught, R. Jehoshua ben Levi said: Both the private individual and the congregation as soon as they say (the passages beginning) with the words, "And in thy law it is written," need say no more.

R. Elazar says: A man should always first prepare himself for prayer and then pray. R. Abba said: "The remarks of R. Elazar seem to apply to the benedictions of New Year's Day and the Day of Atonement, and to the various holidays, but not to the whole year." It is not so; for did

not R. Jehudah prepare himself (even on a week day) before his prayers and then offer them? R. Jehudah was an exception, for since he prayed only once in thirty days, it was like a Holiday. When Rabbin came (from Palestine) he said in the name of R. Jacob bar Idi quoting R. Simeon the Pious: R. Gamaliel did not excuse from public service any but field-laborers! What is the difference (between them and others)? They would be forced to lose their work (if they went to a synagogue), but people in a city must go (to the House of Prayer).

END OF TRACT "NEW YEAR".

Footnotes

61:1 A scholarly family of Babylonian descent, much favored by Herod.

64:1 i-vii.; viii-xiii.; xiv.-xix.; xx.-xxvii.; xxviii.-xxxvi.; xxxvii.-xliv. These passages are called Hazyv Lakh because the initial letters are H, Z, V, V, L, KH.

68:1 He excludes the two interrogative sentences, "Who is the king of glory?"

69:1 A sect similar to Hasidim.

71:1 The cornet is sounded three times, corresponding to the Malkhioth, Zikhronoth, and Shophroth. The order of the sounds is Teqia, Terua, Teqia; Teqia, Terua, Teqia, etc. The case here supposed is that the one who sounded the cornet sustained the second Teqia as long as two Teqioth, intending thereby to sound the second and third Teqioth. This, we see, is not permitted.

71:2 The Hebrew words UTHEQATEM TERUA are interpreted to mean that first a Teqia should be sounded. and then a Terua.

72:1 The Teqia is a long tone produced by sounding the cornet. The Terua is a long tremulous sound. The Shebharim consists of three short staccato sounds.

The Babylonian Talmud

Translated by
MICHAEL L. RODKINSON

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Tract Baba Bathra (Last Gate)

Tract Baba Bathra, Part I

Tract Baba Bathra, Part II

NEW EDITION

OF THE

BABYLONIAN TALMUD

Original Text, Edited, Corrected, Formulated and Translated into English

BY

MICHAEL L. RODKINSON

SECTION JURISPRUDENCE (DAMAGES)

TRACT BABA BATHRA

(LAST GATE, PART I.)

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EXPLANATORY REMARKS.

In our translation we adopted these principles:

I. *Tenan* of the original--We have learned in a Mishna; *Tania*--We have learned in a Boraitha; *Itemar*--It was taught.

2. Questions are indicated by the interrogation point, and are immediately followed by the answers, without being so marked.

3. When in the original there occur two statements separated by the phrase, *Lishna achrena* or *Waïbayith Aema* or *Ikha d'amri* (literally, "otherwise interpreted:), we translate only the second.

4. As the pages of the original are indicated in our new Hebrew edition, it is not deemed necessary to mark them in the English edition, this being only a translation from the latter,

s. Words or passages enclosed in round parentheses ( ) denote the explanation rendered by Rashi to the foregoing sentence or word. Square parentheses [ ] contain commentaries by authorities of the last period of construction of the Gemara.

TO HIM

WHO FOR HIS PHILANTHROPY AND HUMANITY IS BELOVED AND

HIGHLY PRAISED BY THE PEOPLE OF GREATER

NEW YORK AND COUNTRY

THE HONORABLE SAMUEL GREENBAUM

JUSTICE OF SUPREME COURT

THIS VOLUME IS RESPECTFULLY DEDICATED BY HIS ADMIRER

AND FRIEND

MICHAEL L. RODKINSON

New York, January 1, 1902.

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OF

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HAGADAH.

APPENDIX.

Next: Chapter I

TRACT BABA BATHRA (LAST GATE).

CHAPTER I.

RULES AND REGULATIONS CONCERNING HOUSES, YARDS, AND FIELDS IN PARTNERSHIP OR CONJOINTLY; THE SHARING IN PARTITIONS, FENCES, AND WALLS; LOOKING INTO OTHERS' PROPERTY; CLAIMS PAID BEFORE DUE; DUTIES OF ONE TO HIS CITY--STREETS, ETC.; CITIZENSHIP BY LAPSE OF TIME, AND CONCERNING THE SIZE OF A YARD LIABLE TO DIVISION.

MISHNA *I.*: Partners in a courtyard surrounded by two houses, each of them belonging to one of the partners, one of whom (or both) may desire to make a Me'hitza (partition) in the yard, the wall is to be built in the middle exactly. The material for it and all other things must be as is customary in the country; viz.: in the case of unhewn stones (of which the thickness is usually six spans) each of them has to give his share of space and material for three spans; in the case of hewn stones, for two and a half; in the case of half-bricks, between which are usually inserted sand and small stones, for two; and in the case of whole bricks, one and a half spans from each suffice. Therefore, when it happens that such a wall falls, the space and material of it belong to both equally. The same is the case with a garden in places where they are usually fenced: if one of the partners desires to construct a fence, the other cannot prevent him, nor withhold his share of the expense. In valleys, however., in places where it is not usual to fence, one cannot compel his partner to share with him, but he may build a fence about his own portion, and make an enclosure on the outside (as a sign that it belongs to him only); and therefore should such a fence fall, the material belongs to him alone. If, however, such is built conjointly, it must be in the exact middle, and an enclosure is to be made on both sides (as a sign that it was built conjointly); and therefore should it fall, the space and material belong to both.

p. 2

GEMARA: The schoolmen, in interpreting the Mishna, were about to explain the word Me'hitza as meaning division, according to Numbers xxxi. 43, where the word Ma'htzis is used in the sense of divided into halves; and the Mishna comes to teach that when both have decided to divide their grounds, one of them can compel the other to join in building such a wall, even if he object to do so, from which it is to be inferred that looking into the other's property is considered injurious. But perhaps the expression Me'hitza means only a partition, according to what we have learned in a Tosephtha, that if a partition (which divides the vine from other kinds of products) break, the owner of the other products has to notify the owner of the vineyard twice that he should fence it, and if he does not do so, the products are prohibited and the owner of the vineyard is responsible. And as in this Tosephtha the word Me'hitza is used with the meaning of a fence, so it may be that in our Mishna also it means a fence. And the Mishna teaches that if both have decided to build a fence, then each of them must join in its making, but not otherwise. From which it is to be inferred that looking into another's property is not considered injurious? If it should be so, then why does the Mishna state "the *wall* must be," etc.? It ought to be, "*it* must

be built." On the other hand, if the Mishna means that they have decided to divide, why the expression "Me'hitza"? It ought to be "to halve," as people say: "Come to halve our goods"; and also, if looking is considered injurious, why the statement of the Mishna, "if *both* like to do so"? Even if one of them desires, his partner may be compelled to join with him, so as to prevent injurious looking in. Said R. Assi in the name of R. Johanan: Our Mishna treats of a small yard which was not liable to division (it did not contain eight ells), and then only when both consent to divide can one compel his partner, but not otherwise. But then what comes the Mishna to teach? That when the yard is not sufficient for a division, and both wish to do so, they may? Is it not taught plainly farther on? From that teaching one may say that he can compel him only to join in erecting a border-mark, but not a wall. It comes to teach us that the same is the case even with a wall. But if so, why the other statement of a border-mark? There it is needed because of the last part of the Mishna, which teaches that with the Holy Writ it is different: it is not allowed to be divided, even if both consent to do so. Now, the Mishna is explained as treating of

a yard which is not sufficient for division. Then what matters it--even if they have both decided to divide their grounds, could they not retract? Said R. Assi in the name of R. Johanan: It treats of a case in which it was already done with the ceremony of a *sudarium*. But even then, what matters it? After all, it was decided only verbally, and they may retract? It speaks of a case in which the parts of each were already marked off. R. Ashi, however, said: It speaks of a case in which each of them has already made a *hazakha* (settlement) on his part, so that they have acquired title and can no more retract. (The expression in the Mishna for half-bricks is *khphisin*.) Said R. A'ha b. R. Ivia to R. Ashi: Whence do we know that this expression means half-bricks and the additional span is for the stuff which is put between them? Perhaps it means unhewn stones, and this additional span is for the projecting corner. And he answered: The meaning of the words of the Mishna is traditionally so explained.

Said Abayi: A span is needed only when, between the half-bricks, small stones and sand are put, but if only clay, a span is not needed. Shall we assume that a wall, four ells in height, of hewn stones needs the thickness of five spans? Was not the height of the walls of the first Temple thirty ells, and the thickness only six spans, and it nevertheless held? The additional span sustained it. Why, then, did they make the walls of the second Temple still thicker? Because a thickness of six spans can sustain only a height of thirty ells, but not a greater one, and the second Temple was much higher. And whence do we deduce it? From [Haggai, ii. 9]: "Greater shall be the glory of this latter house than that of the former." Rabh and Samuel, and according to others R. Johanan and R. Elazar, differ in the explanation of this verse. According to one, it means the building itself; and according to the other, it means the years of its existence. In reality, however, it was in both respects more glorious.

The schoolmen propounded a question: Does the Mishna mean, by giving the sizes, with the lime, or without? Said R. Na'hman b. Itz'hak: Common sense dictates that it means with the lime; for without the lime the sizes mentioned in the Mishna would not be correct (since without the lime it would not hold, and the lime, of course, enlarges the size). But can it not be said that it means without the lime, and because the size of the. rime does not reach a span, therefore the Mishna does not count

it? But does not the Mishna state a span and a half? It may be said that, because the two halves make a span, therefore it is counted. Come and hear! (Erubin, p. 28:) "The cross-beam in question must be wide enough to hold a half of a brick, which is three spans in length and in width." There it treats of a great one, and it seems to be so, as it says: "A half of a brick, three spans," etc., from which it is to be inferred that there is a smaller half-brick which is not of the size mentioned, and this is the size in our Mishna, where both half-bricks together measure only three spans with the lime. R. Hisda said: One must not take apart a prayer-house until another one is built; according to some, because it may be neglected by accident, and according to others, because until the new one be built there they will have no place for prayer. And the difference is that, when there is another place for prayer, according to the latter it may be done.

Maremar and Mar Zutra used to take apart the summer house of prayer in the winter, and the winter house of prayer in the summer. Said Rabhina to R. Ashi: How is it? When the money for the new building has already been collected by the treasurer, may the old be taken apart, or not? And he answered: Even then a redeeming of prisoners may happen, for which the sum might be used. But how is it if the whole material for the new building was already prepared? And he rejoined: Even then the above case can happen, and the material would be sold out for this purpose. If so, then even when it is already built? And he replied: A completed building it is not customary to sell for such a purpose. And this was all said in case no sign of ruin was seen in the old building; but if there were such, it might be taken apart immediately. R. Ashi, for example, saw such in the prayer-house at Sura, and took it apart and placed his bed there, and did not take it out until the whole building was ready. It is said farther on that Baba b. Buta advised Herod to take apart the old Temple for the purpose of building a new one. Was this not against the law, as declared above by R. Hisda: "One must not take apart," etc.? If You wish, you may say he saw a sign of ruin in the old one; and if you wish, it may be said it is different with a king, who usually does not retract from his word, as, *e.g.*, Samuel said, that if the king should say, "I will remove this great mountain," it would be done.

Herod was a servant of the Hasmoneans, and there was a

little girl among them upon whom he cast his eyes. One day he heard a voice saying that a servant who should rebel that day would succeed. Then he slew all his superiors except this little girl; and when she saw that he intended to marry her, she ascended to the roof and proclaimed: "If it happen that one shall claim himself descended from the Hasmoneans, be it known that he is a slave, for all the Hasmoneans were slain except myself, and I now commit suicide by throwing myself from this roof." Said Herod to himself: Who insists upon what is written [Deut. xvii. 15]: "From the midst of thy brethren shalt thou set a king," etc.? The rabbis, as the leaders of Israel. He therefore slew all the rabbis, and left only Baba b. Buta, to take advice from him when needed; but he blinded him. One day Herod came (incognito) and sat before him, saying: "Let the master see what the bad slave Herod has done." And he answered: "What can I do to him?" And he said: "Curse him." But Baba answered with the verse [Eccl. x. 20]: "Even in thy thoughts, thou must not curse a king." Herod said: "But he is not a king at all." And Baba answered: "Let him be only rich, it is written [ibid., ibid.]: 'In thy bed chambers, do not curse the rich.' And even if he be only a ruler, it is written [Ex. xxii. 27]: 'A ruler among thy people, thou shalt not curse.'" And Herod said: "This is only when he does as the people of Israel do; but he, Herod, does the contrary." And he rejoined: "I am afraid of him." Herod continued: "But there is no one who could tell him, as only you and I are here." And Baba rejoined with the above-cited

verse: "For a bird of the air can carry the sound," etc. Then rejoined Herod: "I am Herod, and did not know that the rabbis were so careful. Had I been aware of this, I should not have slain them; but now I crave your advice; perhaps as to that you will find some remedy for me." And Baba answered: "You have blinded the eye of the world, as it is written [Num. xv. 24]: 'If through inadvertence of the congregation.' 1 Go, therefore, and occupy thyself with the eye of the world, which is now the Temple, as it is written [Ezek. xxiv. 21]: 'I Will profane my sanctuary . . . the desire 2 of your eyes,' and so I advise you to rebuild the Temple."

And Herod said: "I fear the Roman government." Rejoined Baba: "Send a messenger to Rome, for which it shall take a year until he shall reach there, and let him remain there a year, and his returning shall also take a year, and during the three years you can take apart this Temple and build a new one." Herod did so, and the answer was: "If you have not as yet taken apart the old one, let it remain so; if you have already taken it apart, do not build a new one; and if you have already taken apart and also rebuilt, such is the custom of bad slaves: they seek advice after the thing is already done. It is true, you are now the ruler. Your record, however, is in our archives, in which it can be seen that you are not a king, nor a descendant of kings. It is only marked, 'Herod, the servant, has made himself free.'" It was said that he who had not seen the new Temple of Herod had not, in all his life, seen a fine building. "With what material did he build it?" asked Rabha. With ornamented marble stone of different colors, the stones being not in a straight line, but alternately projecting and receding, the gaps being intended to receive the lime. He intended to cover it with gold, but the rabbis advised him not to do so, because as it was it looked as effulgent as the waves of the sea.

But why did Baba give Herod such advice? Did not R. Jehudah in the name of Rabh, or in the name of Jehoshua b. Levi, say that Daniel was punished for giving good advice to Nebuchadnezzar, as it is written [Dan. iv. 24]: "Therefore, O king, let my counsel be agreeable unto thee, and atone for thy sins by righteousness," etc.? With the Temple it was different, for except by the king, it could not be rebuilt at all. And whence do we know that Daniel was punished? He was thrown into the lions' den [ibid. vi.].

"*And all other things*," etc. What does the expression all add? Those places where it is customary to make such a partition of thorns.

"*Therefore, if it happens that such a wall fall*," etc. Is this not self-evident? It means that, should the wall fall into the part of one of them, or if, in the building thereof, one of the partners should build it all on his part, lest one say that then the other partner should be considered as a plaintiff for whom it is to bring evidence, it comes to teach us that this is not so.

"*The same is the case with a garden*," etc. Does not this paragraph contradict itself? It states: "The same is the case, etc., where it is customary to make a fence"; from which it is

to be inferred that if it was not customary, one cannot compel another to join. Then how is to be understood the last part, which states: "In a valley, etc., where it is not customary to make a fence," etc.; from which it is to be inferred that if there be no such custom at all, he may be

compelled to join? And this is contradictory, since even concerning a garden, where there was no such custom at all, he is not to be compelled. So much the less in a valley, where there is no such custom? Said Abayi: It means to say thus: In a garden, even where it was not the custom, and in a valley, where it was the custom, to make a fence, the partner may be compelled to join. Said Rabha to him: If it is so, to what purpose is it stated "*however*." "Therefore," said he, "it means thus: concerning a garden, where there is no custom at all, it must be considered as if it were customary to make a fence; however, in a valley, where it is not the custom, it is to be considered as though the custom were *not* to fence. Therefore in the first case he is to be compelled to join, and in the second he is not."

"*But one may put the fence in the space of his own part*," etc. How shall the enclosure be put? Said R. Huna: It shall be inclined toward the inside. Why not toward the outside? Because then the partner could cut it off and claim that the wall was built conjointly. But can the same not be done even when it inclines toward the inside? The joining (to the fence) would be recognized. But does not the Mishna state plainly, "*outside*"? The objection remains.

R. Johanan, however, said that the Mishna means not exactly an enclosure, but a sign smeared with clay, the extent of an ell, outside. And why not inside? Because then the partner could mark such outside, to claim that it was done by both. But even now, the partner can scrape it off for the purpose of making such a claim? Scraping can be recognized (as artificial). If, however, the partition were made of thorns, there can be no remedy with a sign, unless one writes it on a note and puts in for safekeeping in the court. 1 So Abayi maintains.

"*If, however, such was built conjointly,*" etc. Said Rabha of Pharziqa to R. Ashi: Why, then, the enclosure at all? And

he answered: The Mishna treats of a case in which one has already made such an enclosure on one side; the other should follow him on the other side, as a sign that the wall belongs to both. And he asked: Does the Mishna teach a remedy against a swindler? And R. Ashi rejoined: Is not the first part, which states that an enclosure should be made (inside or outside), a remedy against a swindler? To which he answered: The first part teaches a law, and by the way gives also the advice which should be the remedy against a swindler; but in the last part it does not teach a new law at all, as it is self-evident that when they have joined in the wall the material belongs to both (and the new teaching is only the remedy against a swindler)? Said Rabhina: The last part treats of a case in which the wall was made of thorns, and comes to teach that it is not as Abayi said above, that there is no remedy except by a note, etc.; but that if the enclosures are made on both sides it suffices.

MISHNA *II*.: If one's estates surround those of his neighbor on three sides, and he has fenced all the three sides, the neighbor is not to be compelled to join in the expense (so long as it is open on the fourth side). Said R. Jose: If the neighbor fenced the fourth side of his field, then he must join in the expense of all the fences.

GEMARA: Said R. Jehudah in the name of Samuel: The Halakha prevails in accordance with R. Jose. And there is no difference whether the fourth fence was built by the surrounder or by the surrounded (as in either case his [the neighbor's] field is now protected). It was taught: R. Huna

said: He must take an equal share in all the expense, and Hyya b. Rabh maintains that he has only to pay for the cheapest fence-rails. An objection was raised from our Mishna, which states that when he has fenced all three sides the neighbor is not to be compelled; from which it is to be understood that if he has fenced the fourth side also, then the neighbor must join. Then the decision of R. Jose, who said that when the fourth was fenced he must join in the expense of all the fences, is to be understood that he differs with the first Tana in that, according to him, he must share all the expense equally, while according to the first Tana he must pay only for cheap fence-rails. And this explanation can be correct only in accordance with R. Huna. But according to Hyya, who said that all of them treat only about the payment for cheap fence-rails, what, then, would be the point of difference between the first Tana and R. Jose?

[paragraph continues] It is to be explained as to the surrounder and the surrounded. According to the first Tana, even when the surrounder has fenced the fourth side, the surrounded has to pay, for the reason stated above; and according to R. Jose, only when the surrounded himself has fenced the fourth side, from which we see that the other fences pleased him; but if the surrounder did so, the surrounded has nothing to pay.

Runya's estate was surrounded by that of Rabhina on all four sides. And when he asked him to join in the expense of fencing, he would not listen. "Join at least in the expense for cheap fence-rails." He would not listen. "Give something for the protection of your estate"; and he would not. One day Runya was engaged in gathering dates from his trees, and Rabhina said to his gardener: "Go and fetch one bunch of dates." And Runya rebuked him. Then said Rabhina to him: "Now your intention that your trees should be protected, if not from thieves, at least from goats, is clear." And he answered: "Goats can be prevented by the voice." And Rabhina rejoined: "But even then you must have a man who shall lift up his voice." Finally Runya came before Rabha, who told him that he should go and settle with Rabhina as well as he could, as otherwise he would decide in accordance with R. Jose as explained by R. Huna.

The same Runya bought a field which was attached to one of Rabhina's, and the latter was about to prevent him, in accordance with the law of preemption. Said R. Saphra b. R. Ieba to Rabhina: "People say, Zala, who is poor, needed for his family as much bread as Zalla the rich. Permit then the poor Runya, who has already one estate among your estates, to have another one, so that he can make a living."

MISHNA *III*.: If a wall which separated courtyards falls, the owners of both sides have to join in rebuilding it (to the height of four ells). If there is a wall, and one of the owners claims that his neighbor did not bear his share of the expense in building it up to the height of four ells, he is not to be trusted unless he brings evidence (as it is considered that his neighbor did so at the time it was built). Above four ells, one cannot compel his. neighbor to join with him. If there *were* a wall above that height, and the neighbor built another one near it to the same height, with the intention of roofing, he has to share in the expense, even before roofing; and if he claims

that he has already joined in the expense, he is not to be trusted unless he brings evidence.

GEMARA: Said Resh Lakish: "A debtor who says: 'I paid my debt to the creditor, when the time had not yet elapsed,' is not to be believed, as usually creditors are glad to be paid in due time."

Abayi and Rabha both said: It may happen that one unexpectedly got money and thought, "I shall pay my debt before it is due, so I shall not be troubled thereafter." An objection was raised from our Mishna, which states that he is considered to have paid at the time it was built. Now let us see how was the case. If the defendant claims that he has given his share of the expense in time, there is no reason why he should not be believed, it must then be said that he claims to have paid it before it was due, and nevertheless the Mishna states that he is to be believed? The case of the Mishna is different, as with every brick or every piece of material that was used the time for payment is considered due; *i.e.*, it is not to be considered that he is claiming to have paid before it was due. Come and hear the other part of the Mishna concerning the height over four ells, which is considered not to have been done conjointly. Let us see how was the claim. If the defendant claims: "I have joined with you in time," why should he not be believed (he is the defendant, and it is for the plaintiff to bring evidence)? It must be, then, that he claims that he has joined before the time due, and we see that he is not believed. There is another reason why he should not be believed, as usually one would pay no money before he is positive that the court will decide against him. R. Papa and R. Huna b. R. Jehoshua acted according to Abayi's decision, and Rabha b. Mar R. Ashi acted according to Resh Lakish, and so the Halakha prevails. And even in the case of orphans, although the master said elsewhere that he who comes to collect from the estate of orphans cannot do it without taking an oath; yet in our case the "hazakha" rule, that one does not pay when it is not due, is strong enough even concerning orphans.

The schoolmen propounded a question: If the plaintiff demanded his money after the time has long elapsed, and the defendant claim that he had paid when it was as yet not due, shall we say that the above standing rule., that one does not pay before due, denies the theory of giving consideration to a claim which appears trustworthy, for the reason that, why should he

tell a lie which only injures him, as, *e.g.*, the defendant could say: "I have paid in time" (and then it would be for the plaintiff to bring evidence), while claiming "I have paid before due," the burden of proof lies upon him, or perhaps such a claim is to be considered even with the standing rule? Said R. A'ha b. Rabha to R. Ashi: Come and hear! If one claims, "I have a *mana* with you," and the debtor answers, "Yea"; on the morrow, when he demands his money, the debtor says, "I have already paid you," then he is free. If, however, he says, "You have nothing with me," he is responsible. Is it not to be assumed that by the expression, "I have paid you," it means in time, and the expression, "You have nothing with me", means, "I have paid you before due"? Hence we see that such a claim is not considered Nay, the expression, "You have nothing with me," means, "You have never loaned it to me," as the master says elsewhere: He who claims, "I have never borrowed," is to be considered as if he should say, "I have never paid."

"*If, however, he has built another wall*," etc. Said R. Huna: If he has built only a half-wall, it is the same as if he should build the whole. And R. Na'hman said: He has to join only for the half he has built, but not for what he has not. R. Huna, however, admits that if the neighbor built something opposite the party wall, the corner of his house attaching it to the party wall, then he has not to join in the expense except so far as he has built; and also R. Na'hman admits that if he

has prepared in his wall a place for roofing it (from which is to be seen that he intends to continue the wall and to roof it), he must join immediately. R. Huna said the holes in the wall prepared for placing the roofing beams, which were prepared by one of the partners, do not support the claim of the other partner, who says he has joined with him in the building of the whole wall (claiming that if he should not do so he would not expend so much money in an uncertainty, perhaps his partner would not join with him and would not allow him to open windows to the side of his yard), even when the μελαθγοω (the holes which hold the beams) for the roofing beams have already been placed, as the builder may say, "I have prepared the whole thing, with the purpose of not damaging the wall through making holes in it, being sure that this would suit you, and you will join in the expense afterward." R. Na'hman said: If one has placed on his neighbor's wall little *boards* for roofing, it is not to be considered

that the consent of his neighbor suffices for roofing it with *beams*. In the reverse case, however, such is to be considered sufficient. The same said again: If the dripping of water from; one's roof into a neighbor's yard take place, it gives him a right to put a pipe on the roof so that the water may run to one place in the same yard; and the same is the case in the reverse, but not if the roofing be of small branches, so that it contains numerous interspaces, thus spoiling the earth where there is dripping through the interspaces. R. Joseph, however, maintains that even this is allowed, and so he acted.

R. Na'hman in the name of Rabba b. Abuhu said: If one let a chamber of his house to his neighbor, and this was a house with many rooms for different tenants, the tenant may use the holes which are in the wall, the beams which protrude up to four ells from his chamber; and if this was an upper chamber, he may also use the thickness of the wall on the roof, if customary to use same; but he has no right to use the front yard. R. Na'hman himself, however, maintains that he has a right to the front yard also, but not to the rear yard; and Rabha maintains that he has a right in the rear yard also.

Rabhina said: A roof which is made for shade, if one has attached it to the wall of his neighbor, it is not to be considered as "hazakha" until the lapse of thirty days. However, if there be no protest after thirty days, it is a "hazakha" (and the owner is trusted if he claim that he has done this with his neighbor's consent). If this, however, was done for the purpose of a booth for the Feast of Tabernacles, after seven days it is considered a "hazakha." If, however, one has attached the roof with clay, it is considered a "hazakha" immediately (as this he would not do without consent).

Abayi said: If there were two houses on both sides of a public thoroughfare, each of the owners has to make a parapet to half of his roof, but not exactly opposite each other (*i.e.*, one may make it on the north and the other on the south), and each of them has to add a little to his half (for the purpose of preventing looking into his neighbor's property). [Questioned the Gemara:] Why only on a public thoroughfare--should it not on a private thoroughfare be the same? The law of a public thoroughfare it was necessary for him to teach, lest one say: "One may claim it is anyhow needed for you to make a parapet to prevent the people passing in the street from looking into your property; therefore make the whole parapet on your property,

and I will bear half of the expense." So he comes to teach us that he may answer: "From the public thoroughfare one can see only in the daytime, but not at night"; or, "Only when I am standing, but not when I sit," and also, "When one likes to look. For you, however, it is to be seen in any circumstances." The master said: "Each of them has to make a parapet to half a roof," etc. Is this not self-evident? He means to say that if one has already done his part, lest one say his neighbor has a right to say to him, "Take from me the expense, and make all of it (as it is too much trouble for me to find a laborer for such a small work; and if you had not done yours, I would have taken laborers to do the whole of it on my property and taken from you your share of the expense)," it comes to teach us that his neighbor may say, "As you do not wish to spoil your roof by the weight of the entire parapet, so I do not wish to spoil mine." R. Na'hman in the name of Samuel said: On a roof which looks into the yard of one's neighbor, he has to make a parapet to the height of four ells. However, between the roofs he need not. And R. Na'hman himself maintains that four ells is not necessary, but a partition of ten spans is. To what purpose? If to prevent looking, then four ells are necessary; and if only for separation of the roofs, in case one step beyond his roof, he should be accused of intention to steal, then any partitions suffice, and if to prevent goats or sheep from straying, a small partition which they cannot jump over suffices? It is for the second purpose mentioned above; but if there should be any separation, he may say, "I stretched my hand over to the neighbor's roof because I wanted to measure the boundary lines on the roof," which is not likely for him to say when the partition is of ten spans. An objection was raised from the following: "If his courtyard was higher than the roof of his neighbor, it is not to be taken into consideration." May we not assume that it means that no parapet *whatever* is needed? Nay. It means the *consideration* of a parapet of four ells, but one of ten spans is required.

It was taught: If there were two courtyards, one upon the other, according to R. Huna the lower one has to build from his upper side upwards until he reaches the upper one, and the higher one continues; and according to Ula and R. Hisda the higher one has to share in the expense of the lower one also; and there is a Boraitha which supports R. Hisda as follows: If there were two courtyards, one upon the other, the upper one

cannot say, "I will begin to build from my property," but he must share with the lower one; and if, however, his courtyard were higher than the roof of his neighbor, he has nothing to do with him.

There were two tenants, one in the upper and one in the lower part of a house, and the roof of the lower one sank, and he called on the upper one to rebuild it. He declined, saying, "My residence is not spoiled." Then the lower one asked of him permission to rebuild the whole thing at his own expense, but the upper one responded, "I have no place in which to live until you shall have rebuilt." Then he wanted to hire a residence for him, but he was told, "I do not want to trouble myself by removing." And to the claim of the lower one that he could not live in the house, he answered, "Thou canst bow thy head when going out and coming in." Said R. Hama: The upper one's claim could be taken into consideration, provided the roof had not reached down to the height of ten spans from the floor of the house; but if it so reached down, the lower one may claim, "This place belongs to my property, and it must be removed." And all this is said when there was no stipulation at the time of building; but if there were, the upper one may be compelled to share in the rebuilding. But to what extent must it have sunk that the lower one should have the right to rebuild? Said the rabbis, in the presence of Rabha, in the name of Mar

Sutra b. R. Na'hman: He has quoted his father answering this question, that if the height was less than is stated (Chapter VI., Mishna 4), the height should be the half of the length and the breadth together. And Rabha answered: Did not I tell you, you should never hang a βιχος (clay pot) on R. Na'hman's neck? (It means that nonsense should not be quoted in his name.) For I know R. Na'hman's decision was: "If it was spoiled from the ordinary use of a dwelling." However, after all, to prevent controversy the law should state some dimension. Said R. Huna b. R. Jehoshua: If the height decreases so that the bundles of sticks usually made in the city of Mehusa cannot be brought in and be manipulated.

There was one who built a wall against the window of his neighbor, and to the claim of his neighbor, "You darken my place," he answered him, "I will close up at my expense this window and make you a new one above." But the other party refused, saying, "By doing so you will spoil my wall." He said then: "I will take apart your wall unto this place and

build you a new one." The other rejoined: "The old wall will not bear the new building." He then offered to rebuild the whole wall from top to bottom and to make him a new window, and again he refused, saying that one new wall would not correspond with the three old ones. Finally the other party agreed to rebuild the whole house, and still he refused: "I have no place to live." And even then his neighbor agreed to hire for him a residence, and he again responded, "I do not want the trouble of removing." And R. Hama decided that the law cannot compel him to comply with the wish of his neighbor. But to what purpose is this stated? Has not R. Hama declared his decision in the above case? He meant to say that even if he has used the house in question for keeping straw and wood only, even then he cannot be compelled.

There were two brothers who divided a bequest. One took a palace and the other took a nice garden which was in front of it; and the latter built a wall on the edge of the garden, and to the claim of his brother that he darkened his house, he answered, "I built it on my property." And Rabh decided that the law is not against him. Said Rabhina to R. Ashi: Why should this case differ from the case in the following Boraitha: Two brothers divided a bequest. One took a vineyard and the other took a field. The owner of the vineyard is entitled to four ells of the field for the entering of animals to work it up, etc., as it is considered that so was the stipulation at the time of the division. (Hence we see that the requirements of the vineyard are taken into consideration. Why should it not be the same with the palace of the above case?) And R. Ashi answered: There the owner of the vineyard paid to his partner the difference between the two estates, and consequently the stipulation that his vineyard should be worked up was made. To this Rabhina rejoined: Do you mean to say that in the case of the palace there was not any settlement about the value of the two parts of the bequest? Does the law speak of fools? And R. Ashi rejoined: It may be there was a settlement, and the man of the garden took his share for the value of the building of the palace, but they had not made any settlement for the value of the air. But should there not be taken into consideration the rightful claim of the man of the palace, that he has paid him the difference for a palace, and then it was changed into a dark chamber like a prison? Said R. Shimi b. Ashi: The name of the palace does not change even after the wall is

built, and the gratification which the owner of the garden received was for the name. As we have learned in the Middle Tract (p. 275), if one said, "I sell you the estate, which contains a kur of

earth, and there is no more than a half," etc., the sale is valid, as it is so called. But still, what comparison is this? There he sold him a piece of ground which was so named, and the buyer is aware of what he bought; but here, could not the man of the palace say: "I have agreed to this division for the purpose of living in it as my parents did, and now it is darkened"? Said both Mar the Elder and Mar the Younger, the sons of R. Hisda, to R. Ashi: The Sages of Nahardai, among them R. Hama, decided according to their theory elsewhere, that they hold with R. Na'hman, who said in the name of Samuel that brothers, after the dividing of a bequest, have no claim for a path, for windows, for ladders, and for canals, each on the other (as they ought to take these into, consideration when dividing), and must be strict on this law, as this was enacted once for all. Rabha, however, maintains that such a claim is always to be taken into consideration.

There was a note belonging to orphans, against which the other party showed a receipt, and R. Hama decided not to collect on this note because of the receipt, and not to destroy it until the orphans should have grown up, as they might find some evidence against the receipt. R. A'ha b. Rabha questioned Rabhina: How does the Halakha prevail in all cases like the above-mentioned? and he answered: All of them are to be practised in accordance with R. Hama, except in the case of the receipt, as witnesses should not be considered by us as liars. [1] Mar Sutra b. R. Mari, however, said that even in the last case R. Hama is right; for, if the receipt were genuine, they would have made use of it while the creditor was still alive, and because they did not do so forgery was to be feared.

MISHNA *IV.*: Partners of a courtyard must share in the expense of building a gate or a door to it, if one of them demands it. R. Simeon b. Gamaliel, however, says: Not all courtyards need a door (the Gemara will explain which need one and which do not). An inhabitant of a city has to share in the building of a wall around the city, with the doors and the bolts. R. Simeon b. Gamaliel, however, maintains that not all cities need one. How long must one dwell in a city to be considered

a citizen of it? Twelve months. If, however, he has bought a dwelling-house in it, he is considered a citizen at once.

GEMARA: Shall we assume that a gate to a courtyard is considered a good thing? Is it not a fact that there was a pious man to whom Elijah appeared frequently, and after he had built a gate to his courtyard Elijah did not speak to him thereafter (because this prevented poor men from entering for their needs)? This presents no difficulty. If the door is to be opened from inside, it is not good; but if from outside (so that any one can open it), it is a good thing.

"*Building a gate or door to it*," etc. There is a Boraitha: R. Simeon b. Gamaliel said that only a yard which is near the public thoroughfare needs a gate, but not one which is not near to it. The rabbis, however, maintain that a courtyard which is even far away from a public thoroughfare may need a gate; for it may happen that people will pass into it from that which is at the thoroughfare, and will cause harm to the owner's property. And also to a city which is far from the boundary a surrounding wall is not required, according to R. Simeon; and the rabbis maintain that each of them may require one in war time. R. Elazar questioned R. Johanan: How shall such a tax be apportioned: according to the number of souls, or to the number of houses, or according to one's wealth? And he answered: According to the number of houses; and thou, Elazar, my son, put nails in this Halakha (that it never escape from thy mind).

R. Jehudah the Second taxed the rabbis for this purpose, and Resh Lakish said to him: The rabbis do not need any guard, as it is written [Ps. cxxxix. 18]: "Should I count them," etc. Count whom--the upright? Can they be *more* than the sands? Is it not written [Gen. xxii. 17] that all Israel is only "*as* the sand"? You must then say that it means that the acts of the upright are *more* than the sands, etc. Now, the little sands guard the sea. So much the more should not the acts of the upright, which are *more* than the sands, guard *them*? R. Na'hman b. R. Hisda taxed the rabbis. Said R. Na'hman b. Itz'hak to him: By this act you have transgressed what is written in the Pentateuch, the Prophets, and the Hagiographa. The *Pentateuch* [Deut. xxxiii. 3]: "Yea, thou also lovedst the tribes; all their saints were in thy hand; and they, prostrate before thy feet, received thy words." Thus said Moses before the Holy One, blessed be He: "Lord of the Universe, even when thou lovest the tribes, the saints of Israel shall be in *thy*

hand" (*i.e.*, they shall be guarded by thee). For the further explanation of this verse R. Joseph taught that it means the scholars who drag their feet from town to town and from country to country to learn the Torah and to discuss about the commandments of the Omnipotent. The *Prophets* [Hosea, viii. 10]: "But even though they should spend gifts among the nations, now will I gather them; and they shall be humbled a little through the burden of the king of princes." And Ula said: This verse was written in the Aramaic language, and the expression *Yithnu* should be read *Yethano*, which means (in Aramaic) "to learn," and it is to be interpreted thus: If all the Israelites who are in exile should occupy themselves with the study of the Torah, the gathering of them would be at hand; but if only a few of them, they should be exempt from the burdens imposed by kings or princes. And the *Hagiographa* [Ezra, vii. 24]: ". . . no one shall be empowered to impose any tax, tribute, or toll," etc. And R. Jehudah said: This means, to free the scholars of the taxes of the government.

R. Papa had taxed orphans for digging a new well. Said R. Shesha b. R. Idi to him: Perhaps no water will be found (and then the money of the orphans would be taken for nothing, for they are not of age to relinquish their property). And he answered: I am taking the money; if there should be water, I will use it; if not, I will return it.

Rabbi opened his barns of grain in the years of famine, and said: This shall be for the use of them who have studied the Bible, Mishna, Gemara, Halakha, or Hagada, but not for ignorant men who have never desired to study anything. R. Jonathan b. Amram entered, and said: Rabbi, feed me. He asked him: My son, hast thou read the Bible? And he said no. Hast thou studied the Mishna, or anything? And he said no. "Then why should I feed thee?" And he answered: Feed me as people feed a dog or a raven. And he did so. After he went out, Rabbi was sorry, saying: Woe is me! that I have given my bread to an ignorant man. Said R. Simeon his son to him: Perhaps this man was your disciple, Jonathan b. Amram, whose custom it is not to derive any benefit from his wisdom. It was investigated, and they found that so it was. Then said Rabbi: My barns shall be open to every one, without any distinction. Rabbi's previous act, however, was in accordance with his theory elsewhere, that chastisements are inflicted upon the world only because of the ignorant men who do not desire to study anything.

"*How long must one dwell in a city*," etc. There is a contradiction from the following. A caravan

with asses or camels, who are travelling from one place to another, who took their rest in a city which was guilty of idolatry, and the caravan while being there were persuaded and worshipped idols, they are to be stoned, but their money must be saved for their heirs. If, however, they were there thirty days, they must be slain by the sword, as inhabitants of the town, and their money is to be confiscated (hence we see that thirty days' residence suffices to be counted a citizen). Said Rabha: This presents no difficulty. To be counted an inhabitant of the town, thirty days suffice; but to be a citizen, twelve months are required. As we have learned in the following Boraitha: If one vows that he shall derive no benefit from the citizens of this town, he must not so derive from them who have resided there for twelve months; but he may derive benefit from them who have resided there less than this time. If, however, he vows not to derive benefit from the *inhabitants* of this city, then he may derive from them only who have not resided as yet thirty days. But have we not learned in a Boraitha that a poor man who has resided thirty days in the city is entitled to get meals from the kitchen of the city charities? Three months entitles him to get cash for food from the treasury of the charities; six months, to raiment; nine months, to burial; and twelve months, he must share in the expense of fencing fields or gardens, which it was then customary to make of sticks in the shape of the Greek letter ψ? Said R. Assi in the name of R. Johanan: The statement in the Mishna, *twelve months*, means also the same.

The same said again in the name of the same authority: Every one, even orphans, must share in the expense of the fencing, except rabbis.

R. Papa said: To the repair of the wall of the city, for buying horses for the riders around the city (for watching and to ascertain what it needs), and for an arsenal. all, even orphans, must contribute, except the rabbis. The rule for this is that to everything from which they derive benefit they must contribute, even orphans. Rabba had taxed the orphans of Mar Mirion for charity. Said Abayi to him: Has not R. Samuel b. Jehudah taught that orphans must not be taxed for charity, even for the redeeming of prisoners? and he answered: I did so only to honor them.

Aiphra Hurmiz, the mother of King Sabur, sent a purse with

dinars to R. Joseph, saying: This shall be used for the highest charity. And he deliberated what kind of charity should be considered the highest. Said Abayi to him: As it is said above that orphans must not be taxed even for the redeeming of prisoners, it is to be inferred that redeeming of prisoners is considered the highest charity.

Rabha said to Rabba b. Mari: Wherefrom is the Rabbi's decision that redeeming of prisoners is the highest charity? And he answered: From what is written [Jer. xv. 2]: "Such as are destined to death, to death; to the sword, to the sword; to famine, to famine; to captivity, to captivity." And R. Johanan said all in this verse that is mentioned later is harder than what precedes it--as, for instance, "to be killed by the sword" is harder than a natural death, in accordance with the verse, as well as with common sense. The verse [Ps. cxvi. 15]: "Dear [1] in the eyes of the Lord is the (natural) death of the pious," accords with common sense--because from a natural death the corpse remains clean, but the sword defiles it with blood. And that famine is worse than the sword is also learned from the same, as in the verse [Lam. iv.], "Happier are those slain by the sword than those slain by hunger," etc., and common sense--for the latter has to suffer long and great pain, while the former's death is quick and sudden. Captivity, however, is harder than all of

them, as in it all the before-mentioned sufferings are endured.

The rabbis taught: Charity must be collected by two persons and distributed by three. Collected by two, because an administrating body must be constituted of no less than two; distributed by three, because it requires deliberation in judgment (as to whether the applicant is worthy of support, and to what extent): therefore it is likened unto a civil case which requires a body of three. The collecting of food is to be done every day; but cash for the charity treasury, only on the eves of the Sabbaths. Distributing of food is for every poor man, but cash is only distributed to the poor of the city. However, the elders of the city have a right to exchange, according to their discretion, money for food, or food for money. The elders of the city have also the right to fix the measures, and the prices of victuals and beverages, and also the wages of laborers, and to fine him or them who transgress their laws. The masters

say: No administrative body should be less than two. Whence is this deduced? Said R. Na'hman: It is written [Ex. xxviii. 5]: "And *they* shall take the gold." An administration requires two; but to bestow trust, one is sufficient. And this is a support to R. Hanina, who said that it happened once that Rabbi appointed two brothers as treasurers of the charity (and two brothers are considered one in this office). But, after all, what "administration" is there in collecting charity? It is as R. Na'hman said in the name of Rabba b. Abuhu, that one may be pledged for charity even on the eve of Sabbath (hence it is administration). Is that so? Is it not written [Jer. xxx. 20]: "I will punish all that oppress them"? Also R. Itz'hak b. Samuel b. Martha said in the name of Rabh that it means even the collector of charity? This presents no difficulty. If the man is wealthy, he may be pressed and pledged as Rabha pressed R. Nathan b. Ammi and took from him four hundred zuz for charity. But if he is not wealthy, then the one who presses him will be punished. It is written [Dan. xii. 3]: "And the intelligent shall shine brilliantly, like the brilliance of the expanse." This means a judge who goes into the depths of the law and tries ever to decide according to the truth. "And they that bring many to righteousness shall be like the stars, for ever and ever." This means the collectors of charity. In a Boraitha, however, it is taught that the first part of the verse quoted means both the judges and the collectors, while the latter part means the instructors of children. Who, for instance, is meant? Said Rabh: "R. Samuel b. Shilath"--whom Rabh found once standing in a garden, and he said to him: "Have you left your honorable position (as I was told that you never left the children whom you are instructing, and now I see you standing without them)?" The answer was: "It is thirteen years since I have seen this part of my property, and even now my mind is with my pupils." (But there are only mentioned the judges, collectors, and instructors of children.) But how about the rabbis? Said Rabhina: The verse [Judges, v. 31], "But may those that love him be as the rising of the sun in his might," refers to them.

The rabbis taught: The collectors of charity must not separate themselves from each other (while they are engaged in collecting). However, one may go to collect from the storekeepers, while the other does so from the keepers of the stands in the market. Should it happen to a charity collector to find money

in the streets, he must not put it into his private purse, but into the purse of the charity, and when he shall reach home then he may take it out. The same is the case if he meets one of his debtors

and he pay him what he owes him: he shall not put it into his private purse, but into that of the charity (to prevent suspicion), and when he comes home he may take it out.

The rabbis taught: The treasures of charity, if there be no poor among whom to distribute, they may exchange the smaller coins of the money collected for larger ones, but not from their private purse. And the same is the case with the collectors of food; if there be no poor, they may sell it to others, but not to themselves. The coins of charity must not be counted in pairs, but each one separately (in order to avoid suspicion).

Abayi said: Formerly my master would not sit on the rugs which belonged to the synagogue (because they were brought from the treasury of the charities); but after he heard that the elders of the city have the right to change the use of charity money as they see fit, he sat thereon.

Formerly (he said again), while being a treasurer, he used to have two purses--one for poor strangers and one for the poor of the city; but when he heard that Samuel said to R. Ta'hlipha b. Abdimi, "You can keep the money for charity in one purse with the stipulation that you may distribute it to whom you find worthy," he also kept the money in one purse, as he made the same stipulation with his congregation. R. Ashi, however, who was also a treasurer, said: I need no stipulation at all, as all the donations are intrusted to my discretion.

There were two butchers who made a stipulation that each of them should do business every alternate day, and he who should violate this agreement, the skins of his slaughtered cattle that day should be destroyed. And finally one did business on the day which was not his, and the partner destroyed his skins. And when the case came before Rabha, he made him pay. R. Jimar b. Shlamyah objected to him from that which was taught above, that they may fine them who act against the stipulation, and Rabha did not care to answer him. Said R. Papa: He has done right in not answering, as only when there is no court or honored man may partners make a stipulation between themselves. But if there be, then their stipulations are not to be considered when the court, etc., has no knowledge thereof.

The rabbis taught: One must not examine the treasures of charity, and also not the treasures of the sanctuary. Although

there is no direct support from the Bible, a hint of this is to be found [II Kings, xii. 16]: "And they reckoned not with the men into whose hands they delivered the money," etc.

R. Elazar said: It is advisable for one to count his money, although he has a trusted treasurer in his house, as it is written [ibid., ibid. 11]: "They put up in bags *after* having counted the money," etc.

R. Huna said: If one came to ask food, it may be investigated whether he is in need; but no investigation should be made of him who asks for raiment. This can be seen from the verse [Is. lviii. 7]: "Is it not to distribute thy bread to the hungry . . . when thou seest the naked, that thou clothe him?" etc., as the expression distribute, "Porosh" (with an *sh* instead of with an *s*), means investigate first and then give. And immediately after this it reads: "When thou *seest* the naked," etc., which means *at once*. R. Jehudah, however, maintains the contrary: No investigation for

food, but for raiment. He appeals to common sense and to the verse. To common sense--he who requires food suffers the pangs of hunger, which is not the case with 'him who asks raiment; and the same cited verse is also to be interpreted thus: "Is it not to *distribute* thy bread," etc., means immediately, as the verse is to be explained according to its pronunciation and not the spelling; [1] "and if thou *seest* the naked," etc., means that he shall *show* you that he is so. And there is a Boraitha supporting R. Jehudah. If one say: "Clothe me," he must be investigated, but if he say: "Feed me," it must be complied with at once without any investigation. There is a Mishna (mentioned in Sabbath, p. 247): "If a wandering mendicant come to a town, he must be given a loaf which can be bought for a pundian (one forty-eighth of a sela), when the price of flour is one sela for four saahs. If he remain over-night, he must be given lodging; and if he remain over Sabbath, he must be given three meals for Sabbath." What is meant by lodging? Said R. Papa: A bed to sleep in and a pillow; and a Boraitha in addition to this states that if this mendicant was begging from door to door, then the congregation need not look after him.

There was a mendicant who begged from door to door, and R. Papa paid no attention to him. Said R. Samma b. R. Ieba to him: If the master pay no attention to him, then no one will

mind him, and he may starve to death. But did not the Boraitha say that if he beg from door to door the congregation has nothing to do with him? This means that to him must not be given what is appointed for mendicants who don't beg at the door, but something is to be given him. R. Assi said: One may not refuse to give at least a third of a shekel yearly for charity, as it is written [Neh. x. 33]: "And we established for us (as one of the) *commandments* to impose on ourselves (to give) the third part of a shekel in every year," etc. And he said again: The virtue of charity equals the sum of the virtues of all the other commandments together, as it is written (in the just cited verse) "commandments," in the plural and not in the singular. Said R. Elazar: The gatherer of charity is deemed more virtuous than he who gives charity, as it is written [Is. xxxii. 17]: "And the work of righteousness (*i.e.*, zedaka--charity) shall be peace; and the effect of it quietness and security for ever," which means: If he was worthy of reward, he will distribute his bread to the hungry; and if he was not worthy of reward, the poor will be the members of his household.

Said Rabha to the inhabitants of Mehusa, his city: I pray you, see that there be concord among you, in order that ye shall have peace from the government. R. Elazar said again: When the Temple was in existence one gave his shekel, and he was atoned. Now, when the Temple is destroyed, if people do charity, well and good; if not, the idolaters come and take away their goods by force. Nevertheless, even this is counted as charity in Heaven, as it is written [Is. lx. 17]: " . . . and righteousness as thy taskmasters." (Even when given to the taskmasters, it is counted in Heaven as charity.) Said Mar Uqba: I was told by the child who was corrected by his mother, in the name of R. Elazar, as follows: It is written [Is. lix. 17]: "And he put on righteousness as a coat of mail," etc., which may be understood, that as in a coat of mail every little link thereof is counted in the number which is needed to make up such a coat of mail, so every little coin of charity is counted in Heaven, in the end making up a great amount.

R. Hanina, however, said from the following verse [ibid., lxiv. 5]: ". . . and like a soiled garment, all our righteousnesses . . ." As every thread of a garment makes it into a great garment, the same is it with charity, that every coin counts in the great aggregate.

Why was R. Shesheth called the child who was corrected by

his mother? Because it happened once that R. A'hadbui b. Ammi questioned him something concerning the law plagues; and while discussing this matter, the questioner answered him jestingly. R. Shesheth became dejected, and in punishment for this, R. A'hadbui became dumb, and forgot his studies. The mother of R. Shesheth came to him and wept before him, that he should pray for R. A'hadbui to be cured; but he did not listen to her until she said to him: "See the breasts by which you have been nursed," when he prayed, and R. A'hadbui was cured.

R. Elazar said: The one who is doing charity secretly is greater than Moses our master; as in regard to him it is written [Deut. ix. 19]: For I was afraid of the anger, and the indignation . . . and regarding him who does charity secretly, it is written [Prov. xxi.. 14]: "A gift in secret pacifieth anger, and a bribe in the bosom, strong fury." He differs, however,. with R. Itz'hak, who says that one pacifies only anger, but not strong fury. Because he maintains that the beginning of the verse just quoted does not correspond with the end; as it was heard in his name that a judge who accepts bribery brings strong fury into the world.

R. Itz'hak said again: He who gives a coin to a poor man is rewarded with six blessings; he, however, who encourages him is rewarded with eleven. The six are [Is. lviii. 8, 9]: "Then shall break forth as the morning dawn thy light. . . . Then thou shalt call, and the Lord will answer." The eleven are [ibid., ibid. 10]: ". . . . and satisfy the afflicted soul, then shall shine forth in the darkness thy light And thou shalt be called," etc.

The same said again: It is written [Prov. xxi. 21]: "He that pursueth righteousness and kindness will find life, righteousness, and honor." How is this verse to be understood? Because he pursues righteousness, he will find righteousness? It means that whoever pursues righteousness and charity, the Holy One, blessed be He, will open unto him the ways of procuring money, in order that he may be able to do charity. R. Na'hman b. Itz'hak said that the Holy One, blessed be He, gives him the chance to find men who need and are worthy of support, so that he may have the full reward for it, in the world to come. What does he mean to exclude? He means to exclude what Rabha or Rabba lectured: It is written [Jer. xviii. 23]: ". . . in the time of thy anger deal thus with them."

[paragraph continues] Thus prayed Jeremiah before the Holy One, blessed be He: "Lord of the Universe! even when they overrule their evil thoughts and are about to do charity, Thou shouldst not give them the chance to support worthy men; but unworthy ones, for which they will get no reward in the world to come." R. Joshua b. Levi said: "Whosoever makes it his business to do charity, will be blessed with sons having wisdom, wealth, and who will preach *haggadah* (morality)." As it is written in the above-cited verse, "will find life," which means wisdom; "wealth," as in the same verse it is written *zedaka* (which means charity, and, usually, to be able to do charity, one must be wealthy); and "haggadah," as in the same verse it says "honor," and reads [Prov. iii, 35]: "The wise shall inherit glory. . ."

There is a Boraitha: R. Mair used to say: If a common questioner discusses, "If your God likes

the poor, why does He not feed them?" one may answer, "For the purpose of saving us from the punishment of Gehenna." This Tarnusruphus questioned of R. Aqiba, and the above was his answer. To which Tarnusruphus rejoined: It is, on the contrary, for this you should be punished with Gehenna; and I will give you a parable from which you will understand why: A king became angry at his slave and put him in prison, with the command that nobody should feed him; in spite of this, a person fed him and gave him drink. Would the king not be angry at and punish such a man? And ye Israelites are called servants, as it is written [Lev. xxv. 55]: "For unto me are the children of Israel servants . . . ." R. Aqiba answered: I will give you another parable, to which my previous answer is to be compared: A king became angry with his son, put him in prison, and commanded that nobody should give him food or drink; in spite of which command, one fed him and gave him drink. When the king became aware of it, would he not be grateful to this person and send him a present? And we Israelites are called children, as it is written [Deut. xiv. 1]: "Ye are the children of the Lord," etc. Tarnusruphus, however, said: Ye are named children, and also servants--children, when ye are doing the Omnipotent's will, and servants when ye act against His will. And you will admit that now ye are acting against His will (as your Temple is destroyed and ye are in exile, which would not be the case, if ye did His will). Hence he who favors you acts against the will of God. To which R. Aqiba answered: With

regard to this, it is written [Is. lviii. 10]: "And if thou pour out to the hungry thy soul, and satisfy the afflicted soul," etc. The "afflicted soul" refers to us in our present circumstances, and nevertheless the beginning of this verse favors such charity.

R. Jehudah b. Shalom lectured: As the yearly household expenses for one are appointed (in Heaven) on each Rosh Hashana, so are his losses. If he is worthy, he will act according to the beginning of the verse cited; but if not, the last portion of this verse, "the afflicted souls," will be the members of his own house. So Rabban Johannan b. Zakkai had seen in a dream that his nephews would lose in the current year seventeen hundred dinars, and he made them distribute this amount for charity. However, seventeen dinars remained with them, and on the eve of Atonement the government took them away from them. Then R. Johannan said unto them: "Fear not; seventeen dinars were taken from you, and you will lose no more." To the question: "Whence do you know?" he answered: "I have seen it in a dream." And to the question: "Why did you not inform us, as then we would have distributed the entire amount to the poor?" he answered: "In order that you give charity only for the purpose of doing the heavenly will."

It happened to R. Papa that, while mounting steps, he slipped, and nearly fell (and would have been killed; but was miraculously saved). Then he said: If this had happened, my enemies would have accused me of being a violator of the Sabbath or an idolater. Said Hyya b. Rabh of Diphti to him: Perhaps a poor man called upon you and you paid no attention to him. As we have learned in the following Boraitha: R. Joshua b. Kar'ha said: He whose eyes are shut to charity is likened unto an idolater; and this is to be taken from an analogy of expression in the following verses: Concerning charity it is written [Deut. xv. 9]: "Beware that there be not Belial in thy heart"; and concerning idolatry, it is written [ibid., xiii. 14]: "There have gone forth children of Belial." Hence the expression Belial makes the two above-mentioned acts equal.

There is a Boraitha: "R. Elazar b. Jose said: Charity and kindness done by Israel in this world, are defenders and peacemakers between them and their heavenly Father; as it is written [Jer. xvi. 5]: 'For thus hath said the Lord, Enter not into the house of mourning, neither go to lament nor

to condole with them; for I have taken away my peace from this people,

saith the Lord, yea, kindness and mercy.' Kindness means bestowing of favors, and mercy means charity (hence, because these were taken away, therefore is the peace also taken away)."

There is another Boraitha: "R. Joshua said: Grace is charity, which nears the redeeming; as it is written [Is. lvi. 1]: 'Thus hath said the Lord, Keep ye justice and do *zedaka* [1] (charity).' The same used to say: Ten hard things were created in the world: A mountain is hard, iron cuts it; iron is hard, fire softens it; fire is hard, water extinguishes it; water is hard, the clouds bear it; clouds are hard, the winds spread them; the wind is hard, the body tolerates it; a body is hard, shaking breaks it; shaking is hard, wine dispels it; wine is hard, sleep removes it; death is harder than all of these, and charity saves from death; as it is written [Prov. X. 2]: '. . . but *zedaka* will deliver from death.' "

R. Dusthai b. Yannai lectured: Come and see how the manner of the Holy One, blessed be He, is not as the manner of human beings. When a human being brings a present to the king, there is a doubt whether it will be accepted or not; and if it be accepted, whether he will see the king. But the Holy One, blessed be He, is not so; if a man gives a coin to a poor man, he is rewarded and experiences the appearance of the Shekhinah; as it is written [Ps. xvii. 15]: "As for me, in *zedek* (charity) shall I behold thy face.

R. Elazar used to give a coin to a poor man before praying, quoting the above verse [ibid., ibid.]: "I shall be satisfied, when I awake, with contemplating thy likeness." What does it mean? Said R. Na'hman b. Itz'hak: "It means that scholars who keep sleep from their eyes in this world, the Holy One, blessed be He, satisfies them with the appearance of the Shekhinah in the world to come." R. Johanan said: It is written [Prov. xix. 17]: "He lendeth to the Lord, that is liberal to the poor." If this were not written, it would be impossible of conception; for it appears as if He becomes a servant to the lender; for it is written [ibid., xxii. 7]: ". . . and the borrower is servant to the man that lendeth." R. Hyya b. Abba, in the name of R. Johanan, said: It is written [ibid., xi. 4]: ". . . but *zedaka* will deliver from death"; and [ibid., X. 2]: "Treasures of wickedness will not profit aught; but *zedaka* will deliver from death." What do the two *zedakas* mean? One, that it

saved him from an unnatural death; the other, that it saved him from Gehenna. Which of them speaks of Gehenna? The one from chap. xi., as there is there mentioned the day of "wrath"; as it is written [Zeph. i. 15]: "A day of wrath is that day," etc., meaning Gehenna. And what kind of *zedaka* saves one from an unnatural death? If he gives, and knows not to whom, and he who receives it knows not from whom (if he gives his donation to the treasurer of charity). "Gives and knows not to whom" excludes the acts of Mar Uqba (who used to put four zuz every day in the slot underneath the door for one poor man, so that the poor knew not from whom he received it, but Mar Uqba knew to whom he gave it). "The receiver does not know from whom" excludes the acts of R. Abba, who used to wrap up some dinars in his handkerchief and, coming among the poor, stretch his hand containing it behind him, and the poor would take it out; so that he knew not who took it, but the poor knew who was the giver. An objection was raised from the

following: What shall one do that he should have male children? R. Elazar said: He should distribute his money among the poor. R. Joshua said: He should enjoy his wife before he has intercourse with her. And R. Eliezer b. Jacob said: He shall not give a coin for the treasury of charity unless the treasurer is like unto R. Hananya b. Theradion. (Hence one must not always give to the treasury of charity?) The above Boraitha meant also when the treasurer was of that kind. R. Abuhu said: Moses said before the Holy One, blessed be He: "Lord of the Universe, how may the horn of Israel be raised?" To which He answered: "You should take charity from every one of Israel who is to be counted" [Ex. xxx. 12]. The same said again: King Solomon b. David was questioned: How great is the power of charity? and he answered: Go and see how David, my father, explained this [Ps. cxii. 9]: "He distributeth, he giveth to the needy: his righteousness endureth for ever; his horn shall be exalted in honor." Rabha, however, said, from the following verse [Is. xxxiii. 16]: "He shall dwell on high; rocky strongholds shall be his refuge; his bread shall be given him; his water shall be sure." And it is to be interpreted thus: "Why shall he dwell on high," etc.? Because to the poor he has given his bread, and to the down-trodden his water was sure. R. Abuhu said again: Solomon was questioned: Who is supposed to be the man who has a share in the world to come? And be answered with the verse [Is. xxiv. 23]:

[paragraph continues] " . . . and before his ancients in glory" (which means him who is respected in his old age for the wisdom which he gathered during all his life. As it happened to Joseph b. R. Joshua, who was in a state of catalepsy, and when he awoke his father asked him: What have you seen in the upper world? And he answered: I have seen a reversed world: he who is here highly esteemed is there considered of the lowest class, and *vice versa*. His father rejoined: Not a reversed world, but a rational one, have you seen. He continued questioning: And how are we considered there? And he answered: The same as in this world. I also heard a saying: Happy are they who come here with their study in their hands. I also heard that those who were killed by the government, none of the creatures could approach them (because of their high standing).

Who is meant by those who were killed by the government? Shall we assume that R. Aqiba and his comrades are meant? Is it only because they were killed? (They were the greatest men of the generation, aside from this.) It meant them who were killed in Louda. (See Tract Taanith, pp. 45-46.)

There is a Boraitha: Rabban Johannan b. Zakkai questioned his disciples as to the meaning of the verse [Prov. xiv. 34]: "*Zedaka* exalteth a people; but the disgrace of nations is sin." And R. Eliezer answered: "*Zedaka* exalteth a people" means Israel, as it is written [II Sam. vii. 23]: "And who is like thy people, like Israel, the only nation on the earth?" And "the disgrace of nations is sin"--all the *zedaka* and kindness of the nations, if they indulge in them only for the purpose of becoming great or gaining a good name, is a sin for them. R. Joshua (one of the disciples) answered the first half-verse same as R. Eliezer; and the second half: If the nations do so even in order that their kingdom shall continue to exist for a long time, as in the case of Nebuchadnezzar [Dan. iv.]. Rabban Gamaliel answered the first half of the verse as above; the second half: It is a sin for the nations if they do so solely to pride themselves thereon against other nations. So he who is proud without cause falls into Gehenna, as it is written [Prov. xxi. 24]: "The presumptuous and proud, scorner is his name, who dealeth in the wrath of presumption." And by wrath is meant Gehenna, as mentioned above. Said R. Gamaliel: For the right interpretation of this verse we are still in need of the Modaith; as R. Eliezer b. Modaith interpreted it thus: The first part as above, and the second part: If the nations art doing so only for

the purpose of insulting Israel; as it is written [Jer. xl. 3]: "Now the Lord hath brought it . . . because ye have sinned," etc., which was said by Nebusaradan. R. Ne'hunia b. Hakana, however, answered. This verse is to be interpreted thus: *Zedaka* and kindness exalt a nation, meaning Israel; but to the nations it is considered a sin-offering. Their master, R. Johannan b. Zakkai, rejoined: It seems to me that Ne'hunia's interpretation is better than yours and mine. "Than mine! Did he also say something about this?" Yea as we have learned in the following Boraitha: "Said to them R. Johannan b. Zakkai: As a sin-offering atones for Israel, so does charity atone for all other nations."

Iphra Hurmiz, the mother of King Sabur, sent four hundred dinars for charity to R. Ammi, and he did not accept it, but forwarded it to Rabha, who accepted it, in order to have peace with the royal house. R. Ammi, however, became angry, and said: Does Rabha not accept the verse [Is. xxvii. 11]: "When its boughs are withered, they shall be broken off; women will come and set them on fire; for it is not a people of understanding," etc.?

But why does R. Ammi become angry? Did he not want to maintain the peace with the royal house? He thought that this money ought to be distributed among the Gentile poor only. Rabha also did so, but R. Ammi was not aware of it.

There is a Boraitha: It was said about Benjamin the Upright, who was a treasurer of charity, that at one time a woman came to him in the years of famine, asking him to feed her. And he told her: I swear that there is nothing in the treasury of charity. But she rejoined: Rabbi, if you will not feed me, you will find a woman with her seven children dead. He then fed her from his own pocket. At a later time he became sick and was near to death; the angels said before the Holy One, blessed be He: "Lord of the Universe, Thou hast declared that he who saves one soul of Israel is like unto him who has saved a whole world; and Benjamin the Upright, who has saved a woman with her seven children, should he die in his prime?" Immediately the adverse decree was torn, and a Boraitha states that twenty-two years were added to his life.

The rabbis taught: It happened with the King Monbas, who had distributed his treasure and that of his parents, in the years of famine, that his brothers and the whole household murmured against him, saying: Your parents saved and always added to

the treasure of their parents, and you are distributing all this! And he rejoined: My parents saved their riches in this world, and I save in the heavenly treasury. As it is written [Ps. lxxxv. 12]: "Truth will grow up out of the earth, and righteousness will look down from heaven." My parents saved in their treasury, which brought them no interest, and I have saved in such a treasury as does bring interest. As it is written [Is. iii. 10]: "Say ye to the righteous, that he hath done well; for the fruit of their doings shall they eat." My parents have saved in a place which can be reached by a hand, but I have saved in a place that can be reached by no hand. As it is written [Ps. lxxxix. 15]: "Righteousness and justice are the prop of thy throne: kindness and truth precede thy presence." My parents have saved for their descendants, and I have saved for myself. As it is written [Deut. xxiv. 13]: ". . . and *unto thee* shall it be as righteousness before the Lord thy God." My parents have saved money in their treasury, and I have saved souls in my

treasury. As it is written [Prov. xi. 30]: "The fruit of the righteous is of the tree of life; and the wise draweth souls to himself." My parents have saved for this world, and I have saved for the world to come. As it is written [Is. lviii. 8]: ". . . and before thee shall go thy righteousness; the glory of the Lord shall be thy reward."

"*If, however, he bought a dwelling-house*," etc. Our Mishna is not in accordance with R. Simeon b. Gamaliel of the following Boraitha, who says that if one bought a tract of land, however small, he is considered a citizen immediately. But have we not learned in another Boraitha that he taught, if one bought a tract of land which is even only fit to build a house upon? There are two Tanaim who have reported differently in his name.

MISHNA *V*.: Partners cannot compel each other to divide a courtyard unless each of the parts measures at least four ells; nor can a field be divided unless each part measures at least nine kabs for sowing. R. Jehudah, however, says: Nine half-kabs. Nor can a garden be divided unless each part measures at least half a kab for sowing. R. Aqiba, however, says: A quarter. Neither can one compel his partner to divide a dining-room, a turret, a pigeon-coop, a cloth, a bath-house, or an olive-press house, unless each has enough room to continue his former work. This is the rule: If, after division, each part retains its former name, then one can compel his partner to divide; but not otherwise. All this is said when the partners disagree;

however, when they do agree, they may do as they please. An exception is the Holy Writ, if they possess it, which must not be divided, even if both agree to do so.

GEMARA: Said R. Assi in the name of R. Johanan: The four ells mentioned must be measured after doors and partitions necessary have been placed. And he may be supported from the following Boraithas: As one of them states that a courtyard is not to be divided unless each part contains eight ells, and another one states, unless four ells; to explain the contradiction, it is to be said that one treats without the doors and partitions, and the other treats with them.

R. Huna said: A yard must be divided in accordance with the doors (it means, he who possesses more doors is to get a greater share). R. Hisda, however, maintains that four ells must be allowed for each door, and the remainder should be divided equally. There is a Boraitha which supports R. Hisda: "All the doors which are in a yard, the owners of them have a right to four ells for each one; if one possesses one door, and another one two, the former takes four, and the latter eight ells; and the remainder is to be divided equally. If, however, one of them possesses a gate which measures eight ells, he has .a right to eight ells opposite it, and four ells in the yard." What is meant by the additional four ells? Thus said Abayi: He takes eight ells in the length and four ells in the width of the yard. Amemar said: An excavation in the yard which contains *granum* of fruit for the food of cattle, four ells is to be measured to it on either side. However, this is said when the owner has no separate door for it; but if he has one, four ells to the door only are to be measured. R. Huna said: "To a balcony the law of four ells does not apply, as the four ells which are allowed for each door are for unloading, and to and from the balcony one goes through the door of the house. R. Shesheth objected from the following: Gates of houses, as well as gates of balconies, have a right to four ells? The Boraitha speaks of a balcony which is partitioned with windows; if so, then it is self-evident, as it is a good chamber? It means that the partitions did not reach the ceiling. The rabbis taught: A gate, a balcony, or a gallery to which doors of the upper compartments open, and from which steps lead down to the court,

have each a right to four ells. And even if five houses were open -to this gallery, no more than four ells are allowed. R. Johanan, questioned R. Jannai: Has a chicken-coop a right to four ells,

or not? And he answered: The four ells are given for unloading, and here he can load and unload through the roof of the chicken-coop. Therefore it has no right to four ells.

Rabha questioned R. Na'hman: In the case of a house which is only half roofed, how is the law about the four ells in question? And he answered: It is not entitled to them--not only when it is roofed from inside, so that it is easy for one to go in to unload; but even when it is roofed from outside, he may take the trouble of entering from inside to unload.

R. Huna questioned R. Ammi: If one of the inhabitants of an alley desires to open the door leading from his yard to another alley, may the inhabitants of that alley prevent him, or not? And he answered: They may. He questioned him also: Lodgings for the government militia, how should they be arranged? In accordance with the number of souls or in accordance with the number of doors? And he answered: In accordance with the number of souls. And so also have we learned in the following Boraitha: Manure in the yard is to be divided in accordance with the doors of the house; and military lodgings, in accordance with the number of souls.

R. Huna said: If one of the inhabitants of an alley desires to make a fence around the entrance, the other inhabitants may prevent him, because he extends their way (making them walk around his fence). An objection was raised from the following: If there were five courtyards open to the alley (which was, in turn, open to the street), all of them may use the place bordering on the fifth yard which is nearest the street (for loading, unloading, etc.). The fifth, however, may use only its own place, but not the places near the other yards. The same is the case with the first three at the place near the fourth yard, the first two at the third, and only the first one at all of them, while none of them have the first one. (Hence we see that to the first one none of them has a right; and this objects to R. Huna's theory, who said that *none* of them have a right to make a fence around their entrance.) Regarding this law, Tanaim. of the following Boraitha differ: One of the inhabitants of an alley who desires to open his door into another alley, the inhabitants of that alley may prevent him. If, however, the door was *there*, only it was shut, and he wanted to open it, they cannot prevent him. So is the decree of Rabbi. R. Simeon b. Elazar, however, maintains, that if there were five yards opening to an alley, all of them may use the places which border upon the yards in

the alley. And to the question, "Where are yards mentioned?" it was said that this Boraitha is not complete, and should read thus: "And the same is the case with five yards which open into an alley: all of them may use the fifth which is nearest the street, and the fifth can use only its own place, etc. So is the decree of Rabbi. R. Simeon, however, maintains that all of them may use the places alike."

The master says: If there was a door, and it was shut, the inhabitants cannot prevent him. Said Rabha: This law holds good only when he had not broken the hinges; but if he had broken the hinges, it is supposed that he had not intended to open the door again, and the inhabitants can

prevent him from doing so. Said Abayi to him: The following Boraitha supports you: "If there was a house with a closed door, the four ells for unloading applies to it; if, however, the owner broke the hinges from the door, he has lost his right to them." Rabba b. b. Hana, in the name of R. Johanan, said: Alleys which are open to a road which leads to another city, and the inhabitants of this city desire to close them, the inhabitants of that city may prevent them; not only when there is no other road to that city, but even if there was another road, they can also prevent them. As R. Jehudah, in the name of Rabh, declared: A thoroughfare which is occupied by a majority, it is prohibited to spoil.

R. Annan, in the name of Samuel, said: Inhabitants of alleys who desire to make doors to their ends which are open to the street may be prevented by the public. The schoolmen were about to interpret this that it meant only the first four ells which are attached to the public ground, but not beyond this. As R. Zera said elsewhere, in the name of R. Na'hman: The four ells which are attached to the public ground are to be considered as the public ground itself. In reality, however, it is not so, as R. Na'hman's decision there was only regarding the law of defilement; but here it might happen that the street should be crowded and many people would enter beyond the four ells.

"*Nor can afield be divided,*" etc. And R. Jehudah does not differ with the first Tana, as each of them speaks in accordance with the custom in his country. But what is the law in Babylon? Said R. Joseph: It can be divided if there is enough to plough for a day. How is this to be understood? If it means in the days of sowing, when the earth has already been ploughed, then the ploughing will not last two days, and in one day it could not be

completed; and if in the days of ploughing, then in the time of harvest there will not be a day's work (and it is a trouble to hire laborers for a fraction of a day)? If you wish, it may be said that it means a day of ploughing and sowing together; and if you wish, it may be said that it means a day of sowing and artificial watering. R. Na'hman said: A valley can be divided when there is for each part a day's artificial watering. "A vineyard," says the father of Samuel, "three kabs for each part." And so also we have learned in the following Boraitha: "If one says: 'I sell you a part of the vineyard,' it is no less than three kabs. So is the decree of Symmachos." Said R. Jose: "Such a decree is only prophetical, as I see no ground for this." How is the law in question to be decided in Babylon? Said Rabha b. Qisna: There shall be no less than three bushes, each of them containing no less than twelve branches of grapes, to dig which is a man's day's work.

Said R. Abdimi of the city 'Haifa: Since the Temple was destroyed, prophecy was taken away from the prophets and was given to the wise. (How is this to be understood?) Can a wise man not be also a prophet? In other words, were all the prophets fools? He means to say, that although it was taken away from the prophets who were not wise, it was not taken away from the wise ones. Said Amemar: And a wise man is better than a prophet, as it is written [Ps. xc. 12]: ". . . obtain (*nobbi* [1]) a heart endowed with wisdom." And usually, who is dependent upon whom? The smaller is dependent upon the greater. Hence wisdom is greater than prophecy. Said Abayi: This theory may be supported from the fact that one great man declares something new, and exactly the same had been said by another great man. Said Rabha: "What support is this? It may be that both of them are equal in wisdom. Therefore," said he, "it happens frequently that a great man declares something new, and afterwards it is found that Aqiba b. Jose has already declared so (and it is hard to say that he was equal in wisdom to R. Aqiba). R. Ashi, however,

objected also to this: It may happen that in this one case he was equal in wisdom to him. And he supported this from the fact that it very often occurs that a sage declares a Halakha, and afterwards it is learned that the same was already said to Moses on Mount

[paragraph continues] Sinai. But even then, perhaps it was by chance, as it happens that a blind man accidentally seizes something. It means that he declares also the reason of it.

R. Johanan said: Since the Temple was destroyed, prophecy was taken away from the prophets and was given to lunatics and small children. What is meant by lunatics? Thus it happened to Mar b. R. Ashi, who was standing in the market of Mehuza and heard a lunatic say that the future head of the college in Suria would be Tibumi (Mar's name was Tibumi). And he said: "Who among the rabbis signs his name Tibumi, if not myself? Hence I shall succeed." And he went to Suria. In the mean time the rabbis of the college intended to appoint R. A'ha of Diphthi as their head. However, when they heard that Mar had arrived, they sent to him two of the rabbis to take his advice, and he detained them. Then they sent another two, and he did the same with them. Finally ten of them arrived, and then he began to teach and to lecture, and proclaimed himself as the head of the college. [He did so because one must not begin to lecture if there are less than ten persons present.] R. A'ha then applied to himself the saying of the sages: He to whom harm has been done by heaven, has no hope of relief in the near future, and *vice versa*.

And what in regard to the children? For example, the little daughter of R. Hisda was sitting on the knee of her father, and Rabha and Rami b. Hama were sitting opposite, and to the question of her father, "Whom of them would you like to marry?" she answered, "Both of them." And Rabha immediately rejoined: "I shall be the last one." (And so it was. Rabha married her after the death of her first husband, Rami b. Hama.)

R. Abdimi of 'Haifa said again: Before one eats and drinks he has two hearts, and after this he has only one, as it is writ ten [Job, xi. 13]. [1] Said R. Huna b. R. Joshua: Who is used to wine, even if his heart is locked like a virgin's, the wine opens it; as it is written [Zech. ix. 17]: ". . . and new wine the virgins."

R. Huna b. R. Joshua said: It is certain that when a firstborn among his brothers (who is entitled biblically to two shares) comes to inherit his shares in real estate, he is to be given two portions adjoining. But how is it if the first-born has died

without children, and the surviving brother marries his wife and takes his shares--does the law of preëmption apply to him also, as to the dead brother, or not? Abayi said: He is to be treated just as the dead one. And Rabha said: It is written [Deut. xxv. 6]: "And it shall be that the firstborn," etc., which signifies that he shall be treated as the first-born in that respect, but not respecting the division of a heritage.

There was a man who bought an estate near to the estate of his father-in-law (who had no male children), and when they came to divide the inheritance of the father-in-law, he insisted that the estate at the boundary of the one he bought should be given to him. Said Rabha: Such a claim, if

not listened to, it would be equal to the acts of Sodomites. Therefore they must be compelled to comply with his wish. R. Joseph opposed: Could not his brothers-in-law claim that this estate was pleasant to them as the estate of Bar Marion (which was then known as the best estate)? And the Halakha prevails in accordance with R. Joseph (if the estate needs no artificial watering). Should one of brothers who are about to inherit two estates of dry land, each of which has a pond for watering, buy an estate adjoining one of the two estates in question, and demand that this should be given him as his share-said Rabha: As each of them has a pond for watering, his claim is a right one; and if declined, it would be a Sodomite custom. R. Joseph, however, opposed this, saying: His brother can claim: "It might happen that one pond would become dry and we should be compelled to water both estates from one pond; but as he has bought another estate, the pond will not be sufficient for watering all of them, and mine would remain dry." And the Halakha prevails in accordance with him also in this case.

If the inheritance consists of two estates which are watered from one pond, and one of the brothers has bought an estate adjoining one of these, and demands this adjoining one as his share--said R. Joseph: His claim is a right one, as the above reason cannot apply here; and, therefore, if it should not be listened to, it would be a Sodomite custom. To which Abayi opposed: One can claim: "It is better for me to have my estate between your two, and then it will be better preserved." However, the Halakha prevails again with R. Joseph, as the latter claim is not to be considered. If two brothers inherit an estate which has a river on one side and a pond on the other, the

estate must be divided diagonally so that each half borders on both the river and the pond.

"*Nor a dining-room*," etc. But how is it when there is not so much space for each? According to R. Jehudah the law, "Either you concede or I concede," must be applied. One of them can say: "Either I pay you cash for your share, and the whole estate remains for me, or *vice versa*." And R. Na'hman said: Such a law cannot be applied, and they must remain in partnership. Said Rabha to R. Na'hman: According to your decision, that the law of concession does not apply in such a case, how is it, then, if a first-born and his brother have inherited from their father a slave, or an animal which is not fit for slaughtering-how shall they divide it? (A first-born is entitled to two-thirds; and therefore he took as his instance a first-born, because it is more difficult for them to remain partners.) Answered R. Na'hman: Because I say even then they must remain partners, and the slave or animal in question must serve to one two days, and to the other one.

An objection was raised from the following: If there is a bondsman only in half (as, for instance, he has been a bondsman of two masters and was freed by one of them), he may serve his master one day, and attend to his own business the other day. So is the decree of Beth Hillel. Said Beth Shammai: Such a law is partial, as you have satisfied only the master, but not the bondsman; as the bondsman cannot marry a female slave, for he is half free, nor can he marry a free maiden, because he is half slave, shall it be decided that he shall remain unmarried? This would also be improper, as the world is created for reproduction; as it is written [Is. xlv. 18]: "Not for naught did he create it: to be inhabited did he form it." And therefore he can compel his master to set him free, and accept a note for half his value. And Beth Hillel changed their decision and yielded to that of Beth Shammai. (Hence we see that in such a case the law of concession applies?) Here it is different, as the concession is not an even one for both partners; for the

bondsman can only demand of the master to accept half his value for freeing him; but the master cannot demand of the bondsman to sell him his free half, as this is against the law.

Another objection was raised: Two brothers, one of them rich and the other poor, inherit from their father a bath- or a press-house. If it is rented to somebody, they must certainly divide the rent; but if the bath was made for their private use,

the rich brother can say to the poor one: You may hire or buy servants who will prepare the bath for your use, but I will not pay for half the work, or buy olives and press them in the press-house. (Hence we see that the law of concession does not apply?) Here also the concession is not even, as the poor one has no money to offer to pay for his share in the inheritance. Come and hear another objection from our Mishna. "If, after the subdivision, each part can retain its former name," etc., but if not, it must be appraised in money and one of the partners must concede his share to the other when he is paid. (Hence the law of concession applies?) On this point Tanaim differ, as we have learned in the following Boraitha: "If one of the partners says to the other: 'Take your share in full, and I will take the remainder,' he must be listened to. R. Simeon b. Gamaliel, however, says that he must not."

Now let us see. If the case be similar to that of our Mishna, why should R. Simeon b. Gamaliel object? We must say, then, that the Boraitha cited is not complete, and it should read thus: "You take the prescribed quantity for your share, and I will take the remainder; or, I will concede or else you concede"--he is to be listened to. And R. Simeon b. Gamaliel said: "Nay." Hence Tanaim differ. The case maybe similar to that quoted in our Mishna, and the reason of R. Simeon why he must not be listened to, is this: He may claim: "I have no money to pay for your share, and I do not want to accept a present from you." As it is written [Prov. XV. 27]: "He that hateth gifts shall live."

Said Abayi to R. Joseph: R. Jehudah's decision, that the law of concession applies, is in accordance with Samuel, who said, concerning the Holy Writ, that if it was a property of two partners "it must not be divided even when both agree," the case being only when it was bound in one volume; but if bound in two parts, they may. And this can also be correct when the law of concession does not apply; for if it were applied, then there would be no difference whether bound in one or in two parts. R. Shalman, however, explained the decision of Samuel: When both partners agree to divide.

Amemar said: The law of concession is to be applied. Said R. Ashi to him: And what about R. Na'hman's decision? And he said: I do not hold with him. "Is that so? Did it not happen to Rabba and R. Dimi, the sons of Hinna, that their father bequeathed unto them two female slaves, one of them

able to cook and bake, and the other to spin and weave; and they came before Rabha, and he decided that the law of concession did not apply here?" "There was another reason; viz., both brothers needed the services of both slaves. And to decide, 'You take one and I take the other,' would not be the law of concession." But did not Samuel decide that when bound in two parts

they might divide? It is already explained above that he speaks of a case when both partners are willing to do so.

The rabbis taught: One may attach the Pentateuch to the Prophets, and both to the Hagiographa, and keep them in one volume. So is the decree of R. Meir. R. Jehudah, however, said: "Each of them is to be kept separately." The sages said, furthermore, that the book of each Prophet must be kept separately. Said R. Jehudah: It happened with Beithus b. Zonin, that he had eight books of the Prophets attached together, with the permission of R. Elazar b. Azariah. According to others, however, he had the books, but they were each of them kept separately. Said Rabbi: It happened once that the Pentateuch, Prophets, and Hagiographa, attached to one another, were brought to us, and we approved it.

After each book of the Pentateuch, four lines must be left blank when copying. The law is the same regarding each book of the Prophets; except in the case of the books of the Twelve Prophets, three lines after each is sufficient to be left blank. However, if one book ends at the bottom of the page, the next book may be begun right at the top of the next page without leaving any lines blank.

The rabbis taught: "If one wishes to attach the scrolls of the Pentateuch, Prophets, and Hagiographa to one another, he may do so, provided he leaves a whole page blank at the beginning, and at the end enough blank space to wrap around the entire scroll; and he may begin a new book at the top of a page when the previous book ends at the bottom of the page preceding. And if he wishes to separate the books afterwards, he may do so." How is this to be understood? It is self-evident that a separate book is better than if attached. It means to say one may begin at the top of the page; as then, if he decides to separate the books, it will be easier for him to do so. There is a contradiction in the following Boraitha, which states: "There must be blank space at the beginning and at the end of each book, sufficient to wrap it up." To wrap what up? Around

the whole book? Then it contradicts the former Boraitha which states that at the beginning one page is sufficient; and if it means only one page, then it contradicts the above, which states "enough at the end to wrap around the book"? Said R. Na'hman b. Itz'hak: This Boraitha also means to leave blank space at the beginning and at the end, as prescribed. R. Ashi, however, said: The latter Boraitha speaks of the Holy Scrolls, as we have learned in the following Boraitha: "All scrolls are rolled (around *one* holder) from right to left; the Holy Scrolls are rolled towards the middle (and must be attached to *two* holders); and a blank page must be left both at the beginning and at the end." And R. Eliezer b. R. Zadok said: So wrote the scribes of Jerusalem their Holy Scrolls.

The rabbis taught: The length of the Holy Scrolls must not exceed the circumference; nor must the latter exceed the length.

Rabbi was questioned about the prescribed dimensions of the Holy Scrolls. He answered: Six spans in length when written on double parchment will be equal to the circumference; and when on ordinary parchment, I do not know what length.

R. Huna wrote seventy Pentateuchs, and in only one of them the length happened to be equal to the circumference. R. A'ha b. Jacob wrote only one, on calf-skin, and the measurements happened to be just as prescribed; and the rabbis cast their eyes upon him, and he died.

[Said the rabbis to R. Hamnunah: Is it true that R. Ammi wrote four hundred Pentateuchs? And he answered: Perhaps he wrote only one verse [Deut. xxxiii. 4]: "The law which Moses commanded us, is the inheritance of the congregation of Jacob," four hundred times. Similarly to this, Rabha questioned R. Zera: Is it true that R. Janai had planted four hundred vineyards? And he answered: Perhaps such as contain five trees, two on each side and one behind (which, in regard to the law of Kilaim, is considered a vineyard).]

An objection was raised: The ark which was made by Moses was two and a half ells in length, one and a half in width, and one and a half in height: all these measurements were taken with an ell of six spans. The tablets which were brought down by Moses were six spans square and three spans thick: they were placed in the ark lengthwise. Now, how much space did the tablets occupy in the ark? Twelve spans. Then three spans of space were left. Take off one span for the two walls of the ark, each of which was half a span, then two spans' space

was left, where the Holy Scrolls were placed. As it is written [I Kings, viii. 9]: "There was nothing in the ark save the two tables of stone," etc. The expressions "nothing" and "save" are an *exclusion* after an *exclusion*; and there is a rule that where such is to be found, it means an *inclusion*; and here the Holy Scrolls are included, which were in the ark. Now the length of the ark is accounted for. How is the width to be accounted for? The tablets occupied six spans in width; and from the remaining three one span must be deducted for the two walls. This leaves two spans of empty space, to the end that the Holy Scrolls should not be crushed while being taken out or returned. So said R. Mair. R. Jehudah, however, maintains that the ell was of five spans. The tablets, which were six spans square and three thick, were placed in the ark lengthwise, and occupied twelve spans, thus leaving only one-half span of space: one finger (a quarter of a span) for each wall. This is for the length. As to the width, the tablets occupied six spans; and from the remaining space of one and a half spans take off half a span--one and a half fingers [1] for each wall--leaving then one span; and this was occupied by the pillars. As it is written [Solomon's Song, iii. 9 and 10]: "The pillars thereof," etc. And also the casket in which the Philistines placed the gift to the God of Israel was put alongside. As it is written [I Sam. vi. 8]: "Ye must put in a casket alongside of it, and then send it away," etc. And upon the casket the Holy Scrolls were placed. As it is written [Deut. xxxi. 26]: "Take this book of the law, and put it at the side of the ark," etc. We see, then, that it was placed at the side and not within the ark. But what is to be *included* from the two *exclusions* mentioned above? The broken tables, which were first broken by Moses. Now, if it is borne in mind that the circumference of the Holy Scrolls was six spans, its diameter must have been two spans, as there is a rule that everything with a circumference of three spans has a diameter of one span. Now, as it was said above, that the Holy Scrolls were rolled toward the middle, then the diameter must exceed two spans, for the space in the middle between the two rolls could not be reckoned in the two spans. How, then, could it get in? Said R. A'ha b. Jacob: "The Holy Scrolls which were written by Moses (of which the king read the portion

belonging to him, and the high priest read on the Day of Atonement in the court of the Temple) were rolled from left to right only, in one roll." But even then, how can you put in a thing which is two spans in thickness into a space of only two spans? Said R. Ashi: "A piece of the parchment was left, out from the roll, so that it could be put in the two spans, and what was left was lying on the top." But according to R. Jehudah's theory, where were the Holy Scrolls placed before the Philistines sent the casket? A little board was attached to the pillars, and the Holy Scrolls were put upon it.

The rabbis taught: "The order of the prophets is as follows: Jehoshua, Judges, Samuel, Kings, Jeremiah, Ezekiel, Isaiah, and the Twelve Prophets." Let us see: Hosea, of the Twelve Prophets, was before Isaiah, as it is written [Hosea, i. 2]: "The beginning of the word of the Lord," etc. This certainly cannot be understood that he was the first of the prophets to whom the Lord spoke since the time of Moses, as there were many prophets after Moses preceding Hosea. And therefore R. Johanan explains that he was the first of the four prophets who prophesied at that period; viz.: Hosea, Isaiah, Amos, and Micah. Hence he was before Isaiah. Why is he placed after? Because his book is counted among the Twelve, among whom were Haggai, Zechariah, and Malachi, who were the last of the prophets: therefore his book is placed together with theirs. But why was the book of Hosea not separated, and placed first? Because his book is small, and if it were placed separately it would become lost. However, was not Isaiah before Jeremiah and Ezekiel? Why is he not placed first? Because "Kings" ends with the destruction of the Temple, and the whole book of Jeremiah speaks of the destruction, and that of Ezekiel at the beginning speaks of the destruction and at the end of consolation, while Isaiah's entire book speaks of consolation: destruction was put next to destruction, and consolation next to consolation.

The order of the Hagiographa is as follows: Ruth, Psalms, Job, Proverbs, Ecclesiastes, Song of Solomon, Lamentations, Daniel, Book of Esther, Book of Ezra, and Chronicles. [1]

And who wrote all the books? Moses wrote his book and a portion of Bil'am [Numbers, xxii.], and Job. Jehoshua wrote his book and the last eight verses of the Pentateuch beginning: "And Moses, the servant of the Lord, died." Samuel wrote his book, Judges, and Ruth. David wrote Psalms, with the assistance of ten elders, viz.: Adam the First, Malachi Zedek, Abraham, Moses, Hyman, Jeduthun, Asaph, and the three sons of Korach. Jeremiah wrote his book, Kings, and Lamentations. King Hezekiah and his company wrote Isaiah, Proverbs, Songs, and Ecclesiastes. The men of the great assembly wrote Ezekiel, the Twelve Prophets, Daniel, and the Book of Esther. Ezra wrote his book, and Chronicles--the order of all generations down to himself. [This may be a support to Rabh's theory, as to which, R. Jehudah said in his name, that Ezra had not ascended from Babylon to Palestine until he wrote his genealogy.] And who finished Ezra's book? Nehemiah ben Chachalyah.

There is a Boraitha in accordance with him who said that the last eight verses of the Torah were written by Joshua; namely: "It is written [Deut. xxxvi. 5]: 'And Moses the servant of the Lord died,' etc. Is it possible that Moses himself should have written 'and he died'? Therefore it must be said that up to this verse Moses wrote, and from this verse forward Joshua wrote. So said R. Joshua, according to others R. Nehemiah." Said R. Simeon to him: Is it possible that the Holy Scrolls should not have been complete to the last letter, and nevertheless it should read [ibid., xxxi. 26]: "Take this book of the law," etc. Therefore, we must say that up to this verse the Holy One, blessed be He, dictated, and Moses repeated and wrote it down; and from this verse

forward He dictated, and Moses with tears in his eyes wrote it down; as thus it is read [Jer. xxxvi. 18]: "Then said Baruch unto them, With his mouth did he utter clearly all these words unto me, and I wrote them in the book with ink."

According to whom, then, is the following--that R. Joshua b. Aba, in the name of R. Gidel, quoting Rabh, said: "The last eight verses of the Pentateuch, when read from the Holy Scrolls, must be read by one person without any interruption"?

[paragraph continues] Should it not be in accordance with R. Simeon? It may be also in accordance with R. Simeon; and the reason for the exception of these eight verses is because, as there was already a change at the writing by Moses (as said above), the change is made also here. "Joshua wrote his book"; but is it not written there: "And Joshua died"? This was written by Elazar. But is it not written there: "And Elazar died"? The book was finished by his son Pinchas.

"Samuel wrote his book." But is it not written: "And Samuel died"? The book was finished by Gad the seer and Nathan the prophet.

"David wrote the Psalms," etc. But why did the Boraitha not enumerate also Ethan the Ezrachite? Said Rabh: "The latter and Abraham are identical." It enumerates Moses, and also Hyman; did not Rabh say that by Hyman is meant Moses? There were two Hymans.

"Moses wrote his book," etc. This is a support to R. Levy b. Lachma, who said that Job lived in the time of Moses. 1 Rabha, however, said: Job lived in the time of the spies which were sent by Moses to investigate Palestine.

One of the rabbis was sitting before R. Samuel b. Na'hmeni and said: Job never existed; and is mentioned in the Scripture only for an example. Said he to him: The Scripture is against your theory, as it states plainly [Job, i. 1]: "There was a man," etc. But according to your theory it is also written [II Sam. xii. 3]: "But the poor man had nothing," etc. Was it so in reality? It was written only for an example! The same may be said concerning Job? If it were so, why, then, his name and the name of the country he came from?

R. Johanan and R. Elazar both said that Job was among the ancestors of the Babylonian exiles; and his college was in Tiberias.

An objection was raised: There is a Boraitha: "Job's age was from the time when Israel came to Egypt until he left it." Read: "As many years as the Israelites were in Egypt." Another objection was raised. There were seven prophets who have prophesied to the nations, viz.: Bil'am and his father, Job, Eliphaz the Themanite, Bildad the Shuchite, Zophar the Na'amathite, and Elihu ben Barachel the Buzite. (Hence we

see that Job was a Gentile?) And according to your theory, was then Elihu, just mentioned, a Gentile? He was certainly an Israelite, as it is written, "of the family of Ram." And why is he

called a prophet of the nations? Because his prophecies were for the nations. The same can be said concerning Job. But did not the Jewish prophets also prophesy for the nations? The Jewish prophets prophesied to Israel, and to the nations also, but the above-mentioned seven have prophesied for the nations only.

There is an objection from the following: A pious man was among the nations, and Job was his name; and he came to this world only for the purpose of receiving his reward. The Holy One, blessed be He, however, brought chastisements upon him, and he began to blaspheme; the Lord then doubled his reward in this world, so that he should have no share in the world to come. (Hence we see that Job was a Gentile?) On this point Tanaim of the following Boraitha differ: R. Elazar said: Job was in the time of the judges; as it is written [Job, xxvii. 12]: ". . . deal in such vanities?" And which generation was one entirely of vanities? It is the generation of the Judges. R. Joshua b. Karha said: Job was in the time of Ahasuerus; as it is written [Job, xlii. 15]: "And there were not found such handsome women as the daughters of Job," etc. And in which generation were handsome women searched for, if not in the generation of Ahasuerus? [But perhaps it was in the time of David, when handsome women were also searched for [I Kings, i. 3]? There they searched only among the daughters of Israel, but in the time of Ahasuerus it is written, "in all the land."] R. Nathan said that Job was in the time of the Queen of Sheba, as it is written [Job, i. 15]: "When the Sabeans made an incursion." [And R. Samuel b. Na'hmeni said in the name of R. Jonathan: He who translates *Malchas Sheba* "the queen of Sheba" is in error, as the right translation is "the government of Sheba."] And the sages said: He was in the time of the Chaldea, as it is written [ibid., ibid. 17]: "The Chaldeans posted themselves," etc. Still others said that Job was in the time of Jacob and has married Dinah, Jacob's daughter. (They infer it from an analogy of expression, *Nebala*.) And all the just mentioned sages hold that Job was an Israelite, except the last, who maintains that he was a Gentile. R. Johanan said: It is written [Ruth, i. 1]: "And it came to pass in the days when the judges judged," etc. It means it was a generation that

judged the judges. If, *e.g.*, the judge said to them: "Takeout the toothpick from thy tooth," they answered: "If thou wilt take the beam out of thy eyes, I will remove the toothpick." If, *e.g.*, the judge said to one: "Thy silver is become dross," the answer was: "Thy wine is drugged with water" [Is. i. 22] (*i.e.*, if the judge accused one of a small transgression, the accused said to him: "Thou thyself art a greater sinner than I am").

It is written [Job, i. 6-9]: ". . . that the accuser (Satan) also came in the midst of them," etc. Satan said before the Lord: "I have sped all over the world, and found no trusty man like thy servant Abraham, to whom thou didst say [Gen. xiii. 17]: 'Arise, walk through the land in the length of it and in the breadth of it; for unto thee will I give it.' And not withstanding this, when he searched for a grave to bury his wife Sarah, and did not find one until he bought it for four hundred silver shekels, he did not murmur or bear in mind anything against thee." "Then said the Lord to Satan," etc. Said R. Johanan: That which was said about Job is more important than that which was said about Abraham, as regarding the latter it is written [ibid., xxii. 12]: "Now I know that thou fearest God," etc. And regarding the former it is written [Job, i. 1]: "And this man was perfect and upright, and fearing God and eschewing evil." What is meant by "eschewing evil"? Said R. Aba b. Samuel: Job was liberal with his money; it is customary, if a laborer has done some service to the value of half the smallest coin, that the employer takes him to the storekeeper, buys something for this coin, and gives the laborer the half due him. Job, however,

gave him the whole coin for such services. "Then Satan answered, Is it for nought that Job feareth God? . . . the work of his hands hast thou blessed." What does this mean? Said R. Samuel b. R. Itz'hak: "Any one who took a coin from Job for business, has succeeded." And what means, "And his cattle are far spread out in the land"? Said R. Jose b. Hanina: His cattle have changed the order of the world. Usually wolves kill goats; Job's goats, however, killed wolves.

"But only stretch forth thy hand," etc. [ibid. 11-19]: "The oxen were ploughing, and the she asses were feeding beside them." How is this to be understood? Said R. Johanan: From this is to be inferred that the Holy One, blessed be He, gave Job a foretaste of the world to come (as about the world

to come it is written [Jer. xxxi.] that pregnancy and birth in a woman occurred together). "A fire of God," etc. [to ii. 5]. Satan again answered the Lord, as said above.

"And Thou hast incited me against him," etc. Said R. Johanan: If this were not written it would be impossible for a human being to conceive it: the Scripture speaks of the Lord as if He were a human being who can be influenced through incitement.

There is a Boraitha: Satan descends and tempts human beings; then ascends and accuses them; then takes the order and takes the soul of him whom he has tempted.

"Then the accuser answered the Lord," etc. [ibid., ibid. 4-8], Said R. Itz'hak: Satan was more afflicted than Job himself. It is similar to a master who says to his servant: "Break the barrel, but save the wine" (without letting him have a vessel to save it in). So was it with Satan; the Lord told him to take Job's body, but to save his soul. Said Resh Lakish: From this we see that he who is called Satan is himself the evil spirit who tempts one to sin; and he himself is the Angel of Death, as he was told to save the life: from which it is to be seen that the life of man was in his hands.

R. Levi said: Satan and Peninnah both intended (with their accusation) to please heaven. Satan, who had seen that the Lord was favorable toward Job, feared that through the justice of Job Abraham's merits would be forgotten, and, therefore, he spoke as above. And Peninnah, as it is written [I Sam. i. 6]: "And her rival also provoked her continually, in order to make her fret," etc. It means for the purpose of making her pray and have a child. R. A'ha lectured the same in the city of Papuniah, and Satan came and kissed his feet for this.

"With all this, did not Job sin with his lips." Said Rabha: "With his lips he did not sin, but he sinned in his heart." What was it? [Job, ix. 24]: "Is a land given up to the wicked? He covereth the faces of its judges: if this be not the truth, who is it then? [1] Said Rabha. Job was about to turn the dish face downwards (*i.e.*, to deny the might of the Lord).

[paragraph continues] Said Abayi to him: Job spoke only about Satan. On this point Tanaim differ. About the just cited verse R. Elazar said: Job was about to turn the dish face downwards. And R.

Joshua said to him: Job spoke only with regard to Satan. It is written [ibid. x. 7]: "Still it is within thy knowledge that I am not wicked, and there is none that can deliver me out of thy hand." Said Rabha: Job wanted to free the whole world of a trial. He said thus: Lord of the Universe, Thou hast created an ox with parted hoofs, and us without (and Thou hast commanded that only creatures with the parted hoofs shall be eaten, but Thou couldst have made it the reverse). Thou hast created Paradise, and Thou hast created Gehenna; Thou hast created the upright, and Thou hast created the wicked. Who can prevent Thee? (Hence no reward and no punishment should be dealt, as all was done according to Thy will!) And what have Job's colleagues answered to this? [ibid. xv. 4]: "Yea, thou truly makest void the fear (of God), and diminishest devotion before God." Which means that the Holy One, blessed be He, has created the evil spirit, and He has created wisdom as a remedy against him.

Rabha lectured: It is written [ibid. xxix. 13]: "The blessing of him that was ready to perish came upon me; and the heart of the widow I caused to sing for joy." From the first half of this verse we learn that be used to rob a field belonging to orphans, improved it, and returned it to them; and in the latter half we learn that if there was a widow whom no one wished to marry, he put his name upon her, saying that she was his relative, and then it was easy for her to marry. It is written [ibid. vi. 2]: "Oh, that my vexation could be truly weighed, and my calamity," etc. It was said by or to Rabh: The earth may cover Job's mouth for this. He makes himself a comrade of providence [ibid. ix. 33]: "There is no one who can decide between us, who could lay his hand upon us both." Said Rabha: For this also his mouth may be covered with earth: should a slave rebuke his master? [ibid. xxxi. 1]: "A covenant had I made with my eyes: how, then, should I fix my look on a virgin?" Said Rabha: He had not looked upon strange women, but Abraham had not looked even at his own wife; as it is written [Gen. xii. 11]: "*Now* I know that thou art a woman of handsome appearance," from which it is to be inferred that *before* that time he knew not that.

[Job, vii. 9]: "As the cloud vanisheth and passeth away:

so will he that goeth down to the nether world not come up again." Said Rabha: From this we see that Job denied resurrection. [Ibid. ix. 17]: "He that bruiseth me with his tempest, and multiplieth my wounds without a cause." Said Rabba: Job has blasphemed by the tempest, and by the tempest he was answered. Blasphemed by the tempest--as he said: "Lord of the Universe! Perhaps a tempest passed before Thee, and changed to Thee the word Iyabh to Oyabh." 1 And by the tempest he was answered--as it is written [ibid. xxxviii. 1]: "Then did the Lord address Job out of the storm-wind. . . . Do but gird up like a mighty man thy loins: and I will ask thee, and do thou inform me."

So said He: "I have created many hairs on human beings, and for each hair I have created a separate hole; for if two should be nourished from one hole, it would blind the eyes of men; now from one hole to another it was not changed to me; and from Iyabh to Oyabh, should it be changed?" [Ibid., ibid. 25]: "Who hath divided off water-courses," etc. "There are many drops that I have created in the clouds, and for each drop there is a separate place; for if two drops should go into one, they would make the earth too soft, and it could not produce; these places were not changed to me." ". . . And a way for the lightning (that is followed by) thunders." "Many thunders have I created in the clouds, and for each thunder there is a separate track; for if two should go along the same track, they would destroy the world. The tracks were not changed

to me; and from Iyabh to Oyabh, should it be?" [Ibid. xxxix. 1]: "Knowest thou the time when the chamois of the rock bring forth?" "The chamois of the rock is cruel towards its offspring, and when the time of bearing comes she ascends to the top of the mountain, so that the offspring should fall and die. And I send an eagle which receives it with its wings." "Markest thou when the hinds do calve?" "The hind has a narrow womb, and when the time of bearing comes, I procure a snake that bites her in the womb, so that she is able to bring forth the offspring. In both cases it must happen at the exact moment; for if it occurs a second before or a second later, the young in the first case, and the mother in the latter, would die. Now, from one second to the other

there never is a change; and from Iyabh to Oyabh, should it be changed?" [Ibid. xxxiv. 35]: "Job hath not spoken with knowledge, and his words are without intelligence." Said Rabha: From this it may be deduced that one is not to be made responsible for his words at a time when he is afflicted. [Ibid. ii. 11-13]: "When, now, the three friends of Job . . . and they met together," etc. What is meant by "they met together"? Said R. Jehudah in the name of Rabh: They all entered at one time the gate of the city where Job lived; although a Boraitha states that each of them lived three hundred parsas away from the others. But who informed them? According to some, each of them had a crown on which were engraved the pictures of his three colleagues; and if one of them became afflicted, the picture was changed. And according to others, they had in their garden three trees, each of which bore the name of one of the friends; and if one became afflicted, the tree was changed. Said Rabha: This is what people say: "Either to have colleagues like Job's, or death."

It is written [Gen. vi. I]: "And it came to pass when men began to multiply . . . and daughters," etc. R. Johanan said: With a daughter, multiplication comes into the world, as in Chaldaic a girl is called *rabhia*; literally, *multiply*. Resh Lakish, however, maintains that with a daughter strife comes into the world, as *rabhia* means also *strife*. Said Resh Lakish to R. Johanan: According to your opinion, multiplication comes with daughters; why was not Job doubly rewarded with daughters, as he was with sons and with all his property? And he answered: Although they were not doubled in number, they were in beauty; as it is written [Job, xlii. 13-15]: "He had also fourteen [1] sons and three daughters," etc. And farther on it is written: "And there were not found such handsome women," etc. [2]

To R. Simeon, Rabbi's son, a daughter was born; and he became dejected. Said his father to him: With thy daughter came multiplication (*rabhia*). Said Bar Kapara to him: The

consolation of your father is very poor. The following Boraitha states: "The world cannot be without males and females. However, happy is he whose children are male, and woe to him whose children are female. The world cannot be without a spice dealer and a tanner (*burseus*); happy is he who is a spice dealer, and woe to him who is a tanner." On this point, however, the Tanaim of the following Boraitha differ. It is written [Gen. xxiv. 1]: "The Lord has blessed Abraham *bakhol* (in all things)." What does the word *bakhol* mean? R. Meir said: He was blessed in not having any daughters. R. Jehudah, however, said: He was blessed in having a daughter. Anonymous teachers say: He had a daughter with the name *Bakhol*. R. Elazar the Modai said: Abraham, our father, was an astrologer; and therefore all the kings from the West

and the East came to his door to ask his advice. 1 R. Simeon b. Johanan said: A diamond was hanging on Abraham's neck, and when a sick man looked upon it, he was cured. And when Abraham passed away, the Lord sealed it in the planet of the sun. Said Abayi: This is what people say: When the day arrives, the sick become better. There is another explanation of the word *bakhol*--that as long as Abraham was alive Esau did not rebel. According to still others: "Because Ishmael repented in his days." That Esau did not rebel in his days is stated in a Boraitha to explain the verses Gen. xxv. 29-34 as referring to that day on which Abraham died. And that Ishmael had repented is explained by Rabha, in the name of R. Johanan, to Rabhina and to R. Hama b. Buzi thus: It is written [ibid., ibid. 9]: "And his sons Isaac and Ishmael," etc. And from the fact that Isaac is named first, although Ishmael was older, it is to be understood that Ishmael had repented and, knowing that Isaac was better than he, given him the preference. But perhaps the verse only does it because it was so, and Ishmael had nothing to do with it? Then the Scripture [ibid. xxxv. 29] would also say Jacob and Esau, and not according to the age, as it is now. Hence the previous construction is correct.

The rabbis taught: There are three to whom the Holy One, blessed be He, gave a taste of the world to come in this world; namely, Abraham, Isaac, and Jacob: Abraham--

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because regarding him is written *bakhol*; Isaac--because regarding him is written *mikhol*; and Jacob--regarding whom is written *khol*. The same three overruled the evil spirit, as the words just mentioned are written regarding them.

The rabbis taught: There are six whom the Angel of Death has not dominated: the former three, and Moses, Aaron, and Miriam--the three former, because of the words mentioned; and the three latter, because it is written [Num. xxxiii. 38]: "By the order of the Lord," etc. There are seven whom the worms have not devoured: the former six, and Benjamin ben Jacob; according to others, also David--the former six, because of the reasons stated above; and Benjamin, because it is written [Deut. xxxiii. 12]: "The beloved of the Lord (is he), he shall dwell in safety," etc. There are four who died without sin, but because it was so decreed at the time when the serpent made Eve eat the fruit of the tree of wisdom; viz., Benjamin b. Jacob, Amram father of Moses, Jesse father of David, and Khilab b. David--to all of them traditionally, except Jesse the father of David, which is also deduced from the verse. 1

Footnotes

5:1 The Hebrew expression is, "Me'ainai hoaida," literally, "from the *eyes* of the congregation"; hence the leaders are called the *eyes* of the congregation.

5:2 The expression in Hebrew is "Ma'hmad Ainechem," literally, the *delight* of your eyes.

7:1 In the text it reads that R. Na'hman said there can be made a sign by *Sinuphi Irikhi*. Luria corrected it to read *Ribhi* instead of *Irikhi*, but failed to give any explanation. The explanation of Rashi is so complicated that we cannot understand it. Ashri, however, and Rabono Gershon omit

all this, and we therefore have followed their example.

16:1 In ancient times promissory notes were written mostly by witnesses.

20:1 The expression in Hebrew is *Yoqor*, which has two meanings--"dear" and "grievous": the Talmud takes the former meaning and Leeser takes the latter.

23:1 Their Bibles must have been written differently, as in ours the spelling of the word is as it is pronounced.

28:1 The Hebrew term is *zedaka*; Leeser translates it "equity," according to the sense.

36:1 The expression in the Bible is *ve'nobbi*, which has; two meanings--"to obtain," and also "a prophet." The Talmud takes it literally, that a prophet has a heart of wisdom. Leeser translates according to the sense.

37:1 The expression in this verse is *nabub yilabab*; literally, "The empty one shall receive two hearts." Leeser's translation does not correspond.

43:1 One and a half fingers"--meaning the little finger, of which there are six to a span.

44:1 Rashi explains the reasons of the order of the Hagiographa, which, in his opinion, was arranged in order of time, and maintains that Job was written after Ruth and Psalms, the two latter having been written, according to him, by David; and concerning the Songs, he says: "It seems to me that Solomon said or wrote them in his old age." However, the order of our Scriptures is different, and they are certainly p. 45 not in the order of time, as modern critics ascribe a much later period of time to almost all the books, and we are still ignorant of the reason why the order was changed in the canons we possess from that in the Talmud, and who it was that substituted the existing order.

46:1 His support is from an analogy of expression; and the Gemara discusses the analogy, but it is too complicated, and therefore omitted. The same is the case with the saying of Rabha farther on.

49:1 This is the exact translation of Leeser, which we follow in our edition. The Bible commentaries differ in the explanation of this passage, which is very complicated, and Leeser, following one of them, explains it all as a question. The latest commentator, Dr. Benjamin Szold of Baltimore, interprets it according to the Talmud, that the first half should not be understood as a question, but as a fact; and it seems to us he is right.

51:1 Job in Hebrew is spelled Iyabh: Oyabh means enemy; and this means that perhaps the vowels were changed, thus rendering, instead of *Job*, *enemy*.

52:1 *Shibha* in Hebrew means seven; so it is written in Job ii. In this passage it is written *shibhnah*, which, according to the Talmud, means *fourteen*; and double what was before, as all

his property was doubled. Leeser has translated *seven*, giving no attention to the letter *nun* added in this word.

52:2 in the text it is deduced from the names of the daughters; *e.g.*, Yememah, *beautiful as the day*, etc. We have omitted this, as it is difficult, with the Hebrew words, each of which has several meanings, to point out which meaning it bears, and to discuss it. And it is also unimportant.

53:1 The term in the text for this is *aiztagninuth*, and the commentators explain this to mean *astrologer*. According to Schönhak, however, it is composed of two Greek words, στεγω, νοοω, which mean one who can fathom the mysteries of mankind.

54:1 This also is deduced from different verses in the Scripture, in a very complicated way which would be of no interest to the English reader, and has therefore been omitted.

Next: Chapter II

CHAPTER II.

RULES AND REGULATIONS CONCERNING SPACE TO BE LEFT BETWEEN ONE'S PROPERTY AND ANOTHER'S, BE IT OF ONE OR TWO KINDS. UNDER WHAT CONDITIONS A TENANT MAY PLACE AN OVEN IN HIS DWELLING. UNDER WHAT CIRCUMSTANCES A SHOP IN A YARD MAY BE PREVENTED. CONCERNING THE SPACE TO BE LEFT BETWEEN A CITY AND PIGEON-COOPS, TREES, BARNS, CEMETERIES, AND TANNERIES.

MISHNA *I.*: One must not dig a well near that of his neighbor, nor a channel, cave, aqueduct, or basin, for washing, unless it be removed to a distance of at least three spans from that of his neighbor, and plastered with lime. Olive or poppy waste, dung, salt, lime, and flint-stones must also be removed to a distance of three spans, and must be covered with lime. To the same distance, seeds, ploughing, and urine must be removed from the wall; a handmill to a distance of three spans from the lower millstone, which is four from the upper millstone; and an oven three spans from the foundation, which is four spans from the upper rim.

GEMARA: The Mishna begins with a well and ends with a wall? Said Abayi, according to others, R. Jehudah: By the term "wall" is meant the wall of the well. But then it could teach: "Unless he removes it from the well," and it would be self-evident that the meaning is "from the wall of the well"? The Mishna comes to teach us by the way that a wall of a well must measure no less than three spans, in cases of selling and buying, as we have learned in the following Boraitha: "If one says, 'I am selling you the well with its walls,' the walls must measure three spans."

It was taught: If one comes to dig a well at the boundary of his neighbor's vacant plot, has he to remove it to the distance mentioned in the Mishna, or not? According to Abayi he has not, and according to Rabha he has. They differ with regard to a plot prepared for works only; but if it is not prepared for this, they both agree that he may dig at the boundary. And

even if it was according to Abayi, he is not obliged to remove the well to any distance. Even in accordance with the theory of the rabbis, who state farther on that if one comes to plant a tree near the well of his neighbor, he must do so at a distance of twenty-five ells, it is because the well was already in existence there at the time he comes to plant; but here the well does not as yet exist. And according to Rabha he must maintain the distance. Even in accordance with the theory of R. Jose, who says, farther on, that each of the neighbors has a right to do what he pleases on his own property, etc., it is because, when he begins to plant, roots which can injure the well do not as yet exist. But here the owner of the plot which is prepared for wells may claim: "Each time you use the spade at my boundary, you weaken my estate."

An objection was raised from our Mishna: One must not dig a well near that of his neighbor,

from which it is to be inferred--near the already existing well; but if not, he may. And this contradicts Rabha's theory? He may answer: Was it not taught, in addition to this, that it means from the wall of the well?

Another objection from the latter part of our Mishna was raised, which enumerates all the things that are to be removed from the wall, from which it is to be understood that it speaks of an existing wall, but not if it is not yet in existence. And the answer was: This can also be explained that the Mishna comes to teach us that all the things which it enumerates are injurious to the wall.

Come and hear the following: A tree must be removed from a well to a distance of twenty-five ells. Does it not mean from an existing well? Here also it may be explained to mean that at a distance of less than twenty-five ells the roots are injurious to the well. But the same is the case if the well did not as yet exist. If so, then how should the latter part, which states that if the tree is already in existence one has not to cut it down, be understood? For if one must not plant a tree near a plot, even when it is only prepared for walls, how can such a case be found? As R. Papa explained elsewhere, it speaks of a case where one buys such. So it can also be explained here to mean: In case one bought such a tree, he has not to remove it.

Come and hear the following: One must remove a pond for steeping flax from herbs, garlic from onions, and mustard from

bees. Is it also not to be understood to mean already existing herbs? Here also it can be explained, even when it is only prepared for them, and it comes to teach that the things mentioned harm one another. But if so, how should the latter part: "R. Jose allows mustard. . . . Because the bees consume the blossoms of my mustard," be understood? As if one must remove the bees even from a place which is only prepared for mustard, how can such a case be found? Said R. Papa: "It means, when one buys such." But if so, then what is the reason of the rabbis' decision; and also according to R. Jose, why only with mustard? Should it not also be the same in the above case of herbs and flax? Said Rabhina: The rabbis hold that the injurer has to remove himself from the things which can be injured by him; *e.g.*, if the roots of a tree are injurious to a well, the tree must be removed, and not the well, (Says the Gemara:) From Rabhina's statement it is to be inferred that R. Jose holds that the injured one has to remove himself--then why only in the case of mustard? The same ought to be the case with the herbs. If there is a pond for steeping flax, the herbs should be removed, and not the pond? Therefore we must say that R. Jose is also of the opinion that the injurer must remove himself, and the reason of the herbs in question is because the pond does harm to the herbs, and not the herbs to the pond; but bees and mustard injure each other. And thus said R. Jose to the rabbis: The case of the herbs and pond is correct, because the pond injures the herbs, and not *vice versa*. But why should the same be in the case of bees and mustard, which injure each other? The rabbis, however, are of the opinion that bees do not harm mustard; for if they try to consume the mustard within the sown seeds, they cannot grasp them, by reason of their extremely small size. And if they do harm the leaves, it would not matter, for others will grow. But how can it be said that R. Jose holds that the injurer must remove himself--does not the following Mishna state: R. Jose said: Although the well was in existence before the tree was planted, the latter has not to be cut down, etc.? Therefore we must say that R. Jose holds that the injured one has to remove himself. And he said to the rabbi thus: My theory is, that the injured one must remove; but even in accordance

with your theory, that the injurer must remove, your decision is correct in the case of the herbs in question, as the pond harms the herbs, etc. But why should it be the same in the case of mustard and

bees, which do harm each other? To which the rabbis answered as stated above. The mustard, however, harms the bees on account of its pungency.

"*Nor a basin for washing*," etc. Said R. Na'hman in the name of Rabba b. Abuhu: The case is when it is a basin for soaking clothes (they used to soak clothes for several days in canine dung); but if it is a basin for washing, it is to be removed four ells (because of splashing while washing). And so also we have learned in the following Boraitha: "A basin for washing--four ells." But in our Mishna it is stated "three spans." Hence it must be explained that the Boraitha treats of a basin for washing, and is in accordance with R. Na'hman.

R. Hyya b. R. Ivya taught in our Mishna plainly: Provided there is a space of three spans from the edge of the soaking pond to the wall.

"*And plastered with lime*." The schoolmen propounded a question: Does the Mishna state, "and plastered with lime" (which means that this must also be done), or, perhaps, "or plastered with lime" (which means that one of the two requirements suffices)? It certainly teaches "*and* plastered with lime"; for if it read *or*, then all, parts of the Mishna would be taught together, as there is no difference between them. But perhaps it teaches separately, because the injurious effect is not the same in both cases: in the one case it is wetting from the well, while in the other it is the heat from the olive waste? Come and hear the following Tosephtha: R. Jehudah said: "If a flint-stone is placed by a human being between the properties of two persons, each of them may dig a well on his property at a distance of three spans from the flint-stone, provided the walls of the well he plastered with lime." We see, then, that only when that from which the earth becomes weak is placed there by a human being the lime is needed; but if it is there naturally, no lime is needed? Nay; the same is the case even when it is there naturally; and the expression "placed" is necessary. lest one say that in such a case the prescribed amount of space is not sufficient. Therefore he comes to teach us that it does not matter.

"*Olive or poppy waste*," etc. There is a Mishna [Sabbath, p. 86]: "It must not be deposited . . . and also not in lime or in sand," etc. Why, then, here is sand not mentioned and a flint-stone is, while there the reverse is taught? Said R. Joseph: Because it is not customary to deposit victuals in flint stones.

[paragraph continues] Said Abayi to him: "Is it, then, customary to so deposit in wool-flocks, and, nevertheless, it is mentioned there? Therefore," said Abayi, "the Mishnayoth rely upon each other." (*I.e.*, our Mishna relies upon the cited one in the case of sand, while the latter Mishna relies upon ours in the case of flint-stones, as the same is the case with both.) Said Rabha to him: "If such were the case, then the other things would not be repeated in both Mishnas; but some of them would be mentioned in one Mishna, and others in the other, Therefore," said Rabha, "the reason why a flint-stone is not mentioned in the cited Mishna is because a pot with victuals

cannot be deposited there, as the flint-stone would break it. And the reason why sand is not mentioned here is because the nature of sand is such that it is warmed up by a hot thing, but it is cooled by a cold thing," (Hence, here, it must not be removed.) But did not R. Oshia teach us in his Boraitha that sand must also be removed? R. Oshia numbers it among the things which are injured by wetting. Let, then, the Tana of our Mishna, also add this to the category of things that injure by wetting? Wetting is already dealt with in the case of the channel mentioned therein. But does not the Mishna state, "a basin for washing," which is also in the same category, although a channel has already been mentioned? Both must be mentioned, because one could not be inferred from the other, for the following reasons: If a channel only were mentioned, one might say because it is stationary--but for a basin for washing, which is not stationary, the space in question is not needed. On the other hand, if it mentioned only a basin for washing, one might say: "Because of the wetting by stagnant water which has been used for washing is injurious, but a channel does not matter." Therefore both had to be mentioned.

"*Seeds, ploughing*," etc. Why is it necessary for both to be mentioned? If seeds must be removed, is it not self-evident that ploughing for the purpose of sowing is also meant? It means even when the seeds were sown in an unploughed field where they are not so deep. And would not ploughing be understood from seeds; as what is a field ploughed for, if not for sowing? It means even when it was ploughed for the improvement of trees. But why all this? It has already mentioned the things that injure by wetting; and as a field that has been ploughed or in which seeds have been sown needs wetting, it is self-evident that it must be removed? The Tana speaks

of Palestine, concerning which it is written [Deut. xi. 11]: ". . . from the rain of heaven doth it drink water." Shall we then assume that the Tana holds that the rootlets proceeding from the planted seeds extend laterally so that unless the distance beat least three spans the wall maybe injured? Have we not learned [Kilaim, VII. 1] that when one plants vines, he cannot sow seeds over them, unless there be a layer of earth at least three spans in depth over the vines; and a Boraitha in addition to this taught that he might sow on the sides of the plot where the vines are planted (even if not three spans deep; hence we see that the rootlets proceed from seeds downwards, and not laterally, for in the latter case it would be forbidden to sow the seeds even on the sides)? Said R. Haga in the name of R. Jose: The seeds are mentioned, not because the rootlets proceed laterally, but because they render the ground wherein they are sown friable, thus weakening the support to the wall of the well if placed too near it.

"*And urine*." Said Rabba b. b. Hana: One is allowed to void his urine near the wall of his neighbor; as it is written [I Kings, xxi. 21]: "*Mashtin C'kir*." But does not our Mishna state that urine must be removed to a distance of three spans? The Mishna means urine which has been collected in a urinal. Come and hear another objection from the following Tosephtha: "One must not void his urine against the wall of his neighbor, unless it be at a distance of three spans." This is said concerning a brick wall, but in the case of one made of stones, a distance of one span is sufficient to prevent harm by softening the ground under the wall. And if the wall is built upon a rock, then it does not matter at all. Hence it contradicts Rabba b. b. Hana? This objection remains. But does he not cite a verse? The verse means even such a creature as habitually voids its urine upon a wall--namely, a dog.

"*A handmill*," etc. Why so? Because it makes the ground vibrate. But have we not learned in a Boraitha that a horse-mill must be removed to a distance of three spans from the circumference,

which is four spans from the funnel; and such a mill does not make the ground vibrate? Therefore it must be said that the reason of our Mishna is not the vibration of the ground, but the noise produced by the mill.

"*And also an oven*," etc. Said Abayi: From this it is to be inferred that the foundation should be wider than the upper rim by one span. And this regulation relates to buying and selling;

for if its foundation did not contain a span more, the buyer may recede.

MISHNA *II*.: One must not place an oven in a lower story of a house, unless there be an empty space of four ells above it. If the oven is placed in an upper chamber, there must be at least three spans of stone-flooring under it; under a cooking stove only one span of stone-flooring is required. Yet when damage is caused, it must be repaired. R. Simeon, however, says: All these measurements are ordained so that, when they are complied with and damage is caused, one is not held responsible for it.

One must not establish a bakery or a dyer's shop under another's granary; and also not a stable. In reality, it was said that a bakery may be established under a wine store; but, at all events, not a stable.

GEMARA: But have we not learned in a Boraitha that an oven requires four spans, and a stove three? Said Abayi: That Boraitha speaks of bakers, ovens and stoves, and the oven mentioned in our Mishna is that of a private man, and similar to a baker's stove.

"*One must not establish a bakery*," etc. A Boraitha states that if the stable has been established before the granary over it, it may remain.

"*In reality, it was said*," etc. There is a Boraitha: It was allowed under a wine store, because it improves the wine; but not a stable, because it imparts a bad odor to the wine. Said

R. Joseph: Our wine is harmed even by the smoke of a candle. Said R. Shesheth: A haystack is likened unto a stable (because when the hay is damp it becomes warm and emits an odor which harms the wine).

MISHNA *III*.: Partners in a yard can prevent one from establishing a store there, claiming that they cannot sleep on account of the noise produced by the people's coming and going. He, however, who makes utensils, which he sells in the market, cannot be prevented by the partners, with the claim that the noise of the hammer disturbs their sleep. The same is the case if one of them has a handmill, or if he is a teacher of children, as the claim that they cannot sleep on account of the noise is not to be considered.

GEMARA: Why, in the first part, is the claim of the noise from the people's coming and going considered, while in the latter part the noise of strange children is not considered? Said

[paragraph continues] Abayi: The latter part speaks of an instructor of children residing in an adjoining yard. Said Rabha to him: "If it were so, then the Mishna would state that in an adjoining yard it is permitted. Therefore," said he, "the latter part of the Mishna speaks of a school for children's education, and was stated after the enactment of Joshua b. Gamla. So R. Jehudah said in the name of Rabh: May the memory of Joshua b. Gamla be blessed, for, were it not for him, Israel would have forgotten the Torah, as in former times the child who had a father was instructed by him; but the one that had not, did not learn at all. The reason is that they used to explain the verse [Deut. xi. 19]: "And ye shall teach them to your children," etc., literally--*ye* personally. It was therefore enacted that a school for the education of children in Jerusalem should be established, on the basis of the following verse [Is. ii. 3]: ". . . for out of Zion shall go forth the law, and the word of the Lord out of Jerusalem." And still the child who had a father was brought to Jerusalem and instructed; but the one who had not, remained ignorant. It was therefore enacted that such school should be established in the capitals of each province; but the children were brought when they were about sixteen or seventeen years of age, and when the lads were rebuked by their masters, they turned their faces and ran away. Then came Joshua b. Gamla, who enacted that schools should be established in all provinces and small towns, and that the children be sent to school at the age of six or seven years (and after this enactment it was also enacted that the claim of the noise of school-children should not be considered).

Rabh said to the schoolmaster R. Samuel b. Shilath: If the child is under six years of age, do not accept him; but above that age, accept him and feed him (with knowledge) as you feed an ox. The same said again to him: When you must beat a child, do so with a shoe-strap only; if this produces the desired effect, then well and good; if not, leave him in the company of his comrades, whose steady progress he will see, and this will improve him. An objection was raised from the following: If one of the tenants of a yard wishes to establish an office for circumcision, a barber shop, a tannery, or a school for children, the other tenants may prevent him? It speaks of children of idolaters. But there is another Boraitha which states that if there are only two tenants, and one of them wishes to make one of the above-named establishments, the other one

may prevent him? This Boraitha also speaks of children of idolaters. Conic and hear another Boraitha: He who has a house in a yard belonging to partners, must not rent this house for one of the above-named establishments; nor to a Jewish or a Gentile schoolmaster. This Boraitha speaks of the head schoolmaster of the entire city (who has all the subordinate schoolmasters under his control, and instructs them how to teach, which produces a great deal of noise).

Rabha said: Since the enactment of Joshua b. Gamla we do not transfer a child from the school of one city to that of another; but from one congregation to another we do. However, if there is a river between them, we do not, unless there is a bridge over it; but if there is only a dock, we do not. He said again: The number of children in a school must not exceed twenty-five, if there is one teacher; if the number is between twenty-five and forty, an assistant must be provided for him by the city; and if there are fifty, two teachers must be appointed. He said again: If there is one teacher who can perform his duties well enough, but there is another one who is still better, the former must not be discharged, lest his successor become too certain of retaining the position and will not attend to his work properly. R. Dimi of Nahardea, however, said: On the contrary, he will be even more diligent, as the jealousy of scholars increases wisdom. Rabha

said again: If there are two teachers, one of whom is a good expounder, but is not particular about the exact pronunciation of the words in the Scriptures, while the other is particular in the latter respect but is not so good an expounder, the former should be appointed, as the errors will be corrected by themselves. R. Dimi of Nahardea, however, said: On the contrary, an error impressed upon the mind of a child remains there forever (therefore the latter should be given the preference), as it is written [I Kings, xi. 16]. "For six months did Joab remain there with Israel, until he had cut off every male in Edom." When he came before David, and was asked why he had done so, he said . Because it is thus written [Deut. xxv. 19]: thou shalt blot out each *zochor* (male) of Amalek." Said David to him: But we read *zoicher* (remembrance, meaning both--males and females)! And Joab answered: "My master instructed me to pronounce *zochor*." [1] He then went to his master, and questioned him

how to pronounce this word, and he answered *zochor*. So he took out his sword, and wanted to kill him. And to the question of the master, "Why?" he answered: Because it is written [Jer. xlviii. 10]: "Cursed be he that doeth the work of the Lord negligently." And his master rejoined: "Let, then, this man (myself) remain in this course," and he answered him, quoting the end of the verse: "And cursed be he that withholdeth his sword from blood." Some say that he slew him, and others say that he did not. Rabha said again: An instructor of children, a planter, a butcher, a barber, and a scribe of the city are to be considered as if they were already warned (*i. e.*, if they neglect their duties they may be discharged without previous notice); as the general rule regarding this is: All irreparable damage done by a specialist, who is appointed as such, is to be considered as if he were previously warned. (An instructor of children who has spoiled a child cannot repair this harm; and the same is the case with a planter who has spoiled the trees; a butcher who, through his neglect, has made the meat illegal for use; a barber who has killed a man by performing venesection; and a scribe who has written the Holy Scrolls fallaciously.)

R. Huna said: If one of the inhabitants of an alley establishes a handmill there, and another one comes to do the same, the law gives the former the right to prevent the latter; for he may claim: "You are cutting off my livelihood." He is supported by the following: Fishermen must remove their nets from a fish which has already been marked by one of them while it was trying to escape from him to a distance that a fish is usually able to traverse. And to the question, How far is it? Rabba b. R. Huna said: "The distance of a parsa"? Nay, with fish the case is different, as they place spies (to look out for bait, and the former fisherman is certain that the fish will go to his bait and then he will surely catch it; but here his comrade may say to him: "I am not injuring your livelihood, as your customers will go to you and mine to me").

Said Rabhina to Rabha: Shall we assume that R. Huna is in accordance with R. Jehudah, who said (Middle Gate, p. 143) that a storekeeper must not furnish little children with presents of nuts, etc., for the purpose that they may call again--and the sages allowed this? Nay, it may be said that R. Huna's theory is in accordance with that of the rabbis also, as there they allow this for the reason that the storekeeper may say, "I bestow

nuts, you may give plums"; but here the claim, "You are cutting off my livelihood," is a right one, even in accordance with the rabbis.

An objection was raised. One may establish a store or a bath-house near or opposite to that of his neighbor, and the latter cannot prevent him from doing so, for he may say: "You can do business in your establishment, and I will do business in mine." (Hence this contradicts R. Huna's theory?) On this point Tanaim of the following Boraitha differ: "The inhabitants of an alley may combine to prevent one from another alley from opening a tailor shop, tannery, children's school, or any other specialist's establishment; but they cannot do so against an inhabitant of their own alley. R. Simeon b. Gamaliel, however, maintains that the majority can prevent an inhabitant even of their own alley."

R. Huna b. R. Joshua said: "It is certain to me that the inhabitants of one city have a right to prevent one of another city from competing with them, provided he does not pay the duties of the city. It is also certain to me that an inhabitant of an alley cannot prevent another inhabitant of the same alley; but I doubt whether an inhabitant of one alley can prevent one of another alley." And this question remains undecided.

Said R. Joseph: R. Huna, who prohibits competition in any specialty, admits that concerning instructors of children no competition is to be considered; as the master said that the jealousy of scholars increases wisdom. Said R. Na'hman b. Itz'hak: R. Huna also admits that no competition is to be considered in the case of peddlers in large cities, as the master said that Ezra has enacted for Israel that peddlers shall travel in the large cities, for the purpose that the daughters of Israel might easily procure their ornaments. This is only concerning travelling dealers; but the establishment of a stationary place may be prevented. And if the peddler is a young scholar for whom it is a humiliation to travel, he may be permitted to establish a stationary place; as Rabha permitted R. Yashia and R. Obadiah to establish a place of business against the then existing law of that city, saying that because they were scholars they would be hindered in their study by travelling.

There were three basket dealers who brought baskets to Babylon, and the inhabitants of the city prevented them. So they came before Rabhina, who said: They come from the country, and may sell their goods to countrymen who come

here on the market day; but only on that day, and in the market only, but may not traffic with their goods in private houses of the city.

There were wool dealers who brought wool to the city of Pumnahara, and the inhabitants there prevented them. They came before R. Kahana, who said to them: "They have a right to do so." They, however, claimed that they had to collect their debts, which must take time, and they had nothing to live on if they should be prevented from selling their goods; and he allowed them to sell as much as they needed for a livelihood only, while they were there, but not more.

R. Dimi of Nahardea brought dry figs in a boat. Said the Exilarch to Rabha: Go and see whether he is a scholar; then you may hold the market for him. And Rabha sent R. Ada b. Abba to examine him. He questioned him about something of the Law, which he could not answer. So R. Dimi said to him: Is the master Rabha? He tapped him good-naturedly on the sandal, and answered: "From myself to Rabha there is a great difference; but, nevertheless, I am your master, while Rabha is the master of your master." In consequence of this, the market was not

held for him; and R. Dimi lost on his dry figs, and came to complain before R. Joseph, saying: See, master, what was done to me! And he answered: The One who neglected not to take revenge for the shame of the king of Edom, shall not neglect to revenge your shame. (The shame of Edom, as it is written [Amos, ii. 1]: ". . . because he burned the bones of the king of Edom into lime.") Consequently R. Ada's soul has gone to its rest. Then R. Joseph said: *I* have punished him, for I have cursed him. R. Dimi said: *I* have punished him, for he had caused my loss on the dry figs. Abayi said: *I* have punished him, for he used to say to the rabbis: While ye are licking bones in the college of Abayi, would it not be better for you to eat fat meat in the college of Rabha? And Rabha said: *I* have punished him, for, when he used to go for meat, he used to say to the butcher: You must give me meat before you give it to the servant of Rabha, as I am better than he. R. Na'hman b. Itz'hak said: *I* have punished him. For R. Na'hman b. Itz'hak was the head of the preachers in the days before festivals; and every day, before preaching, he reviewed his sermon together with R. Ada b. Abba. On that day, however, on which R. Ada b. Abba died, R. Papa and R. Huna b. R. Joshua detained him, so that he should explain to them what Rabha

lectured on the last Sabbath concerning cattle tithe, and he repeated for them all that Rabha said. Meanwhile the time for R. Na'hman's preaching arrived, and R. Ada did not call him. Said the rabbis to R. Na'hman: Why does the master sit? It is already dawning, and you have to go to preach. And he answered: I am sitting and waiting for the coffin of R. Ada. And, indeed, R. Ada's death was soon announced. It seems, therefore, that R. Na'hman had punished him.

MISHNA *IV*.: If one's wall is attached to that of his neighbor, he must not build a wall parallel to it unless he leaves an interval of four ells. One must also not build a wall opposite the windows of his neighbor, wherever they are to be found, unless it be at a distance of four ells.

GEMARA: But the Mishna declares that his wall was already attached to that of his neighbor. Who gave him the right to do so? Said R. Jehudah: It means that if one wished to do so he must not, unless he left the above-mentioned space. Rabha opposed: "But the Mishna states that it was already attached?" Therefore he said that the Mishna meant to say thus: If there was already a wall at a distance of four ells from that of his neighbor, and it fell, he must not build another one unless at the same distance, as the treading upon the earth between the two walls is useful for the strength of their foundations. [1] Rabh, said: "The Mishna treats only about a wall of a garden (because, as inside there is no treading upon the earth near the wall, it needs the treading outside); but concerning a wall of a yard, it does not matter. R. Oshia, however, maintains that the same is the case with a wall of a yard also. Said R. Jose b. Hanina: And they do not differ; as the former speaks of an old town (where the ground is already trodden), while the latter speaks of a new town.

Our Mishna states that, for windows, wherever they may be placed, a space of four ells is needed; to which a Boraitha adds: "If a window is placed at the top, the wall in question must reach such a height that when the owner stands upon it and stoops, he should be unable to see anything by looking in at the window. And if a window is placed at the bottom--to such a height that he could not see when standing upon it. And if the window be opposite the wall, he must leave such a space as would not darken the window." We see, then, that the reason of the

regulation concerning a parallel wall is the darkening, but not the treading mentioned above? The Boraitha speaks of a side-wall. How much space, however, must one leave, in order that the window will not be darkened? Said R. Jyobha, the father-in-law of Ashian b. Nadbach, in the name of Rabh: As much as the width of the window. But from such a height one can still look in at the window? Said R. Zebid: He speaks of a wall with a gable-top. But does not the Mishna state four ells? This presents no difficulty. The Boraitha speaks of one side-wall to which the space of the width of a window suffices; and our Mishna speaks of two side-walls; then four ells are needed, so that the window be not darkened. Come and hear: One must leave a space of four ells near the drains of his neighbor's roof, so that the latter may be able Ito place a ladder there. (It speaks, in case the owner of the house. is allowed to direct his drains to the neighbor's yard; and, while he allows him this, he must also allow him a space for a ladder.) We see again that the purpose of leaving the space is for placing a ladder, and not for treading upon the earth? It speaks of a slanting roof overhanging the neighbor's yard, with the drains placed at the edge, which does not prevent the treading in the yard under it; and, therefore, there could be no reason but the latter.

MISHNA *V.*: One must remove the ladder in his yard from his neighbor's pigeon-coop to the distance of four ells, that a weasel should be unable to jump from it to the latter; and also his wall from his neighbor's roof-drains to a distance of four ells, to enable his neighbor to place a ladder there.

GEMARA: Shall we assume that our Mishna is not in accordance with R. Jose, who says farther on that everybody may do on his property what he pleases? This Mishna can also be in accordance with him, as R. Ashi said: When I was at the house of R. Kahana, he said that R. Jose admitted that one is responsible for any damage done to his neighbor by his arrows (*e.g.*, if he places a ladder so, that it would be easy for a weasel to jump from it to the pigeon-coop). But, after all, this is not direct damage, but *germon*? (See First Gate, p. 125.) Said R. Tubi b. Mathna: We infer, then, from this, that to cause damage by *germon* is forbidden (*i.e.*, indirect damage).

R. Joseph had in his yard small date-trees, under which barbers used to perform venesection; and ravens, while coming to consume the blood, caused harm to the dates; and R. Joseph commanded: "Remove the *cur-cur* from my property!" (*i.e.*,

that the barbers should not be allowed any more to do their work there, and then the ravens would not come for the blood). And to Abayi's question: Are not the barbers a *germon*? he answered with the declaration of R. Tubi b. Mathna just quoted. But had not the barbers already made there a *hazakah*? To this R. Na'hman in the name of Rabba b. Abuhu said: There is no *hazakah* concerning damages. But was it not taught that, regarding this, R. Mari said: "As, for instance, smoke, which injures the eyes," and R. Zebid said: "As, for instance a toilet, which is disgusting to the sight"? Said R. Joseph: To me, who am tender-hearted, the blood is as disgusting as the things just mentioned.

MISHNA *VI.*: A pigeon-coop must not be placed within fifty ells of the town: nor has one a right to make a pigeon-coop on his own property, unless his property extends to fifty ells on each side. R. Jehudah said: "He must have four kurs on each side--the space which a dove can

cover at one flight without resting." If, however, one has bought one, he is in his right even when there is only a quarter of a kur of space.

GEMARA: Are fifty ells sufficient for this? Have we not learned in a Boraitha that a net for doves must not be spread unless the locality be thirty *riss* distant (four miles) from an inhabited place? Said Abayi: "As far as flying goes, it is to a great distance; but with fifty ells it usually gets enough of food" (after which it flies thirty *riss*; hence beyond the fifty ells it does no harm to the gardens or vineyards). But does not a Boraitha state that in an inhabited place even within a hundred miles one must not spread a net? Said R. Joseph: This speaks of the case when there are vineyards, so that they fly from one vineyard to another, and so they can fly through a much greater distance. And Rabha said that it speaks of a case where there are many pigeon-coops. If it is so, why does the Boraitha state that one hundred miles from a city one must not do so, because he can catch doves from another pigeon-coop, even not in the city? It may be said that the pigeon-coops in question were his own, or they were ownerless.

"*He is in his right*," etc. Said R. Papa, and according to others R. Zebid: From this it is to be inferred that the court has to open the mouth of a buyer or of an heir to claim *hazakah*. (*I.e.*, if the plaintiff claims that the estate is his and brings evidence that such estate is his or his parents', and the defendant says, "I inherited it from my parents," or "I bought it from so

and so, who has occupied it for so many years," and brings witnesses to his statement, but the witnesses cannot testify that he who occupied it before bought it or inherited it from some one, then the court must consider the defendant's claim; and by the expression "open the mouth," it is meant that the court may say to the defendant: Look for evidence that the one from whom you bought it or inherited it had it in his occupancy for so many years.) What news do they come to teach us? Does not a Boraitha state farther on that if the defendant claims inheritance it is not necessary for him to say when the bequeather bought it? It was necessary for them to teach that the same is the case when the defendant claims "I bought it." But this is also stated farther on [Chapter III., Mishna 10]? Their statement was nevertheless necessary, for the following reason: From the case in the quoted Mishna one might say that, because it speaks of a yard which was near the public thoroughfare, the claim is to be considered a right one; for if it were not as he says, the public would prevent him; or, at his request, the public have relinquished their right to that yard. But here, in a private case, it is different; and if this case only were stated, one might say that it is to be taken into consideration, as a private party usually settles the difference, or else he relinquishes his right; but there, in the case of the public, with whom can he settle, or who can relinquish? Therefore both cases were necessary to be stated.

Again--"he is in his right" (*hazakah*). But did not R. Na'hman in the name of Rabba b. Abuhu say that there is no *hazakah* in regard to damages? Said R. Mari in the name of Rabh: This is said only concerning smoke, as mentioned above.

MISHNA *VII*: A little dove that is found within fifty ells of a pigeon-coop belongs to the owner of the latter; if outside of fifty ells, it belongs to the finder. If it is found between two pigeon-coops, it belongs to the nearer one; but if in the exact middle, it is to be divided.

GEMARA: Said R. Hanina: In a case which we should judge by a majority, it would be so; and

if, according to proximity, it would be different, the decision by a majority must be taken into consideration; and although both majority and proximity are biblical, nevertheless majority has the preference.

R. Zera objected: It is written [Deut. xxi. 3]: "The city which is the nearest," etc. Does it not mean even if there are other cities which are more populous than the nearest one?

[paragraph continues] Nay; it means if they are not. But even then, why should not the majority of the world be considered? It means, if the city in question is situated among the mountains, where it is not usual for robbers to come from a distant place. But does not our Mishna state that a dove within fifty ells of the pigeon-coop belongs to it, even when there are others outside of the fifty ells which have more doves than the nearest one? Nay; it means when there are not. If it is so, how is the latter part, which states, "if outside of fifty ells, it belongs to the finder," to be understood? If there are no other pigeon-coops, it can only be from that one? It speaks of a pigeon which can hop only; and R. Uqba B. Hama said that a pigeon which hops cannot do so more than fifty ells. R. Jeremiah then questioned in the college: How is the law if one foot was within the fifty ells and the other without? And for this question he was driven out of the college.

Come and hear another objection from our Mishna, which states that if it is found between two pigeon-coops, it belongs to the nearer one. Does it not mean even when the farther one has more doves? Nay; it means when both have an equal number. But why, then, should the majority of the world not be considered? It speaks of a case when vineyards occupy the whole distance between the two pigeon-coops, and the pigeon is found on a walk within the vineyard; and then it cannot be supposed that it came from anywhere else, as it is known that a hopping dove does not go out of sight of her pigeon-coop. Hence she must be from one of these two in question; as, if she were from another one, she could not see it on account of the trees and partitions.

It was taught: A barrel of wine floating on a river, if found opposite a city of which the majority of the inhabitants are Jews, it may be used; if opposite a city of a majority of Gentiles, it must not be used. So said Rabh. Samuel, however, maintains that even when the majority are Jews it is also prohibited, lest perhaps it came from Dagra (a country near the river Euphrates, where there were no Jews). Shall we assume that their point of difference is the above statement of R. Hanina--that one is in accordance with him and the other is not? Nay; both agree with R. Hanina, and the point of their differing is thus: One maintains that if this were from Dagra, it would have sunk while floating in the bays formed by the projecting rocks along the coast from Tyre to Accho, and in the shallow waters

caused by melting snow; and the other maintains that because the stream in the river is strong, it could reach here.

A pitcher of wine was found in a vineyard of *arla* (the third year after planting); and Rabhina allowed to use it. Shall we assume that he did so because he holds with R. Hanina's theory? Nay; his reason was because if it were stolen from this vineyard they would not have hidden it in the same. This is only concerning wine (because the thief would not leave the wine lest the presser

of the grapes should find it); as for grapes, however, they would not fear to leave them where they were stolen and take them away afterwards. There were some leather bags of wine which were found among the vines of a vineyard belonging to a Jew; and Rabha permitted their use. Shall we assume that he did so because he does not hold with R. Hanina's theory (as the majority of men are Gentiles, and not Jews)? Nay; his reason is that all the pressers and those that pour the wine into barrels are Jews. This law, however, applies only to large leather bags, but not to small ones, for fear that they were dropped by travellers, the majority of whom are Gentiles; and even if there were large ones with them, the law nevertheless applies, for fear that they were dropped by a traveller upon an ass, who had hung them on both sides of the ass. 1

MISHNA *VIII*.: In planting a tree, a space of twenty-five ells must be left outside of the town; for a carob or a sycamore, fifty ells are needed. Aba Shaul said: "For a wild tree, fifty ells." If the city was built first, the tree might be cut down without paying for it; but if the tree was planted first, it is to be cut down and paid for; if doubtful as to which was there first, it is to be cut down without paying for it.

GEMARA: What is the reason of all this? Said Ulla: "Because of the beauty of the city." But why not because it is not allowed to make a field of the open space around the town, and *vice versa*? It means to say that even according to R. Elazar, who hold., that this is allowed, here it is not to be tolerated, because it spoils the beauty of the city. And also according to the rabbis, who allow to plant trees in an open space belonging to the city, but not seeds; here, concerning a single tree they would not allow it, as it spoils the beauty of the city. And whence do you know that the rabbis make a difference between

seeds and trees in this respect? From a Boraitha [Erubhin, p. 57]: "If a wood-shed of more than two saahs . . . was used to sow grain . . . things must not be moved therein . . . If, however, trees were planted in the greater part of it, things may be carried therein." The Mishna states that if the tree was planted first, it must be cut down and paid for; but why should the: owner of the tree not claim that it should be paid for, and then, cut down? Said R. Kahana: Because a pot belonging to partners is neither warm nor cold (it means that one relies upon the other to warm it or to cool it, and it remains as it was); and here also, if he should wait until he got the money, each of the inhabitants would refer him for payment to the next one, and so the trees would remain indefinitely; therefore it is to be cut down, and the money should be collected through the court.

"*If there is a doubt*," etc. Why is this case different from that of a tree and a well, concerning which, if there is a doubt as to which was there first, the tree must not be cut down? Because there, if it is certain that the tree was there first, it must not be cut down, the same being the case when there is a doubt; while in our case, even when it is certain that the tree was planted first, it must be cut down, the same being the case when there is a doubt. And concerning the payment for it the city may say: Bring evidence that your tree was planted first, and then you will get the money.

MISHNA *IX*.: A barn must not be placed within fifty ells of the town; the same is the case if one wishes to make a barn on his own property-he may do so, provided he has fifty ells of space on each side of it. One must also remove a barn from the plants and from the newly ploughed field of his neighbor (which must wait a year before sowing), to a distance sufficiently great to

prevent any harm to the plants or the field.

GEMARA: Why, in the first part, is a space of fifty ells required, and in the second part a space only large enough to prevent harm. Said Abayi: The latter part of the Mishna speaks of a temporary barn, and not of a permanent one. What is called a temporary barn? Said R. Jose b. Hanina: If one does not winnow with the shovel. R. Ashi, however, maintains that there are no two parts in the Mishna at all, only the latter part is an explanation of the first, thus: Why must a permanent barn be removed from the city fifty ells? For the purpose that it shall not do any harm to the city. An objection was raised from the following: "A permanent barn must be removed fifty

ells from the town, and the same distance must be allowed to one's cucumbers, plants, and a ploughed field, to prevent damage." Now this is correct only according to R. Ashi's explanation; but it contradicts Abayi. The difficulty remains.

However, it is correct only concerning cucumbers, etc., as the dust of the barn settles upon their hearts and spoils them; but what harm can this do to a ploughed field? Said R. Aba b. Zabda, according to others b. Zutra: Because the dust of the barn increases the amount of manure in the field (and spoils the seeds).

MISHNA X: Carcasses. cemeteries, and tanneries must be removed to a distance of fifty ells. A tannery must not be established except on the east side of the city; R. Aqiba, how ever, maintains that it may be established on every side except the west, and a space of fifty ells is to be left. One must also remove his pond for steeping flax from a neighbor's herbs; garlic from onions; and mustard from bees. But R. Jose allows mustard.

GEMARA: The schoolmen propounded a question: What does R. Aqiba mean? On each side he may establish without the space of fifty ells, excepting the west side, where the fifty ells are necessary; or does he mean that on each side he may establish, provided he leaves the space of fifty ells, except the west side, where he must not do so at all? Come and hear the following Boraitha: "R. Aqiba said: On each side one may establish a tannery, if he leaves a space of fifty ells, excepting the west side, where he must not do so at all because of its frequency." Said Rabha to R. Na'hman: "What does the expression frequency mean--does it mean frequent winds? Did not R. Hanan b. Aba say in the name of Rabh, that four winds are blowing every day and the *north* wind blows with them? Therefore the expression frequency means that the Shekhinah rests there frequently." As R. Joshua b. Levi said: "We must be grateful to our forefathers for having informed us of the place where we are to pray; as it is written [Neh. ix. 6]: And the host of the heavens bow down before thee.'" R. Aha b. Jacob opposed: "Perhaps it means, on the contrary, that they are praying at the east side, and then they step backwards, as a slave does usually before his master; and when they come to the west side, they bow." Hence the Shekhinah is in the east side. The objection remains.

R. Jose, however, holds that the Shekhinah occupies every

place, as he said: It is written [ibid., ibid.]: "Thou indeed art the Eternal One alone: it is thou that hast made the heavens," etc. Thy messengers are not as the messengers of human beings, who usually return from the place to which they were sent, to that whence they were sent, announcing that they have fulfilled their duty. Thy messengers, however, are doing the same in the very place to which they were sent; as it is written [Job, xxxviii. 35]: "Canst thou send out lightnings, that they may go, and say unto thee, 'Here are we'?" It does not read that they *come* and say "Here are we," but that they *go* and say it in the place to which they were sent: hence the Shekhinah occupies every place. And R. Ishmael also holds the same, inferring it from [Zech. ii. 7]: "And, behold, the angel that spoke with me went out, and another angel came out to meet him." It does not read *after* him (*achrov*), but *against* him (*likrono*): from which it is to be inferred that the Shekhinah is everywhere. And R. Shesheth also holds so, as he (who was blind) said to his servant: Raise and turn me for praying to any side of the world excepting the east; not because the Shekhinah is not resting there, but because the *minim* have decided that one must pray only towards the east side. R. Abuhu, however, maintains that the Shekhinah is resting in the west, as he said: Why is the west side called *Oriah*? Because it is filled with the air of God. 1

R. Jehudah said: It is written [Deut. xxxii. 2]: "My doctrine shall drop as the rain"; which means the west wind, which comes from the neck of the world; 2 "my speech shall distil as the dew," which means the north wind, which makes gold cheap (because it brings hunger, and that renders gold cheap), as it is written [Is. xlvi. 6]; 3 "as heavy rains upon the grass," means an east wind that makes storms in the world; 4 "and as showers upon herbs," Means a south wind, which brings beneficent rain and causes growth of grasses.

There is a Boraitha: R. Elazar said: The world is like a balcony without the fourth wall; and when the sun arrives in the

evening at the northwest corner, it is diverted by this wind and ascends above the sky. And R. Joshua said: The world is like a tent which is fenced on all sides, and when the sun arrives in the evening at the northwest corner, it turns around and returns beyond the sky; as it is written [Eccl. i. 6]: "Going toward the south, and turning round toward the north, the wind moveth round about continually; and around its circles doth the wind return again." "Going toward the south"--during the day; "and turning round toward the north"--during the night; "moveth round about"--means facing east and west, so that sometimes, when the days are long, it goes through them, and when the days are short, it goes around them. R. Elazar used to say [Job, xxxvii. 9]: "Out of his chamber cometh the whirlwind," which means the south wind; "and out of the north, the cold," which means the north wind. "From the breathing of God ice is given"--means the west wind; "and the broad waters become solid"--means the east wind.--But did not the master say that the south wind brings beneficent rain' etc.? This presents no difficulty: If the rain comes slowly, it makes the grass grow; but if it comes down in torrents, it does harm.

R. Hisda said: It is written [ibid., ibid. 22]: "The golden light that cometh out of the north"--it means the north wind, which makes gold cheap, as it is written in Isaiah, verse cited above.

Raphram b. Papa in the name of R. Hisda said: "Since the Temple was destroyed, the south wind has never brought rain, as it is written [Is. ix. 9]: 'And he snatcheth on the right hand, 1 and is yet hungry; and he eateth on the left hand, and is not yet satisfied; they shall eat every man the flesh

of his own arm.' It is written also [Ps. lxxxix. 13]: 'The north and the south--these hast thou created,' etc." The same said again in the name of the same authority; "Since the Temple was destroyed, the rains do not come from the good treasure; as it is written [Deut. xxviii. 12]: The Lord will open unto thee his good treasure, the heaven, to give the rain of thy land,' etc. From which it is to be seen that when Israel did the will of the Omnipotent, and Israel was in his own land, the rain came from the good treasure; and now that Israel is no more in his own land, the rain does not come from the good treasure."

R. Itz'hak said: He who desires to increase his wisdom shall

recite his prayers towards the south; and he who desires to become rich shall do so towards the north; and as a mark in aid to remembering this direction, may be taken the fact that in the tabernacle the golden table was placed on the north, and the candelabrum, which gives light (wisdom)--on the south. And R. Joshua b. Levi said: One shall always recite his prayers towards the south, as when his wisdom shall increase, he shall also become richer; as it is written [Prov. iii. 16]: "Length of days is in her right hand: in her left are riches and honor." But did not R. Joshua b. Levi say that the Shekhinah is in the west? He does not mean that he should stand in the south exactly, but that he should stand in the west (southwest corner) and incline himself towards the south.

Said R. Hanina to R. Ashi: Ye who are located on the north side of Palestine must recite your prayers towards the south (so that you shall face Jerusalem). And whence do we know that Babylon was situated north of Palestine? From [Jer. i. 14]: "Out of the north shall the evil break forth," etc.

"*A pond for steeping flax*," etc. There is a Boraitha: "R. Jose allows mustard; as the owner of it may claim: 'Instead of telling me that I should remove my mustard from your bees, it is for you to remove your bees from my mustard, for they come and consume its blossoms.'"

MISHNA *XI.*: From a well a distance of twenty-five ells must be left when planting a tree; and fifty ells when planting sycamores or carobs. It makes no difference whether it be above or alongside. If the well has been there first, the tree must be cut down and paid for; but if the tree has been there first, it may remain. The same is the case when there is a doubt. R. Jose, however, maintains that even when the well was there before the tree there is no necessity for cutting down the latter, as one digs on his property while another plants on his own.

GEMARA: There is a Boraitha: "It makes no difference whether the well be below the tree or *vice versa*"? This would be correct when the tree is above the well, as its roots injure it; but if the well be above the tree, what harm can be done? Said R. Haga in the name of R. Jose: Because the roots render the earth friable, and thus harm the bottom of the well.

"*R. Jose, however, maintains*," etc. Said R. Jehudah in the name of Samuel: The Halakha prevails in accordance with R. Jose. And R. Ashi said: When I was with R. Kahana, we came to the conclusion that R. Jose admits that when one's arrows do

damage, etc. (see above, p. 68). Papi di Unaha, who was poor and afterwards became rich, built a palace. In the neighbor. hood were established poppy presses; and when they were in operation the palace used to shake. He came to complain before R. Ashi, who told him what R. Kahana said to him. But how much should the palace shake to make the presses responsible? When a pitcher is on the roof of the palace and its cover shakes.

The disciples of Bar Marian b. Rabbin used to card flax, and the dust of it harmed the men that passed by; and they came to complain before Rabhina, who said to them: That which was said, that R. Jose admits that one should be made responsible for the damage caused by his arrows, was said only when they come from him directly; here, however, as the dust does not come directly, but is blown by the wind, there is no responsibility. Mar b.. R. Ashi opposed: Why should it be different in the case of winnowing, when the wind assists one, concerning which it is said, in the First Gate, that he is responsible? When this was said before Miramar he decided that Mar was right in his supposition, and Marian's disciples were responsible. But to Rabhina: Why should this case be different from that of a spark that proceeds from under the hammer and does damage, in which case he is responsible? "There one is pleased that the sparks should escape outside and not inside--where they may cause harm; but in our case they are not pleased at all that the dust should escape where men pass."

MISHNA *XII.*: One must not plant a tree near to his neighbor's field, unless it be at a distance of four ells; and it makes no difference whether it be vines or other trees. If, however, there is a fence between the two estates, each of them may plant on his side of the fence. If the roots spread to the estate of one's neighbor, the latter may replace them three spans deeper, so that they shall not hinder in ploughing. If he has to dig a pit or a cave, he may cut off the roots which prevent him from doing so, and the fuel is his.

GEMARA: There is a Boraitha: "The four ells in question are for the purpose that the owner of the vineyard should be able to work it up." Said Samuel: "This is said only concerning Palestine, where they have long ploughs; but in Babylon, where the ploughs are short, two ells suffice." And the same is stated in the following Boraitha: "One must not plant a tree near his neighbor's field, unless he leaves a space of two ells."

[paragraph continues] And as this contradicts our Mishna, which states four ells, it must be explained that the Boraitha speaks of Babylon, and is in accordance with Samuel's theory. Infer from this that so it is.

Rabha b. R. Hanon had trees at the boundary of R. Joseph's vineyard; and birds which used to rest on the trees descended into the vineyard and did harm. And R. Joseph told him to cut down his trees. And to his claim that the trees were placed at the prescribed distance, R. Joseph said: "This is prescribed only for trees, but for vines more space is required." But does not our Mishna state that there is no difference between vines and trees? R. Joseph rejoined that it means a tree from a tree, and vines from vines; but from a tree to vines more space is required. Said Rabha: "I shall not cut it down; as Rabh said that a tree which bears fruit to the measure of a kab is forbidden to be cut down; and also R. Hanina said: 'Shakkhath, my son, would not have died if he had not cut down a fig-tree before the time; but you, masters, may cut it down if you like.'"

R. Papa had trees at the boundary of R. Huna b. R. Joshua's estate. At one time he found him digging and cutting off its roots; and to the question why he did so, R. Huna answered: In accordance with our Mishna, which states that one may replace the roots to the depth of three spans, in order not to prevent ploughing. Said R. Papa to him: But the master digs deeper. And he answered: I am digging an excavation, and our Mishna allows to do this. Said R. Papa: I tried to repeat for him many supports to the statement that he was not doing right, but he did not listen to me; until I reminded him about the decision of R. Jehudah, that a path that is used by the majority was forbidden to be spoiled. After R. Papa went out, R. Joshua said to himself: Why did I not oppose also this claim of his, with that this was said only within sixteen ells from a tree; but in my case it was outside sixteen ells, and the cutting off of the root could do no harm to the tree.

"*And the fuel is his*," etc. Jacob of Daiba questioned R. Hisda: Who is meant by 'his'? And he answered: This we have learned in the following: "From roots of a tree belonging to a private man, which spread into the estate of the sanctuary, must not be derived any benefit; but if one has so derived, he is not liable for a sin-offering. This can be correct only when it is said that the roots go with the tree; therefore one is not liable for a sin-offering. But if it should be said that they go with the estate wherein they spread, why should one not be liable? But if

the theory that the roots go with the tree remains, how is the latter part of the Mishna to be understood: If the tree is from the sanctuary, and its roots spread into a private estate, the same is the case? Now, if the roots go with the tree, why is one not liable when he derives benefit from it? This objection cannot hold good, as it speaks of a root that grew after the tree had already been sanctified; and there is a Tana who holds that upon the growth which takes place after sanctification no transgression is considered. Rabhina, however, says that there is no contradiction in that Boraitha, as the first part speaks of the roots which were within sixteen ells of the tree, and the latter part of those which were outside of the sixteen ells. Hence the Mishna, which states "his," means the owner of the tree.

Ulla said: A tree which is within sixteen ells of the boundary of another's estate is considered robbery, as it derives its nourishment from another's estate, and its fruit must not be used for the firstfruit offering. Whence did Ulla deduce this? Shall we assume from the Mishna [Sh'byith, I. 7]: "Ten plants which are scattered within a field which a saah of grain can be sown in, the entire piece of land may be ploughed for the sake of the trees until the new Sabbath year comes (as the trees derive nourishment from the entire field in which they are scattered, which is not allowed in a field for sowing seeds)." How many ells are there altogether in a piece of land which is fifty ells square (this is the extent of ground in which a saah of grain can be sown), if divided into strips of one ell? Two thousand five hundred. Then each tree needs for its nourishment two hundred and fifty; and this would not correspond with Ulla's theory, as he requires sixteen ells on each side, which means thirty-two ells square. And if it should be divided into strips of one ell, it would be 1,024 ells. And shall we say from the Mishna (ibid., ibid. 5): A field with three large trees (which are scattered in the above space), belonging to three different persons, according to the Sabbatic law it counts as a tree field, so that it may also be ploughed until the new Sabbatic year? Then, of the two thousand five hundred ells each tree derives its nourishment from 833 1/3 ells; but even then the quantity prescribed by Ulla differs by still more. Ulla was not particular. But non-particularity may be applied when the matter is taken rigorously; but when taken leniently (as, *e.g.*, in Ulla's case, in which the tree becomes

free from the firstfruit offering), it must not be applied. Ulla meant to say, not sixteen ells square, but sixteen ells in a circle, and as

a square measures more than a circle by one-fourth, it makes only 768 ells for nourishment; and, according to the cited Mishna, each tree would need 16 2/3 ells for nourishment, hence he was not particular in the two-thirds, and this makes it more rigorous--to which non-particularity applies. 1

But why only sixteen ells--does not our Mishna state that a space of twenty-five ells must be left from the tree to the well? Said, Abayi: "The roots spread much farther, but to a distance of sixteen ells they nourish and render the earth poor; while beyond that distance they do not." When Rabbin came from Palestine, he said in the name of R. Johanan that from a tree near the boundary, as well as from a tree whose branches are inclined towards another estate, the firstfruit offering might be brought; and there might be read in this connection the passages from the Scriptures referring hereto, as with this stipulation did Joshua bequeath the land to Israel.

MISHNA *XIII*.: If the branches of a tree are inclined towards another field, the owner of the field may cut them off to a sufficient extent, so as not to hinder a team of oxen from passing with the plough. In the case of a carob or a sycamore, however, it must be measured with a plummet (cutting off all the branches as far as they hang over the border line); and if the field is of dry land, the branches from any tree, which overhang it, may be cut off. Aba Shaul said that the same is the case with every wild tree.

GEMARA: The schoolmen propounded a question: Does Aba Shaul mean to oppose with his decision the first part of the Mishna, saying that even if it be not dry land the branches of a wild tree must be cut off; or the second part, which states that the branches from any tree must be cut off--he opposes, saying only of a wild tree, but not of a fruit-tree? Come and hear the following Boraitha: "Aba Shaul said: Every tree of which the branches overhang a dry field must be measured with a plummet, because the shade harms a dry field." Hence his opposition was to the first part. Said R. Ashi: "Even if the Boraitha did not state it so plainly, this could be understood from R. Shaul's expression in our Mishna, as it states every wild tree; and if he opposed only the second part, he would have specified a wild tree. Hence his opposition is to the first part."

MISHNA *XIV*.: The branches of a tree which overhang public ground may be cut off, so that a camel with its rider may pass freely. R. Jehudah says: A camel loaded with flax or with bundles of branches. R. Simeon says: Every tree of that kind must be measured with a plummet, because of the law of defilement.

GEMARA: Who is the Tana who holds that concerning damages we have to consider only the present time, and not the future? (As the Mishna states, it must be cut off only for a camel; and does not consider that the branches grow up again.) Said Resh Lakish: Tanaim differ in this case; and our Mishna is in accordance with R. Eliezer, who allows in a Mishna farther on to dig caves and excavations under a public ground, of a size sufficient for a wagon loaded with stones to pass. R. Johanan, however, maintains that our Mishna may be also in accordance with the

rabbis of that Mishna who prohibit this, as there it is to be feared that it may fall suddenly; but here, each branch that grows up can be cut off.

"*R. Simeon says*," etc. A Boraitha adds to this "for the purpose that it may not form a tent of defilement." Is this not to be understood from the Mishna itself? (As what other law of defilement can it mean?) If from it one may say that it meant, for fear a raven should bring something unclean and deposit it on the tree; and then it would be sufficient to cut off some branches, so that the branches should not hold anything, it comes to teach us that it means it shall not form a tent, and then it must be measured with a plummet.

Footnotes

63:1 The Scriptures were then written without vowels, these being added at a later time.

67:1 This explanation of Rabha does not very well justify his own opposition, and it is, indeed, objected to by Tothpath, without any answer following it.

72:1 The term in the text is *abruri*, and Schönhack maintains that it originates from the Greek •βαρης, which means *without weight*, the first Hebrew *r* being interpolated.

75:1 Rashi says he has heard that in the Persian language *Oriah* means west; he himself, however, maintains that, on the contrary, *Oriah* (orient) means east. And it is so called because the Shekhinah rests on the west side, facing east. Hence the east side is His air; *avir*, which contains the first four letters of *Oriah*, in Hebrew means *air*.

75:2 The word in Hebrew is *yaarof*; and *ohraf* means *neck*.

75:3 The term in Hebrew is *zol* in both passages--literally, *cheap*. The translation certainly differs in both, according to the sense.

75:4 The term is *sair*, which means also *storm*.

76:1 The expression for *right hand* is *yomin*, and in the Psalms the expression for *south* is also *yomin*; hence the analogy.

81:1 There are many commentaries on this calculation, which would be too complicated for translation, and we leave it to the mathematicians. To omit this, however, would be against our method.

Next: Chapter III

CHAPTER III.

RULES AND REGULATIONS CONCERNING OCCUPANCY (HAZAKAH)--AT WHAT TIME AND IN WHAT RESPECT IT GIVES TITLE. REPLEVINS BY COURT. PROPERTIES OCCUPIED BY A DEFENDANT WHO IS MIGHTIER THAN THE PLAINTIFF BUT EQUAL IN EVIDENCE. A PROTEST AGAINST OCCUPANCY IN ONE'S PRESENCE: OR ABSENCE BY ONE'S OPPONENT. THE WRITING OF BILLS OF SALE AND DEEDS OF GIFT. OCCUPANCIES WHICH CAME FROM INHERITANCE. THE OCCUPANCIES OF SPECIALISTS, PARTNERS, GARDENERS, AND GUARDIANS. OBTAINING PROPERTIES FROM THE CONTRACTING COLLECTORS OF DUTIES AND TAXES. BAILMENTS--OF WHOM THEY MAY BE ACCEPTED. PERSONAL PROPERTIES TO WHICH THE LAW OF OCCUPANCY DOES AND DOES NOT APPLY. OPENING OF WINDOWS AND DOORS TO NEIGHBORS' OR PARTNERS' PROPERTIES, AND BUILDING OF CAVES, PITS, ETC., UNDER PUBLIC GROUND.

MISHNA *I.*: The law of hazakah (occupancy) is, if one has occupied any property for three years from date to date (without any protest from another party), and this applies to houses, pits, excavations, caves, pigeon-coops, bath-houses, press-houses, dry land, slaves, and the same is with all other articles which bring fruit frequently. However, to a field not artificially watered, the three years of hazakah must not be counted from date to date. Thus, according to R. Ishmael: If one had occupied it eighteen months--viz., three months in the first year, the following whole year, and three months of the third, it is considered three years, and constitutes a hazakah. R. Aqiba, however, said: "Fourteen months--viz., one month of the first, one month of the third, and the whole second year suffices to constitute a hazakah." Said R. Ishmael: This is said of a grain field of which the products are harvested at one time; but if an orchard were within, bearing olives and figs, then, if one has harvested the grain, pressed the olives, and dried the figs, it is considered three years.

GEMARA: R. Johanan said: I have heard that the Sanhedrin of Usha used to say: Whence do we know that to constitute a

hazakah three years are needed? From the law of a goring ox; as an ox, when it gores thrice, comes out of the category "not vicious" and is placed under the category of "vicious." So, also, if one has occupied a property three years (without protest), it comes out from the control of the seller and is placed under the control of the buyer.

But if this is so, it can be said that as a vicious ox is not guilty unless he gores the fourth time, so also should it be with the hazakah, that it shall not be considered until the fourth year. Nay, that is no comparison. An ox which gores three times becomes vicious; but even then, if he has not gored oftener, what shall he pay? But here, when one has occupied any property for three years, it becomes his. But according to this, let an occupancy for which no reason can be given by the occupant be considered; and this is not permissible, since a Mishna further teaches that such is

not to be considered? The reason that three years are considered a hazakah is because it approves the claim of the occupant--*e.g.*, if the plaintiff claims, "You have stolen it," and the defendant says, "I have bought it," the occupancy of three years approves the fact that the defendant tells the truth. But if to the question, "What are you doing on my property?" he has no answer, what shall the hazakah approve? Shall the court make for him such a claim as he himself does not? R. Avira opposed: If hazakah is inferred from a vicious ox, then a protest not made in the presence of an occupant should not be considered, as concerning a vicious ox the maiming must be in his presence [Ex. xxi. 29]? Nay; in this respect, there is no comparison, as there the Scripture directs that the warning shall be in the presence of the owner. But here the protest is only to show that he had not relinquished his ownership, and if he has protested for other people it suffices, as he (who has heard the protest) has a colleague, and his colleague has another, etc.; and if it is said in public, it will certainly reach the ear of the occupant. According to this, if he has occupied it three months and consumed the fruit which grew each month--*e.g.*, a *pastio*--let it be considered a hazakah? Was not R. Ishmael [1] of the Sanhedrin of Usha? And according to him this law holds good; as it is stated in our Mishna that if he has harvested his grain, etc., it is considered three years, according to R. Ishmael. But what is the reason of the decision of the rabbis? Said Rabha: Because for the first

three years one usually takes care of his deed; but not for more than this. Said Abayi to him: According to your theory, let a protest which is not in his presence not be considered; as the occupant might claim, "If you gave the protest to me, I would take care of the bill of sale," this claim cannot be considered for the reason stated above, "that your colleague has a colleague," etc.

R. Huna said: "The three years in question must be uninterrupted." What does he come to teach us? Is it not stated in our Mishna, three years from date to date? Lest one say that it means to exclude the case which is told in the Mishna, of a field which is not artificially watered, but if one has occupied it three years on an average it is considered a hazakah even if it was with interruption, he comes to teach us that it is not so. Said R. Hamma: R. Huna admits that in places where it is usual to let the fields rest one year, the three years are considered hazakah, although there is interruption. Is this not self-evident? The case was when he had his field in a *pagus*, where some let it rest while others did not: lest one say that the plaintiff might claim, "If it were yours, you would not make any interruption," he comes to teach us that the defendant might claim, "It was more agreeable for me this way, because after it rests a year it brings more produce." But does not our Mishna apply hazakah to houses to which testimony could be given for occupying in the day-time, but not in the night-time? (Hence a hazakah is considered even when there is no testimony that it was not interrupted.) Said Abayi: Who testifies as to the occupancy of houses? Neighbors. And neighbors are aware of the nights as well as of the days. Rabha said: The Mishna means when two witnesses came and testified: "We have rented the house from the defendant, and lived in it three years, day and night." Said R. Jimir to R. Ashi: Are the witnesses not interested in it; for if they would not so testify, they would be told to pay their rent to the plaintiff? Answered he: "Ignorant judges would give such a decision. May it not be the case that the witnesses hold the rent of the house, asking, To whom shall we pay?" Said Mar Zutra: Nevertheless, if the plaintiff requires that the defendants should bring two witnesses who should testify that they lived in the house three years, day and night, the court must listen to him. And Mar Zutra admits, if the plaintiff was a traveller who had travelled in large cities with his stock that although he does not require the testimony for day and night, the court may claim it for him. And R. Huna admits,

that in stores like those of Mehusa, which are usually occupied in the daytime only, three years is considered a hazakah.

Rami and R. Uqba, the sons of Hamma, bought a female slave jointly: one kept her the first, third, and fifth years, and the other the second, fourth, and sixth. And thereafter a claim was made concerning this slave. And they came before Rabha. Said he to them: Why did you do so--to the end that neither of you should be able to claim hazakah? As it is not a hazakah for each of you, so it is not considered a hazakah for the whole world. This, however, applies because there was no written agreement between you that she should serve you in such a manner. But if such had been written, it might be regarded the same as if it were made public, and no claim is to be considered. Rabha said: If one has used a whole field the years of hazakah, except a quarter of a saah, he acquires title to the whole field except to that which he has not used. Said R. Huna to R. Joshua: It is so if this piece was also fit for sowing. If, however, it was not fit for that, title is acquired to it also, with the field. R. Bibi b. Abayi opposed: According to your theory, how should one make a hazakah on rocky ground, if not by putting cattle or drying fruit there? The same ought to be done with that which was not fit for sowing; and because he has not done so, title is not acquired.

There was one who said to his neighbor: "What are you doing in this house?" to which he answered: "I bought it from you and have occupied it the years of hazakah." Said the plaintiff: "I used to live in the front rooms, passing through yours, and therefore I did not care to protest." And when the case came before R. Na'hman, he said to the defendant: Go and bring evidence that you have occupied the whole house alone. Said Rabha to him: Does not the law dictate that it is for the plaintiff to bring evidence?

The following case, however, contradicts both R. Na'hman and Rabha. It once happened that one said to his neighbor: "I sell you all the properties which formerly belonged to Bar Sisin." There was, however, another estate which also bore the name of Bar Sisin estate, and the buyer wanted to take possession of it; but the seller claimed that this had never belonged to Bar Sisin, and that it was only so called. And when the case came before R. Na'hman, he decided that it belonged to the buyer; and Rabha said to him: Does not the law dictate that it is for the plaintiff to bring evidence? Hence the decision of this case contradicts

the former entirely? Nay; in the former case the plaintiff was the owner of the house, and in the latter case the buyer was the plaintiff. Hence Rabha did not change his decision. And concerning R. Na'hman, he also did not contradict himself; but merely because it was named Bar Sisin, he held that it was formerly owned by Bar Sisin, and it was for the claimant, who said it was not so, to bring evidence. And this case is similar to a case where one wants to deny hazakah with a note. Would it not be said to him: Bring evidence that the note is a right one, and then only you can have this?

There was one who asked his neighbor, "What are you doing in this house?" and he said, "I bought it from you, and I have occupied it the years of hazakah." But the owner claimed that he

was always out of the city and was not aware that he had been occupying this house, and therefore no protest was made. The defendant, however, stated he had witnesses to the fact that thirty days each year the owner used to be in the city, to which the plaintiff again answered: "These thirty days I was always busy in the market, and I never thought about my house." When the case came before Rabha, he decided that the owner of the house was to be trusted.

There was another who asked his neighbor, "What are you doing on my estate?" to which he answered, "I bought it from so and so, who told me that he bought it from you." Then he said: "You admit, however, that the estate was mine and that you have not bought it from me. Then go (and see the man you bought it from). *I*, however, have nothing to do with you." And Rabha decided that the plaintiff's claim was in accordance with the law.

There was another who answered to the same question as above: "I bought it from so and so, and occupied it the years of hazakah." But the owner answered: "That man is known as a robber." The defendant, however, claimed that he had witnesses that at the time he bought it he took the owner's advice. To which the plaintiff answered: "It is true I advised you to buy it, because it would be easier for me to take it away from you than from the robber." Upon which, Rabha decided that the plaintiff's claim was in accordance with the law. Is this in accordance with Admon of the following Mishna: "If one claims that this estate belongs to him notwithstanding the fact that he was a witness on the bill of sale to this field, it may be considered, because he may claim that from this man it is easier for

me to take it away than from the first. So is the decree of Admon. The sages, however, maintained that when he was qualified as a witness he lost his right." It may be even in accordance with the rabbis, as in the case of the cited Mishna he was a witness in writing; but here he only gave his advice in words and had not lost his right.

There was another case where one questioned and answered the same as above. Said the defendant: "I have witnesses that you called upon me on that evening and requested me that I should sell it to you, without your mentioning that it belonged to you." And the plaintiff replied: "I thought I would buy my estate for a small amount, instead of taking the matter into court." And Rabha, before whom the case came, decided that such a claim might be considered.

There was another case in which the defendant claimed that he bought it from so and so, and had occupied it the years of hazakah, to, which the plaintiff opposed: "Here is a bill of sale, showing that I bought it four years ago from the same man you claim you bought it from." To which the defendant answered: "Do you think by the expression 'the years of hazakah,' I meant three years? I meant many years--so that I had occupied it three years before you bought it." And Rabha decided that people call many years the years of hazakah. But this can hold good only when he has occupied it seven years, so that the years of hazakah have preceded the bill of sale; but if he has occupied only six years, then the claim of hazakah cannot be considered, because the bill of sale is the greatest protest.

If two persons come before the court, one claiming, "This estate was my parents'," and the other claiming, "It was my parents'," and one of them brings witnesses that it was his parents', and the other witnesses that he had occupied it the years of hazakah? Said Rabha: The one who brings

evidence that he occupied it the years of hazakah is to be trusted, since, if he wished to tell a lie, he could claim, "I bought it from you and have occupied it the years of hazakah." Said Abayi to him: "The supposition if he cared to tell a lie cannot be applied in a case where there are witnesses. "If thereafter, however, the plaintiff claims: "It is true it was your parents' estate, but I bought it from you. And by what I said before, I It was that of my parents,' I meant that this estate was so long in my possession that I looked upon it as if it were bequeathed to me by my parents"--may one change his claim before the court, or not?

[paragraph continues] According to Ula he may do so by giving a good reason; but according to the sages of Nahardea, he may not. Ula, however, admits that if the first claim was, "It was my parents', and not yours," it cannot be changed in any circumstances. The same is also the case if, before the court, he claimed so, and afterwards, as he was going out, he claimed otherwise, since it is to be supposed that to such claims he was advised by some one else, and they must not be considered. The Nahardeans, however, admit also that if this man claims, "When I said my parents' estate, I meant that my parents bought it from yours," such a claim is to be considered; and also that if one, in discussing a case outside of the court, did not mention anything of that which he is now claiming before the court, he cannot be accused of not having said so before, as it may be supposed that one does not like to tell his right claim to people in absence of the court. Said Amemar: "I am a Nahardean, and nevertheless hold that if there is a good reason one may change his former claim." And so the Halakha prevails.

If one claims, "It was from my parents," and the other claims the same, and one brings evidence that it was his parents' and that he occupied it the years of hazakah, and the other also brings evidence that he has occupied it the years of hazakah? Said R. Na'hman: Disregard the claims of hazakah which contradict each other, and decide it under the evidence that it was from the parents, which was not denied. Said Rabha to him: But do not the witnesses contradict each other, and in such a case not one of them ought to be taken into consideration? And he answered: They contradict each other as to the years of hazakah, but do they contradict themselves with regard to the parents?

Shall we assume that Rabha and R. Na'hman differ in the same way as R. Huna and R. Hisda differ? As it was taught. If two parties of witnesses contradict each other, they may be listened to in another case where there is no contradiction. R. Hisda, however, maintains that, it being manifest they are perjurers, nothing must be trusted to them.

Shall we then assume that R. Na'hman is in accordance with R. Huna, and Rabha with R. Hisda? Nay; if the decision were in accordance with R. Hisda, Rabha and R. Na'hman would not differ (as, according to R. Hisda, such witnesses cannot be used again in any case). Therefore we must say that both are in accordance with R. Huna; and nevertheless they differ, as Rabha maintains that even according to R. Huna the witnesses are fit

for another case, but in this case they must not be listened to in any circumstances. The man who previously brought evidence that he had occupied it the years of hazakah, found thereafter witnesses that the estate was his parents'. Said R. Na'hman: We dispossessed the defendant of that estate (for a good reason), and now that the circumstances have changed we may bring him

in again, without fear that this would be a humiliation to the court. Rabha, or, according to others, R. Zera, objected from a Mishna in Tract Kethuboth, which states, concerning marriage, that after the court has decided no change is to be made, even in the event of new evidence being introduced. Said R. Na'hman to him: I was about to practise according to my theory. Now, as you object, and R. Hamnuna of Suria does the same, I shall not do so. However, thereafter R. Na'hman acted according to his theory. One who had seen him doing so thought it was an error on his part. In reality, however, it was not, as he did so on the basis that many other great men had decided that the humiliation of the court must not be taken into consideration.

There was one who said to his neighbor, "What are you doing on this estate?" to which he answered, "I bought it from you, and here is the deed," to which the defendant opposed that the deed was false: The plaintiff bent and whispered to Rabba: Concerning this note, his claim is right. However, I possessed, but lost, the true one; and this is a correct copy. Said Rabba: He may be trusted, since if he wished to tell a lie he would claim that the document was genuine. Said R. Joseph to him: "But, after all, what is the basis of the plaintiff's evidence? Is it not the deed in question in reality nothing else but a broken piece of clay, as he has himself admitted that it was made by him?"

There was another case similar concerning a hundred zuz in cash, in which the plaintiff admitted that the note in his hand was a false one, made instead of the genuine, lost; and Rabba took it into consideration for his reason stated above, and R. Joseph opposed him as above. And R. Iddi b. Abbin said: The Halakha prevails in accordance with Rabba if the case dealt with real estate, because we leave the estate in the possessor's hands. And the Halakha prevails in accordance with R. Joseph if the case concerned ready-money, for the same reason that we have to leave the money in the hands of the possessor (*i.e.*, according to the rule that it is for the plaintiff to bring evidence).

There was a surety who claimed that he had paid to the

lender for the borrower one hundred zuz, by showing the note. Said the borrower: "Did not I pay you?" And he answered: "But did you not take it again from me." When the case came before R. Iddi b. Abbin, he turned it over to Abayi, and Abayi sent a message to R. Iddi: Why are you doubtful in this case? Was it not you who said that the Halakha prevails with R. Joseph in case of ready-money--that is, that we leave the money with its possessor? This law, however, holds good when the surety claims he lent it again, without giving any reason; but if he claims, "I returned the money because it was not circulating," this claim must be considered, and the note is in force.

It was murmured among people that Rabha b. Sharshum had appropriated land belonging to orphans; and Abayi sent for him and asked him to tell him about the case. And he told him thus: This estate was pledged to me by the father of the orphans. I, however, had other money with him without any pledge; and after I had collected the first debt from the product of the pledge I knew, if I turned over the estate to the orphans and claimed that I had other money with their father, I should have to take an oath in accordance with the decision of the rabbis (stated above, p. 10). Therefore I kept the pledge, with the deed, until I should collect from the products what was due me, and then I would return it. And the court must take my claim into consideration in

accordance with the theory of "because"--that is, because I could claim that I had bought the estate from the deceased, and I would be trusted after I had occupied it the years of hazakah, therefore my claim that I had money with the deceased must be regarded. Said Abayi to him: You could not claim you had bought it, as people are still murmuring that the estate belongs to the orphans. Therefore you must return the estate to the orphans, and when they shall be of age, you can sue them.

A relative of R. Iddi b. Abbin died, and left a tree, and another relative took possession of it. But R. Iddi claimed that he was a nearer relative, and that it belonged to him, while the other claimed that he was a nearer relative. Finally the other party admitted that R. Iddi was a nearer relative, and R. Hisda transferred the tree to R. Iddi. Said R. Iddi to R. Hisda: This man must return to me all the product of this tree which he has consumed since the death of the owner. Said R. Hisda to him: Are you the man about whom it is said that he is a great man? Your claim relies upon his admission that you are a nearer relative,

after you gave evidence; but until that time he felt sure that he was a nearer relative. Consequently he has consumed the fruit rightly, and his admission now is to be considered as if he made you a present. Both Abayi and Rabha disagreed with R. Hisda, as his admission now must be taken into consideration, even concerning the previous product.

There was one who questioned his neighbor as to what he was doing on his estate, and he answered: "I bought it from you, and occupied it the years of hazakah." However, he found witnesses for the occupancy of two years only; and R. Na'hman decided he should return the estate, and also the value of the fruit he had consumed in two years. Said R. Zebid: If he were to claim: "I did not intend to keep the estate, but had the right to consume the fruit thereof, because I rented it," he is to be trusted; for did not R. Jehudah say: If one holds a scythe and a basket, saying, "I am going to gather the dates of such and such a tree, which I bought," he is to be trusted, because one would not dare to take possession of a tree which does not belong to him? And the same is the case here, for no one would dare to consume fruit which did not belong to him. If so, why should this law not apply to an estate also? For land a deed is demanded (as nobody would buy an estate without a deed); but in hiring products, a deed is unusual, and therefore it cannot be demanded.

There was another man who questioned his neighbor as to what he was doing on his estate, and he answered, "I bought it from you and occupied it the years of hazakah," to which he brought one witness. The rabbis who were in the presence of Abayi, before whom the case was brought, were about to say that this was similar to the following case: One snatched a piece of silver from his neighbor, and the case was brought before R. Ami, in the presence of R. Abba, and the plaintiff brought one witness that he snatched. And the defendant answered: "Yes, I took it; but I did so because it was mine." And R. Ami was deliberating," How decide this case?" Shall he repay it? There are no two witnesses. Shall we free him? There is one witness. Shall we give him an oath? The plaintiff claims that he snatched it, which is robbery, and a robber is not to be trusted with an oath. Said R. Abba to him: Consequently this man is obliged to take an oath, for which he is not to be trusted. And the law is, that he who is obliged to take an oath and cannot swear, must pay. Said Abayi to them: What comparison is this? A case

similar to R. Abba's would be if the *plaintiff* had brought one witness that he had consumed the product two years; then he would have to pay, because he would not be trusted with an oath, as concerning the consumed fruit he would be considered a robber. 1 But here, the *defendant* has brought a witness to support himself; and if he had another, we would leave the whole estate in his hand. Hence he cannot be considered a robber who is not to be trusted to take an oath, and therefore we cannot make him pay.

There was a boat about which two parties quarrelled, each claiming that it was his, and one came to request the court that it should take charge of the boat until he should be able to get witnesses that it was his. Should his request be granted, or not? According to R. Huna, it should; and according to R. Jehudah, it should not. But in case the request was granted and the court took charge of it, and the other party, seeing that his opponent could not find evidence, requested that the court should resign its charge and leave it to the parties, so that he who could, should take possession of it--should this request be granted, or not? According to R. Jehudah, it should not; but according to R. Papa, it might. The Halakha, however, prevails that in such a case the court should not take charge of it; but, if it was already done, it should not be released before the question was decided.

If each of the parties claim: "This estate belonged to my parents"--said R. Na'hman: "In such a case, the law of the stronger is to be applied." But why should this case be different from a case where two notes are given out on the very same date to two different persons, and the property of the debtor is sufficient for the payment of one note only, in which Rabh's decision was that the property should be divided between both creditors equally; and Samuel's, that it must be left to the consideration of the judges, so that they might give the preference to him who had more right according to their opinion? It is because there is no hope that one of them would bring evidence that he has the preference (since the notes were written on one and the same day, and even if one should bring witnesses that his note was written before the other, there is a rule that there is no priority in a

matter of hours); but in one case there is hope that one of them may bring evidence. But why should this case not be equal to the one in Mishna 4, p. 261, Middle Gate, about the doubt when the young ass was born, and it was decided that it should be divided? There each of the parties, claiming it was born while under his control, has an equal chance; but here each of them claims the whole article to be his own, and the court cannot decide that it should be divided, since, if the claim of the one be true, the other has never had any right to it. Said the Nahardeans: If a third party from the market came and took possession of it, the court has no right to take it away from him, because there is no plaintiff. As R. Hyya taught: If one steals an article belonging to many persons, he cannot be considered a thief whom the court can compel to return it, as there is no plaintiff. Said R. Ashi: R. Hyya meant to say that he cannot be considered a thief who atones by returning the article, for he does not know whom he robbed; but the court may compel him to place the article under its charge.

"*Three years from date to date*," etc. Said R. Aba: If there are witnesses who testify that the plaintiff has loaded a basket of fruit from this field on the shoulders of the defendant, the hazakah is effected immediately. Said R. Zebid: If, however, the plaintiff claims, "I have let him this field for the products only," he is to be trusted, provided this claim was made during the

three years of hazakah, but not afterwards. Said R. Ashi to R. Kahana: Why should not his claim be regarded even after three years, as, if he sold (for three years) him the fruit, what should he do before the time had elapsed? Answered R. Kahana: He should have protested before the time the hazakah elapsed, so that it should be known that the estate belonged to him. If this were not the case, the pledges of Sura, in the documents of which are written: "After the time of these pledges elapses, this estate shall be returned without any payment," how is it if the possessor of the estate should hide the pledged deed after three years, and claim, "I have bought it"--should he be trusted? Would, then, the rabbis enact such a thing as could do harm to the pledger? We must then say that the pledger, before the lapse of the time, must proclaim his protest, so that it shall be known that the estate belongs to him. The same is the law in our case.

R. Jehudah in the name of Rabh said: An Israelite who has bought a field of a Gentile, who has occupied it the

years of hazakah, claiming to have bought it from another Israelite, but had not shown any deed, the law of hazakah does not apply to the last buyer, even if he has occupied it three years or more, because he relies upon the Gentile, and the law of hazakah does not apply to Gentiles (who are mightier); and it may happen that he has occupied the estate without any right, because the Israelite was afraid to claim it (unless he shows a deed). Said Rabha: If the last buyer claims, "I was told by the Gentile that he bought it from you," he is to be trusted, because he could claim, "I myself bought it from you, and occupied it the years of hazakah." But is such a thing possible, that if the Gentile should claim the property in his own name he would not be relied upon because the law of hazakah does not apply to him, and when the Israelite claims in the Gentile's name he is to be trusted? Therefore Rabha's statement was thus: If the last buyer claims, "In my presence the Gentile bought it from you, and then he sold it to me," he is to be trusted, because he could claim, "I bought it directly from you." R. Jehudah said again: If one holds a scythe and a basket, saying, "I am going to cut off the dates from the tree which I bought of its owner," he is to be trusted, as one would not dare to go publicly to cut off products which do not belong to him. The same said again: If one has occupied a piece of land which was outside the fence of one's field (which they usually sowed for the wild beasts to feed on), he cannot claim hazakah, as the owner may say, "I did not protest because I could not have made use of it anyhow, for the wild beasts would have consumed the produce." If one of the years of hazakah happened to be a year of *arla*, it is not to be considered. And so, also, we have learned in the following Boraitha: If one of the years was a Sabbatic or an *arla* year, or one has sown it with Kilaim, it must not be considered. R. Joseph said: If in the hazakah years he harvested the stalks while yet unripe, it is not to be considered (because he has not occupied it as usual). Said Rabha: But if this was around the city of Mehusa it is to be considered, because all the farmers, on account of their cattle, are in the habit of doing so. R. Na'hman said: To land which is full of pits and cannot be worked up properly the law of hazakah does not apply, because the owner may claim, "As it was of no use to me, I did not protest." The same is the case with such fields as return no more than was sown in them. And also in the case of exilarchs, to an estate which is bought from them, or which they buy, the law of hazakah does not apply, because they

are mighty, and no one would dare to protest against them; and, also, they themselves do not care to protest.

"*Slaves*." Does the law of hazakah apply to slaves? Did not Resh Lakish say: To every living creature the law of hazakah does not apply? Said Rabha: He means to say it does not apply before three years (*i.e.*, one cannot claim that he bought it as he may do with other personal property for which no evidence is needed when found in his possession), but after three years it does. And Rabha said again: If this slave was an infant lying in his cradle, the law of hazakah applies immediately. Is this not self-evident? He means even in case it has a mother; and lest one say that it is to be feared that its mother left it there, it comes to teach us that this is not to be feared, because usually a mother does not forget her child.

There were goats that consumed peeled barley in the city of Nahardea, and the owner of the barley caught them and would not return them until the value of the barley was paid. And his claim was of considerable amount, and the father of Samuel decided that he might claim the value of all the goats, as if he were to claim that he bought them he ought to be trusted, seeing that they were found in his possession. But did not Resh Lakish say that the law of hazakah does not apply to living creatures? Why did the father of Samuel decide (Middle Gate, pp. 306 *seq.*) that he could collect the whole value of the goats? (See there.) With goats it is different, as they are usually transferred to the shepherd. But do not goats go in the morning and evening without the shepherd? In the city of Nahardea thieves were frequently found, and the shepherds used to deliver the cattle into the hands of their owners.

"*Three months in the first year*," etc. Shall we assume that the point of difference between R. Ishmael and R. Aqiba is that one holds ploughing is a hazakah (*i.e.*, if one ploughs a field and the owner does not protest, it is supposed that he bought it from him). And one holds that it is? But how can you bear in mind that R. Aqiba holds ploughing to be a hazakah, when he means a whole month in two hazakah years? Is one day not sufficient for ploughing? Therefore we must say that, according to all, ploughing is not considered a hazakah, and the point of their difference is ripe and unripe fruits. According to R. Ishmael, the hazakah applies only to ripe fruits, and according to R. Aqiba also to unripe ones.

The rabbis taught: Ploughing is not a hazakah. According

to others, it is. Who are the others? Said R. Hisda: It is R. Aha of the following Boraitha. If one has ploughed it one year and sown it two, or *vice versa*, it is not a hazakah. R. Aha, however, says it is. Said R. Ashi: I have questioned all the great men of this generation, and they have told me that ploughing is a hazakah. Said R. Bibi to R. Na'hman: The reason of him who holds that ploughing is a hazakah is because that usually one would not keep silent if a stranger came and ploughed his land. And the reason of him who holds that ploughing is not a hazakah, is because the owner might think: "I can derive benefit from every furrow he makes with the plough on my land, so I will protest afterwards."

The inhabitants of the city of Pumnahara sent a message to R. Na'hman b. R. Hisda thus: Let the master teach us if ploughing is a hazakah or not. And he answered: R. Aha and all the great men of this generation have decided that ploughing is a hazakah. Said R. Na'hman b. Itz'hak: It was too much of him to assert, "All the great men." Are not Rabh and Samuel in Babylon, and R. Ishmael and R. Aqiba in Palestine, who bold that ploughing is not a hazakah? R. Ishmael and R. Aqiba we hear saying so in our Mishna, but where did Rabh and Samuel say so?

As R. Jehudah said in the name of Rabh: R. Ishmael and R. Aqiba were a minority of the sages, but the majority of the sages held that a hazakah is three years from date to date. And this was certainly to exclude ploughing. And concerning Samuel. said also R. Jehudah in his name: This was the opinion of R. Ishmael and R. Aqiba only; but all the other sages held that the hazakah does not apply unless one has harvested, gathered the vintage, and pressed olives, each of them three times. What is the difference between Rabh and Samuel--as, according to both, three years are needed? Said Abayi: A young tree which bears fruit on the average three times in less than three years, according to Samuel it is a hazakah, and according to Rabh it must be from date to date.

"*Said R. Ishmael . . . a field for grain*," etc. Said Abayi: From R. Ishmael's decision, that three harvestings suffice to constitute hazakah, we can understand the opinion of the rabbis opposing him: If the field contains thirty trees, each ten of which take up a space where a saah of grain can be sown, and the defendant has used ten the first year, ten the second, and ten the third, it is a hazakah, although three years have not yet elapsed

[paragraph continues] (as he has consumed in each year what was ripe). And this is to be inferred from R. Ishmael's statement that each performance of the three articles is counted as if it were done thrice, to constitute a hazakah. The same is the case with the thirty trees: the consuming of each ten is counted with the consuming of the others, and therefore it constitutes a hazakah. But this is only the case when but ten of them were ripe each year; but if more were ripe, and he only consumed ten, it is not. And the same is the case if the ten trees were ripe in one place only the first year, ten in another place the second, and ten in a third place the last year; for in order to constitute a hazakah, the trees must be scattered throughout the whole field, three or four of them growing in the space of a saah each year.

If one has made a hazakah on the trees and another upon the ground, each of them acquires title to what he holds. So said R. Zebid: R. Papa opposed; for, according to this theory, the one who has made a hazakah on the trees has nothing in the ground. So let the owner of the field say to the owner of the trees, "Cut down your trees and go." "Therefore," said he, "in such a case one has acquired title to the trees and half of the ground, and the other to the other half of the ground."

It is certain if one has sold his ground and left the trees, the ground required by the trees must be left for them; for even according to R. Aqiba, who said elsewhere that usually when one sold a thing he did so with a good eye (*i.e.*, with the intention of benefiting the buyer), this is only in case he sold him a well. We must say the stone-walls to the well on his property are also sold to him. But in this case, where he retains the trees, which make the ground poor, and also their roots may hinder the plough, it is certainly his intention that the ground needed for the trees shall remain his, as otherwise the buyer will have a right to demand from him that he shall cut down his trees. But if he has sold the trees and retained the ground, in this case the rabbis and R. Aqiba differ. According to R. Aqiba, who holds that usually the seller sells with a good eye, the buyer has a right to the growing of the trees. But according to the rabbis, who do not hold so, the buyer has no such right. And even according to R. Zebid, who said above, in the case of hazakah, that each of them has nothing in that which the other has occupied, it is only as to buyers that the one who has occupied the ground can say to him who possesses the trees, "As I

have nothing in your trees, so you have nothing in my ground."

[paragraph continues] But in case of selling, according to the rule that a seller sells with a good eye, this claim cannot apply even in accordance with the opinion of the rabbis. And even R. Papa, who said above that the owner of the trees has a share in the ground, it is only in the above case where there were two buyers--the one who buys the trees and the buyer of the ground--that each of them can claim, "As the owner sold to you with a good eye, so did he to me." But in this case, according to the rabbis, who hold that a man usually sells with a bad eye (*i.e.*, with the intention of benefiting merely himself), R. Papa may also agree that, according to the rabbis' theory, the buyer of the trees has no claim to the ground. The Nahardeans said that if, of the above-mentioned thirty trees, fifteen of them were planted in the space of a saah, although he had consumed the product of all of them three years successively, it is not considered a hazakah, because he has not done as people do (*i.e.*, fifteen trees in the space of a saah cannot bear good products, and the one who possesses such usually cuts out many of them to make room for the others; and as he did not do so, it seems that he does not consider this to be his property). Rabha opposed this. For, according to this theory, one could never acquire title to a bed of a *pastio*, which is usually sown three times a year, and the overcrowding is thinned out to make space for the remainder (and when the occupant has only consumed them, and not thinned out, he does not acquire title). "Therefore," said he, "in such a case he acquires title to the trees, and not to the ground." Said R. Zera: In this case the Tanaim of the following Mishna differ: A vineyard which was planted in less than four ells' space, R. Simeon said: Concerning Kilaim, it is not considered a vineyard at all. The sages, however, maintained that it is so considered, and the middle ones are to be considered as if they did not exist (*i.e.*, the law of a vineyard, which should interfere with other kinds of seeds, is that it must be planted so that between each row of the vines four ells of space must be left; and if not, it is not called a vineyard. But according to the rabbis, the middle one is not considered; consequently there is more than four ells' space between them, and it does interfere-hence, according to this theory, of the trees in question which were overcrowded, fifteen in the space of a saah, the middle ones are not to be considered, according to the rabbis; but they are considered, according to R. Simeon).

The Nahardeans said again: If one has sold a tree to his neighbor, the buyer acquires title to it from beneath it unto the

deep. Rabha opposed. Why should it be said that the whole ground unto the deep shall be sold to him? The seller may claim: I sold it to you as people used to sell a saffron tree, of which the buyer derives the benefit as long as the tree yields fruit, but after it became withered, the buyer had to remove it and leave the ground to the seller. Therefore said Rabha: This applies only to him who claims that he bought it with the stipulation that if the tree dies he may plant another one in its place, and after he possessed it the years of hazakah. Said Mar the Elder, the son of R. Hisda, to R. Ashi: Even if it was a saffron tree, and in such a case the buyer usually cares for the valuable saffron, and not the ground beneath, what should the seller do if, after the three years, the buyer claims he has also bought the ground (so that he can plant another one)? And he answered: The seller should protest before the years of hazakah elapse, as is said above.

MISHNA *II*: There are three lands concerning the law of hazakah: The land of Judea, the land

on the other side of the Jordan, and of Galilee. If the owner of the estate was in Judea, and one has made a hazakah in Galilee, or *vice versa*, it is not considered a hazakah unless the owner of the estate should be with the occupant in one and the same country. Said R. Jehudah: The law of three years is made only for the purpose that if the owner, for instance, was in Spain, and his estate was in Judea, which is a year's journey from there, if one has occupied his estate while on the road, a year's time is given for him to be notified, and another year for his return (*i.e.*, no matter where he is, three years suffice for hazakah).

GEMARA: Let us see! What does the first Tana of the Mishna hold? If a protest in the absence of the occupant is considered, then, even when one was in Judea and the other in Galilee, he could protest; and if it is not considered, then even if both were in one country, when they are not in one city, the hazakah should not apply, as he could not protest. Said R. Abba b. Mamal in the name of Rabh: He holds that a protest not in his presence is to be considered. But our Mishna treats of a case of war, during which this protest would be of no use (because there would be no one to notify him). And why does he mention Judea and Galilee? To teach that these two countries are always considered as if there might be a war between them, as caravans going from one country to the other are very rare.

R. Jehudah in the name of Rabh said: If one runs away from a city because of crime, etc., and one occupies his estate, the law of hazakah applies. And R. Jehudah continued: After Rabh's death I said this Halakha in his name before Samuel, and he said to me: Is this not self-evident? Must, then, a protest be in one's presence? (Says the Gemara:) And, indeed, what news did Rabh teach with this statement, unless that a protest not in one's presence is considered? He already said so elsewhere. With this statement he teaches us that, even when the protest was before two witnesses who were not able to notify the occupant, it is nevertheless considered a protest. As R. Anan said. Mar Samuel has explained to me his opinion that only when one protested in the presence of two witnesses who are able to notify the occupant, it is considered; but not otherwise. Rabh, however, is of the opinion: "Thy colleague has another colleague," etc.; and so, when protested before two, it will become known. Said Rabha: The Halakha prevails that the law of hazakah does not apply to the property of one who runs away, and also that a protest which is not in one's presence is considered. Are not the two Halakhas contradictory of each other? This presents no difficulty. If one runs away because of money matters, he is not afraid to protest, as he does not care whether his residence is made known; but if one runs away on account of a crime, then he cannot protest, as this would make known his hiding-place.

How should one protest? Said R. Zebid: If the protest was, so and so is a robber; it does not suffice, but he must protest: "He is a robber who has robbed me of my estate, and as soon as it is possible I shall summon him." But how is the law if he added to this protest, "Do not notify him of my protest"? Said R. Zebid: How can this be considered, when he plainly says: Do not notify *him*. R. Papa, however, is of the opinion that it means: Do not notify him, but tell it to other people, so that he will become aware of it afterwards. How is the law if the witnesses told him: We will not notify him? According to R. Zebid, such a protest is not to be considered, and according to R. Papa, it is, because although they should not notify him, they will nevertheless tell it to other people. But how is it if the protestor said: Do not mention it to any one? According to R. Zebid, it is certainly not to be considered. But how is it when they said: We will not mention this to any one? According to R. Papa, it is not to be considered. R. Huna b. R. Jehoshua, however, maintains that, even then, it is a protest, as a thing which does not

belong to a man, he will talk about it some time, and it will become known.

Rabha said in the name of R. Na'hman: A protest not in one's presence is to be considered; and he opposed him from the statement of R. Jehudah in our Mishna, who said that a year is allowed for notifying him and a year for returning. And if a protest not in one's presence should suffice, why must he come back? And he answered: R. Jehudah's statement is only an advice for one that he had better come himself, so that he should be able to take possession of the estates and products. (Says the Gemara:) From that which Rabha objected, it must be said that he himself does not hold with him concerning a protest in the absence of the occupant; and above it was said that Rabha himself had so decided? After he had heard it from R. Na'hman, he accepted it.

R. Jose b. Hanina happened to meet the disciples of R. Johanan and questioned them as to whether R. Johanan had said before how many people a protest must be made. R. Hyya b. Abba said in the name of R. Johanan: In the presence of two. And R. Abuhu said in his name: Three are needed.

Shall we assume that the point of their differing is the saying of Rabba b. R. Huna: "Everything which is said in the presence of three persons cannot be considered slander"? Now he who holds that two persons are sufficient does not agree with Rabba, and he who holds that three are needed does so, because he holds with him? Nay, all agree with Rabba, and the point of their differing is-a protest not in one's presence: he who says that two are sufficient, because such is not to be considered (and therefore he needs two, so that they shall testify that the occupant was present at the protest). [1] And he who holds that three are needed does so because a protest not in one's presence is considered, and therefore three are needed in order to make the protest public. If you wish, it may be said that all agree that such a protest is to be considered, and the point of their differing is that one holds that for this purpose *witnesses* are needed, and the other one holds that it is only necessary to make it public.

Giddle b. Minjumi had to make a protest against some one,

and happened to meet R. Huna, Hyya b. Rabh, and R. Hilkiah b. Tubi, who were sitting together, and he made his protest before them. The next year he came again to protest. Said Hyya b. Rabh to him: The protest from last year is sufficient. Said Resh Lakish in the name of B. Kapara: It is, however, necessary for one to repeat his protest after the lapse of every three years. R. Johanan, however, doubted concerning this decision, saying: Does the law of hazakah apply to a robber? A robber! Is it, then, certain that he is a robber? (Does he not claim that he had a deed, that it was lost?) He means to say that, as after the first protest he has done nothing to find the deed or to bring any other evidence, he is so considered, and the law of hazakah should not apply to him. Said Rabha: The Halakha prevails that one has to repeat his protest after each three years.

Bar Kapara taught: If one has protested once, twice, and three times, if the second and third times he has claimed the same that he claimed the first time, the occupant has no hazakah; but if he comes with other claims, the hazakah prevails with the occupant.

Rabha said in the name of R. Na'hman: When a protest is made before two persons, there is no necessity to ask that it be written down. The same is the case with an announcement. (There is a law that if one is compelled to sell his property, or to do any other thing against his will, he may announce it before two persons, and afterwards he can sue the buyer.) For an admission, however (that he owes something to one), he must ask the two witnesses to write it down. The ceremony of a *sudarium* must be done before two persons without writing. The approval of an oath, however, must be done by three persons. Said Rabha: I could not understand why the *sudarium* should be made before two. If it is considered an act of Beth Din, then three are needed; and if it is not considered such, why should it not be written down? After deliberating, however, he said: This act is not considered as an act of Beth Din, and writing down is not needed, because this act is as good as if it were written. (This is the final conclusion of the act, and cannot be denied.)

Rabha and R. Joseph both said: We do not write down an announcement unless in a case where the defendant does not listen to the court. Both Abayi and Rabha, however, said that even for such people as we are, it may be written down. The Nahardeans said: An announcement in which it is not written:

[paragraph continues] "We witnesses testify that it was known to us that this man was compelled," etc., is not to be considered. What kind of an announcement do they mean? If concerning a divorce or a gift, it is sufficient when it is made public only. And if for a sale, did not Rabha say elsewhere: We do not write announcements about things sold? It means of a sale, and Rabha admits that when one was compelled to sell against his will, as, for instance, in the case of certain vineyards (Middle Gate, p. 176), we do write such announcements.

R. Jehudah said: A hidden deed of gift is not sufficient for collection. What does this mean? Said R. Joseph: If one said to the witnesses, "Go to a place which is invisible, and write him a deed of gift." According to others, R. Joseph said: If the giver did not say to the witness, "Go to the market, and in the presence of the people you shall write him this deed." And the difference between these two sayings is when he said to them: "Go and write," without any addition. Said Rabha: Such a deed is sufficient to be an announcement in case one has to render the same to another.

Said R. Papa: This statement attributed to Rabha was not plainly said by him, but it was inferred from his decision of the following act. There was a man who wanted to marry a certain woman, and she said to him: "If you will transfer all your property to me, I will be yours, and not otherwise." And he did so. Then came his older son, and said to him: "What then becomes of me?" And the father told two witnesses they should hide themselves in a certain place and write a deed that the property belonged to his son. And when the case came before Rabha, he decided that none of them had acquired title to the property (the son, because it was written in a hidden place; and the woman, because the first deed was an announcement against the latter deed). This, however, was only a supposition by those who heard this decision. In reality, however, Rabha did so because any one could see that the deed to the woman was written only under compulsion. But in the above case of a hidden deed, it could not serve as an announcement, because the latter was made in public. And it is to be assumed that he did so because such was his will, and the former was done unwillingly; and therefore he told the witnesses to write it in a

secret place.

The schoolmen propounded a question: How is it when he told them to write a deed of gift without any explanation? (The question is concerning the two sayings of R. Joseph mentioned

above.) According to Rabhina, it is considered proper; and according to R. Ashi, it is not proper (unless he told them to make this publicly). And so the Halakha prevails.

MISHNA *III*.: A hazakah to which there is no claim is not to be considered. How so? "What are you doing on my property?" And if he answered: "Because there was no claim against it," it is not to be considered. But if he says: Because you have sold it; or, You had presented it to me; or, Because your father did so, this is to be considered. A property, however, which one possesses by inheritance does not need any explanation (which means that the claim, "I have inherited," is sufficient).

GEMARA: Is not the first statement in the Mishna self-evident? Lest one say: As the man has occupied the estate, it must be supposed that he has bought it, but has lost the deed; and the reason why he does not claim "bought," is because he feared that the plaintiff would ask to see the deed, therefore it is for the court to ask him: "Perhaps you had a deed, which was lost?" as it is written [Prov. xxxi. 8]: "Open thy mouth for the dumb," etc.; it comes to teach us that it is not so.

It happened that an overflow took away the fence of R. Anan's field, and he built a new one in the space belonging to his neighbor. And his neighbor complained before R. Na'hman, who decided that he must remove it. Said R. Anan to him: But I have made a hazakah on it. And he answered: You desire that I shall decide in accordance with R. Jehudah and R. Ishmael, who said that if it was done in the presence of the plaintiff, it is immediately considered a hazakah. The Halakha does not prevail according to them. Said R. Anan: But this man has relinquished his right to me, as he himself assisted me in making the fence. And he answered: Such a relinquishment was only an error, and cannot be considered; as you yourself, if you were aware that you were building the fence on a space which did not belong to you, would not do it. And so was it with your neighbor: he, also, was not aware that the space belonged to him.

The same happened to R. Kahana, and his neighbor came to complain before R. Jehudah, bringing two witnesses. One testified that R. Kahana had occupied two rows of his neighbor's estate, and the other testified three. And R. Jehudah decided he should pay him for two of the three rows. Said R. Kahana to him: Is not your decision in accordance with R. Simeon b. Elazar, who said elsewhere that the school of Hillel agrees that

the smaller amount is included in the larger one (*i.e.*, as there is no contradiction to the two rows, it is considered as two witnesses for two rows which must be paid for)? But I can bring you a letter from Palestine that the Halakha does not prevail with R. Simeon b. Elazar. And he answered: If you will bring me this letter, we shall see.

It happened in the city of Kashta that one had lived in an attic four years, and then the owner of the house came to ask him what he was doing in the house. To which he answered: I bought it from so and so, who bought it from you. And the case came before R. Hyya, who said to the defendant: If you will bring witnesses that the man from whom you bought it lived in this attic even one day, I will leave the attic in your possession, but not otherwise. Said Rabh: I used to sit then before my uncle, and I said to him: Can it not happen that one should sell out his property in the night-time, and leave it immediately? And I understood from my uncle's appearance that if the defendant should claim: "I was present when my seller bought it from you," he would trust him, because, if he wished to tell a lie, he could claim: I bought it from you directly. Said Rabha: It seems to me that R. Hyya was correct in his decision, as our Mishna states that if the defendant claimed inheritance, no other explanation is needed, which means an explanation is not needed, but nevertheless evidence that he inherited it is needed. (Said the Gemara:) This support does not hold good, as it may be said that the expression, "no explanation is needed," means also no evidence. Furthermore, the claim "bought" should have more chance than an heir; for if it were not known to him that the seller had a right to sell it, he would not throw away his money.

The schoolmen propounded a question: If the seller was seen on this property, not as a tenant, but as the owner, to measure it, would this be sufficient, according to R. Hyya? Said Abayi: "Aye." Rabha, however, maintains that it may happen that one shall measure his property without any intention of selling. If there were three buyers to one estate (*i.e.*, A sold it to B, who occupied it a year, and thereafter sold it to C, who also after a year's occupancy sold it to D, with a bill of sale: then came A and claimed that the estate was his--he never sold it--and B does not possess any bill of sale, shall we say that, as between B, C, and D three years of hazakah have elapsed, and as A has not protested, D is entitled to it? or, as each of them has not occupied

it the years of hazakah, A's claim is to be considered), the years of occupancy count. Said Rabh: This is only when both C and D possessed their deeds, but not otherwise.

Shall we assume that Rabh holds that only a deed is considered to be known by the people, but not witnesses; and the reason why he said elsewhere that he who sells his field in the presence of witnesses, and thereafter it was taken away from the buyer, the buyer has a right to collect his money from encumbered estates, is because the people who bought their estates afterwards from the seller had to investigate whether he had not sold his estates previously with security, but not because witnesses are considered known to the people? But how could Rabh say so? Is there not a Mishna farther on which states that if by witnesses only, he may collect from unencumbered estates only? And lest one say Rabh is a Tana who has a right to differ with a Mishna, did not Rabh and Samuel both declare that a loan which was made orally is not collectible either from heirs or from buyers? You contradict a case of a loan with a case of selling. They are entirely different, as he who makes a loan does it privately, as he would not like people should know he needed money, and the value of his estate would decrease. But he who sells an estate does it publicly, as he is searching for a buyer who will give him a better price.

The rabbis taught: If the father has consumed one year and his son two, or *visa versa*, or each of them one year, and the buyer from them one year, it is considered a hazakah. Shall we assume that it is a hazakah because a sale is considered known to the people, and therefore the owner ought to protest? Does not the following contradict: If one has occupied or consumed in the face

of the father one year, and in the face of his son two, or *vice versa*, or in the face of each one year, and in the face of the buyer who bought it from the son one year, it is considered a hazakah for the occupant? Now, if you would bear in mind that selling and buying are considered known to the people, why is the selling itself not considered the greatest protest? Said R. Papa: This may not contradict, as the cited Boraitha may treat of one who sold the field among his other fields. (And so the sale of this particular field was probably not known to the people, and therefore it cannot be considered a protest.)

MISHNA *IV*.: The law of hazakah does not apply to the following: specialists, farmers, partners, gardeners, and guardians. There is also no hazakah to a husband on the estate of his wife,

and *vice versa*; and no hazakah to a father on the estate of his son, and *vice versa*. All this is said concerning hazakah, but concerning a gift or an inheritance of brothers, or one who takes possession of the estate of an heirless proselyte, if he has done any work whatever (*e.g.*, if he has locked it, or made any partition, or torn down the old one), it is considered a hazakah.

GEMARA: Both the father of Samuel and Levi taught: There is no hazakah to a partner, and so much the less to a specialist. Samuel, however, taught: There is no hazakah to a specialist, but to a partner there is. And Samuel is in accordance with his theory elsewhere, that concerning partners the law of hazakah applies. They also may be witnesses for each other, and they are also considered bailees for hire to each other. R. Abba raised the following contradiction to R. Jehudah "At the cave of R. Zakkai." How can you say that Samuel holds that hazakah applies to partners? Did not he say that when one works on his partner's estate, it is to be considered as if he had done this with the permission of his partner. Is this not to be understood to mean that a partner has no right of hazakah? This presents no difficulty. One of Samuel's decisions speaks of when the partner has consumed the products of the whole estate which belongs to both, and the other decision treats of when he took possession of a half share, claiming that they had divided their estates long before and that he had made a hazakah on the part he now holds. To which his partner objects, saying: Our stipulation was such that you should keep it three years, and then I should keep it three years.

In explaining this, two parties differ. One maintains that Samuel's decision that a partner has a right of hazakah is in case he has consumed all the products of the estate belonging to both. For a partner usually consumes the products of half of the estate, taking them from one half one year and from the other half the following, in order to equalize matters. And as we see that one has taken possession of the entire estate for three years in succession, it is to be supposed that he bought the same. And the other decision of Samuel speaks of when they do as is customary, consuming the products of the same half three years in succession: no hazakah applies, because his partner may claim that such was the stipulation, as stated above.

And the other maintains to the contrary. If he consumes the whole, there is no hazakah, because it may be that that was their arrangement; namely, that one should use the products the

first three years and his partner the three years succeeding. But if one utilizes exactly half for

three years in succession, it may be said that he bought it, and therefore hazakah applies. Rabhina, however, says that both of Samuel's decisions may apply to the case that one has consumed the whole estate; but the decision that he has a hazakah speaks of a field which contains the prescribed quantity for division. Consequently, if one consumes the whole field (without any protest from his partner), it is to be supposed that he bought it. And the decision that there is no hazakah speaks of a field which has not the prescribed quantity. And it is to be supposed that their arrangement was that each should use it for three years, as said above.

The text says: "Samuel holds that when one works on his partner's estate," etc. What did Samuel mean to teach, that in partnership the law of hazakah does not apply? Let him then say so plainly. Said R. Na'hman in the name of Rabba b. Abuhu: He means to say that when one takes his partner's field, which is fit for sowing only, and plants trees in it, he is not liable for damages, as it is considered to be done with his partner's permission, and, moreover, his partner can claim half of any profits which may accrue after the expense of planting has been deducted. Farther on Samuel says: "They may bear witness for each other," etc. Why? Are they not interested in each other's affairs? He means to say, in case one of them gave a deed to the other, saying he had nothing further to do with the field. But even then, what is it? Have we not learned in the following Boraitha: If one says to his partner: "I have no claim on this field," "I have nothing to do with it," or, "I keep my hands off it," he says nothing (*i.e.*, unless he distinctly says, "It is yours, and I shall have nothing further to do with it," it is not to be considered, because it may be that he said it in a manner indicating that he wished he would have nothing to do with it, etc.)? It means that this was done with the ceremony of a sudarium (and then certainly he has nothing to do with it). But, after all, he is still interested in this case, for if the plaintiff should win the case, and the estate were taken away from the defendant, it might be appraised insufficient to cover the debt made while he was still a partner, and then it would devolve upon him. And he may also be interested in seeing that this estate shall remain with his partner, as it may happen afterwards that some one should claim that his partner had borrowed some money while they were still partners, and when his partner should have no estate, the

debt be turned over to him? This means that when he transferred his property to him he at the same time in writing took upon himself the responsibility. The responsibility of what? If the responsibility of this estate, in case it were taken away by some one, should devolve on him, then he is certainly interested in this case; and if it means he takes the responsibility of claims which may be upon the estate for his own debts, then he has nothing to do with any other claims: he is disinterested in so far as he has nothing to do with the estate itself--only the making good of his own debts. But has he a right to cut himself off from all other liabilities? Have we not learned in a Boraitha that if Holy Scrolls were stolen from a city the thieves must not be tried by the judges of that city, and also no witnesses from that city should be brought as evidence?

Now, if one should have a right to say: "I have cut myself off from this estate entirely," it would be possible, in the above case, for two judges to say, "We have relinquished our shares in the Holy Scrolls," and witnesses the same way, and then the judges could decide the case and the evidence of the witnesses be used. With Holy Scrolls it is different, as they are made for reading, and one cannot help hearing them. Come and hear! If one say: Give a manna to the poor of that city--if there is a trial about this, the case must not come before the judges of that

city, and no evidence of witnesses of the same city should be admitted. Now, how can you maintain, because the poor of the city take the charity, that the judges of the city should not be eligible to decide the case? You must say, then, that the judges must not be of the poor who take charity, nor witnesses who have benefit therefrom. And why let the judges or the witnesses relinquish their share in this charity and be used? The Boraitha speaks also When the manna in question was given for Holy Scrolls, and the expression "poor" is because concerning the Holy Scrolls all are considered poor; and if you wish, it may be said, the expression "poor" is to be taken literally, and it speaks of the poor whom the judges or witnesses are obliged to assist. And therefore the trial could not come before them, because they are interested in it (*i.e.*, if the poor should win the case, their share of assistance would be less than before). And even if the judges or witnesses were taxed to assist the poor of that city with a certain sum per annum, they are still considered interested in that case, for they are pleased at the poor receiving more support.

Samuel says further: "They are also considered bailees for

hire," etc. Why so? Is this not a guard in the presence of its owner, and it is said above that in such a case he is not responsible? Said R. Papa: He means to say, if one said to his partner: Guard for me to-day and I will guard for you to-morrow.

The rabbis taught: If one sells another a house or a field, he is not allowed to be a witness, because he is always responsible for it, if there should be a claim against it. But if he has sold him a cow or a garment, he may be a witness, because he has nothing more to do with them. What is the difference between the former and the latter facts? Is the seller not responsible in case it should be found that the cow or garment in question was stolen by him? Said R. Shesheth: The first part speaks of the following case: If A has robbed B of a field and has sold it to C, then D comes with a claim, B then has no right to be a witness for C, because he is interested in having it returned to A, so that he can establish his claim. But if B should be a witness that C is right, how can he claim afterwards that the field is his? He can only testify that D's claim is wrong. But could not B exercise his right, even if it were D's? He may think that C, who is not .so mighty, might settle with him, while with D it would not be so easy. And if you wish, it may be said that it speaks of a case as follows: B has witnesses that this property belongs to him, and D has witnesses who contradict B's witnesses. And in such a case, usually the judges decide that the property shall remain with its present owner. And therefore B is interested in it, .and must not be trusted as a witness. But why was it necessary for R. Shesheth to illustrate this Boraitha in case the robber had sold the field to another? Could he not illustrate this by saying that C had announced his claim while the field was still in the hands of the robber A--then B cannot be a witness? Because it has to teach in the last part that if he has sold movable property to some one, which means the one who robbed the property in question and sold it, the one who has been robbed may be a witness, and this can only hold good in case of movable property which was passing into another's hands and of the renouncing of the hope to regain it by the owner. As the law dictates that these two things give title to the possessor, consequently the robbed one, who has nothing more to do with these articles, may be a witness. But if the article were still in the hand of the robber, the robbed one would not renounce his hope of regaining .it, and it would still be considered his property, and consequently he cannot be a witness. Therefore he illustrated the first part

also in the same manner. But, after all, although the robbed one renounced his hope of regaining the article, did he do the same about the value of it? He speaks when the robber no longer exists--when he has no further hope even for the value, as we have learned in a Mishna that if one robbed movable property and bequeathed it to his children, they are free from paying for it. But why does not R. Shesheth explain this Boraitha as speaking of an heir (it means if the robber dies and leaves it for his heirs)? This objection would not hold good, in accordance with him who, holds that the control of an heir is not equal to the control of a. buyer. But to him who holds that they are equal, what can be said? Furthermore, there was a difficulty to Abayi: Why does; the Boraitha use the expressions "responsible" and "not responsible"--as, according to R. Shesheth's explanation, it ought to be said, because this is "returning" and "not returning"? Therefore the Boraitha must be explained in accordance with Rabbin b. Samuel, who said in the name of Mar Samuel as follows: If one sold a field to his neighbor without security, he has no right to qualify as a witness concerning it, because in case of a creditor he can show this as a source of collection. But this. can only be in case of a house or other real estate, and not of movable property; and not only when it was sold without any stipulation that collection is not to be made on movable property for the claim of a creditor, but even in case it was written, "You shall collect your money from the garment which is on my shoulders," he can do it only when the movable property is still in his; possession, but not otherwise. As even then the property in question has been made a hypothec, he can only collect when it is yet under the borrower's control; but when it is not under his; control, he cannot. As Rabha said (First Gate, p. 19): If one has made his slave a hypothec, and thereafter he sold it, a collection can be made; but if the hypothec was an ox or an ass, and he has sold it, the creditor cannot collect. Why so? Because real estate, when it is sold, people talk about it, which is not the case with movable property. But let it be feared that the owner of the movable property has mortgaged it together with the real estate. As Rabba said elsewhere: Such an agreement holds: good to collect also from the personal property. And R. Hisda. added to it that this law holds good only when the borrower mentioned in his agreement that this should not be considered, an *asmachtah*, or a copied agreement? It speaks of a case in which the movable property was bought and sold immediately.

[paragraph continues] Let it still, however, be feared that he wrote in the mortgage of the real estate: "All the personal property which I possess and which I shall possess hereafter." Shall we assume that because such is not feared, a similar agreement is not to be considered? And if in spite of such agreement he has sold out or bequeathed his movable property, the sale is valid? Nay; it may be said that the above case treats of when there are witnesses who testify that this man never possessed any real estate. But did not R. Papa say that although the rabbis had enacted that if one sold out real estate without security, and a creditor took it away from the buyer, the latter could not claim the money from the seller? If, however, the investigation shows that the seller has never possessed this estate, he must pay?

It speaks that the buyer was aware that the ass in question was born from his cattle. R. Zebid, however, maintained that if sold without security, even if it was found afterwards that he never possessed it, the buyer could claim his money, because the seller might claim that on this account it was sold without security.

It is said above, in the name of Samuel, that he who has sold a field without security cannot be a witness concerning this estate, as he is interested in it; in case his creditor came, he can show him this field for collection. Let us see how the case was. Does the seller possess other real

estate? Then certainly the creditor will make his claim against that estate first, as there is a rule that no collection should be made from encumbered estate when there are unencumbered estates of the defendant. And if he does not possess any others, then what can the creditor take from him, even if it remains with the buyer? It may be said that he does not possess other estates. Nevertheless, he may say: "I do not want to be wicked," that the verse in Ps. xxxvii. 21, "The wicked borrowed and repayeth not," should apply to me. But would not the same verse apply to him concerning the buyer? Nay; as he may say: I plainly told him that I would not secure this field to him. Consequently he was willing to buy it, even though it might be taken away from him afterwards.

Rabha, according to others R. Papa, announced: It shall be known to them who are ascending to Palestine or descending to Babylon, that if one Israelite sold to another an ass, and a Gentile came and took it away, claiming that it was stolen from him, it is but right that the seller shall settle with the buyer, so that he shall not suffer the whole damage. This, however, is said

when the buyer was not aware that this ass was born among his animals. But if the buyer was aware of it, he cannot expect any settlement (as such was his fate). And even in case he was not aware, he may do so when the Gentile takes away the ass only, but when he takes away the saddle and also the man, since he takes not only what belongs to him, but all that the buyer possessed, then again it is his fate.

"*Specialists*," etc. Said Rabba: "This is said when the owner has transferred to the specialist in the presence of witnesses; but otherwise, because he may claim that he never took it from him, he is to be trusted if he says that he bought it from him. Said Abayi to him: According to your theory, even if it was in the presence of witnesses, he should also be trusted, because he could claim that he has returned it already. Answered Rabba: Do you mean to say that if one deposits an article with his neighbor in the presence of witnesses the depositary should return it to him without witnesses, and that it should not be born in mind (that he used witnesses when presenting)? The latter must do the same when returning; for, if not, he will not be trusted when he claims to have returned it. Abayi objected from the following: If one has seen his slave learning a trade at a specialist's, or his garment at a cleaner's, and to the question, "What does it concern you?" he answers, "You sold it, or made it a present to me," he said nothing. But if he claims: "I was present when you told so and so to sell it, or give it for a present," he may be trusted. And to the explanation of the difference in the law between the first part and the latter, said Rabba: The latter part means to say: If the article in question came to the present possessor from a third hand, and the latter said to the plaintiff: In my presence you told so and so that he might sell it, or give it as a present. And the reason is because, if he wished to tell a lie, he could claim: I myself bought it from you. Now we see that the first part states, "If one has seen." And what does it mean? If there were witnesses, why the expression "seen"? He should bring his witnesses and take it away. We must say, then, that there were no witnesses; yet, as soon as he has seen it, he may take it away (hence this contradicts your statement that if there were no witnesses he is to be trusted, claiming, "I bought it from you"). Says Rabba: Nay; it means that there were witnesses (when he presented it to him), and even then only when he saw it in his possession. (Said Abayi:) But did you not declare that he who has deposited an article in the presence of

witnesses, the returning must also be done in the presence of the same? And he answered: I retract that statement. Rabha, however, objected to Abayi, and brought the following as a support to Rabba: If one has given his garment to a specialist, the latter claiming, "The stipulation was that you should give me two zuz," and the owner claims the stipulation was for one zuz, so long as the. article is in the hand of the specialist, it is for the owner to bring evidence. If, however, the specialist has already returned it to the owner, if he announced his claim in time (*i.e.*, before sunset, at which time a laborer has to get his payment), then he takes an oath and gets the full payment. But if it was after that time, he is the plaintiff, and it is for him to bring witnesses. Now let us see how was the case. If there were witnesses, then it must be done as the witnesses testify. It must be said, therefore, that there are no witnesses, nevertheless the specialist is trusted. Is this not because he could claim, "I bought it," so that he would be trusted? So is it when he claims his payment? Nay; it treats of when there were no witnesses, and also when the owner of the article did not see it in the hands of the specialist (so that the specialist could claim that he had returned it).

R. Na'hman b. Itz'hak objected from our Mishna, which states that a specialist has no hazakah, from which it is to be inferred that only a specialist has not, but a common man has. And this is certainly the case if there were no witnesses; for if there were, why should he? Hence we see that a specialist has no hazakah even when there were witnesses. And this contradicts Rabba's above statement, and this objection remains.

The rabbis taught: If one has exchanged his utensils for another's in the house of a specialist, he may use them until the owner shall come and recognize his. If the same was done at the house of a mourner or at a house of a wedding, he must not use them before they shall be recognized. And what is the reason for the difference in the two cases? Said Rabh: I used to sit before my uncle, and he explained it to me that it might happen that the owner of an article might say to a specialist, "Sell this article for me" (hence the article might be given to him, not by an error but intentionally by the specialist, who has a right to sell it), which cannot be the case in the house of a mourner or of a wedding. Said R. Hyya b. R. Na'hman: Then it may be used only when the specialist himself has exchanged it; but if this was presented to him by his wife or children, he must not use it.

[paragraph continues] And even when it was presented by the specialist himself, the law holds good if he said to him: "Here is *this* article"; but if he said to him: "Here is *your* article," then he must not use it, as we see that the specialist has erred in giving it to him. Said Abayi to Rabha: Come and I will tell you what the swindlers of Pumbeditha are doing. If one claims: "Give me up my mantle which I have given to you for repairing," the other answers that this never occurred. And if he claims: "I have witnesses who saw it at your place," he claims it was another's. "But bring it forth and let us see it." He answers: "No, indeed! I have no right to show you the goods of others." Answered Rabha: Although he is a swindler, nevertheless he does it in accordance with the law, as the Boraitha states plainly, when he sees it with his eyes. Said R. Ashi: If the claimant is a clever man, he can make the specialist show him the article in question, saying: I understand that you keep it because you are afraid I shall deny the debt which I owe you. I admit to you in the presence of witnesses that I owe you, and will pay you when you shall bring forth this garment and it shall be appraised. Then you will take yours, and I shall take mine. Said R. Aha b. R. Ivya to R. Ashi: The swindler may answer: I do not need your appraisement, as it was

appraised long ago by more competent men than you are.

"*Gardeners*," etc. Why so? Until now he took only the half, and now we see he has consumed the whole of it for three years, why has he no hazakah? Said R. Johanan: It speaks of family gardeners (*i.e.*, the same gardeners used to guard and work up the fields as gardens of that family since it was in its possession, and as this was a kind of inheritance, the owners could not discharge them by substituting others, and with such gardeners it might happen that they consumed the fruit for three years in succession and thereafter the owners consumed the fruit for the same period, and therefore no hazakah applies to them. But to ordinary gardeners, if they consume the fruit for three years, hazakah does apply. R. Na'hman said: A gardener who has hired other gardeners to substitute him for the years of hazakah (even if he was of the kind mentioned by R. Johanan), hazakah may be considered, because in such a case the owners would protest. R. Johanan said again: To a gardener of the above sort, who has divided the work which is needed for the gardens, to hired gardeners, hazakah does not apply, as it may be supposed that he does so with the permission of the owner (as he himself could not do the whole work).

R. Na'hman b. R. Hisda sent a message to R. Na'hman b. Jacob: Let the master teach us. May a gardener be taken as a witness in case of a claim, or not? R. Joseph was sitting before the latter when the message came, and said to him: "So said Samuel: A gardener may be a witness." But is there not a Boraitha which states that they must not? This presents no difficulty. If there are products still on the estate, the gardener may not qualify as a witness; but if there were none, then he may.

The rabbis taught: A surety maybe a witness for the borrower in case the latter has other property besides that to which the claim refers. And the same is the case with a lender. The first buyer may be a witness to the second (e.g., if A sold one field to B and another to C, and D claims that the field sold to C belongs to him as A has robbed him of it, B may be a witness in that case in behalf of C in case A has other property), so that if there should be another claim he should be able to pay from the remainder.

A receiver (*i.e.*, one who receives the money from the lender and forwards it to the borrower, as to which the law dictates that the lender has a right to collect from whomsoever he chooses--either from the receiver or from the borrower)--according to some he may, and according to others he may not be a witness. He who permits this maintains that the receiver is considered an ordinary surety whom the law permits to be a witness, and he who forbids it maintains that the receiver is always pleased when the borrower has more estates, so that in case a creditor should appear he will be able to pay him from his middle estate.

R. Johanan said again: A specialist has no hazakah, but his son has; and the same is the case with a gardener. A robber, however, neither he nor his son has hazakah, but his grandson has. Let us see how was the case? If all mentioned above claimed that the estate was their fathers', then they also should not have any hazakah; and if they claim for themselves, it means that they themselves bought it. Why should this law not apply to the son of the robber also? He speaks of a case where there are witnesses who testify that the owners have admitted to their fathers in their presence that they sold it; and then the sons of a gardener or a specialist are to be trusted if they claim to have inherited from their fathers; but the son of a robber is not to be trusted even

in such a case. As R. Kahana said: It may be feared that the owner has admitted to the robber only for fear

lest he make him more trouble. Said Rabha: It may happen that even the grandson of a robber shall not have any hazakah. It is when the basis of his claim is his grandfather. Who is to be considered a robber, so that the law of hazakah should not apply? Said R. Johanan: When he has occupied a field which does not belong to him (and as he was an influential man, the owner was afraid to sue him). R. Hisda, however, maintains that it means only people like a certain family of N, who used to kill men when they opposed them in money matters.

The rabbis taught: A specialist has no hazakah so long as he keeps up his profession, but otherwise when he has ceased. And the same is the case with a gardener when he has given up his gardening. The same is the case with a son who has separated himself from his father, and with a woman who was divorced from her husband--all of them are considered, in a case of hazakah, with men in general. It is correct to teach about a son who has separated himself, lest one say that usually a father relinquishes his right to a son; but was it also necessary to teach about a divorced woman? Is not this self-evident? It means that the divorce was made by such a document as is doubtful in legality, and in such a case she is considered divorced and not divorced; and it is in accordance with R. Zera, who said in the name of Jeremiah b. Abba, quoting Samuel, that in a case where the sages say, "She is divorced and not divorced," her husband is obliged to support her.

R. Na'hman said: Huna told me that all the persons mentioned above who have not the right of hazakah, if they bring evidence, it is to be considered, and the court may leave the property in their possession; except a robber, for even if he brought evidence, it must not be considered, and the court replevins the estate. But what news comes he to teach us? Have we not learned this already elsewhere, that if one has bought estates from a *sicarius* (a man who took away the estate by threatening murder if it was not given to him), and afterwards he got a bill of sale from the owner (without giving him any money), the bill of sale is not considered and he has no title (hence it is already taught that a robber and all those who base their claims upon his actions, even if they bring evidence, are not to be considered)? This teaching was necessary to deny Rabh's theory, who said that the cited Mishna speaks only of a case in which the owner told the buyer: "Go make a hazakah on the estate and acquire title," but has not furnished him with any deed.

[paragraph continues] But if he gave him a deed, title is acquired. R. Huna comes to teach us that the Halakha prevails in accordance with Samuel, who said that in such a case, even if he gave him a deed, title is not acquired unless he take the responsibility for the future. And R. Bibi has added to the above statement of Huna in the name of R. Na'hman, that the estate does not remain in his possession, but the claim for his money, in case he paid afterwards to the robbed one, is to be considered, provided witnesses testify that he gave him the money in their presence. But if they testify that in their presence the robbed one has admitted to the robber that he was paid for it, it is not to be considered. As R. Kahana said elsewhere: Such an admission may have been made only because of fear that he would be killed. R. Huna said: If one sold his estate by duress, the sale is valid. Why so? For if one sells every estate which belongs to him, he usually does so

because he is compelled to do so by circumstances, and nevertheless the sale is valid.

But perhaps there is a difference between the pressure of his private circumstances and duress, which is a pressure by others? This is to be explained as we have learned in the following Boraitha: It is written [Lev. i. 3]: "Shall he bring it," which means that he may be *compelled* to bring it--that it may be *Lirzuno* (literally, according to his will). And what does this mean--that he shall be compelled until he shall say: "I am *willing* to do so." But still it may be that there is a difference, because one likes to atone (and consequently he does it, finally, with good will). Therefore we may infer the same from the latter part of the cited Mishna: And the same is the case with divorced women--he may be compelled until he says: "I am willing to do so." But still it may be that this is to be done because it is a meritorious act to listen to the law (which is not the case with R. Huna's theory). Therefore we must say that R. Huna's decision was from a commonsense standpoint, that when a man is in such circumstances he resolves to give title to the buyer. R. Jehudah objected from the following: A divorce which was compelled by the court of Israelites is valid. By Gentiles, it is not, unless they beat him, saying: "Do as the Israelite court dictates to you." Now, if you say because of the circumstances he resolves to give title, why should the divorce be invalid, even at a court of Gentiles? It may also be supposed that because of circumstances it was resolved to give the divorce legally. The answer is: Was it not taught in addition to this that R. Mesharshiah said: Biblically

the divorce is valid, even when it was obtained in a court of Gentiles. And why did the rabbis enact that such should be invalid--that every woman who did not like her husband should not go to the Gentile court to be divorced from her husband? R. Hamnuna objected from the above-cited Mishna: If he bought of a *sicarius*, etc. Why, then, should it not be said in that case also, that because of the circumstances he resolved to give title? Of this, also, it was taught that Rabh said that this holds good only when there was no deed (as said above). But still there would be an objection to Samuel, who said above that even with a deed the same is invalid?

Samuel himself. agrees that such a sale is valid in case the buyer has paid the owner in cash. But would not R. Bibi's above statement in the name of R. Na'hman contradict R. Huna? Bibi's statement is not a Boraitha and not a Mishna, but only a saying, to which R. Huna need not pay any attention. Said Rabha: The Halakha prevails that if one sells his goods under duress the sale is valid, provided he was compelled to sell one of his estates, and he himself has made the selection. But if he was compelled to sell this field, the sale is not valid, provided he did not count the money given him for it (as this shows that he does it unwillingly); but if he has counted the money the sale is valid. And all this is said in case he has no opportunity to extricate himself; but if he had, and did not take advantage of it, the sales are valid. (Says the Gemara:) In reality, the Halakha prevails that in all these cases the sale is valid, even if he was compelled to sell *this* field, as a woman is similar to *this* field; and Amemar said that if a woman is compelled to betroth herself under duress the betrothal is valid. Mar b. R. Ashi, however, said that in case of a woman the betrothal is null and void. Because he has acted unlawfully, he must also be treated unlawfully, and the rabbis deny his betrothal and consider it void.

Tabba hung Pappi on a tree called khidra, to compel him to sell him his field, and he did so. And Rabha b. b. Hana signed his name on both--on the protest of Pappi made before being compelled, and on the bill of sale made under duress. Said R. Huna: He who has signed his name to the protest, and also he who has signed his name on the bill of sale, did well. How is

this to be understood? If there was a protest, the bill of sale cannot hold good, and *vice versa*? He meant to say that if there were no protest, he who signed his name on the bill of sale did well, for according to his theory a sale under duress is valid. But why

should the protest annul the bill of sale, when the same witnesses who signed the protest signed the bill of sale also? Did not R. Na'hman say: Witnesses who testify that they signed their names to a note whose amount was not yet paid, hut which was prepared by the borrower in case he should find some one who would make him the loan, are not to be trusted? And the same is the case if some one has sold a bill of sale, and the witnesses whose signatures were on the same testified that the one who made the bill of sale made also a protest previously "before us, that he was compelled to make *this* bill of sale, and we have acknowledged the truth of his protest."

Why, then, said R. Huna that if not for the protest the sale would be valid? Let him say it is valid, notwithstanding this protest, in accordance with R. Na'hman's decision just stated? R. Na'hman's statement was when the protest was oral, as such cannot harm a written document. In our case, however, the protest was a written one, and therefore it annuls the bill of sale.

Mar b. R. Ashi, however, maintains that if witnesses testify, "We signed our names before the money was given" (as explained above), they are not to be trusted; but if they testify that this bill of sale was previously "protested before us and acknowledged by us," they may be trusted. Why so? Because in the first case, after the witnesses signed their names to the fact that so and so had borrowed money from so and so, they could not sign another document that the borrower had not received the money as yet, as it would contradict their first statement, and it would seem that they had made themselves liars; and, therefore, if they testify so, they are not to be trusted, as there is a rule that one cannot make himself wicked; *i.e.*, if one comes before the court, and says, "I am a liar," or "wicked," for the purpose that another shall have benefit from this confession, he is not to be trusted. But in the other case, however, both documents may be written by the very same men; *i.e.*, if they see a man in trouble, they may listen to his protest, write it down, and sign it, and thereafter also sign the bill of sale to which he was compelled. And therefore, even if the protest was not written by them, they may be trusted if they testify that they have heard the protest and acknowledged to the truth of it.

"*No hazakah to a husband*," etc. Is this not self-evident? As he has a right to use the fruit of her estate,. how can it be considered a hazakah? It speaks of even when he gave her a document that he has no interest in her estate. But even then,

what is it? Have we not learned in a Boraitha above (p. 109), that if one says: "I have nothing to do with this field," "I have no claim to it," and, "I keep my hands off it," he says nothing? Said the disciples of R. Yanai: Our Mishna treats of when he gave her such a document when she was still betrothed. And this is in accordance with R. Kahana, who says of an estate which one expected to take possession of in the future, he has a right to make a stipulation that he should not inherit it. And it is also in accordance with Rabha, who said: If one declares: "I do not care to have the privilege of the enactment by the sages in a thing similar to the above," he may be listened to. What does this mean? That which R. Huna said in the name of Rabh: A woman has a right to say to her husband "I do not wish to be supported by you and also would not wish to do

any work for you."

Now the Mishna states that the consuming of fruit does not make a hazakah; but if he brings evidence that she sold her estate to him, it would be a hazakah. Why? Let her claim that she had done so only to please her husband. Have we not learned in a Mishna: If one bought an estate from another whose properties were encumbered by the marriage contract of his wife, and afterwards he also took a deed from his wife, the sale is invalid? Is it not because she may say: I did so only with the intention of pleasing my husband, but not with the intention of selling it? Was it not taught in addition to this Mishna that Rabha b. R. Huna explained it that the Mishna treats of certain three fields--namely, one, of one he had set apart in the marriage contract before marriage; and another, of one of which he had made a *hypothec* in the marriage contract after marriage; and the third, of one which she brought him as a gift from her father, which was appraised at a certain amount of money, for which the husband became responsible in the marriage contract? What does he mean to exclude? Shall we assume to exclude all other estates which were also encumbered to her? Then, certainly, it would create so much the more animosity between her husband and herself, because he would say: You did not want to sign this because you are expecting my death or to be divorced. Hence the claim that "I have done so to please my husband" would be right. And shall we say that he means to exclude the usage of fruit? Did not Amemar say that if the husband and his wife have sold the usage of fruit from her estate, it is not to be considered (because of the same claim, "I have done it only to

please my husband")? He means to exclude the use of fruit; and Amemar's statement was only in case he had sold out and died, that she might, after his death, make use of that claim, or in case of her death, he had a right to make use of such a claim, according to the enactment of the rabbis. And it is as R. Jose b. Hanina said (First Gate, p. 197). But when they are both alive and have sold out, and even when the husband only has sold out, the sale is valid. And if you wish, it can be said that Amemar's statement is based upon R. Eliezer's elsewhere, that an article which does not bear the name of its owner--as, for instance, the fruit of the wife's estate, which cannot be said to belong to her or to belong to him--cannot be sold by either of them. And Rabha said that R. Eliezer based his statement on [Ex. xxi. 21], "for he is *his* money," which means the money which belongs to him alone.

"On his wife's estate." But did not Rabh say that a married woman must protest (in case one has occupied her estate). Who is the one who has occupied her estate? Shall we assume any one? Did not Rabh say: "There is no occupancy in the estates of a married woman"? We must therefore say, he means even when her husband has occupied her estate? Said Rabha: He means the husband, and in case he has dug in her estate excavations, pits, and caves, then she must protest, as he has the right to her estate only for usage of fruit; and if she did not, he has a hazakah, as, if he had not bought it, he would not dare to dig in it. But did not R. Na'hman say in the name of Rabba b. Abuhu that there is no hazakah concerning damages (hence if the husband has damaged her estate, she. has not had to protest). Was it not taught in addition to this (above, p. 69), R. Mari said: Concerning smoke, etc.? R. Joseph, however, said: Rabh means a stranger, and he speaks in case he has occupied it at a certain time while her husband was still alive and three years after his death; and because the occupant could claim, "I bought it from you" (as three years have already elapsed since her husband's decease), he is to be trusted if he claims, "You sold out your estate to your husband, and I bought it from him." The text states: Rabh says: There is no occupancy in the estate of a married woman. The judges of the Exile, however,

maintain that there is. And Rabh himself, when he was told of this, said: The Halakah prevails in accordance with the judges of the Exile. (Samuel and Karna were called the judges of the Exile.) And to the question of R. Kahana and R. Assi: Has the master

receded from his statement? he answered: I meant to say, as it was illustrated above by R. Joseph. 1

"And *vice versa*." Is this not self-evident? Has she not to be supported from the estate of her husband? It treats in case he has set aside another estate for her support. But how is it if she brings evidence that she has paid him for it? Has she the right? Let him claim: I intended only to discover the money which she had hidden from me, and therefore I told her I would sell it, never intending, however, actually to transfer it to her. And because it was not stated, let it be inferred from this that if a husband sold his estate to his wife, the above claim should not be taken into consideration? Nay; it may be said that the Mishna means evidence in the form of a transfer as a gift.

R. Na'hman said to R. Huna: "The master was not with us yesterday, in our college, and there were taught many good things." "And what were they?" "That when a husband sells his estate to his wife, she acquires title, and the claim, 'I did it only to discover her money,' etc., is not to be considered." And Huna answered: This is self-evident, as if you take away the fact that she has given him money, the bill of sale gives her title. For have we not learned in a Mishna that real estate may bought with money or a document, or with hazakah? Rejoined R. Na'hman: But was it not taught, in addition to it, that Samuel said that it speaks only of a bill of a gift, but a bill of sale gives no title unless he paid the money for it? Said Huna: But was this not objected to by R. Hamnuna, from the following: With a document--how so? If he wrote on a piece of paper [or on a piece of broken clay, although it has no value whatever], "My field is sold to you," or, "My field is bought from you," it is sold and transferred to the buyer? And R. Na'hman answered to this: Did not R. Hamnuna himself answer his objection that it speaks of one who sells his estate because of its barrenness? R. Ashi, however, answered (the objection of Hamnuna): The cited Boraitha speaks of a gift which was written in the manner of a bill of sale, to strengthen its power (*i.e.*, the seller has to make good all claims to it). An objection was raised from the following: If one borrowed from his bondsman, and encumbered his estate for him by a document, and afterwards he freed him, or from his wife and thereafter he divorced her, they have nothing

to claim. Must we not assume that the reason is because we suppose that he only intended to discover the money which was hidden from him? That case is different, as one would not like to make himself a slave to the lender ([Prov. xxii. 7]: "The borrower is servant to the lender").

R. Huna b. Abbin sent a message to the college relating that if one sold out his field to his wife, she acquires title, but he has still a right to use the products. However, R. Abba b. Abuhu, and all the great men of the generation, said that such a bill of sale is to be considered a deed of gift, but it was written in the manner of a bill of sale for the purpose of strengthening its power. This message was objected to by the college, from the Boraitha just cited, and was answered with the

same reply.

Rabh said: If one sold his field to his wife, she acquires title, and the husband uses the products. If, however, he has presented it to her as a gift, she acquires title, and he must not use the fruit. R. Elazar, however, maintains that in both cases title is acquired, and the husband has no right to use the fruit. R. Hisda acted in accordance with R. Elazar. Said Rabban Uqba and Rabban Nehemiah, sons of Rabh's daughter, to R. Hisda: "Does the master put aside the great men and act like the small ones?" (R. Elazar was only a disciple of R. Johanan.) And he answered: I have also acted according to the theory of the great men, as when Rabbin came from Palestine, he said in the name of R. Johanan that in both cases she acquires title, and the husband has no right to use the products. Said Rabha: The Halakha prevails that if one sells his field to his wife she does not acquire title, and the husband may use the fruit; and if a gift, she acquires title, and he may not use the products. Does not Rabha contradict himself? (He says she does not acquire title, and it is self-evident that he may use the fruit; and when he says he may use the fruit, it means although she has acquired title.) This presents no difficulty. If she bought with the money which was hidden from her husband, she does not acquire title at all; but if with money which was not hidden from him, she acquires title; but he may, nevertheless, use the fruit. So was it said in the name of R. Jehudah.

The rabbis taught: One must not accept bailments from women, from slaves, or from children: If, however, one has accepted from a woman, he must return it to her; and in case she dies, he must return it to her husband. From a slave, he must return to him; and in case he dies, then to his master. If from

a minor, he should invest it in such a thing as will bear good fruit until he shall be of age, and in case of death return it to his heirs. All of them, however, if they said, while dying, "This belongs to so and so," he must act accordingly (even when the depositor was a minor); and if they have declared nothing, he may do in accordance with his conscience--(*i.e.*, he shall return it to him whom he thinks to be the proper heir. The wife of Rabba b. b. Hana while dying said: These earrings belong to Martha, and to the sons of his daughter. And Rabba came to question Rabh what he she should do. And he answered: If these people whom she mentioned are worthy, so that they can afford to keep bailments with her, then do as she declared; and if not, then you may explain her declaration as you please. "From a minor, he should invest," etc. R. Hisda maintains in Holy Scrolls; and Rabha b. Huna said: A tree which bears dates.

"*A father on the estate of his son*," etc. Said R. Joseph: Even if they have separated themselves. Rabha, however, maintains that in case of separation the law is different. Said R. Jeremiah of Diphti: R. Pappi has acted in accordance with Rabha's statement. Said R. Na'hman b. Itz'hak: I was told by R. Hyya of Hurmiz Ardshir that he was told by R. Aha b. Jacob, quoting R. Na'hman b. Jacob, that when they have separated themselves each of them has a right of hazakah. And so the Halakha prevails.

It was taught: If one of brothers who was the business man of the house, and the bills of sale and notes were in his name, claims: "All this is my own, inherited from my mother's father," according to Rabh, the burden of proof lies upon him; and according to Samuel, it lies upon his brothers. Said Samuel: Abba admits that in case he dies the burden of proof is thrown upon his brothers. R. Papa opposed: Should we make for orphans such a claim as their father while alive

had not any right to (*i.e.*, when this brother was alive, it was for him to bring evidence, and if he could not, the goods belong to all the brothers, and because he is dead, shall we say that the brothers have to bring evidence, and if they cannot it belongs to his orphans)? Did not Rabha levy upon a pair of shoes and a book of Hagadah from orphans without any evidence that they were things which are usually hired and borrowed? And he did so in accordance with the message of R. Huna b. Abbin, that of things which are usually borrowed and hired one is not trusted to say, "They were bought by me." This difficulty remains.

Said R. Hisda: The decision of Rabh concerning the brother who manages the business of the house, holds good only when all the brothers are not separated in the household--even in the dough of bread which they take for the house. But if they are, he may claim that he has spared from his householding the amount which he has in his hand, and the brothers have nothing to do with it. The evidence mentioned in Rabh's decision--what should it be? According to Rabba, the evidence should be with witnesses that he has saved the money or it came from other sources; and according to R. Shesheth, it is sufficient when the court has approved the bill of sale or other notes which bear his name (as it is to be supposed that the court would not approve if it were not sure it belonged to him only). Said Rabha to R. Na'hman: There are Rabh and Samuel, with Rabba and R. Shesheth, who discuss this matter, and I would like to know the opinion of you, master--with whom you agree. And he answered: I am aware of the following Boraitha: One of brothers who was the business man of the house, and there were bills of sale and other notes bearing his name only, and he claims: "They are my own, inherited from my mother's father," the burden of evidence rests with him. And the same is the case with a woman who was managing the business in a house and there were documents bearing her name only, and she claims that they are her own property which came from her grandfather on the father's or mother's side--it is upon her to bring evidence. (Says the Gemara:) It was necessary for the Boraitha to declare the same law in the case of a woman, lest one say that because it is an honor for a woman to be trusted with the management of a house, she would surely take care not to rob the orphans, and therefore she ought to be trusted without evidence, it comes to teach that it is not so.

"*Concerning a gift or an inheritance of brothers*," etc. How is this to be understood? Does not the law of hazakah apply to the persons mentioned farther on in the Mishna? The Mishna is not complete, and should read thus: All this is said of a hazakah to which there is a claim; as, for instance, the seller says, "I did not sell," and the buyer says, "I have bought." But a hazakah to which there is no claim, as, for instance, who presents a gift or an inheritance of brothers, or who takes possession of the property of a proselyte, to which the law prescribes that he needs to acquire title by doing something-if he has locked it or made any partition, etc.--it is a hazakah. R. Houshia taught: In a

[paragraph continues] Tosephtha of Tract Kidushin, written by the school of Levi, "If he locked it," etc., in the face of the other party--it is a hazakah. Is this to be understood, only to his face, but not in his absence? Said Rabha: He meant to say: If this was in the face of the other party, it is not necessary for the latter to tell him: "Go make a hazakah, and acquire title." But if not to his face, it is not considered a hazakah unless he distinctly said to him the words just mentioned. Questioned Rabh: How is the law concerning a gift, according to the Boraitha just mentioned

(must the giver also tell the receiver, "Go and make a hazakah," or not)? Said Samuel: Why was Abba doubtful? When, concerning a sale for which the seller gets money, it is not a hazakah unless he tells him, "Go and make a hazakah," so much the less it must be so with a gift, for which he has received nothing. Rabh, however, maintains that he who makes a gift usually makes it with a good eye, and no explanation is needed.

The Mishna states: "Any work whatever." What does this mean? As Samuel said: If he has completed the partition which was there already to the size of ten spans, or he has broken a hole in the partition through which he can go in or out, it is considered a hazakah. Let us see how was the partition! If it was placed in such a position that one could not climb over it to the estate, and after its completion by the occupant it is also the same, what, then, has he done that shall be considered a hazakah? And if in its previous condition one could climb over it, and after its completion one cannot, then he has done much that does not correspond with the expression "whatever"? It means that in the previous condition one could easily climb over it, and after it was completed it is not so easy for one to do so; and the same is the case with a hole in a partition, by which, in the previous condition, it was not easy to enter, and one broke it to such an extent that it is easy to enter. R. Assi in the name of R. Johanan said: If the occupant of the property of a proselyte put a little piece of wood too near the hole which was in the partition and with this he has improved it, or he took out a piece of wood and with this he has improved it, it is considered a hazakah. What does he mean by the expression, "he put . . . or he took out"? Shall we assume that with this piece of wood he closed the hole so that it prevents the water from going in, or he took out a piece of wood, and with this he has made place for the water gathered in to come out? Why should it be considered a hazakah? Is it not the duty of every Israelite to save the property

of his neighbor from damage when seeing danger is near? Therefore it must be supposed that he means he has put in a piece of wood with the purpose that the water which is useful to the estate shall remain, or he took out a piece of wood so that he opened a channel permitting water to reach the estate. The same said again in the name of the same authority: If there were two estates left by a proselyte and there was a boundary between them, and one has made a hazakah in one of them with the purpose of acquiring title to it, it is acquired. If for the purpose of acquiring title to both, title is acquired only to that on which he has made a hazakah, but not to that which was on the other side of the boundary; and if for the purpose of acquiring title to the latter, even to that in which he has made a hazakah, title is not acquired.

R. Zera questioned: If one has made a hazakah for the purpose of acquiring title to it, to the boundary, and to the estate which is beyond it, how is the law? Shall we assume that, because all are connected title is acquired, or because the boundary intervenes between them it is considered as if they were separated and title is not acquired? This question remains undecided. R. Elazar questioned: How is it if this man has made a hazakah on the boundary itself with the purpose of acquiring title to both? Should the boundary be considered a breadth of the earth which joins the two fields, and therefore title is acquired, or the fields are nevertheless considered separated and title is not acquired?

This question also remains undecided.

R. Na'hman said in the name of Rabba b. Abuhu: If there were two houses, one inside of the

other, and one has made a hazakah on the outer one for the purpose of acquiring title to it, title is acquired. If for the purpose of acquiring title on the inner one also, the outer one is acquired, but not the inner. For the purpose of acquiring the inner one only, even the outer one is not acquired. The same is said again in the name of the same authority: If one has built a palace on the property belonging to the proselyte in question, and another comes and puts doors to the palace, the latter has acquired title to the whole of it. Why so? Because the work of the first is considered as if he had only turned bricks without using them, as the doors to it are the main thing.

R. Dimi b. Joseph in the name of R. Elazar said: If on the estate of the proselyte in question there was a palace and one has coated one of the walls with lime, or painted one of the pictures

therein, title is acquired. How much of the wall must he coat or how large must he paint the picture? Said R. Joseph: One ell. And R. Hisda added that this ell must be opposite the door (but at another place he must coat or paint more than this).

R. Amram said: The following was told to us by R. Shesheth, who to enlighten our eyes explained a Boraitha. He said: If one has prepared his bed in the estate of the proselyte in question and slept there, he acquires title to the whole estate. And he enlightened our eyes to the Boraitha as follows: How can one acquire title to a bondsman with hazakah? If the slave has put on the shoes of the master or taken off his shoes, or has carried his garments after him to the bath-house and undressed him and washed him, anointed, rubbed, dressed him, put on his shoes, or even lifted him up, title is acquired.

Said R. Simeon: There cannot be a better hazakah than lifting up, as this act gives title to one in everything. How is this to be understood? The Boraitha says that if the slave has lifted up his master it gives title to the master; but if *vice versa*, it does not. And to this answered R. Simeon: There is no better hazakah than lifting up, which means that this gives title even if the slave was lifted up by the master. R. Jeremiah of Bira in the name of R. Jehudah said: If the estate of the proselyte in question was already ploughed and one put radishes in the furrows, it is not considered a hazakah, because at the time he put the radishes in, without covering, there was no improvement at all; and even if in a few days afterwards these begin to grow, it is not considered as if done by him, but from itself.

Samuel said: If one peels off the bark of a tree, if he has done it for the improvement of the tree, title is acquired; and if for food for his cattle, it is not. [And how can we know this? If he peels off the tree from both sides, it is supposed that he does it for the improvement of the tree; but if from one side, it is for his cattle.] He said again: If one cleans off the estate in question, if he has done this for the improvement of the earth, title is given; but if he has done so with the idea of using it for fuel, it does not. [And how shall this be proved? If he takes off all there is, it is supposed that he does it for the improvement; but if he chooses the larger pieces and leaves the smaller ones, it is to be assumed that he does it for the purpose of using it for fuel.]

And the same said again: If one engaged himself to level ground for the sake of the earth itself, it gives him title; and if

with the intention of placing a temporary barn there, it does not. [And how shall this be proved? If, for instance, he takes off the superfluous earth from the hills and puts it in the hollows (and so he has done with all of them), it is to be supposed that he does it for the improvement of the ground; but if he only made the hills lower, and only at the edges of the hollows he filled these in, then it is to be supposed that he does so with the intention of putting up a temporary barn.] He also said: If he opens a stream of water to this ground, if he does so for the improvement of the earth, title is given to him; but if with the idea of catching fish, it does not. [And how shall this be proved? If he opens both sides of the estate, one for the purpose of letting the water enter and the other side for letting it out, it is supposed that he does so with the intention of catching fish; and if he open only one side, so that the water may enter, it is assumed that he does so for the improvement of the earth.] There was a woman who peeled off on one side trees of the estate of the proselyte in question for thirteen years. Another man came who dug a little under the tree; and the case came before Levi, according to, others before Mar Uqba, and he left it in the possession of the latter. And this woman came and protested, and he said to her: What can I do for you, in that you have not made the hazakah as it ought to be?

There was a woman who had made a partition to that which was already there in the estate of a proselyte. Another man, however, came and digged in the estate; and when the case came before R. Na'hman, he left the estate with the latter. And this woman came and caused a disturbance, and R. Na'hman answered: What can I do for you, as you have not made a hazakah as people ought to do? [1]

Rabh said: If one paints in the estate in question a likeness of an animal or a bird, title is acquired. So Rabh himself made such a hazakah at a garden which was near his college, left by a proselyte who died without children.

It was taught: A field which was marked out by boundaries on four sides, said R. Huna in the name of Rabh: As soon as one has dug one spadeful of earth he acquires title to the whole field. Samuel, however, maintains that he acquires only the place he has dug. And what is the law concerning a field not marked off by boundaries? Said R. Papa: If he digs in it as much as a team of oxen in one furrow and the return.

R. Jehudah said in the name of Samuel: The estate of idolaters, if sold to an Israelite and the latter has not made a hazakah on it, it is like a desert; and the first who makes a hazakah on it acquires title. Why so? Because the idolater, as soon as he gets the money, cuts himself off from it; and as the Israelite has not as yet acquired title to it until he gets the bill of sale, it is therefore like a desert, and every one may try to take possession of it (returning the money to the buyer). (The commentator Rashbam, however, maintains that from the expression, "It is like a desert," it is to be understood that the occupant has to pay nothing, and the buyer has to sue the seller if he can do so.) Said Abayi to R. Joseph: Is it possible that Samuel should say so? Did he not declare elsewhere that the law of the government must be respected as the law of the Torah, and the government dictates that title is acquired only by a deed, and not otherwise? Hence the other one who has made a hazakah is also without the deed needed. And he answered: I know it only from experience. As it happened in the village Dura of the shepherds, an Israelite bought an estate of idolaters, and the Israelite came and dug a little on this estate, and when the case came before R.

Jehudah, he left it in the hand of the latter. And Abayi rejoined: Do you want to compare any other cases to the case of the village Dura? There was a *pagus* with estates hidden from the government, and the possessors of those estates did not pay taxes for it. And the government dictates that he who pays the taxes owns the land.

R. Huna bought an estate from an idolater and another Israelite digged in it; and the case came before R. Na'hman, and he left it in the hands of the latter. Said Huna to him: The basis of your decision is what Samuel said, that the estates which are sold by an idolater are like a desert, and who takes possession thereof acquires title. Why should the master not decide in accordance with the other saying of Samuel, that the digger acquires title only at the place where he dug? And he answered: In this respect I hold in accordance with Rabh, in whose name R. Huna said: As soon as one has digged one spadeful he acquires title to the whole of it.

R. Huna b. Abbin sent a message: If an Israelite buys a field from a Gentile, and another Israelite comes and takes possession of it (before the bill of sale reaches the buyer), the court has no right to take it away from the latter. And to this, R. Abbin, R. Elaa, and all our masters at that time agree.

Rabba said: I was told by the Exilarch Uqban b. Nehemiah, in the name of Samuel, the following three things: (*a*) That the law of the government should be respected as the law of the Torah. (*b*) The hazakah of the Persians is no less than forty years. (*c*) And the rich farmers who buy land from the officers of the government for the taxes which were not paid by the previous owners, the sales are valid. But this is only when the owners owe to the government taxes. But if the land was taken for poll taxes, the sale is not valid. Why so? Because the poll taxes rest upon their heads, not upon their land. R. Huna b. Jehoshua, however, maintains that even the barley in the pitcher is mortgaged to the poll taxes (*i.e.*, when the land was taken away for poll taxes, they have a right to sell it). Said R. Ashi: Huna b. Nathan told me that Amemar objected to the decision of R. Huna, saying: According to this theory, the rule prescribed by the Scripture, that a first-born shall take two parts in the inheritance, should be abolished, as if the whole estate is encumbered to the government for poll taxes, the bequeathed estate will be fit only in the future for inheritance, but not as yet. And there is a rule that the first-born has a right to take a share only in that which is already fit. And he answered: Why this objection to poll taxes? The same can be raised concerning land taxes also. But to this it can be answered that he speaks of when one dies after he paid the land taxes, and the same can be said with poll.

R. Ashi said: Huna b. Nathan told me: I asked the scribe of Rabha, and he told me that the Halakha prevails in accordance with R. Huna b. R. Jehoshua. (Says the Gemara:) In reality it is not so, as the scribe of Rabha says this only to approve his acts. R. Ashi said again that an απραχτοσ (a man who goes idle) must bear the taxes of the city. But this is said only when he was freed by some of his friends in that city who told the chief that he owned nothing from which to pay and he let him go; but if the chief himself or the officers who were appointed by the government do not like to collect from him because he is idle (although they collect his share from the other townsmen), it is to be considered as a divine help to him and he must not be troubled again. R. Ashi said in the name of R. Johanan: A boundary or a tree which is found between two estates of a proselyte is considered an intervention concerning hazakah, but not concerning corner tithe and concerning defilement. When Rabbin came from Palestine, he said in the name of R. Johanan: It is considered an intervention concerning the two last-mentioned as

well.

[paragraph continues] But how is the law if there was no boundary and no tree, and nevertheless they were separated? R. Mrinus in the name of R. Johanan explained that he acquires title to the whole field which is called after his name. What does this mean? Said R. Papa: If people call it the field which the proselyte used to water from his valley. R. Aha b. Ivya was sitting before R. Assi, and said in the name of R. Assi b. Hanina that a hazuba makes an intervention in the estate of a proselyte. What is a hazuba? Said R. Jehudah. in the name of Rabh: This was a mark by which Joshua marked the land which he divided among the tribes of Israel. He says again in the name of the same authority: Joshua did not count but the cities which were placed on the boundaries (*i.e.*, the cities which are enumerated in the Book of Joshua). He said again in the name of Samuel: All that the Holy One, blessed be He, had shown to Moses from the land of Israel was subject to tithes. (It means that from the products growing in those places tithes must be separated biblically.) What does it mean to exclude? The land of the Kenites, Kenizzites, and Kadmonites [Gen. xv. 19].

MISHNA *IV*.: If there are two witnesses that the occupant has consumed the products of a field three years, and after investigation it is found that they were collusive, the witnesses have to pay the whole value of the products from the last three years to the plaintiff. If, however, two have testified for the first year and two others for the second year, and still two others for the third year (and all of them had witnessed falsely), the payment mentioned above must be divided among them, of which each of the parties has to pay a third.

If there were three brothers witnessing, and one stranger testified the same as they had, they may be considered as three parties of witnesses--*i.e.*, one of the brothers said: I am aware that the defendant has occupied this property the first year; the second: I am aware that he has occupied it the second year; and the third testified for the third year. If the stranger, how. ever, says: I testify that the defendant has occupied it all the three years, his testimony is counted to each of them, so that for each year there are two witnesses. If, however, the testimony was found to be collusive, they ought to be considered as one party of witnesses, and the brothers have to pay the whole claim.

GEMARA: Our Mishna is not in accordance with R. Aqiba of the following Boraitha: R. Jose said: When Abbah 'Halaftha went to study the Torah from R. Johanan b. Muri,

according to others the reverse was the case, he questioned him: How is it if one has occupied a property the first year in the presence of two witnesses, and the second in the presence of two others, and the third in the presence of still two others, should this be considered a hazakah, or not? And he answered: It is. Rejoined the former: I am of the same opinion; but R. Aqiba opposes, as he used to say: It is written [Deut. xix. 15]: "A case be established." A *case*, but not half a case (*i.e.*, as each party testifies only for one year, they are testifying to only half a case; but not the whole case).

R. Jehudah said: If one of the witnesses testifies that the occupant has occupied the estate all the

three years with wheat, and the other testifies with barley, it constitutes a hazakah. R. Na'hman opposed: According to this theory, if one testifies that he has occupied it the first, third, and fifth years, and the other for the second, fourth, and sixth, should this also be considered a hazakah? Answered R. Jehudah: What comparison is this? In your case one testifies for this year, and the other for other years; but in my case both are testifying for the very name year. The difference is only concerning barley and wheat, about which people are not used to be too particular.

"*If there were three brothers*," etc. There was a promissory note signed by two witnesses, of whom one died, and his brother with a stranger comes before the court to testify that the signature of the deceased is a right one. Rabhina was about to say that this case was familiar to our Mishna, which states that three brothers and one stranger are counted legal witnesses. Said R. Ashi to him: There is no similarity at all. In the case of the Mishna half the amount of the claim is collected, because of the testimony of the brothers, and the other half because of the testimony of the stranger. In this case, however, the brothers' testimony collects three-quarters of the whole amount (*i.e.*, the signature of the deceased witness gives the right to collect half the amount. Now when this brother came to testify concerning the signature, his testimony is for a quarter of the whole amount, and the testimony of the stranger who was with him for the other quarter. Hence three-quarters of the whole amount are to be collected by the testimony of the brothers, which is not legal.

MISHNA *V.*: There is a difference in usage of articles: In some cases the law of hazakah applies, and in some it does not. *E.g.*, if one used to keep his cattle in the yard of his neighbor, or a stove, oven, or handmill, or raised there hens, or he

kept there his manure, it is not considered a hazakah. However, if he has made a partition ten spans high for his cattle, or for the other articles mentioned above, or he has kept his hens in his neighbor's house, or has dug three spans in the ground of his neighbor for his manure, or he has made a heap of it three spans high on the same ground, it is a hazakah.

GEMARA: Why should the law differ in the latter part from the first part (is it not a fact that the owner of the yard would protest when a stranger kept his cattle therein without any right)? Said Ula: It is because of the following rule: Usage which does not give title to the property of a deceased childless proselyte, it also does not give it to the property of one's neighbor; and usage which does give title in that case, gives also title in the latter case.

R. Shesheth opposed: Does this rule always hold good? Is it not a fact that ploughing, which is not considered a hazakah concerning the estate of one's neighbor, gives title when it is done on the estate of a proselyte? On the other hand, usage of fruit, which is considered concerning a neighbor's estate, does not give title to the estate of a proselyte. "Therefore," said R. Na'hman in the name of Rabba b. Abuhu, "the Mishna treats of a yard belonging to partners, who usually are not particular if one of them keeps his cattle there; but they are, if one separates his cattle by a partition." Is that so? Have we not learned in a Mishna: If partners have vowed not to derive any benefit from one another they must not enter in their yard, as by entering one derives benefit from the share of his neighbor. Therefore R. Na'hman's above saying was concerning a rear yard, in which usually one is not particular if his neighbor leaves there his cattle. But concerning a partition, they would be particular. R. Papa, however, maintains that both our Mishna and the cited one speak about a yard belonging to partners; but some are particular concerning leaving

cattle and some not. Therefore, in a case that may lead to an offence, as in the cited Mishna, it is decided rigorously; and concerning money matters it is decided leniently. Rabhina, however, maintains that partners are never particular with one another. And concerning the case of deriving benefit, the Mishna which treats about vows is in accordance with R. Eliezer, who holds that even a little gift that is usually presented by the storekeepers to their customers is prohibited to him who has vowed not to derive any benefit from his storekeeper, which the rabbis allow.

R. Johanan in the name of R. Bnaha said: Everything (which is not in the agreement) may partners prevent each other from doing in the yard belonging to them except washing, because the daughters of Israel must not be left to disgrace themselves by washing at the bank of the river (as they must stand there with bare feet). And Hyya b. Aba said: It is written [Is. xxxiii. 15]: "And shutteth his eyes against looking on evil," meaning him who does not look upon women when they are occupied in washing. How is this to be understood? If there is another way to pass, and one passes by that way for the purpose of looking, then he is wicked; and if there is no other way, what can he do, as he is compelled to pass them? It means even in the latter case, and nevertheless one must manage not to look upon them.

R. Johanan questioned R. Bnaha [1]: What is meant by a shirt of a scholar? And the answer was: It covers the whole body, so that no part of it may be seen. And what is meant by a garment of a scholar? If it covers the shirt so that a fragment of it not more than a span should be seen. What is meant by a table of a scholar? That the table-cloth covers two parts of the table, and the third part is uncovered to place there plates and herbs, and the ring of the table (they used to have a ring in order to keep together the table-cloth, to hang it up after the meal), and the ring should be outside. [But have we not learned in a Boraitha that the ring must be inside? This presents no difficulty, as one Boraitha speaks of when there is a child sitting by the table--then it must be inside; or it speaks of the night meal, when it is better it should be inside, so that the servant should not touch it while it is dim; and another Boraitha speaks of a day meal, without a child.] And that of a common man looks like a *tam*, as the dishes are placed around and the bread is in the middle. What is meant by a bed of a scholar? If under it nothing is to be found but sandals in summer-time and shoes in the rainy season; and the bed of a commoner looks like a treasure of *vilis* wherein you may find everything?

R. Bnaha used to mark caves of the dead (for the purpose of defilement). When he came to the cave of Abraham (the Patriarch), he found Eliezer his servant standing outside, and to the question, What is Abraham doing now, he answered: He sleeps in the arms of Sarah, and she looks on his head. And Bnaha asked Eliezer to beg permission for him to enter. He said to

[paragraph continues] Abraham: Bnaha is waiting at the door. Said Abraham: Let him come in: it is known that the evil spirit does not remain in our world. Bnaha then entered, took the measure of the cave, and went out; when he arrived, however, at the cave of Adam the first, he heard a heavenly voice saying. Thou hast seen the image of Adam; but in the face of Adam himself, who is the work of (the Lord), thou hast no right to look. And to the protest: I need to mark the measure of the cave, he was answered: The measure of the outside of Abraham's cave equals the inside of Adam's.

Said R. Bnaha: I have seen the heels of Adam and they appeared to me as the circumference of the sun. Beside the face of Sarah, that of every one else looks like the face of an ape to that of a man. And Sarah's to that of Eve is also like the face of an ape to that of a man; and Eve's to that of Adam himself is also like the face of an ape to that of a man. The beauty of R. Kahana is similar to that of R. Abuhu, etc. (See Middle Gate, pp. 212, 213.)

There was a Magus who used to dig after the dead for the purpose of taking away their shrouds. When he arrived at the cave of R. Tubi b. Mathna, he grasped him by the beard, and Abayi came and requested him to leave him, and he did so. The next year the Magus came again to this cave, and Tubi again grasped him by the beard, and Abayi's request was refused, until scissors were brought and the beard was cut off.

There was a man who said while dying: I bequeath one barrel of earth to one son, a barrel of bones to another, and one barrel of down to the third. And they did not understand what he meant, and came with this question to R. Bnaha. And he asked them if they possessed estates. They said: Yea. Have you cattle? Yea. Have you also *vestes-stragula* (blankets, quilts, mattresses)? Yea. Then he said: If so, this is what your father has bequeathed to you (it means, one shall have the estate, one the cattle, etc.).

There was a man who heard his wife saying to her daughter: Why are you not careful in your unlawful acts? I have ten sons, and only one is from your father. When he was dying he said: I bequeath all my properties to one son (as he did not know which one was his). And as they did not know to which of the sons, the case came to R. Bnaha, who advised them to go and knock on the father's grave until he should come and explain whom he meant. Nine of the sons did so, but the one who was

his did not. Then R. Bnaha decided that all the estates should be given to this one. His brothers then denounced him to the government, saying: There is one man among the Jews who collects money without witnesses and without any evidence. And he was arrested. His wife then came complaining: I had a slave. People came and cut off his beard, removed his skin, consumed his flesh, filled the skin with water, which they gave to drink to their comrades, and they did not give me any of the money or some other equivalent for it. The officers did not understand her, and decided to question the vise of the Jews; perhaps he would understand what it meant. They did so, and he answered: She is complaining about a leather-bag (it means she had a buck: they stole it from her, killed it, consumed the meat, and from the skin they made a leather-bag for water to drink from. They said then: Because he is so wise, he shall sit at the court and judge. He saw, then, that it was written on the α μ βολαη: A judge who is summoned cannot be named a judge. Said R. Bnaha to them: If so, then any one may come and summon the judge (though he had never any business with him). Should he be no longer qualified to be a judge it ought to be thus: A judge who is found liable in the court, so that money is to be collected from him, is no longer qualified as a judge. And they thus corrected this: However, the sage of Judea maintains that a judge from whom money is collected by a judgment is not considered a judge.

He saw again that there was written at the head of each dead, I, blood, am the cause; and at the head of each life, I, wine, am the cause. And he said to them: According to this, if one falls from

the roof or a tree and dies, does also the blood kill him; and also, if you see one dying, give him wine and he will revive? It ought to be written thus: In the head of every sickness, I, blood, am the cause; and in the head of every medicine, I, wine, am the cause. And they corrected thus: In the head of all sickness, I, blood, am the cause; in the head of all medicines, I, wine, am the cause (*i.e.*, if the man would use wine in accordance to his health he would never come to sickness, and only in places where there is no wine is medicine needed--*i.e.*, because there is no wine, sickness is frequent). On the gates of the city of Kaputkaya was written: Anipak, Anbag, and Antell are all of equal measure (so that there is no claim that if one bought an Anpak and received an Anbag, etc.). These measures are equal to a quarter of a biblical lug (said the Gemara).

MISHNA *VI.*: The law of hazakah does not apply to movable pipes attached to the roof-gutters (drains), but does apply to the places of them and also to spouts. It does not apply to an Egyptian ladder or to an Egyptian window; but to both of Tyre it does apply. What is to be considered an Egyptian window? If a human head cannot enter in it. R. Jehudah, however, maintains: If it has a frame, although a human head cannot enter it, the law of hazakah applies.

GEMARA: How is it to be understood that the pipes have no hazakah, and the place has? Said R. Jehudah in the name of Samuel: It means thus: The movable pipes have no hazakah at one side (*i.e.*, if the pipes were fixed that water should come out; *e.g.*, on the north side of his neighbor's yard, so that if the owner of the yard needs this place he has a right to compel the owner of the house to remove them to the south side). However, he has no right, after long usage undisturbed, to insist that the gutters or pipes be entirely removed. R. Hanina, however, explained the Mishna thus: The law of hazakah does not apply to pipes in the respect that, if they are too long, the owner of the yard may insist that they be shortened; the place, however, has a hazakah, so that if the owner claim that they shall be removed, he is not to be listened to. And R. Jeremiah b. Abba said: It means if the owner of the yard wishes to build something beneath, he may; but he has no right to insist on their removal. An objection was raised from our Mishna, which states that the law of hazakah applies to a spout, which is correct in the two first explanations (as a spout, which is more stationary than a pipe, must not be removed or shortened); but in the third, that one may build beneath, to what purpose does the Mishna teach it? Why not? What harm can be done with this to the spout? The Mishna speaks of when the spout was surrounded by a stone building, so that the owner of it may claim that the new building would weaken the stone building surrounded by the spout.

R. Jehudah in the name of Samuel said: Drains which discharge water in the yard of one's neighbor, and the owner of the roof wants to stop it--the owner of the yard has a right to pre. vent him, claiming, As you have acquired title to my yard for discharging the water of your roof, so I have acquired title to that water of your roof.

It was taught: R. Oshyah said: He may prevent. And R. Hamma said: He may not. He then went and questioned R. Bissa (his father, who was also the grandfather of R. Oshyah)

and he decided that he might prevent. Rammi b. Hamma then applied to him the verse [Eccl. iv. 12]: "And a threefold cord cannot quickly be torn asunder," which means R. Oshyah, the son of

R. Hamma, the son of R. Bissa.

"*To an Egyptian ladder*." What is called an Egyptian ladder? Said the school of R. Yanai: Such as has not four steps.

"*An Egyptian window*," etc. Why does the Mishna explain what an Egyptian window means, and did not so do concerning an Egyptian ladder? Because to the. latter it had to state the opinion of R. Jehudah.

R. Zera said: The window in question has a hazakah when it is placed lower than four ells from the ground only; and one can prevent his neighbor from opening such in a building which adjoins his yard only when it exceeds four ells. R. Ailah, however, maintains that the same is the case even when it is higher than four ells. Shall we assume that the point of their difference is, if the court has to coerce one who acts after the manner of the Sodomites (*e.g.*, if one derives benefit from a thing which does not harm any one, the preventer is equalled to the Sodomites, and the question is, Must the court overrule such a preventer or must it be left to the conscience of this man, and the court has nothing to do with it?). Nay; all agree that in such a case the court shall overrule the preventer. Here, however, it is different, as the neighbor might say: It might happen that you would take a footstool, stand upon it to look in at my window, and then will be visible to you what is going on in my house.

There was one who wanted to open a window higher than four ells to his neighbor's yard, and the case came before R. Ami; and he referred it to R. Abba b. Mamal, who decided in accordance with R. Ailah. Said Samuel: To a window which is to be opened for light, whatever size it may be, the law of hazakah applies.

MISHNA *VII*.: To an enclosure the size of a span in width hazakah applies; and if one came to make it in his building which faces his neighbor's yard, the latter has a right to protest. To less than the above size hazakah does not apply, and also no protest can be made against it.

GEMARA: R. Assi, or R. Jacob in the name of R. Manni, said: If he has made a hazakah with the enclosure which was the width of one span, he has made it for four spans. How is this to be understood? Said Abayi: He means to say that if the enclosure one span wide has the length of four spans, he may

increase it to four spans square (as his neighbor does not disturb him from taking the space of four spans in the length, it would be the same as if it were square).

"*Less than that size no hazakah*," etc. Said R. Huna: This is said concerning the owner of the roof only, but the owner of the yard may prevent his neighbor from making an enclosure even less than a span. R. Jehudah, however, maintains that neither of them can prevent the other. Shall we assume that the point of their difference is, if harm done by looking is considered damage, or not? Nay; all agree that it is considered. But in this case such an enclosure not being fit for use, except to hang something in it, is different, as one may say: I can do it without looking into your property. The one, however, who forbids this, maintains that his neighbor may

claim: It can happen that while hanging his things in this enclosure he will be frightened, and even unwillingly his face will be turned to my property, and will see what I should not like.

MISHNA *VIII.*: One must not open windows to the yard even when he is a partner in it (without the consent of the other partner). If he bought a house in another yard, he must not open a door to that yard in which he is a partner. If he built an attic upon his house, he must not make its entrance in the yard in question. He may, however, divide a chamber inside of his house, and build an upper chamber upon it, so that the entrance should be through his house.

GEMARA: Why does the Mishna treat about a yard of partners? Is it not the same with the yard of one's neighbor, without any partnership? It means to say not only to one's neighbor's yard is he not allowed, but even to that in which he is a partner. Lest one say: As his partner has to hide from him (such things as he would not like his partner to see) in the yard anyhow, it does not matter if he should open a window to that part which belongs to him; it comes to teach us that his partner may say: Until now I had to hide myself from you in the yard only; but by opening a window from which my house will be visible, I shall have to hide myself in my house also.

The rabbis taught: It happened with one who opened his windows to a partner's yard, and he came before R. Ishmael b. R. Jose, who said to him: My son, thy hazakah is valid, as thy partner has not protested. When this case came up again before R. Hyya, he said: You have troubled yourself to open it, trouble yourself to close it. Said R. Na'hman: If one of the partners

built a wall against the window which was opened to the yard in question and was not disturbed by the owner of it, it is considered a hazakah immediately; as one would not tolerate that his light should be shut off in his face and be silent.

"*If he bought a house . . . he must not open a door to that yard*," etc. Why so? Because he increases walkers through the yard (and this would be disagreeable for the inhabitants of it, as their work in the yard would be visible to people, which they would not like). But if so, why then, does the latter part allow to build an upper chamber inside of one's house? Does he also not increase walkers with this? Said R. Huna: It means that he may divide his chamber horizontally, so that it should serve for an attic; but not to enlarge the building.

MISHNA *IX*: One must not open in a yard belonging to partners a door or window opposite his partner's door or window: If there is a small one, he must not enlarge it; and if there is one door, he must not make two of it. All this, however, may be done to the public street.

GEMARA: Whence do we deduce all this? Said R. Johanan: From [Num. xxiv. 2]: "When he saw Israel encamped according to their tribes." What did he see? That their doors were not exactly opposite each other. And then he said: They are worthy that the Shekhinah should rest upon them.

"*He must not enlarge it.*" Rammi b. Hamma was about to say, *e.g.*, that if it was the size of four ells, he must not make it eight; because he takes four ells space from the yard. But if it was two ells, he might enlarge it to four. Said Rabha to him: His partner may claim: When you had a small door, I could hide myself from you, which is not the case with a large one.

"*If there was one*," etc. Rami b. Hamma was about to say, when the door was four ells wide, he must not divide it into two each; but if it was eight ells wide, he might divide it in two--each of four. Said Rabha to him: His partner may claim when he had one door: I could hide myself from you, which is not the case when you will have two.

"*To the public street*." Because one may say: It does not matter that my door is open just opposite yours, as you must anyhow hide from the passers-by.

MISHNA *X*: One must not make a hole in public ground; viz., pits, excavations, or caves. R. Eliezer, however, permits this, if the surface of the ground remains strong enough to bear wagons loaded with stones.

One must not build enclosures or balconies on the space belonging to public ground; he may do so, however, on the space of his property which faces the public ground. If one bought a yard and there were enclosures or balconies upon public ground, it constitutes a hazakah and may remain so.

GEMARA: Why do not the rabbis permit the same as R. Eliezer illustrated? Because it may happen that it shall break suddenly and will cause damage.

"*Enclosures*," etc. There were enclosures from R. Ammi's property facing an alley, and there was also another man whose property was facing the public ground; and the public complained, and the case came before R. Ammi, who decided that the enclosure should be cut off. Said the defendant: Does not the master's enclosures face the alley? And he answered: My enclosures are facing an *alley*, the inhabitants of which have relinquished their right in my behalf; yours, however, are facing the *public* ground. Who can relinquish to you? R. Yanai had a tree bending over public ground, and another man had the same, of which the public complained (that a mounted camel could not pass). And defendant came before R. Yanai, who, told him to leave him to-day and come to-morrow. On that night R. Yanai ordered the removal of his own tree. And when the defendant came in the morning, he told him to remove it. And to the question: Does not the master himself possess such? he answered: Go and see if mine is not removed; if not, yours can remain; but if it is, you must do the same. But why did not R. Yanai remove it before that case came before him? He previously thought that the passers-by were pleased to sit in its shadow; but when he saw that they were complaining, he ordered the removal. And why did he not order the defendant to remove the tree before removing his? Because of what was said by Resh Lakish (Middle Gate, p. 287): Correct first thyself, and then others.

"*In the space of his property*." The schoolmen propounded a question: If one left space for it, but has not yet made the enclosure, may he do it afterward, or not? According to R. Johanan he may; according to Resh Lakish he may not. Said R. Jacob, to R. Jeremiah b. Thalipha: I am able to explain to you that there was no difference between the two rabbis just mentioned, concerning the enclosures in question, as both agree that they may be made even at any time. In what they do differ is, if one wants to replace the walls of his property in their former position,

and their decision was just the reverse. According to R. Johanan he may not; because of that which was said by R. Jehudah (above, p. 35): A path which is used by the majority must not be destroyed. And according to Resh Lakish he may; because even then there is still place for passing.

"*If one bought a yard*," etc. Said R. Huna: If the wall of the yard in question fall, he may rebuild it with the former enclosures. An objection from the following Tosephtha: One must not paint his house with whitewash or any other colored dye at this time to show that he is mourning for the destroyed Temple. However, if he bought such already painted, he may keep it as it is; but if it falls, he must not furnish the same painting to the ones rebuilt. (Hence the refurnishing is prohibited.) You cannot oppose mourning for the Temple to common money matters.

The rabbis taught: When the second Temple was destroyed, many of Israel separated themselves from eating meat and drinking wine. And R. Joshua approached them, saying: My children, why do you not eat meat and drink wine? They replied: Should we eat meat of which sacrifices were brought, or drink wine which was offered at the altar? Said R. Joshua to them: If so, let us not eat bread, as the meal-offering is also abolished?

Then we can live on fruit? They replied: But was there not also the firstfruit offering? And was it not also the custom to put water on the altar, which no longer exists? Let us, then, cease the use of fruit, and of water also. And they were silent. Then said R. Joshua to them: My children, come and listen to me. It would be wrong not to mourn at all, because the evil decree is executed. But to mourn too much is also impossible, as there must not be decreed a prohibition for the congregation which they could not stand, as it is written [Mal. iii. 9 [1]]. And therefore the sages said: When one paints his house, he shall leave part unpainted as a sign of mourning. [How much? Said Rab Joseph: An ell square. And Rab Hisda said: This must be opposite the door.] One may prepare all that he needs for his meal, leaving out some little things as a sign of mourning. And the same is the case with a woman: she may dress with all her ornaments, leaving out some of the unimportant for that purpose. As it is written [Ps. cxxxvii. 5]: "If I forget thee, O Jerusalem, may my right hand forget. May

my tongue cleave to my palate if I do not remember thee; if I recall not Jerusalem at the head of my joy." What is meant by at the head of my joy? Said R. Itz'hak: It is the custom to put some ashes on the head of the groom on the day of marriage. And R. Papa said to Abayi: They used to place it on their foreheads at the place of phylacteries, as it is written [Is. lxi. 3]: "To grant unto the mourners of Zion--to give unto them ornament," etc. And every one who is mourning for Jerusalem will be rewarded by seeing her joy. As it is written [ibid. lxvi. 10]: "Be highly glad with her, all ye that mourn for her."

There is a Boraitha: R. Ishmael b. Elisha said: From that day when the Temple was destroyed it would be only right we should take upon ourselves not to eat meat and not to drink wine; but such a thing must not be decreed, which the majority of the congregation could not endure. And from the day that the Roman government put upon us evil decrees, prohibiting to us the Torah and its commandments, did not allow us to circumcise and redeem our children, it would be only right we should take upon ourselves not to marry and have children, so that the children of

Abraham would be destroyed by themselves; but leave Israel, let them do as they please, as it is better they should sin unintentionally than intentionally (as if this should be ordered, they would certainly not observe it).

Footnotes

84:1 Rashbam says it is unknown to him wherefrom the Gemara took it that R. Ishmael was among the Sanhedrin in question.

93:1 The text contains only a few words, but very complicated; the commentators try to explain it at length, but they differ as to the meaning, and their interpretation is no less complicated. We have done the best we could, that the reader should have an idea of it.

102:1 This is according to Rashbam. R. Gershom, however, maintains that the two who witnessed the protest would notify the occupant, as only for this purpose were they appointed. From the text, however, it is impossible to decide which of the commentators is right, as there are only a few words. The one who holds that "two" suffice is of the opinion that "a protest in absence" is not considered.

124:1 R. Joseph was two generations after Rabh. But it is the custom of the Gemara to write as if Rabh would have said: "I illustrate this as R. Joseph has done it."

131:1 This paragraph is transferred from Erubhin, 25a, as this is the proper place.

137:1 This is placed here in text because all that was said and done by Bnaha should be together.

145:1 Leeser's translation does not correspond at. The commentators try to explain it, but do not succeed. We have, therefore, omitted the translation of the verse, leaving, however, the reference to it.

Next: Chapter IV

CHAPTER IV.

RULES AND REGULATIONS CONCERNING UNCONDITIONAL AND CONDITIONAL SALES OR GIFTS OF BUILDINGS, HOUSES, AND PALACES: WHAT IS AND WHAT IS NOT INCLUDED; AND ALSO CONCERNING YARDS, BATH-HOUSES, AND PRESS-HOUSES FOR OIL AND WINE. SALES OF WHOLE CITIES, VALLEYS, FIELDS, WELLS, ETC.

MISHNA *I*.: If one sells a house unconditionally, the yeziah which is upon it is not included in the sale, even when it is open to the house, neither the chamber which is inside, nor the roof if it has a railing ten spans high. R. Jehudah, however, maintains that if it has the appearance of a door, although it is less than ten spans high, it is not included in the sale.

GEMARA: What does *yeziah* mean? Here (in this college) it was explained as αετο--gable. 1 R. Joseph, however, maintains that it is an upper floor with windows. According to the first explanation, the latter one, which is more valuable, it is self-evident is not included in the sale. But according to the latter explanation the first one is included. R. Joseph taught: We find two additional names to yeziah, mentioned in I Kings, vi. 5: "And he built on the wall of the house a gallery (yeziah) round about." It is also named *Zelah* [Ezek. xli. 6]: "And the side chambers--*Zelah*," etc. And also *To* [ibid. xl. 7]: "And every cell (*To*)," etc. The last is also used in Midoth, IV. 6: Said Mar Zutra: All that is mentioned above applies only when it contains four ells. Said Rabhina to him: According to your theory, the succeeding Mishna, which states: "Not the well (it does not matter whether the well is merely dug in the ground or is surrounded by stone walls), although it was written in the bill of sale that he sold to him all that was in the height and depth, it is not included in the sale"--means, also that if it does not contain four ells it is (and this is certainly not so)? What comparison is this? The use of a well is not

the same as the use of a house, while the use of an upper floor is identical with the use of the house; if it contains four ells, it is of value and it is not included in the sale; but if less than this, it is not of value.

"*Neither the inner chamber*." Was it necessary to teach this? If the yeziah is not included, is it not self-evident that much less is the chamber? It speaks of a case in which in the bill of sale were noted some boundaries of the inner chamber, and lest one say that in such a case it is included, the Mishna comes to teach us that it is not so. And this is in accordance with R. Na'hman, who said in the name of Rabba b. Abuhu that if one sells a house depending on a palace, although in the bill of sale were noted the boundaries of the palace, the buyer cannot claim that he sold him the whole palace, as it is to be considered that the boundaries were noted only to make known where the palace was situated. (Says the Gemara:) Let us see how was the case. If people make a distinction in calling the one a house and the other a palace, and the bill of sale specifies a house, then certainly he sold him a house, not a palace. And if people call the

whole building a house (not a palace), then he certainly sold him the house with all its contents? It speaks of a case in which the majority calls it a house, but the minority names it palace. One might say that he sold him the entire building. R. Na'hman comes to teach us that in such a case he ought to write in the bill of sale: "The entire building is sold to you, and I reserve nothing for myself." And because this was not mentioned, it is to be considered that he sold him only one house of this building and the remainder he left for himself. The same said again in the name of the same authority: If one sold a field situated in a valley, although in the bill of sale are specified the boundaries of the valley, he sold him only the field and not the entire valley, as the specifying is to be considered necessary in defining the situation of the valley only. Let us see how was the case? If people make a distinction in calling the one field and the other valley, and the bill of sale specifies a field, then certainly he sold him a field (etc., etc., as above). And the answer is also the same as above, that because it was not written in the bill of sale that he had reserved nothing for himself, he sold him only one field. And both cases were necessary for R. Na'hman to teach; since, if he had taught only of a house, one might say that there is a difference between using a palace and using a house. But in case of a valley of which the use of

every part is equal, the entire valley is sold. And if he would teach from a valley only, one might say that because there was no necessity for the seller to specify which field of the valley he sold him, as every part of it is used for one and the same purpose, therefore it is considered that he sold him only one field. But in case of a palace the chambers of which are for different uses, it ought to be specified in the bill of sale which house was sold; and as it was not, the entire building was sold: therefore both were necessary.

According to whom is the statement of R. Mari, the son of Samuel's daughter, in the name of Abayi, that if one sells to his neighbor a property, he must write in the bill of sale: "I reserve nothing of it for myself"? In accordance with R. Na'hman's statement in the name of Rabba b. Abuhu.

There was one who said to his buyer: I sell to you the ground of B. Hyya. And there were two pieces of ground that were called B. Hyya (and the buyer claimed that both were sold to him, while the seller insisted that only one was sold to him). When the case came before R. Ashi, he decided that only one was sold (as the seller said to him, "I sell you the ground"--singular, and not the "grounds"); and if even the seller had said the grounds, then it would signify two. And if such were three, the third would not be sold unless he should say: "I sell you all the ground I possess." And even then, if the seller possessed, besides this ground, orchards and vineyards, the latter would not be sold. And if the seller should say, "I sell you my *zihra*"(which means in the Persian language fields and plants), then the orchards and vineyards belong to the buyer, but not houses nor slaves, unless he said, "I sell to you all properties I possess."

If in a bill of sale for real estate there was specified a boundary of a length of one hundred ells on the west side, and of the length of fifty ells only on the east side? Said Rabh: Title is given to the buyer corresponding with the shorter boundary only (*i.e.*, that the specifying of the one hundred ells on the west side is to be considered only a mark to identify the beginning of his field).

Said both R. Kahana and R. Assi to Rabh: Let it be considered that he sold to him a triangle (*i.e.*, that it should be measured from the end of fifty on the east side to the one hundred of the west

side, and the other estate should not belong to him). And Rabh did not answer. (Says the Gemara:) If the

adjoining fields on the west side belonged to A and B, and on the east side to C and D, and in the bill of sale was specified from the boundary of A and B to the boundary of D on the other side, then even Rabh admits that it is to be considered he sold him a triangle, as the boundary of C was not mentioned.

If E owns a field adjoining A's field from east to west, and B's from north to south, and he comes to sell it, he must write in the bill of sale: "I sell you the field adjoining A's field from both sides, and also B's from both sides." And it is not sufficient that he should write: "My field, which is between A's and B's fields," as then he could claim that he sold to him the half of it only (*i.e.*, a half on west side adjoining A's and a half on south side adjoining B's, and the remainder he reserved for himself). If in the bill of sale the three boundaries of the field were specified, but not the fourth, according to Rabh title is given to the buyer from all three boundaries, except a bed of the fourth, which was not specified in the bill of sale. Samuel, however, maintains that title is given to the whole, even to the fourth. But R. Assi maintains that title is given to the buyer for one bed all over this field only. And the reason of his theory is that he agrees with Rabh, that from the fact that the fourth boundary is omitted in the bill of sale, it is to be assumed that he reserved it for himself. And this being reserved for himself, so was his intention with the other boundaries, and the specifying of the three was meant to give him title to one bed all over the field.

Said Rabha: The Halakha prevails that the buyer acquires title to the whole field, even to the fourth boundary, provided it is contained in the three boundaries; but if it is not contained, title is not given. And even if it is, but it contains inoculated trees, or the fourth boundary was of a size in which nine kabs of grain could be sown, it is excluded.

Let us see! Rabha states that if there were inoculated trees, or it were nine kabs, title is not given, from which it is to be understood that if it is not contained properly, title is not given to the fourth boundary, although it does not contain the above. We may infer from this statement that although he has not written in the bill of sale that he reserved nothing for himself (as is said above that so it must be written in a bill of sale), it is supposed that he reserved nothing for himself, and also that the Halakha prevails that if it is contained title is given, provided there were not trees, and the size was less than nine kabs. But

if there were, title is not acquired. However, it was taught in the name of Rabha just the reverse; and therefore, if such a case came before a court, we must leave it to the consideration of the judges.

Rabba said: If A and B were partners in a field, and A sold his share to C, stating in the bill of sale, "I sell you the half I have of this ground," then all his share is sold, and he has reserved nothing for himself. If, however, it states, "Half of the ground I possess," then he sold him only a quarter of the whole field, which is half of his. And to the question of Abayi: "Why should we

make a difference between the two statements (is it only because in the first statement the 'ground' was mentioned later, and in the other statement the expression 'ground' is mentioned first)?" Rabba kept silent. Said Abayi: I thought that because he was silent he receded from his statement, and accepted my opinion; but it was not so, as I have seen the bills of sale which were approved by the court of my master, and in reference to the expression, "I sell the half which I possess in the ground," the court has marked in its approval "that a half of the whole field is sold to so and so," and in reference to the bill of sale which was written, "A half of the ground I possess," the court's approval was: "A quarter of the whole field is sold to so and so." Rabha said again: If two partners have divided their estate, and one of them says to another, "I sell you my share in the ground," and he shows him the boundary, that it begins from the ground belonging to his partner after the division, then all his share is sold. But if the same shows him the boundary of his estate not from the place which belongs after the division to his former partner, but from the opposite side, then a field of nine kabs from his share is sold to him, but not his entire share. 1 And also here Abayi questioned him the reason of the different decisions, at which he again kept silent; and the schoolmen who heard this thought that he had receded from his statement, and in both cases his whole share was sold. In reality, however, it was not so. As R. Youmar b. Shlamjah said: Abayi explained to me that there is no difference whether he has shown him the boundary from which he has divided, or the opposite side. If he has added

to his statement, "and all of its boundaries," then his entire share is sold; but if he has added nothing, then a field of nine kabs only is sold.

It is certain that, if a sick man said in his last will, "So and so shall share my properties," he meant the exact half; but how is it if he said, "Give a share to so and so in my properties"? Said Rabhina b. Kisi: Come and hear the following Boraitha: If one said, "Give a share to so and so in my well"--said Symmachos: No less than a quarter is meant (as it is certain that he wanted to help him out in watering his fields, and the rabbis suppose that a quarter of the well suffices for this purpose). If, however, he said: "Give a share from my well in his barrels" (in which the above purpose cannot be supposed), not less than an eighth part is meant. (This Rashbam explains as implying that he wished to help him out in watering his cattle. R. Gershom maintains: So was then the custom--to fill their barrels with water, for the purpose of using it the whole year.) And if it was said: "Give him a share from my well for his pots," not less than a twelfth part is considered; and if it was said: "Give him for his small vessels," then a sixteenth part 1 of the well is meant.

Hence we see that, according to Symmachos, if he said, "Give him a share in my well," without any additional remarks, a quarter is meant; and the same is the case when he said, "Give him a share in my properties."

The rabbis taught: A Levite who sold a field to an Israelite with the stipulation that the tithes of the field (which the Israelite must separate) should belong to him, this stipulation is valid; and if the stipulation was, "to me and to my children," if the Levite dies, the tithe must be given to his children. But if he said, "So long as the field may be in your hands," then, if the Israelite should sell it and rebuy the same thereafter, the Levite has nothing more to do with it. But why should the tithe belong to him? Is there not a rule that one cannot grant a thing which is not as yet in existence, and as the products of the field have not as yet come forth, consequently the tithe is not in existence? The above stipulation is to be considered as

if he should say: The space in which the first tithe shall grow I reserve for myself.

Said Resh Lakish: From this we may infer that if one sold a house with the stipulation, "The upper *diæta* (chamber) shall remain for him," the stipulation is valid. To what purpose does he state so? Is it not said above that even without any stipulation, if it is not plainly stated in the bill of sale that this *diæta* goes with the house, it remains the owner's? Said R. Zebid: Resh Lakish meant to teach that if there was such a stipulation, then the owner has a right to make enclosures in the attic, facing the yard of this house, and the buyer cannot prevent him, as the stipulation was for this purpose. And R. Papa maintains: If the seller wants to build another attic upon that one, he may do so.

(Says the Gemara:) According to R. Zebid's explanation, it is correct, what Resh Lakish said: "From *this* we may infer," as the above Boraitha teaches that his stipulation is to be considered as reserving space for himself. So also with the stipulation as to the attic--he reserves space for himself to make enclosures, etc. But according to R. Papa's explanation, how can this case be inferred from that Boraitha? This difficulty remains.

R. Dimi of Nahardea said: If one sells a house with the intention of giving title to all its contents, although the bill of sale states from the bottom to the top, title is not acquired in wells, etc. (if such there were), unless he writes: "You shall acquire title from the depth of the earth to the height of the sky." And it is not sufficient to state: "From the depth to the height of this house is sold to you"; and the reason is because the last expression gives title only to that which is beneath the house, like a cellar, basement, etc., and also to the roof and the attic, but it does not suffice for the well and its stone walls, which are not included in the same. However, the expression, "from the depth of the earth to the height of the sky," includes them also, and other caves which may be found beneath the house, and also above the roof, if there is an attic that measures more than ten spans in height and width.

The schoolmen [1] propounded a question: If one has sold or presented the house to one man and the *diæta* to another, should it be considered a reservation, or, because he sold the *diæta* to

some one else, he reserved nothing for himself, and it cannot be considered? And if you will say that such is not considered, how is it if the seller said: "The house is sold to you except the *diæta*" (but did not say, "I reserved it for myself")? Said Rabha in the name of R. Na'hman: If we conclude that the house to one and the *diæta* to another is not considered a reservation, the latter case, besides the *diæta*, is to be considered, and it will be in accordance with R. Zebid, who said above that if he likes to make enclosures, etc., he may do so. Hence we see that, as he left the *diæta* for himself so he did with the space of the enclosures.

MISHNA *II*.: Title is not given to a well, or to the stone wall thereof (if this was not plainly mentioned in the bill of sale of the house), although there is mentioned that he sold him the depth and the height; however, the seller must buy a way to the well from the new owner of the house. So is the decree of R. Aqiba. The sages, however, maintain that it is not necessary; and

R. Aqiba admits that it is not necessary for the seller to buy a way if he said plainly that the well in question was not included in the sale. If, however, the house was sold to some one, and the well to some one else, it is not necessary for the latter to buy the way to it from the owner of the house, according to R. Aqiba; but according to the sages it is.

GEMARA: Rabhina was sitting and deliberating the difficulty of the expressions in the Mishna, *Bour* (well) and *Duth* (a well surrounded by a stone wall). Are they not for the same purpose? Why, then, was it needed to mention both? Said Rabha to him: Come and hear the following Boraitha: *Bour* and *Duth* both meant a well which is dug in the ground, but the first means solid ground without a wall for containing water, and the second means surrounded by a stone wall. (Hence if the Mishna should mention the first, one might say that because it is not surrounded by masonry it is not included in the sale; but the second, which is a kind of building, is included. And if the second were mentioned, one might say that because it is a separate building and of value, therefore it is not included; but the first, which is not of great value, is; therefore both are needed.) And so also explained Mar the Elder, the son of R. Hisda, to R. Ashi.

"*He must buy a way*," etc. And the point of their differing is that R. Aqiba holds that usually the seller sells his goods with a good eye (explained above, p. 98), and the rabbis hold

the contrary. And wherever it is said: "R. Aqiba is in accordance with his theory that the seller sells his goods with a good eye," the argument is based upon this statement. [And lest one say that the point of their differing is something else, as, *e.g.*, the seller could not intend that one should fly to his well through the air, etc., therefore there is repeated in the latter part of the Mishna the same difference of opinion, to teach that only in the supposition of a good and bad eye is the point of their differing.]

It was taught: R. Huna in the name of Rabh said: The Halakha prevails in accordance with the sages; and R. Jeremiah b. Aba in the name of Samuel: The Halakha prevails in accordance with R. Aqiba. Said the latter to the former: Why, many times I said before Rabh that the Halakha prevailed in accordance with R. Aqiba, and he said nothing to me. And he rejoined: "That was because you taught before him the reverse--that R. Aqiba was of the opinion that the seller sells with a bad eye." [1] Said Rabhina to R. Ashi: Shall we assume that both Rabh and Samuel decided in accordance with their theories elsewhere (Chap. I., p. 16), where they differ also concerning brothers who have divided their inheritance; and if it is so, why have they repeated this statement twice? (Answered R. Ashi:) It was necessary, as, if one of the two were cited, one might say that Rabh so decided concerning brothers, as one might claim: "I like to dwell in the house wherein my parents dwelt." As it is written [Ps. xlv. 17]: "Instead of thy fathers shall be thy children." But in the other cases he would agree with Samuel. And if the other case were stated, one might say that only in this Samuel differs with Rabh, but concerning brothers Samuel agrees with him. Therefore both statements were needed.

Said R. Na'hman to R. Huna: Should the Halakha prevail as we declare, or in accordance with you? And he answered: The Halakha should be established in accordance with you, as you are nearer to the Exilarchs, whose judges are competent and can be relied upon.

It was taught: [2] Two houses, one beyond the other, so that one has to pass the other in going to

the street or the yard, and both are sold, or presented as a gift, to two different persons---

neither of them has the right to pass the other's house without his permission, and much less when the inner house is sold and the outer is presented as a gift. But how is the case if the outer house is sold, and the inner is presented as a gift? The schoolmen were about to say that the same is the case. However, they were opposed from the following Mishna, which states, in the last Mishna of this chapter, that "there is a difference with a gift," etc., from which we see that all agree that he who makes a gift does so with a good eye. The same is the case here, when the owner of the house has at one time sold the outer, and made a gift of the inner, as it was with a good eye, so that he shall have a right to pass.

MISHNA *III.*: If one sells a house, the door is sold, but not the key to it; the stationary mortar in the house, but not the movable--the ετροβιλοσ (every revolving body--here, however, is meant the lower stone of a handmill), but not the mill-funnel, nor an oven or a stove. If, however, he said to him, "The house with all its contents," all of these are sold.

GEMARA: This Mishna is not in accordance with R. Meir, who said: If one has sold a vineyard, he has sold all the vessels which are used for same.

The rabbis taught: If one has sold a house, he sold with it the door, the bolt, and lock, but not the key; the engraved mortar, but not that which is only attached; the lower stone, but not the mill-funnel, nor the oven or stove nor the handmill. R. Eliezer, however, maintains that all that is attached to the ground is to be considered as the ground proper. If, however, the seller said, "The house and all its contents," all of them are sold. But in any case, the well, the surrounding stones thereof, and the *yeziah* are not sold.

R. Nehemiah b. R. Joseph sent a message by a woman to Rabha b. R. Huna the minor [1] in the city of Nahardea: When this woman shall appear before you, you shall collect on her behalf the tenth of all the properties belonging to her father, for her support, even from the lower stones of the handmills. Said R. Ashi: When we were with R. Kahana we used to collect for such a purpose even from the rent of the houses (the law is, that for the support of a daughter a tenth of the real

estate is to be collected, and R. Ashi holds that the rent of real estate is to be considered the same for this purpose).

MISHNA *IV.*: If one sold a yard, the houses, wells, cellars, and caves are included, but not movable property. If, however, he said, "with all their contents," all is sold; in any case, if there were bath or press houses, they are not included. R. Eliezer, however, maintains: If one has sold the yard without any explanation, he has sold only the ground thereof, but nothing else. (Even if, according to the amount which was paid by the buyer, it seems that all its contents are sold, as the law of deceiving does not apply to real estate.--Rashbam.)

GEMARA: The rabbis taught: If one sells a yard, the outer houses, the inner ones, *Beth Hulsauth*, 1 and stores which are open inside are included in the sale, but not those which are open outside. If, however, they are open on both sides, they are included. R. Eliezer, however, maintains that if one sold the yard he sold only the *moles* (*i.e.*, the great mass of the air). The text says if they are open from both sides they are sold with it; but has not R. Hyya taught that they are not? This presents no difficulty. Our Boraitha speaks of that of which the main use was inside, and R. Hyya speaks of that of which the main use was outside.

"*Eliezer said*," etc. Said Rabha: If the seller said: "I sell you this foreyard," all agree that the houses are included; but if he said: "I sell you the yard," they differ. According to the rabbis, the yard with all its contents is meant, as the yard of the tabernacle, which is written, "the length of the yard" [Ex. xxvii.], and all its contents is meant; and R. Eliezer holds that with the word "yard" is meant the air only.

Rabha in the name of R. Na'hman said: If one has made a hazakah on the *Chulsu*, title is acquired in the ground to a depth at which silver or gold, if found, belongs to him. Is this not self-evident? Has not Samuel said: If one sold ten fields in ten different countries, as soon as he has made a hazakah on one of them, title is acquired to all? Lest one say that there is a difference, as the surface of the earth is alike everywhere, and the fields are similarly adapted for planting, they are therefore considered as if they were joined each to the other; but in our case the use of the two things mentioned is different,

and one might say that title is not given to the ground-therefore Rabha's statement.

MISHNA *V*.: If one sells a press-house, the sale includes the trough, the press-beam or press-stone, and the poles, but not the boards that are put on grapes while pressing; neither the wheel nor the treading rod. If, however, he told him, "This press-house, with all its contents," all is sold. R. Eliezer, however, maintains that the expression "press-house" means the treading-rod only.

GEMARA: The rabbis taught: If one sell a press-house, the sale includes the bronze plates that prevent the grapes from scattering, the trough, the press-beams, and lower stones of the handmill, but not the upper stones. If, however, he said, "With all its contents," all is sold. In any case, neither the boards which are put on the grapes while pressing, nor the sacks, nor the packing-bags are sold. R. Eliezer, however, maintains that he who sells a press-house sells the treading-rod also, as the expression "press-house" means chiefly the "treading-rod."

MISHNA *VI*.: If one sell a bath-house, the sale does not include the boards on the floor (the baths at that time were heated beneath the stone floors, and boards were placed on the floor for stepping upon), the basin, neither the curtains on the doors. If, however, he said, "With all its contents," all is sold; but in any case the sale does not include the channels with water, nor the wood piles prepared for the bath-house.

GEMARA: The rabbis taught: If one has sold a bathhouse, the sale includes the separate houses for keeping the boards, the tubs, the basins, and the curtains; but not the boards proper, neither the tubs, nor the basins, nor the curtains. If, however, he said to him, "With all its contents," all

is sold. In any case, however, the channels that contain water for the use of bathing in the summer and rainy seasons are not sold, nor the houses for storing the wood, unless he said: "The bathhouse with all its implements," then the sale includes everything that may be used for bathing purposes.

There was a man who said: "I sell you the press-house with all its implements," and there were some stores outside of the press-house, in which poppy was spread out for drying purposes, and the buyer claimed that they were also included, while the seller claimed they were not. The case came before R. Joseph, who decided in accordance with the Boraitha just cited,

that in such a case everything that maybe used for that purpose is sold. Said Abayi to him: But does not R. Hyya teach the contrary? Therefore said R. Ashi: It must be investigated how the sale was; if he said, "the press-house with all its implements and also its boundaries," then title is given to all of them, but not otherwise.

MISHNA *VII.*: If one sells a town, the sale includes houses, wells, caves, bath and press houses, pigeon-houses, and also Beth Hashal'hin, but not the movable property, unless he said, "the town with all its contents"; then, even if there were cattle or slaves, they are also included in the sale. R. Simeon b. Gamaliel said: He who sells a town sells also the *santer* (the meaning will be explained farther on).

GEMARA: Said R. A'ha b. R. Ivya to R. Ashi: From this Mishna is to be understood that slaves are considered movable property; as, if they were to be considered real estate, then they would be sold with the town without any stipulation. Answered he: Even according to your theory that they are considered movable property, why does the Mishna state that if he said, "*even* with all its contents," slaves are sold also, from which is to be understood that they are not movable property proper? And what could you answer to this--that there is a difference between movable property that must be carried and that which is self-moving? The same answer can apply also to the theory that slaves are considered real estate, as there is a difference between stationary real estate "and that which is self-moving."

"*Sold the santer*." What does this word mean? Here in Babylon they explained it "guardsman," or "bailiff" (a slave). Simeon b. Abtulmus said: It means a *pagus* (land that surrounds the town). According to him who explains it as "guardsman," etc., so much the more is the *pagus* included in the sale; but according to him who explains it as a *pagus*, the guardsman is not included. An objection was raised from our Mishna, which states: "press-houses and Beth Hashal'hin," and the schoolmen explained the expression *shal'hin* (which everywhere means dry field) as meaning the gardens around the town, which also usually ought to be watered. And this is correct only for him who explains the word *santer* as a *pagus*, when the Mishna is to be explained thus: The first Tana holds that only the gardens around the town are included, but not anything else; and R. Simeon b. Gamaliel came to add the *pagus*; which, according

to his opinion, is also included. But according to him who explains *santer* as a "guardsman," if it be assumed that the first Tana speaks about gardens, should R. Simeon answer him with a

"guardsman"? Nay! The explanation of the word *shal'hin* is not gardens, as you thought, but, as is everywhere explained, dry land, which means *pagus*. [And this explanation is correct, as it is written [Job, v. 10]: "And sendeth out waters," etc., which is the translation of *Veshilea'h*.] And R. Simeon b. Gamaliel came to say: Not only a *pagus*, but even the "guardsman," is also included.

Come and hear another objection! R. Jehudah said: The *santer* is not included, but the *anqlmus* (the scribe of the city, who was usually a slave to whom all the surrounding fields on which the taxes were to be collected was known). Hence as the scribe *anqlmus* means a man, so also must *santer* mean a man? Why? *Santer* may mean a *pagus*, and *anqlmus* a man. But this cannot be, because of the latter part of the said Boraitha, which states: It does not include, however, the *shirih*, neither the villages around the town, nor the forests which are near it, and also not the *vivarium* of wild beasts, fowl, or fish. And to the question, What means the word *shirih*? it was said by R. Aba: It means pieces of paguses (*i.e.*, dry land surrounding the town, broken by rocks). Now can you say that part of the *pagus* is not sold, while the whole *pagus* is? Reverse the names! R. Jehudah said: The *anqlmus* is not sold, but the *santer* is.

But how can you say that R. Jehudah is in accordance with R. Simeon? Does he not hold with the rabbis, who said: "The villages that surround the town are not sold," while R. Simeon b. Gamaliel said plainly in a Boraitha: The sale of the town includes the villages near by also? It does not matter. R. Jehudah may agree with him in one thing, and differ in another.

"*'Vivarium' of wild beasts*," etc. There is a contradiction from the following Boraitha: If villages belong to the town, they are not sold with it; if the town contains one part of the sea, or it has a vivarium of wild beasts, fowl, or fish, they are sold therewith. This presents no difficulty! One Boraitha speaks of when the entrance to the *vivarium* was from the city, and the other speaks of when the entrance was from the field. But does not the first Boraitha state: Nor the forests which face the town (which means also the entrance from the town)? Read: The forests that are separated from it.

MISHNA *VIII*.: If one sells a field, the sale includes the stones which are needed for its use; and if it was a vineyard, the sticks which are used for keeping the vines in order. Also the stalks that are attached to the ground, the reed-bushes if they take a space less than that in which a quarter of a kab can be sown, the hut (where the watchman guards) if it is not smeared with clay, and a carob or a sycamore uninoculated; but not the stones, the sticks of a vineyard which are not for use at that time, neither the grain that is not attached to the ground. If, however, he says, "with all its contents," all is sold. In any case, however, the sale does not include the reed-bushes if they take more space than said above, and not the hut if smeared with clay, and not a carob or sycamore when inoculated.

GEMARA: What stones are to be considered to be needed for use? Here in this college it was explained, stones which are prepared for laying upon the sheaves, that they may not be scattered by the wind. Ula, however, said: It means stones that are arranged for a wall.

But did not R. Hyya teach: The stones that were gathered in heaps for this purpose? Read: arranged. To him who explains the stones as for laying upon the sheaves--according to R. Meir,

who says elsewhere that if one sells a vineyard all the things which are useful for it are sold therewith, the stones in question are included, even when they are placed outside the field; and according to his opponents, only when they are placed in the field and prepared for this purpose. And to Ula's explanation that it means stones for a wall--according to R. Meir even when they were not arranged, and to his opponents only when they were arranged.

"*The sticks*," etc. The school of R. Yanai says: It means posts for supporting the vine, in order to prevent its bending. And according to R. Meir, even when they were not prepared for this purpose; and to the rabbis his opponents, however, only when already placed under the vine.

"*Stalks which are attached*," etc. Even when they are ripe for harvesting.

"*The reed-bushes*," etc. Although they are growing separately, or thick ones, which have nothing to do with the vineyard.

"*The hut*," etc. Although it was not attached to the ground.

"*And the carob*," etc. Although thick and strong.

"*But not the stones*," etc. According to R. Meir, when they were not prepared for this purpose, and according to the rabbis when they were outside of the field; and also to Ula's explanation--according to R. Meir, when they were not prepared, and to the rabbis, when they were not arranged.

"*The posts for supporting*," etc. According to R. Meir, when they were not prepared, and according to the rabbis, when they were not placed under the vine.

"*When they were not attached*," etc. Even so they still needed the ground for drying.

"*And not the reed-bushes*." Although they are still small. And R. Hyya b. Aba said in the name of R. Johanan: Not reed-bushes only, but even if there was a small bed of spices, having a separate name, it is not included in the sale. Said R. Papa: Provided they are called the spices of so and so.

"*And not the hut*," etc. Although it were attached to the ground.

"*Nor the carob*," etc. Whence is this deduced? Said R. Jehudah in the name of Rabh: From [Gen. xxxiii. 17]: "And the field of Ephron . . . and all the trees that were in the field, that were in all its borders round about, were made sure"; from which is to be understood that all those without the borders were excluded (and so also the inoculated carob, etc., are of separate value and had nothing to do with his field). Said R. Mesharshia: From this passage we infer that the boundary is sold to the buyer with the field biblically; *i.e.*, because it is written "round about," which is the boundary, and was sold by Ephron with the field.

R. Jehudah said: It is advisable for one who sells his estate to write in the bill of sale "acquire title to the trees, to the young plants, also to those trees that do not yield fruit." And although title is given to all these, even if it were not so written, it is better for the bill of sale to contain the words just mentioned. If one said: "I sell you the ground and date trees," then, if there were such on his estate, he must give him two of them; and if there were not, he has to buy two for him; and if he possesses them, but they were mortgaged, he has to redeem two for him. If he said: "I sell you the estate with the date trees," if the estate contains such the sale is valid; and if not, the sale is void. If he said: "An estate on which there are date trees," and there were none, the sale is valid; for he meant, it is fit for them. If he said: "I sell to you this estate,

except such and such a tree," it is to be investigated whether this tree is a good one that yields much fruit--then he reserves it for himself; but if it was a bad one, which yields no fruit at all, or only a little, and in this field were better ones, so much the more does he reserve them for himself. If he said: "I sell you this field, except the trees," if there were many kinds of trees they are certainly not included; but even if it contained only date trees or vines, they are excluded also. If, however, there were trees and vines, the trees only are excluded; and if there were date trees and vines, the date trees are excluded but not the vines.

Rabh said: A date tree is considered a reservation only when he must ascend with a rope for gathering the fruit; but if not so high, it is not considered a reservation. The judges of the Exile (Samuel and Karna), however, maintain: If it does not hinder the yoke of oxen which are ploughing around it, it is not considered a reservation; but if it does hinder, it is. However, they do not differ, as Rabh speaks of a date tree and they treat of other trees.

R. A'ha b. Huna questioned R. Shesheth: How is it if the seller says: Accept the half of such and such a carob? It is certain to me that he does not acquire title to other carobs; but I doubt whether he acquires title to the half of the carob in question? And the answer was: He does not. He objected to him from the following Boraitha: If he said, "Accept the half of such and such a carob," title is not acquired to the other carobs, by which is to be understood that he does not to the other carobs, but he does to the half in question? And he answered: Nay! Even to the half left to the buyer, title is not given, this case being similar to one in which it was said, "I sell you this field, except the half of such and such a one." Were we to assume that the buyer acquires title to all his fields except the half in question, although he said plainly, "I sell you *this* field," it must be said he does not acquire title to any except to that which he had shown him; and that his remark, "except the half field," etc., was but redundance. The same is the case here. If he said, "I sell you this field, except the half tree," the last word is to be considered redundance.

R. Amram questioned R. Hisda: If one has deposited something with his neighbor, and taken from him a receipt (approved by witnesses), and thereafter the depositary claims that he has returned the bailment, how is the law? May it be said that,

because if he were to claim that the bailment was taken away from him by force, he would be trusted, the same should be the case with the claim, "I have returned," or the depositor has a right to say: If it were so, how comes thy receipt in my hands? And he answered: He is to be trusted when he takes an oath, the same being the case when the depositary claims "it was taken

away from me by force"--he must take an oath.

Shall we assume that R. Amram and R. Hisda differ on the same point as the Tanaim of the following Boraitha differ: If one holds a document which witnesses to an amount of money given by him to his deceased partner for a half profit, and claims that the amount was not returned to him, while the orphans say that they are not certain whether the amount was returned? The judges of the Exile said: The plaintiff has to take an oath, and collects the whole amount. The judges of Palestine, however, maintain that he collects only the half with this oath. And all of them agree with the sages of Nahardea, that of the money which is given for the purpose of a half profit half of the amount is considered a loan and the other half a deposit. (See Middle Gate, p. 277.) Now is it not to be supposed that the point of their differing is that one party holds that the claim of the plaintiff, "The document in my hand gives evidence that the amount was not returned," is to be listened to, and the other party (who says that with the oath he collects the half only) maintains that such is not considered evidence? Nay! All agree with R. Hisda, and the point of their differing is, that one party holds if the deceased had returned, he would have notified his heirs, and the other holds it may be that death prevented him from doing so.

R. Huna b. Abi sent the following message: A depositary who claims that he had returned the bailment, although his receipt is still in the hands of the depositor, is to be trusted (with an oath), and with a document of a half profit in the hands of the plaintiff suing the orphans, he may swear and collect the whole amount. Do these two statements contradict each other (as in the case of a depositary the document is in the hand of the plaintiff, and the *defendant* is trusted with an oath, and in the case of a half profit the *plaintiff* is trusted with an oath)? The latter case is different, because, if the deceased had made return, he would have notified his heirs. Said Rabha: The Halakha prevails concerning orphans, that he takes only the half with an oath. Mar Zutra, however, said: The Halakha

prevails with the judges of the Exile. And to the objection of Rabhina, that Rabha had long ago decided that he takes only the half with an oath, he answered: We have learned the reverse; *i.e.*, that the judges of the Exile hold that he takes the half only with an oath, and the Palestinians, that he collects the whole amount. Hence my decision is the same as Rabha's.

MISHNA *IX*.: In selling a field, if it contains a well, cistern, or pigeon-house, no matter whether they are still in use or damaged, they are not included in the sale. However, the seller must buy a way from the buyer for passing to them. So is the decree of R. Aqiba. The sages, however, say that it is not necessary. R. Aqiba, however, admits that if the bill of sale states, "except the above things," he need not buy a way. If the seller sold the above separately to another--according to R. Aqiba it is not necessary for the buyer of them to buy a passage, and according to the sages it is. This is all said concerning a sale; but if the owner of the field has made a gift of it, title is given to the field with all its contents. The same is the case when brothers divide their inheritance, and the field falls in a share of one of them: he acquires title to all its contents.

If one made a hazakah on the estate of a childless proselyte, the hazakah applies to all the above-mentioned things, if they were to be found on it. If one consecrate his field, all that is to be found in it is sanctified. R. Simeon, however, said: The above-mentioned things are not included in the sanctification; but if there was an inoculated carob or a trunk of a sycamore, it is included,

because while growing they are nourished by the sanctified ground.

GEMARA: What is the difference between a sale and a gift? Jehudah b. N'qusa explained before Rabbi: The one who makes a gift, if he desires to reserve any part of it for himself, he ought to state so plainly, which is not the case with a seller, who needs money: the details of the sale must be determined by the buyer, and if not so done, the seller has the preference.

There was a man who said in his will: Give to so and so my house that contains a hundred barrels (*i.e.*, that within the width, length, and height of the house ten barrels square could be placed). After investigation it was found that the house contained one hundred and twenty barrels (*i.e.*, twelve rows, each of ten barrels), and no other house was found on the deceased's estate. And Mar Zutra said: The will states a hundred, but not a hundred and twenty. Said R. Ashi to him:

[paragraph continues] Did not our Mishna state: All this is said concerning a sale, but concerning a gift title is given to all; and the reason is that he who makes a gift does it with a good eye? The same is the case here. The deceased thought that it contained a hundred only. He therefore said so, that the donee should be aware that he bequeathed him such a big house, but not to exclude it if it contained still more than he thought, as it must be supposed it was given to him with a good eye.

"*If one consecrated his field*," etc. R. Huna said: Although the rabbis have declared that he who buys two trees that are between others does not acquire title to the ground beneath, if the seller has sold the ground with the trees, but reserved two trees for himself, the ground beneath belongs to him. And even R. Aqiba's theory, that usually a seller sells with a good eye, is only concerning a well, etc., which does not cause any harm to the ground; but as for trees, which while nourishing do so, if the buyer should not agree that the ground beneath should belong to the seller, he would tell him to cut down the trees and go; and if he did not do so, it must be supposed that he was willing that the trees with the ground beneath should remain to the seller forever, so that in case the trees should wither he might plant others instead.

Footnotes

147:1 The commentator Rashbam explains it as a shelter in the rear; and R. Joseph's explanation means the same, but with windows. Our explanation, however, is in, accordance with Schönhak's Dictionary, which seems to us to be the proper one.

151:1 In the text are only a few words, their meaning being very obscure. The commentators Rashbam and Rabana Gershom differ in their explanation, and in the first saying of Rabba we have adopted Rashbam's interpretation, and in the second Gershom's, though both are very complicated and difficult.

152:1 The reason is, according to Rashbam, that all those quantities were known for said

Purposes. However, he himself was not satisfied with this exposition, and explained it in accordance with Symmachos's theory elsewhere, that all doubtful moneys or properties must be divided. But it is very complicated, and therefore we leave its interpretation to the reader.

153:1 Transferred from 148*b* in this Tract.

155:1 This explanation is the best we can offer, not to contradict Rashbam and R. Gershom (*q. v.*).

155:2 This is a Boraitha with the unusual expression Itemar. See Explanatory Remarks (back of title page).

156:1 According to Halpern he was of the time of R. Huna the Exilarch, and was called "minor" to distinguish him from the former. Others, however, say that it must be Hamnunah.

157:1 A Beth Hulsauth, according to Rashbam, means sand of which glass is made; to Gershom, it means rock. Schönhak, however, maintains that it is a Greek word, meaning *bank*. The reader may choose.

Next: Chapter V

CHAPTER V.

RULES AND REGULATIONS CONCERNING SALES OF SHIPS, BOATS, ANIMALS, AND TEAMS; CONCERNING BROODS OF PIGEONS AND BEASTS; TREES, WITH THE GROUND AND WITHOUT. HOW TO ACQUIRE TITLE TO FRUIT AND FLAX. OF ARTICLES WHICH BECAME DEARER OR CHEAPER BETWEEN THE TIME OF SALE AND DELIVERY. AT WHAT TIME THE WHOLESALERS AND STOREKEEPERS HAD TO CORRECT THEIR WEIGHTS AND MEASURES, AND OF WHAT MATERIAL THE WEIGHTS MIGHT AND MIGHT NOT BE MADE.

MISHNA *I*.: If one sells a boat, the sale includes the mast, the flag, the shovels, and all things pertaining to the leading of the boat, but not the slaves, and the sacks for carrying goods, nor the *entheca*. If, however, he sells the boat with all its contents, all is sold.

GEMARA: The rabbis taught: If one sold a boat, the sale includes the *scala*, and also the well with water therein. R. Nathan said: The sale includes also the safety boats. And so also said Symmachos, but he named them *dugit* as in Palestine, while R. Nathan named them *bizit* as in Babylon. [1]

It was taught: To acquire title to a boat, according to Rabh, as soon as one made a little drawing on it title is given. Samuel, however, maintains that title is not given unless he moved the entire boat. Shall we assume that they differ in the same way as the Tanaim of the following Tosephtha do: How does one acquire title by transferring? By taking hold of the feet of the animal or its hair, its saddle or the load that is upon it, the bridle, the bell on its neck (although the animal has not moved from its place), title is given. And how does one acquire title by drawing? By calling it and it follows the voice, or by striking it with a stick and it runs from him: as soon as the animal has moved hand or foot, title is acquired. R. A'hi,

and according to others R. A'ha, said: Not unless it has moved its whole body. Hence it is to be assumed that Rabh holds with the first Tana and Samuel with R. A'ha? Nay. Rabh may say: My decision is in accordance with R. A'ha's also, as R. A'ha speaks of a living body, which, even if it raised hand or foot, it remains still on its place without moving from it (and therefore he requires the moving of its whole body); but I speak of a boat, which, if one draws it a little, the entire body thereof is set in motion. And Samuel also may say: My decision can be also in accordance with the first Tana, who speaks of a living body which lifts its hand or foot, and usually it is to move the other one also; but concerning a boat, it is not considered a drawing unless he moves the entire boat.

Shall we assume that they differ in the same way as the Tanaim of the following Tosephtha do? To a boat, title is given by drawing. R. Nathan says: To a boat, and also to promissory notes, title is given by drawing, or by a bill of sale. And to the question: Where are promissory notes

mentioned, so that R. Nathan's statement should apply? it was answered that the Tosephtha is not complete, and is to be read thus: To a boat, title is given by drawing, but to promissory notes by transferring. R. Nathan, however, maintains that to both title is given by drawing, as well as by a bill of sale.

But is, then, a bill of sale needed for a boat--is it not movable property, for which drawing is sufficient? It must then be said it was taught thus: To a boat, title is given by drawing, and to promissory notes by transferring. R. Nathan, however, says: To a boat by drawing, and to promissory notes by a bill of sale. And as R. Nathan's statement concerning a boat would be superfluous if his decision were the same as the first Tanaim, we must then say that they differ in the same way as Rabh and Samuel differ (*i.e.*, that R. Nathan requires that the whole body of the boat should be moved, while according to the first Tana a little drawing suffices)? Nay; both may agree with Rabh or with Samuel, and they do not differ at all concerning a boat. Wherein they differ is but as to promissory notes. Said R. Nathan to the first Tana (of the above Tosephtha): Concerning a boat I certainly agree with you, but concerning promissory notes I hold to my opinion that if there were a bill of sale the transferring gives title, but not otherwise. And they differ in the same point as the Tanaim of the following Boraitha do: To promissory notes title is given by transfer.

[paragraph continues] So is the decree of Rabbi. The sages, however, say: Title is not given by writing (as to all the debts contained in the promissory notes) unless the notes in question are transferred to the buyer, and the same is the case when the notes were transferred without a bill of sale: as to such things, both writing and transferring are needed.

Now let us see. The above Boraitha is explained in accordance with Rabbi. Let, then, the case of the boat also be explained in accordance with Rabbi, who holds that to a boat title is acquired by transfer, inasmuch as we have learned in the following Boraitha that such is the decree of Rabbi. But the sages say that title is not given unless he makes a drawing or he hires the place in which it is then placed? This presents no difficulty. Rabbi speaks of when the boat was placed on a public ground (as then drawing could not be made, because he must draw to a place which is under his control, which is not the case when it is in public ground; and the Boraitha speaks of when it was in a place where he could make a drawing to one under his control). Now we see that the Boraitha just cited speaks of a boat that was placed in public ground. How, then, is to be understood the latter part of it, which states: And the sages say title is not given unless the buyer makes a drawing? Now, if it was in public ground, from whom could the buyer hire the place so that a drawing should suffice? And aside from this, does, then, a drawing give title in public ground? Did not both Abayi and Rabha say: Transfer gives title in public ground, and also in a yard that does not belong to both (the seller and the buyer)? In a *semita* (path), however, or in a yard belonging to both, drawing gives title, and "lifting up" gives title everywhere? The expression "unless he makes a drawing" means that he shall move from the public ground to the *semita*, and the expression "unless he hires the place" is also to be explained as meaning that if it happens to be placed on premises belonging to one of them title is not given unless he hires the place.

Shall we assume that Abayi and Rabha both are in accordance with Rabbi (who holds that transferring suffices for a boat)? Said R. Ashi: If he should say: "Go make a hazakah and acquire title," then title would be given. Here, however, it is understood the seller told him, "Go

make a drawing and acquire title." And the point of their differing is, one holds that the seller was particular with his words, that only by drawing

title should be given (but not otherwise), and the other holds that his expression is to be considered only as if he should show him the place where it is to be found (*i.e.*, "If you wish to make a drawing, here it is").

R. Papa said: If one sells a promissory note, he must write in the bill of sale, "Acquire title to it, and to all the debts it contains."

Said R. Ashi: I have explained the Halakha before R. Kahana and questioned him: How would it be if this were not inserted--would not title be given? Did, then, the buyer need it for the purpose of covering a glass with it (is it possible that a man should invest his money in a piece of paper that he cannot use but to cover something--must it not be assumed that he bought the debts which it contained)? And he answered: Yea! for this purpose he bought it. (And if the amount shows that it was double the value of the paper, then the sale would in any case be null and void, as exacting beyond a sixth makes the sale void.)

Amemar said: The Halakha prevails that to promissory notes title is given by transfer in accordance with Rabbi. Said R. Ashi to Amemar: Is your decision traditional or according to common sense? And he answered: Traditional. Rejoined R. Ashi: It is also according to common sense, as promissory notes are only words. (The note proper does not contain the debts or any money, but the promise of the borrower, which are words, and title cannot be given by words only.)

"*But not the entheca*." What does this mean? It means the contents of the *entheca*.

MISHNA If.: If one sold a wagon, the bill of sale does not include the mules for it (when not hitched), and *vice versa*. If the yoke with the wagon were sold, the oxen when not hitched were not included, and *vice versa*. R. Jehudah, however, maintains: The amount paid may serve as evidence. How so? If one said: Sell to me your yoke for two hundred zuz, it is self-evident that he meant the whole team, as there is no yoke that could be worth two hundred zuz. The sages, however, say that such cannot be taken for evidence (as it may be he desires to make him a present without humiliating him).

GEMARA: R. Ta'hlipha b. Merba taught a Boraitha before R. Abuhu: If one has sold a wagon, the sale includes the mules. Said R. Abuhu: But our Mishna teaches that it does not. Rejoined the former: Then ignore my Boraitha. Said Abuhu: It

is not necessary, as it can be explained that your Boraitha speaks of when the mules were hitched to the wagon.

"*If one has sold the yoke,*" etc. Let us see how was the case? If people by the expression "yoke"

mean the yoke without the cattle, then it is self-evident that he sold him the yoke only; and if the expression means "a team," then he certainly sold him the whole team? It speaks of a place in which some people by yoke mean the entire team, while others by this expression mean the yoke with harness, but not the cattle. According to R. Jehudah this can be ascertained from the amount; but the rabbis hold that the amount cannot be taken as evidence (as it is for the buyer to explain his desire plainly, as there are some who by yoke mean the wagon prepared for the oxen, not including them, and therefore the preference is given to the seller).

But even if the amount is not an evidence, let the sale be void if there was an exaction beyond a sixth of the value. And should you say that the rabbis do not hold to the theory that an exaction beyond a sixth makes void the sale but that they hold that the sale is valid, and the seller has only to return the amount which was overcharged, the answer is: This is not so, as we have learned in Middle Gate, Mishna, p. 132, that the rabbis hold this theory? Yea! They hold the theory only in a case where an exaction could be made (*i.e.*, in a sixth or more of the value); but in our case (two hundred zuz for the yoke only), where exaction cannot be made, it may be assumed that the buyer wishes to give a present to the seller (but does not wish to humiliate him, and so presents him the money for the yoke).

MISHNA *III*.: If one sells an ass, the harness is not included. Nahum the Modaite, however, maintains it is. Said R. Jehudah: At one time they may be sold, and at some other time they may not. How so? If the ass with its harness was before him, and the buyer says, "Sell me this ass," and the seller agrees, the harness is also sold; but if he says, "Is this your ass? sell it to me," then the harness is not included.

GEMARA: Said Ula: The first Tana and Nahum differ only in the sacks and *disacos* and *khumni*, as the first Tana holds that usually an ass is bought for riding (consequently the utensils that are not for this purpose are not included); but Nahum maintains that an ass is usually sold for carrying burdens, consequently the utensils for this purpose are included, as the saddle, sumpter-saddle, belt, and girdle.

An objection was raised from the following: "I sell you the ass with its harness": the saddle, the sumpter-saddle, the belt, and the girdle are sold, but not the sack, the *disacos*, nor the *khumni*, unless he said, "it and all pertaining to it"; then all is sold. We see, then, that only when he said, "the ass with its harness," the saddle, etc., are sold; but not, if he did not mention the harness? Nay; the same is the case even if he did not so mention, and the Boraitha comes to teach that the sack, etc., are not sold, even if he said, "the ass with its harness."

What does *khumni* mean? Said R. Papa b. Samuel: A saddle used by females only.

The schoolmen propounded a question: Does the Mishna treat of when the things mentioned above were upon the ass, so that, if they were not so, Nahum the Modaite would agree with the first Tana, or, on the contrary, does it treat of when the ass was not dressed in them, in which case the first Tana would agree with Nahum? Come and hear! If, however, he said, "it and all that is upon it," all is sold. And this is correct according to the supposition that they differ when the ass was dressed in these things, and the Boraitha is in accordance with the first Tana of our Mishna; but on the supposition that they differ when the ass was not dressed, according to whom

would be the Boraitha? Nay; this cannot be taken for a support, as it may be that they differ even when the ass was not dressed, and the cited Boraitha is to be read: If he said, "the ass and all those things in my possession fit for its use."

Come, then, and hear what R. Jehudah says in our Mishna, and there is no doubt that he speaks of when the ass was dressed in them, as his expression "this ass" means all is sold. Is it not to be assumed that this was an answer to the first Tana (who said that even in such a case the things are not sold)? Nay! R. Jehudah was not answering, but taught a separate Halakha. Said Rabhina to R. Ashi: Did not R. Abuhu say, replying to R. Ta'hlipha (above, in the Gemara to the second Mishna): Explain your Boraitha, "When they were hitched," etc.? from which is to be inferred that the Mishna speaks of when they were not hitched; and when the second Mishna treats of them not hitched, it must be assumed that the third Mishna also speaks of the same case? On the contrary, take the first Mishna, which states, "not the slaves nor the *entheca*"; and to the question what does *entheca* mean, R. Papa answered: The

contents of the *entheca*. Hence the Mishna treats of when the load was upon it, from which is to be inferred that the second Mishna speaks also of when they were hitched (and this is not so). Therefore you cannot object or support from their teachings, as each Mishna speaks of a different case.

Abayi said: R. Eliezer, R. Simeon b. Gamaliel, R. Meir, R. Nathan, Symmachos, and Nahum the Modaite all hold that if one sells a thing the sale includes also all those things that are used with it-Eliezer, who said: If one sells a press-house, the treading-rod is included; Simeon b. Gamaliel, who said: If one sells a town, the *santer* is included; R. Meir, who said: If one sold a vineyard, all the vessels in use for the same are included; Nathan and Symmachos, who said above that the safety boats are included in the sale of the boat; and Nahum the Modaite with his statement in our Mishna.

"*R. Jehudah said*," etc. What is the difference whether he said "this ass," or "is this your ass"? Said Rabha: If he said "this ass" he was sure that the ass belonged to him, and with the word "this" he meant the harness; but if he asked him, "Is this your ass?" he was not sure it was his. And he asked, if it was his, that he should sell it to him, meaning the ass only, without the harness.

MISHNA *IV*.: If one sold a she-ass, its foal is sold; but if a cow, the calf is not. If he sold the place where the manure is kept, the manure in it is sold therewith; a well, the water it contains is included; a beehive, the bees are included; a pigeon-coop, the doves it contains are included.

GEMARA: Let us see how was the case? If he said, "with its offspring," even if it is a cow why should the offspring then not be included; and if he did not say so, why should the offspring of an ass be included? Said R. Papa: It speaks of where he told him: I sell you a nursing ass, or a nursing cow. Of the latter the buyer can use the milk, but to what purpose did he say a nursing ass? We must assume that he means the nursing ass with its offspring. [1]

"*A well, the water it contains is sold*." Said Rabha: Our Mishna is in accordance with an individual Tana of the following Boraitha (but the majority do not agree with him). If one sells a

well, the water it contains is not included. R. Nathan, however, maintains it is.

MISHNA *V.*: If one buys the brood of a pigeon-coop (*e.g.*, if he buys in the month Nisan all the pigeons to be hatched during the whole year, but not the old ones, and usually each dove hatches two young ones every month, male and female, and those pigeons after two months hatch also, and so it is during the entire year, the month Adar excluded), he must leave the first pair of little ones with the parents. If one buys the brood of a beehive, he has to take the first three broods, after which the owner may make the bees impotent of propagation. If he buys the honey in combs, he must leave two with the beehive. If one buys olive trees for the purpose of cutting them down, he must leave the branches which are only two spans high for the seller.

GEMARA: But have we not learned in a Boraitha, concerning a pigeon-coop, that he must leave the first and second pair? Said R. Kahana: This presents no difficulty. The Mishna speaks of the old dove, and the Boraitha of both mother and daughter which have hatched--one pair for the old and one for the young mother. But why should not the pair left for the old mother suffice also for the young one, as she would not leave the pigeon-coop, because her mother and the pair remaining would bind her to stay there, even as the old dove is bound to the same? The old one is bound to both--to the young mother as well as to the pair left, while her daughter, as soon as she has hatched, has no longer anything to do with her mother, but is bound to her children.

"*Three broods*," etc. By what means does one make them impotent? Said R. Jehudah in the name of Samuel: By feeding them with mustard. In Palestine, however, it was said in the name of R. Jose b. Hanina: Not the mustard, but the honey which they consume after having eaten the harsh mustard, causes the impotency. R. Johanan said: He must not take the three broods at one time, but gradually, taking one and leaving one, etc.; and a Boraitha states that the first three he may take one after another, and after that he takes one and leaves one. [1]

"*Olive trees*," etc. The rabbis taught: If one buys a tree for the purpose of cutting it down, he must begin a span high from the ground; if it was an uninoculated sycamore, he must

leave three spans; and if a trunk of a sycamore, two spans. If sticks or vines, from the knots upwards. If date and cedar trees, he may take them with the roots, for if they were cut at the top they would not grow again.

Do we need three spans for an uninoculated sycamore? Have we not learned (Shebiith, IV. 5): One must not cut an uninoculated sycamore on a Sabbatical year, because it is considered a labor in a field? R. Jehudah said: One must not do it in the usual way, but higher than ten spans he may, or he may cut it at the level of the ground. Hence we see that it harms only if it is cut at the level of the ground, but not if a little higher than three spans. Said Abayi: If exactly three spans, it is beneficial for the growth of the tree, and at the level of the ground it surely harms it, but up to three spans it does neither good nor harm. Concerning a Sabbatical year, only what harms may be done; and concerning buying and selling, only things which are beneficial.

It is said that date and cedar trees one may take with the roots, because if cut at the top they will

not improve. Has not R. Hyya b. Luliyni lectured that it is written [Ps. xxxii. 13]: "The righteous shall spring up like a palm tree, like a cedar," etc.? Why are both trees mentioned? If it mentioned the cedar only, one might say: As the cedar does not yield any products, so is the upright. Therefore it mentions the palm tree. And if the latter only were mentioned, one might say: As a palm tree does not improve after being cut off, so is the righteous. Therefore both are mentioned. Hence we see that a cedar does improve? This speaks of another kind of cedar which does so. As Rabba b. R. Huna said (Taanith, p. 75): There are ten different kinds of cedars.

MISHNA *VI*.: If one buy two trees within his neighbor's field, the ground beneath is not sold. R. Meir, however, maintains it is. If the branches were wide-spreading, the seller has no right to cut them off, though the shade of them harms his field. That which grows from the trunk belongs to the buyer, and that from the roots to the seller. If the trees die, the buyer has no right to the ground; however, if he bought three trees, the ground is included, and if the branches become wide-spreading, the owner of the ground may cut them off, and all that is growing from both trunks and roots belongs to the buyer; and if the trees die, he has the right to plant others.

GEMARA: There is a Mishna (Bikurim, I. 6): If one buy

two trees within his neighbor's ground, he may offer the firstfruit, but he must not read [Deut. xxvi. 10]: "The soil which thou hast given to *me*," as the earth is not *his*. R. Meir, however, said: He may offer and also read. Said R. Jehudah in the name of Samuel: According to R. Meir, one is obliged to offer the firstfruit, even if he bought it in the market. And whence has he inferred it? From the superfluous Mishna--*i.e.*, it is already said in our Mishna that he who buys even two trees has bought the ground therewith according to R. Meir. Why, then, was it necessary to repeat that in the cited Mishna? We must say that only to teach that, seven if one does not possess any ground, he is nevertheless obliged to offer the firstfruit if he possesses such, even from the market (and the cited Mishna is to be explained thus: R. Meir said to the first Tana: Even if I should agree with you that the one who buys the two trees does not possess any ground, he is nevertheless obliged to offer the firstfruit). But is it not written [Deut. xxvi. 2]: "Which thou shalt bring in from *thy* land"? This is to exclude the land outside of Palestine. But is it not written [Ex. xxiii. 19]: "The first of the firstfruits of *thy* land shalt thou bring," etc.? This is to exclude the ground of a Gentile. But is it not written [Deut. ibid.]: "Which thou hast given *me*"? This means, thou hast given me money to buy."

Rabba objected from the following: If one bought one tree within the trees of his neighbor, he may bring the firstfruit; but does not read, " . . . thou hast given," because he has no ground. So is the decree of R. Meir. Hence we see that if he has no ground he cannot read, "the earth thou hast given." This objection remains.

Said R. Simeon b. Elyakum to R. Elazar: On what reasons did R. Meir base his theory concerning one tree, and the rabbis theirs concerning two trees--that the men should bring the firstfruit and should not read? Does not the Scripture exclude him from bringing also? Said R. Elazar to him: Concerning a thing for which one previous master gave no reason you are questioning me in the college for the purpose of bringing me to shame? Said Rabba: I do not see any difficulty in it, as it may be assumed that the rabbis, as well as R. Meir, were doubtful as to the accuracy of the law: the rabbis could not absolutely decide that he who bought two trees had no ground, and R. Meir could not be certain concerning one tree, and therefore they decided he

should bring, but not read.

But how can you say that R. Meir was doubtful-did he not plainly say above, because he has not acquired title to the ground? Read: "Perhaps he has not acquired titles," etc. But according to both, why should the man in question bring? Suppose that, according to law, they are not considered firstfruit at all, and that he brings common fruits to the sanctuary, which is prohibited--*i.e.*, that he first sanctified them. But the fruit must be consumed by the priests, and if they are not considered firstfruit, they are consecrated for an offering or for another purpose, and it is prohibited that any one should derive benefit therefrom--*i.e.*, after he brings them, he redeems them. But even then, if they are not considered firstfruit, they are liable to separate "heave-offering and tithe"; and by bringing them he exempts them from these duties--*i.e.*, he previously separates the above from them. This can be correct concerning heave-offering, which belongs to the priest, and the same concerning "second tithe"; and also the "tithe for the poor" he may give to a poor priest, but to whom shall he give the first tithe that belongs to the Levite, as the Levite must not derive any benefit from consecrated things? This he may also give to the priest in accordance with R. Elazar b. Azaryha of the following Boraitha: Heave-offering must be given to the priest, first tithe to the Levite. So is the decree of R. Aqiba. R. Elazar b. Azaryha, however, maintains that even the first tithe may be given to the priest (after Ezra fined the Levites). But if they are considered firstfruit, the reading of the passages is obligatory? The obligation does not prevent the bringing. As R. Jose b. Hanina said elsewhere: If one has gathered the firstfruit, and sent it by a messenger who died while on the road, then the firstfruit may be brought into the sanctuary; but the passages should not be read, for it is written [Deut. xxvi. 2]: "Thou shalt take," and farther on, "Thou shalt go," etc., which means that the gathering as well as the bringing should be done by one person, and as the messenger is dead the reading cannot take place.

Said R. A'ha b. R. Ivya to R. Ashi: Let us see I The reading consists of passages from the Scripture, which are allowed to be read by every one and at any time. Let him then read, "And he answered": when he reads this with the bringing, it looks like a lie, which is not the case when he reads the Scripture.

R. Mesharshia b. R. Hyya said: The reason is that if the

reading were allowed, another, who has similar fruit, might think that such is really considered firstfruit, and will not separate the heave-offering therefrom.

"*If the branches were wide-spreading*." What is to be considered trunk, and what roots? Said R. Johanan: All above the surface of the ground is considered trunk, and beneath roots. But suppose that an upheaval should occur that will cover the trunk so that the branches shall have the appearance of three trees, and then the buyer may claim: You sold me three trees, and I have a right to the ground. Therefore said R. Na'hman: The expression in the Mishna, "from the trunk belongs to the buyer," means as to cutting it down, but not to leaving it. And thus also said R. Johanan.

R. Na'hman said: We have a tradition that a date tree has no trunk. R. Zebid was about to explain R. Na'hman's statement by what our Mishna states, that if such a tree is cut on the top it does not further increase, and therefore the buyer cannot claim a right to the outgrowth of the trunk, as, the remainder of the tree being only for removal, he renounced his hope to derive any benefit therefrom. To which R. Papa opposed the statement in our Mishna that he who bought two trees which are also for removal has no right to the ground, and nevertheless he has a right to the outgrowth of the trunk? "Therefore," said he, "R. Na'hman means that it can never occur that trunks of date trees may bring forth outgrowths."

But does not the Mishna oppose R. Zebid's theory? He may say: The Mishna treats of a case in which the buyer bought the trees for the term of five years (*i.e.*, if it should happen that in the meantime they shall die, he has a right to plant others instead), and therefore he has a right also to the outgrowth of the trunks.

"*If he has bought trees*," etc. To what extent of ground has he acquired title? Said R. Hyya b. Abba in the name of R. Johanan: He acquires title to the ground beneath the branches and that between them; and outside, to the extent that he may stand with his basket to gather the fruit from the outside branches. R. Elazar opposed: How is it possible that this should be granted to the buyer, when even a path through the field is not granted, as he has not any right to the ground which is outside of the trees?

Said R. Zera: From the teaching of our master (R. Elazar) we may learn that if he bought three trees he has no path, but

if he bought two trees he has, as he may claim: The trees are situated on your ground, and as you have sold me trees situated on your ground, so also have you granted me a path to them.

Said R. Na'hman b. Itz'hak to Rabha: Shall we assume that R. Elazar does not agree with his master Samuel, who said that the Halakha prevails in accordance with R. Aqiba, who holds that usually the seller sells with a good eye (and according to this theory, if he sold him three trees he granted him also a path to them). And he answered: Our Mishna cannot be in accordance with R. Aqiba, as it states that when the branches are wide-spreading the seller has the right to clear them, and in accordance with R. Aqiba, this right could not be given to him, for the supposition is that he sold them with a good eye. Rejoined R. Na'hman: We have heard R. Aqiba saying so only concerning a well, etc., which does not impoverish the ground; but have you heard him saying so concerning a tree, which does? Does not R. Aqiba agree that, in a case in which the branches of a tree overhang the field of another, he may clear the size of a plough handle?

There is a Boraitha in accordance with R. Hyya b. Aba that the buyer of three trees acquires title to the ground beneath, between, and outside to the extent that he can stand there with a basket in the hand. Said Abayi to R. Joseph: Who has a right to sow the outside ground that belongs to the buyer (the buyer of the trees, to whom it belongs, or the owner of the ground, who allows the buyer to be present there only at the time of gathering--therefore he may sow it, and the buyer has a right to step on it at that time)? And he answered: This we have learned in the Mishna farther on, that the outsider may sow the path which leads to the inside field. Rejoined Abayi:

What comparison is this? There the buyer of the inner field does not suffer any damage when he steps on the sown path to his field; but here, if the owner of the ground should sow it, there is a damage to the buyer of the trees in not having the products of the ground belonging to him. Therefore if this case should be compared to the one in the cited Mishna, it is only to the latter part, which states that neither of them has a right to sow. There is a Boraitha in accordance with Abayi, which states plainly that neither of them has a right to sow.

How much space is to be left between the trees in question, that it should be considered the buyer's? R. Joseph in the name of R. Jehudah, quoting Samuel, said: From four to eight

ells. And Rabha in the name of R. Na'hman, quoting Samuel, said: From eight to sixteen. Said Abayi to R. Joseph: Do not quarrel with R. Na'hman, as there is a Mishna (Kilaim, IV. 9) in accordance with him: If one has planted his vineyard sixteen ells square, he may sow other seeds between the rows. And R. Jehudah said: It happened in the city of Zalmon that one had planted his vineyard sixteen ells square. One year he trained the branches of every two rows in one direction, and sowed in the opposite direction; and the next year he trained the branches in another direction, and sowed on the ground that had lain fallow. And when the matter was brought before the sages, they sanctioned it [his manner of proceeding]. And he answered: I took my theory from such a case as happened in the village of the shepherds, which was brought before R. Jehudah, and he decided to give them space for a yoke of oxen with the harness thereof; but I did not know the measure of such a space, and after I had given my attention to a Mishna stated above, as follows: "One must not plant a tree near his neighbor's field unless he leaves four ells space," and a Boraitha in addition to this states the four ells mentioned are for the purpose of working up a vineyard (as explained above, p. 78), I inferred from this that the measure of a yoke with the harness is four ells. But is there not a Mishna (Kilaim, IV. 9) in accordance with R. Joseph: Beth R. Meir and R. Simeon say: If one plants his vineyard eight ells square, he is permitted to sow other seeds therein? Yea; nevertheless, a practised act is more important for evidence.

It is correct in accordance with R. Joseph, which is according to R. Simeon's theory, as we have heard that R. Simeon's theory equals both cases, when the vines are scattered and also when they are growing together--"scattered," from the Mishna just cited, and "growing together," from the following Mishna. A vineyard which is planted in less than four ells is not to be considered a vineyard at all. So is the decree of R. Simeon, etc. But according to R. Na'hman, who is in accord with the rabbis' theory, we have heard their opinion concerning scattered ones (as said above in the case of Zalmon); but have you also heard their opinion about growing together? This is common sense. As R. Simeon considers the half space in his theory of growing together, the same is the case with the rabbis: they also consider the half space in their theory of growing together.

Said Rabha: The Halakha prevails--from four to sixteen

ells; and there is a Boraitha which supports him as follows: What is meant by being near one to another? Four ells. And what is meant by being far? Sixteen ells. In the latter case, if one bought

the trees he bought also the ground, and also the shrubs between; and, therefore, if it happens that a tree withers or is cut off, the ground remains his. If, however, it were less or more than the above space, or he bought the trees not at one time, but one after another, the ground and the shrubs between do not belong to him; and, therefore, if a tree becomes withered or is cut off, he has no right to the ground (to plant another instead).

R. Jeremiah questioned. How should the ground belonging to the buyer be measured--from the end of the branches or from the trunk (so that he would have more space than by measuring from the branches)? And R. Gibiahh from the city of Khthil said to R. Ashi: Come and hear the following Mishna [Kilaim, VII. 1]: If a vine has been bent in such a manner that the main stem is out of sight [underground], the measure [as to legal distance] must be calculated from the second stem--*i.e.*, the place where it rises from the ground and again becomes visible. R. Jeremiah questioned again: How is the law if one has sold a tree of which the branches are separated by four ells from one another: And the above R. Gibiahh said to R. Ashi. Come and hear the second Mishna [ibid., ibid.]: If three vines are bent [and partly covered with mould] and their stems remain visible, R. Elazar ben Zadok said: If there remain between them not less than four and not exceeding five ells in width, they [the vines] must be looked upon as connected; otherwise, they are not to be so considered.

R. Papa questioned: If one has sold two trees situated in his field and one on the boundary, are they to be counted together, or not? The same question arises when one has sold two situated on his own ground and one on his neighbor's, and both questions remain undecided. R. Ashi questioned: (If in the above questions it were decided that they should be counted together,) how is the law if there were a well, or a channel, or intervention by a public ground or a row of young trees? This question also remains undecided.

Hillel questioned Rabbi: If a cedar tree intervened, how is the law? And he answered: Then title is given to him in the trees, as well as in the cedar. How should the trees be situated so that the sixteen ells in question should be measured? According

to Rabh in a row (. . .) and according to Samuel diagonally (' . '); and the difference is, that according to him who said "in a row" the ground belongs to the buyer, so much the more when they are situated diagonally; while according to him who says "diagonally," if they are in a row the ground does not belong to the buyer, as if in a row the ground between is fit for sowing. R. Hamnuna opposed: According to the theory that if they were placed diagonally the ground belongs to the buyer only for the reason that such a ground is not fit for sowing, how would it be if one should sell three thorns which are called *Higi Runiitha*, the ground between which is also unfit for sowing--shall we also assume that the ground belongs to him? And he was answered that the thorns in question are of little value, which is not the case with the trees in question (and the law dictates both that the trees should be of value and the ground between unfit for sowing).

MISHNA *VII.*: If one sold the head of a cow, the feet are not included, and *vice versa*; the windpipe, the liver is not included, and *vice versa*. However, concerning a calf, the feet are included in the sale of a head, and *vice versa*; and the same is the case with the windpipe and the liver.

There are four legal customs concerning sales: If one alleges having sold good wheat and thereafter it was found to be bad, the buyer may retract; if he alleged having sold bad and thereafter it was found good, the seller may retract. If, however, it was found as alleged, neither of them can retract (although from the sale of the wheat to the delivery the price for same has increased or decreased). If one sold dark red wheat and it was found to be white, or *vice versa*; trees of olives, and they were found to be sycamore, or *vice versa*; wine, if it was found to be vinegar, or *vice versa*--both have a right to retract.

GEMARA: Said R. Hisda: If one has sold wheat worth five zuz for six, and subsequently it increases to eight, who was imposed on prior to the increase? The buyer. Therefore the right of retraction from the sale is given to him only, but not to the seller, as the buyer may say: If you had not imposed on me in the beginning, you could not retract from the sale even if the price increased, and having imposed on me, should you have the right to retract? And it was learned in our Mishna that if one alleged having sold good and it was found bad, the right of retraction was given to the buyer and not to the seller, even if it had increased in price more than the seller took.

The same said again: If one has sold for five the value of six, and thereafter it lowered to three zuz, who was imposed on prior to that decrease? The seller. The right to retract is only for him and not for the buyer, for the reason stated above, that the seller may say to the buyer: If I had not been imposed on in the beginning, you could not retract though the price should decrease, and inasmuch as I have been imposed on, should you have such a right? And so teaches our Mishna: If one alleges having sold bad, and thereafter good was found, the right of retraction is given to the seller and not to the buyer.

But what then came R. Hisda to teach? Does not the Mishna state so? Without his statement, one might say that according to the Mishna, in those cases illustrated by R. Hisda, both have a right to retract, as there was imposition in the beginning of the sale (while the Mishna treats of where no imposition took place), and therefore R. Hisda came to teach us that the Mishna must be interpreted according to his illustration.

"*Wine, and it was found vinegar*." Shall we assume that our Mishna is in accordance with Rabbi, and not with the rabbis of the following Boraitha? Wine and vinegar are considered one kind, concerning heave-offering (so that if he has separated *troomah* from the wine for the vinegar also, or *vice versa*, it is valid). Rabbi, however, maintains that it is not, because they are two separate kinds? Nay! Our Mishna may be in accordance with the rabbis also, as they differ with Rabbi only concerning tithe and heave-offering, and it is in accordance with R. Ilaha, who has inferred elsewhere from the Scripture that if one has separated tithe or *troomah* from the bad, for the good ones of the same kind (grain or fruit), his action is valid; but concerning selling and buying the rabbis also agree that the one who desires wine cannot be satisfied with vinegar, and *vice versa*.

MISHNA *VIII*.: If one has sold fruit, and the buyer has made a drawing on it, although it was not as yet measured, title is given, but not if it was measured for him, and the drawing has not taken place; and if the buyer were shrewd, he would hire the place where the fruit is to be measured, so that the seller should not have the right to retract even before the drawing is made.

If one buys flax, title is not given unless he removes it from one place to another; but if the flax was still attached to the ground, and the buyer pulled up some of it, title is given.

GEMARA: Said R. Assi in the name of R. Johanan: If he

has measured it, and placed it on the *semita* (path) for the buyer, title is given. Said R. Zera to him: Perhaps the master has heard from R. Johanan that he has measured and put it in the basket of the buyer. And he answered: The question of this scholar is similar to that of men who do not understand a Halakha at all, for is it then needed to teach that title is given if the seller puts it in the basket of the buyer?

(Says the Gemara:) Has R. Zera accepted R. Assi's theory, or not? Come and hear! R. Yanai said in the name of Rabbi: If the yard where the fruit was placed belonged to both the seller and buyer, title is given to the latter.

Is it not assumed that title is given even if it was placed on the ground of the yard? Nay; it means if it was placed in the basket of the buyer; and it seems to be so, as R. Jacob in the name of R. Johanan said. If after measuring he puts it on the *semita*, title is not given. And as this would contradict the above statement of R. Assi in the name of R. Johanan, we must then say that one has heard from him when the basket of the buyer was placed on the *semita*, and from the other, when the basket of the buyer was not. Infer from this that R. Zera had not accepted. Come and hear another objection! But when measured, and a drawing was not made, title is not given. Does this not mean in the *semita*? Nay; it means "public ground." If so, how is the first part to be understood: "If he has made a drawing, but not measured, title is given." Does, then, a drawing give title in public ground? Is it not said above, p. 169, that in public ground only transferring gives title, but not drawing? The expression "drawing" means that he removed it from the public ground to the *semita*. But how about the latter part: "If the buyer is shrewd, he hires the place," etc.? If it speaks of a public ground, from whom can he hire it? It means to say, if it still remained on the premises of the owner, then if the buyer is shrewd he will hire the place.

Both Rabh and Samuel said: The vessels of the buyer give title to him in every place, except on public ground. R. Johanan and R. Simeon b. Lakish both are of the opinion that it gives title even when on public ground. Said R. Papa: The above parties do not differ, as the latter speaks of a *semita*; and why they call it public ground is because it is not private ground. (Says the Gemara:) It seems to be so, as R. Abuhu said in the name of R. Johanan: The vessels of one give him

title in every place where it is permitted to him to place them. Hence we see that only to those places where it is permitted to him to place them is title given, but not to public ground where one is not permitted to place one's vessels. Come and hear the following Tosephtha: There are four legal customs concerning sellers: (*a*) If the measure does not belong to both of them and it was placed on public ground, or in a yard that does not belong to both, then, if the measure was not as yet filled up and the seller wishes for some reason to recede from his sale, he may do so; but if it was filled up, then it is considered already the buyer's (as it is supposed that for this

purpose it was lent to the buyer, that as soon as filled he might take it with its contents); (*b*) if the measure belongs to one of them, to every atom that is put in the measure the owner of the measure acquires title, provided it was at those places named above; (*c*) if it was on the premises of the seller, the buyer does not acquire title unless he lifts it up or removes it from the seller's premises; and (*d*) if it was on the premises of the buyer, as soon as the seller agreed to sell him the grain for such and such a price the buyer has acquired title. If, however, the grain in question was deposited previously by the seller without the intention of selling it, and thereafter the depositary bought it from him, title is not given unless the seller agrees to renounce his right to the place where the grain is now placed, or the buyer hires it. We see, then, that if the measure was filled up title is given to the buyer, even if it was on the public ground? Also, here, by public ground is meant a *semita*; but if so, why the repetition, "a yard that does not belong to both"? Is it not the same as a *semita*? By this expression is also meant that the whole yard does not belong to one of them, as they were partners in it.

R. Shesheth questioned R. Huna: If the vessels of the buyer were placed on the premises of the seller, does the buyer acquire title or not? And he answered: This we have learned (Githin, I. 1): "If he put the divorce in the pocket of her dress or in her basket, she is divorced" (hence we see that one's vessels give him title). Said R. Na'hman to R. Huna: Why have you decided this question from that Mishna which was objected to, and there were about a hundred explanations of the meaning of it (*q.v.*)? You should decide this from the Tosephtha cited above: If it was on the premises of the seller, title is not given unless he lifts it up, or removes it; and it is to be assumed that it speaks of when the measure was the buyer's. (Answered he:)

[paragraph continues] Nay; it means if the vessels belong to the seller. (Rejoined he:) If the first part speaks of when the vessels belong to the seller, the second part must also treat of the same. How, then, is the decision to be understood: "If it was on the premises of the buyer, as soon as the seller has agreed," etc., title is acquired? Why, then, is it not still in the hands of the seller? Nay; the latter part speaks of when the vessels belong to the buyer. But what compels you to explain the two parts of it in different applications? Because, generally, if on the premises of the seller his measures are used, and on the premises of the buyer his are used.

Said Rabha: Come and hear another objection: If the buyer or his servants have led the asses of the seller, with the load, to his premises (and the load was still upon the asses or in the hand of the servants), whether the price was made but no measure taken, or measure taken but no price made, both have a right to retract. If, however, they were unloaded in the street and one brought the stuff to his house, if the price was made before measuring neither of them can retract; but if measured before the price was made. the sale is not considered settled, and both may retract. Now, as we see that the vessels belonging to the seller, if they are on the premises of the buyer, do not give title, it must be the same with the vessels of the buyer on the premises of the seller--neither do they give title? Said R. Na'hman b. Itz'hak, it speaks of when the buyer removed it from the vessels and placed it on his premises. Rabha became angry at this explanation: Does not the Tosephtha plainly teach "unloaded," and he says, "removed it and placed it on his premises"? Said Mar b. R. Ashi: It can be explained that the load was of bundles of garlic of which the unloading itself makes it rest on the premises of the buyer, and it needs no more work. Said Huna b. Mar Zutra to Rabhina: Let us see. It states "unloaded" (from which it must be supposed that he did it with the consent of the owner). What, then, is the difference whether the price was made or not? (Is it not said above that if on the premises of the buyer, as soon as

agreed on, no retraction can take place, as the premises of the buyer give title?) Why, then, should a retraction take place in such a case? And he answered: If the price was made, the seller relies upon it, and the sale is made; but if otherwise, he does not. Said Rabhina to R. Ashi: Come and hear what both Rabh and Samuel declared above: The vessels of one give him title at every

place. Is this not equivalent to saying even on the premises of the seller? Yea, provided he told him: Go and acquire title.

There is a Mishna (Kidushin): To real estate title is acquired by money, deed, or hazakah, and to personal property title is given by drawing only. As to which in Surah it was taught in the name of R. Hisda, and in Pumbeditha in the name of R. Kahana, according to others in the name of Rabha, as follows: This is said concerning things which it is not usual to lift up; but to those which it is usual to lift, title is given only by lifting up, but not by drawing.

Abayi was sitting repeating this Halakha, and R. Ada b. Mathna objected to him from the following: If one steals a purse on Sabbath and takes it into the street, he is obliged to pay for the purse, because he was culpable of stealing before the violation of the Sabbath was committed. (There is a rule that if in one and the same thing a liability for money and a crime were committed, the punishment for the crime absolves him from payment.) In such a case. however, two separate crimes are considered, as after he steals the purse it becomes his (and the violation of the Sabbath is done with his own). If, however, he drew the purse little by little, and he picked it up when it was already on public ground, he is absolved from payment, as both crimes were committed together. Now a purse is certainly a thing which is usually lifted up, and nevertheless one acquires title to it by drawing; for should it not be Sabbath, he would be obliged to pay for it, even if he should not have lifted it up until it reaches the street? And he answered: It speaks of a purse fastened with a cord, of which drawing is usual. Said R. Ada: I also speak of such a kind of purse. And he rejoined: I mean such a big purse as could not be lifted up except by drawing it by the cord. It was objected again from the above Tosephtha that if on the premises of the seller, title is not given unless he lifted it up or drew it, from which we see that to a thing that can be lifted up title is acquired by drawing also. Said R. Na'hman b. Itz'hak. It is meant in parts. To a thing which is usually lifted up, title is given by lifting, and usually drawn, by drawing.

Come and hear! If one sold fruit, if he made a drawing although not measured, title is given. Now fruit is usually carried, and nevertheless drawing suffices? It means big loads of fruit. If so, how is the latter part to be understood: "If one buys flax, title is not given unless he removes it to another

place"? Is it not usual for flax to be in big loads? With flax it is different, because it is usually detachable in big loads.

Said Rabhina to R. Ashi: Come and hear! To a cow, title is given by transferring; and to a calf, by lifting up. So is the decree of R. Meir and R. Simeon b. Elazar. But the sages say: To a calf, by drawing also. Now a calf can be lifted up, and nevertheless drawing gives title? With a calf it

is different, as it resists. Therefore it is difficult to lift it up.

Rabh and Samuel both said: If one says: I sell you a kur of thirty saahs for such an amount, the seller has a right to retract even at the last saah. If, however, he said: I sell you a kur of thirty saahs, each saah for a selah, title is acquired to every saah as measured. Come and hear! If the measure belongs to one of them, to every atom that was put in title is acquired, although the whole measure was not as yet filled. Hence we see that title is given even when one did not say: I sell you each measure for a certain price? It speaks of when in the measure were marks, as where one said: I sell you a bin for twelve selahs, each lug for a selah. And R. Kahana illustrates thus: There were marks in the bin for one, two, three lugs, etc. The same is it with the measure in question: there were marks for each saah. Come and hear! If one hires a servant to work for him in the barn (not in harvest-time) for one dinar a day, with the stipulation that he shall work for him for the same price in the harvest-time, although at that time the price is a selah a day (and advances him the wages for the whole time), it is prohibited to do so, as it looks usurious; but if he hires him for one hundred days from to-day for a dinar a day, and advances him one hundred dinars, although during the time the harvest begins and each day is worth a selah, it is permissible. Now, if you say that to a kur of thirty saahs, each saah for a selah, title is given for each saah measured, it ought to be the same with the days in question--for each working day a dinar shall be charged, and when the harvest comes he shall add every day for the increase in price at that time, and by not doing so it is to be considered usury? Said Rabha: Whence did you obtain that it is not permissible to one to lower the price for his work? Hence this does not contradict the statement of Rabh and Samuel at all. But if so, why is there a difference between the first part of the Boraitha and the latter? In the first part it does not say: Work from to-day. And if he begins his work at the harvest-time for a lower price, it looks usurious, as he has

lowered the price for advancing the money. In the second part, however, where he begins to work immediately, and works every day for the same price, it cannot be considered usury if he does not increase the price at harvest-time.

"*And the buyer pulled up some of it*," etc. Because he pulled up some of it, he acquires title to the whole? Said R. Shesheth: It treats of a case in which the seller said to him: Fix something in the ground, and acquire title to all that is attached thereon.

MISHNA *IX*.: If one sold wine or oil, and it became dearer or cheaper, if before the measure was filled it is to be charged to the seller; and if afterwards, to the buyer. If the sale was made through a broker, and it happens that a barrel leaks, it is to be charged to the broker, and the seller is obliged to add a few drops to the measure. After the seller has turned over the measure, and some of the liquid has gathered, it belongs to the seller; the storekeeper, however, is not obliged to keep the measure until the last three drops are leaked out. R. Jehudah says that on the eve of Sabbath, when it grows dark, one is exempt from this duty.

GEMARA: Let us see to whom the measure in question belongs? If to the buyer, why should it be charged to the seller, even if it was not filled; and if to the seller, why should it be charged to the buyer, even if it was filled up? Said R. Ilaah: It speaks of when the measure was the broker's. But does not the Mishna state in the latter part, "if there was a broker," from which it is to be inferred that the first part means without a broker? The first part speaks of the broker's measure in his absence; and the latter, in his presence.

"*After the seller has turned over the measure*," etc. When R. Elazar reached Palestine, he met Zeeri and asked him- Is there here some scholar whom Rabh has taught the laws about measures? And he showed to him R. Itz'hak b. Abdimi. And be asked him: What is your difficulty? The statement of our Mishna, which says that this belongs to the seller, and another: If, of *troomah* which was given to the priest, after the barrel was turned over and leaked out there was still some remainder, it is *troomah* (hence we see that it belongs to the buyer)? And he answered: This presents no difficulty, as additional to our Mishna was taught by R. Abuhu: The reason is that usually the seller renounced his right to such a trifle (which cannot be said there, as who can renounce *troomah*?).

"*The storekeeper*," etc. The schoolmen propounded a question:

[paragraph continues] Does R. Jehudah with his statement mean to say that the wholesaler is exempt from adding the drops on the eve of Sabbaths, therefore being more lenient than the first Tana, or does he mean the storekeeper, and is rigorous, as he exempts him on the eve of Sabbaths and not on week-days? Come and hear the following Boraitha, which states plainly: R. Jehudah said on the eve of Sabbaths the storekeeper is exempt, for he is then busy.

MISHNA *X*.: If one sends his little son to the storekeeper with a *pundiun* (dupondius) to buy one issar's worth of oil and to get one issar change, and the storekeeper so acts, but the child loses the issar and breaks the glass containing the oil, the storekeeper is responsible. R. Jehudah, however, frees him, as for this purpose the child was sent. The sages, however, admit that when the glass was in the hand of the child and the storekeeper poured the oil into it, the storekeeper is free.

GEMARA: It is correct, in their difference concerning the oil and the change of the issar, that according to the rabbis the child was sent only to notify the storekeeper of his want, so that the storekeeper shall supply it, and according to R. Jehudah that it was sent to bring it; but why should the storekeeper be responsible for the *glass*, which the father should not have intrusted to the child, who was unable to take care of it? Said R. Houshiah: The Mishna treats of when the sender was a glass-dealer, and the storekeeper took it to examine it and it broke. And it is in accordance with Samuel, who said elsewhere that if one takes a vessel to a specialist for examination, and it was destroyed by an accident, the latter is responsible. Is it to be assumed that in this simple statement of Samuel the Tanaim differ? Therefore said both Rabba and R. Joseph: It treats of when the storekeeper was a glass-dealer also, and he gave the glass to the child; and R. Jehudah's decision that the sender is nevertheless responsible for the glass also is because it was sent for the purpose of bringing the oil (and as the father gave no vessel, the storekeeper did only what was demanded); and the rabbis are in accordance with their theory that the storekeeper had to supply. But if so, how is the latter part, "If the glass was in the hand of the child," etc., to be understood? Is it not said that the child was sent only to notify him? Therefore Abayi and R. Hanina, sons of Abin, both said: The Mishna speaks of a case in which the storekeeper took the glass to measure with (and although the storekeeper

had not requested that such should be sent to him, as soon as he took it for the purpose of measuring he is responsible). And this is in accordance with Rabba, who said (Middle Gate, p. 69): "If he has struck the animal, although he was not obliged to return it, he is responsible. But Rabba's statement was concerning a living thing, which usually runs away when struck. Have you also heard him stating in such a case as ours? Therefore said Rabha: I and the lion of our society, which is R. Zera, have explained thus: The Mishna treats of when the storekeeper took the glass for measuring to other customers--and the point of their differing is, "a borrower without consent." According to one, he is considered a robber and is responsible; and according to the other, he is considered a borrower who is not responsible for an accident.

The text says: Samuel said: "If one took a vessel from a specialist, to examine it, he is responsible for an accident." This is only when the price of the article was fixed.

There was a man who entered a butcher shop and lifted up a shoulder of meat, and while examining it a crusher came and took it away from him; and when the case came before R. Ziemar, he made him responsible, as the price for it was already made.

There was a man who brought cucumbers to the city of Pumnahara, and a crowd arriving, each of them took one for the purpose of buying, but the seller could not see of whom to demand the money. And he exclaimed, "All of them are consecrated for heaven." When the case came before R. Kahana, he decided that one cannot consecrate a thing not belonging to him (and as the price for each cucumber was fixed and they were in the hands of the buyers, they had acquired title to them even before paying; but if the price were not fixed, they would be still under the control of the owner and the consecration valid).

The rabbis taught: If one were examining herbs in the market, selecting from them and putting the same aside, even if he did so the whole day title is not acquired, and there is no obligation for tithe. (It treats of when the seller was one of the common people who was suspicious that he did not separate tithe therefrom.) If, however, he had made up his mind to buy, title is acquired, and they become a subject for tithe. In case of reconsidering he has no right to return, because they are already a subject obligatory for tithe; and also he has no right to separate the tithe if he intended to return, as he would diminish

the value. Therefore he can do no other than separate the tithe and pay the owner for them.

But is it so, that because one has made up his mind to buy he acquires title and makes a thing subject for tithe? Said R. Houshiah: The Boraitha treats of one who fears heaven like R. Saphra, who always acted as it is written [Ps. xv. 2]: "And speaketh the truth in his heart."

MISHNA *XI.*: The wholesaler has to clean his measures once within thirty days (because the stuff sticks to them and impairs accurate measuring). A retailer, however, has to do so once within twelve months. R. Simeon b. Gamaliel, however, maintains that the reverse is the case. (With the wholesaler, who measures continually, the stuff does not stick, and it is sufficient to clean them once within a year; but with the retailer, who does not measure continually, the stuff sticks, and he is obliged to clean them once within thirty days.) The storekeeper must do the same with his measures twice a week, and the weights once a week (as he takes hold of them

with wet hands, and consequently they become heavier, and when he buys something, in weighing the stuff he deceives the seller). The scales, however, he must clean before each weighing thereon. Said R. Simeon b. Gamaliel: All this is said when he sells liquids, but otherwise it is not necessary. The storekeeper is obliged to bend the cross-bit the size of a span to the scale that contains the stuff sold (in case he sells a *litra* or more). If, however, he weighs strictly, he must give him the overweight due--one-tenth of a liquid and one-twentieth of a dry thing. Where it is customary to measure with small measures, one must not do it with large ones, and *vice versa*. Where it is customary to smooth the measures, it must not be heaped; and to heap, it must not be smoothed.

GEMARA: Whence is all this deduced? Said Resh Lakish: From [Deut. xxv. 15] "A perfect and just weight shalt thou have"; and as the word "just" is superfluous, it is to be explained thus: justify the perfect measure from thy own. If so, how is the latter part, "if he weighs strictly," to be understood? (If it is a biblical obligation to add to the exact weight, tow can it be allowed to weigh strictly?) Therefore it must be aid that the first part of the Mishna treats of places where it is o customary, and the interpretation of Resh Lakish refers to he latter part, which states that he must give him the overweight. And to the question, Whence is this deduced? Resh

[paragraph continues] Lakish interpreted the above-cited verse. And how much shall the overweight be? Said R. Abba b. Mamal in the name of Rabh: A tenth of a *litra* in liquid to a quantity of ten *litras*.

"*One-tenth to liquid*," etc. The schoolmen propounded a question: Does it mean one-tenth of a liquid to ten wet measures and one-twentieth to twenty dry measures, or one-tenth to ten liquid and to twenty dry ones? This question was not decided.

R. Levi said: The punishment for false measuring is harder than for adultery, as concerning the first the expression in Scripture is [Lev. xviii. 24], "with *all*," and the latter [Deut. xxv. 16], "with *iele*." And whence is it inferred that these words mean hard punishment? From [Ezek. xvii. 13]: "But the mighty (*iele*) did he take away."

And what is the reason? Concerning adultery one can atone by repentance, which is not the case with an unjust measure, as he cannot know whom he has cheated, in order to make amends.

The same said again: It is harder for the cheating of a commoner than for the cheating of the sanctuary, as the punishment for robbing a common man is more severe than for robbing the sanctuary. 1 Concerning a commoner it is written [Lev. v. 21]: "If any person sin and commit a trespass against the Lord--if, namely, he lie unto his neighbor . . . in a thing taken away," etc. Hence even in the beginning of the deception the passage calls him sinner, while concerning the robbing of the sanctuary [ibid., ibid. xiv. 15], "If any person commit a trespass," etc., he is not called sinner at the time he took it, unless he derived benefit therefrom.

The rabbis taught: Whence is it deduced that it must not be smoothed where the custom is heaping, and *vice versa*? From [Deut. xxv. 15]: "A perfect and just measure shalt thou have." And whence is it deduced that if one say, where the custom is not to smooth, "I will smooth and diminish the amount," or, in places where it is smoothed, "I will heap and increase the amount,"

he must not be listened to? From the same cited verse and from the superfluous word "just," as stated above.

The rabbis taught: Whence is it deduced that one must not weigh accurately where it is customary to add to the weight, and *vice versa*? From the same cited verse: "perfect and just

weight." And if one cared to do otherwise than according to custom, and pay the difference? He must not be listened to, as said above.

Said R. Jehudah of Sura: It is written [ibid., ibid. 14]: "Thou shalt not have in thy house," etc. (the term "in thy house," which is superfluous, is to be interpreted thus: thou shalt not have money in thy house, for the purpose of smoothing where it is the custom of heaping, and *vice versa*, or for overweight, etc.), because this would bring one to keep in his house two divers measures. And the same explanation is to be given to [ibid., ibid. 13]: "As it is desired of every one to have one weight and one measure, just and perfect."

The rabbis taught: From the same verse is to be inferred that *gradums* must be appointed to investigate measures, but not to investigate prices. The Exilarchs used to appoint gradums for both (measures and prices). And Samuel said to Karna: Go and lecture to them that gradums should be appointed for measures only. He, however, lectured that for *both* (measures and prices) gradums must be appointed. And Samuel cursed him for this. However, Karna did it in accordance with Rami b. Hama, who said in the name of R. Itz'hak: Gradums should be appointed for measures as well as for prices, because of cheating.

The rabbis taught: If one desires a *litra*, a half, or a quarter, it may be given to him with its weight, but for less than this no weight should be made; but he may give it to him according to the money or by weight of coins.

The rabbis taught: If one desires three-quarters of a *litra*, he has no right to demand one shall weigh him each quarter separately (and give him overweight to each of them); but one may weigh him a *litra*, and leave the fourth quarter for overweight. The same is the case if he needs ten *litras*: he has no right to demand he shall weigh him each *litra* separately with an overweight; but he weighs him all the ten in one scale, and gives one overweight to all.

The rabbis taught: The scales must be hanging three spans in the air--*i.e.*, three spans from the ceiling or three spans from the ground; and the cross-bit with the cords of the scales must be the size of twelve spans; for wool and glassware two spans, and the cross-bit with cords of the scale nine spans; the storekeeper and privates, however, one span, and the cross-bit with cords of the scale six spans; and for gold and silver three fingers

in the air, and of the cross-bit and the cord of the scales I do not know the size (the Tana of this Boraitha says so).

(Says the Gemara:) For what purpose is the first-mentioned scale of which it is not stated what should be weighed upon it? Said R. Papa: For *gravita* (of iron and copper smiths, who weigh pieces of one hundred *litras* on one scale., according to others, their filings).

Said R. Mani b. Patish: The same sizes of scales are needed to make a subject for defilement (this will be explained in the proper place).

The rabbis taught:. Weights must not be made of tin, lead, cassiterite, or other kinds of metal, but they may be made of granite or glass.

The rabbis taught: The roller for smoothing must not be made from a melon stem, as it is too light; nor of iron, as it is too heavy; but of olive, nut, sycamore, or box tree.

The rabbis taught: The roller must not be made thick at one end and narrow at the other; one must not strike rapidly, because this would be a benefit for the buyer and a disadvantage to the seller; and also not too slow, which is a disadvantage to the buyer and beneficial to the seller. And to all this was said by Rabban Johanan b. Zakkai: It would be painful to me to declare the art of measuring, as this would serve as a lesson for swindlers, and also painful not to declare it, as swindlers would say that the rabbis have no idea of the art of our profession.

And to the question of the schoolmen: Did R. Johanan declare so, or not? said R. Samuel b. R. Itz'hak: He did; and on the basis of the following verse [Hos. xv. 10]: "For righteous are the ways of the Lord, and the just shall walk in them, but the transgressors will stumble through them." 1

Said R. Jehudah in the name of Rabh: One must not keep in his house an unjust measure, even if he uses it for a chamber. Said R. Papa: This is said of places where measures are not stamped; but in places where they are it does not matter, for no one would take a measure without being stamped. And even where they are not stamped, it is prohibited to keep them when they are not examined by the government; but if they are, it does not matter.

(Says the Gemara:) In reality, however, it is not so, as it

may happen that one may measure with it by twilight. And so also we have learned in a Boraitha: One must not keep in his house an unjust measure, even if he uses it for a chamber. He may, however, keep a saah, a tarkab, a half of it; a kab, a half, or a quarter of it; a thuman or a half of it; and an ukla. [And how much is an ukla? A fifth of a lug.] And of liquids--a hin, a half, a third a quarter; a lug, a half, a quarter, and an eighth, and an eighth of an eighth, which is named kartub. But why is it not allowed to keep a measure of two kabs? for one may take it for a tarkab. We see, then, that a mistake can be made in a third. Then it ought not to be allowed to keep a kab, as we may take it for a half tarkab. Therefore we must say that a measure of two kabs is not allowed, for one may take it for a half tarkab. We see, then, that a mistake can be, made in a quarter, as a half tarkab measures a kab and a half. Why, then, is it allowed to keep a half thuman and ukla? Said R. Papa: Small measures are known to the people, and no mistake can be made. But why is it allowed to keep a third and a quarter of a hin? Because these measures were used in the Temple, the rabbis would not care to prohibit them. But why were

they not prohibited in the Temple also? Because the priests were always careful.

Samuel said: If the elders of the city want to enlarge the measures, it must not be more than a sixth of them; and the same is the case when they want to enlarge a coin. And the seller should not fix his profit at more than a sixth (provided the price of the stuff has not increased; but if it has, then the profit may be even twofold).

Let us see what is the reason of Samuel's decision? Shall we assume that the reason is, if the wholesalers do not increase the price more in proportion, then they may do so even when it is enlarged to one-sixth exactly? And if the reason is not to make void the sale (as exacting more than a sixth makes the sale null and void)? Did not Rabha say: Every sale by measure, weight, or number, if there should be an exaction of even less than the law prescribes, it may be retracted? Therefore it must be said that the reason is that an outside seller should not suffer any damage (*i.e.*, if an outside seller, who is not aware of the increase, sells for the same price as before, and his profit is usually a sixth, if it was enlarged to a sixth only then he derives no profit, but neither does he suffer any damage in the cost price). Is that so? Does not the seller need to make profit on

his sale? Should one who sells at cost be called a merchant? Therefore said R. Hisda: Samuel took as a basis for his decision the following verse [Ezek. xlv. 12]: "And the shekel shall be twenty gerahs: (in pieces of) twenty shekels, five and twenty shekels, fifteen shekels, shall be your maneh." Was, then, a maneh sixty shekels, which makes two hundred and forty zuz? Therefore from this verse may be inferred three things: (*a*) That the maneh of the sanctuary was in value twice as much as the common shekel; (*b*) that it is allowed to increase a sixth, but not more; and (*c*) that the sixth may be added even from outside (*e.g.*, to add ten to fifty, so that the sixth may be reckoned after being added, as the maneh of Ezekiel is sixty shekels, while a maneh in general contains twenty-five shekels).

R. Papa b. Samuel made a kielah of three kpiz. [1] And to the question: Did not Samuel say there must not be added more than a sixth? answered he: I have invented a measure entirely new. He sent it to Pumbeditha, and it was not accepted; but the city of Papunia accepted it, and called it *Rus-Papa* (*i.e.*, the measure of Papa).

The rabbis taught: "Those who forestall fruit," etc. (here as in Derech Eretz--Rabba, Vol. IX., p. 1, line 17 *seq*.--*q. v.*). Those who forestall fruit--who are meant thereby? Said R. Johanan: People like Sabbati, the forestaller of fruit (whose custom was to buy fruit only for the purpose of selling it to the poor at a high price; but if one buys fruit at the cheap season not for this purpose, and the price increases, and he sells it at the existing price, it does not matter). The father of Samuel used to buy grain at harvest-time, and sold it at the same price. Samuel his son, however, used to store up the grain he bought in harvest until the price became higher, and then sold it at the same price as in harvest-time. And from Palestine a message was sent that the acts of the father were more meritorious than those of his son. Why so? Because through the acts of the father the wholesaler could not increase the price, while the acts of the son did not prevent the increase of price, and his selling cheap could not affect the high price which was already fixed.

Rabh said: One may store up the grain he has harvested from his field (as it is prohibited only to buy in the market at

harvest-time for the purpose of increasing the price). And so we have also learned in the following Boraitha: One must not forestall fruit, grain, etc., by which a livelihood is made, as, *e. g.*, wine, oil, and fine flour; but spices, pepper, etc., one may. This is said, however, if one buys it from the market; but from one's own field it is allowed to store everything. One is also allowed to store up in Palestine for the following three years--for the eve of a Sabbatic year, for the Sabbatic year itself, and for the succeeding year (as in the last year people must wait for the new crop). In famine years, however, even a kab of carobs must not be stored up, for it produces a curse to the prices. R. Jose b. Hanina said to Puga his servant: Go, store up for me grain for three years--for the eve of the Sabbatic year, the Sabbatic year itself, and the succeeding year.

The rabbis taught: There must not be exported from Palestine things by which a livelihood is made, as wine, oil, and fine meal. R. Jehudah b. Bathyra allows to export wine, because it diminishes intoxication; and even from Palestine to Syria the export of the above is prohibited. Rabbi, however, allows export from the last province of Palestine to the first province of Syria which bounds it.

The rabbis taught: One must not buy from the farmer things by which a livelihood is made for the purpose of selling in the market at a higher price in the provinces of Palestine; but for the farmer himself it is allowed to sell in the markets.

It was said, however, that R. Elazar b. Azarya used to sell wine and oil to the retail dealers, and they sold it at a higher price; and the reason was, that he holds with R. Jehudah concerning wine; and oil was abundant in the markets of his place, so that the retail dealers could not affect the price.

The rabbis taught: One must not derive twice a profit on eggs. Said Mari b. Mari: In the interpretation of the Boraitha Rabh and Samuel differ. According to one, it means one shall not double the price; and according to the other, it means one seller shall not sell it to another seller so that he has profit, and the seller in the market will also make a profit--but he himself must sell it in the market.

The rabbis taught: It may be prayed by blowing of horns, even on Sabbath, when business becomes dull. Said R. Johanan: This is to be done in case remnants of flax become very low in Babylon, and wine and oil in Palestine. Said R. Joseph: Provided that the stuff was lowered to near half-price.

The rabbis taught: One must not emigrate from Palestine to other provinces, unless the price of grain has increased to the extent of a selah for two saahs. Said R. Simeon: This is only when one could not find any grain at all to buy; but if he can get it even at the price of a selah for each saah, one must not emigrate. And so also was the opinion of R. Simeon b. Johai, who used to say that Elimelech, Mahlon, and Kilyon were the great men of their generation, and were their

leaders; and they were punished only because they emigrated from Palestine. As it is written [Ruth, i. 19]: "All the city was in commotion about them, and people said, Is this Naomi?" And to the question: What does it mean? said R. Itz'hak: It means: See what has become of Naomi, who emigrated from Palestine.

He said again: At that day when Ruth reached Palestine, the wife of Boaz had died; and this is what people say, that before the deceased departed the substitute for managing the house was already prepared. Rabba b. R. Huna in the name of Rabh said: Boaz is identical with Ibzan. What came be to teach us? That which was said in his name elsewhere, viz.: One hundred and twenty banquets Boaz made for his children. As it is written [Judges, xii. 9]: "And he had thirty sons, and thirty daughters he sent abroad, and thirty daughters he brought in for his sons from abroad," etc. And at each marriage two banquets were given--one in the father's and one in the father-in-law's house--and to not one of them did he invite Manoah, saying: What return can I expect of this childless man? And there is a Boraitha that all the children died when he (Boaz) was still alive. And he remarried and begat one who was better than all the sixty, the same was Obed, who was born by Ruth, from whom David descended.

R. Hanan b. Rabha in the name of Rabh said: Elimelech, Shalman the kinsman, [Ruth, iv. i] and the father of Naomi all were the descendants of Nahshon ben Aminadab. To what purpose was it said? To teach that even him who is a descendant of such great men, the meritorious acts of his parents do not absolve him when he emigrates from Palestine. The same said again in the name of the same authority: The name of Abraham's mother was Amthlai bath Khrubu, and the name of Haman's mother was Amthlai bath Urbthi; the name of the mother of David was Nzb'th bath Edal; the mother of Sampson, Z'llpunith, and his sister N'shiin. To what purpose was this said? For an answer to the Epicuristen (who deny all

the legends of the Bible, saying, for instance: If Abraham existed, why was his mother's name not mentioned, as doubtless his father had many wives, and the mother of Abraham should be distinguished, the same being the case with the others mentioned above? and we answer them that all their names are known to us traditionally).

The same said again in the name of the same authority: Abraham our father was in prison ten years three in the city of Khutha and seven in Qurdu. R. Dimi of Nahardea, however, taught the reverse (seven in Khutha and three in Qurdu; some say that he was imprisoned by Nimrod and others by his father, because he broke his idols). R. Hisda said: The city Eibra-Zeira of Khutha is the city Ur Kasdim mentioned in the Bible.

R. Hanan b. Rabha in the name of Rabh said again: On the day when Abraham our father departed from this world, all the great men of the nations stood up in a file and said: Woe to the world, that has lost its leader! and woe to the ship, that has lost its χυβερνη•ης (steerer)!

It is written [I Chron. xxix. 11]: "And thou art exalted as the head above all." And the above said in the name of Rabh: Even an officer of wells (who has to keep order in using them for watering the fields) is appointed by Heaven (*i.e.*, that even such an insignificant office is not filled without the decree of Heaven; and he takes the verse literally, "and thou art exalted over all the heads that arc appointed by thee").

R. Hyya b. Abin in the name of R. Jehoshua b. Karsha said: Elimelech would not emigrate from Palestine, if he could get even bran-flour for use. But why was he punished? Because he ought to have prayed for his generation, which he did not. As it is written [Is. lvii. 13]: "By thy crying thou canst be saved with all who are gathered with thee." 1 Said Rabba b. b. Hana in the name of R. Johanan: One must not emigrate from Palestine when money is cheap, but the grain high; but if *vice versa*, even when the price of four saahs is only one selah, one may. As R. Johanan said: I remember a time when there were four saahs for one selah, and there were many who starved, as they did not have an issar. And he said again: I remember that working people did not wish to take work on the east side of the city, as the smell of bread (which the west wind carried

to them) would kill them, as they had not eaten fresh bread for a long time. The same said again: I remember when a child used to break a piece of carob, threads of honey would leak out and moisten his hands. R. Elazar said: I remember, when a raven would catch a piece of meat, a thread of fat would be seen dropping from the height to the ground. R. Johanan said again: I remember times when a young girl of sixteen and a boy of seventeen walked together and did not sin. He said again: I remember what was said in college: Who yields to idolaters in discussion, the end will be that he will fall into their hands; and he who confides in them, all that he possesses will remain in their hands.

It is written [Ruth, i. 2]: "Mahlon and Kilyon," and in [I Chron. iv. 22]: "Joash and Saraph." Rabh and Samuel differ. One said that the real names were Mahlon and Kilyon; but why were they named Joash and Saraph? Joash, because they despaired of redemption, and Saraph, because they were liable to burning. And the other says their real names were Joash and Saraph; and why were they named Mahlon and Kilyon? Mahlon, because they made themselves very common by their emigration, and Kilyon, because they were liable to destruction. 1

It seems that Mahlon and Kilyon were their real names, as we have learned in the following Boraitha: It is written [ibid., ibid.]: "And Jokim and the men of Coseba, and Joash and Saraph, who had dominion in Moab and Jashubi-lechem. And these are ancient things."

Jokim means Joshua, who had confirmed the oath which was given to the men of Gibeon; and "the men of Coseba" 2 means the men of Gibeon, who lied before Joshua. Joash and Saraph were Mahlon and Kilyon; and why were they named Joash and Saraph? Because they despaired of redemption, and for this they were liable to burning. "Who had dominion in Moab" means that they had married daughters of Moab. "And Jashubi-lechem" means Ruth the Moabitess, who had returned and was attached to Beth-Se'hem. "And these are ancient things" means the above was said by Him who is older than the days. As it is written [Ps. lxxxix. 21]: "I have found David my servant." It is also written [Gen. xix. 15]: "And

thy two daughters, that are found." 1 It is written [I Chron. iv. 23]: "These were the potters (Hayozrim), and those that dwelt in plantations and sheepfolds; for the king's sake, to do his work, they dwelt there." Hayozrim 2 means the children of Jonadabh b. Rechab, who preserved the oath of their father. "In plantations" means the king Solomon, who was a plant in his

kingdom. Vegidroh (sheepfolds) means the Sanhedrin, who had fenced the broken partition of Israel. "For the king's sake," etc., means Ruth the Moabitess, who lived to see the kingdom of Solomon her great-grandson. As it is written [I Kings, ii. 19]: "And placed a chair for the king's mother." And R. Elazar said that it means "to the mother of the kingdom."

The rabbis taught: It is written [Lev. xxv. 22]: "Shall ye eat yet of the old harvest," which means without need of preserving. How is this to be understood? Said R. Na'hman: It will not be worm-eaten. And R. Shesheth said: It will not be singed. There is a Boraitha in accordance with R. Na'hman: "Of the old harvest," lest one say that Israel must wait for the new crop, as the old has already gone, therefore it is written [ibid., ibid.]: "Until its harvest come in," which means, until the harvest shall come by itself (and he will not need to take it before it is ripe, and make it fit for use by drying).

And there is also a Boraitha in accordance with R. Shesheth: "Ye shall eat yet from the old harvest," lest one say that Israel would have to wait for the new harvest because the old one became spoiled, therefore it is written, "Until its harvest come in," which means that the old will suffice until the new shall come in its natural way, without any need to take it before it is ripe.

The rabbis taught: It is written [ibid. xxvi. 10]: "And ye shall eat very old store." From this may be inferred that a thing that is older is better, but this is said of things which are used to be preserved. But whence do we know of things which are not to be preserved? Therefore it is written: "Joshon Noshon" (literally, old, old) [ibid., ibid.],"and the old ye shall remove because of the new," from which is to be inferred that at that time all their granaries were filled up with the old crop and their barns with the new. And Israel used to say: "Why

should we remove the old, which is as good as the new, for the latter?"

Said R. Papa: All old things are good, except dates and the beer thereof, and *harsnah* (a dish at that time used by the poor--see Aboda Zara, 73*a*).

Rabba said: [1] Sailors told me the wave that usually makes the ship sink is visible by a ray of whitish light, and we struck it with a stick, upon which is engraved, "I will be that I will be" [Ex. iii. 14]. Then it became quiet. He said again: The sailors told me that from one wave to the other are three hundred parsas, and the height of each wave is also three hundred parsas. It once happened that I was on the boat, and a wave lifted me up to such a height that I could see the basis of a little star, and in my eyes it looked as a space where forty saahs of mustard could be sown. Should the wave have lifted me up higher, I would have been burned by the heat of that star; and I heard a voice, one wave speaking to the other: My colleague, did you leave something in the world which thou hast not destroyed, that I may accomplish it? And the answer was: Go and see the Might of thy Master, as there is only one row of sand that separates the sea from the land; and yet I could not step over it. As it is written [Jer. v. 22]: "Will ye not fear me? saith the Lord; will ye not tremble at my presence, who have placed the sand as a bound for the sea by an everlasting law, which it never can pass over? and though the waves thereof be upheaved, yet can they not prevail; though they roar, yet can they not pass over it."

He said again: I have seen Hurnim bar Lilith, who jumped on the top of brick-houses of the city

of Mehusa, and was running so fast from one to the other that a rider could not overtake him. Once it happened that two mules were saddled for him on the two bridges over the river Druggring, which were far from each other, and he jumped continually from one saddle to the other, while holding two cups of wine, pouring from one into the other continually without spilling one drop, and this

day was such a stormy one, as illustrated [Ps. cvii. 28], until the government took notice of him, and he was slain. 1

He said again: I have seen a roebuck one day old, which was like the mountain of Tabur, which measures four parsas; and the length of its neck was three parsas and the space covered by its head one and a half parsas; and when it emitted excrement it stopped the Jordan.

Rabba b. b. Hana said again: I have seen an alligator as large as the city of Hagrunia, which contained sixty houses. A snake came and swallowed it, and a large-tailed raven came and swallowed the snake, and then the raven sat on a tree. Come and see how strong was that tree! R. Papa b. Samuel said: If I had not been there, I should not have believed it.

Rabba said again: At one time when on board of a ship I saw a fish into whose gills a reptile crept from which it died, the sea throwing it out on land. And sixty streets were destroyed by its fall, and sixty streets consumed its flesh, and sixty other streets salted the flesh that was left; and from one eye they filled three hundred measures of oil; and when I returned thither after twelve months, I saw its bones being sawed to restore the streets that were destroyed by it.

He said again: At one time I was on board of a ship, which was driven between two fins of a fish, three days and three nights the fish was swimming against the wind and we were sailing with the wind [and lest one say that the ship did not go fast enough, when R. Dimi came from Palestine, he said that ft was so fast that in the time of heating a *cumcuma* of water the ship ran sixty parsas, and a rider shooting an arrow at the same time could not be swifter than the ship]. And R. Ashi said that this was one of the smallest fishes of the sea which has two fins.

The same Rabba said again: It once happened that I was going on a boat, and saw a fish on which sand was gathered and grass grown thereupon. And we thought it was an island, descended, baked and cooked upon it. When the back of the fish grew hot, it turned over, and had the ship not been so near we would have been drowned.

The same Rabba said again: At one time while on board of a ship I saw a bird which was standing in water that reached only up to its toes; its head, however, reached the sky, and we

thought the water was shallow, so we were about to bathe there, when we heard a heavenly voice. Do not go down, for a carpenter here lost an axe seven years ago, and still it has not reached the ground--not because it is so deep, but because of the current. Said R. Ashi: This bird is the *Zeez Sodai* mentioned in Ps. l. 11.

Rabba b. b. Hana said again: It happened once, while in the desert, that I saw geese of which the feathers fell out owing to their fatness, and a whole river of fat was beneath them, and to my question, "Have I a share in you in the world to come?" one of them lifted up its wing, and one of them a foot. When I told this to R. Elazar, he said: Israel will be punished for them, as by his sin Messiah does not come, and the geese must endure their fatness.

The same Rabba said again: Once while in the desert we were accompanied by an Arabian merchant who used to take a clod of earth, smell it, and say: This way leads to such a place, and this to such a one. And we asked him: How far are we from water? And he smelt the earth, saying: Eight parsas. Thereafter we gave him other earth to smell, and he said: Three parsas. I changed the clods of earth, but we could not deceive him, and he said to me: Come with me. I will show you the corpses of the dead in the desert at the time of Moses. I did so, and their appearance was as fresh as if they went to sleep while drinking. All of them were lying on their backs. The foot of one of them, however, was lifted up, and the merchant, while riding and holding a spear in his hand, passed beneath it, without reaching the joint of his knee. I took and cut off a corner of one's *taliths*, 1 in which were tsitsith. Then neither we nor our cattle could stir. Said the merchant to me: Perhaps you have taken something belonging to the dead, as I have a tradition that if one takes something from them he cannot stir. When I told this to the rabbis, they said: The whole Abba is an ass, and the whole Bar Bar Hanah is nonsense (all his stories are). For what purpose didst thou take it? To know with whom the Halakha concerning tsitsith prevails--whether with the school of Shammai 2 or with the school of Hillel? Then thou oughtest to have investigated their tsitsith by counting the threads and knots. Then (continued Bar Bar

[paragraph continues] Hanah) the merchant said to me: Come and I will show you the mountain of Sinai. I followed him, and saw that it was surrounded by serpents. All of them were standing, and looked like white asses. I also heard a heavenly voice saying: Woe is me that I have sworn; and now after having so done, who will absolve me from that oath? When I told this before the rabbis, they said again: The whole Abba is an ass, etc. Why didst thou not say: Thou art absolved, thou art absolved? [He, however, did not do so, because he thought: Perhaps it means the oath for the deluge, referring to what is written in Is. liv. 9: "As I have sworn that the waters of Noah," etc. The rabbis, however, were right in accusing him, as if it were about the deluge, why, then, "woe is me"?] The same merchant said to me: Come and I will show you the place where the children of Korah were swallowed. And I saw two crevices in the ground from which smoke issued. I took a piece of wool, wetted it with water, put it on my spear, placed it in the crevice, and when I took it out it was smudging. And the merchant said to me: Stoop down and hear. And I heard them saying: Moses and his Torah are true, and we are liars. Said the merchant to me: Each thirtieth day of the month, Gehenna turns them over here, like meat in a kettle, and they (the swallowed) repeat the above.

He said again to me: Come and I will show you where the sky and earth meet. I followed him, took my basket, and put it on the window of the sky. After praying, I searched for it but could not find it. Then I said to the merchant: Are there, then, thieves here? And he answered: It was the wheel of the sky which took it with it. Wait until to-morrow at this same time and you will find it.

R. Johanan used to tell: Once while on board of a boat I saw a fish which raised its head out of the water, and its eyes looked like two moons; water was pouring from both of its nostrils like the two rivers of Sura.

R. Saphra used to tell: Once while on board of a boat I saw a fish which had horns raising up its head from the water, and on its horns was engraved thus: "I am of the small creatures in the sea and measure three hundred parsas, and I am going into the mouth of the leviathan." Said R. Ashi: This is a sea-goat that digs with its horns the ground of the sea.

R. Johanan told again: Once while on board of a boat I saw a χαρταλος (a kind of basket) which was set with diamonds and

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pearls and surrounded by a kind of fish called *karshah*, and a diver descended in order to catch it; but the basket made a motion and threatened to break his leg. He, however, threw a leather bag containing vinegar (according to others a leather bag with sand) towards it, and the basket sank. At the same time a heavenly voice spoke to us: What business have ye with this *kartilitha*, which belongs to the wife of R. Hanina b. Dosa, who will deposit in it the purple for the upright in the world to come?

R. Jehudah of Mesopotamia used to tell: Once while on board of a ship I saw a diamond that was encircled by a snake, and a diver went to catch it. The snake then opened its mouth, threatening to swallow the ship. Then a raven came, bit off its head, and all water around turned into blood. Then another snake came, took the diamond, put it on the carcass, and it became alive; and again it opened its mouth, in order to swallow the ship. Another bird then came, bit off its head, took the diamond, and threw it on the ship. We had with us salted birds, and we wanted to try whether the diamond would bring them to life, so we placed the gem on them, and they became animated, and flew away with the gem.

The rabbis taught: It happened with R. Eliezer and R. Jehoshua who were on a ship, that R. Eliezer was asleep and R. Jehoshua awake. The latter became frightened, so that R. Eliezer awoke, and said: What is the matter, Jehoshua? What have you seen that frightened you? And he answered: I have seen a great light on the sea. Rejoined R. Eliezer: Perhaps you have seen the eyes of the leviathan about which is written [Job, xli. 10]: "And his eyes are like the eyelids of the morning dawn."

R. Ashi said: Huna b. Nathan told me: It happened once, while I was in the desert, and we had with us a leg of meat, that we cut it, made it legal for eating, put it on the grass, and went to gather wood for roasting. When we returned, the leg had resumed the shape it had before it was cut; and we then roasted it. When we returned after twelve months, the coals upon which it was roasted were still alive. When I told this to Amemar, he said that the grass was *samtrie*, that has the quality of combining things which were previously separated; and the coals were of broom-brush, which when ignited remains alive for a long, long time.

It is written [Gen. i. 21]: "And God created the great sea

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monsters." Here in Babylon they translate this the *reem* of the sea. R. Johanan, however, says: It means leviathan--leviathan male and female, as it is written [Is. xxvii. 1]: "On that day will the Lord punish with his heavy and great and strong sword leviathan the flying serpent and leviathan the crooked serpent, and he will slay the crocodile that is in the sea."

R. Jehudah in the name of Rabh said: All that the Holy One, blessed be He, created, was male and female, and also the leviathan--the flying serpent male and the crooked serpent female; and if they should have intercourse they would destroy the world. Therefore the Lord made the male impotent, and killed the female and salted it for the upright in the world to come, as it is written [ibid.]: "And he will slay the crocodile," etc. "and also the cattle upon a thousand mountains" [Ps. 1. 10]. He created them male and female, and if they should have intercourse they would destroy the world. Therefore the Holy One, blessed be He, made impotent the male and made cold the female, and preserved it for the upright in the world to come, as it is written [Job, xl. 16]: "only see (how great) is the strength in his loins," meaning the male, "and his force in the muscles of his belly," meaning the female.

But why did He not make cold the female of the leviathan also? Because a salted female has a better taste. And why did He not salt the females of the cattle in question? Salted fish gives a good taste, but salted meat does not.

The same said again in the name of the same authority: At the time the Holy One, blessed be He, willed to create the world, He said to the ruler of the sea: Open thy mouth, and swallow all waters that are to be found in the world. And he said: Lord of the Universe, is it not enough that I swallow the water under my dominion? And he was therefore killed immediately, as it is written [ibid. 12]: "By his power he split in pieces the sea, and by his understanding he crushed *Rahab*." Said R. Itz'hak: Infer from this that the name of the ruler of this sea is *Rahab*, and did not the waters of the sea cover the body, not one of the creatures could remain alive owing to the bad smell, as it is written [Is. xi. 9]: "They shall not do hurt nor destroy . . . as the waters cover the sea." Do not read "cover the sea," but "cover the ruler of the sea."

R. Jehudah in the name of Rabh said again: The Jordan discharges by the cave of Pmias. There is also a Boraitha: The Jordan discharges by the cave of Pmias, and flows to the sea of

Sipchi, of Tiberias, until it reaches the ocean; and through it it flows until it reaches the mouth of the leviathan, as it is written [Job, xl. 23]: "He remaineth quiet, though a Jordan rusheth up to his mouth."

Rabha b. Ula opposed: "Did not this verse speak of the cattle on the thousand mountains? Therefore," said he, "this verse must be interpreted thus: When are the cattle in question sure that they shall remain alive? When the Jordan reaches the mouth of the leviathan (*i.e.*, so long as the leviathan lives, they are sure that they shall remain alive, as all are prepared for the world to come when the Messiah shall appear)."

When R. Dimi came from Palestine, he said in the name of R. Johanan: It is written in Ps. xxiv. 2: "For upon seas he hath founded it, and upon rivers he hath established it." It means the seven

seas and four rivers which surround the land of Israel (Palestine); and they are the sea of Tiberias, Sodom, Chirat, Chiltha, Sipchi, Aspamia, and the Ocean: these are the seven seas, and the four rivers are Jordan, Jarmuch, Kirumyun, and Phiga.

The same R. Dimi said in the name of R. Jonathan: The angel Gabriel will go hunting for the leviathan, as it is written [Job, x1. 25]: "Canst thou draw out the crocodile (leviathan) with a fishhook? or cause his tongue to sink into the baited rope?" And should not the Holy One, blessed be He, help him, he would not conquer him, as it is written [ibid., ibid. 19]: "He is the first in rank . . . he that hath made him can alone bring his sword near to him."

The same said again in the name of R. Johanan: When the leviathan becomes hungry, he expels from his mouth a gas which makes boil all the waters in the deep, as it is written [ibid. xli. 23]: "He causeth the deep to boil." And should he not enter his head in paradise, not one of the creatures could withstand the bad smell of the gas, as it is written [ibid., ibid.]: "He rendereth the sea like an apothecary's mixture." And when he gets thirsty, he makes the sea hollow like beds, as it is written farther on: "Behind him he causeth his pathway to shine." And R. Aha b. Jacob said: The deep does not come to its natural way before seventy years, as it is written: "Men esteem the deep to be hoary"--and hoary is not less than seventy years.

Rabba said in the name of R. Johanan: The Holy One, blessed be He, will make a banquet for the upright from the

flesh of the leviathan, as it is written [ibid. xl. 30]: "*Yichrov* 1 *Olof Chahvierim*." Yichrov means a banquet, as it is written [II Kings, vi. 23]: "And he prepared for them a great meal" (the expression in Hebrew being *Veyichre*, etc.); and Chahvierim means scholars, as it is written [Solomon's Song, viii. 13]: "Companions (Chaverim) listen for thy voice," etc. And the remainder of it will be cut in pieces, and be sold in the markets of Jerusalem, as it is written [Job, xl. 30]: "Divide him among merchants."

The same said again in the name of the same authority: The Holy One, blessed be He, will make a booth for the upright from the skin of the leviathan, as it is written [ibid., ibid. 31]: "Canst thou fill his skin with *Soukoth*." 2 If the upright is to have a booth, a booth is made for him from it; and if less, a little hut; and if still less, a necklace will be made for him, as it is written [Prov. i. 9]: "And chains for thy throat -; and if still less, an amulet will be made for him, as it is written [Job, xl. 29]: "And tie him up for thy maidens"? And the remainder of the skin the Lord will spread on the walls of Jerusalem, and the brightness of it will shine from one end of the world to the other, as it is written [Is. lx. 3]: "And nations shall walk by thy light, and kings by the brightness of thy shining."

It is written [ibid. liv. 12]: "And I will make of *kadkad* (rubies) thy battlements," etc. Said Samuel b. Nahmeni: Two angels--in heaven, Gabriel and Michael, according to others two Amoraim of Palestine, and they are Jehudah and Hiskiyah the sons of R. Hyya--one says it means *shoham* (onyx) and others jasper, and the Holy One, blessed be He, said: Let it be as both say. [Is. liv. 12]: "And thy gates," etc. This is as R. Johanan lectured while sitting: The Holy One, blessed be He will bring jewels and pearls the size of thirty ells square, twenty ells in height and ten in width, and will place them on the gates of Jerusalem. And one disciple

ridiculed him: We do not even find a jewel as large as the egg of a dove, and he lectured about such sizes? Thereafter it happened that the same disciple was on a boat on the high sea, and he saw angels who sawed jewels and pearls the size of thirty ells square, boring holes in them twenty in height and ten in width. He asked them: For what purpose? And they answered: The Holy

[paragraph continues] One, blessed be He, will place them on the gates of Jerusalem. And when he returned he said to R. Johanan: Lecture, Rabbi, for all you said is true, as I have myself seen. And R. Johanan said to him: Ignoramus, if you had not seen it, you would not have believed. So you would ridicule the words of the sages? He cast his eyes on him, and he became a heap of bones.

An objection was raised: It is written [Lev. xxvii. 13]: "I will lead you *qummiuth*." 1 R. Meir said: It means two hundred ells, double the height of Adam the first, who was one hundred ells in height. R. Jehudah, however, said: It means one hundred ells, the size of the Temple with its walls, as it is written [Ps. cxliv. 12]: "So that our sons may be like plants grown up in their youth, our daughters like corner-pillars, sculptured after the model of a palace." (Hence we see that according to both the height of the Temple will be one hundred ells at least. Why, then, said R. Johanan only twenty in height?) R. Johanan only meant for the windows in the gates that let in air.

Rabba in the name of R. Johanan said: The Holy One, blessed be He, will make seven canopies (*chupas*) for each upright, as it is written [Is. iv. 5]: "And then will the Lord create upon every dwelling of Mount Zion, and upon her places of assembly, a cloud and smoke by day, and the brightness of a flaming fire by night; for over all the glory shall be a covering (*chupa*)." Whence we deduce that the Holy One, blessed be He, will make a *chupa* to each upright according to His dignity. But why smoke to a *chupa*? Said R. Hanina: Each one who looks with a bad eye upon the scholars in this world, his eyes will be filled with smoke in the world to come. And why fire (in the *chupa*)? Said R. Hanina: Infer from this that each of the upright will be burned by the *chupa* of his neighbor. And woe to such a burn and such a shame! (*i.e.*, the neighbor's *chupa* is so beautiful and large that my *chupa* looks like a small hut against his). Similar to this is what is written [Num. xxvii. 20]: "And thou shalt put some of thy greatness upon him." But not all of it. The elders of that generation used to say: The appearance of Moses was like the sun, and the appearance of Joshua like the moon. Woe to such a burn! woe to such a shame!

R. Hama b. Hanina said: Ten *chupas* were made by the Holy

[paragraph continues] One, blessed be He, for Adam the first in paradise, as it is written [Ezek. xxviii. 13]: "In Eden the garden of God didst thou abide; every precious stone was thy covering, the sardius, the topaz, and the diamond, the chrysolite, the onyx, and the jasper, the sapphire, the emerald, and the carbuncle, and gold.--(From the word *sardius*, including the word *gold*, are ten different kinds.) Mar Zutra says: Eleven--as he counts all the precious stones also. Said R. Johanan: The gold was less in value than all (as it is placed last). What is meant by the continuation of the same verse: "Thy tabrets and thy flutes," etc.? Said R. Jehudah in the name

of Rabh: So said the Holy One, blessed be He, to Hiram the king of Tyre: When I created the world, and saw that thou wouldst rebel, deeming thyself a god, I therefore created holes and flutes in men, in order that thou shouldst be known as human. And according to others He said: "I saw that thou wouldst rebel," etc. I have therefore punished Adam the first with death, so that it should be known that thou wast human. What mean the words, "upon her places of assembly" (Isaiah, in the above cited verse)? Said Rabba in the name of R. Johanan: Jerusalem in the world to come is not like Jerusalem of this world. In the latter every one who likes to enter does so, but in that of the world to come only those invited will enter.

He said again in the name of said authority: In the world to come the upright will be named with the names of the Holy One, blessed be He, as it is written [Is. xliii. 7]: "Every one that is called by my name, and whom I have created for my glory, whom I have formed; yea, whom I have made."

Samuel b. Nahmeni said in the name of R. Johanan: The following three will be named with the name of the Holy One, blessed be He: the upright, as said above; the Messiah, as it is written [Jer. xxiii. 6]: "And this is his name whereby he shall be called--The Lord Our Righteousness"; and Jerusalem, as it is written [Ezek. xlviii. 35]: "And the name of that city shall be from that day, The Lord is there" (*shamah*). Do not read *shamah* (there), but *shmah* (her name).

R. Elazar said: In the future, *holy* will be said before the upright as now it is said before the Holy One, blessed be He, as it is written [Is. iv. 3]: "And it shall come to pass that whoever is left in Zion, and he that remaineth in Jerusalem, shall be called holy--every one that is written down unto life in Jerusalem."

He said again in the name of the same authority: The Holy One, blessed be He, will increase Jerusalem three parsas, as it is written [Zech. xiv. 10]: "And she herself shall be elevated, and be inhabited on her former site," which means that it will be increased to its former size. And whence do you know that the size of the former Jerusalem was three parsas? Said Rabba: There was a certain old man who told me that he had seen the first Jerusalem, and the size thereof was three parsas. And lest one say that it would be difficult to ascend, therefore it is written [Is. lx. 8]: "Who are these that are like a cloud," etc. Said R. Papa: Infer from this that the clouds are at a height of three parsas from the ground.

R. Hanina b. Papa said: The Lord wanted to give a measure to Jerusalem, as it is written [Zech. ii. 6]: "To measure Jerusalem." And the angels said before the Holy One, blessed be He: Lord of the Universe, there are many great cities thou hast created in thy world, belonging to the nations, of which thou hast not determined their length and their breadth. For Jerusalem, upon which thy name rests, where is thy Temple, and dwell the upright, thou dost determine a measure.

[Ibid. 8]: "And he said unto him, Run, speak to this young man, saying, Without walls shall Jerusalem be inhabited, because of the multitude of men and cattle in her midst."

Resh Lakish said: The Holy One, blessed be He, will add a *Litsuy* (probably a suburb) to Jerusalem a thousand times the area of one containing country seats and twelve hundred *T'trplirus*, a thousand towers and one hundred and sixty-nine thousand gardens, and each of all

that is said above will be like *Ziporias* in her glory. And there is a Boraitha which states: R. Jose said: I have seen Ziporias in her glory, and there were one hundred and eighty thousand markets in which only spices for dishes were sold. It is written [Ezek. xli. 6]: "And the side chambers were three one over another, and thirty times." What does that mean? Said R. Levi in the name of R. Papi, quoting R. Jehoshua of *Skhui*: If there were three Jerusalems, each of them had thirty chambers on the top; and if thirty Jerusalems, each of them had three chambers on the top.

END OF FIRST PART OF TRACT BABA BATHRA AND OF VOL. V. (XIII.).

Footnotes

167:1 Here in text are the well-known legends of Rabba b. b. Hana among the other Hagadah, which we find necessary to transfer to the end of this chapter.

173:1 The Hagadah here we also transfer to the end of the chapter, as it has nothing to do with this text.

174:1 In the text there is a statement of R. Elazar repeated several times, which we leave for the forthcoming Tract Uktzin at the proper place.

193:1 The Hagadah in text will be placed at the end of this chapter.

195:1 Here is repeated matter in pp. 147-148 of Vol. XII. to "Rabha said."

197:1 A kpiz was nine lugs, or a kab less one lug; according to others, one tug, and the kielah was the same as a half tarkab, which contains one and a half kabs.

200:1 Leeser translates differently; the Talmud, however, takes it literally.

201:1 Joash means *despair*; Saraph, *burn*; Choolin, *common*; and Kilyon, *destroying*.

201:2 Khzb in Hebrew means lie.

202:1 Leeser translates "they are here"; but in the Bible is written Hninzouth, literally, "who are found."

202:2 Nozar in Hebrew means *preserved*.

203:1 This matter is transferred from its place at p. 167. See foot-note there.

The Hagadah is known under the name Rabba's or Rabha b. b. Hana's Legends. The scores of commentators thereon say that this is allegoric, and each of them tries to explain after his manner (*e.g.*, philosopher, philosophically, moralist, morally, etc.). We, however, translate literally, without any explanation, leaving it for the consideration of the reader.

204:1 Whether he was a human being or a demon, it is hard to say. As to this, commentators differ, and also as to which government--whether natural or supernatural.

205:1 The garment in which *tsitsith* are woven.

205:2 In Tract Menachoth the schools differ in the number of threads and knots.

210:1 Leeser's translation could not be used here.

210:2 In the Scripture it is written with *Seen*, which reads like *Samach*, and Sukkah means a booth. Leeser's translation cannot here be used.

211:1 *Quomah* means the height of a person, *qummiuth* means two heights. Leeser's translation cannot be used.

Next: Appendix

APPENDIX TO MISHNA I, CHAP. III., PAGE 83.

WE deem it necessary to call the attention of the reader to the fact that the law of occupancy was chiefly taken from the ancient Roman law [1] about *usucapio* (occupancy), which dictates that each *usucapio* without *titulius* (claim) is not considered. The claims must be *pro emptore* (purchase) or *pro donato* (gift), *pro legato*, *pro dote*, or *pro herede* (inheritance); and with *usucapio*, which is based upon inheritance, no other claim was necessary. The law applied even when it was known that the occupant never had a deed to what he had occupied, and the reason was because the plaintiff had time to protest three years, or at three harvestings, and when he did not make any claim nor any protest, it was evident that the occupant had a right to occupy, and no other evidence was needed. There is also a difference between *præsentes* and *absentes* of the occupant. However, concerning *servitutes* (service) there was also *usucapio*, in the reverse; namely, *pro libertate* (liberty), which means that the servant or bondsman had a right to free himself by *non usus*--namely, when during three years he was never put to any work by his master he became free. But there was no *usucapio* by using the bondsman, even if for several years: property in him was not acquired if he had no other evidence. (See Ltf. Schweppe, § 305.) According to this, Abraham Krochmal, in his Scholia to the Babylonian Talmud (p. 278) maintains that the term "to slaves" in the Mishna in question means that the law of occupancy applies to these slaves themselves; viz., after three years' rest from any service to their masters, the slaves become free, but not, in accordance with the Gemara, conversely. And so he also explains Resh Lakish's statement (p. 96), "that the law of hazakah does not apply to a living creature," as unchangeable, and it seems to us that so it is.

Footnotes

214:1 The law of occupancy also existed in Persia, but it prescribed no less than twenty years. See text, p. 101.

NEW EDITION

OF THE

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Original Text, Edited, Corrected, Formulated and Translated into English

BY

MICHAEL L. RODKINSON

SECTION JURISPRUDENCE (DAMAGES)

TRACT BABA BATHRA

(LAST GATE, PART I.)

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EXPLANATORY REMARKS.

In our translation we adopted these principles:

I. *Tenan* of the original--We have learned in a Mishna; *Tania*--We have learned in a Boraitha; *Itemar*--It was taught.

2. Questions are indicated by the interrogation point, and are immediately followed by the answers, without being so marked.

3. When in the original there occur two statements separated by the phrase, *Lishna achrena* or *Waïbayith Aema* or *Ikha d'amri* (literally, "otherwise interpreted:), we translate only the second.

4. As the pages of the original are indicated in our new Hebrew edition, it is not deemed necessary to mark them in the English edition, this being only a translation from the latter,

s. Words or passages enclosed in round parentheses ( ) denote the explanation rendered by Rashi to the foregoing sentence or word. Square parentheses [ ] contain commentaries by authorities of the last period of construction of the Gemara.

TO THE REVEREND GENTLEMEN

HERRN GEHEIMER REGIERUNGSRATH

MORITZ LAZARUS, PH.D., D.D.

UNIVERSITY PROFESSOR

AND

MONS. ZADOC KAHANA

GRAND RABBIN

DU CONSISTOIRE CENTRAL DES ISRAÉLITES DE FRANCE

WHOSE NAMES ARE FAMOUS

IN THE SCHOLARLY WORLD ALL OVER THE GLOBE

THIS FOURTEENTH VOLUME

IS MOST SINCERELY INSCRIBED BY THEIR ADMIRER AND

PERSONAL FRIEND

MICHAEL L. RODKINSON

New York, Eve of Passover, 5662 (April 21st, 1902)

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SYNOPSIS OF SUBJECTS

OF

TRACT BABA BATHRA (LAST GATE).

(PART II)

CHAPTER VI.

MISHNAS *I*. TO *VIII*. If one sold fruit and it did not sprout, or an ox and thereafter it was found a goring one. May the trouble of slaughtering and selling the meat be taken into consideration? If an ox was found killed at the side of another pasturing one. Between majority and hazakah, which should be preferred (see footnote p. 217)? All hold the theory of majority. If one delivered wheat for grinding to fine meal, but the miller did not properly grind it; or if meal were delivered to a baker and he did not bake it properly. If one buys fruit, he has to accept a quarter of a kabh of dust on a saah. If he sold a cellar of wine, he must accept ten harsh barrels on each hundred. If wheat, a quarter of a kabh of peas; if barley, a quarter of chaff; if lentils, of dust. If the buyer has found more than the above prescribed quantity. The difference between a cellar and this cellar, and also if for keeping was added. May or may not wine which is sold in retail stores be considered products of the vine? If one sells wine, and it turns sour. Which wine is considered an old one. If one is proud, he is not tolerated even by his family. A commoner who disguises himself in the garment of a scholar cannot enter into the habitation of the Holy One, etc. If one sells, or a contractor undertakes to build, a wedding or a widow house. A groom who resides in the house of his father-in-law is lighter than bran, and still lighter is an invited guest who brings with him an uninvited one, and still lighter is he who answers before hearing the question. If one wishes to build a stable. If one possesses a well, situated on the other side of his neighbor's house, or a garden inside of his neighbor's. If there was a public thoroughfare through one's field, etc. If one sells a place for digging a grave, or an undertaker makes a place for one, the inside of the cave must be four by six, etc., 215-230

CHAPTER VII.

MISHNAS *I*. TO *VI*. I sell you earth of the size whereon one kur can be sown, etc., or measured with a line. In case the buyer has to make return, it shall be in money. If the seller said "the size of a kur," without

any addition, how is the law? "I sell you the estate," with a measurement a trifle more or less; or, "this estate . . . with its marks and boundaries." If two versions of the seller contradict each

CHAPTER VIII.

MISHNAS *V*. TO *VII*. A will which is against the law of the Scripture must not be listened to; however, if it is as a gift, it may. "My son is my first-born," he takes a double share; "My son is a first-born," he does not. "Go to Sh'kh'at my son, who is a first-born, whose spittle cures eyes." If two wives of one have born two sons in a secret place which was dark, and it is not known who was born first, they may write a power of attorney each to the other, etc. If one was known to the people as a first-born, and his father said of another, etc. A creditor may collect from bondsmen belonging to orphans for their father's debt. A second-cousin, a third-cousin, may be a witness (according to the law). If one says, "This child shall inherit all," or "My wife shall take an equal share with one of my sons," he is to be listened to. If the word "gift" was mentioned in the beginning, etc. How is this to be illustrated If one wrote, "The field on the east side shall be given to A, and B shall inherit that on the west side," is title given or not? All that is said in one speech is valid, except as to idolatry. If one says: "A shall inherit my estate," and he has a daughter, he said nothing; or, "A shall inherit my estate instead of my daughter," or, "My daughter instead of my son"--how is the law? A Halakha must not be taken for granted from a discussion or from an act, unless one is told to do so. Rabbi said: My youth made me presume to contradict Nathan the Babylonian. If one bequeath all his estates to his wife, he makes her a guardian only. (All that is said above treats of a will by a sick man.) How is it if this was done while in good health? If one has bequeathed all his estates to his sons, but has left to his wife a small portion of ground.

How is it in a similar case when one is in good health? A sick person who has bequeathed all his estate to a stranger, it is to be investigated if the latter is in some way fit to be called a direct heir. An inheritance has no interruption, and goes direct to the heirs of the inheritor. The rabbis condemned one who bequeathed his estate to strangers, leaving out his children. What happened to Shamai the elder with Jonathan b. Uziel, 271-297

MISHNAS *VIII*. TO *XII*. "This is my son," he is to be trusted; "My brother," he is not. if one testify he has divorced his wife, he is to be trusted. If a short period of time, can one's testimony be divided--that for the past he should not be trusted, and for the future he should? If a sick person said to witnesses: "Write, and give a mana to so and so," and before they did so he dies. How is it if the same was said by one in good health? If one wishes to bequeath his estate to his children, etc. How if he has written "from to-day and after my death"? If a sudarium is mentioned, no matter what version was used, nothing is needed to be added. "My estates are bequeathed to you, and after you to B," etc. Who is called a crafty villain? To a gift presented by one who is dying, at what time is title given? There was a woman who had a tree on the estate of

[paragraph continues] R. Bibbi b. Abayi, etc. If A said to B, "I give you this ox as a present, with the stipulation that you shall return it to me." If a sick man said, "I have a mana with so and so," the witnesses may write this, etc. The Halakha prevails that it must not be feared the court will err. The father has the right to gather the products bequeathed to his son, etc. If he left grown-up and minor sons, the grown ones have no right to derive any benefit on account of the minors, etc. How is it if a woman has borrowed money, consumed it, and thereafter she married without paying her debt, and brought estates with her at marriage? "The following is not to be returned in the jubilee year," etc. (p. 310). In some respects the husband should be considered as an heir, and in some respects as a buyer, 297-311

CHAPTER IX.

relatives complained that he was not of age when he died. What must be the age of one who has the right to sell the estates left him by his father? How is he to be considered during the nineteenth year--nineteen, which is still not of age, or twenty? There was one lad less than twenty, who had sold the estate of his father. If a lad of thirteen years and one day presented a gift to some one, his act is valid. If one divides his estates verbally, no matter if he was in good health or dangerously sick, according to R. Elazar to real estate title is given by money, etc. It happened with an inhabitant of the city of Mruni, who was in Jerusalem, that he possessed much valuable property which he desired to present to different persons, etc. If it happens that a sick person divides his estates verbally on the Sabbath, etc. Suppose a house falls upon A and his father or on any persons, that one of them has to be bequeather and the other inheritor, and it is not known who dies first. If a son has sold his share of the inheritance of his father to some one, and dies while the father was still alive, and thereafter his father died, the son of the seller has a right to take away the goods from the buyer. And this is a complicated case in the law of money matters. A son inherits from his mother when he is already in the grave, so that his brothers from his father's side should inherit from him, 345-357

CHAPTER X.

MISHNAS *I.* TO *V.* A simple get (document) the witnesses must sign at the end of the contents. A folded one, however, the witnesses must sign outside, etc. In what place should the witnesses sign a folding document? If the signatures of the witnesses were separated by a space of two lines from the writing, the document is invalid; is it meant with their usual space or without? There was a folding document which came before Rabbi, and he said: "There is no date to it," etc. All must be done as is customary in the country. If there was only one witness to a simple, etc. If in the document was written "hundred zuz," which make twenty selas, etc. If on the top of the document was written "a mana," and on the bottom "two hundred zuz," or *vice versa*, etc. There was a document in which was written, "six hundred and a zuz," etc. There was a toll-master of a bridge who was a

Jew who said to Abayi: "Let the master show me his signature," etc. A divorce may be written by the court for a husband in the absence of his wife-the husband must pay the fees. Documents of arbitrating and all other acts of mediating by the court must not be written unless both parties are present-at the expense of both. There was a receipt approved by Jeremiah b. Abba. However, the same woman came into his court to claim her marriage contract several years later, etc. If one has paid a part. of his debt, and deposited his document with some one. If it happened to one that a promissory note became erased, he must find witnesses. The approval must be written: "We three, E, F, G, the undersigned, were sitting together, and before us was brought by A, the son of B, an erased note," etc. If one comes before the court claiming that he has lost a promissory note from so and so, etc. If one has presented a gift to his neighbor by a deed, if the deed was returned by the beneficiary the gift is considered returned. The following is the order of claims before the court. The lender comes to the court to complain that the borrower does not pay his debt, etc. Concerning deeds, they may write another one without mentioning the responsibility of the seller for the estate, etc. There was a woman who gave money to one that he might buy estates for her, etc. If one came to claim a field saying that he possesses a deed, and also that it was in his possession the years of hazakah, etc. If there was any forgery in the document, or there were incompetent witnesses, the transferring is not considered, 357-379

MISHNAS *VI*. TO *IX*. If one has paid a part of his debt, according to R. Jehudah the promissory note must be changed. According to R. Jose. the lender has to give a receipt for the amount paid. The Halakha prevails neither with R. Jehudah nor with R. Jose, etc. If the document was written at the date used by the government, and such a date fell on a Sabbath or on the Day of Atonement, etc. It happened with R. Itz'hak b. Joseph, who had money with R. Abba, etc. Abba said to his scribe. "When it shall happen that you have to write a document with a later date, you must write as follows: this document was postdated by us for a certain reason," etc. If one holds a promissory note for a hundred zuz, and requests that it shall be rewritten in two notes each of fifty zuz, etc. If there were two brothers, one rich and one poor, and they inherited from their father a bath-house, or an olive-press house, if for business they must share equally; but if for private use, etc. If there are two persons who bear one and the same name, they cannot give promissory notes to each other, nor to any of the inhabitants. If a promissory note was paid, etc. If one (while struggling with death) says to his son: "A promissory note among the notes I possess is paid, but I do not remember which," etc. If one made a loan to his neighbor through a surety, he must not collect first from the surety, etc. Whether a surety has to pay or not, R. Jehudah and R. lose differ, etc. If the surety said: "Lend to this man, and I am the surety," etc. If the expression was, "Give to him, and I will return you," then has the lender nothing to do with the borrower. There was a judge who transferred the estate of the borrower to the lender. before the lender had demanded his money from the borrower, etc. There was a surety for orphans who had paid the lender before he notified the orphans. If one was put under the ban because he declined to pay his debts. If the promissory

note of the deceased was in the hands of the surety, who claims to have paid the lender, etc. There was a surety for a deceased debtor to a heathen, who paid the heathen before he had demanded his debt from the Orphans. If one made himself surety to a woman for a marriage contract, etc. A sick person who has consecrated all his estates, and at the same time said "So and so has a mana with me," he may be trusted. A sick person who said: "A has a mana with me," and thereafter the orphans claimed that they have paid, they are to be trusted. If one borrows money on a promissory note, the lender has a right to collect from encumbered estates. If it happen that a creditor sees his debtor in the market, grapples him by the throat and one passes by and says, "Leave him alone, I will pay," he is nevertheless free, because the loan was made not upon his surety. Biblically there is no difference between a loan on a document and by word of mouth, and it should be collected from encumbered estates. A verbal loan is not collectible--neither from heirs nor from buyers. If the surety signed before the signatures, it may be collected from encumbered estates. Only a surety in the presence of the court is free from a sudarium, but all others are not. 379-395

Next: Chapter VI

TRACT BABA BATHRA (LAST GATE).

(PART II.)

CHAPTER VI.

RULES AND REGULATIONS CONCERNING THE SALE OF SEEDS WHICH BECOME SPOILED, THE QUANTITY OF DUST WHICH MAY OR MAY NOT BE ACCEPTED IN THE MEASURES OF GRAIN AND FRUIT, AND WINE WHICH BECOMES SOUR AFTER SALE BEFORE DELIVERY.--CONCERNING CONTRACTORS FOR HOUSES AND STABLES, WELLS AND GARDENS SITUATED IN NEIGHBORS' PROPERTIES OR PUBLIC THOROUGHFARES IN PRIVATE GROUND, AND CONCERNING GRAVES AND CAVES FOR BURYING.

MISHNA *I.*: If one sold fruit or grain (without any stipulation), and the buyer sowed it but it did not sprout, even if this were seed of flax, the seller is not responsible. R. Simeon b. Gamaliel, however, maintains that if he sold seeds for gardens, which could not be used for eating, the seller is responsible.

GEMARA: It was taught: If one sold an ox, and thereafter it was found it was a goring one, the sale is void according to Rabh. Samuel, however, said: The seller may say: "I sold it to you for slaughtering." Let us see: If the buyer was one of those that buy for slaughtering (*e.g.*, a butcher), why then should the sale be void according to Rabh? And if he was one who buys for working purposes (*e.g.*, a farmer), why should the sale be valid according to Samuel? It treats of one who buys for both purposes (*e.g.*, if he was both a farmer and a butcher). But even then, let us see the amount he paid for it, from which we can judge whether he bought for slaughtering or for work. It treats of where the meat has increased in price to the extent of the value of an ox for working. If so, what is the difference (the buyer gets the full value for his

money in any case,)? The difference is, if the trouble of slaughtering and selling the meat should be taken into consideration (according to Rabh it should, and therefore the sale is void; and according to Samuel it should not). Again, let us see how was the case. If the seller has no cash to return, why, according to Rabh, should the sale be void, so that the buyer has to return the ox? Let him keep the ox for his money; as people say: "If you keep something in hand belonging to your debtor, even if it is bran, take the trouble to make money by it." It means when the seller is not lacking in cash. According to Rabh, the sale is void because the majority must always be taken into consideration, and the majority of cattle-buyers are traders; and Samuel maintains that only in prohibitory laws the majority is to be taken into consideration, but not in money matters.

Come and hear an objection from the following (First Gate, V., Mishna I.): "Should an ox gore a cow and the new-born calf be found dead at her side, and it be not known," etc. (see there, end

of the Mishna, p. 106). Now, according to the theory of our Mishna, the decision of the cited Mishna would not be correct, as the majority of cattle should be taken into consideration, which conceive and bring forth living offspring. Hence the dead one found at her side is dead because of the goring. Why, then, is it considered doubtful there? The doubt was, if the ox gored the cow in front, so that the premature birth took place because of terror before goring, or if the cow was gored in the back, and the premature birth was occasioned by the goring, and therefore the extent of the injury is considered doubtful. And there is a rule that such be divided.

Shall we assume that the point of difference between Rabh and Samuel is the same as that in which the Tanaim of the following Boraitha differ? "If an ox was pasturing and another one was found killed at his side, although investigation shows that the death occurred from goring, and the pasturing ox was vicious in goring, or the death occurred from biting, and the pasturing ox was vicious in biting, it is still uncertain that this ox has gored or bitten the other." R. Aha, however, said: If there was found a camel killed at the side of a biting camel, although the latter was not yet vicious, it must be taken

for a certainty that he killed the other. The schoolmen thought majority and hazakah [1] identical; for as a goring or a biting animal has a hazakah to gore, bite, and kill, it is to be taken for a certainty that the gored or bitten one found at his side was killed by him, and the same is the case with the majority.

Is it not to assume that Rabh holds with R. Aha, and Samuel with the first Tana?

Nay! Rabh may say: My decision is correct, even in accordance with the first Tana of the cited Boraitha, as the reason of his decision is not majority, but hazakah"--*i.e.*, there was not a majority of vicious oxen, but one, which had a habit (hazakah) of goring or biting, as hazakah and majority are not identical; but if there should be a majority, it would be taken into consideration. And, also, Samuel may say: My decision is correct, even in accordance with R. Aha, as his reason is the habit (hazakah) of that animal which was found near, and a majority would not be taken into consideration.

Come and hear an objection from our Mishna, which states that the seller is not responsible, even for seeds of flax. Does not the term "even" mean, although the majority is for sowing, and nevertheless it is not taken into consideration? Hence it opposes Rabh? In this point the Tanaim of the following Boraitha differ: "If one sold fruit, and the buyer has sown it but it did not sprout, if it was garden seed, which could not be used for eating, he is responsible; but if it was seed of flax, he is not." R. Jose, however, said that the seller has to return to the buyer the value of the seed, as the majority buy it for sowing only. The sages, however, answered him: There are many who buy it for other purposes.

But who of the Tanaim in this Boraitha hold not the theory of majority? Shall we assume that it means R. Jose; and the sages answered *him* that there are many people who buy seeds, etc.? Then all of them hold the theory of majority, but one takes into consideration the majority of the seed (*i.e.*, the majority of seed which is bought for sowing, and the other the majority of men)? Therefore we must say that it means, the difference of opinion between the first Tana and R. Jose, or the difference of opinion between the first Tana and the sages,

who answered *him* (*i.e.*, the statement in the Boraitha, "and they said to him," means the first Tana, not R. Jose).

The rabbis taught: "The seller has to return to the buyer the value of the seed, but not the expenses for ploughing, sowing, etc.; according to others, however, the expenses also." Who are the others? Said R. Hisda: R. Simeon b. Gamaliel. Which R. Simeon b. Gamaliel? Shall we assume from our Mishna, which states that for seeds which could not be used for eating, he is responsible, and from the first Tana's statement, that the seller is not responsible for seeds of flax, that it is to be inferred for seeds of flax only, but for other seeds which cannot be used for eating, the Tana is also of the opinion that the seller is responsible? Then they do not differ at all. Therefore it must be said that they differ in the expenses, the first Tana holding the seller must return the value of the seeds only, and R. Simeon all the expenses also (and so R. Hisda means R. Simeon of our Mishna). But perhaps the reverse is the case--R. Simeon holds the value of the seeds only, while the first Tana holds the expenses also? This presents no difficulty; for as usual the second Tana adds something. But perhaps the entire Mishna is in accordancewith R. Simeon and is not complete, but should read thus: If one sells fruits and they were sown and did not sprout, even if they were seeds of flax, he is not responsible. Such is the decree of R. Simeon b. Gamaliel, who holds that only for garden seeds that cannot be used for eating the seller is responsible. Therefore we must say that R. Hisda means R. Simeon b. Gamaliel of the following Boraitha: "If one delivered wheat for grinding of fine meal, but the miller did not properly grind it, but made it into bruised grain or bran; or if meal were delivered to a baker and he did not bake it properly, but when he took it out it fell to pieces; or if an ox were delivered to a slaughterer, and he made it illegal, each of these persons is responsible, as they are considered bailees for hire." R. Simeon b. Gamaliel said, that they not only have to pay the damages, but also for the shame of the owner in the eyes of the guests who were invited to the meal, as well as for the shame of the guests themselves; and so the same R. Simeon used to say: There was a great custom in Jerusalem, if one ordered a banquet for guests, and the host spoiled it, he had to pay for his own shame, and for the shame

of the guests. There was also another great custom in Jerusalem: "a flag was put at the door where a banquet was to be given, and the invited guests had to enter only when the flag was still at the door, but when it was taken off they were not to enter any more."

MISHNA *II*.: If one buys fruit, he has to accept a quarter' of a kabh of dust on a saah; of dry figs, he has to accept ten wormy ones in a hundred; on a cellar of wine, he must accept ten harsh ones on each hundred; if he sells him earthen jugs made in Sharon he has to accept ten unglazed ones on each hundred.

GEMARA: R. K'tina taught: By a quarter of a kabh of dust is meant peas, but not earth proper. Is that so? Did not Rabba b. Hyya Ktuspha'h say in the name of Rabba: If one has cleaned off little stones from the barn of his neighbor he has to pay him the value of wheat (*i.e.*, as if they were there, he may put them in the measure, but to put them intentionally he is not allowed)? Peas, he has to accept a quarter of a kabh on a saah, but dust he has also to accept, although a less quantity. You say less than a quarter of dust, but did not the following Boraitha state: "If

one sells wheat, he has to accept a quarter of a kabh of peas on a saah; if barley, a quarter of chaff on a saah; and if lentils, a quarter of dust." Is it not to assume that a quarter of dust is to be accepted for wheat and barley also? With lentils it is different, because they are not cut, but torn out from earth, and therefore usually a great deal of dust remains with them, which is not the case with wheat and barley; but if it is so, infer from this that for wheat and barley no dust must be accepted at all, while it is stated above that less than a kabh is to be accepted? Nay, from the statement that for lentils he has to accept a quarter nothing is to be inferred; this being stated, lest one say because there is usually much dust more than this quantity is to be accepted, it comes to teach us that it is not so.

R. Huna said: If the buyer has found more than the above prescribed quantity and sieves it, he may sieve the whole quantity he bought, without leaving any dust at all, and the seller has to fill the measure without allowing for the prescribed quantity. According to some it is the strict law, as usually one gives his money for clean fruit, but if for a trifle of dust, as

much as a quarter of a kabh on a saah, the buyer is not very particular and does not take the trouble to sieve it; but in our case, when he is compelled to trouble himself with sieving, he may make the whole fruit extremely clean; and according to others, it is a fine, as usually no more than a quarter of a kabh ought to be found in a saah, and when there was found more, it is presumed that the seller put it in intentionally, and therefore he is fined by the rabbis.

Come and hear an objection from the following Boraitha: "If a planter undertakes to plant a field with fruit trees, the owner of it must accept empty space for ten trees on each hundred, but if, however, it was found empty for more than this, he has to plant trees on the whole empty space." Hence is R. Huna's above statement law? Said R. Huna b. R. Jehoshua: This is not a support to R. Huna, as an empty place for more than ten trees is to be considered as a separate field, and the planter who undertook to plant the owner's fields is to be considered as if he had to begin the planting in this empty field, and therefore he has to plant the whole field, which case is not similar to that of R. Huna.

"*If he sold a cellar of wine*," etc. Let us see how is the case. Whether the seller said to the buyer, "I sell you a cellar of wine" or "this cellar of wine," it is a difficulty from the following Boraitha. "If he said 'I sell you a cellar of wine,' all of it must be good; if '*this* cellar of wine,' he must give him wine which is sold in the retail stores; but if he said, 'I sell you *this* cellar,' even if it was found to be all vinegar, the sale is valid." Our Mishna speaks of the case wherein the seller said, "*a* cellar of wine," and there is no contradiction of the cited Boraitha as it should read, and the buyer has to accept the ten spoiled ones in the hundred. But has not R. Hyya taught: If one sells a barrel of wine, he must give the buyer all good wine? With one barrel it is different, as a barrel contains only one kind of wine; but has not R. Z'bid in the name of the school of R. Ossiah taught in "a cellar of wine" all must be good, in "the cellar of wine" the seller must give the buyer all good wine, but the latter must accept ten bad in the hundred; and this is the word *Outzar* ("treasure of wine") which the sages have taught in our Mishna? Therefore it must be said that our Mishna treats of the case wherein the seller said

[paragraph continues] "this cellar," and the contradiction from the above Boraitha in the case, if "this

cellar," presents no difficulty, as R. Z'bid says, if the seller told the buyer, "I sell you wine for keeping," and the Boraitha says the words "for keeping" were not said, and therefore (the Halakha prevails thus) if the seller said, "a cellar of wine for keeping," all of it must be good; if "*this* cellar of wine for keeping," the buyer must accept ten in the hundred; if "*this* cellar of wine," without the addition "for keeping," the seller may give the buyer wine that is sold in retail stores.

The schoolmen propounded a question; How is it if the seller said, "a cellar of wine," without the addition "for keeping"? On this point R. Aha and Rabhina differ. According to one the buyer has to accept ten in the hundred, and according to the other he has not, the one who says "he must accept" inferring it from R. Z'bid, who states in the case of "a cellar of wine," all of it must be good, and it was explained above that he speaks of the case in which the seller added "for keeping," from which it is to be inferred that if these words were not added, the buyer must accept; and the other, who says the buyer must not, infers from the above Boraitha, which states in the case of "a cellar of wine" all of it must be good; and it was explained above that the Boraitha treats of the case wherein "for keeping" was not said. But to him who infers from R. Z'bid, is not the Boraitha contradictory? He may say the Boraitha is not completed, but should read thus: This is said, if the seller told the buyer "for keeping," but if not, the buyer must accept, and if the seller said "this cellar of wine" without any addition, he may give the buyer wine which is sold in the stores; but to him who infers from the Boraitha, is not R. Z'bid contradictory who, as explained, said that the seller told the buyer the wine was "for keeping"? He may say that the same is the case if the seller did not say "for keeping," and the above explanation was only in order that the Boraitha and R. Z'bid might not contradict each other; in reality, however, R. Z'bid does not agree with the Boraitha.

R. Jehudah said: On wine which is sold in stores the usual benediction may be made. (The benediction is, "Blessed be Thou the Lord our God King of the Universe who hast created the products of the vine.") and R. Jehudah means to say that

although the wine in stores is usually bad, it is still called the product of the vine. R. Hisda, however, said: What have we to do with such a wine (*i.e.*, how can such wine be called a product of the vine)?

An objection was raised: In the case of moulded bread and sour wine, and any dish of which the appearance is spoiled, the benediction should be "That all is created by His words" (hence it contradicts R. Jehudah). Said R. Z'bid: R. Jehudah admits that over wine made of kernels, which is usually sold on the corners of streets, the right benediction may be said. Said Abayi to R. Joseph: "There is R. Jehudah, and there is R. Hisda, each of them with his opinion; I would like to know how is yours, master?" And he answered, "I am aware of the following Boraitha: 'If one examine a barrel of wine for the purpose of separating heave-offering from it, for all others, and he did so for a month or two, and thereafter it was found that the wine turned into vinegar, three days is considered certain, and further on doubtful.' How is this to be understood? Said R. Johanan thus: The first three days from the examination it is to be considered certainly wine, and thereafter it is to be considered doubtful. Why so? Because usually wine becomes sour from the top, and when he tasted it, it was not sour, and if you say it had become sour immediately after he tasted it, the smell only was vinegar-like, but the taste still of wine (as the sages had a tradition that less than three days from the beginning it becomes not vinegar) and such is

considered wine. R. Jehoshua b. Levi, however, said that all he separated in the last three days is certainly vinegar, but previous to that it is doubtful. Why so? Because usually wine begins to turn sour from the bottom, and maybe when he tasted it it was sour already, of which he was not aware; and even should I admit that wine begins to turn sour from the top, my decision is still correct as it may be that it began to turn sour immediately after being tasted, and I hold that if it smells of vinegar, though the taste is still of wine, it must be considered vinegar" (hence according to R. Jehoshua b. Levi the wine which is sold in stores is not considered wine at all, and according to R. Johanan it is considered wine).

The sages of the South taught in the name of R. Jehoshua b. Levi thus: The first three days it should be considered as wine,

the last three days as vinegar, and in the days between as doubtful. But does this statement not contradict itself? The first three days it certainly is wine, hence if the smell is of vinegar and the taste of wine, it is considered wine; and thereafter they said, the last three days it is certainly vinegar, from which it is to be inferred that if the smell is of vinegar and the taste of wine, it is considered vinegar. The case was that it was found wholly strong vinegar, and it is stated above that it takes no less than three days after it turns sour to become wholly vinegar; hence it is to be supposed that in the last three days it was already vinegar. However, according to which of these two was the conclusion of R. Joseph? In this, also, R. Mari and R. Z'bid differ, one saying that his conclusion was in accordance with R. Johanan, and the other saying it was in accordance with R. Jehoshua b. Levi.

It was taught: If one sells a barrel of wine and it turns sour, according to Rabh the first three days it is considered tinder the control of the seller, and thereafter "it is considered under the control of the buyer." Samuel, however, maintains that the seller is not responsible even when it was still in his barrel, as this is to be considered the fate of the buyer.

R. Joseph acted in accordance with Rabh concerning beer of dates, and according to Samuel with wine, the Halakha, according to Samuel, however, prevails in every respect. [1]

MISHNA *III*.: If one sells wine and it turns sour, the seller is not responsible; if, however, it was known that the nature of his wine was to turn sour (and the buyer was not aware of it), the sale is void. If he said, "I sell you wine, prepared with spices, in good order," the wine must remain in good order until the feast of Pentecost. (Afterward it may become spoiled by heat.) If the seller sold the buyer old wine, it must be from last year; and if he said "very old," it must be aged not less than three years.

GEMARA: Said R. Jose b. Hanina: All this is said of the case wherein it was delivered to the buyer in his own jugs; but if it was placed in the jugs of the seller, the buyer might say: "Here are your jugs and your wine." Why then may not

the seller claim: You ought not to keep it so long? It means that while selling, the seller told the buyer "for keeping." But what compels R. Jose to such a difficult interpretation, in which the

jugs were the buyer's, and the seller says "for keeping"? Why is it not simply said that the jugs were the seller's and he said nothing? Said Rabha: It is because the further statement of the Mishna, "that if it was known that the nature of the seller's wine was to turn sour the sale is void" was a difficulty to him. Why, then, let the seller claim he ought not to keep it so long? We must then say, that the Mishna treats of the case wherein the seller told the buyer "for keeping" (he therefore interpreted the whole Mishna, that such was the stipulation), and infer from this that so it is. He, however, differs with R. Hyya b. Joseph, who said that the fate of one causes the spoiling of his wine; as it is written [Habakkuk, ii. 5]: "And even the wine of a proud man rebels."

Said R. Mari: If one is proud, he is not tolerated even by his family, as the above verse reads "the proud man whose house will not stand," which is to say that he is not tolerated by his household. R. Jehudah in the name of Rabh said: A commoner who disguises himself in the garment of a scholar, cannot enter into the habitation of the Holy One, blessed be He; and this is deduced from an analogy of expression, *Nvie*, which is to be found in Ex. xv. 13. The Hebrew expression in the above cited verse is also *Y'nvie* (literally, "dwelling," "inhabit").

Rabha said: "If one sells a barrel of wine to a storekeeper (with the stipulation that he shall sell it at retail and then pay the owner), and a half or a third of the wine turns sour, the law is that the seller must accept the return of his wine; and this is said only in case the faucet was not changed by the storekeeper, but if it was changed and placed near to yeast, there is no responsibility, and there is also no responsibility if the storekeeper kept the wine over the market day." He said again: "If one has accepted wine for half interest, with the intention of taking it to the suburb of Dwulchpht (where usually wine is dear), and by the time it reached there the price was lowered, the law is that the owner has to accept the return of the wine." The schoolmen propounded a question: How is it when the same was vinegar? Said R. Hillel to R. Ashi:

[paragraph continues] When we were at R. Kahana's he said to us, the same is the case with vinegar, as he agrees with R. Jose b. Hanina's statement above.

"*Old wine*," etc. A Boraitha in addition to our Mishna states that if it was said, "very old wine, it must keep its good quality until the feast of tabernacle in the third year."

MISHNA *IV.*: If one sells to one a place for the purpose of building a wedding-house for his son or a widow-house for his daughter, and the same is the case if a contractor undertakes to build such for him, the size must be not less than four ells in length by six in breadth; such is the decree of R. Aqiba. R. Ishmael, however, maintains that this is the size of a stable. If one wishes to build a stable for cattle, he builds it four by six. The smallest house is no less than six by eight, a large one eight by ten, and a triclinum (restaurant) ten by ten, and the height must be a half of its length and of its width. An example of this, said R. Simeon b. Gamaliel, was the building of the Temple.

GEMARA: Why does the Mishna state "a wedding-house for his son and a widow-house for his daughter"? Let it state a wedding or a widow house for his son or daughter. The Mishna incidentally teaches us that it is not a good custom for a son-in-law to dwell with his father-in-law, as it is written in the book of Ben Sira: "I have weighed everything on the scale and did not

find a thing to be lighter than bran; however, a groom who resides in the house of his father-in-law is lighter than bran, and still lighter than he is an invited guest who brings with him an uninvited companion, and still lighter is the one who answers before he has heard thoroughly the question, as it is written [Prov. xviii. 13]: 'When one returneth an answer before he understandeth (the question), it is a folly unto him and a shame.'"

"*If one wishes to build a stable*," etc. Who said this? According to some, R. Aqiba himself, and he said so; and although this is the size of a stable for cattle, it nevertheless happens that human beings live in such a building (and as the seller or the contractor did not stipulate the size, the minimum may be taken). Others say R. Ishmael taught this saying: That if one wishes to build a stable, it is the size of four by six.

"*Triclinum*," etc. There is a Boraitha: For a *quantir*,

twelve ells square is needed. What does it mean? A fore yard?

"*An example of this*," etc. Who taught this? Some say R. Simeon b. Gamaliel, and it should read thus. Whence is this deduced? Said R. Simeon b. Gamaliel: All must be judged according to the building of the Temple, and some say that the first Tana taught an example of it (and he was about to finish his statement with "the building of the Temple," but R. Simeon b. Gamaliel interrupted him saying:) Do you want to compare all common buildings with the building of the Temple; do all people build such buildings?

We have learned in a Boraitha: Anonymous teachers say the height must be not less than the length of the crossbeams of the ceiling. But why not say, simply, the height must be as the width? If you wish, it may be said that usually a house is wider at the top than at the bottom; and if you wish, it may be said that, because the ends of the beams are placed in the enclosures of the wall, they are longer than the width of the house.

MISHNA *V.*: If one possesses a well, situated on the other side of his neighbor's house (by inheritance, or even bought from him with a path), so that when water is needed he must pass through the house, he may enter and leave at the time people usually enter and leave. However, he is not allowed to take his cattle to the well, but he has to take water for them outside of the house and water them. The owner of the well, as well as the owner of the house, has a right to put a lock on it.

GEMARA: A lock on what? Said R. Johanan: Both locks may be put on the well. It is right that the owner of the well should put a lock on his well, so that no one can use the water; but for what purpose should the owner of the house put a lock on it? Said R. Elazar: Lest his neighbor, while passing his house to the well in his absence, should remain alone with his wife.

MISHNA *VI.*: If one has a garden inside of his neighbor's garden, he may enter and leave only when people are wont to do so. He must not take buyers with him to his garden, and be also has no right to pass through his neighbor's garden for the purpose of entering another field conjoining this one, when he has no business in his own garden; and only the owner of

the outside garden has a right to sow the path. If, however, a path was designated to him by court, on the side, with the consent of both parties, then he may enter and leave whenever he pleases and may also take with him buyers; however, the right to pass through to another field is not given, and neither of them has the right to sow the path.

GEMARA: R. Jehudah in the name of Samuel said: If one says, "I sell you a place of one ell for digging a well to water your dry land," it must contain the width of two ells, and he also has to add him two ells from his field to the edges of the well, on which to erect walls to prevent the overflow of the water; and if he said, "I sell you an ell for making a sewer," it must be one ell wide and one-half ell to each edge. But who has a right to sow the edges (while the walls were not as yet trade)? R. Jehudah in the name of Samuel said: The owner of the field; and R. Nharnan in the name of Samuel said: The owner of the field may plant trees there, but not sow it, as by sowing he harms the water.

R. Jehudah in the name of Samuel said again: If the walls of a channel fall, the owner of it may repair it from the material of the field upon which the walls were placed; as certainly they fall on the same field where they were placed (but the material was scattered by the wind all over the field). R. Papa, however, opposed, saying that the owner of the field may claim that the water of "your well has underwashed the material and caused it to fall"; therefore he gave another reason, that such a stipulation must have been in existence when he hired that place, for otherwise he would not have wasted his money.

MISHNA *VII.*: If there was a public thoroughfare through one's field and he took it for himself and designated another one at the side of his field, what he has given is considered the public's, and to that which he took for himself he does not acquire title. If one sells a path in his field for a private thoroughfare it must be four ells, for the public it must be no less than sixteen. A way for the government has no limit. The way for carrying a corpse to the grave has also no limit; however, the space where the people stand for condoling was determined by the judges of Ziboras of a space where four kabhs may be sown.

GEMARA: Why should he not acquire title to that thoroughfare

he took for himself, when he designated another one for the public; let him take a stick with which to drive off intruders, or do you want to infer from this that one cannot take. the law in his own hands, even when he suffered damage? Said R. Zebid in the name of Rabha: It is to be feared that if this would be allowed, one would give to the public a crooked way; but R. Mesharshia in the name of Rabha said that our Mishna treats of a case wherein the owner of the field has designated such. R. Ashi, however, maintains that a way which is placed; at one side is considered crooked, because it is near to one who resides near to this side, while it is far to him who resides on the other side, (and therefore he does not acquire title) to that which he took. But let him say to the public, "take your way and return mine" (and the Mishna states what he has given is lost). It is in accordance with R. Eliezer of the following Boraitha: "R. Jehudah said in the name of R. Eliezer, if the public has chosen a way for itself, what was done remains." But may the public be robbers, according to R. Eliezer? Said R. Gid'l in the name of Rabh: He

speaks in case the public has lost a way in this field (*i.e.*, some time ago there was a thoroughfare which afterwards was lost). If so, why then said Rabba b. R. Huna in the name of Rabh that the Halakha does not prevail with R. Eliezer? The one who has taught this statement was not aware of the other statement (*i.e.*, R. Gid'l does not approve the statement of Rabba b. R. Huna in the name of Rabh). But according to Rabba b. R. Huna, what is the reason of our Mishna's statement, that of R. Jehuda, who said above (p. 145) that a path of which the public took charge must not be spoiled? By which act did the public acquire title to the thoroughfare, according to R. Eliezer? By passing, as we have learned in the following Boraitha: If one passed (in an ownerless field) on its length and breadth he acquired title to the place he has passed, so is the decree of R. Eliezer. The sages, however, maintain that passing has no effect at all, and title is not acquired unless he makes a hazakah. Said R. Elazar: The reason of R. Eliezer is the following verse [Genesis, xiii. 17]: "Arise, walk through the land in the length of it and in the breadth of it, for unto thee I will give it." The sages say this cannot be taken for a support, however, as Abraham was beloved by Heaven, and it was said to him for

the purpose of making easier for his children the subjection of the land. Said R. Jose b. Hanina: The sages admit to R. Eliezer in case of a footpath between vineyards, because it was made for passing, title is also given by passing. When such a case came before R. Itz'hak b. Ami he decided that the plaintiff should get a footpath upon which he should be able to carry a bundle of branches on his shoulders, which in turning here and there should not touch the walls. But this is said in a case wherein the places for the walls are not yet designated; but if they were, the space should be given him, so as to put one foot after the other.

"*For a private*," etc. There is a Boraitha: Anonymous teachers say: "As much as an ass with its load could pass." The judges of the exile said: Two cubits and a half. And R. Huna said: The Halakha prevails with them. But did not R. Huna say elsewhere that the Halakha prevails with the anonymous teachers? The limit of both is "equal."

"*A public thoroughfare is sixteen ells*." The rabbis taught: A private way is four ells, a way from one city to the other is eight ells, a public way is sixteen ells, and the way to the cities of refuge (Num. xxxv. ii) thirty-two. [Said R. Huna: Whence is this deduced? From the Scripture (Deut. xix. 3): "*The* way to *them*." It should be "a way," and the word "the" makes it double.] The way of the government has no limit, as the king has the right to erect partitions, houses, and no one has a right to prevent him, and the way for burying a corpse has no limit, because of the honor of the dead. [1]

MISHNA *VIII*.: If one sells a place for digging a grave, or an undertaker makes a grave for one, the inside of the cave must be four by six, and opening into it eight niches for coffins, three on each side and two at the top and bottom. The length of the niches is four ells, the height seven spans, and the width six. R. Simeon, however, said: The inside of the cave must be six by eight, the niches must be thirteen, four on each side, three on the upper side, and one on the right side of the door and one on the left. He also makes a fore yard at the mouth of the cave six ells square, as much as the coffin with its carrier needs. He also has to open to this fore yard two,

caves from two sides. R. Simeon, however, said four to all its four sides. R. Simeon b. Gamaliel, however, maintains that all must be done according to the rock (*i.e.*, if the earth is soft more niches could be made, but if rocky the number must be limited accordingly).

GEMARA: The two niches which R. Simeon requires, one on the right side of the door, etc., how shall he dig them? If their length should be dug from the wall of the cave under the fore yard, then they will be trodden down; furthermore, there is a Mishna to the effect that one who stands in the yard of a grave is clean, but if the niches should be dug under the yard the one who stands above would not be clean. Said R. Jose b. R. Hanina: He made the niches like an upright bolt; *i.e.*, placed the bodies in an upright position. But did not R. Johanan say that asses are buried in like manner? According to him, the niches should be made in the corners. But then each of them would come in contact with the other. Said R. Ashi: If he makes those in the corners deeper (according to R. Simeon, who said that four niches must be on each side), if they were all equally dug they would come in contact. It must be said that he digs some of them deeper, and the same may be said here. [1] R. Huna b. R. Jehoshuah, however, maintains that he makes the niches crooked. (Says the Gemara:) This statement does not hold, as according to it he would have to make eight inches in the space of eleven and one-fifth ells, which is impossible. [2]

Footnotes

217:1 The translation of "hazakah" is chiefly "occupancy"; however, this term is applicable to everything which is the habit of persons, animals, etc.

223:1 The text treats concerning the benedictions on wine, beer, etc., for which the proper place is the Tract Benediction, and to which it will be transferred

229:1 The continuation of the text about graves and condolence, etc., we have translated to Tract Great Mourning, page 60.

230:1 The text is so complicated here that the commentators have to make many illustrations, and after all the matter is hardly understood. However, according to our method we could not omit this, as it is essential from the historical point of view to know how these graves are made. We have done our best to make it intelligible.

230:2 In the text are also mathematical calculations by the rule that one ell square contains one ell and two-fifths when crooked, which is not exactly correct. We have already mentioned this in a foot-note in Erubin, and therefore we have omitted the whole discussion here.

Next: Chapter VII

CHAPTER VII.

RULES AND REGULATIONS CONCERNING ROCKS AND PITS IN GROUND SOLD; THE QUANTITIES OF GREATER OR LESS MEASURE WHICH MAY OR MAY NOT VOID A SALE OF FIELDS, VILLAGES, ETC.

MISHNA *I*.: If one says: "I sell you earth the size where one kur can be sown, and there were crevices ten spans deep, or rocks ten spans high," they are not measured, but if less than that size they are measured. If, however, he said to him, "about the size of a kur," and there were crevices or rocks even more than the size of ten spans, they are measured.

GEMARA: Said R. Itz'hak: The statement of the Mishna about rocks and crevices which are measured when they are less than ten spans holds good only when all of them together do not measure four kabhs, but not if they do. Said R. Uqba b. Hama: Even then they are measured only when they are scattered within five kabhs space (but in less they are not measured); and R. Hyya b. Abba in the name of R. Johanan says that five kabhs do not suffice, and they are measured only when they are scattered within the greater part of the field, which is at least sixteen kabhs, as a kur is thirty kabhs; and R. Hyya b. Abba himself questioned: How is the law according (to R. Johanan's theory) if the greater part of the rocks in question were scattered within the smaller part of the field, and the smaller part of them within the larger part of the field (and if altogether they measured four kabhs)? These questions are not decided. 1

There is a Boraitha: "If there were a single rock (but it bears a separate name; *e.g.*, 'the west rock') even if of less than ten spans, it is not measured; and also if the rock were placed

near to the boundary, whatever size it may be it is not measured." 1

MISHNA *II*.: "I sell you earth of the size wherein a kur can be sown, measured with a line." If there were a trifle less, he may deduct; if a trifle more, the buyer has to return it. If, however, the seller says "about this size, a little more or less," even if there were less than a quarter of a kabh on each saah, the sale is valid; but if it were more than that size, an account must be taken. In case the buyer has to make return, it shall be in money; however, if he wishes to return him land, he may do so. And why was it said that the buyer should return the seller money? To favor the seller, so that if there were a trifle more the buyer should not have the right to return him this trifle, which the seller could not use; but if there were a kabh and a half more than the prescribed size, it means in the case of nine kabhs of land in a field and a half kabh in a garden, and according to R. Aqiba even a quarter of a kabh, then the buyer may return the land, and not only the land which is in excess of the prescribed size, but even that of this prescribed size itself is to be returned with the other.

GEMARA: The schoolmen propounded a question: If the seller said "the size of a kur," without any addition, how is the law? Come and hear. If the seller says, "I sell you an estate the size of a kur," or "about the size of a kur, a little less or more, I sell you," and thereafter it were found a quarter of a kabh less or more to a saah, the sale is valid. Hence we see that even if be does not add to the words "the size of a kur," it is the same as if he would say "about." Nay, the Boraitha is to be explained thus: The last part of the Boraitha explains the first part. If one says, "I sell you of the size of a kur," "about" is to be understood in case he should add a trifle less or more. R. Ashi objected: If this were so, why the repetition "I sell you, I sell you"? Therefore the Boraitha is to be explained as above, that the size of a kur means "about," and so it is.

"*It shall be in money*." We see from this that the advantage of the seller and not the buyer is taken into consideration; but

valid? If, however, the estate is larger, the court compels both the seller to sell and the buyer to buy; hence we see that the advantage of both is taken into consideration? (*I.e.*, that even have we not learned in the following Boraitha: If there were less or more than seven kabhs and a half on a kur, the sale is if the seller insists that the excess should be returned to him, he is not to be listened to if it is an advantage for the buyer to have it.) The Boraitha treats that at the time it was found over the prescribed size, the estate was lower in price and the seller willing to sell. Therefore we say to the buyer, "You may reckon it at the existing price," and the same is said to the seller, "If you do not wish the estate to be returned to you, you must accept the existing price." But have we not learned in another Boraitha that if the buyer compensates the seller, he must reckon at the previous rate? That Boraitha speaks that when the reverse was the case, the price was low at the time of the sale and became higher after it was known that there was an excess over the prescribed size.

"*It means in the case of nine kabhs*," etc. Said R. Huna: This applies even in a valley which is of more than ten kurs. R. Na'hman, however, says seven and a half to each kur; but if there were a kabh and a half more (which counts nine kabhs) even to one kur, all must be returned, even if to the other kurs the addition were not over the prescribed size. Rabha objected R. Na'hman from our Mishna, which states that if he left nine kabhs in a field, etc. Does not the Mishna mean at least two kurs as the size of the usual field? Nay, it means one kur. Farther on, in a garden, a half of a kabh is given as the minimum of excess. Does it not mean at least two saahs, as usually a garden is called of that size? Nay, it means one saah, and according to R. Aqiba one quarter. Does it not mean, if the garden was a saah? Nay, it means if it was half a saah. R. Ashi questioned: If one sold a field, and afterwards, but before the money was paid, it became a garden, and there were found more than a quarter to a saah, but it should not reach the size of nine kabhs or *vice versa*, how should the prescribed size be reckoned--as that of a field or that of a garden? This question remains undecided.

There is a Boraitha: "If the estate over the prescribed size sold was conjoined with the other estate of the seller, even if

that were but a trifle, the buyer has to return the seller the estate." R. Ashi questioned: How is

the law if there were a well between this estate sold and the other estate of the seller, a channel, a public thoroughfare, or a row of trees, should these constitute lines of demarcation or not? This question remains undecided.

"*And not only the land which is in excess*," etc. How is this to be understood? Taught Rabhin b. R. Na'hman: Not only that which was over the prescribed size the buyer returns the seller, but all the quarters to each kur, although the rest be not over the prescribed size, he must return.

MISHNA *III*.: "I sell you the estate with a measurement, a trifle more or less." The last words, "more or less," nullify those preceding them. "I sell you a trifle more or less to be measured with a line." The last words here nullify the preceding ones (and the seller must give the purchaser a just measurement; so that if the land were in excess, the excess must be returned, and if less the seller must supply the deficiency), such is the decree of ben Nanas.

GEMARA: Said R. Abba b. Mamal in the name of Rabh: "The colleagues of ben Nanas differ with him." What came he to teach us? Have we not learned in the Middle Gate, p. 269, Mishna 8, that it happened in Ciphorius that one rented a bath-house for twelve golden dinars a year? The payment was to be one dinar monthly; and thereafter the year was made intercalary. When the case came before R. Simeon b. Gamaliel and R. Jose they decided that the payment for the intercalated time should be made at the same rate as for the ordinary time. If from that Mishna one says that the last words, "one dinar monthly," are to be interpreted as a retraction of the first words, "twelve a year," the last words, "a dinar monthly," may also be interpreted as explaining the former, "twelve a year" (over which the sages differed with ben Nanas); however, here, in that the last words cannot be interpreted as an explanation, but as a retraction of the former, the sages agree with him. He comes to teach us that they differ also in this case. R. Jehudah in the name of Samuel said: This which is taught in our Mishna is in the words of ben Nanas, but the sages say that the shorter expression must always have the greater weight (*i.e.*, "with a measurement" is shorter than "a

trifle less or more"), no matter whether the shorter phrase were said before or after the longer one. Says the Gemara: Shall we assume that with the expression "this" Samuel meant to say that he himself does not agree with him? Do not both Rabh and Samuel say (p. 188) that if one said "a kur for thirty selas," he may retract even at the last saah; and if he added each saah for one sela, to all which was measured title is acquired, which corresponds with the decision of ben Nanas? Therefore we must say that he meant to say "this," and I agree therewith. But is that so? Did not Samuel say (Middle Gate, p. 270): "The decision was so made . . ." but if they had appeared in the beginning, would it be entirely the owner's; and if in the end, the renter's? (This, at all events, cannot correspond with ben Nanas' decision.) Therefore it must be said again that by the word "this" he means that "I do not agree," and the reason of his decision in the case of each saah for selah is because that which was measured is considered already in his hands, and the same is the case with the rent for the intercalary month; if at the end of the month, it belongs to the renter, because it is already in his hand. R. Huna said: It was said in the college of Rabh: If one said: "I sell this to you for an *istra* a hundred *moahs*, he must give him a hundred moahs; but if he says a hundred moahs an istra he has to give him an istra although it is less in value than a hundred moahs."

What came he to teach us--that the last expression must be considered? Has not Rabh said this

already concerning the case of the cited Mishna (page 270): "If I were there, I should give it to the owner of the house" (and that is because the last words were "a dinar monthly")? Lest one should say that in one case the last words ("hundred moahs," or *vice versa*) are to be considered as an explanation to the first words, he comes to teach us that it is not so.

MISHNA *IV*.: If one says, "I sell you this estate, the size of a kur, with its marks and boundaries;" and afterwards it were found that the size is less than stipulated--if it were less than a sixth of the whole size, the sale is valid; but if there were a sixth wanting, the buyer may deduct from the payment.

GEMARA: It was taught: R. Huna and R. Jehudah differ in the explanation of our Mishna. According to the former

the Mishna means that an exact sixth should be considered as less than a sixth, and the Mishna is to be explained thus: "With less than a sixth wanting, a sixth inclusive, the sale is valid." If, however, more than a sixth is wanting, it may be deducted. According to R. Jehudah the Mishna means that an exact sixth is to be considered as more, and it is to be explained thus: "With less than a sixth wanting the sale is valid; a sixth, however, or more wanting is to be deducted."

An objection was raised from the following Tosephtha: "With its marks and boundaries, and there was a sixth less or a sixth more, it parallels a case wherein the court appraises an estate, and the sale is valid." Now we know that in a case wherein the court appraises, if there were an error as to an exact sixth, it is considered as if it were more, and the appraisement is void; hence this contradicts R. Huna? R. Huna may say that there is no contradiction, as the Tosephtha ends with the words "the sale is valid," and if this paralleled the case wherein the court appraises, how could it be valid in case there were more than a sixth? Does not the law provide that in the case of an error of the court in more than a sixth, the appraisemerit is void? It must be said then that it is parallel in one respect but not in the other; and it is to be explained thus: It parallels the case wherein the court appraises with an error of less than a sixth (which does not affect the appraisement), but it does not parallel the case in which the error of the court is of a sixth or more and affects the appraisement, which differs from our case, as the purchaser has only to deduct the money value of the deficiency, while the sale is still valid. [1]

R. Papa bought an estate from some one who told him that it measured the size of twenty saahs. After it was measured it was found that there were only fifteen; and the case came before Abayi, who decided that the sale was valid, because the seller had used the qualifying words "as you see its marks and boundaries." But have we not learned that if there were more than a sixth lacking its value is to be deducted, and here there is a fourth part? In the first case the condition is not known to the buyer before the sale; but in the latter case, as the condition was known to R. Papa and he saw it at the time he

bought, it must be supposed that he had considered and accepted it. Rejoined R. Papa: But did he not tell me that it measured twenty? He probably meant to say that "these fifteen are better than twenty elsewhere."

There is a Boraitha: R. Jose said: "Some brothers divided their inheritance by lot, and when to each of them his lot fell, all of them acquired title to their shares." Why so? Said R. Elazar: At the time the land of Israel was allotted to the tribes. But was there not also the Urim v'tumim, as it is said farther on that the high priest Elazar had on the Urim v'tumim, and then the lots were cast? Said R. Ashi: By their arrangement prior to allotment (whereby the estate was divided into shares of equal value) they had prepared themselves that each should acquire title to the share which the lot should cast for him, and therefore no other ceremony was necessary.

It was taught: To two brothers who had divided their inheritance between them came a third brother (of whose existence they were not previously aware). Their division is null and void according to Rabh. Samuel, however, maintains that each of the two must relinquish a third of his inheritance to the third brother (*e.g.*, they inherited six fields, and each of them must give one of these to the newcomer, so that the three brothers may have two fields apiece). Said Rabha to R. Na'hman: According to Rabh, who says that the division is null and void, it must be said he holds that since all of them did not share in the first division, the inheritance must be redivided. Would the same be the case with three partners, two of whom have divided (in the presence of three persons who are considered a Beth Din) in the absence of the third one, and there is a decision (Middle Gate, p. 74) that such holds good? The cases are dissimilar. In the latter case the partners divided the property into three shares, and as it was done in the presence of a Beth Din the division holds good; but in the former case the two brothers had divided the inheritance into two parts only, as they were unaware of the third brother's existence.

Said R. Papa to Abayi: According to Samuel's decision that the first division is valid, it must be said he holds that such an act, done in accordance with the law, must not be abrogated, although thereafter it appears that the brothers took more than belonged to them; but did not both Rabh and Samuel say: If

one says, "I sell you a kur for thirty selas," the seller may retract even at the last saah (above, p. 235)? (We see then that even when done in accordance with the law an act may still be abrogated.) There is, however, here a difference. The rabbis enacted that law to please both the seller and the buyer. (*I.e.*, in case the price should become lower, before the buyer has received the property, it is to his advantage to retract; and in case the price becomes higher, the advantage is for the seller. Hence this law is beneficial to both.)

It was taught: If brothers divided their inheritance and a creditor of their father came and took away the share of one of them, according to Rabh the former division is null and void. Samuel, however, said that such was this brother's lot, and it did not concern the other. R. Assi, however, maintains, not as Rabh, that the division is void, and they must divide the remainder, and not as Samuel, that it does not at all concern the other one; but that the second brother must surrender one quarter of his estate and a quarter of the money he has inherited. Rabh holds that the heirs, even after their division, are still to be considered heirs (hence if one of them has lost the property through his father's debt, he is still an heir to the remainder), while Samuel holds that at the time they divide they are considered buyers (each of them buying his share of his brother) without any security; and consequently each has no further concern after the division. R. Assi was doubtful whether they are to be considered heirs of buyers; therefore the half which ought to be taken from the one who did not suffer loss is considered doubtful money, and there is a

rule that doubtful money is to be divided. Said R. Papa: The Halakha concerning the two cases, that of the third brother as well as that wherein the share of one was taken away by their father's creditor, prevails in accordance with Samuel, who says the division holds good, and it is for them to divide from their shares in payment of the debt. Amimar, however, said: The Halakha prevails in accordance with Rabh, who said that the division is void and the property must be redivided, and so the Halakha prevails.

The rabbis taught: If there are three who have qualified as a Beth Din to appraise the estate of one deceased, for the support of his widow and daughters, and if one says that in his opinion the estate is worth twenty-five selas (a moanah of

[paragraph continues] 100 zuz), and the two others say two hundred or *vice versa*, the opinion of the individual is of no effect; but if one appraises the estate at one hundred zuz, which are twenty-five selas, the second for twenty, and the third for thirty, the value is fixed at one hundred zuz. R. Eliezer b. R. Zadok, however, says that it should be taken for ninety zuz, and anonymous teachers say that a third of the difference between the second and third valuations must be added to the second, which will give 93 1/3, zuz. The reason of him who says the estate is worth one hundred zuz is that the opinion of the arbitrator is to be taken into consideration, and the reason for R. Eliezer's opinion that the estate is worth ninety zuz is that he who appraised it at eighty underestimated by ten zuz, while he who appraised it at 100 overestimated by ten zuz, and as there is a majority who appraised it at not more than 100 zuz, the third, who appraised it at twenty zuz over a moah, is not to be taken into consideration at all. Why not say that the one who said 100 zuz has underestimated by ten and he who says thirty has overestimated by ten, and the estate should therefore be valued at 100? Because the majority declare it not worth more than 100 zuz, or one moah. The anonymous teachers maintain that the estate is worth 93 1/3 zuz, because the one who estimated its value at twenty selas (eighty zuz) underestimated by 13 1/3, and the one who said 100 zuz overestimated by 13 1/3, although he had intended to say 103 1/3 zuz, but thought he would not like to make his difference too large. And why not say that the one who said thirty selas (120 zuz) has overestimated by thirteen, and the estimate should be fixed at 113 zuz? The opinion of the majority that the estate is not worth over a moah is to be taken into consideration. Said R. Huna: The Halakha prevails with the anonymous teachers. Said R. Ashi: The reason of the anonymous teachers is not acceptable; should we decide according to them? There is a Boraitha that the judges of the exile are in accordance with the anonymous teachers, and R. Huna said again that so the Halakha prevails, but R. Ashi objected again for the same reason stated above.

MISHNA *V.*: If one says "I sell you the half of the field" (the half of the value is meant), the better one against the inferior is to he appraised, and the seller has a right to give the buyer the latter. The same is the case when he said "I sell you

the southern half of this field," and the buyer takes the half determined on by the seller. The seller, however, has to give space for a partition, and for a large and a small ditch. What is the breadth of a large ditch? Six spans. And of a small one? Three.

GEMARA: Said R. Hyya b. R. Abba in the name of R. Johanan: The buyer has to take the

inferior. And he (when he heard this statement from R. Johanan) said to him: Does not the Mishna say "the better one against the inferior is to be appraised"? And should not this be explained to mean that each of them should take half of both good and inferior? And he answered: It seems to me that you have eaten too many dates in Babylon (so that you have no time to descend into the depths of the Mishna). Does not the Mishna contain the same expression, in the latter part, 1 concerning the sale of the south side of his field? And why the repetition? It should read "he should take a half at the south side," and we would understand it to mean half of the size. We must then say that it is repeated to teach that also in that case the half of the value is meant, as the same was in the first part.

"*The partition*," etc. There is a Boraitha: "The large ditch must be outside and the small one inside of the field, but both beyond the partition, so that beasts may not jump over the partition in the field." Why then the small ditch? Does not the large one suffice for this purpose? Because it is six spans wide, the beasts could enter in it and jump over. But does not the small ditch suffice? Because it is small, the beasts could stand on the edge of it and jump over. And how much shall the space be between the large and the small ditch? One span.

Footnotes

231:1 In the text are some other questions: If the rocks were placed round, or square, etc.; and these need many illustrations, and all remain at last undecided. As they are of no importance, we have omitted them.

232:1 The text contains questions of no importance--*e.g.*, if the rocks were placed round, crooked, etc.--which remain undecided. We have therefore omitted the whole discussion.

236:1 We are compelled to explain this in accordance with R. Gershom, as Rashbam's explanation is still more complicated.

240:1 The Mishna repeats the same language concerning the southern part which we, according to the sense, have translated "the same is the case."

Next: Chapter VII.

CHAPTER VIII.

RULES AND REGULATIONS CONCERNING BEQUESTS TO AND INHERITANCE BY NEAR AND DISTANT RELATIVES, MALE AND FEMALE SLAVES AND THEIR DESCENDANTS, FIRST-BORN AND HUSBANDS. ONE MAY OR MAY NOT WISH TO BEQUEATH HIS ESTATE TO STRANGERS WHEN HE HAS CHILDREN. WHICH WILLS MUST BE CONSIDERED AND WHICH WILLS MUST NOT. THE DIVIDING OF AN INHERITANCE BETWEEN GROWN-UP AND MINOR CHILDREN, MALE AND FEMALE.

MISHNA *I.*: (Concerning inheritance, there is a difference between relatives.) There are those that bequeath at their death, and also inherit at the death of their relatives. There are those who inherit but do not bequeath, and also those who neither bequeath nor inherit. The father, his children, and also the brothers of the father may both bequeath and inherit to and from each other. The son from his mother, and the husband from his wife, and also the children of sisters inherit, but the former do not bequeath to the latter. The woman to her children, her husband, and her brothers bequeaths, but does not inherit from them. The brothers of the mother, however, neither bequeath to nor inherit from her.

GEMARA: Why does the Mishna mention the father his sons first? It does so, first, because the reverse order would imply a curse, and usually the beginning must not be with a curse (for when the son dies before his father it is certainly a curse), and, secondly, the Scripture [Numbers, xxvii. 8] reads, "If a man die and have no son," etc.; hence the death of the father is mentioned first. The Tana of the Mishna does thus because the law that a father shall inherit from his son is not written in the Scripture but is deduced (as will be explained farther on) and he desires to mention it first. Whence do they deduce it? From the following Boraitha: "(It is written) 'his kinsman means the father, from which it is deduced that if one dies and leaves brothers and a father, the father is the heir and not the brothers'; but lest one say that the father of the

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deceased is preferred to his son, it is written 'that is next to him,' which means, whoever is nearest, and the son to his father is considered nearer than a father to his son. And what is the reason that you exclude the brother and include the son? Because the Scripture has substituted the son for the father in the case of a man servant [Ex. xxi. 9] and also in that concerning the possession of a field [Levit. xxv. 13], of which it is said elsewhere that only when the son has redeemed the field sanctified by his father, it may be returned in the jubilee year, but not if the father's brother or any other relative has done so. But why not say that the brother shall have the preference, as he inherits from his brother in case the latter dies childless [Deut. xxv. 5]? This cannot hold good, as the brother thus inherits only if there is no son; but if there is a son the brother does not inherit." Is it only for this reason, and if it were otherwise would the brother be the heir? May the son be substituted for his father in the two cases above stated, and the brother in the one case only? Nay, the same reason is given in the case of the above-mentioned possession of a field, wherein the son is preferred to the brother, also because the brother

inherits only when there is no son. But why not say a kinsman means the father, from which we infer that he is preferred to his daughter? Lest one say that he is preferred to his son also, therefore it is written, "who is next to him," and a son is nearer to his father than the father to his son. As said above, this could be opposed thus: Let us see! If one dies and leaves a daughter, it is the same concerning Yeboom as if lie should leave a son. Hence we see that a son and daughter are here equal before the law, and the same equality would obtain concerning inheritance. But why not infer from this that the father has the preference over his brother? And lest one say that he should have the preference over the brothers of the deceased also, it is written "the next," and brothers are considered nearer than the father to his son. It is not necessary that the fathers brother be considered as excluded in the Scripture, as that would be contrary to common sense. What is the basis for the inheritance of the uncle of the deceased from his nephew, if not that his brother is the father of the deceased; and when the father is still alive, why should the brother be the heir?

But let us see. The passage in the Scripture does not correspond

with all that is taught above [Num. xxvii. 8], "If a man die and have no son, then shall ye cause the inheritance to pass unto his daughter, and if he have no daughter . . . unto his brothers . . . and if no brothers, unto his father's brothers, and if . . . no brothers, . . . to the kinsman." (Hence when the kinsman is mentioned at the end, how can you say that it means the father, who is the first in case the deceased left no son?) The passages are not written in order, as the kinsman, meaning the father, should be mentioned first, but the Scripture relies upon the words "who is next to him," and it is for the court to decide who is nearest to him. The following Tana, however, deduces it from the same passage in another manner, as we have learned in the following Boraitha: R. Ishmael said: "It is written, 'If a man die and have no son, then ye shall cause his inheritance to pass,' etc. Infer from this that you transfer the inheritance from the father only when the deceased left a daughter, but not when he left brothers." But why not say that the daughter transfers the inheritance from his brothers but not from his father? Because if it were so, the passage would read "and ye shall *give* the inheritance," and not "ye shall *cause to pass*," which means that if there is a daughter, her father may pass the inheritance to her, even when his own father is still alive. Now, what does kinsman mean in the opinion of R. Ishmael, who has deduced this from the words "ye shall cause to pass"? That which the following Boraitha states: "His kinsman means his wife. Deduce from this that the husband inherits from his wife." But to him who infers this from the word kinsman, what do the words "ye shall cause to pass" mean? That which we have learned in the following Boraitha: Rabbi said: In all the passages it is written "shall ye give," and only concerning the daughter "ye shall pass," to show that there is no one who shall pass an inheritance to another tribe except a daughter; so if she marries one of another tribe, her son or her husband may inherit from her.

But, after all, where is it you are assured that kinsman means the father? In Levit. xix. 12, "Thy father's kinswoman." Then why not say it means the mother, as the next verse reads "thy mother's kinswoman"? Said Rabha: It is written [xxvi. 11] "next to him of this family," and the family is named

only from the father's side as [ibid., 2] "after their families, by the descent from their fathers."

But is not the name of the mother's side also employed? Is it not written [Judges, xvii. 7], "And there was a young man out of Bethlehem-Judah of the family of Judah, but he was a Levite, and sojourned there"? Now does not this passage contradict itself? It is written "of the family of Judah," from which it is to be inferred that they came from the tribe of Judah, and then it says he is a Levite, which means that he was of the tribe of Levi. We must conclude that his father was from Levi and his mother from Judah, and nevertheless this is called a family name. Said Rabha b. R. Hanan: The verse reads "and he is Levi," which does not mean that he was a Levite, but that his name was Levi. If so, how is to be understood (ibid., 17), "I have obtained a Levite for a priest"? There it is also written Levi, and means a man by the name of Levi. But how can you say that his name was Levi? Was not his name Jonathan, as it is written (ibid., xviii. 30), "And Jonathan the son of Gershom . . . were priests," etc.? And he answered: Even according to your theory, was he then the son of Menashe? He was the son of Moses, as it is written [I Chron. xxiii. 15]: "The sons of Moses were Gershom and Eliezer." It is written Menashe, because he acted like Menashe, who was an idolator; and therefore the phrase "of Judah" is employed because Menashe came from Judah. R. Johanan in the name of R. Simeon b. Jo'hai said: From this is to be inferred that we confer a corrupt name on a corrupt man. R. Jose b. Hanina, however, said that this may be inferred from the following [I Kings, i. 6]: "And his mother had after Abshalom." But was not Adoniyah the son of Chaggith, and Abshalom the son of Maacha? We must say that. because he acted like Abshalom, who also rebelled against the kingdom, the verse conjoined him with Abshalom.

R. Elazar said: We see that when Moses married the daughter of Jethro, Jonathan was the outcome, and when Aaron married the daughter of Aminadab the outcome was Pinchos.

But was not Pinchos also a descendant of Jethro, as it is written [Ex. vi. 251, "Elazar took of the daughters of Putiel for wife and she bore unto him Phinchas," and it is said elsewhere that Jethro and Putiel are identical? Nay, this Putiel is Joseph, as it is also said elsewhere that Joseph and Putiel are

identical. 1 But is it not said elsewhere that the tribes chided Phinchas, saying: "See the descendant of Puti, whose grandfather had fattened calves for idols; shall he dare to kill a prince of the tribe of Israel?" Both names are applicable; for if his mother's father was a descendant of Joseph, his mother's mother was a descendant of Jethro or *vice versa,* and the word Putiel instead of Puti may mean both.

Rabha said: If one is about to marry, it is advisable for him to investigate the character of the bride's brothers; as it is written (ibid., 23), the "sister of Nachshon." To what purpose is it written the "sister of Nachshon"? Is it not evident that she was the sister of Aminadab? Hence this is an intimation to one about to marry to investigate the brothers of his prospective bride. There is also a Boraitha to the effect that the majority of children resemble the brothers of their mother. It is written [Judges, xviii. 3], "Who brought thee hither?" (*halom*) which means "Are you not a descendant of Moses?" of whom it is written [Ex. iii. 5] "hither" (*halom*), and "thou shalt be a priest to the idol"? And he answered: "I have a tradition from the house of my grandfather that it is better for one to hire himself to *Abhada Zarah* (idolatry) than to rely upon people that shall support him." [(Says the Gemara:) He has misunderstood it. *Abhada Zarah* means "idolatry." Literally, however, it is "a strange service" and it is as Rabh said to Kahana: (If you are in need), fleece a carcass in the middle of the market and do not say you are a great

man, and it is not fit for you.]

David saw that he was fond of money and appointed him treasurer for the government, as it is written [I Chron. xxvi. 24], "Shebuël the son of Gershom, the son of Moses, superintendent of the treasuries." Was then his name Shebuël? Was it not Jonathan? Said R. Johanan: Shebuël is composed of two words, *Shebu*, which means "repented," and *El* means "God"; and "Shebuël" means that he repented to God with all his heart.

"*His children . . . inherit*." Whence is this deduced? It is written [Numbers, xxvii. 8], "If a man die, and have no son," etc. We see the case is one wherein he has no son, but if he has one, that one has the preference. Said R. Papa to Abayi: But perhaps it means that if there is a son only, he shall inherit, and if there is a daughter only, she shall inherit; but if there were a son and a daughter neither of them should inherit. Said he: Who then shall inherit--the mayor of the city? I mean to say that neither of them shall inherit all, but each take an equal share. Said Abayi to him: Was it then necessary for,, the Scripture to state that if there were only one son he may inherit all the estates of his father? Answered he (R. Papa): I mean to say that the verse perhaps came to teach that a daughter may also be an inheritor. And he (Abayi) answered: This is already written [ibid., xxxvi. 8], "And every daughter that inheriteth," etc. R. A'ha b. Jacob said: This is to be deduced from the following [ibid., xxvii. 4], "Why should the name of our father be done away from the midst of his family because he hath no son?" But if he should have a son, the son would have the preference; but perhaps this was only the saying of the daughters of Zelophchod (*i.e.*, they thought that such was the law, as it was customary at that time). But after the Torah was given the law was changed, that a son and daughter should inherit together; therefore Abayi's explanation is better.

Rabhina said: This is to be deduced from the words "next to him," and a son is nearer than a daughter; and why? As it is said above, he may be substituted for his father in the cases concerning a maid-servant and a field, etc. But could then a daughter be substituted for her father in the case of a maid-servant? Hence the best interpretation is Abayi's; and' if you wish, it may be deduced from Levit. xxv. 46, "For your sons after you," etc., which means to your sons [1] and not to your daughters. But according to this the verse [Deut. xi. 21], "The days of your children," which is also written with "*Bniechein*," should also be explained the sons and not the daughters? With a blessing it is different.

"*The brothers of the father*." Whence is this deduced? Said Rabba: By analogy of expression "brothers" here [Numbers, xxvii. 9]

and in Genesis, xlii. 32. "We are twelve brothers, the sons of our father"; as there they were brothers of the father, so are they here also on the father's side. But was it not said above that from the father's side the family is named, but not from the mother's? (See above, p. 244.) Yea, this is deduced from verse 11, as above, and Rabba's statement was taught concerning Yeboom (the marriage of a brother to the widow of his childless brother).

"*The son from his mother*." Whence is this all deduced? From that which the rabbis taught. It is

written [Num. xxxvi. 8], "Any daughter who inherits the estate of the tribes." [1] How can a daughter inherit from two tribes? It must be concluded that her father was from one tribe and her mother from another, and both died leaving estates, and she has inherited both. This is concerning a daughter, but whence have we knowledge concerning a son? From the *a fortiori* argument that as a daughter who has no share in the inheritance of her father when there is a son is nevertheless an heir to the estate of her mother, a son who inherits from his father so much the more inherits from his mother. And from this it is to be deduced that, as there the son has the preference over the daughter as an heir of the father, so is it also with the inheritance from the mother. Both R. Jose b. Jehudah and R. Elazar b. Jose, however, say in the name of Zecharia the son of the butcher that a son and a daughter are equally heirs of their mother. Why so? Because there is a rule: It is sufficient that the result derived from the inference be equivalent to the law from which it is drawn (and as the law that a son may inherit from his mother is drawn *a fortiori* from the case of the daughter, it is sufficient to say that he inherits also, but not that he shall have the preference). But does the first Tana ignore the theory of "it is sufficient"? Is this not biblical, as we have learned (First Gate, p. 51, in the beginning of the Gemara)? In all other cases he uses the theory; here, however, it is different, because of the reading "from the tribes." We see then that the tribe of the mother is equal to the tribe of the father, and as concerning the father's the son has the preference, so also is it concerning the mother's.

Nithai was about to act in accordance with Zecharia, and

[paragraph continues] Samuel said to him: Ignore Zecharia, as the Halakha does not prevail with him. R. Tabla had acted in accordance with R. Zecharia, and R. Na'hman asked him What he had done. And the answer was that he had done so because R. Hinna b. Shlamiah said in the name of Rabh that the Halakha prevails with R. Zecharia the son of the butcher, and R. Na'hman told him, "Go and retract from your statement, and undo what you have done, and if you will not listen, I will put out R. Hinna from your ears" (I will place you under the ban). R. Huna b. Hyya was also about to act in accordance with R. Zecharia, and R. Na'hman said, "What are you doing?" And he answered: "I do so because R. Huna said in the name of Rabh that the Halakha prevails with R. Zecharia. Said R. Na'hman: "I will send immediately a message to R. Huna asking him if he said so." And Huna b. Hyya became ashamed. Said R. Na'hman to him: "If R. Huna were dead, you would rebel against me and act accordingly." But in accordance with whose was R. Na'hman's opinion? With both Rabh's and Samuel's decision that the Halakha does not prevail with R. Zecharia.

R. Janai leaned upon the shoulders of R. Simlai his servant, when he walked on the street, and it happened that R. Jehudah the second was coming in an opposite direction, and R. Simlai said to him: "The man who is coming in an opposite direction is a respectable one, and he is also nicely dressed." When they came together, R. Janai fumbled about R. Jehudah's dress [1] and said: "Is this what you call nicely dressed? It seems to me like a sack." Jehudah the second questioned him: "Whence [1] is it deduced that a son has the preference over a daughter in the estate of their mother?" And he answered: "Because it is written 'tribes,' and the verse compares the tribe of the mother with the tribe of the father. As in the former case the son has the preference, so is it in the latter." Said Jehudah: "If so, why not say that as in the father's case the first-born takes a double share, so should it be in the mother's?" Said R. Janai to his servant: "Take me away from him, this man does not want to learn." And what was the reason? Said Abayi: It is written [Deut. xxi. 17], "of all that is found in his possession," not in her possession. But why not say that

this is so when a single man has married a widow who has children from the first husband, but if a single man has married a virgin, the first-born shall take a double share? Said R. Na'hman b. Itz'hak: The same verse cited reads, "for he is the beginning of *his* strength," *his* but not *her*. Is this verse not necessary to include a first-born who came after a miscarriage, that he is entitled to a double share, although he is not considered as such to be redeemed? Because it should be read, "he is the first of strength," and from the addition his both inferences are drawn. But still it may be said in case a widower married a virgin, but if a bachelor married a virgin then the first-born is entitled to a double share also from his mother. Therefore said Rabha: The verse ends "to him belongeth the right of first birth"; which means to him a *male*, but not to a *female*.

"*And the husband from his wife*." Whence is this deduced? From that which the rabbis taught. It is written [Numbers, xxvii.], "his kinsman," and his wife is meant. Infer from this that the husband inherits from his wife; but lest one say that she inherits from him also, it is written [ibid.] "and he shall inherit from her." "*Outhoh*" means he inherits from her, but not she from him. But the verses are not written in that order, you say? Said Abayi: Read thus: "Then shall ye give his inheritance to his next kinsman and he shall inherit from her." Said Rabha to him: It seems to me that you have a keen knife to cut the verses. Therefore, said he, the verse means he shall give the inheritance from *his* kinsman to him; as he holds that the sages have a right to subtract, to add, and to interpret. (*I.e.*, it is written *nachlossou*, literally "his inheritance," with a Vav at the end; *lishourou*, literally "to his kinsman," with a Lahmed at the beginning. Subtract the Lahmed from *lishourou* and the Vav from *nachlossou*. Put these two letters together and they will read *lou*, literally "to him," and then the verse will read thus: "Ye shall give the inheritance of his kinsman to him.) The following Tana, however, infers this from the same verse in another way, as we have learned in the following Boraitha: It is written, "And he shall inherit from her." Infer from this that the husband inherits from his wife. So said R. Aqiba. R. Ishmael, however, said: It is not necessary to cut the verses (he does not hold the theory of subtracting, adding,

etc.), as there are other verses [ibid., xxxvi. 8], "every daughter that inheriteth," which refers to the transferring of an estate from one tribe to another through the husband, who is of one tribe and has married a woman of another tribe. It is written [ibid. 7], "And the inheritance of the children of Israel shall not pass from tribe to tribe," and it is also written next, "and no inheritance shall pass from one tribe to another," and then it is written [Joshua, xxiv. 33], "And Elazar the son of Aaron died and they buried him in the hill of Pinchas his son." Where then had Pinchas a hill which Elazar did not possess? We must then conclude that Pinchas married a woman who owned a hill, she died and he inherited it. And it is also written [I Chronicles, ii. 22], "And Segub begat Jair, who had three and twenty cities in the land of Gilad." And wherefrom did Jair obtain that which his father, Segub, did not possess, if not by inheritance from his wife. But to what purpose did R. Ishmael cite all the above verses? Lest one might say that the first cited verse does not speak of transferring an estate through the husband, but through her son, and the husband does not inherit. Therefore is the other verse cited, "And the inheritance of the children of Israel shall not pass," etc. But lest one say that this verse is written to make the one who transgresses answerable under a positive and a negative commandment, but still through the son and not the husband, therefore is the third verse cited. But lest one say that this verse is also written for the purpose of making the transgressor answerable under two

negative and one positive commandments, therefore is the fourth verse cited; and lest one say that Elazar's wife owned a hill and Pinchas inherited it from her, therefore is the fifth verse cited. And lest one say that the same was the case with Segub and Jair, then why two verses which contain the same case?

Said R. Papa to Abayi: But what does this support? It may be said that the husband does not inherit, and all the above cited verses state that it was through the son, and did both Jair and Pinchas buy the estate in question? And Abayi answered: You cannot say that Pinchas bought the estate, as if this had been so the property would have been returned to the seller in the jubilee year, and then the upright Elazar would have been buried in ground not his own. But perhaps the hill

in question was transferred to Pinchas from estates set apart for the priests [Numb. xviii. 14]. Said Abayi to him: If we were to agree with your theory, the estate would be still transferred from one tribe to another. Is it not explained above that verse 8 refers to a woman who has inherited from both father and mother, who were of two different tribes? Why, then, if she should marry one belonging to the tribe of her father, would the estate of her mother be transferred to another tribe? And R. Papa said: This is no objection, as the case may be different, and perhaps the estate of her mother was already transferred. Rejoined Abayi: Such a supposition cannot be taken into consideration; as one would not say that because a part had already been transferred, the other part should now be transferred. Furthermore, the transfer was according to the law, as when a woman has married one of another tribe, her brother being still alive, she then possessed no heritage, but received it after she was already married. Afterward her daughter, who has inherited her mother's estate, if she should marry even one belonging to her father's tribe, her son would inherit from her the estate which had belonged to another tribe.

Said R. Jiiman to R. Ashi: Even in accordance with Abayi, who holds that the husband does inherit, it is correct. If the verse is to be explained that the daughter has already inherited from her mother, who was of another tribe, the Scripture commands that she shall marry one of another tribe, to the end that the estate of one tribe shall not be transferred to another one, no matter whether through son or husband; but if the estate of her mother was not as yet transferred, why should she marry one of her father's tribe? The estate of her mother, which belongs to her, if her husband inherits from her, would be transferred to him; hence the estate of one tribe would be transferred to another. The answer was that she might marry a man whose father was of the tribe of her father, and his mother of the tribe of her mother, and in such a case the estate of her father remains within the tribe of her father, and the estate of her mother remains also with the man whose mother is of the same tribe. But if so, should not the verse read "to one who is of the family of her father's and mother's tribe"? If the verse should so read, one might say that even if her husband's father were of her mother's tribe, and his mother was of

her father's tribe, this would not be in accordance with the law, as the estate of her father would be transferred to her husband, who is of another tribe. There is a Boraitha that through the son the estate is transferred, namely: "The seventh verse reads 'the inheritance of the children of Israel shall not pass,' etc., which refers to the son. But perhaps it refers to the husband? This could not be, as verse 9 reads 'as no inheritance shall pass from one tribe to another,' which

refers to the husband; hence verse 7 refers to the son." There is another Boraitha: "Verse 9 refers to the husband, but perhaps it refers to the son? This cannot be, as verse 7 has already referred to the son." We see, then, that both Boraithas hold that verse 9 refers to the husband. Where is this taken from? Simon in the name of Rabba b. R. Shila said: From the expression "*ish*" in verse 8, which means husband. But is not the same expression in verses 7 and 9? Said R. N'ahman b. Itz'hak: From the expression "*Idbako*" (adhere). But also this expression is in 7 and 9? Therefore said Rabha: From the end of verse 9, which reads "the tribes of Israel shall adhere"; and R. Ashi maintains, from the expression "from one tribe to another tribe," a son cannot be called of another tribe.

R. Abuhu in the name of R. Johanan, who spoke in the name of R. Janai, who heard it from Rabbi, quoting R. Joshua b. Kar'ha, said: Whence is it deduced that the husband does not inherit the estate to which his wife during her life is only heir apparent (*e.g.*, his wife is an only daughter and she dies before her father, leaving a child, and thereafter her father dies, and her child but not her husband inherits)? From [I Chronicles, ii. 22]: "Segub begat Jair, who had three and twenty cities." Whence did Jair obtain these, which his father did not possess. Infer from this that Segub, had married a wife who had twenty-three cities, and she died while her nearest heirs yet lived. Thereafter her nearest heirs also died, and Jair, her son, not Segub, her husband, was her heir. And the same is the case with Elazar, who married a woman who possessed a hill, and she died while her nearest heirs were still alive, and thereafter the nearest heirs also died and Pinchas inherits from her. How are we assured that Elazar's wife brought him the hill; perhaps Pinchas' wife possessed it? By the words "his son," in Joshua, xxiv. 33 (which are superfluous, as every one

knows that Pinchas was his son), meaning his son who was the proper heir."

"*And also the children of sisters*." There is a Boraitha, "Sons but not daughters of sisters." How is this to be understood? Said R. Shesheth: It means that if there were sons and daughters, the sons would have the preference. As R. Samuel 1). R. Itz'hak taught in the presence of R. Huna: It is written [Numb. xxvii. 11] "and he shall inherit it," which means that the second inheritance shall be equal to the first; as in the first the son has the preference, so it shall be with the second. Rabba b. Hanina taught in the presence of R. Na'hman: It is written [Deut. xxi. 16], "Then shall it be (in the day [1]) when he divideth an inheritance," which means in the daytime he may divide an inheritance but not in the night-time. Said Abayi to him: "Do you mean to say that only from him who dies in the daytime his children may inherit, but otherwise they cannot? Perhaps you mean to say that judges must not discuss a case of a will, at night, as we have learned in the following Boraitha: It is written [Numb. xxvii. 11] "a statute of justice," which means that the whole section which treats of inheritance is a statute of justice (which must be discussed in the daytime *only* and by no less than three judges). It is as R. Jehudah said elsewhere: If three persons visited a sick man and he made verbally his last will before them, they might, if they wished, write it down, and, further, they might execute it. If, however, there were only two, they might write down his will (as witnesses), but could not execute it. And to this R Hisda added that so it is as to the daytime only, but if it were at night, even if there are three, they may write down the will, but not execute it; because they are considered witnesses only, and a witness cannot qualify as an executor. And Rabba answered him: Yea, this is what I meant to say.

It is taught: In the case of a gift with the ceremony of a sudarium by any person, whether healthy

or sick, what time may be given him to. retract? Rabba said: As long as they are sitting at that place where the ceremony was performed And R. Joseph said: As long as they are discussing this matter Said R. Joseph also: It seems to me that I am right in my decision, as R. Jehudah said that three who are visiting a sick person

may, if they like, write down his will and execute it; now, if you say he may retract as long as they are sitting there, though they do not discuss the matter, how can they execute the will but in the doubt that while they are doing so he may retract? Said R. Ashi: I have maintained before R. Kahana, even in accordance with R. Joseph's theory, that it is to be feared that even while they are discussing this matter he will retract; how then can they execute the will? Say, then, that they have ceased to discuss this matter and are discussing another one. The same can be said here, that they arose after hearing his will, and again took their seats. The Halakha, however, prevails in accordance with R. Joseph concerning the field mentioned above (p. 38), concerning this case, and concerning the case of "a half" (when the sick man says, "I bequeath my estate to you and your son," upon which, according to R. Joseph, the estate may be divided equally), which matter will be explained in Chapter IX.

"*The woman to her children*." To what purpose is this repeated? Does not the first part read "the son from his mother," etc.? It comes to teach us that the case of "the woman to her children" is equivalent to that of the woman to her husband. As the husband does not inherit in the place of his wife that which she would have inherited had she lived (as illustrated in the case of the woman who predeceases her father), so also the son inherits his mother's share, but his brothers (of the one father) do not inherit from him if he dies. [1] R. Johanan in the name of R. Jehudah b. R. Simeon said: Biblically a father inherits from his son, and a mother also inherits from her son, as it is written "tribes," from which is deduced the tribe of the mother as well as the tribe of the father; as concerning the tribe of the father, the father inherits from his son, the same is the case with the mother. R. Johanan, however, opposed R. Jehudah, from our Mishna, which states that a woman to her son, her husband, and the brothers of the mother may bequeath but not inherit. R. Jehudah answered: I am not aware who taught our Mishna; but let him say that our Mishna is in accordance with R. Zechariah, who does not care to explain the

word "tribes" as a comparison. Our Mishna cannot be explained in accordance with R. Zechariah, as it states "and the children of sisters," and a Boraitha adds that the sons but not the daughters are meant, which was explained by R. Shesheth as meaning that the sons have the preference, and according to R. Zechariah, sons and daughters are equal heirs of their mother. But how is to be explained the teaching of the Tana of our Mishna? If he holds that the word "tribes" is to be taken as a comparison of one tribe to another, why should not a woman inherit from her son; and if he does not, whence does he derive his theory that a son has the preference in the estate of his mother? The comparison holds good, but this case is different; because it is written "every daughter that inheriteth," which means she may inherit but does not bequeath.

MISHNA *II*.: The order of inheritance is thus: If a man dies, leaving no son, the inheritance shall pass to his daughter (reads the passage), by which we see that the son has preference before the daughter, and the same is the case with all the descendants of the son, who also have preference before the daughter. The daughter has preference over the brothers of her father, and

the same is the case with her descendants. The brothers of the deceased have preference over the father's brothers, and the same is the case with their descendants. This is the rule: After every one who has the preference concerning an inheritance, his descendants have, in order, a like preference. The father has the preference before all his descendants.

GEMARA: The rabbis taught: It is written "a son from which we know the son himself only, but whence do we deduce the son's son or his daughter, or even the grandson of his daughter? It is written *ien lou*; and we read the word *ien* as if it were written *ayin*, which means investigate, for perhaps his son left a son or a daughter, etc. It is also written "a daughter," by which we know indeed the daughter, but whence do we deduce her daughter, son, and daughter of her son? It is written *ien*, "*ayin*," as said above. And the same is the case with investigation in the opposite direction (*i.e.*, perhaps the father's father is yet alive), so that an investigation concerning inheritance may stretch back to Reuben, the son of Jacob. Why only back to Reuben, and not as far as Jacob? Said Abayi: We have a tradition that the whole tribe cannot be

extinguished. 1 R. Huna in the name of Rabh said: If one decides that a daughter shall inherit, when there is a daughter of a son, even if he were a prince in Israel, he must not be listened to, as so acts the Sadducean, which we have learned in the following Boraitha: On the 24th day of the month Tebheth we returned to our old law, namely: the Sadducean used to say that a daughter should inherit an equal share with the daughter of the son, and Rabban Johanan b. Zakai said to them: "Ye fools, wherefrom have ye taken this?" And none was there to answer him, except an old man who talked (childishly) against him thus: Is this not an *a fortiori* conclusion? The daughter of his son who comes upon the strength of her deceased father, the son of the bequeather inherits. So much the more the daughter who comes upon the strength of the bequeather himself should take a share in the inheritance. R. Johanan then read before him [Gen. xxxvi. 20], "These are the sons of Seir the Chorite, who inhabited the land, Lotan and Shobal and Zibon and Anah," and there is also written [ibid. 24]. "And these are the children of Zibon, both Ajah and Anah." How is it to be understood? Infer from this that Zibon had lain with his sister Ajah, and she bore Anah. [But perhaps there were two Anahs?] Said Rabba: I shall say a thing which would be fit for King Sabur to say [Samuel is meant, although, according to others, R. Papa said so when he meant Rabba]. It is written in the same verse cited "that Anah," which means one that is the same as the Anah of verse 20. Said the Sadducean to R. Johanan: Rabbi, with such an explanation do you think to override me? R. Johanan answered: And why not? Should not our Torah with its regulations ignore your gossip? Your *a fortiori* conclusion could be easily overthrown by the following theory: How can you compare one's daughter to the daughter of his son, when the latter has a right of inheritance even when the brothers of her father are still alive, while the former has no such right (for a daughter does not inherit when she has brothers)? And with this he conquered the Sadducean, and this day was established for a festival.

It is written [Judges, xxi. 17]: "And they said their inheritance must be secured for Benjamin, that not a tribe may

be blotted out from Israel." Said R. Itz'hak of the school of R. Ami: Infer from this that at that time a stipulation was made that as long as the tribe of Benjamin should continue, the daughter

of a son should not inherit her share with existing brothers, in order that, through her marriage to a man of an other tribe, she might not divert the estate from the tribe of her father. R. Johanan in the name of R. Simeon b. Johai said: He who leaves no son to succeed him is unloved of heaven, as it is written [Psalms, lv. 20]: "Those who leave 1 no changes fear no God." R. Johanan and R. Joshuah b. Levi ,differ. According to one a son is meant, and according to the other a disciple. From the fact that R. Joshuah b. Levi did not go to a funeral unless the deceased was childless, because it is written [Jeremiah, xxii. 10], "Weep sorely for him that goeth away," which R. Jehudah in the name of Rabh interpreted as meaning "he who passeth away without a son," it must be concluded that R. Joshuah b. Levi was the one who said "a disciple." R. Pinchas b. Hama lectured: It is written [I Kings, xi. 21]: "And when Hadad heard in Egypt that David slept with his father and that Joab the captain of the army was dead." Why concerning David is it written "slept," and concerning Joab "dead"? Because David left a son, and Joab did not. But is it not written [Ezra, viii. 9]: "From the children of Joab, Obhadia b. Jechiel"? Therefore, as "slept" is the word employed for David, we must conclude that he left a son like himself, which was not the case with Joab. Wherefore in his case the term "dead" is used. And he also said: Poverty in the house of one is harder than fifty plagues, as it is written [Job, xix. 21]: "Spare me, spare me, O ye my friends! for the hand of God hath touched me." And he was answered [ibid. xxxvi. 21]: "Thou hast chosen this instead of poverty." 2 The same said again: If one has a sick person in his house, he shall go to a wise man and request him to pray for the sick one, as it is writ ten [Prov. xvi. 14]: "The fury of a king is like the messengers (of death; but a wise man will appease it."

"*This is the rule*." Rami b. Hama questioned: If the deceased left a grandfather and a brother, as did Abraham and Jacob to the estate of Esau, who had the preference? Said

[paragraph continues] Rabha: Come and hear the decision of our Mishna, which states that the father has the preference before all his descendants. Rami, however, maintains that the father has the preference over his descendants, but not over the descendants of his son. (Says the Gemara:) It seems that Rami is right. As the Mishna states, this is the rule: He who has preference concerning inheritance, his descendants have the same. Now, if when Esau died Isaac and Abraham were both alive, Isaac would have had the preference to the estate; the same would have been the case if Isaac had been dead. Then Jacob would have had the preference over Abraham, because he was a descendant of Isaac. Infer from this that so it is.

MISHNA *III*.: The daughters of Z'lophchod have inherited three shares from the inheritance of their father, his share as one of the ascendants from Egypt, his share in the division of Chipher his father (who was also among the ascendants from Egypt), and because he was a first-born he inherited a double share.

GEMARA: Our Mishna is in accordance with him who said that the land was divided among the ascendants from Egypt, and not to their children (*i.e.*, the person who entered the land of Israel, if he was among the ascendants of Egypt, took his share, and divided it among his children; and if an ascendant had died and his children entered the land, the share of their deceased father was given to them and they divided it among themselves), as we have learned in the following Boraitha: R. Iashiah said: The land was divided to the ascendants of Egypt, as it is written [Numb. xxvi. 55], "According to the names of the tribes of their fathers." But how does this correspond with [ibid. 53], "unto these shall the land be divided," which means to those who

entered the land? Those are meant who are of sufficient age (twenty years), excluding the minors. R. Jonathan, however, said that to those who *entered* the land it was apportioned, not to their fathers, as it is written in the verse just cited. But how would this correspond with verse 55? This inheritance is different from all other inheritances, as in all others the living inherit from the dead, and here the dead inherit from the living, and to illustrate this, said Rabbi, I shall give you a parable. It is similar to the case of two priests in one city, one of whom has one son, while the other has two;

and when they go to the barn to take the Taruma, he who has only one son takes one share (*e.g.*, a saah), and he who has two takes two shares, and they turn them over to their fathers, who divide the shares equally among themselves, according to the number of souls. Such, also, was the apportionment of the land of Israel. Each received land according to the number of his souls, and after that they divided it among themselves according to the number of the heads of the family who were of the ascendants from Egypt; hence the dead ascendants inherit from the living. R. Simeon b. Elazar, however, said that the land was apportioned to both, in the manner stated in both of the above-cited verses. How so? He who was of the ascendants from Egypt took his share among them, and he who was of those who entered the land of Israel took his share among them, and he who was of both the ascendants and the entering took his shares with both of them. The shares of the spies Joshuah and Caleb took and divided equally. Those who murmured and the congregation of Kora'h had no share in the land at all, and their children took their shares, as the direct heirs of their grandfathers on both the paternal and maternal sides. But whence do you know that in Num. xxvi. the ascendants from Egypt are meant? Perhaps it means the tribes themselves who entered the land? It is written [Ex. vi. 8]: "I will give it you for an heritage." Inheritance implies from parents to children, and this was said to the ascendants from Egypt.

Said R. Papa to Abayi: It is understood by him who says. that the land was divided among the ascendants from Egypt [Num. xxvi. 54], "To the large tribe shalt thou give the more inheritance, and to the small shalt thou give the less inheritance," etc.; but to him who says "to those who entered the land," what does this verse mean? This objection remains.

R. Papa said again to the same: To him who said that the land was divided to the ascendants it is to be understood why the daughters of Z'lophchod sued for their father's share; but according to him who says "to those who entered the land," for what did they sue? There was no share for them, as Z'lophchod was dead and he had no share. They sued that the share of their deceased father might be given to their grandfather Chipher, and that they might take their shares in succession. (He said again:) It is comprehended by him who says "the

ascendants," etc., why the children of Joseph cried [Joshua, xvii. 14], "Why hast thou given me but one lot and one portion of inheritance?" But to him who says "to those who entered," why did they cry--each of them took his share? They cried concerning the minor children, which were numerous. Said Abayi: From all this is to be inferred that all who entered the land of Israel had a share; and if not, they protested. And lest one say that he whose protest had effect is written, and he whose protest had no effect is not written, then the protest of the children of Joseph was of no effect and nevertheless written down. This is beside the purpose of the verse,

which is aimed to convey good advice to mankind; in effect, that one shall take care not to be afflicted by a covetous eye. And this is what Joshuah said to the children of Joseph [ibid. 15], "If thou art a numerous people, then get thee up to the wood country," which means, "Go and hide thyself in the forest, that no covetous eye may afflict thee"; and they answered: We are the descendants of Joseph, whom a covetous eye cannot afflict. As it is written, etc. [see Middle Gate, p. 213].

The text says that the shares of the spies Joshua and Caleb inherited. Whence is this deduced? Said Ula: It is written [Numbers, xiv. 38]: "But Joshua the son of Nun and Caleb . . . remained alive." What is meant by "remained alive"? Shall we assume it is meant literally? To this there is another verse [ibid. xxvi. 65], "save Caleb and Joshua." We must then conclude that the first-cited verse means that they lived with their shares. Farther on they murmured, and the congregation of Kora'h had no share? But did not a Boraitha state that the shares of the spies, the murmurers, and the congregation of Kora'h, Joshua and Caleb inherited? This presents no difficulty. The Tana of our Boraitha compares the murmuring to the spies, while the other master does not, as we have learned in the following Boraitha: It is written [ibid. xxvii. 3], "Our father died in the wilderness." Z'lophchod is meant. "But he was not of the company" means "the spies"; "of those who gathered themselves" means "the murmurers in the company of Kora'h," literally. Hence one compares the murmurers to the spies, and one does not.

Said R. Papa to Abayi: And to him who does not so compare them, did then Joshua and Caleb inherit almost the whole

land of Israel (as the murmuring ones were very numerous)? And he answered: He means to say the murmurers who were among the company of Kora'h. 1

"*As a first-born he inherited a double share*." But why? At the time when Z'lophchod died the land was not as yet prepared for apportionment (as it was still in the possession of the nations), and it is said above that a first-born does not inherit a double share in that which is not yet in existence. Said R. Jehudah in the name of Samuel: The Mishna was meant to say "in their personal property."

Rabba opposes R. Jehudah's statement that the daughters of Z'lophchod, took four shares, as it is written [Joshua, xvii. 5], "Ten portions of Menasseh." Therefore said Rabba: The land of Israel was considered prepared for division, since the Lord himself promised to give it as an inheritance to Israel. An objection was raised from the following: R. Hidqua said: "I had a colleague, Simeon the Shqmuni, who was one of the disciples of R. Aqiba. He used to say thus: Moses our master was aware that the daughters of Z'lophchod were heiresses; but he did not know whether they were entitled to the share of the first-born, and the passage about the inheritance would be written through Moses, even if the case of the daughters of Z'lophchod had not happened, but they were favored by heaven that this passage should be written through them. The same was the case with the wood-gatherer. Moses our master was aware that for the crime he committed there is a capital punishment, but he did not know by which of them he should be executed; and the passage would have been written through Moses, even if the case of the wood-gatherer had not happened. But as he was guilty, it was written through him; and this is what is meant by the reward of virtue, while the chastisement for sin is dealt out through a sinner. (See Sabbath, 1st ed., p. 55.) Now, if it be borne in mind that the land of Israel was

prepared for division, why was Moses doubtful? He was doubtful in the following: It is written [Ex. vi. 8] "And I will give it you for an heritage." Does this mean "an heritage from the parents"? Hence a first-born has to take a double share; or does it mean, "I give it to you--you shall bequeath it to your children" (as the decree was, that the persons ascending from

Egypt were to die in the desert), and the decision was both that the land was a heritage from the parents and yet not for themselves, but to bequeath to their children? And this is what is written [ibid. xv. 17]: "Bring them, and plant them." It was not said "us," and this was a prophecy, wherein they themselves did not know they were prophesying.

It is written [Num. xxviii. 2]: "And they stood before Moses and before Elazar the priest, and before the princes and all the congregation." Is it possible that when Moses did not answer them they were going to complain before the princes? Therefore this verse must be reversed. So said R. Jashia. Abba Hanan in the name of R. Elazar said: All of them were in the college when they came to make their complaint. And the point of their differing is: Whether in presence of the master the disciple must be honored or not. According to one, he may; and therefore he maintains that before they came before Moses they asked the princes, and he who said that this verse must be reversed, maintains that all were of the opinion that in presence of the master the disciple must not be honored with any question. There is a Boraitha that the Halakha prevails that he may be honored. But another Boraitha states: He may not. And it presents no difficulty. In case the master himself honors the disciple, it may be done; and in case he does not, it may not.

There is a Boraitha that the daughters of Z'lophchod were wise, understood lecturing, and were also upright. They were wise, as their protest was to the point. As R. Samuel b. R. Itz'hak said: At the time when Moses our master was sitting and lecturing about the law of Yeboom [Deut. xxv. 57], "If brothers dwell together," they said to him: If we are considered as a son, then let us inherit; and if we are not considered at all, then let our uncle marry our mother. And therefore [Num. xxvii. 5]: "And Moses brought the cause before the Lord." They understood lecturing, as they said: If he should have a son, we would not say a word. But there is a Boraitha that they said: If there should be a daughter. How is this to be understood? Said R. Jeremiah: Ignore the Boraitha. Abayi, however, said: "It is not necessary to ignore it. As they said: If there should be a daughter from a son, we would not say a word. They were upright, in that they each only married him

who was respectable and fit for them. R. Eliezer b. Jacob taught: Even the youngest of them was not less than forty years of age when she married. Is that so? Did not R. Hisda say: If a woman marries at less than twenty years of age she bears children until sixty. After twenty she bears until forty; but when she marries after forty, she does not then bear children? Because they were upright, a miracle happened to them, as to Jochebed, the mother of Moses. As it is written [Ex. ii. 1]: "And there went a man of the house of Levi, and took a daughter of Levi." Is it possible that a woman of one hundred and thirty years of age should be named daughter? As R. Hama b. Hanina said: This meant Jochebed, whose mother was pregnant while on the road to Egypt, and she was born before the walls (when they arrived in Egypt). As it is written [Num. xxvi. 59]: "Jochebed the daughter of Levi, whom (her mother) bore to, Levi in Egypt." And why is she

named daughter? Said R. Jehudah b. Zebidah: Infer from this that signs of youth returned to her. The wrinkles disappeared, the complexion became improved, and her beauty returned to her. But why is it written "he took"? It ought to read, "he remarried." Said R. Jehudah b. Zebidah: Learn from this that he did with her as if he were marrying for the first time: he placed her under a canopy. Aaron and Miriam sang before her and the angels said: "The mother of the children shall rejoice."

Farther on the Scripture mentions the daughters of Z'lophchod according to their age, and here according to their wisdom. 1 And this is a support to R. Ami, who said: In the college the most scholarly has preference to age; at a banquet, however, age is considered. Said R. Ashi: Even in college, only he who excels in wisdom; and also concerning a banquet, only he who is of advanced age is considered (but if one has little wisdom and little more age than the others it does not matter).

In the school of R. Ishmael it was taught: All the daughters of Z'lophchod were equal in wisdom (and that they are mentioned in the Scripture differently means nothing).

R. Jehudah in the name of Samuel said: It was permitted to them to marry any one of any tribe, as it is written [Num. xxxvi. 6]: "To those who are pleasing in their eyes may they

become wives." But what is to be said of that which is written farther on: "Only to the family of their tribe," etc. This is to be considered as a good advice--that they should marry respectable men only who were fit for them, and not as a positive commandment.

Rabba objected: It is written [Lev. xxii. 3]: "Say unto them . . . in your generations." (How is this to be understood?) Say unto them, who were at the mountain of Sinai; and to "your generations" means that the same law shall apply to "all their generations." But why should it be mentioned, "the parents and their children"? Because there were some commandments for the parents only, and some applying to children only. And what are the commandments to parents only? The law [Num. xxxvi. 8]: "And every daughter that inheriteth any possession," etc. And what are the commandments to the children? Many, as *e.g.*, heave-offering, tithe, and all others imposed upon the land of Israel.

We see, then, that the cited verse 8 prohibited marriage to other tribes at that time only? Rabba himself answered his objection: The daughters of Z'lophchod were not included in the commandments to the parents.

The master says: "The commandments belong to the fathers, but not to the sons. But whence is this deduced? From [ibid., verse 6]: 'This is the thing,' which means, 'This thing shall be customary only in their generation.' So said Rabha." Said Rabha the minor (Zuti) to R. Ashi: According to this, should Lev. xvii. 3, in which the same expression is used, also be "for their generation" only? And he answered: There it is different, as verse 7 reads plainly: "A statute forever shall this be unto them throughout their generations."

There is a Mishna in Tract Taanith, p. 80: "Never were any more joyous festivals in Israel than the 15th of Ahb and the Day of Atonement," etc. Why is the 15th of Ahb a festival? Said R.

Jehudah in the name of Samuel: In their days the tribes were allowed to intermarry.

(Here is repeated from Taanith, pp. 91, 92, q. V.)

The rabbis-taught: There were seven men who encompassed the whole world since its creation until now: namely, Mesushelach has seen Adam the first, Shem has seen Mesushelach, Jacob has seen Shem, Amram has seen Jacob, Achiah the Shiloni has

seen Amram; Elijah the prophet has seen Achiah, and the latter (Elijah) is still alive. But how can you say Achiah had seen Amram? Is it not written [Num. xxvi. 65]: "There was not left of them one man save Caleb and Joshua"? Said R. Hamnuna: The tribe of Levi was excluded from the decree that all should die in the desert. As it is written [ibid., xiv. 29]: "In this wilderness shall your carcasses fall, and all that were numbered of you, according to your whole number from twenty years," etc., excluding the tribe of Levi, of which the number was from thirty years. But did not the same happen to other tribes? Is there not a Boraitha that Jair and Machir, the sons of Manasseh were born in the time of Jacob, and did not die until after the entering into the land of Israel? Said R. A'hab. Jacob: In that decree, they who were less than twenty, and more than sixty years old, were not included. 1

The schoolmen propounded a question: How was the land of Israel divided? Was it divided into twelve parts for twelve tribes (and for each tribe as a whole), or was it divided severally? Come and hear! [Num. xxvi. 56]: "According as they are, many or few" (hence it was divided among the tribes and not severally). And there is also a Boraitha: "In the future the, land of Israel will be divided among thirteen tribes," while in the past it was divided only among twelve; and it was also divided by money (the explanation will be given farther on); and it was also divided only "by lot" and by the Urim v'tumim, as it is written [ibid., 56]: "by the decision of the lot." How so? Elazar was attired in the Urim v'tumim. Joshua and all Israel were standing by, and an urn containing the names of the tribes, and another, and the names of the boundaries of the land, were placed there; and Elazar, influenced by the Divine Spirit, would say thus: "Zebulon will now come out from the urn, and with him, the boundary of Akhu." And then one of the tribe of Zebulon would put his hand into the urn and draw the name of his tribe, and then put his hand into another urn and draw Akhu. And then again Elazar, influenced by the Divine Spirit, would say: Now Naphtali will come, and with him the boundary Ginousar. And so it was with each tribe. However, the division in the world to come will not be equal to the division of

land in this world, as in this world, usually, the lot of one is a field of grain, and of another, one of fruits; but in the world to come, every one will have a share in the mountains, valleys, and plains. As it is written [Ezek. xlviii. 31]: "The gates of Reuben, one," etc., which means that every one will have equal land and shares, and the Holy One, blessed be He, Himself will assign the shares. As it is written [ibid., 29]: "And these are their allotted division, said the Lord Eternal." We see, then, that the Boraitha states that in the past the division was twelve parts to the twelve tribes. Hence it was divided among the tribes and not severally. Infer from this that so it is.

The master said: The land of Israel will be divided among thirteen tribes. Who will be the thirteenth? Said R. Hisda "The prince of Israel will be the thirteenth. As it is written [ibid., 19]: "And the laborer of the city (*i.e.*, the prince who bears the yoke of the whole city), whom men of all the tribes will serve." [1] Said R. Papa to Abayi: But why not say that to the prince would be given a city or the like, but not a thirteenth share of all the land? [2] And he answered: This could not be borne in mind. As it is written [ibid., 21]: "And the residue shall belong to the prince, on the one side and on the other of the holy oblation, and of the possession of the city," etc. (Hence we see that a share was given to him by all tribes.)

The text says farther on: "It was divided by money." What does it mean? Shall we assume that he who had good land would pay to him who had inferior? Does the Boraitha treat of fools, who take money instead of good land? Therefore it must be said that money was paid by those who had shares near to Jerusalem to those who took their shares far from Jerusalem (nearness to Jerusalem being preferable, as it was nearer to the Temple and farther from the land of the natives, therefore in less danger than if near to them). And on this point the following Tanaim differ. R. Eliezer said that they were rewarded with money, and R. Joshua maintains that this reward was in land, as, *e.g.*, compared with where a saah can be sown nearer to Jerusalem they took five saahs.

It says farther on: "It was divided only by lots." There is a Boraitha, "except Joshua and Caleb." What does it mean? That they did not take any land at all? Is it possible? It is said above that they took the shares of the spies, etc. Hence they took what did not belong to them. So much the more what did belong to them. It means they did not take by lots, but by the decree of heaven. As it is written [Joshua, xix. 50): "By the order of the Lord did they give him the city which he had asked--Timnath Serah on the mountain of Ephraim." And Caleb--as it is written [Judges, i. 20]: "And they gave Hebron unto Caleb as Moses had spoken." But was not Hebron one of the cities of refuge? It means the suburbs and villages around the city.

MISHNA *IV*.: A son and daughter are equal concerning inheritance. However, a son takes two shares of the estate of his father, but not of the estate of his mother; and the daughters are fed from the estate of their father, but not from that of their mother.

GEMARA: What does the Mishna mean by its statement that they are equal concerning inheritance? Shall we say that they inherit together? Is it not said above that the son and all his descendants have preference over the daughter? Said R. Na'hman b. Itz'hak: It means to say that they are equal concerning an estate which is not yet fit for division. But have we not learned also this: That the daughters of Z'lophchod took three shares from the estate of their father, and when Z'lophchod died the land was not yet fit for division? And, secondly, what does the expression "however" mean? Said R. Papa: It means to say that they are equal in taking the share of a firstborn. It means that when a first-born died childless they took his share. But this also was already stated concerning Z'lophchod; because he was a first-born, a double share belonged to him, which his daughters inherited, and in reference to him also we do not know what the expression "however" means. Therefore said R. Ashi: It means to say that the son and daughter are equal; in case one has bequeathed to him or to her all his estate, his will must be executed. Is this in accordance with R. Johanan b. Beroka? This is said farther on by him: If one has bequeathed to them who are legal heirs, his words must be listened to? And even if one should say that our Mishna is in

accordance with R. Johanan, and the succeeding Mishna is in accordance with them who differ with R. Johanan, is it not a rule that in such a case the Halakha does not prevail with the anonymous Mishna? And still, what means the word "however"? Therefore said Mar b. R. Ashi: It means that the son and daughter are equal in all cases concerning inheritance, be it the estate of father or mother. However, there is a difference between them, that the son takes two shares from the estate of the father, but does not from the estate of his mother."

The rabbis taught: It is written [Deut. xxi. 17]: "To give him a double portion," which means a double portion as against one brother., But perhaps it means a double portion from all the estate, and should be discussed thus: His share, when he has five brothers, should be equal to that when he has only one. As in the latter case he takes two shares from the whole estate, so it should be with the former. On the other hand, it can be discussed thus: His portion, when he has five brothers, should be equal to that when he has only one brother, in this respect, that as in the latter case he takes twice as much as his brother, so it should be in the former case, that he takes twice as much as all of them. Therefore it is written [ibid., 16] "Among his sons, what he hath." We see, then, that the Torah treats of the inheritance as among all one's sons; hence we have to take the second supposition, and not the first. It is also written [I Chron. v. 1]: "And the sons of Reuben, the first-born of Israel, for he was the first-born; but when he defiled his father's bed, his birthright was given unto the son of Joseph the son of Israel, so that the genealogy is not to be reckoned after the first birth." And it is also written [ibid., 11]: "For Judah became the mightiest of his brothers, and the prince descended from him; while the first birthright belonged to Joseph."

Now the case of the first-born is mentioned concerning Joseph, and also concerning generations; as in the case of Joseph, it was only twice as much as each of the brothers. As it is written [Gen. xlviii. 22]: "Moreover, I have given unto thee one portion above thy brothers." So also is it with the case mentioned as to generations, that the first-born should have only one portion more than his brothers. It is written farther on: "Which I took out of the hand of the Emorite with my sword and with my bow." Did he indeed take it with sword

and bow? Is it not written [Ps. xliv. 7]: "For not in my bow will I trust, and my sword shall not help me."? Therefore we must explain that "with his sword" he means prayer, and "with my bow" supplication.

To what purpose was it necessary to cite all the verses? Lest one say that the cited verse in the above Boraitha is needed for R. Johanan's above theory; therefore the other cited verse, etc.

Said R. Papa to Abayi: How is it inferred from the last cited verse that Jacob gave Joseph twice as much as to all his brothers? Perhaps he presented to him only a like estate? And he answered: To thy question. the Scripture says [Gen. xlviii. 5]: "Ephraim and Manasseh shall be unto me as Reuben and Simeon." (Hence we see that he had twice as much as his brothers, who each were counted as one tribe, and he for two.)

R. Helbo questioned R. Samuel b. Na'hmeni: What is the reason that Jacob took away the privilege of the first-born from Reuben and gave it to Joseph? You ask for the reason. Does not the Scripture state the reason: "When he defiled his father's bed"? I mean to say: Why did he give it to Joseph? And he rejoined: I will tell you a parable to which this case is similar: There was one who had raised an orphan in his house. At a later period the orphan became rich, and thought, I will recompense my benefactor (because Joseph supported his father in the years of famine, therefore he recompensed him). Said R. Helbo to him: And how would, it be if Reuben had not sinned: then Jacob would have given nothing to Joseph? Thereto I shall tell you what R. Jonathan your master said concerning this: The first-born had to come from Rachel. As it is written [ibid., 37]: "These are the generations of Jacob. Joseph." But Leah was preferred by virtue of her prayers. Because of the very chastity of Rachel, the Holy One, blessed be He, returned it to her. And what were Rachel's virtues? As it is written [ibid., 12]: "And Jacob told Rachel that he was her father's brother, and that he was Rebekah's son." The brother of her father? Was he not the son of her father's sister? It was thus: He asked her whether she would marry him, and she said, Yea, but my father is very shrewd, and you cannot persuade him. And to the question: What does it mean? she answered: I have a sister who is older than myself, and my father will not give me

to you while she is not married. Then he said: I am his brother in shrewdness. She then asked him: Is it, then, allowed to the upright to be shrewd? And he answered: Yea; as it is written [II Sam. xxii. 27]: "With the pure thou wilt show thyself pure, and with the perverse thou wilt wage a contest." And then he furnished her with some signs, that when she should be brought to him he would ask her for these signs, that he might be sure that she was not exchanged for Leah. Thereafter, when Leah was brought to him instead of Rachel, the latter thought, Now Leah will be ashamed, and confided to her the signs. And this is what is written [Gen. xxix. 25]: "And it came to pass that in the morning, behold, it was Leah," from which it is to be inferred that until the morning he did not know that she was Leah, because of the signs which Leah received from Rachel.

Abba Halipha Qruyah questioned R. Hyya b. Abba: Of Jacob's children who came to Egypt in sum you find seventy; however, if you will number them in detail, you will find only sixty-nine. And he answered: There was a twin with Dinah. As it is written [ibid., xlvi. 15]: "With Dinah his daughter." According to your theory there was a twin with Benjamin also, as the same expression was used? He said then: A valuable pearl was in my hand, and you were about to abstract it. So said R. Hama b. Haninah: This was Jochebed, whose mother was pregnant, and bore her before the walls (above, p. 263).

R. Helbo questioned again R. Samuel b. Na'hmeni: It is written [Gen. xxx. 25]: "And it came to pass, when Rachel had borne Joseph," etc. Why when Joseph was born? And he answered: Because Jacob our father saw that the descendants of Esau would become submissive to the descendants of Joseph only. As it is written [Obadiah, i. 18]: "And the house of Jacob shall be a fire, and the house of Joseph a flame, and the house of Esau a stubble." Helbo objected to him from [I Sam. xxx. 17]: "And David smote them from the twilight even unto the evening of next day," etc. Hence we see that they were submissive also to David, who was a descendant of Judah, and not of Joseph. Answered Samuel: The one who made you read the prophets did not do so with the Hagiographa, in which it is written [I Chron. xii. 21] 1 "And as he was going over to

[paragraph continues] Ziklag . . . captains of the thousands that belonged to Manasseh." Hence they were submissive to the descendants of Joseph. R. Joseph objected from [ibid., iv. 42 and 43]: "And some of them, even of the sons of Simeon, five hundred men, went to mount Seir, having at their head Pelatyah and Nearyah and Rephayah, and Uzziel, the sons of Yishi. And they smote the rest of the Amalekites that were escaped, and dwelt there unto this day." Said Rabba b. Shila: Yishi was a descendant of Manasseh. As it is written [ibid., v. 24]: And these were the heads of their family divisions: namely, Epher and Yishi."

The rabbis taught: "The first-born takes a double share in the shoulders, in two cheeks and the maw, in the consecrated things, and also in the improvement of the estate which was improved after the father's death. How so? If the father left them a cow which was hired to others, or she was pasturing on the meadow and she brought forth offspring, the first-born takes a double share. If, however, the heirs build houses or plant orchards, the first-born does not take a double share."

Let us see how was the case with the shoulders, etc. If already in the father's hand, it is self-evident; and if not when still alive, then it was not yet in existence; and there is a rule that a first-born does not take a double share in that which is fit, but not yet in existence? The Boraitha treats of a case where the priest has acquaintance among people who usually give such a gift to him only, and the cattle were slaughtered while the father was still alive. And the Tana of the Boraitha holds that the above gifts are considered separated immediately after slaughtering, although they were not as yet taken off. It states farther on: If the father left them a cow, etc. Let us see: It teaches that the first-born takes a double share, even when it was under the control of others. Is it not self-evident that so much the more does the rule apply when it was pasturing on the meadow under proper control? It comes to teach us that the case "hired out to others" should be equal to pasturing in the meadow in this respect, that the heirs not needing to feed it, the improvement came of itself; but not when the heirs fed it, as then the improvement would be considered as made by the heirs, of which no double share is given. And this Boraitha is in accordance with Rabbi of the following Boraitha: A first-born

does not take a double share in the improvement of an estate which was improved after the father's death. Rabbi, however, said: I say that he takes, provided the improvements came by themselves, but not if improved by the heirs.

When they inherited a promissory note, the first-born took a double share; and if there was left a promissory note from the father, the first-born had to pay a double share. If, however, he says, "I will not pay double and also not take a double share," he may do so. What is the reason of the rabbis? It is written [Deut. xxi. 17]: "To give him a double portion." We see that the Scripture considers this a gift; and a gift is not considered unless it comes to one's hand. The reason of Rabbi is, because it is written "a double portion." We see, then, that the Scripture equals this to an ordinary share; and as concerning an ordinary share it is considered belonging to the heir even before it reaches his hand, the same is the case with the double share.

Said R. Papa: In case the father left a small tree, and pending the time of inheritance it became

large; or unmanured earth, which has improved by itself, all agree that a double share is given. In what they differ is, in a case where the father dies when the seeds are as yet growing, and at the time of dividing the inheritance had been made into sheaves; or date-trees were as yet blooming, and at the time, of dividing bore dates. According to one, it is to be considered an improvement by itself; and according to the other, it is considered changed to another article, of which a double share is not to be given.

Rabba b. Hana in the name of R. Hyya said: If one has acted in accordance with the decision of Rabbi, the act is valid; and the same is when he has acted in accordance with the decision of the sages. And the reason is because R. Hyya was doubtful whether the Halakha prevails with Rabbi when he differs with an individual, or it is so even when he differs with a majority (as in this case a majority differs with him). Hence it cannot be considered a wrong act if one has acted according to one of the decisions. Said R. Na'hman in the name of Rabh: It is prohibited to act in accordance with Rabbi [as he holds that the Halakha prevails with Rabbi against an individual only]. R. Na'hman, however, himself maintains that it is permitted to act in accordance with Rabbi [as he holds that the Halakha prevails

with Rabbi even against a majority]. Said Rabba: It is prohibited to act in accordance with Rabbi to start with; however, if one did so, his act is valid [and his reason is, that in such a case where Rabbi differs with the majority, the college has to teach in accordance with the majority to start with, but it cannot compel the one who acted in accordance with Rabbi to ignore his act].

It was taught: R. Na'hman taught in the Mechilta and Siphre, it is written [Deut. xxi. 17]: "Of all that is found in his possession," means to exclude the improvement which was made by the heirs after the father's death, but not that which improved by itself. And this is in accordance with Rabbi. Rami b. Hama, however, taught in the above-mentioned books that it excludes that which improved by itself, and so much the more that which was improved by the heirs. And this is in accordance with the sages.

R. Jehudah said in the name of Samuel: A first-born does not take a double share in a loan. According to whom is it? It cannot be in accordance with the rabbis, as they exclude him even from an improvement which is under the heirs' control; so much less of a thing which is not under their control. It must then be said that this is in accordance with Rabbi. But then the Boraitha which states. "If they inherit a promissory note, the first-born takes a double share in the loan, as well as in the interest," will not be in accordance with both the rabbis and Rabbi. It may be that Samuel's statement is in accordance with the sages; and nevertheless he has to teach this, lest one say, because he holds the promissory note in his hand, it is to be considered as already collected, he comes to teach us that it is not so.

"A message was sent from Palestine, that he takes a double share in the loan, but not in the interest." According to whom is this? It cannot be in accordance with the rabbis, for the reason stated above; and also not. in accordance with Rabbi, who states in a Boraitha that he takes a double share in the loan, as well as in the interest? It is in accordance with the sages; but the Palestinians hold that a note is considered as already collected.

Said R. A'ha b. Rabh to Rabhina: Amimar happened to be in our city, and lectured: "A first-born

takes a double share

in a loan, but not in the interest thereof. And Rabhina answered: The Nahardeans are in accordance with their theory elsewhere (both Amimar and R. Na'hman were from Nahardea), as in such a case Rabba said that if the heirs recovered real estate on a loan of their father a double share is given, but not if they collected money. R. Na'hman, however, holds the reverse: A double share is given if money is collected, but not on real estate. Said Abayi to Rabba: There is a difficulty concerning your decision, and also concerning the decision of R. Na'hman. Concerning your decision, the reason of which is to be supposed that their father left to them not *this* money now collected, as he left a promissory note only; but why should it not be the same with the estate? Did, then, their father leave real estate to them? Moreover, you, master, said that the reason given by the Palestinians concerning the case of a certain old woman (stated farther on) seems to you a right one, and this certainly contradicts your present decision. And concerning R. Na'hman's there is also the same difficulty, as his reason must be that there is no double share from the collected estate, because they did not inherit it from their father. Why should it not be the same with money, as the collected money was not of the inheritance of their father. Moreover, did not R. Na'hman say in the name of Rabba b. Abuhu, that if orphans have recovered real estate for a debt to their father, and there was a creditor to whom their father was indebted, the creditor might take away the estate which they recovered? (Hence he (R. Na'hman) considers the recovered estate as if left by the deceased--why, then, should there not be given a double share?) Answered Rabba: There is no difficulty concerning my statement, nor concerning R. Na'hman's, as we both have pointed out only the reason of the Palestinians by which, according to my theory, a double share is given from real estate, but not for money; and to R. Na'hman's it is the reverse. But our own opinion is, that neither from real estate nor from money is a double share given.

What was the case of the old woman, mentioned above? There was one who wrote in his will: "My estate shall be given to my old grandmother, but after her death it shall belong to *my* heirs." The deceased had a married daughter, who died while her husband and the deceased grandmother were still

alive; and her husband, after the death of the old woman, demanded the estate of his father-in-law, which was in the hand of his grandmother. And R. Huna's decision was: His claim is right, as the will states, "After her, my heirs shall inherit it," which is to be explained, "My heirs, and the heirs of my heirs." R. Anan's decision, however, was: His claim is not to be considered, as the will states, "to *my* heirs," and he was not his heir, but the heir of his daughter. And the Palestinians sent a message: The Halakha prevails with R. Anan, but not for his reason, as, according to his reason, even should his daughter leave a son, he would also not inherit; and this is not so, as the reason why the husband could not inherit is, that the law that the husband inherits from his wife holds good only when she left real estate, but not such an estate as was not as yet in her hands, but to come, which is not the case with a son, who inherits this also.

But shall we assume that R. Huna holds that one may inherit even an estate which was not as yet in the hands of his wife? Said R. Elazar: This case was discussed by great men, and the final decision, with its reason, will be rendered by a small man like my humble self. Every one who

says "after thee" is to be considered as if he were to say "from to-day" (*i.e.*, the above will states "after her," which means the estate shall belong to "my heirs from to-day, but they are not to use the products so long as the old woman is alive"). Rabba, however, said: It seems to me that the reason given by the Palestinians is good as, according to that will, if the old woman should sell the estate, the sale would be valid.

R. Papa said: The Halakha prevails that a husband does not inherit a property which was to come in the future to his wife, and the same is the case with a first-born. He--the first-born--also does not take a double share in a recovered loan, in real estate or money; and, furthermore, if the first-born owes money to his father, the share which belongs to a first-born is to be divided, half to himself and the other half to his brothers. (The reason is, according to Rashbam, because this share is considered doubtful money, as it is not certain that the first-born is to be considered an occupant with respect to it, the supposition being that he has mortgaged all his estate for this debt to his father for the purpose that, in case of his father's death, he should take a double share. And there is a rule that doubtful

money is to be divided. And according to Gershom, the reason is because this loan is not to be compared with the loan of a stranger, as he who is an heir is also an occupant with respect to this debt, and this gives him title to a half of the share in question.)

Said R. Huna in the name of R. Assi: If the first-born protests when his brothers come to improve the estate left by their father, saying: "They shall delay improvement until after division," this protest must be considered in case they have not listened to him, and he takes a double share in the improvement also. Said Rabba: The decision given by R. Assi seems to me right in case, *e.g.*, they inherited vines, and the improvement was by gathering the grapes from the vines; or they inherited olives, and took them off from the trees: but if they made wine or oil thereof, the protest is not to be considered. R. Joseph, however, maintains: Also in the latter case, it is to be considered. Why? They inherited grapes, and now it is wine! As R. Uqba b. Hama said elsewhere: It means he shall receive a double share of the value of the grapes. The same is the case here. *I.e.*, if it happened that the vine was of less value than the grapes, he might claim his double share in the grapes, as he has protested that wine be not made of them. And where did Uqba say this? In reference to the statement of R. Jehudah in the name of Samuel, that if a first-born and his brother have inherited vines or olives, and gathered them, the first-born takes a double share of them, even when they were pressed. Pressed! Were they not first grapes, and now wine? Mar Uqba b. Hama explained that it means that the first-born receives his full double share of the value of the grapes, as explained above.

R. Assi said: If, at the dividing, the first-born took an equal share with his other brother, it is to be considered that he has relinquished his right. R. Papa in the name of Rabha said: He has relinquished his right in the divided estate only. R. Papi in the name of Rabha, however, said: It is to be considered that he has relinquished his right on all the estates. The reason of the former is because he holds that the first-born has nothing until the estate is divided. Therefore he can relinquish his right only in the divided ones. And the latter holds that as soon as the father dies the double share belongs to the first-born, even before division. And therefore, as he has relinquished his right

in the divided estate, so has he done with all others. Both statements, however, were not said by Rabha plainly, but were inferred from the following act: There was a first-born who sold all the estate belonging to him and his brother. The orphans of his brother were going to eat dates of the estate belonging to their father, which was in the possession of the buyers, who struck them. Their relatives said to the buyers: It is not enough for you that you have bought their estate without the consent of the father and the orphans, you dare to strike them. And the case came before Rabha, who decided that the act of the first-born was null and void. R. Papi explained that it means he did nothing with the share belonging to the ordinary brother, but concerning his own share, the sale was valid; and R. Papa explained the decision of Rabha, that the whole sale was null and void, because the first-born had nothing in the estate before it was divided.

A message was sent from Palestine: If a first-born sold out before division, he did nothing. Hence they hold that the firstborn had nothing before the division. The Halakha, however, prevails that he has. Mar Zutra of Drishba had divided a basket of pepper with his brothers, and took an equal share, though he was a first-born; and when the case came before R. Ashi, he decided that as he relinquished his right concerning the pepper, it was also relinquished on all other property.

MISHNA *V.*: If one said in his will, "My son so and so, who is a first-born, shall not take a double share," or, "My son so and so shall not inherit at all with his brothers," he said nothing, as this provision is against the law in the Scripture. If, however, he has divided all his goods in his verbal will, and to some of his heirs he has bequeathed more and to some less, also equalizing the first-born, his will is valid, provided he has not mentioned in his will the word "inheritance." But if he said "because of inheritance," it is not to be considered. If there was a written will in which, in the beginning, middle, or end, was mentioned "a gift," all that it contains is to be listened to.

GEMARA: Shall we assume that our Mishna is not in accordance with R. Jehudah, who said in Tract Kedushin that a condition against the law in the Scripture, if in money matters, may be listened to? This Mishna can be even in accordance with him, as in that case the woman was aware of the law, but

relinquished her right. In our case, however, no one has relinquished.

R. Joseph said: "If one said in his will, 'My son so and so is my first-born,' he takes a double share. If, however, he said, 'My son so and so is a first-born,' he does not, as perhaps it was meant he was a first-born to his mother." There was one who came before Rabba b. b. Hana as a witness that he was certain so and so was a first-born. And to the question: Whence do you know it? he answered: Because his father called him "the first-born fool." And he said: This is no evidence, as people used to name a first-born to his mother first-born fool (*i.e.*, a first-born without right).

It happened that another came before R. Hanina as a witness for a first-born, and to the question: Whence do you know it? he answered: His father used to say, "Go to Sh'kh'at my son, who is a first-born, whose spittle cures eyes." But perhaps he meant a first-born to his mother? There is a

tradition that a first-born of the father cures, and a first-born to his mother does not.

R. Ami said: If born ατ μ ητος, and after perforation found to be a male, he does not take a double share, as it is written [Deut. xxi. 15], "first-born son," which means a son when born. R. Na'hman b. Itz'hak said that also the law of ibid., ibid. 18 does not apply to him. Amimar said: Such is not considered an heir at all, so that his share is not to be reckoned, and does not diminish the double share for the first-born. R. Shezby said: He must also not be circumcised on the eighth day. And R. Shrabyah said: The law [Lev. xii. 2] does also not apply to such (as in all the cited verses it reads a son or a male child). Said Rabha: There is a Boraitha in accordance with R. Ami: It is written a son, but not ατ μ ητος a first-born, but not a doubtful one. What does the latter part mean to exclude? That which Rabha lectured: If two wives of one have born two sons in a secret place which was dark, and it is not known who was born first, they may write a power of attorney each to the other (*i.e.*, if I am the first-born, I authorize you to take the double share for me; and if you are, then take it for yourself. And then one of them collects the double share and divides it with the other. Said R. Papa to Rabha: But did not Rabbin send a message: I have questioned all my masters about the law

in this case, and could get no answer from any of them; but it was said in the name of R. Janai that if they were recognized, and afterward they were mixed up again, then the stated power of attorney is to be written, but not otherwise. Then Rabha took an interpreter and announced in college: That which I said in my first lecture was an error, as in the name of R. Janai was said thus: That if they were already recognized and afterward mixed, then the above-mentioned power of attorney should be given to each by the other, etc.

The inhabitants of a village situated in a meadow sent the following question to Samuel: Master, teach us where it was certain to the people that so and so, from the children of so and so, was a first-born. Their father, however, said that another was the first-born. How is the law? And his answer was: They should write the above-mentioned power, one to the other.

According to whom was Samuel's decision? If he holds in accordance with R. Jehudah, let him say so; and if in accordance with the rabbis, let him say so? He was in doubt according to whom the Halakha prevails. And wherein is their differing? The following Boraitha: It is written [ibid., ibid. 17]: "Shall he acknowledge," which means, he shall introduce him to others (which is superfluous, this being already written in the previous verse). From this said R. Jehudah: One is to be trusted if he testifies, "This is my first-born son." And as he is trusted concerning a first-born, so is he also to be trusted to testify, "This is a son of a divorced woman," and of lost priesthood. The sages, however, say that he is not trusted. Said R. Na'hman b. Itz'hak to Rabha: According to R. Jehudah's theory, the above-cited verse is right; but according to the rabbis, to what purpose is it written? That in case of a doubt the father's acknowledgment is needed (but in a case of certainty to the people that one was a first-born, the father is not trusted in denying it). But to what does such a law apply? If concerning a double share, even if he was not a first-born, has the father not a right to bequeath him a double share in the manner of a gift? It means, in case the father acquired estates after acknowledgment (*i.e.*, if he is to be trusted, the acknowledged first-born takes a double share; and if not, he does not). But according to R. Meier, who said that one may grant a thing

not yet in existence, to what purpose is the above verse written? If property came to him while he was struggling with death.

The rabbis taught: If one was known to the people as a firstborn, and his father said of another, that he was the first-born, he is to be trusted; and if one was known to the people as not a first-born, his father, however, testifying that he is, he is not to be trusted. The first part is in accordance with R. Jehudah, and the latter with the rabbis. R. Johanan said: If he has testified, "He is my son," and thereafter said, "He is my bondsman," he is not to be trusted. If, however, he testified, "He is my bondsman," and thereafter, "He is my son," he is to be trusted; as the first testimony is to be considered as if he should say, "He serves me like a bondsman." The reverse is the case when at the house of taxes. If he said before the officers, "He is my son," and afterwards, "my bondsman," he is to be trusted, as the first statement was to avoid the payment of taxes for his slave; but if he said before the officers, "He is my bondsman," and thereafter, "my son," he is not to be trusted. An objection was raised from the following: If he has served him like a son, and he acknowledged him as such, and thereafter he said, "he is my bondsman," he is not to be trusted; and the same is the case if he has served him like a bondsman, and was acknowledged by him as such, and thereafter he said, "He is my son": he is not to be trusted. (Hence this contradicts R. Johanan.) Said R. Na'hman b. Itz'hak: The Boraitha treats of when he was called "the slave who costs me a hundred zuz," and such a thing a father would not say of his son.

R. Abba sent a message to R. Joseph b. Hama: If one says, "You have stolen my slave," and the defendant says, "I have not," and to the question, "What, then, is he doing with you?" the defendant answers, "They sold him to me," or "gave him to me as a present; and if you wish, take an oath that it was not so, and then you can take him." And if the plaintiff did so,(although, according to the law, the plaintiff had no right to take him with an oath, and for the defendant no other evidence or oath is necessary, if he would not say so), the defendant has no right to retract from his previous words.

What news came he to teach us? This we have already learned in a Mishna (Sanh. III., 2)? He comes to teach that

the differing of R. Meier and the sages is in a case equal to our case, and the Halakha prevails in accordance with the sages.

The same R. Abba sent a message to the same R. Joseph: The Halakha prevails that a creditor may collect from bondsmen belonging to orphans for their father's debt. R. Na'hman, however, said: He must not.

The former sent another message to the same: The Halakha prevails that to a second-cousin a third-cousin may be a witness (according to the law, relatives must not be witnesses, and Abba comes to teach that a third to a second-cousin, which means a great-grandson to a grandson, is not considered a relative in this respect). Rabha, however, said: The third-cousin is competent as a witness even to the first-cousin. Mar. b. R. Ashi had accepted a grandfather as a witness: the Halakha, however, does not prevail with him. The same sent another message to the same: If

one can witness about an estate, and he became blind, he is no longer competent as a witness in the case. Samuel, however, maintains that he is, as it is still possible for him to mark the boundaries; but concerning a garment, he is not. R. Shesheth, however, maintains that even in case of a garment he is still competent, as he may mark the width and the length of the garment; but not in a piece of metal. R. Papa, however, maintains that even in such a case he is still competent, as he may be aware of the weight.

An objection was raised: If one were cognizant of a case before he became a son-in-law to one of the parties, and the case came before the court after he became a son-in-law; or he was cognizant of the case when he was still in good health, and afterward became dumb, blind, or insane, he is not competent as a witness. But if he was cognizant of the case before becoming a son-in-law, and thereafter married a daughter, but she died before the case came before the court; or he was in good health when he became cognizant of the case, and also when it came before the court, but in the time between he became dumb, blind, etc., and cured, he is fit to be a witness. This is the rule: If in the beginning or the end of the case he was not competent, his testimony is not to be considered; but if he was competent both at the beginning and the end, but not in the time between, his testimony holds good. This opposes

the statements of all the Amoraim as above, and the objection remains.

R. Abba sent another message to R. Joseph b. Hama: If one say, "Of one child among the others," he is to be trusted. R. Johanan, however, says: He is not. What does this mean? Said Abayi: If one says, "This child shall inherit all my estates," he is to be listened to in accordance with R. Johanan b. Beroka. R. Johanan, however, says: He is not to be listened to, in accordance with the rabbis. Rabha, however, opposed: Does the message say he shall or shall not "inherit"? It says "trusted." Therefore he explained it thus: "If one testifies to one child among his children that *he* is the first-born, he is to be trusted, in accordance with R. Jehudah. R. Johanan, however, says: He is not to be trusted, in accordance with the rabbis. The same sent another message to the same. If one said in his will, "My wife shall take an equal share in my estates with one of my sons," he is to be listened to. Said Rabha: It holds good only concerning the estate in possession when the will was made, but not concerning the estate bought thereafter, and also that she takes an equal share with one of his children at the time of dividing (*i.e.*, if his children increased in number after the will was made, she takes her share accordingly, but not according to the number of children at the time the will was made). The same sent another message to the same: If one holds in his hands a promissory note, saying, "Nothing was paid," but the borrower say, "The half is paid," and witnesses testify that the whole amount is paid, the borrower has to take an oath that he paid the half, and then the lender may collect the other half from unencumbered, but not from encumbered estate, as the people by whom the estate is encumbered may claim, "We rely upon the witnesses that the whole amount is paid." And even according to R. Aqiba (Middle Gate, p. 5), the borrower may be considered as one who returns a lost thing-that is, if there are no witnesses; but if there are, R. Aqiba also admits that a half must be paid, as it is to be supposed that the borrower has admitted the half when he has seen that there are witnesses, and he did not know whether they were for or against him, and therefore lie admitted a half. Mar. b. R. Ashi opposed: Even in accordance with R. Simeon b. Elazar, who said that the admission is to be considered, as an admission in part, to which an oath is

given biblically, it is only when there are no witnesses who support him; but not in this case, where witnesses support him: he is certainly considered as if he returned a lost thing. Mar Zutra in the name of R. Simeon b. Ashi lectured: The Halakha prevails in accordance with all messages that were sent by R. Abba to R. Joseph b. Hama. Said Rabhina to R. Ashi: But does not R. Na'hman oppose one of the above messages (and there is a rule that the Halakha prevails with R. Na'hman concerning money matters)? And he answered: We read the above message: It must not be collected; and so also said R. Na'hman. If so, what does Mar Zutra mean to exclude by his statement that the Halakha prevails with all the messages? It cannot mean Rabha's above statement, as he does not oppose, but explain; and also not Mar b. R. Ashi's, who said that a grandfather is competent as a witness. It is already said there that the Halakha does not prevail with him. And should we say that it means to exclude Samuel's, R. Shesheth's, and R. Papa's concerning witnesses who were not competent at the time the cases came before the court, they also were already objected? Therefore, we must say he came to exclude R. Johanan's statement, and the opposition of Mar b. R. Ashi as above.

"*If it was mentioned in. the beginning,*" etc. How is this to be illustrated? When R. Dimi came from Palestine, he said in the name of R. Johanan: "There shall be given such and such a field to so and so, who shall inherit it"--this is considered as if "gift" were written in the beginning. "So and so shall inherit such and such a field, and it shall be given to him"--this is a gift in the end. "He shall inherit, and it shall be given to him to inherit"--this is considered "gift" in the middle. This, however, is if there were one man and one field--*i.e.*, "Such and such a field shall be given to A, and he shall inherit"; but if it was written, "The field on the east side shall be given to A, and he shall also inherit such on the west side," that concerning which inheritance is mentioned is not to be considered, as it is against the biblical law. The same is the case where there was one field and two persons, as, *e.g.*, "A shall inherit a half of such and such, and the other half be given to B." R. Elazar, however, maintains: The law holds good even in the latter cases, but not when there are two fields and two persons. When Rabbin came from Palestine,

he said: "If one wrote, "The field on the east side shall be given to A, and B shall inherit that on the west side"--according to R. Johanan, title is acquired, and according to R. Elazar it is not. Said Abayi to him: Your saying is right concerning R. Elazar, as he said above that when there are two fields and two persons the will is not to be considered; but it contradicts R. Johanan's above statement. And he answered: R. Dimi and I differ in the statement which was made in the name of R. Johanan. Resh Lakish, however, maintains that title is not acquired unless it is stated plainly, "A and B shall inherit such and such fields which I have presented to them as a gift." Then they should inherit (*i.e.*, as this will speaks about two persons, "gift" must be mentioned twice, so that it should constitute a gift for each of them). However, in this case the Amoraim still differ. R. Hamnuna maintains that the will in question holds good only as to one person and one field, but not as to one person and two fields, or *vice versa*. R. Na'hman, however, said that it holds good even as to one person and two fields, or *vice versa*; but not as to two persons and two fields; and R. Shesheth maintains that it holds good even in the latter case.

Come and hear an objection from the following: "My estates shall belong to you, and after you so and so shall inherit, and after him so and so shall inherit. If the first heir dies, title is given to the second; if the second dies, title is given to the third; but if the second dies while the first is still alive, the estate must be turned over to the heirs of the first one." Now, is not the case in that Boraitha equal to two fields and two men, and nevertheless it states that title is given? And lest

one say that the Boraitha also treats of a case in which the persons mentioned are all direct heirs of the testator, and it is in accordance with R. Johanan b. Beroka's statement said above, then how is to be understood the latter part: "If the second dies, title is given to the third"? Did not R. A'ha b. R. Ivia send a message that in accordance with R. Johanan b. Beroka, if one says, "My estates shall belong to you, and after you to so and so," if the first was a direct heir, the second has nothing in the estate, as the expression is not to be considered as a "gift," but as an "inheritance"? And there is no interruption concerning an inheritance (*i.e.*, an inheritance cannot be halved so that a half of the inheritance shall belong to the direct heir and the other

half to the second, and also cannot be interrupted by the death of the regular heir, but is to be inherited by his heirs). Hence, the Boraitha is an objection to the statements of all the Amoraim mentioned above, and so it remains.

Shall we then assume that it also objects to Resh Lakish's statement (*i.e.*, that the Halakha does not prevail with him)? How can this be imagined? Did not Rabha say that the Halakha prevails with Resh Lakish in certain three things, one of which being his statement made above? This presents no difficulty. The Boraitha cited speaks of when it was said in one speech (*i.e.*, there was no interruption between the words, "My estate shall belong to you, and after you," etc. It is therefore to be supposed that at the time he gave title to the first he also gave it to the second; and therefore all of them acquire title). But Resh Lakish treats of when it was said *with interruption* (*i.e.*, the statement of Resh Lakish that if there were two men and two fields title is not given, means that he said first, "This field shall be given to them," and after deliberating he said again, "shall inherit such a field," etc. Then the word "given" cannot be considered, in case of this other, and therefor title is not given). The Halakha prevails that all that is said in one speech is valid, except as to idolatry (*i.e.*, if one said this shall be for the idol, and without any interruption he said for something else, the thing in question is prohibited: because of the rigor as to idolatry, the first word which was spoken is considered). And the same is the case concerning betrothing--the first word is considered and the following is not, although it was in one speech.

MISHNA *VI.*: If one says: "A (who is a stranger to him) shall inherit my estate," and he has a daughter, or, "my daughter shall inherit," though he has a son, he said nothing, as the provision is against the biblical law. R. Johanan b. Beroka, however, maintains that if he has bequeathed to such persons as are fit to be his heirs, his will must be listened to; but if the persons are not fit to be his heirs, it is not to be considered.

GEMARA: From the expression of the Mishna, to a stranger instead of his daughter, or to the daughter instead of a son, it is understood if it was one daughter among others, or one son among others, he may be listened to. How, then, as to the latter part? R. Johanan b. Beroka said: If the persons

were fit to be his heirs, etc. Is this not the same as what the first Tana said? And lest one say that R. Johanan holds that even in the former case his will is valid, this cannot be, as the following Boraitha states: R. Ishmael the son of R. Johanan said: My father and the sages do not differ as

to when one has bequeathed to a stranger instead of his daughter, or to his daughter instead of his son--he is not to be listened to; and wherein they do differ is, if he had bequeathed to one son or to one daughter among others, where according to my father his will is valid, and according to the sages it is not. (Hence there is a difficulty in understanding the expression of the Mishna?) If you wish, it may be said that because R. Ishmael found it necessary to say that they do not differ, there must be one who said that they do; and this was the first Tana. And if you wish, it may be said that the whole Mishna is in accordance with R. Johanan b. Beroka. But it is not complete, and should read thus: If one said: "A shall inherit my estate instead of my daughter," or "My daughter instead of my son," he said nothing. If, however, "My daughter so and so shall inherit my estate instead of my other daughters," or "my son instead of my other sons," he may be listened to; as R. Johanan b. Beroka declares that if he has bequeathed all his estate to him who is one of his direct heirs, his will is valid.

Said R. Jehudah in the name of Samuel: The Halakha prevails with R. Johanan. And so also said Rabha. And he added: What is the reason of R. Johanan b. Beroka? [Deut. xxi. 16]: "Then shall it be, when he divideth as inheritance among his sons what he hath," means that the Torah gave permission to the father to bequeath his estate to whichever of his sons he pleased. Said Abayi to him: This may be inferred from "that he shall not institute the son of the beloved as the firstborn before," etc. We see that this is said only about the firstborn, but not about the other sons. Nay, the latter is needed in addition to what we have learned in the following Boraitha: Aba Hanan in the name of R. Eliezer said: To what purpose is it written, "that he shall not institute," etc.? Because from the beginning of the verse it is deduced that permission is given to a father to bequeath his estate to whom he pleases. And one may discuss thus: An ordinary son has the privilege to take his share in the estate which is not yet fit for division as if it

were already fit, and nevertheless his father has the permission to ignore him; a first-born, who has no such privilege, so much the more he could be ignored. Therefore it is written, "He shall not institute," etc. But let the Scripture read, "he shall not institute," *only*. Why the first half of the verse? Because one may discuss thus: a first-born, who has not the privilege to take his double share from that which is not yet fit, has nevertheless the privilege that he cannot be ignored by his father. An ordinary son, who has the privilege, so much the more he should not be ignored. Therefore the beginning of the verse, from which we infer that the father is permitted to bequeath his estates to whom he pleases, was necessary.

Said R. Zrika in the name of R. Ami, quoting R. Hanina, who said so in the name of Rabbi: The Halakha prevails in accordance with R. Johanan b. Beroka: Said R. Abba to him: He did not say so, but he decided so in a case (which came before him.) And what is the difference? One holds preference is to be given to a statement (*i.e.*, if he states that so the Halakha prevails, it is a teaching forever; but if he was only acting so, it may be said that it was only according to the circumstances and we cannot take it for a rule forever). And the other holds that the preference may be given to an act.

The rabbis taught: A Halakha must not be taken for granted from a discussion or from an act, as one has no right to act unless he is told to do so. If he questioned his master and he told him such and such a Halakha is to be practised, then he may go and act so, provided he does not compare one case to another. But do we not compare one thing to the other in the laws of the Torah? Said R. Ashi: It means to say that he must not compare one thing to the other in the law

of dietary (*i.e.*, an animal which is fit for eating biblically, if it has such a sickness that it cannot live twelve months, it must not be used). In Tract Chulin the diseases are enumerated, but such diseases as are not enumerated there are discussed whether in connection with lawful use or otherwise. And it is said that in such cases no comparison is to be taken in consideration unless known by tradition. As we have learned in a Boraitha, one must not say, concerning *Trepheth* (sickness which makes the animal illegal): This is similar to this. And one should not be surprised, as, if one cuts a piece of the animal from one side, it

may remain alive; and from another side, and it dies immediately.

R. Assi questioned R. Johanan: "If you, master, declare a Halakha to us, saying that such is the law, may we practise accordingly? And he answered: You shall not practise unless I tell You that such is for practice. Said Rabha to R. Papa and to R. Huna b. R. Joshua: If it should happen that my written resolution in a judgment should come to your hands, and you should see some objection concerning it, you shall not tear it before seeing me; for if I should have some reason to approve it I will tell you, and if not I will retract from it. But if the same should happen after my death, you shall not tear it, and at the same time you shall not take it for an example for other cases. You shall not tear it, because, if I were alive, probably I would approve it by a good reason; and shall not take it for an example, as a judge has to act only according to his conviction and to that which he sees with his own eyes.

Rabha questioned: How is it when one bequeaths his estates to one son among others, while he is still in good health? Shall we assume that R. Johanan b. Beroka's statement is concerning a sick person only, to whom the above-cited passage may apply, but not concerning one who is in good health (when it is not usual for one to divide his estate), or it does not matter, and one may bequeath his estate when he pleases? Said R. Mesharshia to him: Come and hear the following: R. Nathan said to Rabbi: You have taught the following Mishna: If one has not written in the marriage contract, "Male children borne of you by me shall inherit the amount mentioned in your marriage contract in addition to their share among their other brothers," he is nevertheless responsible in this respect, as this stipulation is made by the Beth Din (court). And Rabbi answered him: It is to be read in that Mishna, instead of "inherits," they shall "take" (which means a gift, and to this all agree that the father has a right). Thereafter, however, Rabbi said: My youth made me presume to contradict Nathan the Babylonian, as I see now--from the law that male children cannot collect their mother's marriage contract from encumbered estate--that Nathan, who declared the expression of the Mishna to be "inherited" was right, as if the expression were as I declared, why, then, should they not collect from encumbered estates also?

[paragraph continues] (Hence we see that one even in good health has the right to bequeath, etc., as the Mishna treats of one entering into marriage.) And who is the one who holds that one may give the preference to one of his sons among others, if not R. Johanan b. Beroka? Hence there is no difference if he does it while sick or in good health. Infer from this that so it is.

Said R. Papa to Abayi: Let us see. According to both, no matter if the expression in the Mishna is "inherit" or "take," why should this hold good? Is there not a rule that one cannot grant to some one a thing which is not as yet in his hands? And even according to R. Meir, maintains

that one may do so, it is when the thing is in existence, but not as yet in his hands. Here, however, concerning the marriage contract the male children are not at all in existence, and in such a case even R. Meir admits that one cannot. And if the answer to this question should be: When the court made a stipulation, it is different. Say then that only in a case where the stipulation of Beth Din holds, one can write so, even when he is in good health, but not otherwise? And Abayi answered: After all, it may be inferred that the Halakha prevails in accordance with R. Johanan b. Beroka, from the expression "inherit," as it could state "take" to which there is no opposition; and the choosing of the expression "inherit" shows that it agrees with R. Johanan. Thereafter, however, said Abayi: "What I said above is incorrect, as there is another Mishna: If one has not written in the marriage contract, 'The female children whom you will bear by me shall remain in my house after my death, and shall be fed from my estates until they shall marry,' he is nevertheless responsible, as this is a stipulation of the Beth Din." Now we see that the two statements which ought to be written in the marriage contract are in one case because of inheritance and in the other because of a gift; and in such a case even the opponents of R. Johanan admit that it is lawful. Said R. Nihumi, according to others R. Hananiah b. Minumi, to Abayi: But how do you know that one Beth Din has enacted both the stipulations mentioned above? Perhaps they were enacted by two different Beth Dins?

R. Jehudah in the name of Samuel said: If one bequeath all his estates to his wife, it is to be considered that he makes her a guardian only. It is also certain that if he did so to his elder

son, he is considered a guardian only. But how is it if he has bequeathed all his estates to his younger son? It was taught: R. H'nilai b. Aidi in the name of Samuel said that the same is the case even when his younger son was in his cradle.

It is certain that if one allot in his will an estate to a son and a stranger, the son is considered a guardian and the stranger acquires title to that which is bequeathed to him as a gift. The same is the case if to his wife and a stranger. It is also certain that when he had bequeathed his estates to his bride who was betrothed (and yet not married), or to his divorced wife, that it is a gift and they acquire title. The schoolmen, however, were doubtful when he did so to his daughter if there were sons, or to his wife if he left brothers; and also to his wife, Who had no children, but stepsons. Shall we assume that he appointed any one of them as guardian only, for the purpose that she should be respected by the heirs as long as she lived, or he made them a gift and they acquire title to the estate. Said Rabhina in the name of Rabha: The women mentioned above do not acquire title, as they are considered guardians; except the bride and also his childless wife if she is together with her stepsons. and therefore acquire title). R. Avira, however, said in the name of the same authority that all the above-mentioned women acquire title except his childless wife, if he left brothers; and also his childless wife if she is together with her stepsons.

(All that is said above treats of a will by a sick man?) Rabha questioned: How is it if this was done by one while in good health? Shall we assume that the above verse applies only to a sick man, whose last will must be respected, or the same is the case with one in good health, as for this purpose he so acted that his words should be respected from that day? Come and hear: If one writes the products of his estates to his wife, and thereafter he dies, she may collect her marriage contract from the estate itself. If he writes her a part of the estate--a half, a third, or a quarter--she may collect her marriage contract from the remainder. If, however, he had presented to her all his estates, and thereafter a creditor came holding a promissory note from

the deceased, according to R. Eliezer the deed of gift shall be annulled and she shall remain by her marriage contract. The sages, however, maintain, on the contrary: The marriage contract shall be annulled and she shall remain by the

deed of gift (as it may be supposed that she has relinquished her right in the marriage contract because of the gift she has received). Should, however, evidence be brought that the gift was not lawful, she remains shorn on both sides of the head. R. Jehudah the baker told that such a case happened with his sister's daughter, who was a bride; and the case came before the sages, and they decided that her marriage contract should he annulled and she should remain by her deed of gift. And thereafter the latter, for some reason, was also annulled, and she remained shorn on both sides of the head. We see, then, that if it were not for the creditor with his note, title would be given to her. Now, how was the case? Shall we assume that it was by a will from a sick man? Is it not said above that she is considered a guardian only? We must then say that it was by one in good health. Hence Rabha's question can be decided affirmatively. Nay, it may treat of a will by a sick man; and, according to R. Avira, it can apply to all the women mentioned above, and according to Rabhina's explanation it may apply to a bride and a divorced wife. Said R. Joseph b. Minumi in the name of R. Na'hman: The Halakha prevails that the marriage contract shall be annulled as the sages declare. Shall we assume that R. Na'hman does not hold the theory of supposition? Have we not learned in the following: If one's son went to the sea countries, and was thereafter reported dead, and he in consequence bequeathed all his estates to some one else, the gift is valid, even if his son were alive and returned. R. Simeon b. Menasia, however, maintains that the gift is null and void, as if he were aware that his son was still alive he would not do so; and R. Na'hman said that the Halakha prevails with the latter. (Hence we see that R. Na'hman holds the theory of supposition.) Yea, his decision that the marriage contract should be annulled is also because of a supposition--that for the pleasure she has in announcing that her husband presented to her all his estates she has relinquished the right to her marriage contract.

There is a Mishna (Peah, III., 10): "If one has bequeathed all his estates to his sons, but has left to his wife a small portion of ground, she loses her marriage contract." How is this to be understood--because he gave her a parcel of ground, she lost her marriage contract? Said Rabh: It means when he made the ceremony of a *sudarium*, to give title to his sons with

her garment (*i.e.*, as she has given her garment for the purpose of dividing all his estate among his sons, it is to be supposed that she agreed to this act without any objection concerning her marriage contract). Samuel, however, maintains that it is sufficient if he did so in her presence and she kept silent (as if this were against her will she would protest). R. Jose b. Hanina, however, maintains: It speaks of when he said to her, "Take this ground instead of your marriage contract." And the Boraitha teaches that concerning a marriage contract it is more loosely constructed than for other creditors, as the latter do not lose their right unless they say plainly, "We relinquish our right," while concerning a marriage contract it is sufficient that she does not protest. There is an objection from a Mishna in Khethuboth: R. Jose said: "If she has accepted, although he wrote nothing, she has lost the right of her marriage contract." From which it is to be inferred that according to the first Tana the accepting is not sufficient unless he writes. Hence he requires both writing and accepting. And lest one say that all of the Mishna in question is in accordance with R. Jose (*i.e.*, if he wrote her a small parcel of ground, she loses her right). And

R. Jose adds that the same is the case if she accepted, although it was not written. This cannot hold good, as there is a Boraitha in addition to that Mishna: Said R. Jehudah: All this holds good when she was present and had accepted; but if she accepted and was not present, she lost nothing of her right in the marriage contract. Hence this Mishna is an objection to all the Amoraim mentioned above, and the objection remains.

Said Rabha to R. Na'hman: In the case in question we have heard the opinions of Rabh, Samuel, and R. Jose. Now I would like to know what is the opinion of you, master. And he answered: I am of the opinion that as soon as he made his wife a sharer with his sons (*i.e.*, at the time when he bequeathed his estates to his sons and set aside a piece of ground for her), she lost her marriage contract. (Provided she had not protested, as R. Na'hman holds with Samuel that if she kept silent it was sufficient.--Rashbam.) And so also it was taught by R. Joseph b. Minumi, in the name of R. Na'hman. Rabha questioned: How is it in a similar case when one is in good health? Shall we say only when he was sick, and she was aware that he had no other estates, therefore she relinquished? But when he was

still in good health she might think, "Why should I relinquish my right--he may in the future buy some other estates?" Or, on the other hand, having seen that he divided all his estates, she renounced her hope and relinquished? This question remains undecided.

There was one who wrote in his will, a half of my estate to one daughter, and the other half to another, and a third of the products to my wife. At that time R. Na'hman happened to be in Sura (where this will was made), and R. Hisda questioned him: How should such a case be decided? And he answered: Thus said Samuel: Even if he left to her the products of one tree only, she lost her right in the marriage contract. Said R. Hisda to him: Samuel's decision was when he gave her title to that which is attached to the ground; but in our case he left for her only fruit which was already gathered. And he rejoined: Then you speak of movable property. In such a case she certainly lost nothing. There was another man who said in his will: A third to one daughter, a third to another, and a third to my wife. It happened that one of the daughters died while her father was still alive (*i.e.*, as a father inherits from his daughter the deceased's share reverted to him, and this is similar, as he might buy some other estate after the division of his previous one), and R. Papa was about to decide that his wife had only the third bequeathed to her, but nothing in the third left from her daughter, for the reason that as soon as he has made her a sharer with his daughters the marriage contract was considered null. Said R. Kahana to him: Why should this case be different from the case that after making his will he bought other estate? Would she not have a right to it because of her marriage contract, as she has relinquished her right only for the sake of her daughters, when there was no other estate, but not in the estate he bought afterwards? The same is the case here: the inheritance of his daughter is to be considered as other estate bought.

There was another who divided all his estate but one tree among his wife and children, and Rabhina was about to say that the widow had a right to this tree only, if the amount of her marriage contract exceeded the value of the estate she received. Said R. Yimar to him: If she relinquished her right at the time the division took place, then she has no right even to this tree; and, on the other hand, if she has a right to this

tree, which means that she did not relinquish her right, then, by the same right by which she collects the excess from this tree, she may do so from the others which are in possession of the heirs.

R. Huna said: From all said above, it is to be inferred that in the case of a sick person who has bequeathed all his estate to a stranger, it is to be investigated if the latter is in some way fit to be called a direct heir. Then he takes it as an inheritance; and if not, he takes it as a gift. Said R. Na'hman to him: Why quibble? Say plainly the Halakha prevails in accordance with R. Johanan b. Beroka, as your decision is in accordance with him. However, perhaps you refer to a case which happened while one was dying and was questioned: To whom do you bequeath your estate--probably to so and so? and he answered: To whom else? And hence your statement that if the legatee is in some way fit to be an heir he takes it as an inheritance; and if not, he takes it as a gift? And he (Huna) answered: Yea, that is what I meant. But what is the difference whether he takes it as an inheritance or a gift? R. Ada b. Ahbha in the presence of Rabha said: If because of inheritance, then the widow of the deceased must be fed from the estate until she gets the amount belonging to her according to her marriage contract, which is not the case when he takes it as a gift. Said Rabha to him: Shall such a case make the position of the widow worse? In the case of an inheritance biblically, it is said that the widow must be fed from the estate; in the case of a gift, which is only a rabbinical enactment (as in reality one cannot present anything after death, but the sages enacted that the will of a sick person shall be considered as written and presented), shall she not have her right of support? Therefore Rabha explained: R. Huna's above statement agrees with the message which was sent by R. Aha b. Ivia: In accordance with the decision of R. Johanan b. Beroka (above, p. 285), an inheritance has no interruption, and goes direct to the heirs of the inheritor. Said Rabha to R. Na'hman: But the testator himself has controverted this with his saying, "after you, so and so shall inherit." He said so because he meant that he might do so. But the law dictates that there shall be no interruption; hence this stipulation is against the biblical law, and must therefore not be considered.

There was a man who said in his will: My estates shall belong to A and after A to B. A, however, was a legitimate heir, and when he died, B came and demanded the estate. And R. Elish in the presence of Rabha was about to decide that B's claim was a right one. Said Rabha to him: judges who are arbitrators (*i.e.*, who do not decide according to the strict law, but mediate between the parties) judge so. This case, however, was the same as that concerning which R. Aha b. Ivia sent his message (that inheritance has no interruption), and he became ashamed. Rabha then applied to him [Is. lx. 22]: "I the Lord will hasten it in its time" (*i.e.*, Elish was ashamed that were it not for Rabha he would have acted against the law). And Rabha comforted him, in that Providence would not leave such an upright man to act wrongly, and therefore it so happened that he (Rabha) was present. Hence he had no need to fear the justice of his decisions in other cases.

MISHNA *VII.*: If one bequeathed his estates to strangers, leaving his children without anything, his act is valid; but he is condemned in the eyes of the sages. R. Simeon b. Gamaliel, however, maintains that if his children were not going in the right way he might be mentioned among the good men.

GEMARA: The schoolmen propounded a question: Do the rabbis differ with R. Simeon or not?

Come and hear: Joseph b. Joezer had a son with bad habits; and he had also a measure of dinars. And because of his son, he consecrated the dinars to the Temple. The son went and married the daughter of Gadil, the master of the crowns for King Janai; and when his wife had borne a child, he bought a fish for her, and found in it a pearl. Said his wife to him: Do not carry it to the court of the king, as they will appraise it cheaply and will take it from you. Take it, rather, to the treasurer of the sanctuary; but do not mention any price for it, as if you should do so, you will have no right to change it thereafter, as there is a rule that concerning a sanctuary the upset price is considered final, and one has no longer right to retract, as after delivery to a commoner. He did so, and it was appraised by the treasurer at thirteen measures of dinars. The treasurer then said to him: We have now in the treasury only seven measures of dinars, as the taxes are not yet collected. And he answered: Let the remaining six measures be consecrated to heaven. And the treasurer recorded

in his book: Joseph b. Ioezer brought to the sanctuary one measure, while his son has brought six. According to others, they wrote: Joseph brought to the sanctuary one measure, and his son took from it six measures. Now, as they wrote Joseph brought in, it is to be inferred that he acted rightly. But perhaps, on the contrary, as according to others they recorded "his son took out seven," it may be said that they considered the act of the father unlawful. Therefore from this Boraitha nothing is to be inferred. However, how should this question be decided? Come and hear: Samuel said to R. Jehudah: Do not transfer an inheritance from any one, even from a bad son to a good one; further, nor from a son to a daughter.

The rabbis taught: It happened in the case of one whose children had evil habits, that he bequeathed all his estates to Jonathan b. Uziel; and the latter sold a third of them, consecrated a third, and the remaining third he returned to the deceased's sons. And Shamai the Elder came to rebuke him for having so done with estates bequeathed to him, contrary to the will. And he answered him: Shamai, if you have the right to make null that which I have sold and that which I have consecrated, then you have also a right to take away the property which I have returned to the children. But as you have no right to do the former, you have no right to exclaim against my latter act (*i.e.*, if you consider me the owner of the estates bequeathed to me, then I may do with them what I please; and if I am not the owner, then also what I have consecrated should be annulled; and as you cannot annul the consecration, because the estate was bequeathed to me without any condition, consequently the estates are mine, and you cannot take away the property from the children.) And Shamai exclaimed: The son of Uziel has vanquished me! the son of Uziel has vanquished me! But what was his opinion before he came to rebuke him? He did so because of what happened in the city of Beth Horon. There was one of whom his father vowed that he should not derive any benefit from him; and when he made a banquet for the marriage festival of his son, he said to his neighbor: I make you a present of this courtyard and all that is prepared for the banquet, but only to the end that my father should be able to come and eat with us at that banquet. And his neighbor answered: If all this is mine, I consecrate it to heaven. And the

donor rejoined: I have not given you my property to be consecrated to heaven. Rejoined the neighbor: Then you have given all this to the end that your father and you shall eat and drink and be reconciled, and the sin shall rest on my head. And the sages decided that a gift which

cannot be consecrated by the benefactor is not to be considered a gift at all. 1

MISHNA *VIII*.: If one says: "This is my son," he is to be trusted; but, "my brother," he is not to be trusted. He may, nevertheless, share with him the inheritance of his father (when there are only two; but if there are three, the third, who does not recognize him as his brother, is not bound to share with him, and so he receives a half of the share of the brother who does recognize him). If the doubtful man dies, the estate must be turned over to him from whom it was taken. If, however, the deceased left other estates besides those he inherited with his brother, all the brothers share equally (because in the case of that one who testified that he is a brother to all, he has no right to the inheritance without the other brother).

GEMARA: The Mishna states: "'This is my son,' he is to be trusted." To what purpose is it stated? Said R. Jehudah in the name of Samuel: For the purpose that he may inherit from him, and to acquit his wife of Yeboom. But was it necessary for the Mishna to state that he might inherit from him? Is it not self-evident (*i.e.*, if its testimony was because of inheritance only, he could give it as a present)? It was necessary to state that he is to be trusted to acquit his wife of Yeboom. But this also we have learned elsewhere: If one says while dying: "I have children," he is to be trusted (and his wife is acquitted of Yeboom). If, however, he says: "I have brothers somewhere," and he was childless, he is not to be trusted (the intent being that his wife should be prohibited from remarrying). That Boraitha speaks of when the people were not aware of any brothers, and our Mishna came to teach that even when people were aware that one had brothers he is to be trusted if be testifies that such a person was his son.

R. Joseph in the name of R. Jehudah, quoting Samuel, said: Why was it said: One is trusted in testifying that he has a son; because if one testify that be has divorced his wife, he is to be trusted? And Joseph himself exclaimed: Lord of Abraham!

[paragraph continues] He sustains a thing which we have learned in a Mishna by a thing which was not teamed at all. Therefore, if this was taught, it must be thus: R. Jehudah in the name of Samuel said: Why is one trusted to testify, "This is my son" (and with this to acquit his wife of Yeboom)? because, if he likes, he can divorce her. Said R. Joseph again: Now, when we come to the conclusion that the theory of "because" may be used, we may infer that if one testify he has divorced his wife, he is to be trusted; because, if he wishes to make her free, he may give her a divorce then. When R. Itz'hak b. Joseph came from Palestine, he said in the name of Johanan: A husband is not trusted to testify that he has divorced his wife. R. Shesheth, when he heard this, made a gesture implying: Now the "because" of R. Joseph is gone. Is that so? Did not Hyya b. Abin say in the name of R. Johanan: The husband is trusted? This presents no difficulty. If his testimony is of a time long past, he is not to be trusted; and if of a short period of time (*e.g.*, a day or two before, so that this testimony should be used for the future), he is to be trusted. The difference is in case she was suspected of adultery a month before his testimony: If he is trusted, then she committed no adultery; and if not, the suspicion must be investigated. 1

The schoolmen propounded a question: Should one's testimony for the time past, in which he is not to be trusted, be considered for the future (*e.g.*, if he testified in January that he had divorced in December, which does not hold good in case of the suspicion stated above, does it hold good for the time after the testimony took place? And the question is: Can one's testimony be divided--

that for the past he should not be trusted, and for the future he should)? R. Mary and R. Zebid: According to one we may divide, and according to the other we may not. But why should this case be different from the following case stated by Rabha: If one testifies that his wife has committed adultery with so and so, if he has another witness, the man can be put to death in accordance with the law that two witnesses have to testify to a crime-we conjoin his testimony to the stranger's and they are considered two witnesses; but his wife cannot be executed, as it is unlawful that

a husband should be a witness against his wife (hence we see that the testimony is divided: for one it is considered, and for the other it is not)? It may be said: Concerning two we do divide, but not concerning one person.

There was one who, while dying, was questioned concerning his wife (*i.e.*, he was childless, and they questioned him if his wife was divorced from him, so that she might remarry after his death or she remained liable to Yeboom)? And he answered: She is fit to marry even the high priest 1 (*i.e.*, I have divorced her). Said Rabha: We may trust him, as it is said above by Hyya b. Aba in the name of R. Johanan: A husband is to be trusted in testifying that he has divorced his wife. Said Abayi to him: But did not R. Itz'hak b. Joseph in the name of R. Johanan say: He is not to be trusted? And Rabha rejoined: But have we not explained above, that one speaks of the past, and the other of the future? Rejoined Abayi: Shall we rely upon an explanation in such a rigorous law as marriage is? Then said Rabha to R. Nathan b. Ami (before whom the case came: Investigate this matter (as probably Abayi is right). There was another, of whom it was known to the people that he had no brothers, and so, also, he testified while dying. However, it was murmured by some that he had brothers in some other country. And R. Joseph decided: There is no risk in allowing his widow to remarry, as he not only said so while dying, but it was known to the majority. Said Abayi to him: But is it not murmured that there are witnesses in the sea-country that he has brothers? (Answered R. Joseph:) But at present there are no witnesses, and in a similar case, R. Hanina said elsewhere: Should we prohibit a woman from marrying because some say that there are witnesses in the north? Rejoined Abayi: If Hanina had decided leniently concerning a woman in captivity, whose prohibition to marry a priest is rabbinical only, should we compare our case, which is biblical, if the childless deceased left brothers? And Rabha said to Nathan b. Ami, who had charge of this case: Investigate this matter.

"*'This is my brother,' he is not*." But let us see what the

other brothers say. If they admit that the one in question is their brother, why should he share with one only? We must then say that they deny it. Then how is the latter part, "If he had estates from other sources, the brothers have to share," to be understood? They do not deny that he was their brother. It means When the others say, "We do not know whether he is a brother or not."

"*It must be turned over to him*," etc. Rabha questioned: How is it if the same estate were improved of itself--*e.g.*, if it were a young tree, and it grows up, etc., there is no question of the improvement being through the labor of the deceased, as this is similar to the case in which one got estates from other sources; but the question is: If the improvement was of itself? This

question remains undecided.

MISHNA *IX*.: If one dies, and a δαιθηχη was tied to his body, it is not to be considered at all. If, however, while sick he had submitted it to some one, be he his direct heir or not, it must be listened to.

GEMARA: The rabbis taught: What is to be considered a δαιθηχη? (Repeated here from Middle Gate, p. 40, from the quotation "Wills" to the end of the paragraph. See there.)

Rabba b. R. Huna was sitting in the balcony of Rabh, and declared the following in the name of Johanan: If a sick person said to witnesses: "Write, and give a mana to so and so," and before they did so he dies, it must not be listened to, for the reason that probably the deceased had in mind to give title in the case by a deed only; and as such a deed cannot be written after death, nothing can be done. Said R. Elazar to the disciples who were also sitting there: Bear in mind this Halakha, as it is for practice. R. Shezbi, however, said: The reverse was the case: R. Elazar declared the Halakha, and R. Johanan told them to bear it in mind, etc. Said R. Na'hman b. Itz'hak: It seems to me that R. Shezbi is right, as, if R. Elazar declared the Halakha, it was necessary for R. Johanan to approve it; but if Johanan declared it, was it then necessary for Elazar to give 'his approval to what his master said? And secondly, from the following, it is to be inferred that Elazar had declared the above, namely: Rabin sent a message in the name of R. Abuhu: It shall be known to you that R. Elazar sent a message to the sages in exile, in the name of our master (Rabh): If a sick person said,

[paragraph continues] Write, giving a mana to so and so, and it was not done until he had died, nothing is to be done (for the reason said above). (R. Jehudah in the name of Samuel, however, said: They may write and give. 1) But R. Johanan said (though the Halakha so prevails): It must, nevertheless, be investigated. What shall be investigated? When R. Dimi came from Palestine, he said the following two things: (a) A will which is written at a later period abolishes a will written previously (if title was not given by a ceremony of a sudarium). (b) If a sick person said, "Write, giving a mana to so and so," and died, it must be investigated, whether with the expression "write" the testator meant to strengthen the act. In that case it may be done; and if not, it must not. R. Aba b. Mamel opposed from the following: If one in good health said to witnesses, "Write, giving a mana to so and so," and suddenly died, nothing is to be done. From which it is to be inferred that if this were said by a sick person it would be listened to? He himself answered thereafter: If the expression "write" was only to confirm the act, then it may be listened to. But how can we know what he meant? As R. Hisda said elsewhere: If written, and confirmed by the ceremony of a sudarium, no retraction can take place. So also in our case. If it was said by the sick person, "Give to him, and also write," then the last expression may be considered as a confirmation of this act; and it may be so done.

It was taught: R. Jehudah in the name of Samuel said: The Halakha prevails, they may write and give; and so also said Rabha in the name of R. Na'hman.

MISHNA *X*.: If one wishes to bequeath his estate to his children (*i.e.*, it speaks of one who remarries and does not wish that the children by his first wife should lose their share in his estate after his death), he must write: I bequeath my estate to them from to-day and after my death (*i.

e., the estate belongs to them thenceforward, but not the products until after his death). So is the decree of R. Jehudah. R. Jose, however, maintains: It is not necessary to write "from to-day."

If one wrote: "I bequeath my estate to my son from today, and after my death," he has no longer any right to sell his estate, because it is bequeathed to his son; and his son, also, has

no right to sell it because it is still under the control of his father. If, notwithstanding this, the father has sold, the products thereof are sold until he dies. If the son, however, sold, the buyer has nothing therein until the father dies.

GEMARA: But how if he has written "from to-day and after my death"? Have we not learned in a Mishna: If one wrote in a divorce, "from to-day and after my death," it is considered a doubtful divorce, so that after his death his widow cannot marry his brother, but must perform the obligation of Halitzah. (This is no objection) as there we are doubtful as to the explanation of his words. Does he mean by the words, "after my death," to be a condition (*i.e.*, if I die she shall be divorced from to-day), or as a retraction (*i.e.*, the last words retract the former), and therefore she cannot marry. Perhaps the divorce was valid, and it is prohibited to her to marry a brother-in-law. But she is under the obligation of Halitzah. Perhaps the divorce was invalid. In our case, however, it is to be explained, the body of the estate is bequeathed "from today," but the products, "after my death."

"R. Jose . . . It is not necessary," etc. Rabba b. Abuhu became sick. R. Huna and R. Na'hman came to make him a sick call. Said R. Huna to R. Na'hman: Question him whether the Halakha prevails with R. Jose. And he answered: I am not aware of the reason of his statement. To what purpose, then, should I ask if the Halakha so prevails? Rejoined R. Huna: I will tell you the reason later, and meanwhile you may question him with whom the Halakha prevails. And he did so. And Rabba answered: So said Rabh: The Halakha prevails with R. Jose. When they went out from him, said R. Huna: The reason of R. Jose's statement is because the date of the deed testifies to whom from that day the estate belongs. And so also we have learned plainly in a Boraitha.

Rabha questioned R. Na'hman: According to R. Jehudah, who requires that there shall be written "from to-day," etc., how is it, if this was made with the ceremony of a sudarium? (Shall we assume that as the above ceremony was already performed title is acquired, and nothing further is to be added; or, even then, it must be written in the deed "from to-day," etc.?) And he answered: In such a case it is not necessary. R. Papa, however, maintains that there is a difference in the

tenor of the deed. If it was written: We have secured the ceremony of a sudarium, which he agreed to and made, then nothing is needed to be added. If, however, it was written: He agreed, and we performed the ceremony, then it is necessary to write, "from to-day," etc. (and the reason is, that the latter expression may be explained as intimating that he agreed that possession should come after death, and thereto we have joined the ceremony of a sudarium). R. Hanina of Sura opposed: Are there such things as we do not know, and we must rely upon the scribes? The

scribes of Rabha and of Abayi were questioned, and it was found that they were aware of the difference mentioned above. R. Huna b. R. Joshua, however, said: There is no difference between the two versions mentioned above; as to either of them, nothing is to be added. But if "sudarium" was not mentioned in the deed at all, and there was a memorandum: *e.g.*, "The undersigned testify that a memorandum was made by so and so," etc., then, according to R. Jehudah, "from to-day," etc., is needed. Said R. Kahana: I repeated this discussion before R. Zebid of Nahardea, and he told me: You have learned this so. We, however, have learned it as follows: Said Rabha in the name of R. Na'hman: If a sudarium is mentioned, no matter what version was used, nothing is needed to be added; but in respect to a memorandum (illustrated above) R. Jehudah and R. Jose differ.

"*I bequeath my estates to my son*," etc. It was taught: If the son sold out and then died while the father was still alive, according to R. Johanan the buyer has nothing in it; and according to Resh Lakish, title is given to the buyer after the father's death. The reason of their difference is, because the former holds that the sale of the products ought to be held similar to the sale of the body; and as the products could not be sold by the son, as he had nothing in them so long as the father was alive, so he could not sell the body. And the latter holds that the body is not subordinate to the products; as the body belonged to the son, the sale is valid.

R. Johanan objected to Resh Lakish from the Boraitha stated above, p. 289, which says: The estate must be turned over to the heirs of the first; and according to you, it ought to be to the heirs of the testator. And he answered: It was already explained

by R. Hoshua in Babylon that there was a difference when the testator said plainly "and after you." And so also it was answered by Rabh, to a contradiction made before him by Rabha b. R. Huna. But have we not learned in a Boraitha that the estate must be turned over to the heirs of the testator? In the resolution of this case, Tanaim differ: "My estates are bequeathed to you, and after you to B; A sells out, and consumes the amount. B has a right to recover it from the buyers after the death of A. So is the decree of Rabbi. R. Simeon b. Gamaliel maintains B has a right only to what remained from A." A contradiction was made from the following: My estate is bequeathed to you, and after you to B; A may sell and consume it. So is the decree of Rabbi. R. Simeon b. Gamaliel, however, maintains that A has a right to the products only. Hence Rabbi and R. Simeon contradict themselves in the two Boraithas. This presents no difficulty. The statement of Rabbi in the later Boraitha is concerning the products only; and the statement in the first Boraitha is concerning the body. There is also no contradiction in R. Simeon's statements, as his statement in the last Boraitha means that so is the law to start with; and his statement in the former means, if it were already done.

Said Abayi: Who is called a crafty villain? He who advises A to sell the estate (bequeathed to him for his life only), relying upon R. Simeon b. Gamaliel's decision. Said R. Johanan: The Halakha prevails with R. Simeon b. Gamaliel. He, however, admits that if A gives the same as a present to C, when he is dying, he has done nothing. And what is the reason? Said Abayi: Because C ought to acquire title to it only after the death of A. But at that time B had already acquired title, as it was bequeathed to him after A's death. But did Abayi say so? Was it not taught: To a gift presented by one who is dying, at what time is title given? According to Abayi, with the death: and according to Rabha, after death. Hence C ought to have the preference, according to Abayi's last statement, as to B it is bequeathed after death? Abayi has retracted

from his last statement. But do you know where he has retracted from the last statement? Perhaps he has retracted from the first. Yet it cannot be borne in mind that there is a Mishna which states as follows: If one should say:

[paragraph continues] "This shall be your divorce if I should die"; or, "It shall be yours if I should not recover from this sickness"; or, "After my death," he said nothing. (Hence this Mishna is a direct contradiction to Abayi's statement that title is given *with* the death. If it were so, the divorce would be valid when he said: This shall be your divorce when I die. And therefore it must be supposed that he retracted from the later statement.)

Said R. Zera in the name of R. Johanan: The Halakha prevails with R. Simeon, even in case in the estate in question there were included bondsmen, and they were freed. Is this not self-evident? Lest one say that the testator may claim: "I did not bequeath to you my estate, you shall transgress 1 with them," it came to teach us that it does not matter. And R. Joseph said in the name of the same authority: Even if he had made of them shrouds for a corpse. Is this not self-evident? Lest one say that the testator may claim: "I did not give it to you for the purpose that you should make from it things from which it is prohibited to derive any benefit," he came to say it does not matter.

R. Na'hman b. R. Hisda lectured: If one said: "This citron is given to you as a gift, and after you to B," and A became seized of it, and performed his duty as owner on the first day of Tabernacles, it depends upon the difference between R. Simeon and Rabbi whether it was done lawfully. R. Na'hman b. Itz'hak opposed: The above Tanaim differ in the case whether the sale of the products be considered the same as the sale of the body (explained above), or not? But in our case, if it was not presented to him to the end that as owner he should perform the duty of that day, for what, then, was it given to him? Therefore it must be said that all agree that A, who did as owner his duty of that day, acted lawfully. But if he has consumed or sold it, it depends upon the difference between the Tanaim mentioned above whether the sale is valid, or A has to pay for it.

There was a woman who had a tree on the estate of R. Bibbi b. Abayi; and each time she went to gather the products of the tree, it made him angry. She then sold it to R. Bibbi for his life, with the condition that after his death it should be

turned over to her or her heirs. He, however, transferred it to his minor son (to the end that the tree should remain his for a long time, as according to the law a minor acquires but cannot give title, and this act was according to R. Simeon b. Gamaliel). Said R. Huna b. R. Jehoshua: Because you are weak you speak weak words. 1 Even Simeon b. Gamaliel admits that his statement holds good only when he transferred it to some one else; but not if to himself.

Rabha said in the name of R. Na'hman: If A said to B, "I give you this ox as a present, with the stipulation that you shall return it to me," and B consecrated it and afterward returned it, the ox is consecrated, and B has fulfilled his duty. Said Rabha to R. Na'hman: But, after all, what has he returned to him? The ox being consecrated, he cannot derive any benefit from it. Rejoined R.

Na'hman: But did B depreciate the value, of the ox? Has he not returned it as he got it? R. Ashi, however, said: It must be investigated how the stipulation reads. If "You shall return it," then he acted correctly, as he did return it. But if "You shall return it *to me*," which means it shall be fit for me, but if he has consecrated it, it is no more fit for him. Consequently it cannot be considered returned.

R. Jehudah said in the name of Samuel: If A has bequeathed his estate to B, and B says "I do not want it," he nevertheless acquires title, even if he still protests he does not want it. R. Johanan, however, says: He does not. Said R. Abba b. Mamel: And they do not differ. If B protests at the very time the deed of gift was given to him, he does not acquire title; but if he first kept silent, and afterward protested, title is acquired.

The rabbis taught: If a sick person said, "Give two hundred zuz to A, three hundred to B, and four hundred to Q" it must not be understood that he who is mentioned first in this deed acquires title to that amount; and, therefore, if a creditor comes with a promissory note of the deceased, it may be collected from all of them. If, however, it reads, "Two hundred zuz to A, and after him three hundred to B, and after him four hundred to C," then the one who is mentioned first in

the document acquires title to that amount; and the promissory note must be collected from the last. And if the money he receives does not suffice, it must be collected from the one mentioned before him; and if his does not suffice, it must be collected from the first.

The rabbis taught: If a sick person said, "Give two hundred zuz to my first-born son so and so, who is worthy to have them," he may take them, and also the double share belonging to a first-born. If, however, the sick person said, "Give him such an amount for his first-born privilege, the son has the preference to choose which is better for him--the amount bequeathed or the double share prescribed for him. The same is the case if the sick person said, "Give two hundred zuz to my wife, who is worthy of them." She takes them and also what belongs to her according to her marriage contract. If, however, he said, "Give them to her for her marriage contract," she has the choice of taking them or that which belonged to her according to her marriage contract. If a sick person said, "Give two hundred zuz to my creditor B, who is worthy of them," he may take them, and also collect what the deceased owes him. But if he said, "Give them to him for my debt," then he takes it for the debt.

How is the last sentence to be understood--because he said he is worthy of them, he shall take both the two hundred zuz and his debt? Why not explain, as he had a right to them because of my debt? Said R. Na'hman: Huna told me that this Boraitha is in accordance with R. Aqiba, who is particular concerning the version as it is said (Chap. IV., Mishna 2): R. Aqiba admits, etc. From which we see that he gives his attention to a superfluous word. The same is it with the case in our Boraitha-that the words, "as he is worthy of them," are superfluous; and according to R. Aqiba they are said because he wants to add them to his debt.

The rabbis taught: If a sick man said, "I have a mana with so and so," the witnesses may write this, although they are not aware that such is the case. And therefore, when his heirs come to collect from the debtor, it is for them to bring evidence. So is the decree of R. Meir. The sages, however, maintain that the witnesses must not write unless they are aware that so it is. And

therefore, the heirs may collect this debt without any

other evidence. Said R. Na'hman: Huna told me: The Boraitha must be so understood. R. Meir said: They must not write; and the sages: They may. And even R. Meir said so because he feared that the court, before which the case of "collection" should come, would err, and approve the deed without any investigation, if the witnesses who signed the deed testified only to what the deceased said, or they were aware that the contents were true. And the sages maintain: Usually a court does not err, and can be relied upon to give proper attention to this matter. Said R. Dimi of Nahardea: The Halakha prevails that it must not be feared the court will err. But why should this differ from the following case stated by Rabha: The ceremony of Halitza must not be made by the court, unless they know the persons? And the same is the case with a denial (of a woman, betrothed in childhood, who on arriving at majority denies the marriage before the court; and according to the law she may remarry without any other act). And therefore the witnesses who were present may write a testimony of this act, although they themselves did not know the persons. And the reason why the court must not perform the ceremony of Halitza, unless they know the persons, is because it is to be feared that the court before which she may come to remarry will not investigate whether she is the same person who had to take Halitza. (Hence we see that error by the court is to be feared?) This is no objection. A court usually does not investigate the act of a former court; but the acts of witnesses, it does.

MISHNA *XI.*: The father has a right to pluck the products of trees which are found on the estate bequeathed to his son, after his own death, and may present them to whom be pleases. If, however, the plucked fruit remains after his death, they belong to his heirs.

GEMARA: The plucked fruit only, but not that which is attached to the trees, although ready to be plucked (*i.e.*, such belongs to the son, to whom the estate is bequeathed after his father's death)? Have we not learned in a Boraitha that in case the fruit was ripe, under the control of the bequeather, it belongs to the buyer if he sold it before his death? Said Ula: This presents no difficulty. Our Mishna treats of when he bequeathed to his son, and it may be supposed that his last will

was that from that remaining on the tree his son should derive benefit; and the Boraitha speaks of when he has bequeathed his estate to a stranger.

MISHNA *XII.*: If he left grown-up and minor sons, the grown ones have no right to derive any benefit on account of the minors, nor have the minors a right to same on account of the older brothers (*e.g.*, the older ones have no right to dress themselves at the expense of the inheritance before the division, nor should the minors be supported from the inheritance); but they must divide the inheritance equally. If the older ones have married at the expense of the inheritance, the same amount must be added to the shares of the minors. However, the latter have no right to claim for any addition if their older brothers have married while their father was still alive, as the amount expended for their marriages is considered a gift from their father. [1]

The very same is the case with grown-up and minor daughters. All of them must receive an

equal share. However, in one respect preference is given to daughters who were left together with grown-up sons. The daughters must be fed from the inheritance at the charge of the sons, which is not the case with minor daughters who were left together with grown-up ones.

GEMARA: Rabha said: In the case of the oldest brother who has dressed himself at the expense of the house before division, his act is lawful (and nothing is to be deducted from his share). But does not our Mishna state: "Grown-up ones have no right to derive any benefit," etc. Our Mishna speaks of when they are idle, and do nothing for the benefit of the house. If idlers! Is it not self-evident? Lest one say that, nevertheless, they would be pleased that their brother should be nicely dressed, it comes to teach that it is not so.

"*Grown-up and minor daughters*," etc. R. Abuhu b. Genibh sent a message to Rabha: Let the master teach us:. How is it if a woman has borrowed money, consumed it, and thereafter she married without paving her debt, and brought estates with her at marriage? Must her husband pay her debt, or not?

Shall we assume that the husband is considered a buyer of the estates brought, consequently he has not to pay, as the law

dictates that a loan made without a deed cannot he collected from a buyer; or is he considered an heir, and must pay his wife's debts, even when contracted without any deed? And Rabha answered: This we have learned in our Mishna: If the grown-up daughters have married, the minors may do the same. Is this not to be interpreted that if the grown-up daughters have borrowed money from the estate also belonging to the minors, the minors shall do the same by collecting the debts from their sisters' husbands? Nay! The Mishna means to say that they take the same amount from the inheritance as their sisters did. But this is not so. As R. Hyya taught plainly: If the older ones have married at the charge of the inheritance, the minors may collect the amount from their husbands? (Hence we see that the husband is considered an heir, and must pay?) This cannot be taken for support, as a law made in connection with an inheritance for the purpose of marriage is considered as public and known to the people, and also in the light of a deed which is to be collected from encumbered estates.

Said R. Papa to Rabha: Why did you try to decide the question from R. Hyya's Boraitha? Was the same not decided by Rabbin's letter: If one dies leaving a widow and a daughter, the widow must be supported from the deceased's estate. If the daughter has married or dies, the widow is still to be supported from the estate. Said R. Jehudah the son of R. Jose's sister: Such a case came before me, and it was decided that a widow must still be supported from the estate. Now, if the husband is considered an heir, it is correct that his widow should be supported from his estate; but if he is considered a buyer, why should she be supported from his estate? Does not a Mishna state that for the support of a widow and daughters, encumbered estate must not be taken away? Said Abayi: What news has Rabbin sent in his message? Have we not learned this in a Mishna: "The following is not to be returned in the jubilee year: The double share taken by a first-born and the inheritance of a woman taken by her husband"? Hence we see that the husband is considered an heir? Said Rabha to him: And even after he has sent the message. do we then know that it is in accordance with the law? Did not R. Jose b. Hanina say (Middle Gate, p. 255) that the husband takes away

from the buyer? Therefore said R. Ashi: The rabbis have enacted that in some respects the husband should be considered as an heir, and in some respects as a buyer; and have so done on his account. Concerning the jubilee year, it is better for him that he should be considered an heir, for the purpose that he should not be compelled to return the inheritance of his wife, and concerning the case of R. Jose b. Hanina (stated above) he is to be considered as a buyer, that he should not suffer any, damage; and in the case of Rabbin they have considered him as an heir, to the end that the widow should not suffer any damage. But why did the sages consider him as a buyer in the case of R. Jose b. Hanina? Do not the buyers (from whom he takes away the property) suffer? Therein they themselves cause that they should suffer, as they ought not to have bought goods from a married woman, who lives with her husband, without his consent.

Footnotes

245:1 The Gemara infers it from terms in Hebrew or Chaldaic which it is impossible to translate into English; namely, Putiel, which is a name, *Pitem* meaning in Aramaic "fat," and *Pitpet*, which means in Aramaic "subduing." Hence by Putiel can be meant Jethro, who fattened calves for idols, and also Joseph, who subdued the evil spirits.

246:1 It is written *bniechein*; literally, "sons." Leeser translates "children," according to the sense.

247:1 Leeser's translation does not correspond.

248:1 R. Janai was very infirm and could not see well.

253:1 The Scripture reads *byoum*, "at the day," which Leeser has not translated.

254:1 This is the explanation of Gershom. Rashbam, however, interprets it to mean that if the son dies while his mother is still alive, the legal heirs are not his brothers, but the relations of her father.

256:1 *I.e.*, it cannot happen that all the descendants of one of the twelve tribes of the sons of Jacob should die. The basis of this is Malachi, iii. 6.

257:1 Leeser translates "dread," which does not correspond.

257:2 Leeser does not correspond at all.

261:1 The text continues a discussion about the same matter, explaining the supposed contradiction of the passages, which is of no importance, and is therefore omitted.

163:1 [Num. xxvii. I:] Mahlah, Noah, Chaglah, Milcah, and Thirsah, white on the occasion of their marriage, Mahlah, Thirsah, Chaglah, Milcah, and Noah are written.

265:1 In the text it is deduced by analogies of expression, and omitted as of no importance.

266:1 Leeser's translation does not correspond.

266:2 The text has "Rungur." The Aruch explains this as two words of the Persian language: "Run" means "day," and "gur" means "hirer"; and accordingly Rashbam construes "day-hirer," which does not fit very well. We have therefore translated in accordance with R. Gershom.

270:1 In the Hebrew Bible it is verse 21; in Leeser's, Verse 20, because he put together verses 5 and 6.

297:1 In the text is repeated here from Tract Sukka, p. 36, which see.

298:1 The commentators try to explain at length with illustrations, which we omit as of no importance.

299:1 The commentators find difficulty in explaining the meaning of this expression. It seems to us, however, very simple. He meant: I divorced her before having intercourse with her, and she is still a virgin, whom a high priest may marry.

301:1 Transferred from 152*a*.

305:1 The ancient Hebrew as well as the Roman law prohibits the freeing of a slave without good reason; and also the deriving of benefit from shrouds, or anything else belonging to a corpse.

306:1 The commentators' explanation of this is that Abayi was of the family of Eli, who according to tradition were short-lived. Therefore the word "weak."

309:1 So is it explained in the Gemara by R. Jehudah.

Next: Chapter IX

CHAPTER IX.

RULES AND REGULATIONS CONCERNING THE SUPPORT OF UNMARRIED DAUGHTERS AFTER THE DEATH OF THEIR FATHER, IF AMONG THE CHILDREN WERE AN HERMAPHRODITE OR AN ANDROGYN. MAY OR MAY NOT ONE BEQUEATH HIS ESTATE TO STRANGERS IF HE HAS CHILDREN? DOES THE SECOND WILL ABOLISH THE FIRST? IF A SICK PERSON RECOVERS AFTER MAKING A GIFT WHILE SICK, MAY HE RETRACT OR NOT? IF SUDDEN DEATH OCCUR TO MANY PERSONS, AND IT IS NOT KNOWN WHO DIED FIRST, AND EACH OF THE HEIRS CLAIMS FOR HIS BENEFIT.

MISHNA *I.*: If one dies, and leave sons and daughters, if the inheritance is of great worth, then the sons inherit, and the daughters must be supported from it; and if a moderate one, the daughters must be supported, and the sons may go a-begging. Admon, however, said: Because I am a male shall I suffer? Said Rabban Gamaliel: It seems to me that Admon is right.

GEMARA: What is to be considered great worth? Said R. Jehudah in the name of Rabh: It shall be sufficient for all of them to be supported for twelve months. And he (Jehudah) added: When I told the Halakha before Samuel, he said: Such is the decree of R. Gamaliel b. Rabbi. The sages, however, maintain: It shall suffice to support all of them until the daughters become of age. So also it was taught by Rabbin, according to others by Rabba b. b. Hana, when he came from Palestine, in the name of R. Johanan: If the inheritance suffices to support all of them until the daughters become of age, it is considered of great worth; and if less, it is considered moderate. How is this to be understood? If it does not suffice to support all of them, shall the daughters take the entire inheritance, leaving nothing for the sons? Therefore said Rabha: There must be deducted from the inheritance the amount which will suffice for the daughters until they become of age; and the remainder shall be given to the sons.

It is certain that if for some reason the estates become less

in value after the father's death, and do not suffice for the support of the daughters until they become of age, and also for the sons' support, both have already acquired title, and must be satisfied with that which falls to their lot (*i.e.*, the daughters have no right to claim that they shall be supported until of age from the share of their brothers). But how is it if the estate increased in value after death? Shall we assume that the increase belongs to the heirs, and therefore the sons may have the benefit of it? Or, as they had nothing in it when their father died, they are considered entirely cut off from this inheritance, and have nothing to do with the increase? Come and hear what R. Assi said in the name of R. Johanan: If orphans hastened and sold out from this inheritance before the daughters summoned them, the sale is valid, and the daughters have no right to take it away from the buyers, according to the rule that it cannot be collected from encumbered estate for the support of the daughters. (Hence we see the sons are considered heirs, notwithstanding that the estate was not of great worth.) Consequently they have a share in

the increase.

R. Jeremiah was sitting before R. Abuhu, and questioned him as follows: If the estates were of great worth, but there was a promissory note in the hands of a creditor, which ought to be collected from the estates, should the estates, because of the note, be considered moderate, so that the support should be for the daughters and the sons should go a-begging? Or, until collected, should all of them be supported, without taking into consideration that after collecting nothing might remain for the support of the daughters? And should you decide that the promissory note, although not yet collected, diminishes the value of the estates, for the reason that the amount due will be collected in any event, even should the creditor die, how is it if the deceased left a step-daughter whom he has to support, according to the marriage contract of his wife, until she shall become of age, and the amount of her support diminishes the estate from being of great worth, and stamps it moderate? How, then, should the inheritance be considered, should the step-daughter die, and then, the obligation being gone, the estates remain of great worth. There is still another question. If the deceased left a widow and a daughter, and the estates left could support only one of them, who

has the preference? And R. Abuhu answered: Go to-day, and come to-morrow. And when he came he said to him: Of all the questions, I can decide the last one. As R. Aba said in the name of R. Assi: The sages have enacted that when there is a widow with a daughter she shall have similar treatment to that of a sister who remains with her brother. As in the latter case, if the estate is moderate she must be supported, although her brothers remain beggars, so also the widow as against a -daughter-the widow must be supported and the daughter may go a-begging.

"*Admon, however, said: Because I am a male,*" etc. How is this to be understood? Said Rabha: He means to say: Because I am a male, and ought to inherit all the estates where the inheritance is of great worth, leaving for my sister only the support for her livelihood until of age, shall I remain a beggar when there is a moderate estate?

MISHNA *II*.: If one leave sons, daughters, and an hermaphrodite (if it is doubtful whether male or female), and the inheritance is of great worth, the males may count same among the females; but when the inheritance is moderate, the females may count same among the males.

If one say: "If my pregnant wife should bear a male, he shall take a mana," and she bears a male, the mana is to be given to him; "If a female, she shall take two hundred zuz," she takes two hundred. If a male a mana, and a female two hundred zuz, and she had born a male and a female? The male takes one hundred and the female two hundred zuz. But if she bears an hermaphrodite, he takes nothing. If, however, he said: "What she shall bear shall take," then he takes accordingly. And the same is the case if there were no heirs but he--he inherits all.

GEMARA: The Mishna states: They count same among the daughters, which means he shall be treated like them. But does not the later part state: If she bears an hermaphrodite, he takes nothing? Said Abayi: It means that the males counted him among the females; but the latter have the right not to accept him, and he remains without any support. Rabha, however, maintains: They pass him and he must be similarly supported. And the latter part of our Mishna is in accordance with Rabban Simeon b. Gamaliel of the following Mishna: If

she bears an hermaphrodite or an androgyn, which is at times a male and at times a female, R. Simeon b. Gamaliel said: No sanctity rests upon them. (The cited Mishna treats: If one made a vow for the offspring of a gravid cow--if a male, it shall be a burnt-offering; and if a female, a peace-offering.)

An objection was raised from the following: "An hermaphrodite inherits like a son, and is supported like a daughter." And this can be correct only according to Rabha: That he is considered an heir, like a son, in a moderate inheritance; and is supported, like a daughter, in one of great worth. But according to Abayi, who said above that he takes nothing, how do you find that he shall be supported like a daughter? Even according to your theory, how do you explain Rabha's statement, that as an heir, like a son, he takes something of a moderate inheritance? In such a case the sons take nothing; hence he means to say that he is *considered* an heir like a son--to be a beggar. So also you can explain the Mishna: He is in condition to have support like a daughter, but, nevertheless. he does not get any.

"*If one says: If my pregnant wife shall bear a male*," etc. Shall we assume that a daughter is better to him than a soil (as the Mishna says, "If a male one hundred, and a daughter two hundred")? Concerning inheritance, a male is better to him, as he bears his name; and concerning a gift, a daughter is better to him, as it is more difficult for her to make a living than for a male. Samuel, however, maintains that the Mishna treats of when his wife was pregnant with her first child; and it is in accordance with R. Hisda, who said elsewhere: If the first child is a female, it is a good sign for future sons, according to some because she will educate the sons; and according to some, that she should not be afflicted by a covetous eye. Said R. Hisda: As for me, I always give preference to females over males. And if you wish, it may be said that our Mishna is in accordance with R. Jehudah in the following Boraitha: It is a meritorious act for one to support his daughters, and so much the more his sons who occupy themselves with the Torah. So is the decree of R. Meir. R. Jehudah, however, said: It is a meritorious act to support the sons, and so much the more to support the daughters, because of their humiliation (if they should have to beg).

There was one who said to his wife: I bequeath my estate to the child with which you are pregnant. Said R. Huna: This means that he designed to give title to an embryo, and an embryo cannot acquire title. R. Na'hman objected to R. Huna from our Mishna, which states: If my wife shall bear a male, he shall take a mana, etc. And he answered him: I do not know who has taught our Mishna (*i.e.*, I do not find our Mishna to be in accordance with the majority, nor a single one of the sages). But let R. Na'hman say that the Mishna treats of when the bequeather said: I bequeath the estate to the child after my wife has borne it? R. Huna is in accordance with his principle that the child does not acquire title even after birth. (As it was taught:) R. Na'hman said: If one bequeaths to an embryo, title is not given; but if he said, "after he is born," title is given. R. Huna, however, maintains that even then title is not given. But R. Shesheth is of the opinion that in either case title is given. And he added: I deduce my statement from the following Boraitha: "If a proselyte supposed to be childless dies, and Israelites have robbed his estate, and thereafter they hear that he has a son, or that his wife is pregnant, they are obliged to return it. If, however, they have returned it, and thereafter they hear that the son is dead, or that his wife has had a miscarriage, and they again take the estate, he who made a hazakah in the

second instance has acquired title, but he who made the same in the first instance has not." Now, if it be remembered that an embryo does not acquire title, why should title not be given to them who made a hazakah in the first instance? Said Abayi: There is a difference with an inheritance which came of itself: In such a case the embryo acquires title. Rabha, however, said: Even in case an inheritance came by itself, the embryo does not acquire title; and the reason why title is not given to them who made a hazakah in the first instance is because they were still uncertain whether the property taken would remain with them, as there was still a doubt whether children were left. But in the second instance they were sure of their ground.

Come and hear another objection: "A child of one day inherits and bequeaths (*e.g.*, if his father dies when he was even one day old, he inherits from his father; and if at birth the estate of his deceased father came to him, and he dies when he was

one day old, his relatives inherit from him). We see, then--only when he was one day old, but not when in embryo. This was explained by Rabh Shesheth: He inherits the estate of his mother, to bequeath to his brothers on his father's side. And this can be only when he was alive one day after his mother; but not when he was in embryo, as he died before his mother. And a son does not inherit from his mother, when once in his grave, so that his brothers on his father's side could inherit from him.

Shall we assume that in case the mother dies while pregnant the embryo dies first? Perhaps she dies first? There happened such a case, and the embryo moved convulsively thrice. Said Mar b. R. Ashi: Such a movement was without any life, such as the movement of the tail of a lizard. Mar b. R. Joseph in the name of Rabha said: The cited Boraitha means to say that a child of one day diminishes the share of a first-born . E.g., a first-born takes a double share--*i.e.*, twice as much as each of his other brothers. But if there were added a male child of one day, the estate must be divided into five parts, if there are four brothers, of which the first-born takes a double share. And if this child dies afterwards, his share is to be divided equally among the four brothers. This is only when he was old one day, but not when an embryo; because [it is written, Deut. xxi. 15], "and they *bear* him children." As the same said also on the same authority: A son who was born after the death of his father does not diminish the share of the first-born, as it reads in the verse just cited "bear *him*"; but when born after his death, it was not born to him.

All that was said here was taught in the city of Sura. In Pumbeditha, however, it was taught as follows: Mar b. R. Joseph said in the name of Rabha: A first-born who was born after the death of his father does not take a double share. As it is written [ibid., 17]: "Shall he acknowledge," and when he is dead he cannot acknowledge. The Halakha prevails in accordance with all the versions said by Mar b. R. Joseph in the name of Rabha.

R. Itz'hak in the name of R. Johanan said: He who bequeaths to an embryo, title is not acquired. And should you object to this statement from our Mishna, which states: "If one bequeaths a mana to the embryo, he takes it after he is born,"

[paragraph continues] I may tell you that this is said only of a father, whose mind is near to his son;

but it cannot be done by a stranger. Said Samuel to R. Hana of Bagdad: You may bring to me ten persons, and I will teach in their presence that title is given if one bequeaths to an embryo. The Halakha, however, prevails that title is not given.

There was one who said to his wife: I bequeath my estate to the children who shall be born of you by me. And his elder son came and said: What becomes of me? And the father answered: You will take a share as one of the brothers. Now, the children which are to be born can certainly not acquire any title; but the question is, does the elder son, when he came to share with his brothers born thereafter, take a double share, as his father bequeathed to him a part of his estate when his brothers were not yet in existence? Or does he share with them equally? According to R. Abbin, R. Miicha, and R. Jeremiah, he *is* entitled to a double share; and according to R. Abuhu, Hanina b. Papi, and R. Itz'hak of Naf'ha, he is not. Said R. Abuhu to R. Jeremiah: With whom should the Halakha prevail--with us or with you? And he answered: Certainly with us, as we are older than you; and not with you, who are still young scholars. And R. Abuhu rejoined: Does this depend upon age? It depends upon reason, and our reason is better than yours. And what is it? questioned R. Jeremiah again. And he answered: Go to R. Abbin, and ask him, as I have already explained to him the reason at the college; and he shook his head in sign of assent. He went to him, and he told him: Because this case is similar to that of one who says: "You and this ass shall acquire title to this article," would title be given to him? Is this not to explain: You shall acquire title as the ass? The same is the case if one says: You shall share with the children, which are not yet in existence even in pregnancy. Hence title is not acquired in either case. It was taught: If one says: "Acquire title to this as the ass," certainly title is not given; but if he says: "Acquire title, you and the ass," according to R. Na'hman title is given to a half. And R. Huna said: This man said nothing. R. Shesheth, however, said: He has acquired title to the whole of it. Said R. Mordecai to R. Ashi: R. Ivia raised an objection from a Mishna in Tract Kiduchin: It happened with

five women, among them two sisters, that one presented to them a basket with dry figs, saying: You are all betrothed to me with this basket. And one of the women accepted the basket for them all. And when the case came before the sages, they said: The sisters are not betrothed. Hence--only the sisters? But the strangers were. Why? Is this not similar to the case: You and the ass shall acquire (*i.e.*, as the sisters could not under any circumstances be betrothed to one person, the other women must also be treated similarly)? And he answered: That is what R. Huna dreamt--that R. Ivia was going to raise a question (and now I see that R. Huna's dream was true). However, the objection does not hold good, as that Boraitha was explained: In case the man has added: All of you who are fit to be my wives.

There was one who said to his wife: My estate shall be for you and your children. And R. Joseph decided: One half of the estate belongs to her, and the other half to her children. And he added: I deduce my decision from the following Boraitha: Rabbi said: It is written [Lev. xxiv. 9]: "And it shall belong to Aaron and to his sons," meaning a half shall be for Aaron and a half for his sons. Said Abayi to him: What comparison is this? Aaron was fit to receive a share; and therefore the Merciful One mentioned him, that he should take a half. But in this case a woman is not fit to be an heir at all, when there are male children. Would it not be sufficient that she should take an equal share with her children? Is that so? Did not such a case happen in Nahardea, and Samuel collected for the woman a half; and also in Tiberias, and Johanan collected for her a half? Furthermore, when R. Itz'hak b. Joseph came from Palestine, he told: It happened that the

government had taxed the citizens of the city and those who had real estate for the manufacture of a crown for the ruler, and Rabbi decided a half should be collected from the citizens, and the other from the owners of real estate. But what comparison is that with what was told by R. Itz'hak? As to that one, it is known that in previous orders from the government they applied only to the rich citizens, and those who possessed real estate only assisted them, with the consent of the government. But the order in question was written: Both the rich, and real-estate owners are taxed. Therefore Rabbi's decision.

R. Zera objected from the following: If one said: I intend to bring a meal-offering, of one hundred tenths of an ephah--to bring it in two vessels--he may bring sixty in one vessel and forty in the other. However, if he brought fifty and fifty, in two vessels, he has fulfilled his duty. We see, then, that only when he does so it is valid; but the law prescribes that he must bring sixty in one and forty in the other. Hence we see that equal halves is not to be understood when he says in two parts? Nay, this cannot be compared. We are witnesses that he intended to bring a great offering; and the expression "in two vessels" was because he was aware that it could not be put into one. Therefore there must be put in one vessel as much as it can contain, and the remainder in the other one.

(Says the Gemara:) The Halakha prevails in accordance with R. Joseph in the three cases: the case of a field, mentioned in the eighth chapter (p. 254), in the case of a sudarium mentioned in the preceding chapter (p. 253), and in this case of the half. There was one who had sent home pieces of silk, without any order to which member of his household they belonged, and R. Ami decided: Those which are fit for the sons, they shall use; and those which are fit for the daughters, shall be used by them. This law, however, holds good only in case he had no daughters-in-law; but if such a case should happen when there are daughters-in-law, and his own daughters are married, it is to be supposed that he sent them to the daughters-in-law. If, however, his own daughters were unmarried, he would not neglect his daughters, and it is to be supposed that he sent them for them.

There was one who said in his will: My *sons* shall inherit my estate. However, he had only one son, and some daughters. And the question arose: By the expression "sons" in the plural, does he mean the one son only, excluding the daughters, or does he mean to include them? Said Rabha: There is a verse in Num. xxvi. 8, "And the *sons* of Pallu: Eliab." And R. Joseph said: There is another verse in I Chron. ii. 8, "And the *sons* of Ethan: Azaryah." There was another, who said: "My estate shall belong to my sons," and he had only one son and a grandson. And the question arose: Whether people are used to call grandsons also sons? R. Hbiba said:

[paragraph continues] They are. And Mar b. Ashi maintains: They are not. And there is a Boraitha in accordance with the latter, namely: If one vowed not to derive any benefit from his sons, he may derive it from the grandsons.

MISHNA *III*.: If one left grown-up and minor sons, and the former improved the estate, the improvement shall be divided equally. If, however, they said: "Observe in what condition the estate was left by our father, and it shall be known that we are going to improve it for our own

sake," they have a right to take the benefit for themselves. The same is the case with a widow. If she had improved it without any remark, the improvement belongs to all the heirs. But if she remarked, "Seeing in what condition my husband left," etc., the benefit belongs to her.

GEMARA: Said R. Hbiba, son of R. Joseph b. Rabha in the name of his grandfather: The Mishna means to say that they have improved the estate, not at their own expense, but .at that of the estate (*i.e.*, they went only to the trouble of hiring laborers for improving, but at the expense of the estate). But if they had expended from their own, then the benefit belongs to them without any remarks. Is that so? Did not R. Hanina say: If their father left them only covered wells (which are usually higher for watering fields), the improvement is for all? We see, then, that although the wells required much trouble to preserve them from pollution, and they should be always covered, the improvement is nevertheless for all? This case is different. It requires only that they shall be watched; and this can be done by minors also.

"*Observe in what condition*," etc. R. Saphra's father left money, and R. Saphra took it for business purposes. His brothers summoned him before Rabha (demanding a share from the profits). Said Rabha to them: R. Saphra is a great man, and would not leave his study to trouble himself for the sake of others.

"*If she had improved it*," etc. But what has a woman to do with the estate of orphans? (The law dictates as to whether she shall take what belongs to her according to her marriage contract, and depart; or shall take upon herself the trouble of the orphans, and be supported from the estate. But she .has no right to any profit.) Said R. Jeremiah: It treats in case

the woman were an heir (*i.e.*, if the will reads: She shall share equally with the orphans). 1 But if so, it is self-evident. Lest one say: As it is not usual for a woman to occupy herself with business, therefore it should be considered as she remarked--she is doing it for herself, it comes to teach us that it is not so.

"*In what condition my husband left it*," etc. Is this not self-evident? Lest one say: Because of the pleasure she takes in thinking that people praise her for troubling herself for the orphans' sake, she relinquishes the benefit in spite of her previous remark, it comes to teach us that it is not so.

R. Hanina said: If one has made the wedding of his son in one of his houses, the son acquires title to the house: provided the son was of age, married a virgin, and she was his first wife, and this wedding was the first of his house. It is certain that when the father has separated for this wedding a house with an attic, the son acquires title to the house, but not to the attic. But how is it if on the house was a balcony? or there were two houses, one inside of the other? Is title given to both, or only to that in which the wedding took place? These questions remain undecided. An objection was raised: If the father had separated for his son a house and furniture, the son acquires title to the furniture, but not to the house? This Boraitha treats of when the treasurer of his father was still in the house. So said R. Jeremiah. And the Nahardean said: Even when there was left his pigeon-coop. And both R. Jehudah and R. Papi said: It suffices if his father left there a vessel with roasted fish (*i.e.*, this shows that he has not relinquished his right to the house). Mar Zutra left his sandals in the wedding house which he separated for his son, and R. Ashi a bottle of oil (for the purpose said above). Said Mar Zutra: The following three things the rabbis

enacted as laws, [2] without giving any reason: The case just mentioned; and that which was said above in the name of Samuel: If one has bequeathed

all his estates to his wife, she is considered a guardian only; and also that which was said by Rabh. If A said to B: You owe me a mana, give it to C, and all the three were present, title is given to C.

MISHNA *IV*.: Brothers partners in business. If one of them was taken by the government to work for it, the damage caused by his absence, and also the profit for the business during that time, must be counted to the partnership. If, however, he becomes sick, and has to be cured, it is at his own expense.

GEMARA: The rabbis taught: If the government had appointed one of the brothers as a collector, or a military purveyor, if this was because of the duty of the house, it must be counted for all of them, but if it was because of his personal fitness, then it is for himself. Is this not self-evident, because the duty of the house must be counted for all? It treats of when he was a genius. Lest one say: In such a case it must rot be counted for the house, because he was taken on account of his genius, it comes to teach us that it is not so.

The rabbis taught: If one of the brothers took two hundred zuz, to begin the study of the Torah, or to learn a trade, they may say to him: If you are with us, you have to be supported; but not otherwise. But why not support him, by deducting what his labor was worth to the house? This may be a support to R. Huna's statement, who said elsewhere: The blessing of the house increases when there are more people (*i.e.*, because the expenses of the house do not decrease when there is one person less). But, after all, let them support him even in his absence for the profits, owing to his share after deducting his labor and the expenses. Yea, this in reality they have to do.

"*If, however, he becomes sick*," etc. Rabbin sent a message in the name of R. Ilah: The Mishna means to say: In case he himself causes his sickness; but if he was occasionally sick, the cure must be at the expense of the house. What does it mean: "Caused by himself"? As R. Hanina says: All sickness comes from Providence, except cold. As it is written [Prov. xxii. 5]: "Thorns [1] and snares are in the way of the perverse man; he that doth guard his soul will keep far from them."

MISHNA *V*.: If, while the father of the house was still alive, he sent through some of the brothers presents to weddings of his friends, and after his death some of the brothers married and the presents were returned to them by the same friends, it is to be counted to the income of the house; as the wedding presents may be replevined by the court. If, however, one presents to his friends pitchers of wine or oil, it is not to be replevined by the court, as this is reckoned a bestowing of favors only.

GEMARA: There is a contradiction from the following: "If the father sent, through one of his sons, a present to the wedding of his friend, and told him to remain there during the wedding,

then, when this present returns to the son's wedding, it belongs to him only. If, however, a wedding present was sent to the father, the returning must be at the expense of the house." Hence we see that the son may preserve the returning present for himself; and this contradicts our Mishna. Said R. Assi in the name of R. Johanan: Our Mishna also treats: When the wedding present was first sent to the father. But does not the Mishna state: Through some of the brothers? Read to some of the brothers. But the Mishna states farther on: If it was returned? It means: If this came to be returned by the brothers, it must be returned at the expense of the house. R. Assi himself, however, said: It presents no difficulty (there is no necessity for such a complicated explanation of the Mishna, as it can be explained thus). Our Mishna treats: When the father sent the present through one of his sons, without designating that the returns should belong to him, then the returns belong to the house. And the Boraitha treats: When the father has nominated one of his sons to deliver the present, so that the returning should belong to him. Samuel, however, said: The law is to be practised in accordance with the Boraitha. And our Mishna treats: In case the son through whom the present was sent dies childless, and his brother came to marry his wife, who according to the law is also his heir. However, this present he does not inherit from him; because there is a rule that this brother does not inherit property which was not yet in the deceased's possession, but has to come to him in the future. (Says the Gemara:) From Samuel's statement is to be inferred that the one who has received

the present is obliged to return, even if the donator were dead. Why, then, let him say: Give me my friend who presented it to me, and I shall enjoy myself and give him a present, as he did to me. But as this cannot be, I am not obliged to anything. As we have learned in the following Boraitha: At those places where it is customary to return the presents which the bride has given to her groom at the time of betrothal, and she dies before marriage) they must be returned. At the place where it is not customary, they must not. And R. Joseph b. Abba in the name of Mar Uqba, quoting Samuel, said: Even at those places where it is customary to return, it is only in case the bride dies; but when the groom, it must not be returned, for the reason that she may say: Give me my husband, and I will enjoy myself with him, as for that purpose he gave them to me. Hence he may say also: Give me my friend, and I will enjoy with him. Said R. Joseph: It speaks of when his friend was at the wedding and had enjoyed himself with him all the seven days of the wedding, and the groom suddenly dies before the present was returned to him.

Shall we assume that in the above-mentioned claim of the bride, "Give me my husband," etc., the Tanaim of the following Boraitha differ: If one has betrothed a woman, and dies before marriage (and the marriage contract was already written), a virgin collects two hundred and a widow one hundred zuz. Concerning the presents given at the betrothal, however, it is to be practised as is customary at that place. So is the decree of R. Nathan. R. Jehudah the Prince, however, said: In reality, it was decided that in the place where it is customary to return, it must be returned; and where it is not customary it must not. Now does not R. Jehudah repeat what was said by the first Tana? It must then be assumed that the point of the difference is: If the bride may claim: "Give me my husband," etc., and the Boraitha is not complete and should read thus: If one betroths a woman, a virgin collects two hundred and a widow one hundred zuz, provided he has withdrawn from the contract. But if she dies, if it was in a place where it was. customary to return, it must be done so; and if where it was not, it must not. But all this is in case she dies. But if he dies, there is to be no return, as she may claim: Give me my husband, etc. And to this R. Jehudah the Prince came to say:

[paragraph continues] Even in the latter case it must be done according to the custom of that place, as such a claim is not to be considered? Nay! All agree that the claim in question is to be considered; and there is no difference between them in case he dies. But in case she dies, they differ. And the point of their difference is: Whether the presents with which she was betrothed should be considered lost forever. According to R. Nathan, they are not so considered; and according to R. Jehudah, they are. But does not the Boraitha state that where it is customary to return, it must be so done? This means presents which were given by him aside from the betrothal. And the Tanaim of this Boraitha are in accordance with the Tanaim of the following: If one has betrothed his bride with a talent (a coin--according to some one hundred and twenty manas, and to others sixty, and according to Rashbam twenty-five), a virgin collects two hundred zuz besides the talent, and a widow one hundred. So is the decree of R. Meir. R. Jehudah, however, maintains: A virgin two hundred, and a widow one hundred of the talent; and the remainder must be returned. But R. Jose said: If he has betrothed her with twenty, he may give her thirty halves; and if with thirty, he may give her twenty halves. Let us see of what kind of case this Boraitha speaks. In case *she* dies, there is no longer any marriage contract; and if he dies, why should she return the remainder? Is it not said above that all agree that the betrothal money must not be returned, as the claim: "Give me my husband," etc., is to be considered? And if you should say: It speaks in case she had sinned; then if intentionally, has she still a right to her marriage contract? And if unintentionally, he may marry her if he be a commoner. It must be then said that it speaks of when the groom was a priest, and she was *forced* to sin (and in such a case a commoner may, and a priest may not marry her). And the point of their difference is, that R. Meir holds the money of betrothal to be lost forever, and R. Jehudah holds that it is not; and to R. Jose it was doubtful whether yes or no. And therefore he maintains that, according to the rule, doubtful money is to be divided. If he has betrothed her with twenty selas (eighty zuz), she has to return to him forty zuz. However, he has to complete the amount belonging to a widow as a marriage contract, which is one hundred zuz; therefore he gives her thirty half-selas, which

are sixty zuz, and this completes the mana to which she is entitled. And if he betrothed her with thirty selas, she has to return to him fifteen, and he must give her twenty half-selas more. Said R. Joseph b. Minumi in the name of R. Na'hman: Babylon is the place where it is customary to return. And by Babylon he meant the city of Nahardea. But how is it with the other cities in Babylon? Both Rabba and R. Joseph say: The betrothal money is not to be returned; but the presents are. Said R. Papa: The Halakha prevails, whether he or she dies, or he has retracted, the presents only are to be returned, but not the betrothal money. And in case *she* has retracted, the betrothal money also. Amimar, however, maintains that even in the latter case the money must not be returned, for the reason that one may say that he is then allowed to be betrothed to her sister (*i.e.*, if one should see the betrothal money returned, he might think the betrothal cancelled, and he might marry her sister, which is biblically prohibited so long as she is alive). But according to R. Ashi: This is not to be feared, as the divorce in her hands testifies that the betrothal was not cancelled. (Said the Gemara:) R. Ashi's statement is not to be taken into consideration at all; as one may be aware that she has returned the betrothal money, and not be aware that she took a divorce.

"*May be replevined*," etc. The rabbis taught: The following five things were said about wedding presents: (a) They may be collected by the court; (b) they are returned at the time when the donator marries; (c) they are not considered usurious (*i.e.*, if the return was of a greater value

than presented); (d) the Sabbatic year does not release them; (e) a firstborn has no double share in them. They are collected by the court, because they are considered a loan. They are not usurious, because they were not presented with this intention. The Sabbatic year does not release them, because the verse Deut. xv. 2 does not apply to them. And the first-born does not take a double share in them, because they are not as yet in existence, and he is not entitled to that which will be an inheritance in the future.

R. Kahana said: The following is the rule: If one came into the city, and heard that his comrade, who was at his wedding, marries, he must come and make a present. The same is the

case if he heard the voice of the drum which announced the marriage of his comrade; but if it was not drummed, the groom ought to let him know. However, if he failed to do so, although he may be away, he nevertheless must pay. In such a case, however, he may deduct for the meal of which he has not partaken. And how much may he deduct? Said Abayi: The inhabitants of the city of Ganna used to deduct one zuz. However, this depends upon the value at which one would appraise the respect and honor of attendance at the wedding banquet. The rabbis taught: If one has married publicly, and thereafter, by returning the presents, he wishes to be married privately, he has a right to say: As you did with me publicly, I will do with you; but not when privately. The same is the case if one has married a virgin, and the other marries a widow; or, if one has married a second wife, and his comrade marries his first wife, the former may say: As you have done with me, I will do with you. The same is the case if to him it was done once, and his comrade demands from him he shall do twice.

The rabbis taught: Who is like unto a wealthy man who is known to be rich by his many cattle and estates? The one who is a master in Haggadah (as he lectures everywhere, and becomes known to all). Who is like unto a broker who does business at his home only and is not well known to the community? The one who occupies himself with pilpulistic (dialectology, one who is a master in dialectics). Who is like unto one who makes his living by selling things which are to be measured--who gathers his money little by little, which finally becomes a considerable amount? The one who gathers the decisions of the rabbis, little by little, and finally possesses a great deal of wisdom. However, all are dependent to the owner of wheat, which is the Gemara, as only by the studying of it are we able to understand the Mishnayoth and the Boraithas.

R. Zera in the name of Rabh said: It is written [Prov. xv. 15]: "All the days of the afflicted are evil." It means: The masters of Gemara (because they must find out how to decide the laws from the Mishnayoth, which always need an explanation). "But he that is of a cheerful heart," etc., means: the one who is a master in Mishnayoth. Rabba, however, maintains the reverse. He who is a master in Mishnayoth cannot come to any conclusion about Halakha; but he who is a master in

Gemara knows how to decide Halakhas. And this is what R. Mesharshia said in his name: It is written [Eccl. x. 9]: "He that moves stones will be hurt through them," meaning the masters of the Mishna. "He that cleaveth wood will be endangered thereby," means the masters of Gemara (because they do not always succeed in finding out the correct decisions). R. Hanina said: "All the days of the afflicted," etc., means him who has a bad wife. "But he who is of a cheerful

heart," etc., means him who has a good wife. R. Janai said: "All the days of the afflicted," etc., means one who is effeminate. "And he that is of a cheerful heart," etc., means him who is hardened to the ways of the world. R. Johanan said: By the first is meant him whose nature is merciful, and who takes to heart everything which happens to his fellow-men; and by the second is meant him who is callous. R. Jehoshua b. Levi said: The first means him who is a pedant; and the second, him whose mind is worldly. [1]

MISHNA *VI.*: If one sends presents to the house of his betrothed's father, to the value of one hundred manas, and has partaken of the betrothal meal, even for one dinar, they are not to be returned. If, however, he did not partake, they may be returned in case of retraction. If the presents were given for the purpose that the bride should bring them, after her marriage, to her husband's house, they are to be returned. But if such is to be used while she is yet in her father's house, they are not.

GEMARA: Said Rabha: It means if he has partaken of no less than the value of a dinar; but if less, he has a right to demand a return. Is this not self-evident? The Mishna states a dinar? Lest one say this statement is only general, but not particular, he came to say that this is to be taken literally. Here in the Mishna it is eating. But how is it if he drank, or his substitute had partaken? Also, how is it if they had sent *to him*? Come and hear. R. Jehudah in the name of Samuel said: It happened with one who had sent to his betrothed's father one hundred *carrums* containing pitchers of wine and oil, and vessels of silver and gold, and silk garments; and while he was joyful over the act, he rode on his horse to the gate of

his betrothed's father, where they gave him a goblet of a warm beverage which he drank while sitting on the horse. Thereafter he died before marriage. And R. Aha, the mayor of that city, brought this case up before the sages in the college of Usha, and they decided: Such presents as may become spoiled before marriage are not to be returned, but such as are in good condition may. Hence we see even if one has not eaten, but drunk, it is the same. Infer from this also that the value of what he had drunk was less than a dinar (as a goblet of warm beverage cannot amount to a dinar). Said R. Ashi: Who can assure us that the goblet to which they treated him was not worth a thousand zuz, as perhaps they had ground a pearl [1] of that value in the goblet? But infer from this that if they had sent to his house, it is the same as if he had partaken of it at the house of his betrothed's father? Nay! Perhaps at the gate of his betrothed's father is the same as if he had partaken of it *inside* the house. The schoolmen questioned: How is it when the presents have improved--*e.g.*, if he had made presents in cattle and they brought offspring? Shall we say, because they have to be returned to him, they are to be considered under his control, and belong to him; or, because if they should be lost, payment for them would be demanded, they are considered under the control of his betrothed's father? This question remains undecided.

Rabha questioned: The presents which are usually spoiled during the time from the betrothal to marriage--how is it if they were in good condition; must they be returned, or not? Come and hear the Boraitha cited above: "R. Aha, the mayor of that city, brought the matter up before the sages of Usha, who decided: If they are liable to be spoiled, they are not to be returned." Does it not mean although they are in good condition? Nay, it may mean if they *were* spoiled. Come, then, and hear the last part of our Mishna: "But if they be used while she is yet in her father's house they are not? "This was explained by Rabha to be nets and veils. R. Jehudah in the name of Rabh said: It happened with one who sent to the house of his betrothed's father, wine, oil, and

garments of flax; all of them new of that year at the time of Pentecost.

[paragraph continues] But what news came he to tell us? If you wish, he tells us the great value of the land of Israel; and if you wish, it may be said that he came to teach us: If one claims that he had done so at such a time, his claim is to be considered. The same said again in the name of the same authority: It happened with one, that he was told that his betrothed wife could not smell. He went after her into a ruined building to test her, and said: I perceive a smell of radishes (*i.e.*, he kept in his pockets some for the purpose of testing her, whether she would smell them), and she answered him sarcastically: If one should furnish me with the dates of Jericho, I would eat them with the radishes I smell. Thereupon the ruined building fell and she died. And the sages decided: Because her husband entered the ruin only for the purpose of testing, he has no right to inherit from her.

"*But if they be used while in her father's house*," etc. Rabbin the elder was sitting before R. Papa and said: This is only in case death occurred to one of them; but if he had retracted, the presents are to be returned, but not what he had expended for the banquets. If, however, she had retracted, even the value of a bundle of herbs is to be returned. Said R. Huna b. R. Jehoshua: The value of the meat used at the banquets must be appraised at the cheapest price. How cheap should it be? A third of the existing price.

MISHNA *VII.*: If a sick person had bequeathed all his estates to strangers, leaving some ground for himself, his gift is considered valid. If, however, he left nothing, it is invalid.

GEMARA: Who is the Tana who holds that we may act in accordance with the supposed intention of the bequeather (as the Mishna states, "If he left nothing for himself it is invalid," which means, if the sick person becomes cured, he may retract: because if he could know that he would remain alive, he would not do so)? Said R. Na'hman: It is according to Simeon b. Menasia of the previous chapter (p. 291). R. Shesheth, however, maintains: This is in accordance with R. Simeon of Shizuri of Tract Gittin (Chapter VI., Mishna 6), who said: Also who is dangerously sick. Who is the Tana of what the rabbis taught in the following Tosephtha: If one was sick in bed, and he was questioned to whom he bequeathed his estates, and he said: "I thought that I had a son, but now that I am

convinced I have not, I bequeath my estates to so and so"; or, "I thought that my wife was pregnant, but now that I know she is not, I bequeath them to so and so"; and thereafter it became known that he left a son, or that his wife was pregnant, this bequeathing counts nothing--shall we assume that it is in accordance with R. Simeon b. Menasia and not with the rabbis? Nay! It may be even in accordance with the rabbis, as when he said: "I thought," etc., it is different. Why was it supposed previously that this should not be in accordance with the rabbis? Lest one say that the sick person said it only to mention his sorrow, but he did not think that it should not be bequeathed if he did have a son, it comes to teach us that it is not so. R. Zera in the name of Rabh said: Whence do we deduce that a gift of a sick person must be *biblically* considered? Because it is written [Num. xxvii. 8]: "Then shall he cause to pass unto his daughter" (*i.e.*, it should be written as elsewhere: You shall give the estates), it comes to teach that there is

another case which we have to pass, and this is the gift of a sick person. R. Na'hman in the name of Rabba b. Abuhu, however, maintains from [ibid., verse 9]: "Shall ye give his inheritance unto his brothers" (which is also superfluous, as it should read: If no daughter, then to the brothers), which teaches that there is another gift which is to be considered valid, and that is, of a sick person. R. Menasia b. Jeremiah said: It is deduced from [II Kings, xx. 1]: "Give thy charge to thy house," etc., from which we see that concerning a sick person it is sufficient when he charges without any writing. And Rami b. Ezekiel said: From the following [II Samuel, xvii. 23]: "And Achithophel . . . and gave his charge to his household," etc., we see that charging is sufficient without any writing.

The rabbis taught: The following three things has Achithophel charged his sons: You shall not quarrel with each other; you shall not rebel against the kingdom of David; and if the Day of Pentecost be a clear one, you may begin to sow wheat. Mar Zutra, however, said: It was taught that he said: If it should be cloudy. Nahardeans said in the name of R. Jacob: Not exactly clear, and not exactly cloudy; as, if it should be a little cloudy, with a north. wind blowing, it is also considered clear. Said R. Abba to R. Ashi: We, however, do not rely

upon the cited Boraitha, but on what is said by R. Itz'hak b. Abdimi in Tract Yoma (p. 29, lines 14, 15, etc.).

[There is a Boraitha by Abba Shaul: If the Day of Pentecost be clear, it is a good sign for the whole year. R. Zebid said: If the first day of the new year is a warm one, the whole year will be warm; and if cold, the whole year will be so. And to what purpose was it said? Concerning the prayer of the high priest on the Day of Atonement (that he should pray accordingly).] Rabha, however, in the name of R. Na'hman said: The gift of a sick person is rabbinical. And it was so enacted that a sick person should not become exhausted, being aware that, because he is sick and cannot write down or sign his will, he can do nothing with his property. But did, indeed, R. Na'hman say so? Did he not say: Although Samuel decided: If one sold a promissory note to his neighbor, and thereafter relinquished his right in it, his act is valid; and even his heir may do so? He (Samuel) nevertheless admits that if he gave this note to some one as a gift, he has no longer right to relinquish his debt, even if he becomes cured. Now, this would be correct if the gift of a sick person were biblical; but if it is rabbinical, why should he not be able to relinquish it when cured? It is true it is not biblical, but the rabbis have enacted that this law should be equal to a biblical one.

Rabha in the name of R. Na'hman said: If a sick person said: "A shall reside in such a house," or, "B shall consume the products of such and such a tree," he said nothing, unless he said: "Give such and such a house to A, that he may reside there"; "Give such and such a tree to B, and he shall consume its products." Is it meant to say that R. Na'hman holds that a sick person who verbally wills has no more right than one who is in good health--*i.e.*, if one who is in good health should say: "He shall reside there," it would not be considered a gift even if it were done with the ceremony of a sudarium; then it would contradict another saying of Rabha's in the name of R. Na'hman: If a sick person said: "The loan made by me to A shall be given to B," he is to be listened to, which is not the case with one in good health, as title cannot be given to a loan which is made with the intention that the borrower shall expend it. (Hence we see that a sick person has more right than one in good health.) Said R. Papa: The reason of this law is,

because an heir inherits it, it is considered as if it were under the control of the borrower. And farther on it is said that the gift of a sick person is considered as an inheritance. R. Aha b. R. Aiqua, however, said: To transfer a loan is lawful, even for him who is in good health in case it were made in the presence of all three, as is said above by R. Huna.

The schoolmen propounded a question: If the sick person bequeaths a tree to A and the products of it to B, should it be considered as if he reserved it for himself, in such a case it being said above that he cannot retract when cured, or is it not so considered? And should you decide that it is not so considered when he bequeaths the products to another, how is it if he said: I bequeath the tree to A, except the products. Is this considered as if he reserved some of the ground for himself, or not? Said Rabha in the name of R. Na'hman: Even if it should be decided, the products to another, it cannot be counted that he reserved some of the ground for himself, it is to be counted as if he left the products to himself, for the reason that if one left to himself, he does it with a good eye. Said R. Abba to R. Ashi: We taught R. Na'hman's statement as to what was said above (p. 153) by Resh Lakish concerning a house and an attic; and in accordance with R. Zebid's explanation there.

R. Joseph b. Minumi in the name of R. Na'hman said: A sick person who has bequeathed all of his estates to strangers, it must be investigated how was the case (*i.e.*, if he had divided them at one time). *E.g.*, of my property such and such shall belong to A, and such and such to B, etc.--as he could not do otherwise if he had made up his mind to divide his estates in such a manner as if 'he were to die of his sickness, so the last ones are not considered as if he would reserve some of his estates for himself--all of them acquire title after his death. But in case of cure he may retract from all of them, even from the first, but if he so does after deliberating (*i.e.*, "Such and such shall be to A," then stops, and some time thereafter adds: "Such and such to B," etc.), in case he was cured of this sickness he may retract only from the last one, as he left nothing for himself--for it is to be supposed that if he knew he would be cured he would not give away the last of his estate so that he should remain a beggar--but not from the previous one.

[paragraph continues] But why should not we suppose, even in the latter case, that his intention was concerning all of them, in case he should die, and the deliberation was as to who was more worthy to be his inheritor? Usually a sick person who expects to die makes up his mind for all his estates before he mentions any name.

R. Aha b. Minumi in the name of R. Na'hman said: If a sick person has bequeathed all his estates to strangers, and thereafter is cured, he cannot retract, as it may be feared, perhaps, he has estates in another country. But does not our Mishna state: In case he left nothing for himself, he may? And according to this theory, how can such a case occur? Said R. Hama: It may occur, if he said: *All* my estates, wherever they may be found. Mar b. R. Ashi said: Our Mishna means to say: In case it was clear to the people that he had no estates elsewhere.

The schoolmen propounded a question: Should a retraction in part be considered a retraction of all, or not (*e.g.*, if he first bequeaths all his estates to A, and thereafter he bequeaths a part of same to B, which, according to the law, he may do, the question arises whether A has still the

right to what was bequeathed to him at first, or the retraction of a part annuls the first entirely)? Come and hear: "If one bequeaths all his estates to A, and thereafter a part of them to B, B acquires title, but A does not." Is it not to be assumed that it means in case he dies? Nay! It means in case he was cured. And so it seems to be from the latter part stated in the same Boraitha: "If he wrote, 'A part of my estate shall belong to A and all the remainder to B,' the latter acquires title, but not the first." And this statement is correct in case he was cured; as then, bequeathing all the remainder to B, he reserved nothing for himself; but if it speaks in case he dies, why should both of them not acquire title? Said R. Yemar to R. Ashi: The same might be said even when he was cured. If you decide that a retraction in part is considered a retraction to all, it is correct that title is given to B, as the first bequeathing to A is entirely annulled with that which he has separated from it to B. But if you should decide that a retraction in part does not annul the first, let this case be considered as the case of "dividing" mentioned above, and title should not be given to any of them.

The Halakha, however, prevails: "That a retraction in part

is considered entirely." And the first case mentioned in the just cited Boraitha holds good for both, whether he dies or is cured; and the latter case holds good only when he was cured.

R. Shesheth said: The expressions, "He shall take," "shall be rewarded," "shall make a hazakah," and "shall acquire title" are to be considered a *gift*, from which he has no right to retract. A Boraitha adds: "Also the expression 'shall inherit,' to him who is fit to be his direct heir." And it is in accordance with Johanan b. Beroka.

The schoolmen questioned: How shall it be done, if he expresses himself: A is the one who shall derive benefit from my estates? Does he mean all of them shall belong to him, or that he shall derive *some* benefit from them, but not all? This remains undecided. The same propounded another question: How is it if he had sold all his estates while he was sick--may he retract when cured, or not? And in answering this question, at one time it was said by R. Jehudah in the name of Rabh: He may retract; and at another time it was said by the same in the name of the same authority: He may not. However, they do not contradict each other, as the first decision holds good in case the money obtained was still in his hands, and the second applies in case the seller had expended it by paying his debts.

The schoolmen propounded another question: If a sick person has confessed, "I owe so much to so and so," shall it be taken for granted, and his creditors acquire title to the cash or estates left; or, probably, that he said this for the purpose that, should he be cured, his children should not think that he was rich, and therefore the man whom he mentioned in his confession takes nothing? Come and hear: Aisur, the proselyte, had thirteen thousand zuz with Rabha. R. Mari was his son (whose mother Rachel, daughter of Samuel, who was in captivity, was pregnant with him from the same Aisur when he was still a heathen before marriage, and although he was born after the father had embraced Judaism, according to the law he was not considered his son concerning inheritance, and also must not be named after him, therefore Mari was named Mari b. Rachel, after his mother). Said Rabha: I do not see any lawful case which could make R. Mari inherit the money deposited with me. By inheritance he cannot, as, according to the law, he is not considered an heir. Should his father while sick make

it a gift to him, there is a rule that he who can be an heir is fit to receive the gift, but not he who is not fit to be an heir. There is also a rule that to coins title cannot be given by exchange; and if his father would present him with real estate, which is lawful, his father does not possess it; and if by transferring them from me to him in the presence of all three of us, then certainly, if he would send after me, I would not listen. Which R. Aiqua b. R. Ami opposed, saying: Why, then, let Aisur confess that the money in question belongs to Mari, and with his confession title would be given to him. While so discussing, Aisur got wind of it, and confessed. Rabha became angry, saying: They are instructing people how to make their claims good and do harm to me.

"*Reserving some ground for himself*," etc. But what is meant by this? Said R. Jehudah in the name of Rabh: It means real estate, or ground by which his livelihood is assured. And R. Jeremiah b. Abba maintains: The same is the case when he left movable property. Said R. Zera: See how the decisions of our elders correspond. Why is it said real estate? Because it is supposed that a sick person would think, "If I should be cured, I shall get my livelihood from this estate." The same is the case if he left movable property; he relies upon it. R. Joseph, however, opposed: I do not see such a correspondence at all. He who says "movable property" does not correspond with our Mishna, which states plainly, "ground" (real estate); and he who said "to be sufficient for his livelihood" also does not correspond with it, which states "some real estate," which cannot be explained that it should suffice for a livelihood. Said Abayi to him: Does the Mishna mean in each case when it mentions ground, that it is not changeable for movable property? Did not R. Dimi b. Joseph say in the name of R. Elazar, referring to a Mishna in Tract Gittin, in which also some ground is mentioned: Movable property is also considered a remainder in that case? There it is different. It should not state "ground" at all; but because it begins with the law of Peah, which applies to ground no matter how small it is, etc., it uses the same expression at the end. But in reality there is a difference between real estate and movable property. It was also questioned: Is this a rule--that wherever the expression, a trifle, is mentioned

in the Mishna, it does not mean a certain quantity? Is there not a Mishna in Chulin: "If five sheep give some wool, the law of the first shearing applies to it"? and to the question: What does "some wool" mean? said Rabha: No less than a litra and a half, etc. Hence we see the expression "some" means a certain quantity? There also it should not state "some wool"; but because in the beginning it states: If each sheep gives a litra and a half, it expresses in the latter case "some wool," as the quantity from every five sheep is only one litra and a half.

It is certain that if one says, "I bequeath my movable property to so and so," he acquires title to all vessels or garments which are useful, except wheat and barley. And if he says, "*All* my movable property," wheat and barley are also included; and even the grinder of a handmill, but not the grindstone. And if he say, "All that is movable," even the latter is included. But the question arises: If among his properties were also bondsmen, is title given to them also, as they are also considered movable property; or are slaves under the category of real estate and title is not given?

Said R. Aha b. R. Ashi to R. Ivia: Come and hear Mishna 7 in Chapter IV. of this tract, which states: If he said, "I sell the town, with all its contents," slaves are included. From which it is to

be inferred that slaves are considered movable property; as if they were considered real estate they ought to be included, even if he did not mention "with all its contents." But can you infer from it that they are considered movable property? Does not the Mishna express itself "even bondsmen"; and if they should be considered movable property, why "even"? We must then say that there is a difference between movable property which must be carried and that which is self-moving. The same answer can also apply to the theory that slaves are considered real estate. (See previous vol., p. 59.)

Rabha in the name of R. Na'hman said: In five cases the act of a gift is not considered unless the bequeather writes "all my estates," and they are: A sick person, his bondsmen, his wife, his children, and the estates of a woman who has bequeathed them to some one for the purpose that her future husband should not demand them at the marriage. "A sick

person"--as our Mishna states: If he reserved nothing for himself, the bequeathing is not considered. "A slave"--as there is a Mishna which states: If one has bequeathed all of his estates to a slave, the latter becomes free. If, however, he reserved some for himself, he does not. "His wife"--as is said above: If one bequeaths all his estate to his wife, it is considered that he has appointed her as a guardian only. "To his children"--as stated above: If one bequeaths all his estate to his children, but reserves for his wife some ground, she loses the right of her marriage contract. "And the estate of a woman who desires to hide it from her future husband"--as the Master said elsewhere: In such a case she must write all her estates, as only then she may retract after her marriage. But if she reserved something for herself, she loses the right. And in all those cases where they reserved for themselves movable property, their acts were invalid, except in the case of a marriage contract, to which the enactment of the rabbis was made for real estate only. Amimar, however, maintains: If the movable property in question was mentioned in the marriage contract, and while bequeathing all his estate to his children he reserved it for himself, it is considered, and his wife does not lose her right in the marriage contract.

If A bequeaths his estates to B, and among them were slaves, they are included, as they are also called estate, as said above. Earth is considered estate, as there is a Mishna: Estates which one can rely upon can be acquired with money, with a bill of sale, and with hazakah. Garments are also considered estate, as the same Mishna adds: And to that which cannot be relied upon, title is given only by drawing. Coins are also considered estate, from the same Mishna, which adds: Such estates which cannot be relied upon may be obtained with that which may be relied upon. [1] [Here is repeated from Baba Kama (p. 236) what happened to R. Papa when he had to collect twelve thousand zuz, as evidence that coins are considered estate.] Deeds are also considered estate. As Rabba b. Itz'hak said: There are two kinds of deeds. If one said to witnesses: "Give title of this field to so and so by a ceremony of a sudarium, and

write him a deed, he may retract as to the deed," but he cannot retract as to the field itself, as title was already given. But if he said: "Give title," etc., with the stipulation, "You shall write him a deed also," he may retract from both. And R. Hyya b. Abbin in the name of R. Huna said: There are three, kinds of deeds: the two just mentioned; and the third, if the seller hastened and wrote the deed. As is said above: If the. seller desire to write a bill of sale, he may do so even in the absence of the buyer; as after the buyer makes a hazakah on the estate, title is given to the

deed wherever it may be found. As we have learned: Estates which cannot be relied upon are obtained with that which is to be relied upon, etc. (We see, then, that deeds are considered estate.) Cattle are also so considered, as we have learned (Tract Shekalim, Chapter IV., Mishna g): "If one devote his possessions, and there are among them cattle. fit for the altar, male or female," etc. Fowl are also so considered, as we have learned [ibid., h]: "If one devote his possessions, and among them . . . oils and birds," etc. Tephilin are also so considered, as we have learned: "If one devote his estates, among which tephilin were found, they must be left for him."

The schoolmen propounded a question: How is the case with the Holy Scrolls--as they must not be sold, are they considered estate or not? This remains undecided. The mother of R. Zutra b. Tubhia had transferred to Zutra her estates because she was about to marry R. Zebid. However, after marriage, Zebid divorced her. Then she came before R. Bibi b. Abayi, claiming that she retracted from her transfer, as she told R. Zutra plainly that only for the purpose of marriage had she transferred her estates to him. But he said: You transferred them on account of marriage, and you did marry. Said R. Huna b. R. Jehoshua: Because you are weak you speak weak words (see above, p. 306). Even according to him who said: "If she wishes to hide her estates from her future husband, title is given," it is only in case she does it without any remark; but in this case she said plainly to her son that she did it because of marriage. But now she is divorced.

The mother of Rami b. Hama bequeathed to him her estates on one evening, and in the morning she bequeathed them to her son R. Uqba. Rami then went to R. Shesheth,

who turned over the estates to him. And R. Uqba went to R. Na'hman's court, and he decided that the estates belonged to him (Uqba). R. Shesheth then went to R. Na'hman and questioned him: Why such a decision? If it is because she retracted from the first, this would hold good only should she be cured; but she was dead from this sickness, and her first will ought to be listened to? And he answered: So said Samuel: In such a case where a retraction holds good in case of a cure, it is the same if the retraction was made while still sick. Rejoined R. Shesheth: Samuel said so in case he has retracted and reserved the estates for himself? But did he say also that he might bequeath to another? And R. Na'hman answered. Yea! Samuel said plainly: One may do so, whether for himself or for another.

The mother of R. Amram the Pious possessed a bundle of deeds, and while dying she said: They shall be given to my son Amram. His brothers, however, came to complain before R. Na'hman, claiming that Amram had not made any drawing on the deeds; consequently he had not yet acquired title to them. To which R. Na'hman answered: The words of a dying person are considered as if written and delivered.

The sister of R. Tubi b. Matna bequeathed her estates to him on one morning, and in the evening came R. Ahadbui, who cried before her, claiming that people would say: The one brother is a scholar and the other not, and she has bequeathed to him. When the case came before R. Na'hman, he decided as he said above in Samuel's name, that the retraction held good. The sister of R. Dimi b. Joseph owned a part of a vineyard; and every time she became sick, she used to present it to him, and when cured to retract. At one time she became sick and sent to him: Come and acquire title to my estates.

And he answered: I do not want them. She, however, sent again to him: Come and acquire title to them, so that, according to the law, I shall not be able to retract. He then went, reserved a part thereof for her, and then the ceremony of a sudarium was made. She again became cured, and again retracted, and came to R. Na'hman requesting that he should return to her her estates. And R. Na'hman summoned R. Dimi before the court. But he was not willing to listen, saying: To what purpose shall I go? All that was done was in

accordance with the law. She reserved of the estates for herself in case she should be cured, etc. He then sent to him: If you will not appear before the court, I shall prick you so that blood will not run (*i.e.*, put him under the ban). Then R. Na'hman examined the witnesses how was the case. And they said: The woman said thus: "Woe is me! I am dying," and then she said her will. To which R. Na'hman gave his decision: In such a case it is considered that she made the will because she was afraid she would die; and a will made in the fear of death may be retracted.

It was taught: Concerning a gift in part of a sick person, it was said before Rabha, in the name of Mar Zutra the son of R. Na'hman, who said in the name of his father: In one respect it is equal to a gift by one in good health; it means he cannot retract if cured; and in the other to a will of a sick person, as it needs not the ceremony of a sudarium. Said Rabha to them: I told you several times, "Do not put a clay-pot (see Chapter I., p. 14) on the neck of R. Na'hman." R. Na'hman said thus: It is considered a gift of one in good health and must be done with the ceremony of a sudarium. Rabha, however, objected to R. Na'hman from our Mishna, which states: If he reserved some ground for himself the gift is valid. Is it not to be assumed that no sudarium is needed? And he answered: Nay! It must be done with the ceremony of a sudarium. But does not the latter part state: If he reserved nothing, title is not given? And if it is as you say, why should it not be the same when made by a sudarium? And he answered: So said Samuel: If a sick person has bequeathed all his estates to strangers, although made with a sudarium, he may retract, because it is certain he made it in the fear of death. R. Mesharshia objected to Rabha from the following: It happened with the mother of Rukhl's sons that while sick she said: My jewelry shall be given to my daughter, and is worth twelve manas. And she died; and the sages listened to her will. (Hence we see that, although it was a part of her estate, and it was not made with the ceremony of a sudarium, it was nevertheless considered.) The case was, because she had mentioned: I am certain I shall die, therefore I bequeath this to my daughter. R. Huna b. R. Jehoshua, however, said: If the sick person has commanded while dying, a sudarium is needed; and all Boraithas

cited treat when the sick person has divided all his estates among different persons. And in such a case it is said above that the rabbis consider them as a gift of a sick person. The Halakha, however, prevails that for a gift of a sick person in part a sudarium is needed, even when he dies of that sickness; but if he commanded while dying, no sudarium is needed in case he dies. But if he was cured he may retract, even if it was done with a sudarium.

It was taught: A gift of a sick person, in which it was written that it was made with a sudarium--it is considered based upon two sources, and must be listened to. So declared the school of Rabh in the name of their master. Samuel, however, said: I do not know what should be done in such a

case. The reason of the school of Rabh is: Because the will was made on two bases, it is equal to both--a gift of one in good health, from which he cannot retract, and to a gift of a sick person who said, "The loan I have with A, shall be given to B." And the reason of Samuel, who was doubtful in such a case, is: Perhaps the sick person made up his mind not to give title without a deed, and such cannot be written after death.

However, there is a contradiction from the following statement of Rabh's, to his one decision just mentioned, and the same is it with Samuel--namely: The message which Rabbin sent in the name of R. Abuhu (above, pp. 300-1), in which both Rabh and Samuel contradict themselves? Nay! There is no contradiction at all. Rabh it does not contradict, because in one case he speaks where it was made with a ceremony of a sudarium, and in the other where it was not. And to Samuel also there is no contradiction, as his decision in the case cited speaks when the sudarium was made to strengthen the act. (This will be explained farther on.)

R. Na'hman b. Itz'hak was sitting behind Rabha, and Rabha before R. Na'hman, who questioned him: Did Samuel indeed say that it is to be feared the sick person had perhaps made up his mind to give title by a deed only? Did not R. Jehudah say in his name: A sick person who has bequeathed all his estates to strangers, although made with a sudarium, if he was cured he may retract. Because it is known that this bequest was only because he thought he would die. R. Na'hman gestured, and Rabha remained silent. After R. Na'hman went out,

questioned R. Na'hman b. Itz'hak: Rabha, what does R. Na'hman mean by his gesture? And he answered: He means that title is given when the act was strengthened. And to the question: How is it known that the act was strengthened? Said R. Hisda: If it was written: "In addition to his gift the ceremony of a sudarium was made."

It is certain that if one bequeathed first to one, and thereafter to another, it is as R. Dimi said above: The later will abolishes the first. But how is it if he wrote and gave title with a sudarium to one, and thereafter he did the same to another? According to Rabh: Title is given to the first, as in his opinion it is similar to a gift by one who is in good health. But according to Samuel title is given to the second, as in his opinion it is similar to a gift of a sick person, and it is to be feared that he had perhaps made up his mind to give title only by a deed. So it was taught in the city of Sura. In Pumbeditha, however, it was taught as follows: R. Jeremiah b. Abba said: A message was sent from the college to Samuel: Let the master teach us--how is the law if one has bequeathed his estate to strangers with a sudarium? And his answer was: After a sudarium, nothing can be done. The schoolmen, however, understood that Samuel's decision was only if it was bequeathed to another; but if he became cured and wished to retract for the sake of himself, he might do so. Said R. Hisda to them: When R. Huna came from Khuphry, he explained that Samuel meant to say it holds good in any event (*i.e.*, he cannot retract even for himself). There was one who bequeathed his estates with a sudarium while he was sick, and thereafter became cured and wanted to retract, and brought up his case in the court of R. Huna. And R. Huna said to him: "I can do nothing for you, as you acted not in accordance with those who wish to retract after cure. They usually give title with one of the two--a document or a sudarium. You, however, have done both; and such an act can by no means be abolished." There was a deed of gift in which it was written: While I live and after my death. Rabh considered this as a will upon death, because death was mentioned. And Samuel considered it as a gift by one in good health, because while "I live" was mentioned--explaining that the word death is to be interpreted from

time everlasting. Said Uhla: The

sages of Nahardea decided: The Halakha prevails with Rabh. Said Rabha: If, however, it was written: "While I *still* live," title is given. And Amimar said: The Halakha does not prevail with Rabha. Said R. Ashi to him: Is this not self-evident? Have not the Nahardeans decided: The Halakha prevails with Rabh? (And he rejoined:) One might say: When "*still* alive." Rabh also admits: I came to say that it is not so. There was such a case, which came before R. Na'hman in the city of Nahardea, and he sent the plaintiff to R. Jeremiah b. Abba in the city of Shum-Tamia, saying: Nahardea is the city of Samuel, and we cannot act against him, though the Halakha prevails with Rabh. There was also such a case which came before Rabha, and he decided in accordance with his own theory. And the plaintiff was a woman, who troubled him very much, saying: His decision was not in accordance with the law. He said then to R. Papa b. R. Hanon, who was his scribe: Write her a document that she won the case; but at the bottom write a few words from a Mishna in Middle Gate: "He may hire other laborers or deceive them" (that the court to which she shall bring my judgment will understand that I do not agree with it). And she exclaimed: I see you desire to fool me--may your ship sink! Rabha's followers dipped his clothes in water, to overcome the curse of the woman. However, they did not succeed, as Rabha was punished for this.

MISHNA *VIII*.: If in the deed it was not mentioned that he was sick, and he claims that he was sick at the time of writing and had a right to retract, while the plaintiff claims that he was in good health, it is for him to bring evidence that be was sick. So is the decree of R. Meir. The sages, however, say: There is a rule that it is always for the plaintiff to bring evidence.

GEMARA: There was a deed of gift in which it was written that it was done while he was sick in bed; but it was not mentioned that he died from that sickness. And Rabha said: It does not matter, as in reality he did die, and his grave is evidence. Said Abayi to him: But what evidence is this that he died from that sickness? Perhaps he was then cured, retracted, and thereafter died of another sickness? And that this is to be feared we may infer from a ship which sinks, when it is seldom that the men on board are saved. And, nevertheless, we apply

to such a case both the rigorous law concerning life and the rigorous law concerning death (*i.e.*, the wives of those who were on board are not allowed to marry, as perhaps their husbands are not dead, but have drifted to the shore at another place and remain alive, and also must not partake of Terumah in case their husbands were priests, as perhaps they are dead). So much the more in our case, in which the majority of sick persons become cured. Should we not fear that, because it was not mentioned in the deed that he died from that sickness, he was cured?

Said R. Huna b. R. Jehoshua: The decision of Rabha in this case is in accordance with R. Nathan of the following Boraitha (in such a case as stated in our Mishna, it depends on circumstances): Who has to collect from whom? If he, the bequeather, has to take out of their hands, he can do so without any evidence; but if they have to collect from him, evidence must be brought. So is the decree of R. Jacob. R. Nathan, however, maintains: If the case comes on while he is in good health, it is for him to bring evidence that he was sick when the deed was written. On the other hand, they have to bring evidence that he was in good health, if the case comes on while he is

sick. (Hence we see that R. Nathan's decision is according to the circumstances at the time the case is before the court; and the same is Rabha's theory.)

"*The sages, however, say*," etc. What kind of evidence is required? According to R. Huna: Witnesses shall testify that he was in good health when the deed was written. And according to R. Hisda and Rabba b. R. Huna: The evidence should be by approval of this deed (*i.e.*, the defendant claims that he was then sick, and consequently the deed is valueless; but if they bring evidence from the court that it was approved by it, he must not be trusted, as it is to be supposed that the court would not approve it if it was not aware that he was in good health). R. Huna, who required witnesses, maintains: R. Meir and the sages differ as R. Jacob and R. Nathan do. And R. Hisda and Rabba b. R. Huna maintain: They (Meir and the rabbis) differ as to whether a deed which is admitted by the signer must be approved by the court or not. According to R. Meir, it is not necessary; and according to the rabbis, it is.

Rab ha is also of the opinion that the evidence in question

must be witnesses. Said Abayi to him: What is your reason? Shall we assume that because all other documents state it was done when he was on his feet and in good health, and here it is not so mentioned, it is to be assumed that he was then sick? Why not say to the contrary, as in all documents of a sick person it is written: "It was done while he was sick in bed," and here it is not mentioned, it is to be assumed that he was then in good health? (And he answered:) Since it can be so said, and also the contrary, therefore we leave the money or the article in the hands of its possessor; and it is for the plaintiff to bring evidence.

The decision of this question is still in discussion, as R. Johanan and Resh Lakish also differ. According to the former, witnesses are required; and according to the latter, the approval of the deed.

R. Johanan objected to Resh Lakish from the following: It happened in the city of Bene Brack that one sold the estate of his father, and died; and his relatives complained that he was not of age when he died. And they came and questioned R. Aqiba whether they had a right to examine the corpse. And his answer was: First, you are not allowed to disgrace the dead; and secondly, the signs of maturity are subject to change after death. Now, according to my theory that witnesses are required, it is correct: as the buyers required evidence from the relatives, which they could not give, they asked for permission to examine the corpse. But according to your theory that the evidence should be by approval of the deed, let them, then, approve the documents, and hold the goods without any, examination? And Resh Lakish answered: Do you think that his estates were still in the possession of his relatives, and the buyers were the plaintiffs? On the contrary, the estates were in the hands of the buyers; and the relatives were the plaintiffs. (Says the Gemara:) It seems to be so, as his relatives kept silence when Aqiba told them they were not allowed to examine; and if the buyers were the plaintiffs, they would certainly claim: We gave him money--let him be disgraced and disgraced. However, this cannot be taken as a support, as it can be said that therefore R. Aqiba said to them: "And secondly, signs of maturity are subject to change," because of their claim: Let him be disgraced.

(It was taught) Resh Lakish questioned R. Johanan: There is a Mishna among the Mishnayoth of Bar Kapara: If one worked up a field and consumed the products as if he were the owner of it, and then one came and claimed, "It is mine," but the occupant showed him a document, whether bill of sale or deed of gift, and the plaintiff said, "I do not recognize such a document at all," the signatures which are on the document must be approved by the court (*i.e.*, it is sufficient that the witnesses should testify before the court that they recognize their signatures, but it is not necessary that they should testify that the sale or gift was made in their presence). If, however, the plaintiff claims: "I recognize this deed, but it was written only upon your request for a special purpose; but I never sold"; or, "I sold to you and never took any money," if the plaintiff brings evidence, then it must be done accordingly; but if there is no evidence, the deed is in force. Shall we assume that it is according to R. Meir, who said: "If one recognizes his document, the approval of it is not necessary," and not in accordance with the rabbis? And R. Johanan answered: Nay! I say that all agree such a document does not need any approval. Said Resh Lakish again: But there is a Mishna that they do differ. And he answered: That Mishna treats that the witnesses themselves impair the deed (*i.e.*, they testified that they signed it illegally). But can he, the giver of the document, be supposed to impair it? Rejoined Resh Lakish: But in your name it was said that you would approve the claim of the relatives who asked permission for the examination (cited above), as it seemed to you they were right. To which R. Johanan rejoined: This was said by Elazar, but *I* never said such a thing. Said R. Zera: If R. Johanan denies what was said by Elazar his disciple, will he also deny what was said by R. Janai his master? The same said in the name of Rabbi: If one admits that he wrote this document, it must nevertheless be approved. To which R. Johanan said, answering him: Rabbi, is this not the same as our Mishna states? The sages, however, say: It is for the plaintiff to bring evidence. And there is no other evidence but the approval of the document. And therefore (adds R. Zera), it seems that our master Joseph Js right when he states in the name of R. Jehudah, quoting Samuel, that the rabbis said approval is not needed to a document

which is admitted by the signer. And he who holds that he still needs an approval is R. Meir. Also, by the expression of R. Johanan, "All agree," is meant the rabbis, as R. Meir was only a single individual who so holds. But does not the Mishna state the reverse? And also the Boraitha, does it not state in the name of the sages that it must be approved? Reverse the names in the Mishna, as well as in the Boraitha. But was it not stated above that R. Johanan is the one who requires that the evidence mentioned in the Mishna should be witnesses? This statement is also to be reversed (*i.e.*, R. Johanan said: The evidence should be with the approval of the deed). Then the objection must be reversed also--not that R. Johanan objected to Resh Lakish, but the reverse? Nay! So said R. Johanan to Resh Lakish: According to my theory that I require the evidence should be by the approval of the deed, it is correct that the buyers took possession of the estate which was sold to them by the alleged minor. But according to your theory, how can there be such a case--that the buyers should possess the estate? Where could they find witnesses who should testify that he was of age? And Resh Lakish answered him: I admit to you that the claim of the relatives ought not to be taken into consideration; for what was their claim as against the deed in which witnesses signed that "he was of age"? And there is a rule that witnesses have the preference; as it is assumed that witnesses would not testify unless they were aware of the case. Hence concerning this deed they would not sign it if they were not aware that he was of age.

It was taught: What must be the age of one who has the right to sell the estates left him by his

father? Rabha in the name of R. Na'hman said: Eighteen. And R. Huna b. Hinna in the name of the same authority said: Twenty. R. Zera objected from the above case which happened in the city of Bene Brack, to whom R. Aqiba said: The signs of maturity are subject to change after death. And this can be correct in him who said eighteen, as then his relatives questioned the law if the corpse might be examined. But according to him who said twenty, of what use could the examination be? At that time the signs of maturity are already unrecognizable, as we have learned in a Mishna: If one gets to the age of twenty,

and the signs of maturity are not visible, they have to bring evidence that he has reached the age of twenty; and he, the castrate, is a legal "saris," who does not perform the ceremony of Halitzah and also cannot marry his brother's wife. Hence we see that after twenty the symptoms of maturity are already unrecognizable. The answer was: Was it not taught in addition to the Mishna by R. Samuel b. R. Itz'hak in the name of Rabh: Provided the symptoms of a "saris" were visible. Said Rabha: It seems that this explanation is right, as the Mishna states: "He, the castrate, . . . 'saris,'" from which it is to be understood that such signs were visible on the body; as if not, why should he be named "castrate"? But how is it if neither the signs of maturity nor of a "saris" were visible? How many years are needed, that he should be considered of age? Taught R. Hyya: After he reaches the majority of life (*i.e.*, thirty-six years, as life is considered seventy). It happened that such cases were brought before R. Hyya by the mothers, questioning him: What must be done, that the signs of age should appear? And he used to answer: If the lad was thin, see he should become fat; and if he was fat, he would advise that they should make him thin, as sometimes the signs came earlier because of thinness, and sometimes because of fatness.

The schoolmen propounded a question: How is he to be considered during the nineteenth year--nineteen, which is still not of age, or twenty? Rabha in the name of R. Na'hman said: The whole twentieth year, is he considered nineteen? And Rabba b. R. Shila in the name of the same authority said: As twenty. The statement of Rabha, however, was not heard from him plainly; but it was so judged from the following act: There was a lad who was between nineteen and twenty, who used to sell his father's estate, and Rabha had annulled all his acts. People who saw this thought that it was because he considered him not of age. In reality, however, Rabha did so because signs of foolishness were seen in him, as he used to free all his slaves. 1

Giddle b. Menarshia sent a message to Rabha: Let the master

teach us! How should a girl of fourteen years and one day who has a knowledge of business be considered? And he answered: If she has a knowledge of business, then her sale is valid, but not otherwise. Why was the question for a female and not for a male child? Because so was the case.

There was one lad, less than twenty, who had sold the estate of his father, and his relatives instructed him that when he should be at the court of Rabha he should eat dates and throw the pits at Rabha's person (for the purpose that Rabha should see he was a fool, and so annul his sales). He did so, and Rabha did indeed annul the sales. When the judgment was written, the buyers instructed him to go into court and say: The Book of Esther can be bought for one zuz,

and the same is the price for Rabha's judgment. And he did so. Rabha then decided: His sales are valid. And when his relatives told him he was so instructed by the buyers, Rabha answered: He understands business if it is explained to him, and in such a case his acts are valid; and his previous act, that he threw the pits at me, was because he is too much of a scamp.

Said R. Huna b. R. Jehoshua: Concerning witnesses--his testimony may be considered at such an age (between nineteen and twenty). Said Mar Zutra: But only concerning movable property, and not real estate. Said R. Ashi to him: What is the reason that he is fit to be a witness for movable property--because his sales are valid? If so, let children of six and seven years be fit for this, as there is a Mishna: The purchase or sale of movable property by minors is valid. And he answered: Witnesses must be men, as it is written [Deut. xix. 17]: "Then shall both the men who have the controversy stand before the Lord," etc., which cannot be applied to children.

Said Amimar: If a lad of thirteen years and one day presented a gift to some one, his act is valid. Said R. Ashi to him: Why? Even concerning a sale where he should receive money, the rabbis enacted that it should be annulled, because he might sell too low. Shall we say, if he presents a thing without any money his act is valid? (Said Amimar to him:) And according to your theory, if such a lad bought a thing which is worth six zuz for five, should this be considered? This is certainly not so, because there is no difference whether it was worth more or less, as the rabbis annulled all sales made by such a lad who

does not understand business. And the reason is that the rabbis were aware that lads at such an age have an inclination for money; and if you should allow one to sell, he would sell all the estates of his father for a small amount. But concerning a gift it is different, as if he would not have any benefit from it, he would not do so; and therefore the rabbis enacted that his gift should be considered, so that others should also please him. R. Na'hman in the name of Samuel said: A young man before twenty may be examined for the signs of maturity concerning betrothals, divorces, the ceremony of Halitzah, and protesting against marriage, and as to selling the estates left him by his father. The Halakha, however, prevails, that between nineteen and twenty he is considered as before nineteen; and it prevails also in accordance with Giddle b. Menarshia, with Mar Zutra, and also with Amimar, and with all the laws which are stated by R. Na'hman in the name of Samuel.

MISHNA *IX*.: If one divides his estates verbally, no matter if he was in good health or dangerously sick, according to R. Elazar to real estate title is given by money, by a deed, and by a hazakah; and to movable property, title is given by drawing only. He was then told that it happened with the mother of the sons of Rukhl, who was sick and said: Give my jewelry, which is worth twelve manas, to my daughter, that the sages had listened thereto. And he answered: The sons of Rukhl ought to have been buried by their mother while they were still young (*i.e.*, they had bad habits, and therefore the sages fined them, that they should not inherit from their mother).

GEMARA: There is a Boraitha: R. Eliezer said to the sages: It happened with an inhabitant of the city of Mruni, who was in Jerusalem, that he possessed much movable property which he desired to present to different persons; and he was told that he could not give them title, unless he did so together with some real estate. He went then and bought a rock near Jerusalem, and said: The north side of the rock shall belong to A, and with it one hundred sheep and one

hundred barrels; and the south to B, and with it one hundred sheep and one hundred barrels. And when he was dead, the sages approved his will. Hence we see that, though the rock could not be considered real estate, as it could not be used for anything, nevertheless title was given. And he was answered:

[paragraph continues] This is no support, as the Mrunian was in good health when he did so; but this cannot be done by a sick person.

R. Levi said: It is allowed to make the ceremony of a sudarium with a sick person even on Sabbath, lest he become exhausted; but not because the Halakha is in accordance with R. Eliezer of the following Mishna.

MISHNA *X.*: R. Eliezer said: If it happens that a sick person divides his estates verbally on Sabbath, it may be listened to, because it is prohibited to write; but not on week days. R. Jehoshua, however, maintains: It was said on Sabbath, *a fortiori* when it happened on week days. Similar to this is: One may acquire title for a minor, but not for adults. So is the decree of R. Eliezer. R. Jehoshua said: For a minor, and *a fortiori* for an adult.

GEMARA: Our Mishna is in accordance with R. Jehudah, as we have learned in the following Boraitha: R. Meir said: The reverse is the case. If this happened on week days, his words must be listened to, because he is allowed to write; but not on Sabbath, because he is not allowed to write. So is the decree of R. Eliezer. R. Jehoshua said, on the contrary: It was said on week days, and so much the more on Sabbath. R. Jehudah, however, said: R. Eliezer's decree was, if on Sabbath, his words must be listened to, because he is not allowed to write; but not on week days, when he is allowed to write. And R. Jehoshua's decree was to the contrary. And the same is the case as to the latter part of the Mishna.

MISHNA *XI.*: Suppose a house falls upon A and his father, or on any persons, that one of them has to be bequeather and the other inheritor, and it is not known who dies first, and to the estate there is a claim from the widow for her marriage contract, and from other creditors. The heirs of the father say that the son died first; and the creditors say that the father died first, and the son afterward. (*I.e.*, the creditors of the son who had a right to the estate only if he died after his father, so that with the death of his father the inheritance came to him. But if he was dead before his father, he has nothing in the estate. And this is what his brothers claim, that the creditors have no right in the estate left by their father. Concerning a marriage contract, that will be explained in the Gemara.) According to the school of Shamai, they have to divide; and according to

the school of Hillel, the estate must be left in the hands of the present occupants. 1

If it happened that the house fell on him and his wife, the heirs of the husband claim that the woman dies first, consequently her husband has inherited from her; and the heirs of his wife claim that he died first, consequently they have a right to her marriage contract and also to her own estate. They have to divide, according to the school of Shamai. But the school of Hillel say:

They must leave the estate in the hands of its present occupant. And the occupants are to be considered as follows: The estates belonging to the marriage contract are to be considered as in the hands of the husband's heirs. But her own estates, which she brought with her to her husband, and which ought to go out with her by death or divorce, are to be considered in the hands of the heirs of *her* father.

If, however, the house falls on one and his mother, both schools agree that it must be divided. R. Aqiba, however, said: I hold that they (the schools) differ in the latter case also; and the school of Hillel are still of the opinion that estates must be left in the hands of the occupants. Said Ben Azai to him: We deplore that the schools differ in the former cases, and you come to add the third one, in which the rabbis testify that they have agreed.

GEMARA: The estates which were brought by the deceased woman, mentioned in the Mishna--to her husband for usage of fruit only, according to the school of Beth Hillel. Who is to be considered the occupant? According to R. Johanan: The heirs of the husband. According to R. Elazar: The heirs of the woman. R. Simeon b. Lakish, however, said in the name of Bar Kapara: Such must be divided. And the reason of this statement was taught by Bar Kapara himself, that as the claims of both parties are equal (*i.e.*, the heirs of the husband claim that all the products of this estate belonged to the deceased, as he had a right to sell them, and therefore they belong to his heirs; and the opponents claim that they were only to be used while he was alive, and therefore what was not

consumed by him, if his wife were alive she would certainly take with her estate; hence it belonged to her, and after her death to us), it is to be considered doubtful money, the law of which is division.

"*R. Aqiba said . . . in the hands of the occupants*." But who are considered their occupants? R. Aila said: The heirs of the mother; and R. Zera: The heirs of the son. When R. Zera ascended to Palestine, he retracted from his statement in Babylon and accepted the system of R. Aila. Rabba, however, retained the system of R. Zera as a Halakha. Said R. Zera: From my retraction, I see that the air of the land of Israel makes one wise; as after I came here I saw that my statement while I was still in Babylon was erroneous. [1]

"*Said Ben Azai to him*," etc. Said R. Simlai: Infer from this that Ben Azai was an associate disciple of R. Aqiba; as if he were a disciple only, he would have said to him, "The *master* said," and not, "And you (thou)."

A message was sent from Palestine as follows: If a son has sold his share of the inheritance of his father to some one, and dies while the father was still alive, and thereafter his father died, the son of the seller has a right to take away the goods from the buyer. (Because, at the time sold, the seller has nothing as yet in his hands, and the sale was for that which would be his in the future; and as the son died before his father the goods were never his, and his son is now the heir of his grandfather, to whom the goods in question belong; hence he has a right to take them away.) And this is a complicated case in the law of money matters. But let the buyers say: Your father has sold, and you are taking away? What a claim is this! Cannot the plaintiff say: My basis is my grandfather, from whom I inherit (and my father had not any right to sell this--as

explained above); and that such a claim is to be considered may be supported by [Ps. xlv. 17]: "Instead of thy fathers shall be thy children: thou shalt appoint them as princes in all the land." Hence it is not at all a complicated case in money

matters. And if such there be, it would be the following: A first-born who sold the share prescribed to him while his father was still alive, and died before his father, the first-born's son has a right to take away from the buyers after the death of his grandfather. Hence his father sold that to which he was entitled; and his son, whose basis is his deceased father, takes the goods away. And this is complicated, as he cannot say, "My basis is my grandfather," for the grandfather had nothing to do with the double share of the first-born son. But even this cannot be called a complicated case, as he may claim, "My basis is my grandfather, and not my father, who has never possessed the goods he sold; for now only do I take the place of my father, who was a first-born, and take his share." Hence it is in accordance with the usual law. Therefore, if in the message of Palestine was said "a complicated case," it might be the following: If one sign a document before he robbed some one, and thereafter he became a robber, who is no longer competent to be a witness, he has no right to testify to his handwriting; but others, who know his handwriting, may. Hence he is not trusted, and the others who came upon his basis are trusted. Is this not complicated? But perhaps it treats of when his handwriting was already approved by the court, while he was still righteous? Therefore it is to be assumed that they meant the following case: If one signed a document as a witness to a stranger, and thereafter he became his son-in-law, he has no right to testify to his signature; but others may testify that they recognize the writing of the son-in-law, and then it may be relied upon. Hence he is not trusted, and others are. And you cannot say that it means only when his handwriting was already approved by the court at that time, as R. Joseph b. Minumi in the name of R. Na'hman said plainly: Even in case it was not. However, even this cannot be called complicated, as it may be said that it is thus decreed by the law. A son-in-law must not witness in a case of his father-in-law, not because it is feared he may lie, but because it is prohibited, even if the son-in-law were Moses our master. Therefore we must come to the conclusion that the complication lies in the first case mentioned in the message, and the objection based on the cited verse is not to be taken into consideration, as the verse speaks of a "blessing." But bow can you say that it

speaks of a blessing, and nothing is to be inferred from it? Does not our Mishna state: "If the house falls upon him and his son, or any persons," etc.? Does it not mean, by the "heirs of the father," grandsons, and "any persons," brothers of the deceased? Now, if you bear in mind that one cannot say, "I come on the basis of my grandfather," as the cited verse cannot serve as a support, then, even when the son dies first, how is it? Let the creditors say: We claim the inheritance of the father? Nay! By "the heirs of the father" is meant the deceased's brothers; and by "any persons," his uncles, brothers of his father.

"*One and his mother*," etc. R. Shesheth was questioned: Nay! A son inherits from his mother when he is already in the grave, so that his brothers from his father's side should inherit from him? (The illustration may be found above, p. 317.) Answered R. Shesheth: This we have learned in the following Boraitha: If the father was taken into captivity and died there, and at the same time his son dies in his country, or *vice versa*, and it was not known who died first, the heirs of the father and the heirs of the son (on his mother's side) may divide among themselves

the inheritance. Now, if the son while in the grave could inherit from his mother, even if he dies first, let him inherit from his grandfather on his mother's side, and then his brothers on the father's side would inherit from him. Infer from this that while in the grave nothing is to be inherited. Said R. Aha b. Minumi to Abayi: This may be inferred also from our Mishna, which states that concerning one and his mother all agree that they must divide. And if the law of inheriting in the grave were in force, let him inherit from his mother while in the grave, the same to revert to his brothers on the father's side. Hence such a law does not hold good. And why not? Said Abayi: There is the same expression in the Scripture concerning the inheritance of a husband from his wife, and a son from his mother. As the first does not inherit while in the grave, so it is with the second, etc. (This has already been explained in Chapter VIII., p. 254)
(Here is repeated the whole story of Bar Sisin's estate, preceding volume, pp. 86-87.)

Footnotes

322:1 The commentators Rashbam, Tosphath, and Bach discuss at length how the widow is an heir also, illustrating, *e.g.*, if one has married the daughter of his brother, who has no other children besides her, and the brother has inherited the estate of their father, and thereafter both brothers die, then the widow of the one brother is also an heir to the estate of her grandfather, which belonged to her father, who had no heirs except her. There are also some other illustrations, but all are complicated. We give the last, which is simple.

322:2 Gershom explains *Sinaic* laws, with which Rashbam does not agree.

323:1 The term in Hebrew is "zinim," and "zinha" means cold; and so it is taken by the Talmud. The basis of Leeser's translation is unknown.

329:1 The second explanation to this verse by the same authority will be in Chapter XI. of Tract Sanhedrin as the proper place.

330:1 In ancient times they used to grind pearls and diamonds in medicine.

339:1 In the Talmud, wherever it means real estate, the expression is estates which one can rely upon--which means that if they are mortgaged for a loan the lender may rely upon them, as they cannot be lost by fire, etc.

350:1 At that time it was prohibited to free a bondsman without a good reason, according to Roman and Persian, as well as to Jewish laws.

354:1 The Gemara to this Mishna we transfer to Mishna 8 of the succeeding chapter, as the proper place. We also deemed it necessary to put all three Mishnas which treat of falling houses together, though in the original text they are in three separate places.

355:1 The commentators differ concerning the explanation of this, as well as concerning the

completion of the text. Rashbam affirms that Rabba was not in the text at all. Gershom changes the question concerning the cases in the Mishna and explains them differently. We have done what we could to make the passage intelligible to the reader.

Next: Chapter X

CHAPTER X.

HOW DEEDS SHOULD BE WRITTEN AND WHERE THE WITNESSES SHOULD SIGN. CONCERNING ERASURES OF SOME WORDS IN DEEDS. IN WHICH CASES BOTH PARTIES MUST BE PRESENT AT THE WRITING OF THE DEEDS, AND IN WHICH ONE OF THEM SUFFICES. CONCERNING A DEPOSITED DEED WHICH WAS PAID IN PART. HOW SHALL THE COURT APPROVE AN ERASED DOCUMENT? PROPERTY FOR PRIVATE USE WHICH WAS LEFT TO POOR AND RICH BROTHERS.

MISHNA *I.*: A simple "get" [1] (document) the witnesses must sign at the end of the contents. A folded one, however, the witnesses must sign outside. [2] But if the witnesses signed their names outside in a simple one, or inside in a folded one, both are invalid. R. Hanina b. Gamaliel, however, said: If in a folded one the signatures of the witnesses were inside, it is valid, as it can be taken apart and will constitute a simple one. Rabbon Simeon b. Gamaliel maintains: All must be done as is the custom of the country. A simple document must be signed by two, and a folding one by three witnesses. If there was only one witness to a simple and two to a folding, both are invalid.

GEMARA: Whence is this deduced? Said R. Hanina: From [Jer. xxxii. 44] "Men shall buy fields for money, and write it in deeds, and seal them, and certify it by witnesses," etc. "Write it in deeds" means a simple document; "seal" means a folding one; "certify" means by two witnesses; "by witnesses" means three. How so? We must say, then, two

witnesses for a simple, and three for a folding one. But perhaps the reverse? Common sense dictates that a folding one, which is added to in folding, should be added to also in witnesses. (The discussion proceeds to deduce this from the Scriptures, which were objected to as usual, and the Gemara came to the following conclusion): The folding one is only an enactment by the rabbis; and the verse above cited was only a light support. And why this enactment? Because of the many priests who used to live in their city. (The law prescribes that a priest, having divorced his wife, it is prohibited to him to remarry her; which is not the case with a commoner.) And as the priests are usually ill-tempered, they used to divorce their wives as soon as they became angry. Therefore the rabbis enacted that the "get" should be folded and sewn several times, that it might prolong the time, in order that they should become quiet, and recede from their previous intention. This is correct concerning divorces. But why for other documents? Because all kinds of documents were then called "gets," they enacted that all should be done in one manner.

In what place should the witnesses sign a folding document? According to R. Huna: Between one folding and another (*i.e.*, in the folding space above the lines, and thereafter it was folded and sewn so that the signatures were inside). According to R. Jeremiah b. Abba: On the reverse side, and exactly opposite the writing. Said Rami b. Hama to R. Hisda: According to R. Huna,

who maintains in the folding space above the lines which is thereafter also folded, it is to be assumed that it remains inside; but this is not so, as it happened that a folding document was brought before Rabbi, and he exclaimed: There is no date to it. To which R. Simeon his son answered: Perhaps the date is inserted, etc. (*post*, p. 363), Now, if it were as R. Huna said, Rabbi ought to say: There is neither date nor witnesses (as the witnesses signed inside, one could not sew it when it was folded). And R. Hisda answered: Do you think that R. Huna means between the folding inside? He meant outside. But if so, why should not forgery be feared, as one can write inside what he likes, while the witnesses have already signed outside? In the document must be written at the end, "All its contents are true," and they remain

forever. Hence to that which is written thereafter no attention is given. But it is still to be feared that after it is written he can forge what he pleases, and then write again, "All this is true," and have it signed by other witnesses? A document must contain only one approval that "all is true," but not more. But still it is to be feared that he can erase the approval, adding what he pleases, and then write, "All is true," etc. To this it was said by R. Johanan: If there was inserted a word between the lines, and thereafter the witnesses testify it was inserted at their instance and they approve it, the document is valid; but if some words were erased, then, although approved at the end, the document is nevertheless invalid. And this was said concerning an erasure in the place of the words "all that is written is true," and the size of these words. But even according to R. Jeremiah b. Abba, who said: On the reverse, and opposite the writing (*i.e.*, where the writing finishes inside, he shall begin opposite to write his name; so that if there should be some lines more over the signature of the witness it would be considered forgery), it is also to be feared that one might forge some lines, and add one more witness, opposite the forgery, and might say: My intention was to add one witness more? And the answer was: Do you think that the witnesses have signed lengthwise, in order? No! They signed one under the other, so that no more lines after the witnesses' signatures could be added. [1]

R. Itz'hak b. Joseph in the name of R. Johanan said: To all the erasures which are in the document must be written at the end, "With this signature we approve them," etc.; and in the mean time they must mention the abstract of the contents in the last line. And why so? Said R. Amram: Because the last line is not taken into consideration, as it can easily be forged; as usually the witnesses do not sign so near to the writing that one line could not be inserted, and therefore if the abstract of its contents is written attention is given, but not to something new. And to the question of R. Na'hman: What is the basis of your statement? he answered: The following Boraitha: If the signatures of the witnesses were separated

by a space of two lines from the writing, the document is invalid; but if by one line, it is valid. Let us, then, see what is the reason that two lines' space make the document invalid. Is it not because one can forge the two lines? But the same can be done with one line also? We must then say that if a new sentence is written on the last line it is not taken into consideration. And so it is.

The schoolmen propounded a question: How is it if there is space for one line and a half? Come and hear the following: If there is space for two lines, it is invalid; for less than two, it is valid. If there were four or five witnesses to a document and one of them was found to be a relative, or incompetent for sonic other reason to be a witness, the document may remain in force by the

remaining witnesses. And this is a support to Hezkiyah, who said: If there was a space left, and this was filled up with the signatures of relatives as witnesses, the document is valid. And do not be surprised at such a law (why should not the signatures of the relatives who are not competent to witness in that case harm this document?), as such a law is to be found concerning a Sukka: If on the roof of the Sukka was space to the size of *three* spans uncovered, it makes the Sukka invalid; but if it was covered with illegal things, the size of *four* is needed to make it invalid.

The schoolmen questioned: In the two lines in question, is it meant with their usual space or without? Said R. Na'hman b. Itz'hak: Common sense dictates that their space is included; as if it were supposed that it meant without, of what use could be the size of one line without any space to it? (If one should come to forget this line, he would then be compelled to write it in such characters that it would be entirely different from the original and immediately recognized. Infer from this, therefore, that "with their space" is meant.)

R. Sabbathi said in the name of Hezkiyah: The space of the two lines in question means of the handwriting of the witnesses, not of the scribes; as if one wants to forge, he does not go to the scribes (and usually the handwriting of a commoner is larger than that of a scribe). And what size is meant?

Said R. Itz'hak b. Elazar: As in writing, *e.g.*,

k z l g

, which makes two lines in four spaces. According to R. Hyya b. R.

[paragraph continues] Ami in the name of Ula: Two lines and three spaces. According to R. Abuhu: One line and two spaces. 1 Said Rabh: This was all said about the space between the contents of the document and the signature of the witness. But from the signature of the witness to the approval of the court, it does not matter how much space is left. R. Johanan, however, said: All this was said concerning the space from the contents to the signatures of the witnesses; but concerning the space from the signatures of the witnesses to the approval of the court, even if there was one line, it is invalid. 2

"*R. Hanina b. Gamaliel*," etc. Rabbi objected to the statement of R. Hanina, thus: How could one make from a folding one a simple, if their dates were entirely different? As in a simple document which is dated according to the years of the king, if the king was in his first year, it is written: On fourth day of such and such a month, in the first year of king so and so; and in a folding one they used to add one year to the kingship of the ruler (*e.g.*, when it was in the first year, they used to write in the second; and if in the second, they used to write in the third). (Rashbam says: It was the custom of the nations to add one year to the kingship of the ruler in

their documents. And the rabbis enacted: In a folding one it shall be dated according to the custom of the land, for the above-mentioned reason; but not in simple documents.) Now, if you say that it can be taken apart and made a simple one, it may happen that one can borrow money with a folding one, and during this time may come into some money and pay his debt before due; and to the request for a return of the document, one may say that he lost it, and give a receipt. Then, when the document falls due, he can make it into a simple, and require his money again (as in the folding one there was added one year, hence the time due in a simple comes one year later, and he can claim that he borrowed money again for the current year)? Rabbi holds: Concerning a folding one, no payment is made upon a receipt unless the document is returned or destroyed.

But was, then, Rabbi acquainted with a folding document? Did not one come before Rabbi, who was about to annul it because it bore a later date? And Zunin said to Rabbi: So is the custom of this nation, that if the king has ruled one year they count him two; and if two, three. After he had heard it from Zunin, he enacted the law that no money should be paid upon a receipt. There was a document in which was written: In such a date of the year of Orkhon, A had borrowed money from B (but the number of the year was not written), and R. Hanina, before whom the case came, said: It must be examined when this Orkhon ascended the throne; and perhaps it was several years after, as the meaning of Orkhon is "lengthy," and he was named Orkhon because he was a good many years on the throne. Said R. Hoshea to him: So is the custom of this nation: the first year they named him Orkhon, and the second year Digon. Hence this document must be counted from the first year of the present ruler. But perhaps it was when he ascended the throne the second time, as once he abdicated and then ascended again? Said R. Jeremiah: At the second time he was named Orkhon-Digon, and not Orkhon only.

There was a folding document which came before Rabbi, and he said: There is no date to it. R. Simeon his son then said to him: Perhaps it is inserted between its folds! He took it apart, and found the date. Thereupon Rabbi scrutinized him, To which Simeon said: Not I was the writer of it, but Jehudah the Tailor. And Rabbi answered: Leave out slander. It happened at another time that R. Simeon was sitting before Rabbi, and reading for him a chapter of Psalms, and Rabbi said: How correctly and nicely it is written. To which Simeon answered: Not I, but Jehudah the Tailor, wrote it. And also to this Rabbi remarked: Leave out slander. (Questioned the Gemara:) It is correct that the first time he told him he should leave out slander, as Rabbi disliked folding documents, and was angry with the writer of it. But what slander was it if he said that the correct and nice writing was by Jehudah? This is in accordance with R. Dimi the brother of Safras, who taught: One must be careful in praising his neighbor, as very often blaming comes from praising.

R. Amram in the name of Rabh said: From the following three transgressions one is not saved day by day, namely: (a)

[paragraph continues] Thought about sin (*e.g.*, if he sees a handsome woman); (b) calculation of the effects of prayer--expectation of the granting of one's prayer as a due claim; (c) and slander. Slander! Do you mean that people slander one another every day? It means indirect slander (*e. g.*, while praising or talking of one, one indirectly comes to blame). R. Jehudah said in the name of Rabh: The majority of men are suspected of robbing (*i.e.*, in business every one looks out for

himself, without taking care lest he do wrong to him who deals with him), the minority are suspected of adultery, and all of them of indirect slander.

"*All must be done as is customary in the country*." But does not the first Tana also hold that the customs of the country are to be observed? Said R. Ashi: At those places where a simple is customary, and one told the scribe to make it, and he made him a folding one, it is certainly invalid; and *vice versa*. The point of this difference, however, is the places where both are customary, and he ordered the scribe to make for him a simple, but he prepared a folding one. According to the first Tana: It is invalid. According to R. Simeon: It is valid, as it may be supposed that he ordered him to make for him a simple only for the scribe's sake, that he should have less trouble; but if he did not heed, and made a folding one, it must not be ignored. Said Abayi: R. Simeon b. Gamaliel, R. Simeon, and R. Elazar all are of the opinion that in such a case it must be supposed that the giver of the order did so only to show him what was better for him; but he did not intend to be particular. B. Gamaliel as just mentioned; R. Simeon with his statement that if one has deceived a woman, not to her evil, but to her good (*e.g.*, if he said to her: You are betrothed to me with this silver dinar, and it was a golden one), his act is valid; and R. Elazar of the following Mishna: If a woman said: Go and receive my divorce at such and such a place, and he received it at another place, it is invalid. But according to R. Elazar it is valid, as it is to be supposed that she only showed him the place where she supposed it was better for him to go, but was not particular in her words.

"*If there was only one witness to a simple*," etc. It is correct what the Mishna teaches us: A folding document which was signed by two witnesses only is invalid, as in all other cases two witnesses suffice. But to what purpose does it state

that one witness to a simple is invalid? Is this not self-evident, as there is no case in which one witness should be sufficient? Said Abayi: It teaches: Even if, in addition to that witness who has signed, there were another who testified the same verbally, it is nevertheless invalid. Amimar, however, had in a similar case which came before him decided that the document is in force. And to R. Ashi's objection that Abayi holds it invalid, he answered: I do not hold with him. But how would Amimar explain the above question--to what purpose is it stated in the Mishna? He would answer thus: It came to teach that as a simple document with one witness is invalid biblically, so it is with two witnesses to a folding. And as a support to Amimar there may be taken the following: The colleagues of R. Jeremiah in Palestine sent a message to him: How is it if there is one witness in writing and the other verbally--should they be conjoined for decision upon their testimony, or not? We do not question, how is it according to the first Tana, the opponent of R. Jehoshua, b. Kar'ha, who maintains, in Tract Sanhedrin: Even two with two must not be conjoined under certain circumstances, and so much the less one with one. But our question is, how is it according to R. Jehoshua, who decided: If there were two witnesses in writing and two verbally, they are to be conjoined? Does he hold the same when there was one and one, or not? And R. Jeremiah answered: I am not worthy that you should send to me such a message. But as you have already done so, I may say that the opinion of your disciple is that they may be conjoined. (Said R. Ashi:) We have heard that the message was thus, The colleagues sent to R. Jeremiah: How is the law if, of two witnesses, one of them has testified before one court and the other before another--may both courts be conjoined to decide upon their testimony? We are aware that according to the first Tana, the opponent of R. Nathan: Even if they had testified at different times before one court, their testimony is not to be taken into

consideration, two courts are out of the question. But according to R. Nathan, who says: "In one court their testimony may be conjoined," does he hold the same with two courts, or not? And R. Jeremiah answered them as said above. Rabhina, however, said: The message was thus: If three were sitting as a Beth Din to approve a document,

and thereafter one of them died, must they write in their approval, "We were sitting three, but one is gone"; or is it not necessary? And he answered them: I am not worthy that you should send questions to me, but as you have done so, I may say that the opinion of your disciple is that it is necessary they should write, "We all three were sitting as a Beth Din, according to the law, to approve this document, but one of us is gone, and therefore only we two sign." And for this answer R. Jeremiah was returned to the college (above, p. 71, it was written that he was driven from the college).

MISHNA *II*.: If in the document was written, "hundred zuz which make twenty selas," he collects only twenty selas. If, however, it was written, "hundred zuz which make thirty selas," he collects only one mana (which only makes twenty-five selas). If there was written, "silver zuz which *are*," and the preceding words were erased, then the document is good for no less than two; "silver selas which *are*," and the preceding was erased, no less than two selas; "dracontiums which *are*," it means also no less than two.

If on the top of the document was written "a mana" and on the bottom "two hundred zuz," or *vice versa*, the last one must always be taken into consideration. But if so, why is it at all necessary that the amount should be written at the top? To the end that should it happen that in the words of the bottom one letter should be erased, then we may learn it from the top one.

GEMARA: The rabbis taught: If it was written "silver," without mentioning any particular coin, the document is good for no less than one silver dinar; and if "silver dinars," or "dinars of silver," then it is no less than two silver dinars. If, however, "silver to be paid with dinars," then it is no less than two golden dinars (it being understood that he borrowed from him silver to be paid with gold dinars, and as there is a plural it is no less than two).

The master said: "Silver no less than a dinar." But perhaps it means a piece of metal? Said R. Elazar: It means it was written a silver coin, but it was not mentioned which. But if so, why should it not mean perutas? Said R. Papa: It treats of those places where the perutas were not made of silver.

The rabbis taught: If the documents read "gold," it is not less than a golden dinar; "golden dinars," or "dinars of gold," it is not less than two golden ones. If, however, it was written, "gold to be paid with dinars," he must pay in gold the value of two *silver* dinars. But why should this not be explained: He shall pay him in good gold to the value of two golden dinars? Said Abayi: The defendant has always the preference (*i.e.*, by the general name dinar is meant a silver one; of a golden dinar it must be said plainly *golden*, and as here it is mentioned to be paid with dinars, and the word *gold* is omitted, the holder of the document has to suffer). But why in the first case, where it reads "silver to be paid with dinars," you say he shall pay two golden dinars P

Said R. Ashi: That Boraitha treats of when the document reads "denri," and the latter Boraitha when it was written "*denrin*"; and "denri" means gold, and "denrin" silver. And my support is from a Mishna in Tract Kinin: " . . . It happened that the price of kinin in Jerusalem increased to the extent of denri in gold. Said R. Simeon b. Gamaliel: I swear by the Temple that I go, not to bed this night before their price shall decrease to denrin." Hence denrin means silver, and denri gold.

"*On the top of the document*," etc. The rabbis taught: The bottom may be learned from the top when there is only one letter erased; but not when two (*e.g.*, if it was written, "Hanan of Hanani," or "Anan of Anani"--*i.e.*, the *i* was erased). Let us see! Why not two letters? Because if there were a name of four letters, two would constitute one half of a name. The same can be said with one of two letters, as there are names which consist of two letters only; 1 then the one would be one half of a name. Therefore we must say that the exception of two letters is because it might happen in a name of three letters, and when two are erased the greater part of the name is missing.

There was a document in which was written "six hundred and a zuz," and R. Chrabia sent it to Abayi, questioning him: Does it mean six hundred staters and one zuz, or six hundred perutas and a zuz. And he answered: Eliminate perutas, which it is not usual to write in a document, as generally they are counted together to make from them dinars or zuz. This

must therefore mean six hundred staters. But as there are staters of two zuz, and also others of the same name of half a zuz, and it was said above that the defendant has the preference, the holder of the document must suffer, and he takes only six hundred half-zuz and a zuz. Abayi said: If one desires that his signature shall be known in the court, he shall not write it at the bottom of a paper, as one can find it, but write at the top that he owes him money. And there is a Mishna: If one shows a document with his handwriting that he owes him money, he may collect from unencumbered estates.

There was a toll-master of a bridge who was a Jew, who said to Abayi: Let the master show me his signature, as it is my custom to allow the rabbis to pass without pay (I would leave it with my assistants so that if it should happen you would like to pass, they will not demand payment). Abayi showed him on the top of a piece of paper. He, however, tried to draw the paper so that the signature should come a little lower, and Abayi said to him: Do not try, as the rabbis have preceded you with their advice to sew a signature at the very top of the paper. Abayi said again: From the word "thlath," which means three, to the word "eser," which means ten, one shall not write in a promissory note at the end of the line, to prevent forgery. 1 But if it happened that he did so, he should repeat the word two or three times, so that one of them should occur in the middle of the line.

There was one document in which was written: "A third of a vineyard"--in Aramaic "Thiltha Beperidisa"--and the owner of this document erased the top and the bottom of the first letter of the second Hebrew word, so that from the Beth he made a Vav, which means "and," so that the document, as brought before Abayi, read: "A third and the vineyard," and claimed a third of the seller's garden and the whole vineyard. When Abayi examined the document, he asked him: Why does the Vav stand so extended in the world? He then urged him to confess, which he did.

There was another document, in which was written: The shares of Reuben and Simeon my brothers ("Achai" in Hebrew)

were sold to me. The buyer, however, added a Vav for the word Achai, and as the brothers had another brother by the name of Achai, he claimed that he bought the shares of all three brothers--Reuben, Simeon, and Achai. With this document he came to the court of Abayi. And there also Abayi asked him: Why is the world so narrow to the Vav? And also he was urged to confess, which he did. There was another document, which was signed by Rabha and R. Aha b. Ada. When it was brought before Rabha, he said: I recognize my handwriting, but I never signed my name in the presence of R. Aha b. Ada. He urged the holder of the document to confess, which he did. Then said Rabha to him: I understand how you might easily forge *my* name; but how could you do so with R. Aha's, whose hands are trembling? And he answered: I would put my hand on the rope-bridge, to imitate, trembling writing.

MISHNA *III.*: A divorce may be written by the court for a husband in the absence of his wife (because, according to the ancient law, the consent of the woman was not necessary); and an approved receipt for a marriage contract to be handed to the woman in the absence of her husband, provided the court knows them--the husband must pay the fees. A promissory note may be written for the borrower in the absence of the lender, but not for the tender unless the borrower is present; and the fee is to be paid by the borrower. A bill of sale may be written for the seller in the absence of the buyer, but not for the buyer unless the seller is present; the buyer pays the fees. Documents of betrothal and marriage must not be written unless both are present--at the expense of the groom. The same is the case with documents for hiring, and contracting fields and gardens; and the expenses are to the contractors. Documents of arbitrating, and all other acts of mediating by the court, must not be written unless both parties are present--at the expense of both.

R. Simeon b. Gamaliel, however, maintains: The latter documents must be written in two copies, one for each party.

GEMARA: What does it mean--provided the court knows them? Said R. Jehudah in the name of Rabh: They shall know exactly the name of the husband concerning a divorce, and the exact name of the woman concerning a receipt.

[paragraph continues] R. Safra, R. Aba b. Huna, and R. Huna b. Hinna were sitting together in the presence of Abayi and were deliberating over the statement of Rabh just mentioned--concerning a divorce, the name of the husband, but not the name of his wife? and concerning a receipt, the name of the woman, though they do not know the name of the husband? Why should it not be feared that this man would furnish the divorce to another woman, whose husband bore the same name as himself? And the same is the case with the woman: she may furnish her receipt to a man whose wife bears the same name. Said Abayi to them: So said Rabh: The name of the husband and of his wife, concerning a divorce; and the same is the case with a receipt--the name of the woman and her husband. But why should it be prepared and given to the husband? Is it not to be feared that two men who bear one and the same name should reside in the same city (*e.*

g., Joseph b. Simeon), whose wives also bear the name of Rachel, and one can take a divorce and give it to the wife of the other? Said R. A'ha b. Hinna to them: So said Rabh: If two men of the same name reside in one city, they cannot divorce their wives unless both the men named and their wives are present. Still, it is to be feared that one may go to another city, name himself according to one of the inhabitants of his city, and take a divorce, and thereafter return to his city and furnish the divorce to the wife in whose husband's name the divorce was made out. Said R. Huna b. Hinna: So said Rabh: If one was known under one name thirty days in succession, there is no fear that he bears a false name, as he would be afraid to bear it for such a long time. But how is it if one requires a divorce should be prepared for him before he was known thirty days--shall he not be listened to? Said Abayi: This can be proved by somebody calling him suddenly by this name, and he answered. R. Zebid, however, maintains: A swindler knows what he is about, and is careful. And therefore it is no evidence if he answers to a sudden call.

There was a receipt approved by Jeremiah b. Abba. However, the same woman came into his court to claim her marriage contract several years later; and when her receipt was shown to her, she claimed to be not the same woman (*i.e.*, it was another woman who bore my name and signed the receipt). Said R. Jeremiah: I also was of that opinion, and I said so to

the witnesses who signed this document; but they told me you are the same but older, and therefore your voice has changed. And the case came before Abayi, who said: Although it was decided by the rabbis: If one said something in behalf of the plaintiff or the defendant, he has no right to retract from the first statement, and decide otherwise; however, with a scholar, who is not used to look in the face of a woman and to be particular as to her voice, it is different, as it must be supposed that after he was told she was the same, he himself had recognized her.

There was another similar case before the same R. Jeremiah, who said to that woman: I am sure you are the same. And also here Abayi decided: Although a rabbi is not used to look in the face of a woman, etc.; but when he says he did so, and is sure, he may be trusted.

Abayi said: It is advisable for a young scholar, who goes to betroth a woman, that he shall take with him a commoner; as otherwise they may substitute another woman, and he will not notice it.

"*The husband must pay the fees*," etc. Why so? Because it is written [Deut. xxiv. 1]: " . . . he may write and give," which means at his expense. In our time, however, it is not so customary, because the rabbis put the expenses to the account of the woman, in case the husband should decline to bear the expenses and postpone the divorce in a case where the woman is compelled to demand it.

"*Paid by the borrower*," etc. Is this not self-evident? It treats even where he takes money for business at a half profit.

"*The buyer pays the fees*," etc. Is this not self-evident? It treats even in case the seller sold his field because of its infertility.

"*The expense of the groom*," etc. Is this not self-evident? It means even if he were a scholar and the court were certain that they would be pleased to have him as a son-in-law even at their

expense.

"*The expenses are to the contractors*," etc. Is this not self-evident? It speaks even in case it must remain for a year or two unfertilized for the sake of the estate.

"*Arbitrating*," etc. What kind of documents is meant? In this college it was explained: The documents of the claims

which the scribes of the court have to copy so that the parties should not change afterwards. R. Jeremiah b. Abba said: It means, in case each one chooses his arbitrator.

"*One for each party*," etc. Shall we assume that the point of their difference is, if one may be compelled not to act like a Sodomite? According to the first Tana: If one declines to pay the half of the expenses, it is an act of a Sodomite, and he must be compelled to do so. And according to R. Simeon: It is not, and he must not be compelled? Nay! All agree that such cases are to be compelled. Here, however, it is different, as the reason of R. Simeon's decision is: One may say, I would not like that my claim and my decided right should always be before your eyes, while I do not possess them; and this would be a burden to me, as if a lion would lie at my house, fearing every time that you might come to quarrel with me.

MISHNA *IV*.: If one has paid a part of his debt and deposited his document with some one, with the stipulation: If I should not pay you from date until a certain day, you may return this document to the lender, and finally he failed to pay; according to R. Jose: The depositary may return, and according to R. Jehudah: He must not.

GEMARA: What is the point of their difference? R. Jose holds: An asmachtha [1] gives title. And R. Jehudah maintains: It does not. Said R. Na'hman in the name of Rabba b. Abuhu, quoting Rabh: The Halakha prevails with R. Jose. When they came to say the same before R. Ami, he said to them: After such an authority as Johanan teaches us, once and twice, that the Halakha prevails with R. Jose, what can I do? However, the Halakha does not prevail with R. Jose (remarks the Gemara).

MISHNA *V*.: If it happened to one that a promissory note became erased, he must find witnesses who are aware of the date when it was written, and bring them before the court, and they have to make the following approval: A, the son of B, came here with his note, which was erased on such and such a day, and C and D were his witnesses.

GEMARA: The rabbis taught: The approval must be written as follows: "We three, E, F, G, the undersigned, were sitting together, and before us was brought by A, the son of B,

an erased note, which was signed on such and such a day, and C and D are his witnesses." And then if there be added: "We have examined the testimony of the witnesses, and have found it correct," the holder of the document may collect with it, without further evidence. If, however,

this were not remarked, he must bring evidence.

If a document was torn, it is invalid; but if it was torn of itself, it is valid. If it was erased or faint, if still recognizable it is valid.

What does it mean--"was torn," and "was torn of itself"? Said R. Jehudah: If it was torn by the court; and of itself means not by the court. How is it to be known that it was torn by the court? Said R. Jehudah: If the places where the signatures of the witnesses, the date, and the amount were written are torn. Abayi, however, said: The court used to tear it in its length and width.

There were Arabs who came to Pumbeditha, who used to compel the inhabitants to submit to them the deeds of their estates. The inhabitants of the city came to Abayi with their deeds, requesting him to take a copy of them, so that, in case they should be compelled to deliver to the Arabs the originals, the copies should remain, so that in the future they could be sued. Said he: What can I do for you, since R. Safra long ago decided that two deeds must not be written for one field, because it might happen that one would seize it once, and again thereafter. They, however, troubled him, and he said to his scribe: Write for them on an erased paper, and the witnesses shall sign on the paper which is not erased, as such a deed is invalid. Said R. Aha b. Minumi to him: But perhaps the writing will be recognizable, and then it will be valid, as stated in the Boraitha above? And he answered: I did not say he should write a correct deed: I meant he should write some letters of the alphabet.

The rabbis taught: If one comes before the court claiming that he has lost a promissory note from so and so, although he brought with him witnesses who testify, "We wrote and signed the note in question for the borrower, and in our presence he gave it to him," the court must not write another one. However, this is said only concerning promissory notes. But concerning deeds, if such a case happened, they may write him

another one, without mentioning that the seller is responsible in case it should be taken away by creditors. Rabban Simeon b. Gamaliel, however, maintains: This must not be done even concerning deeds. And he used to say also: If one has presented a gift to his neighbor by a deed, if the deed was returned by the beneficiary, the gift is considered returned. The sages, however, say: Nevertheless, the gift remains for the beneficiary. The master said: Without mentioning the responsibility of the seller. Why so? Said R. Safra: Because two deeds must not be written for one and the same field, for the reason it may happen that a creditor of the previous owner will take it away. Then, the buyer who has two deeds may use both deeds to take away the estates which were sold by A to D and E. (*I.e.*, A had sold a field to B, which was encumbered to C, the creditor of A; and C proclaimed his right to it. Then B proclaimed his right, based upon the deed, to the estate encumbered to C, and took away the estate from D, who bought it from A at a later date. After he did so, and the deed was torn by the court, he (B) would make a bargain with C that for a certain amount he should not hasten to take possession of the field to which he was entitled, but should wait a few years and then do it; for the purpose that C's first claim should be forgotten, and later on, when C should take possession of the field which was until now in the hands of B, it should seem to be as a new claim; and then, on the basis of the second deed retained by him (B), he should also take away from E the estates bought by him from A at a later date.

(Says the Gemara:) But as the promissory note of the creditor was torn by the court when he took away from him the first time, how came he to proclaim his right again? And should one say, in case it was not torn? Did not R. Na'hman say: The following is the order of claims before the court? The lender comes to the court to complain that the borrower does not pay his debt; then the court summons him, and if he does not appear it puts him under the ban, and a replevin is given to the lender, that he may levy on the estates of the borrower or of those who bought same from him at a later date than that of the promissory note. And when the creditor finds such estates in some other city, the court of that city tears the replevin and substitutes a document that he may collect such

and such an amount from such and such estate, after the appraisement shall be made for the court. And after this is done, the court furnishes him with a memorandum of the appraisement and tears the previous document. Hence a replevin in which it is not mentioned that the promissory note of the borrower was "torn by us" must not be taken into consideration by any court; and a document which was given for appraisement in which it is not mentioned that the replevin of such and such a court was "torn by us" is also not to be taken into consideration. The same is the case with the memorandum of appraisement with which the court furnishes him, if it is not mentioned that the document giving the right to make an appraisement of the estate for the debt of so and so was "torn by us." Hence the alleged bargain between B and C could not occur? The statement of R. Safras that two deeds must not be written is because it might happen that one should claim the field not for debt, but because he inherited it from his parents, and it was stolen by the possessors of it. In such a case the above-mentioned bargain may be made. 1

Said R. Aha of Diphthi to Rabhina: According to the supposed bargain mentioned above, that B asked C that he should not hasten to take possession, to what purpose such a bargain? If he possesses two deeds, he may take away from D and E at one time? And he answered: By such an act he would invite investigation by his opponents, and they would find out the bargain.

One Mishna states: Concerning deeds, they may write another one, without mentioning the responsibility of the seller for the estate, in case it should be taken away. Why? Let the court write a correct deed and deliver it to the buyer, at the same time furnishing the seller with a document that the first deed was lost, and if such should be found, that it was of no value, as another deed was supplied to the buyer. The rabbis said before R. Papa, according to others before R. Ashi: Because this is not stated, we may infer that the court must not furnish the seller with such a receipt. And he answered: In other cases, receipts may be written. In this case, however, it is not because of the bargain mentioned above, but as the receipt

which makes the first deed valueless is in the possession of A, and not in the hands of the buyers; and it might be that D and E, who had bought from A, would not be aware of such a document, and would not be in a position to protest against the estates being taken away from them by the creditors of A. But, finally, D and E would transfer their claims to A; and then he would show them the document, and the estates would certainly be returned to them? Yea! But meanwhile the creditors would consume the products, and it would be a difficulty for D or E to collect the value from them, as there is a rule: On consumed stolen property it is very bard to collect. It may also happen that D and E bought their estate without any responsibility on A's

part; hence one may take it away without any claim from these parties. But if such a case is to be feared, why should they furnish such receipts in cases of loans, as the same may happen with promissory notes--that the goods should be taken away while the receipt is in the hand of the borrower? There it is different. If the claim comes with a promissory note which had nothing to do with this estate, the possessors of the estate would investigate the matter, whether the borrower had paid him the money due, and would not return the estate without consulting the seller, who is the debtor on that promissory note: which is not the case if the document was for real estate, as in such cases usually estates are claimed, and not money.

The master said: "It may be written without mentioning the responsibility," etc. How, then, should it be written? Thus said R. Na'hman: This deed is not for collection, neither from encumbered nor from unencumbered estates, but only to testify that the estate belongs to so and so, who is the buyer of it. Said Raphram: From this, where it must be written that such a document is not in force for collection, it may be inferred that in such a one where nothing is written there is authority to collect with it even from encumbered estates; as it is to be supposed that it is an error of the scribe, who had forgotten to insert the responsibility of the seller. R. Ashi, however, maintains: A document in which nothing is mentioned does not collect from encumbered estates. And the above Boraitha, which states, "not to mention the responsibility," etc., is not as R. Na'hman explained it, but is to be taken

literally--that nothing is to be mentioned--and then he is not responsible.

There was a woman who gave money to one that he might buy estates for her. He bought them for her, without responsibility in case there should be claims. And she came to complain before R. Na'hman, who said: The woman is right, as she sent to you to the end that she should have benefit, but not that she should suffer damage. You, therefore, have to buy from the woman without responsibility, and thereafter to sell to her with your responsibility.

It is said above by R. Simeon b. Gamaliel: If one has presented a gift . . . the gift is considered returned. What is his reason? Said R. Assi: Because it is to be considered as if one were to say: I give you this for a present so long as you keep this document. Rabba opposed: If so, how is it if this document was torn or lost--must one also return the gift? Therefore, said he, the point of the difference between R. Simeon and the rabbis is thus: According to R. Simeon, title is given to documents and to all their contents by transferring; and therefore when the donee returned it to the donor, the latter acquired title to it and to its contents. But according to the rabbis, title is not given by transferring; hence when the donee takes possession of the gift, the returning of the document counts nothing.

The rabbis taught: If one came to claim a field, saying that he possesses a deed, and also that it was in his possession the years of hazakah--according to Rabbi, the main evidence should be the deed (if he cannot show it, his second claim of hazakah must not be considered); and R. Simeon b. Gamaliel maintains: The main evidence is the hazakah. What is the point of their difference? When R. Dimi came from Palestine, he said: They differ whether title is given to documents. by transferring. According to R. Simeon b. Gamaliel, the transferring does not give title; and according to Rabbi, it does. Said Abayi to him: If so, you differ with my master, Rabba, who said above: R. Simeon b. Gamaliel holds: That transferring does give title. And he answered: And what if I do differ? Why not? Rejoined Abayi: I mean to say that the above Boraitha could

be explained only as done by my master, but not otherwise. And then, if it is as you say, R. Simeon

contradicts himself. Therefore, said Abayi, the point of the difference between Rabbi and R. Simeon b. Gamaliel in the Boraitha just cited is: In case it happened that one witness who signed the deed was found to be a relative, or for some other reason incompetent to be a witness. And it is the same point in which R. Meir and R. Elazar differ. Rabbi holds with R. Elazar, who says that the final act of a divorce, or anything else, is to be considered done by the witnesses who are present at the transfer, and not by the witnesses who sign the document. And R. Simeon b. Gamaliel holds with R. Meir, who said: The final act is considered done by the witnesses who sign the document.

But did not R. Abba say: Even R. Elazar admitted that if there was any forgery in the document, or there were incompetent witnesses, the transferring is not considered, even when it was done by lawful witnesses? Therefore said Rabhina: All agree that if the court said, "We have investigated the testimony of the witnesses, and found it false," or that one of them was incompetent, the document is invalid, as R. Abba declared. And the above Tanaim differ concerning a document without witnesses at all. According to Rabbi, who holds with R. Elazar, if it was transferred in the presence of witnesses, the act is considered final; and according to R. Simeon, who holds with R. Meir, it is not. And if you wish, it may be said that the point of their difference is: Whether a document which the signer admits must or must not be approved by the court. According to Rabbi, it must not; and according to R. Simeon, it must. But have we not heard just the reverse in Middle Gate, p. 11? (The rabbis taught:) Therefore we must say that the point of their difference is: If one is obliged to convince the court of all the evidence one mentioned at the beginning of the trial, or it is sufficient if he convinces it of one part of it (*i.e.*, if he said, first, "My evidence is a deed, and also hazakah," and thereafter he was able to convince the court of the hazakah only). According to Rabbi: It is not sufficient unless he should show the deed. And according to R. Simeon: The latter evidence suffices. But if he should be able to show the deed, then all agree that the evidence of the hazakah would not be necessary at all. And this is similar to the following case: R. Itz'hak b. Joseph claimed to have money with R. Abba,

and came to complain before R. Itz'hak of Naf'ha. And R. Abba claimed: I paid you in the presence of A and B. Said R. Itz'hak (of Naf'ha) to him: Bring, then, A and B--they shall testify. Said he to him: Am I not to be trusted, even if they do not appear? Is it not a Halakha: If one borrowed money in the presence of witnesses, it is not necessary for the borrower that he shall pay him in the presence of witnesses? Rejoined the former: I hold with the Halakha which was said by you, master, in the name of R. Ada b. Ahaba, quoting Rabh: If one says, "I paid you in the presence of A and B," it is necessary for him that A and B shall come and testify. Said R. Abba again: But did not R. Giddle say in the name of Rabh: The Halakha prevails with Rabban Simeon b. Gamaliel? And even Rabh, his opponent, meant with his statement only to make his evidence clear before the court (but not because the law dictates so)? And R. Itz'hak answered: I also mean you shall make your evidence clear before the court, as I hold with Rabha; and if you are not able to do so, you must pay.

MISHNA *VI.*: If one has paid a part of his debt, according to R. Jehudah, the promissory note must be changed (*i.e.*, the old note must be torn, and a new one made for the balance). According to R. Jose: The lender has to give a receipt for the amount paid. Said R. Jehudah: Then, according to you, the borrower must watch his receipt so that it shall not be consumed by mice. Answered R. Jose: Yea! This is better for the lender, as if it should be a difficulty for the borrower to watch the receipt he will pay the whole debt sooner; and we must not impair the right of the lender.

GEMARA: Said R. Huna in the name of Rabh: The Halakha prevails neither with R. Jehudah nor with R. Jose, but the court must tear the first note and write him another one with the same date as the first. Said R. Na'hman, according to others R. Jeremiah b. Abba, to R. Huna: If Rabh were aware of the following Boraitha: "The witnesses tear the note, and write for him another one with the same date as the first," he would retract from his statement that this must be done by the court. And he answered: He was aware of this Boraitha, and nevertheless he did not retract, for the reason that only the court has the power to collect money, which therefore may tear and write another one with the former date, but not witnesses

who have done the message they were ordered to, as they have no right to do the same again without a new order. Is that so? Did not R. Jehudah say in the name of Rabh: If a deed was lost, witnesses may write another one, even if this occurred ten times, to one field. Said R. Joseph: Rabh meant a deed of gift. And Rabha said: Rabh meant a document without any, responsibility of the estate for other claims.

Where is to be found the Boraitha cited above, of which Rabh was aware? It is thus: If one's debt was a thousand zuz on a document, and he paid five hundred, the witnesses may tear the document and write another one for five hundred, of the date of the old one. So is the decree of R. Jehudah. R. Jose, however, says: The document of the thousand remains, and a receipt for five hundred must he given to the borrower. And for two reasons it was said that a receipt should be written and handed to the borrower: first, because he should be compelled to pay as soon as possible; and, secondly, the debt should be counted from the first date. But does not R. Jehudah also say that a new document should be written with the same date as that which was torn? So said R. Jose to R. Jehudah: If you say that the document should be written from the first date, then I differ with you only in one thing--concerning the receipt; and if you think that the document should be written from the date on which a part was paid, then I differ with you in both.

The rabbis taught: If the document was written at the date used by the government, and such a date fell on a Sabbath or on the Day of Atonement, on which it is prohibited for an Israelite to write, this note is to be considered written with a later date, which is valid. So is the decree of R. Jehudah. But according to R. Jose, it is invalid. Said R. Jehudah to him: Did not such a case come before you in Cepphoris, and you made it valid? And he answered: I did so only with a case similar to that about which we are discussing, because, as the date fell on a Sabbath, it is highly probable that the document was of a later date; but in other cases, where such a supposition has no basis, I do not agree with you. But what answer is this? R. Jehudah also claimed that the case happened to be before R. Jose in Cepphoris. Said R. Pdath: All agree that if the date of the document was examined and found

to fall on a Sabbath, or on the Day of Atonement, it must be considered as with a later date, and it is valid. In what they do differ is: A document which is doubtful, if written with an earlier or a later date. According to R. Jehudah, who holds that in case of payment no receipt is given, but the document itself must be returned, it is valid, because it cannot do any harm to any one by being collectible twice. And according to R. Jose, who holds that for a payment in part the document must not be returned, and only a receipt is furnished, it is invalid, because he can collect with it the whole amount, as the receipt is in the hands of the borrower. Said R. Huna b. Jehoshua: Even according to them who say that a receipt may be written, it is only if a part or a half was paid; but for the whole amount no receipt is written, but he must return him the note; and if lost, he loses his money.

(Says the Gemara:) In reality it is not so, as a receipt may be written even on the whole amount; as it happened with R. Itz'hak b. Joseph, who had money with R. Abba, and when he demanded his money, R. Abba demanded his promissory note. And R. Itz'hak answered: The note is lost, and I will give you a receipt. And he answered: There are both Rabh and Samuel who taught that we do not write a receipt. And when this case came before R. Hanina b. Papi, he said: Rabh and Samuel were so beloved by us that if some would bring the earth of their graves we would keep it always before our eyes; but notwithstanding this, there are both R. Johanan and Resh Lakish who decided that a receipt should be given; and the same was said by Rabbin when he came from Palestine in the name of R. Ilah. Common sense also dictates so; as how can it be supposed that if the creditor lost the promissory note the debtor may consume the whole amount and enjoy himself? Abayi opposed: But after your theory that a receipt is to be written, how is it if the receipt is lost--should the lender collect the money again and enjoy himself? Said Rabha to him: Yea! So is the law, as we read in the Scriptures: "The borrower is a servant to the lender" [Prov. xxii. 7]. Said R. Yema, according to others R. Jeremiah of Diphthi, to R. Kahna: What is the basis of our custom that we write documents with later dates, and we also write receipts? And he answered: That which R. Abba said to his scribe: When it shall happen

that you have to write a document with a later date, you must write as follows: This document was postdated by us for a certain reason, and is dated not with the date it was ordered, but of to-day. Said R. Ashi to R. Kahna: However, in our day and in our country we do not act likewise. It is since R. Safras said to his scribe: Should you have to write a receipt for a lost promissory note, then, if you are aware of the date the promissory note was given, you must write: "The money which was due according to the note written on such and such a date was returned to the lender." And if you do not know the exact date, you must write: "The money due on a note of so and so, to so and so, was paid," not mentioning the date at all; and then, if the note should appear again, it will be of no value. Said Rabhina to R. Ashi, and according to others R. Ashi to R. Kahna: But why is it not customary in our time to do so, as we write documents with later dates without mentioning that they are postdated, and receipts with the date of payment, and we do mention the date of the document? And he answered: The rabbis enacted: One shall do so for his own sake; but if one does not care to do so, it will be his own fault if he should suffer damage. Said Rabba b. Ashila to the scribes: If you should have to write a deed of gift, or deeds in which the seller does not take the responsibility of the estate for the future, you shall do as follows: If you remember the date when the donor or the seller told you in the presence of witnesses to do so, you shall write that date; and if you do not recollect the exact date, you may

write the current date, and it will not be considered false. Rabh told his scribes, and the same did R. Huna: When you are writing a document in the city of Shili, although you were ordered to do so in the city of Hini, you must write in the document the city in which you are doing it, and not the city where you were ordered.

Rabha said: If one holds a promissory note for a hundred zuz, and requests that it shall be rewritten in two notes, each of fifty zuz, his request is to be refused--for the sake of both the lender and the borrower: for the lender it is better to have one document, as, should it happen that he pay the half, he will give him a receipt, which the borrower will have to watch, and therefore he will hasten to pay his debt; and for the borrower

it is also better, as the law of a document paid in part is, that the lender must take an oath (and in case he is lacking cash the lender will give him time rather than take an oath). And he said again: If one has two notes of fifty each, and he requests that one of a hundred should be made instead of the two, also to this request no attention should be paid--and also for the sake of both. For the lender it is better, if fifty is paid, that the other document should remain in force, so that he will not be obliged to take an oath; and also for the borrower it is better, having paid one note, that he shall not be bound to watch the receipt for the other half. R. Ashi said: If the lender holds a promissory note for a hundred zuz, and orders the scribe to write for him another note for fifty zuz, claiming that the half was paid by the borrower, he must not be listened to; nor if he asks that the note should be written from that date, or from the current date. Why so? It is to be feared that the borrower has paid the whole amount, and to the demand that his note should be returned, he was answered, "It was lost," and furnished him with a receipt instead; and this note for fifty zuz be will collect from him, claiming that this note has nothing to do with the former one.

MISHNA *VII.*: If there were two brothers, one rich and one poor, and they inherited from their father a bath-house or an olive-press house, if for business, they must share equally; but if for private use, the rich one may say to the poor, "You may hire slaves, that they shall heat the bath for your use"; or, "You may buy olives and press them for your private use, but I shall not allow you to do this for a stranger, and you take the benefit." If it happen that in one city two persons bear one and the same name, they cannot give promissory notes to each other nor can any of the inhabitants collect on a promissory note of one of them. If there were found a promissory note of one of the two persons by some one which is marked "paid," the other may also claim: My note is paid. How, then, shall they do, if they wish that their documents shall be of value? Write their names threefold--*e.g.*, Joseph b. Simeon b. Jacob; and if they are alike in this also, they must make a sign to their names (*e.g.*, if one is shorter than the other, he must say, "the Little"; and if they are both of equal size, if one is a priest, he shall write "Cohen").

GEMARA: There was a promissory note which came to the court of R. Huna, in which was written: "I, A, the son of B, have borrowed from *you* a mana." Said R. Huna: "From you" can be any one--even the Exilarch, or even King Sabur. Hence it may be that some one lost it, and you found it. Said R. Hisda to Rabba: You must study the case, as in the evening R. Huna will ask you how to decide it. He had deliberated, and found the following Boraitha: A divorce which was signed by witnesses, but there was no date. Said Aba Saul: Ii the divorce reads: "I divorced

her this day," it is valid. Hence we see that "this day" means that on which it was given out. The same is the case with this document; "from you" means from this man who holds it. Said Abayi to him: But perhaps Aba Saul holds with R. Elazar, who holds that the final act of the witnesses of transfer is considered (therefore he makes valid such a divorce as must be delivered in the presence of lawful witnesses). But in our case, why should it not be feared that the plaintiff found a lost note? And he answered: That such a supposition is not to be taken into consideration may be inferred from our Mishna, which states: If there are two persons who bear one and the same name, they cannot give promissory notes to each other, nor to any of the inhabitants, etc. But if one of them has a promissory note from one of the inhabitants, it is valid, and he may collect. Now, why is it not to be feared that it was lost by the other person who bears the same name, and this plaintiff found it? Hence we see that this is not taken into consideration. Abayi, however, may say that this is not taken into consideration because there is only one person who could lose it, and if so, he would certainly announce his loss; but in other cases, where it might be lost by any one, it should be feared. But is there not a Boraitha which states: As the two persons who bear the same name cannot collect promissory notes from each other, so also cannot one of them collect from any other one? Hence this Boraitha differs with our Mishna. And what is the point of their difference? Whether in such a case the plaintiff has to bring evidence. The Tana of the Mishna holds that he has not; and the Tana of the Boraitha maintains that he has. As it was taught: To promissory notes title is given by transferring. However, according to Abayi the holder

of them must bring evidence that they were transferred to him. And Rabha said: He must not.

Said Rabha: I infer my statement from the following Boraitha: If one of the brothers holds a promissory note from some one, claiming that his father or his brother had transferred it to him, it is for him to bring evidence. Hence we see that this law holds good only concerning brothers, who usually hinder one another, and claim that their brother took it without their or their father's consent; but in all other cases no evidence is needed. Abayi, however, maintains: On the contrary, this Boraitha comes to teach: Lest one say that concerning brothers, who hinder one another and are very careful with the inheritance, no evidence is needed for the one who holds the document, although in all other cases it is, the Boraitha came to state that it is not so. But there is another Boraitha: As the persons who bear the same name are allowed to take promissory notes from others, so they may take from each other. And what is the point of their difference? Whether a promissory note may be written for the borrower in the absence of the lender. The Tana of our Mishna holds that this may be done. Hence one of the two persons may go to the scribe, telling him that he wants to borrow from his fellow-citizen, who bears the same name, some money. And after he receives such a promissory note, he may claim that this was given by the other to him; therefore our Mishna says that they cannot collect from each other. And the Tana of the Boraitha holds: The promissory note must not be furnished to the borrower in the absence of the lender. Hence there is no fear.

"*If a promissory note was paid*," etc. We see, because a receipt was found. But how would it be if not? The promissory note would hold good. But our Mishna states: Nor can any of the inhabitants collect. Said R. Jeremiah: It speaks of when in the note his name was written threefold; but if so, let them see the receipt, to whom it was made out. Said R. Hoseah: It speaks of when it was written threefold in the note, but not in the receipt. Abayi, however, said: The Mishna is to be explained thus: If there was found among the borrower's documents a writing,

"The promissory note which I gave to Joseph b. Simeon is paid," if he possess such from the other, both are considered paid.

"*To write their names threefold*," etc. There is a Boraitha: If both were priests, they must write their names four fold--*e.g.*, Joseph b. Jacob b. Itz'hak b. Abraham; and that all the four names should be alike is very rare.

MISHNA *VIII*.: If one (while struggling with death) says to his son: "A promissory note among the notes I possess is paid, but I do not remember which," all of them are to be considered paid. If, however, one person has given two promissory notes, the larger amount is considered paid, and the smaller amount not.

GEMARA: Rabha said: If one says: "A promissory note from you, which I possess, is paid," and there were two from him, the larger amount is considered paid, and the smaller amount not; if, however, "The debt you owe me is paid," all the promissory notes from him which are in his hands are considered paid. Said Rabhina to him: According to your theory, if one says: "My field is sold to you," does it mean that the largest he has is sold? And if he said, "The field I possess is sold to you," does it mean all the fields? There it is different, as it is for the plaintiff to bring evidence; and if the buyer so claims, he has to bring evidence to what he claims. But here the creditor is the plaintiff; and if he says, "Your debt is paid," it is the best evidence that all the notes are paid.

MISHNA *IX*.: If one made a loan to his neighbor through a surety, he must not collect first from the surety, unless the borrower does not possess any estate; however, if the stipulation was made that he may collect from whom he pleases, then he may start with the surety.

R. Simeon b. Gamaliel (however) is of the opinion that even in such a case the lender may not start with the surety, unless the borrower does not possess anything. And he used to say thus: If one made himself a surety to a woman for her marriage contract, and thereafter the husband was about to divorce her, the court should compel him to vow that from the time divorced he should not derive any benefit from his former wife, which means not to remarry her, for fear that the husband and his wife may have made a bargain to collect the money for the marriage contract from the surety, and thereafter he will remarry her.

GEMARA: And why should not the creditor collect from the surety? Both Rabba and R. Joseph said: The surety may

claim: I have given bail for the money in case the borrower should die or run away, but not if I deliver him to you. R. Na'hman opposed, saying: Such is the Persian law. But this is not so, as the Persians collect from the surety only, even when the borrower possesses estates? R. Na'hman meant to say: Such a law is similar to a Persian law, for which they give no reason, and therefore he says the Mishna meant: He shall not summon the surety unless he has already summoned the borrower. So also we have learned in the following Boraitha: If one made a loan to his neighbor through a surety, he must not summon the surety first, unless the stipulation was that he might

collect from whom he pleased. R. Huna said: Whence do we deduce that a surety is obliged to pay? From [Gen. xliii. 9]: "I will be a surety for him." R. Hisda opposed, saying: He was not a surety only, but also a receiver, as it reads farther on, "from my hand shalt thou require him," and also [ibid. xlii. 37], "deliver him into my hand," etc. Therefore said R. Itz'hak: From [Prov. xx. 16]: "Take away his garment, because he hath become surety for a stranger." (Here is repeated from Middle Gate, p. 305. See there.)

Amimar said: Whether a surety has to pay or not, R. Jehudah and R. Jose differ. According to the latter, who holds that an asmachtha gives title, he is responsible; and according to the former, who holds that an asmachtha, does not give title, the surety is not obliged to pay. Said R. Ashi to him: But is it not a fact that a surety is responsible, although it is now taken as a rule that an asmachtha. does not give title? Therefore said R. Ashi: Because of the pleasure that the lender trusted him on his word, the surety made up his mind that the lender should be paid under all circumstances; and such a case it is not considered as an asmachtha, but as a debt which ties upon himself.

"*That he may collect from whom he pleases*," etc. Rabba b. b. Hana in the name of R. Johanan said: Even then, if the borrower possess estates, he must not collect from the surety. But does not the latter part of the Mishna state that Simeon b. Gamaliel said so; from which it is to be inferred that the first Tana holds that he may collect from the surety in any event? The Mishna is not complete, and should read thus: If one made a loan to his neighbor through a surety, he must not collect

through the surety unless he had made the stipulation that he might collect from whom he pleased. But even then he collects from the surety in case the borrower does not possess any estate; but if he does, he must collect from the borrower first, and if it should not be sufficient, then from the surety. If, however, the surety was also the receiver of the loan for the borrower, then he may collect from the surety, although the borrower possesses estate. R. Simeon b. Gamaliel, however, maintains that even then he collects from the borrower if he possesses any estate. (In the name of R. Johanan was said (First Gate, p. 156): In that case the Halakha does not prevail with R. Simeon b. Gamaliel.)

R. Huna said: If the surety said: "Lend to this man, and I am the surety"; or, "I will pay"; or, "Count the debt to me"; or, "Lend him, and I will give to you"--all these versions are considered surety. If, however, he said to him: "Give to him, and consider me as receiving the money"; or, "Give to him, and I will pay"; or, "Count the debt to me"; or, "Give to him, and I will return to you"--all these versions are considered receipt. (*I.e.*, if he said: "Borrow from him," it means that he should be the debtor: "In case he shall not pay, I will." But if he says, "Give to him," then the borrower is not considered here at all, as the lender gave by his order.)

The schoolmen propounded a question: How is it if he said, "Lend him, and count me as the receiver"; or, "Give to him, and I will be surety"? According to R. Itz'hak: In the first case, in which he remarked, "I will be the receiver," he must be so considered, although he said, "Lend *him*"; and in the second case, in which he said, "I will be surety," he is to be so considered, although he said, "*Give* to him." R. Hisda, however, maintains: In either case he is considered a receiver, unless he said, "Lend him, and I will be the surety." And according to Rabha: All the versions mentioned above are considered surety, unless he said, "Give to him, and I will return

to you."

Said Mar b. Amimar to R. Ashi: So said my father: If the expression was, "give to him, and I will return you," then has the lender nothing to do with the borrower. (Says the Gemara:) In reality it is not so. The lender may collect the

money from the borrower, unless the surety took the money from the hand of the lender and delivered it to the borrower.

There was a judge who transferred the estate of the borrower to the lender, before the lender had demanded his money from the borrower, and R. Hanin b. R. Yeba removed the judge. Said Rabha: Who so wise to do such a thing, if not R. Hanin b. R. Yeba, as he holds that the estates of the debtor are his surety; and our Mishna states: He must not collect from the surety, nor must he demand his debt first from the surety?

There was a surety for orphans who had paid the lender before he notified the orphans (*i.e.*, he was surety for the father of the orphans, who borrowed some money, and after his death he paid the lender from his own pocket, and then summoned the orphans to pay him from their estates). And R. Papa decided: To pay a debt for which there is no document is a meritorious act, to which orphans who are not of age cannot be compelled; and therefore the surety must wait with his claim until they shall become of age. R. Huna b. Jehoshua, however, maintains: The reason why the orphans have not to pay until they shall become of age is, because they are not aware that the deceased had not paid such a debt. And the difference of the two statements is, in case the deceased had confessed before his death that he had not yet repaid the debt. Then, according to R. Huna, the orphans may be compelled to pay; but not, according to R. Papa.

A message was sent from Palestine: If one was put under the ban because he declined to pay his debt, and he died while still under the ban, he is to be considered as if he had confessed before his death that he had not yet paid, and the orphans have to pay, as the Halakha prevails in accordance with R. Huna b. Jehoshua.

An objection was raised from the following: If the promissory note of the deceased was in the hands of the surety, who claims to have paid the lender, and he demands the debt from the orphans' estates, he cannot collect (for perhaps the lender lost it, and he found it). If, however, there was marked in the note by the lender that he has received the debt from the surety, he may. Hence this is correct only with R. Huna's statement; but it contradicts R. Papa, who said: The orphans must not

be compelled to pay in such a case. R. Papa may say: When, the lender wrote that he received the money from the surety and transferred the promissory note to him, it is no longer considered a debt without a document, the payment of which is only a meritorious act, to which the orphans cannot be compelled; as for that purpose the tender marked, "I have received from you that from this date the promissory note should be considered as if given by the deceased to the surety."

There was a surety for a deceased debtor to a heathen, who paid the heathen before he had demanded his debt from the orphans. Said R. Mordecai to R. Ashi: So said Abimi of Hagrunia in the name of Rabha: Even according to him who holds that it may be doubted whether the deceased had paid his debt before dying, it is only when the creditor was a Jew, but not when he was a heathen, who usually demands the debt from the surety and not from the debtor. Answered R. Ashi: "It is just the contrary. Even according to him who said that it must not be doubted whether the debt was paid, it is only concerning a Jew; but concerning a heathen, whose law dictates that they have to collect the debt from the surety, it is to be feared that if the surety should not have in his hand an amount which would cover the debt in case it should not be paid, he would not consent to be a surety; and therefore he cannot collect from the orphans except by suing them when they shall be of age.

"*If one made himself surety to a woman for a marriage contract*," etc. Moses b. Azoi was a surety for the marriage contract of his daughter-in-law, whose husband was R. Huna, who was a scholar, and became thereafter very poor and was unable to support his family. Said Abayi: Is there not one who shall advise R. Huna to divorce his wife, and she shall go to his father, who is rich, and collect the marriage contract, and thereafter R. Huna shall remarry her? Said Rabha to him: But does not out Mishna state: "He shall vow not to derive any benefit," etc.? Rejoined Abayi: Must, then, every one who wishes to divorce his wife go to the court? Finally it was developed that R. Huna was a priest, who could not remarry his wife in case of being divorced. Said Abayi: This is what people say: Poverty follows in the path of the poor. But did he not say above (p. 304), that he who gives such advice

is called a shrewd knave? In this case, where the surety was his father and the son was a scholar, it is different. But was not the father a surety only, who has not to pay (as will be explained farther on)? He was also a receiver. But even then, it is correct according to him who holds that a receiver must pay, even in case the groom possessed nothing at the time of marriage. But what can be said to him who said that in such a case even a receiver is not to be compelled to pay? It may be said that when his father became surety the son was still in the possession of some estates; and if you wish, it may be said that with a father it is different. As it was taught: A surety in a marriage contract, all agree that he has not to pay. A receiver from a creditor, all agree he must pay; but concerning a receiver in a marriage contract and a surety from a creditor the rabbis differ. According to one: If the borrower possessed estates at the time the loan was made, the receiver must pay, as it may be supposed that he obliged himself with all his mind, as he had nothing to fear; and the other holds: He must pay in any event. The Halakha, however, prevails: A surety must pay in any event, unless he was a surety to a marriage contract, even in case the husband was in possession of estates at the time he became surety. And the reason is, because it may be supposed that he did so as a meritorious act, in order that the couple should not be parted; and he did no harm to the bride, as, if the husband had money, he would pay.

R. Huna said: A sick person who has consecrated all his estates, and at the same time said, "So and so has a mana with me," he may be trusted, as it is to be assumed that one would not use deceit against the sanctuary. R. Na'hman opposed: Is it, then, usual that one should use deceit against his children? And, nevertheless, both Rabh and Samuel say: If a sick person said, "So and so has a mana with me," if he added, "Give to him," he is to be listened to; but if he did not, he is not to be listened to. Hence we see that, if he did not say "Give," his statement that so and so has a mana with him is considered as if he did so for the purpose that, should he be cured, his

children should not think him very rich. Why should not the same be applied in the case of the sanctuary. R. Huna speaks in case there was a promissory note, and only the sick person admitted that the note was a right one. if so, then we must

say that the statements of Rabh and Samuel applied even when there was no promissory note. But if so, it was a loan without a document, and both Rabh and Samuel said: On such a loan one cannot collect, neither from the heirs nor from the buyers? Therefore said R. Na'hman: In both cases it speaks of when there was a document: one case treats of when the note was approved, and the other when it was not. And then if he said "Give," he approves the note, and is to be listened to; and if he does not say "Give," the note remains unapproved.

Rabba said: A sick person who said, "A has a mana with me," and thereafter the orphans claimed that they have paid, they are to be trusted. If, however, he said, "Give a mana to A," and the orphans say they have paid, they are not to be trusted. But is not common sense against such a theory? It seems just the contrary. If the father said, "Give," and the orphans said "We did so," they may be trusted; but if the father said, "A had a mana with me," it may be supposed they did not hasten to pay him, and why should they be trusted? Therefore if such a statement was made by Rabba, it must be thus: If a sick person said, "A has a mana with me," and the orphans thereafter said that after deliberating the deceased said, "I have paid it already," they may be trusted, as it is probable the deceased remembered that he had returned it. But if the sick person says, "Give a mana," and thereafter the orphans claim the same as is said above, they are not to be trusted; as if it were for deliberation, he would not say it give."

Rabha questioned: If a sick person had confessed (*i.e.*, his creditor came to him, saying, "You owe me a mana," and he said, "yea"), must the sick person also add "yea," that those who are present shall be witnesses, as is required in such a case of one in good health, or not? And it is also a question whether he must say to the witnesses: "Mark this in writing "; and also whether a sick person has the right to say, "It was only a joke," or, "This is out of the question." Concerning one who is dying, after deliberating, he came to the conclusion that all these are not necessary, as there is a rule: The words of a dying person are to be considered as written and delivered to whom it concerns.

MISHNA *X*.: If one borrows money on a promissory note, the lender has a right to collect from encumbered estates; and

if without a note, but in presence of witnesses, the lender may collect from unencumbered only. If A holds a writing that B owes him money (not a promissory note, which usually must be drawn by witnesses), he collects from unencumbered estates only. A surety who has signed his name after the signatures of the document ("I, so and so, am a surety"), the lender may collect from the surety from unencumbered estates only (as it is considered a verbal surety, as there were no witnesses who testified to this).

Such a case happened to come before R. Ishmael, and he decided that he should collect from free estate. Ben Nanas, however, maintains: He must not collect from any estate. And to the

question of R. Ishmael: Why so? he answered: If it happen that a creditor sees his debtor in the market, grapples him by the throat, and one passes by and says, "Leave him alone, I will pay," he is nevertheless free, because the loan was made not upon his surety. The same is the case here. If, after the document was made and the witnesses signed it, he adds, "I am a surety," he is not considered such, as he was a surety when the loan was already made. Said R. Ishmael: If one wishes to become wise, he shall occupy himself with the civil law; for there is no store (of wisdom) in the entire Law richer than it (the civil law). And those who wish to study civil law may take lessons of Ben Nanas.

GEMARA: Ula said: Biblically there is no difference between a loan on a document and by word of mouth; and it should be collected from encumbered estates. Why is it said that on a verbal one, one collects from free estate only? Because the buyers of the borrower should not suffer damage (*i.e.*, as they could not be aware of a thing done verbally). But when there is a document, it is their own fault if they do not investigate before they buy. Rabba, however, maintains the contrary: Both loans ought to be collected from free estates only; as, according to the biblical law, the estates are not mortgaged even if there is a document (unless it is so written). But why did the rabbis enact that a document collects from encumbered estate? In order not to close the door for borrowers. For a verbal loan, however, they did not enact, as it is not known to the people; and the buyers from the borrower could not know there was a loan.

Did, indeed, Rabba say so? Was not his decision [in Chapter VIII., p. 274] "that a first-born takes a double share in the estate collected after the death of the father"? Now if not mortgaged biblically, in a document why should he take a double share--to which he is not entitled in movable property or money collected after death? And lest one say that the names of Ula and Rabba should be reversed in the above statements, this would not hold good, as we have heard Ula saying elsewhere that a creditor collects biblically from the worse estate of the debtor. Hence we see that Ula holds that estates are mortgaged biblically. (This presents no difficulty, as the cited statement of Rabba [in Chapter VIII.] was only to give the reason of the Palestinians; but he himself does not hold with them.)

Both Rabh and Samuel hold: A verbal loan is not collectible--neither from heirs nor from buyers; as, biblically, estates are not mortgaged on any loan. But R. Johanan and Resh Lakish both hold: They are mortgaged, and therefore a loan is collectible--whether from heirs or from buyers. Said R. Papa: The Halakha prevails that a verbal loan is collectible from heirs, for the purpose of not closing the door to borrowers; but is not collectible from buyers, who could not know of the existence of such a debt.

"*If A holds a writing from unencumbered estates,*" etc. Rabba b. Nathan questioned R. Johanan: How is it if this writing was approved by the court? And he answered: Even then, the same is the case. Rami b. Hama objected from a Mishna in Tract Gittin, in which it is stated that, according to R. Elazar, if such a document, without witnesses, was given to the lender in the presence of witnesses, he may collect from encumbered estates? The case is different, as the writing was with the intention of transferring it in the presence of witnesses; it is the same as if the witnesses had signed the document.

"*A surety . . . after the signatures,*" etc. Said Rabh: If the surety signed before the signatures, it may be collected from encumbered estates; and if after, from unencumbered estates only. But at

some other time the same Rabh said: Even if he had signed his name before the signatures, it is to be collected from free estates only. Hence Rabh contradicts himself.

[paragraph continues] This presents no difficulty, as his statement, from free estates only, speaks of when the surety wrote, *e.g.*, "B is a surety," which does not make it clear for whom he is a surety; and the witnesses who signed their names after him, perhaps they have nothing to do with the surety. And his statement that it is collectible from encumbered estates speaks of when there was written after the text, explaining the loan, "And so and so is the surety," to which the approval was by the witnesses signed after him. And the same was said by R. Johanan.

"*Such a case came before R. Ishmael*," etc. Said Rabba b. b. Hana in the name of R. Johanan: Although R. Ishmael praised Ben Nanas, the Halakha prevails with R. Ishmael.

The schoolmen propounded a question: How is it if such a case as illustrated by Ben Nanas occurs? Come and hear what R. Jacob said in the name of R. Johanan: Even then, R. Ishmael differs with him. But with whom, then, does the Halakha prevail? Come and hear what Rabbin, when he came from Palestine, said in the name of Johanan: R. Ishmael differs with Ben Nanas even in the case illustrated by him, and the Halakha prevails also in this case with R. Ishmael. Said R. Jehudah in the name of Samuel: However, if the man who said, "Leave him alone, I will pay," fulfils his promise with the ceremony of a sudarium, he is mortgaged. Infer from this that in case of all other sureties no sudarium is necessary; and this differs with R. Na'hman, who said: Only a surety, in the presence of the court, is free from a sudarium; but all others are not. The Halakha, however, prevails that with a surety who was present when the money was delivered, a sudarium is not needed, but after the delivery it is needed. With a surety appointed by the court it is not needed, as, because of his pleasure at the court choosing him to be the surety, he makes up his mind to pay, and is mortgaged.

END OF TRACT BABA BATHRA AND OF VOL. VI. (XIV.)

Footnotes

358:1 All documents were called by the Mishna "get." This term was afterwards applied to a bill of divorce. The Gemara, however, uses the term "shtar" for documents.

358:2 In ancient times they used to write documents as follows: The scribe wrote one line, then left a blank the size of the line written, and folded it over and sewed it; then he wrote on top of the folding, and again left a blank of the same size, and folded it over the writing and sewed again, and so on; so that after the document was complete the signatures of the witnesses remained on the outside.

360:1 The text continues to discuss the different kinds of forgery possible, and gives illustrations so complicated that it would be difficult for the reader to get any idea of them. They are unimportant, and therefore omitted.

362:1 Here also are illustrations of Hebrew words, which it would be difficult for the English reader to understand, and are therefore omitted.

362:2 We have omitted the discussion in the Gemara as to the reasons of Rabh and Johanan about the risk of forgery, with many illustrations of great complication, which would hardly be understood if translated, and are also of no importance.

367:1 In the Bible there are many examples of names which consist of only two letters.

368:1 "Thlath" means three, "thlathin" thirty; and so also is it with all the words from three to ten: "arba" means four, and with the suffix "in" it means forty; "eser" means ten, "eserin" means twenty.

372:1 This term is explained in previous volumes in several places.

375:1 The commentators give illustrations of how such a bargain might be made, so involved and far-fetched that we spare the reader their infliction.

Errata

page xii: 'provices'->'provinces'

page 32: 'rereward'->'reward'

page 66: 'punised'->'punished'

page 70: 'ocupied'->'occupied'

page 78: 'reponsible'->'responsible'

page 105: 'propperty'->'property'

page 127: 'Gamara'->'Gemara'

page 128: 'Tosephta'->'Tosephtha'

page 132: 'Rasbham'->'Rashbam'

page 135: 'familar'->'familiar'

page 141: 'Egptian'->'Egyptian'

---

page 148: 'speicfies'->'specifies'

---

page 197: 'acccording'->'according'

---

page 203: 'philospher'->'philosopher'

---

page 203: 'philosophicaliy'->'philosophically'

---

page 218: 'acordance'->'accordance'

---

page 163: 'mariage'->'marriage'

---

page 265: 'explantion'->'explanation'

---

page 271: 'acquaintaince'->'acquaintance'

---

page 292: 'obejetion'->'objection'

---

page 319: 'writen'->'written'

---

page 340: 'Catle'->'Cattle'

---

page 351: 'writen'->'written'

---

page 381: 'Acording'->'According'

The Babylonian Talmud

Translated by
MICHAEL L. RODKINSON

Section Moed (Festivals)

Tracts Pesachim (Passover), Yomah (Day of Atonement) and Hagiga (Holocaust)

Book 3: Volumes V. and VI.

1918Tract Pesachim (Passover)

Tract Yomah (Day of Atonement)

Tract Hagiga (Holocaust)

NEW EDITION

OF THE

BABYLONIAN TALMUD

Original Text, Edited, Corrected, Formulated and Translated into English

BY

MICHAEL L. RODKINSON

SECTION MOED (FESTIVALS)

TRACT PESACHIM (PASSOVER)

Volume V.

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EXPLANATORY REMARKS.

In our translation we adopted these principles:

1. *Tenan* of the original--We have learned in a Mishna; *Tania*--We have, learned in a Boraitha; *Itemar*--It was taught.

2. Questions are indicated by the interrogation point, and are immediately followed by the answers, without being so marked.

3. When in the original there occur two statements separated by the phrase, *Lishna achrena* or *Waïbayith Aema* or *Ikha d'amri* (literally, "otherwise interpreted"), we translate only the second.

4. As the pages of the original are indicated in our new Hebrew edition, it is not deemed necessary to mark them in the English edition, this being only a translation from the latter.

5. Words or passages enclosed in round parentheses () denote the explanation rendered by Rashi to the foregoing sentence or word. Square parentheses [] contained commentaries by authorities of the last period of construction of the Gemara.

TO THE

HONORABLE ISIDOR STRAUS

IN RECOGNITION OF HIS MANY PHILANTHROPIC DEEDS AND VALUABLE

SERVICES IN THE CAUSE OF LITERATURE.

MOST RESPECTFULLY DEDICATED

BY THE EDITOR

MICHAEL L. RODKINSON.

NEW YORK, APRIL THE 6TH, 1898, THE EVE OF PASSOVER.

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OF

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vii:1 See introduction to the synopsis in Tract Sabbath, Vol. I., p. ix.

xi:1 We were told that some readers made reference to the synopsis instead of to the text. We have therefore, in the synopsis of this tract, omitted all conclusions. We will do so, likewise, in the future.

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TRACT PESACHIM (PASSOVER).

CHAPTER I.

REGULATIONS CONCERNING THE REMOVAL OF LEAVEN FROM THE HOUSE ON THE EVE OF PASSOVER AND THE EXACT TIME WHEN THIS MUST BE ACCOMPLISHED.

MISHNA "Or" (by light) on the fourteenth (of Nissan), search should be made for leavened bread by the light of a candle, but it is not necessary to search all places in which it is not usual to put leaven. [Why then was it ordered, that two rows (of barrels) should be searched? Because a warehouse or wine cellar is treated of, into which leavened bread is sometimes carried.] Beth Shammai decide "that search must be made between two rows of barrels over the whole surface of the warehouse"; but Beth Hillel decree: It is sufficient to search between the two uppermost rows, as they are also the highest.

GEMARA: What is meant by "Or"? Said R. Huna: "The dawn of day," and R. Jehudah said: "Night." At the first glance it was presumed that the word "Or" was actually explained by R. Huna to mean "the break of day," and by R. Jehudah to mean "night."

An objection was made, however, based upon the passage [Genesis xliv. 3]: "As soon as the morning was light ('Or') the men were sent away," etc. Thus we see that "Or" means "day"? Does then the passage say in the light of the morning? it says distinctly "when the morning was light," which means when the morning was already light, the men were sent away.

Another objection was made: It is written [II Samuel xxiii. 4]: "And as in the light of morning the sun riseth," whence we see that by light is meant "day." Does it then read in the passage "Or Boker" (light is morning)? It reads "Uchor Boker," which means "as the light of the morning," and this should be understood thus: "As the light of the morning on

this earth; so will the sun shine for the righteous in the world to come."

Another objection was made: "It is written [Gen. i. 5]: 'And God called the Or (light) Day,' whence we see, that light (Or) is day?" The passage means to say, that just as soon as it dawned the Lord called it "day."

Another objection was made: "It is written [Psalms cxlviii. 3]: 'Praise him, all ye stars of light (Or).' Whence we see that Or means night?" The passage means to say, "Ye stars that light."

Another objection was made: "It is written [Job xxiv. 14]: 'With the earliest light (Le-Or) riseth the murderer, he slayeth the poor and needy, and in the night he becometh like the thief.' Now, if the latter part of the passage states 'in the night he becometh like the thief,' then the first part must certainly mean to state, that at break of day the murderer slayeth those that pass by, while at night be robbeth houses like the thief. Whence we see that 'Or' means day?" The passage means to say the following: If it is as clear as day to thee that the murderer cometh to slay thee, thou mayest slay him in self-defence; but if it is doubtful to thee whether he comes to slay thee or not, thou shouldst treat him as an ordinary thief and try not to slay him."

Another objection was made: "It is written [Job iii. 9]: 'Let the stars of its twilight be darkened; let it hope for light, and there be none.' Thence we see that by light (Or) is meant day?" The passage means to infer, that job when cursing his fate, said also, that the man who announced his birth should hope for light and not be able to find it.

Another objection was made: "It is written [Psalms cxxxix. ii]: 'Surely darkness shall enshroud me, and into night be turned the Or (light) about me.' Whence we see, that by light (Or) is meant day?" In this passage David means to express the following: I thought, that in the world to come, which is equal to daylight, darkness will enshroud me, and now I find that even on this earth (which compared to the world to come is as night) it has also become light for me.

Yet another objection was made: "We learn further on in the Mishna: R. Jehudah said: 'Leaven should be searched for "Or" on the fourteenth, and in the morning of the fourteenth and at the time when the leaven is about to be burned.' If then R. Jehudah says, that on the morning of the fourteenth

leaven should be searched for, and preceding that he says 'Or' on the fourteenth, 'Or' must certainly mean 'night'?" Therefore we must say, that it is not as was presumed at the first glance to be the case, that R. Huna differed with R. Jehudah concerning the time of searching for leaven, but that both agreed upon twilight as being the proper time for that purpose, and by "Or" is meant "night," but the case was simply this: At the place where R. Jehudah resided twilight was called night, while in R. Huna's place of abode twilight was still called (day)light.

If this is so, why did the Tana of our Mishna commence with the word "Or"? Could he not have said plainly "on the eve"? He wished to commence the Mishna with a pleasing word and not with one suggesting darkness, and this is as R. Jehoshua ben Levi said elsewhere: At no time should a man allow an ill-sounding word to escape from his mouth; for the following verse used eight superfluous letters in order to circumvene the use of one ill-sounding word, as it is written [Gen. vii.]: "Of the clean beasts, and of the beasts that are not clean." Thus instead of using the word unclean (Hatmeah), it is written "that are not clean," which makes a difference of eight letters. 1

Now if the question concerning the word "Or" has been finally decided and "Or" is supposed to mean "twilight," let us see why leaven must be searched for at night. Both according to R. Jehudah and R. Meir (as will be seen further on) it is prohibited to eat leavened bread from the sixth hour, and further, of the fourteenth of Nissan, let the time for searching commence at that hour. If the claim be made, that pious men seek to fulfil a religious duty even before the

specified time, let them commence to search for leavened bread at sunrise on the fourteenth; but why at night? Said R. Na'hman bar Itz'hak: "This was ordained, because at twilight the men are generally in the house and the light of a candle at that time is the best means by which to search for leavened bread."

Said Abayi: Therefore a young scholar should not commence his study at twilight on the thirteenth of Nissan, as he might become engrossed in the ordinances and forget to search for leaven. 2

The master said: "A man should not allow an improper word to escape his lips."

Two disciples sat before Rabh: One of them said to him: "To-day's study of the ordinances made me as tired as a hog." The other one said: "To-day's study made me as tired as a tired goat." From that day on Rabh did not speak to the first of these disciples.

Two disciples (also) sate before Hillel, and one of them was R. Johanan ben Zakai. According to another version: Two disciples sate before Rabbi and one of them was R. Johanan. One of them asked: "Why must wine be pressed with clean utensils and olives do not require clean utensils?" The other disciple at some other time inquired: "Why must wine be pressed with clean utensils whereas for oil unclean utensils may be used?" Whereupon the master remarked: "I am certain that the one who put the former query to me will very shortly be empowered to decide legal questions in Israel." As a matter of fact, it was not long after when this came to pass.

There were three priests. One of them said: "My share (of the showbreads) was about the size of a bean." The other said: "My share was about the size of an olive." And the third one said: "My share was about the size of a lizard's tail." When the language of the last was heard, an investigation was made, and it was found that he was not a genuine priest.

There was a certain Aramæan who was wont to come to Jerusalem every Passover and, representing himself to be an Israelite, would partake of the paschal lamb. When he came back home in the city of Nisibis, he said to R. Jehudah ben Bathyra: "In your Law it is written [Exod. xii. 48]: 'But no uncircumcised person shall eat thereof.' Yet I go to Jerusalem every year and eat of the best of the paschal lamb." Said R. Jehudah ben Bathyra to him: "Did they then give thee some of the fat of the tail?" and he answered: "Nay." So R. Jehudah advised him when he should go there again to ask for it. When the Aramæan came to Jerusalem the following year, he asked that he be given some of the fat of the tail. Said they to him: "Who told thee that thou couldst have it? Is not the fat of the tail sacrificed on the altar?" and he answered them: "R. Jehudah ben Bathyra told me." Said they: "What does this mean?" (Surely R. Jehudah knoweth that this cannot be.) Accordingly an investigation was made and it was found out that the man was an Aramæan, and not an Israelite, and he was punished

for the deception. To R. Jehudah ben Bathyra, however, they sent the following message: Peace be with thee, R. Jehudah ben Bathyra, who sittest in Nisibis and castest thy net in Jerusalem.

R. Kahana became ill. So the sages sent R. Jehoshua the son of R. Idi to find out what ailed R. Kahana. He came and found that R. Kahana's soul had already passed to its rest. R. Jehoshua accordingly made a rent in his garment, but made it so that it could not be perceived, and came back weeping. The sages asked him: "Is the soul of R. Kahana gone to its rest?" and he answered: "Yea, it is; but I did not care to tell of it; for it is written [Proverbs x. 18]: 'He that spreadeth abroad an evil report is a fool.'"

Johanan of Hakukah (according to Rashi and Tosphath, but according to Rabbenu Hananel Johanan the Scribe) went out into the villages. Upon his return he was asked whether the wheat-crop was a success. He answered: "Barley is plentiful." They rejoined: "Go and report that to the horses and asses, as it is written [I Kings v. 8]: 'The barley and the straw also for the horses,'" etc. What then should Johanan have said? He ought to have said: Last year's crop was good or lentils are plentiful (*i.e.*, spoken of something fit for human beings to eat).

There was a man who used to go about and at every opportunity would say "Dono Dini" (Judge ye my judgment). Whence it was inferred that the man was one of the tribe of Dan, concerning whom it is written [Gen. xlix. 16]: "Dan shall judge his people, as one of the tribes of Israel."

There was another man who continually used to say: "On the edge of the sea will I build my palaces." It was said, that the man was probably of the tribe of Zebulon, concerning whom it was written [ibid. 13]: "Zebulon shall dwell at the edge of the seas."

A question was propounded to R. Na'hman bar Itz'hak: "If a man let a house to another on the fourteenth (of Nissan), who of the two men must search for leavened bread? Shall we say, the one who let the house, because whatever leavened bread there may be in the house is his, or that the renter must search for it, because it will be found in his domicile?" Answered R. Na'hman bar Itz'hak: "This was taught in a Boraitha, viz.: If a man let a house to another and have not yet delivered the keys before the fourteenth of Nissan, he must

search for leavened bread; but if the keys were delivered on the fourteenth, the renter must search for it."

Another question was propounded to the same R. Na'hman: "How is it, if a house was rented on the fourteenth (of Nissan) (and it is not known whether the leavened bread had been searched for or not), shall we assume, that if the house was rented from an Israelite, there is no question, but that the leavened bread had been searched for on the preceding night, or shall we not assume such to be the case?" ["What question was this: Let the man who let the house be asked." "In case the man who let the house could not be found] must the renter be troubled to go and search for leavened bread under those circumstances or not?" and R. Na'hman replied: "We have learned this in a Boraitha: 'All persons are credited if they assert, that the leavened bread was removed, even women, slaves, and minors.'" Why are they credited? Because the probability is that such was the case; and the entire law concerning the search for leavened bread is merely a rabbinical institution, the biblical law holding it to be sufficient, if the use of the leavened bread was renounced in thought only; hence where a rabbinical regulation was concerned, anyone testifying that it had been complied with, was credited by the Rabbis.

The schoolmen propounded a question: "If a man let a house to another and told him, that he had already searched for leavened bread; but it was subsequently proven, that he had not, what is the law governing this case? Shall we say, that the renter may on that ground withdraw from his agreement (and not rent the house), or that the agreement is nevertheless binding?" Come and hear: Abayi said: "Not only in such places where the search for leavened bread is not paid for is the agreement binding, because it is more satisfactory to a man to perform a religious duty himself; but even in such places, where men are hired and paid to make search for leavened bread, the agreement is binding, because it is more pleasing to a man to accomplish a religious duty with his own money."

Said R. Jehudah in the name of Rabh: "One who finds leavened bread in his house on the festival (of Easter) should cover it with a vessel (because it must not be handled)." Said Rabha: If the leavened bread was not his property but was consecrated, he need not even cover it with a vessel (because the article being consecrated there is no fear of its being eaten, and people as a rule keep away from consecrated things).

The same said again in the name of the same authority: "If there was leavened bread belonging to a Gentile in the house of a man, he should make a partition ten spans high as a sign that it should not be touched, but if the leavened bread was consecrated he need not make that partition (because the bread being consecrated there is no fear of it being eaten)."

He said again in the name of Rabh: "One who leaves his house to go to sea or to go with a caravan prior to thirty days before the Passover, he need not search for leavened bread; but if he goes away *within* the thirty days preceding the Passover, he must burn the unleavened bread in his house." Said Abayi: "A man who leaves his house within the thirty days preceding Passover must burn the unleavened bread if his intention is to return on the Passover, but if such is *not* his intention, he need not do this," and Rabha rejoined: "If a man leave his house and intend to return *on the Passover*, he must burn the unleavened bread even on the New Year day. Why only if he leave within the thirty days before Passover? Therefore," explained Rabha, "the rule that one need not search for the unleavened bread if he leaves prior to thirty days before Passover applies to one who does not intend to return on Passover, but if his intention is to return on Passover, he must do this even if he leaves on New Year day." And Rabha decrees thus in accordance with his theory elsewhere, namely: If one turned his house into a warehouse prior to thirty days before Passover and there was leavened bread in that house, he need not search for it (because, when the Passover arrives, the leavened bread will lie underneath the grain stored in that warehouse); but if he did this within thirty days preceding Passover, he must search for leavened bread (notwithstanding the fact that it will lie underneath the grain; for during these thirty days the duty to search for leavened bread is already incumbent upon him, whereas prior to that time he was not even supposed to think of removing the leavened bread). Concerning the statement, that one need not search for the leavened bread if he turned his house into a warehouse prior to thirty days before Passover, it holds good only if he did not intend to do this before Passover; but if he did intend to turn his house into a warehouse before Passover, he must search for the leavened bread even then.

Why are thirty days particularly specified? It is as we have learned in a Boraitha, viz.: "One may inquire and preach concerning the laws of Passover thirty days previous to that festival."

[paragraph continues] R. Simeon ben Gamaliel said: "Two weeks before." (Why does the first Tana prescribe thirty days?) Because Moses at the time of the first Passover already made the regulations concerning the second Passover (which was celebrated thirty days later), as it is written [Numbers ix. 2]: "That the children of Israel shall prepare the Passover lamb at its appointed season," and [ibid. 10 and 11]: "Speak unto the children of Israel," etc . . . . .. In the second month, on the fourteenth day," etc. Why, then, does R. Simeon ben Gamaliel not agree with the first Tana? Because he holds, that Moses only enacted those regulations because it was Passover (yet this should not be made a general rule; hence two weeks are sufficient).

R. Jehudah said in the name of Rabh: "He who searches for the leavened bread must at the same time renounce its use in his mind." Why so? On account of the crumbs? Those are of no value! Said Rabha: The reason is, lest he find a useful piece of bread and will not care to burn it (in which case should he even hold it for one second he will transgress the law of "There shall be no leavened bread in thy house," etc.). Can he not renounce its use as soon as he perceives it? It may be, however, that he will not find it until it is too late to renounce its use, for R. Elazar said: "Two things are without the province of man; but the Law made him responsible for them nevertheless, as if they were his property, and they are: A pit in public ground (concerning which a man is responsible if another falls into it as explained in Tract Babah Kamma) and leavened bread after the sixth hour (on the fourteenth of Nissan); although the bread is no more in his possession, still he is responsible for it."

Let the man then renounce the use of the bread in the fourth or fifth hour? As that is not the time either for searching or for burning, there is fear lest a man forget to do this at that time. Let him renounce its use then in the sixth hour, when he is about to burn it. (This being according to a rabbinical enactment illegal, makes it the equivalent of a biblical prohibition?) (As R. Giddel said in the name of Rabh. Vide Chap. II., page 31.)

It is said, that after the prohibition to use bread had already gone into effect, it is not allowed to renounce its use, have we not learned in a Boraitha: "If a man sate in the house of learning and was suddenly reminded that he had not removed the leavened bread from his house, he may renounce its use in thought,

whether this happened on a Sabbath or on a festival?" This would be correct if the eve of Passover fell on a Sabbath; but how can this be done on the festival itself (for it is already Passover and the leavened bread is no longer the property of the man, how then can he renounce its use)?

Said R. A'ha bar Jacob: The case referred to is that of a scholar who sits before his master (and cannot leave without his consent) and having been reminded that there is some dough still in his house, which would shortly become leaven, he may renounce its use before it becomes leaven. This can be inferred from the Boraitha itself, which distinctly states "if a man sate *in the house of learning*" (and if he had leavened bread in the house, what difference would it otherwise make, whether he sat in the house of learning or elsewhere)? Hence the inference.

Rabba bar R. Huna said in the name of Rabh: "If musty bread was found in a chest used for unleavened bread and for leavened bread, and the chest was used more for unleavened bread than for leavened, the musty bread may be used." How was the case? If it was known that this bread was leavened, it would not be of any consequence that the chest was used more for unleavened bread; but if it was not known whether that bread was leavened or not, why say, that the chest was used *more* for unleavened bread? The question at issue would then be for what purpose it was used last--for leavened or unleavened bread. The use it was put to last is the main issue, as we have learned elsewhere (Tract Shekalim, Ch. VII., Mishna 2) concerning money found in Jerusalem: "If found during the festivals, it is regarded as second tithes, and if at other times of the year, it is ordinary money"; and R. Shemaya bar Zera said: "If money was found on the day following the festivals, why should it not be considered second tithes, because the markets of Jerusalem were as a rule swept daily?" whence we see, that the last contingency is the one to be considered, why not apply this to the case of the musty bread? In the case of musty bread it is different. The very fact of its having become musty is sufficient evidence that it was not of recent use. Of what benefit then would it be to ascertain that the chest had been used more for unleavened bread than for leavened? If the bread is musty it is no doubt leavened bread? Said Rabba: Do not say, that Rabh meant to state, "if the chest was used more for unleavened than for leavened bread, but the days on which unleavened

bread was used outnumbered those on which leavened bread had been previously used." If so, the case would be self-evident. Why does Rabh come to tell us this? Rabh means to state, that because the bread was very musty it might be assumed that it had been left over from the leavened bread, and he would tell us that this is not so, but that it may have been an instance of where unleavened bread had been baked on the first day of Passover and a piece was thrown into that chest, thus becoming musty.

R. Jehudah said: "He who searches for leavened bread must pronounce a benediction." How should he pronounce the benediction? R. Papi said in the name of Rabha: "Blessed be He, etc., who commanded us to remove the leavened bread," and R. Papa said in the name of Rabha: "Blessed be He, etc., who hath commanded the removal of leavened bread." Concerning the benediction which reads "commanded us to remove," etc., all agree that the words "to remove," signify an act which may be performed later; but as for the benediction "commanded the removal," R. Papi holds that "the removal" signifies an act already accomplished, while R. Papa maintains that it may refer to an act about to be accomplished. The Halakha prevails, that the benediction must be pronounced upon the removal" (in the same manner as the benediction upon "circumcision").

All agree, however, that the benediction must precede the act. Whence do we adduce this? Because R. Jehudah said in the name of Samuel: "Benedictions must be pronounced prior to the performance of every religious duty." And the disciple of Rabh (R. Hisda) said: "In all cases with the exception of (legal) bathing, in this instance the benediction should be pronounced after the act." So have we also learned in a Boraitha: "When a man had bathed and is ready to depart, he should say: 'Blessed be He, etc., who has ordained for us (the law of) bathing.'"

"*By the light of a candle*." The Rabbis taught: Search for leavened bread must not be made by the light of the sun, of the moon, or of a flame of fire, but only by the light of a candle; because the light of a candle is efficient for search, and although we have no actual foundation for this

regulation, still we are given a hint to that effect in the passage [Exod. xii. 19]: "Seven days no leaven shall be found in your houses," and it is written [Genesis xliv. 12]: "And he searched, at the eldest he began,"

while [in Zephaniah i. 12] it is written: "And it shall come to pass at that time that I will search Jerusalem through with lights (candles)"; [Proverbs xx. 27] it is also written: "A lamp of the Lord is the soul of man, searching all the inner chambers of the body." (Hence as it is written in the first quotation "it shall not be found," and in the latter quotations searching is mentioned in connection with lights (candles), the hint is derived from those passages.)

Under what circumstances shall search not be made by the light of the sun? Shall we say in the case of a court? Did not Rabha say, that in a court no search need be made, because the crows consume what leavened bread may be found there? In the case of a balcony? Did not Rabha say, that on a balcony one may search by the light of the balcony itself? The injunction against using the light of the sun is applied to a window of a room, namely: At the window proper search may be made by the light entering through the window, but at the sides this cannot be relied on and a candle must be procured in order to conduct a proper search.

Not even a flame of fire may be used? Did not Rabha say, referring to the passage [Habakkuk iii. 4]: "And (his) brightness was like the sunlight; rays streamed forth out of his hand unto them: and there was the hiding of his power." "The righteous as compared with the Shekhina appear as the light of a candle to a bright flame; and concerning the benediction to be made at the close of the Sabbath-day which is pronounced over a light, he said, that a bright flame is more conducive to the efficient fulfilment of that duty?" (Why then should a flame not be permitted for the search?) Said R. Na'hman bar Itz'hak: "A candle may be applied to a hole or a crack in the wall, whereas a flame cannot be moved to such a place."

"*It is not necessary to search all places in which it is not usual to put leaven*," etc. What would the Mishna mean to add by stating "all places"? The Mishna means to add what was taught by the Rabbis: "The uppermost or nethermost holes in a house, the roof of an attic, the roof of a tower, a stable of oxen, a chicken-coop, a straw-shed, and the cellars where wine or oil is kept need not be searched." R. Simeon ben Gamaliel said: "A bed, which is placed in a room so that it divides the room into two parts and is so high that the space underneath it is used, must be searched."

A contradiction was interposed, based upon the following

[paragraph continues] Boraitha: We have learned: A hole through a wall standing between two houses must be searched by the householders of each house as far as they can reach from their respective sides, and the space which they cannot reach, they must renounce in their minds. R. Simeon ben Gamaliel said: "A bed dividing a room into two parts, and having underneath it stones and wood though there still be space left between the stones and the bed, need not be searched."

Thus there is a contradiction both regarding the hole in the wall as well as the bed? This presents no difficulty: As for the hole, one that should be searched is a hole in the centre of the wall, while the Boraitha refers to an uppermost and a nethermost hole, and as for a bed, one that is very high and has a great deal of space underneath it should be searched, while one that has but little room underneath need not be searched.

Wine cellars need not be searched? Have we not learned in a Boraitha that cellars where oil is kept need not be searched, but those containing wine *must* be searched? In this case wine cellars are spoken of, that are used during meals, while in the other instance wine cellars that are only used. for storage are referred to. If those that are used only, must be searched, why should cellars where oil is kept be exempt? Because there are fixed times for meals and oil is used only during meals, while wine is constantly in use and the cellars are therefore frequently entered.

R. Hisda said: The place where salt fish are kept need not be searched. Did a Boraitha say that it need be searched? This presents no difficulty. The Boraitha refers to the places where small fishes are kept (*i.e.*, it usually happens that during a meal one goes to bring more fish while having bread in his hands. R. Hisda, however, refers to a place where large fishes are kept, because usually one knows the quantity of fish he requires for the whole meal, and there is no need of getting up during the meal to bring more fish.) Rabba the son of R. Huna said: The places where salt and wax candles were kept must be searched (because it often happened that during a meal salt and candles were needed). R. Papa said: The places where wood and dates were kept needed also to be searched (because it happened that during a meal one might go for wood and by the end of a meal, go for dates). A Boraitha taught: That a man was not compelled to put his hand in a hole to search for leaven as it might be dangerous.

R. Hyya taught: "The beer [1] cellars of Babylon were put on a par with the wine cellars of Palestine if they were frequently used."

["*Why then was it ordered, that two rolls of barrels should be searched*?" Where is a cellar mentioned in the Mishna, that barrels should be discussed? The Mishna means to state as follows: "In all places, where it is not usual to put leaven, it is not necessary to search for leavened bread, and cellars of wine or of oil need not be searched." Why then were two rows of barrels ordered to be searched? If leavened bread was brought into such cellars and used there.]

"*Beth Shammai decide that search must be made between each two rows*," etc. R. Jehudah said: "The two rows mentioned are those from the ground to the ceiling, *i.e.*, the first two rows facing the door of the cellar," and R. Johanan said: The two rows mentioned are one from the ground to the ceiling and one on the top of the pile in the form of a (Greek Gamma) Γ.

We have learned a Boraitha supporting R. Jehudah, viz.: "Beth Shammai said: 'Between two rows over the whole surface of the cellar' and those two rows are from the ground to the ceiling."

We have learned another Boraitha supporting R. Johanan, viz.: "The two rows are over the whole surface of the cellar. One row faces the door and the upper row faces the ceiling. The remaining rows behind the one facing the door and those underneath the row facing the ceiling need not be searched."

"*Beth Hillel decree: 'It is sufficient to search between the two uppermost rows,'*" etc. Said Rabh: "Beth Hillel mean only one row not over the whole surface of the cellar, but one that faces the ceiling and the door, and another row beneath it facing the door only." But Samuel said: "Beth Hillel mean one row over the entire surface of the cellar and another row beneath it." Why do they differ? Because Rabh lays stress upon the word "uppermost" in the Mishna, which he explains as previously mentioned. [It says also "as they are also the highest," so there should be *two* highest. The Mishna calls them highest in order to contrast those beneath them, which are the lower], whereas Samuel lays stress upon the word "highest." [It also says "uppermost." These are called "uppermost" to distinguish them from those beneath them which also face the door] hence he explains the Mishna as above.

R. Hyya taught in accordance with Rabh's opinion and all the other sages taught in accordance with Samuel's opinion. The Halakha prevails according to Samuel. [1]

MISHNA: (And) it need not be suspected, that a weasel have dragged any leavened bread from (one corner that had not been searched to one that had); from one house to another or from one place to another; for if so, the same suspicion might apply to a (possible) removal from one court to another, or even one city to another, and thus make the search an endless task.

GEMARA: This applies to a case where it was not observed that the weasel had dragged the bread; but if it was observed, the search must be made over again? Why should this be so? Let it be presumed, that the weasel consumed the bread.

Have we not learned in a Mishna (Tract Ohaloth): The dwellings of the heathens must be considered unclean (because it was supposed, that they buried their miscarriages in their dwellings), and how long must the heathen have dwelt in such a dwelling in order to render it unclean? Forty days, even if he had no wife; if, however, when the dwelling was vacated, it was left open so that cats and swine entered it, its uncleanness need not be even investigated. (It is certainly clean, because even should there have been such a thing as a fœtus contained therein, the cats or the swine had no doubt already devoured it. Whence we see, that the supposition of the cats having devoured the unclean object renders the investigation unnecessary, why then should in our case the fact that the weasel had carried off the bread not eliminate the necessity of another search?) Said R. Zera: "This presents no difficulty; in the case of the heathen's dwelling, the uncleanness was caused by flesh, and it is not probable that any of it was left over, but where bread is concerned, it may be that some of it was left."

Said Rabha: "What question is this? In the case of the heathen's dwelling there is a twofold supposition. Firstly, the question is whether a fœtus was buried in the dwelling. Secondly, assuming such to be the case, the supposition that it was devoured enters, while in our case, if the weasel was observed carrying out the bread, so much is certain, and there is merely the supposition that it was devoured and a supposition cannot emanate from an established fact."

Our Mishna states: "It need *not* be suspected," etc. Why

then does the succeeding Mishna enjoin, that "whatever remains must be well guarded"? Said Rabha: "By 'whatever remains must be well guarded,' the Mishna means to provide against a weasel coming and dragging it away before our eyes, in which event another search will have to be instituted."

We have learned in a Boraitha in support of Rabha's dictum: "Whosoever wishes to eat Chometz (leavened bread) after the search, should take what he has left over after the search and keep it in a well-guarded place lest a weasel come and carry it off before our eyes, in which case another search will be necessary."

R. Mari said: There is apprehension, if a man have ten pieces of bread left over and finds subsequently only nine, that another search will have to be instituted. (Therefore what remains should be kept in a well-guarded place.)

If there were nine heaps of Matzoth (unleavened bread) and one heap of Chometz and a mouse came along and took a piece of one of the heaps, but it is not known whether it was of a heap of Matzoth or Chometz, the same law applies to this as to the case where there were nine shops dealing in (ritually) slaughtered cattle and one shop dealing in carrion, and a man having bought some of the meat could not tell in which place he had bought it; in that case the meat must not be eaten (notwithstanding the fact that the majority of shops dealt in slaughtered cattle). If, however, meat was found near the shops, it is presumed to be of slaughtered cattle (because the probability is that one of the majority lost it). (The same is the case in the instance of the above-mentioned nine heaps of Matzoth.)

If there were only two heaps, one of which was Matzoth and the other Chometz, and two mice came along and taking a piece each of the two heaps ran into two different houses, in one of which search had already been made, while in the other it had not yet been made. If it was not noticed which mouse ran into the searched house, the one carrying Chometz or the other carrying Matzoth: It must be presumed, that the mouse carrying Chometz entered the house that had not yet been searched; because we have been taught in a Boraitha referring to such a case as follows: If there were two heaps of grain, one being heave-offering and the other ordinary, and opposite there were two measures, one containing heave-offering and the other ordinary grain, and the heaps had fallen into the measures, but it was not known which had fallen into which, we must presume that the

heave-offering had fallen into the measure containing heave-offering and the ordinary had fallen into the measure containing ordinary. [It might be said, however, that in these days heave-offering is merely the offspring of rabbinical law while Chometz is based upon biblical law (hence should be surrounded with more caution)! Nay; is then searching for Chometz biblical? According to biblical law renouncing the use of Chometz is sufficient.]

How is it, however, if there was but one heap and that was Chometz, while there were two houses both of which had been searched and a mouse had carried some of that Chometz into one of the houses; but it was not known into which? This presents an analogous case to two roads, one of which was clean and the other unclean and two men went on those roads but did not

know which had taken the clean road and which the unclean. "If they both consecrated grain," said R. Jehudah, "and each one separately comes to inquire concerning the law in his case, they are both considered clean; but if both come together, both are held to be unclean; (for one of them is surely so)." R. Jose, however, said: "In any event both are unclean." Commenting upon Rabha, according to another version, R. Johanan said: "If both come together, all agree that they are held to be unclean; if they come each separately, all agree that both are considered clean; their point of variance, however, is: if one comes and inquires concerning the other also. According to R. Jehudah, it is the same as if each had come separately, while according to R. Jose, it is the same as if both had come together. (The same rule applies to the two houses under consideration.)

How is it, if it was not known whether the mouse that carried off some of the Chometz had entered either of the houses at all? This presents an analogous case to a valley in which an uncleanness was lost, and remains a point of variance between R. Eliezer and the sages. (Tract Teharoth, Chap. VI., Mishna 5.)

If the mouse had entered, however, and the man instituted another search but could not find the Chometz, must he go further and search the next house also? This will present a point of variance between R. Meir and the sages and is analogous to a case where the uncleanness of a place was at issue where the object causing the uncleanness could not be found. (Bechoroth xxv. b).

If the mouse had entered the house and the man when instituting another search had actually found the piece of Chometz

but did not know whether it is the same, that the mouse had carried in or not, it presents a similar case to the one concerning which Rabbi and R. Simeon ben Gamaliel differ, viz.: if a grave was lost and subsequently a grave was found but it was not known whether it was the same grave or not [ibid. ibid.].

If a man had left over nine pieces of bread and found ten, it again presents an analogous case to the point of variance between Rabbi and the sages concerning a case where a man had deposited one hundred coins and found two hundred. According to one opinion it is all ordinary money and according to another it is ordinary and second-tithe money combined.

If a man had left over ten pieces and only found nine, it again presents a point of variance between Rabbi and the sages similar to the case where a man had deposited two hundred coins as second-tithe and subsequently only found one hundred. According to one opinion the remainder is still second-tithe, while according to the other, the remainder is ordinary money; for it is considered as if the two hundred coins had been stolen and another hundred of ordinary money had been left in place thereof.

If the man had left the remainder of the Chometz in one corner and found it in another, according to the sages another search is necessary while according to R. Simeon ben Gamaliel it is not, and it is a similar case to the one in which they differ concerning uncleanness.

Rabha said: "If a mouse entered a house with some Chometz in its mouth and the man going in after it poured crumbs on the floor, he must make another search; because as a usual thing a mouse leaves no crumbs behind; but if a child entered and he finds crumbs when entering after the child, he need not make another, for usually a child leaves crumbs behind it."

Rabha propounded a question: "If a mouse entered a house and another came out of the same house and both had pieces of Chometz in their mouths, shall we presume that it was the same mouse in both cases or not? If it should be said, that it is the same, how is it if the mouse entering was black and the other was white, shall we assume that one took the piece of bread away from the other or that there were two separate pieces of bread? If you will say that one mouse would not take anything away from another, how would it be if a mouse entered with the piece of bread and a cat came out with a piece of bread? If we presume that the piece of bread is the same, would the cat not

have held the mouse in its mouth also? If then, you say, that the piece of bread was a different piece, how would it be if the cat came out with the mouse and the piece of bread in its mouth? Shall we say that it is the same piece of bread and, the mouse having dropped it through fright, the cat picked it up, or that were it the same piece of bread the mouse would have had it in its mouth?" This question is not decided.

MISHNA: R. Jehudah said: "Search (for Chometz) should be made on the evening ('Or') before the 14th (of Nissan), early on the morning of that day and at the time (when all Chometz must be removed);" but the sages said: "If search had not been made on the evening preceding the 14th (of Nissan), it may be made on that day; if neglected on that day, it may be made on the festival, [1] and if omitted even then, it must be done after the festival, [2] and whatever Chometz is left over, must be kept in a well-guarded place, in order that no further search may become necessary.

GEMARA: What reason has R. Jehudah for his assertion?, R. Hisda and Rabba bar R. Huna both say: "He bases his assertion upon the fact that the search or the removal of Chometz is mentioned three times in the Scriptures" [Exod. xii. 15, ibid. 19, and ibid. xiii. 7].

R. Joseph objected: We have learned in a Boraitha: R. Jehudah said, "If he did not make the search at any of these three times, he need not make any search at all. Hence we see that R. Jehudah does not differ with the sages only concerning the necessity of searching after the three stated times had passed. R. Jehudah in reality only means to state that search should be made but once and that at one of the times mentioned, but if the three appointed times had passed he must not make search on the festival, lest he find some leavened bread and eat it; while the sages hold, that he may do so even on the festival and there is no fear of his eating any of the Chometz which he might find.

MISHNA: R. Meir says: "It is lawful to eat (Chometz on the 14th of Nissan) the whole of the first five hours and what remains must be burned at the commencement of the sixth

hour," but R. Jehudah says: "It is only permitted to eat (Chometz) the first four hours; during the whole of the fifth hour this must be abstained from and it must be burned at the commencement of the sixth hour."

R. Jehudah *also* taught: Formerly (during the existence of the Temple) two cakes of thanksgiving- offering which had become desecrated were exposed on a bench (of the Temple). As long as the two cakes remained there, all the people still ate leavened bread; when one of them was removed, they abstained from eating it but did not yet burn it; when both were removed, all the people commenced burning (the Chometz). Rabbon Gamaliel says: Ordinary (Chometz) may be eaten during the first four hours; but heave-offering may still be eaten during the fifth hour; both, however, must be burned at the commencement of the sixth hour.

GEMARA: We see thus, that at the commencement of the sixth hour, all agree, Chometz must be burned. [1] Whence do we adduce this? Said Abayi: From two passages, viz. [Exod. xii. 19]: "Seven days no leaven shall be found in your houses," and [ibid. 15]: "But on the first day ye shall have put away leaven out of your houses." According to this, then, on the first day there would still be leaven in the house and this would be contrary to the ordinance of the first passage? Hence we must say, that by "the first day" is meant the day preceding the festival. Then why say the sixth hour? Say that already early in the morning of the day preceding the festival (leaven should be burned). The word "but" with which the passage commences divides the day into two parts, so that in the morning leavened bread may be eaten while in the afternoon it must not.

The disciples of R. Ishmael taught: The reason that Chometz must be removed on the 14th (of Nissan) (the eve of Passover) is because that day is referred to as the first day (of the festival) in the passage [Exod. xii. 18]: "In the first, on the fourteenth day of the month, at evening shall ye eat unleavened bread," etc.

Rabha said: "The reason may be inferred from the passage [Exod. xxxiv. 25]: 'Thou shalt not offer the blood of my sacrifice with leaven; neither shall be left unto the morning the sacrifice of the feast of the passover,' which signifies, that the Passover sacrifice must not be offered up as long as there is yet

leaven." If that be the case, then it might be said that the leaven should be burned by each man immediately before offering his passover sacrifice; why designate the sixth hour? The passage means to state, that when the *time* for the Passover sacrifice arrives, there must no longer be any leaven on hand.

We have learned in a Boraitha in support of Rabha: It is written: "But on the first day ye shall have put away leaven out of your houses," and by the first day is meant the day preceding the festival. Whence do we know this? Perhaps the first day of the festival is meant? Nay; for there is another passage stating: "Thou shalt not offer the blood of my sacrifice with leaven," which signifies, that the Passover sacrifice must not be offered up while there is yet leaven on hand. So said R. Ishmael. R. Aqiba, however, said: "The second passage quoted is not necessary, for it is written, 'But on the first day ye shall have put away leaven out of your houses,' and again [Exod. xii. 16]: 'No manner of work shall be done on them'; thus we see that the leaven could not be

burned on that day, for is not burning one of the principal acts of labor."

R. Jose, however, said: R. Aqiba's additional passage is not necessary either; for it says "But," and that "but" signifying that the day must be divided, if the first day were the first day of the festival, how could it be divided? No leaven must be eaten at any time during the festival proper. (If it should be said), that eating leaven only is prohibited but removing or burning it is permitted even on the first day, it would not be correct; for removing leaven is mentioned at the same time as the prohibition to eat leaven bread and at the same time also it is ordered that unleavened bread be eaten, whence we see, that at the time when Matzoth should be eaten no leaven must be on hand. Matzoth must be eaten on the evening of the 14th, hence no leavened bread must be on hand at the time. In consequence the "but" signifies the division of the day preceding the festival.

Rabba said: "Three things may be inferred from the words of R. Aqiba, and they are: Firstly, that R. Aqiba holds according to the opinion of R. Jehudah, that Chometz can be removed only by burning it; secondly that he holds with the opinion of R. Nathan, that the additional commandment not to kindle a fire: on a Sabbath was taught for the sake of separation (of other acts) 1; and thirdly, that he does not hold that, because

a fire may be made for the purpose of cooking on a festival, it may be also made for any other purpose."

The Rabbis taught: For what purpose is the passage "Seven days no leaven shall be found in your houses" written; it is stated *once* already [Exod. xiii. 7]: "And there shall not be seen with thee any leavened bread, neither shall there be seen with thee any leaven in all thy boundaries"? Because from the latter passage it might be assumed that only such leaven as belongs to the man must not be seen; but leaven belonging to others or such as is consecrated may be seen, and it might also be assumed, that one may hide leaven or may keep for a Gentile leaven intrusted to his care and for that reason the other passage says: "no leaven shall be *found*." Then again it may be presumed, that it is not permitted to receive any leaven from a Gentile living in a different place or one who is not under thy control, but how do we know that it is also not permitted to receive leaven from one who lives in the same house or is under thy control? To that end the passage reads "no leaven shall be found *in your houses*." Thus we know that it must not be found in the *houses*, but whence do we adduce that it may not be stored in caves or cellars? From the passage which reads: "Neither shall there be seen with thee any leaven *in all thy boundaries*."

Then again it might be said that if any leaven was found in the houses, one is culpable for transgressing the ordinance relating to "it shall not be seen" nor "found" nor "be hidden" nor "be received from Gentiles," while concerning the boundaries, it might be assumed that one's own leaven must not be seen but that belonging to others or consecrated leaven may be seen; but whence do we know that the ordinances relating to the houses apply also to the boundaries and *vice versa*? To that end the word leaven is repeated. Leaven is mentioned in connection with the houses and also in connection with the boundaries; thus if leaven be found in the house of a man, he is culpable of transgressing the ordinances "it shall not be seen" nor "found" nor "hidden" nor "received from a Gentile"; so is it also in the case of boundaries, and as in the boundaries a man's *own* leaven must not be seen but that belonging to others may; so is it also in

the case of houses, a man's own leaven must not be seen, but that belonging to others and consecrated leaven may be seen.

The master said: "It is not permitted to receive any leaven

from a Gentile living in a different place or from one who is not under thy control, but whence do we know that it is also not permitted to receive leaven from one who lives in the same house or is under thy control?" How is this to be understood? The question should be to the contrary? Said Abayi: "Read the question in the opposite sense" (*i.e.*, it may be presumed that only from a Gentile living in the same or under thy control leaven must not be accepted, but whence do we know that from one living elsewhere or *not* under thy control it must not be accepted?) Rabha, however, said: The question need not be inverted, because it refers to the first part of the teaching of the Rabbis, which says, that a man's own leaven must not be seen but that of others, or consecrated leaven, may; hence it is said, "that leaven belonging to a Gentile living elsewhere or not under thy control must not be seen, but whence do we know that leaven of a Gentile under thy control maybe seen?" Rabha concludes that the leaven of a Gentile under thy control may be seen and does this from the passage which distinctly states that it must not? He does this because the passage contains the words "with thee" twice. The master said: "It might be assumed, that one may keep for a Gentile leaven intrusted to his care, and for that reason the passage says, 'it shall not be found.'" Was it not just said, that leaven belonging to others and such as was consecrated may be seen? This presents no difficulty. Such as a man is not responsible for may be seen, but such as is intrusted to his care is considered as his own and must not be seen, as was said by Rabha to the inhabitants of Mehuzza: "Ye shall remove the Chometz belonging to the government from your houses, because ye are responsible for it and should it be stolen ye must make compensation, hence it is regarded as your own and must not be found in your houses."

This would be correct according to the Tana who holds, that an object which entails a possible pecuniary indemnity is not considered as the property of the one responsible for it; hence a separate passage is required to ordain, that this must not be kept; but according to the Tana who holds such an object to be the property of the one responsible for it (as if he had indemnified its original owner for its loss), why is a separate passage necessary? Because we might assume, that the object not yet being subject to an indemnity it is still the property of another and hence may be seen, we are told that such is not the case,

The Rabbis taught: If a Gentile came into the court of an Israelite (on Passover) with a piece of leaven in is and, the Israelite is not obliged to insist upon its removal. If the Gentile, however, had given it to the Israelite for safe-keeping, it must be removed. If a special place, however, was provided for such leaven, it need not be removed, because the passage only states, that "leaven must not be found in your houses." Where a special place had been provided, that place is considered as belonging to the Gentile.

"*R. Jehudah says*: "Rabha said: "R. Jehudah's reason for his statement is the fact that he holds that the only manner in which Chometz may be removed is by burning, hence he allows us the fifth hour in order to prepare the wood for the fire." Rabhina objected to this statement: "Have

we not learned, that R. Jehudah said removal by burning is only to be effected if the appointed time for the removal had not yet arrived; but if it had, the leaven may be removed by any means whatever?" Therefore Rabha said: "R. Jehudah's reason for his statement was the fact that the exact hour could not be ascertained on account of a cloudy day: and hence a man might mistake the sixth hour for the fifth." If that be so, then it should not be allowed to eat leaven even in the fourth hour? The fourth hour is a general time for eating, [1] hence no mistake can be made.

R. Na'hman in the name of Rabh said: "The Halakha prevails according to R. Jehudah." Said Rabha to him: "Why does not the master say that the Halakha prevails according to R. Meir; for have we not a Mishna by anonymous teachers (the first Mishna in Chapter II.) which bears out R. Meir?" "That Mishna is not in accordance with R. Meir, because it is opposed by others." "Then," rejoined Rabha, "why does master not say, that the Halakha prevails according to R. Gamaliel, who in this instance is the mediator between R. Jehudah and R. Meir?" Answered R. Na'hman: R. Gamaliel is not the mediator in this case, but merely asserts his own opinion, and if it is thy wish, I would tell thee, that Rabh holds with the Tana in the following Boraitha: If the 14th (of Nissan) fall on a Sabbath, all leaven must be removed before the Sabbath. Unclean or doubtful heave-offering must be burned and from clean heave-offering, which, however, cannot be used on the Passover, sufficient for two meals only must be left over for consumption

before the fourth hour. So said R. Elazar ben Jehudah the man of Barthutha in the name of R. Jehoshua. He was asked why the clean heave-offering should be burned, perhaps there may be found such as can eat it, and he answered: "Such men were sought but could not be found," but the Rabbis persisted: "Perhaps there were priests who passed the night beyond the town and might come in on the morrow and eat it?" R. Elazar replied: "According to your argument, the doubtful heave-offering should not be burned either lest Elijah come on the morrow and declare it clean!" and they rejoined: "It is known that Elijah will not come on the eve of Sabbath." In conclusion the Boraitha relates, that the sages carrying on the discussion did not move from their places until it was finally declared that the Halakha should remain according to the dictum of the mentioned R. Elazar ben Jehudah in the name of R. Jehoshua.

Then, if the Halakha prevails according to R. Elazar ben Jehudah it may be assumed, that concerning eating on the day preceding Passover nothing must be eaten after the fourth hour. Said R. Papa in the name of Rabha: "The Halakha prevails according to R. Elazar only concerning the removal of leaven but not concerning the hour of eating."

Rabbi also holds in accordance with the opinion of R. Na'hman; for Rabhin bar R. Ada related: "There was a man who stored a basket full of Chometz with Johanan Hakuka, and mice having gnawed holes in the basket, the Chometz commenced spreading. In the first hour of the eve of Passover Johanan came to Rabbi and asked him what to do. Rabbi told him to wait. In the second hour he still told him to wait, and so also in the third and fourth hour (perhaps the man might come to remove the basket). In the fifth hour he told him to take out the basket and offer it for sale in the market." We must assume, that he advised him to sell it in the market to Gentiles because Israelites could not use it at that hour and hence held with R. Na'hman that the Halakha prevails according to R. Jehudah.

Said R. Joseph: "Nay; he advised to sell it in the market and even to Israelites, thus holding to

the opinion of R. Meir." Rejoined Abayi: "What need was there of his selling it in the market (to an Israelite), he could have used it himself under those circumstances?" And R. Joseph replied: "He could not do this on account of a possible suspicion that he would not pay the man a fair price." Said R. Ada bar Matthna to R.

[paragraph continues] Joseph: "Thou thyself at one time told us distinctly that Rabbi advised him explicitly to sell it to Gentiles, because he was of the opinion of R. Jehudah."

"*R. Jehudah also taught*," etc. One Tana taught in the presence of R. Jehudah, that the two thanksgiving-offering cakes were laid on the benches. Said R. Jehudah: "Was it then the intention to hide the cakes, that they should be put on the benches? Say, rather, they were placed on the roof surmounting the benches, where they could be seen."

Rahba said in the name of R. Jehudah: "On the mount of the Temple there was a double arched seat. We have also learned to this effect in a Boraitha, and R. Jehudah said: It was called Istavanith (columns) because a roof surmounted the seat, and the seat was composed of two arches one within the other."

"*Which had become desecrated*." Why had they become desecrated? Said R. Hanina: Because the cakes were such as had been brought with thanksgiving-offerings and there being so many of them they could not be consumed within the statutory time; hence they became desecrated by being left over night, as we have learned in a Boraitha: "It is not permitted to bring thanksgiving-offerings on Passover, because cakes of unleavened bread must be brought with them." Is this not self-evident? Said R. Ada bar Ahabha: "The Boraitha refers not to the Passover but to the day preceding it; and we are told, that no thanksgiving-offerings should be brought on that day, because there will not be sufficient for the consumption of the leavened cakes before the morrow. Therefore such offerings were brought on the thirteenth; but as there were still more leavened cakes than could be consumed, the remaining ones became desecrated over night (and of these two were placed on the benches)."

We have learned in a Boraitha upon the authority of R. Elazar, that the cakes were not desecrated; that when both were still on the benches all the people still ate leavened bread, when one was removed eating was abstained from and when both were removed it was commenced to burn the leaven.

In another Boraitha we have learned: Abba Saul said: There was another sign, viz.: Two cows were drawing a plough on the Mount of Olives. While both cows were seen, all the people still ate leavened bread; when one of them was taken away, the people abstained from eating and as soon as the other was also taken away, it was commenced to burn the leaven.

MISHNA: R. Hanina, the Sagan of the priests, said: The priests never objected to burn flesh which had become unclean through a child of uncleanness [1] (*i.e.*, had become an uncleanness of the second degree) together with such as had become unclean with a parent of uncleanness (*i.e.*, had become an uncleanness of the first degree), although the (legal) uncleanness of the first

mentioned had become correspondingly increased. R. Aqiba added to this and said: "The priests never objected to burn the oil of heave-offering, which had become unclean by being poured by an unclean person, who, however, had bathed on that day, into (a metal) lamp which had come in contact with an uncleanness produced by a dead body, notwithstanding the fact, that a higher degree of impurity had thus been added to its former impurity."

Said R. Meir: We learn from their words, that it is permissible, on account of the Passover, to burn clean heave-offering (of leaven) with that which has become unclean; but R. Jose rejoined: "This is not a (correct) inference." R. Eliezer and R. Jehoshua agree, however, that it is necessary to burn each separately. Wherein do they differ? Concerning things whose uncleanness is doubtful, and things which are positively unclean; for R. Eliezer says: "Each of them must be burned separately"; but R. Jehoshua says: "They may be burned together."

GEMARA: Let us see! If flesh had become unclean through a child of uncleanness, it became an uncleanness of the second degree; the flesh which had become unclean through a parent of uncleanness, became an uncleanness of the first degree; now, if the first mentioned flesh came in contact with the last mentioned, it also only attains a second degree of uncleanness, how can it be said that its degree of uncleanness had been increased? Said R. Jehudah: "The first named flesh had not been contaminated by a child of uncleanness, but by a second (degree) of uncleanness, in which it had become a third of uncleanness. Thus when brought into contact with flesh which was a first degree of uncleanness, it becomes unclean in the second degree, and R. Hanina holds, that a third degree of uncleanness may be made unclean in the second degree."

It is known, however, that eatables cannot become unclean by contact with other eatables? Here a case is referred to, where the flesh was soaked with a beverage, when it can become

unclean on account of the beverage. If so, why does the Mishna state flesh only? It should have been mentioned in connection with beverages. Therefore we must say, that although, according to biblical law, eatables cannot become unclean by contact with other eatables, yet according to rabbinical law, eatables may become unclean in that manner.

"*R. Aqiba added to this and said*." Let us see! What does R. Aqiba add to the above? The oil which had been touched by the unclean person became primarily a third of uncleanness, and, when poured into the lamp which was a first of uncleanness by reason of its contact with a parent of uncleanness, it became a second of uncleanness. (Hence where is the difference between R. Aqiba's statement and that above?)

Said R. Jehudah: In this instance the lamp was of metal and the Merciful One said [Numbers xix. 16]: "And whosoever toucheth in the open field one that hath been slain with a sword," which signifies, that the sword (which is of metal) becomes equally unclean with the object which it touches. Thus the lamp having come in contact with a parent of uncleanness also becomes a parent of uncleanness and the oil consequently becomes through contact with the lamp a first degree of uncleanness. This constitutes the addition made by R. Aqiba, viz.: A third of uncleanness may be turned into a first of uncleanness.

"*Said R. Meir: 'We learn from their words,'*" etc. From whose words do we learn? Said Resh

Lakish in the name of Bar Kappara: The Mishna in citing a parent or a child of uncleanness refers to such according to the biblical institution, and R. Meir's statement: "We learn from their words," which refers to rabbinical enactments, has no bearing upon our Mishna but concerns the difference between R. Eliezer and R. Jehoshua elsewhere (Tract Terumoth, Chap. VIII., Mishnas 8 and 9), and signifies as follows: "From the dispute between R. Eliezer and R. Jehoshua we learn, that clean heave-offering (of leaven) with that which has become unclean may be burned, etc."

This may be inferred also from our Mishna itself; for further it is stated, that "R. Eliezer and R. Jehoshua agree," etc., and had they not been referred to in the first place, how could they be quoted as agreeing upon the point involved? So also said R. Na'hman in the name of Rabha b. Abuhu.

R. Assi said in the name of R. Johanan: "R. Jose and R. Meir differ only concerning the sixth hour but after that time R. Jose also admits, that the clean heave-offering may be burned

with the unclean." Said R. Zera to R. Assi: According to thy statement, then, R. Johanan holds, that R. Hanina the Sagan treats of the parent of uncleanness from a biblical point of view and of the child (first) of uncleanness from a rabbinical point of view; R. Meir, therefore, in his statement refers to the words of R. Hanina. (For the reason, that R. Meir speaks of the sixth hour, when, according to biblical law, even eating is permissible.) R. Assi rejoined: "Yea; so it is." The very same statement was taught also in the name of R. Johanan: And R. Meir holds according to his theory elsewhere while R. Jose holds in accordance with *his* own theory. R. Meir's theory is, that contact with beverages which are unclean causes uncleanness only according to rabbinical law, while according to biblical law this cannot take place (hence if R. Hanina the Sagan says, that flesh which has become unclean in the second degree was burned with flesh unclean in the first degree, the first named was only unclean according to rabbinical law while according to biblical it was clean and it was burned together with a biblical parent of uncleanness). R. Jose, however, holds, that contact with unclean beverages can cause uncleanness even according to biblical law; hence the first named flesh was made a child of uncleanness *biblically*, in which case it cannot be equal to clean heave-offering in the sixth hour, at which time according to biblical law leaven may still be eaten. This we learn from the following Boraitha:

"If there were doubtful beverages (*i.e.*, it was not known whether they had come in contact with an unclean person or not) they are themselves unclean, but cannot impart uncleanness to others. Such is the dictum of R. Meir. So also said R. Elazar. R. Jehudah, however, said, that they can even impart uncleanness to others. R. Jose and R. Simeon both said: They can impart uncleanness to eatables only but not to vessels."

The master said: "R. Jehudah, however, said, that they can even impart uncleanness to others." Shall we assume, that R. Jehudah. holds the capability of doubtful beverages to impart uncleanness to vessels also in accordance with biblical law? Have we not learned in a Mishna [Tract Kelim xxv. 1]. "all vessels having an inner side and an outer side, *f.i.*, bolsters, pillows, sacks and bags, if becoming unclean on the inner side, the outer side is also unclean; but if the outer side only had become unclean, the inner side remains clean. Said R. Jehudah:, Such is the case if they had become unclean through contact

with beverages, but if through contact with reptiles, it makes no difference which side had become unclean: both sides are unclean?" If we would say then, that uncleanness through contact with beverages is based on biblical law, why is there a distinction made (the same should be the case as with reptiles)?

Said R. Jehudah in the name of Samuel: "R. Jehudah (of the Mishna) retracted this statement."

The schoolmen propounded a question: "Did R. Jehudah retract his statement concerning vessels only but as for eatables he holds as R. Jose and R. Simeon, or did his retraction also apply to eatables and he is of the same opinion as R. Meir?" Said R. Na'hman bar Itz'hak: "Come and hear: The flesh of a cow, which had drunk the waters wherein were contained the ashes of the (sacrificial) red heifer and was slaughtered immediately afterwards, is unclean. R. Jehudah, however, said, that the flesh is not unclean, as the water was annihilated in the entrails of the cow." If, then, R. Jehudah's retraction only referred to vessels, but as for eatables he holds with R. Jose and R. Simeon, why does he say that the flesh is not unclean? Granting that the water was not quite effective in the entrails of the cow, the uncleanness caused thereby is not severe but it certainly constitutes a mild uncleanness? R. Jehudah really means to state that the flesh was not severely unclean but was mildly so. R. Ashi, however, said, that the water was actually annihilated and R. Jehudah holds such to be the case not because of his retraction, but because the water mentioned is foul and can. not be considered a beverage.

Footnotes

3:1 There is a difference of eight letters in the Hebrew original, and by a strange coincidence there is the same difference in English.

3:2 These last two paragraphs are in the old edition, contained on page 4 *a*.

13:1 The beer of the Babylonians was made from dates.

14:1 This last sentence is according to others not contained in the earlier editions, and hence the questions on this point are decided according to Rabh.

18:1 The term used in the Mishna, which we render with "festival," is Moëd, and Rashi explains this to mean "at the appointed time"; but we render it according to the explanation of Tosphath, which is more reasonable.

18:2 The reason that search must be made even after the festival is because the Chometz situated in the house during the festival must not at any time be used.

19:1 The GEMARA in the original old edition is on Pages 4*a* to 6*b*. The proper place for it, however, is here.

20:1 Vide Tract Sabbath, Vol. I., page 136.

23:1 *Vide* Tract Sabbath, page 17.

26:1 For definition of the terms "parent of uncleanness," "child of uncleanness," etc., see Tract Shekalim, Ch. VIII., Mishna *d*.

Next: Chapter II: Time for Eating Unleavened Bread and Material Used for Making Unleavened Bread and Bitter Herbs

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CHAPTER II.

REGULATIONS CONCERNING THE TIME FOR EATING LEAVENED BREAD ON THE EVE OF PASSOVER--MATERIAL USED FOR MAKING UNLEAVENED BREAD AND BITTER HERBS.

MISHNA: As long as it is lawful to eat leavened bread, one may also give it to his domestic or wild animals or to fowls; he may also sell it to strangers or derive benefit therefrom in any other way; when that time is passed, however, it is unlawful to derive any benefit from it whatever, not even use it for fuel or to light therewith an oven or a stove. R. Jehudah said: "The removal of leaven cannot be effected except by burning"; but the sages maintain, "It can also be effected by crumbling it into small particles, casting it to the wind or throwing it into the sea."

GEMARA: According to the Mishna, at the time when one is no longer allowed to eat leaven himself, he must not give it to others either? With which Tana does the Mishna accord?

Said Rabba bar Ula: The Mishna above is according to the opinion of Rabbon Gamaliel, who says, that ordinary eatables may be eaten only during the first four hours, but heave-offerings may be eaten even during the fifth hour and should be explained thus: As long as the priest may still eat heave-offering an ordinary Israelite may give ordinary leaven to others, etc.

Why does the Mishna enumerate domestic and wild animals and fowls? Would it not suffice to simply mention animals? Were domestic animals only mentioned, it might be assumed that they may be given that leaven, because should they leave any it will be seen and can be guarded against, whereas wild beasts generally hide what they leave uneaten and may thus cause the man to be guilty of having leaven in his house on the Passover. On the other hand, were wild animals only mentioned, it might be presumed that wild animals only are mentioned, because whatever they leave uneaten they hide and a man will not be able to see it, while if domestic animals should leave any of it, it will be within sight of all and will not be heeded by him,

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when he will become guilty of having leaven in his house within the view of all. Hence the enumeration is made. Why are fowls specially mentioned? Because animals are specified, fowls are also added.

"*He may also sell it to strangers*." Is this not self-evident? (If it may be eaten, why should it not be allowed to sell it to a Gentile?) We are told this in order not to presume that the Halakha prevails according to the Tana of the following Boraitha: "Beth Shammai say: Leaven should not be sold to a Gentile unless it is positively known that he will consume it before the Passover. Beth Hillel, however, hold, that if it may be eaten, it may also be sold. R. Jehudah ben Bathyra said: 'Kuthach (a dish made with leavened bread) and any other dishes made with Kuthach must

not be sold thirty days before Passover.'"

"*Or derive benefit therefrom*," etc. Is this not self-evident? This refers to corn which had been parched during the first four hours and which may under those circumstances he used even after the appointed time, and the Mishna is in accordance with the opinion of Rabha, who decreed that.

"*When that time is passed, however*," etc. Is this not self-evident? The Mishna means to state that even from the sixth hour up to the time when the Passover sets in, no, benefit may be derived from any remaining leaven notwithstanding the fact that eating during the time mentioned is rendered unlawful by rabbinical enactments only; for R. Giddel said in the name of R. Hyya bar Joseph, quoting R. Johanan: "If a man betroth a woman on the eve of Passover after the sixth hour even with hard wheat, 1 it is not considered a valid betrothal."

"*Nor even use it for fuel*." Is this not self-evident? The Mishna means to state, that even according to R. Jehudah, who holds that removal of leaven cannot be effected except by burning, we might assume, that while it is being burned it may also be used as fuel, hence we are told that this must not be done.

Hezkyah said: Whence do we know that no benefit may be derived from leaven on Passover? Because it is written [Exod. xiii. 3]: "And no leavened bread shall be eaten," and "it shall not be eaten," signifies, that no benefit may be derived from it in the same manner as it must not be eaten. How would it be,

however, if the verse read "ye shall not eat"? Then leaven could be used for everything else except eating? Hence we must say, that Hezkyah differs with R. Abbahu, who said: Wherever it is written "one shall not eat," or "it shall not be eaten," or "ye must not eat," it implies, that no use whatever must be made of such thing unless it be explicitly stated that while it should not be eaten, one may otherwise derive benefit therefrom, as it is written [Deut. xiv. 21]: "Ye shall not eat anything that dieth of itself, unto the stranger, etc., canst thou give it or thou mayest sell it," etc.

Concerning reptiles it is written [Levit. xi. 41]: "And every creeping thing that creepeth upon the earth is an abomination, it shall not be eaten," and still we have learned in a Mishna, that those who catch beasts, fowls or fish and among them there should be any unclean species, they may nevertheless sell them to Gentiles? In that case it is different, for previously it is written [ibid. 23]: "Shall be an abomination unto you," which signifies, that it is theirs and they ma y derive what benefit they can thereof. Then why does the Mishna state, "*if there should be* among them any unclean species, he may sell them," why should it not be allowed to sell such to commence with? Be cause it is written "shall be *unto you* an abomination" and that implies, that they should always be an abomination, but if incidentally they should come within the possession of a man, he may use them at will.

According to Hezkyah, who says, that wherever it is written "it shall not be eaten" it is unlawful to derive any benefit from the object mentioned, why should it not be written instead "ye shall not eat," in which event the additional passage "shall be an abomination unto you" will become

unnecessary? Hezkyah could reply: That is just the ground upon which I base my assertion (for, because it is written "ye shall not eat," the additional passage quoted legalizes the use of such objects; hence wherever it is written "it shall not be eaten" without such additional passage, it is obvious that no benefit may be derived from the object mentioned).

As for leavened bread again, concerning which it is written "it shall not be eaten," and we have learned in a Boraitha that R. Jose the Galilean nevertheless states, that it is surprising why it is ordained that no benefit may be derived from it for all the seven days of Passover? R. Jose may explain his statement by citing the other passage, which reads "shall not be

seen *with thee*," and the words "with thee" signify, that the leaven belongs to the man and he may make use of it. What explanation will the sages bring forth? The sages hold that the words "with thee" merely suggest, that *thy* leaven must not be seen, which belongs to *thee*, but that of others and consecrated leaven may be seen. Whence does R. Jose infer this suggestion? The words "with thee" are written twice. What do the sages infer from the fact that "with thee" is written twice? They hold, that one refers to a Gentile under the control of the man, and the other to one, that is not under his control. Whence does R. Jose adduce this? Because "with thee" is written a third time in another passage [Deut. xvi. 4]. How will the sages explain the third citation of "with thee"? They claim that separate passages were necessary in order to make a distinction between leaven and leavened bread. Were leaven alone mentioned it might be presumed that leavened bread was allowed or *vice versa*, hence both passages were necessary.

Shall we assume that the difference of opinion between Hezkyah and R. Abbahu is similar to the difference of opinion between the following Tanaim: It is written [Levit. vii. 24]: "And the fat of a beast that dieth of itself, and the fat of that which is torn by beasts may be used for any manner of work, but ye shall in no wise eat of it." Why is it written "for any manner of work"? Because it might be presumed that the fat should be used for work pertaining to divine service, but not to ordinary work, hence we are told that it may be used "for any manner of work." So said R. Jose the Galilean. R. Aqiba, however, said: "On the contrary! it might be presumed that the fat could be used for ordinary work but for that pertaining to divine service it should not, hence we are told that this may also be done."

Shall we assume that R. Jose the Galilean and R. Aqiba differ concerning the intent of the passage "Ye shall not eat," R. Jose holding, that wherever the passage occurs, it signifies also, that no use may be made of the object in question and the verse quoted above [Lev. vii. 24] is required in order to permit of the use of such an object as must not be eaten, while R. Aqiba holds, that such things as are forbidden to be eaten may nevertheless be made use of and the verse quoted merely signifies the relation to cleanness or uncleanness?

Nay; it may be that both R. Jose and R. Aqiba agree, that wherever it is written "Ye shall not eat" the object in question

must not even be used, and their point of variance concerns another matter. One holds, that the permission to make use of carrion does not include the fat of the carrion; hence an additional

passage is necessary in order to make the use of the fat lawful; while the latter holds, that fat is included in the permission to use the carrion; hence the additional passage concerns only the relative cleanness or uncleanness.

Let us see! Notwithstanding the citation of so many Passages, and the allegation of diverse opinions existing between Hezkyah and R. Abbahu, we do not find a single instance of where the two sages actually differ concerning the main issue involved, viz.: the permissibility or non-permissibility of using such objects as are forbidden to be eaten. Upon what point then *do* they disagree? They differ concerning leaven on Passover, according to the sages, who prohibit its use, and concerning the ox, which must be stoned for goring a man, 1 and the flesh of which all agree must not be used. According to Hezkyah, it must not be used on account of the passage which states "his flesh shall not be eaten," while R. Abbahu declares, that no passage to that effect is necessary, as by being stoned the ox becomes carrion and must for that very reason not be used.

Even in this case there is no palpable difference of opinion between the two sages? According to both the flesh of the ox must not be used? They differ concerning an ordinary (non-consecrated) animal which had been slaughtered in the court of the Temple, where only consecrated animals could be slaughtered; if an ordinary animal, however, had been slaughtered at that place (it is considered as if it were torn by beasts in the field and its flesh must not be used), Hezkyah says, that it must not be used, because the passage [Exod. xxii. 30] reads: "Flesh that is torn of beasts in the field shall ye not eat; to the dogs shall ye cast *it*." The word "*it*," in his opinion, refers only to the flesh that is torn of beasts, which, though it must not be eaten, may be used as food for dogs, etc., but not to flesh of an animal slaughtered in the court of the Temple. According to R. Abbahu, however, such flesh may, from a biblical point of view, be used.

One of the scholars sate before Samuel bar Na'hmeni and said in the name of R. Jehoshua ben Levi: Whence do we know

that all things, which are according to biblical law forbidden to be eaten are also forbidden to be made use of; *f.i.*, leaven on Passover and the ox which is stoned? Because it is written [Levit. Vi. 23]: "And every sin-offering whereof any of the blood is brought into the tabernacle, etc., shall not be eaten; it shall be burned in fire." Why is the additional injunction to burn it with fire made? The words "it shall be burned in fire" are superfluous in the passage [Lev. vi. 23] quoted, because further on [ibid. x. 16] it is written "Behold it was burnt," hence they should be applied to all other prohibitions of the Law; and if they cannot be applied in connection with such prohibitions as distinctly forbid the eating of the objects mentioned, they should be applied to the use of such objects (*i.e.*, whatever is prohibited to be eaten should also not be used).

Accordingly it might be said, that all such things which must not be used should be burnt? Therefore it is written [ibid. vi. 21]: "And every sin-offering whereof any of the blood is brought into the tabernacle of the congregation to make atonement therewith in the holy place, shall not be eaten; it shall be burnt in fire." Whence we infer, that only such things as are brought into the holy place must be burnt but not other things the use of which is prohibited by the Scriptures should be burned.

Replied Samuel bar Na'hmeni: "From the verse just quoted R. Simeon decrees in another Boraitha that all things of sanctity which become desecrated, *f.i.*, flesh of sacrifices which had been left over, must be burned."

The scholar rejoined: Thy teacher R. Jonathan inferred the above from the following passage [Exod. xxix. 34]: "And if aught of the flesh of the consecration sacrifice, or of the bread, remain unto the morning, then shalt thou burn the remainder with fire; it shall not be eaten." Is not the sentence it shall not be eaten "superfluous? It is already written, thou shalt burn the remainder with fire." Hence it should be applied to the other prohibitions of the Law; and wherever it is already written "it shall not be eaten," apply it in the sense that it shall not be used. And lest it might be assumed, that whatever must not be used should be burned, therefore the verse distinctly states "then shalt thou burn the *remainder* with fire." Thus the remainder only should be burned but not other things which are not to be used.

R. Abbahu said in the name of R. Johanan: "All the prohibitions

of the Law 'it shall not be eaten' or 'it shall not be used' cannot, if disregarded, make one amenable to the punishment of stripes unless the acts were committed in the manner incidental to their customary execution." What would he intend to exclude thereby? Said R. Schimi bar Ashi: He means to exclude the act of putting fat from the stoned ox On a wound; notwithstanding the fact that, contrary to the law, benefit was derived from the fat, the act does not make a man amenable to the punishment of stripes, and so much the more would he exclude the act of eating raw fat (tallow).

It was also taught by R. A'ha bar Ivia in the name of R. Assi quoting R. Johanan: "If a man put fat from the stoned ox on his wounds, he is not culpable; because all the prohibited acts of the Law cannot if committed make a man amenable to the punishment of stripes unless they were executed in the customary manner." Said R. Zera: "We have learned a similar ordinance in another Boraitha (in Tract Cholin)."

Abayi said: All agree, that concerning Kilaim in a vineyard, there is an exception and even if not carried out in the customary manner, the man becomes amenable to the punishment of stripes, because in that instance eating is not mentioned at all (as it is written [Deut. xxii. 9]: "Thou shalt not sow thy vineyard with divers seeds: that the ripe fruit of thy seed which thou hast sown and the fruit of thy vineyard shall not be defiled"), but the injunction is against defilement in any manner whatever.

R. Jacob said in the name of R. Johanan: "It is permitted for a man to cure himself by means of any of the prohibited things mentioned in the Scriptures with the exception of wood taken from the groves used for idolatry." How is this to be understood? If there is danger attending the illness, then even the wood from that grove may be used, and if the illness be not serious then no prohibited things whatever must be used? A dangerous illness is referred to, and nevertheless the wood from a grove used for idolatry must not be used as we have learned in a Boraitha: "R. Eliezer said: 'It is written [Deut. vi. 5], "Thou shalt love the Lord, etc., *with all thy soul*," therefore, even if thou shouldst be forced to give up thy soul thou shalt not do any things pertaining to idolatry.'"

When Rabhin came from Palestine, he said in the name of R. Johanan: "With all things it is permitted to cure one's self except by means of idolatry, adultery, and shedding of blood." Not by means of idolatry as we have learned above, and "not by

means of adultery and shedding of blood" as we have learned in the following Boraitha: Rabha said: "It is written [Deut. xxii. 26]: For as when a man riseth against his neighbor, and striketh him dead, even so is this matter," hence the ravishment of a betrothed damsel is considered equal to murder, and as concerning murder it is said, that if a man be told to slay another or else he would be slain, he must rather permit himself to be slain than slay another, so it is also concerning a betrothed damsel, who should rather permit herself to be slain, than to be ravished by a man."

Whence do we know, that a man must rather permit himself to be slain than to slay another? This is a matter of common sense, as it happened with Rabha: A man came to Rabha and told him, that the governor of the city had ordered that he (the man) slay a certain man or himself suffer death, and Rabha said to him: "Rather than slay another, thou must permit thyself to be slain; for how dost thou know that thy blood is better than his, perchance his blood is better than thine?"

It was taught: The benefit of a thing which is forced upon a man against his will, may, according to Abayi, be enjoyed (*f.i.*, if a man was carried into a house where fragrant incense was offered up to idols he may enjoy the odor of such incense). Rabha, however, maintains, that he must struggle against it. If he can avoid enjoying it and has no intention to derive any benefit therefrom, it is a case similar to the point of variance between R. Simeon and R. Jehudah concerning an act committed unintentionally. R. Simeon holds, that an act committed unintentionally does not make one culpable, while R. Jehudah holds, that it does. If one cannot avoid enjoying it, but had no original intention to derive any benefit therefrom, all agree, that he must not struggle against it. They differ, however, concerning a case where a man cannot avoid enjoying it, but also had the intention to derive pleasure therefrom. According to R. Simeon he is culpable, and according to R. Jehudah as long as the enjoyment cannot be avoided, the man is *not* culpable. Hence Abayi holds in accordance with the opinion of R. Jehudah. Rabha can also declare, that he is in accord with R. Jehudah; for R. Jehudah holds an intentional act and an unintentional act to be on a par only when a more vigorous ordinance is concerned (f. i., in the case of an unintentional act committed on the Sabbath), but was it ever known, that R. Jehudah should be of the same opinion where a more lenient ordinance is concerned?

Said Abayi: When do I adduce my statement? From the following Boraitha: "It was told of R. Johanan ben Zakai, that he sate in the shade of the Temple and lectured all day. (The Temple being sanctified must not be put to (profane) use, and R. Johanan, on account of the heat of the sun, sought the shade caused by the height of the Temple)." In this case it was a matter of necessity for R. Johanan to use an open space because he could not find a room sufficiently large to accommodate his audience, and when seeking the shade of the Temple he did so with the intention to avail himself of the benefit of the shade, whence I may infer, that such an act, even though it be intentional, is permissible.

Rejoined Rabha: "With the Temple it is different. It was constructed for use on the inside and not on account of its shade."

"*Or to light therewith an oven or a stove,*" etc. The rabbis taught: An oven which was fed with the peel of fruit from newly planted trees [1] or with the straw of Kilaim (divers seeds) of a vineyard (if the oven was new and by such burning had become fit), must be demolished. If the oven, however, was an old one, it must only be allowed to cool off and may subsequently be used. If bread was baked with the heat caused by such fuel, Rabbi said, "the bread must not be used," while the sages permit its use. If food was cooked over the coals of such fuel, all agree, that such food may be consumed.

Have we not learned in another Boraitha, that be the oven old or new it need only be cooled off and subsequently it may be used? This presents no difficulty. The latter Boraitha is in accord with the sages, who hold, that bread baked in an oven fed with such fuel may be used, thus discountenancing the assumption that the heat of such fuel invalidates the bread; consequently they hold that the oven must simply be allowed to cool off but need not be demolished.

Said R. Joseph in the name of R. Jehudah quoting Samuel: "An oven fed with the peel of fruit from newly planted trees or with straw of Kilaim of a vineyard (if the oven was new) must be demolished. If it was an old one, however, it must only be allowed to cool off and may subsequently be used. If bread was baked with the heat produced by such fuel, Rabbi said 'the bread maybe used,' while the sages prohibit it." Did

we not learn to the contrary, however, viz.: that Rabbi prohibited the use of such bread while the sages permitted it?

Samuel generally adheres to the rule, that wherever Rabbi differs with an individual, the Halakha prevails according to Rabbi, but when differing with the sages, the Halakha prevails according to the sages. In this instance, however, Samuel holds, that the Halakha prevails according to Rabbi in the former Boraitha; but knowing that the people hold to the rule that wherever Rabbi and the sages differ, the Halakha prevails according to the sages, he purposely inverts the Boraitha and makes it appear as if the sages originally prohibited the use of the bread in question.

The Boraitha also stated: "If food was cooked over the coals of such fuel, all agree, that such food may be consumed." R. Jehudah in the name of Samuel and R. Hyya bar Ashi in the name of R. Johanan differed concerning this ordinance. One holds, that the ordinance is effective only if the coals were already extinguished; but if still live, the food must not be used. The other, however, holds, that even if the coals were still live, it is also permitted to use the food.

According to the former opinion, Rabbi *correctly* states, that bread baked in the heat caused by such fuel is not to be used, because he holds, that the use of the fuel is indirectly transmitted to the bread or, in the case of the live coals, to the food; but according to the one who permits the use of food cooked over the *live* coals of such fuel, how can Rabbi prohibit the use of the bread baked in the heat produced by such fuel? Said R. Papa: Rabbi may refer to bread which is baked

directly by the flame of such fuel. In that case, do the sages *also* permit the use of such bread? Under what circumstances then does the fuel render the use of things unlawful? When a man sits opposite the flame, said R. Ami bar Hama, caused by such fuel in order to warm himself and thus derives direct benefit from such fuel it is not permitted (but bread, being baked only when the flame is about to die out and heat remains, may be used).

"*R. Jehudah said: 'The removal of leaven cannot be effected except by burning.'*" We have learned in a Boraitha: R. Jehudah said: "Leaven must be removed only by burning and so should the law be; for if the remainder of the flesh of the sacrifices, concerning which there are no commandments directing that it must neither be seen nor found, must be burnt, so much the more should leaven be burned"; but the sages replied:

[paragraph continues] "Every regulation which is intended to be made more rigorous but by force of circumstances eventually becomes even more lenient, cannot be considered a proper regulation; for in this case thou sayest 'leaven must be removed only by burning,' but how would it be if a man could not find any wood at the time? Should he do nothing towards removing it? But the law distinctly orders the leaven to be removed, as it is written [Exod xii. 15]: 'But on the first day ye shall have put away leaven out of your houses,' which signifies, that it must be removed by any means whatever."

R. Jehudah, however, advanced another argument: "The remainder of the flesh of the sacrifices must not be eaten and leaven must not be eaten; hence as the former must be burnt so must the latter"; but the sages again replied: "Take the instance of carrion. Carrion must not be eaten, yet it need not be burned," and R. Jehudah replied: "There is a difference between the two. The remainder of the flesh must not be eaten nor may any benefit be derived therefrom, which same law applies also to leaven." "Then take the instance of the stoned ox," said the sages again, "that must not be eaten nor even used and still it need not be burnt." "There is still a difference," rejoined R. Jehudah, "the remainder of the flesh must neither be eaten nor used, and if it is the culprit becomes amenable to the punishment of Kareth (being 'cut off'); the same law applies to leaven; hence the latter should also be burned." "Then what about the fat of the stoned ox," queried the sages, "that must not be eaten, and if this be done, it constitutes a transgression punishable with Kareth; still it need not be burned?" R Jehudah then advanced another argument: "Concerning the remainder the law prescribes, that it shall not be left until morning, and concerning leaven it is also prescribed, that none should remain, then why should not burning apply to both?" and the sages replied: "Take the instance, then, of a trespass-offering brought for a doubtful transgression or a sin-offering fowl brought for a doubtful case, which we ourselves declare should be burned, still thou maintainest, that it must not be put on the altar but should be buried." This rejoinder silenced R. Jehudah. Commenting upon this R. Joseph said: "This can be compared to the general saying, that a wood-carver carved a spoon and with that spoon he carried mustard to his mouth and burned his tongue. Abayi, however, said: "It can be compared to a man making stocks, which are subsequently shackled to his own

feet," and Rabha said: "It can be compared to a man making arrows, one of which finally reaches his own heart."

"*But the sages maintain, it can also be effected by crumbling,*" etc. The schoolmen propounded a question: "What does the Mishna mean, that it should be crumbled in order to be thrown forth to the wind but that it may be thrown into the sea whole or that it must also be crumbled before being thrown into the sea? We have learned in a Boraitha: If the man is in a desert, he should crumble the leaven and throw it forth to the wind; but if he is at sea, he may throw it into the water whole."

MISHNA: Leaven belonging to a Gentile, which during the Passover was in possession of that Gentile, may be used after that festival, but not when it belonged to an Israelite, for it is written [Exod. xiii. 7]: "Neither shall there be seen with thee any leaven in all thy boundaries."

GEMARA: According to whose opinion is this Mishna? Not according to R. Jehudah, nor R. Simeon nor R. Jose the Galilean? What is their opinion? We have learned in the following Boraitha: One who ate Chometz (leavened bread) before or after the appointed time (which is the time between noon and sunset on the eve of Passover) transgressed a negative commandment. If he ate it during the appointed time he transgressed a negative commandment and is amenable to Kareth (being cut off). From the time when it is prohibited to eat Chometz and further, no benefit whatever maybe derived therefrom. Such is the dictum of R. Jehudah. R. Simeon, however, said: "Before and after the appointed time, eating Chometz does not constitute a transgression," but at the appointed time he agrees with R. Jehudah, and R. Jose the Galilean said: "It is surprising to know, that no benefit maybe derived from Chometz during all of the seven days." Whence do we know that a man who eats Chometz during the six hours preceding the time when Passover sets in, transgresses a negative commandment? Because it is written [Deut. xv. 31: "Thou shalt not eat *therewith* any leavened bread." Such is the dictum of R. Jehudah. Said R. Simeon to him: "How canst thou say such a thing? It is also written [ibid.]: 'Seven days shalt thou eat *therewith* unleavened bread' (if thou shouldst say that 'therewith' refers to the Passover-sacrifice, did then the Passover-sacrifice continue for seven days?). Thus 'therewith' refers to the moment when the eating of unleavened bread be

comes compulsory; but before such time the negative commandment, 'Thou shalt not eat leaven,' is not effective."

Upon what grounds, then, does R. Jehudah base his dictum, that even during the six hours preceding the arrival of Passover, Chometz must not be eaten? Because there are three passages referring to leaven [Exod. xii. 20, ibid. xiii. 3, and Deut. xvi. 3], one of which has reference to the six hours preceding the appointed time, the second to the appointed time, and the third for the Chometz which was not removed before the Passover, and was left over until after Passover.

How does R. Simeon account for the three passages? He applies *one* to the appointed time, another [Exod. xii. 20] to such things as had become leavened by contact with leaven, and the third refers to the time when the Israelites went out of Egypt, when the eating of Chometz was prohibited for one day only, as stated by R. Jose the Galilean, who bases his assertion to that effect on the passages [Exod. xiii. 3 and 4]: "No leavened bread shall be eaten. This day go ye out, in the month of Abib." Thus only on this day no leavened bread should be eaten.

Now, then, according to whose opinion is the Mishna? Shall we assume that it is according to R.

Jehudah? Does he not hold all Chometz to be unlawful after Passover, if in existence during the Passover, regardless of whether it belong to a Gentile or an Israelite? According to R. Simeon, even that belonging to an Israelite may be used after the Passover? And according to R. Jose the Galilean, even during Passover benefit may be derived from Chometz belonging to an Israelite also?

R. A'ha bar Jacob replied: "The Mishna is according to the opinion of R. Jehudah, and the question how, according to R. Jehudah, leaven belonging to a Gentile may be used after the Passover can be answered by stating, that R. Jehudah infers a comparison by analogy from the fact that leaven, being mentioned in connection with eating and also with seeing, in the same manner as only leaven belonging to the person concerned must not be seen, but that belonging to others may be seen, so it is also with respect to eating. A man must not eat his own leaven, but that of another he may eat. Accordingly our Mishna should have taught that eating is also permissible; but in consequence of the necessity of mentioning that no benefit may be derived from bread belonging to an Israelite, the same term is used in connection with bread belonging to a Gentile. In the

same manner, our Mishna should have taught, that bread belonging to a Gentile maybe eaten even during the appointed time; but from the necessity of mentioning that bread belonging to an Israelite must not be used *after* the appointed time, the same is also taught concerning a Gentile."

Rabha, however, said: "The Mishna may also be in accordance with R. Simeon, and the question, Why should no benefit be derived from bread belonging to an Israelite after the Passover? may be answered by stating, that it was merely a punishment for the transgression of the two commandments, 'it shall not be seen' and 'it shall not be found,' which the Israelite committed by leaving the leaven over from before the Passover."

The Mishna concludes by quoting the passage: "Neither shall there be seen," etc. Thus Rabha's statement is borne out; but according to R. A'ha bar Jacob, it should conclude with the passage: "No leaven shall be eaten." Thou assumest that the conclusion of the Mishna refers to the prohibition of using bread belonging to the Israelite! This is not so! It refers to the first clause of the Mishna; namely, the bread belonging to a Gentile may be used, because it is written, "Neither shall there be seen with *thee*," but that belonging to a Gentile may not only be seen but also used, as stated above.

Both of these sages (Rabha and R. A'ha bar Jacob) hold to their individual theories, as it was taught: "If a man had eaten leaven belonging to Gentiles on the Passover, according to R. Jehudah, said Rabha, he should be punished with stripes; but according to R. A'ha bar Jacob, he need not be punished in that manner." Why does Rabha decree thus? Because he holds, that R. Jehudah does not put the eating of leaven on a level with the sight thereof; but R. A'ha bar Jacob holds, that R. Jehudah does put eating on a level with the sight of leaven, hence the punishment of stripes is not to be inflicted.

Rabh said: "Chometz, whether it became mixed with its own kind (which was unleavened) or with another kind during the appointed time (the seven days) is prohibited to be used. If it became mixed at any other but the appointed time, it is prohibited to be used only if it became

mixed with its own kind; but if with a different kind it may be used."

[How is the case? Does Rabh mean to state, that the Chometz which had become mixed with the unleavened can be tasted? Why then does he permit its use at any other but the

appointed time and if mixed with a different? The Chometz can be detected by means of the taste? It might be said, however, that the Chometz was of so trifling a quantity that it could not be detected; then why, if it became mixed during the appointed time and not with its own kind, should it be prohibited?

Rabh intended that his decree serve as a precautionary measure, and prohibits even a trifling quantity of Chometz during the appointed time, which had become mixed with a kind not its own, lest it be used if it became mixed with its own kind.]

Samuel, however, said: "During the appointed time only Chometz which had become mixed with its own kind is prohibited but not such as had become mixed with another kind, while at any other but the appointed time it may be used even if mixed with its own kind." (Thus Samuel does not hold the precautionary measure of Rabh to be necessary.)

R. Johanan, however, said: "Chometz even during the appointed time and when mixed with its own kind is only then prohibited if it can be tasted (with the unleavened). In all other cases it may be used." (Because he holds with R. Simeon, who permits the use of Chometz after the appointed time in any manner.)

Said Rabha: The Halakha prevails, that Chometz during the appointed time is prohibited to be used, if mixed with its own kind or with another kind even in trifling quantities, as Rabh decreed; and at any other but the appointed time it may be used in any manner, as R. Simeon decreed. Rabha holds to his individual theory and says: When we were at the school of R. Na'hman, he told us after the Passover to go and buy leavened bread from the soldiers of the government.

Rabh said: "Earthenware pots which had been used during the year must be destroyed before Passover." For what reason? Let them be left over until after the Passover and then used for other kinds of food than formerly? This is a precautionary measure, in order to prevent the possibility of their being used for the same kinds of food as formerly.

Samuel, however, said: "They need not be destroyed, but kept until after Passover, and then they may be again used for any purpose whatever." Samuel holds to his individual theory, for he said to the vendors of earthenware pots for the Passover: Lessen the prices of your pots for the Passover, otherwise I

shall decree that the, law prevails according to R. Simeon (and the old pots will be valid after the Passover)." Why did he not proclaim this in reality? He is of the opinion of R. Simeon? The

place where he was at the time was within the jurisdiction of Rabh; hence he could only threaten them.

An oven was greased with fat immediately after it had been heated. Rabha bar Ahilayi prohibited the eating of the bread baked therein even with salt, lest it be eaten with Kutach (a dish made with milk), and prohibited the use of the oven for all time to come. An objection was made: We have learned: "Dough must not be kneaded with milk, and if this was done the bread therefrom must not be eaten, in order to avoid the possibility of committing a transgression (*i.e.*, eating such bread with meat). Likewise, an oven must not be greased with the fat of a ram's tail, and if this was done, the bread must not be eaten and the oven must again be heated and other bread baked."

Thus we see, that the oven may be reheated and other bread baked therein; why does Rabha bar Ahilayi prohibit the use of the oven permanently? Rabha bar Ahilayi can make no answer to this question.

Said Rabhina to R. Ashi: "Now, if Rabha bar Ahilayi's statement was effectually refuted by the Boraitha, why should Rabh decree, that the pots which were used during the year must be destroyed before the Passover, [1] why could they not be burnt out and then used again?" and R. Ashi answered: "With an oven it is different. That is heated on the inside; hence as soon as it is heated again no traces of the fat will be left and it becomes the same as it was before; while pots are always exposed to the fire from the outside, and for that reason their condition will remain unchanged; and if thou shouldst ask why the inside of the pots should not be exposed to the fire also, the answer is, that there is fear of their bursting should this be done. Hence I say, that a pot which could withstand a

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fire must not be used on Passover, unless it was filled with live coals and burnt out."

Rabhina asked of R. Ashi: "What should be done on Passover with knives?" and he answered: "I buy new knives for the Passover." And Rabhina rejoined: "In Master's case it is proper; for thou art rich and canst afford it; but what should a poor man do?" "I do not mean exactly new knives," replied,, R. Ashi, "but renovated knives," *i.e.*, knives the blades of which are covered with clay and placed in the fire, and after being thoroughly burnt are taken out, and together with the hilts are soaked in boiling water, when they become equal to new ones. The Halakha prevails, however, that the whole knife need only be soaked in boiling water which had not been removed from the fire.

Said R. Huna the son of R. Jehoshua: "A wooden ladle should be placed in boiling water which had not been removed from the fire," for he holds, that in the same manner that the ladle absorbs the leaven contained in the pots, in the same manner can it be purified.

Ameimar was asked: What is the law concerning glazed pottery? If the color of the coating was green, there is no question but that they must not be used; but we refer to such as were glazed in black or in white. If the coating was cracked, there is also no question but that they must not be used; but we refer to such as were perfectly smooth. Ameimar replied: I noticed that the fat cooked in such pots oozes out on the other side, and hence it is obvious that they absorb it; and

the Scriptures attested that an earthen pot never yields forth what it has once absorbed." 1

Said Rabba bar Abba in the name of R. Hyya bar Ashi, quoting Samuel: "All vessels in which leavened food had been kept while cold may be used for unleavened food, with the exception of such vessels as contained actual leaven, for that is very pungent. Said R. Ashi: "Such vessels in which leavened bread and vinegar were generally mixed must also not be used, because that is equal to leaven." And Rabha said: "The large basins which are frequently used in the city of Mehuzza for kneading dough must also not be used, because they are considered the same as kneading-troughs." Is this not self-evident? Because basins are open on all sides we might assume that the

air surrounding it destroys the effects of the leaven, hence we are told that such is not the case.

MISHNA: If a Gentile lent money to an Israelite, taking as security leavened articles, such articles may be used after the Passover; but if an Israelite had lent money to a Gentile on leavened articles they must not be made use of after the Passover.

GEMARA: It was taught: If one man owed another money and pledged his property as security for the debt, and the debt becoming due had not been paid, Abayi said the articles pledged must be considered the property of the creditor from the time the loan was made, while Rabha said, "Only from the moment the debt became due." If the debtor sold or consecrated his property before the debt fell due, all agree that the creditor can recover such property, or (if consecrated) redeem it (for a trifle), in order that it may not be said that consecrated articles can be recovered gratuitously. Wherein they do differ is, if the creditor had, prior to the time the debt fell due, transferred his eventual right to the property to another or consecrated it. Abayi holds, that such transfer is valid in the event of consecration; it holds good because, as we see that the debt was not paid when it became due, the pledged articles are considered the property of the lender from the time the money was loaned. Rabha, however, maintains, that on account of his having no right to the property until it was forfeited, the transfer or consecration, whichever the case may be, is of no account, because if the debtor would have had the money he would have redeemed his pledge, consequently the pledge belongs to him until the time has expired.

An objection was made based upon our Mishna: "If a Gentile lent money to an Israelite upon leavened articles, they may be used after the Passover." Thus, according to Abayi, who holds that the right of possession is vested in the creditor from the moment the loan is made, it would be correct, because during the Passover the leavened articles were the property of the Gentile; but according to Rabha, who holds that the right of possession is not the creditor's until the property is forfeited, the leavened articles were the property of the Israelite during the Passover, how can they then be lawfully used? In this case the Mishna refers to an instance where the pledged articles were deposited with the creditor, as we have learned in a Boraitha: "If a Gentile pledged a large loaf (used as a wedding-cake) with

an Israelite on Passover, the Israelite does not transgress the law prohibiting leaven to be seen or found with him. If the Gentile, however, told him that thenceforth that loaf should be his, the

Israelite by accepting it would commit such a transgression"; hence Rabha's opinion is borne out.

The rabbis taught: If there was a store of wine and bread belonging to an Israelite, and Gentile and Israelitish laborers worked there, the Chometz found therein after the Passover must not be used, much less eaten. If it was a store belonging to a Gentile and Israelitish laborers worked there, the Chometz found there after the Passover may be eaten, and so much the more be used.

MISHNA: Leaven that had been covered by fallen ruins must be considered as annihilated and removed. Rabbon Simeon ben Gamaliel says: "Only then, if it is covered to such an extent that a dog cannot drag it out."

GEMARA: Said R. Hisda: Nevertheless, the man should in mind renounce the leaven.

The Mishna states: "If it be buried to such an extent that a dog cannot drag it out." We have learned in a Boraitha: How much is that? Three spans."

R. A'ha the son of R. Joseph asked R. Ashi: "Samuel said: There is no better way of hiding money than by burying it in the ground. Should it be buried to a depth of three spans also?" and he answered: "In the case of the leaven it is essential that the dog should not scent it, hence three spans are necessary; but when burying money it is only required to hide it from view and a lesser depth is sufficient." What should the depth be, however? Said Raphram bar Papa of Sikhra: "One span."

MISHNA: If any person should eat leavened heave-offering during the Passover by mistake, he must pay the principal and a fifth part [1] in addition; but if he ate it wilfully, he is exempt from the obligation of making restitution and also from payment of its value as wood (fuel) in case of the heave-offering being unclean.

GEMARA: The schoolmen propounded a question: "In what manner must the person make restitution, according to the quantity consumed or according to the value thereof? We do not ask concerning a case where the value of the article consumed

had been greater and had subsequently depreciated; *f.i.*, if it had originally been worth four zuz and later only one. In that case he must certainly refund its original value, for there is no difference between his case and that of a robber, concerning whom we have learned in a Mishna, that when a robber makes restitution for a pillaged article he must do so in accordance with the value of such article at the time it was purloined. We ask, however, concerning an instance of where the article consumed had enhanced in value; *f.i.*, it had been worth one zuz and subsequently rose to the value of four zuz. Should he restore the article according to the quantity or according to the value, *i.e.*, if he had only eaten the worth of one zuz, should he restore the equivalent of that amount?"

Said R. Joseph: "Come and hear: 'If he ate dried figs and repaid with dates, may he be blessed'; thus we have learned in a Boraitha. If he paid in accordance with the quantity, *i.e.*, he ate a measure of dried figs which is only of the value of one zuz and made restitution with a like

measure of dates which was worth four zuz, it is obvious why he should be blessed; but if he restored only the value of the dried figs with dates of equal value, why the blessing? "

Rejoined Abayi: "He may have only refunded the value of the figs by an equal value in dates, but nevertheless he may be blessed on account of making restitution for a less salable article with one that is more easily marketable."

An objection was made based upon our Mishna: "Our Mishna states, that 'he must pay,' etc. If he must restore the leavened heave-offering in equal measure it would be correct, but if be must refund the pecuniary equivalent therefor, how can this be done? Leavened articles have no pecuniary value on Passover?" Our Mishna is in accordance with R. Jose the Galilean, who holds that benefit may be derived from leavened articles on the Passover. How then will the latter clause of the Mishna correspond? Why should he be exempt from repayment if he had eaten the leavened heave-offering wilfully? According to R. Jose, benefit may be derived therefrom on Passover? He holds with R. Nehunia ben Hakana of the following Boraitha: R. Nehunia ben Hakana says that the Day of Atonement is put on a par with the Sabbath in the event of a violation of the law concerning either of the two days. (*I.e.*, if a man violate the Sabbath and by such violation cause damage to another, he need make no restitution for the damage inflicted

from the fact that he has committed an offence punishable with death by stoning; should he have done likewise on the Day of Atonement, the fact that he incurs the punishment of Kareth (being cut off) also exempts him from making restitution. [1] Thus in this case, where by eating leavened heave-offering the man incurs the punishment of Kareth, he need not make restitution for the article consumed.)

This case presents a difference of opinion between Tanaim, as we have learned: If a person had eaten leavened heave-offering on Passover, he is exempt from the obligation of making restitution and also from payment of its value as wood (fuel). Such is the decree of R. Aqiba. R. Johanan ben Nouri, however, holds him liable. Said R. Aqiba to the latter: "What benefit does a man derive from eating leaven on Passover?" and he answered: "What benefit can a man derive from eating unclean heave-offering at any time of the year, and still he is obliged to refund its value?" and R. Aqiba rejoined: "While a man must not eat unclean heave-offering he may otherwise make use thereof, as fuel; how canst thou compare this to leaven on Passover, which must not be used in any manner? The only comparison which can be made between the two can be made by comparing grapes or berries which had become unclean heave-offering and cannot even be used as fuel and leaven on Passover. If such grapes or berries *had* been eaten, I say, no restitution need be made." This difference of opinion refers only to such heave-offering as had been set aside and become leavened before the Passover; but if a person had set aside leavened articles as heave-offering on Passover it cannot be accounted heave-offering at all, for it does not accept of the sanctification of heave-offering.

We have learned in another Boraitha: It is written [Leviticus xxii. 14]. "And he shall make good unto the priest the holy thing." This signifies that he must make good the thing eaten with another that can become holy, but if a man eat leavened heave-offering on Passover, he need not make restitution even for its value as wood (fuel). Such is the dictum of R. Eliezer ben Jacob. R. Eliezer Hasma, however, holds him liable for restitution. Said R. Eliezer ben Jacob to the latter:

"What benefit does a man derive from eating leaven on Passover?" (and he answered in the same manner as R. Johanan answered

[paragraph continues] R. Aqiba. Whereupon R. Eliezer ben Jacob made the same rejoinder as R. Aqiba to R. Johanan ben Nouri, and the conclusion was, that) R. Eliezer Hasma said: "The priest can make use of such leavened heave-offering as food for his dog or as fuel for his stove."

Abayi said: "R. Eliezer ben Jacob, R. Aqiba, and R. Johanan ben Nouri all agree, that no benefit may be derived from leaven on Passover, and R. Aqiba differs with R. Johanan ben Nouri only as follows: R. Aqiba holds, that restitution for holy things must be made in accordance with the value of the article consumed, while R. Johanan ben Nouri maintains, that restitution must be made in accordance with the quantity thereof." Is this not self-evident? We might assume, that their point of variance does not concern the value or the quantity of the article consumed, but whether any benefit may be derived from leaven on the Passover or not; hence we are told by Abayi that such is not the case. Whence does Abayi adduce that such is not the case? Because otherwise R. Johanan ben Nouri would have answered R. Aqiba as R. Eliezer Hasma answered R. Eliezer ben Jacob.

The master said: "If leaven was set aside as heave-offering on Passover, all agree that it cannot be accounted heave-offering." Whence do we adduce this? Said R. Na'hman bar Itz'hak. "From the passage [Deut. xviii. 4]: 'And the first shearing of thy sheep shalt thou give *him*.'" Thus we see that it is written "give *him*," but not for fuel.

R. Huna the son of R. Jehoshua objected: "We have learned, that heave-offering must not be set aside from unclean (grain) to serve for clean (grain), but if this was done unintentionally, the heave-offering is valid." Thus the heave-offering is nevertheless unclean and must not be eaten; still the priest may use it for fuel (and it is nevertheless valid?). This presents no difficulty: In this latter instance the heave-offering at some time could have been eaten by the priest (when it was still clean), while in the case of leaven on Passover the priest never had an opportunity to use it for himself, but it could at any time only have been used as fuel. How should this be understood? For instance, if the article whereof the heave-offering was to be set aside had become leavened while still growing.

How is it, however, if the article had become leavened after it had been reaped? Can it be accounted heave-offering? R. Na'hman bar Itz'hak answered: "Yea; 'This is the interpretation

of the angels and this is the resolve of the Most High [Daniel iv. 21], and it is also decided in the colleges as I have said."

Subsequently, when R. Huna the son of R. Jehoshua came from Palestine, he gave as a reason why leaven set aside as heave-offering on Passover is not accounted heave-offering the following: "It is written [Deut. xviii. 4]: 'The first fruit of thy corn,' etc., which means that the first of fruit should be given to the priest and the remainder should be used by the donor; but when the remainder cannot be used, as was the case with leaven on Passover, the first cannot be

given as heave-offering to the priest."

MISHNA: A person acquits himself of the duty (of eating unleavened bread) on Passover with the following articles: With cakes made of wheat, barley, spelt, rye, and oats; also with Demai (grain of which it is doubtful whether the legal dues had been separated), with first tithes of which the heave-offering had been taken, with the second tithes, and with consecrated things which have been redeemed. Priests (acquit themselves of the duty) with the first of the dough, with heave-offering, but not with (grain) which is still mixed (untithed), nor with the first tithes of which heave-offering has not yet been taken, nor with unredeemed second tithe and consecrated things not redeemed Neither with cakes of thanksgiving-offering nor the thin cakes of the Nazarite's offering, if they had prepared them for their own use; but if prepared for public sale, they may acquit themselves of the duty (of eating unleavened bread on Passover) therewith.

GEMARA: We have leaned in a Boraitha: Spelt is considered grain, and rye and oats are considered cereals.

With the articles enumerated in the Mishna a person acquits himself of the duty, but not with rice or millet? Whence do we know this? R. Simeon ben Lakish and also the disciples of R. Ishmael said; and likewise the disciples of R. Eliezer ben Jacob taught: "It is written [Deut. xvi. 3]: 'Thou shalt not eat therewith any leavened bread. Seven days shalt thou eat therewith unleavened bread,' which signifies, that only such things should be used for unleavened bread which can become leavened; but rice and millet can never become leavened, only putrid." Our Mishna is not in accordance with the opinion of R. Johanan ben Nouri, who said, that rice and millet are also grain, that they may become leavened, and that one *may* acquit himself of his duty therewith.

Rabba bar bar Hana said in the name of Resh Lakish: "Dough which was kneaded with wine, oil, or honey, and becomes leavened, does not make the owner amenable to Kareth, if he had eaten it."

R. Papa and R. Huna the son of R. Jehoshua sate before R. Idi bar Abhin, and the latter was slumbering. Said R. Huna the son of R. Jehoshua to R. Papa: "What reason did Resh Lakish have for his dictum?" and he answered: "Because the above passage [Deut. xvi. 3] implies, that only such things as can become leavened may be used for unleavened bread on Passover he holds that the dough in question being rich, and poor dough only being permissible for unleavened bread, it is not an offence punishable by Kareth to eat such (rich) dough." In the meantime R. Idi awoke and said to them: "Youngsters! Thus was the reason of Resh Lakish: 'The dough was made with juice of fruit and not with water, and juice of fruit cannot make dough leavened.'"

"*Also with Demai*." (The discussions concerning this citation of the Mishna occur many times in the Talmud and have been left in the Tract Berachoth (Benedictions), where they will appear once for all. See Tract Erubin, page 71.)

"*Priests--with the first of the dough*." Is this not self-evident? We might assume that the unleavened bread for Passover must be valid for all alike, and as the first of the dough, etc.,

cannot be eaten except by priests only, they should not be used to discharge the obligation (mentioned); hence we are told by the Mishna that they may, because the verse reads Matzoth (the plural of Matzoh), implying that all kinds of Matzoth may be used.

The rabbis taught: "We might assume that a man may acquit himself of the duty of eating unleavened bread with grain of which all the legal dues had not yet been separated, *f.i.*, grain of which heave-offering had been separated but not the heave-offering of the first tithes or of which first tithes only had been taken, but not second tithes or even such of which only the tithes for the poor had not been taken; therefore the passage quoted states, that 'thou shalt not eat therewith any leavened bread: seven days shalt thou eat therewith unleavened bread'; and this implies, that only such things should be eaten as would make one culpable if eaten in a leavened state only; but not such as would make a man culpable for other reasons."

What has become of the prohibition regarding the eating of leaven in that event? The rabbis are in accord with R. Simeon, who holds that a twofold prohibition cannot apply to one and the same thing, as we have learned in a Boraitha: "R. Simeon said: One who eats carrion on the Day of Atonement is free of the sin of violating that day."

The rabbis taught: Shall we assume that a man may acquit himself of the duty of eating unleavened bread with the second tithes, which he had brought to Jerusalem? Therefore it is written [Deut. xvi. 31, "The bread of affliction," which signifies, that only bread which can be eaten during affliction may be used; but second tithes, which must be eaten with joy (according to the passage [Deut. xxvi. 14], "I have not eaten thereof in mourning"), cannot be used. So said R. Jose the Galilean. R. Aqiba, however, said: "Because it is written Matzoth (the plural of Matzoh) and it is repeated several times, even second tithes are included." Why, then, is it called bread of affliction? This implies, that the dough should not be kneaded with wine, oil, or honey. [What could R. Aqiba, however, say to the claim of R. Jose, that second tithes cannot be eaten as "bread of affliction"? R. Aqiba can say: Is it then written "bread of affliction"? it is written "poor bread." [1]]

Does R. Aqiba, then, hold that one cannot acquit himself of the duty with dough kneaded with wine, oil, or honey? Have we not learned in a Boraitha: It is not lawful to knead dough in Passover with wine, oil, or honey, and if this was done, Rabbon Gamaliel decrees that it should be immediately burned; the sages, however, say, that it may be eaten. R. Aqiba, commenting thereon, said: "At one time I took my Sabbath-rest in the house of R. Eliezer, and R. Jehoshua and I kneaded them dough with wine, oil, and honey, and they did not object?" [Although (according to Rabbon Gamaliel) this must not be done, if it *was* done, cold water may be poured on on the festival, in order to keep it from becoming leavened, and the sages said: "Such dough as may be kneaded may also be kept from becoming leavened by pouring water thereon on a festival; but such as must not be kneaded must also not be kept from becoming leavened in the manner described. All agree, however, that on Passover dough must not be kneaded with tepid water?"]

[paragraph continues] This presents no difficulty. On the first day of the Passover one cannot acquit

himself of the duty of eating unleavened bread with dough kneaded with wine, oil, or honey; but on the remaining days such dough may be used, as was told by R Jehoshua to his children: "On the first day (of Passover) ye shall not knead the dough for the unleavened bread with milk; but on the remaining days ye may do so." (It is allowed to knead dough with milk, according to the opinion of Rabhina, providing it is made so that it can be distinguished from the other.)

The rabbis taught: Shall we assume that a man may acquit himself of the duty of eating unleavened bread with firstfruits [1] (brought as a meat-offering on Pentecost)? To that end it is written [Exod. xii. 20]: "In all your habitations shall ye eat unleavened bread," which signifies, that only such things as may be eaten in all your habitations may be used for the acquittal of the duty of eating unleavened bread, but such things as can be eaten only in Jerusalem, as is the case with the firstfruits, cannot serve for that purpose. Such is the dictum of R. Jose the Galilean. R. Aqiba, however, says, that the reason firstfruits cannot serve the purpose is because as the unleavened bread is put on a par with the bitter herbs which cannot be taken from the firstfruits (as no firstfruits were taken from herbs); hence the unleavened bread also cannot be taken from the firstfruits. Lest it might be said, on the other hand, that as the bitter herbs are prepared from articles of which kind no firstfruits can be brought, leavened bread which would serve for the acquittal of the obligation should be made only from material of a kind of which no firstfruits can be brought; but wheat and barley, of which firstfruits *are* brought, should be deemed unfit for such purpose; hence the passage repeats Matzoth (plural for Matzoh), which includes all kinds. If that term includes all kinds, why not also firstfruits? R. Aqiba retracted his statement concerning the comparison between bitter herbs and unleavened bread, as we have learned in the following Boraitha: Shall we assume that a man may acquit himself of the duty of eating unleavened bread with firstfruits? To that end it is written [Exod. xii. 20]: "In all your habitations shall ye eat unleavened bread," which signifies, that only such things as may be eaten in all your habitations may be used for the acquittal of the

duty of eating unleavened bread, but such things as are eaten only in Jerusalem, as is the case with firstfruits, cannot serve the purpose. Accordingly, it might also be presumed that unleavened bread should not be made with second tithes, which should also be eaten in Jerusalem: therefore Matzoth is repeated several times in the passage and made to include even second tithes. If this be so, why are firstfruits excluded, while second tithes are included? We include second tithes because they may be eaten under certain circumstances in any place, as R. Elazar stated: "When second tithe becomes unclean even in Jerusalem, it may be redeemed, and with the ransom-money things may be bought which can be eaten in any place whatever, and firstfruits which cannot be eaten outside of Jerusalem under any circumstances are excluded." Who holds, then, that unleavened bread may be made with second tithes? R. Aqiba, and he excludes firstfruits by reason of the passage quoted [Exod. xii. 20], and not through comparison with bitter herbs. Thus we see that he retracts his former statement, as mentioned above.

The rabbis taught: "It is written 'bread of affliction'; hence pancakes (made of flour, boiling water, and oil) and large loaves cannot serve for the acquittal of the duty of eating unleavened bread." Shall we assume, then, that only coarse (barley) bread can serve that purpose? Therefore Matzoth is repeated in order to add that any kind may be used, even such as were as fine as those used in the time of King Solomon. For what purpose, then, is it written "bread of affliction"? In order to exclude the two kinds mentioned; and whence do we know that large loaves (called in Hebrew "Ashishah") are considered articles of value which cannot be called

"bread of affliction"? From the passage [II Samuel vi. 19]: "And he dealt out to all the people, to the whole multitude of Israel, to both men and women, to every person one cake of bread, and an Ashpar (good piece of flesh), and one Ashishah." Said R. Hanan bar Abba, by an Ashpar is meant the sixth part of a young bullock and by an Ashishah is meant a loaf which was made of flour to the quantity of a sixth of an Ephah (a half-saah), and this is at variance with the opinion of Samuel, who maintains that an Ashishah is a flagon of wine; as it is written [Hosea iii. i]: "Who turn themselves after other gods, and love Ashishai (flagons of wine)."

The rabbis taught: "Thick loaves must not be baked on the

[paragraph continues] Passover. Such is the decree of the school of Shammai, but the school of Hillel permit this to be done." How thick should they be? Said R. Huna: "One span, because the thickness of the showbreads was one span." R. Joseph opposed this: How can Beth Hillel permit the loaves on Passover to be one span thick, for what have the showbreads in common with Passover loaves? In the case of showbreads there were priests who were thoroughly competent for their work; but the Passover loaves are prepared by ordinary people. The showbreads were prepared with the utmost skill, and how can they be compared to ordinary loaves? For the former dry wood only was used, while for the latter even damp wood is used? The former were baked in a hot oven, while the latter are often baked in a cooler oven; for the baking of showbreads an iron stove was used, while for the Passover loaves an earthen oven was considered sufficient. Said R. Jeremiah bar Abba: I especially asked our Rabbi (meaning Rabh), and according to another version R. Jeremiah bar Abba said in the name of Rabh, who asked his (Rabh's) master (who was R. Jehudah the Holy) concerning this question, and he answered: By "thick loaves" is meant in reality a large quantity of dough, and the reason that this should not be baked on Passover is in order to prevent the preparation of bread on the festival for the coming week-days. Why does the Tana teach this with especial reference to Passover? It applies to every other festival? Because he was at the time teaching concerning the Passover. In another Boraitha we were distinctly taught, instead of "on the Passover," on a festival.

The rabbis taught: "One may acquit himself of the duty of eating unleavened bread on the Passover with coarse or fine bread, and even with cakes adorned with figures, although the sages said that it is not allowed to bake cakes adorned with figures on Passover."

Said R. Jehudah: "This question was propounded by Baithus ben Zunin to the sages: 'Why is it not allowed to prepare figured cakes on Passover?' and they answered: 'Because the woman in preparing them tarries over her work, and in the meantime the dough becomes leavened.' Rejoined Baithus: 'Could she not impress the figures on the cakes with a press and thus facilitate the work?' and the sages replied: 'In that event it would be said, that all figured cakes are prohibited, with the exception of those made by Baithus.'"

Said R. Elazar bar Zadock: "I once went with my father to

the house of Rabbon Gamaliel, and he was served with figured cakes on Passover. Afterwards I asked my father whether it was not a fact that the sages had prohibited the use of figured cakes

on Passover, and he replied: 'My son, only such as are made by ordinary people are prohibited, but not such as are prepared by bakers.'"

R. Jose said: "If such cakes are made, they should be made as thin as wafers, but not as thick as loaves, because in the latter event they might become leavened."

R. Assi said: "Dough of second tithe, according to R. Meir (who holds second tithe to be consecrated) is exempt from the obligation of first dough (due the priests); but according to the sages it is not. Unleavened bread baked from such dough cannot, according to R. Meir, serve for the acquittal of the obligation of eating unleavened bread on the Passover, while according to the sages it may. According to R. Meir the citron, which must be used on the first day of the Feast of Tabernacles, [1] must not be bought with the proceeds of second tithes, while according to the sages it may."

"*Neither with cakes of thanksgiving-offering nor the thin cakes of the Nazarite's offering,*" etc. Whence do we adduce this? Said Rabba: "From the passage [Exod. xii. 17]: 'And ye shall observe the unleavened bread,' which signifies, that only dough which is observed for unleavened bread may be used, but not such as is observed for any other purpose, as is the case with that of the thanksgiving-offering and the Nazarite's offering.

R. Joseph, however, said: "This may be inferred from this passage: 'Seven days shall ye eat unleavened bread,' which signifies, that only such bread should be eaten as can be used for the entire seven days, but the thanksgiving and Nazarite offering can only be eaten on one day and night."

There are two Boraithas, one of which bears out the dictum of Rabba, while the other bears out that of R. Joseph.

Why are passages needed upon which to base the decree of the Mishna? Is it not sufficient that the cakes of both offerings mentioned are made of rich dough (*i.e.*, with oil)? Said Samuel bar Itz'hak: The quantity of oil mixed with the dough is so insignificant that it is not counted; for a quarter of a lug of oil is used for a great many cakes. Then let it be said that the reason

why those cakes cannot be used is because they cannot be eaten anywhere except in Jerusalem? Said Resh Lakish: "From the Mishna itself, we can infer that these two offerings were eaten not alone in Jerusalem, but also in Nob and in Gib'an."

We have learned in a Boraitha: R. Ilayi said: I asked R. Elazar whether the two kinds of cakes mentioned could serve for the acquittal of the duty on Passover, and he answered that he had not heard whether they could or not. So I went out and asked R. Jehoshua, and he answered: "It was decided, long ago, that such as were made for personal use could not, but those prepared for public sale could be used." When I came back to R. Elazar and told him what R. Jehoshua had said, he replied: "Is this (the result of) a covenant? Was it so decreed to Moses on Sinai, that no reason should be given for the enactment?"

What is truly the reason for this ordinance? Said Rabba: "An article prepared for public sale is of a necessity made conditional; for the intention is, if the article is not sold, the maker will use it for himself."

MISHNA: The duty of eating bitter herbs on the Passover may be acquitted with the following herbs: with lettuce, wild endive and garden endive, 1 with Harhabinah, 2 with bitter coriander, 3 and bitter herbs (horseradish), either fresh or in a dried state, but not if pickled, boiled, or cooked in any way; they may also be combined to the size of an olive, and the obligation is discharged if the stalks of them only had been used; also with Demai (when it is doubtful if they had been tithed), or such as are of the first tithe of which the heave-offering had been taken, or of the second tithe, or of redeemed consecrated things.

GEMARA: The disciples of R. Samuel taught: "The duty of eating bitter herbs may be acquitted with the following herbs: with lettuce, wild endive and garden endive, with Harhabinah and bitter coriander, with oleander 4 and Harginin and Hardafni 5

[paragraph continues] (kinds of herbs having a bitter taste)." R. Jehudah said: "Also with lettuce of Julin and of Galin."

Likewise said R. Ilayi: "I heard from R. Eliezer that (Akarbanin) hart's tongue (*scolopendrium*) may be used, and I inquired among all his disciples, seeking one to corroborate his statement, but could not find one; and when I came to R. Eliezer ben Jacob, be admitted that R. Eliezer had made that statement."

R. Jehudah said: "All herbs which when cut emit white juice may serve for the acquittal of the duty of eating bitter herbs on Passover," and R. Johanan ben Berokah, that such as when cut should become a shade paler. Anonymous teachers, however, say that all bitter herbs emit white juice, and become a shade paler when cut. Said R. Johanan: "From these teachings we can infer, that all the bitter herbs enumerated so far are juicy and when cut become a shade paler." Said R. Huna: "The Halakha prevails according to the decree of the anonymous teachers."

Rabhina noticed that R. Aha the son of Rabha always endeavored to have a certain kind of bitter herbs (horseradish) on Passover. Said he to R. Aha: "It is thy opinion that this kind of herbs is to be desired because it is more bitter; but have we not learned in the Mishna, and also from the disciples of R. Samuel, that lettuce stands first, and R. Oshiya also said that lettuce was more preferable. Even Rabha said that lettuce is called Hassa (in Arabic), which signifies, 'God has mercy on us,' and R. Samuel ben Nahmeni said in the name of R. Jonathan: 'Why are the Egyptians compared to bitter herbs? Because, as the bitter herbs are first soft and then hard, so were also the Egyptians: at first they treated the Israelites with kindness and afterwards with harshness?'" Answered R. Aha the son of Rabha: "I shall not do so any more."

R. Rehumi said to Abayi: "Whence do we know that bitter *herbs* must be used? The passage says 'Maror' (bitterness)? Can this not refer to the gall of a Khuphia (a certain kind of fish)?" and he replied: "We adduce this from the Matzoth. As Matzoth should be made of the fruit of the earth, so should also the bitterness be derived from the fruit of the earth." "Cannot this also refer to oleander (which is poisonous)?" queried R. Rehumi, and Abayi replied: "Fruit of the earth is

required, and not fruit of trees." "Cannot this also refer to Harzapha? 1"

[paragraph continues] Answered Abayi: "It must be equal to Matzoth in that it may be bought with the proceeds of second tithes, and Harzapha cannot be bought therewith, as it is not an edible article."

Said Rabba bar R. Hanin to Abayi: "As it is written 'Maror' (bitterness), (one kind), why should the bitterest of all kind of herbs be used? and Abayi replied: "In one place it is also written 'Merarim' [Numb. ix. ii], which signifies more than one." "Perhaps it means but two kinds?" Said Abayi: "As Matzoth maybe of several different kinds, so the bitter herbs should be of several different kinds."

"*Either fresh or in a dried state*," etc. Said R. Hisda: "This refers only to stalks of the herbs, but if leaves of the herbs are used they may only be fresh but not dried." If the latter clause of the Mishna, however, refers to stalks, then should it not be assumed that the first clause refers to the leaves? Nay; the Mishna merely explains that the stalks only may be used, fresh or dried.

The rabbis taught: If the leaves are withered the duty of eating cannot be discharged therewith; but upon the authority of R. Eliezer ben Zadock it was said, that even herbs with withered leaves may be used.

MISHNA: It is prohibited to soak bran on the Passover to feed fowls therewith; but it is permitted to pour boiling water on bran. A woman must not soak the bran which she takes with her to the bath, but must use it in a dry state for the purpose of rubbing her body therewith. A person must not masticate grains of wheat to put it (as a poultice) on his wound, because they will become leavened.

GEMARA: The rabbis taught: The following things can never become leavened: "Baked, cooked, and scalded articles." Cooked articles do not become leavened; but can they not become leavened while being cooked? Said R. Papa: "By cooked articles is meant, articles which had previously been baked and then cooked."

We have learned in a Boraitha: "If water drip on flour even all day long, the flour cannot become leavened." Said R. Papa: "This is the case only if the water drip drop by drop."

The disciples of R. Shila said: "Vathka (a dish made of salt, meal, and oil) may be used on Passover." Have we not learned that Vathka must not be used? This presents no difficulty. Such as was made with water and salt must not be used, but Vathka made with oil and salt is permitted.

Mar Zutra said: "The bottom of a cooking-pot must not be strewn with dry flour, lest it be not thoroughly cooked and become leavened." R. Joseph said: "A man should not pour boiling water on two grains of wheat together, lest one become attached to the other and the water will

not reach every particle of the grain, in which case it may become leavened."

The rabbis taught: "It is not allowed to soak barley on Passover, but if it was soaked it is not to be used, only if the barley fall asunder, whereas if it remained whole it may be used." Said R. Jose: "Even if it be observed that they are about to fall asunder, it is permitted to pour vinegar on them, which will prevent their becoming leavened." Said Samuel: The Halakha does not prevail according to R. Jose."

R. Hisda said in the name of Mar Uqba: "The Boraitha which states that if the barley fell asunder it must not be used means to say, that even if they had not yet fallen asunder, but would when taken out, they must also not be used," and Samuel said: "Nay; it distinctly means to say, only if they had already fallen asunder," and so Samuel acted on one occasion in the village of Bar Hashu.

Rabba said: "A man who wishes to guard his soul (*i.e.*, a very pious man) should not soak grain on Passover." Why only a man who wishes to guard his soul? Does not the Boraitha prohibit this to all alike? Rabba means to say, that one who wishes to be pious should not even soak wheat, which is less liable to become leavened than barley. Said R. Na'hman: "One who would obey the dictates of Abba (Rabba) will be compelled to eat mouldy bread; for at R. Huna's house wheat was soaked, and also at the house of Rabha bar Abin," and Rabha said: It is a duty to soak wheat, for it is written, "Ye should observe the unleavened bread," and if it be not soaked, what would there be observed? Shall we say, the kneading should be observed; did not R. Huna say, that even with unleavened dough of a Gentile the obligation of eating Matzoth may be discharged, providing a piece of unleavened bread of the size of an olive is eaten afterwards? Thus we see that the piece of unleavened bread must be eaten afterwards and not first, because the Gentile's dough was not originally intended to serve for Matzoth. If, therefore, the baking alone should be observed, the dough could be baked for the express purpose of using it as Matzoth; the same applies to kneading the dough; hence the observing of the unleavened bread must take place

before the dough is kneaded, *i.e.*, from the time the wheat is soaked.

Whence do we know that the unleavened bread must be observed before being kneaded? Did not R. Huna say that the dough of a Gentile may be used, and a piece of unleavened bread must be eaten afterwards only because the dough was not originally intended to serve as Matzoth, but if the dough was made by the Gentile especially for that purpose, would it not be sufficient to discharge the obligation of eating Matzoth therewith?

Notwithstanding the fact that Rabha's assertion was thus refuted, he did not retract; for he said to the sheave-binders in the field: "When ye bind the sheaves, bear in mind that they are intended for the preparation of Matzoth"; whence we see that he holds that the unleavened bread must be observed from beginning to end.

The mother of Mar, the son of Rabhina, would buy her wheat for the Passover directly from the field.

It happened that a ship with a cargo of wheat was sunk in the river of Hishta. So Rabha advised that the (recovered) wheat should be sold in small lots to Israelites, in order that they could consume it before the Passover set in.

The rabbis taught: A cooking-pot must not be strewn with flour on Passover, and one who would do this should first strew the flour and then pour vinegar thereon, while according to others, the vinegar may be poured on first. Who is meant by the others? Said R. Hisda: "R. Jehudah, who holds (in Tract Sabbath), that on Sabbath spices may be put in all vessels or cooking utensils, except in such as contain vinegar, because vinegar facilitates cooking." Ula, however, said that this must not be done under any circumstances, for concerning a Nazarite it is said: "Go away! go away! Do not draw nigh unto the boundaries of the vineyard (meaning: One should avoid even such things as might appear as prohibited, lest the prohibition itself be disregarded)."

R. Papa permitted the bakers in the house of the Exilarch to strew a pot with dry flour, and Rabha would even strew his own Pot', with dry flour.

MISHNA: It is unlawful to put flour in Harosoth (sauce) 1

or in mustard, but if this be done, it should be immediately eaten. R. Meir, however, prohibits it. The Passover sacrifice must not be boiled in any liquid or in juice of fruit; but it is permitted to moisten it (after it has been roasted), or to dip it (in a liquid when eaten). Water used by a baker (to cool his hands while kneading the dough for Matzoth) must immediately be thrown away, because it becomes leaven.

GEMARA: R. Kahana said: They differ only concerning mustard; but as for Harosoth (sauce), all agree that (if flour had been put into it) it must be burned. We have also learned to this effect in a Boraitha, viz.: "Flour must not be put into Harosoth, and if this be done the same must be immediately burned; and if it be put in mustard, R. Meir holds that it must be immediately burned, while the sages bold that it should be immediately eaten." Said R. Huna the son of R. Jehudah in the name of R. Na'hman, quoting Samuel: "The Halakha prevails according to the opinion of the sages."

Said R. Na'hman bar Itz'hak to him: "Concerning what does master hold, that the Halakha prevails according to the opinion of the sages, Harosoth or only mustard?" and he answered: "What is the difference?" Said R. Na'hman bar Itz'hak: "What about the statement of R. Kahana (just quoted)?" and he answered: "I have not heard his statement nor does it concern me."

"*The Passover sacrifice must not be boiled*." The rabbis taught: It is written [Exod. xii. 9]: "Ye shall not eat of it raw (rare), nor in any wise sodden with water." Hence we see that it must not be boiled in *water*; but whence do we know that it must not be boiled in any other liquid? Say, that it is an *a fortiori* conclusion, for, whereas it must not be boiled in water, which does not interfere with its taste, it should not so much the more be boiled in any other liquid which might affect its taste.

Rabbi, however, said: "We infer this from the fact that it is written, 'nor in *any wise* sodden with

water,' which signifies, that it must not be boiled in any liquid." Wherein do Rabbi and the rabbis differ? In a case of where the sacrifice is cooked in a pot without water. According to the rabbis it may be cooked in that manner, because no water is used nor is its taste affected, while Rabbi holds that it must not be cooked in any wise."

What definition do the rabbis attribute to the passage "in

any wise"? They explain according to the following Boraitha: "If a person boiled (the Passover sacrifice) and then roasted it, or first roasted and then boiled it, he is culpable." In the former case it is correct to hold the man culpable; but in the latter, if he had already roasted, what difference does it make if it was subsequently boiled? This is not allowed, because it is written, "nor in *any wise* sodden with water."

The rabbis taught: Shall we assume, that a man would be culpable if he had boiled the sacrifice even after it had been thoroughly roasted? Therefore it is written: "Ye shall not eat of it raw (rare), nor in any wise sodden with water." If it was rare and then sodden in water it makes a man culpable; but if it was thoroughly roasted, it does not. What is meant by thoroughly roasted? Said R. Ashi: "If it was roasted brown."

The rabbis taught: We might assume, that if a man ate a raw piece of the Passover sacrifice of the size of an olive, he is culpable; therefore it is written: "raw, nor in any wise sodden with water;" but if not sodden with water, it does not make a man culpable. Shall we assume, then, that it may be eaten raw to commence with? To that end it is written [ibid., ibid.]: "but roasted by the fire." What is meant by raw (rare) P Said Rabh: "That is what the Persians call 'Abarnim' (rare)."

R. Hisda said: "If a thing is cooked on the Sabbath in the hot waters of Tiberias it does not constitute a culpable act; but it is a culpable act to cook the Passover-sacrifice therein." What is meant by the word "culpable" in this connection? Said R. Hyya bar R. Nathan: R. Hisda plainly said: Not culpable (for stripes) but guilty of transgressing the ordinance concerning "roasted by the fire."

Abayi said: "If a man eats the Passover-sacrifice raw (rare) he is amenable to a double punishment by stripes, the same as if he eats it cooked, and if he eats it cooked and raw he is amenable to a triple punishment by stripes, because he transgresses two distinct commandments, viz.: 'Ye shall not eat it raw' and 'but roasted by the fire.'" Rabha, however, said: "For the violation of a negative commandment, which is derived from a positive regulation, no stripes should be inflicted." [1]

The rabbis taught: If a man had eaten part of the sacrifice of the size of an olive, raw, while it was yet day on the eve of Passover, be is not culpable, but if it had already become dark, he is guilty. If he had eaten a part of the sacrifice of the size of an olive, roasted, while it was yet day, he did not exclude himself from the company with whom he had combined for the sacrifice. If he had eaten the same, however, when it had become dark, he did exclude himself from the

others.

The rabbis taught: "If he had eaten a roasted piece of the sacrifice while it was yet day on the eve of Passover, and a piece the size of an olive, raw, when it was already become dusk, he is culpable for both acts; because the roasted is held to be equal to the raw (*i.e.*, as he may eat the roasted only at night, he must not eat it during the day)." It is right, the act of eating a raw piece of the sacrifice is a culpable one, for the reason that it is expressly written: "Ye shall not eat it raw"; but as for the roasted sacrifice, it is written: "Ye shall eat it only at night," and from this it may be inferred that it should not be eaten during the day; hence it is a negative commandment derived from a positive, and it is known that the violation of such a commandment is only equal to the violation of a positive commandment? Said R. Hisda: "This is in accordance with the opinion of R. Jehudah, who maintains that even for the violation of such a commandment, punishment may be inflicted. [1]

"*Water used by a baker must immediately be thrown away*," etc. In one Boraitha we have learned, that the water must be thrown where it will run down, but not in a pit, where it will accumulate; while in another Boraitha we have learned, that it may even be poured into a pit. This presents no difficulty. The former Boraitha treats of a case where there is a large quantity of water, while the latter treats of a small quantity which is absorbed by the soil of the pit.

R. Jehudah said: A woman should not knead dough (on Passover) except with water "Shelanu." [2] R. Mathna repeated the same words in Papunia. On the morrow, all of the inhabitants came to him with jugs in their hands and begged him for water (thinking that the word "Shelanu" meant "our" and that he had the necessary water), whereupon he answered

them: "I meant with water that had remained over night (debithu)."

Rabh preached: "A woman should not knead her dough in the glare of the sun, nor with water that had been heated by the sun. Also not with water that had been left over in a Muliar (teakettle), and should not remove her hands in general from the oven, until her bread is baked. She also requires two vessels filled with water. One to cool off her hands when kneading and the other to moisten her dough before putting it into the oven."

The schoolmen propounded a question: "What is the law if a woman did knead her dough with such water (as thou hast prohibited)?" Said Mar Zutra: "The bread will be lawful," while R. Ashi maintained that "it will *not* be fit for use." Said Mar Zutra: "Whence do I adduce my opinion? From the previous Boraitha, which teaches that, while it is not allowed to soak grain in water, if this was done, it does not make a man culpable unless the grain fell asunder," and R. Ashi replied: "Are all threads woven in the same (woof)? Where this was explicitly taught, it remains so, but where it was not taught, it is not so."

Footnotes

31:1 A betrothal is not made effective unless the man gives something to the woman and she accepts it. The gift may consist of anything whatever, if of any value.

34:1 See Exod. xxi. 28.

38:1 Concerning the law of newly planted trees, see Leviticus xix. 23.

45:1 Why was the decree of Rabh confronted with the fact that Rabba bar Ahilayi's statement had been effectually refuted by the Boraitha? Why could not the Boraitha itself have been used in order to counteract Rabh's decree? In our opinion, this was not done because Rabh was a Tana, and in many instances the Talmud allows Rabh, as a Tana, to dispute a Boraitha. In this case, however, as Rabha bar Ahilayi could find no answer for the refutation, and it was not said in his defence that he held according to Rabh, which he could have done provided Rabh had actually differed with the Boraitha, hence we must assume that Rabh is in accordance with the Boraitha. Now, then, if such is the case, the question why Rabh holds that the pots must be destroyed according to Rabh is a logical one.

46:1 Vide Leviticus vi. 21.

48:1 *Vide* Leviticus xxii. 14.

50:1 The sages do not concur in this opinion of R. Nehunia where the punishment of Kareth is incurred.

54:1 The difference between the two is as follows: The Hebrew term for affliction is Oni, written Ayni, Nun, Vav, Iod; and the term for "poor" is also Oni, but is written Ayni, Nun, Iod, and in the verse it is spelled in the latter manner.

55:1 Vide Leviticus ii. 12-14

58:1 See Leviticus xxiii. 40.

59:1 Hebrew for endive is Thamchah. According to De Pomis, it is the "*Carduus marrbuim*." Others consider it to be the green tops of horseradish.

59:2 A species of nettle. Landau's dictionary translates it *Urtica*.

59:3 According to De Pomis, this should be the *Lactuca agrestis* (wild lettuce).

59:4 Oleander is poisonous, but here a certain non-poisonous species is meant.

59:5 In explanation of this word, see Hamashbir (Warsaw, 58), opposing the Aruch in this matter.

60:1 Probably myrrh, or Greek πυρ•τρον.

63:1 Presumably a mixture of almonds, vinegar, and spice, in which food was dipped by the ancients.

65:1 Of the two statements in this paragraph, in the old edition the former is attributed to Rabha, while the latter is credited to Abayi; but the latter statement always appears in other portions of the Talmud as the opinion of Rabha; hence we have exchanged the places of the two names. In this we are borne out also by R. Joseph Karo in his commentary entitled "Keseph Mishna."

66:1 This will be explained in Tract Tamurah, Chap. I.

66:2 "Shelanu" has a twofold meaning. The more general definition is "our" or "of us," and the other, which is more seldom used, is "which has remained over night." See Appendix at the end of this Tract.

Next: Chapter III: Regulations Concerning Articles Which Cause Transgression of the Law Prohibiting Leaven to be Seen or Found in the House of an Israelite.

CHAPTER III.

REGULATIONS CONCERNING ARTICLES WHICH CAUSE TRANSGRESSION OF THE LAW PROHIBITING LEAVEN TO BE SEEN OR FOUND IN THE HOUSE OF AN ISRAELITE.

MISHNA: The law (prohibiting leaven to be seen or found in the house) on Passover is transgressed by the following articles: Babylonian Kuthach, 1 Median beer (made of wheat or barley), Edomite vinegar (made by the fermentation of barley and wine), Egyptian zeethum, 2 the dough of bran used by dyers, the dough used by cooks, 3 and the paste used by scribes (to paste the sheets of paper together). R. Eliezer says, also the ornaments used by women. This is the general rule: What is composed of any kind of grain can cause a transgression of the law of Passover, and they that become guilty of such a transgression incur the penalty attached to the transgression of a negative commandment 4 (*i.e.*, a commandment commencing with "thou shalt not"); but not the penalty of Kareth (being cut off).

GEMARA: The rabbis taught: "Three things were said in reference to Babylonian Kuthach: It depresses the heart, blinds the eyes, and makes the body lean. It depresses the heart on account of the whey contained therein, it blinds the eyes on account of the salt, and makes the body lean on account of the mould (on the bread)."

They also taught the three things which cause much waste (in Tract Erubin, page 171).

They also taught: "Three things lessen waste, make the body erect, and increase the light of the eyes, and they are: Bread made of fine meal, fat flesh of a virgin she-goat, and

three-year-old wine. As a general thing, all things that are good for the eyes affect the heart and other parts of the body, while those that are good for the heart affect the eyes, excepting moist ginger 1 and pepper-pods and the three things mentioned above."

Median beer and Edomite vinegar are prohibited, because they are both made of barley.

What is Egyptian zeethum? R. Joseph taught: "A mixture of equal parts of barley, salt, and wild saffron," but R. Papa substitutes wheat for barley. The ingredients of this mixture are soaked, then parched over the fire, and afterwards ground. (When the liquid is fermented) it is usually drunk from Passover to Pentecost. One who is constipated is relieved thereby, and diarrhœa is stopped. For a sick person or a pregnant woman it is a dangerous beverage.

"*The dough of bran used by dyers*," etc. This was explained to mean water of bran used to

remove spots on the chest. (This is according to the explanation of Rashi in Tract Chulin and of Maimonides.)

"*The dough used by cooks*," etc. This is explained to mean dough made of grain which had only been one-third mature, and when kneaded into dough and placed over a boiling pot of victuals would attract all the impurities in the pot.

"*Paste used by scribes*." This was explained to mean glue; but R. Shimi of Huzana said, that this is a cosmetic used by the daughters of rich men for the hair, and the reason it is called "paste used by scribes" is, because the rich women would leave it for the use of the daughters of the poor scribes, and he does not concur in the opinion that it means glue, because it would in that event be called "paste used by shoemakers." Said R. Oshiya: "It is glue, and the reason it is called 'paste used by scribes' is because scribes also paste their sheets together therewith."

"*R. Eliezer says also ornaments of women*." What connection have ornaments with the Passover? Read instead of ornaments, paste used by women to adorn themselves, as R. Jehudah said in the name of Rabh: The daughters of Israel who have not yet attained the age of puberty, but have all the signs thereof, are ashamed in consequence, and the poor conceal those

signs with chalk, the rich with fine meal, and daughters of princes with oil of myrrh, as is written in Esther ii. 12.

"*This is the general rule*," etc. Said R. Jehoshua: If the general rule was made that all things which are composed of any kind of grain cause a transgression of the law of Passover, what need was there of enumerating all the articles mentioned in the Mishna? This was done in order to acquaint the people with the names of those articles in order that they might not commit an error, as it happened that a Palestinian came to Babylon, and having some meat in his possession asked for something to eat with the meat. He heard his host order that he be given Kuthach, and having heard the name Kuthach he refused to accept it.

They that become guilty, etc., incur the penalty attached to the transgression of a negative commandment. Who is the Tana who holds that suitable leaven combined with other ingredients, and unfit leaven by itself, also comes under the prohibition of the negative commandment? R. Jehudah said in the name of Rabh: "That is R. Meir," and R. Na'hman said: "It is R. Eliezer," as we have learned in a Boraitha: "For the transgression of the law with leaven of suitable grain the penalty is Kareth; but if combined with other ingredients the penalty is that attached to the transgression of a negative commandment. Such is the decree of R. Eliezer; the sages, however, maintain that with leaven proper the penalty is Kareth; but if combined with other ingredients no penalty whatever is incurred." Now, if R. Eliezer holds that the penalty for using leaven combined with other ingredients is the same as that attached to the transgression of a negative commandment, so much the more would the use of leaven itself, even if it be unfit, make one incur the same penalty.

We have learned a Boraitha in accordance with R. Jehudah: It is written [Exod. xii. 20]: "Nothing that is leavened shall ye eat," which means to include Babylonian Kuthach, Median beer, Egyptian zeethum, and Edomite vinegar. Shall we assume that these articles, if used,

would make a man incur the penalty of Kareth? To that end it is written [ibid. 15]: "Whosoever eateth leavened bread, that soul shall be cut off," whence we infer, that only one who cats leavened bread made of suitable grain incurs the penalty of Kareth; but one who eats such as is combined with other ingredients only incurs the penalty attached to the transgression of a negative commandment. Now, then, who

is the Tana who holds that the use of leaven combined with other ingredients make one incur the penalty attached to the transgression of a negative commandment? R. Eliezer; but we do not learn that he classes unfit leaven in the same category as that of mixed leaven, and for the simple reason that be does not consider the use of unfit leaven a violation of the law. (Hence the Tana who also holds the use of unfit leaven to constitute a transgression of the law is R. Meir.)

Whence does R. Eliezer adduce that the use of leaven combined with the other ingredients constitutes a transgression of the law? From the passage, "Nothing that is leavened shall ye eat," and he means to say that "nothing" includes also leaven combined with the ingredients. How will he explain the "whosoever" [1] in the other passage [Exod. xii. 15]? That includes women, who must also not eat leavened bread on Passover.

Did not R. Jehudah in the name of Rabh say, that women are held to be equal to men as far as all prohibitory laws are concerned, on account of the passage [Numbers v. 6]: "If any man or woman commit any sin"? In this case a special passage prohibiting the eating of leavened bread by women is essential, for the following reason: The negative commandment prohibiting the eating of leavened bread and the positive ordaining the eating of unleavened bread [Deut. xvi. 3] being written together, we might assume that only those who are obliged to eat Matzoth must not eat Chometz; and as the women are not obliged to eat Matzoth, because the positive commandment ordaining the eating of Matzoth is dependent upon the time, [2] we might assume that women may eat Chometz; hence we are told by the passage, "Whosoever eateth leavened bread, etc., shall be cut off."

Now, if we have arrived at the conclusion that women must not eat Chometz, we may add, that they are also obliged to eat Matzoth, and this is in accordance with the opinion of R. Eliezer, who said, that women are *biblically* obliged to eat Matzoth; because the negative and positive commandments are consequent one upon the other, I say, that as they must observe

the negative commandant prohibiting the eating of Chometz, so must they also observe the positive commandment ordaining the eating of Matzoth.

Why is it adduced that the "all" (Kol) in the passage means to include women and to exclude leaven combined with other ingredients? Say, that the "all" also means to include leaven combined with other ingredients. Common sense precludes this supposition; because the passage refers to those who had eaten; hence if anything should be included, it must be that which is also capable of being eaten, but not things that are eaten, as leaven combined with other ingredients.

MISHNA: Should there be any dough in the (holes or) crevices of a kneading-trough, and there is as much as the size of an olive in any one place, it must be removed immediately; but if there be less than that quantity in any one place, it may be considered as not in existence, being so inconsiderable. Thus it is also with respect to defilement: If the owner, however, be particular about the dough, it constitutes an intervention (between the trough and possible defilement, and the trough is not rendered defiled); but if it is desired to leave the dough in the trough, it should be considered as an integral part of the trough.

GEMARA: "*If there be less than that quantity*," etc. Said R. Jehudah in the name of Samuel: "This applies to a case,: where the dough was placed in the crevice of the trough in order to strengthen the trough; but if it is not there for that purpose it must be forthwith removed." Whence we infer, that even if there was a piece of the size of an olive in the crevice of a trough for the purpose of strengthening it, it must also be removed. We have learned to this effect in a Boraitha:

Dough which was placed in the crevices of a kneading-trough for the purpose of strengthening it does not constitute an intervention to defilement nor a transgression of the law of Passover; but if it be found in places where it was not necessary, in order to make the trough firmer, it *does* constitute an intervention and *does* cause a transgression of the law. All this is said of dough which was less than the size of an olive; but if it was of that size, even if it was used to make the trough firmer, it must forthwith be removed.

Said R. Na'hman in the name of Samuel: "If there were two pieces of dough each the size of half an olive in the trough, and happened to be connected with a thread, they are considered

as a whole olive, provided when the thread is lifted both pieces are carried with it, otherwise they are not and may remain in the trough." Said Ula: "This applies to dough situated in the trough; but if the two pieces were not in a trough but in the house, and being connected by a thread would not be carried with the thread, if lifted, they must nevertheless forthwith be removed, lest they in some manner become joined and there will be leaven in the house to the size of an olive."

The rabbis taught: If bread had become mouldy and while unfit for a human being could be eaten by a dog, it is subject to defilement as long as it is of the size of an egg, and may be burned together with unclean things on Passover, even though it be itself clean (heave-offering). Upon the authority of R. Nathan it was said, however, that not being fit for a human being it cannot be subject to defilement.

The rabbis taught: If in a trough of the tanners flour had been put within the three days preceding the Passover, it should be removed; but if it had been placed prior to that time, it need not be removed. This is said of a case where no skins had been placed in the trough by the tanner; but if this had been done, even flour placed in the trough during the three days need not be removed. Said Rabha: "The Halakha prevails according to R. Nathan, and even if the flour was put in one day, yea, even one hour before Passover, it need not be removed."

"*If the owner, however, be particular about the dough*," etc. How can defilement be compared to

the laws of Passover. Concerning the latter it depends entirely upon the size, while as for the former, it depends upon whether the owner is particular about it or not? Said R. Papa: The Mishna should be explained thus: "So it is also with respect to defilement *on Passover*, if it be of the size prescribed on that festival; and 'if the owner be particular,' etc., refers to any other time of the year." How should this be understood? In this wise: If a reptile contaminated such dough on the Passover, and the dough, being of the size of an olive, is for the time being a prohibited thing; hence it serves as an intervention between the uncleanness (of the reptile) and the trough; but at any other time it depends whether the owner is particular about it or not. If he is, it proves an intervention; but if he intends to leave it in the trough, it does not.

MISHNA: Dull dough (which does not exhibit any signs of having risen) must not be used, if another dough which had been

kneaded at the same time and was of equal size and quality had already become leavened.

GEMARA: How is it if there is no other dough on hand (with which to compare the dull dough)? Said R. Abuhai in the name of Resh Lakish: "If it had lain the length of time it is required to walk from the tower of Nunia to Tiberias," which is a mile.

MISHNA: How can the first of the dough (due the priest) be separated on the Passover when it had become unclean? R. Eliezer says: "It should only be named after it had been baked." Ben Bathyra says, however, "It should be put in cold water." Said R. Jehudah to him: "This is not the leaven concerning which it is written, 'It shall not be seen nor found in thy house.' Therefore it may be separated, and left lying until evening, regardless of whether it become leavened or not."

GEMARA: It was taught: He who bakes on a festival for the coming week-days, R. Hisda says, incurs the penalty of stripes; but Rabba says, that he does not. R. Hisda says, that he incurs that penalty because he does not admit of the supposition that, had the man called guests, he could have consumed the entire quantity baked, while Rabba holds, that because this could have been done (whether it was done or not) the man is not culpable.

Said Rabba to R. Hisda: "If thou dost not admit of this supposition, how then can it be allowed to cook on a festival for the Sabbath?" and R. Hisda answered: "By means of the Erub of cooked things." [1] "May, then, a biblical prohibition be disregarded even by means of such an Erub?" queried Rabba, and R. Hisda replied: "Cooking on a festival for the Sabbath is, according to biblical law, permissible, and the sages only prohibited it as a precautionary measure, lest some people would cook on a festival for week-days. Hence an Erub of cooked things is a sign that this must not be done."

Rabba objected: "We have learned: 'An animal which is supposed to be in danger of dying must not be slaughtered on a festival, unless there will be sufficient time after the slaughtering to roast and eat a piece of the size of an olive.' Thus we see, that there must be sufficient time to roast and eat a piece of that size, even if the man have no desire to eat it. According to my opinion, from the fact that I admit of the supposition

that he could eat it, the man is allowed to slaughter the animal; but according to thy opinion, if thou dost not admit of such a supposition, how can the man be allowed to slaughter the dying animal?" R. Hisda replied: "In this case, where a pecuniary injury would have resulted, the prohibition was removed," and Rabba rejoined: "Will, then, a biblical prohibition be disregarded on account of a pecuniary injury?" "Yea," answered R. Hisda; "on account of such pecuniary injury the man would make up his mind to eat a piece of that animal of the size of an olive, and as he cannot do this unless the animal is ritually slaughtered, it is permitted to slaughter it."

Said Rami bar Hama: "The same point of difference as was quoted between R. Hisda and Rabba exists between R. Eliezer and R. Jehoshua. R. Eliezer admits of the supposition (that a certain act was done whether it was done or not); therefore he decrees, that the dough should first be baked and then named; because he holds that while the man is baking for himself he can bake for another also. R. Jehoshua does not admit of such a supposition and hence decrees, that the first of the dough should be separated before baking."

Rejoined R. Papa: "(How canst thou say of a certainty that R. Eliezer and R. Jehoshua differ concerning this supposition?) Perhaps R. Eliezer only admits of the supposition in a case of where a man, when baking each loaf of bread, may do so for himself alone (and afterwards separate a piece of a loaf as the legal first dough for all, which would not involve much labor); but as for the instance cited in the controversy between R. Hisda and Rabba, where it was an impossibility to consume the bread baked on a festival for the week-days without calling guests, and the supposition is, that guests were called, it may be that R. Eliezer in that case does not admit of such a supposition." Said R. Shesha the son of R. Idi: "Perhaps the argument may be reversed, namely: 'In the case of loaves subject to the legal first of the dough, where it is a certainty that one of the loaves must not be used by the owner nor by anybody else, R. Jehoshua does not admit of the supposition, whereas in the point of controversy between R. Hisda and Rabba, where all the loaves baked may be eaten, if not by the man himself by guests, R. Jehoshua *may* admit of the supposition (that guests were called).'"

The sages related the above to R. Jeremiah and R. Zera. R. Jeremiah accepted (the view of Rami bar Hama); but R.

[paragraph continues] Zera would not. Said R. Jeremiah to the latter: "Should the decision of a question which for such a length of time remained unanswered and was finally decided by so great a man as Rami bar Hama, not be accepted by us?" and he answered: How can I accept it? Have we not learned in a Boraitha that R. Jehoshua said to R. Eliezer: "According to thy decree permitting the baking of the dough and the subsequent naming thereof, would the man not be culpable of transgressing the law contained in the passage [Exod. xii. 16], 'No manner of work shall be done on them (the festival-days),' and R. Eliezer did not reply. Should be not have said: 'My reason is based upon "supposition"'?" Rejoined R. Jeremiah: "And according to thy opinion, does the teaching in another Boraitha, that R. Eliezer said to R. Jehoshua: Will not, according to thy decree, a man be culpable for the transgression of the law, 'It shall not be seen nor found in thy house,' and the failure of R. Jehoshua to answer, prove that he could make no reply to the query? Is it not answered in the Mishna by 'this is not the leaven referred to by that passage'? Hence the former Boraitha brings only the question, but not the answer, and the answer may be found elsewhere."

We have learned in a Boraitha: Rabbi said: "The Halakha prevails according to R. Eliezer," and R. Itz'hak said: "The Halakha prevails according to Ben Bathyra."

How much must the quantity of the dough under discussion be? Said R. Ishmael the son of R. Johanan ben Berokah: "If made of wheat it must be two Kabh, but if made of barley three Kabh." Did we not learn in another Boraitha that the same R. Ishmael said: "If made of wheat, three Kabh, and if made of barley four?" This presents no difficulty. One Boraitha treats of good grain and the other of poor grain.

Rabh said: "The measure of dough to be prepared on Passover is a Kabh as used in Lugan, and the same measure applies to a dough of which legal first must be acquitted (to the priests)."

Have we not learned in a Mishna, however, that a trifle over five quarters of meal (equal to five lugs as used in Sepphoris and to seven lugs and a trifle over as used in the desert, which in turn equalled an Omer) are subject to the first of the dough? A Kabh of Lugan contains about the same quantity.

Said R. Joseph: "Our wives bake bread in small quantities on the Passover, not over three lugs of meal at a time," and

[paragraph continues] Abayi remarked: "Thou wouldst suppose that they do this in order to observe the more rigorous interpretation of the Passover law? However, a more lenient ordinance is thereby observed, namely: They thus become exempt from the duty of acquitting the first of the dough," and R. Joseph replied: "Nay; they do this in accordance with the opinion of R. Eliezer, who said in a Mishna elsewhere, that the basket wherein the loaves are deposited combine the quantities, and they acquit themselves of the duty of the first of the dough from the combined quantity of loaves, and R. Jehudah said in the name of Samuel, that the Halakha prevails according to R. Eliezer."

MISHNA: Rabbon Gamaliel says: "Three women may knead dough on the Passover at the same time and bake it in the same oven, one after the other"; but the sages say: "Three women may occupy themselves with their dough, but in the following manner: one should knead the dough, another form it, and the third bake it." R. Aqiba said: "Not all women, nor all wood, nor all ovens are alike." This is the rule: as soon as the dough rises, let the woman plunge her hand in cold water (in order to moisten the dough).

GEMARA: The rabbis taught: The same woman who kneads should also moisten the dough, and the one next to her should then take up the kneading; while the former is baking the latter should moisten the dough, and the third woman should take up kneading. Thus the first woman will commence kneading while the last is moistening the dough, and so on in rotation. The principle thereof is, that so long as the dough is being handled it does not become leavened.

"*R. Aqiba says*," etc. We have learned in a Boraitha: "R. Aqiba said: I argued thus before Rabbon Gamaliel: 'Let our Master teach us whether skilled or inexperienced women are meant;

whether dry or damp wood is spoken of; whether a heated or a cooled stove is under consideration,' and he answered: 'We need only follow the teachings of the sages (and not concern ourselves as to details), but this bear in mind as the rule: As soon as the dough rises, let the woman moisten the dough.'"

MISHNA: Dough which commences to become leavened must be burned; but the person who had eaten it does not incur the penalty of Kareth (being cut off). Dough which becomes riven must be burned, and whosoever eats it incurs the penalty of Kareth. When is a dough considered as about to become

leavened? When small rents can be observed, standing apart in different directions like the feelers of locusts. When is a dough to be considered riven? When the rents cross each other; such is the dictum of R. Jehudah, but the sages say: Whoever eats either kind of dough incurs the penalty of Kareth. When is a dough considered about to become leavened? When (no rents are visible, but) its surface becomes pale like the face of a person whose hair stands on end (through fright).

GEMARA: The rabbis taught: What is called dough about to become leavened? If its surface becomes pale as the face of a man whose hair stands on end. What is called riven dough? If there are rents visible, standing apart like the feelers of a locust. Such is the dictum of R. Meir; the sages, however, maintain: When the rents standing apart like the feelers of a locust are visible, the dough is considered about to become leavened, and when the rents cross each other, the dough is considered riven. Whosoever eats either kind incurs the penalty of Kareth. Have we not learned in our Mishna that dough about to become leavened must be burned, but one who eats it does not incur that penalty and that such is the decree of R. Jehudah? The Mishna should be supplemented with the statement: According to R. Meir, whosoever eats either kind incurs the penalty of Kareth.

Said Rabha: "What reason has R. Meir for his decree?" According to R. Meir, there can be no rents on the surface, even if they stand apart like the feelers of locusts, that have not many rents underneath which may even cross each other.

MISHNA: If the fourteenth (of Nissan) fall on the Sabbath, all leaven must be removed *before* the Sabbath commences. Such is the dictum of R. Meir; but the sages say that it should be done at the proper time. R. Elazer [1] ben Zadok says: "The heave-offering must be removed before the Sabbath, and non-consecrated things at the proper time."

GEMARA: We have learned in a Boraitha: R. Elazer ben Zadok said: "Once my father spent the Sabbath in Yemen (Yamnia), and that Sabbath being the fourteenth (of Nissan), Zunin, the supervisor of R. Gamaliel's household, came and said: 'It is time to remove the leaven.' So I went with my father, and we removed the leaven."

MISHNA: If a man (on the 14th of Nissan) went to slaughter his Passover sacrifice, or to circumcise his son, or to eat the betrothal-meal at the house of his father-in-law, and on the road

recollects that he has left leaven in his house: if he can return home, remove it, and then go back and accomplish any of the acts mentioned, he should do so and remove the leaven; but if he cannot, he should in his mind renounce (the use of the leaven). If his object in leaving home was to aid persons to escape from armed foes, from inundation, robbers, or fire, or to rescue persons from beneath the ruins of fallen buildings, he should in his mind renounce the leaven; but if his object in leaving home was to secure his sabbatical resting-place for his private purposes (in order to obtain his right to the legal limits), he must immediately return and remove the leaven. Likewise, if a person on leaving Jerusalem remembers having in his possession consecrated flesh: if he had gone beyond (the hill) Zophim, he may burn it wherever he may be; but if he had not gone beyond it, he must return and burn it before the sanctuary, with wood of the altar. What is the quantity (of consecrated flesh or leaven) which makes it obligatory for a man to return? R. Meir says: "Either must be of the size of an egg." R. Jehudah says: "Of the size of an olive"; but the sages say: "Consecrated flesh if of the size of an olive and leaven if of the size of an egg."

GEMARA: There is a contradiction: (We have learned): "One who goes to eat the betrothal-meal at the house of his father-in-law or to secure his sabbatical resting-place for his private purposes, should, if he remembered having leaven in his house, return immediately and remove it." Said R. Hisda: "The point of difference between this teaching and the Mishna is only concerning the second meal (after the betrothal); but as for the first, all agree, that it is a religious duty and the man need not return."

We have learned in a Boraitha: "R. Jehudah said: 'I only heard concerning the actual betrothal-meal, but not concerning the meal at which the bridal gifts are bestowed.' Said R. Jose to him: 'I heard concerning both.'"

We have learned in a Boraitha: R. Simeon said: "A meal which is not served on account of some religious duty should not be enjoyed by a Talmud-chacham (scholar)." What kind of a meal is referred to as not being served on account of a religious duty? Said R. Johanan: "The betrothal-meal served

when an ordinary Israelite weds the daughter of a priest, or when a common person weds the daughter of a Talmud-chacham (scholar)"; for R. Johanan would always maintain, that such alliances do not end well. This is not so! Did not R. Johanan say elsewhere, that he who would become rich should ally himself to the descendants of Aaron, when the union of prestige and learning will make him rich? This presents no difficulty. For a scholar it is beneficial to wed a priest's daughter, but not for one of the common people.

R. Jehoshua wedded the daughter of a priest. Subsequently he became ill, and said: "Is then Aaron not contented to have his descendants receive me as a son-in-law?

R. Idi bar Abhin also wedded a priest's daughter, and they brought forth two sons, both of whom were admitted to fellowship (*i.e.*, were entitled to be ranked as rabbis). They were R. Shesheth and R. Jehoshua.

R. Papa said: "If I had not wedded a priest's daughter I should never have become rich;" but R. Kahana said: "If I had not married a priest's daughter I should never have gone into exile"; [1] and

he was asked: "What hast thou suffered thereby; didst thou not flee to a place of learning?" and he answered: "I did not go into exile voluntarily (to improve my learning or to better my condition), but was compelled to flee from the persecution of the government."

R. Itz'hak said: "One who enjoys a meal which is not served for the sake of a religious duty finally incurs the penalty of exile, as it is written [Amos vi. 4]: 'That eat lambs out of the flock, and calves out of the midst of the stall,' and further, it is said [ibid. 7]: 'Therefore now shall they go into exile.'

The rabbis taught: "A scholar who indulges in too many meals destroys his home, makes his wife a widow, his children orphans, his knowledge vanishes; he becomes involved in strife, his words are disregarded, he profanes the name of Heaven, puts to shame the name of his teacher and the name of his father, and leaves behind him an ill-repute for himself, and his children unto the end of his generations."

The rabbis taught: "A man should sell all his possessions and wed the daughter of a scholar; for should he die or be forced to go into exile be will be assured that his sons will be scholars, and he should not wed a daughter of the common people; for

should he die or be forced to go into exile, his children will be common persons.

The rabbis taught: "A man should sell all his possessions in order to secure a scholar as a husband for his daughter. This can be compared to grapes which are planted among other grapes in a vineyard, where they are readily assimilated and present a good appearance. If, however, a common person is secured as a husband, it is like planting grapes among thorns, where they cannot thrive."

The rabbis taught: "A man should sell all his possessions and secure the daughter of a scholar for a wife, and if he cannot secure the daughter of a scholar he should try to obtain a daughter of one of the most prominent men of the age. If he cannot succeed in that, he should endeavor to obtain a daughter of the most prominent men in his community; and failing in that, should seek the daughter of a man known to be charitable; and if he cannot succeed even in this, he should try and obtain the daughter of a teacher of children; only should he avoid wedding the daughter of a common person."

We have learned in a Boraitha: R. Aqiba said: When I was still a common (ignorant) man, I used to say: "If I could lay my hands on a scholar I would bite him like an ass," and his disciples said to him: Rabbi, say 'like a dog,' an ass does not bite," and he replied: When an ass bites he generally breaks the bones of his victim, while a dog only bites the flesh."

We have learned in a Boraitha: R. Meir said: "One who gives his daughter to a common person virtually casts her to a lion; for as a lion tears and devours his victim without shame, so does a common person beat his wife, then they come together again and he is not ashamed."

We have learned in a Boraitha: R. Eliezer said: "If the common people did not require us for

their own welfare, they would slay us."

R. Hyya taught: "A man who occupies himself with the study of the Law in the presence of a common person evokes as much hatred from that person as if he had stolen his bride. As it is written [Deut. xxxiii. 4]: "The law which Moses commanded us is the inheritance of the congregation of Jacob." Do not read ••••• (inheritance), but •••••• (betrothed). For the enmity of a common person toward a scholar is even more intense than that of the heathens towards Israelites, and that of their wives even greater than their own. A Boraitha

stated: That whosoever was at first a scholar and then resigned his studies, and became a common man, is even worse than if he were entirely ignorant.

"*If a person on leaving Jerusalem*," etc.: We have learned in a Boraitha: R. Nathan said: "The quantity for either (the consecrated flesh or leaven) must be the size of two eggs but the sages did not coincide with him.

It is written [Zechariah xiv. 6]: "And it shall come to pass on that day, that there shall be no light, but fleeting light and thick darkness." What is meant by "fleeting light and thick darkness"? He means to point out, that what is considered a strong light in this world is nothing but fleeting light in the world to come. So said R. Elazar; but R. Jehoshua ben Levi said: "The passage means to state, that those men who are considered enlightened in this world are enveloped in darkness in the world to come," as it happened that R. Jose the son of R. Jehoshua ben Levi once fell in a trance, and upon awakening was asked by his father what he had seen while in his apparently lifeless state, and he answered: "I saw a reversed world: Those who are at the head in this world were at the bottom there, and those who are at the bottom here were at the head there." And his father said to him: "My child, thou hast seen the right world! But how do we scholars appear there?" and R. Jose replied: "We are on the same footing there as we are here. I also heard it said there: Well is to the man who hath brought his learning with him, and further, it was said: The place of those who had suffered death (had been martyrs) for the glory of God cannot be entered by any other man." Does this refer to R. Aqiba and his companions? Were they accorded that place merely because they were martyrs; did they then possess no other merits? Therefore this must refer to the two brothers who sacrificed themselves at Lud (Lydda). [1]

It is written [Zechariah xiv. 9]: "And the Lord will be king over all the earth; on that day shall the Lord be (acknowledged) one, and His name be one." What is meant by "on that day"? Is He not *one* even *to-day*? Said R. A'ha bar Hanina: This world is not like the world to come. In this world, when

good tidings are received, a man says: 'Blessed be He who is good and doth good to others,' and the recipient of bad tidings says: 'Blessed be He who judgeth in truth'; but in the world to come the first benediction only will be pronounced, for there shall be no more bad tidings." Why is it said: "His name shall be one," is His name not *one* even to-day? Said R. Na'hman bar Itz'hak: "Not as this world is the world to come. In this world the Name is written Yahveh and pronounced Adonai, while in the world to come it will be pronounced as it is written."

Rabha wished to preach concerning the name of Yahveh from the pulpit; so a certain elder said to him: "In the passage [Exod. iii. 15] where it is written: 'This is my name forever,' the word Olam, which when written Ayin, Vav, Lamed, Mem, means 'forever,' is written in that passage Ayin, Lamed, Mem, which also signifies 'concealed.' Hence the name of the Lord should be concealed and not openly discussed."

R. Abbini propounded a contradictory question about the same passage: In the first part it says: "This is my name Leolam (concealed)," and in the last part it says, "This is my memorial unto all generations"? And he answered: So said the Holy One, blessed be He: Not as I (my name) am written shall I also be pronounced. I am written Yahveh and am pronounced Adonai.

Footnotes

68:1 This is explained to be a mixture of mouldy bread with milk and salt, used as a sauce for food.

68:2 According to the Talmud, this is a mixture of barley, salt, and wild saffron, while according to Pliny, who calls it "zythum," it is a medicine of Egyptian origin.

68:3 A dough used to attract the impurities in a pot where food is boiling.

68:4 The penalty for such transgression is chastisement with thirty-nine stripes.

69:1 The Hebrew term which we render with ginger is Zangbila, and according to other versions it is supposed to be sandal-wood.

71:1 Both passages quoted contain the word "Kol," Hebrew for "all"; and the Passages should read: "All that is leavened shall ye not eat" and "All who eat leavened bread shall be cut off," etc. Hence the analogous comparison made in the above paragraph.

71:2 *Vide* page 71.

74:1 See introduction to Tract Erubin.

78:1 According to Strack, referring to Frankl, Brill, and Bacher. But Heilpern in, his Seder Hadoreth and Mielziner in his introduction to the Talmud, Eliezer.

80:1 R. Kahana was forced to flee from Babylon to Palestine.

82:1 It is related in Tract Taanith that a daughter of a prince in that city having been murdered, the crime was attributed to all the Israelites, when, in order to save their co-religionists, who

were innocent of the crime, two brothers went up and confessed that they had committed the murder (although they were also innocent), thus shielding their brethren from persecution.--RASHI.

Next: Chapter IV: Regulations Concerning Work Which May and Must not be Performed on the Day Before Passover

CHAPTER IV.

REGULATIONS CONCERNING WORK WHICH MAY AND SUCH AS MUST NOT BE PERFORMED ON THE DAY PRECEDING THE FESTIVAL OF PASSOVER.

MISHNA: In places where it is customary to work till noon on the day preceding the Passover, work may be done; but not in places where it is not customary to work on that day. If a person should go from a place where the said custom prevails to another place where it does not, or the reverse, he is subject to the rigor of the custom, either of the place he came from or of that to which he went. Thus it is always proper not to act differently from the established customs of a place, on account of the disputes to which such conduct may lead.

Likewise, when a person brings fruit of the sabbatical year from a place where it is no longer to be found in the fields (and in consequence must not even be kept in the house), to another place where it is still to be found in the field (and may be kept in the house), or the reverse, he is obliged to remove the same. R. Jehudah, however, says: "Such a person may be told to go and fetch for himself similar fruit, and eat."

GEMARA: Why does the Mishna particularly mention the day preceding the *Passover?* is it not a fact that no work may be performed after the Minchah prayer on the day preceding Sabbath or any other festival? for have we not learned in a Boraitha, that "whoever performs any work after the Minchah prayer on the day preceding a Sabbath or a festival shall find no blessing for his work"? The Boraitha only states that he shall find no blessing for his work, but not that he should be put under a ban; while a man who performs work after the Minchah prayer on the day preceding the Passover (in places where it is not customary to do so) may be put under a ban.

The text of the Boraitha states further: "One who performs work after the Minchah prayer on the day preceding a Sabbath or a festival, or on the night when the Sabbath or a festival has drawn to a close, or on the night following the Day of Atonement,

or at any time when there can be the faintest suggestion of a transgression, as for instance on a day which had been designated as a fast-day for the sake of (praying for) rain, shall find no blessing for his work."

Rabha propounded a contradictory question: "It is written [Psalms lvii. 11]: 'For great, even *unto* the heavens, is thy kindness,' and further, it is said [ibid. cviii. 5]: 'Be thou exalted *above* the heavens, O God.' How can the two passages correspond?" The inference is, that the first passage refers to one who fulfils a religious commandment, because it is customary to do so and his parents before him did so, while to one who fulfils such a commandment for the honor of the Lord, the kindness of God is manifested even higher than the heavens, and this is in accordance

with R. Jehudah's opinion, who said in the name of Rabh: "A man should always occupy himself with the Law and with religious duties, even if he bear not in mind always that he does so for the honor of God; for thereby he becomes accustomed to doing thus, and it will eventually be for the honor of the Lord."

The rabbis taught: "He who depends upon the earnings of his wife or upon the proceeds of a hand-mill will never perceive the sign of a blessing." What is meant by the earnings of his wife? If his wife go about with scales, relying upon others to use them and pay for their use. The same applies to the proceeds of a hand-mill: if he rely upon others to use it and pay for its use. If, however, he use the hand-mill himself for the obtainment of his sustenance, or if his wife is actually engaged in traffic, he may even be proud of her, for it is written [Proverbs xxxi. 24]: "Fine tunics she maketh, and selleth them."

The rabbis taught: "From the proceeds of four professions one can never perceive a sign of blessing, and they are: the professions of the scribes, the criers, those who earn their money from orphans, and the men who carry on their traffic at sea" The reason the criers perceive no blessing for their work is because their work (of repeating the words of the rabbis) is generally done on the Sabbath, and those who earn their money from orphans perceive no blessing because they cannot be forgiven if they take the least advantage of orphans; the reason the men who carry on their traffic at sea see no blessing for their work is because a miracle does not occur every day (that a ship should reach port in perfect safety); but why should this also apply to scribes? Said R. Jehoshua ben Levi: "Twenty-four

days the members of the Great Assembly fasted and prayed that the scribes of Scrolls, Tephilin, and Mezuzoth should not become wealthy; for if they did, they would not write any more.

The rabbis taught: The scribes, who write Scrolls, Tephilin, and Mezuzoth; those that deal in them, and those that sell them to the people, and all those who occupy themselves with religious works, even those who sell the blue wool for the show threads, do not perceive any blessing for their work. If, however, they occupy themselves with such work in honor of the Lord (not for gain) they will perceive the blessing.

It was the custom of the inhabitants of Baishan never to go from Tyre to Zidon on the day preceding Sabbath. Their descendants came to R. Johanan and said: "Our fathers could afford to dispense with that journey, because traffic was better in their days; but we cannot. What shall we do?" and he answered: "From the fact that your ancestors already took it upon themselves not to do this, ye cannot act differently, as it is written [Proverbs vi. 20]: 'Keep, O my son, the commandment of thy father, and reject not the teaching of thy mother.'"

The inhabitants of Huzai were wont to separate the legal first dough (due to priests) from rice. This was told to R. Joseph, and he said: "Let an ordinary Israelite take that separated first dough and eat it before their very eyes." Abayi objected: "We have learned: Such acts as are permissible but were regarded as prohibited by some people must not be committed in the presence of such people," and R. Joseph replied: "Was it not reported that R. Chisda said that this refers only to Samaritans?" Why must this not be done in the presence of Samaritans? Because they would take advantage of it and commit acts that are truly prohibited. Is this not

also the case with the inhabitants of Huzai, who are also ignorant and might construe the action to imply that they need not separate the first dough even from grain?" Therefore," said R. Ashi, "let us see how the inhabitants of the city of Huzai do? If the majority of them eat only rice, then the first dough thereof which they have separated should not be eaten by an ordinary Israelite in their presence, lest they forget about the law of first of dough entirely; but if the majority of them eat grain, then an ordinary Israelite should eat the first dough which they have separated from the rice in order to demonstrate to them that they need not do this, and warn them that if they separate the first of the dough from

rice to serve also for grain, they will commit a transgression of the law."

When Rabba bar bar Hana came from Palestine to Babylon, he ate the fat around the stomach of an ox; this fat is, however, not eaten in Babylon. While he was eating this, R. Abhira the elder and Rabba the son of R. Huna entered the room. As soon as he perceived them, he covered up the fat. When they came out Abayi said to them: "He treated you like Samaritans."

Does not Rabba bar bar Hana hold that a man is subject to the rigor of the place whence he came and to which he went? How could he allow himself to eat that fat? Abayi replied: "This rule applies to such persons as go from one city in Babylon to another, or from one city in Palestine to another, or even from Babylon to Palestine; but not to such as go from Palestine to Babylon; for we are under their protection and should do as they do." R. Ashi, however, said: "Even were the rule to apply to one who comes from Palestine to Babylon, Rabba bar bar Hana would still have been permitted to follow the custom in Palestine, for he did not intend to remain in Babylon, but to return to Palestine; hence the customs of Babylon need not concern him."

Rabba bar bar Hana said to his son: "The fat which thou seest that I eat, thou shalt not eat, neither in my presence nor in my absence. I allow myself to eat it, because I saw R. Johanan do so, and he is worthy that I should depend upon him even in his absence; but thou must not depend upon me; hence thou shouldst not eat it in my presence nor in my absence." By this statement, however, he contradicts himself, for he said: R. Johanan bar Elazar related: "I was going with R. Simeon ben R. Jose ben Lakunia in a garden in a sabbatical year (after the crops were removed from the field), and he picked up an aftergrowth of a cabbage, ate part himself, and gave me some, saying: 'My son, in my presence thou mayest eat it, but not in my absence; for I saw R. Simeon ben Jochai do this, and he is worthy that I should depend upon him either in his presence or in his absence; but I am not worthy of being depended upon in my absence.'"

"*If a person should go from a place*," etc. It would be correct to say, that a man who comes from a place where the custom to work on the forenoon of the day preceding the Passover prevails to a place where the custom does not prevail should

hold to the more rigorous custom of the place in which he arrived, to prevent any possible strife; but if he come from a place where the custom does not prevail to a place where it does, what is meant by saying that he should act so as to prevent strife? That he should work on the forenoon the same as the others? Then how can the rigor of the custom peculiar to the place whence he

came be applied to him? Said Abayi: "The injunction to prevent disputes applies only to the first instance, *i.e.*, if he comes to a place where it is not customary to work during that time." Rabha, however, said: "Nay; it applies even to the instance, and the injunction of the Mishna to prevent disputes implies, that no disputes will arise from the fact of the man not working, as his idleness will not be considered as the carrying out of a religious duty, but will be attributed to his want of employment, there being many who have no occupation."

Said R. Saphra to R. Abba: "May we, who are well versed in the calendar, perform work on the second day of a festival (in exile)? I do not ask concerning a place where it is not customary to do so, in order to cause any dispute; but I refer to the desert, where there are no other inhabitants?" and he answered: "So said R. Ami: "In the cities it is prohibited, but in the desert it is allowed."

R. Nathan bar Assia went from his college to Pumbaditha on the second day of Pentecost. R. Joseph punished him for it. Said Abayi to R. Joseph: "Why doth not the Master put him under a ban; for did not Rabh and Samuel both say, that the violation of any of the festivals (in exile) is punishable in that manner?" R. Joseph answered: "This is the case where the offence is committed by a man of the common people, but a young scholar should be dealt with as leniently as possible. In Palestine it is the custom to cast votes for the punishment of a young scholar, but no votes were cast to put him under a ban."

"*Likewise, when a person brings fruit of the sabbatical year,*" etc. Does not R. Jehudah hold, that the man is subject to the rigor of the custom both of the place whence he came and of that where he arrived? Said R. Shesha the son of R. Idi: In this case another matter is concerned: R. Jehudah teaches as follows: If a man came from a place where the fruit was not yet removed from the field, into a place where the same condition existed; but in the meantime had been advised that in the place whence he came the fruit had been removed, he should under

ordinary circumstances be in duty bound to act likewise. Such is the opinion of the first Tana. Whereupon R. Jehudah said to this first Tana: "The man may be told to go to a place where the fruit is not yet removed and fetch his fruit, for at the time when he left his home the fruit had not yet been removed."

The rabbis taught: Fruit of the sabbatical year which has been brought from within the boundaries of Palestine to a place without may be destroyed wherever found; but R. Simeon ben Elazar said: "Nay; it must be destroyed in Palestine proper, even if it has to be brought back, for it is written, 'In thy lands.'

R. Saphra journeyed from Palestine to a place without the boundaries and had with him a measure of wine made of fruit of the sabbatical year. R. Huna the son of R. Ikha and R. Kahana accompanied him, and he said to them: "Has one of you heard whether the Halakha prevails according to R. Simeon ben Elazar or not?" R. Kahana replied: "R. Abbahu declared that the Halakha prevails according to R. Simeon ben Elazar"; but R. Huna the son of R. Ikha rejoined: "Thus said R. Abbahu: 'The Halakha does *not* prevail according to R. Simeon ben Elazar.'" Said R. Saphra: "Under all circumstances the decision of R. Huna must be abided by, because he was very exact in his decrees, which he learned from his master Rahabha of Pumbaditha."

R. Ilayi pruned green dates on the sabbatical year. How was it possible that he should have done this? Is it not written, that for eating purposes they may be gathered, but they must not be removed wantonly? Lest, however, it might be assumed that such is only the case with ripe, edible fruit, but not with such as are unfit--did not R. Na'hman say in the name of Rabba bar Abbahu, that the peel surrounding the dates of uncircumcised trees must also not be used, notwithstanding the fact that it only serves to preserve the dates and cannot be considered fruit itself? Thus we see that, although the peel surrounds dates only when the latter are not yet ripe, still he calls such dates fruit, and in consequence it cannot be said that R. Ilayi pruned dates which were not to be considered fruit?

R. Na'hman holds with R. Jose, who maintains that green fruit is prohibited (during the sabbatical year), because it is considered fruit; but the sages differ with him.

The rabbis taught: "On the sabbatical year grapes may be eaten until the bunches of grapes are all plucked from the vines,

and should there be vines that still contain bunches, grapes may be eaten until even the latter are plucked. Olives may be eaten until the last of them fall off the trees in the city of Thequa. R. Eliezer said: 'Until the last of them fall off the trees in the city of Gush-Halob.' This means to say, that if a poor man goes to seek olives he cannot find any, neither on the branches nor at the roots of the tree. Figs may be eaten until the last fall off the trees in Beth-Hini."

Dates may be eaten until the last fall off the trees in Tzoar. R. Simeon ben Gamaliel said: "They may be eaten when some are to be found among the unripe dates, but not if some are found among the bad dates which have fallen off the trees."

MISHNA: In places where it is customary to sell small cattle (sheep, goats, etc.) to Gentiles, it is lawful to do so, but not in places where this is not customary. Large cattle must not be sold to Gentiles at all, [1] nor calves nor foals of asses, either sound or broken-legged. R. Jehudah permits the sale of the latter and Ben Bathyra permits the sale of a horse.

In places where it is customary to eat roasted meat on the night of the Passover, it may be eaten, but not in places where this custom is not observed. In places where it is usual to burn a light on the night of the Day of Atonement, it may be done; but not in places where this custom does not exist. The synagogues and colleges, however, may be lighted, as may also dark alleys and (rooms) occupied by sick people.

GEMARA: R. Jehudah said in the name of Rabh: "A man must not say: 'This animal shall serve for the Passover meal,' because, by thus specifying the purpose for which he intends to use it, he virtually consecrates the animal, and consecrated things must not be eaten outside of the Temple." Said R. Papa: "This refers only to flesh, but wheat may be designated for use on the Passover; (because by being thus designated it will not become consecrated, but it will simply be preserved)."

An objection was raised: Flesh must not be designated? Have we not learned that R. Jose said:

"Thodos of Rome instituted the custom among his co-religionists in Rome, that they should eat roasted goat-meat on Passover, and the sages sent him the following message: 'Wert thou not Thodos, thou wouldst have been put under a ban for thy action, since thou

inducest Israelites to eat consecrated things outside of Jerusalem'? How can they say consecrated things? Say rather, similar to consecrated things." Hence we see, that only roasted flesh may be considered as consecrated; but how can this refer to raw flesh? When roasted flesh is eaten it appears of itself as if it were consecrated, without being designated expressly for use on the Passover, whereas raw flesh is considered so only when it is expressly specified.

The schoolmen propounded a question: "Was Thodos really a great (learned) man or was he simply a very influential citizen, and hence the sages were afraid to put him under a ban?" Come and hear: "Furthermore related Thodos, the man of Rome: 'What justified Hananiah, Mishaël, and Azariah to permit themselves to be thrown into the fiery furnace? They derived their justification from the following *a fortiori* conclusion: As the frogs [mentioned Exod. vii. 28], which were in no wise obliged to honor the name of the Lord, did not hesitate to enter the ovens which, as they still contained the dough, were hot, so much the more should a man who is in duty bound to honor the name of the Lord not hesitate to throw himself into a fiery furnace.'"

R. Jose bar Abhin said: "Thodos of Rome would give wares to the scholars in order to enable them to procure a livelihood by traffic, and R. Johanan said, that he who gives wares to scholars, so that they are enabled to gain a livelihood and study in peace, will merit the privilege of sitting in the colleges of learning in the world to come, as it is written [Ecclesiastes vii. 12]: 'For under the shadow of wisdom (a man is equally well as) under the shadow of money.'"

"*In places where it is usual to burn a light*," etc. Said R. Jehoshua: Rabha lectured: It is written [Isaiah IX. 21]: "And thy people, they all will be righteous, forever shall they possess the land." From this may be inferred, that all the people were righteous; and those that burned a light on the night of the Day of Atonement as well as those that did not, all had the same purpose in view, namely, to prevent a man from having intercourse with his wife on that night (some believing that when there was a light this would be avoided, while others thought that the light would rather stimulate the desire).

Ula rode on an ass. R. Abba walked to the right of him and Rabba bar bar Hana to the left. Said R. Abba to Ula: "Is it true that both of you, thou and Rabba bar bar Hana,

said in the name of R. Johanan, that a benediction is not pronounced over fire except at the close of the Sabbath-day, for at that time was fire created?" Ula glared at Rabba bar bar Hana and said to R. Abba: I did not quote R. Johanan in this connection, but in the following instance: A certain Tana taught in the presence of R. Johanan: "R. Simeon ben Elazar said: 'When the Day of Atonement falls on a Sabbath, even in such places where it is not customary to burn a light on the night of the Day of Atonement, this should be done in honor of the Sabbath.'" R. Johanan, however, replied that the sages prohibit this.

Rabba bar bar Hana assented, and said: "Yea; such was the statement made by R. Johanan." Commenting upon this, R. Joseph applied to these two sages the passage [Proverbs xx. 5]: "Like deep water is counsel in the heart of man; but the man of understanding will draw it out." "Like deep water," R. Joseph compares to Ula, who, though not knowing what Rabba bar bar Hana might have said, did not reprove him, but merely glared at him; and "the man of understanding will draw it out" is applied to Rabba bar bar Hana, who immediately understood what was passing in Ula's mind and at once assented to his statement.

If, then, R. Johanan did not make the statement attributed to him by R. Abba, whence do the people adduce that a benediction must be pronounced over a light at the close of Sabbath? From the statement of R. Benjamin ben Japheth, who said in the name of R. Johanan: "A benediction must be made over a light both at the close of Sabbath and on the night of the Day of Atonement." And such is the general custom.

An objection was made: Have we not learned, that a benediction over a light should be made only at the close of Sabbath, because at that time fire was created, and as soon as fire is perceived the benediction must be pronounced? R. Jehudah, however, said, that at the time the benediction which is made over the goblet (of wine) the one over the light should also be made, and R. Johanan declared the Halakha prevails according to R. Jehudah?

This presents no difficulty: On the night of the Day of Atonement, according to R. Johanan, a benediction should be pronounced over a light that had been burning all day, but not over one that had just then been made.

We have learned in one Boraitha that over fire arising from

wood or stone a benediction should be pronounced, while in another Boraitha we are taught to the contrary, that no benediction must be pronounced. This also presents no difficulty: The former Boraitha refers to the close of the *Sabbath*, while the latter refers to the night of the Day of Atonement.

Rabbi would as a rule scatter his benedictions at the close of the Sabbath, pronouncing them as the occasion demanded; *i.e.*, if he perceived fire first, he would pronounce the benediction pertaining to fire, and then accordingly over spices, the goblet, etc. R. Hyya, however, would wait until the goblet was brought to him, when he would pronounce all the necessary benedictions together. Said R. Itz'hak bar Abdimi: "Although Rabbi would scatter his benedictions, he nevertheless repeated that over the goblet, for the purpose of fulfilling the duty of the family."

Is it a fact that fire was created at the close of the Sabbath? Have we not learned in Abhoth, where it is stated that ten things were created at twilight on the day preceding the Sabbath, that R. Nehemiah added fire and the mule to the ten things? This presents no difficulty. The fire which we use was created at the close of Sabbath, while the fire of Gehenna was created at twilight on the eve of Sabbath.

Was the fire of Gehenna then created on the eve of Sabbath? Have we not learned in Tract

Nedarim that seven things were created even before the world was created, and among the seven was also the Gehenna? The atmosphere of the Gehenna was created before the world, but the fire of Gehenna was created at twilight on the eve of Sabbath.

Still, was the fire of Gehenna really created on the eve of Sabbath? Did not R. Banaha the son of R. Ula say, that the reason it is not written, in the passages referring to the things created on the second day, that "the Lord saw that it was good," is because on that day the fire of Gehenna was created? Therefore we say, that the atmosphere of Gehenna was created before the world, the fire of Gehenna was created on the second day of the week, and the fire which we use was to be created on the eve of Sabbath, but the creation was postponed; as we have learned in a Boraitha, R. Jose said: "Two things were postponed to be created on the eve of Sabbath, but they were not created until the close of Sabbath: they are fire and the mule"; and at the close of the Sabbath the Lord put into Adam's mind to produce fire by striking two stones against one another

and to pair two different animals (the ass and the horse) and thus produce the mule.

The rabbis taught: Seven things are concealed from man: The time of his death, the time of his contentment, the depth of judgment (according to another version, the depth of divine judgment), the thoughts of others, the source of profit, the time of the reëstablishment of the kingdom of David, and the time of the downfall of the kingdom of Rome.

The rabbis taught: Three things were intended to be instituted, and if they were not intended to be instituted, it would be well if such were still the case. They are: that a corpse should putrefy, that the dead should be forgotten after a certain period, and that grain should rot (by exposure). Others add a fourth thing, namely, that coins should be minted, for without them traffic would be impossible.

MISHNA: In such places as it is customary to work on the 9th of Abh, work may be performed; but not where such is not the custom. The scholars, however, must in every place avoid working on that day. Rabbon Simeon ben Gamaliel said: "Every man should in this respect consider himself a scholar (Talmud-chacham)." The sages, however, said: It was customary in Judæa to work until noon on the day preceding Passover; but in Galilee no work was performed on that day. As for the night preceding that day, the school of Shammai prohibit work to be done thereon, while the school of Hillel permit it until sunrise (of the day following). Said R. Meir: Every occupation which had been commenced prior to the 14th (of Nissan) may be finished on that day; but no new work may be commenced, even if it can be finished on that same day. The sages, however, are of the opinion, that the three following crafts may pursue their usual calling until noon on that day, namely: tailors, barbers, and clothes-washers. R. Jose ben Jehudah says that shoemakers may also do so.

GEMARA: Samuel said: "There is no fast-day, imposed by the community upon its members in Babylon, except the ninth day of Abh." [1] Shall we say that Samuel by this statement means to assert, that eating at twilight on the eve of that day is also prohibited? Have we not heard that Samuel held to the contrary? Shall we assume, that at twilight on the eve of

any fast-day imposed by the community eating is permitted? Have we not learned in Tract Taanith, that on the day preceding congregational fast-days eating is permitted only while it is yet day; and thence we may adduce that as soon as dusk sets in it is prohibited? Nay; the statement that eating is only permitted while it is yet day signifies, that when night sets in eating is prohibited, but as for dusk (twilight), the prohibition does not apply.

We have learned in a Boraitha: "There is no difference between the ninth of Abh and the Day of Atonement as fast-days, except that in the doubtful time of the latter eating is prohibited, while in that of the former eating is permitted." Shall we assume, that by doubtful time the Boraitha refers to the twilight, when it is not known whether it is yet day or not, and thus would be a support to the opinion of Samuel, who permits eating at twilight on the eve of the ninth of Abh? Nay; by "doubtful time" the Boraitha refers, as R. Shesha the son of R. Idi said elsewhere, to the doubt existing whether the day was really the proper day according to the calendar.

Rabha preached: "Pregnant and nursing women must fast on the entire day of the ninth of Abh in the same manner as if it were the Day of Atonement; also, that at twilight on the eve of that day eating is prohibited." This decree was also attributed to R. Johanan. How could R. Johanan have said this? Did he not say elsewhere, that the ninth of Abh is not equal to a congregational fast-day? Must it not be assumed that he holds eating on the eve of the ninth of Abh to be permitted? Nay; R. Johanan means to state, that the ninth of Abh differs from a congregational fast-day only as concerns the number of benedictions to be recited. On a congregational fast-day the number is twenty-four, while on that day it is not so.

An objection was raised: The difference between a congregational fast-day and the fast of the ninth of Abh is merely that on the former no manner of work may be performed, while on the latter, in those places where it is customary to work on that day, this may be done. Hence are they not alike in all other respects? Said R. Papa: "All the Boraithoth quoted only cite the more lenient observance of the ninth of Abh as compared with congregational fast-days and the Day of Atonement, but do not mention the more rigorous observance."

"*Every man should in this respect consider himself a scholar*."

[paragraph continues] Here we see that R. Simeon ben Gamaliel has no objection to a man vainly assuming that he is a scholar, whereas (in Tract Berachoth) concerning the reading of the Shema (prayer) he says, that not every man who so chooses may assume to be (or act like) a scholar. Said R. Johanan: "Transpose the names in the Mishna, so that the statement attributed to the sages should be that of R. Simeon ben Gamaliel and the dictum of R. Simeon ben Gamaliel should be that of the sages." R. Shesha the son of R. Idi, however, said: This is not necessary. There is no difficulty either as to the sages or as regards R. Simeon ben Gamaliel. According to the sages, a man who would not work when all others do, would leave the false impression that he is a scholar, although he is not, while in the instance quoted, concerning the reading of the Shema, a man who is a bridegroom may (on his wedding-day) read the Shema, because all others do likewise, and he cannot be accused of being presumptuous. According to R. Simeon ben Gamaliel, however, premeditation being necessary for a man who is to read the Shema, and it being a known fact that a bridegroom on his wedding-day cannot have the necessary premeditation--if he nevertheless persists in reading that prayer, he does so merely to gratify his

vanity and to demonstrate that he is a scholar; hence it should not be permitted. In the case treated of in the Mishna, however, it is different. The fact of his not working will not give others the impression that he wishes to pose as a scholar; for are there not a number of men who lack employment and are idling in the markets?

"*The school of Shammai prohibit work to be done*," etc. So far the Mishna has been dealing with the customary usages, and suddenly prohibitions are cited? Said R. Johanan: This presents no difficulty. The decisions pertaining to customary usage are all rendered upon the authority of R. Meir, but R. Jehudah actually prohibits work to be performed in those places where it is not usually done, as we have learned in the following Boraitha: R. Jehudah said: "In Judæa work was done on the day preceding the Passover until noon, while in Galilee no work at all was performed on that day." Said R. Meir to him: "To what purpose dost thou cite the customs of Judæa and Galilee? Is it not a rule that, wherever it is customary to perform work on that day, it may be done, and wherever it is not customary it should not?" Thus, if R. Meir's reply to R. Jehudah dealt with customary usage, it is obvious that R. Jehudah

must have directly prohibited work in places where it was not usually done.

The schoolmen propounded a question: Does that part of the Mishna, which states that every occupation which was commenced prior to the 14th of Nissan may be finished on that day refer only to such occupation as was necessary for the due observance of the festival, but if it is not necessary for that purpose, it must not even be completed on that day, or does it refer to such occupation as was not necessary for the festival; but if it was, it is even allowed to commence *and* finish it on that day? Or, on the other hand, does it refer to occupation which is even necessary for the festival and still it may only be finished but not commenced on the day preceding the festival?

Come and hear: R. Meir said: "Every occupation necessary for the due observance of the festival may be *completed* on the day preceding the festival, but if it was not necessary for that purpose it must *not* be finished. Wherever it is customary, work may be done on the day preceding the festival until noon." Thus we see, that only wherever it is customary work may be done until noon of the day preceding the festival but otherwise it must not, and only when the work is needed for the festival may it be completed on that day but otherwise it must not.

"*The sages, however, are of the opinion, that the three following crafts*," etc. We have learned in a Boraitha: Tailors may pursue their occupation, because any man may, if necessary, mend his garments on the days intervening between the first and last days of the festival. Barbers and clothes-washers may pursue their calling, because those that arrive from a sea-voyage or those that are released from imprisonment may trim their hair and wash their clothes on the days intervening between the first and last days of the festival.

R. Jose ben Jehudah says, that shoemakers may pursue their calling, because the pilgrims who journey to Jerusalem for the festivals mend their shoes on the intervening days. Upon what point do R. Jose and the former Tanaim differ? The former Tanaim hold, that permission to commence a certain act of labor cannot be derived from the fact that it may be completed; *i.e.*, while shoes may be mended, it does not follow that it is permitted to make new shoes, while R.

Jose maintains that it makes no difference, and as shoes maybe mended, new ones may be made also.

MISHNA: Fowls may on the day preceding the Passover be

placed in hatching-coops; a brooding hen which had run away (from her eggs) may be replaced on them, and if the hen had died another may be put on the eggs in her place. It is permitted to remove the stable-dung on the 14th (of Nissan) from between the feet of cattle; but it may only be removed to one side during the middle days (the days intervening between the first and last days of the festival). It is also permitted to carry, to and from the houses of mechanics, vessels and other articles, even though they be not needed for use during the festival.

GEMARA: If a fowl may be placed in a hatching-coop on the day preceding the festival, why should it be necessary to state that she may be replaced on the eggs which she had abandoned? (Is this not obvious?) Said Abayi: "The clause permitting the replacing of the hen does not refer to the 14th (of Nissan) but to the middle days." R. Huna said: "When is it allowed to replace a hen on the eggs which she had abandoned? If she had already been hatching the eggs for three days prior to her escape and three days had not elapsed since she had escaped; *i.e.*, if the eggs had already become spoiled and at the same time retained warmth, so that when the hen is replaced she can still complete the hatching with success. If, however, the hen had not yet been hatching the eggs for three days and they had not become spoiled, or if three days had elapsed after she had abandoned them, so that it would be impossible to hatch them with success, the hen must not be replaced." R. Ami, however, said: "Even if the hen had not been hatching the eggs for three days and they had not yet become spoiled, she may nevertheless be replaced."

In which point do R. Huna and R. Ami differ? The former holds, that on account of serious damage only may work be done on the middle days, while the latter maintains that even on account of slight damage this may be done.

"*It is permitted to remove stable-dung*," etc. The rabbis taught: The dung contained in the yard must be removed to one side, and that contained in the stable and in the yard may be entirely removed. How can this latter part be understood? What is meant by dung contained in the stable and in the yard? Said Rabha: "This signifies, that if the yard became like a stable, filled with dung, the dung may be entirely removed."

"*It is also permitted, etc., to carry vessels*," etc. R. Papa said: Rabha wished to examine us and said: "In our Mishna it is stated, that on the 14th (of Nissan) vessels may be carried to

and from the houses of mechanics, etc., even though they be not needed for the festival, and this is contradicted by a Boraitha, which decrees that vessels must not be carried from the house of the mechanic; and if there is danger of their being stolen, they may be deposited in another court?" We replied: This presents no difficulty, as the Boraitha refers to the middle days, while our Mishna has reference to the 14th (of Nissan). We can also give another reason, namely: Both the Boraitha and the Mishna may refer to the middle days, and it merely depends upon

whether the mechanic has sufficient confidence in his master to leave his tools with him; for if he has not, he may remove them.

MISHNA: The inhabitants of Jericho were wont to do six things; three of these were done contrary to the wishes (of the sages) and three were done with the sanction (of the sages). The following were done with the sanction of the sages: They would graft palm-trees the whole day of the 14th (of Nissan), they would read the Shema (prayer) with an additional verse (or without interruption), and they would heap up new corn (into sheaves) before acquitting the "omer" (first-offering) thereof. All these things were done with the sanction of the sages; but the following were contrary to their wishes, namely: They would make use of plants (buds) growing on or near consecrated trees; they would eat fruit on Sabbath which had dropped off the trees on that day, and they allowed herbs to remain in the field as Peah. 1 All these things were contrary to the wishes of the sages.

Six things were done by King Hezekiah, 2 three of which met with approval and three with disapproval: He caused the bones of his father to be transported on a litter of ropes, 3 and this was approved of; he caused the brazen serpent to be broken to pieces, and this was approved of; be secreted the book of medicine, and it was also approved. The following, however, are the three things done by him which were *not* approved of: He cut off (the gold) from the gates of the Temple, and sent it to the King of Assyria; he stopped up the upper mouth of the

waters of Gihon, and made the month of Nissan intercalary--all of which were not approved of.

GEMARA: "*They would graft palm-trees*," etc. How would they do this? Said R. Jehudah: "They would take a damp myrtle-branch, bayberries of which they made an extract, and barley meal, and would boil them in a vessel which had not been made more than forty days before. This brew they would pour into the core of the tree. Any tree which stood within four ells of a tree which was thus treated would, unless receiving the same treatment, wither and die immediately." R. A'ha the son of Rabha, however, said: "They would graft a twig of a male tree on a female tree."

"*They would read the Shema*," etc. How did they do this? Said R. Jehudah: "They would recite the passage: 'Hear, O Israel,' etc., and without any interruption would continue: 'And thou shalt love,'" etc.; but Rabha said: "They would transpose the stress in the following passage thus: Instead of saying: 'And these words, which I command thee this day, shall be in thy heart,' they would say: 'And these words which I command thee--*this day* shall they be in thy heart,' so that one who heard them might have thought that the intent of the passage was to signify: '*This* day shall they (the words which I command thee) be in thy heart, but not *to-morrow*.'"

The rabbis taught: How would they read the Shema? They would recite the passage: "Hear, O Israel, the Lord is our God; the Eternal is One," and then would continue without interruption to say: "And thou shalt love the Lord thy God," etc. (*i.e.*, they would not stop to lay stress on the words, "The Eternal is One," sufficiently long to meditate on the power of God in the heavens and on earth in all directions). Such is the dictum of R. Meir; but R. Jehudah said: They would make that interruption, but what they did not say was the verse: "Blessed be the name of the honor of His kingdom for ever and ever," which should be inserted between the end of the first

verse: "Hear, O Israel," etc., and the one commencing: "And thou shalt love," etc.

Why do we recite this additional verse? It is not written in the Scriptures? In accordance with what was related by R. Simeon ben Lakish: It is written [Gen. xlix. 1]: "And Jacob called unto his sons and said, 'Gather yourselves together, that I may tell you that which shall befall you in the last days,'" which signifies that he wished to disclose to them when the end

of the days should occur. As he was about to accomplish this, the Shekhina left him, and he commenced to fear lest there were among his children an unworthy person like Ishmael the son of Abraham and Esau the son of Isaac. So his children spoke to him and said: "Hear, O Israel, the Lord is our God; the Eternal is One." They said to him: "Father, as in thy heart there is but one God, so is there in our hearts but one God." As soon as Jacob our father heard this, he opened his mouth and said: "Blessed be the name of the honor of His kingdom for ever and ever."

The sages then began to deliberate whether to say this also or not. To say it would not be in accordance with the words of Moses, who did not use the verse; not to say it would be to disregard Jacob. So they finally concluded to say it in a still manner (not audibly).

Said R. Itz'hak: "The disciples of R. Ami compared this to the following parable: A king's daughter, smelling the odor of savory spices, which were being cooked in the kitchen, craved for some. To order her servants to bring a dish of those spices would be to expose herself to ridicule; not to do so would be to suffer: so her servants brought her what she desired surreptitiously, in order that nobody should perceive it."

Said R. Abbahu: "In Usha, where there was a sect of Minim, [1] it was ordained that the additional verse should be proclaimed in a loud voice, in order that the adherents of that sect should not say that the verse which was said in a still manner was one praising their own Deity; but in Neherdai, [2] where there were no Minim, even unto this day the verse is said in a still manner."

The rabbis taught: The inhabitants of Jericho were wont to do six things; three of these were done contrary to the wishes of the sages and three were done with the sanction of the sages. The following were done with the sanction of the sages: They Would graft palm-trees the whole day of the 14th (of Nissan), they would read the Shema without interruption, and they would

cut off new corn before acquitting the "omer" (first-offering) thereof, The following, however, were done contrary to the wishes of the sages, namely: They would heap up the new corn before acquitting the "omer" (first-offering) thereof; they would make breaches in the fences of their gardens and vineyards during times of famine, in order that the poor might enter and eat the fruit which had dropped off the trees on Sabbath and on festivals; and they would make use of the plants (buds) growing on or near consecrated trees, carob-trees, and sycamore. Such is the dictum of R. Meir. Said R. Jehudah to him: "If thou sayest, that the first three things were done with the sanction of the sages, then it will be assumed that all men may do so and that the sages allow them; say rather, that the sages did not Prevent their doing the first three things, but not

that they sanctioned them. Shouldst thou, however, retort, that cutting off the new corn before acquitting the 'omer' thereof is certainly permitted (because it thus taught in a Mishna), then, say I, substitute for 'cutting off,' 'heaping up into sheaves,' and in the last three things substitute for 'they would heap up the new corn before acquitting the "omer thereof,' 'they allowed herbs to remain in the field as Peah.'

Why did the inhabitants of Jericho make use of plants growing on or near consecrated trees? They said: "Our ancestors only consecrated the wood of the trees, and if other plants subsequently grew on those trees, why should we prevent the poor people from making use of them? It does not constitute a trespass to partake of plants which subsequently grew on consecrated trees!" The sages, however, said: "A trespass-offering need not be brought if this was done, but it is a trespass nevertheless."

R. Simeon ben Lakish was quoted by Ula to have said: The inhabitants of Jericho and the sages differed only concerning such plants as grew on the tops of trees, and the sages prohibited their use on the Sabbath or on-a festival, lest they be torn off by the poor on those days, while the inhabitants of Jericho did not hold this precautionary measure to be necessary. As for unripe fruit at the foot of the trees, all agree that it may be gathered.

When Rabhin, however, came from Palestine, he said in the name of R. Simeon ben Lakish to the contrary: That they differ only concerning the unripe fruit, the sages holding that what is prepared for the fowls of the air (crows) cannot be called

prepared for men, while the inhabitants of Jericho maintained that it may be considered prepared for man also. As for the shoots on the tops of the trees, however, even the latter admit that they must not be used, for they hold to the precautionary measure instituted by the sages above.

"*And they allowed herbs to remain in the field as Peah.*" The rabbis taught: "Formerly Peah was left from turnips and cabbage, and R. Jose said: "Also from leek." In another Boraitha we have learned: "Formerly Peah was left from turnips and leek," and R. Simeon said: "Also from cabbage."

The rabbis taught: "Ben Buhaïn allowed herbs to remain in the field as Peah. When his father arrived he saw some poor men already standing with the bundles of herbs at the entrance of the garden, and he said to them: 'Children, throw down your bundles of herbs and I will restore twice their value to you after I shall have acquitted the tithes thereof; and I do not say this because I would grudge you the herbs, but because the sages did not permit the herbs to be left as Peah.'"

The rabbis taught: "Formerly the hides of the sacrificed animals were left in the chamber of Parvah. [1] At night the priests ministering during that week would divide those hides among themselves. The more powerful among the priests, however, would appropriate more than their share. So it was ordered that the division should be made every eve of Sabbath in the presence of all the men comprising the twenty-four watches (shifts) of the Temple. Still the more powerful priests would appropriate more than was due them. In consequence, the persons bringing the sacrifices decided to consecrate the hides for the use of the Temple. It was said that

it did not take very long before it was possible to cover the entire Temple with disks of gold one ell square and of the thickness of a golden Dinar. At the time of the festivals these disks were placed on the mount of the Temple, in order that the pilgrims to Jerusalem might see them; for they were beautifully worked and were not counterfeited."

We have learned in a Boraitha: Abba Saul said: "There were sycamore-trees in Jericho which the priests forcibly appropriated for their own use, in consequence of which the owners consecrated them for the use of the Temple. "Concerning such

outrages and such priests, Abba Saul ben Batnith in the name of Abba Joseph ben Hanin said: "Woe is me on account of the house of Baithos, woe is me on account of their rods! Woe is me through the house of Hanin and through their calumnies! Woe is me through the house of Kathros and through their pens! Woe is me on account of the house of Ishmael ben Piakhi and of their fists! for they were all high-priests, their sons were the treasurers, their sons-in-law were the chamberlains, and their servants would beat us with rods. [1]

The rabbis taught: Four shouts were sent up by (the people in) the court of the Temple. The first shout was: "Go away from the Temple, ye children of Eli, who have defiled God's house" (I Samuel 11.). The second shout was: "Leave the Temple, Issachar, man of the village of Barkai," who by his arrogance desecrated the sanctity of Heaven. He would envelop his hands in silk while performing his services as a priest. The third shout was: "Raise your heads, O ye gates, and let Ishmael ben Piakhi the disciple of Pinhas enter and assume the office of the High Priest." The fourth shout was: "Raise your heads, O ye gates, and let Johanan ben Narbayi enter and fill his bowels with the holy sacrifices." Of Johanan ben Narbayi it was said that he (and his family, which was very large) would consume 300 calves, 300 jugs of wine, and 40 saah of young doves as dessert after his meals. It was also said that during his administration as high-priest there never was any remainder left over of the sacrifices from one day to the next.

What was the end of Issachar, the man of the village of Barkai? It was said that at one time the king and the queen were disputing. as to the relative merits of a kid or lamb as food. The question then arose who was to decide the dispute. So it was suggested that the decision be left to the high-priest, who at that time was Issachar, the man of the village of Barkai, who certainly ought to know which was the better, as he used to bring sacrifices daily. He was called, and coming into the presence of the king, jokingly waved his hand and said: "If a kid were the better it would be used for the daily sacrifice, and we know that a lamb only must be used." Said the king: "Because he showed no respect to the throne and waved his hand, let his right hand be cut off." Issachar, however, bribed the executioner, and his left hand was cut off instead. When the

king heard of this, he ordered that the right hand should also be cut off. Said R. Joseph: "Blessed be the Merciful One, who punished Issachar in this world, and thus enabled him to enjoy the world to come." Said R. Ashi: "Issachar never learnt the Mishna, for had he done so he would have learned the following: R. Sideon said: For sacrifices lambs are always preferable to kids; but shall we assume that this is because they are really more toothsome? Therefore it is written [Lev. iv. 32]: 'And if he bring a sheep for a sin-offering,' and as it is previously written that he

should bring a goat, it may be inferred therefrom that both are equal."

Rabhina, however, said: "Issachar did not even read the Scriptures, for it is written [Lev. iii. 7 and 12]: 'If he offer a sheep for his offering,' etc., and 'If a goat be his offering,' etc., thus showing that both are equal."

Footnotes

90:1 This is a precautionary measure, lest the Gentiles put the cattle to work on Sabbath; but in the Schulchan Aruch this law is revoked.

94:1 In Palestine in times of drouth especially, fast-days were imposed by the community upon its members in order to pray for rain, while in Babylon there hardly ever arose the necessity for such occasions.

99:1 See Levit. xxiii. 22, and Deut. xxiv. 19.

99:2 "Six things of Hezekiah." This is, in the original, not a continuation of the Mishna, but it begins with, "The rabbis taught," which signifies a Boraitha. In the edition of the Mishna, however, this is the continuation of the Mishna, and so it should be. See Tosphath Yomtav Sanhedrin, Chap. 7.

99:3 As a mark of disrespect.

101:1 "In Usha" is in accordance with the explanation of Rabbenu Hananel; for the Gemara does not mention any particular place. By "Minim" is meant the Jewish adherents of several different sects, who in addition to their own creed accepted the doctrines of another religion. In this instance the Nazarenes, *i.e.*, the Jews who accepted the teachings of Jesus of Nazareth, are more particularly referred to.

101:2 Neherdai was the kingdom of Persia, and the Minim Jewish Christians did not exist then at all. (Not, as some one claimed, that they were driven out. See our History of the Talmud.)

103:1 One of the chambers enumerated in Tract Midath in connection with the Temple.

104:1 See "Priester und Cultus," of Buechler.

Next: Chapter V: Regulations Concerning the Sacrifice of the Paschal Lamb

CHAPTER V.

REGULATIONS CONCERNING THE SACRIFICE OF THE PASCHAL LAMB.

MISHNA: The continual (daily) offering 1 was slaughtered half an hour 2 after the eighth hour, and sacrificed half an hour after the ninth hour; but on the day before Passover, whether that day happened to be a week-day or a Sabbath, it was slaughtered half an hour after the seventh hour, and sacrificed half an hour after the eighth hour. When the day before the Passover happened to be a Friday, it was slaughtered half an hour after the sixth hour, sacrificed half an hour after the seventh hour, and the Passover sacrifice celebrated (immediately) afterwards.

GEMARA: Whence do we know all this? Said Rabha: Because it is written [Numbers xxviii. 4], "toward evening," we know that this religious duty must be discharged when the sun commences to move towards the west (evening). Then again, on all ordinary days, in respect to vow and voluntary offerings, as it is written [Lev. vi. 5]: "And he shall burn thereon the fat of the peace-offering." And the master said that this signifies that all the other offerings must be sacrificed before the daily offering. Hence this latter was slaughtered half an hour after the eighth hour (two and one half hours after noon); but on the day before Passover, when the paschal lamb had to be slaughtered after the daily offering, the latter was slaughtered an hour sooner. If the eve of Passover, however. fell on Friday, when the paschal lamb must be roasted before the Sabbath set in, the literal text of the passage in the Scriptures is abided by, and the daily offering is slaughtered as soon as the sun commences setting towards the west, *i.e.*, half an hour after noon.

The rabbis taught: "In the same manner as the daily offering was proceeded with on a week-day, it was also treated on

Sabbath." Such is the decision of R. Ishmael. R. Aqiba, however, said: "In the same manner as it is proceeded with on the eve of Passover, so should it be treated on Sabbath."

What does R. Aqiba mean by this statement? Said Rabba bar Ula: The Mishna teaches us as follows: The usual manner of treating the daily offering on week-days is carried out also on Sabbath, notwithstanding the fact that no vow or voluntary offerings are sacrificed on the Sabbath. Such is the decree of R. Ishmael; but R. Aqiba said: "Nay, on Sabbath the daily offering should be treated the same as on the day before Passover; *i.e.*, it should be sacrificed an hour sooner, and for the very reason that there are no vow or voluntary offerings to be sacrificed on that day." The statement in the Mishna, that "on the day before Passover, whether that day happened to be a week-day or a Sabbath, it was slaughtered half an hour after the seventh hour," refers to the paschal lamb, and this is in accordance with the opinions of both R. Ishmael and R. Aqiba. Wherein do they differ? R. Ishmael holds that the time should not be changed on the

Sabbath, lest this be done also on the week-days, and thus sufficient time will not be allowed for the vow and voluntary offerings, while R. Aqiba maintains that this precautionary measure is not necessary. If the precautionary measure is not necessary, why should the sacrifice be brought on Sabbath half an hour after the seventh hour? why not a half hour after the sixth hour? R. Aqiba holds, that first the additional Sabbath-sacrifice must be brought in the sixth hour, then the frankincense is burned at the seventh hour, and finally the daily sacrifice half an hour after the seventh hour.

The rabbis taught: Whence do we know that nothing must be offered prior to the daily morning sacrifice? Because it is written [Lev. vi. 5]: "And the priest shall burn wood on it every morning, and he shall lay in order upon it the burnt-offering," which signifies that the (daily) burnt-offering shall be the first to be sacrificed. Is this then conclusive evidence? Said Rabha: "Yea, because it says explicitly the burnt-offering, and that means that the daily morning sacrifice should be the first."

Whence do we know that nothing must be sacrificed after the daily evening sacrifice? Because it is written [ibid.]: "And he shall burn thereon the fat of the peace-offerings." How does this signify that nothing shall be sacrificed after the evening sacrifice? Said Rabha: "Because it says the peace

offerings, 1 and that means that the peace-offerings shall be the last.

The rabbis taught: "The daily (evening) offering precedes the Passover-sacrifice, and the Passover-sacrifice precedes the burning of the incense, and the incense precedes the lighting of the candles." Why should the Passover-sacrifice follow the daily offering? Because an act concerning which it is written [Deut. xvi. 6]: "There shalt thou slay the Passover (lamb) at evening, at the going down of the sun," and [Exod. xii. 6]: "They shall kill it toward evening," must be accomplished later than an act concerning which it is only written [Numb. xxviii. 4]: "Thou shalt prepare it toward evening."

The rabbis taught: "There is nothing which may be offered up before the daily (morning) sacrifice except incense, which is burnt before the daily sacrifice." (Why is that so?) Because it is written concerning incense [Exod. xxx. 7]: "*Every* morning when he dresseth the lamps shall he burn it," while concerning the daily sacrifice it is only written plainly "in the morning." After the daily evening sacrifice nothing may be offered up except the paschal lamb, and the incense and the lighting of the candles may be accomplished. Also if there happen to be a man who had not yet had the atonement made for him by the priest before taking the legal bath, the offering necessary for the atonement may be sacrificed even after the daily (evening) sacrifice; then the man may go and bathe himself and partake of the paschal lamb.

R. Saphra propounded a contradictory question to Rabha: "It is written [Exod. xxxiv. 25]: 'Neither shall be left unto the morning the sacrifice of the feast of the Passover '; hence the supposition is that, while it must not be left unto the morning, it may be left over the entire night and should be burned at the approach of morning, which is already the festival day, although the sacrifice was offered before the festival; but we find it written further [Numb. xxviii. 10]: 'This is the burnt-offering of Sabbath on every Sabbath,' and does this not signify that only the burnt-

offering of the Sabbath may be burned on that day?" Rabha answered: "This question was already propounded to R. Abbahu by R. Abba bar Hyya, and R. Abbahu replied: "The passage quoted [Numb. xxviii. 10] refers

to an eve of Passover which fell on a Sabbath, and a sacrifice which was offered up on the Sabbath may be burned on a festival." Rejoined R. Saphra: "Because a Sabbath-sacrifice may be burnt on a festival, does that carry with it, that the passage must be construed to refer to a Sabbath which happened to be an eve of Passover?" Rabha replied: "Let the passage be. It is difficult enough to understand at all events, and it will eventually prove to be in accordance with the explanation rendered."

MISHNA: If the Passover-sacrifice had not been slaughtered for the purpose of sacrificing it as a Passover-sacrifice, 1 or its blood had not been received for that purpose, or the blood had not been brought to the altar and sprinkled for that purpose, or if one act had been accomplished with it in order to make it a Passover-sacrifice and another not for that purpose, or if the reverse had taken place-it is not valid. How is it to be understood that "one act had been accomplished with it as a Passover-sacrifice and another not for that purpose"? This signifies, that one act had been accomplished with it in order to make it a Passover-sacrifice, and subsequently another act had been accomplished with it ill order to make it a peace-offering; and by "if the reverse had taken place" is meant, if at first an act had been accomplished with it in order to make it a peace-offering and another act had subsequently been accomplished with it for the purpose of making it a Passover-offering.

GEMARA: R. Papa propounded a question: "Does the Mishna mean to state that the sacrifice is not valid if the dual intention was carried out even in one act only (*i.e.*, if *f.i.* when slaughtering the lamb the original intention was to have it serve as a paschal sacrifice and subsequently the intention was changed and it was slaughtered for a peace-offering), and thus it is in accordance with the opinion of R. Jose, who maintains that a later intention annuls a previous one; or, does the Mishna mean to state that it is not valid only if the dual intention was divided between two acts (*i.e.*, if *f.i.* the lamb was slaughtered with the intention of making it a paschal sacrifice and its blood was sprinkled for the purpose of making it a peace-offering), and thus it can be even in accordance with R. Meir, who holds that the original intention holds good and cannot be made void by a subsequent intention? Now the question is, does R. Meir hold

that an original intention holds good only for one act where the intention had subsequently been changed, and maintains that, even if two acts were accomplished with two different intentions, the one accomplished with the original intention supersedes the one committed with the subsequent intention; or does he admit that where two acts are accomplished with different intentions the later annuls the former?"

Now let us see! There can be no question that the Mishna does not consider the case of where an act had been accomplished originally with the intention of having it serve for a peace-offering and then the intention was changed so as to bring the Passover-sacrifice; for in that event, according to both R. Jose and R. Meir, the sacrifice could not be valid as a Passover-sacrifice (it

must be borne in mind that R. Jose does not state that a later intention supersedes a former, but that it merely annuls it, and R. Meir holds that the former intention supersedes the later). Thus the question again presents itself whether, if the act had been accomplished first so as to serve as a Passover-offering and was subsequently intended to serve as a peace-offering, does the Mishna refer to a single act embodying both intentions, or is a case referred to where two acts were committed each with a separate intention?

Come and hear: If the blood of the paschal lamb had been sprinkled with the intention to have the lamb serve for those that were to partake thereof and also for those that were not to partake thereof, the sacrifice is valid. Let us see! How was the case? Was the dual intention embodied in two acts, *i.e.*, while the lamb was slaughtered for those who were to partake thereof, the intention was to sprinkle the blood even for those who were not to partake thereof, and sprinkling only is mentioned because that act alone, even if accomplished for another purpose, would not invalidate the sacrifice; if, however, the dual intention was embodied in one act only, say that of slaughtering, *i.e.*, the lamb was slaughtered both for those who were to partake thereof and for others who were not, would that render the sacrifice invalid? This is not so? We know that such a proceeding would not render it invalid? Hence we must say that, as the later (succeeding) Mishna treats only of one act embodying a dual intention, such is also the case with our Mishna above.

This is not conclusive evidence! One (Mishna) may treat of one case and the other of another case. The succeeding

Mishna may deal with one act, while our Mishna may deal either with one or with two acts!

The schoolmen propounded a question: "What is the law concerning a sacrifice which had been offered up at any time during the year (not on the eve of Passover) with the dual intention 'of having it serve both as the paschal sacrifice and as a peace-offering? Shall we assume, that the latter intention supersedes the former and the sacrifice is valid or not?" When R. Dimi came from Palestine he said: I desired to decide this question before R. Jeremiah in the following manner: "Let us see! As a paschal lamb which was offered up for its proper purpose is thereby made valid for its proper season, and if not offered up for its proper purpose it is made valid when not in its proper season, then, if offered up for its proper purpose, although offered for its proper season, the intention to have it serve not for its proper purpose supersedes the original intention, and the sacrifice is not valid, and consequently the intention to offer it up not for its proper purpose, although it is valid not for its proper season, does not supersede the original intention to have it serve for its proper purpose, and the paschal lamb is not valid." R. Jeremiah, however, answered: "Nay; how canst thou compare the paschal lamb to other sacrifices? (Is it not a fact that, if any ordinary sacrifice is offered up not for its originally intended purpose, the sacrifice itself is nevertheless valid, and the man who brings it must only offer up another to carry out his original purpose, while a paschal lamb, if brought for any other but its actual purpose, becomes absolutely useless and cannot be sacrificed at all.) If the paschal lamb was brought for its proper purpose in its proper time (as is the case in the first instance), a subsequent intention to have it serve another purpose would have rendered it absolutely useless; in the next instance, however, when a sacrifice for a certain purpose was brought at any time of the year, a subsequent intention would not render it useless: then if the sacrifice had been brought with the original intention of having it serve as a peace-offering and subsequently the intention was

added to have it serve also as a paschal offering, the sacrifice would nevertheless not become useless; and even if the original intention was to have the sacrifice serve as a paschal offering, from the fact that it was not the proper season it cannot render the sacrifice invalid. Thus the subsequent intention entirely supersedes the original."

Which is, however, the final law? Said Rabha: "A sacrifice

which had been offered up at any other time of the year (not on the eve of Passover) with the dual intention of having it serve both as a paschal sacrifice and as a peace-offering is valid. Why so? For, let us see how it would be if the paschal lamb were brought at any time other than on the eve of Passover? It would certainly be invalid. If, however, the intention to bring as a Passover-sacrifice were changed to that of bringing it as a peace-offering, it would be valid; thus we must assume that the subsequent intention superseded the original. Therefore if the original intention was to offer it up as a paschal sacrifice. and the intention was added to have it serve as a peace-offering, we must say that in this case the subsequent intention supersedes the original intention, and the sacrifice is valid."

Rejoined R. Ada bar Ahabha: "Perhaps the difference exists, whether the man who brought the sacrifice stated explicitly the purpose for which he brought it, or whether he was silent; for let us see! If he offered up the sacrifice both to serve for those who should partake thereof as well as for those who should not, it is valid; but if he offered it up expressly for those who should not, it is not valid. Why should this be so? Had he offered it up without stating any intention it would certainly be valid, because it would be considered as serving for those who should partake thereof, and consequently we see that there a difference is caused by silence, or the expression of an intention."

Rabha replied: "What comparison is there between the two? If a man brought the paschal lamb without comment, it is until the time of its slaughter considered the Passover-sacrifice. If the man slaughtered it in silence, its condition remains unchanged; but can it be said that those who were to partake thereof were the same at the time of the slaughter as they were previously; for is it not the law that, until the time of slaughtering the lamb, those that were to partake thereof might change their mind and others take their place?"

The schoolmen propounded a question: "What is the law concerning a paschal lamb which had been offered up for its actual purpose at any time during the year but on the eve of Passover, but with a change in the name of the person for whom it was originally intended? Shall we assume that this would be equal to a change in the purpose of the sacrifice only and it would remain valid; or that, having been brought as a paschal offering not in its proper time, it is useless?" Said Rabha:

[paragraph continues] "A sacrifice which had changed owners must be considered as being ownerless during the time when it should be offered up and is thus rendered invalid."

MISHNA: If the paschal lamb were slaughtered for those who will not partake thereof, or for

any that do not belong to the persons numbered to eat it, or for the uncircumcised, or for the unclean, it will not be valid; but if it were slaughtered for those who may partake thereof and (at the same time) for those that will not, or for those that are numbered to eat it and also for those that are not, or for the circumcised and also for the uncircumcised, or for the unclean and the clean, it will be valid. If the paschal lamb be slaughtered before noon, it is not valid, because it is written [Exod. xii. 6]: "Toward the evening." If it were slaughtered before the continual (evening) offering is brought, it is valid, provided someone had been stirring the blood until that of the continual daily offering was sprinkled; but if the blood (of the paschal lamb) had already been sprinkled (before that of the daily offering) it is nevertheless valid.

GEMARA. The rabbis taught: "What is meant by 'those who will not partake thereof'? A sick or an aged person. What is meant by 'those that were numbered to eat it and those that were not'? A family for whom the lamb had been slaughtered and another for whom it had not."

Whence do we adduce this? From the following teaching of the rabbis: It is written [Exod. xii. 4]: "According to the number of the souls," whence we infer that the paschal lamb must not be slaughtered except for those who were numbered to eat it. Shall we assume, that one who slaughtered the lamb for those who were not numbered to eat it only fulfilled a religious duty negligently, but the sacrifice is nevertheless valid? To that end the passage reiterates [ibid., ibid.]: "Shall ye make a count," which signifies, that otherwise it would be invalid. Rabbi said: Instead of "make a count" read "slaughter it," because the term "make a count" is expressed with "Thachoso" and the Syriac term for "slaughter" is "chos," and thus the passage appears as if one said to the other: "Slaughter it for me." Thus we have found the sources whence arises the prohibition to slaughter the lamb for those not numbered to eat it; but whence do we adduce that the lamb must not be slaughtered for those who will not partake thereof? In the same passage it is written: "Every man according to what he eateth,

shall ye make a count for the lamb"; hence those that partake thereof are accounted the same as those who are numbered to eat it.

If a man slaughtered the lamb for the circumcised only, but intended that the atonement which is made through sprinkling the blood should serve also for the uncircumcised, R. Hisda. holds that the sacrifice is not valid, because an intention to serve the uncircumcised invalidates the sprinkling, while Rabba holds that such is not the case.

Said R. Ashi: R. Hisda and Rabba differ concerning the following passage [Lev. i. 4]: "And it shall be accepted for him to make atonement for him." Wherever it is written "for him," it refers to that person only and not also to his companion, and Rabba holds that such is the case only if his companion be in all respects his equal and among those for whom atonement is made; but the uncircumcised, not being in that class, cannot prove an impediment, for he was never thought of. R. Hisda, however, said: "The uncircumcised can be included in that class for whom atonement is made, because should he submit to circumcision he becomes in every respect the man's equal, and the passage which says 'for him' would necessarily exclude him. Thus the supposition that he can be circumcised renders him equal to being so."

Does then R. Hisda hold that the supposition that a thing can be accomplished renders it equal to

having been accomplished? Have we not learned (page 74) that he does not admit of that theory? Let us say, then, that he does not hold to the theory of that supposition only in the case of a lenient ordinance, but in the case of one that is rigorous he assents to the same.

R. Huna the son of R. Jehoshua objected: "We have learned: If the paschal lamb, which was over the age of one year and was slaughtered at the proper time and for its proper purpose, and also if a man had slaughtered other animals for the purpose of serving as the paschal offering, at the proper time, R. Eliezer said, the sacrifices are absolutely useless, but R.: Jehoshua declares, that the sacrifices are nevertheless valid sacrifices. Now, then, R. Eliezer holds the sacrifices to be useless if they were brought as paschal offerings at the proper time, but if they had not been brought at the proper time he would also admit that they were valid; why does he not hold to the (theory of) *supposition* that the sacrifice had been brought at the

proper time, and consequently hold it to be useless at all times?" Said R. Papa: "In the case of the Passover-sacrifice it is different; for it is written [Exod. xii. 27]: '*It is* the sacrifice of the Passover unto the Lord,' and this signifies, that it should ever remain thus, *i.e.*, it cannot be sacrificed for other purposes, nor can other things be sacrificed in its stead."

Thus, as the Passover-sacrifice if brought in its proper time for other purposes is rendered utterly useless, so other sacrifices if brought in its stead at the proper time are also rendered useless; but, as the Passover-sacrifice if brought for other purposes not in its proper time remains a sacrifice nevertheless, so should other sacrifices if brought in its stead not at the proper time also be permitted to remain valid.

R. Simlai came to R. Johanan and said to him, "Let Master teach me the contents of the book of ancestry," and R. Johanan asked him: "Whence art thou?" He replied: "From Lydda," "And where dost thou reside?" asked R. Johanan. "In Neherdai," was the reply. R. Johanan then remarked: "The contents of the book of ancestry must not be taught to inhabitants of Lydda or Neherdai, and so much the more thou, who art born in Lydda and residest in Neherdai, shouldst certainly not be taught." R. Simlai, however, was persistent, and persuaded R. Johanan to grant his request, whereupon R. Simlai remarked: "Thou canst teach me the contents of that book in three months." So R. Johanan picked up a clod of soil and threw it at R. Simlai, saying: "If Brurah, the wife of R. Meir, who was also the daughter of R. Hanina ben Tharadion, and who could learn three hundred Halakhas from three hundred great men in one day, could still not master the contents of the book of ancestry in three years, wouldst thou then learn it in three months?"

As R. Johanan was about to leave, R. Simlai said to him: "Rabbi, tell me the meaning of the clause in the Mishna stating, 'if a man slaughtered the Passover-sacrifice for its actual purpose or not for its actual purpose, for those who will partake of it or for those who will not partake of it.' What is the difference, and why is the one sacrifice valid and the other not?" and R. Johanan replied: "Taking into consideration that thou art a young scholar, I will answer thee: If the Passover-sacrifice was offered for its actual purpose or for another purpose the validity of the sacrifice itself is questioned, whereas if it were slaughtered for those who will partake thereof or these that

will not, it does not concern the sacrifice itself. In the first case no distinction can be made as to which part is intended for the one purpose and which for the other, while in the latter instance one may divide the sacrifice and say, 'This part shall serve for those who will partake thereof while the other shall serve for the sick and aged, or the other part will not be given to the sick and aged,' and thus the subsequent intention will be ignored, while in the first instance such would be impossible. The first instance can apply either to an individual or to a congregation, while the latter instance can only apply to a family but not to an individual. Again, the first instance can apply to all the four acts necessary to make it a sacrifice, namely, to the slaughtering, receiving its blood, bringing it to the altar, and sprinkling the blood; but the latter instance cannot apply to all four acts, because we have already learned that in the sprinkling of the blood the partakers of the sacrifice are not considered." (Commenting upon the answer of R. Johanan) R. Ashi said: 'The first two reasons cited by R. Johanan are virtually one and the same thing; for why is 'the validity of the sacrifice itself questioned,' because 'no distinction can be made'?"

Rami bar Judah in the name of Rabh said: "Ever since the book of ancestry was concealed, the power of our sages was on the wane and their eyes were stricken with blindness."

Said Mar Zutra: "The section of Chronicles between the passage concerning, Azel and his six sons in the eighth chapter and the same passage in the ninth chapter (see Chronicles viii. 38 and ibid. ix. 44) required so much space in the book of ancestry that the material whereon it was written had to be transported by four hundred camels." [1]

We have learned in a Boraitha: Anonymous teachers say: "If, when slaughtering the Passover-sacrifice, the intention originally was that it serve for the uncircumcised and subsequently for the circumcised, it is valid. If the reverse was the case, it is not valid."

MISHNA: If a man offer the Passover-sacrifice while still having leaven in his possession, he thereby transgresses a negative commandment. R. Jehudah says: "The same rule applies to the continual daily offering (of that evening)." R. Simeon says: "If the paschal sacrifice was slaughtered for its proper

purpose on the eve of Passover with leaven, the mentioned transgression was committed; but if offered for any other purpose no guilt was incurred. As for other sacrifices, whether they were brought for their proper purposes or not (under their proper denominations or not), no guilt is incurred. If offered as a Passover-sacrifice on that festival, no guilt is incurred; but if offered under any other denomination (not for its proper use) guilt is incurred. As for other sacrifices (offered under the same circumstances during the Passover), a transgression is committed whether they were offered under their proper denominations or not, excepting in the case of the sin-offering, slaughtered not for its actual purpose (because concerning the sin-offering it is expressly written, 'a sin-offering *is it*'; hence if not brought for its actual purpose it cannot be considered a sacrifice at all)."

GEMARA: Said R. Simeon ben Lakish: "No guilt is incurred unless the man slaughtering the

lamb, or the one sprinkling the blood, or the one of those who are to partake thereof, have leaven in his possession, and that only if he have it *with him* in the Temple." R. Johanan, however, said: "Even if he did not have it with him in the Temple." Their point of variance is based upon the word "with" (Hebrew •• "al"). R. Simeon ben Lakish holds that with signifies "near by," while R. Johanan maintains that "with" may also mean, if the man have it in his possession wherever it may be. (The "with" under discussion is that to be found in the passage [Exod. xxxiv. 25]: "Thou shalt not offer the blood of my sacrifice *with* leaven.")

They have already disputed concerning the word "with" elsewhere? Why should their discussion be repeated? For this reason: If they disputed only concerning leaven on the Passover, R. Johanan might say, that leaven being a prohibited thing on that festival, it matters not where it is found, but concerning the cakes of the thanksgiving-offerings, which only become sanctified upon being brought into the Temple, R. Johanan might admit that the thanksgiving-offering would become invalid unless the cakes were brought with it into the Temple; hence it was necessary that R. Johanan should express his opinion to the effect that even in that case "with" signified, if they were in possession of the man bringing the thanksgiving-offering.

If the instance of the cakes only were mentioned, it might be assumed that Resh Lakish only holds that the cakes must

be brought *with* the thanksgiving-offering into the Temple, because they only become sanctified *in* the Temple, while in the case of the leaven, which is a prohibited article on the Passover, be might also admit that, no matter where it was situated, if it was only in possession of the man it would render the sacrifice invalid; hence *his* opinion in this case had to be cited.

R. Oshiya propounded a question to R. Ami: "If the man slaughtering the lamb had not leaven in his possession, but one of the congregation which was to partake thereof had, what is, the law?" Said R. Ami: "What question is this? Does the passage then read, 'Thou shalt not sacrifice it with *thy* leaven'; it states explicitly, 'with leaven'?" Rejoined R. Oshiya: "According to thy opinion, then, even if any person had leaven in his possession, even if he were not connected with the sacrifice, is the man sacrificing culpable?" and R. Ami replied: "The passage reads: 'Thou shalt not offer the blood of my sacrifice with leaven; neither shall be left unto the morning the sacrifice of the feast of Passover,' and it signifies that one who can be culpable for leaving that sacrifice until morning is culpable for slaughtering with leaven." Said R. Papa: "Thus if the priest who burns the fat of that sacrifice have leaven in his possession, he is culpable, because the priest is subject to the negative commandment not to leave the fat until morning."

We have learned a Boraitha in support of R. Papa: "If a man slaughter the paschal lamb with leaven, he thereby transgresses a negative commandment provided he himself, or the one who sprinkles the blood, or one of the congregation which is to partake of the lamb have leaven in possession. If any other person, however, have leaven in his possession, it matters not. Thus only the slaughterer, the sprinkler, and the one who burns the fat of the sacrifice are guilty if having leaven in their possession, but not one who on the 14th day (of Nissan) pinches off the head of the fowl, brought as a sacrifice, by the back of its neck." 1

"*R. Jehudah says: This rule applies to the continual daily offering*," etc. What is the reason for

R. Jehudah's statement? Because it is written [Exod. xxiii. 18]: "Thou shalt not offer the blood of *my* sacrifice with leavened bread," and "my" signifies the sacrifice designated especially for the Lord; and which is that? The continual offering (of the evening).

"*R. Simeon says,*" etc. What reason has R. Simeon for his statement? From the fact that in the same passage "my" is mentioned twice, one refers to the paschal offering and the other to the other sacrifices. Why, then, did the passage not generalize the sacrifices and use the plural? In order to convey that at the time guilt was incurred on account of the paschal offering through leaven, no guilt was incurred on account of other sacrifices through the same means; but when no guilt was incurred on account of the mentioned sacrifice, it was incurred on account of the others.

"*If offered as a Passover sacrifice on that festival,*" etc. Thus guilt was incurred if the sacrifice was offered expressly for other than the Passover purpose, but if offered in silence no guilt was incurred? Why should this be so? Do we not know that if that sacrifice were brought at any other time of the year in silence it would be considered a peace-offering, and a peace-offering brought on the Passover with leaven would certainly make one culpable? Thus, we infer from R. Simeon's teaching to the effect that he is not culpable; that if a paschal lamb is brought without comment, it remains just what it is, and if it is intended for a peace-offering, it must be distinctly stated.

Said R. Hyya bar Garuda: "It was decided by the entire assembly that the Mishna should be explained thus: The case treated of is where the congregation were all rendered unclean through a corpse, in which case the Passover was postponed for one month and was called the Second Passover; then if the paschal offering was brought in silence, it was certainly brought as a Passover-sacrifice."

MISHNA: The Passover-sacrifice was slaughtered for three successive divisions of men, because it is written [Exod. xii. 6]: "The whole *assembly* of the *congregation* of *Israel* shall slaughter it (thus three divisions were necessary, according to the expressions) "assembly," "congregation," and "Israel." The first division entered until the court of the Temple was filled, when the doors of the court were closed, and the cornet (horn) sounded Tekiah (one blast), Teruah (a succession of quick blasts), and Tekiah (another blast). The priests then placed themselves in double rows (file), each priest holding either a bowl of silver or a bowl of gold in his hand, but one row of priests had to hold all silver bowls and the other all gold--they were not allowed to be mixed. These bowls had no stands

underneath, so that the priests might not put them down and allow the blood to become coagulated.

The Israelite slaughtered and the priest received the blood and gave it to another priest, who in turn passed it to another, and each receiving a full bowl, at the same time returning an empty one; the priest nearest the altar squirted out the blood in one (continuous) stream at the base of the altar. (This done) the first division went out and the second entered; when that went out, the

third entered; in the same manner as the first, so did also the second and third divisions proceed.

The Hallel (prayer of praise) was read (by each division): if they had finished (before completing their duties), they commenced it over again, and might even say it for the third time, although it never happened that there was occasion to say it thrice. R. Jehudah says: "It never happened that the third division read as far as the chapter commencing, 'It is lovely to me, that the Lord heareth my voice' (Psalms cxvi.), 1 because they were few in number."

The same things that were done on week-days were also done on the Sabbath, excepting that the priests would on that day wash the court, contrary to the wishes of the sages. R.. Jehudah says: "A cup was filled with the mixed blood (of all the sacrifices) and was squirted out in one (continuous) stream on the altar"; but the sages would not admit that such was the case.

In what manner was the paschal sacrifice suspended and its skin removed? Iron hooks were affixed to the walls and pillars, on which the sacrifice was suspended and its skin removed.

Those who could not find a place to do it, in that manner used thin, smooth sticks of wood provided there for that purpose, on which they suspended the paschal sacrifice (and resting the sticks) between the shoulders of two persons, to remove the skin. R. Eliezer says: "If the 14th (of Nissan) occurred on a Sabbath, one person would place his left hand on the right shoulder of another, the latter would place his right hand on the left shoulder of the former, and thus suspending the sacrifice on the arms would remove the skin with their right hands."

When the sacrifice had been opened, the pieces which were to be sacrificed on the altar were removed, placed on a large dish, and offered up with incense on the altar. When the first

division had gone out (on the Sabbath), they would remain on the mount of the Temple; the second would remain in the open space between the ramparts of the Temple, and the third division remained in its place. As soon as it became dark, they all went out to roast their sacrifices.

GEMARA: R. Itz'hak said: "The paschal sacrifice was not slaughtered unless there were three divisions of thirty men each; why so? Because it is written: 'The whole *assembly* of the *congregation* of *Israel*--thus '*assembly*' means ten men, '*congregation*' ten men, and '*Israel*' also ten men." It was doubtful, however, whether the thirty men had to be together, or whether only ten men at a time had to be present. So it was ordered that thirty men should enter, and as soon as ten were ready they went out, and ten others took their place; the next ten then left, and another ten entered; finally, the last thirty men went out together--thus each division numbered fifty men, or all three divisions one hundred and fifty men.

"*The first division entered,*" etc. It was taught: Abayi said, "that as soon as the first division entered the doors closed of themselves," while Rabha states, "that the doors were closed (by men), according to the teaching of the Mishna." What is the difference? According to Abayi, who states that the Mishna teaches that the doors closed of themselves, a miracle could be depended upon to gauge the number who were permitted to enter, while Rabha maintains that no miracle was depended upon, but that men appointed for that purpose would see when the court

was filled and would then close the doors.

The rabbis taught: It never happened that a man was crushed to death by the vast throng except once during the time of Hillel, when an old man was killed in the crowd. On that account that Passover was called the "crushed Passover."

The rabbis taught: "Agrippa the king once wanted to know how many male Israelites there were. So he told the high-priest to keep account of the paschal lambs. The high-priest then ordered, that one kidney of each paschal lamb be preserved, and it was found that six hundred thousand pairs of kidneys were preserved; and this was twice the number of the Israelites who went out of Egypt. Naturally, this was exclusive of all Israelites who were unclean and could not offer the sacrifice, and all those who lived at a great distance from Jerusalem and were not in duty bound to be present., There was not a single paschal lamb that did not represent at least more than ten persons.

[paragraph continues] That Passover was ever afterwards known as the 'large Passover.'"

How could the kidneys be preserved? Was it not imperative that they should be offered up on the altar? The kidneys were merely deposited by one priest until another came along and substituted something else in their place.

"*The priests then placed themselves in double rows*," etc. Why was this done? Shall we assume that, if this were not done, a priest might empty the blood contained in a golden bowl into a silver bowl, and thus degrade the sanctity of the blood of the sacrifice; then might not a priest also empty the contents of a bowl worth two hundred (dinars) into one worth only a hundred, and thus bring about the same condition? Hence we must say, that it was not on that account, but merely for the sake of better appearance.

"*These bowls had no stands underneath*," etc. The rabbis taught: There were no bowls on the Temple that had any stands except those used to contain the incense which was placed near the showbreads, for had those bowls no stands it was feared that they might fall over on the sides of the showbreads and crush them.

"*The Israelite slaughtered*." This is related by the Mishna in order to demonstrate that an ordinary Israelite may slaughter.

"*The priest removed the blood*," etc. This is related in order to inform us that all subsequent acts necessary for the sacrifice were performed by the priests.

"*Gave it to another priest*," etc. The Mishna teaches us thereby that [Proverbs xiv. 28]: "In the multitude of people is the King's glory."

"*Receiving a full bowl, at the same time returning an empty one*." This bears out the statement of R. Simeon ben Lakish to the effect that a religious duty must not be passed by; *i.e.*, it must first be accomplished and then transferred to another; but not the reverse.

"*The priest nearest the altar*," etc. Who is the Tana who holds that the blood of the Passover-sacrifice must be squirted at the base of the altar? Said R. Hisda: "That is R. Jose the Galilean, as we have learned in the following Boraitha: R. Jose the Galilean said: It is written [Numbers xviii. 17]: 'Their blood shalt thou sprinkle upon the altar, and their fat shalt thou burn as a fire-offering,' and as it does not say 'its blood' or 'its fat,' but in the plural, 'their blood' and 'their fat,' it signifies

that the blood of the firstlings and of the first tithes and of the Passover-sacrifice must be sprinkled, and the pieces which must be offered should be offered up on the altar."

Whence do we know, however, that the blood must be squirted at the *base* of the altar? Said R. Elazar: "By means of a comparison by analogy with the case of a burnt-offering, concerning which it is written [Levit. i. 11]: "And the sons of Aaron, the priests, shall sprinkle its blood upon the altar round about." Thus as in the passage quoted above [Numb. xviii. 7] "sprinkling" is also mentioned, the inference is that in both cases the sprinkling must be done at the base of the altar. Whence do we know that the blood of a burnt-offering must be sprinkled at the *base* of the altar? From the passage [ibid. iv. 18]: "And all the blood shall he pour out at the *base* of the altar of burnt-offering."

"*The first division went out*," etc. We have learned in a Boraitha that the third division was called the "tardy division." Why should this be so? One division had to be the last? Everyone had to strive to be first, as we have learned in a Boraitha: "R. Jose said: The world cannot exist without an apothecary and without a tanner, yet well is to him who follows the profession of an apothecary and woe is to him who follows the calling of a tanner. The world cannot exist without males and females; yet well is to him who hath sons and woe is to him who hath daughters."

"*The priests*, etc., *would wash the courts, contrary to the wishes of the sages*." Who were the sages who were opposed to this? Said R. Hisda: "That was only R. Eliezer, for the other sages all held that a rabbinical prohibition was never effective in the Temple." (See Tract Sabbath, page 187.)

"*R. Jehudah says, 'A cup was filled,'*" etc. We have learned in a Boraitha: R. Jehudah said: "A cup was filled with the mixed blood lest the blood of one of the bowls held by the priests be spilled in transit, and thus the sacrifice whence the blood came became invalid." R. Jehudah was asked, however: "Supposing the mixed blood was taken from that which was spilled on the ground and not from that which had been received in the bowls, would this not be unlawful?" and he replied: "I refer only to such as had been received in the bowls."

How could this distinction be made in the midst of such a vast multitude? The priests were very dexterous. If so, why was there fear that the blood of one of the bowls might be

spilled? just because they were so dexterous, there is all the more reason to assume that in the

handling of the bowls some of the blood might be spilt.

Was it not certain, however, that in that mixed blood there was the last (life) blood of the sacrifice (which must not be offered up on the altar)? R. Jehudah holds to his individual theory, that one kind of blood does not interfere with another, and if the proper blood was sprinkled it was sufficient.

"*The pieces*, etc., *were placed on a large dish and offered up*." Did the same person offer it up on the altar? Read in the Mishna: He would place it on a large dish until a priest would come and offer it up.

We have learned in a Boraitha: As soon as a man had finished preparing his sacrifice, he would wrap up in the skin and carry it off. Said R. Elish: This is after the manner of the Ishmaelitish meat-dealers.

Footnotes

106:1 See Numbers xxviii. 3.

106:2 All hours mentioned in Mishnaoth and Gemara are counted according to Palestinian time, The first hour in the morning is counted from our time, six o'clock.

108:1 The Hebrew term for peace-offerings is "Hashlomim," and "Hashlom" also signifies "to complete," whence Rabha adduces that the peace-offerings complete the sacrifices for the day and nothing further must be sacrificed.

109:1 The manner of procedure necessary to make a Passover-offering efficacious will be more fully explained in Tract Zeba'him (Sacrifices).

116:1 According to the Aruch the passage commencing with Azel and ending with Azel in the one chapter required so much space, while the version rendered above is according to Rashi.

118:1 See Levit. v. 8.

120:1 The Hallel prayer consists of the recital of six chapters of Psalms, from cxiii. to cxviii. incl.

Next: Chapter VI: Regulations Concerning Acts Which Supersede the Due Observance of the Sabbath; The Paschal Offering; What if One Sacrifice is Confounded with Another

CHAPTER VI.

REGULATIONS CONCERNING ACTS WHICH SUPERSEDE THE DUE OBSERVANCE OF THE SABBATH--THE SACRIFICE OF THE PASCHAL OFFERING--WHAT IS TO BE DONE IF ONE SACRIFICE IS CONFOUNDED WITH ANOTHER.

MISHNA: The following acts necessary for the sacrifice of the paschal offering supersede the due observance of the Sabbath, namely: The slaughtering thereof, the sprinkling of its blood, the removal of its entrails, and the burning of the fat with incense; but the roasting of the sacrifice, as well as the washing of its entrails, does not supersede the due observance of the Sabbath. To carry and bring it beyond the sabbatical legal limits, or to remove a wen (or spreading sore) thereon, is an act which does not supersede the due observance of the Sabbath. R. Eliezer, however, says they do supersede it. "For," said R. Eliezer, "this is surely a logical sequence; if slaughtering an animal, which is prohibited on the Sabbath as being a principal act of labor, is allowed in this instance (of the Passover) and even supersedes the Sabbath, does it not follow that these two acts, which are only prohibited by rabbinical law, should also in this instance supersede the Sabbath?" R. Jehoshua answered and said: "The laws concerning the festival will prove the contrary; for many things prohibited on the Sabbath as being principal acts of labor are nevertheless permitted on the festival, [1] while other things which are prohibited by rabbinical law are yet prohibited on the festival." [2] R. Eliezer replied: "What is the matter with thee, Jehoshua? How canst thou adduce proof from purely voluntary acts (such as cooking) to such as are distinctly prohibited by biblical law?" R. Aqiba then answered: "The act of sprinkling (a person who had become unclean) will prove it; for that is a distinct biblical commandment and is only prohibited on the Sabbath by rabbinical

law, still it does not supersede the due observance of the Sabbath; [1] do not therefore wonder that these acts, which are also religious duties, and are only prohibited on the Sabbath by rabbinical law, should still not be allowed to supersede the Sabbath." R. Eliezer replied, however: "I also adduce my inference from the act of sprinkling, and maintain that if slaughtering, which is prohibited to be done on the Sabbath as a principal act of labor, is in this instance allowed to supersede the due observance of the Sabbath, does it not follow that the sprinkling of a person who had become unclean, and which is only prohibited to be done on Sabbath by rabbinical law, should in so much greater a degree supersede the Sabbath?" But R. Aqiba said: "Rather conclude the reverse: for if the sprinkling, which is only prohibited by rabbinical law, nevertheless does not supersede the Sabbath, does it not follow that slaughtering, which is prohibited as a principal act of labor, should *a fortiori* not supersede the Sabbath?" R. Eliezer then said to him: "Aqiba! wouldst thou then annul what is written in the Scriptures [Numb. ix. 3]: 'Toward evening shall ye prepare it, *at its appointed season*,' (and which signifies) whether it be a week or a Sabbath day?" Rejoined R. Aqiba: "Rabbi, pray adduce a text that prescribes a particular (and appointed) time for the performance of these acts (mentioned in the first part of this Mishna), even as there is one concerning the slaughtering of the paschal sacrifice." The

following rule therefore did R. Aqiba lay down: Every act necessary for the paschal sacrifice, which can be accomplished previous to the advent of the Sabbath, does not supersede the due observance of the Sabbath; but as the slaughtering of the paschal lamb cannot be done before the Sabbath, it supersedes the Sabbath.

GEMARA: The rabbis taught: The Halakha in the Mishna was not known to the children of Bathyra; for it once happened that the 14th (of Nissan) occurred on a Sabbath, and they did not know whether the Passover sacrifices superseded the due observance of the Sabbath or not. They therefore commenced to look around for a man who knew the Halakha, and they were told that there was a man who had recently come from Babylon, called Hillel of Babylon, and who had learned under the two greatest men of that generation, namely, Shemaiah

and Abtalion; he would probably be able to aid them in their dilemma. They sent for him and asked him: "Dost thou know whether the Passover-sacrifice supersedes the Sabbath?" and he answered: "Have we only one Passover-sacrifice that supersedes the Sabbath? are there not over two hundred sacrifices that supersede the Sabbath?" (*i.e.*, the continual daily offerings which are offered twice on the Sabbath and the additional two sacrifices which are brought especially on the Sabbath). But they insisted upon his basing his assertion upon some actual text, and he said: "As it is written concerning the continual daily sacrifice [Numb. xxviii. 2]: 'My offering, etc., shall ye observe to offer unto me in its due season,' and the same term, 'at its appointed season,' is mentioned in connection with the Passover-sacrifice [Numb. ix. 2], therefore both may supersede the Sabbath. Aside from this analogous deduction, there is also an *a fortiori* conclusion; for if on account of the continual daily sacrifice, for the neglect of which the penalty of Kareth is *not* incurred, the Sabbath may be violated, so much the more is this allowed on account of the Passover-sacrifice, for the omission of which the penalty of Kareth *is* incurred." When they heard this, they immediately placed him at their head and made him a prince. Thereupon he sat all day and preached upon the Halakhoth of the Passover.

Subsequently Hillel began to reproach them, and said: "What induced you to set me up as a prince among you? Only your own idleness in not taking advantage of the learning of the two great men of your generation, Shemaiah and Abtalion."

The following question was propounded to Hillel: "What is the law if a man had forgotten to bring the slaughtering knife on the day preceding the Sabbath?" He answered: "I have heard the Halakha but have forgotten it. Leave this, however, to the Israelites themselves, for though they are not prophets they are descendants of prophets, and they will know what to do." On the morrow he noticed that those who brought sheep as a sacrifice had the knife thrust in the wool of the sheep and those that brought goats as a sacrifice had the knife stuck between the horns, whereupon he remembered the Halakha covering the case and exclaimed: "Thus is the tradition which I have received from my masters Shemaiah and Abtalion."

The Master said: It is written, "in its due season," etc. Whence is it adduced, however, that the continual daily sacrifice

supersedes the due observance of the Sabbath? From the passage "in its due season"? Is not the same passage to be found in connection with the paschal offering? Why, then, was the question put concerning the latter, while concerning the former it seemed to be an established fact that the Sabbath might be violated on its account? Certainly such is the case! For it is explicitly stated [Numb. xxviii. 10]: "This is the burnt-offering of the Sabbath on every Sabbath, *besides* the continual burnt-offering and its drink-offerings."

The Master said: "On the morrow those who brought a sheep as their sacrifice had the knife thrust in the wool." Would this not constitute the performance of work with a consecrated thing (which is prohibited)? This is in accordance with the custom of Hillel, concerning whom it is said, that in his time not a single transgression was committed with the consecrated animals, because he instituted the custom that they be brought to the court of the Temple in a non-consecrated state, and consecrated in the court of the Temple.

How can the Passover-sacrifice, however, be brought as an ordinary animal in the Temple on the Sabbath? It is not allowed to consecrate things on the Sabbath? This applies only to ordinary articles which were to be consecrated, but not to such as it was a duty to consecrate; for R. Johanan said, that Passover sacrifices may be consecrated on a Sabbath and a festival sacrifice on a festival.

When bringing the sheep with the knife in its wool, did not that constitute an indirect performance of work on the Sabbath, which, although it was not prohibited by biblical law, was nevertheless prohibited by rabbinical law? This was the question propounded to Hillel, whether an act prohibited only by rabbinical law but not by biblical might be performed on the Sabbath in order to discharge a religious duty, and in answer to which he said that he had forgotten the Halakha, but which he afterwards remembered and decided in the affirmative.

Said R. Jehudah in the name of Rabh: "He who is arrogant, if he be one of the sages his wisdom leaveth him, and if he be a prophet his power of prophecy forsaketh him. If he be a sage his wisdom leaveth him, is aptly illustrated by the case of Hillel, who, as soon as he reproached the people and vaunted his own greatness, when asked concerning a certain Halakha admitted that he had forgotten it; and if he be a prophet his power of prophecy forsaketh him, may be inferred from the case

of Deborah the prophetess, as it is written [Judges v. 7]: 'Desolate were the open towns in Israel, they were desolate until that I arose, Deborah, that I arose a mother in Israel,' while further on it is written [ibid. 12]: 'Awake, awake, Deborah,' whence the conclusion that her power left her, for otherwise the admonition to awake would be unnecessary."

Resh Lakish said: A man who becomes angry, if he be a sage his wisdom leaveth him, and if he be a prophet his power of prophecy forsaketh him. The first instance is illustrated by the case of Moses, as it is written [Numb. xxxi. 14]: "And Moses was wroth with the officers of the host," and further it says [ibid. 21]: "And Elazar the priest said unto the men of the army who had gone to the battle, This is the ordinance of the law which the Lord hath commanded Moses," whence the inference that Elazar said this because Moses must have forgotten it. The second instance is illustrated by the case of Elisha the prophet, as it is written [II Kings iii. 14]: "And Elisha said,

As the Lord of hosts liveth, before whom I have stood, surely, were it not that I regard the presence of Jehoshaphat the king of Judah, I would not look toward thee, nor see thee," while in the following passage it is said: "But now bring me a musician. And it came to pass, when the musician played, that the inspiration of the Lord came upon him," whence the conclusion that his power forsook him and could be restored only by the aid of a musician. R. Mani bar Patish said: If a man becomes angry, even if greatness had been predestined for him, it is not granted him, and whence do I adduce this? From the case of Eliab, as it is written [I Samuel xvii. 28]: "And Eliab's anger was kindled against David, and he said, Why didst thou come down hither? and with whom hast thou left those few sheep in the wilderness? I know thy presumption, and the wickedness of thy heart; for in order to see the battle art thou come down," and it is also written, that when Samuel went to anoint one of the sons of Jesse as a king, and the other sons of Jesse were brought before him, he said: "This one also hath the Lord not chosen" [ibid. xvi. 8, 9], while concerning Eliab it is written [ibid. 7]: "But the Lord said unto Samuel, Regard not his appearance, nor the height of his stature; because I have rejected him," whence the conclusion that the Lord had previously intended to have him anointed, but on account of Eliab's anger He had subsequently rejected him.

From what we have learned so far, we know that the continual

daily offering and the Passover-sacrifice supersede the Sabbath, but whence do we know that they also supersede the law of uncleanness? I will tell you! In the same manner as we have deduced (by analogy) from the continual daily offering the law of the Passover-sacrifice, so we deduce from the Passover-sacrifice, which supersedes uncleanness, that the continual daily sacrifice also supersedes uncleanness. Whence do we know that the Passover-sacrifice itself supersedes the law of uncleanness? Said R. Johanan: "Because it is written [Numbers ix. 10]: 'If any man whatever should be unclean by reason of a dead body,' etc., we infer from the term, 'any man whatever,' that only individuals must defer the Passover-sacrifice until the second Passover; but if there is a congregation they should prepare the paschal lamb, notwithstanding the fact that they are unclean."

"*The washing of its entrails*." What is meant by washing the entrails? Said R. Huna: "The entrails are pricked with a knife and then washed," and R. Hyya bar Rabh says: "They are merely pressed with a knife, and in that manner the filth is removed."

It is written [Isaiah v. 17]: "Then shall the sheep feed according to their wont, and the ruins of the fat ones shall sojourners eat." Said Menasseh bar Jeremiah in the name of Rabh: The term "according to their wont" being expressed by (the Hebrew word) *Kedabram*, and "*Debur*" meaning "speaking," the expression *Kedabram* should be explained to mean, "as they were spoken of." The word "sheep" refers to the Israelites, and thus the passage signifies: "Then shall the Israelites feed as they were spoken of." What was spoken of concerning them? Said Abayi: "By the latter part of that verse and by the 'sojourners' are meant the righteous who at that time were strangers, but in the future they would be the inhabitants and feed on the ruins of the fat ones." Said Rabha to him: This interpretation would be correct if there were not the word "and" between the two passages, but that word gives the latter passage a distinct significance; therefore, said he, the passage will have the meaning given it by R. Hananel in the name of Rabh, who said that in the future the righteous would have the power to arouse the dead; because in this passage quoted it is said: "Then shall the sheep feed according to their wont,"

and in another passage [Micah vii. 14]." Let them feed in Bashan and Gilead, as in the days of old." By Bashan is meant Elisha,

the man of Bashan, as it is written [I Chronicles v. 12]: "Yanai and Shaphat in Bashan," and [II Kings iii. ii]. "Elisha the son of Shaphat" (hence Elisha, being the son of Shaphat, was from Bashan). By Gilead is meant Elijah, as it is written [I Kings xvii. 1]: "Elijah the Tishbite, who was of the inhabitants of Gilead" (and both of these prophets Elijah and Elisha roused the dead). Thus the original passage quoted [Isaiah v. 17] should be interpreted as follows: As in the days of old Elijah and Elisha aroused the dead, so will in the future other righteous men also have that power. 1

R. Samuel ben Na'hmeni in the name of R. Jonathan deduces the above conclusion from the passage [Zechariah viii. 4]: "Thus hath said the Lord of Hosts, Again shall there sit old men and women in the streets of Jerusalem, and every one with staff in hand because of their multitude of years"; and as it is written [II Kings iv. 29]: "Lay my staff upon the face of the lad," the inference that the righteous will have the power to arouse the dead is deduced from the analogy of the two passages, the latter of which deals with the arousing of the dead.

"*The burning of the fat with incense*." We have learned in a Boraitha: R. Simeon said: "Come and observe how pleasing the fulfilment of a religious duty at its proper time was to them! We well know that the burning of the fat and of certain pieces could be accomplished at any time during the night; still they did not postpone it, but accomplished it immediately."

"*To carry and bring it beyond the sabbatical legal limits*." (This passage of the Mishna is explained in Tract Erubin, pages 245-246.)

"*For, said R. Eliezer, if slaughtering an animal*," etc. (What could R. Jehoshua reply to this?) R. Jehoshua holds to his individual theory, that the enjoyment of a festival by feasting and drinking is also a religious duty (as explained in a Boraitha on Tract Betza). 2

"*R. Aqiba then answered: The act of sprinkling*," etc. We have learned in a Boraitha: R. Eliezer said to him: "Aqiba, thou hast refuted my assertion with (the instance of) slaughtering; by slaughter shalt thou suffer death!" Said R. Aqiba: "Rabbi, the time when thou judgest me, do not deny what

thou thyself taughtest me! The tradition I quote comes from thee, that sprinkling (an unclean person) is a rabbinical law and does not supersede the due observance of the Sabbath."

If R. Eliezer actually taught R. Aqiba to this effect, why was he angry with him? R. Eliezer had forgotten that teaching, and R. Aqiba reminded him through his answer. Why did R. Aqiba not say at the time that he had learned it from R. Eliezer? Because it is not seemly that a teacher be told that he had forgotten.

Why should sprinkling not supersede the due observance of the Sabbath; it is only a matter of holding a little water, and if necessary to enable a man to partake of the paschal lamb, why should it not be permitted on the Sabbath? Said Rabha: "The prohibition is merely a precautionary measure, lest a man carry the water four ells in public ground."

According to R. Eliezer, however, who maintains (in Tract Sabbath) that the preparation for the accomplishment of a religious duty supersedes the Sabbath, what matters it if the water was carried four ells in public ground? I will tell you! R. Eliezer in that instance refers to a religious duty which the man is already obliged to discharge, but in this case the man, being still unclean, is not subject to the performance of that duty, but by being sprinkled is merely rendered so, and in such a case R. Eliezer does not apply his decision.

Rabha said: "According to the opinion of R. Eliezer just quoted, it is permitted to heat water on Sabbath for a child who is *healthy*, in order to strengthen it, and then circumcise it, because the child is already subject to the performance of that duty; but if the child is *not* well, heating water is not permitted, because in such a condition the child is not subject to that duty." Replied Rabha: "If the child is healthy, what need is there of heating water for it? Therefore," said he, "with respect to circumcision, all children are considered as being unwell until they are bathed, and are not subject to the duty of circumcision prior to being bathed. Hence no water should be heated for a child who is healthy, according to R. Eliezer, on the Sabbath, but on the preceding day."

"*The following. rule therefore did R. Aqiba lay down*," etc. Said R. Jehudah in the name of Rabh: "The Halakha prevails according to R. Aqiba." Concerning circumcision R. Aqiba laid down the same rule, and R. Jehudah also said in the name of Rabh, that the Halakha prevails according to R. Aqiba. (At

the proper place in Tract Sabbath the reason why R. Aqiba made the rule in both instances is explained, page 295.)

MISHNA: Under what circumstances is it allowed to bring a festal offering in addition to the paschal sacrifice? When the paschal sacrifice is sacrificed on a week-day, when those offering it are legally (ritually) clean, and if it is insufficient for the number appointed to partake thereof. But if it is sacrificed on a Sabbath, if it is sufficient for those appointed to eat it, or when those are legally unclean, no festal offering may be brought in addition to the paschal sacrifice. The festal offering may be brought of the flock, of cattle, lambs or goats, and may be either male or female (animals); the time during which it is a duty to consume it is two days and a night.

GEMARA: The Tana who holds that a festal offering must not be brought on the Sabbath is also the same who maintains that bringing or carrying the paschal sacrifice from beyond the sabbatical legal limits does not supersede the due observance of the Sabbath. Thus the statement in our Mishna is merely supplementary to that of the previous Mishna, and signifies that a festal offering may be brought only on a week-day, but it does not supersede the Sabbath.

For what purpose is a festal offering brought generally in addition to the paschal sacrifice? As we have learned in the following Boraitha: "The festal offering which is brought in addition to

the paschal offering should be eaten prior to the latter, in order that the paschal offering may be the last to satiate the appetite of those who partake thereof."

"*Two days and a night,*" etc. Our Mishna is not in accordance with the opinion of Ben Thamah. We have learned in a Boraitha: Ben Thamah said: "The festal offering brought in addition to the paschal sacrifice is in all respects equal to the paschal sacrifice itself, and should be eaten only in the course of one day and night. The festal offering, however, brought on the 15th (the festival proper) should be consumed during the course of *two* days and one night. The festal offering brought on the 14th with the paschal sacrifice only fulfils the duty of enjoying the festival, but the injunction not to come empty-handed into the Temple is not satisfied thereby. The festal offering brought in addition to the paschal sacrifice must be brought of sheep only, but not of oxen; it must be male and not a female, and not over one year old. It should be consumed in the course of one day and night, and must not be eaten

except it be roasted, and not by any except those appointed to eat the paschal sacrifice."

What is Ben Thamah's reason for this statement? He bases it upon the teaching of Rabh to Hyya the son of Rabh, as follows: It is written [Exod. xxxiv. 25]: "Neither shall be left unto morning the sacrifice of the feast of the Passover." From the fact that the passage states "the feast of the Passover," while it could have merely said "the Passover," it must be assumed that the festal offering brought in addition to the paschal sacrifice is meant, and the verse distinctly states that it must not be left until morning.

We have learned in a Boraitha: Jehudah ben Durthai and his son Durthai severed themselves from the company of the other sages and settled in the South (on account of the decree of the sages to the effect that the festal offering does not supersede the Sabbath). He said to them: "When Elijah will come and ask you why ye did not offer a festal offering on the Sabbath, what will ye answer?" and, moreover, he said: "I am astonished at the two great men of this generation, Shemaiah and Abtalion, who were so wise and such excellent preachers, that they did not teach in Israel that the festal offering supersedes the due observance of the Sabbath."

Said Rabh: What was the basis of Ben Durthai's statement? It is written [Deut. xvi. 2]: "And thou shalt sacrifice the Passover-offering unto the Lord thy God, of sheep and oxen," and this surely cannot refer to the paschal sacrifice alone, which must be brought only of sheep and goats. Hence by "sheep" is meant the paschal sacrifice and by "oxen" the festal offering, and as it says "thou shalt sacrifice," it certainly refers to the Sabbath also. Said R. Ashi: Shall we rack our brains to find justifications for men who had severed themselves from the company of our sages? Therefore say, rather, that the passage just quoted refers to the statement of R. Na'hman, who said in the name of Rabba bar Abbahu: Whence do we know that such sheep as had been left over from those which had been separated as paschal sacrifices may be brought as peace-offerings? Because it is written: "Thou shalt sacrifice the Passover-offering unto the Lord thy God, of sheep and oxen," and this surely cannot refer to the paschal sacrifice alone, which must be brought only of sheep or goats. Hence we must say that whatever remains over from the paschal sacrifice may be used for such sacrifices as can be brought either from sheep or oxen.

Why does the festal offering in reality not supersede the Sabbath, according to the decree of the sages? Is it not a congregational sacrifice, and as such privileged to supersede the observance of the Sabbath? Said R. Ilayi in the name of R. Jehudah ben Saphra: It is written [Levit. xxiii. 41]: "And ye shall keep it as a feast unto the Lord seven days in the year." The Feast of Tabernacles (to which this passage refers) is, however, to be observed eight days? Hence we must assume that the festal offering does not supersede the observance of the Sabbath, and (leaving out the Sabbath in consequence) there are only seven days left.

When Rabhin came from Palestine he said: "I once said in the presence of my masters that the Feast of Tabernacles may sometimes last only six days. If, *f.i.*, the first day occurs on Sabbath, the last day would also be Sabbath, and as it is not allowed to bring festive offerings on those days, the festival lasts only six days." 1

Said Abayi: "This statement could not have been made by Rabhin (R. Abhin), but rather by Abhin Thekla (Thekla means one who is childless or has lost his children), because it cannot stand; for eight feast days can never occur in succession, as one must be a Sabbath; seven feast days are the rule, whereas it seldom happens that there should be only six." 2

Ula said in the name of R. Elazar: A peace-offering brought on the eve of Passover cannot serve for the fulfilment of the duty of rejoicing on the festival nor for the festal offering to be brought with the paschal sacrifice. The first duty is not discharged, because it is written [Deut. xxvii. 7]: "And thou shalt slay peace-offerings, and eat them there, and thou shalt rejoice before the Lord thy God." Hence the peace-offering must be slain when the time for rejoicing had already arrived, *i.e.*, on the festival; but on the *eve* of Passover it had not yet arrived. The second duty is not acquitted, because a festive offering must be brought of ordinary animals and not of consecrated,

and an animal brought as a peace-offering is already consecrated.

When Rabhin came from Palestine, he said, however, in the name of R. Elazar: "A peace-offering brought on the eve of Passover fulfils the duty of rejoicing on the festival, as it need not be brought at the time when rejoicing is already a duty but may be brought previously; but it does *not* fulfil the duty of bringing the festal offering, because it is consecrated, and the festal offering must be brought of non-consecrated (ordinary) animals."

An objection was made: It is written [Deut. xvi. 15]: "And thou shalt only rejoice," and this is an additional behest to rejoice also on the night of the last day of the festival. Perhaps this additional behest refers to the first night? The word "only" in the passage makes the distinction, and confirms the view that it means the last night. Hence we must assume that on the first night rejoicing is not possible, because there was nothing to rejoice with; *i.e.*, the peace-offering was not yet permitted to be slaughtered and the flesh (with which it is necessary to celebrate the festival) could not yet be bad. (Is this not contradictory to Rabhin's decree?)

Nay; the reason the first night is not included in the additional behest is as is taught in the following Boraitha: Why is the last night of the festival included in the additional behest and the

first night excluded? The last night was preceded by rejoicing and is for that reason included, while the first night was preceded by ordinary days and is for that reason excluded.

R. Kahana said: "Whence do we know that the pieces of the festal offering which was sacrificed on the 15th day (*i.e.*, the festival proper) are invalid if allowed to remain until morning? Because it is written [Exod. xxiii. 18]: 'Neither shall the fat of my festive sacrifice remain until morning,' and immediately following this it is written: 'The first,' etc., whence we adduce that the morning must be the first and not the second morning."

R. Joseph opposed this: "So it is only because the subsequent verse commences with ' the first' that the pieces of the festal offering may remain only until the first morning, but if the verse did not commence with 'the first' it would be allowed to leave them even until the second morning? Can it be that the pieces of a sacrifice the flesh of which becomes useless in the

night of the day it was offered may remain even until the second morning?" Rejoined Abayi: "Why not? Do we not find in the case of the paschal offering, according to the opinion of R. Elazar ben Azariah, that while the flesh thereof becomes invalid in the middle of the night, the pieces to be offered up become invalid only in the morning?"

Rabha answered: "R. Joseph means to ask, 'Where do we find an instance of where the Tana dispenses with a passage referring to the flesh, whereas R. Kahana brings a passage regarding the pieces of the sacrifice.'"

MISHNA: If a person brought a paschal sacrifice on the Sabbath, not for its proper purpose, he is obliged to bring a sin-offering in expiation. If he slaughtered other sacrifices to serve as a paschal offering, if they were such that they could not be suitable for the paschal sacrifice, he is guilty; but if they were suitable for that purpose, R. Eliezer declares him culpable, but R. Jehoshua declares him free. For thus argues R. Eliezer: If a person is held to be culpable for changing the name (denomination) of the paschal sacrifice, which he is allowed to slaughter on Sabbath, does it not follow that if he brought sacrifices which were in themselves prohibited to be brought on the Sabbath, under another denomination, that he must in so much greater a degree be considered culpable? To this R. Jehoshua replied: "Nay; we cannot apply the decree concerning a sacrifice which was changed to what was prohibited to offer on the Sabbath, to other sacrifices which had been changed to that which was permitted to be brought on the Sabbath." R. Eliezer replied: "The offerings brought for the whole congregation of Israel shall prove my assertion, for it is lawful to offer them on the Sabbath for their proper purpose; yet whoever brings other sacrifices under their denomination is held to be guilty." Then R. Jehoshua rejoined: "Nay; we cannot apply the decree concerning the offerings of the whole congregation, which have a determinate number, to the paschal sacrifices, which have no determinate number." R. Meir said: One who also offers on the Sabbath other offerings under the denomination of those of the congregation is absolved.

If a. person slaughtered the paschal sacrifice for those who will not partake thereof, or for persons who are not appointed to partake thereof, and for uncircumcised and unclean persons, he is culpable; but if he had slaughtered it for those who will and also for those who will not partake thereof, for those appointed,

to eat it and for those who are not, for circumcised as well as for uncircumcised, or for clean and also for unclean persons, he is absolved.

If one slaughtered (the paschal lamb) and a blemish was found thereon, he is culpable; but if, after being slaughtered, it was found to be Trephah (prohibited to be eaten) on account of inward blemishes, he is not culpable. If after slaughtering (the lamb) the man was advised that the participants had withdrawn themselves from it, or had died, or become defiled, he is absolved, because when he slaughtered it, it was under lawful circumstances.

GEMARA: How is the case to be considered concerning the man who brought a paschal sacrifice not for its proper purpose? Shall we assume that he made a mistake (and thought that he was slaughtering another sacrifice), and still he is held culpable? Whence the inference that the denomination of a thing may also be annulled through error; but this is not so. Therefore it must be assumed that there was no error, but that the man intentionally sacrificed the paschal offering for another purpose (*f.i.*, for a peace-offering); if so, how will the latter clause, to the effect that if he slaughtered other sacrifices to serve for a paschal offering and they were suitable for a paschal offering, R.; Jehoshua declares him free, be consistent; for if he did so intentionally, what difference does it make whether the sacrifices were suitable or not, the fact that he sacrificed them on the Sabbath remains--how then could R. Jehoshua declare him free? Hence it must be assumed that this latter clause refers to one who did so through error, and in such an event the first clause of the Mishna will treat of an intentional case while the next clause will refer to an act committed through error? Said R. Abin: "Such is indeed the case."

R. Itz'hak bar Joseph found R. Abbahu standing amongst a crowd of men in a room and asked him how this Mishna should be understood, and he answered: "The first clause deals with an intentional case and the next clause with an erroneous com mission of an act." R. Itz'hak learned this from R. Abbahu! forty times, and he then retained it forever."

An objection was made, based upon the Mishna where R. Eliezer said to R. Jehoshua: "If a person is held to be culpable for changing the denomination of the paschal sacrifice," etc. If, however, the first clause treats of an intentional case and the next clause of a case of error, would not R. Eliezer's argument

be sufficiently answered by R. Jehoshua simply claiming that the man is free because he committed the deed through error? R. Jehoshua meant to state: According to my opinion, thy argument does not hold good, from the very fact that I hold a man to be free if he committed the deed by mistake; but even according to thy opinion, that a man is also culpable when committing an act through error, thy argument is not effective, for in the first instance the sacrifice was changed to an offering which is prohibited to be brought on Sabbath, while in the second instance the sacrifice was changed to one which might be brought on Sabbath.

R. Eliezer replied: "The offerings brought for the whole congregation of Israel shall prove my assertion, for it is lawful to offer them on the Sabbath for their proper purpose; yet whoever brings other sacrifices under their denomination is held to be guilty." Then R. Jehoshua rejoined:

"We cannot apply the decree concerning the offerings of the whole congregation, which have a determinate number, to the paschal sacrifices, which have no determinate number." Shall we then assume, that where there is a determinate number R. Jehoshua holds a man to be culpable; have we not learned in the case of where two children were to be circumcised, one on the eve of Sabbath and the other on the Sabbath, and by mistake the father had the one to be circumcised on the eve of Sabbath circumcised on the Sabbath, R. Jehoshua declared him free, although there was just *one* (*i.e.*, a determinate number) to be circumcised on Sabbath? Said R. Ami: "The case of the two children to be circumcised was as follows: One of them was to be circumcised on the Sabbath and the other on the eve of Sabbath. When the Sabbath had arrived neither one was yet circumcised, and the father by mistake had the one who was to have been circumcised on the preceding day circumcised on the Sabbath. In doing this he was confused in the performance of a religious duty, however, and for that reason R. Jehoshua declares him free, while in the case of the offerings for the congregation the actual offerings to be brought had already been sacrificed and the man who brought other offerings under their denomination did so when the religious duty had already been fulfilled, and for that reason he is held to be culpable."

What about R. Meir? Does he declare a man free who had offered other sacrifices under the denomination of those of the congregation, even if the actual congregational offerings had

already been sacrificed? From R. Meir's explanation 1 (Sabbath, page 306), according to the teaching of R. Hyya of the city of Abel Arab, however, of the dispute between R. Eliezer and R. Jehoshua, do we not see that such is not the case? Said the disciples of R. Janai: In the case of the circumcision R. Meir means to state that the child to be circumcised on the Sabbath had already been circumcised on the eve of Sabbath, and thus no child was left to make it obligatory to violate the Sabbath on its account, hence R. Jehoshua declares the man culpable; but in this case, where the Sabbath would be violated for a congregational sacrifice, R. Meir holds that any other sacrifices brought under that denomination are brought with the intention of fulfilling a religious duty, and for that reason they do not make a man culpable.

Said R. Ashi to R. Kahana: "Why should this latter case differ from the former; if a Sabbath may be violated for other congregational sacrifices, it may surely be violated also for other children who are to be circumcised on that day?" R. Kahana replied: "In that particular instance the Sabbath could not be violated by the father of the children, because he had no child for whom this would have been necessary, while the instance of the congregational sacrifice embodies a multitude of men and applies to all alike."

"*If a person slaughtered the paschal lamb for those who will not partake thereof*," etc. Is this not self-evident? We well know that if a man slaughtered on an ordinary Passover-day a sacrifice for those who will not partake thereof the sacrifice is invalid; surely, then, if he did so on a Sabbath which was also Passover, he is culpable! Because the latter clause, concerning one who slaughters a sacrifice for those who will and those who will not partake thereof, teaches that the man is *not* culpable, it also cites the instance of where he *is* culpable. Is this latter case not self-evident? If the sacrifice was offered on an ordinary Passover-day under the same circumstances, we know that it is valid; surely, then, a man is not culpable if he offers it on Sabbath! Hence we must assume that because the Mishna commences with an instance of where the sacrifice was brought not for its proper purpose, it also mentions the case of where it was brought for those

who will not partake of it.

For what purpose was the original clause in the Mishna cited? In order to quote the dispute between R. Eliezer and R. Jehoshua.

"*If after slaughtering the man was advised that the participants had withdrawn*," etc. R. Huna said in. the name of Rabh: "A trespass-offering which became ownerless (when it must be allowed to feed until it receive a blemish) and was slaughtered without its being stated for what purpose, is valid as a burnt- offering." Thus we see that it is not absolutely necessary to annul its original denomination in order to make it valid for another, but it may be offered up without comment.--Why, then, should it be necessary to allow it to feed until it receives a blemish, would it not be valid if, for instance, the owner had offered up something in its place and immediately offered it up without comment? This is merely a precautionary measure, to prevent a man from offering up a trespass-offering which was not yet substituted by another offering.

R. Hisda objected to R. Huna, and based his objection upon our Mishna, which says: If after slaughtering (the lamb) the man was advised that the participants had withdrawn themselves from it, he is absolved, because when he slaughtered it, it was under lawful circumstances; and a Boraitha teaches, that if a case like this happen on an ordinary Passover-day and not on a Sabbath, the sacrifice must be immediately burned. This would be perfectly proper if the original denomination of the sacrifice had to be plainly annulled, because, as long as its denomination is not annulled, a paschal offering remains what it is, and if it have no owner it must be immediately burned, because it becomes of itself invalid; but if the denomination need not be plainly annulled and if sacrificed without comment it is of itself changed into a peace-offering, then it becomes invalid, not because the invalidity is contained in itself, but because it was offered after the continual daily offering (of the evening), and we well know that in such an event the offering must not immediately be burned, but must be left until morning and then burned. Why, then, does the Boraitha decree that it must be immediately burned?

R. Joseph the son of R. Sala the Pious explained before R. Papa that the Boraitha is in accord with the opinion of Joseph ben Hunai, as we have learned in a Mishna: Joseph ben Hunai said: All sacrifices offered under the denomination of a paschal offering or a sin-offering are invalid. Whence we see that the

invalidity is contained in itself and does not arise on account of other circumstances. For that reason the Boraitha decrees that it must be immediately burned. So far as the commission of an act through error is concerned, Joseph ben Hunai holds with R. Jehoshua, and absolves the culprit.

Footnotes

125:1 Such as cooking, lighting a fire, splitting wood, etc.

125:2 Such as moving things from one legal limit into another without the combination of an Erub. (*Vide* Tract Betza.)

126:1 Even if that day be the last day on which an unclean person may be sprinkled, and occur on the 14th (of Nissan), when should he not be sprinkled, he would not be allowed to partake of the paschal lamb.

131:1 This lecture is inserted because in the previous paragraphs sheep were dealt with in connection with the Passover-sacrifice.

131:2 The entire argument concerning the enjoyment of a festival will be brought up at its proper place in Tract Betza (Yom Tob).

135:1 This statement of Rabhin is virtually a refutation of R. Ilayi's inference that the Feast of Tabernacles lasts only seven days, because the Sabbath, on which no festive offering is brought, is not counted--by stating that at times the Feast could last only six days.

135:2 The original text only reads "Could Abhin Thekla have said this?" In the commentary of Solomon Lurie, entitled "Yam shel Shlomo," it is stated, and rightly so, that Abayi would not have spoken so disrespectfully of Rabhin, who lived generations before him and was a great man, and hence the explanation rendered by us is given.

140:1 In the Boraitha of R. Meir's explanation, Sabbath, 30, last paragraph before the Mishna, the words "taught R. Hyya" are missing, Here, however, it says, "R. Hyya of Abel Arab," which in the original of Sabbath is not mentioned at all.

Next: Chapter VII: Roasting the Paschal Lamb; If the Paschal Lamb Becomes Defiled; Parts of Lamb Eaten

CHAPTER VII.

REGULATIONS CONCERNING THE ROASTING OF THE PASCHAL LAMB--THE MANNER OF PROCEDURE IF THE PASCHAL LAMB BECOME DEFILED--WHICH PARTS OF THE LAMB ARE EATEN.

MISHNA: How should the paschal lamb be roasted? A spit made of the wood of the pomegranate-tree should be taken, put in at the mouth (of the lamb or kid), and brought out again at the vent thereof. Its legs and entrails should be placed inside, according to R. Jose the Galilean; but R. Aqiba said: This would be a kind of boiling, and for that reason they ought to be suspended on the outside (of the lamb). The paschal sacrifice must not be roasted on an iron roasting spit, nor on a gridiron. Zadok related that Rabbon Gamaliel once said to his bondsman Tabbi: "Go and roast for us the paschal sacrifice on a gridiron."

GEMARA: Why should the spit be made of wood? Let it be an iron spit. Nay; when part of an iron spit is heated the entire spit becomes hot, and in consequence the flesh nearest the spit will be cooked by the heat thereof; but the Scriptures distinctly ordain that the lamb must be roasted over a fire, and not otherwise.

Why not use the wood of a date-tree? On account of the bark, which contains water, and when heated the water thereof will be the means of cooking part of the lamb, and this must not take place. Our Mishna is not in conformity with the opinion of R. Jehudah, who said that, as a wooden spit is not burnt while the lamb is being roasted, so also an iron spit will not become sufficiently heated to cook the flesh adjoining it. He was told, however, that while a wooden spit only becomes heated locally, an iron spit when partially heated becomes so throughout.

"*The legs and entrails are placed inside*," etc. We have .learned in a Boraitha that R. Ishmael calls a lamb roasted in that wise a sizzling roast and R. Tarphon calls it a whole roast. The rabbis taught: What is called a roasted goat which must

not be eaten nowadays on the first night of Passover (outside of the Temple)? One that has been roasted whole; but if one of the members was detached or boiled and the remaining part roasted, it may be eaten, because then it is not considered a roasted goat. R. Shesheth said: "Even if a member was cooked (boiled) while still attached to the body of the goat and the remainder was roasted, it may also be eaten, and is not called a roasted goat."

Said Rabba: "If the lamb was stuffed with flour it may be eaten, even if it was not salted prior to being roasted." Rejoined Abayi: "Will not the filling absorb the blood in that event?" And Rabba replied: "Yea; but as soon as the roasting commences the blood recedes from the flour and is consumed by the fire."

Rabhin the Elder stuffed a dove with flour for Rabh, and the latter said: "If it is toothsome, give me a piece and I shall eat it."

We know, however, that, when Rabha was served with a stuffed duck at the house of Exilarch, he said: "If I did not see that the filling is as white as white glass I should not eat it." Now if it is a fact, as Rabba maintained, that during the roasting the blood recedes from the filling, why should Rabha have made that assertion--what difference does it make whether the filling was white or not? In this case the filling was made of coarser meal, which after absorbing the blood is not so easily purged thereof; hence it was necessary for Rabha to see whether the filling was white or not.

The Halakha in this case prevails as follows: "Where fine meal is used it makes no difference whether it had remained white or become red. If coarse meal was used it may be eaten only if it remained as white as white glass, while if any other kind of meal was used it may be eaten if it remains white, but not if it become red (or discolored). Even if a lamb (or goat) was roasted upside down (so that the blood could not escape through its mouth), it may also be eaten; but concerning half-roasted meat, the testicles of a ram, and the muscles of the neck of a lamb there is a difference of opinion between R. A'ha and Rabhina. [In all cases of law, where R. A'ha and Rabhina dispute, R. A'ha upholds the more rigorous decrees and Rabhina the more lenient, and the Halakha prevails according to Rabhina; but in the above three instances R. A'ha inclines towards the more lenient ordinance and Rabhina to the more rigorous, and

the Halakha prevails according to R. A'ha.] If half-roasted meat, which was dripping with blood, was subsequently salted it may even be boiled. If it was roasted on a spit it is also fit, but if it was roasted on live coals there is again a difference of opinion between R. A'ha and Rabhina. One maintains that it must not be used, because the blood remains in the meat, while the other holds that the blood escapes, and the meat is therefore fit to eat. The Halakha prevails according to the latter opinion.

The same case applies to the testicles of a ram. If they were cut up and salted, they may be cooked in a pot; and if they were roasted on a spit without being cut up and salted, they are still fit to eat, because the blood has been consumed by the fire; but if they were cooked over live coals, then is again the same difference of opinion between R. A'ha and Rabhina, and the Halakha prevails that they may be eaten.

Said Mar the son of Ameimar to R. Ashi: "My father would drink the juice of such meat." According to another version, R. Ashi himself would do this, and Mar the son of Ameiniar said to him: "My father used to say that vinegar in which meat had been steeped once, must not be used for the same purpose again, because it is diluted." What about diluted vinegar itself, why may that be used? Vinegar, even if it be weak, still retains its original acidity, and stops the flow of blood in the meat, but vinegar which has been diluted by steeping meat therein has lost its acidity and cannot therefore be used.

"*The paschal sacrifice must not be roasted, etc., on a gridiron*," etc. Does R. Zadok relate this instance (in the Mishna) of Rabbon Gamaliel as a contradiction to the Mishna? The Mishna is

not complete, and should read: "If the gridiron, however, is perforated, it may be used for that purpose, as R. Zadok related that Rabbon Gamaliel," etc. (*vide* Mishna).

The rabbis taught: If the paschal lamb was cut up and placed over coals. Said Rabbi: "I say, that this is equal to roasting it over a fire." Rabha contradicted this saying: How can it be said that Rabbi calls coals "fire"; have we not learned that the passage [Lev. xvi. 12]: "And he shall take a censer full of burning coals of fire," means, that coals which have already become dim must not be used, because it says "coals of fire," and that a flame of fire should not be used, because of the term "coals of fire"? And R. Shesheth explained: Thus we see that live coals are meant, and that a distinction is made between fire and live coals." How then can Rabbi hold that

even live coals are equal to fire? Said Rabha: Therefore, the statement of the rabbis must be explained thus: It is written "coals," and lest we assume that dim coals be meant, it is written "coals of fire." We might, however, assume that half coals and the other half fire should be brought, and by the time they are brought they will become coals entirely, hence it is said [ibid.] "coals of fire from off the altar," which signifies that when taken from the altar they should be coals already.

MISHNA: If any part of the roasted lamb had touched the earthenware oven on which it was roasted, that part must be pared off. If the fat dripping from the lamb had fallen on the oven and then had again fallen on the lamb, the part of the lamb touched must be cut out. If the dripping, however, fell on fine flour, a handful of that flour must be taken (and burned). If the paschal sacrifice had been anointed (basted) with consecrated oil of heave-offering and the company appointed to partake thereof consist of priests, they are allowed to eat it; but if the company consist of Israelites, they must wash it off the lamb if yet raw. Should the lamb have been already roasted, they must pare off the outward skin. If it had been anointed with oil of second tithe, its value must not be charged to the company in money, because it is not lawful to redeem and sell it in Jerusalem. [1]

GEMARA: It was taught: All agree, that if warm (meat) fall into warm (milk) both are rendered prohibited (for use). Cold (meat) in cold (milk), all agree, is *not* rendered prohibited; but if warm (meat) fell into cold (milk) or cold (milk) fell on warm (meat), Rabh said that the thing falling on top supersedes that on the bottom, and hence both may be used or are prohibited as the case may be; but Samuel said, on the contrary, that the thing on the bottom virtually absorbs that on top. An objection was made, based upon the Mishna: "If the fat dripping from the lamb had fallen on the oven, etc., the part of the lamb touched must be cut out." At the first glance, it might be assumed that the oven in question was cold. This would be correct according to Rabh, who holds that the thing falling on top supersedes that originally at the bottom; and thus the oven, becoming in turn hot, causes the fat to boil. When the fat again falls on the lamb, the latter becomes roasted by the heat of the oven; and as the passage states that it should be roasted

by fire only, the part of the lamb touched must therefore be cut out. But according to Samuel, who holds that a thing originally on bottom absorbs that falling on top, when the fat touches the oven, the fat becomes cold; consequently, when it again falls on the lamb, the lamb is not

affected. Therefore, why should the part touched be cut out? Nay; the Mishna refers to a hot oven. (The same objection was made also to the latter part of the Mishna, which refers to the fat dripping on the flour, and the answer is similar.)

We have learned in a Boraitha in support of Samuel's contention, viz.: Warm falling on warm renders both prohibited. Cold falling on warm does likewise. Warm (meat) falling into cold (milk), it is only necessary to pare off the outer skin of the meat and it may be used. If cold (meat) had fallen into cold (milk), it need only be rinsed.

We have learned in another Boraitha: (Smoking) hot meat falling into (boiling) hot milk renders both prohibited. Cold (meat) in hot milk does likewise. If hot (meat) fall into cold milk, its outer skin must be pared off. Cold (meat) falling into cold (milk) need only be rinsed.

Rabh said: "(Ritually) slaughtered fat meat, if roasted together with lean meat of carrion, must not be eaten, because one draws the juice of the other." Levi, however, said: "Even slaughtered lean meat roasted together with fat meat of carrion may be eaten, because it only draws the odor of the fat meat, and that does not interfere with it."

Levi acted in accordance with his decision in the house of the Exilarch, where a goat and a sucking pig were roasted together.

An objection was made: We have learned that two paschal offerings must not be roasted together, lest they become mixed. Must we not assume that the reason is, that the taste of one will be affected by the other, and thus contradict Levi's opinion? Nay; the reason is, that there is fear of the offerings themselves becoming mixed so that their respective owners will not be able to distinguish them. This view seems to be the correct one, because it is taught further that even a lamb and a goat must not be roasted together (if they were paschal offerings). and if the reason therefor is that there is fear. lest the offerings become mixed, the teaching is correct and is merely a precaution against roasting two lambs or two goats together. If, however, the reason were to prevent the taste of either being affected by the other, what difference would it make whether

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a lamb and a goat, or two of either species, be roasted together?

Shall we say, that this is also a contradiction to Rabh's opinion? Said R. Jeremiah: "The case concerning the two paschal offerings which were roasted together refers to an instance of where they were roasted apparently in separate vessels, *i.e.*, over two fires which were separated by a heap of coals, and we should learn thus: Two paschal offerings must not be roasted together on account of one affecting the taste of the other; nor should they be roasted together even when separated as mentioned, for fear of mixing them so that their owners will not be able to distinguish them, even if the two offerings consisted of a lamb and a goat."

R. Kahana the son of R. Hinana the Elder taught: "If bread was baked and meat was roasted in one oven, the bread must not be eaten with Kutach."

It happened that fish was broiled together with meat, and Rabha of the city of Parziqaia prohibited it to be eaten with Kutach. Mar the son of R. Ashi, however, said: "It should not even be eaten with salt, because it produces a bad odor and is the cause of sores."

MISHNA: Five kinds of sacrifices may be brought, even if those who offer them should be in a state of ritual uncleanness; but they should not be eaten by those who offer them while in that condition. They are: The "Omer" (sheaf-offering), the two loaves (of Pentecost), the showbreads (of the Sabbath), the peace-offerings of the congregation, and the he-goats offered on the Feast of the New Moon; the paschal offerings, however, which were sacrificed by men in a state of ritual uncleanness, might also be eaten by them, though they (the men) still be in that condition, because the main object of the commandment concerning the paschal offering was that it should be eaten.

GEMARA: The Mishna mentions five sacrifices; which does it intend to exclude? It means to exclude the festal offering brought on the festival itself (15th of Nissan); for it might be assumed that this offering being a congregational sacrifice and also being one which was appointed for a certain time, it should also be eaten even by a man in a (ritually) unclean state; hence we are taught that, as the festival may be extended over seven days, and in consequence does not supersede the due observance of the Sabbath, it does not also supersede the law of uncleanness.

Why does the Mishna not enumerate also the he-goat brought as a sin-offering on every festival? It *does* enumerate it, by including it in the peace-offerings of the congregation. Why, then, is the he-goat offered on the Feast of the New Moon enumerated separately? Let that also be included in the congregational offerings! Special mention must be made of the latter, because it might be assumed that the Feast of the New Moon is not a festival, and as a consequence the offering of that day does not supersede the law of uncleanness. Hence we are taught, that the Feast of the New Moon is also a festival and the he-goat sacrifice does supersede the laws of uncleanness.

Whence do we adduce the several teachings of the Mishna? From the following: The rabbis taught: It is written [Levit. xxiii. 44]: "And Moses declared the feasts of the Lord unto the children of Israel." For what purpose is this written? Because the entire chapter [ibid. xxiii.] deals with the paschal offering and the continual daily offerings, concerning which it states "at their appointed seasons," signifying, that they supersede both the observance of the Sabbath and the laws of uncleanness; but whence do we know that the same rule applies to other congregational sacrifices? To that end, it is written [Numb. xxix. 39]: "These shall ye prepare unto the Lord on your appointed festivals." Whence do we adduce, however, that the Omer (sheaf-offering) and the showbreads, together with their adjuncts, are also included in the rule? The above passage: "Moses declared the feast of the Lord," etc., implies, that Moses appointed a fixed time for all festivals and made them all equal.

From the above adductions the schoolmen reasoned, that all agree upon the fact that the law of uncleanness had only been temporarily set aside for congregational purposes, but not that it had been abrogated entirely, and also that the plate worn by the high-priest (through which he atoned for the sins of the community) [1] was brought in requisition to atone for the transgression of the law regarding uncleanness; for there cannot be found one Tana who holds that the said law was abrogated entirely, with the exception of R. Jehudah. They also assumed, that the plate of the high-priest atoned for the sacrifice of an unclean thing, but not for the transgression committed

by eating an unclean thing; for there cannot be found one Tana who

holds that the plate can atone for sins committed through eating, excepting R. Eliezer.

Shall we assume, therefore, that our Mishna is not in accordance with R. Jehoshua, as we have learned in a Boraitha: It is written [Deut. xii. 27]: "And thou shalt offer thy burnt offerings, the flesh and the blood," etc. Said R. Jehoshua: "If there is no flesh there is no blood, and if there is no blood there is no flesh"(meaning, if one or the other had become unclean or was lost, the remaining thing is useless). Thus, if it be true that the plate of the high-priest does not atone for sins committed through eating, will it not be evident that even the paschal sacrifice must not be brought in a state of uncleanness, because it must not be eaten? The Mishna may be even in accordance with R. Jehoshua, who maintains further on that, though there be only sacrificial fat of the size of an olive left on the altar, the blood of that sacrifice may be sprinkled, and also that the plate of the high-priest atones for the offerings, parts of which are brought on the altar and which were offered in an unclean state. This would only apply, however, to those offerings of which certain parts were brought on the altar; how will it be in the case of the Omer and the showbreads, no parts of which are ever brought on the altar? Therefore we must assume the following: The Mishna *is* in accordance with R. Jehoshua, but his prohibitory decision applies only to the performance of acts to commence with. If, however, the deed was accomplished, R. Jehoshua also admits that the act is valid. Whence do we adduce that R. Jehoshua holds to the distinction between the performance of an act to commence with and one already accomplished? From the following Boraitha: "If flesh had become unclean or it became unfit for use by virtue of its having come in contact with a man who had bathed, but upon whom the sun had not yet set, or it had become unfit for use by protruding from its proper receptacle, R. Eliezer holds that the blood thereof may be sprinkled, but R. Jehoshua maintains that it must not. The latter admits, however, that if the sprinkling had already been accomplished it is atoned for."

Our Mishna, however, deals with the performance of acts to commence with, because it distinctly states: "Five kinds of sacrifices may be brought"? Therefore we must render another explanation; namely, R. Jehoshua applies his decision only to the cases of individuals, but where congregational purposes are concerned, he interposes no impediment.

Shall we assume that the Mishna is not in accordance with the opinion of R. Jose of the following Boraitha? "R. Eliezer maintains that the plate of the high-priest atones also for sins committed through eating, but R. Jose holds that it does not." If R. Jose does not admit of this supposition, at a casual glance we might think that he is in accord with R. Jehoshua, who declares, that both the flesh and blood are required, and if R. Jose positively asserts that the sins committed through eating are not atoned for, we must presume that the Mishna is not in conformity with his opinion! Nay; in this respect R. Jose agrees with R. Eliezer, that blood may be sprinkled even if the flesh be not there.

R. Mari opposed this: If we admit that R. Jose agrees with R. Eliezer, it would be perfectly proper in the case of the sacrifices, for the blood thereof is offered up on the altar in the case of the Omer because a handful is taken therefrom in the case of the showbreads because the incense brought with it is offered up; but what about the two loaves (of Pentecost), of which

nothing at all is taken off? If you say that the two loaves themselves are not meant, but the sacrifices brought with them, then there will be only four kinds, and the Mishna states that there are five? Hence the most reasonable supposition is, that the Mishna is not in accordance with R. Jose.

MISHNA: If the flesh of the paschal sacrifice has become (ritually) defiled and the fat thereof remains undefiled, its blood must not be sprinkled on the altar; but if the fat has become defiled and the flesh remains undefiled, the blood may be sprinkled; but such is not the case with respect to other consecrated sacrifices (under similar circumstances); for even if the flesh of such has become defiled but the fat has remained undefiled, their blood may be sprinkled.

GEMARA: R. Giddel said in the name of Rabh: What is the case if the blood *has* been sprinkled? In that event the duty has nevertheless been fulfilled. Is it not obligatory, however, to eat the paschal sacrifice, and in this case it must not be eaten? Rabh holds with R. Nathan, who states that the fact of its not having been eaten proves no impediment to the lawful accomplishment of the duty *to sacrifice* the paschal offering, as we have learned in a Boraitha, viz.: If one company had been appointed to eat the paschal sacrifice and subsequently another company had been added thereto, if there was sufficient for the first company, so that each member thereof ate as his share the

size of an olive, this company has fulfilled the duty and need not celebrate a second Passover. If there was not sufficient remaining, so that the members of the second company could each eat a piece the size of an olive, they must celebrate a second Passover. R. Nathan, however, said: "Even the second company need not make a second Passover, because the blood of the sacrifice had already been sprinkled." Perhaps the reason for R. Nathan's dictum is, that had the first company withdrawn there would have been sufficient for the second each to eat a piece the size of an olive; hence the supposition that such was the case renders the sacrifice valid for both, but not because the fact of its not being eaten proves no impediment? If the former reason were the acceptable one, the Boraitha should have stated the supposition, but the fact that it says, "because the blood of the sacrifice had already been sprinkled," is conclusive proof that the sprinkling of the blood is the main object of the commandment.

What impels Rabh to construct the Mishna according to R. Nathan, and expound it in the sense that the blood must not be sprinkled to commence with, but that, if this was done, the act does not invalidate the sacrifice? Let him explain it according to the sages, who hold that the blood must not be sprinkled, and that if this was done it invalidates the sacrifice!

Rabh could not understand the Mishna, and he argued: Why should the Mishna state that the blood must not be sprinkled? because while this should not be done to commence with, if it was done it is a valid act; for otherwise the Mishna could have plainly said, "the sacrifice is not valid."

According to which Tana is the following teaching of the rabbis: "If a man who was appointed to eat of the paschal offering was ill at the time the sacrifice was about to be slaughtered and had recovered when the blood was about to be sprinkled, or was well when it was about to be slaughtered and became ill when the blood was about to be sprinkled, the sacrifice must not be

slaughtered nor the blood sprinkled unless that man was well from the time of slaughter until the sprinkling of the blood"? Shall we say, that this is in accordance with the sages and not with R. Nathan? Nay; it may be even in accordance with R. Nathan; for while maintaining that not eating the sacrifice proves no impediment, he nevertheless admits that at the time when the sacrifice is slaughtered and the blood sprinkled the man must be in a condition to partake thereof.

According to which Tana is the following teaching of the rabbis: "If at the time the sacrifice was slaughtered the participants thereof were still undefiled and subsequently became defiled, the blood may be sprinkled as if for undefiled participants but the sacrifice must not be eaten." Said R. Elazar: "This teaching is in accordance with the disputants and appears to be according to R. Nathan." R. Johanan, however, said: The teaching may be in accord with the sages, but in that event it treats of the whole community and not of an individual, and we have learned that a community may sacrifice the paschal offering even if all the members thereof were defiled. Then why is the sacrifice not allowed to be eaten? As a precautionary measure, lest at the next Passover they become unclean after the sprinkling and nevertheless claim that they are allowed to partake of the sacrifice because they were also unclean on the last Passover, forgetting, however, that they were already defiled before the sprinkling but did not become so afterwards.

If you wish, I can tell you that Rabh holds with R. Jehoshua, as we have learned in the following Boraitha: R. Jehoshua said: "All the sacrifices mentioned in the Scriptures, whether the flesh had become defiled and the fat remained clean, or the reverse was the case, the blood thereof must nevertheless be sprinkled. But of Nazarite offerings or the paschal sacrifice, if the fat became defiled and the flesh remained clean, the blood may be sprinkled; but if the reverse was the case, the blood may not be sprinkled. If this was done, however, the duty is accomplished. If the owners of the sacrifice, however, have become polluted through a corpse, even if the blood had already been sprinkled, the sacrifice is not valid."

"*Such is not the case with respect to other consecrated sacrifices*," etc. This clause of the Mishna will be in accordance with the opinion of R. Jehoshua, as taught in the following Boraitha: R. Jehoshua said: Of all sacrifices mentioned in the Scriptures, if a piece the size of an olive had remained, the blood may be sprinkled; but if a piece the size of half an olive had been left over, the blood may not be sprinkled, except in the case of a burnt- (whole) offering, where, should even a piece the size of half an olive be left over, the blood may also be sprinkled, because the whole sacrifice is offered up on the altar. In the case of a meat-offering which was still intact, if it had become defiled the blood must not be sprinkled. What has a meat-offering to do with the sprinkling of the blood? Said R.

[paragraph continues] Papa: By this is meant the meat-offering brought with every sacrifice, and lest we assume that even if but a piece thereof the size of an olive remain, the blood of the sacrifice may be sprinkled, we are taught that even if it had remained intact it does not legalize the sprinkling of the blood.

MISHNA: If the whole or the greater part of the congregation had become defiled, or the priests were in a state of defilement but the congregation was undefiled, the sacrifice may be brought in this state of defilement; but if the minority only of the congregation had become defiled, the

majority that are clean shall sacrifice the paschal offering at its proper time and the unclean (minority) shall sacrifice a second paschal offering, on the 14th of the following month.

GEMARA: The rabbis taught: If the congregation was defiled but the priests and the utensils necessary for the service were clean, or the reverse was the case; or, moreover, if the congregation *and* the priests were clean and the utensils alone were unclean, the sacrifice must nevertheless be brought in that state of defilement. Why so? Because a congregational sacrifice must not be divided; *i.e.*, even if there were some men among the congregation who happened to be undefiled, they must also participate in the sacrifice.

It was taught: If the congregation was equally divided--one half being unclean and the other half clean--Rabh said that a half is equal to a majority, and one half should bring the sacrifice in its state of defilement, while the other half should bring it in its proper condition. R. Kahana, however, said that a half does not constitute a majority, and hence the half which is clean should bring the sacrifice at the customary time, while the other half should bring it at the second Passover (one month later). According to another version, R. Kahana is supposed to have said: "The half does not constitute a majority, therefore the undefiled half should bring the sacrifice at its usual time; but the unclean half should not bring it at all; because, in the first! place they were defiled, and on the second occasion they, not being a majority, cannot observe a second Passover."

We have learned one Boraitha in support of Rabh's opinion: "If the congregation was equally divided, one half being unclean, and the other clean, each half should bring a separate paschal offering." We have also learned a Boraitha supporting the first. version of R. Kahana's dictum, as follows: "If a congregation was equally divided between unclean and clean members, the

latter should bring their sacrifice at its usual time and the former at the second Passover"; and also a Boraitha supporting the second version of R. Kahana's opinion: "If a congregation was equally divided between clean and unclean members, the former bring their sacrifice at the usual time and the latter need not bring it at all."

The text of the Boraitha states: "If the congregation was equally divided, one half being clean and the other unclean, each half should bring a separate paschal offering," and continues: "if there was one majority in the unclean half, the sacrifice must be brought in the state of pollution, because a congregational sacrifice cannot be divided." R. Elazar ben Mathia, however, says, that a single person cannot determine the uncleanness of an entire community, because it is written [Deut. xvi. 5]: "Thou mayest not slay the Passover within any of thy gates" (which signifies, that a single person cannot influence a congregation). R. Simeon, however, said: "Even if one tribe was unclean and the remaining eleven tribes (of Israel) were clean, the one unclean tribe must bring a separate sacrifice." The reason why R. Simeon maintains this, is because he considers each tribe a separate congregation; but R. Jehudah said: "Even if only one tribe was unclean, all the remaining tribes must bring their sacrifices in a state of defilement." Why so? Because he also holds that each tribe constitutes a congregation, and so the entire community is thus equally divided between unclean and clean; and as a communal sacrifice must not be divided, they must all join in bringing it in a state of defilement.

It was taught: "If the congregation was equally divided, one half being clean and the other unclean, Rabh says that one member of the clean half should be defiled by contact with a dead reptile, and thus the entire congregation can bring the sacrifice in a state of defilement." Why should this be done? Did not Rabh state previously that they should each bring separate sacrifices? In this case there was already a majority of one in the unclean half. If that is so, then there was already a majority; why make another man unclean? Rabh holds with R. Elazar ben Mathia, that one person cannot determine the uncleanness of a congregation. If Rabh holds with R. Elazar, then the same question arises, why should not each half bring a separate sacrifice? Rabh means to say as follows: If there is a Tana who holds with the first Tana of the Boraitha, to the effect that each half must bring a separate sacrifice, and at the same

time holds with R. Jehudah, namely, that a communal sacrifice must not be divided and in consequence is in doubt how to proceed, he should make another man unclean and thus constitute an unquestionable majority.

Ula, however, said: "A member of the clean half should first be sent on a long journey, and then be defiled by contact with a dead reptile," because he holds that a man who had become unclean through a reptile may nevertheless have the sacrifice brought for him; but if he was away on a journey and there becomes unclean, the sacrifice cannot be brought for him. [1] Why not defile the man by means of a corpse? If this is done, he will be robbed of his right to bring even his festival offering. And, on the other hand, is he not deprived of his right to bring the paschal offering? Yea; but he has the privilege of bringing the Passover sacrifice on the second Passover. Then, if defiled by a corpse, he will be enabled to bring his festal offering on the seventh day of Passover, which will be the eighth since his becoming defiled! Ula holds that the extension of the festal offering throughout the seven days applies only to one who was capable of bringing it on the first day, but not if he was legally incapacitated to do so on the first day.

Said R. Na'hman: "Go to Ula and say to him: Is it reasonable that a man should be asked to strike his tent and leave everything behind him in disorder in order to undertake a long journey on the eve of Passover? Therefore, I say that Rabh's proposition to defile him with a dead reptile is sufficient."

MISHNA: If, after the blood of the paschal sacrifice had been sprinkled on the altar, it became known that it (the blood or the flesh thereof) was unclean, the plate of gold (of the high-priest) atones for the sin; but if the body (of the owner) of the sacrifice had been defiled, the plate of the high-priest does not atone for the sin; for it is a rule that the plate atones for (the sin of sacrificing) the paschal offering and that of the Nazarite, if the blood of these had become defiled; but not if the body (of the owner) of such sacrifice had become unclean. It does, on the other hand, atone for the defilement caused by an abyss or by the ground. [2]

GEMARA: From the Mishna we learn, that the plate atones for the sin if it had become known that the blood or

flesh was unclean, *after* the sprinkling; hence we must assume that if this was known *before* the

sprinkling and the blood had been sprinkled nevertheless, the plate does not atone for the sin, and would this not be contradictory to the following Boraitha: "For what things does the plate atone? For blood, flesh, and fat which was rendered unclean either intentionally or inadvertently, whether this was brought about by accident or voluntarily, whether the sacrifice be that of an individual or of a congregation

Said Rabhina: "If the sacrifice was rendered unclean either intentionally or inadvertently, the plate atones for the sin (of sacrificing in such a state); but as for sprinkling, it atones only for unintentional sprinkling (*i.e.*, if the man had forgotten that the sacrifice was unclean) but not for intentional sprinkling." R. Shila, however, said: "(On the contrary!) As for sprinkling, whether done intentionally or unintentionally, the plate atones for the sin; but if the sacrifice became unclean, if it was rendered so inadvertently the plate atones for the sin, but if rendered so intentionally it does not, and thus should the Boraitha also be explained; but as regards the statement in the Mishna that, if the fact of the sacrifice being unclean had become known, *after* the sprinkling of the blood, the plate atones for it, thus showing that if the sprinkling was done knowingly the plate does not atone for it, it is not correct, for the plate atones for the sprinkling even if done knowingly, and the reason the statement is made is because in the latter clause of the Mishna it must be taught that even if the blood had been sprinkled without the knowledge of the fact that the owners of the sacrifice were unclean, still the plate does not atone for the sin; therefore an analogous teaching is made also in the first clause."

"*It does on the other hand atone for the defilement caused by an abyss*," etc. Rama bar Hama propounded a question: "Does the plate atone also for a priest who had contracted (doubtful) uncleanness through an abyss, or does this only apply to the owner of the sacrifice? Shall we assume, that the tradition to the effect that the plate atones for such doubtful uncleanness applies *only* to the owners of the sacrifice, or that it applies to the sacrifice itself and hence also to either owner or priest?

Said Rabha: "Come and hear! R. Hyya taught: 'The law regarding doubtful uncleanness caused by an abyss treats only of uncleanness by means of a corpse.' What does he mean to exclude by using the word "only"? Doubtless a reptile. Now

let us see who can be affected by contact with a reptile: If we should say the owner of the sacrifice, which owner does he refer; to? Shall we assume that the owner was a Nazarite? then uncleanness through contact with a reptile does not change the, legal status of a Nazarite, as it is written [Numb. vi. 9]: "And if *some one die* very suddenly" (but not a reptile). Then we must assume that the owner of a paschal offering is referred to. This would be correct, according to the Tana who maintains that for an owner defiled through a reptile a paschal offering may neither be slaughtered nor the blood thereof sprinkled; but according to the other Tana, who holds that such a condition of' the owner does not interfere with the slaughtering of the paschal offering or the sprinkling of its blood, what would R. Hyya come to teach us?--If the slaughtering and sprinkling are permitted for an owner unquestionably defiled through contact with a reptile, it is certainly permitted for one whose defilement through an abyss was not of a doubtful nature. Hence we must assume that even a priest is referred to, and thus the plate of the high-priest atones also for a priest who was supposed to have become unclean, by passing over an abyss probably harboring a corpse.

R. Joseph propounded a question: "If there was doubt concerning the undefiled state of a priest who had passed over an abyss probably harboring a corpse, and was engaged in bringing the continual daily offering, does the plate atone for him also, or not? If you should even say that he was atoned for, when bringing other sacrifices, *f.i.*, as just mentioned in the case of a priest who sacrificed the paschal offering the question concerning one engaged on the continual daily offering still remains; for while we have a tradition to the effect that the plate of the high-priest atones for a priest in the mentioned condition who had sacrificed a paschal offering, we have none affecting the case of a priest bringing the continual daily offering while in a state of doubtful. defilement; or, on the other hand, from the fact that we have no tradition to that effect, should we draw the inference from the instance of the paschal offering?

Said Rabba: "(This is not only an inference); it is an *a fortiori* conclusion! If in the case of other sacrifices, as the Nazarite offerings, the paschal offerings, etc., where positive uncleanness; would interfere with the validity of the sacrifice, a doubtful case was *not* held to prove an impediment, then certainly in the case of the continual daily offering, which must be brought even if all concerned are in a positive state of defilement,

it should so much the more be valid in a case of doubtful defilement." Is it possible, then, to draw an *a fortiori* conclusion from a tradition? Did we not learn in a Boraitha: "Said to him R. Eliezer: Aqiba! That a bone of a corpse of the size of a barley-corn, when brought in contact with a man, defiles him, is a tradition, and thou wouldst draw therefrom the *a fortiori* conclusion that a quarter of a lug of blood would so much the more be a means of defilement. An *a fortiori* conclusion must not be derived from a tradition!"

"Therefore," said Rabh, "the case of the continual daily offering is not derived from the paschal offering by means of an *a fortiori* conclusion, but by means of a comparison by analogy, namely: As concerning both sacrifices it is written, 'at their appointed seasons,' the same rules apply to both."

Where do we find it written in general concerning the doubtful state of defilement caused by passing over an abyss probably harboring a corpse? It has already been stated that this is merely a tradition, and is not particularly specified at any place.

It was taught: Mar bar R. Ashi said: Do not learn in the Mishna, "only if it became known after the sprinkling that the blood was defiled the plate of the high-priest atones for the sin committed, if previously known, however, it does not"; but even if it was also known previously, the plate atones for it."

MISHNA: If the whole or the greater part of the paschal offering had become defiled, it should be burned before the sanctuary with wood used for the altar; if the lesser part thereof had become unclean, or if some part thereof had remained over until the next morning (on the 15th), the owners may burn it in their own courts, or on their roofs, with their own wood. Avaricious persons, however, would burn it before the sanctuary, in order to get the benefit of the wood used for the altar.

GEMARA: Why was the burning done in so public a manner? Said R. Jose bar R. Hanina: In

order to put to shame the owners of the sacrifice for their negligence in permitting the paschal offering to become defiled.

"*If the lesser part thereof,*" etc. Is this not contradictory to what we have learned in a previous Mishna, namely: "If a person on leaving Jerusalem remembers having consecrated flesh with him (even if it be only the size of an olive) he must return and burn it before the sanctuary with wood of the altar"? Said R. Hama bar Uqba: "This presents no difficulty: The Mishna mentioned treats of a visitor to Jerusalem, who had no

wood of his own, while our Mishna treats of a permanent resident of Jerusalem."

The rabbis taught: "If the people came to burn (the unclean offering or the remainder) before the sanctuary with their own wood or desired to burn it in their own homes with wood of the altar, they must be prevented from accomplishing such an act." It is perfectly proper to prevent their burning it in their own homes with wood of the altar, lest some of the wood be left over and they use it for profane purposes; but why should they not be permitted to burn it before the sanctuary with their own wood? Said R. Joseph: "In order not to disgrace those who have no wood of their own," and Rabha said: "In order not to cast suspicion upon them; for if they have some of their own wood left over and carry it back with them they might be suspected of appropriating the wood of the altar." Wherein do these two sages differ? In a case where the wood brought was not like that used for the altar; for instance, the bark of date-trees or small sticks. (According to R. Joseph, not even such wood may be brought, while according to Rabha this would be permissible.)

MISHNA: If a slaughtered Passover-sacrifice had been carried beyond the walls of Jerusalem or had become defiled, it must be immediately burned (on the eve of Passover). If the owners thereof had become defiled or had died, it must be left until its condition is changed (*i.e.*, it must be left over until the next morning), and should be burned on the 16th of Nissan [1]). R. Johanan ben Broka said: (In the latter event) it should also be immediately burned, because there are none to eat it.

GEMARA: If the Passover-sacrifice had become defiled it is perfectly proper to burn it, because it is expressly written [Levit. vii. 19]: "And the flesh that toucheth any unclean thing shall not be eaten, with fire shall it be burnt"; but whence do we know that if it had been carried beyond the walls of Jerusalem it must also be burned? Because it is written [ibid. x. 18]: "Behold, its blood was not brought within the holy place"; and thence we infer that, as it was not brought within the holy place, it must be burnt. Still, concerning a defiled paschal offering, it would be right to burn it, because the passage states that *ordinary* holy sacrifices which had become unclean must be burnt, but concerning the offering carried beyond the walls of Jerusalem

the passage quoted [ibid. x. 18] refers only to most holy sacrifices, and whence do we know that it applies also to ordinary holy offerings? Aside from this, we have learned in a Boraitha: "If the blood of the sacrifice had become spilled, or the flesh had remained within, but the blood had escaped beyond the walls of Jerusalem, the sacrifice must be burnt." Whence do we learn this?

The law concerning everything which becomes subject to burning with fire, whether it be ordinarily holy or most holy, is derived from a tradition, and as for the passage mentioning the sin-offering of Aaron, it is merely quoted because such happened to be the case. Now then, if the entire law ordaining that, whether the sacrifices be ordinarily holy or most holy, they must in the event of their becoming unclean be burnt with fire, is derived merely from a tradition, for what purpose is it written [Levit. vi. 23]: "It shall be burnt with fire"? That passage is necessary, in order to impart to us the information that it must be burnt in the holy place; for from the tradition alone we might presume that this could be done elsewhere, and hence the necessity for the passage. In that event, to what end is it written [ibid. vii. 19]: "And the flesh that toucheth any unclean thing shall not be eaten, with fire shall it be burnt"? That passage is needed for its own particular purpose; for we might presume that the tradition making it obligatory to burn the invalid sacrifices applies only to those in respect to which, were they ordinary (non-consecrated) articles, the exigency could not possibly arise. For instance, if the blood had remained over night, or the blood had been spilled, or had escaped beyond the walls (of Jerusalem), or if the sacrifice had been slaughtered at night (which is not permissible); but if the sacrifice had become unclean, which state can also prevail in the case of ordinary articles, it might be assumed that it is not necessary to burn it, but that it may even be buried; therefore we find it written as above [Levit. vii. 19].

"*If the owners thereof had become defiled or had died,*" etc. Said R. Joseph: Wherein do they (the sages and R. Johanan ben Broka) differ? Only if the owners had become defiled prior to the sprinkling of the blood; because, as the flesh was not yet (legally) suitable for the duty of eating thereof at the time, the uncleanness is considered to be in the sacrifice itself; but if the owners had become defiled after the sprinkling, in which event the flesh was already suitable for eating, all agree that the invalidity was not occasioned by the sacrifice itself but by some outside

means, and for that reason it should be left until its condition is changed (*i.e.*, it should be left over night). R. Johanan, however, said, that even after the sprinkling the same is the case, and this he states in accordance with his individual theory; for both R. Johanan ben Broka and R. Nehemiah said one and the same thing (namely, that when the owners became defiled, the sacrifice should be immediately burned). Rabba added to this, that R. Jose the Galilean made the same statement. 1

MISHNA: The bones, sinews, and other remaining parts must be burned on the 16th; and should that day fall on a Sabbath, they must be burned on the 17th, because the burning of these does not supersede the laws of the Sabbath or those of the festival.

GEMARA: R. Mari bar Abbahu in the name of R. Itz'hak said: The bones, still retaining marrow, of consecrated sacrifices, if left over as remainder, defile the hands touching them. Why so? Because they are a basis to a prohibited article (*i.e.*, the marrow which was left over and should be burned).

An objection was raised: (We have learned:) The bones left over from consecrated sacrifices are not subject to being burned, excepting only the bones of the paschal offering; (because they must not be broken but left in their original condition and) it might happen that some of the flesh should cling to them. Now, let us see what kind of bones are meant! Shall we assume such as have not retained the marrow? Who would hold that such should be burned? Hence such as still

retain the marrow must be meant. In that event, if the bones are considered a basis to a prohibited article, *i.e.*, they serve the marrow as receptacles, why should they not be burnt?

Said R. Na'hman bar Itz'hak: "Bones which had been found broken and the marrow extracted are referred to; thus the bones of other sacrifices, which may be broken, may have been broken and the marrow extracted from them before they had had an opportunity of becoming a remainder of a sacrifice; hence they need not be burnt. The bones of a paschal offering, however, which must remain whole, could have been broken and had the marrow extracted from them only *after* becoming a remainder, and for that reason they must be burnt."

R. Jehudah said in the name of Rabh: "All sinews are considered of flesh except the sinews of the neck (*i.e.*, if one ate

only the nerves of the flesh of the paschal offering, it is the same as if he had eaten the flesh itself)."

An objection was made based upon our Mishna, which teaches "that bones, nerves, and other remaining parts must be burned on the 16th." Now, let us see what sinews are referred to? If the sinews of the body in general are meant, why not eat them; and if it is claimed that they were left over, why mention them separately-are they not the same as the other remaining parts? Therefore we must say, that the sinews of the neck are meant. If that be the case and, according to Rabh, they are not considered as flesh, why should they be burned? Said R. Hisda: "By the sinews which must be burned, is meant the sinew of the thigh (which is not eaten), and, according to R. Jehudah's opinion that only the sinew of one of the thighs is prohibited to be eaten, the sinew of the other is a legal remainder and should be burned." R. Ashi said: "The Boraitha means to state, that not the sinew proper, but only the fat thereof on account of which the sinew is burned with it, is referred to, as we have learned in another Boraitha, that the fat of the sinew of the thigh may be eaten but it is not customary to do so (as will be explained in Tract Cholin)," and Rabhina said: "The sinew which must be burned is the one on the outside, which, while it is permitted to eat it, is not generally eaten by Israelites (as will also be explained in Tract Cholin)."

"*If that day (the 16th) should fall on a Sabbath*," etc. Why should this be so? Why should not the positive commandment (to burn the remainder) supersede the negative commandment (not to violate the Sabbath)? Said Hezkiyah, and so also the disciples of Hezkiyah: It is written [Exod. xii. x]: "And ye shall not let anything of it remain until morning; and that which remaineth of it until morning ye shall burn with fire." Why is "until morning" mentioned a second time? In order to afford a man a second morning on which to burn the remainder (*i.e.*, if the 16th fell on a Sabbath, to give the man until the 17th).

Abayi, however, said: (It may be inferred from another passage.) It is written [Num. xxviii. 10]: "This is the burnt-offering of the Sabbath on every 'Sabbath,'" *i.e.*, that only an offering of Sabbath may be burned on Sabbath, but not an offering of a week-day should be burnt on a Sabbath or on a festival day.

Rabha said: (It may be inferred from the following passage)

[paragraph continues] [Exod. xii. 16]: "Save what is eaten by every man, *that only* may be prepared by you"; that only, and not a circumcision, which is not in proper time, and which is learned from an *a fortiori* conclusion.

R. Ashi said: "The rest concerning a festival which is mentioned [Lev. xxiii. 24] makes it a positive commandment, which states that no labor shall be done on a festival, so a festival has two commandments, a positive and a negative one; and to burn the remainder is only one commandment, which does not supersede the above two commandments."

MISHNA: Every part usually eaten of a full-grown ox may be eaten of the paschal kid or lamb, such as the cartilage and tendons over the joints.

GEMARA: Rabba found a contradiction in this Mishna, namely: "It is stated that every part usually eaten of a full-grown ox may be eaten of the paschal kid or lamb, and then exemplifies the statement by mentioning the cartilage and tendons over the joints, and is it not a fact that these latter parts of an ox are not eaten?" Said Rabha: "The Mishna means to imply that all parts of an ox eaten boiled may be eaten of the paschal kid or lamb roasted, and what are those parts referred to? the cartilage and tendons over the joints." We have also learned the same teaching as Rabha's in a Boraitha, with the addition, "that the small sinews of the body are also included."

It was taught: "Sinews, which are at first soft and later on become hard," said R. Johanan, "may be selected by one of the men appointed to eat of the paschal sacrifice for his share, because at the time of selection they were soft and eatable"; but Resh Lakish said, "that they must not be selected, because they eventually become hard and are thus at no time edible."

Resh Lakish made an objection to the statement of R. Johanan, based upon our Mishna, which states that the cartilage and tendons only may be eaten: "Hence the small sinews are not to be included." R. Johanan replied: Learn, that the parts mentioned and also the small sinews may 'be eaten; from the fact that they are eaten in a boiled state of the ox, the same cause applies also to the kid or lamb.

R. Jeremiah said to R. Abin: "When thou wilt come to R. Abbahu, propound the following contradictory question to him: Can, then, R. Johanan assert, that the small sinews may be selected as a share of the paschal sacrifice? Did not Resh Lakish ask R. Johanan whether the skin of a young calf's head

is subject to defilement, and the latter answered that (on account of such a skin eventually becoming hard) it is not subject to defilement (as is the case with hide); (hence should we not assume that R. Johanan did so because he took into consideration its final condition--then why should he not also consider the future condition of the sinews, which eventually become hard and inedible)?" (R. Abbahu replied): "The man who evolved this contradictory question did not watch the meal he had ground (*i.e.*, he did not consider the correctness of his deductions); for we have learned that at the same time when Resh Lakish showed R. Johanan a Mishna which

refuted the answer rendered, R. Johanan replied: 'Anger me not! The Mishna thou citest I attribute to an individual opinion, that I myself do not uphold' (whence we see that he retracted his assertion to the effect that the future condition need not be considered)."

MISHNA: Whosoever breaks any bones of the clean paschal lamb incurs the penalty of forty stripes; but the person who should leave a part of the paschal lamb over night, or who breaks a bone of an unclean paschal sacrifice, does not incur that penalty.

GEMARA: It is perfectly proper that a man who leaves part of the paschal lamb over night should not incur the penalty of stripes, because the negative commandment [Exod. xii. 10]: "Ye shall not let anything of it remain until morning," does not involve the execution of an act, and the violation of a negative commandment of such a character does not carry with it the penalty of stripes; but whence do we adduce that a person who breaks a bone of an unclean paschal sacrifice should not incur that penalty? Because it is written [ibid. xii. 46]:"No bone shall ye break *in it*," and the term "*in it*" signifies, that only in a clean paschal sacrifice it is not allowed, but not in an unclean.

The rabbis taught: It is written: "No bone shall ye break *in it*," and this signifies that this must be done in a valid sacrifice but not in an invalid. Rabbi, however, said: "I do not derive this rule from this passage alone, but from the fact that in the same verse [Exod. xii. 46] we find: 'In one house shall it be eaten, etc., and no bone shall ye break in it,' and hence we must say, that only if a bone was broken in a lamb which may be eaten is the penalty of stripes incurred, but not in a lamb which must not be eaten." Wherein do these two statements differ? Said Abayi: "The difference arises in a case where a bone was

broken in the lamb on the day preceding Passover. According to the one statement, which makes a man punishable with stripes if he break a bone in a valid paschal sacrifice, as the paschal lamb is already valid, the man incurs that penalty; but according to the other statement, the fact that the lamb could not at that time be eaten absolves the culprit from the penalty."

An objection was made: Rabbi said, that if a man select only the brains of the paschal sacrifice as his share he may be included in the number appointed to eat it; but he must not be included if he selects as his share the marrow of the thigh-bone. Why should a man be allowed to select as his share the brains of the lamb? Because, in order to extract them it is not necessary to break one of the bones (as they may be extracted through the nostrils). On the other hand, the marrow of the thigh-bone should not be selected because it would necessitate the breaking of that bone. If, however, it is allowed to break the bone during the day, why may not the bone be broken at that time, and thus the marrow, being accessible, be allowed to serve as the share of one of the number appointed to eat the paschal lamb? If the breaking of the bone be the only impediment, then Abayi may reply, there is no need of doing this during the day; for even in the evening the bone may be placed over live coals and burned until the marrow is easily extractable, and thus render it capable of serving as the share of one of the number; for we have learned in a Boraitha, that the burning of the bones or cutting of the sinews cannot be considered a violation of the law against breaking the bones.

Hence we must say, that the reason the bones must not be burned, according to Abayi, is for fear

lest they split while burning, which will be considered as breaking the bones, and, according to Rabha, for fear lest the marrow, which is a consecrated thing, be burnt (and the law is that consecrated things must not be burned to commence with); therefore it may be claimed that this should not be done during the day, as a precaution against a person doing it at night.

R. Papa, however, said: Breaking the bone during the day is, according to the opinion of all, prohibited, even though the sacrifice may not yet be eaten at that time, because at night it will be suitable for that purpose and is therefore considered suitable even during the day. They differ, however, concerning a part of a member which had protruded beyond the wall and which must not on that account be eaten. According to the one who

maintains that a person who is guilty of breaking a bone in a valid sacrifice incurs the penalty of stripes, if a man had broken a bone in that member which is valid, he incurs the penalty of stripes; but according to the one who maintains that breaking a bone of such a sacrifice as may be eaten only involves punishment with stripes, he does not incur the penalty, because the member must not be eaten, as we have learned in a Boraitha; R. Ishmael the son of R. Johanan ben Broka said: "A man who had broken a bone in a member of the sacrifice which had protruded beyond the wall does not incur the penalty of stripes." R. Shesheth the son of R. Idi, however, said, that concerning such a member all agree that one who breaks a bone thereof does not incur the penalty, because it is invalid and must not be eaten. They differ, however, concerning one who had broken a bone in a paschal lamb that was yet raw. The one who claims that it is valid, maintains that the man incurs the penalty, but the other says that he does not, because the lamb cannot yet be eaten.

R. Na'hman bar Itz'hak said: "This is *not* the point of variance, because all agree, that one who breaks a bone in a paschal lamb which was still raw incurs the penalty, as the lamb may be roasted and then be eaten. They do differ, however, concerning a man who breaks the tail of the lamb, which must not be eaten, but offered up on the altar. Those who hold that the sacrifice is a valid one hold him to the penalty, while the others claim that, as the tail must not be eaten, the man is exempt."

R. Ashi, however, said: "Not even on this point can they differ; for all agree, that as the tail must not be eaten, the breaking thereof does not carry with it the penalty of stripes. Wherein they do differ is concerning a member of a paschal lamb that does not contain flesh to the size of an olive. According to one, the member being valid, breaking thereof incurs the penalty, while according to the other, the fact that there is not sufficient flesh thereon to be eaten exempts a man who broke it."

Rabhina, however, said: "Neither on this point do they differ, because as there is not sufficient flesh on that member to be eaten, all agree, that breaking it does not involve the penalty; but they do differ concerning a member which a person had broken in a place where there was not sufficient flesh to be eaten, while the same member contained in another place sufficient flesh. Accordingly, some hold that as a member which was valid

was broken, the penalty was incurred, while others maintain that, as the part which could not be eaten was broken, the penalty is not incurred thereby."

We have learned in a Boraitha a support to four of the preceding sages: Rabbi said: "It is written [Exod. xii. 46]: 'In one house shall it be eaten, etc., and no bone shall ye break in it,' which signifies that one is culpable only if he break the bone in a valid sacrifice, but not in one that was invalid. If at one time the paschal sacrifice was valid, and subsequently became invalid while being eaten, the law against breaking its bones does not apply. If the bone broken had the prescribed quantity of flesh thereon, the law against breaking its bones does apply thereto; but if it had not, the law does not apply. Such parts as are to be brought on the altar are not affected by the law. During the time when the paschal lamb is eaten, the law mentioned applies; but at any other time, when it is not eaten, the law does riot apply."

R. Ami said: "One who carries out flesh of the paschal sacrifice from one company to another does not become culpable until he deposits it in a certain place, because it is written [Exod. xii. 46]: 'Thou shalt not carry forth aught of the flesh abroad out of the house,' and the same rule applies to this as to carrying on the Sabbath, namely: There must be a removal from a certain fixed place and a deposit in another fixed place."

R. Abba bar Mamal made an objection: "We have learned elsewhere, that if four persons carried it on rods and the first pair stepped outside of the wall of the Temple while the other pair remained on the inside, the clothes of the first pair become unclean but not those of the second pair. There was, however, no deposit of the sacrifice in a certain place; why should they become unclean?" The questioner himself answered this by saying: "This was a case where the sacrifice was not carried, but dragged on the ground (hence there was a deposit in a certain place)."

MISHNA: If part of a member (of the paschal sacrifice) protrude beyond (the Temple), it must be cut until the knife reaches the bone, then the flesh should be removed on the inside (of the Temple) until the joint is reached, when it may be cut off (and the bone must be cast away). With regard to other sacrifices (the bones of which it is permitted to break), the protruding part must be cut off with a slaughtering knife; if it extend from the door-wing (or lobby), it must be considered as

inward; if it protrude farther than this, it is to be considered as outward (and should be cut off). The apertures in a wall and the thickness of a wall may be considered as the inside.

GEMARA: Said R. Jehudah in the name of Rabh: "The same rule applies to an assembly for prayer" (if nine men were on the inside and one on the outside, the assembly is not complete), and he differs with R. Jehoshua ben Levi, who declares, that even an iron wall does not intervene between Israelites and their Heavenly Father.

There is a difficulty in the Mishna itself; in one clause it states, that if the part of the member extend from the door-wing it is considered on the inside, hence the door-wing is itself considered on the outside; while in the next clause we find, if it extend farther than this it is on the outside, hence the door-wing itself is considered on the inside?

This presents no difficulty; the former clause refers to the door of the Temple, while the latter clause refers to the door of the walls surrounding Jerusalem, as R. Samuel bar R. Itz'hak said: "Why were not the gates of Jerusalem sanctified (as if they were inside of Jerusalem)? because those afflicted with sores seek shelter beneath them from the sun and rain," and further, he said: "Why was not the gate of Nikmor sanctified? Because those afflicted with sores who brought their sacrifices would thrust their forefingers through the holes in the gate in order to have them smeared with the blood of their sacrifices."

"*The apertures in a wall and the thickness of a wall,*" etc. Rabh said: "The roof and the attics of the Temple were not sanctified." This is not so! Did not Rabh say in the name of R. Hyya, that the companies partaking of the paschal sacrifices were so great that when they would shout the Hallel-prayer the roof would nearly burst through the sound of their voices? Hence must it not be assumed, that the paschal sacrifices were eaten also on the roof? Nay, they ate the sacrifices below, but went up on the roof to recite that prayer.

Come and hear! Abba Saul said: The attic of the holy of holies was even more holy than the holy of holies itself, for while the latter was entered once every year, the former was entered only once in seven years; according to others twice in seven years, and according to others only once in fifty years, and then only to see whether any repairs were necessary (whence we see, that the attic was also sanctified?). Said R. Joseph: How can a comparison drawn between the Temple and the

city of Jerusalem? Concerning the Temple it is written [I Chronicles xxviii. 11]: "Then gave David to Solomon his son, the pattern of the porch, and of its apartments, and of its treasuries, and of its upper chambers, and of its inner chambers, and of the place of the cover of the ark"; and further, it is written [ibid. 19]: "All this, said David, was put in writing from the hand of the Lord, who gave me instruction respecting all the works of the pattern."

MISHNA: When two companies eat their paschal sacrifice in the same house (room), each turning their faces in a different direction while eating thereof, and the warming pot or kettle (containing the water to be mixed with the wine) is in the centre between the two companies, the waiter or servant must close his mouth (*i.e.*, not eat), (in order not to be suspected of eating with both companies), while he waits on the other company to pour out wine for them; then he must turn his face towards the company he eats with, and he must not eat till he rejoins his own company. It is, however, permitted to a bride to avert her face from the company while eating the paschal sacrifice.

GEMARA: This Mishna is in accordance with the opinion of R. Jehudah, as we have learned in the following Boraitha: It is written [Exod. xii. 7]: "In the houses, wherein they shall eat it," whence we may infer, that two companies are allowed to eat in one house. Should we assume that one may also eat it in two places of one house, therefore it is also written [ibid. 46]: "In one house shall it be eaten," which signifies that it may be eaten only in one place. Thence the sages declared, that if the servant who roasted the lamb (or the kid) had forgotten, and eaten a piece the size of an olive while he was engaged in roasting it, he should, if he knows his advantage, eat his fill right then and there, for he will not be allowed to eat any more thereof elsewhere; and if his company wish to show him favor, they can come and sit by him, and thus enable him to eat his fill if he had not already done so. Such is the dictum of R. Jehudah.

R. Simeon, however, said, that the passage "In the houses wherein they shall eat it," signifies, that a man may eat his paschal sacrifice in two different places; but lest a man should also assume that he may eat with two companies, the other passage, "In one house shall it be eaten," is added.

If one company was sitting and suddenly a partition was created between them (by the falling of a curtain), those who say that it is permitted to eat the paschal sacrifice in two companies

allow them to eat, but those who say that it is not allowed to eat in two companies do not permit them to do so. If the contrary was the case, *i.e.*, if a partition which had been between them was suddenly removed, those who say that the paschal sacrifice must not be eaten in two places do not allow them to eat it, while those who say it may be eaten in two places permit them to eat it.

R. Kahana was sitting and proclaiming this as a positive rule. Said R. Ashi to him: "This is not a positive rule. The question arises whether the partition which was formed or which was removed produced two companies and two places or not, and this question is undecided."

"*It is, however, permitted to a bride to avert her face*," etc. Why so? Said R. Hyya bar Abba in the name of R. Johanan: Because she is bashful."

R. Huna the son of R. Nathan happened to be a guest of R. Na'hman bar Itz'hak. The latter asked him his name, and he replied: "Rabh Huna." Said R. Na'hman to him: "Let Master sit on a bed," and he did so. A goblet of wine was handed him, and he at once accepted it and drained it in two draughts; but did not avert his face. He was finally asked why, when his name was inquired for, he called himself "Rabh Huna," and he answered: "Such has been my name since my youth." "Why, then, didst thou immediately take thy scat on the bed when requested to do so?" was the question put to him, and he replied: "Because such is the rule, that whatever the master of the house requests his guest to do, the guest should comply." "Why didst thou at once accept the goblet of wine?" he was asked again, and the answer was: "Because when a man superior to thyself offers thee anything, thou shouldst at once accept it, while only one that is inferior to thee should be allowed to insist upon thy acceptance." "Why didst thou drain it in two draughts?" "Because a Boraitha teaches: 'One who drains his cup at one draught is a glutton. One who drains it in two draughts shows the proper respect, while one who drains it in three is a conceited man.'" "Why didst thou not at least avert thy face?" "Because it was expressly taught, that only a bride averts her face."

R. Ishmael bar R. Jose happened to be a guest of R. Simeon ben R. Jose ben Lakunia, and was given a goblet of wine, which he at once accepted and drained at a draught. The people present said to him: "Does not the Master hold, that one who

drains his cup at one draught is a glutton?" and he answered: "This was certainly not said of a goblet so small as this, especially if containing wine so sweet and intended for a stomach of the capacity of mine."

R. Huna said: "A company which was appointed to eat the paschal sacrifice--if three had arrived and the rest were still absent--may commence to eat it. If the entire company had been there and gone away without eating the sacrifice, but one had remained, that one may eat it himself." Said Rabha: "This only applies if the three who entered had sent the servant to look for the others and they could not be found." Rabhina said: The three who did eat the paschal sacrifice should also be made to pay for it themselves, and the one man who had remained should also pay for more than his share. The Halakha, however, does not prevail according to Rabhina. 1

Footnotes

146:1 Where alone the paschal sacrifice may be brought and eaten.

149:1 *Vide* Levit. xxviii. 38.

156:1 *Vide* Numbers ix. 10.

156:2 By this term is meant defilement caused by passing over an abyss or ground where it is supposed that a corpse was situated, without being aware of the fact.

160:1 Because it is not allowed to burn a consecrated thing on the festival day proper, and the 16th is already one of the intermediate days of Passover.

162:1 Rabba supports his dictum on the strength of a Boraitha, which will be brought forward in Zeba'him.

172:1 All this is in accordance with the explanation of Rabbenu Hananel and not of Rashi, as it is the more reasonable.

Next: Chapter VIII: Those Obligated to Eat the Paschal Sacrifice; Where It May Be Eaten; Companies Appointed to Eat It; Difference Between First and Second Passover

CHAPTER VIII.

REGULATIONS CONCERNING THOSE OBLIGATED TO EAT THE PASCHAL SACRIFICE--WHERE IT MAY BE EATEN--COMPANIES APPOINTED TO EAT IT, AND THE DIFFERENCE BETWEEN THE FIRST AND SECOND PASSOVER.

MISHNA: If a paschal sacrifice had been slaughtered for a woman living in her husband's house, by her husband, and another lamb had been slaughtered by her father (also counting her in), she must eat that of her husband. If she came to pass the first festival after her marriage at her father's house and her father and husband have each slaughtered a paschal sacrifice for her, she may eat it at whichever place she prefers. If several guardians of an orphan have slaughtered paschal sacrifices for him, the orphan may go and eat it at the house he prefers. A slave belonging to two masters must not eat of the sacrifice of both masters. One who is partly a slave and partly free must not eat of the paschal sacrifice of his master.

GEMARA: Does the teaching of this Mishna then mean to signify, that there is such a thing as premeditated choice, *i.e.*, if the woman chose to eat at the house of either her husband or her father her intention to that effect was already existing at the time of the slaughtering of the lamb? Nay; by the statement "if she prefer it," it is not meant that she prefers to do it at the time when she is about to eat, but at the time when the sacrifice is to be slaughtered.

The following presents a contradiction: We have learned in a Boraitha: The first festival after a woman's marriage, she eats at the house of her father, but from that time on and further she may eat wherever she prefers to do so. This presents no difficulty. The Mishna refers to a case where the woman is not anxious to go to her father's house, in which event she may eat at her husband's house, while the Boraitha refers to a case of where the woman would rather eat at her father's house, as it is written [Solomon's Song viii. 10]: "Then was in his eyes as one that found favor," and R. Johanan held the passage to refer to

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a daughter-in-law who was anxious to go to her father's house and relate how she had found favor in the eyes of her husband's family.

It is written [Hosea ii. 18]: "And it shall happen at that day, saith the Lord, that thou shalt call me Ishi (my husband), and shalt not call me any more Ba'ali (my master)." Said R. Johanan: This signifies that (Israel will be as near to the Lord) as a woman who is in the household of her husband is to her husband, and not as one who is still in her father's house.

It is written [Solomon's Song viii. 8]: "We have a little sister, and she hath yet no breasts." Said R. Johanan: This refers to the province of Elam, which was destined to learn only and not to teach (because there lived Daniel, who had no disciples, while Babylonia had Ezra, who left

disciples).

It is written [ibid. viii. 10]: "I am a wall and my breasts are like towers." Said R. Johanan: "'I am a wall' refers to the Law, and 'my breasts are like towers' refers to the scholars who study it; "but Rabha said: "'I am a wall' refers to the congregation of Israel, and 'my breasts are like towers' refers to the synagogues and colleges."

R. Zutra bar Tobiah said in the name of Rabh: It is written [Psalms cxliv. 12]: "So that our sons may be like plants, grown up in their youth; our daughters, like corner-pillars, sculptured on the model of a palace." By "our sons may be like plants" are meant the youths of Israel who had not yet tasted of the flavor of sin, and by "our daughters like corner-pillars" are meant the maidens of Israel who lock their doors to men, as it is written in the next verse [ibid. 13]: "May our garners be full, furnishing all manner of store." By the passage "sculptured in the model of a palace" is meant, that both the youths and the maidens who have not sinned are worthy to have the Temple built in their days.

It is written [Hosea i. 1]: "The word of the Lord that came unto Hosea the son of Beëri, in the days of Uzziyah, Jotham, Achaz, and Hezekiah, the kings of Judah." At the same time four prophets prophesied, and the greatest among them was Hosea, as it is written further [ibid. 2]: "The beginning of the word of the Lord by Hosea was," which was explained by R. Johanan to mean the first of the four prophets that prophesied in that day, and they are: Hosea, Isaiah, Amos, and Micah. The Holy One, blessed be He, said to Hosea thus: "Thy children have sinned," and Hosea should have answered: "They

are *Thy* children, the children of thy favorites Abraham, Isaac, and Jacob, and Thou shouldst extend towards them Thy mercy"; and not alone did he not make this reply, but even said: "Creator of the Universe! The whole world is thine. Why not exchange them for another nation?" Whereupon the Lord said: "What shall I do with this old man? I shall tell him to take unto himself a wife of prostitution and have children of prostitution [ibid. 2], and then I shall tell him to send her away; and if he will then be able to do so, I shall also cast off Israel, as it is written further [ibid. 3]: So he went and took Gomer the daughter of Diblayim.
["Gomer" (which means conclusion), said R. Jehudah, "was so called because at that time the money of the Israelites was about to be abolished," and R. Johanan said: "It was already abolished, for the Israelites were robbed of all possessions, as it is written [II Kings xiii. 7]: 'For the king of Syria had destroyed them and had made them like the dust at threshing.'"] It is further written: "And she conceived and bore him a son" [Hosea i. 4]. "And the Lord said unto him, Call his name Yizre'ël (God will scatter, etc.)." [Ibid. 6:] "And she conceived again and bore a daughter; and He said unto him, Call her name Loruchamah (not finding mercy); for I will not further have any more mercy upon the house of Israel; but I will give them their full recompense, etc." [Ibid. 8:] "Now when she had weaned Loruchamah, she conceived, and bore a son." [Ibid. 9:] "Then said He, Call his name Lo'ammi (not my people); for ye are not my people, and I will indeed not be unto you (a God)." So after Hosea had born unto him two sons and a daughter, the Lord said unto him: "Shouldst thou not have learned from the example of Moses, who, immediately after I began to speak to him, separated himself from his wife? Then as he did, so also shalt thou do." Hosea answered: "Lord of the Universe! I have children with her, and cannot cast her off nor send the children away." So the Lord replied: "If then thou, who hast a wife of prostitution and whose children thou knowest not even whether they be thine,

canst not separate thyself from her, how then can I cast off my children (Israel), whose fathers, Abraham, Isaac, and Jacob I have tried--Israel, which is one of the four acquisitions which I have acquired in my world [see Aboth, Chap. VI., and Exod. xv. 16], and thou wouldst tell me to exchange them for another nation!"

As soon as Hosea realized that he had sinned, he commenced to pray for mercy for himself, and the Lord said unto him:

[paragraph continues] "Instead of praying for mercy for thyself, pray rather for mercy for Israel, for through thee I pronounced those three invectives [mentioned above] against them." So he followed the behest of the Lord, and after praying for Israel, the three invectives were retracted and annulled. Finally, when this came to pass, Hosea commenced to bless the people, as it is written [chap. ii. 1-3]: "Yet shall the number of the children of Israel (once) be like the sand of the sea, which cannot be measured nor numbered; and it shall come to pass that, instead that people say of them, Ye are not my people (Lo'ammi), shall they call them the sons of the living God. Then shall the children of Judah and the children of Israel be gathered together, and they will appoint for themselves one head, and they shall go up out of the land; for great shall be the day Yizre'ël. Call ye your brothers Ammi (my people); and your sister, Ruchamah (that hath obtained mercy)."

R. Johanan said: Woe is to a dominion that overwhelms its own master, for we find that there was not one prophet who did not outlive four kings, as it is written [Isaiah i. 1]: "The vision of Isaiah the son of Amoz, which he saw concerning Judah and Jerusalem in the days of Uzziyahn, Jotham, Achaz, and Hezekiah, the kings of Judah," and this also with the other prophets.

R. Johanan said again: Why was it destined for Jeroboam, king of Israel, to be counted with the kings of the house of David? (*Vide* Hosea i. 1.) Because he did not listen to calumny brought against Amos, as it is written [Amos vii. 10]: "Then sent Amazyah the priest of Beth-el, to Jeroboam the king of Israel, saying, Amos hath conspired against thee in the midst of the house of Israel," etc.; and further, it is written [ibid. 11]: "For this hath Amos said: By the sword shall Jeroboam die," etc., and Jeroboam answered: "God forbid that the righteous man (Amos) should have said this; but if he did, what can I do concerning him? Surely the Shekhina put the words in his mouth!"

R. Elazar said: Even when the Lord is angered, he also remembers His mercy, as it is written [Hosea i. 6]: "I will not farther have any more mercy upon the house of Israel; but I will give them their full recompense," reads: "I will not (go) farther; I will have mercy upon them," 1 etc.

R. Jose bar Hanina said: "The latter part of the verse can be construed to mean that 'their sins will be obliterated.'"

R. Elazar said again: "The Holy One, blessed be He, sent the children of Israel into exile among the heathens only for the purpose of acquiring more converts, as it is written [Hosea ii. 25]: 'And I will sow her for me in the land,' and as a matter of course sowing is done in order to reap a

harvest."

R. Johanan infers it from the next passage [ibid. ibid.]:"I will have mercy upon 'Her that had not obtained mercy,'" refers to the heathens who were not yet converted and upon whom mercy will be had by scattering among them the Israelites as fruitful seed.

R. Johanan said in the name of R. Simeon ben Jochai: It is written [Proverbs xxx. 10]: "Do not calumniate a servant unto his master: lest he curse thee, and thou incur guilt," and further, it is written [ibid. ii]:"There is a generation that curseth its father, and doth not bless its mother," which signifies that even in a generation that curseth its father, etc., a man should not slander the slave to his master. Whence do we know this? From the instance of Hosea (who spoke in a derogatory manner of Israel and thereby incurred the wrath of the Lord).

R. Oshiya said: It is written [Judges v. ii]:"'*Tzidkath Pirzono Be-Israel*" (the benefits towards the open towns in Israel). Read instead: "Tzidkath Pizrono Be-Israel" (the benefits conferred on Israel by scattering them among the nations). This is in accord with the statement of a Roman official to R. Hanina; viz., "We are better men than ye are; for concerning you it is written [II Kings xi. 16]: 'For six months did Joab remain there with all Israel, until he had cut off every male in Edom.' Yet we, who have dominated over you so long a time, have not destroyed you." Said R. Hanina to him: "Wouldst thou permit, that one of my disciples should argue the matter with thee?" (The official acquiesced.) R. Oshiya then came up and said to him: "The only reason why ye have not destroyed Israel, is because ye know not how to proceed. Should you desire to destroy all the Jews, it would be impossible, for there are numbers who are beyond your dominions; should you only destroy those that dwell among you, you would be called a curtailed dominion (because there would be a nation missing)." The official then answered: "I swear by the ruler of Rome that, when deliberating upon this matter, we begin and end with that argument."

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R. Hyya taught: It is written [Job xxviii. 23]: "God alone understandeth her way, and he knoweth her place," which signifies, that God knew that the children of Israel could not bear the tyrannical behests of the Edomites (or Romans), and for that reason He sent them into exile to Babylon or Persia, where they were not compelled to suffer so much.

R. Elazar said: Why was Israel exiled to Babylon? because Babylon is as low as the grave, and it is written [Hosea xiii. 14]: "From the power of the grave would I ransom them, from death would I redeem them." R. Hanina said: "They were exiled to Babylon because the language there is similar to the vernacular of the Law." R. Johanan said: They were exiled there because that was their native country (for Abraham came from Babylon); and this may serve as an example of a man who becomes angry with his wife and sends her back to her mother, and this is according to R. Alexandre's opinion, who said: "Three things returned whence they originated; namely, "Israel, the money carried out of Egypt by the Israelites, and the script of the tablets of the Law": Israel, as just mentioned; the money carried out of Egypt, as it is written [I Kings xiv. 25]: "And it came to pass in the fifth year of King Rehoboam, that Shishak the King of Egypt came up against Jerusalem [ibid. 26], and he took away the treasures of the house of the Lord and the treasures of the king's house, etc."; "the tablets," as it is written [Deutr. ix. 17]: "And I broke them before your eyes," and we have learned in a Boraitha that the tablets were broken and that the letters inscribed thereon vanished.

Ula, however, said: "Israel was exiled to Babylon because the necessities of life were cheap there, and the men would thus be enabled to live cheaply and at the same time study the Law." Ula once came to Pumbaditha, and a basket of dates was brought to him; so he asked how many baskets like that could be bought for one zuz, and he was told that three could be bought for one zuz. Said he to himself: "A big basket of honey for one zuz, and still the Babylonians do not study the Law sufficiently!" He ate too many dates, and it proved injurious to him. Said he to himself this time: "A whole basket of poison for one zuz, and still the Babylonians study."

R. Elazar said again: It is written [Isaiah ii. 3]: "And many people shall go and say, Come ye and let us go up to the mountain of the Lord, to the house of the God of Jacob." Of the God of Jacob. and not Abraham and Isaac? (Not that the

[paragraph continues] God of Jacob is not also the God of Abraham and Isaac,) but the house of God is not the mount concerning which it is written [Genesis xxii. 14]: "On the mount of the Lord shall it be seen," nor yet the field of Isaac where he went out to perform his devotions [Gen. xxiv. 631, but the house of the God of Jacob, as it is written [Gen. xxviii. 19]: "And he called the name of the place Beth-el (house of God)."

R. Johanan said: The day on which all the children of Israel will be recalled from exile will be as great as the day on which the world was created, because it is written [Hosea ii. 2]: "Then shall the children of Judah and the children of Israel be gathered together, and they will appoint for themselves one bead, and they shall go up out of the land; for great shall be *the day* of Yizreël"; and as it is written [Genesis i. 5]: "It was evening and it was morning, the first day," and hence the comparison.

"*If several guardians of an orphan have slaughtered*," etc. Infer from this, then, that there is such a thing as premeditated choice! Said R. Zera: It is written [Exod. xii. 3]: "A lamb for every house," and that signifies, that the head of the house can slaughter a lamb for the entire family without consulting them.

The rabbis taught: "It says: 'A lamb for every house.' Whence we may infer that a man may slaughter the lamb for his minor sons and daughters, for his Canaanitish bond-men or bondwomen, whether he have their consent or not; but he must not slaughter it for his adult sons and daughters, for his Israelitish bond-men or bond-women, or for his wife, without their consent."

"*A slave belonging to two masters*," etc. R. Aina the Elder propounded a contradictory question to R. Na'hman: "We have learned in our Mishna that a slave belonging to two masters must not eat the paschal lamb at the houses of both, and in another Boraitha we have learned that if he chooses he can eat it at either one or the other," and R. Na'hman answered: "Old Aina! This is a case analogous to you and myself. (If we are on good terms we can partake of a joint meal, and) thus also the Mishna treats of masters who are not on good terms with each other, while the Boraitha treats of masters to whom it makes no difference where the slaves eat."

MISHNA: If a person order his slave to go and slaughter for him the paschal sacrifice, and the

slave go and slaughter

kid or a lamb, he may eat it; if he slaughter a kid and a lamb, he may only eat that which he slaughtered first. How is he to act when he has forgotten the exact words of the order of his master? He should kill a lamb and a kid, and say (at the time of the killing and sprinkling of the blood), "If my master said 'a kid,' then may the kid be for him and the lamb for me, but if he said 'a lamb,' then be the kid for me and the lamb for him." If the master also had forgotten the precise terms of the order he gave, both animals must be burned, and neither master nor slave is bound to bring a second paschal sacrifice.

GEMARA: It is self-evident that if the slave slaughtered a lamb, although he generally slaughtered a kid, he may partake of the lamb, and if he slaughtered a kid, contrary to his usual custom of killing a lamb, he may eat of the kid; but is not the further statement in the Mishna, to the effect that if he slaughtered both he should only eat of that which he slaughtered first, contrary to the teaching of the Boraitha "that one man should not be appointed to eat of two paschal sacrifices" (how then may he eat of the offering slaughtered first)? The Mishna treats of the case of a king and a queen, as we have learned in a Boraitha, viz.: "One man must not be appointed to eat of two paschal sacrifices"; but it happened that a king and a queen ordered their slaves to slaughter the paschal sacrifice for them, and the slaves went and slaughtered two--a kid and a lamb. Afterwards they came to the king and asked him (which of the two he would eat), and he told them to ask the queen. When they asked the queen, she ordered them ask Rabbon Gamaliel, and when they came to R. Gamaliel he said: "In the case of the king and the queen, who are not particular whether they eat a kid or a lamb, they should eat of the first one slaughtered; but if this occurred to a man in our condition of life, he would not be allowed to partake of either."

At another time it happened that a reptile was found in the slaughter-house of the king, and it was thought that the reptile was dead, thus causing the entire meal prepared for the king and queen to become unclean. The servants came to the king and asked him concerning the matter, and he referred them to the queen, who in turn ordered them to inquire of Rabbon Gamaliel. When they came to R. Gamaliel, he asked them where the reptile had been found--among hot (food) or cold. They answered that it was found among hot; so he told them to get a cup of cold water and pour it on the reptile. This was done,

and the reptile moved. Accordingly R. Gamaliel held all the meal to be undefiled (for only the dead body of a reptile causes defilement, but not a live one). From this we can see, that the king depended upon the queen and the queen upon R. Gamaliel, and thus the entire meal of the king depended upon the decree of Rabbon Gamaliel.

"*If the master also had forgotten the precise terms of the order*," etc. Said Abayi: "Such is the case only if he had forgotten *after* the blood of the sacrifice had been sprinkled, for at that time the sacrifice was already fit to eat, and therefore no second Passover-sacrifice is necessary; but if he had forgotten *prior* to the time when the blood was sprinkled, in which case the sacrifice was not yet suitable to be eaten, he must bring a second Passover-offering."

According to others, Abayi did not make the above statement with reference to the Mishna but with respect to the Boraitha which follows: "If five skins of five different sacrifices were mixed and a blemish was found on the skin of one, all five sacrifices must be burned, but still neither one of the five owners need bring a second Passover-sacrifice." Commenting on this, Abayi said: "They need not bring a second sacrifice if the skins had become mixed after the sprinkling of the blood; for when the blood was sprinkled there were four of the sacrifices fit to be eaten. But if they had become mixed prior to the sprinkling, in which case none of the five were yet fit to be eaten, the owners are in duty bound to bring second Passover-offerings."

Those who hold that Abayi refers the statement mentioned to the Mishna, hold so much the more that he makes it with respect to the Boraitha also; but those who hold that he refers it to the Boraitha, maintain that in all probability he does not make the statement with reference to the Mishna: because in the case of the Boraitha one of the sacrifices was beyond doubt invalid through the blemish on the skin, and therefore a second Passover-offering should be brought; but in the Mishna the sacrifices were at all events valid, and the owner had merely forgotten what he had ordered. Still to the Lord his intention was known, and for that reason a second Passover-offering is not necessary.

The Master said (in the Boraitha): "Neither of the five owners need bring a second Passover-sacrifice." Why not? One of them had surely not acquitted himself of his duty! Because it is impossible to remedy the case. Should each of the

five bring a second Passover-offering, the four whose sacrifices were valid will be guilty of bringing ordinary animals into the Temple for paschal sacrifices, and that is prohibited. Should all five bring but one, then it will be eaten by persons not appointed for that purpose. Hence all five are exempted.

MISHNA: If a man say to his sons: "I slaughter the paschal sacrifice for whichever one of you shall arrive first in Jerusalem; then the first of them, whose head and greater part of the body first appears (in the city gate), thereby acquires a right to his own share and acquires the same for his brothers.

GEMARA: Infer therefrom that there is such a thing as premeditated choice (for originally the man did not know which one of his sons would arrive first, and when one *did* arrive, it must be assumed that that son was the one for whom the man intended to slaughter the sacrifice at the time of slaughtering). Said R. Johanan: "The man actually intended the sacrifice for all of his sons, but he merely mentioned the one who arrived first in order to cause his sons to hasten to fulfil their duty." This can be inferred from the Mishna itself, which teaches that the one son can also acquire the right to their shares for his brothers. This would be proper if the man intended the sacrifice for all his sons to commence with; but if we should say, that he did not intend it for all of them at the time of the slaughter, how can a right be acquired for them after the slaughtering had been done? for we have learned in a Mishna: "They may be numbered for the sacrifice, and can withdraw from it only until the time of slaughtering." Such, then, is the conclusion.

We also learned in support of this in a Boraitha: It once happened that the daughters of a man

made their appearance before the sons did, and the daughters were consequently held to be alert while the sons were tardy.

MISHNA: As many people may partake of a paschal sacrifice as can obtain therefrom the quantity of flesh of the size of an olive. Those that were appointed to eat it may withdraw (from the company) before the paschal sacrifice is slaughtered. R. Simeon said: "They may do so until the blood thereof is sprinkled."

GEMARA: What would (this Mishna) teach us? It would inform us that, even if one company had already been numbered to eat the sacrifice, another company may nevertheless be appointed, provided always that there will be a quantity of flesh of the size of an olive for each member of the second company.

"*Those that were appointed to eat may withdraw*," etc. Said Abayi: The point of difference between the sages and R. Simeon is only as regards the withdrawal. The sages hold that the passage [Exod. xii. 4]: "And if the household be too small for a lamb," refers to a lamb which is still alive, while R. Simeon holds that it refers to a lamb which is still on hand (in a slaughtered state); but as for the appointment of the company, all agree, that this can be done only until the time of slaughtering, because it is written [ibid. ibid.]: "According to the number of souls," and immediately following it says, "shall ye make a count for the lamb."

We have learned in a Boraitha in accordance with the above: Those appointed to eat of the sacrifice may withdraw until the time of the slaughter; but R. Simeon says: "The appointment may be made until the time of the slaughter; but withdrawal therefrom may be effected until the sprinkling of the blood."

MISHNA: If a person had appointed others to partake with him of his share of the paschal sacrifice, his company are at liberty to give him his share so that he may eat it apart from them with his guests, and they may eat their own share (apart from him and his guests).

GEMARA: The schoolmen propounded a question: If a member of a company have a larger capacity than the other members, may the rest of the company offer him his share to eat separately, or can he insist upon his right to partake of the sacrifice jointly with them? And can they, on the other hand, maintain that they received him as a member only in order to prevent a remainder being left over from the (consecrated) sacrifice, but that they did not calculate upon his appropriating more thereof than the other members of the company?

Come and hear! If a member of a company had a larger capacity than the other members, the rest may say to him: "Take thy share and go!" and not only this; but even if five persons had formed a partnership for the entire year and one of them appropriated more than his due, the others might say to him: "Take thy share and go!" Hence the conclusion.

What additional information would the statement, "not only this, but even if," etc., impart to us? We are told by this statement, that not only can a man be ousted from a company appointed to eat the paschal sacrifice on the ground that he was taken in only to avoid having a remainder left over, but even in an ordinary case of partnership, where such a claim cannot be

brought forward, a man maybe ousted if appropriating more than his just share.

According to another version, this was not the subject at issue, but the question was merely whether a company which had gone into partnership (for any purpose whatever) might be divided or not. Come and hear: If a member of a company had a larger capacity than the other members, he might be told to "take his part and go"; whence we may infer that this may be done only if he had a larger capacity than the others, (because he was taken in only to avoid a remainder being left over,) but where such a claim cannot be put forth he cannot under any circumstances be ousted. Such is the conclusion.

R. Papa and R. Huna the son of R. Jehoshua agreed to take a meal in common. In the time it took R. Huna to eat one (date) R. Papa would consume four. Said R. Huna to him: "Give me my share (and let me go)!" and R. Papa answered: "We are in company! (Eat also as quickly as I do.)" Whereupon R. Huna propounded to him the previous questions (concerning divisions of partnership mentioned above), and was answered accordingly. He then asked him concerning the Boraitha, bringing the instance of an ordinary partnership (cited above), whereupon R. Papa gave him his share.

R. Huna then left and made common cause with Rabhina. In the time R. Huna bar R. Jehoshua would eat one (date) Rabhina would consume eight. So R. Huna said: "Rather an hundred Papas than one Rabhina."

The rabbis taught: If one man invite several others to go with him and partake of his paschal or festal offering, the money in his possession obtained from the guests he invites is non-consecrated, (notwithstanding the fact that money was given with the intention of applying it to a consecrated purpose). One who sold his burnt-offering or his peace-offering is not considered to have done anything, and the money obtained, whatever it be, should be applied to a voluntary offering. If the man is not considered to have done anything, why should the money obtained be applied to a voluntary offering? Said Rabha: This is virtually a punishment for the purchaser (in order to prevent him from buying burnt and peace offerings from another); (for not the mouse is the thief but the hole, *i.e.*, the thief is not as guilty as the receiver of stolen property who aids him). What is the meaning of "whatever it be"? This means to imply, that even if the amount paid was in excess of the value of the

sacrifice, *f.i.*, it was worth four, and five (zuz) were paid, even the one zuz in excess of the value is assessed as a punishment, and not, as might be assumed, allowed the purchaser.

MISHNA: If a person, having a running issue, had observed such issue twice on the same day, and the seventh day after (his malady had subsided) fall on the 14th day (of Nissan), (when he is no longer defiled), he may have the paschal sacrifice slaughtered for him on that day; but if he had observed the issue three times in one day, it may be slaughtered for him only if the eighth day (when he again becomes clean) should fall on the 14th (of Nissan). For a woman whose menstruation continued for a day beyond her regular period, the paschal sacrifice may be

slaughtered if the second day (after her menstruation had subsided) fall on the 14th (of Nissan); if it continued two days beyond her regular period, the sacrifice may be slaughtered for her if the 14th (of Nissan fall) on the third day after the menstruation had subsided; but for a woman whose flow of menses continued three days beyond her regular period, the sacrifice maybe slaughtered only if the 14th (of Nissan) fall on the eighth day after the flow had stopped. 1

GEMARA: R.. Jehudah said in the name of Rabh: "For a person who had a running issue the paschal sacrifice may be slaughtered on the day on which he takes his legal bath even before the sun had set on him (if that day be the 14th of Nissan). The same law applies to one who had already bathed, but had not yet received forgiveness from the altar (*i.e.*, had not yet brought the legal sacrifice); but for one who had contracted uncleanness through contact with a dead reptile the sacrifice must not be slaughtered nor the blood sprinkled, even though be may legally take his bath on that day." Ula, however, said, that for the latter also the sacrifice may be slaughtered and the blood sprinkled.

According to Rabh, why may the sacrifice be slaughtered for one who had a running issue and had taken his legal bath? because he will at night be allowed to partake thereof. Why, then, should he not accord the same permission in the case of one who had become defiled through a dead reptile? For the reason that the latter had not yet taken his legal bath. But even for the one who had bathed, is not sunset lacking? The

sunset must eventually take place, while one may neglect to take a bath. What about the one who still lacks forgiveness? Surely that may be delayed? The case of a man is spoken of, who already has the necessary sacrifice in his possession. If that be the case, then the one who had not yet taken his bath can claim that the bath is ready for him? Still, there is fear that he might not take advantage of it. Can this not also be the case with the one who lacks forgiveness, even if he have the sacrifice in his possession? "In his possession" signifies, that the sacrifice had already been delivered to the tribunal of the priests, and this is in accordance with R. Shamaiah's opinion, which reads: "We are certain that the tribunal of the priests does not adjourn until all the money contained in the chests and set apart for the sacrifices of the day is properly disposed of."

Let us see! Rabh, who does not permit the sacrifice to be slaughtered for one who had become defiled through a reptile and had not yet bathed, does so, because he claims that there is fear lest the man should not take his legal bath, which is merely a rabbinical precautionary measure, while according to biblical law the precaution is dispensed with and the sacrifice may be slaughtered for him. How, then, can Rabh prescribe that if a congregation is equally divided between clean and unclean members, one of the clean should be defiled by being brought in contact with a reptile? Therefore we must say, that, according to Rabh, one who had become defiled through contact with a reptile cannot even according to biblical law have the sacrifice slaughtered for him; for it is written [Numbers ix. 10]: "If any man whatever should be unclean by reason of a dead body," and we know that even if the seventh day of such a man's uncleanness fall on the eve of Passover, still the Law prescribes that he should bring his sacrifice on the second Passover, and the seventh day is the equivalent of a day on which a man had become defiled through a dead reptile.

Whence do we know, that the seventh day fell on the eve of Passover, perhaps it is not the

seventh day (but the fifth or sixth)? Because we know that Rabh holds with R. Itz'hak, who states as follows: "It is written [ibid. ix. 6]: "But there were certain men who had been defiled by the dead body of a man, and they could not prepare the Passover-lamb on *that day*." Whence we adduce, that they were defiled by a corpse for which no burying-ground had been provided, and the seventh after their defilement happened on the eve of Passover, because it is

distinctly written, "on that day," which signifies, that though they could not prepare the sacrifice "on that day" they could do so on the morrow, and still the Law prescribed that they should bring their sacrifice on the second Passover.

MISHNA: For a mourner who has lost a relative, for whom he is obliged to mourn, on the 14th (of Nissan); for a person employed in digging out of a heap of fallen ruins persons buried among them; for a prisoner who has the assurance of a release (in time to eat the paschal sacrifice); and for aged and sick persons, it is lawful to slaughter the paschal sacrifice while they are able to partake thereof a quantity at least the size of an olive. For none of these, however, may it be slaughtered on their account alone, because they may cause the paschal offering to become desecrated and useless; therefore, if any one of the persons enumerated becomes disqualified to partake of the paschal sacrifice, he need not bring a second, with the exception of a person who had dug out a dead body from beneath the ruins, since such a person is unclean to commence with.

GEMARA: Said Rabba bar Huna in the name of R. Johanan: A prisoner on whose account alone the paschal sacrifice should not be slaughtered is one who is imprisoned in the prison of the heathens; but one who is in a prison of the Israelites, if his release for that day was promised him, may have the paschal sacrifice slaughtered for him, because the promise will surely be fulfilled, as it is written [Zephaniah iii. 13]: "The remnant of Israel shall not do injustice, nor speak lies." R. Hisda said: "In treating of the prisons of the heathens, only such are meant is are outside of the walls of Beth Paagi; but if a prisoner is confined in a prison of the heathens inside of the walls of that place, he may have the paschal sacrifice slaughtered for him even if he be not released on the eve of Passover, as it may be brought to him while in confinement and he is allowed to partake thereof."

"*Therefore, if anyone of the persons enumerated becomes disqualified*," etc. Said Rabba bar bar Hana in the name of R. Johanan: "Thus we have also learned in a Boraitha in the name of R. Simeon the son of R. Johanan ben Broka, viz.: If a man dig out of a heap of fallen ruins (persons buried among them), he is sometimes exempt from the duty of bringing a second Passover-offering and at other times he is obliged to do so. How so? If the heap was round and when commencing to dig he virtually formed a tent over the corpse which he was attempting

to dig out, and at the time the paschal offering was being slaughtered, he was already unclean and should therefore bring a second Passover-offering; but if the heap was oblong and the digging was commenced at the side, it is doubtful whether by the time the corpse was reached, (making the man unclean,) the sacrifice had already been slaughtered, and wherever there is a doubt a second Passover-offering need not be brought."

MISHNA: The paschal sacrifice must not be slaughtered for a single individual. Such is the dictum of R. Jehudah. R. Jose, however, permits this to be done. It must not be slaughtered even for a company of a hundred persons, if each one of them cannot eat as his share at least a piece the size of an olive. Neither may a company for the purpose of eating the paschal sacrifice be formed of women, with slaves and minors.

GEMARA: The rabbis taught: Whence do we know the paschal sacrifice must not be slaughtered for a single individual? because it is written [Deut. xvi. 5]: "Thou mayest not slay the passover within any one," etc., and this signifies, that it must not be slaughtered for one (person). Such is the dictum of R. Jehudah. R. Jose, however, said: "If one can eat the entire sacrifice it may be slaughtered for him; but if ten cannot eat it up entirely, then it must not even be slaughtered for the ten." How then will R. Jose explain the term "any one" in the passage quoted? He will apply it to the dictum of R. Simeon as follows: We have learned in a Boraitha: R. Simeon said: "Whence do we know that one who slaughtered a paschal sacrifice on an altar of his own (not in the Temple) is guilty of transgressing a negative commandment? This is demonstrated by the passage: "Thou mayest not slay the passover in any one of thy gates." Shall we assume, that even in the interim between the destruction of the first Temple and the erection of the second, when it was allowed to slaughter the paschal sacrifice outside of the Temple, one would also be culpable if he slaughtered it on his own altar? (Nay; for) to that end it is written, "in any one of thy gates," which signifies that only when there was a common gate for all the Israelites this would constitute a transgression; but when there was not, no guilt was incurred.

R. Uqba bar Hinana of the city of Prishna propounded a contradictory question to Rabha: "How can R. Jehudah say, that the paschal sacrifice must not be slaughtered for a single individual--have we not learned in a Boraitha: For a woman

the first paschal sacrifice maybe slaughtered individually; but in the case of the second sacrifice she must be counted in with a company; such is the decree of R. Jehudah?

Rabha answered: Do not read, 'may be slaughtered for her individually,' but 'for *them* separately,' which means that there were several women together." Rejoined R. Uqba: "But have we not learned in our Mishna that a company must not be formed of women, slaves, or minors, *i. e.*, of any of the three?" and Rabha replied: "Nay; it means that a company must not be formed of the three together. It must not be formed of women and slaves, in order to prevent sin; not of slaves and minors, in order not to spoil the manners of the children."

R. Jacob said in the name of R. Johanan: A company should not be formed entirely of proselytes, because they are over-scrupulous and may cause the sacrifice to become invalid.

The rabbis taught: The paschal sacrifice, the eating of unleavened bread and of bitter herbs, are only obligatory on the first day of the Passover, but after that it is optional, and a man may or may not perform either. R. Simeon, however, said: "These duties are obligatory for men during the entire festival, but for women they are obligatory only on the first day?"

To what does R. Simeon refer? Shall we say to the paschal sacrifice--that may only be brought on the eve of the first day? Hence we must assume that he refers to the eating of unleavened

bread and bitter herbs? Does not R. Simeon hold with the dictum of R. Eliezer to the effect that women are in duty bound to eat unleavened bread by biblical law; because it is written [Deut. xvi. 3]: "Thou shalt not eat therewith any leavened bread; seven days shalt thou eat therewith unleavened bread," etc., from which R. Eliezer infers that, as it is prohibited to eat leavened bread, it is obligatory to eat unleavened bread, and this rule applies to women also? Therefore say, that the paschal sacrifice and eating of unleavened bread and bitter herbs are obligatory on the first day only, and optional thereafter; and R. Simeon said, that the paschal sacrifice on the first day is obligatory for men only, and women are exempt (because it is a positive commandment dependent upon its season)-

MISHNA: A mourner (who is obliged to mourn for a near relative who is not yet interred) may eat of the paschal sacrifice at eve after having taken his legal bath, but must not eat of other holy sacrifices. One, however, who has only received information

of the decease of a near relative, or who has the bones of a deceased person exhumed (and removed) for him, may eat even of other holy sacrifices after having bathed. A Gentile proselyte, who was circumcised on the day before the Passover festival may, according to Beth Shammai, bathe himself, and eat in the evening of the paschal sacrifice. Beth Hillel, however, say: "One who has parted from the uncircumcised must be considered as one who has just parted from the grave." 1

GEMARA: Why may a mourner eat of the paschal sacrifice? Because, while on the day of the decease of the relative the mourner is, according to biblical law, exempted from the performance of all religious duties, on the night of that day the Tana (of the Mishna) holds that he is exempt only by rabbinical law, and on account of rabbinical law they would not assume the responsibility of avoiding a commandment the non-observance of which is punishable with Kareth (being cut off). As for other holy (sacrifices) which do not involve such punishment, if not partaken of they held the rabbinical law to be effective.

"*Who has the bones of a deceased person exhumed,*" etc. Must not a man who exhumes the bones of a deceased person undergo the period of uncleanness for seven days and be sprinkled on the third and the seventh. Read in the Mishna, that a man is referred to who has the bones exhumed *for him,* and thus is only bound to mourn.

"*A Gentile proselyte, who was circumcised,*" etc:. Said Rabba bar bar Hana in the name of R. Johanan: They differ only concerning a Gentile proselyte, for Beth Hillel hold that it might happen on the next year that the Gentile should be unclean, and say: "I will bathe and eat of the paschal sacrifice," thinking that having done so the preceding year he is allowed to do it also then, and not realizing that in the preceding year he had not yet been an Israelite and therefore not subject to uncleanness, while this year he is now an Israelite and is subject to the law of uncleanness. Beth Shammai, however, maintain that such a precautionary measure is not necessary. As for an Israelite, however, who had been circumcised on the day before the Passover, all agree that he may after bathing partake of the sacrifice and that the precautionary measure is in his case superfluous.

The same we have learned in a Boraitha in the name of R. Simeon ben Elazar.

Footnotes

176:1 This version of the verse R. Elazar bases upon the fact that the Hebrew term "Ara'hem" means "I will have mercy upon them," and if it were as translated in the first version of the passage the term used would be "Lera'hem."

185:1 The detailed laws concerning the cases under discussion in the Mishna will be brought forward in Tract Niddah.

190:1 And is therefore unclean for seven days; hence he must not eat the paschal sacrifice.

Next: Chapter IX: The Second Passover; Passover during Exodus; Mixed Paschal Sacrifices

CHAPTER IX

REGULATIONS CONCERNING THE SECOND PASSOVER--THE PASSOVER AT THE EXODUS FROM EGYPT--CONCERNING CASES WHERE THE PASCHAL SACRIFICE HAD BECOME MIXED.

MISHNA: Persons who, in consequence of being (ritually) unclean or on a distant journey, did not observe the first Passover, must observe the second. Also such as have, either through error or compulsion, been prevented from observing the first, must observe the second Passover. Why, then, the verse [Numb. ix. 10]: "If any man whatever be unclean by reason of a dead body, or be on a distant journey"? In order to teach us, that in case of the neglect of the observance of the second Passover by them, they do *not* incur the penalty of Kareth (excision), but others do incur it.

GEMARA: It was taught: If a man was on a distant journey and the paschal sacrifice was slaughtered and the blood sprinkled for him also, R. Na'hman said that the offering is accepted for him, and he need not observe the second Passover; because the Merciful One had pity on him: but if he offered up a second Passover-sacrifice nevertheless, an additional blessing is bestowed upon him. R. Shesheth, however, said: "The offering is not accepted for him, even from the fact that the keeping of a second Passover has been provided for by the Law, as if he were unclean; hence the offering brought for the man is not even considered as brought at its proper time, and hence is of no account."

Said R. Na'hman: "I adduce my teaching from the Mishna itself; for it states, 'that persons who, in consequence of being unclean or on a distant journey, did not observe the first Passover,' implying thereby, that had they chosen to do so they could have observed the first Passover." Said R. Shesheth: "Then how can we account for the latter clause of the Mishna, which states, that such as have, either through error or compulsion, been prevented from observing the first; shall we assume that they could in this case also, had they chosen to do so, observe the first Passover, were they not prevented by compulsion? Therefore we

must say, that the latter case includes even one who intentionally neglected the observance of the first Passover, and he should observe the second. Thus also the first case, by stating, 'did not observe the first Passover,' includes mourners (who mourn for a dead relative that was not yet interred)."

The rabbis taught: "The following persons are obliged to observe a second Passover: Men and women afflicted with a running issue, men and women afflicted with sores, women suffering from their menstruation and such as had sexual intercourse with them during that time, women lying in, those that neglected the observance of the first Passover either through error or

compulsion, those that neglected it intentionally, those that were unclean, and those who were on a distant journey. If all these are included, why does the verse mention only those that were unclean and on a distant journey? In order to exclude these from the penalty of Kareth."

This teaching of the rabbis coincides with the opinion of R. Na'hman to the effect that if a paschal sacrifice had been slaughtered for one who was on a distant journey it is favorably accepted.

Is a woman, then, obliged to bring a second Passover-offering? Have we not learned in a Boraitha: We might assume that the duty of offering the second Passover-sacrifice was only incumbent upon those who were unclean (through contact with a dead body) and upon those who were on a distant journey; whence do we know that men having a running issue, men afflicted with sores, and one who had sexual intercourse with a woman suffering from her menstruation are also included? To that end it is written [Numbers ix. 10]: "any man whatever." Thus we see that "man" is mentioned, but not woman? This presents no difficulty. According to R. Jose women are also bound to bring the second Passover-sacrifice, while according to R. Jehudah and R. Simeon women need not.

The rabbis taught: "Kareth is the penalty for the non-observance of the first Passover as well as of the second." Such is the dictum of Rabbi. R. Nathan, however, said that punishment is incurred only for the non-observance of the first, but not of the second Passover. R. Hananiah bar Aqabia said: "Even for the non-observance of the first Passover the penalty is not incurred unless the second Passover is also not observed."

The opinions of all three are in accordance with their individual theories, as we have learned in the following Boraitha:

[paragraph continues] If a proselyte had become converted (to the Judaic faith) in the interim between the two Passovers, or if a minor had attained his majority during that time, Rabbi holds that they should observe the second Passover. R. Nathan, however, says that only one who was obliged to observe the first Passover should observe the second; but not one who was not in duty bound to observe the first. Wherein do these two sages differ? Rabbi holds that the two Passovers are separate festivals, while R. Nathan maintains that the second is only supplementary to the first but not a substitute therefor; *i.e.*, the observance of the second Passover does not absolve a man from the punishment incurred for the neglect of the first; but R. Hananiah bar Aqabia states that the second Passover is merely a substitute for the first, and its observance exempts a man from the penalty incurred through non-observance of the first. All three sages adduced their teachings from the one passage, viz. [Numb. ix. 13]: "But the man that is clean, and is not on a journey." Rabbi holds that the following words, "and forbeareth to prepare the Passover-lamb, even that same shall be cut off from his people," refer to the first Passover, and the sentence," because the offering of the Lord hath he not brought at its appointed season, his sin shall that man bear," refers to the observance of the second Passover, and instead of "because" (Hebrew *Kee* [1]) it should read "or." R. Nathan, however, holds to the literal text of the verse, and says that it should read, "because the offering," etc. R. Hananiah bar Aqabia says that instead of "because" it should read "if," and then the sentence will read, "if he hath not brought," etc.

Thus the conclusion is as follows: If a man had intentionally neglected the first and second Passover, all agree, that he incurs the penalty of Kareth. If he had inadvertently neglected both, all agree, that he is not culpable. If he had neglected the first intentionally and the second unintentionally, he is, according to Rabbi and R. Nathan, culpable, and according to R. Hananiah absolved. If he had neglected the first unintentionally and the second intentionally, he is, according to Rabbi, culpable, but according to R. Nathan and R. Hananiah bar Aqabia he is absolved.

MISHNA: What must be considered a "distant" journey?

[paragraph continues] According to R. Aqiba, it is from Moodayim and beyond, and from all places around Jerusalem, situated at the same distance R. Eliezer said: "Any distance beyond the outside of the threshold of the Temple-court should be considered as coming in under that term." Said R. Jose to him: "It was to confirm this (Rabbi's statement) that it is (even to this day) directed that a dot must be placed over the Heh in the word Rahuqa'h (meaning 'distant'), to indicate that it is not necessary that a person should actually be on a distant road, but that he is considered distant so long as he has not passed beyond the threshold of the court of the Temple."

GEMARA: Said Ula: "From Moodayim 1 to Jerusalem is a distance of fifteen miles," and he is in accordance with the opinion of Rabba bar bar Hana, who said in the name of R. Johanan: "What is the distance that a man can traverse in one day? Ten Parsaoth. 2 From the time the morning star appears until sunrise five miles, from sunset until the stars appear five miles, and from sunrise until noon fifteen miles, and from noon until sunset fifteen miles."

Ula's reason for calling fifteen miles a distant journey is because he holds, that if a man were in Moodayim after sunrise he could not reach the court of the Temple in time to witness the slaughtering of the paschal offering.

The Master said: "From the time the morning star appears until sunrise a man can traverse five miles." Whence does he adduce this? From the passage [Gen. xix. 15]: "And as the morning dawn arose, the angels urged Lot," etc. and further, it is written [ibid. 23]: "The sun rose over the earth, when Lot entered into Zoar"; and R. Hanina said: "I saw the distance between Sodom and Zoar, and found it to be five miles."

Thus it is said that Ula calls a journey distant if the court of the Temple cannot be reached in time for the slaughtering on the same day, and R. Jehudah says that the journey is distant if the court of the Temple cannot be reached in time for the eating of the paschal lamb on the same day. Said Rabba to Ula: "According to both thine and R. Jehudah's opinion there is a question. According to thy own opinion, for one who had become unclean through a reptile the paschal offering may be

slaughtered and the blood sprinkled notwithstanding the fact that he will not become clean until evening and hence cannot enter the Temple, and still thou sayest that if a man cannot reach the

court of the Temple in time for the slaughtering, the paschal sacrifice should not be slaughtered for him. Now, according to R. Jehudah, who states that if a man can reach the court of the Temple in time for eating, the paschal sacrifice may be slaughtered for him, why does he hold that the paschal offering must not be slaughtered for one who became unclean through a reptile? A man in such a condition becomes clean and may enter the Temple after sunset, and at that time the pashal lamb is eaten."

Replied Ula: "There is no difficulty, neither according to my opinion nor according to R. Jehudah's, According to my opinion there is no difficulty, for the law concerning a man on a distant journey applies only to a (ritually) clean man but not to one that is unclean; and according to R. Jehudah's opinion there is also no difficulty, for one that had become unclean through contact with a dead reptile was excluded by the Law itself, as it is written [Numbers ix. 10]: 'If any man whatever should become unclean by reason of a dead body,' etc., and we will know that a man in such a condition, even if his seventh day of uncleanness fall on the eve of Passover, must postpone his Passover-sacrifice until the second sacrifice; and is this not equivalent to a man who had become unclean through a reptile on the eve of Passover?"

The rabbis taught: If a man was situated on the further side of Moodayim, and while he could not reach the court of the Temple on foot could reach it by means of a mule (or conveyance), we might assume that if he did not come to Jerusalem to offer his sacrifice he is guilty; hence the passage says that only such as are not on a distant journey are culpable if they neglect the Passover, but the man under discussion was on a distant journey. How is it, however, if the man was this side of Moodayim, towards Jerusalem, and could reach it under ordinary circumstances, but was prevented by the obstruction caused by camels and conveyances? We might assume that such a man does not incur punishment; hence it is written, "But the man that is not on a distant journey," and such a man cannot truly be considered on a distant journey.

Rabha said: "The entire world measures six thousand Parsaoth (24,000 miles), and the depth of the sky is one thousand

[paragraph continues] Parsaoth." One of these assertions is based upon tradition and the other is a reasonable conclusion, and Rabha is in accord with Rabba bar bar Hana, who said in the name of R. Johanan that the average man can walk ten Parsaoth in one day; hence if the sun traverses 6,000 Parsaoth in one day and a man can traverse 1 1/4 Parsaoth between dawn and sunrise, which is a sixth of the distance he can traverse from sunrise to sunset, the sun takes one-sixth of the time to pierce the sky that it takes to traverse during the day, which is 1,000 Parsaoth, hence the sky must be 1,000 Parsaoth deep.

An objection was made: The disciples of Elijah taught: R. Nathan said: "The whole earth stands under one star, and proof is, that wherever a man is situated he sees the same star; and there being so many stars, the sky must necessarily be more than 1,000 Parsaoth deep." This objection was not answered.

The rabbis taught: "The sages of the Israelites assert, that the ring (wheel) in which the different constellations [1] are situated is fixed, and every month one of the constellations appears and then recedes, making room for another, while the Gentile sages declare that the wheel is constantly

turning and every month brings forth a different constellation, which is, however, fixed in its place in the wheel." Said Rabbi (in order to contradict the Gentile sages): "We have never found the Bull in the south nor the Scorpion in the north, and were it as the Gentile sages declare, the position of the constellations would constantly change.

The sages of the Israelites said: "During the day the sun moves underneath the sky and at night recedes beyond the sky," while the Gentile sages say: "During the day the sun moves underneath the sky and at night it recedes beneath the earth."

Said Rabbi: "The assertion of the Gentile sages seems to be the more reasonable, for during the day the springs are all cold and at night they are all warm."

We have learned in a Boraitha: R. Nathan said: "In the summer time the sun moves in the zenith of the sky, hence all

the earth is warm and the springs are cool; but in the winter the sun moves in the base of the skies, hence all the earth is cold and the springs are warm."

The rabbis taught: The sun moves in four different paths. During the months of Nissan, Iyar, and Sivan it moves over the top of the mountains, in order to melt the snow. During Tamuz, Ab, and Elul it moves in the cultivated portions of the earth, in order to ripen the fruit. In Tishri, Mar-Cheshvan, and Kislev it moves over the seas, in order to dry up the lakes; and in Tebeth, Shebat, and Adar it moves in the desert, in order not to parch the seed sown.

"*R. Eliezer said, 'Any distance,'*" etc. Even if the man can enter, is be not told to do so, or given the alternative of incurring the penalty of Kareth? Have we not learned in a Boraitha, that an uncircumcised Israelite, if he does not partake of the paschal sacrifice, incurs the penalty of excision; for he is told to be circumcised, and then partake of the sacrifice? Such is the dictum of R. Eliezer. Rejoined Abayi: "A ritually clean man is exempt by law if he is on a distant journey, and outside of the Temple is considered a distant journey; but in the case of an unclean person this privilege is not granted; and he is equal to an unclean person." Rabha, however, said: Concerning this there is a diversity of opinion among different Tanaim, as we have learned in a Boraitha: R. Eliezer said: The Scriptures mention a distant journey in the case of the paschal sacrifice and in the case of second tithes, and as in the latter instance if a man is outside of the Holy Land he is considered as being on a distant journey, so in the former case if a man is outside of the place where he is allowed to eat the paschal offering, *i.e.*, beyond the walls of Jerusalem, he is considered as being on a distant journey. R. Jose the son of R. Jehudah, however, said in the name of R. Eliezer, that a man is not considered as being on a distant journey if he is outside of the place where he is allowed to *eat* the paschal sacrifice, but only if he is outside of the place where he should *prepare* it, and that is beyond the walls of the Temple.

According to whose opinion is the statement of R. Itz'hak the son of R. Joseph to the effect that the paschal sacrifice must be brought in accordance with the condition of the majority of the people inside of the Temple; *i.e.*, if the majority of the men on the inside of the Temple-court were in a state of defilement although the majority of the entire community standing outside

of the Temple were undefiled, the paschal sacrifice must nevertheless be brought in a state of defilement (because those standing on the outside are considered as being on a distant journey)? This is in accordance with the opinion of R. Jose bar Jehudah, quoting R. Eliezer.

"*R. Jose said: 'It was to confirm this,'*" etc. We have learned in a Boraitha: R. Jose the Galilean said: The term "distant journey," as mentioned in the Scriptures, would lead us to presume that at least a three or four days' journey is meant; but as it is written further [Numb. ix. 13], "if he was not on a distant journey," we may conclude that as soon as a man is outside of the threshold of the court he is considered as being on a distant journey.

MISHNA: What is the difference between the first and second Passover? They differ, that during the (seven days of the) first Passover no leaven of any kind may be seen or even found in the house, while in the second both leavened and unleavened articles may be used in the house. At the eating of the paschal offering on the first Passover, the "Hallel" prayer must be recited but not at the eating on the second Passover. During the time, however, that the offering is sacrificed, either on the first or on the second Passover, the "Hallel" must be recited; the sacrifices on both Passovers must be roasted and eaten with unleavened cakes and bitter herbs, and the sacrifice of both supersedes the due observance of the Sabbath.

GEMARA: The rabbis taught: It is written [Numb. ix. 12]: "According to the whole ordinance of the Passover-lamb shall they prepare it." Thus this passage refers to the Passover-lamb itself; but whence do we know that its accessories are to be observed in the same manner? To that end it is written [ibid. 11]: "With unleavened bread and bitter herbs shall they eat it." Shall we assume, that all other ordinances that are not directly accessory to the sacrifice should also be observed? For that purpose it is also written [ibid. 12]: "No bone shall they break on *it*"; and as this behest concerns only the sacrifice when it has been slaughtered, so should all other commands be observed only in so far as they concern the paschal lamb itself.

Issi ben Jehudah said: "(All these explanations are unnecessary, as) the words, 'shall they prepare *it*,' signify that the behest concerns only that which belongs to the preparation of the sacrifice" (when it was slaughtered).

The rabbis taught: From the passage, "According to the

whole ordinance of the Passover-lamb shall they prepare it," we might infer that the laws ordaining against leaven being seen or found in the house should also be effective on the second Passover; to that end the single ordinance providing for its being eaten with unleavened cakes and bitter herbs is quoted, thus demonstrating that it is only in this respect that the second Passover should be observed in conformity with the first. Thus we see that so far the "whole ordinance" of the Passover-lamb was made up of the positive commandment, but whence do we derive a negative commandment on the "whole ordinance"? For that purpose it is written [Numb. ix. 12]: "They shall leave none of it until morning." Still, this negative commandment is virtually contained in the positive commandment, "they shall eat it," or "they shall burn what is left over." Whence do we derive, however, an independent negative commandment? The behest,

"No bone shall they break on *it*," furnishes that negative commandment. From the particularization of this whole ordinance of the Passover we find that concerning the Passover-lamb both the first and second have in common a positive commandment, a negative dependent on or contained in the positive, and an independent negative, and thus the rule may be derived that only such behests are to be carried out on the second Passover as are covered by the three kinds of commandments on both Passovers.

What other positive commandment may be added which is analogous to the one ordaining that the paschal lamb should be eaten with unleavened cakes and bitter herbs? The one ordering that it should be roasted with fire. Which commandments, however, are excluded by the particularization? The removal of the leaven. Perhaps the contrary should be done, *i.e.*, the removal of leaven should be added to the positive and the roasting with fire should be excluded? Nay; a commandment pertaining to the sacrifice itself should be given preference. What other negative commandment contained in a positive should be added to the one, "They shall leave none of it until morning"? The negative commandment, "They shall not carry aught of the meat outside." Which negative commandment, dependent on a positive, is excluded? The one ordaining, "It shall not be seen nor found." Perhaps the contrary should be done? *i.e.*, "they shall leave none of it" should be excluded, and "it shall not be seen nor found" included? Nay; a commandment pertaining to the sacrifice itself should be given preference.

[paragraph continues] Which independent negative commandment should be added to the one, "No bone shall they break on it"? The negative commandment, "Ye shall not eat of it raw." And which should be excluded? The one stating, "Ye shall not offer up with leaven the blood of my sacrifice" [Exod. xxxiv. 35]. Perhaps the contrary should be done? Nay; a commandment bearing upon the sacrifice itself is given preference.

"*At the eating of the first paschal offering, 'Hallel' should be recited, but not at the eating of the second*," etc. Whence do we adduce this? Said R. Johanan in the name of R. Simeon ben Jehu Zadok: From the passage [Isaiah xxx. 29]: "Then shall ye have a song, as in the night when a festival is ushered in." Hence on the night which ushers in a festival "Hallel should be recited," but on the night of the second Passover, when no festival follows, the recital of "Hallel" is not necessary.

"*During the time the offering is sacrificed on both Passovers 'Hallel' should be recited*." Why should this be done? Reason teaches us that; for will then the Israelites sacrifice the paschal lamb, hold the palm-branches in their hand, and not recite the "Hallel"?

"*The sacrifice of both supersedes the Sabbath*." Whence we, see that they supersede the Sabbath, but not uncleanness. We must say, therefore, that the Mishna is not in accordance with the opinion of R. Jehudah of the following Boraitha: "The second Passover supersedes the Sabbath, but not uncleanness. R. Jehudah, however, maintains, that it supersedes even uncleanness." What reason has the first Tana for his statement? He maintains, that if uncleanness was the cause of the postponement of the first Passover, should uncleanness on the second Passover be entirely disregarded? What is R. Jehudah's reason for his (own) opinion? He claims, that while the law requires a man to bring the paschal offering in a state of cleanness, still, if the man did not succeed to be undefiled, he may, bring it in a state of defilement.

The rabbis taught: "Both the first and second Passover supersede the Sabbath. Both the first and second Passover supersede uncleanness. Both the first and second Passover require that the man who offers up the paschal lamb should remain in Jerusalem over night."

Thus we see, that concerning uncleanness the teaching of the rabbis coincides with the opinion of R. Jehudah. Shall we say,

that concerning the obligation of remaining over night the teaching of the rabbis also coincides with the opinion of R. Jehudah? Have we not learned in the following Boraitha: "R. Jehudah said: 'Whence do we know that the man bringing the second Passover is not required to remain over night in Jerusalem? From the passage [Deutr. xvi. 71: "And thou shalt turn in the morning and go unto thy tents," while in the next verse it is written [ibid. 8]: "Six days shalt thou eat unleavened bread." Thus where unleavened bread is eaten for six days it is required that a man should remain over night, but where such is not the case it is not necessary.'" This constitutes a diversity of opinion between two Tanaim. One says that R. Jehudah requires the man to stay over night in Jerusalem when bringing the second paschal offering, while the other maintains that R. Jehudah does not.

MISHNA: When the paschal sacrifice was brought in a state of defilement, it must not be eaten by men or women having a running issue, by women in their ordinary period of menstruation, nor by lying-in women; if they have eaten thereof, however, they do not thereby incur the penalty of Kareth (excision). R. Eliezer considers these as also not subject to such punishment, if they have entered the sanctuary while in that condition.

GEMARA: The rabbis taught. Shall we assume, that if men or women having a running issue, or women in their ordinary menstrual period, or lying-in women partake of a paschal sacrifice brought in a state of defilement, they thereby incur the penalty of Kareth? To that end it is written [Levit. vii. 19]: "And as for the flesh, every one that is clean may eat thereof," and further, it is written [ibid. 20]: "But the person that eateth of the flesh of the sacrifice of peace-offering, that pertaineth to the Lord, having his uncleanness upon him, even that person shall be cut off from his people"; whence we infer, that if an unclean person eat of flesh which may be eaten only by clean persons, he incurs the penalty of Kareth, but if he ate flesh which was not fit for a clean person, *i.e.*, unclean flesh, he is not guilty. R. Eliezer said: "We might assume, that if persons having a running issue had intruded into the sanctuary while the sacrifice was being offered in a state of defilement, they thereby incur the penalty of Kareth; to that end it is written [Numb. v. 2]: 'Command the children of Israel, that they send out of the camp every leper, and every one that hath a running

issue, and whosoever is defiled by the dead,' whence we may infer, that only at the time when those defiled by the dead are sent out the lepers and those afflicted with a running issue should be sent out; but when those defiled by the dead are not sent out, as is the case during the offering of the paschal sacrifice, the lepers and those having a running issue are also allowed to remain."

R. Joseph propounded a question: "If those that have become defiled by means of a dead body

had intruded into the sanctuary when the paschal sacrifice was brought in a state of defilement, shall we say that, as the court of the Temple was allowed them for the purpose of bringing the sacrifice, the sanctuary itself is also allowed them; or is only that which was explicitly allowed them rendered lawful for them to enter, but that which was not, must not be entered?"

Said Rabha: "The verse following the one quoted [Numb. v. 2] states again [ibid. 3]: 'To without the camp shall ye send them,' which means also outside of the court also; hence those who have been excluded from the court are guilty if they enter the Temple itself, but those who cannot be excluded from the court cannot be guilty if they enter the Temple itself."

R. Joseph propounded another question: "If those who have become defiled by means of a dead body have eaten of the pieces which are to be offered up on the altar, of a paschal sacrifice brought in a state of defilement, what is the law governing their case? Shall we say, that as the flesh was rendered lawful to be eaten, the pieces also became lawful, or was only that which was expressly allowed lawful, but that which was not expressly allowed, was not?"

Answered Rabha: "Let us see! Whence do we know that one can become guilty of eating unclean pieces in general? From the passage [Levit. vii. 20]: 'But the person that eateth of the flesh of the sacrifice of peace-offering, that pertaineth into the Lord,' which means the pieces to be offered up on the altar. Now, then, if the uncleanness of the flesh itself is no longer considered, why should that of the pieces remain?"

MISHNA. What is the difference between the Passover as celebrated (by the Israelites while) in Egypt, and that observed by later generations? The Egyptian Passover-sacrifice was specially ordered to be purchased on the 10th (of Nissan), and it was required that its blood should be sprinkled with a bunch of hyssop on the lintel and on the two sideposts of the door; also

that it should be eaten with unleavened bread on the first night of Passover in a hasty manner; while in later generations the law of the Passover applies for the entire seven days of the festival.

GEMARA: Whence do we know all this? From what is written [Exod. xii. 3]: "Speak ye unto all the congregation of Israel, saying, On the tenth day of *this* month they shall take to themselves," etc., whence we infer that only on the tenth of *this* month, but not of the other months, in later generations shall this be done, and the same rule applies to all other laws concerning the Passover.

It is written, however [Exod. xiii. 5]: "That thou shalt perform this service in *this* month!" We adduce therefrom that in later generations each recurring month should be in all respects alike?

What significance has the passage [ibid. xii. 6]: "And ye shall keep it until the fourteenth day of *this* month"? This verse implies that the second Passover (which is similar to the Egyptian in being kept only one day) does not require four days of preliminary investigation the same as the other sacrifices.

We find another passage, however, stating [ibid. xii. 8]: "And they shall eat the flesh in *that*

night," and we surely cannot say that only in that night should flesh be eaten but not in the recurring nights of other generations! This passage is required for the comparison by analogy brought by R. Elazar ben Azariah and R. Aqiba in Tract Berachoth (Benedictions).

If the main argument is centred upon the term "in *this*," why should not the same argument be applied to the passage [ibid. xii. 48]: "No uncircumcised person shall eat *thereof*"? He may not eat thereof, but why not of others? This cannot be; for the Passover laws must be observed, as we have learned, in every recurring month alike. By "thereof" in the quoted passage is merely meant the paschal lamb, but even an uncircumcised person may partake of unleavened bread and bitter herbs.

We find it written again, however [ibid. 43]: "No stranger shall eat *thereof*." We could not say, that only on that particular Passover was he not allowed to eat it but later be was, on account of the teaching previously mentioned. The term "thereof" signifies in this case that an apostate is prevented from eating the Passover-sacrifice *only* through his apostasy, but a priest who had become an apostate is not prevented thereby from eating the heave-offering. Both cases, that of the uncircumcised

and that of the stranger, require illustration in the Scriptures; for if the case of the uncircumcised only were mentioned, we might have assumed, that it would merely have been a disgraceful act for an Israelite who was uncircumcised to eat of the paschal lamb but that a stranger was allowed to partake thereof. If the stranger only were mentioned, we might say, that a stranger who would not eat the Passover-sacrifice as a religious duty, not having been commanded to do so, should be prohibited, but an uncircumcised Israelite whose duty it is to eat thereof should be permitted to do so. For that reason both cases are mentioned.

"*In a hasty manner*," etc. Whence do we know this? From the passage [Exod. xii. 11]: "Ye shall eat it in haste," and "it" signifies the paschal sacrifice, but not anything else.

"*In later generations the law of Passover applies to the entire seven days*," etc. What is meant by the law applies to the entire seven days? Surely not the paschal sacrifice! It must be then the law concerning leaven, and shall we infer therefrom, that at the Egyptian Passover it was only prohibited to eat leaven on that one night but during the day it was permitted? Have we not learned in a Boraitha: R. Jose the Galilean said: Whence do we know that on the Egyptian Passover they were not allowed to eat leaven but on one day? Because it is written [Exod. xiii. 3 and 4]: "No leavened bread shall be eaten. This. day go ye out in the month of Abib," which conjoined would read: "No leavened bread shall be eaten *this day*." Thus the Mishna means to say, that the paschal lamb was offered up on the first night only of the Egyptian Passover and should only be brought on the first night of the Passover of later generations, but leaven which was not eaten but on the first day of the Egyptian Passover should not be eaten for the seven days of the Passover of later generations.

MISHNA: R. Jehoshua said: "I once heard (of my teachers), that an animal which was substituted for another animal intended for the paschal sacrifice may be offered up; and I have also heard, that it must not be offered; and I am unable to explain this." Said R. Aqiba: "I will explain it; if a paschal offering had been lost and subsequently found, before the animal

intended to replace it had been slaughtered, it must be left to, graze until it contracts a legal blemish, when it must be sold and peace-offerings purchased with the proceeds of the sale; so also must it be done with the animal substituted for it (and which had

become lost): if it was found after the other animal had already been slaughtered, it may be sacrificed as a peace-offering, and this applies also to any animal substituted for it."

GEMARA: Why does R. Jehoshua say, "I have heard that an animal which was substituted," etc.? Why does he not apply his statement to the paschal sacrifice direct, and say, that it may be offered up and it may not? He intends to impart to us the information, that it may even happen with a substitute for a paschal sacrifice that it may not be offered up.

The entire case presents a diversity of opinion among Tanaim, as we have learned. If a paschal sacrifice had been lost, and found before the animal intended to replace it had been slaughtered, it must be left to graze; but if the substitute had already been slaughtered, the original may be offered up as a peace-offering. R. Eliezer, however, said (that it does not depend upon the slaughter itself but upon the time of the slaughtering): If the paschal sacrifice was lost, and was found in the forenoon, it must be allowed to graze, but if found in the afternoon, even before the paschal sacrifice was slaughtered, it may then and there be offered up as a peace-offering.

"*So also must it be done with the animal substituted for*," etc. Said Rabha: When is this case? If the original was found before the sacrifice had been slaughtered and had been exchanged for another animal at the same time; but if it was found *before* and was exchanged after that, the substitute may be offered up as a peace-offering. Why is this so? Because the slaughtering sanctifies the animal which is substituted at the time when it may still be killed; but an animal which is exchanged after the slaughter, not being suitable for a paschal sacrifice, cannot be slaughtered.

Abayi objected: We have learned in a Boraitha, that the reason it is written, "if *he* offer a sheep or a goat," is to give us the additional information that, if a substitute of a paschal sacrifice had been found after the Passover, it may forthwith be offered up as a peace-offering. Shall we assume, that the same is the case if it was found before the Passover? To that end it says "he," which refers to the sacrifice alone, but not to the substitute. What is meant by "if the substitute was found before the Passover"? Shall we assume, that the paschal sacrifice itself was found before the substitute was slaughtered and it was exchanged for another before the substitute was slaughtered? This is self-evident. Then for what purpose is the verse needed?

[paragraph continues] Therefore we must assume, that it was found before the substitute was slaughtered and exchanged afterwards, and still it may not be offered up as a peace-offering! The objection to Rabha is not replied to.

MISHNA: If a person had set apart or selected as a paschal offering a she-goat or a ewe-lamb, or a male two years old, they must be left to graze until they contract a legal blemish; they must then be sold, [1] and the proceeds turned over to the fund of voluntary burnt-offerings. If a person

who had selected his paschal offering die (in the interim before it is sacrificed), his son cannot bring it as a paschal offering, but must bring it as a peace-offering.

GEMARA: R. Huna the son of R. Jehoshua said: From this Mishna we can infer three things: Firstly, that although a (living) thing is not suitable for consecration, the moment it is set apart for a consecrated purpose it is rejected for any other use; secondly, that it is not absolutely necessary that a thing must be suitable for a consecrated purpose in order eventually to become rejected, but that it may become rejected even if it was at no time suitable for consecration; thirdly, that even the proceeds of the sale of a thing not suitable for a paschal offering is also rejected as a paschal sacrifice (because the Mishna itself states, that the proceeds derived from the sale of the animal which was left to graze until it contracted a blemish must be used for a peace-offering and *not* for a paschal sacrifice).

"*If a person had set apart*," etc. The rabbis taught: "If a person had set apart a paschal offering and had died, his son may, provided he was one of the number appointed to eat it, bring it in his stead; but if he was not among the number appointed, he must not offer it as a paschal sacrifice but as a peace-offering on the 16th day of Nissan." On the 16th day and not on the 15th? Why so? Because vow and voluntary offerings must not be sacrificed on a festival. Such is the opinion of the Tana of the preceding teaching.

Now let us see! When did the father die? If he died on the forenoon of the day preceding the Passover, how can the son offer it in his stead? Is he not a mourner whose dead is not yet interred? Then he must have died on the afternoon of that day, If that was the case, then, as soon as the noon had

passed, the sacrifice was made a paschal offering in itself; how then may the son, if he was not among the number appointed to eat it, bring it as a peace-offering? Said Rabhina: "The sacrifice was set apart and the father died on the afternoon of that day. If the son was among the number appointed to eat it, the duty to sacrifice the offering superseded that of mourning for the deceased, hence he may offer it up as a paschal sacrifice. If he was not among the number, however, he may sacrifice it as a peace-offering, because at noon of that day the sacrifice was not yet a paschal offering."

MISHNA: If a paschal sacrifice had become mixed with other animals intended as sacrifices, they must all be left to graze until they contract a legal blemish; they are then to be sold, and the owner must bring, with the price obtained for the finest animal among them, another sacrifice of each kind of offering (with which it was mixed), and the eventual loss must be defrayed from the private means of the owner. A paschal offering which had become mixed with first-born (of animals) may, according to R. Simeon, be eaten by an assembly of priests.

GEMARA: According to R. Simeon, who holds that a paschal offering may be eaten by an assembly of priests if it had become mixed with first-born (of animals), the following complication might arise: A paschal offering must be eaten only on one night and the remainder burned in the morning; the sacrifices of the first-born may, however, be eaten on two nights and one day; now, if the priests should mistake first-born sacrifices for paschal offerings, they will eat of them only one night and burn the remainder in the morning, thus wantonly spoiling a

consecrated thing to commence with.

R. Simeon holds in accordance with his individual theory (in Tract Zebahim), that this may be done. And according to the sages, what should be done with a paschal offering that became mixed with first-born (of animals)? Said Rabba: They must all be left to graze until they contract a legal blemish, then the owner of the paschal offering must bring a fat cow and should say: "Wherever the paschal sacrifice may be, let it be exchanged for this, and then sacrifice it as a peace-offering." The priests may then eat all the first-born animals which have a blemish as usual.

MISHNA: If a company have lost their paschal sacrifice and say to some person: "Go, seek and slaughter it for us," and he went, found, and slaughtered it, while the company had

also slaughtered one--if the man had slaughtered his sacrifice first, he shall eat of it and the others shall join with him in eating; but if they had slaughtered their sacrifice first, they shall eat of theirs and he of his; if it is uncertain which had been slaughtered first or if both had been slaughtered at the same time, then shall he eat of his paschal offering, of which the others are not permitted to partake, and theirs must be burned: they are not obliged, however, to observe a second Passover.

If he had said to them: "Should I stay away long, go ye and slaughter a paschal sacrifice for me," and he went, found, and slaughtered the lost paschal sacrifice while the others had also slaughtered one--if theirs had been slaughtered first, they shall eat it and he may eat it with them; but if his had been slaughtered first, he shall eat of his and they shall eat of theirs; if it be uncertain which had been slaughtered first or if both had been slaughtered at the same time, then they may eat theirs, and he is not permitted to eat with them; and his sacrifice must be burned, but he is not obliged to observe a second Passover.

If the man said to them: "Slaughter a paschal offering for me," and they had said to him: "Seek and slaughter for us our lost sacrifice," they should all eat of that which had been slaughtered first; if it is uncertain which had been slaughtered first, then both must be burned; but if there was no express agreement between all the parties, they are not to be considered as at all connected with each other (and each should eat the sacrifice separately).

When the paschal sacrifices of two companies had become mixed, each company should take one of the animals and a member of each company should go to the other, and each company should address the member of the other thus: "If this paschal offering be ours, we withdraw from thy company, and be thou numbered with us; but if it belong to thy company, we withdraw from ours and will be numbered with thee." Thus shall five companies of five members each, or ten companies of ten members each, act; namely, one member of each company shall join with him one of another company, and shall thus address him.

When a paschal offering of two individuals has become mixed, each shall take one of the animals to himself and invite a person from the street (a stranger) to eat it with him; then they should go to each other and thus address each other's guest: "If this sacrifice is mine, withdraw from this and be

numbered with me; but if it is thine, then I withdraw from mine and will be numbered with thee."

GEMARA: The rabbis taught: If there was an express mutual agreement between the company and the man, they should all eat of that which was slaughtered first; but if neither said anything to the other, they are not considered as at all connected with each other. Whence the sages adduced that silence is beneficial to the wise, and so much the more to the foolish, as it is written [Proverbs xvii. 28]: "Even a fool, when he keepeth silence, is counted wise."

Footnotes

193:1 The Hebrew word "*Kee*" can be translated in four different ways; namely, "because," "therefore," "perhaps," and "if."

194:1 The place Moodayim is frequently mentioned in Josephus and the history of the Maccabees under the name of Modain.

194:2 Parsaoth is plural for Parsah, which is the equivalent of four miles, called in Hebrew "Milin."

196:1 According to the sages there were twelve different constellations, one of which appeared every month, and they were: for the month of Nissan, the Ram; for the month of Iyar, the Bull; for Sivan, the Twins; for Tamuz, the Crab; for Ab, the Lion; for Elul, the Virgin; for Tishri, the Scales; for Cheshvan, the Scorpion; for Kislev, the Archer; for Tebeth, the Goat; for Shebat, the Water-bearer; for Adar, the Fishes.

206:1 According to the Mishna which is contained in the original Talmud, the proceeds should be devoted to peace-offerings, and the commentary Tosphat Yom Tab said such should be the right interpretation.

Next: Chapter X: The Meal on the Eve of Passover and the Four Cups of Wine

CHAPTER X.

REGULATIONS CONCERNING THE MEAL ON THE EVE OF PASSOVER AND THE FOUR CUPS OF WINE TO BE DRUNK WITH THE MEAL.

MISHNA: On the eve of any Passover it is not lawful for a person to eat anything from the time of Min'hah (afternoon prayer) until after dusk. Even the meanest in Israel shall not eat until they have arranged themselves in proper order at ease round the able; nor shall a person have less than four cups of wine, even if they must be given him from the funds devoted to the charitable support of the very poor.

GEMARA: Does the law (in the first clause of the Mishna) apply only to the eve of Passover? is it not unlawful to eat aught on the eve of the Sabbath or any other festival from the time of Min'hah until after dark, as we have learned in the following Boraitha: A person must not eat aught on the eve of Sabbath or of a festival from the time of Min'hah on, in order that the entry of the Sabbath or the festival may find him in condition to relish a meal? Such is the decree of R. Jehudah; R. Jose, however, said: "One may eat continually until it becomes dark."

Said R. Huna, "Our Mishna is even in accordance with the opinion of R. Jose, who says that one may only eat continually, on the eve of Sabbath or of any other festival until dark, but on the eve of Passover, when, as soon as the night of the Passover commences, unleavened bread must be eaten, he also admits that nothing should be eaten from the time of Min'hah until dark."

We have learned in a Boraitha: If a meal was in progress on the eve of Sabbath, and before it was finished the Sabbath was ushered in, the table must be cleared off and then reset, the Sabbath benediction made, and then the meal may be continued, in order to demonstrate that the Sabbath had set in. Such is the decree of R. Jehudah; but R. Jose states that this is not necessary.

"It once happened that R. Simeon ben Gamaliel, R. Jehudah,

and R. Jose were sitting on the eve of Sabbath and partaking of a meal in the city of Achu, and when the Sabbath was about to set in, R. Simeon ben Gamaliel said to R. Jose the Great: "Wouldst thou desire that we clear off the table, and act in conformity with the opinion of our colleague, R. Jehudah?" Replied R. Jose: "Ordinarily thou wouldst favor my decrees in preference to those of R. Jehudah, and now thou favorest, in his presence, his decree in preference to mine. 'Will he even do violence to the queen before me in the house?'" [Esther vii. 8]. Rejoined R. Simeon ben Gamaliel: "True! Let us rather not interrupt the meal, for if the disciples should observe this, they might establish the ordinance for future generations." It was said that they did not leave their places until it was decided that the Halakha should prevail according to R. Jose's opinion.

R. Jehudah said in the name of Samuel: "The Halakha does not prevail either according to R. Jehudah or R. Jose; for if a meal was in progress on the eve of Sabbath, when Sabbath set in they should change the table-cloth as a sign and then recite the Kiddush (Sabbath benediction)." But this is not so! For did not R. Ta'hlipha bar Ab. Dimi say in the name of Samuel, that in the same manner as a meal must be interrupted on account of the Kiddush, so must it also be interrupted on account of the Habdalah (the benediction recited at the close of the Sabbath). Must we not assume that by interruption is meant clearing away of the table entirely? Nay; by interruption is meant, that the table-cloth should be changed.

It once happened that Rabba bar R. Huna came to the house of the Exilarch, and a small table was set before him; so he covered the table with a cloth and recited the Kiddush. We also learned in a Boraitha: "A table must not be brought for each guest separately unless the Kiddush had already been recited (by the head of the household); but if a table had been set before him before the Kiddush had been recited, then the guest should cover the table set before him with a cloth and himself pronounce that benediction."

"Those that heard the Kiddush pronounced in the synagogue," said Rabh, "need not recite it at their homes, but should merely pronounce the customary benediction over wine"; but Samuel said: "They have not acquitted themselves of the duty of reciting the Kiddush."

According to Rabh, then, why should a man recite the Kiddush

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over the same cup of wine? Where a man has not another cup of wine, it is different.

If a festival follow a Sabbath, a man has doubtless more wine in his house, and still Rabh says, that one must, over one cup of wine, pronounce the benediction over wine, recite the Kiddush, pronounce the benediction over light, and the Habdalah? Because Rabh mentions all these benedictions but omits that of the season (which must be said at the commencement of each festival), it must be presumed that he refers to the seventh day of Passover as the festival (because on that day the benediction of the season is not said), and at that time it is possible that a man has only one cup of wine left.

How is this possible? On the first day of a festival, when a man surely has more wine, still Abayi said, that over one cup the benediction of wine, Kiddush, of the season, of light, and the Habdalah should be pronounced, and Rabba said, of wine, Kiddush, light, Habdalah, and finally of the season (and both agree that all this may be done over one cup of wine); hence we must

say, that all these benedictions, like Kiddush, Habdalah, etc., are classed as one, because the duty of such benedictions devolves upon a man as soon as the Sabbath draws to a close, and hence may be made over one cup; but the benediction before the meal, and that after, are two separate kinds of benedictions and should not be said over one and the same cup of wine.

The statement previously quoted. "If a festival follow a Sabbath, Rabh says, one must pronounce the benediction of wine, recite the Kiddush, say the benediction of light and the Habdalah," is supplemented by "Samuel says, he must pronounce the benediction of wine, light, Habdalah, and then recite the Kiddush; Rabba says, of wine, Habdalah, light, and then Kiddush; Levi says, Kiddush, light, wine, and Habdalah; other sages say, Kiddush, wine, light, and Habdalah; Mar the son of Rabhina says, light, Kiddush, wine, and Habdalah; and Martha says in the name of R. Jehoshua, light, wine, Habdalah, and Kiddush."

The father of Samuel sent to Rabbi the request: "Let Master teach us the order in which the benediction of Habdalah should be made over the cup of wine," and Rabbi sent the reply: "So said R. Ishmael the son of R. Jose in the name of his father, who in turn said in the name of R. Jehoshua ben Hananiah: 'Light, Habdalah, wine, and Kiddush.'" Said R.

Hanina: This can be compared to the exit of a king from, and to the entrance of a high official into, a city. First the king is escorted out of the city, and then the high official is ushered in. (Likewise the Sabbath, being the holier, is first escorted out with Habdalah, and then the festival is ushered in with the Kiddush.) How does, finally, the Halakha prevail? Abayi said: Wine, Kiddush, season, light, and Habdalah," and Rabba said: "Wine, Kiddush, light, Habdalah, and season." The Halakha prevails according to Rabba. R. Jacob bar Abba once happened to be in the house of Rabha, and he noticed that Rabha said the benediction, "Who hath created the fruit of the vine," over the first cup, and after the meal was over, before the benediction at the conclusion of the meal was pronounced, he again made the same benediction over the wine and then drank it. So R. Jacob asked: "Why dost thou say so many benedictions? Thou hast already made one over the wine, why dost thou make another?" Rabha replied: "When I was at the house of the Exilarch we would do likewise," and R. Jacob replied: "At the house of the Exilarch this was proper, because it was not known whether more wine would be given, hence a benediction was said at the commencement, and then if more wine was given another was said; but here, when we have the wine before our eyes, surely this is not necessary!" Said Rabha: "I act as the disciples of Rabh; for R. Brona and R. Hananel the disciples of Rabh were sitting at a meal, and were waited on by Yeba the Elder. In the meantime they said: 'Give us a cup of wine and we will say the benediction (at the conclusion of a meal).' Subsequently they reconsidered it, and asked for more wine to drink. Said R. Yeba to them: Thus said Rabh, 'As soon as ye have said, give us a cup and we will make the benediction, ye have given up the intention of eating any more, hence ye must not drink until ye have pronounced the benediction at the conclusion of the meal' (whence we see that the concluding benediction disconnects all previous benedictions, and if anything else is eaten afterwards another benediction thereon must be made)."

[Ameimar, Mar Zutra, and R. Ashi sat at one meal, and R. Aha the son of Rabha waited on them. Ameimar made a benediction over each separate cup of wine. Mar Zutra made a benediction over the first, and then over the last cup. R. Ashi only made one over the first cup, and no more.] (Referring to R. Jacob's visit to Rabha again:) When the time for the Habdalah

prayer arrived, the servant of Rabha lit several candles and joined them into one flame. Said R. Jacob to him: Why dost thou need so many candles?" and Rabha replied: The servant did this of his own accord," and R. Jacob rejoined: "If the servant did not know that such is thy wont, he would not have done this; therefore thou probably doest this always, and I ask thee again, Why so many candles?" He then answered: "Doth not my master hold, that the flame used at the Habdalah prayer is a religious duty of the highest degree?"

When Rabha commenced to recite the Habdalah prayer he said thus: "Who hath made a distinction between sanctified and ordinary days, between light and darkness, between Israel and other nations, and between the seventh day and the six working days." Said R. Jacob to him: "Why dost thou recite such a voluminous prayer? Did not R. Jehudah say in the name of Rabh, that R. Jehudah Hanassi's mode of reciting the Habdalah was merely, 'Who hath made a distinction between sanctified and ordinary days'?" and Rabha replied: "I hold with the following Tana, R. Eliezer in the name of R. Oshiya said: 'One who desires to embody few distinctions in the Habdalah prayer should not recite less than three, and he who would multiply them should not recite more than seven.'" Then R. Jacob remarked: "Yea, but thou, Master, hast not recited either three or seven, for there were four." Answered Rabha: "The last one was merely an adjunct to the conclusion of the prayer, for R. Jehudah said in the name of Samuel that one who recites the Habdalah prayer must make the words immediately preceding the conclusion of the prayer similar to the conclusion itself." The sages of Pumbaditha, however, said: "The conclusion of that prayer must be identical with the commencement." Wherein do they differ? Both the commencement and the conclusion read, "Who hath made the distinction between sanctified and ordinary days." They differ in a case of a Sabbath followed by a festival, when the initial and concluding benedictions read: "Who hath made a distinction between sanctification and sanctification." According to those who say that the words immediately preceding the conclusion must be similar to the conclusion itself, the additional sentence, "Who distinguisheth between the sanctification of the Sabbath and that of the festival," must be included; while according to those who say that only the conclusion and the commencement must be identical, the additional sentence is not necessary.

An objection was made: We have learned in a Boraitha: That one who is accustomed to incorporate many benedictions in the Habdalah prayer may embody as many as he chooses, while one who is not, may only recite one? This constitutes a diversity of opinion among Tanaim, as R. Johanan said: "The son of the Holy says, that only one benediction should be recited in the Habdalah, but the people generally pronounce three. [Who is called the son of the Holy? R. Mena'hem bar Sinai, and the reason he was called "son of the Holy" was because he never saw the likeness of a zuz.]

Said R. Jehoshua ben Levi: "One who recites the Habdalah prayer must recite it similarly to the Habdalah in the Scriptures."

An objection was made: How is the order of the Habdalah to be observed? As follows: "Who hath made a distinction between sanctified and ordinary, between light and darkness, between Israel and other nations, between the seventh day and working days, between unclean and clean, between the sea and dry land, between the waters above and beneath, between priests, Levites,

and Israelites," and must conclude with, "Blessed be He who hath arranged in order the creation," and others say, "who hath created all things."

R. Jose bar R. Jehudah said: "He must conclude with 'who hath sanctified Israel.'" How then can it be said that the scriptural order should be observed? It does not mention sea and dry land? This should be eliminated. If that should be so, and taking into consideration that the distinction between the seventh day and working days is merely an adjunct to the conclusion, then seven benedictions will not remain? I will tell thee: Between the priests, Levites, and Israelites are virtually two separate distinctions, because it is written [Deut. x. 8]: "At that time did the Lord separate the tribe of Levi," and between the priests and Levites, as it is written [I Chronicles xxiii. 13]: "The sons of Amram: Aaron and Moses; and Aaron was set apart, to sanctify him as most holy."

What is the conclusion of the benediction? Said Rabh: "It concludes with 'who hath sanctified Israel,'" and Samuel said: "It concludes with 'who maketh a distinction between sanctified and ordinary.'" Abayi, according to another version R. Joseph, denounced Rabh's decree.

We have learned in a Boraitha upon the authority of R. Jehoshua ben Hananiah, that one who concludes the benediction

with both passages, viz., "who hath sanctified Israel" and "who maketh a distinction between sanctified and ordinary," his years and days are prolonged for him; but the Halakha does not prevail accordingly.

Ula once came to Pumbaditha. So R. Jehudah said to his son, R. Itz'hak: "Go and carry a basket of fruit to Ula, and incidentally observe how he recites the Habdalah." R. Itz'hak would not go himself, but sent Abayi in his stead. When Abayi returned, he related that Ula merely said, "who distinguisheth between sanctified and ordinary (days)," and nothing more. R. Itz'hak then went to his father and told him that he did not go himself, but had sent Abayi, who related that Ula merely said, "who distinguisheth between sanctified and ordinary days," and R. Jehudah replied: "Thy arrogance and disobedience will be the cause of thy not being able to cite a Halakha in Ula's name, but thou wilt have to cite it in Abayi's name."

R. Hananiah bar Shlamia and the disciples of Rabh sat together at a meal, and R. Hamnuna the Elder waited on them, and they said to him: "Go and see if the Sabbath, has already set in. If it has, we will stop and make the meal for Sabbath." He replied: "Ye need not do this; for Rabh said, that the Sabbath asserts itself without other aid, and it is not necessary to make a special distinction for it. 'For,' said Rabh, 'as on the Sabbath the law of giving tithes must be particularly observed, even when a light meal is taken, because the Sabbath renders it an honorable duty, so in the case of the Kiddush (prayer)--even if a meal is in the course of being served, one may arise and recite that prayer without first clearing off the table.'"

The disciples of Rabh desired to infer therefrom, that as the Sabbath makes it a duty to recite the *Kiddush* even when in the midst of a meal, the Habdalah should also be said, even though a meal have to be interrupted on that account. Said R. Amram to them: "Thus said Rabh: 'For Kiddush this is imperative but not for Habdalah, and as for interrupting a meal, it need not be

done for the sake of Habdalah; at the same time, it is not lawful to commence eating at the time appointed for the Habdalah, without first reciting that prayer. No interruption need be made when solid food is taken; but when drinking, the Habdalah should be said over the same cup, *i. e.*, an interruption should be made and the Habdalah recited. Again, the interruption must be made only when wine or beer is drunk, but when water is the beverage that is not necessary.'"

Rabhina asked R. Na'hman bar Itz'hak: "If a man did not recite the Kiddush on the eve of Sabbath, is it lawful for him to do so during the Sabbath day?" and he answered: "The children of Hyya having stated, that one who had not recited the Habdalah at the close of Sabbath may do so at any time during the week following, we must assume, that one who had not recited the Kiddush on the eve of Sabbath may do so during all the Sabbath day."

Rabhina objected: "The eve of a Sabbath or of a festival brings with it the duty of saying the Kiddush over a cup (of wine) and also the duty of including the remembrance in the benediction at the conclusion of meals, but the Sabbath or the festival days only carry with them the duty of including remembrance in the benedictions after meals? Now, if it were allowed to recite the Kiddush on the Sabbath or festival day, because they have the duty of the benediction in common with the eve of the Sabbath or the festival, could not a man wilfully postpone the recital of the Kiddush until the morrow?" Replied R. Na'hman bar Itz'hak: "The case of a man who does not act in accordance with the proper law is not considered."

Rabhina again objected: "The honor of the Sabbath day is more important than that of the eve preceding it, so that if a man have but one cup of wine for both the Kiddush on the eve of Sabbath and for the purpose of honoring therewith the Sabbath day, he should rather use it for the Kiddush; whence we can see, that it should not be postponed until the next day; for were this allowed, the owner could leave the cup until the following day and then use it for both purposes." Answered R. Na'hman: "The fulfilment of a religious duty at its proper time is the more preferable." Rabhina, however, rejoined: "Is this indeed the case? Have we not learned in a Boraitha, that if a man enter his house at the close of the Sabbath, he pronounces a benediction over wine, light, and spices in the order named, and then recites the Habdalah over the cup? Now if a man have only one cup of wine, he may leave it until after the meal and then pronounce all the benedictions over it at once. Is this not proof positive that the fulfilment of a religious duty at its proper time is not preferable?" Then R. Na'hman replied: "I am not one of those sages who would proclaim a decree upon my own authority; neither am I a prophet nor do 1 quote an authority without corroboration. The traditional ordinance I quoted I did riot learn from my teachers as referring to

Kiddush alone, but I merely took it upon myself to arrange the order of the benedictions in the Kiddush and Habdalah, and I did so because I was convinced that my order was correct; [1] for thus it is also taught in the colleges, and the reason of all this is, that there is a great difference between the entrance of a sanctified day and its close. At the entrance of such a day, the sooner we observe its sanctification the better, for we thereby demonstrate that we consider the duty a pleasure; but at its close, the further we can postpone its termination the better, for thereby we demonstrate that it is not a burden to us. (Hence if a meal is in progress at the time when the Sabbath is about to set in, we should attempt the repast and say the Kiddush in order to usher in

the Sabbath that much sooner; but if we only have one cup of wine at the close of Sabbath with which to say the Habdalah, we should first finish our repast and pronounce the other benedictions, and then recite the Habdalah over that cup in order to postpone the termination of the holy day that much longer.)"

From the preceding Boraitha we may infer eight things: First: One who included the Habdalah in his evening prayer must nevertheless recite it again over a cup (this is inferred from the sentence "if a man enter his house at the close of the Sabbath," which signifies, that he came from the house of worship, where he had already recited the Habdalah). Second: The benediction after a meal must be made over a cup (of wine). Third: The cup used at the benediction must be of a prescribed capacity (*i.e.*, a quarter of a lug; for were this not so, it could be divided and part used for the Habdalah and another part for the other benediction). Fourth: One who pronounces the benediction over the cup of wine must taste some (for otherwise the benediction could be made and the wine left over for the next benediction). Fifth: As soon as part of the wine is tasted after a benediction, the cup of wine is rendered unfit for any other benedictions. Sixth: Even if a full meal is eaten at the close of Sabbath and the sanctification of the day had passed, it is still a duty to recite the Habdalah. Seventh: Two degrees of sanctification may be bestowed upon one cup of wine. Lastly: The entire Boraitha is in accordance with the school of Shammai and with the interpretation of R. Jehudah (*i.e.*, that

the benedictions over light must be pronounced prior to that over spices, and not *vice versa*).

R. Ashi said: "The inference that the cup of wine must be of a prescribed quantity, and the one that by tasting the wine the cup becomes unfit for other benedictions, are virtually one and the same thing, and the eight inferences are completed thus: Why does tasting of the cup of wine render it unfit? Because the prescribed quantity is thereby lessened."

R. Jacob bar Idi was so particular, that if the jug containing the wine was ever so slightly damaged he would not use the wine for Kiddush or Habdalah, and R. Idi bar Shesha was only particular about the condition of the goblet; Mar the son of R. Ashi was particular even about the condition of the barrel containing the wine, and if it was at all damaged he would not use the wine for the Kiddush or the Habdalah.

The rabbis taught: "It is written [Exod. xx. 8]: 'Remember the Sabbath day to keep it holy.' The remembrance should be effected over wine. This, however, refers to the Sabbath day; whence do we know that the night is also meant? To that end it is written, 'to keep it holy,' which refers also to the night."

"Whence do we know that the night is also meant," is the question? Is not the night the principal time of the Sabbath, when the Kiddush must be said? Then, again, how can the passage refer to the night, when it distinctly states the day? The following is meant: "Remember the day" implies that it should be remembered over wine, when the Sabbath sets in. This therefore refers to the night, and that the day also is meant is clearly proven by the words, "the Sabbath day."

What benediction is made during the day of Sabbath? Said R. Jehudah: "Only the usual benediction over the wine, viz., 'who hath created the fruit of the vine.'"

R. Ashi came to the city of Mehuzza, and the people said to him: "Let Master recite for us the great Kiddush," and not knowing what they meant by the great Kiddush, he thought: "Let us see! The first benediction to be made is the usual one over wine." Accordingly, he pronounced the benediction, "who hath created the fruit of the vine," in a rather prolonged manner. He thereupon observed an old man bending over and sipping the wine (whence he concluded that the one benediction constituted the great Kiddush). He then applied to himself the passage [Ecclesiastes ii. 14]: "The wise man hath his eyes in his head."

We have previously learned that the children of R. Hyya said: "If a man did not say the Habdalah at the close of the Sabbath, he may say it at any time during the following week." Until what day of the week? Said R. Zera: "Until the fourth day of the week (for after that the days belong to the next week)."

R. Brona said in the name of Rabh: "If a man had washed his hands for a meal, he should not make the Kiddush, because that will cause an interruption (and he will be obliged to wash his hands again)." Said R. Itz'hak bar Samuel bar Martha: "Rabh is not yet dead, and still we have already forgotten all his Halakhoth. I myself stood before Rabh several times and noticed that whenever he preferred bread he would make the Kiddush over bread, and whenever he preferred wine he would make the Kiddush over wine."

Said R. Huna in the name of Rabh: "If a man had eaten anything prior to making the Kiddush, he need not make the Kiddush." R. Hana the son of Hinana asked R. Huna: "If a man had eaten prior to reciting the Habdalah, what is the law?" and he answered: "I say, that he must nevertheless recite the Habdalah, but R. Assi said, that he need not do so."

R. Jeremiah bar Abba was at one time in the house of R. Assi, and through forgetfulness ate something before saying the Habdalah. Afterwards he was given a cup of wine and he then said the Habdalah. Said R. Assi's wife to her husband: "Master does not do this?" and he replied: "Let him be; he acts according to the teaching of his masters."

R. Joseph in the name of Samuel said: "If a man had thoughtlessly eaten either before Kiddush or before Habdalah, he need not recite those prayers," but Rabba in the name of R. Na'hman quoted Samuel to the contrary, namely, that he may do so. Said Rabha: The Halakha prevails that one who had eaten before Kiddush or Habdalah may nevertheless recite those prayers; if one had not made the Kiddush on the eve of Sabbath, he may do so during the Sabbath day; and if he did not say the Habdalah at the close of Sabbath, he may say it on the following day.

Mar the Younger and Mar the Elder, sons of R. Hisda, related to R. Ashi the following: It once happened, that Ameimar was a guest in our house, and not having any wine, beer was brought for the Habdalah; but he would not use it for that purpose, and went to sleep without supper. On the morrow,

after a good deal of trouble we succeeded in procuring some wine; and he said the Habdalah and

ate. A year afterwards he was again our guest, and once more we did not have any wine, so we brought beer for the Habdalah. He then remarked: "If wine is so scarce with you and your usual beverage is beer, then the beer may be considered as wine of your land." Accordingly he said the Habdalah over it and ate his meal.

From this narrative we can infer three things: First, that a man who heard the Habdalah in the house of worship, must nevertheless recite it in his house; second, that nothing should be eaten prior to the Habdalah; and third, that if a man did not say the Habdalah at the close of Sabbath, he may say it during the following week.

R. Huna asked of R. Hisda: "May the Kiddush be made over beer?" and he answered: "If as to unfermented barley-beer, fig-beer, and senna-beer, concerning which Rabh was asked, who in turn asked of R. Hyya, who then asked Rabbi, it could not be decided whether they may be used or not, how then can I decide about ordinary beer?"

It was thought, however, that while Kiddush could not be made, it was surely allowed to make Habdalah with beer. Said R. Hisda to them: "So said Rabh: 'As the Kiddush cannot be made over beer, so also must Habdalah not be made over it.'" It was also taught, that R. Ta'hlipha bar R. Abimi said the same thing in the name of Samuel.

Levi sent Rabbi beer made of a thirteen-fold extract of dates, and it was very sweet in taste; and Rabbi said: "With this kind of beer the Kiddush may be made, and all hymns and songs in praise of the Lord may be sung over it." At night he felt some bad effects on account of that beer; so he said: "Should a thing which produces a bad effect be used for the Kiddush?"

R. Joseph said: "I will register a vow before a multitude of people that I will never again drink beer," and Rabha said: "I would rather drink water in which flax was soaked than beer," and continued he: "He who makes the Kiddush over beer, should never have anything else to drink (*i. e.*, in a place where wine is to be had)."

R. Huna once found Rabh making Kiddush over beer. So he said: "It seems to me, that Abba will soon commence to deal in beer, if it is so dear to him."

The rabbis taught: "Neither Kiddush nor any other benediction

should be made with anything except wine." Is there then no benediction made over beer and water, namely: "Through whose word everything came into being"? Said Abayi: "The teaching of the rabbis relative to any other benediction means, that the cup given for the benediction after meals should only be of wine."

The rabbis taught: "Kiddush is not made with beer." It was said upon the authority of R. Eliezer bar R. Simeon, that Kiddush *may* be made with beer.

The statement previously made, that the wine must be tasted when Kiddush is made, means that even ever so little may be tasted, and R. Jose bar R. Jehudah says, that a mouthful must be tasted.

R. Huna said in the name of Rabh, and likewise R. Giddel of Narash taught: "If a man made Kiddush and tasted a mouthful of the beverage, he has fulfilled his duty; but if he had not tasted that much, he has not acquitted himself of the duty."

"*From the time of Min'hah*," etc. The schoolmen asked: Does this refer to the long Min'hah (the time for which commences in the half of the eighth hour, *i.e.*, at half-past one in the afternoon) or to the short Min'hah (the time for which commences on the half of the tenth hour, *i.e.*, at half-past three in the afternoon in our time)? Is it not lawful to eat from the time of the *long* Min'hah, because thereby the time in which the paschal offering must be brought will be taken up, or is it not lawful to eat from the time of the *short* Min'hah, because in that event a man would become satiated, and not be able to do justice to the Passover-meal of unleavened bread?

Said Rabhina: Come and hear: We have learned: Even King Agrippa, whose wont it was to eat at the ninth hour of the day (3 P.M.), should on the eve of Passover not eat until it becomes dark. Now if the short Min'hah is the time meant, after which it is not lawful to eat, then the case of King Agrippa is worthy of note; but if the long Min'hah is meant, what proof does this case exhibit then that it was only because the meal would interfere with the paschal offering, and why is Agrippa's case specially mentioned? Hence we may infer therefrom that the short Min'hah is meant. Still, wherein is the case of Agrippa so noteworthy? If he commence his meal as usual in the ninth hour, the time when it is already unlawful to eat will arrive while he is still at his meal? We might assume, that the ninth

hour of Agrippa is the equivalent of our fourth hour. Hence we are told that such is not the case.

R. Jose said: "While eating is not permitted after the time stated in the Mishna, it is allowed to partake of a light repast of fruit, delicacies, etc." R. Itz'hak would partake of herbs. Rabha would drink wine during all the eve of Passover, in order to arouse his appetite for unleavened bread at night. R. Shesheth would fast all through the eve of Passover, because, being in delicate health, had he eaten anything during the day he would not have been able to eat at night.

"*Even the meanest in Israel*," etc. It was taught: When eating unleavened bread on the Passover-night it is required that one should recline in an easy position, but this is not required when the bitter herbs are eaten. When wine is drunk it was taught in the name of R. Na'hman that a reclining position should be taken, and also that it need not be taken. Still, this apparent contradiction presents no difficulty. The statement quoted of R. Na'hman that a reclining position is necessary when drinking wine refers to the first two cups, and the statement that it is not necessary refers to the last two cups. Some explain the apparent contradiction in the manner quoted because the first two cups symbolize the commencement of liberty for the previously enslaved Jews, while the last two cups have no such significance. Others, however, say on the contrary! The first two cups are a remembrance of the days of bondage, and should therefore not be drunk in a reclining position, while the last two cups are a remembrance of the dawn of freedom, and hence should be drunk in an easy reclining position.

Leaning backwards is not considered reclining, nor is leaning over on the right side considered reclining in an easy position, and another reason why this should not be done is for fear lest the

food enter the trachea instead of the gullet, and thus cause danger.

The woman who sits with her husband need not recline when eating, but if she is a woman of prominence she should do so. A son sitting with his father must recline, and the schoolmen raised the question whether a disciple sitting with his master should also recline or not? Come and hear: Abayi said: When we were at the house of our master (Rabba) we disciples would recline each on the other's knee; but when we afterwards came to R. Joseph, be told us that we need not do this, for it is said in Aboth: "The fear of thy master should be as the fear of the

Lord." The schoolmen then inquired whether the servant in the house of his master must recline or not. Come and hear: R. Jehoshua ben Levi said: "If the servant ate unleavened bread to the size of an olive in a reclining position, he has fulfilled his duty." Whence we may infer that the servant must also recline (for he says "in a reclining position," but if not in a reclining position the servant would not have discharged the duty).

R. Jehoshua ben Levi said again: "Women must also drink the four cups, because they were also included in the miracles which delivered us all from Egypt."

R. Jehudah said in the name of Samuel: "Each cup must contain wine which, when mixed with three parts of water, will be good wine. If unmixed wine was drunk, the duty has nevertheless been fulfilled. If all the four cups were poured into one and drunk, the duty has also been fulfilled. If the household was allowed to drink part of the four cups, the duty has also been fulfilled." Rabha, however, said: "If the wine was drunk unmixed the duty of drinking the wine has been acquitted, but the symbolical feature thereof has not been carried out," and in the case of where the four cups were poured into one, Rabh said: "The duty of drinking wine has been accomplished, but the duty of the four cups has not." If the household was allowed to drink part of the four cups, R. Na'hman said: "The master of the house has fulfilled the duty of drinking the four cups, provided he drunk the larger part thereof."

We have learned in a Boraitha, R. Jehudah said: "The cup must contain the taste and the color of red wine." Said Rabha: "What is the reason of R. Jehudah's statement? Because it is written [Proverbs xxiii. 31]: 'Do not look on the wine when it is red' (whence we adduce, that wine must be red)."

The rabbis taught: "The duty of drinking the four cups devolves upon all alike--men, women, and even children." R. Jehudah, however, said: "What benefit would children derive from wine? They should rather be given nuts, parched corn, etc., on the eve of Passover, so as to keep them awake at night, and that may make them inquire into the reason of the festivity."

It was said of R. Aqiba, that he would deal out nuts and parched corn on the eve of Passover to the children, in order to keep them awake and have them ask for reasons.

We have learned in a Boraitha, R. Eliezer said: On the night of the Passover the unleavened bread is snatched out of the

children's hand in order to keep them awake and have them ask for the reason. 1

A Boraitha states that it was told of R. Aqiba, that he never proposed adjourning the session at the college excepting on the eve of Passover for the children's sake, that they should not fall asleep, and on the eve of the Day of Atonement, in order to see that the children be given their meals at the proper time.

The rabbis taught: It is the duty of every man to cause his household and his children to rejoice on a festival, as it is written [Deut. xvi. 14]: "And thou shalt rejoice on thy feast." Wherewith should a man cause his household to rejoice? With wine. R. Jehudah, however, said: "The men with the thing they like best and the women with what is most pleasing to them." The thing men like best is, of course, wine; but what is most pleasing to women? R. Joseph taught: "In Babylonia multicolored dresses and in Judæa pressed linen garments."

We have learned in a Boraitha, R. Jehudah ben Bathyra said: "When the Temple was still in existence, there was no better mode of rejoicing, than with (the eating of) flesh, as it is written [Deut. xxvii. 7]: 'And thou shalt slay peace-offerings, and eat them there; and thou shalt rejoice before the Lord thy God'; but now, when there is no Temple, wine is the principal means of rejoicing, as it is written [Psalms civ. 15]: 'And wine that maketh joyful the heart of man.'"

"*Nor shall a person have less than four cups of wine*." How can the rabbis order a thing which might involve danger? 2 Have we not learned in a Boraitha, that a man should not eat two dishes, nor drink two cups, nor do anything by twos? Said R. Na'hman: "It is written [Exod. xii. 42]: 'A night to be observed was this unto the Lord,' which signifies that on that night one is exempt from danger." Rabha said: "The cup of benediction (after meals) is only counted in for good purposes but never for evil, because its very name implies that it is for good, and thus only three cups are virtually drunk." Rabhina, however, said: "At all events, the four cups cannot be conjoined, for each one represents a different duty." 3

In Palestine no attention was paid to even or odd numbers, but R. Dimi of Neherdai was even particular about the signs on his barrels; and it once happened that he paid no attention to the signs, so one of the barrels burst. Whence the rule may be adduced, that one who is particular about things lays himself liable to accidents, but one who is not is not affected by superstition; still, it might happen that an accident should occur to him.

When R. Dimi came from Palestine, he said: Two eggs, two nuts, two cucumbers, and two of some other thing which I cannot remember, prove injurious to a man, is a Sinaic law; and because the rabbis could not find out what that other thing was, they included two of everything among the injurious as a precautionary measure. The statement elsewhere, that ten, eight, six, and four are excluded from the even numbers which are injurious only refers to acts caused by evil spirits; but where witchcraft is concerned, even those and more numbers may prove injurious, as it happened that a man once divorced his wife and she then became the wife of a wine-dealer. The first husband would generally go to that wine-dealer for his wine, and they tried to bewitch him, but without success; for he was always careful to avoid the even numbers. One day he imbibed too freely, and after drinking his sixteenth cup he became confused, and did

not know how many he had drunk. So they saw to it that he drank an even number, and then succeeded in bewitching him. When he went out into the street he was met by a certain merchant, who said: "I see a murdered man walking before me." Not being able to proceed farther, the drunken man embraced a tree for support, when the tree emitted a groan and dried up, and the man was killed.

R. Avira said: Bowls and loaves of bread are not affected by even numbers. The rule is, that all things produced artificially are not subject to the evil arising from even numbers; but natural productions, such as fruit and edible things, are. Shops are not affected by even numbers (if one eat in two shops). If one ate one of a certain thing and then considered it, and ate another, the rule of even numbers does not apply. Guests are not affected by even numbers; *i.e.*, if one cup of wine was given a guest and then another, as he had not known in advance how many he would be given, he is not affected.

A woman is not affected by even numbers, but a prominent woman should nevertheless be careful.

Said R. Hinana the son of R. Jehoshua. "Asparagus is always counted in with things tending to good but not to evil." R. Joseph said: Two cups of wine and one cup of beer are not counted together; but two cups of beer and one of wine are counted together. Proof of this can be adduced from a Mishna in Tract Kelim, to the effect that where uncleanness is concerned, the less valuable things are defiled by more valuable, but valuable things are not defiled by things of lesser value.

R. Na'hman said in the name of Rabh: "If two cups are drunk before going to the table, and one while at table, they are counted together, but one drunk before going to the table and two drunk at the table are not counted together." R. Mesharshia opposed this statement. Do we then concern ourselves with the table? It is the man who is affected, and if he drank three cups, it is well. Therefore only if a man drank two cups at the table, pronounced the benediction after the meal, and subsequently drank another, the three cups are not counted together. 1

"*Even if they must be given him from the funds devoted to charitable support*." Is this not self-evident? (Is not the poor man equal to all others?) This statement in the Mishna is made for the purpose of counteracting the decree of R. Aqiba, to the effect that a man should even make his Sabbath-day as any other, in order not to depend upon charity. When the observance of the Passover, however, is concerned, and the miracles performed for our ancestors are to be proclaimed, even R. Aqiba admits that a man may avail himself of charity so that he may be enabled fitly to celebrate the event.

The disciples of Elijah taught: Although R. Aqiba taught that a man should even make his Sabbath-day as any other, in order not to depend upon charity, still some slight distinction should be made in honor of the Sabbath [What is meant by some slight distinction? Said R. Papa: "Small fishes should be eaten"], as it is taught in a Mishna (Aboth): R. Jehudah

ben Thaima said: Thou shalt be bold as a leopard, light as an eagle; swift as a deer, and strong as a lion to do the will of thy Heavenly Father (which signifies, that a man should go even beyond his means in order to honor the Sabbath).

The rabbis taught,. Seven things R. Aqiba commanded his son R. Jehoshua, viz.: "My child, sit not in the midst of a city, when thou desirest to study; do not live in a city the officials of which are scholars, for they do not attend to the wants of the city; do not enter thy house without warning, and so much the less into thy neighbor's house; never go bare-footed; always arise early, and immediately eat in summer on account of the heat and in winter on account of the cold; and rather make thy Sabbath-day as any other in order not to depend upon charity; and, finally, have transactions only with such men as have no ill-fortune." Said R. Papa: "This last injunction does not refer to buying of or selling to a man in good fortune, but merely to entering into partnership."

Now that we have heard from R. Samuel bar Itz'hak that the passage [Job i. 10]: "The work of his hands hast thou blessed" signifies, that whoever only received a coin from the hands of job was fortunate in all his undertakings, we can infer, that with a man who is fortunate it is not only beneficial to be associated as a partner, but it is even to one's interest to buy from or sell to such a person.

Five things R. Aqiba while in prison commanded to R. Simeon ben Jochai: When R. Simeon ben Jochai said to him: "Master, teach me the Law," and R. Aqiba replied, "I do not wish to do this," the former said: "If thou wilt not, I shall complain to my father Jochai, and he will denounce thee to the government." R. Aqiba then remarked: "My son, more than the calf desireth to suck is the cow anxious to yield her milk," and R. Simeon replied: "In this case, however, the calf is in greater danger" (because R. Aqiba had been in prison already for this offence, while R. Simeon ben Jochai (the calf) stood yet in danger of being detected). Whereupon R. Aqiba told him the five things, viz.: If thou wouldst hang thyself, select at least a stout tree (meaning, that if thou wouldst have thy words listened to, quote them in the name of some great authority). If thou wouldst teach thy child, teach it from books free of errors. [What is meant thereby? Said Rabha, and according to others R. Mesharshia: "If a child is taught incorrectly to commence with, it is next to impossible to correct it subsequently."] Do

not cook in the same pot that thy neighbor once used. [What is meant thereby? A divorced woman whose husband is still living; because the Master said, that if a divorced man marry a divorced woman there are four different minds in one bed, and others say, that R. Aqiba even referred to a widow.] If thou wouldst do an act of charity or perform a religious duty, and incidentally derive material benefit therefrom, thou shouldst lend thy money to the husbandman and eat of the fruit of his land, in which case thou wilt do an act of charity and also derive material benefit. If thou wouldst perform a religious duty and keep thy body clean, thou shouldst take a wife and have children.

Four things our holy Rabbi commanded his children, viz.: Do not live in the city of Shakantzib (because the inhabitants are scorners). Do not sit on the bed of a Syrian woman. [What is meant thereby? Some say, that one should not lie down to sleep without reciting the Shema prayer; and others say, that one should not marry a proselyte; while still others say, that the literal meaning is to be accepted on account of what happened to R. Papa. [1]] Do not try to avoid taxation (for

aside from the fact that it is a duty to pay taxes, should it be known that ye desire to avoid them, your property is in danger of being confiscated). Lastly, do not stand in front of an ox just emerging from the swamps, for at that time he is so wild that it seems as if Satan were moving between his horns. R. Samuel said: "This refers only to a black ox in the month of Nissan."

R. Oshiya taught: An ox that had attempted to gore a person once should not be approached for a distance of fifty ells, and one that had done so three times should be avoided as long as he is in sight. It was taught in the name of R. Meir: If thou hast perceived an ox so vicious, even if he still have his head in his crib, climb up an elevation and draw thy ladder after thee immediately.

Three things R. Ishmael bar R. Jose commanded Rabbi, viz.: Thou shalt not cause a blemish on thyself [*i.e.*, thou shalt not deal with three men, one of whom will sue thee in a court of law and the other two will serve as witnesses against thee; for then thou wilt surely lose thy case]. Thou shalt not haggle

over the price of a thing if thou hast not the wherewithal to purchase it with thee; and on the night when thy wife has returned from the bath thou shalt have nothing to do with her. Said Rabh: "This refers to a woman who had been ritually unclean according to biblical law but not to one who had been unclean according to rabbinical law; for in the former case, having been unclean only seven days, there is danger of a recurrence of her uncleanness, while in the latter, where she had been unclean fourteen days, there is no such danger."

Three things R. Jose bar R. Jehudah also commanded Rabbi, viz.: Thou shalt not go out at night alone. Thou shalt not stand naked before a light; and thou shalt not enter a new bathhouse, lest it be imperfectly constructed and breakdown. [How long is a bath-house considered new? Said R. Jehoshua ben Levi: "For twelve months." Why should not a man stand naked before a light? Because we have learned in a Boraitha: "One who stands naked before a light is liable to be seized with epilepsy, and one who has sexual intercourse before a light may produce epileptic children."]

The rabbis taught: "One who has intercourse with his wife in a bed where a child sleeps may cause the child to be epileptic, but this is the case only if the child is less than six years old. If it is over six years old, or even if it be less than six years old but sleeps at the foot or at the head of the bed, it does not matter. If the man, however, put his hand on the child, no matter where it sleeps, there will be no evil consequences."

Why should not a man go out alone at night? For we have learned in a Boraitha: "A man should not go out alone on the night following the fourth day or on the night following the Sabbath, because an evil spirit called Agrath, the daughter of Ma'hlath, together with one hundred and eighty thousand other evil spirits, go forth into the world and have the right to injure anyone they should chance to meet."

In former times this spirit would go forth every day. Once she met with R. Hanina ben Dosa and said to him: "If I had not heard it proclaimed in the heavens, 'Hanina and his knowledge must be respected,' I would inflict some injury upon thee," and he answered: "If I am esteemed in the heavens above, I command thee never to appear where men dwell," and she pleaded: "I must

obey thy command, but leave me some freedom," whereupon be allowed the night following the fourth day and the night following the Sabbath.

At another time this same evil spirit met Abayi, and she also said to him: "Had I not heard it proclaimed above, 'Respect Na'hmeni (another name for Abayi) and his knowledge,' I would do thee harm"; and he answered: "If I am respected above, I command thee never to appear where men dwell."

Rabh said to R. Assi: "Do not live in a city where thou canst not hear a horse neigh or a dog bark, and do not live in a city whose (executive) head is a physician. Do not take unto thee two wives, because they might conspire against thee to do thee wrong. If thou, however, already hast two wives, take a third (and should two conspire against thee the third will betray them to thee)."

Rabh said to R. Kahana: "It were better that thou shouldst occupy thyself with carrion (for a livelihood) than that thou shouldst break thy word (promise). Rather skin carrion in the market for pay than say that thou art a priest or an important person and above such work; for all honest labor is preferable to accepting charity. When thou goest on a journey, no matter how short, always take some food with thee. Even when a hundred cucumbers may be had for one zuz, do not say that thou wilt buy thy food on the way, but carry it along with thee, for thou never canst know what might happen on the way."

Rabh said to his son Hyya: "Do not make a habit of taking medicine. Do not make long strides. Avoid as much as possible having a tooth extracted. Never try to tease a snake, and do not make sport of a Persian."

The rabbis taught: Never tease a little (young) Gentile, a small snake, or a young pupil; because their kingdom is behind their ears (*i.e.*, when they become older they seek revenge).

Rabh said to Aibo his son: "I have tried to teach thee the holy Law, but I cannot succeed; come and I will teach thee worldly things. When the sand is still on thy feet (*i.e.*, if thou hast returned from a purchasing trip), shouldst thou meet with a buyer sell out at once. Sell everything, even though thou mightst subsequently regret it, especially wine, which thou wilt never regret selling, for it might become spoiled. Make fast thy purse and open thy sack (*i.e.*, when selling, obtain the money first, secure it well, and then deliver the merchandise). If thou hast an opportunity to gain a kabh of land in thy immediate vicinity, it is better than a kur of land far away. If thy basket is filled with dates, run to the brewer and have him brew the beer; for the dates might be eaten up, and then thou wilt have

naught." [What quantity of dates should a man have before he goes to the brewer? Said Rabha: "Three saahs." Said R. Papa: "If I had not brewed beer, I should never have been rich," and so also said R. Hisda.

Said R. Papa: "All debts requiring promissory notes are doubtful, and those where the signatures must be verified are even more so; and even should they be paid, the money will not be good (*i.*

e., will come little by little)."]

Three things R. Johanan said in the name of the great men of Jerusalem: When thou goest to war, and canst persuade others to join thee, stay as long as possible in order to see that the men that thou hast recruited all go, and then go thyself last of all. Then upon the return thy reward shall be that thou shalt be first. Rather make thy Sabbath-day as any other, and avoid depending on charity. Associate thyself with one upon whom fortune smiles.

R. Jehoshua ben Levi also said three things in the name of the great men of Jerusalem, viz.: Do not commit private acts in public (on account of the evil consequences which have ensued by reason thereof). If thy daughter is of marriageable age, free thy slave and give her to him in marriage (rather than allow her to remain single), and watch thy wife with her first son-in-law. [Why so? Said R. Hisda: "On account of love," and R. Kahana said: "On account of money matters." As a matter of fact, both things should be looked after.]

R. Johanan said: The following three kinds of men shall inherit the world to come: Those that live in the Holy Land, those that send their children to houses of learning, and those that make Habdalah over wine (*i.e.,* those that have but little and leave some of the wine from the Kiddush for Habdalah, refraining from drinking it on the Sabbath).

R. Johanan said again: The Holy One, blessed be He, himself proclaims the virtue of the three following men: Of a bachelor who lives in a large city and sins not; of a poor man who finds a valuable thing and returns it to its owner; and of a rich man who gives a tenth of his profits to charity unbeknown to others.

R. Saphra was a bachelor, and lived in a large city. A certain Tana repeated the statement of R. Johanan, just quoted, in the presence of Rabha and R. Saphra. R. Saphra's face beamed with delight. Said Rabha to him: "A bachelor such as thou art is not meant, but such men as R. Hanina and R.

[paragraph continues] Oshiya, who were shoemakers in the land of Israel and whose shops were in the markets of the prostitutes. They would make shoes for those women and carry the shoes to the houses where the prostitutes lived, and even fit them there. Still, though the women would look at them, they never lifted their eyes to look at the prostitutes. Thus when oaths were taken, they would swear by the lives of these holy rabbis of the land of Israel."

The Holy One, blessed be He, loves three kinds of men, viz.: Those that never become angry, those that never become intoxicated, and those who do not insist upon asserting themselves. The following three the Lord hates: The one who speaks with his mouth and thinks otherwise in his heart; the one who can testify in a man 1 s favor and does not do so; and the one who alone saw another man doing wrong and testifies against him in public, although knowing that the testimony of one man is not sufficient to convict, as it once happened that a certain man by the name of Tubia sinned. A certain Zigud came to R. Papa and testified against this Tubia. R. Papa ordered this Zigud chastised, and the latter said: "Tubia has sinned, and Zigud should be punished?" and R. Papa answered: "Yea; for it is written [Deutr. xix. 15]: 'There shall not rise up one single witness against a man,' and thou art the single witness against Tubia; hence thy

testimony is of no value and merely slanders a man."

The rabbis taught: The following three kinds of men do not live a life worth living, viz.: Those who have too much pity with importunates, those who are very excitable, and those who are too fastidious. Said R. Joseph: "I combine in myself all those three defects."

The rabbis taught: The following three species hate others of their own kind, viz.: a dog, a cock, and a Persian Gueber (fire-worshipper); and others say, one prostitute hates another; and still others say, one scholar hates another.

The rabbis taught: The three following love others of their own kind, viz.: Proselytes, slaves, and ravens. The following four are unbearable to the sound sense of a man, viz.: A poor man who is vain, a rich man who constantly tells lies, an old man who is lascivious, and a president of a congregation who considers himself superior to all others without cause. Others say, also one who divorces his wife once, remarries, then divorces her again and again marries her.

Five things Canaan the son of Ham the son of Noah commanded his children; viz.: "Love ye one another, love robbery, love lasciviousness, hate your masters, and never tell the truth."

Six things were said of a horse, viz.: He is very passionate, he loves war, he is very proud, he hates to sleep, he eats much and casts off little; and according to others, he loves to kill his owner in a battle.

Rabba bar bar Hana said in the name of R. Samuel bar Martha, quoting Rabh upon the authority of R. Jose the man of Hutzal: Whence do we know that an Israelite must not consult astrologers? Because it is written [Deutr. xviii. 13]: "Perfect shalt thou be with the Lord thy God" (which signifies that perfect confidence must be reposed in the Lord). Whence do we know that if a man is convinced of the superiority of his neighbor to himself, even in one instance only, he should respect him? From the passage [Daniel vi. 4]: "Because a superior spirit was in him: and the king sought to appoint him over the whole kingdom." When a woman continues in the blood of her purification, [1] although she is not defiled, she should not halve any connection with her husband.

We have learned in a Boraitha: Joseph the man of Hutzal is Joseph the Babylonian or Issi ben Gur Ariah or Issi ben Jehudah or Issi ben Gamaliel or Issi ben Mahalalal, and what is (really) his name? Issi ben Aqabia.

R. Itz'hak ben Tabla is R. Itz'hak ben Haqla and the same as R. Itz'hak ben Elazar (Ela'a), and where R. Itz'hak is mentioned in Halakha it refers to R. Itz'hak ben A'ha, while where R. Itz'hak is mentioned in Haggada it refers to R. Itz'hak ben Pin'has.

Rabba bar bar Hana said in the name of R. Johanan, quoting R. Jehudah bar Ilayi: Rather eat onions and sit in peace in thy house than geese and chickens, which thou wilt acquire a taste for and perhaps be unable to gratify it. Reduce the quality of thy meals, if need be, in order to improve the quality of thy abode. When Ula came from Palestine, he said: "There is a saying in

Palestine to this effect: He who always eats the fat of a ram's tail must hide himself from his creditors in an altar, but he who satisfies himself with herbs, can sit in the centre of, the market in full view of all."

MISHNA: When the first cup is poured out, the blessing pertaining to the festival should be said, and then the benediction

over the wine must be pronounced. Such is the dictum of Beth Shammai; but according to Beth Hillel, the benediction over the wine should be said first, and then the blessing of the festival may be pronounced.

GEMARA: The rabbis taught: The following presents one of the instances wherein Beth Shammai and Beth Hillel continually differ as regards meals, namely: Beth Shammai hold, first, that the blessing of the festival should precede that over the wine, because the festival is the direct cause of drinking the wine; and, second, the festival was already at hand while the wine was just brought. The school of Hillel, however, maintain, first, that the blessing over the wine has the preference, because, were it not for the wine or bread, no Kiddush could be said; secondly, the wine is usual and drank every day, while the festival only comes once in a certain period, and the rule is, that between a thing which occurs frequently and one which occurs only at intervals, the latter is to be given preference. The Halakha prevails according to Beth Hillel.

MISHNA: Herbs and vegetables are then to be brought; the lettuce is then to be immersed, part thereof eaten, and the remainder left until after the meal arranged for the night is eaten; then unleavened cakes are to be placed before him as well as the lettuce, sauce (Charoseth), and two kinds of cooked food, although it is not strictly obligatory to use the same; R. Elazar ben Zadok, however, said, that it is obligatory. During the existence of the Holy Temple, the paschal sacrifice was then placed before him.

GEMARA: Why are two immersions necessary, the one when lettuce is immersed and the other when the bitter herbs are immersed? In order to excite the curiosity of the children, and have them inquire into the reason therefor. Which kinds of the above-mentioned cooked food are meant? Said R. Huna: "Mangold and rice," and Rabh would see to it that there was only mangold and rice in place of the cooked victuals, because he wished to carry out the literal sense of R. Huna's teaching.

Hezkyah said: "Fish, together with an egg, may also serve for the two kinds of cooked food," and R. Joseph said: "Nay; there must be two kinds of meat (one roasted and the other boiled), one to serve as a remembrance of the paschal offering and the other as a remembrance of the festal offering." Rabhina said: "A bone and some boiled meat suffice."

It is self-evident that if a man have other vegetables besides lettuce he can say the blessing required for the vegetables, namely, "who hath created the fruit of the earth," and eat them, and then, when coming to the bitter herbs, he may say the blessing required, namely, "who hath commanded us to eat bitter herbs," and then eat them; but if a man have no other vegetables

besides lettuce, how shall he pronounce the benedictions? Said R. Huna: "He should first say the ordinary benedictions for vegetables, eat a piece of the lettuce, then say the blessing over bitter herbs, and proceed to eat."

R. Hisda opposed this: "How can the man say another blessing after he had already eaten of the thing? Therefore he should say the two benedictions together, eat part of the lettuce, and when the time arrives to eat the remainder he can eat it without saying a blessing."

In Suria they acted in accordance with R. Huna's opinion, and R. Shesheth the son of R. Jehoshua would act in accordance with R. Hisda's decree. The Halakha prevails according to R. Hisda's decree. R. A'ha the son of Rabha took care to have other vegetables besides lettuce, in order to avoid the difference of opinion between the two sages.

Rabhina said: R. Mesharshia the son of R. Nathan told me, that so said Hillel, quoting a tradition: A man should not place the bitter herbs between unleavened cakes and eat them in that manner. Why not? Because the eating of unleavened cakes is a biblical commandment, while the eating of bitter herbs in this day is only a rabbinical ordinance. Now if the two be eaten together, the bitter herbs might destroy the taste of the cakes, and thus a rabbinical ordinance would supersede a biblical commandment; and even according to those who hold that one commandment cannot nullify another when both are fulfilled at the same time, such is only the case where both are biblical or both are rabbinical; but when one is a biblical and the other a rabbinical commandment, the rabbinical nullifies the other, and hence their joint fulfilment is not allowed.

Who is the Tana from whom we have heard that the fulfilment of one commandment does not nullify that of another? That Tana is Hillel, as we have learned in a Boraitha: It was said of Hillel, that he would take a piece of the paschal offering, an unleavened cake, and some bitter herbs, and eat them together, as it is written [Numb. ix. 11]: "With unleavened bread and bitter herbs shall ye eat it."

R. Johanan said: "Hillel's colleagues did not agree with him, as we have learned in a Boraitha: Lest we assume that the paschal offering, the unleavened bread, and the bitter herbs must be eaten together, therefore it is written, 'With unleavened bread and bitter herbs shall ye eat it,' which signifies, that each may even be eaten separately." R. Ashi opposed this: "If this Boraitha is supposed to be in opposition to Hillel, why does it state that each may *even* be eaten separately? (If they may be eaten *even* separately, then surely they may be eaten together.) Therefore the Boraitha means to state, that *even* if the three things were eaten separately the duty was acquitted, though they should rather be eaten together."

Now in this day, when it is not known whether the Halakha prevails according to the opinion of Hillel or of the opposing sages, the mode of procedure should be thus: A blessing should be said over the unleavened bread and a piece thereof eaten; then another blessing should be said over the bitter herbs and a piece tasted, and finally the unleavened bread and the bitter herbs should be put together and eaten at the same time, saying: "This is in remembrance of Hillel's actions when the Temple was still in existence."

R. Elazar said in the name of R. Oshiya: "When anything is dipped in sauce, the hands should be perfectly clean"; *i.e.*, previously washed. Said R. Papa: "Thence we may infer that the lettuce must be entirely immersed in the Charoseth (sauce), for otherwise what need would there be of washing the hands, they would not touch the sauce?" Nay; perhaps this is not so: the odor of the sauce might neutralize any poison which might be lurking in the lettuce, and thus the lettuce need not be entirely immersed, and as for washing the hands, that is merely a precaution lest they accidentally touch the sauce.

R. Papa said again: "The bitter herbs should not be allowed to stay any length of time in the sauce, lest the spices draw out the bitterness, and thus make the bitter herbs tasteless."

R. Hisda led Rabbana Ubqa by the arms and the latter preached: "If a man washed his hands prior to dipping the lettuce the first time, he should nevertheless wash his hands again when dipping a second time." The rabbis told this to R. Papa, and remarked that the statement did not refer to the Passover-meal alone, but that it was a general rule; for if it referred to the Passover-meal alone, why should a man wash his hands the second time, he had already performed that duty?

[paragraph continues] Rejoined R. Papa: "On the contrary! The statement refers to the Passover-meal alone; for where do we find that a second dipping is required, and should it be claimed that the duty had already been performed, hence a second washing of the hands were unnecessary, it should be taken into consideration, that between the first and second washing of the hands the recital of the Haggada and the Hallel prayer was accomplished, and thus the first washing of the hands might have been lost sight of?"

Rabha said: "If a man swallowed unleavened bread (without masticating it), even if he did not taste it, he has acquitted himself of the duty of eating unleavened bread; but if he swallowed the bitter herbs without getting a taste of the bitterness, he has not discharged the duty pertaining to eating bitter herbs If he swallowed unleavened bread together with bitter herbs, he has acquitted himself of the duty pertaining to unleavened bread, but not of that pertaining to bitter herbs. If he had, however, wrapped the unleavened bread together with the bitter herbs in a leaf (or peel of a fruit) and swallowed it, so that neither the unleavened bread nor the bitter herbs touched the palate, he did not even discharge the duty pertaining to unleavened bread."

R. Shimi bar Ashi said: "Unleavened bread, bitter herbs, and Charoseth must be dealt out to each man separately, but immediately before the Haggada is read, the tables on which the food is served [1] should not be removed at once, but only from the man who is about to recite." R. Huna, however, said: "The things mentioned were only served to the man who was to recite the Haggada, and he would then deal them out to the others," and the Halakha prevails according to the decree of R. Huna.

For what purpose were the tables removed? Said the disciples of R. Janai: "In order to excite the curiosity of the children present, and induce them to inquire into the reasons."

Abayi while still a child sat at a table in the presence of Rabba, and observed that the table of Rabba was removed. Said Abayi: "We have not yet eaten our meal, why are the tables being

removed?" and Rabba replied: "By thy question we are absolved from commencing with the passage: 'Wherefore is this night distinguished from all nights?' and we can immediately proceed with the answer: 'Because we were slaves,'" etc.

Samuel said: It is written [Deut. xvi. 3]: "Bread of affliction" (Le'hem Oni), and as "Oni" can also stand for "proclaiming," the bread may be called "bread of proclamation," *i.e.*, "bread over which proclamations should be made," and thus we have also learned in a Boraitha (with the following supplementary statement): Or "Oni" may still be called "poor," and for the reason that the benediction pertaining to the eating of the unleavened bread should be made over a broken piece after the manner of the poor.

"*Although it is not obligatory to use Charoseth*," etc. If it is not obligatory, why is it used? For the purpose of neutralizing any poison that might be contained in the bitter herbs, said R. Ami.

"*R. Elazar ben Zadok, however, said: It is obligatory*," etc. What religious purpose can it serve? Said R. Levi: "It serves as a remembrance of the apple-trees." 1 R. Johanan, however, said: "It serves as a remembrance of the loam which the Israelites were compelled to prepare when in bondage in Egypt." Said Abayi: Therefore the Charoseth should be made to have an acid taste in memory of the apple-trees, and also thick, in memory of the loam.

We have learned in a Boraitha in support of R. Johanan, viz.: "The spices used in the preparation of the Charoseth were in memory of the straw used in the preparation of the loam, and the Charoseth was in memory of the loam itself." R. Elazar ben Zadok said: "The vendors of spices in Jerusalem would shout on the streets, 'Come and buy spices for the religious purpose'!"

MISHNA: A second cup of wine is poured out; and the son should then inquire of his father (the reasons for the ceremony). If the son is mentally incapacitated to do this, the father is bound to instruct him as follows: Wherefore is this night distinguished from all other nights? That on all other nights we may eat either leavened or unleavened bread, but on this it must be all unleavened; on all other nights we may eat all kinds of herbs, but on this we may only eat bitter herbs; on all other nights we may eat meat, roasted, boiled, or cooked in different ways, but on this night we may only eat it roasted; on

all other nights we immerse what we eat once, but on this night twice. And according to the powers of comprehension of the child, thus should his father teach him: first, he should inform him of the disgrace (of our ancestors), and then conclude with the recital of the favorable and laudatory passages; he should expound the passage [Deutr. xxvi. 5]: "A Syrian, wandering about, was my father," etc., until the end of the passage [ibid. 9].

GEMARA: The rabbis taught: One who has an intelligent son should be asked by his son; if the son is not sufficiently intelligent, the wife should inquire, and if the wife is not capable, he himself should ask those questions; and even if two scholars who are well versed in the laws of the Passover should sit together at the Passover-meal, one should ask the other the above questions.

The Mishna states, "on all other nights we immerse what we eat once." "Is, then, this done because it is a duty?" asked Rabha. "Therefore," said he, "it should state this: On all other nights we are not even bound to immerse what we eat once, but on this night we must do so twice.'"

R. Saphra opposed this: "Shall we tell children of the duty: what do children know of duty? Therefore let the Mishna rather state: 'On all other nights we do not immerse what we eat at all, but on this night we do so twice.'"

MISHNA: Rabbon Gamaliel used to say: Whosoever does not mention the following three things on the Passover has not fulfilled his duty. They are: The paschal sacrifice, the unleavened cakes, and the bitter herbs. The paschal sacrifice is offered because the Lord passed over the houses of our ancestors in Egypt, as it is written [Exod. xii. 27]: "That ye shall say, It is the sacrifice of the Passover unto the Lord, who passed over the houses of the children of Israel in Egypt," etc.; the unleavened bread is eaten because our ancestors were redeemed from Egypt (before they had time to leaven their dough), as it is written [ibid. 34]: "And the people took up their dough before it was leavened," etc.; and bitter herbs are eaten because the Egyptians embittered the lives of our ancestors in Egypt, as it is written [ibid. 1-14]: "And they made their lives bitter," etc. It is therefore incumbent on every person, in all ages, that he should consider it as though he had personally gone forth from Egypt, as it is written [ibid. xiii. 8]: "And thou shalt tell thy son on that day, saying, This is done for the sake of that which the Lord did unto me when I came forth out of Egypt."

[paragraph continues] We are therefore in duty bound to thank, praise, adore, glorify, extol, honor, bless, exalt, and reverence Him who wrought all these miracles for our ancestors and for us; for He brought us forth from bondage to freedom, He changed our sorrow into joy, our mourning into a feast, He led us from darkness into a great light, and from servitude into redemption: let us therefore say in His presence, "Hallelujah" (sing the Hallel prayer).

How far is the Hallel then to be said? According to Beth Shammai, till [Psalms cxiii. 9]: "He causeth the barren woman to dwell," etc.; but according to Beth Hillel, till [ibid. cxiv. 8]: "Who changeth the rock into a pool of water," etc., and they are to close with a blessing for the redemption. R. Tarphon says: This is the form: "Blessed art thou, O Lord our God, Sovereign of the universe, who hast redeemed us and our ancestors from Egypt," without any further concluding blessing. R. Aqiba, however, says: "(The preceding should be continued as follows.) Thus mayest thou, O Lord our God, and the God of our ancestors, bring us to the peaceable enjoyment of other solemn feasts and sacred seasons which are nigh unto us, that we may rejoice in the rebuilding of thy city and exult in thy service, that we may there eat of the paschal and other sacrifices," etc., until "Blessed art thou, O Lord, who hast redeemed Israel."

GEMARA: Rabha said: One must say, the Lord hath redeemed us from Egypt, and he said again. The unleavened bread and the bitter herbs must be lifted up when about to be eaten, but the meat need not be lifted up; and, moreover, if the meat were lifted up, it would appear as if consecrated things were eaten outside (of the Temple).

R. A'ha bar Jacob said: "A blind man is exempt from the recital of the Haggada, and this is

adduced from the comparison by analogy of the two passages [Exod. xiii. 8]: '*This* is done,' etc., and [Deut. xxi. 20]: '*This* our son is stubborn,' etc.; and as concerning the latter verse it is taught elsewhere that, if the parents of the son be blind, and hence unable to point him out, the son shall not be stoned, so concerning the former verse it is taught, that a blind man is exempt from the duty of the recital."

Is this indeed the case? Did not Mareimar say that he asked the teachers of the disciples of R. Joseph who recited the Haggada in the house of R. Joseph, and that they answered. "R. Joseph," and who recited the Haggada in the house of R. Shesheth, and they answered: "R. Shesheth" (R. Joseph and

[paragraph continues] R. Shesheth were both blind)? (The answer is,) both R. Joseph and R. Shesheth hold, that the entire ceremony pertaining to unleavened bread is in these days only a rabbinical institution (and therefore its observance is optional).

"*It is therefore incumbent on every person*," etc. Said R. Jehoshua ben Levi: "With ten different expressions of praise the entire Book of Psalms was composed, namely: With Nitzua'ch, Nigon, Maskil, Mizmor, Shir, Ashrai, Thehiloh, Thephilalh, Hodaah, and Hallelujah. 1 The most important of all the expressions is that of Hallelujah, because it contains within itself both praise and the Name."

Said R. Jehudah in the name of Samuel: "The song in the Scriptures [Exod. xv.] was sung by Moses with Israel when coming up out of the sea, and who recited the Hallel? The prophets among them ordained, that at all times when they are delivered out of affliction, they should say it on account of their redemption."

We have learned in a Boraitha: R. Meir said: All the praises uttered in the Book of Psalms were uttered by David, as it is written [Psalms lxxii. 20]: "Here are ended the prayers of David the son of Jesse." Do not read "Kolu" (are ended), but "Kol Elu" (all these are).

Who said Hallel? Said R. Jose: "My son Elazar says, that Moses together with Israel said it, when coming up out of the sea, but his colleagues differ with him, maintaining that David said it; but to me my son's opinion seems the more reasonable, for how can it be that the Israelites should slaughter their paschal offerings and take their palm-branches, and not sing a song of praise?"

The rabbis taught: All the songs and hymns in the Book of Psalms were, according to the dictum of R. Elazar, sung by David for his own sake; but R. Jehoshua says, that he did so for the congregation at large, and the sages say, that some were uttered by him for the congregation at large while others were only for his own sake, namely, those which he uttered in the singular were for his own sake and those uttered in the plural were for the community at large. The Psalms containing the terms Nitzua'ch and Nigon were intended for the future; those containing the term Maskil were proclaimed through an interpreter;

where the psalm commences "Le-David Mizmor" the Shekhina first rested upon David and then he sang the psalm, but where it commences "Mizmor Le-David" he first sang the psalm and then the Shekhina rested upon him, whence it may be inferred that the Shekhina does not rest upon one who is in a state of idleness, or sorrow, or laughter, or thoughtlessness, or upon him who indulges in vain words, but only upon one who rejoices in the fulfilment of a duty, as it is written [II Kings iii. 15]: "But now bring me a musician. And it came to pass when the musician played, that the inspiration of the Lord came upon him."

Said R. Jehudah in the name of Rabh: "The same applies to the study of Halakhaoth," and R. Na'hman said: "The same also applies to a good dream."

Is this indeed the case? Did not R. Giddel say in the name of Rabh, that every scholar who sits in the presence of his Master in other than a serious mood cannot retain anything he has learned, so as to be able to repeat it with his lips? as it is written [Solomon's Song v. 13]: "His lips, like roses, dripping with fluid myrrh." (The Hebrew term for roses is "Shoshanim," and for learning the term is "Shanah." The expression for "myrrh" is "mar," which also signifies bitterness. Thus the passage may be interpreted as follows:) "The lips that learn, drip with bitterness (seriousness)." Thus we see that seriousness is necessary when learning, and not rejoicing? This presents no difficulty. Rejoicing is necessary for the teacher, *i.e.*, be should be in an agreeable mood; but the disciple who is learning must be serious, and if you wish, I will tell you that both apply to the teacher, but the former applies before the teacher commenced his lecture and the latter when he had already commenced, as Rabba was wont to do, namely: He would preface his lecture with a joke and bring his disciples into a good humor; then he would proceed in all seriousness and teach the Halakha.

The rabbis taught: Who said the Hallel? R. Elazar said: Moses and Israel said it when standing by the sea. They said what is written [Psalms cxv. i]: "Not for our sake, O Lord, not for our sake, but unto thy name give glory," and the Holy Spirit replied (Isaiah xlviii. 11]: "For my own sake, for my own sake, will I do it"; and R. Jehudah said: Joshua and Israel said it when they did battle with the kings of the Canaanites. Israel said: "Not for our sake," etc., and the Holy Spirit said:

[paragraph continues] "For my own sake," etc. R. Elazar of Modai said: Deborah and Barak said it when Sissera waged war upon them. They said: "Not for our sake," and the Holy Spirit replied: "For my own sake," etc. R. Elazar ben Azariah said: King Hezekiah and his companions said it when Sennacherib waged war upon them. They said: "Not for our sake," etc., and the Holy Spirit replied: "For my sake," etc. R. Aqiba said: Hananiah, Mishael, and Azariah said it when Nebuchadnezzar was about to throw them into the fiery furnace. They said: "Not for our sake," etc., and the Holy Spirit replied: "For my sake," etc. R. Jose the Galilean said: Mordechai and Esther said it when Haman the wicked rose up against them. They said: "Not for our sake," etc., and the Holy Spirit replied: "For my sake," etc.; but the sages said, that the prophets among the Israelites arranged so that whenever affliction overtook the Israelites, they said it in the hour of their redemption.

Said R. Hisda: "Each Hallelujah denotes the conclusion of a chapter in Psalms," but Rabba bar R. Huna said: It denotes the commencement of a chapter." Said R. Hisda: I saw the Book of Psalms in the hands of R. Hanan bar Rabh, and observed that a Hallelujah stood in the midst of a

chapter, whence I infer that there must have been a doubt whether it belonged at the beginning of the chapter or at the end, and for that reason it was placed in the centre." Said R. Hanin the son of Rabha: All agree, that after the verse [Psalms cxlv. 21]: "The praise of the Lord shall my mouth speak: and let all flesh bless His holy name for ever and ever," the Hallelujah is the commencement of the chapter; and after the verse [ibid. cxii. 10]: "The wicked shall see it and be vexed; he will gnash with his teeth and melt away; the longing of the wicked shall perish," the Hallelujah is also the commencement of a chapter; and after the verse [ibid. cxxxv. 2]: "Ye that stand in the house of the Lord, in the courts of the house of our God," the Hallelujah is also the beginning of a chapter. The Karaites [1] add to these verses, ibid. cx. 7 and ibid. cxi. 10, after both of which the Hallelujah is the beginning of a chapter.

Shall we assume, that the Tanaim also differ concerning the Hallelujah in the above Mishna? We have learned: How far is the Hallel to be said? According to Beth Shammai, till [Psalms cxiii. 9] "the joyful mother of children," etc., but according to Beth Hillel, till [ibid. cxiv. 5] "who changeth the rock into a pool of water"; and we have learned in another Boraitha, according to Beth Shammai, till [ibid. cxiv. 1] "when Israel went forth out of Egypt," and according to Beth Hillel, till [ibid. cxv. 1] "not for our sake, O Lord," etc. Shall we then assume, that those who say till "the joyful mother of children," hold that the Hallelujah which succeeds the verse is the beginning of a chapter, while those who say that the Hallel should be said till "when Israel went forth out of Egypt," hold the Hallelujah to be the end of a chapter? Nay; R. Hisda may answer this according to his own theory, that all agree upon Hallelujah as being the end of a chapter, and that those who in accordance with Beth Shammai say the Hallel till "when Israel went forth out of Egypt," are perfectly correct, as they already include the Hallelujah, but those who according to Beth Shammai in the first Boraitha say the Hallel as far as "the joyful mother of children," mean to include that verse also with the Hallelujah.

Rabba bar R. Huna, however, may answer this according to his theory, that all agree upon Hallelujah as being the beginning of a chapter, and that those who according to Beth Shammai say the Hallel as far as "the joyful mother of children," are correct, while those who say it till "when Israel went forth out of Egypt," mean to *exclude* that verse with the Hallelujah.

"*They are to close with a blessing for the redemption*." Rabha said: In the reading of the Shema and the Hallel the redemption of Israel should be referred to in the past tense, namely: "Who hast redeemed," etc., while in the prayer embracing the eighteen benedictions it should be referred to in the future tense, namely: "Who wilt redeem," etc., for a prayer should be made to apply to the future and not to the past.

R. Zera said: When the Kiddush is said, the benediction contained therein must read: "Who hast sanctified us with his commandments," etc., but in prayer the sentence should read: "Sanctify us with thy commandments," etc., because such is the prayer for Mercy.

R. Aha bar Jacob said: In the benediction contained in the Kiddush, the exodus from Egypt must be referred to, and this

is derived from a comparison by analogy in the verses [Deutr. xvi. 3]: "That thou mayest remember the day of thy going forth out of Egypt," etc., and [Exod. xx. 8]: "Remember the Sabbath day to keep it holy," whence the inference, that the exodus from Egypt must be remembered in the Kiddush.

Rabba bar Shela said: In the prayer for redemption, the sentence, "He causeth to sprout the foundation of help," should be said, and the benediction pronounced after the recital of the Haphtorah 1 should be concluded, after the blessing for the redemption, with "the shield of David." As it is written [II Sam. vii. 9]: "I have made thee a great name, like the name of the great," etc., and R. Joseph taught that it signifies the conclusion with "the shield of David."

R. Simeon ben Lakish said: It is written [Gen. xii. 2]: "And I will make of thee a great nation," and this is explanatory to the term "the God of Abraham" used in prayer. "I will bless thee" [ibid.] refers to "the God of Isaac," and "make thy name great" [ibid.] refers to "the God of Jacob"; and lest we assume that the conclusion of the benedictions should also be made to embrace all three terms, therefore the passage [ibid.] ends with "and *thou* shalt be a blessing," signifying that only one (and that is Abraham) should form the concluding blessing.

Rabba said: I discovered that the sages of Pumbaditha once sat and proclaimed the following: "On Sabbath, both in the recital of the Kiddush and in prayer, the concluding blessing must be 'who hath sanctified the Sabbath,' and on a festival also, both in prayer and in the Kiddush, the concluding benediction must be 'who hath sanctified Israel and the time of the festivals.'" Said I to the sages: "On the contrary! On Sabbath and on festivals the concluding blessing of the prayer should be 'who hath sanctified Israel,' but the concluding benediction of the Kiddush on the Sabbath should be 'who hath sanctified the Sabbath,' while on a festival it should be 'who hath sanctified Israel and the time of the festivals,' and I will tell you the reason both for your assertion and my own. Your reason is, that Sabbath is not an institution of the Israelites themselves, but one ordained for them from the beginning; hence it should be said 'who hath sanctified the Sabbath,' but on the festivals, which are instituted by the Israelites themselves, by making

months intercalary or ordinary, it should be said, 'who hath sanctified Israel and the time of the festivals.'

"My reason is, however, that as prayer is generally offered up by an assembly, it should therefore conclude with 'who hath sanctified Israel'; but Kiddush, which is recited by an individual, should conclude with 'who hath sanctified the Sabbath,' and, on festivals only, with 'who hath sanctified Israel and the time of the festivals.'" [This is, however, no argument; for prayer may be offered up by an individual, and Kiddush can be said in an assembly.]

Ula, the son of Rabh, in the presence of Rabha, prayed in accordance with the dictum of the sages of Pumbaditha, and Rabha did not object; whence we may infer that he retracted his former statement and finally agreed with those sages.

R. Nathan the father of R. Huna ben Nathan also prayed in the presence of R. Papa in accordance with the dictum of the elders of Pumbaditha, and R. Papa commended him for doing

so.

Rabhina said: "I once came to Sura and prayed in the synagogue in the presence of Mareimar, and the reader prayed in accordance with the dictum of the sages of Pumbaditha. The congregation, however, desired to silence him, when Mareimar said to them: 'Let him proceed; for the Halakha prevails according to the sages of Pumbaditha.'"

MISHNA: A third cup of wine is then poured out, and the benediction after meals is said. After pouring out the fourth cup, the Hallel should be concluded over it and the blessings on the songs of praise be said. A person may drink as much as he chooses between the second and third cups, but not between the third and fourth.

GEMARA: Said R. Hanan to Rabha: "Infer from this Mishna, that for the benediction after meals a cup (of wine) is required," and Rabha replied: "Nay; these four cups serve as a symbol of our freedom, and incidentally they were divided for the accomplishment of several religious duties, but no inference should be made that the benediction after meals requires a cup of wine."

"*And the blessings on the songs of praise (should) be said*." What are these blessings? R. Jehudah said: The prayer following the Hallel, namely: "All thy works, O Lord, shall praise thee," etc., and R. Johanan said: The prayer commencing: "The breath of all living," etc.

The rabbis taught: On the fourth cup the Hallel is concluded, and the great Hallel should also be recited thereon. Such is the decree of R. Tarphon, and according to another version, R. Tarphon decreed that the chapter [Psalms xxiii.], "The Lord is my shepherd," etc., should also be said. Whence does the great Hallel commence? Said R. Jehudah: From [Psalms cxxxvi.] "Give thanks unto the Lord," etc., until [ibid. cxxxvii.] "by the rivers of Babylon," etc. R. Johanan, however, said: From [ibid. cxx.] "A song of the degrees," etc., until [ibid. cxxxvii.] "by the rivers of Babylon," etc. R. Aha bar Jacob, however, said: From [ibid. cxxxv. 4] "For Jacob hath the Lord chosen," etc., until [ibid. cxxxvii.] "by the rivers of Babylon," etc.

Why is this called the great Hallel? Said R. Johanan "Because the Holy One, blessed be He, sits in the uppermost height of the world and thence deals out food for all his creatures (as it is written [Psalms cxxxvi. 25, 26]: "Who giveth food unto all flesh; for to eternity endureth his kindness. O give thanks unto the God of the heavens," etc.).

R. Jehoshua ben Levi said: "The twenty-six verses of the chapter [cxxxvi.] apply to the twenty-six generations existing before the Law was given, and who were nourished only by His grace."

R. Hisda said: The passage [ibid. cxxxvi. 1], "O give thanks unto the Lord, for he is good," signifies that the Lord punishes man for evil deeds only by diminishing his (the man's) possessions (goods); *f.i.*, a rich man is punished by the loss of an ox, a poor man by the loss of a sheep, an orphan by the loss of an egg, and a widow by the loss of her hen, etc.

R. Johanan said: The earning of a man's daily bread is twice as laborious to him as the bearing of a child is to a woman, for concerning a woman lying-in it is written [Gen. iii. 16]: "In pain

(Be'etzeb) shalt thou bring forth children," while concerning man it is written [ibid. 17]: "In pain (Be'itzabon) shalt thou eat of it all the days of thy life," which implies a greater degree of pain.

R. Johanan said again: The earning of a man's daily bread is beset with more difficulty than the redemption; for concerning the redemption it is written [Gen. xlviii. 16]: "The angel who redeemed me from all evil," while concerning a man's daily bread it is written [ibid. 15]: "The God who fed me from my first being unto this day," whence we see that for redemption it

only required an angel, while for the sustenance of a man it required God's providence.

R. Jehoshua ben Levi said: When the Lord said to Adam [Gen. iii. 18]: "And thorns and thistles shall it (the earth) bring forth to thee," tears ran from Adam's eyes, and he said: "Creator of the Universe! Shall then I and my ass eat of the same crib?" but when he heard the Lord say [ibid. 19]: "In the sweat of thy face shalt thou eat bread," he felt relieved. Said R. Simeon ben Lakish: "It were better for us had we been left in our original condition, when we were doomed to eat the herbs of the field; then we would not have been obliged to work so hard for our bread." [1] Said Abayi: "We have not yet been released from that doom, for there are quite a number of herbs which we can eat directly from the field."

R. Shezbi said in the name of R. Elazar ben Azariah: "The earning of a man's daily bread is as difficult of accomplishment as was the dividing of the Red Sea for the Israelites when going out of Egypt."

If it is necessary to recite the great Hallel, why must the small Hallel be recited at the Passover-meal? Because the small Hallel contains the following five things: "The exodus from Egypt, the dividing of the Red Sea, the giving of the Law to the Israelites, the resurrection of the dead, and the sufferings in the time of the Messiah." The exodus from Egypt, as it is written [Psalms cxiv. 1]: "When Israel went forth out of Egypt"; the dividing of the Red Sea, as it is said [ibid. 3]: "The sea beheld it, and fled"; the giving of the Law, as it is said [ibid. 6]: "Ye mountains, that ye skip like wethers," referring to the time when the Law was given to Israel; the resurrection of the dead, as it is said [ibid. cxvi. 9]: "I will walk before the Lord in the lands of life"; and the sufferings in the time of the Messiah, as it is written [ibid. cxv. i]: "Not for our sake, O Lord," etc., commenting upon which, R. Johanan said that it refers to the time of the war of Gog and Magog (which will occur just before the coming of the Messiah and will be the worst period for the Israelites to pass through).

R. Na'hman bar Itz'hak said: The small Hallel is recited for another reason, namely, because it contains the transposition of the souls of the righteous from Gehenna to Heaven, as it is

written [Psalms cxvi. 4]: "I beseech thee, O Lord! release my soul" (from Gehenna).

Hez'kyah said: There is still another reason why the small Hallel should be recited, namely, because it is mentioned that Hananiah, Mishael, and Azariah were thrown into the fiery furnace and came out alive: for the passage, "Not for our sake, O Lord," was said by Hananiah; "but

unto thy name give glory," was said by Mishael, and "for the sake of thy kindness, for the sake of thy truth," was said by Azariah; and the next passage, "Wherefore should the nations say, Where now is their God?" they all three said together. This happened when they were thrown into the fiery furnace, and when they came out Hananiah said the passage [Psalms cxvii.], "Praise the Lord, all ye nations"; Mishael said: "Praise him, all ye people." "For mighty is his kindness over us," was said by Azariah, and "And the truth of the Lord endureth forever, Hallelujah!" all three said in unison. According to another version, this last sentence, "The truth of the Lord endureth forever," was said by the angel Gabriel, because it was said that when Nimrod the wicked threw Abraham our father into the fiery furnace, the angel Gabriel said to the Lord: "Permit me to go and make the furnace cold, that it may do no harm to Abraham," and the Holy One, blessed be He, replied: "Abraham is now the only one who has forsaken idolatry and believes in God, and I am the only One in the world, hence it would be but fair that the only One should rescue the other exception," and as the Holy One, blessed be He, would not deprive any one creature of the reward due, He said to Gabriel: "Thou shalt have an opportunity to rescue three of his children from the fiery furnace, while I Myself shall rescue him." (Whereupon Gabriel is supposed to have said: "The truth of the Lord endureth forever.")

R. Simeon of Shiloni preached: When Nebuchadnezzar the wicked threw Hananiah, Mishael, and Azariah into the fiery furnace, the angel Jurqami, master of the waters, came before the Lord and said: "Permit me to go and cool the furnace, so that I might rescue the righteous from death." Said Gabriel to him: "This would not prove the power of the Lord, for it is well known that water can extinguish fire, and thou art the master of waters; hence it would be but commonplace if through thy means the furnace were cooled. Rather should I, who am the master of fire, be permitted to go, and I shall remove the fire on the inside and make it so much more fierce on the

outside, which will be a miracle within a miracle; for a master of fire will make the fire cool in one place and so much hotter in another." Whereupon the Lord said: "Go thou, Gabriel, and do so," and Gabriel said: "The truth of the Lord endureth forever."

R. Nathan said: The truth of the Lord endureth forever, was said by the fish of the sea, and this is in accordance with the dictum of R. Huna, who said: When the Israelites were brought forth out of Egypt, they were still sceptics, and when taken through the Red Sea, they said: "Surely the Egyptians have passed through the sea at another point, and will overtake and slay us." So the Lord said to the master of the sea: "Throw out all the bodies of the Egyptians in the sea on dry land, so that the Israelites may see them," and the master of the sea replied: "Creator of the Universe! Is there then a slave who was given a gift by his master, and was then deprived of it again?" So the Lord replied: "I shall return to thee half as many again as thou shalt throw out," and the master of the sea said again: "Creator of the Universe! Is there then a slave who should demand restitution of his master?" and the Lord answered again: "The stream of Kishon shall be thy pledge." Whereupon all the bodies of the Egyptians were thrown up on the dry land, and Israel saw them, as it is written [Exod. xiv. 30]: "And Israel saw the Egyptians dead upon the shore of the sea." Whence do we know that the Lord promised half as many again in return for the bodies of the Egyptians? Because concerning the Egyptians it is said [ibid. xiv. 7]: "And he took six hundred chariots," while concerning Sissera it is said [Judges iv. 3]: "For he had nine hundred chariots of iron."

When Sissera came to wage war upon the Israelites, he came with iron spears; but the Lord changed the position of the stars, as it is written [Judges v. 20]: "From heaven they fought: the stars in their courses fought against Sissera." As soon as the stars moved, the spears of Sissera's army became heated, so the men went to cool them in the stream of Kishon, and then the Lord said to the stream of Kishon: "Thou wast pledged, Go now, and redeem thy pledge." Whereupon the stream threw them all into the sea, as it is written [ibid. 21]: "The stream of Kishon swept them away, that ancient stream, the stream of Kishon." Why is it called the ancient stream? It is so called, because it was given as a pledge in ancient time. Then, when all those men were swept into the sea, the fishes, which were

thus provided with so much food, said: "The truth of the Lord endureth forever."

Rabha preached: It is written [Psalms cxvi.]: "It is lovely to me, that the Lord heareth my voice." The congregation of Israel (Kneseth Israel) said to the Holy One, blessed be He: "Lord of the Universe! When do I know that I have found favor in thine eyes, when thou hearest my prayer?" Further, it is written [ibid. 6]: "I was in misery, and He helped me." The congregation of Israel said to the Lord: "Lord of the Universe! Although I am deficient in the fulfilment of religious duties, I am nevertheless thine; hence it would be seemly that thou shouldest help me."

R. Kahana said: When R. Ishmael bar R. Jose became ill, Rabbi sent to him the following request: "Tell us two or three things which thou wert wont to say in the name of thy father," and R. Ishmael replied: So said my father: The passage [Psalms cxvii. 1], "Praise the Lord, all ye nations," signifies that all the nations should praise Him, on account of the power and the miracles with which He has helped the nations, and so much the more should we Israelites praise him; for concerning us it is written [ibid. 2]: "For mighty is his kindness over us." My father also said: In the future, Egypt will bring a gift to our Messiah, and he will hesitate whether to accept it or not, when the Lord will say unto him: "Accept it, for they were hospitable to my children in their land," and it is written [Psalms lxviii. 32]: "Nobles will come out of Egypt" (with gifts). Seeing this, Ethiopia will say: "If the gifts of Egypt, which held the Israelites in bondage, were accepted, surely gifts from us, who never did them any injury, will be so much the more accepted." So the Lord will say to the Messiah: "Accept their gifts also," and it is written [ibid.]: "Ethiopia will stretch forth her hands eagerly unto God." When Rome shall see this, they will say: "Surely if the gifts of the Ethiopians, who are nowise near to the Israelites, were accepted, gifts from us, who are their brethren, [1] will be accepted." And the Lord said to the angel Gabriel: "Rebuke the wild beasts" [Psalms lxviii. 31], and R. Hyya bar Abba in the name of R. Johanan explains this to mean: "Rebuke the wild beasts, whose quills, are used solely to write decrees to the detriment of the Israelites," and the

further passage [ibid.], "the troop of steers among the calves of nations," signifies that they (the Romans) were like a troop who slew the greatest among the Israelites like calves who had no owners. "That hasten along with presents of silver," signifies that they stretch forth their hands to receive bribes from the Israelites, promising them permission to carry out the ordinances of their law; but when in receipt of the bribe violate their promises and prevent the Israelites from performing their religious duties. "He scattereth the nations that are eager for the fight," signifies the following: "What was the cause of the scattering of Israel among the nations? Their own

eagerness for strife."

Finally, R. Ishmael sent to them the following saying of his father: "There will be a city containing 365 market-places; each market will have 365 stalls; each stall will have 365 steps; and each step will contain merchandise sufficient for the entire world." So R. Simeon the son of Rabbi asked his father, according to others he asked R. Ishmael ben Jose: "To whom will such a city belong?" and the answer was: "To thee, to thy colleagues, and to the friends of thy colleagues (*i.e.*, to all righteous men), as it is written [Isaiah xxiii. 18]: "And her gain and her hire shall be holy to the Lord; it shall not be treasured nor laid up; but for those that dwell before the Lord shall her gain be, to eat to fulness, and for magnificent clothing.'"

[Said R. Samuel ben Na'hmeni in the name of R. Jonathan: The passage [Psalms cxviii. 21], "I will thank thee, for thou hast answered me," was said by David. The next passage [ibid. 22], "The stone which the builders rejected is become the chief corner-stone," was said by Jesse (when David was chosen king). The following passage [ibid. 23], "From the Lord is this come to pass," was said by David's brothers, and the next passage [ibid. 24], "This is the day which the Lord hath made," was said by Samuel. "We beseech thee, O Lord! save us now" [ibid. 25], was said by the brothers of David. "We beseech thee, O Lord! Send us now prosperity" [ibid. ibid.], was said by David himself. "Blessed be he that cometh in the name of the Lord" [ibid. 26], was said by Jesse, and "We bless you out of the house of the Lord" [ibid. ibid.], was said by Samuel. "God is the Lord, and he giveth us light" [ibid. 27], was said by all. "Bind the festive sacrifice with cords" [ibid. ibid.], was said by Samuel. "Thou art my God, and I will thank thee" [ibid. 28], was said by David, and "My God, I will exalt thee" [ibid.], was said by all.]

R. Avira preached at one time, saying it in the name of R. Ami, and at another time quoting it in the name of R. Assi: It is written [Gen. xxi. 8]: "And the child grew and was weaned," which signifies that the Lord will prepare a meal for the children of Isaac on the day when he will receive them into his favor. After the meal and the beverages will have been consumed, the Lord will hand the cup used for the benediction after meals to Abraham, and Abraham will say: "I am not worthy; for from me issued forth Ishmael." Isaac will then be asked to pronounce the benediction, but he will refuse on the ground that from him issued forth Esau. Jacob will then be offered the cup, but he will refuse on the ground that he married two sisters, which was afterwards prohibited by Law. Moses will then be requested to say the benediction, but he also will refuse, on the ground that he was not destined to enter the promised land, neither before nor after his death. Joshua will then be asked to accept the cup, and he also will refuse, saying: "I am not worthy, for I died childless." David will finally be offered the cup, and he will accept it, saying: "I am indeed worthy and shall recite the benediction," as it is written [Psalms cxvi. 13]: "The cup of salvation will I lift up, and on the name of the Lord will I call."

MISHNA: It is unlawful to conclude the eating of the paschal sacrifice with a dessert.

GEMARA: What is meant by a dessert? Said Rabh: "After the paschal sacrifice had been eaten in one company, one should not go and eat aught in another company," and Samuel said: "The literal meaning should be taken, as, for instance, I am used to eating mushrooms for dessert, and Abba (Rabh) eats doves for dessert."

R. Hinana bar Shila and R. Johanan both say: "It means, that no dates, parched corn, or nuts should be eaten afterwards," and so we have also learned in a Boraitha.

R. Joseph said in the name of R. Jehudah, quoting Samuel: "After the unleavened bread, dessert may be eaten." Shall we assume that the Mishna supports this statement by teaching that after the paschal sacrifice no dessert should be eaten, but after the unleavened bread it may? Nay; on the contrary, after unleavened bread, which has a hardly perceptible taste, dessert must certainly not be eaten, but lest we assume that after the paschal sacrifice, which is fat and has a pungent savor, we may do so, hence we are taught that it is unlawful.

And objection was made: "We have learned that sponge-cake, honey-cake, and sugar-cake may be eaten to satiety, providing a piece of unleavened bread to the size of an olive be eaten afterwards," whence we see that those sweetmeats may be eaten before but not afterwards. Nay; this is merely to teach us, that not only does a man fulfil by eating unleavened bread when he is hungry, but even if he does so when satiated, he also acquits himself of the duty.

Rabha said: In the present day, the law pertaining to unleavened bread is biblical, but that pertaining to bitter herbs is rabbinical. Why is the law pertaining to bitter herbs rabbinical? Because the biblical law is, that it should be eaten with the paschal sacrifice; but where the latter does not exist, the bitter herbs need not be eaten? Would this not apply also to the unleavened bread? Concerning unleavened bread there is a separate and distinct commandment, namely [Exod. xii. 18]: "In the first month, on the fourteenth day of the month, at evening, shall ye eat unleavened bread." R. A'ha bar Jacob, however, said, that the law pertaining to unleavened bread is also rabbinical, and the passage just quoted refers to such as were incapacitated to eat of the paschal sacrifice, and who might assume that they were exempt from eating unleavened bread also, hence that passage imposes upon them the duty.

The following Boraitha supports the statement of Rabha: The passage [Deut. xvi. 8], "Six days shalt thou eat unleavened bread, and on the seventh day shall be a solemn assembly to the Lord thy God," implying that on the seventh day eating of unleavened bread is not obligatory: the same is the case with the other six days. Why so? Because the seventh day was excluded from the rule governing the whole seven days, and as there is a tradition that an exception holds good for the entire rule, so the exception of the seventh day holds good for the entire six; *i.e.*, if it is not obligatory to eat unleavened bread on the seventh day, it is also not obligatory on the other six days. Shall we assume, then, that it is also not obligatory on the first night? for that reason it is expressly written: "At evening shall ye eat unleavened bread," which makes it obligatory for that evening.

Shall we say that as the paschal sacrifice was a duty only when the Temple was in existence, so it is with the unleavened bread, that after the destruction of the Temple it is not obligatory; therefore the passage says: "In the evening ye shall

eat Matzoth," consequently the passage made this obligatory forever.

MISHNA: If any of the company fall asleep during the meal, they may eat of the paschal sacrifice afterwards; but if the whole company have fallen asleep, they must not again eat thereof (upon awakening). R. Jose said: "If they are only drowsy, they may eat it, but if they fall fast asleep, they must not eat of it afterwards."

The paschal offering does, after the hour of midnight, render the hands unclean. Sacrifices which are rejected or that have remained beyond their prescribed time, also render the hands unclean.

GEMARA: Abayi was sitting before Rabba. The former said that the Master was asleep, and he said to him: "Are you asleep, Master?" and he answered: "I am only drowsy"; and we have learned in a Mishna that if they are drowsy they may eat, but if they are fast asleep they must not eat of it afterwards.

Who is the Tana who holds that after midnight on the Passover eve the remaining portion of the sacrifice is called a remainder within the meaning of the law? Said R. Joseph: R. Elazar ben Azariah."

Said Rabha: According to R. Elazar ben Azariah, if a man ate unleavened bread after midnight on the Passover eve, he has not accomplished his duty. Is this not self-evident? If the unleavened bread is put on a par with the paschal sacrifice, then surely after midnight the time during which it must be eaten has elapsed. We might assume that, because the passage finally separates the unleavened bread from the paschal sacrifice, it cannot be classed with the latter, therefore we are taught that it remains on a par with the paschal sacrifice, as stated in the passage, Exod. xii. 8.

MISHNA: Whosoever has said the blessing on the paschal offering is not bound to say that on the festal offering, but one who has said the blessing on the festal offering is bound to say it on the paschal offering also. Such is the dictum of R. Ishmael; but R. Aqiba said: "Neither of these absolves from the obligation of saying the other blessing."

GEMARA: R. Simlai once happened to be at a celebration of the redemption of a first-born son, and he was asked the following: "It is self-evident that the benediction, 'who hath sanctified us with his commandments and has commanded us the

redemption of our son,' should be said by the father, but the other benediction, namely, 'who hath permitted us to live to this time,' who is to say this--the priest, because he derives material benefit therefrom, or also the father, because he fulfils the religious duty?" R. Simlai did not know; so he went to the college and inquired, when he was told that the father of the son must pronounce both benedictions, and so the Halakha prevails.

Footnotes

220:1 This explanation is taken from the commentary of Rashbam the grandson of Rashi.

227:1 This is according to the explanation of Rashbam in the third instance.

227:2 There was a tradition extant at that time that anything done an even number of times involved danger to the perpetrator, but if done an odd number of times the danger was averted. (According to page 229.)

227:3 In the original edition of the Talmud an entire page follows here relative to the tradition quoted in the preceding note, which we have omitted on account of its irrelevancy to the text proper.

229:1 All that is stated here about odd and even numbers, as well as the subject of evil spirits (which covers here two and one-half pages of the original), is omitted in Maimonides; and the author of the "History of Oral Law" maintains that, according to the opinion of Maimonides, it was not contained in the Talmud originally. (See page 223, vol. iv., Vienna, 1883.) We, however, although we agree with the above mentioned author, do not care to omit these themes entirely, and have put in a little of both, as the tradition of the odd and even numbers at least existed at that time. (See, also, our Hebrew Commentary to Tract Shekalim, vol. iv., Page 14, of the Hebrew.)

231:1 There is a legend that R. Papa had lent a Syrian woman money, and whenever he would call on her to collect the debt, she would invite him to sit on a bed. One day she strangled a child and threw it upon the bed where R. Papa sate. She then accused him of strangling the babe, and he was compelled to flee for his life.

236:1 *Vide* Leviticus xii, 4.

240:1 The custom was to serve each man separately on a small table which was placed at the couch upon which the men would lean while partaking of the meal.

241:1 The apple-tree that is mentioned in Solomon's Song (viii. 5), "Under the apple-tree have I waked thee," upon which is based the legend that when the edict was promulgated in Egypt to slay the male children of the Israelites, the mothers would give birth to their children under apple-trees and thus shield them from the Egyptians.

244:1 All these ten expressions are to be found in the original Psalms, and while not all of exactly the same meaning imply more or less the same thing.

246:1 There was already in the time of the Talmud a class of men who did not care for the figurative explanation of the Scripture, but who explained it almost literally. They were called Karaier or Baali Mikra, which means men who depended only on the literal translation of the Scriptures, as the Hebrew word Kara means verse. The Karaier of the time of the Gaonim have probably derived their name from them. (See our "History of the Talmud," Chap. Karaites.)

248:1 By Haphtorah is meant the several passages in the Prophets which are read after the

reading of the section in the Pentateuch of the day has been ended.

251:1 This explanation of the text is according to the commentary of Rabbi Samuel Aidlash (Marsha').

254:1 The Talmud states that the Romans were descendants of the Edomites, children of Edom or Esau, the brothers of Jacob, as it is written [Gen. xxxvi. 1]; "The generations of Esau, who is Edom."

Next: Appendix A

APPENDIX A.

(EXPLANATORY OF THE FIRST MISHNA--PAGE 1.)

THIS Mishna we have explained in a different manner from that employed by the Amoraim, in our monthly periodical *Barqai* (in the note on p. 17); and as this explanation has been approved by many eminent scholars, we translate it here for the English public. The explanation quoted was in reply to the attempt of the learned Mr. Buhock of Cherson to interpret this Mishna, in an article printed in the same publication.

After a short preface reviewing the statement of Buhock, the note in question reads:

But before we endeavor to explain this Mishna according to its literal meaning, we will preface that on two points we cannot agree with the learned writer of this article, while on a third we can do so only partially:

(1) That the word "Or," which the Tanaim have used in many Mishnas and Boraithas, signifies "twilight," when there is still some light lingering. Aside from the fact that reason does not admit of this interpretation, we have against it R. Eliezer b. Jacob, who fixes the time from "Or" as that when work is prohibited, and that is only dawn, or sunrise, as the sages of the Gemara also admit; and we must say that he used in his decision a word the meaning of which was known to the whole world, as his colleague designates the "time after sunrise" by a term so well known that it is not subject to doubts. Then, as we see that all the sages understood "Or" to mean daybreak, we need not go out of our way to give to it another meaning. And inasmuch as we are aware that the Tana desired to fix the time so that all should know it, why should he, in such a case, have used

an obscure expression, the meaning of which would be subsequently a matter of dispute?

(2) That when our Mishna used the expression "the Chometz," instead of "Chometz," it refers to the Chometz mentioned in Scripture. But concerning the Sukka, the Tana has not made it known beforehand that it is obligatory to sit in a Sukka on certain days; and similarly of the Lulab and the citron. And notwithstanding this, he begins, "A Sukka which is high," etc., and not "*the* Sukka," doubtless resting upon the presumption that the scriptural law is known. Therefore we must find another leaven which was known at that time, distinct from the leaven of the Bible, and which was searched for; for of biblical leaven this Tana says further: "The place where *leaven* is not brought," not "*the* leaven."

(3) Concerning Mr. Buhock's statement, that when the Tana speaks of the usage in his time to search for leaven, he also fixed the time and quoted the Halakha ordaining that it be accomplished by the light of a candle, we can only agree with the first half of the statement, viz.,

that the Tana speaks of the usage. But we deny that it was his purpose to fix the time and quote Halakhas in question; for in that case he would also have specified the time *until* when the search should be made, in the beginning of the Mishna, as he did in specifying the time of reading Shema, of which he says in the very beginning, "from this time to this time." And if we should say that he wished to fix the time of search immediately after a man's coming from the field or from work, so that the duty should not be forgotten, in that case he had also to specify the time of ending it, similar to his treatment of Shema, which was also fixed when one comes from the field, in order that it should not be forgotten, as it is said in Berachoth: "That he should not say, 'I will eat first, will drink first,' etc., and is then found sleeping the whole night." Nevertheless, they fixed times, one till the end of the first watch, one till midnight, and one till dawn, in the very same place where the time of the beginning is specified. But here, at the end of the Mishna even, he does not fix any time for stopping, as will be explained further on. Therefore we must seek another manner of explaining this Mishna, and in the same connection express our opinion about all the Mishnayoth which begin with diverse Halakhas before stating the source and obligatoriness of these Halakhas. We will proceed to do this after one other prefatory remark, viz., that our sages have long ago permitted us to

interpret the Mishna in a manner different from the sages of the Gemara; that is to say, not to be at variance with the Halakhas which are decided in the Gemara, but only in the interpretation of the meaning of the Mishna, which the Babylonians did not always understand, owing to their remoteness in place and time. (See A. H. Weiss, Vol. III., p. 17, etc., and "He'halutz," V., p. 33; and also Tosphath Yom Tob, Tract Nazir, V., 5.) And sometimes even when they understood it, seeing that it would not agree with the Halakha which was customary, or even with the saying of a certain great Amora with whom they could not differ, they strained the Mishna, discovered it in different readings, and made strange comment, to make it correspond with the customary Halakha or the opinion of the Amora. Therefore they made deductions and additions at their pleasure. And now, without touching on the Halakhas concerning the search of leaven, we will investigate the origin of this usage in the times of the Mishna.

The custom was in the East in former days, as well as at the present time, to eat fresh bread every day; and in every household bread was baked daily (for bread of bakers was rare, and the populace scarcely used it). And on the day before Passover, when the first meal, *i.e.*, of leavened bread, had to be taken in the morning not later than the fourth hour (*i.e.*, 10 A.M.), they baked their bread in good time, before daybreak, and after this they searched for any leaven that might have been left, gathered it to one place, and cleared the house of it; and as dawn had not yet illuminated the house, they used a candle to make search in all those places where they were liable to carry leaven. The Tana of our Mishna, who everywhere used as a support the custom well known in his time, without beginning to relate the *law* anew (of which the best proof is the mention of the Lulab, as be begins the Halakha, "A purloined Lulab is invalid," before he has stated that the palm-boughs mentioned in the Bible are equivalent to the Lulab; and if he did not make reference to the custom known to all in his time, be should have declared what the palm-branches meant), stated, here also, this custom as follows: "'Or' (at daybreak) on the fourteenth, search is made (by the women) for the leaven (which they are at the time using), by candle-light (that it may be transferred to other places before the sun illuminates the house)." And he approves the custom by saying: "A place where leaven is not carried does not require searching"; that is to say, this custom is proof that

leaven need not be searched for in other places, and at other times.

"Beth Shammai say, 'also two rows (of barrels) ranging across the whole cellar' (the women searched for leaven in, because they were accustomed to go there with hands fresh from kneading leavened dough to fetch the yeast obtained from the wine for baking); but Beth Hillel say, 'only the upper row of the two outer rows' (they made search in, because only from those rows did they fetch the yeast, but not from all barrels of the cellar). (And) it is not apprehended that a weasel had transferred it from one spot to another, and from one house to another; for if so, then it will be feared, from court to court, etc. R. Jehudah says: Search was made at daybreak on the 14th, and on the morning, and at the time of clearing (*i.e.*, when the bread is baked, when it is eaten, and when it is burned), and the sages say: If search has not been made at daybreak on the 14th, it is made on the 14th (*i.e.*, in the morning); if not on the 14th, it is done on the intermediate days; if not on these days, it may be done after the festival (that is to say, the men are under no particular obligation, and have no particular time prescribed for them, to make search for the leaven, and it is not feared lest they forget, for even if that occur, they lose nothing)."

This was the form of the Mishna which the arranger of the Mishnas had before him, or had heard orally,, and he was not anxious to explain its meaning, as in his time also the custom had not yet undergone any change. But some copyist, who did not understand the relevancy of the cellar to the leaven, added at the margin: "Why were the two rows of barrels in a cellar mentioned? That is a place whither leaven is carried." Later this marginal note was inserted into the text of the Mishna. The sages of the Gemara, truly, were not satisfied with this remark, and put the question: "Who spoke here of a cellar?" For they thought that this Mishna stated the Halakha, and therefore were anxious to ascertain the meaning of the word "Or." R. Huna explained it to mean "Nog'hi" ("light," in Aramaic), *i.e.*, the beginning of the day; and R. Jehudah "before daybreak," as in the language of his part of the country it designated the time before daybreak, when it is yet night. The other also reasoned, and said: "At the first glance, it seems 'Nog'hi' means 'light,'" etc.; and as it was perplexing to their minds why candle-light was needed for the search, they sought for reasons in Scripture, and used passages thereof in support off

their opinions, arguments from analogies of expression, etc.. etc., which did not enter the Tana's mind at all.

And it is manifest that in all the Boraithoth in which the word "Or" was used, it means "dawn," which was the latest time for all duties to be performed in the night. Even in the Boraitha in Yoma, stating: "'Or' on the Day of Atonement the prayer should be so and so," etc., the word is also used to designate the whole night till the break of day, during which the prayer is yet called "prayer of the evening but that after daybreak is called "morning prayer."

Next: Appendix B

APPENDIX B.

(SUPPLEMENTARY TO SECOND NOTE, PAGE 66.)

IT seems to us necessary, in explanation of this curious passage, to make the following extract from our "History of Amulets":

It is no wonder that the change of one letter in a word resulted in the writing of volumes upon volumes and the adoption of hundreds of restrictions.

The following instance will illustrate this: R. Jehudah being once in a company of friends advised the housekeeper not to use for bread-making any other water than that kept in the house, and he expressed it in six words:

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(A woman should not knead with other than *our* water). The reason was that other water might have been poisoned by snakes, which are abundant in those countries. R. Jehudah said this in reference to the dispute in the *Boraitha* (Terumath VI.) where one maintained that bread made with water kept in an uncovered vessel outside the house should be burnt, even if it were bread of *Terumah*. R. Nehemiah was of the opinion that the snake poison loses its power when brought into contact with fire, and therefore that the bread might be used. To avoid this, R. Jehudah advised the use of *domestic* water, which he expressed by the word (••••) "our."

R. Mathna, who lived sixty years after R. Jehudah, happened to be in the city of "Papuni" and on a certain occasion (probably

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having some objection to the use of the water of that city) lectured in public about using the water which collects in the public streets, and he quoted R. Jehudah's original words: "A woman should not knead with other than *our* water." The people present understood R. Mathna to have brought some water along with him because of his using the word "our." They therefore came to him the next day with vessels to get some of this water. Then R. Mathna explained in the Talmudic language that he meant domestic water, namely

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using the word (•••••) (d'baitha with an •) at the end, having the meaning "domestic." In course of time the word *d'baitha* was incorrectly copied and the Aleph (•) at the end was changed to Vav (•), which would make it mean "which has remained over night." The Rabanim, finding the word in this changed form concluded that it related to the Matzoth (unleavened bread) used at the Passover and therefore maintained that the water used in making Matzoth must remain over

night in the house before it is used. Neither R. Jehudah nor R. Mathna mentioned this, but it was assumed simply because these words of R. Jehudah are found in that tract of the Talmud which treats of the Passover feast. The later Rabanim wrote volume after volume upon this subject (see our journal *Ha-Kol*, Nos. 286, 287, 290, etc.). Still they could not give the least explanation of why they referred this to the Matzoth, and they did not care to investigate where R. Jehudah got it from nor how Matzoth were kneaded before his time.

END OF TRACT PESACHIM.

Errata

page 9: '*learuing*'->'*learning*'

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page 69: 'past'->'paste'

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page 76: 'opinon'->'opinion'

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page 151: 'fufilled'->'fulfilled'

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page 241: 'breadover'->'bread over'

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page 18: 'trepasses'->'trespasses'

NEW EDITION

OF THE

BABYLONIAN TALMUD

Original Text, Edited, Corrected, Formulated and Translated into English

MICHAEL L. RODKINSON

SECTION MOED (FESTIVALS)

TRACTS YOMAH AND HAGIGA

Volume VI.

BOSTON

THE TALMUD SOCIETY

1918

EXPLANATORY REMARKS.

In our translation we adopted these principles:

1. *Tenan* of the original--We have learned in a Mishna; *Tania*--We have, learned in a Boraitha; *Itemar*--It was taught.

2. Questions are indicated by the interrogation point, and are immediately followed by the answers, without being so marked.

3. When in the original there occur two statements separated by the phrase, *Lishna achrena* or *Waïbayith Aema* or *Ikha d'amri* (literally, "otherwise interpreted"), we translate only the second.

4. As the pages of the original are indicated in our new Hebrew edition, it is not deemed necessary to mark them in the English edition, this being only a translation from the latter.

5. Words or passages enclosed in round parentheses () denote the explanation rendered by Rashi to the foregoing sentence or word. Square parentheses [] contained commentaries by authorities of the last period of construction of the Gemara.

TO THE

VENERABLE PRESIDENT OF THE HEBREW UNION COLLEGE

AND OF THE CENTRAL AMERICAN RABBIS' CONFERENCE

THE REV. DR. ISAAC M. WISE

AT HIS

EIGHTIETH BIRTHDAY

THIS VOLUME WITH THE ENTIRE SECTION MOED, IS MOST RESPECTFULLY DEDICATED BY HIS SINCERE FRIEND

MICHAEL L. RODKINSON

NEW YORK, 1899.

p. iv

MOST HONORED RABBI:

When, five years ago, in the month of October, I had the honor to visit you, and then expressed my sorrow in not being able to attend your seventy-fifth birthday, I promised you that I would write a work and dedicate it to you for your eightieth birthday. Now, after the lapse of five years, I praise God that He has preserved us both. I have fulfilled my promise, and written a work on the History of the Talmud, which I believe to be of some value, with the intention of dedicating it to you, but my circumstances do not allow me to publish it in time for your celebration. However, I redeem my promise in dedicating to you the Section Moed, which at that time I had no intention of translating into English.

I hope to see your ninetieth birthday, when, among all your disciples and admirers who will celebrate it, I also may take part.

M. L. R

p. v

TRACT YOMAH (DAY OF ATONEMENT)

p. vii

EXPRESSION OF THANKS.

WITH the issue of this volume this section is almost complete (the last two volumes being in press), and I deem it my duty to express my heartfelt thanks to my patrons and supporters during the last three years, ever since my work was undertaken. Through their support I have been enabled to reach my present position. This is the first time in the history of the Talmud that an entire section of it was translated into a living and comprehensible language, making it easily understood even to a layman. The synopsis of each tract indicates where the most interesting ethical and folkloristic portions way be found, thereby rendering the various tracts readily understood, even by one who is not a student.

Three years ago, when I made up my mind to begin this work, I scarcely dared hope that thirteen [1] tracts of the most difficult part of the Talmud would be translated, more especially that seven of them, the most voluminous, would be published in the course of two years. Notwithstanding all the obstacles that were laid in my way by personal enemies, and notwithstanding all the financial difficulties [2] which I had to surmount, I have succeeded in accomplishing the work mentioned above, chiefly through the aid of the few gentlemen who have encouraged me by enlisting their sympathy and interest in my work, and who also supported me financially, [3] not as a matter of charity, but

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in the form of a subscription and payment in advance for the forthcoming volumes, for the issue of which in due time they have reposed their confidence in me.

Many friends have assured me that this work is destined to become historical, and as the Talmud has indeed a great history, the first translation of it in a foreign tongue cannot fail to attract attention, and therefore I trust that my work will add somewhat in demonstrating its value and importance. In that event all the names of my supporters and sympathizers who will be known to the future historian (which may be after my death) will be mentioned with honor.

With this view in mind, I enumerate herewith with grateful acknowledgment the names of my supporters since this work began, and especially those who aided me during the last two months of the past year, and enabled me to publish the present volume by paying for from twenty-seven to ten forthcoming volumes, at the rate of $2.50 each, in advance. May God bless and prosper them in all their undertakings!

I also extend my thanks to all my subscribers, far and near, for their kindness in the past, hoping at the same time that it will be extended in the future. I am also grateful to the rabbis of the city of New York, who, with very few exceptions, sympathize with my work, and have assisted me with their influence and subscriptions.

The list of patrons is arranged alphabetically. The asterisk indicates that the volumes already delivered and paid for are NOT included. Asterisk and dagger indicate also the subscription for two sets. The list of names on page ix shows those added during the last two months of the past year.

Cowen, Newman	20 Volumes.
Hirsch, Baroness Clara de	30
Lewisohn, Leonard	20
Rothschild, Baron Edmond de (through the Grand Rabbin de France, Zadoc Kahn, [1] who is himself a subscriber)	25
Seligman, Prof. Edwin R. A. * +	20
Sulzberger, Judge Mayer	24

Abraham, A.,* Brooklyn	20 volumes.

Adler, Prof. Felix *	10
Borg, Simon	10
Friedlander, Albert	10
Gans, Louis *	10
Greenbaum, Samuel *	10
Hays, Daniel P	20
Hirsch, Nathan,* of Joseph Hirsch & Son	10
Isaacs, Bendet *	20
Josephi, Isaiah	20
Knopf, Samuel *	10
Lehman, Emanuel*	10
Marshall, Louis *	20
Platzek, M. Warley * +	20
Plaut, Louis, * Newark	10
Rice, Isaac L. *	10

Saks, Andrew * 27

I have to thank once more the following gentlemen and lady, who, besides their subscriptions, have also exerted their influence in insuring me a considerable number of subscribers:

Messrs. Samuel Greenbaum, Daniel P. Hays, Isaiah Josephi, Andrew Saks, and Miss Annette Kohn.

I trust that in the last volume of this section this list of supporters will be greatly increased, as I still need further assistance, till the section is completed, when I am confident that I will derive good financial returns from its sale to booksellers and general agents, who are awaiting the completion of the section, to be sold *en masse* as a complete work by itself.

I am hopeful that the coming generation will be grateful to all those who took part in opening a scaled book to the eyes of the world.

Finally, I express my thanks to my printer, ex-Congressman Hon. Joseph J. Little, who has granted me considerable credit in his establishment, thereby greatly lightening the burden of my work; also to his proofreader for calling my attention to many matters which seemed to him imperfect, and whose assistance I value greatly, and last, but not least, to Mr. A. S. Freidus of the New York Public Library, for many valuable suggestions in bibliographical and other matters.

MICHAEL L. RODKINSON.

Footnotes

vii:1 The translation of one tract of section Jurisprudence is also already completed.

vii:2 It must be borne in mind that the cost of publishing one volume is $700 or more.

vii:3 In my "History of the Talmud" I take notice of the writers who complain that the Jewish people were always opposed to the translation of Jewish lore into foreign languages. They, moreover, assert that all the translations of the Bible, and all the collections of Hebrew manuscripts, as also the Massorah, were supported by different governments and private Gentiles. Zunz ("Ges. Schr.," vol. i., p. 296), in recommending a translation of the Talmud, also relates (p. 273) that the Russian Government, in July, 1829, paid 12,000 thalers to the Abbé Chiarini for a translation of the Talmud in the French language. In one of his works, issued at Paris, the latter complains that the Hebrews opposed and prevented him from accomplishing his commission. See also Wolfsohn's "Jeschurun," p. 242, Breslau, p. viii 1604. it is also a well-known fact that Emperor Nicholas I. of Russia assigned 100,000 rubles for a translation of the Talmud; and that Dr. Pinner, who translated tract Berachoth into German, a work considered of little merit by all scholars, nevertheless received 10,000 rubles from him. A German translation of the Talmud is now being published through the effort of Gentiles. I am proud to say that I am the first who has not sought the support of Gentiles, and that all that I have done was brought about by my coreligionists.

viii:1 **•••• ••••• •••••• •••••**

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CONTENTS.

Next: Introduction to Tract Yomah

INTRODUCTION TO TRACT YOMAH, OR THE DAY OF ATONEMENT.

THE first seven chapters treat of the manner in which the Day of Atonement was celebrated in the second Temple: the different sacrifices brought on that day, the preparation of the high-priest for his ministry, and the order of service as he performed it, entering fully into minute details of every circumstance connected therewith. Although all this has an historical value only, we cannot refrain from giving an introduction to this tract, on account of that day being so different from all the holidays of Israel.

All the festivals, although they were not observed all the time during the first Temple, were nevertheless observed by some of the kings, who invoked the people to celebrate them some of the time; *e.g.*, the Feast of Passover, with all its sacrifices, in the reigns of Hezekiah and Josiah [2 Chron. xxx.; xxxv.]. There is also related [ibid. xxxv. 18], that in the days of the prophet Samuel, Passover was held. The Feast of Tabernacles was celebrated in the days of Solomon [I Kings viii. 2], and although the children of Israel did not dwell in the booths since the days of Joshua b. Nun [Neh. viii. 17] nevertheless the feast was celebrated with all its appertaining sacrifices; and also the Pentecost they have kept [2 Chron. viii. 13]. The Day of Atonement, however, is not mentioned in the entire Scriptures, with the exception of Lev. xvi., and among the prescription of the various sacrifices; but even then we see something unusual among the commandments of the Scriptures; namely, the remark that he (Aaron) did as the Lord had commanded Moses. 1

Moreover, we can plainly see from the Scriptures, that at the time of King Solomon the Day of Atonement was one of the seven days of rejoicing, at the dedication of the Temple [1 Kings viii.; 2 Chron. vii. 8, 9]; and although it is said in the Talmud that the decision not to keep the Day of Atonement was only a temporary one (as it will be explained in Tract Moed Katan), still we cannot rely upon an individual opinion in the Talmud. The facts are that the Day of Atonement was not observed, not only during the first Temple, but at the beginning of the second as well, for even in Nehemiah the Feast of Tabernacles is mentioned, but the Day of Atonement is not. And even during the middle period of the second Temple the Talmud states that the Day of Atonement was one of the holidays for the people, in which the daughters of Israel, all dressed in white, went forth to dance in the vineyards, as will be explained in Tract Taanith. It would be ridiculous to believe that, while observing the five afflictions of the day (see chapter viii. of this tract), they nevertheless danced and sang, trying to captivate the youths.

Ewald, in speaking of that day, also remarks that it is different in its respect from all the holidays; but even he does not explain the reason. He only indicates that it may be a remnant of the pre-Mosaic time. In order to give the reader an opportunity of forming his own opinion, we herewith give an extract from Ewald concerning the Day of Atonement:

"The preparatory celebration in the autumn, which took place on the tenth day of the seventh month, was essentially distinguished from that of the spring in not being a terror-stricken celebration at the commencement of the year, which sought to avert the perils of the dim future and, as it were, the wrath of a new coming God, but in being rather a pure feast of penance which endeavored to expiate all the human and national transgressions and impurities which had occurred during the year, For although the searching stringency of Jahveism, already described, required that every, even the smallest, impurity and defilement which had been contracted should be immediately expiated, yet the higher religion was well aware how little all the

secret and slowly advancing desecrations were actually removed from the entire community. Hence this universal festival of penance and expiation was established in order that even all these might be expiated as far as human labor could avail, and that the community, as free as possible from all guilt, might celebrate with joyous feelings the great happy festival of the year which immediately followed. Both this origin and purpose, and also its name, *feast of expiation*, show its genuine Mosaic character. Here, more than in any other, the entire purpose and the absolute stringency of the higher religion found expression, and it was certainly this religion which first founded the festival. Only in one of its rites, which, strictly speaking, is hardly essential, do we find a remnant of pre-Mosaic belief and life. The festival, then, was by no means to be principally of a domestic character, like the Passover; rather, in contradistinction to the latter, was it to become a thoroughly public festival. Accordingly, the people were not to offer any of the regular sacrifices, but a new one, which should go deeper and reach a more sensitive point in taming man's sensuous nature than the regular offerings. This was to be a rigid fast from the evening of the ninth to that of the tenth; the solitary fast which Jahveism annually required. The whole structure of Jahveism did indeed require that a sacrifice of the ordinary kind should be offered on this day, as its peculiar importance demanded; but this continued to be purely sacerdotal. It was a great expiatory offering, to be made by the high-priest or his representative. Not only the human members of the community, including the priests, were now deemed impure and in need of expiation, but even the visible sanctuary as well, as though, like a wall between the nation and its God, it received all the stains of impiety which were incurred in the realm. Hence the high-priest employed expiatory offerings of two kinds: one, purely sacerdotal and serving especially for the atonement of the sanctuary, and another, which had special reference to the share of the community, and must therefore also proceed from it. The latter bore quite a national stamp, and evidently forms that portion of the usages which was derived from a pre-Mosaic time, and still retained subsequently." ("The Antiquities of Israel," by H. Ewald, pages 361 to 364, which see.)

It seems to us that Ewald's opinion is not altogether right. We do not agree that this festival shows more of the Mosaic character than any other festival, nor with his opinion about the he-goat destined for Azazel, which he considers a pre-Mosaic rite. He is also not correct in saying that there were no regular sacrifices on that day, only new ones [vide Num. xxix. 7, 8], for the simple reason, if such was the case it would have been observed at the beginning of the second Temple, at least, when the entire Law, as we now have it, was discovered by Ezra; but, as stated above, the observance of that day with pomp and celebration (see Appendix) was begun some time during the middle period of the second Temple.

On the contrary, from the great preparations and parade of

the high-priest to and from the Temple, and from other matters, which took place during the

service itself, we would be inclined to believe that the Hellenism which crept into Judaism has served a great deal towards their origination; and also concerning the he-goat destined for Azazel we have something to say, but as we do not like to lay before our readers the grounds for our supposition, we refrain from making our statement. We content ourselves with referring the reader to the book "Daath Elohim ba-Arez" ("The Knowledge of God in the Land "), by Abraham Krochmal, where he will find some hints concerning the Azazel of the Scripture and the Tsuk (rock of its destination) of the Mishna, and leave to him to form an opinion of the time of its origin.

Concerning the services proper at the Temple, we have to translate here for our English readers what we have already written in our Hebrew commentary to Tract Shekalim, chapter iv., Mishna D: "From this Mishna we can see that during the time of the Temple the leaders of the priests kept everything secret, and their customs were not known to any one else; otherwise there could not have been a dispute concerning the services there immediately after the destruction of the Temple. Moreover, R. Ishmael, himself a priest, and his forefathers, Elisha and Ishmael, were prominent priests during the time of the Temple; also R. Hanina the Segan was one of the prominent priests, still they knew not exactly the ceremonies and the manner of their performance, and differed in their opinions greatly. This must be borne in mind by the readers of the tracts treating the services and sacrifices."

We have added to this volume the Tract Hagiga, as it relates to the sacrifices of the festivals, and is also of great historical value. Although in the old edition the Tract Hagiga is next to Moed Katan, the last of section Moed, still in our new edition we could not keep up the old rotation, as we have divided the volumes of the above section in approximately uniform size, and each part contains a complete tract. Nevertheless we number the pages of each tract separately, in order that if any one wishes to bind the volumes in the old order, there should be no hindrance.

NEW YORK, *January*, 1899.

Footnotes

xiii:1 Reading the Scriptures critically, we deem that Lev. xvi. is merely a continuation of Lev. x., where the death of the two sons of Aaron is related when they entered the sanctuary; and after that Aaron is instructed as to the manner in which he can enter the sanctuary *so he shall not die*. In the entire chapter xvi. no mention is made of the Day of Atonement, except that from verse 29 to the end of the chapter, we find the command that it shall be a statute forever for all the Israelites, that on the tenth day of the seventh month the high-priest shall make an atonement for his brother priests, for the sanctuary, and for the people of Israel; but there is no command that he, on that day, shall perform all the ceremonies prescribed in the same chapter, for that concerns only the entrance of Aaron into the sanctuary. Also Ewald has considered this point; and it is possible that the sages, during the first Temple, interpreted this passage in the same manner, and all the sages after them, until the middle period of the second Temple, since when the learned priests, for a reason unknown to us, decided that the entire chapter relates to the Day of Atonement; and the sages of the Talmud, on account of this, afterwards deduced from the scriptural passages the elaborate manner of the service on that day to be found in the Talmud.

Next: Synopsis of Subjects, Tract Yomah

SYNOPSIS OF SUBJECTS

OF

VOLUME VI.-TRACT YOMAH. 1

CHAPTER I.

CHAPTER II.

CHAPTER III.

CHAPTER IV.

CHAPTER V.

CHAPTER VI.

CHAPTER VII.

CHAPTER VIII.

Footnotes

xvii:1 See introduction to synopsis in Tract Sabbath, Vol. I., p. xxix.; also note at end of synopsis in Vol. V.

Next: Chapter I: The Preparations of the High Priest

TRACT YOMAH (DAY OF ATONEMENT).

CHAPTER I.

CONCERNING THE HIGH-PRIEST'S PREPARATIONS FOR THE SERVICE OF THE DAY OF ATONEMENT (WHEN THE TEMPLE WAS IN EXISTENCE).

MISHNA: Seven days before the Day of Atonement the high-priest is to be removed from his house to the Palhedrin Chamber (παρεδρων), and another high-priest is appointed to substitute him in case he become unfit for the service by becoming unclean. R. Jedudah says another wife is to be appointed for him also, in case his own wife dies, whereas it is said [Lev. xvii. 11], "and shall make atonement for himself and for his house"; "his house"--that is, his wife. But it was objected that in this manner there will be no end to the matter. (The other wife may die too.)

GEMARA: We have learned in a Mishna (Tract Parah, III., 1): "Seven days before the red cow [1] was to be burned, the priest who had to perform this ceremony was removed from his house to the northeastern chamber of the Temple," etc. "Whence do we deduce this?" said R. Miniumi bar Helviah in the name of Mahassia b. Iddi, quoting R. Johanan: "It is written [Lev. viii. 34]: 'As they have done this day, so hath the Lord commanded to do farther, to make an atonement for you.' 'To do farther' signifies the red cow; 'to make an atonement for you', signifies the Day of Atonement." But perhaps it signifies the atonement of sacrifices generally? Could we know, in this case,

which priest is going to perform the rite? How, then, could he be removed from his home? But perhaps other festivals are meant? We infer the removal seven days before one day from the removal, seven days (before) for the service of one day, [1] but not seven days (before) for a service of seven days [of the festivals of Passover and of Tabernacles]. Perhaps Pentecost, which also is only one day, is meant? Said R. Abba: "We infer a day of one bull and one ram (when one such is sacrificed) [as on the days of consecration], from a day of one bull and one ram, which is the offering for the Day of Atonement; but for Pentecost two rams are prescribed." Perhaps New Year's Day is meant (which is also only one day)? Said R. Abahu: "We may infer a day of the bull and the ram at the priest's own cost from a day when the priest must act likewise, and that is the Day of Atonement. But on the days of Pentecost and of New Year the bull and ram are at the public cost." R. Ashi, however, said: "We may infer a day on which the bull is a sin-offering, and the ram a burnt-offering (as on the day of consecration and on the Day of Atonement), but on New Year's Day and Pentecost both are burnt-offerings."

Rabbina said: "We may infer from a day on which the service is allowed only to the high-priest a day on which the same is the case, but on the other festivals [than the Day of Atonement] the service is permitted to other priests.

R. Johanan taught: "Both phrases, 'to do farther' and 'to make an atonement,' refer only to one day, and that is the Day of Atonement." Resh Lakish, however, infers from the same two phrases--from "to do," the red cow, and "to make an atonement," the Day of Atonement (as stated previously). But how can R. Johanan infer only one of these, since we have learned that for the red cow the priest was also removed? That was not biblical, but optional. [To contradict the Sadducces, the priest was purposely made unclean, and therefore he was recompensed by honors, one of them that of being removed seven days before.]

When Rabbin came from Palestine, however, he said in the name of R. Johanan, quoting R. Ishmael: "By 'do farther' the red cow is meant, and by 'to make atonement' the Day of Atonement." Said Resh Lakish to him: "Whence do you deduce this? From the days of consecration! As on those

days everything mentioned is obligatory, so on these occasions it should be. Perhaps you will say, it is so. But have we not learned that a substitute is prepared? and it is not written that the substitute must also be removed. If you will say, the substitute was likewise removed, then why does the Mishna say, the high-priest was removed, and a substitute was prepared? Let one expression be used concerning both."

Rejoined R. Johanan: "Whence do you, Master, deduce this?" He answered: "I deduce it from what occurred on Mount Sinai. As it is written [Ex. xxiv. 16]: 'And the glory of the Lord abode upon Mount Sinai, and the cloud covered it six days, and he called unto Moses on the seventh day.' Let us see. He called him on the seventh day; to what purpose were the six days? To make a rule for every man who must enter the abode of the Shekhina, that he must be separated six days." But did we not learn "seven days"? Six days are sufficient; but our Mishna is in accordance with R. Jehudah b. Bathyra, who says that seven days are requisite (as will be further explained).

Rejoined R. Johanan again to Resh Lakish: "It is, according to me, who deduce it from the days of consecration, that the following Boraitha should say, that on the priests on both occasions they sprinkled during all the seven days of preparation, from all the ashes of the red cows which were to be found there, because on the days of consecration there was also sprinkling. But according to you, who deduce it from Mount Sinai, where do you find sprinkling on Mount Sinai?" Resh Lakish answered: "Even according to your theory, are they equal? In the days of consecration the sprinkling was of blood, and here water Rejoined R. Johanan. "It presents no difficulty; because R. Hiya taught the water was later substituted for the blood. But according to your theory, on Mount Sinai there was no sprinkling at all?" Resh Lakish answered: "The sprinkling was an optional improvement."

We have learned of one Boraitha which is in accordance with R. Johanan, and of another which is according to Resh Lakish. The one according to R. Johanan is as follows: It is written [Lev. xvi. 3]: "With this shall Aaron come into the holy place." The phrase "with this" means all that is said concerning the days of consecration. Namely, Aaron was separated seven days, and served but one; during the seven days Moses instructed him, to make him acquainted with the service. So it

should be in later generations; the high-priest should be separated for seven days, and serve one day, and two scholars of the disciples of Moses, excepting Sadducees, were placed in his society during the seven days to make him be practised in the service. Therefore it has been said, seven days before the Day of Atonement the high-priest must be removed from his house to the chamber of Palhedrin. And as the high-priest was separated, so the priest who was to burn the red cow was to be removed to the chamber in the northeast of the Temple. Both priests used to be sprinkled during all the seven days from the ashes of the red cow. And if you will say, on this occasion water of the ashes was sprinkled, and on the days of consecration it was blood that was sprinkled, it can be replied, that that water was a substitute for the blood, as it is written: "As they have done this day, so the Lord commanded to do farther, to make atonement for you" [Lev. viii. 34]. "To do farther" means the red cow; "to make atonement," the Day of Atonement.

The Boraitha according to Resh Lakish is as follows: Moses ascended in the cloud, was covered by the cloud, and was sanctified in the cloud, in order that he should have been able to receive the Torah for Israel in a state of sanctitude, as it is written [Ex. xxiv. 16]: "And the glory of the Lord abode upon the Mount Sinai." This occurred after the day in which the ten commandments were given, which was the first of the next forty days. So said R. Jose the Galilean. R. Aqiba, however, said: "'The Lord's glory abode,' that was the first day of the month (Sivan); 'the cloud covered it,' the mountain, not Moses (for during the six days the latter went from God to Israel and from Israel to God); 'and he called,' he called Moses himself. Although Moses and all Israel stood, yet to do honor to Moses, he called him alone." R. Nathan said: "To what purpose was Moses covered by the cloud six days? That the victuals in his bowels should be digested, so that he should be pure as the angels." R. Matthiah b. Heresh, however, said: "The entire separation was for the purpose of overawing him, that the Torah should be received with awe, shivering, and trembling, as it is written [Ps. ii. 11]: 'Serve the Lord with fear, and rejoice with trembling.'" What is meant by "rejoice with trembling"? Said R. Adda bar Matna in the name of Rabh: "Where there is joy, there should be awe."

On what point do R. Jose the Galilean and R. Aqiba differ?

They differ like the Tanaim of the following Boraitha: "On the sixth day of Sivan the Torah has been given to Israel; R. Jose, however, says, on the seventh." According to him who says that the Torah was given on the sixth day, Moses ascended on the seventh; according to him who says, on the seventh, he received the Torah and ascended on the seventh day, as it is written [Ex. xxix. 16]: "And he called unto Moses on the seventh day." R. Jose the Galilean holds with the first Tana, who maintains that the Torah was given on the sixth of the month; arid therefore, he says, "the glory of the Lord abode" after the day on which the commandments had been given. The cloud covered Moses six days, and on the seventh he called him to receive the rest of the Law. But R. Aqiba holds, according to R. Jose, that the commandments were given on the seventh day, and that Moses ascended on the same day.

"And the Lord called unto Moses, and spoke unto him" [Lev. i. 1]. Why was it need to call first, and then to speak? The Torah teaches good manners, that a man should not communicate to

another anything before he tells him that he wishes to speak to him. And this is in support of R. Hanina, who has said the same.

Said R. Menasseh the Great: How is it known, when one person communicates something to another, that one has no right to tell it to a third without permission? It is written [ibid.], "spoke unto him out of the tabernacle of the congregation, saying" (in Hebrew "Lemor," which is considered here as equivalent to "Lo Emor," not to speak). From the above saying of Resh Lakish to R. Johanan, that if you infer all this from the days of consecration, etc., we must assume that both agree that whatever is written concerning the days of consecration is obligatory. Now from what has been taught, that about the days of consecration R. Johanan and R. Hanina differed, one says, all that is written is obligatory, and the other, that only which is obligatory for later generations, but what is not obligatory for later generations was not obligatory even then. Infer that R. Johanan is the one who says that all that is written there is obligatory. For were the case otherwise, R. Johanan would have replied to Resh Lakish that it is not so.

In what consists the difference? Said R. Papa, in the separation for the seven days. According to him who says that all that is written there is obligatory, the removal of the high-priest for the seven days is obligatory (and if it was not done, his service

is invalid); according to the other opinion, this is not obligatory. But how is it known that in the second case this is not, obligatory? Because it is written in the Mishna: "A substitute is prepared," and not "removed." What is the reason of him who says that all which is written is obligatory? Said R. Itz'hak bar Bisna: It is written [Ex. xxix. 35]: "And thou shalt do unto Aaron and to his sons, *thus*." *Thus* signifies that it is obligatory. This would be right in regard to all the things written in the chapter about the days of consecration; but whence is it known that other things not written in this chapter are also obligatory (*e.g.*, the breastplate and Ephod, not mentioned in that chapter, yet known to be obligatory)? Said R. Na'hman b. Itz'hak: We infer it from an analogy of expression; in that chapter the "door of the tabernacle of the congregation" is mentioned [Lev. viii. 4], and in the chapter about the breast. plate, etc. [Ex. xxix. 4] the same expression recurs. (As in the case of practice it is obligatory, so in the case of the commandment.) R. Mesharshia says: It is inferred from "keep the charge of the Lord" [Lev. viii. 35] (an analogy of expression is not necessary, it is plainly said "keep," hence it is obligatory). R. Ashi says, from "for so I have been commanded" [ibid.]; hence it is obligatory.

How did Moses attire Aaron and his sons on the days of consecration? [That is, to understand the verses of the Bible; we wish to know it, although it does not concern us.] The sons of R. Hiya and R. Johanan differ. One party says he attired Aaron first, and the sons next; and the other, Aaron and his sons at the same time. Said Abayi: About the coats and the mitres they do not differ--namely, that Aaron was attired in them first, and the sons later; for both in speaking of the commandments and the practice Aaron is mentioned first [Ex. xxix. 56; Lev. viii, 7]. What they differ about is the girdle. The party who says, "Aaron, and his sons later," does so because it is written, "and girded *him* with the girdle" [Lev. viii. 7] and later, "girded *them* with girdles" [ibid. 131. The party who says they were attired at the same time, do so because it is written, "Thou shalt gird them with girdles, Aaron and his children" [Ex. xxix. 9]. But how can it be said that he attired them at the same time (it is written plainly that first he attired Aaron, and then his sons)? There is a difference between a girdle of the high-priest and that of an

ordinary priest. That means, when it is written he girdled Aaron first. it is meant,

with the girdle of the high-priest; but with the ordinary girdles he attired them all at once.

"*The high-priest is removed*," etc. For what purpose was he removed? "For what purpose?" Has it not been said above, R. Johanan gave one reason, Resh Lakish another? We mean to ask, why had he to be removed from his home (he could practise at home)? Because it was learned in a Boraitha that R. Jehudah b. Bathyra said, it is apprehended lest he have intercourse with his wife, when there is doubt that she is in her sickness (then he would become unclean for the next seven days, and be unable to serve in the temple).

It was taught: The uncleanness contracted from a dead body is not considered in the case of an entire congregation, according to R. Na'hman. R. Shesheth, however, says, it is only postponed in that case. If there are individuals in the family of priests thus defiled, there is no difference of opinion that those individuals may not serve; but if the whole family was thus defiled, there is a difference of opinion between R. Na'hman and R. Shesheth. According to R. Na'hman, clean individuals of another family need not be sought because, where there is a congregation, the defilement is not considered at all. And according to R. Shesheth, who says it is only postponed, individuals of another family may be looked for. According to others, R. Na'hman says: Even the unclean individual also served, as in case of a congregation defilement is not taken into consideration. Said R. Shesheth: The authority for my decree is the following Boraitha: "If one stand sacrificing the Omer, and it become unclean in his hand, he shall so notify, and the congregation shall bring another in its stead. But if there is no other, he is told to have sense and to keep silent." Now we see that in the beginning it is said, another one should be brought in its stead; hence it is not permitted, but only postponed. Said R. Na'hman: I grant that, in a case in which the remains of the sacrifice must be eaten, when undefiled can be obtained, it is better.

On this point the Tanaim of the following Boraitha differed: The golden plate [Ex. xxviii. 36] which is made for the high-priest, whether it is on his brow or not, it atones for all defilements of the offerings." So said R. Simeon; but R. Jehudah said, when it is on his brow it atones, but not otherwise. Said R. Simeon to him: The high-priest who serves on the Day of Atonement has not the plate on his brow, and nevertheless atones for all sins; hence we see that it atones even when not

on his brow. Answered R. Jehudah: Leave the high-priest on the Day of Atonement alone, for defilement is allowed to him when the whole congregation is defiled. Now, from R. Jehudah's answer that the defilement is allowed, we must conclude that R. Simeon holds that the defilement is only postponed, but not allowed.

Said Abayi: When the plate had been broken, all agree that, it does not atone. They differ only when it is suspended on a peg. R. Jehudah says, because it is written [Ex. xxviii. 38], "it shall be upon Aaron's forehead, and Aaron shall atone," etc., (therefore) it only atones when it is on the brow. But R. Simeon's opinion is: Because it is said, "always they may be received in favor before the Lord" [ibid., ibid.]; and it cannot be said that it is meant that it should *always* be on

his forehead, because he must satisfy human needs and sleep; hence we must say, it means that it always receives the Lord's favor. But what will R. Jehudah say to this "always"? He explains that it is meant, it should never be absent from his mind.

Shall we assume that the former Tanaim differ as the Tanaim of the following Boraitha: Both the high-priest and the priest that was to burn the red cow were sprinkled upon during the seven days with all the ashes that were there. So said R. Meir., R. Jose, however, said: He was sprinkled only on the third and on the seventh day. R. Hanina the Segan of the priests said: "The priest that was to burn the red cow used to be sprinkled on during all the seven days, but the high-priest was sprinkled only the third and seventh." Now, shall we assume that the point of difference is, because R. Meir says the defilement is only postponed in case of the congregation, and therefore he has to be sprinkled upon during the seven days, and R. Jose holds the defilement is not considered at all? (How can you say this? If R. Jose holds that the defilement is not considered, why the sprinkling at all on the third and the seventh?) Therefore we must say that all the Tanaim of this Boraitha hold that the defilement is only postponed, and not allowed, and the point on which they are at variance is this: R. Meir holds we compare the sprinkling to the bathing; as the bathing at the proper times is a religious duty, so also is the sprinkling. And R. Jose holds, we do not compare (the sprinkling to the bathing). Now, then, what is the opinion of R. Hanina the Segan? If we compare it to bathing, the high-priest has to be sprinkled also every day; and if not, why is the other priest of the red cow sprinkled every

day? He does not compare; only in case of the priest of the red cow it is an optional improvement. R. Jose b. R. Hanina opposes this: Why is he sprinkled on the fourth day? (The law is that one unclean must be sprinkled on the third day and on the seventh [Num. xix. 12]. The first three days it was apprehended lest each be the third or seventh (after his unintentional defilement), but the fourth after the removal from his house call neither be the third nor the seventh. Even without this, could he be sprinkled all the seven days? One of them must have been on Sabbath, and sprinkling does not supersede Sabbath? Therefore we must say that what is said of the seven days, is meant with the exception of Sabbath. The same is the case with the fourth; it is meant, all the seven days, except the fourth. Said Rabba: Therefore the high-priest must be removed seven days before the *Day of Atonement*, whose date is not dependent on us; but on the third day of the month, [1] he must be removed seven days before that day, no matter when the fourth day falls. But the priest of the red cow, the date of whose removal depends on us, should be removed on such a day that the fourth shall fall on Sabbath.

"*To the Palhedrin Chamber*." We have learned in a Boraitha: R. Jehudah said: Was it called the Palhedrin Chamber, it was called the Chamber of the Lords? He answers: Formerly it was called the Chamber of the Lords, but after the high-priests began to be appointed for money, and changed as government officers (Palhedrin, changed once in twelve months), it began to be called the Hall of the Palhedrin. What is meant by Palhedrin? Officers.

Rabba bar bar Hana in the name of R. Johanan said: It is written [in Proverbs x. 27]: "The fear of the Lord increases man's days, but the years of the wicked will be shortened." "The fear of the Lord increases the days"; that refers to the first Temple, during whose existence of four hundred and ten years there were only eighteen high-priests. "The years of the wicked will be shortened," refers to the second Temple, which existed four hundred and twenty years, and more than three hundred high-priests succeeded each other during that period. Subtract the forty years during

which Simeon the Righteous ministered, eighty years of Johanan the high-priest's ministry, and ten years of Ishmael b. Favi--according to others, eleven

years of R. Eleazer b. Harsum--and compute, you will see that not even one high-priest completed his year.

R. Johanan b. Turtha said: Why had Shiloh fallen? Two sins were committed there: adultery and sacrilege. Adultery, as it is written [1 Sam. ii. 22]: "Now Eli was very old, and heard all that his sons were in the habit of doing unto all Israel; and how they would lie with the women that assembled at the door of the tabernacle of the congregation." And sacrilege, as it is written [ibid. 17]: "And the sin of the young men was very great before the Lord; for the men despised the offering of the Lord."

Why has the first Temple fallen? Because there were three things: idolatry, adultery, and bloodshed. Idolatry, as it is written [Jerem. xxviii. 20]: "For the bed shall be too short for a man to stretch himself out on it; and the covering too narrow to wrap himself in." And R. Johanan said: The bed is too narrow that there should be two, God and the idols. [Said R. Samuel b. Nahmoni: When R. Jonathan used to come to this verse, he used to cry, saying: That the Lord, of whom it is said [Ps. xxxiii. 7], "He gathereth together like heaps the waters of the sea," should feel too little space because of an idol.] Adultery, as it is written [Is. iii. 16]: "Forasmuch as the daughters of Zion are fraud, and walk with stretched forth necks and casting about their eyes, walking and mincing as they go, and making a tinkling with their feet." R. Itz'hak said to this: What is meant by tinkling? They used to fill the shoes with spices, and when a young man was by, they pressed the spices with the feet, to attract his attention.

Bloodshed, as it is written [2 Kings xxi. 16]: "And also innocent blood did Manasseh shed in very great abundance."

But the second Temple, where the occupations were study of the Law, religious duties, and charity--why fell it? Because there was groundless enmity. [1] From this we can infer that unfounded hatred is equal to all the three sins together: idolatry, adultery, and bloodshed. In the time of the first Temple, although they were wicked, yet because they put their trust in the Holy One, blessed be He, as it is written [Micah iii. 11]: "Her heads judge for bribes, her priests teach for reward, and her prophets divine for money: and yet they will lean upon the

Lord, and say, Is not the Lord among us? evil cannot come over us." For this, the Holy One, blessed be He, brought on them three chastisements, for their three sins; as it is written [ibid. 14]: "Therefore for your sake shall Zion be ploughed up as a field, and Jerusalem shall become ruinous heaps, and the mount of the house, forest-covered high places."

R. Johanan and R. Elazar both said: In the time of the first Temple, as their sin was laid bare, therefore the date of the end of their suffering has likewise been revealed; but in the time of the second Temple, when their sin was not stated clearly in writing, therefore the date of the end (of their suffering) was not revealed either.

R. Johanan said again: The nail of those of the time of the first Temple was preferable to the belly (whole body) of those of the time of the second Temple. Said Resh Lakish to him: On the contrary, the last were better. Although they were subject to a foreign government, nevertheless they studied and observed the Law. Rejoined R. Johanan: The fact of the Temple can prove it. The first obtained the Temple once more, and the last have it not yet. R. Elazar was asked Who were greater, the first or the second? He replied: Take the Temple as a sign.

Resh Lakish was bathing in the Jordan: Rabba bar bar Hana came to him, and shook hands with him. Resh Lakish said to him: God detests you Babylonians, as it is written [Solomon's Song viii. 9]: "If she be a wall, we will build upon her a palace of silver; and if she be a door, we will enclose her with the boards of cedar." That signifies thus If you were all strong as a wall, and went all with Ezra, you would have been like silver, which can never rot; but as you did not, you were like wooden doors, which are subject to decay.

It is possible that Resh Lakish spoke with Rabba bar bar Hana? If with R. Elazar, who was the principal man in Palestine, Resh Lakish did not speak; because it was a rule that, with whomsoever Resh Lakish spoke in the street, money could be given to him without witnesses. Should Resh Lakish then have spoken with Rabba bar bar Hana (who was an inferior man)? Says R. Papa: Substitute another person. Either it was Resh Lakish and Z'eri, or R. Elazar and Rabba bar bar Hana. When the last came to R. Johanan and related to him what Resh Lakish had told him, he said: This is not the reason. If all had come with Ezra, even then the Shekhina would not have dwelt in the second Temple, since it is written [Gen. ix. 27]: "May

God enlarge the boundaries of Japheth, and may he dwell in the tents of Shem"; that signifies, that although God enlarges the boundaries of Japheth, his Shekhina can only dwell in the tents of Shem (*i.e.*, because the second Temple was under the rule Of the Persians, who are of Japheth, the Shekhina could not dwell there, but only in Solomon's Temple, which was Shem's). And how is it known that the Persians are descendants of Japheth? Because it is written [Gen. X. 2]: "The sons of Japheth: Gomer, and Magog, and Madai, and Jabon, and Tubal, and Meshech, and Thirass"; and R. Joseph has taught, that Thirass is Persia.

R. Joshua b. Levi said in the name of Rabbi: A time will come, when those who have destroyed the second Temple will fall into the hands of the Persians. As it is written [Jerem. xlix. 20]: "Therefore hear the counsel of the Lord, that he hath resolved against Edom; and his purposes, that he hath devised against the inhabitants of Theman. Surely the least of the flocks shall drag them away: surely he will devastate their habitation." Rabba b. Ula opposed: How is it known that by the least of the flocks Persia is meant? Because it is written [Dan. viii. 20]: "The ram that thou hast seen, him with the two horns, signifies the kings of Media and Persia?" Perhaps Javan (the Greeks) are meant? As it is written [ibid. 21]: "And the shaggy he-goat is the king of Javan (Greece)." When R. Habiba b. Surmika went up to Palestine, he told to a scholar the objection of Rabba b. Ula. He said to him: A man who cannot explain the verses of the Bible should dare oppose Rabbi? What is meant by "the least of the flock"? the youngest of the brothers (that is, Thirass), and R. Joseph has said, Thirass is Persia.

Rabba bar bar Hana in the name of R. Johanan, quoting R. Jehudah b. Ilai, said: Those who have destroyed the second Temple will fall into the power of Persia. And this is an *a fortiori*

reasoning: If the children of Shem, who built the first Temple, and the Chaldeans, who destroyed it, fell into the hands of the Persians, how much more the destroyers of the second Temple, which the Persians themselves have built, must fall into the power of the Persians. Rabh, however, said: On the contrary, it will come that Persia will succumb under those who have destroyed the Temple. Said R. Kahana and R. Assi to Rabh: Is it right that those who had built the Temple should fall under the dominion of those who have destroyed it? He answered: Yea, such is the decree of the King. R. Jehudah also said in the name of Rabh: The Messiah, descended from

David, will not arrive until Rome shall have dominated over the entire world nine months. As it is written [Micah v. 2]: "Therefore he will give them up until the time that she who travaileth hath brought forth"; and the end of the verse is, "then shall the remnant of his brethren return with the children of Israel."

The rabbis taught: All the chambers of the Temple had no Mezuzahs, 1 except the Chamber of Palhedrin, which was a dwelling of the high-priest. Said R. Jehudah: Were there not many chambers in the Temple which were dwellings, and nevertheless were without Mezuzahs? Therefore we must say that the Mezuzah in the Palhedrin Chamber was only as a precautionary measure (lest it be said of the high-priest that he was in prison, which requires no Mezuzah). What is the reason of R. Jehudah's opinion that no Mezuzahs need be in the chambers of the Temple, even those which are dwellings? Said Rabba: R. Jehudah holds that a house not made both for summer and winter is not considered a house requiring a Mezuzah. Abayi objected: Is it not written [Amos iii. 15]: "And I will smite the winter house together with the summer house" (hence each is called a house)? He answered: It is called "winter house" or "summer house," but not *house* alone. Abayi objected again: We have learned in Maasroth, III., 7: "In regard to the booths made for the Feast of Tabernacles, during that feast things are made obligatory by R. Jehudah, but not by the sages." And concerning this Mishna we have learned in a Boraitha: R. Jehudah makes obligatory in regard to them Erub, Mezuzah, and Tithes (hence we see even a booth is considered a house). But perhaps it will be said, this is only rabbinical, but not biblical? This would be right of Erub and Mezuzah, but about Tithes it cannot be said that R. Jehudah makes them obligatory only on rabbinical grounds, lest he will thus tithe grain which is to be tithed rabbinically for that which is to be tithed biblically, and this is forbidden.

Therefore said Rabha: During the whole year nobody differs from the opinion that the booth is exempt from these duties; they only disagree about the seven days of the feast. And the reason for the Sukka is one, and that for the chamber of the Temple is another. The reason for the Sukka is, because R. Jehudah is consistent with his theory that a Sukka must be a permanent dwelling; and a permanent dwelling requires a Mezuzah.

[paragraph continues] The rabbis are in accordance with their theory that a Sukka need be only a temporary dwelling, which requires no Mezuzah. And the reason for the chambers of the Temple is: The sages hold, a dwelling in which a person abides by compulsion is considered a dwelling-house; and R. Jehudah's opinion is, it is not considered so. Therefore biblically it is exempt from a Mezuzah; but the rabbis have ordered a Mezuzah to be made, lest it be said the high-priest is imprisoned.

Who is the Tana of the following Boraitha which the rabbis taught: "All gates which were in the Temple had no Mezuzahs, except the gate of Nicanor, next to (before) which was the Palhedrin Chamber." Shall we assume that this is only according to the rabbis, and not according to R. Jehudah? For, if it were according to R. Jehudah, who thinks the Mezuzah in the chamber itself was only a precautionary measure, how could a Mezuzah be made on the gate; that would be a precautionary measure against a precautionary measure? Nay, that is all one precautionary measure.

The rabbis taught: What is written [Deut. vi. 9] "upon thy gates" applies to the gates of houses, courtyards, cities, and countries; all these are under the obligation of this religious duty towards God, as it is written: "And thou shalt write upon the door-posts of thy house, and upon thy gates." Said Abayi to R. Saphra: Why was no Mezuzah made on the city gate of Mechuzah (the majority of whose population were Jews)? Abayi replied: It was not made, because it would have been dangerous. (The government in its ignorance would say it was a charm. 1)

As we have learned in the following Boraitha: A Mezuzah of an individual must be examined twice in a Sabbatical period (seven years, whether it is valid); and one of a congregation, twice in a jubilee (fifty years). And R. Jehudah said: It once happened a repairer examined a Mezuzah in the upper market of Ziporeth, and a quæstor surprised him doing this, and fined him a thousand Zuz. But did not R. Elazar say, that harm cannot befall a delegate for religious duties? In cases where harm is usually to be expected, it is different. As it is written [1 Sam. xvi. 2]: "And Samuel said: How shall I go? If Saul should hear it, he would kill me"; and the Lord said: "Take a heifer with thee; and say, To sacrifice unto the Lord am I come." (It

is therefore evident that in cases of certain danger, even a delegate for a religious duty has to fear.) R. Kahna taught before R. Jehudah: A house where straw, cattle, wood, or grain is kept, is exempt from a Mezuzah, because women wash themselves there. Said R. Jehudah to him: Is that the reason why these houses are exempt? And otherwise, it were not so? Have we not learned in a Boraitha, a stable is exempt from a Mezuzah in any event? What is meant is, that in spite of the fact that women make their toilet there, and they may be considered as dwellings, yet they are exempt from Mezuzahs. Rejoined R. Kahna: Is that so? We have learned in another Boraitha, a stable is exempt from a Mezuzah; but if the women make their toilet there, then a Mezuzah is obligatory? What canst thou answer, except that it is one of several different opinions of the Tanaim? So I can say, that what I have said about the reason of the women's washing themselves, is also one opinion of the Tanaim. R. Jehudah, however, holds that when it is not known that the women make their toilet there, all agree they are exempt.

R. Samuel b. R. Itz'hak taught in the presence of Rabba: Six kinds of gates are exempt from a Mezuzah: those of places where straw is kept, or cattle, wood, grain, or a Median (vaulted) gate, or a roofless gate, or one less than ten spans high. Thou hast said six, and hast enumerated seven? He answered: About the Median gate the opinions of the Tanaim are different.

The rabbis taught: "A prayer-house, a house belonging to a woman, and one belonging to two partners, must have a Mezuzah." Is not this self-evident? One might think, because it is written "in thy house," but not "in her house" or "in their house," such are exempt, he comes to teach us

that it is not so. But whence do we deduce that it is not so? It is written [Deut. xi. 21]:"In order that your days may be multiplied, and the days of your children" (a Mezuzah is then useful to longevity; does not a woman wish to live long?). Why, then, is it written "thy house" (Bethcha)? It is according to Rabha, who said, it is equivalent to *Biathcha* (thy entering); as one enters the house with the right foot usually foremost, therefore the Mezuzah should be on the right side of the entrance.

"*Another high-priest is appointed*," etc. It is certain that when the high-priest became unfit by some accident before the daily morning offering (on the Day of Atonement itself), the substitute was exercised in the service of the daily morning offering

(and made to be recognizable as the high-priest). But if the accident happened after the daily morning offering, how was it? (All the services were done in the four articles of dress of an ordinary priest, not in the garments of a high-priest). Said R. Ada bar Ahba: He was exercised in the girdle. (So that he was recognized to be the high-priest.) It is right, according to the Tana who says that the girdle of the high-priest did not differ from that of an ordinary priest; and on the Day of Atonement, as the high-priest's girdle was of byssus, he was identified as the high-priest, but according to him who says that the high-priest's girdle was different (and to girdle him with the high-priest's girdle, except during service, is forbidden), how then was he identified? Said Abayi: He attired himself in the eight articles of dress, and went with the basin, and turned over the sacrifice on the altar that it burn better. (This is considered a service, and he was thus exercised and recognized.) And that is according to R. Huna, who said: A layman who turns over the sacrifice is liable to capital punishment, because it is a service. R. Papa, however, said: His service is his exercise (no preparatory ones are necessary). Because, did not a Boraitha state that all the vessels Moses had made, were consecrated by their anointment? Who consecrated the vessels made later than the time of Moses? Their use for service consecrates them. So also here, his service is his exercise.

When Rabbin came from Palestine, he said: The girdle of the high-priest on the Day of Atonement was of byssus, according to all; during the whole year all agree it was of Kilaim (mixed of wool and linen). What they differ about is, whether a girdle of a common priest, during the whole year and on the Day of Atonement, was of Kilaim, as Rabbi says, or of byssus, as R. Eliezer b. R. Simeon says. Said R. Na'hman b. Itz'hak: We have also learned so in a Boraitha: It is written [Lev. vi. 3], "upon his flesh." Why is "put upon" necessary? This is to add, that when he removes the ashes he must have on the mitre and girdle also. Such is the decree of R. Jehudah. R. Dosa said: This is to add that the four garments of a high-priest on the Day of Atonement may be worn by a common priest. Said Rabbi: There are two objections to this. The first objection is, the girdle of a high-priest on the Day of Atonement is not the same as that of a common priest; and, secondly, how can it be said that the garments employed for a more important (?) holiness, may be used later for any less important. What else is

the phrase "put upon" to add? That he may use his old garments (and needs not new ones). R. Dosa, who prohibits old garments, except to common priests, decrees according to his theory in the following Boraitha: It is written [Lev. xvi. 23], "And he shall leave them there"; that signifies they must be hidden. R. Dosa, however, said: He may not use them himself the next

year (on the Day of Atonement, but a common priest can use them).

The rabbis taught: When the high-priest happened to become unfit for service, and his substitute performed it, then after the Day of Atonement the high-priest resumes his service, and all the laws regarding the high-priesthood apply to the substitute (he can no longer be like a common priest). Such is the decree of R. Meir. R. Jose, however, says: The high-priest resumes his service, the substitute does not become like a high-priest, nor continues to be as a common priest. And R. Jose added: It happened to Joseph b. Alem of Ziporeth, that he was a substitute for the high-priest, who performed the service instead of the high-priest, to whom an accident had happened. Later the sages said, the high-priest should resume his service, and that Joseph b. Alem is fit no longer to be either a high-priest or a common priest. A high-priest, to prevent enmity; and a common priest, because there is a rule, in holiness one may increase but not decrease. Said Rabba bar bar Hana in the name of R. Johanan: The Halakha prevails according to R. Jose. R. Jose grants, that if the substitute *has* performed service in the Temple, this service is valid.

R. Jehudah said in the name of Rabh also: The Halakha prevails according to R. Jose, and R. Jose grants that when it happens the high-priest dies, he may become high-priest. This is self-evident? One might say, since he was his rival in life, he might not become a high-priest after his death. He comes to teach us it is not so.

"*R. Jehudah says, another wife*," etc. The sages apprehend lest an accident happen to the high-priest himself, and prepare a substitute. Why not prepare another wife also? The rabbis can answer: An accident of defilement can happen, but death (which is rare) is not apprehended.

"*There will be no end*," etc. The sages have given a good answer to R. Jehudah? R. Jehudah. can reply: That one may die, is apprehended; that both should die, is not.

The rabbis taught: The high-priest may sacrifice when he is

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an Onen (one of his relatives had died, and not been interred yet), but he may not eat (of the sacrifices). R. Jehudah says, the whole day. What is meant? Said Rabh: If he is in his home, he must be brought to the Temple to perform the service. Said Abayi to him: How canst thou say this? We know that, according to R. Jehudah, he is told to stop, even when he is performing the service, as we have learned in the following Boraitha: "When he stands sacrificing on the altar," and it is reported to him that one of his relatives is dead, he must interrupt the service, and go. So is the decree of R. Jehudah. R. Jose says: He must conclude the service, and then go. And thou sayest he is brought from his home. Therefore says Rahha: What is meant by "the whole day"? The whole day he is not obliged to perform the service, when he is an Onen lest he eat of the sacrifices (but in the evening he may). Said R. Adda b. Ahba to Rabha: Does R. Jehudah take such a precautionary measure against his eating? Did we not learn in our Mishna, R. Jehudah said, another wife was prepared for him, lest his own wife die? If his wife die, he is expected to perform the service, and R. Jehudah does not take the precautionary measure lest he partake of the sacrifice? Rabha answered: What comparison is this? This is the Day of Atonement, when nobody eats; it is not feared that he shall eat. But on a common day it is apprehended.

MISHNA: During all the seven days he sprinkles the blood [of the daily offerings, to become practised], fumes the incense, trims the lamps, and offers the head and the leg. During all the other days, he sacrifices, if he chooses, since the high-priest offers the first portion as he prefers, and takes for his own use a portion of the first offering.

GEMARA: Who is the Tana who holds so? Said R. Hisda: That is not in accordance with R. Aqiba. For R. Aqiba holds that when a clean man is sprinkled upon, he thereby becomes defiled. And since the high-priest was sprinkled upon all the seven days, how could he perform the service? As we have learned in the following Boraitha: It is written [Num. xix. 19]: "And the clean person shall sprinkle upon the unclean." Infer from this (since *unclean* is written, not *him*), that only an unclean person becomes clean; but if a clean person is sprinkled on, he becomes unclean. So is the decree of R. Aqiba. But the sages said: This only applies to things subject to defilement. Abayi, however, said: It may be said, the

Mishna can be even in accordance with R. Aqiba; and the case is, the whole day he can perform the service, in the evening he bathes, and when the sun has set, he becomes clean.

"*Fumes the incense, and trims the lamps*." From this we see that the rite of the incense is performed first, and after that, of the lamps. There is a contradiction? We have learned in Tamid, III., 6: "Who has got the privilege to clear the inner altar of the ashes, to trim the lamps and offer the incense" (hence we see, the lamps precede the incense). Said R. Johanan: The Tana who has taught the order of the rites on the Day of Atonement is R. Simeon, the man of Mitzpah, who differed from the sages of the Mishna in Tract Tamid.

And there is a contradiction even in this tract in the order of the rites, as we learn in a Mishna farther on. The second lot is to determine who should slaughter, who should sprinkle, who should clear the inner altar, who shall trim the lamps, and who shall carry up the members on the staircase. The third lot is drawn by nine priests, to determine who should offer the incense. (Hence the lamps here precede the incense also.) Said Abayi: It presents no difficulty. In the one case the two lamps are meant, in the other case the five lamps. (Shall we assume that between the trimming of the two lamps and the five lamps incense was offered?) Did not Abayi, who ordered the rites according to a tradition, say that between the trimming of the two and five lamps the blood of the daily sacrifice was sprinkled? We can say, it presents no difficulty. This is according to R. Abbu Saul, and according to the sages of the following Boraitha: One shall not trim the lamps, and then offer the incense; but he must first offer the incense, and then trim the lamps. Abbu Saul, however, said: He must first trim the lamps, and then offer the incense. What is the reason of Abbu Saul's decree? It is written [Ex. xxx. 7]: "Every morning, when he dresseth the lamps," (and later) "shall he burn it." What will the sages say to this? The sages say, at the same time both should be done, not that the lamps should be before the incense. For if you should not say so, how will the next verse be explained: "And when Aaron lighteth the lamps toward evening, shall he burn it" [ibid. 8]? He should first light, and then offer the incense later? And if you would say that so it is, did we not learn in a Boraitha, it is written, "from the evening to the morning" [Ex. xxvii. 21]? There is no service which is valid from the evening till the morning except this. (Hence we see

the lamps were the last.) (We must therefore say that) the Torah means, that at the same time the lamps are lighted, the incense is to be offered. So also is it with the cleaning of the lamps; when they are cleaned, the morning incense is offered. R. Papa said: The self-contradiction of this tract presents no difficulty, because one decree is according to the rabbis, and one according to Abbu Saul. What did R. Papa mean to say: He wants to ascribe our Mishna to the rabbis, and that speaking of the lots to Abbu Saul. Let us see how the end of that Mishna in Chap. III., namely, "went in to fume the morning incense, and to trim the lamps," will correspond. This is certainly according to the rabbis. Then the first part and the conclusion of the Mishna will be according to the rabbis, and the middle part according to Abbu Saul? R. Papa can say, that this is the case.

In the Mishna in Tamid we have learned: When he comes to the northeastern corners of the altar, he places the blood there, and when he comes to the southwestern corners, he places the blood there. And in addition to this, we have learned in a Boraitha: "That R. Simeon, the man of Mitzpah, makes a. difference in the daily offering; namely, when he comes to the northeastern corners, he places the blood on both corners at once, but at the southwestern he first places it on the western corner, then on the southern." What is the reason of R. Simeon? Said R. Johanan in the name of one disciple of the school of R. Janai: Because it is written [Num. xxviii. 15]: "One he-goat for a sin-offering unto the Lord, besides the continual burnt-offering, shall it be prepared with its drink-offering." What is the sin-offering mentioned for, in connection with the burnt-offering? To teach us that though it is a burnt-offering, in one respect it must be sacrificed as a sin-offering; namely, at two of the four corners he places the blood on both corners at once as a burnt-offering, and at the southwestern he puts the blood on the western first, and on the southern thereafter.

We have learned in another Mishna (Tamid, III, 3): "The superintendent said to them, Go and bring a lamb from the chamber of the lambs." The chamber of the lambs was in the northwestern corner (of the house of heating. Such an apartment existed in the temple, to render the marble pavement of the temple warm, on which the priest had to walk barefooted).

There were four chambers: one that of the lambs, one that of the seals, one that of the heating house, and one chamber

where the showbread was made. There is a contradiction to the Mishna in Midoth (I., 7): "Four chambers were in the heating house, like small rooms opening into a great hall: two belonged to the sanctuary, and two were profane; and small wickets parted the sacred ones from the profane ones. And what was their use? The southwestern was for the lambs for the sacrifices. The southeastern was that in which the showbread was made. In the northeastern the Maccabees (Hasmoneans) had hidden the stones of the altar profaned by the Greeks. The northwestern was used as a passage to the bath-house." (There is, then, a contradiction between the two about the names and use of the chambers and situation of the chamber of lambs?) Said R. Huna: The Tana according to whom is the Mishna in Tract Midoth is R. Eliezer b. Jacob, as we have learned (ibid. IL, 5): The chamber at the northeast was the place where wood was kept, and the blemished priests examined the wood there, as mouldy wood was unfit for the altar. The northwestern chamber was the place of the cured lepers (who came to the Temple to be sprinkled to sacrifice). The southwestern? Says R. Eliezer b. Jacob: I forget what its use was.

Abbu Saul says: Wine and oil for the offerings were kept there, and it was called the chamber of oil. Hence we see the Mishna in Midoth must be in accordance with R. Eliezer b. Jacob. And so it also seems from another Mishna in Midoth (IV.). R. Addi b. Abba said: Our Mishna is in accordance with R. Jehudah of the following Boraitha: R. Jehudah said: The altar stood in the middle of the court, and was in size thirty-two ells, ten ells opposite to the door of the Temple (wide twenty ells), eleven ells toward the north, and eleven ells to the south: so that the altar was opposite to the Temple and to its walls. Now, if you would say that the Mishna in Midoth is according to R. Jehudah, how can it be that the altar should be in the middle of the court? R. Addi the son of R. Itz'hak said: The chamber of the lambs was at the western side, and extended toward both the north and southwestern corners; and to him who came from the southern side it seemed to be the north, while to one who came from the north it seemed in the southern corner (but in reality it was in the southwestern).

"*The high-priest offers the first portion*," etc. The rabbis taught: What is meant by his offering a portion the first? He may say what burnt-offering or meal-offering he wants to offer (and no other priest may touch it). And what is meant by his

taking a portion the first? He may say of which sin-offering or trespass-offering he desires to partake. And he can take one of the two loaves. He can also take four or five of the loaves of the showbread. Rabbi said: He always took five loaves, because it is written [Lev. xxiv. 9]: "And it shall belong to Aaron and to his sons." We interpret it thus: Half should belong to Aaron (or the high-priest) and half to the children of Aaron (priests). Does not this Boraitha contradict itself? First it is said, he takes one of the two loaves--that means, the half--and this is according to Rabbi, who maintains that the high-priest always takes the half. Now the middle part, which says that he takes four or five, must be according to the rabbis, who say he does not take the exact half; and in the conclusion it is said, Rabbi says he always takes five. It seems, then, that the first part and conclusion are according to Rabbi, and the middle part according to the sages? Said Abayi: The first part and the middle part are according to the rabbis, but they admit that out of two loaves the high-priest could not but receive one, as it was not becoming to give him half a loaf.

MISHNA: He is attended by some elders of the Beth Din, who read to him [out of Lev. xvi.] concerning the ceremonial of the day (of Atonement), and say to him: My lord the high-priest, say it aloud, lest thou hast forgotten, or not studied this. On the morning of the day preceding the Day of Atonement, he is placed at the eastern gate, and bulls, rams, and sheep are passed before him, that he should get a knowledge of the service.

During all the seven days he is free to eat and drink, but on the eve of the Day of Atonement, at dusk, he is not permitted to eat much, as it would induce drowsiness.

GEMARA: It is right that they should say to him, Perhaps thou hast forgotten. But that they should say to him, Perhaps thou hast not studied, is an ignorant man made a high-priest? Have we not learned in a Boraitha: It is written [Lev. xxi. 10]: "And the priest that is highest of his brethren." That signifies, that he must be highest among his brethren in physical strength, in personal beauty, in wisdom, and in wealth.

An anonymous teacher said: Whence do we know that, if he is not rich, his brethren the priests must make him rich? Because it is written: "That is highest of his brethren," that signifies, his brethren must contribute to make him highest.

Said R. Joseph: It presents no difficulty. That was the case

during the time of the first Temple, and this in the time of the second Temple. As R. Assi said: A whole measure of dinars, Martha daughter of Bithas gave to the king Janai, that he should make Joshua b. Gamla high-priest.

"*On the morning of the day preceding the Day of Atonement*." We have learned a Boraitha: The he-goats were also passed before him. But why does not our Mishna mention it? Because (it holds that they were not passed), as the he-goats are only for the atonement of sin, he would have become dejected. If so, why were the bullocks passed, they are also for sins? Because the bulls were to atone for his sins and those of the priests, his brethren; he would not have become dispirited, because if they had sinned, he would have been told, and he would have induced them to repent. But the he-goats were to atone for the sins of all Israel: so he could not know who had sinned. Said Rabhina: This is what people say. Even if your sister's son is a (publican), you should not pass him in the street, for, since he knows your affairs, he will take from you more than from others.

"*During all the seven days*," etc. We have learned in a Boraitha: R. Jehudah b. Naqusa said: They gave to him to eat bread of the best flour, and eggs that it should be digested more easily (that he should not find himself compelled to interrupt his service on the Day of Atonement for a human necessity). The sages said to him: This heats yet more. We have learned in a Boraitha: Symmachos said: They gave him as food no citron, no eggs, no old wine. According to others, he received no citron, no eggs, no fat meat, no old wine. Still others say: Even white wine he did not receive, because white wine brings a man to uncleanness.

MISHNA: The Elders of the Beth Din left him to the attendance of the Elders of the priesthood, who took him up to the house of Abtinas, made him swear, took farewell, and went away. They said: My lord the high-priest, we are delegates of the Beth Din, and thou art our delegate and the delegate of the Beth Din; we conjure thee by Him who has made His abode in this house, that thou shalt not alter one thing about which we have spoken to thee. He took farewell weeping, and they parted weeping.

If he was a teacher, he lectured; otherwise, the scholars lectured before him. If he was practised in reading, he reads; if not, they read to him. From which books of the Scriptures?

[paragraph continues] From Job, Ezra, and Chronicles. Zechariah b. Kabutal says: Many times I read to him out of Daniel.

GEMARA: We have learned in a Boraitha: Teaching him the service consisted in teaching him to take a handful of incense (which had neither to be spilled nor any left on the top of the hand).

R. Papa said: The high-priest had two chambers, one that of Palhedrin, to sleep in, the other that of Abtinas, to learn the service. One was in the north, one in the south. One in the north, as we have learned in Midoth (V., 3): Six chambers were in the court: three in the north, three in the south. Those of the south were the chambers of salt, of Parva, and that where the entrails were washed. The chamber of the salt was where the salt was kept for the sacrifices; that of Parva, where the skins of the sacrifices of the sanctuary were salted, and on its roof was a bath-house for the high-priest on the Day of Atonement. The washing chamber was where the entrails of the sacrifices of the sanctuary were washed. Thence a stone staircase led to the roof of the chamber of Parva. The three in the north were: a chamber for wood, the chamber of Exile, and the chamber of Gazith (hewn marble stones).

About that of wood, said R. Eliezer b. Jacob, I forget for what purpose it was used. Abbu Saul says, the chamber of the high-priest was behind the first two of the above-mentioned ones; the roofs of them all were on the same level. In the chamber of Exile there was a well, which those returned from the Exile had dug; over it was a wheel, whereby water was drawn, to supply the whole Temple. In the chamber of Gazith the Sanhedrin of Israel held session, and examined there the priests. Whatever priest was found to be legally unfit for service, used to dress himself in black clothes, enveloped himself in black, and went away. If he was found fit, he would dress himself in white, envelope himself in white, and enter the Temple to serve with his brethren. One other chamber was in the south, as we have learned in the following Mishna (Midoth V., 4): Seven gates were in the court: three at the north, three at the south, and one at the east. The south one was the Gate of Illumination, the other the Gate of the Sacrifices, the third the Gate of Water. At the east was the Gate of Nicanor; to this gate were adjoined two chambers, one at the right and one at the left. One was the chamber of Pin'has, the superintendent of the priests' wardrobe; the other was where barrels were manufactured. At the north was the Gate of Nitzutz. There was

a balcony and an attic over it, where priests were watching (the Temple) above, and the Levites beneath. Inside was the Choyl (a round walled and roofed place, in the Temple). The other was the Gate of Sacrifices. The third was the Gate of the Heating House, and we have learned in another Boraitha that on that day the high-priest took five legal bathings, and ten times sanctified his hands and feet from the laver. [See Ex. xxx. 18.] Both the bathing and the sanctifications he performed on the roof of the chamber of Parva, in the sanctuary, except the first one, which he did not take in the sanctuary, but near the Gate of Water. The bath-house was on one side of his chamber, only I don't know whether the Chamber of Palhedrin was in the north and that of Abtinas in the south, or *vice versa*.

"*Thou art our delegate*." Shall we assume that in this Mishna is found an objection to R. Huna b. R. Joshua, who said that the priests are delegates of the Merciful One (not of Beth Din)? If they were our delegates, then are there things which we ourselves may not do, and our delegates may (as in the case with the priests)? They did not say to the high-priest that he is their delegate, but that they conjured him to act according to their opinion and to that of Beth Din.

"*He wept, and they wept*." He wept for being suspected of being a Sadducee, and they wept because they probably suspected an innocent man, as R. Joshua b. Levi said: "He who suspects an upright man is smitten by God in his body." (See Sabbath, p. 191.) Why had he to be conjured? It was feared lest he prepare the incense on the censer outside of the Holy of Holies,

and then enter with the censer, as did the Sadducees. The rabbis taught: It happened to one Sadducee, who prepared outside, and entered the Holy of Holies with it, when he came out, he was rejoicing greatly. When his father met him, he said to him: My son, though we are Sadducees, yet we must fear the Pharisees. He replied: All my years I was anxious to fulfil the verse [Lev. xvi. 2], "For in the cloud will I appear upon the mercy seat," and I said to myself, When will come the day when I might do it? And to-day, when I have had opportunity, should I not have done it? It was said, it did not take long before he died, and lay amidst rubbish, and worms crept out of his nose.

"*Zechariah b. Kabutal,*" etc. R. Hanan b. Rabha taught to Hiya the son of Rabh in the presence of Rabh: Said R. Zechariah b. Kavutal: Rabh made to him a sign with the hand that he

should say Kabutal. Why did he not say it to him? Rabh read Sh'ma' at that time. Is it permitted to make signs when Sh'ma' is read? Did not R. Itz'hak b. Samuel b. Martha say: He who reads Sh'ma' must not wink his eyes, whistle with his lips, nor make signs with his fingers? And in a Boraitha we have also learned: R. Eliezer Hasma has said: He who reads Sh'ma', and winks, or whistles, or makes signs with his fingers, of him the verse says [Isaiah xliii. 22]: "On me hast thou not called, Jacob." It presents no difficulty; in the first part of the Sh'ma' one may not do so, but during the recital of the second one may.

MISHNA: If he began to slumber, the young priests snapped with their fingers Tzreda, addressing him: My lord the high-priest, rise, and cool thyself once on the [marble] floor. He was kept occupied until the time for slaughtering the daily offering.

GEMARA: What is meant by the word Tzreda? Said R. Jehudah, the thumb. R. Huna showed this performance, and the sound went to all ends of the college.

"*Cool thyself once on the floor*." Said R. Itz'hak: They said to him, show to us Kidah (supported only on his thumbs and great toes, to kiss the floor).

"*Until the time for slaughtering*." We have learned in a Boraitha: He was not occupied by a violin or harp, but by voices: they sang to him. What? From Psalm cxxvii.: "Unless the Lord do build a house, in vain labor they that build it." The respectable men of Jerusalem forbore to sleep the whole night, and talked among themselves, that the high-priest might hear the sound of voices, and not fall asleep. We have learned in a Boraitha: Abbu Saul says: Even in the countries where the temple was hot, they did it, in honor of the temple, but they came to sin on these occasions. Said Abayi, according to others, R. Na'hman b. Itz'hak: By what Abbu Saul said of the other countries, he meant Nahardea. Elijah said to R. Jehudah, the brother of R. Sala the Pious: You think to yourselves why Messiah does not come. To-day is the Day of Atonement, and many virgins have been lain with to-day in the City of Nahardea. Said to him R. Jehudah; What says the Holy One, blessed be He, to this? Elijah replied: He said in reference to this the verse in Genesis [iv. 7]: "Sin lieth at the door." He asked: What says Satan to this? Elijah answered: On the Day of Atonement he has no right to bring forward accusations.

MISHNA: Every day the altar is cleared of the ashes at the time of the crowing of the Geber (cock), a little while before or after it; but on the Day of Atonement it is done soon after midnight, and on the other holidays after the first watch of the night. And before the cock's crowing the fore court used to be filled with Israelites.

GEMARA: What is meant by Geber? Said Rabh, a *man* (*Geber* signifies "man" also). But the disciples of R. Shila say, a cock. It happened once, that Rabh was at the place where R. Shila was the chief of the college. R. Shila had no interpreter (as he lectured). Rabh assumed the function of his interpreter. When they came to this Mishna, "the cock's crowing," Rabh interpreted, "man's heralding." Said to him R. Shila: Let the Master say, "the cock's crowing." Rabh answered: A song good for educated men is not good for tanners. I have interpreted it thus for R. Hiya; he did not censure me, and you it does not please. Said R. Shila. Is the Master Rabh? Then, leave off. It is not fit that you should be my interpreter (sit on my chair, and I will interpret for you)? Rabh replied: The world says, If one has hired himself to a man, even if he tells him to brush wool (a work only for women) he should do it. According to others, he answered to him: In matters of holiness one increases, but does not decrease.

We have learned in one Boraitha according to Rabh, and in another according to R. Shila. We have learned according to Rabh: Gabini the Herald used to herald: Rise, priests, to your service; and Levites, to your chanting; and Israel, to your standing. [1] And his voice was heard at the distance of three *parsaoth*. It happened once that Agrippa the king being on the road, he heard Gabini's voice at the distance of three *parsaoth*. When he returned home, he sent him presents. Nevertheless, the voice of the high-priest surpassed in strength that of Gabini the Herald. Because the Master said, when he used to say on the Day of Atonement, "I pray Thee, O Lord," his voice was heard at Jericho, and Rabba bar bar Hana said in the name of R. Johanan: Between Jericho and Jerusalem is the distance of ten *parsaoth*, and although on the Day of Atonement one is weak from fasting, and though his voice was heard by day, whereas Gabini heralded only by night.

And we have learned in a Boraitha according to R. Shila: "He

who walks on the road before the "Kriath Hageber" (cock's crowing), his blood is on his head. R. Joshiah says: Before the second cock's crowing. And according to others, before he crows the third time. Of what sort of cock is this said? Of a moderate cock (not a hasty or tardy one). R. Jehudah in the name of Rabh said: "When Israel used to come on the three pilgrimages, they stood crowded. But when they prostrated themselves, they had much space, and stationed themselves eleven ells behind the mercy-seat." What does he mean? Although they were eleven ells behind the mercy-seat, and were crowded, yet when they prostrated themselves they had much room, and this was one of the ten miracles that occurred in the Temple. (See Aboth, V., 2.)

Were there only ten miracles? Did not R. Ushia say that when Solomon built the Temple, he planted there all kinds of golden fruit-trees, and they bore fruits at the proper times, and when the wind blew on them, they fell down and were ripe? As it is written in Psalm lxxii. 16: "Its fruits shall shake like the trees of Lebanon." And when the Gentiles had entered the Temple, the fruit-trees became withered (blighted), as it is writ. ten [Nahum i. 4]: "The flowers of Lebanon wither," and the Holy One, blessed be He, will restore them. As it is written [Is. xxxi. 2]: "It shall blossom abundantly and rejoice; yea, with joy and singing, the glory of the Lebanon shall

be given unto it." (So we see there were miracles besides the ten?) In the Mishna are counted only the perpetual miracles, but those happening on certain times only have not been reckoned.

The Master says elsewhere that in Jerusalem were two perpetual miracles: the rain never extinguished the fire on the outer altar, and the smoke was always straight in spite of the winds, in whichever directions they might blow. But we have learned in a Boraitha: Five things have been said of the fire on the altar: It had the form of a lion, it was clear as the sun, it was palpable, it consumed moist things as dry ones, and never emitted any smoke. (There is, then, a contradiction, since there was no smoke at all?) The smoke was that of the fire kindled by men. As we have learned in a Boraitha: It is written [Lev. i. 7]: "And the sons of Aaron the priest shall put fire upon the altar." Infer from this, that although the fire descended from heaven, it was a merit to kindle an earthly fire also. (There is another contradiction?) You say it had the form of a lion. We have learned in a Boraitha, R. Hanina the Segan of

the priests said. I have seen it, and it had the form of a dog? It presents no difficulty: in the time of the first Temple it was like a lion, and of the second, like a dog.

But in the second Temple there was no heavenly fire at all, as R. Samuel b. Inia said: It is written [Haggai i. 8]: "That I may take pleasure in it, and be glorified"; it is written "Veikabed," and it is read "Veikabdah." Why is the "h" missing? This is to hint that five (the numeral value of "h") things were missing in the second Temple. What are they? The ark, the mercy-seat, the cherubim, the heavenly fire, the Shekhina, the Holy Spirit, and the Urim and Tumim. So we see there was no heavenly fire in the second Temple at all? We may say, it was there, only it did not assist in consuming.

It is said above, that no wind could divert the smoke. But this is not so? Did not R. Itz'hak b. Abdimi say: At the expiration of the Feast of Tabernacles, all looked on the smoke of the *altar*: when it was inclined to the north, the poor rejoiced, and the wealthier were dejected, for it showed there would be too much rain, and the fruit would rot: but when it was inclined to the south, the poor were out of spirits, and the rich were glad, for this was a sign there would be little rain, and the fruit would remain well-preserved, and fetch a high price. When it was bent eastward, all rejoiced, and westward, all were deploring it (thus we see that the smoke was swayed by the wind?). It was made by the wind oblique, but not crooked.

Footnotes

1:1 Some translators say [Numbers xix. 2] "red heifer"; but this would not be proper, according to the teaching of the Mishna that the red cow must not be younger than three years and is fit even from four to five years, for which the term heifer cannot be correctly used.

2:1 See Lev. viii, 33.

9:1 The Day of Atonement always occurs on the tenth day of the month Tishri.

10:1 In the Palestinian Talmud it is said: Because they loved money, and hated each other without grounds.

13:1 See Deut. vi. 9.

14:1 In our *Philacterien-Ritus* we have explained this differently. The danger was that it should be recognized as a purely Jewish city and exposed to the Jews' enemies.

27:1 See Shekalim.

Next: Chapter II: The Lots Priests Drew, Which Priests Should go to the Altar, How Many Priests Needed for Each Sacrifice

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CHAPTER II.

CONCERNING THE LOTS THE PRIESTS DREW, WHAT PRIESTS SHOULD GO TO THE ALTAR, AND HOW MANY PRIESTS WERE NEEDED FOR EACH SACRIFICE.

MISHNA: Formerly, whoever desired to clear the altar of the ashes did so. When there were many of them (priests), they ran on the staircase (leading to the top of altar). Whoever first came within four ells, merited it. When two were on a par, the superintendent said to them (all priests): Put forth your fingers. Which did they put forth? One or two, but not the thumb in the Temple (which were counted instead of the persons they belonged to, and the service was given to the last).

Once an accident happened: one of two who were running up the staircase pushed his companion, so that he fell, and broke his foot. Seeing that it is attended by accidents, the Beth Din made the reform, that the altar should be cleared by lot. There were four lots: this is the first lot.

GEMARA: Why had not lots been used formerly? Previously it was thought that since it is done by night and not considered an important service by the priests, they would not come in considerable number, but when it was seen that the case was otherwise, this reform was made.

Was this reform only for this purpose? We know that he who cleared the ashes also arranged the pieces of wood on the altar, and brought the two measures of wood, and that was considered an important service? Said R. Ashi: Two reforms were made: at first, when it had been thought they would not come in considerable numbers, no lot was used at all; then, when it was observed that they came and accidents happened, the use of the lot was introduced. Then the priests ceased to come, since they were not sure of drawing the lot at all. It was then reformed, that he who clears the ashes should arrange the pieces of wood and bring the two measures also, that the priests might come to draw the lot, since it would be for important services.

"*Put forth your fingers*." We have learned in a Boraitha:

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[paragraph continues] "He said to them thus. Put out your fingers, that they be counted." Why did he not count the persons themselves? This can be a support to what R. Itz'hak has said: "Israel must not be counted, even for religious duties." As it is written [1 Sam. xv. 4]: "And Saul ordered the people to assemble, and he numbered them by means of lambs." 1 Said R. Elazar: Whoever numbers Israel, trespasses a negative commandment, because it is written [Hosea ii. 1]: "Yet shall the number of the children of Israel be like the sand of the sea, which may not be numbered." R. Na'hman b. Itz'hak says: He trespasses two commandments, as it is written, which cannot be measured nor numbered. R. Samuel b. Na'hman, in the name of R. Jonathan,

found a contradiction in the same passage: It is written that the number of Israel will be like that of the sand (then a definite number is given), and then it is said, it cannot be counted--that is, has no number. It presents no difficulty: When Israel shall do the will of God, they will be without number; but when they do not do God's will, they will be of a definite number. Rabbi in the name of Abbi Joseph b. Dustai says: There is no contradiction in it. Men cannot count the sand, but in Heaven they can count it.

R. Huna. said: How secure and careless should the man feet that knows that the Lord helps him: Saul committed only one sin; he lost his royalty: David committed two sins, and yet retained it. Saul's sin was, that he spared Agag. But he massacred the priests of Nob? That which is written [1 Sam. xv. 11], "I repent that I have set up Saul as king," was said already an the occasion of the sin of Agag [which was the first, chronologically]. What are David's two sins? That of Uriah and his numbering of Israel. But there is a third one? That of Bath-Sheba? For that of Bath-Sheba he was punished, as it is written [2 Sam. xii. 6]: "For the ewe he shall pay fourfold." What were the four punishments? The death of Bath-Sheba's child, the death of Amnon, the misfortune of Tamar, and Absalom. But for numbering Israel he was also chastised? As it is written [2 Sam. xxiv. 15]: "And the Lord sent a pestilence in Israel from the morning even to the time appointed." In that case all Israel was chastised, but not he himself. But in those instances it was also his children on whom the wrath was visited) not on

himself? Nay, he was personally punished, too. As R. Jehudah says in the name of Rabh: For six months David became leprous, and the Sanhedrin separated themselves from him, and the Shekhina. As it is written [Ps. cxix. 79]: "Let those that fear thee return unto me, and those that know thy testimonies." And it is written [ibid. li. 14]: "Restore unto me the gladness of thy salvation." (The first refers to the Sanhedrin, and the second to the Shekhina.) But did not David also believe calumnies? (of Ziba). For this he was also punished, for R. Jehudah said in the name of Rabh, when David said to Mephibosheth [2 Sam. xix. 30], "I have said, Thou and Ziba shall divide the field," a heavenly voice was heard, proclaiming that Rehoboam and Jeroboam should divide the kingdom.

It is written [1 Sam. xii. i]: "One year old was Saul in his reign." [1] Said R. Huna: That means, he was innocent of sin as a child of one year. R. Jehudah said in the name of Samuel: Why did not Saul's dynasty last long? Because there was no stain on his whole family. And R. Johanan in the name of R. Simeon b. Jehozadak said: A man must not be made the head of a congregation unless he has a whole heap of reptiles (family disgraces) at his back, in order that, if he should become haughty, people should be able to say to him: Look around, behind your back. R. Jehudah in the name of Rabh said: Why was Saul punished? Because he was willing to dispense with honors. As it is written [1 Sam. x. 27]: "But the worthless men said, in what can this one help us? And they despised him, and brought him no presents. But he acted as though he were deaf." And soon after this is written: "Then came up Nachash the Ammonite," etc.

R. Johanan in the name of R. Simeon b. Jehozadak said again: A scholar who is not revengeful and remembers not injuries as a serpent, cannot be called "Talmud Hakham" (a teacher). But it is written [Lev. xix. 18]: "Thou shalt not avenge nor bear any grudge"? There precautionary matters are spoken of (but in regard to bodily pain or honor it is different). As we have learned in the following Boraitha: "What is called revenge, and what is called bearing a grudge? Revenge is such a case: When one comes to the other, and asks him to lend a sickle to him, he

says: Nay. On the morrow, the second comes to the first, and wants to borrow an axe. He answers:

[paragraph continues] I do not wish to lend to you, as you have not lent to me. This is called revenge. What is bearing a grudge? When one comes to another, and asks him to loan him an axe, and does not get it. On the morrow the second comes to the first, and wants to borrow a shirt. He answers: I lend it to you, because I am not like you, who did not want to lend me yesterday. This is called bearing a grudge." But in case of bodily pain, has not the Torah forbidden vengeance? Have we not learned in the following Boraitha: "Those who are wronged and not wronging, bear their shame and do not reply, do good deeds out of love, and rejoice not at afflictions, of them says the verse [Judges v. 31]: 'Those that love him are as the rising sun in his might.'"

Reply they should not bear a grudge in their hearts they may (and if *another* party avenges them, they need not interfere). Is that so? Did not Rabha say: He who leaves his injuries unavenged, will have his sins forgiven in Heaven? That means, if the offender comes to propitiate him, he should pardon.

"*Which? One, or two?*" If two, why is it said at all, one (or two)? This applies to those who have a disease, that they cannot stretch forth one finger, without stretching out the other also. We have learned in the following Boraitha: They used to put out one finger when healthy, but when diseased, they could stretch out two.

"*Once an accident*," etc. The rabbis taught: It once happened two priests were running, and were on a par. When they came to the top, one outstripped the other by four ells; he took a knife and stuck it into the other one's breast. R. Zadok stood on the staircase of the porch, and said: Brethren of Israel, hear! It is written [Deut. xxi. i]: "If there be found a slain person in the land . . . shall take a heifer." For whom shall we bring the heifer? For the city, or for the Temple? The whole people began to weep. Then the father of the young man arrived, and found him yet agonizing. He said: "May he (the dead) be an atonement for your sins; and as he shows yet signs of life, the knife has not become unclean (since he still lived)." We may infer from this, that the defilement of the knife was considered by them as a yet greater misfortune than bloodshed.

The rabbis taught: It is written [Lev. vi. 4] . "He shall put off his garments, and put on other garments, and carry forth the ashes." We might think that, as on the Day of Atonement, he should strip himself of his holy garments and put on profane

garments, for removing the ashes. Therefore it is written in both cases "garments," that from the analogy of expression we should understand that both are holy garments. And by "other," older ones are meant. R. Eliezer, however, said: From the expression "other garments, and carry forth," we can infer that even a blemished priest may carry forth the ashes. Said Resh Lakish: As R. Eliezer and the first Tana differ about the carrying forth of ashes, so do they differ about the lifting up of the ashes from the altar. R. Johanan, however, said: They differ only about the carrying forth of the ashes, but about the lifting up all agree that it is a respectable service,

which only an unblemished priest may perform. What is the reason of Resh Lakish, who says they differ on this point too? The reason of Resh Lakish is: If it were a real service, could it be performed only in two garments [ibid. 3]? And what will R. Johanan say to this? He says: The Torah only specifies these two, but all four are meant.

Rabh said: For performing the following four services a lay. man deserves capital punishment: namely, sprinkling, offering of incense officiating at the water-offering and the wine-offering. And so also Levi taught in his Boraitha; also as to the lifting of the ashes. What is the reason of Rabh's decree? Because it is written [Num. xviii. 7]: "And thou and thy sons with thee shall keep your priesthood concerning every matter of the altar, and for that within the vail, where ye shall serve; as a service of gift do I give you your priesthood; and the stranger that cometh nigh shall be put to death." Service of gift, but not of removing. Levi says: It is written, "Every matter of the altar," which includes all things. Rabha pro. pounded a question: How about a service of removing from an altar in the Temple (inner)? Is this considered by Rabh like a service of gift, or like a service of removal? Rabha decided later, it is written [ibid.], "and for that within the vail"; but it is written, "and within the vail": that makes the service like to a service of removing. We have learned in one Boraitha according to Rabh, and in another according to Levi. According to Rabh we have learned as follows: "The services for which the layman is guilty of death are: Sprinkling of blood, inside or in the Holy of Holies (on the Day of Atonement); sprinkling the blood of a sin-offering of a bird; wringing-out of a bird's blood which is a burnt-offering [Lev. i. 15]; and officiating at the offering of three *lugs* of water or three lugs of wine." We

have learned according to Levi as follows: "The services for which a layman is guilty of capital punishment are: Removing the ashes; performing the seven sprinklings within, and on a leper; and offering on the altar something either fit or unfit."

Wherefore was the drawing of lots repeated? Said R. Johanan: To cause more excitement in the Temple, as it is written [Ps. xv. 15]: "So that we took sweet secret counsel together, and walked unto the house of God in a great company."

In what garments were the lots drawn? R. Na'hman says, in ordinary garments; R. Shesheth says, in holy ones. R. Na'hman says, in ordinary clothes, because some of the priests being strong men, they could snatch the lot by force, and go to perform the service, if they had the holy garments on. R. Shesheth says, in holy garments, because, if they had the ordinary ones on, they might by absence of mind perform the service in them, since they were very eager to perform the service.

MISHNA: The second lot (determined) who should slaughter, who sprinkle, who should clear of ashes the inner altar and who care for the lamp, who should take up members to the staircase of the altar: the head, the leg, the two forelegs, the tail (tip of tail), the (left) leg (hind), the chest, the windpipe, the two flanks, the entrails, the fine flour, the things made in pans [1 Chron. ix. 31], and the wine.

Thirteen priests are privileged to do all this. Ben Azai, however, said, in the presence of R. Aqiba, in the name of R. Joshua: It (the animal) was offered as it had walked. (See Gemara.)

GEMARA: The schoolmen propounded a question: Were the lots drawn for each service separately, or at once for all services? Come and hear: R. Hiya taught, the lots were not drawn for each service separately; but the priest who had drawn the lot of the daily offering, obtained the service for the other twelve following him.

"*The second lot,*" etc. The schoolmen propounded a question: Who received the blood into the basin, the priest that slaughtered or the priest that sprinkled? Come and hear! We have learned that Ben Katin made twelve cocks for the laver, that twelve priests might sanctify their hands at once. If the priest that slaughtered received the blood, then thirteen cocks would have been needed. Hence infer that the sprinkler did it.

"*Ben Azai said,*" etc. The rabbis taught: What is meant

by "it had walked"? In the following order: The head and the leg, the chest, the stomach, the windpipe, the two forelegs, the two flanks, the tip of the tail, and the other hind leg. R. Jose says: As it has been stripped, so it was offered. How had it been stripped? The head, the leg, the tail, the other leg, the two flanks, the two forelegs, the chest, the windpipe.

R. Aqiba says: As it has been cut to pieces. How had it then, been cut to pieces? The head, the leg, the two forelegs, the chest, the windpipe, the two flanks, the tail, and the other leg. R. Joseph the Galilean says: According to the excellence of the members. How is that? The head, the leg, the chest, the windpipe, the two flanks, the tail, the other leg, and the two forelegs. Said Rabba: Our Tana and R. Jose both agree that the members are to be offered in the order of their excellence. One, however, says, according to the size of the members; the other, according to the fatness. Why the head and leg together, according to all? Because the head contains too many bones, the leg, which contains more flesh, is added.

MISHNA: The third lot was drawn by new (priests) who had not yet fumed incense; the fourth, by new and old ones, (to determine) who should take up the members (parts) from the staircase to the altar.

GEMARA: We have learned in a Boraitha: No man has repeatedly offered incense. What is the reason? Said R. Hanina: Because the offering of incense renders rich. Said R. Papa to Abayi: Whence do we deduce this? Shall we assume this, because it is written [Deut. xxxiii. 10], "They shall put incense before thee," and in the next verse, "Bless, O Lord, his substance"? Then it should not be due to incense alone, since at the end of the tenth verse it is also written, "and whole burnt sacrifice upon thy altar." He answered him: A burnt-offering is frequent (besides being a daily sacrifice, it was offered by many individuals, and all could not get rich), but incense is not frequent.

Rabba said: You will not find a young scholar who decides questions in Law, who should not be of the tribe of Levi or Issachar. Levi, as it is written [ibid.]: "They (the tribe of Levi) shall teach thy ordinances unto Jacob; and Issachar, because it is written [1 Chron. xii. 32]: "And of the children of Issachar, those who had understanding of the times." But why not also Jehudah? As it is written [Ps. Ix. 9]: "Judah is my lawgiver." I mean, to deduce the traditional

sayings from the written Law (this can only do those of Levi and Issachar).

R. Johanan said: For the evening daily offering, lots were never drawn; he who had drawn the lot for that of the morning performed this service also.

MISHNA: [The parts of] the daily sacrifice are offered [according to circumstances] by nine, ten, eleven, twelve--no less and no more. How so? Itself by nine. During the Feast [of Booths] one carries a pitcher of water; thus it is ten. Toward evening by eleven, itself by nine, and two carrying two measures [1] of wood. On Sabbath by eleven, itself by nine, and two having in their hands two spoonfuls of frankincense for the showbread. On the Sabbath which occurs in the middle of the Feast [of Booths], one carrying a pitcher of water [added to the eleven].

GEMARA: Said R. Abba, according to others Rami b. Hama or R. Johanan: Water must be offered during the Feast of Tabernacles only with the morning daily offering, but not with that of evening. This we deduce from the Mishna which states: When the Sabbath occurs during the festival, one is added for carrying water. If water had to be offered with the evening offering also, then it would occur on another day of the festival than a Sabbath, as two carry measures of wood, and a third would be needed for carrying the water (and twelve were needed).

We have learned in a Boraitha: R. Simeon b. Jochai said: Whence do we deduce that the daily evening offering requires two measures of wood, carried by two priests? Since it is written [Lev. i. 7], "And (they shall) lay the wood in order," and as this cannot occur in case of the morning daily offering, as it is written [ibid. vi. 5], "The priest shall burn wood upon it every morning, and he shall lay in order upon it the burnt-offering," we must suppose, then, that what has been said before, applies to the daily evening offering.

R. Hiya taught: The lots amounted sometimes to thirteen, sometimes to fourteen, or fifteen, or sixteen (fourteen on the Feast of Tabernacles, for the pitcher of water; fifteen on the Sabbath; sixteen for the Sabbath during the Feast of Tabernacles).

[paragraph continues] But did we not learn, seventeen? That Boraitha is not according to R. Eliezer b. Jacob, but according to R. Jehudah.

MISHNA: A ram was offered by eleven: the flesh by five; the entrails, fine flour, and wine by two, respectively. A bull is offered by twenty-four: the head by one, the hind leg by two, the tail by two, and the [left] hind leg by two; the chest by one, the windpipe by three, the two forelegs by two, the two flanks by two; the entrails, fine flour, and wine by three, respectively. This refers to public sacrifices. A private sacrifice could be offered, if one chose, by one. In respect of skinning and cutting to pieces, both [sacrifices] are equal [private or public, both may be skinned, etc., by a stranger].

GEMARA: We have learned in a Boraitha: The flaying and cutting into pieces may be performed by a layman. Said Hezkiah: Whence do we deduce this? Because it is written [Lev. i.

7]: "And the sons of Aaron the priest shall put fire upon the altar." Hence only the fire must be put by priests, but the flaying may be done by others. But this verse is needful for its own sake, how can it be deduced from it? Said R. Simeon b. Ashi: I once heard how Abayi explained it to his son as follows: It is written [ibid. 5]: "*He* shall kill." A layman is meant. How is this known? Because it is written [Num. xviii. 7], "And thou and thy sons with thee shall keep your priesthood," one might say, that the slaughtering is also meant. Therefore it is written: "And he shall kill the young steer before the Lord and the sons of Aaron the priest shall bring near the blood." From this we see that all that precedes the bringing near of the blood may be done by a layman. And it is also written [Lev. iii. 2]: "And he shall lay his hand . . . and kill it." From this it can be deduced that the layman who has laid his hand upon it may kill it.

[Rashi explains, that all this is stated in a Mishna elsewhere, and Abayi explained to his son that what Hezkiah had said is in accordance with that Mishna.] Now let us see: We have concluded that from the sprinkling of the blood onwards all must be performed by priests; and the fire is put upon the altar later. Why is it then necessary to say that Aaron's sons should do it? This is to exclude the flaying and cutting into pieces, which, though they come after the sprinkling of the blood, may be done by a layman.

It was taught: R. Assi in the name of R. Johanan said: If a layman has put the two measures of wood on the altar, he is

liable to capital punishment, as it is a service belonging to the following day (and not the final service of the night). Rabba opposed: According to this supposition (that it is a service of the day), a lot had to be drawn? Rabba has forgotten what we have learned above, that he who drew the lot to lift the ashes, also obtained the privilege to arrange the measures of wood. Said Mar Zutra, according to others R. Ashi: How can it be said it is a service of the next day? Did we not learn further in the Mishna: "Go and see whether it is time to slaughter"? If the arranging of the wood was also a service of the next day, why was not this mentioned likewise (for if it were done when it was yet night it would be invalid)? This is no difficulty.

If the animal was slaughtered before the time, it was invalid, but if the wood was put on before the time, it could be removed and replaced by a priest after daybreak. 1

Footnotes

31:1 The Talmud translates *Telaim* lambs, but the ordinary versions regard it as a proper name.

32:1 Literally it is thus, but translators have it, "When he had reigned one year."

37:1 The Hebrew term is Gizrin--•••••. After Jost, we have translated it in Shekalim, VI., *f.*, p. 28, "cords"; but as it is too heavy for two men to carry two cords of wood, we have here translated only "measures," and according to all commentators on the Mishna it is a certain measure of wood for the altar, unknown to us.

39:1 In the text there is still another interpretation, that R. Johanan means to say that the service in question is but the final service of the night and does not belong to the day; and again, questions and answers are raised and made, and it is so complicated that both Rashi and Tosaphoth could not explain it without additions and omissions, and the result seems to be, after all, that the service belongs to the day. We have therefore, contrary to our method, omitted it.

Next: Chapter III: Time of the Daily Offering; Entry of a Layman into the Temple Court; Order of High-Priests' Service on Day of Atonement

CHAPTER III.

REGULATIONS CONCERNING THE TIME OF SLAUGHTERING THE DAILY OFFERING, THE ENTERING OF A LAYMAN INTO THE COURT OF THE TEMPLE, AND THE ORDER OF THE HIGH-PRIEST'S SERVICE ON THE DAY OF ATONEMENT.

MISHNA: The Superintendent used to say to them: Go out and see whether the time for slaughtering has come. If it had come, the one who saw it said: "(*Barqai*) It becomes light." Matthew b. Samuel says: He used to ask: "Is the whole east bright, as far as Hebron?" and he answered: "Yea."

[Why was all this necessary? Because on one occasion the moonlight was bright, and they mistook it for dawn. They slaughtered the daily sacrifice, and removed it to the place of burning (finding it unfit).] The high-priest used to be then taken down to the bath. This was the rule in the temple: After necessary human needs a bath had to be taken, and after making water one had to wash his hands and feet.

GEMARA: We have learned in a Boraitha: R. Ishmael said: He said: "*Baraq barqai*." And R. Aqiba said: "*Ala' barqai* (The light has risen)." Ne'huma b. Aphaqshyon said: He said: "It has become light even at Hebron. But R. Jehudah b. Bathyra said: He said: "The whole east is bright, as far as Hebron." Then each went to do his work. When each went to his work, it was full day. Did they wait so long? It is meant, those who needed laborers went to look for them. Said R. Sophra: The Mincha prayer of Abraham was when the walls begin to be blackened by shadow. Said R. Joseph: Have we to imitate Abraham? Said Rabha: The Tana learns from Abraham, why shall we not? As we have learned in the following Boraitha: It is written [Lev. xii. 3]: On the eighth day shall the flesh of his foreskin be circumcised." But those who are devout do this religious duty early in the morning. As it is written [Gen. xxii. 3]: "And Abraham rose up early in the morning." Therefore says Rabha: How can we learn of Abraham? He was an older

man, who taught the public, 1 and his actions are not to be applied to common men.

"*Matthew b. Samuel says*," etc. Who used to say, "Yea"? if you wish, I will say, he who stood on the roof used to say: "The east is bright," and as the one who stood beneath asked him: "As far as Hebron?" he would reply: "Yea." And if you wish, I can say: He who stood beneath used to say: "Is the east bright?" The one on the roof would then say: "As far as Hebron?" He would reply: "Yea." (Rashi explains: It is written elsewhere: Why Hebron? To remind of the merit of the patriarchs.)

"*Why was all this necessary*?" How could they have made this mistake? Did we not learn in a

Boraitha: Rabbi said: The beams of the moon are not like to those of the sun. For those of the moon rise straight like sticks, whereas those of the sun diverge in all directions. The disciples of R. Ishmael taught: That time it was a cloudy day, and the moon's rays were multiplied in all directions as those of the sun.

R. Na'hman said: The heat during a clouded day is worse than the solar heat itself. A similar instance I can show: A barrel of vinegar smells more strongly when one hole is made in it than when it is wholly opened. A mixed light (of the sun and fire) is more unendurable (by the eye) than the solar light itself. A similar case: It is more difficult to stand under a shower, than to enter wholly into water. The thoughts about women are more exhausting than the sin itself. A similar case: The smell of wasted meat is more irritating than the meat itself. The heat of the end of summer is worse than that of the summer itself (because it is easier to catch a cold, because the body has been inured to heat during the summer). A similar case is: When an oven is heated four or five times a day, then even a couple of pieces of wood render it hot. Fever is much worse in the winter than in the summer. A like case is: In a cold oven much wood is necessary to heat it; hence if one has a high temperature in the winter, the fever must be great. To study old subjects is much more difficult than a wholly new subject. A like case: It is easier to make clay of new sand than of sand which had once been part of a building.

R. Abahu said: What is the reason that Rabbi says that the solar rays are in all directions? Because it is written [Ps. xxii. 1]: "To the chief musician upon the hind of dawn." As a hind has her horns diverging, so are the sun's rays.

R. Elazar said: Why are the prayers of the upright compared to a hind? As the horns of a hind diverge as long as they grow, so the more prayers they will offer, the more they are heard.

"*They slaughtered the daily sacrifice*." To what does this refer? If all the year (they mistook the passage beginning with "The high-priest" to be connected with the foregoing), why was the high-priest taken to the bath? During the whole year he does not sacrifice? If it refers to the Day of Atonement, then there is no moon in the middle of the night (as it is the tenth day in the month). The answer is, the two passages have no connection. When it was bright, they took him to the bath.

"*This is the rule*," etc. The feet he had to wash, since it was possible they had been defiled while performing the function; but the hands? Said R. Abba: Hence it can be inferred, that it is a merit to clean with one's hand the feet in such a case. And this is in support of what R. Ammi had said: A man may not go out into the street when his feet have been thus defiled, lest it be said that he is suffering from a certain infirmity [Deut. xxiii. 2, end]--lest it be said his children are bastards.

MISHNA: No one may enter the forecourt [even of Israelites, not priests] to do service, even when he is clean, before he has bathed. On this day the high-priest bathes five times, and washes his hands and feet ten times. All these ablutions are taken within the sanctuary, over Beth Haparva, except the first. A screen of linen [byssus] was placed between him and the people.

GEMARA: B. Zorna was asked: What was the bathing needed for? He said: If one passes from

one holy place to another, and from a place which it is *Karath* to enter, to a similar place, still one must take a bath; how much more when one, passes from the forecourt, which is not a holy place, and which it is not *Karath* to enter, to the sanctuary. R. Jehudah says: The bathing is not obligatory. It is only used as a reminder. If he was once unclean, and forgot to bathe, he will now remember it, and will wait after bathing till sunset. On what point do they differ? In case he entered without having bathed, according to R. Zorna, he has committed a sin, and rendered the service invalid; according to R. Jehudah, he has not.

Abayi asked R. Joseph: Ought there to be nothing between his body and the water in this bathing, as in other bathing? Or if it is only as according to R. Jehudah, that does not matter? He answered: All that the rabbis have ordered must be done as if it were biblical. He asked him again: If only a part of his body (as head, foot, hand) is introduced into the sanctuary, is a bathing also necessary? He replied: The thumbs and great toes of a leper, which must be besprinkled by the priest with blood [Lev. xiv. 14], he yet introduced into the sanctuary, while standing in the gate of Nicanor, as we have learned in a Boraitha. We see, then, that this was not considered entering, as he could not enter himself.

"*Bathes five times*." The rabbis taught: Five times the high-priest bathed, and washed his hands and feet ten times, all this in the sanctuary over the Beth Haparva, except the first, which was not in the sanctuary, but over the Gate of Water, and near the high-priest's chamber.

"*A screen of byssus*," etc. Why one of byssus? That is according to R. Kahna, as he says further, to remind him that the service of this day is in the linen clothes (not golden). So we say it is meant in this case.

MISHNA: He undressed, went down, and dived. After he had come out again, and wiped himself (dried himself with a sponge?), the garments of cloth of gold were brought to him, which he put on, and then washed his hands and feet. They brought to him the daily sacrifice; he made an incision, and another completed the slaughtering in his presence. He took up the blood, and sprinkled it, went in to fume the morning, (matinal) incense, and to trim the lamps, as well as to offer the head, the members, the things made in pans, and the wine.

The morning incense was offered between the blood and the members; that of evening, between the members and drink-offerings. If he was an aged or delicate high-priest, the cold water of the bath was mixed with water warmed previously.

GEMARA: Our Mishna, which says that after bathing he put on the garments of cloth of gold without having washed his hands and feet previously, is not in accordance with R. Meir, who maintains that the hands and feet must be washed twice at each time of his putting on the garments. As we have learned in the following Boraitha: A screen of linen was placed between him and the people. He undressed himself, went down, dived, came out, wiped himself. They brought him the garments of

cloth of gold, he put them on, he washed his hands and his feet. R. Meir, however, said: He

undressed himself, washed his hands and feet, and then went down, and dived. He came up, dried himself. They brought him the garments of cloth of gold, he put them on, then washed his hands and his feet. It is right, according to R. Meir, who says that for each diving two washings of the hands and feet are needed; that ten times he should wash his hands and feet, as in the Mishna. But according to the rabbis, who say only once, there will be but nine? The rabbis can reply, that the last time he washed his hands and feet, was when he stripped himself of the holy garments and had to put on his week-day clothes, after the whole service.

We have learned in a Boraitha: Rabbi Jehudah said: How is it known that the high-priest has to dive five times, and wash his hands and feet ten times? Because it is written [Lev. xvi. 23]: "And Aaron shall then go into the tabernacle of the congregation, and he shall take off the linen garments, which he had put on when he went into the holy place, and he shall leave them there. And he shall wash his flesh with water in a holy place, and put on his garments, and come then forth, and offer," etc. From this we infer that between one service and the other he had to dive. So also said Rabha, with the addition: Because it is written [ibid. 4], "These are holy garments," that proves that all holy clothes are equal. This day there were five services: The daily morning offering, in garments of cloth of gold; the service of the day, in linen clothes; his ram and the people's ram, in garments of cloth of gold; the spoon and the censer, in linen clothes; the daily evening offering, in garments of cloth of gold. (For the five services, were five divings.) How is it known that for each diving two times have the hands and feet to be washed? Because it is written [ibid.]: "He shall take off his garments . . . and shall wash, . . . put on . . ." The phrase "shall wash" applies to the taking off and the putting on of the garments. From this we see only that when he takes off the linen garment, and puts on cloth of gold, he must wash himself. How do we know that when he takes off the garments of cloth of gold, and puts on the linen ones, he must wash himself? The disciples of R. Ishmael have taught: This can be inferred by a reasoning *a fortiori*. If when he puts off the linen clothes, whose atonement is not great, still he must have a bathing, how much more when he puts off the cloth of gold, whose atonement is great?

But it may he asked, Is the atonement of the linen clothes not great? Did not the high-priest enter in them the Holy of Holies? It is written [ibid. 4]: "These are holy garments, therefore shall he wash his flesh in water (and both the cloth of gold and linen garments are holy.) "

"*He made an incision*." How much? Says Ulla: The greater part of the windpipe and the gullet. So also have said R. Johanan and Resh Lakish. Abayi ordered the services according to a tradition he had, and it agrees with that of Abbu Saul. The (first) great arrangement of wood preceded the second arrangement of wood on the southwestern comer of the altar (as will be explained in Tamid). This preceded the two measures of wood, and they preceded the removal of the ashes from the inner altar, and this preceded the trimming of the five lamps. This preceded the sprinkling of the blood of the morning daily offering, and this preceded the trimming of the two lamps; and this preceded the offering of the incense, which came before the offering of the members; this was before the meal-offering, and this was before the things baked in pans. This preceded the drink-offering, and this preceded the additional offerings (for Sabbath or festival), and these were before the spoonfuls of frankincense, that preceded the daily evening offering, as it is written [Lev. vi. 5]: "He shall burn thereon the fat of the peace-offerings." From the word *Hashlamim* (peace-offerings) can be inferred that they should complete the service of the day (this word means, also, *completion*).

The Master says: "The first great arrangement of wood preceded. The second," etc. How is it known? Because it is written [Lev. vi. 2]: "It is the burnt-offering which shall be burning upon the altar all night. And after that it is written: "And the fire of the altar shall be burning upon it." By this the other arrangement of wood is meant. How is it known that this precedes the two measures of wood? Because it is written [ibid. 5]: "The priest shall burn wood on it every morning." On it, and not on the other fire. From this we infer there is another fire. Which? That of the two measures of wood. How is it known the two measures of wood precede the clearing of the inner altar? Although in both places it is written, "every morning," yet we understand that preparation for service precedes the mere removal of ashes. Whence do we deduce that this precedes the trimming of the five lamps? Says Abayi: I have it so by tradition, but I know no reason. Rabba says:

[paragraph continues] I know it is according to Resh Lakish, who says when one meets an opportunity to perform a meritorious act, one should not pass by it. When the priest enters, he meets first the altar, then the lamps. And what is the reason that this precedes the blood of the daily morning offering? And this precedes the two lamps? Says Abayi: Since it is written of the measures of wood "every morning" twice, (in Hebrew) superfluously, let it apply to the five lamps and to the two lamps, the one to precede the blood of the morning sacrifice, the other to follow it. How do we know that these two lamps precede the incense? Because it is written [Exod. xxx. 7]: "When he dresseth the lamps, (then) shall he burn it." How is it known that the incense comes before the members? Of the incense [ibid.] it is said "*every* morning," but of the daily sacrifice only "morning." [The first precedes the second.] Why do the members come before the meal-offering? Because we have learned in a Boraitha as follows: Whence do we deduce, that before the daily morning offering has been sacrificed nothing else shall be offered? Because it is written [Lev. vi. 5]: "He shall lay in order upon it the burnt-offering." In addition to this Boraitha, said Rabba: By the word *the* burnt-offering is meant the first burnt-offering; that is, the daily offering. How is it known that the meal-offering precedes the things made in pans? Because they are mentioned [Lev. xxiii. 37] in this order. How is it known the things made in pans precede the drink-offering? Because they are also a meal-offering, and added to the daily sacrifice [Num. xxviii. 5]. And why do these precede the additional sacrifice? Because in that verse [Lev. xxiii. 371 they are mentioned in this order. And why do these precede the spoonfuls of frankincense? Did we not learn in a Boraitha that they succeed the frankincense? About this, Tanaim differ. (Pesachim, p 107.) Said Abayi: It seems to me the Halakha prevails, that the additional sacrifices ought to precede the frankincense. Because we have seen that of which it is said "every morning" precedes that of which it is said "morning." [See Lev. xxiv. 7 and 8.] Here of the additional sacrifice is said "every and each *day*," hence--not *morning*.

"*The morning incense was offered between the blood and members*." According to whom is this? If according to the rabbis, it should have been between the blood and lamps; and if according to Abbu Saul, it should have been between the lamps and the members? The whole Mishna is according to the rabbis,

but about the order the arranger of the Mishna has not been particular.

"*That of evening, between the members and drink-offerings*." How do we know this? Because it

is written [Num. xxviii. 8]: "As the meat-offering of the morning, and the drink-offering thereof, shalt thou prepare it." As in the case of the meat-offering the incense precedes the drink-offering, so in the evening the incense shall precede the drink-offering.

The rabbis taught: It is written [ibid. 7]: "The drink-offering thereof shall be the fourth part of a hin." "Thereof," of the evening sacrifice [ibid. 4]. We deduce concerning the morning sacrifice from the evening sacrifice. Rabbi, however, said: On the contrary, we deduce concerning the evening offering from the morning offering. It is right, according to the rabbis, since that of the evening is mentioned last. But what is Rabbi's reason? Said Rabba b. Ulla: Because it is written [ibid. 7], "for the one sheep," and [ibid. 4] "the one sheep," hence in both cases the same morning offering is meant.

"*If he was an aged or delicate high-priest*." We have learned in a Boraitha: R. Jehudah said: Iron plates were heated on the eve of the Day of Atonement, and were on the Day of Atonement plunged into the cold water, to warm it for the high-priest. But the iron gets tempered thereby (which is forbidden as a work)? R. Bibi answers: The iron had not been heated so much as to become tempered. Abayi, however, says: It does not matter, since it is not intentional, and therefore not forbidden.

MISHNA: They brought him to Beth-Haparva, which was in the sanctuary; a linen screen was spread out between him and the people; he washed his hands and feet and stripped himself. R. Meir says: He undressed, and washed his hands and feet. He went down and dived, came up and dried himself, white garments were brought to him, which he put on, and he washed his hands and feet.

In the morning, he put on linen of Pelusium, costing twelve Minas. In the evening, Hindoo linen, of 800 Zuz [8 Minas]. This is according to R. Meir. The sages say, in the morning he put on garments worth 18 Minas, in the evening of 12 Minas--together amounting to 30 Minas. This from public money [*another version*, taken from the holy funds?]; but if he chooses, he can have them more costly out of his private means.

GEMARA: Why is it called Parva? Said R. Joseph: Because it was built by one Parva, one of the magi.

"*In the morning he put on linen of Pelusium*." Wherefore does he tell us the price? He comes to teach us that linen less costly were invalid. Let us see: All agree that what he put on in the morning was more costly than that in the evening. Whence is this deduced? Said R. Huna, the son of R. Ilai: Because [Lev. xvi. 4] linen is mentioned four times in that verse; in reference to the morning garments, they are to be of the best linen.

R.' Huna b. Jehudah, according to others R. Samuel b. Jehudah, taught: After the service of the congregation was finished, if the high-priest possessed a linen coat made by his mother at her own cost, he might put it on, and perform the services appertaining to an individual (not congregation: carry out the spoons from the Holy of Holies, and the censer; the first had been used for frankincense, the second for incense), provided that when he puts it on, he shall bestow it on the congregation. It was said of R. Ishmael b. Phabi: His mother had made him a linen coat

worth 100 Minas; he used to put it on, perform the services of an individual, and bestow it (in his mind) on the congregation. Of R. Eliezer b. Harsum it was said: His mother had made him a linen coat worth 20,000 Minas. His brethren the priests did not permit him to put it on, as in it he seemed to be naked (so delicate was its texture). How could this be, if it is said to have been thick, the threads six times twisted? Said Abayi: As wine is seen through a glass, however thick it be.

The rabbis taught: In the world to come, when a poor man, a rich man, and a wicked man come before the judgment, when the poor is asked, "Why hast thou not studied the Law?" if he answers: "I have been poor, I had to earn my bread, and had no time," they answer him: "Wast thou poorer than Hillel the Elder?" Of Hillel the Elder it was said: Every day he went to work, and earned a Tarpeik (a *Stater* coin of 4 Dinars). Half he gave away to the porter of the college, to let him in, and on the other half he and his family lived. Once it happened he did not earn anything, the porter did not let him in. He ascended the roof where there was an opening, and listened to the words of the living God, from the mouth of Shemaia and Abtalian. It was said: That day was a Friday, and in the season of Tebeth (winter), and he was besnowed. When it dawned, Shemaia said to Abtalian: "Every day it becomes light at this time, and now it is dark. Is it such a cloudy day?" They raised their eyes, and saw the figure of a man. When they went

up, they found on him a layer of snow three ells thick. They took him down, washed him, dressed him with oil, placed him before a fire, and they said: "Such a man deserves that Sabbath should be violated for his sake (by the making of fire)."

When the rich man is asked: "Why hast thou not studied the Law?" if he answers: "Because I was a rich man, and had many estates, and had no time to study," they answer him: "Wast thou richer than R. Elazar b. Harsum?" Of him it was said: His father had bequeathed to him a thousand towns on land, and a thousand ships on the sea, and he himself used to take a bag of flour on his shoulder, and wander from town to town and land to land to study the Law. Once his own slaves found him, and put him to hard labor. He said to them: "I pray you, let me go to study the Torah." They replied: "We swear, by R. Elazar b. Harsum's life, we will not let you go before you work." Thus, as long as he lived, he did not attend to his affairs, but studied all day and all night the Law.

When the wicked man is asked: "Why hast thou not studied the Law?" if he replies: "I was handsome, and was absorbed by my sins," they answer him: "Wast thou more handsome than Joseph?" It was said of Joseph the Righteous, that every day Potiphar's wife used to try to seduce him by her talk. The clothes she used to put on in the morning (to attract his attention) she did not put on in the evening, and *vice versa*, and her refrain was always: "Listen to me; do what I ask of you." He answered: "No." She said: "I will imprison you." He replied [Ps. cxlvi. 7]: "The Lord looseneth the prisoners." She then said: "I will bend your loftiness." His reply was [ibid.]: "The Lord raiseth up those who are bowed down." She said to him: "I will blind you." He answered [ibid. 8]: "The Lord causeth the blind to see." She gave him a thousand talents of silver. He was averse to her, or "to lie with her, or to be with her" [Gen. xxxix. 10]. "To lie with her" in this world, "to be with her" in the world to come.

From this we see that Hillel makes the poor man guilty, R. Eliezer b. Harsum the rich, and Joseph the wicked.

MISHNA: He went to his bullock, which stood between the porch and the altar, his head due south, but his face due west. The high-priest stood on the east, his face due west. He put his two hands on him and confessed himself in the following terms: I beseech thee, Jehovah, I have committed iniquities, have transgressed, and have sinned before thee, I and my house.

[paragraph continues] I beseech thee, Jehovah, forgive, pray, the iniquities, the transgressions, and the sins, which I have committed, transgressed, and sinned before thee, I and my house, as it is written in the Torah of Moses thy servant, "For on that day shall he make an atonement for you," etc. [Lev. xvi. 30]. They respond after him: "Blessed be the name of His kingdom's glory for ever!"

GEMARA: "*His head due south, but his face due west*." If his head was turned to the south, how could his face be turned to the west? Said Rabh: His head was turned aside. Why? Says Abayi: It was apprehended, lest he should excrete. The rabbis taught: How were the hands imposed on his head? The sacrifice stood in the north, his face turned westward; he who imposed his hand stood in the east, his face westward; he placed both his hands between the two horns, provided that there was nothing between his hands and the head of the sacrifice; then he confessed himself. On the sin-offering he confessed the sins for which a sin-offering has to be brought; on a trespass-offering, the sins corresponding to it; and on a burnt-offering, sins of preventing the poor to gather, not forgetting for the poor, and not leaving corners [Lev. xix. 9]. So said R. Joel the Galilean.

The rabbis taught: How did the high-priest confess? He said: "I have committed iniquities, transgressed, and sinned." So he confessed over the goat [Lev. xvi. 21]: "And confess over him all the iniquities of the children of Israel, and all their transgressions, in all their sins." (The order of the terms is the same.) So also by Moses is it written [Ex. xxxiv. 7], "Forgiving iniquity and transgression and sin." So says R. Meir. The sages, however, say: By iniquities are meant intentional transgressions, for it is written [Num. xv. 31]: "That person shall be cut off, his iniquity is upon him." By transgressions are meant rebellion. As it is written [2 Kings iii. 7]: "The King of Moab hath rebelled." (The term in Hebrew is the same.) By sin is meant unintentional wrong, as is written [Lev. iv. 2]: "If any person sin through ignorance." Now, is it possible that after he has confessed the intentional and rebellious sins, he will confess the errors? Therefore we must say that he used to say differently: "I have sinned, committed iniquities, and transgressed, I and my house." And so it is written by David [Ps. cvi. 6]: "We have sinned together with our fathers, we have committed iniquity, we have done wickedly. . . ." And so also Solomon says [1 Kings viii. 47]: "We have sinned, we have committed iniquity, we have acted wickedly." So also

[paragraph continues] Daniel [Dan. ix. 5]: "We have sinned, and have committed iniquity, and have done wickedly, and have rebelled." Why, then, is it said by Moses: "Forgiving iniquity, and transgression, and sin." Moses said to the Holy One, blessed be He: "Lord of the Universe, when the children of Israel will sin before thee, and then repent, mayest thou consider their intentional sins as sins done through ignorance." Said Rabbi b. Samuel in the name of Rabh: The Halakha prevails according to the sages. Is not this self-evident? R. Meir is an individual, the sages are a

majority, and we know that the decree of an individual is prevailed over by that of the majority? Lest one say, In this case the Halakha ought to prevail according to R. Meir, as he takes in his support what Moses said. He comes to teach us that here also the Halakha is according to the majority.

One of the scholars prayed for the people in the presence of Rabba, and followed R. Meir's decree. Said Rabba to him: Thou departest from the rabbis, and doest as R. Meir says. He replied: I hold with R. Meir, for it is written in the Bible that Moses said so.

"*They respond after him*." We have learned in a Boraitha: Rabbi said: It is written [Deut. xxxii. 3]: "When I call on the name of the Lord, ascribe ye greatness unto our God." So said Moses to Israel: "When I mention the name of the Holy One, blessed be He, ye shall add greatness to it." Hananiah the son of R. Joshua's brother said: From the following verse [Prov. x. 7]: "The memory of the just is blessed." That means, the prophet says to Israel: "When I mention the just One of the Worlds, ye shall add a blessing."

MISHNA: He came to the eastern part of the forecourt, to the north of the altar, the Segan of the high-priest on his right, and the head of the family ministering during the week [Rosh-Beth-Ab] on his left. There were two he-goats; and a box was there wherein were two lots. Of box-tree they were. [The high-priest] Ben Gamla made them of gold, for which his memory was praised.

[The high-priest] Ben Katin made twelve cocks to the laver, which had had only two. He, also made a machine to the laver [to take it down into a well at will], that its water should not become unfit by being kept over night [in free air]. The king Monobaz made all the handles of the utensils used on the Day of Atonement--of gold. Helen, his mother, made a golden candelabrum

over the temple-gate. She likewise made a tablet of gold, whereon was inscribed the section about a woman who goes aside [Num. v. 12]. Miracles happened to the gates which Nicanor brought. Therefore all these persons' memory was praised.

GEMARA: "*The Segan on his right*." R. Jehudah said: One who goes on the right of his Master is a boor. An objection was raised from this Mishna: It is written that the Segan was on his right. And we have learned in a Boraitha, that when three walk, the Master ought to be in the middle, the greater of two on his right, and the other on his left. And so we find that of. the three angels that came to Abraham, Michael was in the middle, Gabriel on his right, and Raphael on his left. (How, then, is he a boor?)

R. Samuel b. Papa explained before R. Adda, that it is meant, he should walk on his right, but a little behind, and not side by side. Did we not learn in a Boraitha that he who precedes the Master is rude, and he who walks behind his Master is too ostentatiously humble? He should fall a little back--not precede, and not follow.

"*And a box was there*," etc. The rabbis taught: It is written [Lev. xxi. 8]: "And Aaron shall put lots upon the two goats." Hence, lots of any kind. Should we assume, that he must place two on each goat? Therefore it is written: "One lot for the Lord, one lot for Azazel." Therefore one

ought to be for the Lord, and one for Azazel. Should we assume that he should place both lots on one goat, and then draw them and then place them on the other goat, and draw again? Therefore it is written, "one lot." What, then, means the word "lots"? This signifies that they should be equal: one should not be made of gold, the other of silver; one large, the other small. It is said in the Boraitha, lots of all kinds. This is self-evident? It must teach us this because of another Boraitha: Because the plate on the high-priest's brow, on which the name of the Lord was written, was of gold, one might think this lot must also be so. Therefore it is written, "one lot," twice, to teach that they may be of many kinds, of olive-tree wood, of nut-tree wood, of box-tree wood.

"*Ben Katin made twelve cocks*," etc. We have so learned in a Boraitha, to the end that the twelve priests engaged in the service of the morning daily offering might wash their hands and feet at the same time. We have learned again in a Boraitha: In

the morning, when the laver was full, the high-priest washed his hands from the upper cock; but in the evening when he departed, when it was not full, he did it from the lower cock.

"*He also made a machine*." What machine? Says Abayi: He made a sort of wheel, which brought it down into the well.

"*Helen his mother*," etc. We have learned in a Boraitha: When the sun rose, from the golden candelabrum emanated rays, and all knew it was time to read Shema.

"*Miracles happened to the gates*," etc. The rabbis taught: What miracles have happened to his gates? It was said, when Nicanor had gone to Alexandria, and was returning with the gates, the waves of the sea threatened to drown him; they took one of the gates and cast it into the sea. The sea was not appeased. They desired to cast the second gate overboard also. He took it on his body, and said: "Fling me together with it." Thereupon the sea became quiet. He grieved for the other gate. When he came to the coast at Accho, the gate appeared by the ship. According to others, some beast of the sea had swallowed the gate, and afterward spit it out. Therefore all gates of the Temple were gilt, except Nicanor's, because miracles had happened to them, and they were therefore left as they were. Others say, because their bronze was brilliant. R. Eliezer b. Jacob says: It was polished bronze, and glittered like gold.

MISHNA: And the memories of the following were mentioned with blame; those of the house of Garmo, they were unwilling to teach the art of making the showbread; those of the house of Abtinas, who did not want to teach the art of preparing the incense; Hogros b. Levi, who knew something in music which he was unwilling to instruct others in; Ben Kamtsar did not want to teach the art of writing. Of the first it is said: "The memory of the just is blessed" [Prov. x. 7]; but of the rest is said: "But the name of the wicked shall rot."

GEMARA: The rabbis taught: "The house of Garmo were skilled in making the showbread, and did not want to teach it to others. The sages sent for workers from Alexandria, and they could bake as well, but could not take it out from the oven [it got broken]. They heated the oven from outside, and baked it there, and took it from there, while the house of Garmo heated it inside and baked it inside (and removed it from there). Also the showbread of the Alexandrian bakers used

to become mouldy, and that of the former never became so. When the sages heard this, they said: All which the Lord hath created, He created

only for His glory. As it is written [Is. xliii. 7]: "Every one that is called by my name, I have created for my glory." So the Beth Garmo had to be invited again to resume their post. The sages sent for them, they did not come: so their wages had to be doubled. They used to receive 12 Minas daily, and henceforth 24. R. Jehudah says: They had received 24, and thenceforth 48. Then the sages inquired of them: "Why are you unwilling to instruct others?" They replied: "Our family knows by tradition that this Temple will one day fall, and then, if we will have taught it to an improper person, he may go and serve thereby other idols." And for this thing their memory, was praised: their children were never seen to use bread of pure flour, that it should not be suspected they took it from the flour for the showbread. They did it, to fulfil what is written [Num. xxxii. 22]: "And ye be thus guiltless before the Lord, and before Israel."

"*Those of the house of Abtinas*," etc. The rabbis taught: The house of Abtinas were skilled in the preparing of incense, and were unwilling to teach it. The sages sent for workers from Alexandria. These could prepare the incense, but could not make it so that the smoke should not bend. The smoke of the incense prepared by the house of Abtinas rose straight, like a rod, and the smoke of the others' incense bent hither and thither. When the sages heard of this, they said, etc. [the same as previously; the reason they gave for not teaching was also the same]. For the following thing they were mentioned with praise: Never a bride of their house went out perfumed, and even when one of their house married a woman of another family, it was on the, condition that she should not be perfumed, that it be not said: "They take it from the incense." To fulfil what is written, etc. [as before].

We have learned in a Boraitha: R. Ishmael said: I once was, in the road, and met one of their grandchildren. I said to him: Your ancestors wished to increase their own glory, and diminish that of the Lord; now the Lord's glory persists, and yours has ended in nothing. R. Aqiba said: R. Ishmael b. Luga has related to me: I and one of their grandchildren once went out into, the field to gather grass. I observed that he wept and rejoiced. I inquired of him: Why weepest thou? He replied: I recall the honor my ancestors once had enjoyed, and weep. And why did, he rejoice? "Because I feel sure that the Holy One, blessed be He, will restore it to us." He asked him: Why hast thou

been reminded of it just at present? He said: Because I see the grass we used to put in to make the smoke straight. He said to him: Point it out to me. He replied: We are under an oath not to show it to anyone. Said R. Johanan b. Nuri: It happened once I met an old man, who had a scroll on which was a list of the names of the spices composing the incense. I asked him: Whence art thou? He replied: I am descended of the house of Abtinas. "And what do you hold in your hand?" He said: The scrolls of the spices. I said to him: Show it to me. He said: As long as our family was in life, they did not show it to any man. But now, when they have all died, and the Temple itself no longer exists, I can give it to thee, but be cautious with it. When I related all this to R. Aqiba, he said: From this time one need not blame them any longer. To this said Ben Azai: "By thy name thou shalt be called and to thy position thou shalt be restored, and thine thou wilt always receive, as so it is recorded Above." It is a rule, one man cannot touch what is

destined for another [as they were recalled and paid double wages].

"*Hogros b. Levi*," etc. We have learned in a Boraitha: When he had to render his voice melodious, he placed his thumb in his mouth, and the index in his mustache. When all his fellow-priests heard his voice, they bent to the ground (from ecstasy).

The rabbis taught: Ben Kamtsar did not want to teach the art of writing. It was said of him: He used to take four quills between his four fingers, and when he had to write a word of four letters, he wrote it at once. (Jehovah's name is of four letters.) When they inquired of him: Why dost thou not teach it to others? he found no answer. Therefore of the first it is said "he memory of the just is blessed"; and of Ben Kamtsar and his tribe it is said: "The name of the wicked shall rot." What is meant by "rot"? How can a name "rot"? Said R. Elazar: Their name shall contract such a rottenness that children shall not be named after them.

Rabbina said to one of the scholars who arranged for him the Agada: How do we know that the rabbis have said: "The name of the just is blessed"? He replied: Why rabbis--it is in the Bible, in the Proverbs? He said: Nay. How is it known from the Pentateuch? It is known from the following verse [Gen. xviii. 17]: "Shall I hide from Abraham what I am about to do?" And the next verse is: "Abraham shall surely become a

great nation." And how is it known from the Pentateuch that the name of the wicked shall rot? Because it is written [ibid. xiii. 12]: "And pitched his tents close to Sodom." And the next: "The men of Sodom were wicked and sinners." R. Elazar said: From the blessings awarded to the righteous, one can infer what curses are bestowed on the wicked; as it is written [ibid. xviii. 19]: "For I know him, that he will command," etc. And the next verse is: "The Lord said, Because the cry against Sodom and Gomorrah is great." And from the curses given to the wicked the blessings reserved for the righteous can be inferred, as it is written [ibid. xiii. 13]: "The men of Sodom were wicked and sinners." And the next verse says: "And the Lord said unto Abram, Lift up now thy eyes and look," etc.

R. Elazar says again: Even for one just man is a whole world created. As it is written [Gen. i. 4]: "And God saw the light, that it was good." And good is only a just man, since it is written [Is. iii. 10]: "Say to the just, that he is good." [1] R. Elazar says again: Whoever forgets something of his study, causes exile to his children, as is written [Hosea iv. 6]: "As thou hast forgotten the law of thy God, so will I myself also forget thy children." R. Abahu says: He is degraded from his high station, as it is written [ibid.]: "Because thou hast rejected knowledge, so will I also reject thee from officiating before me."

R. Hiya b. Abba said in the name of R. Johanan: A righteous man does not depart from the world, till another righteous man like him has been created, as it is written [Eccles. i. 5]: "The sun rises, the sun goes down." Before the sun of Eli had been extinguished, the sun of Samuel of Ramah already shone. The same said again: The Holy One, blessed be He, perceived that righteous men are few: He planted them in every generation, as it is written [1 Sam. ii. 8]: "For the Lord's are the pillars of the earth, on which He hath set the world." And the same said once more, on the same authority: Even when there is only one just man in the world, the world can exist through his merit, as it is written [Prov. x. 25]: "The righteous is the foundation of the

world." R. Hiya says, on his own authority, as it is written in a different verse [1 Sam. ii. 9]: "He ever guardeth the feet of his pious ones." But they are spoken of in the plural? Says R. Na'hman, it is read in the plural, but it is written in the singular. R. Hiya b. Abba says again, in the

name of R. Johanan: When a man has lived the greatest part of his life without having sinned, he will sin no more, for they will guard him Above, and this he infers from the above passage. The disciples of R. Shila have said: When a man has had occasion to commit a sin once and twice, and he escapes committing it, he will be guarded Above from sinning. They infer it from the same verse. Resh Lakish said: It is written [Prov. iii. 34]: "The mockers He will mock, but to the modest He will give grace." From this we can infer: If one wishes to defile himself (to sin) the door is opened to him; but he who comes to purify himself, he is assisted. The disciples of R. Ishmael have told a parable in reference to this: When one sells both naphtha and perfumes, when one arrives to buy naphtha, he saith to him: "Measure the quantity you need"; but if one arrives to buy perfumes, he says: "Wait, we will both measure it, and contract the odor." The same disciples taught: A sin stops up a man's heart, as it is written [Lev. xi. 43]: "And ye shall not make yourselves unclean with them, that ye should be defiled thereby." Do not read ••••••• {Hebrew *WNTMATM*} but •••••• {Hebrew *WNTMTM*} (stop up).

The rabbis taught: This verse signifies that when a man defiles himself a little here below, Above he is defiled much; and if he defiles himself in this world, he is defiled in the world to come. And it is written [ibid. 44]: "Ye shall sanctify yourselves, and be holy." When a man sanctifies himself a little here below, he is sanctified much Above, and when he sanctifies himself in this world, he is sanctified in the world to come.

Footnotes

41:1 Here follows a passage to prove that whenever "old man" is used in the Bible, one who teaches in a college is meant; but as it is mentioned elsewhere we omit it.

56:1 The Talmud translates it thus, literally.

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CHAPTER IV.

REGULATIONS CONCERNING THE TWO GOATS OF THE DAY OF ATONEMENT: HOW THEY WERE SLAUGHTERED, SENT AWAY, ETC.

MISHNA: He shook the box, and took out two lots. On one is written, "to Jehovah"; on the other is written, "to Azazel." The Segan is at his right, and the head of the family [see above] on his left. If that of Jehovah was taken up by his right hand, the Segan says to him, "My lord the high-priest, raise thy right hand." If that of Jehovah was taken up by his left hand, the head of the family addresses him: "My lord the high-priest, raise thy left hand." He placed them [the lots] on the two he-goats, and uttered: "To Jehovah a sin-offering." R. Ishmael says: It was not necessary for him to say "sin-offering," but "to Jehovah" sufficed. They responded: "Blessed be the name of His kingdom's glory for ever."

GEMARA: Why had he to shake the box? That he should not have intentionally taken that for Jehovah in his right hand (as it was a good omen if he took it up by chance). Rabh said: The box was of wood, and was not sacred, and could contain only the two palms of the hand. Rabbina opposed: It is right that it had only capacity for the two palms, that he might not intentionally take the lot for the Lord; but if it was profane, he should have sanctified it? The answer is: If he had sanctified it, it would have been a wooden sacred vessel, and in the Temple wooden sacred vessels were not used. Let them have made it of silver or gold? Because the Torah wished to spare the wealth of Israel. The Mishna is at variance with the Tana of the following Boraitha: R. Jehudah says in the name of R. Eliezer: The Segan and the high-priest both placed their hands in the box. When that for Jehovah was picked up by the high-priest, the Segan said to him: "My lord the high-priest, raise thy right hand." But if it was picked up by the Segan, the chief of the family said to him: "Speak thy words." Why not the Segan himself? The lot came into the hand of the Segan, and

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not of the high-priest; therefore the spirits of the latter would have been depressed. On what point do they differ? One thinks, the right hand of the Segan is better than the left hand of the high-priest, and therefore both should put into the box their right hand; whereas the other thinks that the left hand of the high-priest is as good as the right hand of the Segan, and therefore he ought to place both his hands in the box. And who is the Tana who differs from R. Jehudah? That is R. Hanina, the Segan of the priests. As we have learned in the following Boraitha: R. Hanina the Segan of the priests said: Why did the Segan ever walk on the right of the high-priest? In case the high-priest became unfit for service, the Segan should enter at once to do the service.

The rabbis taught: In the time of the forty years during which Simeon the Upright was high-priest, the lot for Jehovah always came into the high-priest's right hand, but thereafter it

sometimes fell into his right, sometimes into his left hand. And the tongue of crimson wool, during the time of Simeon the Upright, always became white. But after Simeon the Upright, sometimes it became white, sometimes it remained red. In Simeon the Upright's time the western light ever burned, but after him it sometimes burned and sometimes went out. The fire of the altar ever waxed in strength, and except the two measures of wood prescribed they had not to add any wood, in Simeon the Upright's time; but after him, sometimes the fire persisted and sometimes wood had to be added. In his time a blessing was sent into the Omer, the two loaves of bread, and the showbread, and every priest who received only the size of an olive became satiated, and some was left over; but after him, these things were cursed, and every priest got only the size of a bean. And the delicate priests refused to take it altogether, but the voracious ones accepted and consumed. It once happened, one took his own share and his fellow's: he was nicknamed "robber" till his death.

The rabbis taught: The year when Simeon the Upright had to die, he told the sages: "Children, know ye that this year I am going to die." They asked him: "How dost thou know?" He said: "Every year when I entered and left the Holy of Holies, I was accompanied by one old man, dressed in white and enveloped in white; but this year it was an old man attired in black and in a black turban, and he entered with me but did not go out with me." And after the festivals, he got sick, and died.

[paragraph continues] And thenceforth priests ceased to bless Israel with the name of Jehovah, but used "Adonai" (the Lord).

The rabbis taught: Forty years before the Temple was destroyed, the lot never came into the right hand, the red wool did not become white, the western light did not burn, and the gates of the Temple opened of themselves, till the time that R. Johanan b. Zakkai rebuked them, saying: "Temple, Temple, why alarmest thou us? We know that thou art destined to be destroyed. For of thee hath prophesied Zechariah ben Iddo [Zech. xi. 1]: 'Open thy doors, O Lebanon, and the fire shall eat thy cedars.'"

"*He placed them on the two he-goats*." The rabbis taught: Six times the high-priest pronounced God's name, as it is written (Jehovah), during the Day of Atonement: three times in the first confession and three times in the second confession, and the seventh time when he had drawn the lot. It happened, when the high-priest said, "I beseech thee, Jehovah," his voice was heard in Jericho, ten *Parsas* distant from Jerusalem, according to Rabba bar bar Hana. And the sound of opening the Temple gates was heard at the distance of eight legal limits of Sabbath (16,000 ells). The goats that were in Jericho used to sneeze at the incense offered at Jerusalem. A bride in Jerusalem had never to perfume herself, as the odor of the incense imbued them all with aromatic smells. R. Joel b. Diglai said: My father had goats on the mountains of Michmar. They sneezed at the incense. R. Hiya b. Abbin said in the name of R. Joshua b. Kar'ha: A certain old man has related to me, that since the time when he was walking in Shiloh, he still felt the smell of its formerly offered incense.

R. Janai said: To take out the lots from the box was obligatory, but to place them on the goats was not so. R. Johanan says: Even taking them out was not obligatory. An objection was made from the following Boraitha: The disciples asked R. Aqiba, If the lot came into his left hand, might he not put it into his right hand? He replied: Do not give the Sadducees opportunity to

rebel (by declaring it unbiblical). Now here the reason is only that the Sadducees should not rebel; but otherwise, we would say, he may transfer it from one hand to the other. How, then, can R. Janai say that it was obligatory? Then the lots would not be changeable. Said Rabba: They mean to say, not that he may transfer the lot in his left hand to his right hand, but that when the lot has been placed on the

goat for Azazel, whether he may transfer him to his right, and design him for the Lord? The answer to this was: Although one may use a thing appointed to a less holy purpose for a more holy, yet the Sadducees will rebel.

MISHNA: He tied a tongue of crimson wool to the head of the goat that was to be sent away [the scapegoat], and placed him opposite to the gate through which he was to be transferred; and the one to be slaughtered, opposite to the place of its slaughtering. He went to his bull a second time, putting his hands on him, and confessing in these terms: "I beseech thee, Jehovah, I have committed iniquities, transgressed, and sinned before Thee, I and my house, and the sons of Aaron, Thy holy people: I beseech Thee, Jehovah, forgive the iniquities, transgressions, and sins which I have committed, transgressed, and sinned, I and my house, and the sons of Aaron, Thy holy people, as it is written in the Torah of Moses Thy servant: 'For on that day shall he make atonement for you, to cleanse you from all your sins, that ye may be pure before Jehovah.'" They respond after him: "Blessed is the name of His kingdom's glory forever."

GEMARA: The schoolmen propounded a question: The Mishna states: He was placed opposite to the gate, and the one to be slaughtered opposite to the slaughtering-place. Were they to be tied in their places, or only placed there? Come and hear! R. Joseph taught: He tied a tongue of crimson wool to the head of the goat that was to be sent away, and placed him opposite to the gate, and the one to be slaughtered opposite to the slaughtering-place, for the purpose that they should not be confounded with one another, as with other goats. Now, if the Mishna means they were tied there, it is right; but if only placed, this can only prevent their being confounded with each other, as the one has the tongue of red wool tied to it, but with other goats the other may be confounded? It is meant, then, that they should be tied in their places.

R. Itz'hak said: I have heard a Halakha about two tongues of wool, one for the red cow and the other for the scapegoat, that one must be of a prescribed quantity and the other need not, and I do not know which it is. Said R. Joseph: Let us see. The wool for the goat which was sent away must be divided into two parts: one part tied to its horns, and one to the rack; therefore it seems that it must be of a prescribed quantity. But the wool for the red cow, which need not be divided, need be of no prescribed quantity. Rami b. Hama opposed: Even that for

the red cow must have a certain weight (as will be explained). Rabha answered him: Concerning the weight, the opinions of the Tanaim are different; consequently, no prescribed quantity is needed. When R. Dimi came from Palestine, he said in the name of R. Johanan: I have heard of three tongues of wool: one for the red cow, one for the scapegoat, and one for lepers. I have heard, one must be of the weight of 10 Zuz, one must have the weight of 2 Selas, and one of 1 Shekel, but I cannot explain which. When Rabbin came from Palestine, he explained this in the words of R. Jonathan: That for the red cow must weigh 10 Zuz, for the scapegoat 2 Selas, and

for lepers 1 Shekel. (For the red cow, which must have a certain weight, it is 10 Zuz; that of the goat, which must be divided, 2 Selas; and the leper's, which need be neither, it is a Shekel.)

R. Itz'hak said: I have heard about the two slaughterings, of the red cow and of the high-priest's bull, one, if done by a layman, is valid, and the other is, in such a case, invalid; but I cannot explain which it is. It was taught: Concerning the slaughtering of the red cow and the high-priest's bull, Rabh and Samuel differed. One said, if the red cow was slaughtered by a layman, it is valid, and the bull, invalid; and the other says the reverse.

It may be ascertained that Rabh is the one who says that the red cow slaughtered by a layman is invalid, because (when Rabh heard) R. Zerah said that the red cow slaughtered by a layman is invalid, Rabh said: The reason is, that in connection with the red cow is mentioned Elazar (a priest) and "statute."

It was taught: Concerning the slaughtering of the red cow by a layman, R. Ammi said: It is valid; R. Itz'hak of Naph'ha said: It is invalid; Ulla said: It is valid; and others say: It is invalid. R. Joshua b. Abba objected to the statement that it is valid, and wanted to support Rabh from the following Boraitha: It is certain to us that the sprinkling of the water of the red cow is invalid, if a woman has done it instead of a man, or when it was not sprinkled in the daytime. But whence do we deduce further that the slaughtering of it, and receiving of the blood, and sprinkling of the blood, and burning it, and the putting in of the cedar-wood, hyssop, scarlet string, is invalid in such cases? Therefore it is written, "The law."

Shall we assume that to them shall be added the gathering of the ashes, and the drawing of the water, and the *sanctification*? Therefore it is written: "*This*" is the statute [Num. xix. 2].

[paragraph continues] But what is the reason of including those, and excluding these? Because we find here an extension and a limitation, we will say that we may deduce all the ceremonies from the sprinkling of the water. As the sprinkling of the water must be done by a male, not by a female, and is valid only in the daytime, we may add to it the slaughtering, the receiving and sprinkling of the blood, the burning, putting in of cedar-wood, hyssop, a scarlet string; as it is certain to us that all these things are invalid when done by a female, so we conclude it is valid only in the daytime; and we will exclude the gathering of the ashes, the drawing of the water, and the *sanctification*, as they may be done by a female, so we will conclude they may be done also in the night-time. What is the objection? If you will say: "Because it is prohibited to a female, it is also prohibited to a layman," you can infer from the sprinkling of the water, which is invalid when done by a female, but nevertheless is valid when done by a layman. Said Abayi: The objection is this, What is the reason that a female may not sprinkle it? Because it is written "Elazar," and we say Elazar, but not a woman. In the same manner, we say Elazar (*i.e.*, a priest), but not a layman. Said Ulla: If you will read carefully the whole section about the red cow, you will see that one case cannot be compared with the other. Some apparently analogous inferences are yet in reality contradictory. And there are apparently analogous inferences which are really analogous. (Therefore care must be taken in making inferences.) Said R. Assi: (It is so), for when R. Johanan and Resh Lakish learned the section of the red cow, they carried away in their heads no more than a fox does earth when it runs across a ploughed field, for some apparently analogous inferences are really so, and some not.

One Tana taught in the presence of R. Johanan: All slaughterings may be done by a layman, except that of the red cow. Said R. Johanan to him: "Go and teach it outside of the college; for we find no single kind of slaughtering invalid when done by a layman." And R. Johanan not only disregarded this Tana's teaching, but even his own Master's; for R. Johanan said in the name of R. Simeon b. Jehozadak: "The slaughtering of a red cow by a layman is invalid." But I say it is valid, because we do not find any kind of slaughtering invalid when done by a layman.

"*He went to his bull.*" Why did he not say in the first confession, "The sons of Aaron, Thy holy people," but does so in

the second? The disciples of R. Ishmael taught: So is it right according to the law, for it is better that one guiltless should atone for the sinners than that one not yet purified from sins himself should atone for other sinners. (Before the first confession, he was not atoned for himself.)

MISHNA: He slaughtered it [the bull], and received in a basin its blood, giving (presenting) it to him who stirred (mixed) it, on the fourth row of marble stones in the Temple, that it should not become congealed. He took the censer, mounted the top of the altar, and cleared the coals on either hand: taking a censerful of the inner glowing coals, then he came down again, and placed it [the censer] on the fourth row of stones in the forecourt.

Every day he scooped up with a silver censer, and emptied into a golden vessel. On this day he filled a golden censer, and also carried it in. Every day he used to scoop [the coals] up in one measuring 4 Kabs, and poured them into one Of 3 Kabs; but on this day he filled one Of 3 Kabs, and also carried them in it. R. Jose says: Every day he filled one of a Seah [6 Kabs], and emptied it into one Of 3 Kabs; but on this day he filled one Of 3 Kabs, and carried them in it. 1 On all days it was a heavy (massive) one, but on this day he took a light one. Every day its handle was short, on this day long; all days its gold was yellow, but on that day red. This is according to R. Mena'hem. On all days he used to offer half a Mina [50 Dinars in weight] of incense in the morning, and one half in the evening; but on this day added a handful more. Every day it was pounded finely, but on this day it was the finest [Lev. xvi. 12]. On all days priests went up on the eastern staircase [of the altar], and descended on the western. On this day the high-priest went up on the middle one, and came down on the same. R. Jehudah says: The high-priest ever mounts and descends on the middle one. All days the high-priest washed his hands from the laver, and on this day from the golden pitcher [cyathus]. R. Jehudah says: The high-priest ever washes his hands and feet from a golden pitcher. All days there were four fires [on the altar]; on that day five: this is according to R. Meir. R. Jose says:

[paragraph continues] Every day three, and on this day four. R. Jehudah says: Every day two, on this day three.

GEMARA: The Mishna states: He gave it to one who stirred it, on the fourth row of the marble stones. Is it not written [Lev. xvi. 17]: "And there shall not be any man in the tabernacle"? Said R. Jehudah: Read not "of the Temple, but "from the Temple"--the fourth row of stones away from the Temple.

The rabbis taught: It is written: "There shall not be any man in the tabernacle." Shall we assume, that one may not be in the corridors either? Therefore it is written, "in the tabernacle" (but outside one may). All this has been said of the tabernacle in Shiloh. How is it known that it applied also to the Temple in Jerusalem? Therefore it is written [ibid.], "in the holy place." All this is said of the time when he offers the incense. How is it known that when he sprinkles the blood no man should be in the holy place either? Therefore it is written, "when he goeth in." But how is it known that no man is to be found there till he comes out? Because it is written, "until he come out." After that it is written, "shall he make an atonement for himself, and for his household, and for the whole congregation of Israel"; from this is seen that first he must atone for himself, then for his household, then for the priests, and then for Israel.

The Master says: It only applies to the time when he offers the incense. Whence is this inferred? Said Rabba, and so said also R. Itz'hak b. R. Dimi, and also R. Elazar: It is written: "He shall make an atonement for himself, for his household, and for the whole congregation of Israel." What atones for all these at once? Only the incense. But how is it known that incense atones at all? Yea, for R. Hanania has taught: How is it known that incense atones? Because it is written [Num. xvii. 12]: "And he put on the incense, and made an atonement for the people." And the disciples of R. Ishmael have taught: For what does the incense atone? Slander. Why? Slander is (quietly) done, so incense is (quietly) offered.

"*Every day he scooped up with a silver censer*," etc. What is the reason (why not a golden one)? Because the Torah has been sparing of Israel's wealth.

"*On this day he filled a golden censer*," etc. Why did he not do on this day as on all days? Because of the high-priest's weakness (from fasting).

"*One measuring four Kabs*," etc. We have learned in a Boraitha: If one Kab of coals was spilled on the ground, he swept them into the trench. In one Boraitha we have learned one Kab, and in another, two Kabs? It is right, *one*. This is according to the rabbis, who say he emptied one of four Kabs into one of three; but this is neither according to the rabbis nor R. Jose (according to whom *three* Kabs were left over). Said R. Hisda: The Boraitha is according to R. Ishmael the son of R. Johanan b. Beroqa of the following Boraitha, who says that he carried them into the Holy of Holies only in a censer of *two* Kabs. R. Ashi says this Boraitha can be according to R. Jose, and can be explained thus: Every day he used one of a *Seah* of the desert, which is one-sixth less than a *Seah* of Jerusalem, and emptied it into one of three Jerusalem *Seahs*.

"*It was a massive one*," etc. We have learned in a Boraitha: On all days its sides were thick, but on that day thin. Every day the handle was short, and this day long? That the high-priest should not need to make such an effort to hold it.

In another Boraitha we have learned: Every day the censer was without a bell, and on this day with a bell ("His sounds shall be heard when he goeth in into the holy place" [Exod. xxviii. 38], since he carried it in in his white garments devoid of bells), so said the son of the Segan.

"*The gold was yellow*," etc. Said R. Hisda: Seven kinds of gold there are: Gold, and good gold,

gold of Ophir, best gold [Muphaz], beaten gold [Sha'hut], pure gold [Sagur], and gold of Parvaim. Gold and good gold, as it is written [Gen. ii. 12]: "And the gold of that land is good"; gold of Ophir, which comes from Ophir; best gold, which is scintillating [1 Kings x. 18]; beaten gold, which is ductile like wire; pure gold-when this gold is exhibited all other wares are locked up; that of Parvaim is like blood of bulls in redness. R. Ashi says: There were only five, only there was gold of each kind of good and bad quality; hence "gold" and "good gold" are deducted. We have learned also in a Boraitha: All days the gold was yellow; this day it was of Parvaim, which is red like the blood of a cow.

"*Finely pounded, but this day finest*." The rabbis taught (whence do we deduce this?): Because it is already written [Ex. xxx. 36]: "Thou shalt pound some of it fine." Why has it to be repeated, "finely pounded"? That means, on this day it must be finest.

"*Washed his hands from the laver, on this day from the golden pitcher*." Why so? For the honor of the high-priest.

"*All days there were four fires*," etc. The rabbis taught: All days were two, this day three; namely, one, the ordinary large fire, the second for the incense, one for this special day (for the extra incense of the Holy of Holies). So says R. Jehudah. R. Jose says: All days were three, this day four; namely, those enumerated by R. Jehudah, and one to keep the fire perpetual, as it is written: "A perpetual fire shall be burning upon the altar, it shall not go out" [Lev. vi. 6], and one specially for this day. Rabbi says: "On all days four, this day five." The four above mentioned, and one for the unconsumed sacrifices which had not yet been burned in the evening.

Now, we see that all agree that this day a special fire was made. Whence do they deduce this? From the expression, "and the fire" [ibid. 5]. And even he who does not deduce it from the "*and*," deduces it from "*and the*." What? As we have learned in the following Boraitha: It is written, "a perpetual fire, it shall not go out." This is to teach that the second fire shall be on the outer altar. But how do we know there had to be fires for the censer and lamps? Therefore it is written, "perpetual fire shall be burning on the altar, it shall not be extinguished." This signifies, the perpetual fire of the lamps which, I have taught you, shall be taken only from the outer altar. From this we know that on the altar must be kept fire for the lamps, but whence do we deduce that fire for the incense must be kept also? Therefore it is written [Lev. xvi. 12]: "He shall take a censer full of burning coals of fire from off the altar, from before the Lord." When do we find an altar which was partly before the Lord, and partly away *from* the Lord? We must say that was the outer altar, which was in part outside in the forecourt.

R. Elazar said in the name of Bar Qapara: R. Meir said, if members of the burnt-offering were left from the day before, he made a separate fire, and had them consumed, even on Sabbath. What does he come to teach us? We have learned in the Mishna that there were four fires? Said R. Abhin: He informs us, that even the members of a burnt-offering which had become invalid, were burnt by a separate fire, provided that they had been already attacked by the fire of the day before, but not those not touched by the fire. This we have also learned in the Mishna; namely, this day five? Says R. A'ha b. Jacob: He had to teach this to

us. We might think all this applies to a Day of Atonement which falls on a Sunday, as we had learned somewhere else, that the fat left over from Sabbath should be burnt on the Day of Atonement next to it; but we might think, if it fell on other days of the week he had not to do so. Therefore he tells us.

Says Rabba: Who is this man, that hears not what he speaks? In the Mishna it is said: "Every day." So it is all days of the week. The objection remains.

It was taught: If one extinguishes the fire of the censer, and of the lamps, Abayi says he is culpable. Rabba says: He is guiltless. If he has taken it from the altar to light it and has dropped it on the ground, and it is extinguished, all agree, he is not culpable; but if he took it from off the altar, and extinguished it there, Abayi says he is culpable, since it is the fire of the altar, of which it is written, "It shall not go out." Rabba says he is guiltless: the moment he has removed it from the altar, the fire is not regarded any more as that of the altar. Now, what R. Na'hman has said in the name of Rabba b. Abahu, that he who has taken a coal from the altar, and extinguished it, is culpable, will be neither according to Abayi nor to Rabba? What comparison is there? In that case he took it for a religious purpose, to light the lamp, or so, and it was extinguished, but in this case he removed a coal and extinguished it wantonly.

Footnotes

64:1 The reason is, because the coals must be live coals, so as to give a flame. As the top ones become somewhat dull, he drops them on the floor and only the middle ones are used, They differ, however, as to the measure of coals extinguished. According to the rabbis, no more than one quarter of the amount extinguishes, while according to R. Jose about one half extinguishes.

Next: Chapter V: Remaining Services of the High-Priest

CHAPTER V.

REGULATIONS CONCERNING THE REMAINING SERVICES OF THE HIGH-PRIEST ON THIS DAY IN THE TIMES OF THE FIRST AND SECOND TEMPLES.

MISHNA: They brought to him a [golden] spoon and censer: he took two handfuls [of incense] and filled the spoon with it. If he had a large hand, it was much; otherwise, it was a little: he used the hand as the measure. He took the censer in his right hand, and the spoon in his left hand.

GEMARA: In a Boraitha we have learned: They brought him an empty spoon from the chamber of the utensils, and a censer full of incense from the chamber of Beth Abtinas.

"*He took two handfuls*." What was the spoon needed for on the Day of Atonement? It is written [Lev. xvi. 12] merely, "both his hands full of incense, and bring it within the rail"? He could not dispense with a spoon. If he had carried in the censer first, and thereafter the incense, he would carry in twice, and it is written "bring in" only once? If he should take the incense in both his hands, and put the censer upon them, and carry them in at once, what should he do then? Take off the censer with his teeth, and put it down? If it would be unbecoming to do so in presence of a human king, how much more in presence of the King of Kings, the Holy One, blessed be He? Therefore it is impossible, and he is to do as the princes [Num. vii. 14], "One spoon . . . full of incense."

"*He took the censer in his right hand*," etc. Shall the citizen be seated on the ground, and the stranger on the heaven of heavens? ("The spoon of incense in his *left* hand," etc.) The spoon is small, and more easily carried in the left hand, while the large censer is borne in the right hand. And if they should be equally heavy, as occurred to R. Ishmael b. Qim'hith, who is said to have taken two handfuls of four Kabs of incense, even he had to take the censer in his right hand, as the censer was hot (and he had to be more careful).

It was said of R. Ishmael, the son of Qim'hith: It once happened

on the Day of Atonement he spoke in a public place with an Arab, whose saliva was sprinkled on the high-priest's clothes. He became unclean (as the Arab might be so). Then his brother Jeshohab entered and took his place, so his mother saw two high-priests of her sons the same day. Another day it happened that he spoke with a Gentile nobleman, and the same happened. Then Joseph his brother took his place. And the rabbis taught: Seven sons had Qim'hith, their mother, and all officiated as high-priests. When the sages asked her: How hast thou deserved it? She replied: The ceiling of my house never looked on my hair. The sages answered: Many did so, and it did not profit them.

The rabbis taught: It is written [Lev. vi. 8]: "He shall lift up from it his handful." We might think, his hand might be overfilled; it is therefore written, "his hand *full*," not more. We might think, he may take some with the tips of his fingers. Therefore it is written, "hand *full*." He should bend his three middle fingers on his palm, and remove with the extreme finger and thumb the incense found outside of the three. This was one of the difficult services in the Temple.

R. Johanan said: R. Joshua b. Uza'ah propounded a question, What is the matter with the incense between the middle fingers? Is it considered as belonging to the handful, or the overflow? He himself, said R. Johanan, decided later that it is doubtful. What, then, shall he do therewith? Says R. Hanina: First he should offer the handful, and then this; for if he offered this first, perhaps it is superfluous: and elsewhere we have learned that if the remains of a meal-offering have been lost before the handful was offered, the handful must not be brought.

R. Papa propounded a question: These handfuls, were they exactly measured according to the hand, or too full? Said R. Abbi to R. Ashi: Come and hear the following Boraitha: The handfuls were not exactly according to the measure of the hand, nor overfull, but middling.

R. Papa propounded another question: When the incense happened to be spilled by him, how is the law? Shall it be said, his hand is like the neck of an animal, and the incense is invalid (if the blood has been received from the throat, it is valid, but not if spilled on the ground), or shall we say his hand is like other utensils of the Temple, and if it had been spilled, it may yet be offered? This question is not decided.

The schoolmen asked R. Shesheth: If he had taken the blood

with his left hand, and placed it on the altar, is it valid, or invalid? He answered: We have learned it in our Mishna, that he took the spoon in his left hand (and yet it was offered). An objection was raised: We have learned in a Boraitha: "A layman, a mourner on the first day, a drunkard, and one who has a blemish, if one of these has received the blood, or carried it to the altar, or sprinkled it, he makes it invalid. The same is the case if he did it sitting, or with his left hand." This objection remains.

R. Papa propounded a question: If his companion took two handfuls, and emptied them into the priest's hands, how is the law? Shall we say, he has two handfuls, and it is valid, or shall we say, since it is written, "he shall take, and bring," it is invalid? This question is not decided. R. Joshua b. Levi propounded a question: When he had filled his hands with incense, and suddenly died, how then? Can another take it out from his hands and bring it in, or is other incense required? R. Hanina said: Come and see what kind of questions our predecessors have asked. Was R. Joshua b. Levi older than R. Hanina? Did not R. Joshua b. Levi say that R. Hanina had given me the permission to drink a beverage of *cress* on Sabbath? (See Sabbath, Mishna, p. 226.) He means, R. Hanina asked a profound question like to those asked by the ancestors. How is the law? Come and hear: "That was the measure." From this we must infer, that as the measure was outside, so it must be inside (that priest has a different hand, hence other incense is to be taken).

Perhaps the Mishna means to say that he may use his hand as a measure, or that he may not add to it or take away from what he has grasped? Come and hear: How did he do it (empty the frankincense from the spoon into his hands, both of which were occupied)? He took the handle of the *spoon* with his fingertips--others say, in his teeth--and moved his thumbs up the handle (being thus able not to spill the frankincense) till the handle fell, near his armpits, and the *head* of the spoon was above his palms. He then overturned the spoon, thus emptying the frankincense thence into his hands, and heaped the frankincense on the censer, that the smoke might be retarded; some say, he spread it out that it should smoke more rapidly.

This was one of the most difficult services of the difficult services that were in the Temple. Hence we see, he took of the frankincense once two handfuls, and then once more.

The schoolmen propounded a question: If he died while

slaughtering, might the blood be sprinkled? Shall we say, that since it is written "with a bullock," it is meant, the blood of the bullock alone, or the whole bull (so that the substitute cannot use him)? R. Hanina says, the entire bullock; Resh Lakish says, the blood alone. Said R. Papa: The hide and the flesh and the dung, all agree, are only parts of the bull; about the blood they differ. One says, the blood is not the bull; the other thinks the blood only is the bull. Says R. Ashi: It seems to me, the one who says that the blood is considered as one with the bull is in the right. Because it is written [Lev. xvi. 3], "With this shall Aaron come into the holy place: with a young bullock," is it meant that he should lead him by the horns? and not simply that he should bring the blood; hence the blood is considered as one with the bullock. And what can the other reply to this? His answer is: It is written, "for a sin-offering"; the word "come" refers, not to the bullock, but to the sin-offering. Let him who says that the blood is one with the bull, give the reason that a sin-offering whose owner has died cannot be used for any purpose, and is only put to death.

Said Rabbin b. R. Adda to Rabba: Thy disciples have said in the name of R. Amram that this bullock is considered a sin-offering for the congregation (who are considered its owners, because he comes to atone for himself and for his fellow-priests), and such is not put to death.

MISHNA: He walked through the Temple till he reached the place between the two vails which separated the sanctuary from the Holy of Holies--one ell wide. R. Jose says: There was but one vail, as it is said [Ex. xxxi. 33]: "And the vail shall divide unto you between the holy place and the most holy."

GEMARA: Did not R. Jose say very correctly to the rabbis? The rabbis may say: This was only the case in the tabernacle, but as in the second Temple there was no ell for the entrance at all (because a partition only an ell thick could not support itself, for the walls of the Temple were a hundred ells high) and only in the first, it was doubted whether this ell of the entrance belonged to the Holy of Holies or the sanctuary. Therefore they made two vails.

The rabbis taught: He walked between the altar and the lamps, so said R. Jehudah. R. Meir says, between the table and the altar. Others say, he walked between the table and the walls. Who are the others? That is R. Jose, who says the

door of the Temple was in the north. R. Jehudah says the door was in the south.

R. Jose says that he walked between the table and wall, which is a public entrance, because the Israelites are a people beloved by God, and need no delegate to pray for them (as it is written [1 Kings viii. 38]: "When they shall be conscious every man of the plague of his own heart, and he shall then spread forth his hands"), therefore their delegate to God needed no private entrance, but could do it in sight of the public.

R. Nathan said: The ell of the entrance was a matter of doubt to the sages, whether it was holy as the Holy of Holies or the sanctuary, and that is what R. Johanan has said: Joseph the man of Hutzal has propounded a question: It is written [1 Kings vi. 19]: "And the Debir in the house *within* did he prepare, to set therein the ark of the covenant of the Lord." They did not know what is meant: whether the place inside of the Debir was prepared for the ark, or that the Debir was itself inside.

MISHNA: The outer one was raised and looked to the southern [wall] and the inner one to the northern. He walked between them, till he reached the northern [wall]: having arrived thither, he turned his face to the south, he walked back with his left hand to the curtain, reaching the ark [which was on his right in the Holy of Holies, reaching the place where the inner curtain was]. Coming there, he placed the censer between the staves, heaped the incense on the top of the coals, so that the whole house was filled with smoke. He departed in the same manner as he had come [facing the Holy of Holies, walking backward], and said a short prayer in the outer sanctuary, but not making it a long one, so as not to alarm the Israelites [about his absence, lest he had been killed by God].

GEMARA: Of which Temple is it spoken? In the first Temple there was a partition, not a curtain, before the ark; if the second, there was no ark in it? As we have learned in the following Boraitha: Since the ark was concealed, with it were hidden the flask of manna [Ex. xvi. 33] and the flask of anointing oil, Aaron's staff, its almonds and buds, and the box the Philistines sent as a gift to the God of Israel with the golden vessels. And who concealed them? King Joshiah. Why? Because it is written [Deut. xxviii. 36]: "The Lord will drive thee and thy king whom thou wilt set over thee," he concealed it; as it is written [2 Chron. xxxv. 3]: "And he said unto the Levites that

instructed all Israel, who were holy men unto the Lord: Set the holy ark in the house which Solomon the son of David the King of Israel did build; ye have not to carry it any more upon your shoulders: now serve the Lord your God, and His people Israel." And R. Eliezer said to this: From the analogy of expression--namely, that of the ark--it is said "there" [Ex. xxx.], and of the flask of marina also "there" [ibid. xvii.]; and there are also mentioned "generations" and "for preservation." R. Eliezer infers that Joshiah concealed them. There was then no ark? The second Temple is meant; and not the ark, but the place where it had to stand, is meant. But it is said, "between the two staves." The place they would occupy is meant.

"*Heaped the incense on the top of the coals*." Our Mishna will agree with him who has said in a Boraitha: Heap it, that the issue of the smoke be retarded (made slow). In one Boraitha we have learned: He heaps it inside, away from him. In another Boraitha: He heaps it outside, toward himself. How will they agree? Says Abayi: There is a difference of opinion between two Tanaim; one says one way, the other, otherwise. Abayi says again: It seems to me the Halakha is according to him who says that he must heap it inside, away from himself; because, as we have further learned in a Mishna, they teach him not to heap near his face, lest he burn himself.

The rabbis taught: It is written [Lev. xvi. 13]: "He shall put the incense upon the fire, before the Lord." "Before the Lord": he must not prepare it outside, but inside, in the Holy of Holies. This is to contradict the Sadducecs, who said that he must prepare outside. Why? Because, they say, it is written [ibid. 2]: "For in the cloud will I appear upon the mercy-seat." Cloud is interpreted, the cloud of the incense. When he prepares outside, he enters with a cloud of incense. The sages said to the Sadducees: Is it not written: "He shall put the incense upon the fire *before the Lord*"? So it has to be prepared inside. They rejoined: What will you make of the "cloud"? The rabbis say: From this we deduce that he must put in the herb which straightens the smoke. How is it known that that herb has to be put in? Because it is written [ibid. 13]: "That the cloud of the incense may envelop." Without that herb, how will the mercy-seat be enveloped? If he has omitted to put in this herb or any ingredient, he is liable to capital punishment. Why give this reason, when, if he come in without the incense being entirely prepared, he enters the Holy of Holies

gratuitously, which involves capital punishment? Says R. Shesheth: The case is, he had omitted one ingredient intentionally, but entered unintentionally. R. Ashi says: Even if he did both things intentionally, but entered with two kinds of incense, one kind prepared as is lawful and the other not, for entering he is not culpable, but for having prepared incense lacking some ingredient he deserves capital punishment.

"*He departed in the same manner as he had come*." Whence do we deduce this? Said R. Shama b. Na'hmain in the name of R. Jonathan: It is written [2 Chron. i. 13]: "Then came Solomon from the high place that was at Gibeon *to* Jerusalem" (literally, *at*). How comes Gibeon to be in Jerusalem? His return from Gibeon to Jerusalem is compared to his entering Gibeon from Jerusalem. As when he entered Gibeon from Jerusalem his face was turned to the high place, so when he left it, his face was still turned to the high place. So did also the priests after service, the Levites after their song, and the Israelites after they had been standing. When they left, their countenances were turned to the Temple. So also a disciple, leaving his Master, should do. So R. Elazar, when he used to part from Johanan. When R. Johanan desired to leave first, he bent himself in his place till Johanan was out of his sight; when R. Elazar was to leave first, he walked backwards till he could see him no longer. Rabba, leaving R. Joseph (who was blind), used to walk backwards till his feet struck against the threshold, so as to cause them to bleed. When this was related to R. Joseph, he said to Rabba: May God's will be that you shall raise your head above the whole city. R. Alexandri said in the name of R. Joshuah b. Levi: Who prays, should make three steps backwards, and then say, "Maketh peace," etc. Said R. Mordecai to him: If he has made three steps backwards, he must stop there a while. It is like a disciple who has taken farewell of his Master, and then returns to him on the instant, which is like a dog returning to his vomit. If he has failed in doing so, he would better not have prayed at all. In the name of Shemaia it has been said: When he says these words, he should first bow to the right,

then to the left; as it is written [Deut. xxx. 2]: "From his right hand a fiery law." Rabha saw Abayi, who said "He maketh peace" first on the right, and then on his left. He said to him: Thinkest thou, thou must say this to the right side of thyself? nay, of the Holy One, blessed be He, who is opposite to thee and whose right side thus corresponds to thy left side. R. Hiya the son of R. Huna

said: I saw Abayi and Rabha making the three steps backwards with one bow.

"*And said a short prayer*." What was the prayer? Rabba and Rabbin the sons of R. Adda both said in the name of Rabh: May it be Thy will, Lord our God, that if this year will be a hot one, Thou mayest give plenty of rain. R. A'ha the son of Rabha said in the name of R. Jehudah that the high-priest used to conclude the prayer as follows: May no ruler cease from the house of Judah, and may Thy people Israel not depend for livelihood on each other (not be paupers), and mayest Thou not heed the prayers of travellers who ask for the cessation of rain.

R. Hanina Dasa happened to be on the road. It began to rain. He said: Lord of the Universe, the whole world enjoys, but Hanina is afflicted. The rain ceased. When he reached home, he said: The whole world is in anxiety because no rain comes, only Hanina is contented (having no fields). Rain began to come again.

Says R. Joseph: What availed the prayer of the high-priest against the prayer of R. Hanina Dasa?

The rabbis taught: It happened that one high-priest made his prayer very long. When the priests became alarmed, they went to see whether he had died, and met him returning. They inquired of him why he had made his prayer so long. He said: Is this displeasing to you, when I prayed the Lord that the Temple might not be destroyed? They said to him: Do not thou repeat it, as we have learned in the Mishna, He should not make the prayer long, lest he alarm the congregation."

MISHNA: When the ark had been taken away, there was a stone from the time of the first prophets, "Shethia" [foundation] it was called, three-finger high above the ground. Thereupon he placed [the censer]. He took the blood from the one who stirred it, went to the place whither he had gone, and stopped where he had stopped [in the Holy of Holies], and sprinkled from his position once upward and seven times downward [Lev. xvi. 14], without being intent on sprinkling it either upward or downward, but holding the palm open, either turned outward or toward himself [meaning doubtful]. Thus he was counting: one [upward], one and one [downward], one and two, one and three, one and four, one and five, one and six, one and seven. He departed, and placed it [the basin] on the golden stand in the Temple. They brought to him the he-goat, he slaughtered it, and received in a basin its blood. He went to

the former place, stopping where he had stopped, and sprinkled thereof once upward, and seven times downward, without taking care to sprinkle upward or downward, but holding his palm open, turned in or out, and counting thus: one, one and one, one and two, etc. He came out, and placed it on the second stand that was in the Temple. R. Jehudah saith: There was but one stand there. He took up the bull's blood, and put down the he-goat's blood. He sprinkled thereof at the

curtain which was opposite to the ark outside, once upward, and seven times down, without taking care, etc., and thus counting, etc. He lifted the blood [-filled basin] of the he-goat, and put down that of the bull's blood; he sprinkled of it on the curtain opposite to the ark outside, once upward, seven times down, etc. He emptied the bull's blood into the he-goat's blood, and transferred (the contents of) the filled basin into the empty one.

GEMARA: The Mishna says, "When the ark was taken away," not *concealed*; it holds, therefore, that it was removed to Babylon. As we have learned in a Boraitha, R. Eliezer said: The ark was taken into exile in Babylonia. As it is written [2 Chron. xxxvi. 10]: "And with the expiration of the year did King Nebuchadnezzar send, and had him brought to Babylon, with the precious vessels of the house of the Lord" (precious; that is, the ark). R. Simeon b. Jochai infers this from another passage [Is. xxxix. 6]: "No thing shall be left": no word (for "king," "word," and "commandment" the same Hebrew word is here used) will be left, none of the ten commandments (or the ark which contained them). R. Jehudah, however, says: The ark was concealed in its place (Temple), as it is written [1 Kings viii. 8]: "And they had made the staves so long, that the ends of the staves were seen out in the holy place in the front of the Debir, but they were not seen without; *and they have remained there until this day*." And he who says that R. Simeon b. Jochai thinks that the ark was taken into exile, differs from Ulla, who says as follows: R. Mathia b. Heresh had asked R. Simeon b. Jochai in Rome: We see that R. Eliezer infers from two verses that the ark was taken into exile. One verse is quoted above; the other is [Lam. i. 6]: "There is gone forth from the daughter of Zion all her splendor." Thereby the ark is meant. What hast thou to say thereto? He replied: I say, the ark was concealed on the spot, and the proof is the verse quoted above. Said R. Na'hman b. Itz'hak: We have also learned it in a Mishna in Shekalim [VI., b]: "Once a priest was engaged there, and he

noticed that one of the paving stones on one place appeared different from the others. He went out to tell others of it; but he had not yet finished speaking, when he gave up the ghost. Thereby it was known to a certainty that the ark of the covenant was hidden there." What was he engaged in? Says R. Helbo: He was busy sporting with his axe. The disciples of R. Ishmael have taught: There were two blemished priests who picked out the wood, which was not mouldy. The axe of one fell down on the place where the ark was concealed; a fire issued, which consumed him.

"*A stone, Shethia*." We have learned in a Boraitha: The word *Shethia* means, that the universe has been created from it, as *Shethia* means *foundation*. This is according to him who says, that from Zion the world began to be created, as we have learned in the following Boraitha: R. Eliezer said: The world was created from the very middle, as it is written [Job xxxviii. 38]: "When the dust is poured out as molten metal, and the clods are made to cleave fast together" (first the central piece was made, then the other parts adhered to it). R. Joshua says: The world was created beginning with the extremities, as it is written [ibid. xxxvii. 6]: "For to the snow he saith, Be thou earth. Likewise to the pouring rain, and to the pouring rains of his strength." Four times the word "rain" is repeated here (in Hebrew, but "rain" means in Talmudic dialect "matter"). There were then four pieces of matter, and of them was composed the world. R. Itz'hak says: The Holy One, blessed be He, threw a stone into the sea, and therefrom a world was made. As it is written [ibid. xxxviii. 6]: "Upon what are her foundation-pillars placed at rest? or who threw her corner-*stone*"? The sages, however, said: The world was created beginning with Zion. As it is written [Ps. l. 1, 2]: "The God of Gods, the Lord Speaketh," etc. "Out of Zion, the perfection of beauty." That signifies, from Zion began to be the beauty of the

whole world. In another Boraitha we have learned: R. Eliezer the Great said, It is written [Gen. ii. 4]: "These are the generations of the heavens and the earth when they were created, on the day, that the Lord God made earth and heaven." The luminous stars, etc., were created from the heavens, and all earthly things from the earth. But the sages say: Everything was created from Zion. As it is written [Ps. l. 1]: "A Psalm of Assaph. The God of gods," etc. "The perfection of beauty," *i.e.*, the beauty of the whole world.

"*Holding the palm open*." What is meant by this? Said R. Jehudah: As one uses a lash first from the right to the left, and then downward.

"*He took the blood from the one who stirred it*," etc. We have learned in a Boraitha: When he sprinkled, he did not sprinkle on the top of the mercy-seat, but opposite; and not that the blood should fall on it, but on the ground. When he sprinkled on the top of the mercy-seat, he bent the palm downward, that it should not fall on the mercy-seat, and when he sprinkled beneath it, he held his palm bent upward, that it should not fall on the mercy-seat, but on the ground. Whence do we deduce this? Because it is written [Lev. xvi. 15]: "He shall sprinkle it above the mercy-seat, and before the mercy-seat." This had not to be written, as it has already been written in the case of the bullock [ibid. 14]. It is meant to make the "before" and "above" equal; as by "before" the mercy-seat, it is meant that it should not be sprinkled at it, but opposite to it; so also by "above" is meant, not upon it, but opposite to it.

The rabbis taught: It is written: "And he shall sprinkle it above the mercy-seat." From this we know only once above (it, in case of the goat). How many times had he to sprinkle downward? This we have to infer from the bullock: as it is written of him seven times, so we infer in regard to the he-goat. We know that it is equal in case of the bullock and goat, downward; but we do not know how many times he is to sprinkle downward in case of the bullock? We apply to the bullock the law in reference to the goat: as in the case of the goat, so in the case of the bullock--once downward, seven times upward.

"*One, one and one*," etc. The rabbis taught: He counted one, one and one, one and two, etc., up to seven. So said R. Meir. R. Jehudah says: One, one and one, two and one, three and one, four and one, five and one, six and one, seven and one. They do not differ. Each said according to the custom in his part of the country (in the one place they said, *e.g.*, twenty-one, in the other one and twenty). Now we see that all agree that the first time of sprinkling had to be counted along with each of the other seven? What is the reason? Said R. Elazar: He should make no mistake in the number of countings. R. Johanan says: Because it is written again [ibid. 14]: "Shall he sprinkle," superfluously, it is to teach us that the first he ought to count with all the others, What is the point of their difference?

[paragraph continues] R. Elazar says: If he has failed to do it, but made no mistake, it is valid; but according to R. Johanan, it is not.

"*He departed, and placed it on the golden stand*." One of the scholars read the prayer in the presence of Rabha, and read, "He departed, and placed it on the second stand"; and after this he

read, "He took the he-goat's blood, and put down the bullock's blood." Said Rabha to him: The first thing thou readest according to the rabbis (who say there were two stands), and the second according to R. Jehudah (who says there was but one stand, and therefore he took down the bullock's blood when he came with the goat's blood), you thus contradict yourself. You should say: He put down the goat's blood (on the second stand), and took up the bullock's blood (from the first, stand).

The rabbis taught: It is written [ibid. 16]: "So shall he do for the tabernacle," etc. Wherefore had this to be written? It comes to teach us, that as in the Holy of Holies he had to sprinkle once and seven times, both from the bullock's blood and the goat's, so he had to do in the sanctuary.

"*That abideth among them in the midst of their uncleanness*." This signifies, even when they were unclean, the Shekhina continued to be among them. A certain Sadducee said to R. Hanina: At the present time, when the Temple is destroyed, ye are certainly unclean, as it is written [Lam. i. 9]: "Her uncleanness on her skirts." He replied to him: Come and see. It is written: "That abideth among them in the midst of their uncleanness."

We have learned in a Boraitha: When he sprinkled on the vail, he sprinkled not upon it, but opposite to it (that the blood fell on the ground). R. Eliezer b. R. Jose, however, said: I have seen on the vail in Rome the marks of the drops of blood of the bullock and goat of the Day of Atonement.

What is the law, when the bloods of the bullock and goat got mingled? What shall he do therewith? Says Rabha: He sprinkled thereof once upward, and seven times downward, and this sufficed for both. This Halakha has been communicated to Jeremiah in Palestine: He said: Ye Babylonians are stupid. Because ye live in a dark land, ye say dark Halakhas. In this manner, he will sprinkle the he-goat's blood before the bullock's, and it is written [Lev. xvi. 20]: "When he hath made an end of atoning for the holy place." "The end"--hence everything must be in its proper turn. What, then, shall he do? Says

[paragraph continues] R. Jeremiah: Once he sprinkles it as the bullock's, and then a second time as the he-goat's blood.

How if the bloods got mixed, when he has already sprinkled the bullock's blood upward? Said Rabha: He should sprinkle it seven times downward as the bullock's, and then upward and downward as the he-goat's, blood. How if he has confounded the basins? What shall he do then? He should sprinkle three times, once for the bullock, then for the he-goat, and the third time for the he-goat (lest the he-goat's blood had preceded the bullock's when he sprinkled the first time).

"*He emptied the bull's blood into the he-goat's*." Our Mishna will be according to him who maintains that the bloods must be mixed, for the purpose of putting it on the corners of the altar. Because it was taught: R. Joshiah and R. Jonathan said, one of them that they had to be mingled, and the other that they ought not to be mingled, but put separately on the corners of the altar. It seems that R. Joshiah was the one who said they had to be mingled, as we have heard elsewhere, though it is not written "together" [Lev. xvi. 18]; yet since it is written "and," it is as good as though it had been written "together."

We have learned in another Boraitha: It is written: "He shall take from the blood of the bullock and the blood of the he-goat." That signifies, they should be mixed together. But whence do ye know that it means that they should be sprinkled together, not separately? Therefore it is written [Ex. xxx. 10]: "And Aaron shall make an atonement upon its horns once in a year": *once*, not repeatedly. We see that the anonymous Boraitha is according to R. Joshiah.

"*He transferred (the contents of) the filled one into the empty one*." Rami b. Hama propounded a question of R. Hisda: If he had placed one basin in the other, and therein received the blood, how is it? Should we say, as they are of one kind, that forms no invalidation? or that though of one kind, it is an invalidation? R. Hisda answered him: We have learned it in our Mishna: He has transferred the filled one into the empty one. Shall we not assume that it means, he placed the full basin in the empty one? Nay. It means, he poured the contents of the full basin into the empty one. But this is already mentioned in the beginning of the sentence? He transfers the mixed blood again into an empty vessel, to mix the two kinds of blood the better.

MISHNA: He then went out to the altar which is before the Lord, which is the golden altar, and began to cleanse it, downward. Whence does he begin? From the northeastern corner [horn] to the northwestern, southwestern, southeastern. Where he begins to cleanse the outer altar, at that spot he finishes cleansing the inner. R. Eliezer says he remains where he stands, and thence cleanses [the altar being one ell square]. Everywhere he sprinkled from below upward, except at the spot where he stood, whereat he sprinkled from above downward.

He, sprinkled on the clean place of the altar [where the gold was to be seen] seven times, and what remained of the blood he poured at the western base of the outer altar, and what remained of the blood of the outer altar he poured at the southern base. Both kinds of blood mingled in the trench, and flowed out into the brook Kidron. And it was sold to gardeners as manure, but one offends by [using without paying for] them.

GEMARA: We have learned in a Boraitha: Why is it necessary to repeat here, "before the Lord"? Said R. Nehemiah: Because we find that when he held the bloods of the bullock and he-goat he stood inside of the altar, and sprinkled the blood on the vail, we might think that at the same time he should sprinkle on the golden altar: therefore it is written [Lev. iv. 7], "the altar of the incense of spice, before the Lord," to let us know that the altar was before the Lord, but not the priest. What, then, should he do? He had to come out to the outside of the altar, and thence sprinkle.

"*Began to cleanse it, downward*." The rabbis taught: He began to cleanse from above downward. And whence did he begin? From the southeastern to the southwestern, northwestern, northeastern. So is the decree of R. Aqiba. R. Jose the Galilean said: From the northeastern to the northwestern, southwestern, southeastern. So that at the place where, according to R. Jose, he begins, according to R. Aqiba he finishes, and *vice versa*. Now we see that, according to all, he does not begin with the corner he meets first, but some definite corner. What is the reason? Said Samuel: Because it is written, "He went out to the altar," till he has come out from the place inside of the altar, and comes outside. (What is the point of difference between the two Tanaim?) The following: R. Aqiba thinks he has to walk round the altar, and R. Jose that he ought only to cleanse the altar at all corners, making its round with the hand. We have learned in

a Boraitha: R. Ishmael said: Two high-priests

remained of the first Temple. One said, he had passed round the altar with his hand; and the other, he had walked round it with his feet. And both gave their reasons. The one said: As it is written, "round." The inner altar was like the outer, which was large, and had to be walked around; while the other said: It was small, and with his hand one could reach all corners, as it was only in size like one corner of the outer altar: hence it was not necessary to walk round it.

"*He sprinkled at the clean place of the altar*." What is meant by the clean place? Said Rabba b. R. Shila: Where the altar was not covered, as it is written [Ex. xxiv. 10]: "Like the color of heaven in clearness." We have learned in a Boraitha: Hanania says, he sprinkled on the northern side, and, R. Jose says, southern. On what point do they differ? The one says the door of the sanctuary was at the north, the other says, at the south; but all agree, that where he finished to put the blood on the corners, at that side he sprinkled on the top. What is the reason? Because it is written [Lev. xvi. 19]: "He shall cleanse it and hallow it." That signifies where he had hallowed it, there he shall cleanse it.

"*What remained of the blood*," etc. This is because it is written [ibid. iv. 7]: "All the (remaining) blood of the bullock shall he pour out," and when he comes out, he meets the western base of the outer altar first.

"*Of the outer altar, he poured at the southern base*." The rabbis taught: By the base of the altar, the southern base is meant.

And another Boraitha states that, according to R. Ishmael, it was the western. The disciples of R. Ishmael, however, taught in the name of R. Ishmael, as the disciples of R. Simeon b. Jochai, that it was the southern (that is, R. Ishmael revoked what he said).

"*One may offend*," etc. The rabbis taught: One becomes guilty, when he uses the blood for his benefit. So is the decree of R. Meir and R. Simeon. The sages, however, said: The blood may be used. They are at variance only as to whether it is rabbinically an offence or not; but all agree that, biblically, one cannot offend (for if they thought it was biblical, they would not sell it to gardeners. *Tosphath*.) Whence do we deduce this? Says Ulla: It is written [Lev. xvii. 11]: "I have appointed it for you upon the altar to make an atonement for your souls": for *you*, it should belong to you. The disciples of R. Simeon taught: To make an atonement, but not an offence.

[paragraph continues] R. Johanan says: In the same verse it is written, "For the blood it is that maketh an atonement for the soul." It is (after the atonement) as it had been before the atonement.

MISHNA: It holds true of all the rites on the Day of Atonement, whose order is prescribed by the Bible (and stated in the above Mishnas), that if they are performed in a wrong order, one has done nothing. Had he used the blood of the he-goat previously to that of the bull, he should sprinkle once more some of that he-goat's blood after that bull's blood, and if while he had not completed the offering of the gifts in the inner part [Holy of Holies], the blood was spilled, it is

incumbent upon him to fetch other blood, and once more sprinkle it inside, and the same is the case in the Temple, and also of the golden altar, because all [rites] are separate atonements. R. Elazar and R. Simeon say, however: From where he had been mistaken, he should begin anew.

GEMARA: The rabbis taught: It holds true of all ceremonies of the Day of Atonement whose order is stated in the Mishna, if one of them has been performed earlier than that which should precede it, it is as nothing. R. Jehudah, however, said: This is only true of the rites performed in the white garments in the Holy of Holies, but of the ceremonies performed in the white garments outside (*e.g.*, the lots, emptying the remaining blood, or confessions), it is true that if he has done them out of the right order, they are still valid. R. Nehemiah said: The case is simply, all ceremonies performed not in the right order in the white garments, whether in the Holy of Holies or outside, are invalid; but the rites performed in the golden garments outside must not be done again. Said R. Johanan: Both have deduced it from the same verse. It is written [Lev. xvi. 34]: "And this shall be unto you as a statute for everlasting, to make an atonement for the children of Israel for all their sins once a year." R. Jehudah holds, what is meant by "once a year"? Where the atonements are made once a year, and that is in the Holy of Holies. R. Nehemiah holds, that not the place where once a year the rites are performed is meant, but the rites done for atoning once a year, and that is inside and outside.

How can R. Jehudah say, the place is meant? It is only written "once a year." We must say, the reason of R. Jehudah is this: It is written, "and *this* shall be," and then "once a year." Hence two limitations, one excluding what is performed in the white garments outside of the Holy of Holies, the other

excluding what is done in the golden garments. And R. Nehemiah says: The one expression excludes what is performed in the golden clothes, and the other the remainders of the blood, which, if not emptied at all, involves no transgression.

R. Hanina said: If he has taken the handfuls of frankincense before the bullock has been slaughtered, he has done nothing. This cannot be according to R. Jehudah, for according to R. Jehudah it is only the rites performed in the Holy of Holies, but this is done outside? Nay; even according to R. Jehudah it would have been invalid. Why? Because it is a preparatory service for a service performed in the Holy of Holies (it is equal to such a service).

Ulla said: If he has slaughtered the goat before the bullock's blood had been sprinkled, he has done nothing. An objection was raised: It is said in our Mishna, if he has sprinkled the he-goat's blood before the bullock's, he should sprinkle once more. If it were as Ulla says, it should have been said: he should slaughter a second time. Ulla explained the Mishna: That is the case with the offerings in the sanctuary, but in the Holy of Holies the bullock's blood must be sprinkled first, then the he-goat must be slaughtered. And so has also R. Ephes explained.

"*The same is the case in the Temple*," etc. The rabbis taught: It is written [Lev. xvi. 33]: "He shall make an atonement for the sanctuary of holiness, and for the tabernacle of the congregation and for the altar shall he make an atonement; and also for the priests and for all the people of the congregation shall he make an atonement." The sanctuary of holiness--that is, the Holy of Holies; by the tabernacle the Temple is meant--the altar, literally; "shall he make an

atonement"--by this is meant the court where the priests might walk; "the priests," literally, "the people of the congregation," Israel; "make an atonement" once more--that means the Levites.

All are then equal in their atonement; that is, all are atoned for by the scapegoat for all sins except uncleanness. So said R. Jehudah. R. Simeon, however, said: As the blood of the he-goat, sprinkled inside, atones for Israel only the uncleannesses of the Temple and all sacred things, so the blood of the bullock atones for the priests only the sins of uncleanness. And as the confession over the scapegoat atoned for Israel's other sins, so also the confession over the bullock atoned for the other sins of the priests.

In a Boraitha we have learned: Rabbi has said: My Master, R. Jacob, has taught me this difference of opinion of R. Elazar and R. Simeon in our Mishna is only in relation to the logs offered by lepers.

R. Johanan said: The trespass-offering of a leper, if slaughtered for a wrong purpose, is where the same difference of opinion of our Mishna exists. According to R. Meir, who says that if he has made a mistake, he must begin anew, he must in this case also bring another trespass-offering. But according to R. Elazar and R. Simeon, who say that he must begin where he had made the mistake, there is no mending of this mistake; for it has been slaughtered already (and if he should slaughter another, he will offer two, while it is written one). The following Boraitha is according to R. Johanan: If a leper's trespass-offering has been slaughtered for another purpose, or some of its blood was not put on the thumbs and great toes of the leper, it may be offered on the altar, and requires a drink-offering; but another trespass-offering has to be offered.

The rabbis taught: All things mentioned in our Mishna--bullocks, he-goats--that have become invalid, defile the garments of him who burns them, and they must be burned in the place where the real sacrifices are burned. [See Lev. xvi. 27, 28.] So is the decree of R. Eliezer and R. Simeon. The sages, however, say: They are not to be burned, because only those which have been used the last, because used for the atonement, must be burned there. Rabha asked R. Na'hman: (If the he-goats have become invalid, two others are required) how many shall he despatch as scapegoats? R. Na'hman answered him: Shall he send a whole flock? R. Papi says in the name of Rabha: He sends the first. R. Simi says in the name of the same: The last. It is right according to R. Simi, because the other of the couple has been used for the atonement; but what is the reason of Rabha, according to R. Papi's saying? He holds as R. Jose of the following Boraitha: If one separates his Paschal lamb and the same be lost, and after he purchases another one in its stead the first one is found, he may offer either one of them. So is the decree of the sages. R. Jose, however, says: There is a merit to offer the first one, unless the second was a better one.

Next: Chapter VI: Regulations Concerning the He-Goats of the Day of Atonement And the Sending to the Desert, And the Confession Thereat.

CHAPTER VI.

REGULATIONS CONCERNING THE HE-GOATS OF THE DAY OF ATONEMENT AND THE SENDING TO THE DESERT, AND THE CONFESSION THEREAT.

MISHNA: It is a merit that the two he-goats for the Day of Atonement should be equal in color, stature, and price, and both (bought) at the same time; but if they are not equal, they may still be used. If one was bought to-day, and the other on the morrow, they are valid. If one of them died, then if this occurs before the lots are drawn, another is purchased to make up the pair; but if later, then a new pair should be acquired. Lots should be drawn again, and this should be said: If the Lord's he-goat has died, "The one on which the lot has fallen for the Lord may substitute him"; and if that of Azazel has died, "The one on which the lot has fallen for Azazel may substitute him." And the remaining one of the previous pair should be allowed to feed (graze) till it chance to get a blemish, when it is sold, and the money goes as a gift-offering, since an animal designed to atone for the congregation is not put to death. R. Jehudah says, it is (put to death). Also said R. Jehudah: If the blood [of the Lord's he-goat, when slaughtered] had already been spilled, the scapegoat should be put to death; if the scapegoat had died, the other one's blood should be poured out [and a new pair purchased].

GEMARA: The rabbis taught: It is written [Lev. xvi. 5]: "He shall take two goats." Why is it mentioned, *two*? If it were in the plural, we would know, not less than two. It is meant, then, the two should be equals. How, then, do we know that when they were unlike they were still valid? Because it is written twice "goats" [ibid. 9, 10], That shows, that if they were not alike they were still valid. But if "goat" were not repeated twice, they would have been, according to you, invalid? Whence would you deduce this? At the first glance, we would say, because it is written thrice "two" [ibid. 5, 7, 8]; but if the repetition of "goat" makes it valid, wherefore is this 87

repeated thrice? Infer from this, it is a merit that they be, first, equal in color; secondly, in stature; thirdly, in price. We have also learned thus in a Boraitha of sheep offered by lepers: It is written "two sheep." *Sheep* would suffice? From this it is also inferred they should be like each other, as stated above. But how do we know that if they are unlike each other they are valid? Because it is written "one sheep." The same Boraitha states in relation to the burnt-offering of a leper; there it is also written "two birds." The *two* could be dispensed with; and from the word *two* it is inferred that they should be alike. If it is so, why should we not say the same of the daily offerings, about which it is also written "*two* sheep"? This *two* is needed for what is stated in the following Boraitha: It is written [Num. xxviii. 3]: "Two on every day." From this we infer that it must be before the day's arrival (daybreak). (This is explained in Tract Tamid.)

The rabbis taught: Should the two he-goats of the Day of Atonement have been slaughtered outside of the Temple, if this was done before the drawing of the lots, he is culpable for both;

but if later, he is culpable only for that designed for the Lord (not that for Azazel. Why should he be culpable?) Before the lots have been drawn, what are as yet these simple. he-goats fit for? Said R. Hisda: Because they are fit for the additional sacrifices of the Day of Atonement, which are sacrificed outside of the Temple. (But how is this to be understood?) Why are they not fit to be sacrificed inside? Because the lots have not been drawn. The same is the case with the additional sacrifices; since all the services preceding these have not yet been performed they are not fit for additional sacrifices either?

R. Hisda holds: The inappropriate time is not to be compared with the unfitness of the goat itself (before the lots are drawn).

"*If the Lord's he-goat dies*." Said Rabh: The second of the first pair must be sacrificed, but the second of the second pair must be left to graze. R. Johanan says conversely. On what point do they differ? Rabh says: A living thing is not postponed. (The second goat of the first pair, being fit, should not be postponed in favor of another goat to be sought out), and R. Johanan says, that such are postponed. What is Rabh's reason? Because he deduces it from the too early time; as he was unfit only as long as he had no fellow, he is fit henceforth. What comparison is this? In that case the he-goat was not yet

fit for anything, but here he has been already postponed. Why not continue to be postponed? Therefore we must say: Rabh deduces it from a temporary blemish. After the blemish has passed away, he is fit; so here, his unfitness is considered temporary.

According to Rabh's theory (that a living thing is not postponed), why only the second of the first pair and not as well of the second pair, say, then, he can choose which he likes? Said Rabha: Rabh holds as R. Jose that it is a merit to use the first (as mentioned at the end of the preceding chapter). Rabha said: It seems to us, that our Mishna is in accordance with Rabh, and a Boraitha is in accordance with R. Johanan. In our Mishna, it is stated: If the Lord's he-goat dies, the one on which the lot has fallen for the Lord shall substitute him; from this we infer that the other one continues to be as it has been. A Boraitha is according to R. Johanan, as we have learned: It is said in the Mishna [1]: The second should be allowed to graze. We do not know whether the second of the first or second pair. As it is written [Lev. xvi. 10]: "Shall be placed alive." Placed *alive*, not the one whose fellow is dead. How can that be inferred? "*Shall be* placed alive," signifies that it shall be placed alive *now*. But the one whose fellow had died has been left alive already. An objection was raised from the following sentence in our Mishna: "R. Jehudah said also: If the blood of the Lord's he-goat had been spilled, the scapegoat should be put to death; if the scapegoat had died, the other one's blood should be poured out." It is right according to Rabh, who says that, according to the first Tana, living things are not postponed, and the second of the second pair is to be left to graze; and what R. Jehudah says of its being put to death refers to the second of the first pair. It is right according to Rabh, who says that according to the first Tana a living thing is not postponed, as it is said in the Mishna, "also said R. Jehudah." That is to say, he differs on two points: first, whether a sin-offering for the congregation is put to death (he says, it shall be put to death), and whether a living thing is postponed. R. Jehudah says, it is postponed, and shall be put to death, and the second of the first pair shall be put to death. But according to R. Johanan, who explains that the first Tana means to say the second of the second pair

(shall be sacrificed), but of the first shall be put to death, because a living thing can be postponed, consequently R. Jehudah differs from the first Tana only on one point, on the congregational offering. Why does the Mishna say, "and also"? This difficulty remains. (From this we see, the Mishna is according to Rabh, not R. Johanan.)

"*If the blood has been spilled, the scapegoat should be put to death*." It is right that if the blood has been spilled, the scapegoat should be put to death, because the duty with the blood has not been fulfilled yet; but if the scapegoat has died, why should the blood be poured out? The duty (of drawing the lots, and of slaughtering the first) has been fulfilled already. Why need the blood be poured out? Said the disciples of R. Janai: Because it is written [ibid.]: "Shall be placed alive before the Lord, to make an atonement for him." That means he (the scapegoat) shall be alive till the atonement with the blood (of the other goat) has been made (and when he has died before, the blood must be poured out).

We have learned in a Boraitha about the Mishna in Shekalim, II., *a*. "If the inhabitants of a town sent their Shekalim," etc., as far as, "and nothing is credited to next year's account" (pp. 7, 8). R. Jehudah, however, said, they may be credited to next year's account. What is the reason of R. Jehudah? Said Rabba: R. Jehudah holds, the duties to be paid this year may be paid the next year. Abayi objected: From the following Tosephtha: The bullock and the he-goat of the Day of Atonement, if lost, and the he-goats offered for idolatry, if lost, and substituted by others and then recovered, then all should be put to death. So says R. Jehudah. If the duties of this year can be paid the next year, they could be left for the next year? Rabh answered: You want to compare the he-goats for idolatry to congregational sacrifices. The latter are quite different. This is as R. Tebi said in the name of R. Joshiah: It is written [Num. xxviii. 14]: "This is the burnt-offering of the new moon for every month throughout the months of the year." The Torah says: Proclaim it a new month, and also bring a sacrifice from *the new products* (Rosh Hashana, p. 9). This would be right in case of the he-goat, for it comes from the congregational funds; but the bullock, which is from the high-priest's, what can be said to it? And, secondly, what R. Tebi said in the name of R. Joshiah is only a merit, but not a duty, as R. Jehudah said in the name of Samuel [ibid., ibid.], that if it was done it is acceptable?

Therefore says R. Zerah: The reason is, that the lot cannot determine during this year for the next year. Let him draw lots the next year? It is a precautionary measure, lest it be said that the lot does determine during one year for the next year. All this is right of the he-goat? But why should the bullock, for which no lots are drawn, be put to death? It is a precautionary measure, lest one should deal with the he-goat as one would with the bullock.

Shall he then be put to death for a precautionary measure against what itself is a precautionary measure? Therefore, says Rabha: It is a precautionary measure, lest there should be a mistake. What mistake can be made? That of sacrificing them (if left to graze). Then this apprehension ought to exist in all cases where animals are left to graze (till they get a blemish and are sold)? If that of shearing their wool, or using them for work, the same fear ought to exist in all cases where invalid sacrifices are left to graze? The mistake of sacrificing them is meant, but for others there is no intention to sacrifice them at any time, as they are left to graze until they get a blemish; therefore a mistake cannot come to pass. But here, as the he-goat must be kept until the

Day of Atonement of the next year, and it may be sacrificed by mistake before (the owner will take care it should not get a blemish). And whether a precautionary measure is taken against a mistake or not, the Tanaim of the two following Boraithas differ: one states, that a paschal sacrifice that has not been sacrificed during Passover may be sacrificed during the second Passover (the succeeding month, when those unclean before, celebrate it); and when not during the second Passover, it may be reserved for the Passover of the next year. And in another Boraitha we have learned: It may not be sacrificed at all. They differ, then, about the apprehension of a mistake; the Tana of the last Boraitha fears a mistake, and that of the first does not.

MISHNA: He comes to the scapegoat, and puts both hands on him, and confesses, using the following expression: I beseech Thee, Jehovah, they have committed iniquities, transgressed, sinned before Thee, Thy people the House of Israel. I beseech Thee, for the sake of Jehovah, forgive the iniquities, transgressions, and sins that they have committed, transgressed, and sinned before Thee, Thy people the House of Israel, as it is written in the Torah of Moses Thy servant, thus: "For on that day shall he make an atonement for you, to cleanse you,

that ye may be clean from all your sins before Jehovah." And the priests and people who stood in the forecourt, hearing the expressed name [of God, *i.e.*, *Jehovah*] issuing from the mouth of the high-priest, used to kneel, prostrate themselves, and fall on their faces, and say: "Blessed be the name of His kingdom's glory for ever." They delivered him [the scapegoat] to the man who was his conductor. All were fit to perform this function. Only the high-priests fixed a usage, that Israelites should not be permitted to do it. Said R. Jose: It happened the conductor was Arsala of Tsipore, who was an Israelite [not a priest]. An elevated walk had been constructed for him [the he-goat], on account of the Babylonians [Babylonian Jews; according to the Gemara, Alexandrian Jews], who used to pull him [the he-goat] by the hair, saying: "Take [the sins] and go, take and go."

GEMARA: We see that in this confession the children of Aaron are not mentioned. According to whom is it? Said R. Jeremiah: This is not in accordance with R. Jehudah; as he said, the priests are also atoned for by the scapegoat. Abayi, however, said: This may be according to R. Jehudah. Are not the priests included in the general phrase, "Thy people Israel"?

"*They delivered him to his conductor*." The rabbis taught: It is written [Lev. xvi. 21]: "A man appointed thereto." From the word "man," it is inferred a layman is also fit. "Appointed" means, appointed from the day before, even when the Day of Atonement falls on a Sabbath, and even if he is unclean. Wherefore does he tell us, even a Sabbath? If the he-goat has become sick, and cannot walk, he may take him on his shoulder, and carry him. Said Raphram: From this it is inferred, that the law of Erub and carrying applies to Sabbath only, but not to the Day of Atonement (else what difference between a Day of Atonement falling on a week-day and a Sabbath?) 1

Why is it mentioned, even when unclean? What case of uncleanness can be here? Said R. Shesheth: Even if the conductor became unclean, he may enter the Temple and take the he-goat.

R. Eliezer was asked: When the he-goat had become sick, might he be taken on the shoulders?

He replied: The he-goat was so healthy that it could bear away you and me together. They asked him again: When the conductor had become sick, may another be appointed? He replied: Let us be healthy; do not

ask us about a case of sickness. They asked him again: If after having been pushed down he did not die, shall he go down and kill him? He gave them as answer the verse in Judges v. 31: "Thus may perish all Thy enemies, O Lord." The sages, however, said: If he had become sick, he must be taken on the shoulders; if the conductor is sick, another should be appointed; if he had been pushed and has not died, he should go down and put him to death.

R. Eliezer was asked whether a certain man would enjoy the world to come. He replied: You inquire of me concerning that man (he named a different man). [1] They asked of him again: May a shepherd rescue a sheep carried away by a lion? He replied: Do you ask me of a sheep? They asked him again: May the shepherd be rescued from the lion's mouth? He answered again: You ask me only of the shepherd. They asked him again: May a bastard be heir of his father? He asked them: May he espouse his dead and childless brother's wife? They asked him: If he possesses a house, must a memorial of the Temple's destruction be left, when his house is whitewashed (an ell is left bare)? He answered: I think you ask me whether his sepulchre is to be whitewashed? He answered thus, not because he wanted to repel them, but he never decided what he had not heard from his Master.

A wise woman asked R. Eliezer. What was done with the golden calf being equally forbidden, why were the penalties different, some being slaughtered with the sword, some dying by water, or by a plague? He answered: The wisdom of a woman relates only to the spindle, as it is written [Ex. xxxv. 25]: "All the wise women spun with their hands." It was taught: Rabh and Levi said--the one, that he who slaughtered to the golden calf and offered incense was slain by the sword; he who embraced and kissed it, died by the plague; and he who rejoiced in his heart thereat, died from dropsy. And the other says: They who did it in spite of warning by witnesses, were slain; they who were not warned but only witnessed, by the pest; and those whom witnesses had not seen, died by dropsy.

R. Jehudah said: The tribe of Levi was not idolatrous (in relation to the golden calf), as it is written [ibid. xxxii. 26]: Whoever is on the Lord's side let him come unto me. And

there assembled themselves unto him all the sons of Levi." Rabhina was sitting and repeating this saying. The children of R. Papa b. Abba objected to him: It is written [Deut. xxxiii. 9]: "Who said of his father and his mother, I have not seen him." [1] By this is meant, those who slew for worshipping the calf, inflicted penalty on their relatives. Whence we see some of the Levites were guilty. Rabhina replied: By father is meant the maternal grandfather, who was of Israel, by brother a half-brother of the mother, and by children, the daughter's children, whose father was an Israelite.

"*An elevated walk had been constructed*," etc. We have learned in a Boraitha: R. Jehudah says: They were not Babylonian, but Alexandrian (Jews). Said R. Jose to him: May thy mind be

appeased, as thou hast appeased mine (for he was a Babylonian himself).

"*Take and go*." We have learned in a Boraitha: They used to say: Wherefore are they detaining the goat, the sins being so great?

MISHNA: Some of the prominent men of Jerusalem used to accompany him [the goat] as far as the first booth [of the ten, supplied with provisions for the conductor]. There were ten booths between Jerusalem and Tsuk [the rock of its destination], a distance of 90 Ris [7½ Ris are equal to one mile]. At each booth they said to him [to the conductor]: "Here is food, and here is water." And they [persons of the booth] accompanied him from booth to booth, excepting the last of them, for the rock was not reached by them; but they stood at some distance looking on what he [the conductor] did [to the scapegoat]. What did he do? He divided the tongue of crimson wool: the half of it he tied to the rock, and the second half between his [the scapegoat's] horns; he pushed him down backward. He went rolling and falling down; he did not reach halfway of the mountain before he became separated limb from limb. He [the conductor] returned to sit down under the last booth, till dark. And since when became his clothes unclean? After he had issued from the walls of Jerusalem. R. Simeon says: After he had pushed it down from the rock.

GEMARA: The rabbis taught: There were ten booths, and twelve *miles*: so says R. Meir. R. Jebudah says: There were nine booths, and ten miles. R. Jose says: Five booths, and

ten miles. All were combined by an Erub. Said R. Jose: Elazar my son told me, if there were an Erub, two booths at ten miles would have been sufficient. Who is the Tana according to whom is what we have learned in our Mishna, that the last stood at a distance and looked? This is according to R. Meir, who says there were ten booths, and twelve miles.

"*At each booth they said to him*," etc. We have learned in a Boraitha: They never made use of it, but they were cheered by the consciousness that they could have it?

"*The half of it he tied to the rock*," etc. Why not the whole of it? Because he had not yet fulfilled the duty of pushing down the goat, and as soon as he had tied it to the rock, it might have become white: he would have rejoiced so much at the thought of the sins having been pardoned, that he might not have attended to the pushing him down. Why did he not tie it wholly to the horns? Because it might happen that the goat bent his head, so as to make him unable to perceive whether it had become white or not.

The rabbis taught: Formerly the tongue of crimson wool used to be tied to the door of the porch, outside (that all should see). When it became white, all were rejoiced; when not, all became out of spirits and ashamed. Therefore it has been reformed that it should be tied to the door of the porch inside. However, they used to take a look at it even then. It was then reformed that half should be tied to the rock, another half to the horns.

"*Before he attained half way of the mountain*," etc. The rabbis taught: It is written [Lev. xviii. 4]: "My ordinances shall ye do." This signifies, such things as, even were they not written, it would be wrong to do, as idolatry, adultery, bloodshed, robbery, and blasphemy. "And my

statutes shall ye keep" [ibid.]. There are things that Satan laughs at, as abstaining from pork, from wearing mixed stuffs [Deut. xxii. 11], the taking off of the shoe of the husband's brother, purification of a leper, and the despatching of the he-goat. Lest it be said, they are nonsense, it is therefore written [Lev. xviii. "I am the Lord your God." I have commanded it; you have no right to question.

"*Since when became his clothes unclean,*" etc. The rabbis taught: The conductor defiles his clothes, but not the person that sends him (the conductor). Shall we assume that as soon as

be comes out from the walls of the Temple court he becomes unclean? Therefore it is written [Lev. xvi. 26]: "He that takes away the goat to Azazel shall wash his clothes." What is meant by taking away? He who pushes him head downward, and he defiles his clothes.

MISHNA: He [the high-priest] went to the bull and to the he-goat destined to be burned. He ripped them, and tore out the parts to be burned upon the altar. He placed them on a charger (Magis), and kindled (for kindling) them upon the altar. He intermingled the limbs of the two animals, and they were removed to the place for burning. Since when are the clothes [of the porters] made unclean? When they came out behind the wall of the forecourt. R. Simeon says: When the fire is consuming most parts [of the animals].

GEMARA: *He intermingled*. Said R. Johanan, a sort of mingling. What is meant? We have learned in a Boraitha: He did not cut them as all burnt-offerings, in which the hide is flayed; but the bullock and he-goat, he cut the hide and flesh together. Whence do we deduce this? Because it is further written [Lev. iv. 11]: "His inwards, and his dung." How is it to be inferred from this? Said R. Papa: As the dung was in the inwards, so the flesh in the hide.

"*Since when are the clothes made unclean*?" The rabbis taught: It is written [ibid. xvi. 28]: "He that burneth them shall wash his clothes." He that burns, but not he who kindles, or he who lays the wood for the fire. Who is considered as the one that burns? He who assists at the burning, his clothes become unclean. Shall we say, that when it has been burned to ashes they still defile the clothes? Therefore it is written "them": he who burns *them*, but not the ashes. R. Eliezer b. R. Simeon says: When the flesh is still called flesh, it defiles; but when it has been dissolved, it no longer defiles. What is the difference between them? According to R. Eliezer, singed flesh ceases to be flesh, and does not defile; but according to the first Tana it is, and does.

MISHNA: The high-priest was told: "The goat has reached the desert." How was the fact known? Watches were stationed on high towers [meaning doubtful], who lifted up flags [to give signals]. Said R. Jehudah: They could have excellent evidence [by calculating the time]. From Jerusalem to Beth Hadudo was three miles. The prominent men had walked one mile, went back one mile, and had tarried as long as a mile is

gone over. Thus they could calculate that the he-goat had reached the desert.

R. Ishmael says: Why, they had another sign. A tongue of crimson wool used to be tied to the

gate of the Temple, and as the he-goat had reached the desert, the wool used to become [by miracle] white; as it is said: "Though your sins be scarlet, they shall be as white as snow; though they be red as crimson, they shall become like wool" [Isaiah i. 18].

GEMARA: Said Abayi: From this we see that the Beth Hadudo was in the desert.

Footnotes

89:1 This is according to Rashi's explanation, although it is unusual for a Boraitha to mention a Mishna.

92:1 What Raphram said is declared in Tract Tamid to be unfounded.

93:1 Rashi and Tosphath say, the question was about Solomon, and he answered, "Do they mean Absalom?" But it does not seem probable to them.

94:1 We follow Leeser's translation in all our biblical quotations, which see.

Next: Chapter VII: The Passages Read by the High-Priest and his Garments

CHAPTER VII.

REGULATIONS CONCERNING THE PASSAGES READ BY THE HIGH-PRIEST AND WHAT GARMENTS HE MINISTERED IN AFTER, AND WHAT GARMENTS OTHER PRIESTS WORE.

MISHNA: The high-priest came to read. If he desired to read dressed in linen [white, byssus] garments, he did so; otherwise, he was reading in a white stole of his own. The Hazzan [servant, attendant] of the congregation takes the scrolls of the Torah, and presents them to the president of the congregation, the president presents them to the Segan, and the latter gives them to the high-priest. The high-priest rises, receives them, and reads standing. He reads the section, "After the death," etc. [*i.e.*, Lev. xvi.], and the section, "Also on the tenth," etc. [i. e., Lev. xxiii. 26-32]. Then he rolls the scrolls together, and keeps them on his knees, and says: "More than what I have read to you, is written here." The section, "On the tenth," etc. [in the book of Numbers, xxix. 17], he reads by heart, and pronounces over it eight benedictions; namely, over the Torah, over the service, over the thanksgiving, the atonement of iniquity, the Temple by itself, and Israel by itself (and Jerusalem by itself, *in some versions*), the priests by themselves, and the rest of the prayer. He who sees the high-priest reading, does not witness the burning of the bull and the he-goat; he who witnesses the burning of the bull and the he-goat, does not see the high-priest reading: not because he is not allowed, but because there was a great distance, and both were done at the same time.

GEMARA: (Let us see:) If he might read in a white stole of his own, then we must assume that this is not a service for which the sacred garments are required; but at the same time, we see that he could read in the white garments. Hence we see they could be used even at other times than that of service. Infer from this, that the priestly garments he could use for his own benefit. Perhaps reading is different: though not itself a service, it is a preparation for service. Then the schoolmen propounded

a question: May the priestly garments be used for personal purposes or not? Come and hear: The priest's garments, in the country, may not be used; but in the Temple, whether during service or not, they may be used, because it is allowed to derive a benefit from the priestly garments. Infer from this, that he may. You say, in the country it may not be used? Have we not learned in the following Boraitha: On the twenty-fifth of Tebeth is called the day of Mount Gerizzim, and no mourning is allowed on it. Why? Because on that day the Samaritans petitioned Alexander of Macedon to have our Temple destroyed, and he permitted them. When Simeon the Upright (the high-priest) was notified of it, he put on the priestly garments, and accompanied by the respectable men of Jerusalem, they all went with torches the whole night till dawn, both parties approaching each other. When it dawned, Alexander of Macedon perceived from a distance the Jews. He asked, Who are these men? And the Samaritans told him: They are the Jews, who have rebelled against thee. As they reached the town Antipatris, the sun had risen, and they faced

each other. As Alexander saw R. Simeon the Upright, he descended from his chariot, and bowed to him. They said to him: Will such a great king as you bow to that Jew? He replied: His image I saw shining before me, whenever I gained a victory. He asked the Jews: Wherefore are you come? They said: The Temple wherein we pray for thee, and for thy empire, that it should not be destroyed, is it possible that thou shouldst be misled by the idolaters to bid its destruction? He asked: Who are those idolaters? They replied: These Samaritans who stand near thee. He said to them: I deliver them into your hands. Treat them as you please. They were soon fastened to the tails of their horses, and thus dragged as far as Mount Gerizzim, which was ploughed, and sowed, as they had intended to do with our Temple. This day was made a festival. (We see that Simeon the Upright went out even into the country in his priestly clothes.) If you wish, I will say, not the priestly clothes were meant, but clothes similar; and if you wish, I will say, this was in a case of urgency, and it is written [Ps. cxix. 126]: "It is time to act for the Lord: they have broken Thy law."

"*The Hazzan takes the scrolls*," etc. Infer from this that honor is given to the disciple even in presence of the Master. Said Abayi: All this was only to honor the high-priest (that he might get it through many subordinate great officers).

"*The high-priest rises*." It seems then implied that hitherto he was sitting. Have we not learned in a Mishna (in Sotah) that nobody might sit in the Temple, except kings who are descendants of David? Said R. Hisda: He was then in the women's court, and there all could sit. It is written: [Nehem. viii. 6]: "And Ezra blessed the Lord, the great God." Why is the epithet "great" employed here? Said R. Joseph in the name of Rabh: He then magnified him by calling him expressly "Jehovah." R. Gidel said: By saying as it is written [1 Chron. xvi. 36]: "Blessed be the Lord the God of Israel from everlasting even unto everlasting." Said Abayi to R. Dimi: Why not as R. Jose said in Rabh's name? R. Dimi answered: Because "Jehovah" must not be pronounced outside of the Temple.

Is that so? Is it not written [Nehem. viii. 4]: "Ezra the expounder stood upon an elevated stand of wood," and R. Gidel has said, he then pronounced the name "Jehovah"? This was only because on that occasion Ezra allowed himself to use it, as he deemed it necessary. It is written [ibid. ix. 4]: "They cried with a loud voice unto the Lord." What did they say? They cried: "Woe! Woe! The tempter to idolatry has destroyed the Temple, has killed all the just men, and exiled Israel from their land, and we see him yet among us. Why hast thou created the tempter? To reward us more for overcoming him. We wish neither him nor the greater rewards." Then fell down a billet from Heaven, whereon was written: "Emeth" (Truth). [Says R. Hanina: Infer from this that the seal of the Holy One, blessed be He, is "Truth."] They fasted three days and three nights. Then he (the evil spirit) was delivered into their hands. So they saw how a lion-cub of fire went out from the Holy of Holies. Then the prophet said to them: "Here is the evil spirit of idolatry." As it is written [Zechariah v. 8]: "This is the wickedness." They caught him. When a hair was torn out from his mane, he issued a cry which was heard at the distance of four hundred *parsas*. They said: If he cries so loud, what can we do to him? Lest he be pitied in Heaven, what shall we do that his voice be not heard? They were then advised to throw him into a leaden pot, as lead muffles the voice. They put him into a leaden pot, and covered it with a leaden lid, as it is written [ibid.]: "And he said, this is the wickedness. And he cast it into the midst of the ephah, and he cast the weighty lead cover upon the mouth thereof." (And since then idolatry ceased

among Israel.) They said: Since it is a time of favor(from Heaven), they would pray that the tempter to fornication be delivered to them too. They prayed, and he was delivered to them. It was said to them: "Take heed. If ye kill this spirit, the world will perish." They kept him imprisoned three days. They sought in all Palestine an egg laid on that day. They could not find. They said among themselves: What shall we do? If we will kill him, the world will perish. Shall we pray for the half (that desire should exist only in legal cases)? We have a tradition that a half is not given from Heaven; so they put out his eyes, and left him. The good result was, that since then he does not excite desire toward relatives.

In Palestine they learned it thus: R. Gidel says: "Great," because he pronounced the express name of God. R. Mathna says: What is written "the great," means that he said [Nehem. ix. 32]: "Our God the great, the mighty, and the terrible." But what R. Mathna had said, will be according to R. Joshuah b. Levi, who said: Why was it called the Great Assembly? Because they restored the old crown. What is it? Moses had said [Deut. x. 17]: "The God, the great, the mighty, and the terrible." Then rose Jeremiah and said: The idolaters are destroying His Temple. Where is His terribleness? So he said only "the great, the mighty," omitting "terrible." Then came Daniel, and said: The idolaters keep as slaves His children. Where is His might? So he omitted "mighty." Then came the men of the Great Assembly, and said: On the contrary, this is His might, that He is patient toward the wicked. And this is His terribleness, that if men had not felt His terror, how could such a small people (as Israel) keep itself among so many peoples of idolaters? Therefore they introduced again the phrase, "the God, the great, the terrible, the mighty." And the rabbis (Jeremiah and Daniel), how did they dare to modify what Moses had established? Says R. Elazar: Because they knew the Holy One, blessed be He, loves truth. So they did not wish to lie to Him, to tell Him what they did not think.

"*More than what I have read to you*," etc. To what purpose did he say so? That the scrolls he used should not be said maliciously to contain only that which he read (and be invalid).

"*He reads by heart*." Why? Let him have found the place in the scrolls? In honor of a congregation, it is not made to wait till the scrolls should have been unrolled for that purpose. Let him have used other scrolls? This they did not, because if they

brought other scrolls, it might be said, the first scrolls were invalid. So says R. Huna b. Jehudah. But Resh Lakish says: In that case, a second benediction would have had to be pronounced (over the new scrolls). Do we fear lest it be said that the scrolls are invalid? Did not R. Itz'hak of Naph'ha, say: That when the first day of the month Tebeth falls on Sabbath, three scrolls have to be taken out: one for the section of that week, one for Hannkah, the third for the first day of the month? When three persons read in these scrolls, it is not feared; but when one man reads in two, it may be said he does not read in the first because the first is invalid.

"*Pronounces over it eight benedictions*." The rabbis taught: Over the scrolls as in the synagogue, over the service, over the thanksgiving, the atonement of iniquity as it has been ordered in the prayer of the Day of Atonement, over the Temple by itself, over the priests by themselves, over Israel by itself, and over the rest of the prayer. The rabbis taught: What is meant by the rest of the prayer? Songs, prayers: "We supplicate before (to) Thee for Thy people Israel, who need

help," and concluding, "Blessed be he who heareth prayer." After this, every one brought a scroll of the Torah from home and read it for himself. Why did they bring them? To show to the whole world that they had scrolls (and loved religion).

"*He who sees the high-priest reading*," etc. Is this not self-evident? We might think, lest one assume one may not pass from place to place in search of religious duties, he comes to teach us that it is not so. And what merit is there? Because it is written [Prov. xiv. 28]: "In the multitude of people is the king's glory."

MISHNA: If he read in linen garments, he washed his hands and feet, stripped himself, and went down to bathe, came out and dried himself with a sponge. Garments of cloth of gold were brought to him, he put them on, washed his hands and his feet, he went out and performed the rites on his ram, and the ram of the people, and the seven unblemished sheep, of one year--according to R. Eliezer. R. Aqiba says: They were offered with the daily sacrifice of the morning; and the bull for the burnt-offering and the he-goat used outside, were offered with the daily sacrifice of the evening. He washed his hands and feet, undressed, went down to bathe, came up and dried himself. White clothes were brought to him, he put them on, washed his hands and feet, he went in to fetch the spoon and the censer.

[paragraph continues] He washed his hands and his feet again, stripped himself, went down, bathed, came out and dried himself. Garments of cloth of gold were brought to him, he put them on, washed his hands and feet, and went in to offer the incense of the evening, and to trim the lamps. He then washed his hands and feet, stripped himself, put on his own clothes--which had been brought to him--and was accompanied to his own house. He then used to keep the day as a holiday with his friends, when he had come away from the Holy of Holies unhurt.

GEMARA: The disciples of Samuel taught: R. Eliezer said: He went out, and performed the rites on his ram, and the ram of the people, and the members of the sin-offering. But the bullock of the burnt-offering, and the seven sheep, and the he-goat that was used outside, were offered together with the daily evening offering. In a Tosephtha it was taught: R. Aqiba said: The bullock of the burnt-offering and the seven sheep were offered with the daily morning offering, as it is written [Num. xxviii. 23]: "Besides the burnt-offering of the morning, which is for a continual burnt-offering." And then he made the offerings of this day, and then the he-goat used outside, as it is written [Num. xxviii. 11]: "One he-goat for a sin-offering, besides the sin-offering of the atonement "; and then he offered his ram, and the people's ram, the members of the sin-offering, and then the daily evening offering.

We see that all agree, that there was but one ram for the people; and this would be according to Rabbi of the following Boraitha: Rabbi said, the one ram mentioned here [Lev. xvi. 5] is the same as is mentioned in Num. xxix. 8. And R. Elazar b. R. Simeon says: Two were needed: one mentioned in Leviticus, the other in Numbers. What is the reason of Rabbi's saying? Because it is written "one." What will R. Elazar b. R. Simeon say to this? That signifies, the only one (best) in his flock. Rabbi, however, says: There is no need to state it, as it has already been mentioned [Deut. xii. 11]: "Your choice vows." According to R. Elazar b. R. Simeon, both statements are needed, because there it is only spoken of voluntary offerings.

"*He washed his hands and feet*." The rabbis taught: It is written [xvi. 23]: "And Aaron shall then go into the tabernacle of the congregation." Wherefore? To take out the spoon and the censer. Why? Because the whole section follows the order of his rites, except this verse. What is the reason of saying

that this verse applies to the taking out of the spoon and censer? Said R. Hisda: It is known to us traditionally, that five bathings and ten times of washing the high-priest performed that day. If thou wilt say, that this verse is not in a wrong place-namely, that no service done outside in the garments of cloth of gold would intervene between the day service (done in white) and the carrying out of the spoon and censer--then you would not find five and ten, but three and six. R. Zera opposed: Perhaps it was intervened by the he-goat used outside. Said Abayi: Because it is written [ibid. 24]: "And come then forth and offer his burnt-offering," we infer that after the first coming forth he offered the burnt-offering (that goat). Then we must say that the spoon and censer he had not yet carried out, else it would be his second coming forth.

When the conductor of the scapegoat returned, if he met the high-priest still in the street, he said to him: "My lord the high-priest, we have done thy commission"; but if he came to his house (on the morrow), he used to say to him: "We have done the commission of Him who giveth life to all living." Rabba said: In Pumbaditha, when the rabbis took leave, they said: "He who giveth life to all the living should give thee long good, and orderly life."

It is written [Ps. cxvi. 9]: "I will walk before the Lord in the lands of the living." (What is meant by the lands of the living?) Said R. Jehudah: The market-places (where food is purchased). Rashi explains this, as to a "long life." This is mentioned, and as for the markets, David persecuted by Saul prayed to be able to go to the markets to buy food.

It is written [Prov. iii. 2]: "For length of days, and years of life, and peace, will they increase unto thee." What means "years of life"? Are there any years not of life? Said R. Elazar: Those are the years of man when his circumstances change from evil to good. Said R. Brachia: It is written further [ibid. viii. 4]: "Unto you, O men, [1] I call." By this scholars are meant, who are weak like women, and perform feats as men. R. Brachia said again: He who wishes to bring a drink-offering on the altar should let scholars drink wine (which will be just as good). The same says again: When a man sees that learning has forsaken his sons, he should marry a scholar's daughter. As it is written [Job xiv. 8, 9]: "If even its root become old in the earth, and

its stock die in the dust: yet through the scent of water will it flourish again, and produce boughs as though it were newly planted."

"*He then used to keep the day as a holiday*." The rabbis taught: It happened to one high-priest going out from the Temple, and the whole world accompanying him, that they perceived Shemaia and Abtalian: the people then left the high-priest alone, and accompanied Shemaia and Abtalian. Later, Shemaia and Abtalian came to take leave of him. He answered them: May the children of the Gentiles (they were proselytes' descendants) go in peace. They replied to him: The children of the Gentiles may go in peace, because they do what Aaron the high-priest did;

but the children of Aaron may not have peace, who do not what Aaron did (love not peace).

MISHNA: The high-priest ministers in eight articles of dress; a common priest in four: in a robe and breeches, a mitre and a girdle. To the high-priest's are added: a breastplate and an ephod, and a coat and a *tsits* [plate on the forehead, [Ex. xxviii. 36]. The Urim and Tumim were inquired of only when he was thus attired; but inquiries were not made for a common man: only for the king, the chief of the Beth Din, and for a person of whom the public had need.

GEMARA: The rabbis taught: The stuff, which should be made according to the prescription of the Bible, of linen, should be six times *twisted*. Where twisted linen is prescribed, it should be eightfold twisted. The material of the robe of the high-priest was twelve times twisted; that of the vail, twenty-four; and that of the breastplate and ephod, twenty-eight. How do we know that an ordinary thread is six times twisted? Because it is written [Ex. xxxix. 27, 28]: "And they made the coats of linen . . . the mitre of linen, and the goodly bonnets of linen, and linen breeches of twisted linen thread." Five times "linen" is mentioned: once, to know that it is linen; the second time, that it be twisted six times; once, that it should be twisted; and once, that even the articles of dress of which it is not said "linen" should be of linen; the fifth time, to prohibit (those not of linen). 1

How do we know that "Shesh" means "linen"? Because it is written "bad" (in some places, as equivalent to "Shesh") which signifies "only," and flax grows single from the reed in

the middle, not in branches. Perhaps wool found between the tree and bark is meant? That can be separated into threads, but flax can not. But flax can also be separated? Flax can be separated when it is beaten, but that material can be so spontaneously. Rabhina says: Because it is written [Ezek. xliv. 18], "flaxen bonnets," and "flaxen breeches." Said R. Ashi to him: If thou adduce the proof from Ezekiel, how did they know it before Ezekiel? They had a tradition. Ezekiel wrote a verse. How do we know that "twisted linen" is eight times twisted? Because it is written [Ex. xxxix. 24]: "They made upon the lower hem of the robe pomegranates of blue, and purple, and scarlet yarn, twisted." Hence we deduce from an analogy of expression in another place (of the vail), by "twisted" twenty-four times is meant, so here, the thread of each kind being eight times twisted. How do we know that that of the robe should be of threads twelve times twisted? Because it is written [ibid. xxviii. 31]: "And thou shalt make the robe of the ephod altogether of blue woollen yarn." Here it is also inferred from an analogy of expression, as "blue" is mentioned speaking of the value also, as there every thread was six times twisted (since four kinds were twenty-four), so here, since it is written "altogether," it should be two times six. How do we know that the vail was of a material of threads twenty-four times twisted? Because it was of four kinds, and that each should not be less than six times twisted, it is unnecessary to deliberate upon. How do we know that that of the breastplate and ephod was of threads twenty-eight times twisted? Because it is written [Ex. xxviii. 15]: "And thou shalt make the breastplate of judgment of weavers' work; after the work of the ephod thou shalt make it: of gold, of blue, of purple, and scarlet yarn, and twisted linen, shalt thou make it." Four kinds, each six-fold, is twenty-four; and the gold four times, this makes twenty-eight. How is it known that the gold is four times? Perhaps also six times? Said R. Ashi: Because it is written [ibid. xxxix. 3]: "To work it in the blue and in the purple." Therefore it must be at least thinner than those threads.

Re'haba said in the name of R. Jehudah; He who tears the priestly garments, receives stripes, as

it is written [ibid. xxviii. 32]: "That it be not rent."

R. Eliezer said: He who takes off the breastplate from the ephod, or the staves from the ark, receives stripes, as it is written [ibid. xxviii. 28]: "That it be not loosed," and [ibid. xxv. 15]:

[paragraph continues] "They shall not be removed therefrom." We have learned also in a Boraitha: It is written [ibid.]: "In the rings of the ark shall the staves be." We might think they must be always there, and may not be moved. Therefore it is written [ibid. 14]: "Thou shalt place the staves into the rings." From the expression, "place the staves into the rings," we might think that as they are placed there, they may be removed thence also. Therefore it is written, "In the rings of the ark shall the staves be." How is it then? They may be drawn out, but not wholly taken out (as their heads were too thick). R. Huma b. R. Hanina said: It is written [ibid. xxvi. 15]: "The boards for the tabernacle of Shittim wood, standing up." What means standing up? They shall be standing up as they grow. Re'haba said in the name of R. Jehudah: Bezaleel made three arks: the middle one was wooden, nine spans high, the one inside was of gold, and eight spans high; that outside was also of gold, and ten spans and odd high--nine, like the middle one, and a span and a trifle over, to screen it. We have learned in another Boraitha that it was eleven and a trifle? It presents no difficulty. This is according to one who says, the gold on the top was a span thick; and he who says it was ten, says it was not a span thick. Why was the fraction needed? That it should seem like a small crown on the top of the ark under the mercy-seat.

R. Johanan said: There were three crowns: one of the altar, one of the ark, and one of the table. Of the altar, called "the Crown of Priesthood," Aaron was privileged to receive; of the table, that of royalty, David received; that of the ark, called "the Crown of Learning," is yet to be bestowed. Shouldst thou say it is not valuable? therefore it is written [Prov. viii. 15]; Through me do kings reign."

It is written [Ex. xxv. 11]: "Within and without shalt thou overlay it" (the ark). Says Rabba: It can be inferred from this, That a scholar whose inside is not like his outside is no scholar. Abayi, according to others Rabba b. Ulla, says: Not only is he no scholar, he is even called "corrupt," as it is written [Job xv. 16]: "How much more abominable and corrupt the man who drinketh like water wrong-doing." R. Samuel b. Na'hmain in the name of R. Jonathan said: It is written [Prov. xvii. 16]: "Wherefore is the purchase-money in the hand of a fool to acquire wisdom, seeing he hath no heart." Woe to the scholars who stud), the Law, and have no fear of Heaven! Said Rabba to his disciples: I pray you, that ye may not inherit

two hells (he who studies and is yet wicked, has a hell on earth, and yet will have hell after his death). R. Joshua b. Levi said: It is written [Deut. iv. 44]: "This is the law which Moses set." If he has merited, it becomes to him a medicine of life; if not, it becomes to him a poison. And this is the same which Rabba has said above (about the two hells). R. Samuel b. Na'hmain in the name of R. Jonathan finds a contradiction of the following two passages: It is written [Ps. xix. 9]: "The precepts of the Lord are upright, rejoicing the heart," and [ibid. xviii. 31]: "The word of the Lord is tried." There is, then, a contradiction. Here it is said, it rejoices, and there, it is trying? If he has merited, it rejoices him; otherwise, it is a trial to him. Said Resh Lakish: This we may infer from the same passages "He is a shield to all those that trust in him." If he merits, it tries him, to enable him the better to live; if he does not merit, his trials kill him. It is written further [ibid. xix. 10]: "The fear of the Lord is pure, enduring forever." Said R. Hanina: That

signifies, a man who studies the Law when he is pure. What is meant by pure? When he has first married a wife, and then studies. It is written [ibid. 8]: "The testimony of the Lord is sure." Said R. Hiya b. Abba: The Torah is itself a trusted witness against the students (about the manner in which they had studied it).

"*The Urim and Tumim were inquired of,*" etc. When R. Dimi came from Palestine, he said: The clothes which the high-priest wore, the priest anointed for war could also wear. Whence is it deduced? Because it is written [Ex. xxix. 29]: "And the holy garments belonging to Aaron shall be for his sons after him." What is meant by "after him"? Next to him in office, and that was the one anointed for war.

R. Adda b. A'hba, according to others K'di objected: We have learned in a Boraitha: Shall we assume that the son of the priest anointed for war shall succeed to the office of his father, as the high-priest's son does? Therefore it is written [Ex. xxix. 30]: Seven days shall that one of his sons put them on who is to be priest in his place, who is to go into the tabernacle of the congregation. That means, he who is fit to enter the tabernacle of the congregation on the Day of Atonement, which is the high-priest. (If it be according to R. Dimi, that the eight garments of the high-priest may be used by the priest anointed for war during the whole year, and that hence he is also fit to enter the tabernacle of the congregation, why should

the Boraitha say it is only the high-priest?) Said R. Na'hman b. Itz'hak: This is meant. "Who is to go into the tabernacle of the congregation" means, him who has been anointed for this, whereas that one has been anointed for war.

An objection was raised: We have learned: The priest I anointed for war may neither put on the four garments, like a common priest, nor the eight, like the high-priest. Said Abayi to R. Na'hman: Do you want to make of him a layman? The Boraitha means this: Like a high-priest he is not attired, to pre vent rivalry; and not like a common priest, because of the rule: In holiness one increases, but does not decrease. As while anointed for war he had eight garments on, he cannot be degraded to the level of a common priest. R. Abahu was sitting, and said the Halakha of R. Dimi in the name of R. Johanan: R. Ami and R. Ashi turned away their faces from him (to indicate that R. Johanan had not said it). When Rabbin came from Palestine, he said; It has not been said that the priest anointed for war may put on the garments, but only when he goes to consult the Urim and Tumim. We have also learned the same in the following Boraitha: The garments in which the high-priest performs the service may be used by the priest anointed for war when he consults the Urim and Tumim.

The rabbis taught: How was the ceremony of inquiring of the Urim and Tumim? The inquirer turned his face toward the priest (who inquires), but the priest's face is turned toward the Shekhina. The inquirer asks, as *e.g.* in 1 Samuel xxx. 8: "Shall I pursue after this troop?" And the priest answers him: "So has said the Lord. Go, and thou wilt succeed." R. Jehudah, however, said: He need not say: "So has said God." He has only to say: "Go, and thou wilt succeed."

One must not ask in a loud voice, as it is written [Num. xxvii. 21]: "And he shall ask of *him*"; no one else need hear. He should not have the question merely in his mind either, because it is written: "He shall ask of him before the Lord." (How shall he speak?) He shall ask as Hanna

prayed [1 Sam. i. 13].

Two inquiries should not be made at once; and if he has made two inquiries, only one is answered, and the first. As it is written [ibid. xxiii. 11, 12]: "Will the men of Ke'ilah surrender me into his hand? Will Saul come down?" etc. And the Lord said: "He will come down." But you have said, Only the first question is answered? David asked them in a wrong

order, and he was answered in the right order. Then, when David perceived this, he asked the second question: "Will the men of Ke'ilah surrender me and my men?" And he was answered: "They will surrender." When, however, two questions must be asked at once, else it cannot be clearly understood, then the two questions are both answered. As it is written [ibid. xxx. 8]: "Shall I pursue after this troop? shall I overtake them?" And the reply is: "Pursue, for thou wilt surely overtake them, and certainly recover." And although the decision of a prophet can be revoked, the decision of the Urim and Tumim cannot be changed, as it is written [Num. xxvii. 21]: "The judgment of the Urim."

Why were they called Urim and Tumim? *Urim*, because they illuminate their words; *Tumim*, because they give a complete answer. It will be asked, Why were the Israelites beaten by the Benjamites of Gib'ah, though bidden to go to the battle by the Urim and Tumim? Because those people did not think to ask whether they would be victorious or defeated. They were answered, "Go," and they were beaten; but later, when they understood how to inquire, they received a right reply, as it is written [Judges xx. 28]: "And Phinehas the son of El'azar, the son of Aaron, stood before it in those days, saying: Shall I yet continue to go out to battle with the children of Benjamin my brother, or shall I forbear? And the Lord said: "Go up, for to-morrow will I deliver him into thy hand."

How did the priest receive the reply? R. Johanan says: The letters constituting the reply became more prominent. Resh Lakish says: Nay, the letters composing the words came near each other. In the Urim and Tumim were only the names of the tribes, hence there was not the letter Tsadhe. Said R. Samuel b. R. Itz'hak: The names of "Abraham," "Itz'hak," and "Jacob" were also written there. But there was not the letter Teth? There were likewise the words "Shibtei Jeshurun" ("The Tribes of Israel": hence there was a *t*). An objection was raised: We have learned that a priest on whom the Shekhina does not rest, and is not inspired by the Holy Spirit, need not be inquired through. (How, then, is it said, the letters projected, or arranged themselves together?) Why? We see that when Zadok inquired he was answered, and Ebiathar received no reply, as it is written [2 Sam. xv. 24]: "And Ebiathar went up, until all the people had finished passing out of the city." "Went up." He resigned. The Holy Spirit enabled him to

perceive the letters that projected, which he could not do otherwise.

"*Inquiries are not made except for a king*." Whence do we deduce this? Said R. Abahu: As it is written [Num. xxvii. 21]: "Before Elazar the priest shall he stand, and he shall ask of him, after the judgment of the Urim before the Lord . . . he and all the children of Israel with him." "He" means the king, and all Israel "with him" means, the priest anointed for war and all the

congregation means, the Sanhedrin.

Footnotes

104:1 Men is in Hebrew here ••••• (not •••••), as if the plural of ••• --woman.

105:1 *Shesh* (linen) means also *six*.

Next: Chapter VIII: Regulations Concerning Fasting on the Day of Atonement; What May Be Done Thereon, And What May Not Be Done.

CHAPTER VIII.

REGULATIONS CONCERNING THE FASTING ON THE DAY OF ATONEMENT, WHAT MAY BE DONE THEREON, AND WHAT MAY NOT BE DONE.

MISHNA: On the Day of Atonement it is forbidden to eat and to drink, to wash, to anoint, to lace on shoes, and to hold sexual intercourse. A king and a bride may wash their faces; and a lying-in woman may lace on shoes. Such is the decree of R. Eleazar. But the sages forbid it. Whosoever eats food to the size of a large date--that is, the date with the kernel--or drinks a mouthful, is guilty. All kinds of food are reckoned together to the size of the date, and all liquids to the mouthful; but food and beverages are not reckoned together.

GEMARA: In the Torah it is written, *Karoth* is the penalty; and you say, merely, it is forbidden? [Lev. xxiii. 29]. Said R. Ila, according to others R. Jeremiah: What is said in the Mishna, "forbidden," applies to half of the prescribed quantity. This would be right according to him who says that half of the prescribed quantity is biblically forbidden, but of him who says that it is biblically allowed, what can you say? Then it was taught: A half of the prescribed quantity, R. Johanan says, is prohibited biblically; and Resh Lakish says: It is allowed biblically. Then the Mishna would be according to R. Johanan. But of Resh Lakish what can be said? Resh Lakish avows, that rabbinically it is prohibited. When it is said in the Mishna "forbidden," it is meant, forbidden rabbinically.

When *Karoth* is the penalty, is not the term "prohibited" employed? We have learned in the following Boraitha: Although the sages have said that it is prohibited in all regards, *Karoth* is due only for eating, drinking, and work. We see, then, that even when *Karoth* is the penalty, the term "prohibited" is employed? The Boraitha meant to say as follows: When the Mishna says "prohibited," it is meant for the half of the prescribed quantity; but if he has eaten the prescribed quantity, *Karoth* is due for eating and drinking, and work; but

not for the other actions. If you wish, I can say, when it is stated in the Mishna "prohibited," the *other* actions only are meant (hence *Karoth* is not due). Rabba and R. Joseph taught from the books of the Pentateuch other than Leviticus, as follows: Whence do we deduce that on the Day of Atonement one must not wash, anoint, lace on the shoes, and have sexual intercourse? Because it is written [Lev. xvi. 31]: "A Sabbath of rest, and ye shall afflict yourselves." What is meant by rest? Desisting from washing, anointing, etc. The text above states: Half of the prescribed quantity is biblically forbidden, according to R. Johanan? Why? Because if he will eat twice the other half, he will have eaten the whole. Resh Lakish says: The Merciful One has said "eat," and this is not called "eating."

The rabbis taught: It is written [ibid. 29]: "Ye shall afflict yourselves." Shall we assume that he

should go and sit in the sunshine or in the cold, to cause himself suffering? Therefore it is written: "No work shall ye do." As about the work the prohibition is negative, so the affliction is meant to be only negative; *i.e.*, abstinence. But perhaps it is meant thereby, if he sits in sunshine or in shade, and feels too hot or too cold, they should not say to him: "Remove from this place," that he might suffer? The affliction is compared to the work: as in case of the work it matters not in which place it is, so in case of the affliction.

The disciples of R. Ishmael have taught: It is written here, "affliction," and it is written further, "affliction" [Deut. viii. 3]: ("He afflicted thee and suffered thee to hunger"). As there by affliction hunger is meant, so here. If he deduces it from an analogy of expression, let him deduce it from the expression [Gen. xxxi. 50]: "If thou shouldst afflict my daughters." It is deduced from an affliction suffered spontaneously (as hunger), but not from affliction inflicted by men.

It is written [Deut. viii. 16]: "Who hath fed thee in the wilderness with manna, which thy fathers knew not, in order to afflict thee." What was the affliction? R. Ami and R. Assi said the one, that not to have bread ready in one's basket is an affliction, whereas the manna had to be hoped for every day; and the other says, not to see what one eats (the manna) is an affliction. (The manna had all flavors at will, but not the *appearance* of all foods whose flavors it had.) Said R. Joseph Infer from this, that the blind are never satiated. Says Abayi He who has to eat, therefore, should eat only by day, and not

by night. Said R. Zera: How can it be inferred from Scripture? From Ecc. vi. 9: "Better is what one seeth with the eyes than the wandering of desire." It is written [Prov. xxiii. 31]: "When he glances into the cup, it goes down smoothly." R. Ami and R. Assi said--the one, that then (when he is drunk) all blood-relations are forgotten by him; and the other says, that the whole world seems to him alike (he does not distinguish between his own and others' property). It is written [Prov. xii. 26]: "If there is care in the heart of a man, he shall suppress it." Said R. Ami and R. Assi-the one, he should suppress it, by driving it out of his thoughts; and the other, by relating about it to another person.

It is written [Is. lxv. 25]: "The serpent dust shall be his food." R. Ami and R. Assi said--the one, that whatever he eats, he tastes the flavor of earth; and the other, that whatsoever he should eat, he is not filled, unless he eats earth after it.

We have learned in a Boraitha: R. Jose said: Come and see. The visage of the Holy One, blessed be He, is not like that of a human being. When a human being incenses another, the latter tries to embitter his life; the Lord, when He cursed the serpent to eat earth, the serpent finds his food wheresoever he goes. He cursed Canaan, that it should be subjected: so it eats what its master eats, and drinks what its master drinks. He has cursed woman, and all run after her. He has cursed the earth, and the world is nourished by it.

It is written [Num. xi. 3]: "We remember the fish which we ate in Egypt." Said Rabh and Samuel--one, that simply fish is meant; and the other, licentiousness (since forbidden by the commandments). He who says "fish," says it is plainly mentioned "ate"; and the other, who says licentiousness is meant, proves it from Proverbs xxx. 20: "She eateth, and wipeth her mouth."

We have learned in a Boraitha: R. Jose said: As the prophet told the Israelites all that passed in their dwellings, and the very nooks, so the manna betrayed all their secrets. How so? For instance, two came to Moses, and one said: "He has stolen my slave," and the other said: "You sold him to me." Moses said: "In the morning we will decide it." On the morrow, if the Omer of manna for the slave was found for the one, it was a sign that the slave had been stolen but if for the other, it was evident that he had bought him. If one came and impeached his wife of adultery, and she charged him with that crime, then

the Omer decided. If her Omer was found for her husband, it was evident that she had sinned; if for her father, it was plain that he had sinned.

Three verses are written [Num. xv. 9]: "When the dew fell upon the camp in the night the manna fell upon it"; and [Ex. xvi. 4]: "The people shall go out, and gather"; and [Num. xi. 8]: "The people went about, and gathered it." How shall the three verses be reconciled? This is meant: For the upright, the manna came down at the door of their tents; for the general, they went out and found it; the wicked had to seek it, till they found it.

In Exodus it is written, "bread from heaven "; and [Num. xi. 4], "made cakes of it "; and [ibid.] "ground it." How shall these be reconciled? For the righteous, there was bread ready; as for the general, they made cakes of the flour; and the wicked had to grind it. It is written [Num. xi. 8]: "Its taste was as the taste of cakes mixed with oil." Said R. Abahu: As the milk of its mother has various flavors for the infant, so the manna, so long as the Israelites ate it, had for them all flavors.

It is written [Ex. xvi. 8]: "Flesh to eat, and bread in the morning to the full." It was taught in the name of R. Joshua b. Kar'ha: Because meat they asked for in an unbecoming manner, they did not receive it as was fitting, but bread which they had asked for properly, they had given to them properly. From this verse we can learn that the usage of the world ought to be that meat is to be eaten only by night. But Abayi has said above: He who has to eat a meal, should eat it only by day? He meant, when there is yet light. Said R. A'ha b. Jacob: At first the Israelites were like chickens, which eat out of the rubbish, till Moses came and fixed for them the times for the meals.

It is written "bread," "oil," "honey." What does this signify? For the young it was bread, for the old it was oil, and for the children it was honey.

The rabbis taught: It is written [Ps. lxviii. 25]: "The bread of Abirim did man eat." Said R. Aqiba: That means, the bread that angels eat. It was told to R. Ishmael. He said to them: Go and tell to Aqiba: Thou hast been in error. Do angels eat bread? It is written [Deut. ix. 9]: "Bread did I not eat, and water did I not drink." What, then, means "Abirim"? It is like "Ebrim" (members); it is absorbed by all the two hundred and forty-eight members, and no refuse is left. But it

is written [Deut. xxiii. 14]: "And a spade shalt thou have." Wherefore did they need it? That is

because they purchased from the Gentiles other foods also. R. Eliezer b. Parta, however, said: Even what they bought from the Gentiles, the manna dissolved. The above verse applies to the time after they had sinned.

"*Forbidden to eat*." To what do these five modes of affliction correspond? Said R. Hishda: To the five kinds of affliction found in the Torah: namely [Num. xxix.], "and on the tenth [Lev. xxiii.] "but on the tenth"; [ibid.] "a Sabbath of rest"; and [ibid. xvi.] "and a Sabbath of rest;" and [ibid.] "may it be to you." Here are only five, but in the Mishna we have learned six? Drinking is included in eating, as it is written [Deut. xiv. 23]: "And thou shalt eat thy corn, of thy wine, and of thy oil," etc.

The disciples of R. Simeon b. Johai questioned him: Wherefore did not the manna descend for the Israelites once a year? He answered: I will explain it to you by a parable. There was a king who ordered that the rations of his son shall be issued but once a year; the son, then, came to see his father but once a year, [at which the king became angry, and] ordered again that the rations should be issued daily, so that the son was compelled to see his father every day. So it was with the Israelites. Whoever had four or five children, worried, and said: Perhaps no manna will descend to-morrow, and all will starve. Consequently they prayed to Heaven every day. According to others, the reason is: So they should have it fresh every day; and still others say: So they should not have to carry it on the road.

It happened long ago that R. Tarphon and R. Ishmael and the elders (of the college) were discussing the subject of manna, and R. Eliezer the Modeite, who was among them, arose and said: The manna in the desert was sixty ells high. Said R. Tarphon to him: Modeite, how much longer wilt thou gather nonsensical words, and lay them before us? He rejoined: Rabbi, I take my theory from the following passages [Gen. vii. 20]: "Fifteen cubits above them did the water prevail, and the mountains were (thus) covered." (Now let us see how it was.) Was it fifteen ells above the valleys and fifteen ells above the mountains? Did, then, the water stand like pillars? And, besides, how could the ark ascend the mountains? We must, therefore, say that when all the fountains were broken up,

etc. [ibid. 11], the water covered the earth, until it reached the top of the mountains, and over that the water was fifteen ells high. As we have a tradition, that the kindness of Heaven is much more than its affliction, and as at the affliction it is said [ibid., ibid. 11]: "And the windows of heaven were opened," and at the kindness it is written [Ps. lxxviii. 23]: "Then he ordained the skies from above, and the doors of heaven he opened"; and as we know from another tradition, that a heavenly door is equal in size to four of its windows, consequently there are eight windows in two doors (doors and windows, both plural, not less than two), and as at the affliction from two windows came water fifteen ells above the earth--therefore the manna which came from eight windows cannot be less than sixty ells high.

We have learned in a Boraitha: Issi b. Jehudah says: The manna has increased itself in height till all the kings of east and west saw it, as it is written [ibid. xxiii. 5]: "Thou preparest before me a table in the presence of my assailants."

How is it known that abstaining from washing and anointing is an affliction? Because it is

written [Dan. x. 3]: "Costly food did I not eat, and flesh and wine came not in my mouth, nor did I anoint myself" What is meant by "costly food" I have not eaten? Says R. Jehudah the son of R. Samuel b. Shilath: Even bread of pure wheat he did not eat. How do we know it is thought an affliction? Because it is written further [ibid. 12]: "From the first day that thou didst set thy heart to . . . afflict thyself," etc. We have found that abstaining from anointing is an affliction, but how do we know that abstaining from washing is one? Said R. Zutra b. Tubiah: It is written [Ps. cix. 18]: "And it cometh like water within him, and like oil into his bones." But perhaps drinking is meant? It is like oil; as the oil here spoken of is used externally, so the water. If you wish, I will say, that we can infer abstaining from washing, as Itz'hak has said, from this verse [Prov. XXV. 25]: "As cold water is to a fainting soul." Here drinking is perhaps meant? That would be, if it were written "in a faint soul"; but here it is written (in Hebrew), "*on* a fainting soul." How do we know that the privation of shoes is an affliction? Said R. Na'hman b. Itz'hak: From the following passage [Jer. ii. 25]: "Prevent thy foot from being unshod, and thy throat from being thirsty," which means: Prevent thyself from sin, that thy foot be not unshod, and prevent thy

tongue from speaking vain words, that thy throat be not thirsty. How is it known that abstinence from sexual intercourse is called an affliction? Because it is written [Gen. xxxi. 50]: "If thou shouldst afflict my daughters." This means, deprive them of sexual intercourse.

The rabbis taught: It is not prohibited to wash an inconsiderable part of one's body, as the whole body. If one is soiled by clay, or any such thing, he may wash himself without apprehension. One may not anoint a part of the body any more than the whole body. But if one is sick, or has an itch, he may anoint without apprehension. The disciples of Manasseh taught: A woman may wash her hand in water, and present bread to the children, without apprehension. It was said of Shamai the Elder: He was averse to give bread to his children, even with one hand, that he should not wash it; so they decreed that he should feed them with both his hands.

The rabbis taught: When a man goes to receive his father, master, or any superior, he may walk up to his neck in water, without apprehension. The schoolmen propounded a question: How if the Master goes to receive the disciple? Come and hear; R. Itz'hak bar bar Hana said: I have seen Z'eri go in water to R. Hiya b. R. Ashi, his disciple. R. Ashi, however, said: On the contrary, R. Hiya b. Ashi went to meet Z'eri, his Master. Rabha permitted the inhabitants across the river to go through the water to watch their fruit. Abayi said to Rabha: I have a Boraitha in support of what you say. Those who keep fruit, may walk through the water, up to their necks, without fear. R. Joseph permitted the inhabitants of Be Tarbu to walk through water to come to listen to the lecture, and return through the same element. Ahayi said to him: It is right that they should come to the lecture, but why return? He said: If they were not to be allowed to return, they would not come at all. R. Jehudah and R. Samuel b. R. Jehudah stood on the bank of the River Euphrates at the passage to 'Hatzdad. Rami b. Papa stood on the other side. He cried to them: How is the law? may I cross over to you? I have to ask of you a Halakha. R. Jehudah answered: Rabha and Samuel both say one way, but one may not draw away one's hands from the skirts of one's robe (not tuck it up on his back, like a burden). R. Pinchas said in the name of R. Huna of Tziporith: The spring that issued from the Holy of Holies was at first like the antennæ of a grasshopper; by the door of the sanctuary it was like a thread of

the warp; at the porch it was thick as a thread of the woof; at the door of the forecourt it was as broad as the mouth of a small pitcher. [This is what we have learned in a Mishna (Midoth, ii. 4): "R. Eliezer b. Jacob said: Water will issue in the times to come from under the sill of the Temple."] Thenceforth, it waxed in strength, and when it reached the door of David's house, it was like a streaming river, and these people bathed, as it is written [Zech. xiii. i]: "On that day shall there be a fountain opened to the house of David . . . for cleansing from sins and for purification." Z'irah b. 'Hama was the entertainer of R. Ami, R. Assi, R. Joshua b. Levi and all rabbis of Cæsarea. R. Joseph the son of R. Joshua b. Levi said to him: Young scholar, come, I will tell thee of the good deeds thy father used to do. He had a kerchief which he used to soak in water on the eve of the Day of Atonement, and then used it on the morrow to wipe his face, hands, and feet. On the eve of the Ninth of Ab, he soaked it in water likewise, and on the morrow cleaned his eyes with it. When Rabba b. Mora came from Palestine, he related that on the eve of the Ninth of Ab, he himself was used to soak a kerchief in water, and take it out, putting it under his pillow; on the morrow he used it for wiping his face, hands, and feet. On the eve of the Day of Atonement he did the same thing, wrung it, and on the morrow wiped his eyes with it. Said R. Jacob to R. Jeremiah b. Ta'hlipha: Thou hast related it in the reverse order that on the Day of Atonement the whole face. etc., was wiped. We have objected: On that day it is prohibited to wring it out.

R. Mnashia b. Ta'hlipha said in the name of R. Amram, quoting Rabha bar bar Hana, R. Eleazar was asked, an Elder, who sat in the college, has he to receive permission from the Nassi to declare the firstlings which have got blemishes fit for slaughtering for personal use, or not? [1] [What was the point of the question the schoolmen have propounded? (Why is the question only about the firstlings? If he has license to decide Halakhas, those about firstlings are included?) The point of the question was this: R. Idda b. Abbin said elsewhere: The matter of firstlings was left to the Nassi, to honor them. But in

this case, when he is an elderly man, and one of the first in the college, must he also receive permission, or not?]

Then R. Zadok b. 'Haluqah arose, and said: I have seen R. Jose b. Zimra, who was an old man and prominent in the college, and he was even a degree higher than the grandfather of our Nassi, and nevertheless he received permission to decide about the firstlings. Said R. Abba to him: The case was not so: R. Jose b. Zimra was himself a priest, and the question that was propounded was this: Shall we assume that the Halakha prevails according to R. Meir, who says, "Who is suspect in a matter, must not decide upon it, nor bear testimony about it," or according to Rabhan Simeon b. Gamaliel, who says, "He is believed in reference to his colleague, but not in reference to himself"? And it was decided then that the Halakha pre. vails according to R. Simeon b. Gamaliel.

The same propounded another question to R. Elazar: Whether one might put on a shoe made of cork on the Day of Atonement, and R. Itz'hak b. Na'hman rose, and said: I have seen myself R. Joshuah b. Levi wearing such shoes on the Day of Atonement, and *I* (Rabha bar bar Hana) asked him: How is it, to put on these shoes on a congregational fast for rain? He answered: There is no difference.

The rabbis taught: Children may do all these things, except putting on shoes. Why? Because it

will be said: The adults have laced them on their feet. But the same is the case with the other actions? The other are necessary and usual, but a child is usually barefooted; and if it has shoes, the adults put them on its feet. As Abayi said: My mother told me that warm water and oil, for a child, is good for its growth, and also eggs and Kutah (see Pesachim, p. 68, foot-note), and also objects to break, as Rabha used to buy cracked clay vessels, and gave them to his infants, that they might break them.

"*A king and a bride may wash their faces*." Our Mishna is in accordance with R. Hanania b. Thradian of the following Boraitha: A king and a bride may not wash their faces. R. Hanania b. Thradian says in the name of R. Elizer: They may. A lying-in woman may not put on shoes. R. Hanania b. Thradian says she may. Why may a king? Because it is written [Is. xxxiii. 17]: "The king in his beauty shall thy eyes behold." And why a bride? Because she will otherwise displease her husband. Rabh asked R. Hiya: How long is she called a "bride"? He replied: This is as we have learned in

the following Boraitha: A bride may not be forbidden to put on even her ornaments, when she is a mourner, the first thirty days after her marriage. And why may a lying-in woman put on shoes? Because otherwise she will catch cold. Said R. Samuel: Where there is a danger of snakes, or scorpions, all may put on shoes.

"*Whosoever eats food to the size of a large date*," etc. Said R. Jehudah: The size of a large date exceeds that of an egg, and it was certain to the rabbis that with such a quantity of food one might appease his hunger, but not with less. An objection was raised: We have learned in a Boraitha: What is the prescribed quantity of the food of a man who may join the three men necessary to say the blessing after a meal? The size of an olive. So is the decree of R. Meir. R. Jehudah says: The size of an egg. Because it is written [Deut. viii. 12]: "Thou hast eaten, and art satisfied"; and by food less than the size of an egg we cannot appease hunger. We see, then, that R. Jehudah says: One can be satisfied by food the size of an egg. Why does he say, above, of a large date? Therefore we must say, R. Jehudah must have said a large date is somewhat smaller than an egg. With food the size of an egg, one may be *satisfied*; but in this case one can still appease *hunger* with food to the size of a large date.

We have learned in a Boraitha: Rabbi said: All prescribed quantities are only of the size of an olive, except in case of defilement of eatables, about which Scripture has deviated from its rule. Therefore the sages have also altered this prescribed quantity, and a proof of this is the Day of Atonement. How has Scripture deviated in regard to them? It has said [Lev. xxiii. 29]: "Every soul that will not afflict itself." The sages have altered in this case the prescribed quantity by making it as a large date. Why could he say, the Day of Atonement is a proof? (We see, as will be written further, that Scripture has deviated in case of defilement also. Why, then, could he say, the Day of Atonement is proof?) The deviation in regard to defilement we might have thought to be the usual language of Scripture. But here, when it is said 'I shall not afflict itself, it is a deviation, because it might have been said: "The soul that had eaten." (What is it? It was taught:) What is the reason that an eatable subject to defilement must be of the size of an egg? Because it is written [ibid. xi. 34]: "Of all eatables which may be eaten." What is that? What is an eatable which

comes from an eatable? An egg of a hen (which can be eaten itself, as well as the hen),

"*Or drinks a mouthful*." Said R. Jehudah in the name of Samuel: Not a whole mouthful is meant, but so much as would make the check bulge out. But we have learned, a mouthful? Nay, it is meant, as a mouthful. The disciples of Zera opposed: Why do they say, about food "the size of a date" (equal for all), and about beverages, "a mouthful" (differing in every person)? Abayi answered: It was certain to the rabbis that food of the size of a date appeases hunger, but only that one's own mouthful of water will quench thirst, not necessarily another's mouthful.

"*All kinds of food are reckoned together to the size of the date*." Says R. Papa: When one has eaten meat and salt, both are reckoned. And although salt is no food, yet as salt is used with meat, it is also reckoned. Resh Lakish said: The sauce which is upon herbs is reckoned with them. Is this not self-evident? One may say, the sauce is a beverage, and not counted; hence he came to teach, that since it is only made to flavor the herbs, it is reckoned part of the dish. Resh Lakish said again: When one commits an excess in eating on the Day of Atonement, he is not culpable. What is the reason? Because it is written, "They should afflict themselves," and this afflicts him. Said R. Jeremiah in the name of Resh Lakish: A layman who has eaten to excess of the heave-offering must only pay the costs, but not one-fifth more; because it is written [ibid. xxii. 14]: "If a man *eat*." But eating to excess, to one's hurt, is not called eating.

"*Food and beverage are not reckoned together*." Who is the Tana who says so? Said R. Hisda, and also Resh Lakish: In this differ the Tanaim, in Tract M'ilah, and our Mishna is according to R. Joshua. R. Johanan says: It may be even according to the rabbis, but there they differ from R. Joshua on the point of defilement, but not from our Mishna, where the question is about appeasing hunger or thirst, for which purposes foods and beverages are not to be reckoned together.

MISHNA: If one has eaten and drunk through forgetfulness, he must bring only one sin-offering. If he has eaten and also done work, he must bring two. If he has eaten food not fit for eating, or drunk liquids not fit for drinking, as brine or fish-lye, he is not guilty.

GEMARA: Resh Lakish said: Why is there no positive command to afflict one's self? It is only said: "Every soul that

not afflict itself, will be cut off." It could not be otherwise: If it were written, "shall not eat," instead of "will not afflict itself," then we might think, eating food of the size of an olive was also a sin. Then, should it have been written: "Beware lest you should not afflict yourselves," we might think, beware not to afflict ourselves, but go and eat!--The disciples of R. Ishmael have taught. (It is an analogy of expression.) Here it is written, "affliction," and [Deut. xxii. 24], "because he has afflicted (done violence to; in Hebrew it is the same term) the wife of his neighbor." As the penalty is preceded by a warning previously, so here the penalty (of being cut off) must have been preceded by a warning. R. A'ha b. Jacob says: (There is another analogy of expression.) Here it is written, "A Sabbath of rest," so it is like all Sabbaths; and as in cases of Sabbath there is a warning, so there must have been a warning (positive prohibition) here. R. Papa says: The Day of Atonement itself is considered as a Sabbath, as it is written [Lev. xxiii.

32]: "Your Sabbath." [It is right if R. Papa says differently from R. A'ha b. Jacob, because he does not deduce it, but finds it expressed in the same passage. But why does R. A'ha b. Jacob not say as R. Papa? R. A'ha b. Jacob requires that verse for what we have learned in the following Boraitha: It is written [ibid., ibid.]: "Ye shall afflict your souls on the ninth day of the month." Shall we assume that we should begin to fast on the ninth? Therefore it is written, "at evening," We might think, when it became entirely dark? Hence it is written, "the ninth." How then? One shall begin to fast while it is yet day. From this we infer that something from the profane must be added to the holy. This is when the Day of Atonement arrives, but how do we know that is so when it departs? Therefore it is written, "from evening to evening." This we know about the Day of Atonement, but about other Sabbaths? Therefore it is written further, "shall ye rest" (Tishb'thu). How do we know about other holidays? Because it is written, "your Sabbaths." From this we deduce that whenever "rest" is enjoined, some portions of the profane day must be super-added to the holy days. But that Tana who infers all these things from the following verse [ibid. 29], "No manner of work shall ye do on this same day," that the penalty is due for violating the day itself, but not the additions made thereto, and this above implies that there are additions, what will he make of these verses? He needs these verses for what R. Hiya b.

[paragraph continues] Rabh of Diphthi has taught, as follows: It is written: "ye shall fast on the ninth." Do we fast on the ninth? We fast on the tenth. This comes to teach, that he who eats and drinks on the ninth, the verse makes him equal (in merit) to him who would fast the ninth and the tenth.]

"*If he has eaten food not fit for eating*." Rabha said: If he has chewed pepper or ginger during the Day of Atonement, he is not culpable. The rabbis taught: If he has eaten leaves of *reeds* he is guiltless; but twigs of vines, he is guilty, What is meant by twigs of vines? Said R. Itz'hak of Magdala: Those that flourish between the first day of the year and the Day of Atonement. R. Kahna says: All the thirty days. We have learned in a Boraitha, as R. Itz'hak of Magdala has said: If he has eaten leaves of *reeds* he is guiltless; of twigs of vines, he is guilty. What are twigs of vines? Such as flourish between the beginning of the year and the Day of Atonement.

"*If he has drunk . . . brine as fish-lye*." How if he has drunk vinegar? He is guilty? We must say our Mishna is according to Rabbi in a Boraitha which says vinegar refreshes a man.

R. Gidel b. Menasseh of Biri d'Narash once lectured: The Halakha does not prevail according to Rabbi: when the Day of Atonement arrived, the whole world mixed vinegar with water, and drank. R. Gidel heard of this; he became indignant. He said: I have said, when it has been drunk already, one is not culpable, but have not recommended it. I meant a little, but did not mean much. I spoke of vinegar, but not of mixed vinegar.

MISHNA: Children are not made to fast on the Day of Atonement, but when one or two years old they are accustomed to do it, so that they become habituated to obey the religious commandments.

GEMARA: If it is stated "two years," *one* is understood? Said R. Hisda: It presents no difficulty. The one applies to a healthy child; the other, to a weakly child. R. Huna said: When the child is eight or nine years old, it may be accustomed to fast some hours. When it becomes ten or eleven

years old, it may be made to fast rabbinically the whole day. A girl must fast biblically at the age of twelve. R. Na'hman, however, said: When nine or ten years old--some hours; at eleven or twelve--rabbinically the whole day; at thirteen--biblically, a boy. R. Johanan says: So long as it is rabbinical, they need not fast the entire day. Only at ten or eleven they must be habituated to

fast for hours, and at twelve they must fast the whole day biblically.

MISHNA: A pregnant woman, who longs for food which she smells, should be fed until relieved. An invalid is fed by the direction of persons possessing medical knowledge; if there be none such, he is to be fed at his own desire, till he says, Enough."

The rabbis taught: If a pregnant woman has smelled sacred meat, or pork, something should be dipped in the sauce thereof, and presented to her mouth. If she is relieved thereby, it is good; otherwise, the sauce must be given to her. If this has not satisfied her either, the meat itself must be given to her. Because nothing is prohibited which is needed to save a life, except idolatry, adultery, and bloodshed.

It happened to a pregnant woman that she smelled food. They came to ask Rabbi. He said: Go, tell her in her car, Today is the Day of Atonement. They did thus, and she became composed. Rabbi said of this child the verse in Jeremiah [i. 5]: "Before yet I had formed thee in thy mother's body I knew thee." That child became R. Johanan. The same accident happened to another woman. They came to ask R. Hanina. He said the same; but it availed not. He said of him the verse [Ps. lviii. 4]: "The wicked are estranged from the womb"; and this child became Sabbathai, who used to buy fruits to sell in time of dearth (and this is forbidden in Palestine).

"*An invalid is fed,*" etc. Said R. Janai: When the invalid says, "I must eat," and the physician says he need not, the patient is obeyed. Why? Because it is written [Prov. xiv. 10]: "The heart knoweth its own bitterness." Is this not self-evident? We might think the physician has a better comprehension of the patient's needs. He chooses to teach us; it is not so. How, if the case is reversed? Then the physician is obeyed, because the patient only fancies he does not need to eat.

An objection has been made to our Mishna: If no medical persons are there, he is fed at his own desire. Hence, when there are such, he is not to be fed at his own desire? The Mishna means: When the patient says he does *not* need to eat, then he is not fed at the recommendation of medical persons; but if he says he *does* need to eat, no one is to be consulted.

MISHNA: If a man is seized with bulimy, he may be fed even with unclean food, till his eyes become clear. One who is bitten by a mad dog may not have the dog's midriff above

the liver given to him. R. Mathia b. Harash allows it. Moreover, R. Mathia b. Harash also said: "If a person has a sore throat, it is permitted to put drugs into his throat on Sabbath, because the disease may endanger his life, and whatsoever threatens to endanger life supersedes Sabbath."

If a building tumble down, and it is doubtful whether anyone is buried beneath the ruins or not; if it is doubtful whether he be dead or alive, it is permitted to remove the ruins from above him on the Sabbath. If he be found alive, the ruins are to be entirely removed; but should he be dead, he is to be left there.

GEMARA: The rabbis taught: Till his eyes become clear. How is it known when his eyes are clear? When he regains his reason to distinguish between good and evil. Said Abayi: Good and evil in taste is meant.

The rabbis taught: He who has been seized by bulimy must be fed with less strictly prohibited foods. For instance, if there is grain from which the heave-offering has not yet been separated, and carrion, he must be given the carrion (as for eating the first the penalty is death from Heaven). When there is such grain and grain of a Sabbatical year, he must be given the latter. When there is that grain, and the heave-offering itself, then there is a difference of opinion between the Tanaim of the following Boraitha: They may give him the grain from which the heave-offering has not been separated, but not the heave-offering itself. R. Thema said: The heave-offering, but not that grain. (The heave-offering is less strictly prohibited because a priest may eat thereof, but of other kind even a priest may not eat.)

The rabbis taught: He who is seized by bulimy must be fed on honey, and other sweet things, as these things make the eyes clear. And although there is no support thereto in the Bible, yet it is written in proof of it [1 Sam. xiv. 29]: "My eyes have become clear because I have tasted a little of this honey." Why is this no support? Because Jonathan had not been seized by bulimy. Said Abayi: This must be given after his repast, but if it be given to him before he has received the food, it will only increase his hunger. As it is written [ibid. xxx. 11, 12]: "And they found an Egyptian man in the field, and took him to David, and gave him bread and he did eat; and they made him drink water; and they gave him a piece of a cake of fig, and two clusters of raisins, and he ate, and then his spirit returned

to him, for he had not eaten any bread, nor drunk any water, three days and three nights."

R. Na'hman said in the name of Samuel: He who has been seized by bulimy should be given the fat of a sheep's tail in honey,. R. Huna the son of R. Joshua said: Fine flour with honey is also good. R. Papa says, even barley flour with honey.

R. Johanan said: Bulimy once seized me. I ran to the eastern side of a date palm, and ate the dates. I fulfilled in my own person one verse [Eccl. vii. 12]: "Wisdom giveth life to him who possesseth it." [As R. Joseph has taught: He who desires to feel the real taste of dates, should take them from the eastern side of the palm, as it is written [Deut. xxxiii. 14]: "And through precious fruit, brought forth by the sun" (east).]

R. Jehudah and R. Jose were on the road. R. Jehudah was seized by bulimy. He overpowered a shepherd, and robbed him of his bread. Said to him R. Jose: Thou hast robbed the shepherd! When they came to the city, R. Jose was seized by bulimy. He was overladen with food and sweet things. R. Jehudah said to him: I have only robbed the shepherd, but thou--the whole city. It happened again that R. Meir, R. Jehudah, and R. Jose were on the road. R. Meir was particular

about the names of his innkeepers, but the other two were not. When they arrived at an inn, they asked the host: What is thy name? He answered: "Kidor." R. Meir thought: He must be a wicked man, because it is written [Deut. xxxii. 20]: "*Ki dor tah puchoth hema*"--"for a perverse generation are they." R. Jehudah and R. Jose intrusted him with their purses for safekeeping over Sabbath, and R. Meir did not, but hid it in Kidor's father's sepulchre. Then his father appeared in a dream to Kidor, and told him: "Go and take away the purse that is over my head." Kidor rose in the morning, and told everybody of his dream. They said to him: A dream dreamed on the eve of Sabbath has no significance. Nevertheless, R. Meir kept watch over his money the whole day, and by night removed it. On the morrow R. Jehudah and R. Jose required of Kidor their purses. He said to them: You have never given them to me! R. Meir then said to them: Why were you not particular about names? They said to him: Why has the Master not told us about it? He replied: I say, such men ought only to be suspect, but I could not have said with certainty. Finally, they took him to a store. They perceived he had lentils on his mustache. They went to his wife, and told her that her husband had eaten that

day lentils, and she should give them their money. She returned their purses to them, and they went away. He (Kidor) then went and murdered his wife. And this is what a Boraitha states: the failure to wash his hands before the meal caused a man to eat pork (as he was taken for this reason in the inn for a Gentile); and after the meal, caused a murder.

"*One bitten by a mad dog*." The rabbis taught: Five things have been mentioned as symptoms of a dog's madness: his mouth is opened, his saliva flows, his ears are lowered, and the tail is held between his thighs, and he ever takes the bypaths; and others say, he barks spasmodically. We have learned in a Boraitha: He must be killed by an arrow, or other projectile, for whoever touches him becomes dangerously sick, and who is bitten, dies. What are the remedies? He whose clothes have been touched by the dog, should cast them off, and run away.

R. Huna the son of R. Joshua happened to be rubbed against by a rabid dog; he stripped himself, and ran away, and said: I have fulfilled in my own person the verse: "Wisdom giveth life to him who possesseth it." What is the remedy for a bite? Says Abayi: He should fetch the hide of a hyena, and inscribe on it: "I, So-and-So, son of the woman So-and-So, have inscribed on the hide of a male hyena, I have inscribed on it thus: *Kanti Kanti Qlirus*"; others say: "*Kandi Kandi Qlirus; Yo, Yo, Yehavah Tsebaoth. Amen, Amen. Selah*." Then he should strip himself of his clothes, and inter them for twelve months; then he should take them out, burn them in an oven, and spread the ashes on the roads. During these twelve months he should drink water only out of copper vessels, that he should not see the image of the dog, as from this he may become dangerously sick. In the case of Abba b. Martha, who is Abba b. Minyumi, to whom this happened, his mother made for him a golden pitcher to drink out of it.

"*R. Mathiah b. Heresh said also*," etc. R. Johanan had the scurvy. He went to a matron of Rome. She did something to relieve him on a Thursday and the eve of Sabbath. He asked her, What shall I do on Sabbath? She said: You will not need to do anything. He said: But if, notwithstanding, I should be obliged to do something? She said: Swear to me that you will not tell of it to anyone, so I shall tell you. [After this, when she had told him, he went and lectured about it to everybody. But he had sworn not to tell? He had sworn, "To the God of Israel I will not reveal"; but to the people of

[paragraph continues] Israel he could. But this deception was a profanation of God's name? He had told her immediately thereupon: I had sworn not to say it to God, but to Israel I would. What was it that she told him? Said R. A'ha the son of R. Ammi: Water of leavened dough, olive oil, and salt. R. Yemar says: Not the water, but leavened dough itself, olive oil, and salt. R. Ashi says: Fat of the wing of a goose. Said Abayi: I have used all these things, and was not cured until an Arab merchant said: The stones of olives, one-third grown, should be taken and burned in a new Mar, and be applied to the rows of the teeth. This I have done, and have been cured. What causes such a sickness? Eating of hot wheat bread, or the remains of a dish of *Haisana* (fish fried in oil) from the previous evening. What are its symptoms? When something is put on the teeth they begin to bleed.] R. Johanan did it on the Sabbath and was cured. How did R. Johanan do this? His life was not threatened? R. Na'hman b. Itz'hak said: Scurvy begins in the mouth and ends in the entrails. Said R. Hiya b. Abha to R. Johanan: Do you hold, then, as R. Mathiah b. Heresh, who says: If one has a sore mouth, it is permitted? He said: Yea, for I say, to put drugs into his mouth. In regard to this sickness the sages agree with him, but about other diseases they do not. Come and hear in support of this: Rabba b. Samuel taught: A pregnant woman, who smells food, should be fed till relieved. One bitten by a mad dog should be fed on the midriff of its liver; and he who has a sore mouth may have medicines put into it or, Sabbath. So has said R. Eliezer b. Jose in the name of R. Mathiah b. Heresh. And the sages say: In this case, but not other cases. Which case? Should we say, that of the pregnant woman, there are none differing about it; if of the mad dog, they are at variance about it. Hence the putting in of medicines is meant. Said R. Ashi: From our Mishna we can perceive it; for all the things about which the sages and R. Mathiah are at a variance are mentioned before, and then it is said: "R. Mathiah b. Heresh said also," and the rabbis do not differ with him. Now, if it were something from which the rabbis differed, it would be mentioned above, among the other things.

"*Whatsoever threatens to endanger life supersedes Sabbath*." Why has this to be mentioned again? Said R. Jehudah in the name of Rabh: Not only when it is doubtful whether his life is threatened this Sabbath, but even the next, it is allowed. How

can this happen? *E.g.*, when it has been estimated on a Sabbath that the patient must take the remedy the next eight days, lest it be said: The evening will be waited for; so that only the next Sabbath will have to be violated, it comes to teach us it is not so. We have learned thus in a Boraitha: Warm water has to be heated for a patient, whether for drinking or to wash him, even when the consequences of these measures will be felt the next Sabbath. It should not be said: It will be delayed, perhaps these remedies will not be needful; but immediately he must get them, because the danger to life supersedes Sabbath, not only if the danger is this Sabbath, but will be the next Sabbath. But these things must not be done through Gentiles as Samaritans, but the greatest Israelites. But such things must not be done when neither the physician nor the patient says this is necessary, but only women as Samaritans. But their opinion is added to give weight to others' opinions.

The rabbis taught: The Sabbath is superseded when life is threatened; and with more alacrity this is done, the greater the praise. Permission from Beth Din need not be taken for it. How so? When a child is seen to have fallen into the sea, it should be fished for immediately; and the sooner one does this, the more praiseworthy one is; and no permission from Beth Din is to be

taken for it, even when he will take up in the net at the same time game fish. If one has seen a child fall into a pit, he may remove a piece of earth to save it the sooner. The more quickly he does it, the more praiseworthy he is, and though he forms by this means a staircase, he need not take license from Beth Din. If he saw a child enter, behind which the door got locked, he should break open the door immediately, and the sooner the better; and he need not take permission from Beth Din, even when by this means he breaks it for kindling. If he has perceived a fire kindled on Sabbath, he should extinguish it immediately; and the sooner the better, and even when the coals he saves from consumption will be used by him later for roasting meat.

"*If a building tumble down*." How is it to be understood? It is meant to say, that not only when it is doubtful whether one is there, and lives, or is not there; but even when the uncertainty is whether being there, he lives, or is dead, nevertheless the ruins are to be removed. If he is found alive, the ruins are entirely cleared. Is this not self-evident? The Mishna means to say, when it is known that he is dying, still the ruins are to be removed. If he is dead, he is to be left. Is not this also

self-evident? This is to teach us that it is not according to R. Jehudah b. Lakish of the following Boraitha: Sabbath is not superseded to save a corpse from fire. R. Jehudah b. Lakish, however, said: I have heard, a corpse may be saved from fire, even on Sabbath. But even according to R. Jehudah b. Lakish, a corpse is to be saved only from fire; because otherwise he to whom the corpse is dear will extinguish the fire. But in this case, even when the dead body is dear to him, what can he do (to violate the Sabbath)?

The rabbis taught: When the body under the ruins seems dead, what members are to be brought to light and examined? As far as the nose. Others say, as far as the heart. When it does not beat, he is taken to be dead. But if one has commenced with examining the head and heart, and found them defunct, one should nevertheless bring to light the other parts, and examine them. As it happened, that the upper parts were dead, and yet the lower had still some life, said R. Papa: The sages differ when one has commenced the examination from below upwards; but from above downwards, that is, when the nose has been found to have ceased breathing, no further examination is needed, as it is written [Gen. vii. 22]: "All in whose nostrils was the breath of life." It happened long ago that R. Ishmael, R. Aqiba, and R. Eliezer b. Azariah were on the road; and Levi, the Sadar, or Sarad, [1] and R. Ishmael the son of R. Eliezer b. Azariah followed them. They were asked the following question: How is it known that, when life is in danger, Sabbath may be violated? R. Ishmael answered: It is written [Ex. xxii. 2]: "If a thief be found while breaking in and be smitten so that he die, there shall no blood be shed for him." We can deduce, *a fortiori*, from this: If in this case, when it is doubtful whether he had come to steal only, or to murder, yet taking his life is permitted, although bloodshed defiles the land and causes the Shekhina to remove from Israel, how much more is violation of the Sabbath (less important than bloodshed) permitted to save a human life.

R. Jonathan b. Joseph says: From the following verse: Of Sabbath it is written [Ex. xxxi. 14]: "For it is holy unto you." *Unto you*: The Sabbath is for you, but not you for the Sabbath. R. Simeon b. Menasseh says: It is written [ibid. 16]: "And the

children of Israel shall keep the Sabbath." The Torah enjoins thus: Violate one Sabbath, that ye may keep many Sabbaths. R. Jehudah said: Samuel has said: If I had been there, I would have said a thing better than this; namely, it is written [Lev. xviii. 5]: "Ye shall keep my statutes . . . which, if a man do, he shall live by them." He shall live by them, but not die. Said Rabba: All the verses from which they have deduced it may be questioned, but to Samuel's nothing can be objected. Rabbina, and according to others R. Na'hman b. Itz'hak, has said of this: One grain of pungent pepper is better than a whole basket of cucumbers.

MISHNA: Sin-offerings and trespass-offerings atone. Death and the Day of Atonement, if one is penitent, atone. Penitence atones for slight breaches of positive or negative commandments; for grave sins, it effects a suspension, till the Day of Atonement completes the atonement. To him who says: "I will sin, repent, sin again, and repent again," is not given the opportunity to repent. For him who thinks, "I will sin; the Day of Atonement will atone for my sins," the Day of Atonement does not atone. A sin towards God, the Day of Atonement atones for; but a sin towards his fellowman is not atoned for by the Day of Atonement so long as the wronged fellowman is not righted. R. Eliezer b. Azariah lectured: It is written [Lev. xvi. 30]: "From all your sins before the Lord shall ye be clean." (This is our tradition.) The sin towards God, the Day of Atonement atones for; but sins toward man, the Day of Atonement cannot atone for till the neighbor has been appeased.

Said R. Aqiba: Happy are ye, O Israel. Before whom do ye cleanse yourselves, and who cleanses you? Your Father who is in Heaven. For it is written [Ezek. xxxvi. 25]: "Then will I sprinkle clean water upon you, and ye shall be clean "; and it is also written: "The Migveh (hope, or legal bath) of Israel is the Lord." As a legal diving-bath purifies the unclean, so does the Holy One, blessed be He, cleanse Israel.

GEMARA: "*Death and the Day of Atonement*," etc. Only when one is penitent, but otherwise they do not atone? Shall we assume that the Mishna is not in accordance with Rabbi, in the following Boraitha: "Rabbi says: All sins mentioned in the Bible, whether one is penitent or not, are atoned by the Day of Atonement, except throwing off the yoke (of God), expounding the Torah falsely, and abolition of circumcision (and mocking a fellowman). These sins are atoned for by the Day of Atonement,

if one is penitent, but not otherwise." It may be said even that the Mishna is in accordance with Rabbi: Penitence is supplemented by the Day of Atonement or Death, but the Day of Atonement does atone alone.

"*Penitence atones for slight breaches, if positive or negative,*" etc. Why has it to be told, positive? If negative, so much the more positive? Said R. Jehudah: The Mishna meant to say, a positive commandment, or a negative commandment inferred from a positive. But a real negative commandment is not atoned? There is a contradiction from the following Boraitha: What are called slight sins? A breach of a positive and negative commandment, except the negative commandment [Ex. xx. 7]: "Thou shalt not take the name of the Lord thy God in vain"; and all things equal to this: since this, which is a real negative commandment, is excepted, the other negative commandments are atoned for? Come and hear another contradiction: It is written [Ex. xxxiv. 7]: "And he will clear of sins." We might think, from this sin, the breach of the negative commandment, "Thou shalt not take the name of the Lord," etc., he will also clear.

Therefore it is further written, "by no means." Shall we assume, that from the breaches of all negative commandments he will not clear? Therefore it is written [Ex. xx. 7]: "For the Lord will not hold him guiltless (the Hebrew term is the same) that taketh *His name* in vain." Infer from this, that breaches of other negative commandments he does atone for? (How, then, does Jehudah say that the breaches of real negative commandments are not atoned for?) There is a difference of opinion among the Tanaim, as we have learned in the following Boraitha: "What does penitence atone for? For breaches of positive, and negative inferred from positive, commandments. And for which does penitence only gain a suspension, and the Day of Atonement atones? The sins for which the penalties are *Karoth*, death by Beth Din, and real negative commandments."

The Master has said: Because it is written [Ex. xxxiv. 7]: "He will clear of sins," how is it to be understood? That is as we have learned in the following Boraitha: R. Elazar said: We cannot say it means, He clears of sins, because it is written further, "by no means" does He clear. We cannot say, He does not, because it is written "clear of sins." 1 We must therefore

explain the verse: He clears of sins those who do penance; and does not, those who are not penitent.

R. Mathiah b. Heresh asked R. Elazar b. Azariah at Rome: Have you heard of the four differences made in atonements, about which R. Ishmael lectured? He replied to him: There are only three, and penitence is combined with each. When one has transgressed a positive commandment, and done penance, he is atoned for before he goes away from his place. As it is written [Jerem. iii. 14]: "Return, O backsliding children." If he has transgressed a negative commandment, penitence suspends (the sentence), and the Day of Atonement atones. As it is written [Lev. xvi. 30]: "For on that day shall he make atonement for you, to cleanse you from all your sins." If he has committed sins for which the penalties are *Karoth*, or death by Beth Din, then penitence and the Day of Atonement suspend (the sentence in Heaven) and afflictions wipe it out. As it is written [Ps. lxxxix. 33]: "Then will I visit with the rod their transgressions, and with plagues their iniquity." But he who has on his conscience the defamation (profaning) of God, neither penitence can suspend, nor the Day of Atonement atone for, nor sufferings wipe out. But all the three only suspend, and death wipes out, as it is written [Is. xxii. 14]: "And it was revealed in my ears by the Lord of hosts: Surely this iniquity shall not be forgiven unto you, until ye die."

What is called defamation of God? Says Rabh: For instance, if I take meat from the butcher, and do not immediately pay, I profane God (by its being said, a great and religious man robs). Says Abayi: This is when it is the custom to pay cash, but not where it is the usage to pay later. R. Johanan says: For instance, when I should walk four ells without Torah (in my mind), I profane God. R. Janai's disciples have said: When a man's companions are ashamed of his reputation, it profanes God. Said R. Na'hman b. Itz'hak: (What is meant by reputation?) When people say of a man: "O God, pardon him for his deeds." And Abayi says, as we have learned in the following Boraitha: It is written [Deut. vi. 5]: "Thou shalt love the Lord thy God." That means, God's name should be loved through thee; that is to say, a man must read and study the Torah, and attend on (serve) scholars, and his dealings with the world should be mild. What do people then say of him? Well with his father, who taught him Torah; well with his teacher, who has instructed him in Torah, and woe to those people

who have not learned the Law! Behold, the one who has learned Torah, how beautiful are his ways, how just his deeds! Of him says the verse [Is. xlix. 3]: "And he said unto me, My servant art thou, O Israel, thou on whom I will be glorified." But if one has learned Torah and served the scholars, but is in his dealings not honest and speaks with people not gently, then what do people say about him? Behold, him who has learned Torah, woe to his father, that has taught him Torah; woe to his teacher, who has instructed him in Torah! See the one who has learned Torah, how evil are his ways, how evil his deeds! Of him says the verse [Ezek. xxxvi. 20]: "They profane my holy name, because they said of them, these are the people of the Lord, and out of his land are they gone forth."

R. Hania b. Hanina said: Penitence is great, and brings healing to the world, as it is written [Hosea xiv. 5]: "I will heal their backsliding, I will love them freely." The same has found a contradiction: It is written [Jerem. iii. 14]: "Return, O backsliding children"; by which seems to be implied a former backsliding. And here it is written: "I will heal thy backsliding," where it seems to be implied that it will remain, only be healed. It presents no difficulty. When one does penance out of love towards God, he is as he had not been; but if he does penance only out of fear, his previous sins remain, only they are healed.

R. Jehudah finds a contradiction: In these verses it is written, "backsliding children," and elsewhere [Jerem. iii. 14]: "For I am become your husband and will take you." It presents no difficulty. Children they are called, when they do penance out of love or fear; and otherwise, when they do it through suffering. 1

R. Levi said. Penitence is great. It reaches the throne of His glory, as it is written [Hosea xiv. 2]: "Return, O Israel, even unto the Lord thy God." R. Johanan said: Penitence is great, so that it supersedes a negative commandment in the Torah. As it is written [Jerem. iii. 3]: "One could say, Behold, if a man send away his wife, and she go from him, and become another man's, can he return unto her again? Would not that land be greatly polluted? and thou hast played the harlot with many companions, and wilt yet return to me, saith the Lord." (So penitence is greater than the commandment not to take back one's wife, married to another.)

R. Jonathan said: Penitence is great, so that it brings the redemption, as it is written [Is. lix. 20]: "But unto Zion shall come the redeemer, and unto those who return from transgression in Jacob," which means, Why is the redeemer come? Because Jacob has returned from transgressions. Resh Lakish says: Penitence is great: even the sins that have been done intentionally are considered as if they had been done unintentionally. As it is written [Hosea xiv. 2]: "For thou hast stumbled in thy iniquity." Iniquity is intentional, and yet it is called "stumbling." This is not so? Did not Resh Lakish himself say: Penitence is great, so that intentional sins come to be considered as merits, as it is written [Ezek. xxxiii. 19]: "And when the wicked returneth from his wickedness, and executeth justice and righteousness, he shall surely live for them"? It presents no difficulty. One is from love, and the other from fear. R. Samuel b. Na'hmani in the name of R. Jonathan says: Penitence is great. It causes man to live long, as it is written: [ibid., ibid.]: "He shall surely live." R. Itz'hak said: In Palestine, they say in the name of Rabha b. Mari as follows: Come and see. The ways of the Holy One, blessed be He,

are not like the ways of a man. When a man had incensed another man by his speech, it is doubtful whether he has really appeased him or not; but the Holy One, blessed be He, even if a man commits a sin in secret, allows himself to be appeased, as it is written [Hosea xix. 3]: "Take with you words, and return to the Lord." And not this alone, but He takes it as a favor, as it is written [ibid., ibid.]: "Accept good"; and not this only, but the verse makes him equal to one who has sacrificed bullocks, as it is written at the end of the verse: "Let us repay the steers with our lips." Perhaps it will be thought like steers as sin offerings. Therefore it is written [ibid. 5]: "I will heal their backsliding, I will love them voluntarily."

We have learned in a Boraitha: R. Meir used to say: Repentance is great: when an individual repents, the whole world is pardoned, as it is written: "I will heal their backsliding, I will love them freely; for my anger is turned away from them." 1 It is not said from them, but from us, from all of us.

What is a penitent man? Said R. Jehudah: When he had an opportunity to do a sin once, and a second time he did not

do it. The same explains: That is meant, the same woman, the same place, the same time. R. Jehudah said again: Rabh found a contradiction in the following passages: It is written [Ps. xxxii. 1]: "Happy is he whose transgression is forgiven, whose sin is covered," and [Prov. xxviii. 13]: "He that concealeth his transgressions will not prosper." It presents no difficulty: This refers to a sin publicly known: he ought to confess, and repent; but that refers to one not yet known; he ought to repent before it has become known. R. Zutra b. Tubia said in the name of R. Na'hman: The one refers to a sin toward a man: he must make it public, and appease the man; but a sin toward God, one need not make public, but repent.

We have learned in a Boraitha: R. Jose b. R. Jehudah said: When a man sins the first time he is pardoned; the second time, he is pardoned; the third time, he is pardoned; the fourth time, he is not pardoned, as it is written [Amos ii. 6]: "Thus hath said the Lord, For three transgressions of Israel, and for four, will I not turn away their punishment." And it is written [Job xxxiii. 29]: "Lo, all these things doth God two or three times with man." [What is the second passage required for? From the first we might think it is only the case with a congregation; but the second shows to us that it is true in case of an individual also.]

The rabbis taught: The sins one has confessed on one Day of Atonement, he need not confess on the next Day of Atonement. This is the case, if he has not repeated the sin; but in that case, he should repeat the confession. If, without having sinned again, he confessed again, then to him applies the verse [Prov. xxvi. 11]: "As a dog returneth to his vomit, so doth a fool repeat his folly." R. Eliezer b. Jacob, however, said: So much the more may he be praised, as it is written [Ps. li. 5]: "For of my transgressions I have full knowledge, and my sin is before me continually."

When he confesses, he must specify his sin, as it is written [Ex. xxxii. 31]: "This people hath sinned a great sin, and they have made themselves a god of gold." So said R. Jehudah b. Babha. R. Aqiba, however, said: "Happy is he whose transgression is forgiven, whose sin is covered." [Why, then, has Moses specified the sin? It is, according to R. Janai: Moses said to the

Holy One, blessed be He: "Lord of the universe, thou hast given so much gold that they said, 'Enough.' This has caused that they made a golden god."]

Two good leaders Israel had: Moses and David. Moses said: May my sins be inscribed, as it is written [Num. xxii. 12]: "Because ye have not confided in me, to sanctify me." And David said: May my sins not be inscribed; namely, "Happy is he whose transgression is forgiven, whose sin is covered."

Moses and David may be compared to two women punished in court: one, because she has really sinned, and the other, because she has eaten fruit of the Sabbatical year. The second said: Pray, proclaim what my transgression is, that it should not be thought I am punished for the same sin as the other woman. They took the fruit, and suspended it on her neck, and proclaimed: Be it known, she has been chastised for eating fruit of the Sabbatical year.

The evil deeds of hypocrites should be made public, that the name of the Lord may not be profaned. As it is written [Ezek. iii. 20]: "When a righteous man doth turn from his righteousness and doeth what is wrong, then will I lay a stumbling-block before him."

When a confirmed sinner repents, the execution of the punished is not carried out, even after the decree has been sealed.

The mirth of the wicked ends in sin; and the possession of power (dominion) buries him who wields it. Naked he enters, and naked he comes out. Were he but as clean when he goes out as when he came in! He who is given to philanthropic activity, him sin reaches not; and he who induces the public to sin, to him is not given from Heaven the opportunity to repent. The first is not allowed (from Above) to sin, that he may not be in Gehenna while his disciples are in Paradise, as it is written [Ps. xvi. 10]: For Thou wilt not abandon my soul to the grave, Thou wilt not suffer Thy pious to see corruption; and the second is not permitted to repent, that he should not be in Paradise while his disciples will be in Gehenna, as it is written [Prov. xxviii. 17]: "A man oppressed by the load of having shed human blood will flee even to the pit: they shall not support him."

"*I will sin, the Day of Atonement will atone*." Shall we assume that our Mishna is not in accordance with Rabbi, who said in the following Boraitha: All the sins mentioned in the Bible, whether one has repented or not, are forgiven on the Day of Atonement? The Mishna may be according to Rabbi; but if he sins, relying on the Day of Atonement to atone for his sins, then Rabbi also agrees that he is not pardoned.

"*Transgressions towards God*." R. Joseph b. Habu pointed to a contradiction to R. Abahu: Here it is said: The sins against men the Day of Atonement does not atone for. But is it not written [2 Sam. ii. 25]: "If one man sin against another, God will forgive him when be will pray"? Not God is meant [Elohim, *God* or *Judge*], but the Judge; and by "Upil'lo," not "will forgive for prayer" is meant, but "shall punish." If it is so, what means what is written further, "If against the Lord a man should sin, who shall judge him?" (Cannot God himself judge him?) This is meant: If one

sins against a man, and appeases him, God forgives; but if he sins against God, who can *pray* for him (not *judge*)? Repentance and good deeds.

R. Itz'hak said: He who has provoked his neighbor, even by words, must appease him, as it is written [Prov. vi. 1, etc.]: "My son, if thou hast become surety for thy friend," etc., "go hasten to him and urge thy friend," which means, if thou hast his money, open thy palm, and restore it to him; if not, request some persons to pray him to forgive thee. Said R. Hisda: He must try to appease him three times, and among three circles of persons, as it is written [Job xxxiii. 27]: "He then should assemble men around, and say, I have sinned, and perverted what is right, yet have I not received a like return" (three verbs: "sinned," etc.).

R. Jose b. Hanina said: When one tries to appease another, he need not try more than three times, as it is written [Gen. l. 17]: Oh, I pray Thee, forgive, I pray Thee, the trespass of thy brothers, and their sin, for evil have they done unto Thee, and now we pray Thee, forgive ("pray Thee" repeated three times). And if the offended person is dead, he should bring ten persons to his grave and say: I have sinned against God and him who lies here.

R. Jeremiah had been not on quite good terms with R. Abha: he went to appease him. He sat down on the threshold. The servant-maid came out to empty dirty water, and bespattered him. He said: I was made like unto mud, and applied unto himself the verse [1 Sam. ii. 8]: "From the dunghill he lifteth up the needy." When R. Abha heard about this, he came out and said: Now I have to ask forgiveness of you, as it is written: "Go hasten to him, and urge thy friend."

When R. Zara was on bad terms with any person, he passed him repeatedly, that the other might recollect and appease him. Rabh once had a quarrel with a butcher. When the eve of the

Day of Atonement arrived, the butcher did not come to ask his forgiveness. Rabh said: If he does not come to me I will go to him to ask his forgiveness. On the road, R. Huna met him, and inquired of him: Whither goes the Master? He said: I go to appease that man. Then R. Huna said to himself: Abha (*i.e.*, Rabh) is going to kill a man. Meanwhile Rabh came to the butcher, who was cleaving heads of cattle. When the latter raised his eyes and perceived Rabh, he said: Abha, is that thou? Go away, I don't want to have any dealings with thee. When he resumed the cleaving of the heads, a bone flew out, and stuck in his throat, so that he died.

Rabh read a section from the Prophets before Rabbi. In the meantime R. Hiya entered. Rabh began again from the beginning. Then entered Bar Kapara. He began from the beginning again. Later came R. Simeon the son of Rabbi. He read from the beginning once more. Then came R. Hanina b. Hama. He said.. Shall I begin again from the beginning, after so many times? and he did not do it. R. Hanina was provoked by this. Rabh went to him thirteen eves of the Day of Atonement, and yet that man did not permit himself to be appeased. How did he do it? Did not R. Joseph b. Hanina say: More than three times one need not try? Rabh is different. He treated himself more rigorously. How did R. Hanina do so? R. Hanina saw in a dream that Rabh was hanged on a tree, and there is a tradition, if one dreams of a man that is hanged, he will become a head. He said: If I will not permit myself to be appeased, he will go to Babylon, and become a head (of a college) there, and I will become one here."

The rabbis taught: The duty of confession is on the eve of the Day of Atonement, when it grows dark. Still, the rabbis said, one should confess previously to the meal; for if something happen to him at his meal, he will have remained without a confession. But although one has confessed before the meal, he should confess again in the evening, and once more the next morning, and in the additional prayer, Minchab prayer, and the concluding prayer (N'ilah).

At what place in the prayer should he confess? An individual, at the end of the prayer; and the reader for the congregation, in the middle of the prayer. What shall he say? Rabh says: He shall begin: "Thou knowest the secrets of the world"; R. Samuel says, he should begin: "From the depths of the heart"; and Levi says, he shall begin: "In thy Torah it is

written thus." R. Johanan says: He should begin: "Lord of the Universe (not for our merits we pray of Thee mercy," etc.); and R. Jehudah says: He shall begin: "Our transgressions are too numerous to be counted, and our sins too mighty to be told of." R. Hamnuna says: He shall begin: "My God, before I was created I had not been worthy to be created; and now when created, I am the same as previously. I am earth during my life, and so much the more when I will be dead. I am entirely before Thee as a vessel full of disgrace and shame. May it be Thy will that I may not sin more; and my sins hitherto mayest Thou in Thy great mercy wipe off, but not by means of suffering." And this was the confession of Rabha the whole year, and that of R. Hamnuna the Younger on the Day of Atonement. Said Mar Zutra: All this has to be said, if he has not said previously, "It is true we have sinned." If, however, he has pronounced this, he need add nothing to it. As Bar Hamduri related, when he stood once before Samuel on the Day of Atonement, he perceived that as soon as the reader came to this sentence, "It is true we have sinned," all rose. Hence he understands that this is the principal part. Ulla b. Rabh was a reader in the presence of Rabha: He began the concluding prayer with: "Thou hast chosen us," etc., and concluded with, "What are we and what is our life?" etc.; and Rabha praised him. R. Huna the son of R. Nathan, however, said: When an individual reads the concluding prayer, he should say, "What are we and what is our life," etc., after it.

Rabh said: The prayer of N'ilah substitutes the evening prayer also. Rabh is in accordance with his theory elsewhere, that it is an additional prayer, and if it has been read, no other prayer is needed for the evening. Did Rabh say so? Did he not say elsewhere that the evening prayer is in general voluntary, not a duty? He means, even according to him who would say it is a duty, the "concluding prayer" substitutes it. An objection was made: We have learned in a Boraitha: In the beginning of the evening before the Day of Atonement, one shall read as prayers the seven benedictions, and confess. The same one does in the morning, and also in the additional prayer, the seven benedictions, and confessions; the same in the "concluding prayer": but in the evening one shall say as prayers seven of the eighteen week-day benedictions. [1] R. Hanina b.

[paragraph continues] Gamaliel said in the name of his ancestors: He shall say all the eighteen week-day benedictions, because he must include the Habdalah in the benediction of Wisdom (Honen Hadaath). The opinions of the Tanaim differ about it.

The disciples of R. Ishmael taught: He who sees Qeri on the Day of Atonement, he shall pray

the whole year; but if he has survived this year, he shall be sure of entering the world to come. R. Na'hman b. Itz'hak said: The proof is when the whole world is hungry, he was full. When R. Dimi came from Palestine, he said: He will live long, he will see children and grandchildren, as it is written [Is. iii. 10]: "Shall see seed, live many days."

END OF TRACT YOMAH.

Footnotes

119:1 The law of firstlings, after the destruction of the Temple, is as follows: The firstling must be given to a priest, who has to keep it until it gets a blemish. And as he was suspected of making a blemish intentionally, it could not be slaughtered unless examined by the rabbi of the city. The latter, however, has no right to decide such a question unless he gets permission from the Nassi.

131:1 According to one "Aruch," it is the maker of the clothes of service (Bigde S'rad).

133:1 The literal translation is: "And clear he will not clear."

135:1 The passage is difficult, and Rashi is also uncertain.

136:1 The Hebrew for "from them" is "Mehem," but here "Mimenu" ("from us") is used.

141:1 What the seven of the eighteen are, will be explained in Tract Berachoth.

Next: Appendix

APPENDIX.

WE think it will please our readers to have placed before them the following letter, written by a Gentile who had witnessed the services at the Second Temple on the Day of Atonement. We give the entire extract as it is translated in "Shevet Jehudah" by Solomon Aben Virga, who translated it from a letter written by Versovius to King Alfonso the Pious, although it began with the Feast of Passover, part of which is already mentioned in Tract Pesachim, as it will be of much interest to the historian to know some details of the Jewish services at the Temple.

EXTRACT FROM A LETTER WRITTEN BY VERSOVIUS TO KING ALFONSO THE PIOUS, WHO COPIED IT FROM A WRITTEN REPORT SENT BY MARCUS, CONSUL OF JERUSALEM, TO ROME.

. . . *Tenth*.--Concerning the service at the Temple, these Jews were reluctant to inform me about it, as they declared it was against their law to inform a Gentile about the manner of their serving God. They have enlightened me upon two subjects only, part of which I saw with my own eyes, and was greatly rejoiced thereat. One was the sacrifice which they brought on the feast that they call Pessach, and is considered to be the greatest of all their feasts; and the second is the entrance of the high-priest, whom we call *sacerdote mayor*, into the Temple on the day which to them, in regard of holiness, purity, and strengthening of the soul, is the most important of all the days in the year. The Pessach sacrifice, which I have partly witnessed, as also, as I was told, the entire ceremony, takes place in the following manner. When the beginning of the month which they call Nissan approached, by the command of the king and the judges, swift messengers visited every one in the vicinity of Jerusalem who owned flocks of sheep and herds of cattle, and ordered him to hasten to Jerusalem with them, in order that the pilgrims should have sufficient animals for sacrifices and food; for the people were then very numerous, and whoever did not present himself at the appointed time, his possessions were confiscated for the benefit of the Temple. Consequently all owners of flocks and droves came hastily on, and brought them to a creek near Jerusalem, and washed and cleaned

them of all dirt. They believed that in regard of that Solomon said [Solomon's Song iv. 2]: "A flock of well-selected sheep, which are come up from the washing." When they arrived at the mountains which surround Jerusalem, the multitude was so great that the grass was not seen any longer, as everything was turned white, by reason of the white color of the wool. When the tenth day approached--as on the fourteenth day of the month the sacrifice was brought--every one went out to buy his paschal lamb. And the Jews made an ordinance, that when going forth on that mission, nobody should say to his neighbor, "Step aside," or "Let me pass," even if the one behind was King Solomon or David. When I remarked to the priests that this was not seemly nor polite, they made answer that it was so ordered, to show that there is no rank before the eyes of God, not even at the time of preparing to serve Him, more especially at the service itself; at that time all were equal in receiving His goodness. When the fourteenth day of the month arrived,

they went to the highest tower of the Temple, which the Hebrews called Lul, and whose stairway was made like those in our church towers, and held three silver trumpets in their hands, with which they blew. After the blowing, they proclaimed the following: "People of the Lord, listen! The time for slaughtering the paschal lamb has arrived. In the name of Him who rests in the great and holy house!" As the people heard the proclamation, they donned their holiday attire; for since midday it was holiday for the Jews, being the time for sacrifice. At the entrance of the great hall stood twelve Levites on the outside, with silver staves in their hands; and twelve within, with gold staves in their hands. The duties of those on the outside were to direct and to warn the incoming people not to injure one another in their great haste, and not to press forward in the crowd, to prevent quarrels; as it previously happened on one of the feasts of Pessach, that an old man, together with his sacrifice, was crushed, in consequence of the great rush. Those on the inside had to preserve order among the outgoing people, that they should not crush each other. They were also to close the gates of the hall when they saw that it was already full to its capacity. When they reached the slaughtering place, rows of priests stood with gold and silver bowls in their hands: one row had all gold bowls and another row had all silver bowls. This was done to display the glory and splendor of the place. Every priest who stood at the head of the row received a bowl full of the sprinkling blood. He passed it to his neighbor, and he to his, until the altar was reached; and the priest who stood next to the altar returned the bowl empty, and it went back in the same manner, so that every priest received a full bowl and returned an empty one. And there occurred no manner of disturbance, as they were so used to the service that the bowls seemed to fly back and forth, as the arrows in the hand of a hero. For thirty days previous they practised that service, and,

therefore, found out the place where there was the possibility that a mistake or a mishap might occur. There were also two tall pillars, on which stood two priests with silver trumpets in their hands, who blew when each division began the sacrifice [the paschal lamb was slaughtered in three divisions--see Pesachim], in order to give warning to the priests who stood on their eminence to begin Hallel amid jubilee and thanksgiving, and accompanied by all their musical instruments; on that day, namely, they brought forward all the instruments. The sacrificer also prayed the Hallel. If the sacrifice was not ended, Hallel was repeated. After the sacrifice, they went into the halls, where the walls were full of iron hooks and forks; the sacrifices were hung upon them and skinned. There were also many bundles of sticks; for when there were no more empty hooks, they put a stick upon the shoulders of two of their number, hung the sacrifice upon it, skinned it, and put the particular portion upon the altar, and went away rejoicing, as one who went to the war and returned victorious. The one who did not bring the paschal lamb at the appointed time, was eternally disgraced. During the service the priests were dressed in scarlet, that the blood which might accidentally be spilled on them should not be noticed. The garment was short, reaching only to the ankle. The priests stood barefoot, and the sleeves reached only the arms, so they should not be disturbed during the service. On their heads they had a cap, around which was tied a three-ell-long band; but the high-priest, as they told me, had a band which he could tie around his cap forty times. His was white. The ovens in which they roasted the paschal lambs were before their doors, in order, as they told me, to publish their religious ceremonies, also on account of the festival joys. After the roast, they ate amid jubilee songs and thanksgiving, so that their voices were heard from afar. No gate of Jerusalem was closed during Passover night, because of those who were constantly coming and going, who were considerable in number. The Jews also told me that on the Feast of Pessach the number of those, present was double of that which went out of Egypt, for they wished to acquaint the king with their number.

The second service was the entrance of the high-priest in the sanctuary. Of the service itself they did not tell me, but of the procession to and from the Temple. Some of it I have also seen with my own eyes, and it surprised me so greatly that I exclaimed: "Blessed be He who imparts His glory to His nation!" Seven days before that day which they call Atonement Day, and which is the most important in the entire year, they prepared at the house of the high-priest a place and chairs for the chief of the courts, the Nassi, the high-priest, his substitute, and for the king; and besides these, also seventy silver chairs for the seventy members of the Sanhedrin. The oldest of the priests got up and delivered an oration before the high-priest, full of earnest entreaty. He said: "Bethink thyself

before whom thou enterest, and know that if thou wilt loose the devotion of thy mind, thou wilt at once drop down dead, and the forgiveness of the Israelites will come to naught. Behold! the eyes of all Israelites are turned upon thee. Investigate thy deeds. Perchance thou hast committed some slight sin; for there are sins which equal in weight many good deeds, and only the Almighty God knows the weight thereof. Investigate also the deeds of the priests, thy brothers in office, and have them repent. Take it to heart, that thou art going to appear before the King of all kings, who sits upon the throne of judgment, who sees everything. How darest thou to appear, when thou hast the enemy within thee!" The high-priest then makes answer that he has already investigated himself, and has repented all that which seemed to him sinful; that he has also already assembled all the priests, his brother officers, in the Temple, and by Him who rests His name there conjured them that each one should confess the transgressions of his brother officers, as well as his own, and that he prescribed for each transgression a corresponding repentance. The king also spoke to him kindly, and promised to shower upon him honors, when he should safely come out of the sanctuary. After that it was publicly proclaimed that the high-priest was about to take possession of his room in the Temple. Whereupon the people made ready to accompany him, and marched before him in the following order, which I witnessed myself: First went those who traced their ancestry to the kings of Israel, then those who were nearer in the priesthood; then followed those who were of the kingly house of David, and, indeed, in the most perfect order, one after the other, and before them was exclaimed: "Give honor to the family of David!" Then followed the Levites, before whom it was exclaimed: "Give honor to the family of Levi!" Their number amounted to 36,000. At this time the substitute Levites donned blue silk garments; but the priests, 24,000 strong, donned white silk garments. Then followed the singers, the musicians, the trumpeters; then the closers of the gates, the preparers of the incense, the preparers of the holy curtains, the watchers, the masters of the treasury; and then a corps which was called *chartophylax*; then all who were employed at the Temple, then the seventy members of the Sanhedrin, then a hundred priests with silver staves in their hands to make room, then the high-priest, and behind him the older priests in pairs. At the corner of every street stood the heads of the colleges, who spoke to him thus: "High-priest, enter in peace. Pray to our Creator for our preservation, so that we may occupy ourselves with the study of His Law." When the procession reached the mount of the Temple they halted and prayed for the preservation of the kings of the house of David, then for the priests and the Temple, whereat the *Amen* exclamation, because of the great crowd, was so loud that the birds overhead fell to the ground. After that the high-priest bowed before the entire

people very respectfully, and, weeping, separated himself from them all, and two substitute

priests led him into his room, where he took leave of all the priests, his brothers in office. All that took place at the procession to the Temple; but at the procession from the Temple his honor was double, for the entire population of Jerusalem marched before him, and most of them with burning candles of white wax, and all attired in white; all windows were draped with varicolored kerchiefs and were lighted dazzlingly, and, as the priests told me, the high-priest, during many years, because of the great crowds and rush, could not reach his house before midnight; for although all fasted, nevertheless they did not go home before they convinced themselves whether they could kiss the hand of the high-priest. On the following day he prepared a great feast, to which he invited his friends and relatives, and made that day a holiday, because of his safe return from the sanctuary. After that he caused a goldsmith to make a gold tablet with the following inscription engraved upon it: "I, so and so the high priest, son of so and so the high-priest, have performed the service of the high-priest in the great and holy Temple, in the service of Him who rests His name there, in the year of creation so and so. May He who favored me with the performance of that service, favor also my son after me, to perform the service before the Lord."

TRACT HAGIGA (HOLOCAUST).

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SYNOPSIS OF SUBJECTS

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TRACT HAGIGA (HOLOCAUST).

CHAPTER I.

REGULATIONS CONCERNING THE HOLOCAUST, AND THE APPOINTED TIME FOR THE PEACE-OFFERING.

MISHNA: All are bound in the case of a holocaust 1 except a deaf man, a fool, a minor, and one of doubtful sex (ατ μ ητος) and one of double sex (androginos), and women and bondsmen, the lame, the blind, the sick, the old, and he who is not able to go upon his feet. What is a minor? Every one who is unable to ride on his father's shoulders, and to go up from Jerusalem to the mountain of the Temple. So is the decree of the School of Shammai. But the School of Hillel say: Every one who is unable to take hold of his father's hand, and to go up from Jerusalem to the mountain of the Temple, as it is said [Ex. xxiii. 14], "Three times," 2 etc. The School of Shammai say: The holocaust involves two silver coins (one-third of a gold dinar), and the feast-offering one meah (one-sixth of a dinar). But the School of Hillel say the contrary.

GEMARA: What is meant to be added by the word "all"? It means to add a man who is half a slave (he was a slave to two men, and one gave him liberty). But according to Rabhina, who says that such a man is absolved from holocaust, what did the Mishna mean to add? One who was lame on the first day, but on the second day he became well. This would be correct according to him who says that on every day of the succeeding six days the obligation of the holocaust exists, but according to those who say that all the six days are only a completion of the

first day, and as he was not obliged the first day, although he was fit for it later, he is free from it. What did the Mishna mean to add by the expression "all"? Therefore we must say that it is as stated above (one who is a half-slave), and Rabhina's statement is in accordance with the later Mishna, which states as follows: For the sake of the world, it was ordained that the master of the slave shall be compelled to set him free for the purpose that he should be able to marry a free man, and the slave shall give him a note for it for the half of his value. And the School of Hillel retracted their decision and decided as the School of Shammai; consequently if he is yet half a slave, he is obliged, because he will be free, and the Mishna adds by "all" such a case.

"A deaf man, a fool, and a minor," etc. The Mishna mentions the deaf man together with fool, to teach us that as the fool has no intelligence, so also the deaf man is absolved when he has no intelligence, *i.e.*, when he is both deaf and dumb; but if he speaks but cannot hear, or *vice versa*, he is obliged. But did we not learn in a Boraitha: Both when he can bear but not speak, or speak and not hear, in either case he is free? Said Rabhina: The Boraitha is not completed, and must read thus: All are obliged in case of a holocaust, and to enjoy the festival, except a deaf man

who hears but speaks not, or *vice versa*, then he is free from holocaust, but not from rejoicing. But he who neither hears nor speaks is free from rejoicing also, because he is exempt from all commandments contained in the Law. And so we also learned in a Boraitha plainly.

But why is a man who hears but speaks not, or *vice versa*, exempt from holocaust? Because about holocaust he deduces from an analogy of expression as follows: It is written [Deut. xxxi. 12]: "Assemble the people together, the men and the women, and the children," and [ibid. 2]: "When all Israel came to appear before the Lord thy God." But whence do we deduce that he who hears not but speaks, etc., is exempt from pilgrimage? Because it is written [ibid. 12]: "That they may hear, etc., that they may learn." And a Boraitha taught: "May hear" to exclude one who can talk but cannot hear, and "may learn" to exclude those who can hear but cannot speak. Is that so, that he who cannot speak cannot learn? We know there were two dumb men in the neighborhood of Rabbi, who were sons of the daughter of R. Johanan b. Gudguda (and others say, sons of his sister), who, when Rabbi entered the house of learning, went

in also, shook their heads, and muttered with their lips; and Rabbi prayed mercy for them and they were healed; and it was found that they were well versed on Halakha, and on the whole six sections of the Mishna? Said Mar Zutra: Read in the Bible: They may teach [1] (not "learn"), and who cannot speak cannot teach. Said R. Ashi. Assuredly, it must be so, because if learning is meant it could be deduced from the words, "and they may hear," and he who cannot hear cannot learn.

R. Tan'hum said: He who is deaf in one ear is free from holocaust, because in the verse stated above [ibid. 2] it is written: "In their *ears*" (in the plural). R. Tan'hum said again: He who is lame in one foot, is also exempt, because it is written: "Three times" [Regalim (times), which means also feet (plural)].

Rabha lectured: "It is written (Song of Songs, vii. 2): "How beautiful are thy steps in sandals, O prince's daughter." This refers to the pilgrims on the festivals (see Succah, chap. iv.). R. Kahana said: R. Nathan b. Minyumi lectured in the name of R. Tan'hum: It is written [Gen. xxxvii. 24]: "And the pit was empty, there was no water in it." If it was empty, is it not self-evident that there was no water in it? Infer from this that it was empty from water, but not from snakes and scorpions.

The rabbis taught: It happened that R. Johanan b. Broka and R. Elazar b. Hasma went to visit R. Jehoshua in the city of Pekiin, and he asked them: What news is to-day in the house of learning? They answered him . We are your disciples, and we drink only your waters. He rejoined: Nevertheless, it cannot be there should not be something new in the college; tell me whose Sabbath was it for lecturing? And they said: R. Elazar b. Azariah's. And on what verse did he lecture? (asked he again). On the portion of the Assembly. And what did R. Elazar preach? He lectured thus: It is written [Deut. xxxi. 12]: "Assemble the people together, the men and the women and the children." It is right, the men came to learn, the women came to hear; for what purpose were the children brought? Only that those who brought them should be rewarded. And he rejoined: You have had a good pearl in your hand and you wanted to deprive me of it.

He also lectured on the verse Deut. xxvi. 17. (See Berachoth.)

[paragraph continues] The same lectured again: It is written [Eccl. xii. 2]: "The words of the wise are like goads, and like nails planted 1 are the words of the men of the assemblies which are given by one shepherd." As the goad keeps the animal which ploughs (to make it straight) furrows, so as to produce sustenance for the world, so also the words of the Law (keep those who study them) away from the ways of death for the ways of life. But if you would say, that as the goad is movable so also the words of Law. Therefore it is written: "Nails." But if you will say, as the nail (makes a hole in the wall and) diminishes (and does not add to it), so also the words of the Law diminish and do not add. Therefore it is written: "Planted"; as a plant is fruitful and multiplies, so also the words of the Law. "The men of assemblies," which means the scholars who sit in assembly, studying the Law and discussing-these make clean, the others make unclean, these prohibit and those allow, these make valid, those make invalid. But if one may say: If it is so, how can I learn the Torah? Therefore it is written: "Given by one shepherd." One God gave them, and one Master (Moses) said it from the mount of the Lord of all creatures, blessed be He, As it is written [Ex. xx. i]: "And God spoke all these words." And therefore you must make your ears as an επιχυσις (a kind of strainer which receives but lets not out), and gain an understanding heart to comprehend the reason why these make unclean, those clean, etc. Then R. Jehoshua rejoined: I tell you, it is not an orphan generation in the midst of which R. Elazar b. Azariah lives. Why did they not tell him at once the news in the house of learning? Because of the occurrence stated in the following Boraitha:

It happened once that R. Jose, the son of a Damascene woman, went to visit R. Eliezer in the city of Luda, and R. Elazar asked him: What news was there in the house of learning to-day? And he answered: It was voted, and the decision was that in the lands of Amman and Moab the tithe to the poor is to be given on the Sabbatical year (this is explained in Tract Maasroth), and he told him: Jose, stretch out your hand, and take out your eyes. And he did so. Then R. Elazar wept and said: It is written [Ps. xxv. 14]: "The sacred counsel of the Lord is for those that fear him, and his covenant to make it known to them." And he said to R. Jose: Go and tell

them, you should not doubt about your conclusion to-day, because I have a tradition from R. Johanan b. Zakkai, who heard it from his master, and his master from *his* master, etc., up to Moses on Sinai, that the land of Amman and Moab may give the tithe to the poor on the Sabbatical year. [The reason is because those who went out of Egypt subjugated many fortified cities, but those who went out from Babylon did not, and the first sanctification had sanctified the land only for that time, but not for the future. And those who went out from Babylon left these lands for the poor; they should be supported on them on the Sabbatical year. In another Boraitha it was taught: After R. Elazar became calm he prayed that it should be the will of God that Jose's eyes be cured, and they were cured.]

The rabbis taught: What is called a fool? He who goes out alone in the night, and who sleeps in a cemetery, and who tears the clothes he wears. It was taught: R. Huna said: It is only when he does all these things together. How is the case? If because he is a fool, then any of these is sufficient, and if he does it not through folly, what is the proof of all these? It is meant he does it through folly; but when he does all these things, he is like an ox goring another ox, a camel, and an ass, after which he is considered vicious as to all creatures, so he is considered a fool in all

respects. Said R. Papa: If R. Huna had heard the following Boraitha, which states, Who is a fool? When he destroys all things that are given to him, he would have retracted his decree.

"*One of doubtful sex,*" etc. The rabbis taught: It could be written [Deut. xvi. 16]: "The males," which would exclude only the women, but it is written "*Thy* males," which means to exclude also those of doubtful as of double sex. But why is needed a verse to exclude the women? Is not this a commandment which is dependent upon the time? and it is known that of all commandments which are dependent upon the time the women are exempt. This verse is needed, for at the first glance one might say that it shall be drawn from an analogy of expression, "the assembly"; as to the assembly women are also bound, so would be the case here, therefore, it comes to teach us. The master said: "All thy males to include the minors. But did not we learn in our Mishna, Except a deaf man, a fool, and a minor?" Said Abayi: It presents no difficulty: There is the case of a minor who has not arrived at the age of education yet, and here is the case when he has arrived at such age. When a

minor who has arrived at such age, his duty is only rabbinical. Why then is needed a verse? Yea, it is only rabbinical, and the verse is only a support. But to what else does the verse apply? To that of the following Boraitha: Anonymous teachers said: Those whose work imparts to them a bad odor which accompanies them wherever they go, are exempt from the holocaust, because it is written, "*All* thy males," *i.e.,* all that can go together with others, but not such as cannot be in others' company.

"Women and bondsmen." This is correct as to women, as it was said above, but whence do we deduce about bondsmen? Said R. Huna: Because it is written there [ibid. ibid.]: "Before the Lord thy God," which means one who has only one Lord, but not such as has another lord. Let us see: To what purpose is needed a separate verse? It is known that all the commandments which are obligatory to a woman are so also to a bondsman and all the commandments from which a woman is exempt a bondsman is also exempt, and this is inferred from an analogy of expressions [Deut. xxiv. 1]: "Write her," and [Lev. xix. 20] "Her freedom given her," hence a woman and bondsman are equal in duties. Said Rabhina: The verse is needed for one who is half a slave and half free, and it seems to be so because the Mishna taught: Women and bondsmen who were not freed. To what purpose is stated "not freed"? If it is meant that they were not freed at all, "bondsmen" alone is enough. We must say, therefore, that the Mishna meant those who were not wholly free. And what can that be? One who is half a slave and half free.

"*The lame, blind, sick*," etc. The rabbis taught: It is written "Regalim" to exclude the lame, sick, blind, and old men who cannot go with their feet. What is meant to be added by "who cannot go with their feet"? Said Rabha: Such delicate persons as cannot walk without shoes (and in the Temple it was not permitted to go in shoes), as it is written [Is. i. 12]: "When you come to appear in my presence, who had required this at your hand to tread down my courts?"

We have learned in a Boraitha: If one is uncircumcised, or unclean, he is exempt from the holocaust. It is right of one unclean, because it is written [Dent. xii. 5, 6]: "And thither shalt thou come, and ye shall bring thither." From this we infer, that he who can come in ought to bring, but he who cannot, should not; (and he who is unclean cannot come into the Temple).

But of an uncircumcised, wherefrom is it deduced? This is in accordance with R. Aqiba, who makes an uncircumcised equal to an unclean one, as we have learned in the following Boraitha: R. Aqiba said: It is written [Lev. xxii- 4]: "Any man whatsoever of the seed of Aaron." "Any man"--it could be written "a man." Why "any man," to include that "the uncircumcised shall be equal to the unclean ones"?

The rabbis taught: R. Johanan b. Dahabai said in the name of R. Jehudah: A man blind in one eye is exempt from the holocaust, because it is written [Deut. xvi. 16]: "Shall appear," 1 as if one comes to see, it is with both eyes; so if he appears, he must be with both eyes. R. Huna, when he came to the verse above cited, used to weep and say: That a slave whose master exhorts him to come to see him should be debarred from seeing him, as it is written [Is. i. 12]: "When you come to appear in my presence, who had required this at your hands to tread my courts?" Also when he came to the following verse [Deut. xxvii. 7]: "And thou shalt slay peace-offerings, and eat there." A slave who is invited to eat from his master's table, shall be debarred from seeing him, as it is written [Is. i. i]: "Or what serveth me the multitude of your sacrifices?" R. Elazar, when he came to this verse [Gen. xlv. 3]: "And his brothers could not answer him, because they were terrified at his presence," he wept and said: If one is thus terrified when a human being has recognized his guilt, how much the more will it be before the Holy One, blessed be He.

Also when he came to the verse [1 Sam. xxviii. 15]: "And Samuel said to Saul: Why hast thou disquieted me, to bring me up?" If Samuel, the upright, was afraid of the judgment, so much the more must we be afraid of it. How shall this be understood? It is written [ibid. 12]: "And the woman said unto Saul: Divine beings have I seen ascending (Olim) out of the earth." Olim is plural. (Who were they?) It was Samuel and Moses, because Samuel was afraid. Perhaps he was asked to the judgment, and he had gone to Moses and asked him to testify, that he (Samuel) had done all that was written in his Law. R. Ammi, when he came to the following verse, used to cry [Lam. iii. 29]: "That he put his mouth in the dust, perhaps there still is hope." He said: After so much had been done

nevertheless it is said "*perhaps*." Also when he came to the following verse [Zeph. ii. 3]: "Seek righteousness, seek meekness, perhaps ye will been protected," he said: After so much will have been done, still it will be "*perhaps*." R. Asi, when he came to the following passage, used to cry [Amos v. 15]: "Hate the evil and love the good, and establish justice firmly in the gate: perhaps the Lord, the God of hosts." He said: After so much will have been done, it will still be "*perhaps*."

R. Joseph, when he came to the verse [Prov. xiii. 23]: "But there are many who are taken away without justice," 1 cried. R. Johanan, when he came to the following passage [Job ii. 3]: "And thou hast incited him against me to destroy him without cause," he cried. He said: If a slave persuades his master, and the master is persuaded, what cure can there be? Also, when he came to the following passage [ibid. xv. 15]: "In his holy one he putteth no trust," he cried and said: If he puts no trust in his holy one, whom will he believe? Once when on the road he saw a man pick figs from a tree. He left the ripe ones and picked the unripe ones. R. Johanan asked him: Are not the ripe ones better? He answered: These which are unripe I need for the route, because the ripe ones will be spoilt, but not these. Then said R. Johanan: This is as what is written: He

putteth no trust in his holy ones (*i.e.*, they are gathered in before they are tempted to sin).

R. Johanan, when he came to the following verse [Mal. iii. 5] he wept: "And I will come near unto you to hold judgment, and I will be a swift witness against the sorcerers, and against the adulterers, and against those that swear falsely, and against those that withhold the wages of the hired laborer, fear me not, saith the Lord of hosts."

R. Johanan b. Zakkai said: Woe is to us, the verse makes equal for us light sins as well as grave sins." (Rashi explains it that the light sin is that of those who withhold the wages of the hired laborer, who is here equal to sorcerers, etc.) R. Hanina bar Papa said: When a man commits a sin and soon repents of it, he is forgiven immediately, because it is written [ibid.]: "And fear me not, saith the Lord of hosts." When he fears and asks for forgiveness, he is pardoned. R. Johanan, when he came to the verse [Eccl. xii. 14]: "For every deed will God bring into the

judgment, concerning everything that had been hidden," he cried. He said: If there is a slave whose master reckons his unintentional sins as his intentional sins, what cure can there be? What is meant by "everything that hath been hidden"? Said Rabh: When one kills a louse in another man's presence, and makes himself disagreeable thereby to him. And Samuel says: Even if he spits in the presence of his neighbor, and makes himself disagreeable.

What is meant [ibid.], "Whether it be good, or whether it be bad"? The disciples of R. Janai said: That applies to a man who gives charity to a poor man publicly. As R. Janai saw a man give a Zuz to a poor man publicly, he said to him: It would be better if you gave him not at all than as you did now, and put him to shame. The disciples of R. Shila said: It means a man who gives charity to a woman secretly, which brings on him suspicion.

It is written [Deut. xxxi. 21]: "And it shall come to pass when many evils and troubles." What is meant by "evils and troubles"? Said Rabh: Evils that trouble one another; for instance, a man who was bitten by a bee and by a scorpion--for the bee's sting warm water is needed, and for a scorpion's bite cold water is needed, hence the use of either will harm the other wound. Samuel said: What is written before, "whether good or bad," means one who (whether he is in good or bad circumstances) gives money to the poor only when the latter is in extreme poverty. Said Rabha: This is what people say: A Zuz for pleasure is not to be obtained, but a Zuz for trouble must be found (at any time).

It is written [Deut. xxxi. 17]: "And my anger shall be kindled against them on that day, and I will forsake them, and I will hide my face from them, and they shall be given to be devoured." Said R. Bardala bar Tebiumi in the name of Rabh: A man from whom God hides not his face is not an Israelite, and he who is not given to be devoured is not an Israelite, either. Said the rabbis to Rabha: It seems to us that you are neither included in the "hiding of the face" nor in the "devouring." And he rejoined: Can you know how much I must spend secretly on the government? Nevertheless the rabbis looked at him with an evil eye, and finally they came from the government and robbed him of everything. Said he: This is what R. Simeon b. Gamaliel said: Whatever the sages looked at with their eyes, either death or poverty followed.

It is written [ibid.]: "And I will hide my face from them." Said Rabha: The Holy One, blessed be He, said: "Although I have hidden my face from them, nevertheless I will talk to them in the dream." R. Joseph said: Still His hand is inclined to us, as it is written [Is. li. 16]: "With the shadow of my hand have I covered thee."

R. Joshua b. Hanania was before the Emperor (Cæsar). A Min who stood by showed him with his hand a people from whom God had turned away His face. R. Joshua b. Hanania showed him with his hand that "His hand is still over us." Asked the Emperor of R. Joshua: Do you know what the Min has shown you with his hand? He replied: Yes, he showed me a people from whom God had turned away His face. He asked him: What have you shown him with your hand? He answered: I showed him that God's hand is still inclined over us. The Emperor then asked the Min: What have you shown to R. Joshua b. Hanania? He said the same. And he asked him: What did he show you? He replied: I do not know. Then the Emperor said: A man that does not know what is shown to him by a sign, should he dare to raise his hand in the presence of an emperor? He ordered, and the Min was killed.

When R. Joshua b. Hanania was dying, the rabbis asked him: What will become of us with the Minim? He rejoined: It is written [Jer. xlix. 7]: "Is counsel vanished from the sons, is their wisdom become corrupt?" And this must be interpreted: When the children of God love their adviser the wisdom of their adversaries becomes corrupt. [And if you wish, we can infer it from the following passage (Gen. xxxiii. 12): 11 Let us depart and move farther, and I will travel near [1] thee," which means we will be always equal to those against us.]

R. Ula, when ascending the steps of the house of Rabba bar Shila, heard a child read the following passage [Amos iv. 13]: "He that formeth the mountains, and createth the wind and declareth unto man what is his thought." And he said: If there is a slave whose master can declare him what his secret thought is, what cure can there be? What is meant by "He declareth"? Said Rabh: Even a superfluous conversation between a man and his own wife is mentioned to him at the time of his death.

It is written [Jer. xiii. 17]: "My eye shall weep sorely and run down with tears, because the flock of the Lord is driven

away captive." Said R. Elazar: What signify the three tears? [1] One over the first, one over the second Temple, and one over the exile of Israel from their land.

The rabbis taught: For the following three things the Holy One, blessed be He, weeps every day: For him who has the power to study the Law every day and does not; for him whose circumstances do not allow him to study, but who nevertheless does, and for a chief of the congregation who is haughty toward his congregation. Rabbi held the book of Lamentations and read. When he came to the verse [Lam. ii. 2]: "He had cast down from heaven unto the earth," the book dropped out of his hand. He said: It fell from the highest attic to the lowest pit.

Rabbi and R. Hyya were on the road. When they came to a city they said: If here is a scholar we will go to pay him a visit. They were told: There is here a young scholar, but he is blind. Said R.

Hyya to Rabbi: You, as a Nasi, stay here, not to degrade your dignity, and I will go to sec him. Rabbi did not listen, but perforce accompanied him. The blind man said to them when they were departing: You have come to see a countenance that can be seen, but cannot see; therefore ye should deserve to see that countenance which sees all, but which no one sees. Said Rabbi (to R. Hyya): If I had listened to you, and refrained to accompany you, I could not have received this blessing. They then asked the blind man: From whom have you heard this beautiful saying? (That to visit a scholar is so great a merit.) He replied: I heard it at the lecture of R. Jacob of the village of Hitaya, who used to visit his master every day. When he became old, his master said to him: Do not take this trouble now, for you are too aged to walk every day. He answered: Is this slight in your estimation what is written about scholars [Ps. xlix. 10]: "Should he still live forever, and not see the pit, for he must see that wise men die"? Now, if he who sees the wise die lives forever, much more so he who comes to see them when alive.

R. Idi, the father of R. Jacob bar Idi, had the custom to be three months on the road, and one day in college. The students of the college called him "the single-day student." So he became discouraged, and said in application to himself the verse [Job xii. 4]: "I am as one laughed at by his friends." Said R.

Johanan to him "I pray thee, do not cause the rabbis to be punished (by Heaven for their wrong to him), and he himself went and lectured thus: It is written [Is. lviii. 2]: "Yet me do they ever seek day by day, and to know my ways do they always desire," and said: Do they seek only by day, and not in the night? This comes to teach us that he who studies the Law even one day in the year, the verse makes him equal to one who studied the whole year.

"*Every one unable to ride on his father's shoulders*," etc. R. Zera was opposed to this teaching, and asked: "And who brought him as far as Jerusalem?" Abayi answered: As his mother is bound to rejoice, she brought him, and there if he can go up to the Temple mountain with his father, he is no longer a minor. To defend the teaching of the School of Hillel, Rabbi replied thus: It is written in 1 Sam. i. 22: Hannah said: "So soon as the child shall be weaned, I will bring him." Why did she let him wait till he would be weaned, since the father could have carried him? Said Abayi [1] to him: According to your question, why did Hannah herself fail to go, since she was bound to rejoice? It must be said, that because of the too delicate condition of the child (which his mother noticed in him) she did not want to go.

"*Beth Shammai say two silver coins*," etc. The rabbis taught: Beth Shammai say two silver coins for holocaust, because the sacrifice is a burnt-offering and must be more valuable, but for the feast-offering, which is only a peace-offering, one meah suffices. And we find also in case of Pentecost, about which the Law commands the burnt-offering should cost more than the peace-offering. And the Beth Hillel say: For the holocaust only one silver coin is sufficient. But the feast-offering had existed before the Law was given to Moses, as it is written [Ex. xxiv. 5]: "And they offered burnt-offerings and peace-offerings." (Although in the Bible it is written after the Law was given, this occurred before.) And we also find when the princes of Israel offered sacrifices, the cost of the peace-offerings was greater than the burnt-offerings.

Abayi said: Beth Shammai (R. Elazar and R. Ishmael) all hold that the sacrifice the Israelites offered in the desert was a holocaust-offering, and the Beth Hillel (R. Aqiba and R. Jose the Galilean) all hold that it was the daily offering, but not that of holocaust. We have learned in

Tract Peah, Chap. I., the following

things have no biblical prescribed quantity: Peah (the corner); the first-fruit [Deut. xxvi.], and the holocaust-offering, and the conferring of kindness and the studying of the Law. R. Johanan taught to say: They have no prescribed maximum, but they have a prescribed minimum, until R. Oshia the Great came and taught: The holocaust has no prescribed quantity, even a minimum. But the sages said: The holocaust-offering should not be of less worth than a silver coin, and the feast-offering not less than two.

The expression in the above-cited Mishna for the holocaust is "the seeing" (Haraion). Now the question arises what is meant by "the seeing"? R. Johanan said: He can come to the court as many times as he likes to see it; the sacrifice, however, is only once in each festival. Resh Lakish, however, said: Every time he comes to visit the court he must offer a sacrifice. And they differ only during the whole year, not in the festivals. According to R. Johanan he may visit it without a sacrifice, but according to Resh Lakish he must bring a sacrifice, but both agree, in the festivals, he must come with a sacrifice, and one is sufficient for all days of the feast. And Resh Lakish agrees also that when one comes to visit in the middle of the year without a sacrifice, he may nevertheless enter the court and the Temple, but they differ when he came in the middle of the year and brought a sacrifice with him. According to R. Johanan it must not be accepted from him as an offering of the holocaust, because it is not prescribed how many times he should visit, but is prescribed that only one sacrifice in each festival. And according to Resh Lakish it may be accepted, because there is no prescribed quantity for sacrifices also, and he can sacrifice as much as he likes.

We have learned in a Boraitha: It is written [Prov. xxv. 17]: "Make thy foot scarce to the house of thy friend." From this we may infer: Thou shalt forbear to bring too many sin-offerings. Whence do we deduce this? Perhaps it means too many burnt-offerings or peace-offerings? It cannot be, for it is written [Ps. lxvi. 13]: "I will enter thy house with burnt-offerings; I will pay unto thee my vows (peace-offerings)." Now we see that burnt-offerings and peace-offerings he can offer when he likes. What, then, does the verse mean? Sin-offerings.

MISHNA: Burnt-offerings on the intermediate days come from ordinary things, but the peace-offerings from second-tithe. On the first day of Passover the School of Shammai say that

they come from ordinary things, but the School of Hillel say that they come from the second-tithe. Israelites generally fulfil their duty with vows and voluntary offerings, and with cattle-tithe, and the priests by the eating of sin-offering and of the trespass-offering, and by the first-born, and by the breast which hath been waved, and the shoulder which hath been lifted up, but not by eating of birds or of meal-offerings.

GEMARA: According to this Mishna, burnt-offerings are only to be sacrificed on the intermediate days, but not on the festival itself, and this would not be according to the School of Hillel concerning the Mishna in the next chapter? The Mishna is not completed, but must read thus: Burnt, vow, and voluntary offerings can be brought only on the intermediate days, not on

the festival itself. The holocaust-offering, however, may be brought even on the festival. And when it is brought it must be only from ordinary things, but the peace-offerings of enjoying may be brought also from the second-tithe; the feast-offering, however, on the first day of Passover, the School of Shammai say, from ordinary. things, and the School of Hillel say, from second-tithe. And so it was taught plainly in a Boraitha. Why is the feast-offering on the first day of the Passover different? Said R. Ashi: The Mishna comes to teach us only the feast-offering of the fifteenth of Nisan may be brought on the festival, but not of the fourteenth (which is brought together with the Paschal lamb). [From this we see that R. Ashi holds that the feast-offering of the fourteenth is not biblical.]

The Mishna says. The School of Hillel say: It may be brought from the second-tithe. Why? Is this not a duty-offering, and all that is a duty-offering must come from ordinary things? Said Ula: They meant to say, when he added the money of the second-tithe to the ordinary money. Hezkyah, however, said: An animal from second-tithe can be added to an ordinary animal, but with money it cannot be done so. R. Johanan, however, said: That, on the contrary, money to money can be added, but an animal to an animal cannot be added.

We have learned in one Boraitha in accordance with Hezkyah, another in accordance with R. Johanan.

"*Israelites fulfil their duty,*" etc. The rabbis taught: It is written [Deut. xvi. 14]: "Thou shalt rejoice on thy feast," that is to add, all the moneys you have for rejoicing you can add to the money for this rejoicing. (It is said in, another place that there is no rejoicing without meat, and as he has money

for the second-tithe as for other rejoicing, he can use it to eat the meat of the peace-offerings.) From this the sages infer that the Israelites can fulfil their duty with vow and voluntary offerings and with cattle-tithe; and the priest with sin and trespass-offerings, with the firstlings, and wave (breast) and heave (shoulder), lest one say, also with birds or meal-offerings. It is therefore written: "Thou shalt rejoice *thy* feast," and from this we may infer that all the things of which a feast-offering may be brought can be used for enjoying, excluding the above, of which a feast-offering cannot be brought. And R. Ashi said: From the expression only "Thou shalt *rejoice*" it can be inferred, because meal and fowls are not used for rejoicing.

MISHNA: He who has many to eat with him and few possessions brings more peace-offerings and fewer burnt-offerings. He who has more possessions than persons to eat with him brings more burnt-offerings and fewer peace-offerings. If one has little of both, to this case applies the saying about the meah of silver and the two pieces of silver. If he have enough of both, to this case applies the words: "Every man shall give as he is able, according to the blessing of the Lord thy God, which he hath given you" [Deut. xvi. 17].

GEMARA.. More peace-offerings? Where should he take them? Said R. Hisda: He should add money, and shall bring a large bull. Ula said in the name of Resh Lakish: If one have separated ten animals for his feast-offerings, if he have offered five on the first festival, he may offer the other five on the second day of the festival. R. Johanan, however, said: As soon as he stopped offering, he shall not do it more. Said R. Abba: They do not differ, however. R. Johanan says he

must do so, when he stopped, without any condition, but Resh Lakish meant the case when he said, when he stopped, that he would offer more. So It was taught also, that R. Shaman bar Abba said in the name of R. Johanan: The case where he cannot continue his offerings is only when he has no time to continue this day, and did not do so, but when he had time he may continue on the morrow.

MISHNA: If one has not offered the feast-offering on the first day of the festival, he may do it on any of the seven intermediate days, and even on the last day of the festival; but if the feast is over and he has not done it, he is not responsible for this. Of such a person is said [Eccl. i. 15]: "That what is crooked cannot be made straight, and what is defective cannot

be numbered." R. Simeon b. Manassea, however, said: Who is this that is crooked that cannot be made straight? That is he who forms an illegitimate connection and begets therefrom a bastard child. If you should say: Nay, it has to do with theft and plunder, then he could make restitution of it and be made straight? R. Simeon b. Jo'hai said: Nothing is called crooked that was not straight at the beginning and has become crooked. And what is this? A scholar that separates himself from the Law.

GEMARA: Whence do we deduce this? Said R. Johanan in the name of R. Ishmael: It is written of the seven days of Passover: "Assembly," and it is also written of the eighth day of the Feast of Tabernacles: "Assembly." As the eighth day of the Feast of Tabernacles is a completion, so also is the seventh day of Passover, and this expression is "empty" (seemingly superfluous), because if it would not be superfluous it could be objected to that the seventh day of Passover is not separated in anything from the former days, but the eighth day of the Feast of Tabernacles is separated from the former days in the offerings and in many things (as is stated in Succah). And in reality this expression "assembly" is superfluous: for let us see: What is meant by "assembly to the Lord thy God"? They shall assemble not to do any labor, and this is already written above [Deut. xvi. 8]: "You shall not do any labor." Why "assembly" again? Infer from this to make it "empty" for the analogy stated above. But the Tana of the Boraitha infers this from the following passage: It is written [Lev. xxiii. 41]: "Ye shall celebrate it as a feast unto the Lord seven days in the year." Might we assume he shall celebrate the holidays all the seven-days? Therefore it is written "it"--*it* but not *all* the seven days. And for what purpose then is it written "seven days"? You must say, they are only for a completion. But whence do you know that if he has not offered the feast-offering on the first day, he may do so on all the succeeding six days of the festivals? Therefore it is written [ibid.]: "In the seventh month shall ye celebrate." If the seventh month, one might assume that he shall celebrate the whole month? Therefore it is written "it" (on the festival), but ye cannot do so outside of the festival.

"*If the feast is over*," etc. Said Ben Hei Hei to Hillel: If it is so, why is it written, "Cannot be numbered"? It should be written, "Fulfilled"? We must therefore say that this verse means,

that if a man was numbered among his colleagues for a religious duty, and he did not want to be numbered--of him is said the verse. So also we have learned plainly in a Boraitha (Berachoth). Ben Hei Hei again asked Hillel: It is written [Mal. iii. 18] "And ye shall return and see the difference between the righteous and the wicked, between him that serveth God and him that has

not served him." What is the difference between the righteous and the servant of God, or the wicked and him who serves not God? Is it not the same? And he answered: Both he who serves God and serves not are really upright men, but when one repeats his chapter of the Law one hundred times he is not equal to him who does it one hundred and one times. Said Ben Hei Hei again: Can the man be called upright who serves not God, because he did not repeat the one hundredth and first time? And he said: Yea, go and learn from the marketplace, where asses are hired: when one hires an ass for ten parsa, he pays one Zuz, but if for eleven, he must pay two.

Elijah said to Ben Hei Hei, according to others to R. Elazar: It is written [Is. xlviii. 10]: "Behold, I have refined thee, though not into silver: I have approved thee in the crucible of affliction." [1] Infer from this when the Holy One, blessed be He, looked for merits given to Israel, he found only poverty. Said Samuel, and according to others R. Joseph: This is what people say: Poverty becomes Israel as a red leather trapping a white horse.

"*R. Simeon b. Menassea*," etc. If born, yea, but if not, nay? Did we not learn in a Boraitha: Simeon b. Manassea said: If one has stolen something, he can return it and repair his sin; if one has robbed, he can return, and make all good, but he who has had a connection with his neighbor's wife, and disqualified her for his neighbor, this man is destroyed from the world, and is lost? R. Simeon b. Jo'hai said: We do not say, one shall examine a camel, or one shall examine a pig (because they are unfit, and there is nothing to examine). But what is to be examined? A sheep (which is fit for an offering). Perhaps it has received a blemish which makes it unfit--that is, a scholar who has departed from the Law. R. Jehudah b. Lakish said: Of a scholar who separated himself from the Law the verse [Prov. xxvii. 8] said: "As a bird that wandereth away from her nest so is a man that wandereth away from his place." Of him is also

written [Jer. ii. 5]: "What fault did your fathers find in me, that they went away from me?" (Now we see, however, that he who has a connection with his neighbor's wife, although he has no bastard born, is also destroyed from the world? It presents no difficulty: If he forced her, she may continue with her husband and he may repent and make it good, but if a bastard was born, she cannot live with her husband, and he is lost; but if he did it with her will, even when there is no bastard, he is lost). And if you wish I will say: In both cases it is when he used force. If he had a connection with the wife of a priest (who cannot live with her husband in any case), he is lost even when no bastard was born; and when it is stated that he is lost only when a bastard is born, the wife of a common man is meant.

It is written [Zech. viii. 10]: "And for him that went out or came in there was no peace." Said Rabh: That means, if a man goes out from the study of the Mishna to read the verses of the Bible, this man can have no more peace (because nothing can be decided from the verses without the commentary of the Mishna). Samuel, however, said: Even the man who separates himself from the Talmud to learn the Mishna (because nothing can be decided from the Mishna without the explanation of the Talmud). R. Johanan said: Even he who separates himself from the Palestinian Talmud, and goes to the Babylonian Talmud (because nothing is to be decided from the Babylonian Talmud, as it is said in Sanhedrin: "In dark places that he set me to dwell," etc. [Lam. iii. 6], which means, the Babylonian Talmud); and so explains Rashi; but Tosphath says, it can be explained *vice versa, i.e.*, one who goes from the Babylonian Talmud before understanding it thoroughly to the Palestinian Talmud, who will surely not understand it.

MISHNA: The laws about the dissolving of vows hang in the air, and have no basis (in the Bible). The Halakhath concerning Sabbath, feast-offerings, and trespasses are as mountains suspended by a hair, because the verses of the Bible concerning this are very few, and the Halakhath are very many. The jurisprudence, the Temple services, and the purification, and uncleanness, and the cases of illegal unions, have a basis in the Bible, and they are the essential parts of the Law.

GEMARA: We have learned in a Boraitha: R. Elazar, however, said: They have a basis in the Bible, as it is written: [Lev. xxvii. 2]: "If a man make a particular vow," and [Num. vi. 2]

it is written again: "Pronounce an especial vow." Why twice? It is to signify--one is to make the vow, the other is to dissolve it. R. Joshua said also: They have a basis, as it is written: [Ps. xcv. 11]: "So that I swore in my wrath." From this we infer, what I have sworn in my wrath, which later I recalled (and from this we infer, who swears, or vows when he is excited, or so, may later ask to have it dissolved). R. Itz'hak said: There is a basis from the following [Ex. xxxv. 5]: "Whosoever is of a willing heart." From this we may infer, he can make a vow with a willing heart, but otherwise he can ask for its being dissolved. Hananiah the son of R. Jehoshuah's brother said: Their basis is the following verse [Ps. cxix. 106]: "I have sworn and I will perform it, to observe thy righteous ordinances," and when he says, "I will perform it," he may sometimes not do it, although he has sworn, because he will ask it to be dissolved. Said R. Jehudah in the name of Samuel: If I would be there I would say to them: The following verse would be better than yours, viz. [Num. xxx. 3]: "He shall not profane his word." *He* shall not profane, but others can make him profane it. Said Rabha: To all said above I can object, but what Samuel said could not be objected to.

"*The Halakhath concerning Sabbath*." Are not written many verses about Sabbath? Why do they say, they are as mountains suspended by a hair? It is prohibited only to labor with an intention, but what is and what is not labor with an intention is not written at all; but the Talmud concludes that it is such that was done in the Tabernacle, because the commandment of Sabbath immediately precedes the building of the Tabernacle [Ex. xxv.].

"*The offering of peace*." Why, it is written? (It is said above, "Ye shall celebrate"? Yea, it is written, "Ye shall celebrate it," but where is it written an offering shall, be brought?) This may be inferred from an analogy of expressions. It is written [Ex. v. 1]: "That they may hold a feast unto me in the *wilderness*," and it is written [Amos v. 25]: "Have ye offered unto me sacrifices and meat-offerings in the wilderness?" Hence as there is plainly stated "offerings," so also "hold a feast" means to bring offerings. Why, then, is it said, they are as mountains hanging by a hair? Because between the words of the law of the Pentateuch and the words of the Prophets we do not draw any analogies.

"*Trespass*." Is that not written? Said Rabha: It means as

a case of the following Boraitha: If the owner has remembered, but his messenger did not remember, the messenger has trespassed. Now, what has the poor messenger done to trespass?

That is, these laws are as mountains hanging by a hair.

"*In the Bible are very few*," etc. We have learned in a Boraitha: That about plagues, tents for a dead body, the verses are few, and the Halakhath are many. Is that so? Of plagues there are very many verses? Said R. Papa: The Boraitha meant to say thus: About plagues there are many verses, but few Halakhath; but about tents there are few verses, but many Halakhath. And what is the difference? That is, if one is doubtful in a Halakha concerning plagues, he should look up the Bible, but if he is doubtful concerning tents, he must look up the Mishnas.

"*Jurisprudence*." (The Mishna says, it has only a basis. Is it only that?) Is it not written all about it? It is meant a case as in the following Boraitha: Rabbi said: What is written [Ex. xxi. 23]: "Life for life" means money. But whence do we deduce this? Perhaps it means life in the reality? Therefore here it is written: "Thou shalt give," and in the preceding verse it is written: "He shall give by the decision of thee judges." As there it is to pay money only, so it is here.

"*The Temple services*." Is this not written? It means to say about the bringing of the blood to the altar, as we have learned in a Boraitha. The passage [Lev. iv.] "shall *bring*" means "*receiving*" the blood, as it is a service that must be done by the priest with the observation of all the regulations of the Law.

"*Clean and unclean*." Is this not written? The Mishna means, the prescribed quantity for a legal bath, which is not, written at all. But about unclean things, is it not written? It means to say, the size of a lentil from a reptile defiles, which is not written.

"*Illegal unions*." Is it not written about this plainly? It was necessary to meet the case of the daughter of a woman whom he has forced, which is not written about in the Bible and that is only drawn from an analogy of expression.

"And they are the essentials of the Law." Are only these the essential parts? and the former not? Say, they are also.

Footnotes

1:1 The Hebrew term is •••• which means "appearing" [*vide* Deut. xvi. 16], and because of the statement [ibid.], "And no one shall appear before the Lord empty," it is construed to mean the sacrifice; *i.e.*, the holocaust.

1:2 The Hebrew expression for "times" is "Regalim," the singular of which is "Regel," and means "a foot" also, hence the meaning "if the minor can go with his feet."

3:1 The expression "Ylmdu," which means "to learn" and Mar Zutra said it should be read "Yelamedu," which means "to teach."

4:1 *Netuim*, "planted" or "fastened."

7:1 The Hebrew expression is ••••••• which means "shall be seen the same letters with following punctuation ••••••• would be "shall see," hence the analogy.

8:1 Here is a legend of what happened to R. Bibi bar Abayi with the Angel of Death, who killed a man prematurely, which is omitted according to our method. This, however, can be found in the translation of Mr. Streane.

10:1 *Lnegdecho* and *Neged* mean "against."

11:1 In this verse in the Hebrew "tears" is mentioned three times.

12:1 This must be Abayi the Elder, who lived at that time.

17:1 *Oni* is translated "affliction," but by the Talmud "poverty."

Next: Chapter II: Regulations Concerning Public Lectures: Which Are And Which Are Not Allowed.

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CHAPTER II.

REGULATIONS CONCERNING PUBLIC LECTURES WHICH ARE AND WHICH ARE NOT ALLOWED.

MISHNA: One should not discuss illegal unions unless there were three besides him, nor the creation unless there were two besides him, nor the divine chariot with one individual, unless he was a wise man and had much knowledge of his own. Every one who tries to know the following four things, it were better for him if he had never come into the world, viz.: What is above and what is beneath, what was before creation, and what will be after all will be destroyed. And every one who does not revere the glory of his Creator, it were better for him he had not come into the world.

GEMARA: In the first part it is said: "The divine chariot with an individual" (because he may deviate from the tradition and add out of his own mind, and there will be nobody to remind him), and afterwards it is said: "Unless he is a wise man and will understand by himself?" (from this we infer, that no tradition is necessary). The Mishna meant to say thus: One must not lecture about illegal unions even to three, nor about the creation even to two, and not about the divine chariot even to one, unless the lecturer was a wise man and will understand himself to answer, if they will question him about something. Why so? Said R. Ashi: One must not lecture about illegal unions not mentioned in the Bible (*e.g.*, his daughter of a forced woman, or the mother of his father-in-law, which is drawn only from an analogy of expression?) And why not to three? This is common sense. If there are only two, the Master speaks to one, and the other listens to him. But if there are three, one listens, and the other two discuss it between them, and can err and come to a wrong conclusion to permit an unlawful thing. If it is so, why only about unlawful unions, the case should be the same with the whole Law? In case of unlawful unions it is different, because the Master says: Robbing and vice a man desires. If so, why only in case of illegal unions, let him not lecture about robbery

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also to three? Robbery one desires when the thing to be robbed is in his presence, but this is desired in the party's absence also.

"*And not about creation to two*." Whence do we deduce this? As stated in the following Boraitha: It is written [Deut. iv. 32]: "For do but ask of former days" (this is in the singular). From this we may infer, that *one* may ask, not *two*. Lest one assume that a man can ask, What was before the creation? therefore it is written [ibid.]: "Since the day that God created man from the earth"; but lest one assume, a man must not ask even what was done in the six days of creation? therefore it is written [ibid.]: "Which were before thee" [*i.e.*, the six days before]; lest one ask, What is above and what is beneath, what was before creation and what will be after it? therefore it is written [ibid.]: "From one end of the heavens unto the other end of the heavens,"

"but not what is beyond." [If we infer this from what is written: "From one end of the heavens unto the other end," why is needed the verse further: "Since the day that God created man upon the earth"? This is according to R. Elazar, who said that Adam was tall from the earth up to heaven, and after he had transgressed, the Holy One, blessed be He, laid His hand upon him, and made him lower, as it is written (Ps. cxxxix. 5): "Behind and before hast thou hedged me in, and thou placest upon me thy hand."]

R. Jehudah in the name of Rabh said: Ten things were created on the first day, and they are: heaven and earth; chaos and desolation; light and darkness; wind and waters; the measures of the day and those of the night--heaven and earth, for it is written [Gen. i. 1]: "In the beginning God created the heaven and the earth"; chaos and desolation, for it is written [ibid. i. 2]: "And the earth was without form and void (chaos)"; light and darkness--darkness, for it is written [ibid., ibid.]: "And darkness was upon the face of the deep"; light, for it is written [ibid. i. 3]: "And God said, Let there be light"; wind and water, for it is written [ibid. i. 2]: "And the spirit (wind) of God was waving over the face of the waters"; the measures of the day and those of the night, for it is written [ibid. i. 5]: "And it was evening; and it was morning, the first day."

We have learned in a Boraitha: Chaos is a green line compassing all the world, and from it darkness springs, as it is written [Ps. xviii. 12]: "He made darkness his hiding place, round about him." Desolation--this means the stones covered

with mud, which are sunk in the deep, from which waters come forth, as it is written [Is. xxxiv. 11]: "And he shall stretch out over it the line of destination and the weights of desolation."

Was light created on the first day? Is it not written [Gen. i. 17]: "And God set them in the expansion of the heaven," and also [ibid. i. 19]: "And it was evening and it was morning the fourth day"? This is as R. Elazar said: The light which the Holy One created on the first day, Adam saw by its means from one end of the world to the other. When the Holy One considered the generation of the flood and the generation of the dispersion, and that their works were vain, He took it from them and concealed it for the upright in the world to come. In this, however, the following Tanaim differ, as we have learned in a Boraitha: The light which the Holy One, blessed be He, created on the first day, Adam observed and saw by its means from one end of the world' to the other. So said R. Jacob. But the sages said. These are the luminaries which were created on the first day, but were not hung up until the fourth day.

R. Zutra bar Tobiah in the name of Rabh said: By ten things the world was created: by wisdom and by understanding; by knowledge and by strength; by rebuke and by might; by righteousness and by judgment; by mercy and by compassion. [1] R. Jehudah in the name of Rabh said: At the time that the Holy One, blessed be He, created the world it went spreading on like two clews of shoot and warp, until the Holy One, blessed be He, rebuked it and brought it to a standstill, as it is written [Job xxvi. 11]: "The pillars of heaven tremble greatly, and are astounded at his rebuke." And this is what Resh Lakish also said: What is meant by [Gen. xvii. 1]: "I am the Almighty God"? (•••) It means: I am He *Who* (•) said to the world, "*Enough*" (••) Resh Lakish said again: At the time the Holy One, blessed be He, created the sea, it went spreading on, until the Holy One, blessed be He, rebuked it and made it dry, for it is written [Nah. i. 4]: "He rebuketh the sea and maketh it dry; and all the rivers he dried up."

The rabbis taught: The School of Shammai say: The heavens were created in the beginning, and afterwards the earth was created, for it is written [Gen. i. 1]: "In the beginning God created the heaven and the earth." But the School of Hillel say: The earth was created in the beginning, and afterwards the

heavens, for it is written [Gen. ii. 4]: "On the day that the Lord God made *earth* and heaven." Said the School of Hillel to the School of Shammai: According to your words, a man builds an upper story, and afterwards builds a house; and the heavens are the upper story, as it is written [Amos ix. 6]: "That buildeth in the heavens his steps, and hath founded his vault over the earth." Said the School of Shammai to the School of Hillel: According to you, a man makes a footstool, and afterwards makes a throne, as it is written [Is. lxvi. i]: "Thus saith the Lord, The heaven is my throne, and the earth is my footstool." The sages say: Both were created together, as it is written [ibid. xlviii. 13]: "My hand also hath laid the foundation of the earth, and my right hand hath spanned out the heavens. I call unto them, they stand forward together."

What is meant by "heavens"? Said R. Jose bar Hanina: It means, the place where there is water. In a Boraitha it is explained as equivalent to fire and water, thus teaching that the Holy One, blessed be He, brought them and mingled them one with the other, and made from them the firmament. R. Ishmael questioned R. Aqiba when they were on the road: Thou art one who hast served for twenty-two years Na'hum, the man of "Gimzu," the man who expounded the meaning of all the particles "*eth*" (the) which are in the Law. What was his exposition of "Eth-ha-shamayim v'eth haaretz"? R. Aqiba answered: If the words had been simply: First created God heaven and earth, I should have said, "Heaven" is another name of God. But as it is now, all know that heaven and earth are to be taken in the literal meaning. And why do I find the expression "*v'eth haaretz*"? To show that heaven preceded the earth.

There is a Boraitha of R. Jose which says: Woe to the creatures which see and know not what they see, which stand and know not upon what they stand. Upon what does the earth stand? Upon the pillars. The pillars stand upon the waters; the waters upon the mountains; the mountains upon the wind; the wind upon the storm; 1 the storm is suspended upon the strength of the Holy One, blessed be He, as it is written [Deut. Xxxiii. 27]: "And here beneath, the everlasting arms." The sages say: It stands upon twelve pillars, as it is

written [Deut. xxiii. 8]: "He set the bounds of the tribes according to the number of the sons of Israel." According to others, seven pillars, as it is written [Prov. ix. i]: "She had hewn out her seven pillars." R. Elazar b. Shamua said: Upon one pillar, and its name is Zaddik (The Righteous), as it is written [Prov. x. 25]: "But the righteous is an everlasting foundation." R. Jehudah said: There are two firmaments, as it is written [Deut. x. 14]: "Behold, to the Lord thy God belong the heavens and the heavens of the heavens." Resh Lakish said, they are seven, viz.: Vilon, Rakia, Shchakim, Zbul, Maon, Makhon, Araboth. Vilon serves no purpose whatever save this, that it enters in the morning, and goes forth in the evening, and renews every day the work of creation. Rakia is that in which are set sun and moon, stars and constellations. Shchakim is that in which the millstones stand and grind manna for the righteous. Zbul is that in which is the heavenly Jerusalem and the Temple, and the altar is built there, and Michael the great prince

stands and offers upon it an offering. Maon is that in which are companies of ministering angels, who utter His song in the night and are silent in the day for the sake of the glory of Israel. Resh Lakish said: Every one who studied in the Law in this world, which is like the night, the Holy One, blessed be He, stretches over him the thread of grace for the future world, which is like the day, as it is written: "By the day the Lord gives his merciful command, and by night his song is with me." Makhon is that in which are the treasures of hail, and the high dwelling-place of harmful dews and the high dwelling-place of the round drops, and the chamber of the whirlwind and of the storm, and the retreat of noisome vapor; and their doors are made of fire. Araboth is that in which are righteousness and judgment and grace, the treasures of life and the treasures of peace and the treasures of blessing, and the souls of the righteous and the spirits and souls which are about to be created, and the dew with which the Holy One, blessed be He, is about to quicken mortals. There also are celestials and seraphs and holy beings and ministering angels and the throne of glory, and the King, the Living God, high and lifted up, sitting over them among the clouds, and darkness and cloud and thick darkness surround Him. How is there darkness in the presence of the Lord? Is it not written [Dan. ii. 22]: "He is that revealeth what is deep and secret: he knoweth what is in the darkness, and the light dwelleth with him"? This presents no difficulty.

[paragraph continues] The one refers to that which is within, the other to that which is without. R. A'ha bar Jacob said: There is again a firmament above the heads of the living creatures, for it is written [Ezek. i. 22]: "And the likeness of a vault was over the head of the living creatures, shining like the glitter of the purest crystal." So far thou hast permission to speak. Thenceforward thou hast not permission to speak. For thus it is written in the book of Ben Sira: Seek not out the things that are too hard for thee, and into the things that are hidden from thee inquire thou not. In what is permitted to thee instruct thyself thou must not discuss secret things.

We have learned in a Boraitha: Rabban Johanan b. Zakkai said: What answer did the heavenly voice make to that wicked man at the time when he said [Is. xiv. 14], "I will ascend above the heights of the clouds; I will be equal to the Most High"? The heavenly voice said to him: Thou wicked man, son of a wicked man, grandson of Nimrod the Wicked, who led all the world to rebel against Him in his kingdom, how many are the years of a man? Seventy years, as it is said [Ps. xc. 10]: "The days of our years in this life are seventy years, and if by uncommon vigor they be eighty . . ." And is not from the earth to the firmament a journey of five hundred years, and so too the interspace of the firmaments? Above there are the holy living creatures. The feet of the living creatures are of corresponding measure to all the things mentioned above, the ankles of the living creatures are of corresponding measure, the legs of the living creatures are of corresponding measure, the knees of the living creatures are of corresponding measure, the thighs of the living creatures are of corresponding measure, the bodies of the living creatures are of corresponding measure, the necks of the living creatures are of corresponding measure, the heads of the living creatures are of corresponding measure, the horns of the living creatures are of corresponding measure. Above them is the throne of glory. The feet of the throne of glory are of corresponding measure. The throne of glory is of corresponding measure. The King, the Living and Eternal God, high and lifted up, sitteth upon them. And thou didst say: "I will ascend above the heights of the clouds; I will be equal to the Most High"? Yet thou, shalt be brought down to bell, to the uttermost parts of the pit.

"*Nor the divine chariot with one*." R. Hyya taught: But you may impart to him the quintessence

of the chapters. Said

[paragraph continues] R. Zera: Even that may only be imparted to a chief of the Beth Din, and only then when his heart yearns for knowledge.

R. Ami said: The secrets of the Law may be imparted only to the one who has the five prescribed things, viz. [Is. iii, 3]: "The captain of fifty, and the honorable man, and the counsellor, and the skilful artificer, and the eloquent orator." R. Johanan said to R. Elazar: Come, I will fully instruct thee in the subject of the divine chariot. He said to him: I am not old enough. When he was old enough, R. Johanan's soul had passed away. R. Asi said to him: Come, I will fully instruct thee in the subject of the divine chariot. He said to him: If I had been worthy, I should have received full instruction from R. Johanan, thy teacher. R. Joseph was giving full instruction in the subject of the divine chariot. The sages of Pumbeditha were teaching the subject of creation. They said to him: Would the master instruct us fully in the subject of the divine chariot? He answered them: Instruct me in the subject of creation. After they had instructed him, they said to him: Would the master instruct us in the subject of the divine chariot? He answered: In reference to this we have learned in a Boraitha: It is written [Song of Songs iv. 11]: "Honey and milk are under thy tongue." That means, let words sweeter than honey and milk be under thy tongue. R. Abuhu infers the same thing from the following passage [Prov. xxvii. 26]: "The sheep are for thy clothing." That means, things that are the secrets of the world shall be under thy clothes. They said to him: We have worked in them as far as the words [Ezek. ii. 1]: "And he said unto me, Son of man." And he said to them: But this is the real subject of the divine chariot.

The rabbis taught: It happened once that a certain child, who was reading in his teacher's house in the Book of Ezekiel, was pondering over 'Hashmal, and there came out fire from 'Hashmal and burnt him, and they sought in consequence to conceal the Book of Ezekiel. Said Hananiah b. Hezkyah to them: If he was wise, are then all wise?

It is written [Ezek. i. 4]: "And I saw, and behold, a storm wind came out of the north, a great cloud, and a flaming fire, and a brightness was on it round about; and out of the midst of it was like the glitter of amber, out of the midst of the fire." Whither did it go?, Said R. Jehudah in the name of Rabh: It went forth to subdue the whole world under the wicked Nebuchadnezzar. And this was done that the nations might not

say: The Holy One, blessed be He, delivered His children into the hands of a low nation. The Holy One, blessed be He, said: What forced Me to minister to worshippers of carved images? The iniquities of Israel, they forced me. It is written [ibid. i. 15]: "And I looked on the living creatures, and behold, there was one wheel upon the earth close by the living creatures." Said R. Elazar: It means a certain angel who stands upon the earth, and his head reaches to the level of the living creatures. In a Tosephtha we are taught that his name is Sandalphon, who is higher than his fellows by the space of a journey of five hundred years, and he stands behind the divine chariot and binds crowns for his Creator. This is not so, as it is written [Ezek. iii. 12]: "Blessed be the glory of the Lord from his place." From this we may infer that His place is impossible to know? He utters one of the holy names of the Lord over the wreath, and thereupon he goes and

rests by His head. Rabha said: All which Ezekiel saw Isaiah saw, but Ezekiel was like a villager who saw the king for the first time (and therefore he said all that he has seen); Isaiah, however, was like a townsman who has often seen the king (and therefore he said little).

Resh Lakish said: What is the meaning of the passage [Ex. xv. 1]: "I will sing unto the Lord, for he hath triumphed gloriously"? It means a song to Him who takes His place proudly above the high, as the Master said: The king among living creatures is a lion; the king among domestic beasts is an ox; the king among birds is an eagle, but man takes his place proudly above them, and the Holy One, blessed be He, takes His place proudly above them all, and above the whole world in its entirety. We have learned in a Boraitha: Rabbi said in the name of Abba Jose b. Dosai: It is written [Dan. vii. 10]: "Thousand times thousands ministered unto him." This is the number of one troop, but *all* his troops cannot be numbered. R. Jeremiah bar Abba, however, said: This passage refers to the fiery stream, as it is written [ibid., ibid.]: "A stream of fire issued and came forth from before him; thousand times thousands ministered unto him; and myriad times myriads stood before him." Whence does it come forth? From the perspiration of the living creatures. And upon what is it poured? Said R. Zutra bar Tobiah in the name of Rabh: Upon the heads of the wicked men in Gehenna, as it is written [Jer. xxiii. 19]: "Behold, the storm wind of the Lord is gone forth in fury; yea, a whirling storm upon the head of the wicked shall it fall grievously." R.

[paragraph continues] A'ha bar Jacob said: Upon those who were held back, as it is writ. ten [Job xxii. 16]: "Who were shrivelled up before their time, whose foundation was flooded away like a river?" There is a Boraitha to the effect that R. Simeon the Pious said: There are nine hundred and seventy-four generations which were held back from being created. The Holy One, blessed be He, scattered them through all the successive generations, and these are the impudent (••• ••••) who are in a generation. R. Na'hman bar Itz'hak, however, said: On the contrary, this passage refers to those who are wrinkled for blessing, as it is written: As for these scholars who have become wrinkled over the words of the Law in this world, the Holy One, blessed be He, discloses to them the secrets of the world to come, as it is written [Job xxii. 16]: "Whose foundation was flooded away like a river."

Samuel said to Hyya bar Rabh: Thou son of a scholar, come and I will tell thee something of those noble words which thy father used to say: Every several day ministering angels are created from the fiery stream, and they utter a song and perish, as it. is written [Lam. iii. 23]: "They are new every morning; great is thy faithfulness."

When R. Dimi came he said: Eighteen curses did Isaiah pronounce upon Israel, and he was not satisfied, until he had spoken against them this passage [Is. iii. 5]: "The boy shall demean himself proudly against the ancient, and the base against the honorable."

What are the eighteen curses? The following [Is. iii. 1-4]: For, behold, the Lord, the Eternal of hosts, doth remove from Jerusalem and from Judah stay and staff, every stay of bread, and every stay of water. The hero and the men of war," etc., etc. "Stay"--these are the learned in the Law. "Staff"--these are the learned in the Mishna; *e.g.*, R. Jehudah b. Tema and his fellows. [R. Papa and the rabbis differ in respect to this: One says, there were six hundred sections of Mishna, and another says, there were seven hundred sections.] "Every stay of bread"--these are the learned in Talmud, as it is written [Prov. ix. 5): "Come, eat of my bread, and drink of the wine which I

have mingled." "And every stay of water"--these are the learned in Agada, who draw a man's heart like water by means of Agada." "The hero"--this is the man versed, in oral tradition. "And the man of war"--this is he who knows how to handle matters in the battle of the Law. "The judge"--this

is a magistrate who gives decisions faithfully, "And the prophet"--this is in its literal meaning. "The prudent"--this is a king, as it is written [Prov. xvi. 10] "There should be a wise sentence on the lips of the king." "And the ancient"--this is he who is worthy to sit as a teacher presiding over an academy. "The captain of fifty"--this is in accordance with R. Abuhu, who saith: From this we may infer, that an interpreter who is less than fifty years old is not appointed over the congregation. "And the honorable man"--this is he for whose merits his generation is forgiven; by Heaven (*e.g.*, R. Hanina b. Dosa); in this world (*e.g.*, R. Abuhu in the house of Cæsar). "And the counsellor"--one who knows how to intercalate years and to fix months. "And the skilful"--this is the disciple who, by his keenness, sharpens the minds of his teachers. "Artificer"--at the time he is unfolding the words of the Law all are made like deaf men. [1] "And the eloquent"--this is he who, having knowledge of one thing, can derive therefrom knowledge of another thing. [2] "Orator"--this is he to whom it is fitting to impart the words of the Law, which is given in a whisper (*e.g.*, the subject of the divine chariot. See page 21). "And I will set up boys as their princes"--that is, as R. Elazar said: These are men who are deprived of good works. [3] "And children shall rule over them"--as R. A'ha bar Jacob said: These are foxes and sons of foxes. [4] And he was not satisfied until he had said to them: "The boy shall demean himself proudly against the ancient," etc. [ibid., ibid.]--these are the men who are deprived of good works. They shall demean themselves proudly against the one who is filled with good works as a pomegranate. "And the base against the honorable"--*i.e.*, that one to whom heavy sins are like light ones will demean himself proudly against the one to whom light sins are like heavy ones.

R. Kattina said: Even at the time of the destruction of

[paragraph continues] Jerusalem there did not cease from them faithful men. Is that so? Did we not learn: Rabha said: Jerusalem was not laid waste till there ceased from it faithful men, as it is written [Jer. v. 1]: "Roam about through the streets of Jerusalem, and see now, and notice, and search in its broad places, if ye can find one man, if there be one who executeth justice, that searcheth for truth: and I will pardon it"? This presents no difficulty. The former means, faithful in the study of the Law, and the latter means, honesty in common business.

The rabbis taught: It happened with Rabban Johanan b. Zakkai that he was riding upon his ass and was travelling on the road, and R. Elazar b. Arakh was behind him, as driver. Said the latter to him: Rabbi, teach me a chapter on the subject of the divine chariot. And he answered him: Have I not taught you: Nor the chariot with one individual, unless he was a wise man and had much knowledge of his own? Then he said to him: Rabbi, allow me to say before thee one thing which thou hast taught me. He allowed him. Immediately R. Johanan b. Zakkai dismounted from the ass, and wrapped himself up and seated himself upon the stone under the olive tree. R. Elazar asked him: Rabbi, wherefore didst thou dismount from the ass? He answered him: Is it right that thou shouldest investigate the subject of the divine chariot, and the Shekhina is with us

and ministering angels accompany us, and that I should ride. upon the ass? Then R. Elazar b. Arakh entered upon the subject of the divine chariot and lectured: And there descended fire from heaven and encircled all the terebinth trees of the field, which uttered a song. [What was the song which they uttered? [Ps. cxlviii. 7, 9, 14]: "Praise the Lord from the earth, ye sea monsters, and all deeps . . . fruitful trees and all cedars . . . Hallelujah."] An angel answered from the fire: This is the real subject of the divine chariot. R. Johanan arose and kissed him upon his head, and said: Blessed be the Lord God of Israel who hath given to our father Abraham. a son who is able to understand and lecture on this subject. There is one who lectures well, but doth not perform well. There is one who performeth well, but does not expound well. Thou dost expound well and dost perform well. Blessed art thou, Abraham our father, from whose loins bath come forth Elazar b. Arakh.

And when these things were told to R. Joshua, he and R. Jose the priest were travelling on the road. They said: Let us also expound on the same subject. R. Joshua opened his mouth

and lectured: And it was the day of the summer solstice. The heavens were wrapped in clouds, and there appeared the form of a bow in the cloud, and the angels were assembling and coming to hearken, as the men assemble and come to look at the festivities of bridegroom and bride. R. Jose the priest went forward and related the whole occurrence to Rabban Johanan b. Zakkai, who said: Blessed are ye, and blessed is she that bare you. Blessed are mine eyes, that they have thus seen. And also in my dream I and ye were resting upon Mount Sinai, and a heavenly voice was heard, which said: Come up hither, come up hither. Large banqueting chambers are prepared and fair coverlets are spread for you, you and your disciples and your disciples' disciples, as fitted to attain to the third degree of blessedness.

Is it so? Have we not learned in a Boraitha: R. Jose in the name of R. Jehudah said: There were three consecutive expositions. R. Joshua explained things before R. Johanan b. Zakkai; R. Aqiba explained things before R. Joshua; Hananiah b. Hachinai explained before R. Aqiba. Hence we see that R. Elazar b. Arakh was not mentioned. (This presents no difficulty:) He who teaches and before whom others teach *is* mentioned, while he who teaches and before whom others do not teach is not mentioned. But was not Hananiah b. Hachinai one who taught and before whom others did not teach? And still he was mentioned? Yea, for he taught at least in the presence of one who taught others.

The rabbis taught: Four men went up into the heavenly garden, [1] and they were: Ben Azzai and Ben Zoma, A'her and R. Aqiba. Ben Azzai gazed and died; [2] to him the scriptural passage may be applied [Ps. cxvi. 15]: "Grievous in the eyes of the Lord is the death of his pious ones." Ben Zoma gazed and went mad; to him the scriptural passage may be applied [Prov. xxv. 16] Hast thou found honey? eat so much as is sufficient for thee, lest thou consume too much of it, and have to vomit it forth." A'her cut the plants. [3] R. Aqiba departed

in peace. [1] A'her cut the plants; it is to him that the scriptural passage may be applied [Eccl. v. 6]: "Suffer not thy mouth to cause thy body to sin." There came out a heavenly voice and said [Jer. iii. 14]: "Return, O backsliding children" (except A'her). When he learned it he said:

Inasmuch as that man is excluded from yonder world, let him go and enjoy himself in this world. A'her went forth into evil courses. A'her asked this question of R. Meir, after he had gone forth into evil courses: What is the meaning of the passage [Eccl. vii. 14]: "Also this hath God made in equal measure with the other"? He answered him: Everything which the Holy One, blessed be He, created, He created with its counterpart. He created mountains; He created hills: He created seas; He created rivers. He said to him: R. Aqiba thy teacher did not say so, but he explained it as meaning that He created righteous; He created sinners. He created the Garden of Eden; He created Gehenna. To every individual belongs two shares, one in the Garden of Eden and one in Gehenna. If one is meritorious and righteous, he receives his own portion and also the portion of his neighbor in the Garden of Eden. If he has incurred guilt, he receives his own portion and also the portion of his neighbor in Gehenna. [R. Mesharshia said: What is the Scripture proof? As regards the righteous it is written [Is. lxi. 7]: "Therefore in their hand shall they possess a twofold (portion)"; as regards the wicked it is said [Jer. xvii. 18]: "And strike them with a double breach."]

A'her asked again of R. Meir: What is the meaning of the passage [Job xxviii. 17]: "She cannot be estimated after gold and glass; and not in exchange for her (can) vessels of refined gold (be taken)"? He answered him: These are the words of the Law, which are difficult to buy, as vessels of gold and of pure gold, and are easily lost, as vessels of glass. He said to him: R. Aqiba thy teacher did not say so, but he explained it as meaning that as vessels of gold and vessels of glass, although they are broken, may be mended, so a disciple of the sages, although he have sinned, may be mended. He said to him: Return thyself also. He answered him I have already heard from behind the curtain [Jer. iii. 14]: "Return, O backsliding children" (except A'her).

Also, what happened to Ben Zoma with R. Jehoshua b. Hananiah, as it seems to us the version of the Palestinian Talmud is correct. See note above.}

The rabbis taught: It happened that A'her was riding upon his horse on the Sabbath, and R. Meir was walking behind him to learn the Law from his mouth. He said to him: Meir, turn thee backwards, for I have already measured by means of my horse's hoofs up to this point the legal limit of the Sabbath. He answered him: Return thyself also. He said to him: And have I not already answered thee what I have heard from behind the curtain? He forced him to enter a place of lecturing. He said to a child: Repeat for me thy verse. He said to him [Is. xlviii. 22]: "There is no peace, saith the Lord, unto the wicked." He brought him to another synagogue, until he had brought him into thirteen synagogues. They all repeated to him the same way. In the last one he said to him: Repeat for me thy verse. He said to him [Ps. i. 16]: "But unto the wicked God saith: What hast thou to do to relate my statutes, and why bearest thou my covenant upon thy mouth?" That child was a stammerer. It sounded as if he had said: "And to Elisha said God," etc. [1] And he said: If there had been a knife in my hand I would have cut him in pieces.

When A'her died it was said: Let him not be brought into judgment (because he has studied the Law), but let him not be admitted to the world to come (because he sinned). R. Meir said: It would have been better if he would have been brought to judgment and punished, and then admitted to the world to come. I wish I would die, in order that smoke should go up from his grave (*i.e.*, that he should be brought to judgment). When R. Meir died it was so: smoke went up from the grave of A'her. Said R. Johanan: A mighty deed it was to consign his teacher to the flames. There was one among us, and we should not find a way to save him? If I take him by the

hand, who will snatch him away from me? Would that I might die and extinguish the smoke from his grave. And it was so. When R. Johanan died the smoke ceased from the grave of A'her. The public mourner then uttered this expression over him: Even the keeper of the door of Gehenna stood not his ground before thee, O our teacher!

The daughter of A'her came to Rabbi and asked him for food. He said to her: Whose daughter art thou? She answered:

[paragraph continues] I am the daughter of A'her. And he said to her: Is there still of his seed in the world? Is it not written [Job xviii. 19]: "He will have neither son nor grandson among his people, nor any that escapeth in the places of his sojourning"? She said to him: Remember his studiousness, and not his deeds. Immediately there came down fire, and consumed the seat of Rabbi. Rabbi wept and said: And if those who disgrace themselves through it, are honored thus, how much more those who obtain praise through their use of it.

How did R. Meir study the Law from the mouth of A'her? Have we not learned (see Tract Moed Katan) that if it is not certain that the rabbi is equal to an angel, no instruction must be received from him? Said Resh Lakish: R. Meir interpreted the following passage thus [Prov. xxii. 17]: "Incline thine ear, and hear the words of the wise, and apply thy heart unto my knowledge." It is not written, "Unto *their* knowledge," but "unto *My* knowledge." R. Hanina said the following passage [Ps. xlv. 11]: "Hearken, O daughter, and look and incline thy ear, and forget thy own people, and thy father's houses," etc. But do not these passages contradict each other? Nay, the one is the case of an adult, the other of a young person (who cannot distinguish between good and evil).

When R. Dimi came he said: They say in the West: R. Meir, while eating the date, he threw away the stone (*i.e.*, he picked out the good and threw away the bad teachings).

Rabha expounded the meaning of the passage [Song of Songs vi. 11]: "Into the nut-garden was I gone down, to look about among the plants of the valley," etc. Why are scholars likened to a nut? It means to say that, as a nut, although soiled, what is within it is clean: so also, although a scholar has sinned, his study of the law is not rejected.

Rabba bar Shila met Elijah and said to him: What is the Holy One, blessed be He, doing? He answered him: He had uttered doctrine in the name of all other rabbis, but in the name of R. Meir He had not uttered. He said to him: Why? Because he learned doctrine from the mouth of A'her. He said to him again: Why? R. Meir found a pomegranate. He ate its inside and cast away its husk. He answered him: He is at this moment saying: Meir my son is speaking and says: At the time that men were afflicted, the Shekhina used the following language: My head and my arm are heavy on me (*i.e.*, I am sorry that the men I have created have to die for their sins). If the

[paragraph continues] Holy One, blessed be he, is thus grieved when the blood of wicked men is poured out, how much more when the blood of the righteous man is poured out.

Samuel found R. Jehudah when the latter was swinging upon the bolt of a door and weeping. He said to him: Is it a small thing that is written concerning the rabbis [Is. xxxiii. 18]: "Where is he who wrote down? where is he that weighed? where is he that counted the towers"? "Where is he that counted?" for they counted all the letters that are in the Books of the Law. "Where is he that weighed?" for they weighed the light and the heavy things which are in the Law. "Where is he that counted the towers?" for they taught three hundred doctrines concerning the tower which flies in the air. And R. Ami said: Three hundred questions were treated by Doeg and Ahithophel concerning the tower which flies in the air. And we learned, however, in a Mishna (Tract Sanhedrin, chap. xi. 1): Three kings and four private persons have no position in the world to come, and we--what will there be for us? He said to him: Oh, clever one, there was uncleanness in their hearts.

It was said about A'her: Greek melody ceased not from his mouth, as it was said of him (A'her), that at the time when he stood up to go out of the college many books of the Minim used to fall from his lap.

Nimus of Gardi [1] asked R. Meir: Does all wool which goes down to the dyeing-vat come up with the right color? He answered him: All which was clean on its mother's (sheep's) back does so come up; all which was not clean on its mother's back does not so come up.

It is said above: R. Aqiba went into the heavenly garden in peace and came down from it in peace. And it is to him that the scriptural passage may be applied [Song of Songs i. 4]: "Oh, draw me! after thee will we run." Nevertheless R. Aqiba was also in danger of being thrust away by the angels, but the Holy One, blessed be He, said to them: Leave this elder, for he is worthy to avail himself of My glory.

What kept R. Aqiba from being misled, as was A'her? The passage [1 Kings xix. 11, 12]: "But not in the wind was the Lord; and after the wind was an earthquake, but not in the

earthquake was the Lord; and after the earthquake was a fire, but not in the fire was the Lord; and after the fire was the sound of a soft whisper. And, behold, the Lord passed by" (*i.e.*, from the whisper he understood that there was the Shekhina).

The rabbis taught: Six things are said with regard to demons, three in which they are like the angels: they have wings, they float from one end of the world to the other, and they know what is about to be; and three in which they are like men: they eat and drink, they are fruitful and multiply, and they are mortal.

Six things are said with regard to men, three in which they are like angels: they have knowledge like the angels, they go with stature erect, and they speak in the holy language; and three like the beasts: they eat and drink like beasts, and they are fruitful and multiply, and they relieve nature.

"*Every one who does not respect the glory*," etc. What is meant by this? Said R. Joseph: This is the man who commits a transgression secretly. This is in accordance with R. Itz'hak, who said: Every one who committeth a transgression secretly is as though he jarred the feet of the Shekhina, as it is written [Is. lxvi. i]: "Thus hath said the Lord, The heaven is my throne and the

earth is my foot-stool." But this is not so, for R. Alea the Elder said (in Tract Moed Katan), that in such a case he may go to a place where he is not known? (as it will be explained in Moed Katan). This presents no difficulty. The former is the case of a man who has found a means of checking his evil nature; the other, of one who is not able to do so.

R. Jehudah in the name of R. Na'hmani, the interpreter of Resh Lakish, lectured: Every one who gazes upon three things, his eyes grow weak, viz.: upon the bow, and the prince, and the priests. Upon the bow, for it is written [Ezek. i. 28]: "Like the appearance of the bow that is in the cloud on the day of rain . . . this was the appearance of the likeness of the glory of the Lord." Upon the prince, for it is written [Num. xxvii. 20]: "And thou shalt put some of thy greatness upon him." 1 He that gazeth upon the priests--this has to do with the time that the Temple was in existence, when they stood upon their platform and blessed Israel in the ineffable name.

The same lectured again in the name of the same authority:

[paragraph continues] It is written [Mic. vii. 5]: "Trust ye not in a friend, put ye not confidence in a confidant." It means, if the evil imagination say to thee, Do thou sin and the Lord will forgive, be not persuaded, as it is written: "Trust ye not in an evil one"; 1 and "an evil one" is nothing but the evil imagination, as it is written [Gen. viii. 21]: "The imagination of a man's heart is evil"; and there is no "guide" but the Lord, as it is written [Jer. iii. 4]: "My father, the guide of my youth art thou." Perhaps one might say, Who witnesseth against me? The stones of a man's house and the timbers of his house, these witness against him, as it is written [Hab. ii. 11]: "For the stone will cry out of the wall, and the beam out of the wood (work) will answer it." The sages say: The soul of a man witnesseth against him, as it is written [Mic. vii. 5]: "From her that lieth in thy bosom guard the doors of thy mouth." What is this that lieth in a man's bosom? Say, it is the soul. R. Zerika said: The two angels which lead him, these witness against him, as it is written [Ps. xci. 11]: "For his angels will he give charge concerning thee, to guard thee on all thy ways." Others say: The limbs of one's body testify against him, as it is written [Is. xliii. 12]: "And ye are my witness, saith the Lord, and I am God."

MISHNA: Jose b. Joezer says that one must not lay on his hand (on a sacrifice on a biblical festival), but Joseph b. Johanan says that one may. Joshua b. P'ra'hia says that one must not lay it, but Mathai the Arbelite says that one may. Jebudah b. Tabbai says that one must not, but Simeon b. Sheta'h says he should. Sh'maia says he must, but Abtalian says he must not. Hillel and Mena'hem. did not differ. Mena'hem went out (left the Sanhedrin); Shammai entered it. Shammai says one must not; Hillel says one may. The first of the several pairs were princes, the second to them were chiefs of the court.

GEMARA: The rabbis taught: In the three former pairs, which say that a man is not to lay, and in the two latter pairs, which say that a man is to lay, the first were princes and the second chiefs of the court. So said R. Meir. But the sages say: Jehudah b. Tabbai was a chief of the court and Simeon b. Sheta'h was a prince.

"*Mena'hem went out*," etc. Whither did he go out? Said Rabha: He went out from the service of the king. We have

learned in a Boraitha: Mena'hem went out from the service of the king, and there went out with him eighty pairs of disciples clothed in Syrian robes. Said R. Shaman bar Abba in the name of R. Johanan: Let a rabbinical decree concerning the Sabbath not be a light thing in thine eyes, for the laying on of the hand is only a rabbinical prohibition, and the greatest men of the different generations were divided upon this matter. Is this not self-evident? He comes to teach us that even a rabbinical prohibition which is seemingly contrary to a positive command of the Bible must also not be light in thine eyes. But this is also self-evident from the teachings of our Mishna? This is needed to object to those who say that they differ not as to the rabbinical prohibition, but as to the laying on of the hand itself, because they maintain that the laying on of the hand is necessary only in case of a voluntary peace-offering, but not in that of an obligatory peace-offering. 1

Said Rami bar Hama: Infer from this that the laying on of the hands must be with all one's strength, because if we would imagine that all the strength is not necessary, what labor is it or what is he doing to the animal that the rabbis prohibited it on the festival?

An objection was raised: We have learned elsewhere It is written [Lev. i. 2-4]: "Speak unto the children of Israel . . . and he shall lay his hand." *He*--the males, but not the females of Israel. R. Jose and R. Simeon, however, said that the females of Israel, if they wish, they may lay on their hands (although it is not obligatory for them); and R. Jose added to this: My father Elazar told me that it happened once that we had a calf of peace-offering, and we brought it to the department of the women, and the latter laid their hands on it. It was not because the laying on of the hands belongs to women, but so as to gratify them. Now, if you think that the laying on of the hand must be with all one's strength, would it be right, in order to gratify the women, to allow them to do labor with the holy things? Infer, therefore, from this that it is not necessary to use all the strength. Nay, maybe it *is* necessary, but in that case it was told to the women to lay on their hands lightly. If so, why does R. Jose say: Not because the laying on of the hands belongs to women, etc. Let him say, because it was not considered

laying on at all? Said R. Ami: he meant both, firstly, because it was not considered laying on the hands at all; and, secondly, in order to gratify the women.

MISHNA: The House of Shammai say: A peace-offering may be brought without laying the hands on them, but not burnt-offerings. But the House of Hillel say: Both peace-offerings and burnt-offerings may be brought, and also lay the hands on them.

In the case of Pentecost, which falls upon the eve of a Sabbath, the House of Shammai say: The day for sacrificing is after the Sabbath. But the House of Hillel say: There is no day for sacrificing after the Sabbath. Both, however, admit that if it fall upon a Sabbath the day for sacrificing is the day after the Sabbath. And on that day (which is called the day of sacrificing) a high-priest is not to clothe himself in his costly garments, unless in case of a mourning or of a fast. The prohibition was in order not to confirm the words of those who say, Pentecost is after the Sabbath (only).

GEMARA: (The Gemara begins with the saying of R. Elazar in the name of R. Oshiyah, that the Pentecost-offering is transferable to all the six succeeding days, and repeats here all the statement contained in Tract Rosh Hashana, p. 6, lines 15-29.)

"*In the case of Pentecost which falls on the eve of a Sabbath*," etc. Does that not mean that there is no day at all for sacrificing? Nay, it means that a substituted day is necessary for this. But what does it come to teach us--that it shall be sacrificed on the very day of the festival? Was this not discussed already in the beginning of our Mishna? It is needed. For if the statement would be in the latter paragraph only, one might say that the School of Shammai hold so because it can be done on the morrow, but if it fall on the eve of a Sabbath, when it cannot be done on the morrow, they agree with the School of Hillel; and if the statement would be in the first paragraph only, one might say that the School of Hillel allow it to be sacrificed on the very day of the festival because it cannot be done on the morrow, but when the Pentecost falls on the Sabbath day, they agree with the House of Shammai; therefore both statements are needed. (An objection was raised:) Come and hear: He who has not kept the feast for the seven days of the Passover, and the eight days of the Feast of Tabernacles, and the first day of Pentecost, he cannot afterwards keep the

feast. Did this not include also the day of Pentecost, that it has no compensation? (*i.e.*, if not sacrificed on the very festival, it cannot be done soon any other day). Nay, it means the last day of compensation.

The disciples of R. Eliezer b. Jacob taught It is written [Lev. xxiii. 21, 22]: "And ye shall proclaim." "And when ye reap." What is the feast in which thou makest proclamation and reapest? Thou must say, it is the Feast of Pentecost. Now, let us see. When is it? If I am to say on the holiday itself, how is reaping lawful on a holiday? We must then say, it means the completion days. Resh Lakish, however, said: It is inferred from the following passage [Ex. xxiii. 16]: "And the feast of the harvest." What is the feast on which thou feastest and reapest? Thou must say, it is the Pentecost. When is it? If I am to say, on the holiday itself, how is reaping lawful on a holiday? We must then say, it means the completion days. Said R. Johanan: According to thee, the Feast of Ingathering. What is the feast in which there is an ingathering? Thou must then say, it is the Feast of Tabernacles. When is it? Shall I say, on the holiday itself? How is work lawful on a holiday? And if you will say, that it means on one of the middle days? But even then is work allowed on those days? Therefore we must say, that it means the feast that falls during the time of the gathering in. Say, also, this is the case here.

We see from this that both are of the opinion that on the middle days the doing of work is forbidden. Whence do we deduce this? From the following Boraitha: It is written [Lev. xxiii. 8]: "No servile work shall ye do." That means, that on the middle days the doing of work is forbidden. So said R. Jose the Galilean. R. Aqiba says: It was not necessary, because it is written [ibid. 4]: "These are the feasts of the Lord," etc. With reference to what is the Scripture speaking? If to the first day, it has been already called a Sabbath day; if to the seventh day, it has also been already called a Sabbath day. We must therefore say, it refers to the middle days, to teach that doing of work is forbidden thereon.

There is another Boraitha: It is written [Deut. xvi. 8]: "Six days shalt thou eat unleavened bread, and on the seventh day shall be a solemn assembly to the Lord thy God: thou shalt do no work."

As on the seventh day work is prohibited, so also on the six days. But one might say, as on the seventh day no work at all is to be done, so also on the six days; therefore it is

written [ibid.]: "And on the seventh day shall be a solemn assembly . . . thou shalt not work," thus indicating that on the seventh day no work at all shall be done, but on the six days there is not a prohibition from *all* work. Consequently, the Scripture has communicated only to the sages that they can decree on which days work is and on which work is not allowed, and what labor may and what labor may not be done, etc.

"*But it is allowed in case of a mourning or of a fast after the Sabbath*." But have we not learned in a Boraitha: It happened that Alexis died in Luda, and all Israel assembled to mourn him, and R. Tarphon had not allowed them because it was the festival? Now, if it was the festival itself, how did they come to assemble at all? We must therefore say, it was on the day of sacrificing, and hence we see even on those days it is not allowed to mourn? The Mishna refers to a case when the Pentecost falls on a Sabbath. And the case of Alexis was when it fell on the first day of the week.

MISHNA: One may wash his hands for common food and for second-tithes and for heave-offerings, but for hallowed things they must be bathed legally. For the sin-offering, if one's hands be defiled, his whole body is defiled.

If he have dipped for common food, he has credit as clean for common food, but is forbidden tithe; if for tithe, he has credit for tithe, but not for heave-offering; if for heave-offering, he has credit for heave-offering, but not sacred things; if for sacred things, he has credit for sacred things, but not sin-offering. If for a weightier thing (more rigorous), he is free for a lighter thing (lenient). If he have dipped without any intention for cleanness, it is as though he had not dipped.

The garments of a common person are defiled by pressure (*i.e.*, are looked upon as affected by uncleanness arising from pressure) for Pharisees; the garments of Pharisees are defiled by pressure for those that eat heave-offering; the garments of those that eat heave-offering are defiled by pressure for those that partake of sacred things; the garments of those that partake of sacred things are defiled by pressure for those that partake of sin-offering. Jose b. Joezer was the most pious among the priests, and yet his apron was defiled by pressure for those that partake of sacred things. Johanan b. Gudgodah was one who ate his ordinary food all his days with observance of the laws of purification which belong to sacred things, and yet his apron was defiled by pressure for those that partake of sin-offering.

GEMARA: Is, then, for common food and tithes, washing of hands needed? (Have we not learned elsewhere that it is not needed?) This presents no difficulty: The one has to do with bread, the other with fruit. For R. Na'hman said: Every one who washes his hands for fruit is overscrupulous and affected.

"*He that dips for common food and has credit for common food*," etc. According to whom is our Mishna? Shall we say it is according to the rabbis, for they make a distinction between common

food and tithes? According to whom, then, would be the latter part of the Mishna: The garments of a common person are defiled by pressure for Pharisees; the garments of Pharisees are defiled by pressure for those that eat heave-offering? which is certainly in accordance with R. Meir, who says, common food and tithes are exactly the same? Then this conclusion would be that the former part is according to the rabbis, and the latter part according to R. Meir? Yea, it is so. R. A'ha bar Ada, however, teaches in the latter part five orders, and establishes it all according to the rabbis.

Footnotes

23:1 All these are deduced from passages. See foot-note further on.

24:1 There are here adduced biblical passages for every statement, but we omitted them, as they are not in point.

30:1 The Hebrew term is •••••, and is explained to have the same meaning as •••••, a deaf man.

30:2 The Hebrew terms are •••• •••, the literal meaning of which is "the instructed whisperer," but we give in the text Loesser's translation.

30:3 The Hebrew term is •••••, which means also "to shake off, to be deprived," as in (Judges xvi. 20) •••••••••.

30:4 The Hebrew term is ••••••• and is interpreted here as derived from the Aramaic •••, a fox; *i. e.*, men who are shrewd as a fox, but deprived of any good qualifications.

32:1 The Hebrew term is *Pardes*, meaning "a garden"; the commentaries explain it to mean "heavenly." Tosaphoth states: "They did not go up literally, but appeared to them as if they went up." See Streane's "Hagigah," p. 83.

32:2 In the Palestinian Talmud it reads: Ben Zoma gazed and died, Ben Azzai gazed and was injured. This seems to be the more correct, as can be seen many other places in the Babylonian Talmud and Tosephtha. See our "Eben Harosha," at the end.

32:3 These terms are used because he speaks of a garden; *i.e.*, in some way made bad use of his learning.

33:1 We have omitted here a question put to Ben Zoma, for the reason that the same was inserted in the Talmud not by the Talmudists. See our "Eben Sapir," p. 50.

34:1 The Hebrew term is "Ul'rosha" ("to the wicked"), and because of the stammering it sounded as "Ul'Elisha," which was the true name of ••• this latter meaning "another"--*i.e.*, not

Elisha, because it was not believed that the great Tana Elisha should have deserted the true teachings.

36:1 Nimus of Gardi was a Gentile, and it is stated of him in Midrash that he was one of the greatest men that ever lived among the nations. The modern writers differ very much as to who he was, but we showed in our "Saneiger," p. 193, that he was one of the judges of the Supreme Criminal Courts of Gardum.

37:1 Such hagadical statements must not be taken literally, merely in their allegorical sense. Some of them we will explain in our introduction to the Hagadah.

38:1 The Hebrew term is ••••, which is here read as •••, "evil."

39:1 What is a voluntary and what is an obligatory peace-offering will be explained in Tract Mena'hoth.

Next: Chapter III: In What Cases Sacred Things Are More Rigorous Than Heave-Offerings, And Vice Versa

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CHAPTER III.

REGULATIONS REGARDING IN WHAT CASES SACRED THINGS ARE MORE RIGOROUS THAN HEAVE-OFFERINGS, AND VICE VERSA.

MISHNA: More rigorous rules hold in sacred things than in a heave-offering, for we may dip vessels in the midst of vessels for a heave-offering, but not for sacred things. The outside and the inside and the place for laying hold are reckoned as distinct in the heave-offering, but not in the sacred things. One who takes up that which has been made unclean by pressure, may offer the heave-offering, but not the sacred things. The garments of those that eat the heave-offering are unclean through pressure in regard to sacred things. The manner of the heave-offering is not as the manner of the sacred things. For in the case of sacred things, one loosens a knot and wipes and dips and afterwards ties up again, but in the case of a heave-offering he ties up and afterwards dips.

Vessels finished in purity need dipping for sacred things, but not for a heave-offering. The vessel includes what is within it for sacred things, but not for heave-offering.

The unclean in the fourth degree in the case for sacred things is disqualified, but in the third degree in the case of heave-offering.

Though one of his hands be unclean in the case of heave offering, its fellow is clean; in the case of sacred things, how ever, both are dipped, for the hand makes its fellow unclean in the case of hallowed things, but not in the case of heave-offering. One may eat dry food with ordinary (not ceremonially clean) hands in the case of heave-offering, but not in the case of sacred things.

A mourner, before the burial of the dead (who has not defiled himself yet on the dead), and one who lacks atonement, need dipping in a legal bath for sacred things, but not for heave-offering.

GEMARA: "*In sacred things*." Why are sacred things more rigorous? Said R. Aila: Because the weight of the inside vessel intervenes. Shall we assume, that as the reason for the

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statement in the latter part of the Mishna is because of intervention, the first part has another reason? (For if both have one and the same reason, why state both? One would suffice.) Nay, both the earlier and the later cases are because of intervention, and still it was necessary that they should be separately mentioned, for if he had taught us the first only, one should say, *this* is the reason for the rigorousness of sacred things, viz.: because of the vessel's weight, which actually exists. But in the latter case, where the vessel's weight is not an element, one should say, in regard to sacred things, that it is not considered an intervention; and if he had taught us

the latter only, one should say, the reason why it is not allowed for sacred things is because a knot in water is drawn tighter, while in the former case the water makes the vessel to swim, and so the intervention is not considered. Thus it was necessary that they should be separately mentioned. R. Aila is in accordance with his theory elsewhere, who said in the name of R. Hanina bar Papa: Ten degrees of superior excellence are taught here. The first five refer alike to sacred things, and to ordinary things which are treated with the observance of the law of purification. belonging to sacred things; the latter refer to sacred things only. Why so? Because the former five could constitute a biblical defilement (when he dips one vessel in another vessel, and an intervention would be discovered). The rabbis have ordained that they apply to both. The later one, however, in which there can be no biblical defilement, the rabbis did not care to ordain.

Rabha, however, said: Since the later portion of the Mishna is on account of intervention, the former is not on that account, but because it is a precautionary measure, in order that needles and pipes should not be dipped in a vessel, the mouth of which is not of the size of the pipe of a wine-skin bottle. (This will be explained in Mikwooth, VI., P And Rabha holds in this case, as R. Na'hman said elsewhere in the name of Rabba bar Abuhu, viz.: Eleven features of superior excellence are taught here. The first six refer alike to sacred things and to ordinary things which are treated with the observance of the laws of purification belonging to sacred things. The latter ones refer to sacred things only. What real difference is there between Rabba and R. Aila? It is this: In the case of a basket and a wine-strainer which are filled with vessels and dipped. According to the one who says, the prohibition is because of intervention, there is an intervention; but according to the one who says, that it is a

precautionary measure, lest haply needles and pipes should be dipped in a vessel, the mouth of which is not of the size of the pipe of a wine-skin bottle, there is no such thing in a basket and a wine-strainer.

"*The outsides and the insides*," etc. What is meant by this? As we have learned in a Mishna [Kelim, XXV., 6]: In the case of a vessel the outside of which is defiled by beverages, its outside is defiled, but its inside, its rim, and its short handles, and its long handles are clean; but if its inside is defiled, it is all defiled.

"*And the place for laying hold*," etc. What is meant by Beth Hazibtah? Said R. Jehudah in the name of Samuel: The part by which he reaches it, as it is written [Ruth ii. 14]: "And he reached her parched corn" (Vaitzboth). R. Asi in the name of R. Johanan said: It means that part of the dish of which fastidious persons lay hold.

"*One that takes up that which has been made unclean*," etc. Why not sacred things? Because of the following occurrence: R. Jehudah in the name of R. Samuel said: It happened to a certain man, who was carrying a cask of wine from one place to another, and the thong of his sandal came off, and he took it up and placed it on the mouth of the cask, and it fell into the inside of the cask, and it was made unclean. And thereupon it was ordained: One that taketh up that which has been made unclean by pressure may offer the heave-offering, but not the sacred things. If so, why not also the heave-offering? This is in accordance with R. Hananiah b. Aqabia, who said: This restriction was made only as regards Jordan or a ship, and in accordance with the matter that occurred. What was that? It was that which R. Jehudah said in the name of Rabh: It happened with a man who was carrying the sprinkling water and the ashes of the red cow over

Jordan in a ship, and a piece of a dead body as large as an olive was found fixed in the bottom of the ship; thereupon it was ordained that such a thing should not happen again.

"*Vessels finished in purity*," etc. Finished by whom? If a learned man has finished them, why should they be dipped? If a learned man has finished them, how is it that the Mishna calls them "finished in purity"? Said Rabba bar Shila in the name of R. Mothnah quoting Samuel: The case is, that a learned man has finished, yet because of a drop of spittle of a common man which may have fallen upon it, it is treated as unclean. "May

have fallen upon it" when? Should we assume, before it is completed, then it is not yet a vessel; if after, then he takes good care of it? The case may be, before it is completed, yet perhaps at the moment it was made, it was still liquid (and it may be defiled).

"*The vessel includes what is within*," etc. Whence do we know that? Said R. Hanin: It is written [Num. vii. 14, etc]: "One spoon of ten shekels of gold, full of incense." The Scripture makes everything that is in the spoon one. R. Kahana objected: We have learned, that R. Aqiba added to the teaching, which immediately follows, the flour and the incense, and the frankincense and the coals, for if the person, in the course of purification, touch the extremity of it, he disqualifies the whole. Now, this addition of R. Aqiba is certainly rabbinical, as the first part of the Mishna states (Edeoth, viii., 1): R. Simeon b. Bathyra bore testimony with reference to the ashes of the red cow, that if an unclean person touch the extremity of them, he makes all of them unclean; and immediately he says, that R. Aqiba added this? (And R. Hanin says, it is rabbinical.) Said Resh Lakish in the name of Bar Kapara: The addition was only necessary for the rest of the meat-offering, For, biblically, what stands in need of a vessel, the vessel includes it; what does not stand in need of a vessel, the vessel does not include it; but the rabbis went further and ordained that, although a thing does not necessarily belong to a vessel, the vessel, nevertheless, includes it.

"*The unclean in the fourth degree*," etc. We have learned in a Boraitha: R. Jose said: Whence do we deduce the case of the unclean in the fourth degree, that in the matter of sacred things he is disqualified? By an *a fortiori* argument. For he who has entered on the last stage of his atonement, while he is free as regards heave-offering, he is disqualified as regards sacred things, so much the more when one is unclean in the third degree who defiles heave-offering that he should become disqualified as regards sacred things if unclean in the fourth degree. We have learned, however, that he who is unclean in the third degree is disqualified as regards sacred things, biblically, and that he who is in the fourth degree--by an *a fortiori* argument, namely: It is written [Lev. vii. 9]: "And the flesh that toucheth any unclean thing shall not be eaten." Are we not here treating of the touching of a thing of secondary uncleanness? And nevertheless the Scripture says, it shall not be

eaten? That which is unclean in the fourth degree is proved to be disqualified by the *a fortiori* argument stated above.

"*And though one of his hands be unclean*." R. Shezbi said: It is only in the case of contact, but

not otherwise. Abayi objected: We have learned: A wiped hand renders its fellow unclean so far as to make unclean for sacred things, but not for heave-offering. Such is the dictum of Rabbi. R. Jose b. R. Jehudah says: This is the case so far as to disqualify, but not to render unclean. It is correct if the Mishna treats of a case where it did not come in contact, and therefore the importance of "wiped" hand? But if the case is only when there is contact, but not otherwise, where is the importance of "wiped" hand? It was taught also that Resh Lakish said the Mishna refers only to his own hand, but not to the hand of his companion (R. Johanan, however, says both his own hand and his companion I s hand), with the same hand he may only disqualify, but not render unclean. Whence did he learn this? From the fact that it has been taught in the latter portion of the Mishna. For the hand makes its fellow unclean in the case of sacred things, but not in the case of heave-offering. Why the repetition? Was it not taught in the preceding clauses of the same Mishna? We must therefore say, it comes to teach us that the hand of the companion is included. And Resh Lakish himself retracted his decision, as R. Jonah said in the name of R. Ami that Resh Lakish said, whether it be his own hand, or the hand of his companion, with that same hand he may disqualify, but not render unclean.

"*We may eat dry food*", etc. We have learned in a Boraitha: R. Hanina b. Antigonus said: Does such a question as to whether a thing be dry or wet exist as regards sacred things? Does not love for the sacred things make men cautious in regard to defilement? The Mishna treats of a case, that a man's companion put a piece of the sacred things into his mouth, or he put it into his own mouth with a spindle or with a skewer, or attempted to eat along with these an onion or garlic taken from unconsecrated things. As to sacred things the rabbis ordained so, but as to heave-offering they did not.

"*The mourner and he who lacks atonement*." Why so? Because they were under restriction, the sages ordained that they shall dip.

MISHNA: More rigorous rules, on the other hand, hold in a heave-offering, for in Judea people are believed with regard to,

purity of wine and oil all the days of the year, but at the time of the vintage and the oil-pressing, with regard to heave-offering also.

When the vintage and the oil-pressing are over, and a cask of wine for heave-offering was brought, it must not be received, but it may be left for the next vintage. But if he say to him, I have separated and put into the midst of it a fourth part of something consecrated for sacred things, he is believed. In the case of jugs of wine and jugs of oil which are mixed, men are believed with regard to them at the time of vintage and oil-pressing and for seventy days before the vintage.

GEMARA: In Judea, yes; but in Galilea, no? Why so? Said Resh Lakish: Because there is a strip of the Gentiles making a separation between them. But let him bring it in a box, a chest, or in a balloon? This is in accordance with Rabbi, who said: A tent projected is not a real tent. But let one bring it in an earthenware vessel tied round with a line of thread? Said R. Eliezer: We have learned in a Boraitha: Sacred things are not preserved from uncleanness by a line of thread.

"*But at the time of vintage*," etc. There is a contradiction from the following Boraitha: He who finishes his olives shall leave aside one box and place it before the eyes of the priest (in order that he shall examine it as to whether they are not ripe yet, and the priest shall place them in cleanness when they become ripe. Hence we see that even at that time they were not believed?) Said R. Nahman: This presents no difficulty. The one is the case of those early in season, the other of those late in season. Said R. Ada bar Ahba to him: For instance, things like those belonging to the house of thy father. R. Joseph, however, said, the Mishna (in Taaroth) refers to Galilea.

"*When the vintage and the oil-pressing are over,*" etc. The schoolmen questioned of R. Shesheth: Suppose that it is over, and yet he receives it, what about the law that he shall leave it for the next vintage? He answered them: This we have already learned in the following Mishna (Dmai, VI., i): A learned man and a common person who are their father's joint heirs. The common person may say to him: Take thou the wheat that is in such a place, and I will take the wheat that is in such a place; take thou the wine that is in such a place, and I will take the wine that is in such a place. But he may not say to him: Take thou the liquid and I will take the dry; take thou the wheat and I will take the barley. And in regard to this we have

learned: That same learned man burns the liquid and leaves the dry. Why? Let him leave it for the next vintage? It may be one of the things that have no vintage. But let him leave it for one of the feasts? It may be one of the things which will not keep till the feast.

"*But if he say, I have separated for sacred things, he is believed*." We have learned in a Mishna (Choloth, XVIII., 4): Both the School of Shammai and the School of Hillel agree that we are to investigate a field in which a person is buried for those who are to bring the paschal lamb, but not for those who desire to eat heave-offering. What is the meaning of investigate? Said R. Jehudah in the name of Samuel: A man blows upon the unclean land as he walks along. [1] And R. Hyya bar Abha in the name of Ula said: An unclean place of this sort that is trodden is clean for those who bring their paschal lambs; as it is a case of Kareth, they did not insist upon their decisions, but for those who desired to eat heave-offering, they did insist on their decisions, as it is a case of death penalty (by Heaven).

"*In the case of vessels of wine,*" etc. There is a Boraitha: They are not believed, either about the cans or about the heave-offering. Cans belonging to what? If they belong to sacred things, then if he is believed about the sacred things, he is believed also about their cans? If the cans belonging to heave-offerings are meant, then it is self-evident. About heave-offering he is not believed--shall he be believed about cans that belong to it? It is a case of sacred cans which are empty, and it is during the remaining days of the year. And the same is the case of those full of heave-offering, and at the time of the vintage they are believed. (And although no precautionary measure was ordained as to their heave-offering, in order not to cause any loss to the priests, still they were not believed as to the cans, and the priests receive from them the heave-offering with the cans, but place the heave-offering in other cans of their own.)

"*For seventy days before the vintage*." Abayi said: Infer from this that the law is, that the farmer shall go up to dip the casks seventy days before the time of the presses.

MISHNA: From Modiim and inwards men are believed with

regard to earthenware vessels; from Modiim and outwards they are not believed. How so? The potter who is selling the pots goes inwards from Modiim. That is the potter, and those are the pots, and those are the buyers. He is believed. If he goes out he is not believed.

GEMARA: We have learned in a Boraitha: The place of Modiim itself is sometimes considered within and sometimes without. How so? When the potter goes out, and the merchant goes in, it is considered within. Both go in, or both go out, it is considered without. Said Abayi: We have learned the same in our Mishna, viz.: The potter who sells the pots and goes *inwards* from Modiim. What about Modiim itself? Is it not believed? Then how is the latter part: When he goes out he is not believed? From this we may infer that Modiim. itself is believed. Hence the case is as stated in the Boraitha. Infer therefrom.

MISHNA: The tax collectors who have gone into the midst of a house, and so too the thieves that have restored the vessels, are believed when they say: We have not touched. And in Jerusalem they are believed as regards sacred things, and at the time of a feast as regards heave-offering also.

GEMARA. There is a contradiction from the following Boraitha: In the case of the tax collectors who have gone into the midst of the house, the whole house is unclean? There is no difficulty. The one is when there is a Gentile with them; the other is when there is not a Gentile with them. For there is another Mishna: If there is a Gentile with them, they are believed when they say, We did not enter; but they are not believed when they say, We entered, but we did not touch. And if there is a Gentile with them, what of it? R. Johanan and R. Elazar: One says that they fear that the Gentile should not punish them, and the other says that they fear that the stranger should not give them away to the government. What is the difference between them? A Gentile who is not of importance.

"*And so too the thieves,*" etc. There is a contradiction from the following Boraitha: In the case of the thieves who have gone into the midst of the house, only the place where the thieves' feet trod is unclean. Said R. Pinhas in the name of Rabh: They are to be believed only in the case they have repented. It seems that our Mishna intended the same thing, for the statement is: Who have restored the vessels. Infer from this.

"*And in Jerusalem they are believed,*" etc. We have learned in a Boraitha: They are believed as regards large earthen vessels for sacrifice. And the reason is, because they do not make ovens in Jerusalem.

"*And at the time of the feast,*" etc. Whence is this deduced? Said R. Joshua b. Levi: Because it is written [Judg. xx. 11]: "So all the men of Israel were gathered against the city, associated together as one man." The Scripture makes them all equal.

MISHNA: One that opens his cask, and one that commences his dough at the time of a festival,

R. Jehudah says: He shall finish it, but the sages say he shall not.

GEMARA: R. Ami and R. Itz'hak of Naph'ha sat at the portico of the latter. One began and said: According to the sages, may he keep it for another festival? He answered: Every one's hand has been handling it, and dost thou say, he shall keep it for another festival? He said to him: But hitherto as well, has not every one's hand been handling it? He rejoined: What comparison is that? Hitherto the uncleanness of a common person in a festival, the Law makes him clean, but now it is a case of uncleanness.

MISHNA: As soon as the festival is over, they make them pass on to the cleansing of the court. But if the festival is over on a Friday, they do not make them pass on, on account of the honor of the Sabbath. R. Jehudah said: Also not on Thursday, for the priests are not at leisure.

GEMARA: And the Boraitha adds: That the priests are not at leisure because of the removing of the fat.

MISHNA: How is that made out, that they make them pass on to the cleaning of the court? They dip the vessels which were in the Temple, and say to them: Be ye clean that ye touch not the table. All the vessels that were in the Temple had second and third sets, so that if the first became unclean they might bring the second instead of them. All the vessels which were in the Temple were subject to dipping, except the altar of gold and the altar of bronze, because they were like the floor. Such is the dictum of R. Eliezer. But the sages say, because they were overlaid.

GEMARA: We have learned in a Boraitha: Be ye clean lest ye touch the table or the candelabrum. Why did our Mishna not mention the candelabrum? Because the table is called in the Scripture perpetual; the candelabrum is not perpetual.

[paragraph continues] Resh Lakish said: It is written [Lev. xxiv. 6]: "Upon the pure table." From this it may be inferred that it may be defiled. Why? Is it not a vessel of wood made to rest, and as such is not subject to defilement? Infer from this that the table was raised up and exhibited the shewbread on it to the pilgrims, and they were told: See how beloved you are before the Lord, that the shewbreads are as warm now as they were when placed on the table. For R. Joshua b. Levi said: A great miracle was wrought in the shewbread. As its placing was miraculous so was its end, for it is written [1 Sam. xxi. 7]: "So as to put down hot bread on the day when it was taken away." It is written [Ezek. xli. 22]: "The latter was of wood, three cubits high, and its length was two cubits, and its corners and its top-piece and its walls were of wood, and he spoke unto me: This is the table that is before the Lord." He began with "altar" and he ended with "table." R. Johanan and Resh Lakish both say: At the time that the Temple was set up an *altar* made atonement for a man; now a man's *table* makes atonement for him.

"*All the vessels that were in the Temple had second and third sets*," etc. The altar of bronze, because it is written [Ex. xx. 21]: "An altar of earth shalt thou make unto me." The altar of gold, because it is written [Num. iii. 31]: "The candlestick and the altars." The altars are placed in comparison one with the other.

"*Because they are overlaid*." On the contrary, since they are overlaid they may become unclean. Said the rabbis to R. Eliezer: Why do you think them capable of defilement, because they are covered over? Their covering is of no avail in respect of them.

R. Abuhu in the name of R. Eliezer said: As to the scholars, the flame of Gehenna has no power over them. For this is shown by an *a fortiori* argument drawn from the salamander. As only the creature of fire, and still he that anoints himself with its blood, flame has no power over him, how much more then that the flames have no power over the scholars, whose whole body is fire, as it is written [Jer. xxiii. 29]: "Is not thus my word like fire? saith the Lord." Resh Lakish said the flame of Gehenna has no power over the transgressors of Israel, as is shown by an *a fortiori* argument from the altar of gold. For the altar of gold, upon which is only about the thickness of a denarius of gold, it lasted so many years and was not affected by fire; how

much less can flame have power over the transgressors of Israel, who are full of the commandments as a pomegranate is full of seeds, as it is written [Song of Songs iv. 3]: "Like the half of a pomegranate is the upper part of thy cheek," etc. Read not "the upper part of thy cheek," but "the vain fellows that are in thee."

END OF TRACT HAGIGA.

Footnotes

50:1 *I.e.*, one who is on the way, bringing the paschal lamb, and comes across a field in which a human body was buried, he may examine it by blowing as he walks, along; and if there is a bone of the size of a barley, and he notices it and avoids to walk over it, he does not contract uncleanness, as it does not communicate uncleanness unless by contact.

The Babylonian Talmud

Translated by
MICHAEL L. RODKINSON

Book 8   Section Jurisprudence (Damages)

BOSTON, THE TALMUD SOCIETY

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Tract Sanhedrin

NEW EDITION

OF THE

BABYLONIAN TALMUD

Original Text, Edited, Corrected, Formulated, and Translated into English

by

MICHAEL L. RODKINSON

SECTION JURISPRUDENCE (DAMAGES)

TRACT SANHEDRIN

Volumes VII. and VIII. (XV. and XVI.)

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EXPLANATORY REMARKS

In our translation we adopted these principles:

1. *Tenan* of the original--We have learned in a Mishna; *Tania*--We have learned in a Boraitha; *Itemar*--It was taught.

2. Questions are indicated by the interrogation point, and are immediately followed by the answers, without being so marked.

3. When in the original there occur two statements separated by the phrase, *Lishna achrena* or *Waïbayith Aena* or *Ikha d'amri* (literally. "otherwise interpreted"), we translate only the second.

4. As the pages of the original are indicated in our new Hebrew edition, it is not deemed necessary to mark them in the English edition, this being only a translation from the latter.

5. Words or passages enclosed in round parentheses denote the explanation rendered by Rashi to the foregoing sentence or word. Square parentheses contain commentaries by authorities of the last period of construction of the Gemara.

TO HIM WHO RANKS AMONG THE FIRST PHILANTHROPISTS OF OUR CO-RELIGIONISTS

ABRAHAM ABRAHAM, ESQ.

IN RECOGNITION OF HIS GENEROUS DEEDS TOWARD PROMOTING LITERATURE IN GENERAL AND JUDAISM IN PARTICULAR, THIS BOOK IS MOST RESPECTFULLY DEDICATED BY THE TRANSLATOR

MICHAEL L. RODKINSON

NEW YORK

IN THE MONTH OF ELUL,

5662 (SEPTEMBER 18TH, 1902)

Next: A Word to the Reader

A WORD TO THE READER.

MANY books have been written by the scientists of the last century, and many lengthy articles have appeared in the various periodicals, concerning the Jewish high court, and this tract, which, if extracts were given, would make an entire bulky volume in itself. However, we deem it best to give the reader the information where these are to be found. The time during which the Sanhedrin were established is the main topic of their discussions. Zunz, for instance, gives the time from King Simeon of the Maccabees. Jost states that it was from the period of Hyrcan. And an anonymous writer in "Israelitische Annalen," Vol. I., pp. 108-134, maintains that they were established at an exceedingly earlier date, and that the Greek name "Sanhedrin" was changed during the time of the second Temple. At all events, Schürer, in his "Jüdische Geschichte," wrote a lengthy article on this subject, in Vol II., from p. 188 to 240 (where there is to be found a bibliography of the subject), concluding with his opinion that the *high court* began at an earlier time. Z. Frankel, too, in his article, "Der gerichtliche Beweis," Berlin, 1848, claims that the establishment of the jury in the entire civilized world was taken from the Sanhedrin. All this was written in Germany. An English book by Rabbi Mendelsohn also treats upon this topic. We, too, will have something to say concerning this in our forthcoming "History of the Talmud." We are inclined, in many respects, however, to accept the opinion of Reifmann, given in his Hebrew book, "Sanhedrin," Warsaw, 1888. He says that courts were even established in the days of Noah, the judges of which were Shem, Abraham, Isaac, and Amram, continuing until Moses. He, in turn, established a court of seventy judges, and from that time the Supreme High Court was of that number (seventy-one, including Moses), and thereafter supreme courts of twenty-three, and courts of three, were established at all times, and wherever the Jews resided; the sages of the second Temple naming these courts "great" and "small" Sanhedrin. Reifmann's reasons are gathered from the post-biblical literature, and are based upon the Bible. According to him, the three judges had to decide civil cases only, the twenty-three, criminals

and capital punishments, and the seventy-one were a political body, who were to decide also the great events; as, for instance, an entire tribe, or the princes and heads of tribes. We, however, would say that the court of three had also to decide criminal cases to which capital punishment did not apply. So it seems to us, from this tract, p. 212 of the Talmud, that a stubborn and rebellious son was punished with stripes by a court of three, before being finally sentenced to death by the court of twenty-three.

Reifmann also quotes from "Midrash Aggada," that before prophesying a prophet was obliged to get permission from the Sanhedrin, who previously tried him whether he was a true prophet or not We may here add that this contradicts the Talmud, for it says that to recognize a true prophet was by demanding a sign, p. 260, and if the prophet would have been obliged to get the permission of the Sanhedrin, this would certainly be mentioned in the Talmud instead.

This is as much as we have to say in regard to the time and name, and that the Sanhedrin ceased

about forty years previous to the destruction of the Temple. At the same time we would call the attention of the readers to the fact that this tract distinguishes itself from all others in Halakha as well as in Haggada. Aside from the many strange explanations of the verses of Scripture, which are not used in other extracts, it says plainly that there are numerous laws written in the Pentateuch which have never occurred, and never will occur, but that they were written merely for study. The Haggada also distinguishes in taking the power to judge upon the Bible personages if they are to have a share in the world to come, and also in criticism of their acts, even of the most holy of them. This is self-evident that the later commentaries, and especially the cabbalists, interpreted the Haggada after their ways. We, however, have translated it almost literally, with an effort to make it in some respects intelligible to the general reader, and have also added footnotes, where we deemed it necessary. And we may say that the real student will find much pleasure if he will devote his special attention to this tract.

For this purpose we have made from this celebrated tract a double volume, as we deem it will please the readers and the students, and will also equalize the size of the volumes.

M. L. R.

September 16, 1902.

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Next: Synopsis of Subjects

SYNOPSIS OF SUBJECTS

OF

TRACT SANHEDRIN (SUPREME COUNCIL).

CHAPTER I.

MISHNA *I*. To which cases judges are needed to decide, and to which commoners; which three, five, twenty-three, and seventy-one. The Great Sanhedrin consisted of seventy-one, and the Small of twenty-three. How many a city should contain, that it should be fit for a supreme council. If one were known to the majority of the people as an expert, he alone might decide civil cases. A permission from the Exilarch holds good for the whole country (of Babylon and also for Palestine); from the Prince in Palestine, for the whole of Palestine and Syria only: he may teach the law, decide civil cases, and may also decide upon the blemishes of first-born animals. He (a priest) saw a divorced woman and married her, and with this he annulled his priesthood. He erred in his opinion--*e.g.*, there were two, Tanaim and two Amoraim who differed in a case, and he decided the case according to one. There are three Tanaim who differ concerning arbitration. When the decision is already given in accordance with the strict law, an arbitration cannot take place. May or may not a judge say, "I do not want to decide this case"? and under what circumstances? Is mediation a meritorious act, or is it only permitted? There were many who used to say maxims of morality, and Samuel found that they were only repetitions of verses in the Scriptures. "Say unto wisdom, Thou art my sister," means, if the thing is certain to you as that it is prohibited for you to marry your sister, then you may say it; but not otherwise. If one appoints a judge who is not fit to be such, he is considered as if he were to plant a grove in Israel. The court shall not listen to the claims of one party in the absence of the other (in civil cases). "You shall judge righteously" means, you shall deliberate the case carefully, and make it just in your mind, and only thereafter may you give your decision: "For the judgment belongeth to God." The Holy One, blessed be He, said: "It is the least for the wicked to take away money from one and give it to another illegally," etc. Is warning needed to a scholar? Where is the hint that collusive witnesses are to be punished with stripes? Punishment of stripes is not applied to those who do no manual labor. The numbers three, five, and seven--to what have they a similarity?

[paragraph continues] A year must not be intercalated with one month, except by them who are invited for it by the Nashi. Since the death of the last prophets--Haggai, Zechariah, and Malachi--the Holy Spirit has left Israel, etc. A leap year should not be made because of the kids, lambs, etc. For the following three things a leap year is made: Because of the late arrival of Spring, etc. A leap year must not be made in the years of famine, The year must not be intercalary before

Rosh Hashana. A leap year must not be made in one year for the next. No appointment of a leap year must be because of defilement. If not for Ben Baba, the law of fines would be forgotten from Israel. The legend how Jehudah b. Baba supplied the degree of Rabbi to five (six) elders, and by this act he caused the oral law not to be forgotten from Israel. The custom of giving degrees must not be used out of Palestine. What is to be considered second tithe, of which the value is not known? Rotten fruit, etc. "Every great matter," means the matter of a great man. By the whole tribe, is meant the head of it. The legend how a battle was decided by King David. Whence do we know that it is a duty to appoint judges to each tribe? etc. The legend of Eldad and Medad, and what their prophecy was. How Moses selected the seventy elders from each tribe, and also the payment of the first-born who were not redeemed by Levites. Sentence of guilt must be by a majority of two. If all persons of a Sanhedrin are accusing, the defendant becomes free. How so? In a city in which the following ten things do not exist it is not advisable for a scholar to reside. and they are, etc. Of rulers of thousands were six hundred; of hundreds, six thousand; of fifties, twelve thousand; of tens, sixty thousand--hence the total number of the officers in Israel was seventy-eight thousand and six hundred. 1-42

CHAPTER II.

MISHNAS *I*. AND *II*. The high-priest may judge and be a witness; be judged and witnessed against. A king must not judge, and is not judged; must not be a witness, nor witnessed against. There are cases from which one may withdraw himself, and there are others from which he may not. How so? A king must not be a member of the Sanhedrin; nor he and a high-priest engage in discussion about a leap year. The legends of three pasturers who had a discussion about the month Adar, which the rabbis took as a support to establish a leap year. When he (high-priest) goes in the row to condole with others, his vice and the ex-high-priest are placed at his right, etc. Formerly the custom was for the mourners to stand, and the people to pass by, etc. A row is not less than ten persons, not counting the mourners. All agree that if a king has relinquished his honor, it is not relinquished. How could David marry two sisters while they were both living? The strength of Joseph was moderation on the part of Boas, and the strength of the latter was moderation on the part of Palti, etc., etc. If a death occurs in the house of the king, he must not leave the gate of the palace, 43-52

MISHNAS *III*. TO *VI*. Three positive commandments was Israel commanded when they entered Palestine, viz., they should appoint a king, etc. The treasures of kings which are plundered in time of war belong to the king, only. He (the king) must not marry more than eighteen wives. Even one

wife, should she be liable to turn his heart away, he must not marry her. The number eighteen mentioned in the Mishna--whence is it deduced? Four hundred children were born to David by the handsome women whom he took captive (*i.e.*, those mentioned in Deut. xxi. 11). Only a son may stay alone with his mother, but it is not allowed for any one besides to stay alone with a married woman. He (the king) must not acquire many horses, neither more gold and silver than to pay the military. He shall not acquire many horses, and lest one say, "Even those which are needed for his chariots," etc. He shall not acquire much gold and silver--lest one say, "Not even sufficient for paying the military," etc. Why does not the Scripture explain the reason of its law? Because in two verses it was so done, and the greatest men of a generation stumbled because of them, etc. Ezra was wrothy that the Torah should be given through him, if Moses had not

preceded him. In the very beginning the Torah was given to Israel in Assyrian characters, etc. (see footnote, 1). One must not ride on his--the king's--horse, etc. Come and see how hard is divorce in the eyes of the sages! He who divorces his first wife, even the altar sheds tears on account of him. The king must cut his hair every day, a high-priest every eve of Sabbath, and a commoner priest every thirty days, 52-63

CHAPTER III.

MISHNAS *I*. TO *III*. Civil cases by three: one party may select one, and so the other, and both one more. Pure-minded people of Jerusalem used not to sign a document unless, they were aware who was the other who was to sign it, and also would not sit down to judge unless they were aware who was to be their colleague, etc. One has no right to reject a judge who was appointed by the majority. There is a rule that the testimony of one who is interested in a case is not to be taken into consideration. Proof is needed to each claim, even if it is not so important that it could injure the case. He who saw Resh Lakish in the college saw one uprooting hills and crushing them, and he who saw R. Mair saw one uprooting mountains and crushing them. Gamblers (habitual dice-players) and usurers, and those who play with flying doves, are disqualified to be witnesses. What crime is there in dice-playing? Because they do not occupy themselves with the welfare of the world. One who borrows to pay usurers is also disqualified. Gamblers are counted those who play with dice; and not only with dice, but even with the shells of nuts or pomegranates. Among those who play with doves--other animals are also meant. There was added to the disqualified witnesses robbers and forcers (*i.e.*, those who take things by force, although they pay the value for them). There was secondly added to that category, collectors of duty and contractors of the government. The father of R. Zera was a collector for thirteen years, etc. One's thought for his maintenance injures him in his study of the law, etc. They who accept charity from idolaters are disqualified to be witnesses, provided they do so publicly, etc. One who is wicked in money matters only is disqualified to witness, but not one wicked in heavenly matters. Bar Hama had slain a man, and the Exilarch told Aba b. Jacob to investigate the case; and if he really slew the man they should make the murderers blind, etc., 64-79

MISHNAS *IV*. TO *VI*. The following are counted relatives who may not be witnesses: Brothers, brothers of father or mother, brothers-in-law, etc. "My father's brother shall not witness in my cases; he, his son, and his son-in law." "The brother of my mother-in-law cannot be a witness for me." The husband of one's sister, also the husband of the sister of one's father and the husband of the sister of one's mother, their sons and their sons-in-law, are also excluded from being witnesses. A stepfather . . . his son-in-law, etc. There was a deed of gift which was signed by two brothers-in -law--*i.e.*, two husbands of two sisters, etc. How were the witnesses examined? They were brought into separate chambers, etc. How were the witnesses frightened? There was one who had hidden witnesses under the curtains of his bed, and he said to his debtor: "Have I a mana with you?" etc. There was one who was named by the people "the man who has against him a whole kab of promissory notes." There was another who was named "the mouse who lies on dinars," etc. There was a document of confession in which it was not written: "He (the debtor) has said to us, 'Write a document, sign, and give it him' (the creditor)," etc. "I have seen your deceased father hide money in a certain place, saying, 'This belongs to so-and so,'" etc. How is the judgment to be written? So was the custom of the pure-minded in Jerusalem. They let parties enter, listened to their claims, and thereafter let the witnesses enter, listened to

their testimony, then told all of them to go out, etc. This is a rule for every case in which is mentioned "a witness," that it means two. Simeon b. Alyaqim was anxious that the degree of Rabbi should be granted to Jose b. Hanina, etc., etc. A confession after a confession, or a confession after a loan, may be conjoined; but a loan after a loan, or a loan after a confession, do not join (p. 91). Witnesses in civil cases who contradict one another in unimportant investigations are to be considered. So long as the defendant brings evidence to his advantage, the decision may be nullified by the court. However, if after he had said, "I have no witnesses," etc. What happened to R. Na'hman with a young man whom he made liable. If one who is summoning a party who says, "I want my case brought before the assembly of sages," etc., he maybe compelled to try his case in that city. In Babylon they are not allowed to try cases of fine, 79-96

CHAPTER IV.

MISHNAS *I.* TO *III*. Cases coming before the court, the witnesses thereof must be examined and investigated. What difference is there between civil and criminal? The following from (a) to (g). Biblically there is no difference between civil and criminal cases concerning investigations. But why is it enacted that civil cases do not need investigation? "Justice, only justice, shalt thou pursue," means that one shall follow to the city of a celebrated judge, etc. What has the court first to say to the advantage of the defense in criminal cases? If one has tried a case, and made liable him who is not, or *vice versa*, etc. Tudus the physician testified that not one cow or one swine was sent from Alexandria in Egypt of which the womb was not removed. If one was found guilty by the court, and thereafter one come, saving: "I know a defense for him, etc, So long as the fire in the

stove burns, cut off all that you want to roast, and roast it. (*i.e.*, when you are studying a thing, consider it thoroughly to prevent questions.) All who take part in the discussion may explain their reasons, until one of the accusers shall yield to one of the defenders. In the neighborhood of R. Johanan there was one who was blind who used to judge cases, etc. From the time of Moses until the time of Rabbi, we do not find one man who was unique in the possession of wisdom, riches, and glory, etc. One may teach his disciple, and at the same time may judge in association with him in criminal cases. In ten things civil cases differ from criminal cases. All are competent to judge civil cases. But not all of them are competent to judge criminal cases. The Sanhedrin sat in a half-circle in order that they could see each other, etc. The Torah has testified that we are such a kind of people that even a fence of lilies is sufficient for us, and will never be broken. How were the witnesses awestruck in criminal cases? A human being stamps many coins with one stamp, and all of them are alike; but the Holy One, blessed be He, has stamped every man with the stamp of Adam the first, and, nevertheless, not one of them is like the other, Although the court of the Sanhedrin existed no longer, the punishment of the four kinds of death prescribed in the Scripture was not abolished by Heaven. Adam the first was created singly, and why? That disbelievers should not say there were many Creators in heaven, etc. In three things one is different from his neighbor--in voice, etc., 97-114

CHAPTER V.

MISHNA *I*. The court used to examine the witnesses with seven inquiries, etc. Should one of the

witnesses say, "I have something to say in behalf of the defendant," or one of the disciples, I have something to say to the disadvantage of the defendant," the court silences him. Why not say that eight queries are necessary in the examination? Viz., how many minutes are there in the hour? Do you recognize this man as the murderer of him who was slain? Was he a heathen or an Israelite? Have you warned him? Did he accept the warning? etc. Whence do we deduce that the warning is prescribed biblically? Witnesses who testified in case of a betrothed woman, if they be found collusive, are not to be put to death. What is the difference between examination? etc. Until what time may the benediction of the moon be pronounced? If Israel should have only the meritorious act of receiving the glory of their heavenly Father once a month, it would be sufficient. They do not drink wine. And why not? In civil cases the court may say: The case becomes old, etc., 115-125

CHAPTER VI.

MISHNAS *I*. TO *IV*. If the conclusion was to condemn, the guilty one was taken out immediately to be stoned. A herald goes before him, heralding: So and so, etc. One stands with a flag. I doubt who had to bear the cost of the flag and horse mentioned in the Mishna, etc. If one of the disciples said, "I have something to say in behalf of the defendant," and thereafter he became dumb? He who is modest, the verse considers him as if he should

sacrifice all the sacrifices mentioned in the Scripture. When he (the guilty) was far from the place of execution--a distance of ten ells--he was told to confess. Why are the words "unto us and to our children," and the Ayin of the "ad" pointed? The Lord said to Joshua: Thou thyself hast caused all the evils, because thou didst excommunicate the goods of Jericho. One should always proceed with prayer before trouble comes. It happened with one who was going to be executed, that he said: If I am guilty of this crime, my death shall not atone for all my sins. See footnote, 1, concerning the legend of Simeon b. S. of the eighty witches hung by him. A male was stoned while naked, but not a female. The stoning place was two heights of a man, etc. If before the execution the hands of the witnesses were cut off, he becomes free from death. "The avenger of the blood himself shall slay." Infer from this that it is a meritorious act for the avenger to do so himself, 126-139

MISHNAS *V*. AND *VI*. All who are stoned are also hanged. A male, but not a female. Two must not be judged on the same day, provided there are two kinds of death. How was one hanged? The beam was put in the earth, etc. King Sabur questioned R. Hama: Whence do you deduce from the Torah that one must be buried? etc. Is the burying because the corpse shall become disgraced if not buried, or is it because of atonement? Is the lamentation an honor for the living or for the deceased? And what is the difference? etc. A wicked person must not be buried with an upright one. All the curses with which David cursed Joab fell on the descendants of David. They were [II Sam. iii. 29], etc. If not for Joab, David would not have been able to occupy himself with the law, etc., 139-148

CHAPTER VII.

MISHNAS *I*. TO *V*. Four kinds of capital punishment are prescribed to the court by the Scriptures. According to R. Simeon, burning is more rigorous than stoning. With her father,

burning applies; with her father-in-law, stoning applies. How is this to be understood? Do you come to teach a Halakha which will be used only then when the Messiah will appear? The prescribed punishment of burning was this: The sinner was placed in waste knee-deep. Then placing a twisted scarf of coarse material within a soft one, etc. But why should burning not be inferred from the offerings of the bullocks, which were burned bodily? Nadob said to Abihu: When will the two old men die, and you and I be leaders of Israel? The prescribed punishment of slaying was thus: He was decapitated, etc. The prescribed punishment of choking was thus: The sinner was placed in waste knee-deep, etc. To the following sinners stoning applies: viz., one who had connection with his mother, etc. "A man" means to exclude a minor. [Lev. xxii.]: "That lieth with his father's wife" means, that there is no difference whether she is his mother or not,

MISHNAS *VI*. TO *VII*. One who had connection with a human male, or with an animal, and also a human female who uncovers herself before a male animal, are punished with stoning. "With an animal" makes no difference whether it was a large or a small one. A blasphemer is not guilty, unless he mentioned the proper name of God (Jehovah). "Any man whatsoever,"

etc., meaning to include the heathen, who are warned of blasphemy. Ten commandments were commanded to Israel in Marah; seven of them are those which were accepted by the descendants of Noah. For transgression of these commandments a descendant of Noah is put to death, viz., adultery, bloodshed, and blasphemy. A descendant of Noah may be put to death by the decision of one judge, by the testimony of one witness, etc. Every relationship for which the punishment of the courts of Israel is death, a descendant of Noah is warned of it; but all other relationships, the punishment of which is not death, are permissible to them. He who raises his hand to his neighbor, although he has not as yet struck him, is called wicked. "Flesh in which its life is, which is its blood, shall ye not eat," [Gen. ix. 4] means any member of the animal, while it is still alive. We do not find any case where what is forbidden to the descendants of Noah should be allowed to the Israelites. An unclean thing never came from heaven. There is no difference if one hears it from the blasphemer himself or from the witness who heard it from the blasphemer--he must rend his garments

MISHNAS *VIII*. TO *XII*. One is considered an idolater who worships it with its proper worship; and even if he only sacrifices, smokes incense, or pours wine, etc. Why not say that from bowing "all kinds of worshipping" is to be inferred? In our Mishna it is stated: "He who worships idols." There is another Mishna, farther on, which states: He who says: "I will worship," is always considered an idolater, etc. If one worship an idol because he loves it, or because he fears it, etc. Concerning Sabbath it is more rigorous than all the other commandments in one respect, and all other commandments are more rigorous in another respect, etc. There is a tradition: He who conjoins the name of Heaven with something else is to be destroyed. It happened to a female heathen who was very sick an vowed that if she recovered she would worship all the idols which were to be found, etc. If one gives one of his children to Molech, he is not guilty unless he has transferred him to the servants, etc. One is not guilty unless he let him pass in the usual manner. What was that? A row of bricks were placed for passing, etc. Baal ob (mentioned in the Scripture) is the python that makes the dead speak from his armpit, and Yidoñi means one that makes the dead speak from his mouth. Is not he who queries an "ob" the same who inquires of the dead? Nay! etc. An observer of times is, according to R. Aqiba, he who reckons times and hours, saying: This day is good to go on the road, etc. He

who curses his father or mother is not punished with a capital punishment, unless he curse them by the proper name of God, 187-194

MISHNAS *XIII*. TO *XIV*. He who sins with a betrothed damsel is not guilty to be stoned, unless she was a maiden betrothed and still in her father's house. A seducer means one who is himself a commoner--*e.g.*, he says: There is an idol in such and such a place which so and so eats, etc. Concerning all who are liable to capital punishment biblically, it is not allowed to hide witnesses except in this case, etc. A conjurer is liable to be stoned only when he did an act, but not if he dazzled the eyes. The Halakhas of witchcraft are similar to the Halakhas of Sabbath. There are some to which stoning applies, etc. I have seen a rider of a camel who took his sword, cut off the head of the camel, and thereafter rung a bell, and the camel stood up. It was only a dazzling of the eyes. The legend of R. Eliezer with

his disciple, "Thou shalt not learn to do," means: "Thou must not learn to do, but thou mayest learn it to understand it for the purposes of deciding cases, 194-200

CHAPTER VIII.

MISHNAS *I*. TO *VIII*. A stubborn and rebellious son--at what age may he be considered as such? From the time he brings forth two hairs, etc.; but the sages used to speak with delicacy. A minor of nine years and one day is fit to have connection with a woman, and in a case of adultery it is considered. Whence do we know that the first generation produced children at the age of eight? A daughter should be more open to the charges of stubbornness and rebelliousness, etc. But so is the decree of the Scripture--"a son, and not a daughter." He cannot be condemned as a stubborn and rebellious son, unless he eats meat and drinks wine. You shall not look for wine which makes red the faces of the wicked in this world, and makes them pale in the world to come. Thirteen ways are enumerated in the Scripture concerning wine, as in Genesis ix., from 20 to 25. If he has stolen from his father and consumed on *his* premises, etc., he is not charged as a stubborn and rebellious son unless he stole from his *mother* and father. If the father is willing to transfer the case of the son in question to the court, and the mother is not willing, or *vice versa*, etc. Such a thing neither occurred nor ever will be, and the same is with the case of a misled town, and also with a house of leprosy, and was written only for study. If one hand of his father or mother is missing, or they limp, or are dumb, etc. If he runs away before the decision of condemnation is rendered, etc. The Scripture prefers that be should die innocent, and not be put to death because of his sins. For the death of the wicked is both a benefit to them and a benefit to the world, etc. In the case of "breaking in" (Ex. xii., 1], for which there is no liability if one is killed by a detector, one is also punished because of his future crimes, etc. A burglar who broke in and succeeded in taking some utensils and escaped is free from paying. Because he acquired title to them by his blood. It happened that rams were stolen from Rabha by burglary and thereafter they were returned to him; he would not accept them because the above decision came from the mouth of Rabh, etc., 201-216

MISHNA *IX*. The following may be killed for self-protection: He who pursues one to kill him, and he who pursueth a betrothed damsel, etc. According to the rabbis the Scripture cares for the violation of her honor, and as she also cares for it, though without life-sacrifice, she must be saved even by killing her pursuers, etc. One who intends to worship idols may be killed (if there

is an impossibility of preventing his crime otherwise.) "In the city of Luda it was voted and resolved that if one were compelled, under threat of being killed, to commit any one of all the crimes which are mentioned in the Torah, he might commit it and not be killed, except idolatry, adultery, and bloodshed. Is a descendant of Noah commanded to sanctify, the Holy Name, or not? It happened to one that he saw a woman and became sick through his infatuation, etc,. 216-221

CHAPTER IX.

MISHNAS I. TO VI. Punishment of burning applies to one man who has intercourse with a woman and her daughter, and to a daughter of a priest,

p. xix

etc. Punishment with the sword applies to a murderer and to the men of a misled town. If one pressed down a person while he is in water, or in fire, preventing him from coming out, he is guilty, etc. If one bound a person, and he died thereafter of hunger, he is not guilty of a capital crime. If, however, he put him in a sunny place, and he died because of the sun, he is guilty. Ball-players--if one threw a ball with the intention of killing some one, he is to be put to death, and if it was unintentional, he is to be exiled, etc. All agree that if one kills a person whose windpipe and larynx (gullet) are cut or whose skull is fractured, he is free (for it is considered as if he attacked a dead man). If one strikes a person with a stone or with his fists, and he was diagnosed (by the physicians of the court) to die, and thereafter he improved, etc. Capital punishment does not apply to one who intended to kill an animal and killed a man, an idolater and killed an Israelite, etc.; but it does apply to one who intended to strike a person on the loins with an article which was sufficient for this purpose, and he strikes him to death on his heart, etc. A murderer mixed up among others--all of them are free, etc. If it happen that the persons sentenced to deaths of different kinds, and are so mixed that it is not known who comes under this kind of death and who under another, all of them must be executed with the more lenient death. If one committed a crime which deserves two kinds of death, he must be tried for the more rigorous one. Ezek. xviii. must not be taken literally, but "the mountains he eateth not" means that he does not live upon the reward of the meritorious acts done by his parents; "his eyes he lifteth not up to the idols" means that he never walked overbearingly, etc., 222-238

MISHNAS *VII*. TO *IX*. He who receives stripes, and relaxes into the same crime, the court takes him to the kyphos. He who kills a person not in the presence of witnesses is taken to the kyphos and is fed on scant bread and water. If one steals a kisvah, or one curses his neighbor, invoking God as a "carver," zealous people (like Pinchas) have a right to strike him when caught in the act. What is this punishment if there were no zealous men? Answer to this, it happened that it was read before R. Kahan in a dream, etc. In a case where there is a violation of the Holy Name the honor of the master must not be considered. "If a priest performs the service while he is defiled," etc. "If a common Israelite served in the Temple," etc., 238-244

CHAPTER X.

MISHNAS *I*. TO *VI*. Choking applies to him who strikes his father or mother, to him who steals a living soul, etc. A son is not guilty of a capital crime unless he wounds his father by striking him. Cursing is in one respect more rigorous than striking, as he is guilty even if he did it after

his lather's death. If one steals a person, he is not guilty of a capital crime unless he brings him upon his own premises. There is no difference whether he stole a male or a female, a proselyte, or a bondsman, or a minor, etc. R. Jehudah says that there is no disgrace for slaves. "Thou shalt not steal," in the third commandment, means human beings. [Lev. xix., ii]: "Ye shalt not steal," meaning money. A judge rebelling against the Great Sanhedrin. There were in Jerusalem three courts, etc. In case a judge in the country had a dispute with his colleagues, they came to the first court. If this court were able to decide it traditionally they rendered their decision; and if not, all of them came to the Great Sanhedrin, which was in the Temple

treasury, etc. A disciple who is not a judge who decides for practice against the Great Sanhedrin, is not culpable. A rebelling judge is not guilty unless he gave his decision in a matter to which, if done intentionally, korath applies, etc. The punishment of him who transgresses the decision of the scribes is more rigorous than for that which is plainly written in the Scriptures. The judge in question was not put to death by the court of his own city, etc., but was brought to the Supreme Council, in Jerusalem, etc. A false prophet who is to be sentenced by the court is only he who prophesies what he (personally) has not heard and what he was not told at all, etc. He who prophesied in the name of an idol, saying, "So and so was said by such an idol," although it corresponds exactly with the Hebrew law, he is punished by choking. See all illustrations, pp. 258-260. In every case mentioned in the Torah, if a true prophet commands you to transgress, you may listen, except as to idolatry, 245-261

CHAPTER XI.

MISHNA *I*. All Israel has a share in the world to come. The following have no share in the world to come: He who says, etc. Three kings and four commoners have no share in the world to come etc. Is he who does not believe that the resurrection is hinted at in the Torah such a criminal that he loses his share in the world to come? Where is the resurrection hinted at in the Torah? etc. From the Pentateuch, Prophets, and Hagiographa. See 267, also footnote. Queen Cleopatra questioned R. Mair thus: When they shall be restored, will they be naked. or dressed? Cæsar questioned Rabbon Gamaliel: You say that the dead will be restored. Does not the corpse become dust? etc. The living die--should the dead come to life? That which has not existed at all comes to life--shall those who had life once not come to life again? The legend of Gebiah b. Pessisa who advocated Israel before Alexander of Macedonia, etc. (Pp. 268, 270.) Antoninus said to Rabbi: The body and soul of a human may free themselves on the Day of judgment by Heaven. How so? Why does the sun rise in the east and set in the west? At what time does the soul come into the body? At what time does the evil spirit reach man? Lest one say that the verse just cited means, I make one die and another, one shall I bring to life, therefore it reads, "I wound and I cure." As wounding and curing apply to one person only, etc. He who hesitates in declaring a Halakha to a disciple, even the embryos in the entrails of their mothers denounce him. Great is wisdom, as it was placed between two divine names. Exiles atone for everything. The upright who will be restored in the future will never return to dust. "What will they do at the time the Holy One, blessed be He, shall renew His world?" etc. Concerning the dead whom Ezekiel restored, the different opinions of Tannaim and Amoriam, if it was a reality or a parable only. (p. 278.) Six miracles occurred on the day Nebuchadnezzar threw Chananyah, Mishael, and Azaryah into the caldron. Even at the time of danger one shall not change the dress belonging to his dignity. Where was Daniel at the time that they were thrown into the caldron? The legend of Achab and Zedkiyahu with the daughter of Nebuchadnezzar. According to the

advice of three, Daniel went away before the affair of Chananyah, etc, Concerning the six barleys which Boaz gave to Ruth. All that is written in the book of Ezra was said by Nehemiah b. Chackhalyah. Why then was

it not named after him? The angel who rules the souls after their departure from this world is named Dumah. Hiskiah, who has eight names, shall take revenge on Sanherib, who also has eight names. Hiskiah's (king of Judah) whole meal consisted of a litter of herbs. Pharaoh, who personally blasphemed, was also punished by Heaven. Sanherib, who blasphemed through a messenger, was also punished through a messenger. Ten trips had the wicked made on that day, etc., as it reads [II Kings, x. 28 to 32]. There was one day more appointed for the punishment of the iniquity of Nob. And the astrologers told Sanherib, etc. If the judgment is postponed over one night there is hope that it will be abolished entirely. The legend how Abishai saved King David from Yishbi's hand at Nob. Sanherib, when he came to attack, brought with him forty-five thousand princes with their concubines in golden carriages, etc. See pages 293-296, the many legends concerning Sanherib. Be careful with the children of the Gentiles, as it happens very often wisdom emanates from them. That the day on which Achaz died consisted of only two hours. And when Heskiah became sick and thereafter recovered, the Holy One returned the ten hours to that day, etc. Three hundred mules loaded with iron saws which cut iron were given to Nebusaradan by Nebuchadnezzar while going to attack Jerusalem. Nebusaradan was a true proselyte, from the descendants of Sissera were such who studied the law in Jerusalem, and from the descendants of Sanherib were such who taught the Torah among a majority of Israelites, etc. Have you heard when the fallen son will come? etc. In his Sabbatic period when the son of David will appear in the first year there will be fulfilled, etc. The generation in which the son of David will come, young men will make pale the faces of the old, etc. The world will continue for six thousand years, the first two thousand of which was a chaos, etc. There are no less than thirty-six upright in every generation who receive the appearance of the Shekinah. All the appointed times for the appearance of the Messiah have already ceased. And it depends only on repentance and good deeds. Jerusalem will not be redeemed but by charity. What the Messiah told to Jehoshua ben Levi: Ben David will not arrive until Rome shall have dominated, etc. Discussion concerning the name of the Messiah. The cock said to the bat, I look out for the light because the light is mine (I see it), but for what purpose do you wait for it? The days of the Messiah will be as from the day of creation until now. "He hath despised the word of God," means he who learned the Torah but does not teach it. He who learned the Torah and does not repeat it is similar to him who sows but does not harvest, etc. Has not Moses written something better than: And Lotan's sister was Thimna, etc.? Who is meant by the term epicurian? What good have the rabbis done for us? They have never permitted us to eat a crow, and they have not prohibited us to eat a dove, etc. The measure with which man measures will be measured out to him--*i.e.*, as a man deals he will be dealt with. A good woman is a good gift; she may be given to one who fears God. A bad woman is leprosy to her husband, etc. One may ask the fortune tellers who tell fortunes by certain oils or eggs. But it is not advisable to do so, because they often lie. Support me, and I will bear the statement of Aqiba, my disciple, who says: "Pleased are chastisements," etc. Three men (biblical personages) came with indirectness, etc. What means, "and he lifted up his hands"? He took off his phylacteries in his presence. (See footnote, page 1.) The legends concerning Jeroboam,

pp. 322-325. King Menashe appears to R. Ashi in a dream. R. Abuhu used to lecture about the three kings and became sick, etc. Why was Achab rewarded by the prolongation of his kingdom for twenty-two years? Because he was liberal with his money and assisted many scholars from his estate; half his sins were atoned. Four sects will not receive the glory of the Shekhina, viz., scorners, liars, hypocrites, and slanderers. Achaz abolished the worship and sealed the Torah, etc. The angels wanted to put Michah aside, but the Lord, however, said leave him alone because his house is open for travellers. Great are entertainments, for its refusal estranged two tribes from Israel, etc. Why does not the Mishna count Achaz and Amon among those who have no share? etc. Explanation to verses of Lamentation, pp. 334 to 337. The Scripture is particular that if any one tells his troubles to his neighbor, he should add: "May it not happen to you." The interpreters of notes said that all of them have a share in the world to come, etc. "A perpetual backsliding." Said Rabh: A victorious answer has the assembly of Israel given to the prophets, etc. Concerning Bil'am, the elders of Moab, and Midian, 265-340

One shall always occupy himself with the Torah and divine commandments, even not for the sake of Heaven, as finally He will come to do so for His own sake, etc. The caution that Achiyah, the Shilonite, gave to Israel is better for them than the blessings that Bil'am has given to them. "And Israel dwelt in Shittim." Everywhere such an expression is to be found it brings infliction, etc. I saw the record of Bil'am, and it was written therein thirty-three years was Bil'am when he was killed by Pinchas, the murderer. One shall not bring himself into temptation, as David, king of Israel, placed himself in the power of a trial and stumbled. Six months was David afflicted with leprosy; the Shekhina left him, and the Sanhedrin separated themselves from him. Exclusion shall always be with the left hand, and inclusion with the right hand--*i.e.*, if one is compelled to repudiate some one, he shall do it easy as with his left hand, etc. Concerning David's sin with Bath Sheba, 340-350

MISHNA *II*. The generation of the flood have no share in the world to come, and are also not judged, etc. Concerning the generation of dispersion, men of Sodom and Gomorrah, etc., pp. 350-355: "Noah was just, a perfect man in his generation;" in his generation, but not in others. According to Resh Lakish: In his generation which was wicked, so much the more in other generations. Eliezar, the servant of Abraham, questioned Shem the great, etc. Shem the great questioned Eliezar, etc. "The generation of dispersion." What had they done? What were the crimes of the Sodomites? Concerning the congregation of Korah. One must do all he can not to strengthen a quarrel, etc. "And all . . . on their feet," means the money which makes one stand on his feet. "The generation of the desert has no share," etc, Eliezar, however, said, they have, etc., 350-362

MISHNAS *III*. TO *IV*. The ten tribes who were exiled will not be returned, etc., (pp. 362-363). From what age has a minor a share in the world to come? Your saying is not satisfactory to their creator. Say the reverse, even he who has studied but one law does not belong to the Gehenna. It happened once that I was in Alexandria of Egypt, and I found a certain old Gentile who said to me: Come, and I will show you what my great-grandfathers have done to yours, etc. Concerning Shebna and his society, ref. Isaiah, viii-12. Adam was created on the eve of Sabbath. And why?

The Minnim shall not say, etc. At the time the Lord was about to create a man, He created a *cœtus* of angels, etc. Every place where the Minnim gave their wrong interpretation the answer

of annulling it is to be found in the same place--*e.g.*, p. 370. The discussion with R. Gamaliel and other rabbis, pp. 372-376. "My creatures are sinking into the sea, and ye want to sing?" It reads [Ob. i. 1]: "The vision of the Lord . . . concerning Edom." Obadiah was an Edomite-proselyte. And this is what people say that the handle of the hatchet to cut the forest is taken from the wood of the same forest. [Gen. xxii. 1]: "After these things." After what? After the words of the Satan, etc. According to Levi, after the exchange of the words between Ishmael and Isaac, etc., 362-378

MISHNA IV. The men of a misled town have no share in the world to come (the Halakhas in detail, 378-383). Concerning the key of rain, which is one of the three keys which are not to be transferred to a messenger, Elijah, too, in the days of Achab, etc., 378-385

Next: Chapter I

TRACT SANHEDRIN (SUPREME COUNCIL).

CHAPTER I.

RULES AND REGULATIONS CONCERNING THE APPOINTMENT OF JUDGES IN CIVIL AND CRIMINAL CASES. WHICH ARE CONSIDERED CIVIL AND WHICH CRIMINAL. HOW MANY ARE NEEDED TO THE INTERCALATION OF A YEAR AND OF MONTHS; TO APPRAISE CONSECRATED REAL ESTATE AS WELL AS MOVABLE PROPERTIES; AND IF AMONG THE APPRAISERS MUST BE PRIESTS, AND IF SO HOW MANY. THE NUMBER OF PERSONS NEEDED TO ADD TO THE CITY FROM THE SUBURBS OF JERUSALEM. WHAT MAJORITY IS NEEDED TO ACCUSE AND WHAT TO ACQUIT. HOW MANY PEOPLE MUST BE IN A CITY THAT A COURT OF TWENTY-THREE JUDGES SHOULD BE ESTABLISHED.

MISHNA *I*: To decide upon the following cases, three persons are needed (the Gemara explains for which common and for which judges): Civil cases, robbery, wounds, whole damages and half, double amount and four and five fold payments; [1] and the same in the case of forcing, seducing, and libel (*i.e.*, an evil name, Deut. xxii. 19). So is the decree of R. Meir.

The sages, however, maintain: In the last case (libel) twenty-three are needed, as this is not a civil case, but a crime which may bring capital punishment. In the case of stripes, three. In the name of R. Ishmael, however, it was said: Twenty-three are needed. To the intercalation of a month and to proclaim a leap year, three. So is the decree of R. Meir.

Rabban Simeon b. Gamaliel maintains: It begins with three persons and is discussed by five, and the decision is rendered by seven If, however, it was decided by three, their decision holds good.

The elders who had to lay their hands upon sacrifices [Lev.

iv. 15], and also in the case of the heifer [Deut. xxi. 3]--according to R. Simeon, three are needed, and according to R. Jehudah, five. At the performance of the ceremony of Halitzah and denial, three; to appraise the value of the plants of the fourth year (which must be redeemed), and the second tithe, of which the value in money is to be appraised, three; to appraise the value of consecrated articles, three; in cases of Arakhin (vows of value, men or articles), if movable property, three--according to R. Jehudah, one of them must be a priest; and if real estate, ten, and one of them a priest; and likewise to appraise the estimated value of men [Lev. xxvii.].

Crimes (which may bring capital punishment), twenty-three; in the case of Lev. xx. 15, twenty-three, as verse 16 reads: "Then shalt thou kill the woman and the beast"; and also in the

preceding verse: "The beast also shall ye slay." And the same is the case with the stoning of an ox, of which it reads [Ex. xxi. 29]: "The ox shall be stoned, and the owner . . . be put to death"--which means, as for the death of its owner twenty-three are needed, so also for the stoning of the ox.

The wolf, the lion, the bear, the tiger, the bardls, 1 and the serpent are killed by the judgment of twenty-three. R. Eliezer, however, maintains: Every one who hastens to kill them is rewarded. But R. Aqiba says: Twenty-three are needed.

A whole tribe, or a false prophet, or a high-priest, if they have to be judged for a crime which may bring capital punishment, a court of seventy-one judges is needed. The same number of judges is needed to decide upon battles which are not commanded by the Scriptures, and also for enlarging the city of Jerusalem by annexing its suburbs or free land; and the same is the case if it is necessary to enlarge the courtyard of the Temple. Also, the same number of judges is needed for appointing supreme councils to each tribe. A misled town [Deut. xii. 14] must also be condemned by seventy-one. However, a town which stands on the boundary cannot be condemned; nor three of them at one time at any place, but only one, or two.

The Great (Sanhedrin) consisted of seventy-one, and the small of twenty-three. Whence do we deduce that the great council must be of seventy-one? From [Num. xi. 16]: "Gather unto me seventy men." And add Moses, who was the head of them--hence seventy-one? And whence do we deduce that a small one, must be twenty-three? From [ibid. xxxv. 24 and 25]: "The

congregation shall judge"; "And the congregation shall save." 1 We see that one congregation judges, and the other congregation saves-hence there are twenty; as a congregation consists of no less than ten persons, and this is deduced from [ibid. xiv. 27], "To this evil congregation," which was of the ten spies, except Joshua and Caleb. And whence do we deduce that three more are needed? From [Ex. xxiii. 2]: Thou shalt not follow a multitude to do evil"--from which we infer that you shall follow them to do good. But if so, why is it written at the end of the same verse, "Incline after the majority, to wrest judgment"? 2 This means, the inclination to free the man must not be similar to the inclination to condemn; as to condemn a majority of two is needed, while to free, the majority of one suffices. And a court must not consist of an even number, as, if their opinion is halved, no verdict can be established; therefore one more must be added. Hence it is of twenty-three.

How many shall a city contain that it shall be fit for a supreme council? One hundred and twenty families. R. Nehemiah, however, maintains: Two hundred and thirty--so that each of them should be the head of ten families, as we do not find in the Bible rulers of less than ten.

GEMARA: Are not robbery and wounds civil cases? Said R. Abuhu: The Mishna means to explain the term "civil cases" by robbery and wounds; but to the admitting of debts or loans, three judges are not needed. And that so it should be understood, both expressions were needed; as, if it stated civil cases only, it would include loans, etc.; and if the expression "robbery," etc., only, one might also say the same is the case with loans, etc.; and the expression "robbery," etc., is because the main point wherein three judges are prescribed by the Scriptures is in cases of robbery [Ex. xxii. 7]: "Shall the master of the house be brought unto the judges." And

concerning wounds, it is the same whether a wound be in one's body or in his pocket (money), and therefore it begins with civil cases, and explains that cases like robbery are meant, and not common ones, etc. But whence are common loans excluded, that they do not need three? Did not R. Abuhu say: If two persons have judged in a matter of civil law, all agree that their

judgment is of no value? Therefore we must say that the Mishna means to exclude loans and admission of debts--to exclude from three *established* judges; but three common men are needed. And the reason is what R. Hanina said: Biblically, investigation is needed of crimes as well as of civil cases. As it is written [Lev. xxiv. 22]: "One manner of judicial law shall ye have." But why was it said that civil cases do not need investigation? In order not to lock the door to borrowers. And Rabha explained this statement as meaning that in two kinds of civil cases--loans, etc.--three common people are needed; but in cases of robbery, etc., three established judges. And R. Aha b. R. Ekha said: Biblically, even one is fit to decide civil cases, as it is written [ibid. xix. 15]: "In righteousness shalt thou judge thy neighbor." But the rabbis enacted three, in order to prevent men of the market, who are ignorant of law, to undertake to judge cases. But is it not the same with three common men? Are they not men of the market? If three undertake to judge a case, it is highly probable that at least one of them knows something of law. But if so, let two who should make an error in judging not be responsible? If this should be enacted, then all the market people would undertake to decide upon things.

But what is the difference between Rabha and R. Aha b. R. Ekha (according to both, three common men are needed in cases of common loans, etc.)? They differ in the following, which was said by Samuel: If two commoners have decided upon loan cases, their decision is to be respected; but they are considered an impertinent Beth Din. Rabha does not hold with Samuel, and maintains: Their decision must not be respected. And R Aha holds with him (Samuel).

"*Whole damages and half*," etc. Are not damages the same as wounds (both are to be paid)? Because it has to state half damages, it mentions also whole damages. Are not half damages also the same? The Mishna teaches concerning money which is to be collected according to the strict law and that which is only a fine. But this is correct only as to him who says that half damages are a fine; but as to him who says damages are strict law, what can be said? Because it has to state about the double amount, and four and five fold, which are more than the amount damaged, it mentions also half damages, which is less; and as half is mentioned, it mentions also the whole.

Whence do we deduce that three are needed? From what the rabbis taught. It treats [Ex. xxii. 7 and 8] three times of judges; hence three are needed. So said R. Yachiha. R. Jonathan, however, maintains: The first expression "judges," as the beginning, must not be taken into consideration, as it is needed for itself, and therefore only the two expressions "judges," mentioned after, are to be counted, and the third one is added only because we do not establish a court of an even number (as said above).

The rabbis taught: Civil cases are to be discussed by three. Rabbi, however, said: It is discussed by five, so that the final decision should be by three. But even when there are three, is not the final decision made by two? He means to say, because the conclusion must be of three judges. This explanation was ridiculed by R. Abuhu, saying: On such a theory, then the great Supreme

Council ought to be one hundred and forty-one, to the end that the final conclusion should be made by seventy-one; and of a small council there ought to be forty-five, so that the conclusion should be made by twenty-three. And therefore we must say, as the Scripture reads, "Gather unto me seventy," it means the seventy ought to be at the time established. And the same is it in the case above cited, "the congregation shall judge, and the congregation shall save," meaning that at the time of judging there shall be ten. And in the same way are to be interpreted the just cited verses 7 and 8, that the plaintiff has to bring his case before three only. Therefore it may be said that the reason of Rabbi's decision is that because in the first verse is written, "The judges may condemn," as in the last, three is meant, so is it with the word Elohim, mentioned before, which means judges, also two is meant, which makes four; and one is added, so that they shall not be an even number--hence five. The rabbis do not care for this, as the term which is translated, "They may condemn," is written in the singular, and is only read in the plural.

The rabbis taught: Civil cases are decided by three; but if one is known to the majority of the people as an expert, he alone may decide. Said R. Na'hman: *e.g.*, I decide cases alone, without consulting any other rabbis. And so also said R. Hyya.

The schoolmen propounded a question: What does R. Na'hman mean by saying: As, for instance, I? Does he mean similar to him, who knew the laws traditionally and by common sense, and was also so empowered by the Exilarch; but if there

was one who was equal to him in wisdom, but had no permission, his decision must not be respected? Or does he mean to say, if one were equal to him in wisdom he might so do without permission? Come and hear: Mar Zutra, the son of R. Na'hman, made an error in one of his decisions, and came to question R. Joseph whether he must make good the error. To which he answered: If he was appointed by the parties as a judge, he had not to pay; if not, he must pay. Infer from this that he who is appointed by the parties may so do even without permission from a higher court.

Said Rabh: If one wants to decide cases, and not be responsible in case of an error, he shall get permission from the Exilarch. And so also said Samuel.

It is certain that here in Babylon a permission from the Exilarch holds good for the whole country; and the same is the case from the Prince in Palestine, for the whole of Palestine and Syria. And it is also certain that if one has a permission from the Exilarch, he may practise in Palestine. As the following Boraitha states: The sceptre shall not depart from Judah. These are the exilarchs of Babylon, who rule over Israel with their sceptres. "And a lawgiver," etc., [Gen. xlix, 10] means the grandsons of Hillel, who are teaching the Torah among the majority of the people. The question, however, is, if with the permission of the princes they may judge in Babylon?

Come and hear: Rabba b. Hana had decided a case and erred, and came to question R. Hyya whether he had to pay, To which he answered: If the parties appointed you as a judge, you have nothing to pay; but if not, you have. Now, as Rabba, b. Hana had permission from Palestine, and would be obliged to pay if not appointed, it is to be inferred that the permission from Palestine did not hold good in Babylon. But is it not a fact that Rabba b. R. Huna, when he would quarrel

with the house of the Exilarch, used to say: I did not take any permission from you, but from my father, who had it from Rabh, and the latter from R. Hyya, and the latter from Rabbi? This was concerning worldly affairs only. But if the permission of Palestine does not hold good for Babylon, why did Rabba b. Hana take it? For the cities which are situated on the boundary of Palestine. How was the case when he took the permission? When he was about to descend from Palestine to Babylon, R. Hyya said to Rabbi: My brother's son, Rabba b. Hana, descends to Babylon. And Rabbi answered: He may teach the

law, decide civil cases, and may also decide upon the blemishes of first-born animals which are prohibited to be slaughtered without a blemish on their body. 1

When Rabh was about to go to Babylon, R. Hyya said to Rabbi: The son of my sister goes to Babylon. Said Rabbi: He may teach the law, decide cases, but not about blemishes of the first-born of animals.

Why did R. Hyya name the first "my brother's son" and the second "my sister's son"? And lest one say that so was the case, did not the master say: Abu, Hana, Shila, Marta, and R. Hyya all were the sons of Abba b. Aha Kharsala of Khaphri? (Hence Rabh, who was Abu's son, was also his brother's son--why did he say "my sister's"?)

Rabh, who was his brother's and also his sister's son (on his mother's side), he named him "the son of my sister"; but Rabba b. Hana was the son of his brother only. And if you wish, it may be said that R. Hyya named him "my sister's," because of his great wisdom. As it is written [Prov. vii. 4]: "Say unto wisdom, Thou art my sister." But why should Rabh not be permitted to decide about blemishes? Was he not wise enough for this? Is it not a fact that be was wiser than any of his contemporaries? Or was he not acquainted enough with the kind of blemishes? Did not Rabh say: I have dwelt eighteen months with a pasturer of cattle to learn the blemishes which are temporary, and those which remain forever? This was done that Rabba b. Hana should be respected, as Rabh was highly respected even without that. And if you wish, it might be said that because of the fact itself, that Rabh was an expert concerning blemishes, it was not allowed to him to practise, for the reason that Rabh would allow such blemishes as other experts were not aware of, and people who should see that would act likewise, relying upon Rabh, so that they would finally allow the animal which had a temporary blemish to be slaughtered.

It is said above: "Rabbi said: He shall teach law." To what purpose was this said? Does such a scholar as Rabh need such a permission for teaching? This was said because of the

following case: It happened that Rabbi went into a certain place and saw that they kneaded dough without offering a sample for legal purity. And to the question why they did so, their answer was: There was a disciple who taught: Water of *Bzein* (swamp) does not make articles subject to defilement. In reality, however, the expression was: "Mee Beizim," which means eggs; and they took it for Bzein, and acted accordingly. And therefore it was taught: A decree was enacted that a disciple should not teach unless he had the permission of his master.

Tanchun, the son of R. Ami, happened to be in the city of Hthar, and lectured: One may wet wheat and pound for peeling on Passover. And they said to him: Is not there here R. Mani of the city of Zur, who is a great scholar, and there is a Boraitha: A disciple must not decide a Halakha at the place of his master, unless distant from him three parsas--which distance Israel took when travelling in the desert. And he answered: I was not aware of this.

R. Hyya saw a man standing in a cemetery, and said to him: Are you not the son of so and so, who was a priest? He said: Yea, but my father was one of those who follow their eyes. He saw a divorced woman and married her, and with this he annulled the priesthood.

It is certain, when one takes a permission to give judgment, in part, that it holds good (as so it was with Rabh). But how is it if the permission was conditionally for a certain time? Come and hear what R. Johanan said to R. Shauman: You have our permission until you shall return to us.

The text says: Samuel said: If it was decided by two, their, decision is valid; but they are called an impertinent Beth Din. R. Na'hman repeated this Halakha, and Rabha objected from the following. If two are defending and two are accusing, and one says, "I do not know how to decide," judges must be added; now, if it were as you say, that the decision of two is valid, let, then, the decision of the two hold good? There it is different, as they start with the intention that it should be decided by three. He then objected to him from the following: Rabban Simeon b. Gamaliel said: Judgment in accordance with the strict law must be decided by three. In an arbitration, however, two suffice; and the strength of the mediation is greater than that of the law; as, if there were two who had decided a case in accordance with the law, although they were appointed by the parties, they (the parties) may retract. But

if a mediation was made by the arbitrators, no retraction can take place. And lest one say that the rabbis differ with R. Simeon, did not R. Abuhu say: All agree that a decision passed by two is valueless? And he answered: Do you oppose one man to another (Abuhu may say so, and Samuel otherwise)?

R. Abba objected to R. Abuhu from the following: If one has decided upon a case--freed the guilty, or pronounced guilty the innocent, or decided unclean a thing which is clean, or *vice versa*, the act is valid and he must pay from his pocket. (Hence we see that even the decision of one is respected.) This Boraitha speaks of when the parties had appointed him for this purpose. But if so, why must he pay? It means, if they tell him: We appoint you to decide this case in accordance with the biblical law.

Said R. Safras to R. Abba: Let us see what was the error. If the error was that he decided against a Mishna, did not R. Shesheth say in the name of R. Assi that he who made an error as to a Mishna might retract from his decision? Hence such a decision is not valid, and he has not to pay from his pocket. Therefore it must be said that it means he erred in his opinion. How is this to be understood? Said R. Papa: *E.g.*, there were two Tanaim and two Amoraim who differed in a case, and it was not decided with whom the Halakha prevailed. However, the world practised according to one party, and he had decided the case according to the other party; and this could be called erring in one's opinion.

Shall we assume that in that case in which Samuel and R. Abuhu differ, the Tanaim of the following Boraitha also differ: Arbitrating must be done by three persons. So is the decree of R. Meir. The sages, however, maintain: One is sufficient? The schoolmen who heard this thought that all agree that arbitration is similar to a strict law, and therefore they assumed that the point of their difference was: R. Meir holds three are needed, and the sages that two suffice. Nay, all agree that a strict law must be decided by three, and the point of their differing is: Whether arbitration must be similar to a strict law according to one it must, and according to the other it must not.

Shall we assume that there are three Tanaim who differ concerning arbitration? One holds: Three are needed; the second, two; and the third, that even one is sufficient. Said R. Aha b. R. Ekha, according to others R. Yema b. Chlamia: He says two are needed holds that even one is sufficient; and only

to the end that they should be able to testify to this case as witnesses did he say two. Said R. Ashi: Infer from this that an arbitration does not need a sudarium; for if it should be necessary, why should not the one who maintains that three are needed be satisfied with two and a sudarium? The Halakha, however, prevails: An arbitration needs a sudarium.

The rabbis taught: Even as a strict law needs three, so is it with arbitration. However, when the decision is already given in accordance with the strict law, an arbitration cannot take place. R. Eliezer, the son of R. Jose the Galilean, used to say: It is prohibited to mediate, and he who should do so sins; and he who praises the mediators despises the law, as it is written [Ps. x. 3]: "The robber blesseth himself when he hath despised the Lord." But it may be taken as a rule that the strict law shall bore the mountain, as it is written [Deut. i. 17]: "The judgment belongs to God." And so was it said by Moses our master. But Aaron (his brother) loved peace, ran after it, and used to make peace among the people, as it is written [Mal. ii. 6]: "The law of truth was in his mouth, and falsehood was not found on his lips; in peace and equity he walked with me, and many did he turn away from iniquity." And R. Jehoshua b. Karha also said: Arbitration is a meritorious act, as it is written [Zech. viii. 16]: "With truth and the judgment of peace, judge ye in your gates." How is this to be understood? Usually, when there is judgment, there is no peace; and *vice versa*. It must then be said that an arbitration is a judgment which makes peace. So also was it said about David [II Sam. viii. 16]: "And David did what was just and charitable 1 unto all his people."

Here, also, "just" and "charitable" do not correspond; as if just, it could not be called charitable, and *vice versa*. Say, then, it means arbitration, which contains both.

The first Tana, however, who said above that arbitration is prohibited, explains the passage thus: He, David, judged in accordance with the strict law--he acquitted him who was right, and made responsible him who was so, according to the law, but when he saw that the culpable one was poor and could not pay, he used to pay from his pocket. Hence he did judgment to one and charity to the other. Rabbi, however, could not agree with such an explanation, because of the expression,

unto all his people"; and according to the above explanation, it ought to be "to the poor." Therefore said he: Although he did not pay from his pocket, it was counted as a charitable act that he delivered a theft out of the hands of the defendant.

R. Simeon b. Menasia said: If two persons brought a case before you, before you have heard their claims, and even thereafter, but you are still not aware to whom the strict law inclines, you may say to them: Go and mediate among yourselves. But after you are aware who is right according to the strict law, you must not advise them to mediate, as it is written [Prov. xvii. 14]: "As one letteth loose (a stream) of water, so is the beginning of strife; therefore before it be enkindled, leave off the contest"; which means, before it be enkindled you may advise a mediation, but not after you know with whom the law is. Similar to this is: If two persons came with a case before you, one being mighty (who can harm you) and the other common, you may say to them, "I am not fit to judge between you," so long as you have not heard their claims; or even thereafter, not knowing as yet to whom the law inclines. But you must not say so after you are aware; as it is written [Deut. i. 17]: "Ye shall not be afraid of any man."

R. Jehoshua b. Karha said: Whence do we deduce that if a disciple were present when a case came before his master, and saw a defence for the poor and an accusation for the rich (which his master might overlook), he must not keep silence? From the verse just cited. R. Hanin said: One must not keep in his words out of respect for any one; and witnesses also must be aware for whom they testify, and for whom their testimony goes. And who is he who will punish them for bearing false witness? As it is written [Deut. xix. 17]: "Then shall both the men who have the controversy stand before the Lord." And the judge must also be aware of same, as it is written [Ps. lxxxii. i]: "God standeth in the congregation of God; in the midst of judges doth he judge." And so also it reads [II. Chron. xix. 6], which was said by the king Jehoshaphat: "Look (well) at what ye are doing; because not for man are ye to judge, but for the Lord."

And should the judge say: Why should I take the trouble and the responsibility to myself?--therefore it is written at the end of this verse: "Who is with you in pronouncing judgment." Hence the judge has to decide according to what he sees with his eyes.

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What is to be understood by final judgment? Said R. Jehudah in the name of Rabh: When the judge is able to pronounce: You, so and so, are guilty, and you, so and so, are right. Said Rabh: The Halakha prevails with R. Jehoshua b. Karha. Is that so? Was not R. Huna a disciple of Rabh, and his custom was, to question the parties of a case before him: Do you desire strict law, or arbitration? Hence we see that he did not begin with mediation; and R. Jehoshua said that mediation is a meritorious act. R. Jehoshua, with his statement, means also to say: Ask the parties which they like better. But if so, it is the same as what the first Tana said (*i.e.*, it is prohibited to arbitrate after the conclusion, but not before the case is begun)? The difference between them is--according to R. Jehoshua it is a meritorious act; and according to the first Tana it is only a permission for the judge, but not meritorious. But then it is the same as R. Simeon b. Menasia said. There is also a difference, as according to the latter we must not advise an arbitration after hearing the claim, which is not according to the former. All the Tanaim mentioned above differ with R. Thn'hum b. Hnilai, who said: The above-cited verse [Ps. x.] was said concerning the golden calf [Ex. xxxii. 5]: "And when Aaron saw this." What did he see? Said R. Benjamin b. Jeptheth in the name of R. Elazar: He saw Chur, who was killed by the people. And he thought: "If I do not listen to them, they will do likewise with me, and will

commit a sin, as written [Lam. ii. 20]: 'Shall there be slain in the sanctuary of the Lord the priest and the prophet?' And they will have no remedy. It is better for them that I should make the golden calf, and to that probably there will be a remedy by repenting."

There was one who used to say: It is well for him who is silent while being reproved; and if he is accustomed to do so, it prevents a hundred evil things which he might have to overcome through quarrelling. Said R. Samuel to R. Jehudah: This man only repeats what is already written in the above-cited verse [Prov. xvii. 141]. [1] There was another who used to say: A thief is not killed for stealing two or three times (*i.e.*, do not wonder if the punishment does not occur at once, as finally it will come). And Samuel said to R. Jehudah: This is also repeating the verse [Amos, ii. 5]: "Thus hath said the

[paragraph continues] Lord, For three transgressions of Israel, and for four, will I not turn away their punishment."

There was another who used to say: Into seven pits does the man of peace fall and come out, and the wicked does not come out from the first into which he falls. And to this also said Samuel to R. Jehudah: It is a repetition of the verse, Prov. xxiv. 16: "For though the righteous were to fall seven times, he will rise up again"; and should the wicked fall in one, [1] he will not rise again.

There was another who used to say: If the court levied on one's mantle for a bet to his neighbor, he might chant a song and go on his way. And to this the same said to the same: This also is to be understood from [Ex. xviii. 23]: "The whole of this people will come to its place in peace."

There was another who used to say: She slumbers, and the basket which was placed on her head fell down. And also to this said Samuel: The same is understood of [Eccl. x. 18]: "Through slothful hands the rafters will sink," etc. And there was another who used to say: The man on whom I relied raises his fist against me. To which Samuel referred [Ps. xli. 10]: "Yea, even the man that should have sought my welfare, in whom I trusted, who eateth my bread, hath lifted up his heel against me."

There was one more who used to say: When love was strong, we--I and my wife--could place ourselves on the flat of a sword. Now, when love is gone, a bed of sixty ells is not sufficient for us. To which R. Huna said: We can see this from the Scriptures in [Ex. xxv. 22]: "I will speak with thee from above the cover." And a Boraitha. states that the ark measured nine spans, and the cover one; hence, altogether, it measured ten. Also in [I Kings vi. 2]: ". . . house which was built . . . sixty cubits in length." And finally we read [Is. lxvi. 1]: ". . . where is there a house that ye can build unto me?" (*I.e.*, when the Tabernacle was built, ten spans sufficed, and at the exile no house in the world could be found in which the Shekinah would rest.)

R. Samuel b. Na'hmani in the name of Jonathan said: A judge who judges truth to his fellow-men makes the Shekinah to rest in Israel; as the above-cited Psalm lxxxii. I reads: "God

standeth in the congregation of God; in the midst of judges doth he judge." And those who do the contrary influence the Shekinah to leave, as it is written [ibid. xii. 6]: "Because of the oppression of the poor, because of the sighing of the needy, now will I arise, saith the Lord."

The same said again in the name of the same authority: A judge who takes away from one and gives to another, against the law, the Holy One, blessed be He, (in revenge) will take souls from his house. Thus it is read [Prov. xxii. 22, 23]: "Rob not the poor because he is poor, neither crush the afflicted in the gate; for the Lord will plead their cause, and despoil the life of those that despoil them."

And he said again, in the name of the same authority: A judge should always consider as if a sword lay between his shoulders and Gehenna was open under him. As it is written [Solomon's Song, iii. 7, 8]: "Behold, it is the bed which is Solomon's; sixty valiant men are round about it, of the valiant ones of Israel. All of them are girded with the sword, are expert in war; every one hath his sword upon his thigh, because of the terror in the night--which means the terror of Gehenna, which is equal to the night.

R. Jashyha, according to others R. Na'hman b. Itz'hak, lectured: It is written [Jer. xxi. 12]: "O house of David, thus hath said the Lord: Exercise justice on (every) morning, and deliver him that is robbed out of the hand of the oppressor." Do, then, people judge only in the morning, and not during the entire day? It means, if the thing which you decide is clear to you as the morning, then do so; but if not, do not. R. Hyya b. Abba in the name of R. Jonathan, however, said: This is inferred from [Prov. vii. 4]: "Say unto wisdom, Thou art my sister," which means, if the thing is as certain to you as that it is prohibited for you to marry your sister, then you may say it, but not otherwise.

R. Jehoshua b. Levi said: If there are ten judges discussing about one case, the collar lies upon the neck of all of them. But is that not self-evident? It means even a disciple who is sitting before his master (although the result does not depend upon him).

R. Huna used to gather ten disciples of the college when a case came before him, saying: In case of error, let them also have sawings of the beam. And R. Ashi, when it happened that there was the carcass of a slaughtered animal to examine if

it was legal, used to gather all the slaughterers of the city, for the above-said purpose.

When R. Dimi came from Palestine, he said: R. Na'hman b. Kohen lectured: It is written [ibid. xxix. 4]: "A king will through the exercise of justice establish (the welfare of) a land; but one that loveth gifts overthroweth it"; meaning, if the judge is like unto a king, who needs not the favor of any one, he is establishing the land; but if like unto a priest who goes around the barns asking for heave-offering, he overthroweth it. The house of the Prince had appointed a judge who was ignorant, and it was said to Jehudah b. Na'hman, the interpreter of Resh Lakish: Go and be his interpreter. He bent himself to hear what was said for interpretation; but the judge said nothing. Jehudah then exclaimed: Woe unto him that saith to the wood, "Awake!" "Rouse up!" to the dumb stone. Shall this teach? Behold, it is overlaid with gold and silver, and no breath whatever is in its bosom [Hab. ii. 19]. And the Holy One, blessed be He, will punish his

appointer, as the following verse reads: "But the Lord is in his holy temple: be silent before him, all the earth."

Resh Lakish said: If one appoints A judge who is not fit to be such, he is considered as if he were to plant a grove in Israel. As it is written [Deut. xvi. 18]: "Judges and officers shalt thou appoint unto thyself"; and ibid. 21 it reads: "Thou shalt not plant unto thyself a grove-any tree." R. Ashi added: And if this were done in places where scholars are to be found, it is considered as if one should do it at the altar, as the cited verse continues: "near the altar of the Lord thy God."

It is written [Ex. XX. 23]: "Gods of silver and gods of gold," etc. Is it only prohibited from gods of silver, and of wood we may? Said R. Ashi: This means the judge who is appointed by means of silver and gold. Rabh, when he went to sit on the bench, used to say: By my own will I go to be slain (*i.e.*, if I make an error I shall be punished for it), without attending the needs of my house; and I enter, clear the court, and I pray that the departing should be like the entering (as he came without sin, so should he depart). And when he saw the crowd run after him, he used to say: "Though his exaltation should mount up to the heavens, and his head should reach unto the clouds, yet when he but turneth round will he vanish for ever" [Job, xx. 6, 71 (to quiet his excitement).

Mar Zutra the Pious, when he was carried on the shoulders

of his followers on the Sabbaths before the festivals (each Sabbath before the three festivals they used to preach festival laws), he used to say [Prov. xxvii. 24]: "For property endureth not forever, nor doth the crown remain for all generations."

Bar Kapara lectured: Whence do we deduce what the rabbis said: Be deliberate concerning judgment? From [Ex. xx. 23.]: "Neither shalt thou go up by steps upon my altar"; and the next verse is These are the laws of justice."

R. Eliezer said: Whence do we know that the judge should not step upon the heads of the whole people (the hearers of the lectures used to sit on the floor during the lectures, and one who passed among them appeared as if he were stepping on their heads)? From the same cited verse. It treats: Thou shalt set before them the laws of justice; it ought to be: Thou shalt teach them? Said R. Jeremiah, and according to others R. Hyya b. Abba: It means the preparation of things belonging to judgment: the cane, the strap, the cornet, and the sandal. As R. Huna, when he used to go on the bench, used to say: Bring here all the things above mentioned.

It is written [Deut. i. 16]: "And I commanded your judges at that time." This was a warning to the judges that they should be careful with the cane and straps, which were in their hands to punish them who rebelled. Farther on it is written: Hear the causes between your brethren and judge righteously." Said R. Hanina: This is a warning to the court that it shall not listen to the claims of one party in the absence of the other (in civil cases); and the same warning is to one of the parties--he shall not explain his claim in the absence of his opponent. "You shall judge righteously" means, you shall deliberate the case carefully, and make it just in your mind, and only thereafter you may give your decision.

It is written: "Between a man and his brother, and his stranger." Said R. Jehudah: It means, even between a house and its attic. (*I.e.*, if it were an inheritance, the judge must not say: You both need dwellings-what is the difference, if one take the house and one the attic? But he must appraise the value of each and then give his decision. "And his stranger" means, if you hire your house to a stranger for a dwelling, it cannot be said: What is the difference, if I give him an oven or a stove? But you must give him according to the conditions. So R. Jehudah. Farther on it reads: "Ye shall not recognize (respect) persons in judgment." According to R. Jehudah, it

means: You shall not recognize him if he is your friend; and according to R. Elazar, it means: You shall not recognize him as strange to you, if he is your enemy.

The host of Rabh had to try a case before Rabh, and when he entered he said to Rabh: Do you remember that you are my guest? And he answered: Yea, but why? And he said: I have a case to try. Rejoined Rabh: I am unfit to be a judge for your case (because you reminded me that you favored me some time ago). And he appointed R. Kahana to judge the case. R. Kahana, however, had seen that he relied too much upon Rabh, so that he would not listen to him. He then said to him: If you listen to my decision, well and good; and if not, I will put Rabh out of your mind (*i.e.*, I will put you under the ban). It reads farther on "The small as well as the great shall ye hear." Said Resh Lakish: It means, you shall treat a case of one peruta with the same care and mind as you would treat a case involving a hundred manas. To what purpose was this said? Is this not self-evident? It means, if two cases come before you, one of a peruta and one of one hundred manas, you shall not say: It is a small case, and I will see to it after.

"Ye shall not be afraid of any man; for the judgment belongeth to God." Said R. Hama b. R. Hanina: The Holy One, blessed be He, said: "It is the least for the wicked to take away money from one and give it to another illegally"; but they are troubling me that I shall return the money to its owner. "And I commanded you at that time." Above it reads: "I commanded your judges." Said R. Elazar in the name of R. Simlai: This was a warning for the congregation, that they should respect their judges; incidentally, also, a warning to the judges that they should bear with the congregation. To what extent? Said R. Hana, according to others R. Sabbathi: Even [Num. xi. 12] "as a nursing father beareth the sucking child."

It treats [Deut. xxxi. 23]: "Thou must bring this people," etc. And in verse 7 it is written: "Thou must go with." Said R. Johanan: Moses said to Joshua: You and the elders shall rule over them; but the Holy One, blessed be He, said: "*Thou* shalt bring them (*i.e.*, thou alone), because there must be one ruler to a generation, and not two or many.

There is a Boraitha: A summons must be by the consent of three judges. And this is in accordance with Rabha, who said: If the messenger of the court had summoned one in the

name of one of the three judges who are in the court, the summons is nothing unless he state it is in the name of all the three judges, provided it was not a court day; but on a court day he has to mention nothing.

"*Double amount.*" R. Na'hman b. R. Hisda sent a message to R. Na'hman b. Jacob: Let the master teach us. In cases of fine, how many persons are needed? [What was the question--does not the Mishna state three? The question was, whether one judge, who is an expert, may do this, or not?] And the answer was: This is stated in our Mishna, in the double amount, and four and five fold-three. And it cannot be said it means three common men; for your grandfather said in the name of Rabh: Even ten commoners are illegal to decide cases of fine. Hence the Mishna means judges, of whom, nevertheless, three are needed.

"*It may bring capital punishment.*" And what is it (meanwhile his claim is money--why should three not be sufficient)? Said Ula: The point of their differing is, if an evil tongue is to be feared (*i.e.*, while he comes to the court complaining about his wife, witnesses may come and testify that she had indeed sinned; and then it is a crime of capital punishment). According to R. Meir, the fear of such is not to be taken into consideration; and according to the rabbis, it is. Rabha, however, maintains: The fear of an evil tongue is not taken into consideration by all of the parties; but the point of their difference is, if the honor of the first should be respected or not. And it treats that twenty-three were gathered for that case, and the husband claimed that he would bring witnesses that his wife had sinned. But thereafter he could not bring witnesses, and the case remained as a claim for money only, and then the twenty departed. And he asked them to decide at least his civil claim. According to R. Meir, this case, as a money matter, might be tried by three; but according to the rabbis, we must respect the honor of the judges gathered, and therefore even in the latter case all the twenty-three have to take part.

An objection was raised from a Boraitha which states: The sages said: If the claim was money, then three suffice; but if a crime which could bring capital punishment, then twenty-three are needed. And this is correct only according to Rabha's statement, viz.: If the beginning of the claim was money, then three; and if the beginning was crime, then twenty-three. But according to Ula's it is contradictory.

Said Rabha: I and the lion of our society, who is R. Hyya b. Abbim, have thus explained this: The Mishna treats of a case in which the husband brought witnesses that his wife had sinned, and his father-in-law brought witnesses who proved the first collusive. And his claim against the husband was money; and therefore three sufficed. But in a case where crime is charged, twenty-three are necessary.

Abayi, however, maintains: All agree that an evil tongue is to be feared; and they also agree that the honor of the first must be respected. The Mishna, however, speaks of a case in which the warning was as to capital punishment, but not stoning. (*I.e.*, as will be explained in the proper place, one should not be put to death for a crime of which he was not warned that the punishment for it was death; and according to some, the warning must be: The punishment for such a crime is such and such a death. And as the punishment of adultery is stoning, and she was warned only of death in general, according to him who holds that the warning must state the kind of death, in this case no capital punishment can occur.) And this is in accordance with R. Jehudah, who said elsewhere: One is not put to death unless he was informed in the warning what kind of death he should die.

R. Papa maintains: It speaks of a scholarly woman who was aware of what kind of punishment

pertained to such a thing; and the point of their differing is, if to a scholar warning is needed. And R. Ashi maintains: The warning was as to stripes, instead of capital punishment; and the point of their differing is, if a trial involving stripes needs twenty-three, in accordance with the opinion of R. Ishmael, or not. 1 And Rabhina maintains: It speaks of when one of the witnesses was found a relative, or incompetent to be a witness; and the point of their difference is, if the testimony of the other witnesses should be ignored because of the incompetent one, or not (explained at length in Tract Maccoth). And if you wish, it can be said that it speaks of when one was warned by some others, but not by the witnesses; and there are some of the Tanaim who hold that the warning holds good only when it was made by the witnesses. And it might also be said that the witnesses contradicted one another, at the cross-examination, concerning certain unimportant things (*e.g.*, how he and she were dressed when the crime was committed),

but they did not contradict each other concerning the important thing (*e.g.*., the date and hour). And there is a difference between Tanaim whether such a contradiction is to be taken into consideration, or not?

R. Joseph said: If the husband brought witnesses that she had sinned, and the father brought witnesses who proved them collusive, the witnesses of the husband are put to death, but do not pay the prescribed fine. If, however, the husband brought a third party of witnesses, who proved collusive the second party, they are to be punished both with death and with payment of fine to the husband.

Rabha said: If witnesses testify that A had sinned with a betrothed woman, and thereafter they be found collusive, they are put to death, but do not pay the fine; if, however, they testified that A had sinned with the daughter of B, who was betrothed, they pay the fine also. And the same is the case if they testify that one had connection with an ox, and they were found collusive; if, however, they testify with the ox of so and so, they have to pay the fine to the owner of the ox also. But to what purpose did he state the other case--is it not the same as the first? Because he himself was in doubt concerning the following case: If one testified that so and so had connection with my ox, should he be trusted or not? Shall we say that only a testimony which incriminates one's self is not to be trusted--because one is kin to himself and cannot make himself wicked, but in a case where one's property is involved, we do not say that he is kin to his money, and therefore he should not be trusted. After deliberating, however, he decided that the testifying concerning his ox should be trusted, as the latter case is not taken into consideration.

"The cases of stripes," etc. Whence is this deduced? Said R. Huna: It is written [Deut. xxv. i]: "And they judge them," which is plural, and no less than two; and as a court must not be of an even number, one is to be added--hence it is three. In the same verse it reads: "And they justify . . . and they condemn," which is also plural, and no less than two -hence two and two are four, and with the three mentioned above it is seven?

The latter terms are needed for that which Ula said: Where is to be found a hint in the Scriptures concerning collusive witnesses? [A hint--does it not read (ibid. xix. 19): "Then shall ye do unto him as he had purposed to do unto his brother"?

[paragraph continues] Where is the hint that collusive witnesses are to be punished with stripes?] From the above-cited terms, "and they shall justify . . . condemn the wicked: Then shall it be, if the guilty man deserve to be beaten," etc., which is not to be understood as meaning the court only, as the words, "they shall justify the righteous," would be superfluous in that case. And therefore it is to be explained thus: If there were witnesses who had made the righteous guilty, and thereafter other witnesses came and justified the righteous who were indeed right, and made guilty the witnesses who accused them; then, if the former were to be punished with stripes, if found guilty, the same punishment is to be meted to the guilty witnesses.

But is there not a negative commandment in Ex. xx. 16: "Thou shalt not bear false witness"? This negative commandment is counted among those who do no manual labor; and for the transgression of such, punishment of stripes is not applied.

"*In the name of Ishmael it was said*," etc. What is his reason? Said Abayi: The analogy of expression, Rosha (guilty). It reads [Deut. Xxv. 2]: "Guilty man," and [Num. xxxv. 31] "Who is guilty of death." As in case of death, twenty-three are needed, the same is the case with stripes. Rabha, however, maintains: His reason is simple, as stripes take the place of that. Said R. Aha, the son of Rabha, to R. Ashi: If so is the case, why must he be examined by the court to see if he can stand the forty stripes? Let him be beaten without any examination; and if he cannot stand them, let him die. And he answered: It reads [Deut. xxv. 3]: "And thy brother be rendered vile before thy eyes." Hence if you beat, you must beat one who is still alive, but not a dead body. If so (said R. Aha again), why does a Boraitha state that if the examination shows that he can stand only twenty, he is beaten with that number, which can be made a multiple of three, say eighteen only? Let him receive twenty-one; and if be cannot receive the last stripe let him die, as the last stripe was on a body which was still alive (*i.e.*, thrice seven are twenty-one, and as he would not die by twenty according to the examination, the twenty-one would still be on a live body). Rejoined R. Ashi: The verse reads: "Thy brother thus rendered vile before thy eyes," which means that after the stripes he shall still be thy brother, which would not be the case if be died while being beaten.

"To the intercalary month," etc. It does not state for the

consideration of the intercalary, nor does it state for the consecration of the month; but for the intercalary itself, why are three needed? Let it be not consecrated at the thirtieth day, and it will become intercalary by itself (*i.e.*, if the thirty-first day be consecrated as the first of the next month, the past month will be intercalary with one day). Said Abayi: Read: For the consecration of the month. And so also we have learned in a Tosephtha: For the consecration of the month and the proclamation of a leap year, three. So is the decree of R. Meir. Said Rabha: You say: Read "for the consecration"; but it is stated "the intercalary." Therefore, he maintains, the consecration in the additional day (*e.g.*, the thirtieth) must be by three; but after the day is over, no consecration is needed. And it is in accordance with R. Elazar b. Zadok, who said (Rosh Hashana, p. 1): If the moon was not seen at the usual time, no consecration is needed, as it was already consecrated by heaven. R. Na'hman says: The consecration after the thirtieth day must be by three; but at the thirtieth no consecration takes place at all.

And it is in accordance with Plimi, who says in the following Boraitha: When the moon is seen

at her usual time, no consecration is needed; but if not at the usual time, then it must be consecrated. R. Ashi, however, maintains: It is to be understood, the consideration if the month should be intercalary, and the expression "to intercalary" means the consideration of it. And because it needs to teach to proclaim a leap year, it says also intercalary. Hence only to the consideration, but not to the consecration, which is in accordance with R. Eliezer, who said: A month must not be consecrated at any time, as it is written [Lev. xxv. 10]: "Ye shall hallow the fiftieth year," from which we infer that a year may be consecrated, but not months.

"Rabban Simeon Gamaliel," etc. There is a Boraitha: How was it said by R. Simeon b. Gamaliel that it began with three, was discussed by five, and concluded by seven? Thus: If one of the three says it must be considered, and the other two say it is not needed, then the individual's opinion is abandoned. If, however, *vice versa*, two more must be added to discuss the matter; and then, if two say it needs, and three say no, the majority is considered. And if *vice versa*, then two more must be added, and the decision is according to the majority.

The numbers three, five, and seven, to what have they a

similarity? R. Itz'hak b. Na'hmani and one of his colleagues, who was R. Simeon b. Pazi, and according to others just the reverse, differ. One said that the three were taken from the three verses specifying the blessings of the priests (Num. vi. 24, 25, 26). And the other said: Three from the "three doorkeepers" mentioned in II Kings, xxv. 18; and five, from [ibid. 19l: "The five men of those that could come into the king's presence"; and the seven from "the seven princes of Persia and Media" [Esther, i. 14].

R. Joseph taught the same as the latter, and Abayi questioned him: Why did not the master explain this to us before now? To which he answered: I was not aware that you needed the explanation. Has it happened that you questioned me, and I would not answer?

The rabbis taught: A year must not be intercalated with one month, except by them who are invited for it by the Nashi. It happened with Rabban Gamaliel, who commanded that seven persons should be invited for the morrow in his attic, for the purpose of the intercalation of the year, that on the morrow, when he came, he found eight persons, and said: He who was not invited shall leave. Samuel the Little then arose and said: I am the one who was not invited. I came here, not to take part in the intercalation, but to get experience in the practice of this ceremony. To which the former answered: Sit down, my son; sit down. All the years which have to be intercalated might be done by you. But so was the decision of the sages, that such must be done only by the persons who were invited. (Says the Gemara:) In reality, it was not Samuel the Little, but some other, and he did so only not to bring shame upon his colleague. It happened that as Rabbi was lecturing he perceived the odor of garlic, and he said: He who has eaten garlic shall leave. R. Hyya then rose and left the place; and every one, seeing R. Hyya go out, did the same. On the morrow R. Simeon, the son of Rabbi, met R. Hyya, and questioned him: Was it you who disturbed my father yesterday? And he answered: Save God! Such a thing would not be done in Israel by myself. And from whom did R. Hyya learn this? From R. Meir, as is stated in the following Boraitha: It happened with a woman who came to the college of R. Meir, saying: One of you has betrothed me, but I do not know who it was. Then R. Meir arose and wrote her a divorce, and handed it to her; and after him, all the people in the college did likewise. And from whom did

[paragraph continues] R. Meir learn this? From Samuel the Little; and Samuel the Little from Shechanyah b. Yechiel, who said to Ezra [Ezra, x. 2]: "We have indeed trespassed against our God, and have brought home strange wives of the nations of the land; yet now there is hope in Israel concerning this thing." And he, Shechanyah, learned this from Jehoshua b. Nun, of whom it is said [Josh. vii. 10]: "Get thee up; wherefore liest thou upon thy face? Israel hath sinned," etc.

The rabbis taught: Since the death of the last prophets, Haggai, Zechariah, and Malachi, the Holy Spirit has left Israel; nevertheless they were still used to a heavenly voice. It happened once that they had a meeting in the attic of the house of Guriah, in the city of Jericho, and a heavenly voice was heard: Among these people there is one who is worthy that the Shekinah should rest upon him; but his generation is not fit. And the sages turned their eyes on Hillel the Elder. And when he departed, they lamented him. "Woe, pious! Woe, modesty! O thou disciple of Ezra." The same happened again when they had a meeting in an attic in the city of Yamnia, and the heavenly voice said: Among these people is one worthy that the Shekinah should rest upon him, but his generation is not fit. And the rabbis turned their eyes on Samuel the Little. When he departed, he also was lamented: "Woe, pious! Woe, modesty! O thou disciple of Hillel!"

The rabbis taught: A year must not be intercalated without the Prince's consent. It happened once that Rabban Gamaliel went to one ruler in Syria, and remained there longer than was expected; and the sages had intercalated the year on the condition that Rabban Gamaliel should agree; and then, when he came, he said, "I agree," and the year was intercalated without any other ceremony.

The rabbis taught: A leap year should not be made unless necessary, because of the spoiled roads, bridges requiring to be repaired, and because of the ovens where the paschal lambs were to be roasted, and they were not yet dry; and for them who reside in exile, and had left their places for Jerusalem to offer the paschal lamb, but could not reach in such a short time; but not if there was still snow or cold, and also not for them who resided in exile and had not as yet left their places for Jerusalem.

The rabbis taught: A leap year should not be made because of the kids, lambs, and pigeons which are too young. But this

may be taken as a support. How so? Said R. Janai in the name of R. Simeon b. Gamaliel: We inform you that the pigeons are still soft, and the lambs still thin, and the time of spring has not yet arrived; and it has pleased me to add to this year thirty days. An objection was raised from the following Boraitha: How much is to be added to a leap year? Thirty days. R. Simeon b. Gamaliel said: One month of twenty-nine days. Said R. Papa: If they wish, they can make it with thirty days; and if they wish, with one month of twenty-nine days. Come and see the difference between the old, mighty generation and that of the new, modest one. There is a Boraitha: It happened with Rabban Gamaliel, who used to sit on a step in the court of the Temple, that Johanan his scribe was standing before him, and three pieces of parchment were

lying before him. And be told him: Take one parchment, and write to our brethren in Upper Galilee and to our brethren in Lower Galilee: May your peace be increased! We inform you that the time has come to separate tithe of the mounds of olives. And take another piece of parchment, and write to our Southern brethren: May your peace be increased! We inform you that the time has come to separate tithe of the garden sheaves. And take the third one, and write to our brethren in exile in Babylon, and to our brethren in Media, and to all other Israelites who are scattered in exile: May your peace be increased everlastingly! We inform you that the pigeons are soft, and lambs thin, and the time of spring has not yet come, and it pleases me and my colleagues to add to this year thirty days. (Hence Gamaliel wrote: "pleased me and my colleagues"; and Simeon his son did not mention his colleagues.) (Says the Gemara:) Perhaps this happened after R. Gamaliel was discharged and reappointed, as then he became more modest.

The rabbis taught: For the following three things a leap year is made: because of the late arrival of spring; of the unripeness of tree-products; and for the late arrival of Thkhupha (the equinox). [1] When two of the three things occur, the year is made intercalary; but not if one of them. And when one of the reasons is spring, all rejoiced. And R. Simeon b. Gamaliel said: When Thkhupha (the equinox) was the reason. And the schoolmen questioned: How is he to be understood? Does he mean that they rejoiced when the Thkhupha (the equinox) was

one of the reasons, or does he mean to say that if it was the reason it suffices to make the year intercalate even without other reasons? The question remains undecided.

The rabbis taught: For the following three lands the leap year was made: Judea, Galilee, and the other side of the Jordan. For two of them, but not for one. If it happened that Judea was one of them, all rejoiced, because the offer of the omer (as the first of the harvest) was brought only from the land of Judea.

The rabbis taught: The year is to be made intercalary only in the land of Judea; but if it was made already in Galilee, their act is valid. However, Hananiah, the man of Anni, has testified that if the leap year was made in Galilee it was not considered. And R. Jehudah b. R. Simeon b. Pazi said: The reason of Hananiah is [Deut. xii. 5]: "Even unto his habitation shall ye refrain," which means, all your repairing should be only in the habitation of the Omnipotent.

The rabbis taught: A leap year is to be made only during the day-time, and if it was done in the night it is not intercalate. And the same is the case with the consecration of the month; it holds good in the day-time, and not in the night.

The rabbis taught: A leap year must not be made in the years of famine. And there is a Boraitha: R. Meir used to say: It is written [II Kings, iv. 42]: "And there came a man from Ba'al-shalishah, and brought unto the man of God bread of the firstfruits, twenty loaves of barley-bread," etc. And we know by tradition that the city of Ba'al-shalishah was the most fruitful city in the whole land of Israel, in which the fruit became ripe previous to all other cities; and nevertheless at that time it was not ripe, but only one kind of grain; and not wheat, but barley, as so it reads. And lest one say it was before the time the omer was to be brought, therefore it is written at the end of this verse: "Give it unto the people, that they may eat." Hence, under such circumstances, that

year ought to have been intercalary. And why was it not made so by Elisha? Because it was a year of famine, and every one went to the barns in order to get something to eat, and therefore it was not intercalated.

The rabbis taught: The year must not be intercalary before Rosh Hashana (*i.e.*, no meeting must be appointed to discuss upon the necessity of an additional month in the next year). Even if it were so done, it is not to be taken into consideration. However, if circumstances compelled them to do so, they may

do it immediately after Rosh Hashana; but the additional month must be no other one than Adar. Is that so? Was not a message sent to Rabha: A couple came from the city of Lecarte, and caught an eagle, and in their hands were found things which were made in the city of Luz (*e.g.*, Thkhalth, for Tshitzith). And by the kindness of the Merciful One, and because of their unripeness, they were redeemed, and left in peace. And the descendants of Na'hshun desired to establish one nazib (ruler) more, but the Aramaic had prevented them. However, the prominent men of the cities held a meeting, and added one ruler (nazib) in that month in which Aaron (the high-priest) died. (Hence we see that a meeting about a leap year was appointed in the month of Ab, as Aaron died in that month?) 1

The discussion, and even the establishment, may be done even before Rosh Hashana; but it must be kept secret until the day of New Year is past. But whence do we know that with the above-mentioned word "nazib" they meant "a month"? From [I Kings, iv. 7]: "And Solomon had twelve superintendents (nazibun) . . . for the king's household, one month in the year"; but ibid. 19 reads: "Besides the one superintendent (nazib) who was in the land?"

R. Jehudah and R. Na'hman--one said: One manager over all the superintendents. And the other maintains that this nazib was for the intercalary month.

The rabbis taught: A leap year must not be made in one year, for the next; and also three successive years must not be intercalary. R. Simeon, however, said: It happened with R. Aqiba, that he established three leap years, one after the other, while he was in prison. And he was answered: This is no evidence, as the court had established each leap year in its proper time.

The rabbis taught: A leap year must not be appointed, neither in the Sabbatic year nor in the following year. But when were they used to be established? On the eve of the Sabbatic year. The house of Rabban Gamaliel, however, used to appoint it for the year following the Sabbatic.

The rabbis taught: No appointment of a leap year must be because of defilement. R. Jehudah, however, maintains it may,

and adds: It happened with King Hezekiah, who had established such because of defilement, and thereafter he prayed for forgiveness. As it is written [II Chron. xxx. 18]: "For a large portion of the people, even many out of Ephraim and Manasseh, Issachar, and Zebulun had not cleansed themselves, but ate the Passover not as it is written. However, Hezekiah prayed for them,

saying: "The Lord, who is good, will grant pardon for this."

R. Simeon said: If they had established it because of defilement, it is intercalary; and Hezekiah prayed for forgiveness because the law dictates that only the month of Adar shall be intercalary. He, however, intercalated the month Nissin. R. Simeon b. Jehudah, however, said in the name of R. Simeon: He prayed for forgiveness because he seduced Israel to establish a second passover.

The master said: He intercalated the month of Nissin. Did he not hold the tradition [Ex. xii. 2]: "This month shall be unto you the chief of months," which means Nissin; and it is written, this is Nissin, but no other month shall be named Nissin? He erred in that which is said in the name of Samuel: In the thirtieth day of Adar no intercalary month must be appointed, because this day was fit that it should be the first of Nissin. And he, Hezekiah, did not hold this theory. There is also a Boraitha which states: In the thirtieth day of Adar no month must be intercalated because it is fit to be the first of Nissin.

But how is it if, notwithstanding this, it was established on that day? Said Ula: Then the month must not be consecrated on that day. But how is it if it was consecrated also? According to Rabha, the consecration abolishes the intercalary; and according to R. Na'hman, both hold good--the intercalary and the consecration. Said Rabba to R. Na'hman: Let us see! From Purim to Passover are thirty days; and on Purim we begin to lecture about the law of Passover. Now, if they should appoint another Adar on the thirtieth day after the lectures of Passover were already heard, people would not believe then that another month was appointed, and so they would use leavened bread on Passover. And he answered: Why, they would believe, as they know the establishment of a leap year depends on counting; and they would say that it was not as yet clear to the rabbis--the reckoning of this year--until the thirtieth day of Adar arrived.

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R. Jehudah in the name of Samuel said: A leap Year must not be established unless the Thkhupha was less with a greater part of the month, which are sixteen days. So is the decree of R. Jehudah. R. Jose, however, said: Twenty-one days. And both took their reference from [Ex. xxxiv. 22]: And the feast of ingathering at the closing (Thkhuphat--equinox) of the year. One holds that the whole feast should be in the new Thkhuphat; and the other holds that it is sufficient if a few days of the feast should occur in the new Thkhuphat. How is this to be understood? If they hold that the day in which the Thkhupha occurs is counted to the past Thkhuphat, why, then, is it necessary for R. Jehudah that the Thkhuphat shall be less with sixteen, and to R. Jose with twenty-one days? Even if it would be less with fifteen days, according to R, Jehudah, and twenty days, according to R. Jose, the whole festival will not be on the new Thkhuphat according to R. Jehudah, as the fifteenth day of Nissin, which is the first day of the feast, and in which the Thkhuphat occurs, is counted to the past Thkhuphat; and also according to R. Jose, if the Thkhuphat occurs on the twenty-first day, which is counted to the past, not one of the festival days would occur on the new Thkhuphat, as the festival begins on the fifteenth, and the seventh ends with the twenty-first. Therefore it must be said, of the day in which the Thkhuphat occurs, both R. Jehudah and R. Jose count it as the beginning of the new Thkhuphat. 1

"*Laying the hand of the elders upon sacrifices*." The rabbis taught: It is written [Lev. iv. 15]: "And the elders of the congregation shall lay their hands," etc. (The expression in Hebrew is,

Vsomkhu Ziqnye Hoedha"--literally, "and they shall lay," the elders," "of the congregation.") From the expression Hoedha, which means the congregation, instead of elders of the congregation, it is deduced that it means the prominent of the congregation, and from the plurality of Vsomkhu ("and they shall lay," which means no less than two) and the plurality of the elders who are also two, it is deduced four persons; and as the number of the court must not be even, one is added--hence it makes five. So is the decree of R. Jehudah. R. Simeon, however, maintains: There is only one

plurality in the elders, who are two, and one is added for the purpose mentioned above, making three only. And there is a Boraitha: To laying the hand upon the elders, and laying the hands of the elders upon the sacrifices, three are needed. What does this mean? Said R. Johanan: Laying the hand upon the elders means, to give one the degree of Rabbi: Said Abayi to R. Jose: Whence do we deduce this? From [Num. xxvii. 23]: "And he laid his hand upon him," etc. Then let one be sufficient, as Moses was only one person; and lest one say that Moses took the place of the Large Sanhedrin, who were seventy-one, then say that to confer a degree seventy-one are needed? This difficulty remains.

Said R. Aha b. Rabha to R. Ashi: Do we lay the hands upon the man to whom we want to give such a degree? And he answered: We support him with that, that we name him Rabbi and give him the permission to judge about fines upon them who deserve it.

Is it indeed so--that one man cannot bestow a degree? Did not R. Jehudah in the name of Rab say: Behold, the memory of that person shall remain blessed forever--I mean, R. Jehudah b. Baba, as, if not ben Baba, the law of fines would be forgotten from Israel. It happened once that the government passed an evil decree upon Israel, that he who bestowed a degree should be put to death, and the same should be done with him who received the degree. The city where the degree was conferred should be destroyed, and even the boundaries which were used while giving the degree should be torn out. Jehudah b. Baba then went and sat between two great mountains, and between two large cities--between the two suburban limits of the cities of Usha and Sprehen--and conferred the degree of Rabbi on five elders; and they were: R. Meir, R. Jehudah, R. Simeon, R. Jose, and R. Elazar b. Shamuas. According to R. Ivia, there was a sixth: R. Nehomai. When the enemy got wind of it, Jehudah said to them: My children, run away. And to their question: Rabbi, what will become of you? he answered: I shall remain before them as a stone which cannot be moved. It was said that three hundred iron spears were put by the enemy into his body, making it as a sieve. (Hence we see that even one person only is authorized to give a degree?) There were some other persons with him, but they were not mentioned because of the honor of Jehudah b. Baba. Was indeed Meir elevated by Jehuda? Did not Rabha b. Hanah say in the name

of Johanan that R. Aqiba gave the degree to R. Meir? Yea, R. Aqiba did so, but it was not accepted; and from R. Jehudah b. Baba he accepted.

R. Jehoshua b. Levi said: The custom of giving degrees must not be used out of Palestine. What does he mean? Shall we assume that loss of fines should not be judged at all out of Palestine? This is not so, as there is a Mishna: Sanhedrins are to be established in Palestine as well as in

other places out of Palestine. He means that one must receive his degree in Palestine only.

It is certain that a degree of Rabbi is not considered when the bestower is out of and the receiver is in Palestine. But how is it if the bestower is in Palestine and the receiver is out? Come and hear: R. Johanan was troubled for R. Shaman b. Aba, who was not present and could not receive the degree R. Johanan wished to honor him with. R. Simeon b. Zerud and his colleague Jonathan b. Ekhmai, according to others *vice versa*--one of them who was present they supported with a degree, and the one who was not did not receive such.

R. Hanina and R. Hoseah were two about whom R. Johanan troubled himself very much, to honor them with the degrees they deserved, but was always prevented, whereat he was very sorry. Said they to him: Let master not worry, as we are descendants of the house of Eli. And R. Samuel b. Na'hman in the name of R. Jonathan said: Whence is it deduced that the descendants of Eli are prevented by Heaven from receiving degrees? From [I Sam. ii. 32]: "And there shall not be an elder in thy house in all times"--which cannot be meant literally--"an old man," as it is written [ibid. 33]: "And all the increase of thy house shall die as (vigorous) men." Hence it means a *degree* of an elder (scholar).

R. Zera used to hide himself so as not to be honored with a degree, because of R. Elazar's statement: Be always misty, in order to have a better existence. Thereafter, when he heard another statement of the same authority, "One is not raised to a great authority unless all his sins are forgiven by Heaven," then he went to receive a degree. When he was graduated as a rabbi, his followers sang for him thus: "There is no dyeing, no polishing, no painting, and nevertheless it is handsome and full of grace." When Ami and Assi were graduated as rabbis, likewise people sang of them thus: "Of such men--of such people--appoint rabbis for us, but not from the sermonisers";

and according to others, "not steel-hearted and impudent men"

R. Abuhu, when he came from college in the court of the Zaiser, the matrons of Zaiser's house used to sing for him: "Great man of his people! ruler of his nation! candle of light! may thy coming be welcomed in peace."

"*Case of the heifer*." The rabbis taught [Deut. xxi. 2]: Then shall thy elders and thy judges go forth," etc. Elders, two, and judges, two, are four, etc. (will be translated in Tract Souta, as the proper place).

"*Plants of the fourth year and second tithe*," etc. The rabbis taught: What is to be considered second tithe of which the value is not known? Rotten fruit, sour wine, and rusty coins. They also taught: Such second tithe must be redeemed by the appraisement of three buyers who all know the price of such stock; but not by three laymen who do not know the exact price. Among the buyers maybe a Gentile, and also the owner of the stock. And R. Jeremiah questioned: How is it if the three were partners? Come and hear: One and his two wives may redeem the second tithe of which the value is not known. Hence it is allowed. This is no support, as this Boraitha may speak of such as were apart in business. *E.g.*, R. Papa and his wife, the daughter of Aba of Sura (who used to do business for herself).

"*Consecrated articles*," etc. Our Mishna is not in accordance with R. Eliezer b. Jacob of the following Boraitha, who said: Even for a small fork of the sanctuary, ten persons are needed to appraise the value for redeeming. Said R. Papa to Abayi: R. Eliezer is correct that it needs ten, as he may hold with the statement of Samuel, who said: Priests are ten times mentioned in the portion which speaks of consecrated things. But whence did the rabbis take three? This difficulty remains.

"*Arakhin . . . movable properly*." What are they? R. Giddle in the name of Rabh said: If one vows, the value of this utensil is to be consecrated, then it must be appraised for its value, and he must pay. R. Hisda, however, said in the name of Abayi: It means, if one vows his own value, and appoints movable property for the collection. R. Abuhu said: If one vows his own value for the treasurer of the priests, when he came to collect, if he collects from movable property, three suffice to appraise it; but if from real estate, ten are needed. Said R. Aha of Diphthi to Rabhina: It is correct that three are

needed to appraise articles which are to be redeemed from the sanctuary; but why are three needed for bringing into the sanctuary? And he answered: It is common sense. What is the difference between bringing in and taking out? The reason of appraisement is because an error can occur by which the sanctuary would suffer; and this can take place in both taking out and bringing in.

"*A priest*," etc. Said R. Papa to Abayi: It is correct that R. Jehudah requires that one of them should be a Cohen, as in that portion a Cohen is mentioned; but what is the reason of the rabbis, who do not require him--and for what purpose is a Cohen mentioned, according to them? This difficulty remains.

"*By ten, and one of them a priest*," etc. Whence is all this deduced? Said Samuel: In this portion the word Cohenim is mentioned ten times, and only one of them is needed for itself; and all the others are considered as an exclusion after an exclusion, as to which there is a rule that such comes to add something. And therefore we add nine Israelites to one Cohen. R. Huna b. R. Nathan opposed, saying: Why not say: Add five Israelites to five Cohenim? This difficulty also remains.

"*The value of men*," etc. But does, then, a man become consecrated? Said R. Abuhu: If one vows, the money he is worth (not according to age, which is prescribed biblically) must be appraised as if he were a slave sold on the market; and a slave is equal to real estate. Therefore it needs ten: R. Abim questioned: How is it if one vows the value of his hair, and it should be cut off? Shall we say that things which ought to be cut off are considered as already cut, and movable, and the appraisement needs three only; or, so long as it is attached to the body, it is considered as the body itself, and ten are needed? Come and hear: If one consecrated his slave, no transgression is committed by using him for work. R. Simeon b. Gamaliel said: If one uses his hair, it is a transgression: And we are aware that he speaks when the hair in question is still attached to the body and is ready to be cut off. Hence there is a difference of opinion among the Tanaim.

"*The stoning of an ox . . . and the owner put to death*." Said Abayi to Rabha: Whence do we know this verse means to equal the judgment of the ox to that of its owner? Perhaps it is meant literally--that its owner also shall be put to death? Said Hezekiah, and so also was it taught by his school: It is written [Num. xxxv. 21]: "He who smites him shall be put

to death, for he is a murderer." From which we infer that only when he himself smote is he to be put to death: but he is not to be killed for the death by his ox.

"*The wolf, the lion*," etc. Said Resh Lakish: This is in case they have killed some one; but if not, it is not a meritorious act to kill them. [Hence we see that he holds that these beasts can be considered the property of one who domesticates them.] R. Johanan, however, maintains: In any case, it is a meritorious act to kill them. [Hence he holds that they cannot be domesticated, and are considered ownerless.]

There is an objection from our Mishna: R. Eliezer says: Every one who hastens to kill them is rewarded--which is correct according to R. Johanan, who may explain the word "rewarded"--with the skin of the animal; but according to Resh Lakish, who said, only when they have killed, there is a rule that when so it was, the rabbis considered them as if they were already sentenced to death by the court, and in such a case it is prohibited to derive any benefit from them. What, then, means Eliezer by the expression "he is rewarded"? It means that he will be rewarded by Heaven. There is a Boraitha in accordance with Resh Lakish, as follows: An ox, as well as other animals or wild beasts which kill, must be judged by twenty-three. R. Eliezer, however, maintains: An ox which has killed, by twenty-three; but as to all wild beasts, he who hastens to kill them will be rewarded by Heaven.

"*R. Aqiba says*," etc. Is it not the same as the first Tana? They differ in the case of a serpent.

"*A whole tribe*," etc. Let us see what sin a whole tribe may commit. Shall we assume that it has violated the Sabbath? We know that there is a difference between an individual and a majority only in the case of idolatry; but in the other commandments there is no difference, according to the Scripture. And if it means that the whole tribe was accused of idolatry, and they should be judged as a majority, then our Mishna is neither in accordance with R. Jashiah nor with R. Jonathan of the following Boraitha: How many people must be in the city which shall be misled? From ten to one hundred. So is the decree of R. Jashiah. R. Jonathan, however, maintains: From one hundred up to the majority of the tribe. Now we see that even Jonathan says the majority, but not the whole tribe. Said R. Mathna: It means the Prince of the tribe only. As R. Ada b Ahaba explains [Ex. xviii. 22]: "Every great matter" means:

the matter of a great man; so also here, by the whole tribe is meant the head of it. Rabhina, however, said: The Mishna speaks of a case in which the whole tribe was accused of idolatry, your difficulty being, do we then judge them as a majority? We may say, Yea! although their punishment is similar to that of an individual who is to be stoned. And this is in accordance with R. Hama b. Jose, who said in the name of R. Oseah: It is written [Deut. xvii. 5]: "Then shalt thou bring forth that man or that woman who has committed this wicked thing, unto thy gates"--

which means only an individual, but not the whole city, to thy gates. The same is the case with a whole tribe; only an individual can be brought to the gates to be stoned, but not the whole tribe. (Hence they are judged by seventy-one, as a majority.)

"*False prophet*," etc. Whence is this deduced? Said R. Jose b. Hanina: From an analogy of expression--"presume"--which is to be found in the case of a false prophet [Deut. xviii. 20] and in the case of a rebelling elder [ibid. xvii. 12]. As in the latter case seventy-two are needed, so also in the former. But is not the expression "presumptuously" used in the cited verse concerning death, of which. the verse reads; and death is judged by seventy-three only? Therefore said Resh Lakish: The analogy is in the expression "Dobhor," which is mentioned in both the verses cited.

"*High-priest*," etc. Whence is this deduced? Said Ada b. Ahaba: From the above-cited Ex. xviii. 22, which is explained as the matter of a great man.

"*To decide upon battles*," etc. Whence is this deduced? Said R. Abuhu: From [Num. xxvii. 21]: "And before Elazar the priest shall he stand . . . he and all the children of Israel with him, and all the congregation." "He" means the king. "All Israel with him means the priest who was anointed to be the leader of the war. And all the congregation" means the Sanhedrin. But perhaps the cited verse means that only for the just-mentioned persons the Urim is allowed to be used; but not for common men. And the question, Wherefrom is it taken that seventy-one are needed to decide about battles? remains. Therefore it must be said, as R. Aha b. Bizna in the name of R. Simeon the Pious said: A harp was placed over the bed of David, and when midnight arrived a north wind used to blow in it, so that the harp would play by itself and awake David, who used to get up and occupy himself with the Torah until the

morning star arose. And thereafter the sages of Israel used to enter to him, saying: Lord our king, thy nation Israel needs food. And to his answer: Go, then, and make business among yourselves, they answered him: A handful of food can never satisfy a lion, and a pit can never be filled with the earth taken out from it. Whereupon David decided: They shall go to a battle. Then they consulted Achithophel, took also advice from the Sanhedrin, and asked the Urim, etc.

R. Joseph said: Whence do we know from the Scripture that such was the custom? From [I Chron. xxvii. 34]: "And after Achithophel (came) Yehoyada, the son of Benayahu, and Ebyathar; and the captain of the king's army was Joab. Achithophel was the counsellor, as it reads [II Sam. xvi. 23]: "And the counsel of Achithophel, which he counselled in those days." Yehoyada means the Sanhedrin, as it is written of his father Benayahu [I Chron. xviii. 17]: "And Benayahu, the son of Yehoyada, was over the Kerethites and the Pelethites," which means the Sanhedrin, to whom Yehoyada his son was the head after Benayahu. And why was the Sanhedrin named Kerethites and Pelethites? Because the literal meaning of the two terms in Hebrew is "cutting" and "wonder"; and the Sanhedrin, with their decisions, used to cut off and do wonderful things. "And Ebyathar" means the Urim Vethumim; and then comes "the captain of the king's army, Joab," which means war. And R. Itz'hak b. Ada, and according to others B. Abudimi, said that [Ps. lvii. 9] "Awake, psaltery and harp, I will wake up the morning dawn," is a support to R. Aha b. Bizna's statement.

"*For enlarging, the city*," etc. Whence is this deduced? Said R. Shimi b. Hyya: From [Ex. xxv. 9]: "In accordance with all that I show thee, the pattern of the tabernacle, and the pattern of all instruments thereof, even so shall ye make it"--which means, so shall ye do in the later generations. Rabha objected from the following: "All the utensils which were made by Moses, the anointment sanctified them; however, the utensils which were made after him, the using of them for service consecrated them." And why? Apply, "So shall ye do," etc., to the utensils also; they shall need anointment in the later generations also? With this it is different, as [Num. vii. i]: "And had anointed them, and sanctified them," means them with anointment, but not those which should be made in a later generation. But how is it inferred from the passage that for the utensils made in the later generations anointing is prohibited?

[paragraph continues] Said R. Papa: It is written [ibid. iv. 12]: "Wherewith they minister in the sanctuary." We see, then, that the passage makes them sanctified by ministering with them.

"*Appointing supreme councils*," etc, This is taken from Moses, who had established the first Sanhedrin; and the person of Moses is equalized to seventy-one of them.

The rabbis taught: Whence do we know it is a duty to appoint judges? From [Deut. xvi. 18]: "Judges and officers," etc. But whence do we know that it is a duty to appoint them to each tribe? From [ibid., ibid.]: "Throughout thy tribes." (From this verse is deduced that judges as well as officers are to be appointed to each tribe.) R. Jehudah maintains: It was also necessary to appoint one who should rule over all the judges; as this verse reads, "Shalt thou appoint," which means that the Great Sanhedrin, who ruled all the judges in the lower houses, should be appointed by them. R. Simeon b. Gamaliel said: It reads: "Throughout thy tribes, and they shall judge," which means, it is a meritorious act to appoint judges to a tribe from its own people.

"*To condemn a misled town*," etc. Whence is this deduced? From [ibid. xvii. 5]. "Then shalt thou bring forth that man," etc. An individual you may bring to thy gates, but not the whole city, as said above by R. Hama b. Joseph (here mentioned Hyya, instead of Hama).

"*Town on the boundary*," etc. Why so? Because it reads, "From thy midst," but not from a boundary.

"*Nor three of them*," etc. Because it is written [ibid. xiii. 13]: "One of thy cities." But why two? Because of the word "cities."

The rabbis taught: One, but not three. But perhaps one, and not two? Because it reads cities, two are meant. Hence with the term one, one, not three, is meant. Rabh used to say at one time that for one court it is not allowed to make three, but for two or three courts it is allowed; and at another time he said that it is not allowed to do so, even in several courts? And the reason is, that Israel must not be made bald-headed. Said Resh Lakish: This is said only in one country; but in several countries, it may. R. Johanan, however, is of the opinion that even then it must not, for the reason that the land should not be bald-headed. There is a Boraitha in accordance with R. Johanan. Three misled cities must not be made in the land of Israel; two, however, may--*e.g.*, one in Judea and one in

[paragraph continues] Galilee; but not two in Judea, nor two in Galilee. And if it were near to the boundary, even one must not be proclaimed misled; for, should it come to the ears of the heathens, they might destroy the whole land of Israel. But why not deduce it from the passage which states "from thy midst," and not from the boundary? This is in accordance with R. Simeon, who used to explain the reasons of what is stated in the Scriptures.

"*The Great Sanhedrin*," etc. What is the reason of the rabbis, who said that Moses was as head of them? Because it reads [Num. xi. 16]: "And they shall stand there with thee," which means, and thou shalt remain with them. R. Jehudah, who says seventy only, maintains: It was necessary for Moses to remain with them, that the Shekinah should rest upon them.

The rabbis taught: It is written [ibid. xi. 26]: "And there remained two men in the camp." According to some, it means that their names remained in the urn. As, at the time the Holy One, blessed be He, said to Moses: Gather unto me seventy men of the elders of Israel, he thought: How shall I do it? Shall I appoint six of each tribe? Then there will be two more. Or shall I take five of each? Then there will be ten less. Or shall I appoint from two tribes five only, while from the others six each? Then will I bring jealousy among the tribes. So he chose six from each, and wrote on seventy tickets "Zaqan" (elder), and two he left blank; then mixed, and put all of them into the urn. Then he said: Go, each, and take your ticket. To those who drew "elder," he said: You are already sanctified by Heaven. But those who drew the blanks had no claim, as such was their lot.

Similar was the case from [ibid. iii. 47]: "Thou shalt take five shekels apiece for the poll." And to this Moses also said: How shall I do it? If I should say to one, "Give the shekels," he may answer, "The Levite has already redeemed me." Therefore he wrote on twenty-two thousand tickets "Levite"; and on two hundred and seventy-three he wrote "five shekels," mixed them, put them in the urn, and told the people: Each shall draw his ticket. To the one who drew "Levite" he said: You are free, as the Levite has redeemed you. And he who drew five shekels was told to pay the amount and go.

R. Simeon, however, said: Not their names remained in the urn, but themselves remained in the camp in doubt, saying: We

are not worthy of such a high appointment. And the Holy One, blessed be He, said: Because ye were modest, I will increase your grace. And what grace was increased to them? All the seventy had prophesied once, and ceased; but these two did not cease to prophesy. And what was their prophecy? They said: Moses shall die, and Joshua shall bring Israel to his land. Aba Hanin, however, said in the name of R. Elazar: They prophesied about the quail, saying, "Come up, quail. Come up, quail." And R. Na'hman said:, About Gog and Magog they prophesied, as it is written [Ezek. xxxviii. 17]: "Then hath said the Lord Eternal: Art thou (not) he of whom I have spoken in ancient days through means of my servants the prophets of Israel, who prophesied in those days (*Shanim*) years, that I would bring thee against them?" Do not read *Shanim*, but *Shnaim*, which means two. And who were the two who had prophesied at one period, with one and the same prophecy? Eldad and Medad.

It is correct in respect to him who said above that their prophecy was, "Moses shall die," what is written [Num. xi. 28]: "My lord Moses, forbid them." But in respect to them who said they prophesied about other things, why, then, should they be forbidden? Because it was not seemly for them thus to prophesy in the presence of Moses. What is meant by the words, "forbid them"? He meant to say: Appoint them, they shall occupy themselves with the needs of the congregation, and they will be destroyed by themselves.

Whence do we know that three more are needed, as, after all, sentence of guilt by a majority of two cannot take place; as, if eleven defend and twelve accuse, then there is only a majority of one; and if ten defend and thirteen accuse, there is a majority of three? Said R. Abuhu: Such a case can be only when there is a necessity to add more judges according to all. (*I.e.*, in case eleven accuse and the same number defend, and one of them says: I am in doubt. And in such a case all agree that judges must be added, as the one who is in doubt cannot be counted; and then two more are to be added. And if the two who were added also accuse, there is a majority of two.) And such also can be found in the Great Sanhedrin, in accordance with R. Jehudah, who said: There was an even number of seventy. R. Abuhu says again: In case more judges are to be added, an even number may be made in the Small Sanhedrin also. Is this not self-evident? Lest one say that the one who says he is in

doubt is counted, and if thereafter he gives a reason for his decision after deliberating he may be listened to, he comes to teach us that as from the time he is in doubt he is not to be counted at all, so after the deliberation he may not be listened to.

R. Kahana said: If all the persons of the Sanhedrin are accusing, the defendant becomes free. Why so? Because there is a tradition that such a trial must be postponed for one night. as perhaps some defence may be found for him; but if all accuse him, it is not to be supposed that some will find any defence for him over night, and therefore they are no longer competent to decide in his suit.

R. Johanan said: The persons who are chosen to be members of the Sanhedrin must be tall, men of wisdom, of good appearance, and of a considerable age; and, also, they should understand something in cases of witchcraft; and they must also know seventy languages, so that they shall not need to hear a case through an interpreter. R. Jehudah in the name of Rabh said: In a city in which there are not to be found two persons who can speak seventy languages, and one who can understand them although he cannot speak, Sanhedrin must not be established. In the city of Bethar were three; and in the city of Yamiam were four, namely: R. Eliezer, R. Jehoshua, R. Aqiba, and Simeon of Tehmon their disciple, who was not of age to become a rabbi.

An objection was raised from the following: A Sanhedrin in which three of them could speak seventy languages was considered a wise one; and if four, it was considered the highest one. We see, then, that three who could speak were needed? Rabh holds with the Tana of the following Boraitha: If two, it is a wise one; and if three, it is the highest one.

There is a rule that, where there is to be found throughout the Talmud the expression "the man who learned in the presence of the sages," Levi before Rabbi is meant; and where the expression, "discussed before the sages," Simeon b. Azi, Simeon b. Zoma, Hanan the Egyptian,

and Hayanya b. Hkhinai are meant. R. Na'hman b. Itz'hak taught five persons--the four mentioned above, and the fifth was Simeon of Tehmon. Where it is mentioned, "our Masters in Babylon," Rabh and Samuel are meant; "our Masters in Palestine," R. Abbi is meant; "the judges of the Exile," Karna is meant; "the judges of Palestine," R. Ami and R. Assi; "the judges of Pumbeditha," R.

[paragraph continues] Papa b. Samuel; "the judges of Nahardea," R. Ada b. Minumi; "the elders of Sura," R. Huna and R. Hisda; "the elders of Pumbeditha," R. Jehudah and R. Eina; "the geniuses of Pumbeditha," Eiphah and Abimi sons of Rabha; "the Amoraim of Pumbeditha," Rabba and R. Joseph; "the Amoraim of Nahardea," R. Hama. If it is said "the Nhardlaien taught," Rami b. Berokha is meant. But was it not said by Huna himself: "It was said in the college"? Therefore it must be said that "Hamnuna" is meant. "It was said in Palestine," R. Jeremiah is meant; "a message was sent from Palestine," R. Jose b. Hanina is meant. And where it is said, "it was ridiculed in Palestine," R. Elazar is meant. But do we not find a message was sent from Palestine: According to R. Jose b. Hanina it is so and so? Hence R. Jose b. Hanina cannot be meant in the expression, "there is a message from Palestine"? Therefore it must be reversed. Where it is said, "a message from Palestine," R. Elazar is meant; and "it was ridiculed in Palestine," R. Jose b. Hanina is meant.

"*How many shall a city . . . one hundred and twenty*," etc. What is the reason of that number? Twenty-three of the Small Sanhedrin, and three rows of twenty-three each (hearers), make ninety-two; and ten idle men, who must always be in the houses of prayer and learning, make one hundred and two; and two scribes, two sextons, two parties for defendant and plaintiff, two witnesses, and two men who may be able to prove the witnesses collusive, and still two more who could prove the last ones collusive--hence in the total there are one hundred and fourteen. There is a Boraitha that in a city in which the following ten things do not exist, it is not advisable for a scholar to reside, and they are: Five persons to execute what the court decides; a treasury of charity (which is collected by two and distributed by three); a prayer-house, a bath-house, lavatories, a physician, a barber, a scribe, and a teacher for children. And according to others it was said in the name of R. Aqiba: In the city should be several kinds of fruit, as the consuming of fruit enlightens the eyes.

"*R. Nehemiah*," etc. There is a Boraitha: Rabbi said: Two hundred and seventy-seven. And there is another: Rabbi said: Two-hundred and seventy-eight. And there is no contradiction, as one Boraitha is in accordance with R. Jehudah, who needs only seventy for the Great Sanhedrin.

The rabbis taught: It is written [Ex. xviii. 21]: "And place

these over them, as rulers of thousands, rulers of hundreds, rulers of fifties, and rulers of tens." Rulers of thousands were six hundred; rulers of hundreds were six thousand; rulers of fifties, twelve thousand; and rulers of tens, sixty thousand. Hence the total number of the officers in Israel were seventy-eight thousand and six hundred.

Footnotes

1:1 All this is explained in Tract Baba Kama.

2:1 According to some, the hyena: to others, another sort of a preying beast.

3:1 Leeser translates, "to deliver," the meaning of which is to save, as it is adopted in the original text.

3:2 Leeser's translation here is incorrect, not only according to the Talmud, but also to the *punctuation* of the verse.

7:1 The first-born of cattle which might be legally eaten, and also of an ass, had biblically to be submitted to the priest when the Temple was in existence; but after the destruction of the Temple they had to be raised until a blemish on their bodies appeared. But what kind of a blemish made them fit for slaughtering? They had to be examined by an expert who understand blemishes, and was familiar with the entire law; and a permission was needed for the expert.

10:1 *Zdakha* is the term in Hebrew, which means also charity.

12:1 It is inferred from the term in Hebrew, "Reshit Madun," which is not translatable into English.

13:1 The end of the verse, "but the wicked shall stumble into misfortune," is not found in the Scriptures. This is one of several places which shows that at that time in the Bible was another text.

19:1 All this will be explained in the proper place in succeeding volumes.

25:1 See Rosh Hashana, p. 12, second edition.

27:1 This riddle was sent at the time when it was prohibited by the Roman government to establish a leap year, and even to discuss about it. Therefore the message was sent as a riddle so as to be unintelligible to those not concerned.

29:1 The detailed explanation of all this would take too much space. However, it will be understood by those who know the order of the Jewish calendar. Although in our work it is of no importance, we hope that the reader will have an idea of it from our text, without the detailed explanation and the discussion following, omitted.

Next: Chapter II

CHAPTER II.

RULES AND REGULATIONS CONCERNING THE HIGH-PRIEST: IF HE MAY JUDGE AND BE JUDGED, BE A WITNESS AND BE WITNESSED AGAINST; THE LAWS REGARDING A DEATH OCCURRING IN HIS FAMILY AND THE CUSTOM OF THE CONDOLENCE. THE SAME RULES CONCERNING A KING. REGULATIONS AS TO WHAT A KING MAY AND MAY NOT ALLOW HIMSELF: HOW MANY WIVES AND HOW MANY STABLES FOR HORSES HE MAY HAVE; HOW HE MUST BE RESPECTED AND FEARED BY HIS PEOPLE, ETC.

MISHNA *I.*: The high-priest may judge and may be judged; he may be a witness and may be witnessed against; he may perform the ceremony of Halitzah, and the same may be done to his wife if he dies childless, or his brother may marry his wife in such a case. He, however, must not marry his brother's wife when his brother dies childless--because it is forbidden for a high-priest to marry a widow. If a death occurs in his family, he must not accompany the coffin; but if the coffin with those accompanying it are no longer visible in the street, he goes after them. And so with other streets-when they are not visible, he may enter the street, etc.; and in such manner he may follow the coffin to the gate of the city. So is the decree of R. Meir. R. Jehudah, however, maintains: He must not leave the Temple at all, as it reads [Lev. xxi. 12]: "And out of the sanctuary shall he not go."

When he, the high-priest, condoled with others, it was usual that the people went one after another, and the superintendent of the priests would place him between himself and the people (so that he could say a word of condolence to every one of them); but when he was being condoled with, the people used to say to him: We shall be your atonement (*i.e.*, to us shall occur what ought to occur to you), and his answer was: You shall be blessed by Heaven. And at the condoling meal, all the people were placed on the floor, but he sat on a chair.

A king must not judge, and he is not judged; he must not be a witness, nor be witnessed against. The ceremony of Halitzah does not exist for him, nor for his wife. He does not marry

his childless brother's wife, and his brother must not marry his wife. R. Jehudah, however, maintains: If be was willing to give Halitzah or to marry his brother's wife, he may be remembered among the good. And he was told: Even if he is willing, he must not be listened to.

His widow must not remarry. R. Jehudah said: A king may marry the widow of a king, as so we found with David, who married the widow of Saul; as it reads [II Sam. xii. 8]: "And I gave unto thee the house of thy master, and (put) the wives of thy master into thy bosom."

GEMARA: Is it not self-evident that the high-priest may judge? It was stated, because it was

necessary to say that he may be judged. But this is also self-evident; as if it were not permitted to judge him, how could he judge? Is it not written [Zeph. ii. 1]: "Gather yourselves," which Resh Lakish explained in Middle Gate (p. 287): "Correct yourself first, and then correct others"? Therefore we must say, because in the latter part it was necessary to teach that a king must not judge or be judged, it teaches also that the high-priest may judge and be judged. And if you wish, it may be said that it came to teach us what is stated in the following Boraitha: A high-priest who killed a person-if intentionally, he may be killed; and if unintentionally, he may be sent into exile: he transgresses a positive and a negative commandment, and is also, concerning other laws, considered as a commoner in every respect.

Intentionally-he may be killed. Is this not self-evident? It was necessary to state, if unintentionally, he might be sent into exile. But is this also not self-evident? Nay! One may consider, because it reads [Num. xxxv. 28]: "He shall remain until the death of the high-priest," that he who has a remedy to return to his land by the death of the high-priest shall be sent into exile; but he who has no such remedy should not; and there is a Mishna: He who kills a high-priest, or a high-priest who has killed a person, is not returned from the city of refuge for everlasting, and therefore he should not be exiled-it comes to teach us that it is not so. But perhaps it should be so? There is another verse [Deut. xix. 3]: "Every man-slayer," which includes a high-priest.

The Boraitha states: He transgresses a positive and negative commandment. Must he, then, transgress? It means to say that if it happened he should transgress a positive and a negative commandment, he is considered a commoner in every respect.

"*Be a witness, and witnessed against*," etc. May he be a witness? Have we not learned in the following, Boraitha: It reads [Deut. xxii. I]: "And withdrew thyself." There are cases from which one may withdraw himself, and there are others from which he may not. How so? *E.g.*, a priest who sees a lost thing lying in a cemetery is not obliged to pick it up for the purpose of returning it; or if there were an old, respectable man, and it was not in accordance with his honor to bother with such a thing, or even if one's time is more valuable than the value of the lost thing, he may withdraw himself. Hence it is self-evident that it is not fit for a high-priest to go and witness. Why, then, should he be obliged? Said R. Joseph: He may be a witness in a case that concerns the king. But does not our Mishna state "that a king must not be a witness, and not be witnessed against"? Therefore said R. Zera: He may be witness in the case of a prince, the son of the king. A prince--is he not considered a commoner in all respects concerning the law? Say he may witness before the king. But have we not learned that the king must not be a member of the Sanhedrin; and also that both the king and the high-priest must not take part in the discussion about a leap year? For the honor of the high-priest, the king comes and remains with the Sanhedrin until the testifying of the high-priest ends, and then both depart; and the Sanhedrin themselves deliberate and decide the matter.

The text states that a king must not be a member of the Sanhedrin, nor a king and a high-priest engage in the discussion about a leap year. The first is deduced from [Ex. xxiii. 2]. 1 And the second--a king--because he would not like to add a month to the year, because of the increase of the wages of the military; and a high-priest, because of the cold (*i.e.*, it is prescribed by the Scriptures to take during the Day of Atonement legal baths five times in cold water, and by adding a month, the month of Tishri would fall when in a usual year is the month of Cheshvi,

which is much colder than Tishri).

Said R. Papa: Infer from this that the seasons of the year follow the usual months, and not according to the intercalary month. Is that so? We know that it happened, three pasturers

were standing and conversing in the presence of rabbis thus: One of them said: If there were enough heat so that the wheat which was sown in the beginning of the month, and the barley which was sown recently, should sprout, the month could be named Adar; and if not, it remains Shbat. The second said: If in the morning there is such a cold that the ox trembles from it, and in the middle of the day he should hide himself in the shadow of a fig tree, the month may be considered Adar; and if not, it remains Shbat. And the third said: If the winter has already lost its strength, and the air you blow from your mouth moderates the cold brought by the east wind, it is Adar; and if not, it remains Shbat. And as that year was not so in any of these cases, the rabbis intercalated it. Hence we see that the intercalary comes because of the cold, and not *vice versa*?

How can you conceive that the rabbis had relied upon the pasturers to intercalate a year? They relied upon their own reckoning, and the gossip of the pasturers was considered as a support only.

"*He may perform the ceremony of Halitzah*," etc. The Mishna makes no difference if the widow was from betrothal or from marriage. And this can be correct only with a marriage, as there is a positive commandment that a high-priest must marry a virgin, and a negative commandment that he must not marry a widow; while to marry the wife of his childless brother is a positive commandment only, which cannot invalidate a positive and a negative commandment. But if the widow was from betrothal, she is still a virgin; there remains only one negative commandment, he shall not take a widow. And there is a rule that a positive commandment invalidates a negative commandment? The positive commandment applies only to the first intercourse, but not thereafter, upon which the negative commandments rest. And if the first were allowed, he would come to commit a transgression thereafter, and therefore it is prohibited. And so also a Boraitha states.

"*If death happens*," etc. The rabbis taught: "He shall not leave the sanctuary" means he shall not go with them, but he may go out after them. How so? "When they are not visible in the street, he may appear," etc.

"*To the gate of the city*," etc. Is not R. Jehudah correct with his statement? R. Meir may answer: According to your theory, he must not leave the Temple for home? You must then explain this passage, that it means that he must not go out

from his sanctuary; and while he goes after them, when they are no longer visible, he will not come in contact with the corpse. R. Jehudah, however, fears that because of his sorrow it may happen that when he shall accompany them he will come in contact with the corpse, and violate his sanctity.

"*Condole with others*," etc. The rabbis taught: When he goes in the row to condole with others, his vice and the ex-high-priest are placed at his right, and the head of the priest's family at the mourners'; and all other people are placed at his left. But when he stands in the row to be condoled with by others, the vice only is placed at his right, but not the ex-high-priest, as he may be dejected, thinking that the ex-priest sees a revenge in him.

Said R. Papa: From the Boraitha three things are to be inferred: (*a*) That the vice and superintendent are identical; (*b*) that the mourners stand and the people pass by; and (*c*) that the mourners are placed at the left side of the condolers.

The rabbis taught: Formerly the custom was for the mourners to stand and the people to pass by; but there were two families in Jerusalem who had quarrelled, one saying: I must pass first. according to my dignity; and the other said: I must pass first: Therefore it was enacted that the people should stand and the mourners pass. Said Rami b. Aba: R. Jose reëstablished the old custom that the mourners shall stand and people pass, in the city of Sephorias. And he said also: The same enacted in the same city that a woman should not go into the street with her child following her, but that she should follow the child, because of an accident that happened. (Rashi explained: It happened that immoral men had stolen a child who was following its mother, and put it in a house; and while she was crying and searching for it, they said to her: Come with us and we will show it to you. And while doing so, she was assaulted.) He also said: The same enacted in Sephorias that women should talk to each other while they were at their toilet, for the purpose that men should not intrude.

R. Menashia b. Evath said: I questioned R. Jashiah the Great in the cemetery of Huzl, and he told me that a row is not less than ten persons, not counting the mourners, who must not be among them; and there is no difference if the mourners stand and the people pass, or *vice versa*.

"*Being condoled with*," etc. The schoolmen questioned: What did he say when he condoled with others? And they

were answered from a Boraitha, which states: He used to say: Be comforted.

"*A king must not judge*," etc. Said R. Joseph: This is concerning the kings of Israel; but the kings of the house of David are judged and judge. As it is written [Jer. xxi. 12]: "O house of David, thus said the Lord: Exercise justice on every morning." We see that they did judge; and if they were not to be judged, how could they judge?--as is said above by Resh Lakish. And what is the reason it is prohibited to the kings of Israel? Because an unfortunate thing happened as follows: The slave of King Janai murdered a person; and Simeon b. Cheta'h said to the sages: Notwithstanding that he is the slave of the king, he must be tried. They sent to the king: Your slave has killed a man. And Janai sent his slave to them to be tried. However, they sent to him: You also must appear before the court. As it is written [Ex. xxi. 29]: "Warning has been given to its owner"--which means the owner of the ox must appear at the time the ox is tried. He then came and took a seat. Said Simeon b. Cheta'h: King Janai, arise, so that the witnesses shall testify while you stand; yet not for us do you rise, but for Him who said a word, and the world was created. As it reads [Deut. xix. 17]: "Stand before the Lord." And the king answered: It

must not be as you say, but as the majority of your colleagues shall decide. Simeon then turned to his right, but his colleagues cast their eyes upon the floor without any answer; and the same did his colleagues at his left. Simeon then exclaimed: You are all troubled in mind (disconcerted)! May the One who rules minds take revenge upon you. Gabriel came then and smote them to the floor, that they died. And at that time it was enacted that a king should neither judge nor be judged, neither be a witness nor be witnessed against.

"*If he was willing to give Halitzah*," etc. This is not so? Did not R. Ashi say: Even he who holds that if a prince has relinquished his honor it holds good, agrees that if a king does so his honor is not relinquished. As it is written [Deut. xvii. 15]: "Set a king over you"--which means, that respect (fear) for the king should always be before thy eyes (*i.e.*, and in the ceremony of Halitzah the woman takes off his shoe, and spits before him, which is a disgrace for a king, and must not be done even if he is willing)? R. Jehudah, however, maintains: Where there is a biblical commandment, it is different.

"*His widow must not remarry*," etc. There is a Boraitha:

[paragraph continues] The sages answered R. Jehudah: The verse you refer to means, the woman who was ordained to him by the king, Saul; and they were Merab and Michal, his daughters.

The disciples of R. Jose questioned their master: How could David marry two sisters while they were both living? And he answered them: He married Michal after the death of Merab. And R. Jose said so in accordance with his theory in the following Boraitha, which states: He, R. Jose, used to lecture about passages in the Scriptures which were obscure, namely: It reads [II Sam. xxi. 8]: "And the king took the two sons of Rizpah, the daughter of Ayah, whom she had born unto Saul, Armoni and Mephibosheth; and the five sons of Michal, the daughter of Saul, whom she had borne 1 to Adriel, the son of Barzillai the Meholathite." But was Michal given to Adriel? Was she not given to Palti b. Layish? It reads [I Sam. xxv. 44]: "But Saul had given Michal his daughter, David's wife, to Palti, the son of Layish." Hence the Scripture equalizes the betrothing of Merab to Adriel to the betrothing of Michal to Palti b. Layish; as the betrothing of Michal to Palti was a sin (for she was already the wife of David, and according to the law a second betrothing is not considered at all), so also was the betrothing of Merab to Adriel a sin (for she was already David's wife). R. Jesh b. Karha, however, maintains: The betrothal of Merab to David was by an error. As it is written [II Sam. iii. 14]: "Give up to me my wife Michal, whom I espoused," etc. But what would he say to that passage which reads, "the five sons of Michal, the daughter of Saul"? He might say: Did, then, Michal bear them? Was it not Merab who bore them, whereas Michal merely brought them up? But they bore the name of Michal, because the Scripture considers the one who brings up an orphan as if it were born to him.

R. Hanina says: This is inferred from [Ruth, iv. 17]: "There hath been a son born unto Naomi," etc. Did, then, Naomi bear him? Was it not, in fact, Ruth who bore him? Therefore we must say that, though Ruth bore him, he was nevertheless named after Naomi, because she brought him up. R. Eleaser said: From [Ps. lxxvii. 16]: "The sons of Jacob and Joseph. Selah." Were they, then, born to Joseph, and not to

[paragraph continues] Jacob? They were born to Jacob, but Joseph fed them, and therefore they were named after him.

R. Samuel b. Nahmeni in the name of R. Jonathan said: He who teaches the Torah to the son of his neighbor, the Scripture considers him as if he were born to him. As it is written [Num. iii. 1]: "And these are the generations of Aaron and Moses"; and the following verse reads: "And these are the names of the sons of Aaron." It is only to say that they were born to Aaron and Moses taught them, and therefore they were named after him.

It is written [Is. xxix. 22]: "Therefore thus hath said the Lord unto the house of Jacob, he who hath re, deemed Abraham." Where do we find that Jacob redeemed Abraham? Said R. Jehudah. He redeemed him from the affliction of bringing up his children. (*I.e.*, Abraham was promised by the Lord that He would multiply his children, and so the affliction of bringing them up was to lie upon Abraham; but, in fact, it was Jacob who was afflicted by bringing them up.--Rashi.) And this is what is written [ibid.]: "Not now shall Jacob be ashamed, and not now shall his face be made pale"--which means, he shall not be ashamed of his father and his face shall not become pale because of his grandfather.

In the Scripture there is written in some places "Palti," in other places "Paltiel." Said R. Johanan: His name was Palti; and why was he named Palti-El? "For God saved him from sin" (*i.e.*, "Polat" in Hebrew means "to break through" and "El" means God, and according to tradition Palti did not live with Michal [although he slept with her in one bed], because of her betrothal to David). Said R. Johanan: The strength of Joseph was moderation on the part of Boas, and the strength of the latter was moderation on the part of Palti. "The strength of Joseph was moderation on the part of Boas"--as it is written [Ruth, iii. 8]: "And it came to pass at midnight, that the man became terrified," etc. And Rabh said: His body became as soft as (boiled) turnip heads. "And the strength of the latter was the moderation of Palti"--as with Boas it occurred only on one night, and with Palti it was continually. The same Said again: It is written [Prov. xxxi. 29]: "Many daughters have done virtuously, but thou excellest them all." "Many daughters" means Joseph and Boas. "That feareth the Lord shall indeed be praised" [ibid. 30] means Palti b. Layish. R. Samuel b. Nahmeni in the name of R. Jonathan said [ibid. 30]: "False is grace" means Joseph; "and beauty

vain "means Boas"; ". . . that feareth the Lord" means Palti b. Layish. According to others, "False is the grace" means the generation of Moses, "and vain is the beauty" means the generation of Joshua; ". . . that feareth the Lord" means the generation of Hezkiah. And still according to others, "False is the grace" means the generation of Moses and Joshua, "and vain is the beauty" means the generation of Hezkiah; ". . fear of the Lord," etc., means the generation of R. Jehudah b. Elii. As it was said: In the time of that rabbi six disciples had covered themselves with one garment (as they were very poor), and occupied themselves with the study of the Torah.

MISHNA *II*: If a death occurs in the house of the king, he must not leave the gate of the palace. R. Jehudah, however, maintains: If he is willing to accompany the coffin, he may do so, as we find that David accompanied the coffin of Abner [II Sam. iii. 31]: "And King David walked behind the bier." But he was told that David did so only to appease the spirit of the people. And at the condoling meal all the people are placed on the floor and he is seated on the dais.

GEMARA: The rabbis taught: In those places where it is customary for women to follow a coffin, they may do so; and where it is customary for them to precede the coffin, they have to do accordingly. R. Jehudah, however, maintains that women must always precede the coffin, as we find in the case of David, who followed the coffin, as in the above-cited verse in the Mishna. And he was told that this was only to appease the spirit of the people. And they were appeased, because David used to go from the men to the women and from the women to the men for this purpose. As it is written [ibid. 37]: "And all the people and all Israel understood on that day that it had not been of the king." Rabha lectured: It is written [ibid. 35]: "And all the people came to cause David to eat food while it was yet day." (The term "to cause" is expressed in Hebrew *Le habroth*, and according to him it was written *Le hakhbroth*. The first term means food and the second means to destroy--*Korath*); from which it is to be inferred that in the beginning the people came to destroy him because of the death of Abner, but after he had appeased them they caused him to eat. 1

Said R. Jehudah in the name of Rabh: Why was Abner punished? Because he ought to have warned Saul he should not kill the priest of Nob, and he did not do so. R. Itz'hak, however, maintains: He did warn, but was not listened to. And both infer this from the following verses [ibid. 33, 34]: "And the king lamented over Abner, and said, O that Abner had to die as the worthless dieth! Thy hands were not bound and thy feet were not put in fetters . . ." The one who said that he did not warn interprets thus: "Thy hands were not bound and thy feet were not put in fetters." Why didst thou not warn? And he who said that he did, but was not listened to, interprets it thus: "O that Abner should die as the worthless dieth! Thy hands were not bound . . ." And thou didst warn Saul. Why, then, "as one falleth before men of wickedness art thou fallen"? But according to the latter, that he did warn--why was Abner punished? Said R. Na'hman b. Itz'hak: Because he postponed the kingdom of David for two years and a half.

MISHNA *III*.: And he (the king) declares a war which is not commanded in the Scripture, after consultation with the court of twenty-one judges. He may also establish a way in private property, and nobody has a right to protest against it. The way of a king has no limit. When the military take plunder from the enemy, they must transfer it to the king, and he takes his share first.

GEMARA: Was not this already taught in the first Mishna of this tract: A court of seventy-one judges is needed to decide upon battles which are not commanded, etc.? Because it teaches of other things which belong to the king, this is also repeated. R. Jehudah in the name of Samuel said: All which is written in I Samuel, viii. in that portion relating to a king, the king is allowed to do. Rabh, however, maintains that the whole portion was not said except to warn them. The above Amoraim differ in the same respect as the Tanaim of the following Boraitha: It is written [Deut. xvii. 15]: "Set a king over thee," etc. According to R. Jose, all that is written concerning a king in Samuel, the king is allowed to do. R. Jehudah, however, maintains that the whole portion is written only to frighten them, as the expression, "to set a king over thee," means that the fear of the king shall be always upon you. And thus R. Jehudah used to say: There are three positive commandments which Israel was commanded at the time they entered Palestine, viz.: They shall

appoint a king; they shall destroy the descendants of Amalek; and they shall build a temple. R. N'hurai, however, says: The whole portion was said only because they murmured against Samuel, requesting a king. As it is written [ibid., ibid. 14]: "And thou sayest, I wish to set a king over me," etc.

There is a Boraitha: R. Eliezer said:, The elders of that generation rightly asked Samuel for a king. As it reads [I Sam. viii. 5]: "Appoint for us a king to judge us like all the nations." But the commoners who were among them degraded the case. As it reads [ibid., ibid. 20]: "That we also may ourselves be like all the nations; and that our king may judge us, and go out before us, and fight our battles."

There is another Boraitha: R. Jose said: Three positive commandments Israel was commanded when they entered Palestine, viz.: They shall appoint a king; they shall destroy the descendants of Amalek; and they shall build a temple. But it was not known which was the first. However, from [Ex. xvii. 16], "And he said, Because the Lord hath sworn on his throne that the Lord will have war with Amalek from generation to generation," it is to be inferred that the commandment relating to the king was first, because the word "throne" implies a king. As it is written [I Chron. xxix. 23]: "Then sat Solomon on the throne of the Lord as king." But it was still unknown which should be first, the case of Amalek or the temple. But from [Deut. xii. 10], "He will give you rest from all your enemies . . . and then shall it be that the place," etc., it is to be inferred that the cutting off of the nation of Amalek was to be first. And so was it with David. As it reads [II Sam. vii. 1]: "And it came to pass, when the king dwelt in his house, and the Lord had given him rest," etc., he spake then to Nathan the prophet about the Temple.

The rabbis taught: The treasures of kings which are plundered in time of war belong to the king only; all other plunder, however, half to the king and half to the people. Said Abayi to R. Dimi, according to others to R. Aha: It is correct that the treasures of kings belong to the king, as so it is customary. But from where do we know that other plunder is half to the king, etc.? From [I Chron. xxix. 22]: "And they anointed him unto the Lord as chief ruler, and Zadok as priest." We see, then, that he compares the ruler to Zadok. As in the case of Zadok the high-priest, a half belongs to him and a half to his brother, the same is the case with the ruler. And wherefrom do you

know that in the case of Zadok it is so? From the following Boraitha: Rabbi said: It reads [Lev. xxiv. 9]: "And it shall belong to Aaron and to his sons," meaning half to Aaron and half to his sons.

MISHNA *IV.*: He (the king) must not marry more than eighteen wives. R. Jehudah, however, maintains: He may marry as many as he likes, provided that they shall not turn his heart away. And R. Simeon maintains: Even one wife, should she be liable to turn his heart away, he must not marry her. And the verse which reads, "Neither shall he take to himself many wives," means even when they were similar to Abigail.

GEMARA: Shall we assume that R. Jehudah takes account of the reason mentioned in the Scriptures and R. Simeon does not? Have we not heard elsewhere just the reverse? A widow must not be pledged, no matter if she be rich or poor. As it is written [Deut. xxiv. 17]: "Thou

shalt not take in pledge the raiment of a widow." So is the decree of R. Jehudah. R. Simeon, however, maintains: If she be rich she may be pledged, but when she is poor she must not be pledged. And one is obliged to return the pledge to her. And to the question: How is this to be understood? it was said thus: If you take a pledge from her, you are obliged, biblically, to return it every evening, and by this act she will get a bad name, etc. Hence we see that R. Jehudah does not take account of the reason mentioned in the Scriptures (as there it is written: "You shall return to him; as if not, he will not have whereupon to sleep," which treats only of the poor, and R. Jehudah's theory is that even a rich person must not be pledged)? R. Jehudah does not take account of the reason in all other cases. But here it is different, as the verse itself explains the reason--that "his heart shall not be turned away." And R. Simeon may also say: Do we not take account in all other cases of the reason? Why, then, does the Scripture give the reason here? Let it say, "He shall not marry many wives," and we would understand the reason that it is because of his heart. And as the reason is mentioned, it is for the purpose that even if only one, and she is liable to "turn his heart away," he must not marry her.

The number eighteen mentioned in the Mishna, whence is it deduced? From [II Sam. iii. 2-5]: "And there were born unto David sons in Hebron: And his first-born was Amnon, of Achinoam the Yizreelitess; and his second was Kilab, of Abigayil the wife of Nabal the Carmelite; and the third, Abshalom, the

son of Maachah the daughter of Thalmai the king of Geshur; and the fourth, Adonijah, the son of Chaggith; and the fifth, Shephatyah, the son of Abital; and the sixth, Yithream by Eglah, David's wife. These were born unto David in Hebron." And the prophet said [ibid., ibid. xii. 8]: "And if this be too little, I could bestow on thee yet many more like these." 1

Now let us see! The number of the wives mentioned in the Scriptures is six. "Like this" is six more, "and like this" is again six more, of which the total is eighteen. But was not Michal his wife, who is not mentioned? Said Rabh: Eglah is identical with Michal. And why was she named Eglah? Because he liked her with the liking of a cow for her new-born calf. And so also it reads in judges, xiv. 18: "And he said unto them, If he had not ploughed with my heifer," etc. (from which we see that he names the wife heifer or calf). 2 But had, then, Michal children? Is it not written [II Sam. vi. 23]: "And Michal the daughter of Saul had no child," etc.? Said R. Hisda: She had no children after that time (mentioned in the Scripture), but previous to this she had children. But is it not written [ibid. v. 13]: "And David took yet more concubines and wives out of Jerusalem." (Hence it is to be supposed that he married more than eighteen.) Nay, he married more, to fulfil the number of eighteen. What are wives, and what are concubines? Said R. Jehudah: Wives are married by betrothal and marriage contract; concubines are without both of them.

R. Jehudah in the name of Rabh says: Four hundred children were born to David by the handsome women whom he took captive (*i.e.*, those mentioned in Deut. xxi. 11). All of them had never cut their hair. They were placed in golden *carra*. And in time of war they were placed with the chief officers of the military, and they were the mighty soldiers in David's army. The same said again in the name of the same authority: Thamar was a daughter of one of the above-mentioned handsome women. As it reads [II Sam. xiii. 13]: "But now, O speak, I pray thee, unto the king; for he will not withhold me from thee." And if she were really his daughter, how could she say that the king would allow a sister to marry her brother? Infer from this that she was one

of the children borne by one of the above-mentioned handsome women. It reads [ibid. 3-10]: "But Amnon had a

friend . . . and Yonadab was a very shrewd man." Said R. Jehudah in the name of Rabh: He was shrewd to advise evil. It reads [ibid. 19]: "And Thamar put ashes on her head, and the garment of divers colors which was on her she rent." There is a Boraitha in the name of R. Jehoshua b. Karha: From that which happened to Thamar, a great safeguard was decreed by the sages, as it was said: If it so happened to daughters of kings, so much the more could it happen to daughters of commoners; and if to the chaste, so much the more to the lewd. And therefore said R. Jehudah in the name of Rabh: At that time a decree was made that one must not stay with a married woman alone, nor with a single one. Is that so? Is this not prohibited biblically? As R. Johanan in the name of R. Simeon b. Johozadek said: Where do we find a hint in the Scriptures that one must not stay alone with a married woman? [Deut. xiii. 7]: "If thy brother, the son of thy mother . . . should entice thee." Does, then, only a brother from the mother's side entice, and not a brother from the father's side? It is but to say that only a son may stay alone with his mother, but it is not allowed for anyone besides to stay alone with a married woman. (Hence it is biblical?) Say that at that time it was decreed that one must not stay alone even with a single woman.

It is written [I Kings, i. 5]: "And Adoniyah the son of Chaggith exalted himself, saying, I shall be king." Said R. Jehudah in the name of Rabh: Infer from this that he wanted to place the crown on his head and could not. (Rashi explains this that there was a band of gold in the crown which fitted the descendants of David who had an indentation in their heads which Adoniyah had not.) It is written further: "And he procured himself a chariot and horsemen, and fifty men who ran before him." What is there exceptional in this for a prince? Said R. Jehudah in the name of Rabh: The milt of all of them was taken out (so that it should be easy for them to run), and also the flesh of the soles of their feet was cut off.

MISHNA *V.*: He (the king) must not acquire many horses--only sufficient for his chariots; and also he must not acquire more gold and silver than to pay the military. He must also write the Holy Scrolls for himself; when he goes to war he must bear them with him; when he enters the city they must be with him, and the same when he sits judging the people; and when he takes his meals they must be placed opposite him. As it is

written [Deut. xvii. 19]: "And it shall be with him, and he shall read therein all the days of his life."

GEMARA: The rabbis taught: He shall not acquire many horses, and lest one say even those which arc needed for his chariots, therefore it is written "for himself," from which it is to be inferred that for the chariots he may; but if so, what, then, is meant by "he shall not acquire many horses"? It means horses which should remain idle. And whence do we deduce that even one horse which is idle is under the negative commandment, "He shall not acquire many horses"? For it is written there [ibid., ibid. 16], "in order to acquire many horses." Is it not said above of even one horse, and it is idle, that he transgresses the commandment, "He shall not acquire many horses"? Why is it written "in order to acquire," etc.? That he should be

responsible for the transgressing of the above commandment for each horse which is idle. But how would it be if in the Scripture were not mentioned "for himself"--he would not be allowed even for the chariots? Is this possible? Then, it could be explained, he should have the exact number needed, but not more.

"*Much gold and silver*," etc. The rabbis taught: It is written: "He shall not acquire much gold and silver"--lest one say not even sufficient for paying the military, therefore it is written "for himself." But how would it be if this were not written--he would not be allowed, even for paying the military. Is that possible? Then, it could be explained that he should have the exact amount, but not more. Now, as we see that from the words "for himself" things are inferred, what do you infer from the same words which are written concerning wives? This excludes commoners, who are allowed to take as many as they please.

R. Jehudah propounded a contradiction in the following verses [I Kings, v. 6]: "And Solomon had forty thousand stalls for the horses for his chariots, and twelve thousand horsemen"; and [II Chron. ix. 25]: "And Solomon had four thousand stalls for horses and chariots, and twelve thousand whom he quartered in the cities for chariots, and near the king at Jerusalem." How is it to be understood? If there were forty thousand stables, every one of them contained four thousand stalls; and if it were only four thousand stables, then each contained forty thousand stalls. R. Itz'hak propounded the following contradiction: It reads [I Kings, x. 21]. "None were of silver; it was not *in the*

least valued in the days of Solomon"; and [ibid. 27]: "And the king rendered the silver in Jerusalem like stones." (Hence it had some value?) This presents no difficulty. The first verse speaks of before Solomon married the daughter of Pharaoh, and the second after this.

R. Itz'hak said: (Here is repeated from Tract Sabbath, 1st ed., page 109, in the name of R. Jehudah. See paragraph there--same rabbi.)

The same said again: Why does not the Scripture explain the reason of its law? Because in two verses it was so done, and the greatest men of a generation stumbled because of them. They are, "he shall not acquire many wives," for the purpose that they should not "turn his heart away." And King Solomon said: I shall take many wives, and my heart shall not be turned away. However [I Kings, xi. 4]: "And it came to pass . . . that his wives turned away his heart." And the same was the case with the horses, of which he said: I shall acquire many, and shall not return to Egypt. However [ibid. x. 29]: "And a chariot-team came up and went out of Egypt," etc.

"*Write the Holy Scrolls*." There is a Boraitha: He must not suffice himself with those left by his parents. Rabba said: It is a meritorious act for one to write the Holy Scrolls at his own expense, though they were left to him by his parents. As it is written [Deut. xxxi. 19]: "Now therefore write this song." Abayi objected from our Mishna: "He shall write the Holy Scrolls for himself," and must not suffice himself with those of his parents. And this speaks only of a king, but not of a commoner. Our Mishna treats of two Holy Scrolls, as it is explained in the following Boraitha: It is written [ibid. xvii. 18]: "He shall write for himself a copy of this law," which means that he must write for himself two Holy Scrolls, one which he must bear with him wherever he goes, and one which shall remain in his treasury. The one he has to bear with him he shall write in the

form of an amulet, and place it on his arm. However, he must not enter with it a bath or toilet house. As it is written [ibid., ibid. 19]: "And it shall be with him and he shall read," which means it shall be with him in those places where it is allowed to read it, but not in those where it is not.

Mar Zutra, according to others Mar Uqba, said: "Originally the Torah was given to Israel in Hebrew characters and in the Hebrew language; the second time it was given to Israel in Ezra's time, but in Assyrian characters and in the Aramaic

language; finally the Assyrian characters and the Hebrew language were selected for Israel, and the Hebrew characters and the Aramaic language were left to the Hediotim (Idiots). Who are meant by Idiots? Said R. Hisda: The Samaritans. What is meant by Hebrew characters? Said R. Hisda: The Libnuah characters. 1

There is a Boraitha: R. Jose said: Ezra was worthy that the Torah should be given through him, if Moses had not preceded him. Concerning Moses it reads [Ex. xix. 3]: "And Moses went up unto God"; and concerning Ezra it reads [Ezra, vii. 6]: "This Ezra went up." The term "went up" concerning Moses means to receive the Torah, the same being meant by the same expression concerning Ezra. Farther on it is written [Deut. iv. 14]: "And me the Lord commanded at that time to teach you statutes and ordinances." And it is also written [Ezra, vii. 10]: "For Ezra had directed his heart to inquire into the law of the Lord and to do it, and to teach in Israel statutes and ordinances." And although the Torah was not given through him, the characters of it were changed through him. As it is written [ibid. iv. 7]: "And the writing of the letter was written in Aramaic, and interpreted in Aramaic." And it is also written [Dan. v. 8]: "They were not able to read the writing, nor to make its interpretation." (Hence we see that the new characters the Aramaic people could not read.) And why are they named Assyrian? Because they were brought from the country of Assyria.

There is another Boraitha: Rabbi said: In the very beginning the Torah was given to Israel in the Assyrian characters, but after they had sinned it was turned over to them as a dasher. However, after they repented, it was returned to them. As it is written [Zech. ix. 12]: "Return you to the stronghold, ye hopeful prisoners: even to-day do I declare that I will recompense twofold unto thee." And why is it named Assyrian? Because the characters are praised above all other characters. ("Ashur" in Hebrew means "praise.") R. Simeon b. Elazar, however, said in the name of R. Eliezer b. Parta, quoting R. Elazar the Modai, that the characters were not changed at all. As it is written [Ex. xxvii. 10]. 2 And it is also written [Book

of Esther, viii. 9]: "And to the Jews according to their writing, and according to their language." From which it is to be inferred, that as their language was not changed neither was their writing. But if so, what means the term Mishna 1 in the verse in Deuteronomy cited above: "He shall write a copy of this law"--the two copies of the Holy Scrolls which a king has to write, as said above: One for the treasury and one which he must bear attached to his arm. As it is written [Ps. xvi. 8]: "I have always set the Lord before me, that, being at my right hand, I might not be moved." But he who maintains that the writing was not changed at all, what does he infer from

the verse just cited? That which was said by R. Hana b. Bizna: He who praises should always think that the Shekinah is opposite him, as the cited verse reads.

MISHNA *VI*.: One must not ride on his, the king's horse, and also must not seat himself on his chair, and must not make use of his sceptre. And none must be present when he cuts his hair, and not when he is naked, and not when he is in the bathhouse. As it is written: "Thou shalt set a king over thee," which means that his fear shall be always upon thee.

GEMARA: R. Jacob in the name of R. Johanan said: Abishag was allowed to Solomon but not to Adoniyah, because Solomon was a king; and to a king it is allowed to make use of the sceptre of his predecessor, but not to Adoniyah, who was a commoner. How is to be understood that which is written in I Kings, 4: "And she became an attendant on the king"; and to her request that the king should marry her he answered: You are prohibited to me (as I have already eighteen wives). Said R. Shoman b. Aba: Come and see how hard is divorce in the eyes of the sages: So they permitted Abishag to be with David and did not allow him to divorce one of his wives in order to marry her. Said R. Eliezer: He who divorces his first wife, even the altar sheds tears on account of him. As it is written [Mal. ii. 13]: "And this do ye secondly, covering the altar of the Lord with tears, with weeping and with loud complaint, so that he turneth not any more his regard to the offering, nor receiveth it with favor at your hand." And immediately after it reads: "Yet ye say, Wherefore? Because the Lord hath been witness between thee and the wife of thy youth, against whom thou hast indeed dealt treacherously: yet is she thy companion, and the wife of thy covenant."

R. Johanan, according to others R. Elazar, said: Frequently, one's wife dies when her husband owes money and has not to pay. As it is written [Prov. xxii. 27]: "If thou have nothing to pay, why should he take away thy bed from under thee?" The same said again: To him whose first wife dies, it is as if the Temple had been destroyed in his days. As it is written [Ezek. xxiv. 16 and 19]: "I will take away from thee the desire of thy eyes," etc. "And when I had spoken unto the people in the morning, my wife died at evening"; and [ibid. 21]: "I will profane my sanctuary, the pride of your strength, the desire of your eyes." And R. Alexander said: To him whose wife dies, the whole world is dark for him. As it is written [Job, xviii. 6]: "The light becometh dark in his tent, and his lamp will be quenched above him." And R. Jose b. Hanina adds: Also his steps become shortened, as immediately it reads: "His powerful steps will be narrowed." And R. Abuhu adds. Also his advice is no more of use; as the end of the cited verse reads: "and his own counsel will cast him down."

Rabba b. Bahana said in the name of R. Johanan: It is hard for heaven to appoint marriages as it was to divide the sea; as in Ps. lxviii. 7: "God places those who are solitary in the midst of their families: he bringeth out those who are bound unto happiness." [1]

R. Samuel b. Na'hman said: For everything there may be an exchange, but for the wife of one's youth. As it is written [Is. liv. 6]: "And as a wife of one's youth that was rejected." R. Jehudah taught to his son R. Itz'hak: One does not find pleasure only in his first wife, as it is written [Prov. v. 19]: "Thy fountain will be blessed; and rejoice with the wife of thy youth." And to the question of his son, Whom do you mean? he answered: *E.g.*, your mother. Is that so? We are aware that the same read before R. Itz'hak his son [Eccl. Vii. 26]: "And I find as more bitter than death the woman whose heart is snares and nets," etc. And to the question of his son, Whom do

you mean? he answered. *E.g.*, your mother. True, she was hard to him at the start, but finally she overruled herself and did all he pleased. R. Samuel b. Umaya said in the name of Rabh: A wife is similar to a piece of metal, and does not make any covenant but with him who makes her a vessel. As it is written

[paragraph continues] [Is. liv. 5]: "For thy husband is thy master," etc. There is a Boraitha: One dies but to his wife, and the wife dies but to her husband. The first is deduced from [Ruth, i. 3]: "Thereupon died Elimelech Naomi's husband"; and the second from [Gen. xlviii. 7]: "And as for me, when I came from Padan, Rachel died by me."

"*Cuts his hair*." The rabbis taught: The king must cut his hair every day. As it is written [Is. xxxiii. 17]: "The king in his beauty shall thy eyes behold." A high-priest every eve of Sabbath, and the commoner priest every thirty days. Why every eve of Sabbath? Said R. Samuel b. Na'hman in the name of R. Johanan: Because the watching priests are relieved every eve of Sabbath. And why for a commoner every thirty days? Because it reads [Ezek. xliv. 20]: "And their heads shall they not shave close, nor suffer their hair to grow long: they shall only crop (the hair of) their heads." And there is an analogy of expression from a Nazarite [Num. vi. 5]. As concerning a Nazarite it is thirty days, the same is the case here. And whence do we know that for a Nazarite it is thirty days? Said R. Mathna: It reads: Holy shall he be. Because the generation of *Yihiye* counts thirty (a Yod counts ten, a He, five, and in the word *yihiye* there are two Yods and two Hes). Said R. Papa to Abayi: Why not explain the above-cited verse as that they shall not be allowed to let their hair grow at all? And he answered: If it read: "They shall not let their hair grow," your explanation would be correct; but as it reads "to grow long," it must be explained as the rabbis enact: They shall let it grow thirty days. (Said R. Papa again:) If so, in our time, when there is no temple, it is to equalize the cutting of the hair to the partaking of wine, which was prohibited to the priests only when they had to enter the Temple (as after the case of hair-cutting immediately follows the prohibition of the partaking of wine). Is that so? Have we not learned in a Boraitha: Rabbi said: I say that it is prohibited for the priest to drink Wine at any time whatever. But what can I do, in that the destruction of the Temple was their remedy: as they were forbidden to drink wine in order that they should not enter the Temple while drunk, so, now that the Temple no longer exists, they do not care? Said Abayi: According to whom do the priests drink wine in our time? In accordance with Rabbi's statement.

Rabbi was questioned: How was the hair-cutting of the high-priest,

which it is told was done very artistically? And he answered: Go and see the hair-cutting of Ben Aleshe. And there is a Boraitha: Rabbi said: Not in vain has B. Aleshe expended his money to learn the art of cutting hair: it was only to show how the high-priests used to cut their hair.

Footnotes

45:1 How it is deduced from this verse it is impossible to express in any living language. Even in the Hebrew we have to make from the word Rebh--literally. "quarrel"--the word Rab--literally, "great," and to interpret the passage in another fashion altogether. It would therefore be of no use to insert the verse as it is usually translated.

49:1 Leeser translates "brought up," according to the sense. The term in the Bible, however, is the same as in the first part of this verse; therefore the question in the text.

51:1 In the Scripture which is before us there is nothing of the kind. However, we have remarked several times that their text of the Scripture was different from ours. And so also is it remarked in a foot-note in the Wilna edition, 1895.

55:1 The term in Hebrew is "Khohino ve Khohino"--literally, "like this and like this." Hence the analogy in text.

55:2 Eglah is, literally, "a calf."

59:1 For the explanation of this passage see our "Pentateuch: Its Languages and its Characters" (pp. 14, 15). See also there who Utra or Uqba was.

59:2 We have not inserted the verse, as the translation of it does not correspond at all.

60:1 The term "Shana" means "to repeat," and also "change."

61:1 The Talmud takes the last cited words for the exodus from Egypt, and explains: "Do not read the Hebrew term so, but otherwise," which it is impossible to give in the English version.

Next: Chapter III

CHAPTER III.

RULES AND REGULATIONS CONCERNING THE QUALIFICATION OR DISQUALIFICATION OF JUDGES AND WITNESSES WHO MAY DECIDE UPON STRICT LAW AND WHO IN ARBITRATION. WHEN A REJECTION AGAINST JUDGES AND WITNESSES MAY OR MAY NOT TAKE PLACE. OF RELATIVES THAT ARE DISQUALIFIED AND THOSE THAT ARE NOT. HOW THE WITNESSES SHOULD BE EXAMINED IN CIVIL CASES. UNTIL WHAT TIME NEW EVIDENCE MAY OR MAY NOT AFFECT A DECISION RENDERED.

MISHNA *I.*: Civil cases by three; one party may select one and so the other, and both of them select one more; so is the decree of R. Meir. The sages, however, maintain that the two judges may select the third one. One party may reject the judge of his opponent, according to R. Meir. The sages, however, say: This holds good only when the party brings evidence that the judges selected by his opponent are relatives, or they are unqualified for any other reason. If, however, they were qualified, or they were recognized as judges from a higher court, no rejection is to be considered. The same is the case with the witnesses of each party, according to R. Meir, so that the rejection of each party against the witnesses of its opponent may be taken into consideration. The sages, however, say: Such holds good only in the cases said above concerning the judges, but not otherwise.

GEMARA: How is to be understood the expression of the Mishna: One party selects one, etc.? Does it mean one party may select one court of three judges, and likewise the other; and then both the third court, which would be altogether nine judges? Are, then, three not sufficient? It means, if one party selects one judge its opponent may also do so, and then both may select the third one. And what is the reason of such a selection? It was said in Palestine in the name of R. Zera: Because each party selects its own judge, and both agree in the selection of the third one, the decision will be a just one.

"*The sages, however, say,*" etc. Shall we assume that the point of their difference is what was said by R. Jehudah in the

name of Rabh: Witnesses may not sign a document unless they are aware who will be the others; and so R. Meir does not hold this theory and the rabbis do? Nay! All hold this theory, and the point of their difference is thus: According to R. Meir, the consent of the parties is also needed; but the rabbis hold that the consent of the judges, but not of the parties, is needed.

The text reads: R. Jehudah said in the name of Rabh: Witnesses, etc. There is also a Boraitha: Pure-minded people of Jerusalem used not to sign a document unless they were aware who was the other who was to sign it, and also would not sit down to judge unless they were aware who

was to be their colleague, and would also not go to a banquet unless they were aware who were invited to it.

"*Each party may reject*," etc. Has, then, one the right to reject judges? Said R. Johanan: It speaks of the little courts in Syria, where there were Gentile judges who were not recognized by the higher court. But if they were, no objection could be taken into consideration. But does not the latter part state: "and the sages, however, say . . . recognized by the court"? From which it is to be understood that their opponent R. Meir speaks even of them who were recognized? They mean to say: If not disqualified (on account of kinship or bad conduct) they are to be considered as if they were authorized judges against whom no rejection can take place.

Come and hear: The sages said to R. Mair: One cannot be trusted with any right to protest against a judge who was appointed by the majority? Read: One has no right to reject a judge who was appointed by the majority. And so we have learned in the following Boraitha: One may reject the selected judge of his opponent until he has selected a judge who was recognized by a majority. So is the decree of R. Mair. But are not witnesses considered as recognized judges, and nevertheless R. Mair. said that one party may disqualify the witness of his opponent? Aye! But was it not already said by Resh Lakish: How is it possible that a holy mouth like R. Mair's should say such a thing? Therefore it must be supposed that R. Meir did not say "witnesses," but "his witness" (*i.e.*, a single witness). Let us see! What does he mean by one witness? If concerning a civil case, the law itself disqualifies him; and if concerning an oath, he is trusted by the law as if there were two witnesses. It speaks of a civil case, and the case was that previously the parties accepted him, saying that his testimony would be considered as

if it were testified by two. But, after all, what news did he come to teach us--that he may retract? This we have learned already in the succeeding Mishna, which states that, according to R. Mair, he may retract, to which R. Dimi b. R. Na'hman b. R. Joseph said that the Mishna speaks of when he has accepted his father as a third judge (and because biblically a father is not fit to judge in a case of his son), he may retract even if he has previously accepted him. Why not say the same in our case, because one is not fit for a civil case he may retract although he had previously accepted him? Both cases were needed, as if the case about his father only were stated one might say that because the same is fit to be a judge in other cases, therefore the rabbis maintain that no retraction is to be considered; but in the case of a commoner, who is not fit to be a judge in any case whatsoever, the retraction would hold good, even in accordance with the rabbis. And if the case of a commoner were stated, one might say that only in that case R. Meir permitted to retract. But in the other case he agrees with the rabbis, therefore both are stated.

But how would the expression of the Mishna be understood? It speaks about the judge in the singular (one may reject the *judge*, etc.), and concerning witnesses, it speaks in the plural (one may reject the *witnesses*, etc.). Hence we see that the Mishna is particular in its expression. How, then, can you say that R. Mair maintains a single witness? Said R. Elazar: It means that he-one of the parties, and also another one who does not belong to this case--come to reject this witness, as then they are two against one, and therefore the rejection holds good. But, after all, why should one of the parties have a right to reject? Is he not interested in this case, and there is a rule that the testimony of such is not to be taken into consideration. Said R. Aha b. R. Ika: The case was that he laid before the court the reason of his protest, which can be examined.

Let us see what was the reason. If, *e.g.*, robbery, it must not be listened to, as he is interested in this case. Therefore we must say that the reason was the incompetence of his family--*e.g.*, that he or his father was a bondsman, who was not as yet liberated. According to R. Mair, he may be listened to, as his testimony is against the entire family. The rabbis, however, maintain that even then he must not be listened to because of his interest in this case, and the court has not to consider his testimony at all.

When R. Dimi came from Palestine, he said in the name of

[paragraph continues] R. Johanan that the point of their difference is two parties of witnesses, *i.e.*, *e. g.*, the borrower said: "I have two parties of witnesses who will testify to my right," and brought one party of them against which the lender protests. According to R. Mair, the protest holds good because the opponent himself confessed that he had another party. Hence he may bring the other party, against whom no protest would be considered (and his reason is that a proof is needed to each claim, even if it is not so important that it could injure the case); and according to the rabbis, no protest must be listened to even in such a case, as they do not desire a proof to each claim. But when there was only one party of witnesses, all agree that no rejection is considered.

Said R. Ami and R. Assi to R. Johanan: How is it if the other party of witnesses were found to be his relatives, or incompetent to be witnesses for any other reason, should the testimony of the first party be considered, or because of the incompetence of the other party, the first party also loses credit? Said R. Ashi: The testimony of the first party was already accepted, and therefore there is no basis to ignore their testimony because of the incompetence of the other party. Shall we assume that R. Mair and the rabbis differ the same as Rabbi and R. Simeon b. Gamaliel. differ concerning one who claims that he has bought a document and "hazakah" (Last Gate, p. 377), and in the discussion we come to the conclusion that the point of their difference is, if one must prove his words or not? Nay! According to R. Simeon b. Gamaliel, they do not differ at all, and the point of their difference is according to Rabbi's statement there. R. Mair holds with Rabbi. The rabbis, however, maintain that Rabbi does so only in case of the claim of hazakah, which is based upon the document; but in our case, where the testimony of the witnesses is not based upon that of others, even Rabbi admits that no proof is needed.

When Rabbin came from Palestine, he said in the name of R. Johanan that the first part of our Mishna treats of incompetent witnesses but competent judges, and because they reject the witnesses the judges are also rejected; and the latter part speaks of the reverse--that the judges were incompetent and not the witnesses, and the witnesses are rejected because of the judges. Rabha opposed: It would be correct to say that because of the incompetence of the witnesses one may reject the judges, as the case can be brought before other judges. But how can the witnesses be rejected because of the judges? Then the

party would remain without witnesses at all. It speaks of when there was another party of witnesses. But how would it be if there were no other witnesses? Then no rejection is to be considered. Thus Rabbin said the same that R. Dimi said? The theory of "because" is the point of their difference. As to R. Dimi, the theory of because is not to be used at all, while according

to Rabbin it is.

The text says: Resh Lakish said: "The holy mouth of R. Mair should say such a thing," etc. Is that so? Did not Ula say that he who saw Resh Lakish in the college saw one uprooting hills and crushing them? (Hence how could he say such a thing, which was objected to?)

Said Rabhina: Was it not said of R. Mair that he who saw him in the college had seen one uprooting *mountains* and crushing them (and nevertheless he was criticised by Resh Lakish). Therefore he (Ula) meant thus: Come and see how the sages respected each other (though Resh Lakish was such a genius, he nevertheless, in speaking of R. Mair, named him holy mouth). 1

MISHNA *II*.: If one says, "I accept as a judge in this case your father or my father," or, "I accept certain three pasturers to judge our case," according to R. Mair he may retract thereafter, and according to the sages he must not. If one owes a note to a party, and the latter said to him, "Swear to me by your life, and I will be satisfied," according to R. Mair he may retract, and according to the sages he may not.

GEMARA: Said R. Dimi b. R. Na'hman b. R. Joseph: It speaks of when he has accepted his father as a third judge. Even then he may retract, according to R. Mair. Said R. Jehudah in the name of Samuel: The Tanaim of the Mishna differ in case the creditor said to the debtor: Your or my father may judge this case, and if they should acquit you, I will renounce my claim. But if the debtor said to the creditor: I trust your father, and if they shall hold me liable, I will give you the money--all agree that he may retract. R. Johanan, however,: said that they differ in the latter case.

The schoolmen propounded a question: Does R. Johanan mean to say that they differ only in the latter case, but in the former, "I will renounce my claim," all agree that no retraction is to be considered; or, does he mean to say that they differ in both cases? Come and hear what Rabha, said: They differ only

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if he said, "I will satisfy your claim," but in case of "I will renounce my claim," all agree that he cannot retract. Now let us sec! If the question of the schoolmen is to be resolved according to Rabha's decision just mentioned, it is correct, as he is in accordance with R. Johanan; but if the question should be resolved that they differ in case of renouncing, etc., according to whom would be Rabha's opinion? Rabha may differ with both, and declare his own opinion. R. Aha b. Tahlipa objected to Rabha from the latter part of our Mishna's statement, that if he told him to swear by his life, according to R. Mair he may retract, etc. Does not the Mishna speak of one who is to be acquitted with an oath, which is equal to "I renounce my claim"? Nay; it speaks of them who ought to swear and collect, which is equal to "I will give you." But this was stated already in the first part? The Mishna teaches both cases, one in which he is dependent upon himself and one in which he is dependent on the mind of others. And both are needed; as, if there were stated the case when he is dependent upon others *e.g.*, "I trust your father," etc.--one might say that only in such a case R. Mair permits to retract, as he has not as yet made up his mind to pay, thinking that probably he will be acquitted; but when he depends upon himself--*e. g.*, "Swear by your life," etc.--R. Mair also admits that he cannot retract. And if this case only were stated, one might say that in such a case only the rabbis hold that he cannot retract; but in

case he depends upon others. they agree with R. Mair. Therefore both are needed.

Resh Lakish said: The Tanaim of the Mishna differ in case the decision was not yet rendered; but after it was, all agree that no retraction can take place. R. Johanan, however, maintains that they differ in the latter case.

The schoolmen propounded a question: Does R. Johanan mean to state that they differ in a case where the decision was rendered, but in case the decision was not as yet rendered all agree that a retraction can take place, or does he mean to say that they differ in both cases? Come and hear what Rabha said: If one has accepted a relative or one who is legally disqualified to be a judge, if before the decision, his retraction holds good; but if after, no retraction is to be considered. Now let us see! If the saying of R. Johanan is to be explained that they differ when the retraction took place after the decision--but if before, all agree that it holds good--Rabbi's decision is correct, as it is in accordance with R. Johanan's explanation and in accordance

with the rabbis. But if it should be explained that they differ also in case it was before the decision, according to whom would be Rabha's decision just mentioned? Infer from this that they differ in the case after the decision but before, all agree that a retraction holds good.

R. Na'hman b. R. Hisda sent a message to R. Na'hman b. to Jacob: Let the master teach us in which case the Tanaim of our Mishna differ--after or before the decision, and with whom the Halakha prevails. And the answer was: After the decision, and the Halakha prevails with the sages. R. Ashi, however, "I said that the question was: Do they differ in case he said, "I will renounce my claim," or in case "I will satisfy your claim"? And the answer was: They differ in the latter case: the Halakha prevails with the sages. So was it taught in the College of Sura. In the College of Pumbeditha, however, it was taught: R. Hanina b. Shlamiha said it was a message from the college, to Samuel: Let the master teach us how is the law if the retraction took place before the decision, but they have made the ceremony of a sudarium? And the answer was that nothing could be changed in such a case.

MISHNA *III*.: The following are disqualified to be witnesses: Gamblers (habitual dice-players) and usurers, and those who play with flying doves; and the merchants who do business with the growth of the Sabbatic year. Said R Simeon: In the beginning they were named the gatherers of Sabbatic fruit; *i.e.*, even those who had gathered the fruit, not for business, were disqualified. However, since the demand of the government to pay duties increased, the gatherers of the Sabbatic fruit were absolved from the disqualification, and only those who did business with same were disqualified. Said R. Jehudah: Then the merchants and all the other persons named above were disqualified only when they had no other business or trade than this; but if they had, they were qualified.

GEMARA: What crime is there in dice-playing? Said Rami b. Hama: Because it is only an *asmachtha*, which does not give title. R. Shesheth, however, maintains that such is not to be considered an *asmachtha*; but they are disqualified because they do not occupy themselves with the welfare of the world--and the difference between them is if they had another business besides. As we have learned in our Mishna, according to R. Jehudah, if they have some business besides, they are qualified. Hence we see that the reason of the disqualification is because they

do not occupy

themselves with the welfare of the world--and this contradicts Rami b. Hama's above statement? And lest one say that R. Jehudah's opinion is only of an individual, as the rabbis differ with him, this is not so, as Jehoshua b. Levi said that in every place where R. Jehudah says "this is only," or if he says "provided," he comes only to explain the meaning of the sages, but not to differ with them; and R. Johanan maintains that when he says "this is only," he comes to explain, but when he says "provided," he means to differ. And as in our Mishna he expresses himself "this is only," all agree that he is only explaining.

Hence Rami is contradicted? Do you contradict one man with another man? Each of them may have his opinion. Rami holds that they do differ, and Shesheth that they do not.

Have we not learned in the following Boraitha that it does not matter if he has another business besides; he is nevertheless disqualified? The Boraitha is in accordance with R. Jehudah in the name of Tarphon of the following Boraitha: R. Jehudah said in the name of R. Tarphon, concerning a Nazarite (Tract Nazir, 34a), that wherever there is any doubt he is not deemed a Nazarite. And the same is in our case, as the gambler is not certain that he will win or lose, it cannot be considered a real business, but robbery, and therefore he is disqualified even when he has another business.

"*Usurers*." Said Rabha: One who borrows to pay usury is also disqualified. But does not our Mishna state "usurers," which means the lenders, and not the borrowers? It means to say a loan which is usurious. There were two witnesses who testified against Bar Benetus. One said: In my presence he has given money at usury; and the other said.. He has loaned to me at usury. And Rabha disqualified b. Benetus from being a witness. But how could Rabha take into consideration the testimony of him who said: I have borrowed from him at usury? Did not Rabha say that the borrower also is disqualified, because, as soon as he has borrowed at usury, he is wicked; and the Torah says: Thou shalt not bring a sinner as a witness. Rabha is in accordance with his theory elsewhere, that one is not trusted to make himself wicked. (Hence his testimony that he himself has bor. rowed at usury is not taken into consideration, but that part, that Benetus has loaned to him at usury, was.) There was a slaughterer who sold illegal meat in his business, and R. Na'hman disqualified him . And he let his hair and nails grow as a sign of repentance; and Na'hman was about to remove the

disqualification. Said Rabha to him: Perhaps he is deceiving you. But what remedy can he have? As R. Aidi b. Abin said elsewhere: For him who is suspected of selling illegal meat there is no remedy, unless he goes to a place where he is not known and returns a valuable lost thing, or he recognizes the illegality of meat in his business, even if it is of great value.

"*Flying doves*," etc. What does this mean? In this college it was explained: If your dove should fly farther than mine (such and such a distance), you shall take an amount of money. And Hama b. Oushia said that it means an •ρυω {Greek *a?ruw*}, one who uses his doves to entice to his cot doves belonging to other cots--and this is robbery. But to him who maintains, "If your dove shall

fly farther," etc., is this not gambling? (Why, then, is it repeated?) The Mishna teaches both cases--depending upon himself and depending upon his dove; as if depending upon himself only were stated, one might say that, because he was sure he would win, he offered such an amount, and be has not made up his mind to pay the sum willingly in case of a loss, and therefore it is considered an *asmachtha*, which does not give title. But in the other case, where he is dependent upon his dove, in which he is not sure, and has nevertheless offered a sum of money, it is to be supposed that he made up his mind to pay willingly in any event, and therefore it is not considered an *asmachtha*. And if this latter case were stated, one might say that he did so probably because the winning of the race depends on the clapping, and he knew better how to clap (at the pigeon race); but when he depends upon himself, it is different. Therefore both are stated.

An objection was raised from the following: Gamblers are counted those who play with dice; and not only dice, but even with the shells of nuts or pomegranates. And when is their repentance to be considered? When they break the dice and renounce this play entirely, so that they do not play even for nothing. And usurers are counted both the lender and the borrower, and their repentance is to be considered only then when they destroy their documents and renounce this business entirely, so that they do not take usury even from a heathen, from whom it is biblically allowed. And among those who play with doves, those who train doves to fly farther are counted; and not only doves, but even other animals; and their renunciation is considered only when they destroy their snares and renounce the business entirely, so that they do not catch birds even in

deserts. Among those who handle Sabbatic fruits are counted those who buy or sell, and their renunciation is considered only when they cease to do so in the next Sabbatic year. Said R. Na'hamia: It is not sufficient that they cease to do so, but they must return the money which they derived from the sale of the fruit. How if one say: I, so and so, have obtained two hundred zuz from the Sabbatic fruit, and I present them for charity? We see, then, that among those who play with doves, those who do so with other animals are also counted; and this can be correct only according to him who explains our Mishna: "If your dove should fly farther than mine," as the same can be done with other animals. But to him who says an •ρυω {Greek *a?ruw*}, could this be done with other animals? Aye, this can be done with a wild ox; and it is in accordance with him who says that a wild ox may be counted among domesticated animals.

There is a Boraitha: There was added to the disqualified witnesses robbers and forcers (*i.e.*, those who take things by force, although they pay the value for them). But is not a robber disqualified to be a witness biblically? It means even those who do not return a found thing which was lost by a deaf-mute or by minors (which according to the strict law is not to be returned, but it was enacted that it should be returned for the sake of peace--that there should be no quarrel with their relatives), and as this does not occur frequently, they were not counted among the disqualified. Thereafter, however, they were added, as, after all, they take possession of money which does not belong to them. And the same is the case with the forcers, who were not placed among the disqualified, because this does not happen frequently. Thereafter, however, as the rabbis saw that it became a habit, they added them also.

There is another Boraitha: There was secondly added to that category, pasturers, collectors of duty, and contractors of the government. Pasturers were not put in this category previously,

because, when it was seen that they led their animals into strange pastures, it was only occasionally; but later, when it was seen that they did it intentionally, they were also added. And the same is the case with the collectors of duty and the contractors, as at first it was thought that they took only what belonged to them; but after investigation, when it was found that they took much more than they ought, they were added. Said Rabha: The pasturer in question--it matters not if he is a pasturer of small cattle or of large ones. Did Rabha indeed say so? Did

he not say that a pasturer of small cattle is disqualified only in Palestine, but not outside of it, and pasturers of large cattle even in Palestine *are* qualified? This was taught of them who raise the cattle for themselves; and if they are small cattle, they are disqualified because it was forbidden to keep small cattle in Palestine, as explained elsewhere. And so it seems to be as the previous Mishna expresses, "three pasturers," and it is to be assumed for witnesses. Nay; it means for judges, and this is to be understood from the number three. As if for witnesses, for what purpose are three needed? But if for judges, why does the Mishna express itself "pasturers"--let it state three laymen who do not know the law? It means to say that even pasturers who spend their time in uninhabited places are nevertheless qualified to judge of the appointment of the parties.

R. Jehudah said: A pasturer of whom it is not heard that he leads his cattle into strange pasture is nevertheless disqualified, but a duty collector of whom it is not said that he takes more than he ought, is qualified.

The father of R. Zera was a collector for thirteen years, and when the governor would come to that city he used to say to the scholars: Go and hide yourselves in the houses, so that the governor shall not see so many people, or he will demand from the city more taxes. And also to the other people, when he saw them crowded in the streets, he used to say: The governor is coming, and he will kill the father in presence of the son, and the son in presence of his father. And they also used to hide themselves. And when the governor came, he used to say to him: You see that there are very few people in this city. From whom, then, shall we collect so much duty? When he departed, he said: There are thirteen maes which are tied in the sheet of my bed; take and return them to so and so, as I took it from him for duty and did not use it.

"*They were named gatherers of Sabbatic fruit,*" etc. What does this mean? Said R. Jehudah thus: Formerly it was said the gatherers of the fruit were qualified, but the merchants were not. But when it was seen that they used to pay the poor that they should gather the fruit for them and bring it to their houses, it was enacted that the gatherers as well as the merchants were disqualified. This explanation, however, was a difficulty to the scholars of the city of Rehaba as to the expression of our Mishna, "since the demand of the government," and according to this explanation it ought to be, "since the increase of buyers,"

and therefore they explain thus: Since the government has increased their duties [as R. Jani announced, "Go and sow in the Sabbatic year, because of the duties"], it was enacted that the gatherers were qualified, but not the merchants.

Hyie b. Zarssuqi and Simeon b. Jehuzdack went to intercalate a year in Essia, and Resh Lakish met them and said: I will go with them to see how they practise. In the meantime he saw a man who was ploughing in the Sabbatic year, and he said to them: Is this man a priest, who is suspected of doing work in the Sabbatic year? And they answered: Probably he is hired by a Gentile to do so. He saw again a man who was collecting the fluid in a vineyard and putting it back into the bale. And he said again: Is this man a priest, who is suspected, etc.? And they answered: He who trims vines in the Sabbatic year may say: I need the twigs to make a bale for the press. Rejoined Resh Lakish: The heart knows whether it is done for "ekel" (a legitimate purpose) or out of "akalkaloth" (perverseness). And they rejoined: He is a rebel. When they came to their place, they ascended to the attic and moved the steps that he (Resh Lakish) should not ascend with them. The latter then came to R. Johanan and questioned him: Men who are suspected of transgressing the Sabbatic year, are they fit to establish a leap year? After deliberating, however, he said: It presents no difficulty to me, as they may be compared with the three pasturers mentioned above (p. 46), and the rabbis recommended them to do so, as so it should be according to their reckoning.

Afterward, however, he said to himself: There is no similarity, as, concerning the three pasturers mentioned thereafter, the rabbis selected the right number needed for intercalation. Here, however, they themselves did it, and they are only a society of wicked men who are not at all qualified to intercalate. Said R. Johanan: I am distressed that you called them wicked. When the above-mentioned rabbis came to R. Johanan, complaining that Resh Lakish called them pasturers of cattle in the presence of R. Johanan and he kept silent, he answered: If he were to call you pasturers of sheep, what could I do to him?

[1]Ula said: One's thought for his maintenance injures him in his study of the law (*i.e.*, because of his sorrow it remains not in his mind for a long time, and he forgets it easily). As it is written [Job, V., 12]: "Who frustrateth the plans of the crafty, so that

their hands cannot execute their well-devised counsel." Said Rabba, however: If he occupies himself with the Torah for the sake of Heaven, he is not injured. As it is written [Prov. xix. 21]: "There are many thoughts in a man's heart; but the counsel of the Lord alone will stand firm"--which is to be explained: A study which is for the sake of Heaven, no matter in what circumstances one is, it remains forever. [1]

"*Only then,*" etc. Said R. Abuhu in the name of R. Elazar: The Halakha prevails with R. Jehudah. And the same said again in the name of the same authority: All the persons mentioned in the Mishna and in the Boraithas are disqualified only then when their crime was announced by the court. However, concerning a pasturer, R. Aha and Rabhina differ. According to one, even concerning him announcement is needed; and according to the other, no announcement is needed for his disqualification. (Says the Gemara:) It is correct, according to him who holds that no announcement is needed, that which R. Jehudah said above, that a pasturer is disqualified even if we are not aware of any crime; but according to him who holds that even a pasturer must be announced, why, then, Jehudah's decision? Because he holds that the court has to announce of each pasturer, no matter what he is, that he is disqualified. There was a document for a gift which was signed by two robbers, and R. Papa b. Samuel was about to make it valid because they were not announced by the court. Said Rabha to him: When to a robbery which is only rabbinical an announcement is needed, should we say that the same is needed to a biblical

robbery

R. Na'hman said: They who accept charity from idolaters are disqualified to be witnesses, provided they do so publicly, but not if privately; and even publicly, they are disqualified only then when it was possible for them to do same privately and they do not care to disgrace themselves publicly; but if not, one is not disqualified, as he is compelled to get a living. The same said again: He who is suspected of adultery is qualified to be a witness. Said R. Shesheth to him: Master, answer me. Should a man who has forty stripes on his shoulders 2 be qualified?

[paragraph continues] Said Rabha: R. Na'hman admits that concerning a woman he is disqualified to be a witness. And Rabhina, according to others R. Papa, said: This is said only concerning a divorce, but concerning bringing her into the house of her husband, the suspicion does not matter. R. Na'hman said again: If one has stolen in the month of Nissan at the harvest-time, and has stolen again in the month of Tishri, he is not named a thief so that he should be disqualified, provided he was a gardener and stole a thing of little value, and if it was a thing which could be consumed without any preparation. The gardener of R. Zebid stole a kab of barley, and R. Zebid disqualified him. And also another one stole a bunch of dates, and was also disqualified.

There were undertakers who had buried a corpse on the first day of Pentecost, and R. Papa put them under the ban and disqualified them to be witnesses. However, Huna b. R. Jehoshua qualified them, and to the question of R. Papa: Are they not wicked? he answered: They thought they were doing a meritorious act. But were they not put under the ban for this transgression, and nevertheless did it again? They thought that the putting under the ban was only a kind of atonement imposed by the rabbis for violating the holiday. However, the burial act itself is meritorious, though they will have to be under the ban for a few days for violation of a holiday.

An apostate who eats illegal meat, which is identical with carcasses, because it is cheaper, all agree that he is disqualified. But if he does this not because it is cheaper, but for the purpose of angering his former brothers in faith, 1 according to Abayi he is disqualified and according to Rabha he is not. The reason of Abayi is because he is wicked, and the Scripture reads plainly: "Thou shalt not bring a sinner as a witness." Rabha's reason, however, is that it speaks of one wicked in money matters only. An objection was raised from the following: "The meaning of the Scripture concerning the testimony of a sinner means one who is wicked in money matters; as, for instance, robbers and perjurers. No matter if the oath was a vain one (*e.g.*, if one has sworn that a stone is a stone), or if the oath was a false one concerning money matters." Hence we see that even a vain swearer

is also disqualified? By the expression "vain swearer" is not meant as explained, but that he has sworn in vain concerning money matters--*e.g.*, A owes money to B, which was not necessary at all, as A has never denied it. An objection was raised from the following: "Thou shalt not bring a sinner as a witness," means one wicked in robbery--namely, robbers and usurers. Hence this Boraitha contradicts Abayi's statement. The objection remains.

Shall we assume that the above Amoraim differ in the same respect as the Tanaim of the

following: A collusive witness is disqualified in all law cases. So is the decree of R. Mair. R. Jose, however, maintains: Provided he was made collusive in a case of capital punishment; but if in money matters, he is still qualified to be a witness in criminal cases? Now, shall we say that Abayi holds with R. Mair, who maintains that even from a lenient we disqualify to a rigorous one, and Rabha holds with R. Jose, who maintains that only from a rigorous case we disqualify, even to a lenient one, but from lenient to rigorous we do not? Nay! In accordance with R. Jose's theory, they do not differ. But the point of their difference is concerning R. Mair's theory, as Abayi holds with him, and Rabha maintains that even R. Mair said so only concerning a collusive witness in money matters, which is both wicked against man and wicked against heaven; but in our case, where the wickedness is in heavenly things only, even R. Mair admits that he is qualified to be a witness in money matters. The Halakha, however, prevails with Abayi. But was he not objected to? The Boraitha which contradicts Abayi is in accordance with R. Jose. But even then, is it not a rule, when R. Mair differs with R. Jose, that the Halakha. prevails with the latter? In this case it was different, as the editor of the Mishnayoth taught an anonymous Mishna in accordance with R. Mair's opinion. And where is it? This was, explained in the following case: Bar Hama had slain a man and the Exilarch told Aba b. Jacob to investigate the case; and if he really slew the man, they should make the murderer blind. (Since the Temple was destroyed, capital punishments were abolished by Israel, and therefore to make a man blind was to make him dead to the world.) And two witnesses came to testify that he surely killed the man. The defendant, however, brought two witnesses who testified against one of the witnesses. One of them said: In my presence this man stole a kab of barley; and the other said: In my presence he stole the handle of a borer.

[paragraph continues] And the Exilarch said to him: You wish to disqualify this man to be a witness because of R. Mair's theory, but I know of the rule that the Halakha prevails with R. Jose when he differs with R. Mair; and according to R. Jose, if one was collusive in money matters, he is still qualified in criminal cases. Said R. Papa to him: This is so in other cases; but in this case it is different, as there is an anonymous Mishna in accordance with R. Mair. But which Mishna is it? Shall we assume it to be that which stated that he who is competent to judge criminal cases is competent for civil cases also, which cannot be in accordance with R. Jose, as, according to his theory, there is a witness who was made collusive in civil cases and is still competent in criminal cases? Hence it is in accordance with R. Mair. But perhaps the cited Mishna does not speak about collusive witnesses, but of such as are incompetent to be witnesses because of their family. Therefore we must say that he means our Mishna which states the following are disqualified for witnesses: Players with dice, etc.; and a Boraitha adds: And also slaves. This is the rule in all cases in which women are not allowed to be witnesses--they also are disqualified. And this cannot be in accordance with R. Jose, as he holds that they are qualified to be witnesses in criminal cases, for which women are disqualified. Hence it is in accordance with R. Mair. B. Hama then arose and kissed him, and freed him from paying duties all his life.

MISHNA *IV.*: The following are counted relatives who may not be witnesses: Brothers, brothers of father or mother, brothers-in-law, uncles by marriage from father's or mother's side, a stepfather, a father-in-law, the husband of one's wife's sister, they and their sons and their sons-in-law, and also a stepson himself--but the latter's children are qualified. Said R. Jose: This Mishna was changed by R. Aqiba. The ancient Mishna, however, was thus: One's uncle, one's first-cousin, and all those who are competent to be one's heirs and also all one's relatives at that time; but if they were relatives and thereafter became estranged, they are qualified. R. Jehudah, however, maintains that even if a daughter dies and leaves children, her husband is still

considered a relative. An intimate friend, as well as a pronounced enemy, is also disqualified. Who is considered an intimate friend? The groomsman. And who is considered a pronounced enemy? The one who has not spoken to him for three days because of animosity. And the sages answered R. Jehudah: The children of Israel are not suspected of witnessing falsely because of animosity.

GEMARA: Whence is this deduced? From that which the rabbis taught. It is written [Deut. xxiv. 16]: "Fathers shall not be put to death for the children . . . for his own sin," etc. To what end is this written? If only to teach the meaning of it literally, it would not be necessary, as the end of the verse reads, "for his own sin shall every man be put to death." It must therefore be interpreted, fathers should not die by the witnessing of their children, and *vice versa*. From this is deduced fathers by sons, and *vice versa*; and so much the more fathers who are brothers are incompetent to' testify for each other. But whence do we know that grandsons (cousins) are also incompetent to testify for each other? It should read, "parents shall not die because of their son." And why "sons" in the plural? To teach that their sons are not competent to testify for each other. But whence do we know that two relatives are not qualified to testify in one case even for a stranger? It should read in the singular, "and a son for his parents." And why in the plural, "and sons"? To teach that two sons are incompetent to testify in one case, even for a stranger. But from this is deduced the relatives from the. father's side only. Whence, however, do we know that the same is the case with the relatives from the mother's side? From the repetition of the word "fathers" in the same verse. And as it was not necessary for the relatives on the father's side, apply it to the relatives on the mother's side. But this verse speaks of accusation. Whence do we know that the same is the case concerning advantage? From the repetition of the words, "shall not die," which were not necessary in the case of accusation. Apply it, therefore, to cases of advantage. All this, however, is said concerning criminal cases. But whence do we know that it is the same with civil cases? Hence it reads [Lev. xxiv. 22]: "One manner of judicial law," etc., meaning that all cases must be judged equally.

Rabh said: My father's brother shall not witness in my cases; he, his son, and his son-in-law. And similarly, I, for my part, will not witness in his cases, neither my son nor my son-in-law. But why? Is not one's son a grandnephew, who is a third to a father's brother, and our Mishna teaches that only a cousin is not competent, who is second to the party, but not a second-cousin, who is third to the party? The expression in our Mishna, "his son-in-law," means the son-in-law of his son, who is already a third. But if so, why does it not teach "the son of his son" (grandson)? Incidentally, the Mishna teaches us that the husband

is equal to his wife. But if so, according to whom would be the following Boraitha, taught by R. Hyya: Eight fathers, which counts twenty-four, including their sons and sons-in-law (*i.e.*, father and brother, two grandfathers, and four great-grand fathers--two from each side--and eight sons and eight sons-in-law)? And if our Mishna means the son's son-in-law, then it ought to be thirty-two, viz.: eight fathers, eight sons, eight sons-in-law, and eight grandsons. Therefore we must say that our Mishna means his son-in-law. And why does Rabh name him the son-in-law of his son? Because he is not a descendant from him, but came from strangers, he is considered not of the second generation but as of the third. But, after all, according to Rabh's saying it is a third to a second-cousin, and we are aware that Rabh holds that such is qualified to be a witness?

Therefore we must say that Rabh holds with R. Elazar, who says in the following Boraitha: Even as my father's brother cannot be a witness for me, neither his son nor his son-in-law, the same is the case with the son of my father's brother and with his son and son-in-law. Still, this cannot serve as an answer to the objection that Rabh himself has qualified a third to a second-cousin? Say, Rabh holds with R. Elazar only concerning his son, but differs with him concerning the son of his father's brother. And the reason of Rabh's theory is because it reads: "Fathers shall not die because of their sons; and sons," etc.--which means the addition of one more generation. And the reason of R. Elazar is: "For their children" means that the incompetence of the fathers shall extend to their children also.

R. Na'hman said: The brother of my mother-in-law cannot be a witness for me, and the same is the case with his son, and also with the son of the sister of my mother-in-law. And there is also a Boraitha similar to this, viz.: The husband of one's sister, also the husband of the sister of one's father And the husband of the sister of one's mother, their sons and their sons-in-law, are also excluded from being witnesses. Said R. Ashi: While we were with Ula we questioned him: How is it concerning the brother of one's father-in-law and his son, and also concerning the son of the sister of his father-in-law? And he answered: This we have learned in a Boraitha: One's brothers, the brother of one's father and of one's mother, they, their sons and their sons-in-law--all are incompetent.

It happened that Rabh was going to buy parchments, and he was questioned: May one be a witness to his stepson's wife? The

answer to this question was, according to the College of Sura, that the husband is the same as his wife; and according to the College of Pumbeditha, the answer was that the wife is the same as her husband--which means that he is considered as if he were really her father-in-law. And as Huna in the name of Rabh said: Whence do we know that the woman is considered to be the same, as her husband? From [Lev. xviii. 14]: "She is thy aunt." Is she indeed his aunt? Is she not the wife of his uncle only? We see, then, that the wife is considered the same as her husband.

"*A stepfather . . . his son and son-in-law*." Is not his son a brother of the: party from the mother's side? Said R. Jeremiah: It means the brother of his brother--*e.g.*, the son of his stepfather from another wife. R. Hisda, however, qualified such ~ a person. When he was questioned: Was he not aware of Jeremiah's explanation of our Mishna just mentioned? He answered I do not care for it. But if so, it is his brother. The Mishna teaches concerning a brother from the father's side, and also from the mother's side. R. Hisda said the father of the groom and the father of the bride may be witnesses for each other, as their relation is similar to the relation of a cork to a barrel only, which cannot be counted relationship. Rabba b. b. Hana said: One may be a witness for his betrothed, but not for his wife. Said Rabhina: Provided he testified against her; but if his testimony is in her behalf, he is not trusted. In reality, however, (says the Gemara,) there is no difference: One is not trusted in any case, as the reason concerning witnesses is that one is too near in mind to his relatives; and as she is betrothed to him, he is not fit to be a witness in any case.

The rabbis taught: One's stepson only. R. Jose says: The husband of one's wife's sister only. And there is another Boraitha: The husband of one's wife's sister only. R. Jehudah says: One's stepson only. How is this to be understood? Shall we assume that the Tana of the first Boraitha

has mentioned only the stepfather, but that the case is the same with the husband of one's wife's sister? And R. Jose with his statement also does not mean to differ, but he mentioned the latter, and the same is it also with the former. Then our Mishna, which states, "the husband of one's wife's sister, he, his son, and his son-in-law are excluded, would be neither in accordance with R. Jedudah nor with R. Jose. "Or does the Boraitha mean to say that regarding a stepfather only is he excluded, but concerning the husband of the wife's sister, he, with his sons, etc., is excluded; and R. Jose differs, as, according

to his opinion, the latter only is excluded, but not his sons, etc.; but a stepfather, with his sons, etc., is excluded? Then the Boraitha of R. Hyya, mentioned above, which states that there are twenty-four, would be neither in accord with R. Jose nor with R. Jehudah. Therefore we must say that the Boraitha is to be explained thus: The stepfather only is to be excluded, but concerning the husband of his wife's sister, his children are also excluded. And R. Jose came to teach that even concerning the latter he only is excluded, but not his children, and so much the more a stepfather. And then our Mishna is in accordance with R. Jehudah and the Boraitha in accordance with R. Jose. Said R. Jehudah in the name of Samuel: The Halakha prevails with R. Jose.

There was a deed of gift which was signed by two brothers-in law--*i.e.*, two husbands of two sisters--and R. Joseph was about to make it valid, based upon the decision of Samuel that the Halakha prevails with R. Jose. Said Abayi to him: Whence do you know that Samuel meant R. Jose of our Mishna, who qualified the husband of one's wife's sister? Perhaps he meant R. Jose of the Boraitha who disqualified him. This could not be supposed, as Samuel said, *e.g.*, I and Pinchas, who are brothers and brothers-in-law--but if only brothers-in-law, they are qualified. And Abayi rejoined: It is still uncertain, as perhaps Samuel meant to say: Because Pinchas was the husband of his wife's sister. Therefore said R. Joseph to the beneficiary: Acquire title to this gift by the testimony of the witnesses who were present when the gift was transferred to you, in accordance with R. Aba's decision. Said Abayi again: But did not Aba admit that if there was a forgery in the deed while writing, it is invalid even in the latter case? And R. Joseph said to the beneficiary: Go! you see people do not allow me to transfer it to you.

"*R. Jehudah said*," etc. Said Thn'hum in the name of Tabla in the name of Bruna, quoting Rabha: The Halakha prevails with R. Jehudah. Rabha, however, in the name of R. Na'hman, and also Rabba b. b. Hana in the name of R. Johanan, said: The Halakha does not prevail with him: There were some others who taught the saying of Rabba with regard to the following: Thus lectured R. Jose the Galilean: It is written [Deut. xvii. 9]: "And to the judge that may be in those days." Was it necessary to state thus? Can it then be supposed that one should go to a judge that is not in his days? Therefore it is to be explained that it means that the judge was previously a relative of

his, and that thereafter he became estranged. And to this said Rabba, etc., the Halakha prevails with R. Jose the Galilean.

The sons of Mar Uqba's father-in-law were relatives, and became thereafter estranged. And they had a case, and came, with it to his court. He, however, exclaimed: I am disqualified from being

your judge. They then rejoined: Is it because you hold with R. Jehudah? We will bring you a letter from Palestine stating that the Halakha does not prevail with him. Rejoined he: I myself know that I am not attached to you with wax, and my saying that I am disqualified to judge you is because I know that your custom is not to listen to my decision.

"*A friend is a groomsman*." But how long shall this friendship hold? R. Aba in the name of R. Jeremiah, quoting Rabh, said: All the seven days of the wedding. The rabbis, however, in the name of Rabha said that after the first day the friendship is no longer considered, and he is qualified.

"*An enemy*," etc. The rabbis taught: It reads [Num. xxxv. 23]: "He was not his enemy and did not seek his harm"--which means, he who is not one's enemy may be a witness and he who does not seek one's harm may be his judge. This is concerning an enemy. And whence do we know that the same is the case with a friend? Read, then, "and he is not his enemy and not his friend"--and then he may be a witness; and if he does not seek his harm and not his welfare, then he may be his judge. But is it, then, written a friend? This is common sense. Why not an enemy? Because his mind is far from doing any good to him; and the same is it with a friend, whose mind is near to do all that he can in his behalf. The rabbis, however, infer from this two things: one concerning a judge and the other that which we have learned in the following Boraitha: R. Jose b. R. Jehudah said: From the verse, "he is not his enemy and does not seek his harm," is to be inferred that if two scholars have animosity toward each other they must not judge in a case together.

MISHNA *V*.: How were the witnesses examined? They, were brought into separate chambers and were frightened to tell the truth. And then all except the eldest were told to go out, and he questioned: How do you know that A owes money to B?, And if his answer was: "Because A himself told me that he owes,. him," or, "C told me that such was the case," he said nothing, unless he testified that, in the presence of myself and my colleague, A confessed that he owed to B two hundred zuz: and then the second witness is brought in and they examine him, and if both

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testimonies correspond the court discusses about the case. If two of the judges acquit and one makes him liable, he is acquitted; and if *vice versa*, he is liable. If, however, one acquits and the other makes him liable, and the third one says, "I don't know," then judges must be added. And the same is the case if there were five, and two of them were against two, while the fifth was doubtful. After the conclusion of the judges is arrived at, they are told to enter, and the eldest of the judges announces, "You, R, are acquitted," or, "You, A, are liable." And whence do we know that one of the judges must not say: I was in favor of the defendant, but my colleagues were against, and I could not help it, as they were the majority. As to this it reads [Lev. xix. 16]: "Thou shalt not go up and down as a talebearer among thy people"; and it reads also [Prov. xi. 131 He that walketh about as a talebearer revealeth secrets."

GEMARA: How were the witnesses frightened? Said R. Jehudah. Thus [ibid. xxv. 14]: "Like clouds and wind without rain, so is a man that vaunteth falsely of a gift" (*i.e.*, that because of false witnesses, even though it is cloudy, the rain is withheld), Said Rabha: This is no frightening, as they may think what people say, even seven years of famine do not pass the gate of a specialist. "Therefore," said he, "it was said to them [ibid., ibid. 18]: 'A battle-axe, and a sword, and a sharpened arrow is a man that testifieth as a false witness against his neighbor.'"

And R. Ashi maintains that even this is not sufficient, as they may think, even in time of a pest one does not die before his time. Therefore said he: I was told by Nathan b. Mar Zutra that they were frightened that false witnesses were disgraced even in the eyes of those who hired them. As it reads [I Kings, xxi. 10]: "And set two men, sons of Belial, opposite to him, and let them bear false witness against him," etc.

"*'A' himself told me*," etc. This is a support to R. Jehudah, who said in the name of Rabh: If one wants the case to be recognized by the court, he must insist that the debtor shall say: Ye shall be my witnesses. And so also was taught by Hyya b. Aba in the name of R. Johanan. And there is also a Boraitha as follows: (A said to B:)"I have a mana with you," and he answered, "Yea." On the morrow A asked him, "Give it to me," and B said it was only a joke, he is free. And not this only, but even if A has had two witnesses hidden under a fence (so that B could not see them), and questioned him: "Have I a mana with you?" and B answered, "Yea." And to the question, p. 86 "Would you like to confess before witnesses?" B answers, "I am afraid, if I do so, you will summon me to the court"; and on the morrow A asks B to give him the mana, and his answer is, "It was only a joke," he is not liable. However, one must not defend a seducer. A seducer! Who has mentioned this term? The Boraitha is not complete, and should read thus: If, however, B does not defend himself, the court must not question him; perhaps it was a joke. But in criminal cases, a similar question must be asked by the court, although he has not so defended himself, except in the case of a seducer. And why? Said R. Hama b. Hanina: From the lecture of R. Hyya b. Aba I understand that it is because it reads [Deut. xiii. 9]: "Nor shall thy eye look with pity on him, nor shalt thou conceal it for him."

Said Abayi: All that is said above is, provided the defendant claims, "It was a joke"; but if he claims, "I have never confessed," he must be considered a liar and is liable. R. Papa b R. Aha b. Ada, however, maintains: In the case of a joke, people do not remember their confession, and therefore even such a claim must be investigated.

There was one who had hidden witnesses under the curtains of his bed, and he said to his debtor, "Have I a mana with you?" and he answered, "Yea." And he questioned him again, "May the people who are here sleeping or awake be witnesses?" and he answered, "No." And when the case came before R. Kahana, he said: He cannot be liable, as he said no. A similar case happened with one who had hidden witnesses in a grave, and to the question, "May the living and the dead be witnesses?" he answered, "No." And when the case came before Resh Lakish, he acquitted him. Rabhina, according to others R. Papi, said: The decision of R. Jehudah that it must be said by the party, "Ye are my witnesses," is no matter whether it is said by the lender in the presence of the borrower and he keeps silent, or by the debtor himself. And this is inferred from that which was said above, that the debtor had answered the question with no; but if he should remain silent, he would be liable. There was one who was named by the people "the man who has against him a whole kab of promissory notes." And when he heard this, he exclaimed: Do I owe to anyone but B and C? The latter then summoned him before the court of R. Na'hman, and R. Na'hman decided that the above exclamation could not be taken as evidence, as it might be that he said so for the purpose that people should not think him too rich. There was another one who was

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named "the mouse who lies on dinars," and at the time he was dying he said: A and B are my creditors. After his death the creditors summoned his heirs before R. Ismael b. R. Jose, and he

made the heirs pay, for the reason that, if he said so while in good health, it might be supposed that he did so for the purpose mentioned above, but this could not apply to a man who was dying. The heirs, however, only paid the half, and were summoned for the other half in the court of R. Hyya, who decided, as it is supposed that one may say so for the purpose that he shall not appear too rich, so it may be said that the deceased did so that his children should not appear too rich. The heirs then demanded what they had already paid, to which R. Hyya answered: It was decided long ago by a sage, and the decision must remain.

If one has confessed before two witnesses and they have made the ceremony of a sudarium, they may write it down; but if there was no sudarium, it must not be written. If he has, however, confessed before three without a sudarium, according to Rabh it may, and according to R. Assi it must not be written. However, there was such a case before Rabh, and he took into consideration R. Assi's decision.

R. Ada b. Ahba said: Such a document of confession is dependent upon circumstances. If the people were gathered by themselves and he confessed before them, then it must not be written; but if he himself caused the gathering, it may. Rabha, however, is of the opinion that even in the latter case it must not be written unless he said to them, "I accept you as my judges"; and Mar b. R. Ashi maintains that even then a judgment is not to be written unless they appoint a place, and summon him to the court.

It is certain, when one has confessed with the ceremony of a sudarium in cases of movable property, that a judgment may be written, but not otherwise. But how is it with real estate--without a sudarium? According to Ameimar it may not, and according to Mar Zutra it may be written. And so the Halakha prevails. It happened that Rabhina came to the city of Damhariah, and R. Dimi b. R. Huna of the same city questioned him: How is the law if the confession was for movable property which is still in full possession of the parties? And he answered: Then it is considered as real estate. R. Ashi, however, maintains that so long as the creditor has not collected it, it is to be considered as money, because if the possessor

would like to sell it, he could do so even after the confession, which is not the case in real estate.

There was a document of confession in which it was not written: "He (the debtor) has said to us, 'Write a document, sign it, and give it to him' (the creditor)," and both Abayi and Rabha decided that this case was similar to that of Resh Lakish, who decided that witnesses would not sign a document unless they were aware that the person who told them to sign was of age; the same is the case here, they would not sign it unless he said to them, "Sign and give." R. Papi, according to others R. Huna b. Joshua, opposed: Is there a thing of which we, the judges, are not sure, and the scribes are? Therefore the scribes of Abayi and of Rabha were questioned, and they were aware of the law, when it must be written and when not. There was another document of confession in which the memoranda, and all the versions which are needed thereto, were written correctly, but. the words, "in the presence of us three," were missing, and the document was signed by two only. And Rabhina was about to say that this case was similar to that of Resh Lakish mentioned above; but R. Nathan b. Ami said to him: Thus was it said in the name of Rabha: In such a case it may be feared that it was an error by the court--*i.e.*, they thought that such might be done by two. Said R. Na'hman b. Itz'hak: If in the document was written, "we the Beth Din," although it was signed by two, it is valid without any investigation. But perhaps it

was written by an impudent Beth Din of two, of which, according to Samuel, the decision is to be considered, but they are named impudent (and the Halakha does not so prevail). The case was that the document read, "the Beth Din appointed by R. Ashi." Still, perhaps the same holds with Samuel. It means that it was written: Our master, Ashi, thus said.

The rabbis taught: If one said I have seen your deceased father hide money in a certain place, saying this belongs to so and so," or, "The money is for second tithe," if this place is to be found in this house, he said nothing. if, however, the place was in a field, where the witness could take it without being prevented, his testimony is to be considered, this being the rule in such a case. If he is able to take it himself without notifying, his word is to be trusted, but not otherwise. Moreover, if they themselves saw their father hide money in a chest, or the like, and he said to them, "This money belongs to so and so," or, "It is for second tithe," if it looks as if he told this as his last will,

he is to be trusted; but if it appears that he desires to deceive them, then his words are not to be considered. The same is the case if one became harassed, searching for the money which his father left for him, and he dreamed that the sum was of such and such an amount and was placed in a certain place, but it was for second tithe. Such a case happened, and the sages decided that the caprices of dreams are not to be taken into any consideration.

"If two of the judges acquit," etc. But how is the judgment to be written? According to R. Johanan, "So and so is ac. quitted," and according to Resh Lakish, "Such and such judges acquitted, and such hold him liable." R. Elazar, however, says it should be written, "From the discussion of the judges, the decision is that such is acquitted." And what is the difference? The tale-bearing. According to R. Johanan it must not be written who acquits and who holds liable, as this would appear like tale-bearing; and according to Resh Lakish, it must be written, as, if not, it would appear like a unanimous verdict, and it would look as though they had lied; and R. Elazar's decision is: To prevent vainglory it may be written, "From their discussion, the decision is that the defendant is acquitted," in which there is no tale-bearing and it does not appear unanimous.

"Are told to enter." Who? Shall we assume the parties? It is not stated the parties, but the witnesses, must go out. You must then say that the witnesses are told to enter, and this would not be in accordance with R. Nathan of the following Boraitha: The testimony of the witnesses is not to be conjoined unless both witnesses have seen the case together. R. Jehoshua b. Karha, however, maintains that, even if they have seen one after the other, their testimony is not to be approved by the court unless they both testify together. R. Nathan, however, maintains that the court may hear the testimony of one to-day, and on the morrow from the other one, when he appears. Hence, according to him, both witnesses may not be present? The Mishna means the parties, and it is in accordance with R. Nehemiah, who said in the following Boraitha: So was the custom of the pure-minded in Jerusalem. They let the parties enter, listened to their claims, and thereafter let the witnesses enter, listened to their testimony, and told all of them to go out, and then discussed the matter.

The text says that their testimony is not conjoined, etc. What is the point of their difference? If you wish, it may be said common sense. If, for instance, one testifies that he has

seen A borrow a mana from B, and on the morrow the other witness testifies that he has seen A borrow a mana from B, one may say, *e.g.*, C has seen one mana and D has seen another mana. Hence their testimony cannot be conjoined according to the first Tana of the Boraitha; but according to R. Jehoshua b. Karha it may be conjoined, as both admit that A owes a mana to B. This is common sense. And if you wish, they differ in the meaning of the verse [Lev. v. 1]: "And he is a witness," etc. And there is a Boraitha: It reads [Deut. xix. 15]: "There shall not rise up one single witness against." Why is it written "single"? This is a rule for every case in which is mentioned "a witness," that it means two, and the term single is expressed because their testimony is to be considered only then when they saw it together. So is the explanation of the first Tana. B. Karha, however, gives his attention to the verse cited [Lev. v.]: "And he is a witness, since he either hath seen or knoweth something." Hence it matters not whether they have seen together or singly. And what is the point of difference between R. Nathan and the first Tana? Also, if you wish, it is common sense; and if you wish, in the explanation of the Scripture. "Common sense"--usually one witness is brought not to make the defendant pay, but to make him liable for an oath. Hence, if their testimony does not come together, it cannot be conjoined to make the defendant pay. Such is the meaning of the first Tana. But Nathan maintains: Even when they come together, does, then, their testimony go out from one mouth? They testify one after the other, and we conjoin them. The same is the case when they come on two days. "In the explanation of the Scripture "[ibid., ibid.]: "If he do not tell it, and thus bear his iniquity." And both the first Tana and Nathan hold with the opponents of B. Karha, that both witnesses have to see the case together. And the point of their difference is, if the testimony is to be similar to the seeing of the case. One holds it is: hence it cannot be conjoined if not seen together; and one holds it is not.

Simeon b. Alyaqim was anxious that the degree of Rabbi should be granted to Jose b. Hanina, but the opportunity did not present itself. One day they were sitting before R. Johanan, and the latter questioned: Is there one here who knows if the Halakha prevails with B. Karha or not? And B. Alyaqim pointed to Jose b. Hanina, saying: He knows. Johanan then said: Then let him tell. But B. Alyaqim, however, rejoined: Let the master give him the degree of Rabbi, and then he will tell. And he did so,

and then said to him: My son, tell me just so as you have heard. And he answered: I have heard that B. Karha yielded to R. Nathan. Rejoined R. Johanan: Is that what it was necessary for me to know? Is it not self-evident that B. Karha could not demand that they should testify together, as he does not desire that the seeing shall be together? Nevertheless, since you have already ascended to the degree of Rabbi, it may remain with you. And R. Zera said: Infer from this act that if a great man gives a degree, even conditionally, it remains forever.

Hyya b. Abin in the name of Rabh said: The Halakha prevails with Jehoshua b. Karha concerning real estate, as well as movable property. Ula, however, maintains: It prevails with him concerning real estate only. Said Abayi to Hyya: You say that the Halakha prevails. Is there one who differs with him? 'Did not Aba say in the name of R. Huna, quoting Rabh: The sages yield to B. Karha concerning the testimony as to real estate. And so also taught Idi b. Abin in the Section Damages, taught by the College of Karna: The sages yield to B. Karha concerning the testimony as to a first-born, as to real estate, as to hazakah, and concerning the signs of

maturity--for a male as well as for a female? You contradict one person with another. People may hold different opinions. Said R. Joseph: I say in the name of Ula that the Halakha prevails with B. Karha concerning real estate, as well as movable property. However, the rabbis who came from the city of Mehuza say in the name of Zera, quoting Rabh: Concerning real estate, but not concerning movable property. And Rabh is in accordance with his theory elsewhere, that a confession after a confession, or a confession after a loan, may be conjoined; but a loan after a loan, or a loan after a confession, do not conjoin. (*I.e.*, if one says, "In my presence A confessed on Monday that he owed a mana to B"; and the second witness says, "In my presence A confessed on Tuesday that he owed a mana to B," they may be conjoined. And the same is the case if one says, "On Monday A borrowed from B a mana in my presence," and the other witness testifies, "In my presence A confessed on Tuesday that he owed a mana to B." But if one testifies that in his presence A made a loan to B on Monday, and the other testifies that the same was done on Tuesday, they are not to be conjoined, as they may be two different manas. And the same is the case if one testify that A confessed on Monday that he owed a mana to B, and the other testified that B had made a loan to A on Tuesday.)

Na'hman b. Itz'hak met Huna b. R. Jehoshua, and questioned him thus: Let us see why the testimony of a loan after a loan is not to be conjoined. Because the loan which one witness has seen may not be the same which the other saw. Why, then, not say the same concerning a confession? Say, the confession of Tuesday was not the same as that of Monday? The answer was: He speaks of when he said to the last witness, "The mana which I confess before you is the same as that which I confessed yesterday before so and so." But even then, the second witness only knows this, but not the first. It means that after he has confessed before the second he goes again to the first witness, telling him, "The mana which I confessed before you, I did so also before so and so." Rejoined Na'hman: Let your mind be at rest, for you have set my mind at rest. And Huna asked him: What was the trouble? Because I had heard that Rabha, and according to others R. Shesheth, swung an axe at it (*i.e.*, disproved the opinion), saying: Is this not similar to a confession after a loan? Which means that he said in his confession, "I confess before you that I owe a mana to so and so, which I borrowed yesterday in the presence of so and so." Hence it was already said once by Rabh. Why, then, the repetition? Rejoined Huna: This is what I have heard of your people--when they tear out trees, they plant them again (*i.e.*, you answer questions, and then object to them again). The sages of Nahardea, however, say that, no matter if it is a confession after a confession, a loan after a confession, or a loan after a loan, they are to be conjoined, as they hold with B. Karha.

R. Jehudah said: Witnesses in civil cases who contradict one another in unimportant investigations are to be considered. Said Rabha: It seems that he meant that the contradiction was that one said the purse in which the mana was given was a black one and the other said it was a white one. But if one says that the loan was with old coins and the other said it was with new ones, they are not to be conjoined. But is such a contradiction not to be taken into consideration even in criminal cases? Did not R. Hisda say that if one testifies that he killed him with a sword and the other with an axe, it is not to be considered; but if one says the murdered or the murderer was dressed in white, while the other testifies that he was dressed in black, their testimony holds good? And the answer was: Do you contradict one scholar with another? Each may have his own opinion. The Nahardeans, however, maintain that even if one testifies old coins

and the other new, they are nevertheless to be conjoined; and this is because they hold with B. Karha. But have you then heard B. Karha say that they may be conjoined even when they contradict each other? Therefore we must say that the Nahardeans hold with the Tana of the following Boraitha: R. Simeon b. Elazar said: The schools of Shamai and Hillel do not differ, if there were two parties of witnesses. If one party testifies that he owes him two hundred, and one party testifies one hundred, the latter amount is to be collected, as in the testimony of two hundred one hundred is certainly included. In what they do differ is that, if among one party of witnesses was this contradiction (*i.e.*, one says that he owes two and the other one hundred), according to the school of Shamai the whole party must be disqualified, because one of them is surely a liar; and according to the school of Hillel they are not, as both admit that he owes one hundred (and so the Nahardeans, be it old or new coins, both admit that he owes a mana). Suppose one testifies that he borrowed a barrel of wine and the other of oil. Such a case came before Ami, and he made him liable to pay the value of a barrel of wine, as a barrel of oil amounts to twice as much as a barrel of wine. But according to whom was his decision? Is it in accordance with R. Simeon b. Elazar? He said so, because in the amount of two hundred a hundred is surely included; but did he say so in such a case as that of the barrels? The case was that they testified not for the barrels themselves, but for the value (*i.e.*, one testified that he owed him the amount of a barrel of wine and the other the amount of a barrel of oil, which is twice as much).

Suppose one of the witnesses says the law was made in the first attic, and the other says in the second attic. Said R. Hanina: Such a case came before a rabbi, and he conjoined their testimony.

"*And whence do we know that one of the judges must not say?*" The rabbis taught: Whence do we know that one of the judges, when he is going out, must not say, "I was in favor of the defendant, but my colleagues were against, and I could not help it, as they were the majority"? To this it reads [Lev. xix. 16]: "Thou shalt not go up and down as a talebearer among thy people"; and it reads also [Prov. xi. 131 "He that walketh about as a talebearer revealeth secrets." There was a disciple of whom there was a rumor that he told a secret thing which was taught in the college, after twenty-two years, and R. Ami drove him out of the college, saying: This man is telling secrets.

MISHNA *VI.*: So long as the defendant brings evidence to'. his advantage, the decision may be nullified by the court. If he was told: "All the evidence which you have, you may bring before the court within thirty days," if he found such within thirty days, it affects the decision, but after that it does not. Exclaimed R. Simeon b. Gamaliel: But what should the man do who could not find such within thirty days, but found it after? If he was told to bring witnesses, and he said, "I have none"; "Bring any other evidence," and he said, "I have none," and after the time had elapsed he brought evidence and found also witnesses, it is as nothing. And to this also R. Simeon b. Gamaliel exclaimed: What should this defendant do if he was not aware that there were witnesses and evidence? However, if, after he said "I have no witnesses," seeing that he is about to be liable, he says, "Bring in so and so to testify in this case," or he takes out from under his girdle a new evidence, it counts nothing (even according to R. Simeon).

GEMARA: Said Rabba b. R. Hana: The Halakha prevails with R. Simeon. And the same says again: The Halakha does not prevail with the sages. Is this not self-evident? If it prevails with R.

Simeon, it cannot prevail with the sages? One might say the Halakha prevails with R. Simeon to start with; but if some have done in accordance with the sages, it should remain so. He comes to teach us that even if it was so done, it must be changed.

"*If he was told to bring witnesses*," etc. Said Rabba b. R. Hana in the name of R. Johanan: The Halakha prevails with the sages. And the same said again: The Halakha does not prevail with R. Simeon b. Gamaliel. Is this not self-evident--that if the Halakha prevails with the sages it cannot prevail with R. Simeon? He comes to teach us that only in this case the Halakha does not prevail with R. Simeon, but in all other cases it does; and this is to deny what Rabba b. b. Hana said in the name, of R. Johanan, that everywhere R. Simeon b. Gamaliel is mentioned in the Mishnayoth the Halakha prevails with him, etc. (Last Gate, p. 388). There was a young man who was summoned to the court before R. Na'hman, and he asked him: "Have you no witnesses?" and he answered: "No." "Have you some other evidence?" and he answered: "No." And R. Na'hman made him liable. The young man went and wept; and some people heard him cry, and said: We know something in your behalf in the case of your father. Said R. Na'hman: "In such a case even

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the rabbis would admit that the young man was not acquainted with the business of his father and therefore the new evidence is to be taken into consideration." There was a woman with whom a document was deposited and she gave it away to some one, saying: "I am aware that this document is already paid," and R. Na'hman did not believe her. Said Rabha to him: Why should she not be trusted? Should she desire to tell a lie, she could burn it. And R. Na'hman answered: Inasmuch as it was approved by the court and known that it was deposited with her, the supposition that if she wanted to lie she could burn it does not apply. And Rabha objected to R. Na'hman from the following: A receipt which was signed by witnesses may be approved by its signer. If, however, there were no witnesses, but he was coming out from a depository; or the receipt was written on the document after the signature of the witness (which was in the hands of the creditor), it is valid. Hence we see that a depository is to be trusted. This objection remains. When R. Samuel b. Jehudah came from Palestine, he said in the name of R. Johanan: The defendant has always a right to bring evidence against the decision of the court, unless all his claims are concluded and he himself confesses that he has no more witnesses nor any other evidence. However, even after this, if witnesses arrived from the sea countries, or the box of documents of his father was deposited with a stranger who has returned it after he was found liable, it may be taken into consideration to change the first decision. When R. Dimi came from Palestine, he said in the name of R. Johanan: If one is summoning a party who says, "I want my case to be brought before the assembly of sages," while the plaintiff says, "It is sufficient that it be tried in the court of this city," the plaintiff may be compelled to follow the defendant to the assembly. Said R. Elazar: Rabbi, is it right that, if the plaintiff claims one mana from the defendant, he shall spend another mana to go with him to the assembly? Therefore the reverse must be done: The defendant should be compelled to bring the case before the court in that city. It was taught also in the name of R. Saphra: If two men were cruel to one another, and one of them insisted, "We shall try our case here," while the other says, "Let us go to the assembly," the latter must be compelled to try his case in that city. However, if there was a necessity to question the assembly, they might write and send it in writing. And also, if the defendant demands, "Write down the reason why you accused me, and give it to me," he

may be listened to. In the case of a widow whose husband dies childless and she has to marry his brother, she is obliged to go to that place where the brother is to be found (that he should marry her or perform the ceremony of Halitzah). And to what distance? Said R. Ami: Even from Tiberias to Sephorius. Said R. Kahana: Whence is this deduced? From the Scripture [Deut. xxv. 8]: "The elders of *his* city"; of his, but not of hers. Said Ameimar: The Halakha prevails that one may be compelled to go to the assembly (and there try his case). Said R. Ashi to him: But did not R. Elazar say: He maybe compelled to try his case in that city? This is when the borrower said thus to the lender; but if the lender claims so, we apply to him [Prov. xxii. 7]: "The borrower is servant to the man that lendeth."

A message was sent from Palestine to Mar Uqba: To him to whom the world is light as to the son of Bathiah (it means to Moses), peace may be granted. Uqban the Babylonian complained before us that Jeremiah his brother destroyed his way (*i.e.*, he has treated me badly, through which I have lost my money), and we have decided that he shall be compelled to appear before us in the city of Tiberias. (How is this to be understood? Thus:) They said to him: You may try him. If he will listen to you, well and good; and if not, you must compel him to see us in the city of Tiberias. Said R. Ashi: This was a case of fine, and in Babylon they are not allowed to try cases of fine; and that which they said to Mar Uqba, "You shall try him," etc., was only to honor him.

Footnotes

68:1 Here is a repetition from Tract Sabbath, pp. 89-92, which is already translated.

75:1 The Haggadic passage we have transferred to the last chapter of this tract, which is all Haggadah.

76:1 Rashi gives also another interpretation to this passage; viz., mental resolution frequently fails, even if it is concerning the study of the Torah--*e.g.*, if one made up his mind to finish such and such a tract in a certain time. And to this came Rabba to say, if it was for the sake of Heaven, it would not fail, etc.

76:2 Rashi explains this, that one is suspected of such an offence, but cannot be punished with the prescribed punishment because there were no legal witnesses p. 77 or he was not warned, has nevertheless been punished with stripes, as so it is stated (Tract Kidushin, 81b).

77:1 Our explanation in the case of angering may be new, as we are not in accord with other commentators. However, it seems to us that this is the correct interpretation, as to which we challenge criticism.

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CHAPTER IV.

RULES AND REGULATIONS CONCERNING EXAMINATIONS AND CROSS-EXAMINATIONS OF WITNESSES IN CIVIL AND CRIMINAL CASES. THE DIFFERENCE IN JUDGING AND IN DISCUSSIONS BETWEEN CIVIL AND CRIMINAL CASES. HOW THE MEMBERS OF THE SANHEDRIN WERE SEATED. HOW MANY RECORDING SCRIBES WERE NEEDED. HOW JUDGES WERE ADDED IF NEEDED, AND FROM WHAT PEOPLE. HOW WITNESSES SHOULD BE FRIGHTENED IN CRIMINAL CASES. THE REASON WHY ADAM THE FIRST WAS CREATED SINGLY.

MISHNA *I.*: Cases coming before the court, be they civil or criminal, the witnesses thereof must be examined and investigated. As it is written [Lev. iv. 22]: "One manner of judicial law shall ye have." But what difference is there between civil and criminal cases? It is the following: (a) The former cases are to be tried by three, and the latter by twenty-three judges. (b) In the former the discussion may commence either with the accusation or with the defence, while the latter must commence with the defence and not with the accusation. (c) In the former case one voice suffices either to accuse or to acquit, and in the latter he is acquitted by one voice, while to condemn two are needed. (d) In the former the judge who proclaimed his view either to advantage or to disadvantage may, after deliberating, announce his view to the contrary. In the latter, however, he may do so only to acquit, but not to condemn. (e) In civil cases the whole body of the court may defend or accuse, while in criminal cases all of them may acquit, but the whole body must not accuse. (f) The former may be discussed in the daytime and the decision rendered at night, while in the latter the decision must be in the daytime. But if they did not come to a conclusion on the same day, they have to postpone it to the morrow. (g) The decision concerning the former may be reached on the same day either to one's advantage or to his disadvantage, while in the latter the decision may be rendered on the same day to free him, but not to condemn him until the next day; and, therefore, cases of capital punishment must not be begun on the eve of Sabbath or of a legal holiday. In civil cases,

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and regarding defilement and purity, they begin by asking the opinion of the eldest, while in criminal cases they begin with those who are sitting on the side.

All are qualified to judge civil cases, but not every one is qualified to judge criminal cases; as to the latter--only priests, Levites, and Israelites who may legally marry daughters of priests.

GEMARA: Are investigation and examination indeed needed in civil cases? If so, there is a contradiction from the following Tosephta: A document of which the date shows the first of Nissan in a Sabbatical year and witnesses came, saying, "How can you testify in favor of this document--were you not with us at the same date mentioned in the document in such and such a place?" The document as well as the witnesses are valid, as it is to be supposed that they might

have written the document after the date mentioned therein. Hence if investigation and examination are needed, why should they be valid because of the above reason? Would not the investigation show if it were so or not. But according to this theory, how is to be understood the following Mishna: Promissory notes which were written at an earlier date are invalid. However, if they were written at a later date, they are. Now, if an investigation in civil cases is needed, why should that which was written at a later date be valid? (The investigation would show that the witnesses who signed the document were not present when the loan was made, as it was signed at an earlier date. Hence the loan which was made earlier is to be considered a verbal loan, which does not collect from encumbered estates, and the note should be considered a forgery?) This presents no difficulty, the objection mentioned applying more to the statement of the Boraitha, as it speaks of a Sabbatical year, in which people do not usually lend money because of the law [Deut. xv. 2] of that year, and nevertheless it makes valid that which was written in the month of Nissan, because the above-mentioned law concerning promissory notes applies only at the end of the year. However, the contradiction to our Mishna remains!

R. Hanina said: Biblically there is no difference between civil and criminal cases concerning investigations, as it reads, "One manner of judicial law," etc. But why was it enacted that civil cases do not need investigation? So as not to close the door to borrowers. (And our Mishna, which states that it is needed, was taught *before the enactment*; and the Boraitha cited *after the enactment*.) But if so, let the judge who made an error in the

decision of the case not be responsible? If this should be enacted, so much the more would the door be closed to borrowers. Rabha, however, maintains that our Mishna treats of fine cases and the Boraitha of loan cases. However, both were taught after the above-mentioned enactment. And R. Papa maintains that both treat of loan cases. But our Mishna speaks of a case which appears to the court unfair; and to such, investigation is needed. The Boraitha speaks of non-suspicious cases. And this is in accordance with Resh Lakish, who used to propound a contradiction to the following: It reads [Lev. xix. 15]: "In righteousness shalt thou judge thy neighbor"; and Deut. xvi. 20 reads: "Justice, only justice, shalt thou pursue," from which it is to be understood that an investigation is needed? And he answered that the first verse speaks of an ordinary case and the second of a suspicious one. R. Ashi, however, maintains that the above answer of R. Papa, concerning the contradiction from the Mishna, holds good. However, the supposed contradiction of the verse is to be explained that the first speaks of a strict law and the second of an arbitration, as the following Boraitha states: "Justice, only justice," etc., one word means strict law and the other means arbitration. How so? If, *e.g.*, two boats are plying on a river and they meet each other, if both try to pass where there is not room, both would be lost; but if one passes after the other, both would be saved. And the same is the case with two camels passing the steps of Beth Chorin, which met each other. If both tried to pass together, both would fall; but if one after the other, both would be saved. Then the strict law is that the unloaded one should wait, and the loaded one pass; or, if one was near to the dangerous place and the other far off, the nearer one has to pass; but if both were loaded, or if both were at the same distance, then arbitration must be used as to which one has to pay to the other for loss of time.

The rabbis taught: "Justice, only justice, shalt thou pursue," means that one shall follow to the city of a celebrated judge, *e.g.*, at Luda, after R. Elazar; at Brur-Heil, after Rabban Johanan b. Zakkai. [There is a Boraitha: (At the time the government had forbidden circumcisions and

weddings, they made use of handmills to announce a circumcision.) Then, if one heard the sound of a handmill in the city of Burni, he understood that there was a ceremony of circumcision in that city; and if one saw many lights in Bene Heil, he understood that there was a wedding banquet in that city].

There is another Boraitha interpreting the cited verse thus: You should always trouble yourself to follow after the sages in assembly, as, for instance, after R. Elazar at Luda; after R Johanan b. Zakkai at Brur-Heil; after Jehoshua at Pekiein; after Rabban Gamaliel at Jamnia; after Aqiba at Bene Braq; after Matia at Rome; after Hanania b. Thrduin at Sikhni; after Jose at Sephorius; after Jehudah b. Bathyra at Nzibin; after Hanina, the nephew of Jehoshua, in exile; after Rabbi at Beth Shearin; and (when the Temple was in existence) after the sages at their assembly in the chamber of the Temple.

"*With the accusation or with the defence*." But what has the court first to say to the advantage of the defence in criminal cases? Said R. Jehudah: The court may ask the witness: "Whence do we know that it was as you say?" But from such an interrogation the witness will become dejected, and will refrain from saying anything. [But let him be dejected? Have we not learned in a Boraitha, R. Simon b. Eleazar said: The witnesses may be transferred from one place to another that they shall become dejected and retract from their statement if it was not true? What comparison is this? There they become dejected by themselves; but here, if you say to them, "Whence do we know that what you say is true?" *you* cause them to be dejected.] Therefore said Ula: The court questioned the other party, "Have you other witnesses to make collusive the witnesses of your opponents?" Said Rabba to him: Is this what you call *beginning with the defence?* With this saying you begin by accusing witnesses of the other party. Therefore said he: The court may say to the other party, "Have you other witnesses who may contradict the witnesses of your opponent?" R. Kahna says: The court may say, "From your testimony it seems that the defendant may be acquitted"; and thereafter they discuss the matter. Both Abayi and Rabha say: The court may say to the defendant, "Do not fear; if you have not committed the crime, nothing will be done to you." And R. Ashi said: The beginning should be with the announcement of the court: Every one who knows of a defence concerning the defendant may come to tell it before the court. There is a Boraitha in accordance with Abayi and Rabha as follows: It reads [Num. v. 19]: "If thou hast not gone aside to uncleanness behind thy husband, then be thou free." Said Rabbi: Infer from this that in criminal cases the beginning must be with the defence (as it is written first, "then be thou free").

"*May after deliberating . . . announce to the contrary*." There is a contradiction from the following: If one has tried a case and made liable him who is not, or *vice versa*; has purified a thing which is unclean, or *vice versa*, his decision holds good, but he has to pay for his error from his own pocket. (Hence we see that he must not retract?) Said R. Joseph: This presents no difficulty. A judge who was appointed by the court, if he made an error, he must pay for it; but if he was appointed by the parties only, he has not. But is there not a Boraitha: If he was appointed by the court, he has not to pay? Said R. Na'hman: The just cited Boraitha treats of when there was a superior judge to him, who ignores his decision; therefore he is free from paying, as the superior judge decides it properly. But if there is no superior and his decision remains, then he must pay for his error. R. Shesheth, however, maintains: It depends in what the error was made.

If he erred in that which is plainly taught in a Mishna, then he has not to pay, because his decision will not be executed; but if he erred in his opinion, then he has to suffer. So did he hear from R. Assi. Rabhina questioned R. Ashi: Is it the same even if he has erred in that which was taught in the Boraithas of R. Hyya and R. Oshia? And he answered: Yea. And how is it if he erred in that which was said by Rabh and Samuel? And he answered: Yea. And how is it if he erred in that which was said by you and me? And he rejoined: What, then, are we? Are we splitting wood or gathering splinters in the forest! How is to be understood, "erred in his opinion"? (See the answer in Chapter I., page 9, line 21.)

R. Hamnuna objected to R. Shesheth from the following: It happened that a cow of which the womb had been removed was brought before R. Tarphon, and he made the owner give it to the dogs. However, a similar case came before the sages in Jamnia, and they made it valid, because Tudus the physician testified that not one cow or one swine was sent out from Alexandria in Egypt of which the womb was not removed, Or the purpose that they should not bring forth offspring. And R. Tarphon exclaimed thus: O Tarphon, thy ass is gone! (*I.e.*, I have to sell my ass to pay for the error.) Said R. Aqiba to him: You are free, as there is a rule that a judge who is appointed by the majority h-as not to pay for his error. Now, if an error in that which was taught in a Mishna does not hold good and must be redecided, why does not Aqiba say: You have erred against a

Mishna? R. Aqiba meant to say both--first: You have erred against a Mishna; and secondly: Even if you erred in your own opinion you would also be free, because you were chosen by the majority.

Said R. Na'hman b. Itz'hak to Rabha: How could R. Hamnuna object to Shesheth from the case of the cow? Did not Tarphon give it to the dogs? Hence the cow was no longer in existence, and it could not be redecided. Hamnuna meant to say thus: If the decision should be that the case of one who erred against a Mishna is not to be redecided, it is correct that Tarphon was afraid that he must pay, and R. Aqiba told him that he must not, because he was a recognized judge. But if the Halakha is that in such a case it must be redecided, let Aqiba say to him: How would it be if the cow were still in existence--your decision would not remain and the cow would be declared valid? The same is the case even now that it is not in existence, as you did not yourself give it to the dogs: You had only decided that it was invalid, and as your decision does not count, the owner of the cow, himself, has to suffer for his act.

R. Hisda, however, explains our Mishna that it means: If the judge himself took from the one who was liable in his eyes and gave to his opponent, only then must he pay from his pocket, but not otherwise. But this would be correct in one case only--namely, if he had made liable the just, then we could say that he took from the just and gave to his opponent. But how could this be done in the second case, in which he has acquitted the one who was liable, as he only said to him: You are not liable? His decision, "You are free," is counted as if he would take with his hand and give to him. But if so, how is to be understood the following statement of the Mishna, that the judge may retract from this view, no matter if it is concerning defence or accusation, as this can be explained only in case he said to the just, "You are liable," but did not collect from him, as then he may retract and say, "You are not liable"? But in case he made liable a just man, how could such a case take place, if not by the decision, "You are free"? And it is said above that such a decision is considered as if he would take from one party and give to the other:

hence, after such, no retraction can take place. Our Mishna, with its expression, "whether in defence or in accusation," means to say that with the acquittal of one party the other party is accused; namely, a retraction may take place in behalf of one who was erroneously made liable but it was not as yet collected,

although it is a disadvantage to his opponent, but in case he has acquitted the one who is liable he has to pay from his pocket. But if so, then in criminal cases a retraction could take place only when it is in behalf of the defendant. but at the same time his opponent is not accused. And this can be said if the criminal case was a violation of Sabbath or a case of adultery; but in case of murder, how can such be found? But how, if there is a retraction that he is not guilty of slaying a person, who is accused? It may be said the relatives of the person murdered; as biblically, if the relatives of the person murdered took revenge on the murderer and slew him, he is freed; and by the retraction from guilty to not guilty, if the relative should put his hand on the murderer, he would be accused. But could such a thing be supposed? You mean to say, because perhaps the relative of the person murdered will take revenge, therefore no retraction shall take place and the defendant shall be put to death. And secondly, does not the Mishna state, whether concerning defence or accusation? This difficulty remains. Rabhina, however, says: Even in case he has acquitted the one liable, it may also be found that the judge did it with his hand--namely, in case he had a pledge and the judge took it away from him and transferred it to the borrower.

"*Criminal cases*," etc. The rabbis taught: Whence do we know that if one was found guilty by the court, and thereafter one came, saying: I know a defence for him, that the case may be retried? Because it reads [Ex. xxiii. 7]: "Him who hath been declared innocent and righteous, thou shalt not slay." Read: Him who was declared innocent even by one person, you shall not slay (without a reinvestigation). And whence do we know concerning the one who was acquitted by the court, and thereafter one says, "I know of a fact which will make him guilty," that he must not be listened to? From the same cited verse: "Him who hath been declared righteous, ye shall not slay." Said R. Shimi b. Ashi. And just the reverse may be done with a seducer, as the Scripture reads [Deut. xiii. 9]: "You shall not have any pity," etc. R. Kahana infers this from [ibid., ibid. 10]: "You shall surely kill him," etc.

R. Zera questioned R. Shesheth: Whence do we know that the same law applies to them who are to be punished with exile? And the answer was: From an analogy of the expression "murder," which is to be found in both cases. And whence do we know that the same is the case with them that are to be punished

with stripes? From an analogy of the expression, "wicked," which, is to be found in both cases. And so also is it plainly stated in a Boraitha.

"*But not to condemn*." Said Hyya b. Aba in the name of R. Johanan: Provided he has erred in a thing which the Sadduceans oppose; but if they admit, it must read so plainly in the Scripture. And such a decision is not to be taken in consideration at all, as schoolchildren are aware of it; it must be retried. The same Hyya questioned R. Johanan: How is it we err in a case of adultery? And he answered: So loner as the fire in the stove burns, cut off all that you want to roast, and roast it. (*I.e.*, when you are studying a thing, consider it thoroughly to prevent questions. You

have heard from me that, a thing which the Sadduceans admit, his decision is not counted. Is not adultery one of these?)

"*All of them*," etc. Does the Mishna mean that even their witness who had accused him may also thereafter defend him? Then our Mishna is in accordance with R. Jose b. Jehudah, and,, not in accordance with the rabbis of the following Boraitha: It is written [Num. xxxv. 30]: "But one witness shall not testify against any person to cause him to die." It means whether to defend or to accuse. Jose b. Jehudah, however, maintains that he may testify to defend, but not to accuse. (Hence our Mishna is not in accordance with him.) Said R. Papa: Our Mishna with its expression *all*, means to add one of the disciples who sat in a row before the judges, and such may make use of his opinion according to all.

What is the reason of R. Jose's statement? Because it reads: "to cause him to die," we infer that only to accuse he must not testify, but to defend he may. But if so, why do the rabbis differ? Said Resh Lakish: Because it appears that the witness is interested in this case. And what do the rabbis infer from the words "to cause him to die"? They apply this to one of the disciples, as we have learned in the following Boraitha: If one of the witnesses says: "I have something to say in defence. of the defendant," whence do we know that he must not be listened to? From the verse cited: "One witness shall not testify." And whence do we know, if one of the disciples say, "I have something to say to the disadvantage of the defendant," that he must also not be listened to? From the same: "One shall not testify to cause him to die."

"*Only to acquit, but not to condemn*." Said Rabh: This is

said only at the time they discuss this matter; but at the time of the conclusion he may change his views from defence to accusation also. An objection was raised from the following: "On the morrow they arise early and come to the court. He who defended has to say: I defended yesterday and am of the same opinion to-day. And he who accused has also to say: I accused, and am of the same opinion to-day. However, he who had accused may change his view to defence, while this is not allowed to him who defended." Now, on the morrow it is time for the conclusion, and it nevertheless states that the defendant may not change his view? According to this theory, no discussion is to be prolonged on the morrow; and this is certainly not so. Hence the Boraitha means that he must not do so at the time of discussion.

Come and hear another objection: "All who take part in the discussion may explain their reasons, until one of the accusers shall yield to one of the defenders (and then the majority of one will suffice to acquit)." Now, if you say that one may change his view from defence to accusation, why does not the Boraitha state, "or to the contrary"? It is simply because the Tana of the Boraitha does not care to repeat a matter of accusation.

Come and hear another objection: "R. Jose b. Hanina said: If one of the disciples has defended and dies at the time of the conclusion, his view should be considered as if he were still alive." And why? Let it be said that if he were alive he might retract from his view? This is no objection, as in reality he did not retract. But how can you explain that the decision of R. Jose b. Hanina may correspond with Rabh's statement? Was not a message sent from Palestine as follows: R. Jose's statement denies our master's (Rabh's) statement? Nay, the message was just

the contrary: R. Jose's statement does not deny the statement of our master in Babylon.

"*Discussed in the daytime,*" etc. Whence is this deduced? Said R. Aha b. Papa: From [Ex. xviii. 22]: "And let them judge the people at all times." But how is it to be inferred from this that the conclusion must not be at night, and the discussion may? This is in accordance with Rabha, who has propounded a contradiction from the just cited verse to that of Deut. xxi. 16: "Then shall it be, *on the day* 1 when *he divideth* . . . what

he hath"--on the day, "but not at any time"? And the answer was that the beginning of the trial must be in the daytime, but the conclusion may be even at night-time in civil cases. Our Mishna is not in accordance with R. Mair of the following Boraitha: It reads [ibid., ibid. 5]: "Every controversy and every plague." 1 What have plagues to do with controversies? The Scripture compares controversies to plagues, in order to apply the law of the latter to the former. As concerning plagues it must be in the daytime [Lev. xiii. 14]: "But on the day," etc., the same is the case with controversies. And also as, concerning plagues, it cannot be judged by one who is blind, as the priest must see the signs, the same is the case with controversies. And also the law concerning controversies, which must not be judged by relatives, applies to plagues--that the priest must not be a relative of him who has the plague.

In the neighborhood of R. Johanan there was one who was blind who used to judge cases, and R. Johanan did not protest. But could R. Johanan be silent in such a matter? Is it not against his own decision? Did not he himself declare that the Halakha always prevails with an anonymous Mishna, and there is one which states: Every one who is qualified to judge is also qualified to be a witness? However, there are some who are qualified to witness, but not to judge; and the same R. Johanan has declared that it means one who is blind of one eye, who is qualified to witness, but not to judge. Hence one who is blind, who is disqualified to be a witness because he cannot see, ought also to be disqualified to judge? R. Johanan found another anonymous Mishna for his basis, namely: "Civil cases may be discussed in the daytime and the conclusion at night," which is the same as a case of one who is blind. But why does he give preference to the latter Mishna, and not to the first? If you wish, it may be said because the latter treats of a majority, while the first treats of an individual. And if you wish, it is because the latter is taught concerning the laws of trying cases.

"*If they did not come to a conclusion*," etc. Whence is this deduced? Said Shini b. Hyya: From [Num. xxv. 4]: "Take all the heads of the people and hang them up before the Lord in the face of the sun." If people have sinned, wherein have the heads of the people sinned, that they should be hanged? Said R. Jehudah in the name of Rabh: Thus said the Holy One, blessed be He, to Moses: "Take the heads of the people, and set

them at separate places, that they shall judge the guilty ones and hang them in the face of the sun (which means in the daytime)." And why in separate places? Shall we assume, because two capital punishments must not be decided on one and the same day? Did not R. Hisda say that this is said only when capital punishments are of different kinds, but if of one kind they may? Therefore it must be said: To hasten the execution of the guilty, that the anger of Heaven shall

cease.

"*They have to postpone it until the morrow*." Whence is this deduced? Said R. Hanina: From [Is. i. 21]: "Righteousness lodged therein; but now murderers"--which means, formerly they used to postpone the condemnation for a night, and now that they are not doing so they are considered murderers.

"*Must not be begun on the eve of Sabbath*," etc. Why so? Because it could not be done otherwise; as, if they should begin and finish on the eve of Sabbath, perhaps they would need to condemn him, and then they would have to postpone it over night. And to conclude the case on Sabbath and to execute on the same day, the execution does not violate the Sabbath; and should it be executed at night, after Sabbath the law requires, "in the face of the sun"; and should the conclusion be on Sabbath and the execution on the following day, then it would be torture for the guilty one, which is not allowed. Should they begin on the eve of Sabbath and conclude on the day after Sabbath, then they are liable to forget the reasons. Although there were two scribes who used to write down the discussions--the defence as well as the accusation--they wrote only what was said, but could not write the heart of the man. And, therefore, it was impossible otherwise.

"*They used to ask the opinion*," etc. Said Rabh: I used to be among the judges of the court of Rabbi, and they used to begin the question of opinions with me. But does not the Mishna state that they have to begin with the eldest? Said Rabba b. Rabba, according to others Hillel b. Wals: It was different in the court of Rabbi, as in all cases they used to begin from those who were sitting at the side. The same said again: From the time of Moses until the time of Rabbi we do not find one man who was unique in the possession of wisdom, riches, and glory. Is this so? Was it not so with Jehoshua? Nay, there was Elazar the high-priest, who was equal to him. But was not Pinchas such a man? Nay, there were the elders who ruled with him. But was there not King Saul, of whom the same could be

said? Nay, there was Samuel. But did not Samuel die before Saul? It means, all the years of his life. But was not David such a man? There was Era of Ja'ir. He also departed before him. It means, also, all the years of his life. Was not King Solomon such a man? There was Shimi b. Geara. But did not Samuel slay him? It means, all the years of his life. Was there not Hezekiah? There was Shbna. Was there not Ezra? There was Nehemiah. Said R. Ada b. Ahbah: I can add thus: From the time of Rabbi until the time of R. Ashi there is also not to be found a man who was unique in all that is said above. But was there not Huna b. Nathan? R. Huna was under the influence of R. Ashi.

"Criminal cases they began from those sitting at the side." Whence is this deduced? Said R. Aha b. Papa: It is written [Ex. xxiii. 3]: "Neither shalt thou speak in a cause." (The term for "cause" is "rib," literally "quarrel," and "rab" means "great.") Do not read "rib," but "rab," which means: You shall not contradict one who is greater than you. Rabba b. b. Hana in the name of R. Johanan said: This is inferred from [I Sam. xxv. 13]: "Gird ye on every man his sword, and they girded on every man his sword; and David also girded on his sword." (We see that first it was done by the people and afterwards by the master.)

Rabh said: One may teach his disciple, and at the same time may judge in association with him in criminal cases. An objection was raised from the following concerning purification and defilement. A father with his son, or a master with his disciple, are counted as two voices. However, in civil cases, in criminal cases concerning stripes, in consecration of the month and in the, establishment of leap year, a father with his son, or a master with his teacher, is counted as one voice only. (Hence we see that the master with his disciple cannot judge together in criminal cases, so that they should be counted two.) Rabh speaks of such disciples as R. Kahana and R. Assi, who needed only Rabh's tradition, but not his sagacity, to equalize things.

R. Abuhu said: In ten things civil cases differ from criminal cases. However, all of them do not apply to the case of an ox which is to be stoned, except as to the number of judges, twenty-three being needed, similar to all other criminal cases. But whence is this deduced? Said R. Aha b. Papa: From [Ex. xxiii. 6]: "Thou shalt not wrest the judgment of thy poor in his cause"; *i.e.*, thou shalt not wrest the case of thy poor, but thou

mayst wrest the case of the stoning of an ex. (And as this law does not apply to the stoning of an ox, so do not apply the other laws except the one of the twenty-three, judges mentioned above.) But are there not some other things in which criminal cases differ from civil? Have we not learned in a Boraitha that among the Sanhedrin must not be any one of great seniority, a castrate, and those who have no children? R. Jehudah also adds to these a cruel man.

"*All are competent to judge civil cases*." What does the Mishna mean by the expression "*all*"? Said R. Jehudah. To add a bastard. But this was taught already in the above-mentioned Boraitha, that all who are competent to judge criminal cases are competent for civil cases. However, there are those who are competent for civil cases but not for criminal. And in our discussion we have debated: "What does it mean by all who are competent?" The same R. Jehudah said: It means to add a bastard. One means to add a proselyte and the other means to add a bastard; and both cases are necessary to be stated. For if a proselyte only were stated, one might say, it is because he is eligible to marry a daughter of an Israelite; but a bastard, who is not allowed to do so, is not competent. And if a bastard only were stated, one might say, because, after all, he is a descendant of an Israelite; but a proselyte, who is a descendant of a heathen, is not competent. Therefore both statements are necessary.

"*But not all of them are competent to judge criminal cases*." What is the reason? That which was taught by R. Joseph: As the court must be select in its uprightness, so it must be select in all other things--without any blemish. And R. Ameimar said: Where is there to be found an allusion to this in the Scripture? In [Solomon's Song, xiv. 7]: "Thou art altogether beautiful, my beloved, and there is no blemish on thee." But perhaps it means literally that the judges shall be without any bodily blemish? Said R. Aha b. Jacob: It reads [Num. xi. 16]: "And they shall stand there *with thee*"--which means those who are equal to thee (*i.e.*, in birth, but not a proselyte and a bastard). But perhaps there is a difference, because of the glory of the Shekinah. Therefore said R. Na'hman b. Itz'hak: This is inferred from [Ex. xviii. 22]: "When they shall bear with thee." This means they shall be equal to thee in birth.

MISHNA *II.*: The Sanhedrin sat in a half-circle in order that they could see each other. Two scribes of the judges stood before them, one on the right and one on the left, and they wrote

down the reasons of the accuser and of the defender. According to R. Jehudah there were three--one who wrote down the reasons of the accuser and one the reasons of the defender, and one the reasons of both. And before them sat three rows of scholars (disciples). To every one of them his seat was known. If it was necessary to add a judge, one from the first row was elevated, and one from the second came and took the latter's place, and one from the third took the place of this one; and for the place in the third row one of the standing people was selected, but he did not take the same seat as the one departed occupied, but that to which he was entitled.

GEMARA: Whence is this deduced? Said R. Aha b. Hanina: From [Solomon's Song, vii. 3]: "Thy navel is like a round goblet which lacketh not the mixed wine." By "navel" is meant the Sanhedrin. And why were they named navel? Because they used to sit in the middle of the world (according to the Talmud, Jerusalem was the middle of the world and the Temple was in the centre of Jerusalem), and also protected the whole world. And why were they named a "round goblet"? Because the Sanhedrin sat in a circle: "Which lacketh not the mixed wine "--*i.e.*, if one wished to leave, it must be seen that besides him twenty-three remained, and if there were less, he must not. "Thy body is like a heap of wheat fenced about with lilies," means that as from a heap of wheat all derive benefit, so all were pleased to hear the reasons given by the Sanhedrin in their discussions. "Fenced about with lilies" means that even a fence of lilies was not broken by them to go out of it. This is what was said by a certain Minn to R. Kahana: Your law permits a, man to stay alone with his wife during the days of her menstruation. Is it possible that flax and fire should be together and should not burn? And he answered: The Torah has testified that we are such a kind of people that even a fence of lilies is sufficient for us, and will never be broken. Resh Lakish said: This is inferred from ibid. vi. 72, which means that even thy vain fellows, are full of meritorious acts--like the pomegranate. 1 R. Zera said: From [Gen. xxvii. 27]: "And he smelled the smell of his garments," etc. Do not read "bgadov," which means dress, but "bagdov," which means his transgressor. There were •βριον {Greek *ù!brion*} 2

(insolent fellows) in the neighborhood of R. Zera, who nevertheless associated with them and showed them respect, to the end that they should repent. The rabbis, however, were not satisfied with this. But after the soul of R. Zera had gone to its resting-place the above-mentioned people took this to heart, saying: Hitherto there was the little man who prayed for us, but now who will do so? And they repented and became good.

"*Three rows*," etc. Said Abayi: Infer from this that if one left his place, all in the row had to change their places. But could one not protest, saying: Hitherto I have sat in front, and now you place me in the back? Said Abayi: To such a protest he was answered: There is a parable that it is better for one to be the tail of a lion than the head of a fox.

MISHNA *III*.: How were the witnesses awestruck in criminal cases? They were brought in and warned: Perhaps your testimony is based only on a supposition, or on hearsay, or on that of another witness, or you have had it from a trustworthy man; or perhaps you are not aware that finally we will investigate the matter by examination and cross-examination. You may also be aware of the fact that there is no similarity between civil and criminal cases. In civil cases one may repay the money damage and he is atoned; but in criminal cases the blood of the person

executed, and of his descendants to the end of all generations, clings to the originator of his execution. So do we find in the case of Cain, who slew his brother. It reads [Gen. iv. 10]: "The voice of the 'bloods' of thy brother are crying unto me from the ground." It does not read "blood," but "bloods," which means his blood and the blood of his descendants. [According to others it reads "bloods" in the plural, because his blood was scattered all over the trees and stones.] Therefore the man was created singly, to teach that he who destroys one soul of a human being, the Scripture considers him as if he should destroy a whole world, and him who saves one soul of Israel, the Scripture considers him as if he should save a whole world. And also because of peace among creatures, so that one should not say: My grandfather was greater than yours; and also that the heretic shall not say: There are many creators in heaven; and also to proclaim the glory of the Holy One, blessed be He. For a human being stamps many coins with one stamp, and all of them are alike; but the King of the kings of kings, the Holy One, blessed be He, has stamped every man with the stamp of Adam the First, and nevertheless not one of them is like the other. Therefore

every man may say: The world was created for my sake, hence I must be upright, just, etc. Should you (witnesses) say: Why should we take so much trouble upon ourselves? To this it is written [Lev. v. 1]: "And he is a witness, since he hath seen or knoweth something; if he do not tell it, and thus bear his iniquity." And should you say: After all, why should the blood of this man cling to us? To this it is written [Prov. xi. 10]: "When the wicked perish, there is joyful shouting."

GEMARA: The rabbis taught: What means a supposition? The court may say to them: Although you saw that one ran after his companion to a ruin and you ran after them, and found a sword in his hand from which the blood dripped, and you also saw the one killed move convulsively, you saw nothing (so long as he did not kill him in your presence).

There is a Boraitha: Simeon b. Shetha said: May I not live to see the consolation of our people if I did not see one who ran after his companion to a ruin, and I ran after him, and saw a sword in his hand from which blood dripped, and the one killed moved convulsively, and I said to him: You wicked one, who has slain this man--I or you? But what can I do that your blood is not legally in my hands, as it reads [Deut. xvii. 6]: "Upon the evidence of two . . . be put to death." But He who knows the thoughts of man shall take revenge on this man who has slain his companion. It was said that both (Simeon and the murderer) had not moved before a snake came and stung the guilty one that he died.

But was this man liable to be killed by a snake? Did not R. Joseph say, and so also taught the disciples of Hiskia: Since the Temple was destroyed, although the court of the Sanhedrin existed no longer, the punishment of the four kinds of death prescribed in the Scripture was not abolished by Heaven--as, *e.g.*, he who is liable to be stoned finds his death by falling from a roof or by being trodden down by a wild beast; he who is liable to be burned finds his death by fire or by the bite of a snake; he who is liable to be slain by the sword falls into the hand of the government, which slays him, or he comes to death by the sword of murderers; and he who ought to be hanged finds his death by drowning in the river or by diphtheritis. (But the murderer is only to be slain, and not burned?) This man was liable to be burned for another, crime; and the master said elsewhere that he who is guilty of two crimes is to be punished by the heavier death.

"*Supposition*." We see that a supposition does not hold good

in the case of crimes. Does it hold good in civil cases? And if yea, it would be in accordance with R. Aha, who said in the "Last Gate" that if there was a biting camel among camels and a killed camel was found at its side, it might be taken for a certainty that it had killed him and its owner was liable. But according to this theory, if there was a witness who heard this by hearsay from another, which is not considered in criminal cases, it should be considered in civil. Does not the Mishna state that if he said, "The defendant has confessed to me that he owes," etc.; or, "So and so told me that he owes him," he said nothing? Hence if such does not hold good in civil cases, why should this be repeated concerning criminal cases? Therefore we must say that, notwithstanding that such a testimony is not considered in civil cases, they nevertheless warned them in criminal cases. The same is the case with the above-mentioned case of supposition.

"*You shall be aware*," etc. R. Jehudah b. Ahia said: Infer from the verse cited in the Mishna that Cain made wounds and gashes on the body of his brother Abel, as he did not know by what member the soul departed until he reached his neck. The same said again: From that time when the earth opened its mouth to receive the blood of Abel, it has not again opened. As it is written [Is. xxiv. 16]: "From the edge of the earth," etc. Hence it reads "from the edge," but not "from the mouth." Hiskia, his brother, however, objected to him from [Num. xvi. 32]: "And the earth opened her mouth," etc. And he answered it opened for disadvantage, but not for advantage. The above said again in the name of the same authority: Exile atones for only half of a sin, but not for all of it, as it reads [Gen. iv. 14]: "And I shall be a fugitive and vagabond on the earth," etc.; and [ibid. 16]: "And dwelt in the "land of Nod" (vagabond). Hence half of his sin was atoned. [1]

"*Therefore after them man was created singly*." The rabbis taught: Adam the first was created singly, and why? That disbelievers should not say there were many Creators in Heaven. And another reason is because of the upright and the wicked, that the upright should not say: We are descendants of an upright man; and the wicked should not say: We are descendants of a wicked one (hence we are not to be blamed). There is another reason: Because of families, that they should not quarrel, saying

[paragraph continues] Our parents were better than yours. As we see that when only one man was created there are quarrels of rank, how much the more if many original Adams had been created. Still another reason: Because of robbers and forcers. As even now, when he was created singly, there are robbers and forcers although they are all from one father, how much the more would there be robbers and forcers if they were from different parents.

"*To save the glory*," etc. The rabbis taught: To save the glory of the King of the king of kings, the Holy One, blessed be he! A human being stamps many coins and all are alike, but the Holy One, blessed be He, has stamped every man with the stamp of Adam the First, and nevertheless not One is like his neighbor. As it reads [Job, xxxviii. 14]: "She is changed as the sealing-clay; and (all things) stand as though newly clad." And why are not the faces of men alike? Because one might see a nice dwelling or a handsome woman, and say: It is mine. As it reads [ibid. 15]: "And from the wicked is their light withdrawn, and the high-raised arm is broken."

There is a Boraitha: R. Mair used to say: In three things one is different from his neighbor--in voice, in face, and in mind: in voice and in face, because of adultery; and in mind, because of robbers. (*I.e.*, if one were to know the mind of his neighbor, he would know of all his treasures and mysteries and would rob him of them. 1)

Footnotes

105:1 In Leeser's version it is not mentioned "on the day," notwithstanding that the text so reads, which, according to the sense, may mean "the time." The Talmud, however, takes it literally.

106:1 Leeser's translation does not correspond.

110:1 It is useless to quote the passage, as its translation does not correspond with the saying of Resh Lakish at all.

110:2 We have translated in accordance with Schönhack's Dictionary, as it seems to us correct.

113:1 Here come Haggadah, which we have transferred to the Haggadic part of this tract.

114:1 Here also are a few pages of Haggadah, which we have transferred to the Haggadic chapter.

Next: Chapter V

CHAPTER V.

RULES AND REGULATIONS CONCERNING PRELIMINARY QUERIES, EXAMINATION, AND CROSS-EXAMINATION IN CRIMINAL CASES. WHAT MAY OR MAY NOT BE CONSIDERED A CONTRADICTION OF WITNESSES. HOW IS IT IF A DISCIPLE NOT BELONGING TO THE JUDGES SAYS: "I HAVE SOMETHING TO SAY TO HIS ADVANTAGE OR DISADVANTAGE"? BY WHAT MAJORITY ONE MAY BE ACQUITTED AND BY WHAT ACCUSED; AND TO WHAT NUMBER JUDGES MAY BE ADDED, IF THEY CANNOT COME TO ANY CONCLUSION.

MISHNA *I.*: The court used to examine the witnesses with the following seven inquiries: (a) In what Sabbatic period? (b) In what year of the latter? (c) In what month? (d) On what date of the month? (e) On what day? (f) At what hour? (g) And in what place? R. Jose, however, maintains: "Only on what day? At what hour? In what place?" And also: Did you know this man? Did you warn him?

If the crime was idolatry, they were questioned which idols they worshipped and what kind of worship? He who is more particular and who enlarges the examination is praiseworthy. It happened that Ben Sakkai had examined the witnesses concerning the kind and the size of the figs of a certain fig tree which was connected with the crime.

What is the difference between examination and queries? In the latter, even if only one answered, "I don't know," the complaint is dismissed; while in examination, if one of the witnesses, and even two, claim that they did not know, their testimony holds good. In both cases, however, if they contradict each other, their testimony is ignored. If one says, "It happened on the second of the month," and the second says, "on the third of it," their testimony holds good, as it is to be supposed that to one was known the intercalation of the last month and to the other it was not. However, if one says "on the third" and the other says "on the fifth of the month," their testimony is ignored. If one says "in the second hour" and the other says "in the third," it holds good; but if one says "in the

third" and the other "in the fifth hour of that day," it is ignored. R. Jehudah, however, maintains that it still holds good; but if one says "in the fifth hour" and the other says "in the seventh," even according to R. Jehudah it is ignored, as in the fifth hour the sun is in the east, while in the seventh hour it is already in the west.

After one witness was examined they let the second enter and examined him. And if their testimony correspond, the discussion begins with the defence. Should one of the witnesses say, "I have something to say in behalf of the defendant, or one of the disciples, "I have something to say to the disadvantage of the defendant," the court silences him. If, however, one of the

disciples says, "I have something to say in his behalf," they take him out of his place, and set him among them, and he remains there the whole day; and if his words are reasonable, he is listened to. Furthermore, if the defendant says, "I have something to say in my behalf," he is to be listened to if there is something in his defence. If the judges find a good reason to acquit him, they do so immediately; and if not, they postpone the trial to the morrow. The judges then go out in pairs, and eat something--not much, but do not drink wine the whole day. They continue their discussion (outside of the court) all night, and on the morrow they come early to the court. He who was among the defenders says: I defended yesterday, and am still of the same opinion. The same is it with the accuser--he has to say: I accused, and am still of the same opinion. The one who has accused may retract from his statement of yesterday, to the advantage of the defendant. This is not allowed to him who has defended. If some of them erred in their statements, the scribes of the judges remind them of it. And again, if the conclusion is to the advantage of the defendant they free him immediately; and if not, they arise to be numbered. If twelve of them acquit and eleven accuse, he is acquitted. But if twelve accuse and eleven acquit, and even if eleven accuse and eleven acquit, but the twenty-third says, "I am in doubt"; even if twenty-two are for acquitting or accusing and one says, "I don't know," judges are to be added. And to what number? Two and two, till the whole number reaches seventy-one. And then if thirty-six acquit and thirty-five condemn, he is acquitted; but if *vice versa*, the discussion is prolonged until one of the accusers accepts the opinion of the acquitters.

GEMARA: Whence is all this deduced? Said R. Jehudah:

[paragraph continues] From Deut. xiii. 15: "Then shalt thou inquire and make search, and ask diligently." And it reads also [ibid. xvii. 4]: "And it be told thee, and thou hearest of it, thou shalt inquire diligently"; and also [ibid. xix. 18]: "And the judges shall inquire diligently." But perhaps the Scripture does not require seven queries in one case, and it is meant literally (namely, in the crime of a misled town three queries, and concerning idolatry two, and the same also concerning collusive witnesses; as in the former searching is mentioned three. times and in the latter searching is mentioned twice). As if seven in one case were needed, let the Scripture state all the above cases together, and then all other criminal cases would be inferred from this. Because searching is mentioned in all three cases above, we infer one from the other, so as to apply everything which is in one case to the others. But the law concerning those cases is not similar, as the case of a misled town cannot be equalized to the other two cases, as they are punished only in their body, but not in their estate; while in the case of a misled town all its estates must be destroyed. Neither can idolatry be equalized to the two cases, as the latter are put to death by the sword, while an idolater is to be stoned. And the case of collusive witnesses is also in one respect more rigorous than the others, as they are put to death without warning? One is inferred from the other, because of the analogy of the expression "diligently," which is to be found in all the cases, and would be superfluous if it were not written for that purpose. And to such an analogy, which comes from a superfluous expression, an objection is not to be made. Hence we infer the case which is to be punished with hanging by an *a fortiori* conclusion, from those which are to be punished by stoning or by the sword; and those by burning, by an *a fortiori* conclusion from those by stoning, etc. But such an *a fortiori* conclusion would be correct if all of the rabbis agreed that stoning is a more rigorous death than all the others. But there are some who hold that burning is more rigorous. Hence, according to them, the above *a fortiori* conclusion could not he drawn. Therefore said R. Jehudah: The seven queries of examination are inferred from [ibid. xiii. 15]: "And behold, if it be true--the thing is certain," which term is again repeated in ibid. xvii. 4. The words "certain" and "true," which are repeated,

make four, and in the above three cases "searching" is mentioned seven times. These altogether make eleven, of which seven are to be taken for the seven queries, three of them for an analogy, and the one

which remains applies to that case of which the punishment is burning, in accordance with R. Simeon's theory that burning is more rigorous. And concerning the rabbis, who hold that stoning is more rigorous, it does not matter if a thing which is to be inferred by the drawing of an *a fortiori* conclusion is nevertheless mentioned in the Scripture.

R. Abuhu ridiculed this statement. Why not say that the superfluous word of the eleven in question is to teach that eight queries arc necessary in the examination? Eight queries! What is this? How many minutes are there in the hour? And so, also, a Boraitha states that queries were used. But such a question is correct, according to Abayi, who said that R. Mair maintains that one is not liable to err in the minutes at all, or in a few minutes. But according to him, after R. Jehudah, who maintains that one is liable to err in a half hour, and according to Rabha, who maintains that one can err even in a whole hour, what should be the eighth query? "What period of the jubilee year?" However, he who maintains that the eleventh word mentioned above is applied to something else, maintains that the latter query is not necessary, as they were already questioned: What period of the Sabbatic year?

"*R. Jose said,*" etc. There is a Boraitha: R. Jose said to the sages: According to your theory, if a witness came before the court testifying, "Yesterday this man killed some one," may he be questioned in what period of the Sabbatic year, or in what year, month, and on what day of the month? And he was answered: The same as, according to your theory, that the queries should be: On what day, at what hour, and in what place? How is it if one testifies before the court, "This man has just killed a man"? Nevertheless the above queries are put to him: On what day, and at what hour? Hence, although not necessary, nevertheless he is to be questioned in accordance with the theory of R. Simeon b. Elazar, who maintains that the examination should be made severe, that the witnesses may lose heart in case they do not tell the truth. The same is the case with the other queries--they have to be put although it is not necessary. R Jose, however, may say: Usually the case is not tried just after the crime is committed, and therefore it is very seldom that the witness has to say: He killed him just now. However, one or a few days after the crime has been committed, it frequently happens that the case is tried.

"*Do you know this man?*" etc. The rabbis taught: The

query was: Do you recognize this man as the murderer of him who was slain? Was he a heathen or an Israelite? Have you warned him? Did he accept the warning? Did he answer in spite of this? Did he commit the crime just after he was warned? And if the crime was idolatry: Which idol has he worshipped--the idol Peor or Markulis? Now did he worship it? Did he sacrifice an animal or incense to it, or pour out wine for it, or bow himself down before it?

Ula said: Whence do we deduce that the warning is prescribed biblically? From [Lev. xx. 17]: "And if a man take his sister, the daughter of his father, or the daughter of his mother, and see

her nakedness." Is he guilty because he has seen it? It must therefore be said that it means he is aware of the crime (*i.e.*, aware that she is his sister and that it is a crime). Hence the same is it with all other crimes--that he is not to be sentenced unless he was aware that it was a crime; and to be certain that he was aware, it can only be through warning. And as this verse speaks of a crime for which he is punished with "korath," which means through Heaven, to which warning is not applied, apply to it the punishment of stripes. The school of Hiskia deduces it from [Ex. xxi. 14]: "But if a man come presumptuously upon his neighbor, to slay him with guile," which means it was presumptuously done even after he was warned. The school of R. Ismael inferred this from [Num. xv. 33]: "And they that find him gathering sticks," which means that after they warned him he still gathered the sticks. And the school of Rabbi deduced this from [Deut. xxii. 24]: "Because he had done violence." 1 And all of them are needed; as if it were stated only in the case of his sister, as to which it was explained that it means the punishment of stripes, one might say that this applies only to stripes, but not to capital punishment. Therefore the cited verse in Ex. xxi. And if the two only were stated, one might say that it applies only to a kind of death which is more lenient than stoning, but to the punishment of stoning, which is very rigorous, it does not apply. Therefore all are needed.

The Boraitha states: Did he answer in spite of this? Whence do we know this? Said Rabha, and according to others Hiskia:

[paragraph continues] From [ibid. xvii. 6]: "Shall he that is worthy of death be put to death," which means, provided he answered, "I will do this even should it cause my death."

R. Hanan said: Witnesses who testified in case of a betrothed woman, if they be found collusive, are not to be put to death, as they may say: Our intention was to make it unlawful for her to be his wife only, but not that she should be put to death. But did they not warn her? It speaks of when they did not. But in such a case it is self-evident, as without warning she is not to be put to death. He speaks of a scholarly woman, and this is in accordance with R. Jose b. Jehudah, who said in the following Boraitha: Warning does not apply to a scholar, as the purpose of warning is only to recognize if the perpetrator of the crime did it while he was not aware that such was a crime, or he did it although he was aware; and as a scholar is aware of this crime, no warning is needed. And as they are not to be put to death, she also is exempted from death, as the Scripture requires that the collusive witnesses should be punished with the same punishment as the perpetrator of the crime, if it were true; and as they claim that they intended only to make it unlawful for her to be the wife of her betrothed, such a punishment is not applicable to the witnesses, and therefore she also is acquitted.

R. Hisda said: If one of the witnesses testifies that he slew him with a sword and the other says "with a razor," it is not admissible. But if one says that the murderer or the one murdered was dressed in white, and the other testifies, "He was in black," it is to be considered admissible. An objection was raised from the following: "It should exactly correspond," means that if one testifies that he slew him with a sword and the other with a razor, or if one says that he was dressed in black and the other that he was dressed in white, it does not? R. Hisda explains this Boraitha, that it means if both have testified that he strangled him With a muffler, and one said "It was a white one," and the other said "It was a black one." Come and hear another objection: If one says, "He wore black sandals," and the other says, "white ones," it is not considered corresponding? Also this Boraitha may be explained that he kicked him with his sandals and

killed him. Come and hear another objection from our Mishna: It happened that Ben Sakkai examined the witnesses . . . of a certain fig tree? Said R. Jose: Do you want to contradict a man from Ben Sakkai's theory? He was of the opinion that there is no difference between. examination and query, and his

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theory is individual. Who was Ben Sakkai? Shall we assume that it means Rabban Johanan ben Sakkai? Was he, then, among the Sanhedrin? Is there not a Boraitha that the age of R. Johanan was one hundred and twenty: the first forty years he was engaged in business, the middle forty he studied, and the last forty he taught? And there is another Boraitha: Forty years before the Temple was destroyed, the Sanhedrin was exiled from the chamber of the Temple to a store. And R. Itz'hak b. Abudimi explained that it means that from that time the Sanhedrin did not try cases of capital punishment. And there is also a Mishna which states that after the Temple was destroyed R. Johanan ben Sakkai enacted, etc. Hence we see that during forty years of his life there were no cases of capital punishment in the court of the Sanhedrin, and it cannot be that the examination in question was made by him. Therefore it must be said that this Ben Sakkai was some one else. And so it seems to be, as if it were R. Johanan b. Sakkai, how is it possible that Rabbi, the editor of the Mishnayoth, should name him Ben Sakkai only. But have we not learned in a Boraitha: It happened that *R. Johanan b. Sakkai* examined . . . the kind of figs? Therefore it must be said that at that time he was a disciple who was sitting in the row before the Sanhedrin, and he said something which was accepted by the Sanhedrin, and therefore it was established in his name. Hence while he was as yet a student he was named Ben Sakkai; and afterwards, when he began to teach, he was named Rabban Johanan. And the Mishna which mentioned him by the name of Ben Sakkai did so because when this happened he was still Ben Sakkai; the Boraitha, however, mentioned him by his name of the latter period.

"*What is the difference between examination?*" etc. How is to be understood: If two claim, etc.? Is it not self-evident that if the testimony holds good when one says, "I don't know," the same is the case also when two say so? Said R. Shesheth: This statement applies to the first part--namely, if the investigation shows that two of them are aware and the third says, "I don't know," even then their testimony is ignored; and it is in accordance with R. Aqiba, who compares three witnesses to two. As with two, if there is a difference in their testimony, the case is to be dismissed, the same is it with three, if even only one of them says, "I don't know." Said Rabba: How can such an explanation hold good? Does not the Mishna state that their testimony holds good? Therefore said he: It is to be explained

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just in the reverse. Even concerning queries, if two witnesses are aware, but the third one says, "I don't know," their testimony holds good; and it is not in accordance with R Aqiba.

R. Kahana and R. Saphra used to learn the Tract Sanhedrin in the college of Rabba, and when Rami b. Hama met them, he questioned them: What new have you found in the Tract Sanhedrin, as taught by Rabba? And they rejoined: And how would it be if we had learned Tract Sanhedrin other than at Rabba's college--would you ask us for any news? It must be that there is some difficulty to you in this tract. Tell us, then, what it is. And he answered: The statement of the Mishna, which makes a difference between queries and examination--the reason for which is unknown to me. Are not both prescribed biblically? And they answered: What comparison is

this? In the inquiry, if one said, "I don't know," their testimony is annulled, because the witnesses of such a testimony cannot be made collusive. And there is a rule that such a testimony is not to be taken into consideration; while in examination, if one said, "I don't know," their testimony still holds good. Hence they remain legal witnesses who can be made collusive. Rejoined he: If it is so, then you have brought with you very great news, Rejoined they: Because of the kindness of you, master, not to object to us, it may be named good news; but if you were to use your sagacity to object to us, we would have nothing to say.

"*The intercalation of the month*," etc. Until what date of the current month should the supposition of the ignorance of the intercalation of the last month hold good? Said R. Aha b. Hanina in the name of R. Assi, quoting R. Johanan. Until the greater part of the month is passed (*i.e.*, *e.g.*, if one says, "It was on the twentieth of the month," and the other says, "on the twenty-first," the supposition of the intercalation is not to be taken into consideration, and their testimony is annulled). Said Rabha: This we infer also from our Mishna, which states that, if one says "on the third," and the other "on the fifth," their testimony is ignored. And if the intercalation were taken into consideration, why not say that one of the witnesses was aware of two intercalations (*i.e.*, from the last two months), and the other was not aware of it? Hence the reason must be, because one may not be aware of it during the first half of the month, but in the second half it is impossible that he has not heard of it. (Says the Gemara;) This, however, is not to be taken as a support, as it

may be said that one is not aware of it even during the second half of the month. And the reason why the Mishna does not say that he was not aware of two intercalations is because, usually, each intercalation was announced by blowing in the cornet and it could happen that one might overhear one blowing, but not two.

R. Aha b. Hanina said again in the name of the same authority., Until what time may the benediction of the moon be pronounced? Until it becomes more round. But until what date? R. Jacob b. Bibi in the name of R. Jehudah said: Until the seventh. And the sages of Nahardea said: Until the sixteenth. And the basis of both is R. Johanan's statement. They differ, however, in the explanation of it. According to R. Jehudah, his expression, "until it becomes more round," means when it is already half; and according to the others, R. Johanan means a full moon. Said R. Aha of Diphthi to Rabhina: Let one pronounce, after the time of the month's benediction has elapsed, the benediction of "Who is good, and does good to the world," And he answered: Do we then pronounce the benediction of "Blessed is He who judges true" when the moon diminishes, so that we shall pronounce the blessing, "Who is good," etc., after the full moon? But why not pronounce both? Because to a custom no such benedictions are used. The same said again in the name of the same authority: He who pronounces the benediction of the moon in time is considered as if he had received the glory of the Shekinah. And this is deduced from the analogy of the expression "zeh" mentioned in Ex. xiii. 2 and ibid. xv. 2.

In the school of R. Ismael it was taught. If Israel should have only the meritorious act of receiving the glory of their heavenly Father once a month, it would be sufficient. Said Abayi: Therefore we must pronounce the above benediction standing. Miramar and Mar Zutra used to stand shoulder to shoulder, pronouncing this benediction. Said R. Aha to R. Ashi: In the West they used to pronounce the benediction, "Blessed be He who renews the moon." And he answered: Such a blessing our women also pronounce. We, however, have adopted that which

was composed by R. Jehudah: "Blessed be He who with His words has created the heavens, and with the breath of his mouth all their hosts, to whom he gave order and time, that they should not change His command; and they rejoice and are happy in doing the will of their creator. They work truthfully,

and what is done through them is truth." 1 And to the moon He commanded that she renew herself every month, and that she should he a crown and a guide to the people who were selected by Him from their birth. It is a symbol to the children of Israel that, finally, they also will be renewed like unto her (the moon), and they will praise their Creator, his name, and the glory of His kingdom. Blessed be Thou, Eternal, who dost renew the moon.

[R. Aha b. Hanina in the name of R. Assi, quoting R. Johanan, said: With whom can you fight a war of the Torah? With him who posesses bundles of Mishnayoth. And R. Joseph, who was a master in Mishnayoth, applied to himself (Prov. xiv. 4): "But the abundance of harvests is (only) through the strength of the ox." 2]

"*If one says, 'in the second hour,'*" etc. Said R. Shimi b. Ashi: This is only when they differ concerning the hour; but it one says, "It was before sunrise," and the other says, "It was after," their testimony is to be ignored. Is this not self-evident? even if one says, "It was before sunrise," and the other says, "At the sunrise." Is this also not self-evident? Lest one say that the one who says it was before the rising of the sun stood at such a place that he could not see it well, he comes to teach us that it is not so.

"*The whole day*," etc. The whole day only? Have we not learned in a Boraitha that if they accepted his reasons he remains with them all the time; but if his reasons were not accepted, he nevertheless remains there the whole day to the end that his descent should not be a disgrace to him? Said Abayi, Explain, then, our Mishna that he remains there the whole day if his reasons were not accepted.

"They do not drink wine," etc. And why not? Said R. Aha b. Hanina. Because of [Prov. xxxi. 4]: "Nor for *rausnim* (princes) strong drink." By "rausnim" is meant that those who occupy themselves with *raus* (secrets) of the world should not drink strong drinks.

"*The opinion of the acquitter*." But how is it if he does not accept it? Said R. Aha, and so also R. Johanan., They have to acquit him. Said R. Papa to Abayi: if so, why was he not acquitted previously when they (were still twenty-three)? And he answered: So said R. Johanan. Because they should not leave the court disputing, According to others the answer was . R. Jose of the following Boraitha holds with you. As there is no addition to the court of seventy-one, so there is no addition to the court of twenty-three (but if there is no majority for condemning, the defendant is freed).

The rabbis taught.. In civil cases the court may say: The case becomes old. But this cannot be said in criminal cases. What does this mean? If it means it becomes so old that it is hard to reach a conclusion, and that therefore it must be postponed, then the reverse should be the case. It

means, in criminal cases they must postpone it, as perhaps they will find some defence, but not in civil. Said Huna b. Monoach in the name of Aha b. Ika. Reverse the Mishna. R. Ashi, however, said., The Mishna must not be reversed, as the expression "become old" means that the matter has received a thorough discussion and may not be further prolonged. An objection was raised from the following "The oldest of the judges may proclaim the case old. And this is correct according to the explanation of R. Ashi, as such a proclamation belongs to the oldest. But according to the first explanation, should the oldest blame himself? Nay, it would be a disgrace if some one else should say this to him. But if he himself proclaims this, there is no disgrace. According to others, it was questioned: How could the oldest praise himself, saying that the matter has become so clear that objection cannot be made? Is it not written [Prov. xxvii. 2]: "Let another man praise thee, and not thy own mouth." With a trial it is different, as it rests upon the shoulders of the oldest; for the Mishna states. After the conclusion, the oldest of the judges proclaims: "You, so and so, are acquitted"; or, "You, so and so, are guilty."

Footnotes

119:1 The expression in Hebrew is *al dbar asher enah*, etc.--literally, "the thing which he has violated," etc.; and it should be written "because he has violated," without the term, "dbar" (thing). The Talmud takes the term "dbar," which means "thing," and which if punctuated "dibur" means "talk," to mean that he was *told* was a crime and he did not listen.

124:1 This benediction, which is copied in the prayer books, is not exact as in the original Talmud. And also not of that which was copied by Hananiel, but of that which was copied by Asher. And there is a great difference in the translation. We, however, have translated according to that of the Talmud, as so is our method.

124:2 It is unknown to us why the passage in the text is inserted here; it also quotes a verse from Prov. xxiv., which does not correspond. However, according to our method, we could not omit it.

Next: Chapter VI

CHAPTER VI.

RULES AND REGULATIONS CONCERNING THE EXECUTION BY STONING AND THE MANNER OF HERALDING. HOW THE CRIMINAL WAS URGED TO CONFESS BEFORE DEATH. THE STRIPPING OFF BEFORE DEATH OF THE DRESS OF A MALE AND OF A FEMALE. THE HANGING AFTER STONING, AND HOW IT WAS PERFORMED.

MISHNA *I.*: If the conclusion was to condemn, the guilty one was taken out immediately to be stoned. The place where he had to be executed was outside of the court, as it reads [Lev. xxiv. 13]: "Lead forth the blasphemer." One stood at the gate of the court with a flag in his hand, and one who rode on a horse stood so far distant that he could see the signal of the flag in case there were any. And then if one came before the court, saying, "I have something to say in his defence," the man raised up the flag, and he who was on horseback rushed and stopped the procession; and even if the guilty one himself says, "I have something new to say in my defence," he is to be brought back to the court, even four and five times, provided there is something in it which is worthy of consideration. And then, if the court finds that he is not guilty, he is acquitted, and if not, he is taken back to be stoned. And a herald goes before him, heralding: So and so, the son of so and so, is taken to be stoned, because he committed such and such a crime, and A and B are his witnesses. Every one who knows something in his defence may come and tell it before he is executed.

GEMARA: Was, then, the place of execution outside of the court only? Does not a Boraitha state that it was outside of all the three camps (when they were in the desert), and when they were in the cities the place of execution was outside of them? Yea! it is as you say, and the expression of the Mishna, "outside of the court," means that if it happened that the court took its place outside of the three camps or outside of the towns, even then the place of execution must be outside of the court, for the purpose that it should not appear that the court itself executed him, or for the purpose that there should be a procession,

to give time to one who might have some defence for the guilty.

Whence is this deduced? From that which the rabbis taught: It reads: "Lead out the blasphemer to without the camp," meaning out of all the three camps. But perhaps only out of one camp? There is an analogy of the expression "camp" which is mentioned here, with that in the case of the burning bullocks [ibid. iv. 20]: "And he shall carry forth the bullock to without the camp, and burn him"; and as there it means outside of all three camps, as explained elsewhere, the same is the case here. R. Papa, however, maintains that this is to be inferred from the following: Let us see. Moses sat in the camp of the Levites, and the Merciful One said to him: "Lead out the blasphemer to without the camp." Hence, out of the camp of the Levites. And thereafter it reads [ibid. xxiv. 23]: "And they led forth the blasphemer to without the camp, and they stoned

him," which means out of the camp of the Israelites.

But is not the verse necessary in itself, to state that it was done as Moses commanded? This is written plainly farther on: "And the children of Israel did as the Lord had commanded Moses." But to what purpose is it written, "they have stoned him with stones?" It is already written they did it, and it is self-evident that they stoned him? It is needed, as we have learned in the following Boraitha: It reads, "they stoned him with a stone," which means him--his body--but not his garments; *i.e.*, they had to undress him before the execution. "With a stone" means that if he dies by the first stone no others are needed. In Num. xv, 35 it reads: "With stones," in the plural. And both expressions are needed, as if it were stated only in the singular, one might say that one stone should be thrown, and should it not cause death, no other stones must be thrown; and if it were mentioned in the plural only, one might say that many stones are needed to start with. Therefore both are stated. 1

But how could R. Papa differ from the Boraitha mentioned above? Does not the Tana state it was said so? Hence the analogy of expression was traditional, to which an Amora had no right to object. The Tana meant to say that if there were not a verse it could be inferred from the analogy; but inasmuch as there is a verse, the analogy is not necessary. R. Ashi said

that from the same cited verse this is inferred. Let us see! Moses was in the camp of the Levites, and the Merciful One commanded him: "Lead out the blasphemer," etc.--meaning from the camp of the Levites. "Out of the camp," means the camp of Israel.

"*One stands with flag*," etc. R. Huna said: "I am certain that the stone with which the executed was stoned, as well as the tree upon which he was hanged, the sword with which he was slain, and also the cloth with which he was choked must be at the expense of the congregation. However, I doubt who had to bear the cost of the flag and the horse mentioned in the Mishna. The defendant, as they are provided only for his sake, or the congregation, because they are obliged to do all they can to save him? I am in doubt also as to that which was said by R. Hyya to R. Ashi in the name of R. Hisda. When one was going to be killed, they used to put a grain of frankincense in a goblet of wine and gave him to drink, so that he should become dazed. As it is written [Prov. xxxi. 6]: "Give strong drink unto him that is ready to perish, and wine unto those who have an embittered soul." And there is a Boraitha that the wine and the frankincense were donated by the respectable women of Jerusalem. Now, if it happened that they were not donated, who must bear the expense? Says the Gemara concerning the latter: Common sense dictates, at the expense of the congregation, as the verse reads "give," which means the congregation.

R. Aha b. Huna questioned R. Shesheth: How would it be if one of the disciples said, "I have something to say in behalf of the defendant," and thereafter he became dumb? Gestured R. Shesheth, saying: Then we would have to consider that there was some one at the other end of the world who had some defence for him. But, after all, it was said by the disciple that he had a defence, and when he became dumb, would it not be right for the court to investigate again-perhaps they would find out what he meant? Come and hear that which was said above by R. Jose b. Hanina: If one of the disciples who defended him at the time of the discussion dies, it will be seen at the time of the conclusion whether he is still alive and defends him. Hence we see that if he has already defended, and he says: "I have something to say in his defence," and he becomes dumb before he gives his reasons, it is not to be taken into consideration. Rejoined R.

Aha: Notwithstanding that it is certain to you that R. Jose meant when his defence was already made by him, but

not otherwise, it is still a question to me. For perhaps R. Jose said so because it is usual, if one has something to say, that he says it immediately; but if it happened that he became dumb before telling the reasons, it might be that even R. Jose would admit that the court must look the matter up again.

"*Which is worthy of consideration*," etc. Does the Mishna mean that for the first two times it must be examined while he is yet at his place--if there is something, etc.? Have we not learned in a Boraitha, that the first two times he is to be brought back to the court, even if he does not give a good reason; and only at the third time it is to be examined if there is something in his defence before he is taken back? Said R. Papa: I interpret it that the Mishna means after the second time. But who decides whether it is a good reason or not? Said Abayi: After the second time the court appoints a pair of the rabbis to follow him, and if he has something to say, they examine him and decide if there is a good reason to take him back or not. But why should not the same rabbis be appointed previously, so that even at the first time he should not be brought back unless the rabbis found a good reason? Because he is affrighted he cannot say at the beginning all he wishes to say.

"*Such and such a crime*," etc. Said Abayi: "The herald must also proclaim the day, the hour, and the place, for the purpose that perhaps there will be found some people who know that the witnesses were not in that place on that day or at that hour, and they will come to make them collusive.

"*The herald goes before him*," etc. It means only when he is already sentenced, but not before. R. Jehoshua b. Lev! said. Him who repents and mortifies his passions after they have

taken a firm hold of him, and he confesses before Heaven, the verse considers him as if he should glorify the Holy One, blessed be He, in both this world and the world to come. As it is written [Ps. l. 23]: "Whoso offereth thanksgiving, glorifieth me." 1 The same said again: When the Temple was in existence, if one brought a burnt-offering the reward for such was with him; a meat-offering, the reward of such was with him: but him who is modest, the verse considers him as if he should sacrifice all the sacrifices mentioned in the Scripture. As it reads [ibid. li. 19]: "The sacrifices of God are a broken

spirit." Furthermore, his praying is never despised, as it reads farther on: "A broken and a contrite heart, O God, wilt thou not despise."

MISHNA *II*.: When he (the guilty one) was far from the place of execution--a distance of ten ells--he was told to confess, as so is the custom, that all who are to be executed should confess, and they who do so have a share in the world to come. And so do we find with Achan, to whom Joshua said: "My son, give . . . and make confession." And [ibid., ibid. 20] Achan answered Jehoshua: "Truly, I have sinned, and thus and thus have I done." And whence do we know that

he was atoned after his confession? From [ibid., ibid. 25]: "And Joshua said, How hast thou troubled us! So shall the Lord trouble thee this day." *This day*--but not in the world to come. However, if the guilty one does not know how to confess, he is told to say. My death shall atone for all my sins. R. Jehudah said: If he knew that he was innocent of this crime, he might say. My death shall atone for all my sins, except this one. And R. Jehudah was answered.. If it were so, all those who were to be executed would say so, to the end that they should be innocent in the eyes of the people.

The rabbis taught: In the verse cited--in what Jehoshua said to Achan--the term "na" is used, and "na" means "I pray." At the time the Holy One, blessed be He, saw [Joshua, vii. ii]: "Israel hath sinned," Jehoshua said before Him: "Lord of the Universe, who has sinned?" To which He answered. "Am I a talebarer, to tell you who. Go and draw lots." And he did so, and the lot fell on Achan. And he said to him. Joshua, do you accuse me on account of a lot? Thou and Elazar, who are the greatest of this generation, if I were to draw lots between thee and him, to one of you the lot would fall. And Jehoshua rejoined: I pray thee, do not discredit the decision of the lots, as the land of Israel will be divided by lots. As it is written [Num. xxvi. 55]: "Through the lot shall the land be divided." "Give confession!" Said Rabhina: He bribes him with words. We want of you only the confession. Give the confession, and you will be free: And Achan answered Jehoshua, and said: "Truly, I have indeed sinned against the Lord the God of Israel, and thus and thus have I done." Said R. Assi in the name of R. Hanina: Infer from this that Achan had committed a similar crime trice--twice in the days of Moses and once in the day of Jehoshua. As it reads: "And thus and thus I have done."

R. Johanan in the name of R. Elazar b. Simeon said: Five times--four in the time of Moses and once in the time of Jehoshua. As it reads. "I have sinned, and thus and thus I have done." But why was he not punished until the last crime? Said R. Johanan in the name of the same authority. Because Israel was not punished for crimes which were committed secretly until they passed the Jordan.

On this point the Tanaim differ. It is written [Deut. xxix. 28]: "The secret things belong unto the Lord our God, but those things which are publicly known belong unto us and to our children for ever, to do all the words of this law." Why are the words, "unto us and to our children" and the Ayin of the "ad" pointed? To teach that they were not punished for secret crimes until they passed the Jordan. So is the decree of R. Jehudah. Said to him R. Nehemiah. Where is the plain which it is written that they were punished for secret crimes at any time? Is it not written in the cited verse, "forever?" Say, then, as they were not punished for secret crimes, so they were not punished for crimes which were done publicly until they passed the Jordan. But why was Achan punished--his crime was in secret? Because his wife and children were aware of it. "Israel hath sinned!" Said R. Abbah b. Zabda: Although he had sinned he was still called an Israelite. And said R. Abbah: This is what people say: "A myrtle which stands between thorns is still a myrtle," and so it is named. In Joshua, vii. 11, five times is "gam" (also) written in the cited verse: Infer from this that he had transgressed all that is written in the five books of Moses.

The Exilarch said to R. Huna: It reads [ibid., ibid. 24]: "And Joshua took Achan the son of Zerach, and the silver, and the mantle, and the wedge of gold, and his sons, and his daughters, and his ox, and his ass, and his sheep, and his tent, and all that he had, and all Israel were with him, and they brought them up unto the valley of Achor." Yea! he had sinned; but wherein had

his sons and daughters sinned? And he answered: According to your theory, what had all Israel to do with this? Hence it was only to terrify them. The same was it with his sons and daughters. It reads farther on: "And all Israel burned them with fire and stoned them with stones." 1 Were they, then, punished

with both? Said Rabhina: That which was fit for burning, *e.g.*, silver, gold, and garments, was burned, and those which were fit for stoning, *e.g.*, oxen and other cattle--were stoned. It reads [ibid., ibid. 21]: "I saw among the spoil a handsome Babylonish mantle, and two hundred shekels of silver." Rabh said: A silk mantle; and Samuel said: A σαραβαλλα {Greek *saraballa*}. It reads farther on [ibid., ibid. 23]: "And as they laid them out before the Lord." Said R. Na'hman: Joshua cast them down before the Lord, saying: Lord of the Universe, were these little things worth that the majority of the Sanhedrin should be killed on account of them? It reads [ibid., ibid., 5]: "And the men of Ai smote of them about thirty and six men." There is a Boraitha: Thirty-six men were slain. So said R. Jehudah. Said R. Nehemiah, to him: "Is it, then, written thirty-six? It reads, "about," and it means that only Joer b. Menasseh, who was equal to the majority of the Sanhedrin, was put to death.

R. Na'hman said in the name of Rabh: It reads [Prov. xviii. 23]: "The poor speaketh entreatingly, but the rich answereth roughly." "The poor speaketh," means Moses; and "the rich," etc., means Joshua: But why? Is it because he cast them down before the Lord and said: "Little things," etc.? Did not Pinchas do the same? As it reads [Ps. cvi. 30]: "Then stood up Phinehas," etc. It ought to be written, "vayitpalel," which means, "and he prayed," instead of "vayiphalel (debated). Infer from this that he had debated with his Creator. He cast them before the Lord, saying: "Lord of the Universe, were they, then, worthy that on account of them twenty-four thousand persons of Israel should fall?"--as it reads [Num. xxv. 9]. So said R. Elazar. And if because of [Joshua, vii. 7]: "Wherefore hast thou caused this people to pass over the Jordan?"--did not Moses say similar to this [Ex. v. 22]: "Wherefore hast thou let so much evil come upon this people?" Therefore it must be said, because Joshua said at the end of the above-cited verse (7): "Would that we had been content, and dwelt on the other side of the Jordan." It reads [ibid., ibid. 10]: "Get the cup," etc. R. Shilla lectured: The Holy One, blessed be He, said to him: Thou thyself hast transgressed more than Israel, as I have commanded [Deut. xxvii. 4]: "And it shall be so, as soon as ye are gone above the Jordan, that ye shall set up these stones," and ye went a distance of sixty miles before ye did this.

After Shilla went away, Rabh appointed an interpreter and lectured: It reads [Joshua, xi. 15]: "As the Lord had commanded

[paragraph continues] Moses and his servant, so did Moses command Joshua, and so did Joshua; he left nothing undone of all that the Lord commanded Moses." But why is it written, "Get thee up?" It means that the Lord said to him: "Thou thyself hast caused all the evils, because thou didst excommunicate the goods of Jericho, and no crime would have been committed if thou hadst not done so." And this is what is written [ibid. viii. 2]: "Only its spoil and its cattle shall ye take for booty unto yourselves." It reads [ibid. v. 13, 14]: "And it came to pass, when Joshua was by Jericho . . . And he said, No; for as a captain of the host of the Lord, am I now come. And Joshua fell on his face to the earth," etc. How could Joshua do so? Did not R. Johanan say:

One must not greet a stranger, with peace in the middle of the night, as perhaps he is a demon, and so much the more must he not bow before him? There it was different, as he said: I am a captain of the Lord. But perhaps he lied? We have a tradition that even the demons do not pronounce the name of the Lord in vain. And then the angel said to him: "Yesterday you abolished the presenting of the daily eve-offering, and to-day you abolished the studying of the law." And to the question, "For which of the two transgressions hast thou come?" he answered: For that of to-day. Hence it reads [ibid. viii. 18]: "And Joshua went that night into the midst of the valley." And R. Johanan said: Infer from this that he had occupied himself the whole night with the deepness of Halakhoth. 1 Samuel b. Unya in the name of Rabh. said: The study of the Torah is greater than the sacrifices of the daily offerings, as the angel said: For that of to-day.

Abayi said to R. Dimi: It reads [Prov. xxv.]: "Do not proceed to a contest hastily, lest (thou know not) what thou wilt have to do at its end, when thy neighbor has put thee to confusion. Carry on thy cause with thy neighbor; but lay not open the secret of another." How do the people of the West explain this passage? And he answered "At the time the Holy One, blessed be He, said to Ezekiel [Ezek. xvi. 3]: "And thou shalt say . . . thy father was an Emorite and thy mother was a Hittite," the arguing spirit (Gabriel) before the Holy One, blessed be He, said: "Lord of the Universe, if Abraham and Sarah should come and stand before thee, and thou saidst to them this, they should become ashamed." "Carry on thy cause with thy

neighbor; but lay not open the secret of another." Had he, then (Gabriel) a right to say such a thing? Yea! As R. Jose b. Hanina said: Gabriel has three names--Piskon, Aitmun, Zigoron. *Piskon* means that he argues before Heaven for Israel's sake; *Aitmun* means that he restrains the sin of Israel; *Zigoron* means that when he concludes his defence for Israel and it does not have any effect, none of the other angels would attempt any further defence, being certain that none would accomplish anything if Gabriel had not done so.

It reads [Job xxxvi. 19]: "Hast thou prepared thy prayer before thy trouble came?" 1 said R. Elazar: One should always proceed with prayer before trouble comes. As if Abraham had not proceeded with his prayer until the trouble between Bith-El and the city of Ai, not one of Israel would have remained alive when the trouble happened at the city of Ai. Resh Lakish said: He who strengthens himself with prayer on the face of the earth has no enemies on the face of Heaven. R. Johanan said: One should always pray mercy, that all shall support his strength to pray, and he should not have enemies to accuse him in Heaven.

"*Atoned after confession,*" etc. The rabbis taught: Whence do we know that his confession has made atonement for him from Joshua: "How hast thou troubled us! so shall the Lord trouble thee this day." *This day*, but not in the world to come. And it is also written [I Chron. ii. 6]: "And the sons of Zerach: Zimri and Ethan, and Heman and Calcol and Dara, in all five." To what purpose is it written "in all five"? It means all five have a share in the world to come. Here it reads "Zimri," and in Joshua he is named Achan. Rabh and Samuel--according to one, his name was Akhan. And why is he named Zimri? Because his acts were according to Zimri of the Pentateuch. And according to the other his name was Zimri. And why is he named Akhan (circle)? Because he caused the sins of Israel to rest upon them like a circle.

"*To the end that they should be innocent,*" etc. But what harm could he do, if he should say so?

He could cast suspicion on the court and the witnesses. The rabbis taught: It happened with one who was going to be executed, that he said: If I am guilty of this crime, my death shall not atone for all my sins. And if I am innocent of this crime, my death shall atone for all

my sins, and I have nothing against the court and all Israel; but to the witnesses I do not surrender my innocence, and they shall not be atoned for, for ever. When the sages heard this, they said: It is impossible to bring him back, as the sentence is already rendered; but be shall be executed, and the collar shall rest upon the neck of the witnesses. Is this not self-evident--for who could trust such a man? The case was, that the witnesses retracted from their first statement. But even then, what did it amount to? Is there not a rule that after testimony has been made and accepted no retraction can take place? The case was, that they gave a good reason for their retraction, and nevertheless they were not listened to. (So did it happen with the contractor Bar Mayon.) 1

MISHNA *III*.: When he came to four ells from the place of execution, he was stripped of his garments. If a male, he was covered in front; and if a female, she was covered on both sides. So said R. Jehudah. The sages, however, say: A male was stoned while naked, but not a female.

GEMARA: The rabbis taught: If it was a male, he was covered a little in front, but a female was covered in the greater part of the front and back. So said R. Jehudah. But the sages say: Only a male was stoned while naked, but not a female. And what is their reason? [Lev. xxiv. 14]: "And all the congregation shall stone him." And what does it mean? It cannot be said "him," but not "her" (a female), as it reads [Deut. xvii. 5]: "Then shalt thou bring forth that man or that woman," and therefore it must be said, it means him without his garments, but her with her garments. Hence he is to be stoned while naked, but not a female. R. Na'hman in the name of Rabba b. Abuhu said: (The reason why a woman was not stripped is because it reads [Lev. xix. 18]: "Thou shalt love thy neighbor as thyself," which means, in case he is sentenced to death, select for him a decent death, that he shall not be disgraced. 1)

MISHNA *IV*.: The stoning-place was two heights of a man. One of the witnesses pushed him on his thighs (that he should fall with the back to the surface), but if he fell face down, he had to be turned over. If he died from the effects of the first fall, nothing more was to be done. If not, the second witness took a stone and thrust it against his heart. If he died, nothing more was to be done; but if not, all who were standing by had to throw stones on him. Thus [Deut. xvii. 7]: "The hand of the witnesses shall be first upon him, to put him to death, and the hand of all the people at the last."

GEMARA: There is a Boraitha: With his own height he was

thrown down from the height of three men. Was such a height necessary? Does not a Mishna in First Gate state that as a pit which causes death is of ten spans, so all other heights which may cause death must be no less than ten spans. Hence the height of ten spans is sufficient? Said R.

Na'hman in the name of Rabba b. Abuhu: From the above-cited verse [Lev. xix.], it is inferred that a decent death must be selected for him. If so, why not from a still higher place? Because his body would be mangled.

"*One of the witnesses pushed him*," etc. The rabbis taught: Whence do we know that he must be pushed? From [Ex. xix. 13]: "But he shall surely be stoned, or shot through." From the term "yorauh yeyoreh," which means pushing. And whence do we know that he must be stoned? From the term "soqueul." And whence do we know with both stoning and pushing? Therefore it reads "soquoul yisoquel auyorauh yeyoreh." And whence do we know that when he died from pushing nothing more was to be done? From "au," which means "or." And because the term is future, we infer that the same shall be in later generations.

"*Took a stone*," etc. Took! Have we not learned in a Boraitha: R. Simeon b. Elazar said: There was a heavy stone, which two men had to carry, and this he took and thrust against his heart, and if he died he fulfilled his duty. (Hence if two men had to carry it, it could not be taken by one.) He lifted it up with the support of his comrade, and then he alone threw it, that the blow should be stronger.

"*To throw stones*," etc. Is there not a Boraitha: It never happened that he did not die from the hand of the witnesses, so that one should need to throw another stone? Does, then, the Mishna state that it was so done? It states, "should it be necessary."

The master said: "There was a stone," etc. But does not a Boraitha state that the stone with which he was stoned, as well as the tree upon which he was hanged, or the sword with which he was killed, or the muffler with which he was choked, must be buried with him? It means that before it was buried they prepared another like it, which remained. But is there not another Boraitha which states that the above things were not buried with the one executed? Said R. Papa: It does not mean that it was buried just with him, but near him, at a distance of four ells.

Samuel said: If before the execution the hands of the witnesses were cut off, he becomes free from death, because the commandment, "the hand of the witnesses should be on him first," cannot be fulfilled. But if so, should witnesses who have no hands be disqualified? There it is different, as the verse reads, "the hand of the witnesses," which means that when they testified they had hands. An objection was raised from the following: Every one, of whom two witnesses testify that he was sentenced at such and such a court, and A and B were his witnesses, he is to be put to death. Hence we see that in any case he is executed? Samuel may explain the Boraitha that it means that the witnesses themselves testified that they were witnesses in the former court. But is it indeed needed that it should be done as the verse dictates? Is there not a Boraitha: It reads [Num. xxxv. 21]: "He that smote him shall surely be put to death; (for) he is a murderer." We know that one is to be put to death by that which applies to him; but whence do we know that if it is impossible that he should be killed by that which applies to him, he is nevertheless to be executed by any death which is possible? From the verse cited, "he shall surely die," which means in any case? That case is different, as it reads, "he shall surely die." But let all other cases be inferred from it? Because the verse cited, which speaks of a murder, and the verse which speaks of the avenger of the one murdered, are two verses which dictate one and the same thing (death), and there is a rule that from two such verses nothing is to be inferred. What verse of the avenger is meant? [Ibid., ibid., 19]: "The avenger of the blood himself shall slay." Infer from

this that it is a meritorious aft for the avenger to do so himself. And whence do we know that if the murdered one had none such, that the court is obliged to appoint one? From the end of the verse, "when he meeteth him, shall he slay him?" Said Mar the elder b. R. Hisda to R. Ashi: How can one say that it is not needed as the verse dictates? Does not Mishna 5 in Chapter viii. of this tract state that it must be done just as the verse dictates, and it is deduced from the Scripture. With the verse cited in the Mishna in question it is different, as that verse is altogether superfluous, and is written only so that it should be done just as it dictates. But does not a Boraitha say in the eleventh chapter, concerning a misled town, that if there was not a main street in this city, according to R. Ismael such is not to be recognized as a misled town, as the verse dictates, "You

shall gather all its goods in the main street," and according to R. Aqiba a main street should be made? We see, then, that they differ only if such should be made or not, but both agree that it must be done just as the verse dictates? In this case Tanaim differ, as a Mishna in Tract Negaim (xiv. 9) states. If he (referring to Lev. xiv. 25) lacked the thumbs of his right hand and foot, or the right ear, he can never be purified. R. Eliezer, however, said: It may be done at the place they are lacking. And R. Simeon said: It shall be placed on the left one.

MISHNA *V.*: All who are stoned are also hanged. So is the decree of R. Eliezer. The sages, however said: Only a blasphemer and an idolater are hanged (but no others). A male is hanged with his face toward the people, and a female with her face toward a tree. So R. Eliezer. The sages, however, say: A male is hanged, but not a female. Said R. Eliezer to them: Did not Simeon b. Shetha hang females in the city of Askalon? And he was answered: He hanged eighty women in one day, and there is a rule that even two must not be sentenced in one day, if the punishment is with the same death. (Hence Simeon's act was only temporary, because of the need of that time, and nothing is to be inferred from it.)

GEMARA: The rabbis taught: It reads [Deut. xxi. 22]: "And he be put to death, and thou hang him on a tree." And lest one say: "All who are put to death must also be hanged," therefore it is written in the second verse [ibid.., ibid. 23]: "For he that is hanged is a dishonor of God" (a blasphemer), and as a blasphemer is to be stoned, the same is the case with all others who are to be stoned. So R. Eliezer. The sages, however, say: that as with a blasphemer who has denied the cardinal principle of our faith (*i.e.*, he does not believe in God), the same is the case with an idolater who denies the might of God, but all others who are stoned are not to be hanged. And what is the point of their difference? According to the rabbis, when there is a general expression and an explicit statement, we infer from the general expression and from the explicit statement which comes after it. And R. Eliezer infers from additions and exclusions. According to the rabbis, "He should be put to death and hanged," is a general expression; "The dishonor of God--hangs," is an explicit statement. And if they were in one verse it might be said, that the general expression applies only to that which is in the explicit statement; viz., only those which are mentioned in that case, but no others. But as they

are in two verses, we infer from these an idolater, who is equal to a blasphemer in all particulars. And according to R. Eliezer, "He shall be put to death and hanged," is considered an addition; "the dishonor of God" is considered an exclusion. And if they were in one verse, we would add

an idolater only; but, seeing that they are in two verses, all the cases of stoning are to be added.

"*A male is to be hanged*," etc. What is the reason of the rabbis? It reads, "thou hang him," which means him, but not her. And according to R. Eliezer, it means him, without his garments; and the rabbis also hold this theory, But as it reads, "And if a man has committed," etc., it means a man, but not a woman. And R. Eliezer infers from the word "man," to exclude a stubborn and rebellious son. But is there not a Boraitha which states that, according to R. Eliezer, even a stubborn and rebellious son is stoned and hanged? Therefore said R. Na'hman b. Itz'hak: R. Eliezer infers from this to include a stubborn son, and his reason is this: It reads, "If a man," meaning a man, but not a son; "committed a sin," means he is put to death, because he has already committed a sin; but a stubborn son is put to death, not because he has sinned, but because in the future he will sin. And this is an exclusion after an exclusion, of which the rule is, that it comes to add.

"*Said R. Eliezer to them*," etc. Said R. Hisda: Two must not be judged on the same day, provided there are two kinds of death; but if there is only one kind, two may be judged. But was not the case of Simeon b. Shetha one kind of death? And nevertheless it was said to him: Two cases of capital punishment must not be judged on one day. Therefore if it was taught in the name of R. Hisda, it was thus: Provided there is one kind of death applicable to two kinds--namely, for two separate crimes; but if there was only one crime, and only one kind of death, it may. R. Ada b. Ahabah objected from the following: Two must not be judged in one day, even in the case of adultery--the two adulterers, he and she? R. Hisda explained this Boraitha, that it speaks of a daughter of a priest, and her paramour, in which case, according to the law, she is to be burned Hence there are two different kinds of and he is to be stoned. death. There is a Boraitha: R. Eliezer b. Jacob said: I have heard that the court may punish with stripes and even capital punishment, not in accordance with the biblical law--not with the intention to violate the law, but to make a safeguard for it.

[paragraph continues] So it happened with one who rode on a horse on Sabbath, at the time Palestine was under the Greeks, and this man was brought before the court, and stoned, not because he deserved such a punishment, but because it was a necessity of that time, to warn others. And it also happened that one had connection with his wife under a fig tree, and he also was brought to the court, and was punished with stripes, not because he deserved such a punishment, but because of the necessity of that time.

MISHNA *VI*.: How was one hanged? The beam was put in the earth, and it was fastened at the top, and he tied the hands of the culprit one upon the other, and hung him up. R. Jose said: The beam was not put in the earth, but the top of it was supported by the wall, and he hung him up as the butchers do, and he took him off immediately. And should he leave him over night, he transgressed a negative commandment, as it reads [Deut. xxi. 23]: "Thou shalt not leave his corpse on the tree over night, but thou shalt surely bury him on that day (for he that is hanged) is a dishonor of God," etc. How so? "Why is this man hanged?" "He is a blasphemer." Hence the name of Heaven is violated. [Said R. Mair: When a man is in trouble, in what language does the Shekinah lament over him? Qalleni meiraushi, qalleni miz'raay. [1] Now, if the Omnipotent grieves over the blood of the wicked which was shed, so much the more about the blood of the upright!] And not only of him who was executed it was said that he should not remain over night? But even every one who leaves unburied his corpse over night transgresses the negative

commandment. However, if he left it over night for the sake of its honor, as for instance to prepare for it a coffin or shroud, he does not transgress.

The one executed was not buried in the cemetery of his parents, but two cemeteries were prepared by the court, one

for those who were slain with a sword and choked, and one for those who were stoned and burned. After the flesh of the corpse was consumed, the relatives gathered the bones and buried them in their right place. And the relatives came, and greeted in peace the judges, as well as the witnesses, to show they had nothing in their heart against them, as the judgment was just. The relatives also did not lament for him loudly, but mourned in their heart.

GEMARA: The rabbis taught: If the verse read, "If a man committed a sin, he shall be hanged," we would say that he should be hanged until death occurs, as the government does; but it reads, "He shall be put to death and hanged," which means he shall be put to death and thereafter hanged. How was it done? They kept him till near sunset, condemned him, killed him, and then hanged him; one hangs him up, and the other immediately loosens the knot, as his hanging was only to fulfil the commandment.

The rabbis taught: It is written, "on a tree," from which ought to be inferred that it makes no difference if the tree was still attached to the ground or not. Therefore is it written, "Thou shalt surely bury him," from which it is to be understood that everything should be already prepared for the burying. And if the tree were still attached to the ground, it could not be considered prepared, as the tree was not as yet cut off. R. Jose, however, maintains that this verse excludes also a beam which is put in the ground, as it is not considered prepared, for the tree was not as yet taken out from the ground. But the sages say that the taking out is not to be considered.

"*Why is he hanged? Because he is a blasphemer*." There is a Boraitha: R. Mair used to say: There is a parable. To what can this be compared? To two twin brothers, one of whom was selected for a king and the other became a robber, and was hanged at the command of the king. Now, people who saw him hanged would say that the king was hanged, and therefore the king commanded the corpse to be taken off (*i.e.*, as man was created in the image of God).

"*And not only for him who was executed*," etc. R. Johanan in the name of R. Simeon b. Jochi said: Where is to be found an allusion to this in the Torah? In "thou shalt surely bury him." King Sabur questioned R. Hama: Whence do you deduce from the Torah that one must be buried? And the latter remained silent--without answer. Said R. Aha b. Jacob: The

world is transferred into the hands of fools. Why did he not answer from the above-cited verse? Because the above is to be explained that it means a coffin and shroud are to be prepared for him. But let him say: Because all the upright were buried. This is only a custom, and not a command of the Torah. And why not say: Because the Holy One, blessed be He, buried Moses? It may be said that this also was not to change the custom. Come and hear [I Kings, xiv. 13]: "And all Israel shall mourn for him, and bury him." This, also, was not to change the custom.

But is it not written [Jer. xvi. 4]: "They shall not be lamented for; nor shall they be buried"? Them Jeremiah cautioned, that with them should be a change of custom.

The schoolmen propounded a question: Is the burying because the corpse shall become disgraced if not buried, or is it because of atonement? And what is the difference? If one says, "I do not wish to be buried," if it is because of the disgrace, he must not be listened to; but if it is for atonement, he should be listened to, as he says, "I don't want any atonement." Come and hear! "Because all the upright were buried." And if the reason should be for atonement, do, then, the upright need atonement? Yea, as it reads [Eccl. vii. 20]: "For no man is so righteous upon earth that he should do always good, and never sin." Come and hear the above-cited verse about Jeroboam, in which it reads that only he should be buried. Now, if the reason is atonement, why should not the others also be buried and atoned? He who was upright ought to be buried and atoned, the others who were wicked were not worthy to be atoned. The same is the case with them who were cautioned by Jeremiah that they should not be buried, because they were not worthy of atonement.

The schoolmen propounded another question: Is the lamentation an honor for the living or for the deceased? And what is the difference? If, *e.g.*, one says, "I do not wish to be lamented," if it is an honor for the deceased only, he may be listened to; and if for the living, he may not. Or, on the other hand, if his heirs do not want to pay the mourner, if it is an honor for the deceased, they may be compelled to pay; and if it is for the living, they may not. Come and hear [Gen. xxiii. 2]: "And Abraham came to mourn for Sarah, and to weep for her." Now, if this were only an honor for the living, should the body of Sarah have been kept till Abraham came, for his

honor? Nay! Sarah herself was pleased that Abraham should be honored because of her. Come and hear! "All Israel shall mourn for him." Now, if it is for the honor of the living, were, then, the people of Jeroboam worthy to be honored? The upright are pleased that any human being should be honored on their account. But is it not written that they shall not be mourned for and buried? The righteous do not wish that they shall be honored because of the wicked. Come and hear Jeremiah [xxiv. 5]: "In peace shalt thou die; and as burnings were made for thy fathers, the former kings who were before thee so shall they make burnings for thee; and, 'Ah Lord,' shall they lament for thee." Now, if it is to the honor of the living, what good can this do to Zedekiah? The prophet said to him thus: Israel shall be honored because of thee as they were honored because of thy parents. Come and hear! It is said elsewhere [Ps. xv. 4]: "The despicable is despised," meaning King Hezekiah, who bore the remains of his father on a bed of ropes. Now, if it is for the honor of the living, why did Hezekiah do so? For the purpose that his father should have an atonement. But has he a right to invalidate the honor of Israel because of the atonement of his father? The people themselves were pleased to relinquish their honor, because of the atonement of Achaz. Come and hear what was said by Rabbi in his will: "Ye shall not lament me in the small cities, but in the large ones." Now, if it is for the honor of the living, why such a will? He thought: Let the people be more honored because of me. Come and hear the statement in our Mishna: If he left it over night for its honor, to prepare for it a coffin and shroud, he does not transgress. Hence we see it is to the honor of the dead? Nay, "for his honor" means for the honor of the living. But has one the right to leave the corpse over night, for the sake of his own honor? Yea, as the commandment not to let the corpse hang was because of the disgrace; but if it is not disgraced, the honor of the living is to be considered. Come and hear another Boraitha: If he left him over night for his honor, that his friends in other cities should hear of his death or

bring for him the lamenting-women, or prepare for him a coffin and a shroud, he does not transgress the negative commandment: for all he does is for the honor of the dead? It means to say that all he does for the sake of his own honor is not considered a disgrace for the dead. Come and hear another Boraitha: R. Nathan said: It is a good sign for one deceased if he was punished after his

death; namely, if he was not lamented, not buried properly, or a wild beast seized upon his corpse, or if, while carrying him to burial, rain wet the corpse. All these are good signs that it was done for his atonement. Hence we see that all these are to be done for the honor of the dead. Infer from this that so it is.

"*But two cemeteries*," etc. And why so? Because a wicked person must not be buried with an upright one. As R. Ahha b. Hanina said: "Whence do we know that a wicked person must not be buried with an upright? From [II Kings, xiii. 22]: "And it came to pass, as they were burying a man, that, behold, they saw the hand; and they cast down the man into the sepulchre of Elisha; and as the man came and touched the bones of Elisha, he revived, and rose up on his feet." Said R. Papa to him: But perhaps this was done to fulfil what is mentioned [ibid. ii. 9]: "Let there be, I pray thee, a double portion of thy spirit upon me." And as Elijahu restored only one man, so did Elisha also restore one while he was alive; and the second was restored after his death. And he answered: If it were so, why, then, does a Boraitha state that the restored only stood upon his feet, but did not go home? And if it were for the purpose said above, he would remain alive. But if, as you say, Elijahu's promise was not fulfilled? As it was said by R. Johanan: This was fulfilled with the cure of Na'hman from his leprosy, for leprosy is equal to death. As it reads [Num. xii. 12.]: "Let her not be as a dead-born child." And as it is prohibited to bury an upright person with a wicked, so also it is not allowed to bury a lesser wicked with a greater one. But if so, there should have been four cemeteries. The two cemeteries were traditional. 1

The rabbis taught: They who are put to death by the government,

their estates belong to the government; and they who, are killed by the court, their estates belong to their heirs. R. Jehudah, however, maintains that their estates belong to the heirs even when they are killed by the government. Said the sages to him: Is it not written [I Kings, xxi. 16]: "And it came to pass, when Achab heard that Naboth was dead, that Achab rose up to go down to the vineyard of Naboth, the Yizreelite, to inherit it"? And he answered: Achab was his brother's son. and was a legal heir. But had not Naboth many sons? Rejoined R. Jehudah: He slew him and his sons. As it reads [II Kings, ix. 26]: "Surely I have seen yesterday the blood of Naboth, and the blood of his sons." The rabbis, however, maintain that the expression "sons" means those who would come out from him had he remained alive. It is correct for him who says that the estates belong to the government, as it reads [I Kings, xxi. 13]: Naboth hath blasphemed God and the king." But to him who says the estates belong to the heirs, why was it. necessary to add "and the king"? But according to your theory that they belong to the heirs, why was God mentioned? You may say it was done to increase the anger of the people. For the same reason, it was also mentioned, "and the king." It is correct to him that it belongs to the government, as it is written [ibid. ii. 30]: "No; but here will I die"--which means: I do not wish to be counted among those who were killed by the government, so that my estate should belong

to it. But according to him who says that it belongs to the heirs, what difference did it make to Joab. The simple one of remaining, alive one hour longer. It reads [ibid., ibid. 30]: "And Benayahu brought the king word again, saying, Thus hath Joab spoken, and thus hath he answered me." Joab said to Benayahu thus: Go and tell the king: You cannot do two things with me. If you wish to slay me, you must accept for yourself the curses with which your father cursed me. And if you will not accept them, you will have to leave me alive. Farther on it is said: "Then said the king unto him, Do as he hath spoken, and fall upon him, and bury him." Said R. Jehudah in the, name of Rabh: All the curses with which David cursed Joab fell on the descendants of David. They were [II Sam. iii. 29]: "And may there not fail from the house of Joab one that hath an issue, or that is a leper, or that leaneth on a crutch, or that falleth by the sword, or that lacketh bread." The first fell on Rehoboam (this is inferred from an analogy of expression which

we do not deem it necessary to translate); the second--"leper"--on Uzziyahu. As it reads [II Chr. xxvi. 9]: "The leprosy even broke out on his forehead." "Leaneth on a crutch"--Azza, of whom it reads [I Kings, xv. 23]: "Nevertheless, in the time of his old age he became diseased in his feet." And R. Jehudah in the name of Rabh said: Podagra caught him. Said Mar Zutra b. Na'hman to R. Na'hman: What kind of a sickness is this? And he answered: It pains like a needle in raw flesh. (Asked the Gemara: Wherefrom did he know this? He himself suffered from this sickness. And if you wish, he had it as a tradition from his master; and also, if you wish, from [Ps. xxv. 14]: "The secret counsel of the Lord is for those that fear him; and his covenant, to make it known to them.") Falleth by a sword--on Josiah, as it reads [II Chr. xxxv. 23]: "And the archers shot at king Josiah; and the king said to his servants, Carry me away, for I am sorely wounded." And R. Jehudah said in the name of Rabh: They made his body like a sieve. "Lacketh bread"--fell on Jechonyah [II Kings, xxv. 30]: "And his allowance was a continual allowance," etc. Said R. Jehudah in the name of Rabh: This is what people say: It is better for one to be cursed than to curse, as usually a curse in vain falls upon the invoker--Rashi. Joab was brought before the court to justify himself for the killing of Abner; and he answered that he was the revenger of the blood of Asahel. But did not Asahel prosecute Abner? And he said: Then he could save himself by striking on one of the members of his body. And to the question: Perhaps he could not do so? he answered: Did he not strike him [II Sam. ii. 231 "On the fifth rib"? to which (according to R. Johanan) the bile and the liver are attached. Now, if he could aim at the fifth rib, could he not do so at some other member? The court then said: Let us leave out Abner. But why did you kill Amassa? And he answered: He was a rebel to the king. As it reads [ibid. xx. 5]: "So Amassa . . . he remained longer than the set time." And he was answered: Amassa was not a rebel, as he had a good reason for his delay. 1 But you are indeed a rebel, as you were inclined to Adoniyahu against David's will. It reads [I Kings, ii. 28]: "And the report came to Joab; for Joab had turned after Adoniyahu, though he had not turned after Abshalom." Why is it mentioned here that he had not turned after Abshalom? Said R.

[paragraph continues] Jehudah: He was inclined to turn, but did not. And why? Said R. Elazar: Because the "moisture of David" was still in a good condition. And R. Jose b. Hanina said: Because the active force of David were still in their strength. As it is said above (p. 55) in the name of Rabh: "Four hundred children," etc. All the Amoraim mentioned above differ with R. Abbah b. Kahana, who said: "If not for Joab, David would not have been able to occupy himself

with the law; and if not for David, Joab would not have been able to wage the war. As it is written [II Sam. viii. 16 and 17]: "And David did what is just and right unto all his people. And Joab the son of Jeruyah was over the army." It means that, because Joab was over the army, David was able to do justice, etc.; and also *vice versa*. It reads [ibid. iii. 26]: "Who brought him back from the well of Sirah." What does "well of Sirah" mean? Said R. Abbah b. Kahana: The well means the pitcher of water which David took from under the head of Saul; and Sirah--literally "a thorn"--means the piece of cloth which David cut off from the garment of Saul, which were good reasons for Abner to reconcile Saul with David, if he should care to do so; but he did not. It reads farther on [ibid., ibid. 27]: "Joab took him aside in the gate, to speak with him in private." Said R. Johanan: He brought him before the Sanhedrin to try him for having killed his brother Asahel. And to his answer that Ashael was his persecutor, he was told as said above. It reads [I Kings, ii. 32]: "And may the Lord bring back his bloodguiltiness upon his own head, because he fell upon two men more righteous and better than he." Better than he? Because they were commanded verbally (to kill the priests of Nob) and did not listen, and Joab was commanded in a letter to kill Uriah, and he listened. It reads farther on [ibid., ibid. 34]: "And he was buried in his own house in the wilderness." Was, then, his house in the wilderness? Said R. Jehudah in the name of Rabh: It was like a wilderness. As a desert is ownerless, and every one who wishes can derive a benefit from it, so was the house of Joab. And also as a desert is free of robbery and adultery, so was the house of Joab. It reads [I Chr. xi. 8]: "And Joab repaired the rest of the city." Said R. Jehudah: Joab supplied to the poor of that city everything to which they were accustomed, even little things and fishes.

Footnotes

127:1 Leeser translates all the verses in the plural; in the text, however, in Leviticus it is in the singular and in Numbers in the plural.

129:1 The term in Hebrew is "zobeach touhda yichabdon'ni"--literally, "He who slaughters thanks-offering, glorifieth me"; and as the last word is written with a double Nun instead of one, he infers both worlds.

131:1 Leeser has translated this improperly. The real translation is thus: "And all Israel stoned him with a stone, and they burnt them with fire and stoned them with stones. Hence the supposition of Rabhina.

133:1 The term in Hebrew, "emek," has two meanings--"valley" and "deep." Hence the explanation of R. Johanan.

134:1 We translate according to the Talmud. Leeser's translation, among others, does not correspond.

135:1 Rashi thus explains this: It happened with a contractor, who was wicked, that he died and was to be buried on the same day as a great man in Israel. And all the inhabitants of the city came to take part in the funeral of the latter, and the relatives of the contractor were also occupied in bearing the coffin of the contractor in the same street, following after the coffin of

the great man. Suddenly, however, enemies fell upon them, and all of them left the coffins and ran away, except one disciple, who did riot leave the coffin of his master. Thereafter, when they returned, people exchanged the coffin of the contractor for that of the great man, notwithstanding the disciple's cry that it was an error, and buried the contractor with great honor instead of the great man; and the relatives of the contractor buried the scholar. And the disciple was much grieved because his master was buried in such disgrace and the contractor with such honor. Finally his master appeared to him in a dream, and counselled him not to grieve, saying: Come with me and I will show you my glory in the garden of Eden, and also the place of that wicked man in Gehenna. And the reason why I was punished was because I was present when a scholar was disgraced, and I did not protest. And the contractor prepared a banquet for the governor of his country, and as the governor did not appear he donated the banquet to the poor of the city, and this was his reward. And to the question of the disciple: Till when shall this man be in Gehenna? The answer: Until Simeon b. Shetha shall die and take his place. And what is the sin of b. Shetha? There are many Israelitish women who occupy themselves with witchcraft in the city of Askalon, and Simeon b. Shetha, who is the head of the court, does not seize them. On the morrow this disciple told this to Simeon b. Shetha. And he selected eighty tall young men, gave to every one a big pitcher which contained a mantle, to the end that it should be kept dry, as that day was a rainy day, and told them that they should be careful to complete the task, as there were eighty witches, and every one of them had to lift up one woman, as then they could not employ any more witchcraft. He then visited the witches at their palace, leaving the young men outside. And to the question who he was and what he wanted, he answered: I am a witch, and am come to try how far you are skilled in it, And they said to him: What can you do? To which he answered: To-day is a rainy day, but nevertheless I can bring you eighty young men, all of whom aye wrapped in dry mantles. And they said to him. Bring them in. He went out, and at his hint they took out the mantles from the pitchers, wrapped themselves in them, and entered. Each of them lifted up a woman; and so they overcame them, took them out, and all of them were hanged. Their relatives, however, p. 136who grieved over them, plotted against Simeon's son, and two of them plotted together that their false testimony concerning a crime which results in capital punishment should correspond, and so testified before the court, and he was condemned. And when he was brought to be executed, he said; If I am guilty of this crime, etc. After the witnesses heard this they retracted, and gave the execution of the women as a reason for their false testimony; and nevertheless he was executed. This legend is to be found in the Palestine Talmud--Tract Hagigah, Chapter II.--with many changes; and according to the Aruch, the name of this contractor mentioned was Bar Mayon.

136:1 In the text there is repeated here a contradiction from Tract Souteh, its proper place, which we therefore omit.

141:1 We cannot find in the English idiom any equivalent for this. In the German translation of the Mishna (Berlin, 1823) it is translated in accordance with Rashi. "Wie lässt sich gleichsam die Gottheit bei solcher Gelegenheit aus? Mein Kopf ist mir zu schwer! Meine Arme sind mir zu schwer!" notwithstanding that such is objected to by Rabha in the Gemara farther on, and his explanation is: As one who is in trouble says, "The world is ignominous to me." And all this is taken from the term "qillelath elohim" [Deut. xx. 23], (translated by Leeser "dishonor of God"), which one reads, "qal leth," literally, "not easy," and the other "qollal-eth," literally, "an ignominy" (according to Thosphath and Hananel). And therefore it seems to us better to give the original expression of the Mishna, without any explanation, leaving the matter to the reader, as we could not omit it, according to our method.

145:1 Here are omitted two pages of the text, as their contents are repeated in different places. Much of it is already translated, and the rest will appear in the proper place. However, the following difference of Abayi and Rabha is important--namely, according to Abayi, if one dies a usual death, while he is still wicked, without repentance, his death does not make atonement for him. And the same is the case even if he is executed by the court, if he did not repent. But if one were slain by the government, his death atones. And his reason is, because the government does not always act justly in its decisions, while the court does. But according to Rabha, even if he is executed by the court, death atones; as, according to him, there is no comparison between a death from a usual sickness and that by an execution; and therefore in the latter case he is atoned, but not in the former. And Ameimar said that the Halakha prevails in accordance with Abayi, but the rabbis said that the Halakha prevails with Rabha, with which the Gemara agrees.

147:1 In the text the reason is given, but if translated it would not sound well in English; and, besides, it is unimportant, and therefore omitted.

Next: Chapter VII

CHAPTER VII.

RULES AND REGULATIONS CONCERNING THE FOUR KINDS OF DEATH PRESCRIBED IN THE SCRIPTURE, AND HOW THEY OUGHT TO BE EXECUTED. THE ENUMERATION OF THOSE WHO COME UNDER THE CATEGORY OF STONING. HOW THE EXAMINATION CONCERNING BLASPHEMY SHOULD BE CONDUCTED. CONCERNING THOSE WHO TRANSFER THEIR CHILDREN TO MOLECH; FAMILIAR SPIRITS, ETC. CONCERNING CURSING FATHER AND MOTHER, SEDUCERS AND MISLEADERS, ETC.

MISHNA *I.*: Four kinds of capital punishment are prescribed to the court by the Scriptures; viz., stoning, burning, slaying by the sword, and choking. R. Simeon, however, maintains: Their order is: burning, stoning, choking, and slaying by the sword. The laws of stoning are already explained above (in the preceding chapter).

GEMARA: Rabha in the name of R. S'hora, quoting R. Huna, said: Where the sages give an arrangement (plan of action), one must not be particular with it, as it does not matter if one changes the order and acts with the latter before the former, except in the case of the seven dyes with which a spot of menstruum is to be tested, which are mentioned in Chapter IX., Mishna 4, of Tract Nida, of which the Mishna says: If one tested with them not according to the order mentioned, or one mixed all the seven together and tested with them, he has done nothing. R. Papa the Elder in the name of Rabh said: The same is the case in the four kinds of capital punishment mentioned in our Mishna. As R. Simeon differs in their order, it must be understood that the Mishna is particular in their arrangement. But why does not R. Huna mention them? R. Huna speaks of that in which all agree, but where there is dissension he does not. R. Papa himself said: Also concerning the arrangement of worshipping on the Day of Atonement (when the Temple was in existence), as there is a Mishna (Yoma, p. 84). All the rites on the Day of Atonement, whose order is prescribed by the Bible . . . if they are performed in a wrong order, one has done nothing. R. Huna, however, did not mention this.

[paragraph continues] For the reason of not changing the order prescribed by the Scripture is because of the holiness of that day, and not because one act is more rigorous than the other. R. Huna b. R. Jehoshua maintains that the order of the daily offerings is also not changeable, as there is a Mishna (in Tract Thamid): This is the arrangement. However, R. Huna, who did not mention it, maintains that this is only meritorious. And the rule mentioned above in the name of R. Huna excludes also the ceremony of Halitzah, and also the dressing of the priests at their worship in the Temple, as explained elsewhere. 1

"*Stoning, burning,*" etc. Stoning is more rigorous than burning, as blasphemers and idolaters are punished with it. And why are these two crimes considered more rigorous than others? Because

the sinners laid their hands on the main principle of the Jewish faith (*i.e.*, disbelief and denying the power of God). But why not say, on the contrary, that burning is more rigorous, as it applies to the daughter of a priest who has sinned? And why should this crime be more rigorous? Because it reads that she violates her father, which means that her father loses his priesthood. The rabbis hold that only a married woman who was the daughter of a priest is to be burned if she sinned; but if betrothed, stoning is applied. And because a betrothed woman is distinguished from a married one, who bears the name of her husband and not of her father, while a betrothed still bears the name of her father, we see that stoning is more rigorous. The same is also more rigorous than slaying by the sword, because of the reason stated above. But why not say that the sword is more rigorous, because it applies to the men of a misled town? And what is the rigor of a misled town--that their property is to be destroyed? It may be answered that a misleader is always considered more criminal than those who are seduced. And there is a Boraitha that the punishment of a misleader is stoning. Stoning is also more rigorous than choking. And lest one say that choking is more rigorous, as it applies to one who strikes his father or mother, and the rigor is because the honor of the parents is equalized with the honor of the Omnipotent, it is inferred from the case of a daughter of a common Israelite, who is excluded from choking, which applies to a married daughter of the same, and is included in the category of stoning; and it is already explained above that a betrothed

disgraces her father and his whole family, while the disgrace of a married one belongs more to her husband. 1

Burning is more rigorous than the sword, as it applies to a sinning daughter of a priest, whose crime is more rigorous for the reason stated above. But why not say, on the contrary: The sword is more rigorous, because it applies to a misled town, the property of which is to be destroyed? We find the term "her father" concerning stoning, and the same term is used concerning burning. And it is to be said: As the term "her father," used concerning. stoning, is more than the sword, the same is it with the term which is used by burning-that burning is also more rigorous than the sword.

Burning is also more rigorous than choking. This is inferred from the fact that a married daughter of a priest is excluded from choking, which applies to a married daughter of a common Israelite, and is included in the category of burning. And lest one say that choking is more rigorous, as it applies to him who has struck his father or mother, the honor of whom is equalized with the honor of the Omnipotent, it is already decided above that they who laid their hands on the main principle, etc., are considered the greatest criminals.

"*R. Simeon said,*" etc. According to him, burning is more rigorous than stoning because it applies to a daughter of a priest who has sinned; and it is considered more criminal because her father loses his- priesthood. And he (Simeon) differs from the rabbis, who make a distinction between a betrothed and a married woman, as according to him both are punished with burning; and because the greatest criminal is punished with burning, it is to be inferred that this punishment is more rigorous than all others. 2

R. Simeon also differs concerning the punishment of misleaders of a misled town, as according to him they also are punished with choking.

R. Johanan used to say: A betrothed young girl, who is the daughter of a priest, is to be stoned if she has sinned; but according to R. Simeon, she must be burned. And the same is

the case if she had sinned with her father. (Although, if such a case happened with a commoner, burning is applied, nevertheless she is to be stoned, according to the rabbis); as according to their theory stoning is more rigorous, and there is a rule that he who is guilty of two crimes liable to capital punishment is to be executed with the more rigorous one. And according to R. Simeon, that burning is more rigorous, she is to be put to death by that. And where do we find R. Simeon saying so? In the following Boraitha: R. Simeon said: There are already two general expressions about adultery; viz. [Lev. xx. 10]:

"Then shall the adulterer be put to death, "together with the adulteress." And this applies either to a betrothed or to a married woman, with whom the daughter of a priest is certainly included. Why, then, does the Scripture distinguish a daughter of a priest [ibid. xxi. 9]: "And if the daughter of any priest profane herself by committing harlotry, her father doth she profane: with fire shall she be burnt," which makes no difference between a betrothed and a married woman? To exclude her from the punishment of a betrothed commoner, to whom stoning applies; and if married, choking applies, and puts her in the category of those who are to be burned. Now, as to the punishment of a married one, which applies to a daughter of a priest, all agree that it is more rigorous than that of a commoner; the same is the case with a betrothed one, whom the Scripture excluded from an easier punishment, for a severer one. Hence burning is more severe than stoning. However, collusive witnesses (to whom, according to the Scripture, the same must be done as to the defendant, if their testimony were true) are not excluded from that punishment which they would have to suffer if they had been found collusive in the case of a daughter of a commoner, and are punished with the death of their accused; no matter if the accused were the daughter of a commoner or of a priest; namely, if they had testified regarding a betrothed one, and thereafter were found collusive; the death which would apply to her, were she a daughter of a commoner, applies to them. And the same is the case if they had testified regarding a married one.

The rabbis taught: It reads: "And if the daughter of any priest profane herself." Lest one say that it means that she profaned herself by violating the Sabbath, Therefore it reads further, "by committing harlotry." But lest one say, even if she were single, it reads here, "her father." And the same expression

is used concerning a betrothed woman; as there the sin is because of her bond to a husband, the same is the case here. It is considered a crime liable to capital punishment if she were already betrothed or married. But perhaps it means when she has sinned with her father, and not with some one else? Therefore it reads, "she profane," which means that she has profaned him, and not he her. Hence from the analogy of expression, father, we infer that the sin is because of her husband. But from this analogy of expression it is inferred when she was betrothed. Whence do we know that, if she was not of age and nevertheless married, or of age and betrothed or married, or even if she were already an old woman, that the same is the case? Therefore it is written: "And the daughter of any priest," which means, whatever her condition. But lest one

say: It speaks only when she was married to a priest, but if to Levite or to a common Israelite, to a heathen, to a descendant of one who has profaned the priesthood, to a bastard, or to a descendant of the Gibeonites who were temple-servants, it is different? Therefore it is written: "The daughter of any priest," which means, even though she was not the wife of a priest. She is to be burned, but not her paramour. She is to be burned, and not her collusive witnesses.

R. Eliezer said: With her father, burning applies; with her father-in-law, stoning applies. How is this to be understood? Shall we assume that he means she has sinned with her father? Then why only a daughter of a priest? Is not the case the same even when she was a daughter of a common Israelite? Burning applies to committing a crime with a daughter, and stoning to the crime with a daughter-in-law. We must then say that with the expression, "with her father," he means when she was still under the control of her father; and the same is it with the expression, "with her father-in-law." Now, let us see in accordance with whom is his theory. It is not in accordance with the rabbis, as they hold that only a married woman is to be burned, but not a betrothed. It is also not in accordance with R. Simeon, as he holds that there is no difference between betrothed and married--both are to be burned. And also not in accordance with R. Ishmael, as he holds that only a betrothed is to be burned, but not one married. And he also holds that if she had committed a crime with her father-in-law, choking applies. As to this, Rabin sent a message in the name of R. Jose b. Hanina: This Boraitha is to be explained thus: It is in

accordance with the rabbis. And the expression of R. Eliezer, "with her father," means thus: If such a crime be punished, with an easier death than if the crime had been committed with her father--*e.g.*, that of a married woman, daughter of a commoner, to whom choking applies, in her case, because she is a daughter of a priest, the death of her father, if he should commit the crime with her, applies to her--viz., burning. And if such a crime by a commoner were punished with a heavier death than if the crime were with her father--*e.g.*, a betrothed daughter of a commoner, to whom stoning applies, no exception is to be made, and the punishment of her sinning with her father-in-law applies--viz., stoning. R. Jeremiah opposed: Does, then, the Boraitha read "easier" and "heavier death," which it should do according to your explanation? "Therefore," said he, "it must be said that R. Eliezer is in accordance with R. Ishmael; and the expression, 'with her father,' means under the control of her father-viz., a betrothed, not yet married, to whom burning applies; and 'with her father-in-law' means, literally, if she had sinned with her father-in-law she is to be stoned, but if with some one else choking applies."

Said Rabha: This explanation is still more complicated than the first one, as both expressions must be explained equally: either both are to be taken literally, or both mean "under the control." And therefore said Rabbhina: R. Eliezer is in accordance with the rabbis, and his decision was just the reverse. "With her father," stoning applies, and "with her father-in-law," burning applies. And both expressions mean "under the control." And although a betrothed woman is no longer considered under the control of her father, he so expressed himself because of the latter expression, "under the control of her father-in-law."

Said R. Na'hman in the name of Rabha b. Abuhu, quoting Rabh: The Halakha prevails according to the message which was sent by Rabbin in the name of R. Jose b. Hanina. Said R. Joseph: Do you come to teach a Halakha which will be used only then when the Messiah shall appear? Said Abayi to him: According to your theory, why should we study the section Holiness (which treats about sacrifices, at the time when the Temple was in existence) at all? Is not the whole for the

time when the Messiah shall appear? You must then say that we must study and be rewarded for it by Heaven. The same is the case here. We have to study, although it is not for use to us

at this time, and the reward will come from Heaven." Answered R. Joseph: I mean to say, may one name Halakha in the explanation of a Boraitha (*i.e.*, the message of Rabbin was only concerning the explanation of the Boraitha)? To which it may be said, that such an explanation is correct. The expression "Halakha," however, means "law," which does not correspond with his meaning.

Where do we find R. Ishmael's opinion, of which it is said above that Eliezer holds with him? In the following Boraitha: It reads, "the daughter of any priest profane," etc., speaking of a young betrothed maiden. But perhaps it means a married woman? This is not the case, as the law about adultery is already written in Lev. xx., in which a daughter of a priest is included. However, we find that the Scripture has distinguished a daughter of a commoner, and applied stoning to her, if she was betrothed and not married. The same is the case with the distinction of a priest's daughter, to whom the Scripture applies burning, meaning also when she was betrothed only. Her collusive witnesses, however, are to be punished with the same death that applies to her paramour, because it reads [Deut. xix. 19]: "Then shall ye do unto him as he had purposed to do unto his brother." "To his brother," but not to his sister. So is the decree of R. Ishmael. R. Aqiba, however, maintains: There is no difference whether she was betrothed or married, as in both cases burning applies. And to the question of R. Ishmael: Why should we make a distinction concerning a daughter of a priest, the expression for which is "Naahra" (a maiden), while the same expression is used concerning a commoner who is betrothed only? R. Aqiba rejoined: Ishmael, my brother, I infer it from the word *and*, which begins the verse--"and the daughter of any priest." Rejoined R. Ishmael: "Do you desire that this should be burned, because the Vav (which means *and*) is in your way?

Let us see! R. Ishmael infers the punishment of a priest's daughter from an analogy of expression. How does he explain the above-cited verse, "her father has she profaned"? He explains it as in the following Boraitha: R. Meir used to say: This phrase means that if, until now, their custom was to consider her father holy, from that time they consider him common; if until that time he was honored, from that time he is disgraced. As people say: "Cursed be such a man who has born such a daughter; cursed is he who has brought her up; cursed

is he that he has such an offspring." Said R. Ashi: According to whom do we name a wicked person, "wicked, the son of a wicked," although his father was upright? In accordance with the Tana of the just-mentioned Boraitha.

MISHNA *II.*: The prescribed punishment of burning was thus: The sinner was placed in waste knee-deep. Then, placing a twisted scarf of coarse material within a soft one, they wound it around his neck. One (of the witnesses) pulled one end to ward himself, the other doing the same, until he opened his mouth. Meanwhile the executioner lights (heats) the string, and thrusts it into his mouth, so that it flows down through his inwards and shrinks his entrails. To which R. Jehudah said: Should the culprit die before the string is thrust into his mouth, the law of burning has not been properly executed, and there fore his mouth must be opened forcibly with a pair of

pincers. Meanwhile, the string having been lighted, is thrust into his mouth so that it may reach his intestines and shrink his entrails. R. Eliezer b. Zadok, however, said: Once a daughter of a priest, having sinned, was surrounded with fagots and burned. He was answered: The court which so decided was ignorant of the exact law.

GEMARA: What kind of a string was it? Said R. Matnah: A string of lead. And whence is this deduced? They infer this burning from the burning of the congregation of Korah. As there the souls only were burned, but the bodies remained, so also here only the soul is to be burned, but the body is to remain. R. Elazar said: They infer this burning from the burning of the sons of Aaron. As there the souls only were burned and the bodies remained, the same is the case here.

Let us see! He who infers it from the congregation of Korah, wherefrom does he know that the soul, and not the body, was burned? From [Num. xvii. 3]: "The censers of these sinners against their own souls." 1 Which means that the souls only were burned, but the bodies remained. And the other, who infers it from the sons of Aaron, maintains that this phrase means they were burned bodily, and the expression "own souls" means that they were liable to be burned because of their souls. And it is in accordance with Resh Lakish, who said elsewhere: It reads [Ps. xxxv., 16]: "With flattering, babbling mockers, they gnashed upon me with their teeth," which

means that, because they had flattered Korah for the sake of entertainments (to which he used to invite them), the ruler of Gehenna gnashed upon them with his teeth. And he who inferred this from the sons of Aaron, wherefrom does he know that their souls only were burned, etc.? From [Lev. x. 2]: "And there went out a fire from before the Lord, and consumed them, and they died before the Lord," which means that, although they died before the Lord, they died as all others-only their corpses remained. And the other maintains that the sons of Aaron were burned bodily, and the expression, "they died," means, that the beginning was from inside the body. As we have learned in a Boraitha: Abba Jose b. Dusthai said: Two fire cords came out from the Holy of Holies chamber, and were divided into four: two of them entered the nostrils of one, and two the nostrils of the other, and burnt them. But is it not written, "and consumed them"? From which it is to be inferred "them," and not something else. Yea--"them," and not their garments.

But why should burning not be inferred from the offerings of the bullocks, which were burned bodily? Common sense dictates that a man must be inferred from man, and not from cattle: as a man sins, and one infers a man who has sinned from another man, and from him whose soul was taken for his sin to him whose soul is to be taken. But he who infers it from Korah's congregation-why did he not infer it from the sons of Aaron? Because he maintains that the sons of Aaron were burned bodily, and to infer from them would not be proper, as R. Na'hman said in the name of Rabha b. Abuhu: From the phrase "Thou shalt love thy neighbor as thyself," we deduce that one may select a decent death for the sinner. But as the theory of R. Na'hman is accepted--why, then, the analogy of expressions at all? If not for the analogy, one might say that the burning of the soul, while the body remains, is not called burning at all, and that which is written, "Thou shalt love thy neighbor," etc., could be done by increasing the fire by bundles of fagots so that he should die quickly. Therefore the analogy of expression shows that such a burning, although the body remains, is called burning.

There is a tradition that Moses and Aaron used to walk, and Nadob and Abihu followed them, and all Israel after them. And Nadob said to Abihu: When will the two old men die, and you and

I be the leaders of Israel? To which the Holy One,

blessed be He, said: Time will show who will bury whom. Said R. Papa: This is what people say: "There are many old camels who are laden with the skins of young ones." R. Elazar said: A scholar, in the eyes of a commoner, at first acquaintance (the scholar) appears to him (the ignorant man) like a golden kithon. However, after he holds conversation with him, he appears like a silver kithon; if he accepts a benefit from him, he appears like an earthen one, which, once broken, cannot be mended.

Aimretha bath Tli was the daughter of a priest, who had sinned, and R. Hama b. Tubiah surrounded her with bundles of twigs and burned her. And R. Joseph, when he heard this, said: He erred twice. In the explanation of the Mishna, in which, according to R. Na'hman, the sinner was burned with lead; and (b) he was not aware of the following Boraitha: It is written [Deut. xvii. 9]: "And thou shalt come unto the priests the Levites, and unto the judge that may be in those days." At that time, when the priests acted, judgments concerning capital punishments might be rendered; but when there were no more acting priests, no such judgment could be rendered.

"*Said Elazar b. Zadok,*" etc. Said R. Joseph: The court in question was of the Sadducees (who take the commandments of the Scripture literally). Did, indeed, Elazar say so? And the answer was as stated in the Mishna? Is there not a Boraitha which states: R. Elazar b Zadok said: I recollect, when I was a child, being carried upon the shoulders of my father, and a daughter of a priest, who was a sinner, was brought, and was surrounded with bundles of twigs and burned? To which the sages answered: At that time you were a child, and we cannot accept any evidence from a child? Two such cases happened in the days of R. Elazar, and when be was answered that no evidence of a child is to be taken into consideration, he related before them the other case which be saw when he was already of age, and to this they answered him: That court was an ignorant one.

MISHNA *III*.: The prescribed punishment of slaying was thus: He was decapitated, as was customary with the Roman government. R. Jehudah, however, maintains: Such a death is repulsive. But they put his head on the (executioner's) block and cut it off with a butcher's hatchet. And he was answered: There is not a more detestable death than this.

GEMARA: There is a Boraitha: R. Jehudah said to the sages: I myself am aware that the death I explained is repulsive;

but what can we do against the Scripture, which reads [Lev. xviii. 13]: "And in their customs shall ye not walk," etc.? To which the rabbis answered: As this is written in the Scripture, we are not learning this from them, but they learned it from us. And should one disagree with us, then what would he say to the following Boraitha: Garments and some other valuable things may be burned on the grave of kings, for the sake of their honor. And this custom is not considered the custom of the Amalekites. And why? It is because it is mentioned in the Scripture [Jer. xxxiv. 5].: "And as burnings were made for thy father," etc., we do not learn from them. The same is

the case here.

Let us see! In the succeeding chapter, there is a Mishna: The following are slain with a sword: a murderer, and the men of a misled town. It is correct, "a misled town," as it is plainly written [Deut. xiii. 16], "with the edge of a sword." But whence do we know that the same is the case with a murderer? From the following Boraitha: It reads [Ex. xxi. 20]: "And if a man smite his servant or maid with a rod, and he die under his hand, it shall be surely avenged." And as we do not know what "revenge" means; therefore it is written [Lev. xxvi. 25]: "And I will bring unto you the sword avenging." Hence avenge means with a sword.

But whence do we know that they decapitated him--perhaps they killed him with the sword in another part of the body? It reads, "with the edge of a sword," which excludes stabbing. But perhaps it means splitting the head. It is already inferred by Rabha b. Abuhu from the phrase: "Thou shalt love thy neighbor as thyself," that one must select a decent death. But all this speaks of when one has slain a bondman. Whence do we know that the same is the case with a freeman (whose punishment is death in general, and there is a rule that wherever the kind of death is not mentioned, it means choking)? This cannot be, as an *a fortiori* conclusion is to be drawn: A slave, who is less in value than a freeman, if one kills him, he is punished with slaying by the sword (which is more rigorous than choking); if one kills a freeman, so much the more should he be punished with a more rigorous death. But this would be correct only to him who holds that the sword is more rigorous than choking. But to him who holds the contrary, what can be said? He infers this from another verse, as is stated in the following Boraitha: It is written [Deut. xxi. 9]: "And thou

shalt put away (the guilt of) the innocent blood from the midst of thee." From this we see that all shedders of blood are compared to the heifer in that connection. And lest one say that as the heifer is killed with a butcher's knife toward the back part of the neck, the same shall be done with all other shedders of blood, it is already inferred above that a decent death must be selected.

MISHNA *IV.*: The prescribed punishment of choking was thus: The sinner was placed in waste knee-deep. Then, placing a twisted scarf of coarse material within a soft one, they wound it around his neck. One (of the witnesses) pulled one end toward himself, the other doing the same, until the soul of the culprit departed.

GEMARA: The rabbis taught: It reads [Lev. xx. 10]: "And if there be a man "--" man" means to exclude a minor, "Who committeth adultery with a man's wife"--"man's wife" means to exclude the wife of a minor (whose marriage is not considered). "With his neighbor's wife" means to exclude those people who live with their wives in common. 1 [Ibid.]: "Then shall the adulterer be put to death" means choking. But perhaps it means some other kind of death which is prescribed by the Scripture? It was said that wherever it is written in the Torah "death," without specifying which, you must not apply a rigorous one, but an easier one (and choking is the easiest of all the kinds of death mentioned in the Torah). So is the decree of R. Jashiah. R. Jonathan, however, maintains: The reason is not because choking is an easier death, but because there is a tradition that in any place where death is mentioned in the Scripture, without specifying which, it is choking. Rabbi said: The reason is because there is mentioned in the Scripture a heavenly death [Gen. xxxviii. 10], and there is also mentioned death from human hands. And as a heavenly death does not leave any marks on the body of the man, the same must

it be by death from human hands. But perhaps burning is meant, which also does not leave any signs outside of the

body? As the Scripture prescribed burning to a daughter of a priest, it is to be understood that all other sinners are not punished with the same.

It is correct that choking is to be used, according to R. Jonathan, who says that it is a tradition; and Rabbi gives the reason. But R. Joshiah, who wants only an easier death--whence does he deduce choking at all? (Such is never mentioned in the Scripture.) And perhaps there is no more than three kinds of death, and from these three the easier one must be selected, which is the sword? Said Rabha: The four kinds of death are known traditionally. And the expression of R. Jonathan, "not because it is easier," shows that he and R. Joshiah differ concerning choking, whether it is an easier death. In the same manner differ R. Simeon and the rabbis.

R. Zera said to Abayi: There are sinners who are punished with stoning, although it is not so mentioned in the Scripture. But they are inferred from an analogy of expression, "from a familiar spirit." I question you which expression of the two following is meant--"put to death," or "their blood shall be upon them"? And he answered: The latter expression, as the first is needed, "to death," which is explained above.

MISHNA *V.*: To the following sinners stoning applies: viz., one who has had connection with his mother, with his father's wife, with his daughter-in-law, with a human male, or with cattle; and the same is the case with a woman who uncovers herself before cattle; with a blasphemer; an idolater, he who sacrifices one of his children to Moloch; one that occupies himself with familiar spirits; a wizard; one who violates the Sabbath; one who curses his father or mother; one who has assaulted a betrothed damsel; a seducer who has seduced men to worship idols, and the one who misleads a whole town; a witch (male or female); a stubborn and rebellious son.

One who has had connection with his mother is guilty of transgressing two negative commandments--the negative commandment as to his mother and the negative commandment as to his father's wife. R. Jehudah, however, maintains: He is guilty only for his mother. One who has connection with his stepmother is also guilty in respect to two negative commandments--the commandment of adultery and the separate commandment as to his father's wife. There is no difference if he has done it while his father was still alive or after his death; and there is also no difference if she was only betrothed to his

father, or already married. One that commits a crime with his daughter-in-law transgresses also two commandments-adultery and of the separate commandment of his son's wife. And there is also no difference if it was done while his son was still alive or after his death, after her betrothal or after marriage.

GEMARA: There is a Boraitha: R. Jehudah said: "If his father had married his mother illegally; he transgresses only the commandment as to "mother" and not as to "his father's wife." And the expression illegally means that by marrying, he has transgressed a negative commandment

which is not punished capitally or with korath. As to such, even according to the rabbis, such a marriage is not considered at all. But to death which is only of a negative commandment--*e.g.*, a widow to a high-priest--according to the rabbis the marriage is considered, and according to R. Jehudah it is not, as he holds with R. Aqiba, who is of the same opinion. R. Oushia objected: There is a Mishna in Yebamoth [Chap. II., 3]: "Owing to other legal prohibitions, or on account of the holiness of station" [ibid. ix.]. By "legal prohibitions" (to marry as above mentioned) are meant the secondary degrees of relationship prohibited by the rabbins as to intermarriage. Those prohibited to intermarry on account of holiness of station are a widow to a high-priest; a woman who had been divorced or performed the ceremony of Halitzah; who had (unlawfully) been married to an ordinary priest. To which a Boraitha adds: R. Jehudah changes the expression, viz., by "legal prohibition," a widow to a high-priest, etc., is meant; and "on account of holiness of station," the secondary degrees of relationship, etc., are meant. Hence we see that R. Jehudah changes the expression only, but nevertheless the ceremony of Halitzah is required. And if it were in accordance with R. Aqiba (that a marriage within secondary degrees is not considered at all), why, then, the ceremony of Halitzah? R. Jehudah collected only the expressions which ought to be in accordance with the opinion of the first Tana, but he himself does not require anything of that kind.

When R. Itz'hak came from Palestine, he taught just as our Mishna teaches, viz.: R. Jehudah said: He is guilty only concerning the negative commandment as to the mother. And what is the reason? Said Abayi: Because it reads [ibid. xviii. 7]: "She is thy mother," which means: You have to make him guilty only because of his mother, but not because of the wife of his father. But why do the rabbis make him guilty concerning

two commandments? Do they not hold this theory? The rabbis apply this expression to that which was said by R. Shesha b. R. Idi, which is stated farther on. But does not R. Jehudah also hold the theory of R. Shesha? Hence, his theory cannot be inferred from it. Therefore said R. Aha b. Iki: It reads [ibid. 7]: "She is thy mother, thou shalt not uncover her nakedness," meaning, "for one nakedness you can make her guilty, but not for two." But if so, why does not R. Jehudah differ concerning a daughter-in-law, who is guilty, according to our Mishna, as to two commandments? It then must be said, because there is one body, although there are two transgressions, he is culpable only for one, as it reads, "her nakedness." The same should be the case concerning the mother? Therefore said Rabha: R. Jehudah holds: At the beginning of the verse, "the nakedness of thy father" means "thy father's wife." And that it means thus he infers from an analogy of expression, as stated farther on. And "father's wife" means that there is no difference whether she is his mother or not. But whence do we know that it is the same with his mother, who is not his father's wife? Therefore it is written: "She is thy mother, thou shalt not uncover her nakedness." Hence only for the crime as to the mother you make him guilty, but not as to that of his father's wife.

There is a Boraitha according to Rabha: "A man" means to exclude a minor [Lev. xxii.]: "That lieth with his father's wife" means that there is no difference whether she is his mother or not. But whence do we know that the same is the case with his mother who is not his father's wife? Therefore it reads: "His father's nakedness," which is pleonastic, [1] and is written only for the purpose of an analogy of expression. "Both of them shall be put to death" means by stoning--but perhaps with some other death? It is written here: "Their blood shall be upon them"; and in the case of "familiar spirits" there is also the same expression. And as concerning the latter stoning

is plainly applied by the Scripture, the same is the case here. But here we have heard only of the punishment. Whence do we know of the warning? Therefore it is written: "The nakedness of thy father," etc., which means of "thy father's wife." But perhaps it means literally the father himself? It is written here, "The nakedness of thy father thou shalt not uncover,"

and there it is written, "The nakedness of his father he had uncovered." As the latter means his wife, so does the former. And from the expression "his father's wife," it is inferred, whether his mother or not. But whence do we know as to his mother who is not his father's wife? Therefore it is written, "the nakedness of thy mother," etc. But this is only in the warning in which the Scripture has equalized the mother who is not his father's wife with her who is. But whence do we know that the punishment is also equal? From the analogy of the expressions: "the nakedness of thy father thou shalt not uncover," and it reads also: "He has uncovered the nakedness of his father." And so as in the warning it is equalized with the mother who is the wife of his father and with her who is not, the same holds good concerning the punishment. "She is thy mother" means, you can make her guilty only for the crime as mother, but not for the crime as father's wife. But the rabbis, who do not use the above analogy of expression, whence do they deduce the punishment of a mother who is not the wife of one's father? Said R. Shesha b. R. Idi: It reads: "She is thy mother," which means that the Scripture equalized the mother who is not the wife of his father with her who is.

"Who had connection with his daughter-in-law." But let him be guilty also because of the wife of his son? Said Abayi: The verse begins with his daughter-in-law and ends with the wife of his son--to teach that "daughter-in-law" and "wife of his son" are one and the same.

MISHNA *V.*: One who had connection with a human male or with an animal, and also a human female who uncovers herself before a male animal, are punished with stoning. And should one say: If man has sinned, what is the fault of the animal? Because a misfortune has happened to a human being through it, therefore says the verse: "It shall be stoned," There is also another explanation; viz., should it happen that people saw the animal passing the street, they would say: On account of it so and so was stoned.

GEMARA: A human male--whence is deduced? That which the rabbis taught: "A man" means to exclude a minor; with a male," of any age whatever or a minor. "As they lie 1

with a woman" means to say that with a woman there are two kinds of lyings, one usual and one unusual; and one is guilty as to both. Said R. Ishmael: This verse came to teach that which was just mentioned, as if not for this teaching it would be pleonastic, for regarding a male there is only one kind of connection. "Both of them have committed an abomination, they shall be put to death"--by stoning, but perhaps by some other death. Therefore it is written: "Their blood shall be upon them." And the same expression is used concerning "a familiar spirit," etc. And as the punishment of the latter is known to be stoning, the same applies here. From this we have heard the punishment. Whence is the warning? [Ibid. xviii. 22]: "And with a man shalt thou not lie as with a woman; it is an abomination." But this is a warning only to him who has done so. But whence is the warning to them with whom the connection was made? As to this it reads [Deut.

xxiii. 18]: "There shall not be a courtesan of the sons of Israel"; and also [I Kings, Xiv. 24]: "And courtesans also were in the land . . . the Lord had driven out." So R. Ishmael. R. Aqiba, however, said: "It was not necessary to have another verse warning him with whom the connection was made, as this is inferred from the same verse, which may apply also to the latter by some change in pronunciation.

Concerning animals, whence is this deduced? The rabbis taught: From Lev. xx. 15. "A man" excludes a minor; "with an animal," it makes no difference whether it was a large or a small one; "shall be put to death" means stoning--but perhaps some other kind of death? It reads here (ibid.) "thahargu" (ye shall kill), and in Deut. xiii. 10, "thahargenu" (thou shalt kill). And as there the punishment is stoning, as it reads plainly in ibid. 11, the same is the case here. Here, however, we have learned only the punishment to the man. But whence do we know that the animal with which the crime was done is also to be killed in the same manner? It reads [Ex. xxii. 18]: "Whosoever lieth with a beast shall surely be put to death," which was not necessary for the man, as there is another verse cited above. Apply it, therefore, to the beast. From this we have learned the punishment for both. But whence is the warning? From the above-cited verse [Lev. xviii. 23]. But this is only a warning to the man, and whence the warning concerning the animal? From Deut. xxiii. 18. (Here are repeated the cited verses in the name of R. Ishmael,

and also in the name of R. Aqiba, that it is not necessary, as in the above verses there is a warning for both. 1)

MISHNA *VI.*: A blasphemer is not guilty, unless he mentioned the proper name of God (Jehovah). Said R. Jehoshua b. Karha: Through the entire trial the witnesses are examined pseudonymously--*i.e.* (the blasphemer said): "Jose shall be beaten by Jose." (Rashi explains that the name Jose was selected because it contains four letters, as does the proper name of the Lord.) When the examination was ended, the culprit was not executed on the testimony under the pseudonym; but all are told to leave the room except the witnesses, and the oldest of them is instructed: "Tell what you heard exactly." And he does so. The judges then arise, and rend their garments, and they are not to be mended. The second witness then says: I heard exactly the same as he told. And so also says the third witness.

GEMARA: There is a Boraitha: One is not guilty unless he blesses (*i.e.*, curses) the Holy Name by the Holy Name (as illustrated in the Mishna): "Jose shall be beaten by Jose." And whence is this deduced? Said Samuel: From Lev. xxiv. 16, of which the term in Hebrew is "we-nauquib shem," which means, "when he has cursed with the name." And whence do we know that the term "nauquib" means cursing? From [Num. xxiv. 8]: "How shall I curse," etc. And the warning as to this is [Ex. xxii. 27]: "Thou shalt not revile Elohim." But does not "nauquib" mean "hole"? Why, then, not so say--*i.e.*, suppose one wrote the Holy Name on a piece of parchment and tore it, the term "we-yiqaub" [II Kings, xii. 10]? meaning he "bored a hole in its lid"--and the warning as to which should be from [Deut. xii, 3, 4]: "Ye shall destroy their name out of the same place. Ye shall not do so to the Lord," etc. It was said above if the Name should be cursed by the Name, which is not the case here. But perhaps the term "nauquib is meant as plainly expressed, as the same is used in Num. i. 17, which are expressed by name" (*i.e.*, it was forbidden to

express the name Jehovah in any case whatever, except in that of the high-priest in *his* worshipping on the Day of Atonement when the temple was in existence; and even then, when the people heard this expression, they used to fall upon their faces). And the warnings should be from [Deut. vi. 13]: "The Lord thy God shalt thou fear" (which means to pronounce His name). This does not hold good, firstly because, as said above, it must be by the Name; and secondly, a warning of a positive commandment cannot be counted as a warning. And if you wish, it may be said because it is so written plainly [Lev. xxiv. 11]: "The son of the Israelitish woman pronounced (*weyiqaub*) the holy name and blasphemed." Hence this term is used to blaspheme. But perhaps one is not guilty unless he did both-expressed the name and blasphemed? This cannot be supposed, as farther on it reads [ibid. 14]: "Lead forth the blasphemer," and the expression "nauquib" is not mentioned. Hence it is one and the same.

The rabbis taught: It reads: "any man whatsoever," etc., meaning to include the heathen, who are warned of blasphemy the same as an Israelite. And they are to be executed by the sword, as wherever it is mentioned in the Scripture concerning death to the children of Noah, it means by the sword, and not otherwise. But is this inferred from the verse cited? Is it not stated farther on that such is inferred from a verse in Genesis? Said R. Itz'hak of Navha: This verse is needed to include the pseudonyms. And it is in accordance with R. Mair of the following Boraitha: Any man whatsoever that blasphemeth his God shall bear his sin. To what purpose is this written? It reads earlier [ibid. 16]: "But he that pronounced the name of the Lord (with blasphemy) shall be put to death"? Because from this one might say that he is not guilty, unless he has done so with the unique proper Name, but not with the pseudonyms. Therefore it reads in the cited verse (15), "his God"--no difference between proper and pseudonym. So is the decree of R. Mair. The sages, however, maintain: For the unique proper Name death is the punishment; and for the pseudonyms it is only a warning by a negative commandment, and the punishment is as for the transgression of a negative commandment. (Says the Gemara:) Itz'hak of Navha differs with R. Maisha, who said: One of the children of Noah, who blasphemed God by any of His pseudonyms whatsoever is guilty, and is put to death, even according to the rabbis.

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The rabbis taught: Seven commandments were given to the children of Noah, and they are: Concerning judges, blasphemy, idolatry, adultery, bloodshed, robbery, and that they must not eat of the member of a body while the animal is still alive. R. Hananiah b. Gamaliel said: Also of the blood of the same. R. Hidka said: Also castration was forbidden to them. R. Simeon said: Also witchcraft. And R. Jose said: All that is said in: the portion on witchcraft is forbidden to a descendant of Noah. As it reads [Deut. xviii. 10-12]: "There shall not be found among thee any one who causeth his son or his daughter to pass through the fire, one who useth divination, one who is an observer of times, or an enchanter, or a conjurer, or a charmer, or a consulter with familiar spirits, or a wizard, or who inquireth of the dead. For an abomination unto the Lord are all that do these things; and on account of these abominations the Lord thy God doth drive them out from before thee." And as there is no punishment without preceding warning, hence they were commanded not to do all this. R. Elazar said: Also Kilaim. I mean to say, the descendants of Noah are allowed to dress themselves with a mixture of wool and flax; and also sow different kinds of seeds together (which are forbidden to the Israelites); but they are forbidden to gender different kinds of animals and to graft two kinds of trees together.

Whence is all this deduced? Said R. Johanan: From Genesis ii. 16. [1] Were the descendants of

Noah indeed commanded concerning judges? Is there not a Boraitha: Ten *commandments* were commanded to Israel in Marah; seven of them are those which were accepted by the descendants of Noah, and three were added to them: viz., Judges, Sabbath, and to honor father and mother. Judges--as it is written [Ex. xv. 25]: "There he made for them a statute and an ordinance," etc. And concerning Sabbath and the honor of parents it reads [Deut. v. 12 and 16]: "As the Lord thy God hath *commanded thee*." And R. Jehudah said: "As he hath commanded thee in Marah." Said R. Aha b. Jacob: This means that Israel was commanded to establish courts of justice in every district and

city; and the children of Noah were commanded concerning judges in general only. But is there not a Boraitha: As Israel was commanded to establish judges in every city and district, so also were the children of Noah commanded? Said Rabha: The Tana of the Boraitha cited above is in accordance with the school of Manasheh, which excluded from the seven commandments judges and blasphemy, and included castration and kilaim. Thus was it taught in the school of Manasheh: Seven commandments were the descendants of Noah commanded: Concerning idolatry, adultery, bloodshed, robbery, a member of a living animal, castration, and kilaim. R. Jehudah, however, said: Adam the First was commanded as to idolatry only, as it reads [Gen. ii. 16]: "And the Lord commanded the man" *i.e.*, the Lord commanded him about the law of God (that he should not be exchanged for another). R. Jehudah b. Bathyra said: Also as to blasphemy. And there are some others who say, also concerning judges.

According to whom is that which was said by R. Jehudah in the name of Rabh: God said to Adam: I am God, thou shalt not blaspheme me. I am God, thou shalt not exchange me for an idol. I am God, the fear of me shall be always upon thee? According to the "some others" just mentioned. (The expression "the fear of me," etc., means to appoint judges who shall punish them who transgress my commandments.)

Said R. Joseph: It was said in the college: For transgression of the following three commandments a descendant of Noah is put to death: viz., adultery, bloodshed, and blasphemy. R. Shesheth opposed: It is correct concerning bloodshed, as it reads [Gen. ix. 6]: "Whoso sheddeth man's blood, by man shall his blood be shed." But whence do you deduce the two others? And should you say that it is inferred from bloodshed, then why not infer all the seven? And if you infer it from "any man whatsoever," then idolatry is also inferred from same? Therefore said he: In the college it was said: For four they are but not put to death? Said R. Na'hman b. Itz'hak: It means ant of Noah indeed put to death because of idolatry? Have we not learned in a Boraitha concerning idolatry, if for such a crime one is put to death by the court of Israel, the descendants of Noah are warned of it? Hence they are only warned, but not put to death? Said R. Na'hman b. Itz'hak: It means that they are warned if they should commit this they will be put to death. R. Huna and R. Jehudah and also all other disciples

of Rabh say: For each case of the seven commandments a descendant of Noah is to be killed. As the Scripture prescribed death for one, it shall serve as an example for the others.

When R. Dimi came from Palestine, he said in the name of R. Elazar, quoting R. Hanina: A descendant of Noah who has separated a female slave to one of his male slaves, and thereafter

had connection with her, is to be put to death for this crime. A similarity to this in the crime of bloodshed was not taught. Said Abayi: If such a similarity is to be found, it may be in that which we have learned in the following Boraitha: R. Jonathan b. Saul said: If one runs after his neighbor to kill him, and the one who flees could save himself by injuring one of the members of his pursuer, and he did not so, but killed him, it is a crime of bloodshed and he is put to death for it. [1] R. Jacob b. Aha found a writing in a Haggadic book written by the college of Rabh, thus: A descendant of Noah may be put to death by the decision of one judge, by the testimony of one witness, and although he was not warned previously. However, the testimony must be from a man, and not from a woman; and the testimony holds good even if given by one of his relatives. In the name of R. Ishmael it was said: He is put to death even for killing an embryo. Whence is this deduced? Said R. Jehudah: From [Gen. ix. 5]: "Your blood, however, on which your lives depend, will I require," meaning even by one judge. "At the hand of every beast" means even without warning; "at the hand of man" means even with one witness; "at the hand of every man" means of a man but not of a woman; "brother" means even when the witness was a relative. And the reason of R. Ishmael is [ibid. 6]: "Whoso sheddeth man's blood in man, [2] his blood shall be shed." What is meant by "a man in man," if not an embryo, which is in the entrails of his mother? And the first Tana, who holds that a descendant of Noah is not guilty for an embryo, is in accordance with the school of Manasheh, which maintains that every death which is mentioned regarding the descendants of Noah is choking; and he explains the above-cited verse "in man shall his blood be shed," that it means choking, from which death occurs inside of the body as illustrated above. R. Hamnuna objected: Does, then, the commandment

of bloodshed not apply to a woman? Is it not written [Gen. xviii. 19]: "For I know him, that he will command his sons and his household after him"? And by the "household" it means the woman, as the sons are already mentioned? He objected, and he himself answered: It reads farther on, "that they shall keep the way of the Lord, to do righteousness and justice." It means that he shall command his sons to appoint judges for justice and his household to do righteousness and charity.

Said R. Ibiah the Elder to R. Papa: Say, then, that a woman who is a descendant of Noah shall not be put to death if she has killed a man; as it reads "from the hand of a man," which means not from the hand of a woman? And he answered: So said R. Jehudah: It reads, "Whoso sheddeth the blood of a human," etc., which means any human whatsoever. (Said R. Ibiah again: "Say, then, that a female descendant of Noah should not be punished if she sinned, as it reads [ibid. ii. 24]: "Therefore doth a man leave his father and his mother"--a man, and not a woman. And he answered: So said R. Jehudah: It reads further, "and they become one flesh"; and with this the verse associates them to be equal in every respect.)

The rabbis taught: It should read "a man." Why is it written "any man whatsoever"? To include heathens in the warning of adultery, as well as Israelites. But was it not said above that in the seven commandments which were given to the descendants of Noah adultery is included? Said R. Johanan: It is needed for such a relationship which they do not recognize, but the Israelites do; *e.g.*, a betrothed woman before marriage, whom they consider as single. And if it happened that a heathen should sin with a woman betrothed of an Israelite, he is to be tried in the courts of the Israelites. But if he sins with a married woman, he may be tried in his own courts--the punishment of which is by the sword, and not choking. But is there not a Boraitha: A heathen who has sinned with a betrothed woman is to be stoned; and if with a married, choked? Hence

he is tried in the Israelitish courts, as in his own courts he would be slain by the sword. Said R. Na'hman b. Itz'hak: By the term married woman is meant that the ceremony of marriage was performed, but her husband had not as yet had any connection with her; and such a marriage their courts do not consider, and the bride is still deemed single. Therefore he is to be tried in the courts of Israel, and punished with their prescribed

death. And so taught R. Haninah: The law of the heathen considers the wife of a man only after their connection, but not after the ceremony of marriage.

There is a Boraitha in accordance with R. Johanan: Every relationship for which the punishment of the courts of Israel is death, a descendant of Noah is warned of it; but all other relationships, the punishment of which is not death, are permissible to them. So is the decree of R. Mair. The sages, however, say: There are many relationships which in our courts are not punished with death, nevertheless the descendants of Noah are warned of them. If it happens that one of the latter has committed a crime with a daughter of Israel, which is considered adultery in the courts of the Israelites, but not in the courts of the heathens, he is to be tried in the courts of Israel. But if such a crime is considered adultery also in the courts of the heathen, he may be tried in their own courts. However, we do not find a case which would be a crime for Israelites and not for heathens, except that of a betrothed woman (as said above). But why does the Boraitha not count the case of a married woman--by the ceremony of marriage only--which is a crime according to our law, and not according to their law? The Boraitha is in accordance with the school of Manasheh: The death of the descendants of Noah is also choking. Hence it makes no difference in which court he should be tried. 1

Resh Lakish said: He who raises his hand to strike his neighbor, although he has not as yet struck him, is called wicked. As it is written [Ex. ii. 13]: "And he said to the wicked one, wherefore smitest thou thy fellow?" It does not read, "why hast thou smitten," but "why smitest thou." Hence he is called wicked even if he only raises his hand to strike. Zeairi in the name of R. Hanina said: He is named sinner. As it reads [I Sam. ii. 16]: "If not, I will take it by force." And immediately after it reads: "The sin of the young men was very great." R. Huna said: If one has the habit of raising his hand against man, his arm may be cut off. As it reads [Job, xxxviii. 15]: "And the high-raised arm should be broken." 2 (And R. Huna acted according to his theory, and

cut off the arm of a man whose habit was to strike men with it.) R. Elazar said: There is no remedy for such a man, but burial. As it is written [ibid. xxii. 8]: "But as for the man of a strong arm, for him is the land." He said again: Only one who has a strong arm may obtain land (as usually there is much trouble to keep away cattle and all other animals which harm the growth, and also to preserve it from thieves, etc.). Resh Lakish said again: It reads [Prov. xii. 11]: "He that tilleth 1 his ground will be satisfied with bread." It means, when one makes himself a slave to the earth, he may be satisfied with bread, but not otherwise.

The Boraitha states: R. Hananiah b. Gamaliel, etc. The rabbis taught: It reads [Gen. ix. 4]: "But flesh in which its life is, which is its blood, shall ye not eat." This means any member of the

animal, while it is still alive. And Haninah b. Gamaliel said: Also the blood of same. And his reason is that the verse is to be read thus: Flesh in which its life is, ye shall not eat, and blood in which its life is, ye shall not eat. The rabbis, however, maintain that blood is here mentioned to teach that other animals, as reptiles, are allowed to a descendant of Noah. Similar to this, it reads [Deut. Xii. 23]: "Only be firm, so as not to eat the blood; for the blood is its life," which the rabbis explain as meaning the blood of the veins, by which the soul departs.

For what purpose is it written concerning the descendants of Noah, and thereafter repeated in the laws which were given on Mount Sinai? It is as R. Jose b. Hanina said: Every commandment Which was given to the descendants of Noah, and thereafter repeated in the laws given on Mount Sinai, applies to both Israel and the descendants of Noah. And that which was given to the descendants of Noah, and not repeated, applies to Israel only. However, we have only one case [Gen. xxxii. 33] which was commanded before the laws were given on Mount Sinai, which was not repeated, and applies only to Israel, according to R. Jehudah's theory (in Tracts Chulin, Chap. vii., which will be explained there).

The master said: A commandment which was repeated on Sinai is for both. Why not the contrary-because it was repeated on Sinai, it must be said it was given to Israel only? Although

idolatry was repeated on Sinai, as we find that the descendants of Noah were already punished for idolatry, therefore it applies to both. He says further that that which was given to the descendants of Noah and not repeated is for Israel only. Why not the contrary--because it was not repeated, it applies to the descendants of Noah and not to Israel? Because we do not find any case where it is forbidden to the descendants of Noah and allowed to the Israelites, a commandment which was given to the children of Noah and repeated on Sinai applies to both. Is there not circumcision? [Gen. xvii.]: "And God said unto Abraham: But thou, for thy part, shalt keep my covenant"; and it reads also [Lev. xii. 3]: "And on the eighth day shall the flesh of his foreskin be circumcised." And nevertheless it applies to Israel only, and not to the descendants of Noah? The verse just cited was needed to permit the circumcision to be done on Sabbath; as the term "on the eighth day" means even on Sabbath. And if you wish, it may be said that circumcision was given to Abraham especially. As it reads [Gen. xvii.]: "But thou, for thy part, shalt keep my covenant: thou, and thy seed after thee, in their generations"--which means "thou and thy children," but not some other man's. But according to this, let the descendants of Ishmael be obliged to circumcise? It reads [ibid. xxi. 12]: "For in Isaac shall thy seed be called." But if so, let this obligation be for the children of Esau also? It reads "in Isaac," but not the whole of Isaac, which means to exclude the descendants of Esau. R. Oushia opposed: Let, then, the children of Kturah not be obliged to circumcision. And R. Jose b. Abin or R. Jose b. Hanina said: From [ibid. xvii. 14]: "He hath broken my covenant" is understood even the sons of Kturah.

R. Jehudah said in the name of Rabh: Adam the First was not permitted to eat meat. As it reads [ibid. i. 29, 30]: "To you it shall be for food, and to every beast of the field," meaning, but not the beasts to you. However, after the descendants of Noah came, he permitted them. As it reads [ibid. ix. 3]: "Every moving thing that liveth shall be yours for food: even as the green herbs have I given you all things." And lest one say that they may be eaten while still alive, therefore it reads: "But flesh in which its life is, which is its blood, shall ye not eat." And lest one say that this forbids also reptiles, the term "but" excludes them. How is this to be understood? Said R. Huna: It reads "his blood," which means of animals in

which the blood is separated from the flesh, and excludes reptiles, of which the blood is not separated from their flesh.

There was an objection to that which was said that Adam the First was not allowed to eat meat, from that which Jehudah b. Bathyra said (Vol. IX., p. 7): "Adam the First was sitting in the garden of Eden, and the angels served him with roasted meat," etc. Hence he was allowed? And the answer was that with meat which came from heaven it is different. And the question is, was there any meat which came from heaven? It was answered: Yea! As it happened to R. Simeon b. Chalafta, who, being on the road, met lions, which were stirred against him; and a miracle occurred, and two legs fell from heaven, one of which the lions consumed, and the other one remained. Simeon then took it, brought it into the college, and questioned if it was allowed to eat it. And he was answered: An unclean thing never came from heaven. And R. Zera questioned R. Abuhu: How is it if such should come from heaven in the form of an ass? And he was scolded for this question thus: Was it not decided long ago that no unclean thing descends from heaven?

"*R. Simeon said: Also witchcraft.*" What is his reason? It reads [Ex. xxii. 17]: "Thou shalt not suffer a witch to live"; and farther on: "Whosoever lieth with a beast shall surely be put to death"--which applies also to the descendants of Noah. And as this applies to them, the same is the case with the first verse. R. Elazar said: Kilaim! Whence is this deduced? Said Samuel: From [Lev. xix. 19]: "My statutes shall ye keep," which means the "statutes which I stated long ago" (long ago, to the descendants of Noah). "Thy cattle shalt thou not let gender with a diverse kind; thy field shalt thou not sow with mingled seeds." And as concerning cattle "gender" is prohibited, so concerning fields grafting is prohibited; and as the prohibition of the first applies to every place--in Palestine and outside of it--the same is the case with the fields. But if so, why not explain [ibid., ibid. 37]: "Ye shall therefore observe all my statutes, and all my ordinances," in the same way: "my statutes which I stated long ago"? Nay! "You shall therefore observe my statutes" means which I have now given to you. But in the above-cited verse, which begins, "my statutes ye shall observe," it must be said the statutes which are already stated.

"*Said R. Jehoshua b. Karha,*" etc. Said R. Aha b. Jacob:

[paragraph continues] Infer from this that one is not guilty unless he blesses (curses) the Name which contains four letters, but not that of two letters (*e.g.*, a Jud and Heh--"Ja"; or Aleph and Lamedh, which is "ehl." But is this not self-evident? Does not the Mishna state, *e.g.*, "Jose . . . by Jose," which contains four letters? Lest one say that this is only an example, but not in particular, he comes to teach us that it is not so. According to others, Aha b. Jacob said: Infer from this that a name which contains four letters is also considered. Is this not self-evident? The example is given, "Jose by Jose," which contains four. Lest one say that one is not guilty, unless he blesses (curses) the great Name (Rashi explains: Which contains forty-two letters--which are not known to us, and the example is not particular, he comes to teach us that it is not so). 1

"*They arise.*" Whence is this deduced? Said R. Itz'hak b. Ami: From [Judges, iii. 20]: "And Ehud came unto him; and he was sitting in the summer upper chamber, which was for himself

alone. "And Ehud said: I have a word of God unto thee. And he arose out of his chair." Is there not to be drawn an *a fortiori* conclusion--Eglon, the king of Moab, who was a heathen, to whom the God of Israel was known only by a pseudonym, rose up from his chair when he heard the Name of God: An Israelite, hearing the great Name, so much the more must he arise?

"*Rend*," etc. Whence is this deduced? From [II Kings, xviii. 37]: "Then came Elyakim the son of Chilkiyah, who was superintendent over the house, and Shebuah the scribe, and Yoach the son of Assaph the recorder, to Hezekiah, with their clothes rent; and they told unto him the words of Rabshakeh."

"*Not to be mended*." Whence is this deduced? Said R. Abuhu: From an analogy of expression--"rent." It reads here: "With their clothes rent"; and [ibid. ii. 12]: "And Elisha saw it, and he cried, My father, my father, the chariot of Israel, and their horsemen. And be saw him no more; and he took hold of his clothes and rent them in two pieces." Why the word "pieces"? Is it not self-evident that when he rent them in two, they became pieces? Hence this term means that they should remain pieces and never be mended.

The rabbis taught: There is no difference if one hears it from the blasphemer himself or from the witness who heard it from the blasphemer--he must rend his garments. However, the witnesses themselves are not obliged to rend their garments gain, as they already did so when they heard the blasphemy. But supposing they have already rent? Do they not hear this now? Hence they should rend again? This cannot be supposed, as it reads [Ibid., ibid., 19]: "And it came to pass, when King Hezekiah heard it, that he rent his clothes." Hence Hezekiah rent, but they who told him did not rend again.

R. Jehudah said in the name of Samuel: If one hears a blasphemy from the mouth of a heathen, he is not obliged to rend his garments. And should one say: Why did they rend when they heard it from Rabshakeh?--he was not a heathen, but an apostate Jew. The same said again in the name of the same authority: Garments must be rent only upon the unique proper Name, but not upon a pseudonym. And he differs from R. Hyya in both his decisions, as R. Hyya said: If one hears a blasphemy in our times, he is not obliged to rend; for if one should say he is obliged, then all garments would be full of rents. Now, who are the blasphemers--Israelites? Are they so bold as to blaspheme God? Hence he means heathens. And are, then, the heathen aware of the unique proper Name? Hence he means a pseudonym. And nevertheless he says, "in our times," from which we understand that in previous times it was obligatory to rend upon a pseudonym also. Infer from this that so it was.

"*The second witness says: I heard exactly the same*," etc. Said Resh Lakish: Infer from this that in civil cases, as well as in criminal, if one of the witnesses says: "I have heard just the same," and does not repeat what he has heard, it is lawful. And that which the court used to require from the witnesses, that each of them should explain how the case was, is only a higher standard which the rabbis have enacted. In the case of blasphemy, however, in which it is impossible that the second witness should repeat, they leaned on the biblical law. As, if it were biblically illegal, how could it be supposed that because it is forbidden to repeat, a man should be put to death?

"*And so also says the third witness*." This anonymous Mishna is in accordance with R. Aqiba,

who compares three witnesses to two.

MISHNA *VII.*: He is considered an idolater who worships

it with its proper [1] worship; and even if he only sacrifices, smokes incense, or pours wine. He is also so considered if he bows himself to it, or accepts it as a god, even without any other act. And also if he only says: Thou art my god. However, he who arms, kisses, wipes the dirt, sprinkles water, washes, anoints, dresses, or shoes it, transgresses a negative commandment [Ex. xx. 5]. He who vows or determines in its name transgresses also a negative commandment [ibid. xxiii. 13]. He who uncovers himself before Baal Peor, and commits a nuisance (is guilty, for) this is the mode of worshipping him; also, he who casts a stone on a *merculis* (*hermaeon*)--that is the way of worshipping it (and he is guilty).

GEMARA: Whence is this deduced? The rabbis taught: It is written [Ex. xxii. 19]: He that sacrificeth unto any god, save unto the Lord only, shall be utterly destroyed. If the word "any" were omitted from this verse, I would say it speaks of one who sacrifices animals outside of the sanctuary; but as the word is written, it is to explain that it means: who sacrifices to any idol. From this, however, we infer sacrificing only. But whence do we know that the same is the case with smoking incense or pouring wine? From the words "unto the Lord only," which would be superfluous if they do not mean: all the kinds of worshipping the Lord--if he has done it to an idol, he is guilty. Now, as sacrificing is included in the worshipping of the Eternal, and nevertheless specified, it is to be assumed that it comes to teach that one is guilty for that kind of worshipping which takes place inside of the sanctuary. Whence, then, do we know that bowing is also considered? From [Deut. xvii. 3]: "And he hath gone and served other gods and bowed [2] himself to them"; and [ibid., ibid. 5]: it reads: "Then shalt thou bring forth that man," etc. But from this we know the punishment--whence is the warning? [Ex. xxxiv. 14]: "For thou shalt bow thyself to no other god." And lest one say that arming, kissing, shoeing are also included to be crimes subject to capital punishment, as they are to be inferred from bowing, therefore sacrificing was specified, to show that nothing is to be inferred from bowing, and also to teach that as a distinction is made concerning the worshipping inside of the sanctuary, the same is the case with all other worshippings which are used inside--if with such one has worshipped an idol,

he is liable to a capital punishment. However, bowing is out of this rule and stands alone.

The master said: If not for the word "any," I would say it speaks of sacrificing out of the sanctuary. But is not such a crime under the category of Korath? Should one say that it is when he was not warned, but if he was, capital punishment applies, he comes to teach us that it is not so.

Said Rabha b. R. Hanan to Abayi: Why not say that from bowing "all kinds of worshipping" is to be inferred, and the specification of sacrificing is needed for itself, to teach that an intention of worshipping an idol with any future act, although one does not intend it by the first act, is considered worship; *e.g.*, if one slaughters a cow with the intention of sprinkling its blood, or of burning its fat before the idol, although with the slaughtering he does not worship it, it is

nevertheless considered, and it is prohibited to derive any benefit from the cow, according to Johanan? But according to Resh Lakish the cow is permissible for use, as he does not hold this theory. And the reason of R. Johanan is because he infers it from the worshipping inside, as to which a future intention, *e.g.*, to sprinkle the blood on the morrow--makes invalid the whole sacrifice. The same is the case with an outside act, as illustrated here.

Said R. Aha of Difti to Rabhina: According to Rabha b. R. Hanan, who said to Abayi: Why not say that from bowing all kinds of worshipping are to be inferred? What, then, would he exclude from the passage which reads [Deut. xii. 30]: "How did these nations serve their god?" And lest one say that one who uncovers himself for such idols as are worshipped with sacrifices is excluded, this may be inferred from bowing: as the act of bowing is an honor to the idol, so are all kinds of worship which are in order to honor. But uncovering, which is a disgrace, is not considered a worship? Say--to exclude the one who uncovers himself for Merculis. And lest one say that as the kind of worship of Merculis is a disgrace, the same shall be the case with the disgrace of uncovering, it comes to teach us that it is not so. But did not R. Elazar say: Whence do we know that if one sacrifices an animal to Merculis he is guilty? From [Lev. xvii. 7]: "So that they shall offer no more their sacrifices unto evil spirits," which is not needed for itself, as this is already written elsewhere? Apply it, therefore, to bringing an offering to an idol of which the kind of worshipping is not sacrificing. Now, as from bowing is inferred all kinds of

worshipping which are of honor, so one is liable if he did it for any idol, whatsoever be the kind of its worship. Why, then, does R. Eliezer need the above-cited verse? He means to say: Even if he had sacrificed to Merculis, not as an honor but for dishonor, he is nevertheless liable for the transgression of the negative commandment cited above.

It happened to Hamnuna that he lost his oxen, and while searching for them Rabha met him, and propounded to him a contradiction from the two following Mishnayoth: In our Mishna it is stated: "He who worships idols," from which is to be inferred only worshipping, but not saying. And there is another Mishna, farther on, which states: He who says: "I will worship," or "I will go to worship," or "We will go to worship"--is already considered an idolater. And he answered: Our Mishna means that he said: I do not accept this idol as a god unless by worshipping. Said R. Joseph to him: You are saying this as if it were your own opinion. Do you ignore the Tanaim who differ on this point in the following Boraitha: If one says: "Come ye and worship me, for I am a god," R. Mair makes him guilty as a seducer, and R. Jehudah frees him. However, if there were some who had already worshipped him, all agree that he is guilty. Thus it reads [Ex. xx. 41 Thou shalt not make unto thyself," etc., which means also, "Thou shalt not make thyself for an image." But the point of their difference is that he was not as yet worshipped. R. Mair makes him guilty because, according to his opinion, talking is to be taken into consideration; and according to R. Jehudah it is not. Hence we see that Tanaim differ on this point? After deliberating, however, said R. Joseph: What I said was not correct; as we find in the following Boraitha that R. Jehudah also makes one guilty for talking: R. Jehudah said: One is not guilty unless he says: "I will worship," or "I will go and worship," or "We will go and worship." And the point of their difference in the Boraitha cited above is thus: If one who is a seducer for himself (*i.e.*, "Worship me"), and there were some people who said, "Yea," according to R. Mair he is considered a seducer because there were some people who answered, "Yea"; and according to R. Jehudah this is not considered, as their answer, "Yea," is only a joke. They ridicule him, saying: Are you not a man like us? And the Mishnayoth, which contradict each other, are to be

explained thus: Our Mishna, which states "who worshipped," treats if he who was seduced, listened and

worshipped him, he is guilty; because if an individual made up his mind to worship him, it is to be presumed that he will not retract. And the other Mishna treats of when many people were seduced and worshipped him, it is not to be considered, as it is to be supposed that they will reconsider, seeing there is nothing in him, and will retract. And R. Joseph said: Whence did I take my theory? From [Deut. xiii. 9]: "Then shalt thou not consent unto him, nor shalt thou hearken unto him." From which it is to be understood that if he did listen, and consented unto him, he is culpable. Abayi objected to him: Is there indeed a difference between an individual who was seduced and a majority? Is there not a Boraitha: It reads [ibid., ibid. 7]: "If thy brother, the son of thy mother, should entice thee," means that there is no difference between an individual and a majority, if they were seduced? And the verse which excluded an individual from a majority, is to make more rigorous his body--viz., to be stoned--and lenient concerning his property, which remains for his heirs; and excluded also a majority from an individual, to make more lenient their bodies--viz., slaying by the sword--and rigorous concerning their property, which must be burned. Hence we see that only on this point is there a difference between them, but on all other points they are equal. And therefore he explains the two contradictory Mishnayoth, that one speaks of when he has seduced himself--therefore he is not culpable unless he worshipped, as from his talk only, it is supposed that he will retract after deliberating. And that Mishna which makes him culpable for talking only, speaks of when he was seduced by others, as it is not to be supposed that he will retract. On the contrary, as they are many, it is highly probable that he will be inclined to them. And Abayi also infers his theory from the above-cited verse, "If he did not consent," etc., from which it is to be understood that if he did, he is culpable. Rabha, however, maintains that both Mishnayoth speak of when he was seduced by others, but one treats of when the seducers said to him: "So does the idol eat, so does it drink, so does it good, and so does it harm; and the other one treats of when he was not so informed. And he adds: Whence do I deduce my theory? From [ibid., ibid. 8]: "Some of the gods of the nations which are round about you, that are nigh unto thee," etc. To what purpose is it written? Is there a difference if the idols were near to him or far from him? It must be explained that the verse means

thus: From the nature of the idols which are near to thee, thou mayst understand the nature of those which are far from thee. (*I.e.*, usually a seducer comes to tell one from such as are not known to him, and relates before him all the good of the idol, and so seduces him to worship. Hence he said to him: "So does it eat, so does it drink," etc.) R. Ashi maintains: The Mishna which makes one guilty for talking treats of an apostate, who is guilty for talking, as such would not retract after it is seen that such is his habit." Rabhina, however, said: Both Mishnayoth speak of an Israelite, not of an apostate, and they do not differ at all, as the first Mishna says, "who worshipped," and the second states not only "worship," but if he says, "I will," he is also culpable.

It was taught: If one worship an idol because he loves it, or because he fears it, according to Abayi he is culpable, and according to Rabha he is free. The former said so because, after all, he has worshipped it, and therefore he is guilty; and the latter maintains: He is guilty only when he

accepts it as a god; but when this is no longer the case, he is free.

Said Abayi: I take my theory from our Mishna, which states, "If one worship," etc., "sacrifice," etc. Now, as the Mishna explains farther on all the kinds of worshipping, the term "worshipped," without specifying the kind, means for love or for fear. Rabha, however, maintains that the Mishna is to be explained as by R. Jeremiah. Said Abayi: I may infer my theory from the following Boraitha: It reads: "Thou shalt not bow thyself to them"--but thou mayst bow thyself to a man who is equal to thee. But lest one say, "Even if the man were worshipped like Haman?" therefore it reads: "Thou shalt not worship them." Now, Haman was worshipped for fear. We see, then, that such a worship is considered. Rabha, however, explains the Boraitha: Like Haman, who established himself as an idol, but not like him who was worshipped only for fear. And Abayi said again: I infer my theory from the following Boraitha: The anointed priest for war may bring an offering, if he acted unintentionally concerning idolatry. So is the decree of Rabbi. Now, let us see! What means, "he acted unintentionally"? Shall we assume that he thought, of a house of idolatry, that it was a synagogue, and bowed himself? Then why should he bring an offering--his heart was toward Heaven? We must then say that he saw an image and bowed himself. Now, if he accepted it is a god, then he has acted intentionally

and should be put to death. But if he has not accepted it as a god, but bowed himself--*e.g.*, for the honor of the king who was with him? Then it cannot be considered a sin at all, even to the extent of bringing an offering. We must then say that "unintentionally" means for love or for fear. Rabha, however, maintains that his error was that he thought that such a thing was allowed.

R. Zakkai taught in the presence of R. Johanan: If one has sacrificed, smoked incense, poured wine, and bowed himself before an idol, because of one forgetfulness (that the law does not allow it), he is liable for one sin-offering only. And R. Johanan answered him: Go and teach your teaching outside of the college (*i.e.*, it is nonsense). Said R. Abba: As to the theory of R. Zakkai, R. Jose and R. Nathan differ in the following Boraitha: The negative commandment of kindling on Sabbath, which is already included in the negative commandment, "Thou shalt not do any labor," is written for the purpose of teaching that he who kindles transgresses only a negative commandment, which is not under the category of Korath or capital punishment, as for all other labor on Sabbath. And R. Nathan differs from him (see Sabbath). And there is the same difference here concerning bowing. According to R. Jose, bowing was specified for the purpose of showing that he who does so transgresses only a negative commandment, to which capital punishment does not apply. And R. Nathan differs from him with the same theory as concerning kindling.

When R. Samuel b. Jehudah came from Palestine, he said that R. Zakkai had taught before R. Johanan thus: Concerning Sabbath it is more rigorous than all other commandments in one respect, and all other commandments are more rigorous than concerning Sabbath in another respect--viz., concerning Sabbath, if one has done two kinds of labor by one forgetfulness (*e.g.*, he forgot that it was Sabbath), he is liable for two sin-offerings; and in all other commandments--if, for instance, he worshipped with two kinds by one forgetfulness--he is liable to one sin-offering. And in another respect the other commandments are more rigorous than concerning Sabbath; as concerning Sabbath, if he had done any labor unintentionally--*i.e.*, he intended to do another thing and did this--he is not liable at all, while concerning other commandments, if such a thing occurs, he is liable for a sin-offering.

R. Ami said: If one has worshipped by all three worships--

viz., sacrificing, smoking, and pouring--in one forgetfulness, he is liable only for one sin-offering. Said Abayi: The reason of R. Ami's theory is: Because it is written, "Ye shall not worship them," hence the Torah has included all kinds of worship into one. Did Abayi indeed say so? Has he not said: There is written in the Scripture three times "bowing," concerning idolatry: once, that one is culpable if the worship of the idol was by bowing; second, that one is culpable even if the worship of the idol was not by bowing; and the third, to distinguish it from all other worships--that one is liable for it to a capital punishment? You say once, when the usage is to worship thus. Is, then, a verse needed as to this? Is it not written plainly [Deut. xii. 30]: "How did these nations serve their gods? even so will I do likewise"? Say then, once, for such an idol as is not accustomed to be worshipped by bowing, but only occasionally; and once, for such as before which bowing is not used at all"--*e.g.*, Baal Peor; and once, to separate it for capital punishment? Hence we see that he is not in accordance with R. Ami? He said so to give a reason for R. Ami's theory, but he himself does not agree with him.

"*And also if he only says, 'Thou art my god.'*" R. Na'hman in the name of Rabba b. Abuhu, quoting Rabh, said: As soon as he has said, "Thou art my god," he is culpable. But what news is this? If he means capital punishment, did not the Mishna say so? He means to say that he is liable to bring a sin-offering, if this was said by an error, even according to the rabbis, who require an act. But does not a Boraitha state: One is not culpable unless by acting--*e.g.*, sacrificing, smoking, pouring, or bowing? To which Resh Lakish said: Who is the Tana who holds that bowing is also an act? R. Aqiba, who does not require a mental act--from which it is to be understood that the rabbis do? Rabh also means to say in accordance with R. Aqiba. But is this not self-evident? Does not R. Aqiba say that even an unintentional blasphemer is also liable for a sin-offering? Lest one say that R. Aqiba holds liable a blasphemer because the punishment of korath is mentioned in the Scripture concerning him, but concerning bowing, which is not mentioned, even R. Aqiba frees him from this obligation, he comes to teach us that they are compared. As it reads [Ex. xxxii. 8]: "They have bowed themselves to it, and have sacrificed unto it," etc.

R. Johanan said: If not for the Vav in the word "he-elukha"

(brought thee up) in the above-cited verse (which makes it plural and means that they also took part in the exodus from Egypt), all Israel would be liable to be destroyed. However, in this the following Tanaim differ: Anonymous teachers say: If not for the Vav in the word "he-elukha," etc. Said R. Simeon b. Johai to them: This is still worse, as there is a tradition: He who conjoins the name of Heaven with something else is to be destroyed; and therefore the Vav in "he-elukha," which makes the word plural, shows that they were fond of many gods.

"*He who arms, kisses*," etc. When Rabbin came from Palestine, he said in the name of R. Elazar that one is not punished with stripes for all them, unless one vows or determines in its name. But let us see! Why is one not punished for all these? Because the negative commandment is not

plainly written to this effect, but was included in the negative commandment, "Thou shalt not worship them." And there is a rule that for such a commandment no stripes apply. Why, then, should stripes apply to one who vows? This commandment is also not for mental labor, but for manual. And there is a rule that concerning a commandment in which mental labor is not involved, stripes do not apply. He is in accordance with R. Jehudah, who said that for such a negative commandment stripes do apply. As we have learned in the following Boraitha: It reads [Ex. xii. 10]: "And ye shall not let anything of it remain until morning, and that which remaineth of it until morning ye shall burn with fire." Hence the Scripture came to give a positive commandment (ye shall burn) after a negative commandment (ye shall not leave), to say that for the transgression of such a negative commandment stripes do not apply. So R. Jehudah. R. Jacob, however, says: The reason why stripes do not apply is not because of that which is said by R. Jehudah, but because in this commandment no mental labor is involved, and to such no stripes apply. Hence we see that, according to R. Jehudah, even to such stripes do apply.

"*He who vows in its name,*" etc. Whence is this deduced? From [Ex. xxiii. 13]: "And of the name of other gods ye shall make no mention"--which means, one must not say to his neighbor: Await me in such and such a place, where such and such an idol is to be found. "It shall not be heard out of thy mouth" means, one shall not vow or determine in its name, and shall also not cause others to do so. Another explanation to, "It shall not be heard out of thy mouth," is that it is a warning

to a seducer and to a misleader. But concerning a seducer is it not written plainly [Deut. xiii. 12]: "And all Israel shall hear and be afraid"? Therefore it must be said that it is a warning to a misleader, and also that one shall not cause others to vow or determine in its name. And this is a support to Samuel's father, who said that one must not make partnership with an idolater, as it may be that his partner will owe an oath to him, and he will swear by the name of his idol. And the Torah says: "It shall not be heard out of thy mouth," which means: You shall not cause others to vow in its name.

It happened once that Ula lodged in Khalmbu, and when he came to Rabha, he asked him: "Where did the master lodge last night?" And he said: In Khalmbu. Said Rabha to him: Is it not written: "The name of other gods ye shall not mention"? Rejoined Ula: So said R. Johanan: Every idol which is mentioned in the Scripture, one may mention.

R. Jehudah in the name of Rabh said: It happened to a female heathen who was very sick and vowed that if she recovered she would worship all the idols which were to be found. And after her recovery she did so. When she reached Baal Peor she asked how it should be worshipped. And she was told that worshippers ate mangcorn, drank beer, and then uncovered themselves in its face. And she said: "I would rather suffer the same sickness again than perform such a worship." But yet the house of Israel have not done so, as it reads [Num. xxv. 5]: "That have been joined unto Baal Peor," which means like the cover to a pot. However [Deut. iv. 4]: "But ye that cleave unto the Lord," etc., as a twin of dates. A Boraitha states. "Joined to Peor," as a ring on the finger of a woman, "cleave to the Lord" means, literally.

The rabbis taught: It happened to Saphta b. Als, who hired his ass to a certain female heathen. And when she reached the place of Baal Peor, she said to him: "Await me here, I will enter only for a while and come out." And when she came out, he also said to her: "Await me here, I will

also do the same." And to her question: "Are you not a Jew?" he answered: "What do you care?" He then entered, uncovered himself and put the dirt on the nose of the idol. And the ministers of Peor praised him for this, saying that there was no man who worshipped Peor as properly as he did. The sages, however, made him guilty for the proper worship of the idol, although his intention was to disgrace it. And the same is the case if he

throws a stone at Merculis, although with the intention of stoning it, he is nevertheless guilty, for so is the kind of its worship.

R. Menassah went to the city of Turta, and was told that this place is of an idol. And he took up a lump and threw it at it (the idolatrous statue). He was then told that it was Merculis, and he answered that the Mishna states "he who throws a stone at Merculis," *i.e.*, to worship. And when he came to the college he was told that the Mishna means, even if his intention was to stone it. He then said: I will go and take it up. However, he was told that it is the same transgression, for by taking one stone he makes room for another.

MISHNA *VIII.*: If one gives one of his children to Molech, he is not guilty unless he had transferred him to the servants of Molech and let him pass through the fire. If, however, he had transferred and not passed through the fire, or *vice versa*, he is not guilty.

GEMARA: The Mishna speaks of idols, and mentions Molech. Said R. Abiu: Our Mishna is in accordance with him who says that Molech is not an idol at all. As we have learned in the following Boraitha: There is no difference whether one has given of his children to other idols or to Molech--he is culpable. R. Eliezer b. R. Simeon, however, maintains: Only if he has done it to Molech he is guilty, but not if to another idol. Said Abayi: R. Elazar b. Simeon and Hanina b. Antiguus have said the same--R. Elazar b. Simeon, in the Boraitha cited; and Hanina, who said in the following Boraitha: Why does the Torah use the term Molech? [1] To say of every one whom they have accepted as a king over them--be it even a piece of wood--one is guilty if he had transferred one of his children for it. Hence we see that, according to him, one is guilty only concerning Molech, but not concerning another idol. Rabha, however, maintains that Simeon and Hanina differ concerning a temporary Molech, as according to R. Simeon one is not guilty on account of such.

R. Janai said: One is not guilty unless he transfers a child to the servants of the idol, as it reads [Lev. xviii. 2]: "And from thy children thou shalt not give to pass through the fire to Molech." And so also we have learned in the following Boraitha: Lest one say that when he passed his child and has not transferred, he should be guilty, therefore it reads, "Thou shalt not give." If he has transferred and not passed through

the fire, he is also not guilty, because it reads, "to pass through the fire." And if one has done both, but not for Molech, one might say he is guilty? Therefore it reads, "to Molech." If one has transferred and passed to Molech, but not through fire, he is also not guilty, because it reads, "through fire." And it is written also [Deut. xviii. 10]: "There shall not be found among thee any one who causeth his son or his daughter to pass through the fire." And we infer one from the

other. As there it is mentioned plainly "fire," so here also it is meant fire; and as here is meant Molech, so also there is meant Molech. Said R. Aha b. Rabha: If one has transferred all his children to Molech, he is not guilty, as the verse reads, "and from thy children"--but not all. R. Ashi questioned: How is it if one has passed through the fire a son blind or asleep, or one of his grandchildren? The last question may be answered from the following: It reads [Lev. xx. 3]: "Because of his seed he has given unto Molech." To what purpose was it written? Because in the above-cited verse in Deuteronomy it reads "son" and "daughter," and one might say, but not of grandchildren. Therefore it is written [ibid., ibid. 4]: "When he giveth of his seed," in which grandchildren are included.

Let us see! The Tana begins with verse three [3] and ends with verse four [4]. He did so because of another teaching. One might say that one is guilty only for legitimate children, but not for illegitimate; therefore it reads in verse four, from his "seeds," which includes all.

Said R. Jehudah: One is not guilty unless he let him pass in the usual manner. What was that? Said Abayi: A row of bricks were placed for passing, and on both sides fire was kindled. Rabha, however, maintains that it was by jumping, as children used to jump on Purim. (Rashi explains that they used to have a pit in which fire was kindled, and the people used to jump over it.)

There is a Boraitha in accordance with Rabha: One is not culpable unless he has passed in the usual manner of worship. However, if he passed it by, not jumping, he is not guilty. He is also culpable only when he passed his descendants; but not if his brother, sisters, father, mother, or even himself. R. Eliezer b. R. Simeon, however, makes guilty him who passed himself. There is no difference whether he has passed to Molech or to any other idol. R. Eliezer b. R. Simeon, however, maintains: To Molech, but not to others.

Said Ula: The reason why R. Elazar makes guilty him who passes himself is because it reads: "bkho"--literally, "*in* thee," which means "thyself." But do not the rabbis also give attention to the word "bkho"? Is there not a Mishna in Middle Gate: And R. Jehudah said: The reason of it is because it is written "bkho"? There is also another reason--because the verse begins with "although, indeed."

R. Jose b. Hanina said: Three times korath is mentioned concerning idolatry: once for worshipping it as it is done usually; once as not done usually; and once for Molech, although it was not considered an idol. And to him that holds that Molech was also an idol, why is a separate korath needed for it? Is it not included in idolatry? To him who passes his son not in its usual manner (*i.e.*, although he is not put to death by the court, the punishment of korath rests upon him). And to him who holds that he who worships idols--*e.g.*, he sings before one--is also considered blasphemous,--to what purpose is korath mentioned concerning blasphemy? To that which we have learned in the following Boraitha: It reads [Num. xv. 3 1]: "hekorath tekorath"--"hekorath," which means cut off from this world; "tekorath," from the world to come. So R. Aqiba. Said R. Ishmael to him: Is it not written in the preceding verse, "Shall be cut off"? Are there then three worlds? Therefore the expression [in 30] means from this world, and the term "hekorath" means from the world to come; and the expression "tekorath" is not to be considered, as the Torah speaks with the usual language of human beings.

MISHNA *IX*.: Baal ob (mentioned in the Scripture) is the python that makes the dead speak from his armpit, and Yidoui means one that makes the dead speak from his mouth. These two are to be stoned; and he who queries from them is warned [Lev. xix. 31].

GEMARA: Why does our Mishna count both Baal ob and Yidoui, and in Tract Keritoth the Tana mentioned only Baal ob and omitted Yidouim, etc.? (The discussion here is a repetition from Tract Kheritoth, which is the proper place, where it will be translated.)

The rabbis taught: Baal ob is one who ventriloquizes, and a Yidoui is he who puts a certain bone in his mouth, which speaks from itself.

The rabbis taught: There are two kinds of "ob": one who brings up the dead, and one who questions a dead head. He

who brings up the dead--it appears before him not in the usual manner, but with its feet on top; and on the Sabbath it does not come up at all. But he who does this with the head of one dead answers as usual, and answers also on Sabbath. Also about this, R. Aqiba was questioned by Turnusrupus: Why is this day (of Sabbath) distinguished from all other days? To which Aqiba answered: Why is this man (Turnusrupus) distinguished from all other men? And he answered: Because it is the will of my master (the king). Rejoined R. Aqiba: Sabbath is also distinguished because it is the will of the Lord of the Universe. Said Turnusrupus: You misunderstand me. My question is: Whence do you know that this day is Sabbath? And he answered: From the river of Sabbation (which rests on this day); and it may also be proved from the fact that he who occupies himself with bringing up the dead cannot do his work on Sabbath; and also the grave of your father may prove that the smoke which comes out of it on all week days does not come out of it on all week days does not come out on Sabbath. Exclaimed Turnusrupus: You have disgraced, ashamed, and insulted me.

Is not he who queries an "ob" the same as one who inquires of the dead? Nay! The latter is as we have learned in the following Boraitha: By "inquire of the dead" is meant he who does not take food all day, and while he suffers hunger he goes to a cemetery, and remains there overnight for the purpose that the unclean spirit should rest upon him. And when R. Aqiba used to read this passage, he would weep, saying: Is not an *a fortiori* conclusion to be drawn from this passage? If one who makes himself suffer from hunger, for the purpose that the unclean spirit should rest upon him, usually succeeds, and the spirit in question rests upon him, so much the more, if one makes himself suffer hunger for the purpose that the pure spirit should rest upon him, should he succeed in reaching his desire; but what can we do if our sins cause that our desire shall not be reached, as it reads [Is. lix. 2]: "But your iniquities have ever made a separation between you and your God"? Said Rabha: If the upright would take care to be clean from any sin whatsoever, they would be able to create a world (and he infers it from the verse just cited). Rabha created a man and sent him up to R. Zera. The latter spoke to him, and he did not answer. Exclaimed R. Zera: I see that thou wast created by one of our colleagues. It is better that thou shouldst be returned to

the earth from which thou wast taken. R. Hanina and R. Oshia were accustomed to sit every eve of Sabbath studying the book of creation, and create a calf like that of the third offspring of a living cow, and they used to consume it on Sabbath.

The rabbis taught: An observer of times is, according to R. Simeon, he who passes the outcome of a certain male over his eye (for the purpose of witchcraft); according to the sages, it is he who dazzles the eyes. R. Aqiba, however, said: The one who reckons times and hours, saying: This day is good to go on the road, such a day is good to buy things, on the eves of the Sabbatic years the wheat is fine, such and such a time is good for picking peas as they will not become verminous.

The rabbis taught: An enchanter is he who says: "My bread has fallen from my mouth to-day, and it is a bad sign"; or, "My cane has fallen from my hands"; or, "My son called me up from my back"; or, "A robin is calling me"; or, "A ram has crossed my way"; or, "A snake is on my right, a fox is on my left, and all this is a bad sign." Or, if one says to a collector: Do not begin with me, as this will be a bad sign for me. And the same is it if he says: "To-day is the first day of the month," or, "It is the Sabbath eve, and if I should pay at this time I will have a bad week" or "a bad month." And the same is the case with them who enchant with cats, birds, and fish (*i. e.*, I will not begin this thing because a cat has crossed my way, etc.). So is the teaching of the rabbis.

MISHNA *X*.: He who violates the Sabbath with such a labor as is liable to korath if done intentionally, and to a sin offering if unintentionally.

GEMARA: From this we see that there are violations of Sabbath to which neither korath nor a sin-offering apply. What are they? The limit of the cities (Te'humi), in accordance with R. Aqiba; and kindling, according to R. Jose.

MISHNA *XI*.: He who curses his father or mother is not punished with a capital punishment, unless he curse them by the proper Name of God. If he has done so with a pseudonym, according to R. Mair he is guilty, and according to the sages he is not.

GEMARA: Who are the sages? R. Mnahem b. Jose of the following Boraitha, who said thus: It reads [Lev. xxiv. 16]: "When he pronounceth the holy name," etc. Why is here repeated "the holy name"? It should read: "If he blaspheme,"

etc. To teach that in the case of cursing father and mother one is not guilty unless he do so with the Holy Name.

The rabbis taught It reads [ibid., xx. 9]: "Every one," instead of "one." This came to include a daughter, or an hermaphrodite, or an andogyn. "That curseth his father and his mother." But whence do we know that the same is the case when he curses his father only, or his mother only? Therefore it reads farther on, "his father and his mother has he cursed." Hence the word "cursed" corresponds with the word mother"; and in the beginning of the verse the word "cursed" corresponds with "father," which is to be explained as that he is equaly guilty if he has cursed his father or his mother. So is the decree of R. Jashia. R. Jonathan, however, said: The

beginning of the verse can be explained that it means both together, and also one or the other; and in such a case the applicability is to each of them, unless the verse itself explains that both together are meant. "Shall be put to death"--by stoning! But perhaps with some other kind of death mentioned in the Scripture? It reads here, "His blood shall be upon him," and elsewhere it is written, "Their blood shall be upon them." As there it means stoning, the same is it here. But here we have heard of the punishment. Where is the warning? [Ex. xxii. 27]: "The judges thou shalt not revile, and a ruler among thy people thou shalt not curse." "If one's father were one of the two, he is included; but if he was neither a judge nor a Nasi, whence do we know that the same is the case? This can be inferred from the construction of the leading rule in both cases (*i. e.*, one who is to be respected must not be cursed, although the nature of respecting them is not equal), as concerning a judge we are commanded to follow his decision, which is not the case with a Nasi; and concerning the latter We are commanded not to rebel against him, which is not the case with a judge. However, in one case they are equal, in that they are of "thy people," and thou must not curse them. The same is the case with the father, who is also of "thy people" and must be respected by thee. Hence you are warned not to curse him. And lest one say that, after all, we can infer nothing from the case in which they are equal, as their dignity is the reason of their equality, which is not the case with a common father, concerning this it reads [Lev. xix. 14]: "Thou shalt not curse the deaf"--from which we see that the verse speaks of the unfortunates of "thy people." And lest one say that this is also

different, as the misfortune is the reason, the above case of judge and Nasi proves that this is not so. And again, their dignity is the reason? The case of the deaf proves that it is not so. Hence, although the reason of the one is not similar to that of the other, in one thing, however, they are equal, in that they are of "thy people" and must not be cursed. The same is the case with his father. And still, lest one say that, after all, the three above mentioned are distinguished, which is not the case with the father, it may be said that I the reason is because of distinction, it would not be necessary for the Scripture to write all the three, as a judge and a death or a Nasi and a death would suffice. Why, then, all the three? As it is not needed for itself, apply it to a common father. And all this is correct to him who explains the word "Elohim" in the above-cited verse [Ex. xxii.] with "judges"; but to him who explains the word "Elohim" as meaning God, what can be said? For there is a Boraitha: Elohim in this verse is common, and means "judges." So R. Ishmael. R. Aqiba, however, maintains that Elohim is "holy." And there is another Boraitha: R. Eliezer b. Jacob said that this verse is a warning against blasphemy. He who holds that the word Elohim here is common, must say that the holiness is inferred from this passage (by drawing an *a fortiori* conclusion--if one is warned not to curse a human judge, so much the more is he warned not to curse the Holiness), as we do not find any other warning besides; and he who holds that the word Elohim is "holy," the case of a commoner may also be inferred--from the double Lamed in the word "tekhalel" (curse), which could be expressed "tekhal" with one Lamed.

MISHNA *XI.*: He who sins with a betrothed damsel is not guilty to be stoned unless she was a maiden betrothed and still in her father's house. Should it happen that two had sinned with her, the first is to be stoned and the second choked.

GEMARA: The rabbis taught: It reads [Deut. xxii. 23]: "if a damsel"--not a *vigaros*; "a maiden"--not one who had already known man; "betrothed"--not married. And [ibid., ibid. 21] it reads, "in her father's house," excluding if the father had already transferred her to the

messengers of her husband.

Said R. Jehudah in the name of Rabh: This is in accordance with R. Mair. The sages, however, say: A betrothed damsel,

even if she is still a minor. Said R. Aha of Diphthi to Rabhina: Whence do you know that the Mishna is in accordance with R. Mair and excludes a minor--perhaps it is in accordance with the rabbis excluding a *vigaros* only? And he answered: If so, the Mishna should state that he is not guilty but as concerning pression means to exclude a minor also; and about this no more discussion.

R. Jacob b. Adda questioned Rabh: In accordance with R. Mair, if it happened one had sinned with a betrothed minor, does he exclude him from any punishment, or from stoning only? And he answered: Common sense dictates from stoning only. But is it not written [ibid., ibid. 22]: "Shall both of them die," which is explained elsewhere, that it means, provided both were alike concerning age? And Rabh kept silent. Said Samuel: I do not understand why Rabh was silent, and did not refer him to ibid., ibid. 26, which reads: "He shall die alone"?

In this point Tanaim differ. "Both shall die" means, provided both were alike concerning age. So R. Jashia. R. Jonathan, however, said: From the verse [25] is inferred that he alone must be put to death. But what does R. Jashia infer from the verse, "He alone," etc.? That which we have learned from the following Boraitha: If ten men knew her while she was still a virgin, all of them are to be stoned. Rabbi, however, maintains that only the first one is to be stoned, and all the others choked, as thus it reads: "And the man that lay with her shall die alone." What does it mean? Said R. Huna b. R. Jehoshua: Rabbi holds with R. Ishmael that a betrothed damsel is to be burned, but not one married. And the verse which reads about one betrothed is to be explained thus: Only the beginner is to be burned, but all others are to be choked. Said R. Bibi b. Abayi: Our master, R. Joseph, does not say so. But that Rabbi holds with R. Mair, who said that if the daughter of a priest was married to one who was prohibited from marrying her, and she has sinned, her death is choking. And Rabbi meant to say thus: If the beginning of her profanation was sin, then she is to be burned; but if she was already profaned by an illegal marriage, she is to be choked. And his expression, "And so also it reads: 'He shall die alone,'" is not to be taken particularly, but as a remark.

MISHNA *XII*.: A seducer means one who is himself a commoner and seduces a commoner--*e. g.*, he says: There is an

idol in such and such a place which so and so eats, so and so drinks, and so and so does good, and so does harm.

Concerning all who are liable to capital punishment biblically, it is not allowed to hide witnesses except in this case: If, *e.g.*, he said the above to two persons, they are his witnesses--they bring him up to the court, and they themselves stone him. If, however, he said it only to one, he may say: I have some colleagues who will also follow your advice, if you will say the same to them.

But if he is shrewd, and does not want to talk in the presence of two persons, they may hide witnesses behind a fence, and he may say to him: Repeat to me what you said at first. And if he repeats, he may say to him: How can we leave our Heavenly Father and go to worship idols of stone and wood? If he retracts--well and good. If, however, he answers: This will be good for us and also is our duty, the witnesses who are hidden behind the fence may bring him to court and stone him.

A seducer is considered he who says: I will worship; I will go and worship; Let us go and worship; I will sacrifice to such and such an idol; or, Let us go and sacrifice; I will smoke incense before it; I will go and smoke; Let us go and smoke; I will pour wine before it; I will go and pour; Let us go and pour; I will bow myself; I will go and bow; Let us go and bow.

GEMARA: The Mishna states: A seducer means a commoner. But how would it be if he should say: I am a prophet, and tell you to do so in the name of the Lord? Choking would apply. And also "he seduces a commoner" (individual). But how if he should seduce many? Then also choking would apply and not stoning. We see, then, that our Mishna is in accordance with R. Simeon of the following Boraitha: To a prophet who had misled, stoning applies. R. Simeon, however, said: Choking. To the misleader of a misled town, stoning applies, according to R. Simeon, choking. How, then, will be understood the succeeding Mishna, which states: A misleader is named he who says, "Let us go and worship idols"? To which R. Jehudah in the name of Rabh said: It speaks of the misleader of a misled town, who is to be stoned, which is in accordance with the rabbis. Hence our Mishna is in accordance with R. Simeon, and the succeeding Mishna in accordance with the rabbis. Said Rabhina: Both are in accordance with the rabbis; and by the expression, "he seduced a commoner," he does not mean to exclude a majority. But it was said in

the Mishna, "not only"--*i.e.*, not only is he to be stoned who seduces a majority, but even a single commoner. And R. Papa said: Even the beginning of the Mishna, "the seducer is a commoner," does not mean to exclude a prophet, as it was supposed, but it means to say: He is a commoner idiot, to whom hiding witnesses is allowed, which is not the case with all other criminals. And how used they to do with such a person? They used to light a candle in the inner chamber, engaging him with talk, and the witnesses were placed in the outer chamber so that they should see him and hear his voice, while he could not see them; and there the person whom he attempted to seduce tried to make him repeat, as stated above in the Mishna.

MISHNA *XII.*: By a misleader is meant one who says: Let us go and worship idols. A conjurer is liable to be stoned only when he did an act, but not if he dazzled the eyes. R. Aqiba said in the name of R. Jehoshua: As, for instance, if there are two who gather cucumbers from a field by enchantment--one of them is liable to a capital punishment and one of them is entirely free. If one has really gathered all of them to one place by witchcraft, he is to be stoned; and the other, who did so only by dazzling the eyes, but in reality the cucumbers remained in their place, is entirely free.

GEMARA: R. Jehudah in the name of Rabh said: The Mishna speaks of the misleader of a misled town. "A conjurer," etc. The rabbis taught: It reads: "A witch." There was no difference whether male or female--why, then, the term "witch"? Because in most cases women used to be engaged in witchcraft. What kind of death applies to them? R. Jose the Galilean said: It reads

[Ex. xxii. 17]: "Thou shalt not suffer a witch to live"; and it reads [Deut. xx. 16]: "Shalt thou not let live a single soul." As there it is meant by the sword, the same is the case here. R. Aqiba, however, said: It is to be inferred from [Ex. xix. 13]: "It shall not live." As there stoning is meant, the same is the case here. Said R. Jose: My analogy is from "techaiah"--"let not live" (a female), while your analogy is from "yechaiah"--"shall not live" (a male). And he answered: My analogy is to infer Israel from Israel, to whom many kinds of deaths are prescribed, while according to your analogy, Israel from the descendants of Noah should be inferred, and there is only one death prescribed for descendants of Noah. Ben Azai, however

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said. Ex. xxii. 17 is to be inferred from the next verse [18] "Whosoever lieth with a beast," etc. As to this stoning applies, the same is the case here. Said R. Jehudah. to him: Because this verse is near to the other, therefore the witch should be stoned? According to my opinion there is another reason. Ob and Yidoui ought to be included in the case of conjurers--why, then, does the Scripture separate them? Only for the purpose of comparing other conjurers to them. As to them stoning applies, so does it to all conjurers.

According to R. Jehudah: Let Ob and Yidoui be considered as two verses which command one and the same. And there is a rule that from such nothing is to be inferred. Said R. Zecharias: Infer from this that R. Jehudah does not hold this theory and maintains that from such it may be inferred. It reads [Deut. iv. 35]: "There is none else besides him." Said R. Hanina: Even witchcraft has no effect against a heavenly decree. There was a woman who tried to take earth from beneath the foot of R. Hanina. And he said to her: If you think you will succeed in affecting me with your witchcraft, go on and do so, as I am not afraid. It reads: "There is none else besides Him." Is that so? Did not R. Johanan say: It may happen that witchcraft may affect even against heavenly decrees? With R. Hanina it was different, as his strength was great, being righteous all his life. Aibu b. Nagri in the name of R. Hyya b. Abba said: In Ex. vii. 11 it reads, "blahatehem," and in ibid. viii. 3 it is written, "blatehem." The latter means by the act of demons, and the former by the act of sorcery. And so also is it expressed in Gen. iii. 24, "lahat," or the sword which revolveth (revolveth by itself, which looked like witchcraft). Said Abayi: A conjurer who is particular to use a utensil, it is by a demon, and he who is not particular, it is by witchcraft.

He said again: The Halakhas of witchcraft are similar to the Halakhas of Sabbath. There are some to which stoning applies; there are some which are not allowed to start with, but if, nevertheless, one has done them, he is free; and some are allowed even to start with. To him who did an act by witchcraft, stoning applies. To dazzle the eyes is not allowed to start with, but if one did, he is free. And it is allowed to start with, as said above. R. Hanina and R. Oshia were accustomed to create a calf, etc.

Said R. Ashi: I have seen the father of a certain man Karna

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scatter strips of silk from his nose. It reads [Ex. viii. 15]: "Then said the magicians of Pharaoh, This is the finger of God." Said R. Elazar: Infer from this that a demon is not able to produce a creation the size of which is less than a barley. Said R. Papa: They are not able to create even the size of a camel; but if they needed it, they got it from far places, which they could not do

with smaller creations.

Said Rabh to R. Hyya: I have seen a rider of a camel who took his sword, cut off the head of the camel, and thereafter rung a bell, and the camel stood up. Said R. Hyya to him: Did you see after it stood up, that the place was dirty from blood and dust? There was nothing. Hence it was only a dazzling of the eyes.

It happened that Zera was in Alexandria of Egypt, and bought an ass. Afterward, when he carne (to a river) to let the ass drink, it disappeared (the charm was broken), and there stood a landing board. And he was told: If you were not Zera, your money would not be returned, as there is no one who buys something here and does not try it on water. Janai happened to stop at a certain inn and asked for water. And he was supplied with *sthitha* (water mixed with flour), and he noticed that the woman who brought it mumbled. He poured out a little and a serpent came out of it. And then he said to her: I drank from your water, now you may also drink from mine. She did so and became an ass. He then rode upon her to the market. And her associate, who recognized the witchcraft absolved her, and then every one saw that he was riding on a woman.

It reads [ibid., ibid. 2]: "And the frogs came up." Said R. Elazar: It was only one frog which multiplied over all Egypt with its offspring. In this point Tanaim differ. R. Aqiba said the same as Elazar. Said Elazar b. Azariah to him: Aqiba, what have you to do with Haggadah? Leave it, and show forth thy study in the difficulties of Negaim and Ohaloth. It was only one frog to whose croaking all other frogs were gathered.

"*R. Aqiba said*," etc. Did R. Aqiba indeed learn this from R. Jehoshua? Is there not a Boraitha: When R. Eliezer became sick, R. Aqiba and his colleagues came to make him a sick-call. He was under a canopy, and they were placed in his palace. That day was an eve of Sabbath, and Hurcanos, his son, entered to undress his phylacteries. 1 His father rebuked

him, and he went out as if he had been under the ban, and said to his colleagues: It seems to me that the mind of my father is not clear. And R. Eliezer, who heard this, said to them: And I think that the minds of both his mother and himself are unsound, as they occupy themselves with undressing phylacteries on account of which the Sabbath would not be violated, even if they were to remain upon him the whole Sabbath, while so long as they have not as yet prepared other things for Sabbath, which would be a violation subject to a capital punishment if done on Sabbath.

When the above-mentioned sages saw that his mind was clear, they approached him a distance of four ells, and became seated. He then questioned them: To what purpose is your call? To which they answered: We came to learn Torah from you. And to his question: Why have you not come until now? They answered: We had no time. He then exclaimed: I wonder if these people will die a natural death! Said Aqiba to him: And what will be my lot? And he said: Yours will be still harder than theirs. He then took his two arms, put them on his heart, and said: Woe to ye! my two arms, which are as two parchments of the Holy Scrolls, of which nothing can be read when they are rolled together (he meant that when he should die, all his wisdom would go with him, as there were none to whom to teach it). I have studied much and taught much. I have studied much, and have not diminished from the wisdom of my masters even to the extent of

what a dog laps from the sea. I taught much, and my disciples have not diminished from my wisdom--even as the painting pencil which is inserted in a tube. And not this only, but I have learned about three hundred Halakhas as to planting cucumbers, and there was no man who could question me something concerning them except Aqiba b. Joseph. As it once happened, I was on the road with him, and he said to me: Rabbi, teach me something about planting cucumbers. And I said something, and the whole field was filled with cucumbers. And he said to me: Rabbi, with this you taught me the planting of them; now teach me the removing of them. And I said something and all were gathered to one place. Hence we see that he had learned this of R. Eliezer, and not of R. Jehoshua? He learned it from R. Eliezer, but did not understand thoroughly. But thereafter, however, he learned this from R. Jehoshua thoroughly, and it remained in his mind. But how could he do so? Have

we not learned in a Mishna that he who does an act with witchcraft deserves a capital punishment? To learn it is different. As the Master said: It reads [Deut. xviii. 9]: "Thou shalt not learn to do"--which means: Thou must not learn to do, but thou mayst learn it to understand it for the purpose of deciding cases.

Footnotes

150:1 Mishnas mentioned in the text will be translated in their proper places.

151:1 The text here is very complicated, and Rashi, who tries to explain it at length against his method, admits that there may be objections to it, and maintains that the reason of betrothed and married does not hold good. But the basis is, what is said above, that stoning applies to a blasphemer, etc., who laid their hands on the main principle. We have done our best to give an idea of the text to the reader.

151:2 Here also is repeated why stoning is more rigorous than the two others, and the same reasons are given, which it is not necessary to repeat.

156:1 Leeser translates "own lives" according to its sense. We, however, translate it literally, according to the Talmud.

160:1 The text reads, "•••• ••••• {Hebrew *L?ShT ?HRYM*}," literally, "the wife of many strangers," and so it means. The explanation of Rashi that the word *acherim* means a Samarite, is probably because he did not know of the existence of such a sect who live in common with their wives. It may also be that the word "Samaritan," in Rashi, was corrected by the censor instead of "heathen" or idolator. However, this is certain, that the expression "acherim" in the Gemara is original, and if it meant a heathen or a Samarite, it would not hesitate to say so. It therefore seems to us, that our translation is correct.

163:1 For the explanation of a pleonastic term we refer the reader to Mielziner's "Introduction to

the Talmud" (page 150).

164:1 The term "as they lie," translated by Leeser, is not correct, as it reads "mishkhbey," which is plural and means "lyings," from which the Gemara infers that there are two lyings regarding a woman.

166:1 We deem it expedient not to translate about two pages of the text preceding the next Mishna, treating of miserable crimes with men and animals, and giving the discussion with questions and answers, it would be undesirable to express in the English language. However, it seems to us important to give the opinion of Rabh: "A minor who was over nine years and one day is guilty, and may be punished the same as one of age, if he commit a crime with man, or an animal of any kind and age." (And there is a Boraitha which agrees with him.) This is all that we think proper to take from the text.

168:1 It would be of no use to quote the verse, as every word in it is used for an analogy of expression of the Hebrew terms. There, is besides, a difference of opinion among the Amoraim, which expression is to be used for an analogy, and what it means; and to translate it all, we would have to fill our page with Hebrew words and their explanations. After all, it would be of no importance, as the fact that to the children of Noah seven commandments were given is traditional.

170:1 We do not understand this similarity, although Rashi in his commentary tries to explain it at length. It is so complicated as to be untranslatable into English.

170:2 The term in Hebrew is "be-adam," literally, "in the man"' Leeser, how, ever, translates according to the sense.

172:1 The text farther on discusses about a proselyte, whose mother embraces Judaism when he was yet an embryo--which relationship is allowed to him and which not; also if a heathen is allowed to marry his daughter; if a slave may marry his sister or daughter, etc.--all of which, as we deem it not fit for translation, we omit.

172:2 Leeser's translation does not correspond.

173:1 The term in Hebrew is "obed"; literally, "worshipped," and also "works up"; and *ebed* means "a slave." Hence his analogy.

176:1 It is almost the first time that we have translated against our method, announced in the third of the explanatory remarks on back of title pages, the reason of which we hope the render will understand.

178:1 This is explained in the Gemara by R. Jeremiah.

178:2 Leeser has omitted this; we do not know the reason why.

187:1 The term for king in Hebrew is *melech*.

198:1 See our "Phylacterien Ritus," p. 49, footnotes.

Next: Chapter VIII

CHAPTER VIII.

RULES AND REGULATIONS CONCERNING A STUBBORN AND REBELLIOUS SON. AT WHAT AGE AND WHAT HAS HE TO DO TO BE CHARGED AS SUCH? HOW IS IT IF *e.g.*, HIS FATHER CONDEMNS HIM, BUT NOT HIS MOTHER, OR *vice versa*. IF ONE OF HIS PARENTS WERE LAME OR BLIND, ETC. IF HE RUNS AWAY BEFORE THE DECISION WAS RENDERED. CONCERNING BURGLARY AND IF A BURGLAR DESERVES CAPITAL PUNISHMENT, MUST PAY THE DAMAGE CAUSED BY BREAKING IN.

MISHNA *I*. A Stubborn and rebellious son--at what age may he be considered such? From the time he brings forth two hairs till they encompass the face: it does not mean the chin, but the bottom (pubes); but the sages used to speak with delicacy.

It reads [Deut. xxi. 18]: "If a man have a stubborn and rebellious son," etc. A son, and not a daughter; a son, but not a mature man. However, a minor is free from such a charge, as the commandment's obligation does not as yet rest upon him.

GEMARA: Whence do we know that a minor is free? Whence do we know! Does not the Mishna give the reason, "because the commandment's obligation does not as yet rest upon him." And secondly, where do we find that the Scripture has made a minor liable, so that in this case it is necessary to free such? We mean to say thus: Is, then, the punishment of a stubborn son because of his sins? He is punished because of his future (as will be explained farther on). Then it would be supposed that the same. is the case even when he is still a minor. And again, the Mishna itself states, "a son, but not a mature man." And if it Jehudah in the name of Rabh: It reads: "If a man has a son," which means a son who has grown up almost to maturity.

"*Till they surround*," etc. R. Hisda said: A minor who has

born a son--the latter does not become a rebellious son: which means, when a man has a son, but not a son who has a son. But was not what R. Jehudah said in the name of Rabh inferred from the same verse? It should read, "If there shall be a son to a man."

And from what is written, "when a man has a son," we infer also what R. Hisda said. However, he differs with Rabha, who said elsewhere that a minor cannot beget children. As it reads [Num. v. 8]: "But if a man have no kinsman." And to the question: Is it possible that a man in Israel should have no kinsman? it was said that the verse speaks about the robbery of a proselyte (who has no kinsman in Israel). But why does the Scripture mention a man? It should read, "if he has no kinsman," to teach that if the proselyte was already a man you have to inquire; for perhaps he has begotten children, and thus has kinsmen. But if he was a minor, you have not to inquire, as a

minor cannot beget children. Abayi objected to him from [Lev. xix. 20]: "And if a man lie," etc.--as to which a Boraitha states, "A man!" But whence do we know that the same is the case with a minor after the age of nine years and one day, who is already fit to have connection with a woman? Therefore it is written, "and if a man," to add the minor just mentioned. (Hence we see that such is already fit to beget children.) Rejoined Rabba: He is fit to have connection, but not to beget children, which is equalized to grain which has not as yet grown up to a third of its usual growth; and if such were sown, it would not reproduce. Is this so? Did not the disciples of R. Ishmael teach: It is written, "a son"; but not when he is a father. Now let us see how was the case. Shall we assume that his wife was pregnant just after he grew two hairs, and that he begot the child before the above-mentioned encompassing was completed. Has she, then, so much time? Did not R. Khruspdai say that the prescribed time for a rebellious son is only three months? You must then say she was pregnant before he grew two hairs, and begot a child before the encompassing was complete. Hence we see that a minor begets children? Nay! she was pregnant after he grew two hairs, and begot after the encompassing. And the difficulty about what was said by Khruspdai was explained by R. Dimi after his return from Palestine thus: In the West it was said, "a son," but not one who is fit to be called a father, as he has already a pregnant wife.

The text says: Khruspdai in the name of R. Sabatta said: The time for a rebellious son is only three months. We, however, have learned in a Mishna that the prescribed time is from when he grows two hairs until the encompassing is complete. However, if the completion was before three months, the time has already elapsed; and the same is the case when the encompassing was not completed after the three months had elapsed.

R. Jacob of the city of Nhar Pauqud was sitting before Rabhina, and said in the name of R. Huna b. Jehoshua: From Khruspdai's theory we may infer that a woman who bears in the seventh month cannot be recognized as pregnant after the first third of her pregnancy. For if it were so, why was it said in the West that he is fit to become a father after three months--would not two and a third suffice, as then the pregnancy is already recognizable? Answered Rabhina: This cannot be taken as evident, as the majority do not bear children in the seventh month, but in the ninth. All this was declared to R. Huna b. Jehoshua, and the latter exclaimed: Do we, then, consider a majority in criminal cases? The Torah says: The congregation shall judge, the congregation shall save and you say that we shall go after a majority. His answer was brought back to Rabhina, to which the latter replied: Is it indeed so--that we do not consider a majority in criminal cases? Have we not learned in a Mishna that if one witness says it was in the second of the month and the other says that it was on the third, their testimony is valid, since to one the intercalation of the month was known, but not to the other. Now, if a majority which does not know of the intercalation should not be considered, why should their testimony be valid? Say they are aware of it, but they contradict each other! Hence we must say that the majority is considered.

R. Abiah b. Rabba b. Nahmani in the name of R. Hisda, according to others the latter in the name of Zeeli, said: All agree that a minor of nine years and one day is fit to have connection with a woman, and in a case of adultery it is considered; and they agree also that at less than eight years of age one is not fit, and it is not considered. And the point of their difference is from the age of eight up.

The school of Shammai holds: We may infer from the first generation. And the school of Hillel holds: We may not.

And whence do we know that the first generation produced children at the age of eight? From [Gen. xi. 27]: "Now these

are the generations of Therach: Therach begat Abram, Nachor, and Charan." Abram was one year older than Nachor, and Nachor was one year older than Charan. And it reads [ibid., ibid. 29]: "And Abram and Nachor took themselves wives: the name of Abram's wife was Sarai; and the name of Nachor's wife was Milcah, the daughter of Charan, the father of Milcah, and the father of Yiscah." And R. Itz'hak said: There is a tradition that Yiscah is identical with Sarai. Now, how much was Abram older than Sarai? Ten years. And how much was he older than her father? Two years. Hence, when Charan bore Sarai he was eight years. But perhaps Abram was the younger, and the enumeration in Scripture is not particular, being according to their wisdom. And that the Scripture used to enumerate according to wisdom, and not age, may be seen from [ibid. vi. 10]: "And Noah begat three sons--Shem,, Ham, and Japheth." And from the latter passage it is inferred that Shem was the youngest, and nevertheless he is named first, because of his wisdom. Said R. Kahana: I told this to R. Zebith of Nahardea, and he answered: Ye learned this from the cited passage. We, however, infer this from [ibid. x. 21 "But unto Shem also, the father of all the children of Elier the brother of Japheth the elder." Hence we see that Japheth was the oldest of all the brothers.

Now the question, "Whence do we know that the first generations produced children at eight years?" still remains unanswered. This is to be inferred from the following. It reads [Ex. xxxv. 30]: "And Moses said unto the children of Israel, See, the Lord hath called by name Bezaleel the son of Uri, the son of Chur, of the tribe of Judah"; and in I. Chron. ii. 19, 20, it reads: "And when Azubah (the wife of Caleb) died, Caleb took unto himself Ephrath, who bore unto him Chur. And Chur begat Uri, and Uri begat Bezaleel." And when Bezaleel was engaged in building the Tabernacle, he was at least thirteen years old. As it reads [Ex. xxxvi. 4]: "Every man from his own work which they were doing"; and one is not called a man before the age of thirteen. And there is a Boraitha: The first year Moses prepared all that was necessary for the Tabernacle, and in the second year he erected it and sent the spies. And it reads [Joshua, xiv. 7]: "Forty years old was I when Moses the servant of the Lord sent me"; and [ibid., ibid. 10]: "Behold, I am this day eighty and five years old." Now, take off fourteen, the age of Bezaleel from the forty of Joshua when

he was sent as a spy, and there remain twenty-six; take off two years for the three pregnancies with Uri, Chur, and Bezaleel, and there remain twenty-four. Hence each of them produced at the age of eight.

"*A son, and not a daughter*," etc. There is a Boraitha: R. Simeon said: According to common sense, a daughter should be more open to the charges of stubbornness and rebelliousness, as it is to be supposed that her future be to stand in the way and entice men to sin. But so is the decree of the Scripture--"a son, and not a daughter."

MISHNA *II*.: When does such become guilty? When he consumes ατρι τη μ •ριον {Greek *atri thmórion*} of meat and drinks half a lug of Italian wine. R. Jose, however, maintains: Meat not less than a manna, and wine not less than a whole lug. If, however, he ate at a banquet of a meritorious society, or at the intercalation of a month, or at second tithe in Jerusalem; or he ate carcasses, illegal meat, or reptiles, and second tithe and consecrated things which were not redeemed, or mixed grain of first tithe from which the heave-offering was not separated. There is a rule: If he ate a thing which is meritorious, or, on the contrary, a thing which is a transgression--if he consumes any kind of food but not meat, any kind of beverages but not wine--he cannot be condemned as a stubborn and rebellious son, unless he eats meat and drinks wine. As it reads [Deut. xxi. 20]: "He is a glutton and a drunkard." And although there is no direct support in the Scripture that gluttony means meat, and drunkenness, means wine, a hint of this is to be found in [Prov. xxiii. 20]: "Be not among those that drink wine, among those that overindulge in eating meat." 1

GEMARA: R. Zerah said: The term "tertimory" mentioned in the Mishna--I don't know how much it weighs. But from the fact of R. Jose having doubled the measure of wine from half a lug to a lug, I understand that he means also to double the weight of meat. Hence a "tertimory" must be half a manna.

R. Hanan b. Muldha in the name of R. Huna said: He is not guilty unless he consumes the meat and the wine raw. Is that so? Did not both Rabha and R. Joseph say that he who consumes meat and wine raw is not to be condemned as a stubborn

and rebellious son? Said Rabhina: By raw wine is meant refined and not refined, and by meat is meant cooked and uncooked, as usually consumed by thieves.

Both Rabha and R. Joseph said: If he consumed salted, meat and drank wine from the press, he cannot be condemned as a stubborn and rebellious son. What is to be considered salted meat? When it has lain in salt for three days. And, what is called wine from the press? When it is still fermenting.

R. Itz'hak said: It reads [Prov. xxiii. 3 1]: "Do not look on the wine when it looketh red"--meaning that you shall not look for wine which makes red the faces of the wicked in this; world, and makes them pale in the world to come. Rabha said: You shall not look for wine which causes bloodshed. 1

When R. Dimi came from Palestine, he said: About the verse [ibid., ibid. 29, 30]: "Who hath woe? who hath sorrow? who hath quarrels? who hath complaints? who hath wounds without cause? who hath redness of eyes? They that tarry late over the wine; they that come to seek for mixed drink." It was said in the West that he who tries to explain them from their beginning to their end is correct, and he who tries to explain them from their end to their beginning is also correct. 2

Eubar the Galilean lectured: Thirteen vavs are enumerated, in the Scripture concerning wine, as in Genesis ix., from 20 to 25, there are thirteen vavs: "And Noah, who was a husbandman,

began his work, and he planted a vineyard. And he drank of the wine, and became drunken; and he uncovered, himself within his tent. And Ham, the father of Canaan, saw the nakedness of his father, and told it to his two brothers without. And Shem and Japheth took a garment, and laid it upon the shoulders of both of them, and went backwards, and covered the nakedness of their father; and their faces were turned backwards, and they saw not their father's nakedness. And

Noah awoke from his wine, and discovered what his younger son had done unto him." 1

R. Hisda in the name of Uqba, according to others Mar Uqba in the name of R. Sakkai, said: The Holy One, blessed be He, said to Noah: "Noah, why didst thou not learn from Adam the First that all the troubles he had were caused by wine"? And this is in accordance with R. Mair who maintains that the tree of whose fruit Adam the First partook was a vine. As we have learned in the following Boraitha: R. Mair said that the tree of whose fruit Adam the First partook was a vine, as there is no other thing which causes so much lamentation as wine does. And R. Jehudah said: It was wheat, as a child is not able to call mother or father before it has experienced the taste of wheat. R. Nehemiah said: It was a fig-tree, as their remedy came from the same thing by which they had transgressed. For it reads [Gen. iii. 7]: "And they sewed fig leaves together."

It reads [Prov. xxxi. i]: "The words of king Lemuel, the prophecy with which his mother instructed him." Said R. Johanan in the name of R. Simeon b. Jochai: Infer from this that his mother tied him to a pillar, saying: "What (hast thou done), O my son? and what, O son of my body? and what, O son of my vows?" "O my son"--all are aware that thy father has feared Heaven, and now that people see thee going in a wrong way, they will say: "It was caused by his mother." "The son of my body" means: All the wives of thy father never saw the king again after their pregnancy, which was not the case with me, as I have troubled myself to see him again after pregnancy, for the purpose that my child should be of good health. "The son of my vows"--all the wives of thy father used to vow to the sanctuary for the purpose that their child should be fit for the throne, and I have vowed that my son should be full of wisdom, and fit for prophecy. "Not for kings, O Lemuel, not for kings (is it fitting) to drink wine, nor for princes (rausnim) strong drink!" She said to him: "What hast thou to do with kings who drink wine, become intoxicated, and say: "For what purpose do we need God" ("Lomo-el"--literally, "why God")? "And to rausnim strong drink." Is it right that be to whom all the mysteries of the world are revealed should drink wine to intoxication

[paragraph continues] --according to others: He to whose door all the princes of the world are hastening, shall he drink wine to intoxication? Said R. Itz'hak: And whence do we know that Solomon repented and confessed to his mother? From [ibid. xxx. 2]: "Surely I am more brutish than any man, and have not the understanding of a common man." "Than any man" means Noah. As it reads [Gen. ix. 20]: "And Noah, who was a husbandman, began his work, and he planted a vineyard." "Of a common man" means Adam the First (the term for this in Hebrew being "adam").

"*Of a meritorious society*," etc. Said R. Abuhu: He is not guilty unless he consumed the above-mentioned meat and wine with a society of reckless persons (as then there is no hope that he will

depart from his way after he is bound to such a company). But does not our Mishna state "A meritorious society"--he does not become a stubborn and rebellious son? From which it is to bc understood that if it was not a meritorious one, he is culpable even if not all of the society were reckless men? The Mishna comes to teach us that if it happened that to the meritorious banquet were invited men all reckless, he is nevertheless not culpable, as he was engaged in a meritorious banquet and eating and drinking to excess will not become his habit.

"*At the intercalation of the month*," etc. Was there then used meat and wine at the meal of intercalation? Does not a Boraitha state only bread and peas? The Mishna comes to teach us that although they were used only to bread and peas, and one in spite of this took for this meal meat and wine, he is not culpable, as the meal was of a meritorious nature and it will not become a habit.

The rabbis taught: To the intercalation meal no less than ten persons were invited, and nothing else was used but bread and peas; and it was prepared only oil the thirtieth day, and not in the daytime but at evening. But is there not a Boraitha, "not at evening but in the day"? As R. Hyya b. Abbah said to his sons: Try to go to this meal when it is yet day, before sunset: and also to leave before sunrise, that people shall know that you were engaged in a meal of intercalation.

"*Second tithe*," etc. Because he consumed it in the usual way, it will not become a habit.

"*Carcasses*," etc. Said Rabha: If he has consumed meat of fowls, he is not to be charged as a stubborn son. But does

not our Mishna state "carcasses, illegal meat," etc., from which it is to be understood that if it was legal he is to be charged? Our Mishna means that even if he has eaten this to complete the prescribed quantity--*e.g.*, he has eaten a "tertimory" less an eighth, and this eighth he ate from illegal meat--he is also not culpable, for the reason stated farther on.

"*A thing which is meritorious*," etc.--means a meal of condolence.

"*A transgression*"--means when he ate on a fast day of the congregation. And what is the reason? It reads [Deut. xxi. 20]: "He will not hearken to our voice." "Our voice"--but not of him who does not hearken to the voice of the Omnipotent.

"*But not meat*," etc.--means to add even pressed figs of the city of Kaêla, which cause intoxication.

"*But not win*e"--means even honey and milk, as we have learned in the following Boraitha: If one consumed pressed figs of Kaêla and drank honey and milk and entered the sanctuary, he is culpable as to [Lev. x. 91 "wine and strong drink," etc.

"*He eats meat and drinks wine*," etc. The rabbis taught:

If he consumes any kind of food, but not meat, any kind of beverages but not wine, he cannot be

condemned as a stubborn and rebellious son unless he eats meat and drinks wine. (???--jbh)bles, it will not become a habit. In the second case, although there is no direct support the Scripture that gluttony means meat and wine, a hint to this is to be found in--"Be not among those that drink wine, among those that overindulge in eating meat." And it is also written [ibid., ibid. 21]: "For the drunkard and the glutton will come to poverty; and drowsiness clotheth a man in rags Said R. Zerah: He who sleeps in a house of learning, his wisdom is rent to pieces. As it reads: "And drowsiness clotheth a man in rags."

MISHNA *III.*: If he has stolen from his father and consumed on *his* premises, or he has stolen from strangers and has consumed on the premises of still other strangers, or he has stolen from strangers and consumed on the premises of his father, he is not charged as a stubborn and rebellious son unless he stole from his father and consumed on the premises of strangers. R. Jose b. Jehudah maintains: Unless he stole from his *mother* and father.

GEMARA: In the first case, when he stole from his father

and consumed on the premises of the father, because he trembles, it will not become a habit. In the second case, although he does not tremble after stealing, as it cannot be frequently done, it will not become a habit. From strangers, and consumed on the premises of his father, there are both, because this can be done only occasionally and when consuming he trembles for his father. Unless he stole from his father and consumed on the premises of strangers--which includes both, because it can be done frequently and without any trembling.

"*From his mother*," etc. Where did his mother get this, so that it should belong to her only? Is there not a rule that all a woman buys belongs to her husband? Said R. Jose b. Hanina: He took it from the meal which was prepared for his father and mother. But did not R. Hana b. Mouldha in the name of R. Huna say that he is not culpable unless he buys meat and wine cheap and consumes them? Say that he has stolen the money which was prepared to buy a meal for his father and mother; and if you wish, it might be said that some one else gave it to his mother, with the condition that her husband should have no share in it.

MISHNA *IV*: If the father is willing to transfer the case of the son in question to the court and the mother is not willing, or *vice versa*, he cannot be accused as a stubborn and rebellious son, unless both arc willing to do so. Furthermore, R. Jehudah says: If his mother was not fit to be the wife of his father, their son cannot be charged as a stubborn and rebellious son.

GEMARA: What does the Mishna mean by the words "was not fit"? Shall we assume that his father married a woman who was under the liability of the korat, or capital punishment by the court? Why? After all, the father is *his* father and the mother is *his* mother. Hence it must mean that she was like to his father. And so also we have learned plainly in the following Boraitha: R. Jehudah said: If his mother was not alike to his father in her voice, in her appearance and her height, he cannot be charged as the son in question. And what is the reason? Because it reads: "He does not hearken to her voice." As we see that their voices must be alike, the same is the case with the appearance and height. According to whom is the following Boraitha? The case of a stubborn and rebellious son never existed and will never occur, and it was written only for the purpose of studying and the reward for it. It is in accordance with R. Jehudah (who requires such

things as can never occur). And

if you wish, it is in accordance with R. Simeon, who said in the following Boraitha thus: Does the law indeed dictate that because this boy consumed a "tertimory" of meat and drank half a lug of Italian wine his father and mother shall deliver him to be stoned? Hence such a thing neither occurred nor ever will be, and it is written only for studying. R. Jonathan, however, said: I myself have seen such, and have sat on his grave.

According to whom is the Boraitha that a case of a misled town never occurred and will never be--and was written only for studying? In accordance with R. Eliezer, who said in the following Boraitha thus: A misled town in which there is to be found even one mezuza (a piece of parchment on which a portion of the Holy Writ is written to be placed on the doorpost) cannot be condemned as misled town, because it reads [Deut. xiii. 17]: "And all its spoils shalt thou gather into the midst of the marketplace thereof, and thou shalt burn them with fire." And as there is a mezuza this cannot be done, as it reads [ibid. xii. 4]: "ye shall not do so unto the Lord your God." R. Jonathan, however, said: I have seen such and I myself have sat on its heap.

According to whom is the following Boraitha?: A house of leprosy never occurred and will never be, and it is written only for studying, etc. In accordance with R. Elazar b. Simeon, who says in the following Mishna: A house of leprosy cannot be condemned unless the leprosy was of the size of two beans upon two stones at the two walls in the corner--the length of two beans and the width of one.

There is a Boraitha: R. Eliezer b. Zadok said: There was a place within the limit of the city of Azah which was named the "ruin of leprosy." And R. Simeon, head of the village Akhu, said: It happened once that I went to Galilee and saw a place which they used to mark, saying, It was because stones of leprosy were placed there.

MISHNA *V.*: If one hand of his father or mother is missing, or they limp, or are dumb, blind, or mute, he cannot be condemned as a stubborn son. As it reads [Deut. xxi. 19]: "Then shall his father and his mother lay hold on him"--which cannot be done with one hand. "And bring him out." This cannot be when they limp."--And they shall say"--not when they are mutes. "This our son"--not when they are blind. "He will not hearken"--not when they are dumb.

They must first warn him in the presence of two witnesses and then bring him to the court of three judges, who punish

him with stripes. And only then when he offends again must he be tried before twenty-three judges, but must not be stoned unless the first three judges are among the twenty-three. As it reads: "This our son"--which means, this is our son who was beaten according to *your* decision.

GEMARA: Infer from our Mishna that wherever the Scripture commands something, it must be taken literally? (See above, Chapter VI.) With this passage it is different, as it is entirely superfluous. (It should read: "Ye shall deliver him at the gate of that city, to be stoned.") But

where is it written that he must first be beaten? Said R. Abuhu: From an analogy of the expressions [Deut. xxi. 18]: "And they chastise him," which same is to be found in ibid. xxii. 18. And also from the expression "son," which same is to be found in ibid. xxv. 2, Which speaks of stripes. "*This our son*." But is not this verse needed for this not when they are blind? It should read: "*He our son*." Why "this"? To infer both statements.

MISHNA *VI.*: If he run away before the decision of condemnation is rendered and the encompassing (mentioned in the first Mishna) occurred afterwards, he is free. But if he runs away after the decision was rendered, the encompassing which occurs afterwards does not free him.

GEMARA: R. Hanina said: A descendant of Noah who blasphemed, and thereafter he embraced Judaism, is free from capital punishment, because the law concerning him was changed (for when he was yet a heathen one witness and one judge sufficed, while as au Israelite two witnesses and three judges are needed). And also capital punishment was changed--as to a heathen the sword applies, and to an Israelite stoning; and as he cannot be punished with stoning (for at the commission of the crime he was yet a heathen), he is entirely free.

Shall we assume that our Mishna, which states that if he runs away before the decision is rendered and the encompassing in question occurred afterwards, he is free, is also because, there being a change, the punishment is also changed? Nay, here it is different; because, if he were to commit the crime at the time after the encompassing, capital punishment would not apply at all. Should we say that the second case stated: If he runs away after the decision was rendered, the encompassing in question does not free him--forms an objection to R. Hanina? Do you wish that after the decision was rendered the change

should affect the decision? After the decision is rendered he is considered as dead, which changes cannot affect.

Come and hear another objection: A descendant of Noah who killed his neighbor or committed a crime with his neighbor's wife, and afterwards he embraced Judaism, he is free from capital punishment. But if he did the same with an Israelite while he is yet a heathen, he is guilty even if, after the crime, he becomes a Jew. And why? Say, because it was a change, the capital punishment should also be changed? It requires a change in both--in the trial and in the kind of punishment. Here, however, the change is only in the trial (as said above), but not in the punishment, as either to a heathen or an Israelite the sword applies.

MISHNA *VII.*: A stubborn and rebellious son is tried because of his future. The Scripture prefers that he should die innocent, and not be put to death because of his sins. For the death of the wicked is both a benefit to them and a benefit to the world, while to the upright it is a misfortune for them and for the world. Drinking and sleeping are a benefit to the wicked and to the world, while they are so doing (do they not do harm to the world), and the reverse is it with the upright (because when they are drinking or sleeping they cannot do any good). Separation of the wicked is also a benefit for themselves and for the world; the reverse, however, is the case with the upright. The assembling of the wicked is a misfortune for them as well as for the world, while as to the upright it is a benefit for themselves and for the world. The idleness of the

wicked is a misfortune for them and for the world (because in the time of their idleness they will conspire to do harm, but the repose of the upright is a benefit for them as well as for the world).

GEMARA: There is a Boraitha: R. Jose the Galilean said: Is it possible that because this boy ate a "tertimory" of meat and drank half a lug of Italian wine he shall be stoned? But the Torah foreshadows the final thought of the son in question, as in the future he will squander his father's property, and pursuing his habit, which he will find difficult, he will proceed to rob people in the street. Therefore the Torah said: "He shall rather die while he is still innocent than be put to death because of his sins, as the death of the wicked is a benefit," etc., as stated above in the Mishna.

MISHNA *VIII*.: In the case of "breaking in" [Ex. xii. i],

for which there is no liability if one is killed by a detector, one is also punished because of his future crimes (*i.e.*, because of his intention to kill his opponent, although no crime involving capital punishment was as yet committed). And therefore, if he broke a barrel while breaking in, if according to the laws he must not be killed when caught (*e.g.*, a father who breaks into the premises of his son, who could not have intended to kill his son if he made opposition, and therefore if his son kills him he is liable to capital punishment, he must pay for damaging the barrel. But with respect to other persons who, if killed by the detector, would not be punished, he is free.

GEMARA: Said Rabha: The reason why the Scripture freed the detector if he killed the burglar, is because it is certain that a man cannot control himself when he sees his property taken. And as the burglar must have had the intention to kill anyone, in such a case, who should oppose him, the Scripture dictates that if one comes to kill you, hasten to kill him first.

Rabh said: A burglar who broke in and succeeded in taking some utensils and escaped, he is free from paying for the utensils. Why so? Because he acquired title to them by his blood. Said Rabha: It seems to me that Rabh's decision was in case he broke the utensils: and as they are no longer in existence, he is free from paying their value. But if he took them and they still exist, he must return them. [Says the Gemara: By God! Rabh's decision was even if they were still in existence, and his reason is that if they were taken by a burglar of that class, the opponent being guilty of shedding his blood, for which the Mishna makes him liable, would he not be responsible if the utensils were broken or taken away by force by someone else? He would be, because they were already under his control. The same is the case with an ordinary burglar, as by his blood he has acquired title to them, and therefore he is not obliged to return them.] However [continued Rabha], it is not so, as the Scripture considers the things stolen by the burglar to be under his control only concerning a contingency--*i.e.*, if they were taken away from him. But the Scripture never meant him to acquire title to them when they were still in his possession, for he is considered as a borrower.

It happened that rams were stolen from Rabha by burglary, and thereafter they were returned to him; but he was not willing to accept them because the above decision came from the mouth of Rabh.

The rabbis taught: It reads [Ex. xxii. 2]: "If the sun be

risen upon him, there shall be blood shed for him." What is meant by the sun being risen upon him? Does the sun rise upon him only? It means therefore if it is as clear to you as the sun that it is impossible to be at peace with him, then you may kill him, but not otherwise. There is another Boraitha: If it is as clear to you as the sun that it is possible for you to be at peace with him, then you should not kill him; but if not, you may. Hence the Boraithas contradict each other? It presents no difficulty: one speaks in case a father breaks into his son's house, whose usual intention is not to kill his son, and the other case speaks of the reverse--namely, when the son breaks into the house of his father.

Rabh said: Anyone whatsoever who should break into my house, I would kill him, except R. Hanina b. Shila. If it should happen that he should break in, I would not kill him, as I am sure that he would have mercy upon me as a father for his son.

The rabbis taught: The expression "blood shed" mentioned in ibid., ibid. 1 and 2 means that it makes no difference whether such a case happened on week days or on a Sabbath. Let us see I The teaching that a burglar may be killed even on Sabbath is correct, lest one say as there is a rule that the execution by the court does not violate the Sabbath the same applies here. But why the teaching that the burglar must not be killed, the same being the case if the burglary occurred on Sabbath? Even on week days he is not to be killed?

Said R. Shesheth: The teaching was needed in case it happened that while breaking in on Sabbath a heap of earth covered him. If he is of that class who are to be killed, then the heap must not be removed on Sabbath; if of the other class, it must be done to save the man, if still alive.

The rabbis taught: It reads "to be smitten so"--by any man whatsoever; "he die"--through any kind of death possible. This teaching was necessary. Lest one say, only if he were killed by the owner, who could not control himself; but if he were killed by some other detector, he is liable, it comes to teach us that the burglar is considered a life-seeker, who may be killed by anyone.

The rabbis taught: The text speaks only of breaking in whence can it be proven that the thief found on one's roof, in one's yard, or in any building whatsoever may be killed? Therefore it reads, "If a thief be found," which means in any place whatsoever. But if so, why is the term" breaking in" mentioned?

[paragraph continues] To say that his breaking in serves the place of warning (for he knew what he might expect).

Said R. Huna: Even a minor who seeks one's life may be killed for self-protection. He holds that one who seeks one's life does not need any warning, be he of age or a minor.

R. Hisda objected to him from a Mishna (Ohaloth, VII., 7): If the head of a child were already without the womb, it must not be killed to save the life of its mother in case of danger, as one's life must not be given for that of another. And why not consider the child as the seeker of the life of its mother, so that it shall be killed? There it is different, as the child cannot intend to seek the life of its mother, and the danger in question is decreed by Heaven.

MISHNA *IX*: The following may be killed for self-protection: He who pursues one to kill him, and he who pursues a betrothed damsel, or pursues a male person to lie with him; but he who pursues an animal for this purpose, or he who intends to commit idolatry or to violate the Sabbath, must not be killed before the crime is committed.

GEMARA: The rabbis taught: Whence do we know that one may kill for self-protection? From [Lev. xix. 16]: "Thou shall not stand idly by the blood of thy neighbor." But how can you so infer from this passage? Is it not needed to that of the following Boraitha: Whence do we know that if one sees his neighbor drowning in a river, or a wild beast or robbers seize him, he is obliged to save him? From the verse just cited? Yea, so it is. And that one may be killed in self-protection, is to be inferred by an *a fortiori* conclusion which is to be drawn from "a betrothed damsel." If in this case, in which one only intended assault, the Torah says he may be killed in self-protection, how much the more a seeker of life. But do we then punish from an *a fortiori* conclusion? The school of Rabbi taught that this is not only an *a fortiori* conclusion, but also an analogy. As it reads [Deut. xxii. 26]: "As a man riseth against his neighbor and striketh him dead, even so is this matter." And what have we to learn from the case of a murder? This passage is intended to throw light (on the case of a violated betrothed) and is at the same time receiving light. [1] He compares a murder to a betrothed damsel. As in case of a damsel one may be killed in self-protection, the same is it in the case of a murder.

And whence do we know that so is the case concerning a betrothed damsel? From what was taught in the school of R. Ismael. It reads [ibid. xxi. 27]: "There would have been none to aid her"--which means, if there were one he must help her under all circumstances, even to killing her pursuer.

The rabbis taught in addition to what is stated in the Mishna concerning self-protection: However, in the pursuing by a high-priest of a widow, or by a common priest of a divorced woman, or of one with whom the ceremony of Halitah was performed, or even in the pursuing of a betrothed damsel who had already had connection with some one, killing in self-protection is not allowed. And R. Jehudah said: Also, if the damsel herself said to the pursuers of her assaulter: Let him go--although it is to be supposed that she said so, only because of fear lest the pursuers should kill her-he must not be killed before the crime was committed. Whence is all this deduced? From [ibid., ibid. 26]: "But unto the damsel shalt thou not do anything: there is in the damsel no sin worthy of death." It is written "naar" (youth), and it reads "naaro"--from which we infer, both him who is pursuing a male for the purpose of sin and a betrothed damsel. And from the term "sin" we infer crimes of a kind to which the punishment of korath applies; and from "worthy of death," we infer those who are to be executed by the court.

The Boraitha states: R. Jehudah said: Also if the damsel herself said, etc. What is the point of their difference? Said Rabha: They differ in case the damsel cares for her honor, but without sacrificing her life for it. According to the rabbis the Scripture cares for the violation of her

honor, and as she also cares for it, though without life-sacrifice, she must be saved even by killing her pursuers. And according to R. Jehudah, the Scripture commands to kill him, only in case the damsel herself is willing to sacrifice her life for her honor, but not otherwise.

Said R. Papa to Abayi: Let us see! In case a high-priest is pursuing a widow, is not this also a violation of her honor? Why, then, is he not to be killed? Is not the Scripture particular about the honor of a woman? And Abayi answered: For the honor of a damsel, who is ruined forever, the Scripture is particular to save her even to the killing of the pursuer, which is not the case with a widow.

It says farther on, "sin"--meaning those who are liable to be punished with death. There is a contradiction from the following: Among the assailants of damsels who must pay a fine

besides the bodily punishment, is counted also one who assaults his sister (the punishment for which is korath). Now, if he is to be killed while pursuing, he must be counted in the class subject to capital punishment. And there is a rule that he who commits a crime subject to capital punishment is absolved from paying a fine. Said Abayi: The Boraitha which states that he must pay a fine treats of a case in which, she could be saved by injuring one of the members of her pursuer's body, and it is in accordance with R. Jonathan b. Shaul who said in the following Boraitha thus: A seeker of life whom the pursued killed, although he was able to protect himself by injuring a member of the pursuer's body--it is to be tried as a case of capital punishment. And what is the reason of Jonathan? It reads [Ex. xxi. 22, 23]: "If men strive . . . and if any mischief follow, then shalt thou give life for life." And R. Elazar said: The cited verses treat about him who intended to kill his opponent. And nevertheless it reads: "And yet no further mischief follow, he shall be surely punished." Now, if you say that the law dictates that the pursuer must not be killed in case his crime could be prevented by injuring one of the members of his body, it is correct that he is to be fined. But should you say that even in the latter case there is no liability if the pursuer was killed--his offence being in the class subject to capital punishment--why, then, is he to be fined? And should you say that he is fined because his intention was to kill another, and the fine belongs to another person, we understand from Rabha's decision [1] (First Gate, pp. 269 and 270) that it is not so.

"*He who pursues an animal*," etc. There is a Boraitha: R. Simeon b. Jochai said: The one who intends to worship idols may be killed (if there is an impossibility of preventing his crime otherwise). And this is to be drawn by an *a fortiori* conclusion thus: When the dishonoring of a commoner is to be saved even by killing the pursuer, so much the more because of a heavenly dishonor. But is one to be punished because of an *a fortiori* conclusion? R. Simeon holds that so it is. There is another Boraitha: R. Eliezar b. Simeon said: The same is the case with one who intends to violate the Sabbath. He holds with his father, that one may be punished from a decision drawn from an

a fortiori conclusion. And he infers the violation of Sabbath from the case of idolatry by the analogy of the expression "violation," which is termed in Hebrew "chillul," and is to be found in both cases. Said R. Johanan in the name of R. Simeon b. Jehozadok, in the Ethic of Beth Nithza:

"In the city of Suda it was voted and resolved that if one were compelled, under threat of being killed, to commit any one of all the crimes which are mentioned in the Torah, he might commit it and not be killed, except idolatry, adultery, and bloodshed." But is not the case the same with idolatry as the following Boraitha states: R. Ismael said: Whence do we know that, if one were told under threat of being killed, to worship an idol, he should rather worship than be killed? From [Lev. xviii. 5]: "He shall live in them"; *i.e.*, but not die in them. But lest one say that the same is the case when he is told to do so publicly, therefore it reads [ibid. xxii, 32]: "And ye shall not profane my holy name; so that I may be sanctified." Hence we see that privately he may rather worship than die? They (R. Johanan and R. Simeon b. Jehozadok) hold with R. Eliezer who said in the following Boraitha thus: It reads [Deut. vi. 5]: "And thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy might." Why, then, with all thy soul and with all thy might--is not one of them sufficient? Because people are of different natures. There are among them some who prize their body more than their money--for them it is written, "with all thy soul." And there are some others who prize their money more than their body, and for them it is written, "with all thy might? And from this we infer that even if one were told to commit idolatry privately, he must not do so, even under threat of being killed. This is concerning idolatry. But whence do we know that the same is the case with adultery and bloodshed. From the following Boraitha: Rabbi said: It reads [ibid. xxii. 26]: "For as when a man riseth against his neighbor". He compares a murder to the case of a betrothed damsel. As concerning a betrothed damsel one may be killed to save her, the same is it in the case of a murder. And as concerning a murder one is obliged to sacrifice his own life rather than kill another by command, the same is the case with a betrothed damsel--she is held to be killed rather than be ravished. And whence do we know that in a murder case one is obliged to sacrifice his own life, etc. This is common sense. Thus it happened to one who came before Rabha. (See Pesachim, p. 37, line 11.)

When R. Dimi came from Palestine, he said in the name of R. Johanan: All this was said when there was no civil decree by the government to violate religious duties; but if there was, one must sacrifice himself even for a most lenient commandment. And when Rabbin came, he said in the name of the same authority: Even when an evil decree did not exist, he might do so privately; but publicly, one must sacrifice his life, even for a most lenient commandment. What is meant by a most lenient commandment? Said Rabba b. R. Itz'hak in the name of Rabh: (In days of religious persecution you must resist, even to changing the shoe-strap. And what is to be considered publicly? Said R. Jacob in the name of R. Johanan: If this is to be done in the presence of no less than ten Israelites. R. Jeremiah questioned: How is it if there were nine Israelites and one heathen? Come and hear what R. Janai the brother of R. Hyya b. Aba taught: It reads [Lev. xxii. 32]: "In the midst of the children of Israel," and [Num. xvi. 21]: "From the midst of this congregation"; and from the analogy of the expression "midst," we infer that, as in the case of Korach there were no less than ten, and all Israelites, the same is the case with the sanctification in question. But was not Esther compelled to sin with Ahassuerus, in the presence of more than ten Israelites? Said Rabha: In case they do it for their own benefit it is different; as, if this were not the case, how could we lend copper vessels to the Persians for the purpose that they should fill them in their houses of worship with live coals at the time of their holidays? But as this is for their own benefit, it is not considered a transgression; and Rabha is in accordance with his theory elsewhere, that if a heathen commands an Israelite to cut hay on Sabbath for his cattle, with threat of killing him, he shall rather cut the hay than be killed. But if he tells him, "Cut it and put it in the river," from which we see that he wants only to overcome his religious scruples, it is better for him to resist and be killed than to comply with his command.

R. Ami was questioned: Is a descendant of Noah commanded to sanctify the Holy Name, or not? And Abayi answered: Come and hear! "There were seven commandments which were given to the descendants of Noah," etc. Now, if they were commanded to sanctify the Holy Name, there would be eight. Said Rabha to him: From this we can infer nothing, as by the seven commandments is meant all that pertains to them (and sanctifying the Holy Name pertains to the negative commandment of idolatry). However, how should this question be decided? Said

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[paragraph continues] Adda b. Ahaba: It was said in the college: It reads [II. Kings v. 18 and 19]: "For this thing may the Lord pardon thy servant, that when my lord goeth into the house of Rimmon to prostrate himself there, and he leaneth on my hand, and I prostrate myself also in the house of Rimmon. . . . and he said unto him, Go in peace." Now, if a descendant of Noah were commanded concerning sanctification, Elisha would not say to him, "Go in peace," but would keep silent. This also is not a support, as Nahman's request was considered privately as no Israelites were present. Said R. Jehudah in the name of Rabh: It happened to one that he saw a woman and became sick through his infatuation, and he consulted physicians, who saw that there was no remedy for him unless he had connection with her, and the sages decided that he should rather die than have connection. The physicians, however, said: "Let her stand before him naked; perhaps this may do something in his behalf. But even this the sages did not allow. Let her talk to him behind a fence. Even this the sages forbade. R. Jacob b. Idi and Samuel b. Na'hmani differ. According to one she was a married woman, and according to the other she was single. Single! Why such strictness? Said R. Papa: Because of the dishonor of her family, as a daughter of an Israelite must not be sold for prostitution. And R. Ahbah b. R. Ika said: To prevent such becoming a habit among the daughters of Israel. But why did he not marry her? Said R. Itz'hak: This would not satisfy him. As it reads [Prov. ix. 171: "Stolen waters are sweet, and bread of secrecy is pleasant."

Footnotes

205:1 The term in Hebrew is "zaulel v' saube," which Leeser translates "glutton," etc. In Proverbs, however, be translates the same term with "overindulging", which also means gluttony.

206:1 The term in Hebrew for "becoming red" is "yithadom," and for "blood" the term is "dom"; and Rabha divides "yithadom" into two--yitha, dom--literally "will bring blood."

206:2 Rashi explains the passage thus: From the beginning to the end means, "To whom is woe?" etc. To them that tarry late over the wine. And from the end to the beginning means, "For whom is it right to tarry late over wine?" For those who are crying woe--*e.g.*, mourners, and those who have quarrels, and wounds without cause, and those who have redness of eyes because they are stout or are idleness may drown their troubles in the wine.

207:1 There are sixteen "ands" in these passages, three of which, being for connection only, are excluded.

216:1 A proverbial phrase: "This one comes as a teacher and turns out a learner" (Jastrow).

218:1 See p. 269, third line from the bottom, which begins: "This decision of Rabha," to Mishna 7, which is here repeated literally, with the difference that there it is Rabba and here it is Rabha. Concerning the difference in the names, see Thosphat Khethuboth, *30b*, paragraph beginning with the name "R. Ashi."

Next: Chapter IX

CHAPTER IX.

RULES AND REGULATIONS CONCERNING THOSE TO WHOM BURNING AND THOSE TO WHOM SLAYING APPLIES. WHO IS CONSIDERED A MURDERER DESERVING CAPITAL PUNISHMENT AND WHO IS TO BE EXILED. THOSE WHO RECOVERED AFTER THEY WERE DIAGNOSED TO DIE; KILLING SOME OTHER ONE INSTEAD OF THOSE WHOM HE HAD INTENDED.

MISHNA *I.*: To the following the punishment of burning applies: To one who has intercourse with a woman and her daughter, and to a daughter of a priest who has sinned. Under the general rule of a woman and her daughter comes his own daughter, the granddaughters of his daughter and son, the daughter of his wife, her granddaughters of her daughter and her son, his mother-in-law, and the mother of his mother and father-in-law.

GEMARA: The Mishna does not state a woman whose daughter he has married, but "a woman and her daughter," which seems to be that the intercourse with both of them was a sin, and this can only be with his mother-in-law and her mother. And from the expression, "Under the general rule of a woman and her daughter," it is to be assumed that both are mentioned in the Scripture, which is not so, as the mother of his mother-in-law is only inferred from an analogy. Read: If one has had intercourse with a woman whose daughter he has married. Whence is this deduced? From what the rabbis taught: It reads [Lev. xxi. 4]: "And if a man take a woman and her mother." This is concerning a legal wife and her mother. But whence do we know that the same is the case with the illegal daughter of a ravisher (referring to Deut. xxii. 28), and her granddaughters from her daughter and her son? From the analogy of the expression "incest" (zimha), which is to be found here in the verse cited and also in Lev. xviii. 17. And as there it speaks of an ordinary woman, and it is plainly mentioned the granddaughters of her son and daughter, the same is the case here (that all of them must be punished by burning).

[paragraph continues] And whence do we know that the males who have committed the crimes in question are also to be punished by burning, the same as the females? Again from the same analogy of the expression zimha. As there the verse speaks of the male perpetrator of the crime, so also in the case here we are not to make any difference in the punishment between males and females. And whence do we know that the latter generations--*i.e.*, the daughters and the granddaughters--are to be equalized to the earlier generations--*i.e.*, the mothers of one's father and mother-in-law? Again from the analogy of the same expression. As there the Scripture does not make any difference between the expression in verse 15, which speaks of a father with his daughter-in-law, and that of the seventeenth, which speaks of the latter generations, and at the end of which it reads: for *they* are near kins-"women," which refers to all of them, so here the punishment of the earlier generations is to be equalized to that of the latter. [1]

The father of R. Abbin taught: Because there is no definite commandment in the Scripture concerning the daughter of a ravisher, it was necessary for the scripture to state [Lev. xxi. 9]."And if the daughter of *any* priest"--"esh cohn," instead of "cohen." From which we infer that, were she a legal or an illegal daughter, if he sins with her, she must be burned.

But if so, let the punishment of burning apply only to the daughter of the abuser, but not to the abuser himself, as so is the case with the daughter of a priest in which the punishment applies only to her, but not to her abuser. Said Abayi: Concerning the daughter of a priest it reads: "Her father does she profane." Exclude this case, in which the father is profaning her. Rabha, however, said: For this no verse is necessary, as it is common sense. In the case of a priest's daughter, if you have excluded her abuser from burning, he is nevertheless left under the category of choking, which applies to any one having intercourse with a married woman. But here, if you exclude the abuser from the punishment which applies to her, under what category can you put him? Should you put him under the category of those who have had intercourse with single women, who are free from any

punishment, is it possible that she should be burned for this crime, and he who is the abuser of her mother and the seducer of herself should be free? Now we have had the punishment for such, but where is the warning? It is correct for both Abayi and Rabha as they infer the warning from the same which states the punishment. But according to the father of R. Abbin, whence is deduced? Said R. Ailea, from [Lev. xix. 29]: "Do not profane thy daughter, to cause her to be a prostitute." R. Jacob, the brother of R. Abha b. Jacob, opposed: Is not the verse just cited necessary to that of the following Boraitha: "Thou shalt not profane thy daughter," etc? Lest one say that it speaks of a priest who marries his daughter to a Levite or an Israelite, therefore it reads "to cause her to be a prostitute." Hence it speaks only of him who gives his daughter other than in marriage. From the "ll" in the word "techallel" (profane), instead of "tochal," which would have the same meaning, the warning in question may also be inferred. And both Abayi and Rabha, who have inferred the warning in this case from the same verse mentioning the punishment--what do they infer from the verse just cited? Said R. Mani: Him who marries his daughter to an old man, as the following Boraitha states: "You shall not profane your daughter," etc. According to R. Eliezer: He who marries his daughter to an old man is meant; and according to R. Aqiba, he who leaves his daughter unmarried until she becomes "vigaros."

R. Kahana in the name of R. Aqiba said: There is none poor in Israel, but a shrewd-wicked and he who has left his daughter unmarried until "vigaros." How is this to be understood? Is not one to be called a shrewd-wicked if he left his daughter unmarried for his own benefit, that she should do the housework until "vigaros"? Said Abayi: He means thus: There is none poorer than he who is compelled because of his poverty to leave his daughter unmarried until "vigaros," as then he is equal to a shrewd-wicked.

R. Kahana in the name of R. Aqiba said again: Be careful in your counsellor in order that you shall not listen to him who counsels you for his own benefit.

R. Jehudah said in the name of Rabh: He who marries his daughter to an old man and he who marries his minor son to a woman of age; to both the verses [Deut. xxix. 18, 19]: "In order that the indulgence of the passions may appease the thirst (for them): The Lord will not pardon him," apply.

The rabbis taught: Concerning the verse Lev. xx. 14, in which

the words "him and them" are mentioned, R. Ismael and R, Aqiba differ. According to the former it means "him and one of them," and according to the latter, "him and both of them." What is the point of their differences (even R. Ismael agrees that both of them are to be punished)? Said Abayi: They differ only as to the texts from which the law is derived. According to R. Ismael, who maintains "him and one of them," it is because in Greek εν {Greek *en*} means one, and the expression in the passage is "es'-en." Hence, biblically his mother-in-law is to be burned, while her mother is inferred only rabbinically by an analogy of expression. And according to R. Aqiba both of them are meant in this verse. Hence both, biblically, are to be burned. Rabha, however, maintains that the point of their difference is an intercourse with one's mother-in-law after the death of his wife. According to R. Ismael, even then she must be burned, as in the verse cited it reads "and them," which makes no difference whether his wife is still alive or dead. And according to R. Aqiba, after the death of his wife, it is only a prohibition, but not a crime to which burning applies.

MISHNA *II*.: To the following, punishment with the sword applies: To a murderer and the men of a misled town. A murderer who strikes his neighbor with a stone or with an iron so that he dies; if one pressed down a person while he is in water or in fire, preventing him from coming out, until he dies--he is guilty. If, however, he pushes him into water or into fire and he was able to come out, but nevertheless dies without being prevented by him who pushed him, he is not guilty of a capital crime. If he sets a dog or a serpent upon him, he is not guilty of a capital crime. If, however, he applies the snake to his body with his hand, and it bites him to death, R. Jehudah makes him guilty of a capital crime, and the sages free him.

GEMARA: Samuel said: Why is there not mentioned in the Scripture the word "yod" concerning iron in Num. xxxv. 16, as is done concerning stones and wood in ibid., ibid. 17, 18? Because even a fragment of iron brings death. So also we have learned in a Boraitha: Rabbi said: It is known to Him who created the whole world by one word, that a fragment of iron may bring death, and therefore He has not prescribed any size concerning iron. (Says the Gemara:) This is only when he pierced him with it; but if (he struck him with iron), it must be of a size to cause death.

"*If he presses down*," etc. The first part teaches a preponderance, and so does the second. The preponderance of the first

part is that, although he did not push him, but only prevented him from coming out, he is nevertheless guilty of a capital crime. And the preponderance of the second part is that, although he pushed him in, yet, so long as the victim could come out and was not prevented, he is not guilty of a capital crime. But whence do we know that one is guilty for pressing down? Said Samuel: From [ibid., ibid. 21]: "Or if in *enmity* he have smitten him with his hand," which means to include him who pressed him down.

There was one who urged cattle of his neighbor into the sun until they died. And Rabbini made him liable, but R. A'hal b. Rabh freed him. The former made him liable because of an *a fortiori* conclusion drawn from a murderer. As concerning a murderer the Scripture makes a difference between intentionally and unintentionally, between accident and premeditation, and nevertheless makes guilty the presser; and as concerning damages, where there is no difference between intentionally and unintentionally, between accident and premeditation, so much the more should a pusher be liable. And as to the reason of R. A'hal, who freed him, said R. Mesharshia: The reason of my grandfather, who freed him, is the above-cited verse: "He that smote him shall surely be put to death, for he is a murderer," meaning only in case of murder is one guilty of pressing, but not in a case of damages.

Rabha said: If one bound a person, and he died thereafter of hunger, he is not guilty of a capital crime. If, however, he bound him and put him in a sunny place, and he dies because of the sun, or he puts him in a cold place and he dies of cold, he is guilty. But if he put him in a sunny or a cold place, where there was not as yet either sun or cold, and thereafter, when it came, it caused his death, he is not guilty of a capital crime.

The same said again: If one bound a person and left him before a lion, he is not guilty of a capital crime. (Rashi explains that he could not save himself from the lion even if he were unbound. Rashi's reasons are not quite clear to us.) But if he bound him in a place where mosquitoes are abundant, he is guilty. R. Ashi, however, maintains that even in the latter case he is not guilty, as the mosquitoes which were on his body at the time he tied him, went away, and others came. Hence he did not cause his death directly.

It was taught: If one places a vat over a person and he dies from heat, or he removes the ceiling to let the cold come in,

and he dies from cold-Rabha and R. Zerah--one of them makes him guilty and the other frees him. Says the Gemara: It seems that Rabha is the one who frees him, as it is in accordance with his theory. Said above: If one bound a person and he dies of hunger, he is free. On the contrary, it seems R. Zerah is the one that makes him free, as it is in accordance with his theory elsewhere: He who puts a person in a house closed from all sides so that the air cannot go out, and lights a candle, which causes his death, is guilty. Hence we see that the reason of making him liable is the lighting of the candle, and if this were not done he would be free? Nay! It may be said that the heat which caused his death began with the lighting of the candle. The same is the case with the vat-the heat began just when he turned it over him.

Rabha said again: If one pushed a person into an excavation in which a ladder stood for coming out, and someone came and removed the ladder, or even if he himself removed it after he pushed him in, he is not guilty of a capital crime, as at the time he pushed him in he was able to come out.

The same said again: If one shot an arrow at a person who wore an armor and someone removed the armor, or even if he himself removed it after he shot, he is not guilty of a capital crime, as at the time he shot the arrow it could not injure him.

And he said again: If one shot an arrow at a person who was supplied with spices which could cure the wounds from the arrow, and someone came and scattered them, or even if he himself scattered them before the arrow reached him, he is not guilty, because the victim, at the time he shot, could be healed by the spices. Said R. Ashi: According to this theory he would not be guilty if there should be spices in the market which could cure the wounds? Said R. Ahbah, the son of Rabha, to R. Ashi: How is the law if it happened that spices were brought to him after he was shot, and he did not make use of them? And he answered: In such a case the court would not overlook this, and would accept the defence to his advantage.

Rabha said again: If one throws a stone at a wall, with the intention of killing a person with it, the stone, however, killing the man only by the rebounding, he is guilty of a capital crime. In explanation of this, it was taught, *e.g.*, ball-players--if one threw a ball with the intention of killing someone, he is to be put to death, and if it was unintentionally, he is to be exiled. Is this not self-evident? The teaching that one is to be put to death, if done intentionally, was necessary. Lest one say that such a

warning was of a doubtful nature, as who could predict that the ball would kill him by rebounding so that he should be forewarned of it, he comes to teach us that he is nevertheless guilty.

R. Tachlifa of the West taught in the presence of R. Abuhu concerning those who play ball: If the ball killed one by rebounding within a distance of four ells from the wall, he is free from exile, but if it exceeded four ells, he is guilty.

Said Rabhina to R. Ashi: Let us see, how was the case! If the player was pleased with the rebounding of the ball, then let him be guilty if the man was killed even within a nearer distance (as the law of killing a man unintentionally prescribes). And if he was not pleased with the rebounding, let him be free even at a greater distance. And he answered: The greater the distance a ball rebounds, the more is the pleasure of the ball-player.

It was taught: R. Papa said: If one bound a person and turned a stream of water upon him, it is considered as if the man were killed directly by his arrow, and he is guilty of a capital crime. However, this is only when he was killed by the first stream which poured upon him; but if he dies from the continued flow, it is not considered direct killing, but only a cause of death.

The same said again: If one throws a stone on high and it swerves and kills a man, he is guilty. Said Mar. b. R. Ashi to him: Let us see what is the reason of your theory! Because the stone went by his force? But if so, the force must only be considered when it went on high; and when his force ends it should fall down vertically. But according to your theory it swerves, hence it is not by his force. It must be said, however, if this cannot be called his exact force, it may nevertheless be considered a part of his force.

The rabbis taught: If one was assaulted by ten different persons, no matter whether at once or at different times, and was killed, none of them has to suffer capital punishment, as according to the Scripture it must be known who was the cause of the death. R. Jehudah b. Bathyra, however, holds: In case the assault was made by one after the other, the last one is guilty, for he hastened

his death. [1] Said R. Johanan: Both parties took their theories from one and the same passage [Lev. xxiv. 17]: "And he that taketh the life of all the soul of man." [2] The rabbis hold that all the "soul" means one is not guilty unless he

takes the whole soul. And R. Jehudah holds that it means all that was as yet left of the soul.

Said Rabha: All agree that if one kills a person whose windpipe and larynx (gullet) are cut, or whose skull is fractured, he is free (for it is considered as if he had attacked a dead man). And they agree also that, if one killed a person who was struggling with death through sickness caused by Heaven, he is guilty of a capital crime. And the point of their difference in the above Boraitha is, if one killed a man who was struggling with death through sickness caused by man. According to the rabbis, it is similar to him whose windpipe, etc., are cut. But according to R. Jehudah b. Bathyra, it is similar to him who was struggling with death through sickness caused by Heaven.

A disciple taught in the presence of R. Shesheth: The above cited verse, which commences with "and a man," means if one struck a person with an article which can cause death, but the man was not entirely without life, and another came and put an end to him entirely, the latter is responsible, as the ordinary opinion is in accordance with R. Jehudah b. Bathyra.

Rabha said: If one kills a person whose windpipe and larynx are cut he is free; but if the latter killed a person, if this was in the presence of the court, he is guilty. As it reads [Deut. xiii. 6]: "And thou shalt put the evil away from the midst of thee." But if not in the presence of the court, but in the presence of other witnesses, he is free, as their testimony cannot be taken into consideration, because they cannot be made collusive (as their intention was to kill a man already dead). And there is a rule that such a testimony as was given by those cannot be made collusive is not considered as testimony at all.

And he said again: Although the witnesses who had testified against the man whose windpipe, etc., were cut were thereafter found collusive, they are not to be put to death; if the windpipe, etc., of the witnesses themselves were cut at the time they, testified, and thereafter they were found collusive, they are to be put to death, because of the above-cited verse. R. Ashi, however, maintains that they are not, because the witnesses who made them collusive could not be punished if their testimony were found false, as their intention was to kill men who are considered already dead.

And Rabha said again: An ox of such a kind, if he killed a person, is guilty. But if the ox was a healthy one and his owner was of that kind, he is free; because it reads [Ex. xxi. 29]: "The ox

should be put to death and the owner also." And as in this case the owner is considered already dead, and the expression "he shall also be put to death," does not apply to him, we therefore do not apply to the ox the beginning of the verse. R. Ashi, however, maintains that even if the ox was of that kind, he is also free for if its owner would be such it would be free; therefore it is to be tree when it itself is of this kind.

"*If he set a dog or a serpent,*" etc. Said R. Abbah b. Jacob: If you wish to know the reason of their difference, it may be said thus: According to R. Jehudah, the venom of the serpent is always between its teeth (*i.e.*, with the bite of the serpent the venom is injected into the body, which causes death directly) and, therefore, if he applied the serpent to the body he is to be decapitated, and the serpent is free. And according to the sages, the poisoning comes after the bite, from the venom of the serpent Hence the biting did not cause death directly, and therefore the serpent must be stoned and he who applied it is free from capital punishment.

MISHNA *III*.: If one strikes a person with a stone or with his fists, and he was diagnosed (by the physicians of the court) to die, and thereafter he improved, and was diagnosed to live, and then again becomes worse and dies, he is guilty of a capital crime. R. Nehemiah, however, maintains that he is free, because it is reasonable to say that he did not die directly from the blow, but from some other cause.

GEMARA: The rabbis taught: The lecture of Nehemiah concerning this matter was thus: It reads [Ex. xxi. 19]: "If he rise again and walk abroad upon his crutch, then shall he that smote him be acquitted." Can it be supposed that one should be put to death because he struck a person who later walks in the market, if there were not a passage which commands the contrary? We must then say that the passage means that if when he was struck he was diagnosed to die, and thereafter he improved, walked in the street, and was diagnosed to live, and then became worse and died, he is nevertheless free. What do the opponents of R. Nehemiah infer from the words "be acquitted"? That the person who struck must be kept in arrest until the outcome shall be known. R. Nehemiah, however, maintained that no verse is necessary for this, as this is to be inferred from the woodgatherer, who was arrested immediately after committing the crime. Why did not the rabbis also infer from the woodgatherer? (Moses was aware that) he was surely guilty of a capital

crime, but did not know what kind of death applied to him. But concerning the murderer in question, it is not known whether he came under the category of capital punishment at all? R. Nehemiah, however, infer this from the blasphemer, of whom Moses did not know whether he came under the category of capital punishment at all, and nevertheless he was imprisoned. The rabbis, however, do not infer this from the blasphemer, as according to their opinions it was only a decision for that time, as we have learned in the following Boraitha: Moses our master was aware that the woodgatherer was guilty of capital crime. As it reads (Ex. xxxi. 14]: "Everyone that defileth it shall be put to death." But he did not know what kind of death; as it reads: [Num. xv. 341: Because it had not been declared what should be done to him." Concerning the blasphemer, however, it is not so written, but "To the decision of the Lord," hence Moses was not aware whether he came under the category of death at all.

The rabbis taught: If one struck a person and he was diagnosed to die, but he nevertheless remained alive, they may free him. And if he was diagnosed to die and he improved, the sick man must be examined again, and appraisement made concerning the money which is to be collected from his smiter; and if thereafter he becomes worse and dies, he must be charged according to the second examination. So is the decree of Nehemiah. The sages, however, maintain that there is no other examination after the first. There is another Boraitha: If he was diagnosed to die, but he did not, he must be examined again. But if the first opinion was that he

would live no second examination as to dying may take place (for if it happened that he dies, it is probably not from the previous blow). If, however, he was diagnosed to die, and he becomes better, the sick man must undergo an appraisement concerning money. And if thereafter he becomes worse and dies, his murderer must pay for damages and the suffering of the deceased, to the heirs from the time he was struck till his death. And this anonymous Boraitha is in accordance with R. Nehemiah, who frees such from capital punishment.

MISHNA *IV.*: To the following, capital punishment does not apply: To one who intended to kill an animal and killed a man, an idolator and killed an Israelite, a miscarried child and killed a mature one. The same is the case with one who intended to strike another on the loins with an article which was not sufficient to cause death, but the blow was made on his heart, for which it was sufficient, and he dies; or if he intended to

strike him on the heart with an article which was sufficient to cause death if striking same, but he struck the loins and the man dies, although it was not sufficient to cause death if struck on the heart or even if he intended to strike an adult with an article which was not sufficient for such, but it happened that he struck a minor and he dies, as for a minor it was sufficient; or, on the contrary, if be intended to strike a minor with an article which was sufficient for such, but not for an adult, and it happened that he struck with it an adult and he nevertheless dies. To the following, however, capital punishment does apply: To one who intended to strike a person on the loins with an article which was sufficient for this purpose, and he strikes him to death on his heart, or if he intended to strike an adult with an article which was sufficient to cause his death, but it happens that he strikes to death a minor with it. R. Simeon, however, maintains: Capital punishment does not apply even to him who intended to kill a certain person, and it happened that he killed another.

GEMARA: To which part of the Mishna belongs R. Simeon's, theory? If to the latter part only it should read: And R. Simeon frees him (*i.e.*, him who intended to kill an adult and killed a minor). We must then say that it belongs to the first part, which states: an animal--an idolater--an Israelite--a miscarried child, etc., to which capital punishment does not apply, from which it is to be understood that if there were two resembling persons, and he intended to kill one and killed the other, capital punishment does apply. And to this R. Simeon came to say that even in such a case capital punishment does not apply. Now, let us see! If, *e.g.*, there were Reuben and Simeon, and the murderer said, "I intend to kill Reuben and not Simeon," and finally Simeon was killed, and not Reuben--this is the case in which the first Tana and R. Simeon differ. But how is it if the murderer said, "I intend to kill one of them"; or the murderer mistook Simeon for Reuben? Does R. Simeon differ even in this? Come and hear the following Boraitha: R Simeon said: Capital punishment does not apply, unless one said, "I intended to kill so and so," and he did so. And what is his reason? [Deut. xix. 11]: "But if any man be an enemy to his neighbor and lie in wait for him," which means only when he killed the intended person. Said the disciples of Janai: And what do the rabbis say to this verse? It excludes him who throws a stone into an excavation in which men are standing without the intention of killing any particular one. Now, let us

see! According to the rabbis, who apply capital punishment to him who killed one person,

although he intended to kill another, the verses Ex. xxi. 22 and 23, "If men strive . . . then shalt thou give life for life," are in accordance with the explanation of R. Elazar, stated above, that the verses speak about him who intends to kill. But how should this passage be explained in accordance to Simeon's theory? In accordance with Rabbi of the following Boraitha: "Thou shalt give life for life" means money (*i.e.*, the value of the woman should be paid to her heirs). You say "money," but perhaps it means literally it life"? The expression here "thou shalt give," is to be explained similarly to ibid., ibid. 22: "He shall give according to the decision," etc. As there it means money, the same is the case here.

Rabha said: The following statements, taught in the school of Hiskia, correspond neither with Rabbi nor with the rabbis mentioned above. Namely: It reads [Lev. xxiv. 21]: "And he that killeth a beast shall make restitution for it, and he that killeth a man shall be put to death." As in the case of a beast there is no difference whether it was intentionally or unintentionally, by an error or by premeditation, while he was ascending or descending, he is always liable and must pay. The same is it in the latter case of a human being: there is no difference whether it was intentionally, etc.,--he is absolved from any money payment.

Now let us see what is meant by the expression "unintentionally" concerning a human being. Shall we assume, *i.e.*, that it was done without any intention? Then it was an error, which has been already mentioned. Why, then, the repetition? You must then say that it means, if he intended to kill one and killed another person, and nevertheless it states that he is absolved from any payment. Now, if he should hold with the rabbis that such is guilty of a capital crime, then such a statement is not necessary, as there is a rule that no payment is required in a case of capital punishment. We must therefore say that it does not agree with them; nor can we say, on the other hand, that it agrees with Rabbi, as the latter requires payment, while Heskia does not.

MISHNA *V.*: A murderer mixed up among others--all of them are free. R. Jehudah maintains: All of them must be taken to χυφος {Greek *xufos̱*}; (a life-long prison, to be done with as explained farther on). If it happen that the persons sentenced to deaths of different

kinds, and are so mixed that it is not known who comes under this kind of death and who under another, all of them must be executed with the more lenient death, *e.g.*, if those who are to be stoned are mixed up among those who are to be burned, according to the sages all of them must be executed by burning, as stoning is more rigorous; and according to R. Simeon all of them are to be executed by stoning, as burning is more rigorous. Said R. Simeon to the sages: Were burning not more rigorous, it would not apply to a daughter of a priest who had sinned. Answered the sages: Were stoning not more rigorous, it would not apply to a blasphemer and an idolater. If they who are to be slain by the sword are mixed among those who are to be choked, according to R. Simeon they must be decapitated, and according to the sages, they must be choked.

GEMARA: What does the Mishna mean by the words, "among others"? Does it mean others who are innocent? Is it not self-evident that they are all free? And secondly, could R. Jehudah say that such are to be imprisoned? Said R. Abuhu in the name of Samuel: It speaks of a murderer who was not as yet sentenced, and was mixed among those who were already sentenced; and as the verdict of death must be rendered only in the presence of the criminal, therefore all of them are free from execution according to the rabbis. R. Jehudah, however,

maintains that such cannot be entirely free, since they are murderers, and therefore, they must be taken to the kyphos.

Resh Lakish said: The Mishna does not mean human beings at all, but oxen--*i.e.*, whether an ox which was not as yet sentenced to death was mixed among others which were already sentenced is the point of their difference. According to the rabbis the ox must be judged the same as its owner. As its owner cannot be sentenced to death if not present, the same is the case with the ox; and as he is now mixed among others, all of them are free. And R. Jehudah maintains that all of them must be taken to the kyphos.

Said Rabha: How can such an explanation be given to the Mishna? Does not a Boraitha add to this: Said R. Jose: Even if among the others was Abbah Halafta (who was known as a great man). How, then, can the Mishna be interpreted that it means other murderers or oxen? Therefore explains he: It means if, *e.g.*, two were standing shoulder to shoulder and an arrow came out from one of them and killed a person, both of them are free. And to this R. Jose said: Even if Abbah Halafta was among the

two, and it is certain that Abbah Halafta would not commit such a crime. Nevertheless, the other is free. And the saying of R. Jehudah belongs to another case, as the Mishna is not completed, and should read thus: And if an ox which was sentenced to death was mixed among other innocent oxen, they must all be stoned. R. Jehudah, however, maintains that all of them must be taken to the kyphos, and it is in accordance with the following Boraitha: If a cow has killed a human being, and thereafter gave birth, before she was sentenced to death, the offspring is valid; but if it happened after she was sentenced, the offspring is invalid. And if such were mixed among others, and even if some of the others among which it is mixed were mixed with still others, all of them must be taken to the kyphos. R. Elazar b. Simeon, however, maintains: All of them are to be brought to the court and stoned.

"*All who were sentenced to death*," etc. Infer from this that if one is forewarned of a rigorous crime, it suffices for a lenient one. (This question was not yet solved.) Said R. Jeremiah: The Mishna speaks of a case where the criminal was warned in general; and it is in accordance to the Tana of the following Boraitha: All the crimes to which capital punishment applies, the perpetrators of them are not put to death unless there were witnesses who warned them, and unless they warned them that they were liable to die by the decision of the court. And according to R. Jehudah, only when they notified them by which kind of death they would be executed.

The first Tana, who does not require that they should be notified by which death, infers it from the case of the woodgatherer; and according to R. Jehudah, nothing is to be inferred from the case of the woodgatherer, as it was only a decision of that time.

"*Among those who are to be burned*," etc. R. Ezekiel taught to Rami his son: If those who are to be burned were mixed among those who are to be stoned, according to R. Simeon, they are to be executed by stoning, as burning is more rigorous. Said R. Jehudah (his older son) to him: Father, do not teach so, for, according to your teaching (as "those who are to be burned were mixed among those who are to be stoned") it seems that the majority of them come under the category of stoning: Hence the reason why they are to be stoned is not because it is more lenient, but

because so was it to be done with the majority. And to the question of his father: How, then, shall I teach? The answer was: As our Mishna states: If those who are to be stoned

were mixed among those who are to be burned, R. Simeon said, etc. But if so, how is the latter part, "And the sages said that they are to be executed by burning, because burning is more rigorous," to be understood? Also here the reason may be that the majority who are to be executed come under the category of burning? Nay! The expression of the rabbis, "stoning is more rigorous," was not as a reason, but as an answer to R. Simeon. And it is to be explained thus: If they were mixed among those who are to be burned, it must be done with them in accordance with their majority. And your supposition to care about the minority, because we have to select for them a lenient death, does not hold good, as in reality stoning is more rigorous. Said Samuel to R. Jehudah: Genius! do not express yourself in such terms to your father, as there is a Boraitha: If a son saw his father transgressing what is written in the Scripture, he must not say to him, "Father, you have transgressed the law," but, "Father, so and so is written in the Scripture."

But is it not finally one and the same? It means he shall say: "Father, there is a verse in the Scripture which reads so and so," and in such a tone that it shall not seem a rebuke, but an intimation.

MISHNA *VI*.: If one committed a crime which deserves two kinds of death (*e.g.*, one who has intercourse with his mother-in-law who is married, commits two crimes--with a married woman, to which choking applies, and with his mother-in-law, to which burning applies), he must be tried for the more rigorous one. R. Jose, however, maintains: According to that act, he began first. (Illustrations in the Gemara.)

GEMARA: Is this not self-evident? Should one who has committed another crime which brings an easier punishment be benefited by it? Said Rahba: It speaks of where he was tried for a case which deserved a lenient death, and was sentenced, and then committed a crime to which a more rigorous death applies. Lest one say that this man is to be considered as already killed and not to be tried again, it comes to teach us that he must be tried and punished with the more rigorous death.

The brother of R. Jose b. Hanna questioned Rabba b. Nathan: Whence is this law deduced? (And the answer was:) from Ezek. xviii. 10-13; " . . . Upon the mountains he eateth . . . and his eyes he lifteth up to the idols of the house of Israel . . . and the wife of his neighbor he defileth . . . " To bloodshed the sword applies, to adultery with a married woman choking

applies, and to idolatry stoning applies, and it ends with "his blood shall be upon him," which means stoning. Hence he is to be executed with the more rigorous one. R. Na'hman b. Itz'hak opposed: Perhaps all the crimes mentioned in this passage come under the category of stoning, namely, a "dissolute son," means a stubborn and rebellious son, to whom stoning applies; "he defileth the wife of his neighbor" means a betrothed damsel, to whom also the same applies; "to the idols he lifteth up," which is idolatry, to which stoning applies? If it were so, then what came

Ezekiel to teach? And lest one say that he was only repeating what is in the Scripture, then he ought to have done as did Moses our master, who said [Deut, xvii. 18]: "He shall write the *repetition* of the law." 1

R. Abhah b. Hanina lectured about the passage [ibid. 6]: Upon the mountains he eateth not," which ends with [ibid. 9]: "He is righteous, he shall surely live." Is it possible that, because he has not committed such crimes, he should be called righteous? Therefore these verses must not be taken literally, but "upon the mountains he eateth not" means that he does not live upon the reward of the meritorious acts done by his parents; "his eyes he lifteth not up to the idols" means that he never walked overbearingly; "and the wife of his neighbor he defileth not," means that he never tried to compete in the special trade of his neighbor; "unto a woman on her separation he cometh not near" means that he never tried to derive any benefit from the treasure of charity--and to this it reads: "He is righteous, he shall surely live."

Rabban Gamaliel, when he came to this passage, used to weep, saying: It seems as if he who has done all of them is righteous, but not he who has done only one. Said R. Aqiba to him: According to your theory, the verse [Lev. xviii. 24]: "Do not defile yourself with all of these things," also means with all of them, but one of them is allowed? Hence it means to say with "any" of them. The same is to be said here: If one does one of the things mentioned above, he is righteous.

"*A crime which deserves two kinds*," etc. There is a Boraitha: How is R. Jose's decision in our Mishna to be illustrated?--*e.g.*, if the crime which he committed with this woman was that she became first his mother-in-law and then married. Hence the prohibition of having intercourse with her applied, even before she

married again. Then he must be tried under the crime "with a mother-in-law." But if she became his mother-in-law after her marriage, then he must be tried under the crime "with a married woman," as the prohibition against intercourse with her existed already before she became his mother-in-law.

Said R. Adda b. Ahabah to Rabha: In the first case, in which she married after she became his mother-in-law, why should he not also be tried for the crime with a married woman? Did not R. Abuhu say that R. Jose agrees in case a prohibition were added. (*E.g.*, when she was his mother-in-law but unmarried, she was prohibited to him only, but allowed to the whole world, and when married she became prohibited to the whole world. Hence one prohibition was added. And in such a case R. Jose agrees that the second crime must also be taken into consideration.) And Rabha answered: Adda, my son, do you want us to execute him twice? (R. Jose considers the added prohibition to be only concerning sin-offerings, when incurred through error.)

MISHNA *VII*.: He who receives stripes, and relaxes into the same crime, and is punished again and does not repent, the court takes him to the kyphos, and feeds him with barley until his abdomen bursts.

GEMARA: Because he received stripes twice, should the court imprison him in the kyphos forever? Said Jeremiah in the name of Resh Lakish: The Mishna speaks of crimes to which

korath applies, and he was forewarned of stripes, and was punished twice for the same crime. And as this man deserves death by Heaven, but his time has not yet come, and we see that he devotes his life to sin, the court imprisons him to hasten his death. Said R. Jacob to R. Jeremiah b. Tahlifa: Come and I will explain to you the real meaning of Resh Lakish: The Mishna means that he has committed the same crime thrice, for two of which he has received stripes. And as the court does not see any remedy for him, it puts him in the kyphos after the third time. If, however, he has committed different crimes to which korath applies, he is not taken to the kyphos, as he is not considered as devoting his life to this crime, but as one careless concerning prohibitions.

"He who receives stripes twice," etc. Twice, although he was not punished a third time! Shall we assume that our Mishna is not in accordance with R. Simeon b. Gamaliel, who says that until one has repeated the same crime thrice it is not considered

a hazakah [1] (habit), Said Rabhina: It may be even in accordance with R. Simeon, as the crime was committed thrice, and he considers it a habit, although he was not beaten thrice.

An objection was raised from the following: He who has committed a crime twice to which the punishment of stripes applies receives the stripes twice; repeating same a third time, the court puts him in the kyphos. Abba Shaul, however, maintains that even to the third time he receives stripes, and only after he has committed the crime a fourth time does the court imprison him. Is it not to be assumed that the Tanaim of this Boraitha differ in the same point as R. Simeon b. Gamaliel and Rabbi differ--namely, whether it should be considered a hazakah after two times, which is the opinion of Rabbi, or after three times, according to R. Simeon? Nay; all agree with R. Simeon. And the point of their difference is that, according to the first Tana, the crimes which were committed thrice counted, and according to Abba Shaul, the stripes, and not the crimes, are to be counted.

Where is to be found an allusion in the Scripture to the kyphos in question? Said Resh Lakish [Ps. xxxiv. 22]: "The evil will slay the wicked." And the same said again: It reads [Eccl. ix. 12] "For man also knoweth not his time, like the fishes that are caught in an evil net," from which the same is to be inferred.

MISHNA *VIII*.: He who kills a person, not in the presence of witnesses, is taken to the kyphos and is fed on scant bread and water.

GEMARA: But whence do we know if it was not in the presence of witnesses? Said Rabh: If there was only one witness, or even if there were two who saw this from separate places. And Samuel said: If he committed the crime without forewarning. And R. Hisda in the name of Abimi said: Even when the witnesses contradicted themselves in unimportant matters--as, *e.g.*, a Mishna stated above. Ben Sakkai examined them concerning the size of figs, etc., and they were not contradicted in the examination.

"*And is fed with scant bread and water*." And above it was said that he was fed with barley? Said R. Shesheth: In both cases it is meant that he was first fed with scant bread and water till his abdomen shrank, and afterwards with barley, from which it swelled till it burst.

MISHNA *IX*.: If one steals a kisvah, or one curses his

neighbor, Invoking God as "a carver," or one has intercourse with a female heathen, zealous people (like Pinehas) have a right to strike him when caught in the act. If a priest performed the service in the Temple while he was unclean, his fellow-priests would not bring him to the court, but the youths would take him out of the sanctuary and split his head. If a common Israelite served in the Temple, according to R. Aqiba, he was choked by the court, and according to the sages he would come to his death by Heaven.

GEMARA: What is meant by "*kisvah*"? Said R. Jehudah: It means service vessels [cf. Num. iv. 7]. And where is there to be found an allusion to this in Scripture? [Ibid., ibid., 20]: "That they may not go in to see when the holy things are covered, and die."

"*Who curses*," etc. R. Joseph taught: May the carver strike his carving. And another explanation by Rabah b. Mari is: May the carver strike him himself, and his creator and his creation.

"*One who has intercourse*," etc. R. Kahana questioned Rabh: What is this punishment if there were no zealous men? Rabh forgot his traditional answer to this, and it happened that it was read before R. Kahan in a dream, etc. [Mal. ii. 11]: "Judah hath dealt treacherously, and an abomination hath been committed in Israel and in Jerusalem; for Judah hath profaned the sanctuary of the Lord which he loveth, and hath married the daughter of a strange god." And he came to Rabh and told him that so was it read to him, and therefrom Rabh recollected that this passage was an answer to his question, as it reads immediately after it: "The Lord will cut off, unto the man that does this, son and grandson, out of the tents of Jacob, and him that bringeth near an offering unto the Lord of hosts"--which means, if he was a scholar, that he should not have a son among the scholars or a grandson among the disciples; and if he was priest, that he should not have a son who should bring an offering, etc. Hyya b. Abuhu said: He who has had intercourse with the daughter of an idolater is considered as if he mingles himself with the idols. As it reads: "He hath married the daughter of a strange god." Has, then, an idol a daughter? Hence it means as is just mentioned above.

When R. Dimi, or Rabbin, came from Palestine, he said that the court of the Maccabees decreed: He who does so transgresses concerning the following four things: Neda (menstruation), Shif'ha (female-slave), Goiye (strangers in faith), and prostitution.

Said R. Hisda: If one comes to the court with the question, "May one take revenge on the criminal mentioned above?" his question must not be answered. And so also said Rabba b. Hana in the name of R. Johanan, and not only this, but if it should happen that Zimri were killed by Phinehas after he separated himself from Cozbi, Phinehas would be put to death for this crime. Furthermore, if Zimri, seeing that Phinehas seeks his life, were to kill him in self-protection, he would not be punished, as Phinehas would be considered a seeker of life.

It reads [Num. xxv. 5]: "Moses said to the judges of Israel," etc. The tribe of Simeon went to

Zimri ben Saul and said: They (the judges) are judging cases of capital punishment, and you keep silent! What did he do? He gathered twenty-four thousand of his tribe and went to Cozbi, pleading with her to listen to him. And to her answer, "I am a princess, the daughter of a king, and my father commanded me not to listen to any one but the greatest of Israel," he said: I myself am a prince of a tribe in Israel, and I am greater than Moses, as I am from the second tribe, while he is from the third. He took her by the locks of her hair, and brought her to Moses, saying: Son of Amram, is this damsel allowed to me, or prohibited? And should you say that she is prohibited, I would ask you, Who allowed to you the daughter of Jethro? Moses, however, had forgotten the traditional Halakha, and he and all who accompanied him wept. As it reads [ibid., ibid. 6]: "And these were weeping by the door of the tabernacle of the congregation."

And farther on it reads: "And Phinehas saw." What did he see? Said Rabh: He saw Zimri's act, from which he recollected the traditional Halakha. And he said to Moses: Granduncle, didst thou not teach me, on thy descending from Mount Sinai, that zealous men might take revenge on him who has had intercourse with the daughter of an idolater? To which Moses answered: Let him who reads the letter be the carrier--*i.e.*, let him who gives the advice be its executor.

Samuel, however, said: Phinehas saw [Prov. xxi. 30]: "There is no wisdom, nor understanding, nor counsel against the Lord--*i.e.*, in a case where there is a violation of the Holy Name the honor of the master must not be considered (and therefore Phinehas did it without the consent of his master Moses).

R. Itz'hak, in the name of R. Elazar said: He saw the angel who destroyed the people. It reads: "Arose and took a javelin in his hand." From this it may be inferred that one must not

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enter with arms into the house of learning. He took out the javelin from its sheath, sharpened it, and replaced it in the sheath so that it should not be visible; and went to the headquarters of Simeon's tribe, saying: Whence do we know that the tribe of Levi is greater than Simeon's? And the people who were there thought: Phinehas himself is coming to do the same as Zimri has done. Hence the scholars decided that this is allowed.

Said R. Johanan: Six miracles occurred to Phinehas when he came to smite Zimri. One--Zimri has not separated himself, etc (The continuation of the Haggadah will be translated farther on.)

"*If a priest performed the service while he is defiled,*" etc. R. Ahbah b. Huna questioned R. Shesheth: Is a priest who does service, being defiled, deserving of death by Heaven, or not? And he answered: This we have learned in our Mishna: "A priest who does service in the Temple, being defiled, his fellow-priests would not bring him to court, but the youths would take him out and split his head." Now, if it should be supposed that he was guilty of death by Heaven, why did not they leave him to the heavenly punishment? Rejoined he: Do you mean to say that he was not guilty at all? Is there such a thing--that Heaven frees him and we should put him to death? Yea! Does not the court put one who is twice beaten with stripes in the kyphos and cause him to die? (What comparison is this?) Did not R. Jeremiah say that it speaks of crimes of a kind to which korath applies? Hence such an offender deserves death. But is the case not the same with him who steals a kisvah, and with the two other cases mentioned in our Mishna? To all of them it is taught that there are allusions in the Scripture implying that they deserve death, viz.,

concerning a kisvah [Num. iv. 20]: "That they may not go in to see when the holy things are covered, and *die*," concerning one cursing his neighbor, etc., it was explained by R. Joseph that it looks like blasphemy, and concerning an intercourse with a daughter of an adulterer, Rabh recollected his tradition, as said above.

An objection was raised from a Boraitha which states: And the following are liable to death by Heaven: An unclean priest who served in the Temple, etc. Hence we see that his punishment is death, R. Shesheth being objected to, and the objection remains.

The same Boraitha continues thus, The following deserve death by Heaven: One who eats grain in which the heave-offering

is mixed, an unclean priest who eats a heave-offering while defiled, and a commoner who partakes of the heave-offering, a commoner who performs service in the Temple, a priest, while defiled, serving in the Temple, a priest who has had a legal bath after defilement and performs the service in the Temple before sunset, the same is if he performs the service without the prescribed dress, or he who performs service before the prescribed offering after defilement is brought, and also he who serves without the prescribed washing of his hands and feet, or he serves while drunk, or without having cut his hair at the prescribed time. However, one uncircumcised, a mourner while the corpse is not yet buried, and he who worships while sitting, do not come under the category of death by Heaven, but are only forewarned. A priest who has a blemish and he who derives benefit from the sanctuary intentionally--according to Rabbi he comes under the category of death by Heaven, and according to the sages he comes under the category of the forewarned.

Concerning heave-offering mentioned in the Boraitha, said Rabh: A commoner who partakes of heave-offering is to be punished with stripes. Said R. Kabana and R. Assi to him: Let the master say he deserves death by Heaven. And he answered: It reads [Lev. xxii. 9, 10]: "They die therefore . . . I am the Lord who sanctify them. And no stranger shall eat of a holy thing." Hence between "they will die" and "no stranger shall eat" intervenes "I am the Lord," etc., to teach that the punishment of death does not apply to a stranger. But does not the above Boraitha state that such comes under the category of punishment by Heaven? Do you want to contradict Rabh from a Boraitha? Rabh is a Tana, and has the right to differ. [1]

"*If a common Israelite served in the Temple,*" etc. There is a Boraitha: R. Ismael said: It reads [Num. xviii. 7] "And the stranger that cometh nigh shall be put to death"; and [ibid. xvii. 28] "Everyone that cometh near at all unto the tabernacle of the Lord shall die." As the verse just cited speaks of death by Heaven, the same is the case with the former.

R. Aqiba, however, said: Here the Scripture says: "And die therefore"; and [Deut. xiii. 6]: "And that prophet, or that dreamer of dreams, shall be put to death." And as there it means by stoning, the same is the case here. And R. Johanan

b. Nuri said: As a false prophet is punished with choking, the same is the case here. What is the

point of their difference? R. Aqiba holds that the expression "put to death" must be analogized with "put to death," and not "put to death" with "shall die." And R. Ismael holds that we should equalize a commoner with a commoner, and not a commoner with a prophet. According to R. Aqiba, however, a prophet who has misled is worse than a commoner.

And the point of difference between R. Aqiba and R. Johanan b. Nuri is the same wherein R. Simeon and the rabbis differ in the following Boraitha: To a prophet who has misled, stoning applies; according to R. Simeon, however, choking applies. But does not a Mishna above state (p. 239): R. Aqiba said: Choking applies. There are two Tanaim who differ concerning R. Aqiba's statement. Our Mishna mentioned R. Simeon, who said so, in accordance with R. Aqiba's theory; but the Boraitha is in accordance with the rabbis, who are of the opinion, with R. Aqiba. that choking applies.

Footnotes

223:1 It is impossible to give a literal translation of this Boraitha with even an abstract of the explanation as discussed by the Amoraim at length in the text. It is so complicated that the Amoraim themselves could not explain it without correcting the Boraitha or without giving to it an entirely strange interpretation. As was said by Rabha: "In any event, the analogy of expressions cannot be used without objections and difficulties." We therefore give a free rendering of the Boraitha, omitting the discussion.

228:1 Against our method, here are repeated a few lines from First Gate, pp. 55 and 56; but we could not do otherwise, because of the explanation in the text.

228:2 Leeser's translation does not correspond.

237:1 Leeser's translation, "a copy of the law," is entirely wrong.

239:1 See footnote, Vol. XIV., p. 217

243:1 All that is mentioned in the Boraitha cited is inferred from different passages in the Scripture by analogy of expression, followed by a discussion at length about them, which does not belong here and is therefore omitted.

Next: Chapter X

CHAPTER X.

RULES AND REGULATIONS CONCERNING THEM TO WHOM CHOKING APPLIES. CONCERNING A REBELLING JUDGE; WHAT SHALL BE HIS CRIME FOR WHICH HE IS TO BE EXECUTED; AT WHICH PLACE AND WITH WHICH KIND OF DEATH; AND CONCERNING A FALSE PROPHET.

MISHNA *I*.: To the following, choking applies: To him who strikes his father or mother, to him who steals a living soul of Israel, to a judge rebelling against the Great Sanhedrin, to a false prophet, to him who prophesies in the name of an idol, to the paramour of a married woman, and to the collusive witnesses of the married daughter of a priest who has sinned, and to her abuser.

GEMARA: Whence do we know that choking applies to the smiter of his father or mother? From [Ex. xxi. 15]: "Put to death"; and wherever the Scripture mentions death without specifying what kind, choking is meant. But perhaps the verse cited means "when he kills him or her"? How can it be supposed if one who kills a stranger is executed by the sword, that he who kills his father should be executed by choking, which is more lenient? However, this is correct according to him who holds that choking is lenient; but according to him who holds that the sword is lenient, what can be said? Therefore, from [ibid., ibid. 12]: "He that smiteth a man so that he die," and from [Num. xxxv. 21]: "Smitten with his hand that he die," we infer that when it is not mentioned "that he die," it means smitten only. And it was necessary for the Scripture to write both of the following passages, namely [Ex. xxi. 12]: "He that smiteth a man so that he die," and [Num. xxxv. 30]: "Whoever it be that killeth a person (soul)," for if the first only were written, one might say that one is liable only when he kills an adult, but not a minor; and if the second only were written, one might say that one is liable even if he killed a miscarried child or one who was born in the eighth month, and therefore both are necessary.

But from the above theory it is to be understood that if one smote his father he is guilty of a capital crime even if he did not

wound him. Why, then, does the succeeding Mishna state that he is *not* guilty unless he wounds him? This is inferred from [Lev. xxiv. 21]: "And he that smiteth a beast shall make restitution for it, and he that smiteth a man shall be put to death." 1 As concerning a beast the striker is not liable unless he makes a wound, as in ibid. 18 it reads "nefesh" (soul, blood of it), the same is the case if he smote a person--he is not guilty unless he made a wound. R. Jeremiah opposed: According to this theory, if one has made lean an animal by using it to carry stones, should he not be responsible? Therefore we must say, as verse 30 is not necessary for this case, because of verse 18, apply it to human life. If so, why the analogy? In accordance with what was taught by the school of Hiskia (above, p. 233). But this is only correct for him who agrees with the school of Hiskia. But for him who does not agree with this theory, to what purpose is the analogy? To

teach that, as there is no liability if one wounds an animal for the purpose of curing it, the same is the case with a human being. A similar question was propounded by the schoolmen: May one bleed his father to cure him? R. Mathna said: From "Thou shalt love thy neighbor as thyself" it may be inferred that he may. And R. Dimi b. Henna said: It is inferred from the analogy just mentioned. As there is no liability for wounding an animal to cure, the same is the case with a human being. Rabh did not allow his son to take out a string from his finger, lest he might wound him unintentionally, which is prohibited for one to do to his father; and Mar b. Rabhina did not allow his son to open for him a wound, for the same reason.

R. Shesheth was questioned: May a son be a messenger from the court to punish his father with stripes, or to put him under the ban? [2] Said Rabba b. R. Huna: And so also was it taught by the school of R. Ismael: Concerning all the crimes mentioned in the Torah, the court must not appoint the son of the criminal to strike, to curse his father, etc., except in the case of a seducer, about whom it reads [Deut. xiii. 9]: "Nor shall thy eye look with pity on him," etc.

MISHNA *II*.: A son is not guilty of a capital crime unless he wounds his father by striking him. Cursing is in one respect

more rigorous than striking, as for the latter one is guilty when done to his living father only, and for the former he is guilty even if he did it after his father's death.

GEMARA: The rabbis taught: It reads [Lev. xx. 9]: "His father and mother has he cursed," which means even after his death. And this is repeated only for this purpose, lest one say that one is guilty for striking his father and for cursing him. Hence, as the former applies to a living father only, the same is the case with the latter. But this is correct only for R. Jonathan, as according to him the verse just cited is superfluous; but for R. Jashiah, who uses this verse for inferring father or mother (above p. 192), whence does he deduce the above statement? From [Ex. xxi. 17]: "And he that curseth his father," etc. But let the Mishna state that in another respect striking is more rigorous than cursing, as concerning the former one is guilty if he did so to his father even if he were of another faith, which is not the case with cursing (according to the opinion of some Tanaim). The Tana of our Mishna holds that cursing is compared to striking even in the latter case; *i.e.*, one is also guilty if he curses his father who is of another faith.

Shall we assume that the Tanaim of our Mishna differ in the same way as the Tanaim of the following Boraithas, one of which states: If one's father was a Samaritan, he is forewarned against striking him, but not against cursing; and the other states: He is forewarned neither against striking nor against cursing? The schoolmen who learned these Boraithas thought: Both Boraithas agree that at the beginning the Samaritans were true proselytes (this refers to II. Kings, vii. 23-34), but at that time they were decadent. Hence the point of their difference is that, according to one Boraitha, striking is equal to cursing, and according to the other it is not? Nay! All agree that they are not equal, consequently the point of their difference is, whether the ancient Samaritans were true proselytes, or only embraced Judaism from fear of the lions. Hence they were not considered Israelites at all, but heathens.

MISHNA *III*.: If one steals a person, he is not guilty of a capital crime, unless he brings him upon his own premises. R. Jehudah, however, said: One is not guilty for only bringing him upon

his premises, but after he used him for work. As it reads [Deut. xxiv. 7]: "And he treateth him as a slave."

If one steals his own son and sells him, R. Ismael, the son of R. Johanan b. Beroka, makes him guilty; the sages, however, free

him. If one steals a person who is half free and half slave, *i.e.*, a slave of two owners, one of whom has freed him, R Jehudah makes him guilty, and the sages free him.

GEMARA: And the first Tana of our Mishna does not require any work (notwithstanding that so it is written in the Scripture)? Said R. Ahbah b. Rabha: They differ if he worked with him to the value of less than a perutha. (According to the first Tana he is guilty, and according to R. Ismael he is not.)

R. Jeremiah questioned: How is the law if one steals a person while asleep and sells him in this condition, or if he stole a pregnant woman for the purpose of selling her embryo, is it considered treating as a slave, or, because he has not done it in the usual manner, is it not so considered? Usual manner! Let him say that there was not any kind of slavery at all? He speaks of when he used the sleeping one as a support and the pregnant woman as a protection against the wind (and as she is more stout because of the embryo, the protection is stronger). And to this was the question: "Is it considered slavery, or, because it was in an unusual manner, is it not? This question is now decided.

The rabbis taught: It reads [Deut. xxiv. 7]: "If a man be found stealing any one of his brethren of the children of Israel." From this we know only concerning a male, but whence do we know concerning the stealing of a female? It reads [Ex. xxi. 16]: "And he that stealeth a man--whatsoever. However, from both verses we know about a man who stole either a male or a female. But whence do we know that the same is the case when a woman steals a male or female? As to this, it reads in the verse above cited: "Then shall that thief die," meaning what person soever.

There is another Boraitha: The verse just cited means that there is no difference whether he stole a male or a female, a proselyte, or a bondsman who was freed, or a minor. However, if he stole him and did not sell him, or even if he sold him, but he is still on his own premises, he is not condemned to capital punishment. If he sold him to the father or brother of the stolen one, or to some one else of his relatives, capital punishment does apply. However, for stealing slaves it does not. This Boraitha was repeated by one of the disciples before R. Shesheth, and he rejoined: I teach: R. Simeon said: It reads: "From his brethren," which means that he is not guilty unless he took him out from the control of his brother. And you teach: He is guilty of a capital crime if he sold him to his father or brother.

[paragraph continues] Go and teach that he is free. (Says the Gemara:) And what is the difficulty? Why not say that the Boraitha is in accordance with the rabbis? This cannot be supposed, as there is a rule that all the anonymous Mishnayoth are in accordance with R. Mair, anonymous

Tosephtas in accordance with R. Nehemiah, anonymous Siphra in accordance with R. Jehudah, and anonymous Siphri in accordance with R. Simeon. And all of them are after R. Aqiba's instructions. And the Boraitha above cited is to be found in Siphri.

"*If one stole his own son,*" etc. What is the reason of the rabbis, who free him? Said Abayi: It reads [Deut. xxiv. 7]: "If a man be found 'stealing,'" which means to exclude him who is often with him. Said R. Papa to Abayi: According to your theory [ibid. xxii. 22]: "If a man be found lying with a woman," etc., is also to be explained to exclude him who is often with her; *e.g.*, in the house of so and so, which is crowded, and men and women are often together--should one not be liable for adultery? And he answered: I call your attention to [Ex. xxi. 16]: "And he will be found in his hand" (which is not the case with a father, whose son is usually in his hand). Said Rabha: According to this theory, teachers of schoolchildren and masters with their disciples are considered often together, and if it happened that one of the masters stole one of the children, he is free from capital punishment.

"*Half a slave,*" etc. There is a Mishna (First Gate, p. 193): R. Jehudah says that there is no disgrace for slaves. And ibid. 195 (*q.v.*), the reason of R. Jehudah is given from [Deut. xxv. 11]. However, what would be his reason here? Thus: "From his brethren" means to exclude slaves; "children of Israel" means to exclude a half slave; "of the children of Israel" means again an exclusion, and means to exclude the same. And there is a rule that an exclusion after an exclusion comes to add. Hence a person who is half slave and half free is added to those for whom guilt is incurred. The rabbis do not hold his theory that "of his brethren" means to exclude slaves, as a slave is also considered a brother who is obliged to perform all the commandments which are obligatory on a woman. Hence, according to them, "children of Israel" means to exclude a slave, and "of the children of Israel" means to exclude half a slave and half a free man. But whence do we know about the forewarning of stealing a person of Israel? According to R. Jashiah: From [Ex. xx. 13]: "Thou shalt not steal." And according to R.

[paragraph continues] Johanan: From [Lev. xxv. 42]: "They shall not be sold as bondmen are sold." And they do not differ, as one master counts the negative commandment of stealing, and the other the negative commandment of selling.

The rabbis taught: "Thou shalt not steal," in the third commandment, means human beings. But perhaps it means simply money? It may be said: Go and learn it from the thirteen methods by which the Torah is to be explained, one of which is that a word or (passage) is to be explained from its connection or from what follows, 1 and as the connection of this passage speaks of human beings, you must explain also that "stealing" applies to human beings. There is another Boraitha: It reads [Lev. xix. 11]: "Ye shalt not steal," meaning money. You say money, but perhaps it means human beings? Go and learn it from the thirteen methods, etc., one of which is that a word or (passage) is to be explained from what follows. And as the continuation of this passage is concerning money [ibid. 13] so also stealing is to be explained as meaning money.

It was taught: If there were two parties of witnesses, and one party testified that one stole a human being and the other testified that he sold him, and thereafter one of the parties, or both, were found collusive, they are not to be put to death, according to Hiskia. According to R. Johanan, however, they are. Hiskia's reason is that he holds in accordance with R. Aqiba, who used to say (Last Gate, p. 135): A case, but not half a case. And R. Johanan is in accordance

with the rabbis, who said: Even for half a case. R. Papa, however, said, concerning the witnesses of selling: All agree that they are to be put to death. But the point of their difference is concerning the witnesses of the stealing. According to Hiskia they are not to be put to death, because stealing and selling are two separate crimes. R. Johanan, however, is of the opinion that the stealing is the beginning of the selling. The latter, however, agrees that the first witnesses concerning a stubborn and rebellious son are not to be put to death if found collusive, as they could say: Our intention was only that he should be punished with stripes, as it is said above that the son in question is not put to death unless he first received stripes.

Said Abayi: There are three cases concerning a stubborn and

rebellious son. In two of them all agree, and in one of them they differ. Namely, concerning the first witnesses in this case, all agree that they are not to be put to death if collusive, as they could say: Our intention was only that he should receive stripes. And their claim must be taken into consideration. And also all agree concerning the second witnesses of same, that they are to be put to death, as the first witnesses are considered as concerning stripes only. Hence the second witnesses only would be the cause of death to the criminal son, if they were not collusive; and they have done the whole case even according to R. Aqiba, who requires the whole, and not half a case.

And the third case in which they differ is, if there were two parties of witnesses, one of which testifies: "In our presence he stole," and the other testified: "In our presence he consumed." And as the law regarding the criminal son dictates that he is not to be put to death unless he stole from his father and consumed on the premises of strangers, both things depend on each other. Hence according to R. Aqiba each of the parties has done only half a case. And if one or both were found collusive, they cannot be put to death for half a case; and according to the rabbis they can, as they make one guilty for half a case.

MISHNA *IV.*: A judge rebelling against the Great Sanhedrin (to whom, as stated in the first Mishna of this chapter, choking applies) is commanded in the Scripture as in Deut. xvii. 8-13. There were in Jerusalem (at the time of the Temple) three courts: one was situated at the gate of the Temple Mount (this was the east gate, inside of the surrounding wall, preceding the women's court); and another was situated after the women's court, but preceding the court of the common Israelites; and the third one was situated in the Temple treasury for congregational sacrifices. And in case a judge in the country had a dispute about the law with his colleagues, as to which the Scripture commands to bring their case before the court in Jerusalem, they came to the first court, situated at the above-mentioned gate. And the judge in question related his case before the court: I have lectured thus and thus, and my colleagues have lectured otherwise--thus and thus. I have taught in accordance with my lecture so and so, and my colleagues so and so. And if this court were able to decide it traditionally, they rendered their decision; and if not, they came before the other court, explaining the same again. If this court were able to decide it traditionally, they rendered their decision; and if not, all of them came to the Great Sanhedrin,

which was in the Temple treasury, from which the law proceeds to all Israel, wherever found. As it reads [ibid., ibid. 10]: "From that place which the Lord will choose, and thou shalt observe

to do according to all that may instruct thee." Then if the judge returns to his own city and continues his lectures as before, he is not culpable. If, however, he gives his decision for practice, he is subject to capital punishment. As it reads [ibid., ibid. 12]: "And the man that will act presumptuously," etc., which means that he is not culpable unless he decides for practice.

A disciple who is not a judge, who decides for practice against the decision of the Great Sanhedrin, is not culpable. Hence the rigorousness which lies upon him, not to give his decision in any law (until he shall be forty years of age), becomes lenient concerning the punishment.

GEMARA: The rabbis taught: It reads [ibid., ibid. 8]: "khi j'pola," literally, "if it will wonder." Hence the passage speaks of the wonder (prime) judge of the courts. "*Mimcho*"--from thee," means a counsellor. As it reads [Nahum, i. 11]: "There is gone forth (mimcho) out of thee he that devised evil against the Lord, the counsellor of infamous things." "Dabhor"--"a matter," means a Halakha; L'michphat means a decision of money matters. "Between blood and blood" means blood of menstruation and the blood of purification after birth (referring to Lev. xii. 4) or blood of infliction. "Between plea and plea" means criminal and civil cases and cases of stripes; "Between lepers and lepers"--bodily leprosy, leprosy of houses, of dress, etc.; "matters"--excommunications, appraisement of things belonging to the sanctuary; "controversy"--a thing which came from a controversy between a husband and wife (ref. to Num. v. 11-25); breaking the neck of the heifer (Deut. xxi.)--the purification of men who were afflicted with leprosy; "within thy gates"--about gathering grain of the poor, forgetters of sheaves and peah (corner tithe); "shalt thou arise"--from thy court. "Get thee up" infer from this that the Temple was the highest building in all Jerusalem, and the land of Israel was situated higher than all other countries. "Unto the place"--infer from this that the place is the cause of the situation of the high court.

The rabbis taught: A rebelling judge is not guilty unless he gave his decision in a matter to which, if done intentionally, korath applies; and if unintentionally, a sin-offering. So is the decree of R. Mair R. Jehudah said: As to a matter of which the source is to be found in the Scripture, and the interpretation is

by the scribes. R. Simeon, however, maintains: Even as to one observation of the many observations of the scribes.

Said R. Huna b. Hinna to Rabha: Can you explain to me this Boraitha which has enumerated all the cases inferred from Deut. xvii. 8, in accordance with R. Mair's decree? And Rabha said to R. Papa: Go and explain it to him. And he explained thus: The Boraitha which states a counsellor, means him who is able to establish leap years and to appoint the days of the month. And a difference of opinions may cause the eating of leavened bread on Passover; namely, according to some a leap year may be established during the whole month of Adar, and according to others only until Purim. Hence if the law is in accordance with one of them, and it was done to the contrary, people would eat leaven on Passover. The Halakha which is mentioned in the same Boraitha means the difference of opinion between R. Johanan and Resh Lakish concerning the tenth day of menstruation--whether it is still to be counted menstruation blood or of infliction (explained in Tract Nidda, 72b). Criminal cases means the case concerning the daughter of a coercer mentioned above. Concerning blood of menstruation, Akabia b. Mahalalel and the rabbis differ (Nidda, 19a). Concerning blood of purification, Rabh and Levi differ (ibid. 35b).

Concerning blood of infliction, R. Eliezer and R. Jehoshua differ (ibid. 36b). Concerning civil cases, Samuel and R. Abuhu differ (above, p. 7). Concerning criminal cases, Rabbi and the rabbis differ (above, p. 3); stripes, R. Ismael and the rabbis differ (in the first Mishna of this tract); leprosies, R. Jehoshua and the rabbis differ (Nidda, 19b); leprosy of houses, R. Elazar b. Simeon and the rabbis differ (above, p. 4); leprosy of dresses, Jonathan b. Abtulmes and the rabbis (Nidda, 19a); appraisement of men, R. Mair and the rabbis (Arachin, 5a); excommunications, Jehudah b. Bathyra and the rabbis (ibid. 28b); sanctification, Eliezer b. Jacob and the rabbis (above, p. 32); controversies concerning a woman who is suspected by her husband, R. Eliezer and R. Jehoshua (Sota, 2a); breaking the neck of the heifer, R. Eliezer and R. Aqiba (ibid. 45b); purification of leprosy, R. Simeon and the rabbis (above, p. 137); gathering, the schools of Shamai and Hillel (Tract Negaim, XIV. 9); forgotten sheaves (the same, ibid., ibid.); peah, R. Ismael and the rabbis (Themura, 6a). (And of all of them, the sources are in the Scripture and the explanation is by the scribes.)

"*There were three courts*," etc. Said R. Kahana: If he says, "I have it from a tradition," and they (the Great Sanhedrin) also

say the same, he is not put to death. And the same is the case if he says: So is it according to my opinion; and they also say: According to our opinion. And so much the more if he says: I have it from a tradition; and they say: So is it according to our opinion. And only when they say: We have it from a tradition; and he says: According to my opinion it is the contrary--then (if he gives his decision for practice) he is put to death. And an evidence in support of this is that Akabia b. Mehalalel, who decided against the Great Sanhedrin, was not killed. R. Elazar, however, maintains that even if he says, "I have it from a tradition," and they say, "So it is according to our opinion," he is put to death, for the reason that quarrels should not increase in Israel. And your evidence from Akabia b. Mehalalel does not hold good, as he was not killed because his decision was not for practice. An objection was raised from our Mishna: I have lectured, etc. Does not the latter expression mean that he taught so from a tradition? Nay! "I taught so because of my opinion, and they taught so from a tradition."

Come and hear another objection: R. Jashiah said: The following three things I was told by Zeerah, one of the citizens of Jerusalem: A husband who has sacrificed his claim against his wife, it is considered (and his wife is not to be brought to the court); and the same is the case if the parents of a stubborn and rebellious son have sacrificed their claim; and the same is it also if the high court were willing to sacrifice their honor in the case of a rebelling judge. And when I came to my brethren in the South, they yielded to me concerning the first two, but not concerning the third--for the reason that quarrels should not be increased in Israel. Hence the reason as to a rebelling judge is not to increase quarrel, and there is no difference whether he says, "I have it from a tradition" or "from my own opinion." This objection remains.

There is a Boraitha: R. Jose said: Formerly there was no quarrel in Israel, but a court of seventy-one was situated in the Temple treasury, and two courts of twenty-three sat at the gate of the Temple Mount and at the gate of the common Israelites; and the same courts of twenty-three were established in every city of Israel; and if there was a matter of difference concerning which it was necessary to inquire, they used to bring it before the court of their own city. And if they were able to decide from a tradition, they did so; and if not, they brought it to the court of a near-

by city; and if also they could not decide it, they brought

it before the court which was at the gate of the Temple Mount, and thereafter to that of the common Israelite, and he related to them: So have I lectured, etc., and so have I taught, etc. And if they had any tradition concerning this, they explained it; and if not, all of them came before the court of the Temple treasury, in which the judges sat from the morning daily offering until that of the evening on week days. And on Sabbaths and on holidays they used to take their place in the chamber of the surrounding wall, and the question was laid before them. If they could decide it, they did so; and if not, they stood up to vote, and their decision was according to the majority. However, since the disciples of Shamai and Hillel who had not accomplished their study increased in number, quarrels were increased in Israel, and it seemed as if the law came from two different lawgivers.

From the court of the Great Sanhedrin they used to write and send to all the cities of Israel: Whosoever is wise, modest, and is liked in the eyes of his people may be a judge in his own city. And thereafter, if he deserved it, he was advanced to the court at the gate of the Temple Mount; and farther on, until he reached to be a member in the court of the Temple treasury.

A message was sent from Palestine: Who is the man who has surely a share in the world to come? He who is modest, bends his head when he goes in, and the same when he goes out; is always studying the Torah, and does not become proud thereof. And the rabbis gave their attention to R. Ula b. Abba (who possessed all these qualifications).

"*Returned to his own city*," etc. The rabbis taught: He is not guilty unless he himself practised according to his decision; or, he decided so for others, and they practised. it is correct when he so decided for others, etc., as if he did so before he was not subject to a capital punishment. But if he himself has done according to his decision, he is guilty even before he goes to the higher courts? Previously, if he gave a good reason for his decision, it would be accepted; but after he came from the court, no longer is any reason accepted.

MISHNA *V*.: The punishment of him who transgresses the decision of the scribes is more rigorous than for that which is plainly written in the Scriptures, *e.g.*, if one says, "I do not see any commandment in the Torah about tephyilin (phylacteries)," with the intention of transgressing that which is written concerning them (*i.e.*, giving another interpretation to Deut. vi. 8, etc.), he is free. However, if he (the rebelling judge) should

decide that the phylacteries must contain five Totaphoth (portions), instead of the four enacted by the scribes, he is guilty.

GEMARA: Said R. Elazar in the name of R. Oshia: One is not considered a rebelling judge unless he decides upon a thing the sources of which are in the Scripture and the explanation is by the scribes, and there is something to add. However, if it is added, it harms the whole matter; and we cannot find such a thing in the whole Scripture but phylacteries, according to E. Jehudah (who maintains the four portions in question are to be attached one to the other [1]).

MISHNA *V*.: (The judge in question) was not put to death by the court of his own city, and also not by the court of the great Sanhedrin which was established temporarily in the city of Jamnia, but was brought to the supreme council in Jerusalem, kept in prison until the feast days, and executed on one of the feast days. As it reads [Deut. xvii. 13]: "And all the people shall hear and be afraid." So R. Aqiba. R. Jehudah, however, maintains that he must not be tortured by postponing the execution, but must be put to death immediately after being sentenced; and messengers were sent out to all the inhabitants of Israel that the judge so and so was sentenced and executed by the court for such and such a crime.

GEMARA: The rabbis taught concerning what was said by R. Aqiba mentioned in our Mishna: R. Jehudah rejoined: Does the Scripture read: "The people shall see and be afraid?" It reads: "They shall *hear* and be afraid." Why, then, should

this man be tortured? Therefore I say that he is executed immediately, and messengers are sent out to notify the people.

The rabbis taught: The following four crimes must be heralded--of a seducer, a stubborn and rebellious son, a rebelling judge, and collusive witnesses. Concerning the first three it reads: "All the people of Israel (shall hear and be afraid)." And concerning collusive witnesses it reads [Deut. xix. 20]: "And those who *remain* shall hear"--because not all of Israel are qualified to be witnesses.

MISHNA *VI*.: A false prophet who is to be sentenced by the court is only he who prophesies what he (*personally*) has not heard and what he was not told at all. However, he who does not proclaim what he was told to do, or did not listen to another prophet, or he who acted against what he himself was instructed by Heaven, his death depends upon Heaven. As it reads [ibid. xviii. 19]: "I will require it from him."

He who prophesied in the name of an idol, saying, "So and so was said by such and such an idol," although it corresponds exactly with the Hebrew law, he is punished by choking. The same was the case with him who had intercourse with a married woman, as soon as she comes under the control of her husband, even before she has had intercourse with him. The same punishment applies to the collusive witnesses of the married daughter of a priest, and also to her abuser, there is a difference between this case and all other cases of collusive witnesses, who are to be punished with the same death which would apply to the accused if it were true; and also between the adulterer in this case and other adulterers to whom the death of those abused applies.

GEMARA: The rabbis taught: Concerning prophecy, there are three who are to be sentenced by the court; viz., he who prophesies what he has not heard, he who prophesies what was not said to him, and he who prophesies in the name of an idol. And there are three whose death is by Heaven; viz., he who does not proclaim his prophecy, he who acts against what he was told by another prophet, and he who acts against his own prophecy.

Whence is this deduced?' Said R. Jehudah in the name of Rabh: It reads [Deut. xviii. 20]: "But the prophet who may presume to speak a word in my name" means him who has prophesied

what he has not heard; "which I have not commanded *him*"--although it was commanded to his colleague. "Or who may speak in the name of other gods" means in the name of any

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idol. "That prophet shall die" means by choking, as choking applies to all the deaths which are mentioned in the Scriptures without specifying which. And the other three above mentioned are inferred from the preceding verse [19]: "A man who will not hearken," etc.--which is to be understood both of him who does not make the people hear it and him who himself does not listen to it--which ends: "I will require it of him." (Now the illustrations.) He who prophesies what he has not heard--*e.g.*, Zedekiah ben Kenaanah, of whom it is written [II. Chron. xviii. 10]: "Made himself horns of iron," etc. But why was he guilty? Did not the spirit of Naboth make him err? As it reads [ibid., ibid. 19 to 21]: "And the Lord said, Who will persuade Achab, the king of Israel, that he may go up and fall at Ramoth-gilead? And one spake saying after this manner, and another saying after that manner. Then came forth a spirit, and placed himself before the Lord, and said, I will persuade him. And the Lord said unto him, Wherewith? And he said, I will go forth and I will become a lying spirit in the mouth of all his prophets. And he said, Thou shalt persuade him, and also prevail; go forth and do so." And to the question: What spirit? R. Johanan said: The spirit of Naboth Haisraeli. And what is meant by "go forth"? R. Jehudah said: Go outside of the fence of my glory (as a liar must not remain in it, hence it was not Zedekiah's fault, as he was deceived by the spirit)? He ought to have given his attention to what was said by R. Itz'hak: The sense of a divine oracle is given by Heaven to many prophets equally; the language, however, by the prophets cannot be identical even in two of them, as each prophet expresses it in his own language--*e.g.* [Jer. xlix. 16]: "Thy hastiness hath deceived thee--the presumption of thy heart"; and [Ob. i. 3]. "The presumption of thy heart hath beguiled thee." Here, however, it reads [II. Chron. xviii. 11]: "And all the prophets so prophesied, saying, Go up against Ramoth-gilead," etc. Hence, as all prophesied in identical language, he ought to have known that it was not a true prophecy. But perhaps Zedekiah did not know what was said by R. Itz'hak? There was Jehoshaphat, who told him that. As it reads [ibid., ibid. 6]: "Is there not a prophet of the Eternal besides?" And to the question of Achab: Are not all these, who prophesy in the name of the Lord, sufficient? Jehoshaphat answered: I have a tradition from my grandfather's house that the sense of a divine oracle is given by Heaven, etc. And here I hear the same version from all of them. He who prophesies

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what was not said to him--*e.g.*, Chananyah ben Azzur, who said [Jer. xxviii. 2]: "Thus hath said the Lord . . . I have broken the yoke." And this was only by an *a fortiori* conclusion, drawn from what was said by Jeremiah [ibid. 49]: "Thus hath said the Lord . . . behold, I will break the bow of Elam." And his *a fortiori* conclusion was thus: Elam, who came only to assist the king of Babylon, should be broken; the king of Babylon, who himself came to destroy the kingdom of Judah, so much the more should be broken. [Said R. Papa to Abayi: But this illustration does not correspond, as such a prophecy was not given to anyone? And he answered: For if such an *a fortiori* conclusion were to be drawn, it is equal to its having been said to some one else; however, it was not said to him directly.] He who prophesied in the name of an idol--*e.g.*, the prophets of Baal. He who does not proclaim the prophecy--*e.g.*, Jonah b. Amitthai. He who does not listen to what he was told by another prophet--*e.g.*, the colleague of Michah; as its reads [I. Kings, xx. 35, 36]: "And a certain man of the sons of the prophets said unto his companion, by the word of the Lord, Smite me, I pray thee. But the man refused to smite. Then said he unto him, Forasmuch as thou hast not obeyed the voice of the Lord . . . " And a prophet who acted

against that wherein be himself was instructed by Heaven--*e.g.*, Edah the prophet, of whom it is written [ibid. xiii. 9]: "For so was it charged me by the word of the Lord"; and [ibid., ibid. 18]: "And he said unto him, I also am a prophet like thee." And farther on it is written [19]: "So he returned with him," ending [34]: "And when he was gone, a lion met him on the way and slew him." [A disciple taught in the presence of R. Hisda: He who does not proclaim the prophecy he was told has to receive stripes. And R. Hisda said to him: Should one who ate dates from a sieve receive stripes? Who warned him? And Abayi said: His colleagues, the prophets. And whence did they know this? Said Abayi: From [Amos, iii. 7]: "For the Lord Eternal will do nothing, unless he have revealed his secret unto his servants the prophets." But perhaps the decree was changed by Heaven? If it were so, all the prophets would be notified. But was not such the case with Jonah, who was not notified that the decree was changed? There was the prophecy: Nineveh will be overthrown, which had two meanings, to be destroyed, and also to be turned over from evil to righteousness, and he did not understand the real meaning. "*Who* does not listen to another prophet." But whence is one

aware that he is a true prophet, that he should be punished? In case he gives him a sign. But was not Michah, who was punished for not listening to the prophet (as said above), although he did not give any sign? With him who has long been recognized as a true prophet it is different. For if the case were not so, how could Isaac have trusted his father that his prophecy was a true one, since such a commandment was never before heard, and also no sign was given by Abraham. And also, bow could they rely upon Elijah, who commanded them to sacrifice outside of Jerusalem, which was prohibited by the Scripture? Hence, because they were recognized prophets, one must listen to them in any event. [1]

The rabbis taught, concerning what was taught by rabbis (above, p. 151) as to a prophet who had misled, to whom stoning applies according to the rabbis, and choking according to R. Simeon: Said R. Hisda: The point of their difference is in case one removed the whole portion of the Scripture concerning idolatry, saying: I was so commanded by Heaven. Or even if he said: To perform some of its worship and to abolish the rest. But if he removed a portion which speaks concerning other commandments, all agree that choking applies. And if he told to perform some of them and abolish the others, he is free according to all. R. Hamnuna, however, said: The point of their difference is if he removed a portion of any commandment, be it concerning idolatry or some other; and also in performing some worship of idolatry and abolishing the rest. As it reads: "From the way"--which means even a part of it. But if he prophesied as to performing some of the commandments and abolishing the others, all agree that he is free.

The rabbis taught: If one commands by prophecy to remove a commandment from the Scripture, he is guilty; but if to abolish some of it, and perform the remainder, R. Simeon frees him. However, concerning idolatry, even if he commands "To-day worship," and on the morrow to abolish it, all agree that he is guilty. Hence it contradicts the explanations of both R. Hisda and R. Hamnuna? Abayi, who holds with R. Hisda, explained the Boraitha just cited: According to his theory-viz., if one commands by prophecy to remove a commandment from the Scripture--all agree that be is to be choked. "As to performing some," etc., R. Simeon makes him free, and the same do the

rabbis. But concerning idolatry, even if he said: "To-day worship," and on the morrow to abolish, he is subject to a capital punishment--according to the rabbis by stoning, and according to R. Simeon by choking. Rabha, however, who holds with R. Hamnuna, explains according to his theory thus: He who commands by prophecy to remove, etc., either concerning idolatry or some other commandment, is subject to a capital punishment--each of the masters according to his opinion. "As to performing some," etc., R. Simeon makes him free, and so also do the rabbis. Concerning idolatry, however, even if he says: "To-day," etc., he is guilty accordingly--each of the masters according to his opinion.

R. Abuhu in the name of R. Johanan said: In every case mentioned in the Torah, if a true prophet commands you to transgress, you may listen, except as to idolatry, when you must not listen, even if he were to stop the sun for you, as was done by Joshua.

R. Jose the Galilean said: "There is a Boraitha! The Torah foreshadowed the final mind of idolatry and therefore gave force to it, for the purpose that one should not listen to him who commands to commit it, even if he were to stop the sun for him in the middle of the sky. Said R. Aqiba: God forbid that the sun should be stopped for them who are acting against His will. But it means even, *e.g.*, Hananiah b. Azzur, who was a true prophet when he began to prophesy, and became a false one only afterwards.

"*Collusive witnesses of the married daughter of a priest*," etc. Whence is this deduced? Said Abhah b. R. Ika: From the following Boraitha: R. Jose said: Why is it written: "Then shall ye do unto him . . . unto his brother." (Would it not be sufficient if it should read: "As he purposed to do"?) Because all who are to be put to death biblically, their collusive witnesses and their abusers are punished with the same, except in the case of the married daughter of a priest, where she is to be burned, but not her abuser, who is to be choked. However, concerning her collusive witnesses, it would not be known whether they were to be equalized to him or to her? Therefore the expression, "unto his brother," which means, not unto his sister.

END OF TRACT SANHEDRIN, PART I. (HALAKHA), AND OF VOL. VII. (XV.).

Footnotes

246:1 Lesser's translation does not correspond.

246:2 A discussion at length about this matter is omitted from the text, as most of the objections and answers are already translated, or will be translated in their proper places. Here, however, it is of no importance at all, as the question is solved by Rabha without any objection or opposition.

250:1 "We refer the reader for the real meaning of this method to Mielziner's "Introduction to the Talmud" (par. No. 50 of page 174).

256:1 For the explanation of this passage we published a book, "Ursprung und Entwickelung

des Phylacterien Ritus bei den Juden" (Pressburg, 1883), in which it is explained thoroughly. It is remarkable that the chief commentator of the Talmud (Rashi) does not give any sensible explanation hereon, other than that he dislikes the interpretation mentioned in our text in parentheses, and he would say that the expression, "according to R. Jehudah," means what was said by him elsewhere--that one is not guilty unless the matter discussed contains a study which relies upon the teaching of the sages how to practise. Thosphat remarks that R. Oshia, the author of this saying, ignores all that was inferred from Deut. xvii. 8, said above, without any other explanation. All the other commentators, however, keep silent.

Our book, mentioned above, is written in the language of the Talmud, and the very essence of this strange passage is that this Mishna was written after the Jewish Christians began to add to the four portions of the Scripture (viz.: Ex. xiii. 1-10; ibid., ibid. 11-17; Deut. vi. 4-9; and ibid. xi. 13-21) the first portion of John in the New Testament. For the sources from which we establish that so was the custom of the Jewish Christians in the first centuries, A.C., we refer to the above-mentioned book, and also to our little book, "The History of Amulets, Charms, and Talismans," published in English (New York, 1893).

260:1 Here are also some Haggadas, which we transfer to the Haggadic chapter.

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VOLUME VIII. (XVI.)--TRACT SANHEDRIN.

PART II.--(HAGGADA.)

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CHAPTER XI.

THE HAGGADIC PART ABOUT RESURRECTION; SHARES IN THE WORLD TO COME; AND ABOUT THE MESSIAH, ETC.

MISHNA *I*.: All Israel has a share in the world to come. As it reads [Is. IX. 21]: "And thy people-they will all be righteous, for ever shall they possess the land, the sprout of my planting, the work of my hands, that I may glorify myself." The following have no share in the world to come: He who says that there is no allusion in the Torah concerning resurrection, and he who says that the Torah was not given by Heaven, and a follower of Epicurus R. Aqiba added, him who reads books of the Hizunim and him who mumbles over a wound, reciting the verse [Ex. xv. 26]: "I will put none of those diseases upon thee, which I have brought upon the Egyptians; for I the Lord am thy physician." Abba Shaul said: Also he who speaks out the Holy Name with its vocals. 1 Three kings and four commoners have no share in the world to come. The three kings are Jeroboam, Achab, and Menasseh. R. Jehudah, however, said: Menasseh has a share in the world to come. As it reads [II. Chron. xxxiii. 13]: "And he prayed unto him and he permitted himself to be entreated by him, and heard his supplication and brought him back to Jerusalem unto his kingdom." And he was answered: He was returned to his kingdom, but not to the world to come. The four commoners are Bileam, Doeg, Achitopel, and Gechazi.

GEMARA: Is he who does not believe that the resurrection is hinted at in the Torah such a criminal that he loses his share in the world to come? It was taught: He denies resurrection therefore he will not have a share in it, as punishment corresponds to the deed; for all retributions of the Holy One, blessed,

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be He, are in correspondence with man's doing. And R. Samuel b. Na'hmani in the name of R. Jonathan said: Whence do we know that so it is? From [II. Kings, vii. 1, 2]: "Then said Elisha, Hear ye the word of the Lord: Thus hath said the Lord, About this time to-morrow a seah of fine flour shall be sold for a shekel, and two seahs of barley for a shekel, in the gate of Samaria. Then answered the lord of the king, on whose hand he used to lean, the man of God, and said, Behold will the Lord make windows in the heavens, that this thing shall be? And he said, Behold, thou shall see it with thy eyes, but thereof shalt thou not eat." And this chapter ends [ibid. 20]: "And it happened unto him so; for the people trod him down in the gate and he died."

But perhaps this was because Elisha cautioned him? As R. Jehudah in the name of Rabh said: If a sage cautions some one, even if the one cautioned had not deserved such, it falls upon him nevertheless? If it were so, it should read: "And the people trod on him and he died." Why in the *gate*? Thus because of his protest which he made at the gate.

Where is resurrection hinted at in the Torah? [It reads, Num. xviii. 28]: "And ye shall give thereof the heave-offering of the Lord to Aaron the priest." Should, then, Aaron remain alive forever? He did not even enter into the land of Israel. How, then, could Israel give him heave-offering? Infer from this that he would experience resurrection and Israel would give him heave-offering. Hence here is a hint of resurrection. The school of R. Ismael, however, taught: (Nothing is to be inferred from this,) as the words "to Aaron" mean priests who are similar to him--viz., scholar as he was. And from this it is inferred that no gift whatsoever should be given to a priest who is ignorant. Samuel b. Na'hmani in the name of R. Jonathan said: Whence do we know that one must not give heave-offering to a priest who is an ignoramus? From [II. Chron. xxxi. 4]: "To give the portion of the priests and the Levites, in order that they might hold firmly to the law of the Lord." Hence the priest who knows to hold firmly the law has a portion, but not he who is ignorant of the law. R. Johanan said that he who does so causes death to the ignorant priest. As it reads [Lev. xxii. 9]: "That they may not bear sin through it, and die therefor, if they profane it." The disciples of R. Eliezer b. Jacob taught that [ibid., ibid. 16] also applies to him who gives heave-offering to an ignoramus.

There is a Boraitha: R. Sinai said: The hint of resurrection in the Torah is to be found in [Ex. vi. 4]: "And as I did also

establish my covenant with them, to give unto them the land of Canaan." It does not read "to you" (as it should, the patriarchs of that time being already dead), but "to them"--hence this is a hint that they would be restored. The Minim questioned Rabban Gamaliel: Whence do you deduce that the Holy One, blessed be He, would restore the dead? And he answered: From the Pentateuch, Prophets, and Hagiographa. However, they did not accept it. From the Pentateuch--[Deut. xxxi. 16]: "Thou shalt sleep with thy parents 've-qom,'" "*and arise*." 1 And they answered: Perhaps this word ve-qom is connected with its succeeding words.

From the Prophets--[Is. xxvi. 19]: "Thy dead shall live, my dead bodies shall arise. Awake and sing, ye that dwell in the dust; for a dew on herbs is thy dew, and the earth shall cast out the departed." And they answered: Perhaps the verse cited means those dead who were restored by Ezekiel [chap. xxxvi.]. In the Hagiographa--[Solomon's Song, vii. 10]: "And thy palate like the best wine, that glided down for my friend gently, exciting the lips of those that are asleep." And they answered: This cannot be taken as an evidence, for it is not certain that "are asleep" means the dead. [(Says the Gemara:) R. Johanan, in the name of R. Simeon b. Jehozodok, used to cite this verse with his statement that if a Halakha is mentioned in the name of a dead sage the lips of the latter move (mumble) in his grave.] Thereafter, when Gamaliel mentioned to the Minim [Deut. xi.

[paragraph continues] 9], "And the Lord hath sworn unto your fathers to give unto them" which does

not read "to ye," but "to them"--hence it is a hint of resurrection from the Torah--it was accepted. According to others he mentioned before them [Deut. iv. 4]: "But ye that did cleave unto the Lord your God are alive every one of you this day" which means, as this day every one of you is alive, so will it be in the world to come. The officers of Rome questioned R. Jehoshua b. Hananiah: Whence do you know that the Holy One, blessed be He, will restore the dead and that there is also revealed before Him all that will be in the future? And he answered: Both things are inferred from Deut. xxxi. 16, cited above. And to their answer: Perhaps the word "ve-qom" belongs to its succeeding words, he rejoined: Accept at least the half (the second question)--that there is revealed before Him all that will be in the future. The same was taught also by R. Johanan in the name of R. Simeon b. Jehai, that from this verse both the resurrection and that there is revealed before Him all that will be in the future is inferred.

There is a Boraitha: R. Eliezer b. Jose said: I have shown the falsification in the books of the Minim, who used to say that there is no hint about resurrection in the Pentateuch. And I said to them: You have falsified your Torah, but you have nothing in your hand to say that there is no hint of resurrection. Does it not read [Num. xv. 31]: "That person shall be cut off, his iniquity is upon him"? Upon him--when? Does it not mean after he shall be cut off? Hence it means even in the world to come. (Questioned the Gemara:) Above, this passage is explained by R. Aqiba and R. Ishmael. But neither of them has explained what means "his iniquity shall be upon him"? They may explain it as in the following Boraitha: Lest one say that he will be cut off even after his repentance, therefore "the iniquity is upon him" means only when it is still upon him, but if he repented it is no more upon him.

Queen Cleopatra questioned R. Mair thus: I am aware that the dead will be restored. As it reads [Ps. lxxii. 16]: "And (men) shall blossom out of the city like herbs of the earth." My question, however, is: When they shall be restored, will they be naked or dressed? And he answered: This may be drawn by an *a fortiori* conclusion from wheat. A grain of wheat which is buried naked comes out dressed in so many garments: the upright, who are buried in their dress, so much the more shall they come out dressed in many garments.

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Cæsar questioned Rabbon Gamaliel: You say that the dead will be restored. Does not the corpse become dust? How, then, can dust be restored? And the daughter of Cæsar said to R. Gamaliel: Leave the question to me and I myself shall answer it. And she said (to her father): If there were two potters in our city, of whom one should make a pot from water and the other from clay, to which of them would you give preference? And he said: Certainly to him who creates from water; for if he is able to create from water, he is undoubtedly able to create from clay. (And she said: This is an answer to your question.)

The school of R. Ismael taught: One may learn it from glass-wares, which are made by human beings, and if they break there is a remedy for them, as they can be renewed: human beings, who are created by the spirit of the Lord, so much the more shall they be renewed (restored).

There was a Min who said to R. Ami: You say that the dead will be restored. Does not the corpse become dust? How, then, can dust be restored? And he told him: I will give you a parable showing to what this thing is similar. A human king said to his servants: Go and build me a palace in such a place, where there is no earth and no water. And they did so: and after it collapsed he commanded the same to build it for him in a place where there was earth and water.

And they answered: We cannot do so. And he became angry, saying: When you could build it in such a place where there was no earth and no water, ought you not to be able to build it where they are? And if you don't believe it, go into a valley and see a mouse, which is half flesh and half earth (it being believed that there is a species of mice developed from earth), and to-morrow it multiplies and becomes all flesh. And should you say that it takes much time till it becomes so, go up into the mountain, and see that to-day you cannot find even one helzun, 1 and on the morrow, after rain, you will find the mountains full of them.

There was another Min who said to Gebiah b. Psisa: Woe to you, wicked, who say that the dead are restored. The living die--should the dead come to life? And he answered: Woe to you, wicked, who say that the dead will not come to life. That which has not existed at all comes to life--shall those who had

life once not come to life again? Said the Min to him: You call me wicked. If I arise, I will kick thee and level thy hump from off thee (drive out thy conceit). And he rejoined: If you do so, you will be a specialist physician, and you will receive a great reward.

The rabbis taught: On the twenty-fourth of Nissan the contractors of duty were taken off from Judah and Jerusalem. This was when the Africans summoned Israel before Alexander of Macedonia, claiming that the land of Canaan belonged to them. As it reads [Num. Xxxiv. 2]: "The land of Canaan according to its boundaries"--and that they were the descendants of Canaan. Said Gbiah b. Psisa to the sages: Permit me, and I will appear before Alexander as advocate of the defendant Israel, and if they defeat me, say to them, "You have defeated an ignoramus among us"; and if I defeat them, say to them, "The law of Moses has defeated you." He got this permission, and did so. Then he said to them: What is your evidence? And their answer was: From your Torah. Then said he: I in defence will also bring my evidence from the same. It reads [Gen. ix. 25]: "And he said, Cursed be Canaan; a servant of servants shall he be unto his brethren." Now, to whom belongs the estate of a slave, if not to his master. And not this only, but I summon you before the king for the many years you have not done any service for us. And Alexander commanded them to give answer, for which they requested from him three days' time. And he gave it to them. And as they could not find any right answer at the appointed time they fled, leaving their fields, which were sown, and their vineyards, which were planted. And this year was a Sabbatical one.

It happened again that the Egyptians summoned Israel before Alexander of Macedonia, demanding from them the gold and silver which they had borrowed from them at the time of their exodus. As it reads [Ex. xii. 36]: "And the Lord hath given the people favor in the eyes of the Egyptians, so that they gave unto them what they required; and they emptied out Egypt." And Gbiah b. Psisa requested from the sages permission to be the advocate of the defendant Israel, with the same reason mentioned above. He got this permission, and did so. Then he said to them: What is your evidence? And their answer was: From your Torah. Then said he: I in defence will also bring my evidence from the same, which reads [ibid., ibid. 40]: "Now the time of the residence of the children of Israel, which they dwelt

in Egypt, was four hundred and thirty years." Hence I demand of you the wages for the labor of six hundred thousand men whom your parents compelled to work for them all the time they were in Egypt. And Alexander decided that the Egyptians should give a proper answer--for which they requested three days' time, which was allowed to them. But they could not find a satisfactory answer, and they fled, leaving their sown fields and their planted vineyards. And also this year was a Sabbatical one.

And it happened again that the descendants of Ishmael and the descendants of Keturah summoned Israel before Alexander, claiming to have a share in the land of Canaan, as they also were descendants of Abraham. And again Gbiah b. Psisa requested for permission to be Israel's advocate, which he received. And the same question of evidence was put to them, and their answer was: From your Torah [Gen. xxv. 12 and 19], which shows that Ishmael as well as Isaac were Abraham's children. And he then also brought his evidence from the same [ibid., ibid. 5 and 6]: "And Abraham gave all that he had unto Isaac. But unto the sons of the concubines that Abraham had, Abraham gave gifts; and he sent them away from Isaac his son." Now, on a father who made a *legatum* (bequest) to his children, and separated them while he was still alive, can they have any claim thereafter!

Antoninus said to Rabbi: The body and the soul of a human may free themselves on the day of judgment by Heaven. How so? The body may say: The soul has sinned; for since she has departed I lie in the grave like a stone. And the soul may say: The body has sinned; for since I am separated from it, I fly in the air like a bird. And he answered: I will give you a parable to which this is similar: A human king, who had an excellent garden which contained very fine figs, appointed two watchmen for it--one of whom was blind, and the other had no feet. He who was without feet said to the one who was blind: I see in the garden fine figs. Take me on your shoulders, and I shall get them, and we shall consume them. He did so, and while on his shoulders he took them off, and both consumed them. And when the owner of the garden came and did not find the figs, and questioned them what became of them, the blind one answered: Have I, then, eyes to see them, that you should suspect my taking them? And the lame one answered: Have I, then, feet to go there? The owner then put the lame one on the shoulders of the one who was blind, and punished them together. So also

the Holy One, blessed be He--He puts the soul in the body and punishes them together. As it reads [Ps. 1. 4]: "He will call to the heavens above, and to the earth beneath, to judge his people." "To the heavens above" means the soul, and, "to the earth beneath" means the body.

Antoninus again questioned Rabbi: Why does the sun rise in the east and set in the west? And he answered: If it were contrariwise, you would also question the same. Rejoined Antoninus: I mean to say, why does he set in the west (let him go around without setting, until he reach the place where he arose)? And he answered: For the purpose of greeting with peace his Creator (as the Shekhina is in the west). Rejoined again Antoninus: Let him then travel to half of the sky, greet the Creator, and set? This would harm the laborer, and those who are on the road.

The same questioned again the same: At what time does the soul come into the body--at the moment of conception, or at the time the embryo is already formed? And the answer was: When it is already formed. Said Antoninus to him: Is it possible that a piece of flesh shall keep three days or more without being salted, and it shall not become stinking? And therefore it must be

said: At conception. Said Rabbi: This teaching I accepted from Antoninus, and a support to him is to be found in [Job, x. 12]: "And thy providence watched over my spirit." 1

Antoninus questioned Rabbi again: At what time does the evil spirit reach man? At the time the embryo is formed, when it comes out from the womb? And he was answered: At the time it is formed. Rejoined Antoninus: If so, the embryo would kick the entrails of the mother and go out; therefore it must be from the time it comes out. And Rabbi said: This teaching I received from Antoninus, and he is supported by Gen. iv. 7: "Sin lieth at the door."

Resh Lakish proposes the following contradiction: It reads [Is. xxxv. 6]: "Then shall the lame leap as a hart, and the tongue of the dumb shall sing"; and [Jer. xxxi. 7 2]: "Among them the blind and the lame, the pregnant woman and she that

travaileth with child together." (Hence the passages contradict each other.) It must therefore be said: They will be restored with the blemishes they had in their life, and thereafter they will be cured.

Ula advanced another contradiction: It reads [Is. xxv. 8]: "He will destroy death to eternity; and the Lord Eternal will wipe away the tear from off all faces, and the shame of his people will he remove from off all the earth; for the Lord hath spoken it"; and [ibid. lxv. 20]: "There shall no more come thence an infant . . . for as a lad shall one die a hundred years old"? This presents no difficulty. The former speaks of Israel's self, and the latter of those concerning whom it reads [ibid. lxi. 5]: "And strangers shall stand and feed your flocks, and the son of the alien shall be your ploughmen and your vintners."

R. Hisda also advanced a contradiction: It reads [ibid. xxiv. 23]: "And the moon shall be put to the blush and the sun be made ashamed; for the Lord of hosts will reign on mount Zion"; and [ibid. XXX. 26]: "And the light of the moon shall be as the light of the sun, and the light of the sun shall be sevenfold, as the light of the seven days"? This presents no difficulty. The latter speaks of the time when the Messiah shall appear, and the former, of the world to come. And to Samuel, who maintains that there will be no difference between this time and the time of Messiah, except that Israel will no longer be under the dominion of foreigners, the explanation of these contradictory verses may be thus--that the latter speaks of the camp of the upright and the former of the camp of the Glory of the Shekinah.

Rabha propounded another contradiction: It reads [Deut. xxxii. 39]: "I make one die and I make one alive"; and further on it reads: "I wound and I heal"? It means that the Holy One, blessed be He, says: All that I made to die shall I bring to life again, and thereafter shall I cure what was wounded.

The rabbis taught: Lest one say that the verse just cited means, I make one die and another one shall I bring to life, therefore it reads, "I wound and I cure." As wounding and curing apply to one person only, the same is the case with death and life--they apply to one person. This is an answer to those who say that there is no hint in the Torah about resurrection.

There is a Boraitha: R. Mair said: It reads [Ex. xv. 1]: "Then Moses and the children of Israel

will sing this song." It does not read "sang," but will sing (yoshir). This is a hint of

resurrection in the Torah. Similar to this is [Joshua, viii. 30]: "Then Joshua will build an altar." It does not read "did build," but "will build." This is also a hint of resurrection. (Says the Gemara): However, this cannot be taken as a support, as the same expression is to be found in I. Kings xi. 7, and nevertheless it does not mean in the future, but in the past.

R. Jeoshuah b. Levi said: It reads [Ps. lxxxiv. 5]: "Happy are they who dwell in thy house: they will be continually praising thee." It does not read "praised thee" in the past, but in the future. Hence it is a hint of resurrection.

The same said again: He who sings to his Creator in this world will be rewarded by singing the same in the world to come, as the verse just cited reads.

Hyya b. Abah in the name of R. Johanan said: It reads [Is. lii. 8]: "The voice of thy watchmen--they raise their voice, together shall they sing; for eye to eye shall they see, when the Lord returneth unto Zion." It does not read "sung," in the past, but in the future. Hence it is a hint of resurrection.

The same said again in the name of the same authority: In the future all the prophets together will sing a song of praise with one voice, as the verse just cited reads.

R. Jehudah said in the name of Rabh: He who hesitates in declaring a Halakha to a disciple is considered as if he would rob him of the inheritance of his parents. For it reads [Deut. xxxiii. 4]: "The law which Moses commanded us is the inheritance of the congregation of Israel." Hence the law is considered as an inheritance to all Israel since the creation of the world.

R. Hana b. Bizna in the name of R. Simeon the Pious said: He who hesitates in declaring a Halakha to a disciple, even the embryos in the entrails of their mothers denounce him As it reads [Prov. xi. 26]: "Him that withholdeth corn, the people [1] will denounce." And what is the reward for declaring such? Said Rabha in the name of R. Shesheth: He will be rewarded with the blessing with which Joseph was blessed, as the end of the verse cited reads: "But blessing will be heaped upon the head of the one that selleth it," which means Joseph; as it reads [Gen. xlii. 6]: "And Joseph, he was the governor over the land, he it was that sold corn to all the people."

R. Shesheth said again: He who teaches the Torah in this world will be rewarded by teaching it in the world to come. As it reads [Prov. xi. 25]: "He that refresheth (others) will do same in the future." [1] Rabha said: Resurrection is hinted at in the Torah in [Deut. xxxiii. 6]: "May Reüben live, and not die"--which means that he may live in this world, and not die in the world to come. Rabhina, however, maintains that it is hinted at in [Dan. xii. 2]: "And many of those that sleep in the dust of the earth shall awake, some to everlasting life, and some to disgrace and everlasting abhorrence." And R. Ashi said: From [ibid., ibid. 13]: "But thou, go (thy way) toward the end; and thou shalt rest, and arise for thy lot at the end of the days."

R. Elazar said: A leader of a congregation, who leads them humbly, will be rewarded by leading the same in the world to come. As it reads [Is. xlix. 10]: "For he that hath mercy on them will lead them, and by springs of water will he guide them."

The same said again: Great is wisdom, as it was placed between two divine names [I Sam. ii. 3]: "For a God of knowledge is the Lord."

And he said again: Great is the Temple, as the word "mikdash" (Temple) [Ex. xv. 17] is also placed between two divine names.

R. Adda b. Karthinaah opposed: According to this theory "revenge" is also great, as it is also placed [Ps. xciv. 1] between two divine names. And he was answered: And it is in accordance with Ula. (This will be translated in Berachoth, as the proper place.) R. Elazar said again: Every man who possesses wisdom may consider himself as if the Temple were built in his days, as both "wisdom" and "temple" are placed between two divine names. And he said again: A man who possesses true wisdom will finally become rich. As it reads [Prov. xxiv. 4]: "And thorough knowledge are chambers filled with all manner of precious and pleasant wealth." And he said again: He who does not possess any knowledge does not deserve that one should have mercy with him." As it reads [Is. xxvii. 11]: "For it is not a people of understanding: therefore he that made it will not have mercy on it, and he that formed it will show it no favor." And he said again: He who feeds one who does not possess any

knowledge, chastisement will be the reward for it. As it reads [Ob. i. 7]: "They that eat thy bread have struck thee secretly a wound. There is no understanding in him." And he said again: Such a man as has no knowledge will finally be exiled. As it reads [Ps. v. 13]: "Therefore are my people led into exile, for want of knowledge." 1 R. Jehudah said: Exile atones for three things. As it reads [Jer. xxi. 9]: "He that remaineth in this city shall die by the sword, or by the famine, or by the pestilence; but he that goeth out and runneth away to the Chaldeans that besiege you, shall remain alive, and his life shall be unto him as a booty."

R. Johanan, however, said: Exiles atones for everything. As it reads [ibid. xxii. 30]: "Thus hath said the Lord, Write ye down this man as childless, as a man that shall not prosper in his days; for no man of his seed shall succeed to sit upon the throne of David, and to rule any more in Judah." And in I Chron. iii. 17, it reads: "And the sons of Yechonyah: Assir, Shealthiel his son." And there is a tradition that Assir, Shealthiel is one person, and was Nehemiah b. Chachalyah. And why was he called Assir? Because he was conceived in prison. (The term in Hebrew for prisoner is Azzir.)

R. Elazar said: A house in which the words of the Torah are not heard in the nights will finally be burned. As it reads [Job, XX. 26]: "Entire darkness is laid by for his treasures: a fire not urged by blowing will consume him; it will destroy any one left in his tent." The Hebrew term for left is "sharid." As it reads [Joel, iii. 5]: "Among the remnant (shridim)." And he said again: He who does not benefit scholars by his estate will never see a sign of blessing: As it reads [Job, XX. 21]: "Nothing was spared from his craving to eat; therefore shall his wealth not prosper." (There also the Hebrew term is "sharid," which, according to him, means a scholar, as analogized above.) And from the same passage the same inferred that he who does not leave any

bread after his meal will not see any blessing. But did not the same say elsewhere that he who left pieces of bread after his meal is considered as if he were to worship idols? This presents no difficulty. In the latter saying he means, after finishing the meal he puts a whole loaf on the table, which is prohibited. As it reads [Is. lxv. 11]: "That set out a table for the god of Fortune and that fill for Destiny the drink-offering." On the

former saying he speaks of leaving some crumbs of bread for the poor. The same said again: He who changes his word is considered as if he were to worship idols. As Gen. xxvii. 12 reads: "Seem to him as a deceiver"; and as in Jer. x. 15: They are vanity, the work of deception." And he said again: A man shall always be modest, but nevertheless shall be strong in his mind, so that he shall not be overruled by any one. (As then he may be sure that he will exist.) Said R. Zera: A hint of this is to be found in the following Mishna (Negaim vii. 3): If there seems to be leprosy in a house which is dark, windows must not be opened for investigation. (Hence if one is strong in his mind, and at the same time modest, his defects cannot be investigated.)

R. Tabi in the name of R. Joshiah said: It reads [Prov. xxx. 16]: "The nether world, and a barren womb; the earth which is not satisfied with water; and the fire which never saith, Enough." What correspondence is there between the nether world and the womb? This is only to say that as the nature of the womb is, if something be brought in, to give it out, the same is the case with the nether world--it gives out what is brought in. And it is to be inferred by an *a fortiori* conclusion thus: A womb into which corpses are privately brought gives them out with much noise, the nether world, into which corpses are brought with much noise, so much the more shall they come out with great noise. And this may be an answer to those who say that resurrection is not hinted at in the Torah.

The disciples of Elijah taught: The upright who will be restored in the future by the Holy One, blessed be He, will never return to dust. As it reads [Is. iv. 3]: "And it shall come to pass that whoever is left in Zion, and he that remaineth in Jerusalem, shall be called holy, everyone that is written down into life in Jerusalem." And as the Holy One is forever, so also those who are mentioned in this verse will be forever. And lest one say, "What will they do at the time the Holy One, blessed be He, shall renew his world," as it reads [ibid. ii. 17]: "And exalted shall be the Lord alone on that day." The upright in question will be supplied with wings similar to the wings of the eagles, and they will fly over the world. As it reads [Ps. xlvi. 3]: "Therefore will we not fear when the earth is transformed, and when mountains are moved into the heart of seas." And lest one may say that they will be inflicted--to this it is written [Is. xl. 3 1]: "Yet they that wait upon the Lord shall acquire new strength; they shall mount up with wings as eagles; they shall

run and not be weary; they shall walk and not become faint." But why not infer from the dead who were restored by Ezekiel, and who died again? He (Elijah) holds with him who says that in reality Ezekiel did not restore any dead at all, and the prophecy was only a parable for the Jewish nation that it would be restored again. And this is related in the following Boraitha: The dead whom Ezekiel restored arose on their feet, sang a song, and died again. And what kind of a song was it? The Lord makes one die justly, and mercifully restores him. So R. Eliezer. R Joshua said: The song was from I Sam. ii. 6: "The Lord killeth, and maketh alive; he bringeth

down to the grave, and bringeth up." R. Jehudah, however, said: Really, it was only a parable Said R. Nehemiah to him: If really, then it is not a parable; and if a parable, it is not really. Say, then, in reality it was a parable R. Eliezer b. R. Jose the Galilean, however, said: The dead who were restored by Ezekiel went to the land of Israel, married, and brought forth sons and daughters. And R. Jehudah b. Bathyra arose on his feet, saying: I myself am a descendant of them, and these are the phylacteries which I inherited from my grandfather, who told me that they were used by the restored. But who were the restored dead in question? Said Rabh: They were the sons of Ephraim who erred concerning the promised time of redemption from Egypt. As it reads [I Chron. vii. 20-23]: "And the sons of Ephraim: Shuthelach, and Bered his son, and Thachath his son, and Eladah his son, and Thachath his son, and Zabad his son, and Shuthelach his son, and Eser and Elad whom the men of God that were born in that land slew . . . And Ephraim their father mourned many days, and his brethren came to comfort him." Samuel, however, said: They were the men who disbelieved in resurrection. As it reads [Ezek. xxxvii. 11]: "Then said he unto me, Son of man, these bones are the whole house of Israel; behold, they say, Dried are our bones, and lost is our hope; we are quite cut off." R. Jeremiah b. Abah said: They were the bodies of men in whom there was no sap of any meritorious act. As it reads [ibid., ibid. 4]: "O ye dry bones, hear ye the word of the Lord." And R. Itz'hak of Nabhar said: They were the men who did what was mentioned in [ibid. viii. 10]: "So I went in and saw; and behold there was every form of creeping things, and cattle, abominations, and all the idols of the house of Israel, engraven upon the wall all round about." And it reads [ibid. xxxvii. 2]: "And he caused me to pass by them all round about," etc. And R. Johanan said: They were the dead of the

valley of Dura, whom Nebuchadnezzar killed. This is what he said elsewhere, that from the river Achar to the city of Rabath in the valley of Dura there were young men of Israel who were exiled by Nebuchadnezzar the wicked, who were so beautiful that there were none similar to them under the sun; and the women of Chaldea became sick when they looked upon them. The king then commanded to slay them all and to tread down their faces.

The rabbis taught: At the time Nebuchadnezzar threw Chananya, Mishael and Azaryah into the caldron the Holy One, blessed be He, told Ezekiel to go and restore the dead of the valley of Dura, and the vessels which were made from the bones of those who were slain by Nebuchadnezzar kicked him in the face. And to his question, "What is the matter?" he was told that the colleagues of those whom he had thrown into the caldron were engaged in restoring the dead of the valley of Dura. He then said [Dan. iii. 33]: "His signs--how great are they! and his wonders--how mighty are they! his kingdom is an everlasting kingdom, and his rule is over every generation." Said R. Itz'hak: May hot melted gold be put in the mouth of that wicked, for if an angel had not come and shut his mouth, he would have brought to shame all the songs and praises which were said by David in the Psalms.

The rabbis taught: Six miracles occurred on that day: (*a*) The caldron floated upwards; (*b*) it broke; (*c*) its foundation was crumbled by the heat; (*d*) the golden image fell upon his face; (*e*) men from four kingdoms were burned; and (*f*) Ezekiel restored the dead in the valley of Dura. All of them are known tradition. ally. However, concerning the men from the four kingdoms, there is to be found in the Scripture [Dan. iii. 2]: "And King Nebuchadnezzar sent to assemble (his) lieutenants, the superintendents and the governors, the judges, the treasurers, the counsellors, those learned in the law, and all rulers of the provinces; and [ibid., ibid. 12]: "There are certain Jewish men," etc., and further on (27) it reads: "And the lieutenants, superintendents

and governors, and the king's counsellors, being assembled together, saw these men," etc. (Hence four of those mentioned in verse 2 are missed.)

The disciples of R. Eliezer b. Jacob taught: Even at the time of danger one shall not change the dress belonging to his dignity. As it reads: [ibid., ibid. 21]: "Then were these men bound in their mantles," etc. Said R. Johanan: Upright men are greater than angels, as it reads [ibid., ibid. 25]: "He answered and said, So, I see four men unbound, walking in the midst of the fire, and

there is no injury on them; and the appearance of the fourth is like a son of the gods." (Hence the angels are mentioned last.)

R. Tanhin b. Hanilai said: When Chananyah, Mishael, and Azaryah came out of the caldron, the nations came and kicked Israel in their faces, saying: Ye have such a God, and ye bowed yourself to the image! They (Israel) immediately confessed, saying [ibid. ix. 7]: "Thine, O Lord, is the righteousness, but unto us belongeth the shame of face, as it is this day."

R. Samuel b. Nah'maine, in the name of R. Jonathan, said: It reads [Solomon's Song, vii. 9]: "I thought, I wish to climb up the palm-tree, I wish to take hold of its boughs." I thought, I will take hold of the whole tree, but now I claim only one branch (of the palm Israel)--that of Hanania, etc. R. Johanan said: It reads [Zech. i. 8]: "I saw this night, and behold there was a man (ish) riding upon a red horse," etc. "This night"--the Lord intended to plunge the whole world into night. "Behold there was a man"--the Holy One, who is named [Ex. xv. 31 "ish, lord of war." "Upon a red horse"--he intended to plunge the world into blood, but after looking upon Chananyah, Mishael and Azaryah he gave up his intention. As it reads further on, "And he was standing among the myrtle-trees (hadisin)." And by myrtle-trees are meant the upright. As it reads [Esther, ii. 7]: "And he brought up Hadassah." And "deep valley" means Babylon. As Is. xliv. 27 reads: "That saith to the deep, Be dry, and thy rivers will I dry up." "Behind them were red"--immediately the red which were filled with anger became pale, and the red became white. Said R. Papa: Infer from this that if one sees a white horse in his dream, it is a good sign. But what became of Chananyah, Mishael, and Azaryah after they came out of the caldron (as there is no further mention of them)? According to Rabh, they died from an evil eye; and according to Samuel, they died in order not to bring further shame on Israel. R. Johanan, how. ever, said that they returned to Palestine, married, and begot children. As it reads [Zech. iii. 8]: "Do but hear, O Joshua the high-priest, thou and thy fellows that sit before thee, for men of wonder are they." And who were the men to whom wonder was done, if not Chananyah, etc.? But where was Daniel at the time that they were thrown into the caldron? Said Rabh: He went to dig a river in the city of Tiberius. And Samuel said: He was sent by Nebuchadnezzar to bring a certain kind of grass from Palestine, to build it in Babylon. And R. Johanan says: He was sent to bring swans from Alexander of Egypt. But was it

not said above by Tudus the physician that no swan left Alexandria without removal of the womb (for the purpose that they should not multiply in other countries)? He brought little ones, and the Egyptians were not aware that he took time for the purpose that they should multiply in Babylon.

The rabbis taught: According to the advice of the following three, Daniel went away before the affair of Chananyah, etc., happened: The Holy One, blessed be He, Daniel himself, and Nebuchadnezzar. The Holy One, for the reason that people should not say they were saved because of Daniel's good deeds. Daniel said: I shall go away that it shall not be done with me as in Deut. iii. 25: "The graven images of their gods shall ye burn with fire," And Nebuchadnezzar said: Let Daniel go, in order that people shall not say I have burnt my god in fire. And whence do we know that Nebuchadnezzar worshipped him? From [Dan. ii. 46]: "Then did king Nebuchadnezzar fall upon his face, and he bowed down to Daniel."

It reads [Jer. xxix. 21-23]: "Thus hath said the Lord of hosts, the God of Israel, concerning Achab the son of Kolayah, and of Zedekiah the son of Maasseyah, who prophesy unto you in my name falsehood . . . And a curse shall be derived from them for all the exiled of Judah who are in Babylon, saying: May the Lord make thee like Zedekiah and like Achab, whom the king of Babylon roasted in the fire." It does not read whom he "burned," but whom he "roasted." And R. Johanan in the name of R. Simeon b. Johai said: Infer from this that they were roasted as people roast grain. It reads farther on [ibid., ibid. 23]: "Because they have done scandalous deeds in Israel, and have committed adultery with the wives of their neighbors." What had they done? They went to the daughter of Nebuchadnezzar. Achab said: The Lord has commanded me to tell thee that thou shalt listen to Zedekiah. And the latter said the same-that she should listen to Achab. And she went and told this to her father. To which he answered: It is known to me that their God abhors incest. When they shall come to you again, send them to me. She did so. And to the question of Nebuchadnezzar: Who told you to do so? they said: The Lord. "But Chananyah and his colleagues told me that such a thing is prohibited." And they answered: We are also prophets as they are, and this command was given to us, of which they were not aware. Then said the king: I would try you as I did Chananyah and his colleagues. And to their claim, "They were three, and we are only two," he gave

them the choice of any one they liked, who should be thrown with them into the caldron. And they selected Jehoshua the high-priest, thinking that his merit was so great that it would save them also. Jehoshua was then brought, and all three were thrown into the caldron. They were burned, but Jehoshua was saved; only his garments were singed. And this is what it reads [Zech. iii. 1-3]: "And he showed me Jehoshua the high-priest standing before the angel of the Lord. And the Lord said unto the accuser, The Lord rebuke thee, O accuser," etc. Satan said to him: I know that you are an upright man, but why did the fire affect your garments, which was not the case with Chananyah, Mishael and Azaryah? And he answered: They were three, and I one. And to the question: Was not Abraham the patriarch also only one when he was thrown into the caldron? he answered, With Abraham there were no wicked ones whom permission was given to the fire to affect, but with me were two wicked, and permission was given to the fire. And this is what people say: Two dried pieces of charred wood burn the third which is wet.

But why was he punished? Said R. Papa: Because his sons married such as were not fit to be the wives of priests, and he did not object; and this is meant by "filthy garments," mentioned in the verse cited.

R. Tanhun said: Bar Kappara lectured in Ciporias thus: It reads [Ruth. iii. 17]: "These six barleys gave he unto me." How is to be understood six barleys? It cannot be meant literally, for would a man like Boas give six grains of barley as a gift? And it also cannot be said "measures

of barley," as it is not customary for a woman to carry six measures. Therefore the six barleys were a hint that in the future six sons would come out from her, each of whom would be blessed with six blessings: viz., David, Messiah, Daniel, Chananyah, Mishael, and Azaryah. David--as it reads [I Sam. xvi. 18]: "Then answered one of the servants, and said, Behold, I have seen a son of Jesse the Bethlechemite, who is skilful as a player and a mighty valiant man, and a man of war, and intelligent in speech and a person of good form, and the Lord is with him." Messiah--as it reads [Is. xi. 2]: "And there shall rest upon him the spirit of the Lord, the spirit of wisdom and understanding, the spirit of counsel and might, the spirit of knowledge and of the fear of the Lord." Daniel, Chananyah, Mishael, and Azaryah--as it reads [Dan. i. 4]: "Lads in whom there should be no kind of blemish, but who should be

handsome in appearance, and intelligent in all wisdom and acquainted with knowledge, and understanding science, and such as should have the ability to serve in the king's palace, and that these should be taught the learning and the language of the Chaldeans." (Hence all of them were blessed with six things.)

[Concerning the verse cited about David, said R. Jehudah in the name of Rabh: The whole verse is a slander, said by Doeg the Edomite. "Who is skilful as a player"--who knows how to propound questions; "mighty valiant man"--who knows how to answer questions; "a man of war"--who understands argument in the disputations of the Torah; "intelligent in speech" 1--he understands from one thing another one; "a person of good form"--who is able to give good reasons for Halakhas; "the Lord is with him"--the Halakha always prevails with him. To all the things mentioned above Saul said: "My son Jonathan possesses all the same qualities. But when he heard that the Halakha prevailed with him, a qualification which he himself did not possess (for concerning Saul it reads [I Sam. xv. 47]: "And whithersoever he turned himself, he caused terror," and about David it is written: "In whatsoever he turned to be he was successful" 2), he was dejected, and began to be jealous. But whence do we know that it was Doeg who said so? From [ibid. xvi. 18]: "One of the servants"--the most distinguished of them and [ibid. xxvi. 8]: "And his name was Doeg the Edomite, the chief of the herdsmen that belonged to Saul." Concerning the verse cited about Messiah, it reads also farther on "vahari'hu" (animated), from which R. Alexandri infers that he is always overloaded with the divine commandments and chastisements resting upon him as "re'hayim" (a handmill). And Rabha said: The term "vahari'hu" means smelling--*i.e.*, he judges by smelling. As farther on it reads: "And not after the sight of the eyes shall ye judge, and not after the hearing of the ears . . . (but nevertheless) he judges with righteousness the poor and decides with equity for the suffering ones of the earth, and he shall smite the earth with the rod of his mouth, and with the breadth of his lips shall he slay the wicked." Hence, if not by the eye and not by the ear, it must be by smelling; and therefore the sages did not recognize Bar Kochba, who claimed to be the Messiah and ruled

two and a half years, because he did not judge by smelling. And now concerning the verse cited about Chananyah, Mishael, etc., that they had no blemish. Said R. Haman b. Hanina: Not even a scratch was to be found on their bodies. "The ability to serve in the king's palace"--that they were able to restrain themselves from laughing, sleeping, and dreaming, and even from departing for one's necessity for fear of the king. It reads farther on [ibid. 6]: "Now there were among these, of the children of Judah," etc. According to R. Elazar, all of them were of the tribe

of Judah, and according to Samuel b. Na'hmane, Daniel only was of Judah, but Chananyah, Mishael, and Azaryah were of other tribes.

It reads [Is. lvi. 5]: "I will indeed give unto them . . . an everlasting name." Said R. Tanhun: Bar Kappara lectured in Ciporias that this means the book of Daniel, which is named after him. 1 Let us see! All which is written in the book of Ezra was said by Nehemiah b. Chackhalyah. Why, then, was it not named after him? (The book of Nehemiah in our Bible was not as yet separated from Ezra in the time of the Talmud.) Said R. Nehemiah b. Abah: Because he was proud of it. As it reads [Neh. v. 19]: "Remember for me, my God for good, all that I have done for this people." But did not David also say similar to this [Ps. lvi. 4]: "Remember me, O Lord, when thou favorest thy people?" This was said only as a prayer.

R. Joseph said: The book was not named after him because he slandered the former governors. As it reads [Neh. v. 15]: "Former governors . . . had made it heavy . . . had taken of them bread and wine, besides forty shekels." And in this slander Daniel, who was greater than he, was also included, as he was of the former governors who made their exodus from Babylon a long time before Nehemiah. And whence do we know that Daniel was greater than he? From [Dan. x. 7]: "And I, Daniel, saw alone this appearance; but the men that were with me did not see the appearance; nevertheless a great terror fell upon them, so that they fled to hide themselves." Who were these men? Said R. Jeremiah, and according to others, R. Hyya b. Abah: Haggai, Zechariah, and Malachi. In one respect he

was better than they, for he saw the appearance, but they did not. And in another respect they were better than he, as they were prophets, while he was not. But why were they shocked when they saw nothing? Though they did not see it, their guardian angels did. Said Rabhina: Infer from this, that if a man is shocked, unaware of the cause, his guardian angel must be aware of it; and his remedy is stepping back four ells, or reading the portion of Shema. And if he stands in a dirty place, where it is not allowed to recite the portion of "Shema Israel," he may say, "The goats of the butcher are stronger than I."

It reads [Is. ix. 6]: "For promoting the increase of the government, and for peace without end," etc. Said R. Tan'hun: Bar khapara lectured in Ciporias about this verse thus: Why is the first word of this verse distinguished? In all other words if a "mem" happens to be among its letters, if at the beginning or in the middle, it is an open one • {Hebrew *M*}. Here, however, the "mem," which is the second letter of this word, is closed • {Hebrew *M*}, which is usually only at the end of a word? It is because the Holy One, blessed be He, was about to make Hiskiah the Messiah, and Sanherib who declared war against him as a substitute for Gog and Magog the future nations who will declare war against the Messiah. Said the divine attribute of justice for Him: Lord of the Universe, David, the king of Israel, who recited before Thee so many songs and praises, Thou madest him not a Messiah; Hiskiah to whom Thou hast done so many miracles, and he recited neither songs nor praises--shouldst Thou make him a Messiah? And therefore the "mem" was closed (as a hint to this). The earth, however, opened her mouth and said: Lord of the Universe, I will recite songs before Thee instead of this upright, and Thou, I pray Thee, make him a Messiah. And she did so immediately, as it reads [ibid. xxiv. 16]: "From the edge of the earth have we heard songs 'Glory be to the righteous.'" And the governor of the world also said before Him: O Lord of the Universe, do, I pray Thee, the desire of this upright. Then a heavenly voice was heard saying: "It is my secret, it is my secret! To which the prophet

exclaimed: Woe is me! Tell what time will it be postponed? And the heavenly voice answered: "Till the treacherous will have dealt treacherously." And Rabha, and according . to others, R. Itz'hak, explained this: Until disgrace after disgrace will have come upon Israel.

It reads [ibid. xxi. 11]: "The prophecy concerning Dumah. Unto me one calleth out of Le'ir, Watchman, what of the night?

[paragraph continues] Watchman, what of the night? Said R. Johanan: The angel who rules the souls after their departure from this world, is named Dumah. And the latter said that all spirits gathered themselves to him questioning him: What said the watchman of the world (the Lord) about the exile which is equalized to night? And he answered. So said the watchman: The morning cometh, but previously will be a long, long night. If, however, ye desire to pray that He shall hasten it, try to do so by repenting of your sins, and coming again prepared for redemption.

It was taught in the name of R. Pepiyas: It is a shame for Hiskiah and his associates not to have recited any song until the earth recited hers, as the verse "from the edge of the earth," etc., cited above, reads. Similar to this it reads [Ex. xviii. 10]: "Blessed be the Lord who hath delivered you." And it was taught also in the name of Pepiyas: It was a shame for Moses and the six hundred thousand Israelites with him who didn't say this benediction till Jithro came. It reads [ibid., ibid. 9]: "Vayi'had" (rejoiced) Jithro, the Hebrew term "had" means to sharpen. And according to Rabh, it means that he passed a sharp razor upon the flesh of his body. (He performed the ceremony of circumcision). And according to Samuel it means that his whole body pained as if stuck with sharp needles. Said R. Papa: This is what people say: One shall not dare to disgrace any heathen before a descendant of a proselyte, even if he is of the tenth generation.

It reads [Isa. x. 15]: "Therefore will the Lord, the Eternal of hosts, send forth among his 'bmashmanov' (fat ones) leanness." What is meant by the term "bmashmanov"? (in Hebrew shamuno means eight). The Lord said: Hiskiah who has eight names shall take revenge on Sanherib who also has eight names. Hiskia's eight names are enumerated in [Isa. ix. 5]: "For a child is born unto us, a son hath been given unto us, and the government is placed on his shoulders and his name is pele, yaez, el gibaur, abbi, ad, sar, shalaum." And concerning Sanherib it reads [II Kings, xv. 9]: "Thiglash pilesser" [ibid., ibid. 19]: "Pul" [II Chron. xxviii. 20]: "Pilnesser" [II Kings, xvii. 3]: "Shalmanesser" [Isa. xx. i]: "Sargon" and [Ezra, iv. 70]: "Assnapper, rabha, v'yaqira." The name Hiskia is not counted, for he was named so because God strengthened him. And the name Sanherib is also not counted, for he was named so because he said vile words against Heaven.

Said R. Johanan: Why was he named Assnapper, the honored

and the great? Because he did not speak evil of the land of Israel, as it reads [II Kings, xviii. 32]: "Until I come and take you away to a land like your own," etc.

Rabh and Samuel. According to one he was a clever king, because if he would have said that he

would take them in a better land than theirs they would consider him a liar. And according to the other he was a fool, for what use could it be for them to go in a land which is not better than their own? To where did he exile the ten tribes of Israel? According to Mar Sutra to Africa, and according to R. Hanina to the mountains of Slug. However, the ten tribes of Israel slander the land of Israel, for when they reached the city of Sus they said that it was like their own land. And when they came to the city of Elmin they said that it is like our Elmin (Jerusalem). And when they reached the second Sus they said that it was much better than their own land.

It reads [Isa. x. 16]: "And under his glory shall be kindled." According to R. Johanan it means "under his dress garments," as he used to call garments glory. Hence the body was burned, but not the garments. R. Elazar, however, maintains "under his glory" means under the flesh--*i.e.*, only the soul was burned as by the children of Aaron.

There is a Boraitha in the name of R. Joshua b. Kharha: Pharaoh who personally blasphemed Heaven, was also punished by Heaven. Sanherib, who blasphemed though a messenger, was also punished though a messenger. Concerning Pharaoh, it reads [Ex. V. 2]: "And Pharaoh said, Who is the Everlasting, whose voice I am to obey?" And he was punished by Heaven, as it reads [ibid. Xiv. 27]: "And the Lord overthrew the Egyptians in the midst of the sea." And also [Habakkuk, iii. 15]: "(But) thou didst pass along over the sea." Concerning Sanherib it reads [II Kings, xix. 23]: "By thy messengers thou has blasphemed the Lord." He was punished through a messenger, as it reads [ibid., ibid. 3 5]: "And it came to pass . . . that an angel of the Lord smote in the camp of the Assyrians, one hundred eighty and five thousand.

R. Hanina b. Papa propounded a contradiction from [Isa. xxxvii. 24]: "I will enter into the height of its summit." [II Kings, xix. 23]: "I will enter into the lodgings of its summit." Thus thought Sanherib: I will first destroy the lower dwelling and thereafter the higher one. R. Jehoshua b. Levi said: It reads [ibid. xviii. 25]: "Now am I come up without the Lord('s will)

against this place to destroy it? The Lord hath said to me, Go up against this land, and destroy it." What is it? He heard the prophet who said [Isa. viii. 6-7]: "Forasmuch as this people despiseth the waters of Shiloach that flow softly, and rejoice in Regin and Remalyabu's son," etc. Said R. Joseph: Were it not for the translation of this verse into Chaldaic, we would not understand its meaning. The translation is thus: Because this people despised the kingdom of David, who ruled them gently like the waters of Shiloach which flow gently, and grew fond of Regin and the son of Remalyabu.

R. Johanan said: It reads [Prov. iii. 33]: "The curse of the Lord is in the house of the wicked"--Peckach b. Remalyabu, who used to consume forty saas of pigeon as a dessert. "But the habitation of the righteous will he bless"--Hiskia, king of Judah, whose whole meal consisted of a liter of herbs.

It reads [Isa. viii. 7 and 8]: "The king of Assyria . . . and he shall penetrate into Judah, overflood and flood over, even to the neck shall he reach. Now as Sanherib acted in accordance with the prophecy, why then was he punished? The prophet prophesied concerning the ten tribes, and he himself made up his mind to go to Jerusalem. Then came the prophet and said [ibid., ibid. 23]: "And no fatigue (befalleth) him that oppresseth them." And R. Elazar b. Breakhya explained the

passage thus: A people who are occupied with the study of the law will not be delivered over to their oppressor. "In the first time, he made light of the land of Zebulun and of the land of Naphtali, and at the last he will deal hard, with the way by the sea, on the other side of the Jordan, (up to) the Galilee of the nations"--not like the first, who threw off the yoke of the Thorah, but like the latter, who tolerated the heavy yoke of the Thorah, and therefore deserved that a miracle should happen to them as happened to those who passed the Red Sea and to those who stepped over the Jordan. Hence if he will retract to turn away from Jerusalem, well and good, but if not, I will make him a shame among all other nations.

It reads [II Chron. xxxii. i]: "After these things and veritable events came Sanherib the king of Assyria, and invaded Judah, and encamped against the fortified cities, and thought to break them open for himself." Is such a present given to the men of truth? And also what is meant by "after"? Said Rabhina: It means after the Holy One, blessed be He, had sworn, saying, If I would tell Hiskiah that I will bring Sanherib, and

deliver him in his hands, he would say I want neither to be scared nor to have him delivered to me. And therefore the Lord swore that he will bring him in, as it reads [Isa. Xiv. 24 and 25]: "Sworn hath the Lord of host, saying, Surely as I have purposed, so doth it come to pass; and as I have resolved, so shall it occur. To break Asshur in my own land, and upon my mountains will I tread him under foot; then shall his yoke be removed from off them, and his burden shall be removed from off their shoulders."

Said R. Johanan: The Holy One, blessed be He, said: Sanherib with his companions shall come and be made a crib for Hiskiah and his associates.

It also reads [ibid. x. 27]: "And it shall come to pass in that day, that his burden shall be removed from off thy shoulder, and his yoke from off thy neck, and the yoke shall be broken because of the fatness." Said R. Itz'hak of Nafha: The yoke of Sanherib was broken because of the fats of Hiskia which he used to kindle in the prayer house and in house of learning. He placed a sword on the gate of the house of learning as a sign that he who will not occupy himself with the Thorah shall be slain by the sword. And thereafter a search was made from the city of Dan to the city of Beersheba, and there was not found one ignoramus among them. And also from the city of Gebeth to the city of Antiphras, and there was not found one who was not acquainted with the law of purification, even among the women and children. And to that generation it reads [ibid. vii. 21]: "And It shall come to pass on that day, that a man shall nourish (but) one young cow and two sheep." And (23): "And it shall come to pass on that day that every place, where there are (now) a thousand vines worth a thousand silver shekels, shall be--yea, this shall be (given up) to briers and thorns," which means though the vine was so valuable it was left to briers and thorns because all of them occupied themselves with the study of the law.

It reads [ibid. xxxiii. 4]: "And your spoil shall be gathered as the cricket gathereth." The prophet said to Israel: Gather your spoils. And to the question: Shall each one gather for himself or shall it be divided into equal shares? the prophet answered: As the cricket gathereth--as the gathering of the cricket is each one for himself, so also shall be your gathering. And when they objected, saying, Is there not among these the property of the ten tribes which was robbed by the Assyrian? he answered;

[paragraph continues] So long as it was mingled among it, it is not considered the property of the ten tribes. 1

R. Huna said: Ten trips had the wicked made on that day, as it reads [ibid. x. 28 to 32]: "He cometh to Ayath, he passeth on to Migron; at Michmash he layeth up his baggage: They go through the pass; they take up their lodgings at Geba; Rama trembleth; Gib'ah of Saul fleeth. Let thy voice resound, O daughter of Gallim! listen Layshah; O poor Anathoth! Madmenah is in motion (the inhabitants of Gebin)," etc. Are there not enumerated more than ten places? Verse 30 the prophet said to the assembly of Israel thus: Those daughter of Gallim means Abraham, Isaac and Jacob, who performed divine commandments as numerous as the waves of the sea. Layshah means be not afraid of Layshah, which means Sanherib, but of Nebuchadnezzar, who is equalized to a lion, as it reads [Jer. iv. 7]: "The lion has come up from his thicket. O poor Anathoth!"--there will come a prophet from Anathoth, Jeremiah, who will prophesy the destruction of Jerusalem.

(Verse 32): "As yet will be remain at Nob." What does this mean? Said R. Huna: There was one day more appointed for the punishment of the iniquity of Nob. And the astrologers told Sanherib that if he could reach Jerusalem on that day he would be victorious. He therefore hastened his march and made a journey of ten days in one. And when he reached Jerusalem a ladder was made for him, upon which he ascended to view the whole city which was visible from that place. And it appeared to him very small, so that he exclaimed: Is this the city of Jerusalem for which I have troubled all my forces? Is she not smaller and weaker than all the great cities and countries which I have besieged with my powerful arm? He nodded his head, and gestured with his hands over the mountain of the Temple in Zion and over the court of the Temple in Jerusalem. And as his army wanted to put their hands on Jerusalem immediately, he told them that they were at present too tired, but on the morrow everyone of them should bring with him a piece of the wall which surrounds it. Concerning that night, however, it reads [II Kings, xix. 35]: "And it came to pass, on that same night, that an angel of

the Lord . . . . smote . . . . of the Assyrians one hundred eighty and five thousand men; and when the people arose early in the morning, behold they were all dead corpses."

Said R. Papa: This is what people say: If the judgment is postponed over one night, there is hope that it will be abolished entirely.

It reads [II Sam. xxi. 16]: "And Yishbi at Nob, who was of the children of the Raphah, the weight of whose spear was three hundred shekels of copper, he being girded with a new armour, thought to slay David." What is meant by "Yishbi at Nob"? Said R. Jehudah in the name of Rabh: It means that this happened because of that which was done to the city of Nob. The Lord said to David: How much longer will the iniquity of Nob rest upon thee? Thou caused the destruction of the priest's city of Nob. Thou caused the iniquity of Doeg the Edomite, and through thee Saul and his three sons were killed. Now thou hast the choice of one of the following two. Either thou shalt not leave any issue, or that thou couldst be delivered over to thy enemies. And he answered: Lord of the Universe, it is better for me to be delivered over to the

enemy than my descendants shall be destroyed.

It happened then that David went to a village and the Satan appeared to him in the form of a ram. He shot an arrow at it, but it did not reach it. So he ran after it till he passed the border of the Philistines. And when Yishbi of Nob saw him he said: This is he who killed my brother Goliath. He bound him, gagged him and put him under an olive press. However, a miracle occurred in that the earth under him became soft, and he was not killed. To this it is written [Ps. xviii. 37]: "Thou enlargest my steps under me, so that my joints do not slip." That day was an eve of Sabbath. And Abishai b. Zeruyah used to wash his head with four pitchers of water, and spots of blood appeared on the water. According to others, a dove flew to him, flapped her wings as if in trouble. And he said the assembly of Israel is equalized to a dove. Hence it must be that David the king of Israel is in trouble. He went to David's house but did not find him there. And he said, I was taught: One must not ride on a king's horse, must not sit on his chair, etc. But how is it at the time of danger? He went to the college and questioned concerning it. To which he was answered that at the time of danger one may. Then he rode upon the king's mule and miraculously the earth jumped towards him. And while riding he saw

[paragraph continues] Arpa, the mother of Yishbi, sitting and spinning. When she saw him she broke the thread of her spindle and threw it at him with the intention of killing him (simulating that it had accidentally slipped). Then she said: Young man, hand me my spindle. And he took the spindle, threw it at her head, and she was killed. When Yishbi of Nob saw Abishai, he said: Now there are two, and they will be able to kill me. He took David and threw him up high, and placed the point of his spear so that David should fall upon it, and be killed. And Abishai mentioned a certain holy name, through which David remained between the sky and the earth. [But why didn't David himself mention such a name? Because a prisoner cannot liberate himself from prison without help.]

Abishai then questioned David what he was doing there. And he narrated before him what the Lord told him and what his answer to it was. Said he to him: Reverse thy prayer. Thy grandson may go and sell wax, but thou thyself must not take any trouble upon thee. Rejoined David: If it must be so, then succor me to pray. For it reads [Sam. xxx. 17]: "But Abishai the son of Zeruyah succoured him." And R. Jehudah, in the name of Rabh, said that he succored him in prayer. Thereafter Abishai mentioned another holy name and took David up on the knees, and both ran away. And Yishbi ran after them. And when they reached the village of Kubi (situated on the boundary of Palestine) they thought: Let us stop here and fight him. However, they went to the village of Tri and said to themselves that two cubs of a lion are able to kill a big lion. When the fight began they said to him: Go back, and you will see that your mother is dead. And when he heard this he became weak, and then they killed him. And this is what is written [ibid. 17]: "Then swore the men of David unto him, saying: Thou shall go out no more with us to battle, that thou mayest not quench the lamp of Israel."

The rabbis taught: To the following three the earth jumped: To Eliezar the servant of Abraham, to Jacob our father, and to Abishai b. Zeruyah: To the latter, as it was said above. To Eliezar the servant of Abraham, as it reads [Gen. xxiv. 42]: "And I came this day unto the well." "This day" means on the same day he went from home. To Jacob our father, as it reads [ibid. xxviii. 10 and 11]: "And Jacob went out from Beersheba and went towards Charan. And he "vayiphga" (lighted) upon a certain place and tarried there all night, because the sun

was set," etc. When he reached Charan he said: Is it right of me not to have prayer when I passed the place my parents passed? He resolved to return, and soon after his resolution the earth jumped and he met Bethel.

And another explanation is that "vayiphga" means praying, as it reads [Jer. vii. 16]: "But thou--pray not thou in behalf of this people, nor lift up in their behalf entreaty or prayer, nor make an intercession ("al-tiphga") to me, for I will not hear thee." "And tarried there all night," etc. He wanted to return after he prayed, but the Holy One, blessed be He, however, said: This upright came to my inn and he should go away without staying over night. He made, therefore, the sun set immediately. And this is what it reads farther on [ibid. xxxii. 32]: "And the sun rose unto him as he passed by Penuel." Does the sun only rise to him and not to the whole world? Therefore said R. Itz'hak, it means the sun which has set for his sake has risen now for him.

And whence do we know that David's children were destroyed? From II Kings xi. 1: "And when Athalyah the mother of Achazyahn saw that her son was dead, she arose and destroyed all the seed royal. But did not Yoash remain? There in the case of Nob also Ebyathar remained, as it reads [I Sam. xxii. 20]. And R. Jehudah said in the name of Rabh: If from Achimelech's family there would not one have remained there would not have remained from David's family a single soul.

R. Jehudah in the name of Rabh said: Sanherib the wicked, when he came to attack, brought with him forty-five thousand princes with their concubines in golden carriages, and eighty thousand valiant men which were clothed in coats of mail, and sixty thousand girded with swords, who ran before the army. And the remainder were riders. Similar to this army was the one that attacked Abraham. And such will come in the future with Gog and Magog. In a Boraitha it was taught: The length of his camp was four hundred parsus, and the width of the necks of his horses were forty parsus. And the total of camp was two hundred and sixty thousand, less one. Questioned Abayi: What is meant by "less one"? Less one thousand, less one hundred, or less, one literally? The question was not decided.

There is a Boraitha: The first part of Sanherib's army passed the Jordan by swimming, as it reads [Is. viii. 8]: "He shall penetrate into Judah, overflow," etc.; the middle part standing on their feet, as it reads: "Even to the neck shall he reach." (The water was so diminished by the swimming of the first part, that these

had to pass over on foot.) And by the last part (the Jordan was so dry) that the dust whirled up by the tramping of their feet. And they found no water to drink, and they had to bring it from another place; as it reads [ibid. xxviii. 25]: "I have dug and drunk water." But is it not written that the angel smote only one hundred eighty and five thousand, and when they arose early in the morning they were all corpses? Said R. Abuhu: This enumerates only the officers of the army. Said Rabhina: It seems to be so from [II Chr. xxxii. 21]: "And the Lord sent an angel, who cut off every mighty man of valor and leader and captain in the camp of the king of Assyria, and when he returned with shame of face to his own land, he went into the house of his god, and (those) that were come forth from his own bowels felled him there with the sword."

With what did the angel smite them? R. Eliezar said: With his hand. As it reads [Ex. xiv. 31]: "And Israel saw that great hand which the Lord had shown," *i.e.*, that which will take revenge on Sanherib. And R. Jehoshua said: With the finger. As it reads [ibid. viii. 15]: "Then said the magicians unto Pharaoh, this is a finger of God," "this" means the one which will take revenge on Sanherib. And R. Eliezar b. R. Jose the Galilean said: The Holy One, blessed be He, said to Gabriel: Is thy sickle (of death) polished? And he answered: Lord of the Universe, it is ready, polished, since the six days of the creation. As it reads [Is. xxi. 15]: "From the drawn sword, from the bent bow." R. Simeon b. Jochai said: That was the time when the fruit became ripe, and the Holy One said to Gabriel: When thou will go to make the fruit ripe, by the way, thou shalt attend to them. As it reads [ibid. xxviii. 19]: "For morning by morning shall it pass by, by day and by night; and the mere understanding of the report shall cause terror." Said R. Papa: This is what people say: When thou passest by the door of thy enemy, look at it. According to others the angel blew into their nostrils till they died. As it reads [ibid. X1. 24]: "When he breathed upon them, they withered." R. Jeremiah b. Abah said: They died from the striking of his hands. As it reads [Ezek. xxi. 22]: "I will strike my hands together, and I will cause my fury to be assuaged."

And Itz'hak of Nafha said: He revealed their ears so that they hear the songs of the angel and become death from it. As it reads [ibid. xxxiii. 3]: "When thou liftedst thyself up nations were scattered." And how many remained of them? According

to Rabh, ten, as it reads [ibid. x. 19]: "And the rest of the trees of his forest shall be few in number, so that a boy may write them down." And what can a boy write a • {Hebrew *Y*} (yad) which counts ten. And Samuel said: Nine, as it reads [ibid. xvii. 6]: "Two or three berries on the top of the uppermost bough, four to five on the outmost branches of a fruitful tree." And R. Jehoshua b. Levi said: Fourteen, as the just cited verse reads two, three . . . four, five. R. Johanan, however, said: Only five, and they were Sanherib and his two sons, Nebuchadnezzar and Nebusaradan, the latter is known by tradition, and concerning Nebuchadnezzar, it reads [Dan. iii. 25]: "And the appearance of the fourth is like a son of the gods," and if he would not have seen him first, how would he know how an angel looks? And concerning Sanherib, it reads [II Kings xix. 37]: "And it came to pass, as he was prostrating himself in the house of Nisroch his god, that Adrammelech and Sharezer his sons smite him."

R. Abuhu said: Were it not for the following verse it would be impossible to believe. It reads [Is. vii. 20]: "On the same day, will the Lord shave with the razor that is hired, from among those on the other side of the river, with the king of Assyria, the head and the hair of the feet, and also the beard shall it entirely remove." The Lord sent an angel, who appeared before Sanherib as an old man, and questioned him: When thou wilst return to the kings of the East and the West, whose sons thou broughtst with thee, and who were killed, what excuse canst thou give to them? And he answered: I myself am trembling about this. Canst thou advise me what to do? And he rejoined: Go and change thyself that thou mayest not be recognized. And to the question how should this be done, he told him, Bring me scissors and I will cut your hair off. And to the question where he shall take the scissors, he showed him a certain house, telling him to go there and that he will find what he needs. He went there, and found angels who had appeared before him as men, engaged in grinding the kernels of dates. And he asked them for a scissors. To which they answered, grind one kernel and thou wilst get it. He did so and got the requested

scissors. But when he returned it grew dark, and he was told to bring light. And while carrying the light, the wind blew and caught his beard, and therefore he was compelled to cut off his hair and his beard. And this is what is written, "and also the beard shall it entirely remove." [Said R. Papa, this is what people say: Then

you are engaged in cutting the hair of an Aramaen, cinge his beard, and you will have to laugh for a long time.] When he went away he found a board from the ark of Noah. And he exclaimed, This is the great God, who saved Noah from the flood. I vow that if I will succeed in the future, I will sacrifice my two sons to him. This his sons heard, and therefore they killed him, and this is what is written in the above cited verse [II Kings, xix. 37].

It reads [Gen. xiv. 15]: "And he divided himself against them, he and his servants by night (lajlha), and smote them." Said R. Johanan: The name of the angel who came to assist Abraham was lajlha (night), as it reads [Job, iii. 3]: "And the night when it was said, There hath been a male child conceived," etc. And R. Itz'hak of Nafha said: The term lajlha concerning Abraham means that the stars of the night assisted him in his war as they did in the war with Sissera [Judges, V. 20]: "From heaven they fought--the stars in their courses fought against Sissera." Said Resh Lakish: The explanation of Nafha is better than that of the bar Nafha (Johanan, who is always called bar Nafha).

R. Johanan said: When this upright (Abraham) reached the city of Dan he became weak, as he saw that in the future his children will worship idols in Dan, as it reads [I Kings, Xii. 29]: "And the other put he in Dan." And also this wicked (Sanherib) did not feel. strong until he reached Dan, as it reads [Jer. viii. 16]: "From Dan was heard the snorting of his horses."

R. Zera said: Although R. Joshua b. Levi sent a message, in which among other things he said be careful with the children of the gentiles, as it happens very often wisdom emanates from them, the following may be nevertheless proclaimed. It reads [ibid., xii. 1 to 3]: "(Too) righteous art thou, O Lord, that I could plead with thee; yet must I speak of (the principles of) justice with thee: Wherefore is the way of the wicked happy? Do all those prosper that deal treacherously? Thou hast planted them; they have also taken root; they grow; they also bring forth fruit: thou art near in their mouth, and far from their mind." And he was answered [ibid., ibid. 5]: "If thou hast run with the footmen, and they have wearied thee, how then canst thou contend with the horses? and if in the land of peace, (wherein) thou trusted, (they wearied thee), how then wilt thou do in the swelling of the Jordan?" As a parable to this is: One who proclaims that he is able to run three parsus in front of

horses in the swamps. And a pedestrian happened to say to him that he is able to do the same. And he tried to run in front of him three miles and became tired. And then he said, If you become tired by running in front of me, how much the more in front of horses? If only from three miles, how much the more from three parsus? If you become tired on dry land, how much the more would you become so in the swamps! Similar to this was it said to Jeremiah. Thou art wondering that I have rewarded that wicked for the four steps he was running for the sake of my glory: how much more will you wonder when I will come to pay the reward of Abraham, Isaac and Jacob, who used to run for me like horses! And this is what is written [ibid. xxiii. 9]: "To

the prophets--Broken is my heart within me; all my bones shake; I am like a drunken man, because of the Lord, and because of his holy words."

But what four steps arc meant? Those of [Isa. xxxix. i]: At that time sent Merodach-baladon, the son of Baladon, the king of Babylon, letters and presents to Hezekiah, for he had heard that he had been sick, and was becoming strong again." And to this it reads also [II Chron. xxxii. 31]: "And in the same manner in the business of the ambassadors . . . who sent unto him to inquire concerning the wonder that had happened in the land." (And what is it?) What R. Johanan said: That the day on which Achaz died consisted of only two hours. And when Heskiah became sick and thereafter recovered, the Holy One, blessed be He, returned the ten hours to that day, as it reads [Isa. xxxviii. 8]: Behold, I will cause the shadow of the degrees, which is gone down on the dial of Achaz by the sun, to return backward ten degrees. So the sun returned ten degrees, by the degrees which he was gone down." Merodach-baladon then questioned why that day is so long. And he was told, because Hiskia was sick and recovered. He said then: If there is such a man, must he not be greeted? Write him a letter of greeting. And they wrote, Peace to the king Hiskiah, peace to the city of Jerusalem, and peace to the great God.

At that time Nebuchadnezzar was Merodach's scribe. But this letter was written in his absence. When he returned and heard of this he asked them what they wrote. And they told him so and so. And he exclaimed: Ye named Him the great God, and greet Him at the end! It ought to have been written, Peace to the great God, peace to the city of Jerusalem, and peace to Hiskiah! And they told him that the dictator of the letter

should be the messenger. He then ran after the messenger to make him return. But after he ran four steps Gabriel came and stopped him. And R. Johanan said: If Gabriel would not have stopped there would be no remedy for the people of Israel.

What does the term "ben baladon" mean? It was said that Merodach's father was a king whose appearance was changed to that of a dog. And his son baladon sat on the throne. And when he used to sign his name he did so in conjunction with his father's for the sake of his honor. And to this it reads [Malachi, i. 6]: "A son honoreth his father, and a servant his master." A son honoreth his father, as just mentioned, and a servant his master, as in [Jer., lii. 12 and 13]: "And in the fifth month on the tenth day of the month, which was the nineteenth year of King Nebuchadnezzar, the king of Babylon, came Nebusaradan, the captain of the guard, (who) served the king of Babylon, unto Jerusalem. And he burnt the house of the Lord," etc. But was Nebuchadnezzar, indeed, at that time in Jerusalem? Is it not written [II Kings xxv. 20]: "And Nebusaradan, the captain of the guard, took these, and conducted them to the king of Babylon to Riblah." And R. Abuhu said that Riblah is identical with Autukhia? R. Hisda and R. Itz'hak b. Abudimi: One said that the image of Nebuchadnezzar was engraved on his carriage, and the other that the fear of Nebuchadnezzar rested upon Nebusaradan, so that it always appeared to him that he was standing by him.

Rabha said: Three hundred mules loaded with iron saws which cut iron were given to Nebusaradan by Nebuchadnezzar while going to attack Jerusalem. And all of them were broken at one gate of Jerusalem, as it reads [Ps. lxxiv. 6]: "And now they hew in pieces the carver work thereof altogether with hatchets and hammers." Seeing this he thought to return, but a heavenly voice was heard: "Jumper, the son of a jumper, O Nebusaradan, jump now, and thou wilst

succeed, as the time for the destruction of the sanctuary and for the burning of the Temple has arrived." And one saw remained with him, and with it he struck the gate, and it opened, as it reads [ibid., ibid. 5]: "(The enemy) is known as one that lifteth up high axes against the thickets of a forest." Then he slew every one coming under his hand till he reached the Temple and kindled it. However, the Temple wanted to fly away, but it was prevented by Heaven and was trodden down, as it reads [Lamentations, i. 15]: "A winepress hath the Lord trodden over the virgin, the daughter of

[paragraph continues] Judah." Nebusaradan became proud of all this, and a heavenly voice was heard saying: "You slew a killed nation, a burnt temple have you burned, grind flour have you grind," as it reads [Isa. xlvii. 2]: "Take the mill and grind meal; Uncover thy locks, lift up the train, uncover the thigh, pass over the rivers." It does not read "and grind wheat," but "grind meal."

He then saw the blood of Zecharyah the prophet, which was boiling. He asked: What is it? And he was told that it is blood of sacrifice which was spilled. And he said: I will bring such blood and see if it will be similar. He did so, but it didn't correspond. Said he to them: Reveal to me this secret, for if not I will scratch your flesh with iron combs. They told him then that it was that of a priest and prophet, who had prophesied the destruction of the Temple and was slain. Said be to them: I will reconcile him. He slew the rabbis over his blood, but it didn't become quiet. He brought then the little school children, slew them, and it didn't effect. He slew then the young priest over it, and it didn't cease to boil. He slew then altogether nine hundred and forty thousand, and still the blood did not rest. He approached the blood, saying: Zecharyah, the best of thy people I slew; dost thou want that I shall slay all of them? And the blood immediately rested. He then repented, thinking they had suffered so much only for one person. I who have shed so much blood, how much will I have to suffer? He then ran away, sent his will to his house, and became a proselyte.

The rabbis taught: Naamani's proselytism was only to perform the seven commandments given to the descendants of Noah. Nebusaradan, however, was a true proselyte, from the descendants of Sissera were such who studied the law in Jerusalem, and from the descendants of Sanherib were such who taught the Torah among a majority of Israelites, and they are Shmayah and Abtalia. From the descendants of Haman were such who learned the Torah in the city Bne-Brack. And even the descendants of Nebuchadnezzar, the Holy One, blessed be He, thought to enter them under the wings of the Shekinah. But the angels prayed before Him: Lord of the Universe, he who has destroyed your house, burned your Temple, shouldst thou enter him under the wings of the Skekinah? And this is what reads [Jer. li. 9]: "We would have healed Babylon, but she was not healed." And Ula said this means Nebuchadnezzar. Samuel b. Na'hman, however, said: It means the waters along the (dry, or stony) palms of Babylonia.

Ula said: Amon and Moab were the two bad neighbors of Jerusalem, and when they heard the prophets prophesying the destruction of same, they sent to Nebuchadnezzar, "Come up," and to his answer that he is afraid that they will do to him as they have done with their former enemies, they said to him [Prov. vii. 19]: "For the man is not in his house," and by the man is meant the Lord. He, however, sent to them; he is near to them, and will return. They sent again to him, "He is gone on a journey a great way off." Nebuchadnezzar, however, sent to them: I am aware that

among them are upright, who will pray for them to Him and He will return; and they answered: The bag of money hath he taken with him, and by a "bag of money," the upright are meant, as it reads [Hosea, iii. 2]: "So I bought me such a one for fifteen pieces of silver," etc. He sent again: The wicked of them will repent, pray, and will be listened to. And they answered: He has already appointed a time for repenting, as it reads [Prov. vii. 19]: "By the day of kesa only will he return," and the term kesa means "an appointed time," as it reads [Ps. lxxxi. 4]: "Blow on the new moon, the cornet at the time appointed (kesa) on the day of our feast." He, however, sent to them: It is winter, and I cannot come up because of snow and rain. And they sent to him: The mountains will protect thee, as it reads [Is. xvi. 1]: "Send ye the lambs of the ruler of the land from Sela, through the wilderness unto the mount of the daughter of Zion." He (Nebuchadnezzar) sent to them: When I will arrive there I will have no place to reside. And they answered: Their graves are better than your palaces, as it reads [Jer. viii. 1 and 2]: "At that time, saith the Lord, shall they bring out the bones of the kings of Judah, and the bones of the princes, and the bones of the priests, and the bones of the prophets, and the bones of the inhabitants of Jerusalem, out of their graves. And they shall spread them out before the sun, and the moon and all the hosts of heaven, which they have loved, and which they have served, and after which they have walked."

R. Na'hman said to R. Itz'hak: Have you heard when the fallen son will come? And to the question, Who is it? He answered: The Messiah. And the Messiah you call "The fallen son"? And he said: Yea, for it reads [Amos, ix. 11]: "On that day will I raise up the tabernacle of David, which is fallen." And he answered: Thus said R. Johanan: In the generation in which the son of David will come scholarly men will decrease, and

by the remainder their eyes will protrude from sighing and sorrow, many chastisements and many evil decrees will be renewed, one will not cease as yet, while another will have come.

The rabbis taught: In this Sabbatic period in which the son of David will appear in the first year there will be fulfilled what is written, in [Amos, iv. 7]: "And I caused it to rain upon one city, and upon another city I caused it not to rain." In the second year, arrows (tokens) of famine will be sent. In the third, a great famine, from which men, women, and children, pious men and men of good deeds will die, and the Torah will be forgotten by their scholars. In the fourth there will be abundance, and not abundance. In the fifth there will be great abundance, and the people will eat, drink, and enjoy themselves, and the Torah will return to her scholars. In the sixth, voices will be heard saying that the Messiah is near. In the seventh, war will be, and at the end of the seventh, ben David will come. Said R. Joseph: Were there not many Sabbatical periods which were like this, but still he did not come? Said Abayi: Were then the above-mentioned voices heard in the sixth? And was there in the seventh war? And secondly, has it then happened in the same order as said above? There is a Boraitha. R. Jehudah said: The generation in which the son of David will come, the houses of assembly will be converted into houses of prostitution. Galilee will be destroyed. The place called Gablan will be astonished. Men of the borders of Palestine will travel from one city to another, but will find no favor. The wisdom of the scribes will be corrupted. Men fearing sin will be hated. The leaders of that generation will have the nature of dogs. And truth will be missing, as it reads [Is. lix. 15]: "And thus is the truth missing." What does this mean? It was said in the college that it passes away like flocks. [1] "And he that departeth from evil is regarded as foolish." Said the school of Shila: He who turns away from evil is regarded as foolish in the eyes of the people. Said Rabha: Previously I thought there

is no truth in the whole world. However, I met thereafter a certain rabbi named Tubuth, according to others R. Tibumi, and if the whole world filled with gold would be given to him, he would not change his word or tell a lie. It happened once that he came to a city named Kushta (truth). And the inhabitants of

that city would not change their word, and it never happened that one should die an untimely death. And he married one of its inhabitants, and she bore him two children. It happened once that his wife washed her head and a female neighbor came to ask for her, and he thought that it was not nice to say that she is washing her head, and therefore said that she is out. And the two children died. And when the inhabitants came to ask him what was the reason that such an unusual thing happened to him, he told them the truth. And they requested him to move away from their city in order not to cause untimely death.

R. Nehuraia taught: The generation in which the son of David will come, young men will make pale the faces of the old, old men will rise before youth, a daughter will rebel against her mother, a daughter-in-law against her mother-in-law, the leaders of the generation will have the nature of dogs, and a son will not be ashamed when his father reproaches him.

There is a Boraitha: R. Nehemiah said: The generation in which ben David will come, insolence will increase, an evil man will be honored, respect will be missed, the vine will give forth its fruit abundantly; wine, however, will be dear, and all the governments will be turned over to *Minuth* (will embrace the religion of the Minim), and no preaching will avail. And this is a support to R. Itz'hak, who said that ben David will not come unless all governments will be turned over to *Minuth*. Where is to be found a hint to this in the Scripture? [Lev. xiii. 13]: "It is all turned white, he is clean."

The rabbis taught: It reads [Deut. xxxii. 36 and 37]: "For the Lord will espouse the cause of his people, and bethink himself concerning his servants: When he seeth that their power is gone, and the guarded and fortified are no more." Ben David will not come until the denouncers will increase. According to others, unless the disciples will decrease; and still according to others, until the pockets will be empty of aperuthar. And some others also say unless they will renounce their hope to be redeemed. And this is as R. Zera found the rabbis occupying themselves with the question of the Messiah. And he told them, I beg you do not make the thing further than it is, as there is a Boraitha that the following three come suddenly after renouncing all hope for them, viz., the Messiah, found and a bite of a serpent. R. Ktina said: For six thousand years the world will continue, and in the seventh it will be destroyed. As it reads [Isa. xii. 11]: "And exalted shall be the Lord alone, on that day."

[paragraph continues] Abayi, however, said two thousand will be destroyed, as it reads [Hosea, vi. 2]: "He will revive us after two days. There is a Boraitha in accordance with R. Ktina: As in the Sabbatic period, the seventh year is a release, so will it be with the whole world that one thousand years after six will be a release, as above cited verse [Isa. xii. i] and [Ps. xcii. 11]: "A Psalm or song for the Sabbath day," which means the day which will be all Sabbath. And as [ibid. xc. 4]: "For a thousand years are in thy eyes but as the yesterday when it is passed."

The disciples of Elijah taught: The world will continue for six thousand years, the first two thousand of which were a chaos (Tahu), the second two thousand were of wisdom, and the third two thousand are the days of the Messiah, and because of our sins many, many years of these have elapsed, and still he has not come. Elijah said to R. Jehudah, the brother of R. Sala the Pious: The world will continue for no less than eighty-five jubilaic periods, and in the last jubilaic period ben David will come. And to the question: At its beginning or at its end? he answered: I don't know. Has this passed already, or will it come? He also answered, I don't know. R. Ashi, however, said: Elijah told him thus: Until the above mentioned time will pass you shall not have any hope for him. But after that time, you may hope.

R. Hanan b. Tahlipha sent a message to R. Joseph: I met a man who possessed scrolls written in Assyrian characters and in the holy language. And to my question from where he got it, he answered: I hired myself to the Persian army, and among the treasures of Persia I found it. And it was written therein that after two thousand, two hundred and ninety-one years of the creation, the world will remain an orphan, many years will be the war of whales, and many more years will be the war of Gog and Magog, and the remainder will be the days of the Messiah. But the Holy One, blessed be He, will not renew the world before seven thousand have elapsed. And R. Aha b. R. Rabha said: After five thousand years from to-day.

There is a Boraitha: R. Nashan said: The following passages bore a hole to the depth (*i.e.*, as no one can fathom the depth, so no one can come to the exact meaning of these), viz. [Habukkuk, ii. 3]: "For there is yet a vision for the appointed time, and it speaketh of the end, and it will not deceive: Though it tarry, wait for it; because it will surely come, it will not be delayed." It is not as our masters lectured about this from [Dan. vii. 25]:

[paragraph continues] "And they will be given up into his hand until a time and times and half a time." And not in accordance with R. Simlai, who used lecture about this form [Ps. lxxx. 6]: "Thou feedest them with the bread of tears, and givest them tears to drink in great measure. And also not in accordance with R. Aqiba, who used to lecture about this from [Haggai, ii. 6]: "For thus said the Lord. . . . Yet one thing more (will I do), it is but little, when I will cause to quake the heavens and the earth, and the sea, and the dry land." But the. first kingdom was of seventy years, the second of fifty-two, and the kingdom of Bar Kochba, two years and a half. 1

What does the verse "Speaketh of the end" to mean? Said R. Samuel b. Na'hman, in the name of R. Jonathan: Blown out shall be the souls of those who are sitting and appointing times for the arrival of the Messiah. Because they usually err, and when the appointed time comes and the Messiah does not appear, they say that he will not come anymore. But everyone has to wait for him, as it reads: "Wait for him, because he will surely come." And lest one say, We are awaiting but He does not wait, therefore it reads [Isa. xxx. 18:] "And therefore will the Lord wait, to be gracious unto you, and therefore will he exalt himself, to have mercy upon you." But if He and we are awaiting, who prevents Him to come? The divine attribute prevents. But if so, what is the use of our waiting? To receive reward for waiting, as the cited verse ends: "Happy are those that wait for him."

Abayi said: There are no less than thirty-six upright in every generation who receive the appearance of the Shekhina (see Succah, p. 68, and there it reads every day instead of every

generation.) Is this so? Did not Rabha say that the row in front of the Holy One, blessed be He, contains eighteen thousand parsus, as it reads [Ezek. xlviii. 35]: "All around it shall be eighteen thousand rods"? This presents no difficulty. Abayi speaks of those who are looking in a "*speculare*," which gives the right light. And Rabha speaks of those who are looking in such, which does not give the right light. But are there, indeed, so many? Did not R. Simeon b. Jochai say: I see the very greatest men in the world are very few, etc. (see ibid., ibid., line 6)? This presents no difficulty. R. Simeon b. Jochai speaks of those who may enter without permission, and Rabha speaks of those who must have

permission. Said Rabh: All the appointed times for the appearance of the Messiah have already ceased. And it depends only on repentance and good deeds. Samuel, however, said: It is sufficient for the mourner to remain with his own sorrow (*i.e.*, the suffering of Israel for such a long time is sufficient that they should be redeemed even without repentance.) And on this point the following Tanaim differ. R. Eliezar said: If the people of Israel will repent they will be redeemed, but not otherwise. Said Jehoshua to him: According to you, if they will not repent they will not be redeemed at all? (Replied R. Eliezar [1]): The Holy One, blessed be He, will appoint, for this purpose, a king whose decrees concerning Israel will be as severe as Haman's were. And this will bring them back to the better side, and they will repent.

There is another Boraitha: R. Eliezar said: If the people of Israel will repent they will be redeemed, as it reads [Jer. iii. 14]: "Return, O backsliding children, I will heal your backslidings." Said R. Jehoshua to him: Is it not written [Isa. lii. 3]: "For thus hath said the Lord, for naught were you sold, and without silver shall ye be redeemed," *i.e.*, for naught were you sold to the idolaters, and not because of repentance and good deeds will you be redeemed. Rejoined R. Eliezar: But does it not read [Malachi iii. 7]: "Return unto me, and I will return unto you, said the Lord"? Rejoined he: Does it not read [Jer. iii. 14]: "For I am become your husband, and I will take you one of a city and two of a family, and bring you to Zion"? Said R. Eliezar again: It reads [Isa. xxx. 15]: "In repose and rest shall ye be helped." And R. Jehoshua answered: I call your attention to [ibid. xlix. 7]: "Thus hath said the Lord, the Redeemer of Israel, his Holy One, to him who is despised by men, to him who is abhorred by nations, to the servants of rulers, kings shall see it and rise up, princes, and they shall prostrate themselves, for the sake of the Lord who is faithful." And R. Eliezar rejoined: To this it is written [Jer. iv. 1]: "If thou wilt return, O Israel, saith the Lord, unto me, must thou return." Said R. Jehoshua to him: I call your attention to [Dan. xii. 7]: "Then heard I the man clothed in linen, who was above the waters of the stream; and he lifted up his right hand and his left hand unto the heavens, and swore by the Everliving One that after a time, times and a half, and when there shall be an end to the crushing of the power of the holy people, all these things shall be ended." And R. Eliezar

kept silent. Said Rabha: The appointed time for the Messiah cannot be more revealed than in this passage, as it reads [Ez. xxxvi. 8]: "But ye, O mountains of Israel, ye shall send forth your boughs, and your fruits shall ye bear for my people Israel." R. Elazar said also from [Zech. viii. 10]: "For before those days, there was no reward for man, nor any reward for beast; and for him that went out or came in there was no peace, because of the oppressor." What do the last words in this passage mean? Said Rabh: Also the scholars, of whom it reads [Ps. cix. 165]: "Abundant peace have they who love thy law," will also have no peace from the oppressor. Samuel,

however, said: The cited verse means the Messiah will not come until high prices will be for all articles of life. R. Hanina said: The son of David will not come unless even a piece of fish will be sought for a sick one and it will not be found, as it reads [Ez. xxxii. 14]: "Then will I make clear their waters, and cause their rivers to flow like oil." And it reads also [ibid. xxix. 21]: "On that day will I cause to grow a horn for the house of Israel, and unto thee will I open the mouth in the midst of them. [1] R. Hana b. Hanina said: Ben David will not appear unless every office of the government, even the least one will be removed from the children of Israel, as it reads [Isa. xviii. 5]: "He will both cut off the tendrils with pruning-knives, and the sprigs will he remove and cut down." And thereafter it reads [ibid. 7]: "At that time shall be brought as a present unto the Lord of hosts a people pulled and torn." And Zera, in the name of R. Hanina, said: Ben David will not come until the haughty men of Israel will cease to be, as it reads [Zeph. iii. 11]: "For then will I remove out of the midst of thee, those that rejoice in thy pride, and thou shall never more be haughty again on my holy mount." And thereafter it reads [12]: "I will leave remaining in the midst of thee an humble and poor people, and they shall trust in the name of the Lord." R. Simlai said, in the name of R. Elazar b. Simeon: Ben David will not come unless there will cease to be judges and officers of Israel, as it reads [Isa. i. 25 and 26]: "And I will turn my hand against thee, and I purge away as with lye thy dross, and remove all thy tin. And I will restore thy judges as at first, and thy counsellors as at the beginning," etc.

Said Ula: Jerusalem will not be redeemed but by charity, as

it reads [Isa. i. 27]: "Zion shall be redeemed through justice, and her converts through *zdaha*" (the meaning of which is both righteousness and charity). Said R. Papa: When insolence shall cease to be in Israel, the *magus* of the Persians who causes much trouble will also cease to be, as it reads [ibid., ibid. 25]: "And purge away as with lye thy dross, and remove all thy tin." When judges of Israel will cease to be, the brutal executions of the Persian court-servants will be abolished, as it reads [Zeph. iii. 15]: "The Lord hath removed mishophtakha (literally "the judges from thee"), he hath cleared away thy enemy." R. Johanan said: When you see that wisdom decreases continually from a generation, you may hope for the Messiah, as it reads [II Sam. xxii. 28]: "And the afflicted people thou wilt save." And he said again: If you see chastisements and evils are increasing in a generation like the waters of the rivers, await the Messiah, as [Isa. lix. 19]: "For there shall come distress like a stream." And the next verse reads: "But unto Zion shall come the redeemer." He said again: Ben David will appear either in a generation in which all will be upright or in one in which all shall be wicked. "All upright," from [ibid. ix. 21]: "And thy people--they all will be righteous, for ever shall they possess the land." And "all wicked," from [ibid. lix. 16]: "And he saw that there was no man, and wondered that there was no intercessor." And [ibid. xlviii. ii]: For my own sake, for my own sake, will I do it."

R. Alexandri said: Jehoshua b. Levi propounded a contradiction: It reads [ibid. ix. 22]: "I the Lord will hasten it in its time." "Hasten" and "in its time" contradict each other. And the answer was that if they will be worthy I will hasten it, and if not, they must wait till the right time will come. The same said again that the same authority propounded another contradiction from [Dan. vii. 13]: "Behold with the clouds of heaven came one like a son of man . . . " [Zech. ix. 9]: "Lowly and riding upon an ass." And the answer was, if they will be worthy he will come with the clouds of heaven, and if not, he. will come upon an ass.

The king Sabur said to Samuel: You say that your Messiah will come upon an ass, let me send him the best horse of my stable. And he answered him: Do you then possess a horse of a hundred colors as the ass of the Messiah? (a joke to a joke). R. Jehoshua b. Levi met Elijah standing at the gate of the cave of R. Simeon b. Jochai and asked him if he will have a share in

the world to come. And he answered: If it will be the will of this Lord. Said R. Jehoshua: Two persons have I seen and the voice of the third have I heard. 1 I questioned him further when the Messiah will appear. And he answered: Go and ask him himself. "But where is he to be found?" "At the gate of Rome, among poor people inflicted with wounds." "And how can I recognize him?" All the inflicted poor open the bandages of all their wounds, fix all of them and then dress them. And he opens one bandage, fixes the wound and dresses it, and then goes on to the next one, for the reason that perhaps he will be cold and there will be a delay till all the wounds are dressed. R. Jehoshua went to him, and when he met him he said: Peace be to thee, my master and teacher. And he answered: Peace be with thee, son of Levai. And to Jehoshua's question: When will the master appear? he answered: This day. When Jehoshua met Elijah again, the latter questioned him as to what the Messiah said to him. And he said: Peace be with thee, son of Levai. Said Elijah: He assured you of a share for thyself and for thy father in the world to come. Rejoined Jehoshua: He made a fool of me by saying that he will come this day. And Elijah answered: The expression "this day" means as in [Ps. xcv.] "Yea this day, if you will hearken to his voice."

The disciples of R. Jose b. Kisma questioned him when the son of David will appear. And he answered: I am afraid you will request from me a sign. And they assured him that they would not. He then said to them: When this gate will fall, be rebuilt and fall again, be rebuilt again and fall again. And before it will be rebuilt for the third time the Messiah will appear. The disciples then said: Our master, give us a sign. "Have you not promised that you will not ask of me for any sign?" They answered: Nevertheless we would like to have it. And he said: If it is as I say, the spring of the cave of Paneas shall be converted into blood. And so it happened. While dying he said to his disciples: Put my coffin very deep into the earth, for there will not be one tree in Babylon to which a horse of the Persians will not be tied. And there will not remain one coffin in the land of Israel from which the horses of the Modoites will not eat straw.

Rabh said: Ben David will not arrive until Rome shall have dominated over Israel nine months (see Yomah, p. 13, where it

is said, "over the entire world"; see there the sources also). Said Ula: Messiah may appear in the near future; I, however, wish not to see him. And the same said Rabba. R. Joseph, however, said: I pray for his coming in my days, and that I shall have the preference to sit in the shadow of his ass. Said Abayi to Rabba: Why does the master not wish to see the Messiah? Is it because of the lot which will be at that time? Is there not a Boraitha that the disciples of R. Elazer questioned him: What may one do to be saved from the lot of the Messiah? And he answered: He shall occupy himself with the Torah and with bestowing favors to the people, and you, master, are doing both; why then are you afraid? And he answered: Perhaps sin will cause me to suffer by the lot. And this is in accordance with R. Jacob b. Idi, who propounded the following contradiction: It reads [Gen. xxviii. 15]: "And, behold, I am with thee, and will keep thee

withersoever thou goest." And [ibid. xxxii. 8]: "Then Jacob was greatly afraid, and he felt distressed." Hence after he was promised by the Lord, he was still afraid? And the answer was that he was afraid perhaps his sins caused what happened, as we have learned in the following Boraitha. It reads [Ex. xv. 16]: "Till thy people pass over "--*i.e.*, their first coming to Palestine; "till this people pass over"--*i.e.*, their second coming to Palestine from Babylon; from which we may infer that the second coming ought to be equal in miracles with the first. And why did not miracles occur at the second coming? Because of their sins. R. Johanan also said: The Messiah may come, but I shall not see him. Said Resh Lakish to him: What is your reason? Is it because of [Amos, v. 19]: "As if a man were to flee from a lion, and a bear should meet him; and he enter into the house, and lean his hand against the wall, and a serpent should bite him." Come, and I will show you a similarity to this in the world at this time--*e.g.*, one is going to his field and a bailiff meets him (trying to contest this title to the field): is this not equal as if a lion should meet him? And when he enters the city a collector from the government meets him: is this not equal as if a bear should meet him? And when he enters his house and finds his sons and daughters starving: is this not equal as if a serpent would bite him? It must then be because of [Jer. xxx. 6]: "Ask ye now, and see whether a male doth give birth to a child? Wherefore do I see (gebher) every man with his hands on his loins as a woman in giving birth? and why are all faces turned pale?"

What is meant by "I see every *gebher*? Said Rabba b. Itz'hak in the name of Rabh: Him (God) from whom all the strength comes. And what is meant by "*all* faces turned pale"? Said R. Johanan: The heavenly household and the household of the earth, as at the time the Holy One, blessed be He, said: Both Israel and the nations are my work, why then should I destroy the one for the other? Said R. Papa: This is what people say: If the ox which is liked by the owner falls while going on his way, and he is compelled to substitute for it a horse which he does not like very much, when the ox, however, becomes better it is difficult for him to remove the horse because of the ox. 1

R. Giddel said in the name of Rabh: The years of abundance in the time of the Messiah, will benefit Israel. Said R. Joseph: Is this not self-evident? Who else then should have benefit from them, Hilek and Bilek (as in English Dick and Harry)? This was said by him in order to deny R. Hillel's theory, who said farther on, that Israel has no more to wait for a Messiah, as they have consumed him already at the time of Hezekiah. Said Rabh: The world is created only for such men as David. And Samuel said: For such men as Moses. And R. Johanan said: For such men as the Messiah. But what is his name? The disciples of R. Shilah said: Shilah is his name, as it reads [Gen. xlix. 10]: "Until Shilah will come." The disciples of R. Janai said *Jinun* is his name, as it reads [Ps. lxxii. 17]: "In the presence of the sun, Jinun is his name." And the disciples of R. Hanina said: Hanina is his name, as [Jer. xvi. 13]: "So that I will not grant you Hanina." (Favor.) According to others, Menachem b. Hiskia is his name as in [Sam. i. 16]: "For from me in Menachem (comforter) that should refresh my soul." And the rabbis said: The sufferer of the house of Rabbi is his name, as [Is. liii. 4]: "But only our diseases did he bear himself, and our pains he carried: while we indeed esteemed him stricken, smitten of God and afflicted." Said R. Na'hman: If Messiah is among the living he is a man like myself, of whom it reads [Jer. xxx. 21]: "And their leader shall be of themselves, and their ruler shall proceed from the midst of them." Said Rabh: If he is among the living it is our holy rabbi, and if he was from the death it was Daniel. Said R. Jehudah in the name of Rabh: In the future the Holy One, blessed be He, will create for them

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another David, as it reads [ibid., ibid. 9]: "And David their king, whom I will raise up unto them." It does not read "I raised," but "I will raise." Said R. Papa to Abayi, Does it not read [Ezek. xxxvii. 25]: "David my servant shall be prince unto them forever"? As it is now a Cæsar and a half Cæsar.

R. Simlai lectured: It reads [Amos, v. 18]: "Woe unto you that long for the day of the Lord! for what do you wish the day of the Lord? It is (one of) darkness and not of light." It is similar to a cock and a bat who were waiting for light. The cock said to the bat, I look out for the light, because the light is mine (I see it), but for what purpose do you wait for it? And this is what a Min said to R. Abushu: When will your Messiah appear? When your people will be surrounded with darkness. Rejoined the Min: Do you caution me? And he answered: No, but [Isa. Ix. 2] reads: "For behold, the darkness shall cover the earth, and a gross darkness the people; but over thee will shine forth the Lord, and his glory will be seen over thee."

There is a Boraitha: R. Eliezar said: Forty years will be the days of the Messiah. As it reads [Ps. xcv. 10]: "Forty years long did I feel loathing on this generation." R. Elazar b. Azaryah said: Seventy years, as [Isa. xxiii. 15]: "Seventy years like the days of one king." By "one king" the Messiah is meant. Rabbi, however, said: It will continue three generations, as [Ps. lxxii. 5]: "They shall fear thee, as long as the sun shineth, and in the presence of the moon throughout all generations." R. Hillel, however, said: There is no more any Messiah for Israel, as they have consumed him already in the days of Hiskia. Said R. Joseph: May the Lord forgive R. Hillel! Hiskia was at the time of the first Temple, and Zacharyah prophesied at the time of the second Temple, and said [Zech. ix. 9]: "Be greatly glad, O daughter of Zion; shout, O daughter of Jerusalem! Behold, thy king will come unto thee, righteous and victorious is he lowly, and riding upon an ass, and upon a colt the foal of a she-ass.

There is another Boraitha: The days of the Messiah are forty years, as it reads [Deut. viii. 3]: "And he afflicted thee, and suffered thee to hunger," and [Ps. xc. 15]: "Cause us to rejoice as many days as those wherein thou hast afflicted us," Hence, as their journey in the desert was forty years, so long will be the days of the Messiah; so R. Eliezar. R. Dusa, however, said: Four hundred years, as in [Gen. xv. 13]: "And they will afflict them four hundred years." And as the above cited verse reads, "to rejoice as many days as thou afflicted us," hence it is four

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hundred years. Rabbi said: Three hundred and sixty-five years, according to the days of the year when counted after the sun, as [Isa. xxiii. 4]: "For the days of vengeance was in my heart, and the year of my redeemer was come." What is meant, the day of vengeance is in my heart? Said R. Johanan: I revealed it to my heart, but not to any other member of my body. And R. Simeon b. Lakish said: I revealed it to my heart, but not to the angels. Abimi b. Abuhu taught: Seven thousand years will be the days of Messiah, as it reads [ibid. lxii. 5]: "And as a bridegroom is glad over the bride, so will be glad over thee thy God," which is seven days, and each day of the Lord is a thousand years.

R. Jehudah said in the name of Samuel: The days of the Messiah will be as from the day of creation till now, as it reads [Deut. xi. 2 1]: "As the days of heaven over the earth." R. Na'hman

b. Itz'hak said: As from the day of Noah till now, as [Isa. liv. 9]: "For as the waters of Noah is this unto me; as I have sworn," etc.

R. Hyya b. Aba in the name of R. Johanan said: All the prophets have prophesied only for the days of the Messiah, but concerning the world to come it reads [ibid. lxiv. 3]: "No eye (also) had seen a god beside Thee." And he differs with Samuel, who says that there is no difference between this world and the days of the Messiah only concerning the dominion of foreigners over Israel. R. Hyya said again in the name of R. Johanan: The prophets prophesied only to those who have repented, but concerning the entirely upright, it reads: "No eye has seen," etc. And they differ with R. Abuhu, as he said that at the place where those who have repented will be placed, entirely upright cannot be placed, as it reads [Isa. lvii. 19]: "Peace, peace to him that is afar off, and to him that is near." Hence "afar off" is first, and then is "that is near." And what is meant, by "far off"? Who previously was far off and now is near. And what is meant by "near"? He who was first near, and is also now near. R. Johanan, however, explained "far off" means one who was always far off from sin, and "near" means one who was near to sin, but now is far off.

The same said again in the name of the same authority: The prophets prophesied only to him who marries his daughter to a scholar, to him who is in business for a scholar, and to him who benefited the scholars by his estate, but to the scholars themselves "an eye has not seen," etc. What is this? Said R. Jehoshua b. Levi: This is the wine which is preserved in

the grapes since the days of the creation. And Resh Lakish said: That is the Eden which no eye has seen. And lest one say that Adam the First was there? Adam dwelt only in the garden. And lest one say that both are one and the same. To this it reads [Gen. ii. 10] And a river went out of Eden to water the garden."

"*And he who says that the Torah is not given by Heaven*," etc. The Rabbis taught: It reads [Num. xv. 31]: "Because the word of the Lord hath he despised and his commandment hath he broken." It means him who says that the Torah is not given by Heaven. According to others it means an Epicurean. Still another explanation is that "the word of the Lord hath he despised," means him who explains the Torah against the true law. "His commandment hath he broken"--means circumcision, Hikorath--shall be cut off from this world. Tikorath--from the world to come. Said R. Elazar the Modoi: It is inferred from this that he who profanes the sanctuary, who despises the festivals, he who breaks the covenant of Abraham our father, he who explains the Torah in a wrong way, he who makes pale in public the face of his neighbor, although they possess wisdom and good deeds, have no share in the world to come. There is another Boraitha: "He hath despised the word of God," means him who says that the Torah was not given by Heaven, and even if he says that the Torah is given by Heaven, except such and such, which is not by the Holy One, but by Moses himself. And even if he says that the whole Torah is by Heaven except such and such an explanation, such an *a fortiori* conclusion, such an analogy of expression, they are considered as despising the word of the Lord.

There is another Boraitha. R. Mair said: The just cited verse means him who learned the Torah but does not teach it. R. Nathan said: It means him who does not care for the Mishna. R. Nehoraim said: It means him who is possible to study the law, but does not. R. Ismael, however, said: It means an idolater. How does he infer this from this passage? As in the following

Boraitha: The disciples of R. Ismael taught: "He hath despised the word of the Lord," means him who has despised the words which were said to Moses at Sinai, "I am the Lord thy God, there shall not be any other god before thee."

R. Jehoshua b. Karcha said: He who learns the Torah and does not repeat it, is similar to him who sows but does not harvest.

R. Jehoshua said: He who learned the Torah and forgot it, is similar to a woman who bears children and buries them. Said R. Aqiba: One shall systematize his study as a song which is to be sung daily (and this will cause his singing in the world to come). Said R. Itz'hak b. Abudimi: Where is an allusion to be found to this in the Scriptures? [Prov. xvi. 26]: "The desire of the laborer laboreth for him; for his mouth imposeth it on him," Which means he is laboring here and the Torah labors for him in another place. R. Elazar said: Every man is created to labor, as it reads [Job, v. 7]: "But man is born unto labor." From this, however, we do not know if it means mental or manual labor. As the end of the above-cited verse [Prov. xvi. 26] ends "for his mouth imposeth it on him," hence mental labor is meant. But still I am not aware if it means wisdom or gossip. But as [Josh. i. 8] reads: "This book of the law shall not depart out of thy mouth," hence it means for the labor of the Torah. And this is what Rabha said: Every body is a δρνφατο {Greek *drnfato*}. Well is to him who is a "druphanto" for the Torah. Resh Lakish said: He who occasionally studies the Torah lacks sense, as it reads [Prov, xxii. 18]: "For it is a pleasant thing if thou keep them within thy bosom, if they be altogether firmly seated upon thy lips."

The rabbis taught: It reads [Num. xv. 30]: "But the person that doth aught with a high hand," means Menasseh b. Hiskia who was offending the legends of the Torah by saying: Has not Moses written something better than in [Gen. xxxvi. 22]: "And Lotan's sister was Thimna," or that she was a concubine of Eliphaz b. Esau, or that of [ibid. xiii. 14]. "And Reuben went in the days of the wheat harvest and found mandrakes in the field." A heavenly voice was then heard [Ps. l. 20]: "Thou sittest and speakest against thy brother, against thy own mother's son thou utterest slander." And to him also applies [Isa. v. 18]: "Woe unto those that draw iniquity with the cords of falsehood, and as with a wagon-rope, sinfulness." What does a "wagon-rope" mean? (See Succah, p. 80, line 3.) But what means in reality the verse "Lotan's sister was Thimna"? Thimna was a princess, as it reads [Gen. xxxvi. 40]: "Duke Thimna," and a dukedom is a kingdom without a crown; and she desired to become a proselyte, but Abraham, Isaac, and Jacob did not accept her. And she went and became the concubine of Eliphaz b. Esau, saying it is better to be a servant in this nation than to be a princess of another.

[paragraph continues] And the offspring from her was Amalek, who troubled Israel as a punishment to their parents, who ought not to have driven her out.

"*Reuben went in the days of harvest*," etc. Said Rabha b. Itz'hak in the name of Rabh: Infer from this that the upright do not stretch their hands out to robbery. What are the *dudaim* which Reuben found? According to Rabh they were *jabruchen*, and according to Samuel mandrake flower. R. Alexandri said: Those who occupy themselves with the Torah for her own sake cause peace to reign in the heavenly household and in the household here below, as it reads [Isa. xxvii.

15]: "If he but take hold of my strength, make peace with me, make peace with me." And Rabh said: He is considered as if he had built both palaces of heaven and earth, as it reads [ibid. li. 16]: "And I have placed my words in thy mouth, and with the shadow of my hand have I covered thee: to plant the heavens and to lay the foundations of the earth." R. Johanan said: He is also considered as a protector of the world, as it reads "with the shadow of my hand have I covered thee." Levi said: He makes redemption sooner, as this verse ends "to say to Zion, Thou art my people." Resh Lakish said: He who teaches the Torah to his neighbor's son the verse considers him as if he had created him, as it reads [Gen. xii. 5]: "And the persons they had obtained in Charan." R. Elazar said: He is considered as if he has created the law, as it reads [Deut. xxix. 8]: "Keep ye therefore the words of the covenant, and do them." And Rabha said: He is considered as if he created himself from the same verse; do not read authom, but athem (ye yourselves). R. Abuhu said: He who hastens his neighbor to do a meritorious act, the verse considers him as if he himself has done it, as it reads [Ex. xvii. 5]: "And thy staff wherewith thou smotest the river take in thy hand and go." Did he, then, smite the river? Did not Aaron do this? Hence it was written to teach that the verse considers him as if he himself has done it.

"*Epicurean*," etc. Both Rabh and R. Hanina said: He who disgraces a scholar is meant. And both R. Johanan and R. Jehoshua b. Levi said: He who disgraces his neighbor in the presence of a scholar. It is correct according to them who said that an Epicurean is he who has done as in the latter case, as then he who disgraces a scholar himself is considered as explaining the Torah a wrong way. But according to them who

say that he who disgraces a scholar himself is considered only an Epicurean, who then is considered as explaining the Torah wrongly? *E.g.*, Menassah b. Hiskia. There were those who taught the same concerning the latter part of the Mishna, "who explains the Torah not according to the true law." And to this Rabh and R. Hanina said: He who disgraces a scholar. And Johanan and Jehoshua b. Levi said: He who disgraces his neighbor in the presence of a scholar. And the question was, if he who disgraces his colleague in the presence of a scholar is considered as explaining the Torah wrongly, who then is considered an Epicurean? Said R. Joseph: *E.g.*, those who say, What good do the rabbis do to us? They read and study the Torah for their own sake. Said Abayi to him: Such are also considered as explaining the Torah wrongly, as it reads [Jer. xxxiii. 25]: "Thus said the Lord, If my covenant be not day and night, I would not have appointed the ordinances of heaven and earth." [1] This is inferred also from [Gen. xviii. 26]: "Then will I spare all the places for their sake." So R. Na'hman b. Itz'hak. And an epicurean is considered--*e.g.*, if one sits before his master and recollects a Halakha stated somewhere else and says, so and so we have learned there, but does not say: And the master said so. Rabha, however, said: An epicurean is considered--*e.g.*, the disciples of Benjamin the physician, who used to say, What good have the rabbis done for us? They have never permitted us to eat a crow, and they have not prohibited us to eat a dove (hence all remains as it is in the Scriptures). It happened that a question of legal or illegal meat was brought before Rabha from the house of Benjamin the physician, and he saw a reason to permit the use of it, and he said then: See, I have permitted you a crow. The same happened again and he saw a reason to prohibit it, and also said: See, I have prohibited a dove to you. R. Papa said: Even he who speaks of the rabbis in the same language as when he speaks of common people. However, he himself forgot his statement in talking about the rabbis, and thereafter when he recollected it, he fasted. Levi b. Samuel and R. Huna b. Hyya used to prepare mantles for the holy scrolls in the college of R. Jehudah. When they came to the Book of Esther, they said: For this certainly no mantle is needed. Said R. Jehudah to them: Even such a language is as used by the followers of

[paragraph continues] Epicurus. R. Na'hman said: He who named his master by his name without adding "my master." As R. Johanan said: Why was Gechazi punished? Because he named his master by his name [II Kings, viii. 5]: "This is our son whom Elisha restored." R. Jeremiah was sitting in the presence of R. Zera and said: The Holy One, blessed be He, will create a river in the future, which will issue from the holy of holy chamber, and on its edges the best fruit will be grown, as it reads [Ezek. xlvii. 12]: "And by the stream upon its banks, on this side and on that side, shall grow up all kinds of trees for food, the leaves of which shall not fade, and the fruit of which shall not come to an end, every month shall they bring forth new ripe fruit; because its water is that which issueth out of the sanctuary; and their fruit shall serve for food, and their leaves for remedies."

And there was a certain old man who said: Thanks, so also said R. Johanan. Said R. Jeremiah to R. Zera: Is such a language also not used by the epicureans? And he answered: Nay, he is only supporting you, and if you have heard that such a language must not be used, it is what is said in Last Gate (pp. 210 and 211, from "it is written" to "Rabha"). What means "leaves for remedies"? R. Itz'hak b. Abudimi and R. Hisda. One said: To make the dumb speak. And the other: To open the womb when there is a difficulty in bearing the child. And so also was it taught by Hiskia, to open the mouth of the dumb and by Bar khapara, to open the womb. R. Johanan, however, said: It is to be explained literally remedies for everything. R. Samuel b. Na'hmani said: It means a remedy for the appearance of those who have studied with their mouth, as R. Jehudah b. Simon lectured: He who makes his face black by studying the Torah in this world, the Holy One, blessed be He, will make radiant his face in the world to come, as it reads [Sol. Song, v. 15]: "His countenance is as Lebanon, excellent like the cedars." R. Tanhun b. Hanilai said: He who starves because of the words of law in this world, the Holy One, blessed be He, will satiate him in the world to come, as it reads [Ps. xxxvi. 9]: "These will be abundantly satisfied with the fatness of thy house: and of the stream of thy delight wilt thou give them to drink." When Abdimi came from Palestine, he said: The Holy One, blessed be He, will give in the future to every upright his handful of reward, as it reads [ibid. lxviii. 20]: "Blessed be the Lord; day by day he loadeth us (with benefits); our God is our salvation." Said Abayi to him:

How is it possible to say so? Is it not written [Isa. X1. 12]: "Who hath measured in the hollow of his hand the waters, and meted out the heavens with the span"? And he answered: Why are you not used to study Haggadah? It was said in the West in the name of Rabha b. Mari: The Holy One, blessed be He, will give in the future to every upright man, three hundred and ten worlds, as it reads [Prov. viii.]: "That I may cause those that love me •• {Hebrew *YSh*}" etc., and these two letters count 310. (And this is called a handful.)

There is a Boraitha: R. Mair said: The measure with which one measures will be measured out to him--*i.e.*, as man deals, he will be dealt with, as it reads [Isa. xxvii. 8]: "In measure, by driving him forth, thou strivest with him." Said R. Jehoshua to him: How is it possible to say so? *E.g.*, if one gives to a poor man a handful of charity, will then the Holy One, blessed be He, give the donator His handful? Does it not read "he meted out the heavens with a span"? Said he to him: And you do not say so? What measure is greater of good or of evil? You must say that the former is greater than the latter, as concerning good it reads [Ps. lxxviii. 23 and 24]: "Then he

ordained the skies from above, and the doors of heaven he opened; and he let rain down upon them manna to eat, and the corn of heaven gave he unto them." And concerning evil it reads [Gen. vii. 11]: "The windows of heaven were opened." (It is said elsewhere that the size of a door is as the size of four windows.) Now, come and read what is written about chastisement. [Isa. lxvi. 24]: "And they shall go forth and look upon carcasses of the men that have transgressed against me; for their worm shall not die, nor shall their fire be quenched; and they shall be an abhorrence unto all flesh." And how is this to be understood? We know that in this world, if a man puts his finger in the fire, immediately he is burned. You must then say, that as the Holy One, blessed be He, gives strength to the wicked to receive their punishment. The same is the case with the upright; he gives them strength to be able to accept their reward.

"*The books of the Hizumni*." In a Boraitha it was taught: In the books of the atheists. R. Joseph said: One must not read even in the book of Ben Sirra. Said Abayi to him: Is it because it reads: Thou shalt not take off the skin of a fish, even that of the ear, as the skin will be damaged, but roast it in fire, and eat with it two loaves of bread? Is not similar to

this also written in the Scripture [Deut. xx. 19]: "Thou shalt not destroy the trees thereof," etc.? And if because it reads: "A daughter to a father is a false treasure, as because he is afraid of her, he does not sleep in the night. When she is a minor, perhaps she will be seduced. When she becomes of age, perhaps she will sin, when she becomes vigaros, perhaps she will not marry. If she is married, perhaps she will have no children. And when she becomes old, perhaps she will become a witch?" Similar to this, the rabbis also said: The world cannot be without males and females, however happy are those who have male children, etc. And if because there is written "Thou shalt not bring worry in thy heart," as such has killed strong men. This was also said by Solomon [Prov. xii. 25]: "If there be care in the heart of a man, let him suppress it." (See Yomah, p. 140, for explanation.) And if because it reads: "Prevent many people to enter thy house," as not all of them are fit to come into it; this was said also by Rabbi in a Boraitha elsewhere. Therefore we must say, because it reads there, "He who has a long and thin beard is shrewd." And he who has a thick one is a fool. He who blows off the foam, it is sign that he is not thirsty. And he who says with what he shall eat his bread, take the bread away from him. And he whose beard is parted in two, the whole world will not overrule him.

Said R. Joseph: However, the good teachings which are in this book may be proclaimed. It reads there: A good woman is a good gift, she may be given to one who fears God. A bad woman is leprosy to her husband, and there is no remedy for him till he divorces her, and be cured. A beautiful woman, happy is her husband, the numbers of his days are doubled. Turn away thy eyes from a beautiful woman, as thou canst be easily caught in her net. Abstain thyself from drinking beer and wine with her husband, as by the appearance of a beautiful woman many were destroyed. And numerous are those who were killed by such.

A great number of pedlars were wounded by the husbands who found them trading with their wives. As a spark kindles a coal, or like a coop full of birds, so are their houses full of deceit. Many may be who wish you peace, however thy secrets you may reveal only to one from thousand. Be careful with words even with her that lies on thy bosom. Don't worry of the morrow, as thou knowest not what the morrow may bring. For perhaps thou wilt not exist any more to-morrow,

and thou hast worried for a world which belongs not to thee. All the days of a poor are bad. Ben Sirra said: Also the nights, as his roof is lower than others, the rain from these falls on his. And his vineyard is usually on the top of the mountain, and the manure which he brings up for it is blown off to the other vineyards which are lower. (Here is repeated from Last Gate, p. 328, paragraph commencing with R. Zera in the name of Rabh said, till Mishna VI. See there also footnote.)

The rabbis taught: If one reads a verse of the Songs of Solomon in a different manner than it is written, and makes a song of it; or any other verse in the drinking-places not in its proper time, causes evil to the world, because the Torah, dressed in a sack, stands before the Holy One, blessed be He, and says: Lord of the Universe, thy children have made of me a fiddle on which frivolous persons play. And He said to her: My daughter, with what else, then, shall they occupy themselves while they are eating and drinking? And she said before Him: Lord of the Universe, if they are masters in the Scriptures, they may occupy themselves with the Pentateuch, Prophets, and Hagiographa; if they understand Mishnayoth, they may study Mishna, Halakha, and Haggadah, and if they are Talmudists they may study Halakhas in time of Passover on Pesach. Of Pentecost at that time. And the Halakhas of Feast of Tabernacle at that time. R. Simeon b. Elazar in the name of R. Simeon b. Hanania testified: If one reads a verse in its proper time, he benefits the world, as it reads [Prov. xv. 23]: "And a word spoken at the proper time, how good is it."

"*He who mumbles over a wound*," etc. Said R. Johanan: Provided he also spits, as the name of Heaven must not be mentioned by spitting. It was taught: Rabh said: Even a verse which does not contain the name of Heaven--*e.g.*, a plague, if it will be on a man. And R. Hanina said: Even the words: And He has called to Moses.

The rabbis taught: One may ask the fortune tellers who tell fortunes by certain oils or eggs. But it is not advisable to do so, because they often lie. They usually mumble over the oil in a utensil, but not over that which is in the hand, and therefore one may use the oil from the hand, but not that in a utensil. R. Itz'hak b. Samuel b. Marta happened to be in a certain inn. They brought him oil in a utensil, and he anointed himself with it, and blisters came out on his face. When he went to the market a certain woman saw him, and said: I see

on your face a sickness caused by witchcraft. And she did something for him and he was cured.

Abba said to Rabba b. Mari: It reads [Ex. xv. 26]: "I will put none of those diseases upon thee . . . as I the Lord will heal thee." Now if he did not put any, why the cure? Said R. Johanan: This verse explains itself. "If thou wilt diligently hearken," etc., I will not put disease upon thee, but if thou wilt not hearken, I will. However, at any rate, I will heal thee.

Rabba b. b. Hana said: When R. Eliezar became sick his disciples came to make him a sick call, and he said to them, I have high fever, and they began to weep. R. Aqiba, however, smiled. And to the question: Why are you smiling? he returned the question: Why are you weeping? And they answered: Is it possible not to weep when we see the Holy Scrolls are in such a distress?

Rejoined he: And therefore I smile, for so long as I have seen our master's wine does not become sour, his flocks undamaged, his oil unspoiled, and his honey unfermented, I was afraid that perhaps he received all his reward in this world, now as I see him in trouble, I rejoice. Said he to him: Aqiba, have I failed to perform or transgressed anything of that what is written in the whole Torah? And he answered: You, master, yourself taught us [Ecc. vii. 20]: "For no man is so righteous upon earth, that he should do always good and never sin."

The rabbis taught: When R. Eliezar became sick four elders entered to make him a sick call--R. Tarphun, R. Jehoshua, R. Elazar b. Asaryah, and R. Aqiba. Exclaimed R. Tarphun: You are better to Israel than drops of rain, as the latter are only in this world, While you are in both, in this and in the world to come. Exclaimed R. Jehoshua: You are better to Israel than the planet of the sun, which is only in this world, while you are in both. And R. Elazar b. Asaryah exclaimed: You are better to Israel than a father and mother, who are only in this world, etc. R. Aqiba, however, exclaimed: Pleased are chastisements. And R. Eliezar answered: Support me, and I will hear the statement of Aqiba, my disciple, who says: "Pleased are chastisements." And he said: Aqiba, whence is this known to you? And he answered: From the following: It reads [II Kings, xxi. 1 and 2]: "Twelve years old was Menasseh when he became king, and fifty and five years did he reign in Jerusalem . . . and he did what is evil in the eyes of the Lord." It reads also [Prov. xxv. 1]: "Also these

are the proverbs of Solomon, which the men of Hezekiah, the king of Judah, have collected." Could it be possible that Hiskia taught the law to the whole world, but not to his son Menasseh? It must then be said that of all the troubles which Hiskia has troubled himself to bring him, and from all his toil to correct him nothing was done, and only until chastisement had turned him over to the better side, as it reads [II Chron. xxxiii. 10-14]: "And the Lord spoke to Menasseh, and to his people; but they listened not. Wherefore the Lord brought over them captains of the army belonging to the king of Assyria; and they took Menasseh prisoner with chains, and bound him with fetters, and led him off to Babylon. And when he was in distress he besought the Lord his God, and humbled himself greatly before the God of his fathers. And he prayed unto Him, and He permitted Himself to be entreated by him, and heard his supplication and brought him back to Jerusalem unto his kingdom. Then did Menasseh feel conscious that the Lord is indeed the (true) God." Learn from this that chastisements are pleased.

The rabbis taught: Three men (biblical personages) came with indirectness (instead of praying in a straightforward manner), and they were Cain, Esau, and Menasseh. Cain who says [Gen. iv. 13]: "My sin is greater than I can bear." He said before Him: Lord of the Universe, is then my sin greater than that of the six hundred thousand Israelites who will sin before Thee in the future, and Thou wilt forgive them? Esau said [Ex. xxvii. 38]: "Hast thou then but one blessing, my father?" And Menasseh, who at the beginning called to many gods, and only finally called to the God of his parents.

"*Abba Shaul*," etc. There is a Boraitha: Provided he does so out of the sanctuary in a profane language.

"*Three kings*," etc. The rabbis taught: Jeroboam means who made Israel quarrel among themselves. According to others, who has made a controversy between them and their Heavenly Father. Ben Nebat means the son of him who had a vision, but did not see (interpret it properly).

As the following Boraitha Nebat is identical with Michah and with Sheba ben Bichri Nebat because of the reason said above. And Michah, because he became poor while occupying himself with building. And his real name was Sheba ben Bichri.

The rabbis taught: There were three who had a vision, but have not seen it properly. Nebat Achitopel and the astrologers

of Pharaoh. Nebat saw that some light will come out from him. He thought he himself will become a king, and he erred, as this was his son Jeroboam. Achitopel saw also the same. He thought that he himself will become a king, but he erred, as it was his daughter, Bath Sheba, from whom Solomon came out. And the astrologers of Pharaoh, who saw that the redeemer of Israel will be beaten through water, and therefore advised Pharaoh to command. [Ex. i. 22]: "Every son that is born ye shall cast into the river." And they erred, as this was [Num. xx. 13]: "These are the waters of Meribah where the children of Israel quarreled." But whence do we know that Jeroboam has no share in the world to come? From [I Kings, xiii. 34]: "Blotted out, and destroyed from the face of the earth. Blotted out from this world and destroyed from the world to come. Said R. Johanan: What has Jeroboam done that he was rewarded to be king? Because he rebuked Solomon. And why was he punished? Because he rebuked him in public, as it reads [ibid. xi. 27]: "And this was the occasion that he lifteth up his hand against the king: Solomon built up the Milo and closed up the breach of the city of David his father." He said to 'him: David, thy father hath broken in holes in the surrounding wall of Jerusalem, for the purpose that it shall be easier for Israel to enter the city. And thou hast fenced it for the purpose to make an *angaria* to Pharaoh's daughter. What means "and he lifteth up his hands"? Said R. Na'hman: He took off his phylacterious in his presence. [1] R. Na'hman said again: The insolence of Jeroboam destroyed him from the world, as it reads [ibid. xii. 26-28]: "And Jeroboam said in his heart, Now may the kingdom return to the house of David. If this people go up to prepare sacrifices in the house of the Lord at Jerusalem, then may the heart of this people turn again. unto their lord, even unto Rehoboam, the king of Judah, and they might kill me, and return to Rehoboam, the king of Judah." He said: We have a tradition that in the Temple there are no seats except for the kings of the house of David. Now if they see that Rehoboam, the king, is sitting and I am standing, then they will say that he is the king and I am his servant. And if I will sit, Rehoboam's people will say that I am a rebel, and they will kill me, and therefore (28): "Whereupon the king took counsel, and he made two calves

of gold, and saith unto the people, You have been long enough going up to Jerusalem; behold here are thy gods, O Israel, which have brought thee up out of the land of Egypt." What is meant by "the king took counsel"? Said R. Jehudah: He has conjoined an upright to a wicked, and said to them: Will you sign your name to all what I will command you? And they said: Yea. "Even to worship an idol"? The upright answered: God forbid. But the wicked saith to him: Do you think a man like Jeroboam will worship idols? He wants only to try us. And in this thing even Achiyah, the Shilonite, erred and signed his name. As Jehu, who was one of the greatest of upright about whom it reads [II Kings, x. 30]: "Forasmuch as thou hast acted well in doing what is right in my eyes, and hast done in accordance with all that was in my heart unto the house of Achab: children of the fourth generation after thee shall sit upon the throne of Israel." And thereafter it reads (31): "And Jehu took no heed to walk in the law of the Lord the God of Israel

with all his heart: he departed not from the sins of Jeroboam, who induced Israel to sin." But what caused him to sin? Said Abayi: There is a covenant to one's lips. He said [ibid., ibid. 18]: "Achab hath served Baal a little: Jehu will serve him much." And Rabha said: He saw the signature of Achiyah the Shilonite and he erred, as reads [Hosea, v. 2]: "And for murdering they who had rebelled (against God) concealed themselves in deep places; but I will inflict correction on them all." Said R. Johanan: The Holy One, blessed be He, said: They laid deeper plans than that of mine: I said: He who does not ascend to Jerusalem for the festivals transgresses a positive commandment only, and they say that he who will ascend to Jerusalem shall be slain by the sword.

It reads [I Kings, xi. 29]: "And it came to pass at that time when Jeroboam went out of Jerusalem, that the prophet Achiyah the Shilonite found him on the way; and he had clad himself with a new garment; and these two were alone by themselves in the field." It was taught in the name of R. Jose: "At that time" means the time which was designated for chastisement. [Jer. ii. 18]: "In the time of their punishment shall they vanish," was also taught in the name of the same authority, means at the time designated for chastisement. [Isa. xlix. 8]: "In the time of favor have I answered thee," according to the same authority: The time which is designated for doing good [Ex. xxxii. 8]: "But on the day when I visit I will visit their

sins upon them," according to the same, at the time which is designated for chastisement. And the same is with Gen. xxxviii. i: "And it came to pass at *that time*." It reads [I Kings, xii. i]: "And Rehoboam went to Shechem (. . .) to make him king." It was taught in the name of R. Jose. That place was designated for trouble. In Shechem, Dina was assaulted in the same place, Joseph was sold by his brothers, and in the same place the kingdom of David was divided. And (ibid. 29) "Jeroboam went out of Jerusalem." Said R. Hanina b. Papa: It means he went out of the destiny of Jerusalem (*i.e.*, was to have no share in the welfare of Jerusalem). "And the prophet Achiyah . . . with a new garment," what does it mean? Said R. Na'hman: As a new garment has no spots so also the wisdom of Jeroboam was clean, without any error. According to others: They renewed things which no ear has ever heard of. And what is meant by "The two were alone in the field"? Said R. Jehudah in the name of Rabh: All other scholars were like the plants of the field in comparison with them. According to others: All the reasons for the commandment of the Torah were revealed to them as a field.

It reads [Michah, l. 14]: "Therefore shalt thou have to give presents to *Moreshe thgath*: the houses of Achzib shall become a deception to the kings of Israel." Said R. Hanina b. Papa: A heavenly voice was heard saying: "To him who has killed Goliath the Philistine and inherited to you the city of Gath, should ye send away his descendants?" Therefore the house of Achzib shall be a deception to the kings of Israel. It reads [II Kings, xvii. 21]: "And Jeroboam misled Israel from following the Lord, and caused them to commit a great sin." Said R. Hanina: As one throws a stick by means of another stick--*i.e.*, he makes Israel to sin against their will. Said R. Aushia: Until Jeroboam came, Israel had to bear the iniquity of one golden calf, and from that time farther on for two and three. Said R. Itz'hak: Every evil dispensation which came upon Israel contained in it a twenty-fourth part as punishment for the golden calf, as the above cited verse [Ex. xxxii.] states. Said R. Hanina: After twenty-four generations this verse was fulfilled, as it reads [Ezek, ix, i]: "The '*pkudas*' of the city came already at an end." 1

It reads [I Kings, xiii. 33]: After this event Jeroboam returned not from his evil way. After what! Said R. Abba: After the Holy One, blessed be He, held Jeroboam by his garment, saying: Repent, and I and David Ben Yishai and thou will walk in the Garden of Eden. And to Jeroboam's questions: Who will have the preference? he said: Ben Yishai. And he rejoined: If so I don't want it.

R. Abuhu used to lecture about the three kings and became sick, and he made up his mind not to lecture about them, and he was cured. However, he lectured about them as before, and to the question of his disciples: Have you not made up your mind not to lecture any more about them? he answered: Did they then repent that I shall do so?

R. Ashi appointed a time for lecturing about the three kings, and said: On the morrow we will begin our lecture about our colleague Menasseh. He then appeared to him in a dream, and said to him: You call me a colleague and a colleague of your father? Answer me the question: Where must one begin to cut the bread by the benediction of *thamotzi*? And he said: I don't know. Rejoined Menasseh: If you are not aware to answer even that what I questioned you how can you call me a colleague? Rejoined R. Ashi: Teach this to me, and tomorrow I will proclaim it in your name in the college. And he said: From that part where it begins to bake when in the oven. Said R. Ashi again: If you are so wise, why did you worship idols? And Menasseh answered: If you would have been at that time you would have lifted up the edges of your dress, that they shall not impede you to run after me to worship the idols. On the morrow said R. Ashi to the rabbis: Let us lecture about the great men. Achab--means "Ach," a thorn to Heaven, and "ab," a father to idolatry, as it reads [I Kings, xvi. 31]: "And it came to pass as if it had been too light a thing for him to walk in the sins of Jeroboam." Said R. Johanan: The lenient things which were done by Achab were more rigorous than the rigorous things done by Jeroboam. And why then does the Scripture make Achab dependent on Jeroboam, because Jeroboam was the beginner and all his followers were dependent upon him.

It reads [Hosea xii. 12]: "Their altars also are as stone

heaps." Said R. Johanan: There was not one heap in the land of Israel upon which Achab had not placed an idol and bowed himself to it. And whence do we know that he has no share in the world to come? From [I Kings, xxi. 21]: "Behold, I will bring evil upon thee, and I will sweep out after thee and will cut off from Achab every male and the guarded and fortified in Israel." "Guarded" means in this world, and "fortified" in the world to come.

R. Johanan said: For which good deeds was Omri (Achab's father) rewarded that he obtained the kingdom? Because he added one great city to the land of Israel, as it reads [ibid. xvi. 24]: "And he bought the mount Samaria of Shemer for two talents of silver, and built on the mount, and called the name of the city which he had built, after the name of Shemer, the lord of the mount, Samaria."

R. Johanan said again: Why was Achab rewarded by the prolongation of his kingdom for twenty-two years? Because he respected the Torah which is written with the twenty-two letters of the alphabet, as it reads [ibid. xx. 2, 7, and 9]: "And he sent messengers to Achab, the king of Israel, into the city. And he said unto him: Thus hath said Ben-hadad, Thy silver and thy gold are mine;

thy wives also and thy children, even the best are mine. And the king of Israel answered and said, According to thy word, my lord, O king, thine am I, and all that I have. And the messenger returned and said: Thus hath said Ben-hadad, to say (to thee) I have indeed sent unto thee, saying, 'Thou shalt give unto me thy silver, and thy gold, and thy wives, and thy children. Nevertheless, about this time to-morrow will I send my servants unto thee, and they will search through thy house, and the houses of thy servants, and it shall be, that whatsoever is pleasant in thy eyes, they shall place it in their hand, and take it away.' Then did the king of Israel call for all the elders of the land, and said, Mark, I pray you, and see that this man seeketh mischief, for he hath sent unto me for my wives, and for my children, and for my silver, and for my gold, and I have not refused them to him. Wherefore he said unto the messengers of Ben-hadad: Say to my lord the king, all that thou didst send for to thy servants at the first will do; but this thing I am not able to do. And the messengers went away, and brought him word again." What is meant by "pleasant in thy eyes" if not the holy-scrolls? But perhaps it means an idol. This cannot be supposed, as it reads farther on

[paragraph continues] (8): "And all the elders, and all the people said unto him, Thou must not hearken nor consent." But perhaps it means the elders of the same kind as was Achab, as we find such in [II Sam. xvii. 4], that they are also named the elders of Israel. There it does not read "all the people," but here it does; and it is impossible that among them were no righteous, as it reads [I Kings xix. 18]: "And I will leave in Israel seven thousand, all the knees which have not bent unto Baal and every mouth which has not kissed him." Said R. Na'hman: Achab's sins and good deeds were just equal, as it reads [ibid. xxii. 20]: "Who will persuade Achab," hence it is difficult to punish him, as his sins did not overweigh his good deeds. R. Joseph opposed: He of whom it reads [ibid. xxi. 25]: "But indeed there was none like unto Achab," etc., etc. And you say that his sins and good deeds were equal? The reason, however, that it was necessary to persuade him, is because he was liberal with his money and assisted many scholars from his estate, and therefore half his sins were atoned. And there came out a spirit," etc. (see above). It reads [ibid. xvi. 33]: "And Achab made a grove; and Achab did yet more, so as to provoke the Lord the God of Israel to anger, than all the kings of Israel that had been before him." Said R. Johanan: He wrote on the gates of Shemer: Achab denies the God of Israel, and therefore he has no share in Him.

Menasseh means "he has forgotten the Lord." According to others it means that he made Israel to forget their Heavenly Father. And whence do we know that he has no share in the world to come? From [II Kings, xxi. 3]: "And he built up again the high places which Hezekiah hath destroyed and he reared up altars for Baal and made a grove as Achab the king of Israel hath done." As Achab has no share in the world to come the same is the case with Menasseh.

"R. Jehudah said Menasseh has a share," etc. Said R. Johanan: Both infer their theory from one and the same passage [Jer. xv. 4]: "And I will cause them to become a horror unto all the kingdoms of the earth on account of Menasseh the son of Hezekiah." According to one: Because Menasseh has repented and the other kings have not. And according to others: Because be himself had not repented. Said R. Johanan: He who said that Menasseh has no share in the world to come weakens the hands of those who are repenting. As a disciple taught before. R. Johanan: Menasseh repented thirty-three

years, as it reads [II Kings, xxi. 1-3]: "And fifty-five years did he reign in Jerusalem . . . and he made a grove as Achab did." How long did Achab rule? Twenty-two years; take off the twenty-two from the fifty-five years which Menasseh reigned, there remains thirty-three years.

R. Johanan said in the name of R. Simeon b. Jo'hai: It reads [II Chron. 13]: "And he prayed unto Him, and He permitted himself *v'ychtar* 1 instead of *voyethar*. Infer from this that the Lord made for him an opening like a *machteres* (opening) in the Heaven to receive him; because of the opposition of the divine attribute.

The same said again in the name of the same authority: In [Jer. xxvi., xxvii. and xxviii., the first verses]: "In the beginning of the reign of Yehoyakim. . . . The beginning of the reign of Zedekiah." Were there not rulers before them? But this signifies that the Lord was about to return the world to tahu vebahu because of Yehoyakim. But when he looked upon his generation who were upright, he reconsidered it. And the reverse was the case with Zedekiah. He wanted to destroy the world because of his generation, but when he looked upon him he reconsidered it.

But does it not also read about Zedekiah [II Kings, xxiv. 18]: "And he did what was evil in the eyes of the Lord"? This was because he had to warn them, but did not do so.

The same said again in the name of the same authority: It reads [Prov. xxix. 9]: "If a wise man contend with a foolish man, whether he be angry or whether he laugh, he will have no rest." The Holy One, blessed be He, said: I became angry with Achaz and delivered him to the king of Damascus. What had he done? He sacrificed and smoked incense to their gods, as [II Chron. xxviii. 2]: "And he sacrificed unto the gods of the people of Damascus, who had smitten him; and he said, "Because the gods of the kings of Syria do help them (therefore) will I sacrifice unto them, that they may help me." But they only became to him a stumbling-block for him and for all Israel. I smiled on Amazia and had delivered the kings of Edom to his hand. And what has he done? He brought their gods and bowed himself to them, as it reads [II Chron. xxv. 14]: "After Amasyahu was come home from

smiting the Edomites he brought the gods of the children of Le'ir, and set them up unto himself as gods, and before them he used to prostrate himself and unto them he used to burn incense." Said R. Papa: This is what people say: You can do nothing with the ignoramus; weep before him, laugh with him, he does not care. Woe is to him who does not understand between good and evil. It reads [Jer. xxxix. 3]: "In the middle gate." Said R. Johanan in the name of R. Simeon b. Jo'hai: This was the place the Sanhedrin decided upon Halakhas. Said R. Papa: This is what people say: Should the hook which was used by the herd, etc. (see Middle Gate, p. 216, line 14 from the bottom). R. Hisda said in the name of R. Jeremiah b. Aba: It reads [Prov. xxiv. 30-31]: "By the field of a slothful man I once passed along, and by the vineyard of a man void of sense: And, lo, it was all grown over with thorns, nettles had covered its surface, and its stone wall was broken down." "By the field of a slothful man," etc., means Achaz, "void of sense" means Menasseh, "with thorns" means Amon, "nettles had covered," etc., means Yehoyakim, "broken down"--Zedekiah, in whose days the temple was destroyed.

The same said again in the name of the same authority: Four sects will not receive the glory of

the Shekhina; viz., the scorners, as it reads [Hosea, vii. 5]: "He groweth his land with scorners"; liars, as it reads [Ps. ci. 7]: "He that speaketh falsehood shall not succeed in my eyes"; hypocrites, as [Job, xiii. 16]: "For a hypocrite cannot come before Him," and slanderers, as [Ps. ii. 5]: "For thou art not a God that hath pleasure in wickedness. Evil cannot abide with thee," and thereafter it reads [7 and 10] "Thou wilt destroy those that speak lies . . . For there is not in their mouth any sincerity."

The rabbis taught: Menasseh used to learn fifty-five arguments (ways of interpretation) concerning the book of Leviticus, as many as the years of his reign. Achab, eighty-five, and Jeroboam, one hundred and three.

There is a Boraitha: R Mair used to say: Absalom has no share in the world to come, as it reads [II Sam. xviii. 15]: "Smote Absalom"--in this world, and "slew him"--in the world to come.

R. Simeon b. Elazar said in the name of R. Mair: Achaz, Achazyah and all the kings of Israel about whom it is written,

and he did evil in the eyes of the Lord," will not be restored at the time of resurrection, but are also not sentenced to Gehinem.

It reads [II Kings, xxi. 16]: "And also innocent blood, did Menasseh shed in very great abundance, till he had filled (therewith) Jerusalem from one end to another; beside his sin wherewith he induced Judah to sin, to do what is evil in the eyes of the Lord." Here in this college it was explained because he had slain Isaiah. In the West it was explained that he made an image the weight of a thousand persons. And those who were engaged in carrying it from one place to another would die because of the great exertions.

According to whom is what Rabba b. b. Hana said? One soul of an upright is equalized to the whole world--*i.e.*, if one kills an upright, he is considered as if he would slay the whole world. It is in accordance with him who says that Menasseh has killed Isaiah.

Achaz placed the images in the attics of the Temple, as it reads [II Kings, xxiii. 12]: "Altars that were on the upper chamber of Achaz." And Menasseh placed them in the Temple, as it reads [ibid. xxi. 7]: "And he placed a hewn image of the Asherah that he had made, in the house of which the Lord had said to David, and to Solomon, his son, In this house, and in Jerusalem, which I have chosen out of all tribes of Israel will I put my name forever." And Amon placed them in the holy of holy chamber, as it reads [Isa. xxviii. 20]: "For the bed shall be," etc. (See Yomah, p. 10, line 14, for the explanation and continuation which are repeated here. By the way, we have to remark that there is a misprint, Jeremiah instead of Isaiah.)

Achaz abolished the worship and sealed the Torah, as it reads [ibid. viii. 16]: "Bind up the testimony, seal up the law among my disciples." Menasseh cut the divine names out (of the Scriptures) and destroyed the altar. Amon burned the Torah and caused spider-webs to be on the place where the altar stood, as it reads [II Chron. xxxiii. 23]: "For he, Amon, made his guiltiness great."

Questioned Rabba, Rabba b. Mari: Why did not the Mishna also count Yehoyakim, of whom it reads [ibid. xxxvi. 8]: "And the rest of the acts of Yehoyakim, and his abominable deeds which he did, and which was found upon him," which, according to one of the sages, means that he engraved the name

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of the idol upon his body? And he answered: Concerning kings I have not heard, but I have heard concerning common men thus: Why did not the Mishna count Michah? Because his house was open to travellers (who used to eat and drink there without being charged).

It reads [Zech. x. 11]: "And he will pass through the sea (with) distress, and he will smite in the sea the waves." Said R. Johanan: This is the image which Michah had made in Egypt and which passed with him the Red Sea. There is a Boraitha: R. Nathan said: From the city of Grab to the city of Shilah (where the tabernacle was temporarily) is a distance of three miles, and the smoke from the altar in Shilah used to mix itself with the smoke from the altars which were made for the image of Michah. And the angels wanted to put Michah aside, but the Holy One, blessed be He, said to them: Leave him alone because his house is open to travellers. And for this were punished the men who took revenge in the case of the concubine of Gibah (Judges, xix. and xx.). And the Holy One said to them: Ye took revenge for the honor of a man, but did not act so for my honor-*i.e.*, they did not care to destroy the image of Michah, etc.

R. Johanan said in the name of R. Jose b Kisma: Great are λυν μ ος {Greek *lunmos*} entertainments, for a little refreshment plays an essential part, for its refusal estranged two tribes from Israel (Ammon and Moab), as it reads [Deut. xxiii. 5]: "For the reason that they met you not with bread and with water, on the way." And R. Johanan himself said: It estranges relatives and brings near strangers; shuts the eye not to look upon the wicked, makes the Shekhina rest on the prophets of Baal, and even an error in this affair is considered as if it would be done intentionally. (Now the illustrations.) It estranges relatives--*e.g.*, Ammon and Moab (who were relatives to Israel). It brings near strangers--*e.g.*, Jithro, as he said elsewhere that the reward for [Ex. ii. 20]: "Call him that he may eat bread" was that his descendants were rewarded to sit among the Sanhedrin in the chambers of the Temple, as it reads [I Chron. ii. 55]: "And the families of the scribes who dwelt at Jabez; the Thirathites, the Shimathites and the Suchathites. These are the Kenites that came from Chammoth, the father of the house of Rechab, and [Judges, i. 16]: "And the children of the Kenite, the father-in-law of Moses, went up out of the city of palm-trees with the children of Judah into the wilderness of

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[paragraph continues] Judah, which is south of Arad, and they went and dwelt with the people." Shuts the eye not to look upon the evil deeds of the wicked, *e.g.*, Michah, as said above. Makes the Shekhina to rest upon the prophets of Baal, as [I Kings, xiii. 20]: "And it came to pass as they were sitting at the table, That the word of the Lord came unto the prophets, who had brought him back." And even an error is considered as if done intentionally, as R. Jehudah in the name of Rabh said: If Jonathan would have supplied David with some loaves of bread the priests of the city of Nob would not have been slain, Doeg, the Edomite would not have been lost, and Saul and his three sons would not have been killed.

Why does not the Mishna count Achaz among those who have no share in the world to come? Said R. Jeremiah b. Aba: Because he was placed between two uprights (Jotham, his father, and Hezekiah, his son).

And R. Joseph said: Because he was ashamed before the prophet Isaiah, as [Isa. vii. 3]: "And the Lord said unto Isaiah, Go forth now to meet Achaz, thou with Shear Yashub, thy son, to the end of the aqueduct of the upper pool, on the highway of the washers' field." Why is mentioned the washers' field"? Because Achaz was ashamed to look at Isaiah, and to put upon his face the αβλυο {Greek *abluo*} of the washers when he passed Isaiah in order not to be recognized.

And why was Amon not counted? Because of the honor of his son, Yeshiyahu. If so, let them not count Menasseh, because of the honor of Hezekiah? There is a tradition that a son can save his father, but not a father his son, as it reads [Deut. xxxii. 39]: "And no one can deliver out of my hands," which means Abraham cannot save Ishmael, and Isaac, Esau. Now, when we come to this theory it may be said that Achaz was not counted because of the honor of Hezekiah. However, the above question, why Yehoyakim was not counted is as yet unanswered. It is because of what was said by Hyya b. Abuiha that on the head of Yehoyakim was written "This and something else"--*i.e.*, one revenge more will be taken from it. The grandfather of R. Praida found a skull in the gates of Jerusalem upon which was engraved: "This and something else." He buried it once and twice, but it came out again. He then said that it must be the skull of Yehoyakim, of whom it reads [Jer. xxii. 19]: "With the burial of an ass shall he be buried, dragged about and cast forth beyond the gates of Jerusalem."

[paragraph continues] He then said: It is the skull of a king, and it must be nicely treated. He wrapped it in a silk garment and put it in a bag. When his wife saw this she thought it was the skull of his first wife, whom be does not want to forget. And she heated the oven and burned it. This was what was engraved upon it: "This and nothing else."

There is a Boraitha: R. Simeon b. Elazar said: Hiskia praised himself [II Kings, xx. 3]: "And have done what is good in thy eyes" caused what is said [ibid., ibid. 8]: "What sign," etc., and this caused that idolaters were invited to his table [ibid., ibid. 13]. And these altogether caused the exile of his descendants [ibid., ibid. 17]. This is a support to Hiskia, who said that he who invites an idolater to his house and serves on him, causes exile to his children, as it reads [ibid., ibid. 18]: "And of thy sons . . . they shall be court servants in the palace," etc.

Lamentation I. begins with *aichoh* (O'how). Said Rabha in the name of R. Johanan: Why was Israel beaten with aichoh? Because they transgressed thirty-six things to which Korath applies, and the word aicho counts 36. And he said again: Why is Lamentations written according to the alphabet? Because they have transgressed what is written in the Torah, which is written with the letters of the alphabet.

"Doth she sit solitary?" said Rabha in the name of R. Johanan: The Holy One, blessed be He, said: I said [Deut. xxxiii. 28]: "And then dwelt Israel in safety, alone, the fountain of Jacob; in a land of corn and wine; also, its heavens shall drop down dew." And now solitary is their sitting. "The city that was full of people." Said Rabha again in the name of the same authority. They used to marry a minor to an adult and *vice versa*, for the purpose that they shall have many

children. "Is become like a widow." Said R. Jehudah in the name of Rabh: Like a widow, but not a widow. Like a woman whose husband has departed to the cities of the countries of the sea, who intends to return. "She that was so great among the nations, the princess among the provinces." Said Rabba in the name of R. Johanan: Everywhere they came they became masters of their masters, as the rabbis taught: It happened with two men who were captured in the mountain of Carmel, and their capturer was walking behind them. Said one of the captured to his colleague: The camel which walks in front of us is blind in one eye and carries two bags, one of wine and the other of

oil. And the men who lead it, one of them is an Israelite, and the other is a heathen. Said the capturer to them: Hard-necked people, whence do you know this? And they answered: From the grass which is in front of the camel that is consumed only from one side, hence from the side on which he sees he consumes, and on the other side on which he is blind he leaves it. It carries two bags of wine and oil; because drops of wine sink, and drops of oil float. And the leaders, one of them is an Israelite and the other a heathen; because an Israelite when he needs to do his necessity, usually turns aside, and the heathen does it on the way. The capturer then ran after them and found that it was as they said. He then kissed them on their heads, brought them to his house, prepared for them a great meal, danced before them, saying: "Blessed be He who chose the descendants of Abraham and gave them of his wisdom, and everywhere they go they become masters of their masters." He freed them, and they went in peace to their home.

"*Weeping, are they weeping*?" [1] Why two weepings? Said Rabba in the name of R. Johanan: One for the first Temple, and the other for the second Temple.

"*In the night*," means because of what happened in a former night [Num. xiv. 1]: "And the people wept that night." And Rabba in the name of R. Johanan said: This day was the ninth of Ab, and the Holy One, blessed be He, said: "Ye have cried on this night in vain, and I shall ordain it that your generations shall lament on this day forever." (See Taanith, p. 88, line 9.) According to others: In the night, because he who weeps in the night, it looks like the stars and planets are weeping with him. And so also with human beings. He who hears one weeping in the night, weeps with him, as it happened with Rabban Gamaliel, whose female neighbor wept because her son died, and he wept with her until the eyelids dropped. On the morrow his disciples recognized it, and they made her move away from his neighborhood. "And her tears are on her checks." Said Rabba in the name of R. Johanan: As a woman weeps for the husband of her youth, as it reads [Joel, i. 8]: "Lament like a woman girded with sackcloth for the betrothed of her youth." "Her adversaries are become chiefs." Said Rabba in the name of R. Johanan: Every one who oppresses

Israel becomes a chief, as it reads [Isa. viii. 3]: "For no fatigue befalleth him that oppresseth them." And the same said again in the name of the same authority: That from the same verse is inferred that an oppressor of Israel never becomes tired.

"*Not for you, ye travellers, behold and see*," etc. Said Rabba in the name of R. Johanan: From this may be inferred that the Scripture is particular that if one tells his troubles to his neighbor,

he should add, "May it not happen to you." "All that pass this way." Said R. Amram in the name of Rabh: They (the nations) have made of me the perpetrator of a crime to whom burning applies, as about Sodom it reads [Gen. xix. 24]: "And the Lord rained upon Sodom." And here it reads [13]: "From on high hath he sent a fire into my bones."

It reads [ibid. iv. 6]: "For greater is the iniquity of the daughter of my people than the sin of Sodom." Said Rabba in the name of R. Johanan: Jerusalem was punished with such that even Sodom was not. As concerning Sodom, it reads [Ezek. xvi. 49]: "Behold, this was the iniquity of thy sister Sodom: Pride, abundance of food . . . but the hand of the poor and needy did she not strengthen." And concerning Jerusalem, it reads [Sam. iv. 10]: "The hands of merciful women choked their own children." [Ibid. i. 15]: "The Lord hath trodden under foot all my mighty men in the midst of me." As one says to his neighbor: This coin is already out of current.

[Ibid. ii. 16]: "All thy enemies open wide their mouth against thee." (The whole portion is in alphabetical order). Here, however, the *peh* is before the *ayin*, and why? Said Rabba in the name of R. Johanan: Because of the spies, who said with their mouths (peh) what they had not seen with their eyes (ayin).

It reads [Ps. xiv. 4]: "Who eat up my people, as they eat bread (while), they do not call on the Lord." Said Rabba in the name of R. Johanan: It is so the custom of Israel's enemies that he who robs Israel and consumes his bread feels a good taste, while he does not feel any taste if he has not done so. "They do not call on the Lord," means the judges. So Rabh. And Samuel said that it means the teachers of children who are doing their work falsely. (However, what was said in the Mishna) of having and not having a share in the world to come? Who were they who have decided so? Said R. Ashi: The men of the great assembly. Said R. Jehudah in the name of Rabh:

[paragraph continues] They wanted to count one king more, and the appearance of his father's face came and spread itself before them, but they did not care. And then a fire from heaven came and charred the benches on which they were sitting, but they did not care. Then a heavenly voice said to them [Prov. xxii. 29]: "Seest thou a man that is diligent in his work? Before kings may he place himself: let him not place himself before obscure men." He has built his house during thirteen years, and my house during seven years. But not this only, but he built first my house and then his house. Should he have such luck? And still they did not care. Then came another heavenly voice [Job, xxxiv. 33]: "Should He then according to thy view send a recompense, because thou hast rejected him? Because thou must choose and not I?"

However, the interpreters of notes said that all of them have a share in the world to come, as it reads [Ps. lx. 9 and 10]: "Mine is Gilead," which means Achab, who fell at Ramoth Gilead. "Menasseh"--literally, "Ephraim the stronghold of my head," means Jeroboam, who was an outcome of the tribe Ephraim. "Judah are my chiefs," means Achitopel, who was of the tribe of Judah. "Moab my washpot," means Gechazi, who was beaten because of the business of washing. "Upon Edom will I cast my shoe," means Doeg the Edomite. "Philistia, triumph thou but over me." The angels said before the Holy One, blessed be He: Lord of the Universe, if David, who has killed the Philistines, would come before Thee and would complain to that what Doeg and Achitopel shared in the world to come, what wilst Thou say to him? And He answered: It is for me to make them friends.

It reads [Jer. viii. 5]: "A perpetual backsliding." Said Rabh: A victorious answer has the assembly of Israel given to the prophets. The prophet said to Israel: Repent ye of your sins, as you may look upon your parents who have sinned, where are they? And they answered: And your prophets who have not sinned, where are they? As it reads [Zech. i. 5]: "Your fathers, where are they? and the prophets, could they live forever?" He then said to them: But your parents have repented and confessed, as it reads [ibid., ibid. 6]: "But my words and my decrees, which I commanded my servants, the prophets, behold, they did overtake your fathers: and (then) they returned and said, just as the Lord of hosts had purposed to do unto us, in accordance with our ways, and in accordance

with our doings, so hath he dealt with us." Samuel said: The victorious answer was thus: Ten men came to the prophet and sat down. And the prophet said to them: Repent of your sins. And they answered: A slave whom his master has sold, and a woman whom her husband has divorced, has then one something to do with the other? Said the Holy One to the prophet: Go and say to them [Isa 1. 1]: "Where is your mother's bill of divorcement, wherewith I have sent her away? or who of my creditors, is it to whom I have sold you? Behold, for your iniquities were ye sold, and for your transgressions was your mother sent away?" And this is what Resh Lakish said: This is what is written [Jer. xliii. 10]: "Nebuchadnezzar my slave." It was known before Him, who said a word and the world was created, that Israel will claim so in the future, and therefore He said in advance, "Nebuchadnezzar my slave." And to whom, then, belongs the property of a slave, if not to his master?

It reads [Ezek. xx. 32-34]: "And that which cometh up into your mind shall not at all come to pass (namely), that ye say, We will be like the nations, like the families of the other countries to serve wood and stone. As I live, saith the Lord Eternal, surely, with a mighty hand, and with an outstretched arm and with fury poured out, will I rule over you." Said R. Na'hman: With such an anger may the Merciful One be angry with us and redeem us.

[Isa. xxviii. 26]: "For his God had instructed him rightly, taught him (so to do)." Said Rabba b. b. Hanna: The prophet said to Israel: Repent. And they answered: We cannot, as we are under the dominion of the evil spirit. And he said to them: Overrule him. To which they answered: This can be done only by his God.

It reads concerning Bil'am [Num. xxii. 5]: "The son of Beor." And [Num. xxiv. 3]: "Bil'am, his son Beor." Said R. Johanan: His father was a son to him what concerns prophecy. The Mishna says that Bil'am has no share in the world to come, but other nations will have. Our Mishna is in accordance with R. Jehoshua of the following Boraitha: It reads [Ps. ix. 18]: "The wicked shall return into hell, all the nations that are forgetful of God." "The wicked" means the transgressors in Israel. "All the nations," means idolaters. So R. Eliezar. Said R. Jehoshua to him: Does it read, "And all the nations"? It reads "All the nations." This passage is

to be explained thus: The wicked shall return to hell, means all the nations that are forgetful of God. And even Bil'am gave a sign concerning himself with his saying [Num. xxiii. 10]: "May my soul die the death of the righteous, and may my last end be like his." If I will die a death of

the righteous, then will be my end like his, and if not [ibid. xxiv. 14]: "I am going with my people."

It reads [Num. xxii. 7]: "And the elders of Moab and the elders of Midian departed." There is a Boraitha: Midian and Moab were always enemies with each other. This is a parable to two watch-dogs who were jealous of each other. But it happened that a wolf came to fight one of them. Said the other: If I will not help him the wolf will kill him to-day, and to-morrow he will kill me. And they therefore conjoined together and killed the wolf. Said R. Papa: This is what people say: The χρεχος {Greek *xrexos̱*} and the cat (who are always enemies with each other) made a wedding meal of the fat of Bichgada.

It reads [ibid., ibid. 8]: "And the princess of Moab abode with Bil'am." And what became of the princess of Midian? As soon as they heard that Bil'am told them to stay there over night, they thought: Does then exist a father who dislikes his son? (The Holy One is the father of Israel, and will certainly not advise him to curse Israel.)

Said R. Na'hman: Impudence affects even Heaven, as [ibid., ibid. 12] reads: "Thou shalt not go with him," and finally [20]: "Go with them." Said R. Shesheth: Impudence is a kingdom without a crown, as [II Sam. iii. 39]: "And I am this day yet weak, and just anointed king; and these men, the sons of Zeruyah, are too strong for me."

R. Johanan said: Bil'am was lame on one foot and blind on one eye, as [Num. xxiv. 3]: "Whose one eye is open."

[Num. xxxiv. 16]: "Knoweth the knowledge of the Most High." Is it possible for him, who does not know the knowledge of his ass, to be aware of the knowledge of the Most High? It means he was aware of that moment when the Holy One, blessed be He, became angry. And this is what the prophet said to Israel [Michah, vi. 5]: "O my people, do but remember what Balak the king of Moab resolved, and what Bil'am the son of Beor answered him, from Shittim unto Gilgal, in order that ye may know the gracious benefits of the Lord." What do the last words mean? The Holy One, blessed be He, said to Israel: Beware of the gracious benefits

[paragraph continues] I have done to ye, that I have not become angry on that day in the time of Bil'am, for if I would have done so, there would not remain one living soul from ye. And this is what Bil'am said to Balak: What is the use of my anger when God was not angry these days in spite of what he used to do every day, as it reads [Prov. vii. 12]: "God is indignant (with the wicked) every day." How long is the duration of the anger? One second, as it reads [Ps. xxx. 6]: "For his anger is momentary." And if you wish, it is from [Isa. xxvi. 20]: "Go, my people, enter thou into thy chamber, and shut thy door behind thee: hide thyself for a little moment, until the indignation be passed away." And at what time in the day does He become angry? In the first three hours when the comb of a cock becomes white. But is the comb not white at any other time of the day? At any other time there are red points in the white, and at that time it is white without any points.

There was a Min in the neighborhood of R. Jehoshua b. Levi who caused him great trouble. And on a certain day Jehoshua tied a cock on the posts of his beds, thinking that when the comb will

become white I will caution him. However, when that time arrived he slumbered. He said then: I understand from this that such a thing must not be done, even to Minnim.

There is a Boraitha in the name of R. Mair: When the sun rises and the kings put their crowns on their head, and bow themselves down to the sun, the Lord immediately becomes angry.

It reads [Num. xxiv. 21]: "And Bil'am rose up in the morning and saddled his ass." There is a Boraitha in the name of R. Simeon b. Elazar: Love abandons the custom of great men, and the same animosity does. Love abandons their custom, as we have seen by Abraham, who himself saddled his ass (because of his love to the Creator), and the same we saw by Bil'am, who himself saddled his ass, because of his animosity to Israel.

R. Jehudah said in the name of Rabh: One shall always occupy himself with the Torah and divine commandments, even not for the sake of heaven, as finally he will come to do so for its sake. This can be inferred from Balak, who offered forty-two sacrifices, and was rewarded by that what Ruth was the outcome from him. As R. Jose b. Huna said: Ruth was the daughter of Eglon, the grandson of Balak, king of Moab.

Rabha said to Rabba b. Mari: It reads [I Kings, i. 47]: "May God make the name of Solomon more famous than thy name, and make his throne greater than thy throne." Is it the usual way of saying to a king thus? And he answered: It is not to be taken literally; they meant to say "similar to thy name," as if you would not say so, how is to be understood [Judges, V. 24]: "Dwelling in the tent may she be blessed"? Who is meant by "dwelling in the tent," if not Sarah, Rebekha, Rachel, and Leah? Does, then, this passage mean that Ja'el shall be more blessed than they? Hence it is not to be taken literally; and it means "similar to them"; and the same is the case here. However, Rabba b. Mari differs with R. Jose b. Huni, who said that usually one becomes jealous of every one but of his son and disciple. Of his son, as we see from the above-cited verse concerning Solomon. And of his disciple [II Kings, ii. 9]: "And Elisha said, Let there be, I pray thee, a double portion of thy spirit upon me," and if you wish, from [Num. xxvii. 23]: "And he laid his hands upon him," though he was commanded [ibid., ibid. 18]: "Thou shalt lay thy hand upon him."

It reads [ibid. xxviii. 16]: "And put a word in his mouth." Said R. Johanan: From all the blessings of that wicked you may learn what he intended to say, if he would not have been prevented. He wanted to say: Israel shall not possess any houses of assembly and of learning. And what was he compelled to say [ibid., ibid. 5]: "How beautiful are thy tents, O Jacob." He intended to say that the Shekhina shall not rest upon them, and said, "Thy dwellings, O Israel."

He intended to say that their kingdom shall not be prolonged, and said, "As streams are they spread forth." He intended to say that they shall not possess olives and vineyards, and said, "As gardens by the river's side." They shall have a bad odor, and said, "As aloe-trees which the Lord had planted." They shall not have kings of nice appearance, and said, "And cedar-trees beside the waters." Their kings shall not be descendants of kings, and said, "Water runneth out of His buckets." Their kingdom shall not rule over other nations, and said, "That his seed may be moistened by abundance of waters." Their kingdom shall not be strong enough, and said, "And exalted above Agag shall be his king." And their kingdom shall not be feared, and said, "And

raised on high shall be his kingdom." Said R. Abba b. Kahana: All

[paragraph continues] Bil'am's blessings were overturned to cautions, except concerning houses of assembly and of learning, as [Deut. xxiii. 6]: "And the Lord thy God changed unto thee the curse into a blessing, because the Lord thy God loved thee." It reads "curse," singular, but not "curses," plural.

Samuel b. Na'hman in the name of R. Jonathan said: It reads [Prov. xxvii. 6]: "Faithful are the wounds of a friend; but deceptive are the kisses of an enemy." The caution that Achiyah the Shilonite cautioned Israel is better for them than the blessings that Bil'am has blessed them. The former cautioned Israel with a reed, as it reads [I Kings, xiv. 15]: "As the reed is shaken in the water." As this reed stands in water-places, the branches of it change, but its roots are many, and even all the winds of the world when blowing upon it are not able to uproot it, but it bends in every direction of the wind. However, when the wind ceases it remains straight in its place. But Bil'am, the wicked, blessed them with a cedar, Which does not stand in water-places, does not change its branches, and its roots are few, and although no winds can affect it, however, as soon as a south wind comes it uproots it and turns it over on its face. Moreover, a pen for writing the Holy Scrolls, Prophets, and Hagiographa was made from a reed.

Farther on it reads [Num. xxiv. 21]: "And he looked on the Kenites. . . . Strong is thy dwelling-place," etc. Bil'am said to Jithro: Kenite, wast thou not with us at the time we consulted to destroy Israel? How, then, does it come that thou art placed now among the strongest of the world? And this is what R. Hyya b. Aba in the name of R. Simlai said: The following three--Bil'am, Job, and Jithro--were the advisers of Pharaoh, concerning his command of throwing in the river the children of Israel. Bil'am, who gave this advice, was killed; Job, who kept silent, was punished with chastisement; and Jithro, who ran away, was rewarded by having his descendants placed among the Sanhedrin, in the chamber of the Temple, as the above-cited verse [of I Chron. ii. 55, p. 327] reads.

"And he took up his parable, and said, Alas, who shall live when God doth appoint this one?" [Num. xxiv. 23]. Said R. Johanan: Woe will be to that nation which will try to prevent the redemption of Israel, when the Holy One, blessed be He, will do it to his children. Who can prevent a lion to come together with his lioness at the time they are both free?

It reads [ibid., ibid. 14]: "And now, behold, I am going unto my people: come, I will advise thee against what this people will do to thy people in the end of days." This people to thy people! It ought to be the reverse: "I will advise thee against what thy people will do to this people." Said R. Abah b. Kahana: It is similar to one who intends to caution himself, and does it by cautioning his neighbor. (Rashi explains this that Bil'am said as it ought to be, but the verse changed its language.) Bil'am said to Balak: The God of this nation hates incest, and they, I am aware, are fond of linen dresses. Put up shops for them, and place therein prostitutes, an old woman outside, and a young one inside, and they shall sell them linen dresses. He put up shops from Har Shelek to the place of Beth Hayishimon, and placed therein prostitutes accordingly. And when Israel were eating, drinking, and rejoicing themselves and taking a walk, the old woman said to him: Do you want to buy a linen dress for a reasonable price? But the young woman

from inside offers it to him thrice cheaper, and finally she says to him: You are at home, choose what you like. And there stood a pitcher full of Ammonite wine, which was not as yet prohibited. And she treats him with a goblet of wine. And after he drinks it, it kindles him as a fire, and he makes his proposition to her. She, however, takes out her idol from her bosom, saying: Worship it. And to his answer: I am a Jew, she said: What is it, it is required only of you to uncover yourself before it. While he was not aware that so was the custom of its worship, as it reads [Hosea, ix. 10]: "But they, too, went to Baal Peor, and devoted themselves unto that shameful idol, and became abominations as those they loved."

It reads [Num. xxv. 1]: "And Israel dwelt in Shittim." Said R. Johanan: Everywhere such an expression is to be found it brings infliction. Here the people began to commit incest. [Gen. xxxvii. 1]: "And Jacob dwelt in the land of his fathers sojourning," and (2) "Joseph brought evil reports of them to his father." [Ibid. xlvii. 27]: "And Israel dwelt in the land of Egypt, in the country of Goshen," and [ibid. 29]: "And the days of Israel drew near that he was to die." [I Kings, v. 5]: "And every man dwelt in safety," and [ibid. xi. 14]: "And the Lord stirred up an adversary unto Solomon, Hadad the Edomite."

It reads [Num. xxxi. 8]: "And the kings of Midian they

slew, besides the rest of their men that were slain . . . and Bil'am, the son of Beor, they slew with the sword." What hath Bil'am to do there? Said R. Johanan: He went to take the reward for the twenty-four thousand Israelites who were killed through his advice. Said Mar Zutra b. Tubia in the name of Rabh: This is what people say: A camel wanted to get horns, and therefore the ears he possessed were cut off.

[Josh. xiii. 22]: "And Bil'am, the son of Beor, the soothsayer." The soothsayer! Was he not a prophet? Said R. Johanan: At the beginning he was a prophet, but thereafter became a soothsayer.

A Sadducaer said to R. Hanina: Are you aware of Bil'am's age when he was slain? And he answered: There is nothing written about it, but from [Ps. iv. 24]: "Let not the men of blood and deceit live out half their days," I understand that he must have been thirty-two or thirty-three when he was killed. And the Sadducaer answered: Thou sayest well, as I saw the record of Bil'am, and it was written therein thirty-three years was Bil'am when he was killed by Pinehas, the murderer.

Said Mar b. Rabhina to his son: About all the commoners who are mentioned in the Mishna, you have not to be anxious to lecture of them to their disadvantage, except Bil'am, about whom you may lecture as much as you like.

About Doeg is found in the Scripture this word differently, in some places with an *aleph* and in others with double *yods* instead of an *aleph*. Said R. Johanan: At the beginning Heaven was worrying that perhaps this man will go out in a wrong way, and after it happened so, it was exclaimed that this man is lost by his bad habits.

R. Itz'hak said: It reads [Ps. lii. 3]: "What vauntest thou thyself of wickedness, O mighty man?

the kindness of God endureth all the time." The Holy One, blessed be He, said to Doeg: Art thou, then, not mighty in the Torah? Why art thou fond of slandering?

And the same said again: It reads [Ps. 1. 16]: "But unto the wicked God saith, What hast thou to do to relate my statutes?" The Holy One, blessed be He, said to Doeg the wicked: What hast thou to relate my statutes when thou reachest the portion of murderers and the portion of slanderer (which thou hast done both)? How wouldst thou explain them?

"Why bearest thou my covenant upon thy mouth?

[paragraph continues] [ibid.]. Said R Ami: Infer from this that the study of Doeg was only with his mouth, but not with his heart.

R. Itz'hak said: It reads [Job, xx. 15]: "The wealth which he hath swallowed, will he have to vomit up again: God will drive it out of his belly." David said before the Holy One, blessed be He: Let Doeg die. And he was answered: Thou must wait until he will have forgotten the Torah, which he has swallowed. And he prayed again: Let God drive it out of his belly.

R. Itz'hak said again: It was said before David: Let Doeg have a share in the world to come. And he answered [Ps. lii. 7]: "Therefore God will also destroy thee forever." Let there at least a Halakha be mentioned in his name in the college. And he answered: "Pluck thee out of his tent." Let his descendants be rabbis. "And root thee out of the land of life."

The same said again: It reads [Isa. xxxiii. 18]: "Where is he who wrote down? where is he that weighed? where is he that counted the towers?" (All this passage is concerning Doeg.) Where is he who counted the letters of the Torah? Where is he who weighs the lenient and rigorous things mentioned therein? Where is he who counted three hundred decided Halakhas (about Levitical cleanness) concerning a turret flying in the air? Said R. Ami: Four hundred questions had Doeg and Achitophel asked concerning turrets flying in the air, and not one of them could be decided. Said Rabha: Is it also a great thing to ask questions?

In the years of R. Jehudah all their studies were confined to the Section of Damages, etc. (See Taanith, p. 71, from line 12 to the end of that chapter.) However, here the answer is: The Holy One, blessed be He, wants the heart of one, but not his mouth, as it reads [I Sam. xvi. 7]: "But the Lord looketh on the heart." Said R. Ami: Doeg was not dead before he had forgotten all his studies, as it reads [Prov. v. 23]: "He will indeed die for want of correction; and through the abundance of his folly will he sink into error." Said R. Johanan: Three angels of destruction attended to Doeg: one who had made him forget his study, and one who burned his soul, and the third who scattered his ashes in prayer and learning houses.

The same said again: Doeg and Achitophel did not see each other, as Doeg was in the days of Saul and Achitophel in the days of David.

And he said again: Both Doeg and Achitophel have not lived

half of their days. So also we have learned in the following Boraitha: All the years of Doeg were only thirty-four, and those of Achitophel thirty-three. R. Jehudah said in the name of Rabh: One shall not bring himself into temptation, as David i king of Israel, placed himself in the power of a trial and stumbled. He said before Him: Lord of the Universe, why is it said the God of Abraham, Isaac, and Jacob, and not the God of David? And he was answered: Because they were tried by Me, and thou wast not. And he said before Him: Lord of the Universe, try me, as it reads [Ps. xxvi. 2]: "Try me, O Lord, and prove me." And he was answered: You will be tried, and, furthermore, I will do with thee a thing which I have not done with the patriarchs, as them I have not informed that I will try, and thee I inform that thou wilt be tried with a case of adultery. And this is what it reads [II Sam. xi. 2]: "And it happened at evening tide that David arose," etc. Said R. Jehudah: He did in the daytime what is usually done at night. And he overlooked a Halakha: There is a small member in the body of a man which is always hungry if one is trying to satisfy it, and is always satisfied if one starves it. "And he walked upon the roof of the king's house; and he saw from the roof a woman bathing herself, and the woman was of a very beautiful appearance." Bath Sheba used to wash her head under a bee-hive. The Satan then appeared before David as a bird, and he shot an arrow at it, and the arrow fell on the bee-hive and broke it, so that Bath Sheba was visible to David. And immediately [ibid., ibid. 3 and 4]: "David sent and inquired after the woman; and some one said, Behold, this is the Bath Sheba, the daughter of Eliam, the wife of Uriyah the Hittite. And David sent messengers and took her; and she came in unto him, and he lay with her, and she had just purified herself from her uncleanness: and she returned unto her house." And this is what it reads [Ps. xvii. 3]: "Thou hast proved my heart; thou hast thought of me in the night; thou hast refined me--thou couldst find nothing; my *zamuthi* (purpose) doth not pass beyond (the words of) my mouth," which means it would be better for me that a *zmama* (a bit) should have been put in my mouth than to have prayed: Try me.

Rabha lectured [Ps. li. 6]: "To thee, thee only, have I sinned, and what is evil in thy eyes have I done; in order that thou mightest be righteous when thou speakest, be justified

when thou judgest." David said before the Holy One, blessed be He: It is known before Thee, that if I would want to overrule my impulse (concerning Bath Sheba) I would be able to do so. But I didn't, so people shall not say that the slave has conquered his master. He lectured again: It reads [Ps. xi. 1]: "In the Lord have I put my trust; how can ye say to my soul, Flee to your mountain as a bird?" David said before the Holy One, blessed be He: Lord of the Universe, forgive me this sin for the purpose that people shall not say that your mountain was lost through a bird (as said, above that the Satan appeared to David as a bird). He lectured again: It is written [ibid. xxxviii. 18]: "For I am prepared for (my) downfall, and my pain is continually before me." From the six days of creation Bath Sheba was destined for David; however, she came to him only by infliction. And so also taught the disciples of R. Ishmael: Bath Sheba, the daughter of Eliam, was destined to David, but he enjoyed her as an unripe fruit (did not wait until she was his legitimate wife). (Here is repeated from Middle Gate, p. 138, from "Rabha lectured" until Rabha said.")

R. Jehudah said in the name of Rabh: David was about to worship idols, as it reads [II Sam. xv. 32]: "When David was come to the head where he used to bow himself to God." By "head" is

meant an idol, as it is to be found in Daniel that the head of the image was of gold. "Behold, Chushai, the Arkite, came to meet him with his coat rent, and earth upon his head." And he said to him: Is it proper that a king like thyself shall be an idolater? And he answered: Is it proper that a king like myself should be slain by his son? It is better for me to worship an idol privately than that the Holy Name should be profaned publicly. Said Chushai to him: Why, then, hast thou married a handsome woman? And to his answer: The Merciful One has allowed to marry such. Rejoined Cushai: Why have you not given your attention to the interpretation founded on the facts of local junction of texts, as after "A woman of handsome form is near" [Deut. xxi. 11], the 18th verse, which speaks of "A stubborn son "?

R. Dusthai, of the city of Biri, lectured: David's following prayer is similar to a peddler who wanted to sell out his stock little by little. He said before the Holy One, blessed be He [Ps. xix. 13-15]: "Lord of the Universe, who can guard against errors?" And he was answered: They will be forgiven to you.

[paragraph continues] "From secrets (faults) do thou cleanse me," and the same answer was given. "Also from presumptuous sins withhold thy servants," and he was also answered that it will be forgiven. "Let them not have dominion over me"--the rabbis shall not talk about me, and he was also promised that so it will be. "Then shall I be blameless"--my sins shall not be written. And he was answered: This is impossible as the *Jod* which I took away from the name of Sarai complained before me several years, until Joshua came and I added it to his name, as it reads [Deut. xiii. 16]: "And Moses called Hoshea, the son of Nun, Joshua." How then can I omit a whole portion of the Torah? "Clear from any great transgression"--He said before Him: Lord of the Universe, forgive me the whole sin. And he was answered: It is revealed before Me what Solomon, thy son, will say by his wisdom in the future [Prov. vi. 27-30]: "Can a man gather up fire in his lap, and shall his clothes not be burnt? Can a man walk along hot coals, and shall his feet not be burnt?" So it is with him that goeth in to his neighbor's wife: no one that toucheth her shall remain unpunished. He then exclaimed: If so, I am lost. And he was answered: Accept chastisements upon thyself. And he did so.

Said R. Jehudah in the name of Rabh: Six months was David afflicted with leprosy; the Shekhina left him, and the Sanhedrin separated themselves from him. "Inflicted with leprosy" [Ps. li. 9]: "Cleanse me from sin with hyssop," etc. "The Shekhina left him" [ibid., ibid. 14]: "Restore unto me the gladness of thy salvation." "The Sanhedrin separated themselves" [ibid. cxix. 79]: "Let those that fear thee return unto me and those that know thy testimonies." And whence do we know that all this lasted full six months? From [I Kings, ii. 11]: "And the days that David reigned over Israel were forty years; in Hebron he reigned seven years, and in Jerusalem he reigned thirty and three years. And in [II Sam. v. 5]: "In Hebron he reigned over Judah seven years and six months, and in Jerusalem he reigned thirty-three years over all Israel and Judah." Hence we see that the six months more which are counted in II Samuel are not counted in I Kings, and this was because the six months in which he was inflicted with leprosy were not counted. (Here is repeated from Minor Festivals, p. 13, line 6: Said R. Jehudah in the name of Rabh--to the end of the par. See there.) Now about Gechazi. It reads [II Kings, viii. 7]: "And Elisha came to Damascus." What did he do there?

[paragraph continues] Said R. Johanan: He went to make Gechazi repent of his sins. He tried to do so, but he did not want, saying: I have a tradition from thee, that he who sins and causes others to sin, Heaven gives no opportunity to him to repent. But what has he done to cause others to sin? According to some he put a magnet over the casts made by Jeroboam, and they were suspended in the air. And according to others, he engraved a holy name on its mouth, and it heralded: "I am the God," etc. And according to still others, he drove away disciples from Elisha's college, as it reads [ibid. vi. 1]: "Behold now the place where we dwell before thee is too narrow for us." (And this was after the departure of Gechazi, hence it was not narrow when he was there, because he drove away many disciples.)

The rabbis taught: Exclusion shall always be with the left hand, and inclusion with the right hand, *i.e.*, if one is compelled to repudiate some one, he shall do it easy as with his left hand, and at the same time try to admit him again with his right hand. And not as Elisha has done with Gechazi, whom he rejected with both hands, as it reads [II Kings, V. 23, 27]: "And Naaman said, Give thy assent, take two talents. And he urged him. . . . Whence comest thou, Gechazi?" And he said, Thy servant went not hither or thither. And he said unto him, "My mind was not gone when the man turned around from his chariot to meet thee. Is it time to take money, and to take garments, and oliveyards, and vineyards, and sheep, and oxen, and men-servants, and maid-servants?" Hath then Gechazi taken all this? He took only silver and garments. Said R. Itz'hak: At that time Elisha was occupied with the study of the chapter of eight reptiles (the 14th chap. of Tract Sabbath). Naaman, the captain of the king of Syria, was inflicted with leprosy, and his servant girl, who was captured from Israel, told him that if he will go to Elisha he will be cured. And when he came and was told to dip himself in the Jordan, he said: They ridicule me. But the men with him induced him to do so. He followed their advice and he was cured. And he brought all what he had with him to Elisha, but he did not want to accept it from him. Gechazi, however, departed from Elisha, took what he took, and hid it, 1 and when he came before Elisha again he saw that the leprosy was flying over his head. Then he said

to him: Has then the time come that you should be rewarded for my studying of the chapter of eight reptiles, as you took from him the value of the eight things mentioned in this passage? And therefore he went out of his presence a leper (as white) as snow. It reads [ibid. vii. 3]: "And there were four leprous men at the entrance of the gate." Said R. Johanan: These were Gechazi and his three sons. There is a Boraitha: The animal impulses of man, a child and a woman, should always be repulsed with the left hand, and at the same time embraced with the right hand. The rabbis taught: Thrice Elisha became sick, etc. (See Middle Gate, p. 229, which is repeated here with the change that the paragraph "until the time of Abraham there was no mark of age," in line 15, reads here after the paragraph, "The rabbis taught," in line 21. See there.)

MISHNA *II*.: The generation of the flood have no share in the world to come, and are also not judged, as it reads [Gen. vi. 3]: "*Lau jodun ruchiy bheodom*," literally "My spirit shall not judge in man"--no judgment and no spirit. The generation of dispersion (cf. to ibid., chap. 11) have also no share in the world to come, as it reads [ibid. 8]: "And the Lord scattered them abroad"; and it reads also (9): "From there the Lord scattered them"--"scattered them" in this world, and "from there the Lord scattered them"--in the world to come. The men of Sodom have also no share in the world to come, as it reads [ibid., ibid. 13]: "For the men of Sodom were wicked, and sinners before the Lord exceedingly"--"wicked" in this world, and "sinners" in the world to come. However, they are standing for judgment. R. Nehemiah said: Both of the following are

not standing for judgment, as it reads [Ps. i. 5]: "Therefore shall the wicked not be able to stand in the judgment"--the generation of the flood. And "sinners in the congregation of the upright"--men of Sodom. But he was told by the sages: The latter do not stand up among the congregation of the upright, but they stand among the congregation of the wicked. The spies have no share in the world to come, as it reads [Num. xiv. 37]: "Died by the plague before the Lord." "Died"--in this world, "plague"--in the world to come. The generation of the desert has no share in the world to come, as it reads [ibid., ibid. 35]: "In this wilderness shall they be spent"--in this world, and therein shall they die"--in the world to come. So R. Aqiba. R. Eliezar, however, maintains: To

them is written [Ps. i. 5]: "Gather together unto me my pious servants, who make a covenant with me by sacrifice." The congregation of Korah will not be restored at the time of resurrection, as it reads [Num. xvi. 33]: "And the earth closed over them"--in this world, and "they disappeared from the midst of the congregation"--in the world to come. So R. Aqiba. R. Eliezar, however, maintains: To them it reads [I Sam. ii. 6]: "The Lord killeth and maketh alive: he bringeth down to the grave, and bringeth up."

GEMARA: The rabbis taught: The generation of the flood has no share in the world to come, as it reads [Gen. vii. 23]: "And it swept off every living substance"--in this world, "and they were swept from the earth"--in the world to come. So R. Aqiba. R. Jehudah b. Bathyra said: They will neither be restored nor judged, as it reads in the cited verse of the Mishna: "No judgment and no spirit." R. Menahem b. Jose said: Even at the time the Holy One, blessed be He, will return the souls to the corpses, the souls of the generation in question will still be judged hard in the Gehenim, as it reads [Isa. xxxiii. 11]: "Ye shall be pregnant with hay, (and) ye shall bring forth stubble: your breath is a fire, which shall devour you."

The rabbis taught: The generation of the flood were exalted only because of the overflowing goodness, the Holy One, blessed be He, overflooded them, as concerning them it reads [Job, xxi. 9-14]: "Their houses are at peace without any dread, and no rod of God (cometh) over them. The bull of each one gendereth and disappointeth not: the cow of each one calveth, and casteth not her young. They send forth their little ones like a flock, and their children skip about (with joy). They sing to the timbrel and harp, and rejoice at the sound of the pipe. They wear out their days in happiness." The verse continues, and "in a moment they go down to the nether world." This was caused by what they said, "Depart from us and the knowledge of thy ways we desire not," etc. They said: We need the Almighty only for the drops of rain with which He supplies us; however, we possess springs and rivers, of which we can make use. Said the Lord: With the same good I have overflooded them they anger me, I will therefore punish them with the same, I will bring a flood of water, etc.

R. Jose said: The generation of the flood were exalted because the sclerotic coat of the eye which resembles water, as

it reads [ibid., ibid. 2]: "And they took themselves wives of all whom they chose," and therefore they were punished with water, which resembles the eye, as [ibid. vii. 11]: "On the same day, were all the fountains of the great deep broken up, and the windows of heaven were opened."

R. Johanan said: The generation in question sinned with the word *rabbha*. [ibid. vi. 5]: "God saw that *rabbha* the wickedness of men, and they were punished with the same word [ibid. vii. 11]: "All--the fountains of the deep *rabbha*." And he said again: Three of the hot springs of that time remained forever, and they are, of Gedda, of Tiberius and the great springs of Biram.

It reads [ibid. vi. 12]: "For all flesh has corrupted his way upon the earth." Said R. Johanan: Infer from this that cattle, beast and men had intercourse with each other. Said R. Aba b. Kahana: All of them returned to their usual manner of propagation, except the bird Thushl'mi. [1]

It reads [ibid., ibid. 13]: "The end of all the flesh is come before me." Said. R. Johanan: Come and see how severe is the force of robbery, as the generation of the flood had committed all kinds of crimes and their evil decree was not sealed until they stretched out their hand to robbery, as it reads (13) "for all the earth is filled with violence through them, and I will destroy them with the earth," and also [Ezek. vii. 11]: "The violence is grown up into the staff of wickedness: nothing is left of them, and nothing of their multitude and nothing of theirs; and there shall be no lamenting for them." Said R. Elazar: Infer from this passage that the violence itself has grown up as a cane and placed itself before the Lord, saying: Lord of the Universe; nothing shall be left of them, etc.

The disciples of R. Ismael taught: In that evil decree Noah was included, but found favor in the eyes of the Lord, as it reads [Gen. vi. 7 and 8]: "For it repenteth me that I have made them. But Noah found grace in the eyes of the Lord."

It reads [ibid., ibid. 6]: "And it repenteth the Lord that he had made man on the earth." When R. Dime came from Palestine, he said: (The Lord said) I have not done well that I prepared for them graves in the earth. (As it might be that if I would leave them alive, they would repent.) And this is inferred from the analogy of the expression "and it repented,"

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which is to be found here and in [Ex. xxxii. 14]: "And the Lord bethought himself."

It reads [Gen. vi.. 9]: "Noah was a just, perfect man in his generation;" according to R. Johanan in his generation, but not in others who were more righteous. And according to Resh Lakish: In his generation, which was wicked, so much the more in other generations. Said R. Hanina: As a parable to that of R. Johanan, may be, *e.g.*, if one places a barrel of wine among barrels of vinegar. In that place, the good smell of wine is marked, which would not be the case if placed among other barrels of wine, And a parable to that of Resh Lakish, said R. Oshia, may be, *e.g.*, a glass of perfume which was placed in a filthy place, and the smelling was marked, so much the more would it be marked if placed among spices.

It reads further on [Gen. Vii. 23]: "And it swept off," etc. If man sinned, what were the sins of the animals? It was taught in the name of R. Jehoshua b. Kar'ha: It is similar to one who made a canopy for his son, and prepared all kinds of delicacies for the wedding-meal, but his son dies before the wedding and he destroys all what he prepared, saying: All this was done only because of my son; now, as he is dead, to what purpose do I need the canopy and all what I prepared? So the Holy One, blessed be He, said: To what purpose have I created cattle and beast, only for the

sake of man; now, when man has sinned and is to be destroyed, to what purpose do I need all other creatures? [Gen. vi. 22]: "All that were on dry land died," but not the fishes in the sea.

R. Jose of Tesarius lectured: It reads [Job, xxiv. 18]: "Swift are such men (to flee) on the face of the water; accursed is their field on the land." Infer from this that Noah, the upright, warned them, saying: Repent and pray to God, for if not He will bring the flood upon you and will make your corpses swim upon the water like bags filled with air; and not only this, but ye will be accursed to future generations (*i.e.*, one will curse this enemy that his lot shall be like yours). And they answered: Let him do so, who prevents him? And he answered: There is one pigeon among ye which must be taken away from this evil (*i.e.*, Methushelech, the upright, who must depart, not to see the evil). And they answered: If it is so, then we will continue on our way and will not hide ourselves in the vineyards.

Rabha lectured: It reads [Job, xii. 5]: "To the unfortunate

there is given contempt--according to the thoughts of him that is at ease--prepared (also) for those whose foot slippeth." Infer from this that Noah, the upright, warned them in hard words. But they scorned him, saying: Thou old man, why buildest thou the ark? And to his answer: The Lord will bring the flood, they said: A flood of what? If a flood of fire, then we have an animal by the name of Elita which extinguishes fire. And if of water, we have iron plates with which we can pave the ground (to prevent water coming up). And if of the sky, we have a thing named Akeb or Ikosh, which can prevent it. And Noah answered: He will bring you (the flood) from under your heels, as the just cited verse reads, "prepared for those whose foot slippeth."

Said R. Hisda: With their hot blood have they sinned, and they were punished with hot water, and it is inferred from ah analogy of the expression [Gen. viii. 3]: "And the water was appeased," and [Esther, vii. 10]: "And the fury of the king was appeased."

It reads [Gen. vii. 10]: "And it came to pass after the seven days that the waters of the flood were upon the earth." Seven days of what? Said Rabh: The seven days' mourning for Methushelech. From this you may learn that the lamentation of uprights delays the chastisement to come. Another explanation: The Lord appointed for them at first a long time for repenting, and thereafter a short time. And still another explanation: The seven days in which was given them a taste of the world to come, for the purpose that they shall know what good they are losing.

[Ibid., ibid. 2]: "Of every clean heart thou shalt take to thee seven pair of each, the male and his female." Have these animals wives? Said Samuel b. Na'hman in the name of R. Jonathan: It means from those with whom a crime was not committed. And whence did he know this? Said R. Hisda: He passed them by the ark, and those who were accepted by the ark he was certain that no crime was committed, and those who were not, he was certain that a crime was committed. R. Abubu said: It means from those animals which came by themselves.

[Ibid. vi. 14]: "An ark of gopherwood." What is meant by gopher? R. Adda, in the name of the school of Shila, said: It means an oak tree, and according to others, a cedar tree.

[Ibid., ibid. 16]: "A window shalt thou make." Said R.

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[paragraph continues] Johanan: The Holy One, blessed be He, said to Noah: Put there diamonds and pearls, that they shall give you light as the middle of the day.

"With lower second and third stories shalt thou make it." The lower for manure, the second for animals and the third for man.

[Ibid. viii. 7]: "He sent forth a raven." Said Resh Lakish: A victorious answer has the raven given Noah: Thy master hates me and thou doest the same. Thy master hates, as from the clean he took seven and from the unclean only two, and thou hatest me as thou sends a creature of which you have only two, while from others you have seven. If I would be killed by heat or by cold would not the world be lacking my creation?

[Ibid., ibid. 8] "He then sent forth a dove from him." Said R. Jeremiah: Infer from this that clean fowls may be kept in the residence of uprights.

[Ibid., ibid. 11]: "And the dove came in to him at the time of evening." Said R. Elazar: The dove said before the Holy One, blessed be He: Lord of the Universe, may my food be bitter like an olive, but I shall receive it from thy hand rather than that it should be sweet like honey, and I shall receive from beings of blood and flesh.

"Plucked off *tereph*." And whence do we know that tereph means food? From [Prov. xxx. 8]: Let me eat the bread," in which the same term *tereph* is used.

It reads farther on [Gen. viii. 19]: "After their families." Infer from this that each family was placed separate. R. Hana b. Bisna said: Eliezar, the servant of Abraham, questioned Shem the Great: As all the animals were placed separately, where was your family placed? And he answered: We had great trouble in the ark to feed all the animals. The creature whose habit it is to eat in the daytime we had to feed in the day, and those whose habit it is to eat in the night, we have to feed in the night. A chameleon, my father did not know what its food is. It happened one day that he cut a pomegranate and a worm fell out of it, and the above consumed it, and from that time prepared its food from the worms found in rotten apples. The lion was fed by his fever, as Rabh said: No less than six and no more than twelve months one can live in fever without taking any food. The Aurshina my father found that it slept in a corner of the ark; and to his question: Dost thou

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need any food, it answered: I saw thou art very busy, and I thought I would not trouble thee. And he blessed her that it shall never die, and this is what it reads [Job, xxix. 18]: "As the chaul (aurshina) shall I have many days."

R. Hana b. Levai said: Shem the Great questioned Eliezar, the servant of Abraham: When the kings of the West and East came to fight you, what have you done? And he answered: The Holy

One, blessed be He, took Abraham, sat him down to His right, and we, however, took earth, threw it, and they became swords. Straw and they became arrows, as it reads [Ps. cx. 1]: "Sit thou at my right hand, until I place thy enemies a stool for thy feet." And also [Isa. Xli. 2]: "Who waketh up from the east the man whom righteousness met in his steps? He giveth up nations before him, and maketh him rule over kings. That his sword may render them as the dust, as driven stubble his bow." (Here is repeated from Taanith, p. 56, the legend of Nahum of Gim-zu.)

"*The generation of dispersion has no share*," etc. What had they done? The school of R. Shila said: They wanted to build a tower to ascend to the sky and split it with hatchets, so that the contained water shall pour down. This legend was ridiculed in the West. If they intended to ascend to the sky they ought to have built the tower on a mountain, and not in a valley. Therefore, said R. Jeremiah b. Elazar: They were divided into three parties. The first party said: Let us go there to dwell; the second: Let us go there and worship their idols, and the third: Let us go there to fight. The party that said, Let us go there to dwell, were scattered all over the world, and the party that said, Let us go there and fight, became demons, devils, etc. And the party that said, Let us go there and worship their idols, were scattered to Babylon, to which it reads [Gen. xi. 9]: "Therefore is the name Babel, because the Lord did there confound the language."

Said R. Johanan: From the tower, a third of it was burned, the second was swallowed and a third is still in existence.

"*Men of Sodom*," etc. The rabbis taught: Men of Sodom have no share in the world to come, as the verse cited in the Mishna. And in addition to it, said R. Jehudah: They were wicked with their bodies and sinners with their money. With their bodies, as it reads [ibid. xxxix. 9]: "How then can I do this great evil and sin against God?" and sinners with their money, as it reads [Deut. xv. 9]: "It will be sin in thee." Before

the Lord means blasphemy. "Exceedingly"--all their sins were intentionally. In a Boraitha it was taught the reverse: wicked with their money, as it reads [ibid., ibid. 9] "And thy eye be thus evil against thy needy brother," and sinners with their bodies [Gen. xxxix. 9]: "And sin against God." "Before the Lord" means blasphemy, and "Exceedingly" means bloodshed, as it reads [II Kings, xxi. 16] "And also innocent blood did Menasseh shed exceedingly." The rabbis taught: The men of Sodom were exalted because of the overflowing goodness of the Lord. Concerning them it reads [Job, xxviii. 58]: "The earth out of which cometh forth bread, is under its surface turned up as it were with fire. Her stones are the place whence the sapphire cometh; and golden dust is also there. On the path which no bird of prey knoweth, and which the vulture's eye hath not surveyed," etc. And they said: As our land supplies us with sufficient bread, why shall we leave in travellers who come only to lessen our money? Let our land forget that there is a foot of stranger, as it reads [ibid., ibid. 4]. 1

He said again: It reads [Ps. lxii. 2]: "How long will ye devise mischief against a man? Will ye all assault him murderously, as though he were a falling wall, a tottering fence?" Infer from this that they used to place a wealthy man under a tottering wall and pushed the wall over him, and robbed him of his money.

He said again: It reads [Job, xxiv. 16]: "They break into houses in the dark, in the daytime they lock themselves in: they know not the light." Infer from this that when they saw a wealthy man they used to deposit with him balsam, which usually the depositories placed in their treasure box, and in the night they scent the balsam and rob him. 2

R. Jose lectured the same in Ciporias. And the night after that three hundred burglaries were committed through the smell of balsam, the town-men troubled him, saying: "You have shown a way to the thief." And he answered them: How could I know that all of you are thieves?

The following was enacted in Sodom. He who possessed one ox had to pasture all the cattle of the city one day, but he who possessed none at all had to pasture them two days. There

was an orphan, the son of a widow, to whom they gave their oxen to pasture, and he killed them, saying: Who has one ox shall take one skin, and he who has none at all shall take two skins. And to the question: What is this? he said to them: The final trial must be at the beginning of it. You enacted that he who has one ox shall pasture them one day, and he who has none at all shall pasture them two days. The same is the case with the skins.

He who passed the river on a boat had to pay one zuz. And he who passed the river on foot had to pay two. If one had a row of bricks, every one of them came and took one, saying: I am not causing you any damage by taking one. The same they used to do when one scattered garlic or onions to dry. There were four judges in Sodom. Every one of them had a name which meant false, lie, etc. If it happened that one struck a woman and she miscarried, they used to decide that the woman should be given to the striker, and he shall return her when she will be pregnant again. If it happened that one cut off the ear of his neighbor's ass, they used to decide that the ass should be delivered to the striker, till it shall be cured. If one wounds his neighbor, they decided that the striker shall be paid for bleeding him. He who passed the river on a bridge had to pay four zuz. And he who passed it with one foot had to pay eight zuz. It happened once that a washer came there and they required of him four zuz. And to his claim that he had passed the water on foot, they required eight. And because he didn't pay they wounded him, and when he came to the judge, he decided that he shall pay for bleeding and eight zuz for passing the water.

Eliezar, the servant of Abraham, happened to be there, and was wounded, and when he came to the judge to complain he said: "You must pay for bleeding." And he took a stone and wounded the judge, saying: The payment for bleeding which you owe to me pay them, and my money shall remain with me. They made a condition that he who invites one to a wedding shall be stripped of his garments. There was a wedding at the same time Eliezar happened to be in the city, and none of them wanted to sell him any bread for a meal. He then went to the wedding and took a place at the very end of the table. And when he was asked who had invited him, he said to him who was sitting near by, Thou hast invited me. And for fear that they will believe that he has invited him and that he will be

stripped of his garment, he hurried to take his mantle and run away. And so he did to the remainder, and they all ran away, and he ate the whole meal. They had a bed for strangers. If he

was too long for this bed they made him shorter, and if too short they stretched him. When Eliezar was there they told him to sleep in the bed, to which he answered: Since my mother is dead I vowed not to sleep in a bed. When a poor man happened to be there every one used to give him a dinar, on which his name was engraved, but they did not sell him any bread until he died. And then each one took his dinar back. There was a girl who used to supply a poor man with bread, which she used to hide in a pitcher while going for water. And when this was found out they smeared her body with honey, put her on the roof of the surrounding wall, and bees came and killed her, and this is what it reads [Gen. xviii. 20]: "Because the sin against Sodom and Gomorrah is great," etc.

"*Spies . . . and the congregation of Korah*," etc. The rabbis taught: The congregation of Korah has no share in the world to come, as it reads: "And the earth covered them "in this world, and "they disappeared from the midst of the congregation"--in the world to come. So R. Aqiba. R. Jehudah b. Bathyra said: They are as a lost thing for which the loser inquires, as it reads [Ps. cxix. 176]: "I have gone erringly astray, like a lost sheep; seek thy servant, for thy commandments have I not forgotten." It reads [Num. xvi. 1]: "And Korah took (*vayikah*)." Said Resh Lakish: He purchased for himself a very bad undertaking. "Korah" means, he has made Israel bald-headed. "Ben Yizhar," he who made the world hot as in the middle of the day. "Ben Kehath," he who made blunt the teeth of his parents. "Ben Levi," he who became a companion to the Gehenna. But why is not also written "ben Jacob"? Said R. Samuel b. Itz'hak: Jacob prayed [Gen. xlix. 6]: Unto their secret shall my soul not come," means the spies. Unto their assembly my glory shall not be united," means the congregation of Korah. Rabh said: "The wife of On ben Peleth" saved him from being among the congregation of Korah. She said to him: What is the difference to you? If Moses will be master, you are only a disciple, and the same will be for you if Korah will be the master. And to his answer: What shall I do, I was with them in consultation, and swore to take part with them? she said: I know that the whole congregation is holy, as it reads [Num. xvi. 3]:

[paragraph continues] "For the whole of the congregation are all of them holy;" remain in your house and I will save you. She made him drink wine to intoxication, and she made him sleepy in the house, and she herself sat outside at the entrance of the house, uncovered her head and dishevelled her hair. And every one coming to his house, to call upon On, when he saw the uncovered head of the woman, he returned. She, however, continued to sit there, till the congregation was swallowed. On the other hand, the wife of Korah said to him: See what Moses did. He proclaimed himself as a king, his brother he made high-priest, the sons of his brother for adjuncts of the high-priests. Heave-offering he commanded to give to the priests, and even from tithes, which are for the Levites, he commands to give again one-tenth to the priest. And not only this, he made of you fools by commanding all the Levites to shave off all their hair. And to his answer: He himself also did so, she said: As all the glory belongs to him, he does not care, etc. And this is what it reads [Prov. xiv. 1]: "The wise among women buildeth her house"--the wife of On ben Peleth. But the foolish pulleth it down with her own hands--the wife of Korah.

It reads farther on [Num. xvi. 2]: "So that they rose up before Moses, with certain men of the children of Israel, in number two hundred and fifty"--the distinguished of the congregation. "Called to the assembly"--who were able through their wisdom to intercalate months and establish leap years. "Men of renown"--whose name was renowned through all the world. "And Moses heard it, and fell upon his face." What had he heard? Said Samuel b. Na'hman in the

name of R. Jonathan: That they suspect him of adultery, as it reads [Ps. cvi. 16]: "Moreover, they envied Moses."

"And Moses went to Dathan and Abiram." Said Resh Lakish: Infer from this that one must do all that he can not to strengthen a quarrel (as he himself who was a king went to Dathan and Abiram [Num. xvi. 25]). As Rabh said: He who strengthens a quarrel transgresses a negative commandment. [Ibid. xvii. 5]: "That he become not as Korah and as his company." R. Ashi said: Such is worthy to be punished with leprosy, as here it reads "by the hand of Moses," and [Ex. iv. 6]: "And he put his hand into his bosom, and when he took it out, behold, his hand was leprous, white as snow."

R. Jose said: He who fights against the kingdom of David deserves to be bitten by a snake, as [I Kings, i. 9]: "By the

stone Zoheleth," and [Deut. xxxii. 24]: "With the poison of *Zochle aphar* (serpents)."

R. Hisda said: He who quarrels with his master is considered as if he would quarrel with the Shekhina, as it reads [Num. xxvi. 9]: "At the time they quarrelled against the Lord." R. Hama b. Hanina said: He who has a controversy with his master is considered as if he would do so against the Shekhina, as it reads [ibid. xx. 13]: "These are the waters of Meribah, where the children of Israel quarrelled with the Lord." And R. Hanina b. Papa said: He who murmurs against his master is considered as if he would do so against the Shekhina, as it reads [Ex. xvi. 8]: "Not against us are your murmurings, but against the Lord." And R. Abuhu said: Even one whose thoughts are against his master is considered as if his thoughts would be against the Shekhina, as it reads [Num. xxi. 5]: "And the people spoke against God and against Moses."

It reads [Eccl. v. 12]: "Riches reserved for their owner to his own hurt." Said Resh Lakish: This means the riches of Korah. It reads [Deut. xi. 6]: "And all . . . on their feet." [1] Said R. Elazar: It means the money which makes one stand on his feet. And R. Levi said: The keys of Korah's treasure were of such a weight that three hundred white mules had to carry them. R. Hama b. Hanina said: Three treasures were hidden by Joseph in Egypt, one was found by Korah, and the second by Antoninus ben Arsirus, and the third is still hidden for the upright in the future. R. Johanan said: Korah was not from those who were swallowed and not from those who were burned. Not those from who were swallowed, as [Num. xvi. 32]: "And all the men that appertained unto Korah," but not Korah himself. And not from the burned. [Ibid. xxvi. 10]: "The fire devoured the two hundred and fifty men, but not Korah." In a Boraitha, however, it is stated that Korah was both burned and swallowed. "Swallowed," as in the just-cited verse, "And swallowed them up together with Korah," and "burned," as [ibid. xvi. 35]: "And there came out a fire . . . and consumed two hundred and fifty," and Korah was among them.

Rabha said: It reads [Habakkuk, iii. 1]: "At the light of thy arrows they walked along." Infer from this that the sun and the moon ascended to Zebul (one of the seven heavens

mentioned elsewhere), and said: Lord of the Universe, if thou wilst take revenge for Ben Amram

we will go out to our work, and if not, we will not. And they were standing until he shot arrows at them, saying, When my own glory is affected (by that People are worshipping ye) ye did not protest; and for the honor of a being of blood and flesh ye do.

Rabha lectured [Num. xvi. 30]: "But if the Lord do create a new thing, and the earth open her mouth." Moses said before the Holy One, blessed be He: If such is already created, well and good, but if not, the Lord shall create. Shall create! Does it not read [Eccl. i. 9]: "And there is nothing new under the sun"? to bring the opening of the Gehenna near to them.

It reads [Num. xxvi. 11]: "But the sons of Korah did not die." In the name of Rabbi it was taught: A place was prepared for them in Gehenna, in which they sat and sung a song. (Here is repeated Rabba b. b. Hana's legend from Last Gate, p. 206, concerning the children of Korah.)

"*The generation of the desert has no share*," etc. The rabbis taught (in addition to the verse cited in the Mishna) [Ps. xcv. 11]: "So that I swore in my wrath, that they should not enter into my rest." So R. Aqiba. R. Eliezar, however, said they have a share, as it reads, "Gather unto me my pious servants." And the verse "I swore in my wrath" is therefore to be explained: I retract from it because it was sworn while I was in anger. R. Jehoshua b. Karha said: The verse cited by R. Eliezar was said only for the future generations. "Gather together unto me my pious servants," means the righteous which are to be found in every generation. "Who make a covenant," means Hanania, Meshael and Asaryah, who delivered themselves to the caldron. "By sacrifice," means R. Aqiba and his colleagues, who had delivered themselves to be slain because of the words of the Torah. R. Simeon b. Menasia said: They will have a share in the world to come, as it reads [Isa. xxxv. 10]: "And come to Zion with song!" Said Rabba b. b. Hana in the name of R. Johanan: R. Aqiba's saying is against his piety, as it reads [Jer. ii. 2]: "I remember unto thee the kindness of thy youth, the love of thy espousals, thy going after me in the wilderness, through a land that is not sown." Hence we see that from their reward even their descendants will be benefited, so much more they themselves.

MISHNA *III.*: The ten tribes who were exiled will not be returned, as it reads [Deut. xxix. 27]: "And he cast them into

another land, as this day." As that day will not return, so will they not return. So R. Aqiba. R. Eliezar said: As this day means as usually a day becomes clouded and thereafter lights up again, so the ten tribes, who are now in darkness, the future will lighten upon them.

GEMARA: The rabbis taught: The ten tribes have no share in the world to come, as it reads: "And the Lord plucked them out of their land of anger, and in wrath and in great indignation," means in this world, "and he cast them into another land," means in the world to come. So R. Aqiba. R. Simeon b. Jehudah, the head of the village of Aku, said in the name of R. Simeon: If their acts will be as on that day, they will not return, but if they will repent, they will. Rabbi, however, said: They will have a share in the world to come, and they will return, as it reads [Isa. xxvii. 13]: "And then shall come those who are lost in the land of Asshur," etc. Said Rabba b. b. Hana in the name of R. Johanan: R. Aqiba's saying is against his piety, as [Jer. iii. 12]: reads: "Go and proclaim these words towards the north, and say, Return, thou backsliding Israel, saith the Lord; I will not cause my anger to fall upon you, for I am full of kindness, saith the Lord, I

will not bear grudge forever." What is the kindness? As in the following Boraitha: The minors of the wicked of Israel will not have a share in the world to come, as it reads [Malachi, iii. 19]: "For behold, the day is coming which shall burn as an oven; and all the presumptuous, yea, and all who practice wickedness shall be stubble; and the day that is coming shall set them on fire, saith the Lord of hosts, who will not leave them root or bough." "Root," in this world, and "bough," in the world to come. So Rabban Gamaliel.

R. Aqiba, however, said: They will have a share in the world to come, as it reads [Ps. cvi. i]: "The Lord preserveth *pethayim* (fool)." And in the countries of the sea (Arabia), a child is called pathia. And also [Dan. iv. ii and 12]: "Hew down the tree and lop off its branches, strip off its leaves and scatter its fruit; let the beasts flee away from under it, and the fowls from among its branches. Nevertheless leave the body of its root in the earth." But what is meant in the former verse, and "he shall not leave them a root or bough"? It means that he shall not leave one commandment or a part of it which they will observe unrewarded, however they will be rewarded for it in this world, but will have no share in the world to come. Another

explanation, "root" means the soil, and "bough" the body. However, the minors, children of idolaters, all agree that they will not have a share in the world to come.

It was taught: From what age has a minor a share in the world to come? R. Hyya and R. Simeon b. Rabbi differ. According to one, immediately after birth, and according to the other, from the time he commences to speak. The former infers it from [Ps. xxii. 32]: "Will tell his righteousness to a people just born," and the latter infers it from the previous, "Sera (children) shall serve him; there shall be related of the Lord unto future generations."

It was taught: Rabhina said: From the time he is formed; and R. Na'hman b. Itz'hak said: From the time he was circumcised, as it reads [Ps. lxxxviii. 16]: "I am inflicted and perishing from my youth up." There is a Boraitha in the name of R. Mair: From the time he can answer "Amen," as it reads [Isa. xxvi. 2]: "Open ye the gates, that there may enter in the righteous nation which guardeth the truth (*amunim*). Do not read *amunim*, but *amen*. What is meant by "amen"? It is an abbreviation of *El melech neman* (literally, God, King of Truth).

It reads [Isa. v. 14]: "Therefore hath the deep enlarged her desire, and opened her mouth without measure (*chok*)." Said Resh Lakish: It means him who failed to perform even one (*chok*) law of the Torah. Said R. Johanan to him: Your saying is not satisfactory to their creator. Say the reverse, even he who has studied but one law does not belong to the Gehenna.

[Zech. xiii. 8]: "And it shall come to pass that in all the land, saith the Lord, two parts (of those) therein shall perish, but the third part shall be left therein." Said Resh Lakish: It means a third of Shem's descendants. And R. Johanan said to him: Your saying is not satisfactory for their Lord. And even if you should say: A third of Noah's children will remain and two-thirds will be destroyed, it would also not satisfy Him, but it means one-third of the wicked will remain. [1]

[Jer. iii. 14]: "I will take you one of a city and two of a family, and bring you to Zion." Said Resh Lakish: It means

literally. And R. Johanan said again to him: Their Lord is not pleased with such an interpretation, but it means one righteous in a city saves the whole city, and two from a family save the whole family. And the very same said Rabh to R. Kahana when he was sitting before him interpreting the just-cited verses literally.

Rabh saw R. Kahana washing his head and improving his complexion, and thereafter came to study in Rabh's college. And he read to him [Job, xxviii. 13]: "And she is not to be found in the land of the living." And to the questions of R. Kahana: Do you caution me? he replied: I only tell you the interpretation of this Passage. The Torah cannot be found with him who adorns himself before studying.

There is a Boraitha: R. Simai said: It reads [Ex. vi. 7]: "I will take you to me as a people," and (ibid. 8): "I will bring you in unto the land." The Scripture compares their exodus from Egypt to the coming in their land. As in entering the land only two from six hundred thousand who made their exodus from Egypt, viz., Joshua and Kaleb, had entered, but all others from the age of twenty to sixty died in the desert, so also from those who made their exodus from Egypt were only two from every six hundred thousand, notwithstanding that they numbered six hundred thousand.

Said Rabha: And so it will be in the time of the Messiah, as it reads [Hosea, ii. 17]: "She shall be inflicted there, as in the days of her youth and as on the day of her coming up out of the land of Egypt."

There is a Boraitha: R. Elazar b. Jose said: It happened once that I was in Alexandria of Egypt, and I found a certain old Gentile who said to me: Come, and I will show you what my great-grandfathers have done to yours. A part of them they threw in the sea, a part they slew with the sword and a part they have crushed in the buildings. Says the Gemara: And for this evil Moses, our master, was punished, as it reads [Ex. v. 23]: "He hath done more evil to this people." To which the Holy One, blessed be He, answered: Woe for those who are lost, as such are not to be found now. Several times I have revealed myself to Abraham, Isaac, and Jacob by the name Almighty God, and they have never thought against my retribution, and did not question me for my proper name. I said to Abraham [Gen. xiii. 17]: "Arise, walk through the land in the length of it and in the breadth of it, for unto thee will I give

it." And thereafter when he was searching for a grave for his wife Sarah, he could not get it until he bought one for four hundred silver shekels, and, nevertheless, his thoughts were not against my retribution. I said to Isaac [ibid. xxvi. 3]: "Sojourn in this land, and I will be with thee and bless thee," and thereafter when his bondmen wanted to drink water they could not get it without quarrel, as [ibid., ibid. 20]: "And the herdsmen of Gerar did strive with Isaac's herdsmen, saying, The water is ours," and he also had no thought against my retribution. I said to Jacob [ibid. xxviii. 13]: "The land whereon thou liest, to thee will I give it," and thereafter when he wanted to spread a tent for himself, he could not get it until he paid a hundred kessitah, and his thoughts were not against my retribution and he did not ask for my proper name. Thou, however, first hast asked for my proper name, and now thou sayest to me [Ex. v. 23]: "Thou hast in nowise saved thy people." And therefore [ibid. vi. 1]: "*Now* shalt thou see what I will do to Pharaoh,"

but thou wilst not live to see the war with the thirty-one kings in the time of Joshua.

It reads [ibid. xxxiv. 8]: "And Moses made haste, and bowed his head." What had he seen that he bowed himself? R. Hanina b. Gamla. said: He saw the words "long-suffering." And the rabbis say: He saw the word "truth." There is a Boraitha in accordance with him, who said he had seen long-suffering, viz., When Moses ascended to heaven, he found the Holy One, blessed be He, writing the words "long-suffering." And he said before Him: Lord of the Universe, does this mean long-suffering for the righteous ones? And he was answered: Even for the wicked. And to Moses' exclamation: May the wicked be lost! he answered: In the future thou wilst see that my previous words will be necessary for thee. Thereafter when Israel sinned, the Lord said to Moses: Didst thou not say long-suffering for the righteous? And Moses said before Him: Lord of the Universe, but hast Thou not said to me also to the wicked"? And to this it is written [Num. xiv. 17]: "And now, I beseech thee, let the greatness of the power of the Lord be made manifest as *Thou* hast spoken."

R. Hagga, ascending the steps of the school of Rabba b. Shila, heard a child saying [Ps. xciii. 5]: "Thy testimonies are exceedingly steadfast. In thy house abideth holiness, O Lord, to the utmost length of days." And immediately he began [ibid. xc. 1]: "A prayer of Moses." And he then

said: I infer from this that Moses has seen the words "long-suffering."

R. Elazar, in the name of R. Hanina, said, etc. (Here is repeated from Tract Megilla, p. 38, line 23 to p. 39, line 3: However, here is some change at the end of the paragraph which is unimportant.)

[1]It reads [Isa. viii. 12]: "Call ye not a conspiracy all that this people may call a conspiracy." What conspiracy does it mean? The conspiracy of Shebna, as his college had thirteen great men, and Hiskia's college had only eleven. When Sanherib came to attack Jerusalem, Shebna wrote a note that he and his society are willing to make peace, however Hiskia and his society are not. And this note he put in an arrow and shot it into the camp of Sanherib, as it reads [Ps. xi. 2]: "For lo, the wicked bend their bow, they arrange their arrow upon the string." And Hiskia was afraid, that perhaps the inclination of Heaven will be towards the majority, whose desire was to deliver themselves to the enemy. The prophet then came to him, saying: "Call ye not a conspiracy," etc., *i.e.*, this conspiracy is wicked, and a conspiracy of the wicked is not counted. The same Shebna wanted also to hew out a cave for a grave for himself among the kings of David's house, and this is what the prophet said to him [ibid., ibid. 16 and 17]: "What hast thou here? and whom hast thou here, that thou hast hewn out for thyself here a sepulchre? . . . Behold, the Lord will thrust thee about with a mighty throw. Oh, man!" Said Rabh: From this is to be inferred that travelling is harder for a man than for a woman, as, from the expression of the last word of this verse, R. Jose b. Hanina infers that Shebna was punished with leprosy, as the same expression is to be found concerning leprosy [Lev. xiii. 45].

"He will roll thee up as a bundle, and (toss thee) like a ball into a country of ample space." There is a Boraitha: His (Shebna's) desire was to disgrace the house of his master, and therefore his own honor was turned over to disgrace, for when he came out to Sanherib with his society, Gabriel shut the door in the face of his society. And when Sanherib questioned him: Where is

thy society? he answered: They have retracted. Exclaimed Sanherib: I see thou hast ridiculed us. And they bored holes in his heels, tied them to the tails of their horses, and dragged his body over thorns.

In the interpretation of [Ps. xi. 3]: "For (if) the foundations be torn down, what would the upright do?" R. Jehudah and R. Eina differ. According to one it means, if his kin and his association would be destroyed, how would the promise of the Lord be? And according to the other, should the Temple be destroyed by Sanherib, in accordance with the advice of Shebna, what would become of the wonderful miracles of the Lord? And according to Ula, this passage is to be explained negatively. If the thoughts of that wicked (Shebna) would not have been destroyed, what would have become of the upright, Hiskia? It is correct, the explanation of Ula, and of him who explains the word "foundation" to mean the Temple, as according to the former, it means the previous verse (2) which was the basis of his thoughts. And also concerning the Temple we found in Mishna, which states that a stone was placed in the Temple from the time of the first prophets, with the name *shethiha* (foundation). But he who explains the passage to mean Hiskia and his society, where is to be found that by the word foundation the upright are meant? [I Sam. ii. 8]: "For the Lord's are the pillars of the earth, on which he hath set the world." "Pillars" are the upright, "on which he hath set"--the foundation.

1The rabbis taught: Man was created on the eve of Sabbath. And why? The Minnim shall not say that he was a partner to the Lord, in the creation of the world. Another explanation is, if a man becomes haughty it may be said to him: At the time of creation even a fly was created before thou wert. Still another explanation is that his first act should be meritorious, in keeping the Sabbath, and also he shall partake of the Sabbath meal immediately. This is similar to a human king who built a palace, accomplished it, prepared a banquet and thereafter invited guests, as it reads [Prov. ix. 1-4]: "Wisdom hath built her house; she hath hewn out her seven pillars. She hath killed her cattle; she hath mingled her wine; she hath also set in order her table. She hath sent forth her maidens; she invited (her guests) upon the top of the highest places of the town." "Wisdom hath built her house"--it is one of the divine affairs of the Holy One, blessed be He, who has created the whole world with wisdom. "Seven pillars"--"the seven days of the creation." Killed her cattle," etc.--

means the seas, the rivers, and all what was necessary for the world. "She sent forth her maidens"--Adam and Eve upon the top of the highest places.

Rabba b. b. Hana propounded a contradiction from ibid. 3, which reads, "on the top of the height," to ibid. (14), on the chair in the high places. And he himself answered: First they were placed on the top, and thereafter on a chair. "Void of sense," the Holy One, blessed be He, said: Who made a fool of Adam the first? The woman who told him, etc., as it reads [ibid. vi. 32]: "Whoso committed adultery with a woman lacketh sense." There is a Boraitha: R. Mair used to say: From the whole world was gathered the earth, from which Adam the first was created, as it reads [Ps. cxxxix. 16]: "My undeveloped substance did thy eyes see." R. Oshia said in the name of Rabh: The body of Adam the first was taken from Babylon, his head from Palestine, and all other members, hands, feet, etc., from all other countries, and the earth for his rump, said R. Aha, was taken from Akra of Agma. R. Johanan b. Hanina said: A day consisted of twelve

hours, the first hour the earth for his creation was gathered, the second hour it became an unformed body, and in the third his limbs were shaped; in the fourth the soul entered the body, in the fifth he arose on his feet, in the sixth he named all his beasts and animals, in the seventh Eve was brought to him, in the eighth they went to bed, two persons, and four persons came out of it; in the ninth he was commanded not to eat of the tree, in the tenth he sinned, in the eleventh he was tried, and in the twelfth he was driven out of the Garden of Eden, as it reads [Ps. xlix. 13]: "And Adam though in his splendor endureth not."

R. Jehudah said in the name of Rabh: At the time the Holy One, blessed be He, was about to create a man, He created a *coetus* of angels, and said to them: Would ye advise me to create a man? And they asked Him: What will be his deeds? And He related before them such and such. They explained before Him: Lord of the Universe, what is the mortal, that Thou rememberest him, and the son of men, that Thou thinkest of him? [Ps. vii. 5]. He then put His little finger among them and they were all burnt. And the same was with the second coetus. The third one, however, said before Him: O Creator of the world! the first angels who protested, did they effect? The whole world is Thine, and all what it is pleased before Thee Thou mayest do. Thereafter at the time of the generation

of the flood and the generation of dispersion whose deeds were criminal, the same angels said before Him: Creator of the Universe, were not the first angels right with their protest? And He answered: "And even unto old age I am the same, and even unto the time of hoary hairs will I hear" [Isa. xlvi. 4].

R. Jehudah said again in the name of the same authority: Adam the first was from one end of the world to the other, as it reads [Deut. iv. 32]: "Since the day that God created Adam upon the earth, and from the one end of the heavens unto the other end." After he had sinned, the Holy One, blessed be He, laid His hand upon him and reduced him [Ps. cxxxix. 5]. "Behind and before hast Thou hedged me in, and Thou placest upon me Thy hand." R. Elazar said: Adam the first was tall from the earth to the sky, as the above cited verse: "The day Adam was created upon the earth and to one end of the heaven." And when he sinned He laid His hand upon him, and diminished him, as the cited verse [Ps. cxxxix.] reads.

R. Jehudah said again in the name of Rabh: Adam the first spoke with the Aramaic language, as [ibid., ibid. 17]: "And how precious are unto me thy thoughts," and the terms in the original Psalm are Aramaic. And this is what Resh Lakish said: It reads [Gen. v. 1]: "This is the book of the generation of Adam." Infer from this that the Holy One, blessed be He, showed to Adam every generation with its scholars, every generation with its lecturers. And when Adam saw the generation of R. Aqiba, he was pleased with his wisdom, but was dejected seeing his death, and said: "How precious are unto me thy thoughts."

The same said again in the name of the same authority: The Minnim [1] of this generation say that Adam the first was also of their sect. And they infer it from [Gen. iii. 9]: "And the Lord God called unto Adam and said unto him: Where art thou?" *i.e.*, to what is thy heart inclined?

Said R. Johanan: Every place where the Minnim gave their wrong interpretation, the answer of annulling it is to be found in the same place--*e.g.*, they claim from [Gen. i. 26]: "Let us make

man." Hence it is in plural. However, in [ibid. 271 it reads: "And God created man in his image" (singular). [Ibid. xi. 7]: "Let *us* go down" (plural); however,

[paragraph continues] [ibid., ibid. 5]: "And the Lord came down" (singular). [Ibid. xxxv. 7]: "And there God appeared" (the term in Hebrew is plural); however [ibid., ibid. 3]: "Unto the Lord who answered me" (singular). [Deut. iv. 7]: "For what great nation is there that hath gods so nigh unto it?" However, it reads farther on, "as is the Lord our God every time we call upon *him*." [II Lam. vii. 23]: "Which God went?" (the term in Hebrew is plural). However [Dan. vii. 9]: "I was looking down until chairs were set down, and the Ancient of days seated himself" (singular). But why are all the above-mentioned written in plural? This is in accordance with R. Johanan, who said elsewhere that the Holy One, blessed be He, does not do anything until he consults the heavenly household, as it reads [ibid. iv. 14]: "Through the resolve of the angels is this decree, and by the order of the holy ones is this decision." However, this answer is for all the plurals mentioned, except the last one, "the chairs." Why are they in plural? One for Him and one for David. So R. Aqiba in a Boraitha. Said R. Elazar b. Azaryah to him: Aqiba, how do you dare to make the Shekhina common? It means one chair for judgment and one for mercy. Did Aqiba accept this, or not? Come and hear the following Boraitha: One for judgment and one for mercy. So R. Aqiba. Said R. Elazar b. Azaryah to him: Aqiba, what hast thou to do with Haggada? Give thy attention to Negain and Ohaloth. It means one for a chair to sit upon and one for a footstool.

Said R. Na'hman. He who knows to give a right answer to the Minnim like R. Aidith may discuss with them, but he who is not able to do so, it is better for him that he discuss not with them at all. There was a Min who said to R. Aidith: It reads [Ex. xxiv. 1]: "Come up unto the Lord." It ought to be, "Come up to me." (And when God said to him: Come up to the Lord, there must be one lord more?) And he answered: That is the angel Mattatron (name of the chief of the angels) about whom ibid. xxiii. 20 speaks, as he bears the name of his master [ibid., ibid. 21]: "Because my name is in him." If so, rejoined the Min, let us worship him. It reads, ibid., ibid., ibid., *al tamer be*, and this term means also "exchange." Hence it means thou shalt not exchange him for Me.

Said the Min again: But does it not read "he will not pardon your transgression"? And Aidith answered: Believe me, that even as a guide we refused to accept him, as it reads

[paragraph continues] [ibid. xxxiii. 15]: "If thy presence go not (with us), carry us not up from here."

A Min asked Ismael b. R. Jose: It reads [Gen. xix. 24]: "And the Lord rained upon Sodom and Gomorrah brimstone and fire. From the Lord," etc. From the Lord! It ought to be from Him (hence there was one more lord). And a certain washer said to Rabban Gamaliel, Let me answer him. It reads [Gen. iv. 23]: "And Lemech said unto his wives, Adah and Zellah, Hear my voice, ye wives of Lemech," etc. Wives of Lemech! "My wives," it ought to be? You must then say that so is it customary in the language of the verse, the same is the case here. And to question of R. Ismael to the washer: Whence do we know this? he answered: From the lectures of R. Mair. As R. Johanan used to say, R. Mair's lectures consisted always of a third Halakha, a third Haggadah, and the last third parables. And he said also: From R. Mair's three hundred fox fables we have only three: (*a*) [Ezek. xviii. 2]: "The fathers have eaten sour grapes, and the teeth of the

children have become blunt;" (*b*) [Lev. xix. 36]: "just balances, just weights," and (*c*) [Prov. xi. 8]: "The righteous is delivered out of distress, and the wicked cometh in his stead." 1

There was an atheist who said to Rabban Gamaliel: Your God is a thief, as it reads [Gen. ii. 21]: "Lord God caused a deep sleep . . . and he slept; and he took one of his ribs." Said R. Gamaliel's daughter to him: Let me answer him. And she said to him: Would you assist me to take revenge on a thief

who robbed me this night, by stealing a silver pitcher, however he left a golden one instead? And he said to her: I would like that such thief would come to me every day. Then she said: Was it not better for Adam that one bone was taken from him, and in its stead was given a woman to him, who shall serve him? Rejoined the atheist: I mean why stealing; could He not take it from Adam when he was awake? She then took a piece of meat, put it in glowing ashes, and when roasted took it out and gave it to him to eat. To which he said: It is repulsive to me. Rejoined she: Eve would also have been repulsive to Adam if he could have seen how she was formed.

The same atheist said to Rabban Gamaliel: I am aware of what your God is doing now. R. Gamaliel sighed deeply. And to the question: Why are you sighing? he said: I lost every information of my son who is now in the sea countries. Can you perhaps assist me by informing me where he is? And he rejoined: Where shall I know this from? Rejoined Rabban Gamaliel: You don't know what is in this world, and you claim to know what is in heaven?

At another time the same said to Rabban Gamaliel: It reads [Ps. cxlvii. 4]: "Who counted the number of the stars," etc. What prerogative is this? I also can do this. R. Gamaliel took some grain, put it in a sieve, and while straining told him to count the grain. And he rejoined: Let the sieve stand and I will count it. Rejoined R. Gamaliel: The stars are also always moving. According to others R. Gamaliel answered him: Can you tell me how many teeth are in your mouth? And he put his hand in his mouth and began to count them. Rejoined R. Gamaliel: You are not aware of the number of teeth in your mouth, and you claim to know how many stars there are in heaven?

A Min said to R. Gamaliel: He who created the mountains has not created the wind, as it reads [Amos, iv. 13]: "He that formed the mountains and created the wind." And he answered: If so, then concerning a man, of whom it reads [Gen. i. 27]: "And God created," and [ibid. ii. 7]: "And the Lord God formed," should also mean that he who has formed has not created, and *vice versa*. There is in the body of man one span square, in which two holes are to be found--one in the nose and one in the ear. It must be also that he who created one of them did not create the other, as it reads [Ps. xciv. 9]: "He that hath planted the ear, shall he not hear? Or he that

hath formed the eye, shall he not see?" And the Min said: Yea, I am of this opinion. Rejoined Gamaliel: How is it, then, when death comes? Are both creators reconciled, to kill their creation together?

A magician said to Rabban Gamaliel: The lower half of your body is created by *ahermes* (God), but the upper half by Hermes (Mercury). And he answered: If it is so, why does then ahernes leave the dirty water coming from the upper half to pass the lower half?

The Cæsar said to R. Tanhum: Let us unite and be a people of one and the same creed. And he answered: Very well; but we who are circumcised cannot be like your people. However, ye are able to be like us if ye will circumcise yourself. And the Cæsar answered: Your answer is right. However, it is a rule that he who conquers the king must be thrown in the *vivarius* to be devoured by the beasts. He was thrown in the vivarius and was not touched. And there was a Min who said to the king: They did not devour him, because they were not hungry. And they then threw him in the vivarius and he was devoured.

Another atheist said to R. Gamaliel: You say that upon every ten Israelites the Shekhina rests. How many Shekhina have you then? Gamaliel then called the servant of the atheist, struck him with a whip, saying: Why didst thou leave the sun enter the house of your master? His master, however, answered: Every one is pleased with the sun. Rejoined Gamaliel: The sun, which is only one of the hundredth millions servants of the Lord, is pleasant to every one, so much the more the Shekhina of the Holy One, blessed be He, Himself.

A Min said to R. Abuhu: Your God is a jester. He commands Ezekiel to lie on his left side and then on his right side [Ezek. iv. 4-6]: "At the same time a disciple came and questioned him: What is the reason of the Sabbatic year?" And Abuhu answered: I will now say something which will be an answer to both of you. The Holy One, blessed be He, said to Israel: Work up the earth for six years and release the seventh for the purpose that you shall be aware that the earth is mine. However, they did not do so, but sinned, and were exiled. It is custom of a human king if a country has rebelled against him to kill all of them if he is a tyrant, and to kill half of them if he is merciful. But if he is full of mercy he chastises

the leaders only; so was it with Ezekiel, the Holy One, blessed be He, chastised him for the sin of Israel.

There was a Min who said to R. Abuhu: Your God is a priest, as it reads [Ex. xxv. 2]: "Bring Me a *therumah*." Now when He buried Moses where did He dip Himself? (Took the legal bath prescribed for him who touches a corpse.) You cannot say that He did so in the water, as it reads [Isa. xl. 12]: "Who hath measured in the hollow of his hand the waters." And he answered (a joke to a joke): He dipped Himself in fire, as it reads [ibid. lxvi. 15]: "For behold, the Lord will come in fire." And to the question of the Min: Is it legal to dip in fire? he answered: On the contrary, the principal dipping is in fire, as it reads [Num. xxxi. 23]: "And whatsoever doth not come into the fire shall ye cause to go through water."

There was a Min who said to R. Abina: It reads [II Sam. vii. 23]: "And who is like thy people, like Israel, the only nation on the earth?" What is your proudness about? Are you not mingled among other nations, of whom it reads [Isa. xl. 17]: "All the nations are as naught before him"? And he answered: A prophet of nations themselves has testified concerning us [Num. xxiii. 9]: "And among the nations it shall not be reckoned."

R. Elazar propounded a contradiction from [Sam. iii. 25]: The Lord is good unto those that hope in him" to [Ps. cxlv. 9]: "The Lord is good to all"? This question may be answered with the following parable to one who possesses a fruit garden. When he waters it, he waters all of them. And when he hoes to cover tip the roots, he does so only to the best of them, *i.e.*, when He feeds, He feeds the whole world with discriminating, but to save from trouble He helps only those who hope in Him.

It reads [I Kings, xxii. 36]: "And there went a *rinah* (song) throughout the camp." Said R. Aha b. Hanina: This is what is written [Prov. xi. 10]: "And when the wicked perish there is rinah," means when Achab, the son of Omri, perished, there was rinah. Is this so? Is it then pleasant for the Holy One, blessed be He, the ruin of the wicked? Is it not written [II Chron. xx. 21]: "As they went out before the armed array and said: Give thanks unto the Lord; for unto everlasting endureth His kindness"? And R. Johanan said: Why is it not written here: "He is good," as [Ps. cxviii. 1]: Because the Holy One, blessed be He, is not rejoicing over the ruin of the wicked, as

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R. Samuel b. Na'hman said in the name of R. Jonathan: It reads [Ex. Xiv. 20]: "And the one came not near unto the other all the night." At that time the angels wanted to sing their song before the Holy One, blessed be He, but He said to them: "My creatures are sinking in the sea, and ye want to sing." 1

It reads [I Kings, xviii. 3]: "And Rehab called Obadiah, who was the superintendent of the house;--now Obadiah feared the Lord greatly." To what purpose does the passage relate that Obadiah feared the Lord? Said R. Itz'hak: Achab said to him, concerning Jacob, it reads [Gen. xxx. 27]: "The Lord hath blessed me for thy sake." And concerning Joseph it reads [ibid. xxxix. 5]: "The Lord blessed the Egyptian's house for the sake of Joseph." I, however, keep thee and my house is not blessed. Perhaps thou art not fearing God? To this a heavenly voice was heard, saying: Obadiah fears the Lord greatly, but the house of Achab is not fit for blessings. Said R. Abah: It is more conspicuous What is said of Obadiah than of Abraham, as about Abraham it reads, "he feared God," and about Obadiah it adds "greatly." Said R. Itz'hak: For what deeds was Obadiah rewarded with prophecy? Because he hid one hundred prophets in a cave, as it reads [I Kings, viii. 4]: "And it happened when Isabel cut off the prophets of the Lord that Obadiah took a hundred prophets, and hid them fifty in one cave, and provided them with bread and water." Why fifty? Said R. Elazar: He learned this from Jacob, who divided his camp into two parts, for the reason that if it should happen that one would be lost the other would be saved. And R. Abuhu said: Because the cave could not hold more than fifty.

It reads [Ob. i. 1]: "The vision of the Lord . . . concerning Edom." And why? The Holy One, blessed be He, said: Obadiah, who lived among two wicked (Achab and his wife) and did not learn from them, shall prophesy to Esau who lived among two upright (Isaac and Rebecca) and did not learn from them. And Ephraim of Kashaha, a disciple of R. Mair, said in the name of his master: Obadiah was an Edomite proselyte. And this is what people say that the handle of the hatchet to cut the forest is taken from the wood of the same forest. And this also applies to David, who was a descendant of Moab (according to R. Johanan, in the name of Simeon b. Jo'hai), who smote them [II Sam. viii. 2].

It reads [II Kings, iii. 27]: "Then took he his eldest son

that should have reigned in his stead, and offered him for a burnt-offering upon the wall. And there was great indignation against Israel." Rabh and Samuel. According to one, he sacrificed him to Heaven, and according to the other, to an idol. But if to an idol, why was there great indignation against Israel? It is in accordance with R. Jehoshua b. Levi, who propounded a contradiction from [Ez. v. 7]: "According to the ordinances of the nations have ye *not* acted," to [ibid. xi. 12]: "But according to the ordinances of the nations ye have acted." And he himself answered: Ye have not acted according to their good deeds, but ye have acted according to their crimes.

It reads [I Kings, i. 4]: "The maiden was *ad meod* exceedingly." Said R. Hanina b. Papa: She did reach even half the beauty of Sarah, of whom it reads [Gen. xii. 14]: "Behold the woman that she was *very* fair (*meod*).

[1]It reads [Gen. xxii. 1]: "And it came to pass after these things, that God did tempt Abraham," After what? Said R. Johanan in the name of R. Jose b. Senira: After the words of the Satan to those of [ibid. xxi. 8]: "And the child grew, and was weaned," etc. The Satan said before the Holy One, blessed be He, thus: Lord of the Universe, Thou hast favored this old man with an offspring at his hundredth birthday, and from all the great meals which he prepared for the people he did not sacrifice for Thee even one dove or pigeon. And he was answered: Does he not prepare all this only for the sake of his son? If I would tell him to sacrifice his son to me, he will do it immediately. Hence God tempted Abraham.

And He said: "Take *na* thy son," etc. Said. R. Simeon b. Aba: The expression "*na*" means request. This is similar to the fable of a human king who had to fight many wars, and who had one hero who was victorious in all of them. Finally a war was declared to the same king by a king with a very strong army, and he said to his hero: I pray thee be victorious also in this war; people shall not say that the former wars were not worthy of consideration. So the Holy One, blessed be He, said to Abraham: I proved thee with many temptations, and thou withstood all of them. I request thee withstand also this temptation, in order people shall not say that the former were not worthy of consideration. "Thy son." But Abraham said: I have two sons. "Thy only one." But Abraham said: Both

of them are the only ones to their mothers, "whom thou lovest," but I love both of them, even Isaac. And why so many words? For the purpose that he shall not become insane from such a sudden command.

The Satan preceded him on the way, saying [Job, iv. 2-6]: "If we essay to address a few words to thee, wilt thou be wearied? . . . Behold, thou hast (ere this) corrected many, and weak hands thou was wont to strengthen. Him that stumbled thy words used to uphold, and to sinking knees thou gavest vigor. Yet now, when it cometh to thee, thou art wearied; it toucheth even thee, and thou art terrified." And Abraham answered him [Ps. xxvi. 11]: "But as for me, I will walk in my integrity." And the Satan said again: "Is not then thy fear of God a stupidity?" [1] And Abraham answered: Remember . . . whoever perished being innocent. When the Satan saw that Abraham did not listen to him, he said to him [ibid. 12]: "But to me a word came by stealth." I have heard

from behind the paraganda (the heavenly curtains) that the ram will be for a burnt-offering, but not Isaac. Rejoined Abraham: This is the punishment of liars, that even when they tell the truth, nobody believes them.

R. Levi, however, said: The above cited verse "after these things" means after the exchange of words between Ismael and Isaac. Ismael said to Isaac: I am greater than thee in performing the commandments of the Lord, as I was circumcised when I was thirteen years of age, and thou when thou wert only eight days. To which Isaac answered: Thou art proud against me because of only one member of thy body; if the Holy One, blessed be He, should command me to sacrifice my whole body to Him I would do it immediately, hence, "and God has tempted Abraham."

MISHNA *IV.*: The men of a misled town have no share in the world to come, as it reads [Deut. xiii. 14]: "There have gone forth men, Belial, from the midst of thee, and have misled the inhabitants of their city." However, they are not killed, unless the misleaders are from the same city and from the same tribe And also not unless the majority are misled. And the misleaders also must be men; if, however, they were misled by women or minors, or a majority of the city were misled, or the misleaders were outsiders, they are to be considered as

individuals, and each of them must have two witnesses and be forewarned.

There is more rigorousness with individuals than with the majority in that respect, that individuals are to be stoned, therefore their property is saved for their heirs. And the majority are to be decapitated, therefore their property is also lost, as it reads [ibid., ibid. 16]: "Then shalt thou smite the inhabitants of that city with the edge of the sword." A caravan with asses or camels, who are travelling from one place to another, who took their rest in a city which was guilty of idolatry, and the caravan while being there was persuaded and worshipped idols, and counting them to those people of the city who were misled, it will be a majority they save the money of the innocent inhabitants of the city, for the guilty ones are still considered individuals, as the caravan is not counted to complete a majority, as it reads, "Devoting it utterly, and all that is therein, and the cattle thereof, to the edge of the sword" (but not of strangers passing by). From this it was also said that the properties which are found in the city belonging to the innocent individuals are also lost in case the majority were misled, but their properties which are placed outside of the city are saved, while by the property of guilty there is no difference wheresoever it is found it must be destroyed, as it reads [17]: "And all its spoils shalt thou gather into the midst of its main street," etc.

If it happened that the city had no main street, such must be established. If there was one outside of the city, it must be taken in, as it reads, "Thou shalt burn with fire the city, and all its spoil entirely." "Its spoil," but not the spoil belonging to Heaven. From this it was said that if there were some goods belonging to the sanctuary, they are to be redeemed. If there was heave-offering, it must remain till it becomes rotten. Second tithe and books of the Holy Writ must be hidden. "Entirely unto the Lord thy God." Said R. Simeon: The Holy One, blessed be He, said: If ye will take judgment on a misled town, I will consider it as if ye would bring to me a burnt-offering. "A ruinous heap forever" means that from that place gardens and vineyards should not be made. So R. Jose the Galilean. R. Aqiba, however, maintains: It reads: "It shall not be built again," means it shall not be built as it was, but gardens and vineyards may be made from it.

"There shall not cleave to thy hand aught of the devoted things," for

as long as the wicked exist the heavenly anger lasts. And when the wicked perish the heavenly anger ceases.

GEMARA: The rabbis taught: There have gone forth men, but not their messengers. "Men" (plural) no less than two. And according to others "men" and not "women," "men" and not "minors," "sons of Belial," sons who took off the yoke of Heaven from their necks. "From the midst of thee," but not if they were from the boundary. "The inhabitants of their city," but not of another one. "Saying"--infer from this that (if not a majority) witnesses and warning are needed for every one of them. It was taught: When the land was divided among Israel, it was allowed to divide one city for two tribes, according to R. Johanan. Resh Lakish, however, said: It was not. And R. Johanan objected to Resh Lakish from our Mishna: However, they are not guilty unless the misleaders are from the same city and from the same tribe. It is not to be assumed that even if the misleaders were from the same city they are guilty when they were men of their own tribe; hence we see that one city can be divided for two tribes? Nay, it may be said that his share in this city fell to him from an inheritance, or some one had made him a present of it. He objected to him again from [Joshua xxi. 16]: "Nine cities from those two tribes." Does it not mean four and a half for one tribe and four and a half for the other? Hence, one city was divided for two tribes. Nay, it means four from one and five from the other. But if so, let the Scripture say from which tribe five and from which tribe four. This difficulty remains.

The schoolmen propounded a question: How is it if they were misled by themselves without any seducer? Shall we say it reads "and they misled," but not if they were misled by themselves, or there is no difference? Come and hear. Our Mishna states: "If they were misled by women and minors," etc., they are to be judged as individuals. And why? If misled by themselves is the same as by leaders, let the misleading by women and minors be considered as if they were misled by themselves? Nay, these cannot be equalized, for when they were misled by themselves they acted according to their own deliberations, but if they were misled by women and minors, they acted according to the seducer's mind, which was not worthy of consideration.

"Unless the majority was misled." How is it to be done?

[paragraph continues] According to R. Jehudah, when they saw two, three, or more guilty of idolatry, they were tried, sentenced, and kept in prison. And so the others, until they formed a majority of the city, and then they are decapitated and their property destroyed. Said Ula to him: By such an act the prisoners are tortured. And therefore said he in such a case those who are sentenced are also stoned, but their property is not to be destroyed until they number a greater part of the city. And only then if more cases happen they are slain, and the property of all who were executed till now is destroyed.

It was taught: R. Johanan was of the same opinion as Ula. Resh Lakish, however, said that if such a case happened courts who investigate all cases must be increased, and all of them turn it over to the supreme council, who sentences them, and they are then slain.

"*Then shalt thou smite the inhabitants of the city*," etc. The rabbis taught: A caravan with asses or camels, etc. (Here is repeated from Last Gate, p. 19, second line to the seventeenth. See there.)

"*Devoting it utterly*," etc. The rabbis taught: Devoting it and that is therein excludes the property of the innocent which is found out of town, and includes the property of them which is inside of the city.

"*All the spoils*," etc. Includes the property of the guilty, which is outside of the town. Said R. Simeon: Why does the Torah say that the property of the innocent, which is inside of the city, is to be destroyed? Because the reason of their residence in this city was their property, and therefore it must be destroyed. The master said: To include the property of the guilty which is outside. Said R. Hisda: Provided they are near by, so that they can be gathered in on the same day. And he said again: The deposits of a misled town are to be saved. Let us see how was the case. If it was deposited by another city in this city, it is self-evident that they are to be saved, as such deposits do not belong to this city at all. And if the men of this city had deposited in another city, why are they to be saved if they are placed near by, so that they can be gathered together on the same day? And if he speaks of those which are far away and cannot be gathered, why then the repetition, he said it already once? It means deposits of another city which are found in this city, but the depositors took the responsibility for them. And lest one say that in such a case

it is considered as if it would be their own property, he comes to teach us that it is not so.

R. Hisda said again: If there was an animal, a half of which belongs to one city and the other half to one of another city, it is invalid. However, if there was dough, half of which belongs to one of another city, it is valid; because it can be divided it is considered as already divided, which is not the case with a living animal. He (R. Hisda), however, was doubtful if the slaughtering of a cattle from a misled town effects to put it out of the category of a carcass. Shall we assume that "with the edge of a sword" there is no difference; if it was killed or legally slaughtered it is considered as any carcass, or the legal slaughtering effects that it is not so considered, and if one touches it he does not become unclean, while he does by touching other carcasses? This question was not decided.

"*In its main street*," etc. The rabbis taught: If there was no main street, it does not become a misled town. So R. Ismael. R. Aqiba, however, said that if there was none, one must be established. And what is the point of difference? One holds that the Scriptures mean a main street which existed already when it became misled, and the other holds that there is no difference if one existed before or was established after.

"*Belonging to the sanctuary*," etc. The rabbis taught: If there were cattle sanctified to the altar, they must be put to death. Sanctified things for improving the Temple must be redeemed. Heave-offering must be left till it becomes rotten. Second tithe and books of the Holy Writ must be hidden. R. Simeon said: "The cattle thereof," but not cattle of a first-born, and the tenth of cattle (cf. to Lev. xxvii. 30 and 32). "And all that is therein" excludes sanctified money, and money with which tithe is to be redeemed. But why should cattle sanctified to the altar be put to death? Said R. Johanan: Because it reads [Prov. xxi. 27]: "The sacrifice of the wicked is an

abomination." And Resh Lakish said: It speaks of when the owners where they were found responsible for it, and it is then considered as if they would be the property of the owners according to R. Simeon.

The text reads: R. Simeon said: "The cattle thereof," etc. Let us see how was the case. If they were without any blemish it is self-evident, as it belongs to the sanctuary, and if they had a blemish, why then should they be different? Said Rabhina:

[paragraph continues] It speaks of when they were blemished; but "cattle thereof" means those which are consumed in the usual manner of cattle, but not those which were the property of Heaven, and only because of their blemish become the property of men and may be consumed; hence they cannot be considered as property belonging to the city. And he differs with Samuel, who said. An animal which is to be sacrificed when it is without blemish, and redeemed when with a blemish, is excluded from "the cattle thereof." And if it is to be sacrificed while without a blemish, and is not to be redeemed when with a blemish--*e.g.*, a first-born and the tenth of a cattle, it is included in "the cattle thereof."

"*Heave-offering . . . till it become rotten*," etc. Said R. Hisda: Provided the heave-offering was in the hand of the priest already, but if it was still in the hand of an Israelite, it may be given to a priest of another city.

"*The books of Holy Writ*," etc. Our Mishna is not in accordance with R. Elazar of the Boraitha mentioned above (p. 2 11), that even if there was one mezuza it cannot be called a misled town. (See there.)

"*Garden and vineyards*," etc. Shall we assume that the point of their difference is what was said by R. Abin in the name of R. Ilaa: Everywhere you find a general expression in a positive commandment, and the explicit specification to it in a negative commandment, it must not be judged, as in other cases, that there is nothing in the general expression but what is specified in the explicit specification. The one who does not allow to make gardens of it does not hold this theory. And he who allows it holds this theory? Nay, all hold the theory of R. Abin. And the difference of their opinion is the expression "again." According to one "again" means again as it was built, and according to the other "again" means it shall not build for whatsoever. The rabbis taught: If there were uprooted trees, they are invalid, and if they are still attached they are valid. From another city, however, they are invalid even if they were attached. What does "another city" mean? Said R. Hisda: It means Jericho, as it reads [Josh. vi. 26]: "And Joshua adjured (the people) at that time, saying, Cursed be the man before the Lord that will rise up and build this city of Jericho: with his first-born shall he lay its foundation, and with his youngest shall he set up its gates."

There is a Boraitha: Any other city must not be built

under the name of Jericho, and also Jericho shall not be rebuilt under another name, as it reads [I Kings, xvi. 34]: "In his days did Chiel the Bethelite build Jericho; with Abiram, his first-born,

laid he the foundation thereof, and with Segub, his youngest son, set he up the gates thereof." There is a Boraitha: From Abiram, his first-born, this wicked has to learn. What does it mean? Thus: To what purpose is it written that Abiram was his first-born and Segub his youngest son? To learn that he buried all his children, beginning from Abiram, the oldest, to Segub, his youngest son. And this wicked should have learned not to continue the building after burying Abiram. Achab was his friend, and both he and Elijah came to condole Chiel. Said the latter to Elijah: Perhaps Joshua's caution was to those who will rebuild Jericho even under another name, or any other city under the name of Jericho? And Elijah answered: Yea. Said Achab: How can it be supposed that Chiel's troubles were because of Joshua's caution, when even the caution of Moses his master does not effect, as it reads [Deut. xi. 16]: "Take heed to yourselves," etc., " . . . and serve other gods, . . that there be no rain," etc. And I am worshipping idols on every flower bed, and nevertheless rain did not cease to fall. Is it possible that the caution of Moses should not stand good while that of Joshua should? To this it is written [I Kings, xvii. 1]: "Then said Elijah the Tishbite, who was one of the inhabitants of Gilad, unto Achab, As the Lord God of Israel liveth, before whom I have stood, there shall not be in these years dew or rain, except according to my words." He prayed and the key of rain was transferred to him. It reads farther on (3) and (6): "Go away from here . . . and the ravens brought him bread and flesh in the morning." Where did they take it? Said R. Jehudah in the name of Rabh: From the kitchen of Achab. "And it came to pass . . . that the brook dried up," etc. When he saw that the whole world is in trouble he went to Zarephath according to the Heavenly command, and it happened (17) "that the son . . . fell sick," etc. And Elijah prayed again that the key of resurrection shall be given to him. And he was answered: Thou knowest that there are three keys in heaven which are not entrusted to a messenger--the key of birth, of rain, and of resurrection. Now when the key of resurrection shall also be given to thee, thou wilst have two keys and heaven only one. Bring, therefore, the key of rain, and then thou wilt receive

the key of resurrection. And this is what it reads [ibid. xviii. I]: "Go, show thyself to Achab, and I will give rain." A certain Galilean lectured in the presence of R. Hisda: The parable of Elijah, to what is it similar? To one who shut his door and lost the key from it. (So Elijah has shut the door of rain and had to depend upon Heaven.)

R. Jose lectured in Ciporias: Father Elijah is sensitive (hot-tempered), dealing with Achab too severely. Elijah, however, who used to visit R. Jose every day, disappeared for three days. And thereafter when he appeared and was questioned by R. Jose: Why have I not seen the master three days? he answered: Because you called me sensitive. Rejoined R. Jose: Is this not true? Hast not thou, master, become angry because of my expression?

"*As long as the wicked exist*," etc. Whom does it mean? Said R. Joseph: The thieves (who steal from the things which are legally to be devoted). The rabbis taught: With the appearance of a wicked anger comes to the world, as it reads [Prov. xviii. 3]: "When the wicked cometh, then cometh also contempt, and with dishonorable acts disgrace." And when the wicked perish good comes to the world, as it reads [Prov. xi. 10]: "And when the wicked perish there is joyful shouting." When an upright departs from this world evil comes to the world, as it reads [Isa. lvii. 1]: "The righteous perisheth, and no man layeth it to heart: and pious men are taken away without one considering that before the evil the righteous is taken away." And when an upright comes to the world goodness comes with him, as it reads [Gen. v. 29]: "This one shall comfort us concerning our work and the toil of our hands."

END OF TRACT SANHEDRIN, PART II. (HAGGADA),

AND OF VOLUME XVI.

Footnotes

265:1 The explanation of this term, with a difference, is found in the Gemara farther on. It is prohibited to mention the name of Jehovah as it is written, and we read it with the expression "Adonay." see a footnote in Chapter VII. We have to add thereto, that none of the Jews--not even the reformers of that time--dared to mention this Holy Name as it is written, and wherever it was mentioned they read it "Adonay."

267:1 The translation of this verse by the translator of the Bible according to the sense does not correspond. The reason, however, of the Talmud's opinion is because it should read, "Sleep with thy father, and the people will go astray." Hence the word "arise" is superfluous. Furthermore, as it reads, "and arise," it is therefore enumerated among the five verses of which the explanation was doubtful to the most famous Tanaim of the Talmud. These verses are: Gen. iv. 7: The word "sheath," which has two meanings, "atone" and "carry" (the sin)--whether it belongs to its preceding words and the former is the meaning, or to its succeeding words and the latter is the meaning; Ex. xxv. 34: the word "almond-shaped"--whether it belongs to the candlestick or to its succeeding words; ibid. xvii. 9: whether the word "to-morrow," mentioned in this verse, belongs to preceding or succeeding words; Gen. xlix. 7: whether the word "cursed" ends verse 6 (at that time the verses were not as yet marked) or it is the beginning of verse 7 (explained elsewhere); and the verse in question cited, whether the word "ve-qom" belongs to the preceding or succeeding words. This was said by Issi b. Jehudah, the greatest authority among the ancient Tanaim, to whom even the word Rabban was not added, as to Hillel and Shammai. (See Passover, 236, explaining who Issi b. Jehudah was.) And after him no lesser authorities than Rabban Gamaliel and R. Jehoshua b. Chananjah interpreted this verse on the assumption that the word "ve-qom" belongs to its preceding words. Hence, in accordance with our method, we could not omit this strange supposition.

269:1 It is explained elsewhere that the color of its body is like to that of the sea, the body itself like that of a fish, and that it comes out once in seventy years, and also that with its blood the Tkheles were dyed. See also the description of it in S'hönhack's Dictionary.

272:1 Conception in Hebrew is termed "pqiddha," and the term in the verse cited is "up-qudos'ha." Hence the analogy.

272:2 In Leeser's translation of the Bible, which we follow in our edition, there is an error, as the first verse of Jer. xxxi. is misplaced and ought to be the twenty-fifth of xxx., with which it ends, and chap. xxx. begins with: "Thus hath said the Lord." Hence the verse cited is 7, and not 8, as in Leeser.

274:1 The Hebrew term for "people" is "Leum," and for "corn" "bor," and he infers from the

analogy of expression that the latter means the Torah and the former means embryos.

275:1 Leeser's translation does not correspond. It seems also that in the Bible which was before the sages of the Talmud "yorah" had an *h* at the end, as so it is cited, while in our Bibles it ends with an "*a*," and has another meaning.

276:1 Transferred from 37b of this tract.

283:1 The Hebrew term for this is "nabun dabhar"--literally, "understanding things." Leeser, however, took it as "dibur," meaning "talk."

283:2 This passage is not to be found in the Scripture (see footnote in the original, 93b).

284:1 In the text this is inferred from the term "sarissim," which has two meanings--"servants" and "eunuchs"; and [Is. xxxix. 7] in the prophecy to Hiskia it is said that his descendants will be sarissim in the palace of the Babylonian king. Here (lvi. 4) this prophecy was said to the sarissim who would keep the Sabbath; and Daniel was a descendant of Hiskia, and among the sarissim who were taken to Nebuchadnezzar's palace.

290:1 This answer is inferred from the end of the cited passage with a strange interpretation. However, it was impossible for us to translate it, as the Hebrew term "gebin" was translated by Leeser with "locusts," and according to the Talmud it means water-pipes, the source of which is unknown to us. We therefore gave the answer without the reason.

301:1 The Hebrew term for flocks, "eder," and concerning truth, the expression is, "neaderes."

304:1 We do not understand the connection of this passage. And also Rashi, after quoting many commentaries, ignores them, and says that all these legends are not from a Mishna, nor from a Boraitha.

305:1 This of the parenthesis is from the Palestinian Talmud.

306:1 See Samuel Eidles (Mahrsho) about the strange analogy of these two passages. It is remarkable in that the text quotes the verse xxix. 21 after that of xxxii. 14.

308:1 The explanation of this may be found in Samuel Eidles (Marsho).

310:1 Rashi explains this thus: When Israel sins, the power is given to the nations. And therefore when Israel repents, and has to be redeemed, it is hard for Heaven to destroy the enemies because of Israel. (See also Marsho.)

316:1 Translated according to the Talmud.

323:1 An explanation to this you will find in our "Amulets," Charms and Talismans, p. 28.

325:1 Leeser translates Ex. xxxii. 8 *pokdi* and *pokadi* with "will visit," and here he translates the same term with "charge" (by the way, both translations are wrong). The Talmud, however, has its way of saying that the *pokdi* of that verse had ceased p. 327 at that time. It is important that it counts from Moses to Ezekiel twenty-four generations.

329:1 Such a word is not found. However, perhaps it was in the Bible of the author of this saying (see Marsho).

335:1 It is impossible to follow Leeser's translation of the Bible in the Chapter of Haggadah, as the Talmud translates literally.

349:1 See Samuel Eigdus Marsho, who tries to explain why all this is repeated here after it is narrated in the Bible. However, he did not succeed.

352:1 It is a kind of bird unknown to the commentators, as well as to us.

357:1 The translation does not correspond.

357:2 Here is also referred to some passages from the Scripture, but which have no direct bearing, and are therefore omitted.

361:1 Leeser's translation does not correspond.

364:1 Rashi tries to explain this at length, basing it on a Midrash of which we are not aware. And as it is very complicated, he also tries to give his own explanation, but it seems to us still more complicated, and therefore we have translated almost literally.

367:1 Transferred from 26*a*. See also footnote, p. 1.

368:1 Transferred from 38*a*. See footnote at the end of Chap. IV. (p. 1--jbh).

370:1 In accordance with the commentary of Hananel.

372:1 In the text nothing is mentioned of what the fables were. Rashi, however, explains it thus: The fox said to the wolf: If you would go in a Jewish yard on the eve of Sabbath to assist them in the preparation of meals for Sabbath, they would invite you for their best meal on Sabbath day. And when the wolf was severely beaten while doing so, he wanted to kill the fox. He, however, told him, this was because your father in assisting them to prepare their meal, consumed the best of it and ran away. And to his question: Should I be beaten because of my father? he answered: Yea, the fathers have eaten sour grapes, etc. However, if you will follow me I will show you a place where you can eat to satiation, and he led him to a well in which two pails were pulled up and down by means of a rope attached to a beam. And the fox entered in one pail, which dropped down to the bottom. And to the question of the wolf: For what purpose did you enter the pail? he answered: I see here meat and cheese which will be sufficient for both

of us. And he showed him the reflection of the moon on the water, which he mistook for a round cheese, And asking the fox how he can get it, he was told to enter the other pail, which was on top. And as he was heavier than the fox, the pail with the wolf dropped down and that of the fox came on the top. And to the cry of the wolf: How can I come out? he answered: The righteous is delivered out of distress, etc.

376:1 The answer is united.

377:1 Transferred from 89*b*, footnote, p. 1.

378:1 According to the interpretation of the Talmud.

The Babylonian Talmud

Translated by
MICHAEL L. RODKINSON

Section Moed (Festivals)

Tracts Betzh, Succah, Moed Katan, Taanith, Megilla and Ebel Rabbathi or Semahoth

Book 4: Volumes VII. and VIII.

1918

Tract Betzah or Yom Tob (Feast Days)

Tract Succah (Booths)

Trace Moed Katan (Minor Festivals)

Tract Taanith

Tract Megilla (Book of Esther)

Tract Ebel Rabbathi (Great Mourning), or Sema'hoth (Joys).

NEW EDITION

OF THE

BABYLONIAN TALMUD

Original Text, Edited, Corrected, Formulated, and Translated into English

BY

MICHAEL L. RODKINSON

SECTION MOED (FESTIVALS)

TRACTS BETZAH, SUCCAH, AND MOED KATAN

Volume VII.

BOSTON

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[1918]

EXPLANATORY REMARKS.

In our translation we adopted these principles:

1. *Tenan* of the original--We have learned in a Mishna; *Tania*--We have learned in a Boraitha; *Itemar*--It was taught.

2. Questions are indicated by the interrogation point, and are immediately followed by the answers, without being so marked.

3. When in the original there occur two statements separated by the phrase *Lishna achrena* or *Waïbayith Aema* or *Ikha d'amri* (literally, "otherwise interpreted"), we translate only the second.

4. As the pages of the original are indicated in our new Hebrew edition, it is not deemed necessary to mark them in the English edition, this being only a translation from the latter.

5. Words or passages enclosed in round parentheses ( ) denote the explanation rendered by Rashi to the foregoing sentence or word. Square parentheses [ ] contain commentaries by authorities of the last period of construction of the Gemara.

TO

LOUIS STERN, ESQ.

IN RECOGNITION OF HIS MANY PHILANTHROPIC DEEDS AND

VALUABLE SERVICES IN THE CAUSE OF JUDAISM

AND ITS LITERATURE

THIS BOOK IS MOST RESPECTFULLY DEDICATED

BY THE EDITOR

MICHAEL L. RODKINSON

New York, Friday ••• ••••, April 28th, 1899.

TO THE READER.

THIS volume contains three tracts, in order to maintain some uniformity in the size of the volumes, [1] whereas in former issues one subject required three volumes and another one volume, while in two instances each of two volumes treated of two different subjects; viz., three volumes being devoted to subject Sabbath (including Erubin), one volume to Passover, one to the Half-shekels (Shekalim--which were to be given in the beginning of each year) and New Year, one to the Day of Atonement (including also the Holocausts for the Altar). Of the three tracts now presented, Tract Succah treats of the Booth, Palm Branches, Citrons, etc., and specially appertains to the Feast of Tabernacles, the other two treating of the laws and regulations as to festivals in general; viz., Yom Tob (literally "Good Days") of all festivals, including also the New Year and Moed Katan (Minor Festivals) of the middle days between the first and seventh days of Passover and between the first and eighth days of Tabernacles.

As to the treatment of the semi-festivals, viz., Hanukka and Purim--the former is included in Tract Sabbath, Volume I., and the latter, which has a tract to itself, named "Megilah," or "Book of Esther," is to appear in the next and last volume of this section, and contains Taanith (the Regulation of Fast Days), Megilah (which is to be read while fasting), and, finally, Ebel Rabbathi (Great Mourning), which is also called "Sema'hoth" (Joys) for reasons which will be explained in our introduction to it.

We do not at present say more about the tracts of this section, as it is our intention to make further comment on them in our next volume.

NEW YORK, *April*, 1899.

Footnotes

v:1 Each tract, however, is paged separately, for the reason stated in Introduction to Vol. VI., p. xvi.

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xi:1 See Introduction to Synopsis in Tract Sabbath, Vol. I., p. xxix; also note at end of Synopsis in Vol. V.

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TRACT BETZAH (YOM TOB).

CHAPTER I.

REGULATIONS CONCERNING EATABLES AND BEVERAGES: PREPARATIONS FROM THE FIRST DAY OF FESTIVALS TO THE SECOND, FROM THE FESTIVALS TO THE SABBATH, AND VICE VERSA.

MISHNA: An egg laid on a festival may be eaten on the same day. So say the school of Shammai; the school of Hillel, however, say it must not. The school of Shammai say that leaven the size of an olive and leavened bread the size of a date (are to be removed before Passover), but the school of Hillel say that both must be removed when of the size of an olive only. If wild game or fowl is to be slaughtered on a festival, the school of Shammai say one should dig up (the earth) with a spade and cover the blood, but the school of Hillel forbid the killing unless loose earth had been prepared for that purpose the day before. Both schools, however, agree that if the killing had been done, one may loosen some earth and cover the blood with it, for ashes are always ready in the hearth.

GEMARA: To what kind of hen does the Mishna refer? If to a hen designed for eating, why then does the school of Hillel prohibit the eating of the egg? Is it not a part of the eatables which were prepared (for the festival)? If to a hen kept for laying eggs only, what is the reason of the school of Shammai, who permit to eat it? Is this not Muktzah (designation [1])? Should we suppose that the school of Shammai do not hold the theory of Muktzah, even then the eating of it could not be permitted, as it is a new-born thing, and even one who denies the theory of Muktzah should hold to the theory of Nolad (new-born thing). Nay, R. Na'hman has declared that one who denies the theory of Muktzah denies also the theory of Nolad.

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If so, then the school of Shammai will be in accordance with R. Simeon (who denies the theory of Muktzah), and the school of Hillel will be in accordance with R. Jehudah (who holds it); but this would not be the case, because did not R. Na'hman state (in Tract Sabbath) that the school of Hillel are always in accordance with R. Simeon and the school of Shammai with R. Jehudah? R. Na'hman may say: Because we found an anonymous Mishna (in Tract Sabbath, p. 375) which is in accordance with R. Simeon, therefore he declares that concerning the Sabbath the school of Hillel hold with R. Simeon, and concerning the festivals we found an anonymous Mishna (Sabbath, p. 375) in accordance with R. Jehudah, therefore he declares that the school of Hillel are in accordance with R. Jehudah, who is more rigorous.

Let us see: Who makes the Mishna anonymous? Rabbi (its editor). Why does he make it anonymous in regard to Sabbath in accordance with R. Simeon, and in regard to festivals (makes it anonymous) according to R. Jehudah? This is no question. Relating to Sabbath, which is so

rigorous that it has a capital punishment and there is no fear that anyone will dare to disregard its rules, therefore Rabbi made an anonymous Mishna in accordance with the more lenient R. Simeon; but relating to festivals, which have no capital punishment at all, and the rules are lenient, for fear that otherwise they may be disregarded, Rabbi made an anonymous Mishna in accordance with R. Jehudah.

Now, then, if the Mishna means a hen which is kept for laying eggs, and the reason that the school of Hillel prohibit it, is because the egg is Muktzah, why do they not differ about the hen itself? (whether it is permitted to eat it or not). Therefore said Rabba: The Mishna refers to a hen kept for eating, and to a festival which falls after Sabbath; and the teaching of the school of Hillel is not for the reason of Muktzah, but of preparation; *i.e.*, an egg which is laid to-day Rabba is certain that it was ripe the preceding day, and it is in accordance with his theory, thus: It is written [Ex. xvi. 5]: "And it shall come to pass on the sixth day, when they *prepare* what they shall have brought in"; *i.e.*, only on a week-day shall anything be prepared for the Sabbath or for festivals, but nothing should be prepared on a festival for the Sabbath, and *vice versa*.

Said Abayi to Rabba: Let it then be permitted on a festival which does not come after Sabbath, and he answered: It is as a precautionary measure for the festival which falls after Sabbath.

[paragraph continues] Said Abayi again: Let it then be permitted on a Sabbath, and he rejoined again: It is a precautionary measure for the Sabbath which falls after a festival. Said Abayi again: Do we take such precautionary measures? Have we not learned in a Boraitha: If one kills a hen on a festival and finds in it ripe eggs, he is permitted to eat them? Now, if such precautionary measures are taken, why should not the same precautionary measure be taken for the above eggs, for fear lest one eat new-laid eggs? Rabba again rejoined: Ripe eggs in the entrails of a hen are not a usual occurrence, and for an unusual occurrence no precautionary measures are taken.

R. Joseph, however, said that (the prohibition of eating an egg from a hen kept for eating) is as a precautionary measure lest one may eat fruit which has fallen from a tree on Sabbath. R. Itz'hak said that the precautionary measure is taken lest one drink the beverages which flow from a tree on Sabbath. From the following teaching we learn that R. Johanan agrees with R. Joseph's opinion, viz.: R. Johanan found R. Jehudah contradicting himself, namely: We have learned in a Mishna in Sabbath, one may not press fruit to derive beverage from it; and even if the beverage flowed of itself, it is prohibited. R. Jehudah, however, said: If the fruit was for the purpose of eating, the beverage which flows from it is permitted, and if the fruit was for beverage, the latter is not permitted. From this we see that although the beverage which flows from the fruit was not prepared on the preceding day, its use is nevertheless permitted; and in another place we find that the same R. Jehudah said, "that an egg which was laid on one festival day may be eaten on the second festival day"--on the second, but not on the first. This contradicts his first dictum, that the beverage may be used on the same day. And R. Johanan answered about this contradiction thus: Say, that it is on the contrary, that not R. Jehudah permits to drink the beverage, but the first Tana in the above Mishna. Now, when R. Johanan contradicted the teaching concerning the beverage and the egg, we must say that the prohibition of both is for one and the same reason.

Rabbina the son of R. Ula said: It is not so. R. Jehudah, who says that the egg must be eaten on the second day, and not on the first, refers to a case where the hen was kept for laying eggs only,

and this is according to his theory of Muktzah.

An objection was raised from the following Boraitha: An egg which was laid on Sabbath or on a festival day must not be

handled to cover a vessel with it, or to support the foot of a bed, with it. It is permitted, however, to cover it with a vessel to prevent it from breaking. If it is doubtful whether the egg was laid on that day or not, it is also disallowed to use it. Should it become mixed in even with a thousand eggs, all the eggs are prohibited to be used on that day. It is right according to Rabba's teaching, who says that when the egg is prohibited for the reason of preparation, which is biblical, therefore a doubtful egg must not be used because it is doubtful according to a biblical law, and all doubts about biblical ordinances must be decided more rigorously; but according to R. Joseph and R. Itz'hak, who say that it is prohibited only as a precautionary measure, why then is it not allowed to use the doubtful egg that is so only according to a rabbinical ordinance, and all doubts concerning rabbinical ordinances must be decided more leniently? The latter part of the Boraitha means that it was doubtful whether it was laid by a hen biblically forbidden to be eaten (*e.g.,* sick or crippled), If it is so, how will the latter part of this Boraitha, "if it were mixed in even with a thousand eggs, all are prohibited," be explained? It would be right if there were a doubt whether it was laid on a week-day or on a festival, where the prohibition is temporary (because on the morrow all may be eaten); and there is a rule when anything is temporarily prohibited, if it is mixed in with a thousand, the prohibition remains, but if the egg was doubtful to be from a biblically forbidden hen (in which case the prohibition remains in force always), then if it is mixed in with other eggs, why should they all be invalid? Let it be ignored as against the majority? (that one egg be removed, and the remaining should be used). The assumption that an egg is a thing of value, and therefore must not be ignored, would apply only to those who say that all things usually counted must not be ignored; but what can be said to those who say that only things which are always sure to be counted may be ignored? (This objection remains.)

R. Ashi said: The meaning of "doubtfulness" in the Boraitha is, whether it is a week or festival day, it is nevertheless prohibited to use it, although according to R. Joseph and R. Itz'hak it is only a rabbinical doubt, because the prohibition is only temporary, and in case of a temporary prohibition even a rabbinical one must wait till the prohibition is over.

We have learned in a Boraitha: Anonymous teachers in the name of R. Eliezer said that the egg in question may be eaten

together with the hen that laid it. To what case does the Boraitha refer? If the hen is kept for eating, then it is self-evident; if it is a hen kept for laying eggs, then both are not allowed to be used. Said R. Zera: The Boraitha means to say that the egg can only then be eaten when the hen which laid it was also eaten. Flow shall it be explained? Said Abayi: In case the hen was bought not for any definite purpose, if it was slaughtered and prepared, then it is clear that it was bought for the festivals, and the egg may also be used; but if the hen is kept alive, then it is clear that it was bought with the intention to keep it for laying eggs, and then it must not be used. R. Mari, however, said that the Boraitha meant to say nothing, but merely exaggerated (*i.e.,* the egg may be eaten in any manner), as we have learned in the following Tosephta: A new-laid egg may be

eaten with the hen that laid it, and a new-born pullet with its shell. As the shell cannot be used and is only an exaggeration, so is it also meant with the egg and the hen which laid it.

It was taught: If Sabbath fell after a festival, or *vice versa*, anything born on one of these days must not be used on the other. So said Rabh. R. Johanan, however, allowed it to be used on the morrow.

Shall we assume that Rabh holds that both are of one and the same sanctitude? Did not Rabh say that the Halakha prevails according to the four old sages [1] who are in accordance with R. Eliezer, who said that Sabbath and the festivals are of different sanctitudes? Nay, here they do not differ concerning the sanctitudes, but as to the law of preparation mentioned above in the name of Rabba. Rabh is in accordance with this theory and R. Johanan is not.

The Tanaim of the following Tosephta differ on the same point: If an egg was laid on the Sabbath, it may be eaten on the festival, and *vice versa*. R. Jehudah in the name of R. Eliezer, however, said, that there is still a difference of opinion among the schools of Shammai and Hillel. According to the former it may, and according to the latter it may not be eaten.

The householder of R. Adda b. Ahabah had eggs which were laid on a festival preceding the Sabbath; he came to him and inquired whether it is permitted to roast them that day, to be eaten on the morrow. He answered: What is thy question P

[paragraph continues] Because thou thinkest that when Rabh and R. Johanan differ the Halakha prevails according to the latter; yet even R. Johanan permits only to sip the egg when raw on the morrow, but he never permitted to handle it on the same day.

The householder where R. Papa lived, according to others another man, had eggs which were laid on a Sabbath preceding a festival, and he asked R. Papa if they could be eaten on the morrow, and R. Papa answered him: Leave it until to-morrow and come again, because Rabh did not use an interpreter on a festival day after meals to decide questions belonging to the next day, for fear, perhaps, that he had drunk more than a quarter of a lug of wine. When he came on the next day R. Papa said to him: If I had decided the question yesterday, when I was a little lightheaded, I would have erred, and would have decided according to R. Johanan, as the rule is where Rabh and R. Johanan differ, the Halakha prevails always according to R. Johanan, and this would not be right, because Rabha said that the case in question is one of the three [1] where the Halakha prevails according to Rabh, both when he is lenient as well as rigorous.

R. Johanan said: Wood which falls from a tree on Sabbath must not be used on the following festival day; and if it would be asked what is the difference between the wood and the egg, it can be said that the egg can be used while raw just after it has been laid, and if left until the next day, because it must not be used on the same day; but if the wood will be used just after Sabbath is over, one might say that the use of the wood was allowed on the same day, and that it was not used because it was prohibited to make a fire on Sabbath.

R. Mathna said: If wood had fallen down from a tree directly into an oven on a festival day, one

may add wood which had been prepared on the preceding day and burn it; but is not this handling a prohibited thing? To this the answer is, because the bulk of the wood may be handled, the rest is ignored. But did he not ignore the prohibited wood intentionally? and a Mishna teaches that a prohibited thing must not be ignored on purpose. This, however, is only true of a biblical prohibition, but not of a rabbinical. But according to R. Ashi, who said that a thing which is prohibited only temporarily, cannot be ignored by any means, what can be said? This is when the prohibited thing is preserved; but here, when the wood is to be destroyed by fire, it is different.

It was taught about the two festival days in exile: Rabh said if anything was born on the first day, it may be eaten on the morrow, but R. Assi says it must not. Said R. Zera: It seems to me that R. Assi is correct in his opinion, because in our time the time of the calendar is known to us, and nevertheless we hold in exile two days of festival (consequently we must hold all the ordinances which were ordained in that time). Abayi, however, said: It seems to me that Rabh is correct in his opinion, and our keeping of two days of festival in exile is merely because a message was sent to us from the West: Take heed of the customs of your ancestors, as it can happen that the government might forbid the keeping of festivals, and the exact date might be forgotten (after the government should retract the command).

It was taught: Rabh and Samuel both said of the two festival days of New Year: Something born on the first day must not be used on the other.

Rabha said: From the day of the ordinance of Rabban Johanan ben Zakkai, [1] an egg which is laid on the first day of the New Year festival may be eaten on the next day. Said Abayi to him: Did not Rabh and Samuel both say that it is not allowed? Rejoined Rabha: I say to you that of Johanan b. Zakkai, and you mention Rabh and Samuel to me [says; the Gemara: Do really Rabh and Samuel contradict a Mishna P Nay, it presents no difficulty: The ordinance of Johanan b. Zakkai was only for Palestine, but Rabh and Samuel speak for the exile].

R. Joseph, however, said even after the ordinance of Johanan b. Zakkai the prohibition of the egg remains in force, because the prohibition has been ordained by the vote of a majority of sages, and everything that has been ordained by a majority some time ago, must again be voted by a majority. Said Abayi to him: Did the sages in Johanan b. Zakkai's time discuss about an egg? They discussed only about the witnesses of the new moon. When it was ordained that the witnesses should not be received on the 30th day (consequently two days were kept festival), the egg was prohibited, but after that, when it was again allowed to receive the witnesses the entire 30th day, in consequence holiday was kept only one day, and the egg could not be any longer prohibited.

R. Ada and R. Shalman [both from the city of Khaluchith] said: The reason why the egg is prohibited even after the ordinance

of R. Johanan b. Zakkai, is because the Temple will soon be rebuilt, and then one may say the last year, have we not eaten the second day of the festival the egg that was laid on the first day?

We will do the same now, and they will not know that the last year had two separate sanctitudes; and now, when the Temple is built, the two days are as one long day of one and the same sacredness.

If it is so, let the witnesses who come to testify about the new moon, also not be received? because soon will the Temple be rebuilt, and they will say: Did we not receive the last year the whole 30th day? The same will we do now? What comparison is there? Only the court (Beth Din) can receive the testimony of the witnesses, but eating an egg appertains to the common people. Rabha, however, said: That even after the ordinances of R. Johanan b. Zakkai the egg is prohibited for this reason: Would not R. Johanan b. Zakkai himself agree that if the witnesses were coming after the Min'ha prayer (in the afternoon), both the 30th day and the morrow would be kept sacred? (Therefore we who are at a great distance from Palestine, and do not know when the witnesses appeared, must keep both days holy, and as of one kind of sacredness; in consequence an egg laid cannot be eaten on what is considered as the same day.)

Rabha said again: The Halakha prevails according to Rabh in these three ordinances, both when he is lenient and rigorous (namely: 1. An egg laid on a Sabbath preceding festival day or on a festival day preceding a Sabbath may be eaten on the morrow. 2. The same is the case with the two festival days in exile. 3. But if it m, as laid on the first day of the two New Year's days, it must not be eaten).

Rabha said: The preparing for the burial of a dead body on the first day of the exile festival must be done by Gentiles; but on the second day Israelites may do it, even if it is New Year. With a new-born thing, however, in the two days of New Year it is different (because *these* two days are considered as of one sacredness). The sages of Nehardai, however, said the case is the same with a new-born thing also. Said Mar Zutra: The law concerning burial on holidays refers to a case when the corpse had been lying some time and there is fear of corruption; but if it had just died it may lie until after the holidays and then be interred. R. Ashi, however, said: Even if it has just died it can be buried on the same day, as the sages considered the second day of a festival a week-day in relation to a dead body, and it is

allowed even to cut myrtle for it and prepare (a nice cloak for him besides) the shrouds.

Rabbina was sitting in the presence of R. Ashi on the first day of New Year, and noticed that he was downcast. He asked him: Why is the Master downcast? R. Ashi answered: Because I have not made a combining of cookery (Erub Tabshilin; ix., the third day of the new year was a Sabbath, and it was necessary to prepare on the second day of New Year for the Sabbath by making a "combining of cookery"). Said Rabbina to him: Let Master make it to-day. Did not Rabha say that whoever forgot to make a combining on the eve of a festival, is permitted to make it on the first day? And R. Ashi rejoined: Rabha allowed it only on the exile festival day, but not on the two days of New Year. Said Rabbina again: Did not the sages of Neherdai decide that the same is the case with New Year's day? R. Mordecai answered to Rabbina: I have heard Master plainly declare that he did not agree with the sages of Neherdai (Master means R. Ashi). Therefore do not molest him with this question.

The rabbis taught: A pullet which was born on a festival must not be eaten on the same day. R.

Eliezer ben Jacob said even on a week-day it is not allowed to eat it on the same day, because its eyes are not yet open. We also learn in the following Boraitha: It is written [Lev. xi. 22]: "All flying insects that walk upon four legs shall be an abomination to you." By "all" it is meant to add the pullet whose eyes are not as yet open.

R. Huna said in the name of Rabh: An egg becomes ripe as soon as it is laid, What does Rabh mean to teach us by this statement? Shall we assume that he meant to say that it becomes ripe enough to be eaten with milk, which would not be the case if the egg were found in the entrails of a hen? Did not a Boraitha say: He who kills a hen and finds in it ripe eggs may eat them with milk? Shall we assume that Rabh means to teach us that when it is laid on a festival it may be eaten on that same day; but how if it were found in the entrails of a hen, would it not be allowed to eat it on a festival? Did not a Boraitha say that if ripe eggs are found in the hen on a festival day, they may be eaten? If it be said that Rabh means to teach us what the Boraitha has added to the Mishna (this cannot be said either, because) we have learned in the Mishna, an egg laid on a festival the school of Shammai permit to be eaten, etc. We see therefore that the above schools differed only about an egg laid already, but not about an egg found in the entrails of a hen and

it cannot be said of the school of Hillel that they prohibited this, for then the above Boraitha which allows this would not be in accordance with any of the schools.

Rabh comes to teach us that only an egg which is laid is ripe to be put under a hen for hatching; but an egg which is found in the entrails of a hen, even if it were ripe, cannot be used for hatching, as it cannot breed pullets.

And the difference is in matters of buying and selling (*i.e.*, if one buy eggs for hatching and he was given eggs which were found in the entrails of a lien, the seller must return the money to him). As it happened once, one came to the market and asked for new-laid eggs and he was given eggs which were found in a killed hen. When the case was brought before R. Amai he decided that the sale was null and void and the seller must return the money. Is that not self-evident? One may say that when the buyer asked for new-laid eggs he meant eggs for eating, and he who sold him the eggs which were found in the killed hen has only to return to the buyer the difference between the value of a new-laid egg and one found in a killed hen. Therefore he comes to teach us that it is not so, but that the whole sale is null and void and the seller must return the money.

It happened, also, that one came to the market and asked for eggs of a hen which had paired with a cock, and he was given eggs of a hen which laid them by warming herself by scratching the earth; and when this case was also brought before R. Amai, he made the sale null and void for the same reason.

And if you wish, we will explain (the above saying of R. Huna in the name of Rabh), that an egg is ripe as soon as it is laid, means, that as soon as the greater part of it is out of the body of the hen, it is considered ripe; and this will be in accordance with R. Johanan, who said that an egg, of which the greater part was out on the eve of a festival, and it slipped back, and came out on the festival, it might be eaten the same day. And still others say, that Rabh means to teach that when the egg is wholly out then it is ripe, 'but not otherwise, the reverse of the opinion of R.

Johanan.

The text says: When one has killed a hen and found ripe eggs in it, they may be eaten with milk. R. Jacob, however, said: When the egg is as yet covered with veins, it must not be eaten with milk.

The rabbis taught: All the females which have communication with their males in the day-time only, give also birth in the

day-time only; and those which have communication in the night-time only, give also birth in the night-time only. Those, however, which have communication at all times, give birth also at all times. Those that have communication in the day-time only: *e.g.*, a hen; and in the night only, *e.g.*, a bat; and at all times, *e.g.*, man and all animals similar to him.

To what purpose did the Master say all this? This is necessary to the following Halakha: R. Mari the son of R. Cahana says: One who has searched a chicken-coop on the eve of a festival at twilight, and does not find any eggs, and on the morrow before sunrise does find one, it may be eaten the same day (as it could not have been laid during the night). But did he not search the day before? Say, then, he did not search thoroughly; and even if he did search thoroughly, it is possible that at that time the greater part of the egg came out and slipped back again; and this is in accordance with what is stated above in the name of R. Johanan.

This is not so? For did not R. Jose b. Saul say in the name of Rabh: If one has searched a chicken-coop on the eve of a festival at twilight, and does not find any eggs in it, and on the morrow he finds one, it must not be used? He has reference to a hen which bears by scratching the earth (and such a hen may lay even at night). If it is so, say in the case of R. Mari also that the egg which was found in the morning was laid by such a hen.

There is the case where a male was in the coop. Even then, can it not happen that a hen may scratch the earth? Said Rabina: It is certain that when there is a male, no hen scratches the earth for the purpose of bearing. And at what distance in the neighborhood must the cock be? Said R. Gamda in the name of Rabh: As far as she can hear his voice in the day-time.

R. Mari, according to his decision, has decided a case (in which it was searched on the eve of a festival and nothing found in it, but an egg was found on the morrow, and there was no cock at) a distance of sixty houses.

When there is a stream between, the hen does not cross it, but she crosses a bridge; neither does she cross over a plank. It happened once that a hen crossed over a plank.

"*The school of Shammai say that leaven the size of an olive*," etc. What is the reason of their teaching? They maintain if the same size would be for leaven and leavened bread, why did the Torah need mention leaven at all? Let it have been written

[paragraph continues] "leavened bread," and it would be known from an *a fortiori* conclusion that leaven the size of an olive is prohibited (*i.e.*, as leavened bread, which is not as sour as leaven itself, one is culpable if he eats the size of an olive, so much the more, leaven itself the same size). Now, when the law mentioned leaven and leavened bread separately it is only to teach us that their sizes are different (leaven the size of an olive and leavened bread the size of a date). The school of Hillel, however, maintain that both are needed, because if *leaven* only were mentioned, one might say that because leaven is very sour, it must not be used, but leavened bread, which is not so sour, one may eat; if *leavened bread* only were mentioned, one could say that leavened bread which is fit to be eaten is prohibited, but leaven itself which is not fit for eating one is not culpable if he eats; therefore leaven is also mentioned.

We have learned also in a Boraitha: It is written [Ex. xiii. 7]: "And there shall not be seen with thee any unleavened bread, neither shall there be seen with thee any leaven in all thy boundaries." This is the point of difference between the school of Shammai and the school of Hillel: The first says, leaven the size of an olive and leavened bread the size of a date, and according to the latter, both are of the size of an olive.

"*When a person has killed*," etc. If one has killed already, but may he not commence it? Said Rabha: The Mishna meant to say that if a person wishes to slaughter an animal at a festival and comes to ask how he shall do it, the school of Shammai say he must be told that he may slaughter first, dig to get loose earth, and then cover; but the school of Hillel say he must be forbidden to slaughter unless he has loose earth prepared from the preceding day. R. Joseph, however, said, that according to the school of Shammai he must be told to dig first, slaughter, and then cover. Said Abayi to R. Joseph: Shall we assume that the Master and Rabha differ about what R. Zera said in the name of Rabh, as follows: Whoever slaughters a wild animal or fowl, must have loose earth beneath, to soak the blood, and some on the top, to cover with, as it is written [Lev. xvii. 13]: "Then shall he pour out the blood thereof, and cover it up with (or *in*) earth"? 1 It is not said "to place earth *on* it," but to it "cover it *in* earth." From this we infer that there must be earth underneath and earth on the top. Now, the Master agrees with R. Zera (and therefore he must be told to dig first), but Rabha

does not agree with R. Zera (therefore in his opinion he must be told to slaughter first and dig after). Rejoined R. Joseph: We both agree with the dictum of R. Zera, and we differ on another point, namely, Rabha holds if there is already earth underneath, he may slaughter, but he must not dig first, for it may happen that he should afterwards reconsider the matter and not slaughter at all (then he will have dug for nothing), but I hold it is better to permit him to dig first, else it may be that he would not slaughter at all, and not enjoy the festival as becomes it.

"*Both colleges agree*," etc. R. Zriqa said in the name of R. Jehudah: The case is when one had a spade sticking in the ground from the preceding day. But he pounds the earth? (reduces the earth to powder). Said R. Hyya bar Ashi in the name of Rabh: It is meant that the spade was already in powdered earth.

"*As the ashes from the hearth*," etc. Where are the ashes mentioned? Said Rabha: The Mishna means to say, that the ashes from the hearth may be considered as always prepared. Said R. Jehudah in the name of Rabh: The case is when the hearth had been heated on the preceding

day, but when the fire was made on the festival, it is not so. When the ashes, however, are hot enough for roasting an egg, they are considered as prepared. We have learned the same in a Boraitha, with the addition, that if one has brought loose earth for his garden or for a ruin, he may cover the blood with it.

R. Jehudah said again: One may bring a basketful of earth, and do with it all that he needs. Lectured Mar Zutra in the name of Mar Zutra the great: The case is when he has separated a corner for it.

An objection was raised: We have learned elsewhere: A kui [1] must not be slaughtered on a festival, and when it is, its blood must not be covered. Now, if it be so, let him cover it as R. Jehudah said above? What question is it--he could also cover it with the ashes of the hearth, or with a spade in powdered earth? We must say, then, that they were not available; and it is the same with the basketful of earth mentioned above, that he has not any. If such is the case, why a kui, of which it is doubtful whether his blood must be covered or not? Even an animal of which it is certain that his blood must be covered, the same is the case? The Mishna means to say, that not only an

animal of which it is certain that his blood must be covered must not be slaughtered, unless he has prepared a covering; but even an animal which is doubtful, lest one say that because of the enjoyment of the festival it shall be slaughtered without covering, it comes to teach us that he must not. But did not the latter part of the Mishna state, that if it *was* slaughtered the blood must not be covered, from which we must infer that the first part of the Mishna means, even when he has a prepared covering for it?

Therefore said Rabha: The ashes of the hearth are only considered to be prepared when the animal is of a species whose blood must be certainly covered; but when the animal is of a kind about the covering of whose blood there is a doubt, it is not so (*i.e.*, the ashes must not be handled for this purpose, as they are Muktzah). And this is in accordance with his theory elsewhere, that if one has brought earth to cover with it dung, he may cover with it the blood of a fowl, but not *vice versa*. The sages of Neharbelai, however, said that even if he has brought the earth for the purpose of covering with it the blood of a fowl, he may cover with it dung also. In the West R. Joseph bar Hama, and according to others Rabha the son of R. Joseph bar Hama, and R. Zera differed on this point. According to one a kui (about which it is doubted whether it is a wild or domestic animal) is regarded as dung, and according to the other it is not so (but who entertained either of these two opinions it was not known). Now, from the above teaching of Rabha, who said that earth prepared for a fowl must not be used for dung, we infer that Rabha is the one in whose opinion a kui is regarded as dung.

Rami the son of R. Jebha, however, said that the reason that we do not cover a kui on a festival is as a precautionary measure, lest one think the use of its tallow permissible. If so, let it not be covered even on a week-day? Nay, on a week-day one (who sees the blood covered) may think it is done for the purpose of cleaning the yard. But what shall be the reply to him who comes to ask (whether he should cover the blood)? Therefore we must say, that the reason is this: On a week-day, when it is doubtful, the sages decree that nevertheless he should trouble himself to cover it, but on a festival day the sages do not wish to put him to perhaps unnecessary work.

R. Zera taught: Not the blood of a kui only is it prohibited to cover on a festival day, but even when a slaughtered domestic animal's and fowl's blood were mixed together, it must not be

covered either. Said R. Jose bar Jasiniah: The case is when one cannot cover the whole blood with one (shovelful) stroke of the spade, but if he can, he must cover it. Is this not self-evident? One might say that we should prohibit this as a precautionary measure to prevent him from making two strokes. Therefore he comes to teach us that such precautionary measures are not necessary. Rabha said: If one has slaughtered a fowl on the eve of a festival, the blood must not be covered on the festival; but if he kneaded dough on the eve of a festival, he must separate the "first dough" on the festival. The father of Samuel, however, said that even this is prohibited.

MISHNA: Beth Shammai say: It is prohibited to remove a ladder from one dove-cote to another; it may, however, be inclined from one opening to another (of the same dove-cote). But Beth Hillel allow both.

GEMARA: R. Hanan bar Ammi said: Both schools differ only when it is done in public ground: According to Beth Shammai one who will see him carrying a ladder may think he is going to repair his roof; but Beth Hillel do not care for that, for they say the dove-cote will show the man's purpose of carrying the ladder. But if this is done in private ground (where there is no person to see his act), all agree that this is permissible. But is it so? Did not R. Jehudah say in the name of Rabh, that all which is prohibited on account of its liability to be seen (and misjudged) remains so even in the greatest privacy? In this the Tanaim differ (Sabbath, pp. 336, 337).

Our Mishna does not accord with the Tana of the following Boraitha: R. Simeon b. Elazar said both schools agree that the ladder may be carried from one dove-cote to another; the point on which they differ is whether the ladder may be carried back. The school of Shammai prohibit it, and the school of Hillel allow even this. Said R. Jehudah: The Mishna refers only to a ladder used for a dove-cote, but a ladder to an attic all agree is prohibited. R. Dosa said he may incline it from one window to another. Anonymous teachers say in the name of R. Dosa, that he may also trail the ladder (making it change its position by turning it about).

The children of R. Hyya were going out into the villages. When they came back their father asked them, was no question asked of you, which you have decided? and they answered that they were asked whether a ladder of an attic may be inclined on a festival, and they allowed it. And he said to them: Go, prohibit

what you have permitted. (Said the Gemara): "The children of R. Hyya thought that R. Dosa had allowed what R. Jehudah prohibited, and it was not so; he only allowed what the first Tana did not prohibit; *i.e.*, a ladder to a dove-cote, allowed by the first Tana even to be carried, R. Dosa permits only to incline.

"*It may, however, be inclined from one opening*," etc. We learn also in another Mishna farther on: The shutters (of shops) must not be removed on a festival, so is the decree of Beth Shammai;

but according to Beth Hillel they may be even returned to their places. From this we see that concerning the enjoyment of the festival, the school of Shammai are rigorous, and the school of Hillel are lenient. Is not this in contradiction to the first Mishna of this chapter, where we see the opposite? It would be (intelligible) if we explain the first Mishna's meaning that it speaks of a spade stuck in the ground before (then Beth Shammai would not be more rigorous). But what can be said of the self-contradiction of Beth Hillel? Said R. Johanan: Change the names of the authorities (assume the prohibitions to be made by Beth Shammai and the permissions by Beth Hillel). Says the Gemara: Perhaps it is not so, because we can explain the lenience of Beth Hillel in the case of the shutters by the fact that the law of building cannot be applied to vessels (according to their theory); but in the first Mishna, where such a reason cannot be found, they did not permit.

MISHNA: Beth Shammai say: It is unlawful to remove the birds from their places, unless they have been handled *before* the festival; but Beth Hillel say: It is unnecessary to do more than stand on the eve of the festival before the dove-cote and say: "This and this bird will I take for the festival."

GEMARA: Said R. Hanan bar Ammi: They differ only about the first brood of pigeons. Beth Shammai hold that if one will not handle it before the festival, he may change his mind (and spare it when he comes to take it on the festival, and will take others instead of them, but if he has handled it on the previous day, we are sure that he will not change his mind). Beth Hillel, however, do not entertain this fear. But as for the second brood, all agree that it is enough if he says before the festival: "I will take this and this."

According to Beth Hillel, why is it needed one should mention the individual bird? Would it not suffice to refer to the whole dove-cote (and say, "from this dove-cote I will take

more")? Should we assume that the school of Hillel do not hold the theory of premeditated choice (see Vol. III., p. 80)? But this would not be right, as from the Mishna (Oholath, VII., 3), we know that the school of Hillel hold this theory. Said Rabha: It is needed for the reason that if he will not point out the individual, he may handle the next day all birds of the dove-cote except the one he chooses (if any) unnecessarily. But did not Beth Hillel say it is enough if he says: "I will take this and this bird," and yet he may reject it when he comes to take it for slaughtering? Nay, this is on the eve of a festival, if he has chosen some of them, be they lean or fat, he will not exchange them for others; but if he did not so on the eve, and he comes to choose them on the festival itself, it may be that he will be compelled to handle many until he finds one that is fit, or it may happen he finds none fit, and he will handle them for no purpose, and he will be deprived of the enjoyment of the festival.

MISHNA: If a person who had prepared for a festival black pigeons finds white ones, or having prepared white pigeons, should find black ones; or two birds, and he find three, they must not be used. If three birds had been prepared and two only are found, they may be used; but if they had been prepared within the nest, and are found before the nest, they must not be used unless there were no other birds but these in the dove-cote.

GEMARA: Is not this self-evident? Said Rabba: The Mishna refers to a case when one had

prepared both white and black, and on the morrow, when he comes to take them, he finds they have changed places. One might say that the pigeons are all the same, but they have changed places, hence the Mishna comes to teach us that it is not customary for the birds to change places, and therefore we must say that all the old ones are gone, and those which are found are other pigeons. Shall we suppose that this Mishna is in support of the decree of R. Hanina, who said that when one has to decide according to the majority of cases similar to one at hand, or according to the intrinsic probability, one should decide according to the former? (As our Mishna decided that they are other pigeons, and that is because in the majority of cases pigeons do not change places, we see that the Mishna decides according to majority and not probability.) Nay, the case of the Mishna can be explained as Abayi says farther on, that it means not in the nest itself, but on the board before the

nest, where strange pigeons also come and roost (and so decides not according to majority, but probability).

"*Or two birds, and he finds three,*" etc. Why is it so? For all reasons: Either all are strange pigeons, or at least one.

"*If three birds,*" etc. Why so? Because two are the same, though one is gone. Shall we assume our Mishna is only according to Rabbi, and not the sages of the following Boraitha? If one had left at a certain place one hundred zuz of second tithe, and he found afterwards two hundred zuz, the ordinary and the second tithe money are mixed together. Such is the decree of Rabbi. But the sages said that the whole is considered as ordinary money (considering the first hundred as having been stolen, and this to be other money). But if he left two hundred zuz, and found only one hundred, it is considered that one hundred has been stolen, and the other hundred remains. So is the decree of Rabbi. But the sages said that the remainder becomes ordinary. Hence we see that the case of the doves in our Mishna is according to Rabbi? Nay, the Mishna can be explained even in accordance with the sages, for it was taught in addition to this Boraitha, that R. Johanan and R. Elazar both said that in the case of pigeons the law is different because pigeons have the habit of leaving their nest for short whiles.

"*But if they had been prepared in the nest,*" etc. Shall we say this part of the Mishna is in support of the above decree of R. Hanina? Here it can also be explained as the former according to Abayi (that the board before the nest is meant where strange pigeons come to roost). Rabha, however, said: The Mishna refers to a case where there were two nests, one on the top of the other; and not only is one prohibited to use pigeons found before the lower nest, when he had prepared same in the lower, and found both nests empty, because it is considered that from only the lower nest they are gone, and those from the upper nest have come down; but if he had prepared them in the upper one, and found them in front of it, while both nests are empty, the case is the same; though usually pigeons do not go up, it is considered that the upper pigeons are gone, and those of the lower nest came up in front of the upper nest.

"*Unless there were no other birds*," etc. How was the case? Shall we say flying pigeons are meant? Then it maybe assumed that those that had been in the nest had flown away, and these are strangers. And if pigeons too young for flying are meant, then if there is a nest within fifty ells, we may say that those

that were here bounded away, and these are strangers; but if no strange nest is near, is it not self-evident that they are the same and may be used, as Mar Uqba bar Hamma said: A pigeon that cannot fly yet is not able to bound away more than fifty ells? Nay, it can be explained thus: There is a nest within fifty ells, but it is situated in a corner so that the pigeons could not see it. They are in their own nest, and the Mishna comes to teach us, that the fear of their bounding away is only when there is another nest within fifty ells, which is visible to them when they are in their own nest; but if not visible, they do not bound away at all.

MISHNA: Beth Shammai say: The (large wooden) pestle may not be moved for the purpose of using it as a block to cut meat upon; but Beth Hillel allow it. Beth Shammai teach: It is unlawful to lay down a skin to be trodden on (as a preparation for its being tanned) or to raise it from the ground unless the (*minimum*) quantity of meat of the size of an olive be thereon; Beth Hillel, however, allow it.

GEMARA: We have learned in a Boraitha (an addition to this Mishna) that all agree that if one has already cut meat on this pestle, it may not be handled more (because the occasion on which it was necessary for the festival is over).

Said Abayi: Even if the pestle mentioned in the Mishna was a new one, made only for breaking bones, the case is the same; (and Abayi found this necessary to explain) lest one say, that because it is a new one, it shall be feared that he will change his mind and will not use it for this purpose, and so it will be handled unnecessarily, and therefore the Mishna comes to teach us that this fear is not entertained. From this we see that Beth Shammai have not such fear. But did we not learn in a Boraitha: Beth Shammai said the slaughterer and the knife must not be brought to the animal, nor, *vice versa*, it to them (for fear of his changing his mind, and not slaughtering at all, and being troubled for nothing)? And the same is the case with spices and the pestle, which must not be carried to the mortar, nor *vice versa*. But Beth Hillel allow both (hence we see that the school of Shammai fear his changing his mind). What comparison is it? He can reject on second consideration an animal because he wants a fatter one, or spices because he resolves to have a dish without spices, but in this case the animal is already slaughtered and the meat is for cooking; hence he must cut it and prepare it for eating.

"*Beth Shammai teach it is unlawful to lay down a skin,*" etc. We have learned in a Boraitha: Both schools agree that meat for roasting may be salted on the skin. Said Abayi: Only for roasting is it permitted to salt meat on it, but not for boiling (because for roasting much salt is not necessary, but for boiling more is needed). Is not this self-evident? It is plainly stated, "for roasting." Abayi comes to teach us that even for roasting, if more salt is needed than ordinarily, it is not permitted.

The rabbis taught: Tallow must not be salted and must not be turned over. In the name of R. Joshuah, however, it was said that one may spread it out upon nails for being aired. Said R. Mathna: The Halakha does not prevail according to R. Joshuah; but wherein differs this case from the case of the skin in our Mishna? (The cases are not identical.) When one sees him spreading out the skin, he may think because it is fit for sitting on, it is spread out for such

purposes; but when one will be allowed to salt the tallow, he may say: For what purpose have the sages allowed it? Only that it shall not become spoiled. Then what is the difference between spreading and salting, and he will also salt it?

R. Jehudah in the name of Samuel said: One may salt several pieces of meat at one time, though only one of them is needed. R. Adda bar A'hbah had recourse to ingenuity, and used to salt meat for a festival meal (salting one piece with the pretext that he will use it, and then rejecting it, and choosing another, and so on).

MISHNA: The shutters of stalls must not be removed on a festival according to Beth Shammai; but Beth Hillel allow even to replace them.

GEMARA: What kind of shutters is meant? Said Ula: The shutters of movable stalls. He said again: There are three things of which the finishing was allowed (though not essential for the festival), for the reason of the beginning (which was necessary; *i.e.*, if it would not have been allowed to finish them, they would not have been begun). They are: The skin for the tanner, the shutters of the shops, [1] and the replacing of a plaster (on the priest's hand [2]) in the Temple. And Rhaba said in the

name of Rabh Jehudah the Babylonian Amora: [1] The same is the case when one opens a barrel or begins to knead dough on the festival (he may stop up the barrel, or finish the kneading, because he would not begin if he were not permitted to finish, and his enjoyment of the festival would not be complete), and this is according to Rabbi Jehudah the Tana, who said (in Hagigah, p. 52), he shall finish it.

Our Mishna is not in accordance with the Tana of the following Boraitha: R. Simeon b. Elazar said: The schools both of Shammai and Hillel agree that the shutters may be removed on the festival; they differ only about the replacing of them. Beth Shammai do not permit this, and Beth Hillel allow even this. But this is in case there are hinges, but if there is none all agree it is permitted. But have we not learned in another Boraitha the contrary of this? Said Abayi: It can be explained so: If the hinges are at the sides of the shutters, all agree it is prohibited; [2] if there are no hinges at all, all agree it is permissible. They differ only on this point when the hinges are in the middle: Beth Shammai prohibit it as a precautionary measure, lest one think it permissible also even when they are at the sides, and Beth Hillel think such a precautionary measure is not to be taken.

MISHNA: A child, a Lulab (a branch of a date-tree), holy scrolls, must not be carried in public ground according to Beth Shammai; but Beth Hillel allow it.

GEMARA: In the presence of R. Itz'hak bar Abdimi one Tana taught as follows: If one slaughters a voluntary offering on a festival, he is liable to the penalty of stripes. Said R. Itz'hak to him: According to whom is your teaching? That is only according to Beth Shammai, who do not hold the theory that because it is permitted to carry things for the purposes of the festival, it is permissible to carry other things, even when they are not necessary for the purposes of the festival; but according to Beth Hillel, who hold this theory, we can say, because slaughtering for the festival is permitted, slaughtering for other

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purposes is also permitted, consequently he is not liable to stripes. R. Johanan's opinion is also that Beth Shammai and Beth Hillel differ about the acceptation of the above theory.

Because a disciple has taught in the presence of R. Johanan thus: If one cooks the sinew which shrank [Gen. xxxii. 33] in milk on a festival, and eats it, he is liable to five times stripes: once for cooking the sinew, once for eating it, once for cooking meat in milk, once for eating meat with milk, and once for kindling a fire on the festival. And R. Johanan said to him: Go with thy teaching out of the college, because for kindling a fire and cooking on the festival he is not liable for stripes, according to the teaching of the Mishna; and even if you would find a Mishna which is in accordance with your teaching, it could be only according to the school of Shammai, who deny the theory that, because it is permitted to kindle a fire and to cook for the purposes of the festival, it is permissible also for other purposes; then, according to the school of Hillel, who agree with this theory, no Mishna could teach so. Now then, when kindling and cooking are permitted on the festival, you must remove the stripes for cooking and kindling out of the whole case.

MISHNA: It is unlawful, according to Beth Shammai, to carry to the priest on a festival the first dough (Halah) or other gifts, whether they had been set apart for that purpose on that day or on the preceding day. Beth Hillel, however, allow this. Said Beth Shammai: Let us say to them: Is there not an analogy of expression in both? First dough and other priestly dues are called gifts to the priest (Matanoth); and heave-offering (Terumah) is also called gifts to the priest. Now, as the last is prohibited, the same must be the case with the first? Rejoined Beth Hillel: Nay, how can the gifts be compared to heave-offering? The last one is not allowed to be set apart on the festival, whereas other gifts may.

GEMARA: At the first glance, the teaching of the Mishna, "whether it had been set apart on the same day," would seem to mean that it was slaughtered and set apart on the same day, and the expression, "the preceding day," would seem to mean that it was slaughtered also on that day. If it is so, however, according to whose opinion would the Mishna be? Not according to R. Jose, not according to R. Jehudah, but according to the anonymous teachers. As we have learned in the following Boraitha: R. Jehudah said: Beth Shammai and Beth Hillel do not differ about the gifts that were set apart on the eve of a festival,

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whether they might be brought together with the gifts set apart and slaughtered on the festival. What they differ in is only whether those set apart on the eve of the festival might be brought to the priest separately. Beth Shammai do not allow this, and Beth Hillel permit it. R. Jose, however, said that the above schools do not differ about gifts at all, but only about the heave-offering; but an anonymous teacher said that they never differ about the heave-offering, which is prohibited according to all, but only about other gifts. Hence our Mishna is in accordance with the anonymous teachers. Said Rabha: Did the Mishna teach that they were set apart and *slaughtered* on the same day? They were set apart on that day, but may have been slaughtered on the previous day. Then the Mishna will be according to R. Jehudah only, but not according to the anonymous teachers? Nay, we may say it is in accordance with the anonymous teachers also, but the point on which they differ would be the gift that had been slaughtered on a preceding

day. If it is so, the anonymous teachers would say the same as R. Jehudah? Nay, there is a difference about the adding of the gifts set apart on the preceding day to those set apart on the festival itself (according to R. Jehudah it may be done, and according to the anonymous teachers it may not). Said R. Jehudah in the name of Samuel: The Halakha prevails according to R. Jose.

R. Tubbi the son of R. Nehemiah possessed one pitcher of wine of heave-offering on a festival, and he came to R. Joseph and asked him: Can I give it away to the priest to-day? And the answer was, that R. Jehudah in the name of Samuel declared the Halakha prevails according to R. Jose (who permits).

The host of an inn where Rabha bar R. Hanan was staying, possessed bundles of mustard stalks, and he asked his guest: May I thrash it and eat it on a festival? And he did not know the law. And he came before Rabha, who told him: We have learned in a Tosephta, one may pluck ears or crush pea-pods to get out the grains or peas on a festival. Abayi objects: We have learned in a Boraitha: Whoso has plucked ears on the eve of Sabbath, he may blow away chaff on the Sabbath from one hand into another, and eat, but not sieve. If he has done it on the eve of a festival, he may sieve it on the next day in a small but not a large sieve (that it may not be thought he does it for the next day). Hence it seems from this that to do it on the festival itself is not allowed. Rabha answered: The same would be the case on the festival itself. But as in the first part it is said: On

the eve of Sabbath, so in the last part he speaks of the eve of the festival. (Said Abayi again:) If it is so, then we find a case in which it is allowed to set apart heave-offering on a festival (as it is usually taken from a quantity of grains, not ears); and here, when he thrashes the ears for the purpose of eating the grain, you allow him to separate the heave-offering of it, for otherwise he is not allowed to eat, and in our Mishna it is plainly stated that the heave-offering is not allowed to be set apart on the festival. Rabha answered: It presents no difficulty. Elsewhere it is said, according to Rabbi's opinion heave-offering may be separated on the festival, and only R. Jose bar Jehudah opposed him, and our Mishna is in accordance with the latter.

How shall one pluck (a change from the ordinary week-day manner there must be)? Abayi in the name of R. Jose said: He shall pluck it with the thumb and the index-finger. But R. Ivya upon the same authority said: The thumb and the two fingers next to it. Rabha, however, said: As soon as he does it in a peculiar manner, the number of fingers he employs is a matter of no great consequence.

How shall one blow? R. Adda bar A'hba said in the name of Rabh: He shall blow only off his fingers (but not the palms). But in Palestine they ridiculed this, saying that, provided he does it in a peculiar manner, he may employ his palms also. Therefore R. Elazar said: He may blow it off one hand with his whole might (but must not use the other).

MISHNA: Spices may be pounded on a festival with a wooden pestle only, and salt with an earthenware jug, or with a large wooden spoon, according to Beth Shammai. But Beth Hillel say: Spices may be, as usual, pounded with a stone pestle, and salt with a wooden spoon.

GEMARA: From this we see that all agree that salt must be pounded in a different manner.

Why? R. Huna and R. Hisda: One said, because all the dishes must have salt, but not all the dishes must have spices; and the other said, all the spices lose their fragrance, but not salt. What is the difference between the two? If one knows on the eve of a festival what dish he will prepare on the morrow? According to the former it needs a peculiarity (because he could have prepared it on the eve); and according to the latter it needs not, because had he prepared it on the eve the spices would lose their fragrance.

R. Jehudah in the name of Samuel, however, said: All that is pounded may be pounded on a festival as on week-days, even salt.

[paragraph continues] Did we not say above, that salt must be pounded differently? He holds with the Tana of the following Boraitha: R. Meir said: Both schools of Shammai and Hillel never differ about the point that all things may be pounded on a festival as on week-days, and salt when it is among them: what they differ about is, whether it may be done so when it is separate. According to Beth Shammai it must be pounded with an earthenware jug or a large wooden spoon; and only in a quantity needed for roasting, but not for stewing into a pot; but Beth Hillel allow any quantity.

R. A'ha Bardla said to his son: If it shall happen that you will have to pound something on a festival, you should incline your mortar, and then pound (*i.e.*, he shall make some change in the manner of pounding). R. Shesheth heard on a festival the sound of pounding in a mortar, and he said: It is surely not in my house. Why was he sure? Perhaps the mortar was inclined? Because he could infer from the sound that this was not so. Perhaps they were pounding spices? Then the sound would have been different.

The rabbis taught: *Ptisana* [1] must not be made on a festival, for nothing may be pounded. But a small quantity may be pounded in a small mortar.

It once happened that R. Papa was the guest of Mar Samuel, and *Ptisana* was offered him, but he did not partake of it. Why? Perhaps it had been done in a small mortar? He did not choose to trust his host's servants, because they were disobedient.

MISHNA: When one picks pulse on a festival, he may, according to Beth Shammai, only pick out the eatable part and eat it; but according to Beth Hillel he may pick it as usual in his lap, in a basket with holes, or in a large dish, but not on a large table, or through a small or large sieve. Rabban Gamaliel says: It is also lawful to pour water thereon, and remove the part not fit to eat, by hand.

GEMARA: We learn in a Boraitha: Said R. Gamaliel: The Mishna refers to a case when there was more of the eatable part than of the part unfit for eating; but if the opposite was the case, then all agree that he may take out only the eatable part and leave the rest. Is there any one who is allowed to do as usually even when the unfit part was larger than the rest? R. Gamaliel meant to say, that even when the quantity of the unfit part was

small, but to pick it out would be more trouble than to pick out the eatable part, all agree that he shall do what gives less trouble,

"*Rabban Gamaliel said*," etc. We have learned in a Boraitha: R. Elazar bar Zadok said: Such was the custom in the house of Rabban Gamaliel: They usually brought a pail full of lentils and poured water on it, and the eatable part settled down, while the unfit part remained floating; but another Boraitha states the contrary (that the unfit part settles down, etc.)? It presents no difficulty: the straw floats above, but if there is any dust or other such matter, it sinks.

MISHNA: It is unlawful for one to send to another as a present on the festival anything but eatables, according to Beth Shammai. Beth Hillel, however, permit to send even cattle, game, and poultry, either slaughtered or alive; also presents of wine, oil, fine flour, and pulse, but not grain. R. Simeon allows also to send grain.

GEMARA: R. Je'hiel taught: This is permissible only when he sends it by a few persons, but not by a whole line of men. A Boraitha taught that a line is not constituted by less than three men.

"*R. Simeon*," etc. A Boraitha taught: R. Simeon permits to send grain; *e.g.*, wheat, to make of it a dish which the inhabitants of Lydia used to make (by grinding the grains of wheat); barley, to give it to cattle; and lentils, to make of them a dish.

MISHNA: It is also permitted to send clothes, sewed or not, even of "Kelayim," in case they can be used on the festival, but not sandals with iron nails or unfinished shoes. R. Jehudah says: White shoes may not be sent either, because an artificer is required to make them fit for use. This is the general rule: Whatever can be used on the festival, may be sent as a present thereon.

GEMARA: It is right that sewed clothes should be permitted on a festival, because they can be used, and clothes not sewed may also be used for covering; but how can Kelayim be used? The Mishna meant to say rough clothes which can be used for sitting upon, and this is according to R. Huna the son of R. Joshuah, who said that felt of the city of Narash (which was rough) might be worn even if in it is Kelayim (linen and wool mixed together),

"*But not sandals*," etc. What is the reason? Because once

an accident occurred. 1 Said Abayi: Sandals with iron nails must not be worn, because an accident happened on account of them, but they may be handled; and this we infer from our Mishna, which says that they shall not be sent, and if it were disallowed to handle them, it would be self-evident that they could not be sent.

"*Or unfinished shoes*." Is it not self-evident? The Mishna means to say that even if there were nails in them already (so that they could be put on), yet being unfinished, they might not be sent.

"*R. Jehudah says*," etc. We have learned, in a Boraitha: R. Jehudah permits to send black shoes, but not white, because lime is needed to make them white; and R. Jose prohibits black shoes, because they must be polished. They do not disagree, however. Both speak of the customs in

their respective places. In the place of one Master the skin of the shoes had the inner side turned out, and therefore it had to be made white; while in the other the opposite was the case, and polishing was needed.

"*This is the general rule*," etc. R. Shesheth permitted to his disciples to send phylacteries on a festival. Said Abayi to him: Did not we learn in our Mishna, only a thing which can be used on the festival may be sent (and phylacteries are not used then)? And he answered: The Mishna meant to say things fit to be used on a week-day may be sent on a festival. Said Abayi: When the phylacteries are spoken of we would like to say something: If one was on the road on the eve of Sabbath or of a festival, and the Tefilin were on his head and the sun set, he may lay his hand on the Tefilin and thus come to his home. The same is the case when he was sitting in the house of learning and the Tefilin were on his head, he may lay his hand on them until he comes home.

Footnotes

1:1 See footnote on p. 79 of Tract Sabbath.

5:1 See Tract Erubin, p. 82.

6:1 As it will be explained further on, p. 8.

7:1 For this ordinance of R. Johanan ben Zakkai see Tract Rosh Hashana, pp. 55-56.

12:1 The Hebrew term is •••• which signifies both in and with.

13:1 Cross between a he-goat and a hind.

20:1 It means that he would not slaughter, the animal at all if he would not be sure that the skin would not be spoiled; and so he would not open the shop to take out what was necessary for the festival, if he would not be allowed to shut it again, and the festival would be without enjoyment.

20:2 As the priest is not permitted to do his work of sacrificing when there is something between (Hatzitzah, *intervention*) his hand and the victim.

21:1 Rashi says: To some people it is doubtful if it was in the name of R. Jehudah the second, or R. Jehudah the disciple of Samuel; but I say, he added, that Rhaba, who was from Pumbeditha, had never seen R. Jehudah the second, as we do not find that he, sometime in his life, ever went to Palestine. Moreover, it is said elsewhere that no one was so particular in his study as Rhaba of Pumbeditha, and we must assume that Rhaba was so particular that he would not leave in his words any doubt about the man in whose name he said it; and if it was Jehudah the second, he would have certainly mentioned it.

21:2 As when the hinges are at the sides, it is very difficult to remove and replace.

25:1 Latin for a dish of pounded barley.

27:1 See Tract Sabbath, p. 116.

Next: Chapter II

CHAPTER II.

REGULATIONS CONCERNING THE COMBINING OF COOKERY ON A FESTIVAL PRECEDING A SABBATH.

MISHNA: When the festival falls on Friday, it is unlawful to prepare thereon, on purpose, any food for the Sabbath, but for the festival alone, and whatever remains may be used for the Sabbath; and one may prepare on the eve of the festival one dish for the Sabbath especially, and then he may continue cooking on the festival for the Sabbath. Beth Shammai, however, say: Two dishes are necessary; Beth Hillel say: One is sufficient. Both, however, agree that fish and egg upon it may be considered as two dishes. If the dish thus prepared has been eaten or lost, nothing more may be cooked in addition to it; but if any small portion whatever is left, it suffices.

GEMARA: Whence is this deduced? Said Samuel: It is written [Ex. xx. 8]: "Remember the Sabbath day to keep it holy"; from which we infer that we should remember it when we are liable to forget it (*i.e.*, when it is holiday already, one can forget it). Our Tana, however, infers this from the following passage [ibid. xvi. 23]: "What ye shall bake, bake to-day and what ye shall seethe, seethe to-day." From this R. Elazar inferred that it shall not be baked unless same is baked already, and it shall not be cooked unless same is cooked already. And this is used by the sages as a biblical support to the law of the combining of cookery.

The rabbis taught: It once happened that R. Eliezer was sitting and lectured a whole day (of the festival) about the laws relating to festivals. The first part of his audience arose and went out, and R. Eliezer said: These people must have great barrels of wine, and they are in a hurry to drink them. The second portion of the audience went away, and he said: These people must have smaller barrels. Of the third part he remarked: They must have cans. Of the fourth he said: They must have *lugs*. When the fifth part left him, he said: They must have only goblets. When the sixth part began to

depart, he said: They are worthy to be scolded (because the college began to be empty). At the same time he looked upon his disciples and saw the color of their faces was changed, and he said to them: My children, I did not mean you. I spoke only about those people who leave eternal life for temporary affairs. When his disciples were going away, he said to them [Nehem. viii. 10]: "Go your way, eat fat things, drink sweet drinks, and send portions unto him for whom nothing is prepared; for this day is holy unto our Lord: and do not grieve yourselves; but let the joy of the Lord be your stronghold."

The Master says: "Because they leave eternal life for temporary affairs." Is not the enjoying of the festival a religious duty? R. Eliezer said this in accordance with his theory that the enjoying

of a festival is not obligatory, as we learned in the following Boraitha: R. Eliezer said: A man has nothing to do on a festival but either to eat and drink the whole day, or to sit and study; but R. Joshuah said: He must divide the day--one-half of it for eating and drinking, and one-half of it for religious purposes. Said R. Johanan: The above both sages deduce from the following verse [Deut. xvi. 8]: "On the seventh day shall be a solemn assembly unto the Lord thy God"; another verse [Num. xxix. 35]: "An assembly shall be to you." How can the contradiction between these two verses be explained? R. Eliezer explains it thus. The whole day shall be either for you or for the Lord; but R. Joshuah explains it thus: Divide the day--one-half for the Lord and one-half for you. Said R. Elazar: 1 All agree that on Pentecost the day must be partly devoted to one's self also. Why so? Because on this day the law was given to Israel, and we must enjoy it. Said Rabha: All agree also that on a Sabbath the day must be devoted to one's self also. Why? Because it is written [Is. lviii. 13]: "Thou shalt call the Sabbath a delight." And R. Joseph said: All agree that on the festival of Purim the day must also be devoted to one's self, as it is written [Esther, ix. 22]: "To make them days of entertainment and joy." Mar the son of Rabina was fasting the whole year except on Pentecost, Purim, and the eve of the Day of Atonement: Pentecost, because the law was given; Purim, because they are days of joy and entertainment; and the eve of the Day of Atonement, for a reason that is explained in Tract Yomah, p. 129.

R. Joseph on the days of Pentecost used to say to his domestics: Prepare for me a calf which is the third-born (of the third birth), saying: If not this day be the reason, how many Josephs are there abroad! (and but for the law, he would not be distinguished among them).

R. Shesheth used to repeat his studies every thirty days, and, supporting himself against the wall of the college, said: Rejoice, my soul! Rejoice, my soul! For thy sake I have read, for thy sake I have studied.

What is meant, in the above verse of Nehemiah, by "send portions to those for whom nothing is prepared"? Said R. Hisda: It refers to those men who have not made an Erub Tabshilin (combining of cookery). What is meant by "let the joy of the Lord be your stronghold"? Said R. Johanan in the name of R. Elazar bar Simeon: The Holy One, blessed be He, said to Israel: My children, borrow money for my sake, and rejoice on the holy day, and trust to me, I shall pay it.

R. Tachlipha brother of Rabanai Huzaah taught: All the necessaries of a man are appointed for him in the Heavenly Court in the ten days between New Year and the Day of Atonement, except the expenses for Sabbath, the festivals, and the studies of his children: the amount for these purposes appointed for him in Heaven is the same as that which he spends (and varies with it).

We have learned in a Boraitha: It was said that Shammai the Elder used to eat all days for the honor of Sabbath. When he found a good animal, he used to say: This shall be for Sabbath. But when he found a better one, he ate the former, and left the better one for Sabbath; but Hillel the Elder had another habit: Because all his deeds were for the sake of Heaven, as it is written [Ps. lxviii. 20]: "Blessed be the Lord! *day by day* he loadeth us with benefits" (trusting in God to provide for Sabbath at the proper time). 1

"*One may prepare on the eve of the festival one dish,*" etc. Said Abayi: Only a dish is good for

the purpose, but bread alone is not. Why so? Shall we assume it is required to have an article of food which is not often eaten, and bread is always eaten, then a dish of *disa* (mush), which is rarely eaten, is nevertheless disallowed by R. Nehuma bar Zachariah in the name of Abayi? The reason is this: One must have a thing which can be eaten

[paragraph continues] *with* bread, and *disa* cannot be eaten with bread. As it happened that R. Zera saw people eating *disa* with bread, he said: The Babylonians are fools, they eat bread with bread!

R. Hiya taught: Lentils which are on the bottom of a pot may be used as an Erub Tabshilin, if the quantity is of the size of an olive. R. Itz'hak the son of R. Jehudah said that the fat of a fowl, if it is of the size of an olive, may be similarly used. And R. Abha said in the name of Rabh: The prescribed quantity for an Erub is the size of an olive, and it is sufficient for one or for one hundred persons. Said R. Huna in the name of Rabh: The combining of cookery must be done intentionally. It is certain that the person who makes the Erub must have the intention, but how is it with the person for whom the Erub is made? Is his intention also needed, or is it not? Come and hear: The father of Samuel made an Erub for all the inhabitants of Nehardai, and R. Ammi and R. Assi made an Erub for the whole population of Tiberia (hence the intention of those for whom the Erub is made is not necessary).

R. Jacob bar Idi proclaimed: Everybody who has not made an Erub Tabshilin shall rely on my Erub Tabshilin (and shall do the preparing for Sabbath). And at what distance? Said R. Nehuma bar Zachariah. in the name of Abayi: As far as the legal limit of Sabbath (2,000 ells).

There was a blind man who had classified Mishnaioth before Mar Samuel; and Mar Samuel saw he was downcast. And he asked him: Why are you downcast? And he answered: Because I have not made an Erub Tabshilin. Said Mar Samuel to him: Rely upon mine. The next year he saw him again sad, and got the s me answer, and Mar Samuel rejoined: If it is so, you are a transgressor (you have not made one intentionally). All can rely upon my Erub Tabshilin, but not you.

The rabbis taught: On a festival which happens to be on Friday, the Erub of legal limit and the Erubin of courts are not to be made. Rabbi, however, said: The Erub of legal limit is not to be made, but the Erubin of courts may, because you can prohibit one to do a thing for to-morrow which he may not do to-day; but you cannot forbid a man to do a thing for to-morrow which he may do to-day (Erubin of courts are needed only for Sabbath, but not on festivals). It was taught: Rabh said the Halakha prevails according to the first Tana, but Samuel said the Halakha prevails according to Rabbi.

The rabbis taught: On a festival following on Sabbath one

shall say eight benedictions; that is to say, the Sabbath benediction separately. Beth Hillel, however, said: One shall pronounce seven benedictions, and he shall begin and close, with Sabbath, and shall include the holiness of the day. Rabbi said: He shall close with the benediction: "Blessed be He who sanctifies the Sabbath, Israel, and the festivals." A disciple

taught in the presence of Rabina: "Who sanctified Israel, the Sabbath, and the festivals," and Rabina rejoined: Does Israel then sanctify the Sabbath? The Sabbath is itself holy: Say then: "Who sanctified the Sabbath, Israel, and the festivals." Said R. Jose: The Halakha prevails according to Rabbi as interpreted by Rabina.

The rabbis taught: On a Sabbath following on the first day of the month, or any day of the intermitting days, one shall pronounce in the three prayers of evening, morning, and Min'ha seven benedictions; and concerning the festival he shall include the prayer about the return of the Temple-service, and if he has omitted it he must begin all again. But in the Additional Prayer he shall begin and close with the benediction of Sabbath, and t c holiness of the day shall be included.

Rabban Simeon b. Gamaliel and R. Ishmael the son of R. Johanan b. Broka say that whenever there are seven benedictions, he shall begin and close with Sabbath, and the benediction of the day shall be included. Said R. Huna: The Halakha does not prevail in accordance with last pair.

R. Hyya bar Ashi in the name of Rabh said: One may lay an Erub of legal limit on the first day of a festival (in exile, where two days are kept) with a condition, if the right day of the festival is to-day, then the Erub is null and void, because one can go to-morrow without any Erub at all; and if the right day of the festival is the next day, this Erub shall be for that day. Said Rabha: The same is the case with the Erub for cookery.

The rabbis taught: It shall not be baked from one festival day for another. It was truly said that a woman may fill a whole pot with meat though she do not need more than one piece (for that day). The same is the case with a baker, who may fill a whole barrel with water, though he need only one can (for the day); but it is not allowed to bake except as much as is needed for the day. R. Simeon b. Elazar, however, said, that a woman (not a baker) may fill a whole oven with bread, because it is better baked when the whole oven is full. Said Rabha: The Halakha prevails according to the latter.

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The schoolmen propound a question: If one has not made an Erub Tabshilin, is he only prohibited to do anything for Sabbath, but not his flour? Or is his flour also forbidden? What is the difference? To transfer his flour to others, if you say the flour is not prohibited, then another one can take his flour and prepare for him; but if you say his flour is prohibited, then he must transfer it. Come and hear: One who has not made an Erub Tabshilin must not bake nor cook nor save either for himself or for others, nor may others do it for him; but what shall he do (to eat something on Sabbath)? He shall transfer his flour to others, and then they may bake and cook for him. From this we infer that both he and his flour are prohibited.

The schoolmen propounded a question: How is it if one has transgressed and baked without an Erub? Come and hear: If one has not made an Erub Tabshilin, etc. (as mentioned above). Now, if it would be allowed to eat, why does not the Boraitha state that if one has transgressed and has baked, it is allowed to eat? Said R. Adda b. Mathna: From this nothing can be inferred. The Tana advises only how to dispose for a man, he shall be able to prepare something in accordance with the Law; but when one has acted against the Law, this Tana does not speak of it at all. Come and hear another Boraitha: If one has made an Erub Tabshilin, he may bake, cook, and

save, and if he wants the Erub, it is allowed; but if he has eaten the Erub before he has baked or saved, then he is not allowed to bake, cook, or save either for himself or for others, neither are others allowed to do so for him. He may, however, cook for the festival and use what is left on the Sabbath, provided he does not do it cunningly (*i.e.*, he shall not add so much that he shall have sufficient for the whole Sabbath), and when he does it cunningly he must not use it for the Sabbath. (Hence we see, that if he acted against the Law, it is prohibited.) Said R. Ashi: The case of cunning is different, because the rabbis were very rigorous with such. R. Na'hman b. Itz'hak said: The Boraitha which said that cunning is prohibited is not at all in accordance with the decision of the rabbis, but of an individual, Hananiah, who taught it in accordance with the decision of Beth Shammai, as it is to be understood from the following: Hananiah said: Beth Shammai declare: One shall not bake unless he has made an Erub with bread; one shall not cook unless he has made it with something cooked; and one shall not save, unless he has already saved warm water for the Sabbath. Beth Hillel, however,

said: One may make an Erub with something cooked, and through it he may prepare everything.

"*Beth Shammai say two dishes*," etc. Our Mishna is not in accordance with the Tana of the following Boraitha: R. Simeon b. Elazar said: Both schools agree that two dishes are needed. In what they differ is about a fish and egg which is upon it. According to Beth Shammai it is considered as two dishes, but according to the school of Hillel it is considered only as one dish. Both agree, however, that if one put in a cooked egg in the fish or χεφαλιδος in the cooked fish, it is considered as two dishes. Said Rabha: The Halakha prevails as our Tana and according to Beth Hillel.

"*If it has been eaten or lost*," etc. Said Abayi: We have a tradition that he who has begun to knead dough and heard mean. while that the Erub was lost, may finish his work nevertheless.

MISHNA: When the festival falls after a Sabbath, Beth Shammai say: Everything requiring purification must be immersed before the Sabbath. But Beth Hillel say: Vessels must be immersed before the Sabbath, and human beings on the Sabbath. Both schools agree that water which has become polluted may be purified by pouring it into an earthenware vessel, but not on earth itself. It is lawful, however, to dip vessels whose original appropriation has been altered, and men may bathe when they have changed from one company to another (to eat the Paschal lamb). 1

GEMARA: We see from this Mishna that, according to all, a vessel must not be dipped on Sabbath. Why so? Said R. Bibbi: It is a precautionary measure, lest one leave the vessels unclean on the week-days for purification on Sabbath. We have learned in a Boraitha in support to R. Bibbi: A vessel which has become unclean on the eve of the festival must not be dipped on the festival; and this is a precautionary measure, as the one above mentioned. Rabha, however, said: The reason why one must not immerse on Sabbath is that it would seem as if one repaired the vessel. If it is so, why may a man bathe on Sabbath (and a man cannot eat Terumah, etc., when he has not bathed). A man is different, as it can be said that he is doing so to cool himself. That would be right, if he bathed in pure water; but if he immerses himself in turbid water? Said R. Na'hman bar Itz'hak: It happens that a man becomes heated, and then

he bathes even in water in which flax has been steeped, to cool himself. This would be right in summer-time, but what can be said if he does it in winter-time? Said R. Na'hman bar Itz'hak: It may happen a man becomes dirty and soiled, and then considers not the quality of the water. All this is right on a Sabbath, but what would be the law on a Day of Atonement? Said Rabha: Do you find something allowed to be done on Sabbath that is not allowed on the Day of Atonement? (Therefore, *because* it is permitted on Sabbath, it is permitted also on the Day of Atonement.)

"*But not on earth itself*." What is meant by this? Said Samuel: He may bring it in contact with water of a legal bath, but not in an unclean vessel.

According to whom is our Mishna? As it is not according to Rabbi, nor according to the sages of the following Boraitha: One must not immerse the vessel with the water therein to purify it, nor bring it in contact with water in a stone vessel to purify the water therein: so is the decree of Rabbi. The sages, however, permitted both. (Hence according to whom is the Mishna?) We may say that it is according to the sages' opinion, and the Mishna refers not to purification on a week-day but on Sabbath.

"*Whose original appropriation has been altered*," etc. The rabbis taught: If one wishes to immerse his vessels for the purpose of filling them with the oil of newly crushed olives, and afterwards changes his mind and resolves to crush the olives in them, or *vice versa*, he may do so. If one was engaged to eat the Paschal lamb with one company, and thereafter he changed his mind to eat with another company, he might do so.

MISHNA: One may bring peace-offerings on the festival, but not lay his hands on them; [1] and burnt-offerings may not be brought at all--according to Beth Shammai. Beth Hillel, however, allow all this.

GEMARA: Said Ula: The point on which both schools differ is the laying of the hands on the peace-offerings of the feast and whether burnt-offerings of the pilgrimage may be sacrificed at all. Beth Shammai hold: It is written [Ex. xii. 14]: "Ye shall celebrate *it* as a feast unto *the Lord*"; *it*, *i.e.*, the peace-offering, but not the burnt-offering. But Beth Hillel say: "unto the Lord that signifies, all that is unto the

[paragraph continues] Lord is allowed. But vows and voluntary offerings, all agree, are not. Such also is the opinion of R. Adda bar A'hba. An objection was raised: We have learned elsewhere (in addition to this Mishna): R. Simeon b. Elazar said: Both schools do not differ concerning a burnt-offering which does not belong to the festival, that it must not be offered, and also that peace-offerings which belong to the festival may be offered. In what they differ is, when the burnt-offering *belongs* to this festival and concerning the peace-offerings which *do not* belong to this festival. According to Beth Shammai they must not be offered, and according to Beth Hillel they may. (Hence we see that according to both, vow and voluntary offerings are to be offered on the festival?) Answer this objection that the saying of R. Simeon b. Elazar must read thus: He said, Both schools do not differ when the burnt and peace-offerings do not belong to this

festival, that they must not be offered, and the peace-offering which belongs to this festival, that it may; they differ only about a burnt-offering which belongs to this festival, that according to Beth Shammai it must not, and according to Beth Hillel it may. Said R. Joseph: Is it necessary to make out the Boraitha as erroneous because of the saying of Ula? Are there not other Tanaim who differ on this point, and Ula's saying can be according to them? As we, have found in the following Boraitha: Peace-offerings which belong to this festival, when they are to be offered on it, Beth Shammai said: He may lay his hands upon it on the eve of the festival, and it shall be slaughtered on the festival; Beth Hillel, however, said: Both may be done on the festival; but vow and voluntary offerings must not be offered on the festival.

And the Tanaim of the following Boraitha differ on the same point: One must not bring thanksgiving-offerings on all days of Passover, because they contain unleavened bread; nor on Pentecost, because it is a festival; but he may bring them on the Feast of Tabernacles (on the intermitting days). R. Simeon, however, said: It is written [Deut. xvi. 16]: "On Passover, on Pentecost, and on the Feast of Booths." From this we may infer that all that may be brought on Passover and Pentecost, may be brought also during the Feast of Tabernacles; but what must not be brought on the first two, one may not on the third. R. Eliezer b. R. Simeon, however, said: One may bring thanksgiving-offerings during the Feast of Tabernacles, and by this will be fulfilled the duty of enjoying the holiday, but not the duty of bringing a feast-offering. Is not

this self-evident? Are not the feast-offerings a duty, and it is certain that a duty must be brought of a profane (ordinary) quality? He mean s to teach us, that even if one has explicitly said that be intends the thanksgiving-offering also for a feast-offering, nevertheless the duty of the feast-offering is not fulfilled. As R. Simeon b. Lakish asked of R. Johanan: If one say, "I will bring a thanksgiving-offering, and with this I will fulfil the duty of a feast-offering"; or, "I will be a Nazarite, but when I shall bring the offering after shaving, [1] I will take it from the second tithe money," what is the law? And R. Johanan answered him: He must bring a thanksgiving-offering, but the duty of the feast-offering is not fulfilled; he is a Nazarite, but cannot bring the shaving-offering from the second tithe money.

It once happened a man said: Give four hundred Zuz to a certain man, and he shall marry my daughter. Said R. Papa: The four hundred Zuz must be given to him, and the daughter, if he likes her, he can marry, but not otherwise. The reason is, because he has said first, "give him the money"; [but if he had mentioned the daughter first he would get the money only if he married]. If he had said: He shall marry and take the money, then he must marry her first. Meremar was sitting and declaring the Halakha in his own name. Said Rabbina to him: You teach this as if it were a Boraitha; we, however, learn it as the question of Resh Lakish from R. Johanan, mentioned above, and the decision is R. Johanan's.

The rabbis taught: It happened to Hillel the Elder that he brought his burnt-offering to the Temple-court for laying hands on it on the festival. The disciples of Shammai the Elder, however, surrounded him, and asked him: What is the matter with this animal? And he answered: It is a female, and I have brought it for a peace-offering. And he shook the animal's tail, and they went away. And on that day the school of Shammai took the upper hand over Beth Hillel, and the people wanted to decide the Halakha according to them; but one old man was there among the disciples of Shammai the Elder, Baba ben Butta by name, who was certain that the Halakha prevailed according to Beth Hillel. And he sent and brought of the best sheep of

Jerusalem, and placed them in the Temple-court, and said: Everybody who wants to lay his hands upon them shall come and do so. And on that day Beth Hillel took the upper hand,

and the Halakha was decided according to them, and no objection was made by anybody.

Again, it happened once that a disciple of Beth Hillel brought his burnt-offering into the Temple-court for the purpose of laying his hands upon it, and a disciple of the school of Shammai met him and said: Why the handling? And he replied: Why are you not silent? So he silenced him with a rebuke, so that he went away. Said Abayi: From this we may infer that if a young scholar says to another a few words, the answer shall not be more lengthy than the remark which was addressed, as we have seen in the case of the two disciples, when he asked him: "Why the laying of the hands?" he answered him: "Why not be silent?"

We have learned in a Boraitha: The disciples of Hillel said to the disciples of Shammai: (Is not this an *a fortiori*?) If on Sabbath, when all things to be done for a human being are prohibited, nevertheless in honor of the Lord all is permitted; on a festival, when all things necessary for a human being may be done, so much the more everything may be done for the Lord (*i.e.*, and why, then, shall a burnt-offering of the pilgrimage not be sacrificed?). And they answered: You can infer this from voluntary and vow offerings, that are permissible for a human being, and nevertheless even you own that they must not be sacrificed on a festival. Said Beth Hillel again: There is no comparison here because voluntary and vow offerings have no appointed times. The burnt-offerings, however, have stated times. Rejoined Beth Shammai: Nay, even these have no appointed time, as we have learned in a Mishna: One who has not brought his feast-offering on the first day of a festival may do it during the whole festival and even on its last day. Rejoined Beth Hillel again: Is this not a fixed time? As we have learned in another Mishna, if one has not brought a feast-offering during the whole festival, he is no longer responsible to do it (consequently there is a stated time for it, and if we will prohibit him from bringing it on the first day of the festival, he may not bring it any more at all). Said Beth Shammai again: Has it not been said in the verse, "an assembly shall be unto you," which may signify for your sake and not for the Lord's sake? And they answered: Does not another verse say: "An assembly shall be unto the Lord"? Whence we may infer that all which is in honor of the Lord shall be done. And from the expression "unto you" we may infer "for your sake but not for the sake of strangers."

R. Iviah the Elder asked R. Huna: An animal which is half a Gentile's and half an Israelite's, how is the law of slaughtering it on a festival? And he answered: One may do it. And he asked him again: What is the difference between this and voluntary vow-offerings? And he replied: A raven flew away. When R. Iviah was gone, said Rabba, R. Huna's son, to his father: Was this not R. Iviah the Elder, whom you praised to me as a great man? And he answered: What could I have done with him? I am to-day weak, I have lectured, and need what is written in Song of Songs, ii. 5, to "strengthen me with flagons of wine, refresh me with apples"; and he asked me a thing of which the reason must be explained (at length). [And in reality, what is the reason? This: An animal which is half a Gentile's and half an Israelite's may be slaughtered on a festival, because if one wants to eat meat even the size of an olive, he cannot take it .from the animal when it is still alive, but it must be slaughtered; and as this animal belonged half to an Israelite, he can certainly slaughter it. But vow and voluntary offerings, they are considered all for

Heaven, and although the priests eat some of their meat, this is only because of their reward from Heaven, and not from the one who brings the offerings.]

Dough, however, which is half an Israelite's and half a Gentile's, is not to be baked on the festival, because it can be divided when it is yet dough. R. Hana bar Hanilai objects: We have learned of dough made for dogs, if the shepherd can eat of it, one is liable to take of it first dough, and may make an Erub with it, and may use it for the combining of the entrance; and the benediction of eating may be said over it, and if three or more men had eaten of it, they may pronounce the benediction of the meal, and it may be baked on the festival, and the man who eats it (when it is not leavened) on the first evening of Passover has done his duty of eating Matzah. Now, if it is possible to divide it when it is dough, why should it be baked on a festival (let him set apart the portion for the dogs, and bake for himself)? The dough for the dogs is different; because one can give a carcass to the dogs, instead of the dough. But does R. Hisda hold the supposition of *because*? Was it not taught (Vol. V., p. 74) that R. Hisda is against this supposition? Say, the case is when the shepherd has a carcass and intends to do so.

R. Huna was asked: May the inhabitants of Baga, who had the duty to give bread to the military, bake it on the festival?

[paragraph continues] And he answered: Let us see. If the soldiers are not particular when one takes a piece of the bread and gives it to a child, then of every loaf we can say: "This is fit for a child," and it may be baked. But if they are particular, it may not be so done. But have we not learned in a Boraitha as follows: It once happened to Simeon of Teman that he did not visit the house of learning on a festival day. On the morrow Jehudah b. Baba asked him: Why wast thou not yesterday in the house of learning? And he answered: Military were coming yesterday into the city, and wanted to rob the whole city; and we slaughtered for them calves, and made them eat, and they went away in peace. Rejoined R. Jehudah b. Baba: I wonder whether your loss vas not greater than your benefit, for the Torah teaches "unto you," but not unto Gentiles. (They should not have done work for the soldiers.) Now, why? Were not the calves fit for Israelites also? Said R. Joseph: The calves were Terepha. 1

But was it not fit for dogs when the owners are obliged to feed them? The Tanaim of the following Boraitha differ about this law: It is written [Ex. xii. 16]: "Save what is eaten by every soul, that only may be prepared for you." From the expression "every soul," we may infer, even a soul of an animal, as we find [in Leviticus xxiv.], "he that taketh the soul of an animal shall pay for it." Therefore the verse says plainly, "for you," and not for dogs. So said R. Jose the Galilean. R. Aqiba, however, said: For all souls, even souls of animals, are included. But for what purpose is it written "*for you*"? To indicate only animals for whose support you are responsible, but not for strangers, for whose support you are not responsible. Rabha accompanied Mar Samuel to the pulpit and the latter lectured: One may invite a Gentile on Sabbath, but not on a festival day, because on a festival day he may increase the Israelite's work in his behalf. When a Gentile guest came to Maremar or to Mar Zutra on a festival day, they said to him: If you are satisfied with what we have already done for ourselves, then you are welcome; and if not, you must excuse us, because we must not do any work for you.

MISHNA: It is prohibited to boil water on the festival for the purpose of washing the feet, unless the water is also fit to drink, according to Beth Shammai. But Beth Hillel allow it.

[paragraph continues] (All agree, however,) that a fire is to be made for the sole purpose of warming himself by it.

In three things Rabban Gamaliel decides like the school of Shammai more rigorously, namely: They prohibit to commence to preserve the heat of pots for Sabbath on its eve, when it happens to be a festival; to put together the pieces of a candelabrum; and to bake large loaves, but only thin cakes. Rabban Gamaliel said: They never used to bake in my father's house large loaves on the festival, but only thin cakes. The sages, however, said to him: What does this usage of your father's family prove, who though strict in this respect nevertheless allowed all Israel to bake on the festival large loaves and thick cakes?

GEMARA: How is the case? If an Erub Tabshilin was made, why do Beth Shammai prohibit it? And if none was made, why do Beth Hillel permit it? Said R. Huna: It may be explained, when the case is that an Erub Tabshilin was not made, but nevertheless what is necessary for one's life, the sages permit. And this is according to his theory elsewhere, where he said: If one has not made an Erub Tabshilin, one loaf and one pot may be baked, and cooked for him, and also light may be kindled for him. In the name of R. Itz'hak it was said: They may roast for him also a small fish. The same we have learned in a Boraitha, with the addition that one pitcher of water may be heated for him. Rabha, however, said: The Mishna can be explained also thus: that an Erub Tabshilin was made, and nevertheless Beth Shammai prohibit it, because the preserving of the heat everybody can see is done only for Sabbath.

"*To put together pieces of a candelabrum*." What labor is in it? Said R. Hin'na bar Bisna: This refers to a candelabrum whose parts have to be screwed together, and is regarded like an act of building (construction) (see Tract Sabbath, p. 266).

It happened once that Ula came to R. Jehudah; his servant inclined the lamp so that the wick should sooner be extinguished (by the oil being out of its reach). R. Jehudah objected: Did we not learn that whoso puts oil into the lamp is culpable of kindling fire? and whoso removes the oil therefrom is culpable of extinguishing? Answered Ula: The servant did it without my knowledge.

Rabh said: To snuff a lamp on a festival is permitted. Abayi asked Rabba: How is the law to extinguish a conflagration on a festival? When there is danger of loss of life,

[paragraph continues] I do not ask, for it is allowed even on a Sabboth; what I ask is, when there is a pecuniary loss only? He answered: It is not permitted. Abayi objected to him: Did we not learn: A chip of wood must not be extinguished in order to save it. However, for preventing the house or the pot from being filled with smoke, it is permitted? He rejoined: This is in accordance with R. Jehudah, but my decision is in accordance with the majority of the rabbis.

R. Ashi asked Amemar: How is the law to paint the eyes (for a medical purpose) on a festival? When there is danger, *e.g.*, when they prick, or are bloodshot, or drip, or drop tears continually,

or are in fever at the first stages, it is not doubtful to me, as this is allowed even on a Sabbath. Where I am uncertain is, when they are almost cured, and the painting is done only for improving the sight? He decided that it is not allowed. R. Ashi objected to him with the same Boraitha which Abayi objected to Rabba as stated above, and Amemar's answer was the same.

Amemar himself, however, used to dye his eyes through a Gentile on the Sabbath. Said R. Ashi to him: What is your opinion in doing it? Because Ula the son of R. Ilai said: All that is necessary for a sick man may be done through a Gentile on Sabbath. And also R. Hamnuna said: All things which are not dangerous, it may be said to a Gentile that he should do them. But when is this the case? When the Gentile does it himself without assistance from the Israelite. But you, Master, assist him in his dyeing by your opening and closing the eyes. And he answered: There is R. Zbid, who has also asked the same question, and I answered him that assistance is not considered a labor at all. The same Amemar allowed that one should dye his eyes on the second day of New Year. Said R. Ashi to him: Did not Rabha say that in the two days of New Year the case is different with an egg (see above, p. 8)? And he answered: My opinion is as that of the sages of Nehardai, who say there is no difference.

"*To bake large loaves*," etc. The rabbis taught: The school of Shammai said: Thick loaves must not be baked on the Passover. Beth Hillel permit it. What are called thick loaves? Said R. Huna: If it is a span in thickness, for the showbread was thus. R. Joseph opposed: What comparison is this? There it is related of the specialists, who knew their work and were careful; there a great deal of labor was necessary (as stated in Menahoth,

that the flour of the showbread required three hundred oscillations and five hundred beatings of the fist); there it was baked with dry wood (as stated in Taanith, that on the fifteenth of Ab they had ceased to cut wood for the Temple); there was a hot oven which was constantly fired, and it was of iron. Should it be compared to common people, to common bread, to wet wood, and a brick oven which may not be heated as required?

Said R. Jeremiah bar Abha in the name of Rabh: I have asked especially our Master, our holy rabbi, what is meant by thick loaves? And he said: A great quantity; *i.e.*, not the loaves are thick, but the quantity of the dough is great. But why does he call them thick loaves? Because it is thick when kneaded. If so, why is it prohibited only on Passover, why not on other festivals also? It means also other festivals, but the Tana was teaching them the laws of Passover, and therefore mentioned that festival. Another Boraitha says plainly: Much bread shall not be baked on a festival, according to Beth Shammai; but Beth Hillel allow it.

MISHNA: He (Rabban Gamaliel) decided the law leniently in respect to the following three things: He allowed to sweep on the festival between the couches (or sofas on which the ancients used to eat), to put spices on live coals (after meals), and to prepare a complete roasted kid on the nights of Passover (as a memorial to the Paschal lamb). But the sages prohibit all these.

GEMARA: Said R. Assi: They differ only about the enjoyment of the odor of the spices, when they are already there; but to put the spices on the live coals, all prohibit. The schoolmen propounded a question: How is the law to put fruit in the smoke of spices to flavor them on the festival (as the custom was to do)? R. Jeremiah bar Abha in the name of Rabh said: It is

prohibited, but Samuel permitted it. R. Huna said: It is prohibited, because one extinguishes the live coals. Said to him R. Na'hman: Let the Master say, because one kindles the spices? And he answered: In the beginning, when he pours out the spices on the coals, he extinguishes the coals, and afterwards they kindle. R. Jehudah, however, said: That is prohibited only on live coals, but in a heated oven it is permitted. Rabba, however, said: This is also prohibited, because he produces a new odor in the oven. [Rabba and R. Joseph both said: It is unlawful to cover a silk garment with a goblet of spices on a festival in order to impart an odor to it. Why so? Because the garment produces a new odor. But why is this different from grinding

or cutting spices for smelling, which is allowed? There the odor is in it when grinding or cutting them, the odor is only increased, but here he produces a new odor altogether.]

Rabha, however, said: Even on live coals it is also permitted, because is it not allowed to put meat on live coals for eating on a festival? R. Gbiha of Be-Kthil at the door of the exilarch lectured: Fuming is allowed. Said Amemar to him: What is meant by fuming? Does it mean to perfume the sleeves of a woman's dress? This must be done by a specialist, and this is certainly prohibited. And if it means to fume to produce good odors, the producing of a new odor is not permitted also? Said R. Ashi: *I* have declared this law to him and in the name of a great man, that it may be even to produce a new odor, and it is nevertheless permissible, because it is equal to meat on live coals, which is permitted.

MISHNA: Rabbi Elazar ben Azariah permitted three things which the other sages prohibit: His cow was going out on a Sabbath with a strap attached to her horns; he permitted also to curry cattle on the festival, and to grind pepper in a pepper-mill. R. Jehudah says: It is not permitted with an iron currycomb, because a wound may be inflicted; but with a wooden comb it is. The sages, however, prohibit both.

GEMARA: Did R. Elazar ben Azariah possess but one cow? Did not Rabh, or according to others R. Jehudah in the name of Rabh, say that thirteen thousand calves used R. Elazar ben Azariah to give as tithes from his cattle yearly? We have learned in a Boraitha that the cow mentioned in our Mishna was not his, but his neighbor's, and because he did not protest, it was considered as if it was his own.

"*He also permitted to curry cattle*," etc. The rabbis taught What is called ••••? An iron comb with small teeth, which produces a wound. What is called •••••? wooden comb with large teeth, which produces no wound. And three Tanaim differ about this law. R. Jehudah holds that if a thing was done even unintentionally, it is prohibited; but we do not take a precautionary measure to a wooden comb, lest one do it with one iron one. The sages are of the same opinion as R. Jehudah, but they say that such a precautionary measure may be taken. R. Elazar b. Azariah, however, holds with R. Simeon, who said that a thing done unintentionally is not prohibited at all, and therefore he permits both. Said R. Na'hman: The Halakha prevails according to R. Simeon, because R. Elazar ben Azariah

agrees with him. Said Rabha to R. Na'hman: Why does not the Master say that the Halakha

prevails according to R. Jehudah because the sages agree with him? And he answered: I hold with R. Simeon, and confirm my opinion because R. Elazar ben Azariah agrees with him.

MISHNA: A pepper hand-mill is subject to defilement in all the three separate vessels whereof it is composed: the upper, because it is of metal; the middle one, because it is a kind of a sieve (which allows only the finely ground particles to pass through); and the lower one, because it is a vessel of capacity (where the ground pepper is collected).

A child's cart is subject to defilement through pressure (as will be explained in Tract Taharoth), and may be moved on Sabbath from one place to another, provided it is dragged over cloths or carpets. R. Jehudah said: It is not allowed to drag any piece of furniture except such a cart, because it makes but a slight impression on the ground (and does not remove the soil so as to make a furrow).

GEMARA: The cart is subject to defilement. through pressure, because the child is in the habit of sitting on it. It may be handled on Sabbath, because it is a vessel; and may be dragged only on pieces of cloth, but not over the ground itself, because it would make a furrow, and the whole Mishna is in accordance with R. Jehudah, who holds that a thing which is made unintentionally, is also prohibited; but according to R. Simeon, who holds that it is not, it may be dragged on the ground also, no matter if it makes a furrow.

42APPENDIX TO PAGE 42.

R. Zutra bar Tubiah said in the name of Rabh: If an eye has rebelled (bulges out), it may be painted even on Sabbath. The hearers thought, that is if the paint was already prepared; but to prepare and bring it through public ground on the Sabbath, it may not. Said one of the scholars, whose name was Jacob, to them: It was explained to me by R. Jehudah that even all this may be done. R. Jehudah permitted to paint an eye on Sabbath. Said R. Samuel bar Jehudah: Who will follow Jehudah, who permits to violate the Sabbath? Finally himself had sore eyes, and be sent to R. Jehudah to inquire whether it was permitted (to paint the eyes) or not, and the answer was: It is permitted to all, but not to you (because you have rejected my decision). And in reality, was it then my decision? It was Mar Samuel's. When his servant had fever in her eyes on a Sabbath, she cried, but none attended her (because of Sabbath). Finally the eye burst. On the morrow Mar Samuel lectured in public that if an eye has bulged out it may be painted on Sabbath, because the veins of the eye are connected with the cells of the heart.

R. Joshua b. Levi said: Unkli may be cured on Sabbath, What is "Unkli"? Said R. Abba; *Asthma*.--From Abodah Zarah, pp. 28a-29b.}

Footnotes

29:1 This is transferred from Pesachim, p. 68, b.

30:1 The saying of R. Johanan here is transferred in our edition from here to Tract Sabbath, p. 18, as it belongs there.

34:1 See Tract Pesachim, Chap. IX., Mishna I.

35:1 See Lev. i. 4.

37:1 See Num. vi. 9.

40:1 Legally prohibited to be eaten by Israelites, as will be explained in Tract Hulin.

Next: Chapter III

CHAPTER III.

REGULATIONS CONCERNING FISHING AND HUNTING ON FESTIVALS.

MISHNA: It is not allowed to catch fish from aquaria on festivals, nor to give them food; but one may hunt beasts or birds in parks, and feed them. Rabban Simeon b. Gamaliel says: Not all aquaria and parks are regarded in the same light. This is the general rule. In case the animals have to be hunted it is prohibited; but when no hunting is required, it is not.

GEMARA: There is a contradiction. We have learned in a Tosephta that in parks beasts and fowls must not be caught on the festival, and must not be fed. The contradiction between the Tosephta and Mishna concerning the beasts could be explained that the Tosephta is in accordance with R. Jehudah, who prohibits this (Sabbath, p. 216); but the contradiction about fowls, how can it be explained? And if it be said, that here also there is no difficulty, because the Tosephta meant an unroofed park, while the Mishna spoke of a roofed park, did not the Mishna in Tract Sabbath state that according to all a fowl must not be caught in a house, and a house is certainly meant a roofed one? Said Rabha bar R. Huna: The Tosephta meant a bird called Durur in Arabic, which it is very difficult to catch, and which never becomes domesticated. As the disciples of R. Ishmael taught: Why is this fowl named Durur? Because to it the house and the field are the same. Now, when we know this, the contradiction about beasts can also be explained, that the Mishna speaks of a small park, and the Tosephta of a great one, where it is difficult to catch. What is called a small park, or a great park? Said R. Ashi: If the shadows of the two walls on the ground touch, then it is small, but otherwise it is great.

"*R. Simeon b. Gamaliel says*," etc. Said R. Joseph in the name of R. Jehudah quoting Samuel: The Halakha prevails according to R. Simeon b. Gamaliel. Said Abayi to him: Is there any one that differs from him, that it is necessary for you to declare that the Halakha prevails according to R. Simeon b.

Gamaliel? Said the former: And what difference is it to you? Rejoined Abayi: Shall the Gemara be like a song, to learn it without knowing any reason for each decision?

"*This is the general rule*," etc. What is meant by "have to be hunted"? The same authority says in the name of the same authority: If one must say, bring a net to catch it. Said Abayi to R. Joseph: Of geese and chickens it is usually said, bring a net, we will catch them. Nevertheless we have learned in a Boraitha that whoso catches geese and chickens is not culpable? Said Rabba bar R. Huna in the name of Samuel: The latter come to their places in the evening, and the owner is responsible for their feeding (therefore whoso catches them is not culpable), but animals of a park do not do so, and the owner is not obliged to feed them.

MISHNA: If nets have been spread for fish or wild game on the eve of a festival, it is not allowed to take from them, on the festival, unless it is known that they have been caught before its commencement. It once happened that a Gentile brought on the festival a present of fish to Rabban Gamaliel, when he said: It is allowed to use them, but I do not wish to accept presents from that man.

GEMARA: Is the deed of R. Gamaliel not in contradiction with the teaching of the Mishna? The Mishna is not completed. It must be read thus: If it is doubtful whether a thing was prepared from the day before, it is prohibited; but R. Gamaliel permits it; and it once happened also that a Gentile brought fish on a festival, in the morning, as a present to R. Gamaliel, and he said: They are permitted, etc. R. Jehudah in the name of Samuel said: The Halakha does not prevail according to R. Gamaliel. According to others, R. Jehudah declared his decision about the following Boraitha: Beasts from parks may be slaughtered, but not from nets (because it is not known on what day they were found there, on the festival or before it). R. Simeon b. Elazar said: If one found the nets disturbed on the eve of a festival, it is certain that they had been caught before the festival, and they are permitted; but if he came on the festival, and saw them disturbed, it is certain they were caught during the festival, and they are not allowed. Is this saying not contradictory in itself? It says: If he found it disturbed on the eve of a festival, it is certain that they were caught before the festival, and they are allowed, from which it is to be understood, that if it was doubtful, it is not allowed; and in the latter part it says:

{If he found it disturbed on the festival, etc., it is certain that they were caught during the festival, and they are not allowed, from which it is to be inferred that when there is a doubt it is permissible? It means to say thus: If he found it disturbed on the eve, it is certain that they were already caught, and are permissible; but if it was doubtful, it is to be considered that they were caught on the festival, and are not permissible. Said R. Jehudah in the name of Samuel: The Halakha prevails according to R. Simeon b. Elazar.

"*When he said, it is allowed*," etc. Allowed what? Rabh said: They are permitted to be received, but Levi said, they are permitted to be eaten.

Said Rabh: A man should never absent himself from the house of learning, even for one hour, because I and Levi both were in the college when Rabbi declared this Halakha. In the evening he said: They are permitted to be eaten; but in the morning he said: They are permitted to be received. I, who was in the college in the morning and heard his second decision, gave up the first; but Levi, who was not, did not.

R. Papa said: The Halakha is as follows: If a Gentile brought a present to an Israelite on a festival, if the same kind of productions are found yet on the trees or ground, it is prohibited; and even in the evening, one must wait till the time when such a thing may be gathered and brought. But if that kind of production is no longer found on trees or on the field, then, if the present has been carried from within the legal limit, it may be accepted, but if from beyond the legal limit it may not. And if it has been brought for one Israelite, another may use it.

Rabba bar R. Huna said in the name of Rabh: When one has choked a pond, on the eve of a festival, and on the morrow he found there fish, they are permitted. Said R. Hisda: From the

teaching of our Master we can infer that a beast which was overnight in the garden need not have been prepared on the preceding day (may be used). Said R. Na'hman: My colleague has attempted to decide the quarrel of great men. In the case of the fish, the man does nothing; but in this case, he must catch it. But how could R. Hisda decide that it has not to be prepared, did we not learn in a Boraitha, that a beast that was overnight in a garden must have been prepared, and a bird must have had its wings bound that it should not be exchanged for another? And this law is one of those which it has been testified, that they were said by Shemaia and Abtalian? This objection remains.

MISHNA: It is not allowed to kill on a festival an animal suffering from a mortal disease, unless there is time to eat thereof, on that day, at least the size of an olive, roasted. Rabbi Aqiba allows it, if there be only time to eat thereof the size of an olive, raw, even in the very place where it is slaughtered. If it has been killed in the field, the entire carcass may not be carried home on poles or sticks, but only piecemeal, by hand.

GEMARA: Said Rami bar Abba: The taking off the skin, and the cutting of a burnt-offering (which could be burnt without this) is only to teach the latter generations, that one shall not eat meat of a slaughtered animal before the skin is taken off, and was not cut in the usual pieces. Is this also a necessary teaching? Yea, as we have learned in a Boraitha, a man shall not commence eating garlic or onions from the roots, but from the leaves; otherwise his taste is coarse. Likewise, a man should not empty his goblet at a draught, otherwise he resembles a drunkard. 1

A Boraitha states in the name of R. Meir: Why was the Law given to Israel? Because they are bold (difficult to be vanquished). The disciples of R. Ishmael taught: It is written [Deut. xxxiii. 2]: "From his right hand he gave a fiery law unto them." The Holy One, blessed be He, said: The Israelites are so bold that a fiery law must be given to them. According to others, the law of this people is like fire, because if such a law had not been given to them, no nation and tongue could stand before them. And this is as R. Simeon b. Lakish said: The boldest nation of all nations is Israel. 2

"*The entire carcass may not be brought on poles*." The rabbis taught: A blind man should not walk with his stick on a festival, nor a shepherd with his bag (pouch); also, a man must not be carried in a chair. It matters not whether it is a man or a woman. This is not so? Did not R. Jacob bar Iddi send a message that an old man was in his neighborhood and he was carried in a litter (*Lectica*), and they went to R. Joshuah b. Levi and asked him whether it was lawful, and his answer was, that if he was needed by many people, he could do so. And our Masters use as a sup. port to this opinion words of Ahi Shakia, who said: I have carried R. Huna in a chair on the festival from Hini to Shilli, and back. And R. Na'hman bar Itz'hak told: I have carried Mar Samuel

from the shadow into sunshine, and back. The reason is stated, because if many people needed him it was allowed.

Says R. Na'hman to Hama bar Adda, the messenger of Zion: When you go to Palestine, turn

down from your road and ascend the "Ladder of Tzur" and visit R. Jacob bar Iddi and ask him: How is their custom with a litter? When he arrived there, R. Jacob bar Iddi was dead, and he found R. Zrika, and asked him: How is your custom in regard to litters? And he answered: So said R. Ammi: One may be carried in them, provided he shall not put his hands on the shoulders of the bearers. What is meant by this? Said R. Joseph the son of Rabha: He shall not be carried in a palanquin (a kind of litter which required that he who is carried should hold by the shoulders of the bearers). Is that so? Did not R. Na'hman allow his wife Yalta to be carried in a palanquin? The case with Yalta was different; she was timid.

Amemar and Mar Zutra were carried on the Sabbath before the festivals on a palanquin, because there was a great crowd and it was feared they would be injured. According to others: Because it was so crowded by the people who came to hear, that they could not pass through.

MISHNA: If a first-born animal fall into a pit on the festival (and it is not known whether it was injured), R. Jehudah says: An expert may descend and see whether it had already an in. curable and permanent blemish, in which case it may be drawn up and killed, but not otherwise. R. Simeon, however, said: If a blemish in a first-born animal was not recognized on the eve of the festival, this is not considered prepared, and must not be killed on the holiday.

GEMARA: On what point do they differ? Shall we assume that the point is, if it is allowed to examine blemishes on the festival, that according to R. Jehudah it is allowed, and according to R. Simeon it is not, then let him say so plainly. Why do they differ here when it fell in a pit? This case was necessary, lest one say that, because here is pity for the living thing which falls in the pit, it shall be allowed to be taken out for the purpose of slaughtering it, if it has a blemish, as R. Joshua said further on (Chap. V., p. 75). Therefore it comes to teach us that even in this case there is yet a difference of opinion.

If it is so, then the Mishna should say, he shall *bring* it up and slaughter it? And the difference on this point is only whether it should be slaughtered or not? The case is, when he has already brought it up, lest one say that when it is brought up

it may be slaughtered. Slaughtered! is it not a first-born without a blemish? That means, if it got a blemish. But if it has the blemish now, is it not yet Muktzah? The case is when it has a blemish which has to be examined on the eve of the festival, and now through its fall it has got a permanent blemish, and it can be slaughtered without any examination, lest one say that because a blemish was from yesterday, the owner had it in his mind, and might be slaughtered to-day, the Mishna comes to teach us that it is not so.

The rabbis taught: Of a first-born animal which was without blemish (if it fall into a pit on a festival), R. Jehudah the Nassi said: An expert shall descend and see whether it had a blemish, and then it may be drawn up and slaughtered; and if not, it shall not be slaughtered. Said R. Simeon b. Menasia to him: Did not the sages say that blemishes must not be examined on a festival? How so? If it got a blemish on the preceding day it must not be examined on the festival; but if it got the blemish on the festival, R. Simeon said that it could not be killed, because it was not prepared from the day before. They all agree, however, that if it was born on a festival with a blemish, it is considered as prepared. Rabba bar R. Huna lectured: If the animal

was born with a blemish, the examination may be commenced on the festival. Said R. Na'hman to him: Abba, 1 we have learned if he has transgressed and had already examined, the examination can be useful, and thou sayest that they may *commence* the examination? Said Abayi: It seems to me that Rabba bar Huna is right, because the Boraitha teaches three cases. If it got a blemish on the eve it must not be examined on the festival. From this we may infer that it must not be examined, but that if it has already been examined, it may be used. (The second case is) if the blemish was got on the festival, R. Simeon said that it is not prepared. From this we see that, even if it has been examined and a real blemish found, it must also not be used. (And the third case is) all agree that if it was born with a blemish on a festival, it is considered prepared. Consequently, the examination may be commenced.

(Is that so?) We know that when R. Oshija came from Palestine he brought a Boraitha. Either when he got a blemish on the eve of the festival, or on the festival, according to the

sages it is not to be considered prepared (and the Boraitha must be in accordance with R. Simeon, who says that it must not be examined on the festival; and nevertheless the Boraitha teaches that even if the blemish was from the eve of the festival, it is also not to be considered as prepared, we can say, then, that if it was born with a blemish, it is permissible only when it was examined, but it is not allowed to commence the examination, as R. Na'hman said above?) Yea, it can be said so, but the following Boraitha is yet a contradiction to him (why, then, should you prefer the Boraitha which R. Oshiya brought to *the former*?) Because the former Boraitha came from the sources of Adda bar Ukhmi, 1 who was known to be erratic in the Boraithas which he taught. Said R. Na'hman bar Itz'hak: It seems from our Mishna also that it is in accordance with the Boraitha of R. Oshiya, because it states: R. Simeon said: If the blemish was not recognized on the eve, etc., it is not considered prepared. Now let us see what is meant by "recognized"? Shall we assume that it was not visible at all? This would be self-evident. We must then say that it was not examined whether it was a permanent blemish or a temporary one; nevertheless it states that it is not considered prepared, even when one slaughtered it. (Consequently the latter part of the Mishna, which states that "all agree," etc., "it is prepared," must be explained as R. Na'hman corrected.)

Hillel asked of Rabha: Does the law of Muktzah exist for a half of Sabbath (*i.e.*, whether a thing is fit for one half of Sabbath, but not for the other half)? How can such a case be? If it was fit in twilight, then it was fit for the whole Sabbath; and if it was not fit at twilight, then it was not fit for the whole Sabbath?

He meant to say it was fit at twilight, but afterwards it got wet from rain, and dried again, as it was in the beginning, and not fit during one part of Sabbath., and then fit again. How is it? The answer was: There is no law of Muktzah for a half of Sabbath. Shall we assume that the above Boraitha, which declares that if it was born with a blemish it shall be considered as prepared, is a support to Rabha's decree? Because the first-born, when it was yet in the womb of its mother, was fit along with its mother (because it was not reckoned a firstling before its birth); and as soon as it is born, it is not fit; and after its being examined by an expert and found blemished it becomes again fit (from this we see that the law of Muktzah does not exist for a half of Sabbath, as it was fit before its birth, became unfit at birth, and became fit again after examination).

Nay, said Abayi in the name of R. Saphra: It may be that the case was, the expert was by when it was born, and saw it was fit from its birth.

R. Jehudah the second possessed a firstling, and sent it to R. Ammi on a festival for examination. At first he thought he would not examine it. Said R. Zrika, or according to others R. Jeremiah, to him: If R. Simeon and R. Jehudah differ, the Halakha prevails according to R. Jehudah.

At another time he sent it to R. Itz'hak of Naph'ha, and the same happened again. Said R. Abba to R. Zrika: Why did not you let people do a thing in accordance with R. Simeon? And he answered him: Have you heard any decision that the Halakha is according to R. Simeon? And he said: Yea, so I have heard from R. Zera. Said some one of the disciples present: If I will be worthy to go to Palestine, I would like to learn the Halakha from the mouth of R. Zera. Later when he came to Palestine, he asked R. Zera: Did the Master say that the Halakha prevails according to R. Simeon? And he answered: I did not say it is so, but I said: It seems so to me, because the Mishna relates, R. Simeon said: If the blemish was not recognized while it was yet day, it is not prepared, and the Boraitha teaches the same in the name of the sages (in plural). And I thought the Boraitha did so because the Halakha prevails accordingly. How is it in reality? Said R. Joseph: Come and hear. I will base my decision on the words of great men, that R. Simeon ben Pazzi in the name of R. Joshuah b. Levi, quoting R. Jose b. Saul in the name of Rabbi, upon the authority of the Holy Assembly of Jerusalem, said that R. Simeon (b. Menasseh) and his colleagues

decide the above Halakha according to R. Meir. How can they have decided it according to R. Meir? They lived (the Holy Assembly of Jerusalem) in an earlier age than he. Say, they decided it in accordance with the *system* of R. Meir (this will be explained in Tract B'choroth).

Ammi of Vardinaa was the examiner of the firstlings of the Nasi; and he did not examine on festivals. When this was told to R. Ammi, he said, he does right. Is it so? Did not R. Ammi himself examine the blemishes of the firstlings? Nay, he used to see them the preceding day, but he kept his decision until the morrow, when he asked the owner how the animal had come by the blemish. As it happened when a man brought a firstling before Rabha on the eve of a festival, after noon, and at that time Rabha was washing his head. He raised his eyes, and looked on the blemish, and told the man: Go away to-day, and come to-morrow. The next day he asked him what was the cause of the blemish, and he answered: I have given it barley on one side of thorns, and it was on the other side; when it wanted to eat, it put forth its head between the thorns and thus tore its lip. And Rabha asked him: Perhaps you did it intentionally? And he said: No.

MISHNA: An animal which dies on the festival may not be removed thereon. It happened once, when Rabbi Tarphon was questioned on the subject, and also concerning a separate piece of dough, which had become polluted, he went to the college and inquired. They told him: They may not be removed from the spot.

GEMARA: Shall we say that this anonymous Mishna is not in accordance with R. Simeon (see Sabbath, p. 375)? Nay, the Mishna can be explained in accordance with him, but he owns that

animals that died on Sabbath are prohibited. This would be right according to Mar bar Amemar, who said in the name of Rabh that R. Simeon owns it; but according to Mar b. R. Joseph, who declares in the name of Rabha that R. Simeon differs, even when the animals died on Sabbath, and said that they may be used? (What can be said to that?) Zera explained this Mishna, that it refers to an animal that was consecrated for sacrifice. And it seems Zera is right in his explanation, because the Mishna speaks further on about Hala that became unclean; and as the Hala was a consecrated thing, so must be also the animal in question.

MISHNA: An association for the purpose of jointly purchasing

an animal may not be formed on the festival; but if this was arranged before the festival, the animal so purchased may be slaughtered and shared on the festival.

GEMARA: What is meant by "may not be formed"? Said R. Jehudah in the name of Samuel: The price of the animal must not be fixed on the festival; but how shall it be done? Said Rabh: Two animals shall be brought, and placed side by side, and it shall be said: The value of this animal shall be as the value of that. We have learned also in a Boraitha: One shall not say to his neighbor: I will be a partner with you in this animal for one Sela or more; but he may say: I would be a partner with you for one half, third, or quarter of it.

MISHNA: R. Jehudah said: (A butcher who sells meat on a festival) may weigh it against a vessel or hatchet; but according to the sages he may not even look on the scales at all.

GEMARA: What is meant by "at all"? Said R. Jehudah in the name of Samuel: Even to preserve the meat from mice, he must not put it on the scales. Said R. Iddi bar Abbin: That is, when the scales hang on the lever. R. Jehudah in the name of Samuel says again: A butcher who is a specialist must not weigh the meat on his hand. He says again: The same must not weigh the meat in water. R. Hyya bar Ashi said: It is not permitted to make a hole in the meat, to use it as a handle. Said Rabina: But if he made it with his hand, not with a tool, it is allowed. R. Huna said: One may make a sign upon the meat, as Rabba bar R. Huna would cut the meat in the shape of a triangle for a sign. R. Hyya and R. Simeon the Great used to weigh one piece against the other, and they did it according to R. Joshua, as we learn in the following Boraitha: R. Joshua said: One may weigh one piece against the other. And R. Joseph said: The Halakha prevails according to R. Joshua, because there is a Mishna in Tract B'choroth in accordance with his decision.

MISHNA: Knives may not be ground or set on the festival; but it is permitted to sharpen one knife with the other.

GEMARA: Said R. Huna: It is only on a whetstone, but on wood one may. Said R. Jehudah in the name of Samuel: Even on a whetstone it is only prohibited to sharpen, but to remove the fat from it one may. We may infer from this, that on wood it is allowed even to sharpen.

Who is the Tana who holds that on a whetstone it is not permitted? Said R. Hisda: It is at any rate not according to R.

[paragraph continues] Jehudah, as we have learned in a Boraitha: R. Jehudah allows to make on a festival even the arrangements for the preparation of food (Sabbath, p. 309).

Said Rabha to R. Hisda: Shall we lecture in thy name that the Halakha prevails according to R. Jehudah? And R. Hisda answered: It may be the will of the Lord that all good things like this shall ye lecture in my name.

R. Nehemiah b. R. Joseph said: Once I was standing before Rabha, and saw that he took the knife and made passes with it over a basket. And I said to him: Does Master intend to sharpen it, or to remove the fat? And he said: To remove the fat. But I saw that he intended to sharpen it. From this it is understood that the Halakha prevails thus, but is not to be proclaimed to the people. Abayi told that the same thing happened to him and his Master, Rabba.

The schoolmen propound a question: May one give the slaughtering-knife to the wise for examination on the festival? R. Mari the son of R. Bizna allowed this, but the rabbis prohibited. R. Joseph, however, said: A scholar (Talmud Hakham) may examine the knife for his own use, and then lend it to others. R. Joseph said again: A knife that becomes blunt may be sharpened by pressure, provided that the knife becomes only blunt, but not injured.

R. Jehudah in the name of Samuel said: A spit that became crooked must not be repaired on a festival. Is not this self-evident? He meant to say, that even with the hand, without the aid of tools, it is not allowed. The same says again: After the meat has been roasted on the spit, it may not be handled more (because the blood defiling it makes it unfit for use until cleaned). Said R. Adda bar Ah'bah in the name of R. Malkiya: He may, nevertheless, take it to put into a corner, the same as it is permitted to do with a thorn that is seen in public ground. (Sabbath, p. 75.)

MISHNA: One must not say to a butcher: Give me meat for a Denar; but the butcher may slaughter the animal, and divide it among the customers.

One may say to another (on the festival), fill me this vessel, but it must not be a vessel appropriated to measure with. R. Jehudah says: If a measure is used it must not be quite filled. Abba Saul b. Batnit used to fill his measures on the day before the festival, and delivered them to the customers on the festival. The same Saul said: One may do so even on the intermediate

days, on account of the froth in the measure. The sages, however, say: One may do so also on week-days in order to let out the entire contents of his measure into the vessels of his customers.

GEMARA: What is meant by "vessel appropriated to measure with"? Said Rabha: That is, he shall not mention the kind of measure, but if the vessel is a measure he may do so. And R. Jehudah comes to teach that even this must not be done. From this we see that, about the enjoyment of the festival, R. Jehudah is more rigorous, and the sages are more lenient; but did we not learn in the Mishna about the scales (p. 55), that R. Jehudah is more lenient and the sages are more rigorous? And this would be a contradiction to that teaching? It presents no difficulty. The above Mishna referred to a thing which was not a weight, but this speaks of a vessel that is

a measure. This reconciles the contradiction between one teaching of R. Jehudah. and the other. And as regards what sages teach about the scales? They merely say that a man shall not do as is usually done on week-days, but here he does not do as on week-days, because it is not usual that a man should give wine to his guest to drink from a measure.

"*Abba Saul b. Batnit*," etc. A Boraitha taught: One may do it in the intermediate days to prevent interruption in the house of learning (if he will busy himself with the measuring, he will fail to go to the college).

The rabbis taught: Abba Saul collected three hundred pitchers of wine barely from the froth of the measures; [1] and his colleagues collected the same amount from what remained in the measures after emptying them for the customers. Both brought this wine to the treasurers of charity at Jerusalem. The treasurers said to them: It is not necessary for you to do so (because it is your own). But they replied: We do not wish to use (because we do not consider it ours). And the treasurers rejoined: If you are so rigorous towards yourselves, go and dispose of it for the benefit of the people.

R. Hisda accompanied Rabbana Uqba, and the latter lectured: One must not measure barley to give it to cattle; but one may nevertheless take a Kab full, or two Kabs, and give it to the cattle without fear. But the baker (cook) may measure the quantity of spices for putting into the pots, lest he spoil the flavors.

R. Jeremiah bar Abba in the name of Rabh said: A woman may measure the flour on a festival for her dough, for the purpose of separating a due share of the first dough. Samuel, however, prohibited to do so. But did not the disciples of Samuel teach in his name that it is allowed? Said Abayi: Now, when the disciples declared in his name that it is permitted, and from himself it was beard that it is not, we may assume that he retracted his decision in order to teach us how to act.

The rabbis taught: One must not resieve flour on the festival; but R. Papias and R. Jehudah b. Bthera both permit it. All agree, however, that if some dust or a chip fell into the flour, that may be done. One disciple taught in the presence of Rabina that if a chip has fallen into it, he shall remove it with the hand. And Rabina rejoined that this is by an *a fortiori* argument, not allowed, because it looks as though he sifts it.

Rabha bar R. Huna the Minor lectured at the gate of Nehardai: One may resieve flour on the festival. Said R. Na'hman to the people of Nehardai: Go and tell Abba, Take thy favor and put it on the thorns (*i.e.*, he did not any good with his lecture). Go and see how many sieves are used in Nehardai on the festival (even before his lecture).

The wife of R. Joseph has sifted flour on the back of a sieve, and he said to her: See, I want to have good bread (it means, you should not make any change). The wife of R. Ashi sifted the flour on the back of the table (to show a change from the week-days). Said R. Ashi: My wife is the daughter of Rami bar Hama, who was very particular in his deeds, and if she had not seen it done in the house of her father, she would not do it.

MISHNA: One may go to a shopkeeper with whom one is used to deal, and say to him: "Give me so many eggs or nuts," because the master of a house is used to count similar articles by numbers.

GEMARA: The rabbis taught: One may go to his shepherd who is an acquaintance, and ask him for one goat or one sheep; to his butcher, to ask him for a shoulder or leg; to the birdseller, and ask him for one old or young pigeon, to his baker, and

ask him for a loaf or roll; and to his grocer, and ask him for twenty eggs or fifty nuts or ten peaches or five pomegranates or one lemon--provided one does not mention any numbers of measures. R. Simeon b. Elazar said: Provided one does not mention the prices.

Footnotes

48:1 See Tract Pesachim, p. 171.

48:2 This is explained in our periodical "Hakol," also in our "Lebaker Mishpat," and we will touch upon it in our present translation.

51:1 Rabba's name was *Abba*, and Rabba means Rab Abba. R. Na'hman as a colleague addresses him by name.

52:1 This name is mentioned only once in the whole Babylonian Talmud. In the Palestinian Talmud, however (Chap. I., Halakha 3) is mentioned R. Adda bar Uikhuma. The different pronunciation of the two Talmuds is usual, and so this Amora is the only one who was erratic. We are surprised why Zacuto and Heilprin, in "Seder-Hadoroth," ascribed this to Adda bar Abhimi, who is also mentioned only once in the whole Talmud. (In our edition, Vol. III., p. 24, and in the old edition the same saying is repeated, 9 *b* and 12 *a*), and there is not to be found even a hint that he was erratic. Also in the Palestinian Talmud the same is mentioned twice (Berakhoth, Chap. I., Halakha 3), with whom two great men of the Amoraim, R. Tanhurn and R. Hezekiah, communicated. There it is also said that he was a disciple of R. Zera (Zeera--according to the pronunciation of the Palestinian Talmud). Why, then, should it be ascribed to such a man that he was erratic? Moreover, Heilprin does not mention Adda bar Ukhmi among the Amoraim at all, although he mentions his name in the paragraph of Adda bar Abhimi, and gives also all our citation mentioned above. We also do not know the sources from which Heilprin states that according to others it is Abba bar Abhimi.

57:1 Rashi explains thus: It was known to him how many lugs there had been in his barrel, and also how many he sold out to his customers, and the remainder which was in the barrel he considered was left because of the froth of the measures, and during the year it amounted to three hundred pitchers. And his colleagues who sold oil, which makes no froth, collected the same number from the remainder of the measures, as there is always some oil left in them, and

during many years they collected from this the same amount.

Next: Chapter IV

CHAPTER IV.

REGULATIONS CONCERNING THE CARRYING AND HANDLING OF THINGS ON THE FESTIVAL.

MISHNA: If one has to transport jars of wine from one place to another (on a festival) he must not carry them in a basket or a case, but on the shoulder, or in his hand in front of his person. The same is the case when he has to carry straw; he must not put the bundle on the shoulder behind, but must carry it in his hand. One may commence to take a heap of straw (for fuel), but not of stacks of wood in an unused yard behind the house.

GEMARA: A Boraitha taught: If it is impossible to change the manner usual on week-days, it may be done as ordinarily.

Rabha has ordered in Mehuzah as follows: "A heavy burden which a man carries on a week-day with great trouble, if he has to bear it on a festival, he may carry it with the help of a *Rigla* (a long, crooked pole for bearing burdens), and though it is also heavy and a trouble, it is a change of the manner, on weekdays. And what one man carries on week-days with the help of a *Rigla*, two men shall carry. The burden which two men carry on a pole on their shoulders, they shall carry on a festival with the hand, and what is carried with the hand, shall on the festival be carried with a cloth." All this shall be done, if possible; but if it is impossible, it shall be carried as usually, because the Master said: If it is impossible to change the manner it is allowed.

Rabha bar R. Hanin said to Abayi: A Mishna teaches: It is prohibited to clap with the hands, strike on the hips, and to dance on a festival. And in our time we see people do so, and we do not say to them anything. And he answered: And according to your theory, come and see the women who take their cans and go and stand at the gates of the entry, which is also prohibited, and we say nothing to them (Would you also blame us for this?). This is not so (because it is a rule). Let

Israel do things unintentionally rather than intentionally (*i.e.*, they were sure that if it was told to them, they would not listen, and to preserve them from conscious transgression, they keep silence). And there is no difference in such a case between a biblical and a rabbinical prohibition. Because the adding from the eve of the Day of Atonement to the Day of Atonement (about half an hour) is biblical, nevertheless we see women eating and drinking till dark, and we say nothing.

"*But not of stacks of wood*," etc. R. Kahana said: From this it may be inferred that we must not commence to take of a whole store (stock storehouse), because it is "designated." Then it would be according to R. Jehudah, who holds the theory of Muktzah. How then would be explained the

beginning of the Mishna, that one may begin to take of a heap of straw, that would be according to R. Simeon, who does not hold the theory of Muktzah? The Mishna refers to spoiled straw (which is no longer fit for food of animals). But it may yet be used for bricks? It refers to a case when there were thistles (or thorns) in the straw.

MISHNA: Wood may not be taken from a booth, but the pieces lying by may be used.

GEMARA: R. Hyya bar Joseph taught before R. Johanan the following Boraitha: Wood must not be taken from a booth, but only the pieces lying near it. R. Simeon, however, permits it. But all agree that from a booth made for the Festival of Tabernacles it must not be taken *then*. If the booth was made conditionally, all must be done according to the condition.

It has been said: R. Simeon permits it. But did he not demolish a tent? Said R. Na'hman bar Itz'hak: The case is when the tent is already demolished, or so weak as to *fall down* soon, so that even on the preceding day he had the intention to take wood of it.

The Boraitha states: If the booth was made conditionally, etc. Can then a condition affect it? Did we not learn in Succah (p. 10), that R. Shesheth said in the name of R. Aqiba: that the wood of the Succah is prohibited in all the seven days at all events? This part of the Boraitha means an ordinary booth, not a tabernacle.

MISHNA: One may bring wood from the field when it is a stack, and from a wood-shed, even of the dispersed pieces of wood. What is called a wood-shed? If it is near the city. So is the decree of R. Jehudah. R. Jose, however, said, If there is a door which can be locked, even if it is within the legal limit.

GEMARA: R. Jehudah said in the name of Samuel: Wood may be brought only from the stacks that are in the wood-shed, but not dispersed pieces. Did not our Mishna teach that from a wood-shed may be taken even dispersed pieces? The Mishna is only according to an individual Tana, but the other sages differ from it. Rabha said: Leaves of a vineyard or of branches, although they are gathered and lie together, because by a wind they may be dispersed, are to be considered as dispersed already, and may not be used. But if one had put a heavy thing on them the preceding day, they may be used.

"*What is called a wood-shed*," etc. The schoolmen propound a question: Did the Mishna mean both? Did it mean that it is near the city and has a door, and R. Jose comes to teach if it has a door it is enough, if it is not near the city, but within the legal limit, or when it has no door, even near to a city, also not? Come and hear: Because R. Jose teaches that if it can be entered through a door, and the door can be locked, it is allowed even within the legal limit, we may infer that R. Jose decides in both cases leniently. Said R. Sala in the name of R. Jeremiah: The Halakha prevails according to R. Jose, leniently.

MISHNA: It is not permitted to cut wood from new beams, even from an old beam that was broken on the festival; neither may wood be cleft with an axe, or saw, or bite-hook, but with a chopping-knife only.

GEMARA: Has not the first part of the Mishna said that we must not cut wood at all? Said R. Jehudah in the name of Samuel: The Mishna is not completed, and must be read thus: It is not allowed to cut from a pile of logs, neither from a beam that was broken on the festival; but from a beam that was broken the preceding day. And when they cut it, they shall not do it with an axe, etc. The same we have learned in the following Boraitha: One may not cut wood from a pile of beams, nor from a beam broken on the festival, because they are not considered prepared while it is yet day.

"*But with a chopping-knife only*." Said R. Hinna bar Salmia in the name of Rabh: It is only with the side of the blade used for chopping wood, but with the broad side wherewith one can cleave beams, it is not allowed. 1

MISHNA: A house filled with fruits, if a hole was made, it is allowed to take fruit through this hole. R. Meir, however, said one may make a hole in the house, to commence with, for the purpose of taking the fruit.

GEMARA: Why so? Is he not demolishing a tent? Said R. Nehuma bar Adda in the name of Samuel: The Mishna refers to a house of bricks without mortar. R. Zera said: R. Meir allowed this only on a festival, but not on Sabbath. The same we have learned plainly in a Boraitha. Samuel said: If the doors of the cellars are tied with ropes, one may untie; but he may not untwist the ropes themselves, nor cut them off. When, however, with such ropes vessels were tied, he may untwist them and cut them off, and there is no difference between Sabbath and a festival in this case.

An objection was raised from the following Boraitha: If the doors of the cellars are tied with ropes, on Sabbath, one may untie, but he may not untwist the ropes themselves, nor cut them off. On a festival, however, all this is allowed? The Boraitha is according to R. Meir, who allows this on a festival to commence with, but I say according to the rabbis. But did the rabbis differ with R. Meir that if the doors of the cellars, etc.? Have we not learned in another Boraitha, that the sages agree with R. Meir concerning this case? Samuel holds with another Boraitha which stated differently.

MISHNA: It is not permitted to make a cavity in a lump of potter's clay for the purpose of using it as a lamp, because a utensil is thereby formed; neither may charcoal be made on a festival, nor the wick of a lamp be cut in two. R. Jehudah says: With fire it may be done.

GEMARA: Who is the Tana who holds that when a hole is made in such a lump it is called a utensil? Said R. Joseph: That is R. Meir (who states so in Tract Kelim).

The rabbis taught: One must not make a hole in a lump of clay to use it as a lamp, nor plates used by rustics (who are not particular about fine china, but use them as soon as made, before they have been hollowed out and *baked* in fire). 1 R. Simeon b. Gamaliel, however, allows it.

"*Neither may charcoal be made*," etc. Is this not self-evident? What use can one make on that day of charcoal? Taught R.

[paragraph continues] Hyya: The Mishna refers to those who need the charcoal for an *olearius* on this day (*i.e.*, a machine to heat oil to be fit for the body and clothes). Is it allowed then to take a bath on this day? As Rabha had explained in another place that it was allowed to go to sweat before it was prohibited, so also can this Mishna be explained to mean sweating, before the prohibition was made (see Sabbath, pp. 71, 72).

"*Nor the wick of a lamp*," etc. Why is it not allowed to do it with a knife? Because he makes of it a utensil (*i.e.*, he makes two out of one). Is not the same with fire? Taught R. Hyya: R. Jehudah meant to say that the ends shall be placed in two lamps, and shall be separated by burning the middle part, (and he only kindles the lamps).

R. Nathan bar Abba said in the name of Rabh: One may snuff a wick on the festival. Bar Qappara taught: Six things were said about a wick: three rigorously and three leniently. Rigorously: One must not commence to braid the wick, nor singe, nor cut it in two; and leniently: One may *twist* it with the hand, soak in oil, and make two wicks by burning the middle part. R. Nat an bar Abba in the name of Rabh said again: The rich men of the Babylonians are among those who descend to Gehenna; as it once happened Sabathai bar Merenus came to Babylon and asked them to support him in some business, and they did not; and he asked that they should feed him at least, and they also refused. Then he said: They are descendants of the "mixed multitude," as it is written [Deut. xiii. 18]: "And grant thee mercy, and have mercy upon thee." From this we infer that whosoever has mercy for creatures, he is surely of the children of Abraham our father, but whosoever has not mercy for creatures, it is certain he is not. The same says again in the name of the same authority: Whosoever is dependent upon the table of his neighbor, the whole world is dark for him. As it is written [Job xv. 23]: "He wandereth abroad for bread, (saying), Where is it? he knoweth that there is ready at his hand the day of darkness." R. Hisda said: His life is no life at all.

The rabbis taught: There are three men whose lives are not counted as lives at all: He who is dependent on the table of his neighbor; he whose wife dominates over him; and he who has bodily suffering. According to others, he who has no more than one shirt.

MISHNA: One may not break pieces of earthenware, nor cut paper for the purpose of roasting salted fish on it. Ashes

from the oven or hearth may not be removed, but they may be moved to one side. Two barrels must not be brought near each other, to place a pot on them over the fire, nor may a piece of wood be used to support a pot, nor a door. Cattle may not be driven on the festival with a stick; but R. Eliezer b. Simeon permits it.

GEMARA: Why so? Because he produces thereby utensils.

"*Ashes of the oven*," etc. R. Hyya b. Joseph taught in the presence of R. Na'hman that if it is not possible to bake in the oven unless one removes the ashes, one may do so. It happened to the

wife of R. Hyya that half a brick from the wall of the oven fell down into the oven on a festival. Said R. Hyya to her: See to its removal, because I like to have good bread. Rabha said to his servant: Roast for me a duck, and see that it shall not be singed. Said Rabina to R. Ashi: We were told by R. Aha of Hutzl that the Master's servants, when the oven is closed, smear it with clay on the festival. And he answered: We live near the River Euphrates, where clay is ready at hand. The case is, when he makes a sign on the clay on the previous day. Said Rabina: To knead ashes, it is permitted (because they cannot keep for a long period).

"*Nor may a piece of wood*," etc. The rabbis taught: A pot must not be supported with a piece of wood nor a door, because wood is prepared only for fuel. R. Simeon, however, allows this. Cattle must not be driven with a stick, but R. Eliezer the son of R. Simeon permits it. Shall we assume that R. Eliezer holds with his father, that no theory of Muktzah exists? Nay, he is more lenient than his father; for his father would assent that they must not be driven with a stick, because it seems as if they are taken to the market.

Hizra (Abhazar in Arabic), R. Na'hman prohibited to use for the purpose of roasting on it meat; but R. Shesheth permits it. If it was dry, all agree it is permitted; they differ only when it is wet yet. Whosoever prohibits it, does it because it is not fit for fuel, and whosoever permits it, does it because in a great fire this also can be used. The Halakha, however, prevails thus: That a dry one is allowed, but not a wet one.

Rabha lectured: A woman shall not enter a wood-shed to take a crooked piece of wood for a poker; and if a poker was broken on the festival, it must not be burned, because fire may be made with vessels, but not broken vessels (Sabbath, p. 270). Shall

we assume that Rabha holds with R. Jehudah regarding the theory of Muktzah? Did not Rabha say to his servant: Roast me a duck, and throw the entrails to the cat? With the entrails it is different; because, as they become putrified he made up his mind the day before that they must be given to the cat.

MISHNA: Rabbi Eliezer says: One may take a splinter from the wood lying near him to clean his teeth with, and gather in the yard small pieces of wood, and burn them, because whatever is in the yard may be considered as prepared for the festival. But the sages allow one to pick up only those pieces that lie near him, and only to burn them. Fire may not be produced on the festival from wood, stones, dust or earth, or from water; nor may one heat tiles to broil food on them.

GEMARA: R. Jehudah said: To food fit for cattle the law of making a utensil does not apply (*e. g.*, to take straw or other fodder of cattle, and break it for cleaning the teeth, or so, is permitted; because, being fit for cattle, it may be handled, etc.).

R. Kahana objected him: We have learned that branches of spice-trees may be handled to enjoy the odor, and to fan with them a sick man. One may *grind*, also, to produce an agreeable odor; but one must not break them for the purpose of enhancing the odor. If he did so, he is not liable to a sin-offering; but if he broke them for the purpose of cleaning the teeth with them, he is liable. And he answered: If the Boraitha had said that one may not break them for the purpose of

cleaning the teeth, it would be a great difficulty to me; much more, when it says he is liable to a sin-offering for it. The Boraitha must be incomplete and must be stated thus: He may grind with his hand for the purpose of odor; he may break them for this purpose, but the case is only when they are yet soft. But when they are already hard, he shall not break them. If he did so, however, he is not culpable, although it is prohibited; but if he broke for the purpose of cleaning the teeth, he is liable to a sin-offering.

In one Boraitha we have learned, he may break it in order to smell it, and in another one--that he must not break it for this purpose? Said R. Zera in the name of R. Hisda: It presents no difficulty. The Boraitha which allows it means when they are soft, and the other one, when they are dry. R. A'ha bar Jacob opposed: Why shall dry ones not be allowed? Did not a Mishna (Sabbath, p. 332) state: One may break open a cask to cut dry figs therefrom, etc.? Furthermore: Rabha and Rabbin, the sons of R. Adda, both say: When we were at the house of R. Jehudah,

he used to break twigs off a spice-tree, and give us sticks of the same, although the sticks were so large that they could be used for an axe or a spade handle. Therefore we must say that of the two Boraithas (mentioned above) one is according to R. Eliezer and one according to the rabbis of the following Boraitha: "R. Eliezer said: One may take a splinter from the wood lying near him to clean his teeth with; but the sages say: He can take it only from a manger. All agree that he shall not break it off, and if he did so, to clean the teeth or to open the door with it, if unintentionally on a Sabbath, he is liable to a sin-offering, and if intentionally on a festival, he is liable to the punishment of stripes. So is the decree of R. Eliezer. The sages, however, say: In both cases he is free, because this is only a *Shbuth* (Sabbath-rest, rabbinically)." Now, the Boraitha which states that he must not break it off is in accordance with R. Eliezer, who says there that he is liable to a sin-offering; and the Boraitha which states that he may do so is in accordance with the rabbis, who say there that he is free, even if he broke it off for the purpose of cleaning his teeth. Here, however, when it is for the purpose of smelling, it is allowed to commence with. But does not R. Eliezer hold what is stated in the above Mishna, that one may break open a cask, etc.? Said R. Ashi: According to R. Eliezer, the Mishna must be explained that the cask was cemented with resin, and it is impossible to use it afterwards as a vessel.

"*And gather in the yard*." The rabbis taught: He may gather in the yard and burn, because all things that are in the yard are considered as prepared, provided he does not make of them heaps. R. Simeon, however, permits even this. On what point do they differ? One holds that if he makes heaps, it seems as if he prepared them for the day subsequent to the festival; but the other holds that his pot proves that it is for to-day.

"*Fire may not be produced*," etc. Why so? Because to produce a new thing is not lawful.

"*One may not heat tiles*," etc. What labor is that? Said Rabba bar bar Hana in the name of Rabbi Johanan: The Mishna refers to new tiles, that must be examined as to whether they can stand fire. According to others, it is a labor because they must be heated long, until they become hard.

The rabbis taught: New ovens or hearths are considered as ordinary vessels that may be handled in the yard; but they must not be anointed with oil, nor cleaned with a wet cloth, nor cooled

in cold water to harden it. But if all this should be done only for the purpose of baking on that day, it is allowed.

The rabbis taught: The head and the feet of an animal may be scalded, also singed. The hair may be removed by fire, but not with lime, clay, or earth; nor must it be cut off with scissors. Herbs must not be cut out with the same scissors with which they are usually detached from the ground. But one may prepare χιναρα (artichoke) and thistle and bake in a large oven, and water may be formed in an "antikhi" (a kind of kettle: see Sabbath, p. 74). A new large oven, however, must not be heated on the festival, because it may burst.

The rabbis taught: One must not blow bellows, but one may blow through a pipe. A spit must not be sharpened and fixed (for the purpose of roasting).

The rabbis taught: A cane must not be splintered for the purpose of roasting salted fish. A nut, however, may be cracked through a piece of cloth, without fear lest that the latter be torn.

MISHNA: R. Eliezer said again: In a Sabbatical year a man may place himself on the eve of Sabbath at the place where figs or raisins are kept, and say: From there I will take to-morrow. But, according to the sages, he must point out the exact spot, and say: I will take from this point to that point.

GEMARA: In a Mishna (Maasroth, Chap. IV., 2) it is stated: If children had saved dates from the eve of Sabbath and forgot to separate the tithe, when the Sabbath is over they must not eat them until the tithe is separated. Also in another Mishna (ibid. III., 1): If one passed dates through his yard to dry them, his household may eat of them moderately. Now, Rabba asked R. Na'hman: Does the Sabbath fix the time for separating tithe even from things the labors belonging to which are not finished yet? Shall we assume that because it is written [in Is. lviii.]: "Thou shalt call the Sabbath a delight," it fixes the time of tithing even for things the labors belonging to which are not finished yet, or it fixes the time only for things the labors on which are finished and not otherwise? And he answered: Sabbath fixes the time in any event. The former said again: Why shall not Sabbath be equal to a yard which does not fix the time for things on which the labor is not finished yet? Let the law of Sabbath be the same? And he answered: We have an explicit teaching that the Sabbath fixes the time for the thing in any event. Said Mar Sutra the son of R. Na'hman: Our Mishna which states that only on Sabbatical years it may be done so, and not

in an ordinary year, must also be explained, that because the Sabbatical year is exempt from tithe, he may do so; but in an ordinary year it must not be done so, because the Sabbath fixes it for tithe. When Rabbin came from Palestine he said, however, in the name of R. Johanan, that Sabbath, Heave-offering, a Yard, and Price all do not fix for tithe, only in things on which all the labor belonging to them is already done. [1]

Sabbath--to state that the law is not after Hillel in the following Boraitha: If one transferred fruit from one place to another to cut it, and Sabbath overtook him, R. Jehudah said that only Hillel

prohibited to eat it before separating tithe, but all his colleagues differ from him.

A Yard--to state that the law is not after R. Jacob in the following Mishna, which says that whoso passes dates through the yard, his household may eat of them moderately, and they are free from tithe. And a Boraitha, in addition to this Mishna, states that R. Jacob says tithe must be separated, and R. Jose b. Jehudah frees it from tithe.

Heave-offering--to state that the law is not after R. Eliezer in the following Mishna: Fruit of which the heave-offering was separated before all the labors belonging to it were finished, R. Eliezer prohibits to eat from moderately, but the sages allow this.

And Price--as we learned in the following Boraitha: Whose, bought dates from a man of the common people in a place where the majority of gardeners press the dates, he may eat of them moderately; and when he comes to give tithe of them, he may separate tithe from it (but it is not necessary to separate heave-offering). And from this Boraitha we have learned three things: Firstly, that the price which is made does not fix for tithe until all the labor is done; secondly, that the majority of the common people do separate tithes; and thirdly, that if one comes to separate tithes from fruits bought from one of the common people, from a doubt lest the seller had not yet separated the tithe, he may separate it even from things the labors belonging to which are not yet finished.

Footnotes

62:1 It is difficult to understand the argument, as it is not known to us how the chopping-knife was made. Even Tospheth remarks because we do not know what kind of a chopping-knife it was, therefore it is not allowed to cut wood with any knife, only with the hand.

63:1 The commentators, Rashi and Tospheth, also the dictionaries, try to explain this term, but it remains obscure.

69:1 The law of the tithe of all these will be explained in Tract Maasroth. The meaning of "Price" is, that if the grain was sold before it became ripe, it does not fix it for tithe.

Next: Chapter V

CHAPTER V.

REGULATIONS CONCERNING LABORS PERMITTED AND NOT PERMITTED ON BIBLICAL FESTIVALS.

MISHNA: It is allowed to throw down fruit (kept on the roof for drying) by a trap-door (into the yard) on the festival, but not on Sabbath. It is also allowed to cover fruit, or jars of wine or oil, with vessels to protect them from rain. One may also place a vessel to receive rain on Sabbath.

GEMARA: Of which quantity does the Mishna speak? Said R. Zera in the name of R. Assi, according to others R. Assi in the name of R. Johanan: The same quantity which we have learned in the Mishna (in Sabbath, p. 276). One may even clear off four or five chests of straw or grain in order to remove obstacles to instruction, etc. But perhaps there it is different, because there are obstacles to instruction; but here, where it is not the case, it may be a less quantity? Or, on the contrary, there the Mishna speaks of Sabbath, which is rigorous, therefore a slight quantity is allowed. But here it is a festival, perhaps a greater quantity is allowed? It can be interpreted even in another way: There, where there are no damages of *money*, a quantity from four to five is allowed; but here, where there can be damages of money, even more is also allowed? And another question: There the Mishna teaches that one must not clear out a whole barn, and Samuel explained this that the Mishna meant he shall not clear out the whole barn for fear he will notice pits and would like to fill them up (ibid. 276). How is the law in our case? Shall we assume that because Sabbath is rigorous, the precautionary measure must be taken; but in the case of the festival, which is lenient, it need not be taken? Or, on the contrary, there, where although the reason is the fear of interruption in the house of learning, yet it is not allowed to clear the whole barn, how much the more here, where such a reason does not exist? And another question: Here the Mishna teaches that fruit must be thrown through a trap-door, and R. Na'hman said in addition

to this, that it is allowed only from *that* roof; but to throw it from this roof to another, it is not allowed. And so it was also taught in a Boraitha, that the fruit must not be carried from one roof to another, although the roofs are of equal altitude. Shall we assume that only in the case of the festival which is lenient this is prohibited as a precautionary measure, lest one shall come to hold cheap the holiday, and will do other things, but on Sabbath which is rigorous and no such fear exists, perhaps this is allowed? Or, on the contrary, as here, where the fruit can be damaged, we do not allow this; there, where no such a fear exists, so much the more it is not allowed. And another question: A Boraitha in addition to this Mishna teaches he shall not let it down by ropes and also not by ladders. Shall we say that only here, where the fear of the interruption in the house of learning does not exist, it is prohibited; but there, where such a fear does exist, it is allowed? Or, on the contrary, here, although there is fear of damages, it is not allowed, so much the more there? All these questions are not decided.

"*And fruits may be covered*." Said Ula: Even piled-up bricks not mortared may be covered. R. Itz'hak, however, said only fruit fit for consumption may be covered with vessels, but no other things.

"One may place vessels to receive rain." A Boraitha taught: When the vessel was full, he might empty it, and put it in its former place again; and so repeatedly. The handmill of Abayi was exposed to the rain (and he had not enough vessels to protect it). He came to Rabba his Master, and asked; and he answered: Go and place your bed in that room (where the handmill was), and then the handmill will be considered as a night chamber, which may be removed from a bedroom (and then he can remove the bed again). Abayi himself considered the law and said to himself: May one turn a clean thing into an objectionable thing intentionally? While he sat and thought thus, the handmill cracked. Said he: I deserve this punishment because I was disobeying my Master.

Samuel said: A chamber-pot and similar vessels may be removed, and voided on the garbage; and then washed, and returned. The schoolmen who heard this thought that the dirt may be removed only together with another vessel, but not without another vessel? Come and hear: Once a dead mouse was found in the place where R. Ashi's spices were kept, and he said: Take it by its tail, and throw it out.

MISHNA: All transgressions of the precept of Shbuth, [1] whether by any optional actions, or actions for religious purposes, are also such on the festival. The following actions are forbidden on account of Shbuth: To climb trees, mount an animal, swim in water, clap with the hands, strike on the hips, or dance. The following are prohibited as optional actions: To administer justice, to acquire a woman as a wife (by giving a ring, money, etc.), to take off the shoes of one refusing to marry the deceased brother's widow (Halitzah), or to marry such a brother's widow. The following actions are prohibited as though they are actions for religious purposes: To consecrate anything, to value sacred things, to pronounce anything as devoted (to the service of the Temple), to separate heave-offerings and tithes. All these have been decided to be prohibited on the festival, and *a fortiori* on Sabbath. (This is the rule): There is no difference between the Sabbath and the festival, except that the preparation of food is permitted on the latter.

GEMARA: To climb trees--lest one tear off something; mount an animal--lest one should cut off a twig (to drive it therewith); to swim--lest one make a *swimming bladder*; to clap the hands, strike on the hips, dance--all lest one fix musical instruments.

"*The following are prohibited as optional*." *To administer justice*: is this not a religious act? The case is, when there is a better man than he who can perform it. *To acquire a wife*: is this not a religious act? The case is, when he has already a wife and children. *The ceremony of Halitzah and Jibum*: are these not religious duties? The case is, when there is an elder brother than he, and the duty falls on the elder brother. And the reason why all these are prohibited is as a precautionary measure, lest he come to write. *And these are prohibited, though religious acts*: as a precautionary measure, lest he will come to buy and sell. *To separate heave-offerings*, etc.: is not this self-evident? Taught R. Joseph: The case is, when he, wants to give it to the priest on the same day. But the law applies only to things wherefrom it is fit to separate the day before; but if he kneads dough on the festival, the first dough maybe separated and given to the priest.

All these on the festival, etc.: there is a contradiction to this (in the first Mishna of the chapter): "One may throw fruit on the festival, but not on Sabbath"? Said R. Joseph: There is no

difficulty: Our Mishna is in accordance with Eliezer: that the precautionary measures taken for Sabbath are to be taken also for festivals; and the other Mishna is according to Joshua, who says: When mother and son fall in a pit, the first maybe taken out for slaughtering, and then by connivance the other. R. Papa, however, said that the above Mishna is in accordance with Beth Shammai, and the first Mishna is in accordance with Beth Hillel. But perhaps it is not so? The statement of Beth Shammai refers only to carrying out, but not to handling it? Nay, is then handling not necessary in carrying out?

MISHNA: Cattle and utensils may be brought as far only as their owners may go, and when a person commits his cattle to his son or shepherd, they may not be brought or driven farther than the owner may go. Utensils that are appropriated to the exclusive use of one among brothers living together in the same house may be brought as far as that brother may go; but if they are not thus exclusively appropriated to one only, they may be brought to the places where all may go.

A utensil that had been borrowed since the eve of the festival may be carried as far as the borrower may go; but if on the festival, as far as the lender may go. And when one woman has borrowed of another spice, water, or salt, to make dough, they may be carried as far as both may go. R. Jehudah excepts water, because its substance does not remain visible.

GEMARA: Our Mishna seems to be not in accordance with R. Dosa of the following Boraitha: R. Dosa, according to others Abba Saul, said: Whoso had bought an animal from his neighbor on the eve of a festival, although he did not receive it until the festival, the animal may be driven as far as the buyer may go. The same is the case with him who gives an animal to the shepherd. If the arrangement was made before the festival, but he delivered it on it, it must be considered as the shepherd's? Nay, the Mishna can be explained also in accordance with R. Dosa, and it presents no difficulty. Our Mishna refers to a case where there are two shepherds in the town (when it was not known to which of them he would give); therefore it is considered as the owner's. But R. Dosa speaks of a case where there is but one shepherd. This explanation seems to be right, because our Mishna teaches, "to his son or shepherd." And as there may be more than one son, so is it about shepherds.

Said Rabba bar bar Hana in the name of R. Johanan: The Halakha prevails according to R. Dosa.

The rabbis taught: If two men had borrowed one garment, one should go in it to the House of Prayer in the morning, the other to the Dancing-house in the evening. Thus one will make an Erub to the north and the other to the south. Whoso has made an Erub to the north may go in this garment only as far as he who has made an Erub to the south may go in it to the north; and *vice versa*. But if either has made an Erub *at his* legal limit, so that by giving the right to move two thousand ells *more* in one direction, he loses the right to walk in the opposite direction even one step, then the garment belonging to both may not be moved from the town by either.

It was taught: If two men bought a barrel and an animal in partnership on the eve of a festival, the barrel may be moved by either to places where he goes; but the animal is not allowed to be driven except to places where both are allowed to go. So is the decree of Rabh. But according to Samuel, the case is the same with the barrel as with the animal. (Let us see:) What is the reason of Rabh's theory? If Rabh holds the theory of premeditated choice, then why shall the animal not be allowed? And if he does not, why shall the barrel be allowed? We may say that in reality he holds this theory (and therefore the barrel is allowed); but the animal is different, because it was alive at the twilight before the festival, and the blood changing its place from one member to the other on the festival, neither half can be chosen by either man (and as the partners have to go in different directions, neither may move the animal). Said p. Kahana and R. Ashi to Rabh: Even according to your theory, if the animal would be slaughtered, both partners would be allowed to eat of it, although the blood was circulating from one half designated for one man to the other half of the other man. Consequently the circulation of the blood is not feared in case of the law of Muktzah. Why, then, shall it affect the law of legal limit? Rabh was silent. What is in reality the law? R. Hoshia said: There is the theory of choice, and R. Johanan says: There is not. Mar Zutra lectured that the Halakha prevails according to R. Hoshia.

Samuel said: An ox from the dealer may be moved by every buyer to the places where he goes; but an ox belonging to the herdsman may be driven only where the people of the town have a right to go.

"*A utensil borrowed since the eve of*," etc. Is not this self-evident? The case is, when one actually received it on the festival, we would assume that as at twilight it was yet in the lender's

house, it should not yet be considered as the borrower's, he comes to teach us that the arrangement suffices to make it considered as the borrower's. And this is in support of R. Johanan's decree, who said: One who had arranged to borrow a utensil from his neighbor on the eve, and took it on the festival, is considered as the borrower's.

"*But if on the festival*," etc. Is this not self-evident? The case is, when it was the custom of this man to borrow of that man often, and we would assume that the lender had the intention to give it to him from the eve, and therefore it should be regarded as the borrower's, he comes to teach us this is not the case; because it may happen that meanwhile another man may come and borrow it.

"*And when a woman borrowed*," etc. When R. Abba intended to go to Palestine, he prayed that it should be the will of the Lord he should say a thing which should be accepted (by those sages). When he arrived there, he found R. Johanan, R. Hanina bar Papi, and R. Zera; according to others, R. Abahu, R. Simeon b. Pazzi, and R. Itz'hak of Naphha, who were sitting interpreting our Mishna, saying: Why, let the water and the salt be ignored in the dough? Said R. Abba to them: Would it be right, when one threw in one Kab of wheat into ten Kabs of his neighbor's, shall the owner of the nine Kabs take the one Kab as his own and enjoy it? (The same shall be the case here. Because water and salt are of little value, shall they be ignored?) They were laughing at him. Said R. Abahu to them: Why do you laugh? Have I taken your garments? They laughed again. In reality. what is the reason of the Mishna's teaching? Said Abayi: That is a precautionary measure, lest they will make the whole dough in partnership. Rabha said: The

reason is because spices give a flavor, and everything that gives a flavor cannot be ignored. R. Ashi said: The reason is, this prohibition is only temporary, and anything temporarily prohibited cannot be ignored, even when it is among a thousand.

"*R. Jehudah excepts water*." Did R. Jehudah except water, and not salt? Have we not learned in a Boraitha: R. Jehudah said that water and salt both are ignored, either in dough or in a pot? It presents no difficulty: Our Mishna speaks of Astrakhan salt, which is coarse, and must not be ignored, while the Boraitha means salt of Sodom, which is fine and is ignored. But we found another Boraitha, which says that according to R. Jehudah water and salt are ignored only in dough, but not in a pot, because of

its wetness (and it imparts a taste to every part). It presents no difficulty: One Boraitha applies to a pot where something thick is cooked, while the other means a pot of soup.

MISHNA: Burning coals may be carried as far as the owners may go, but a flame may be carried everywhere. If a coal of consecrated fire has been applied to profane use, the sin of desecration has been committed; but though no profane use must be made of a flame of sacred fire, yet a person who applies it thus has not incurred the penalty, and thus, if anybody carries (on Sabbath) a burning coal into a public place, he is guilty, but does not incur the penalty for a flame. The water of a well belonging to an individual may be carried as far as that man may go; but if it belongs to a town, as far as the inhabitants thereof may go. The water of a well made for the use of travellers (such as those) who come from Babylon, may be carried as far as he who draws it may go.

GEMARA: The rabbis taught: Five things have been taught about the burning coals: They may be carried as far as the owners may go; but a flame, everywhere. The sin of desecration applies only to a coal, but not to a flame; it must not, however, be used. A coal of idolatry is prohibited to be used, but the flame is permitted. Whoso carries a coal into public ground on Sabbath is culpable, and a flame is innocent; and whoso has made a vow not to receive any benefit from his neighbor must not use his coal, but may use his flame. Why may a consecrated flame not be used, but a flame of idolatry may be? In regard to idolatry, which is repulsive, and men avoid it in any event, no precautionary measure was taken; but to a consecrated thing which is not so, it was taken.

"*A well belonging to an individual*," etc. Rabha suggested the following contradiction before R. Na'hman: Our Mishna teaches that the water of an individual may be carried only as far as he may go, and in another Boraitha we have learned: Running rivers and springing wells are to be considered as the feet of every man (Sabbath, p. 261). Said Rabba: The Mishna refers to a well where water is not springing, but collected, and the same was taught in the name of Samuel by R. Hyya bar Abbin.

"*Babylonian travellers*": as the feet of him who draws it. It was taught: If one draw it and give it to another man, R. Na'hman said it may be considered as the feet of him for whom it is drawn; but R. Shesheth says, as his who draws. In what point do they differ? One holds that the well may be considered

as ownerless (and if the water was drawn for any one he becomes the owner), and the other holds that they are partners.

MISHNA: If one has fruit in another town of which the inhabitants only made an Erub (but not the owner), they must not bring his fruit to him; but if he has made the Erub, the fruit may be carried to any place he is allowed to go.

When one has invited guests, they must not carry home with them anything from the table, unless he had granted it to them the day before the festival.

GEMARA: It was taught: If one has deposited fruit at his neighbor's house, Rabh said the fruit is to be considered the property of the keeper; but Samuel said it is still regarded as the property of the depositor. An objection was made, based upon our Mishna: If he made also an Erub, the fruit may be brought to him. Now if, according to Rabh, it is considered the property of the keeper, what is the use of his making an Erub? Said R. Huna: The disciples of Rabh explain our Mishna that it refers to a case when they assigned a corner for his fruit (so that it is as if under his supervision). Come and hear (another objection): "They must not carry home," etc., "unless he had granted it," etc. Now, if it is considered the keeper's, what is the use of granting on the day before? The answer is, that granting is equal to assigning a separate place, as explained above, and if you wish it can be said that the case when granting is different.

R. Hana bar Hanilai suspended meat on the bar of the door, and went away. After when he wished to use it he came before R. Huna and asked him whether he can use it or not (because the meat was brought to him by a butcher out of town, and he feared perhaps he brought it from over the legal limit), and R. Huna answered: If yourself have suspended it, you may use it, but if the butcher suspended it, you may not.

MISHNA: One must not give drink to, or slaughter, animals living wild, but one may do it to domestic animals. And what are called domestic animals? When they are at night in the town or the suburbs; and those which are in the open field are called wild.

GEMARA: To what purpose are both drinking and slaughtering stated? It is a thing by the way: it comes to teach us that before slaughtering it is good the animal shall drink, because it is then easier to take off the skin.

The rabbis taught: Wild beasts are called those which depart

about the time of Passover, and feed in the marshes in the summer, and return in the fall; and domestic are called those which go out every day beyond the legal limit, but return every night, Rabbi, however, said: Both kinds mentioned are called domestic; but which are called wild beasts? Those that never come to inhabited places. Does, then, Rabbi hold the theory of Muktzah (prohibiting to slaughter even a wild beast)? Did not his son, R. Simeon, ask him: Dates which become not ripe on the tree, but are put in boxes of palm-branches and remain there till they ripen, what is the law about eating them on Sabbath according to R. Simeon? And he

answered: The theory of Muktzah, according to R. Simeon, does not exist at all? (And as we know that Rabbi's opinion was according to R. Simeon, consequently he does not hold the theory of Muktzah at all?) Rabbi said to the sages as follows: According to my opinion, no theory of Muktzah exists. But even in your opinion, would you not own to me that the animals which return in the fall must be called domestic? And the sages answered: No; in our opinion they are still called wild beasts.

END OF TRACT BETZAH (YOM TOB).

Footnotes

72:1 See above, p. 67.

Errata

page 70: 'quanity'->'quantity'

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page 39: 'whe'->'who'

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page 40: 'Succah, '->''

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page 7: 'do do'->'to do'

---

page 35: 'corrrected'->'corrected'

---

page 16: 'the'->''

---

page 24: 'Mesopatamia'->'Mesopotamia'

---

page 89: 'M.'->'P.M.'

---

page 20: 'contradition'->'contradiction'

TRACT SUCCAH (BOOTHS).

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TO THE PRESIDENT OF "TEMPLE ISRAEL," NEW YORK,

DANIEL P. HAYS, ESQ.

In consideration that through his influence, this Congregation is the first and unique among the reformed to establish a Succah in connection with their Temple, the Editor takes much pleasure in dedicating the tract which treats about the Succah, to him, to the Rabbi, and all the associates who took part in introducing same.

Very respectfully,

MICHAEL L. RODKINSON,

New York, Tuesday •••• •••, April 25th, 1899.

SYNOPSIS OF SUBJECTS

OF

VOLUME VII.--TRACT SUCCAH. 1

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Footnotes

v:1 See Introduction to Synopsis in Tract Sabbath, Vol. I., p. xxix., also note at end of Synopsis in Vol. V.

TRACT SUCCAH.

CHAPTER I.

REGULATIONS CONCERNING THE BUILDING OF A LEGAL BOOTH FOR THE FEAST OF TABERNACLES, ITS WALLS, AND ROOFING.

MISHNA: A booth which is higher than twenty ells is not valid. R. Jehudah, however, says it is. One which is not ten spans high, one which has not three walls, or which has more sun than shade, is not valid. 1

GEMARA: Whence do we deduce this? Said Rabha: It is written [Lev. xxiii. 43]: "In order that your generations may know that I caused the children of Israel to dwell in booths." Up to twenty ells a man knows that he is living in a booth, but higher than twenty ells he does not know, because his eyes do not frequently perceive the roof. R. Zera said: From the following passage [Isa. iv. 6]: "And a tabernacle shall it be for a shade in the daytime from the heat." Up to twenty ells a man sits in the shade of the roof, but if it is higher than twenty ells a man sits in the shade of the walls (but not of the roof). Said Abayi to him: According to your theory, if one has made a booth between two hills, it is also not legal (because there is no shadow from the roof at all)? And he answered: What comparison is this? if the hills were removed, he would sit in the shadow of the roof; but here, if the walls would be taken away, there would be no shade at all. Rabha said: From the following passage [Lev. xxiii. 42]: "In booths shall ye dwell seven days." The Law commands that for seven days one shall remove from his permanent dwelling into a temporary dwelling. Up to twenty ells, ordinarily a man makes a temporary dwelling; but higher than this it is not usual to make a temporary dwelling. Said Abayi to him: According to you, if one has

made iron walls, and covered them with a legal roof, would it also be unlawful for a booth? Rabha answered: I mean to say this: Up to twenty ells, which is an ordinary height for a temporary dwelling, even if one makes it a permanent dwelling, he can fulfil his duty; but over twenty ells, which is the ordinary height only of a permanent dwelling, even if one has made it a temporary dwelling, it is also unlawful? According to whom is the following saying of R. Joshia in the name of Rabh: The sages and R. Jehudah differ only when the walls do not reach the roof; but if the walls do reach the roof, all agree that the booth is valid though the walls be higher than twenty ells? It is in accordance with Rabha, who says that the sages make it invalid because the eye cannot reach the roof; but when the walls are attached to the roof, the eye is able to do so.

According to whom would the following saying of R. Hannan in the name of Rabh be: that they differ only about a booth less than four ells square, but when it is four ells square all agree that it is valid? This is in accordance with R. Zera, who says: The rabbis make it unlawful because of

the lack of shadow, and in a booth four ells square there is a shadow. And according to whom is the following saying of R. Harman b. Rabha in the name of Rabha: They (the sages and R. Jehudah) differ when the booth is only of a size to accommodate a man's head and greater part of body, and his table; but if it is of a larger size, then if it is higher than twenty ells, is it also valid? It is not, according to any one. An objection was raised: We have learned in a Boraitha: A booth which is higher than twenty ells is not valid. R. Jehudah, however, makes it valid, even if its height is forty or fifty ells; and he said: It happened that the Queen Helen, in the city of Lud, was sitting in a booth which was higher than twenty ells, and the older sages were entering and going out of it, and they did not object. And the sages answered him: This is not proof. She was a woman, and it is not obligatory for a woman to sit in a booth at all. And he rejoined: Everybody knows that she had seven male children; and besides this, all her acts were only in accordance with the will of the sages.

Now, it is right according to him who said that they differ in a case where the walls of the booth do not reach the roof, because usually a queen is sitting in a booth whereof the walls reach not the roof, that air may come in; but according to him who said that even in case of a small booth they differ, is it customary that a queen should sit in a small booth? Said Rabba bar R. Adda:

[paragraph continues] The case was of a booth separated into chambers. But is it customary that a queen should sit in a booth separated into chambers? Said R. Ashi: Yea, the case was that of a large booth with chambers, and the sages differ about the chambers. They hold that she sat in a separate chamber, but her children were sitting in a lawful booth, and therefore the elders did not object; but R. Jehudah said, her children sat with her, and nevertheless they did not object.

R. Samuel bar Itz'hak said: The Halakha prevails that the booth must be large enough to accommodate the head, the greater part of the body, and a table. Said R. Abha to him: According to whose opinion is this? And he answered: It is according to Beth Shammai, and nevertheless one shall not deviate from this law. R. Na'hman bar Itz'hak opposed this: Where do you find that Beth Shammai and Beth Hillel differ about a small booth? Perhaps they differ about a large booth, and the case was that the man was sitting at the entrance of the booth, and the table was in the house. Beth Shammai prohibit this as a precautionary measure, lest he incline himself toward the table, and then he will not be sitting in the Succah at all, and Beth Hillel does not call for such a precautionary measure. And a support to this I can bring from the following Boraitha: If one whose head and greater part of body was in the booth, and his table was in the house, Beth Shammai say it is not lawful, and according to Beth Hillel it is. Now, if they differed about the size of the booth, it should be said: if one sat in a booth which cannot contain more than the head and greater part of the body. And another Boraitha stated that Rabbi says if a booth does not contain four ells square it is invalid; but the sages say, if it contains the space for the head and the greater part of the body it is valid? Nay, they differ in both cases, and the Boraitha is not complete, and must be read thus: if one was sitting with his head and greater part of his body in the booth, and the table was in the house, he did not fulfil his duty, according to Beth Shammai; but Beth Hillel say he did, and a booth which cannot contain more than the greater part of the body and the head is unlawful, according to Beth Shammai; but Beth Hillel say it is.

Who is the Tana of the following teaching of the rabbis: In a house which is not four ells square, it is not obligatory to have a Mezuzah (a battlement), 1 and it is not subject to being defiled

by plagues, and it is retained at the jubilee year in a fortified town [Lev. xxv. 29], and a man possessing such a new house must not be kept from going to war, and an Erub must not be made in it, and it is not counted as a house to combine with the houses of the alley, and an Erub (from the courts) must not be deposited in it, and it must not be regarded as a house on the border between two towns, and brothers and partners do not divide it? Shall we assume it is according to Rabbi, not the sages? Nay, we can say that it is in accordance even with the sages. Do the sages allow a dwelling of less than this size? Only when it is a Succah which is temporary; but a house which is a permanent dwelling even the sages agree must be at least four ells square. Then men can live in it; but if less, it is not called a house at all.

If the booth was higher than twenty ells, and one put in pillows and feather-beds, it is not considered as made lower thereby; even when he renounces their use for any other purposes, because we ignore his resolve, as people in general do not do it. But if one puts there straw, and renounces it, it is considered as made lower; and so much the more, loose earth. But if one puts there straw which he does not renounce, although he does not purpose to remove it, and also sand, which he does not renounce--in that case Jose and the sages differ (Tract Ahaloth, Chap. xv. 6). If the booth was higher than twenty ells, and from the roofing hung down small twigs, then if they are so numerous that there is more shadow than sunshine, they are considered to make it lower; but if less than that, they do not make it lower. If it was high only ten spans, and small twigs hung down from the roof, Abayi thought that if there was more sun than shadow between the twigs, it m-as valid. Said Rabha to him: It is an unendurable dwelling, and nobody would live in it. (Therefore it is not valid.)

If it was higher than twenty ells, and one constructed in it a bench along the whole middle wall, if the bench is as large as the legal size of a booth (seven spans and a trifle), then the booth is valid (the whole booth because of a crooked wall); but if he constructed a bench along a side-wall, if from the edge of the bench to the opposite wall it is four ells, it is not valid; but if less than this, it is valid (because the bench legalizes two walls, the third being without the legal limit). If he constructed a bench in the midst of the booth, if from the edge of the bench to each of the walls it is four ells, it is not valid; but if less, it is valid, because of a crooked wall on all sides. If, however, he put the bench on

one side, then if it is less than four ells of the wall, it is valid (because of a crooked wall on one side); but if it is four ells, it is not. If the booth was less than ten spans in height, and he dug in it a pit to make it ten spans high, if from the edge of this pit to the wall is three spans, it is invalid; but less than that, it is valid. Why, then, in the case when it is twenty ells high, are less than four ells needed to make it valid, while here, when it is ten spans high, less than three spans are needed? Because there a wall is in existence, and to make it invalid one must have four ells; but in the case of ten spans, the wall is not considered a wall at all, and to make it a wall less than three spans are wanted (because then it is Lavud, *i.e.*, considered as attached to the ground of the pit when it would be ten spans high). (See Sabbath, p. 12, note §.)

The rabbis taught: If one has placed four poles and roofed them, according to R. Jacob, it is valid in cases when the poles admit of partition, as will be explained further, for a booth, but

according to the sages it is invalid. Said R. Huna: They differ only about the edge of the roof. R. Jacob holds the theory of Gud Assik (see Erubin, note, p. 6) applies here, and the sages hold that it does not. But about the middle of the roof they all agree it is invalid. R. Na'hman, however, said: They differ even about the middle of the roof. The schoolmen propounded a question: Does R. Na'hman mean to say they differ about the middle, but about the sides all agree that it is valid? Or does he mean to say, they differ even about the middle? This question is not decided.

The rabbis taught: If one drove into the ground four poles and roofed them, R. Jacob said, it should be seen whether each of the poles is so thick that if it would be divided it would reach a span on each side (see illustration of enclosures, Erubin, p. 18), then they must be considered as enclosures and the booth is valid; but if they have not such a thickness, it is not valid. And this is according to his theory elsewhere, that the enclosures of a booth must be not less than a span at each side. But the sages said, the booth is not valid unless there are two walls as usually; and the third wall is sufficient, even if it is one span.

"*If less than ten spans*." Whence is this deduced? It was taught: Rabh and Mar Hanina, R. Johanan and R. Habiba, taught

[in the whole section of Moed, whenever these names are mentioned, they put R. Jonathan in the place of R. Johanan], the ark was nine spans, and the cover to it one span, together it is

ten. As it is written [Ex. xxv. 22]: "And I will meet with thee there, and I will speak with thee from above the cover." And we have learned in another Boraitha: R. Jose said that the Shekhina never descended, and Moses and Elijah never ascended the heaven. As it is written [Psalms, cxv. 16]: "The heavens are the heavens of the Lord, but the earth hath he given to the children of man"; but is it not written [Ex. xix. 20]: "And the Lord came down upon Mount Sinai"? And the answer is, that He did not come down lower than ten spans [1] from the ground. (Now, when He says, "I will speak to thee from above the cover," that means ten spans higher. From this we see that ten spans are counted as separate premises; hence ten spans is the minimum height of a dwelling.)

It is true, the ark is nine spans, because it is written [Ex. xxv. 10]: "And they shall make an ark of shittim wood: two ells and a half shall be its length, and one ell and a half its breadth, and an ell and a half its height" (and as an ell is six spans, the height of one and a half is nine spans). But where do we find that the cover is one span? From the teaching of R. Hanina as follows: Of all the utensils that Moses made, the Law had prescribed before the length, the breadth, and the height. In case of the cover, however, the length and the breadth are written, but not the height; and we must go and draw this lesson from the meanest of the utensils, as it is written [ibid., ibid. 25]: "And thou shalt make unto it a rim of a hand's breadth round about." As the height of the rim is a span, we infer that the height of the cover is also a span. But why from the meanest of the utensils--why not from the utensils themselves? Because there is a rule, when much is grasped at, nothing is grasped; but when little is grasped, it is retained. R. Huna said: We infer it from this passage [Lev. xvi. 14]: "On the face of the cover, eastward"; if less than a span, it would not be called face. But where do we find that the distance between the roof and ground should be ten spans? Perhaps the roof itself should be included? Therefore we say this theory they draw from the Temple; as it is written [in I Kings, vi. 2]: "And the house which King Solomon built unto the Lord was sixty ells in length, and twenty in breadth, and thirty ells in

height"; and [ibid., ibid. 26]: "The height of the one cherub was ten cubits, and so was the other"; and a Boraitha states, as

we have found in the Temple, that the cherubim were a third of the height of the house, so also in the tabernacle in the desert they were one-third. Now, the height of the tabernacle was ten ells, as it is written [Ex. xxvi. 16]: "Ten ells shall be the length of each board." How many spans are in ten ells? Sixty. A third thereof is twenty: take off ten, which was the height of the ark with the cover, ten is left. And it is written [ibid. xxv. 20]: "And the cherubim shall spread forth their wings on high, overshadowing the cover." Hence we see that the Torah calls "overshadowing" when above ten spans. Therefore we infer that the roofing overshadowing the booth must be above the ten spans.

This would be right according to R. Meir, who said that all the ells mentioned in the Torah measure six spans; but according to R. Jehudah, who says that the ells of a building measured six spans, but other ells only five spans, what can be said? If so, the ark with its cover would be only eight and a half: then remain for the cherubim eleven and a half. Shall we say that the booth must be high at least eleven and a half? According to R. Jehudah the size of a booth is (Sinaic). (As it is said in Tract Erubin, p. 5)

"*One which has not three walls*." The rabbis taught: Two walls must be as usually, but the third one may be even one span. R. Simeon, however, said: Three must be as usually, and the fourth one may be a span. In what point do they differ? The rabbis hold, the bases are the Massorah (*i. e.*, if we came to draw something from Scripture the basis must be the Massorah) and as [in Lev. xxiii.] "in booths" is mentioned three times, and the Hebrew term for this is ••••, ••••, •••••• 1 that is, two of them are written in the singular and one in plural, and from each term in the singular we infer the necessity of one wall, and from the term in the plural two, which make four: take off one expression intended as a commandment to make booths in general, we infer from the two which are superfluous the necessity of three walls; that is, two as usually, and the third one the tradition reduces to a span in case it is valid. But according to R. Simeon the basis must be the biblical words as they *read*; and as all three *read* in the plural, we infer the necessity of six walls: take off one term as a general commandment, we have left four; hence three must be as usually, and the fourth tradition reduces to one span. And if you wish, we will say: that all

agree that the basis must be the Massorah, but the point whereon they differ is, one holds that the first verse, where the commandment is written, we also take into consideration to infer the necessity of a wall--consequently it is four walls; and one holds that the first must not be taken into consideration, and it is only three. R. Mathua said: R. Simeon infers his theory from the following passage [Isa. iv. 6]: "And a tabernacle shall it be for a shadow in the daytime from the heat, and for a refuge, for a covert from tempest and from rain" (*i.e.*, if it is not three walls, it cannot be a protection from wind, etc.).

Where shall be placed the wall which is one span wide? Said Rabh: One may place it where one wall ends, no matter which; it was taught that the same was said by Samuel in the name of Levi, and so also it was decided in the college. R. Simon, and according to others R. Joshuah b. Levi,

said: The wall which is a span shall be wide as a span made by the palm when extended, and one shall place it at a distance of less than three spans from another wall, so that the theory of Lavud should apply.

R. Jehudah said: A booth that was made as an entry is valid (the two walls need not be adjacent, but may be opposite, while the wall of one span can be placed at any side one likes). R. Simeon, and according to others R. Joshuah b. Levi, said: Such a booth is lawful only when one places an enclosure four spans and a trifle wide, and at a distance of less than three spans from the wall, so that the theory of Lavud can apply: then it will be counted together seven spans and a trifle, which is the lawful width for a booth. Why is it said there that it is sufficient when it is wide as an extended span, and here that an enclosure of four spans is needed? There, where there were two walls, as usually, a span is enough; but here, in which case they are opposite, an enclosure of at least four spans is required. Said Rabha: And to it must be added an appearance of a door (on the other side). R. Ashi found R. Kahna, who made a third wall extended a span wide, and on the other side an appearance of a door; and he said to him: Does not the Master hold with Rabha, who said that an appearance of a door is sufficient for a third wall? And he answered: I hold with the saying of Rabha, as it is interpreted above, that an appearance of a door must be added too.

Again: "*Two walls as usually*," etc. Said Rabha: This booth is considered private ground in reference to a Sabbath falling in the Feast of Tabernacles, so that things may be carried

from another private ground into this booth, and *vice versa* (although for a legal private ground three walls are needed), because as the two walls are considered a Succah, it is considered also private ground for this Sabbath. Rabha said again: If one has made a roof above an entry which has a side-beam, it is valid for a booth. [1] And the same said again: If one has roofed the enclosure of a w ell (see illustration in Erubin, p. 18), it may be used as a booth.

"*If there is more sun than shadow, it is not valid*." The rabbis taught: If there is more sunshine than shadow from the roof, but not from the walls. R. Joshiah, however, said: Even if it is more sunshine from the walls, it is also invalid. Said R. Yemar bar Shlomiah in the name of Abayi: What is the reason of R. Joshiah's decree? Because it is written [Ex. xl. 3]: "Thou shalt cover the ark with a vail"; now the vail was a partition, and the Torah says: "Thou shalt cover with it"; we may infer from this, the partition shall be equal in law to the cover (or roof). And what will the rabbis say to the query of R. Joshiah? The rabbis explained the expression, "Thou shalt cover it," that it means he shall fold the vail a little towards the ark, so that it shall seem as a cover.

Abayi said: Rabbi, R. Joshiah, R. Jehudah, R. Simeon, and Rabban Gamaliel, the school of Shammai, R. Eliezer, and the anonymous teachers all hold that a booth must be considered not as a temporary but as a permanent dwelling. (Rashi explains that it means that it should be possible to turn it into a permanent dwelling.) Rabbi, as we have learned above, that a Succah that was not four ells square is invalid; R. Joshiah, from the statement just mentioned; R. Jehudah, as he declares valid a booth which is higher than twenty ells; R. Simeon, as he requires four walls (three as usually, and one, one span wide); Rabban Gamaliel, as he declares invalid (farther on) a booth constructed on board a vessel or on a wagon; Beth Shammai, as they declare in a Mishna, farther on, that it is invalid if it can contain a man's head and greater part of body, while his table is in a house; R. Eliezer, as he declared a Succah constructed in the shape of a

pyramid is invalid; and the anonymous teachers, who declare invalid a circular Succah.

R. Johanan said: A booth which is made like a lime-kiln (*i.e.*, round), if its circumference is large enough that twenty-four

persons may sit at the walls, it is valid; but if not, it is; invalid. 1 And this teaching is according to Rabbi, who said that a booth which is not four ells square is not considered a booth at all.

R. Levi in the name of R. Meir said: Of two booths of potters which are one within the other, the innermost is not valid-for a legal booth, and is liable to have a Mezuzah, but the outermost may be used as a legal booth, and needs not a Mezuzah. Why so? Let the outer one be considered as a passage to the innermost, and a passage is not exempt from a Mezuzah? Because of both booths the outer one is only temporary, and it is exempt from a Mezuzah.

The rabbis taught: The booths of strangers, made only for the summer, booths for women (to make the toilet), booths made for animals, or booths made by Samaritans for the feast, and everything whatever called a booth is valid as a religious tabernacle, provided that it is roofed according to the Law. What is meant, "according to the Law"? Said R. Hisda: If it was roofed for this end, what is meant by the saying: "Anything whatever that is called a booth is valid"? To include the booths of shepherds, of those who watch dried figs, watchmen outside of the towns, and of those who watch fruit (all these are booths if they are roofed according to the Law, and are valid for religious purposes).

MISHNA: An old Succah, Beth Shammai hold, is not valid, but Beth Hillel hold it is valid. What is called an old. Succah? One which was constructed thirty days before the festival; but if it has been constructed on purpose for the festival, even though it be one year old, it is valid.

GEMARA: What is the reason of Beth Shammai's opinion? It is written [Lev. xxiii. 34]: "The feast of the booths shall be seven days unto the Lord." From this we infer that the booths must be made for the purpose of the feast. And what would Beth Hillel say to this passage? They infer from it another theory in accordance with R. Shesheth, who says in the name of R. Aqiba: Whence do we know that the wood that was used for the booths, must not be used for another purpose all the seven days? Because it is written: "The feast of the booths shall be seven days unto the Lord." And we have learned in a Boraitha:

[paragraph continues] R. Jehudah b. Bethyra said: In the same manner that the name of the Lord rests on the feast-offering (and this prohibits the eating of the feast-offering till the pieces are offered on the altar), so does the name of the Lord rest on the booth, to prohibit the use of the material of which it is constructed during the seven days. But did not Beth Shammai also infer this prohibition from the same passage? Yea, we must therefore say that the reason of Beth Shammai is another passage [Deut. xvi. 13]: "A feast of tabernacle . . . seven days." Infer from this that the booth must be made for this purpose. And what do Beth Hillel infer from the above passage? They infer from it that a Succah may be made during the intermediate days also, while Beth Shammai do not allow it.

MISHNA: If one constructs his Succah under a tree, it is the same as if he made it in his house (under the roof). Should he construct one Succah above another, the upper one is valid, but the lower one is not. R. Jehudah says: Should the upper one not be inhabited, the lower one is valid.

GEMARA: Rabha said: The Mishna refers only to a tree under which there is more shadow than sunshine; but if the sunshine is more than the shadow, it is valid. And I infer this, because the Mishna teaches that a booth which was made under a tree is as if made in a house, why does it express it thus? Let it say, it is invalid? We must therefore assume that it means: As in a roofed house there is more shadow than sunshine, so is it also under a tree, under which the same is the case. But if there is more sunshine than shadow, what is the use, since the branches of the tree, which are invalid, will combine with the roofing of the: booth to shut out the sunshine, and thus make the Succah invalid? Said R. Papa: The case is when one has cut off the branches. If they have been cut off, is it not self-evident that the booth is valid? One might say, we shall take a precautionary measure (lest any make it under a tree which has its branches) and he comes to teach us that such precautionary measures are not to be taken.

"*One Succah. above another*," etc. The rabbis taught: It is written [Lev. xxiii. 22]: "Ye shall sit in booths." We may infer, in booths, but not in a booth which is under a booth, or under a tree, or in a house. On the contrary, it is written in the "booths" in the plural (that can mean, in this and in that)? Said R. Na'hman bar Itz'hak: It reads plural, but it is written in the singular.

What distance must be between the upper and the lower Succah, that the second should be invalid? Said R. Huna: One span, as we find this measure in the law of defilement (Ahaloth, Chap. III. 7): R. Hisda and Rabba bar R. Huna both said: Four spans. The reason is, that we do not find any distance considered to be of any significance if it is less than four spans. Samuel, however, said:-Ten; and his reason is, that as to make it valid it must be no less than ten spans, so as make it invalid there must be ten spans. When R. Dimi came from Palestine, he said that in the west they so interpret: If the roof of the lower one could not bear the pillows and feather-beds of the upper one, then the lower is valid. From this we may infer that the first Tana holds that, although the lower one cannot bear the pillows in the upper one, it is nevertheless invalid? We may say that the difference between the first Tana and the sages is in a case in which the roof of the lower one could bear it, but not easily (according to him it is invalid, according to them it is valid).

MISHNA: If a cloth be spread over the (roof of the Succah as a screen) against the sun, or below (the roof, inside) to catch the falling leaves, or if one spread a cloth over a (four-post) bed-tester, the Succah is not valid, but one may spread a cloth over two bed-posts.

GEMARA: Said R. Hisda: The case is if one spread a cloth to catch leaves; but if he did it only for ornament, it is allowed. Is not this self-evident? Did not the Mishna say plainly "to catch leaves"? One might say the same is the case when it is an ornament also, but the Mishna mentioned a thing, it is usually so done; he comes to teach it is not so. It was taught: That such ornaments do not make it lower (if it was more than twenty ells high, it is not lowered thereby, or if it was ten spans they do not make it invalid). Said R. Ashi: But if the cloth was hung before a side-wall, it makes it smaller. It happened once that the shirt of Menymin, the servant of R.

Ashi, was soaked in water, and he spread it on the roof of the booth to dry. Said R. Ashi to him: Take it off, for one might say, we cover the roof with a thing which is subject to defilement. But everybody will see that it is wet? I mean to say, that when it will be dry, you shall take it off.

It was taught: If the ornaments of the Succah are four spans under the roof, R. Na'hman said the Succah is valid, but R. Hisda and Rabha bar R. Huna both say it is invalid. But sages were once the guests of the exilarch, and R. Na'hman made them

sleep in a booth where the ornaments were four spans beneath the roof; and they kept silent, and said nothing. Then he asked them: Did the Masters retract their decision? And they answered: We are delegates for a religious purpose, and therefore we are free from the duty of a Succah.

R. Jehudah in the name of Samuel said: One may sleep in a nuptial bed, because its canopy is not considered as a roof (being slanting) even when it is ten spans high. An objection was raised: We have learned, who sleeps under a canopy in a booth does not fulfil his duty? There is the case when the canopy is not of a nuptial bed, but different, like a roof. Rabha bar R. Huna lectured: One may sleep under a canopy, although it is like the roof, and high ten spans; and it is according to R. Jehudah, who said that a temporary tent cannot make a permanent one be ignored, as we have learned in a Mishna. R. Jehudah said: Our custom was to sleep in the booth under the bed in the presence of the elders. But let him say: The Halakha prevails according to R. Jehudah? If he would say so, one might say it is only the case with a bed because it is made to be slept on, but not underneath it (and therefore cannot make the permanent tent ignored); but in the case of a bed with a canopy, which was made for sleeping in, it may be thought different. Therefore he teaches us there is no difference.

MISHNA: If one has trained a vine, or gourd, or ivy over the booth, and covered it, it is not valid; but should the covering be the greater part of the roof (and they the smaller part), or if they had been cut off, it is valid. This is the rule: Everything subject to defilement, and not growing from the ground, must not be used as a roof to the booth; but everything not subject to defilement, and growing from the ground, may be used.

GEMARA: R. Joseph was sitting in the presence of R. Huna, and said: To the Mishna which says, if they are cut off, the Succah is valid. Said Rabh: They (the remainder of the roof) must nevertheless be shaken (after having been cut off). Said R. Huna to him: This said Samuel. R. Joseph turned away his face from him and said: Did I say to you Samuel did not say it? I told You Rabh said, and Samuel may have said it also. Rejoined R. Huna: But I tell you that only Samuel said it, and not Rabh, because, according to the latter, it is valid without shaking, as it happened once that R. Amram the Pious made fringes [Num. xv. 38] on the garment of his wife, but he did not cut asunder the heads of the thread; and later, when he came to ask about

it, R. Hiya b. Ashi said to him: So said Rabh: The cutting asunder of the thread, this makes the fringes lawful. From this we see that according to Rabh the cutting off makes it valid, though nothing but this was done. And the same is the case here also. Cutting off makes valid. Shall we assume that the point of difference between the Tanaim of the following Boraitha is the same as

that of Rabh and Samuel? Namely, we have learned in an addition to the Mishna: If a myrtle bough has more berries than leaves, it is invalid till the latter are made fewer; but it is not allowed to do so on a festival (Succah, Chap. III.). If, however, one transgressed, and cut off the berries on a festival, the myrtle bough is invalid according to R. Simeon b. R. Jehozodok, but is valid according to the sages. Now, the schoolmen thought the point on which R. Simeon and the sages differ is whether the cutting is a final preparation, for they thought all agree that the Lulab should be tied together n the beginning with the other branches, drawing a lesson from the Succah, about which it is said: "Ye shall *make*," *i.e.*, you shall commence to make, but not use what is made already. And R. Simeon says it is invalid, because he does not regard the cutting as a final preparation, and the Lulab, being tied with an invalid myrtle, is invalid; but the sages hold the cutting is a final preparation, and therefore the Lulab is valid. Hence the point whereon they differ is the same as that whereon Rabh and Samuel differ: whether the cutting off is a final preparation (and then shaking is not needed) or not. Nay, all agree that the cutting off is *not* considered a final preparation, but R. Simeon and the sages differ whether the Lulab has to be tied together at all, or not; R. Simeon maintains that it must, and the sages say, it must not; as we find in a Boraitha that the sages make no difference whether it was tied or not, and only R. Jehudah maintained that if untied it is invalid. But according to whom would be the following teaching: There is a merit in tying the Lulab; it is, however, valid if it is untied? This is in accordance with the rabbis, and the merit is because it is nicer when tied, as it is explained elsewhere that the word [Ex. xv. 2] •••••• means, "beautify your religious performances for the Lord's sake."

"*This is the rule: everything subject to defilement,*" etc. Whence is all this deduced? Said Resh Lakish: It is written [Gen. ii. 6]: "But there went up a mist from the earth." As a mist is not subject to defilement, and ascends from the earth, so also must the Succah be a thing not subject to defilement,

and growing from the earth. This would be right according to those who said that the booths in the desert were of clouds of glory; but according to those who say that they were ordinary booths, what can be said? Namely, as we learn in the following Boraitha: It is written [Lev. xxxiii. 43]: "I caused the children of Israel to dwell in booths": these were clouds of glory, R. Eliezer said. But R. Aqiba said: They were ordinary booths. Said R. Ashi: It is written [Deut. xxi. 13]: "Of thy threshing-floor and wine-press." *Of* thy threshing-floor, but not the threshing-floor itself; *from* thy wine-press, but not the wine-press itself. R. Hisda said: From the following passage [Nehem. viii. 15]: "Go forth unto the mountain and fetch olive leaves, and oleaster leaves, and myrtle leaves, and palm leaves, and leaves of the three-leaved myrtle, to make booths, as it is written." Are not the leaves of the myrtle and those of the three-leaved myrtle the same? Said R. Hisda: The myrtle leaves for the Succah, and the three-leaved myrtle for a Lulab.

MISHNA: Bundles of straw, of wood, and of twigs must not be used to cover the Succah; all of these are become valid, however, if the bundles are loosed. As side-walls, however, all of these may be used.

GEMARA: R. Jacob said: I have heard from R. Johanan two things which he explained to me, namely: the above Mishna, and the Mishna farther on, "Should one hollow out a space in a stack (of sheaves) to use it as a Succah, it is not considered such." Of one of them he says the reason is that it is only a precautionary measure, lest one make his storehouse for a Succah, which

biblically is allowed; and of the other he said the reason is, because it is written: "Ye shall make," from which we infer, it must not be ready-made (and this is biblical). But I don't know for which Mishna the reasons are respectively given. Said R. Jeremiah: Let us see. R. Hiya bar Abba said in the name of R. Johanan: Why is it prohibited to cover with bundles of straw, wood, or twigs? Because it may happen a man comes from the field in the evening with his bundle on the shoulder and puts it on the roof for the purpose of drying, and later he resolves to leave it there as a roof to the booth, and it is said, "Ye shall make it," but not have ready-made. Now, as we see that the reason for this is biblical, that for our Mishna must be a precautionary measure, Then why was R. Jacob doubtful? Because he had not heard the saying of R. Hiya in R. Johanan's name. Said R. Ashi: What is the difference? Does,

then, the law, "shall make," apply only to our Mishna, and not to the other Mishna farther on, or does the precautionary measure apply only to the other Mishna, and not to ours? Both are alike (and why, then, does he make a difference between them?). R. Johanan can say that his teaching is correct, because our Mishna states, they must not cover it; that means, to commence it, and it is a precautionary measure, but if he has covered, it is valid. But there it is said, It is not a Succah, even after it has been covered; it is even biblically not a Succah.

Said Rabha bar bar Hana: I have heard in the name of R. Johanan three things: If he has roofed it with bundles of flax it is invalid, but if with unsoaked flax, it is valid; and as for *Hushne* [meaning uncertain] flax, I am in doubt about it. Rabha bar bar Hana added to this: What he meant by Hushne flax, I don't understand. Does he mean, flax soaked and dried, but not brushed; or brushed already, but not made into bundles?

R. Hanan bar Abba said: With thorns and weeds a Succah may be covered. Abayi, however, said, if they have no leaves, one may; but if they have leaves, one must not. Why so? Because, when the leaves fall down, this will trouble him, and he will leave the booth and go out. R. Gidl said in the name of Rabh: The roots of a tree may be used to cover with, although they are intertwined, because a bundle made by nature is not called a bundle. And even if he tied together the extremities, he may nevertheless use them, because as at the base they intertwine naturally, the bundle at the top is not considered such.

R. Hisda in the name of Rabbina b. Shila said: Branches (stalks) of διχρα may be used for covering, though they are intertwined, because a bundle made by nature is not considered as a bundle. And although one ties them together himself, he may nevertheless use them, because as at the base they intertwine naturally, the bundle at the top is not considered such. So also we have learned in a Boraitha: The stalks of διχρα may be used as covering.

Maremar lectured: The bundles they sell out in the market in Syria may be used to cover, although they are tied together, because they tied them only to know the number. Huts of reeds, used by fowlers, if they are untied at the top, may be used as a covering for a booth although they are yet tied together below? Said R. Papa: One loosens them at the bottom also. R. Huna the son of R. Joshuah, however, said: Even if they

were not untied at the base, they also may be used, because a bundle that cannot hold together is not called a bundle.

R. Abba said in the name of Samuel: If of herbs by which the sages said a man can fulfil his duty to eat bitter herbs on Passover was made a tent, they bring defilement, when a corpse or part of a corpse was in it, to all vessels that are in the tent; but if a partition was made of them they do not prevent the defilement to spread further, and if they are used to cover a Succah, they make it invalid, because when they become dry they crumble and fall. Therefore, even if they are wet, they are considered not to exist at all, and in place of a roof an empty piece of space.

MISHNA: One may cover with thin boards, according to R. Jehudah, but R. Meir prohibits it. If one has put a deal board four spans wide over the booth, it is valid, provided that one sleep not under it (the board).

GEMARA: Said Rabh: They differ only about boards that are four spans wide. R. Meir prohibits it as a precautionary measure, lest he come to make a ceiling, and R. Jehudah does not take this measure; but if they were less than four spans, all agree that it may be used. Samuel, however, says, on the contrary: They differ only if it is less than four spans; but if more, all agree it is prohibited. If it is less than four spans and even less than three (they differ), how can it be? Is it not considered a stick? Said R. Papa: Samuel meant to say thus: If it is four spans, all agree it is not valid; less than three, all agree it is valid. They differ only from three to four; one holds because it is not of the prescribed size (four spans), it is valid, because they are considered as sticks; and another holds, as it is more than three, to which the theory of Lavud cannot apply, we take the precautionary measure. Come and hear: Two sheets, if put in the middle of the roof, each of which is less than four, but whose combined width is four spans or more, make the booth invalid; but two boards of the same sizes do not combine to make it invalid. R. Meir, however, said: The same is the case with both. It would be right according to Samuel, who said that they differ when it is less than four spans; but if it is four spans, all agree it is invalid, because then it would be explained that the combined width makes the Succah invalid if it is on the side of the roof (attached to a wall), and their combined width is four ells, not four spans (for otherwise, if the roof is by the wall, it is valid up to four ells because it is considered as a crooked wall continued). But

according to Rabh's opinion, this can be only according to R. Meir;. but according to R. Jehudah, what can be meant by the expression "combined width," since according to him, if they are less than four spans, they are considered sticks? R. Jehudah does not mean combined width, but only uses the same expression as R. Meir (without a particular meaning).

We have learned in a Boraitha according to Rabh, and in another Boraitha according to Samuel: according to Rabh, if one has covered the Succah with boards of cedar that are less than four spans wide, all agree they are valid; but if they are four spans, R. Meir makes it invalid, and R. Jehudah makes it valid. Said R. Jehudah: It happened once, in a time of danger, we brought boards four spans wide, and roofed a balcony and used it as a Succah, and the sages answered him: A dangerous time does not prove. According to Samuel: If one has roofed the booth with cedar boards four spans wide, all agree it is invalid; if less, according to R. Meir, it is invalid; according to R. Jehudah, valid. R. Meir agrees, however, that if there was between one board and the other the width of a board, one may lay between anything fit, and the Succah is valid.

And R. Jehudah agrees, that if one board was wide four spans, it is valid, but one must not sleep under it, and who does so does not fulfil the duty of a Succah.

It was taught: If one placed the boards on their edges on the Succah, R. Huna said the booth is invalid, but R. Hisda and Rabba bar R. Huna both said it is valid. It happened once R. Na'hman came to Sura: R. Hisda and Rabba bar R. Huna visited him and asked him the law about the boards in question, and he said: They are considered as iron spits, and certainly invalid. Said R. Huna to them: Did I not tell you that R. Na'hman agrees with me? And they answered him: Did the Master explain to us the reason of this, and we did not accept it? Rejoined R. Huna: Did you ask me for the reason, and I did not tell it to you?

MISHNA: If small rafters, over which is no ceiling, are to be used for a booth, R. Jehudah says: Beth Shammai hold, the rafters must be loosened, and the middle one out of every three removed. But Beth Hillel hold: One must either loosen them, or else remove one of every three. R. Meir says: One must remove one out of three, but one need not loosen.

GEMARA: It is right according to Beth Hillel, as their reason is because it is written: "Ye shall *make*," and not have

ready-made. Hence either of the two is sufficient. But what is the reason of Beth Shammai? If the reason is the same, why must he do both? Is not one sufficient? It is as a precautionary measure, and Beth Shammai meant to say thus: Although one has loosened, it is not valid until he removes one of every three. If it is so, then Beth Shammai said the same as R. Meir. R. Meir meant to say, Beth Shammai and Beth Hillel did not differ, if one has removed same, though they were not loosened.

MISHNA: If one roofs his booth with iron spits, or with boards of a bedstead, if there is as wide a space between them (covered with anything fit) as one of them, it is valid. If one should hollow out a space in a stack (of sheaves) to use it as a Succah (although of the prescribed size), it is not considered as a Succah at all.

GEMARA: Shall we assume that the decision of R. Huna the son of R. Joshuah, who says, that if the open spaces of a fence equal the fence proper it is not valid (Erubin, p. 35), contradicts this Mishna? R. Huna can explain the Mishna, that it means an interspace a trifle wider than the spit or board itself, so as to allow it to be taken out and replaced without difficulty. But can it not be made precisely to fit? (Rashi explains this question thus: At the first glance the answer of R. Huna is that, whenever the thing is mentioned to be of the same width, it is meant to be a trifle less wide, so as to be removed without difficulty: and to this comes the question, why should it be so made? can it not be made to fit precisely? And to this question the answer of R. Ammi will be farther on. But Tospheth oppose to this another explanation, which is still more complicated, and we have therefore translated the text literally.) Said R. Ammi: Yea, but this Mishna means, it is only valid then, when it is a trifle more. Rabba, however, said: The Mishna can be explained even if it was precisely; but if it was laid lengthwise, it should be placed crosswise, and *vice versa* (and above them the lawful roofing, so that the fit must be more than the unfit roofing, and thus the fit portion above neutralizes the unfit portion below).

"*With boards of a bedstead*." Shall we assume that this is a support to R. Ammi bar Tibiumi, who said that if one covered the Succah with broken utensils it is invalid? Nay, the Mishna can be explained as R. Hanan said in the name of Rabbi. If the side-board of the bedstead was laid with two short boards, or two short boards with the side-board, which is subject to defilement (as will be explained, Kelim, Chap. XIX. 9). What is meant

by broken utensils? Said Abayi: Remnants of silken togas, that measure less than three fingers square, and are of no value to either rich or poor (Sabbath, p. 272). We have learned in a Boraitha in accordance with R. Ammi bar Tibiumi: The remainders of a mat of bark or reeds, although they are less than of the prescribed size to be subject to defilement, must not be used to cover a Succah. A mat of sticks, if it is large, may be used to cover it (because a large one is only made for a covering, and is not a utensil subject to defilement); but if small, it may not. R. Eliezer, however, said, that even a large one is subject to defilement, and may not be used.

"*If one should hollow*," etc. R. Huna said: The case is, when there is no hole of the size of one span in length by seven in width; but if there was, it is a Succah. [1] We have learned so also in a Boraitha: If one hollows out a space in a stack to use it as a Succah, it is a Succah. And this Boraitha must be explained as the decree of R. Huna to prevent the contradiction to our Mishna.

MISHNA: If one suspends textile walls from the roof downwards, if they do not reach the ground within three spans, it is invalid. If they stand on the ground and are high ten spans, it is valid. R. Jose, however, said: Even when the walls do not reach the ground by more than three spans the law of ten spans applies to both cases (and in either case it is valid).

GEMARA: On what point do they differ? One holds that a hanging partition makes the Succah valid, and the other that it does not. We have learned in the Mishna in Erubin, Chap. VIII. p. 206, concerning a wall that was between two courts and a partition was made, and R. Jehudah said there: The partition is not more effectual than the wall which is between them. Said Rabba bar bar Hana, in the name of R. Johanan: R. Jehudah's decree there is of the same system as R. Jose's in our Mishna, who says that a hanging partition makes valid. In reality, however, it is not so. R. Jehudah does not agree with R. Jose, and *vice versa*. Because R. Jehudah, who allows it there, does so because Erubin of the courts are rabbinical; but here, in the case of the Succah, which is biblical, he would not allow it. And, on the contrary, R. Jose,

who allows it here, does it because the Succah is only a positive commandment; but concerning Sabbath, where there is a capital punishment, he would not allow it. And if it be asked, What happened in Ziporeth (which will be related farther on), according to whose opinion was it? Not according to R. Jose, nor in accordance with R. Jehudah, but according to R. Ishmael bar Jose. Namely: When R. Dimi came from Palestine, he told that it happened once (in Ziporeth) that they had forgotten to bring the holy scrolls on the eve of Sabbath, and on the morrow they put sheets on the pillars and brought the holy scrolls, and read them (and these hanging partitions were made at the command of R. Ishmael).

R. Hisda in the name of Abimi said: A mat which is large four spans and a trifle can be used as a

side-wall to the Succah. How shall it be placed? It shall be hung in the middle, less than three spans from the ground, and less than three spans from the roof, because we apply the law of Lavud to both places. Is not this self-evident? One may say that two Lavuds in one case do not apply, he comes to teach us that we may.

MISHNA: If the roof is three spans distant from the walls, the Succah is invalid. If the roof of a house was broken, and it was covered, then if there are four ells between the wall and the covering, it is invalid; but if less it is valid. The same is the case with a court surrounded by balconies. If the top of a large Succah was covered with something unfit, if it is distant four ells it is not valid.

GEMARA: Rabha said: I once found the rabbis of the college sitting and declaring: Air makes the Succah invalid with three spans, but unfit covering makes it invalid only with no less than four ells; and I said to them: Where do you find that air makes invalid with three spans? In our Mishna, which teaches if the roof was at a distance of three spans it is invalid? Then, learn also from it that unfit covering should not make the Succah invalid if it is less than four *ells*? as it teaches farther on, that a house whose roof was broken, and it was covered in the middle, if there is from the covering to the wall four ells, then it is invalid? And they answered: Leave alone this teaching, because Rabh and Samuel both said that this teaching is only because we consider it as a crooked wall. And I rejoined: If it is so, what would be according to your opinion? If there would be air less than three spans, and unfit covering less than four ells., in the same place, it certainly would be valid; but if one covered the

vacant space with iron spits, it would make it invalid. Now, the air, which is so rigorous that it makes invalid by three spans, will not be equal to an invalid covering which is so lenient that it makes invalid only by four ells? And they said to me: And according to your theory, that unfit covering makes invalid only when it is four ells, how would the case be if empty air less than three spans were added to it? Would it not be valid? But if one puts iron spits over the empty place, would it not make it invalid? Now, then, does not the same question apply to your theory also? And I rejoined again: What comparison is this? In my opinion, unfit covering makes invalid with four ells, because that is the prescribed quantity, and the same is with air; and as both quantities are not equal, they do not combine together to make the Succah invalid. But according to your opinion, that the reason is not because it is a prescribed quantity, but because the roof is separated from the wall, then the question is, what is the difference whether it be separated from the wall by air less than three spans and unfit covering, or by iron spits and unfit covering? Said Abayi to him: And even according to the Master's opinion, that because the quantities are not equal they do not combine, this can be said only of a large Succah, where unfit covering makes not invalid unless it is four ells; but in a small Succah, where unfit covering makes it invalid with three spans, are not the quantities then equal? Consequently they must combine, even in a large Succah. Answered Rabha: In a small Succah it is not because the prescribed quantities are equal, but because the prescribed size for a Succah does not remain.

Abayi said: If there was air three spans wide in a large Succah, and one diminished it by sticks or iron spits, it is considered as diminished; but if it was a small Succah, if with sticks it is lawful, but with iron spits it is not. But this is the case only when it is near the wall. If in the middle of the roof, however, R. A'ha and Rabina differed: According to one, the law of Lavud applies also in the middle, and according to the other it can only be applied when they are at the

side.

R. Jehudah bar Ilai lectured: If the roof of a house was broken, and one covered it with fit covering, it is valid for a Succah. Said R. Ishmael bar Jose to him: Rabbi, explain your decision, because my father had explained thus: If it is less than four ells from the wall, then it is valid; but if four or more, it is invalid. Again lectured the same: An *abruma* (a small fish not distinguishable from prohibited reptiles) is permitted. Said R. Ishmael

to him: Rabbi, explain the decision, for so said my father: From one place it is permitted, from another it is not. Accordingly, Abayi said: The small fish called Tza'hntha (smelt), of the river Bab, are permitted (and from another not).

It was taught: If one has covered a balcony which has small pillars (less than three spans one from the other), it is valid for a Succah: but if it has no pillars, Abayi said it is valid, because the edge of the roof downward may be considered as making (forming) a wall; but Rabha said it is invalid, because he does not hold this theory. Said Rabha to Abayi: According to thee, who holdest this theory, even if the middle wall of the Succah was broken, let it also be valid, as the edge of the roof is considered to descend and make a wall. Said Abayi: I yield to thee in this point, because it looks like an open entry. An objection was raised from our Mishna: If a court is surrounded by balconies, etc., why? Let it also be considered that the edge of the roof makes it a wall? Rabha explained, in accordance with Abayi's opinion, that the case is that the edge projected not over the wall, but was even with it.

R. Ashi found R. Kahna, who had roofed a balcony that had no small pillars, and he asked him: Does not the Master hold what Rabha said, that when there are no pillars the Succah is invalid? And he took him outside and showed him that there were pillars not visible inside, but only outside; and it was taught in Erubin (p. 17), if it was seen from outside, and not from inside, it is regarded as a side-beam, and a side-beam is the same as a small pillar.

A Boraitha taught: A vestibule, outside of the booth, is considered as the booth itself. What is meant by this? Said Ullah: A vestibule formed by sticks projecting beyond the Succah. Are not three walls needed? When there are. But is it not needed that there be more shadow than sunshine? If there was. But is not a prescribed size needed? If it was. If so, what comes he to teach us? Lest one say, that because the Succah was made for sitting inside, shall the outside not be considered a Succah at all, he comes to teach us it is not.

MISHNA: If one makes a Succah in the form of a cone, or leans the roof against a wall, R. Eliezer says it is not valid, because it has no roof; but the sages declare it is valid.

GEMARA: A Boraitha taught: R. Eliezer admits, if one placed it one span over the ground, or separated it one span from the wall, the Succah is valid. What is the reason of the sages?

for the theory of Lavud applies to them, and they are regarded as upright. They hold that the slanting parts of a tent are considered as the tent itself. Abayi found R. Joseph sleeping in a

nuptial bed in a Succah. Said Abayi to him: According to whom do you do so? According to R. Eliezer? Then you left the majority of rabbis, and followed an individual. Answered he: The Boraitha teaches the contrary: That R. Eliezer makes it valid, but the sages say it is invalid. Rejoined Abayi: Then you leave a Mishna, and act according to a Boraitha. And he answered: The Mishna is written according to an individual's opinion, as we have learned in a Boraitha: if one makes a booth in the form of a cave, or leans the roof on a wall, R. Nathan said that R. Eliezer makes it invalid, because it has no roof, but the sages permit this.

MISHNA: A large reed mat made for sleeping on is subject to defilement, and a Succah must not be covered with it; but if it was made to cover a booth, it may be used, and is not subject to defilement. R. Eleazar said: There is no difference whether it is large or small, but only the use for which it was made is considered; if for sleeping, then it is subject to defilement, and must not be used; but in the other case, if for covering, it is not subject to defilement, and may be used.

GEMARA: Did not the Mishna contradict itself? In the first part it says, if it was made for sleeping, then it is subject to defilement, etc., but if the purpose for which it was made was not expressed, it must be considered as for a covering. And the second part says, "If it was *made* for a cover"; from this we may infer, if the purpose was not expressed we consider it for sleeping? Said R. Papa: In case of a small one, if the purpose was not expressed, all agree it may be considered as for sleeping; but in case of a large one, the first Tana holds that where no purpose was expressed it is considered to have been made for covering. But R. Eliezer holds, that even a large one is also usually made for sleeping, and the expression in the Mishna, "if it was made for sleeping," is to be explained so: if it was made, say it is for the purpose of sleeping, unless he expressed another purpose.

The rabbis taught: A mat made of bark or papyrus, if large, may be used for a cover; but if small, it may not. If it is of reeds, or *hilath*, a large one may be used for covering; but if they are woven together, it may not. R. Ishmael bar Jose said in the name of his father: Both may be used to cover, and the same said R. Dosa.

p. 25

We have learned (Edioth, III. 4): "All hutzlahs 1 are liable to become unclean from a corpse, so is the decree of R. Dosa; but the sages said: They are liable to become unclean only by pressing." What are *hutzlahs*? Said R. Simeon bar Lakish: It means ordinary mats, and the same is according to his theory elsewhere, where he said: I would sacrifice myself to bring back to life R. Hiya and his children, because in the ancient time, when the Torah was forgotten by Israel, Ezra came from Babylon, and reëstablished it again; when afterwards it was again forgotten, Hillel the Babylonian came up from Babylon and restored it again; and when it was again forgotten, came R. Hiya and his children and restored it again. And they said to this: That R. Dosa and the sages did not differ about the mats of the city of Usha, that they are subject to defilement, and that the mats of Tiberia are not; what they do differ about is the mats of other places: one holds that because nobody sits on them, they are equal to those of Tiberia; and the others hold that because it can happen that somebody should sit upon them, they are equal to the mats of Usha.

We learned in a Boraitha: R. Hananiah said: When I came into the exile, I found an old man who said to me that to cover a Succah with a mat is lawful; afterwards, when I came to R. Joshuah my father's brother, he admitted this theory. Said R. Hisda: This is only when it is not

seamed. Said Ullah: The mats from the city of Mehuzah, but for their scams, would be lawful to be used for covering. So also we have learned in a Boraitha: Mats may be used for covering, provided they have no seams.

Footnotes

1:1 See Vol. III., p. i, Gemara, which also belongs to our Mishna.

3:1 Deut. xxii. 8.

6:1 See the article, "What is the Talmud?" in our pamphlet, "The Pentateuch, its Languages and Characters," for an explanation of this saying.

7:1 In our Scripture we do not find so, but see the Massorah.

9:1 The law of an entry with a side-beam is explained in Tract Erubin, Chap. I.

10:1 The Gemara interprets this law by a geometric calculation how much space a person needs, and the relation of a circle and a square, with illustrations, which do not belong here, and therefore we omit.

20:1 The reason is because a hole of a span constitutes a legal tent in the law of defilement, and the covering above it is called roofing. Now, if one enlarged this hole to the size prescribed for a Succah, from the base upwards, so that he diminished the covering, he is considered to have made a new roofing and thus a new tent for this purpose, and it is a valid Succah. (Rashi.)

25:1 See Levi's Dictionary.

Next: Chapter II

CHAPTER II.

REGULATIONS CONCERNING THE SITUATIONS IN WHICH A BOOTH MAY BE PLACED, WHAT MUST BE DONE IN IT, ETC.

MISHNA: He who sleeps under a bed in the booth has not fulfilled his duty (of sleeping there). Said R. Jehudah: We were in the habit of sleeping under a bed in the presence of the elders, and they never said anything to us. Said R. Simeon: It happened that Tabbi, the slave of R. Gamaliel, used to sleep under a bed. But R. Gamaliel said to the elders: Do you see my slave Tabbi? He is a scholar (Talmud Hakham), and knows that slaves are exempt from the duty of Succah. Therefore he sleeps under a bedstead. From this we infer that he who sleeps under a bed has not fulfilled his duty.

GEMARA: Why? The bed is usually not ten spans high? Samuel explained this, that the case is when the bed is high ten spans. (But if so,) what is the reason of R. Jehudah's decree? This is according to his theory elsewhere, that the Succah must be a permanent dwelling, and the bed is only a temporary dwelling, and a temporary dwelling cannot make ignored a permanent one. But did not R. Simeon held the same theory, that a Succah must be a permanent dwelling (because his decree is that it must have four walls), and nevertheless he does not allow to sleep under the bed? This is the point of their difference: according to R. Simeon a temporary dwelling makes ignored, and according to R. Jehudah it does not.

"*It happened once that Tabbi the slave*," etc. We have learned in a Boraitha: R. Simeon said: From R. Gamaliel's remarks we have learned two things: That slaves are free from the duty of a Succah, and that one who sleeps under a bed has not fulfilled the duty of Succah. Let him say, "from R. Gamaliel's decree," he comes to teach us by the way that R. A'ha bar Adda, according to others the same in the name of R. Hamnuna, quoting Rabh, said: Whence do we know that even a remark of a scholar must be studied? Because it is written [Ps. i.] "And the leaf does not wither," even a slight thing as a leaf is not valueless.

MISHNA: If one supports his Succah with a bedstead, it is valid. R. Jehudah said: A Succah that cannot stand by itself is invalid.

GEMARA: What is the reason of R. Jehudah's decree? R. Zera and R. Abba bar Mamel differed: One says: Because so it is not made a permanent dwelling; and one says: Because he supports it with a thing subject to defilement. What is the difference? If one put iron spits and covered it, according to them who say because it is not permanent, the iron spits are permanent; but according to those who say because he supports with a thing subject to defilement, the iron spits are subject to defilement, and are invalid. Said Abayi: They differ only if he supports the booth with the bedstead; but if he has roofed the bed itself, all agree it is valid. Why so? Because

to them who say, because it is not permanent, it can be said the bed is permanent; and to them who say because he supports with a thing subject to defilement, it can be said the roof is not subject to defilement.

MISHNA: A Succah covered thinly, if there is more shadow than sun, is valid; if the covering is close, like the roof of a house, though the stars are not visible through it, it is nevertheless valid.

GEMARA: What is meant by thin covering? Said Rabh: Scanty covering (too much empty space between one stick and the other). And Samuel said: Irregular covering--one twig down, one twig up, that is. Rabh interpreted that the Mishna teaches only one case, a poor Succah, in which there is more shadow than sun, is valid; and according to Samuel, the Mishna teaches two things: first, that a Succah with an irregular covering is valid; and secondly, that all Succahs where the shadow is more than the sunshine are valid. Said Abayi: The Mishna refers to a case where there is not three spans distance from one twig to the other; but if there is, it is invalid. Rabha, however, said: Even if there were three spans between, provided the twig was not wide at the top a span, it is invalid; but if it was, it is valid, because we say: *Havit rami*, [1] and it is valid.

"*If there is more shadow than sun*." From this we may infer, that if they were equal, it is not valid; but in the first chapter

the Mishna teaches, if the sunshine was more than the shadow it is invalid, from which we may infer that if they were equal it is valid? It presents no difficulty. If on the top the empty place was equal to the covering, because on the ground the sunshine would appear larger; but if on the ground the sunshine and the shadow are equal, it is valid, because then on the top there must be more covering than empty space. Said R. Papa: This is according to what people say: If on the top it is of the size of a Zuz, it appears on the ground the size of a Sela. [1]

"*If close like the roof of a house*." The rabbis taught: If it was close as a roof of a house, although the stars cannot be seen through it, it is valid; but if the rays of the sun do not penetrate, Beth Shammai hold it is not valid, and Beth Hillel hold it is.

MISHNA: If one constructs a Succah on the top of a wagon, or on board a vessel, it is valid, and he may ascend thereto on the festival. If he has constructed the Succah on the top of a tree, or on the back of a camel, it is valid; but he must not ascend thereto on the festival days. If two walls are formed by a tree, and one by human hands, or two by human hands and one by a tree, the Succah is valid, but one must not ascend thereto on the festival. This is the rule: Whenever the Succah can stand by itself, even should the tree be removed, the Succah is valid, and it is lawful to ascend thereto on the festival.

GEMARA: This Mishna is in accordance with R. Aqiba only, as we have learned in a Boraitha: If a Succah was made on a ship, Rabban Gamaliel makes it invalid, and R. Aqiba makes it valid. It happened once that Rabban Gamaliel and R. Aqiba were on a ship, and R. Aqiba constructed a Succah on the ship. On the morrow a wind blew it off, and Rabban Gamaliel said to him: Aqiba, where is thy Succah? Said Abayi: If the Succah cannot withstand an ordinary wind from land, all agree that it is not a Succah at all; if it can hold out a storm on land, all agree it must be

regarded as a Succah; but if it can hold out an ordinary wind from land, but not an ordinary wind from the sea, there is the point of their difference: R. Gamaliel holds it must be a permanent dwelling, and as it cannot withstand an ordinary wind from the sea, it is not considered as anything; but R. Aqiba holds that only a temporary dwelling is needed, and so soon as it is proof against an ordinary wind from land, it is called a temporary dwelling.

"*Or on the back of a camel*." The Mishna is in accordance with R. Meir. as we learn in the following Boraitha: If one has made his Succah on the back of an animal, it is valid, according to R. Meir; but not according to R. Jehudah. What is the reason of R. Jehudah? Because it is written [Deut. xvi. 13]: "The feast of tabernacles shalt thou hold seven days." From this we infer that a booth fit for all seven days may be called a Succah, but not otherwise (and as the sages prohibited to mount an animal on the festival, it is not fit for the first day of the festival). But what would R. Meir answer to this? Biblically it is fit, but only the rabbis prohibited as a precautionary measure to mount an animal (and if biblically fit, it is called a Succah).

If the animal was used as a wall to the Succah? R. Meir makes it invalid, and R. Jehudah makes it valid. Because R. Meir used to say: All things which have life must not be made a wall to the Succah, nor a side-beam to an entry, nor an enclosure to a well, nor a covering of a grave; and in the name of R. Jose the Galilean it was said: Also, a letter of divorce must not be written on it. What is the reason of R. Meir? Abayi said: Because it may die. R. Zera said: Because it can run away. If an elephant were tied to a wall and used as a wall, all agree it is valid, because, even if it should die, its carcass measures more than ten spans. In what they differ is, when the elephant is not tied: according to them who fear its death, it is valid; but according to those who fear its flight, it is not valid. But did Abayi say that R. Meir feared its death, and R. Jehudah did not? Have we not heard the contrary from him in Gittin, that R. Meir feared it, and R. Jehudah did not? Read these conversely: Abayi said R. Meir feared its death, and R. Jehudah did not. But did we not learn in Tract Yomah, R. Jehudah declares: To the high-priest another wife must be prepared for the Day of Atonement, lest his wife die? (So he apprehends death.) Is it not taught, in addition to the same Mishna: R. Huna the son of R. Joshua said, that for forgiving the sins an exceptional rule was made?

Let us see: According to both sages--who apprehend death or flight--biblically it is valid as a wall; and only as a rabbinical precautionary measure is it forbidden. Why is it not subject to defilement when it covers a grave, according to R. Meir? Said R. A'ha bar Jacob: R. Meir holds that all partitions not made by human hands are not called partitions at all.

MISHNA: If one makes a booth between trees which form side-walls, it is valid.

GEMARA: A'ha bar Jacob said: All partitions that are not proof against an ordinary wind are not partitions at all. An objection was raised from our Mishna, which teaches that if the trees were used as walls, it is valid; but did not the trees shake by an ordinary wind? The case is, when they are old trees. But even if old trees, are there not branches? If one weaves the branches into the walls. If it is so, what does he come to teach us? Is it not self-evident? One might say that perhaps it shall be prohibited as a precautionary measure, lest on the festival he climb the tree, he comes to teach us that such a measure is not taken.

MISHNA: Delegates for a religious purpose are free from the duty of Succah; also sick persons, and those who nurse them. One may occasionally eat or drink something outside of the booth.

GEMARA: Whence do we deduce this? From what the rabbis taught: It is written [Deut. vi. 7]: "When thou sittest in *thy* house": that means, except when thou art occupied by a religious observance; [ibid.] "When thou walkest by the way" means, except when thou goest to marry. From this is said, that he who marries a virgin is exempt, but he who marries a: widow is not. But how can this be inferred? Said R. Huna: From the expression "on the way," as one goes on the way, means as a voluntary act, and this is to exclude one occupied by a religious duty. R. Abba bar Zabda said in the name of Rabh: A mourner is not exempt from the duty of the Succah. Is not this self-evident? One might say, because the same authority says elsewhere that one who is afflicted by something is exempt from the duty of Succah, and a mourner is certainly afflicted, one might say that he is exempt, he comes to teach us that it is when the affliction is caused by the Succah; but here, when he afflicts himself, he must divert his attention, and fulfil the duty of Succah. The same says again in the name of Rabh: A bridegroom and his attendants and all who belong to the wedding-party are exempt from the Succah all the seven days. Why so? Because they must enjoy themselves. But let them enjoy themselves in the Succah? No enjoyment can be had outside of the house where the wedding is. But let them eat in the Succah and enjoy themselves in the house. There is no enjoyment except where the banquet is. But let the house where the wedding takes place

be made in the Succah? Abayi said, it cannot be made, because the bride must not be left with strangers; and Rabha said, because the bridegroom will find it inconvenient. What is the difference? when even in the house, where men come in and go out, they are not in privacy, but it is inconvenient. According to Abayi, it may be made in the Succah, and according to Rabha it may not. R. Zera said: When I was a bridegroom, I ate in the Succah, and enjoyed myself in the bride's house, and I enjoyed myself the more because I fulfilled two religious duties.

The rabbis taught: A bridegroom and his attendants and all the wedding-party are exempt from prayers, from phylacteries, but they must read Shema. In the name of R. Shila it was said: Only the bridegroom is exempt, but all the others are not. A Boraitha states, R. Hanania b. Akabia said: Writers of the holy scrolls, or tefilin, or mezuzoth, they and the wholesale sellers and the retail sellers, and all men engaged in work for Heaven, including also the sellers of blue threads for tzitzith, are exempt from the reading of Shema, from praying, from tefilin, and all the religious duties commanded in the Torah. He said so to confirm the words of R. Jose the Galilean, who said: Who is engaged in one religious work, is free from another one.

The rabbis taught: Those who are on the road in the day are exempt from the duty of Succah during the day, but not during the night; and if they travel by night, it is conversely. If they travel during both, they are exempt wholly. But who goes on a religious mission, is exempt from the duty of Succah both by day and by night. As it happened, R. Hisda and Rabha bar R. Huna coming on a Sabbath falling on one of the intermediate days, to the exilarch to hear his lecture, they slept on the bank of a river of Sura. They said, we are delegates for a religious purpose, and exempt from the duty of Succah.

The rabbis taught: The watchmen of a tower who watch by day are exempt from the Succah by day, but not by night; and those who watch by night are exempt for the night, and those who watch during both are entirely exempt. Those who watch gardens and vineyards are exempt from the Succah by day and by night. But let them make the booths there, and sit in them? Said Abayi: It is written: "Ye shall dwell in booths." It must be where the dwellings are. And Rabha said: The hole brings the thief (*i.e.*, he will not be able to watch carefully). What is the difference? When the whole of the fruit would be visible from his position in the Succah (he should sit in one).

"*Sick persons and their nurses*." The rabbis taught: Not only those who are dangerously sick, but if there is no danger, if one has sore eyes or a headache, he is also exempt. R. Simeon b. Gamaliel told: It once happened I had sore eyes when I was in Cæsarea (Kisrin), and R. Jose the Great allowed me and my servants to sleep outside of the Succah. Rabh, however, allowed R. A'ha of Bardla to sleep under a canopy in a booth (though ten spans high), to prevent mosquitoes. Rabha allowed R. A'ha bar Ada to sleep outside of the Succah, because it was freshly whitewashed. And Rabha acted according to his theory elsewhere, that whoever suffers is exempt. But have we not learned in our Mishna that only sick persons are exempt, and we may infer, not those who are in sorrow? Nay, in case of a sick person, he and his nurses are exempt, but he who is in sorrow may only himself stay out, not his servants.

"*Men may occasionally eat*," etc. What is meant by something? Said R. Joseph: Two or three eggs. Said Abayi to him: But many times a man finds three eggs sufficient for a meal? Therefore said Abayi: As much as a young scholar partakes before he goes to hear the lecture.

The rabbis taught: One may eat a hasty meal outside of the Succah, but one must not take a nap outside. Why so? Said R. Ashi: As a precautionary measure, lest he fall profoundly asleep for the whole night. Said Abayi to him: If it is so, why does a Boraitha allow a man to take a nap with his tefilin on, but not to sleep long? Let it be apprehended lest he fall asleep? Said R. Joseph bar Ilai: This is the case when he has engaged a man to wake him up. Rabha, however, said: There is no appointed time for sleeping; concerning the tefilin, it is for a different reason (as will be explained in Tract Benedictions). Rabh said: One must not sleep by day longer than a horse sleeps. How long is it? So as to be able to make sixty respirations. Said Abayi: My Master used to sleep by day as long as Rabh, and Rabh as Rabbi, and Rabbi as King David, and David slept as long as a horse. And how long is the sleep of a horse? Sixty respirations. Abayi himself sleeps as long as it would take to walk from Pompeditha to Be Kubi. Exclaimed R. Joseph about him the verse in Proverbs [vi. 9]: "How long, O sluggard, wilt thou lie down? When wilt thou arise out of thy sleep?"

MISHNA: It happened that a dish was brought to R. Johanan b. Zakai to taste, and two dates and a jar of water to Rabban Gamaliel. Each of them said: Bring it to the booth.

[paragraph continues] But when food less than an egg was brought to R. Zadok, he took it in the napkin, and ate it outside of the booth, but did not pronounce the benediction after meals for it.

GEMARA: Is it customary to adduce an act as a contradiction to the former teaching of the Mishna above (which says a hasty meal may be eaten outside of the Succah)? The above Mishna is not completed, and must read so: If one wants to make it more rigorous for himself, he may do so, without it being said he is vain; and it also happened with R. Johanan b. Zakai and Rabban Gamaliel that a dish and dates were brought to them, and they said they should be carried to the Succah.

"*And when food less than the size of an egg,*" etc. But if the size of a whole egg? Then the Succah is needed? Shall we assume that this will be an objection to the teaching of R. Joseph and Abayi (which states above, three eggs, or as much as a young scholar, which is at any rate not less than an egg)? Nay, it may be explained that if it would be of the size of an egg, the legal washing of hands before and benediction after the meal would be needed (but Succah would not be needed).

MISHNA: Fourteen meals must be eaten in the Succah, one in the morning and one at night (of each day of the festival), according to R. Eleazar; but the sages say it is not fixed by law, except that one must eat in the Succah on the first night. R. Eleazar said again: He who has not eaten on the first night can make amends for it by eating in the booth on the last night of the festival; but according to the sages no amends can be made, and they apply it to the verse [Eccl. i. 15]: "What is crooked cannot be made straight, and that which is defective cannot be numbered."

GEMARA: What is the reason of R. Eleazar? Because it is written: "Ye shall dwell." And as in a dwelling it is usually eaten in the morning and in the evening, so must it be done also in the Succah; but according to the sages, it is as a dwelling, where one eats or not, at his pleasure. If it is so, why is he bound to eat the first evening of the festival? Said R. Johanan in the name of R. Simeon b. Jehozodok: It is written here in the fifteenth, and about the Passover the word fifteen is written: there is an analogy of expression, as on Passover the first night must Matzah be eaten, and later it is optional, so on the first night of the Feast of Tabernacles it must be eaten in the Succah, and henceforth it is optional. But whence is it known that on Passover it is obligatory? Because it is written [Ex. xii. 18]: "At evening shall ye eat unleavened bread." This verse makes it obligatory.

"*R. Eliezer said again,*" etc. But did not R. Eliezer say that it is obligatory to eat fourteen meals in the Succah: every day one meal in the morning and in the evening? Said Bira in the name of R. Ami: R. Eliezer retracted what he had said. But with what shall he make amends? Shall he eat another meal? A man cannot eat more than he needs. With extra dishes for dessert. We have also learned in a Boraitha, if one makes amends with extra dishes, he has done his duty. The manager of the house of Agrippa the king (επιτροπος) asked R. Eliezer: I, for instance, who eat only one meal in twenty-four hours, may I do so in the Succah--eat one meal and fulfil my duty? And he answered him: Did you not make every day many dishes of delicacies for the sake of yourself, and can you not add one dish for the sake of your Creator? He asked him again: I, for example, who have two wives, one in Tiberia and one in Ziporeth, and have also two booths, one in Tiberia and one in Ziporeth, may I go from one Succah to the other, and my duty shall be fulfilled? And he answered: Nay, because I say who goes from one booth to another abolishes the religious duty he has done in the first.

We have learned in a Boraitha: R. Eliezer said: One must not go out from one Succah to another

(to eat in one and sleep in another), and a Succah must not be made in the intermediate days. The sages, however, say: Both may be done. All agree that if the Succah has fallen, he may rebuild it on the intermediate days. What is the reason of R. Eliezer? Because it is written [Deut. xvi. 13]: "Seven days shall ye hold the feast of tabernacles." From this we infer the Succah shall be made to be fit for seven days. The rabbis, however, explained this passage so: On the Feast of the Tabernacles ye shall make a booth (during the whole feast). They all agree that if the Succah falls, it may be rebuilt. Is not this self-evident? We might assume that the second Succah cannot be made for seven days, and therefore shall not be made at all. He comes to teach us that it is not so.

We have learned in a Boraitha: R. Eliezer said: As a man cannot fulful his duty with a Lulab belonging to his neighbor on the first day, as it is written [Lev. xxiii. 40]: "And ye shall take unto yourselves on the first day the fruit of the tree hadar, branches of palm trees," etc.--"unto yourselves," that means, your own, but not those belonging to your neighbor; so also a man cannot fulfil his duty in a Succah belonging to his neighbor,

because it is written: "Seven days shalt thou make unto thee the feast of the tabernacles," and we infer from "for thee" it shall be thy own. The sages, however, said: Although it was said that a man cannot fulfil his duty with the Lulab of his neighbor, he may nevertheless do his duty of Succah in the neighbor's Succah, because it is written [ibid.]: "All that are Israelites born shall dwell in booths." From this we learn that all Israelites may sit in one Succah. But how will the sages account for the expression "unto thee"? They say it is to exclude a robbed Succah, but a borrowed Succah may be used.

The rabbis taught: It happened once to R. Ilai that he came to see R. Eliezer his Master in the city of Lud on the festival; and the latter said to him: Ilai, thou art not of those who rest on the festival, because R. Eliezer used to say: I praise the sluggards, who do not go out on the festival from the house, because it is written [Deut. xiv. 26]: "Thou shalt rejoice, thou and thy household." This is not so: did not R. Itz'hak say: Whence do we know that a man must visit his teacher on the festival? Because it is written [II Kings, iv. 23]: "Wherefore art thou going to him to-day? It is neither new moon nor Sabbath?" From this we may infer that on a new moon and a Sabbath it is obligatory to visit one's Master? It presents no difficulty: If one's Master is in the same city, where one can go and return the same day, he must; but not otherwise.

The rabbis taught: It happened once that R. Eliezer took his rest in the booth of Johanan bar Ilai in the city of Kisri, of Upper Galilea, according to others in Kisrion, and the sun reached the Succah. And the host asked R. Eliezer: Shall I spread a sheet on it? And he answered: There was not one tribe of Israel from which a judge did not descend. [1] The sun reached the middle of the Succah, and he asked again: How if I should spread a sheet on it? And he answered: There was not one tribe of Israel from which prophets have not descended, and

the tribes of Judah and Benjamin chose kings at the command of the prophets. Finally the sun reached R. Eliezer's feet, and Johanan took a sheet and spread it over the Succah; and R. Eliezer took his garments and shouldered them, and left the booth. This was not because he did not want

to teach him the law, but because R. Eliezer never decided a thing which he had not heard from his Master. But how could R. Eliezer do this? Did he not himself declare that a man must not go out from one Succah to another? They answered: That was not on the Feast of Tabernacles at all; it was another festival, and they sat in the Succah only for fresh air. But did not R. Eliezer declare: I praise the sluggards who do not leave on a festival their houses? It was not on a festival; it was an ordinary Sabbath.

The rabbis taught: It happened with R. Eliezer that he took rest in Upper Galilea, and he was asked thirty Halakhoth about the law of Succah. To twelve he answered: So I have heard; and to eighteen he answered: I did not hear them. R. Jose b. R. Jehudah says: On the contrary, to eighteen he answered: I have heard; and to twelve: I have not heard. And they asked him: Are all your decisions only from what you have heard? He answered: You compelled me to tell you one thing which I had not heard from my Masters. That is, never in my life came a man to the house of learning before me and I never slept in the house of learning a long or a short time; I never left a man in the house of learning when I went away, and I never talk about worldly affairs, and I never decided a thing which I had not heard from my Masters.

It was said of R. Johanan b. Zakai: Never in his life did he talk of worldly affairs; he never walked four ells without studying the Law and without tefilin; he was never anticipated by another in turning to the house of learning, and did not sleep in the house of learning even a short time; he did not teach about the Law in dirty alleys; he did not leave a man in the house of learning when he went away; he was never to be found silent, but always studying aloud, and never anybody opened the door for his disciples but himself; he never decided a thing he had not heard from his Master, and he never said it was time to go out of the house of learning except on the eves of Passover and on the eves of the Days of Atonement. And R. Eliezer his disciple conducted himself similarly.

The rabbis taught: Hillel the Elder had eighty disciples: thirty of them were worthy that the Shekhina should rest on

them as on Moses our Master; thirty of them were worthy the sun should be stopped for their sake, as it did before Joshua the son of Nun, and twenty were mediocre. The greatest of all the disciples was Jonathan b. Uziel, the least of all was R. Johanan b. Zakai. It was said of the latter, that he did not leave out the Bible, the Mishna, the Gemara, Halakhoth, and Agadoth (legends), the observations of the Bible, observations of the Scribes, lenient ones and vigorous ones, the analogies of expression, equinoxes, *geometries*, the language of the angels and the language of the evil spirits and the language of the trees, the fables, the great things, the heavenly chariots and small things, the discussions of Abayi and Rabha, to confirm what is written [Prov. viii. 21]: "That I may cause those that love me to inherit a lasting possession and their treasures will I fill." And when the least of all was so, how much the more was the greatest of all. It was said of Jonathan b. Uziel, that when he studied the Law every bird that flew over him was burned.

MISHNA: If the head and greater part of a man's body is in the booth, and his table in the house, Beth Shammai say he has not fulfilled the duty of Succah, but Beth Hillel say he has. Said Beth Hillel to Beth Shammai: Did it not happen that the elders of Beth Shammai and those of Beth Hillel visited R. Johanan b. Hahoronith, and found him sitting with his head and greater part of his body in the booth, and his table was in the house? and they said to him nothing. Beth

Shammai replied: Do you adduce this as a proof? They said to him: If such has always been your custom, you have never in your life properly fulfilled the duty of Succah.

Women, slaves, and minors are exempt from the Succah. A boy that needs no longer the nursing of his mother must obey the command of Succah. It happened that the daughter-in-law of Shammai the Elder gave birth to a son on the festival, so he caused the roof to be taken off, and covered it as a Succah for the sake of the infant.

GEMARA: Whence is all this deduced? From what the rabbis taught: The verse could say *Ezrah* ("an Israelite born"). That would include the women. But it is written *Ha'ezrah*, "*the* Israelites born," which means the certain Israelites, and to exclude women. And by the word "all" it is meant to include minors. Shall we assume that the expression "Israelites born" includes women also? Did not we learn in a Boraitha (concerning the Day of Atonement), where it is written, "the Israelite

born," which means to include women, for whom it is as obligatory to fast as for males? From this we see that when it is written, "Israelites born," only males are meant? Said Rabha: That is not deduced from the passages, but it is all Sinaic, and the passages were taken as a support. But which passage, and which Sinaic law? And, again, to what purpose was a verse or a Sinaic law needed at all? Is not the Succah a commandment dependent on a certain season, and from all commands depending on certain seasons women are free? This is concerning Succah; and concerning the Day of Atonement this is deduced from what R. Jehudah says in the name of Rabh; and so also taught the disciples of R. Ishmael. It is written [Num. v. 6]: "If any man or woman commit a sin." From this we see that the verse made the man and the woman equal in all penalties of the Torah. Said Abayi: That a woman is exempt from the Succah is a Sinaic law, and nevertheless this support of a verse was needed, because one might say it is written, "Ye shall dwell"; and as in a dwelling are usually a man and wife, we might think that in the Succah there should also be a man and wife, it comes to teach us that it is not so. Rabha said: It is needed lest one say, by an analogy of expression, it is written about Passover on the fifteenth, and here, as on Passover, it is obligatory for women, so it is also on the Feast of Tabernacles, it comes to teach us that it is not so. Now, when you say there is a Sinaic law, why is the passage needed? It comes to include the proselytes; one might say the Israelites born, but not a proselyte, we are taught that they also are included. But the Day of Atonement, that is inferred from the above saying of R. Jehudah in the name of Rabh. Why is the Sinaic law here needed? This is needed for the addition to the Day of Atonement from the preceding day, which is biblical, but has no capital punishment. One might say that because the addition has no punishment, the women are exempt; the Sinaic law comes to say it is not so.

The Master says: *All*, to include the minors. But have we not learned in our Mishna, that women, slaves, *minors*, are free from Succah? This presents no difficulty: The Mishna means a case in which the minor is not yet old enough to be trained in a religious duty, and the Boraitha means a case of a minor old enough for that. But in case of a minor who has reached such an age, the duty is only rabbinical? Yea, the passage is taken only as a support.

"*A minor that needs not the nursing of his mother*." What is

meant by this? A minor who can obey the call of nature without the aid of his mother. So said the disciples of R. Yanai. But Resh Lakish said: A child that on awakening does not cry: Mother! mother!

"*It happened that the daughter-in-law of Shammai*," etc. Is not this act a contradiction to the former teaching? The Mishna is not completed. It must be read so: "And Shammai the Elder is more rigorous, and it happened also that his daughter-in-law gave birth to a son, so he caused the roof to be removed, and covered it as a Succah for the sake of the infant."

MISHNA: During the seven days of the festival one must use the booth as the regular domicile, and the house only as an occasional abode. If it rains, when is he permitted to remove from the Succah? When a mess of porridge has been spoiled. The elders illustrate this by a comparison: What does such a circumstance resemble? As if a servant presented a goblet to his master, who throws a bowl full in his face.

GEMARA: The rabbis taught: All the seven days one must use the booth as one's regular domicile. How so? If he has fine utensils, he shall place them in the Succah; if he has fine bedding, he should transfer it to the Succah; and he should eat, and drink, and walk only in the Succah. Whence is this deduced? From what the rabbis taught: It is written: "Ye shall dwell"; it means, it shall be as a regular dwelling, and from this was deduced that all the seven days one shall make the Succah his regular dwelling, and his house a temporary one. He shall eat, drink, and study in the Succah. Is it so? Did not Rabha say that only to read the Bible and to learn a Mishna one may in the Succah, but study one may not? This presents no difficulty. The Boraitha means to repeat what he had studied already, and Rabha--to study something new, as Rabha and Rami, while studying under R. Hisda, used to repeat his lecture among themselves first, and afterwards tried to find out the reasons of it. Rabha said: The vessels for drinking shall be kept in the Succah; but the vessels for eating, outside. A pitcher of clay, outside of the Succah, a candlestick of clay in the Succah, and according to others, outside, and they do not differ; it means, in a large Succah it may; in a small one, it may not, because it is dangerous.

"*If it rains*." We have learned in a Boraitha: When a mess of *gris* is spoiled (which is spoiled easily).

Abayi was sitting in the presence of R. Joseph in the Succah,

[paragraph continues] and a wind blew the chips from the covering into the dish, and R. Joseph said: Take off the dishes, and we will go out. Said Abayi to him: Have we not learned in the Mishna: Till the porridge is spoiled? And he answered: As I am delicate, the chips do me as great harm.

The rabbis taught: If one ate in the Succah and rain fell, and he went away and took his meal in the house, when it clears again we do not trouble him to interrupt his meal, and to go back to the Succah. If he was sleeping in the Succah and it rained, and he went away to sleep in the house, he is not aroused when it clears again, till the next morning.

"*What does such a circumstance resemble*?" The schoolmen asked: What is meant by this? Come and hear. We have learned in a Boraitha: As if the master threw the pitcher into the servant's face, and said to him: I do not want your service more.

The rabbis taught: An eclipse of the sun is an ill omen to the whole world. What does this resemble? A human king making a banquet for his servants, and placing a great lantern before them, when he gets angry he says to his servant: Take away the light, let them sit in the dark.

We have learned in a Boraitha: R. Meir said: When the sun and the moon are eclipsed, it is a bad sign to the enemies of the Israelites (meaning, the Israelites themselves), because they are used to troubles: it is equal to the teacher's coming to the school with his whip in his hand. Who is more afraid? The child used to being beaten. This is the case when Israel do not do the will of the Creator; but when they do, they need not fear anything, as it is written [Jeremiah, x. 82]: "Thus hath said the Lord: Do not habituate yourselves in the way of the nations, and at the signs of the heavens be ye not dismayed; although the nations should be dismayed at them."

The rabbis taught: On account of the following four things the sun becomes eclipsed: When a chief judge dies, and is not lamented becomingly; when a betrothed virgin calls for help in the town, and is not aided; unnatural vice; when two brothers are killed on the same day; and on account of the following four things both the sun and the moon are eclipsed: Forgery, false witness, when fruit-bearing trees are cut out, and when sheep and goats are kept in Palestine. On account of four things the property of householders is transferred (confiscated) to the government: When paid notes are kept; usury; and when men had the

power to prevent, but would not; and when charity was promised to the people, and was not given. Rabh said: For four things the property of householders becomes annihilated: When they keep workers, and do not pay them in time; for robbing them; when the strangers free themselves from the yokes on their necks and put them on their neighbors' necks; and for arrogance. And arrogance is the worst of all. But of those who are modest is written [Ps. xxxvii. 11]: "But the meek shall inherit the land, and shall delight themselves because of the abundance of peace."

Footnotes

27:1 This expression has the same meaning as *gad achith*, explained in Erubin, p. 6, and means, if the twig was a span at the top, it is considered whether the top lies over the empty place. And Rashi explains this, that the twigs were not lying but standing upright, and therefore the top when wide a span is considered to be lying.

28:1 Two coins, the first a one, the second very large.

35:1 Rashi explains this as follows: The Judges of the Book of Judges, *i.e.*, the Rulers of Israel since Joshua's death to the prophet Samuel: From the tribe Ephraim was Joshua; from Benjamin,

Ehud; Manasseh, Gideon--that is, from the children of Rachel. Samson was of Dan, Barak of Kaddesh was of Naphtali--Bilha's children. Ibzan, or Boaz, from Judah; Eli of Levi, Tola from Issachar, Elun from Zebulun; Othniel, Jephthah, Shamgar, Abdan--it is not known of what tribes they were descended. From the tribes of Reuben, Simeon, Gad, and Asher, I have not found, says Rashi, explicitly that judges were descended from them. But it may be the Judges whose tribes were not named were traditionally said to be of those.

Next: Chapter III

CHAPTER III.

REGULATIONS CONCERNING PALM BRANCHES, MYRTLES, WILLOWS, AND CITRONS USED ON THE FIRST DAY OF THE FEAST OF TABERNACLES.

MISHNA: A palm branch 1 which has been acquired by theft, or which is dried, is not valid. One which comes from a grove (devoted to idolatry) or from a rejected town 2 is not valid; if the point has been broken off, or the leaves torn off, it is not valid; if they are only dissevered, it is valid. R. Jehudah says: It must be tied together at the top. A palm branch from the Iron Mount 3 is valid. A palm branch that is three spans long, sufficient to shake it by, is valid.

GEMARA: The Mishna does not mention on which day it is valid, and on which not; and from this we can infer that it is invalid even for the second day. This would be right only in case of a dried one, because it is written *hadar*, which means "beauty," which a dried one has not; but a robbed one--that is prohibited only because it must be his own, as stated above (p. 34)--but on the second day, which is wholly rabbinical, why should it be invalid? Said R. Johanan in the name of R. Simeon b. Jochi: Because it is a religious duty that is performed by a sin. R. Johanan said again in the name of the same authority: It is written [Is. lxi. 8]: "For I, the Lord, love justice: I hate robbery with burnt-offering." It resembles a human king who passed the custom-house and said to his servants: "Pay the duty to the officers"; and the servants said to him: "Why shall we give duties? All the duties are thine"; and he said: "All passengers shall learn it from me, and shall not shirk to pay their duty." So the Holy One, blessed be He, said: "I, the Lord, hate robbery with a burnt-offering of me shall my children learn, and avoid robbery."

It was taught also in the name of R. Ami: A withered one

is invalid, because it has no beauty; and a robbed one is invalid, because it is a religious duty done by a sin.

R. Huna said to the sellers of the myrtles: If you buy myrtles from the heathen, do not cut them off yourselves, but let themselves cut off, and give them to you. Why so? Because most heathen have robbed the ground from the Israelites, and the robber is not considered the owner of the ground, even when the original owner has despaired of it (but the law is different about movable property). And therefore, if you will cut off yourselves, that will be as taking a robbed thing; but when they cut off, and as the original owners have despaired, the cut-off myrtle boughs become theirs, and you may buy them.

The rabbis taught: A robbed Succah or a roof made in a public street, R. Eliezer makes invalid, but the sages make it valid. Said R. Na'hman: They differ only when the ground on which the

Succah is built belongs to his neighbor, and he put out the neighbor and took the Succah to himself. This is according to R. Eliezer's theory, who said that one cannot fulfil his duty in his neighbor's Succah. It is invalid in any case. According to those who say that the robber of ground is considered the owner of it, after the original owner has despaired, it is a robbed Succah; and even according to those who say that he can never become the owner of the ground, it is nevertheless a borrowed Succah (because it is not a robbed one). But the sages hold to their theory that one can fulfil his duty in a borrowed Succah, and also that ground cannot be robbed; therefore it is valid, because it is considered as a borrowed Succah. But if one has robbed wood, and made a roof, according to all, the owner of the wood has only to claim his money, but the wood becomes the property of the robber, and the Succah is valid. And he infers this from the expression of the Mishna, "a robbed Succah or a roof made in public ground," as in the latter case the ground was certainly not his, so also the robbed Succah means, that the ground was also not his and he has robbed it.

It happened once that an old woman came to R. Na'hman and said: The exilarch, and all the sages of the house of the exilarch, are sitting in a robbed Succah. She complained, but he did not answer her. Said she again: A woman whose father had three hundred and eighteen slaves complains before you, and you do not pay attention. R. Na'hman said to the sages: The woman is only a prattler: she has to claim only the money for the wood that has been taken for the use of the Succah.

Rabhina said: If a beam of the roof of a Succah has been robbed, the sages have arranged that only money for it should be returned to the owner, and not the beam itself. Is this not self-evident? What is the difference between a beam and wood, as just mentioned above? One might say wood can be found in any place, and one can buy it for the money; but a beam, which is not so common, should be returned. They come to teach us that during the seven days of the festival, one can lay claim only to money, but after the festival it must be returned, provided one has not attached it with clay; but if one has, even after the seven days only the money shall be given.

We have learned in a Boraitha: A withered palm branch is invalid, but R. Jehudah makes it valid. Said Rabha: They differ only about a Lulab that is rabbinical. The sages hold that we compare a Lulab to a citron: as the citron must be beautiful, because it is written *hadar* (beauty), so the Lulab must be beautiful; and R. Jehudah does not hold this theory, and says that a Lulab need not be beautiful, but a withered citron, according to all, is invalid. Does R. Jehudah require that a citron shall be beautiful? Did we not learn in a Boraitha: The four kinds that are with the Lulab, as there must not be less, so nothing shall be added to them? If one did not find a citron, he cannot replace it with a lemon or a pomegranate, or anything else; and if they are withered they are valid, but if dried, then invalid. R. Jehudah, however, said: Even when dry, they are valid. And he says again: The inhabitants of great cities used to transmit their Lulabs to their grandchildren. And they answered him: This cannot prove, because the places where such things are rarities do not prove. Hence we see that R. Jehudah said that even dry ones are valid, and this includes also citrons? Nay, R. Jehudah meant only the Lulab when he said dry ones are valid.

The text says: "If he cannot find a citron, he shall not replace it with a lemon," etc. Is not this self-evident? One might say, he shall replace it with something, lest the command. of a citron

should be forgotten: it comes to teach us that if it would be done so, the later generations might use such things forever. Come and hear: An old citron is invalid, but R. Jehudah says it is valid. Is this not a contradiction to the saying of Rabha [1] above, that R. Jehudah meant only the Lulab, and not a citron? Yea, it is

a contradiction. But how can R. Jehudah say that an old one is valid? is it not written *hadar* (beautiful)? R. Jehudah explains the word *hadar* [1] not to mean "beauty," but "dwelling"; that means, a fruit which dwells on its tree the whole year.

"*If the point was broken off*." Said R. Huna: If it is broken off; but if it is only split, it is valid. But have we not learned in a Boraitha: A bristly Lulab or one crooked like a scythe, a split one, a hardened one, is invalid. But if it seems hardened, and in reality is not, it is valid. Hence we see that a split one is also invalid? Said R. Papa: By "split" is here meant one growing as a fork, into two different directions. "Crooked like a scythe," said Rabha; "that is only if it is bent forward, but if backward it is natural, and it is valid." Said R. Na'hman: If bent sideways, it is as if forward. According to others, R. Na'hman says it is as if bent backward. Rabha said again: A Lulab that has all the leaves on one side, and on the other side none at all, is blemished and is invalid.

"*If the leaves were torn off*." Said R. Papa: By torn off is meant that it is made like a broom. What is meant by dissevered? When the leaves grow as branches of a tree, in different directions.

R. Papa put a question: If the "twins" of the Lulab are divided, how is the law (the double leaves on a palm branch are called "twins")? Come and hear: R. Mathun in the name of R. Joshuah b. Levi said: If the "twins" are divided, it is as if the leaves were torn off, and it is invalid.

"*R. Jehudah says*," etc. We have learned in a Boraitha: R. Jehudah said in the name of R. Tarphon: The expression "branches of palm trees" is *Kapoth Tmarim*. As the word *kapoth* signifies in Aramaic "bound," "tied," if the Lulab was separated, it must be tied together. Said Rabhina to R. Ashi: How is it known that by Kapoth Tmarim is meant a young Lulab that has been the first year on the tree? Perhaps the branches are meant when they are two or three years old, when the leaves spread on all sides? We require that they shall be tied together, and in that case they cannot be tied at all.

"*A Lulab from the Iron Mount*." Said Abayi The case is only when the top of one reaches the lower part of the one that grows over it; but if not, they are invalid.

"*A Lulab three spans long*." Said R. Jehudah in the name of Samuel: The prescribed size for a myrtle bough and willow is three spans, and of the Lulab four, so that the Lulab shall be one span higher than the myrtle bough and willow when they are tied, R. Parnach in the name of R. Johanan said: (Not the leaves, but) the back of the Lulab, should be one span higher. Come and hear: The prescribed size of a myrtle bough and willow is three spans, of a Lulab four spans: is it not meant with the leaves? Nay, it is meant, besides the leaves. The Boraitha says farther on: R. Tarphon says: It shall be measured with an ell of five spans. Said Rabha: May the Lord

forgive R. Tarphon for such teaching: A myrtle bough of three spans is not to be found, and he calls for a myrtle bough of the length of five spans. When Rabbin came from Palestine, he said that R. Tarphon meant to say so: An ell which was five spans, consider it as if it was six spans, and three spans of this take off for the myrtle bough, and the remainder, which is about two and a half, for the Lulab. If it is so, then it is a contradiction to Samuel, for according to R. Tarphon the myrtle bough would be only two and a half spans, and Samuel said it must be three spans? Samuel was not particular in his decision, and said more rigorously, three. But, nevertheless, R. Huna says in his name that the Halakha prevails according to R. Tarphon.

MISHNA: A myrtle bough which has been acquired by theft, or which is dry, is not valid. One which comes from a grove or from a rejected town is invalid. If the tip has been broken off, or the leaves torn off, or if one has on it more berries than leaves, it is invalid; if the berries are diminished in number it becomes valid, but this must not be done on the festival. A willow of the brook, which has been acquired by theft, or which is dry, is invalid. One which comes from a grove, or a rejected town, is not valid. If the point has been broken off, or the leaves torn off, or if it be a *Tzaphtzapha*, 1 it is invalid. One which is faded, or from which some leaves have dropped off, or which has grown on dry ground (not near a bank), is valid.

GEMARA: The rabbis taught: It is written: "Boughs of the myrtle tree"; that is, a tree whose branches cover the whole tree, and this is only a myrtle tree. Rabha said: We take a myrtle bough because it is written [Zechariah, viii. 19]: "Only

love ye the truth and peace" (as a myrtle is an emblem of peace and love, therefore we take it on the festival). 1

The rabbis taught: A branch that is twined like a chain, that is the myrtle. R. Eliezer b. Jacob says: It is written: "The branch of a twined tree." That means, a tree whose trunk and fruit have the same taste, and that is a myrtle. In a Boraitha we have learned: A branch that is twined, is valid; if not, it is invalid. What is meant by twined? Said R. Jehudah: On each stem are three leaves. R. Kahna however, says: Even if on one stem are two, and on the other one, it is also reckoned three. R. A'ha the son of Rabha was looking for a myrtle bough which had two and one and two and one because this has been announced by R. Kahna. Said Mar bar Amemar to R. Ashi: My father calls such a myrtle a wild myrtle.

The rabbis taught: If the greater number of leaves have dropped, and on three stems they remained, it is valid. The rabbis taught: If the greater part of the leaves on the bough have dried up and only three twigs, each containing three leaves, remained, it is valid. Said R. Hisda, provided that the remainder are on the top of each.

"*If the tip has been broken off*." Ulla bar Hinna taught: If the tip has been broken off, and in its place is a green fruit like a date (Rashi explains this, that on the top of a myrtle there happen to be green fruits, with which women paint their vails), it is valid. R. Jeremiah put a question: If the tip had been broken off on the eve of the festival, and this green fruit grew up on the festival, how is the law? Shall it be said that, because it was not fit on the eve, it has been rejected, and cannot be used any more; or, the law of rejecting does not apply to religious duties? This question is not decided. Shall we assume that this is a point of difference between the following

Tanaim: We have learned: If one has transgressed, and cut off the berries on the festival, it is invalid, according to R. Elazer b. R. Zodok; but according to the sages it is valid? Must we not assume that he who says it is invalid does it because he holds the law of rejecting applies to religious duties, and as this branch with the berries was rejected on the eve of the festival, it was rejected for the whole festival, and he who says it is valid does so because he holds that the law of rejecting does not apply to religious duties? Nay, all agree that

the law of rejecting applies to the positive commandments of religious duties, but in this case they differ whether a Lulab must be tied or not, as on this point differ the Tanaim of the following Boraitha: A Lulab, whether tied or not, is valid. R. Jehudah, however, said: A tied one is valid; if not, it is invalid. What is the reason of R. Jehudah? He infers it from an analogy of expression. It is written here [Lev. xxiii. 40]: "Ye shall take unto yourselves on the first day," and [in Ex. xii. 22] "and ye shall take a bunch of hyssop"; as there it is plainly written a bunch, so also here it must be tied as a bunch, and the sages do not take into consideration this analogy of expression. [1]

"*If one has more berries on it than leaves*." R. Hisda said: The following thing said our great rabbi (*i.e.*, Rabh), and the Lord come to his help: The case is only if it was in one place, but if the berries were in two or three places, then it is valid. Said Rabha to him: If it was in two or three places, it seems spotted, and it is invalid? Therefore if such a thing was taught, it was taught thus, said R. Hisda: The following thing our great rabbi said, and may God come to his help: The case is only when the berries were black; but if they were green, they are the same as the myrtle bough, and it is valid.

"*If they have been diminished in number*," etc. They have been diminished in number when? If before it was tied, it is self-evident, and if after it was tied, then it was rejected for the festival, and how made good? Infer from this that the law of rejecting does not apply to religious duties! Nay, we can say that the case is even after it had been tied, but the Tana of the Mishna holds that the tying is not considered a construction, but only a preparation, and does not therefore count it.

The rabbis taught: They must not be diminished in number on the festival. In the name of R. Eliezer bar Simeon, however, it was said: It maybe done. But is not this like repairing a utensil on the festival? Said R. Ashi: R. Eliezer means to say, that if he took off the berries for the purpose of eating, and he holds as his father, that a thing which was done unintentionally is allowed.

The rabbis taught: If the *binding* of the Lulab was loosened on the festival, one shall tie it as he usually ties a bundle of herbs. Why? Let him tie it into a loop (not a knot). That is according to R. Jehudah, who said in Sabbath (p. 233), that tying into a loop

is like a knot, for either is culpable. But according to R. Jehudah the Lulab must be tied not as a bundle of herbs, but in a good knot? This Tana holds as R. Jehudah in one thing, and differs from him in the other.

"*A willow of the brook*," etc. The rabbis taught: It is written "A willow of the brook." That means, they usually grow near every brook. According to others, the willow of the brook means that it has leaves smooth as a brook. In another Boraitha we have learned: The willows of the brook! Whence do we deduce that willows from dry ground and mountains are valid? It is written "willows," in the plural: all are included. Abba Shaul, however, said: The plural signifies that two are needed: one for the Lulab and one for the Temple. And whence do the rabbis deduce that One for the Temple? They hold it is Sinaic (as will be explained farther on).

The rabbis taught: Willows of the brook, that grow only at brooks; but the *Tzaphtzapha*, which grows only between mountains, is excepted.

The rabbis taught: How can we recognize what is a willow and what is a *Tzaphtzapha*? The willow's stem is red, with the leaves elongated and their edges smooth. But a *Tzaphtzapha* has the stem white, and the leaves round, and their edges like a scythe. But have we not learned, if it is like a scythe, it is valid, and when like a saw it is invalid? Said Abayi: This we learned of the willows of Hilpha Gila: they are valid. Abayi said again: We may infer from this that the same willows may be used for the seventh day when *Hosha'noth* are used. Is not this self-evident? One would say that because the willows of Hilpha Gila have an additional name, they are not valid, he comes to teach that it is not so. But perhaps it is so? Because it is written in the plural, all are included.

MISHNA: R. Ishmael says: Three myrtle boughs, two willows, one palm branch, and one citron are needed. If two out of the three myrtle boughs had the tips broken off, they may be used. R. Tarphon says: Even if all three should have the tips broken off. R. Aqiba says-: As one Lulab and one citron are needed, so are only one myrtle bough and one willow needed.

GEMARA: We have learned in a Boraitha,: It is written: The fruit of the tree *hadar*," in the singular. one fruit; "a branch of a palm tree," in the singular, 1 one branch; "boughs

of the myrtle tree, "in the plural, three; and "willows of the brook," also in the plural, two. And even if two had the tips broken off, it is valid. R. Tarphon, however, said: Three are needed; and if all the tips are broken off, it does not matter. R. Aqiba said: As the Lulab and the citron are only one, so of the myrtle boughs and the willows is needed only one. Said R. Eliezer to him: According to thee, the citron must be tied together with the Lulab? And he answered: Did the verse say: "The fruit of the tree *hadar and* a branch of a palm tree"? It mentions them separately. If so, whence do we know that one depends upon the other? Because it is written: "Ye shall take." That means, you shall take all things that are enumerated, and not one without the other. How shall we imagine the case, according to R. Ishmael? If all kinds have to be entire, why are the myrtle boughs allowed if they are broken? And if it is not required that they should be entire, let even the other kinds, if broken, be used? Said Birah in the name of R. Ammi: R. Ishmael retracted this decision. Said R. Jehudah in the name of Samuel: The Halakha prevails according to R. Tarphon, and Samuel said this according to his theory, because he said to the sellers of the myrtles: Make the price lower, and if you will not do so, I will lecture that the Halakha prevails according to R. Tarphon. Let him then lecture according to R. Aqiba, who is more lenient, and says only one is needed? Three with the tips broken are more easily procurable than one uninjured.

MISHNA: A citron which has been robbed, or is withered, is invalid. One coming from a grove or a rejected town is invalid. One taken off a tree less than three years old [1] is not valid. Nor one taken from heave-offering that is unclean. From clean heave-offering a man is not to take a citron; but if he has taken, he has fulfilled his duty. One taken from *Demai* (fruit from which it is doubtful whether the legal dues have been paid) Beth Shammai hold invalid, but Beth Hillel hold it valid. A man is not to take a citron from second tithe in Jerusalem; but if he has taken one, he has done his duty. If a stain spread over the greater portion of the citron, if it has lost its crown, or the fine rind has been peeled off, or if it is split, or perforated, if ever so little thereof is wanting, it is not valid. If, however, the stain is spread over the smaller portion of the citron, if it has lost its stalk, or if that be perforated (but the citron itself is entire) so

that no part, however small, be wanting, it is valid. A dark-colored one is invalid, a leek-green one R. Meir pronounces valid, but R. Jehudah invalid.

The minimum size of a small citron, R. Meir says, is like a nut; R. Jehudah says, like an egg; and of a large citron, that one can hold two in one hand. So is the decree of R. Jehudah; but R. Jose says, even one must be taken with both hands.

GEMARA: The rabbis taught: The fruit of the tree *hadar*; that is, a tree whose wood and fruit have the same taste, and that is a citron. Perhaps it is pepper, as we learn in the following Boraitha: R. Meir used to say: Because it is written [Lev. xix. 23]: "Plant any kind of tree, bearing edible fruit." Why was it needed to say, a tree bearing edible fruit? Is it not self-evident that if it is bearing fruit it is edible? From this we infer that to pepper, whose wood and fruit have the same taste, the law of *Arlah* applies. And in the land of Israel nothing is lacking (even pepper), as it is written [Deut. viii. 9]: "A land . . . wherein thou shalt not lack anything"? Because it is impossible: how shall we do? Shall we take one pepper-grain, that will not be noticed at all, many of them; the law says one, not two or three; and therefore it cannot be. R. Abahu says: Do not read *hadar*, but ha-dar; that is, a thing that *dwells* on its tree the whole year. Ben Azzai said: Do not read hadar, but *adur*, because in Greek they call water •δωρ, and that means a tree which can grow in all waters, and that is only a citron.

"*One that comes from a grove*," etc. Because it must be burned, and therefore it is considered to have no size.

"*From a tree less than three years*," etc. Why so? R. Hiya bar Abbin and R. Assi differed: one says, because it is not allowed to eat it, it must not be used either; and one says, because at that time it is worth nothing (because it must not be used for any purpose).

R. Assi said: With a citron of second tithe, according to R. Meir, a man cannot fulfil his duty; but according to the sages, he can. The same is the case with Matzah of second tithe. And dough of second tithe, according to R. Meir, is exempt from Halah, and according to the sages, is not.

"*From unclean heave-offering*." Because it is not allowed to eat it. And from clean heave-offering? "*One shall not take*," etc. R. Ami and R. Assi differ: one says, because he makes it subject to defilement, and one says, because he spoils it (because, when he holds it in the hand,

it gets black, and is spoiled).

"*But if he has taken, it is valid*." According to those who say that it must not be taken, because it is not allowed to be eaten, this law is according to all; and according to those who say because it has no value, this Mishna is only in accordance with the rabbis.

"*From Demai*." What is the reason of Beth Hillel? Because if one wishes, he can relinquish his estates, and then he would be poor, and he would be allowed to eat it; therefore now also we consider it proper.

"*If a stain*," etc. Said R. Hisda: The following thing our great rabbi said, may the Lord come to his help: The case is only when it is in one place (of the citron), but if it is in two or more places, it is like a spotted one, and is invalid. Said Rabha: On its top, even if it is but trifling, it is invalid.

"*Its crown*," etc. R. Itz'hak b. Elazar taught: The crown, but not the stalk at the bottom.

"*Peeled off*," etc. Said Rabha: If a citron has been peeled, and gets the color of a red date, it is valid. But did we not learn in our Mishna that if peeled, it is invalid? It presents no difficulty. If it was in part peeled off, it is like a spotted one, and invalid; but if entirely peeled, it is valid.

"*Split or perforated*," etc. Ulla bar Hanina taught: When it is perforated through and through, even if it is trifling, it is invalid; but otherwise, then if the hole is of the size of an *Isar* (a coin), it is also invalid, but if less it is valid.

A citron that is swollen, ill-smelling, soaked, boiled, black or white, or spotted, is invalid. A citron round as a sphere (not elliptical) is invalid. According to some, twins (two growing together) are also invalid. An unripe citron R. Aqiba makes invalid, and the sages do not. If it was made to grow in a mould, and it came out of an irregular shape, it is invalid.

It was taught: "A citron that mice have perforated," said Rabh, "cannot be called beautiful."

"*And of a large citron*," etc. We have learned in a Boraitha: R. Jose said it once happened to R. Aqiba that he came to a prayer-house with his citron, and it was so large that he brought it on his shoulder. Said R. Jehudah to him: It proves nothing, because the sages told him then: This cannot be considered beautiful,

MISHNA: The Lulab must only be tied with its own kind (threads of palm branches). So says R. Jehudah. But R. Meir says: It may be tied even with twine. R. Meir also said: It

happened that the inhabitants of Jerusalem tied a Lulab with gold lace. But the sages answered: Yes, they did so, but beneath the gold lace they tied it with its own kind.

GEMARA: Said Rabha: With the bark or the root of the same tree it may be tied. And he says again: What is, the reason of R. Jehudah's decree? Because according to him the Lulab must not be used unless it is tied, and if it be tied with another kind, it should be five kinds, and not four. He says again: Whence do I deduce that the bark and the root of the palm tree are considered of the same kind as the Lulab itself? From the following Boraitha: It is written: "Ye shall dwell in booths." That signifies, a booth of any materials: so is the decree of R. Meir. R. Jehudah, however, said: A booth must be made only of the four kinds used for the Lulab. And it seems to me that such is right, because if a Lulab which is used only in the day, and not in the night, must have the four kinds only, for a Succah which is used both by day and by night, so much the more are the four kinds needed. Replied the sages to him: Every law which is at the beginning more rigorous, and is finally more lenient, is no law at all. And our case, according to your opinion, if one did not find the four kinds, he should sit in his house, doing nothing; and the Torah says: "Seven days ye shall dwell in booths." Therefore we say a Succah should be made of any materials. And so it is written in Nehemiah, viii. 15: "Go forth unto the mountain and fetch olive leaves, and oleaster leaves, and myrtle leaves, and palm leaves, and leaves of the three-leaved myrtle to make booths." R. Jehudah, however, explains this verse thus: That olive leaves and oleaster leaves are for the walls of the Succah, and myrtle leaves, etc., are for the covering. And we have learned in a previous Mishna: It may be roofed with boards, so is the decree of R. Jehudah. Hence we see that, although R. Jehudah requires only the four kinds for the covering, nevertheless, if one has covered it with boards, it is valid, because the boards of the bark and of the roots of the same tree are considered by him of the same kind. But have we not learned in a Boraitha that if one has covered it with boards of cedar, it is valid according to R. Jehudah? By cedar is also Meant myrtle, as Rabha bar R. Huna says elsewhere: There are ten kinds of cedar, and the myrtle is among them, as it is written [Is. xli. 19]: "I will place in the wilderness the cedar, the acacia, the myrtle."

Said Rabba to the men who tied the Hosha'noth for the

exilarch When you tie them, leave the breadth of a hand at the bottom there shall be no intervention between the hand and the Hosha'na. 1 Said Rabha: All that was made to beautify it, does not intervene. Rabba says again: A man shall not hold the Hosha'na through a cloth, because it is written: "Ye shall take," with your own hands. Rabha, however, said: Even if one takes it through another thing, it is still called *taking*. Rabba says again: After the Hosha'na and the myrtle bough have been tied, one shall not insert the Lulab, lest some leaves be torn off from them, and they will be an intervention between the Lulab and them. Rabba, however, said: A thing of the same kind makes no intervention.

Rabba says again: A myrtle bough used for the religious purpose may not be smelled, but a citron may. Why so? Because the myrtle is only used because of its odor, and as it has been designated for a religious purpose, it must not be smelled; but a citron, which is made for eating, has been designated only for eating, and may be smelled. The same authority says again: A myrtle attached to the ground may be smelled on the festival, but a citron must not. Why so? Because a myrtle, which is used only for smelling, if one will be allowed to smell it, when yet attached to the ground, he will not cut off; but a citron, which is for eating, if he will be allowed to smell, he will cut off, and eat. He says again: The Lulab must be held in the right hand, and the citron in the left hand. Why so? Because by the Lulab three duties are performed, and by the citron only one.

Said R. Jeremiah to R.. Zrika: Why do we pronounce the benediction over the Lulab only? Because it is higher than the other kinds. But let one raise the citron, and pronounce the benediction over it? And he answered: Because by *nature* it grows higher than the other kinds..

MISHNA: When must the Lulab be shaken? At the verse: "Praise ye the Lord" (in the prayer), at the beginning and ending (of that part of the prayer), and at the verse: "O Lord, we beseech thee, save us": so is the decree of Beth Hillel. But Beth Shammai hold, also at the verse: "O Lord, we beseech thee, prosper us." R. Aqiba said: I watched Rabban Gamaliel and R. Joshuah (in the time of prayer), and I saw while all men shook the Lulabs at both the above-mentioned verses, they shook theirs only at: "O Lord," etc., "save us."

GEMARA: Where is it mentioned that it should be shaken? In the first Mishna of this chapter: it teaches, a Lulab which is three spans long "sufficient to shake it by"; and now it is asked, When shall it be shaken? Said R. Johanan: The shaking shall be towards all four sides--to the Creator, that all the sides are His; and it shall be raised and lowered to Him to whom the heaven and the earth belong. In the West they taught so: R. Hama bar Uqba in the name of R. Jose bar Hanina said: He shall shake towards all sides, to prevent bad winds; and up and down, to prevent bad dews.

MISHNA: If one is on the road, and has no Lulab, he must, when he gets home, shake it before his meal. If he has not done it in the morning, he must do it toward evening, as the duty may be done during the whole day.

If a slave, woman, or minor reads *hallel* (see Pesachim, Chap. X., pp. 242-46) to a man, he should repeat after them word for word, but it is a disgrace to him (not to have learned to read). If a grown man reads to him, he only responds "Hallelujah." At the places where certain verses are said twice, he is to do so. Where they are recited once, he must do so. Where a benediction is said after the Lulab, he must say it. In every case he must do as is the custom of the country.

GEMARA: Rabha said: Great Halakhoth can be inferred from the custom of saying Hallel: From the custom of our time, when almost all men can read the Hallel themselves, nevertheless they repeat the beginnings of the chapters after the reader, we may infer what are the essential portions of Hallel, and how it was done in the ancient times, when the people could not read themselves, and a man was wanted to read it, for them to repeat after him. The Mishna says: He responds "Hallelujah." From this we see that Hallelujah is of the essential portions which must be responded. We see also in our time, when the reader begins: "Praise, O ye servants of the Lord," and the people respond, "Hallelujah," we may infer that if a grown man is the reader of the Hallel, it is sufficient for the hearer to respond "Hallelujah," and not to repeat the whole chapter (part of the prayer). From what we see, that when the reader says, "Praise ye the Lord," they also repeat, "Praise ye the Lord," we infer that it is a merit to repeat the first verses of the chapter.

[It was also taught: R. Hanan bar Rabha said: It is a merit to repeat the first verses of the chapter.] When the reader says: "O Lord, save us," they should repeat it. If the reader is a

minor, however, one must repeat after him word for word. When he says: "O Lord, prosper us," they repeat it, and from this we see that if one wishes to say it twice, he may do so. When he says, "Blessed be he that cometh," they respond, "in the name of the Lord." From this we see that he who listens to the prayer is equal to him who himself repeats it.

R. Hiya bar Abba was asked: If one has listened to the prayer, and not responded, how is the law? And he answered: The sages, the scribes, the heads of the people, the preachers, all have decided that he who has listened, and not answered, has fulfilled his duty.

"*At the places where verses are said twice*," etc. We have learned in a Boraitha: Rabbi used to say twice in the Hallel same parts. R. Elazar b. Parta has added parts to the same prayer. What is meant by "added"? Said Abayi: He added the manner of saying twice every verse from the 21st verse of Psalm cxviii. to the end of that psalm.

"*When it is the custom to say a benediction*," etc. Said Abayi, that is only at the end of the Hallel; but before, it is not a custom, but obligatory. As R. Jehudah said in the name of Samuel: All the religious duties must have a benediction pronounced before they are performed.

MISHNA: If one buys a Lulab from a man of the common people in a Sabbatical year, he shall ask of him that the citron shall be given to him as a gift, because it is not allowed to buy a citron in the Sabbatical year.

GEMARA: But how is the law if the seller does not want to give him this as a gift? Said R. Huna: He shall include the price of the citron in the price for the Lulab. Why? Let him give it to him publicly? Because one must not give money for fruits forbidden to be sold on the Sabbatical year to a man of the common people. As we have learned in a Boraitha: One must not give money for fruit on the Sabbatical year to a man of the common people more than is sufficient for three meals; and if one has done it, he shall say: This money that I give to this man shall be exchanged for the fruit which I have in my house, and after that he uses the fruit which he has had in the house only for purposes for which fruit of the Sabbatical year may be used. When is that the case? When he saw that the man sold to him fruit from a field left to the public, which had no owner; but if he sold it from his own field, one must not buy even for half an *isar*. If it is so, why only the citron? What is the

case with the palm branch? The Lulab cannot be of the Sabbatical year, because it had been ripe on the sixth year. But the same is the case with the citron? In case of a citron, it is not counted from the time of its ripeness, but its removal from the tree (as is explained in Tract Rosh Hashana, p. 19). But we know that according to both R. Gamaliel and R. Eliezer, in reference to the Sabbatical year, in case of the citron it is counted from the time of its budding. As we have learned in the following Mishna: The citron is equal to a tree in three respects, and to herbs in one respect--to a tree in three respects, to wit: Of *arla* (the first three years), *rebai* (the fourth year) [Lev. xix. 22-24], and of the Sabbatical year, in reference to which it is counted from the time of its budding; and to a herb in one respect, that it must be tithed when it is gathered (*i.e.*, the tithe must be used for the purpose of that year). So is the decree of Rabban Gamaliel. R.

Eliezer, however, said: A citron is equal to a tree in all respects (hence we see that all agree that in reference to the Sabbatical year it is counted in case of the citron from the time of its ripeness, not of its budding). The Tana of our Mishna holds as the Tana of the following Boraitha: R. Jose said: Abtulmus testified in the name of five elders, thus: The citron must be counted from the time when it is gathered for tithe. Our Masters, however, have voted and decided in the city of Usha that in reference both to tithe and Sabbatical year it is to be counted from the time of its gathering. But where is here mentioned the Sabbatical year? The Boraitha is not completed, and must read thus: The citron is counted when gathered in reference to tithe, and from budding in reference to the Sabbatical Year. Our Masters in Usha, however, have decided that in both cases it is counted from the time of the gathering.

R. Elazar said: The fruit of the Sabbatical year does not become exchanged, unless it is done in the manner of buying and selling. R. Johanan, however, said: It becomes exchanged even through exchanging. What is the reason of R. Elazar? Because it is written [Lev. xxv. 13]: "In this year of the jubilee," and the next verse says, "shall he sell," from this we infer, only through buying and selling. What is the reason of R. Johanan? Because it is written [ibid., ibid. 12]: "For it is the jubilee, holy shall it be unto you"; and as in case of all holiness there is no difference between selling and exchanging, the same is the case with the fruit of the Sabbatical year. We have learned in one

[paragraph continues] Boraitha in accordance with R. Elazar, and in another Boraitha we have learned in accordance with R. Johanan.

A Boraitha according to R. Elazar: The Sabbatical year holds the money exchanged for its fruit, because it is written: "It is a jubilee year and shall be holy." As the holy things hold the money exchanged for it, and makes it holy, so also do the fruit of the Sabbatical year. But should we assume, as the holy things become ordinary, when exchanged, the same shall be with the Sabbatical year, therefore it is written: "*It shall be*"--which means, so shall it stay. How so? *I.e.*, if one bought for its fruit meat, both must be destroyed; if, however, he bought fish for the meat, the fish becomes its substitute, and the meat is free; the fish, again, exchanged for wine, the latter becomes the substitute. The same is the case when the latter is exchanged for wine: the very last always becomes the substitute of the preceding one, except the original fruit, which remains as it was. Now, then, when the Boraitha mentions at every exchange the word "*lokah*," which means bought, we may infer from it that it was done only by purchase, but not by exchange (hence R. Elazar's opinion).

A Boraitha according to R. Johanan: Both the fruit of the Sabbatical year and of the second tithe may be exchanged for wild game, cattle, and fowl when they are either alive or slaughtered. So is the decree of R. Meir. But the sages say that only for slaughtered ones, but when alive they must not be taken in exchange, lest he shall raise a herd from them. Said Rabba: They differ only as to males, but females, all agree that only slaughtered ones may be exchanged, but not living ones, for the precautionary measure stated above.

Said R. Ashi: They differ only about the fruit exchanged already for the Sabbatical fruit, but about the Sabbatical fruit itself all agree, only through selling and not through exchanging. But have we not learned in a Boraitha: The fruit of the Sabbatical year and second tithe may be exchanged for animals, wild beasts, and fowls? By this is meant, not the fruit but the money

obtained for it. And this must be so, because it is mentioned together with second tithe, and by second tithe could not be meant the fruit itself, because it is written [Deut. xiv. 25]: "Bind up the money in thy hand."

MISHNA: Formerly the Lulab was used in the Temple all the seven days of the festival; in the country, however, only one day. When the Temple was destroyed, R. Johanan b. Zakkai

ordained: In the country it shall also be used all the seven days, in memory of the Temple. He ordained also at the same time that on the sixteenth day of Nissan, called the day of Noph (the day of waving the omer: Lev. xxiii. 11), it should not be allowed to eat new grain.

GEMARA: Whence do we infer that it must be done in memory of the Temple? Said R. Johanan: Because it is written [Jeremiah, xxx. 17]: "This is Zion, whom no one seeketh after." From this we infer that it must be sought after.

"*The day of Noph*," etc. What is the reason? Said R. Na'hman bar Itz'hak: R. Johanan b. Zakkai said this in accordance with the system of R. Jehudah, who said that it is biblically prohibited to eat the whole day, because it is written [Lev. xxiii. 14], "until the self-same day"; and the self-same day means this day shall be included. Does R. Johanan b. Zakkai indeed hold with R. Jehudah, did he not differ from him? As we learn in the following Mishna: When the Temple was destroyed, R. Johanan b. Zakkai ordained that the whole day of Noph it shall be prohibited. And R. Jehudah said to him: Why such an ordinance? Is it not biblically prohibited, as it is written, "on the self-same day," which means to include the whole day? R. Jehudah erred, because he thought R. Johanan b. Zakkai intended to make his ordinance rabbinical, and it was not so; R. Johanan b. Zakkai ordained this biblically. If biblically, what is meant by the expression "ordained"? Read: He lectured that this is biblical and so ordained.

MISHNA: If the first day of the festival falls on a Sabbath, the people bring their Lulabs to the synagogue on the eve of Sabbath and leave them there, and on the next morning they come early to synagogue, and each seeks out his own Lulab, and performs with it his duty, because the sages bold that the duty cannot be fulfilled on the first day by means of a Lulab belonging to his neighbor; but it can be fulfilled on the subsequent days of the festival.

R. Jose says: If the first day of the festival falls on the Sabbath, and one carries out the Lulab into public ground through forgetfulness, he is not culpable, because he carried it out with the intention to do a religious duty.

GEMARA: Whence is this deduced? From what the rabbis taught: It is written [Lev. xxiii. 40]: "Ye shall take," that means, it shall be taken with the hand; "unto yourselves," it shall be your own, but not a borrowed one or robbed one; and

from this the sages said that one cannot fulfil his duty with the Lulab of his neighbor on the first day, unless he has made of it a present to him. And it happened to Rabban Gamaliel, R. Joshuah, R. Elazar b. Azariah, and R. Aqiba, when they were on board a ship, that they had but one

Lulab, which was the property of Rabban Gamaliel, who had bought it for a thousand Zuz; and R. Gamaliel performed with it his duty, and then made of it a present to R. Joshuah; R. Joshuah did the same, and gave it away to R. Elazar, who did the same, and gave it as a present to R. Aqiba; and R. Aqiba, after having fulfilled his duty, returned it to Rabban Gamaliel. To what purpose do they tell us that R. Aqiba returned it to Rabban Gamaliel? It is to teach us by the way, that a present with the condition that it shall be returned after, is called a present. As Rabha said elsewhere: "If one say: I present to you this citron to fulfil your duty with it, and afterwards you shall return it to me," if the man returned it afterwards, he had fulfilled his duty, but if he failed to return it, it is not counted as anything. And to what purpose do they tell us that he bought it for a thousand Zuz? To let us know how dear to them were religious duties. Said Mar bar Amemar to R. Ashi: My father used to pray, holding the Lulab in his hand. We have learned in a Boraitha: R. Elazar [1] bar Zadok says: So was the custom of the men of Jerusalem: when one was going out of his house, the Lulab was in his hand; when he went to the house of prayer, the Lulab was in his hand; when he read the Shema and prayed, the Lulab was in his hand; when he read in the Torah and raised his hands (when a priest) to bless Israel, he laid it away, on the floor, and afterwards took it up. If he went to visit the sick, or console mourners, the Lulab was in his hand. When he went, however, to the house of learning, he sent it away through his son, or servant, or messenger. To what purpose is all this told? To let us know how mindful they were of religious duties.

"*R. Jose said*," etc. Said Abayi: He is not culpable so long as he has not fulfilled his duty with it; but if he has, he is. But has not the duty been performed as soon as he has taken it into his hand and raised it? Said Abayi: It means, if he carried it out inverted (because the duty is not fulfilled so long as he does not hold it as it grows). Rabha said: Even if he has not inverted it, but carried it out in a vessel. But did not Rabha himself

say that taking through any other thing is called taking? That is, if he took it thus to honor it; but if in a vessel not appropriate to a Lulab, it is not called taking.

MISHNA: A woman may receive a Lulab out of the hand of her son or of her husband, and put it back into water on the Sabbath. R. Jehudah says: On the Sabbath it may be put back, on the festival they may add fresh water, and on the intermediate days they may change the water. A minor who understands how to shake the Lulab is bound to perform that duty.

GEMARA: Is this not self-evident? Lest one say, that because the Lulab is not obligatory for a woman, she must not handle it, it comes to teach us that she may.

"*A minor*," etc. The rabbis taught: A minor who knows how to shake the Lulab is bound to perform this duty. If he knows how to wrap himself in a cloth, he is bound to perform the duty of Tzitzith; if he is able to take care of Tefilin, his father may buy for him Tefilin. As soon as he can talk, his father shall teach him the Torah, and to read Shema. [What is meant by Torah? Said R. Hamnuna: The verse of Deuteronomy, xxxiii. 4: "The law which Moses commanded us is the inheritance of the congregation of Jacob." What is meant by Shema? The first verse.] (The Boraitha says farther on): If he knows how to slaughter animals, it may be eaten of his slaughtering. Said R. Huna: Only if an adult was standing by. If he is capable to eat bread the size of an olive, one must remove from him to the distance of four ells (if one has to pray or to study), on certain occasions. Says R. Hisda: This is only if he can eat the piece of bread in the

same length of time that a grown person can eat bread of the size of three eggs, or more. Said R. Hiya the son of R. Yeba: In the case of a grown man who is sick and unable to eat as much, in the above-mentioned length of time, one must nevertheless remove four ells. Because it is written [Eccl. i. 18]: "Where there is much wisdom, there is much vexation." If the minor is able to eat roasted meat of the size of an olive, the Paschal offering may be slaughtered for him, as it is written [Ex. xii. 4]: "Every man according to what he eateth." R. Jehudah, however, said: It must not be given to him until he is able to distinguish. How? If he is given a chip, he drops it; but a nut, he accepts it.

Footnotes

42:1 Lev. xxiii. 40.

42:2 Deut. xiii. 12.

42:3 A mountain near Jerusalem, southward, the palm branches of which wen very short.

44:1 The name of Rabha is not mentioned above, but it must have been known to him that Rabha said so.

45:1 The word *hadar* in Hebrew has two meanings: "Beauty" and *dar* means "dwelling" (see Ps. lxxxiv. 11). Hence R. Jehudah explains this in the latter sense.

46:1 The Gemara will explain the term.

47:1 Rashi explains it in another manner, which is complicated. We, however, think that our explanation is right.

48:1 See page 14, lines 32-37, beginning "But according," etc., which also belong here.

49:1 The word *Kapath* is written in the singular, but is read *Kapoth*, in the plural.

50:1 Lev. xix. 23.

54:1 The Gemara calls Hosha'na the Lulab, and the myrtle bough and willow tied together.

60:1 See foot-note in Tract Pesachim, p. 78.

Next: Chapter IV.

CHAPTER IV.

REGULATIONS CONCERNING THE FOUR KINDS TIED WITH THE LULAB, CONCERNING HALLEL, POURING THE WATER ON THE ALTAR.

MISHNA: The Lulab and willow to surround the altar were sometimes used on six days, and sometimes on seven days of the festival. The Hallel and the eating of peace-offerings took place on eight days. The dwelling in the Succah and the pouring out of water lasted seven days, and the pipes were played on sometimes five, sometimes six days. In which case was the Lulab used seven days? When the first holy day of the festival fell on a Sabbath, the Lulab was used on seven days; but when the first day of the festival fell on any other day of the week, the Lulab was only used six days. In which case was the willow used on seven days? When the seventh day of the willow happened to fall on a Sabbath, the willow was used seven days; but when the seventh day fell on any other day of the week, the willow was only used six days. How was the command to take the Lulab fulfilled when the first holy day of the festival fell on a Sabbath? It was the custom that every man brought his Lulab to the Temple mount, where it was received by inspectors, who deposited it in a gallery. The elders placed theirs in a separate chamber, and the people were taught to say: Whoever gets hold of my Lulab, be it his as a gift. On the next morning the people came early; the inspectors threw all the Lulabs down before them; every man seized on one, and it often happened that they hurt each other. When the Beth Din saw that the people were thus exposed to danger, they ordained that every man was to use his Lulab in his own house.

GEMARA: Why? It is only handling it, and as the commandment of this is biblical, that it shall be taken in the Temple all the seven days, why shall it not be preferred to Sabbath? Said Rabba: As a precautionary measure, lest one take it into his hand to go with it to an expert to learn the performance, and at the same time one will carry it four ells in public ground. And the same reason is with the cornet, and the same reason is

with the Book of Esther, when Purim falls on Sabbath. If it is so, let it be forbidden even on the first day of the festival? On the first day of the festival, was it not ordained that it shall be used in the house, as mentioned above? Yea, that was after it was ordained; but what was the case before it was ordained? Therefore we must say, that the reason is because for the first day, which is biblical even in the country, the rabbis did not take the precautionary measure; but the other days, which for the country is only rabbinical, the rabbis took it. If it is so, why shall we not take it now on the first day, when it falls on Sabbath? If one may say, because we do not know exactly the calendar, why do the Palestinians, who know exactly the calendar, not carry it on Sabbath? Yea, they did so, even after the Temple was destroyed, as we have learned in the Mishna above that the people brought their Lulabs to the Temple mount; and another Mishna said, they brought it to the prayer-house, from which we may infer that in the time of the Temple they took it to the Temple mount, and after its destruction they took it into the house of

prayer. But whence do we deduce that in the country it is biblically obligatory on the first day? From the following Boraitha: It is written: "Ye shall take." That signifies, it shall be taken with the hand. "Unto yourselves," it shall be your own, excluding a borrowed or a robbed one; "on the day," even on Sabbath; "the first," even in the country. "The first," from this we infer that only when the first day falls on Sabbath it must be taken, but not on the other days. The text says, "the day," to include Sabbath. Let us see. This is only handling. Do we need a biblical verse to allow handling? Said Rabba: It is meant to allow the preparing of the Lulab, and this is in accordance with the Tana of the following Boraitha: The Lulab and all its preparations violate the Sabbath. So is the decree of R. Eliezer. And the reason of R. Eliezer is, because it is written, "the day," it is meant the Sabbath.

The rabbis taught: It is written: "In booths shall Ye dwell seven days." "Days" signifies the nights also; but perhaps only the days are meant, and not the nights? And it would be an analogy of expression: it is written here "the days," and about the Lulab "the days"; as of the Lulab only days are meant, and not the nights, so also it may be with the Succah? Or take another way, the analogy of expression of "the seven days of Aaron's consecration" [Lev. ix.]; as there the nights are included, so shall here also the nights be included. Now let us

see what it resembles more: We may draw a lesson about a thing the duty of which is the whole day, from another thing of which the duty is also the whole day, and not draw the same from a thing the duty of which is only one hour. Or in another way: We shall draw a lesson about a thing of which the duty is forever from a thing of which the duty is also forever, and not about a thing of which the duty is forever from Aaron's consecration, of which the duty was only for that time. Therefore another analogy of expression is found: It is written here: "Ye shall dwell," and about the seven days of Aaron's consecration it is also written [Lev. viii. 35]: "ye shall dwell"; as there it is plainly written days and nights, so is here also meant days and nights.

"*In which case is the willow used seven days*?" Why shall the willow violate the Sabbath? Said R. Johanan: To let the public know that the willow is biblical. If it is so, let the Lulab also violate the Sabbath, to make it public that the Lulab is biblical? The precautionary measure, which Rabbi mentioned above, is taken in reference to the Lulab. But why not in reference to the willow? Because usually the messengers of the Beth Din were sent to take the willow for the performance, but the Lulab was taken by private persons. Said Rabha to R. Itz'hak the son of Rabba bar bar Hana: Son of a scholar, come and I will tell you a good thing that your father said: What we learn in a Mishna farther on, that every day they went round the altar once, and on that day seven times, said your father in the name of R. Elazar: That is meant with the Lulab (not with the willow). R. Itz'hak objected: We have learned in a Tosephta: The Lulab violates the Sabbath in the beginning of its duty, and the willow in the end of its duty. It happened once that the seventh day of the willow fell on Sabbath and the branches of the willow were brought on the eve, and were laid in the court of the Temple; and when the Baithusees got wind of it, they took the branches of the willows, and hid them under the stones of the court. On the morrow the common people pulled them out from beneath the stones, and the priests erected them around the altar, because the Baithusees do not agree that the performance of the duty of willows violates the Sabbath. Hence we see that they performed the religious ceremony with the willows, and not with the Lulab? The question remains: But why did they bring them on the eve of Sabbath, why not on Sabbath (let the bringing of the willows violate the Sabbath as the handling while the duty is performed)?

[paragraph continues] Because as we, who are in exile and are not certain of the calendar, do not violate the Sabbath for the willow, they in Palestine also do not violate the Sabbath for the bringing. But we see that on the first day we do not violate the Sabbath for the Lulab, and they do? It was told, that now they also do not violate even with the Lulab.

Abayi said to Rabha: Why do we use the Lulab all the seven days in memory of the Temple, and not the willow? Rabha answered: We use the willow tied with the Lulab together all the seven days. Rejoined Abayi: But we use it not for the sake of the willow, but for the sake of the Lulab; and if you would say that we raise it again for the sake of the willow, we see proofs every day that we do not do so. Said R. Zbhid in the name of Rabha: The Lulab, which is biblical, we use in memory of the Temple all the seven days, but the willow, which is rabbinical, we do not use so.

It was taught: R. Johanan and R. Joshuah b. Levi differ: One says that the basis of the willow is a tradition from the prophets, and one says that the willow is only a custom of the prophets. From the following saying of R. Abahu we may assume that R. Johanan is the one who said that the basis is a tradition of the prophets, because he said in his name that so said R. Johanan. Said R. Zera to R. Abahu: Did R. Johanan say so? Did he not say in the name of R. Nehumia, the man of the valley of Beth Hursa, that the ten plants concerning Kilaim, the willow, and the pouring of water are Sinaic laws? He was astounded for a little while, and said: They were forgotten once, and then reëstablished. But how could R. Johanan say so? Did he not say to the sages of Palestine: Do not say that the ordinances derived from the Torah are yours: they are the Babylonians', because we have received all our learning from them. (R. Johanan said this when he saw R. Kahna, one of the disciples of Rabh, come to Palestine and explain many questions which R. Johanan could not decide.) Hence we see that R. Johanan did not think that in Babylon the Torah was forgotten, and how can it be said it was forgotten? It presents no difficulty: In the Temple it was Sinaic, but in the country it had for a basis the tradition of the prophets.

R. Ami said: The willow has to be of the prescribed size, and must be taken separately, and a man does not fulfil his duty with the willow which is tied with the Lulab. R. Hisda in the name of R. Itz'hak, however, said that a man can fulfil his duty with

the willow which is tied with the Lulab. What is the prescribed size? Said R. Na'hman: Three moist twigs with leaves. R. Shesheth, however, said: Even if there was one leaf on one twig. Said Aibu: I was standing in the presence of R. Elazar bar Zadok, and a man brought a willow before him; and he took the willow into his hand, and knocked off the leaves, but without any benediction, because he held that the willow was only a custom of the prophets. Aibu and Hezekiah, the grandsons of Rabh by his daughter, brought a willow to Rabh, and he also took it and knocked it, without benediction, because he also held it was only a custom of the prophets.

Aibu said again: I was standing before R. Elazar bar R. Zadok, and a man came to him and said: I possess some villages, and the inhabitants of the villages weeded the orchards in the Sabbatical year, and for their labor they ate the olives: did they right, or not? R. Elazar answered: It is not right. And the man went away. Said R. Elazar: I am living in this country forty years, and I have

not seen a man walk in the right path as this man. Afterwards the man came again, and asked R. Elazar what he should do in this matter, and R. Elazar told him he should abandon the olives to the poor, and the laborers he should pay from his purse.

Aibu says again in the name of R. Elazar: A man must not walk on the eve of Sabbath more than three *Parsaoth*. Said R. Kahna: The case is when he goes home, and his family does not know that he will come, and do not prepare anything for him for Sabbath; but if he is going to an inn, he may walk more, because he has prepared everything that is necessary for Sabbath. According to others, R. Kahna said that even to his house he shall not go, so much the less to an inn. And he added to this: It once happened to me that I was coming home late on the eve of Sabbath, and my family did not expect me: I did not find even small fish prepared for Sabbath.

"*How was the commandment to take the Lulab fulfilled*?" One Tana taught in the presence of R. Na'hman: He deposited it on the roof of the gallery. And R. Na'hman said to him: Why on the roof, did he intend to dry it? Read, "on the galleries."

MISHNA: How was the command to take the willow fulfilled? There was a place below Jerusalem called Motza. Thither the people descended, and gathered drooping willow branches. These they brought and erected at the side of the

altar, the tips inclining over it. While this was doing, a blast, a long note, and again a blast were blown. Every day they made one circuit round the altar, and recited the verse: "O Lord, help us; O Lord, prosper us." R. Jehudah said the words: "I and he, help us," were also said. On the particular day for using the willows (the seventh of the festival) they made seven circuits round the altar. When they withdrew, what did they say? "Beauty is thine, O altar! Beauty is thine, O altar!" R. Elazar said, they also said: "To God and to thee, O altar! To God and to thee, O altar!" As they did on week-days, so did they likewise on the Sabbath; excepting only that they gathered the willow branches on the Sabbath-eve and put them into golden casks (filled with water), that they might not fade. R. Johanan b, Beroka said: They fetched branches of palms and threshed them to pieces on the sides of the altar. Thence the day was called "the branch-threshing day." Directly afterwards the children threw down their Lulabs and ate the citrons.

GEMARA: In a Boraitha it was taught: that the place where they were taken was free from taxes, and one Tana of the Mishna calls it Motza, because this word signifies *exempt* from taxes.

"They brought and erected at the side of the altar." In a Boraitha was taught: They were soft and eleven ells high, so that they could cover the altar one ell. Said R. Abahu: From what biblical passage is this inferred? From Psalm cxviii. 27: "Bind the festive sacrifice with cords," etc. He said again in the name of R. Elazar: One who takes the Lulab with its binding, and the myrtle bough with its braiding, the verse makes him equal to one who would build an altar and offer a sacrifice on it, and he infers it from the end of the passage just quoted. Hezekiah said in the name of R. Jeremiah, quoting R. Simeon b. Jochai, and R. Johanan in the name of R. Simeon the Mehuzi, quoting R. Johanan the Mekuthi: One who added a day to the festival for eating and drinking, the verse makes him equal to one who built an altar and offered a sacrifice on it, as it is written: "Bind the festive sacrifice with cords (leading it) up to the horns of the altar."

Hezekiah said again in the name of R. Jeremiah, quoting R. Simeon b. Jochai: All the prescribed plants for religious duties must be taken as they grow, as it is written [Ex. xxvi. 15]: "Shittim wood, standing up." Hezekiah said again in the name of the same authority: I could exempt the whole world from the

[paragraph continues] Day of Judgment since I was born till now; and if Eliezer my son would be with me, I could do it for all men since the world was created till now. And if King Jotham ben Uzziah would be with us, we could do it for all men from the creation of the world till its end. The same says again in the name of the same: I see the greatest men in the world are very few. If they are a thousand, I and my son are included; if they are a hundred, I and my son are included, and if they are only two, they are I and my son. Said Abayi: There are no less than thirty-six upright men in the world who receive appearance of the Shekhina every day, as it is written [Is. xxx. 18]: "Happy are all those that wait for him," and him is expressed by ••, which counts thirty-six.

"*To God and to thee*." How did they do so? Did they not combine the name of the Lord with another thing, and we have learned in a Boraitha: Who combines the name of the Lord with another thing, will be destroyed from the world? As it is written [Ex. xxii, 19]: "Save unto the Lord only." The Mishna meant it was said so: "To God we bow, and Thee we praise."

R. Jehudah in the name of Samuel said: The benediction over the Lulab must be pronounced all the seven days, but in the Succah the benediction must be made only the first day. Why so? Because the nights intervene between the days, and every day it is a separate commandment; but in case of the Succah, which is a duty during the nights also, all the seven days are considered as one long day, and one benediction is enough. Rabba bar bar Hana in the name of R. Johanan, however, said: The benediction over the Succah must be pronounced all the seven days, but over the Lulab only the first day. Why so? Because the Succah is biblical, the benediction is to be made every time; but the Lulab being rabbinical, it is sufficient on the first day. When Rabbin came from Palestine, he said in the name of R. Johanan, that over both it is to be pronounced every day all the seven days. Said R. Joseph: Keep what Rabba bar bar Hana said in your mind, because all the Amoraim hold with him concerning Succah. Other Tanaim, however, differ also on the same point. As we have learned in the following Boraitha: Over the Tefilin, every time one lays them, one must pronounce a benediction. So is the decree of Rabbi. The sages, however, said: In the morning only. And it was taught Abayi said the Halakha prevails according to Rabbi, and Rabba said the Halakha prevails according to the sages. Said R. Mari the son of the daughter of Samuel: I have seen Rabba did not follow his

own decision, and we also all are doing according to Rabbi, and pronounce the benediction on every one of the seven days.

R. Jehudah in the name of Samuel said: The commandment of the Lulab is all the seven days; but R. Joshuah b. Levi said: The biblical commandment is only for the first day, and from this day further on it is the commandment of the Elders; and so said also R. Itz'hak. Rabh, however, holds that the commandment is for all seven days, and R. Na'hman bar Itz'hak taught plainly that Rabh said so.

The rabbis taught: If one made a Succah for himself, he must pronounce the benediction of the time. When he comes to dwell in it, he must pronounce the benediction: "Blessed be He, etc., who has commanded us to dwell in a Succah"; but if the Succah had been prepared, if he is able to fix there something new, he may pronounce the benediction of the time; if not, when he comes to dwell in it, he should pronounce both benedictions. Said R. Ashi: I have seen R. Kahna, who used to pronounce all the benedictions over the goblet, together with the benediction of the day.

The rabbis taught: If one have before himself many religious duties, he can say: "Blessed be He who has sanctified us with His commandments, and commanded to us many duties." R. Jehudah, however, said: He must pronounce the benediction before each one separately. Said R. Zera, according to others R. Hanina bar Papa: The Halakha prevails according to R. Jehudah. And he (either of the two mentioned) says again: What is the reason of R. Jehudah? Because it is written [Ps. lxviii. 20]: "Blessed be the Lord, day by day." Do we only bless Him by day, and not by night? We may learn from this that every day we should bless Him for the duties of that day (if Sabbath, we must bless Him for the Sabbath; if a festival, for the duties belonging to each festival). The same authority says again: Come and see. The usages of the Holy One, blessed be He, are not as the usages of human beings: A human being can put only something into an empty vessel, but if the vessel is full, he can put in nothing; but the Holy One, blessed be He, can add to a full vessel, but can put nothing into an empty one, as it is written [Deut. xxviii. 1]: "If thou wilt hearken diligently"; [1] *i.e.*, if you have heard diligently, you can receive

more knowledge, but if not diligently, you can hear nothing. Another interpretation for this verse is this: If you have given your attention to what you have learned before, you can learn from it new things; but if you have turned away your heart from the old teaching, you cannot learn anything new.

"*The children threw down*," etc. Said R. Johanan: The citron on the seventh day is prohibited to be eaten, but on the eighth day it is allowed; but the wood of the Succah, even on the eighth day, is not allowed to be used. Resh Lakish, however, said: Even on the seventh day the citron is allowed. R. Johanan made an objection to Resh Lakish from our Mishna: The children throw down their Lulabs and eat their citrons. From this we may infer that only the children may do so, but not adults. Answered Resh Lakish: Nay, adults may also do so, but the Mishna mentions children because it was usually done so. R. Papa asked Abayi: What is the reason that R. Johanan makes a difference between the Succah and the citron? And he answered: The Succah is fit for twilight, so that if one had to eat at twilight, he must sit in the Succah and eat there; and because it was designated for twilight, it is designated for the whole eighth day; but the citron, which is not to be used at twilight, and was not designated for the twilight, is not designated for the whole eighth day. Levi, however, said: The citron is prohibited even on the eighth day. And the father of Samuel said: On the seventh day it is not allowed, but on the eighth day it is allowed. The father of Samuel afterwards retracted his teaching, and remained in accordance with the system of Levi. R. Zera, however, remains in accordance with the old teaching of the father of Samuel, and taught in the house of learning that a citron which becomes invalid must not be eaten all the seven days. R. Zera said again: One must not give as a present to a child a Lulab on the first day of the festival. Why so? Because a child may receive a present, but cannot make a present to another; and afterwards if the man uses the Lulab for the religious purpose, he

has used a thing which is not his (by which he cannot fulfil his duty). He says again: A man shall not promise a child something, and afterwards not keep his word, for the child can learn from it to tell a lie.

We in exile, who keep two days of the festival, how shall we do? Said Abayi: On the eighth day, which it is doubtful perhaps it is the seventh, it is prohibited; but the ninth day, which it is doubtful perhaps it is the eighth, it is allowed. Meremar,

however, said: Even on the eighth day, which it is doubtful perhaps it is the seventh, it is also allowed. In Sura they acted according to Meremar; but R. Shesheth the son of R. Iddi acted according to Abayi, and the Halakha prevails according to Abayi.

R. Jehudah the son of Samuel bar Shilath said in the name of Rabh: The eighth day, which it is doubtful whether it is not the seventh, may be considered as the seventh day in reference to the Succah, but is considered the eighth day in reference to the benediction. R. Johanan, however, said: It may be considered the eighth day for both purposes. (The Gemara explains it so): In reference to the benediction, all agree that the benediction may not be said. What they differ about is only the citron. According to Rabh, on the eighth day one must sit in the Succah, and according to R. Johanan, even sitting is not necessary either. Said R. Joseph: Keep in your mind what R. Johanan said, because the Master of this Halakha, R. Jehudah bar Samuel, who declared it in the name of Rabh, did not act according to his teaching, and we have seen him on the eighth day sitting outside of the Succah. The Halakha prevails: That we do sit in the Succah, but do not pronounce the benediction over it.

R. Johanan said: The benediction of the time must be pronounced on the eighth day of the Feast of Tabernacles, but not on the seventh day of Passover. Said R. Levi bar Hama, according to others R. Hama bar Hanina: This may be approved, because the eighth day of the Feast of Tabernacles is different in three things from the preceding days: It needs not Succah, it needs not Lulab, nor the pouring of water. If it is so, the seventh day of Passover is also different, because it is not a duty to eat Matzah thereon, as the Master said (p. 33) that only the first night it is a duty to eat Matzah? What comparison is this? There it is different only from the first night, but not from the first day; but here it is different from the day also. Rabhina said: The eighth day of the Feast of Tabernacles is different from the preceding day; but the seventh day of Passover differs only from the first day, but not from the one preceding it. How shall we act? Said R. Na'hman: The benediction of the time maybe said on the eighth day, and R. Shesheth said it must not, and the Halakha prevails that it may be said. We have learned in a Boraitha in support to R. Na'hman: The eighth day is a holy day by itself, has lots cast for itself (which priest should perform

the service of the sacrifice, as is explained in Shekalim), the benediction of time for itself, offerings for itself, a separate song for itself (all seven days one song was sung by the Levites at the sacrifice), and also a blessing for itself ("the eighth day of assembly" was pronounced in the benediction).

MISHNA: The Hallel and the enjoying of peace-offerings were eight days. How so? We infer from this, that a man is bound to recite the Hallel and enjoy the peace-offerings the last day of the festival the same as the preceding days.

GEMARA: Where is this deduced from? The rabbis taught: It is written [Deut. xvi. 15]: "Thou shalt only rejoice"; it comes to add the night of the last day of the festival, and to exclude the night of the first day. But perhaps it is meant only for the first day? The word (*ach*) "only" separates it. But why do you include the last day, and exclude the first day? I include the last night, before which there was enjoyment; but I exclude the first night, before which was no enjoyment.

MISHNA: The Succah is dwelt in seven days. How so? When a man has taken his last meal therein, he is not directly to pull down his Succah; but, after noon, he may move the furniture back into the house, in honor of the last day of the festival.

How was the pouring out of the water? A golden pitcher that held three lugs was filled with water from the brook Siloah. When they came with it to the water-gate, they blew a blast, a long note, and again a blast. The priest then ascended the stair of the altar, and turned to the left. Two silver basins stood there. R. Jehudah says: They were of gypsum, but had a dark appearance from the wine. Each was perforated with a small hole, like a nostril (at the bottom), the one for the wine somewhat wider, the other for the water narrower, that both might get empty at once. The one, to the west, was used for water; the other, to the east, for the wine. But if the water was poured into the wine basin, or the wine into the water basin, one's duty was reckoned to be fulfilled. R. Jehudah says: They poured out one lug on each of the eight days. To him who poured out the water the people called: "Raise thy hand"; for once it happened that one priest charged with this duty poured the water over his feet, and all the people pelted him with their citrons, As they did on the week-days, so they did likewise on the Sabbath, except that they fetched the water from the Siloah on the Sabbath eve in a golden cask that had not been consecrated, and placed it in a chamber; if it was upset or uncovered, they filled again from the

laver. For it was not lawful to bring on the altar water or wine which had been uncovered.

GEMARA: Whence is it deduced? Said R. Eina: It is written [Is. xii. 3]: "Ye shall draw water with gladness."

"*Ascended the stair*," etc. The rabbis taught: All who ascended the altar ascended on the right, went round, and descended on the left; except that those who ascended for the following three purposes (duties) ascended on the left, and went back on the same side: to pour water, to pour wine, and to offer a burnt-offering of a fowl when it was too much on the east side of the altar. 1

"*Each was perforated*," etc. Shall we assume that the Mishna is according to R. Jehudah and not according to the sages, as it teaches farther on: "R. Jehudah said with a lug," etc.; because if the Mishna would be according to the sages, the quantity of the wine and water was equal? (And why was one wider, and the other narrower?) Nay, we may say the Mishna is according to the sages; but wine is thick, and water is thinner, and this is the reason for the unequal sizes of the holes. It seems to us it is so, for according to R. Jehudah one must be wide and the other narrow,

as we learn in the following Boraitha: R. Jehudah said: Two urns were there, one for water and one for wine: that for wine had its mouth wide, and that for water narrow, that they should be emptied at the same time.

Rabha lectured: It is written [Song of Songs, Vii. 2]: "How beautiful are thy steps in sandals, O prince's daughter! How beautiful were the steps of Israel, when they pilgrimaged for the festival! "Prince's daughter" means, daughter of Abraham our father, who was called prince; as it is written [Ps. xlvii. 10]: "The nobles of the people are gathered together, the people of the God of Abraham." The God of Abraham, and not the God of Isaac and Jacob? It means, the God of Abraham, who was the first of the proselytes.

The disciples of R. Anan taught: It is written [Song of Songs, ibid.]: "The roundings of thy thighs." As the thighs are in a hidden place, so the words of the Law must all be hidden, and this is similar to what R. Elazar said, as follows: It is written [Micah, vi. 8]: "He hath told thee, O man, what is good, and what the Lord doth require of thee: nothing but to do justice, and

to love kindness, and to walk humbly with thy God." To do justice, *i.e.*, judgment; to love kindness, *i.e.*, the bestowing of favors; and to walk humbly with thy God, that means, to bear a dead body, and to conduct a bride under the canopy. Is this not an *a fortiori* conclusion? If things usually done publicly are to be done surreptitiously, so much the more things usually done privately?

R. Elazar said: The doing of charity is greater than all the sacrifices; as it is written [Prov. xxi. 3]: "To exercise righteousness and justice is more acceptable to the Lord than sacrifice." The same says again: The bestowing of favors is greater than charity; as it is written [Hosea, x. 12]: "Sow then for yourselves righteousness, that you may reap the fruit of kindness." If a man sows, it is doubtful whether he will eat from his sowing, or not; but if a man reaps, he is sure to eat of it (and so it is with charity, sometimes it is useful, sometimes not, but kindness is always so).

R. Elazar says again: Charity is rewarded only according to the kindness with which it is done; as it is written: "Sow for yourselves righteousness, that you may reap kindness."

The rabbis taught: In three things is the bestowing of favors greater than charity: Charity is only with money, but the bestowing of favors is either with one's money or with one's person; charity is only to poor men, but the bestowing of favors is to poor and rich; charity is only for the living, but the bestowing of favors is both for the living and the dead. The same says again: One who does charity and judgment is as if he filled the whole world with kindness; as it is written [Ps. xxxiii. 5]: "He loveth righteousness and justice; the earth is full of the kindness of the Lord." But if you mean that every one who wants to do charity is given the opportunity to do real charity, it is therefore written [ibid. xxxvi. 8]: "How precious is thy kindness! "It is different, however, with a man fearing Heaven; as it is written [ibid. ciii. 17]: "But the kindness of the Lord is from everlasting to everlasting over those that *fear him*." R. Hama bar Papa said: A man who finds favor everywhere, it is certain that he fears God; as it is written: "The kindness of the Lord is from everlasting to everlasting over those that fear him."

He says again: It is written [Prov. xxxi. 26] She openeth her mouth with wisdom, and the law of

kindness is on her tongue." Are there two laws, one of kindness, and one not of kindness? That means, if one studies the law in honor of the

[paragraph continues] Lord, it is a law of kindness; but if one studies the law for his own interest, it is a law not of kindness. According to others, if he studies the law to teach it, it is a law of kindness; but if he studies it for himself, it is not.

"*If it was upset or uncovered*," etc. Why so? He can strain the water? Shall we assume that our Mishna is not according to R. Nehemiah from the following Boraitha: Even if the water was strained, the law of uncovered water does still apply to it. R. Nehemiah, however, said: This is only when the lower vessel was uncovered, but when the lower vessel was covered, though the upper one was uncovered, the law of uncovered water does not apply to it, because the venom of a snake, like a sponge, rises to the top. The Mishna can apply also to R. Nehemiah, but he spoke of preparing for an ordinary man, but in honor of the Lord could he say so? Did not R. Nehemiah consider the verse in Malachi [i. 8]: "Do but present it unto thy governor, will he be pleased with thee, or receive thee with favor? says the Lord of hosts."

Footnotes

69:1 The Hebrew term for this is ••• ••••, which is literally, "by hearing you will hear more."

73:1 The burnt-offerings and east side of the altar will be explained in Tract Tamid, Chap. I.

Next: Chapter V

CHAPTER V.

REGULATIONS CONCERNING THE ENJOYMENTS AND THE SONGS IN THE TEMPLE DURING THE TIME OF THE SACRIFICES, AND THEIR ORDER.

MISHNA: The pipes were played sometimes on five days, and sometimes six. This means, the pipes played on during the time of water-drawing, which does not supersede either the Sabbath or the festival.

GEMARA: The rabbis taught: The playing of pipes supersedes the Sabbath, so is the decree of R. Jose bar Jehudah; but the sages said, even the festival it does not supersede. Said R. Joseph: They differ only about the music of the sacrifices. R. Jose holds that the music of the sacrifices is instrumental, consequently it is a service, and supersedes the Sabbath; but the sages hold it is vocal, and therefore not a service, and does not supersede the Sabbath; but the music of the drawing of the water all agree is only an enjoyment, and does not supersede the Sabbath. But R. Jeremiah bar Abba said: They differ only about the music of the drawing of water. R. Jose bar R. Jehudah holds that this enjoyment also supersedes the Sabbath, and the sages hold it does not; but about the music of the sacrifice all agree it is a service, and does supersede the Sabbath.

What is the reason of those who say that the main music must be instrumental? Because it is written [II Chron. xxix. 27]: "And Hezekiah ordered to offer the burnt-offering on the altar. And when the burnt-offering began, the song of the Lord began with the trumpets, and with the instruments of David the King of Israel." And what is the reason of those who said the main music is vocal? Because it is written [ibid. v. 13]: "And it came thus to pass, as the trumpeters and singers were as one, to make one sound." But what will they do with the former passage? Hezekiah meant, the voices accompanied the instruments. And those who hold it was only instrumental, what will they say to the last-quoted passage? They explain it thus: The singers were as the trumpeters, *i.e.*, used instruments also.

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MISHNA: He who has not witnessed the rejoicings at the water-drawing has, throughout the whole of his life, witnessed no real rejoicing. At the expiration of the first holiday of the festival they descended into the women's court, where a great transformation was made. Golden candelabra were placed there, with four golden basins at the top of each; and four ladders were put to each candelabrum, on which stood four lads from the rising youth of the priesthood, holding jars of oil containing 120 jugs, with which they replenished each basin.

The cast-off breeches and belts of the priests were torn into shreds for wicks, which they lighted. There was not a court in Jerusalem that was not illuminated by the lights of the water-drawing. Pious and distinguished men danced before the people with lighted flambeaux in their hands, and sang hymns and lauds before them; and the Levites accompanied them with harps,

psalteries, cymbals, and numberless musical instruments. On the fifteen steps which led into the women's court, corresponding with the fifteen songs of degrees, stood the Levites, with their musical instruments, and sang. At the upper gate which leads down from the court of the Israelites to the court of the women stood two priests, with trumpets in their hands. When the cock first crowed they blew a blast, a long note, and a blast. This they repeated when they reached the tenth step, and again (the third time) when they got into the court. They went on, blowing their trumpets as they went, until they reached the gate that leads out to the east. When they reached that gate they turned westward, with their faces towards the Temple, and said: Our ancestors, who were in this place, turned their backs on the Temple of the Lord, and their faces towards the east; for they worshipped the sun towards the east; but we lift our eyes to God. R. Jehudah says: They repeated again and again: "We belong to God, and raise our eyes to God."

GEMARA: The rabbis taught: Who has not seen the rejoicing at the drawing of water, has not seen a real rejoicing in his life. He who has not seen Jerusalem in its beauty, has not seen a beautiful great city in his whole life; and who has not seen the building of the Second Temple, has not seen a handsome building in his life. What is meant by this? Said Abayi, according to others R. Hisda: It means the building of Herod. Of what materials was it built? Said Rabba: Of black and white marble; and according to others, of other colors also. He made one tier of stones projecting outward, and one tier of stones

remaining inside. He wished to overlay it with gold, but the sages said to him: Leave it so, because it is more beautiful, having the appearance of waves of the sea.

We have learned in a Boraitha: R. Jehudah said: Who has not seen the διπλο στοα (diuplustin, double portico) of Alexandria in Egypt, has not seen the glory of Israel. It was said it was a great) βασιλιχη (a palace with colonnades), and the palace could contain twice the number of men who went out from Egypt (the Israelites), and there were seventy-one golden *cathedras* (armchairs with footstools) for the seventy-one sages of the Great Sanhedrin, and each *cathedra* was no less than twenty-one myriads of talents of gold; and a wooden βη μ α (pulpit) was in the middle of the palace, where the sexton of the congregation stood, with a flag in his hand, and when the time came in the prayer to respond "Amen," he raised the flag, and the whole people said "Amen." And they did not sit promiscuously, but separately; the golden chairs were separate, the silver chairs were separate, smiths sat separately, carpenters separately, and all of the different trades sat separately, and when a poor man went in, he recognized who his fellow-tradesmen were, and went to them, and thus got there work for the support of himself and his family. Said Abayi: And all these were killed by Alexander of Macedon. Why were they so punished? Because they had transgressed the passage [Deut. xvii. 16]: "The Lord had said unto you, Ye shall henceforth not return on that way any more." And they returned, and resided in Egypt. When Alexander came, he found them reading the passage [ibid. xxviii. 49]: "The Lord will bring up against thee a nation from afar," etc., and he said: "I had to go ten days on board the ship, and the winds blew and brought me here in five days (certainly I was meant by the quoted passage)"; and he killed them.

"*At the expiration of the first holy day*," etc. What was the transformation? Said R. Eleazar: Similar to what we have learned in the following Boraitha: The court of the women was formerly without a balcony, but they surrounded it with a balcony, and ordained that the women should sit above and the men below.

The rabbis taught: Formerly the women sat in inward chambers and the men in outer ones; but thereby was produced some levity, and therefore it was ordained the men should sit inwardly and the women outwardly; but still levity arose, and therefore it was ordained that the women sit above and the men

below. How could they do so? Does not the passage say [in I Chron. xxviii. 19]: "All was put in writing from the hand of the Lord, who gave me instruction respecting all the works of the pattern"? Said Rabh: They found another passage and lectured about it, namely [Zech., xii. 12]: "And the land will mourn, every family apart by itself, the family of the house of David apart, and their wives apart." And they said: Is this not an *a fortiori* conclusion? At the time of mourning, when the passions are powerless, it is said the women and the men should be separate; so much the more in the Temple, where they were occupied in rejoicing, and the passions can have power over them.

What was the mourning for? R. Dosa and the rabbis differ: One holds that it was for the Messiah the son of Joseph, who was killed; 1 and one holds that it was for the evil angel, who was killed. 2 It would be right according to one who holds that it was for the Messiah the son of Joseph, because he explains as supporting him the passage [Zech. xii. 10]: "And they will look up toward me (for every one) whom they have thrust through, and they will lament for him, as one lamenteth for an only son, and weep bitterly for him, as one weepeth bitterly for the firstborn"; but according to one who says that it was for the death of the evil angel, why mourning? must it not be, on the contrary, an enjoyment? Why then weeping? This can be explained as R. Jehudah lectured: In the future the Holy One, blessed be He, will bring the evil angel and slaughter him in the presence of both the upright and the wicked. To the former he will look like a high mountain, and to the latter he will look like a thin hair. Both, however, will cry. The upright will cry, saying: How could we overpower such a high mountain? and the wicked will cry, saying: How could we not subdue such a thin hair? And also the Holy One, blessed be He, will join them in wondering, as it is written [Zech. viii. 6]: "Thus hath said the Lord of hosts: If it

should be marvellous in the eyes of the remnant of this people in those days, should it also be marvellous in my eyes. 1

R. Assi said: In the beginning the evil angel appears as insignificant and thin as a cobweb, 2 and finally he becomes as thick as a wagon-rope, as it is written [Is. v. 18]: "Wo unto those that draw iniquity with the cords of falsehood, and as with a wagon-rope, sinfulness.

The rabbis taught: The Messiah b. David, who (as we hope) will appear in the near future, the Holy One, blessed be He, will say to him: Ask something of me and I will give it to thee, as it is written [Ps. ii. 7-8]: "I will announce the decree . . . Ask it of me, and I will give," etc. But as the Messiah b. David will have seen that the Messiah b. Joseph who preceded him was killed, he will say before the Lord: Lord of the Universe, I will ask nothing of Thee but life. And the Lord will answer: This was prophesied already for thee by thy father David [Ps. xxi. 5]: "Life hath he

asked of thee, thou gavest it to him."

R. Awira, according to others R. Joshuah b. Levi, lectured: There are seven names for the evil angel (tempting man). The Holy One, blessed be He, names him "evil," as it is written [Gen. Viii. 21]: "The imagination of man's heart is evil from his youth"; Moses calls him "obduracy," as it is written [Deut. x. 16]: "Remove the obduracy of your heart"; David calls him "unclean," as it is written [Ps. li. 12]: "Create unto me a clean heart"; and when he says "a clean heart," it must be an unclean one. Solomon calls him "enemy," as it is written [Prov. xxv. 21]: "If thy enemy be hungry, give him bread to eat, and if he be thirsty, give him water to drink; for though thou gatherest coals of fire upon his head, yet will the Lord repay it unto thee." Do not read ••• (repay it), but •••• (he will make him peaceful toward thee). Isaiah calls him "stumbling-block," as it is written [Is. lvii. 14]: "And he will say, Cast ye up, cast ye up, clear out of the way, lift up every stumbling-block out of the way of my people." Ezekiel names him "stone," as it is written [Ezek. xxxvi. 26]: "I will remove the heart of stone out of your body." Joel calls him "host of the north," as it is written [Joel, ii. 20]: "And the host of the north will I remove." (The expression in Hebrew is Tzephoni, which also signifies the "hidden

one," and they interpret it as the evil spirit which is hidden in the heart of man.)

The rabbis taught: And I will drive it into a land barren and desolate: the evil angel hidden in a man's heart I will drive into the desert, *i.e.*, where men do not live, that he might tempt them; "with its advance towards the eastern sea," *i.e.*, he set his eyes on the First Temple, and destroyed it, and killed the scholars that were there; "and its rearward toward the western sea," *i.e.*, he set his eyes on the Second Temple, and destroyed it, and killed the scholars that were there; "and its stench shall ascend, and its ill savour shall come up, because he hath done great things," *i.e.*, he leaves out the other nation, and comes to tempt only the Israelites.

"*He hath done great things*." Said Abayi: Scholars he tempts more than any one else. As it once happened, Abayi heard a man say to a woman: "Let us rise early, and we will go on the road"; and Abayi thought: "I will follow them, and prevent them from a sin." He went after them about three miles through reeds, and he heard them saying: "Our conversation has been very agreeable, and now we must take separate roads." Said Abayi: "My enemy (meaning himself) would not have contained himself thus." He leaned against the bolt of the door, and was very sorry that he would have been worse than a common man. And an old man came to him and taught him: "The greater a man is, the more is he tempted by the evil angel." R. Itz'hak said: The evil passions of man try to get the better of him all the day long, as it is written [Gen. vi. 5]: "Was only evil all day long." R. Simeon b. Lakish said: They try to get the better of him, and to slay him, as it is written [Ps. xxxvii. 32]: "The wicked looketh out for the righteous, and seeketh to slay him"; and were not the Holy One, blessed be He, to aid him, man could not resist, as it is written further: "The Lord will not leave him in his hand, and will not condemn him when he is judged."

The disciples of R. Ishmael taught: If this hideousness has attacked thee, take it to the house of learning; if it is a stone it will be ground to powder, and if it is iron it will be split to pieces. "If a stone, it will be ground," as it is written [Is. lv. 1]: "Ho, every one of ye that thirsteth, come ye to the water" (*i.e.*, the Law); and it is written [Job, xiv. 19]: "The water weareth out stones." "And of iron, it will be split into pieces," as it is written [Jeremiah, xxiii. 29] Is not thus my word like

the fire?

saith the Lord, and like a hammer that shivereth the rock?" Said R. Samuel bar Na'hmani in the name of Jehonathan: The evil angel tempts man in this world, and bears testimony in the world to come, as it is written [Prov. xxix. 21]: "If one rear his slave delicately from his youth, then will he at length become *Manon*"; and in the *Alpha Betha* of R. Hiya, which was called Atbach, a witness was called *Manon*. 1

Rabh Huna pointed out a contradiction: It is written [Hosea, iv. 12]: "For the spirit of lewdness *has caused them to err*," and [ibid. v. 4]: "The spirit of lewdness is in *their bosom*." At first it causes to err, and afterwards it remains in the bosom. Rabha said: In the beginning he is called "traveller," and then "guest," and then "man," as it is written [II Sam. xii. 4]: "And there came a traveller unto the rich man; and he felt compunction to take from his own flocks and from his own herds to dress for the guest that was come to him; but he took the ewe of the poor man, and dressed it for the man that was come to him" (Rabha assumes the whole verse to refer to the evil angel).

R. Johanan said: If it were not for the following three passages, the enemies of Israel (meaning Israel) could not withstand: First [Micah, iv. 6]: "And her to whom *I* have done evil"; and the second [Jeremiah, xviii. 6]: "As the clay is in the potter's hand, so are ye in my hand, O house of Israel"; and the third is [Ezek. xxxvi. 26]: "*I* will remove the heart of stone out of your body, and I will give you a heart of flesh." R. Papa says: Also from the following verse [ibid., ibid. 27]: "And *my* spirit I will put within you."

It is written [Zech. ii. 3]: "And the Lord showed me four carpenters." Who are the four carpenters? Said R. Hanah bar Bizna in the name of R. Simeon the Pious: Messiah b. David, and Messiah b. Joseph, Elijah, and Cohen Zedek.

It is written [Micah, v. 4]: "And in this (manner) shall there be peace: If Asshur should come into our land; and if he should tread in our palaces, then will we raise up against him seven shepherds, and eight anointed men. Who are the seven shepherds? David in the centre; Adam, Sheth, Methushelach, at his right; Abraham, Jacob, and Moses at his left. And who are the eight

anointed men? Jesse, Saul, Samuel, Amos, Zephaniah, Zedekiah, Messiah, and Elijah. 1

"*And four ladders*," etc. It was taught in a Boraitha, that the height of every candelabrum was fifty ells.

"*And four lads*," etc. The schoolmen propounded a question: Is it meant that each of them held a pitcher that contained 120 lugs, or the 120 lugs was the joint capacity of all the four? Come and hear: And in their hands were pitchers of oil containing each 30 lugs, which altogether amounted to 120. And a Boraitha states that they were praised more than the son of Martha the daughter of Baithus. It was said of the latter that he used to take two legs from the large ox

which was bought for a thousand Zuz, in his hands, and went with them slowly, step by step. And his fellow-priests did not let him do so, because it is written [Prov. xiv. 28]: "In the multitude of the people is the king's glory" (*i.e.*, if more men carried, God's glory were greater). What is meant by, "They were praised more than the son of," etc.? Shall we assume the 30 lugs were heavy--the legs were heavier? Yea, but there was only one step, and it was square; but here was a ladder, and standing upright (and it was more difficult for children to carry the burden).

"*There was not a court in Jerusalem that was not illuminated*." A Boraitha taught: A woman could pick wheat by this light.

"*Pious and distinguished men*," etc. The rabbis taught: Among were such as said thus: "Well be to our youth which does not disgrace our age." They were pious and distinguished men, and there were among them people who said: "Well be to our age that has atoned for our youth." And these are the penitents. Both used to say: "Well be to those who have not sinned at all; but who has sinned shall repent, and he will be forgiven." We have learned in a Boraitha: It was said of Hillel the Elder (the Prince): When he rejoiced at the drawing of the water, he used to say thus: If I am here, all are here; but if I am not here, who is here? He used also to say: To the places which I am fond of, my feet bring me; if thou wilt visit my house, I will visit thy house; but if thou wilt not visit my house, I shall never visit thine. As it is written [Ex. xx. 21]: "In every place where I

shall permit my name to be mentioned, I will come unto thee, and I will bless thee." 1 R. Johanan said: The feet of the man are securities for him: where he is needed, they bring him thither. Two Ethiopians were in the service of King Solomon, named Elihoreph and Achiyah the son of Shisha, and were his scribes. One day Solomon saw the Angel of Death was sad, and he asked him for the reason, and he said: Because the two men are required from me. And Solomon took the two men and gave them away to devils, who should carry them away to the city of Luz, which the Angel of Death cannot enter. On the morrow he saw the Angel of Death was very cheerful, and when he asked him the reason, he told him: To the place where I was commanded to take the lives of these two men, thou hast sent them, for they died at the gate of Luz. Then said Solomon: The feet of a man are his securities; where he is needed, to that place they bring him.

We have learned in a Boraitha: It was said that Rabban Simeon b. Gamaliel, when he rejoiced at the drawing of water, would take eight flambeaux in his hands, and throw them into the air, and catch, and one would not touch another. When he used to prostrate himself, he fixed his thumbs on the ground, and bowed, and kissed the floor, and then raised himself, and no creature can do so. And this is what is called Qidah. Levi tried to make such a Qidah in the presence of Rabhi, and became lame on one leg. Levi also tried in the presence of Rabhi to throw and catch eight knives. Samuel tried to do so in the presence of Sha'bur the king with eight goblets full of wine; and Abayi in the presence of Rabha with eight eggs, according to others with four eggs. We have learned in a Boraitha: R. Joshua b. R. Hananiah said: When we were engaged in rejoicing at the drawing of water, our eyes saw no sleep. How so? The first hour for the morning daily sacrifice; afterwards for praying, and from that to the additional sacrifice; after that the additional prayer; afterwards we went to the house of learning; from there we went to eat and drink at home, and afterwards the Min'ha prayer; and from the Min'ha prayer to the daily evening sacrifices, and from that time we rejoiced at the drawing of the water till the morning.

[paragraph continues] But this is not so? Did not R. Johanan say: If one says: I swear I will not sleep three days, he shall get stripes for a false oath, and shall go to sleep immediately? He meant to say: We have not tasted any sleep, for we slept each on the other's shoulders.

"*Fifteen songs of degrees*," etc. Said R. Hisda to one of the rabbis who read the Agada (legends) before him: Have you heard of the fifteen songs of the degrees, for what purpose David composed them? He answered: So said R. Johanan: When David was mining under the altar to get water, water burst out ready to overflow the world; there he composed the fifteen songs of degrees, and therewith checked it.

"*We belong to God and we raise our eyes to God*." This is not so? Did not R. Zera say: One who said twice, "Shema, Shema," is the same as if he had said, "*Modim, Modim*," [1] of which a Mishna says, that he must be silenced? The Mishna meant thus: Our ancestors bowed toward the east to the sun, but only to God we bow, and our eyes we raise in hope to God.

MISHNA: In the Temple they never blew the trumpet less than twenty-one times a day, nor oftener than forty-eight times. They daily blew the trumpet twenty-one times: thrice at opening the gates, nine times at the daily morning offering, and nine times at the daily evening offering. When additional offerings were brought, they blew nine times more. On the eve of the Sabbath, they blew six times more: thrice to interdict the people from doing work, and thrice to separate the holy day from the work day. But on the eve of the Sabbath, during the festival (of Tabernacles) they blew forty-eight times: thrice at the opening of the gates, thrice at the upper gate, thrice at the lower gate, thrice at the drawing of water, thrice over the altar, nine times at the daily morning offering, nine times at the daily evening offering, nine times at the additional offerings, thrice to interdict the people from doing work, and thrice to separate the holy day from the work day.

GEMARA: Our Mishna is not in accordance with R. Jehudah of the following Boraitha: According to those who say they were few, they were not less than seven; and according to those who say that they were many, they were not more than sixteen.

What is the point on which they differ? R. Jehudah holds that blowing and alarming are one and the same thing, while

the sages hold that they are two separate things. But what is the reason of R. Jehudah? Because it is written [Num. x. 5]: "And when ye blow an alarm." The rabbis, however, maintain that the passage means to say, that before and after the alarming a common blowing must be used. What is the reason of the rabbis' decree? Because it is written [ibid. 7]: "But at the assembling of the assembly, ye shall blow, but he shall not sound an alarm"; hence blowing and alarming are two separate things, for if they were not, how could the Merciful One command to do only half of the merit.

According to whom would be the saying of R. Kahana that there is no difference between a

Tekiah (a blowing) and a *Teruah* (an alarming) whatever? This is certainly in accordance with R. Jehudah.

"*But on the eve of Sabbath, during the festival*." The Mishna does not count the times that they blew when they ascended the tenth step, and therefore we must assume the Mishna is in accordance with R. Eliezer b. Jacob from the following Boraitha: Three times they blew, when they ascended the tenth step. R. Eliezer b. Jacob, however, said: These three times they blew over the altar. From this we see that those who said it was blown over the altar, do not hold it was blown on the tenth step; and he who says it was blown on the tenth step, does not mean to say it was blown over the altar. What is the reason of Eliezer b. Jacob? He meant, when it was blown at the opening of the gates, it was not necessary to blow again on the tenth step. And what is the reason of the rabbis? They hold that when it was blown at the drawing of the water, it was unnecessary to blow over the altar. And therefore they gave preference to the ascending of the tenth step. When R. A'ha bar Hanina came from the South, he brought a Boraitha with him, thus: It is written [Num. x. 8]: "And the sons of Aaron the priest shall blow with the trumpets." This verse is superfluous, because there it is already written [ibid. 10]: "Shall ye blow with the trumpets over your burnt-offerings, and over the sacrifices of your peace-offerings." And why is the first-cited verse needed? To signify that they have to blow when there are additional sacrifices. He taught the Boraitha, and he explained it that it meant to say, that it was a duty to blow at every additional sacrifice.

An objection was raised based upon our Mishna: But on the eve of Sabbath during the festival they blew forty-eight times. Now, if it was so (to blow at each additional sacrifice)

let the Mishna state that if the Sabbath falls during the festival there were fifty-one (because there was one additional sacrifice)? Said R. Zera: Because they did not blow at the opening of the gates on Sabbath. Said Rabha: Who is that who is not careful in his statements? The saying of R. Zera cannot hold good at all events. First, the Mishna states that there was blowing *every day*, which certainly includes Sabbath, and, secondly, even if the Sabbath, falling during the festival, were equal to the eve of Sabbath (in regard to blowing), the Mishna would not mention the eve of Sabbath, instead of the Sabbath itself, of which we could learn two things: that of R. Eliezer b. Jacob, that the blowing was not on the tenth step, but over the altar, and, secondly, what R. A'ha b. Hanina stated above, that they blew at each additional sacrifice.

Therefore said Rabha that the reason (for not mentioning Sabbath in our Mishna) is because they did not draw water on Sabbath, but on the eve of Sabbath, as stated *supra*; and then there were many blowings less (namely, the blowing when they reached the upper and the lower gate, the water-gate, and over the altar).

But let the Mishna state, when New Year falls on a Sabbath, when there are three additional sacrifices, namely, the New Year, the new moon, and the Sabbath sacrifice. The Mishna, in reality, left this out, as well as it left out the case when the eve of Passover falls on a Sabbath, when there were many additional blowings at the slaughtering of the Paschal lamb.

"*Nor oftener than forty-eight times*." Is that so? Did they not blow, when the eve of Passover fell on Sabbath, according to R. Jehudah fifty-one, and according to the rabbis fifty-seven, times?

When the Passover offering was brought, it is explained in Tract Pesachim (Chap. V., Mishna 5, p. 119) that it was blown many times during the time when the three divisions brought their offerings. This, which was done every year, is counted in the Mishna; but the eve of a Passover that fell on Sabbath, which Is not every year, but only seldom, is not reckoned. But does the eve of Sabbath fall every year on the festival; it may happen that the first day of the festival falls on Friday, and then there is no eve of Sabbath during the whole festival? If this happens, then we prolong the festival for another day, because if the first day of the Feast of Tabernacles would be on Friday, the Day of Atonement would fall on Sunday, and no Day of Atonement must fall on Friday or on Sunday. An objection was raised:

[paragraph continues] We have learned that if the first day of the month falls on Sabbath, the song of the first of the month supersedes the song of the Sabbath. Now, if it would be as R. A'ha interpreted the Boraitha before, that they blew at every additional sacrifice, why does it supersede? Let the song of the first of the month be sung, and that of Sabbath also? Said R. Saphra: The Boraitha which says "supersedes the Sabbath" means, it is said before the song of the Sabbath. Why so? Is there not a rule as to that which is frequent and that which is rare, that the frequent has the preference? Said R. Johanan: This was an exception to the rule, that the people should know that this month is consecrated by Beth Din in its time.

Another objection was raised: Rabha bar Samuel taught: One may say, as we must blow every Sabbath separately, and every first month separately, so shall we blow at every additional sacrifice? Therefore it is written [Num. x. 10]: "On the beginnings of your months" (on the beginnings of the months only, but not at additional sacrifices). This objection to R. A'ha's teaching remains. How is it inferred from this passage? Said Abayi: Because it is written, "on the beginnings of the months," in the plural, all the months shall be equal (and if a first day of the month falls on Sabbath, and it would be blown for every additional sacrifice, the months would not be equal). R. Ashi says: We may infer it from the following: It is written "your months," and the "beginnings," in the plural. Which month can happen to have two beginnings? That is New Year, which is the beginning of the year and of the month, and it is nevertheless written, "your months." From this we infer, all the first days of the months must be equal. We have learned in another Boraitha: On the intermediate days the songs were as follows: On the first day they used to say from Psalm xxix.: "Ascribe unto the Lord, O ye sons of the mighty"; on the second, from Ps. 1. 16; on the third, Ps. xciv. 16; on the fourth, ibid. 8; on the fifth day, Ps. lxxxi. 7. On the sixth day they used to say lxxxii. 5: "All the foundations of the earth are moved"; and if Sabbath fall on one of these days, "All the foundations of the earth are moved" should be superseded. (Now, from what is said, that when Sabbath falls it is superseded, we see that it was not blown for additional offerings.) The objection of R. A'ha remains. But did not R. A'ha bar Hanina cite both a verse and a Boraitha? Said Rabbina: The Boraitha which says it was blown at additional offerings, meant to say it was blown a little longer, but not a

greater number of times. The rabbis of Cæsarea in the name of R. A'ha said: It was added to the number of trumpets.

And we in exile, who keep two days of festival, how shall we say in the additional prayer the passages [Num. xxix. 17-32] about the sacrifices? Amemar ordained in Nehardai: The second

day we should leave out verse 17, but on the third day we should say (17-20) "both on the second and third"; on the fourth day (20-23) "the third and the fourth," etc., because in exile it was doubtful when the first of the month was consecrated.

MISHNA: On the first holy day of the festival there were thirteen bullocks, two rams, and one goat to be offered. There then remained fourteen lambs for eight orders of priests. On the first day of the festival six of these orders offered two lambs each, and the other two orders one lamb each. On the second day five of the orders offered two lambs each, and the remaining four orders one lamb each. On the third day four orders offered two lambs each, and the remaining six orders one lamb each. On the fourth day three orders offered two lambs each, and the remaining eight orders one lamb each. On the fifth day two orders offered two lambs each, and the remaining ten orders one lamb each. On the sixth day one order offered two lambs, and the remaining twelve orders one lamb each. On the seventh day they were all equal. On the eighth day they cast lots, as on other festivals. It was so regulated that the order which offered bullocks one day were not permitted to offer bullocks the next day, but it went in rotation.

GEMARA: These seventy bullocks, for what purpose were they offered? Said R. Elazar: For the sake of the seventy nations which existed then. And to what purpose was offered the one bullock [Num. xxix. 36]? For the sake of the single nation (Israel). It can be compared to a human king who says to his slaves: Make for me a great meal for several days. On the last day he says to his friend: You make for me a little meal, that I should have a benefit from yourself only. Said R. Johanan: Woe be to the nations, they have lost, and they do not know even what they have lost! When the Temple was in existence, the altar atoned for their sins, but now who shall atone for their sins?

MISHNA: Three times in the year all the twenty-four orders of priests were alike entitled to share the pieces of offerings of the festival, and in the shewbread; and on the Feast of Pentecost the distributors say to each priest: "Here is leavened bread

for thee, and here is unleavened bread for thee." The order of priests whose regular time of service occurs in the festivals offer the continual daily offerings, vows, and voluntary offerings, and all congregational offerings, and every sacrifice.

GEMARA: The pieces of the offerings? They were brought to the altar? Said R. Hisda: Do not read "*pieces* [1] of the offering," but "the offerings that were said to be sacrificed on the festivals." The rabbis taught: Whence do we deduce that all the orders of the priests had equal shares of the offerings of the festival? Because it is written [Deut. xviii. 6]: "And come with all the longing of his soul . . . he shall minister." Lest one say, on any day of the year it should be also so, therefore it is written, "from any one of thy gates," to signify, this is only when all Israel comes through one gate.

"*And in the shewbread.*" The rabbis taught: Whence do we deduce that all the orders of the priests have equal shares of the shewbread? From what is written [Deut. xviii. 8]: "They shall have like portions to eat." That means, according to his share in the service shall be his share in eating. But what is meant by eating? Shall we assume, that means to eat his share of the sacrifice? This is already deduced from Leviticus, vii. 9: "Shall belong to the priest that offereth

it alone." Hence it means only the eating of the shewbread. But lest one say, they shall have a share also in the duty-offerings which are not dependent on the festival, therefore it is written [Deut. xviii. 8]: "Beside that which cometh of the sale of his patrimony." What is meant by selling the patrimony? That they have divided the weeks: I and my children shall take this week, and you shall have the other week.

"*And on Pentecost*," etc. It was taught: (If one has to pronounce two benedictions, of the Succah and the time,) Rabh said, he shall pronounce first the benediction of the Succah, and after this that of the time; and Rabha bar bar Hana said, that of the time first. The reason of Rabh is because the duty of the day must be given preference; and Rabha bar bar Hana's, the frequent thing has the preference over the rarer thing (and the benediction of the time is said many times in the year, and that of the Succah only once a year). An objection was raised from our Mishna:

[paragraph continues] On Pentecost it is said: "Here is leavened bread, and here is unleavened bread." Now, on the Pentecost, the duty of the day is with leavened bread, and nevertheless it mentions unleavened bread first, and this would be an objection to Rabh, who says that the duty of the day must be given preference? Rabh might say . On this differ the Tanaim, as we learn in the following Boraitha: Here is unleavened bread, here is leavened bread. R. Saul, however, said: Here is leavened bread, here is unleavened bread. R. Na'hman b. R. Hisda lectured: It shall be done not according to Rabh to pronounce the benediction of Succah before that of time, but that of time should be said before that of Succah. R. Shesheth the son of R. Idi says: The Succah before the time. And so the Halakha prevails.

"*The order of priests, whose regular time*," etc. What is meant by "all congregational sacrifices"? It means to add the bullock, which the congregation has to offer for ignorance [Lev. iv. 13, 14] and the goat for idolatry.

"*And every sacrifice*." What is meant by every sacrifice? It means, to supply the deficit on the altar. (See Tract Shekalim, Chap. IV., Mishna D.)

MISHNA: If a festival falls before or after a Sabbath, all the twenty-four orders share alike in the shewbread. But if a day intervenes between the Sabbath and the festival, the order whose regular turn it was, received ten of the shewbread, and the loiterers received two shewbread. At other times of the year the order which entered on their duty received six, and that which went off duty received also six. R. Jehudah says: That order which enters on duty received seven, and that which goes off receives five. Those who entered shared them on the north side, and those who went out, on the south side (of the Temple court). The order Bilgah always divided their share on the south side; their slaughter ring was fastened down, and the window of their chamber blocked up.

GEMARA: What is meant by "before or after"? Shall we assume that "before" means the first day of the festival, and after a Sabbath? The last day of the festival, is it not the same as a Sabbath during the festival? Therefore we must say that "before" means, the last day was before a Sabbath, and "after" means, the first day was after Sabbath. Why, then, shall the shares be equal? The Sabbath does not belong to the festival at all? Because those who have to work on the succeeding week must come before the Sabbath, and those whose duty was out

could not go away on the festival, and they all stayed in the Temple. Therefore the sages ordained they should have an equal share.

"*If a day intervene*," etc. And according to R. Jehudah, what is the reason that those who enter received two more? Said R. Itz'hak: That was the reward for opening the gates. But why did they not say, let it be equal for ever, for in the other week those who take seven this week will have five the next? Said Abayi: It is better to take a ripe small orange than to wait for an unripe large melon.

"*Those who entered shared them on the north*," etc. The rabbis taught: Those that entered took their shares on the north side, that it should be seen they were entering; and those who took them on the south side did it that everybody should see they were going out.

"*The order Bilgah*," etc. The rabbis taught: It happened to Miriam the daughter of Bilgah that she became an apostate, and was married to an officer of the Greek kingdom. When the Greeks entered the Temple, she took her sandal and knocked on the altar, and said: Lucus, Lucus, how long will you destroy the money of Israel, if you cannot help them in their trouble? When the sages heard this, they fastened down their ring and blocked up the window. But according to others, the order of Bilgah was always late to come, and the order of Jeshebab his brother substituted them; and although always the neighbors of the wicked are not benefited, the neighbors of Bilgah have benefited, because they took their share always in the south, and those of Jeshebab his brother always in the north. It is right according to those who say that the whole order was late, therefore it was punished; but according to those who say that only Miriam, Bilgah's daughter, became apostate, can it be that the Bilgah should be punished for his daughter? Said Abayi: Yea, because people say, what a child speaks in the street, it has heard either from its father or from its mother. But must the whole order be punished for the sin of her father and mother? Said Abayi: Woe be to the wicked, and woe be to his neighbor; well be to the righteous, and well be to his neighbor, as it is written [Is. iii. 10]: "Say ye to the righteous, that he hath done well; for the fruit of their doings shall they eat."

END OF TRACT SUCCAH.

Footnotes

79:1 There was a tradition among the ancient Hebrews that two Messiahs would appear before the redemption of Israel one of the tribe of Joseph and one of the tribe of Jehudah, a descendant of David and the expression "who was killed" means who will have been killed. The Jewish Christians at that time, who did not believe in the divinity of Christ, but in his Messiahship (*i.e.*, that the traditional Messiah ben Joseph meant the son of a man by the name of Joseph, but not of the tribe of Joseph, as Christ was, and that his fate was to be killed before the appearance of Messiah b. David), explain this passage to have reference to Christ.

79:2 See Tract Yomah, p. 100.

80:1 Leeser in his translation has it in the form of an interrogation, but the Talmud takes it in simple form.

80:2 According to Rashi; according to Scheinhack, however, it means the thread of the χροχη and so it seems also from the Aruch.

82:1 In Leeser's version of the Bible he translates Manon "son," for which we do not know the authority; but the Mashbir translates Manon μενοιναω, *i.e.*, "violent," and quotes a Midrash where the evil angel is meant.

83:1 It is strange to Rashi why Isaac is not mentioned here among the patriarchs. He says it seems to him that it is stated elsewhere that it is because Isaac went to redeem his children from Gehenna. It is so. This can be found in Midrash "Chronicles and in Jalkut Shimoni Micah, v. The strangeness of this saying, however, remains.

84:1 Rashi explains this that Hillel said so in the name of the Shekhina--that the Shekhina says: "As long as I am in the Temple, all are here; but if I am not here, who shall be here?" In the Palestinian Talmud, however, it is explained that he says it of himself; Tosphoth, however, said that the second part based on the verse shows that Rashi's explanation is correct.

85:1 This is explained in Tract Berachoth, Chap. V., Mishna 3.

90:1 The expression in the Mishna for pieces is ••••••, and in Hebrew signifies also "saying"; and R. Hisda interprets it not *pieces*, but the *saying*, what ought to be sacrificed.

TRACT MOED KATAN (MINOR FESTIVALS.)

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iii:1 See footnote in Tract Succah.

Next: Chapter I

TRACT MOED KATAN (MINOR FESTIVALS).

CHAPTER I.

REGULATIONS CONCERNING LABOR AND MARRIAGE IN THE INTERMEDIATE DAYS.

MISHNA: Beth Hashal'hin (Dry Land) may be irrigated during the middle days, and also during the Sabbatical year, as well from a fountain that is newly sprung forth as from one that is not newly sprung forth; but one must not irrigate it with rainwater, nor with water (drawn) from a deep well; nor may one make trenches (to hold water) round vines.

R. Elazar ben Azariah said: "One must not make (dig) a fresh trench (conduit, or water course) during the middle days, or during the Sabbatical year." The sages, however, hold, that a fresh trench (water course) may be dug during the Sabbatical year, and that those (conduits) which are choked up may be repaired during the middle days. One may likewise repair water reservoirs (which are) on the public ground, and cleanse them. One may also repair the roads (streets), the market (public) places, and the spring-baths. In short, it is allowed to do whatever the exigencies of the public (service) require. Tombs may be marked, and messengers are to be sent out on account of possible Kilaim. [1]

GEMARA: As the Mishna permits irrigation from a newly sprung fountain, although its sides are likely to cave in, it is self-understood then that it is the more so allowed from a fountain not newly sprung, the sides of which are not likely to cave in? For what purpose then did the Mishna state expressly that irrigation is also allowed from a fountain not newly sprung? If not for this statement we might assume that from a newly sprung fountain whose sides are likely to cave in, dry land may and lowland

may not be irrigated, but from a spring not newly sprung even Beth Habal (lowland not requiring frequent irrigation) may also be irrigated, it therefore comes to teach us that there is no difference.

But whence do we deduce that "Beth Hashal'hin" means dry land. From the passage [Deut. xxv. 18]: "When thou wast 'faint' and weary"; the translation of Onkeles of which is: "When thou wast 'Mshalhi' and weary." (The letter "h" is changeable for "'h"; and "mshalhi" is equivalent to "mshal'hi.") And whence do we deduce that "Beth Habal" means "husband fields"? From the passage [Isaiah, lxii. 5]: "For as a young man 'espouseth' a virgin," etc., the translation of Jonathan whereof being "as a young man 'husbands' a virgin," etc.

Who is the Tana who holds that irrigation is permitted only far the purpose of preventing loss

but not for the purpose of deriving gain; and even in case of loss no troublesome work is permitted? Said R. Huna: "It is R. Eliezer ben Jacob, as we have learned in the following Mishna: R. Eliezer ben Jacob said: Water may be conveyed from one tree to another, provided the whole orchard be not irrigated." (This is in the case of lowland and because it is only for gain; R. Eliezer said it must not.) From this statement it may only be deduced that R. Eliezer holds so in case of gain, but no deduction can be made therefrom as to where loss is involved? Therefore said R. Papa: It is in accordance with R. Jehudah of the following Boraitha: From a newly sprung fountain even lowland may be irrigated, this is the dictum of R. Meir. R. Jehudah holds that only dry land which became ruined may be irrigated. R. Elazar b. Azariah, however, agrees with neither of them. R. Jehudah went further than that and said: "One may not direct a water channel to irrigate his garden and ruined land, during the middle days."

What is meant by "ruined"? Does it mean actual ruin? why then irrigating it? Said Abayi: "It means, land one spring of which was ruined but another one sprung forth." R. Elazar b. Azariah, however, does not allow even in this case. But why all this argument? Perhaps R. Jehudah did not allow the irrigation of lowland only from a new spring, for the reason stated above; but from an old spring, the sides of which are not likely to cave in, it is permitted? If this be so, then according to whom would be the statement in our Mishna? We, therefore, must say, that according to R. Jehudah from both newly sprung and not newly sprung fountains dry land may and lowland may not be irrigated;

and the statement in the Boraitha: "From a newly sprung fountain," etc., is for the purpose of indicating the extent of R. Meir's permission, viz., that dry land may be irrigated, and even from a newly sprung fountain. It was taught: "One who weeds or waters plants on Sabbath, against what principal labor must he be warned?" [1] Said Rabba: "Ploughing, as, these are derivative from it." R. Joseph, however, said: "Sowing, as these are derivative from it."

This would be correct as for the intermitting days, during which work is permitted in case of loss; but as for the Sabbatical year, during which both ploughing and sowing are prohibited, how can it be allowed? Said Abayi: "The Mishna treats of the Sabbatical year subsequent to the destruction of the Temple, and Rabbi said elsewhere that this is only rabbinical." Rabha, however, said: "The Mishna maybe explained even according to the rabbis, who hold that it is biblical, but the Scripture prohibits only principal labors but not derivative; as it is written [Lev. xxv. 4]: "But in the seventh year there shall be a sabbath of rest unto the land, a sabbath of the Lord; thy field shalt thou not sow, and thy vineyard shalt thou not. prune," etc. Let us see: Is not sowing the principal of pruning, and is not reaping the principal of gathering? For what purpose then did the Scripture expressly state pruning and gathering? We must say that it is to point out the derivatives for which one *is* liable.

But is one not liable even for other derivatives? Did we not learn in a Boraitha: It is written [Lev. xxv. 4]: "Thy field shalt thou not sow, and thy vineyard shalt thou not prune"? Whence do we deduce that weeding, grubbing up vines, cutting, plucking, sawing (off branches, when they are too numerous), and supporting (trees), manuring, removing rubbish from the roots, or covering the roots with earth, or smoking (for the purpose of killing the insects on the tree) are also not permitted to be done during the Sabbatical year? From the arrangements of the words in the passage: It is not written: "Thou shalt not sow thy field, and thou shalt not prune thy vineyard," but, "Thy field shalt thou not sow," etc., which indicates that all work pertaining to

the field and all work pertaining to the vineyard shall not be done. But this generalization does not include grubbing up olive-trees, or vines, or filling water conduits, or digging trenches

round vines. Whence do we deduce these exceptions? From the statement, "Thy field thou shalt not sow." Was not sowing included in the general commandment, "A year of rest shall it be unto the land"? Why the repetition of sowing? For the purpose of comparison: As "sowing" includes both the field and the vineyard, so other labor similar to it is prohibited. (Hence we see that for other derivatives one is also liable?) Nay, all those enumerated in the Boraitha are only rabbinical prohibitions, and the biblical passage is only a slight reference.

Is grubbing up olive-trees permitted during the Sabbatical year? Is it not written [Exod. xxii. 11]: "But the seventh year shalt thou let it rest and lie still," etc., and it was construed to mean, "let it rest from being grubbed, and lie still from being cleaned from stones"? Said R. Uqba bar Hama: "Grubbing is done for two different purposes, viz., to promote the growth of, and to fill the cracks in the tree; the latter is permitted, the former is not."

We have learned in a Mishna (Shekalim I., 1): "Up to what time is it permitted to dig in an orchard during the year immediately preceding the Sabbatical year? The school of Shammai hold, during all the time the fruit may benefit thereby. The school of Hillel, however, decree, up to the feast of Pentecost." Both these limits are almost identical. And up to what time is it permitted to plough corn-fields during the year preceding the Sabbatical year? Until the ground ceases to be damp, and during all the time people till the soil to plant melons and cucumbers. Said R. Simeon: "If this be so, then the Law permitted every individual to fix his own time?" Therefore, the time is fixed as follows: Corn-fields may be tilled up to the Passover and orchards up to Pentecost. (The school of Hillel fix the time at the Passover.) And R. Simeon ben Pazzi in the name of R. Joshua ben Levi, quoting Bar Qappara, said: "Rabban Gamaliel and his tribunal have abolished those two limits." Said R. Zera to R. Abbahu (and according to others, Resh Lakish to R. Johanan): "How could Rabban Gamaliel and his court abolish a regulation established by the schools of Shammai and Hillel? Did we not learn in a Mishna: No one court is permitted to overrule the decision of another court, unless they exceed the other in number and wisdom? He was astound for one hour [Daniel, iv. 16], and then answered: Say, so was the condition of the first court, that those who differ with them may overrule them. R. Ashi, however, said: Rabban Gamaliel and his court are in

accordance with R. Ishmael, who holds that this was oral law, and as such it was binding only during the existence of the Temple, similar to that of "pouring water on the altar," but not after.

The rabbis taught "It is not permitted to irrigate from the water basins, or trenches, which were filled with rain-water on the eve of the feast, unless there is a water-channel passing between them." Said R. Papa: "Even this is permitted only where the greater part of the land is irrigated therefrom." R. Ashi, however, said: "It is permitted even if this is not the case, for when water is likely to flow in (into the channel) one is not likely to do any troublesome work, and is rather likely to think to himself, 'if it cannot be irrigated in one day it will be so in two or three days.'"

The rabbis taught: "It is permitted to irrigate dry land from a water basin which receives its water supply from the dry land situated above it" (the upper land being irrigated from a well and some water is dripping down into the basin). But is it not likely to cease (and some troublesome work may be done in bringing water from another place)? Said R. Jeremiah: "The case is when it is still dripping." Abayi adds: "This case holds good only when the original spring has not ceased."

"*One must not make a fresh trench*," etc. This would be correct in reference to the middle days, because it is considered work, but what is the reason for the Sabbatical year? R. Zera and R. Abba bar Mamel: One holds, the reason is because it resembles delving; and the other says, because it is considered a preparation of the adjacent ground for sowing.

"*And those conduits that are choked up may be cleansed*." What is meant by "choked up"? Said R. Abba: "If it was only one span deep, it may be restored to its original depth of six spans."

Abayi allowed the inhabitants of Hamdoch to cut off the branches of the trees growing in the river (during the middle days). R. Jeremiah allowed the inhabitants of Sekutha to cleanse a choked well of the river. R. Ashi permitted the inhabitants of Matha M'hasiah to deepen the river Burniz; and the reason assigned by him for this permission was, that because many persons used its water it was to be considered as a public necessity, and our Mishna states that all work for public service is permitted.

"*One may repair water reservoirs located on public ground*."

[paragraph continues] Is cleansing only, and no digging, permitted? Said R. Jacob in the name of R. Johanan.: The Mishna refers to a case in which the public do not need it, but otherwise even digging is permitted. Is that so? Have we not learned in a Boraitha: "Basins, pits, and cavities may be cleansed, if they belong to private persons, and so much the more if they are public. But it is not allowed to dig even when they are public, and so much the more when they are private." Should we not assume, that it is not permitted even when needed by the public? Nay, the case is when the public do not need it. Then how would it be in case of the private ones? Shall we assume that it is even when one does not need it? Then why should cleansing be permitted? Explain thus: Private basins may be cleansed when needed by him, and so much the more public basins if required by the public; but it is not permitted to do so even when they are public in case they are not needed by the public, and so much the more private ones if not needed by the owners, for if not needed by the owners -even cleansing is not permitted. Said R. Ashi: "The explanation of our Mishna seems to mean the same, as it states *all* that is necessary," etc., and this word "all" adds also digging. But the expression "all" may include the works enumerated in the following Boraitha: Messengers may be sent out (on the middle days) to remove prickles from the roads and to repair the markets and thoroughfares, and to ascertain the contents of the legal baths; and if they do not contain the prescribed measure they must be regulated. And whence do we deduce that if the messengers were not sent out and in consequence thereof an accident happened, that those guilty of such neglect are personally charged with having caused that accident? Therefore it is written [Deut. xix. 10]: "And bloodguiltiness be brought upon thee"? Are all these not expressly stated in our Mishna? "The roads," etc., "may be repaired?" why then repeat, "all" what is required by the public, etc.? We must then assume that it adds digging. Infer herefrom.

"*And tombs may be marked*," etc. R. Simeon b. Pazzi said: Where is it hinted at in the Scripture that tombs must be marked? It is written [Ezek. xxxix. 15]: "When any one seeth a man's bone, there shall be set up a sign by it." Said Rabina to R. Ashi: Were not tombs marked prior to Ezekiel? Therefore we must say, that it was traditional and the passage in Ezekiel only refers to it. Rabina, however, said: We may find a reference to this in the following passage [Psalms, l. 23]: "And

to him that ordered his course aright will I show the salvation of God." (From this passage it may be inferred that the tombs were marked in order not to pass over them.) As R. Joshua b. Levi said: One who weighs his ways will be rewarded in seeing the salvation of the Holy One, blessed be He. As the Hebrew term of the above passage is "Vessom derech," do not read "vessom," but "veshom." [1] A pupil of R. Janai who was wont to ask questions of the latter whenever he was lecturing, refrained from doing so on the Sabbath preceding a holiday, when a multitude of people used to gather (for fear that R. Janai might not be able to answer him and get confused), and R. Janai referred to him the passage just quoted (as explained by R. Joshua b. Levi).

The rabbis taught: Those things which cannot communicate uncleanliness when in a tent need not be marked; but the following parts of a dead person must be marked: the spinal cord; the head; the major part of the structure of the skeleton, and the major number of parts of the skeleton. Those places which are known to be unclean need not be marked, but those which are doubtful need be. The following are considered doubtful places: Those having trees with spread out branches, places near fences the stones of which are projecting forward, and Beth Haperes (Perch): and no signs should be put up on the *very spot* of the uncleanliness (but a short distance away), in order not to injure those who are clean (because if one inadvertently approaches the sign he becomes unclean); neither shall a sign be put too far away from the unclean spot, in order not to injure the land of Israel (*i.e.*, not to mark too much clean space as unclean). R. Jehudah said: "No marking should be done unless there is the Elder (of the congregation) or a scholar, for not every one is experienced in such things." Said Abayi: "From this we may infer, that if there is a young scholar in the city, all the business of the congregation must be attended to by him" (if there is no one else to do it).

"*And messengers are to be sent out on account of Kilaim*." Were messengers sent out on the middle days? Have we not learned in a Mishna (Shekalim, I., *a*) that they were sent out on the first day of Adar? R. Elazar and R. Jose bar 'Hanina: One explains the contradiction thus: "Our Mishna relates to those

plants which are late in season and the other to those early in season." The other explains that our Mishna refers to vegetables and the other to herbs. Said R. Assi in the name of R. Johanan: This is the case only when the plants have not sprung up, but when they have (and Kilaim were noticed) messengers are sent out even before. Why are messengers sent out on the *middle days*? Said R. Jacob in the name of R. Johanan: Because on those days labor is cheap. How much of the mixed seeds must there be in order to constitute Kilaim? Said R. Samuel bar Itz'hak: As we

have learned (in Kilaim, II., i): "Every Sah that contains one-fourth of seed of another species must be lessened." But did we not learn in a Boraitha: "It was determined that the whole field be confiscated (made ownerless)"? This presents no difficulty. The former was said before and the latter after the determination was made, as we have learned in a Boraitha: Formerly the messengers used to pull out the Kilaim and throw them to the cattle, and the owners used to be doubly pleased, first because their fields were weeded, and secondly because their cattle were fed; so it was determined that it be pulled out and thrown on the roads, but the owners were still very pleased because of the weeding of their fields, and it was finally determined that the whole field should be given to the free use of the people.

MISHNA: R. Elazar ben Jacob said: "One may lead water from one tree to another, provided always the whole orchard be not irrigated; plants which have not imbibed (water) before the middle days, must not be irrigated during the middle days. The, sages, however, permit both."

GEMARA: R. Jehudah said: "If it was damp land it may be done." So also we have learned in the following Boraitha: The prohibition to irrigate during the middle days applies only to plants that have not imbibed prior to the feast, but those that have may be irrigated during the middle days. And if it was damp land it may. Withered land, however, must not. But the sages permit both. Rabina said: From this it is to be inferred that a yard-garden may be besprinkled during the middle days, for what is the reason for withered land? because by irrigation it is changed from one late in season unto one early in season? The same is the case with a yard-garden.

MISHNA: One may catch Ishuth (moles) and field mice in orchards and fields in the usual manner, both during the middle days and the Sabbatical year. The sages, however, said, that in

an orchard (the vermin may be caught) in the usual manner, but that in a corn-field it must not be caught in the usual manner. During the middle days one may pile (loose stone) to stop a gap in a fence; on the Sabbatical year, however, it may be repaired in the ordinary way.

GEMARA: What is "Ishuth"? Said R. Jehudah: It is an eyeless insect. Said Rabha bar Ishmael, and according to others R. Yemar bar Shlamia: Where is it mentioned in the Scripture that Ishuth is an eyeless insect? It is written [Psalms, lviii. 9]: "As a snail which melted, let him pass away, like the untimely birth of a woman: (Ehsheth) 1 *which hath not seen the sun*."

"*But that in a cornfield it must not be caught in the usual manner*." We have learned in a Boraitha: "R. Simeon ben Elazar (or ben Jacob) said: This refers only to those corn-fields that are adjacent to a town, but in case of those adjacent to an orchard it may be done even in the usual manner, for the reason that they might overstep the boundary and injure the trees."

"*During the middle days one may pile loose stones to stop a gap in a fence*." With what is it stopped? Said R. Joseph: With the twigs of shrubbery and the bay-tree. In a Boraitha we have learned: "The stones maybe piled up but no mortar must be used." Said R. Hisda: "This applies only to garden fences, but in case of court walls it may be rebuilt in the usual manner." Said R. Ashi: This may be inferred from our own Mishna. It states: "And during the Sabbatical year it may be rebuilt in the usual manner." This statement cannot relate to a court wall, because there is no reason why it should not be permitted; it must then relate to garden fences, and although it

looks as if done for the purpose of protecting the fruit, infer herefrom that it is permitted.

MISHNA: R. Meir said: Priests make the first inspection of the plague (of leprosy) in order to relieve (the patient) but not to restrict him. The sages, however, decide, neither to relieve nor to restrict.

GEMARA: We have learned in a Boraitha: "R. Jose holds, neither to relieve nor to restrict, for the reason that if an inspection is made, if you cannot relieve him you must restrict him." Said Rabbi: "R. Meir's decision seems to be more proper in the

case of one who is still subject to the examination; and R. Jose's decision seems to be the more proper one in the case of one who was decidedly afflicted with the disease." Said Rabha: They all agree that no examination is made (during the middle days) of a clean person; they also all agree that an inspection may be made during the first seclusion; [1] in what they differ is: in the case of the second seclusion. One holds that it is discretionary with the priest. If he finds him clean, he informs him; but if he finds him unclean, he keeps silent. And the other holds that, as it is written [Lev. xiii. 59]: "To *pronounce* him clean *or* unclean," he must in either case *pronounce* it. The Master said: "Said Rabbi: R. Jose's decision seems to be more proper," etc. But have we not learned in a Boraitha, *vice versa*? There is a difference of opinions between the Tanaim in regard to Rabbi's statement. One holds that one (who is afflicted with the plague) prefers association with the public; and the other holds, that he appreciates more the society of his wife.

MISHNA: R. Meir further said: One may gather the bones of his father or mother (during the middle days to inter them), because it is a joy to him (it relieves his mind). But R. Jose said: "It is a grief to him" (afflicts his mind). One must not grumble over his dead, nor hold a funeral oration for thirty days before the festival.

GEMARA: There is a contradiction: We have learned in a Boraitha (Ebel Rabbatti, XII.): [2] "One who gathers the bones of his dead father or mother shall mourn over them the whole day, but not in the evening. Said R. Hisda: This is applicable even if they are wrapped up in his mantle (and are not readily seen by him?) Said Abayi: Read in the Mishna: R. Meir said, etc., for the enjoyment of the festival will prevent him from mourning."

"*One must not grumble over his dead*." What is meant by "grumble"? Said Rabh: The funeral orators in Palestine use the following expression in their funeral orations "Let all the perturbed join him in mourning." (The Mishna means, then, that he should not excite others to mourn.)

"*Thirty days before the festival*." Why thirty? Said R, Kahana, according to others Rabh: "It happened once that a funeral orator came around to the house of one who had saved up some money for the prescribed pilgrimage to Jerusalem,

and he so pleased the wife of the latter with his orations that she handed him all her savings, and

her husband was prevented from going to Jerusalem. And therefore it was then determined that no exciting oration be held within thirty days preceding a festival." Samuel, however, said: The reason is, because no one departed is forgotten by his mourners during the first thirty days. In what respect does it make a difference, whether the one or the other is the reason? In case one volunteers to do it without compensation. (According to Rabh it may, and according to Samuel it may not take place.)

MISHNA: One must not dig graves or burial vaults on the middle days; but one may prepare graves (previously dug); and also make a washing pit, and a coffin in the same court where the corpse lies. This, however, R. Jehudah prohibits, unless the boards have been (previously) provided.

GEMARA. What part is called "grave," and what part "vault"? Said R. Jehudah: Grave is the excavation, and vault is that part which is built in the grave. So also we have learned in a Boraitha.

"*But one may prepare graves*." What is meant by "preparation"? Said R. Jehudah: "If it was too long it may be shortened." In a Boraitha we have learned that it may be made both longer and wider.

"*And a coffin in the same court where the corpse lies*." What we read in this Mishna has reference to what the rabbis taught: "All that is necessary to be done for the dead may be done: his hair may be cut, his wrapper washed; and his coffin may be prepared from boards cut before the festival," R. Simeon ben Gamaliel said: "Timber may be also brought and boards cut therefrom, privately in the house."

MISHNA: One must not espouse a wife on the middle days--neither virgins nor widows; nor must one marry the childless widow of his deceased brother, [1] as that (the espousal) is a cause of joy to him (individually), but one may receive back his own divorced wife. A woman may prepare her ornaments on the middle days. R. Jehudah said: "She must not apply lime (chalk as a cosmetic), because it may disfigure her. A layman may sew (make stitches) in the regular way; but the tailor must do it zigzag. One may twine (the ropes in the sacking) of bedsteads." R. Jose, however, said: "They may only be tightened."

GEMARA: And if it is a cause of joy to him, why not? Said R. Jehudah in the name of Samuel, and so also said R. Elazar in the name of R. Oshiya or Hanina: "For the reason that two different joys must not be comingled." Rabba bar Huna said: "For the reason that the enjoyment of the festival is neglected on account of the enjoyment over his wife." Said Abayi to R. Joseph: The statement of Rabba bar Huna was originally made by Rabh, as R. Daniel bar Ktina said in the name of Rabh: Whence do we deduce that it is not permitted to espouse wives on the middle days? For it is written [Deut. xvi. 14]: "And thou shalt rejoice on thy feast." *Over thy feast* thou shalt *rejoice*, but *not* over thy *wife*. Ula said: "The reason is: Because there would be too much trouble." R. Itz'hak of Naf'ha said: "The reason is, in order not to restrict reproduction (for every one will postpone his marriage until the festival)."

An objection was made: We have learned elsewhere: "All those said to be prohibited from

espousing wives on the middle days, may do so on the eve of the feast." This seems to contradict all those reasons assigned? This presents no difficulty: According to the one who said, because of the enjoyment--the main enjoyment over his bride is on the first day only; according to the one who said, it is the trouble--the main trouble is also on the first day only; and according to the one who said, in order not to restrict reproduction-for one single day no one will postpone it.

But whence do we deduce that two different joys may not be comingled? It is written [I Kings, viii. 65]: "And Solomon held at the time the feast," etc., "seven days and seven days, even fourteen days." Now then, if comingling of two different joys were permitted, why did Solomon not postpone it until the feast and the seven days of the feast would have served for both? R. Parnach in the name of R. Johanan said: On that year the Israelites had not observed the Day of Atonement and they were perturbed and thought they were sinful, and a Heavenly voice was heard announcing: "All of you are prepared for the world to come."

It is written [I Kings, viii. 66]: "On the eighth day he dismissed the people, and they blessed the king and they went unto their tents," etc.

"And they went unto their tents," meaning, they found their wives clean. "Joyful "--they were delighted with the brightness of the Shekhina. "Glad of heart"--the wife of every one became

pregnant with a male child. "Because of the good," etc.--for the announcement of the Heavenly voice, as stated above. "For David his servant and Israel his people"--this would be correct so far as Israel is concerned, for they were forgiven their neglect to observe the Day of Atonement; but what is hinted at by the statement, "For David his servant"? Said R. Jehudah in the name of Rabh: When Solomon desired to place the ark in the Temple, the gates became fastened to each other and they could not be opened. Solomon then pronounced twenty-four prayer-songs and was not answered. He then commenced to pray [Psalm, xxiv. 7]: "Raise your heads, O ye gates," etc., and still he was not answered; but when he finally said [II Chron. vi. 42]: "O Lord God, turn not away the face of thy anointed, remember the pious deeds of David thy servant," he was at once answered. At that moment the enemies of David became as black as the bottom of a pot, and then it was known to all that the Holy One, blessed be He, had forgiven David *that* sin (of Bath-Sheba).

R. Jonathan ben Esmai and R. Jehudah b. Gerim had been studying the chapter treating of Vows before R. Simeon b. Jo'hi. In the evening they took leave of him and departed. On the following morning they returned and asked leave again. R. Simeon b. Jo'hi questioned them: "Did you not take leave of me last night?" They answered him: "Did not our Master teach us, that a disciple who takes leave of his instructor and remains in the same place over night must take leave again?" As it is written [I Kings, vii. 66]: "On the *eighth* day he dismissed the people, and they blessed the king"; and it is again written [II Chron. vii. 10]: "And on the twenty-third day of the seventh month he dismissed the people." Infer from. this, that a disciple who after taking leave of his Master remains over night in the same place must take leave again. Then be (R. Simeon b. Jo'hi) said to his son: "These men are of nice countenance (scholarly). Go and receive their blessing." He went, and found them discussing the contradiction of the following passages: It is written [Prov. iv. 26]: "*Balance* well the track of thy foot, and let all thy ways be firmly right"; and ibid. v. 6 reads: "So that (she) *cannot balance* the path of life"? This presents no difficulty. The first passage refers to a commandment that can be performed by others, and the other

passage has reference to such as cannot be performed by others. They again propounded a question: It is written [Prov. iii. 15]: "She is more precious than pearls, and all the things *thou valuest* are not equal unto her." From

this it seems that Heavenly things are equal. And it is written [ibid. viii. 2]: "And *all* the things that men wish for are *not equal* to her"; from which it seems that Heavenly things are also included? And the above answer was applied also to answer this contradiction.

They then turned to him and asked him what his wishes were, and he answered: "Father sent me here to receive your blessing." They then pronounced: "Let it be the Will that thou shalt sow but not reap, thou shalt bring in but not give forth, thou shalt give forth but not bring in; thy house shall be ruined and thy temporary dwelling shall remain; thy table shall be confused; and thou shalt not see a new year." When he returned to his father he said: "Not only did they not bless me, but, on the contrary, they cursed me!" and he recited the above. His father replied: All those are blessings; viz.: "Thou shalt sow and not reap" means, allegorically, "Thou shalt bear children and they shall not die." "Thou shalt bring in and not give forth" "Thou shalt bring in thy house wives for thy sons, and thy male children shall not die, so their wives will not need to leave thy house." "Thou shalt give forth and not bring in"--"Thou shalt have daughters and their husbands shall not die, so that they shall not be compelled to return to thy house." "Thy house shall be ruined and thy temporary dwelling shall remain"--for this world is only a temporary dwelling and the world to come is the real house, as it is written [Psalms, xlix. 12]: "Their inward thought (Kirbom) is, that their houses are to be forever." Do not read "kirbom," but "kivrom" (their graves). "Thy table shall be confused"--by thy many children. "And thou shalt not see a new year"--"Thy wife shall not die, so that thou shalt not be compelled to marry another."

R. Simeon b. Halafta took leave of Rabh, and the latter said to his son: "Go to him and receive his blessing." R. Simeon pronounced the following: "Let it be the Will that thou shalt not shame others and others shall not shame thee." When he returned to his father he said: "He did not bless me, but only advised me." And his father rejoined: "Nay, it is a blessing; and it is the same, the Holy One, blessed be He, pronounced over Israel, as it is written [Joel, ii. 26]: "And ye shall eat in plenty," etc., "and my people shall not be ashamed unto eternity"; and repeated in the next passage: "And ye shall know that I am in the midst of Israel," etc., "and my people shall not be made ashamed unto eternity." The repetition herein

means, both that they shall not shame others and others shall not shame them.

"*A woman may prepare her ornaments*," etc. The wife of R. Hisda was once ornamenting herself in the presence of her daughter-in-law. R. Huna bar Dinna, who was present at the time, said: "It seems to me that only a young woman is allowed to prepare her ornaments, but not an old one?" And R. Hisda rejoined: "By the Lord! even your mother and your grandmother, and even the woman who is on the brink of her grave; as the proverb goes: 'A woman of sixty is as enthusiastic over the music of a cymbal as a girl of six.'"

"*R. Jehudah said: She must not apply lime*," etc. R. Bibi's daughter applied gradually cosmetics

to every part of her body, and she improved so much that she received a dowry of four hundred Zuz. The daughter of a stranger who resided in the neighborhood (of R. Bibi), learning of that, applied a cosmetic at once to all parts of her body, and in consequence thereof died. The stranger then said: "Bibi killed my daughter." R. Na'hman said: "In R. Bibi's house, where beer was used, his daughters had to use cosmetics, but in our houses, where beer is not used, our daughters need not apply cosmetics."

"*The layman may sew in the regular way*," etc. Who is considered a layman? The school of R. Janai explained, one who is not experienced in gathering on the needle; R. Jose bar Hanina said: "One who cannot properly place the foundation in the border of a garment."

"*They may twine the ropes*," etc. What is the difference between "twining" and "tightening"? When R. Dimi came from Palestine he said: "R. Hyya bar Abba and R. Assi, both in the name of Hezekiah and R. Johanan, differ: One says "twining" means both the shoot thread and the warp, and "tightening" means the shoot only; and the other holds that "twining" means the warp and not the shoot thread, and "tightening" means "if they were not tight they might be tightened." When Rabin, however, came from Palestine, he declared that as to "twining," all agree that it means the shoot thread and the warp; they differ only as to "tightening": one holds it means the shoot only, and the other holds that if they were not tight they might be tightened.

MISHNA: One may erect an oven or a hearth, or a mill, on the middle days. R. Jehudah says: "New millstones must not be chipped."

GEMARA: What is the meaning of "chipping"? Said R. Jehudah: It means notching. R. Je'hiel said: "It means the boring of the centre-hole in the millstone." R. Hama lectured: "Millstones may be cleaned during the middle days." In the name of R. Meir he said: Even the hoofs of the horse and ass may be pared, provided they are used for riding; but not the hoofs of an ass employed in a treadmill. R. Jehudah permitted to pare the hoofs of an ass employed in a treadmill, to place the millstones in proper position, and to build a new mill; to erect a foundation for the millstones, and also to erect a stall. Rabha permitted to comb a mare, to erect a stand and a colonnade. Rabha also permitted to let blood to a domestic animal during the middle days. Said Abayi to Rabha: "We found a Boraitha in your support: 'Blood may be let to a domestic animal; and no restriction is made to the administration of medicines to domestic animals during the middle days.'" Rabha permitted to press garments. Why so? For the reason that it can be done by any unskilled person. Rabha said again: "Trading even in the most moderate degree is not permitted." Said R. Jose bar Abin: "But in case of perishable articles it is." Rabina was to complete a transaction in which he would have earned six thousand Zuz, and by postponing it till after the middle days he earned twelve thousand. Rabina had to collect some money from the inhabitants of the fortress of Shnuatha, and he consulted R. Ashi whether to go there or not. R. Ashi told him: "If you think you can find them now and not on other days, it is as if it were perishable articles and you may do it." We have learned in a Boraitha similar to that just stated, in regard to dealings with idolaters: "It is permitted to attend markets of idolaters and to purchase domestic animals, male and female slaves, land and vineyards, and to write out the deeds and record the same, for it is considered as if rescued from their hands." Rabh permitted Hyya bar Ashi to construct a fisher's net on the middle days. R. Jehudah permitted Ami, the oven-builder, to erect an oven, and to Rabba bar Eshbi he permitted to mesh a sieve.

MISHNA: A railing (balustrade) may be made round a roof, or gallery, in the way a layman does it, but not in the way it is done by a mechanic. Rents (in the roofs) may also be closed, and (then) smoothed with a roller, or with hand and foot, but not with a trowel. Should the hinges of the door-frame, or the beam, or the lock (of the door), or the key (thereto) have been broken

they may be repaired on the middle days, provided always one does not intentionally put off the repairs till the middle days. All (kinds of) pickled food of which one can eat during the middle days may be pickled.

GEMARA: What is meant "*in the way of a layman*"? Said R. Joseph: "With twigs or wire." A Boraitha states: When the railing was not smeared with clay.

"*Rents may be closed*," etc. If they may be smoothed with a roller, it is self-understood then that it may be done so with the hand and foot? This should be understood thus: "Rents may be closed and smoothed with hand and foot as if done with a roller, but not with a trowel."

"*Should the hinges of the door*," etc., "*they may be repaired*," etc. Is there not a contradiction from what we have learned, that "up to his days (of R. Jo'hanan, the high-priest) the sound of the hammer (falling on the anvil) used to be heard in Jerusalem," etc., from which we see, only up to his days, but not afterwards? Nay, this presents no difficulty. The statement just quoted has reference to a blacksmith's hammer, and that mentioned in our Mishna relates to that of a carpenter.

"*All pickled food of which*," etc. The river Bditha of Libai had an abundance of fish, and any one who wanted to fish them could do so. Rabha permitted to go there, bring fish and salt them. Said Abayi to him: "Does not our Mishna state, only those foods that can be eaten on the middle days?" Rabha replied: These can also be eaten by washing them first, as it happened once with Samuel, who was served with (pickled) fish, and he ate them after washing them sixty times. Rabha happened once to be in the house of the Exilarch (on the middle days), and he was served with pickled fish which were washed sixty times, and he partook of them. Rabh was once the guest of R. Shapir and fish was served, one-third of which was cooked, another third pickled, and the rest fried. Rabh related: "Ada the fisher once told me that fish taste best some time after they are caught." Rabh further stated: "The same told me: 'Fish should be fried with their brother (salt--for both are found in water); after they are fried they should be placed with their father (water--which produces fish), and they should be eaten with their offspring (their juice); and after eating them, drink their father (water).'" Rabh said again: "Ada the fisher told me: 'One who eats fish, dates,

or milk should not go to sleep right after, unless he takes first a long walk.'" Rabh said again: "Ada the fisher told me: 'After eating fish, dates, or milk, water is to be preferred as a drink to beer, and beer should have preference over wine.'"

Footnotes

1:1 *Vide* Shekalim, Chap. I., M. *a*.

3:1 No capital punishment, nor even that of stripes, is inflicted without a previous, warning. *Vide* Introduction to Sabbath, p. xxvi.

7:1 The letter "Shin" in Hebrew when pointed rightward reads "sh"; when pointed left reads "ss." The word "shom" in question is pointed left and the rabbi reads it as if pointed right, and explains it to have the meaning of the Aramaic "Shomin"--to weigh, to estimate.

9:1 "Ishuth" and Ehsheth are similar in pronunciation, and it states, "which hath not seen the sun."

10:1 See Lev. xiii. 5.

10:2 See our introduction to same tract.

11:1 See Deut. xxv. 5-11.

Next: Chapter II

CHAPTER II.

REGULATIONS CONCERNING LABOR. MOURNING AND BUYING AND DOING BUSINESS IN THAT TIME, AND ALSO IN THE INTERMEDIATE DAYS.

MISHNA: One who has turned his olives, and a death occurred in his family; and one who is prevented from at once putting them to press, or has been disappointed by his laborers, may put the first press-block on, and leave it until after the feast. Such is the dictum of R. Jehudah. R. Jose, however, said: "He may put the olives into the oil-press and finish pressing them, and bung up the casks in the usual manner."

GEMARA: It begins with mourning and ends with the middle days (without stating the law relating to the former)? Said R. Shesha, son of R. Idi: "Infer from this, that things permitted on the middle days are, nevertheless, prohibited during mourning." R. Ashi says to the contrary: "Not only in the mourning time, which is only rabbinical, are these things allowed, but even on the middle days, during which work is prohibited biblically, in the case of loss the rabbis permitted it."

The following Boraitha is in support of the assertion of R. Shesha, son of R. Idi: The following things are done by *others* for one who is in mourning: If his olives are turned, the press-block may be put on, the cask bunged, his flax removed from the buck, his wool taken out of the boiler, and his land watered when his turn comes on. R. Jehudah said: "Even his ploughed land may be sown and the flax-field planted." The sages, however, maintain, that if not sown early in the season it can be done so late in the season; and if not flax, other plants can be raised. R. Simeon b. Gamaliel, however, said that if he is the only specialist in the place, of all those things mentioned above, they may be done by himself privately. And even more than that the same Rabban allowed: If he were the only mechanic in the place employed by the public, or a barber, or a bather, and the feast was approaching, he might perform his functions. Contractors of all kinds must have others to do their work (during their mourning).

Those who hire out asses, camels, or ships to others, must not do their work. But if at the time (their mourning commences) they were already hired out, they might continue. A day laborer, although in a place where he is not known, must not work. If he were to work for others in his own house, whether under contract to do it for a definite time or not, he must not do it. If others were working for him in his own house, they must postpone their work; but in a house other than his own, they might continue. Marian, son of Rabhin, and Mar, son of A'ha son of Rabha, had a team of oxen in copartnership. One day a death occurred in the family of Mar b. A'ha and he kept in his ox. Said R. Ashi: Why should a great man like Mar do such a thing? If he does not consider his own loss, he must consider that of another. As stated above: "If they were hired out at the time, they might proceed with their work." He (Mar), however, was of the opinion that the

case is different when a prominent person is concerned. Samuel said: "Those who do their work under contract for a definite period of time, if *within* the legal limits, may not; if *outside* those limits, they may do it." R. Papa, however, said: Even where it is outside the legal limits, the case is only when there is no town adjacent. R. Mesharshia, however, said that even where there is no town adjacent the case is so only in reference to Sabbath days and festivals, for on those days people are few; but as regards the middle days, during which people are numerous, it is not permitted. Mar Zutra, son of R. Na'hman, had a house built under contract outside of the legal limits. R. Saphra and R. Huna bar Hinna happened to be in the neighborhood of that house and declined to enter it; and according to others, R. Zutra himself also declined to enter it. But has not Samuel said that if it was outside of the legal limits it is permitted? R. Zutra himself assisted them in placing the straw during the progress of the work. R. Hama permitted the Abunagars (waiters) of the Exilarch to do their work on the middle days; for, he said, they receive no salary, and work only for their board. (It is therefore not considered labor, and does not matter.)

The rabbis taught: Work may be taken under contract during the middle days to be done after the feast. But on the middle days it is not permitted. The rule is: All that one himself may do, he may have a Gentile do it for him, but not what he may not. We have learned in another Boraitha: "Work may be taken under contract on the middle days to be performed

after the feast, provided always he does not measure, weigh, or count in the usual manner."

The rabbis taught: "No animals should be copulated on the middle days; the same applies to the firstborn and also to the desecrated ones at any time."

The rabbis taught: Cattle must not be brought into the field for the purpose of manuring, either on Sabbath days, feast days, or middle days. But if they come there of themselves it is permitted. And no assistance may be afforded to those in charge, neither a watchman assigned them to watch their sheep. But the case is different if they are hired by the week, month, year, or for a period of seven years. Rabbi, however, says: "On Sabbath days it may be done without compensation; on feasts days, for food only; and on the middle days, even for compensation." Said R. Joseph: "The Halakha prevails as Rabbi decreed."

MISHNA: The same is the case when one whose wine is in the press-pit and a death occurred in his family or another accident happened; or if he had been disappointed, he may pour the wine into casks, cooper, and bung them up in the usual manner. Such is the dictum of R. Jose. But R. Jehudah said: "He must only cover the pit with boards, so that the wine may not grow sour.

GEMARA: Said R. Itz'hak bar Abba: "The Tana who holds that on the middle days it must not be done in the usual manner, does not accord with R. Jose." Said R. Joseph: "The Halakha, however, prevails as decreed by R. Jose." A question was propounded to Na'hman bar Itz'hak: "Is it permitted to bung up a beer barrel on the middle days?" He answered: "Sinai (R. Joseph) had already stated that the Halakha prevails as decreed by R. Jose." But R. Jose's statement relates only to wine, but not to beer? What was the reason for wine--because there is a great loss? The same is the case with beer. R. Hama bar Guriah said in the name of Rabh: The laws regarding the middle days are distinct from each other and cannot be compared for the purpose of inference. As Samuel said: "A jug may, but a barrel may not be covered with tar." R. Dimi of

Nehardea holds the reverse. The one considers the loss involved; the other, the trouble with which it is accompanied.

The rabbis taught: Grinding is permitted on the middle days for use on those days only, but not otherwise; but if some of the flour remain till after the festival, it may be used. Such is also

the case with wood-cutting and beer-brewing, but one must not go too far. R. Hananel said in the name of Rabh: "One may fell a tree, even if he needs only the splinters." Abayi, however, censured that. R. Ashi owned a forest in the neighborhood of Shalnayi, and he went there once during the middle days to chop wood. Said R. Shela of Shalnayi to R. Ashi: "You do this, relying on the statement of R. Hananel in the name of Rabh? But has not Abayi censured it?" And he replied: "I do not care for that." When he commenced to chop, his axe slipped off the handle and almost injured his shoulder. He thereupon left the forest (for he took it as a punishment for his statement in reference to Abayi). R. Jehudah permitted to pluck flax, hops, and poppy. Said Abayi to R. Joseph: "This would be correct as regards flax and hops, for the one may be used for covering (figs, etc.), and the other in beer-brewing; but what use can be made of poppy? Its seed can be used. R. Janai owned an orchard the fruit of which got ripe on the middle days, and he gathered in the fruit; on the following year every one postponed the gathering in of his fruit until the middle days. R. Janai (as a punishment to himself for having caused others to postpone their work until the middle days) gave away on the very same year that orchard to the free use of the public.

MISHNA: One may house his fruit from (dread of) thieves, and take flax out of the buck, that it be not spoiled, provided he does not intentionally defer doing it till the middle days; but should he have so deferred, then in all these cases he forfeits the articles in question.

GEMARA: A Boraitha states: "Provided he does it privately." R. Joseph had removed beams to his house in the daytime. Said Abayi to him: "Have we not learned that it should be done privately?" He answered: "In this case it may be considered more privately in the day-time than in the night-time; for in the night-time it must be done by light, and it requires therefore more men."

"*And take the flax out of the buck,*" etc. R. Jeremiah propounded the question to R. Zera: "One who deferred intentionally doing it until the middle days and soon afterwards died, shall we impose the fine on his sons? Shall we assume that the rabbis intended to punish him personally, and, therefore, his sons are released? or shalt we assume that the fine was directed against his property, and, therefore, his sons must pay it?" And he answered: "This we have learned in the following Mishna: A

field which has been cleaned from prickles during the Sabbatical year may be sown immediately thereafter; but this is not the case if it was manured either by man's labor or by animals." Said R. Jose bar Hanina: "There is a tradition that if one had manured his field (on the Sabbatical year) and soon afterwards died, his son might sow it." Hence we see that the fine was directed against him, and not against his son. The same is the case with working on the middle days, stated

above.

MISHNA: One must not purchase houses, slaves, or cattle, excepting for the use of the whole festival, or for the use of the vendor, who otherwise might have nothing to eat.

GEMARA: Rabha asked R. Na'hman: "What is the law if a laborer has nothing to eat?" And he answered him: "This we have learned in our own Mishna, 'or for the use of the vendor,' which intends to include the case of the laborer." (For the case of the vendor is included in the statement, "for the use of the *whole* festival," which includes the middle days.) Rejoined Rabha: Perhaps the Mishna explains only what is meant by the expression "use of the vendor."

MISHNA: One must not remove things from one house to another, but this may be done from the house of another court to his court. Things must not be brought home from the mechanic's house, but if he fears (that they might be lost) he may remove them to another court.

GEMARA: Did not the Mishna begin with the statement that it must not be removed at all? Said Abayi: The last clause of the Mishna means to say, that it may be removed from the court-house to the court (but not to another house).

MISHNA: Dried figs may be covered with straw. R. Jehudah says: "They may, likewise, be put in layers. Dealers in fruit, garments, or utensils may privately sell what is required for use on the middle days. Huntsmen (fishers) and manufacturers of peeled barley and grits may carry on their occupations in private, as the exigencies of the festival may require it." R. Jose said: "They have of their own accord adopted the more rigorous observance and do not carry on their occupations (on the middle days)."

GEMARA: R. Hyya bar Abba and R. Assi, both in the name of Hezekiah and R. Johanan, differ. One holds that "covering," mentioned in the Mishna, means "thinly covering," and "put in layers" means "thickly covering"; and the other one holds that "covering" means both thinly and thickly covering, and "put in

layers" means "heaping up." So also we have learned in a Boraitha: "Putting in layers--placing in a heap. Such is the dictum of R. Jehudah."

"*The dealers in fruit*," etc. The schoolmen propounded a question: "Does it mean that they adopted a rigorous, etc., not to do any work at all, or only not in public?" Come and hear: The dealers in fruit, garments, and utensils may sell in private, for use on the middle days. R. Jose said: "The dealers of Tiberias adopted of their own accord a more rigorous observance and did not sell at all." (The Boraitha states further on that R. Jose said that the same was the case with the hunters and fishers of Achu and the manufacturers of grits of Sepphoris.) Abayi said: "It is called grits, if it (the kernel) is crushed into two; pearl grits, if into three; and meal, if crushed into four parts." When R. Dimi came he said: "It (grits) means spelt." R. Huna permitted the dealers in spices to trade in their usual way. R. Kahana objected: We have learned elsewhere: A store opening into a gallery may be locked and unlocked in the usual way, but if it opens into a public street he must open one door and lock the other; and on the eve of the last day of Tabernacles one may decorate his stores with fruit in honor of the last day of the festival. But

not otherwise? This presents no difficulty: the one is the case regarding fruit; the other, regarding spices (which may be done in the usual way).

Next: Chapter III

CHAPTER III.

REGULATIONS REGARDING MOURNING ON FESTIVALS, REGARDING THOSE WHO ARE UNDER THE BAN, AND WASHING.

MISHNA: The following may shave (trim their hair) on the middle days: One who arrives from the sea countries, or returns from captivity, or has been discharged from prison; or one who was absolved by the sages from the ban, or from his vow (not to cut his hair for a certain period of time); also a Nazarite and the leper who is restored to cleanness. The following may wash their garments on the middle days: One who arrives from the sea countries, or returns from captivity, or has been discharged from prison; and one whom the sages have absolved from the ban, or from his vow. Towels, barbers' napkins, and bathing towels (may be washed). Men and women who have had a running issue, women after their courses or lying-in, and all persons who from uncleanness are restored to cleanness, are permitted to wash their garments; but all other persons are forbidden.

GEMARA: What is the reason for not permitting other persons? As we have learned in the following Mishna (Taanith). "The priests of the weekly watch and the standing Israelites are prohibited from shaving their beards and washing their clothes; but on Thursday they are allowed to do so in honor of the Sabbath." And Rabba bar bar Hana in the name of R. Elazar said: "The reason why they are prohibited to do so the whole week is in order that they shall not enter upon the fulfilment of their duties when they are filthy (if they would be allowed to do so during the days of their duty)." The same reason applies to the festival (if they will be allowed to do so in the middle days they will not shave themselves before the festival).

"*Who arrive from the sea countries*." Our Mishna is not in accordance with R. Jehudah of the following Boraitha: R. Jehudah said: "One who returns from the sea countries may not shave, for he went to sea of his own accord." Said Rabha: "If he went to sea for adventurous purposes, all agree that he may not; if to earn his bread, all agree that he may. They only

differ in case he went to sea to accumulate profits (*i.e.*, one who was well provided with an income, but went to sea to increase his riches). One equals it to the case of adventurous purpose; and the other, to that for the purpose of earning his bread. Samuel said: "A minor (child) may be shaved on the middle days, and it makes no difference whether he was born on or before the middle days." Said R. Pin'has: "We also have a Mishna to the same effect: All those who were permitted to shave on the middle days may also do so during their mourning." From this we must assume that those prohibited to shave on the middle days are also prohibited from doing so during their mourning? Now, if a minor would be prohibited, then mourning would be customary to a minor also, but the following Boraitha states: "The garments of a minor mourner are rent for the purpose of moving others to mourn?" Hence we see that to a minor himself

mourning is not customary? Said R. Ashi: Does, then, the Mishna state "those who are prohibited"? (It only states "those who are allowed") and possibly some are prohibited who are not mentioned in the Mishna.

A mourner must not observe mourning on festivals, for it is written [Deut. xvi. 14]: "And thou shalt rejoice on thy feast." Then, if the mourning commences before the festival the positive commandment of the rejoicing of the feast which relates to the whole public is relieving from the positive commandment of mourning of an individual; and in case it began on the festival, the commandment of mourning to an individual cannot relieve from the commandment (of rejoicing) to the public. What is the law of one who is under the ban as regards the festival? Said R. Joseph: Come and hear: "Cases involving capital punishment or stripes, or civil cases, may be tried (on the middle days), and if one (of the parties) is in contempt he may be put under the ban." Now then, if you should think that if one who was *already* under the ban the festival comes and postpones it, how could we put one under the ban *originally* on the festival? Said Abayi to him: "Perhaps the Boraitha meant, by 'tried,' the examination only (but not the result)?" Therefore said Abayi: This can be decided from our Mishna, which states: "One whom the sages absolved from the ban." And if the festival would postpone it, why then the absolving by the sages?

Said Rabha: Does, then, the Mishna state: The *sages have absolved* the ban? It states: "Who was *absolved by the sages* from the ban," which means that he has previously arrived at an

understanding with his opponent and then come to ask the rabbis that they should absolve him. (Hence the question remains undecided.)

Is the law of leprosy customary on the festival? Said Rabha: "Come and hear: It is written [Lev. xiii. 45]: "And the leper." That means to include even if it was the high-priest. Now, it is certain that as to the high-priest all the week-days are considered feast-days, as we have learned in a Mishna (Sebo'him): "The high-priest may sacrifice in his mourning before the interment of the corpse, but not to eat of it." Infer from this that the law of leprosy is customary on festivals. [1]

Rabha said: Whence do we know that the court has power to summon one to appear before them; to appoint a time for the trial before the chief of the court; and to fix a time for the appearance of both parties? It is written [Num. xvi. 12-16]: "And Moses sent to call Dathan and Abiram, the sons of Eliab," etc. "And Moses said unto Korah, thou and thy company be ye before the Lord," etc. "Thou and they and Aaron to-morrow." And whence do we know that the court has power to postpone the trial to another day? It is written [Jerem. xlvi. 17]: "They called out there," etc., "he hath let the time appointed pass by." And whence do we know that the report of the court messenger, that the summons is disobeyed, is not considered slander? From the report of the messengers to Moses [Num. xvi. 114]. And whence do we know that a great man has the power to put one under the ban? From [Judges, v. 23]: "Curse ye Meroz, said the messenger of the Lord." [It means that he was a great man.] And whence do we know that the court has power to excommunicate him and to prohibit to eat or drink in his company, or to stand near him within a distance of four ells? From the passage [ibid., ibid.]: "Curse ye bitterly, curse its inhabitants." And whence, that his disobedience is made public? From [ibid., ibid.]: "Because they came not to the help of the Lord." And whence, that his property may be confiscated (made ownerless)? From [Ezra, x. 8]: "And that whosoever should not come within

three days," etc., "all his substance should be forfeited 2 and himself separated from the congregation

of the exiles." Whence, that he may be cursed, beaten, his hair plucked, and made to swear? From [Nehem. xiii. 25]: "And I contended with them, and cursed them, and smote certain of them, and plucked out their hair, and made them swear," etc. Whence, that his hands and feet may be bound, and he may be tied to the whipping post, and prosecuted? From [Ezra, vii. 26] Whether it be unto death, or to banishment, or to a fine on goods, or to imprisonment." What is meant by "banishment"? Said Ada Mari in the name of Ne'hemiah bar Baruch in the name of R. Hyya bar Abin, quoting R. Jehudah: "It means, prosecution." What kind of prosecution? Said R. Jehudah, son of R. Samuel bar Shilath, in the name of Rabh: "It means that he is put under the ban at once, and if he does not repent within thirty days the ban is continued; and if he still continues to be disobedient, he is excommunicated after the lapse of sixty days." Said R. Huna bar Hinna to him: "But has not R. Hisda stated: He is first warned on a Monday, Thursday, and the following Monday"? This relates only to cases involving money; but if he is accused of having denounced the authorities, he is at once put under the ban. A certain butcher was disobedient to R. Tubi bar Mathna, and be was put under the ban by the concurrence of Abayi and Rabha. Subsequently he came to an understanding with his opponent. Said Abayi: "What shall be done in such a case? Shall we absolve him? Thirty days have not passed yet? Shall we not? The rabbis need him?" And he turned to R. Idi bar Abin and asked him: "Do you know anything about such a case?" And the latter answered him: "R. Ta'hlipha bar Abimi said in the name of Samuel: 'The horn that announced that he was placed under the ban, may announce that he was absolved.'" And Abayi rejoined: "This is only in cases involving money; but in the case of denouncing the authorities, the ban must continue for thirty days." Ameimar said: "The Halakha prevails, that if scholars declare the ban over a person, he may be absolved therefrom by three other scholars." Said R. Ashi to Ameimar: Have we not learned in a Boraitha: R. Simeon b. Gamaliel said: If one of the scholars who declared the ban over a person died, his part cannot be absolved from? Shall we not assume that it cannot be absolved from at all? Nay; that means, only until other three absolve him.

The rabbis taught: The ban is declared for not less than thirty days; rebuke, however, is only for seven days; and although

there is no explicit proof for that, there is a hint [Num. xii. 14]: "If her father had spit in her face, would she not be ashamed seven days?" R. Hisda said: "Our (Babylonian) ban equals in point of time their (Palestinian) rebuke; and their rebuke is only for seven days." Is that so? Has it not happened that R. Simeon bar Rabbi and Bar Qappara have been studying together, and they came across a difficult question? Said R. Simeon to Bar Qappara: "This question must be solved by Rabbi (my father)." And Bar Qappara answered him: "What could Rabbi say to this?" 1 R. Simeon reported this statement to his father, and he became angry. Subsequently Bar Qappara came to visit him, and Rabbi said to him: "Bar Qappara, I have never known thee." Bar Qappara understood this reproach, and he reprimanded himself for thirty days? It also happened that Rabbi ordered not to teach disciples in the public streets. R. Hyya disregarded the order, and did teach his two nephews, Rabh and Rabba bar bar Hana, in a public street. When Rabbi heard of it, he was angry. Subsequently R. Hyya came to visit him, and Rabbi said to him: "Eyya, you are

wanted in the street." R. Hyya understood what was hinted at, and he reprimanded himself for thirty days.

[On the thirtieth day Rabbi sent a message to him to come; and a short while after he sent him another message not to come. Subsequently R. Hyya came. Said Rabbi to him: "Why didst thou come?" He answered: "Because the Master sent for me to come." Said Rabbi: "But did I not subsequently send thee not to come?" And he replied: "The first message I received, the second one I did not." And Rabbi applied to him the following passage [Proverbs, xvi. 7]: "When the Lord receiveth in favor a man's ways, he maketh even his enemies to be at peace with him."] Hence we see from this that the rebuke of the Palestinians is for thirty days? The rebuke of a prince is different.

For how long, however, is *our* rebuke? For one day only, as seen from the following: Samuel and Mar Uqba, *studying* together, the latter used to sit (out of respect to Samuel) four ells distant from the former; but when sitting as a court, the reverse used to be the case, and Mar Uqba used to sit on a low platform (near the candelabrum 2) in order that his voice might be heard

well. Mar Uqba was in the habit of accompanying Samuel every day to his residence. One day he was so engrossed in a case that he forgot to do it, and the latter, instead, followed *him* to his house. When they reached the house, Samuel said to him: "Is this sufficient for thee? May I now return?" And Mar Uqba understood that Samuel was angry, and he reprimanded himself for one day. There was a woman who was sitting in a pathway, and was in the habit of stretching out her foot to pick up the barley. A young scholar happened to pass by and she paid no attention to him, and he remarked: "How insolent this woman is!" The woman came before R. Na'hman and he asked her: "Did he utter the ban?" And she answered: "Nay." He then ordered her to be reprimanded for one day. Zutra bar Tubiah was once arranging biblical passages before R. Jehudah. When he came upon the passage [II Sam. xxiii, 1]: "And these are the last words of David," he said to him: "If these were the last, what were the first words of David?" R. Jehudah remained silent. But when he (Mar Zutra) repeated the question, R. Jehudah said: "Art thou of, the opinion that if one cannot explain this he is no more a great man?" And Mar Zutra understood that R. Jehudah was angry, and he reprimanded himself for one day. How is this passage, however, to be explained? It plainly reads "the last"; then there must be the first words? [Ibid. xxi. 1]: "And David spoke unto the Lord the words of this song, on the day that the Lord had delivered him out of the hand of all his enemies, and out of the hand of Saul." This passage was expounded thus: The Holy One, blessed be He, said unto David: "David, thou singest songs over the downfall of Saul; if thou wert Saul and he were David, I would annihilate many a David for his sake." And this is meant by [Psalms, vii. 1]: "A Shiggayon of David 1 which he sang unto the Lord, concerning the affairs of Cush (the Ethiopian) the Benjamite." Was then his name Cush? It was Saul, but as an Ethiopian is distinguished from others by the color of his skin, so was Saul distinguished from others by his good deeds. Likewise [Num. xii. 1]: "On account of the Ethiopian woman which he had married." Was then her name Ethiopian? Was it then not Ziporah? But it is to state, that as an Ethiopian is distinguished by the color of his skin, so was she distinguished by her kind deeds. Likewise [Jerem. xxxviii. 7]: "Now when the slave of the king, the Ethiopian,"

etc. Was then his name Ethiopian? [1] Was it then not Zedekiah? But as it is stated above. Likewise [Amos, ix. 7]: "Are ye not like the children of the Ethiopians, O children of Israel?" Was then their name Ethiopians? Was it then not "Israel"? But as the Ethiopians differ from others in the color of their skin, so does Israel differ from all idolaters by their good deeds.

R. Tan'hum said in the name of R. Huna, and according to others R. Huna himself said it: A disciple who put one under the ban for disobedience to himself, the ban is valid, as we have learned in a Boraitha: "One who is put under the ban by the Master is considered so also towards the disciple; but if put by a disciple, is not so towards the Master." Hence towards the Master he is not so, but as towards the general public he is so. Now, then, let us see: To what case is this applicable? Shall we assume that it applies to Heavenly things? Is it not written [Psalms, xxi. 30]: "There is no wisdom nor understanding nor counsel *against the Lord*"? Hence it must be assumed, even for the disobedience to himself. R. Joseph said: "Even a young scholar, if only he is certain that his demand against another is just, may render judgment in his own favor." There was one young scholar concerning whom evil rumors were current. Said R. Jehudah: "What shall be done in this case? Shall we put him under the ban? The rabbis need him. Shall we not? The name of Heaven will be profaned." And he asked Rabba bar bar Hana: "Do you know anything about such a case?" He answered him: So said R. Johanan: "It is written [Malachi, ii. 7]: 'The priest's lips are ever to keep knowledge, and the law are they to seek from his mouth, for he is the messenger [2] of the Lord of hosts.' That means: If the Master is equal to an angel, law may be sought from his mouth, but not otherwise." Thereupon R. Jehudah put him under the ban. Subsequently, R. Jehudah was taken ill and the rabbis made him a sick-call, among whom was also that young scholar. When R. Jehudah beheld him, he smiled. Said he to R. Jehudah: "Is it not enough that you put me under the ban, that you still laugh at me?" R. Jehudah answered him: "I do not laugh at you, but in the world to come I will be proud to say that I was not biased even towards so great a man as you."

When R. Jehudah died the young scholar came to the college and asked to be absolved from the ban, and the rabbis answered him: "There is not here a man equal in esteem to R. Jehudah to absolve you. Go to R. Jehudah the Second, and he may absolve you." He went to him. Said the Nasi to R. Ami: "Go and examine his case, and if found favorable, absolve him." R. Ami did so, and was about to absolve him when R. Samuel bar Na'hmeni arose and said: "Even when the maid-servant of the house of Rabbi declared one under the ban the sages did respect it for three years, and so much the more we must respect Jehudah our colleague." Said R. Zera: "How did it happen that this old man came to-day to college after an absence of several years? It is a token that the young scholar is not to be absolved." He left weeping, and on the way he was stung by a bee and he died. He was brought to the vaults of the Pious, and was not accepted; he was then removed to those of the Judges, and was accepted. Why so? For he acted as R. Ilai of the following Boraitha: "If one cannot withstand the temptation, he shall go to a place where he is not known, and shall dress in black and wrap himself in black and do as he pleases, but shall not profane the name of Heaven openly."

What was the occurrence with the maid-servant of the house of Rabbi? The maid-servant of the house of Rabbi saw once one beating his grown-up son, and she said: "Let that man be under the ban, for he has transgressed the commandment [Lev. xix. 14]: 'Thou shalt not put a stumbling-block before the blind.'" And the following Boraitha states that this passage relates to one who beats his grown-up son. Resh Lakish was watching an orchard, and there came a certain man

and ate of the figs. Resh Lakish shouted to him not to do it, but he paid no attention to him. Resh Lakish then said: "Let this man be under the ban." And the man answered him: "On the contrary, let *that* man be under the ban; for if I am responsible to thee in damages, am I then liable to be put under the ban?" When Resh Lakish came to the college, he was told: "His placing you under the ban is valid, but not yours." "How can it be corrected?" "Go and ask his pardon." "But I do not know where to find him?" And he was told: "You have to go to the Nasi in order to be absolved, as we have learned in a Boraitha: 'One who was put under the ban and he does not know the person, he must go to a Nasi in order to be absolved.'"

R. Huna said: It was enacted in Osha that if the chief of tile court should be delinquent, if for the first time he should not be put under the ban, but should only be told: "Be dignified and stay at home." But if for the second time, he should be put under the ban, lest the name of Heaven be profaned. This is not in accordance with the following statement of Resh Lakish: A scholar who is delinquent is not put under the ban publicly, for it is written [Hosea, ii. 5]: "Therefore shalt thou stumble in the day-time, and the prophet also shall stumble with thee in the night," which means: See that he is devoid of publicity, as the night is devoid of daylight.

Mar Zutra the Pious, when a young scholar was delinquent and deserving to be reprimanded, first reprimanded *himself* and then the young scholar. When he entered his residence, he first absolved *himself* and then the young scholar. R. Giddel said in the name of Rabh: "A scholar may first put himself under the ban (for a certain period of time) and afterward absolve himself therefrom." Said R. Papa: "I may be rewarded; for, as a matter of fact, I have never put a young scholar under the ban."

"*And the Nazarite and the leper*," etc. R. Jeremiah questioned R. Zera: "Does it mean in the case when they had no opportunity to do so before, or even when they had?" And he answered him: "We have learned this in the following Boraitha: All those who were said to be permitted to shave on the middle days, may do so only when they had no opportunity to do it before, but not otherwise. A Nazarite, however, may do so, although he had the opportunity to do so before, in order that his sacrifice be not delayed.

The rabbis taught: "All those who were said to be permitted to shave on the middle days, may also do so in their mourning." But have we not learned in another Boraitha that they may not? Said R. Hisda ill the name of R. Shila: "The first Boraitha relates to a case where the mournings succeeded one another." If this is the case, why only "those who were said," etc.? Why not every one? As we have learned in a Boraitha: "When one mourning succeeds the other, and so on for a long time, and his hair has become heavy, it may be made light by a razor, and he may wash his clothes in water?" Yea, but as to this, it was taught that R. Hisda said: The Boraitha means by a razor only, but not by scissors; in water, but not with Spanish chalk (which was used then instead of soap) or lye. Said R. Hisda:

[paragraph continues] "From this it may be inferred that a mourner must not wash his clothes."

The rabbis taught: "As it is not allowed to shave on the middle days, so also is it not allowed to

trim the nails. Such is the dictum of R. Jehudah. R. Jose, however, permits it." And the same is the case in regard to mourning. Said Ula: "The Halakha prevails according to R. Jehudah in regard to mourning, and according to R. Jose in regard to the middle days." Samuel, however, said: "The Halakha prevails according to R. Jose in regard to both mourning and the middle days." As Samuel said elsewhere: The Halakha prevails according to the one who is lenient, in regard to mourning. R. Shaman bar Aba said: I was present once on the middle days in the college of R. Johanan, and saw him trimming his nails with his teeth and throwing the parings away. And from the above occurrence three things were inferred: that the nails may be trimmed on the middle days; that there is no aversion to trimming them with the teeth; and that the parings may be thrown away. 1 R. Itz'hak bar Jacob bar Geurah in the name of R. Johanan sent the following message: "Flaxen garments may be washed on the middle days."

MISHNA: The following documents may be written on the middle days: contracts of betrothing, bills of divorce, and receipts in discharge of debts; also wills or codicils; deeds of gift; premonitions; and deeds of maintenance, certificates of Halitza, and certificates of refusal; arbitration bonds; decrees of the Beth Din; and powers of attorney.

GEMARA: Samuel said: "One is permitted to become betrothed to a woman on the middle days, for fear that he may be preceded by another one." Rabh said in the name of R. Reuben b. Atztrubli: It appears from the Law, the Prophets, and the Hagiographa that the union of a woman to her husband comes from God himself. The Law [Gen. xxiv. 50]: "Then Laban and Bethuel answered and said: The thing hath proceeded *from the Lord*," etc.; the Prophets [Judges, xiv. 4]: "But his father and his mother knew not that it was from *the Lord*"; the Hagiographa [Prov. xix. 14]: "Houses and wealth are an inheritance from fathers; but from the *Lord* cometh an intelligent wife." 2 Rabh further said in the name of the same authority; and according to others this was learned in a Boraitha:

[paragraph continues] "R. Reuben b. Atztrubli said: 'No one is suspected of having done something (wrong), unless he has really done it; and if he has not done it all, he has done part of it; and if not even that much, he at least had in mind to do it; and if not even that much, he probably approved of it when it was done by others.'" An objection was made: Come and hear [Psalm cvi. 16]: "Moreover, they envied Moses in the camp and Aaron the holy one of the Lord." And R. Samuel bar Itz'hak said: "From this it is inferred that every one suspected his own wife of having relations with Moses?" (Hence we see that one may be suspected although there is no particle of foundation for it?) In that case it was different, for it was done out of hatred. Another objection was made: Come and hear: R. Jose said: "May my share in the world to come be with those who were *groundlessly* suspected." And R. Papa said: "I was once suspected without any ground whatever?" This presents no difficulty. The one is the case when the suspicion has ceased; the other is, when it has not. What is meant by not having ceased? Said Abayi: My mother told me: 'A town rumor is for a day and a half.' The case is only if it has not ceased at intervals, but if it has it does not matter; and if, however, it has ceased out of fear, it is not taken into consideration; and even if it was not out of fear, the case is when it was not circulated again more vigorously. All this, however, is the case when the person suspected has no enemies; but if he has, the latter circulated it.

MISHNA: Bonds of debts must not be written on the middle days; but if the lender does not otherwise want to trust the borrower, or the latter has nothing to eat, they may be written. Holy

Scrolls, Phylacteries, or Mezuzoth must not be written on the middle days, and not a single letter may be corrected--even in the Book of Ezra. 1 R. Jehudah, however, says: "One may write Phylacteries and Mezuzoth for his own use, and he may also spin sky-blue wool for show-threads in his garment."

GEMARA: The rabbis taught: One may write Phylacteries and Mezuzoth for his own use and may spin sky-blue wool for show-threads in his garment; but for others he may do it as a favor only (without compensation). Such is the dictum of

R. Meir. R. Jehudah, however, said: "One may connive and sell his own, and then write another one for his own use." But R. Jose said: "He may write and sell in the usual way as much as necessary for his living expenses." Rabh, and according to others Rabba bar bar Hana, rendered his decision to R. Hananel: "The Halakha prevails, that one may write and sell in the usual way as much as necessary for his living expenses."

MISHNA: One who buried his dead three days before the commencement of the festival is freed from the observance of the seven (days of deep mourning); if eight days before the festival, he is freed from the observance of the thirty days; for the sages hold: "The Sabbath enters into the computation, but does not supersede the mourning, whereas the festivals supersede the mourning, but do not enter into the computation." R. Elazar said: "Since the destruction of the Temple, Pentecost is to be considered (in respect to mourning) like the Sabbath." R. Gamaliel said: "The New Year and the Day of Atonement are to be considered like festivals; the sages, however, say that it is neither as the one nor as the other, but hold that there is no distinction between the Pentecost and any other festival, but the New Year and the Day of Atonement are like the Sabbath."

GEMARA: Rabh said: "Only the *observance* of the thirty days is dispensed with, but not the days themselves." So also said R. Huna. R. Shesheth, however, said: "Even the days are dispensed with." In what case may it happen that the days shall still not be dispensed with? If (the observance of the thirty days being dispensed with) one had not shaved himself on the eve of the festival, he may not do so after the festival (during all the thirty days). We have so also learned in a Boraitha: One who buries his dead three days before the festival is freed from the observance of the seven days; if eight days, he is freed from the observance of the thirty days, and he may shave himself on the eve of the festival; if he, however, failed to do so on the eve of the festival, he must not do so after the festival. Abba Saul, however, said: "He may do so, for as the observance of the three days frees from the observance of the seven days, so also does the observance of the seven days free from the observance of the thirty days. "Seven days? Have we not learned eight? Abba Saul is of the opinion that a portion of a day counts for a whole day, and the seventh day enters into the computation of both. Said R. Hisda in the

name of Rabina bar Shila: "The Halakha prevails according to Abba Saul, and even the sages concede to Abba Saul that in case the eighth day falls on a Sabbath which is incidentally the eve of a festival, he may shave on the eve of Sabbath." According to whom is the statement of R. Amram in the name of Rabh: "A mourner, as soon as his condolers have left him, is permitted to

wash himself"? It is according to Abba Saul. Said Abayi: The Halakha prevails according to Abba Saul in regard to the seventh day; and the sages concede, in regard to the thirtieth day, that a portion of a day counts for a whole day. Rabha said: The Halakha prevails according to Abba Saul regarding the thirtieth day, but not regarding the seventh day. But the sages of Nehardea maintained that the Halakha prevails according to Abba Saul in both cases, as Samuel said: "The Halakha prevails according to the one who is lenient in regard to mourning." Abayi inquired of Rabba: "If one buried his dead on the festival, does, or does not, the festival enter into the computation of the thirty days? Certain it is to me that it does not enter in regard to the seven days, for the observance of the seven is not customary on the festival; but my question is in regard to the thirty days, because the observance of the thirty days is customary on the festival?" And he answered him: "It does not enter." Abayi raised an objection based on the following Boraitha: The festival enters into the computation of the thirty days. How so? If the burial took place in the beginning of the festival, the observance of the seven days begins after the festival, and his work may be done by others, and his male and female servants may do their work privately, and the public need not condole with him during the seven days, for they have already done so on the festival; and the festival enters into the computation of the thirty days? This objection remains unanswered. When Rabbin came from Palestine he said in the name of R. Johanan: "Even if he was buried on the festival" (the festival enters into computation). So also has R. Elazar decided to his son R. Padath.

The rabbis taught: If one has observed the lowering of the couch for three days prior to the festival, he need not observe it any more after the festival. Such is the dictum of R. Eliezer. The sages, however, hold: "Even one day, and even one hour." Said R. Elazar b. R. Simeon: These are, respectively, the decrees of the school of Shammai and the school of Hillel. For the school of Shammai decrees: "Three days"; and the school

of Hillel decrees: "Even one day." Said R. Huna in the name of R. Hyya bar Abba, quoting R. Johanan, and according to others R. Johanan said to R. Hyya bar Abba and R. Huna: "Even one day, and even one hour." Rabha said: "The Halakha prevails according to our Tana (of the Boraitha), who holds three days."

Rabina happened to be in Sura of Euphrates. Said R. Habibha to him: "What is the Halakha?" And he answered him: "Even one day, and even one hour." R. Jose bar Abin said: "One who receives information which is recent on the festival, but becomes remote after the festival, the latter counts, and mourning is observed only one day." Rabbi Ada of Kisri taught before R. Johanan: "One who receives information which is recent on the Sabbath but becomes remote thereafter, must mourn one day only." Must he rend (his garments) or not? R. Mani said: "He may not." R. Hanina, however, said: "He may." Said R. Mani to R. Hanina: "As to my statement, it is correct, because rending is customary only together with the observance of the seven days; but as to your statement, is then there a case in which one must rend although there is no mourning of the seven days?" Is there not such a case? But has not R. Isi the father of R. Zera, and according to others the brother of R. Zera, taught before R. Zera: "One who has no garment to rend and he becomes a mourner, if within the seven days, he must rend; if after the seven days, he may not"? And R.1 Zera rejoined: "This is the case only in the five cases of relatives whom one is bound to bury, but over his father and mother he must rend notwithstanding (the lapse of the seven days?). In this case it is only out of respect to his father and mother."

"*Because the sages held that Sabbath enters into computation*," etc. The inhabitants of Judea and the inhabitants of Galilea: Those hold that the law of mourning applies on Sabbath (to things done privately), because the Mishna states: "It enters into computation"; and these hold that it does not apply, because the Mishna states: "But it does not supersede."

But does not the Mishna state that it enters into computation? It is only because it has to state in the latter part, that it does not enter, he uses also in the first past "enter." But did not the Mishna state plainly "it does not supersede"? This is for the same reason, as it has to state in the latter part "it does supersede" it uses the same term in the first part also.

Raphram bar Papa said: "We have learned in Tract 'Great Mourning': 'A mourner is prohibited to have sexual intercourse during his mourning. It happened once that one did have sexual intercourse with his wife during his mourning, and his corpse was dragged about by hogs.'" Samuel said: "To remove the wrapping from the head, the rent from the front to the back, and to put the couch in proper condition (on the Sabbath) is obligatory; but to wear shoes, to have sexual intercourse, and to bathe the hands and feet in warm water on Friday evening is optional." Rabh, however, said that even removing the wrapping is also only optional.

Abayi found R. Joseph during his mourning walking around in the house with his mantle wrapped around his head (on the Sabbath), and he said to him: "Does not the Master hold that mourning is not customary on the Sabbath?" And he answered him: "So said R. Johanan: 'Things of a private nature are permitted.'"

"*R. Elazar said: Since the destruction of the Temple*," etc. R. Giddel bar Menasiah said in the name of Samuel: "The Halakha prevails according to Rabban Gamaliel (Berachoth), who said that a mourner on the Sabbath is bound to observe all the commandments."

R. Anni bar Shashan lectured in front of the house of the Nasi: "If (the mourning is) observed one day before Pentecost and on Pentecost, it is considered to have been observed fourteen days." (For Pentecost counts for seven days, and so also does the day preceding it, as stated above.) When R. Ami heard of this he was angry, and said: "Is this then his own? This was stated long ago by R. Elazar in the name of R. Oshiya." The same thing was stated in a lecture by R. Itz'hak of Naph'ha in Babylon at the cottage of the Exilarch, and R. Shesheth became angry because R. Elazar in the name of R. Oshiya, the author of this statement (Hagiga, 40), was not. mentioned. R. Papa, accompanying R. Avia the elder, lectured: "One day (of observance of mourning) before the New Year and the day of New Year count for fourteen days." Said Rabina: "Therefore, one day before the Tabernacles, the Tabernacles, and the eighth day (which counts for a separate festival) count (regarding mourning) twenty-one days." Rabina happened to be in Sura of Euphrates. Said R. Habibha of same place to him: "Do you, Master, hold: 'If observed one day before the New Year and on the New Year it counts fourteen

days'?" And he answered him: "I have only stated that it seems to me that the Halakha prevails according to R. Gamaliel."

MISHNA: The garments are not rent, nor the shoulders laid bare, nor the funeral meal eaten (on the middle days), unless by the near relatives of the deceased. The funeral meal is not to be taken except on a couch standing up properly.

GEMARA: Does this apply to a scholar also? Have we not learned in a Boraitha: "When a scholar dies, all must rend their garments, bare their shoulders, and partake of the funeral meal served in the public thoroughfare, for all are considered as his relatives"? Nay, this Mishna refers to one who is not a scholar, but an upright man over whom also rending is obligatory, as we have learned in the following Boraitha: "Why do little children die? Because their parents failed to weep (mourn) over the death of an upright man; to one who does so, all his sins are forgiven, for the honor he has done to the deceased." In the case of the death of an ordinary person, however, rending is obligatory only on the one who is present at the time of the death, as we have learned in the following Boraitha: "R. Simeon b. Elazar said: 'One who is present at the time when the death occurs is bound to rend his garments, for it is similar to the case of one who is present at the time the Holy Scrolls are burned, in which case he is bound to rend his garments.'" When R. Saphra's soul passed unto rest, the rabbis intended not to rend their garments, for they said: "We received no teachings from him." Said Abayi to them: "Does, then, the Boraitha treat of a rabbi? It treats of a scholar, and still more so in the present case, when his Halakhas are always on our lips in the college?" Still they were inclined not to rend, for they said: "The time for doing so has already passed." Said Abayi to them: "We have learned: In the case of a scholar, so long as the funeral orations are still going on, one is bound to rend." They then wanted to rend at once (without holding funeral orations). Said Abayi to them: "There is a Boraitha that states that the honor paid to the remains of a scholar lies in the funeral oration." When R. Huna departed, it was intended to place the Holy Scrolls on his bier. Said R. Hisda to them: "Shall we now act against his will? Has not R. Ta'hlipha said: 'I was once present when R. Huna wanted to sit down on a cot on which the Holy Scrolls were lying, and he first removed the latter and then sat down'? Hence we see that he was of the

opinion that one must not sit on a cot on which the Holy Scrolls are placed?" When the cot was to be removed from the house, it was found out that it could not pass through the door; and it was about to be removed through the roof opening, when R. Hisda remarked: "We have a tradition from him that the honor to a deceased scholar demands that he be removed through the door opening." They then wanted to place him on a cot of smaller dimensions, but R. Hisda again remarked: "We have a tradition from him that the respect to a deceased scholar demands that he be removed in the cot he died on." Then they broke away the door-posts, and passed him out. Then R. Abba began the following eulogy: "Our rabbi was worthy that the Shekhina should rest upon him, but Babylon prevented it." When his corpse arrived in Palestine, R. Ami and R. Assi were informed that "R. Huna had arrived." And they said (under the impression that he was alive): "When we were in Babylon we could not raise our heads on account of him (for his great learning), and now he has followed us here." And they were then told: "His *coffin* has arrived." R. Ami and R. Assi went out (to pay their respects). R. Aila and R. Hanina remained in the house. Others, however, said that only R. Hanina remained. What was the reason of those who went out? The following Boraitha: "When a coffin is being removed from one place to another, those present must stand in a row and must pronounce the mourning benediction and the words of consolation." The reason, however, of those who did not go out is the follow me, Boraitha: "When a coffin is being removed from one place to another, those present need not stand in a row," etc. But do not these Boraithas contradict each other? Nay, the one relates to a case where

the skeleton is still in good condition; the other where it is not. But R. Huna's skeleton was still in good condition? They were not aware of that. They then began to deliberate where to place his remains, and concluded to place them alongside of those of R. Hyya. For they said: "R. Huna diffused the Torah among Israel as much as did R. Hyya." The question then came up as to who should do the placing. Said R. Haga to them: "*I* will do it, for I was his disciple since the age of eighteen. I never had a wet-dream, and I have served him since then and knew his ways: once it happened that one of his phylactery fillets turned over, and he fasted forty days." When R. Haga brought in the coffin into the arch, he noticed that Jehudah was sleeping at the right of his father and

Hezekiah at his left. He heard Jehudah say to his brother: "Rise, for it would not be correct not to pay respect to R. Huna." When he arose, a pillar of fire arose with him. R. Haga became frightened and, lifting up the coffin of R. Huna, left the arch.

When R. Hisda died they wanted to place the Holy Scrolls on his bier. Said R. Itz'hak: "A thing which was not approved by his Master (R. Huna), we must not do to him." They also intended to leave their rent garments unmended, when R. Itz'hak bar Ami said to them: "In case of a scholar, the rent may be sewed together as soon as those who follow the coffin turn away their faces from the latter." When Rabba bar Huna and R. Hamnuna had died in Babylon, their bodies were brought on camels to Palestine. Arrived at a narrow bridge, where the two camels could not pass at once, both remained standing. An Ishmaelitish merchant present, surprised. at the interruption of the journey, asked for the reason, and was told that each of the deceased wished to give the other the preference of the way. "If I were to give my view of the matter," the Arab said, "I should decide in favor of Rabba bar Huna (as he was known to me as a venerable man)." The Arab had hardly concluded his remarks, when the camel bearing Rabba passed the bridge. (As a punishment for not paying proper respect to R. Hamnuna), the molars and front teeth of the Arab fell out. A disciple declaimed the following elegy:

A learned scion of an ancient race
Upward to Sacred Palestina draws,
And bears into illimitable space
The code of battles, the great book of laws.
The cormorant and the hedgehog nightly gloat
Upon destruction spreading far and wide;
For God His wrath upon the earth has hurled,
Our pious sage His voice has called away;
And God is glad that from this sinful world
His dearest servant has come home to stay. 1

When Rabina died, the funeral orator held the following oration:

Bend, ye majestic palms, in grief sincere
O'er one who like a palm had flourished here
Nor cease your mourning when the moon's soft ray
Changes to shadowy night the brilliant day.
For moon's broad glare had oft to midnight waned
Ere slumber o'er his studious eyelids reigned.

R. Ashi said to Bar Kipuk (the funeral orator): "What oration will you make on that day (of my death)?" And he answered him: "The following.

How can the lowly hyssop still survive,
When with devouring flames the cedars strive?
With huge Leviathan the angler's prey,
What have the fishes of the pond to say?
If the dry torrents shame the fisher's hook,
How fares it with the waters of the brook?

Said Bar Abhin to him: "Heaven forbid that 'net' and 'flame' be used in orations over the righteous." "What, then, would *you* say?" "I would say: 'Weep for the losers but not for the lost (deceased), for *he* passed into rest but we into grief.'" R. Ashi felt discouraged (for one orator used the words "net" and "flame," and the other the word "lost"), and their (of the orators) feet upturned. When he died, neither of the orators came to hold orations. And this was meant by R. Ashi when he said: "Neither Bar Kipuk nor Bar Abhin would be bound to perform the ceremony of Halitza." (*Vide* Yebamoth, 103*a*, where it is stated that those who have deformed feet are not bound to perform Halitza.)

When Rabha came to Hiddekel, he said to Bar Abhin: "Pronounce an (appropriate) prayer," and the latter began: The major part of Israel went through water; remember, and have mercy. We went astray from Thee as a woman goeth astray from her husband; do not cast us off, for it may have the same indication as that of the bitter-water." [*Vide* Num. v. 11-28.]

R. Hanin, the son-in-law of the Nasi, had been for a long time childless; he prayed and was answered. On the day of the birth of the child he died. The funeral orator on this occasion declaimed the following elegy:

Parental joy was changed to hopeless pain
Where bliss had entered, grief was doomed to reign
For in the moment of his hope fulfilled,
The joyful beating of that heart was stilled.

The child was named Hanin after his father. When R. Johanan died, R. Itz'hak b. Elazar began the eulogy as follows: "This day is as momentous to Israel as the day of which the prophet

spoke [Amos, viii. 9] 'And it shall come to pass in that day that I will cause the sun to go down at noon,'" which R. Johanan explained to have reference to the day of the death of the King Josiah. When R. Johanan departed, R. Ami observed both the seven and the thirty days (of mourning). Said R. Abba the son of R. Hyya bar Abba: "R. Ami stands alone in his action, for so said my father in the name of R. Johanan: 'Even over an instructor in science one need not mourn more than one day.'" When R. Zera departed, the funeral orator delivered the following oration:

In Babylon this noble sage was born,
In Palestine he was admired and cherished;

"Woe unto me!" doth Reketh [1] sadly mourn,
"For my most precious jewel now has perished."

When R. Abuhu died, the pillars of Kisri shed tears; when R. Jose died, the gutters of Sepphoris were overrun with blood; when R. Jacob died, the stars were seen in the day-time; when R. Assi, all the trees were rooted out; when R. Hyya, fire-balls fell from heaven; when R. Mena'ham (ben R. Simai), all the images became obliterated and as smooth as if passed upon with a roller; when R. Tan'hum bar Hyya died, all the impressions upon the images were effaced; when R. Eliashib, seventy burglaries were committed in Nehardea; when R. Hamnuna, hailstones fell from heaven; when Rabba and R. Joseph died, the bridge-arches of Euphrates collapsed; when Abayi and Rabha, the bridge-arches of Hiddekel collapsed; when R. Mesharshia died, the trees were laden with thorns (instead of fruit). [2]

MISHNA: The food for the funeral meal is not placed before the mourners on a table, nor in a silver tureen, nor in a dish, but in wicker baskets. The mourning prayers must not be pronounced on the middle days, but the rows are formed and the consolation is pronounced and the people assembled are at once dismissed. The bier must not be set down in any public place, that the mourning may not spread (in the middle days). The bier of women must at *no* time be there set down, on account of respect (to the sex of the deceased). [3]

"*The bier must not be set down in any public street*." Said R.

[paragraph continues] Papa "No middle days are considered in regard to a scholar (Talmid-Hakham), and so much the more so the half-feast of Hanuka or Purim. This, however, is the case only in the presence of the corpse." This is not so? Has not R. Kahana lamented over the death of R. Zbhid of Nehardea on the banks of the river (and surely the corpse was not there)? Said R. Papa: "That was on the very day he received the information, which is equivalent to the presence of the corpse."

MISHNA: The mourning women may wail during the middle days, but not clap (their palms together). R. Ishmael said: The nearest to the bier may clap. On the days of the New Moon, on the half-festivals of Hanuka and Purim, they may wail and clap, but must not sing lamentations; but when the corpse is interred, they must neither wail aloud nor clap.

What is meant by wailing? When all of them join in one chorus. What is meant by lamentation? When one recites and the others respond, as it is written [Jer. ix. 20]: "Teach your daughters wailing and every one her neighbor lamentation." But of the age that is to come it is written [Isa. xxv. 8]: "He will destroy death to eternity; and the Lord Eternal will wipe away the tear from off all faces."

GEMARA: R. Levi bar Hitha said: One who takes leave of the dead shall not say, "Go *in* peace," but "Go *with* peace," as it is written [Gen. xv. 15]: "But thou shalt come to thy fathers *with* peace" (*Be*sholom); but the contrary must be said when taking leave of the living. When David said to Absalom: "Go *with* peace "[II Sam. xv. 9], the latter hanged himself; while, when Jethro said to Moses [Exod. iv. 18]: "Go *in* peace" (*Le*sholom), Moses went and was successful. R. Levi further said: One who goes from the college to the prayer-house, and *vice versa*, is

rewarded by receiving the appearance of the Shekhina, as it is written [Psalms, lxxxiv. 8]: "They go from strength (college) to strength (the prayer-house); each of them appeared before God in Zion." R. Hyya bar Ashi said in the name of Rabh: "Scholars (Talmide-Hakhamim) have no rest even in the world to come, as it is written [ibid.]: 'They go from strength to strength; each of them appeareth before God in Zion.'"

END OF TRACT MOED KATAN (MINOR FESTIVALS).

Footnotes

27:1 All the laws of mourning not belonging to festivals we transfer to Tract Ebel Rabbathi (Great Mourning) as the proper place, and they will be published in the next volume, which will complete this section.

27:2 Leeser translates "devoted."

29:1 Rashi explains this to mean: "There is no scholar who could answer this." But our explanation seems to us more proper.

29:2 For Mar Uqba was an Exilarch.

30:1 The root of Shiggayon is ••• meaning "error."

31:1 The Talmud translates the meaning of the words literally. Hence our translation.

31:2 The text reads "Malach," which means a messenger, and also an angel.

34:1 This subject will be explained in Tract Niddah.

34:2 See our "Maamar Ha'ishuth," Wien, 1887, p. 6.

35:1 It means the first Pentateuch which Ezra wrote. Rashi, however, says that he heard that it should not be read "Ezra," but, ••••, which means the Temple; as to his knowledge, there was a correct copy of the Holy Scrolls, from which all the others are corrected.

42:1 From "The Poetry of the Talmud," by Sekels, with metrical corrections, as also the verses following.

44:1 Reketh is Tiberias. (Rashi.)

44:2 All this must not be understood literally but allegorically.

44:3 The Gemara belonging to this Mishna, which properly does not come in here, will be found in its proper place.

NEW EDITION

OF THE

BABYLONIAN TALMUD

Original Text, Edited, Corrected, Formulated, and Translated into English

BY

MICHAEL L. RODKINSON

SECTION MOED (FESTIVALS)

TRACTS TAANITH, MEGILLA, AND EBEL RABBATHI OR SEMÁHOTH

Volume VIII.

BOSTON

THE TALMUD SOCIETY

[1918]

EXPLANATORY REMARKS.

In our translation we adopted these principles:

1. *Tenan* of the original--We have learned in a Mishna; *Tania*--We have learned in a Boraitha; *Itemar*--It was taught.

2. Questions are indicated by the interrogation point, and are immediately followed by the answers, without being so marked.

3. When in the original there occur two statements separated by the phrase *Lishna achrena* or *Waïbayith Aema* or *Ikha d'amri* (literally, "otherwise interpreted"), we translate only the second.

4. As the pages of the original are indicated in our new Hebrew edition, it is not deemed necessary to mark them in the English edition, this being only a translation from the latter.

5. Words or passages enclosed in round parentheses ( ) denote the explanation rendered by Rashi to the foregoing sentence or word. Square parentheses [ ] contain commentaries by authorities of the last period of construction of the Gemara.

A WORD TO THE PUBLIC.

WITH this volume Section Moed (Festivals), the weightiest and most difficult of the six Talmud sections, becomes complete. Students of the Talmud will observe that while the old edition contains twelve treatises, we have embodied thirteen, taking one--viz., Tract Ebel Rabbathi--from Section Nezikin (Damages), for reasons which will be stated further on.

Section Festivals contains all the Halakhoth (ordinances) pertaining to the Sabbath, to festivals, semi-festivals, fast-days, feast-days, and days of mourning, and stands practically independent of all other sections, inasmuch as we have been careful to cull all matter bearing upon the subjects discussed in this section from the other sections, and to insert the same in its proper place. (See Betza, p. 45.) [1]

And now that by the grace of the Almighty we have succeeded in editing and translating an entire section of the Talmud, a work that, with due modesty, we can claim stands unique in the annals of literature, we deem it but fair to explain to our readers the method adopted by us in the accomplishment of this task, and demonstrate as well the innovations and changes introduced in comparison with the original, ancient edition. They are:

(*a*) In the original the name of each separate treatise alone indicated its contents, while the chapters into which such treatise was subdivided were known merely by the words with which they began. We have, however, headed each chapter with a line or two giving in succinct form the subjects discussed therein.

(*b*) Rashi's commentary, without the aid of which even students of the original Talmud cannot comprehend the intricate meanings of portions of the text, we have, wherever practicable, embodied *in* the text, denoting such commentary by the use of parentheses, and where this was not feasible on account of the

vagueness of the phraseology and its inseparability from the text proper, we have made the commentary an integral part of the text.

(*c*) Wherever Rashi's commentary was insufficient or rather vague, and we were in consequence compelled to make use of one of the several other commentaries forming part of the original Talmud, we have added a footnote giving the name of the other commentator and the reasons for taking his opinion. (See Erubin, p. 211)

(*d*) The frequent repetitions of discussions, some literally alike and others having a similar tendency even though employing a change of terms, occurring in the several sections and

corresponding treatises, we have translated once only. We have been careful, however, to mark such places where a repetition occurs and is not embodied, giving the name of the treatise and the page where it can be found. In this section, now completed, we have also omitted some discussions which are repeated in treatises where they are more pertinent. There they will appear in due time, and where they are at present lacking, a notice to that effect will be found, and the place of their proper insertion is denoted. (See Succah, p. 48.)

(*e*) The original Talmud, with its innumerable biblical quotations, nowhere indicates where such biblical quotations may be found, simply stating: "It is written," etc. One savant named Joshua Boas went to the trouble of publishing a work called "Thora Or," in which he provides each biblical quotation found in the Talmud with its place in its respective book and chapter without naming the verse; but, either through misprints or negligence, they are for the most part incorrect. In our edition we give the book, chapter, and exact verse of each biblical quotation, as well as its correct form, as far as obtainable.

(*f*) We have, wherever necessary, made a footnote explaining the much-encountered Talmudic peculiarity of dividing up a word so as to put a different construction upon its meaning, and thus obliterate its actual linguistic purport. Wherever a word is totally untranslatable the fact is recorded and the word circumscribed likewise in a footnote. We have also had occasion to refer the reader, for the elucidation of some passages, to our previously published works, but in no case is such reference absolutely necessary.

(*g*) It has become necessary in some cases to provide a treatise with a special introduction or an appendix, or both, and

this we have done whenever it seemed to us to facilitate the understanding of such treatise.

(*h*) Wherever the Talmud made use of a Greek word, naturally in Hebrew letters, and consequently at times incorrectly, we have, to avoid errors, rendered the word into pure Greek. In a doubtful case we have appended a footnote giving the word in several versions and emphasizing the one most likely to have been the correct one. (See Erubin, p. 208.)

(*i*) While any index of subjects treated in the Mishna and Gemara is impossible for reasons we have already explained in the few lines heading the synopsis of Volume I., we have provided each volume with a synopsis of a sufficient scope to enable the reader to find any subject of peculiar interest to him without perusing the entire volume.

(*j*) Wherever two disputing Amoraim are not of the same period--on the contrary, were in existence a century or so apart--we have called the attention of the reader to this in a footnote explaining who the discussing teachers were, their probable names, etc.

(*k*) Whatever misprints occurred in the original edition of the Talmud we have carefully corrected, and have explained their probable origin and cause. (Erubin, p. 192.)

(*l*) The absence of commentaries to the tracts Shekalim and Ebel Rabbathi gave us an

opportunity to add our own comment, which we have done with as much care and zeal as possible.

Finally, we call attention to the explanatory remarks printed on the reverse of the title-page of each volume.

Now it remains for us to state the reason why we embody the Tract Ebel Rabbathi in this section.

Maimonides tried to find some explanation for the sequence of sections and tracts of the Talmud, and whether he succeeded in this endeavor or not we will leave to the decision of the reader. At all events, as far as the Tract Ebel Rabbathi is concerned, he could not give any reason why it should have found a place in the Section Nezikin (Damages).

As a matter of fact, the Tract Ebel Rabbathi is not among the thirty-seven main tracts comprising the Babylonian Talmud, but is accounted one of the minor tracts written after the original was finished. Yet it would be decidedly wrong to class Ebel Rabbathi with the minor tracts, and for the reason that in a number of instances we find a passage in the Talmud reading, "We have learned in Ebel Rabbathi," proving conclusively that

it antedates the final completion of the original Babylonian edition.

The bibliographers Zunz and N. Bruell endeavored to prove that the Tract Ebel Rabbathi, so frequently mentioned in the Talmud proper, is not identical with the one found among the minor tracts, and Dr. Mielziner, in his Introduction to the Talmud, adds: "It seems to be a reproduction of the same with later additions." We do not care, as the Talmud says, "to put our heads between the mountains," and contradict these learned gentlemen, although they have not quoted by a good many all the quotations of Ebel Rabbathi used by the Talmud, and we have found that all quotations from Ebel Rabbathi are verbatim reproductions from the tract now before us. Be this, however, as it may, this tract is the *only* source in the Hebrew code from which the ordinances and laws pertaining to the mode of procedure with dying, dead, burials, and mourners, in vogue even at this day with all classes of Jews, emanate. Were we to leave this tract untranslated, the Section Festivals would be incomplete.

It must be borne in mind that laws pertaining to mourners are thoroughly discussed in one of the tracts of Section Festivals, Moed Katan, and hence our, we hope valid, excuse for embodying the Tract Ebel Rabbathi as part and parcel of that section. We wish to call attention to the fact, however, that such mourners' ordinances as had no connection with festivals and feast-days we have eliminated from the original tract in which they were contained, and have transferred them to Ebel Rabbathi, where they properly belong.

Having thus, in this introduction, outlined as fully as possible our method of disclosing the weighty contents of Judaism's greatest example of literature to laymen and those of the archæological students unacquainted with the idioms employed by the Talmudic teachers, we lay our work open to the critics and invite, in all honesty of purpose, scholarly, pithy criticism. So far we have: only been favored with spasmodic efforts at criticism, consisting mainly of dissenting opinions as to the use of a term or the spelling of a word taken from the Hebrew and

transcribed into, English. What we would appreciate, however, is a fair and just summarizing of the work as a whole, of its value as such, and of its merit in facilitating the general knowledge among laymen, Gentiles and Jews alike, of ancient customs, ordinances, laws, and usages.

M. L. R.

NEW YORK, *June* 18, 1899.

Footnotes

iv:1 This is only one instance where this policy was pursued. There are, of course, countless others, too numerous to mention.

Next: A Letter From Prof. Dr. M. Lazarus

A LETTER FROM PROF. DR. M. LAZARUS, GEH. REGIERUNGSRATH.

MERAN (AUSTRIA), d. 14 *Juni*, 1899.

HERRN M. L. RODKINSON, New York:

Geehrter Herr Rodkinson: In meinem Briefe vom 20. Juli, 85, habe ich meine Ansicht ausgesprochen, dass nur eine Verbindung von mehreren hervorragenden und bewährten Gelehrten den hohen Zweck einer neuen kritischen Talmud-Ausgabe vollkommen erfüllen könnten. Inzwischen haben Sie selber die Ausführung des Werkes nebst einer englischen Uebersetzung unternommen und bereits 7 Bände drucken lassen. Jedermann muss deshalb Ihren Muth und Ihre Ausdauer bewundern. Auf ein Urtheil, ob Ihre Uebertragung zutreffend ist, muss ich bei meiner bescheidenen Kentniss der englischen Sprache verzichten; aber Ihr genaues Verständniss des Originals steht ja ausser Zweifel und an dem erforderlichen Beirath in Bezug auf die englische Fassung wird es Ihnen ja nicht gefehlt haben.

Jeder Schritt zur Verbreitung einer eingehenden Kentniss des Talmuds auch im Kreise derer, welche die Sprache des Originals nicht kennen, betrachte ich als nützlich und werthvoll. Ich wünsche und hoffe deshalb, dass Sie zur Ausführung Ihres grossen Unternehmens reichliche Unterstützung finden mögen,

Mit hochachtungsvollem Grusse,

LAZARUS,

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Footnotes

xiii:1 See introduction to synopsis in Tract Sabbath, Vol. I., p. xxix.; also note at end of synopsis in Vol. V.

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TRACT TAANITH (FASTING).

CHAPTER I.

REGULATIONS CONCERNING THE TIME WHEN MENTION IS MADE OF RAIN IN THE DAILY PRAYER, WHEN RAIN IS TO BE PRAYED FOR, WHEN FAST-DAYS ARE ORDERED ON WHICH TO PRAY ESPECIALLY FOR RAIN, AND THE CHARACTER OF SUCH DAYS OF MOURNING.

MISHNA: From what time should the power manifested in the descent of rain be commenced to be mentioned (in the daily prayer)? R. Eliezer said: "From the first day of the Feast of Tabernacles." R. Jehoshua, however, said: "From the last day of that festival." "For," said he to R. Eliezer, "since rain on the Feast of Tabernacles is considered unpropitious, why should it be mentioned in the prayers?" And R. Eliezer answered: "I do not mean to say that rain should be prayed for, but only that it should be mentioned with the words, 'He causeth the wind to blow, and the rain to descend in its proper time.'" "If so," rejoined R. Jehoshua, "such mention might be made at all seasons of the year."

Prayers for rain should not be said sooner than shortly before the commencement of the rainy season. R. Jehudah said: "The last of the ministers of the congregation who on the last day of the Feast of Tabernacles officiates at the reading-desk should mention the rain, but not he who officiates first. On the first day of Passover, the minister who officiates first (at the morning prayer) should still mention it, but not he who officiates last (at the Additional Service)."

GEMARA: Whence does the Tana of this Mishna adduce that the rain must be mentioned or prayed for at all (in the daily prayer), that he commences by saying: "From what time should it be mentioned"? He adduces this from the Mishna in Tract Rosh-Hashana (New Year) where he has learned that on the Feast of Tabernacles judgment is passed concerning rain, and

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having learned this, he proceeds to inform us when rain must be mentioned and prayed for. If so, let him teach us concerning the rain--why does he mention "the power manifested in the descent of rain"? Said R. Johanan: "Because rain descends with the power of God, as it is written [Job, v. 10]: 'Who giveth rain upon the surface of the earth, and sendeth out waters over the face of the fields'; and further it is written [ibid. ix. 10]: 'Who doeth great things which are quite unsearchable, and wonders which are quite without number (and rain is also included among these "great things").

Whence do we know, however, that mention must be made of rain in the eighteen benedictions of the daily prayer? Because we have learned in a Boraitha thus: It is written [Deut. xi. 13]: "To

love the Lord your God, and to serve him with all your heart and with all your soul." And what service can be performed with the heart? The service of prayer, and immediately following the passage quoted it is said [ibid. 14]: "I will send rain for your land in its due season, the first rain and the latter rain," etc.

R. Johanan said: Three keys are in the hands of the Holy One, blessed be He, which are not intrusted to any messenger, and they are: The key of rain, the key for a woman lying-in, and the key for the resurrection of the dead. The key of rain, as it is written [Deut. xxviii. 12]: "The Lord will open unto thee his good treasure, the heaven, to give the rain of thy land in its season"; the key for a woman lying-in, as it is written [Genesis, xxx. 22]: "And God remembered Rachel, and God hearkened to her, and opened her womb"; and the key for the resurrection of the dead, as it is written [Ezekiel, xxxvii. 13]: "And ye shall know that I am the Lord, when I open your graves and when I cause you to come up out of your graves, O my people." The sages of the West say, that also the key to a man's earnings are in the hands of God alone, as it is written [Psalms, cxlv. 16]: "Thou openest thy hand and satisfiest the desire of every living thing."

Why did not R. Johanan mention this also? Because R. Johanan may claim that rain itself is the means of earning a livelihood.

"*R. Eliezer said: 'From the first day of the Feast of Tabernacles.'*" The schoolmen propounded a question: Whence does R. Eliezer derive his teaching? Does he derive it from the palm-branch which is brought along for use at the morning service

only, or from the pouring of water, which is brought also in the evening, as the Master says: "It is written [Numb. xxix. 24.]: 'Their meat-offerings and their drink-offerings' (in plural), that is to say, that they may be brought even in the evening, and therefore R. Eliezer holds that mention of the rain should be made even on the eve of the Feast of Tabernacles?"

Come and hear: R. Abbahu said: "R. Eliezer derived his teaching from the palm-branch." Some say, that R. Abbahu had a tradition to that effect, while others hold that he takes it from the following Boraitha: From what time is mention made of rain in the daily prayer? R. Eliezer said: "From the time the palm-branch is taken" (*i.e.*, from the time the morning-prayer is said). R. Jehoshua, however, said: "From the time when the palm-branch is laid aside" (*i.e.*, from the time of the Additional Prayer, when the palm-branch is not used). Said R. Eliezer: "Because the four articles [1] of the Feast of Tabernacles are used only for the purpose of favorably inclining the judgment concerning rain; and as those four articles cannot grow without water, neither can the world exist without water, therefore mention of rain must be made even in the morning." And R. Jehoshua replied: "But rain during the festival of Tabernacles is considered an unpropitious event!" (because it prevents the sitting in the booth). Whereupon R. Eliezer rejoined: "I do not mean to say that rain should be prayed for but merely that it should be mentioned, and it is the same as the mention of the resurrection of the dead, which though this can take place only at the appointed time, it us nevertheless mentioned all the year round. Therefore if a man desires to mention rain in the prayer the whole year, he may do so."

Rabbi, however, said: "I say, that when a man ceases to pray for rain, he should also cease mentioning it." And R. Jehudah ben Bathyra said: "Mention of the rain should begin to be made

on the second day of the Feast of Tabernacles." R. Aqiba said: "Even on the sixth day." R. Jehudah in the name of R. Jehoshua said: "The last of the ministers of the congregation who on the last day of the Feast of Tabernacles officiates at the reading-desk should mention the rain; but not he who officiates first. On the first day of the Passover, the minister who officiates first should still mention it, but not he who officiates last."

We have learned in a Boraitha: Our sages did not impose the duty on a man to make mention of the dew and wind in the prayer; but if he desires to do so, he may. Why so? Said R Hanina: Because dew and wind are never withheld. Whence do I know this? Because it is written [I Kings, xvii. 1]: "Then said Elijah the Tishbite, who was of the inhabitants of Gilead, unto Achab, 'As the Lord the God of Israel liveth, before whom I have stood, there shall not be in these years dew or rain, except according to my word'"; and further, it is written [ibid. xviii. 1]: "Go, show thyself unto Achab; and I will give *rain* upon the face of the earth," but in the latter passage dew is not mentioned, because it was never withheld. It might be asked, however, why Elijah swore that it would not fall? He meant to say merely that no dew which would benefit the soil Would fall, for all the dew which should fall would not be productive of any good.

Whence do we know that the wind will not be withheld? Said R. Jehoshua ben Levi: "Because it is written [Zech. ii. 10]: 'For as the four winds of heaven have I spread you abroad,' which signifies, that as the world cannot exist without winds, so it cannot also exist without Israel."

R. Hanina said: From what we have learned so far, we see that if a man said in his prayer during the dry season, "He causeth the wind to blow," he is not obliged to say his prayer over again; but if he said "He causeth the rain to descend," he is bound to say the prayer again. During the rainy season if he omitted in his prayer the words, "He causeth the wind to blow," he need not be made to say the prayer over again, but if he omitted the words, "He causeth the rain to descend," he should be made to say the prayer again. And not only this, but if the man said in his prayer the words, "He causeth the wind to cease and the dew to vanish," he need not repeat the prayer, because those words are of no consequence.

We have learned in another Boraitha: The sages did not impose the duty of mentioning clouds and winds in the prayer; but if a man chooses to do so he may, because they are not withheld.

R. Jehudah said: The wind which comes after the rain does as much good as the rain itself; the sun which comes after the rain does as much good as two rains.

Rabha said: Snow to the mountains is as beneficial as five rains are to the ground, as it is written [Job, xxxvi. 6]: "For

to the snow he saith, 'Be thou on the earth'; likewise to the pouring rain, and to the pouring rains of his strength." [1]

Rabha said again: "Snow is good for the mountains; a light rain is good for the trees; a heavy rain is good for the budding fruit, and a shower is even beneficial to the seed lying dormant in

the ground."

Again Rabha said: "A young scholar is like a seed, lying in the ground, which, once sprouting, will continue to grow." And he said also: "When a young scholar appears excited, it should be known that it is his knowledge that is excited within him, as it is written [Jeremiah, xxiii. 29]: 'Is not thus my word like the fire? saith the Lord.'" And R. Ashi said that a scholar who is not as firm as iron cannot be considered a scholar, because the end of that passage reads: "And like a hammer that shivereth the rock." Said Rabhina: "Still, a man should train himself to speak calmly without anger, as it is written [Ecclesiastes, xi. 10]: 'And remove anger from thy heart.'"

R. Samuel ben Na'hmeni in the name of R. Jonathan said: Three men prayed to God for things that were not suitable (for prayer). Two were answered in a proper manner, but one was answered accordingly. They are: Eliezer the slave of Abraham, Saul the son of Kish, and Jephthah of Gilead. Concerning Eliezer it is written [Genesis, xxiv. 14]: "Be (she) the one thou hast appointed for thy servant Isaac." Now, the maiden may have been blind or maimed, but still the Lord ordained it so that Rebekah was the one. Concerning Saul the King it is written [I Samuel, xvii. 25]: "And it shall be that the man who killeth him, him will the king enrich and his daughter will he give him," etc. It might have happened that a slave or an illegitimate son might have accomplished the feat, but still the Lord destined it to be David. Concerning Jephthah it is written [Judges, xi. 3 1]: "Then shall it be, that whatsoever cometh forth out of the doors of my house . . . I will burn it up for a burnt-offering." The prayer was improper, because an unclean thing (such as a swine or a dog) might have come forth which would not be a proper sacrifice, and the answer was also not proper, for his own daughter came forth to meet him. This causes the wrathful query of Jeremiah the prophet, as it is written [Jeremiah, viii. 22]: "Is there no more balm in Gilead? or is no physician there?"

(meaning was there not Pin'has the high-priest in Gilead, who could have released Jephthah of his vow?). 1 And further, it is written [ibid. xix. 5]: "Which I had not commanded, nor spoken, and which had not come into my mind," which implies, "I had not commanded" refers to the sacrificing of the son of Mesha the King of Moab by his father [II Kings, iii. 27]: "now spoken," refers to the daughter of Jephthah; and "which had not come into my mind," refers to Isaac, whom his father Abraham was willing to sacrifice.

Said R. Berachiah: The congregation of Israel also prayed for an improper thing, but the Holy One, blessed be He, answered it in a proper manner, as it is written [Hosea, vi. 3]: "And let us feel it, that we may strive to know the Lord; bright as the morning dawn is his rising; and may He come as the rain unto us, as the latter rain that maketh fruitful the earth." And the Holy One, blessed be He, said: My daughter, thou askest a thing which at times is necessary and at other times is superfluous, but I will be to thee as a thing which is at all times needed, as it is written [Hosea, xiv. 6]: "I will be as the dew unto Israel." Once again the congregation of Israel prayed improperly, saying: I, Sovereign of the universe! Set me as a seal upon thy heart, as a seal upon thy arm" [Solomon's Song, viii. 6], and the Lord said: Thou askest me to do a thing which at times can be seen and at other times cannot, for sometimes the heart is closed and the arms are covered; but I will set thee as a seal in a place that is always exposed; as it is written [Isaiah, xlix. 16]: "Behold, upon the palms of my hands have I engraved thee."

"*Shortly before the commencement o the rainy season*." The schoolmen thought that mentioning rain in the prayer and praying for it was one and the same thing, therefore they said that this Mishna is in accordance with the opinion of R. Jehoshua, who said previously that rain must be mentioned from the time that the palm-branch is laid aside. Said Rabha to them: "Nay; this Mishna may even be in accordance with R. Eliezer's opinion, for mentioning rain and praying for it are two different things."

"*R. Jehudah said: 'The last of the ministers,'*" etc. Is this not a contradiction to what we learn in the next Mishna, namely: Until when is rain to be prayed for? R. Jehudah said: "Until

after the Passover," etc. Said R. Hisda: "This presents no difficulty. Our Mishna refers to the *mention* of the rain, while the Mishna quoted refers to *praying* for rain, and rain may be prayed for during the entire Passover." Said Ula: "This statement of R. Hisda is as vinegar to the teeth and smoke to the eyes. If a man may mention rain even when he should not pray for it, why should he not when praying for it also be allowed to mention it?" Therefore, says Ula, this contradiction can be explained from the fact that two Tanaim differ as to the opinion of R. Jehudah.

R. Assi in the name of R. Johanan said: "The Halakha prevails according to R. Jehudah."

How shall *we* do, however, who have two days as the last days of the festival? (Shall we apply the Halakha to the first of those two days or to the last?) Said Rabh: "The rain should be first mentioned in the Additional Prayer on the first of the two last days, then it should be omitted in all prayers until the Additional Prayer on the second of those days, when it should again be mentioned." Said Samuel to those who repeated Rabh's statement: "Go ye and tell Abba. this: 'Is it proper that after thou hast sanctified the day thou shouldst make it ordinary again? For in the afternoon prayer of that day thou hast omitted the mention of the rain.' Therefore I say that mention should be made first at the Additional Prayer on the first of the two last days, also in the afternoon prayer, then it may be omitted at night and in the morning of the following day; but it should be again mentioned in the Additional Prayer of the last day." Rabha, however, said: "As he once began to mention it, it should not be stopped again." And so also said R. Shesheth, and even Rabh retracted his former statement, for R. Hananel said in his name that twenty-one days should be counted from the New Year day the same as the ten days preceding the Day of Atonement are counted, and on the twenty-first day he should commence to make mention of the rain and should then not omit it in any of the prayers. So the Halakha prevails.

MISHNA: Till what time is the rain to be prayed for? R. Jehudah says until after the Passover; R. Meir says till the month of Nissan is passed, because it is said [Joel, ii. 23]: "And he hath caused to come down for you the rain, the first rain, and the latter rain in the first month."

GEMARA: Said R. Na'hman to R. Itz'hak: "Does the first rain then descend in the month of Nissan, does it not descend in Mar-Cheshvan? As we have learned in a Boraitha, namely:

[paragraph continues] 'The first rains fall in Mar-Cheshvan and the latter rains in Nissan.'" And R.

Itz'hak answered: R. Johanan said thus: The passage quoted in the Mishna, which states that both the first and the latter rains come down in the first month, refers to the time of Joel the son of Pethuel, when, it is written [Joel, i. 4]: "What the caterpillar left, hath the locust eaten," etc. In that year the month of Adar had already passed, and the first rain descended in the month of Nissan. Said the prophet to Israel: "Go and sow your seed." And they replied: "Should one who has a patch of barley or wheat eat it and live, or sow it and die (until the new grain becomes ripe)?" And he said to them: "Still, see that ye sow as much as ye can." Thereupon a miracle occurred, and the grain which had been hidden in the walls and in the subterranean passages of the ants was discovered. They then went and sowed their grain on the second, third, and fourth days of Nissan. On the fifth of Nissan the second rain fell, and on the sixteenth of that month they already offered up the new grain which had ripened. Thus the grain which should have taken six months to ripen, matured in eleven days; and the offerings which were usually brought of grain that had been growing six months, were that time brought of such as had only been growing eleven days, and concerning this generation it is written [Psalms, cxxvi. 5]: "Those that sow in tears shall reap in joyful song."

R. Na'hman said again to R. Itz'hak: "It is written [II Kings, viii. 1]: 'For the Lord hath called for a famine, and it is also coming on the land for seven years.' What was eaten during these seven years?" And he answered: "So said R. Johanan: In the first year they ate the reserve store that they had in their houses; in the second year they ate the reserve store they had in the fields; in the third they ate the flesh of ritually clean animals; on the fourth, the flesh of ritually unclean animals; in the fifth year they ate reptiles; in the sixth year the famine was so severe that people had to eat their own children; and in the seventh it reached a stage where some had to eat the flesh from off their own arms; and the saying [Isaiah, ix. 19]: 'They shall eat every man the flesh of his own arm,' was verified thereby."

Again, R. Na'hman asked R. Itz'hak: It is written [Hosea, xi. 9]: "The Holy One in the midst of thee, and I will not come into the city." How is this to be understood? Because the inhabitants did so much good in the city that they were called holy, and the Holy One did not wish to enter? And R. Itz'hak

answered: "Thus said R. Johanan: The Holy One, blessed be He, said that He would not enter the Jerusalem of the heavens until he could enter the Jerusalem below." "Is there then a Jerusalem above?" asked R. Na'hman. "Yea," was the answer, for it is written [Psalms, cxxii. 3]: 'Jerusalem! which art built as a city wherein all associate together (*i.e.*, Jerusalem is built as that Jerusalem which is connected (associated) with it. Hence there is another Jerusalem, and that is above in the heavens).

R. Na'hman again asked R. Itz'hak: 'How is the passage [Jeremiah, x. 8]: 'But at once shall they be shown to be brutish and foolish: it is a doctrine of vanities, it concerneth but wood,' to be understood?" And he replied: "Thus said R. Johanan: One thing will cause men to burn in Gehenna, and that is idolatry; for it is said above, a doctrine of vanities, it concerneth but wood,' and further, we find it written [ibid. 15]: 'They, are vanity, the work of deception; in the time of their punishment shall they vanish.'"

R. Na'hman asked R. Itz'hak again: "What does the passage [Jeremiah, ii. 13], 'For two evils have my people committed,' mean? Are there only two, and the twenty-four which are

subsequently enumerated [1] (in the same chapter) were forgiven them?" And R. Itz'hak answered: Thus said R. Johanan: One evil which is considered as two--namely, idolatry--as it is written further [ibid.]: "Me have they forsaken, the source of living waters, to hew out for themselves cisterns, broken cisterns, that cannot hold water"; and it is also written [ibid. 10 and 11]: "For pass over to the isles of the Kittites, and see; and unto Kedar send, and consider well: and see if anything like this hath happened. Hath a nation exchanged its gods, which are yet no gods? and still my people hath exchanged its glory for that which cannot profit." In a Boraitha we have learned as follows: The Kittites worship fire and the inhabitants of Kedar worship water, and though knowing that water extinguishes fire, they nevertheless did not exchange their god, while my people exchanged their god for "that which cannot profit."

R. Na'hman and R. Itz'hak sat together at a meal, and R. Na'hman said to the latter: "Let Master relate something!" And R. Itz'hak said: "So said R. Johanan: 'While eating one should not talk, lest the food enter the windpipe (trachea) before

the gullet and inflict an injury.'" After having finished their meal, he said: "So said R. Johanan: 'Jacob our father never died.'" And R. Na'hman rejoined: "Then was it in vain that he was mourned and embalmed?" And R. Itz'hak replied: "I make this assertion from the following passage [Jeremiah, xxx. 10]: 'And thou, do not fear, O my servant Jacob, saith the Lord, and be not dismayed, O Israel; for, behold, I will save thee from afar, and thy seed from the land of their captivity; and Jacob shall return, and shall be at rest, and be secure, with none to terrify him.' And Jacob is compared to his children; as the latter are still living so is he also." [1]

When R. Na'hman and R. Itz'hak were about to part, the former said to R. Itz'hak: "Bless me." And he answered: "I shall tell thee a parable to which this can be compared: A man once went into the desert, and when hungry, thirsty, and tired came to a tree bearing luscious fruit and affording plenty of shade, and underneath which there was a spring of water. He ate of the fruit, drank of the water, and rested beneath the shade. When about to leave he turned to the tree and said: 'Tree, tree, wherewith can I bless thee? That thy fruit may be sweet--it is already sweet; that thou shouldst afford plenty of shade--that also thou dost; that a spring may be near thee--even that thou hast. The one thing left me which I can wish for thee is, that all trees planted from thy seed may be as fruitful as thou art.' So it is with thee. Should I bless thee with knowledge--that thou hast; should I bless thee with riches--that thou also hast; should I bless thee with children--even children thou lackest not; hence all I can wish thee is that thy seed be as prosperous as thou art."

The rabbis taught: Why is the first rain called Yorah? [2] Because it teaches the people to paint their roofs, take in the fruit, and otherwise prepare for the winter; and also because it satiates the earth and penetrates into the very depths, as it is written [Psalms, lxv. 11]: "Watering her furrows abundantly; smoothing down her ridges, thou softenest her with showers; thou blessest her growth." Another thing that is meant by "Yorah" is "a rain that comes without storm"; and as the first rain is intended for a blessing, so also is the latter rain. And whence do we know that the first rain is intended for a blessing?

[paragraph continues] From the passage [Joel, ii. 23]: "And ye children of Zion, be glad, and rejoice in the Lord your God; for he hath given you the first rain in beneficence, and he hath caused to come down for),on the rain, the first rain and the latter rain in the first month."

The rabbis taught: The first rain falls in the month of Mar-Cheshvan and the latter rain in Nissan. Whence do we know that the first rain should fall in the month of Mar-Cheshvan, perhaps it would do if it fell in the month of Kislev? Because the first and latter rains are mentioned together and by the latter rain is meant that falling in Nissan; for otherwise it would be of no benefit. Hence by the first rain is meant that falling in Mar-Cheshvan. In another Boraitha it is added that such is the dictum of R. Meir; but the sages say: "The first rain falls in Kislev." Who are those sages? Said R. Hisda: That is R. Jose, who says, in another Boraitha, that the time for the first rain is the third day of Mar-Cheshvan; ordinarily it falls on the 7th of that month, and if it is delayed it falls on the 17th. Such is the dictum of R. Meir. But R. Jehudah says the three dates are the 7th, 17th, and 23d, and R. Jose says they are the 17th, the 23d, and the 1st of Kislev; and he added that fasting for rain is not necessary until the 1st of Kislev has passed without rain having fallen. Said R. Hisda: "The Halakha prevails according to R. Jose."

Ameimar taught the same as R. Hisda with reference to another Boraitha: We have learned: As early as the 3d of Mar-Cheshvan, rain should be prayed for. R. Gamaliel said: "On the 7th of that month is the time when the delayed rain should be prayed for." Said R. Hisda: "The Halakha prevails according to R. Gamaliel."

According to whom will the following Boraitha be? We have learned: R. Simeon ben Gamaliel said: "If there was rain for seven consecutive days it must not be considered as too much rain, but merely that there was a threefold fructification of the earth by the rain." (This will be according to R. Jose, who said that seven days elapse between each fructification, and R. Hisda said the Halakha prevails according to R. Jose.) Said R. Abbahu: "Why is it called fructification? Because it fructifies the earth; for R. Jehudah said that the rain is the husband of the earth, as it is written [Isaiah, Iv. 10]: 'For as the rain and the snow come down from heaven, and return not thither, but water the earth, and render it fruitful, and cause it to bring forth plants.'"

R. Abbahu said again: "The first fructification takes place if the rain penetrates one span into the ground, and the second fructification is accomplished when the soil is so pliable that it can be used to stop up a barrel without the addition of other water."

R. Hisda said: "If at the first fructification the soil becomes so pliable that it can be used to stop up a barrel, it cannot be considered as if the heavens were closed (and no rain had fallen)." He said again: "If it rained in some cities, but was dry in others, it cannot be said that the heavens are closed." This is not so! For is it not written [Amos, iv. 7]: "And I also had indeed withholden from you the rain, when it was yet three months to the harvest; and I caused it to rain upon one city, and upon another city I caused it not to rain; one piece of land was rained upon, and another piece whereupon it rained not became dried up." And R. Jehudah said, in the name of Rabh, that the entire verse was in the form of a curse? This presents no difficulty. For the verse signifies that in one city it will rain too much and in another it will not rain at all, which is a curse; but if it rain ordinarily in one city and not at all in another (one city can draw its supply from the other). Said R. Ashi: "This very thing may be inferred from the passage itself; for it

says 'one piece of land was rained *upon*,' and that implies that in that piece of land there will be too much rain." [1]

R. Abbahu said: "The day of rain is of more importance than the day of resurrection; for on the latter day only the righteous will arise from the dead, but rain falls for all alike, righteous and wicked." And R. Abbahu differs with R. Jose, who declares that the day of rain is just as important as the day of resurrection, and for that reason is mentioned in the prayer at the benediction regarding the resurrection of the dead.

R. Jehudah said: "The day of rain is as important as the day on which the Law was given, because it is written [Deut. xxxii. 2]: 'My doctrine shall drop as the rain,' and by doctrine is meant the Law; for it is written [Proverbs, iv. 2]: 'For good doctrine do I give you: my law must ye not forsake.'" And Rabha said: "The day of rain is even more important than the day on which the Law was given; for it says: 'My doctrine shall drop as the rain,' and surely the thing upon which another is

dependent, or to which another is compared, is more important than that other."

The same interpreters cite the following contradiction: It is written [Deut. xxxii. 2]: "My doctrine shall drop as the rain, my speech shall distil as the dew." In the first he says "rain," and in the other "dew." (It is said above that dew is always good, but with rain the case is different?) From this it is to be signified that if the scholar is a conscientious man, consider him as dew, which is always useful; but if he is not, turn your neck to him [1] as we do to rain.

We have learned: R. Banaha said: "He who studies the Law for the honor of God, his knowledge becomes to him the elixir of life, as it is written [Proverbs, iii. 18]: 'A tree of life is she to those that lay hold on her'; and it is also written [ibid. 8]: 'It will be healing to thy body'; while, further, it is said [ibid. viii. 35]: 'For he who findeth me, findeth life'; but he who studies the Law, not for the honor of God (but in order to injure others or for other purpose), his knowledge becomes to him a deadly poison." As it is written in the passage just quoted, the term *Yaaroph* is to be interpreted as the term *Vearphu* [Deut. xxi. 4]: "And they shall break there the neck of the heifer in the valley."

R. Jeremiah said to R. Zera: 'Let Master go and teach." And he answered: "My heart is weak, and I cannot." "Then let Master relate some trifling thing from the Haggada," said R. Jeremiah. And R. Zera spoke: "Thus said R. Johanan: 'It is written [Deut. xx. 19]: "The man is a tree of the field."' Is then a man a tree of the field? The passage says previously: 'For of them mayest thou eat, and thou shalt not cut them down'; and further, it says [ibid. 20]: 'Only those trees of which thou knowest that they are not fruit-trees, thou mayest destroy and cut down.' And this implies that the man is compared to a tree, and that if thou knowest a man to be a scholar and a good man, thou shouldst enjoy his company and derive benefit from him; but if he be a scholar but an evil man, thou shouldst avoid him and cut off thy intercourse with him."

R. Hama bar Hanina said: "It is written [Proverbs, xxvii. 17]: 'Iron is sharpened by iron,' and this applies to two scholars who study together, when one sharpens the intellect of the other."

Rabba bar bar Hana said: Why were the words of the Law compared to fire, as it is written [Jeremiah, xxiii. 29]: "Is not this my word like the fire? saith the Lord." As fire cannot burn without having hold of an object, so the words of the Law cannot remain with one who is alone.

R. Na'hman bar Itz'hak said: Why are the words of the Law compared to a tree, as it is written [Proverbs, iii. 18]: "A tree of life is she to those that lay hold on her." As a small piece of wood kindles a larger, so a lesser scholar brightens the wits of the greater by his queries, and this is as R. Hanina has said: "I have learned much from my teachers, more from my colleagues, and most of all from my disciples."

R. Hanina bar Papa cited a contradiction: "It is written [Isaiah, xxi. 14]: 'Toward him that is thirsty they *bring* water'; and further, it is written [ibid. lv. 1]: 'Every one of ye that thirsteth, *come* ye to the water'?" (Th is presents no difficulty.) If a man is a diligent disciple and cannot come to the master, the master should go to him; but if he is not a diligent disciple, the master need not go to him, but if he comes to the master he should be taught.

R. Hanina bar Hama cited another contradiction: It is written [Proverbs, v. 16]: "So will thy springs *overflow* abroad"; and further, it is said [ibid. 17]: "They will be *thy own* only"? This means to say, that if a man is a thorough scholar his teachings should be allowed to spread abroad; but if not, they should be for him alone.

R. Hanina bar Idi said: Why are the words of the Law compared to water, as it is written [Isaiah, xxi. 14]: "Toward him that is thirsty they bring water"? Because as water leaves a higher place for a lower, so the words of the Law cannot be retained by one who does not deport himself in a lowly (humble) manner.

R. Oshiya said: Why are the words of the Law compared to the following three beverages--water, wine, and milk? "To water," as it's written in the verse just quoted; to "wine and milk," as it is written [Isaiah, Iv. 1]: "Yea, come, buy without money and without price wine and milk." In order to teach us, that as those three beverages can best be kept in common utensils such as wooden or earthen vessels, so the Law can only be retained by those who are humble in their manner. As the daughter of the Cæsar once said to R. Jehoshua b. Hananiah: "Alas for such handsome wisdom, which is in an ugly vessel" (it means that the

rabbi was very homely). And he said to her: "In what does your father keep his best wine?" And she answered: "In earthen vessels." And he rejoined: "Then what is the difference between your father and a commoner?" And she asked: "In what, then, shall it be kept?" And he said: "You, who are wealthy and mighty, ought to keep it in golden and silver vessels!" She then told her father, and he commanded that his wine should be kept in vessels of gold and silver. And it became sour. When the Cæsar was informed of this, he asked his daughter: "Who told you that we should keep our wine in golden vessels?" And she named the above rabbi. He was sent for, and questioned as to the reason of his advice. And he rejoined: "This was only an answer to the question of the princess." "But are there not," the Cæsar said, "men who are handsome and nevertheless are very scholarly?" "Believe me," said the rabbi, "that if they would be homely,

their wisdom would be greater still."

R. Hama bar Hanina said: The day of rain is of equal importance with the day on which heaven and earth were created, as it is written [Isaiah, xlv. 8]: "Drop down, ye heavens, from above and let the skies distil blessing; let the earth open, and let them all be fruitful of prosperity, and let righteousness spring up likewise: I the Lord have created it." And as it is said "created *it*" and *not* "created *them*," it proves that rain is referred to; (and hence the day of rain is equally as important as the day of the creation of the heavens and earth).

R. Oshiya said: The day of rain is so great that, even if a man be blessed with prosperity, the prosperity becomes more fruitful, as it is said in the verse quoted: "Let the earth open, and let them all be fruitful of prosperity."

R. Tanhum bar Hanilai said: "Rain does not descend unless the sins of Israel are forgiven, as it is written [Psalm lxxxv. 2-3]: 'Thou hast been favorable, O Lord, unto thy land; thou hast brought back the captivity of Jacob. Thou hast forgiven the iniquity of thy people; thou hast covered over all their sin. Selah.'" Said Zeiri of Dehabath to Rabina: "Ye learn this from the above passage. We, however, apply to this the following: [I Kings, viii. 34]: 'Then hear thou in heaven, and forgive the sin,'" etc. R. Tanhurn the son of R. Hyya of the village Acco said: "Rain is not withheld unless the enemies of Israel (meaning Israel itself) deserve to be destroyed, as it is written [Job, xxiv. 19]: 'Drought and heat speedily consume the snow-waters:

so doth the grave those who have sinned.'" Said Zeiri of Dehabath to Rabina: "Ye learn this from the above passage. We, however, apply to this the following [Deut. xi. 17]: 'And he will shut up the heavens . . . and ye shall perish quickly.'"

R. Simeon ben Pazi said: "Rain is not withholden except from such as slander each other, as it is written [Proverbs, xxv. 23]: 'The north wind bringeth forth rain; so doth secret talking, angry countenances.'"

R. Sala said in the name of R. Hamnuna: "Rain is withholden only on account of the impudent, as it is written [Jerem. iii. 3]: 'And though the early showers were withholden, and the latter rain came not: yet hadst thou a forehead of an adulterous wife, thou refusedst to feel shame.'"

R. Sala said again in the name of R. Hamnuna: "The man who is impudent will finally stumble into idolatry." And he derives it from the passage just quoted, "Yet hadst thou a forehead of an adulterous wife." And R. Na'hman said: "An impudent man must be considered as having already stumbled into idolatry; for the passage does not say, 'thou *wilt have* a forehead,' etc., but I thou *hadst*.'"

Rabba bar Huna said: "An impudent man may be classed with the wicked, as it is written [Proverbs, xxi. 29]: 'A wicked man showeth impudence in his face.'" And R. Na'hman bar Itz'hak said: "He may even be hated, as it is written [Eccles. viii. 1]: 'And the boldness of his face Yesuna (will be lessened)' Do not read 'Yesuna' (will be lessened) but 'Yisonei' (may be hated)."

R. Joseph said: Rain is witholden only for abolishing the Law, as it is written [Job, xxxvii. 21]: "Yet men see not the light which is bright in the skies, when the wind hath passed along and purified them." By *light* is meant the Law, as it is written [Prov. vi. 23]: "For the commandment is a lamp, and the law is light"; and *bright*, the disciples of R. Ishmael interpret thus: "Even when the sky was spotted with clouds, the wind of the law clears them away."

R. Ami said: Rain is withholden solely on account of the sin of robbery, as it is written [Job, xxxvi. 32]: "His hands he covereth with light." By "his hands" is meant the hands of robbery, as it is written [Jonah, iii. 8]: "And from the violence which is in their hands"; and by "light" is meant rain, as it is written [Job, xxxvii. 11]: "He scattereth the cloud of his lightning."

R. Ami said again: It is written [Eccles. x. 10]: "If the iron be blunt and man do not whet the edge, then must he exert more strength; but the advantage of making it properly sharp is wisdom," which signifies, that if the heavens became closed as the "iron is blunt," it was because of the persistent wickedness of the men who "did not whet the edge" (of righteousness). What is the remedy for the evil? Praying for mercy, as it is said: "Then must he exert more strength"; and so much the more, will they be granted mercy if at the beginning their deeds were those of wisdom.

Resh Lakish said: If thou shouldst see a scholar whose mind is blunt as iron, because of unsystematic study, the remedy for him is, that he should devote more time to systematic study in the colleges, as it is said, "Then must he exert more strength." And a better remedy yet is, if he arrange all he had hitherto learned in order, as Resh Lakish would arrange his studies forty times before entering into the presence of R. Johanan [deriving it from the forty days which Moses occupied in receiving the Law on Mount Sinai]. R. Ada bar A'hbah would arrange his studies twenty-four times before entering into the presence of Rabha [deriving it from the twenty-four books of the Scriptures.]

Rabha said: "If thou shouldst see a disciple whose mind is as blunt as iron because his teacher does not thoughtfully explain the teachings to him, the remedy for him is, to request his friends to intercede for him with the teacher in order that the explanations may be more lucid and especially if the disciple's behavior is proper towards the teacher and others." [1]

R. Ami said again: It is written [Eccles. x. 11]: "If the serpent do bite because no one uttered a charm, then hath the man that can use his tongue (in charming) no preference," which signifies that if thou shouldst see a generation in whose time the heavens became firm as copper and would not give forth dew and rain, because there was no one to utter a silent prayer for rain, the remedy is to obtain someone who can pray silently for the removal of the curse. And if the one who is able will not pray, what benefit will he derive from it? hence it is more than probable that he will do so. If, however, he persist in refusing, the most pious of that generation should be appealed to. And

if he did pray and was answered, and because of that he becomes too proud, he brings down wrath upon the world.

Rabha said: Two scholars who reside in one town and are not agreeable to each other in Halakha, they cause wrath and bring the same down as it is written [Job, xxxv. 33].

Resh Lakish said: It is written [Eccl. x. 11]: "If the serpent do bite because no one uttered a charm, then hath the man that can use his tongue (in charming) no preference." In the future all the wild beasts will come to the serpent and question him thus: A lion presses and eats, the wolf tears and eats; but thou, what benefit dost thou derive from killing the creatures? And his answer will be: Do, then, the evil tongues derive any benefit?

Again R. Ami said: The prayer of a man is not answered unless he put his whole soul into it, as it is written [Lamentations, iii. 41]: "Let us lift up our heart with our hands unto God in the heaven." This is not so! For did not Samuel through an interpreter preach as follows: It is written [Psalms, lxxviii. 36 and 37]: "Nevertheless they prayed insincerely to him with their mouth, and with their tongue they lied unto him. For their heart was not firm with him, and with their tongue they lied unto him"; and further, it says [ibid. 38]: "Still he, being merciful, forgave the iniquity." This presents no difficulty. If a man prays alone, he must put his whole soul into it; but if a congregation is engaged in prayer and one of the members does not happen to be as devout as he should, the prayer is nevertheless heard.

R. Ami said again: "Rain falls only for the sake of those who are truthful, as it is written [Psalms, lxxxv. 12]: 'Truth will grow up out of the earth and righteousness will look down from heaven.'" And he said again: "Come and see how great are the men who have faith, and I know this from the story of the cat and the well; for if a man have faith in a cat and a well so much the firmer should his faith be in God." 1

R. Johanan said: "He who justifies all his actions here below, is closely scrutinized by the Power above, as it is written [Psalms, lxxxv. 12]: 'Truth will grow up out of the earth and righteousness will look down from heaven.'" R. Hyya bar Abin in the name of R. Huna adduces the same teaching from another passage [Psalms, xc. 11]: "Which is like the fear of thee," implying that as a man endeavers to prove his fear of the Lord here below, so is he scrutinized as to his sincerity from above. Resh Lakish adduces this same teaching from the passage [Isaiah, lxiv. 4]: "Thou acceptest him that rejoiceth and worketh righteousness, those that remember thee in thy ways: behold, thou wast wroth, for we had sinned on them continually; and can we thus be saved?" which implies that when we accept one who wishes to appear righteous before us, his sins are looked into from above and he is closely observed.

R. Jehoshua ben Levi said: "One who rejoiceth in his affliction brings prosperity to the whole world, because the last two words of the above-cited verse are 'Aulom Venosha,' which should be interpreted, 'the world will be helped.'"

Resh Lakish said: It is written [Deut. xi. 17]: "And he will shut up the heaven." When the heaven is shut up from giving rain, it is compared to a woman lying-in, who has all the pain of travail but cannot bear the child; and this is what Resh Lakish said in the name of Bar Qappara:

The expression "shut up" is said about rain, as quoted above, and the same expression is used of a woman [Gen. xx. 17]: "For the Lord had fast closed up 1 every womb." It is said "birth" of a woman [ibid. xxx. 23]: "And she conceived, and bore a son"; and the same expression is used for rain [Isaiah, Iv. 10]: "And render it fruitful," 2 etc. It is said "visiting" of a woman [Gen. xxi. 1]: "And the Lord visited Sarah"; and the same expression is used for rain [Psalms, lxv. 10]: "Thou hast visited 3 the earth and waterest her abundantly; thou greatly enrichest her; the brook of God is full of water."

In the days of R. Samuel ben Na'hmeni there were two evils in the land--famine and pestilence--and the sages said: What shall we pray for? We must not pray for two things, and we do not know which to pray for--the cessation of famine or of pestilence. Let us pray, then, for the abatement of the pestilence and we shall suffer with the famine. Said R. Samuel ben Na'hmeni to them: "Nay, let us pray for relief of the famine; for if the Merciful One will give bread he will give it to the living, surely not to the dead, and thus the pestilence will cease of itself, as it is written [Psalms, cxlv. 16]: 'Thou openest thy hand and satisfiest the desire of every *living* thing.'" Whence do we know that two things must not be prayed for? From the passage [Ezra, viii. 23]: "So we fasted and besought our God for this." Whence we see that if they besought God for *this*, there must have been something else besides, and only one thing was prayed for.

In the days of R. Zera the government issued proclamations detrimental to the interests of the Jews, and remarked that no fast-days were to be kept. Said R. Zera to the people: "Let us take a fast-day upon ourselves *now*, and when the government shall have rescinded its decree, we will then fast." And they asked him: "Whence dost thou know that this would be beneficial?" And he answered: "I know it, because it is written [Daniel, x. 12]: 'And he said unto me: Fear not, Daniel! for

from the first day that thou didst set thy heart to obtain understanding, and to fast before thy God, were thy words heard: and I am come in consequence of thy words.'"

R. Itz'hak said: "Even if the years be years of drought, as were the days of Elijah, and rain fall on the eve of Sabbaths, it cannot be considered as a sign of blessing." Again, R. Itz'hak said: "The day of rain is such a blessed day, that even the coin in one's pocket is blessed; for it is written [Deut. xxviii. 12]: 'To give the rain of thy land in its season, and to bless all the work of thy hand.'" 1

R. Johanan said: "Rain is not withholden only on account of such men as promise publicly to give charity and then do not carry out their promise, as it is written [Proverbs, xxv. 14]: 'Like clouds and wind without rain, so is a man that vaunteth falsely of a gift.'"

R. Johanan said again: "The passage 'thou shalt truly tithe' signifies that a man should give tithes in order that he may himself become rich. 2 R. Johanan met a child of Resh Lakish (after the latter's demise) and he asked him: "How far along art thou in thy studies?" And the child answered: "I am at the passage [Deut. xiv. 22]: 'Thou shalt truly tithe,'" and then asked, "What does that passage mean?" R. Johanan replied: "It means: Give tithe in order that thou mayest become rich." The child then said: "Whence dost thou know this?" And he replied: "Go and try it, and see if it is not so." But the child rejoined: "But is it then allowed to try God--is it not

written [Deut. vi. 16]: 'Ye shall not tempt the Lord your God.'" And R. Johanan said: "Thus said R. Hosea: 'In all things except tithes, for it is said [Malachi, iii. 10]: "Bring ye all the tithes into the storehouse, that there may be provision in my house, and prove me but herewith, saith the Lord of hosts, if I will not open for you the windows of heaven, and pour out for you a blessing, until it be more than enough."'" Replied the child: "If I had already come to that verse (in my studies) I would not have needed thee nor Hosea thy rabbi."

Once more R. Johanan met the child of Resh Lakish, learning the passage [Proverbs, xix. 3]: "The folly of man perverteth his way and against the Lord will his heart rage." R. Johanan sat

and pondered, saying: "Is there then anything written in the Hagiographa, of which there should not even be a hint in the Pentateuch?" Said the child of Resh Lakish to him: "Is there not a hint of this in the Pentateuch? Is it not written, [Genesis, xlii. 28]: 'And their heart failed them and they were afraid, saying one unto another, What is this that God hath done unto us'?" (and was it not their own folly in selling their brother, that brought the sons of Jacob into their position)? R. Johanan (who had very large eyebrows--so large, in fact, that he had to lift them with silver pincers before he could see well) raised his eyes and wished to gaze at the child, when the mother of the child immediately took him away, saying: "Go away from him, or he may do unto thee what he did unto thy father." (What R. Johanan did to Resh Lakish is explained in Tract Baba Metziya.)

R. Johanan said: Rain may descend even for the sake of the merits of one man, but general prosperity comes only for the sake of the public, as it is written [Deut. xxviii. 12]: "The Lord will open unto *thee* his good treasure, the heaven, to give rain," etc.; and it is written [Exod. xvi. 4]: "I will rain for *you* bread from heaven."

An objection was raised: R. Jose the son of R. Jehudah said: Three good leaders were given to Israel, and they are: Moses, Aaron, and Miriam; and three good gifts were given through them, namely: the well of water which the Israelites had along with them in the desert was given them for the sake of Miriam; the 'pillar of cloud which led them by day was given them on account of Aaron, and the Manna was given them for Moses' sake. When Miriam died, the well vanished, as it is written [Numbers, xxi. 1]: "Miriam died there, and was buried there"; and immediately afterwards it says: "And there was no water for the congregation." Still, the well was again given to the children of Israel through the prayers of Moses and Aaron.

When Aaron died, the pillar of cloud left. 1 Still, both the well and the pillar of cloud were returned for the sake of Moses; but when Moses died, everything vanished, as it is written [Zechariah, xi. 8]: "And I removed the three shepherds in one month." Did then Moses, Aaron, and Miriam die in the same month? Did not Moses die in Adar, Aaron in Abh, and Miriam in Nissan? Therefore infer from that passage that the three gifts which were given to Israel vanished in the same month that Moses died.

[paragraph continues] Does all this not prove that the Manna was given solely on Moses' account? Nay; Moses prayed for the whole congregation, and thus he was equal to the whole

congregation.

R. Huna bar Manoah, R. Samuel bar Idi, and R. Hyya of Vastania were disciples of Rabha. When Rabha died, they came to R. Papa. When R. Papa would say something that was not quite pleasing to them, they would wink at one another; and he became downhearted. At one time in a dream the passage just quoted: "And I removed the three shepherds in one month," was read to him. On the morrow before they left him he blessed the three disciples, saying: "The rabbis may go in peace" (not wishing that any harm might befall them).

R. Shimi bar Ashi was also a visitor at the college of R. Papa, and would put so many questions to him that it happened at times that R. Papa could not answer them. One day R. Shimi noticed R. Papa, who was reciting the prayer at which the face was generally hidden in the arm, and overheard him pray: "May the Merciful One save me from the disgrace which I suffer at the hands of that Shimi." So at that time he resolved to be silent and not trouble R. Papa any more with questions.

We have learned in a Boraitha: R. Eliezer said: The whole world drinks of the water of the ocean, as it is written [Gen. ii. 6]: "But there went up a mist from the earth and watered the whole face of the ground." Said R. Jehoshua to him: "How can that be? Are not the waters of the ocean salty?" And he replied: "They become sweet in the mist (when evaporating)." R. Jehoshua, however, says: The whole world drinks of the waters above, as it is written [Deut. xi. 11]: "From the rain of heaven doth it drink water." Thus the significance of the first-quoted verse is, that the mists rise unto heaven, open their mouths like bags, and drink in the water, as it is written [Job, xxxvi. 27.]: "For he taketh away drops of water, which are purified into rain in the mist"; and the mist is porous like a sieve, through which the rain descends to the earth, as it is written [II Samuel, xxii. 12]: "Heavy masses of water, thick clouds of the skies," and the space from one drop to another is only the width of a hair. All this teaches us that the day of rain is as great as the day of the creation of heaven and earth.

The rabbis taught: The land of Israel was created first of all and the rest of the world afterwards, as it is written [Proverbs, viii. 26]: "While as yet he had not made the land and open fields," and the land of Israel was already made.

The land of Israel is watered by the Lord himself, while the rest of the world is watered by a messenger, as it is written [Job, v. 10]: "Who giveth rain upon the surface of the earth, and sendeth out waters over the face of the fields."

The land of Israel is watered by rain, while the rest of the world is watered by the residue remaining in the clouds, and this is inferred from the same passage [Job, v. 10], which also implies that the land of Israel is watered before the rest of the world.

R. Jehoshua ben Levi, however, said that the whole world is watered with the residue remaining after the garden of Eden had been watered, as it is written [Gen. ii. 10]: "And a river went out of Eden to water the garden"; and in a Boraitha we have learned that with the residue of water left over from a quantity necessary to water a Kur of land, a Tharqabh (one-sixtieth of a Kur) of land can be watered.

The rabbis taught: Egypt measures four hundred square Parsah, and that is only one-sixtieth of Mesopotamia; Mesopotamia is a sixtieth of the whole earth; the earth is one-sixtieth of the garden of Eden; the garden is one-sixtieth of Eden, and Eden is in turn only one-sixtieth of Gehenna. Thus it follows that the whole world is but a lid to the pot. Others say again that Gehenna is immeasurable, while still others maintain that Eden is immeasurable.

R. Oshiya said: "It is written [Jeremiah, li. 13]: 'O thou that dwellest upon many waters, great in treasures,' etc., which implies that the reason, why Babylon is great in treasures is because it dwelleth upon many waters." Rabh said: "Rich indeed is Babylon, that reapeth her grain without rain." Abayi said: "I know of a tradition which tells me that swampy ground is better than dry." [1]

MISHNA: On the third of Mar-Cheshvan prayers for rain should be said; but according to Rabban Gamaliel, on the seventh of the same month--namely, fifteen days after the Feast of Tabernacles--in order to give the last of the Israelites (returning to their homes from the city of Jerusalem, where they had been during the festivals) an opportunity to reach the River Euphrates (the northern boundary line of Palestine).

GEMARA: Said R. Elazar: "The Halakha prevails according to R. Gamaliel." We have learned in a Boraitha: Hananiah said: In exile, prayers for rain should be said sixty days after

the equinox of Tishri"; and Huna bar Hyya said in the name of Samuel that the Halakha prevails according to Hananiah.

The schoolmen propounded a question: "What about the sixtieth day after the equinox? Is it included in the sixty days, or is it counted as one of the days on which the prayers are already to be recited?" Said R. Papa: "The Halakha prevails: The sixtieth is considered as the day after the sixty days."

MISHNA: If the seventeenth of Mar-Cheshvan have passed without the rain having yet descended, private individuals commence to keep three fast-days. As soon as it becomes dark on the fast-days, however, it is allowed to eat and to drink; and on the fast-days themselves it is permitted to work, to bathe, to anoint the body, to wear shoes, and to perform the duty of cohabitation.

If the new moon of Kislev has arrived without rain having yet descended, the supreme court shall order three public and general fast-days. As soon as it becomes dark on those fast-days, however, it is lawful to eat and drink; and on the fast-days themselves it is permissible to work, to bathe, to anoint the body, to wear shoes, and to perform the duty of cohabitation.

GEMARA: Who are meant by private individuals (in this Mishna)? Said R. Huna: "The rabbis." We have learned in a Boraitha that if private individuals commenced to keep the fast-days, they should fast on Monday, Thursday, and the following Monday; and they may interrupt their fast-days if a Monday or a Thursday fall on the day of the new moon or on such days as are mentioned in the Roll of Fasts.

The rabbis taught: "A man should not say: 'I am too young a scholar to be counted in among the rabbis, and thus be included in the meaning of the term "private individuals," hence I need not keep the fast-days'; but every young scholar should consider himself a rabbi for that purpose."

Who is called a private individual? One who is worthy of being elected Parnass (president) of the congregation. And who is called a young scholar? One who is asked concerning passages in his studies even in Tract Kalah and can make satisfactory answer.

The rabbis taught: Not every one who would count himself among the private individuals may do so, and not every one who would count himself among the young scholars may do so. Such is the dictum of R. Simeon ben Elazar. Rabban Simeon ben Gamaliel, however, said: "This only applies to those who do so

for the glory thereof, but not to such as only incur an inconvenience by so doing; and the latter, when counting themselves among such persons, should be favorably remembered therefor."

The rabbis taught: One who fasted on account of some trouble, or for the recovery of a sick person, even though the trouble had passed away during the day of his fasting, or the sick person had recovered during that day, should nevertheless continue to fast until nightfall. One who came from a place where there was no fast-day to a place where there was a fast-day must keep that fast-day; but if a man came from a place where there was fasting to a place where there was none, he must nevertheless quietly end his fast. If he forgot that the day was a fast-day, and ate and drank, he should not at least make it apparent to others, and should also not participate in any pleasures on that day, as it is written [Gen. xlii. 1]: "Why do ye look at one another?" which signifies, that Jacob said to his sons: Why do ye make it appear that ye are satisfied when the other races of Esau and Ishmael around you are starving?

R. Jehudah said in the name of R. Hyya: One who travels on the road should not eat much--no more, in fact, than is eaten in a year of famine. Why so? Here in Babylon they say: "In order that the stomach be not filled and thus make walking difficult"; but in Palestine they say: "In order that the supply of food which is carried along be not too quickly exhausted." The difference in the two opinions is therefore concerning a man on board of a ship. There is fear of the supply of food being exhausted, but not that walking will be hindered. On the other hand, the difference of opinion also concerns a man travelling from village to village. There is no fear of the supply of food becoming exhausted, but there is fear of overloading the stomach and thus impeding further progress.

R. Papa when travelling would eat a small loaf after traversing a Parsah, because he thought that eating too much would be injurious to the stomach.

R. Jehudah said in the name of Rabh: A man who has plenty in years of famine and still eats sparingly because others have but a small supply will be saved from sudden death, as it is written [Job, v. 20]: "In famine he redeemeth thee from death." Why is it said "in famine," it should say "from famine he redeemeth thee"? Therefore the passage means to imply that because one ate sparingly in times of famine, he will be redeemed from sudden death.

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Resh Lakish said: "A man should not cohabit with his wife in years of famine, as it is written [Gen. xli. 50]: 'And unto Joseph were born two sons *before* the years of famine came.'" A Boraitha, however, teaches that a man who is childless may do so even in times of famine.

The rabbis taught: When Israelites are in trouble and one of them leaves them for the purpose of avoiding the trouble, the two angels who accompany each man lay their hands upon his head and say: "The man who secludes himself from the community which is in distress shall not see the prosperity of the community." Therefore a man should share the common distress of the community, as we see in the case of Moses, who always shared the troubles of the congregation, as it is written [Exod. xvii. 12]: "But when the hands of Moses became heavy, they took a stone, and put it under him, and he sat thereon." Did not Moses possess a pillow or bolster upon which he could have sate down? Yea; but Moses said thus: "Because the community is in distress I shall not use a pillow, but sit on a stone and share their woes." Thus everyone who shares the misery of the community shall also see the prosperity, and lest a man say: "Who will testify that I took no part in the woe of the community?" he should know that the stones and beams of his house will bear testimony to the fact, as it is written [Habakkuk, ii. 11]: "For the stone will cry out of the wall, and the beam out of the woodwork will answer it." The disciples of R. Shila say, that the two angels who accompany a man will testify against him, as it is written [Psalms, xci. 11]: "For his angels will be given charge concerning thee." R. 'Hidka said: "The soul of man will testify against him," as it is written [Micah, vii. 4]: "From her that lieth in thy bosom guard the doors of thy mouth." Others say that the members of a man's body will testify against him, as it is written [Isaiah, xliii. 10]: "Ye are my witnesses, saith the Lord."

It is written [Deut. xxxii. 4]: "The God of truth, and without iniquity." By the "God of truth" is meant, that as retribution is meted out above to the wicked for every transgression which they commit, so are the righteous also held to account in this world for every transgression committed; and as the righteous are rewarded in the world to come for every little good act, so are the wicked rewarded in this world for every fulfilment of a religious duty, be it ever so insignificant. It says further [ibid.]: "just and upright is He." Infer therefrom that when a man

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comes into the world beyond, all his deeds are laid before him in detail, and he is told where and on what day he committed them. The man then answers: "Yea, I did so"; and he is told to subscribe his name, which he does, as it is written [Job, xxxvii. 7]: "He sealeth it on the hand of every man." And not alone this, but the man also exclaims: "I have been justly judged," as it is said [Psalms, li. 6]: "In order that thou mightest be righteous when thou speakest, be justified when thou judgest."

Samuel said: "A man who fasteth is called a sinner." R. Shesheth said: "If a young scholar sitteth and fasteth, may a dog eat his meal." Said R. Jeremiah bar Abba: "In the community in Babylon there is no fast-day except the 9th of Abh"; and in the name of Resh Lakish he said: "It is not lawful for a scholar to fast, because by fasting he diminishes the work in the heavenly cause."

"*As soon as it becomes dark*," etc. R. Zera said in the name of R. Huna: "If an individual took it upon himself to fast the next day, even if he had eaten and drunk the entire night, he may on the

morrow recite the fasting-prayer in the Min'hah (afternoon prayer). If a man, however, fasted a day and a night, he must not on the following morning recite the fasting-prayer." Asked R. Joseph: "What does R. Huna hold? That fasting at night is not considered and for that reason the fasting-prayer must not be recited on the following morning, or that fasting at night is considered the same as fasting for a few hours, but for fasting of the latter kind no prayer should be said?" Abayi answered: "R. Huna holds, that fasting at night is considered as fasting for a few hours, and for such a fast the prayer may be said; but the reason that he disallows the fasting-prayer on the morning following the night is because the man originally intended to fast only during the day and did not take upon himself previously to fast the night through also."

Said R. Hisda: "A fast of hours is considered only if the man had not tasted food until night." Said Abayi: "This would not be a fast of hours! it would be a regular fast-day?" R. Hisda means to say that if a man had not eaten before noon through lack of time, and then resolved to fast the remaining half of the day so as to have a fast-day to his credit--although he had only taken it upon himself to fast a half of a day, still it is considered as a regular fast-day.

R. Hisda said again: "A fast-day which was not kept until sunset cannot be called a fast-day." An objection was made:

[paragraph continues] We have learned in a Mishna: "The priests who had the weekly watch of the Temple fasted, but not the whole day." (This presents no difficulty.) In that case the men of the watch did not intend to fast, but merely to share the trouble of the rest of the community.

Samuel said: "A man who had fasted without having previously taken it upon himself to do so is not considered to have fasted at all." But what if a man did fast without having previously resolved to do so? Said Rabba bar Shila: "That is considered the same as inflating a bag with air." When must a man resolve to fast? Said Rabh: "On the preceding day during the time of the afternoon-prayer." And Samuel said: "On the preceding day at the afternoon-prayer."

Said R. Joseph: "It seems to me that the opinion of Samuel is correct."

The rabbis taught: "Until what time may a man eat on the night preceding a fast-day?" "Until the advent of the morning star." Such is the dictum of Rabbi; but R. Eliezer bar R. Simeon said: "Until the cock crows." Said Rabha: "This applies to one who had not slept; but if he had once retired and slept, he must not eat at all."

Abayi objected: "Did we not learn that if the man slept and arose again, he may eat?" That teaching does not mean if the man had slept, but had only slumbered.

R. Jehudah said in the name of Rabh: "A man, after taking it upon himself to fast on a certain day, may postpone that day and fast on another day; and," continued R. Jehudah, "when I told this to Samuel, he said: 'This is self-evident, for cannot a man vow to do a certain thing and postpone it to some other time?'"

R. Jehoshua the son of R. Idi was a guest of R. Assi; and a calf, the third of its mother, was

prepared for him. And they said to him "Let Master partake of something." Whereupon he replied: I am fasting this day." And they rejoined: "Why not postpone this fast-day? Does not Master hold with R. Jehudah's decree in the name of Rabh, that a fast-day may be postponed?" And he said: "This is a fast-day to me on account of a dream, and Rabba bar Mahassia in the name of R. Hama bar Guria, quoting Rabh, said: 'A fast-day is to a bad dream what fire is to flax'; and R. Hisda said that the fast-day should be kept only on the same day, and R. Joseph said that even on Sabbath such a fast should be kept, and for the violation of the

[paragraph continues] Sabbath caused thereby he should keep an additional fast-day later on."

MISHNA: If these (three fast-days) have passed without their prayers having been favorably answered, the supreme court shall decree three more public and general fasts; on the nights preceding these it is not permitted to eat or drink, and on the fast-days it is prohibited to work, to bathe, to anoint the body, to wear shoes or to perform the duty of cohabitation, and the public bathing places are to be closed. Should even these fast-days have passed without their prayers having been favorably answered, then shall the Beth Din decree seven more fast-days, which altogether will make thirteen public and general fasts. These last seven fast-days differ from the preceding six, in that on them the alarm is sounded; the shops remain closed, excepting that on Mondays, towards evening, the shop-shutters (of the dealers in articles of food) may be loosely fastened (*i.e.*, not entirely closed, but in a slanting position), and on Thursday they may be taken off entirely in honor of the Sabbath.

Should even these seven fast-days have passed without a favorable answer to the prayers, the people are to avoid and withdraw from engaging in any joyous occupation, and also to diminish their business; from the erection of buildings and from the planting of pleasure-gardens; from betrothals, weddings, and mutual greetings, like men who are rebuked by the Omnipotent; (pious) private individuals recommence fasting till the end of the month of Nissan. If Nissan had passed and then rain descended, it must be considered a curse, for it is written [I Samuel, xii. 17]: "Is it not wheat harvest to-day?" etc.

GEMARA: It would be right to prohibit bathing, anointing the body, etc., on the fast-day, because those things are luxuries; but why should working be prohibited? Surely working cannot be considered a luxury! Said R. Hisda in the name of R. Jeremiah bar Abba: It is written [Joel, i. 14]: "Sanctify ye a fast, proclaim a solemn assembly, gather the elders," etc. Thus we see that it says, "Proclaim a solemn assembly"; and as certain festivals on which no work may be done are also called "assembly" (Atzereth), it follows that no work may be done on a fast-day also. We might assume then that, as on those other festivals no work may be done from the time of dusk on the preceding eve, such should also be the case with these fast-days. Said R. Zera: It was explained by R. Jeremiah bar Abba that as it is written, "Gather the elders," this might be compared to them,

and as the elders assemble only during the day, so work should not be done only during the day. If that be so, then let it be prohibited to work only from midday on; for the elders generally assemble about midday. Said R. Shesha the son of R. Idi: This bears out the opinion of R. Huna, who said that in olden times the assemblies of elders would take place from the morning on.

What would the elders do when they assembled in the morning? Said Abayi: From morn until midday they would occupy themselves with municipal affairs; and the first part of the afternoon would be consumed in the reading of the scrolls and of the Haphthorah, while the other part would be devoted to the recital of prayers, as it is written [Nehemiah, ix. 3]: "And they stood up in their standing-place, and read in the book of the law of the Lord their God the fourth part of the day; and another fourth part they made confession, and prostrated themselves before the Lord their God." Perhaps the contrary was the case; *i.e.*, they read the Law and prayed in the forenoon and occupied themselves with the municipal affairs in the afternoon? This would not be consistent; for it is written [Ezra, ix. 4]: "And then assembled themselves unto me every one that trembled at the words of the God of Israel, because of the trespass of the exiles: and I sat astounded until the evening sacrifice; [ibid. 5] And at the evening sacrifice I rose up from my fasting, and while rending my garment and my mantle, I knelt down upon my knees, and spread out my hands unto the Lord my God."

Raphram bar Papa said in the name of R. Hisda: "On days when one is fasting on account of a mournful occurrence, as the 9th of Abh, or when is mourning the loss of a near relative, bathing in either cold or warm water is prohibited; but where bathing is not allowed as a luxury, as on ordinary communal fast-days, warm water must not be used but cold water may be." Said R. Idi bar Abin: "This we have learned also in our Mishna, for it says 'that the bathing places are closed,' which signifies that bathing in warm water is prohibited." Said Abayi to him: "What proof is that? If then cold water was prohibited, would the Mishna say that all rivers and lakes should be drained or stopped up?" And R. Shesha the son of R. Idi replied: "My father meant to say that the following was the difficulty in the Mishna: It says that bathing is not allowed, why then should it add that the bathing places were closed? Therefore the Mishna evidently meant to imply that the bathing places were closed in

order to prevent the use of warm-water, but cold water may be used."

Where should the fasting-prayer be mentioned? R. Jehudah led his son R. Itz'hak to the desk, and the latter proclaimed: "If an individual takes it upon himself to fast, he must recite the fasting-prayer and insert it among the eighteen benedictions, between the benediction of redemption and healing."

R. Itz'hak (of a later generation) opposed this: May, then, an individual say an additional benediction? Therefore, according to his opinion, he should say it in the prayer commencing: "Hear our voice, O Lord," etc. And so also said R. Shesheth. What is the final decision? Said R. Samuel bar Sassartai, and so also said R. Hyya bar Ashi in the name of Rabh: "It should be said between the benedictions of redemption and healing." R. Ashi, however, said in the name of R. Janai the son of Ishmael: "In the prayer commencing, 'Hear our voice,'" etc. And thus the Halakha prevails.

We have learned in one Boraitha that pregnant women and those suckling infants should fast only during the first fast-days ordained by the community, but not during the subsequent fast-days. In another Boraitha we have learned that they should fast in the last fast-days, but not in the first; and in a third Boraitha we have learned that they should fast neither in the first nor in

the last. Said R. Ashi: Hold firm to the middle Boraitha and the others will be readily explained (*i.e.*, the first Boraitha means to say that they should fast on the three days between the first three days and the last seven, but not on the last seven days; the second Boraitha calls the three middle days the last because they, were preceded by three others, hence it says that they should fast only on the last three days, *i.e.*, the three days mentioned above; and the last Boraitha means to say that they need not fast on the first three days or on the last seven, but only on the three middle--thus all three Boraithoth mean one and the same thing).

"*The alarm is sounded*." Wherewith was the alarm sounded? Said R. Jehudah: "With the cornets." And R. Jehudah the son of R. Samuel bar Shilas, quoting Rabh, said: "With the shout, 'Answer us, O Lord!'" All agree that where cornets are used it is referred to as "sounding an alarm," but they differ concerning the prayer, "Answer us, O Lord!" One says that that is also called sounding the alarm, while the other says that it is not. He who says that the alarm was sounded by reciting the prayer mentioned, also admits that the cornets were used; but

the one who says that the cornets were blown, does not hold that the prayer was also said.

Did we not learn in a Boraitha that on account of other kinds of plagues, such as the itch, locusts, flies, wasps and gnats, and snakes the alarm, was not sounded, but the prayers were merely shouted; and as shouting signifies that the prayer, "Answer us," was merely said, it must be assumed that where it says that the alarm was sounded it means that the alarm was sounded with cornets? This constitutes a difference of opinion among Tanaim, as we learn in a subsequent Mishna (Chap. III. of this Tract), which says: "For the following calamities an alarm is to be sounded even on Sabbath," etc.; and as on the Sabbath it is not permitted to sound an alarm with cornets, we must assume that the prayer, "Answer us," etc., is also called an alarm. Such is the conclusion.

In the days of R. Jehudah the Third there was a calamity. He ordained thirteen fast-days, but no favorable answer was received. He accordingly desired to ordain more fast-days; but R. Ami said to him: "It was said that the community must not be troubled to too great an extent." Said R. Abba, the son of R. Hyya bar Abba: "R. Ami said that from a selfish motive (*i.e.*, he did not care to fast any more), for my father said in the name of R. Johanan that only when rain is withholden thirteen fast-days should be kept, and no more; but on account of other calamities the people should fast until their prayers are answered, and thus we have also learned in a Boraitha.

The inhabitants of Nineveh sent a query to Rabbi: "Should we, whose soil is unusually dry and in need of rain already in the month of Tamuz (June-July) be considered as a community and when praying for rain insert the prayer in the benediction of years, or should we be regarded as individuals and insert the prayer in that commencing, 'Hear us, O Lord!'" He answered them: "Ye are regarded as individuals and must insert the prayer for rain in that commencing, 'Hear us, O Lord.'"

An objection was raised from the following Boraitha. R. Jehudah said: "All this applied to the time when the Israelites were in their own land and Palestine was the principal place, but in the present time the prayers are said according to the place, time, and year?" And he answered him:

Thou askest concerning a contradiction of Rabbi to a Boraitha? Rabbi is a Tana, and consequently may, have his own opinion and differ with the teaching of a Boraitha. How does the Halakha prevail.

however? R. Na'hman said: "The prayer for rain must be inserted in the benediction of the years," and R. Shesheth said: "It must be inserted in 'hear our voice,'" etc. And the Halakha prevails according to R. Shesheth.

"*But on Thursday they may be taken off entirely*," etc. We have learned in a Boraitha: On Monday towards evening, the shop-shutters were only partly closed; on the Thursday they were entirely opened in honor of the Sabbath; but if there were two doors to the shop, one of them could be opened even on Monday; and if there was a bench against the door, it was allowed to open the door on Monday as usual.

"*From the erection of buildings and from the planting of pleasure-gardens*," etc. We have learned in a Boraitha: What is called a building of pleasure? A house which was built especially for a son about to be married;, and what is meant by a pleasure-garden? A bower for princes.

"*And mutual greetings*." The rabbis taught: The scholars would not greet each other at all; but the common people when greeting the scholars would be answered very feebly and with a faint nod. Amongst themselves the scholars would sit wrapped in their cloaks, silent and morose, the same as mourners and as men who were rebuked by the Omnipotent, until the Lord would have mercy upon them.

R. Elazar said: "A prominent man must not clothe himself in sackcloth unless he knows positively that his prayers will be answered, as was the case with King Jehoram the son of Achab, concerning whom it is written [II Kings, vi. 30]: "And it came to pass when the king heard the words of the woman, that he rent his clothes, as he was passing along upon the wall; and the people looked, and behold he had sackcloth beneath upon his flesh," etc.

R. Elazar said again: "Not everyone has a right to rend his clothes, nor is it proper for everyone to fall upon his face (in prayer). Moses and Aaron fell upon their faces [Numbers, xiv. 5], and Joshua and Caleb rent their garments" [ibid., ibid.].

R. Zera, and according to others R. Samuel ben Na'hmeni, opposed this: "If it said, 'Joshua and Caleb rent their garments,' the statement of R. Elazar would be correct, but as it says '*And* Joshua and Caleb rent,' etc., it signifies that they did *both*--fell upon their faces and rent their garments."

R. Elazar said again: Not to everyone is it allowed to praise God by rising or by bowing. Kings may do so by rising, as it is

written [Isaiah, xlix. 7]: "Thus hath said the Lord, the Redeemer of Israel, his Holy One, to him

who is despised by men, to him who is abhorred by nations, to the servant of rulers, kings shall sec it and rise up." Princes may do so by prostrating themselves, as it is written [ibid.] Princes, and they shall prostrate themselves."

R. Zera, others say R. Samuel ben Na'hmeni, opposed this: "If the verse read, 'and princes shall prostrate themselves,' it would imply that they would not rise *and* prostrate themselves; but as it reads 'princes, and they shall prostrate,' etc., it implies that they did both."

Said R. Na'hman bar Itz'hak: "I would also remark that not everyone is worthy of obtaining light, and not everyone is worthy to have joy. The righteous are deserving of light and the upright of joy, as it is written [Psalms, xcvii. 11]: 'Light is sown for the righteous, and joy for the upright in heart.'"

Footnotes

3:1 See Leviticus, xxiii. 40.

5:1 This is signified because in the Hebrew rain is mentioned five times in this passage--including snow.

6:1 Elsewhere the Talmud rebukes both Jephthah and Pin'has; Jephthah would not go to Pin'has because he, being a prince, considered himself the superior of Pin'has, while Pin'has, being high-priest, thought it below his dignity to go to Jephthah, and on account of this pride a human life was sacrificed.

9:1 According to the commentary of Rabbenu Hananel there are altogether twenty-six evils, committed by the Israelites, enumerated in Jeremiah ii.

10:1 The commentary of Tosphath says that it is a noteworthy fact that while the Scriptures state that Abraham and Isaac died, they say that Jacob "departed this life" [Gen. xlix. 33].

10:2 In addition to Yorah, meaning the first rain, it also means to show or to teach.

12:1 The benediction on rain is transferred from here to Tract Berachoth, as the proper place.

13:1 The Hebrew term for this is *arpehu*, the term in the beginning of the passage quoted is *yaaroph*, the term for "neck" in Hebrew is *aroph*; hence the explanation according to Samuel Eidlis, which is more proper here than Rashi's.

17:1 The above teachings of R. Ami, Resh Lakish, and Rabha are all based upon the one passage--Ecclesiastes, x. 10; but the interpretations of several of the words contained therein are so diversified that we have deemed it advisable merely to reader their teachings alone, without reference to the literal text of the verse.

18:1 The legend of the cat and the well is not to be found in the Talmud proper, but the Aruch and Rashi relate it as follows: A youth of a patrician family while strolling through a forest chanced to meet a beautiful maiden with whom he fell violently in love. The maiden received his advances favorably; and he plighted his troth to her, calling upon a well standing near by and upon a cat which at that moment rushed past them as witnesses of his undying affection. Returning to his home, the young man in the midst of festivities forgot about his adventure with the maid of the forest and became betrothed to another maiden of a prominent family. He married her and in due course the union was blessed with a child. Not long after the child was born, its nurse accidentally let it full into a well. Another child was born to then, p. 19 and one day, when the child was left alone for a moment, a wild cat carried it off and devoured it. Thus was retribution meted out to the youth who had violated his promise.

In Vol. VI., p. 64, of the periodical *Hakol* (the Voice) we published in an article an explanation of the above passage in the Gemara, as follows: "It is entirely unreasonable to assume that one could believe in a cat or a well otherwise than as a means by which God would punish an iniquity, and therefore it is highly probable that the words 'Huldah and Bor, meaning *cat* and *well*, originally were intended for 'Huldah and De*bor*ah, the prophetesses of the Scriptures, and that simply a Daled and a Heh were omitted in the manuscript. The Talmud generally treats prophetesses with but little consideration and regards their prophecy as of small value, for it says in Tract Megilla, p. 37, 'Greatness is not seemly for women. Two prophetesses we had and one was called Deborah (a bee) and the other 'Huldah (a cat).' It then continues to criticise their behavior in general; but still the King Yoshiyahu (Josiah) believed in 'Huldah the prophetess (see II Kings, xxii. 13 to 20) and Barak the son of Abino'am believed in Deborah (see Judges, iv. 8). Thus it would be far more reasonable to explain the above passage in the Gemara, not with reference to the cat and the well, but rather as referring to Deborah and 'Huldah, and say: If a man have faith in the prophetesses 'Huldah and Deborah, he should be so much the firmer in his faith in God." This explanation met with the approval of a number of the most Orthodox scholars, but the well-known Rev. Dr. At. Mielziner, in a letter addressed to us, called our attention to the fact "that, were it so, Deborah would stand before 'Huldah in the above passage, having preceded 'Huldah in the chronological order of the Scriptures." In Tract Megilla Deborah really does precede 'Huldah, but we forstalled this query in that article by stating that in all probability Huldah was mentioned first in the above passage from the fact that a King Josiah) believed in her, while a commoner (Barak) was the man who placed his faith in the prophetess Deborah.

20:1 The Hebrew term for both is *Otzar*.

20:2 The Hebrew term for both is *Holid*.

20:3 Leeser translates in the first *visited*, and in the second *thought of*. The Hebrew term, however, for both is *Pokad*.

21:1 The other sayings of the same authority are transferred to tract Baba Metziya as the proper place, and some of them are repeated there.

21:2 *Vide* Tract Sabbath, p. 252.

22:1 *Vide* Tract Rosh-Hashana, p. 3.

24:1 This passage is in accordance with the explanation of the Aruch.

Next: Chapter II

CHAPTER II.

REGULATIONS CONCERNING THE ORDER OF PROCEDURE ON THE LAST SEVEN FAST-DAYS, AND THE PRAYERS TO BE RECITED ON THOSE DAYS.

MISHNA: What is the order of procedure on the fast-days? The ark containing the Holy Scrolls is to be brought into an open place in the city, ashes of burnt substances are to be strewed on that ark, on the head of the Nassi (prince), on the head of the chief of the Beth Din (court of justice); and other persons shall also themselves strew ashes on their heads. The eldest among them shall then address them in heart-moving terms, as follows: "My brethren! Consider that it is not written, anent the (repentance of the) Ninevites, that God regarded their having wrapped themselves in sackcloth and considered their fast-days, but that 'God saw their *works*, that they had turned from their evil way' [Jonah, iii. 10], and the tradition of the prophets is (as it is written): 'Rend your hearts, and not your garments'" [Joel, ii. 131.

After standing up to pray, the people shall place at the praying-desk, to minister, an old experienced person who has children and whose larder is empty, so that his mind may be entirely devoted to his prayer. This person shall say twenty-four benedictions; namely, the eighteen benedictions of the daily prayer, with the addition of six more, which are as follows: The texts of Zikhronoth (remembrance of His creatures) and of Shophroth (sounding of the cornet); the chapters [Psalms, cxx.] "Unto the Lord, when I was in distress, did I call, and he hath answered me"; [ibid. cxxi.] "I lift up my eyes unto the mountains," etc.; [ibid. cxxx.] "Out of the depths have I called to thee, O Lord; and [ibid. cii.] "A prayer of the afflicted, when he is overwhelmed." R. Jehudah said: It was not necessary to mention the Zikhronoth and Shophroth, but the following passages are to be read instead, namely: [I Kings, viii. 37]: "If there be famine in the land, if there be pestilence," etc.; and [Jeremiah, xiv.] "The word of the Lord

that came to Jeremiah concerning the drought"; and the concluding is then added to each.

To the first he (the reader) shall say additionally: "May He who answered Abraham on Mount Moriah answer you, and listen to your (prayer and) cry on this day. Blessed art thou, O Lord, Redeemer of Israel!" To the second he shall say: "May He who answered our ancestors on the Red Sea answer you, and listen favorably unto your cry this day. Blessed art thou, O Lord, who rememberest all things forgotten (by man)!" To the third he shall say: "May He who answered Joshua in Gilgal answer you, and listen to your cry this day. Blessed art thou, O Lord, who deignest to listen to the sound of the cornet!" To the fourth he shall say: "May He who answered Samuel in Mizpah answer you, and listen this day to your cry. Blessed art thou, O Lord, who hearkenest to (our) cry!" To the fifth he shall say: "May he who answered Elijah on Mount Carmel answer you, and listen favorably to your cry on this day. Blessed art thou, O Lord, who hearkenest to prayer!" To the sixth he shall say: "May He who answered Jonah in the bowels of

the fish answer you, and listen unto your cry this day. Blessed art thou, O Lord, who answerest in the time of distress!" To the seventh he says: "May he who answered David and his son Solomon in Jerusalem answer you, and listen unto your cry on this day. Blessed art thou, O Lord, who hast compassion on the earth!"

It happened in the days of R. Halaphta and R. Hanina the son of Teradion, that a minister advanced to the praying-desk and completed the entire benediction without any (of the congregation) answering thereto "Amen." (The sexton then proclaimed): "Sound, priests! Sound!" (The minister who said the prayers then continued): "May He who answered our father Abraham on Mount Moriah answer you, and listen favorably to your prayer this day." (The sexton then called): "Sound an alarm, sons of Aaron! Sound an alarm!" (The previous minister continued): "May He who answered our ancestors on the Red Sea answer you, and listen favorably to your cry this day." When the sages were informed of this, they said: "This was not our custom, except at the eastern door (of the Temple) and on the Temple mount."

On the first three fasts, the priests who had the weekly watch of the Temple fasted, but only part of the day, and the ministering priests did not fast at all. On the second three fast-days, the

priests on the weekly watch fasted the whole day, but the ministering priests only fasted part of the day; but on the last seven fast-days both classes of priests fasted the whole day. So said R. Jehoshua. But the sages say: "The first three fasts were not kept by either of the two classes; on the second three fasts the priests on weekly watch would fast part of the day, but the officiating priests would not fast at all. On the last seven, however, the priests on the weekly watch would fast the whole day; but the officiating priests would fast only part of the day."

The priests having the weekly watch may drink wine at night, but not during the day, [1] but the officiating priests may drink it neither by day nor by night. The priests of the weekly watch and the standing men (commoners attending the public sacrifices as the representatives of the congregation at large) are not allowed to shave their beards or to wash their clothes; but on Thursday they are permitted to do so, in honor of the approaching Sabbath. (Moed Katan, p. 25.)

Wherever it is mentioned in the "Roll of Fasts" that "no lamentation and mourning is to be made" on certain days, it is also prohibited to do so on the day preceding, but permitted on the day following. R. Jose, however, says: "It is prohibited to do so on both the day preceding and the day following." Where it is said, however, "No fasts are to be kept thereon," it is allowed to fast on the day preceding and following days. R. Jose, however, says: "It is prohibited on the preceding, but allowed on the following day."

Public fasts must not be ordered to commence on a Thursday, in order not to raise the price of victuals in the markets; [2] but the first three fasts must be kept on Monday, Thursday, and the following Monday. But the second three fasts may follow on Thursday, Monday, and the following Thursday. R. Jose says: "Even as the first fasts are not to be commenced on Thursday, so also are the second and last fasts not to commence on that day."

Public fasts are not to be ordered to take place on the feast of the New Moon, on that of Dedication (Hanukah), nor on that of Lots (Purim); but if the fast had already been commenced on one of those feasts, it need not be broken. Such is the decree of Rabban Gamaliel. R. Meir, however, says, that although Rabban Gamaliel said that the fast need not be broken, he admits that on those days people are not to fast the entire day. Such is also the case with the fast of the ninth of Abh, if it happen to fall on a Friday.

GEMARA: "*What is the order of procedure on the fast-days*?" Does this apply also to the first three fast-days? Then it would be a contradiction to the following Boraitha: The first and the second three fast-days they enter into the praying-house and pray as usual; but in the last seven the ark is to be brought into an open place, etc. Said R. Papa: "Nay; our Mishna also refers to the last seven."

"*On the head of the Nassi (prince)*"; and further, the Mishna teaches that "other persons shall also strew ashes on their heads." This should not be so! For did not Rabbi teach in a Boraitha that where an act of honor is to be accomplished the most prominent persons are commenced with, while when an act of humiliation is to be performed the lowest in rank are first considered? The strewing of ashes on the heads of the prince and of the chief of the Beth Din first is also an act of honor; for they are told that they are more worthy of praying for mercy for us and for all the world.

"*Other persons shall also strew ashes on their heads*." Why must the prince and the chief of the Beth Din have someone else to strew ashes on their heads? Can they not do so themselves? Said R. Abba (or Ada) of Kisri: "The humiliation of disgracing one's self by one's own hands is not equal to that of being disgraced by the hands of others (where prominent persons are concerned, but as for common people it does not matter)." On what part of the head are the ashes put? Said R. Itz'hak: 'On the place where the phylacteries are generally worn, as it is written [Isaiah, lxi. 3]: 'To give unto them ornament in the place of ashes,' implying that where ornaments (phylacteries) were worn ashes were put."

Why do they congregate in an open place? Said R. Hyya bar Abba: "In order that they might say: 'We have prayed privately and were not answered, hence we shall humiliate ourselves by praying in public." And Resh Lakish said: "In

order that they might say: 'We have been driven from our abodes, and may our banishment be the means of our forgiveness.'" Why is the ark brought into an open place? Said R. Jehoshua ben Levi: "In order that they might say: 'We had a hidden treasure, but through our transgressions that also has become profaned.'" Why do they clothe themselves in sackcloth? Said R. Hyya bar Abba: "In order that they might say: 'We are now like the beasts of the field.'" Why are ashes strewn on the ark? Said R. Jehudah ben Pazi: "In order to say that this is an allusion to what is written [Psalms, xci. 15]: 'With him I am in distress,' meaning that the Shekhina shares the distress of the people." Resh Lakish said: "In order to say that this is an allusion to the passage: 'In their affliction he was afflicted.'" Said R. Zera: "When I saw the rabbis strew ashes on the ark, my whole body trembled."

Why are ashes strewn on the heads of all? Concerning this, R. Levi bar Hama and R. Hanina

differ. One says that this is equal to saying: "We are now before thee, O Lord, as ashes"; and the other says: "It is for the purpose of begging the Lord to remember the ashes of Isaac." For what purpose did they go out to the cemeteries? 1 Concerning this, R. Levi bar Hama and R. Hanina also differ. One says, in order that they might say they were now equal to the dead; while the other says that it was for the purpose of having the souls of the departed pray for them.

Why was the Mount called Mount Moriah [II Chronicles, iii. 1]? Concerning this there is again a difference between R. Levi bar Hama and R. Hanina. One says that Moriah is the equivalent of Horaah (*i.e.*, enactment), while the other says that Moriah is the equivalent of Mora (fear); for when the Temple was built, other nations were awed.

"*In heart-moving terms*." The rabbis taught: If the eldest among them was also a scholar he would address them; otherwise a scholar, even if he was younger, would address them, and if there was no scholar among them a prominent man would do it. And he would say to them: "Brethren! It is not written, anent the repentance of the Ninevites, that God regarded their having wrapped themselves in sackcloth and considered their fast-days,

but that 'God saw their works, that they had turned from their evil way'" [Jonah, iii. 10].

Concerning the Ninevites it is written [Jonah, iii. 8]: "But let man and beast be covered with sackcloth." How was it done? They separated the suckling animals from their mothers and said: "Sovereign of the Universe! If Thou wilt not have mercy upon us, we will not have mercy upon them." And further on: "Let men call unto God with might." What is meant by "with might"? That means to say that they said: "Lord of the Universe! Who of the two should give way unto the other? The oppressed and the one who cannot be oppressed, the righteous and the wicked?" (Now, as we are the oppressed and Thou canst not be oppressed, shouldst Thou not overlook our iniquity?) Further, it is written [ibid.]: "And let them turn every one from his evil way, and from the violence which is in their hands." What is meant by "the violence which is in their hands"? Said Samuel: "If a man had wrongfully appropriated a beam which he had used in building a house, he would tear down the house and restore the beam to its rightful owner."

R. Ada bar Ahabha said: "If a man confesses to a wrong committed, and repents it without making proper restitution therefor, he is equal to a man holding a dead reptile in his hands and bathing himself in order to become clean; for, as a man who has a dead reptile in his hands, even should he bathe in all the legal baths in the world, would not become clean until he had rid himself of the reptile--but if he threw away that unclean thing a bath measuring forty Saahs would cleanse him--so it is with a man who had committed a wrong: unless he made proper restitution all confession and repentance is in vain, as it is written [Proverbs, xxviii. 13]: 'He that concealeth his transgressions will not prosper; but whoso confesseth and forsaketh them will obtain mercy'; and as it is written [Lamentations, iii. 41]: 'Let us lift up our heart and our hands unto God in the heavens.'"

"*After standing up to pray*." The rabbis taught: At prayer, though there be the eldest and a scholar present, neither should be placed at the reading-desk unless they were experienced in prayer; but only one who has had thorough experience. R. Jehudah said: "The minister should be a man who has children and cannot provide for them, who works hard in the field but has empty

storehouses, who has good manners, who is modest, who is popular, who has an attractive, sweet voice, who can read the entire Holy Writ, and is competent to learn Midrash, Halakhoth,

and Haggadoth, and is conversant with all the benedictions." The rabbis looked among themselves and cast their eyes upon R. Itz'hak bar Ami, who had all those qualities.

(R. Jehudah said:) "'Who has children and cannot provide for them and who has empty (store) houses.' Is that not one and the same thing?" Said R. Hisda: "By an empty house is meant one free from sin." What is meant by "good manners"? One who never had a bad reputation since his earliest youth.

"*With the addition of six more*." Are there not seven additional benedictions? as the Mishna states further on: "To the seventh he says," etc. Said R. Na'hman b. Itz'hak: By the seventh is meant the seventh to the long benediction, as we have learned in a Boraitha: He says twenty-four benedictions, namely: the eighteen benedictions of the daily prayer, with the addition of six more, and those six are said between the benediction of redemption and healing, and the benediction of the redemption is made longer. After each benediction the congregation answers "Amen." Such was the custom, however, only outside of the Temple, but in the Temple the reader would say: "Blessed be the Lord the God of Israel, from the beginning to the end of the world"; and they would conclude by saying: "Blessed be the Redeemer of Israel." But no "Amen" was answered; and why not? Because in the Temple it was not allowed to answer "Amen." Whence do we deduce this? Because it is written [Nehemiah, ix. 5]: "Arise, bless ye the Lord your God from eternity to eternity. And let men bless thy glorious name, which is exalted above all blessing and praise." This signifies, that after each blessing the Lord's name should be praised (but not that "Amen" should be said).

The rabbis taught: To the first benedictions the reader would say: "Blessed be the Lord the God of Israel, from the beginning unto the end of the world. Blessed be the Redeemer of Israel!" and the people answered after him: "Praised be the name of the glory of His kingdom for ever and ever." The Chazan (sexton) of the congregation then says: "Sound, priests, sound!" The reader then continues: "May He who answered Abraham on Mount Moriah answer you, and listen to your cry on this day." The priests then sound, make an alarm, and sound again. To the second, the reader says at the conclusion: "Blessed be the Lord, who remembereth all things forgotten (by man)"; and the people answer: "Praised be the name of the glory of His kingdom for ever and ever." The Chazan then says: "Sound

an alarm, children of Aaron, sound an alarm!" The reader then says: "May He who answered our ancestors on the Red Sea answer you, and listen favorably unto your cry this day." The priests then make an alarm, sound, and then make another alarm; and such is the manner of procedure with everyone of the benedictions. The Chazan says alternately, "Sound!" and "Sound an alarm!" until all the benedictions are said.

Thus did R. Halaphta proceed in Sepphoris and R. Hanina ben Teradon in the city of Sikhni; and when the sages were informed of this, they said: "This was not customary except at the eastern

door of the Temple, and at the Temple Mount."

"*R. Jehudah said: 'It was not necessary to mention the Zikhronoth,'*" etc. Said R. Ada of Jaffa: "The reason of R. Jehudah's dictum is, that the Zikhronoth and Shophroth are only mentioned on the New Year day, on the day of the jubilee, and during times of war."

"*To the sixth . . . to the seventh he shall say,*" etc. Let us see! Jonah lived after the time of David and Solomon, why is he mentioned first? Because he must conclude the benediction to the seventh with, "Blessed be thou, O Lord, who hast compassion on the earth," therefore he must mention Jonah first. We have learned in a Boraitha: It was said upon the authority of Symmachos that instead of the benediction, "who hast compassion on the earth," the benediction, "who makest humble those that are arrogant," is said.

"*On the first three fasts, the priests,*" etc. The rabbis taught: Why was it said that the priests on the weekly watch were allowed to drink wine at night and not during the day? Lest the officiating priests be overwhelmed with work and those on the weekly watch would be required to assist them. And why was it said that the officiating priests must not drink either during the day or at night? Because they were compelled to work day and night.

"*The priests of the weekly watch and the standing men,*" etc. What was the reason that they were not allowed to shave their beards? "In order that they may not enter upon their duties while they are ugly to look upon," said Rabba bar bar Hana in the name of R. Johanan. [1]

"*Wherever it is mentioned in the, Roll of Fasts,*" etc. The rabbis taught: It says in the "Roll of Fasts": These are the days on which fasting is not permitted, and on some of them it is not even allowed to mourn. From the first of Nissan on, until and including the eighth, on which days it was resolved that the strife carried on between the Pharisees and the Bathusees concerning the continual daily offering [1] should be amicably concluded by adopting the decree of the Pharisees, it was enacted that no mourning or lamenting should be permitted; and from the eighth day of Nissan until after the Passover festival it was established when the feast of Pentecost should be celebrated, [2] and for that reason on those days no mourning or lamenting is allowed.

The Master said: "From the first day of Nissan," etc. Why does he say from the first? That is the day of the New Moon, and in itself a feast-day when one must not mourn--why does he not say from the second day of Nissan? Said Rabh: "He said 'from the first day of Nissan' so as to provide that even on the day preceding that, one must not mourn." But the first day of Nissan being a feast of the New Moon, it is self-understood that on the preceding day one must not mourn; for such is the law concerning all days preceding a feast-day! Nay; but the feast of the New Moon is a biblical feast-day, and no additional measure need be enacted to provide for its faithful observance; and mourning on a day preceding a feast-day is only prohibited as a precautionary measure, lest the mourning be continued on the feast-day itself. If the feast-day, however, is a biblical one, such a measure is not necessary and is only enacted for rabbinical feast-days.

The Master said: "From the eighth day until after the festival," etc. Why does he say "until after the festival"? Why not until the festival? Surely one must not mourn on the festival itself! Said R. Papa: "In the same manner as Rabh said, that the first day of Nissan is mentioned in order to provide for the day preceding it as a day on which one must not mourn, so in this case it says 'until after the festival' in order to include the day following the festival among the days on which it is not allowed to mourn; and this will be in accordance with the dictum of R. Jose, who says in this Mishna 'that it is prohibited to mourn on both the day preceding and following.'"

It was taught: R. Hyya bar Assi said in the name of Rabh that the Halakha prevails according to R. Jose, and Samuel said that the Halakha prevails according to R. Meir.

R. Na'hman ordained a fast-day on the thirteenth day of Nissan, and he was reminded by the sages that that was the day of Torainos; but he replied that the day of Torainos was abolished, for on that day Shmaia and Ahia his brother were slain. Why was R. Na'hman reminded that the day was that of Torainos, he could have been apprised of the fact that it was the day before the feast of Nikanor? Said R. Ashi: "If the day was abolished as the feast-day of Torainos, should it be kept as a precautionary day for the observance of the day of Nikanor?"

What is Nikanor and what is Torainos? We have learned in a Boraitha: Nikanor was one of the Greek viceroys, and every day he would lift up his hand and vow that if ever Judea and Jerusalem came into his hands he would crush them. After the Maccabees conquered him in battle, his thumbs and big toes were cut off and hung up in the gates of Jerusalem, and it was said that the mouth which had vowed against Jerusalem and the hands which had been lifted up against it should be made to suffer.

What is Torainos? It was said: When Torainos desired to slay Lolainos and his brother Papos in Ludkia (Lydda), he said to them: "If ye be of the same nation as Hananiah, Mishael, and Azariah, let your God come and save you from my hands as He did them from the hands of Nebuchadnezzar." They answered: "Hananiah, Mishael, and Azariah were truly righteous men and Nebuchadnezzar was a just king, deserving of being the means through which a miracle was to be performed. But we have incurred the death penalty before Heaven in any event, and if thou shouldst not slay us, God has other agents who will

accomplish this--for instance, lions, bears, and other wild beasts who could kill us; and thou art a wicked man, who art not worthy of having a miracle occur through thee, and God hath given us into thy hands in order to hold thee to account for our blood which thou wilt have shed." Still, he had them executed, and it was said that he did not leave his place before two envoys arrived from Rome, and his skull was split into pieces.

"*Public fasts are not to be ordered*," etc. What is meant by "but if the fast had already been commenced"? Said R. Aha: "If three fast-days had already been kept"; and R. Assi said: "Even if one had been kept."

R. Jehudah said in the name of Rabh: All (of) this (clause of the Mishna) is in accordance with the dictum of R. Meir in the name of Rabban Gamaliel; but the sages said that one must complete his fast. Mar Zutra went and preached in the name of R. Huna, that the Halakha

prevails that one must fast under those circumstances and, moreover, complete the fast.

Footnotes

33:1 This regulation is a general one and applies to ordinary days as well as to fast-days.

33:2 Precautions were taken in every instance to prevent exorbitant prices being charged for victuals and at times even existing ordinances were abrogated for this purpose. Thus no fast-days were ordered to commence on Thursday in order that the dealers in articles of food might not take advantage of the greater demand produced by the necessity of laying in an extra supply for the day preceding the fast and for Sabbath.

40:1 In the Palestinian Talmud it is stated, in addition to what is taught in this Mishna, that they would clothe themselves in sackcloth, go out to the cemeteries, and sound the cornet.

43:1 The proper time when kings, officials, and the common people may shave their beards will be explained and discussed in Tract Sanhedrin, and for that reason the discussion pertaining thereto is here omitted.

44:1 The strife carried on between the Pharisees and the Bathusees concerning the continual daily offering was as follows: The Bathusees maintained that because it is written [Numbers, xxviii. 4]: "The one sheep shalt *thou* prepare in the morning and the other sheep shalt *thou* prepare toward evening," it is permitted for an individual to bring the continual daily offering, while the Pharisees held that the offering must be brought by the congregation from communal funds, basing their claim upon the passage [ibid. 2]: "Shall *ye* observe," etc.

44:2 The Pharisees and Bathusees also disputed about the date when the feast of Pentecost was to be celebrated, the latter claiming that as it is written [Lev. xxiii. 15]: "And ye shall count unto you, from the morrow after the Sabbath . . . seven complete weeks," the day of Pentecost must necessarily fall on the first day of the week; but the Pharisees, through R. Johanan ben Zakkai, maintained that the passage implies that counting must be commenced on the day following the first day of the festival, and therefore the feast of Pentecost would fall on the sixth day of the month of Sivan.

Next: Chapter III

CHAPTER III.

REGULATIONS CONCERNING OCCURRENCES ON ACCOUNT OF WHICH FAST-DAYS ARE ORDERED, OR ALARMS ARE SOUNDED. WHEN FASTING ON ACCOUNT OF RAIN IS STOPPED.

MISHNA: The order of procedure on fast-days, as mentioned (in the preceding Mishna) above, applies only when the first fructifying rains do not descend; but when the sprouts commence to degenerate, they shall immediately commence to sound an alarm. It should also be immediately sounded if there be an interval of forty days between each rain; for that is a general plague on the land, causing dearth.

If sufficient rain for the growth of sprouts and herbs had fallen, but not for the growth of trees; or sufficient for the growth of trees, but not enough for the growth of herbs; or sufficient for both, but not enough to fill the wells, cisterns, and caves (creeks), an alarm is immediately to be sounded.

Thus, also, if no rain should have fallen over some particular city, similar to that which is written [Amos, iv. 7]: "I caused it to rain upon one city, and upon another city I caused it not to rain; one piece of land was rained upon," etc.--the inhabitants of such a city must fast and sound an alarm, and those of the circumjacent places shall fast, but not sound. R. Aqiba, however, says, "They are to sound, but not to fast."

Thus, also, when pestilence is raging in a city, or when the walls fall down, the inhabitants of such a city must fast, and those of the adjacent places should fast, but not sound. R. Aqiba, however, says: "They should sound the alarm, but not fast." What is considered a pestilence? If in a city capable of furnishing five hundred able-bodied men three persons die in three consecutive days, it is a pestilence; less than this is not a pestilence.

An alarm should be sounded in all places for the following plagues: For a corn-blast, mildew, locusts, crickets, attacks of wild beasts, and hosts of armed men; for all these an alarm should be sounded, because they are spreading evils.

It once happened that some elders going from Jerusalem, each to his own place, decreed a fast, because a corn-blast, the grainless stalks of which were sufficient to heat an oven, had been seen near Ascalon.

They also decreed a fast on account of two children having been devoured by wolves on the other side of Jordan. R. Jose says: "It was not ordered because of the wolves having devoured the children, but because of their presence (in the towns prowling for food)."

On account of the following calamities an alarm should be sounded even on the Sabbath: For a city surrounded by enemies, for a flood threatening to inundate the country, and for a ship in imminent danger of being wrecked at sea. R. Jose says: "This sounding is intended to obtain assistance from men, and not as an imploring cry to God." Simeon the Temanite says: "They shall also sound on the Sabbath in case of pestilence"; but the sages did not coincide with him.

On account of every plague--with which may the community never be visited!--an alarm should be sounded except on account of an excess of rain.

It once happened that Honi Hama'gel (the circle-drawer) was asked by the people to pray for them, that rain might descend. Said he to them: "Go and bring in the Passover ovens, 1 that they may not be spoiled by the rain." He prayed, but the rain did not descend. What did he then? He drew (marked out) a circle around him, and placing himself within it, prayed as follows: "Creator of the Universe! Thy children have always looked up to me as being like a son of Thy house before Thee. I swear, therefore, by Thy Great Name, that I will not move from this place until Thou wilt have compassion on Thy children." Whereupon the rain commenced to drop down gently. Said he: "It was not for this I prayed, but for rain sufficient to fill the wells, cisterns, and caves." The rain then fell in torrents, and he said: "Not for such rain have I prayed, but for mild, felicitous, and liberal showers." The rain then descended in the usual manner, until the Israelites of Jerusalem were obliged to seek refuge from the city to the Temple Mount, on account of the rain. They came and said to Honi: "Even as thou didst pray that the rain might descend, so pray now that it may cease."

[paragraph continues] And he replied: "Go and see whether the stone To'yim 1 is covered by the waters." Simeon b. Sheta'h sent him word, saying: "If thou wert not Honi, I would order that thou be anathematized. But what shall I do with thee, since thou art petulant towards God, and yet He forgiveth and indulgeth thee like a petted child who is petulant towards his father and is nevertheless forgiven and indulged? To thee may be applied the passage [Prov. xxiii. 25]: 'Let thy father and thy mother rejoice, and let her that hath born thee be glad.'"

If, while the people are fasting, rain should fall before sunrise, they shall not continue to fast the whole day; but they must do so if the rain fall after sunrise. R. Eliezer says: "If it rains before noon, they need not continue to fast the whole day; but they must do so if the rain commenced after noon is passed." It once happened that a fast was ordered in Lydda and it rained before noon, whereupon R. Tarphon said unto the people: "Go, eat and drink, and make a feast." They went, ate and drank, and made a feast; but in the evening they returned and sang the great Hallel.

GEMARA: "*When the first fructifying rains do not descend*." A contradiction was made: "We have learned in a Boraitha: 'If the first and second fructifying rains did not descend, prayers for rain must be commenced, and only if the third fructifying rain was withheld fasting is resorted to'?" Said R. Juhudah: "The Mishna means to say this: If the time for the first, second, and third fructification had passed without rain having descended, then the order of fasting goes into effect; but if the first fructification has taken place, yet the seed had not sprouted, or the sprouts had degenerated, then the alarm must be sounded." Said R. Na'hman: "Only if the sprouts had degenerated the alarm is sounded, but not if they had withered (for in the latter event there is

still hope that they might revive). Is this not self-evident? It says, distinctly, 'if the sprouts had degenerated'?" R. Na'hman means to say that, even if the sprouts had already reached the stage of stalks and had then withered, it might be assumed that there was no hope of their ever again reviving-hence we are told that all hope is not yet lost.

"*For that is a general plague on the land, causing dearth*." What is considered a "plague causing dearth"? Said R. Jehudah: "That is a plague which eventually results in a famine." Said R. Na'hman: "If a town had no grain, but could procure a supply from another town by means of ships, it cannot be said to be suffering from an actual famine, but merely from temporary want; but if the entire land has no grain and it can procure a supply only from another country, and not by means of ships but by means of asses, then a state of famine can be said to exist."

R. Hanina said: "Even if the price of grain has reached the sum of one Sela for one Saah, but at that price it is obtainable, this would merely constitute a case of want; if, however, the price of grain remained one Sela for *four* Saah, but it was not obtainable at all, then a state of famine actually exists." Said R. Johanan: "All this applies when grain is dear but money is plentiful; if, however, grain is not dear but money is scarce, an alarm must immediately be sounded; for I recollect it happened at one time in Tiberias that although four Saah of grain were to be had for one Sela, still many people were starving to death, because they did not have the necessary coin with which to purchase their grain."

"*If sufficient rain for the growth of sprouts . . . had fallen*," etc. It may well be that sufficient rain can descend for the growth of sprouts that would not be beneficial to the growth of trees--for instance, a heavy rain; or that the rain be sufficient for trees but inadequate for the growth of sprouts--for instance, a light rain (see page 5). It might also be that sufficient rain should descend for both the trees and the sprouts, which would, however, be inadequate to fill the wells, cisterns, and caves; but how can that take place, after what we have learned in a Boraitha, namely: "that sufficient rain descended to fill the wells, cisterns, and caves, which was, however, inadequate for the trees and sprouts"? That (Boraitha) refers to a rain which fell in torrents and filled up the wells, etc., but did no good to the trees and sprouts.

The rabbis taught: In the midst of Passover, if sufficient rain had not yet fallen for the trees, the alarm is already to be sounded; and if there was not sufficient rain by the time the middle (day) of the Feast of Tabernacles was reached, the alarm must immediately be sounded; and at all times where there is not sufficient drinking-water on hand, the alarm should at once be sounded, What is meant by "at once"? The Monday,

Thursday, and Monday following; and the sounding must be effected in the capital of the province concerned.

On account of croup (quinsy or whooping-cough), if fatalities arise therefrom, the alarm must be sounded; but if all affected become cured an alarm is not necessary. On account of locusts (Gobai), [1] as soon as they make their appearance the alarm is to be sounded. R. Simeon ben Elazar said: "Also on account of grasshoppers" (Chagabim). [2]

The rabbis taught: An alarm may be sounded on account of the trees (when they have not succeeded) in ordinary years; but when there is a want of rain for the wells, cisterns, and caves, this may be done even in the Sabbatical years. R. Simeon b. Gamaliel, however, said: "It may so be done in Sabbatical years even on account of the trees, as they constitute the means of livelihood of the poor." The same we have learned in another Boraitha, with the addition that even on account of the . . . it may be done, as they are the means of livelihood of the poor.

The rabbis taught: It once happened that the Israelites came to Jerusalem for the festivals, and there was not sufficient water for drinking purposes. So Nakdimon ben Gurion went to a certain master (a heathen), and requested him to lend him twelve wells of water for the pilgrims, promising to return either the twelve wells of water or in lieu thereof twelve talents of silver, at a certain time. When the time arrived, the master sent to Nakdimon in the morning demanding either the wells of water or the silver, and Nakdimon replied: "I have still the whole day's time." At noon the same demand was made, and the same answer given. Late in the afternoon the master sent the same demand, and received a reply that the day had not yet passed. So the master laughed at the idea, saying that if a whole year had elapsed without it having rained, was it possible that it should still rain on that day? and went to his bath rejoicing over the prospect of soon possessing the money due him. At the same time that he entered his bathroom, Nakdimon went into the Temple, wrapped himself in his cloak, and commenced to pray, saying: "Creator of the Universe! It is known to Thee, that not for the sake of glory for me nor for my father's house, but

for the glory of Thy name, that the pilgrims in Jerusalem might have water, did I borrow those wells." Immediately upon this the sky became clouded, rain began to fall, and the twelve wells became filled up to overflowing.

When the master stepped out of his bath-house, Nakdimon went out of the Temple, and they met. Said Nakdimon to him: "Refund to me the amount for the water in excess of that which I borrowed from thee." And he replied: "I know well that the Holy One, blessed be He, caused the world to storm only on thy account, yet I can still claim the amount due me, for the sun has already set and the rain descended after the stated time had expired." Nakdimon then reëntered the Temple, again wrapped himself in his cloak and commenced to pray, saying: "Creator of the Universe! Announce to the world that Thou hast favorites here on earth!" Whereupon the clouds immediately scattered, and the sun again commenced to shine. The master seeing Nakdimon, said to him: "Had the sun not reappeared, I should have had a valid claim for the amount of money due me." We have learned in a Boraitha: His name was not Nakdimon, but Boni, and he was called Nakdimon because on his account the sun hastened. [1]

The rabbis taught: "For the sake of each of three men alone the sun shone, and they are Moses, Joshua, and Nakdimon ben Gurion." This is correct in the case of Nakdimon ben Gurion, from the above-mentioned tradition. In the case of Joshua it is also correct, because so is it written [Joshua, x. 13]: "And the sun stood still in the midst of the heavens." But whence do they adduce that the sun shone for Moses alone? Said R. Elazar: This may be inferred from the analogous term: "I will commence." It is written [Deut. ii. 25]: "This day will I commence to put the dread of thee," and [Joshua, iii. 7]: "This day will I commence to make thee great," etc. R. Johanan said: "(No analogous comparison is necessary, for) it may be adduced from the passage

itself [Deut. ii. 25]: 'Whoever will hear of thee shall tremble and shall quake because of thee.' Why will they do this? Because on Moses' account alone the sun shone."

The rabbis taught: A man should always be soft (*i.e.*, pliable, yielding) as a reed, and not hard as a cedar-tree. It once

happened that R. Elazar ben R. Simeon (should rather be R. Simeon ben Elazar) went from the tower of Gador, where resided his Master, riding on an ass. He rode leisurely on the banks of the river, being greatly rejoiced and feeling very proud on account of the wealth of knowledge he had accumulated from his Master. On the way he met a man who was terribly ugly (of face). [1] That man greeted R. Elazar respectfully, and said to him: "Peace be with thee, Rabbi!" The rabbi did not, however, return the greeting, and, moreover, said: "Vain man, how terribly ugly art thou! Are all thy townsmen as ugly as thou art?" And the man replied: "That I know not; but it would be seemly if thou wert to go to the Creator who formed me and say to Him: 'How ungainly is the creature Thou hast made!'" Realizing that he had offended against the man, R. Elazar dismounted and, making an obeisance, said: "I have sinned against thee--forgive me, I pray!" But the man refused, saying: "Nay, I shall not forgive thee until thou shalt go to the Creator and say to Him: 'How ungainly is the creature Thou hast made!'" R. Elazar, however, would not leave the man, and followed him on foot until they reached the city where R. Elazar dwelt. As soon as the townsmen perceived him they thronged towards him with greetings. "Peace be with thee, Rabbi, Rabbi! Master, Master!" The ugly man who preceded R. Elazar asked them whom they were addressing with "Rabbi" and "Master," and they answered: "The man who is following thee." Said he: "If he be a rabbi, may there not be many like him in Israel." And they asked: "Why not?" So he replied that thus and so had he been served by him. They then pleaded with him: "Still forgive him, for he is a great man in the study of the Law." And he said: "For your sakes I will forgive him, but upon the condition that he shall not do likewise again." Immediately following this, R. Elazar went forth and preached: "A man should be soft as a reed and not hard as a cedar."

On account of having been compared with man, it was destined for a reed that the Scrolls, Phylacteries, and Mezuzoth should be written with it.

"*When walls fall down*." The rabbis taught: "By 'walls' are meant sound walls; *i.e.*, such as were not expected to fall,

but not such as were tottering." What is meant by "such as are tottering"? Walls that stand on the banks of a stream. As it once happened in Neherdai there was a wall resting on a weak foundation; and although it had been standing for thirteen years, Rabh and Samuel would never pass by beneath it. One day R. Ada bar Ahabha came to Neherdai, and together with Rabh and Samuel set out to go somewhere. Said Samuel to Rabh:, Let the Master go with me in a roundabout way, so as to avoid the wall." But Rabh replied: "To-day this is not necessary. For R. Ada is with us, and his merits are such that a wall would not fall where he is about to walk; hence I have no fear."

R. Huna had wine in a room which was in an unsafe condition, and the walls of which were momentarily expected to fall. He wished to remove the wine, but was afraid to enter the room. So he got R. Ada bar Ahabha to enter the room with him, engaged him in a discussion concerning a Halakha, and while they were arguing R. Huna's men removed the wine. After they left, the walls of the room fell in. When R. Ada realized how he had been used, he became angry.

(What R. Ada did to be so eminently favored will be related in Tract Megilla.)

Rabha asked Raphram bar Papa: "Canst thou not relate to me the good things which R. Huna did?" And he replied: "I do not remember anything of his youth; but when he was of mature age, I know that whenever there was a storm in the city where he lived, which caused any damage to the buildings, he would have himself carried about in a golden palanquin and examine the city, and wherever he noticed an unsafe wall, would order its demolition. Wherever the owner of that building could not afford to have it rebuilt, R. Huna would have it done at his own expense. On every eve of Sabbath he would send his servants to the markets with instructions to purchase all the vegetables, which the marketers had left on their hands, and throw them into the stream, in order that they might not be put on sale again the following week in an unwholesome condition." [Why did he not rather distribute them among the poor than throw them into the stream? Because the poor would depend upon receiving them free the second time, and would not buy any at all. Then why did he not use them as food for the animals? Because R. Huna held that articles which a man can use as food should not be purchased as fodder for cattle to commence

with.] "Whenever the sickness of Shaibatha [1] occurred in his city, he would examine it and give the sufferers relief; outside of his house he placed a jar of water for the use of all who desired him to relieve them. When sitting down to a meal, he would order a servant to throw open the doors and call out: Whoever desires to eat, let him come in and do so."

Said Rabha: "I could accomplish all that R. Huna did, with the exception of throwing open my doors and inviting everybody to eat; for there are a great many poor people in Mehuzza, and I could not feed them all." (According to another version, he said that he could not do this on account of the many soldiers and Persians stationed in Mehuzza, who would take advantage of such an invitation and eat him out of house and home.)

Ilpha and R. Johanan studied the Law together. They were in very poor circumstances and were in want of food. So they said: "We will lay aside our studies and engage in some remunerative occupation, thereby carrying out what is written [Deut. xv. 4]: 'Indeed, there should be no needy man among thee.'" In the meantime they sat down to eat beneath an unsafe wall. So two angels appeared, and R. Johanan heard one of them say to the other: "Let us throw this wall down upon them, for they are about to leave the pursuit of the future life in order to obtain a worldly livelihood." But the other angel replied: "Let them be; for there is one of them whom the time will succor and who will shortly become great." R. Johanan heard this, but Ilpha did not, and the former asked "Did Master hear anything?" And Ilpha replied: "Nay; I heard nothing." So R. Johanan thought: "Because I heard it and Ilpha did not, in all probability I am the one who is referred to as shortly to become great." And he said to Ilpha: "I have reconsidered it and will return to the study of the Law, thus fulfilling what is written in another passage [ibid. 11]: 'For the needy will not cease out of the land.'" Thus R. Johanan returned to his studies and Ilpha

engaged in business. By the time Ilpha returned, R. Johanan became the chief of the college. The schoolmen afterwards

said to Ilpha: If thou hadst stayed here with us, we would have made thee the chief of the college. 1

It was said of Nahum the man of Gim-Zu--who was blind in both eyes, crippled in both hands, both of whose legs were crushed and whose whole body was covered with sores, and who was lying on a bed the feet of which stood in buckets of water so as to prevent worms from reaching his body, and his bed stood in a house which was in a tottering condition--that his disciples at one time wished to remove his bed from that house and then remove all the other vessels contained therein. So he said to them: "My children! First take out everything contained in this house and then remove my bed; for ye can rest assured that as long as I am in this house it will not fall." They did so, and after removing his bed the house fell in. Said the disciples to him: "As we can perceive, Master, thou art a truly upright man. Why, then, art thou so terribly afflicted?" And he replied: "My children! I myself am the cause of it. I was at one time on my way to the house of my father-in-law and had with me three asses, one laden with food, another with drink, and the third with delicacies. In the course of my journey a poor man came to me and said: 'Master, give me some food,' and I answered: 'Wait until I can unload my asses.' But before I had done so, the poor man expired. So I fell on his face and said: 'My eyes, which had no compassion on thy eyes, may they become blind! My hands, which had no mercy upon thy hands, may they become crippled! My feet, which had not pity with thy feet, may they be crushed!' And I could not assuage my grief until I had said May my whole body become covered with sores.'" Said the disciples to him: "Woe is unto us that we must see thee in this condition." And he replied: "Woe would be unto me if ye did not see me in this condition."

Why was he called Nahum the man of Gim-Zu? 2 Because whenever something happened to him he would say: "Gam Zu Le-Toboh" (This also is for good).

It once happened that the Israelites had to send a present to the imperial house, and Nahum was selected to carry out the mission, because it was quite usual for miracles to be performed

on his account. They intrusted to him a casket containing precious stones and pearls. When he arrived at his quarters for the night, thieves became aware of his treasure, and they removed the valuables contained in the casket, substituting therefor dry earth. When he arrived at the imperial palace, the casket was opened, and it being observed that it contained nothing but earth, the emperor became very wroth and determined to destroy all the Jews, thinking that they had merely mocked him. Nahum, however, said to himself: "Even this will lead to good." When a conference was held as to the manner in which the Jews were to be destroyed, Elijah appeared disguised as one of the councillors, and after the conference said: "Perhaps this earth is of the greatest value, as it may be the same earth which Abraham their father had within his domain, and which possessed the merit of turning into swords which would cut down the enemy when thrown at a hostile army. The coarser pieces would turn into arrows when thrown at the enemy, as it is written [Isaiah, xli. 2]: He rendered as earth his sword, as driven stubble his bow.'" 1

His advice was taken, and they said: "There is one land which we cannot conquer, let us try this earth and test its powers." This was done, and the land was conquered. The earth was thereupon deposited in the treasury, and the casket filled with precious stones and pearls. Nahum (who had been kept a prisoner in the meantime) was sent away with an escort and laden with great honors. On the return, it happened that Nahum and his escort had to pass the night in the same quarters where the precious stones had previously been stolen. When it was observed with what honors Nahum returned, he was asked what gifts he had brought the emperor, to be thus honored. He replied: "I brought the same casket there that I took away with me from this place." The men then, thinking that their earth was so valuable, tore down their houses, gathered up the earth, and sent it to the emperor, saying: "The earth which Nahum brought thee was our earth and not that of the Jews, for we took out the precious stones contained in his casket when he spent the night here and substituted this earth." The earth was examined and found to be unlike the other, so the senders were all put to death.

"*What is considered a pestilence? If in a city capable of furnishing*

[paragraph continues] *five hundred able-bodied men*," etc. The rabbis taught: A town that can furnish fifteen hundred able-bodied men--as, *e.g.*, the village of Ako--and nine deaths occurred in three days, *i.e.*, three deaths each on three consecutive days, is said to be afflicted with pestilence. If, however, all the nine died in one day or in four days, it is not considered a pestilence. A town that has not more than five hundred able-bodied persons--*e.g.*, the village of Amigo--and three deaths occurred in three days, *i.e.*, one on each consecutive day, can be said to be afflicted with a pestilence. If, however, all three died in one day or in four days, no pestilence can be said to exist (for it is considered as only an accident).

In the town of Darograth, which had five hundred able-bodied persons, three deaths occurred in one day, and R. Na'hman the son of R. Hisda ordered a fast-day. Said R. Na'hman bar Itz'hak', to him: "Thou art presumably of the opinion of R. Meir, who regards a bull as vicious if he had gored three men in one day (as explained in Tract Baba Kamma)."

R. Na'hman bar Hisda requested R. Na'hman bar Itz'hak to remove to his (the former's) city (so that they could study together). Said the latter: We have learned in a Boraitha: R. Jose said: Not the place where he lives makes the man distinguished, but the man makes the place distinguished. And so we find with respect to Mount Sinai, that so long as the Shekhina rested there, cattle were not allowed to graze even near the mountain, as it is written [Exod. xxxiv. 3]: "Neither let, flocks or herds feed near the mount," and after the Shekhina, had withdrawn from the mount, it is written [Exod. xix. 13]: "They may come up to the mount." A similar instance can be found with respect to the Tabernacle, near which the leprous could not come (as well be explained in Tract Menachoth).

Said R. Na'hman bar Hisda to him: "If this be so, then will I go to the place where thou, Master, dwellest." And he answered: "Nay, that would not be right; for thou art a rabbi and a son of a rabbi, while I am the son of one who was not among the scholars; therefore it would be more fitting that I should come to thee."

It happened that pestilence raged in Sura, but in the neighborhood where Rabh resided the

pestilence was not prevalent. The townsmen concluded that this was due to the especial merits of Rabh; but in a dream they were told that this would be but a small object wherewith to demonstrate Rabh's merits, and that

this was so in consideration of the merits of a man who lends his hoe and other digging-tools used for burials, without compensation.

In Darograth there was a great conflagration, but in the neighborhood where R. Huna lived the fire did not reach, and it was thought that it was on account of the merits of R. Huna that it was spared; but they were also told in a dream that this would be but a small recognition of R. Huna's merits, and that it was merely in consideration of a certain woman who would heat her oven and then place it at the disposal of such as desired to bake their bread, without remuneration.

R. Jehudah was apprised of the fact that locusts had made their appearance, and he ordered a fast-day. Subsequently he was told that the locusts were not doing any damage, and he replied: "Did the locusts then bring their food with them?"

R. Jehudah was also advised that a pest had broken out among, the swine, and he ordered a fast-day. Does then R. Jehudah hold that if a pest break out among one kind of animals it affects all others? Nay; but with swine it is different, for the entrails of a swine are similar to those of a human being (and the pest may prove contagious).

Samuel was told that a pest had broken out in Huzai, so he ordered a fast-day. He was reminded, however, that the place was a great distance off, and he replied "Is there then a partition between here and there that would prevent the entrance of the pest in this place?

R. Na'hman was told that a pest had broken out in Palestine, so he ordered a fast-day, saying: "If the princess is stricken, surely the slaves are affected." Is it only when a princess is stricken that a slave is affected? What about slave and slave? Did not Samuel order a fast-day in Neherdai when Huzai was stricken? From Huzai to Neherdai there was a regular caravan traffic, and Samuel apprehended lest one of the caravans should carry the pest. from Huzai into Neherdai.

Abba the (expert) bleeder received greetings every day from the heavenly college; Abayi received such a greeting only once every eve of Sabbath; and Rabha would receive such a greeting only once every eve of the Day, of Atonement. Abayi was grieved because of the greater distinction conferred upon Abba, and he was told: "The thing.; that Abba does, thou canst not do." [What did Abba do that was so inimitable? First of all, he had a separate place for bleeding men and a separate place for

women. Then he had a certain garment for women with which he would clothe them, and which was split so that he could insert the lancet at any place without looking at the woman. Then he had a certain place where his fee for bleeding was deposited, and which was so arranged that as soon as it was touched a ring was heard; but he never looked at the amount deposited, and, those

that had not the necessary amount would merely touch the place and depart. If a young scholar came to him to be bled, he would not alone refuse to accept money, but would give him money, saying: "Take this and become well, for after bleeding a good meal should be eaten."]

One day Abayi sent two of his disciples to Abba to examine into his actions. Abba entertained them with meat and drink, and even made for them couches of fine wool to use as beds. On the morrow the disciples folded up their woollen couches and carried them into the market in order to sell them. They there encountered Abba. Said they to him: "Let Master estimate the worth of these." And he said: "So much." And they rejoined: "Perhaps they are worth more." And he answered: "For so much money I can purchase them," Said they to him: "These couches are thine; we took them from thee." And they continued: "What didst thou suspect us of?" And he replied: "I thought that perhaps some prisoners had to be ransomed, and ye did not wish to tell me what amount that would require last night. So ye took the couches, and probably thought to tell me this day." They then said: "Then take them back; they are thine." But he answered: "Nay; I have already made up my mind to devote them to charitable purposes, and hence I cannot take them back."

Rabha was grieved over the greater distinction conferred upon Abayi, who was greeted on the eve of every Sabbath, while he only received the heavenly greeting on the eve of every Day of Atonement; so he was told that it was sufficient for him that the entire town where he lived profited by his merits,

To R. Beroka of Huzaah, Elijah would frequently appear, when he (R. Beroka) would be standing in the market of Be-Lepht. One day he asked Elijah whether there was any one in the market who would have a share in the world to come, and Elijah answered: "Nay." Suddenly Elijah perceived a man wearing black shoes, and the garments of that man had no show-threads. So he pointed him out to R. Beroka, and said: "That man will have a share in the world to come." R. Beroka ran up

to the man and asked him his occupation, and the man answered: "I have not time to-day. Come on the morrow." On the morrow R. Beroka again approached him and asked to know his occupation. The man replied: "I am a warden of a prison; I keep the men and women prisoners in separate compartments, and my own bed stands between the two compartments. There I sleep alone, and take care that no evil acts are perpetrated. If there is a daughter of Israel upon whom evil eyes have been cast (by the higher officials), I do my utmost, even at a personal sacrifice, to save her. One day it happened that a betrothed girl, upon whom the higher officials had cast an eye, was brought to my prison; so I took lees of wine, spread them over her couch, and said to the officials that she was suffering from her menstruation and could not be approached."

R. Beroka then asked the warden why he wore black shoes and garments without show-threads, and he replied: "In order that I should not be recognized as a Jew; for thus, if I hear of any plots that are formed against the welfare of my co-religionists, I can immediately advise the rabbis that they may pray to God to avert the impending calamity. And yesterday, when thou didst approach me, I told thee to come on the morrow, because I had heard a discussion pertaining to action to be taken against the Jews and I hastened to learn the true facts of the case."

Again it happened that two brothers were passing by, and Elijah said to R. Beroka: "These two brothers shall also have a share in the world to come." R. Beroka approached them and asked to know their occupations, and they replied: "Our occupation is to cheer and comfort all those who are downcast, and when we see two men quarrelling, to make peace between them."

"*An alarm should be sounded in all places for the following plagues,*" etc. The rabbis taught: For a corn-blast, mildew, locusts, crickets, and attacks of wild beasts an alarm must be sounded wherever they make their appearance. And R. Aqiba said: "For the first two, as soon as they make their appearance ever so slightly in any place, an alarm must be sounded; but for locusts, as soon as the wing of one single locust is perceived in Palestine, an alarm must be immediately sounded."

"*Attacks of wild beasts*." The rabbis taught: "For attacks of wild beasts an alarm should be sounded only if it is obvious that the attacks are in the nature of a curse, but otherwise no alarm need be sounded. How can the distinction be made? If the wild beasts are seen in a city, then it is to be considered in

the nature of a curse; but if they are seen in the field, it is nothing unusual. If seen in the day it is a curse, at night it is not. If the wild beast saw and pursued two men together, then it is a curse; but if it slank away and sought to hide, it is not. If the wild beast killed two men and only devoured one, it is to be considered a curse; but if it devoured both (then it was simply hungry, and) it is not considered a curse. If the beast climbed up on a roof and snatched a child from the cradle, it is most assuredly a curse.

"*Hosts of armed men*." The rabbis taught: Even if hosts of armed men are seen, who have no intention of attacking the place, but merely desire to pass through to make war upon others, an alarm must nevertheless be sounded; for there can be no more friendly intentions in a host of armed men than in that which was sent by Necho, King of Egypt, to Josiah, King of Judah, and still Josiah lost his life on their account, as it is written [II Chron. xxxv. 21]: "But he (Necho, King of Egypt) sent ambassadors to him (Josiah), saying: What have I to do with thee, thou King of Judah? I come not against thee this day, but against the house wherewith I have war, and God hath commanded me to make haste: forbear thee from meddling with God who is with me, that He may not destroy thee." What is meant by "God who is with me"? What God could Necho have had with him? Said R. Jehudah in the name of Rabh: "It was an idol, and for the reason that Necho had confidence in the idol, Josiah thought that he could surely vanquish him in battle."

Further it says [ibid. 23]: "And the archers shot at King Josiah; and the king said to his servants: Carry me away; for I am sorely wounded." What is meant by "sorely wounded"? Said R. Jehudah in the name of Rabh: "From that it may be inferred that his whole body was perforated by the arrows like a sieve." Before Josiah died, Jeremiah the prophet noticed that his lips were moving, and thinking that, God forbid, he was saying something blasphemous on account of the terrible pain he was suffering, Jeremiah stooped down and heard Josiah justifying the judgment which had befallen him, saying the passage f, [Lament. i. 18]: "Righteous is the Lord; for against his orders have I rebelled." Whereupon Jeremiah lamented his death with the words [ibid. iv. 20]: "The breath of our nostrils, the anointed of our Lord, was caught in their pits."

"*Should be sounded even on Sabbath*." The rabbis taught

[paragraph continues] On account of a city surrounded by foes, a ship that was wrecked at sea, or even on account of an individual pursued by foes, robbers, or evil spirits, a man may keep a fast-day himself (without waiting for the order instituting it). R. Jose, however, said: "A man is not allowed to do this by himself, lest he become weak through fasting and unable to work, when he would become dependent upon others who might have no pity for him, because he himself was the one responsible for his condition." Said R. Jehudah in the name of Rabh: "What reason has R. Jose for this assertion? Because it is written [Genesis, ii. 7]: 'And the man became a living being,' which implies, that man should let the living soul, given him by the Creator, live and not wilfully kill it."

"*Simeon the Temanite says*," etc. We have learned in a Boraitha: For a pest an alarm should be sounded on a Sabbath, and so much the more on a week-day; but R. Hanan bar Pitom, the disciple of R. Aqiba, said in the name of his Master that for a pest no alarm need be sounded even on a week-day.

"*On account of every plague*," etc. The rabbis taught: On account of every plague--with which may the community never be visited--an alarm should be sounded, except on account of an excess of rain. What is the reason? Said R. Johanan: "Because it is not permitted to pray for the cessation of too much good." Said Rami bar R. Jod: "In the land of exile (Babylon) an alarm should be sounded for an excess of rain." We have also learned in a Boraitha that in a year when there is an excess of rain the priests of the weekly watch would send word to the standing men: "Take care of your brethren in exile, that their houses may not become their graves."

The rabbis taught: It is written [Lev. xxvi. 4]: "Then will I give you rains in their due season," which means, that the earth s all not become too full of water nor that it shall be thirsty, but have just sufficient; for if there is too much rain, the earth becomes too sodden and fruit cannot grow. Another explanation of the term "in their due season" is, that the rains will fall on the night of the fourth day of the week and on the night of Sabbath, when men do not go out; for so do we find, that in the days of Simeon ben Sheta'h rain fell only on those nights, and grain prospered so that wheat-grains became as testicles, barleycorns as the kernels of olives, and lentils as golden Dinars; and part of these fruits of the earth were preserved to show to future generations, in order to demonstrate to them that the only reason

why crops were not as prosperous as they formerly were was because of the transgression-; of the people, as it is written [Jeremiah, v. 25]: "Your iniquities have turned away these things, and your sins have withholden what is good from you."

So it was also at the time when Herod built the new Temple. It would rain only at night, and in the morning the wind would disperse the clouds, the sun would commence to shine, and the people would go to their work in peace, so that all men knew that they were engaged in a heavenly undertaking.

"*It once happened that Honi Hama'gel*," etc. The rabbis taught: It once happened the greater part of the month of Adar had passed, and no rain had yet fallen. Honi Hama'gel was thereupon requested to pray for rain. He prayed, but no rain descended. So he marked out a circle around him, the same as Habakkuk did, as it is written [Habakkuk, ii. 1]: "Upon my watch will I stand, and place myself upon the tower," placed himself in the midst of it, and said: "Creator of the universe! Thy children have always looked up towards me as being like a son of Thy house before Thee. I swear therefore, by Thy great Name, that I shall not move from this place until Thou shalt have compassion upon Thy children." Whereupon the rain commenced to drop down gently. Said the disciples to him: "May it be that we may see thee and not die; for we think that the rain is merely dropping in order to release thee from thy vow." And he replied: "It was not for this I prayed, but for rain sufficient to fill the wells, cisterns, and caves." The rain then fell in torrents, each drop being as large as the mouth of a barrel, and the sages opined that each drop contained no less than a lug of water. The disciples again said to him: "Rabbi, may we see thee and not die! We believe that the rain is falling in order to destroy the world." He again said: "Not for such rains have I prayed; but for mild, felicitous, and liberal showers." The rain then descended in the usual manner, until the Israelites of Jerusalem were obliged to seek refuge from the city to the Temple mount on account of the rain. They then came to him and said: "Rabbi, even as thou didst pray that the rain might descend, thus pray now that it may cease." And he replied: "I have a tradition that it is not permitted to pray for a cessation of too much good. Still, bring me a praise-offering." It was accordingly brought to him, and putting both hands upon it, he said: "Creator of the universe! Thy people which Thou hast brought out of Egypt cannot be sustained either with too much evil or too

much good. When Thou becamest angry with them, they could no longer bear it; and now that Thou hast showered too much good (rain) upon them, they cannot bear it either. Let it be Thy will that the rains may cease and the world become happy." Thereupon a wind came up, dispersed the clouds, the sun commenced to shine, and the people went out into the fields and brought back mushrooms.

Simeon ben Sheta'h then sent him word, saying: If thou wert not Honi, I would order that thou be anathematized; for were these years as those when Elijah said that no rain should fall and when he had the key to the rain, thou wouldst have merely desecrated the Holy Name; but what shall I do with thee, since thou art petulant towards God, and yet He forgiveth and indulgeth thee like a petted child who is petulant towards its father, and says: "Father, bathe me in hot water, bathe me in cold water, give me nuts, almonds, apricots, and pomegranates," and is nevertheless forgiven and indulged? To thee maybe applied the passage [Prov. xxiii. 25]: "Let thy father and thy mother rejoice, and let her that hath born thee be glad."

The rabbis taught: What was the word which the Sanhedrin sitting in the chamber of marble sent to Honi Hama'gel after the occurrence? They cited the passage [Job, xxii. 28]: "And if thou decree a thing, it will be fulfilled unto thee; and upon thy ways the light will shine," and said: "Thou hast decreed below, and the Holy One, blessed be He, ratified it above, and the generation which was in darkness thou hast enlightened with thy prayer.

R. Johanan said: All the days of this righteous man (Honi), he troubled himself concerning the meaning of the passage [Psalms, cxxvi. 1]: "When the Lord bringeth back again the captivity of Zion, then shall we be like dreamers." Honi would constantly say: "How can a man sleep or be

like a dreamer for seventy years?" Once he was travelling on the road, and he noticed a man planting a carob-tree. He asked him how many years it would take before the tree would bear fruit, and the man answered: "Seventy years." Honi then asked: "Art thou, then, sure that thou wilt live seventy years?" And the man replied: "I found carob-trees in existence when I came into the world, consequently my ancestors must have planted them. Why should I not also plant them for my children?" About that time Honi became hungry, and sat down to eat near the newly

planted tree. After the meal he fell asleep, and a bay [1] formed about him so that he could not be noticed, and thus he slept for seventy years. When he awoke, he observed a man gathering the fruit from the carob-tree; and he asked the man: "Didst thou plant this tree?" The man replied: "Nay; I am the grandson of the man that planted it." Honi then realized that he must have slept for seventy years, and when he looked around for his ass, he noticed that there were many smaller asses. He then went to his home, and inquired whether the son of Honi Hama'gel was still alive. He was told that the son was no longer living, but that a son of the son was alive. He then said: "I am Honi Hama'gel"; but they would not believe him. He went to the house of learning and heard them say: "To-day the Halakhoth are as clear as in the days of Honi Hama'gel, who would immediately render a clear decision when any questions whatever were put to him by the rabbis." He went in and said to them: "I am that Honi"; but they would not believe him, nor would they accord him due respect. This caused him to become downcast and despondent, and he prayed to God that he might die, and so he died. Said Rabha: "This illustrates the saying: 'Give me the glory due me, or give me death.'"

Abba Helkyah was a grandson of Honi Hama'gel. When the country was in need of rain the rabbis would send to him, and he would pray for rain, which thereupon commenced to fall. One day the country was in need of rain, and the rabbis sent a committee of two younger rabbis to him, with the request that he pray for rain. They came to his house, but did not find him. They went to his field, and found him weeding it. They greeted him, but he made no reply. On his way back to his home, he placed some wood and the hoe on one shoulder and a garment on the other shoulder. The entire way he did not wear shoes, but whenever he came to water which he had to ford he would put them on. When he came to a thorny path, he would raise his garments. When he came to the city, his wife met him dressed in fine apparel. When he reached his house, his wife entered first, then he, and finally the two young rabbis entered. He sat down to his meal, but extended no invitation to the rabbis to join him. When dealing out bread to his children, he gave the elder one loaf and the younger two. Afterwards he

said to his wife in a low voice: "I know that these rabbis came on account of rain. Come, let us go up into the attic and pray for rain, and should the Lord have mercy on His children and cause it to rain, it will not appear as if it came about through us." They went up into the attic, and he stood in one corner, while she stood in another. The rain-cloud appeared in the direction where the wife was standing.

When he went down again, he said to the rabbis: "What hath brought the rabbis here?" And they replied: "The rabbis have sent us to Master that he may pray for rain." And he answered: "Blessed be the Lord, that ye no longer need Abba Helkyah's favor." Said they to him: "We well know that this rain is come only on account of Master, still we should like to know the reason

for several actions on his part which appear to us surprising. Why, when we greeted the Master, did he not turn his face towards us?" He replied: "I hired myself out for the day and my time was not my own, hence I did not wish to waste any." "Why did the Master carry the wood on one shoulder and the garment on the other?" "Because the garment was borrowed by me to wear, but not to use as a pad for wood." "Why did the Master go barefooted all the way, and put on his shoes when coming to water?" "Because the entire way I could see what I was stepping on, but in water I could not." "Why did the Master raise his dress when walking in a thorny path?" "Because if my flesh should receive a scratch, it will heal; but if the garment should become torn it cannot be mended." "Why, when the Master came to the city, did his wife come forth to meet him, dressed in her best apparel?" "In order that I may not look at any other woman." "Why did she enter first, then the Master, and then we?" "Because I know nothing about you." "Why, when the Master sat down to eat, did he not invite us to partake also?" "Because there was not sufficient bread for all, and I did not wish to invite you merely to receive your thanks in vain." "Why did the Master give the elder child one loaf and the younger two?" "Because the elder was at home all day and probably helped himself previously, but the younger was at school all day and more hungry." Why did the rain-cloud appear first in thy wife's corner?" "Because my wife is always at home, and when a poor man begs for a meal she always gives it to him readily, while I can but give him a Zuz and he must first go and purchase food for it. Thus her charity is more effective than mine."

Hanan the Hidden was a son of the daughter of Honi Hama'gel. When the country was in need of rain, the rabbis would send the school-children to him, who would surround him, take hold of his garments, and cry: "Father, father, give us rain!" And he would say to the Holy One, blessed be He: "Creator of the universe! Cause rain to descend, for the sake of those who cannot distinguish between a father capable of giving rain and one who is not." Why was he called Hanan the Hidden? Because whenever he would do some good, he would hide himself so as not to be observed.

Said R. Z'reiqa to R. Saphra: "Come and see the difference between the pious of Babylon and the righteous of Palestine. The pious of Babylon--*e.g.*, R. Huna and R. Hisda--when the country was in need of rain, would say: "Let us combine and pray to God, perhaps we shall find favor in His eyes, and He will give us rain"; and the righteous of Palestine--*e.g.*, R. Jonah the father of R. Mani--when the country was needing rain, would go to his house, ask for a sack, and say: "I will go to the market and buy a Zuz' worth of grain." When going out he would seek a deep place, as it is written [Psalms, cxxx. 1]: "Out of the depths have I called to thee, O Lord," and he would station himself in a hidden place, cover himself with the sack, and offer up a prayer for rain to the Lord, and forthwith rain would descend. When returning home, he would be asked: "Didst thou buy the grain for a Zuz?" And he would reply: "I noticed that it commenced to rain, and hence thought it unnecessary to go to the market for it, as it can be had now anywhere."

Again it happened that R. Mani the son of Jonah was sorely troubled by the members of the house of the Nassi (prince); so he went and threw himself on his father's grave, exclaiming: "Father, father, the men of the house of the Nassi are troubling me." One day the retainers of the Nassi were riding by the burial ground where Jonah was interred, and their horses Could not proceed until they vowed not to trouble R. Mani any more.

R. Mani would frequently come to the house of R. Itz'hak ben Aliashib, and he once told R.

Itz'hak that the members of his father-in-law's family were giving him much trouble. Said R. Itz'hak: "May they become poor!" and they really did become poor. R. Mani then came again, and complained that now his relatives were poor they were compelling him to support them. Said R. Itz'hak: "May they then become rich again!" and accordingly they became rich.

At another time R. Mani complained to R. Itz'hak that his wife was too ill-favored. Said R. Itz'hak: "What is her name?" And R. Mani replied: "Hannah." Said R. Itz'hak: "May Hannah become handsome!" and accordingly she became handsome. Subsequently R. Mani came again, and complained that now his wife had become handsome she made life a burden to him by her vanity, and R. Itz'hak said: "May I Hannah again become ugly!" and Hannah again became ugly.

Some time later, two disciples of R. Itz'hak ben Aliashib begged him to pray to the Lord for them, that they might become wiser and more capable for study. Said he to them: "I used to do that at one time and would succeed; but I have stopped that practice and shall not do it again."

Elazar the man of Birtha would be shunned by the men who were sent out to collect money for charitable purposes, because he would give away everything he had. One day he went out into the market to buy the articles necessary for the proper celebration of his daughter's marriage. The collectors of alms perceived him, and hid themselves. He, however, pursued and overtook them, and said: "I adjure you, tell me for what purpose ye are sent out now and what ye need." And they answered: "We are collecting money for two orphans who are about to be married." Said he: "I vow they have precedence over my daughter." And he gave them everything he had, with the exception of one Zuz, for which he bought some wheat and deposited it in his storehouse. The mother (Elazar's wife) said to the daughter: "What did your father bring?" And the daughter replied: "All that he brought he deposited in the storehouse." She then went to the storehouse, but could not open the door, as the wheat was piled up so high and the storehouse was so full that the wheat forced its way through the cracks in the walls. Thereupon she betook herself to the house of learning, where Elazar her husband was studying, and calling him out, said: "Come and see what thy friend did for thee." Arriving at the storehouse, Elazar said "I vow that all this wheat is devoted to the poor, and thou hast but a share in it equal to the other poor."

R. Jehudah Hanassi (the Second) once ordered a fast-day and prayed for rain, but without success. Said he: "What a difference there is between Samuel the prophet and Jehudah the son of Gamaliel! Woe is to the generation that has retrograded to such an extent and woe to the Nassi (prince) who hath witnessed

it." He became very despondent, and forthwith rain began to fall.

A fast-day was ordered from the house of the Nassi, and no previous notice thereof was given to R. Johanan and Resh Lakish. Said R. Johanan to Resh Lakish: "What shall we do? We did not take it upon ourselves to fast to-day or yesterday? Replied Resh Lakish: "We are dependent upon the Nassi; hence it is not necessary for us to take it upon ourselves a day in advance."

Again it happened that the house of the Nassi ordered a fast. day; but no rain descended. So

Oshiya, the youngest of the colleagues, taught: It is written [Numb. xv. 24]: "Then shall it be, if through inadvertence of the congregation it was committed by ignorance," which is a simile to a bride in the house of her father--if she have beautiful eyes, there is no need of examining her body, but if her eyes be bad her entire body should be examined (*i.e.*, if the prince of the congregation be a righteous man, the congregation need not be tried, but if he be wicked the congregation itself must be examined). So the servants of the Nassi came to Oshiya, threw a cloth over his neck, and tortured him. Said the townsfolk to the servants: "Let him be, for though he often offends us with his sayings, still, as we see that he means well and does so for our good, we let him have his own way."

Rabbi once ordered a fast-day, but no rain descended. So Ilpha, others say R. Ilphi, went up to the reading-desk to pray. As soon as he came to the sentence, "He causeth the wind to blow," a wind sprang up; and when he said, "He causeth the rain to descend," rain began to fall. So Rabbi asked Ilpha: "What are thy merits?" And he answered: "I live in a very small town, where it is almost impossible to obtain any wine for the Kiddush and the Habdalah on the Sabbath; but I go to great trouble to procure it and distribute among my townsmen, and when reciting the Kiddush prayer I also include my townsmen in the prayer."

Rabh came to a certain place and ordered a fast-day, but no rain descended. The minister of the congregation went up to the reading-desk and commenced to pray. Arriving at the sentence, "He causeth the wind to blow," a wind sprang up; and as soon as he said, "He causeth the rain to descend," rain began to fall. Said Rabh to him: "What are thy merits?" And he answered: "I teach little children, and treat the children of the

poor like the children of the rich. Those that cannot afford to pay, I teach without remuneration; and being also a fisherman, I persuade those who do not wish to come and learn, to do so by giving them fish to take home with them."

R. Na'hman ordered a communal fast. He prayed for rain, which, however, did not come. And he said to the people: "Take ye Na'hman and throw him from the roof to the ground." He became downcast, and rain commenced to fall. Rabba ordered a fast, he prayed, and no rain came. And they said to him: "But when R. Jehudah orders a fast, then rain comes." He replied: "What can I do? In point of learning we are better than they; for in the years of R. Jehudah all their studies were confined to the Section of Damages, while we study now all the six sections. And when R. Jehudah came to the Section of Taharath (Purification), Tract Uqtsin, and the Halakha, 'When a woman put herbs in a pot,' or, according to others, to the Halakha, 'If olives were soaked with their leaves, they are clean,' 1 R. Jehudah used to say: 'I find it as deep as would befit the times of Rabh and Samuel.' But we have thirteen colleges which are studying the Tract Uqtsin, and nevertheless when R. Jehudah would put off one shoe, the rain would come; and we are crying the whole day, and there is nobody to look at us. And if one might say, R. Jehudah was better than we by his deeds, then if there is any one here that knows we have not acted rightly, let him say so; but the true reason is, what can the leaders of the generation do, when the generation itself is not good?"

R. Jehudah saw once two men throwing bread at each other, and he said: "I see from this that there is plenty in the world." He cast an evil eye, and a famine began. Said the rabbis to R. Kahna the son of R. Nahuniah: "We have heard that the Master frequents the house of R.

Jehudah: cause him to go into the market (he should become aware that a famine reigns)." He did so, and took him out into the market. He saw a crowd of men. He asked: "What is the matter?" He was answered: "There is a measure of dates for sale, and each is eager to obtain it." Said he: "I perceive from this that there is famine in the world." He said to his servant: "Take off my shoes." He had taken off but one of his shoes, when it began to rain.

R. Mari the son of the daughter of Samuel said: "At that time, when R. Jehudah had his shoes taken off, I stood on the

bank of the River Papa. I saw angels clad like sailors, who took sand, filled the ships therewith, and it was turned to fine flour, and the whole world came to buy it. I said to the persons of my household: 'Do not buy of it, for it is only through a miracle, and I wish to derive no benefit from miracles.' I waited till the morrow, when ships laden with wheat actually arrived from Parzina."

It happened once that Rabha came to the city of Hagrunia, and he ordered a fast, but no rain came. Said he to the people: "Fast over night." On the morrow morning he said to them: "If any one saw something in a dream, he should come to tell what he saw in the dream." R. Elazar of the same city related that he had been told in a dream the following words: "Good peace to the good master who received his knowledge from a good master, and who with his goodness is doing good to his people." Said Rabha: "I infer from this that it is a favorable time." He prayed again, and rain came.

It happened once that a man had committed a crime for which he had to receive stripes in a court where Rabha was the chief judge. Rabha had the penalty inflicted on him. He could not endure it, and died. When the government of Sabbor the king heard of this, they wanted to cause trouble to Rabha. Said Iphra Harmyz, the king Sabbor's mother, to her son: "I advise you to have nothing to do with the Jews, for all that they request of their God, He grants to them." Said he: "What, for example?" Said she: "Whenever they pray to God for rain, it rains." Said he to them: "That is only because they pray in the season when it has to rain. Now, when it is Tamuz [July], when it ought not to rain, let them pray for rain, and you shall see that it will not come." So she sent for Rabha, and said to him: "Fix your mind on it, and pray to God to send rain." He prayed, and no rain came. Said he: "Before the Lord of the universe [Ps. xliv. 2] God, with our ears have we heard, our fathers have told us . . . in times of old, but *we* with our eyes do *not* see it." Then it rained so much that all the canals of Me'huza overflowed and the water spread in the streets into the River Tigris. His father appeared to him in a dream and told him: "Is there any other man who gives so many pains to Heaven? Go and change the place of your couch." On the morrow he found marks of a knife with which his bed had been slashed.

R. Papa also ordered a fast: no rain came. Meanwhile he

felt too weak from fasting. He took a spoonful of *daitha* [a kind of dish], and went on praying. Still, however, no rain came. R. Na'hman, his fellow-lodger in the inn, [1] said to him: "If the Master would partake of another spoon of *daitha*, then rain would surely come" (ironically). He

felt shame, he became downcast, and rain came. (See Yomah, p. 76: "R. Hanina b. Dosa," etc.)

Said R. Jehudah in the name of Rabh: "Every day a heavenly Voice goes forth and says: 'The whole world is nourished merely by the merits of Hanina my son, and for Hanina alone one Kabh of carobs is sufficient from one Sabbath-eve to the other.'"

The wife of Hanina would make a fire in her oven on the eve of every Sabbath in order not to be ashamed before her neighbors. She had, however, one bad neighbor who said: "I know that Hanina and his wife have nothing to cook for the Sabbath, why does she make fire in her oven? I shall go and see." She went and knocked at the threshold, and Hanina's wife became ashamed and went into another room. In the meantime a miracle happened, and the oven became filled with bread. The neighbor, noticing the bread in the oven, called to Hanina's wife: "Bring the bread-shovel, or the bread will be burned!" And she replied: "I just went in for that purpose." We have learned in a Boraitha: Hanina's wife really did go into the next room for a shovel, because she was accustomed to have miracles happen to her.

One day the wife of R. Hanina said to him: "How long shall we yet be troubled with the want of our daily bread?" And he replied: "What can I do?" Said she: "Pray to God that He should give thee something." He accordingly went and prayed. A hand came forth and gave him a leg of a golden table. Subsequently his wife saw in a dream that all the righteous in heaven ate on golden tables having three legs, while her table only had two. Said she to Hanina: "Wouldst thou then like it, that all should eat at a table having three legs, while we should eat at one only having two? Pray to God that the golden leg may be taken back." He prayed, and the leg was taken back. We have learned in a Boraitha that this latter miracle was even greater than the former; for we have a tradition, that it is usual for heaven to bestow but not to take back.

One eve of Sabbath Hanina noticed his daughter in a despondent mood. Upon asking her what the trouble was, she replied: "I got the two vessels containing oil and vinegar mixed, and poured the latter into the Sabbath lamp and lit it." Said he: "My daughter! why should that trouble thee? He who hath ordained that oil should burn can also ordain that vinegar should burn." We have learned in a Boraitha that the vinegar in that lamp burned all night and all day, till some of it was used for the Habdalah prayer.

R. Hanina ben Dosa had a few goats, and he was told that his goats caused damage to others. Said he: "If my goats do damage, may wolves devour them; but if they do not, may they each bring a bear impaled upon their horns." That same evening, each goat really brought in a bear mounted on its horns.

How did Hanina happen to have goats? Was he not a poor man? Said R. Pinchas: "It once happened that a man left a few chickens at the house of Hanina, and the latter said to his wife: 'Do not use the eggs, for the chickens do not belong to us.'" Accordingly the eggs were left untouched, and in the course of time quite a number of chickens were produced, so that they became too troublesome, and Hanina sold them and with the proceeds purchased goats. Subsequently the man who left the chickens returned to claim them. He was asked for a description of his property, which he gave correctly, whereupon Hanina turned over the goats to him, and these are the goats that brought bears upon their horns. [1]

The same Hanina had a neighbor who was building a house, and the beams were too short. So she came to him, and said: "I have built my house, but my beams do not reach far enough." And he asked her her name. And she answered: "Aikho." He then said: "Aikho, may thy beams become longer." We have learned in a Boraitha that they really became so long that they protruded an ell on each side, while others say that pieces were conjoined with the beams so that they attained the required length. We have learned in another Boraitha: "Plimo said: 'I saw that house and noticed that the beams protruded an ell on each side. And I was told that the house was the one for which Hanina prayed to have the beams become longer.'"

R. Hama bar Hanina ordered a fast-day, but no rain descended,

and he was told: "Why, R. Jehoshua ben Levi would order a fast-day, and rain would commence to fall!" Said he: "That was the son of Levi, and not I!" And they said: "We meant to say, that we should again congregate, and perhaps, if we prove contrite of heart, the rain will descend." They did so, and still no rain descended. Said he to them: "Think ye that ye deserve rain to descend for you?" And they answered: "Yea." Said he to the sky: "Cover thy countenance." No results, however, were produced, and he exclaimed: "How impudent are the skies!" Whereupon they became covered, and rain commenced to fall.

Levi ordered a fast-day, but no rain descended. Said he: "Creator of the universe! Thou didst ascend to the heavens, and didst sit down, but hast no compassion upon thy children." Whereupon rain descended, but Levi fell and became lame.

R. Hyya bar Lolaini heard one cloud say to another: "Come, let us go and deposit our waters in the lands of Ammon and Moab." Said R. Hyya: "Creator of the universe! when thou gavest Thy Law to Israel, Thou hadst gone to other nations, offering it to them, and they would not accept it; and now Thou wouldst allow the clouds to pour forth their waters on their lands!" and turning to the clouds, he exclaimed: "Pour forth your waters on this spot," and they did so.

The same R. Hyya preached: "It is written [Psalms, xcii. 13]: 'The righteous shall spring up like the palm-tree; like a cedar in Lebanon shall he grow high.' Why are both the palm-tree and the cedar mentioned? If the palm-tree only were mentioned, I would say that as a branch of the palm-tree which is broken off does not grow out again, so it will be with the righteous--if he dies, he will leave no one in his stead; therefore a cedar is also mentioned, for with a cedar it is not so. And if a cedar only were mentioned, I might say that as the cedar does not bear fruit, so will it also be with the righteous (which may God forbid). Hence the palm-tree is also mentioned."

The rabbis taught: It once happened that R. Eliezer ordered thirteen fast-days, but no rain descended. When the congregation dispersed after the thirteenth fast-day, he asked them if they had already ordered their graves, and they commenced to weep aloud, whereupon rain commenced to fall.

Another time it happened that R. Eliezer recited the twenty-four benedictions at prayer, but he was not answered. R. Aqiba followed him at the reading-desk, and said: "Father and

King! we have no other king but Thee. Only for Thy sake have mercy upon us!" And his prayer was answered. The people then began to murmur (and say that R. Aqiba was a greater man than R. Eliezer). A heavenly Voice went forth and said: Not because R. Aqiba is a greater man than R. Eliezer was his prayer answered, but because he always gives in to another, while R. Eliezer never did that."

The rabbis taught: How much rain should fall in order that the congregation may stop fasting? When the rain fills up a furrow made with a plough. So said R. Meir, but the sages say: If the water is a span deep on dry land, two spans on moist earth, and three spans on ploughed soil.

"*If while the people are fasting rain should fall before sunrise*." The rabbis taught: "If while the people are fasting rain should fall before sunrise they may stop fasting, but if after sunrise they must not. Such is the dictum of R. Meir. But R. Jehudah said: If it fell before noon they may stop fasting, but if after noon they should not. R. Jose, however, said: They may stop if rain fell before the end of the ninth hour (3 P. M.), but not if it fell after that hour. And so we find in the case of Achab, King of Israel, who fasted from the ninth hour on, and further, as it is written [I Kings, xxii. 29]: "Hast thou seen how Achab hath humbled himself before me?" (It is explained, elsewhere that king used to eat their meal at the ninth hour.)

R. Jehudah Nesseah (the Second) ordered a fast-day, and rain commenced to fall after sunrise. He thereupon desired to stop fasting, but R. Ami said to him: "We have learned that if rain falls before noon or after noon there is a difference of opinion, but after sunrise all agree that fasting may be stopped."

Samuel the Little ordered a fast-day, and rain descended before sunrise. The people wanted to infer therefrom that it was in praise of the congregation; for as soon as a fast was ordered, rain commenced to fall. Said Samuel to them: "This can be compared to a case of where a slave begs for something of his master, and the master says Give it to him! I do not care even to hear his voice."

Again it happened that the same Samuel ordered a fast-day, and rain fell after sunset. Then said the people: "Surely this is in praise of the congregation that after fasting and praying rain came." Said he to them again: "Nay, this is not to be considered; for it can be compared to a slave begging of his master, who says: 'Let him pray and trouble himself for some time before

[paragraph continues] I will give it to him.'" What, then, does Samuel consider as praise for the congregation? If when the sentence is read, "He causeth the wind to blow," a wind springs up, and when the sentence, "He causeth the rain to descend," is read, rain commences to fall.

"*In the evening they returned and sang the great Hallel*." Why should they return in the evening and say the Hallel? Let them say it beforehand? Abayi and Rabha both say: "Hallel is not sung except with a satisfied soul and a well-filled stomach." This is not so! For did it not happen that R. Papa ordered a fast-day in the synagogue of Abi Gober, and rain descended before noon,

when they sang the Hallel, and then ate and drank? With the inhabitants of Me'huza it is different, for they are generally drunkards.

Footnotes

48:1 The ovens were movable, and were used to roast the paschal lamb on the Passover. When not in use they were kept outside of the house.

49:1 This was the name of a high stone in Jerusalem, where the finders of lost articles would deposit what they had found, and then proclaim that they had found something. The owners would then come, and upon sufficient identification of the lost article it would be restored to them.

51:1 In Tract Chullin, 65 *a*, it says Go-bai zeh Arbah = Gobai, and means locust.

51:2 Chagab is also a locust, and presumably a grasshopper. See Numbers, xiii. 33; Isaiah, xl. 22, etc.

52:1 Hastening is called in Hebrew "K'dimah," and Nakdimon is derived from K'dimah, according to the annotations of Joel Sirkosh.

53:1 In Tract Derech Eretz, as well as in the commentaries of Rashi and Tosphath, this man is said to have been Elijah the Prophet, who assumed that disguise in order to humble R. Elazar.

55:1 Concerning the sickness of Shaibatha there is a lengthy discussion among the commentators of the Talmud. Some say that it was a muscular disease peculiar to children between the age of two months and seven years. Others say that it was a disease produced by evil spirits, etc. No definite term for the word can be found. The Aruch devotes two whole pages to the different opinions regarding this disease.

56:1 Here follow the questions put to and answered by Ilpha, which are, however, not essential in this tract, and which will appear in Tract Kethuboth.

56:2 According to Zach. Frankel, in his work about the generations of the Tanaim and Amoraim, and also according to Dr. I. M. Wise, Dr. H. Strack, and Mielziner, Nahum was a resident of Gimzo, a town in southwestern Judea.

57:1 This is a literal and not a figurative translation of that verse.

66:1 The Hebrew term is "Meshunitha." Rashi explains it to mean a rock, while the dictionaries define it as given in our text.

71:1 This will be explained in its place in Tract Uqtsin.

73:1 According to the Aruch the text should read, "Bar-Ushpirti," *i.e.*, the son of Ushpirti, who was the mother of R. Papa, and he said to him thus: "You, son of Ushpirti," etc.

74:1 According to Hananel and other commentaries the whole paragraph was inserted here from other sources than the Gemara. In the Ain Jacob this is not to be found.

Next: Chapter IV

CHAPTER IV.

REGULATIONS CONCERNING THE PRIESTS' BLESSING OF THE PEOPLE, THE INSTITUTION OF THE STANDING MEN--THEIR FASTS AND PRAYERS. THE FAST OF THE SEVENTEENTH DAY OF TAMUZ AND THE NINTH OF ABH, AND THE CELEBRATION OF THE FIFTEENTH DAY OF ABH.

MISHNA: At three periods of the year the priests shall raise their hands (to bless the people) at each prayer, (, *i.e.*) four times on each day; viz., during the morning, additional, afternoon, and closing prayer. (The three periods mentioned are:) On the fast-days, on the fast of the standing men, and on the Day of Atonement.

(The reason for the institution of) these standing men is because it is written [Numb. xxviii. 2]: "Command the children of Israel, and say unto them: My offering, my bread for my sacrifices . . . shall ye observe," etc. How can an offering be brought for a person without his being present (at the time when it is sacrificed)? Therefore did the elder prophets institute twenty-four watches (divisions): each watch always had a section of standing men, composed of priests, Levites, and Israelites, stationed at Jerusalem. When the turn of each watch came around to go up (from their cities to the Temple), the priests and Levites went up to Jerusalem, and the Israelites who belonged to that watch assembled in (the synagogues of) their cities to read the history of the creation (*i.e.*, the first chapter of Genesis).

The standing men used to fast four times in the week; viz., from Monday until Thursday (inclusive), but they did not fast on Friday, on account of the honor due the Sabbath, nor on Sunday, that they might not (too suddenly) pass over from rest and pleasure to weariness and fasting--for that might endanger their lives. On Sunday the standing men read (the sections commencing): "In the beginning," etc. [Genesis, i. 1 to 5], and, "Let there be an expansion," etc. [ibid. 6, etc.]; on Monday they read: "Let there be an expansion," and, "Let the waters," etc. [ibid. 9, etc.]; on Tuesday: "Let the waters," and, "Let there be

lights," etc. [ibid. 14, etc.]; on Wednesday: "Let there be lights," and, "Let the waters bring forth," etc. [ibid. 20, etc.]; on Thursday "Let the waters bring forth," and, "Let the earth bring forth," etc. [ibid. 24, etc.]; on Friday: "Let the earth bring forth," and, "Thus were finished," etc. [ibid. ii. 1 to 4]. The long section of the day was read by two persons and the short by one; this was done, however, during the morning and additional prayers; but at the afternoon prayers they entered (the Synagogue) and recited the sections mentioned by heart, even as the Shema' is recited. On Friday afternoon they did not go to the synagogue at all, in honor of the Sabbath.

On the days on which the Hallel was sung, the standing men would not attend during the morning prayer (in Jerusalem). When there was an additional offering, they did not assemble at

the time of the closing prayer. When a wood-offering was brought, they did not assemble during the afternoon prayer. Such is the dictum of R. Aqiba; but Ben Azai said to him: "R. Jehoshua taught as follows: 'When there was an additional offering, the standing men did not assemble during the afternoon prayer; and when a wood-offering was brought, they did not assemble at the time of the closing prayer.'" Thereupon R. Aqiba changed (his opinion) and taught like Ben Azai.

The times when the delivery of wood (for the altar) was made by priests and people were on nine appointed days: viz., on the 1st day of Nissan, the family of Arah ben Jehudah (made the delivery); on the 20th of Tamuz, the family of David ben Jehudah; on the 5th of Abh, the family of Par'os ben Jehudah; on the 7th of that month, the family of Jonadab ben Rekhab; on the 10th of the same month, the family of Sinaha ben Benjamin; on the 15th of that month, the family of Zathoo ben Jehudah, and with them priests and Levites, and all those who did not know from which tribe they were descended--also the family of Gonebe Eli and the family of Kotze'li Ketzi'oth; and on the 20th, the family of Pa'hath Moab ben Jehudah; on the 20th of Elul, the family of Adin ben Jehudah; and on the 1st of Tebeth, the family of Par'os for the second time.

There was no meeting of the standing men on the 1st of Tebeth; because Hallel was sung and additional sacrifice and wood-offering were brought on that day.

Five calamities happened to our ancestors on the 17th of Tamuz, and five on the 9th of Abh: viz., on the 17th of Tamuz the tables of the Holy Law were broken; on that day the

continual daily offerings ceased, and the city of Jerusalem was stormed; on the same date Apostamos burned the Holy Scrolls and placed an idol in the Temple;--on the 9th of Abh it was decreed that our ancestors should not enter the Holy Land; on that day the first and second Temples were destroyed, the city of Bethar was taken, and the site (of Jerusalem) was ploughed up (like a field). From the 1st of Abh it is incumbent upon a person to lessen his participation in joyful events (until after the 9th of that month).

During the week in which the 9th of Abh occurs, it is prohibited to a person to shave himself, or to wash (his clothes), but on Thursday this is allowed in honor of the Sabbath. On the day before the 9th of Abh a person should not partake of two different kinds of dishes of meat, nor may he drink any wine. Rabbon Simeon ben Gamaliel says: "He should change" (his ordinary mode of living). R. Jehudah considers it obligatory for a person to turn over the bed places, [1] but the sages do not coincide with him.

Rabbon Simeon ben Gamaliel said: Never were there any more joyous festivals in Israel than the 15th of Abh and the Day of Atonement, for on them the maidens of Jerusalem used to go out dressed in white garments-borrowed ones, however, in order not to cause shame to those who had none of their own. These clothes were also to be previously immersed, and thus the maidens went out and danced in the vineyards, saying: Young men, look and observe well whom you are about to choose (as a spouse); regard not beauty alone, but rather look to a virtuous family, for "false is grace, and vain is beauty: a woman only that feareth the Lord shall indeed be praised" [Proverbs, xxxi. 30]; and it is also said [ibid. 31]: "Give her of the fruit of her hands, and let her own works praise her in her gates." Thus also is it written (alluding to that custom):

"Go forth and look, O ye daughters of Zion, on King Solomon, with the crown wherewith his mother bath crowned him on the day of his espousals, and on the day of the joy of his heart" [Solomon's Song, iii. 11]. "The day of the espousals" refers to the day on which the Law was given, and "the day of the joy of his heart" was that when the building of the Temple was completed. May it soon be rebuilt in our days!

GEMARA: "*At three periods of the year*," etc. Is there then an additional prayer on fast-days and for the standing men? The Mishna is not complete, and should read thus: "At three periods of the year the priests shall raise their hands (to bless the people) at each prayer, and among such periods there are days when this is done four times during the day: viz., during the morning, the additional, the afternoon, and the closing prayers; and the three periods of the year are on fast-days, on the fast of the standing men, and on the Day of Atonement . Said R. Na'hman in the name of Rabba bar Abbahu: "Such is the dictum of R. Meir. But the sages maintain that during the morning and additional prayers the priests raise their hands; but not during the afternoon and closing prayers." Whose opinion is that attributed to the sages? That is the opinion of R. Jehudah, as we have learned in the following Boraitha: "In all the four prayers mentioned above, the priests are to raise their hands. This is the dictum of R. Meir, but R. Jehudah said that this is not done in the afternoon and closing prayers, while R. Jose maintains that it is not done in the afternoon prayer, but it is done in the closing prayer." Said R. Na'hman: "The Halakha prevails according to the opinion of R. Jose." And so it remains.

Why is it, then, the custom at present that the priests raise their hands in the afternoon prayer of a fast-day? Because the afternoon prayer is said very near to the time of sunset, it is regarded the same as the closing prayer.

"*These standing men*," etc. How is the Mishna to be understood? The Mishna means to say: "These are the standing men, and the reason of their institution is because it is written," etc.

The rabbis taught: "There are twenty-four watches in the Land of Israel, and of these there are twelve in Jericho. When the watches were to go up to the Temple, half went up from all parts of the Land of Israel to Jerusalem, and the other half from Jericho." Why were half of them in Jericho? Because they had to prepare food and drink for their brethren in Jerusalem.

R. Jehudah said in the name of Samuel: Priests, Levites, and Israelites that compose the division of the standing men prevent, in the event of their absence, the offering of the sacrifices. In a Boraitha we have learned: R. Simeon ben Elazar said: "The priests, Levites, and the musical instruments prevent, by their absence, the offering of the sacrifices," because he

holds that the chanting at the offering of the sacrifices must be accomplished mainly through the musical instruments, and not vocally.

R. Hama bar Guria said in the name of Rabh: Moses established for the Israelites only eight watches; viz., four for the descendants of Elazar the priest and four for those of Ithamar. Subsequently Samuel the prophet increased the number to sixteen, and finally David further

increased them to twenty-four, as it is written [I Chronicles, vi. 26]: "In the fortieth year of David were they inquired into, and there were found among them mighty men of valor at Ya'zer and Gil'ad."

The rabbis taught: "Four watches went up out of exile, and they are: Yida'yah, Harim, Pash'hor, and Imar. And the prophets who went with them increased them to twenty-four." How was this done? They threw lots into an urn, and Yida'yah came and drew lots for himself and companions to the number of six. Then came Harim, and drew lots for himself and for his companions to the number of six. Likewise did Pash'hor, and thus also Imar; and the prophets also enacted that, even should Jehoyoreb, the chief of the watches, come up out of exile, he should not displace Yid'ayah, but Yid'ayah should be first, and Jehoyoreb act merely as an additional (to Yid'ayah).

The rabbis taught: The men of the watch would pray that the sacrifices of their brethren should be favorably accepted; and the standing men would congregate in the synagogues and fast four fast-days; viz., from Monday until Thursday, inclusive. On the first fast-day they would fast for those who plied the seas; on the second, for those who traverse the desert; the third, that the children might be saved from the disease of croup; and the last day, for pregnant women and for those suckling their babes--that the former might be happily delivered and the latter retain their strength. On the day preceding the Sabbath they would not fast, in honor of the Sabbath, and most assuredly not on the Sabbath itself. Why did they not fast on Sunday? Said R. Samuel ben Na'hmeni: "Because that is the third day (after man was created)"; and Resh Lakish said: "Because of the second soul that is given to man on the Sabbath, and which leaves him at the close of the Sabbath day" (hence he would be too weak to fast on the following day).

"*On Sunday the standing men read, 'In the beginning,'*" etc. We have learned in a Boraitha: The first section, *i.e.*, from the

passage commencing, "In the beginning," until that commencing, "Let there be an expansion, was read by two men, while the second section, commencing, Let there be an expansion," until, "Let the waters," etc., was read by one man only.

"*The long section of the day was read by two persons,*" etc. We have learned in a Boraitha: During the morning and additional prayers they would enter into the synagogues and read the sections from the Scrolls as usual; but during the afternoon prayer one man would recite the section by heart. Said R. Jose: "May, then, an individual recite a section of the Scriptures by heart in the presence of the entire congregation?" "Therefore," said he, "the entire congregation went in and recited the section by heart, just as they do the Shema' prayer."

"*On the days on which the Hallel was sung, the standing men would not attend,*" etc. What is the difference? (*i.e.*, why, when a wood-offering was brought, was the closing prayer omitted and the afternoon prayer retained?). Because the closing prayer was a rabbinical institution, while the afternoon prayer was a biblical ordinance.

"*The times when the delivery of wood was made by priests and people*." The rabbis taught: Why did the Mishna have to mention both the times when the priests and when the people made the delivery of wood? Because it was said that when the children of Israel returned from exile they

found no wood in the wood-chamber, and the priests contributed the wood of their own accord. In consideration of this fact, the prophets at that time made the enactment that even when the wood-chamber was filled with wood, the priests be allowed to furnish wood of their own accord (and from their own means), as it is written [Nehemiah, x. 35]: "And we--the priests, the Levites, and the people--cast lots concerning the procuring of the wood, to bring it into the house of our God, unto the house of our fathers, at fixed times, year by year, to burn upon the altar of the Lord our God, as it is written in the Law."

"*And with them priests and Levites*," etc. The rabbis taught: Who were those Gonebe Eli and Kotze Ketzi'oth? It was said that at one time the government decreed that the Israelites should not bring any wood for the altar, nor the firstfruit-offerings to Jerusalem, and guards were appointed to watch the wagons in the same manner as Jeroboam ben Nebat appointed guards to prevent the Israelites from going to Jerusalem for the festivals. What did the pious and those who were

afraid of transgressing do? They would place a basket containing the firstfruits at the bottom of the wagon, and cover it with dried fruits. In addition to that they would carry a pestle, and when stopped by the guards would tell them that they were on their way to a place where they desired to pound the fruit; and after having safely passed the guards, they would ornament the basket containing the firstfruits and bring it into the Temple. And we have learned in a Boraitha, in addition to this, that the Gonebe Eli and the Kotze Ketzi'oth are the same who are called elsewhere the family of Salmai Hanthophathai. Who were the Salmai Hanthophathai? The rabbis taught that when it was decreed that no wood should be brought for the altar they would construct ladders, which they would carry past the guards appointed to watch for any men who would violate the decree, and when stopped would claim that they were about to take down some doves from their dovecots. Having safely eluded the guards and arrived at the Temple, they would take the ladders apart and carry in the wood for the altar. [1] To these men and those emulating their example the passage may be applied [Proverbs, x. 7]: "The memory of the just is to be blessed."

"*On the 20th, the family Pa'hath Moab ben Jehudah*," etc. In a Boraitha we have learned: By "the family Pa'hath Moab ben Jehudah" is meant the family of David ben Jehudah (meaning David the King of the tribe of Judah). Such is the opinion of R. Meir; but R. Jose said that they were of the children of Joab ben Tzeruyah.

"*On the 20th of Elul, the family of Adin ben Jehudah*," etc. The rabbis taught: By "the family of Adin ben Jehudah" is meant the family of David ben Jehudah. Such is the opinion of R. Jehudah; but R. Jose said that they were of the children of Joab ben Tzeruyah.

"*There was no meeting of the standing men on the* 1*st of Tebeth*." Said Rabha: The Hallel which is sung on the feast of new moon is not based upon a biblical ordinance, because R. Johanan said in the name of R. Simeon ben Jehozadok: "Eighteen times during the year an individual may recite the

whole Hallel, and they are: On the eight days of the Feast of Tabernacles, on the eight days of the Feast of Dedication (Hanukah), on the first day of the Passover, and on the day of Pentecost. While in exile, however, one may recite it twenty-one times during the year, namely: On the nine days of the festival of Tabernacles, on the eight days of Hanukah, on the first two days of Passover, and on the two days of Pentecost."

Rabh happened to be in Babylon (*i.e.*, before he removed there permanently) and he saw the people reading the Hallel on the first day of the month. He first intended to interrupt them, but seeing that they read only portions of it, he said: I understand they follow the customs of their ancestors, and it does not matter. In a Boraitha we have learned that an individual shall not start, but if he had already started he may conclude it.

"*Five calamities happened to our ancestors*," etc. Whence do we know that on the 17th day of Tamuz the tables of the Holy Law were broken? Because we have learned in a Boraitha as follows: On the sixth day of Sivan the ten commandments were given, and on the seventh day Moses ascended unto heaven. R. Jose says: "On the seventh day the ten commandments were given." All agree, however, that on the seventh day of Sivan Moses ascended unto heaven, because it is written [Exodus, xxiv. 16]: "And he called unto Moses on the seventh day out of the midst of the cloud"; and further, it is said [ibid. 18]: "And Moses went into the midst of the cloud, and ascended the mount; and Moses was on the mount forty days and forty nights." Thus Moses was there twenty-four days in Sivan and sixteen days in Tamuz, and on the 17th he descended and broke the tables, as it is written [ibid. xxxii. 19]: "And it came to pass, when he (Moses) came nigh unto the camp, and he saw the calf and the dancing, that the anger of Moses waxed hot, and he cast from his hands the tables, and broke them at the foot of the mount."

That the continual daily offerings ceased on the 17th of Tamuz is traditional; and the statement that the city was stormed on that day refers to the second destruction. That the other two calamities occurred on that day is also traditional.

"*On the 9th of Abh it was decreed*," etc. Whence do we know that? From the following Boraitha: We have learned that on the twenty-ninth day of Sivan Moses sent out the spies, as it is written [Numb. xiii. 25]: "And they returned from spying out the land at the end of forty days," and those forty

days (included the day of their return, that is) were in reality forty less one, and Abayi said that in that year the month of Tamuz was a full month of thirty days, as it is written [Lam. i. 15]: "He hath called an assembly against me to crush my young men." [1]

Further, it is written [Numb. xiv. 1]: "And all the congregation lifted up their voice, and cried aloud, and the people wept that night." Said Rabba in the name of R. Johanan: "That night was the eve preceding the ninth of Abh, and the Holy One, blessed be He, said: 'Ye have cried on this night in vain, and I shall ordain it that your generations shall lament on this day forever.'"

"*On that day the first and second Temples were destroyed*." It is written [II Kings, xxv. 8]: "And in the fifth month, on the seventh day of the month," etc., and [Jeremiah, lii. 12]: "And in the fifth month, on the tenth day of the month." It cannot be said that on the seventh day the

calamity occurred, because it is also written "on the tenth." Neither can it be said that it happened "on the tenth," because it says "on the seventh"--hence it must be assumed that entrance to the Temple was gained by the enemy on the seventh, and they ate and did damage therein on the seventh, on the eighth, and on the ninth. Toward the evening of the ninth they set it on fire, and it continued to burn all day on the tenth, as it is written [ibid. vi. 4]: "Wo unto us! for the day waneth, for the shadows of the evening are stretched out." And this bears out the statement of R. Johanan, who said as follows: "Were I living in those days, I would have ordained the fast for the 10th of Abh; for on that day the greater part of the temple was burned." The sages of that day, however, held that the day when the calamity began should be observed as a fast-day.

Whence do we know that the second Temple was also destroyed on the 9th of Abh? We have learned in a Boraitha: "A happy event is credited to the day on which another happy event happened, while a calamity is ascribed to the day when another calamity occurred; and it was said that when the first Temple was destroyed it was on the eve preceding the 9th of Abh, which was also the night at the close of the Sabbath and also the close of the Sabbatical year. The watch at the time

was that of Jehoyoreb, and the Levites were chanting in their proper places, at that moment reciting the passage [Psalms, xciv. 23]: "And he will bring back upon them their own injustice, and in their own wickedness will he destroy them"; and they did not have time to end the passage, which concludes, "yea, he will destroy them--the Lord our God," before the enemy entered and took possession of the Temple. This happened also at the destruction of the second Temple.

That the city of Bethar was taken on the 9th of Abh is traditional.

"*And the site was ploughed up like afield*." We have learned in a Boraitha: When Torosnopos the Wicked destroyed the Temple, a decree was promulgated that Rabbon Gamaliel (the First) should be executed. A certain master came into the house of learning, and said that the man of the nose [1] was being looked for (*i.e.*, the most prominent member of the community). R. Gamaliel understood that he was meant thereby, and hid himself. The same master surreptitiously came to the place where R. Gamaliel was concealed and asked him if, should he (the master) be instrumental in saving his (R. Gamaliel's) life, he would assure him a share in the world to come, and R. Gamaliel answered that he would. The master then demanded that he swear to it, and R. Gamaliel swore. Thereupon the master ascended to an attic, threw himself down, and died. The tradition goes on to say that if one of the signers of a death-warrant or any other unfavorable decree died, the decree became null and void. Thus was Rabbon Gamaliel saved. A heavenly Voice then came forth, and declared that the master would have a share in the world to come.

The rabbis taught: When the first Temple was destroyed, groups of young priests, who had the keys of the Temple, went up to the roof and said: "Creator of the Universe! it being that we were not destined to live and be trustworthy keepers of thy treasure, we herewith return the keys." With that they threw the keys up into the air, and something like a hand was seen to come forth and grasp them, whereupon the priests immediately threw themselves down into the fire beneath. They were mourned by Isaiah the prophet in the verses [Isaiah, xxii. 1 and 2]:

[paragraph continues] "The doom of the valley of vision. What aileth thee now, that thou art wholly gone up to the roofs? O noiseful, tumultuous city, joyous town! thy slain ones are not slain with the sword, and not those that die in battle."

"*From the* 1*st of Abh it is incumbent upon a person to lessen his participation in joyful events*." Said R. Jehudah, the son of R. Samuel bar Shilath, in the name of Rabh: "As from the 1st of Abh participation in joyful events must be lessened, so, as soon as the month of Adar enters, joyous festivities should be increased."

"*During the week in which the* 9*th of Abh occurs*," etc. Said R. Na'hman: "The washing of clothes is prohibited only when they are washed for the purpose of immediate wear, but it is allowed to wash clothes and put them away for future wear." R. Shesheth, however, said that even washing for future wear is also not allowed, and the proof is that the laundresses of Rabh would stop work on that entire week. It was taught also that R. Benjamin said in the name of R. Elazar: "Washing for immediate wear is prohibited during that week, but for future wear it is permitted."

An objection was raised: We have learned: "It is not allowed to wash clothes before the 9th of Abh, even if they be intended for use after the 9th. In those days the washing of the clothes was similar to our laundrying, and as for linen garments the prohibition is not effective (only for silk garments)?" The objection remains.

R. Itz'hak bar Giuri in the name of R. Johanan sent word, saying: "Although the prohibition against washing does not apply to linen garments, still it is not allowed to put on such garments during the week in which the 9th of Abh occurs." Said Rabh: "This applies only to the days preceding the 9th of Abh, but not to those succeeding it," while Samuel said that even on the days following the 9th of Abh it is also not allowed.

This constitutes a difference of opinion among Tanaim, as we learn in the following Boraitha: "If the ninth day of Abh falls on a Sabbath, or even if the eighth falls on a Sabbath, one may eat and drink whatever he chooses, and may place on his table even such viands as were eaten by Solomon while he was yet king. He must not shave or wash (his clothes) from the day of the new moon until after the fast of the 9th of Abh. Such is the dictum of R. Meir. R. Jehudah, however, says that it is

not allowed to do this the entire month of Abh; but R. Simeon ben Gamaliel maintains that the prohibition applies only to the week in which the 9th of Abh occurs."

In another Boraitha we have learned: "A man should be in a state of mourning from the first day of Abh until after the fast-day. Such is the dictum of R. Meir. R. Jehudah, however, says that during the entire month one is not allowed to do things prohibited for a mourner; but R. Simeon ben Gamaliel maintains that one must be in such a state only during the week in which the 9th of Abh occurs." (Hence the difference of opinion between Rabh and Samuel arises from the fact

that Rabh holds with R. Meir, while Samuel holds with the other Tanaim.)

Said R. Johanan: "All the three Tanaim of the Boraitha quoted derived their teachings from the following passage [Hosea, ii. 13]: 'And I will cause to cease all her mirth, her festival, her new moon, and her Sabbath,' etc. The Tana who teaches that one should be in a state of mourning from the 1st of Abh on, derives his teaching from the word 'festival' in the passage, because the 1st, being New Moon, is a festival. The Tana who applies his teaching to the whole month derives it from the words 'new moon,' and infers that it means the entire month; and the Tana who applies his teaching only to the week in which the 9th of Abh occurs, derives it from the word 'Sabbath,' and infers that it means the week of that Sabbath."

Said Rabha: "The Halakha prevails according to R. Meir," and on another occasion he said: "It prevails according to R. Simeon ben Gamaliel"; and by both statements he meant to render the more lenient construction of the ordinance. Thus it was necessary to make both statements. For had he said that the Halakha prevails only according to R. Meir, the state of mourning would extend for the nine days from the 1st to the 9th of Abh inclusive; and had he said that the Halakha prevails only according to R. Simeon ben Gamaliel, the state of mourning would extend over the days following the 9th of Abh in the same week. By citing both decrees, however, the ordinance is made more lenient, in that the state of mourning commences only with the first day of the week in which the 9th occurs and ends with the 9th itself.

"*On the day before the* 9*th of Abh a person should not partake of two dishes*." Said R. Jehudah: "This applies only to the time from the sixth hour on (12 P.M.). but previous to that time

it may be done." And again he said: This applies only to the concluding meal, but during the other meals he may eat what he chooses, and both statements are intended for the more lenient construction of the ordinance (*i.e.*, if one eats his last meal before noon, or if he eats a meal after noon but intends to eat again before the fast commences, he may in either case eat as many dishes as he chooses). We have learned in a Boraitha: On the eve of the 9th of Abh one must not eat two dishes, nor eat meat nor drink wine. R. Simeon b. Gamaliel, however, said: "He shall make a change." Said R. Jehudah: "What is meant by making a change? *E.g.*, if he usually eats two dishes, he shall now eat one; if he usually eats in the company of ten men, he shall now eat in the company of five; if his custom is to drink ten cups of wine, he shall now drink five. But all this applies to the time from the sixth hour on; but previously to the sixth hour, everything is permitted." In another Boraitha we have learned: On the eve of the 9th of Abh one should not eat two dishes, nor eat meat, nor drink wine. So is the decree of R. Meir. The sages, however, said: "He shall make a change, and shall use less meat and wine. How so? If his custom had been to eat a *littre* of meat, he shall now eat one-half of it; if his custom had been to drink a *lug* of wine, he shall now drink one-half of a *lug*; but if his custom had been to drink no wine at all, he must not drink it at all--even a drop." R. Simeon b. Gamaliel said: "If his custom had been to eat radishes or something salt, after his meal, he may continue to do it." In yet another Boraitha we have learned: "In case of the concluding meal before the 9th of Abh he must not eat meat, neither drink wine, nor wash himself; but if this meal is' not the concluding meal, he may eat meat and drink wine, but must not 'wash." R. Ishmael, the son of R. Jose, however, said in the name of his father: "As long as it is allowed to eat meat, it is allowed to wash one's self also."

The rabbis taught: All ordinances applicable to a mourner are effective for all (Israelites) on the 9th of Abh; viz., one must not eat, drink, anoint himself, wear shoes, or have sexual intercourse. The Pentateuch, the Prophets, and the Hagiographa must not be read. The Mishna, Gemara, and Midrash must not be studied, nor Halakhoth or Haggadoth discussed; but something which one has not previously read he may read, and may study something which he had never before studied. The school-children must not learn on that day, because it is written

[paragraph continues] [Psalms, xix. 9]: "The precepts of the Lord are upright, rejoicing the heart." R. Jehudah, however, says that one must not even read something new to him nor study anything which is new to him; but all agree that one may read Job, Lamentations, and the evil prophecies of Jeremiah, and the school-children must be idle on that day.

"*Nor drink any wine*." We have learned in a Boraitha: One may eat salt meat and drink wine still in a state of fermentation (on the day before the 9th). How long must the meat lie in salt in order to be classed as salt meat which may be eaten? Said R. Hinana bar Kahana in the name of Samuel: As long as the time during which a peace-offering may be eaten; *i.e.*, if meat lie in salt two days and one night it is not yet salt meat, but if it lie longer it may be eaten on that day. The prohibition concerning drinking wine that has been standing uncovered does not apply to wine in a state of fermentation, and how long is wine in such a state? Three days.

R. Jehudah said in the name of Rabh: "Such was the custom of R. Jehudah bar R. Ilayi: On the night preceding the 9th of Abh, dry bread with salt and a jug of water were brought to him; he would sit behind the oven and eat the bread and drink the water, and his manner was the same as if the dead body of a near relative were lying before him." In a Boraitha we have learned: To him who eats meat and drinks wine on the 9th of Abh is applied the passage [Ezekiel, xxxii. 27]: "And their iniquities were upon their bones."

"*But the sages do not coincide with him*." Said Rabha: "The Halakha prevails according to the sages."

"*On the* 15*th of Abh and on the Day of Atonement*," etc. It is right that the Day of Atonement should be a day of rejoicing, because that is a day of forgiveness, and on that day the second tables of the Law were given to Moses; but why should the 15th of Abh be a day of rejoicing? Said R. Jehudah in the name of Samuel: "On that day it was permitted to the members of the different tribes to intermarry." Whence is this deduced? Because it is written [Numb. xxxvi. 6]: "This is the thing which the Lord hath commanded concerning the daughters of Zelophehad," etc., they claim that "this is the thing" implies that only for that generation was it decreed, but for later generations the decree does not apply.

R. Joseph in the name of R. Na'hman said: On that day the members of the tribe of Benjamin were permitted to intermarry

with the other tribes, as it is written [Judges, xxi. 1]: "Now the men of Israel had sworn in Mizpah, saying: Not any one of us shall give his daughter unto Benjamin for wife." Whence was

it deduced that subsequently permission might be given to intermarry with the tribe of Benjamin? Because the quoted passage says "Any one of us," and Rabh said that their descendants were not included in the vow.

Rabba bar bar Hana said in the name of R. Johanan: On that day the last of those who were destined to die in the desert died, and the destiny was thus fulfilled; for the Master said that so long as the destiny was still unfulfilled, the Lord did not speak to Moses for his particular sake, as it is written [Deut. ii. 16 and 17]: "So it came to pass, when all the men of war were spent by dying from the midst of the people, that the Lord spoke unto me, saying"; and "unto me" signifies that the Lord spoke unto Moses in particular.

Ula said: "On that day the guards appointed by Jeroboam to prevent the Israelites from coming to Jerusalem were abolished by Hoshea the son of Elah, and he said: 'Let them go wherever they choose.'"

R. Mathnah said: "On that day permission was given to bury the dead who were killed in battle at the city of Bethar." And R. Mathnah said again: "On that day, when it was permitted to bury those killed at Bethar, the assembly at Yamnia ordained the benediction reading: 'Blessed art thou, God the good, that doth good.' What is meant thereby? By 'good' is meant that the bodies were not left to putrefy, and by 'doth good' that burial was permitted."

Rabba and R., Joseph both said: On that day they ceased to cut wood for the altar, as we have learned in a Boraitha: R. Eliezer the Great said: "From the fifteenth day of Abh the heat of the sun was lessened and the timber was no longer dry, so they ceased to cut wood for the altar." [Said R. Menasseh: "That day was called the day on which the saws were broken"], and from that day on, he who adds the night to his time for study may have years and days added to his life.

"*In white garments--borrowed ones,*" etc. The rabbis taught: The king's daughter borrowed from the daughter of the high-priest; the daughter of the latter would borrow from the daughter of the Segan (assistant); the Segan's daughter would borrow from the daughter of the priest who was anointed for the war [see Deut. xx. 2]; and she in turn would borrow

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from the daughter of an ordinary priest. The daughters of the ordinary Israelites would borrow one from the other, in order not to put to shame those who had none of their own.

"*These clothes were also to be immersed*. " Said R. Eliezer: "Even if the clothes were folded and laid in a chest, they must also be immersed."

"*The maidens went out and danced,*" etc. We have learned in a Boraitha: Those that had no wives would go there to procure a spouse.

"*Saying: 'Young men, look and observe,'*" etc. The rabbis taught: The pretty ones among the maidens would say: "Regard but beauty alone, because a woman is made only for beauty." Those among them who were of good family would say: "Rather look to a good family," for

women are but made to bear children (and those of good family produce good children). The ill-favored ones among them would say: "Make your selections only for the glory of Heaven, but provide liberally for us."

Said Ula Biraah in the name of R. Elazar: "In the future the Holy One, blessed be He, will make a ring of the righteous, and He will sit among them in the garden of Eden, and they everyone will point to Him with their fingers, as it is written [Isaiah, xxv. 9]: 'And men will say on that day, Lo, this is our God, for whom we have waited that He would help us: this is the Lord, for whom we have waited; we will be glad and we will rejoice in His salvation.'"

END OF TRACT TAANITH.

Footnotes

80:1 It was the general custom among the Israelites of that day to turn over the couches on which they sate during the day, and slept during the night, on any occasion of mourning and also as a sign of their being in actual mourning.

84:1 The names Gonebe Eli, Kotze Ketzi'oth, and Salmai Hanthophathai were not in reality proper names, but signified the following: Gonebe Eli means those who stole the pestle; Ketzi'oth means dry figs or cinnamon, from the Arabic cassia; and Salmai is derived from the word Sulam a ladder. The connection is easily established, as alluding to the means employed by those pious men safely to elude the guards appointed to watch for the firstfruits and the wood for the altar.

86:1 How it is inferred from the passage is not understood by us, nor explained by any commentary.

87:1 The expression in the original is 'Hotam, meaning *nose*; but Abraham Krochmal asserts that 'Hotam should read 'Hotham, meaning a *seal*, and thus the passage would read "the man of the seal," *i.e.*, the prince of the community.

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TRACT MEGILLA.

CHAPTER I.

REGULATIONS CONCERNING THE TIME WHEN THE BOOK OF ESTHER MUST BE READ ON THE RABBINICAL FEAST OF PURIM IN OPEN TOWNS AND WALLED CITIES, ETC.

MISHNA: The Megilla is read sometimes on the 11th, 12th, 13th, 14th, or on the 15th of the month Adar, neither earlier nor later. Cities which, from the time of Joshua the son of Nun, were surrounded with walls, read it on the 15th. Villages and large open towns should read it on the 14th, and inhabitants of villages may read it in advance on the day of assembly. 1 How is this to be understood? When the 14th fell on Monday, inhabitants of villages and of large open towns used to read it on that day, and those of walled cities on the day following. When it fell on Tuesday or Wednesday, the inhabitants of villages used to read it in advance (the preceding Monday) on the day of assembly, those of large open towns on that day (the 14th), and those of walled towns on the morrow. When it fell on Thursday, inhabitants of villages and large open towns used to read it on that day, and of walled towns on the following day. If it fell on the eve of Sabbath, inhabitants of villages read it in advance on the preceding or day of assembly, and those of large open towns and of walled towns on that day (14th). When it fell on Sabbath, inhabitants of villages and large open towns read it in advance on the preceding Thursday, the day of assembly; and of walled towns on the morrow (the Sunday). When it fell on Sunday, in villages they read it on the preceding day of assembly (Thursday), and in large open towns on that day (14th), and in walled cities on the morrow.

GEMARA: The Megilla was read on the 11th day. Whence do we deduce this? Whence do we deduce this! (Is this, then, a biblical commandment, which you want to deduce from the passages of the Bible? This is only rabbinical), and as it will be explained further on, the sages made it easier for the inhabitants of villages, who usually came to the towns on Mondays and Thursdays, that they should read then the Book of Esther, and should have time to provide their brethren of the towns with water and with food? We meant to say so: let us see. The reading of the Megilla, the men of the Great Assembly have ordained. Now, at the first glance, if the men of the Great Assembly had ordained it should be on the 14th and 15th, have then the sages the power to abolish the ordinances of the Great Assembly? Have we not learned in a Mishna that a Beth Din is not able to abolish the ordinances of its colleagues unless they are greater than they in wisdom and in members? Therefore we must say that all the mentioned days were ordained by the Great Assembly. Where, then, is the hint in the Bible for it? Said R. Shamen bar Abba in the name of R. Johanan: It is written [Esther, ix. 31]: "To confirm these days of Purim in their times." In their *times*: this signifies that many times are to be ordained. But if so, say even the 16th and 17th? Nay, it is written [ibid. 27]: "So that no one should trespass it." That means, it must never be after the appointed time. R. Samuel bar Na'hmani, however, said: It is written

[ibid. 22]: "like those days whereon the Jews had rest from their enemies." And those "days" are plural, meaning two; "like the days" means to add also the 11th and the 12th. But perhaps it is the 12th and the 13th? Said R. Samuel 'bar Itz'hak: The 13th day was the time when all Israel in all places were assembled to take revenge on their enemies, and it is certain that such a day must not be added from the verse, because this day was the day of the main miracle; and therefore if you add something, it can be only the 11th and the 12th. But again, perhaps it is the 16th and 17th? That is already explained by the verse: "He shall not trespass." Said Rabba bar bar Hanah in the name of R. Johanan: This is only according to R. Aqiba, according to whom are many anonymous Mishnas; but the sages say that in our time, (when the messengers are no longer sent) and the people look to the reading of the Megilla as to a sign of the coming feast-day (of Passover), therefore it must be read only in its main time (14th). And so we have learned also in a Boraitha:

[paragraph continues] R. Jehudah said: The old ordinance was only when the years were fixed (by the court in Palestine), and Israel dwelt on its own land; but in our time, when they look to make the feast only when the Megilla. is read, it must be read only in its time. Did R. Jehudah say so? Did not we learn in another Boraitha that *R. Jehudah* said that the ordinance was only in those places where the people from the villages came to the towns on Mondays and Thursdays; but in the places where they do not come, it must be read only in its main time? From this we see that where they come, even in our time, they can read it not in its appointed time, and this contradicts his teaching above. This contradiction was made by R. Ashi, and he answered it: That one Boraitha is not according to R. Jehudah, but according to R. Jose his son.

"*Cities which, from the time of Joshua b. Nun*," etc. How do we deduce this from the Book of Esther? Said Rabba: It is written [ibid. ix. 19]: "Therefore do the Jews of the villages that dwell in the unwalled towns," etc. Now, when the inhabitants of the unwalled towns read on the 14th, it is self-evident that the inhabitants of the walled towns read on the 15th. But perhaps the inhabitants of unwalled towns read on the 14th, but of walled towns do not read at all? Do not read at all! Are they not Israelites? And furthermore, it is written [ibid. 30]: "And he sent letters unto all the Jews, to the hundred and twenty-seven provinces of the kingdom of Ahasuerus," [1] and that means all Israel? But perhaps it means the inhabitants of open towns should read on the 14th only, and those of walled towns should read on both the 14th and I 5th, as it is written [ibid. 21]: "To take it on themselves as a duty that they should celebrate the fourteenth day of the month Adar, and the fifteenth day of the same, in each and every year." If it would read, "the fourteenth *and* the fifteenth," it would be right as you said; but when it is written, "the fourteenth day," separately, and "the fifteenth," separately, that means that the inhabitants of open towns should celebrate on the fourteenth, and those of walled towns on the fifteenth. But this is only about the celebration, which means the eating and the drinking; but the reading of the Megilla, which is only a memorial, whence do we deduce that this is also different? It is written [ibid. 28]:

[paragraph continues] "And these days are remembered and celebrated." And we compare the celebration to the remembering; as the celebration is different, so is the remembering.

But what is the reason of the Tana of our Mishna, who says "walled towns from the time of Joshua b. Nun"? He makes an analogy of expression: it is written here, "therefore the Jews of

the unwalled towns"; and it is written [Deut. iii. 5], "besides the unwalled towns." As thereby unwalled towns are meant those from the time of Joshua, so also is it meant here.

Our Mishna will not be in accordance with R. Joshua b. Kor'ha of the following Boraitha: R. Joshua b. Kor'ha said: The inhabitants of towns surrounded with walls from the times of Ahasuerus should read on the 15th. What is his reason? It shall be as in Shushan? As in Shushan they read on the 15th, so all towns surrounded with a wall shall read on the 15th. But the inhabitants of Shushan itself act according to whom? It is certainly not in accordance with the sages, because it was not surrounded with a wall in the time of Joshua b. Nun? Said Rabba, and according to others Kdi: The case with Shushan is different, for there was the miracle, and they feasted on the 15th. R. Joshua b. Levi said: A large city, and its neighborhood, and all the places around that can be seen with it, must be considered like the large city itself. But how much distance is meant? Said R. Jeremiah, according to others R. Hyya bar Abba, as the distance from Hamtn to Tiberia, which was a mile. The same says again: The double letters in the Hebrew alphabet--Mem, Nun, Zadik, Pe, Kaph--the prophets have added. Is this possible? Is it not written [Lev. xxvii. 34]: "*These* are the commandments"; from which we infer *these* are the commandments, and no prophet has the power to make new ones from that time? And furthermore, did not R. Hisda say that the Mem (when it is the last letter of the word) and Samekh (which is round), which were chased through the tables of Moses, were held in only by a miracle? This is so, but it was not before known which letter must be in the middle of the word and which at the end; and the prophets ordained that the open one should be at the middle and the closed one final. 1 But even that much had they then the right to do? Therefore we must say that it was forgotten and the prophets only restored them. The same

authority says again: The Targum (translation) of the Pentateuch was made by Unkelas the Proselyte under the supervision of R. Eliezer and R. Joshua; the Targum of the Prophets--by Jonathan b. Uziel under the supervision of the three prophets Haggai, Zechariah, and Malachi, Then the ground of Palestine trembled (as if shaken by an earthquake) four hundred Parsaoth square, and a heavenly voice was heard: Who are these who have revealed My Mystery to man? Then Jonathan b. Uziel arose and said: "I am the one who hath revealed Thy Mystery to man, but it is known unto Thee that not to my honor, nor in honor of the house of my father I did this, but for Thy glory, to prevent controversies in Israel." He intended to do the same with the Hagiographa, when a heavenly voice was heard: "Refrain from doing this." Why, so? Because in the Hagiographa the time of Messiah's arrival would be known if it should be translated (and this must be hidden).

Why at the translation of the Pentateuch did not the ground tremble, and at the translation of the Prophets it trembled? Because the Pentateuch is almost all explained; but in the Prophets there are many things not explained at all. As it is written [Zechariah, xii. 11]: "On that day will the lamentation be great in Jerusalem, like the lamentation at Hadad-rimman in the valley of Megiddon." And R. Joseph said, but for the translation of this verse, I would not know at all what it means. The translation is: "On this day will the mourning in Jerusalem be as it was over Ahab b. Amri, that was killed by Hadad-rimman b. Tabrimon in the city of Ramoth Gilead, and as they mourned over Joshia b. Aman, who was killed by Pharaoh Necho (the lame one) in the valley of Megiddon."

It is written [Dan. x. 7]: "And I, Daniel, saw alone this appearance, but the men that were with

me did not see the appearance; nevertheless a great terror fell upon them, so that they fled to hide themselves." Who were these men? Said R. Jeremiah, according to others R. Hyya b. Abba: They were Haggai, Zechariah, and Malachi. They were better than he, because they were prophets, and be, Daniel, was not a prophet. And he was better than they because be saw it, and they, did not see it. But if they did not see, why fell a terror upon them? Although they did not see literally, they saw it clairvoyantly. Said Rabbina: From this we may infer that whoso is terrified, although he does not himself see, he sees clairvoyantly.

We have learned in a Boraitha: The priests during their service,

[paragraph continues] Levites from their balcony, and the Israelites standing around, all must leave their places to go and hear the reading of the Book of Esther. And so also said R. Jehudah in the name of Rabh. This the houses of learning took as their support when they stopped the learning of the Law, and went to hear the reading of the Megilla. They draw an *à fortiori* conclusion from the Temple service: as the Temple service, which was very vigorous, they stopped for the sake of the Megilla, the learning of the Law so much the more. But did not R. Samuel bar Unia say that the learning of the Law is greater than the daily sacrifices? It presents no difficulty; the learning of an individual is not greater than Temple service, but the learning of a congregation together is greater.

Rabha said: It is certain to me that of the Temple service and the reading of the Megilla the latter has the preference, as it is said above. Between the studying of the Law and the reading of the Megilla the latter has the preference, as did the houses of learning. Between the studying of the Law and the burying of a dead man who has no friends the latter has the preference. Between the Temple service and the burying of a dead man the latter has the preference. But what is doubtful to me is, if a man has to read the Megilla and to bury a man who has no friends, which has the preference? Shall we assume the Megilla has the preference, because it proclaims the miracle; or the burying has preference, for the honor of man? After he had considered, he himself decided that the burying has preference, as the Master said (Sabbath, p. 85): Great is the honor of man, which supersedes even a negative commandment of the Torah. The text says: R. Joshua b. Levi said that "a large city and its neighborhood," etc., are considered as the city itself. We have learned in a Boraitha, in addition to this: If it is in the neighborhood, even if it cannot be seen from a distance together with the city; and when it can be seen with the city, although it is not near the city. (This is explained, when the city is in a valley or on a mountain.)

R. Joshua b. Levi says again: A city where the inhabitants had resided before, and later it was surrounded with a wall, must be considered as a village. Why so? Because it is written [Lev. XXV. 29]: "And if a man sell a dwelling-house in a walled city." Whence we may infer that the city was walled before he dwelt in it, but not if he had dwelt in it and afterward it was walled. He says again: A city where there are not ten

unemployed men [1] who devote all their time to the study of the Law must be considered as a village. What does he come to teach us? Did we not learn this in the following Mishna: What is called a great city? If there are ten unemployed men and less than this it is a village? His

teaching is needed to tell us that, even if it was a great city and men came thither from the whole world, if there are fewer than ten men unemployed there, it is considered as a village. The same says again: A large city that was destroyed, and afterward was rebuilt, must be considered as a large city. What is meant by destroying? Shall we assume it is meant that the walls were destroyed? Then if they were only rebuilt it is considered a large city, and not otherwise? Did we not learn in a Boraitha, R. Eliezer b. R. Jose said: It is written [ibid. 30]: "The house in the city which has a wall," from which we infer, which has had a wall previously, even though it has not now? Nay, what is meant by the expression "destroyed" is, that it has not now ten unemployed men (who learn the Law). R. Joshua b. Levi says again: It is obligatory for women to hear the reading of the Megilla, because they benefited also by the same miracle. He says again: If the Feast of Purim falls on Sabbath, it may be lectured about the duties of this day (Purim). Why only the Feast of Esther? Is this not a rule for all festivals? Did we not learn in a Boraitha: Moses ordained that the Israelites should lecture on the duties of each day: the Halakhoth of Passover on Passover, those of Pentecost on Pentecost, and those of Tabernacles on the Feast of Tabernacles? One might say, we shall take a precautionary measure not to lecture about the Megilla, lest one carry it four ells in public ground. As Rabha explains further on, he comes to teach us that such a precautionary measure is not taken about lecturing. The same says again: So also said R. Helbu in the name of Ulla: One is obliged to read the Megilla in the evening, and to repeat it in the daytime, as it is written [Ps. xxx. 13]: "To the end that my glorious soul may sing praise to thee, and never be silent. O Lord my God! forever will I give thanks unto thee." (As this psalm in the Pesiqtha is interpreted; to refer to Mordecai and Esther, he explains "may sing praise to thee" means to read the Megilla in the night, and "never be silent" means to read it in the day.)

"*Inhabitants of villages shall read*," etc. R. Hanina said: The sages made it easier for the inhabitants of villages to read on the days of assembly, because they usually supply with water and food the inhabitants of towns on those days.

"*How is to be understood? 'If it falls on Monday,'*" etc. Why, in the first part of the Mishna, does it begin with the order of the days of the month and when it comes to explain it, it begins with the order of the days of the week? (It does not say "read on the 15th," but "on the morrow.") Because confusion between the numbers of the days in the month and in the week would have arisen, therefore it begins with the dates of the month alone.

"*If it fell on the eve of Sabbath*," etc. According to whom is this Mishna? According to Rabbi, or according to R. Jose? Which Rabbi and R. Jose? Of the following Boraitha: If it falls on the eve of Sabbath, villages and large open cities used to read it on the day of assembly, and inhabitants of walled towns read it on that same day. Said Rabbi: *I* say that the large open towns must not have the appointed time postponed, and must be equal to walled towns, and both read the same day. And which R. Jose? From the following Tosephtha: If it falls on the eve of Sabbath, the inhabitants of walled towns and villages read on the day of assembly, and the large open cities read on the appointed day. R. Jose, however, said: The inhabitants of walled towns do not read in advance of those of the large cities, but both read on the appointed day. But does Rabbi hold that for the inhabitants of large cities we do not change for the day of assembly? Did we not learn in another Boraitha: If the Feast of Purim falls on Sabbath, the inhabitants of villages read in advance on the previous assembly day, and the inhabitants of large open cities read on the eve of Sabbath, and those of walled towns on the day following? As the appointed day has already

been changed for the inhabitants of large cities for the previous day, (I say) it shall be fixed on a day before, which is the assembly day? What comparison is this? In case of the above Boraitha the right-time was on Sabbath, and as they had it changed it was set two days before; but in the previous Boraitha the right-time was the eve of Sabbath, why should it be changed? According to whom is what R. Helbu said in the name of R. Huna, as follows: If the Feast of Purim fall on Sabbath all is postponed for the day of assembly (Thursday). [What is meant by "all"? Is it possible, "all"? Do not the inhabitants

of a walled town read it on the Sabbath itself? It means, for those for whom it has to be postponed, it shall be set on the assembly day.] This will be according to Rabbi.

We see, however, that all agree that the Megilla must not be read on the Sabbath. Why so? Said Rabha: All are obliged to read the Megilla, but not all are able to read it; and this is a precautionary measure, lest one take the Megilla in his hand and go with it to an expert to learn to read it, and at the same time he will carry four ells in public ground. (Therefore it must not be read on Sabbath at all.) And the same is the reason why we do not blow the cornet on the New Year's day when it falls on Sabbath, and do not use the Lulab on the first day of the Feast of Tabernacles when it falls on Sabbath. R. Jose said: Here is another reason: It is because the poor hope only for the day when the Megilla is read to receive gifts, a thing which cannot be done on Sabbath. We have learned the same also in the following Boraitha: Because it was said that the inhabitants of villages read in advance on the day of assembly, the charity that must be given on that feast shall be collected and distributed on the same day, because the poor hope only for the day when the Megilla is read. The enjoyment of eating and drinking, however, must be only on the appointed time.

Rabh said: If the Megilla is read in the right-time, it may be read even by an individual; but if not on the right-time, then only when ten men are together. R. Assi, however, said: In both instances it must be read only when ten men are together. It happened once that Rabh had not ten men: he took the trouble to assemble ten men because of R. Assi's decision.

MISHNA: What must be considered as a large town? Any town in which there are ten *Batlonim*. Should there be less than that number, it is legally considered a village. It was said with respect to these, that "it may be done sooner, but not later"; but the day of the delivery of wood for the priests, the fast on the 9th of Abh, the festive sacrifices, and the day of assembly (to fast and pray for rain) are to be postponed to a later day, but must not be kept before their proper time.

Although it was said in respect to the reading of the Megilla that it may be done earlier but not later, it is yet permitted on these days to pronounce funeral orations and to fast, also to give the gifts to the poor. Said R. Jehudah: When is it allowed to read the Megilla before its proper time? In places where it is customary for the country people to assemble in the towns on

Mondays and Thursdays; but where that does not take place, the Megilla may only be read on its proper day.

GEMARA: We have learned in a Boraitha: By the ten *Batlonim* are meant those who are always in the house of prayer (and must be supported by the congregation, so that at the prayer should never be less than ten men, as is explained in Tract Berachoth).

"*It may be done sooner, but not later*." Why so? Said Samuel: Because in the Book of Esther it was said, "shall not trespass."

"*Delivery of wood for the priests, the 9th of Abh*," etc. The 9th of Abh shall not be made sooner, because calamities are not lamented in advance; and concerning the festive sacrifice and the assembly, it cannot be done earlier, because that duty has not arrived yet. And a Boraitha taught: "The festive sacrifice, and all the time appointed for it (if it was not brought in its right time), can be postponed, but not made earlier." It is right, the festive sacrifice itself; if the festival falls on Sabbath, we postpone it till after Sabbath. But what is meant by "its time shall be postponed"? Said R. Ushia: The Boraitha meant to say thus: The feast-offering, when the festival falls on Sabbath, and the burnt-offering which must be brought when the pilgrims visit Jerusalem [see Deut. xvi. 16, 171, even when the festival did not fall on Sabbath, the offering had to be postponed for the time during the seven days after it. And this is according only to Beth Shammai (Betzah, Chap. II., Mishna 3). Rabha, however, said: What is meant by "the time of the feast-offering may be postponed"? Only for the seven days it can be postponed, not later.

R. Eleazar said in the name of R. Hanina: Rabbi used to set out a plant on Purim, and washed himself in the market of Ziporith (publicly) on the 17th day of Tamuz (which is a fast-day), and intended to abolish the fast of the 9th of Abh. But the sages did not agree with him. Said to him R. Abba bar Zabda: Rabbi, this was not so, for it once happened when the 9th of Abh fell on Sabbath, and it was postponed to Sunday, and Rabbi declared: When it has been postponed, it shall not be kept at all. And the sages did not agree with him. And the former then read the verse [in Ecc. iv. 9]: "Two are better than one." (Rashi explains this, that he means to say the second statement was better than the first; but it seems to us the explanation is different. He means to say that if so, both happened twice, and

Rabbi did not intend to abolish the 9th of Abh, but *did* abolish.)

Hezekiah used to read the Megilla in Tiberia both days--the 14th and the 15th--because it was doubtful to him whether Tiberia had been surrounded with a wall from the time of Joshua b. Nun. But how can this be doubtful? Is it not written [Josh. xix. 35]: "And the fortified cities Ziddim, Zer and Chammath, Rakkath and Kinereth"? And we have a tradition that Rakkath is Tiberia. It was doubtful to him, because on one side the sea was its wall. If so, why is it doubtful? The sea is not a wall, and we have learned in a Boraitha that what is written [Lev. xxv. 30], "the city that has a wall," means a wall, but not if the houses are built around like a wall--and that excludes Tiberia where the sea is the wall? He was not doubtful in respect to the law about houses in a walled town, but in respect to the Megilla, because the expression in the Megilla is "open towns," and he doubted whether the city, having the sea as a wall, is called open or not.

R. Asi used to read the Megilla in the city of Hutzl also on both days, because he doubted whether it was surrounded in the time of Joshua with a wall or not. According to others, R. Asi

said: This Hutzl, which was in the tribe of Benjamin, I am certain was walled in the time of Joshua b. Nun.

R. Johanan said: When I was a child I said a thing, and afterward the elders were asked, and it was found that I was right; namely, Hammath, that is, Tiberia. And why is it called in the Bible Hammath? Because of the hot springs that are in Tiberia. [1] Rakkath is Ziporith, but why is it called in the Bible Rakkath? Because it is situated on the summit of a mountain, as the banks of a river are more elevated than the river. [2] Kinereth, that is, Genoser; but why is it called Kinereth? Because the fruit of this city is agreeable as the sound of a violin. [3] Said Rabha: Is it possible a man exists who says that Rakkath is not Tiberia? It is known to us that if a great man dies here in Babylon, they in Tiberia, in the funeral oration, say thus: The man was great in Sheshakh (Babylon,--Rashi explains this because Sheshah is, by the alphabet of Athbash, Babel) and his name has reached Rakkath. And if the coffin is brought thither, they say in the funeral oration so: Ye lovers of Israel, inhabitants

of Rakkath, go and receive the man who was killed in the valley of Babylon. And when R. Zera died, in the lamentation was mentioned Rakkath (see Moed Katan, p. 44.) Therefore said Rabha: Hammath means Hammei-Grar, Rakkath is Tiberia, Kinereth is Genoser. And why is it called Rakkath? Because even the common men there are full of religious merits as a pomegranate. [1]

R. Jose bar Hanina said: It is written [Zechariah, ix. 7]: "And I will remove their blood out of their mouth, and their abominations from between their teeth; and their land also shall be left for our God." I will remove their blood out of their mouth,--that means, their *Beth Bamia*; [2] "and their abominations from between their teeth"--that is, their *Beth Galia*; [2] "and the land also will be left to our God" means, the houses of prayer and of learning which are in Edom (meaning Rome); "and it shall be as a prince's dwelling in Judah, and Ekron shall be like Jebusi"--that means the theatres and circuses which were in Edom, but in the future the princes of Judah will teach the Torah publicly in them. R. Itz'hak said: Leshem is Pamias, Ekron is Cesaria--why is it called the daughter of Edom? Because it was the metropolis of kings. Same said because there kings were reared, and according to others because from the inhabitants of that city were made kings. Of Cesaria and Jerusalem--if one will say to thee, Both are destroyed, thou shalt not believe; if one will say, Both are in their splendor, do not believe; but if one will say, Cesaria was destroyed and Jerusalem is in its glory, or *vice versa*, you may believe, as it is written [in Ezek. xxvi. 2]: "I shall be made full, now she is in ruins"--that means, if one is full the other is destroyed, and if one is destroyed the other is full. R. Na'hman bar Itz'hak says, we infer it from the following passage [Gen. xxv. 23]: "one people shall be stronger than the other" (Israel and Edom, *i.e.*, Rome). And R. Itz'hak said: It is written [Is. xxvi. 10]: "If favor be shown to the wicked, he will not learn righteousness." Isaac our father said before the Holy One, blessed be He: Creator of the Universe! let Esau be favored. And He said: "He is wicked." Said Isaac again: "It is because he has not learned righteousness." And the Lord said again: "(It is known before me that even) in the land of

uprightness he will deal unjustly." Rejoined Isaac: "If it is so, (then) he shall not regard the majesty of the Lord." R. Itz'hak says again: It is written [Ps. cxl. 9]: "Grant not, O Lord, the

longings of the wicked: suffer not his wicked device to succeed: lest they exalt themselves. Selah." Said Jacob before the Holy One, blessed be He: Creator of the Universe! do not grant to Esau the wicked longing of his heart; "his wicked device to succeed," meaning Germamia of Edom, for if they would go out they would destroy the whole world. He says again: If one will say to you: I have exerted myself, and not found, do not believe him; if one will say, I have not exerted myself, and have found, do not believe him. But if he will say, I have exerted myself, and have found, then believe him. This is all in the studying of the Law, but in business it is a matter of fortune sent from Heaven. And even in studying the Law you must not believe in his sagacity; but if he says what he has learned he has retained without much trouble, you may believe him, because this can be a help from Heaven. He says again: If you have seen a wicked man on whom fortune smiles, do not provoke him, as it is written [Ps. xxxvii. 7]: "Do not fret thyself because of the evil-doers"; so much the more when in his ways he is successful, as it is written [ibid. x. 5]: "Prosperous are his ways at all times." And not only this, but he always wins in a lawsuit, as it is written [ibid., ibid.]: "Far in the height remain thy punishments from him;" and not this only, but he sees vengeance on his enemies, as it is written [ibid.]: "All his assailants, he puffeth at them." This is not so? Did not R. Johanan say in the name of R. Simeon b. Yochi, that one may provoke the wicked in this world? As it is written [Prov. xxviii. 4]: "They that forsake the law praise the wicked; but such as observe the law contend with them." And we have learned also in a Boraitha: R. Dusthai bar Mathun said: A man may provoke the wicked in this world? [And lest one say: "Do not fret thyself because of the evil-doers, neither be thou envious against the workers of iniquity," this can be said only about him whose heart trembles. But the interpretation of this passage is thus: "Do not strive to be like the wicked, neither be thou envious to be like the workers of iniquity," as it is written [Prov. xxiii. 17]: "Let not thy heart be envious against sinners."] (Hence we see that the wicked may be provoked?) It presents no difficulty, for if it is in his own interest he shall not do so; but if in heavenly things, he may. And if you like, I can say: Both are

in his own interest; yet when he is a really upright man he may do so, but when he is not really upright he shall not do so. As R. Huna said: It is written [Habakkuk, i. 13]: "Wherefore wilt thou look upon those that deal treacherously; and be silent when the wicked swalloweth up him that is more righteous than he?" From this we may infer that the wicked swallows him who is more righteous than he, but him who is really upright he cannot swallow. And if you wish, I can say: with him whom fortune favors it is different.

MISHNA: If the Megilla had been read in the first Adar, and the year declared (by the Sanhedrin) to be intercalary, it must be again read in the second Adar. There is no difference between the first Adar and second, but in the reading of the Megilla and the gifts to the poor.

GEMARA: The Mishna says that the two Adars do not differ; that is to say, in the order of the portions that must be read from the Bible on the Sabbaths of the four weeks of Adar, the two Adars are equal. According to whom is the Mishna?

Not according to the first Tana, and not according to R. Eliezer b. R. Jose, and not according to R. Simeon b. Gamaliel of the following Boraitha: If they have read only the Megilla in the first Adar, and the year becomes intercalary, it must be read again in the second Adar, because all the duties that are obligatory in the second Adar are so also on the first Adar, except the reading of the Megilla. R. Eliezer b. R. Jose said: It must not be read in the second Adar, because all the

duties customary in the second are so also in the first. R. Simeon b. Gamaliel in the name of R. Jose said: It must be read also in the second Adar, because all the duties obligatory in the second must not be done in the first. And we asked there, is R. Simeon b. Gamaliel not saying the same as the first Tana? And R. Papa answered: The order of the portions is different between them. Hence our Mishna is not in accordance with the first Tana, because of the gifts to the poor, which according to the Tana of the Boraitha must be given in the first Adar also; and not in accordance with R. Eliezer, who says the Megilla must not be repeated at all in the second Adar; and not in accordance with R. Simeon b. Gamaliel, as according to him there is a difference in the order of the portions (as R. Papa explained). The Mishna is in accordance with R. Simeon b. Gamaliel, but is not completed, and must read thus: There is no difference between the fourteenth day of the first Adar and the fourteenth day of

the second Adar, except in the reading of the Megilla and gifts to the poor. But the next day, in respect to mourning and fasting, they are equal. Concerning the order of the portions, the Mishna does not speak about it. Said R. Hyya bar Abin in the name of R. Johanan: The Halakha prevails according to what Rabban Simeon b. Gamaliel said in the name of R. Jose. Said R. Tabi: The reason why R. Simeon b. Gamaliel declares so is, that one redemption (from Haman) should be near to another redemption (from Egypt, Passover). R. Elazar said: The reason of R. Simeon b. Gamaliel is, because it is written in Esther [ix. 29]: "To confirm this letter of Purim the second time." "The second" means in the second Adar.

R. Samuel bar Jehudah said: Esther sent to the sages the request: "Establish me for the later generations." And they answered: "You want to excite the envy of other nations against us." She rejoined: "My history is already written in the chronicle of the kings of Media and Persia." Rabh and R. Hanina, R. Johanan and R. Habiba (see Sukka, page 5), taught: Esther sent to the sages: "Write about me for later generations." And they answered to her: It is written [Prov. xxii. 20]: "Have I not written for thee thrice?" [1] (thrice means, three times shall be mentioned in the Torah the war with Amalek--in Exodus, in Deuteronomy, and in I. Samuel): only thrice, and not four times. Finally, they found a passage in the Pentateuch [Ex. xvii. 14]: "Write this for a memorial in the book"; and they interpreted the passage thus: "Write this"--what is written here and in Deuteronomy; "for a memorial"--*i.e.*, what is written in the Prophets (Samuel); "in the book"--*i.e.*, what is written in the Book of Esther. We have learned in a Boraitha: R. Eliezer said: The Book of Esther was dictated by the Holy Spirit, as it is written [Esther, v. 16]: "And Haman said in his heart"; and if it were not by the Holy Spirit, how could we know what he said in his heart? R. Aqiba said: "Esther" was dictated by the Holy Spirit because it is written [ibid. ii. 15]: "And Esther found favor in the eyes of all those that beheld her" (this also could not be known, but for the Holy Spirit). R. Meir said: "Esther" was dictated by the Holy Spirit, because it is written [ibid. 22]: "And the thing became known to Mordecai" (and who told him? We must say that it

was the Holy Spirit). R. Jose b. Durmaskes said: From this passage [ix. 10]: "But to the spoil did they not stretch forth their hands" (and it could not be known what was done in the one hundred and twenty-seven provinces by everyone). Said Samuel: If I had been there, I would have said a thing better than all these sayings: It is written [ibid., ibid. 27]: "The Jews confirmed it as a duty, and took it upon themselves." That means, they confirmed in Heaven what they took upon themselves below. Said Rabha: To all the above sayings I have objections, except to Samuel, to

whom it cannot be objected. What R. Eliezer said--that was common sense. Haman knew there was not a man in the king's court that was so respected as he himself, and it is self-evident that thus he thought. What R. Aqiba said--perhaps it was as R. Elazar explains farther on, that every nation thought Esther was of its race; and what R. Meir said-perhaps it was as R. Hyya bar Abbi will explain farther on, that Mordecai understood the language of Rigthau and Theres; and what R. Jose b. Durmaskes said--perhaps they may have sent messengers to the king; but to what Samuel said there is no objection. Said Rabbina: That is as people say, it is better to have one pungent pepper-grain than a full basket of cucumbers. R. Joseph said: From this passage [ix. 28]: "And these days of Purim will not pass away" (and how can this be known? Only from the Holy Spirit). And R. Na'hman b. Itz'hak said (from the end of the verse): "Nor will their memorial cease from their seed."

"*Gifts to the poor*." R. Joseph taught: It is written [ix. 22]: "Sending portions one to another." "Portions" in plural--two portions should be sent to one man; "and gifts to the needy"--needy is in plural: that means, no less than two portions to two men. R. Jehudah the Second [1] sent to R. Oshyia a leg of a third-born calf and a pitcher of wine, and the latter sent to him the message: "The Master has confirmed both duties to send portions one to another; and to give gifts to the needy." Rabha sent to Mari bar Mar through Abayi a bag of dates and a goblet full of flour of dried wheat. Said Abayi to him: Now Mari will say: When a countryman becomes a king, he is still unable to remove the basket from his shoulder. And it is the same with you: now you are the Head of the College, and send

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to him commonplace articles. R. Mari bar Mar returned to Rabha through Abayi a pouch (*tasca*, Lat.) of ginger and a goblet full of long pepper. Said Abayi: Now the Master will say: I had sent him sweets, and he has sent to me pungent things. Said Abayi again:, When I went out from the house of my Master, I was sated. When I arrived there, they furnished the table with sixty diverse dishes, and they ate all; and the last dishes were called "roast of Kedar," and it was so good that I wanted to eat up the dish with it. And this is what people say: "The poor does not know even when he is hungry." Or, as people say: "The stomach is wide enough for sweet things."

Abayi bar Abbin and R. Hanina bar Abbin used to change their meals on Purim. Said Rabha: A man is obliged to intoxicate himself on Purim, till he cannot distinguish between "cursed be Haman" and "blessed be Mordecai." Rabha said again: If one has eaten the festive meal in the night, he has not fulfilled his duty, because it is written, "*days* of entertainment and joy."

R. Ashi was sitting in the presence of R. Kahana. It became dark, and the rabbis had not yet come. Said R. Kahana to him: Why have not the rabbis come yet? And he answered him: Perhaps they are engaged with the festive meal? And he rejoined: Could they not have the festive meal in the evening? Said R. Ashi: Has the Master not heard what Rabha said, that if one has eaten the meal of Purim in the night, he has not fulfilled his duty. And he rejoined: Did Rabha indeed say so? And he answered: Yea. And he learned it from him forty times, and afterward it was as if he had put it into his pocket.

MISHNA: There is no difference between Sabbath and festivals, except in the preparation of food. There is no difference between the Sabbath and the Day of Atonement, excepting that those who knowingly and wilfully profane the Sabbath are punished by man, while those who

wilfully profane the Day of Atonement are punished with *Karoth* (by Heaven).

There is no difference between one who by a vow has interdicted himself from receiving a benefit from another man and one whose vow was confined to the interdiction of accepting any food from another, except that it is not lawful for the first to set his foot in the house (or property) of the other and to borrow vessels (of the other) which are not used for the preparation of food, There is no difference between vows and voluntary offerings,

except that in the case of the first-mentioned the person who thus vows is liable for the risk, but he is not liable for the last-mentioned.

GEMARA: "*Except in the preparation of food*." But in the preparations for the preparing of food, they are equal.

"*He is punished with Karoth*." But in paying of damages, both are equal. And the Mishna is in accordance with R. Nehunia b. Hakana of the following Boraitha: He decided that the Day of Atonement is equal to Sabbath with regard to damages: as on Sabbath, because it is a capital punishment, no damages are to be paid, so on the Day of Atonement, as the punishment is Karoth, he is exempt from damages.

"*Vessels which are not used*," etc. But in regard to vessels which are used for the preparation of food, they are equal.

"*He is not liable for the last-mentioned*." But with regard to the commandment, "Thou shalt not delay," they are equal. (This is explained in Tract Rosh Hashana, page 5.)

MISHNA: There is no difference between a person laboring under an involuntary emission of semen who has experienced it twice (on the same day, or on the two following days) and one who has experienced it thrice (in the same time, or within three days), excepting that the last-mentioned must bring a sacrifice. There is no difference between a leprous person who has only been shut up and one whom the priest has declared as leprous, excepting that the latter must go with rent clothes, and suffer the hair of his head to grow wild. There is no difference between the leper declared clean after being shut up and one who has been cured of that disease, excepting that the latter must be shaved, and bring offerings of birds.

There is no difference between the Holy Books and Thephilin and Mezuzoth, except that the first-mentioned may be written in any language, but the latter in Assyrian characters only. Rabban Simeon b. Gamaliel says: The permission to write the Holy Books in another language was limited to the Greek language only.

There is no difference between a high-priest anointed with the sacred oil and one whose dignity was marked by additional sacerdotal vestments only, except the bull which the first-mentioned is to offer, in case he gave a wrong decision which led to a transgression of a precept. There is no difference between an officiating high-priest and his late substitute, except the bull offered on the Day of Atonement, and the

tenth of the ephah of flour(which the real high-priest alone might offer).

There is no difference between a large high place 1 and a small one, except the Paschal offering. This is the rule: All offerings which are brought in consequence of vows, and all peace-offerings, may be offered on a small high place, but not sacrifices of another kind.

There was no, difference between the Tabernacle of Shiloh and the Temple of Jerusalem, except that at the former place it was lawful to eat of sacrifices having a minor degree of holiness, and of the second tithe, in any place from whence Shiloh might be seen; but in Jerusalem it was lawful to eat these within the walls only. In both places, however, sacrifices which were most holy might be only eaten within the hangings (of the court of the sanctuary). The holiness of Shiloh had subsequently a period in which it became lawful (to offer sacrifices elsewhere), but the holiness of Jerusalem has no such period.

GEMARA: "*Excepting that the last-mentioned must bring a sacrifice*." But in respect to their lying, sitting, and the seven days which they have to wait till it is allowed to take a legal bath, both are equal (all this will be explained in Tract Zabim).

"*There is no difference between a leprous person*," etc. But in regard to sending him away outside of the assembly and in respect to defilement they are both equal (as will be explained in Tract Negaim).

"*There is no difference between the Holy Books*," etc. But to sew it with dried veins of a clean animal and to make unclean the hand (see Appendix, Sabbath) both are equal.

"*May be written in any language*." There is a contradiction to the following Boraitha: If one wrote a Targum instead of portions of the Holy Book (in the original); or, *vice versa*, if he wrote the translation in characters of the original, and also if he wrote it not in Assyrian but ancient Hebrew (square) characters, it is not holy to make unclean the hand, until it should be written in Assyrian characters, in a book and with ink (and there it has been said the *Holy* Books can be written in all languages). It presents no difficulty: the Boraitha meant, not Holy Books, but the Thephilin and Mezuzoth, and the Mishna means Scripture. What is the reason that Thephilin and Mezuzoth if written in

another tongue are not holy? Because it is written [Deut. vi. 8]: "*They shall be* as frontlets between thy eyes." They shall be as originally.

What is meant, if the Targum was written in the original characters? If in the Torah, it is right. The words "Yegar Sahadutha" [Gen. xxxi. 47] are Aramaic; but what Aramaic words are in the Thephilin? Therefore we must answer the contradiction thus: The Boraitha refers to the Book of Esther. Why must it not be written in other languages? Because it is written [Esther, viii. 9]: "According to their writing, and according to their language." But what Aramaic words are in the Book of Esther? Said R. Papa [in Chapter I., verse 20], "The king's *decree*" (Pithgam), which

is not a Hebrew word, but Aramaic. R. Na'hman bar Itz'hak said [ibid., ibid.]: The last word, "will show *respect*" (Yekar), is not Hebrew. R. Ashi, however, said: That the Boraitha means, not the Holy Scrolls (Pentateuch), but the Prophets and Hagiographa. And this is in accordance with R. Jehudah of the following Boraitha: Thephilin and Mezuzoth must be written only in Assyrian characters; and our sages have not allowed they shall be written in any language, only in Greek. And in addition to this Boraitha it is stated: Said R. Jehudah: The sages allowed to write in Greek only the Pentateuch, but not anything else. And this was also allowed only because of what occurred with Ptolemy the king, as follows: It happened to Ptolemy the king that he took seventy-two elders from Jerusalem, and placed them in seventy-two separate chambers, and did not inform them to what purpose he had brought them. And afterward he entered to each of them, and said to them: Translate me the Torah of Moses from memory. And the Holy One, blessed be He, sent into the heart of each of them a counsel, and they all agreed to have one mind, and changed as follows: Instead of "In the beginning God created the world," they wrote, "God created the world in the beginning"; instead of Gen. i. 26 they wrote, "*I* will make a man in an image"; instead of Gen. ii. 2 they wrote, "And God finished on the sixth day, and rested on the seventh day"; instead of Gen. v. 2 they wrote, "created *him*"; instead of Gen. xi. 7 they wrote, "Let *me* go down"; [xviii. 12]: "And Sarah laughed among her relatives"; instead of xlix. 6, "In their anger they slew an ox, and their self-will lamed a fattened ox." And instead of Ex. iv. 20, "Set them on a porter (man-carrier)"; instead of ibid. xii. 40, "Dwelt in Egypt and in *other lands*"; and ibid. xxiv. as ibid.,

[paragraph continues] "Against the *respectable* men of Israel." Instead of Num. xvi. 15, "Not one precious thing I took away"; and instead of Deut. iv. 19 they wrote, "assigned to light for all nations"; instead of ibid. xvii. 3, "which I have not commanded to worship"; and instead of Lev. xi. 6, "the hare," which is expressed in the Bible "Arnebeth," as Ptolemy's wife was named so they wrote, "and the beast that has small feet."

"*Rabban Simeon b. Gamaliel says*," etc. Said R. Abahu in the name of R. Johanan: The Halakha prevails according to R. Simeon b. Gamaliel. And he says again: What is the reason of R. Simeon b. Gamaliel? Because it is written [Gen. ix. 27]: "May God enlarge the boundaries of Japheth, and may he dwell in the tents of Shem." That means to say, the most beautiful thing which Japheth has--that is, the Greek language--shall dwell in the tents of Shem.

"*There is no difference between a high-priest*," etc. But in respect to the bullock of the Day of Atonement, and the tenth of an ephah, which the high-priest must bring, both are equal.

"*There is no difference between Shiloh and Jerusalem*." Said R. Itz'hak: I have heard that one may sacrifice in the Temple of Honin in Egypt, even at this time. He holds that the Temple of Honin is not a temple for idolatry, but for God, and also that the sanctitude of Jerusalem was only while the Temple existed, but is not so for the future, since its destruction. As it is written [Deut. xii. 9]: "For ye are not as yet come to the rest and to the inheritance." "To the rest," *i.e.*, the Tabernacle of Shiloh; "to the inheritance," *i.e.*, the Temple of Jerusalem: and we see that the Tabernacle of Shiloh is compared to the Temple of Jerusalem, as Shiloh, after the Tabernacle was destroyed, ceased to be holy, and it was lawful to sacrifice elsewhere, the same was with Jerusalem. The sages then said to R. Itz'hak: Do you say so? And he answered: No. Said Rabha: I swear by God that he has said so, and I have learned it from him. But what is the reason that he himself receded from this? Because R. Mari objected to this, from a Boraitha which states that

the sanctitude of Shiloh was gone after the Tabernacle was destroyed, but of Jerusalem the sanctitude was not gone even after the Temple's destruction.

It is written: "And it came to pass in the days of Ahasuerus." R. Levi, according to others R. Jonathan, said: This is a tradition among us from our ancestors--the men of the Great Assembly--that wherever it is written •••• (it came to pass),

was some disaster. Here there was Haman. In Ruth: "And it came to pass in the days of the judges." There was hunger. Genesis, vi. 1: "And it came to pass when men began to multiply," and soon after is written: "And God saw that the wickedness of man was great"; [ibid. xi. 2]: "And it came to pass as they journeyed toward the east." And there was the dispersion. And ibid. xiv. 1. "And it came to pass in the days of Amrophel." There was a war. In Joshua, v. 13: "It came to pass when Joshua was by Jericho," it is written he saw a man with a drawn sword in his hand; ibid. vi. 27: "And the Lord *was* with Joshua" (the Hebrew expression is the same); and soon it is written: "And the children of Israel committed a trespass"; I Samuel: "There *was* a certain man"; and afterward it is written: "Hannah he loved, but the Lord had shut her womb." Ibid. viii. 1: "It came to pass when Samuel was old." His sons walked not in his way. Ibid. xviii. 14: "And David *was* successful in all his ways," and soon comes: "Saul was in dread of him." II Samuel, vii. 1: "And it came to pass when the king dwelt in his house." And he was not allowed to build the Temple. But is it not written [Gen. xxix. 16]: "When Jacob saw Rachel," and in Genesis [i. 5]: "And it was evening, and it was morning, the first day"--and so in many other instances, and no disaster happened? Wherever it is said, "it came to pass," there may or may not be a calamity; but whenever it is said, "and it came to pass in the days," there surely happened a misfortune. There are five expressions, "it came to pass in the days"; viz., in the days of Ahasuerus, the judges, Amrophel, Ahaz [Is. vii.], and Yoiakim [Jerem. i.], and in all instances there were troubles.

R. Levi says again: We have a tradition from our ancestors that Amuz and Amaziah were brothers. What does he come to teach us? It is similar to what R. Samuel b. Nahmani said in the name of R. Jonathan: A bride who is chaste in the house of her husband's parents deserves that kings and prophets should descend from her, and this we infer from Tamar, as it is written [Gen. xxxviii. 15]: "And Judah saw her and thought her to be a harlot, because she had covered her face." Because she had covered her face he took her for a harlot? That means, she had covered her face when she had been in his house, so that he did not know her. Therefore she was rewarded that from her descended kings and prophets--kings from David; and prophets, as R. Levi said above. Amuz

and Amaziah were brothers, and Isaiah the son of Amuz was a prophet.

R. Jonathan, when he came to lecture about the Book of Esther, began with this passage [Is. xiv. 22]: "I will rise up against them," etc., "and I will cut from Babylon name and remnant, and son and grandson, saith the Lord." Name, *i.e.*, they will not have their own writing; "remnant," they will not have their own language; "son," they will not have any kingdom; "grandchild," that means Vashti.

R. Simeon b. Nahmani, when he came to lecture, began his lecture with the passage [Is. lv. 13]: "Instead of the thorn shall come up the fir-tree, and instead of the nettle shall come up the myrtle." "Instead of the thorn," *i.e.*, instead of Haman the wicked, who made himself an idol, as it is written [ibid. vii. 19]. "All thorn-hedges"; "shall come up the fir-tree," *i.e.*, Mordecai, who was the essence to all the spices, as it is written [Ex. xxx. 23]: "And thou, take unto thyself principal spices, of pure myrrh"--this is translated in the Aramaic Mor-decai; "instead of the nettle," *i.e.*, Vashti the wicked, who was granddaughter of Nebuchadnezzar the wicked, who had burnt the house of God, shall rise Esther the upright, who was called Hadassa (Myrtle), as it is written: "And he had brought up Hadassah--that is, Esther" [Esther, ii. 7]; "And it shall be unto the Lord for a name," *i.e.*, the reading of the Megilla; "for a sign of everlasting that shall not be cut off," *i.e.*, the Days of Purim.

R. Joshua b. Levi began his lecture from this passage [Deut. xxviii. 63]: "And it shall come to pass that as the Lord rejoiced over you to do you good, and to multiply you, so will the Lord rejoice over you to bring you to nought, and to destroy you." Let us see. Does the, Holy One, blessed be He, rejoice when the wicked are in misfortune? It is written [II Chron. xx. 21]: "As they went out before the armed array, and said: Give thanks unto the Lord. for unto everlasting endureth his kindness." Said R. Johanan: Why is it not here said, as usually, "for He is good"? Because the Holy One, blessed be He, rejoices not at the misfortunes of the wicked. And R. Johanan said again: It is written [Ex. xiv. 20]: "And the one came not unto the other all the night." That means, the angels of heaven wanted to sing the usual song, and the Holy One, blessed be He, said to them: My creatures are drowning in the sea, and you want to sing songs! Said R. Elazar: He Himself does not rejoice, but He makes others rejoice. And it seems to be

so, because it is not written: "As *he* rejoiced," etc., "so will he rejoice" (others). 1

R. Abba bar Kahana began his lecture with this passage [Ecc. ii. 26]: "For to a man who is good in His presence He giveth wisdom and knowledge and joy"--this means Mordecai the Upright; "but to the sinner he giveth employment to gather up and to bring together"--that means Haman; "that he may give it to him that is good before God," *i.e.*, Mordecai and Esther, as it is written afterward [Esther, viii. 2]: "And Esther appointed Mordecai over the house of Haman."

Rabba bar Upbron began his lecture with the following passage [Jerem. xlix. 38]: "And I will set up my throne in Elam, and I will destroy thence kings and princes." By kings is meant Vashti, and by princes Haman and his ten sons.

And R. Dimi b. Itz'hak begins to lecture from this passage [Ezra, ix. 9]: "For we are bondmen; yet in our bondage hath our God not forsaken us, but hath extended unto us kindness before the kings of Persia." And that was in the time of Mordecai.

R. Hanina bar Papa begins his lecture from this passage [Ps. lxvi. 12]: "Thou hast caused men to ride on our heads: we entered into fire and into water." "Into fire," in the time of Nebuchadnezzar; "into water," in the time of Pharaoh. "But thou broughtest us to the enjoyment of overflowing plenty." That was in the time of Haman.

R. Johanan began his lecture from this passage [Ps. xcviii. 3]: "He hath remembered his

kindness and his truth to the house of Israel: all the ends of the earth have seen the salvation of our God." When did all the ends of the earth see it? In the time of Mordecai and Esther.

Resh Lakish began his lecture with this passage [Prov. xxviii. 15]: "As a roaring lion and greedy hear, so is a wicked ruler over an indigent people." "The roaring lion"--that is, "Nebuchadnezzar, as it is written [Jeremiah, iv. 7]: "The lion is come up from his thicket." "A greedy bear" is Ahasuerus, about whom it is written [Daniel, vii, 5]: "And behold, there was another, a second beast, like a bear." An d R. Joseph said: The Persians are meant, who eat and drink like a bear, and are corpulent like a bear, and let their hair grow like a bear, and

have no repose, like a bear. "Wicked ruler," *i.e.*, Haman; "indigent people," *i.e.*, Israel, who are poor in merits.

"R. Elazar begins his lecture with this passage [Ecc. x. 18]: "Through slothful hands the rafters will sink, and through idleness of the hands the house will become leaky." That means to say, because Israel became idle, and did not observe the Law, the enemy of the Holy One, blessed be He (meaning Him), becomes sunk, *i.e.*, poor.

R. Na'hman b. Itz'hak begins his lecture with this passage [Ps. xxiv. 2]. "If it had not been the Lord who was for us, when men rose up against us." Men, and not a king (that is Haman).

Rabha begins his lecture with [Prov. xxix. 2]: "When the righteous are in authority, the people will rejoice; but when the wicked beareth rule, the people groan." When the righteous rule, *i.e.*, Mordecai and Esther, the people rejoice, as it is written [Esther, viii. 15]: "And the city of Shushan was glad and joyful." And when the wicked rule, *i.e.*, Haman, the people groan, as it is written [ibid. iv. 15]: "But the city of Shushan was perplexed."

R. Mathna begins with the following passage [Deut. iv. 7]: "For what great nation is there that hath God so nigh unto it?"

R. Ashi begins with the following passage [ibid., ibid. 34]: "Or hath God essayed to go to take to himself a nation from the midst of a nation?" (What they lectured is not written.)

"*And it came to pass in the time of Ahasuerus*." Said Rabh: Woe! woe! This is what is written [ibid. xxviii. 68]: "And there ye will offer yourselves for sale unto your enemies for bondmen and bondwomen without anyone to buy you." Samuel said: It is written [Lev. xxvi. 44]: "I will not cast them away, neither will I loathe them, to destroy them utterly." I have not cast them away--in the times of the Greek, and I have not loathed them--in the time of Nebuchadnezzar; "to destroy them"--in the time of Haman; "to break my covenant with them"--in the time of the Persians; "for I am the Lord their God"--in the time of Gog and Magog. A Boraitha stated: "I will not cast away"--in the times of the Chaldeans, as in that time I raised for them Daniel, Hananiah, Mishael, and Azariah; and have not loathed men in the times of the Greeks, when I gave them Simeon the Upright and the Maccabees; "to destroy them"--in the time of Haman I gave them Mordecai

and Esther; "to break my covenant"--in the time of Rome I gave them the House of Rabbi and the sages of that generation; "for I am the Lord their God"--in the future no nation or tongue will dominate over them.

R. Levi said: From this verse [Num. xxxiii. 55], and R. Hyya from ibid. 56. (What they lectured is unknown.)

"*Ahasuerus*." Said Rabh: He was the brother of a head 1 and the companion of a head. "The brother of a head," *i.e.*, brother of Nebuchadnezzar the wicked, who was called "head," as it is written [Daniel, ii. 38]: "Thou art the head of gold." "And the companion of a head"--what Nebuchadnezzar did, *he* intended to do. Nebuchadnezzar killed, *he* intended; Nebuchadnezzar destroyed, *he* had the intention. As it is written [Ezra, iv.]: "In the beginning of the reign of Ahasuerus, they wrote slanders on the inhabitants of Judea and Jerusalem." Samuel said: Ahasuerus signifies "black," 2 *i.e.*, in his time the faces of the Jews were black as the bottoms of pots. R. Johanan says: Ahasuerus signifies "woe to his head" (*ah, rosh*); and R. Hanina says it signifies "poor" (*rash*)--his taxes were so heavy that men became poor.

It is written [Esther, i. 1]: "The same Ahasuerus"--he was the same in his wickedness from beginning to end. (Similarly) it is written [in Gen. xxxvi. 43]: "This is Esau," *i.e.*, the same in wickedness from beginning to end; and [Num. xxvi. 9]: "These are Dathan and Abiram," *i.e.*, they were the same in wickedness always; and [II Chron. xxviii. 22]: "He, King Ahaz," *i.e.*, the same in wickedness always; and on the contrary, also [I Chron. i. 27]: "Abram--the same is Abraham," *i.e.*, Abraham was the same in his righteousness from beginning to end; [Ex. vi. 26]: "These are Aaron and Moses," *i.e.*, were the same in righteousness from beginning to end; [I Samuel, xvii. 14]: "And David was the youngest," that means, he was as in his youth from beginning to end: as in his youth he humbled himself before one greater than be, so also when he was a king he was modest before a man superior to him in wisdom.

"*Who reigned*." Said Rabh: He was a self-made king. Some say, it was in his praise, there was none so fit to be a king as he; and some say it is to his disgrace--he was not fit to be a king, but he had much money, and the money made him king.

The rabbis taught: Three kings reigned over the whole world--Ahab, Ahasuerus, and Nebuchadnezzar. Ahab, as it is written [I Kings, xviii. 10]: "As the Lord thy God liveth . . . he caused that kingdom and nation to take an oath . . ."; and if they would not be under his dominion, how could he cause them to take an oath? Nebuchadnezzar, as it is written [Jerem. xxvii. 8]: "And it will come to pass that the nation or kingdom which shall not serve Nebuchadnezzar, king of Babylon, and not place its neck under the yoke of the king of Babylonia." Ahasuerus, as stated in Sanhedrin, was king of the whole world. Are these all? Was not Solomon also king of the whole world? Solomon was not a king to the end of his life.

This is right, according to those who hold he was first a king and then a common man; but according to those who say he was a king, a common man, and then again a king, what can be said? Solomon is different. He reigned over the beings above 1 and below, as it is written [I

Chron. xxix. 23]: "Solomon sat on the throne of the Lord." (He is not reckoned with them.) But there is Sennacherib? As it is written [Is. xxxvi. 19]: "Which of all the gods of the lands have saved their countries from my hand?" There was Jerusalem, which was not subject to him. But there is Darius? As it is written [Dan. vi. 26]: "Darius the king wrote to all peoples, nations, and tongues that live on the whole earth: Your peace shall be great." There were seven countries not under his dominion; as it is written [ibid. 2]: "It pleased Darius, and he raised over his kingdom 120 satraps" (while Ahasuerus reigned over 127). But there is Cyrus? As it is written [Ezra, i.]: "So said Cyrus, king of Persia: All the kingdoms of the earth the Lord hath given unto me." He only vaunted.

"When the king sat," and, "in the third year of his reign." That is a contradiction? Nay, it is when be became firmly seated on the throne.

R. Na'hman b. Hisda lectured: It is written [Is. xlv. 7]: "Thus hath said the Lord to his anointed, to Cyrus, 'Whom I have taken hold of by his right hand.'" Was then Cyrus a Messiah? It is meant that God had said to Messiah: I complain of Cyrus; I have thought he would build my House, and gather all my people that were in exile, and he only says [Ezra, i. 3]:

[paragraph continues] "Whoever among you that is of all his people, may his God be with him, and let him go up to Jerusalem" [but did not command all to return].

It is written in the first chapter: "The army of Persia and Media"; and [x. 2] "The kings of Media and Persia." Why is Media here mentioned first, and in the other verse Persia? Said Rabha: They made this agreement between them: When one of our nation will be king, the governors will be of your nation, and *vice versa*; [ibid. i. 5]: "And when these days were completed." Rabh and Samuel say, one that he was a wise king, and the other that he was a foolish king. One says he was a wise king, because he made the feast first for the remote subjects, because for his townsmen he could make it at any time; and the other says he was a fool, for he should have made it first for his townsmen, so that if those would rebel, these at least would defend him.

The disciples of R. Simeon b. Yochi asked their Master: By what sins had the Israelites incurred the decree of Haman in that age? Answered he: What is your opinion? They said: Because they enjoyed the feast which Ahasuerus the wicked man made. If so, only those of Shushan should have suffered. Why did those of all provinces? They said to him: Let the Master explain. So he answered: Because they kneeled to the image. Said the disciples to him: If so, they were guilty, and why were they not killed? And he answered: They bowed to the image not because they wanted, but only for appearance; so the decree against them was also for appearance not carried out. And this is what is written [Lam. iii. 33]: "He doth not afflict of his own will."

"In the court of the garden of the king's palace." Rabh and Samuel--one says every one was placed in the place be fitted: the court, garden, and king's palace; and one says he first tried to place them in the court, and it could not contain them; he then placed them in the garden, and it also could not contain them, until he placed them in the king's palace. A Boraitha, however, states that he placed them in the court from which two doors opened, one into the garden and another into the palace.

"And the royal wine was in abundance" [Esther, i. 7]. Said Rabh: We infer from this that he gave to each to drink wine that was older than he.

"And the drinking was according to the order" [ibid. 8]. What is meant by "according to the order"? R. Hanan said

in the name of R. Meir: It was according to the order of our Torah. As in our Law eating precedes drinking, so he gave more to eat than to drink.

"Without compulsion." Says R. Elazar: From this it can be learned that to each was given to drink wine that grew in his country.

"On the seventh day, when the heart of the king was merry with wine." And till then, what did he do? Was he not till then merry with wine? Said Rabha: The seventh day was Sabbath. When Israelites eat and drink on Sabbath, they begin with sayings of the Law and praises to God; but the nations, when they feast, speak about women. These said the Medians are beautiful, and those said the Persian women are more fair. And Ahasuerus said to them: The one that I have is neither Median nor Persian, but Chaldean, and she is fairer than they all; and if you wish you can see her. They said: Yea, we wish to see her, but she must be naked. And the same measure which one uses, is used against one: as Vashti used to take Israelite maidens, and make them work nude, on Sabbath, so also it was decreed that she should be brought nude. And this is what is written [Esther, ii. 1]: "After these events, as the king's fury was appeased, he remembered Vashti, and what she had done, and what had been decreed concerning her"; *i.e.*, the decree had been the same as what she had done. "And the king was very wroth." What was the cause? Said Rabh: She sent to him this message: "Thou groom of my father, my father used to drink wine as a thousand persons, and never had he committed such follies when he was drunk as thou." And therefore he was so wroth.

"Then said Memuchan." We have learned in a Boraitha: Memuchan was Haman. Why was he called Memuchan? Because he was *destined* [1] for the troubles that befell him afterwards. R. Kahana said: From this we see that usually an ignorant man comes forward first (as he is mentioned last in verse 14).

"That every man should bear rule in his own house." Said Rabha: But for the first letters, there would have been left no remnant of Israel; because the men laughed at such a decree, that every man should rule in his own house. For even a tanner is in his own house a prince, and therefore they did not pay so much attention to the second decree in the later letters.

"And let the king appoint officers." Said Rabh: It is written [Prov. xiii. 16]: "Every prudent man acteth with knowledge, but a fool spreadeth abroad his folly." "Every prudent man acteth with knowledge"--that was David, as it is written [I Kings, i. 2]: "Wherefore his servants said unto him, Let them seek out for my lord the king a young virgin." Everyone who had a daughter, brought her himself to the king. "But a fool spreadeth abroad his folly," *i.e.*, Ahasuerus, who had to appoint officers, for whoso had a beautiful daughter hid her from him,

"There was a certain Jew in Shushan the capital a Benjamite." What is meant by "he was a Benjamite? If it is meant to give his genealogy, let it have been traced to Benjamin; otherwise, why were the first three of his ancestors mentioned? In a Boraitha it is explained that all the three names are not those of his ancestors, but are his own. The son of Yair, *i.e.*, the man who made the eyes of the Jews *light* 1 with his prayer; the son of Shimi, the man whose prayer God *heard*; 1 the son of Kish, *i.e.*, the man who *knocked* on the gates of *Mercy, and they* were opened to him. 1 Said R. Na'hman: Mordecai was crowned with these fair names. It is written, "a Judean man," and then, "a Benjamite." Which was he? Said Rabba bar bar Hana in the name of R. Joshua b. Levi: His father was a Benjamite and his mother was a Judean. The sages, however, said: The tribes disputed with each other. Judah said: Through me Mordecai was born, for if David bad killed Shimi b. Gera, he could not have been born; and Benjamin said, he belongs to me, because he is of my tribe. Rabha says: On the contrary, the Kneseth (congregation) of Israel said: See what Jehudah did to me, and see what the Benjamites have done to me: Judah, because David did not kill Shimi, made possible the birth of Mordecai, of whom Haman became jealous; and because Saul had not killed Agag was born Haman, who caused troubles to Israel.

R. Johanan said: He was a Benjamite. Why is he called a Judean? Because he did not want to worship idols, and every Israelite who rejects idols is called a Judean, as it is written in Daniel x. 12: "There are certain *Judean* men," etc. "Thy gods they do not worship."

R. Simeon b. Pazzi, when he wanted to lecture about Chronicles,

began thus: All the names which are mentioned in the Chronicles without any explanation, we are nevertheless able to explain them. It is written [I Chronicles, iv. 18]: "And his wife the Judean bore Jered the father of Gedor, and Cheber the father of Socho, and Jekuthiel the father of Zanoach. And there are the sons of Bithya the daughter of Pharaoh, whom Mered had taken (for wife)." Why was she called "the Judean"? Because she denied idolatry, as it is written [Ex. ii. 5]: "And the daughter of Pharaoh went down to wash herself at the river." And R. Johanan said: She went to cleanse herself of the idolatries of her father's house.

"Bore Jered." Did she bear him--she only reared him? From this we may infer that whoso rears an orphan is the same as if she bore him. Jered--that is, Moses. Why is he called Jered? Because in his day manna *descended* 1 from heaven to Israel. "Gedor," 1 *i.e.*, he fenced up the breaches of Israel. "Cheber," 1 *i.e.*, he *joined* the Israelites to their Heavenly Father. "Socho" 1--he was to Israel as a tabernacle (protection). "Jekuthiel"--the Israelites *hoped* to God in his days. 2 Zanoach," *i.e.*, he *abandoned* 2 or atoned for the sins of Israel in his days. It is written three times "Abi" (father), *i.e.*, he was the father of Torah, the father of Wisdom, and the father of Prophets. And these are the sons of Bithya the daughter of Pharaoh, whom Meret had taken. Was, then, his name Meret--it is known that his name was Kaleb? The Holy One, blessed be He, said: "Kaleb, who *rebelled* 2 against the advice of the spies, shall take the daughter of Pharaoh, who had rebelled against the idolatries of her father."

"Who had been carried away into exile from Jerusalem" [ii. 6]. Said Rabha: He had not been exiled, but came by his own will.

"And he had brought up Hadassah." Is she called Hadassah and called Esther? We have learned in a Boraitha, R. Meir said: Her right name was Esther, but she was called Hadassah, because the upright are called thus, as it is written [Zechariah, i. 8]: "He was standing among the *myrtle*-trees." 2 R. Jehudah said: Her right name was Hadassa. Why was she called Esther? Because she *concealed* 2 her words, as it is written [ii. 10]:

[paragraph continues] "Esther told nothing." R. Nehemiah said: Her right name was Hadassah. Why was she called Esther? Because the nations called her for her beauty "star" (αστηρ). B. Azzai said: Esther was not tall or short, but of moderate size, like a myrtle. R. Joshua b. Kar'ha said: Esther's complexion was yellow, but she had grace.

"For she had neither father nor mother. And when her father and mother were dead, Mordecai had taken her to himself as a daughter." Why this superfluous repetition? Said R. Aha: To tell us that when the mother became pregnant her father died, and when she was born the mother died.

"And the seven maidens who were selected to be given to her" [ibid. 9]. Says Rabha: By them she counted the days to know when Sabbath was.

"In the evening she went and in the morning she returned" [ibid. 14]. Said R. Johanan: Among the blameworthy actions of that wicked man, it can be said in his praise that he had intercourse with women only by night.

"And Esther found favor" [15]. Said R. Elazar: Every nation thought her to belong to itself.

"And the king made a great feast" [ibid. 18]. And Esther still did not tell her nation; he lightened the taxes of all nations, and she did not tell; he sent presents to his governors, and she still did not tell; so he asked the advice of Mordecai how to discover it; and he told him that a woman becomes jealous only of another woman, and when he will take other women she will tell (as a favor to him). But this availed not either, as it is written: "And Esther had not yet told of her descent or her people."

R. Elazar said: It is written [Job, xxxvi. 7]: "He withdraweth not his eyes from the righteous." In reward of the modesty of Rachel, King Saul descended from her; and in reward of Saul's modesty Esther descended from him. Wherein was Rachel modest? It is written [Gen. xxix. 12]: "And Jacob told Rachel that he was her father's brother." Was he her father's brother? He was the son of her father's sister! That means, he asked her: Will you marry me? And she answered: Yes, but my father is a trickster, and he will deceive you. To this he answered: I am his brother in trickery. And she asked him: May an upright man do it? And he answered: Yea, it is written in "Samuel, xxii. 27: "With the pure thou wilt show thyself pure, and with the perverse thou wilt wage a contest." And he asked Rachel: How can he cheat me? And

she replied: I have an elder sister, and he will not let me marry before her. So he confided to her some signs by which to distinguish her. And when Leah was brought in her stead, Rachel said:

My sister will be put to shame. So she confided to her the signs. And this is what is written: "And it came to pass that in the morning, Behold, it is Leah." That means, till the morning he knew it not. And therefore she was rewarded by Saul's being descended from her.

And what was Saul's modesty? It is written [II Sam. x. 16]: "Of the matter of the kingdom, whereof Samuel had spoken, he told him not." For this he was rewarded by Esther's being descended from him. R. Elazar said again: When the Holy One, blessed be He, decrees greatness for a man, it is for him and his descendants to the end of ages; as it is written [Job, xxxvi. 7]: "He doth establish them forever, and they are exalted." But if they become proud, he humbles them, as it is written [ibid. 8.]: "If they be bound in fetters."

"In those days, while Mordecai was sitting in the king's gate, Bigthan and Theresh . . . became wroth" [Esther, ii. 21]. Said R. Hyya bar Abba in the name of R. Johanan: The Lord makes the masters wroth against their servants, in order to do good to the upright; as it was in the case of Joseph, as it is written [Gen. xli. 12]: "And there was with us a Hebrew lad," etc. And he makes slaves wroth against their masters, to perform a miracle for the good of the upright. And who is it? Mordecai, as it is written: "And the thing became known to Mordecai." R. Johanan said Bigthan and Theresh were *Tarsees*, and spoke their own language, and said among themselves: "Since Esther has come into the court, we know no sleep. Therefore let us put poison into the king's drink, in order that he should die." And they knew not that Mordecai was of the Great Sanhedrin, every one of whom knew seventy languages. Then Bigthan said to Theresh: Our watches are not the same. He answered: I will watch for you too (and say you are sick). "And the thing was inquired into, and found true." What was found? That he had not been at his post.

"After these events" [ibid. iii. 1]. What events? Said Rabha: After the Holy One, blessed be He, had created a cure to their woe. Because Resh Lakish said: The Holy One, blessed be He, afflicts not Israel before He has prepared the cure for them in advance. As it is written [Hosea, viii.]: "Should I desire to heal Israel, then would the iniquity of

Ephraim be laid open." But with idolatrous nations it is different. First He smites them, then He heals them, as it is written [Is. xix. 12]: "And the Lord will thus strike Egypt, striking and healing."

"But it appeared too contemptible in his eyes to lay his hand on Mordecai alone" [6]. Said Rabha: In the beginning he wanted to lay hand on Mordecai alone, and later on the people of Mordecai, *i.e.*, the scholars, and later on all the Jews.

"Some one cast the Tur, that is the lot" [7]. We have learned in a Boraitha: When the lots fell on the month of Adar, Haman rejoiced very much, for he said: It is the month in which Moses died. But he did not know that on the 7th of Adar Moses had died, and also had been born.

"There is one people" [ibid. 8]. Said Rabha: There was no man who could calumniate so well as Haman. He said to the king: Let them be destroyed. And he answered: I am afraid of their God, lest he act toward me as toward others that did evil to Israel. Then Haman replied: They no longer observe their God's commandments. Then the king said: But there are among them rabbis, who observe them. Then he rejoined: They are one people, all are the same, no one

observes. And if thou shouldst think I shall leave a void in thy kingdom, thou must know that they are scattered among all nations, and their extermination will not be perceptible. And perhaps thou wilt say, thou derivest a benefit from them. Know that they are like mules, [1] that are unproductive. And if thou shouldst imagine there is one country in which they dwell together, know that they are scattered in *all* the provinces of thy kingdom.

"And their laws are different from those of every people," *i.e.*, they do not eat with us, and do not intermarry with us.

"They do not execute the laws of the king." The whole year they find excuses not to give the taxes, saying: Now is Sabbath, now is Passover.

"It is no profit for the king to tolerate them." Because they eat and drink in a manner to disgrace the king, for if a fly fall into a goblet of wine, they will take it out and drink it; but if the king should touch the goblet of wine, they will pour it Out.

"If it be pleasing to the king, let it be written to destroy them, and ten thousand talents of silver will I weigh out. Said

[paragraph continues] Resh Lakish: It was known to Him who said one word, and the world was created, that in the future Haman would give talents of silver to buy Israel. Therefore He had commanded that in the same month they should give Shekalim of silver to the Lord, as we have learned in a Mishna that on the first day of Adar it was heralded that the Shekalim be given. And the king said to Haman: The silver is given to thee; that people also, to do therewith as it seemeth good in thy eyes.

Said R. Abba: The parable of Ahasuerus and Haman resembles what? Two men, one of whom had a hillock in his field and the other a valley (or pit); he who had the valley, when he saw the hillock, said: If one would sell it to me, I would buy it to fill tip the valley. Then it happened they met, and he who had the valley said: Sell me the hill. And he answered: Take it for nothing, so that you remove it. (So Ahasuerus also had wanted to get rid of the Israelites, and when Haman came to him he gave them away for nothing.)

"And the king drew his signet ring from off his hand." Said R. Abba bar Kahana: The removal of this ring had a greater effect than forty-eight prophets and seven prophetesses, who preached that Israel should better its ways; but this made them really better.

The rabbis taught: Forty-eight prophets and seven prophetesses preached to Israel, and subtracted or added nothing, save the reading of the Megilla, which was instituted by the prophets alone. What basis had they for that? Said R. Hyya bar Abbin in the name of R. Joshua b. Kar'ha: They drew an *a fortiori* conclusion: if when Israel was delivered from slavery to freedom they sang, so much the more when they were saved from death to life. Why, then, do we not say Hallel on Purim? Because we do not say Hallel for the miracles that happened outside of Palestine. But the exodus from Egypt was also a miracle outside of Palestine? This is in accordance with the teaching of the following Boraitha: Till Israel entered Canaan, they said praises for all miracles, but since they occupied Palestine they sang praise only for miracles in

Palestine. R. Na'hman, however, said: The reading of the Megilla, that is the same as Hallel. Rabha said: There, when they went out of Egypt, it was right to say Hallel, because it is said: "Praise, O ye servants of the Lord," and not Pharaoh's; but now, how could they say so on Purim, since they continued to be slaves of Ahasuerus?

Who were the seven prophetesses? Sarah, Miriam, Deborah, Hannah, Abigail, Huldah, Esther.

Sarah, as it is written [Gen. xi. 29]: "The father of Milcah and the father of Yiscah." And R. Itz'hak said: By Yiscah is meant Sarah. Why was she called Yiscah? Because that signifies *seeing*, and she was a *seer* through the Holy Spirit. Miriam, as it is written [Ex. xv. 26]: "Then took Miriam the prophetess, the sister of Aaron." Aaron's, and not Moses' sister? Said R. Na'hman in the name of Rabh: She had prophesied even when she had been yet but Aaron's sister, before Moses' birth, and she said: In the future my mother will give birth to a child that will deliver the Israelites. Finally, when Moses was born, the whole house was filled with light. And her father rose, and kissed her on her head, and said: Daughter, thy prophecy is fulfilled. Afterward, when he was cast into the river, the father asked: Daughter, what has become of thy prophecy? And this is what is written [ibid. ii. 4]: "And his sister placed herself afar off, to ascertain what would be done to him," *i.e.*, to know what would be the end of her prophecy.

Deborah, as it is written [Judges, ix. 4]: "And Deborah, a prophetess."

Hannah, as it is written [I Sam. ii. I]: "And Hannah prayed and said, My heart is glad in the Lord, my horn is exalted through the Lord." My *horn* is exalted, and not my *flask*. David and Solomon, who were anointed with the horn, their dynasty endured; but Saul and Jehu, who were anointed with a flask, their dynasties did not last.

"There is none holy like the Lord, for there is none beside thee" [ibid. 2]. The expression for "none beside thee" is ••••. Said R. Jehudah b. Menassia: 'Do not read ••••, but ••••••, because not as a human being is the Holy One, blessed be He: a human being is survived by his own work, but God survives all His works. 1

"There is not any rock like our God," *i.e.*, there is no sculptor like our God. Do not read ••• (rock), but •••: 2 a man makes a statue, and cannot endow it with a soul; but the Holy One, blessed be He, makes an image within an image, and endows it with a soul and life, entrails, etc.

Abigail, as it is written [I Sam. xxv. 31]: "And when the Lord will do good unto my lord." She prophesied that he would be king.

Huldah, as it is said [II Kings, xxii. 14]: "Huldah the prophetess."

And Esther, because it is written [Esther, v. 7]: "Esther put on royalty." 1 It should be written, "royal apparel"? That means, she clothed herself in the Holy Spirit, and this is inferred from an analogy of expression; here it is written, "she put on," and in I Chron. xii. 18, "a spirit invested 2

Amassoi." As there the Holy Spirit is meant, so here.

Said R. Na'hman: Pride does not become women. Two women were proud, and they both had unlovely names: one was called Bee (Deborah) and one Cat (Huldah). Of Deborah it is written [Judges, iv. 6]: "And she sent and called Barak and went not herself"; and of Huldah it is said [II Kings, xxii. 15]: "Say unto the man that hath sent you to me"; and she did not say, "unto the king."

"And Mordecai ascertained all that had been done" [Esther, iv. I]. What had been done? Said Rabh: That Haman had persuaded Ahasuerus.

"Then called Esther for Hathach Said Rabh: Hathach is Daniel. Why was he called Hathach? Because he was *cut* from, or deprived of, his office. 3 Samuel says: On the contrary, he had the office, but he was called Hathach because all laws were *decided* 4 by him.

"And they told Mordecai the words of Esther" [12]. But he went not himself to her? From this is inferred that an evil tiding must not be brought personally.

"And Mordecai went about" [17]. Said Rabh: What is meant by "went about"? He transgressed 5 by fasting on the first day of Passover; he fasted three days, and the third was Pesach. And Samuel says: It means "he passed." There was a piece of water between the court and Shushan, and he crossed it.

"And it came to pass on the third day that Esther put on royalty" [iv. 1]. Said R. Elazar in the name of R. Hanina: From this we infer that she clothed herself in the Holy Spirit, as explained above [66].

The same says again: The blessing of a common man shall

never be held light, because we find that two who were the greatest in their generations were blessed by two common men, and the blessings have been fulfilled, and they are David and Daniel. David, whom Araunah blessed, as it is written [II Samuel, xxiv. 23]: "And Araunah said unto the king, may the Lord thy God receive thee favorably." And Daniel, whom Darius blessed, as it is written [Dan. vi. 17]: "May thy God, whom thou worshippest, continually, truly deliver thee." The same authority says again: Do not hold light the curse of a common man. For Abimelech cursed Sarah, saying [Gen. xx. 16]: "This is to thee a covering to the eyes," and it happened to her children as is written: "And Isaac's eyes became dim" [Gen. xxvii. 1]. The same says again: He who repeats something said by another, in that person's name, brings salvation to the world, as it is written: "And Esther said it to the queen in the name of Mordecai." And thus Israel was saved. He says again: When an upright man is lost, he is lost to his generation; but not he himself. He is like to a pearl, which may be lost to the owner, but is and remains a pearl.

"Yet all this profiteth me nothing" [v. 13]. Said R. Elazar in the name of R. Hanina: That was because Mordecai once had a πρεσβευτα•, and Haman had sold himself to him as a slave, as said R. Hisda. The same said again: In the future, the Holy One, blessed be He, will be Himself

a crown on the head of every upright man, as it is written [Is. xxviii. 5]: "On that day will the Lord of hosts be for a crown of glory and a diadem of beauty." What is meant by "a crown of glory and a diadem of beauty"? It is to those who do His will, and hope for His glory. But shall we assume, to all of them? Therefore it is written: "Unto the residue of his people." That means, to those who are so modest that they consider themselves like the remnant of the people.

"And for a spirit of judgment" [ibid. 6]. To those who judge their own resolutions. "To him that sitteth in judgment." It is the judge who does justice. "And for strength." It is to those who conquer their own desires. "To those that drive back the battle." That means, the disputing about the Law. "To the gate." That means, the scholars who come to the gate of the houses of prayer and learning in the morning and the evening. The Severity of justice said to the Holy One, blessed be He: Creator of the world, what is the difference between the Israelites and other nations? And He answered:

Israel studied the Torah, and the idolaters did not. To this justice replied [ibid. 7]: "But these also are now stumbling through wine, and reeling through strong drink."

"And placed herself in the inner Court of the king's house" [Esther, v. 1]. Said R. Levi, as she came to the house of idols, the Shekhina left her; so she began to say [Ps. xxii. 2]: "'My God, my God, why hast thou forsaken me?' Canst thou hold guilty one who does a thing unintentionally as if she did it intentionally, and what she is forced to do as if she did it voluntarily?"

"And it happened when the king saw Esther the queen" [2]. Said R. Johanan: Three angels came to her help at the same time: one angel raised her head, that the king might see her; one, who gave her grace; and one who made longer the sceptre which the king stretched out to her. How much did it become longer? Says R. Jeremiah: It was two ells long, and became twelve ells long. And others say sixteen, and others say twenty-four; and in a Boraitha we have learned sixty. Rabba bar Uphran said in the name of R. Eliezer, who had heard it from his Master, and his Master from *his* Master: It became longer two hundred ells.

"Let the king and Haman come this day unto the banquet" [v. 5]. The rabbis taught: Why did Esther invite Haman to the feast? R. Elazar says: She spread for him a net, as it is written [Ps. lxix. 23]: "May their table become a snare before them." R. Joshua says: She learned it in her father's house, as it is written [Prov. xxv. 21]: "If thy enemy be hungry, give him bread." R. Meir said that at the time when Ahasuerus would be at the feast, Haman should not get wind of the matter, and rebel. R. Jehudah said: She did it that it should not be noticed she was a Jewess. R. Nehemiah said: That the Israelites say not, We have a sister in the king's court. Therefore we need not pray to God. And R. Jose said: He should be near, if she wanted him. R. Simeon b. Menassia said: That He above should see that she was so humbled as to be forced to flatter her enemy, and should perform a miracle. R. Joshua b. Korba said: She meant to make herself agreeable to Haman, that the king might become jealous, and should kill both him and her, whereby Israel would be saved. R. Gamaliel said: Because she knew Ahasuerus was very fickle (and if she told him to kill Haman, he might repent; but if he should be in her house, it would be executed immediately). Said R. Gamaliel:

[paragraph continues] After all, we must still hear what the Median has said. As we learn in the following Boraitha, R. Elazar of Media said: She had intended to make Haman jealous of Ahasuerus, and Ahasuerus jealous of Haman. Rabha said: As it is written [in Prov. xvi. 18]: "Before downfall goeth pride." Abayi and Rabha both said: She intended to do as is written [in Jeremiah, li. 39]: "When they are heated I will prepare their drinking feasts and will make them drunken." Rabba bar Abahu once found Elijah the prophet, and asked him: What did Esther intend to do? And he answered: As all the Tanaim and all the Amoraim opined.

"In that night sleep fled from the king" [vi.]. He thought, What could be the meaning of Esther's invitation of Haman? Perhaps they conspired against him to kill him? Then he considered that some friend of his would be found to inform him. But then he said: Perhaps there are men who have rendered me services, and I have not rewarded them. Therefore people do not care to do me a kindness. As soon as this struck him, he commanded to bring to him the Chronicles. "And they were read" by themselves; *i.e.*, that place in the Chronicles turned up accidentally.

Said R. Ashi: R. Shila of the village Tamratha lectured: If what is recorded about Israelites below is not erased, so much the more what is written about them in Heaven above.

"There hath nothing been done with him" [3]. Says Rabha: They said so, not because they loved Mordecai, but because they hated Haman.

"Do this to Mordecai" [10]. And Haman asked: Who is Mordecai? And the king answered: The Jew. And he said again: There are many Jews by the name of Mordecai. And he answered: The one that sits at the gate of the king. He said: For this man it will suffice if thou wilt give him a village, or the tolls of a river. And the king said: Give him this too. Therefore it is written: "Leave out nothing of all that thou hast spoken." "And Haman then took the apparel and the horse" [11]. As Mordecai saw that Haman came to him on the royal horse, he trembled, and said to the rabbis who sat near him: This man probably comes with an order to put me to death. Go away from here, that you may not get harmed through me. Mordecai wrapped himself, and stood up to pray. When Haman entered, he sat down and waited till Mordecai ended the prayer. Then Haman asked Mordecai: What was

your occupation when I entered? He replied: We studied the laws of a handful [Lev. vi. 8]. We deliberated what a handful should be. Haman answered: Your handful, which you have offered to God, has outweighed the ten thousand talents that I had proposed to the king, for your destruction. Then said he to him: Put on the royal apparel and mount the horse, for the king wants you. Mordecai said: I must not put on the royal garments before I wash myself. Haman took him himself to the bath, and washed him, and cut his hair. Thereafter, he bade him mount the horse. He replied: I cannot; I am too weak from fasting. So Haman bent himself, and helped him to climb the horse, by letting him step on his back.

"And proclaimed before him: Thus shall be done unto the man," etc. [11]. Haman's daughter heard this, and saw from a distance a man riding on a horse. She thought her father sat on the horse, and Mordecai led him. When they came nearer, and she perceived her mistake, she threw herself from the balcony, and died. And this is what is written: "Haman hastened to his house, mourning, and having his head covered"--mourning over his daughter, and his head covered,

because of the disgrace.

"And Haman related to Zeres his wife and to all his friends" [13]. And afterward it is written: "Then said unto him his wise men and Zeres his wife." First they are called friends, and then wise men? Said R. Johanan: A man even of the nations who says an intelligent thing may be called wise.

"If Mordecai be of the seed of the Judeans." They said: If Mordecai is descended from other tribes, you will get the better of him; but if he be descended from one of these tribes--Jehudah, Benjamin, Ephraim, Menasseh, then you cannot overcome him. From Jehudah because it is written [Gen. xlix. 8]: "Thy hand shall be on the neck of thy enemies"; and the other three, because it is written [Ps. lxxx. 3]: "Before Ephraim, Benjamin, and Menasseh, awaken thy might."

"But thou wilt surely fall before him." R. Jehudah b. Ilai lectured: What is meant by "surely fall"? His wise men and wife said to him thus: This nation [Israel] resembles earth, and resembles stars; when they sink they sink to the dust, and when they rise they rise to the stars.

"When the king's chamberlains arrived" [Esther, vi. 14]: "and they hastened." From this we infer that they brought him in a hurry,

"For we have been sold, I and my people . . . for the adversary regardeth not the damage of the king." She said to him: This enemy is not worth the damage he causes to the king: when he became jealous of Vashti, he killed her; and now he becomes jealous of me, and wants to kill me too.

"And the king arose in his fury . . . and when the king returned" [vii. 7, 8]. From this we may infer that as he had gone out in fury, so he returned in fury. "Haman was fallen upon the couch." It is not written "fell," but "was fallen," from which we may infer that an angel came and pushed him. And the king said: Woe inside, and woe outside!

"Then said Harbanah" [9]. Said R. Elazar: Harbanah the wicked had been among those who had given the advice to make a gallows for Mordecai; but as he saw his plan not fulfilled, he deserted Haman and went over to Mordecai's friends, and this is written [Job, xxvii. 22]: "And will cast upon him, and have no pity; out of his hand will surely escape."

"And the fury of the king was appeased" [xii. 10]. The expression is ••••, which is plural. (What signifies the plural? His anger about Vashti and about Esther was appeased.)

It is written [Gen. xiv. 22]: "To all of them he gave to each changes of raiment; but to Benjamin he gave . . . five changes of raiment." Is it possible that what gave trouble to Joseph's father, as Rabba bar Me'hassia said in the name of Rabh (Sabbath, p. 19), *he* (Joseph), the righteous man, should do? Said R. Benjamin b. Jepheth: That was a hint that from him would descend a man who would wear five royal garments, as it is written [Esther, viii. 15]: "And Mordecai went out in a royal apparel of blue and white, and with a great crown of gold, and with a cloak of fine

linen and purple."

"And he fell upon his brother Benjamin's neck [1] . . ." [Gen. xlv. 14]: "How many necks had he--he had only one? He wept for the two Temples, that would be situated in Benjamin's land, and would be destroyed. "And Benjamin wept upon his neck." He wept for the Tabernacle of Shiloh, that would be in Joseph's part of the land, and would be destroyed. "And behold, your own eyes see, and the eyes of my brother Benjamin" [Gen. xlv. 12]. Said R. Elazar: Joseph said to them: Just as I have nothing in my heart against Benjamin, who took

no part in my sale, so I have nothing against you." It is my mouth that speaketh unto you." What I speak with my mouth, I think in my heart. "And to his father he sent after this manner [ibid. 23] . . . with the best things of Egypt." What is meant by the best things of Egypt? Said R. Benjamin b. Jepheth in the name of R. Elazar: He sent him old wine, which when old men drink they have their minds invigorated. "And Israel bowed himself upon the head of the bed" [xxxvii. 31]. The same authority said: When the fox is at the head, the people bow to him. "And he comforted them, and spoke kindly unto them" [l. 21]. Said the same authority again: He told them such things as are agreeable to be heard; namely, ten lights could not extinguish one, much less could one light put out ten.

"For the Jews there was light, and joy and gladness and honor" [Esther, viii. 16]. Said R. Jehudah: By light is meant the Law, as it is written [Prov. vi. 23]: "For the commandment is a lamp, and the law is light." "Joy," that is, a holiday, as it is written [Deut. xvi. 14]: "And thou shalt rejoice on thy feast." "Gladness" means circumcision, as it is written [Ps. cxix. 162]: "I am rejoiced over thy promise." And by "honor" is meant Thephilin, as it is written [Deut. xxviii. 16]: "And all the nations of the earth shall see that thou art called by the name of the Lord, and they shall be afraid of thee." And we have learned in a Boraitha, R. Eliezer the Great said: By this are meant the Thephilin on the head.

"And Parshandatha" [Esther, ix. 7]. R. Adda, from the city of Jopha, said: The names of the sons of Haman and the phrase "and the ten" must be pronounced in one breath. Why? Because their souls left their bodies all at the same time. Said R. Johanan: The Vav of Vayzatha must be made longer, that it look like a gallows, for all ten were hanged on one gallows-tree.

"Words of peace and truth" [30]. Said R. Tanhum, and according to others R. Ashi: We may infer from this that it should be written like the Law of Truth; as that must be written on ruled parchment, so this.

"And the order of Esther confirmed" [32]. Said R. Johanan: Read together the former verse and this: "The matters of the fastings, the prayers, and the order of Esther confirmed."

"For Mordecai the Jew was the second in rank after King Ahasuerus, and great among the Jews, and acceptable to the

multitude of his brethren" [x. 3]. To the multitude, but not to all? From this we may infer that a

part of the Sanhedrin turned away from him.

R. Joseph said: The study of the Law is greater than the saving of lives, for before Mordecai was mentioned the fifth, and later the sixth. It is written [Ezra, ii. 2]: "Who came, with Zerubbabel, Jeshua, Nehemiah, Serayah, Realayah, Mordecai, Balshan;" and later, [in Nehemiah, vii. 7] he is mentioned the sixth. (Rashi explains this thus: From the return of Ezra to the return of Nehemiah twenty years elapsed, and meanwhile Mordecai became of high rank, but before he had been more of a scholar.)

Rabh, and according to others R. Samuel b. Martha, said: The study of the Law is of more importance than the building of the Temple; for so long as Barach b. Neriah lived, Ezra returned not to the land of Israel. Said Rabha in the name of R. Itz'hak b. Samuel the son of Martha: The study of the Law is more important than the honoring of the parents; for in all the years that Jacob passed with Shem and Eber and studied the Law, he was not chastised for failing during that time to honor his father and his mother. 1

Footnotes

1:1 In the time of the Mishna the tribunals of justice kept the courts open on Mondays or Thursdays for the sake of the men who came to the markets, which were usually on these days. The reading of the Holy Scrolls in the synagogues was also on these days, and therefore they were called "days of assembly."

3:1 The text says it is written "from India to Ethiopia" and refers to verse 9, chap. viii., but as there it is written not about the Book of Esther, we have cited the other verse.

4:1 The open one, *e.g.*, • the closed one, as •, So also with the other letters.

7:1 The Hebrew term for this is "Batlonim." The true meaning is that every city must hire ten persons who shall do nothing but study and pray.

11:1 *Ham* is in Hebrew *hot*.

11:2 *Rakkath* in Aramaic means the bank of a river.

11:3 *Kinor* is a violin.

12:1 *Rek* is in Hebrew *empty, idle*.

12:2 Places for the worship of idols in Rome.

15:1 The expression is *Shalishim*, which the Talmud translates literally, "thrice"--though in

Leeser it is different.

16:1 We doubt whether it was the second or the third, as there were also two Oshyias, one in the time of the second and one in the time of the third. See Seder Hadoroth, parag. Oshyia.

19:1 High places are the public altars on which they used to sacrifice before the erection of the Temple at Jerusalem. Small places are altars of private persons.

24:1 The Hebrew is ••••, "he will make rejoice." "He will rejoice himself should have been ••••.

26:1 *Ah* is brother and *Ras* is head, and it is considered as composed of two words.

26:2 *Sha'hor* is "black."

27:1 According to Rashi--"the demons."

29:1 *Muchan* in Hebrew is "prepared," "designed."

30:1 *Our* is "light," *Shema* is "hear," *Kish* is "rap."

31:1 *Jarod* is "to descend"; *Geder*, "fence"; *Habor*, "join"; *Sukka*, a "protection."

31:2 *Jekan*, "hopes"; *El*, "God"; *Zanoach*, "abandon"; *Marod*, "rebel"; *Hadas*, "myrtles"; *Haster*, "conceal."

34:1 "Separated", •••••• and •••• is "a mule."

36:1 ••• is "to rot, fade, dwindle, wear out."

36:2 Which means "painter, sculptor."

37:1 In Hebrew it is so.

37:2 In Hebrew it is the same expression.

37:3 *Hathach*, "cut."

37:4 Which is in Hebrew expressed by cutting.

37:5 *Abor* has all these meanings.

42:1 In the Hebrew text the plural is used.

44:1 The Gemara proceeds to prove this by certain calculations of the ages of Ishmael, Itz'hak, and Jacob, deduced from scriptural passages; the proof being very flimsy and complicated, we have omitted it.

Next: Chapter II

CHAPTER II.

CONCERNING THE READING OF THE MEGILLA--BY WHOM, WHERE, AND IN WHAT LANGUAGES.

MISHNA: Anyone who reads the Megilla in an irregular manner does not fulfil his duty; nor if he reads it by heart, or translated in any language which he does not understand. It is lawful, however, to read to those that know no Hebrew in a foreign language which they understand; if they have heard it in (the original language with) Assyrian characters, they have also done their duty (though they have not understood the Hebrew). Should anyone read it so as to make long pauses between the parts and slumber meanwhile, he will have fulfilled his duty. If anyone should read the Megilla while writing, expounding, or correcting it, with the intention of fulfilling his duty, it is fulfilled; but not, if he had no such intention. If the Megilla was written with paint, ruddle, gum, vitriol black, on papyrus, or on rough vellum, the duty is not fulfilled, but it must be written in Assyrian characters, in a book, on good parchment, and with ink.

GEMARA: Whence do we deduce this? Said Rabha: It is written [Esther, ix. 28]: "And these days are remembered and celebrated." The remembering is compared to the celebrating, as the celebration cannot be earlier, because the 15th day cannot precede the 14th; so in remembering, the second chapter cannot be read before the first. We have learned in a Tosephtha that the same is the case with the Hallel Prayer, and the saying of Shema. And whence is this deduced? Said Rabba: Because it is written [Ps. cxiii. 3,]: "From the rising of the sun unto his going down, the name of the Lord is praised (as the sun does not go backward, so the praises of the Lord). R. Joseph said: From the following passage [Ps. cxviii. 24]: "This is the day which the Lord has made" (as the day progresses without irregularity, so is to be the prayer). R. Ivia says: From the following passage [ibid. cxiii. 2]: "*Let* the name of the Lord be blessed" (*let* it be as it is). And R. Na'hman

bar Itz'hak, and according to others R. A'ha bar Jacob, says: From [ibid. 2]: "From this time forth and for evermore" (as time progresses regularly, so should the prayer be).

The rabbis taught: Whence do we deduce that we should mention the Patriarchs in the prayer? Because it is written [Ps. xxix. 1]: "Ascribe unto the Lord, ye sons of the mighty" (by mighty are meant the Patriarchs). And whence do we deduce that we should mention in the prayer the power of God? Because it is written [ibid.]: "Ascribe unto the Lord glory and strength." And whence do we deduce that His Holiness must be mentioned? Because it is written [ibid. 2]: "Ascribe unto the Lord the glory of his name; bow down to the Lord in the beauty of holiness." And from what did they see that we should pray for Wisdom after Holiness is mentioned? Because it is written [Is. xxix. 23]: "Then will they sanctify the Holy One of Jacob, and the God of Israel will they reverence"; and in the succeeding verse: "They also that were erring in spirit

shall acquire understanding." And why do we mention Repentance after Wisdom? Because it is written [Is. vi. 10]: "Lest his heart understand, and he will repent, and be healed." If so, we ought to mention Healing after Repentance? It would not be proper, because it is written [ibid. Iv. 7]: "And let him return unto the Lord, and he will have mercy upon him; and unto our God, for be will abundantly pardon." Pardon is therefore prayed for after Repentance. But why is preference given to this verse over that verse? There is another passage [Ps. ciii. 3]: "Who forgiveth all thy iniquities, who healeth all thy diseases. Who redeemeth from the pit thy life." Shall we assume that Redemption and Healing come after Forgiveness--in the verse above quoted it is written, "he will repent and be healed"? Not healing from disease is meant, but the forgiveness is a healing. And why did they mention Redemption in the seventh Benediction? Said Rabha: Because it is known they will be redeemed in the seventh year (in Sanhedrin it is said that in the last of the seven years before Messiah they will be redeemed). And why do they pray for Healing in the eighth Benediction? Said R. A'ha, because circumcision takes place on the eighth day, and requires a healing. And why do they pray for the Blessing of the Year in the ninth Benediction? Said R. Alexandri: That is for those who raise the prices, as it is written [Ps. x. 15]: "Break thou the arm of the wicked and of the bad man." And this the ninth psalm. (This whole psalm, Rashi

explains, speaks only of people buying up grain to raise its price, and he infers it from the verse: "He lieth in wait to snatch up the poor; he snatcheth up the poor as he draweth him into his net." And why is it considered the ninth psalm? Because they consider the first two psalms as one.) And why do we pray for Return from the Exile after the Benediction of the Year? Because it is written [Ezek. xxxvi. 8]: "But ye, O mountains of Israel, ye shall send forth your boughs, and your fruit shall ye bear for my people Israel; for they are near at hand to come." And as soon as there will be a Return from Exile, there will be the Punishment of the Wicked, as is written [Is. i. 25]: "I will turn my hand against thee, and purge away as with lye thy dross." And further [26]: "I will restore thy judges as at the first, and thy counsellors as at the beginning." After the Judgment of the Wicked there shall be no sinners, as is written [28]: But destruction shall come over transgressors and sinners together." And those that forsake the Lord shall perish, and when sinners cease to exist, the horn of the righteous is exalted; as it is written [Ps. lxxv. 11]: "And all the horns of the wicked will I hew off, but the horns of the righteous shall be exalted." And righteous proselytes are included among them, as it is written [Lev. xix. 32]: "Before the hoary head shalt thou rise up, and honor the old man." And soon after: "If a stranger sojourn with thee, ye shall not vex him." And where will be exalted their horn? In Jerusalem. As it is written [Ps. cxxii. 6]: "Pray ye for the peace of Jerusalem: may those that love ye prosper. "When Jerusalem will be rebuilt, David will come as it is written [Hosea, iii. 5]: "After that will the children of Israel return and seek for the Lord their God and David their king." And with David will come Prayer, as it is written [Isaiah, lvi. 7]: "Even these will I bring to my holy mountain, and make them joyful in my house of prayer." And with Prayer comes Service in the Temple, as it is written further: "Their burnt-offerings and their sacrifices shall be accepted upon my altar." And after service comes a thanksgiving offering, as it is written [Ps. l. 23]: "Whoso offereth thanksgiving glorifieth me." (The order of the separate parts of the Eighteen Benedictions has already been laid down.) And why do they say the Blessing of the Priests after Thanksgiving? Because it is written [Lev. ix. 22]: "And Aaron lifted up his hands toward the people, and blessed them, and came down after he had offered the sin-offering and burnt-offering and peace-offering."

[paragraph continues] And perhaps he blessed them *before* the service? Nay, we do not suppose so; for it is written, "he came down *after* he had offered"--not "to offer," but *after* offering. If so, let it be said before the Thanksgiving? It would not be proper, because! it is written: "Whose, offereth the thanksgiving glorifieth me." And why is this verse preferred to that? Because common sense tells that Service and Thanksgiving are the same thing. And why do we pray for Peace after the Blessing of Priests'? Because it is written [Num. vi. 27]: "And they shall put my name upon the children of Israel, and I will bless them." And the blessing of the Holy One, blessed be He, is Peace, as it is written [Ps. xxix. 11]: "The Lord will bless his people with peace."

(Let us see:) If one hundred and twenty elders, and among them many prophets, have arranged the Eighteen Benedictions, why have we learned in another place that Simeon of Peculi had ordered them? They had been forgotten, so he reintroduced the order.

After these Eighteen Benedictions, it is not permitted to bless the name of the Lord more, as R. Elazar said: It is written [Ps. cvi. 2]: "Who can utter the mighty acts of the Lord? Who can publish all his praise?" *i.e.*, who is fit to utter? He who can publish *all* his praise (and as no one can do it, only the prayers that have been ordained should be said).

Rabba bar bar Hana said in the name of R. Johanan: He who speaks too much in praise of God is uprooted from the world, as it is written [Job, xxxvii. 20]: "Can all be related of him when I speak? Or if a man talk even till he be swallowed up?" R. Jehudah of the village Geboriah, according to others of Gibor-Hail, lectured: It is written [Ps. lxv. 2]: "For thee praise is silent." 1 Silence is the cure to everything: when R. Dima came from Palestine, he said that in the West they say: "A word is worth a sela, and silence two."

"*If he reads it by heart*." Whence is this deduced? Said Rabha: There is an analogy of expression in the word "memorial." Here it is written [Esther, ix. 28]: "These days are remembered"; and there [Ex. xvii. 14]: "Write this for a memorial in a book." As there it is written "in a book" so here it. should be read out of a book. How is it known that loud reading is meant--perhaps only looking through the book?

[paragraph continues] It would not be reasonable; as a Boraitha states: It is written [Deut. xxv. 17]: "Remember"; and it cannot mean "in thy heart," because it is written again [ibid. 19]: "Thou shalt not forget." That means, certainly, in thy heart. Consequently "remember" must mean orally.

"*Or translated*," etc., *i.e.*, when both the language and the characters are foreign.

"*To those who know no Hebrew*," etc. But it is just stated that by hearing it read in a foreign language one has not fulfilled his duty. Rabbi and Samuel both said: By this Greek is meant. How is the case? If it was written in Assyrian (characters), and one read it in Greek, then he reads it by heart? Said R. A'ba in the name of R. Elazar: That means, when it is written in Greek, and he reads it in Greek.

The same authority says again: How is it known that God called Jacob "El" (one of the names of God)? Because it is written [Gen. xxx. 20]: "And called it El, the God of Israel," which he interprets, "who called him El, the God of Israel." For if the altar was meant, the verse would say, "and Jacob called *it*." An objection was raised: If one read the Megilla in Coptic, in Old Hebrew, Elamic, Median, or Greek, one has not fulfilled his duty? What is said above, that Greek is lawful, is like another Boraitha which says that if one has read in Coptic to Coptic, Hebrew to Hebrews, Elamic to Elamite, or Greek to Greek Israelites, they have done their duty. If so, why do Rabh and Samuel say the Mishna means only Greek: let them say it means all foreign languages may be read to those who understand them? Rabh and Samuel mean that even to those who do not comprehend it, it may be read in Greek. But in the Boraitha it is said, that only if Greek is read to Greek Israelites it is lawful? Rabh and Samuel are in accordance with Rabban Simeon Gamaliel, who says that even the Pentateuch was allowed to be written only in Greek, not in another tongue. If so, let them say, more briefly, the Halakha prevails according to R. Simeon b. Gamaliel? If they said so, we would think it bears reference only to other books; but as of the Megilla it is written, "according to its writing," we would think only in Assyrian characters it is allowed, and not Greek, therefore they come to teach us that even here Greek is proper.

"*One who has it read to him from Assyrian characters*." But he does not comprehend it? What is the use? It is like the case of women and common people, who do not understand

it either, yet they are fulfilling their duty. Rabbina opposed: Why do you compare him to women and common people, and we ourselves, do we understand what is meant by ••• •••••• •••••••••: [viii. 10]? But as it does not matter, provided we understand the proclamation of the miracle, so it also matters not in their case.

"*Long pauses*," etc. (The term used in the Mishna is "Serugin.") The rabbis did not understand the expression of the Mishna, ••••••• until they beard that the servant-maid of Rabbi, when she saw that the rabbis came to Rabbi's house in small detached parties, at intervals, said to them Why do you come--Serugin, Serugin? 1 The rabbis taught If one made pauses in his reading, he has fulfilled his duty; but if he read it irregularly, he has not; R. Muna says in the name of R. Jehudah: Even when one has made pauses he has done his duty, provided they were not long enough for the reading of the whole Megilla, but otherwise he must begin again from the beginning. Said R. Bibbi: Rabh said that the Halakha does not prevail according to R. Muna, and Samuel says that it does. Said R. Joseph: Hold in thy mind what R. Bibbi has said, for Samuel decides more vigorously. When a single authority holds vigorously, even when the majority differ from him (and it is an old rule, that where Samuel and Rabh disagree the Halakha prevails according to Rabh, when the laws are not about pecuniary matters).

The rabbis taught: When the scribe who had written the Megilla had omitted letters or sentences, but the reader read it like an interpreter, and supplied what was missing, the duty was done.

The rabbis taught: If the reader has omitted one verse, he should not say: When I shall have read the entire Megilla I shall then read the omitted verse; but he should commence with that verse, and read further. The same is it when one comes to the house of prayer, and finds the first half of it gone through by the congregation, he should not say: "I will read with the congregation to

the end, and then read the first half"; but he should begin to read from the beginning, and read to the end.

"*And slumber*." What is meant by slumbering? It means not sleeping, but being drowsy, so that when he is called, he answers;

but to answer intelligently he is not able before he is called a second time.

"*If anyone should read whilst writing*," etc. How was the case? If he had arranged the verses beforehand, and first read, then copied them, even if he had the intention, what is it? It is reading by heart. Shall we say, if he was writing verse by verse and reading them, he has not fulfilled his duty either, because by R. Helba in the name of R. Hama bar Guria, quoting Rabh, said: The Halakha prevails according to him who said that legally the whole Megilla must be written and be before him? This is meant: An entire Megilla lay before him, and he read each verse, and copied it.

Rabba bar bar Hana said in the name of R. Johanan: Even one letter must not be written, unless copied from a Megilla. An objection was raised: R. Simeon b. Elazar said: It happened to R. Meir, that he went to make the year intercalary in Asia, and there was not any Megilla; so he wrote it down from memory, and then read it to the community. Said R. Abahu: With R. Meir it is different: Of R. Meir was said the 25th verse of chap. iv. of Proverbs: "Thy eyelids see straight out before thee" (he saw the Megilla in his mind as clearly as with his eyes). Ramai bar Hama asked R. Jeremiah of Diphthi: What is meant by this? He answered him: The words of the Law, of which it is said [Prov. xxiii. 5]: "When thou lettest merely thy eyes fly over it, it is no more." But in the case of R. Meir it was as if he saw it with his eyes, so was it engraved in his memory.

R. Hisda found R. Hananal writing Scripture, not from a copy, and he said to him: It is true, thou art fit to write the entire Bible from memory; but the sages have said, nevertheless, that it is unlawful to write even one letter thus. From what we hear that he was fit for writing it all by heart, and we see that he knew it also by heart, yet he was not allowed to do so (how then could R. Meir do it?). In the time of necessity, when there was no other Megilla, it was different.

"*If the Megilla was written with . . . vitriol black*." Said Rabba bar bar Hana: This means that which is used by shoemakers for blackening new shoes.

"*Rough vellum*," when the hide has been already salted, but not polished.

"*But it must be written in Assyrian characters*." Why? Because it is said, "according to their writing."

"*In a book and with ink*." Whence do we deduce this?

[paragraph continues] From an analogy of expression. It is written [Esther, ix. 29]: "Then wrote Esther"; and [Jer. xxxvi. 18]: "Then said Baruch unto them, With his mouth did he utter clearly all these words unto me, and I *wrote* them in the book with ink."

MISHNA: If an inhabitant of an open town had gone to an anciently walled town, or *vice versa*, if he intends to return to his place, he shall read it at the same time they read in his place; if not, he may read with the inhabitants of the place in which he is. From where is it necessary to commence the reading of the Megilla, so as to fulfil one's duty? R. Meir says: It is obligatory to read the whole. R. Jehudah says: It suffices if he commence at "a Jewish man" [Esther, ii. 5]. R. Jose says: Even if from "after these events" [ibid. iii. 1].

GEMARA: Said Rabha: "If he intends to return." That means, to return on the night of the 14th; but if he does not purpose to return on that night, he may read with the inhabitants of the place where he is. And he said again: Whence do I deduce this? Because it is written [Esther, ix. 19]: "Therefore do the Jews of the open towns, that dwell in open towns." Let us see. It is stated already, "The Jews of the open towns." Why is it repeated, "that dwell in open towns"? He comes to teach us, that if one dwells even one day there, he is considered as an inhabitant of an open town. This is right about open towns, but how do we know that the same applies to walled towns? That is common sense: If one who dwells a day in an open town is considered an inhabitant thereof, the same must be in the case of a walled town.

And Rabha says again: If a countryman has gone into a town, he must read with the inhabitants, for why was he permitted to read on the Assembly-day? That he should not trouble himself to come to the town; but if he is there, he must read in any case, whether he intends to stay there or not.

"*From where is it necessary to commence*," etc. We have learned in a Boraitha: R. Simeon b. Jechayi said: He may begin from, "in that night" [chap. vi. 1].

Said R. Johanan: All these different opinions have been deduced from the following verse: It is written [ix. 29]: "Then wrote Esther the queen. . . . with Mordecai the Jew, with all due strength." Those who say the entire Megilla should be read, mean the whole might (strength) of Ahasuerus; he who says it should be begun from "a Jewish man," means the whole power of Mordecai; and he who says from "after these events," thinks

the power of Haman; and he who says from "in that night," means the whole power of the miracle should be related. Said R. Helba in the name of R. Hama bar Guria, quoting Rabh: The Halakha prevails according to him who says: The whole Megilla must be read. And even he who says from "a Jewish man" also means it should be *written* wholly, if not read. The same says again: The Megilla is called "a book," also "a letter." That means, it is called a book because if it is stitched together with threads of flax it is invalid, as the Holy Scrolls are; and it is called a letter because if only three veins are used it is yet valid (unlike the Holy Scrolls). Said R. Na'hman: This is when every vein is triple (triply stitched).

R. Jehudah said in the name of Samuel: If one has read the Megilla from the Bible, in which it is among other books, he has not fulfilled his duty, as the Megilla should be separated. Said

Rabha: This is when the scroll of the Megilla was like the other scrolls; but if it was a little longer or shorter and distinguishable from them, it does not matter.

R. Hyya bar Abba said in the name of R. Johanan: If one reads the Megilla bound with other books, he has not done his duty. Those who heard him repudiated him, saying: This is only the case when it is read in public; but an individual may do so. The same says again in the name of the same authority: The law that, when the Holy Scrolls are stitched together, margins must be left at the top and at the bottom is a Halakha from Moses on Sinai. And those who heard him repudiated him, 1 saying: It is not a Halakha from Moses on Sinai, but it has been ordered only that the parchment may not be torn. The same says again in the name of the same authority: If in the case where Moses and Elijah were, there had been a chink as narrow as a needle, they would not have remained alive when the Lord passed, as it is written [Ex. xxxiii. 20]: "For no man can see me and live." The same says again in the name of the same authority: It is written [Deut. ix. 10]: "And on them was written according to all the words which the Lord had spoken with you on the mount." We infer from this that God revealed to Moses

all the particulars of the Bible (*i.e.*, what words signify that something is to be included or to be excluded), and of the particulars the Gemara deduces from the Mishna, and what the scribes will discover later. And what is it? The reading of the Megilla.

MISHNA: All are qualified to read the Megilla, except a deaf person, fool, or a minor. R. Jehudah, however, allows it to be read by a minor.

GEMARA: Who is the Tana that holds that even when a deaf man has already read it the duty is not fulfilled? Said R. Mathna: The Tana is R. Jose of the following Mishna in Berachoth: "He who read Shema, and did not himself hear what he read, he has done his duty. R. Jose, however, said, he has not." How do we know that our Mishna is in accordance with R. Jose, who says that even if he has done it already, he has not fulfilled his duty. Perhaps it is in accordance with R. Jehudah, who says that he must not commence; but if he has done it already, he has done his duty? It would not be reasonable; because the deaf person is mentioned together with the fool and the minor, and as when the last two have done it the duty has not been fulfilled, so it must be with the deaf.

"*R. Jehudah allows a minor*." We have learned in a Boraitha: R. Jehudah said: When I was a minor I read the Megilla in the presence of R. Tarphon and the elders in the city of Lud. The sages answered: One adduces no proof from a minor. We have learned in another Boraitha: Rabbi said: When I was a minor I read the Megilla in the presence of R. Jehudah. The sages said to him: One cannot adduce a proof from a man who permitted it (because the majority differed from him). Why have they not answered here also. One brings no proof from a minor? They meant it; firstly, he was a minor, but even if he were not, they would not recognize it as a proof, because R. Jehudah was an individual exception.

MISHNA: The following religious acts may not be done before sunrise on the day on which they are obligatory: To read the Megilla, to circumcise, to bathe (on the seventh day of the purification of an unclean or defiled person), to sprinkle (the unclean as a purification); nor may a woman (who had experienced her menses beyond the usual time, and who was to) wait a day

(before she might bathe) do so before the sunrise of that day. But if any of these acts has been done at any period after daybreak, it is valid.

GEMARA: Whence do we deduce this? It is written

[paragraph continues] [Esther, ix. 28]: "And these days are remembered and celebrated." The days, and not the nights. Shall we assume that this is in contradiction to R. Joshua b. Levi, who said above (p. 7.) that one must read the Megilla in the evening, and repeat it on the day? What this Mishna teaches, that before sunrise the Megilla must not be read, refers to the second time, *i.e.*, the reading by day.

"*To circumcise*." Because it is written [Lev. xii. 3]: "On the eighth day shall the flesh of his foreskin be circumcised."

"*To bathe, to sprinkl*e." Because it is written [Num. xix. 19]: "And the clean person shall sprinkle upon the unclean on the seventh day"; and bathing is equal to sprinkling.

"*After daybreak*." Whence is this deduced? Said Rabha: Because it is written [Gen. i. 5]: "And God called the light day"; and the beginning of the light is called day. If so, then, as it is written, "and the darkness he called night," let the time when it begins to be dark be called "night"; and we have a tradition that until the stars appear it is not reckoned to be night. Therefore, says R. Zera, infer it from the following passage [Nehemiah, iv. 15]: "So we labored at the work, while the half of them were holding the spears from the rising of the morning dawn till the stars appeared,

MISHNA: The following religious acts may be done during the whole of the day (on which they are obligatory): The reading of the Megilla, of the Hallel; the sounding of the cornet; the handling of the Lulab; the prayer at the additional offering; the additional offering; the confession of sin on sacrificing the bulls, the confession to be made on bringing the second tithe, the confession of sin by the high-priest on the Day of Atonement; the imposition of hands (on the sacrifice); the slaughtering of a sacrifice; the waving of the offering; the bringing it to the altar; the taking of the handful of flour [Lev. ii. 2]; the burning with incense of the fat of a sacrifice on the altar; the pinching or wringing off of the head of fowls brought at sacrifices [Lev. i. 15]; the receiving of the blood of a sacrifice; the sprinkling thereof on the altar; the giving the bitter water to drink to a woman suspected of adultery; the striking off of the heifer's neck [Deut. xxi. 4], and the purification of a leprous person. The following acts may be done during the whole of the night: The cutting of the sheaves for the "omer," and the burning of the fat and members of a burnt-offering on the altar [Lev. vi. 9]. This is the rule: Whatever is commanded to

be done by day may legally be done during the whole of the day; and whatever is commanded to be done by night, it is lawful to do during the whole of the night.

GEMARA: Whence do we deduce this? Because it is written: "Those days are remembered and celebrated." The reading of Hallel, as is written [Ps. cxiii. 3]: "From the rising of the sun unto the going down." R. Joseph says: As it is written [ibid. cxviii. 24]: "This is the day which the Lord hath made." "The use of the Lulab," because it is written [Lev. xxiii. 40]: "And ye shall take unto yourselves on the first *day*." "The sounding of the cornet," because it is written [Num. xxix. 7]: "A day of blowing of the cornet shall it be unto you." "And the additional offering," as it is written [Lev. xxiii. 3 7]: "Everything upon its day." And the prayer at the additional offering is like the offering itself. 1

"*This is the rule,*" etc. What is it meant to include? The putting away of the spoon of frankincense, and the taking it away (because the old must be taken away at the same time that the new is brought, as will be explained in Tract Mena'hoth).

"*By night,*" etc. What is it meant to include? The eating of the Paschal lamb, which is only before sunrise; and the Mishna is not in accordance with Elazar b. Azariah (as will be explained in Tract Mena'hoth).

Footnotes

48:1 So the Talmud translates.

50:1 See Rosh-Hashana for other cases where the rabbis did not understand till they heard the explanation by Rabbi's maid.

53:1 Rashi explained this, that not others objected, but he himself retracted his assertion. But this seems to us incorrect: firstly, as the word "repudiated," in the original, is in the plural; and secondly, when R. Hyya bar Abba said in R. Johanan's name he no longer lived, how could he contradict himself at that time? Therefore we translate it as it seems to us right. See our "Ursprung und Entwickelung des Philacterien-Ritus beiden Tuden," p. 140, where this passage is explained.

p. 56

APPENDIX TO FOOTNOTE ON PAGE 53.

Jastrow's Dictionary has just reached us, and we are surprised not to find under sub. ••• the quotation ••••, repeated twice on page 19b, old ed., mentioned by us in our note, which means they struck the Halakha on its head. We fail to find any reason for this omission, as it seems to us very important that the quotation should occur.

56:1 The remaining laws of the Mishna are also deduced here from verses or from analogies of expression; but they are found in other and more proper places, and are therefore here omitted.

Next: Chapter III

CHAPTER III.

REGULATIONS CONCERNING THE POSTURE OF THE READER OF THE MEGILLA, AND HIS CLOTHES, BEFORE PRAYER.

MISHNA: The Megilla may be read either sitting or standing, by one person only, or by two persons at the same time. They alike fulfil their duty. In places where it is usual to say a blessing (after reading it) it is obligatory to say it, but not when it is not customary. Three men are called to read in the Holy Scrolls on Mondays and Thursdays; and in the afternoon of the Sabbath neither more nor less than that number may be called, nor shall any section from the Prophets then be read. He who commences the reading of the Holy Scrolls shall pronounce the first benediction before reading it, and he who concludes the reading shall pronounce the last benediction after reading it.

On the first of the month, on the intermediate days of the festivals, four men are to be called. This number may neither be added to nor diminished, nor shall any section of the Prophets then be read (the first of these men shall say the first blessing before reading, and the last who concludes the reading shall say the last blessing after reading). This is the rule: On all days, when an additional offering is prescribed, which are nevertheless not festivals, four men are to be called; five on festivals; six on the Day of Atonement; and seven on the Sabbath. This number may not be diminished, but it may be increased, and a section of the Prophets must be read on those days. The first and the last readers shall pronounce the benedictions before and after reading.

GEMARA: We have learned in a Boraitha: It is not so with the reading of the Torah, which can be read only when the congregation sits. Whence do we deduce this? Said R. Abahu: It is written [Deut. v. 28]: "But as for thee, stand thou here by me." From this we infer, he should stand, and the congregation should sit. He says again: How do we know that the Master should not teach the disciple when he sits on the bed, and the disciple on the floor? Because it is written: "Stand by (with) me" (as I stand so you should stand).

The rabbis taught: From the time of Moses till Rabban Gamaliel the Law was studied standing; when R. Gamaliel died, sicknesses came into existence, and they began to study sitting. And this is what we have learned in a Mishna elsewhere, that since R. Gamaliel had died the honoring of the Law had ceased.

One verse says [Deut. ix. 9]: "I sat on the mount"; and another [ibid. x. 10]: "I stood on the mount." Said Rabh: He stood when he studied, and he sat when he repeated. R. Johanan, however, said: By "sitting" is meant abiding, as is written [Deut. i. 46]: "And ye sat in Kadesh," which means "dwelt." Rabha says: The easy things he learned standing, and the difficult things

he sat down to understand.

"*By one person, or by two*," etc. We have learned in a Boraitha: The law is not so with the Holy Scrolls (which only one can read, not two).

The rabbis taught: The scrolls of the Pentateuch one should read and the other should interpret; but not one shall read and two interpret; but the Prophets: One should read and two may interpret it, but two should not read and two interpret. In case of Hallel and the Megilla, however, even ten may read and ten interpret. Why so? Because Hallel and the Megilla are dear to the people, and even if ten read they will give their attention.

"*In places where it is usual to say a blessing*," etc. Says Abayi: The Mishna refers only to the benediction after it; but before, it is obligatory. As R. Jehudah said in the name of Samuel: For all religious duties, one should pronounce a benediction before they are done.

What blessing should be pronounced before the reading of the Megilla? R. Shesheth of Qartazia said in the presence of R. Ashi: Three blessings: Blessed be He, etc., who has commanded us to read the Megilla; Blessed be He, etc., who has performed miracles for our ancestors; and the benediction of the time. What blessing is said after the reading of the Megilla? "Blessed be Thou, O Lord our God, King of the Universe, who hast taken up our quarrels, who hast judged our judgments, who hast taken revenge for us, who hast retaliated for us on our adversaries, and who recompensest according to their deservings all our enemies. Blessed be Thou, O Lord, who punishest all the adversaries of Israel." Rabha said: "Blessed be Thou, God of salvation." Said R. papa: Therefore, we should say both: "Blessed be Thou, O Lord, who punishest our adversaries, God of our salvation!"

"*Three men are called to read*," etc. To what do the three

correspond? To the Torah, the Prophets, and the Hagiographa. So said R. Ashi. Rabha said: To priests, Levites, and Israelites. And R. Simi taught: One must not read less than ten verses in the house of prayer; and if one of them consists of the words, "And God spoke to Moses," it is reckoned among the ten. To what do these ten correspond? R. Joshua b. Levi says: To the ten unemployed men in the synagogue. And R. Joseph said: To the ten commandments given to Moses on Sinai. R. Johanan says: To the ten sayings of the Lord, by which He created the world.

Rabha said: The first of the three men who goes to read in the Torah, if he has read four verses, he may be praised; if not the first, but the second did it, he may be praised; if the third did this, he may be praised (and if all three read four verses each, all may be praised). It happened once R. Papa came to the synagogue of Abiguber; and he read four verses to the first, and R. Papa praised him.

"*Neither more nor less*." We have learned in a Boraitha: "The beginner shall pronounce the benediction before the reading, and the last reader after." But in this time, when we have the custom that everyone says the benediction both before and after, the reason why the rabbis have ordained so is that those who enter and go away in the middle of the reading should not fail to hear either the blessing before or after.

"*On the first of the month*." Ula bar Rabh asked Rabha: The portion about the beginning of the month [Num. xxviii. 11], how should it be read? Shall we begin to read with the first verse of the chapter which speaks about the daily offering--eight verses--how shall we do? If two each read three verses, only two will be left for the third, and two should not be read? If they read each four, then for the third will be left seven verses, because about Sabbath there are two, and about the first of the month five? If the third should begin with the ninth verse (about Sabbath), and read the two about Sabbath and one about the first of the month, we have learned in a Boraitha: One must not begin a portion (containing less) than three verses? (and about Sabbath there are two). If the third begin with Sabbath, and read three about the first month, then two verses will be left. Rabha answered: This I did not hear, but I heard something similar. We have learned in the Mishna, in Tract Taanith: "The first day one reads in Genesis from i. 6: 'Let there be an expanse,'" And a Boraitha added to this: From "In the beginning"

should be read by two, and from "Let there be an expanse" should be read by one. And it was discussed: It is right that from "Let there be an expanse" should be read by one, because there are three verses; but up to that there are only five verses, and how can two men read it? Have we not learned in a Boraitha that each must read no less that three verses? And in answer to it, it was taught: Rabh said: The second should begin from the third verse, which has been already read; and Samuel says: They shall divide the third verse into two parts.

[Why does Rabh say he shall read a second time, and not begin in the middle? Because Rabh holds the verse which Moses did not leave in the middle we may not split; but Samuel says we may. And according to Samuel may we stop in the middle of the verse? Did not Hanania Kara say: I had great trouble when I was by R. Hanina the Great, who did not permit me to stop in the middle of a verse, except for the schoolchildren, because I had to teach them? Why did R. Hanina permit? Because schoolchildren could not otherwise be taught; and so Samuel allowed, because it was necessary. But why does not Samuel say as Rabh? Because if one enter in the middle, and hear the second reading the third verse, he may think the first has read only two.]

An objection was raised: We have learned in Taanith: "A portion containing six verses may be read by two men, but if it contain five, only one man must read; but if the first has only read three, the second must read the remaining two, and one of the next portion. But, according to others, he must read three verses of the next, because he must not begin to read a portion, unless he read three verses." Now, if it were as Rabh and Samuel say, why does not the Boraitha teach he shall repeat a verse, or stop in the middle? There the case is different; because it is practicable, but not here.

Said R. Tan'hum in the name of R. Joshua b. Levi: The Halakha prevails according to the saying of the Boraitha in the name of the others. And he says again: As one must not begin a portion, to read less than three verses, so one must not stop unless three verses are yet left.

Rabba the son of Rabha sent to ask R. Joseph how the Halakha prevails. And he sent him the answer: The Halakha prevails, that it shall be repeated by the second reader.

"*This is the rule: When an additional offering.*" The schoolmen propounded a question: On a

fast of the congregation how

many persons should be called to read? Should we say that be. cause on the first of the month and intermediate days there is an additional offering, four should read; but on this occasion, when there is no additional offering, only three should read? Or that, because there is an additional prayer, four should be called to read?, Come and hear: It happened that Rabh came to Babylon on a congregational fast-day. He arose and read in the Torah, and said a benediction when he began, but not when he finished. The whole congregation fell upon their faces, and he did not. Now let us see: Rabh (who was no priest) could read only what an Israelite reads (*i.e.*, was the third). Why, then, did he not pronounce the benediction after he had finished? We must assume because he thought a fourth would yet read, so there would be four? Nay; Rabh was the beginner, and substituted a priest, because he was the best man; and we find in Gittin, that R. Huna did so too. It is right of R. Huna, because, as it is said there, R. Ammi and R. Ashi, although they were priests themselves and the most honored men of Palestine, nevertheless bowed before R. Huna; but Rabh, how could he substitute a priest? Was there not Samuel, who was a priest, and always had preference before Rabh? Nay; Samuel also bowed to Rabh; but Rabh gave preference to him only to honor him, and it seems to us that this is correct, that Rabh read first; because if not so, why did he pronounce the benediction before? But perhaps it was after it was ordained that the benediction should be pronounced both before and after? Then he would have pronounced the benediction after it also? It is different. Where Rabh was, the people were permitted to enter the house of prayer, but not to leave, till Rabh finished lecturing. Hence there was no fear for those who might leave. (The question is therefore not decided, because after the first may be either two or three.) Come and hear. This is the rule: On the day when no labor is done, as on a congregational fast and the 9th of Abh, three must read; and on those days when to do labor is not prohibited, as on the first of the month and intermediate days of a festival, four read. This decides the question.

Said R. Ashi: Have we not learned in our Mishna: This is the rule: On the day which has an additional sacrifice, but is not a festival, four men read? Now, when it is said, "this is the rule," may we not assume that it is meant to include a congregational fast and the 9th of Abh? Nay, a sign only was given that it should not be thought festivals and intermediate

days are equal in the reading of the Torah: they gave us a rule that even on a day having a preference over another day, one man more must be called to read. Therefore, on the first of the month, intermediate days, which have an additional sacrifice, four read; on a festival, when no labor may be done, five must read; on the Day of Atonement, which has a punishment of Kareth, six read; on Sabbath, which has a capital punishment, seven read.

It is said above: Rabh did not fall on his face. Why? Because he was the most honored man; and this is similar to the teaching of R. Elazar: He said, an honored man must not fall on his face, unless he is sure he will be answered as Joshua b. Nun, of whom it is written [Josh. vii. 10]: "And the Lord said to Joshua: Get thee up; wherefore liest thou upon thy face?" Said R. Hyya bar Abbin: I saw that Abayi and Rabha used not to fall on their faces, but only reclined their heads on their hands.

"*Six on the Day of Atonement*." According to whom is our Mishna? Not according to R. Ishmael, and not according to R. Aqiba of the following Boraitha: "On the festival five, on the Day of Atonement six, and on the Sabbath seven--not more and not less. So is the decree of R. Ishmael. R. Aqiba says: On a festival five, on the Day of Atonement seven, on Sabbath six--not less, but it may be more." If the Mishna was in accordance with R. Ishmael, it would not allow, as he, more; and if in accordance with R. Aqiba, the latter says, on Sabbath six? Said Rabha: The Mishna is in accordance with the disciples of R. Ishmael, who teach: On festivals five, on the Day of Atonement six, on Sabbath seven--not less, but more is permitted. So said R. Ishmael. This is in self-contradiction of R. Ishmael? There are two Tanaim: One says R. Ishmael had said so, and the second he had said otherwise. To what do the three, five, and seven correspond? R. Itz'hak b. Nahmani and R. Simeon b. Pazzi, according to others R. Samuel b. Nahmani--one said that it corresponds to the blessings of the priests (where there are three words in the first verse, five in the second, seven in the third), and the other said that they correspond to the three door-keepers [II Kings, xxv. 18] and the five men who could come unto the king's presence [ibid. 19] and the seven who could see Ahasuerus [Esther, i. 14]. And the same taught R. Joseph. Said Abayi to him: Why has the Master not explained it to us before? He answered: I did not know you needed an explanation

of it, and you asked me not; did you ever ask me anything to which I answered not?

Said Jacob, one of the Minim, 1 to R. Jehudah: The six men who read on the Day of Atonement, to whom do they correspond?, He said: To the six men who stood on the right and the left of Ezra, as is written [Nehem. viii. 4]: "The names of the six who stood on the right, and of the six that stood on the left."

The rabbis taught: All are entitled to be counted read among the seven on Sabbath, even a minor and a woman. The sages, however, said: A woman should not read in the Torah for the honor of the congregation. The schoolmen propounded a question: May the last reader from the Prophets be counted among the seven? R. Huna and R. Jeremiah bar Abba differ: One says yes; the other says no. The first gives the reason that, although he reads from the Prophets, he reads from the Pentateuch also, and why should he not be counted? while the second holds with Ula, who said that the reader from the Prophets reads from the Pentateuch only in honor of the Torah, not because it is his task; and therefore it is not counted. An objection was raised: We have learned that he who reads portions from the Prophets should read not less than twenty-one verses, to correspond to the verses from the Torah read by the seven men (each of whom read three). Now, if the same person reads also from the Pentateuch, he should read but twenty-four verses from the Prophets, as he himself read three in the Torah? As be reads only in honor of the Law, it should not be counted. Rabha opposed: Do not we read Jeremiah, vii., from verse 21 to chapter viii., where twenty-one verses are not found? There it is different, because the subject is concluded there. And where the subject is not finished, must we read twenty-one verses? Did not Samuel bar Abba say: I stood many times before R. Johanan, and when we had done reading ten verses, he told us to stop, though it was in the midst of the subject? Where there is an interpreter, the law is different. As R. Tahlipha b. Samuel taught: When must be read twenty-one verses? Where there is no interpreter, otherwise he may cease earlier.

MISHNA: When men come into the synagogue after the prayer has been finished, they may not repeat the prayer if they

are less than ten in number, nor may any of them act as minister before the reading-desk, nor may priests raise their hands (to say the priest's blessing), nor may they read in the Law, nor read a section from the Prophets. When there are less than ten men present at a burial, the customary standings and sittings with the corpse, may not take place, nor may the blessing for mourners be said, nor the forms used in condolence with mourners, nor the seven blessings said on the celebration of a marriage, nor may the persons who join to say grace after meals mention the Divine name. And on an occasion of redeeming land that has been consecrated it is necessary that at least nine Israelites and a Cohen (priest) shall be present, and the same also at the valuation of a man (if he had said: I consecrate the value of my person to the sanctuary).

GEMARA: Where is this deduced from? Said R. Hyya b. Abba in the name of R. Johanan: Because it is written [Lev. xxii. 32]: "I may be sanctified among the children of Israel." All things sanctified must not be less than ten. [1]

"*Standings and sittings*." Because it was the custom for a mourner to say: "Rise, honored men, rise!" and "Sit down, honored men, sit down!" which may not be said to less than ten.

"*Blessing for mourners*," etc. What is the blessing for mourners? The benediction they said in the streets after the burial. Then R. Itz'hak said in the name of R. Johanan that the benediction of mourners was pronounced by not less than ten men, and the mourners themselves are not counted. The benediction of bridegrooms, however, is also said by ten, including, however, the bridegrooms.

"*Mention the Divine name*." Why so? Because he must say: "Let us bless our God," and this is not suitable when there are less than ten. [2] (The Owner of Rewards shall recompense you for the kindness of accompanying the deceased. Blessed art Thou, O Lord, who givest rewards), and the same was said to the condolers.

MISHNA: Not less than three verses of the Holy Scrolls may be read in the synagogue by each person (called to read). One verse only of the Law may at one time be read to the interpreter.

[paragraph continues] From the Prophets, however, may be read three also; but if each verse should form a separate section, each must be read separately. Passages may be skipped in the reading of the Prophets, but not in that of the Holy Scrolls. What time may be suffered to elapse to skip from one passage to another? while the interpreter does not conclude his interpretation.

GEMARA: "*A separate section*," etc. For instance, Isaiah, lii. 3, 4, and 5, treat of different subjects.

"*Passages may be skipped*." There is a contradiction: We have learned in a Mishna in Yoma the following: He reads Lev. xvi. 7, "After the death," etc., and then in xxiii. 27, "But on the tenth." From this we see that he skips in the Pentateuch also? Said Abayi: It presents no difficulty. In

the Pentateuch one may not skip when it is one subject; but if there are two different subjects one may. But we have learned in a Boraitha that even when the subject is the same one may skip in the Pentateuch, and in the Prophets only when the subjects are different? In both cases it is meant, while the interpreter does not conclude his interpretation.

In another Boraitha we have learned: One must not skip from one Prophet to the other. In the reading of the twelve Minor Prophets, however, one may do so; but not from the termination of one to the beginning of the other.

MISHNA: Whoever reads in the house of prayer the section from the Prophets may also repeat the prayer (Shema) and act as minister before the reading-desk; and if he is a priest, may say the blessing of the priests. If a minor, his father or teacher shall act for him.

A minor may read in the Law (in the synagogue) and act as an interpreter, but may not publicly recite the Shema, nor act as minister at the reading-desk, nor (if a priest) say by himself the blessing of priests. A man in rags may repeat the Shema and act as interpreter, but he may not read in the Holy Scrolls, nor act as minister before the reading-desk, nor (if a priest) say the blessing of priests. A blind man may repeat the prayer and act as interpreter; but R. Jehudah says: One who never beheld the light (*i.e.*, was born blind) may not repeat Shema.

GEMARA: Why so? Said R. Papa: This is a reward of honor (because to read portions from the Prophets is not such an honor as to act as minister). Rabba bar Simi, however.. said: To prevent quarrels (one should not say: I will read the Prophets and thou read the Shema).

"*A man in rags*." Ula bar Rabh asked Abayi: May a minor in rags read in the Torah? He answered: Why did you not ask about a naked man? Because we are certain that he must not, for the honor of the congregation, the same is the case here.

We have learned in a Boraitha: The sages said to R. Jehudah: Many persons lectured about the *Merkabha* (Divine Chariot) [Ezekiel, i.], although they had never seen it. Answered R. Jehudah: That deals with things in the inner consciousness, and if one meditates about them one may be fit to lecture. But if a man blesses for light it is for the benefit received, and a blind man has no benefit by it. The rabbis, however, hold that a blind man does derive benefit from light, as R. Jose of the following Boraitha said: My whole life I was sorry about the following verse [Deut. xxviii. 29]: "And thou shalt grope about at noonday, as the blind gropeth about in the darkness." I always asked, what matters it to the blind whether it be light or darkness, he gropes at any rate? till it happened once I walked in a dark night, and I met a blind man who walked with a torch. I asked him: My son, thou art blind. Why walkest thou with fire? He replied: So long as the torch is in my hands, people see me, and would not let me fall into a pit or tread on thorns.

MISHNA: A priest whose hands are deformed must not raise them (to bless the people). R. Jehudah also Prohibits it to a priest whose hands are stained with wood or with madder roots, because the people stare at him.

GEMARA: We have learned in a Boraitha: By the blemishes are meant those on his hands, face, or feet. R. Joshua b. Levi said: If there are eruptions on his hands, he must not raise them. We

have learned the same in the following Boraitha: If he has eruptions on the hands, or they are crooked, he must not raise them. Said R. Ashi: The priests from the villages 'Hiphni and Bishni all stutter, and must not bless either. The same we have learned in the following Boraitha: One must not make men act as ministers who are from Beth Sheon or Beth Hippa; also the men of Tibonin, because they pronounce an *a* as an *h*, and an *h* as an *a*. R. Johanan said: A priest of one eye must not raise his hands. But was there not a one-eyed priest in the neighborhood of R. Johanan who did bless, and he said to him nothing? That man was known in his town, and nobody stared at him because of his peculiarity; as is stated in a Boraitha: If one such is known in his town, he may.

"*R. Jehudah also prohibits*." We have learned in a Boraitha:

If the majority of a town worked at the same kind of work, and their hands were stained also, he may.

MISHNA: One who should say: "I will not minister at the reading-desk in colored clothes," may not be permitted to do so even in white ones [because we are afraid perhaps he becomes heretical, as only the Minim are particular about this]. If he refuses to minister with sandals on his feet, he may not be permitted to minister even barefooted. A man who makes the Tephilin round endangers himself, and has not properly observed the commandment. [1] A person who places them low down on his forehead, or on the palm of his hand, acts like the Sadducees. If he covers them with gold, or places them on his *unkli*, [2] he acts like a dissenter who does not care for our tradition.

If one says in his prayers: "The good shall bless Thee," he acts heretically. [3] If he says: "As to birds' nests were Thy mercies extended, so have mercy upon us"; or, "For Thy good be Thy name remembered"; or one who says twice "Modim," he shall be silenced (by authority). Also, whoever explains the text [Lev. xviii. 21]: "And of any of thy seed shalt thou not let pass through to Molech" to mean, "Thou shalt not give thy seed to an Aramite (heathen) woman," (and those who explain figuratively the section in the Law relating to carnal intercourse between relatives [Lev. xviii.]), shall be silenced, and publicly reprimanded. The occurrence of Reuben with Bilha is to be read without being interpreted; that of Tamar is to be read and interpreted. The first part of the occurrence with the golden calf is to be read and interpreted; but the second part [commencing Ex. xxxiv. 21] is to be read without being interpreted. The blessing of the priests, and the occurrence of David and Amnon, are neither to be read nor interpreted; the description

of the Divine Chariot [Ezek. i.] is not to be read as a portion from the Prophets, but R. Jehudah permits it. R. Eliezer says, neither [Ezek. xvi.]: "Cause Jerusalem to know her abominations," etc.

GEMARA: "The rabbis taught: The Scripture about the creation of the world may be read and interpreted." [Is this not self-evident? Lest one say if it will be read and interpreted, one may ask what was before the creation, or what will be after the world, what is taking place above, and

what is occurring below, they come to teach us this is not feared.] What happened to Lot and his two daughters may be read and interpreted. [Is this not self-evident? One might say that we should care for the honor of Abraham: they come to teach it is not so.] What happened to Tamar and Jehudah may be read and interpreted. [Is not this self-evident? Lest one say that we should care for the honor of Jehudah, they come to teach us, on the contrary, it is an honor for Jehudah that he confessed it.] What occurred with the golden calf may be read as far as the first part goes, and interpreted. [Is this not self-evident? We might assume we should care for the honor of Israel. They come to teach us that it is more agreeable to them when it is interpreted, that it causes their forgiveness.] The blessings and the curses pronounced by Moses in Leviticus and Deuteronomy may be read and interpreted. [Is this not self-evident? We might assume, perhaps, when they will hear it, they will become dejected, and say: If so, we will do all we please, as we will be punished so terribly in any event: they come to teach us it is not so.] The warnings and punishments may be read and interpreted. [Is this not self-evident? One might say if the punishments will be read, one might think Israel should do their duties only from fear, they come to teach us this is not apprehended.] The story of Abisolom, Amnan, and Tamar may be read and interpreted. [Is this not self-evident? One might say we should spare the honor of David. They tell us it is not so.] The story of the concubine in Gibea may be read and interpreted. [Is not this self-evident? They come to teach us that we should not do as R. Eliezer of the following Boraitha: It happened to a man who read in Ezekiel, xvi.: "Make known unto Jerusalem her abominations," in the presence of R. Eliezer, that R. Eliezer said to him: "Instead of investigating the unworthiness of Jerusalem, go and rather investigate the faults of your mother." When it was heard, an investigation was

made, and it was found he was not a rightful Israelite.] Following are those which may be read, but not interpreted: What happened to Reuben and Bilha may be read, but not interpreted. It happened once to R. Hanina b. Gamaliel, who went to Kabul, and the reader of the congregation read [Gen. xxxv. 22]: "And it came to pass when Israel dwelt," he said to the interpreter: "Stop, do not interpret except the last verse." And the sages commended him for this. The second part of the story about the golden calf may be read, but not interpreted? What is the second part? From Ex. xxxii. 21-25.

We have learned in a Boraitha: R. Simeon b. Elazar said: A man should always be prudent in his replies, for from Aaron's answer to Moses, those that murmured became lawless; for they said: There is something in idolatry, for it is written: "And I cast it into the fire, and there came out this calf." The Blessing of Priests is read, but not interpreted, because it is written [Num. vi. 26]: "The Lord lift up his countenance."

"*The occurrence of David and Amnan.*" Did we not learn in a Boraitha that the story of Amnan and Tamar is to be read and interpreted? It presents no difficulty: Where "Amnan ben David" is written, it must not be read; but the other places may.

Footnotes

63:1 Tosphoth proposes it should be read Matzaa, of the city of that name, because, If he would

be of the Minim, the Gemara would not mention his name. We, however, have explained in our *Philacterien-Ritus* that Jacob the Mini is right.

64:1 The Gemara deduces this from an analogy of expression, where a congregation is mentioned, and it is said a congregation is not called an assembly if less than ten.

64:2 It is also shown from what the other laws are deduced, but they will all be found in other and mare proper places in the Talmud.

67:1 In our *Philacterien-Ritus*, pp. 56, 87, 126, we have corrected this misprint as, "it is dangerous and there is no merit in it." We found this misprint corrected in Tract Tephilin of the seven new tracts by Kirchheim.

67:2 About this Mishna we have remarked in our "History of Amulets, Charms, and Talismans," p. 30, note 33, thus: We have already demonstrated in "Phyl.-R.," p. 56 (and at length on p. 65, under the heading ••••••) that the Mishna in Megilla, "If one cover them with gold," etc., "he acts like a dissenter," refers to the Jewish Christians.

67:3 The expression here is not plain. It seems to us that the Mishna meant to say he acts like the Persians, who believe in two Gods--one of good, the other of evil--as the latter part of the Mishna, "who says twice Modin," means: Who praises the God of good for his kindness, and the God of evil that he has not done evil.

Next: Chapter IV

CHAPTER IV.

REGULATIONS CONCERNING SELLING OF SACRED PROPERTY AND ABOUT THE READING OF THE HOLY SCROLLS ON SABBATH AND HOLIDAYS.

MISHNA: Inhabitants of a town who have sold the open (or market-) place of the town may buy for that money a prayer-house; the money obtained by the sale of a prayer-house they may apply to the purchase of an ark (to keep the Holy Scrolls in); for that obtained by the sale of such an ark, cloaks or wrappers for the Holy Scrolls may be purchased; for the proceeds of such wrappers, books of the Prophets and Hagiographa may be purchased; for the proceeds of the same books, the scrolls of the Pentateuch may be purchased; but if they had sold scrolls of the Pentateuch, it would not be lawful to apply that money for the purchase of books of the Prophets and Hagiographa, nor wrappers for the proceeds of such books, nor an ark for the proceeds of wrappers, nor a prayer-house with the proceeds of an ark, nor a market-place with the money obtained by the sale of a prayer-house; and so in respect to any surplus fund.

GEMARA: "*Inhabitants of a town*." Said Rabba bar bar Hana in the name of R. Johanan: All this was said by R. Menahem bar Jose, in accordance with whom are many anonymous Mishnas; but the sages said that there is no sanctity in a market-place. But what is the reason of R. Menahem b. Jose? Because on the congregational fast-days the people assembled in the market-places to pray (as is explained in Tract Taanith). The rabbis, however, do not care for what happens only occasionally.

"*The money obtained by the sale of a prayer-house*." Said R. Samuel bar Na'hmani in the name of R. Jonathan: The case is only about prayer-houses of villages, where they are the inhabitants' property; but in large towns, where money for them is collected from other places also, and to which other men come to pray, the congregation cannot sell it at all, because the prayer-house belongs to a majority who are absent, and it is not theirs.

Said R. Ashi: The prayer-house in my town, Masa-Me'hasia

[paragraph continues] (Sura), although the money was collected from abroad, yet because they all came for my sake, I am the owner of it, and if I wish, I may sell it. Rabha said: What is said, that the money obtained for sacred property must be spent only on other sacred things, applies only to a case where it was not sold by the seven elders of the town, in presence of the townsmen, but if they did so, it may be spent even on drinking beer (if all so wish). There was a hill, on which had stood a prayer-house, which Rabbina wanted to sow. He came to R. Ashi, and asked whether he might do so. He answered him: Go and buy it from the seven elders of the city, in the presence of the townsmen, and then you may sow it. Rami bar Abha was engaged in building a new prayer-house; but he also had an old prayer-house, which he wanted to pull down

in order to use the bricks and beams for the new structure. He asked himself this question: R. Hisda once said, one may not destroy an old prayer-house before the new one has been finished; but this is only because one is not sure whether the new one will be completed; I, who am certain that it will, may I pull it down or not? He went and asked R. Papa, who prohibited. He went then and asked R. Huna: he forbade him also.

Rabha said: A prayer-house may be exchanged for another, or sold, but it may not be rented or pledged. Why? Because when it has been sold, its sanctity departs from it; but when rented or pledged, it remains holy, and may not be used for profane purposes. The same is it with the bricks of a prayer-house: they may be exchanged or sold, but not pledged. This applies to old bricks, but not to new ones which have not yet been used. About giving away, however, as a present, R. Aha and Rabbina differ: one says one may do so, and the other not.

The rabbis taught: Articles used for a religious duty may be cast away; but such as are used in holy service must be hidden. What articles are used for religious duties? Such as a Sukkah, Lulab, cornet, Tzitzith. What are holy things? Scrolls of Scripture, Tephilin, Mezuzoth, also cases of scrolls, of Tephilin, and their straps.

Said Rabha: I had thought before, that the pulpit on which the Holy Scrolls are laid to be read is not itself a sacred article, but only one used for the preparation of a holy article; but where I saw once the Holy Scrolls put down on it (without a cloth between), I thought it was itself used for a holy purpose, and therefore must not be sold. Rabha says again: At first I

had thought the curtain of the ark was only an article used for a sacred article; but after I had seen that they folded it together, and put the Holy Scrolls on it, I knew it was a sacred article itself, and must not be sold. The same said again: Of an ark which fell to pieces one may construct a smaller ark, but not a pulpit. He said again: When the curtain of the ark is rotten, one may cut it smaller for the use of the Holy Scrolls, but for scrolls of parts of the Pentateuch he must not. The cases of the Holy Scrolls and of the Five Books, as they were used for sacred purposes, must be hidden. Is this not self-evident? Lest one say that they are not made for the honor of the sacred things, but to preserve them, he comes to teach us it is not so.

Mar Zutra said: The Holy Scrolls, when rotten, may be used as shrouds for a dead man that has no friends to bury him, and left no property to be used for that purpose, and this is hiding them.

Said Rabha: Holy Scrolls that were whole, and were torn, may be interred in the grave of a scholar, and even if he had learned only Halakhoth (and did not know Gemara). Said R. A'ha bar Jacob: But they must be put into a clay vessel, as it is written [Jer. xxxii. 14]: "And place them in an earthen vessel."

R. Papi said in the name of Rabh: A prayer-house may be converted into a learning-house, but not *vice versa*; and R. Papa in the name of Rabha taught the contrary. Said R. A'ha: It seems to be according to R. Papi, because so said R. Joshua b. Levi: A prayer-house may be turned into a learning-house. Infer from it that it is so.

"*It will not be lawful to buy books of the Prophets,*" etc. The schoolmen propounded a question:

May old Holy Scrolls be sold, to purchase with the money new ones? Shall we assume that as the new ones have no preference over the old ones, they may not be sold; or that if the old ones are not sold, the new ones cannot be had, therefore it may be done? Come and hear: Rabba bar bar Hana said in the name of R. Johanan, quoting R. Simeon b. Gamaliel: One must not sell old scrolls for the purpose of buying new ones. There it is different: It is a precautionary measure lest he sell the old ones without buying new ones; but here the question is about such as are already written, and he ready for us to be obtained when the money is had. How is the law? Come and hear: R. Johanan said in the name of R. Meir: In any case the Holy Scrolls must not be sold, except for the purpose of using the money for study, or for marriage.

[paragraph continues] From this we see that to exchange the Law for study, one may; so to exchange old scrolls for new ones, one may also. But perhaps it is different, because from studying he will know how to act; and marrying, because it is written [Is. xlv. 18]: "Not for naught did he create it; to be inhabited did he form it." But to exchange old Holy Scrolls for new ones, perhaps one may not? (This question is not decided.)

The rabbis taught: A man shall not sell Holy Scrolls, even when he does not need them; furthermore, says R. Simeon b. Gamaliel, even when he has nothing to eat, and has sold the Holy Scrolls, or his daughter for a slave, he will not see a sign of blessing all his life. Even when he has sold them, and bought new ones instead at a lower price, he will not see a sign of blessing in the remainder of the money. Said Rabha: The case is only when old Holy Scrolls have been sold, and new ones bought, so that some money was left; but when money was collected for this purpose and Holy Scrolls were bought, but some money was left, it may be used for all purposes. And even in the first instance it is so only when the old Holy Scrolls had been bought by the seven elders of the town, in the presence of townsmen, without any condition; but if it was bought conditionally, it may be used even for Duksusia.

Said Abayi to one of the rabbis, who arranged Boraithoth before R. Shesheth (who was blind): Hast thou not heard from R. Shesheth what is meant by Duksusia? He answered: So said R. Shesheth: A rider, whom the people of the town hire for their needs. Said Abayi again: Therefore if a young scholar heard something and does not know it, he should ask a man who usually goes before the great rabbis, because it is impossible that he should not have heard an explanation from the great men.

R. Johanan said in the name of R. Meir: When inhabitants of one town went away to another town, and the elders of that town ordered them to give charity for the poor of that town, they should give (that it should not be suspected they give no charity); but when they return, they may take it back, to support therewith the poor of their own town. The same we have learned in a Boraitha. But if an individual went to another town, and was ordered to give charity there, it should be given away to the poor of that town.

R. Huna ordered a congregational fast. Came to him R. Hana bar Hanilai, with many inhabitants of his town: he ordered

them to give charity, and they did so. When they had to return, they said: Let the Master give us back the money, that we may support therewith the poor of our own town. He said to them: We have learned in a Boraitha: When must it be given back? Where there is no scholar in their town who occupies himself with the public needs; but if there is such a man, it must be given to him, that he should dispose thereof. According to this judgment, so much the more the poor of my town and yours, all are supported through me.

MISHNA: Sacred public property must not be sold to private individuals, because the sanctity thereby becomes lowered. This is according to R. Meir. The sages, however, said: If so, it would also be prohibited for a large town to sell sacred things to a smaller one.

A prayer-house may be sold, according to R. Meir, only conditionally (that if they want it, it shall be returned to them). But the sages permit it to be sold permanently, except for the four following uses: to be made a bathing-house, a tanning-place, a legal diving-bath, or laundry. R. Jehudah says: It may be sold on the condition that it be made an open court, and then the purchaser is at liberty to turn it to what purpose he pleases.

GEMARA: "*But the sages permit to be sold permanently*." Said R. Jehudah in the name of Samuel: A man may let water within four ells of a prayer-house. Said R. Joseph, what does he come to teach us? We have learned this in a Mishna, R. Jehudah said, he may sell it for a court-yard, and the buyer can do what he pleases. And even according to the rabbis, who forbid it, it is only in case of a prayer-house whose sacredness is permanent; but in regard to the four ells before the prayer-house, which have no sacredness, even the rabbis admit. One Tana taught in the presence of R. Na'hman: One who prays, and wants to let water, shall step away four ells and do so; and he who has done so must walk away four ells before he may pray. Said R. Na'hman to him: "The last teaching is right, because we have learned in a Mishna that he must withdraw from such things to a distance of four ells; but that he who prays should go away four ells, why is this? By this teaching you make all streets of Nahardea sacred, for there is no place. there where men have not prayed; hence letting water would be unlawful in them? Therefore teach, he must tarry for the length of time required for walking four ells, but need not walk."

[paragraph continues] It is right that he who has let water should wait as long as walking four ells requires, because the feet can be besprinkled and he must wait till they dry; but why shall he who has prayed wait for that time? Said R. Ashi: Because for that length of time the prayer is still in his mind and his lips still keep moving, if he had been praying. The disciples of R. Zakkai asked him: In reward of what have you been living so many years? He replied: I never let water within four ells from a prayer-house, and I never called my neighbor nicknames. It never happened I should pronounce the morning benediction of the Sabbath without a goblet of wine: it happened once I had no money to buy with, and my old mother sold the cap from her head and brought me wine for Kiddush.

[It is taught in a Boraitha:] when she died she left three hundred cans of wine, and when he died he left to his heirs three thousand cans of wine. R. Huna stood in the presence of Rabh, girdled with a piece of rubber gum. And Rabh asked him: Where is thy girdle? He said: I had not wine for Kiddush, and pawned my girdle to get it. Rabh answered him: May it be God's will that you should be wrapped in silk. When he married his son Rabha, he slept on a bed; as he was not tall, his daughters and daughters-in-law threw their silken clothes upon him, and he was wholly hid.

When Rabh heard of this, he was sorry, and said: When I blessed you, why did you not answer me: and the same to the Master.

The disciples of R. Elazar b. Shamua asked him: In reward of what have you lived so long? He replied: I never used the house of learning as a passage (*compendiarius*, thoroughfare); I never trod on the heads of the holy people (he used to come earlier than his disciples, and did not make them rise from their seats on the ground, as it is in the East); and I never raised my hands (for he was a priest) to bless Israel without pronouncing first a benediction. R. Preda was asked the same question by his disciples. He told them it never happened a man should come to the house of learning earlier than I; I never pronounced a benediction at a meal in the presence of a priest; and I never ate of an animal of which the gifts had not been separated, as R. Itz'hak said in the name of R. Johanan: It is not allowed to eat of an animal of which gifts have not been made to the priest even in these days. The Master says: "I have pronounced no benediction in the presence of a priest." Is that a merit? Did not R. Johanan say a scholar for whom a priest, even a high

priest, who is an ignorant man pronounces a benediction (which properly the scholar had to pronounce, and the latter had not protested, he) deserves death, because it is written [Prov. vii. 36]: "All those that hate me love death"? Do not read "Mesanai," etc. (see Sabbath, p. 236). R. Preda means when the priest was equal to him in scholarship.

The disciples of R. Nehunia b. Haqana put to him the same question, and he answered: I never honored myself by the disgrace of my neighbor, and I never went to bed with the curse of my neighbor (but reconciled myself to him before), and was liberal with my money.

["I never honored," etc. As it happened, R. Huna bore a *pickaxe*. R. Hana bar Hanailai took it away from him, and he wanted to carry it. He said to him: If it is your custom to carry such a thing in your town, do it; but otherwise, if I will be honored by your disgrace, I do not want it." I never went to bed." As Mar Zutra, when he went to bed, used to say: I pardon all the men who have vexed me. "I was liberal." As the: Master said elsewhere that Job was liberal with his money; that is, he allowed the storekeepers larger profits than was necessary.]

R. Aqiba asked R. Nehunia the Great the reason for his longevity. His servants came and beat him (for the question). R. Aqiba fled from them, and went to the top of a tree, and said: Rabbi, when it is written [Num. xxviii. 4]: "one sheep," if it is not in the plural why should "one" be written in addition? And he said to his servants: He is a young scholar; do not hit him. And he answered to him: "One" is added to signify that it shall be the best in its flock. (Then he answered to him to the first question thus:) I never accepted in my life presents, I never was obstinate, and I was liberal with my money.

["I accepted no presents." As happened to R. Elazar, when gifts were sent to him from the house of the Nasi, he did not take them; and when he was invited, he used not to go. He used to say: When they send to me gifts, they do not wish that I shall live, for it is written [Prov. xv. 27]: "He that hateth gifts will live." And R. Zera, when gifts were sent to him, he did not accept; but went when he was invited, saying: "They only want to honor me." "And I was not obstinate." As Rabha said: Who yields from his obstinacy has his sins cancelled. As it is written [Micah, vii.

18]: "Pardoning iniquity

and forgiving transgression"; and that is interpreted in Tract Rosh Hashana: To whom does God pardon iniquity? Him who pardons the wrongs of his neighbor toward him. Rabbi asked R. Joshua b. Korha: In reward of what have you lived so long? He answered to him: Does it grieve you that I live so long? He rejoined him: Rabbi, it is a study, and I want to learn it from you. He replied: I never in my life looked into the face of a wicked man [as R. Johanan said: One shall not look at the appearance of a wicked man, as it is written (II Kings, iii. 14)]: "Surely, were it not that I regard the presence of Jehoshaphat the King of Judah, I would not look toward thee nor see thee." Rabha says: From the following passage [Prov. xviii. 5]: "It is not good to favor the countenance of the wicked." When R. Joshua b. Korha was dying, Rabbi asked him: Bless me! And he said to him: It shall be the will of God you should reach the half of my age. Said he to him: Rabbi, and not your whole age? Do you not wish I should live as long as you? He replied to him: And what will your sons do? will they tend sheep? If you will live so long, you will survive them (Rabbi was a Nasi). The disciples of R. Adda bar Ahba [1] asked him: Why have you lived so long? He answered: I never was angry in my house, I never preceded a superior, I never thought of Divine subjects in unclean alleys, and I never walked four ells without thinking about the Law and without phylacteries, and I never took a nap in the house of learning; I never rejoiced when my neighbor was in misfortune, and I never called my fellowmen nicknames.]

MISHNA: Furthermore, R. Jehudah says: No funeral orations may be delivered in a house of prayer which had become ruinous, nor may it be used as a rope-walk, nor to spread nets therein, nor to spread fruit on its roof, nor to use it as a passage--*compendiarium*--(by a shorter route), as it is said [Lev. xxvi. 31]: "I will bring your sanctuaries into desolation." That means, they remain sanctuaries even in their desolation. If grass spring up therein, it may not be pulled up, that the view may contribute to the affliction (of the beholder).

GEMARA: The rabbis taught: The house of prayer must not be treated with levity: one must not eat therein, drink, decorate one's self there, promenade, nor resort there from the great heat or from rain; one must not deliver there a funeral

oration after an individual, but one may read there, study Mishna, and deliver a funeral oration after a scholar who was needed by many men. And it has to be swept always, also sprinkled with water, that there be no dust, and no grass grow (where there is no floor). R. Jehudah said: "This is when they are in good condition; but when in ruins, if grass spring up, it may not be pulled up, that the view may contribute to the affliction." R. Asi said: The prayer-houses which are in Babylon, although they are built conditionally, yet in the meantime no one allows himself any levities in them. What does he mean thereby? They do not make business calculations there. R. Asi said again: When business calculations are made in the prayer-house, finally it will become a place for a dead body for a night. How is this to be understood? He means to say that in punishment of this, some one will die in the town who will have no friends, and will be left overnight in the house of prayer. "Decorate one's self." Said Rabha: The scholars and disciples may do it in the learning-house. As R. Joshua b. Levi said: Why is a learning-house called the house of the rabbis? Because some things it is allowed to the rabbis to do which is not permitted

to others.

"From the great heat or rain." As Rabbina and R. Ada bar Mathna stood and asked a question of Rabha, meanwhile it began to rain. They entered the house of prayer, but remarked thereat: We go to the prayer-house not from the rain, but for the study of a Halakha for which the mind must be clear as the sunny day, when a north wind blows, purifying the air. R. A'ha b. Rabha asked R. Ashi: How is it when one wants to see a man who is in the prayer-house? May one go in to call him, or not? He answered: If he is a young scholar when he enters the prayer-house, he should speak about some Halakha. When he is a disciple studying Mishna, he should study, entering, a Mishna; if he can only read the Pentateuch, he should say a verse therefrom; if he is unable to do this, he should ask a child: What verse have you learned to-day? If not even this, he should enter, and stay there a while, and only then leave (that it should not seem he came only for this purpose). "After a scholar who was needed," etc. What is meant by this? R. Hisda pointed out, *e. g.*, if anyone of R. Shesheth's disciples should die. R. Shesheth pointed out R. Hisda: If, *e.g.*, one of R. Hisda's disciples would die.

Raphram lamented his daughter-in-law in the prayer-house.

[paragraph continues] He said: For my honor, and in honor of the deceased, the whole world will come to hear my oration. R. Zera lamented after one of the rabbis in the prayer-house, and said: Either in my honor or in honor of the deceased all will come to hear. Resh Lakish delivered a funeral oration after a young scholar who had been in Palestine, and taught Halakhoth to twenty-four rows of disciples. He said: Woe! that the land of Israel has lost such a great man. One scholar died who had known Halakhoth, Siphra, Siphri, and Tosephta. They came and told R. Na'hman he should lament him. R. Na'hman said: What shall I say to such a great man--shall I say, Woe! that such a book-case full of books was lost? (He learned all by himself and not from masters, therefore he styles him merely thus, but not "scholar," because maybe he learned by heart but did not understand the reasons.) Come and see the difference between the mighty of the land of Israel and the pious ones of Babylon. (Rashi explains it thus: Resh Lakish was of the most honored men of Palestine, as it is said elsewhere that even to Rabbi bar bar Hana he did not talk in the street. Nevertheless, as above said, when a young scholar, learned only in Halakhas, died, he made the lamentation without any questions. R. Na'hman b. Itz'hak was of the pious men of Babylon, as it is said elsewhere that he said: Do not mention fear of sin, because I live yet.)

We have learned in a Mishna in Aboth: "Who uses the crown, is lost." Resh Lakish taught: That means, if one uses for his service a man who learns Halakhoth, which are the crown of the Law. Said Ula: A man can use the service of one who learns four Halakhoth, but not of one who *teaches* four Halakhoth; as happened with Resh Lakish, who walked on the road, and had to cross a stream. A man came, took Resli Lakish on his shoulders, and carried him across. Resh Lakish asked him: Can you read in the Torah? He said yes. Can you read in the Mishna? He said: I have studied four sections of the Mishna. Said Resh Lakish to him: You have cut out for yourself four rows of gold, and still you carried the son of Lakish on your shoulders? Throw him into the water! Said the man: It is agreeable to me to serve the Master. Said he: You may do it only when you will have learned from me something (and then he taught him a Halakha).

The rabbis taught: The burial of a corpse and the marriage of a bride supersede the study of the

Law. It was said of R. Jehudah b. R. Ilai: He used to interrupt his study for the above

two things. This is in the case when the dead man has not enough men to accompany him, but if there are enough, one need not interrupt his study. What is meant by "enough"? Said R. Samuel bar Inia in the name of Rabh: It means thirteen thousand men, and six thousand with cornets. And according to others, the six thousand are included in the thirteen thousand. And Ula says: As many men as could form a wall from the place where the man died to the grave. R. Shesheth says: Six hundred thousand men. As the Law was given to six hundred thousand men, so a man who has learned the Law should be accompanied by six hundred thousand men. This applies only to a disciple who has learned, but for the Master who taught, no definite number is to be prescribed.

We have learned in a Boraitha: R. Simeon b. Yochi said: Come and see how the Israelites are beloved by the Holy One, blessed be He. Wherever they went in exile, the Shekhina accompanied them. They were exiled into Egypt, the Shekhina was with them, as is written [I Sam. ii. 27]: "Did I not appear unto the house of thy father, when they were in Egypt?" When they were exiled into Babylon, the Shekhina was with them, as is written [Is. xliii. 14]: "For your sake I was sent to Babylon." And in future, when they will be redeemed, the Shekhina will also come to them, as is written [Deut. xxx. 3]: "The Lord thy God will return"; it is not said, He will bring back you, but *He* will return with you.

It is written [Ezek. xi. 16]: "Yet will I be to them as a minor sanctuary." Said R. Itz'hak: This means the houses of prayer and the houses of learning that are in Babylon. R. Elazar said: That is the house of our Master who is in Babylon (*i.e.*, Rabh). Rabha lectured: It is written [Ps. xc. 1]: "Lord, a place of refuge hast thou been unto us." That means the prayer and learning-houses. Said Abayi: Formerly I learned at home, and prayed at the house of prayer; but when I heard later what David said [in Ps. xxvi. 6]: "Lord, I love the site of *thy* house," I went to study also in the prayer-house.

A Boraitha states: R. Elazar the Kapar said: The prayer and learning-houses which are at present in Babylon will in the future be established in the land of Israel, as it is written [Jer. xlvi. 18]: as Thabor is among the mountains, and as Carmel is by the sea, so shall he come." An *a fortiori* conclusion is to be drawn: If Thabor and Carmel, at which only occasionally the Law was studied, are counted among the land of Israel, the

prayer and learning-houses, at which the Law is still studied, so much the more that they will become the land of Israel.

Bar Kapara lectured: It is written [Ps. lxviii. 17]: "Why watch ye enviously, ye many-peaked mountains?" A Heavenly voice was heard, which said to the mountains: "Why should ye be jealous of Mount Sinai? Ye, all great mountains, are blemished in comparison with Sinai." This is inferred from the expression "*Gabnunim*," and by analogy of expression in Lev. xxi. 20, the expression "crook-backed," which is one of the blemishes, is "*Giben*." Said R. Ashi: From this we may infer that a man who is haughty must be considered as blemished.

"*Nor used as a passage*" (*compendiarium*). What is meant? Said Rabha: The explanation is similar to the word; instead of going around, one goes through the house. Said R. Abahu: If the house was originally used as a shorter route, one may. R. Na'hman b. Itz'hak said: If one entered it without the intention to use it thus, but afterward wants to go through the other door, he may. And R. Helbi in the name of R. Huna said: If he entered to pray, he may go out by the shorter road. As is written [Ezek. xlvi. 9]: "But when the people of the land came before the Lord on the appointed feasts, he that entereth in by the way of the north gate to bow himself down shall go out by the way of the south gate."

"*If grass spring up*," etc. But did we not learn in a Boraitha, he must not pull it up to feed therewith cattle, but he may uproot it, and leave it lie? In the Mishna also is meant, he should not pull it up for animals.

MISHNA: When the first of Adar falls on a Sabbath, the portion Shekalim [Exod. xxx. ii] is to be read; if it falls on any other day, that portion must be read on the preceding Sabbath, and nothing additional is read on the following Sabbath. On the second, the portion "Remember" [Deut. xv. 15] is to be read; on the third, that of the red heifer [Numb. xix.]; on the fourth, that of the new moon [Ex. xvii.]; on the fifth, they return again to the regular order. The regular order of Aphtaroth is also to be interrupted on the days of new moon, on that of Hanuka, on Purim, and on public fast-days, also on the fast of the standing men (this is explained in Tract Shekalim), and the Day of Atonement.

GEMARA: We have learned in the Mishna in Shekalim (vol. iv., p. i): "On the first day of the month of Adar warnings are heralded from Jerusalem concerning Shekalim and

[paragraph continues] Kelayim." About Kelayim it is the time of sowing, therefore it is right that it is heralded they should have no Kelayim; but whence do we deduce that about Shekalim it must be heralded on the first of Adar? Said R. Tebi in the name of R. Joshia: It is written [Num. xxviii. 14]: "This is the burnt-offering of the new moon for every month." The expression is: "*Hodesh behodsho*" (*i.e.*, new in its new), that means that the Torah said: Renew it. Ye shall bring the offerings from the new taxes of the year, and as with the first of Nisan begins the new year, it must be heralded in Adar that the new taxes shall be collected before or on the first of Nisan, for the purpose that they might be brought in time to the Temple.

Is the Mishna not in accordance with R. Simeon b. Gamaliel, who said: Only *two weeks* before Passover shall it be lectured about the Passover? Nay, we can say it is in accordance with R. Simeon b. Gamaliel also, but because in Shekalim, I, Mishna *c*, it is said: "On the fifteenth of Adar the money-changers outside of Jerusalem seated themselves at their tables," etc., we must be earlier in reading the portion of Shekalim. What is called the portion of Shekalim? Rabh says: The portion about the daily offerings [Num. xxviii. 2]. And Samuel says: Ex. xxx. 21. It is right according to Samuel that it is called Shekalim, because it speaks about it; but according to Rabh, where is mentioned in that portion about Shekalim? About Shekalim is not mentioned, but according to Rabh this shall be read because the daily offerings must be brought from the new Shekalim as R. Tebi said above. We have learned in the following Boraitha in accordance with Samuel: If the first of Adar falls on Sabbath, the portion from Ex. xxx. 21 shall be read; and the portion from the Prophets should be about Yehoyada the priest [II Kings, xii.]. R. Itz'hak of the

city of Naph'ha said: If the first of Adar falls on Sabbath, three Holy Scrolls must be taken out, and it should be read from one the portion due on that Sabbath, and from one the portion proper on the first of the month, and from one the portion of Shekalim [Ex. xxx. 21]. He says again: When the first of the month Tebeth falls on Sabbath, the same thing is to be done--three scrolls are to be taken out: one portion proper for the Sabbath should be read, the second that of the first day of the month, and the third about Hanuka [Num. vii..] It was taught: When the first of Tebeth falls on a week-day, said R. Itz'hak: Three must read the portion of the first day of the month, and one about the sanctification; and

[paragraph continues] R. Dimi from the city of Hepha said, Three must read about the sanctification, and one about the first of the month. Said R. Mani: It seems to us that R. Itz'hak of Naph'ha is correct; because a frequent thing is given preference over an unfrequent thing, and we read Hanuka once a year, while the first of the month is twelve times. Said R. Abbin: On the contrary, it seems to be according to R. Dimi, for what is the cause of the fourth man being called to read the Torah? The first of the month. Therefore the fourth man must read the portion of the first of the month. How is it to be decided? R. Joseph said: We must give preference to Hanuka; and Rabba said, to the first of the month. And the Halakha prevails that the main attention must be given to the first of the month, not to Hanuka.

It was taught: When the Sabbath of Shekalim falls when the portion proper to this Sabbath is Thetzaveh [1] [Ex. xxvii. 20], said R. Itz'hak of Naph'ha: Six persons should read from verse 20 of xxvii. to verse 11 of xxx., and one from verse 11 in xxx. to verse 17. Said Abayi: The people will think the portion is so long, and will not notice that they read the portion Shekalim, therefore he says six should read from 20 in xxvii. to 17 in xxx. (Thetzaveh), and then should come another and repeat from 11 in xxx. to 17 (Shekalim). It was taught: When the first of Adar falls on the eve of Sabbath, said Rabh, the portion Shekalim should be read the preceding Sabbath, because the tables of money-changers are set up two weeks after the reading, and if it will be read on the succeeding Sabbath, they will not be set up on the 15th, but two days later. Samuel, however, said: It should be read on the succeeding Sabbath. The tables will not be set up at all events until Sunday, because they will not begin on the eve of Sabbath, consequently the reading will not cause any delay. Their point of difference is the same as that of the Tanaim of the following Boraitha: There must be an interruption between the Sabbaths, on which must be read the four portions before Passover; so is the decree of R. Jehudah Hanasi. R. Simeon b. Elazar, however, said: No interruption must there be. And he said again: I say, there must be no interruption only then when the first of Adar falls on the eve of Sabbath, but if in the middle of the week, the portion

Shekalim must be read on the preceding Sabbath, although the Sabbath is yet in the month Shebat.

"*On the second the portion 'Remember' is to be read*." It was taught: When Purim falls on the eve of Sabbath, said Rabh: The portion "Remember" should be read on the preceding Sabbath, because, if on the Sabbath after, "Remember" will be read after it has been done (with the reading of the Megilla). Samuel, however, said it should be read on the succeeding Sabbath; and concerning the fact, that the reading of the Megilla must not precede the reading of

"Remember," it will not precede in the walled towns, where it is read on the 15th, and then "Remember" will be read before the Megilla. When, however, Purim falls on Sabbath, said R. Huna, all agree it must not be read the preceding Sabbath, but on the same Sabbath. R. Na'hman, however, said: Rabh and Samuel differ also about this. The same was taught also by R. Hyya bar Abba in the name of R. Abba quoting Rabh: When Purim falls on Sabbath, the portion "Remember" should be read the preceding Sabbath.

"*The third, that of the red heifer*." The rabbis taught: What is meant by the third Sabbath? The one falling after Purim. In the name of R. Hama bar Hanina it was taught: By the third Sabbath is meant the one after which comes the first day of Nisan. They do not differ, however, when the first of Nisan occurs on Sabbath. On the preceding Sabbath the portion of the heifer must be read; and when it falls on a week-day, it has to be read on the Sabbath after Purim.

"*The fourth, that of the new moon*." The rabbis taught: When the first of Adar falls on Sabbath, the portion Shekalim must be read, and the portion of the Prophets should be about Yehoyada the priest. And what is called the first Sabbath? The one after which the first of Adar falls in the same week, and even on the eve of the succeeding Sabbath. On the second has to be read "Remember," and the portion of the Prophets must be from I Sam. xv.: "I remember what Amalek," etc. And what is called the second Sabbath? When Purim falls on the week after it, and even on the eve of Sabbath after it. On the third Sabbath it must be read about the heifer, and the portion of the Prophets in Ezek. xxxvi. 24: "I will sprinkle upon you." And what is called the third Sabbath? When it falls after Purim. The fourth Sabbath it has to be read about the new moon, and the portion of the Prophets shall be from Ezek. xlv. 19: "Thus has said the Lord Eternal, in the first

month, on the first of the month." And what is called the fourth Sabbath? When the first of Nisan falls in the week after it, and even on the eve of the next Sabbath.

"*On the fifth, they return again to the regular order*." What order is meant? R. Ami says: To the order of the portions usually read on each Sabbath; and R. Jeremiah says, to the order of the portions from the Prophets (because on these four Sabbaths the portions from the Prophets were different). Said Abayi: It seems to us it should be as R. Ami said, as the Mishna stated above (p. 81) agrees with his opinion.

MISHNA: On the first day of Passover the portion in Leviticus relating to the festival must be read; on Pentecost that commencing "Seven weeks shall ye count," etc. [Deut. xvi.]; on the day of New Year, the portion commencing "In the seventh month, on the first day of the month" [Num. xxix. 7]; on the Day of Atonement that of "After the death" [Lev. xvi.]; on the first day of the Feast of Tabernacles, the portion of Leviticus relative to the festivals must be read; and on the other days of that festival the offerings for each day [Num. xxix. 17].

On the half feast of Hanuka, the portion of the offerings of the princes [Num. vii.] must be read; on Purim, that of "And Amalek came" [Ex. xvii. 8]; on the first of the month, "And on the beginnings of your months" [Num. xxviii. 11]; on the fast-days for the standing men, about the creation [Gen. i.]; on fast-days, the portion containing the blessings and maledictions [Lev. xxvi. 3]; the denunciations therein contained must be read without interruption; namely, one man

must read the whole chapter. On Mondays and Thursdays, and on the Sabbath afternoon, they shall read the portion of the Torah in its regular order, but these readings are not available to reduce the regular number, for it is written [Lev. xxiii. 14]: "Moses declared unto the children of Israel the appointed festivals of the Lord." Whence it is inferred that each must be read on the appointed festival to which it refers.

GEMARA: The rabbis taught: On Passover should be read the portions referring to this festival, and the portions from the Prophets should be from Joshua, v. 9, about Gilgal, etc.; and at present in exile, when we keep two days as festivals, the first day should be about Gilgal; the second day from II Kings, xxiii., about Joshiah; the last days of Passover should be selected small portions in which it is spoken about Passover. What are they? (This will be explained further on.) And the last days of

[paragraph continues] Passover--on the first of them should be read [Ex. xiii. 17], "And it came to pass when Pharaoh," and the portion from the Prophets should be from II Samuel, xxii., "And David spoke"; and on the next day [Deut. xv. 19], "All the first-born males," and from the Prophets, in Isaiah, x. 32, "As yet to-day will he remain at Nob." Said Abayi: And now people have the custom to read as follows: "Draw out" [Ex. xii. 2], "When a bullock" [Lev. xxii. 27], "Sanctify" [Ex. xiii. 2], "If thou lend" [ibid. xxii. 24], and "Hew thyself" [ibid. xxxiv. i], "And the Lord spoke" [Num. ix. i], and "It came to pass" [Ex. xiii. 17], and then "All the first-born" [Deut. xv. 19]. On Pentecost, "Seven weeks shalt thou number" [Deut. xvi. 9], and from the Prophets, in Habakkuk, iii. An anonymous teacher says [Ex. xix.]: "In the third month," and the portion from the Prophets should be from Ezekiel, i., about the Divine Chariot. And now when in exile we keep two days Pentecost, we do as both have said, but reverse it on the first day of the New Year, as the anonymous teacher, and on the second as above. In the days of the New Year, "In the seventh month" [Num. xxix.], and from the Prophets, "Is not Ephraim a dear son" [Jerem. xxxi. 201. According to others, "And the Lord visited Sarah" [Gen. xxi.], and from the Prophets, about Hannah [I Sam. i.]. And now when we keep two days, we read on the first about Sarah, and the second, "God did tempt Abraham" [Gen. xxii.], and the portion from the Prophets, "Is not Ephraim" [Jer. xxxi. 20]. On the Day of Atonement we read [Lev. xvi.], "After the death," and from the Prophets [Is. lvii. 15], "For thus hath said the High," etc. And in the Min'ha prayer, we read about the laws of legal marriage [Lev. xviii.], and from the Prophets, Jonah.

[R. Johanan said: In nearly every place where you find the might of the Holy One, blessed be He, you find also His modesty. This is written in the Pentateuch, and repeated in the Prophets, and mentioned a third time in the Hagiographa. In the Pentateuch [Deut. x. 17]: "For the Lord your God is the God of gods, and the Lord of lords"; and the next verse, "Who executeth justice for the fatherless and the widow." It is repeated in the Prophets [Is. lvii. 15]: "Thus hath said the High and Lofty One, who inhabiteth Eternity, whose name is Holy"; and the end of this verse is "yet also with the contrite and humble in spirit." The third time in Hagiographa [Ps. lxviii. 5]: "Extol him who rideth upon the heavens." "The

[paragraph continues] Everlasting is his name," and the next verse is "A father of the fatherless, and the judge of the widows."]

The first festival day of the Feast of Tabernacles should be read the portion about this feast in Leviticus; and from the Prophets [Zechariah, xiv. 1]: "Behold, a day is coming unto the Lord." Now when we keep two days, we read on the second the same as on the first, but from the Prophets [I Kings, viii. 2]: "And all the men of Israel assembled." And on the remaining days of the festival we read about the sacrifices of the festival, and on the last day we read "All your first-born," to the end of the chapter, and from the Prophets [ibid. iv. 1]: "And it came to pass when Solomon had finished"; and on the morrow, "And this is the blessing" [Deut. xxxiii.], and from the Prophets [I Kings, Viii. 22]: "And Solomon stood."

R. Huna said in the name of Rabh: On the Sabbath in the intermediate days of the festivals, whether Passover or that of Tabernacles, should be read Ex. xxxiii. 12; and from the Prophets [Ezek. xxxvii.], about the dry bones, and on Feast of Tabernacles [Ezek. xxxviii.], about Gog and Magog. During Hanuka the portion in Num. vii. about the offerings of the princes, and from Prophets [Zechariah, iii.], about the candlesticks, And when it happens there are two Sabbaths in the eight days of Hanuka, on the first Sabbath the candlesticks of Zechariah, on the last Sabbath from I Kings, vii. 49, about the candlesticks of Solomon. On Purim [Ex. xvii.], "And Amalek came," and "On the beginnings of your months" [Num. xxviii.]. And if the first of the month falls on Sabbath, it should be read from Isaiah, lxvi. 23: "And it shall come to pass that from one new moon to the other." And when the first of the month falls on Sunday, the preceding Sabbath it should be read from the Prophets [I Sam. xx. 5]: "And Jonathan said unto David, to-morrow is the new moon."

R. Huna said: If the first of the month Ab falls on Sabbath, it should be read from the Prophets in Is. i. 14: "Your new moons and your appointed feasts my soul hateth." On the ninth of Ab itself? What portion do we read from the Prophets? Said Rabh: Is. i. 2]: "How became a whore the faithful city?" Said Abayi: And now people have the usage to read from the Pentateuch [Deut. iv. 24]: "When thou begettest children ", and from the Prophets in Jerem. viii. 13: "I will make an end of them."

"*On the fast of the standing men*." Whence do we deduce

this? (Rashi explains it that the question is what connection there is between the creation and these fasts.) Said R. Ami: If not the standing men, the heaven and earth would not abide; as is written [Jerem. xxxiii. 25]: "If my covenant be not with day and night, I would not appoint the ordinances of heaven and earth," And it is also written [Gen. xvi. 8]: "And he said, Lord God, whereby shall I know that I shall inherit it?" Said Abraham before the Holy One, blessed be He: Creator of the Universe, perhaps if Israel will sin before Thee, Thou wilt destroy them as the generation at the time of the Flood and of the Dispersion of Babel. And He answered: Nay. Said Abraham: Whereby will I know it? And the Lord said: Take Me a heifer three years old (*i.e.*, the sacrifices will forgive their sins). Then Abraham said again: Creator of the Universe, this will be as long as the Temple exists, but what will be when the Temple will be destroyed? And the Lord answered: I have therefore ordained to them the order of the sacrifices, and every time they will read it, it will be considered by Me as if they had offered them, and I will forgive them all their sins.

"*Without interruption*." Whence do we deduce this? Said R. Hyya bar Gamda in the name of R.

Asi: Because it is written [Prov. iii. 11]: "The correction of the Lord, my son, do not despise." (And if there were interruption, it would seem as if the correction were disagreeable to them.) Resh Lakish, however, said: That is because we do not pronounce a benediction over chastisement. What else shall he do? We have learned in a Boraitha: He should begin a verse before the curses, and should end a verse after them. We have learned in a Boraitha: R. Simeon b. Elazar said: Ezra ordained that Israel should read the curses in Leviticus before Pentecost, and those in Deuteronomy before New Year. Why so? Said Abayi, and according to others Resh Lakish: That the curses should end with the year. It is right of Deuteronomy, because then begins a new year; but in Leviticus, before Pentecost, does Pentecost begin a new year? Yea, Pentecost is also a New Year's day, as we have learned in Tract Rosh Hashana, on Pentecost is decided in Heaven about the fruit of the year.

The rabbis taught: From the same place where they stop to read in the Pentateuch on Sabbath in the morning, they begin to read in the Min'ha prayer; and from the same place they should begin on Mondays and Thursdays and the next Sabbath. So is the decree of R. Meir. But R. Jehudah said: From the

same place where they had stopped the last Sabbath, they should begin at the Min'ha prayer, and Mondays and Thursdays, and also the next Sabbath. Said R. Zera the Halakha prevails so. The rabbis taught: One shall open the Holy Scrolls and look on them, then pronounce the benediction, then read. R. Shephatia said in the name of R. Johanan: He who rolls together the Holy Scrolls, shall do it so that the sewn rolls should be in the middle, so that it be done easily. The same said again in the name of the same authority: They may be rolled together only from outside, but not from inside, so that the letters should not be seen outside. When one holds scrolls himself, and has to find in it something, he should not begin to roll away from his person, because one scroll might fall down, but he should roll them toward his person, so that they should remain on his knees. When he rolls them from both sides, he should begin with the side toward his person, because if from the other side, a man will be unable to see at a distance what is written in them, and it is a duty to let him see.

The same says again: If ten men have read in the scrolls, the greatest of them should roll them together, for R. Joshuah b. Levi said: He who rolls them together, is rewarded as much as all of them together.

He says again: Whence do we know that we may avail ourselves of a Heavenly voice? Because it is written [Is. xxx.]: "Thine ears shall hear a thing from behind them." When is this the case? When one hears a male voice in town, and a female voice in the country, and when it says: "Yea, yea," or "Nay, nay." The same says again in the name of the same authority: Who reads without sweetness, and learns without a chant, of him says the verse in Ezekiel [xx. 25]: "And I also have given unto them laws that are not good." Abayi opposed. Shall I say, because he cannot make sweet his voice, the above verse should be applied to him? Therefore we must say as R. Mesharshia said elsewhere, that if two scholars are in one town, that contradict themselves in Halakha, to them is the above verse applied.

Said R. Pornach in the name of R. Johanan: Who handled the Holy Scrolls, while naked, [1] *will be buried naked*. Said R.

Janai the son of R. Janai the Elder: It is better that the mantle of the Holy Scrolls should be inserted between the scrolls than *vice versa*. It is written [Lev. xxiii. 44]: "And Moses spoke of the festivals of the Lord to the children of Israel"; *i.e.*, he told them the merit of reading the portions of the Torah each in its time. The rabbis taught: Moses ordered to Israel they shall discuss and lecture on the subject of the day: the Halakhas of Passover on Passover, the Halakhas of Pentecost on Pentecost, and the Halakhas of Tabernacles on the Feast of Tabernacles.

END OF TRACT MEGILLA.

Footnotes

77:1 In text it is written R. Zera, but it is a misprint. See Taanith, p. 54.

83:1 In Babylon they read through the Pentateuch once a year, as we do now; in Palestine, once in three years. This question applies to both; it can happen in both that the portion of Thetzaveh before that of Shekalim can come to have to be read when Shekalim should be.

89:1 According to Rashi, it applies to the scrolls; Mordchai Plungian, however, in his "Alphai Menashe," interprets it in the name of Menashe of Ila that it applies to the man, which seems to be more correct, though he was persecuted for this interpretation.

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TRACT EBEL RABBATHI (GREAT MOURNING), OR SEMA'HOTH (JOYS).

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EBEL RABBATHI (GREAT MOURNING), OR SEMA'HOTH (JOYS).

CHAPTER I. 1

A. One in he struggle of death is to be regarded as living in all respects. He still binds the dependents to the law of Yibum, A2 and he exempts from the same. A3 He makes his dependents eat of heave-offerings, A4 and prevents them from eating it. A5 He inherits and makes others inherit. A6 When a limb or a piece of flesh is removed from him, it is regarded as of a living man. A7 The blood of his sin-offering and transgression may be sprinkled until he dies. A8

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B. His mouth must not be closed, nor his openings stopped. No metal vessel or anything which chills B1 must be put on his navel till he dies, as it is written [Eccl. xii. 6]: "While the silver cord is not yet torn loose."

C. He must not be moved, nor put on sand or salt, until he dies. C1

D. His eyes must not be closed. Whoever touches or moves him is regarded as a shedder of blood. D1

E. His relatives may not rend their clothes nor remove their shoes nor lament over him, nor may the coffin be brought into his room, till he dies.

F. His death must not be announced, nor his deeds proclaimed, until he dies; R. Jehudah, however, said: If he was a wise man, the latter may be done. F1

G. Greetings must not be exchanged when there is a death in a village, but it may be done in a greater city. An infant cut or torn at birth, a miscarriage, or born alive at the eighth month, or born dead at the ninth--all the religious ceremonies do not apply to it.

H. The same is the case with an idolater or bondsman, nevertheless they may exclaim over him: "Woe, lion! lion! Woe, hero!" H1 R. Jehudah said: (It may be said also:) Woe, trusted man, who lived by his labor! They said to him: If so, what is there left to say of the upright? He rejoined: If he was righteous why should this not be said of him? H2 No consolation is needed (on the death of) male and female slaves.

I. It happened when the female slave of R. Eliezer died, his disciples went to console him. When

he saw them he went into

the yard, and they followed him; he returned to the house, and they followed him. He then said to them: I thought that you might be scalded with lukewarm water, now I see that you cannot be scalded even with boiling. Have I not taught unto you: No consolation is needed (on the death of) slaves?

J. When Tebbi the slave of Rabban Gamaliel died, the latter accepted consolation. Said his disciples to him: Our master! hast thou not taught unto us that no consolation is needed on slaves? He rejoined: My slave Tebbi cannot be likened to other slaves; he was a righteous one.

K. He also permitted him to lay Tephilin. Said his disciples: Our master! hast thou not taught unto us that slaves are exempt from Tephilin? And he made the same rejoinder.

L. Slaves must not be distinguished as Father so and so, or Mother so and so. L1 The household of Rabban Gamaliel, however, used the distinction of "Father Tebbi" and "Mother Tebbitha" to the above-named and his wife. L2

M. Ancestors must not be distinguished as the fathers of the nation (or the tribes), except the three Patriarchs; nor mothers of the nation, but the four mothers. M1

Footnotes

1:1

EDITOR'S COMMENTARY.

CHAPTER I.

As the chapters are short, their contents will be found in the Synopsis.

1:A2 *A*. If he is the only brother of him who died childless, the widow cannot marry again until he dies. And if it happened that she did marry in that time, the marriage is considered null and void.

1:A3 If he is the only son of his father who died at that time, he is considered as a living child, and to exempt the widow from Yibum or Halitzah.

1:A4 His wife or slave if he is a priest, also his mother if she was the daughter of a commoner.

1:A5 If his wife was the daughter of a priest, and he a commoner [Lev. xxii. 12-14].

1:A6 For instance, if his mother dies at that time and leaves property to him, it is considered his; so that when he dies his relatives on his mother's side inherit from him, but not those on his father's. See Nidah, 44*a*.

1:A7 It is not a subject of defilement, to make him who touches it or the tent which contains it unclean, if it has not a certain quantity, as will be explained farther on.

1:A8 The blood of an offering can be sprinkled only when the offerer is alive, and has a substitute in the Temple.

2:B1 *B*. See Sabbath, p. 353.

2:C1 *C*. As was the custom at that time.

2:D1 *D*. For the reason, see ibid., Mishna and Gemara thereon; here, however, this is said in the name of R. Meir.

2:F1 *F*. Not in his presence, but people may say among themselves: "What a great loss we have in the death of the man who did so and so." Some say even in his presence, because he is used to hear his praises, and will not be alarmed; but we do not find any basis for this assertion.

2:H1 *H*. If they were worthy of such a lamentation.

2:H2 It seems to us that this is said of a bondman only, but not of an idolater, as an idolater, even if he was a Gentile, is called a sinner according to the Talmud, which declares that idolatry was prohibited to Noah for all nations.

3:L1 *L*. The word Abba, which means "Father," was a title at that time, as "Reverend" is now, or as the Catholics entitle their superiors of the Church and nunneries "Father" and "Mother."

3:L2 In Midrash Rabbah [Lev. chap. xix.] is to be found Tebbitha, the female slave of Rabban Gamaliel, presumably Tebbi's wife.

3:M1 *M*. Sarah, Rebeccah, Rachel, and Leah, the wives of our patriarchs. See Berachoth.

Next: Chapter II

CHAPTER II.

A. A suicide must be buried without any ceremony. R. Ishmael said: It may be exclaimed: Alas, suicide! Alas, suicide! Said R. Aqiba to him: Leave him alone. Do not honor nor abuse him. A1 No rending, no removal of shoes, and no lamenting. They may, however, stand in line, A2 and say over

p. 4

him the mourners' benedictions, because it is for the honor of the living. This is the general rule: Whatever is for the honor of the living may be done; but everything which is not for their sake, it is not imperative for the congregation to do for such.

B. Who is to be considered a suicide? If one ascended to the top of a tree or a roof, and he fell down and was killed, B1 he must not be considered a suicide, unless he says previously: "I am going to drop myself!" and immediately afterward it was observed that he did so; then it is to be considered a suicide, and he shall be buried without any religious ceremonies.

C. When one is found hanging on a tree strangled, or lying on a sword killed, he is not to be considered a suicide, and nothing may be withheld from him.

D. It happened to the son of Gornos in Lud, who ran away from school, that his father threatened him. Being afraid of his father, he drowned himself in a pit. When R. Tarphon was inquired about him, he said: Nothing shall be withheld from him.

E. It happened to a lad at the city of Bene-Berak, who broke a glass on the Sabbath, that his father threatened him. Being afraid of his father, he drowned himself in a pit. It was told to R. Aqiba, and he said: Nothing shall be withheld from him. E1

F. From this the sages declared: One shall not threaten a child. He shall either punish him immediately, or he shall keep silence. Said R. Simeon b. Elazar: Lust, children, and women should be repulsed with the left, and attracted with the right hand. F1

G. Those who are put to death by the decision of a court must be buried without any ceremonies. Their brothers and relatives may come and greet the witnesses and the judges, to show them that the judgment is considered just, and that they

p. 5

have nothing against them; that they do not mourn for them loudly, but are sorry for them, as sorrow is only in the heart. Rabbi Nathan, however, said: There is no difference between silent sorrow and loud weeping. G1

H. No funeral meal H1 must be prepared for them, as it is written [Lev. xix. 26]: "Ye shall not eat upon the blood." H2

I. Whoever separates himself from the congregation, nobody shall have anything to do with him. And when he is dead, his brothers and other relatives may dress and wrap themselves in white, eat, drink, and rejoice that the enemy of the Place I1 is lost [Ps. cxxxix. 21]. This verse, with the following, is to be explained thus: Why do I hate them with the utmost hatred? Because they have separated themselves from me, and become my enemies.

J. The same is the case with those who steal the duties, or steal from devoted things, they are considered as shedders of blood; and not merely that, but also as idolaters, adulterers, and intentional violators of the Sabbath. J1

K. From those who are killed by the government, nothing may be withheld, nor from those who were drowned in the sea or a river, or were eaten by a wild beast. From what time must the day of the mourning for them be counted? Since the time that they have despaired of finding. If separate limbs are found, it cannot be counted till the head and the greater part of the body are found. R. Jehudah said: The backbone and the skull are considered as the greater part of the body.

L. If a husband or wife, or parents, were crucified in the town, the wife, the husband, or the children shall not live in that town, except it be as large as Antioch, and even then they must remove to another part. Until what term are they not allowed to live there? Till the flesh is totally destroyed, and the bones cannot be recognized any longer. L1

Footnotes

3:A1

CHAPTER II.

A. With the saying that you lament him, you also blame him that he committed suicide. It is, therefore, better that nothing should be said.

3:A2 When the mourners return from the burial, all those who accompanied them stand in two rows, through which the p. 4 mourners pass, and each one consoles them. So was the custom at that time, and in some congregations it is still extant. The mourners' benediction (Tzidduk Hadin) is said in the cemetery just after the interment.

4:B1 *B*. Although he said he would do so sometime previous.

4:E1 *E*. According to Rashi, Mishna A is incomplete, and must read thus: But if the suicide was a minor, it is different. He said so, that the decisions of Aqiba and Tarphon should not contradict it.

4:F1 *F*. To all these three, to which human beings are attracted naturally, it is advisable not to be subject, but at the same time, when he attracts them with the right, he shall try to repel them with the left when necessary.

5:G1 *G*. *I.e.*, both are permitted or prohibited.

5:H1 *H*. It is customary that when the mourner returns from the cemetery his consolers bring with them food for the first meal, and in the ancient times they dined together with him. The custom of dining together was abolished because of the poor, who could not afford the outlay for it; so the costly shrouds were also prohibited, as it is explained farther on. Put the bringing of food to the mourner is in vogue even to-day. The reference to the passage mentioned in the text means to say, you shall not dine with such a mourner, whose death occurred for the crime of bloodshed (as the capital punishment by the court was only for bloodshed, as will be explained by us in Tract Sanhedrin). It is self-evident that the literal translation of this passage does not mean so, but the sages took this passage as a support to many things. They take this passage elsewhere as a support that one must not eat before the morning prayers, and they explain it: "Ye shall not eat before ye have prayed for your blood"; but they nevertheless use the language as if it would be so written.

5:H2 The continuation of this Mishna will be found in Tract Sanhedrin in a Mishna in Chap. VI.

5:I1 *I*. In many places the Talmud gives to the Lord the appellation "Place," for the reason which is explained elsewhere, that He, the Lord, is the place of the world (it means that He bears the entire world), but the world is not the place of Him (because He does not merely fill the world, but He also expands out of the world). Others translate it "Omnipotent," which needs no commentary. We will do the same in our further translations. We made an exception here, however, to explain the meaning of this term in the text.

6:J1 *J*. We translate here according to the corrections of Elias Wilna, as we follow his corrections throughout the tract.

6:L1 L. It refers to the barbarous times in which, when the government hanged a person, the body was never removed. We conclude this chapter here, as the following Mishna is taken in in Kethuboth, as the proper place.

Next: Chapter III

CHAPTER III.

A. An infant a day old must be regarded by his parents as if he would be a bridegroom; A1 and not merely a day old, but even if the head and the greater part of the body came out alive. The expression of "a day" is used by the sages because it is more usual.

B. An infant dying at birth is interred attended by one woman and two men, and is carried in the hand. Abba Saul, however, said: By two women and one man. The sages objected

to him that one woman is allowed to be with two men in a separate place, but not *vice versa*. No line of consolers is formed, no mourners' benediction is said, until it is thirty days old. From the age of thirty days till a twelvemonth it may be attended by men and women, and is carried in a case under the arm. From the age of one to three years it is attended by the same, with the addition that it may be carried in a case on the shoulder. R. Jehudah, however, said: If the father desires, a coffin may be brought to the cemetery to bury it in, even if it is not three years old.

C. At the age of three it is carried in a hearse. R. Aqiba, however, said: If it is three years old, but looks like two, it is not carried in a hearse; but a hearse may be used for those who look like three even if they are less. Simeon the son of the brother of Azariah said: Anyone borne in a hearse, his praises may be proclaimed. R. Meir in the name of Elazar b. Azariah said: If when he was alive he used to play on the street and was known to the people, then they are obliged to attend, but not otherwise. R. Jehudah, however, said in the name of the same: Even if he was known only to his neighbors.

D. Regarding lamentations, R. Meir in the name of R. Ishmael said: The poor are lamented from the age of three, and the rich from the age of five; R. Jehudah, however, said in the name of the same: The poor from the age of five, and the rich from the age of six. R. Aqiba said: The poor from the age of six, and the rich from the age of seven. D1 The poor are lamented the same as the rich, the rich as the children of the sages, and they as the princes. D2

E. A child that was able to act for himself may be lamented for his own virtues; if he has none, for those of his parents; if his parents have no virtues, for those of his other relatives. A bride may be lamented either for the virtues of her father or father-in-law, as honors should be exaggerated and not diminished. No honor is to be invented, but may be added to the original.

F. In Jerusalem they used to say: "Prepare good things, they shall be used *before* thy hearse." In Judah, however, they

used to say: "They shall be used *behind* thy hearse." Because in Jerusalem the lamenters used to

walk in front of the hearse, and proclaimed only the virtues which he possessed; and the people who were behind the hearse, even such as he did not. And in Judah the lamenters were behind the hearse, and they spoke only of the virtues which he possessed; and the people who were behind them did not repeat anything. F1 From the age of three to thirty, one is lamented as if he were a bridegroom; F2 from thirty to forty he is lamented as a brother; F3 from forty to fifty as a father. F4

G. R. Simeon b. Elazar said: From the age of thirty to forty, if he has children, or if most others of his age have grandchildren, he is lamented as a father; otherwise, as a brother. G1

H. One dying under the age of fifty, it may yet be considered as if he were under the punishment of Kareth (short life). When, however, he reaches the age of fifty-two, this was the death of Samuel the Prophet; at the age of sixty, this is the death mentioned in the Scriptures, as it is written [Job, v. 26]: "Thou wilt go in a ripe age unto the grave." At seventy it is considered old age, as it is written [Psalms, xc. 10]: "The days of our years in this life are seventy years." At eighty it is considered uncommon vigor, as it is written [ibid.]: "And if by uncommon vigor they be eighty." "Above that age it is a life of affliction, and so said Barzillai the Gileadite to David," [II Samuel, xix. 36].

Death after only one day of sickness is a death of wrath; at two days, it is a death of terror; at three days, a death of pest; at four and five days, a hastened death; at six days, it is the death mentioned in the Torah; at seven, it is a death of favor; H1 more than that, it is a death of suffering.

The rabbis taught: H2 One who dies suddenly, he is said to have died an abrupt death; if the death was preceded by one day's sickness, it is a hastened death. R. Hananiah, however, said: The latter case is termed a plague-death, as it is written [Ezek. xxiv. 16]: "Son of man, behold, I will take away from thee the desire of thy eyes by a sudden death (plague)"; and it is stated again [ibid. 18]: "And when I had spoken unto the people in the morning, my wife died at evening." If it was preceded by a two days' sickness, it is a hurried death; if by a three days', it is a reproach; if by a four days', a rebuke; but if preceded by a five days' sickness, it is an ordinary death. [Said R. Hanin: From what biblical passage is this adduced? From (Deut. xxxi. 14): "Hehn korvu yomechu lomuth" (Behold, thy days approach that thou must die). "Hehn" means "one" in Greek; "korvu" (in the plural) is two; "yomechu" (in the plural) is also two; altogether five.] Death at the age of fifty is Kareth (cut off); at fifty-two, the age at which Samuel of Ramah died; at sixty, a death by Heaven. H3 [Said Mar Zutra: Whence is this adduced? From (Job, v. 26): "Thou wilt go in a ripe age, •••• unto the grave," the numerical value of the letters of •••• H4 being sixty.] Seventy is called an old age; eighty, an age of uncommon vigor, as it is written [Psalms, xc. 10]: "And if by uncommon vigor they be eighty." Rabba, however, said: "From fifty to sixty it is Kareth; and the reason why this is not stated in the Boraitha is because of the honor of Samuel." When R. Joseph arrived at the age of sixty, he gave an entertainment to the rabbis, for he said: "I have passed the age of Kareth." Said Abayi to him: "It is true that the Master has passed the *age* of Kareth, but has then the Master already passed the *day* of Kareth?" And he answered him: "Be content for the present with half." R. Huna died suddenly, which caused the rabbis great worry. A couple

of sages of Hadaeb taught them: "It was stated (regarding a sudden death), only when the deceased has not reached the age of eighty; but if he has, it is, on the contrary, considered a death caused by a kiss." Rabha said: Longevity, fertility, and maintenance do not depend on virtue but rather on fate, as is illustrated by the case of Rabba and R. Hisda, both of whom were upright rabbis and both could bring down rain by their prayers, and still R. Hisda died at the age of ninety-two and Rabba at the age of forty. In the house of R. Hisda there were sixty marriages, while in that of Rabba there were sixty deaths. In the house of R. Hisda there was fine white bread in such an abundance that even the dogs did not care for it, while in that of Rabba there was not sufficient barley bread for human beings. Rabha further said: Three things I prayed Heaven to grant me. Two were granted, the third one not: the wisdom of R. Huna and the riches of R. Hisda were granted me, but the modesty of Rabba bar R. Huna was denied to me. R. Seorim (Amram), the brother of Rabha, was sitting at the bedside of Rabha when the latter was in his last agonies. Said Rabha to him: "Let the Master tell him (the angel of death) not to cause me any pain." And he answered him: "Is, then, the Master himself not a friend of him?" Rabha rejoined: "As my fate was already referred to him, he will not care for me any more." R. Seorim then said to the sick: "I would like that the soul of the Master should appear before me." When it was so, R. Seorim asked: "Had the Master felt any pain?" (at the time of the separation of the soul from the body), and he answered: "It was as if pinched with the lancet." Rabha was sitting at the bedside of R. Na'hman when he was in his last agonies, and the latter said: "Let the Master tell him (the angel of death) not to pain me." And he said to him: "Is not the Master a prominent person?" (to tell him so himself). And he answered him: "Who is esteemed, or worthy, or who can contend (at such a moment)?" He then said to the dying: "Let the Master's soul appear before me." When it was so, he asked him: "Had you pain?" And he answered: "It was as easy as to remove a hair from milk; and yet, if the Holy One, blessed be He, would command me to return to the world I was in I would pray permission not to do it, for the fear (of the angel of death) is too great." R. Elazar was eating Trumah (heave-offering) when the death angel appeared before him, and he said to him: "You see that I am now eating Trumah, is it not sacred?" And the appropriate moment passed

over. To R. Shesheth he presented himself in the market, and he said to him: "Do you wish to take me when I am in the market, as if I were an animal? Come to my house." When he presented himself to R. Ashi in the market, the latter said to him: "Extend my time thirty days, so as to enable me to review my studies, as ye say: 'Happy is the person who comes here possessed of his studies.'" On the thirtieth day he appeared again, and R. Ashi said to him: "Why such punctuality?" And he answered him: "You interfere with Bar Nathan, as no regency must interfere with another, even as much as a hair (*i.e.*, R. Nathan cannot become the head of the college so long as you are alive)." R. Hisda could not be overpowered (by the angel of death), for he kept on studying all the time, and the death angel climbed up and hid himself in a cedar in front of Rabha's house. When the cedar broke down, R. Hisda discontinued his study for a moment and he was overpowered at that moment. R. Hyya was inaccessible (to the angel of death). One day he transformed himself into a mendicant, and knocked on the door and asked for a slice of bread. When R. Hyya handed him what he asked for, the angel said to him: "Does not the Master have mercy with a poor man? Why does the Master have no mercy with me? I am the angel of death." And as proof, he showed him the fire-rod. R. Hyya then delivered up his soul to him.

I. Said R. Hanina b. Antigonos: If an old man has eaten forbidden things, or intentionally violated the Sabbath, the punishment of which is Kareth, I1 and he is over the age that short life should be applied to him, what will signify to us that his death was that of Kareth? Therefore we must consider that he who died after only three days of sickness, it is a death of Kareth; at four days, it is a hastened death, etc. Said R. Jehudah: The pious of ancient times have suffered of the sickness of the intestines two or three days before their death, I2 for the purpose of cleaning their bodies of all food and drink, that they should enter clean in the world to come, as it is written [Proverbs, xxvii. 21]: "(As) the fining-pot is for silver, and the furnace for gold, so is a man (proved) according to his praise."

Footnotes

6:A1

CHAPTER III.

A. See Nidah, 44*b*, where it is explained that an infant even a day old must be regarded as a bridegroom, if someone kills it, and the same language is used here.

7:D1 *D*. Rashi explains this: Because the pain of the poor on the death of their children is much greater than that of the rich, as their children are their only joy, having no others.

7:D2 It means that no distinction must be made from the rank of the parents, but from the corpse itself, as all Israel is alike in pedigree.

8:F1 *F*. We have translated according to the corrections of Elias Wilna, and as Rashi explains it in Sabbath, 153*a*, old edition.

8:F2 It means to say, as he was in the best vigor of his life, the lamentations were as great as if it had happened to a bridegroom standing under the canopy.

8:F3 It means that he was an active member of society, and his loss is felt by everybody.

8:F4 Who was active so long that he was considered as a father.

8:G1 *G*. One of the commentators supposes that at that time there were separate customs for a father, brother, etc. It seems to us, however, that our interpretation is right.

8:H1 *H*. As six days are enough for one to reconsider all he has done in his life and to make his will, leaving the seventh for the purpose p. 9 of taking his leave from his family. Where, however, six days of sickness are mentioned in the Torah we cannot imagine, nor do we find it in any of the commentators.

9:H2 All paragraphs beginning with, "The rabbis taught," or with italics, are transferred from Moed Katan (see there note, p. 27). The paragraphs not so beginning will be marked in the Commentary *Gemara*.

9:H3 There are different penalties for crimes: Kareth; death by Heaven; and death by the court, which latter was in four different forms.

9:H4 This Hebrew word aggregates sixty; namely, the first letter (from right to left) counts two, the second twenty, the third thirty, and the last eight.

11:I1 *I*. Leviticus, vii. 25.

11:I2 According to Elias Wilna's corrections, and according to him, it is to be understood that R. Jehudah opposes R. Hanina b. Antigonos, and maintains that even a pious man may die in two or three days. The text, however, reads twenty days.

Next: Chapter IV

CHAPTER IV.

A. For relatives of the first degree--*e.g.*, father, mother, son, daughter, brother, wife, and sister--a priest may defile himself. R. Aqiba said: For those of the second degree A1 he mourns and is prevented also from services, which he must not perform when his dead is not buried; but he must not defile himself.

B. R. Simeon b. Elazar, however, said: He may defile himself for his grandfather and his grandson, but the sages B1 say: For whomsoever he is obliged to perform all the ceremonies of mourning, are to mourn with him, but not otherwise. If it was doubtful, however, whether the deceased was his brother or son, or not, he mourns and is considered an Orvan, but he must not defile himself.

C. For his betrothed he must neither mourn nor defile himself. The same is the case with his divorced wife, although he has children by her.

The rabbis taught: Over all those of which it is written in the chapter relating to priests [Lev. xxi.], that a priest may defile himself on them, an ordinary person must mourn, and they are the following: wife, father and mother, brother and sister, son and daughter. To these were added: his brother and virgin sister by his mother, and his married sister either by his mother or by his father. And also over all their second degree of consanguinity. Such is the dictum of R. Aqiba. R. Simeon b. Elazar, however, holds that it extends only to his grandson and his grandfather. The sages, however, laid down the

following rule: "Over whom one is bound to mourn, *with* him he must mourn." C1 Does not the rule of the sages state the same thing stated by the first Tana? There is a difference as to those who are *with* him in the same house. C2 Rabh once said to Hyya his son, and so also said R. Huna to Rabba his son: "In her (wife's) presence observe mourning, but not in her absence." Mar Uqba's brother-in-law died, and he was inclined to observe both the seven and the thirty days. When R. Huna came to him and found him mourning, he said: "Dost thou desire to partake of the mourning-meal? The rule that one must observe mourning out of respect for his wife, extends only to father-in-law and mother-in-law." We have also so learned in a Boraitha: "Ameimar's grandson died, and he rent his garment. When subsequently his son arrived he rent again in his presence, and when he afterwards recollected that he was seated at the time he rent, he arose and rent once more."

D. [What is the term for Aninuth? D1 From the time of death till the interment, such is the dictum of R. Meir. The sages, however, say: One day only.] If a high-priest has married a widow against the written Law; or an ordinary priest has married a divorced woman, or one who

has performed Halitzah, he may mourn for her, and has to keep the term of Aninuth, but must not defile himself.

E. For his sister, if she is betrothed, E1 R. Meir and R. Jehudah say he may defile himself. R. Jose and R. Simeon hold that he must not. E2

F. If he has married a virgin but without virginity, F1 according to R. Jose and R. Meir he defiles, and according to R. Simeon he may not. If he has married a forced F2 or a seduced woman, all agree that he may not. If he married a *vigaros*, F3 all agree that he may.

G. The general rule which R. Simeon laid down is: For every woman who was fit for the high-priest when she was yet a virgin he may defile himself, but not otherwise.

H. For all those of whom it was declared that a priest may defile himself, it is not meant as a permission but as an obligation. So also said R. Aqiba; R. Ishmael, however, said: It is meant as a permission. H1

I. It happened to Joseph the priest that his wife died on the eve of Passover, and he was reluctant to defile himself, so his colleagues pushed him on her and defiled him against his will, saying: It is not a permission but an obligation.

J. Until what time may he defile himself? R. Meir said: That whole day; R. Jose said: Until three days; R. Jehudah in the name of R. Tarphon says: Until the grave is closed.

K. It is related that when R. Simeon b. Jehozadok died at Lud, his brother Johanan came from Galilee to defile himself with him, after the grave was already closed. When the sages were asked about it they decided: He must not defile himself; however, the grave may be opened to enable him to see him.

L. It happened that a youth died and left his property to strangers, and left out his family. His relatives complained,

and demanded an examination. L1 When the sages were asked, they decided not to do so, because as soon as the grave is closed the corpse must not be moved. According to others: As soon as one dies, his hair is changed. L2

M. An ordinary priest who is defiling himself with relatives must not do the same with a stranger, even at the same time, in case the stranger has sufficient attendants; but if he has not he may defile himself, and afterward retire to an undefiled place. The same is the case when he begins, and others come to relieve him.

N. When there were two roads, one short but unclean and the other long but clean, if the people

went on the long one he should accompany them, and if the people took the short road he should go with them, for the honor of the people.

O. If he was engaged in burying his dead, so long as he is in the grave he may receive from strangers for burial, but if he was out he must not return.

P. If he has defiled himself on the same day, R. Tarphon makes him culpable to a sin-offering, and R. Aqiba makes him free. All agree, however, that he is culpable when he does so on the morrow, because he has added one more day to be unclean, as he must count seven days after the last defilement.

Q. A priest may defile himself for relatives even if they are not fit for the priesthood; *e.g.*, for his son, daughter, Q1 brother or sister, begotten by a temple-servant or bastard, except for those begotten by a slave or a Gentile. Q2

R. A high-priest who defiles himself with the dead, or bares his head, or rends his garments, is liable to the punishment of stripes.

S. For all uncleanness for which a Nazarite must shave off his hair, he is liable to stripes; otherwise he is not.

T. A high-priest who enters a cemetery is liable to stripes.

U. If he enters the yard of a cemetery, or if he goes outside of Palestine, he is liable to chastisement (rabbinically).

V. If he enters a field where there is a lost grave, he is not culpable till he traverses every bit of it.

W. A priest may defile himself by going outside of Palestine to attend a civil or criminal court; to sanctify the month; to intercalate the year, and to save his field from the idolaters. He may bring a complaint and sign it in their courts; however, he must first make a declaration that he is going for this purpose.

X. He may also leave Palestine for the purpose of studying the Law, or to get married. Said R. Jehudah: He may do the former when there is nobody in the place to learn from; otherwise he may not. R. Jose, however, said: Even if there is one to learn from he may do so, because not everyone can teach. It happened to Joseph the priest that he went to his master to study the Law; he went outside of Palestine to R. Jose in Zaidin.

Y. A priest may defile himself with a piece of bone of his father's body, even if it was as large as a grain of barley; R. Jehudah, however, said: He must not. A priest must not defile himself with a limb cut off a living body, be it even that of his father. Y1

Z. It happened to Joseph Parkass that he had an abscess on his foot, and the surgeon came to cut

it off. He said to him: If thou wilt leave of it a bit of the size of a hair, let me know. When the surgeon told him that he did so, he summoned his son Nehemiah and said: My son, till here thou art obliged to attend me, but no farther. For the sages said: One must not defile himself for a limb cut off a living body, be it even that of his father. When the sages heard of it, they said: The following passage: "My life is in my hand continually, yet thy Law do I not forget." [Ps. cxix. 109], applies to him; and also: "There is many a righteous man that perisheth in his righteousness" [Prov. vii. 15].

AA. If he was on the road and he found a Meth-Mitzvah, AA1

he is obliged to attend to it. What is to be considered such? If he would call for help and his cry could not be heard in the nearest town; but when it is heard, it is not considered as such (and he must not defile himself).

BB. It is always considered a Meth-Mitzvah unless there are sufficient people to attend to its funeral.

CC. If there was a high-priest and a Nazarite, the high-priest shall defile himself but not the Nazarite, according to R. Eliezer; for the latter must bring an offer for his defilement, and the former not. The sages, however, say: Rather let the Nazarite bring a hundred offers than cause defilement even to an ordinary priest; because the sanctification of the priest is from birth and forever, and the Nazarite's is only temporary.

DD. All agree that if there was an anointed high-priest and an unanointed one who is recognized only by his many garments, DD1 the latter must defile himself and not the former; when there was the latter and an overseer, or an overseer and an ex-overseer, or an ex-overseer and a priest anointed for the war, or he and a common priest, or a common priest and a Levite, or he and an Israelite, the second of each pair always must defile himself but not the first. If both are equals, the quickest of the two must do so; and if both are quick, the one that expresses the desire shall do so.

EE. If it was found between a ploughed and an abandoned field, it shall be buried in the latter; between a ploughed and a sown field, it shall be buried in the former; between a sown field and an orchard, or an orchard and a field in which *persea* grows,

it shall be buried in the former. If both places are equal in value, it shall be buried in the nearest one; and if they are equal in distance, it can be buried wherever desirable.

FF. Said R. Aqiba: "The following incident was the commencement of my reward to be counted among the wise. I once arose early and found a slain body. I burdened myself with it for three legal limits of the Sabbath, until I brought it to a cemetery, and I buried it. When I related this to the sages, they told me that my every step was considered as if I had shed blood. FF1 Whereupon I drew the following *a fortiori* conclusion: When, having in view to perform a meritorious deed,

I have transgressed so much, how much the more would I have sinned if I had had no such intention!" Whenever R. Aqiba was reminded of this incident he said: This was the commencement of my reward. FF2

Footnotes

12:A1

CHAPTER IV.

A. Grandfather, grandmother, grandson, etc.

12:B1 *B*. The sages differ with R. Aqiba, who says: That for the second degree he must not mourn at all, and it is to be understood so: Whoever is obliged to perform all the mourning ceremonies, *e.g.*, not to sit in a chair, not to put on the shoes, etc., which are customary for the first degree, then also the priest must mourn and defile himself; but for the second degree, for whom he is not allowed to defile himself, the mourning is also unnecessary for him. The case where mourning without defilement can be found is only when it is doubtful, the doubtfulness meaning when the woman who bore the child was suspected.

13:C1 *C*. *E.g.*, for a father for whom one is bound to mourn, if the father mourns for his father, the son may mourn with him. The same is the case with a son for whom the father is bound to mourn, if the son mourns for his son the father mourns with him. (Rashi.)

13:C2 It means that according to the sages the grandfather or the grandson is bound to mourn only when the father or the son is mourning in the house. (Rashi.)

13:D1 *D*. The term "Onen" in the Talmud means one of the relatives of the deceased, just after he departed and before the burial. It is derived from Genesis [xxxv. 18]: "Ben Oni." (See Leeser's translation, who did not translate *Ben Oni*, but inserted the words as written. He nevertheless translates Deut. xxvi. 14: "I have not eaten thereof in my mourning," the Hebrew term for which is the same, which is surprising.) The law of an Onen is, that only the high-priest may perform his service when a death occurs in his family; an ordinary priest, however, must not; and if he does, he violates the law. Hence is the question here, how long the term of Aninuth must be kept. According to R. Meir, even if there are several days from death to interment, the entire law of it must be observed; but according to the sages only one day, as it is explained elsewhere--from morning till evening.

14:E1 *E*. The high-priest. See Lev. xxi. 3. When she, however, is not married, but betrothed; hence the difference of opinion.

14:E2 The names are corrected according to Tract Jebamoth, p. 60.

14:F1 *F*. Without virginity--through sickness, or she has lost it through something else; and according to the sages, the high-priest was not allowed to marry one who had lost her virginity, whatever the reason.

14:F2 Forced--Deut. xxii. 28.

14:F3 *Vigaros*, also without virginity, but only through age; therefore all agree that in marrying her he does not commit any transgression, as he himself could not know it.

14:H1 *H*. See Elias Wilna.

15:L1 *L*. If he was of age to make a will.

15:L2 It is difficult to understand the real meaning of it. It seems to us that it means that the examination of the hair could decide nothing, as it could have grown after the death.

15:Q1 *Q*. If they were born by a woman whom he married unlawfully.

15:Q2 According to the Talmud, an illegitimate child begotten by parents of two different creeds without being married, must be considered according to the creed of the mother; hence they are not his children.

16:Y1 *Y*. The law is, if a whole limb was separated from a living body it is a subject of defilement; but if flesh was separated from that limb, even if it was more than the size of an olive, it is not. However, when the limb was separated from a corpse, and flesh separated from it the size of an olive, it defiles.

16:AA1 *AA*. This expression is used in the whole Talmud about one who died without relatives, or if he died somewhere far from them, or in a lonely place. "Meth" means a corpse, "Mitzvah" means a commandment, and together they express: A corpse which anybody who finds is commanded to attend to its burial.

17:DD1 *DD*. There is a tradition that in the time of King Josiah the oil of anointment made by Moses was concealed, and from that time the ascent of a high-priest was made only with his prescribed garments, and in the Talmud such a high-priest was called by the name of "who was known by his many garments." Hence if it happened that an anointed ex-high-priest were in company with a high-priest who was elected after the oil of anointment, was concealed, the latter, though he is a high-priest, must defile himself, because his degree in sanctification is considered lower than that of the former; and so is it with all the pairs--the second is lower in sanctification than the first.

18:FF1 *FF*. Because the law is that it must be buried on the place where it is found.

18:FF2 *I.e.*, From the answer of the sages he learned that he knew nothing of the Law, and he began to study until he reached his eminence.

Next: Chapter V

CHAPTER V.

A. No work must be done by a mourner on all the. seven days after the burial; nor by his children, his servants, or his cattle. As he and they all are not allowed, so are others not allowed to do any work for him.

The rabbis taught: A mourner is prohibited to do any work during the first three days, even the indigent who lives on charity; thenceforward he may do it privately; and the housewife may spin with her spindle.

The rabbis taught: A mourner must not visit another mourner during the first three days; thenceforth he may, but he must not sit among the condolers, but among those who are being condoled.

The rabbis taught: A mourner is prohibited the first three days from greeting others; from the third to the seventh he may only answer a greeting; thenceforward he may greet and answer as usual. When the sons of R. Aqiba died, an enormous crowd flocked to the funeral. R. Aqiba ascended the rostrum, and addressed the people: "Brothers in Israel, listen to my words: It is not because of merit or station of mine that ye appear here, for

assuredly there are my superiors in this city. Oh, your reward will be great. Ye have dome homage to the Law; your presence would suffice to console me, even if I had buried two bridegrooms; ye appeared here because you thought to yourselves [Psalms, xxxvii. 3]: 'The law of his God is in his heart.'" (Hence we see that it is permitted to greet even within the first three days?) Where the honor of the public is concerned the case is different.

"*From the third to the seventh day he may answer, but not greet*." There is a contradiction from the following Boraitha: One who meets his friend who is in mourning, if within twelve months he may speak to him words of consolation, but must not greet him; if after twelve months, he may greet him, but not speak to him words of consolation, unless indirectly. R. Meir said: To what may the case of one speaking to his friend, a mourner, words of consolation after twelve months be compared? To one whose foot was dislocated, and after having it cured, met a physician who said to him: "Come with me and I will dislocate it again, and cure it in order to prove to you the efficiency of my drugs"? This presents no difficulty. This Boraitha relates to mourning over father or mother; the former statement relates to mourning over other relatives. But have we not learned in another Boraitha that he may speak to him words of consolation indirectly? Our Boraitha may also be explained in the same sense; viz., "He shall not speak to him words of consolation directly."

The rabbis taught: A mourner, during the first three days, if he arrives from a place nest distant, may adopt the same computation of the time as the local mourners, but if he arrives from a distant place he must have his own computation; thenceforth, if he even arrives from a place not

distant, he must have his own computation. R. Simeon, however, said: "Even if he arrived on the seventh day, if only from a near-by place, he may adopt the computation of the local mourners." The Master said above: "The first three days, one who arrives from a near-by place," etc. Said R. Hyya bar Abba in the name of R. Johanan: "This is the case only where the eldest of the family is at home at the time." The schoolmen propounded a question: How is it if the eldest of the family has gone to the cemetery? Come and hear: R. Hyya bar Abba said in the name of R. Johanan: "Even if the eldest of the house has gone to the cemetery, he may compute with them (the local mourners)." But have we not learned in another Boraitha that he must have his own computation? This

presents no difficulty: One case is when be arrived within the first three days, and the other when he arrived after the first three days. As Rabh said to the inhabitants of Zalpuni: "Those who arrive within the first three days may compute with you; those who do not, must compute for themselves." Rabha said to the inhabitants of M'huza: "You who do not follow the coffin (to the cemetery, but only as far as the town-gate) may compute (the mourning) from the minute you turn your faces away from the town-gate."

A1The Boraitha states: R. Simeon said, etc. Said R. Hyya bar Gamda in the name of Joseph b. Saul, quoting Rabbi: "The case is only when he arrived before the condolers departed."

A2It is written [Jerem. xxii. 10]: "Weep not for the dead and do not bemoan him." Weep not--that is, not more than sufficient; and do not bemoan him--that is, not more than prescribed. How so? During the first three days--weeping; the seven--lamentation; during the thirty days--not to calender clothes and cut the hair. After that period the Holy One, blessed be He, says: Be not more merciful than I am." It is written [ibid., ibid.]: "Weep sorely for him that goeth away." Said R. Jehudah: "This means one who goeth away childless. R. Joshua b. Levi had never gone to console a mourner unless the deceased died childless, for it is written [ibid., ibid.]: "Weep sorely for the one that goeth away, for he shall never return any more, and see the land of his birth." R. Levi said: "A mourner the first three days must imagine to himself as if a sword is placed between his shoulders; between the third and seventh day, as if it is opposite him in a corner; from that day on, as if it passes in front of him in the street." A3

"*The bier of a woman must at no time be set there*," etc. R. Ami said: "For what purpose was the death of Miriam stated closely following the law of the red cow? To teach that, as the red cow atoned for sin, so also does the death of the righteous. Said R. Elazar: "For the same purpose was the death of Aaron closely written to the description of the priests' garb; viz., as the priests in their garb atoned for the sins, so also does the death of the righteous."

B. It is permitted for others to do work involving things perishable; *e.g.*, his grain may be garnered and thrashed, his tubs may be scoured, and if his olives are turned, R. Jehudah says he may put the first press-block on, etc.

The rabbis taught: The following things are prohibited to a mourner: labor, washing, anointing, sexual intercourse, wearing shoes, reading the Law, the Prophets, the Hagiographa, studying the

Mishna, Midrash, Halakha, Talmud, and Agada; but if, however, the public require his services, he need not restrain himself. As it happened, the son of R. Jose died in Sepphoris, and the latter notwithstanding came to college and lectured the whole day long. Rabba bar bar Hana was once in mourning, and he was inclined not to go out to deliver his usual lecture. Said R. Hanina to him: "If the public requires one's services, he need not restrain himself." He then wanted to employ an interpreter. Said Rabh to him: "We learned in a Boraitha: 'But he should not employ an interpreter.'" How, then, shall he do it? As we have learned in the following Boraitha: It happened that the son of R. Jehudah bar Ilai died, and the latter came to college followed by R. Hanania b. Akabia, who took a seat at his side. He (R. Jehudah bar Ilai) whispered (the lecture) to R. Hanania b. Akabia, and the latter to the interpreter, and the interpreter announced it aloud to the public.

The rabbis taught: A mourner must not wear phylacteries during the first three days, but from and including the third day he is allowed to do so, and need not remove them on the arrival of new persons. Such is the dictum of R. Eliezer. R. Jehudah, however, said that he must not wear them only during the first two days, but from and including the second day he is allowed; but on the arrival of new persons he must remove them.

R. Hyya bar Abba, R. Ami, and R. Itz'hak of Naph'ha were sitting in the cottage of R. Itz'hak b. Elazar, and a statement resulted: "Whence is it deduced that mourning lasts for seven days? It is written [Amos, viii. 10]: 'And I will change your feasts into mourning.' As the feast lasts for seven days, so does also mourning." But perhaps Pentecost is meant, which lasts only for one day? The latter one is applied according to Resh Lakish; for Resh Lakish said in the name of R. Jehudah the Second: Whence do we know that remote information (of the occurrence of a death in the family) makes mourning customary for one day only? From the passage [ibid., ibid.]:

[paragraph continues] "And I will change your feasts into mourning." And we find one festival which lasts for one day only.

C. C1 If he was the only baker in town, he may do his work privately for the sake of the people.

D. If one was cutting another's hair, or was having his hair cut, and he was told that his father was dead, he might finish it. Workingmen who receive work from a mourner are forbidden to do this work at his house, but they are allowed to do it at theirs. R. Simeon b. Jo'hai said: A day laborer is forbidden in any case. Contract work may not be done on his premises, but it may on theirs. Work on anything attached to the ground must not be done in either case, and work to be done in another city is allowed in either case.

E. When one mourning succeeds another, he may cut his hair with a knife but not with shears. If his clothes are dirty, he may wash them in cold water but not in feet-water. E1 A mourner and one who is under the ban, when on the road, are allowed to wear sandals; however, they must remove them as soon as they reach the town. So is the law also for the 9th of Abh, or a general fast-day.

E2It is certain that a mourner must not cut his hair, for the Merciful One expressly directed the sons of Aaron [ibid. x. 6]: "The hair of your head you shall *not* let grow long"; hence the case is

not so with other mourners. The question, however, is, whether those who are under the ban, and lepers, may cut their hair? Come and hear: Those who are under the ban, and those afflicted with leprosy, are prohibited from cutting their hair and washing (their clothes). One who, was under the ban and died in such a state, the Beth Din stone his coffin. Said R. Jehudah: "It does not mean a heap of stones, as was the case with Achan [Josh. vii. 26], but it means that the Beth Din places a big stone on his coffin, to teach that whoever dies while under the ban, his coffin is stoned.

E3A mourner must wrap up his head, for the Merciful One

directed Ezekiel [Ezek. xxiv. 17]: "And cover *not* thyself to thy upper lip." Hence, others must cover. How is it, however, with one who is under the ban? Said R. Joseph: Come and hear (Taanith): "And they wrapped up their heads and sat as if they were under the ban, or mourners, until they were commiserated by Heaven." Said Abayi to him: "Perhaps they have done that, because they have considered themselves as put under the ban by Heaven, in which case it is very rigorous." What is the law in regard to a leper? Come and hear: It is written [Lev. xiii. 45]: "And he shall cover himself up to his upper lip." Hence we see that wrapping up is necessary. A mourner must not wear phylacteries, for Ezekiel was commanded [Ezek. xxiv. 17] to put them on. E4 Hence we must say that others must not. But the question is as to one who is under the ban, in regard to phylacteries? E5 This question was not decided. It is certain that a mourner must not greet any one, as Ezekiel was commanded [ibid.]: "Sigh in silence." But how is the case with one who is under the ban? Said R. Joseph: Come and hear (Taanith, ibid.): "And to greet one another as if they were rebuked from Heaven." Said Abayi to him Perhaps this case is different, because it is very strict."

F. No ban is for less than thirty days, and no rebuke is for less than seven days.

G. Said Rabban Gamaliel: He to whom the court has stretched out its hand, although he was again befriended, will not leave this world peaceably.

Footnotes

20:A1

CHAPTER V.

A. *Gemara* from Moed Katan.

20:A2 *Gemara* from Moed Katan.

20:A3 This illustrates the different degrees in which it must be borne in mind.

22:C1 *C*. For former Mishnas, see Moed Katan, pp. 19-20.

22:E1 *E*. In Tract Krithath, where it speaks of the preparation of the spices for the incense, the Gemara says: To make it stronger--*mei raglayim*; literally, "feet-water (wine, according to some commentators) would be good for it"; but this must not be brought into the Temple court. The same term is found in Nidah, 61*b*, in the Mishna, among the spices which remove stains.

22:E2 *Gemara* from Moed Katan.

22:E3 *Gemara* from Moed Katan.

Next: Chapter VI

CHAPTER VI.

A. A mourner must not read the Pentateuch, Prophets, and Hagiographa. He is also not allowed to study Mishna, Talmud, Halakha, and Hagadah. He is also not allowed to wash, to anoint, to wear shoes, or to have sexual intercourse with his wife. He must cover his head and lower his couch. Rabban Gamaliel washed himself when his wife died (see Mishna Berachoth, 166).

A1A mourner must not study the Law, because the Merciful

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[paragraph continues] One commanded Ezekiel: "Sigh in silence" [ibid.]. But how is it with one who is under the ban? Said R. Joseph: Come and hear: We have learned: "One who is put under the ban may study for himself and also with others; he may be hired and he may hire others. But the case is otherwise with one who was excommunicated; the latter may, however, study for himself in order not to discontinue his studies. He may also establish for himself a small store in order to earn a living." Rabh said: "He may sell water in the market of Araboth."

A2A mourner must not wash his clothes, as it is written [II Sam. xiv. 2]: "Then sent Joab to Thekoa, and he fetched thence a wise woman, and said to her," etc., "and anoint thyself not with oil; but be as a woman that hath these many days been mourning for the dead." What is the case with those under the ban? Come and hear: "Those who are under the ban are prohibited from cutting their hair and washing their clothes." Infer herefrom. A mourner must have his garment rent, because the Merciful One commanded the sons of Aaron [Lev. x. 6]: "And your garments you shall *not* rend"; hence others must. A mourner must lower his couch (place the mattress near or on the floor), as Bar Qappara taught: "(God said) I had placed my image among them, and for their sins I upset it (decreed death). Let them now lower their beds." A mourner must not work, for it is written [Amos, viii. 10]: "And I will change your feasts into mourning," As on the feast it is prohibited to do any work, so also is the case with the mourner. May one who is under the ban work? Said R. Joseph: Come and hear (Taanith): "When it was stated that it is prohibited to do work, it referred only to the day-time but not to the evening; and the same is the case with one who is under the ban." A mourner must not wash himself, as it is written [II Sam. xiv, 2]: "And anoint thyself not with oil"; and anointing includes also washing.

A3And the Halakha prevails that a mourner must not bathe his entire body in either warm or cold water for seven days, but he may bathe his face, hands, and feet with cold water but not with warm. To anoint himself ever so little is prohibited, however, for a mourner; but he may do so for the purpose of removing the dirt from a certain part of his body.

A4A mourner must not wear shoes, because Ezekiel was commanded

p. 25

[paragraph continues] [Ezek. xxiv. 17]; "And the shoes put on thy feet." Hence others must not. A mourner must have no intercourse with his wife, as it is written [II Sam. xii, 24]: "And David *comforted* Bath Sheba, and he went in unto her, and lay with her." Hence, before comforting it is prohibited.

On the first three days if a mourner is greeted he shall say: "I am a mourner." However, from the fourth day onward he may answer half-heartedly.

B. When the death occurs in the same city, he must not accompany the others on the first two days; on the third he may go out and stand in the line for the purpose of being consoled, but he must not console others. All this is only when there are sufficient pall-bearers and burial attendants; otherwise he must accompany the others even on the first day.

The rabbis taught: "A mourner on the first Sabbath B1 must be confined to his house. On the second he may leave the house, but he may not occupy his usual seat (in the prayer-house); on the third he may occupy his usual seat, but he must refrain from conversation; and on the fourth Sabbath he is as any other person." R. Jehudah said: "As to the first Sabbath, it was not necessary at all to state that he must be confined to the house, for it is self-evident, because all come to comfort him on that day. But the above order begins on the second Sabbath; viz., 'On the second he must be confined to his house,' etc., and only on the fifth Sabbath he is as any other person.

C. On the first and second days the mourner must not enter the Temple mountain; on the third, however, he is allowed to enter, but must go around to the left. The following must enter to the left: A mourner, one who is under the ban, one who has a sick person in his house, and one who has sustained a loss. "Why do you enter to the left?" (the people standing about ask him). "Because I am a mourner!" And they rejoin: "The One who rests in this house may console thee!" And if he says: "Because I am in ban!" they rejoin: "The One who rests in this house may soften their hearts and they will befriend thee." So says R. Meir. Said R. Jose to him: "If so, you seem to insinuate that they have not judged him rightly? But they rejoin thus: "The One who rests in this

house, will soften thy heart, that thou mayest listen to their advice, and they will again befriend thee." To the one who had a sick person in his home they rejoined: The One who rests in this house shall have mercy upon him! and if the sick was his only son they should pray: "Shall have mercy upon him immediately!"

D. It happened to a woman whose daughter fell ill, that she ascended the Temple mount, turned to the left, and did not stir from there till she was told that her child had recovered.

E. To one who has sustained a loss they say: "The One who rests in this house will soften the heart of the finder, and he will return it to thee immediately!" It happened to Elazar b. Hananiah b. Hezekiah b. Gorion that he lost the Holy Scrolls, which cost him a hundred Manah. E1 He ascended the Temple mount, turned to the left, and did not stir till he was told that they were found. And the Temple was built by Solomon only for the purpose that everyone who should have any trouble should come and pray, as it is written [I Kings, viii. 37]: "If there be famine in

the land, if there be pestilence," etc. From this we know only for individuals; when do we know that it is also for the public in general? It is written [ibid., ibid. 38]: "Of all thy people Israel." Lest one say it is also for the one who prays for children, or for riches which may not be good for him, therefore it is written [ibid., ibid. 39]: "As thou mayest know his heart, for thou thyself alone knowest the heart of all the children of men." Whatever is good for him, grant him. Whence do we know that they should not persist in their rebellion? E2 It is written [ibid., ibid. 38]: "When they shall be *conscious* every man of the plague of his own heart, and he then spread forth his hands toward this house." All this concerns the Israelites, but whence do we know that it concerns also the Gentiles? Therefore it is written [ibid., ibid. 41]: "But also to the stranger, who is not of thy people Israel, but cometh out of a far-off country," etc.

Footnotes

23:E4 The Talmud explains this passage to refer to the phylacteries.

23:E5 See our "Phylacteries Ritual," pp. 49 and 55.

23:A1

CHAPTER VI.

A. *Gemara* from Moed Katan.

24:A2 *Gemara* from Moed Katan.

24:A3 Transferred from Taanith.

24:A4 *Gemara* from Moed Katan.

25:B1 *B*. It means the first week, etc., even when he goes to prayer-house in the week-days.

26:E1 *E*. The coin Manah was of the value of a hundred Zuz.

26:E2 This is to be understood thus: Whence do we know, if a rebel comes to pray that he shall be successful in his rebellion, that he shall not be listened to?

Next: Chapter VII

CHAPTER VII.

A. The period of thirty days must be counted to the following: to mourning, to calender clothes, to cutting of hair, to demand debts, to a woman of handsome form, to betrothal, to marriage, to a virgin, to a widow, to a Yebamah, A1 to one who vowed against his wife, and to an indefinite Nazarite.

B. "*To mourning*." How so? It is written [Deut. xxxiv. 8]: "And the children of Israel wept for Moses in the plains of Moab thirty days."

"*Calender clothes*" means all garments which come out from under the press. So is the decree of Rabbi. The sages, however, say: Colored but not white. But R. Meir said the reverse: White but not newly colored; old, however, is permitted in any case. *Funda, fascia, pileus*, B1 and helmets are also permitted. To give garments to be pressed is permitted within the thirty days.

The rabbis taught: "It is not permitted to calender clothes, whether new, or old ones which have just been removed from under the press, during the full period of thirty days." Rabbi, however, said: "It applies only to new ones." R. Elazar bar Simeon said: "They have prohibited new white garments only." Abayi acted in accordance with Rabbi. Rabha, however, acted in accordance with R. Eliezer bar R. Simeon.

"*To cutting of hair*." He must not cut off the hair of his head, his mustache, his beard, or any hair of his body. A woman, however, is permitted to cut her hair after the seven days.

"*To demand debts*." If one lends money for an indefinite period, he cannot demand it before thirty days.

C. "*To a woman of handsome form*." It is written [Deut. xxi. 11]: "And hast a desire unto her, that thou wouldst take her to thee to wife." She must shave off her hair, and pare her nails. So is the decree of R. Meir; but R. Aqiba said: The hair must be shaved, and the nails she must let grow. Said R.

Eliezer: As in both the head and nails the Torah prescribed a doing, C1 and as the doing what is said by the head means that the hair shall be cut off, the same is the case with the nails; but R. Aqiba said: As the doing what is said by the head is meant to make her ugly, the same is the case with the nails (and nothing is uglier than long nails). A support to R. Eliezer can be found in II Samuel [xix. 25]: "And Mephibosheth the (grand-) son of Saul came down to meet the king, and he had not dressed his feet, nor trimmed his head." A support to R. Aqiba can be found in Daniel [iv. 30]: "Till his hair was grown like eagles' (feathers), and his *nails* C2 were

like birds' claws."

C3Pin'has, the brother of Mar Samuel, was in mourning. When Samuel came to condole with him and noticed that. his nails were untrimmed, he said to him: "Why dost thou not trim them?" And he answered him: "If this were the case with thee, wouldst thou disrespect the mourning to such an extent?" And it was [Eccl. x. 6] "like an error which proceedeth from the ruler." And a death occurred in Samuel's family. When R. Pin'has came to condole with him, the former trimmed his nails and threw the parings in his face, saying: "I see that thou dost not pay any attention to the saying: Words are ominous, as said R. Johanan. Whence is it deduced that words are ominous? It is written [Gen. xxii. 5]: "And Abraham said unto his young men," etc., "and we will worship *and come again to you*"; and it so happened that both of them returned. (Although Isaac was intended to be sacrificed.) It was understood from Samuel's action that, the nails of the hand only may be cut, but not those of the feet. R. Onan bar Ta'hlipha, however, said: "It was explained to me by Samuel himself that there is no distinction made." Said R. Hyya bar Ashi in the name of Rabh: "With a nail file, however, it is not allowed."

C4Rabh said (and Mar Zutra learned it in a Boraitha): "A

couple from Hamthon once came before Rabbi and asked his permission to cut their nails in their mourning, and he permitted them to do so; and if even they would have asked his permission to trim their mustaches, he would also have permitted them." Samuel added: "They actually did ask his permission and he did permit them."

D. It is written [Deut. xxi. 13]: "And she shall put off the raiment of her captivity." If she was dressed in white or black which becomes her, or she had on jewelry, they must be removed from her, for the purpose of making her unhandsome. The case is only if she has declined to embrace the Jewish faith; but if she be inclined, she is dipped, is freed from slavery, and he may marry her. The purpose for which all this was done is to prevent mingling.

E. "*To betrothal*." How so? It is not allowed to make the feast of betrothal within thirty days of the day of the funeral. "*To marriage*." The feast of marriage is not allowed to be made within this period; but if everything was prepared before the death occurred of one of his or her parents he may marry, and have the first intercourse with her; but after that they must be separated for seven days. This is only in case one of his parents dies; but if his wife dies, he is not allowed to marry again until three regular festivals have passed. E1 R. Jehudah, however, said: Two, and he may marry at the third. This is the case when he has grown-up children; but if they are yet little ones, or he is childless, he may marry even within the thirty days. It happened that the wife of R. Tarphon died, and R. Tarphon said to her sister within the period of mourning: "Enter this house, and educate thy sister's children." Nevertheless, he had no intercourse with her until the thirty days were over.

The rabbis taught: "One is not permitted to marry during the full period of the thirty days. If he, however, mourns over his wife, he must not remarry again until three festivals shall have passed. R. Jehudah, however, allows after the first and second festival have passed." But if he is childless he may remarry at once, in order not to restrict reproduction; so also is

the case if he has minor children, for they have to be brought up. It happened that the wife of Joseph the priest died, and he said to the deceased's sister while still on the burial ground: "Go and rear thy sister's children." But still he did not cohabit with her for a long while. For how long? Said R. Papa: "Until after the thirty days."

"*To a virgin*." The period in which to complain that one has not found virginity E2 is limited till thirty days after the marriage. E3

Footnotes

27:A1

CHAPTER VII.

A. Yebamah is called a woman whose husband died childless, leaving living brothers [Deut. xxv. 5].

27:B1 *B*. All these garments have Roman names, and were used those days, and we do not think it necessary to describe how they were made. The reader, however, will find it in "Hamashbir" and similar works.

28:C1 *C*. In the text it is termed "Maasse," and in Yebamoth (48*a*) "Assiyah." The meaning of both is doing, and Rashi there explains that, although the two above-mentioned terms are not to be found in reference to the head, R. Aqiba and R. Eliezer maintain that the cutting off of the hair is also called a doing; hence the analogy.

28:C2 The verse begins with, "and from men was he driven away," and concludes that his nails were like birds' claws; hence it is not an ornament.

28:C3 *Gemara* from Moed Katan.

28:C4 *Gemara* from Moed Katan.

29:E1 *E*. If she dies before Passover, he may marry after Tabernacles; if after Passover, he must wait till the three festivals Pentecost, Tabernacles, and Passover have passed; and so on with the other festivals.

30:E2 Deut. xxii. 14.

30:E3 Concerning a widow and the other subjects mentioned above, they are explained in their

respective tracts; therefore we have omitted them here.

Next: Chapter VIII.

CHAPTER VIII.

A. During three days before the interment, experts repair to the cemetery and examine the dead whether they are really dead; [and although this is the custom of other nations], there is no fear of the prohibition of the deeds of the Amorites. A1 It happened that one of the dead was examined (and found alive), and he lived twenty-five years after that; and to another one, that he begat five children before he died.

B. A canopy may be made for dead bridegrooms and brides, and either eatable or uneatable things may be hung on it. So is the decree of R. Meir. R. Jehudah, however, said: Only unripe things-viz., unripe nuts, unripe χαλλοξ, tongus of purple, and flasks of Arabian oil; but not when they are ripe, nor ripe pomegranates, nor flasks of sweet oil, as whatever hangs on the canopy, no benefit may be derived from it. B1 Strings of fish, pieces of meat, may be thrown before the dead bridegroom or bride in the summer, B2 but not in rain time; and even during

the summer, they must not do so with cooked fish or other eatables which will be spoiled after they are thrown on the ground. Nuts and other fruit in shells, as they are not spoiled, may be thrown at all times. There is a rule that anything which may be spoiled must not be thrown.

C. Likewise wine and oil may be put in a water pipe in honor of live bridegrooms and brides. As it happened to Jehudah and Hillel the sons of R. Gamaliel, when they were the guests of Ben Zakkai in Babylon, C1 the townspeople flooded the water pipes with wine and oil to honor them. Also the bodies of kings, and their clothes may be burned, their cattle ham-stringed, without fear that it is after the usages of the Amorites. The ceremony of burning clothes and other things is performed for the corpses of kings only, but not for princes. When Rabban Gamaliel died, Aquilas the proselyte, however, burned in his honor clothes of the value of eight thousand Zuz, and when he was asked why he did so, he answered: It is written [Jerem. xxxiv. 5]: "In peace shalt thou die; and as burnings were made for thy father," etc. Was not Rabban Gamaliel more worthy than a hundred kings, for whom we have no use? C2

D. The hair of a dead bride may be loosened; and the face of a bridegroom may be uncovered, and the marriage contract and the pen may be put by his side, without fear that so is the custom of the Amorites. There may also be put in the coffin the key and the pinkas (πιναξ) of the dead, to call the attention of others to mourn, as it happened with Samuel the Little, that his key and pinkas were put in his coffin, because he did not leave a son. And Rabban Gamaliel the Elder and R. Elazar b. Azariah lamented him, saying: "For this dead one it is meet to weep, it is proper to lament. When kings die they leave their thrones to their children, when rich men die they leave their wealth to their children, but Samuel the Little took with him the most precious thing in the world, and is gone!"

E. Before he died, he said: "Simeon and Ishmael are prepared for the sword, and all the

remaining people for being robbed, and great trouble will follow." And he spoke this in

Aramaic. When this occurred, and R. Simeon b. Gamaliel and R. Ishmael were condemned to death, R. Ishmael was weeping; but R. Simeon said: I praise God that it is only two steps till I shall be received in the bosom of the righteous in the world to come, and you are weeping? And the former rejoined: Do I weep because we are going to be slain? I am weeping because we will be slain as if we were murderers and violators of the Sabbath. After they were executed, and R. Aqiba and R. Jehudah b. Ethyra were informed, they put sackcloth on their loins, rent their garments, and said: Brother Israelites! If a good thing was to come for the whole world, these two sages would certainly have been the first to receive it; and now, as they were the first to be executed, it must be only for their benefit: they shall not see the great calamities which will follow after that. Woe! "The righteous perisheth, and no man layeth it to heart" [Isaiah, lvii. 1]. "He shall come (to his father) in peace, they shall repose in their resting-place" [ibid., ibid. 2].

F. When R. Aqiba was executed, and R. Jehudah b. Baba and R. Hanina b. Teradion heard of it, they also arose, put sackcloth on their loins, rent their garments, and cried: Brothers, listen to us! R. Aqiba was not slain because of robbery nor because he had not observed the Law with all his might, he was slain only for an example, as it is written [Ezek. xxiv. 24]: "Thus shall Ezekiel be unto you for a token . . . then shall ye know that I am the Lord eternal." We are sure that within a few days there will not be a place in the whole of Palestine where corpses of the people will not be lying about. It was said that scarcely had a few days passed, when a canine appetite dissipated the whole world, which lasted from that time for a twelvemonth.

G. When R. Hanina b. Teradion was seized by the government they sentenced him to the stake, his wife to the sword, and his daughter to a house of prostitution. He inquired: To what have they sentenced the poor thing (his wife)? And he was answered: To the sword! Whereupon he exclaimed the following passage: "Righteous is the Lord in all his ways [Ps. cxlv. 17]. When she asked to what the rabbi was sentenced, she was answered: To the stake. Whereupon she exclaimed the passage: "Great in counsel, and mighty in execution," etc. [Jer. xxxii. 19]. When he was to be burned they wrapped him in the Holy Scrolls, and his daughter cried and threw herself on the ground. He said to her: My daughter! If thou weepest and throwest thyself on the ground over me, is

it not better I should be consumed by a fire which was kindled in this world than by a fire which is not kindled (Gehenna)? As it is written [Job, xx. 26]: "A fire not urged by blowing." And for the Holy Scrolls! Knowest thou not that the Torah is fire itself, and no fire can consume another? The parchment only is burned, but the letters fly away. Thou must also know that the great servants of the king are mostly beaten through the lesser, as it is written [Hosea, vi. 5]: "Therefore did I hew (them) down by means of the prophets, I slew them by the work of my mouth." G1

H. R. Aqiba said: There is a king who has four sons. One is struck and is silent; the second rebels; the third prays for mercy; and the fourth says to his father: Strike me (because I am deserving). Abraham was struck but was silent, as it is written [Gen. xxii. 2]: "Take now thy

son, thy only one, whom thou lovest, even Isaac . . . and offer him there for a burnt-offering." He ought to have said: The other day thou didst tell me: "For in Isaac shall thy seed be called" [Gen. xxi. 12]? and nevertheless it is written [ibid. xxii. 3]: And Abraham rose up early in the morning," etc. Job was struck and rebelled, as it is written [Job, x. 2]: "I will say unto God, do not condemn me: let me know for what cause thou contendest against me." Hezekiah was struck, and he prayed for mercy, as it is written [II Kings, xix. 15]: "And Hezekiah prayed before the Lord," etc. According to others, even Hezekiah rebelled, because he said: "Did I not do what is good in thy eyes?" [ibid. xx. 3]. H1 But David is the one who said to his father: Strike me (because I am deserving), as it is written [Psalms, li. 4]: "Wash me thoroughly from my iniquity, and cleanse me from my sin."

I. The study of the Torah must not be interrupted till the soul is out of the dying one. When R. Simeon the son of R. Aqiba was ill, I1 he (R. Aqiba) did not absent himself from the college, but inquired about him through messengers. The first

messenger announced that he was yet ill. He nevertheless said to the disciples: "Question!" The second announced that he was worse, and still he did not interrupt his studies. The third one announced that he was in the struggle of death, and yet he said: "Question!" till the fourth one announced the death. Whereupon he arose, removed his phylacteries, rent his garments, and said to them: "Brother Israelites, listen to me! Till now we were obliged to study the Law; now, however, we are obliged to honor the dead." A great multitude assembled to bury the son of R. Aqiba. He said: "Bring me out a bench to the cemetery." He sat down and said: "Brother Israelites, listen! (You have assembled) not because I am a sage, for there are greater sages than I; not because I am rich, for there are richer men than I. If the men of the south know Aqiba, why should the Galileans know him? If the men know Aqiba, what have the women and the children to do with Aqiba (but here is not Aqiba, here is the Torah)? Oh! your reward will be great, ye have done homage to the Law. I am consoled, and had I even seven sons and buried them all, I would be consoled, [not that one is desirous of burying his children], but because I know that he will inherit the world to come; because it is known to all that he was given to philanthropic activity, to whom a sin never reaches." (See Yomah, p. 138.)

Moses, who was himself righteous, and was given to philanthropic activity, the reward of the public was counted to him, as it is written [Deut. xxxiii. 21]: "He executed the justice of the Lord, and his judgments with Israel." Jeroboam the son of Nebat sinned and induced the public to sin: the sin of the public was counted to him, as it is written [I Kings, xiv. 16]: "For the sake of the sins of Jeroboam, who did sin, and who induced Israel to sin."

J. (There is a tradition): The reward of virtue is brought about by a meritorious person (Sabbath, p. 55); *e.g.*, Israel was destined to be redeemed from Egypt, as it is written [Gen. xv. 14]: "And afterward shall they go out with great substance." But as Moses and Aaron were meritorious persons, it was done through them. The same is the case with the receiving of the Torah: they would have received it without Moses' Aaron, and the generation of the desert, as it is written [Proverbs, ii. 7]: "He treasureth up sound wisdom for the righteous." The paragraph of judges [Ex. xv. 18] would be said, even if Jethro would not appear. The same is the case with the paragraph

about the second Paschal lamb, it would be said even if the defiled men were not under the requirements of law [Numb. ix. 7]; and the same is with the paragraph of inheritance, it would be written without the daughters of Zelophchad.

K. The Temple also would have been built without David and Solomon, as it is written [Ex. xv. 17]: "The sanctuary, O Lord, which *Thy hands* have established." In the time of Haman, Israel would have been redeemed also without Mordecai and Esther, as it is written [Lev. xxvi. 44]: "And yet for all that, though they be in the land of their enemies, I will not cast them away, neither will I loathe them to *destroy* them utterly." But all that was done through the above-mentioned, because a reward shall be brought about by a meritorious person.

L. The same is true of the reverse. Israel was destined to be enslaved, even if Pharaoh should not have existed, as it is written [Gen. xv. 13]: "And they will make them serve, and they will afflict them four hundred years." Israel would worship the idols even if Jeroboam b. Nebat should not have existed, as it is written [Deut. xxxi. 16]: "And then will this people rise up and go astray." The paragraphs of the blasphemer and the violator of Sabbath would have been written even if the blasphemer and the stick-gatherer should not have existed. Israel was destined to be slain by the sword, even if the persecutors L1 at different times should not have existed, as it is written [Amos, ix. 10]: "By the sword shall die all the sinners of my people." Jerusalem would have been destroyed also, without Nebuchadnezzar and his associates, as it is written [Micah, iii. 12]: "Therefore for *your sake* shall Zion be ploughed up as a field, and Jerusalem shall become ruinous heaps, and the mount of the house as forest-covered high places." But all this was done through the above-mentioned, because of the rule that the chastisement for sin is dealt out through a sinner, and this was explained by Papus and Lulianus his brother to Trajan their prosecutor. (Taanith, p. 48.)

M. Those who are more particular in interpreting the verses of the Scriptures said: It is written [Deut. xii. 3]: "And ye shall overthrow their altars." Wherein have the wood and stone sinned (to be destroyed)? It must be only because people have stumbled through them. From this is to be drawn an

a fortiori conclusion: Wood and stones which have neither virtue nor sin, neither goodness nor wickedness, because people have stumbled through them, if the Torah nevertheless decided their destruction, so much the more he who causes his neighbor to sin, and inclines him from the path of life to the path of death, deserves to be destroyed! In the same manner they explained the following: It is written [Lev. xx. 16]: "Then shalt thou kill the woman and the beast." If the woman has sinned, in what has the beast sinned? It must be only because the woman has sinned with it, it must be killed; as otherwise, whenever it would be seen in the street, people would say: "This is the beast through which so and so was stoned." And also here they draw the same *a fortiori*: An animal which has no virtue, etc., like the wood and stones, and nevertheless the Torah decided that it must be stoned--a man who causes his neighbor to depart from the path of life to the path of death, so much the more must he suffer for it.

N. An *a fortiori* conclusion is also to be drawn from the stones of the altar; namely, it is written [Deut. xxvii. 5]: "Thou shalt not lift up any iron tool upon them," and it is also written [Ex. xx.

22]: "For if thou lift up thy tool upon it, thou hast polluted it." Why, then, shall iron be unfit for the altar more than any other metal? It is because the sword is an unpropitious event and the altar is a propitious one, and a sign of curse must be removed from the thing which is forgiveness. Now, is this not all *a fortiori*: The stones of the altar which do not see, hear, talk, neither eat nor drink, but only because they made peace between Israel and their heavenly Father, the Torah said they should not be cut with iron, "Of whole stones shall they build the altar of the Lord God" [Deut. xxvii. 6], we see then that the stones which bring peace in the world must not come in contact with iron and must be whole--the students who in themselves are a forgiveness to the world, so much the more must they not come in contact with evil things, in order to be perfect before the Holy One, blessed be He?

Footnotes

30:A1

CHAPTER VIII.

A. Lev. xviii. 3.

30:B1 *B*. Therefore only unripe things were allowed, lest one should use them if they were ripe.

30:B2 It must have been a custom at that time to throw some things which were prepared for the wedding feast. It is certainly difficult to explain, without a particular knowledge of this obsolete custom. Naumburg, however, maintains that it was done for a live bridegroom and bride; but we do not agree with him, for the reason that this is not mentioned in Berachoth, where it is enumerated what is to be done to honor the bride and bridegroom.

31:C1 *C*. These were Jehudah the second and Hillel his brother the grandsons of Rabbi; and b. Zakkai must have been a prominent person in Babylon.

31:C2 In Abodah Zarah, 11*a*, is stated that burning of clothes was also done for princes, and Aquilas' deed was used as a support without any explanation.

33:G1 *G*. This is Leeser's translation, but the Talmud takes it literally--that the prophets were slain through the sin of Israel.

33:H1 *H*. It means that this expression is a protest against his affliction, as it was not proper to remind the Lord of His good deeds.

33:I1 *I*. See above, p. 18. The entire occurrence is repeated here at length, with some changes; therefore we leave it as it is in both places.

35:L1 *L*. In Yalkut is mentioned Balaam instead of persecutors, but it seems to us to be proper

as explained here.

Next: Chapter IX

CHAPTER IX.

A. For all the relatives, one must rend his garments, also for the teacher from whom he received his study. A wise man, however, all are his relatives, all must rend their garments, all

must take off their shoes, and all may take part in the funeral meal (which used to be eaten in the street on the return from the cemetery). R. Simeon b. Elazar, however, said that rending of the garments is obligatory to all who are present at the death of a human being; the relatives, however, must rend their garments and take off their shoes, even if they are not present. Different is it when a sage dies. All who are notified of his demise must perform the mourning ceremonies.

B. For the death of the chief of a college all (the college men) are obliged to bare their right arm; B1 for the chief of a court, the left; and for the Nasi both arms are bared. When the death of R. Eliezer occurred, R. Aqiba bared both his arms, beat his breast until blood spurted from it, and cried: "My father, my father, the chariot of Israel, and their horsemen [I Kings, ii. 12].

Ula said: "Lamenting is by striking on the breast, for it is written [Isa. xxii. 12]: 'They shall strike on the breast, lamenting.'" Clapping is done with the hands, and striking is done with the feet.

The rabbis taught: "One who strikes with his feet must not do so with his sandals on, but with his shoes on, in order to avert danger." R. Johanan said: "If the mourner motions his head (as if he is consoled already), his consolers need no more stay with him." R. Johanan said again: "All persons must rise from their seats on the arrival of a Nasi, except a mourner and a sick person." R. Johanan said again: "All persons are told to be seated (after they rose), except a mourner and a sick person.

C. For all his relatives one is not obliged to bare his aim, except for father and mother. If something is on the arms which prevents their being bared, one is not obliged to do it even at the death of his parents. It happened that when the death of R. Aqiba's father occurred, R. Aqiba did not bare his arm, though others did.

C1In all cases it is praiseworthy to remove the corpse as soon as possible, excepting in the case of a dead parent, unless it is

on a Friday or on the eve of a festival, for the removal is then only for the honor of the deceased (in order that they shall not remain unburied until after the Sabbath or festival). In all cases of death it is optional with the mourner whether to lessen his attendance to his business or not; in

the case of the death of a parent, he must lessen. As to baring the shoulder, it is also obligatory in case of parents only. It happened that the father of a great man of the generation died, and the great man wanted to bare his shoulder; another great man, who equalled him and who was present at the time, wanted to do likewise (in order to show his respect), and the first one refrained from doing it (in order to prevent the other one from inconvenience). Said Abayi: "The great man of the generation was Rabbi, and the other one who was present at the time was R. Jacob bar A'ha." According to others, it was *vice versa*. In all cases of death the mourner may cut his hair after thirty days; but in the case of his parents, not before he is censured by his friends (for wearing too long hair). In all cases of death one may participate in any enjoyment after thirty days, except in the case of his parents, when he may do so only after twelve months. Said Rabba bar bar Hana: "In an entertainment of friends he may participate at once." In all cases one may rend his garment only one span long; over parents he must rend so much as to bare his breast. Said R. Abuhu: From what passage do we know this? From [II Sam. i. 2]: "David thereupon took hold of his clothes, and rent them." And it is known that wherever "hold" is mentioned, it is not less than a span. In all cases, even if one has ten garments on, it is sufficient to rend the upper one only; over his parents, however, he must rend all the garments he has on, except the chest protector. And there is no distinction made between male and female. R. Simeon b. Elazar, however, said: "A woman rends the undergarment, places the rent part on her back, and then rends her upper garment." In all cases it is optional whether to tear asunder the outside hem or not, but over parents it is obligatory. R. Jehudah, however, said: "If the hem is not torn asunder, it is not considered rending at all." C2 Said R. Abuhu: "What is the reason of R. Jehudah's statement? It is written [II Kings, ii. 12]: "And he took hold of his clothes, and rent them in two pieces." The superfluous

statement, "in two pieces," indicates that it must be rent so that it should look as if torn in two pieces. In all cases the rent may be slightly sewed together after the seven days, and regularly mended after the thirty days; but over parents it may only be slightly sewed together after thirty days, but never regularly mended. Women, however, may sew it together at once, for the sake of decency. When Rabbin came from Palestine, he stated in the name of R. Johanan: "Over relatives it is optional whether to rend by hand or with an instrument; over parents, by hand only." R. Hyya bar Abba said in the name of R. Johanan: "Over relatives the rent is made in the house; over parents, even outside of the house." A prince once died. Said R. Hisda to R. Hanan bar Rabha: "Stand on an elevation and rend your garments, so that every one will see it." Over the death of a scholar, the right shoulder is bared; over that of a chief of a court, the left one is bared; over that of a Nasi, both shoulders are bared.

The rabbis taught: When a scholar dies, his college closes. When a chief of a court dies. all the colleges in the city in which he resided close, and those who come to the prayer-house to pray change their usual seats, so that those who have seats on the north benches take seats on the south benches, and *vice versa*. But when a Nasi dies, all the colleges close and the members of the congregation assemble in the prayer-house, and only seven read in the Law, and leave. R. Joshua b. Kar'ha said: "That does not mean that they shall walk around in the streets, but that they must remain in their houses and keep silent." And no ordinance or Agada should be declared in the mourner's house. It was said, however, of R. Hananiah b. Gamaliel that he had declared ordinances and Agada in the house of a mourner.

The rabbis taught: "And the following rent garments may not be mended: garments rent over the

death of parents: over the death of one's instructor in Law; over a Nasi, chief of the court; over ill-tidings; over blasphemy; the Holy Scrolls which were burned by fire; the cities of Jehudah; the Temple; and over Jerusalem. And one may rend over the destruction of the Temple and add another rent (at the same place) over Jerusalem." C3 R. Helba in the name of Ula of Birah, quoting R.

[paragraph continues] Elazar, said: "One who beholds the cities of Jehudah in their desolate state, says [Isa. lxiv. 9]: 'Thy holy cities are become a wilderness,' and rends his garment; when he beholds Jerusalem in her desolate state, he says [ibid., ibid.]: 'Zion is become a wilderness, Jerusalem a desolate place,' and rends; when he beholds the Temple in its desolate state, he says [ibid. 10]: 'Our holy and our beautiful house where our fathers praised Thee is burned up with fire; and all our costly things are become ruins,' and rends."

C4The Boraitha stated: "One may rend over the Temple and add another rent," etc. There is a contradiction from the following Boraitha: "Both the one who heard it and the one who saw it, as soon as they reach Zophim they rend their garments, and they do so *separately* over the Temple and over Jerusalem?" This presents no difficulty: The first Boraitha relates to a case where he beheld the Temple first; the second, where he beheld Jerusalem first (Rashi explains the first case that he was under such circumstances that he could not see Jerusalem first, as for instance if he were in a closed carriage).

The rabbis taught: "And all (rents) may be slightly sewed together, hemmed, gathered (a sort of stitch), and stair-stitched, but not regularly mended." Said R. Hisda: "Mending is not allowed only when it is done in the fashion of Alexandria"(for it then looks as if never rent).

The rabbis taught: The original rending is a span long; the additional, three fingers. Such is the dictum of R. Meir; R. Jehudah, however, said: "The original rending is three fingers, and the additional a trifle." Said Ula: "The Halakha prevails according to R. Meir as regards the original rending, and according to R. Jehudah as regards the additional one." We have learned the same also in a Boraitha in the name of R. Jose.

C5Rending which is not done in the moment of excitement (immediately after the occurrence of the death) is not considered rending at all. Was it then not stated that Samuel rent all the twelve different garments he had on when he was informed of the death of Rabh, saying: "The man whom I always feared (for his sharpness) has passed away"? And was it not also stated of R. Johanan that he rent thirteen woollen garments when he was

informed of the death of R. Hanina, saying: "The man whom I always was in dread of has passed away"(and in these instances it was not immediately after the occurrence of the death)? In case of death of rabbis it is different, because. their teachings being always fresh in memory, the moment of excitement is whenever the information of their death reaches. Rabhin bar Ada said to Rabha: "Thy disciple R. Amram taught the following Boraitha: A mourner during all the seven days must wear the rent part in front, and if he changes clothes he must rend again. On the Sabbath he must remove the rent part from the front to the back; if he, however, changes his

clothes for the Sabbath, he must not rend again." (Hence we see that one must rend, although after the moment of excitement?) Rabha answered him: "This applies only to parents, but over other relatives it is different."

C6May those rents be mended? The father of R. Oshiya and Bar Qappara differ: One holds they may, and the other holds they may not.

C7Rabha said: A mourner may walk around in his easy-dress in his house (in private). C8

D. If he was informed of his father's death, and he rent his garments, and afterward he was told that it was not the father but the mother, his duty is fulfilled; and also *vice versa*. If after he has rent for his parents he was told that it was not his parents but one of his relatives, this rending is sufficient. If, however, he was informed of the death of a relative, and after he has rent he was told that it was not his relative but one of his parents, he must rend again.

The rabbis taught: "If one is informed of the death of his father and he made a rent, and then he was informed of the death of his son and he made an additional rent, the lower rent may be mended but not the upper one. If, however, he was informed of the death of his son first, the upper one may be mended but not the lower one. If he was informed of the death of his father, mother, brother, and sister at the same time, he may make one rent for all. R. Jehudah b. Bathyra, however, said: One rent over his father and mother, and another over

all the others; for an additional rent should not be added to the one over his parents." What is the reason? Said R. Na'hman bar Itz'hak: "Because the law of additional rending does not apply to the case of parents." Said Samuel: "The Halakha prevails according to R. Jehudah b. Bathyra." Could Samuel say so? Did not Samuel decide that the Halakha prevails, in regard to mourning, according to the one who is lenient? Mourning is one thing and rending is another.

D1How far down must one rend? As far as his navel. According to others, as far as the breast. And although there is no direct support for that from the Scripture, there is nevertheless a hint for that in [Joel, ii. 13], "And rend your heart, and not your garments."

The rabbis taught: If a sick person has a case of death in his family he must not be informed of the fact, for it may cause him distress; and no rending is done in his presence, and the women are silenced (to keep any knowledge from him); and a minor's garments are rent for the purpose of moving others to pity him; and rending is done over the parents of one's wife out of respect to the latter. R. Papa said: "We have learned in Tract Great Mourning: 'But one (mourner) may not place a babe in his lap, for it may cause him to smile and thus be disliked by others.'"

"*The funeral meal is not to be taken except on a couch standing up properly*." The rabbis taught: "One who comes to the mourner's house, if he was intimate with the mourner, he takes the funeral meal on a lowered couch; if he were not, on a couch standing up properly." Rabha had a death in his family, and Abba bar Martha, who was also known as Abba bar Maniumi, came to console him. Rabha put up the couch, Abba bar Martha lowered it, and Rabha remarked: "How little sense this young scholar has!"

The rabbis taught: "A mourner who travels from one place to another, if it is convenient to him to lessen his attendance to his business he shall do so; if not, he shall attend at least in company with other traders."

The rabbis taught: From what time on must the couch be lowered? From the time the deceased is removed from the house. Such is the dictum of R. Elazar. R. Joshua, however, said: "From the time the top-stone is placed on the grave."

[paragraph continues] When R. Gamaliel the Elder died, D2 as soon as he was removed from the house R. Elazar told the mourners to lower the couches; when the top-stone was placed on the grave, R. Joshua told them to do so, and they answered: "We have already done so by the direction of the elder teacher."

The rabbis taught: "From what hour on may the couches be put in proper condition on Friday? From the hour of the Min'ha prayer on." Said Rabba bar Huna: "One must not, however, sit down on them until sunset, and on Saturday evening he must again lower them, although he has but one more day to mourn."

The rabbis taught: "One must lower not only his own couch, but all the couches in the house, even if they numbered ten and were placed in different places; and even if four brothers mourn over the death of a fifth brother, they all must lower their couches. If there is, however, one couch used exclusively for placing on it utensils, that one need not be lowered."

The rabbis taught: "One (a mourner) who sleeps on a stool, a large mortar, or on the floor has not fulfilled his duty." Said R. Johanan: "For he has not performed the duty of lowering the couch."

E. If one bought a garment which was rent for a death, he must not sew it together, unless he knows that the rent is such that it may be sewed together. If one sells such a garment, he is obliged to acquaint the buyer what kind of a rent it is. All garments of which their rents must not be sewed together, must not be sold to Gentiles; neither can they be turned downward and sewed together. Such is the decree of R. Simeon b. Elazar. The sages permit it. If one comes to a dying person in a rent garment, he is robbing the dead. E1 It is a greater sin to rob the dead than the living, because one can always appease the latter

and make restitution, which he cannot do to the dead. The same may be said of him who honors his parents after they are dead: it is more praiseworthy than when he honors them when they are alive, as in that case it may be said that he does so because he fears them, or because he expects to inherit from them; but when he honors them after they are dead, it is only for the sake of heaven.

The rabbis taught: One who wears in the presence of a deceased person a garment which has been rent over another deceased, is imposing on both the deceased and the living. R. Simeon b.

Gamaliel said: "One who borrows a garment of another for the purpose of visiting his sick father, and informing the borrower of the purpose for which the garment is to be used, does visit his father but finds him dead, he must rend, but may mend it and return it to the owner, paying him the difference in value caused by the rending. But if he has not informed the owner of the purpose, he may not rend.

F. If one has rent for one dead, and he be resuscitated, if he dies immediately after, this rent is sufficient; but if he live some time, one must rend again.

G. One who saves the garment which was upon the dead is robbing the dead: this is only with the garments which are with him in the coffin, but not those which are with him in bed; nevertheless, the heirs must be told not to save even the garments which were with him in the bed. G1 One who adds garments to a corpse more than necessary, he transgresses the precept, "Thou shalt not destroy" [Deut. xx. 19]. G2 So is the decree of R. Meir. R. Eliezer b. Zadok said: He makes the corpse homely. G3 Rabban Gamaliel said: Also, they add vermin.

H. Said R. Nathan: The garments in which the corpse is buried will be renewed with him in resurrection, as it is written [Job, xxxviii. 14]: "She is changed as the sealing-clay, and (all things) stand as though newly clad."

Footnotes

37:B1

CHAPTER IX.

B. As this custom is obsolete, we cannot explain its meaning and how it was done.

37:C1 *C*. *Gemara* from Moed Katan.

38:C2 In order to understand the explanation hereof of Rashi, a thorough knowledge of the ancient cut of garments is required, which we leave to the historian.

39:C3 All this is adduced from biblical passages which we deem unimportant to quote here.

40:C4 *C*. *Gemara* from Moed Katan.

40:C5 *Gemara* from Moed Katan.

41:C6 *C*. *Gemara* from Moed Katan.

41:C7 *Gemara* from Moed Katan.

41:C8 The term in the text for "easy-dress" is •••••• which has several different meanings. See our "Phyl. Rit.," p. 65. Here, however, it seems to mean a gown worn in the house.

42:D1 *D. Gemara* from Moed Katan.

43:D2 It seems to us that it should read Gamaliel of Jamniah, as R. Gamaliel the Elder was his grandfather, and Eliezer and Joshua were colleagues of the former. Heilprin in his "Seder Hadoroth" brought Abraham Zacutta's opinion that R. Eliezer and R. Joshua were present at the death of both Gamaliel the Elder and his grandson of Jamniah without any remarks, which seems to us impossible. Moreover, if R. Eliezer and R. Joshua existed in the time of the Elder, they could have been little children only.

43:E1 *E*. The Talmud elsewhere says that he robs the living and the dead, because the people who see the rent in his garments may think that he rent it then, and to impose upon the people is considered a robbery.

44:G1 *G*. It seems to us from Sanhedrin, 48*a*, that the Talmud advises that all the garments which were with the dead in bed shall be used for the purpose of honoring the dead, as their custom was to pour wine before the dead.

44:G2 All things which were fit for use for human beings, or for their benefit, the Talmud does not allow to destroy, without a purpose, and calls the one who does so "a transgressor" of the negative commandment cited in this passage.

44:G3 It means, because when they are rotten it adds to the homeliness of the corpse.

Next: Chapter X

CHAPTER X.

A. A mourner is exempt from reading Shema, from prayers, and all the precepts commanded in the Torah, during the time that the corpse is in his house. If one desires to be rigorous with himself, he shall not do so, for the honor of the dead. When the time for reading Shema approaches, all the people read; he, however, must be silent. When they rise to pray, he shall acknowledge the justice, saying: "Lord of the universe! I have sinned against Thee; a little only of my indebtedness was called in, although I deserve much more. May it be Thy will to close up our breaches A1 and condole us!" R. Simeon said: He also prays for the departed soul.

B. The mourner must eat with his neighbors. If he has none, he shall eat in another room; if he has none, he shall make a partition of ten spans' distance; if he has nothing to make a partition with, he shall turn his face and eat. He must not lean B1 and eat, neither must he eat meat nor drink wine; he must not pronounce the meal benediction, nor can he be included where three are required in pronouncing it, neither may others pronounce it singly or in three for him. All this is only on week-days; on the Sabbath, however, he may eat and lean, and is allowed all the things mentioned above. As Rabban Gamaliel said: On the Sabbath a mourner is not considered as a mourner at all.

B2R. Jehudah in the name of Rabh said: "A mourner on the first day must not eat of his own bread, for the Merciful One said [Ezek. xxiv. 22]: 'And the bread of other men shall ye not eat.'" Rabba and R. Joseph (when they were in mourning) used to exchange their meals between themselves. R. Jehudah in the name of Rabh said again: "When a case of death occurs in a town, all the inhabitants of the town are prohibited from doing any work." R. Hamnuna happened to be in Drumtha,

and he heard the horn announcing the occurrence of a death. When he subsequently noticed certain persons doing some work, he said to them: "Let these persons be under the ban, for is there not a death-case in town?" They answered him: "There are special societies for burying the dead." And he thereupon said to them: "If such is the case, you are absolved." R. Jehudah in the name of Rabh said again: "One who laments excessively over a deceased may be sure to have to do so over another deceased." There lived a woman in the neighborhood of R. Huna who bad seven sons. Once one of them died, and she was weeping very much. R. Huna sent her a message not to do so, but she paid no attention to it, and R. Huna sent her the following message: "If you listen to what I say, well and good; if not, you may as well prepare a shroud for another of your sons." Subsequently another son died, and one by one all of them died. He then said to her: "Now prepare a shroud for yourself." And she also died.

C. The corpse must not be carried out when near the time of reading Shema: it must be done an hour sooner or later. When the bearers of the hearse go out, those in front of it, as their services

are required, are exempt from reading Shema, but are prohibited to wear their shoes; those who are behind it, however, as their services are not required, are obliged to read Shema and are allowed to wear their shoes. Both are exempt from prayer and phylacteries. If on their return from the burial there is yet time to begin and finish Shema before standing in line, they first read, and stand in line afterward; otherwise they stand in line first, and read and pray afterward. The inside row which sees the mourner is exempt from it; the outside, however, is not. R. Jehudah said: Even if there is but one row, if they stand for the sake of the mourner, they are exempt; but if they stand for the sake of their own honor, they are not. The people who come to console, if they see the mourner they are exempt, otherwise they are not.

D. R. Simeon b. Elazar said: Rabban Gamaliel had a prepared sepulchre at Jamnia, wherein they used to deposit the corpse and lock the door. After that they came to stand in line around the mourner and consoled him; through this they exempted the public from doing these duties, and subsequently the corpse was brought up to Jerusalem.

The rabbis taught: At first in the houses of the rich (mourners), silver and gold baskets and white glass were used:

and in those of the poor, willow baskets and colored glass were used, and the poor felt ashamed; and it was enacted that only willow baskets and colored glass should be used by all. At first they used to leave the face of the deceased uncovered and used to carry him on an expensive bier if he belonged to the rich class; but they used to cover his face (for their faces grew dim from hunger) and carry him on a common bier if he belonged to the poor class, and the poor people felt ashamed. So it was enacted that all should be covered and be carried on a common bier. At first they used to carry the rich in braided beds, and the poor in common ones, and the poor felt ashamed, and it was enacted that all should be borne in a common bed. At first spices used to be placed at the side of those who died from bowel-troubles, and those who suffered from that disease while still living used to feel. ashamed; and it was enacted that spices should be placed at the side of every deceased person out of respect to those who were suffering from that disease while still living. At first the expenses accompanying the burial of a deceased person were more burdensome and painful to his relatives than the death itself, and they used to leave the corpse and run away, until Rabban Gamaliel, the Nasi, directed that he be buried in flaxen garments; and it became customary with the people to bury the dead in flaxen garments. Said R. Papa: "And at present, even in a flaxen garment of the value of one Zuz."

When the grave is closed, the mourner wraps up his head: D1 when ready for the line, he bares it and exempts the others from doing it; if he steps outside the line, he covers it again; when he comes home and others come to visit him, he bares it again and exempts the others from doing it. D2

E. When a death occurs in the family of a sage or a disciple of a sage, they may come and discuss about the laws of mourning before him. If they err, he may set them right half-heartedly; but himself must not propound a question. He may speak himself, if he so desires, or he may permit another to

speak for him. It happened that the son of R. Jehudah died, and the latter permitted another to speak for him; so also did R. Jose the Galilean when his son died. It happened to R. Aqiba that his son died, and he sat and lectured all day; so also did Rabbi when his son died. If it is necessary to discuss about something, they must begin concerning the laws of mourning, and then branch off to other matters, and finish again in regard to mourning. In Judah, on the Sabbath they greet the mourner on entering and leaving the college, to show that no mourning exists on the Sabbath.

Footnotes

45:A1

CHAPTER X.

A. According to the translation of Leeser, and meaning that the doors shall be closed for further bereavements.

45:B1 *B.* According to the custom in the Orient to eat leaning, and as we do at the *Seder* ceremony on the first eve of Passover.

45:B2 *Gemara* from Moed Katan.

47:D1 *D.* See above, p. 27.

47:D2 The literal translation of the text is to cover and to bare the head, and it may be that the custom was already in vogue, to honor those present in baring the head, as Paul required to bare the head in the house of prayer. We, however, translated "wrap up," in accordance with the text, page cited, and in accordance with other commentators.

Next: Chapter XI

CHAPTER XI.

A. When two deaths occur in town, the one that died first is buried first; and if the first has to be left over night, the second is buried. And although it is said: Whoever leaves his dead over night transgresses a negative commandment, A1 still, if it is done for the purpose of digging a grave, to prepare shrouds, or to enable his outside relatives to attend to his funeral, it does not matter. If a master and a pupil die on the same day, the master is buried first; a pupil and a common man, the pupil is buried first. If both are masters, or pupils, or common men, the one that died first is buried first. A man and a woman, the woman is buried first, because the latter is more liable to become disgusting.

B. These are the differences between a man and a woman:

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A man may be left in the street to hold an oration over him, but not a woman; the greatest man of the city may accompany a man, but he is not to be troubled for a woman. R. Jehudah said: He may; the funeral meal is taken over a man, but not over a woman. Said R. Jehudah: If she has little children, the meal is taken with them.

C. They do not stand in line, nor is the mourning benediction said after the burial of the first, but after the second; then they do all this, and console, and exempt the public from doing so. Two mourners may not be consoled together, unless they are in the very same position in the community. The same is the case with two corpses to be carried in one hearse: An accident happened in the city of Usha wherein a house tumbled down and killed two male children and one female child, and R. Jehudah ordered that all three should be carried together. The male children were put on one side, and the female on the other, and they lamented over them: "Woe, woe, bridegroom! Woe, bride!" Two funeral orations may not be held in one town at the same time, unless there is enough attendance for both. The same is the case with two brides, they must not be married at the same time, unless there is enough attendance for both. R. Simeon b. Elazar said: Even in this case it is not advisable to do so, because there may be enmity. C1

D. The corpse must be set aside for a bride, D1 because the honor of the living precedes that of the dead. A bride, however, must be set aside for a king, for the honor of the king. King Agrippa, however, stepped aside for the sake of a bride, and he was praised by the sages. His remark was: "I have time to put on my crown every day, and she can put on her crown only once in her lifetime."

E. The study of the Law (in the colleges) must not be interrupted for the sake of a burial or a bride. Abba Saul, however, said: The performance of meritorious deeds has preference over study, as was the custom of R. Jehudah. Whenever he saw a funeral or a bridal party coming, he glanced at the disciples, telling

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them: The performance supersedes study. If one of the parents of a married couple die, the woman must not paint nor adorn herself, and her husband must not protest against it. Sweeping, washing glasses, and making of the beds is not considered as labor to a mourner.

The rabbis taught: "The mourner's house may be swept and besprinkled, and the dishes, glasses, flasks, and jugs may be rinsed, but no gum to be put on coal, or spices, may be brought to the mourner's house." Must it not? But has not Bar Qappara taught: "No benediction is pronounced over gums (to be put on coal) or spices in the mourner's house"; from which it is inferred that only the benediction is not pronounced, but they may be brought there? These present no difficulty: the first statement relates to the place where the mourner is sitting; the statement of Bar Qappara, to the place where the consolers are sitting.

F. If one leaves five sons, who were at his table, but each one slept at his own house, each one must lower his couch in his own house, otherwise the performance is made only in the house which is used for sleeping. If, however, there were five rooms, and all were used, it must be done in all. One lodging in another's house, if he is intimate with his host, he must lower his couch, otherwise he need not. One who is on a journey and hears of the death of one of his near relatives, if he can lower his couch without any difficulty, he may do so. One may turn over his couch on two benches, or on four stones, no matter if there were even five mattresses on top of it, and was four spans above the ground, provided the legs of the couch are in the air. This, however, is after the burial; but when the corpse is in the house, he may not sleep even on an upturned couch.

G. The performance of lowering the couch is sometimes for six days, and sometimes for five, four, and three days, no more, no less. How so? If the death occurred on a week-day, it is for six days; if in the afternoon of the eve of Sabbath, it is for five days; if a festival succeeds this Sabbath, for four days; and if the two days of New Year succeed this Sabbath, it is for three days. G1

Footnotes

48:A1

CHAPTER XI.

A. The negative commandment is Deut. xxi. 23, although it is spoken only of one hanged by judicial decree. It seems to us, however, that it only means that the corpse must be taken away from the house in which it died, and not that it must be buried on the same day; and this we do for two reasons: first, because it would be a contradiction to what is said above that they deposited the corpse in a prepared grave, and also that they examine the deed the first three days; and second, if it meant that it must be buried the same day, the Talmud would say that he transgresses a positive commandment also, as further on the verse says, "But thou shalt surely bury him on that day." However, the expression "negative commandment" is taken from the corrections of Elias Wilna, who took it from the Talmud elsewhere.

49:C1 *C*. Enmity may be caused between certain persons and the bride, why they went to the other wedding and not to hers. He, therefore, differs only in the case of a marriage, but not in the case of a funeral.

49:D1 *D*. It means when they meet together at the gate or on a narrow street.

50:G1 *G*. The Mishna was taught before the existing calendar was made, as since then New Year cannot fall on Sunday.

Next: Chapter XII

CHAPTER XII.

A. Renting on a death, the mourning of seven and thirty days, begin from the day of burial, or from the day he was informed, if he was not present. For whom one is obliged to rend at the time of death, he is also obliged when gathering his bones from one grave to be put into another. Also the law of sewing together the rent applies to that for gathering bones; the mourning, however, is only for one day, and the night belonging to that day does not belong to the day of mourning.

The rabbis taught: A recent information makes customary both the seven and the thirty days; a remote information, however, makes customary only one day's mourning. What is a recent, and what a remote information? A recent--if within thirty days; a remote--if after thirty days. Such is the dictum of R. Aqiba. The sages, however, hold either case makes customary both the seven and the thirty days. Said Rabba bar bar Hana in the name of R. Johanan: "Whenever it is found that the majority is rigorous and the individual is lenient, the Halakha prevails according to the majority, with the exception of this case here, in which, although the majority is rigorous, still the Halakha prevails according to the individual" (R. Aqiba). As Samuel stated: "In the case of mourning the Halakha prevails according to the one who is lenient." R. Hanina received information of the death of his father from the city of Husai, and he consulted R. Hisda. The latter said to him: "A remote information causes mourning for one day only." R. Nathan bar Ami received information of the death of his mother from the same place, and he consulted Rabha, who said to him: "Are you not aware of what was said in regard to a remote information?" And the former objected: "Have we not learned that this is so only in regard to the five cases of relatives whom one is bound to bury (son, daughter, brother, sister, and wife); but as regards father and mother, the seven and thirty days must also be observed?" And he answered him: "The Tana of the Boraitha is an individual (in his opinion), and we do not concur with him." As we have learned in the following: It happened that the father of R. Zadok died in the city of Ginsak, and he was informed after three years, and he went and asked Elisha b. Abajah and the Elders who were with him, and they told him he shall keep seven

and thirty. The same occurred when the son of R. A'hiya died in exile, and his father has performed for him the mournings of seven and thirty (hence the above Boraitha is in accordance with the individual, and not according to R. Aqiba. And from the following we can see also that the Halakha does not prevail according to Elisha b. Abajah, namely,) Rabh was the son of the brother of R. Hyya on his father's side, and also the son of his sister on his mother's side. And when Rabh came to Palestine, R. Hyya asked him: Is thy father alive? And he answered: My mother is alive. Then R. Hyya asked again: Is your mother really alive yet? And he answered. My father is alive. A1 Then R. Hyya told his servant: Take off my shoes; but a little later you shall take my garments in the wash-house. From this we have learned three things: First, that a mourner must not wear shoes; second, that a remote-in formation mourning is customary for only one day; and, third, that a part of the day is considered as a whole day. A2

B. There were different societies in Jerusalem, and each of them had to attend to different things. One was to attend mourners; one to attend marriages; one to attend circumcision or redeeming of a first-born male child, and one for removing the bones from one grave to another. The attendance to a bride's house precedes a mourner's house; circumcision or the redeeming of a first-born male child precedes the removal of bones. The ancient pious, however, preferred to go to a house of mourning instead of the house of a bride, as it is written [Eccl. vii. 2]: "It is better to go to the house of mourning than to go to the house of feasting; inasmuch as that is the end of all men, and let the living lay it to his heart," as whoever follows the bier, knows that this will happen also to him.

B1We have learned in a Boraitha: R. Meir used to say: It is written [Eccl. vii. 2]: "It is better to go to the house of mourning

than," etc., "and let the living lay it to his heart," which means, let the living lay to his heart matters connected with one's death--viz., when he laments over him, that he will also be lamented over; when he buries him, that he will also be buried; when carrying him, that he will also be carried; and when eulogizing him, that he will also be eulogized. According to others one who is modest, and troubles himself with burying the dead, will be elevated by Heaven, as it is written [Prov. xxv. 7]: "For better it is that it be said unto thee, Come up higher, than that thou shouldst be put lower in the presence of the prince, which thy own eyes have (often) seen." B2

The rabbis taught: When the sons of R. Ishmael died, four elder sages came to console with him; viz., R. Tarphon, R. Jose the Galilean, R. Elazar b. Azariah, and R. Aqiba. Said R. Tarphon to the other three: "You must know that he (R. Ishmael) is very wise and he is well versed on Agada, and therefore none of you must intrude when the other will be speaking." Said R. Aqiba: "And I will be the last one." R. Ishmael began: "His sins have increased, his mournings have succeeded one another, and he has inconvenienced his instructors once and twice." R. Tarphon then arose and said: "It is written [Lev. x. 6]: 'But your brethren, *the whole house of Israel*, may bewail the burning,' etc. If this was ordered over the death of Nadob and Abihu, who have observed only one commandment, as it is written [ibid. ix. 9]: 'And the sons of Aaron brought the blood unto him,' etc., so much the more so over the death of the sons of R. Ishmael." R. Jose then followed and said: "It is written [I Kings, xiv. 13]: '*And all Israel* shall mourn for him, and bury him.' If so much was done for Abiyah the son of Jeroboam, who has performed one kind deed only, as it is written [ibid., ibid.]: 'Because there had been found in him some good thing,' so much the more so over the death of the sons of R. Ishmael." [What was the good thing? R. Zera and R. Hanina bar Papa: one says that he suspended his office and made a pilgrimage to Jerusalem on the feasts; the other says: he has abolished the guards which were established by his father to prevent the pilgrimage to Jerusalem.] R. Elazar b. Azariah then began: "It is written [Jerem. xxxiv. 5]: 'In peace shalt thou die; and as burnings were made for thy fathers,' etc., if so much

was done for Zedekiah the king of Judah, who performed only one meritorious thing in that he ordered to bring up Jeremiah from the pit filled with mire, so much the more so over the sons of

R. Ishmael." Finally, R. Aqiba began: "It is written [Zech. xii. 11]: 'On that day will the lamentations be great in Jerusalem like the lamentation at Hadadrimmon in the valley of Megiddon.' [And R. Joseph said: If not the translation of Jonathan of this passage, namely: On that day will the lamentations be great in Jerusalem, like the lamentation for A'hab bar Omri, who was killed by Hadadrimmon bar Tabrimmon, and like the lamentations for Josiah bar Amon, who was killed by Pharaoh the Lame in the valley of Megiddon, I would not know its meaning.] If so much over A'hab the king of Israel, who has done only one good thing, as it is written [I Kings, xx. 35]: 'And the king was stayed up in his chariot against the Syrians' (to prevent the defeat of Israel), so much the more for the sons of R. Ishmael." Rabha said to Rabba bar Mari: Zedekiah was promised that he would die in peace, and still it is written [Jerem. xxxix. 7]: "And the eyes of Zedekiah did he blind?" (How was the promise to die in peace fulfilled?) He answered him: "So said R. Johanan: (It was fulfilled) that Nebuchadnezar died in his time." Rabha further said to Rabba bar Mari: Josiah was promised [II Kings, xxii. 20]: "Therefore, behold, I will gather thee unto thy fathers, and thou shalt be gathered unto thy grave in peace." And still it is written [II Chron. xxxv. 23]: "And the archers shot the king Josiah?" And he answered him: "So said R. Johanan: (The promise was fulfilled in that) the Temple was not destroyed during his life-time."

B3R. Johanan said: "The consolers are not permitted to speak consolation before the mourner engages in conversation, as it is written [Job, ii. 13]: "But no one spoke a word unto him," etc.; [ibid. iii. 1]: "After this time Job opened his mouth," etc.; and only [ibid. iv. 1]: "Then answered Eliphaz," etc. (These quotations are according to Na'hmanidus.) R. Abbuhu said: Whence do we know that the mourner takes his seat at the head of the consolers? It is written [ibid. xxix. 25]: "I chose their way for, them, and sat as chief," etc., "as the mourners being comforted" (read YiNâXêm) Mar Zutra said: "From the following passage [Amos, vi. 7]: 'And the noisy banquet of those who were

stretched out shall pass away?' B4 R. Hama bar Hanina said: Whence do we know that a bridegroom takes his seat at the head of the guests? It is written [Isa. lxi. 10]: "As a bridegroom decketh himself with elegant attire." (The Hebrew reading: "Ke'hathan yechaehn pêêar," "Hathan" meaning a bridegroom, and "yechaehn" having the same letters as "cohen," a priest), as a priest sits at the head, so also does a bridegroom. R. Hanina said: "The separation of the soul from the body is as difficult as the removal of a knotty rope from the mast." R. Johanan said: "It is as difficult as the removal of a knotty rope holding the masts of two ships together."

The bones and the veins must not be taken apart when gathering them; it must not be feared, however, that this will happen while gathering them. All bones one may handle while gathering, except that of his parents, which must be handled by others. Such is the decree of Rabbi Johanan b. Nuri; R. Aqiba, however, said: As the bones are not allowed to be gathered till the flesh is all destroyed, and the form is not recognized any longer, it does not matter even if they are his parents'.

C. The bones of two corpses may be gathered together, but he shall keep them separate in a casket; he shall put one's in one corner, and the other's in another. So is the decree of R. Aqiba. R. Johanan b. Nuri, however, said: There is not any need for keeping the bones separated, as the basket in which they will be buried will finally be rotten, and the bones will be mixed again; if, however, he desires that they shall be separate, he shall bury them in caskets of cedar. C1

D. The bones may be sprinkled with wine or oil, according to R. Aqiba; with oil and not wine, because wine destroys them, according to Simeon b. Nanes; the sages, however, maintain that they may not be sprinkled with any of these, but cover with dust.

E. Said R. Eliezer b. Zadok: So my father commanded me: When I will die, you shall first bury me in a valley, then gather my bones, and put them in a cedar casket; but you shall not handle them yourself, and so I did. Johanan entered the grave and gathered (the bones) and spread over them a chest protector, and then I entered, rent my garments over them, and covered them with a sheet. I did to my father as he has done to his. It is not allowed for a man to wrap and tie up the corpse of a woman; a woman, however, may do so to a man. E1 The same is the case when a woman suffers in her intestines, a man must not examine nor attend her; a woman, however, is allowed to do so to a man.

F. Abba Saul b. Botnith said in his will to his sons: Bury me at the feet of my father, and take off the Tzitzith F1 from my *palium*.

G1*G*. With all relatives one is allowed to bathe, except with his father, father-in-law, his stepfather, the husband of his sister, and the instructor from whom he received his wisdom. R. Jehudah, however, said: If his father was old or sick he may enter the bath-house and bathe him, for it is in his honor.

A hearse is not used unless the head and the greater part of the corpse are there. R. Jehudah said: The backbone and the skull are considered as the greater part of the body.

H. It happened with the son of R. Hanina b. Teradion, who associated with bad company and became a robber and was executed, when, after three days, he was found all swollen, his remains were put in a cage and that in a hearse, and was brought

in the city. They wanted to lament him for the sake of his parents, but the father did not let them do so; he instead exclaimed on him the following [Prov. v. 11-14]: "While thou moanest at thy end, when thy flesh and thy body are coming, to their end, thou sayest: 'How have I hated correction, and how hath my heart rejected reproof, while I hearkened not to the voice of my instructors, and to my teachers I inclined not my ear; but little more was wanting and I had been in all (kinds of) unhappiness in the midst of the congregation and assembly.'" His mother also exclaimed over him the following passage [ibid. xvii. 25]: "A foolish son is a vexation to his father, and bitterness to her that hath borne him." His sister also exclaimed the following [ibid. xx. 17]: "Bread of falsehood is pleasant to a man, but afterward his mouth will be filled with gravel stones."

Footnotes

52:A1

CHAPTER XII.

A. In the ancient times one was very careful not to bring a bad message; and even when asked, as the Talmud prohibits it, he would give evasive replies.

52:A2 This is inferred from what R. Hyya told his servant-to bring his garments into the wash-house, that, after he had mourned a part of the day, on the remaining part he might do all he liked.

52:B1 *B*. *Gemara* from Moed Katan.

53:B2 We must leave this without any explanation, as there are no commentaries for this besides Eidlis in his "Hidushe-Agadoth," and it is too complicated to be translated here.

54:B3 *B*. *Gemara* from Moed Katan.

55:B4 The Hebrew text reads: "Vesor mirsah seru'him." The letter Samech has the same sound as the left-pointed Shin, and therefore "vesor" has the same meaning as if written with a left-pointed "Shin," viz., "a chief." "Mirsah" is given the same meaning of "Mirseah" [Jer. xvi. 5], a mourner--*i.e.*, the mourner became chief of the seru'him, those who were stretched out (the comforters), by taking his seat at the head.

55:C1 *C*. There is difficulty in understanding the meaning of R. Johanan b. Nuri, as there are many errors in the text, which were corrected by different commentators. What we understand is, that in their time they had different baskets or coffin-like boxes, *Aphikarsin*, in which bones were gathered and buried with them; and R. Aqiba maintains that although it is allowed to put together the bones of two bodies in one basket, they must nevertheless not be mixed together; and R. Johanan b. Nuri maintains that it is no use separating them, and advises what one shall do when he wishes them to be kept separate.

56:E1 *E*. Because a man is more excitable than a woman.

56:F1 *F*. Tzitzith--the fringes (see Numb. xv. 38)--and *Palium* in our times is called Tallith, in which the show-fringes are put in, and are worn during prayer.

56:G1 *G*. Speaking above of men who must not see the body of a woman, the Mishna tells also that it is not customary for a son to see his father or his father-in-law, whom he must respect, naked. As to the husband of his sister, however, there must be another reason-lest he see some deformity in his body, and inform his sister of it.

Next: Chapter XIII

CHAPTER XIII.

A. One who gathers or guards the bones is exempt from reading Shema, prayer, and all the precepts commanded in the Torah, and if he desires to be rigorous with himself, he must not do so, for the honor of the dead. R. Johanan b. Nuri, however, said: He should step outside a distance of four ells and read. Ben Azai said: If they were with him in a boat he should remove them to another place and read. R. Itzhak said: Only from the bones of relatives he is exempt; from strangers, however, he is not. R. Simeon said: He is exempt only on week-days, but not on Sabbath. R. Nathan, however, said: He is exempt only when the bundle (of the bones) is on his shoulders, because the duty of guarding it is on him, but not of prayer.

B. One who removes bones or the Scriptures from one place to another, must not place them in a wagon, a boat, nor on a beast under his seat: however, in order to preserve them from thieves or robbers, he may. B1

C. It is not allowed to pass through a cemetery with the phylacteries on, nor the Scriptures in the hand, as it is considered disrespectful to the dead. C1

p. 58

D. One finding a corpse in a grave must not move it, unless he is certain that the place was only borrowed for him. One finding bones on marshy ground, must put them in a grave. Such is the decree of R. Aqiba. The sages, however, say: He must not move them. One who finds bones in a grotto or a cavity must not move them. A corpse or his bones must not be moved from one place to another, even if they are equal in esteem, much less if the other place is lower; he may, however, do so from a lower to a higher place. However, if he moves them to a place on his estate, he is allowed to do so, even if the former place is more esteemed. D1

Two corpses must not be buried in one grave, nor a corpse with bones, and *vice versa*. R. Jehudah, however, said: If they used to sleep together when alive, they may be buried together.

E. A building over a grave which was vacated, no benefit may be derived from it; if, however, it was excavated in a rock, and also the grave itself, when it was vacated a benefit may be derived from it; nevertheless, it must not be used for low purposes, such as a cow-house, straw-barn, etc. A grave which was dug for a person who was yet alive may be sold; but if for one who was already dead, it may not. The same is the case with monumental stones.

No benefit may be derived from a vacated coffin. If it is made of stone or clay, it must be broken, and if of wood--burned. Boards of the cemetery must not be moved from their place.

Footnotes

57:B1

CHAPTER XIII.

B. Corrected from Berachoth.

57:C1 *C.* The reason is explained in Berachoth, because the dead are exempt from all the commands given in the Law.

58:D1 *D.* It means to say that the estate belonged to the deceased, as it is agreeable to one to be buried on his own grounds.

Next: Chapter XIV

CHAPTER XIV.

A. A cemetery must not be considered vilely; *e.g.*, no aqueduct may be drawn through it, nor a path made; no cattle must feed there, nor may one use it as a *compendiarius*, nor pick wood or grass therefrom. If he has picked he must derive no benefit from it, and if he picked them only to clean the grave, he must burn them on the same place.

B. Though inheritances are movable from place to place and changed from one family to another, with graves, however, it is different; they are not movable or changeable from one family to another. A new grave may be measured, divided, and sold, but

not an old one; there is, however, a new one which must be considered as old, and *vice versa*, namely: When there were in an old grave even ten corpses, but were buried without the permission of the owner, it must be considered as a new grave and may be measured, divided, and sold; if, however, it was with his permission, even if it was a miscarriage, it must be considered an old one, and nothing may be done with it.

C. No occupancy must be considered with the graves of the exiles; *e.g.*, in time of a pest or war, the graves are not secured to the corpses by occupancy. C1 R. Simeon b. Gamaliel said: Miscarriages do not acquire their graves, the same is the case with all who are buried without the permission of the owner. A woman who has inherited a grave, she and her offspring are to be buried in it. Such is the decree of R. Meir; R. Jehudah, however, said: She, but not her offspring; however, he owns that all her offspring who existed during her life, may be buried with her. If her father requires she should be buried in his grave, and her husband says in his, the father has the preference; if she has children, then the husband has the preference; if her will states that she shall be buried with her children, it should be done so. If the father says she should be buried with her husband, or *vice versa*, she is buried with her husband, because it is his duty to feed, redeem, and bury her, and he must provide all the necessaries, such as a hearse, flutes, and mourners, and where an oration is held, he must provide also that. If he declines to do all that, it is done by the court on his account against his will.

D. There are three kinds of graves: One that is found, D1 one that is known, and one which injures the public. The first is permissible to vacate, and if it was vacated, the place is clean, and a benefit may be derived from it; the second is not permissible to vacate; if it was vacated, the place is unclean, D2 and no

benefit may be derived from it; and the third is permissible to vacate; the place is clean, D3 but no benefit may be derived from it.

E. A cemetery which surrounds the city on three sides, must be vacated; if on two sides, if they were opposite they can remain; if they were joined, they must be removed. E1 All graves may be removed for the necessity of the community. R. Aqiba, however, said: With the exception of those of a king and a prophet, as there was the grave of the prophetess Huldah, in Jerusalem, and it was never touched. His contemporaries rejoined: That is no proof, as there was a cavern from the grave to the brook Kidron, which drew off the uncleanness. E2

F. One who sells the graves of his family, (it is considered as if) he did nothing. The same is the case if he sold the place of lamenting. The rabbis taught: One who sold his grave, F1 the way to it, or standing-place, and the house of lamenting, his family may come and reclaim them against his will, because it is a disgrace to the family that they should be sold to someone else.

G. The rabbis taught: G1There must be not less than seven standings and sittings after the burial, G2to signify the seven times "vanity" is mentioned in Ecclesiastes [i. 2]: "Vanity of vanities, saith Koheleth, vanity of vanities: all is vanity." Said R. A'ha the son of Rabha to R. Ashi: Explain me how they used to do, G3 and he rejoined: As we have learned in the following Boraitha: R. Jehudah said: Formerly in Jehudah they have

made not less than seven standings and sittings for a dead body, and the funeral director used to say: "Arise, dearests, arise!" and "Sit down, dearests, sit down!" Said the sages to him: If that was all, let them do so also on the Sabbath. G4 The sister of Rama bar Papa was the wife of R. Ivjah, and she died. He made for her a standing and a sitting. Said R. Joseph: He has erred in two things. First, this do only the relatives of the second degree, who are not obliged to mourn, and he was one of the mourners; and, secondly, this is to be done only on the day of burial, and he did so on the day after. Said Abayi: He has also erred in this: It is usually done near the cemetery, and he did this in the city. Said Rabha: He erred also in this: It is only done where it is customary, and in his place it was not customary at all. An objection was raised: It is said above that the sages said to R. Jehudah: "If that was all, let them do also on the Sabbath." Now if this is to be done only in the cemetery, and on the first day, can this occur on Sabbath? The answer was, They meant to say, in a city which is near the cemetery, and when the consolers returned from the funeral which ended at twilight.

Whoever reminds a mourner of his dead after twelve months are over, is to be blamed for renewing his wound. Said R. Simeon b. Gamaliel: One whose wife died and has married again within a twelvemonth, one who wishes to talk to him about his dead, shall do so in the market, but not in his house.

All eatables may be brought to the house of a mourner-oval. shaped bread, meat, and fish; and if an assembly does that, also herbs and pulse. Rabban Simeon b. Gamaliel said: Where it is customary, even cooked food.

H. Ten goblets of wine have the sages ordered in the mourning house: three before eating, to give an appetite; three during the meal, to soften the food in the stomach, and four after the meal, for the four blessings contained in the after-meal benediction. Afterwards they have added four more: one for the sake of the sections of the city who have occupied themselves with the burial; one for the sake of the presidents of the congregations (for their advancing money for the

sake of the burial of the poor); one for the Temple (to console for its destruction),

and one in memory of Rabban Gamaliel (who was the first to command to be buried in linen garments, as said above). When the sages have seen that they became drunk, they have restored the original number.

One who pronounces the meal benediction in the house of a mourner, what shall he say in the fourth blessing? "The good One who does good to all." R. Aqiba, however, said: "The truthful judge, the Ruler of His creatures. O give thanks unto the Lord, for He is good; because unto eternity endureth His kindness." H1

END OF TRACT EBEL RABBATHI (GREAT MOURNING) AND THE WHOLE SECTION OF FESTIVALS.

Footnotes

59:C1

CHAPTER XIV.

C. The Hebrew term for occupancy is *Hazakah*, which means a surety--that is, if the property is in the possession of one a long time it is sure to be his, even if he has no documents for it.

59:D1 *D*. It means that if it was found that there was a corpse buried without the permission of the owner, the place, after it is vacated, is considered clean, because no precautionary measures were taken for such a one.

59:D2 A precautionary measure was taken to consider all graves unclean, even after their vacation, lest one use the ground when they are not yet vacated.

60:D3 *D*. For the sake of the public, no precautionary measure is to be taken for this.

60:E1 *E*. Taken from Tract Nazir, Palestinian Talmud, as the Mishna here is very complicated, after all the different corrections of the commentaries.

60:E2 There is a law concerning defilement, that a hole of one span which reaches the air draws off the uncleanness. This will be explained in Tract Teharoth.

60:F1 *F*. It was the custom then that each family had cares for the purpose of burying there the members of the family. The standing place means where the consolers stood or sat after the

burial, and it was near the grave, and there was also a place where the lamenters stood.

60:G1 *G*. Transferred from Baba Bathra, 100*b*.

60:G2 The custom was that when they returned from the burial they used to walk a few steps and then sit down and console the mourners or weep for the dead, and then rise and go on; and to repeat this seven times, so that they should remember the life of a human being is but vanity of vanities.

60:G3 As in our place it is not customary.

61:G4 *G*. If that was all, without lamentation, it could be done also on the Sabbath, if they returned from burial on the eve of Sabbath at sunset.

62:H1 *H*. This passage is brought here at the conclusion of this tract, as it is usual to conclude each tract with a good expression.

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MICHAEL L. RODKINSON

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Tracts Maccoth, Shebuoth, Eduyoth, Abuda Zara, and Horioth

Tract Maccoth

Volume IX. (XVII.)

Tract Shebuoth (Oaths)

Tract Eduyoth (Testimonies)

Tract Abuda Zara

Volume X. (XVIII.)

Tract Horioth (Decisions)

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EXPLANATORY REMARKS.

In our translation we adopted these principles:

1. *Tenan* of the original--We have learned in a Mishna; *Tania*--We have learned in a Boraitha; *Itemar*--It was taught.

2. Questions are indicated by the interrogation point, and are immediately followed by the answers, without being so marked.

3. When in the original there occur two statements separated by the phrase, *Lishna achrena* or *Waïbayith Aema* or *Ikha d'amri* (literally, "otherwise interpreted"), we translate only the second.

4. As the pages of the original are indicated in our new Hebrew edition, it is not deemed necessary to mark them in the English edition, this being only a translation from the latter.

5. Words or passages enclosed in round parentheses denote the explanation rendered by Rashi to the foregoing sentence or word. Square parentheses [ ] contain commentaries by authorities of the last period of construction of the Gemara.

TO HIM

WHO IS HIGHLY RESPECTED BY THE PEOPLE FOR HIS GENIUS AND GENEROSITY THE

HONORABLE JACOB A. CANTOR

PRESIDENT OF THE BOARD OF ALDERMAN, BOROUGH OF MANHATTAN, NEW YORK

THIS VOLUME IS RESPECTFULLY DEDICATED BY THE EDITOR AND TRANSLATOR

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CONCLUDING WORDS

TO THE COMPLETION OF SECTIONS FESTIVAL AND JURISPRUDENCE.

With the benediction to the Almighty, who prolonged our life to see the completion of our translation the above two large sections of the Talmud, we deem it necessary to say a few words concerning the criticisms which have recently appeared, and to which we are grateful for having called our attention to some important matters. However, before we will come to the point we beg to say that we were anxious during the whole time to see a true criticism to our entire work, pointing out the mistakes or errors which must be found in the editing as well as in the translating itself of such a difficult and voluminous work. But to our knowledge such has not appeared anywhere as yet, although reviews and notices of different kinds were given in more than a hundred leading papers in both the old and the new world. The praises encouraged us but little, and some of the criticisms did not discourage us at all, for the reason that both were only phrases, without giving any evidence or important facts to which our proper attention should be called. And we would still be grateful indeed to those who would give such criticisms in compliance with our wishes, as this would be a great help to us in the continuation of the translation of the four remaining sections, which may take about twelve volumes or so more. Now to the point. There was a criticism in the "Open Court" of Chicago, Vol. XVI., pp. 425-427, accusing us that we have omitted the discussion of some sages concerning "evangelium." How it should be written •••-••••• or •••-••••• [1]

and for such an omission he exclaimed that we have no translation of the whole Talmud. [1] We have received also some private letters from educated people, asking why they do not find any mention of Jesus of Nazareth. And in answer to the criticism as well as to the many letters we have received, we beg to give some letters of an editor of a scientific paper of this country, which we think will throw some light on this matter.

June I, 1901.

REV. MICHAEL RODKINSON,

New York City.

Dear Sir:--The receipt of Volume XII. of the Talmud brings back recollections of a pleasant hour spent with you in my office, and the information which you so kindly gave me on several very obscure points. Perhaps you will pardon a personal letter of inquiry on a point or two in "Sabbath" that have especially interested me.

You will remember where the subject is discussed as to whether it was lawful to rescue books from the

flames, the point turning especially, as I read it, that on the one hand the books of unbelievers should be allowed to perish, while on the other hand, these same books also contain the Sacred Name.

R. Abuha is asked if the books of the Be Abhidon should be saved, and gives an equivocal reply. It is stated that Rabh went to neither the Be Abhidon nor the Be Nitzrephe. Samuel went to the Abhidon, and Mar Bar Joseph "was of their society."

Your note on the passage leaves it conjectural who the people were. To me it seems altogether likely that they were Christian sects (possibly Jewish Christians and Gentile Christians). I should infer this because, first, R. Tarphon's statement immediately precedes it, and Christian tradition at least connects him with disputes with Christians. Second, the story of Ema Shalom and her brother Gamaliel II., and the philosopher and judge follows it. It seems to me that there are at least three implied quotations in this story from Matthew's Gospel or some other Christian document: "Let your light shine," "I came not to destroy but fulfill the law," and the statement about son and daughter inheriting alike.

Do Hebrew scholars think that Christians are indicated by Be Abhidon and Be Nitzrephe? And if so, how is the fact explained that Samuel went to one of them, unless it be that Samuel is Saul (Paul), and how could Mar Bar Joseph be of their society?

It seems to me that I find a number of places where Christian usages or

doctrines are referred to, and I wish I were informed as to the names would show this. If you could give me some and other indications which light, without trespassing too much on your time, I would be very grateful indeed.

June 12, 1901.

My Dear Sir: Your kind favor of the 9th at hand and carefully noted. I assume that you have good and sufficient reasons for your hesitation in such a matter, although they may not be apparent to me. Therefore it only remains for me to assure you as strongly as I know how, that the information I seek is only for myself, that it will not be published, that it will not be quoted even in conversation as your opinion.

1 simply wish to read understandingly the fine work you are placing before English readers; I want to get into the atmosphere of the times as much as possible. Judaism and Christianity must have touched elbows a good deal in the first three centuries, and there must be some evidences of it in the Talmud to those who can read between the lines. I think I can see references. For instance, were there Saducees after the final overthrow, and is not the term, at least occasionally, applied to Christians?

My own conviction, which of course, is based on very superficial knowledge mostly gleaned from the early Christian Fathers, is that at first, the line of demarcation between the Jewish Christians and the Jews was not so strong as it became afterwards. But at any rate, there must be more references to them than appear on the surface, it seems to me, and that is what I want to know. But I have no theory to vindicate and seek the knowledge only for myself.

July 2, 1901.

My Dear Sir: I wish to acknowledge the receipt of your very kind and instructive letter of two weeks

ago. It covers substantially the points I wished to know, and saved me much research that might in the end prove barren of results. I shall remember your kindness. Again thanking you, I am,

And to these letters we may add a paragraph of Tract Sabbath, p. 119. "R. Aqiba said: 'The wood-gatherer was Zelophchad.' To which R. Jehudah b. Bathyra exclaimed: 'Aqiba! Whether your statement be true or false, you will have to answer for it at the time of the divine judgment; for if it be true, you disclosed the name of the man whom the Scriptures direct to shield, and thus you brought him unto infamy, and if it be false, you slandered a man who was upright,'" etc. (See there.) And this rule we adopted while engaged in this translation--namely, not to give hypotheses to the reader, as there is not one line in the whole Mishna which speaks clearly of Jesus and his beliefs. In our book on "Phylacteries" we have alluded to the reason why the editor of the Mishna did so. And the same reason prevented us from *interpreting* passages or paragraphs which seemed to us to treat about Jesus and his

followers, as after all these are only hypotheses, and we do not like to throw our suppositions in a translation which ought to be more or less authentic. This is all that we can say in answer to the "Open Court."

There has appeared in the "Baltimore Sun," April 17, 1903, a notice which, in the main, is very flattering, but gives also some criticisms that are of interest, and correct from the standpoint of the writer. They concern the remarks sub 3 and 4 of the "Explanatory Remarks" published in each volume on the other side of the title-page. Concerning the fourth he says: "There are many who would be glad to verify references who may not have a copy of the new Hebrew text, or unable to use it, if they had it." Concerning the third remark he says: "This seems unfortunate. The alternative interpretation is often of very considerable value, and may be used for historical purposes even if not so important theologically." To this we may say that we were very careful when omitting the first version, and where we found it important we translated both, as the reader will find in our Talmud in many places, "If you wish, it may be said so, and if you wish, it may be said so and so." And we did not fail even to translate a third "if you wish" when we saw that they all were of importance. In general, however, only the last versions are of great account, and the decisions of the post-talmudical rabbis were only in accordance with those. And only they are the guides of the Schul'han Arush (Jewish Code).

Concerning the fourth we may confess that the critic is perfectly right in his contention. However, it is not our fault but that of the circumstances which deceived us in the beginning of our undertaking. We previously thought that we would find subscribers for the Hebrew text also, and so give the Hebrew with the English together, and then there would have certainly been no need of separately marking the pages of the text. Unfortunately, there was no demand for the text at all, so that we were unable to furnish it with the translation, and in reality, for the general English reader who is not able to read Hebrew the page of the text is immaterial. And for the Hebrew students, who are very few, we could not afford to go to such expense, as a separate column for each page would be necessary for this purpose, for such could not be inserted in the text even in parentheses.

Concerning the last Tract Horioth, which speaks of sacrifices

and offerings only, we are at a loss to understand why it was inserted in the section Jurisprudence, unless the reason be the treatment of whether the expenses of the offerings must be carried by the judges of the court themselves or by the treasury of the congregation, which may belong to the category of damages.

However, the whole tract treats almost of one and the same point, so that we could not give the contents of each chapter separately, and confined ourselves by giving the synopsis of the beginning of each Mishna and some important matters from the Gemara, of the last.

M. L. R.

NEW YORK, *May* 25, 1903.

Footnotes

v:1 The meaning of the first two words is one and the same. And the *aleph* here is the same as the *ayen*. The same differ also about the same letters concerning the word "Eidehen," Abuda Zara, p.1. (see foot-note there); hence, as it is without any importance for the English reader, we have to omit it, according to our method. But that what was said in the name of Jesus by Jacob (James) we have translated, although we do not believe that this was so (see foot-note, ibid. p. 27).

vi:1 Some one has called our attention to this article being in the public library about a year ago and we only glanced at it for lack of time. And for the same reason we could not have the original before us when we are writing our answer. By the way, we like to say that there is published a booklet, "Chasronoth-Hashas," containing the omission made by the censor about Jesus and his disciples, to which we do not pay any attention, as its contents are nonsense and we are sure that these were not said or written by the talmudic scholars. We also possess a letter from the late lamented Dr. Mielziner, who agrees with us on this point.

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SYNOPSIS OF SUBJECTS

OF

TRACT MACCOTH (STRIPES).

CHAPTER I.

MISHNA *I*. TO *X*. How should witnesses be made collusive? There are another sort of witnesses who are not subject to the punishment of collusive ness but who are to suffer stripes instead. Where do we find a hint in the Scripture that collusive witnesses shall be punished with stripes? There are four points concerning collusive witnesses, etc. And they are not sold as Hebrew slaves. As it reads: "He shall be sold for his theft, but not for his collusiveness." A collusive witness pays his share. What does this mean? We testify that so and so has divorced his wife and has not paid the amount mentioned in her marriage contract, etc. We testify that so and so owes to his neighbor a thousand zuz, etc. If one says I will make you a loan with the stipulation that the Sabbathic year shall not release me, it nevertheless releases. If one loans money to his neighbor without a fixed term of return, he has no right to demand it before the elapse of thirty days. We testify that so and so owes 200 zuz to his neighbor, and they were found collusive, etc. To a negative commandment that does not contain manual labor, stripes does not apply. The fine of money may be divided into two or three shares; however, this is not to be done with stripes. Witnesses cannot be made collusive unless the falsehood lies in their bodies. A woman once brought witnesses, and they were found false. She then brought another party, who were also found false; she then brought another party, etc. Because she is suspicious should all Israel be suspected of testifying falsely? Collusive witnesses are not to be killed unless the sentence of capital punishment for the defendant is rendered. There is no punishment on the ground of *a fortiori* conclusions. May I not live to see the consolation of our nation, if I have not killed a collusive witness for the purpose of removing from the mind of the saducier, etc. The verse punishes one, an accomplice who conjoins himself to transgressors with the same punishment, etc. And we may learn from this; that so much the more will he who conjoins himself to those who are engaged in meritorious acts, be rewarded, etc. There is no capital punishment, unless two witnesses have warned this culprit. If both of the witnesses have seen him who warned them, they are considered conjoined, The court of Sanhedrin is to be established in Palestine as well as in the countries outside of it. In the large cities but not in the small ones, 1-4

CHAPTER II.

MISHNA *I*. TO *V*. The following are exiled, he who kills a person unintentionally. The act of one who thought that such is allowed is not to be considered an accident, but almost intentional.

If one has climbed a ladder and the step under him broke and killed, one Boraitha declares him guilty, etc. If the iron of a hatchet slipped off and killed. One threw a lump of brittle stone at a date tree, and the dates fell off and killed (a child). What is considered second force according to Rabbi? If one throws a stone in a public ground and it kills, he is to be exiled. The punishment of exile attaches but to a private set. Is hewing wood always considered a private affair? All kinds of human beings are exiled when they killed by accident an Israelite. A father is exiled if he killed his son accidentally. A heathen or a slave is to be exiled or punished with stripes through an Israelite and *vice versa*. A stranger or an idolator who has killed even unintentionally is put to death. Only then when, thinking that such is allowed; "For he is a prophet." How is this to be understood? Because he is a prophet she has to be returned, but if a layman, she would not, etc. Exile does not apply to a blind one. An enemy is not exiled (as such a punishment does not suffice). If the rope to which the man's instrument was attached, broke--then he is exiled; but if the instrument slips out of his hand, exile is not sufficient. Whither are they to be exiled? To the cities of refuge, etc. They were also obliged to prepare roads from one city to the other. Formerly all murderers, accidental as well as intentional, used to flee to the cities of refuge, etc. "Giliad is become a city of workers of wickedness," etc. What does this expression mean? The city of refuge must neither be too large nor too small, but middle-sized ones. Be situated in places where there is water and markets. If a disciple is exiled, his master is exiled with him; because the expression, "and live," means you shall supply him with the sources of moral life. He who loves the abundance of scholars possesses the fruit of knowledge. I learned much from my masters, more, however, from my colleagues, and still more from my disciples. The Holy One, blessed be He, appoints them into one inn, and he who had killed intentionally is placed under a ladder, while the other, who killed unintentionally, descends the steps, falls and kills him. According to one he wrote only the eight verses, which begin with. "And Moses died," etc., 14-28

MISHNA *VI*. TO *X*. There is no difference between the high priests who were anointed with the holy oil, etc. Therefore the mothers of the priests used to support the murderers with food and clothes, etc. It is counted as a sin to the priest who should pray that no accident might happen in that generation. If a sage has put some one under the ban conditionally, etc. The forty years during which Israel was in the desert, the remains of Judah were dismembered in his coffin until Moses prayed for him, etc. If after the decision has been rendered, the high priest dies, he is not exiled, etc. If it happens that a murderer goes outside of the limit, etc. What has the high priest done that the murderer's fate should depend upon his death? Joab erred twice in so acting: (*a*) he thought that the horns of the altar protect, etc. The cities of refuge are not given for cemeteries. If one killed accidentally in the city of refuge, he is to be exiled, etc. If a murderer

was exiled, the townsmen like to honor him, he has to say to them "I am a murderer," 29-34.

CHAPTER III.

MISHNA *I*. TO *V*. To the following stripes apply: Crimes under the category of Korath, as well as under that of capital punishment, are also punished with stripes if they were so warned. To a negative command, which is preceded by a positive one, stripes apply. The culprit does not get stripes unless he abolishes the succeeding positive command. R. Simeon b. Lakish, however, differs, and says: He is free from stripes only when he has fulfilled the succeeding one. He who took the mother-bird with her children gets, according to R. Jehudah, stripes. It happened with a

children teacher who struck too much the children, and R. A'ha excommunicated him; Rabbma, however, returned him because he could not find as good a teacher. Stripes also apply to him who partook of the first fruit before the ceremony of reading was performed. If a positive succeeds a negative, no stripes apply. A stranger who had consumed sin and transgression offerings before their blood was sprinkled is free from any punishment. Concerning the first fruit, placing it in the temple is the main thing, and not the ceremony of reading. The culpability for second tithe arises only after it has seen the face of the wall of Jerusalem. He who makes a baldness in the hair of his head, or rounds it, etc., is liable. The culpability arises only, then, when he took it off with a razor. What should be the size of the bald spot which would make him culpable? If one made an incision with an instrument he is culpable. For dead he is culpable at all courts whether by hand or instrument. The culpability for etching-in arises only when he has done both, wrote and etched-in with dye, etc. A Nazarite who was drinking wine the whole day is culpable only for one negative. There is an instance that one may plough only one bed and shall be culpable for eight negatives. The number of stripes is forty less one, 34-47.

MISHNA *VI.-IX*. The examination as to the number of stripes he can receive and remain alive must be such that can be equally divided by three. If one commits a sin to which two negatives apply, etc. How is the punishment with stripes to be performed? The striker strikes him with one hand so that the strokes shall become weaker. If, after he has been tied, he succeeds to run away from the Court, he is free. As he was already disgraced, he is not taken to be disgraced again. The Lord wanted to make Israel blissful and therefore he multiplied to them his commands. At three places the Holy Spirit appeared. At the court of Shem, etc. Six hundred and thirteen commands were said to Moses, etc. Isaiah reduced them to six. Michah came and reduced them to three. Isaiah (the second) again reduced them to two. "Keep ye justice and do equity." Amos reduced them to one. "Seek ye for me, and ye shall live," 47-56.

APPENDIX.

He who speaks ill of his neighbor, he who listens to such evil-speaking, finally, he who bears false testimony deserves to be thrown to the dogs, 47-56.

Next: Chapter I

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TRACT MACCOTH (STRIPES).

The Sanhedrin who executes a person once in seven years, is considered pernicious. R. Eliezar b. Azariach said: Even one who does so once in seventy years is considered such. Both R. Tarphon and R. Aqiba said: If we were among the Sanhedrin, a death sentence would never occur." (Mishna X.)

CHAPTER I.

RULES AND REGULATIONS CONCERNING COLLUSIVE WITNESSES IN BOTH CRIMINAL AND CIVIL CASES, AND THE APPLICATION THERETO OF CORPOREAL AND OTHER PUNISHMENTS.

MISHNA *I*.: How should witnesses be made collusive (so that they should be punished)? If, *e. g.*, they testify that so and so (who is a priest) is a son of a divorced woman (whom his father had illegally married, wherefore he lost his priesthood), the court has not to decide that the witness who has falsely testified shall be regarded such (and shall lose his priesthood if he is a priest), but he should be punished with forty stripes; likewise if one testifies that so and so is to be exiled for an unintentional murder, the court has not to decide that he, the witness, be exiled for false witnessing, but he is punished with forty stripes.

GEMARA: How should the text of the Mishna be understood? It states, "how should witnesses be made collusive," and according to the illustration hereafter adduced it ought to be: How should the witnesses not be made collusive (as the punishment of a collusive witness is according to the Scripture that the same which is to be inflicted upon the defendant if the accusation prove true, and it states that such a punishment does not apply to the witness; it furthermore states concerning the case of collusive witnesses, that they are considered collusive only, then, when another party of witnesses come and say that the witnesses in question were with them at another place on the same date on which, according to their testimony, the

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alleged crime was done. Hence, only in such cases they are considered collusive, but not otherwise. The Tana of the Mishna refers to this passage (Sanhedrin, p. 261): "Because all who are to be put to death biblically, their collusive witnesses and their abuses are punished with the same, except in the case of the married daughter of a priest," etc. And he (the Tana) adds that there are another sort of witnesses who are not subject to the punishment of collusiveness, but who are to suffer stripes instead, and this are those who testify that so and so is a son of a divorced woman or of such who has performed the ceremony of chalitza.

Whence is this deduced? Said R. Jeoshia b. Levy: From here [Deut. xix. 19]: "Then shall ye do unto him as he had purposed to do unto his brother; to him but not to his descendants" (and if

the decision were that he should lose his priesthood, then even his children would be affected). But let the court affect him only and not his descendants? This cannot be done, as the law dictates that it shall be done just the same to him as to the alleged defendant, and if such be the case his descendants would necessarily be affected. B. Pada, however, says: This is to be drawn by *a fortiori* reasoning--viz.: he who has transgressed (by illegal marriage of a divorced woman) does not lose his priesthood, and only his descendants from this marriage lose it. Much less so should the witness who falsely testified lose his priesthood. Rabbina opposed: Were we to use such theory the whole case of collusiveness would be made illusory. As the same *a fortiori* method could be applied thus: He through whose false testimony a man was already stoned, is not to be stoned; so much less so if the accused man was not as yet stoned? Therefore the best is as it is answered above.

"*Is to be exiled*." Whence is all this deduced? Said Resh Lakish: From here [Deut. xix. 5]: "This one shall flee unto one of these cities," etc., *i.e.*, *this one*, but not his collusive witnesses. R. Jochanan, however, said: This is to be drawn by *a fortiori* reasoning. He who has done such a crime intention. ally does not become exiled; so much less so he who is only testifying to such a crime. This statement, however, cannot be taken into consideration, as the reason why an intentional murderer is not to be exiled is that he shall not be atoned. But the witnesses who have not perpetrated such a crime should be exiled, so that they should expiate; therefore, the best interpretation is that of Resh Lakish given above.

Ula said: Where do we find a hint in the Scripture that collusive witnesses shall be punished with stripes (here is quoted from Tract Sanhedrin, p. 20, l. 39 to p. 21 up to l. 17. See there). The rabbis taught, "there are four points concerning collusive witnesses: (*a*) they are not made sons of a divorced woman or of such who has performed the ceremony of chalitza; (*b*) they are not exiled to the cities of refuge; (*c*) they do not pay the atoned money, and (*d*) they are not sold as Hebrew slaves." In the name of R. Aqiba it was said that: Nor do they pay on self-confession. They are not made sons of a divorced woman, etc., as said above, nor are they to be exiled as said above, and they do not pay atoned money, because the rabbis hold that the money which one has to pay in case his ox has killed a person is not considered as a recompense for damages, but as an atonement, and collusive witnesses are not under the category of atonement. And who is the Tana who holds this? Said R. Hisda: It is R. Ismael, the son of Johanan b. Brokah. (See Baba Kama, p. 90, l. 2 from bottom, to 91, l. 16.)

"And they are not sold as Hebrew slaves." R. Hamnuna was about to say that this is only in the case when he, the alleged defendant, has money to pay for the theft, or if the witnesses have money to pay; but in case both have not they are to be sold. Said Rabba to him: It reads [ibid. xxii. 2], "he shall be sold for *his theft*, but not for his collusiveness." The text says in the name of R. Aqiba, etc.: What is his reason? He holds that this is only a fine, and one does not pay fine upon his self-confession. Said Rabba: There is a support to R. Aqiba's theory in the fact that a collusive witness, though he has not committed the crime manually, is nevertheless responsible, and is to be killed in case his testimony caused a death-sentence; and likewise in civil cases he has to pay, although he has done no damage. And similarly said R. Na'hman.

R. Jehuda in the name of Rabh said: A collusive witness pays his share. What does this mean? Shall we assume that in the case where two witnesses were found collusive each of them pays half? This is already stated further on in a Mishna. Or does it mean that if one of them was

found collusive, he has to pay half? This is not so, as there is a Boraitha which states that there is no payment imposed unless both are found collusive. Said Rabha: He speaks of the case when one came before

the court testifying: I, together with so and so, have testified before such and such a court, and we, having been found collusive, the court has decided that we have to pay such and such an amount. And lest one say that, as his testimony does not make liable his colleague, he himself should not be responsible either, he comes to teach us that this is not so.

MISHNA *II*.: We testify that so and so has divorced his wife and has not paid the amount mentioned in her marriage contract (and that testimony was false). Although they have not done any damage, as the husband has to pay the marriage contract at some time, they are nevertheless not free from the following payment--namely, it is to be appraised how much one would risk for her marriage contract in case she should remain a widow or be divorced. However, if she died while her husband is still alive, he would inherit her (and such an amount they have to pay).

GEMARA: How should the appraisement be made? (here are two kinds of risks, one can risk to buy the inheritance of a woman from her husband, who would inherit her in case of her death when he is still alive; and one can also risk to buy this from the woman in case her husband die first. However, there is a great difference concerning the amount one would risk. As a rule, one would give much more when buying it from the husband than from the wife). According to R. 'Hisda the appraisement must be of the husband's, and according to R. Nathan b. Oshia, of the wife's estate. Said R. Papa: It prevails that the appraisement should be as of the wife's, and only to the amount mentioned in her marriage contract, without, however, touching the benefit which her husband has in the fruit of her estate while she is yet alive.

MISHNA *III*.: We testify that so and so owes to his neighbor a thousand zuz on the condition to pay him this debt after thirty days from to-day. He, however, claims that he has to pay the amount at the expiration of ten years: and such was found to be the case. It remains, then, to appraise how much one would give for keeping a thousand zuz ten years instead of thirty days, and such an amount they have to pay.

GEMARA: R. Jehuda in the name of Samuel said: If one made a loan to his neighbor for ten years the Sabbathic year does not annul it, and although when the Sabbathic year will arrive, he would transgress the negative commandment. "He shall not exact it of his neighbor" [Deut. xv. 2], yet at present

this commandment does not exist, and we do not care for the later time. Said R. Kahana: This we have also learned in our Mishna, which states that the witnesses have to pay only the difference between thirty days and ten years. And if the Sabbathic year released the whole debt, they would have to pay the whole thousand zuz. Said Rabha: The Mishna may refer to one who lends his money on a pledge, or to one who transfers his documents to the court; and there is a Mishna teaching that in such cases the Sabbathic year has no effect.

R. Jehuda said again in the name of the same authority: "If one says I will make you a loan with the stipulation that the Sabbathic year shall not release me, it nevertheless releases." Shall we assume that Samuel holds that such is considered a condition against the biblical law, and it therefore does not hold good? Is it not taught (Baba Metzia, p. 126) if one says: I sell this article to you on the condition that you shall not claim any cheating against me, etc.? According to Samuel the condition holds good, though such a condition is against the written law? Yea, but to this it was added by R. Anan that Samuel himself has explained it to him (see continuation, p. 127); and according to this explanation there is no contradiction here. Now as the case here is analogous, it follows that he made the condition: "The Sabbathic year shall not release *me*, it releases nevertheless. But if he says in the condition that *you* shall not release it, then his condition holds good."

There is a Boraitha to the effect that if one loans money to his neighbor without a fixed term of return, he has no right to demand it before the elapse of thirty days. And Raba b. b. 'Hana was about to interpret this Boraitha in the presence of Rabh that such is the case only when he lends on a document, as one would not trouble himself to write a document for less than thirty days; but if it was a verbal loan, he may demand it at any time. Said Rabh to him: So said my uncle that there is no difference between a verbal and a written loan as regards the thirty days, so long as the loan was made without any term. Similarly we have learned in a Boraitha. Samuel said to R. Mathna.. You shall not sit down before you have explained me the courses wherefrom is based the Halakha that one shall not demand a loan no matter whether it be verbal or written before the elapse of thirty days? And he answered from [ibid., ibid. 9]: "The seventh year, the year of release," etc. Is it not self-evident that the seventh year is the year of release? why then

the apposition? To tell that there is another release similar, and this is a loan without a term which cannot be demanded before thirty days, as the master said that thirty days, a fragment of a year, is considered a whole year.

MISHNA *IV.*: We testify that so and so owes 200 zuz to his neighbor, and they were found collusive; they have to suffer both stripes and payment, because the negative commandment for the trespass of which they have to receive stripes does not, make them pay. And only another verse concerning collusiveness makes them to pay. Such is the decree of R. Mair. The sages, however, maintain that he who pays is not to be punished with stripes. If they testify that so and so has deserved forty stripes, and are found collusive, they are to be punished with twice forty stripes, once on the basis of the negative commandment: "Thou shalt not bear false witness," and, secondly, on that of the commandment: "Shall ye do unto him as he had purposed to do unto his brother"; such is the decree of R. Mair. The sages, however, say: they suffer stripes only once.

GEMARA: This is in accord with the rabbis' theory, which reads [ibid. xxv. 2]: "According to the degree of his fault," which statement is to be explained that he is made responsible for one fault, and not for two. But what is the reason of R. Mair's decree? Said Ula: He bases it upon the case of an evil name, for which crime the law prescribes the double punishment of stripes and payment, and analogous is the case here treated. But is not the payment for an evil name considered a fine? He, R. Mair, holds with R. Aqiba that the payment of collusive witnesses is also required as a fine.

There are others who refer the saying of Ula to the following Boraitha: It reads [Ex. xii. 10]; (see Sanhedrin, p. 185, l. 23, to the end of the par.), and to the question, whence is it known that to a negative commandment that does not contain manual labor, the punishment of stripes does not apply, Ula answered from the case of an evil name stated above. What, then, do the rabbis who do not hold that they shall be beaten twice infer from "Thou shalt not bear false witness"? They need this for a warning to the case of collusiveness. And where is to be found such a warning according to R. Mair? Said R. Jeramaia in [Deut. xix. 20]: "And those who remain shall hear and be, afraid, and shall henceforth," etc. The rabbis, however, infer from this passage that such a case must be heralded (see Sanhedrin,

p. 256). As to R. Mair, he, too, infers from here heralding, as according to him the words "and shall be afraid" would be superfluous, if heralding were not inferred therefrom.

MISHNA *V.*: The fine of money may be divided into two or three shares; however, this is not to be done with stripes. How so? If they have falsely testified that one owes to his neighbor 200 zuz, and they were two or three persons, each of them has to pay his share to complete that amount. But if they have falsely testified that one deserves forty stripes, each of them is to get forty stripes in full.

GEMARA: Whence is all this deduced? Said Abaye: Concerning stripes, it reads [Deut. xxv. 2]: "Wicked"; and [Numb. xxxv. 31] it reads also "wicked" concerning capital punishment, and as that cannot be divided, so stripes are not to be divided either. Rabha, however, said: The reason is this: The punishment ought to be done to him as he had the purpose to do it to his brother. And as each one of them intended that the defendant be beaten with forty stripes, he has to get just the same. But why should not the same be concerning money fine? Because money if counted together completes the amount he should suffer, which is not the case with stripes.

MISHNA *VI.*: Witnesses cannot be made collusive unless the falsehood lies in their bodies; how so? If, *e.g.*, they testify that so and so has killed a person and another party of witnesses came to contradict them, saying: How can you testify so? The killed one or the alleged murderer was with us at that date in such and such a place. They are, nevertheless, not considered collusive (so that they should be killed instead); but if the other party say you yourself were with us at that date in such a place, consequently you could see neither the murderer nor the killed one, then they are considered collusive and are to be killed upon such a testimony. If, thereafter, a third party of witnesses came and made collusive the second party, and a fourth party made collusive the third party, even if the number reach to 100 parties they all are to be killed. R. Jehuda, however, maintains that such parties of witnesses are to be considered στασις, and only the first party is to be killed.

GEMARA: Whence is this deduced? Said R. Ada: From [Deut. xix. 18]: "And, behold, if the witness be a false witness, he hath testified a falsehood against his brother," which means that the body of the witness should be found false. The disciples of R. Ismael taught, it reads [ibid., ibid. xix. 16]:

[paragraph continues] "Testify against him for any deviation," 1 which means the testifying itself should be a deviation.

Rabha said: "If two persons testify that one has killed a man in the east side of such and such a palace, and another party of witnesses come, saying that the same witnesses were with them in the west of the same, it is to be investigated if, while standing on the west side, one can see what is going on in the east side, they are not to be considered collusive, otherwise they are." Is this not self-evident? Lest one say that we have to investigate, perhaps their sight is better than the usual one, so that they could see, he comes to teach us that this does not matter. The same said again: "If two have testified that one has killed a person in the City of Sura Sunday morning, and another party came and testified that the same persons were with them in the City of N'hardaia Sunday evening, an investigation is to be made, if it is possible.

If the investigation shows that it is possible for one to walk during that time from Sura to N'hardaia, then they are not collusive; otherwise they are." Is this not self-evident? Lest one say it is to be feared perhaps the man went to the latter city in a flying camel 2 he comes to teach us that such fear must not be taken into consideration.

And he said again: If they testify that on Sunday one has killed a person and are contradicted by another party that on Sunday they were with them, however it is a fact that the same person has killed a man on Monday; or even if they said that this man killed a person on Friday, the collusive witnesses are to be put to death, because at the time they testified the defendant was not as yet sentenced to death. But if they testified that the death sentence occurred on Sunday, and the other party testifies that they were with them at that time, the sentence, however, having occurred on Friday, or even on Monday, the first party is not to be considered collusive, because at the time they testified, the defendant was already sentenced to death. And the same is the case concerning fines. If, for instance, they testify that so and so has stolen an ox, slaughtered him or sold, on Sunday (for which he has to pay four and five fold), and the other party says that on Sunday they were with

them, but the defendant did so on Monday, the first party is subject to the fine, because on Sunday the defendant was not as yet liable. However, if they say that the accused has done so on Friday; or even if they say that the decision of the court occurred on Monday the first party is not considered collusive, because at the time they testified, the man was already sentenced to a fine.

"*R. Jehuda, however, said*," etc. But according to him that all the parties are *staçis*, why should the first party be put to death? Said Rabha: He means to say that if there was only one party of witnesses. But did he not say the first party only? This difficulty remains. A woman once brought witnesses, and they were found false. She then brought another party, who were also found false. She then brought a third party. Said Resh Lakish: This woman is to be considered suspicious whose purpose is to use false witnesses. Said R. Alazar to him: Because she is suspicious should all Israel be suspected of testifying falsely? Such a case happened also before the court of R. Johanan, and Resh Lakish said the same as above. But R. Johanan exclaimed: "If she is suspicious should all Israel be suspected?" He (Resh Lakish) looked at R. Alazar rebukingly, saying: You have heard your statement from Bar Naf'ha (R. Johanan), and you have

not mentioned his name! Shall we assume that R. Johanan is in accordance with the rabbis of our Mishna, and Resh Lakish is in accordance with R. Jehuda? Nay. Resh Lakish may say: "I am in accordance even with the rabbis, as in that case there was no one who searched for witnesses. In this case, however, the woman was searching for them." And R. Johanan may say: "I am in accordance with R. Jehuda"; however, this case is different, as she may have thought that the first parties were aware of her case, and she erred. The third party, however, may be aware of it.

MISHNA *VII*.: Collusive witnesses are not to be killed unless the sentence of capital punishment for the defendant is rendered. As only the Saducier declare that the collusive witnesses are put to death after the defendant was executed. Because it reads [Ex. xxi. 23]: "Life for life," to which the sages answered: Is it not written: "It shall be done to him as he had purposed to do unto his brother"? which means that his brother is still alive. Why, then, is it written "Life for life"? Lest one say that they should be executed as soon as their testimony was accepted, therefore it reads, "Life for life," to teach

that they are to be put to death only, then, when the death sentence for the defendant was already rendered.

GEMARA: There is a Boraitha Biribi says: If the man who was accused by them was not executed as yet, the collusive witnesses are put to death; but if he was already executed, they are not. Said his father: "My son, can this not be argued by *a fortiori* reasoning that they should be put to death, if the accused was executed?" And he answered: "My master, have you not taught me that there is no punishment on the ground of *a fortiori* conclusions?" And this we have learned in the following Boraitha: It reads [Lev. xx. 17]: "If a man take his sister, the daughter of his father, or the daughter of his mother," from this we know only about the daughter of his father, not of his mother, and *vice versa*. But where do we know that he is guilty when she was the daughter both of his father and mother? To this it reads at the end of this verse, "The nakedness of his sister hath he uncovered." And this is written only for the purpose that one should not say that such is to be drawn by *a fortiori* conclusion, thus: If he is guilty for his sister who was only from one side, his father's or mother's, how much the more should he be guilty when she was his sister from both sides? Hence, from this we have to learn, that there is no punishment based on *a fortiori* conclusions. Thus far concerning punishment; but whence do we know that the same is the case concerning warning? To this it reads [ibid. xviii. 9]: "The nakedness of thy sister, the daughter of thy father, or the daughter of thy mother." And it is also repeated [ibid., ibid. ii.]: "She is a sister," etc. Also for this purpose one shall not base this on *a fortiori* conclusion. All this is concerning capital punishment. But whence do we know that the same is the case with stripes? From an analogy of the expression "wicked" stated above (p. 7) and whence do we know that the same is the case concerning exile? From the analogy of expression "murder" as stated above. There is a Boraitha. R. Jehuda b. Tabai said: "May I not live to see the consolation of our nation, if I have not killed a collusive witness for the purpose of removing from the mind of the Saducier, who say that, collusive witnesses are not put to death, unless their accused were executed. Said Simeon ben Shata'h to him: I, too, swear by the consolation of our nation that you had shed innocent blood, as the law dictates that witnesses should not be put to death unless both of them are found collusive. Then Jehuda ben Tabai decided that he

shall not render any decision before consulting Simeon ben Shatah. And all his lifetime he used to prostrate himself upon the grave of that witness. And a voice was heard. People thought that this was the voice of the dead one. But Jehuda told them that it was his own voice, saying, "You will see that after my death no voice will be heard."

MISHNA *VIII.*: It reads [Deut. xvii. 6]: "Upon the evidence of two or of three witnesses, shall he that is worthy of death," etc. If the evidence of two persons is sufficient, why does the Scripture mention three? To compare the evidence of three to that of two in the case of collusiveness, as another party of two, make the first party of two collusive, so they make them collusive even if the first is of three. And whence do we know that, even if they were a hundred persons, the evidence of two persons is sufficient? To this it reads: "Witnesses." R. Simeon, however, maintains that as two cannot be put to death, unless both of them are found collusive, so is it if they were three, all of them must be found collusive. And even if their number reaches a hundred, all of them must be found collusive before sentencing one of them to death. R. Aqiba, however, maintains that the third witness mentioned in the Scripture was not for the purpose to make for him the punishment more lenient, but, on the contrary, to make it more rigorous--viz., lest one say as the testimony of the third one was superfluous, because the evidence of two suffices, and, therefore, he should not be punished at all. The Scripture terms the third one in order to make him equal with the former two. From this we see that the verse punishes one, an accomplice who conjoins himself to transgressors, with the same punishment to be inflicted upon the transgressors themselves. And we may learn from this: That so much the more will he who conjoins himself to those who are engaged in meritorious acts, be rewarded equally with them. Three witnesses are also equal to two in case one of them was found a relative or legally unfit for witnessing, as it is in the case of two when the testimony is invalidated, so it is in the case when one of the three was found such. And the same law applies even when their number reaches a hundred, from the expression "Witnesses." Said R. Jose: This is said concerning criminal cases only, but in civil cases, if one was found a relative or unfit, the evidence of the remainder is to be taken into consideration. Rabh, however, said, that as regards this there is no difference between civil and criminal

cases. However, this rule holds good only when the relatives took part in warning the trespasser; but if they did not, the evidence of the others must be taken into consideration, since, if not, what could two brothers do when both saw that some one has killed a person (and there were also some other ones who have seen the murder, should then the testimony of the others be eliminated as void because there were also two brothers)?

GEMARA: Rabha said: The Mishna treats of a case where all of them have testified at once. Said R. A'ha of Difti to Rabbina: How could such a thing be possible with a hundred persons; could all of them testify at once? And he answered: It means that every one of them has testified just as his colleague has finished his testimony.

"*What could two brothers do*?" But how shall the court examine them? Said Rabha: They are to be questioned for what purpose they came here: to testify, or merely to see? If they say, we came to testify, then, if there was a relative or an unfit among them, their testimony is void; but if they say that merely to see, then must be taken into consideration the testimony of the others,

since what could two brothers do, etc., as illustrated in Mishna.

It was taught: R. Jehuda in the name of Samuel said: The Halakha rules in accordance with R. Jose. And R. Nachman said: It rules in accordance with Rabbi.

MISHNA *IX*.: If two persons have seen the crime from one window and two others have seen it from another window, and there was one standing in the middle and warning the criminal, if the two parties could see each other, all of them are considered as one party of witnesses. But if not, they are considered two parties. And therefore if one of the parties was found collusive, he (the accused) and they (the collusive) are put to death, and the other party is free. R. Jose, however, maintains that there is no capital punishment unless two witnesses have warned this culprit, as it reads: "Upon the mouth of two witnesses." 1 Another explanation of the words upon the mouth is that the Sanhedrin must not hear the evidence from a demonstrator (but they themselves must understand the language of the witness).

GEMARA: R. Zuthra b. Tubia in the name of Rabh said:

[paragraph continues] Whence do we know that one witness is not relied upon? From [ibid., ibid. 6]: "He shall not be put to death upon the evidence of one witness." What does the expression, "one witness," mean? If it means that the testimony of one witness does not suffice, this is already stated above, "two witnesses"; hence it means that if two witnesses saw the crime separately, each from another place, and if they themselves could not see each other, such witnesses are not considered conjoined, so that their testimony should be taken into consideration. Furthermore, even if this was from one window, but one has seen it first, and then the other, they are likewise not to be considered conjoined. Said R. Papa to Abayi: Was it necessary to state this after the former statement, that even if each of them has seen the whole crime they are not to be conjoined if they do not see each other? So much the less so if each of them has seen but half of the act. And he answered: He speaks of an adultery case. Rabha said: If both of the witnesses have seen him who warned them, they are considered conjoined. And he said again that the warning suffices even if it comes from the mouth of the killed one. And even if a voice of warning was heard without their knowing whom it is from. R. Na'hman said: The individual witnesses in question are fit for civil cases, as it reads: "He shalt not be *put to death* upon the evidence of one witness," from which we learn about criminal cases only, but in civil cases they are to be considered.

"*R. Jose said*," etc.: Said R. Papa to Abayi: does R. Jose really hold such a theory? Have we not learned in a Mishna that if an enemy has killed unintentionally, he may be put to death because he is considered vicious, and warned? And he answered: This is not R. Jose from our Mishna, but R. Jose b. Jehuda from the following Boraitha, who said: A scholar needs no warning, for the warning is on the whole only for the purpose, that the court know whether it was done intentionally or unintentionally.

"*From a demonstrator*," etc. There were two foreigners who appeared in the court of Rabha, and he appointed an interpreter for them. But why did he do so? Is it not stated that the judges must not hear the case through an interpreter? Rabha understood what they said, but he could not answer them in that language.

Ailea and Tubia were relatives of a surety, and R. Papa was about to say that they are fit to be witnesses, because they are

not relatives of the lender and borrower. Said R. Huna b. R. Joshua to him: If the borrower should not pay would not the lender demand the debt from the surety? Hence they are considered relatives in this case, and are not fit to be witnesses.

MISHNA *X.*: If, after the decision had been rendered the guilty one ran away, and thereafter he returned to the same court, his case must not be reconsidered. Everywhere, if two persons standing at any place testify that a decision was rendered for so and so by such and such a court, according to the testimony of the witnesses, so and so, the accused may be put to death upon their testimony.

The court of Sanhedrin is to be established in Palestine as well as in the countries outside of it.

The Sanhedrin who executes a person once in seven years, is considered pernicious. R. Eliezar b. Azariach said: Even one who does so once in seventy years is considered such. Both R. Tarphon and R. Aqiba said: If we were among the Sanhedrin, a death sentence would never occur. To which R. Simeon b. Gamaliel said: Such scholars would only increase bloodshed in Israel.

GEMARA: The Mishna states if he return to the same court his case must not be reconsidered. From which it is to be understood that if he returns to another court, it is to be reconsidered. And in the latter part it states that if two testify that such a decision was rendered, etc., he is to be put to death without any reconsideration? Said Abayi: This presents no difficulty. If he runs away to a court in Palestine from outside, it is to be reconsidered. As it is stated in the following Boraitha, R. Jehuda b. Dusthai said in the name of R. Simeon b. Shatah: That if one runs from the Palestine court to an outside court, his case must not be reconsidered. But if *vice versa*, it is to be reversed, because of the privilege Palestine has.

"*Sanhedrin are to be established*," etc. Whence is this deduced? From what the rabbis taught. It reads (Numb. xxxv. 29]: "For a statute of justice throughout your generations, in all your dwellings." From this it is inferred that Sanhedrin are to be established in Palestine as well as in the countries outside. But why is it written elsewhere "in thy gates"? To say that "in thy gates" in Palestine, you have to establish courts in every principal city, as well as in the small cities; but in the countries out of Palestine, you have to establish them in the large cities but not in the small ones.

Footnotes

8:1 Leeser translates "wrong"; however, he is wrong according to the sense in the text.

8:2 *Rodkinson*: The text says it shall be feared that they went there on a flying camel, We have rendered it a balloon, as the sense is the same. *JBH*: I have redacted this as the much more charming and to the point 'flying camel'.

12:1 The term in the Bible is *al pe* and the Hebrew term for mouth is *pe*, and he takes it literally.

Next: Chapter II

CHAPTER II.

RULES AND REGULATIONS CONCERNING UNINTENTIONAL MURDER AND EXILE WHICH IS THE PUNISHMENT THEREFOR.--WHO IS AND WHO IS NOT SUBJECT TO EXILE.--THE CITIES OF EXILE AND THEIR PREPARATIONS.--THE REDEEMING OF THE EXILED BY THE DEATH OF THE HIGH-PRIEST.

MISHNA *I.*: The following are exiled: He who kills a person unintentionally. If, *e.g.*, one fixes his roof with a machine and the latter falls from his hand and kills a man, or if he takes off a barrel from the roof and it falls from his hand and kills, or if he himself falls from the ladder while descending and kills, he is to be exiled. However, if, while carrying the machine up to the roof, or pulling a barrel on a rope up to the roof, the rope breaks and the barrel falls and kills, or if he himself, while ascending to the roof, falls and kills, there is no exile. As there is a rule that for killing while descending, he is exiled, but not while ascending.

GEMARA: Whence is this deduced? Said Samuel: From [Numb. xxxv. 23]: "And he have let it fall upon him, that he died," which means that it fell in the usual manner. The rabbis taught [ibid., ibid. 15]: "Unawares" means to exclude the case when it was done intentionally; [Deut. xix. 4] "without knowledge" to exclude him who intends to do so. But is it not self-evident that he who kills a person intentionally is to be put to death? Said Rabha: It excludes even him who thought that such is allowed. Said Abayi to him: Is the act of one who thought that such is allowed not to be considered an accident? Answered Rabha: I hold that such is to be considered almost intentional.

Further on it is stated "without knowledge to exclude him who intended to do so." Is this not self-evident? Said Rabha, *i.e.*, to exclude him who intended to kill an animal, and killed a man, or miscarried and killed a full term child.

The rabbis taught: It reads [Numb. xxxv. 22]: "If he have pushed against him accidentally "means to exclude a corner

[paragraph continues] (where the injured one has entered, while the murderer was going from the opposite with a knife in his hand and wounded the former). "Without enmity" excludes the case where the murderer was his enemy. "Pushed" means with his body. "Or have cast upon him" includes the one who injured while bending himself for the purpose of raising his instrument to land the blow harder. "Without lying in wait" excludes him who intended to strike in one side, but struck in the opposite. [Ex. xxi. 13] "And if he did not lie in wait" excludes the one who intended to throw it as far as two and threw it four yards. [Deut. xix. 5] "And he that goeth into the forest with his neighbor" means as the entrance into a forest is permitted to every one, so also must the place be open where the accident happened--be open to every one--to the injurer

as well as to the injured. R. Abuhu questioned R. Johanan: What is the law in this case: If one was climbing a ladder and, a step having been broken under him, he fell down and killed; is this to be considered on *ascending*, for which one is not liable, or on *descending*; for which he is? And he answered: It is already explained above: That a *descending* for the purpose of *ascending* is included. He (Abuhu) objected to him from the following: "This is the rule, that if while descending he is to be exiled, but if while ascending, he is not." Does not the expression "while ascending" include a similar case to that about which I questioned you) And be answered: According to your theory, the expression "while descending" must also include something. And what is it? You must then say that it means to include chopping, *e.g.*, a butcher that chops meat and kills a man (by a slip of the hatchet, etc.); similarly it may be said that the expression "while ascending" means to exclude same. As we have learned in the following Boraitha: "A butcher who has chopped meat," etc. One Boraitha declares him guilty if the killing was in front of him, but not if it happened behind. And another Boraitha asserts the contrary. A third one, however, declares him free at any rate. And they are not contradictory, since one of them speaks of the case that, while he was bending himself, the accident took place in front of him, he is then responsible. And if through his rising the accident happened behind, he is free. And the other two Boraithas speak of cases which happened to be in the contrary and otherwise.

Shall we assume that in this case the Tanaim of the following Boraitha differ--viz.: If one has climbed a ladder and the

step under him broke and killed, one Boraitha declares him guilty, and another free. Is it not because one considered his climbing as *ascending* and the other as descending? Nay, according, to both, it is considered as *ascending*. But that which declares him liable means in respect of damages, and that which declares him free means from exile.

MISHNA *II*.: If the iron of a hatchet slipped off and killed, according to Rabbi he is not to be exiled, and according to the sages he is. The same differ also as regards the case where a piece of wood split off from the felled tree and kills; according to Rabbi he is, and according to the sages he is not exiled.

GEMARA: There is a Boraitha. Rabbi said to the sages: Does it read [Deut. xix. 5]: "The iron slippeth from *its* tree"? It reads, "from *the* tree." And secondly, in the beginning of the verse the expression is "to hew (*etz*) trees," and herewith "the iron slippeth," the same word, *etz*, is used, whence, as above, it means that a chip slipped from the tree, so by the expression "from the etz" is meant a piece of wood split from the tree. Hence, he is to be exiled. Said R. Hiye b. Ashe in the name of Rabh: Both (the sages and Rabbi) took their opinion from one and the same passage cited above. Rabbi holds that the law must be decided in accordance with the Masora writing, which is "*v'nishshel*," *i.e.*, and the iron chips off a part of the wood. And the rabbis hold that the attention must be called to the traditional reading which is *v'nashal, i.e.*, "and the iron slips off the helve." But does Rabbi indeed hold that attention must be given to the *Masora*? Did not R. Itz'hak b. Joseph in the name of R. Jo'hanan say: Rabbi, R. Jehuda b. Roietz, the school of Shamai, R. Simeon and R. Aqiba all hold that the attention must be given to the traditional reading? For this purpose Rabbi added in his discussion "and secondly," etc.

R. Papa said: If one threw a lump of brittle stone at a date tree and the dates fell off and killed (a child), we come to the differing of Rabbi and the sages mentioned in our Mishna.

Is this not self-evident? Lest one say that Rabbi would consider this as a secondary force (*i.e.*, the killing was not the result of the direct force of the man who struck the tree, but of the second force of the tree), he came to teach us that it is not so. What then is considered second force according to Rabbi? If, *e.g.*, he struck a bare branch of the tree, and it struck the

branch upon which the dates were growing, and the dates fell and killed.

MISHNA *III*.: If one throws a stone in a public ground and it kills, he is to be exiled. R. Eliezer b. Jacob, however, maintains: If after the stone had been thrown one bent his head and received it, the thrower is free. If one throws a stone in his yard and kills a person, he is guilty if the killed one had a right to enter it, otherwise he is not. Because concerning this case a forest is mentioned in the Scripture, that the place of injuring should be similar to a forest into which every one is allowed to enter; excluding a private yard into which every one is not permitted to enter. Aba Shaul said: As the hewing of wood (mentioned in the Scripture in this case) is a private thing, so also the punishment of exile attaches but to a private act; excluding, *e.g.*, a father who struck his son, or a teacher his pupil, or the messenger of the court who was on duty.

GEMARA: In public ground! Then he must be considered an intentional murderer? Said R. Samuel b. Itz'hak: It speaks that the accident occurred while he was removing his wall (see the discussion to this answer in Baba Kama, p. 72, l. 11-26).

"*R. Eliezer b. Jacob said*," etc. The rabbis taught: It reads [Deut. xix. 5]: "And find [1] his neighbor," to exclude him who causes himself to be found under the stone. And from this R. Eliezer b. Jacob inferred his theory, that if after the stone was already thrown, one has put his head under it and was killed, the thrower is free.

"*As hewing wood*," etc. One of the rabbis questioned Rabha: Is hewing wood always considered a private affair? Is there not a meritorious act to hew wood for making a *Sukka* or for the purpose of burning it upon the altar? Hence, if an accident happened by such an act, let him be free. And he answered: This cannot be considered so, as a *Sukka* can be prepared from hewed wood, and the same it is with the altar. Hence, such an act cannot be considered meritorious.

MISHNA *III*.: A father is exiled if the accident happened to his son, and *vice versa*. All kinds of human beings are exiled when they killed by accident an Israelite; and same is exiled if he killed one of them accidentally, except a proselyte (who accepted upon himself only the seven commandments which

were given to the descendants of Noah) who is to be exiled only, then, when he killed accidentally a proselyte like himself.

GEMARA: The Mishna states: A father is exiled if he killed his son accidentally. Was it not taught above that a father who struck his son is excluded? It speaks of a case where the son was

already a learned one; or of a father who taught a trade to his son, who had had already another trade.

"*And the son may be exiled*," etc. There is a contradiction from the following. It reads [Numb. xxxv. 15]: "That killeth any person unintentionally." "Any person" means to exclude him who struck his father? Said R. Ka'hana: This presents no difficulty; the cited Boraitha is in accordance with R. Simeon, who holds that choking, which applies to killing one's father, is more rigorous, and such cannot be atoned. And our Mishna is in accordance with the rabbis, who hold that the sword is more rigorous than choking. And therefore the sword applies to parricide; however, an error in a crime to which the sword applies, can be atoned.

"*All kinds of human being*," etc. What does the expression "all" mean to add? If a heathen and a slave, this was taught by the rabbis: A heathen or a slave is to be exiled or punished with stripes through an Israelite and *vice versa*. But how is this to be understood? It is correct that they are to be exiled in case an Israelite was accidentally killed by them, and by stripes it they cursed an Israelite. But how can this be done with an Israelite? It is correct that he is exiled when he killed one of them accidentally; however, how can he be beaten if he cursed one of them? Is it not written [Ex. xxii. 27]: "And a ruler among thy people thou shalt not curse." And it was explained that it speaks of him who acts according to the rules of thy people. Said R. A'ha b. R. Aika: It speaks of a case that one of the above-mentioned has hit an Israelite in such a manner as could not be appraised with payment. As R. Ami said in the name of R. Jo'hanan, that in such a case the heathen gets stripes. And the same is the case when an Israelite hits a heathen. And we do not compare the case of hitting with the case of cursing.

"*Except a proselyte*," etc. There are some who presented a question of contradiction in the following passages--viz. [Numb. xxxv. 15]: "For the children of Israel, and for the stranger and for the sojourner among them, shall these six cities," etc., while [ibid., ibid. 12] "And these cities shall be

[paragraph continues] *unto you* for a refuge," which means to exclude strangers. Said R. Kahana: "This presents no difficulty; verse 12 means in case the stranger killed an Israelite, while verse 15 speaks of a stranger who killed one of his like." But there is a contradiction from the following: "And therefore a stranger, or an idolator who has killed even unintentionally is put to death; hence, it compares a stranger to an idolator, as in the case of an idolator there is no difference whether he kills a person of his like, or any person. The same is the case with a stranger." Said R. 'Hisda: "This presents no difficulty, as one Boraitha speaks of him who killed while *descending*, and the other while *ascending*. He who killed while descending, in which case an Israelite is to be exiled, is also exiled; but if he killed while ascending, in which case an Israelite is free, is put to death." Said Rabha to him: "Is it not to be drawn by *a fortiori* argument that in such a case he is to be free; namely, if while descending, in which case an Israelite is exiled, he is also exiled only; in case of ascending, in which an Israelite is free, so much the more he should not be put to death?" and therefore, says Rabha, that only then when the stranger has killed intentionally, thinking that such is allowed; and this is in accordance with his foregoing theory (p. 15) that such is to be considered almost intentional. Abayi and R. 'Hisda, however, consider such a case an accident. Rabha objected to them from the following [Gen. xx. 3]: "Behold, thou shalt die for the sake of the woman whom thou hast taken." Does this not mean that he will die upon the decision of a human court? (Hence, although Abimelech thought

she is single, nevertheless the court would sentence him to death)? Nay, it means he deserves death by Heaven. And as evidence to this can be adduced, the expression [ibid., ibid. 6] "against me." But how can this theory be taken as evidence? Is it not written [ibid. xxxix. 9] "and sin against God"? Does this mean and not against men? It surely means that for such a sin against God he will be tried by the human court (which punishes adultery with death).

Abayi objected to Rabha from [ibid. xx. 4]: "Lord, wilt thou then slay also a righteous nation?" (Hence we see that his uncertainty is considered accidentally.) Nay, this objection was already met as follows: It reads [ibid., ibid. 7]: "For he is a prophet." How is this to be understood? Because be is a prophet she has to be returned, but if a layman, she would not

have to be returned? We must then say that this passage is to be interpreted in accordance with R. Samuel b. Na'hman thus: "Thou shalt return the wife at any rate, and to thy question, 'Lord, wilt thou then slay also a righteous nation? . . . . She is my sister,' etc., the answer is, he is a prophet, and has learned to say so from thyself." Usually, when a guest comes to a house, he is questioned about eating and drinking, but not whether the woman accompanying him is his wife or sister. (In his country, however, Abraham said that she is his sister only because he was questioned.) From all this it is to be inferred that a descendant of Noah is put to death because he had to learn and did not.

MISHNA *IV.*: Exile does not apply to a blind one. So says R. Jehuda. R. Meyer maintains that it does. An enemy is not exiled (as such a punishment does not suffice). R. Simeon, however, maintains: An enemy is to be put to death, for he is considered vicious. To which R. Simeon said: "It depends upon circumstances; sometimes such is exiled, and at other times he is not. For this is the rule: If there is a possibility to think that he killed intentionally, exile is not sufficient; but if such is not the case, he is exiled."

GEMARA: The rabbis taught [Numb. xxxv. 23]: "Without seeing" means to exclude a blind one who cannot see at all. So R. Jehuda. R. Meyer, however, maintains that this *includes* him; and their reasons are as follows [Deut. xix. 5]: "Into the forest," where, as usually, also the blind go; therefore the expression "without seeing" excludes him. Such is the reason of R. Jehuda. And R. Meyer's is: Because "without seeing" is an exclusion, and there being another expression "without knowledge," which is also an exclusion, we have two exclusions, and there is a rule that an exclusion after an exclusion comes to add something; hence it adds a blind one. R. Jehuda, however, explained the last expression to mean the exclusion of an intentional murder.

"*An enemy is to be put to death*." Why, he was not warned? Our Mishna is in accordance with R. Jose b. Jehuda, who says above (p. 13) that no such warning is needed.

"R. Simeon said," etc.: There is a Boraitha: How does R. Simeon illustrate his theory? If, *e.g.*, the rope, to which the man's instrument was attached, broke--then he is exiled; but if the instrument slips out of his hand, exile is not sufficient, as he was the enemy of the killed, it is to be supposed that he did

it intentionally. But have we not learned in another Boraitha: R. Simeon said. He is not exiled "until the entire ramming machine slips out of his hands"? Hence it contradicts in both cases: in case the rope broke, and in case the instrument slips. Nay, there is no contradiction in case of the rope; as one speaks of an enemy and the other of a friend. There is also no contradiction in case of the slipping of the instrument; as one Boraitha is in accordance with Rabbi (who says: If such a case happen to a friend he is exiled), while the other is in accordance with the rabbis who do not agree with him. 1

MISHNA *V.*: Whither are they to be exiled? To the cities of refuge, three of which are situated on the other side of the Jordan and three in the land of Cana'an. As [Numb. xxxv. 14]: "Three of these cities shall ye give on this side of the Jordan, and the three other cities shall ye give in the land of Cana'an." However, until the latter three were selected, those on this side of the Jordan have not protected as yet; as it reads [ibid., ibid. 13]: "six cities of refuge," which means none of them protects unless all the six are selected.

They were also obliged to prepare roads from one city to the other; as it reads [Deut. xix. 3]: "Thou shalt put in order for thyself the (way to them), and divide into three." Two scholars are to accompany the exile on the road to protect him, so that he shall not be killed by the relatives of the deceased, and they are to reconcile them. R. Meyer, however, said: He himself has to reconcile them, as it reads [ibid., ibid. 4]: "And this is the talk 2 of man-slayer." R. Jose b. Jehuda, however, said: Formerly all murderers, accidental as well as intentional, used to flee to the cities of refuge; the court then sends after them and tries them. He who was found guilty was executed, otherwise he was freed; and him who was to be exiled they returned to the city of which he was taken; as it reads [Numb. xxxv. 25]: "The congregation shall restore him to the city of his refuge."

GEMARA: The rabbis taught: Three cities Moses separated on this side of the Jordan, and opposite them Joshua separated out in the land of Cana'an, and they were right opposite:

one against the other, as two rows in a vineyard." Namely [Joshua xx. 7] "Hebron in Judah," opposite [Deut. iv. 43] "Bezer in the wilderness," "Shechem in the mountain of Ephraim", "Ramoth in Gil'ad," "Kedesh in Galilee in the mountain of Naphthali," "Golan in Bashan." "And divide into three" means there shall be the same distance from South Palestine to Hebron as from Hebron to Shechem; and from Hebron to Shechem as from the latter to Kedesh, and from Shechem to Kedesh as from the latter to North Palestine. Now let us see: three were needed on the other side of the Jordan, and only three for the whole land of Israel? Said Abayi: In Gil'ad there were many murderers, as it reads [Hosea vi. 8]: "Gil'ad is become a city of workers of wickedness, is full of traces of blood." What does this expression mean? Said R. Elazar: They were thirsty to shed blood. Why were the cities on both sides of the Jordan far from the boundary, and the middle one was near? Said Abayi: Because Shechem was also full of murderers; as it reads [ibid., ibid. 9]: "And troops that lie in wait for a man, like the band of priests, they murder on the way to Shechem." 1 "Band of priests"--what does it mean? Said R. Elazar: They conjoin themselves to kill as the priests conjoin themselves to receive the heave-offering from the barns. But were there not more cities of refuge? Is it not written [Numb. xxxv. 6]: "And in addition to them shall ye give forty and two cities"? Said Abayi: The former protect the refugee at any rate, whether he is aware of that city being a place of refuge or not; while the latter accept him only when he was aware.

Was then the city of Hebron indeed a city of refuge? Does it not read [Judges i. 20]: "And they gave Hebron," etc. Said Abayi: It was only the suburb of it, as it reads [Joshua xxi. 12]: "But the fields of the city, and its villages, they gave to Caleb." Was Kedesh one of them? Does it not read [ibid. xix. 37]: "And Kedesh, and Edre'i," etc.? And there is a Boraitha that the city of refuge must neither be too large nor too small, but middle-sized ones. (The cities mentioned there were, however, all large ones?) Said R. Joseph: "There were two cities of the same name." Said R. Ashi: As, for instance, Sliquus and Aquri of Sliquus.

The text says: Middle ones. To this is added: They must

be situated in places where there is water, and also where there are markets; and if such are not found, the same must be established. Also must they be situated near the army, and if the army was diminished, it must be added. If the dwellings in such cities become vacated, there must be brought new people composed of priests, Levites, and Israelites; and ammunition must not be sold in such cities, according to R. Ne'hamayi. The sages, however, allow this. But both agree that neither snares (for catching beasts) nor rope factories must there be established. All this is to prevent the relatives from coming to the cities in question. And R. Itz'hak said: This is inferred from [Deut. iv. 42]: "And that he should flee unto one of these cities and live," which means you shall prepare for him all the necessities of life. And there is a Boraitha that if a disciple is exiled, his master is exiled with him; because the expression "and live" means you shall supply him with the sources of moral life. And R. Zera said: From this we infer that one shall not teach a disciple of bad character. R. Johanan says: If it happens that the head of a college is exiled, the whole college is exiled with him. Is that so? Did not R. Johanan say that the study of the Torah relieves one; for immediately after the verse "in the wilderness" stated above, is written "and this is the law"? This presents no difficulty: it relieves only at the time he is occupied with it, but not otherwise. And if you wish, it may be said that it relieves from the Angel of Death; as it happened with R. Hisda, who was studying continuously, so that the Angel of Death could not come near him until he caused the cedar in the yard of the college to break, the noise of which stopped his studying, and the Angel of Death took hold of him. R. Tan'hum b. Hanilaye said: Why is the tribe of Reuben mentioned first among the cities of safety? Because he was the first to save Joseph from his brothers, as it reads [Gen. xxxvii. 21]: "And when Reuben heard it, he delivered him out of their hand."

R. Simlae lectured: It reads [Deut. iv. 41]: "Then Moses set aside three cities on this side of the Jordan, toward the rising of the sun." The Holy One, blessed be He, said to Moses: "Thou hast made the sun shining toward the murderers."

R. Simaye lectured: It reads [Eccl. v. 9]: "He that loveth money will never be satisfied with money; but he that loveth abundance, will finally have income." [1] He that loveth money

means Moses, our Master, who was aware that the three cities on the other side of the Jordan do not accept until the other three cities are selected; nevertheless he selected them, saying: I shall not fail to perform a meritorious act which came to my hand. And "he that loveth abundance"--

who is fit to lecture before a crowd, he who possesses the fruits of knowledge (of Bible, Mishna, Halakha and Hagada). And this is what R. Elazar said. It reads [Psalm cvi. 2]: "Who can utter the mighty acts of the Lord? He who can publish all his praise." (He takes the latter not as a question, but as answer to the former.) The rabbis, according to others, Rabba b. Mari explained this passage thus: He who loves the abundance of scholars possesses the fruit of knowledge; and the rabbis looked upon Rabha b. Rabba who possessed such a quality. R. Ashi said: He who likes to learn among a crowd of scholars possesses the fruit of their knowledge. And this is what R. Jose bar Hanina said: It reads [Jer. l. 36]: "The sword on the *badim* means the sword may cut the necks of the scholars who are studying separately each for himself; and not only this, but they become also foolish and also commit a crime thereby." 1 Rabina said: He who loves to teach many, has the fruit of knowledge. And this is what Rabbi said: I learned much from my masters, more, however, from my colleagues, and still more from my disciples.

R Jehoshua b. Levi said: It reads [Psalm cxxii. 2]: "Our feet are now standing within thy gates, O Jerusalem." Who caused that our feet shall conquer the enemy and stand within the gates of Jerusalem? The same gates in which the Law was studied. He said again: It reads [ibid., ibid. 1]: "I was rejoiced when they said unto me, Unto the house of the Lord let us go." David said before the Holy One, blessed be He, Lord of the Universe, I have heard people say, When will this man die, so that Solomon, his son, shall build the Holy Temple and we will rejoice? And He answered [ibid. lxxxiv. 11]: "For better is a day in thy courts than a thousand." I like one day in which thou art occupied with the Law better than the thousand burnt-offerings which Solomon, thy son, will sacrifice before me in the future.

"*To prepare roads,*" etc. There is a Boraitha. R. Eliezer

b. Jacob said: "The word 'refuge' was written at every crossing for the purpose that the murderer shall recognize the way to take. Said R. Kahana: This is inferred from the above-cited verse [Deut. xix. 3], which means you shall establish all preparations needed on this way.

R. Hamma b. Hanina, when he wanted to lecture on this case, used to begin with [Psalm xxv. 8]: "Good and upright is the Lord: therefore he pointeth out to sinners the right way," saying, If He puts the sinners in the right way, so much the more the upright.

Resh Lakish used to begin his lecture on this case with [Ex. xxi. 13 and I Sam. xxiv. 14]: "From the wicked proccedeth wickedness." The Scripture speaks about two men each of whom killed a person: one of them intentionally, and the other unintentionally, but there were no witnesses in either of these cases. The Holy One, blessed be He, appoints them into one inn, and be who had killed intentionally is placed under a ladder, while the other, who killed unintentionally, descends the steps, falls and kills him (the one under the ladder). Hence the outcome is: he who has killed intentionally was killed; and the unintentional killer was exiled.

Rabba b. R. Huna in the name of his father, according to others the latter in the name of R. Elazar, said: From the Pentateuch, Prophets, and Hagiographa it is inferred that the way the man likes to follow, he is led upon by Heaven. From the Pentateuch [Numb. xxii. 12]: "Thou shalt not go with them," and [ibid., ibid. 20]: "Rise up, go with them"; from the Prophets [Is. xlviii. 17]: "Who teach thee for thy profit, who lead thee by the way thou shouldst go"; and from

Hagiographa [Prov. iii. 34]: "If (it concern) the scornful, he will himself render them a scorn; but unto the lowly doth he give grace."

R. Huna said: If a relative killed the murderer who had already been in the city of refuge, he is nevertheless free; because he holds. that the expression "he deserveth not a judgment of death" [Deut. xix. 6] applies to the relative. An objection was raised from the following: The just-cited verse speaks of the murderer; but perhaps it speaks of the relative of the dead? For this purpose it reads [ibid., ibid. 4]: "When he hath not been an enemy to him in time past." Hence the verse in question speaks of the murderer? He (R. Huna) holds with the Tana of the following: The verse in question speaks of the

relative; but perhaps of the murderer? For this it reads (4) "enemy" hence the verse in question necessarily concerns the relative.

Another objection was raised from our Mishna which states: "Two scholars have to accompany him." Was it not for the purpose of warning the relatives, that, in case they would attempt to slay, the same will be done to them? Nay, only to reconcile them; they should not consider him as a blood-shedder, for he has done it by error. And to the opinion of R. Mair that the murderer himself could do so, it was answered: "Outside defence is more considered."

R. Elazar said: A city, the majority of which are murderers, does not protect; as it reads [Joshua xx. 4]: "And speak in the ears of the elders of that city *his* words," but not the words which they (the elders) had to speak for themselves some time ago. The same said again that a city in which there are no elders does not protect. In this case, however, R. Ami and R. Assi differ. According to one it does, and according to the other it does not. The same differ concerning a stubborn and rebellious son, and also concerning breaking the neck of the heifer [Deut. xxi.], as in all the cases the elders are mentioned, and they are not found; however, he who holds that it does not matter maintains that it was written only because it is usual that a city should have its elders, but not to prevent if there are none.

R. Hama b. Hanina said: Why is the portion of murderer., with a strong language [Joshua xx. 1]: "And the Lord *spoke* to Joshua" instead of *said*; and also at the end of the verse (2), "Whereof I have *spoken*"? Because this command was the only one which the Lord commanded Joshua to fulfil what had been already written in the Pentateuch. And whence do we know that *spoke* is stringent language? From [Gen. xlii. 30]: "Spoke roughly." However, concerning this subject R. Jehudah and the rabbis differ: according to the one it was because Jeshuah delayed to establish them, and according to the others the reason is as said above.

It reads [josh. xxiv. 26]: "And Joshua wrote these words in the book of the law of God." R. Jehudah and R. Ne'hamiah differ: according to one he wrote only the eight verses, which begin with "And Moses died"; according to the other he wrote the portion of the cities of refuge. And the latter explains the expression "in the book of the law of God" thus: Joshua wrote

in *his* book that which had been already written in the book of the law of God.

In case the Holy Scrolls were sewn with thread of flax, R. Jehuda and R. Meyer differ: according to the one it is valid; according to the other it is not. The latter's reason is [Ex. xiii. 9]: "In order that the Law of the Lord may be in thy mouth," we see, then, that the Law is compared to Tephilin, and as the Tephilin are to be sewn with thread of a calf, the same is the case with the Holy Scrolls. And according to the other it is compared only as regards the hide of such cattle which is allowed to the mouth, but not concerning other laws. Said Rabh: I have seen the Tephilin of my uncle and they were sewn with thread of flax. (Says the Gemara): The Halakha, however, does not prevail with him.

MISHNA *VI*.: There is no difference between the high-priests who were anointed with the holy oil (in the first Temple) and those who were sanctified by the holy dress (in the second Temple), and even him who has temporarily substituted the high-priest in case of sickness--they all release the murderer by their death. R. Jehudah said: Even the priest who was anointed for the war only. Therefore the mothers of the priests used to support the murderers with food and clothes that they shall not pray death to their sons.

GEMARA: Whence is this deduced? Said R. Kahana: From [Numb. xxxv. 25-28], where the death of the high-priest is mentioned three times, from which we infer the three kinds of priests in the Mishna. And R. Jehudah, who adds also the anointed for the war, infers it from verse (32), where the priest is mentioned the fourth time. The rabbis, however, do not care to add same, because the word *high* is not mentioned there, hence it means one of the above-mentioned.

"*The mothers of the priests*," etc. They shall not pray, but what if they should, would it effect? Does it not read [Prov. xxvi. 2]: "As the bird (cometh) to flit away, as the swallow, to fly off: so will an undeserved curse not come (to fulfilment)"? Said a certain elder: I understood from the lecture of Rabha that it is counted as a sin to the priest, who should pray that no accident might happen in that generation, and he did not. As it happened with one whom a lion has consumed a distance of three passas from R. Jehoshua b. Levi's dwelling, and Elisha did not talk to him for three days. Said R. Jehudah in the name of Rabh: The curse of a sage and be it for nothing, is realized;

and this we see to have been the case with Achithaphel. When David was digging under the altar a hole to reach the watery depth of the earth (-*Shithin*), the water came up and menaced to inundate the world; whereupon David asked: Is it allowed to inscribe the Holy name upon a piece of broken clay and drop it into the water; and as no answer came from the people present, he exclaimed: Whoever amongst ye knows and abstains from answering, shall be suffocated! Then Achithaphel concluded *a fortiori* thus: If the Lord has allowed His name to be erased by water in order to make peace between husband and wife, so much the more so when the peace of the whole world is concerned. Accordingly he decided that it is allowed; David then following this decision dropped the bit of clay with the name on into the water, and the water turned back into its depths. Nevertheless Achithaphel choked himself [2 Sam. 17, 23]; all which corroborates Rabh's saying quoted above by R. Jehudah.

R. Jehudah in the name of Rabh said: If a sage has put some one under the ban conditionally, a release must take place at any rate by the same sage or by some other one. And this is inferred from the case of Judah, of whom it reads [Gen. xliii. 9]: "If I bring him not unto thee," etc. R.

Samuel b. Na'hamoni in the name of Jonathan said: It reads [Deut. xxxiii. 6-7]: "May Reuben live . . . this is the blessing of Judah." (Why, then, is Judah mentioned just after Reuben and also his blessing distinguished with the expression "and *this*"?) Because all the forty years during which Israel was in the desert, the remains of Judah were dismembered in his coffin until Moses arose and prayed for him, saying: Lord of the universe! Who caused Reuben to confess if not Judah? Hear, Lord, the voice of Judah!" Immediately, then, the members of his body were placed in their order. However, he was not allowed to enter the heavenly college until Moses prayed: "And bring him unto his people." Still he could not discuss with the rabbis; to this Moses said: "Let the power of his hand contend for him!" Still he could not answer questions; thereupon Moses said: "And be thou a help to him from his adversaries."

The schoolmen propounded a question: When is the murderer released? Does the release of the murderer require the death of all those priests mentioned in the Mishna or the death of one of them suffices? Come and hear: If his decision was rendered at the time when a high-priest did not exist, he remains there forever. Now, if he is released by the death of one

of them, let him be returned by the death of a substitute? Hence he must wait until the death of them all. However, perhaps the Mishna speaks of a case where there was no substitute?

MISHNA *VII.*: If after the decision had been rendered the high-priest dies, he is not exiled. If, however, the priest dies before it was rendered and another priest was appointed and the decision was then rendered, he returns on the death of the second one. If, however, his decision was rendered while a high-priest did not exist, or he was to be exiled, because be killed a high-priest, or a high-priest who himself killed accidentally, he never returns from his exile.

The murderer is never to go out from his place of exile even if he was a witness to a meritorious or to a civil, or even to a criminal case. And even if Israel needs him and should he be a captain in Israel, like Johab b. Zeruiah, he must not go out all his life; as it reads [ibid., ibid. 25]: "To the city of his refuge, whither he had fled," which means there shall be his dwelling, there shall be his death, there his burial.

As the city itself protects, so does its limit; therefore, if it happens that a murderer goes outside of the limit and the relatives of the deceased meet him, according to R. Jose, the Galilean, it is a meritorious act for the relatives to kill him; and if a stranger kills him he is not responsible. R. Aqiba, however, maintains that a relative is not responsible, but it is not meritorious; while a stranger is responsible for his death.

GEMARA: What is the reason of the first statement in the Mishna? Said Abayi: This is to be drawn by *a fortiori* reasoning: he who was already exiled is released, so much the more is he who is only sentenced to it. But perhaps he who was already in exile is atoned, but not he who was not there as yet? Does, then, the exile atone? The death of the high-priest atones.

"*Dies before it was rendered,*" etc. Whence is this deduced? Said R. Kahana: From [Numb. xxxv. 25]: "And he shall abide in it until the death of the high-priest, who hath been anointed with the holy oil." Who has anointed him? Certainly not the murderer! It, therefore, means: He who was anointed in his days. But what has the high-priest done that the murderer's fate should

depend upon his death? He ought to have prayed that the decision of the court be in behalf of the defendant, which he did not.

Abayi said: We have a tradition that if after the decision was rendered the defendant dies, his remains must be carried to

the city of refuge; as it reads [ibid., ibid. 32]: "That he should come again to dwell in the *earth* 1 until the death of the priest." Dwelling in the *earth* means the grave. There is a Boraitha: If he dies in the city of refuge before the death of the high-priest, his remains may be carried to his native place; as it reads [ibid., ibid. 28]: The manslayer may return unto the earth of his possession. What is meant by "the earth of his possession"? The *grave*. In the case when after the decision had been rendered, the high-priest was found unfit for his dignity, *e.g.*, he was the son of a married, or of one who performed the ceremony of *Halitzah*, R. Ami and R. Itz'hak of Nafha differ: one holds that the priesthood is dead, and it is equivalent to the death of the high-priest; while the other holds that it is abolished, hence he was never a priest and the decision against the murderer was rendered when a high-priest did not exist; accordingly, he must remain there forever.

"*And a high-priest did not exist*," etc. R. Jehudah said in the name of Rabh: It reads [I Kings ii. 28]: "And Joab fled unto the tabernacle." Joab erred twice in so acting. (*a*) he thought that the horns of the altar protect, while the roof of the Temple protects; and (*b*) he thought that the altar of the tabernacle of Shila protects; in reality, however, the altar of the Temple, only, protects. Said Abayi: He erred also in this: he thought that it protects every one, while in reality it protects only a priest on duty, which was not the case with him.

Resh Lakish said: It reads [Isaiah lxiii. 1]: "Who is this that cometh from Edom, dyed red in his garments from Bozrah?" The heavenly ruler of Rome will err thrice in the future. (*a*) He will think Bozrah protects, while only Bezer does so; (*b*) that it protects even an intentional criminal, while it does so only an unintentional; and (*c*) it protects only a man, but not an angel as he was.

R. Abuhu said: The cities of refuge are not given for cemeteries, as it reads [Numb. xxxv. 3]: "And their open spaces shall be for their cattle, and for their goods, and for all their requirements," *i.e.*, requirements for life, but not for death; and the statement above that the murderer must be buried in the city is no objection, as concerning him the Scripture dictates a separate law.

"*So does its limit*." There is a contradiction from the following: It reads [ibid., ibid. 25]: "And he shall abide in it," but not in its limit? Said Abayi: This presents no difficulty; concerning protection it does, but to dwell he is not allowed.

"*Outside of the limit*." The rabbis taught: It reads [ibid., ibid. 27]: "And the avenger of the blood should kill the manslayer: he shall not be guilty of blood." It is a meritorious act of the avenger to do so; and every stranger may do so if there is no relative. Such is the decree of R. Jose the Galilean. R. Aqiba, however, maintains that if the relative likes to do so, he may; but it is not

meritorious. A stranger, however, if he did so, is guilty. The reason of the former is: it does not read "*if* he will kill him;" and the reason of the latter is: it does not read "he *shall* kill him." Mar Zutra b. Tubiah in the name of Rabh, however, said that if the relative has killed him while he was out of the limit, he is to be killed if he did it intentionally. But this is not in accordance with R. Jose, nor with R. Aqiba. In accord with whom, then, is his theory? With the Tana of the following Boraitha: R. Eliezer said [ibid., ibid. 12]: "Until he have stood before the congregation for trial." To what purpose is this written (is it not self-evident that he is not to be executed without a trial)? Because (27) reads "should kill . . . not guilty of blood"; lest one say that so it is even if the avenger had killed him before he was tried and found guilty, therefore it reads "until he have stood . . . for trial." R. Jose and R. Aqiba, however, infer from the just-cited passage that if the Sanhedrin themselves have seen one killing a man, they must not execute him unless he has been tried before another court and found guilty.

The rabbis taught: It reads (26): "Should at any time pass the boundary," etc., which means intentionally, but whence do we know as to if he pass unintentionally? Therefore, "at any time," which would be superfluous if not signifying this case. But is there not a Boraitha to the effect that if one has killed intentionally he is put to death, etc.? This presents no difficulty: the Boraitha cited is in accordance with him who holds that the Scripture speaks in accordance with human language, while the rabbis do not hold so. Said Abayi: It seems to me that he who holds that the Scripture speaks in accordance with human language is correct in this case, because his final case should not be more rigorous than the beginning. In the beginning if he had killed a man intentionally he is put to death, and

if unintentionally he is exiled; and the same is to be his final case: if he goes out of the limit intentionally, he is killed; but if unintentionally, he must be returned to his exile.

If a father has killed a son unintentionally, his other son may be considered the avenger in accordance with one Boraitha; another Boraitha, however, states that he must not be so considered. Shall we assume that one is in accordance with R. Jose and the other with R. Aqiba? How can such be borne in mind? Is it not decided (Sanhedrin, p. 246) that a son must not be appointed by the court to punish his father with whatsoever punishment, etc.? Therefore, we must say that one Boraitha speaks of his son, and the other of his grandson.

MISHNA *VIII*.: A tree placed in the limit, but its branches extending outside of it or *vice versa*, in any case the inclination of the branch must be considered.

GEMARA: There is a contradiction from the following: A tree which stands inside but is inclined outside, or *vice versa* if from opposite the surrounding wall and inside, it is considered as inside; and if the same were inclined outside it is considered as outside? [1] Do you contradict tithe with cities of refuge? Concerning tithe the Scripture relies upon the surrounding wall of the city, but concerning the cities in question it relies upon the dwelling, and one can use his dwelling under the branch but not upon the root of a tree. Rabh Ashi explains the expression of the Mishna, "the inclination of the branch must be considered," with *also, i.e.*, the inclination must also be considered, and so much the more the root of it.

MISHNA *IX*.: If one killed accidentally in the city of refuge, he is to be exiled from one

neighborhood to another; and if such happen to a Levite, he is to be exiled from one city to another.

GEMARA: The rabbis taught: It reads [Ex. xxi. 13]: "Will I appoint thee a place," etc., *i.e.*, while thou art still alive. "Whither he shall flee" signifies that if such happen while Israel was still in the desert, they were exiled. And where to?--to the camp of the Levites. From this it was said that if it happen to a Levi that he killed, he is exiled from one district to another; and even if he was exiled to the district in which he resides, it protects him. And R. A'ha b. R. Aika said:

This may be inferred from [Numb. XXXV. 28]: "Because in the city of his refuge shall he remain," *i.e.*, "his refuge" means which was his before he was exiled.

MISHNA *X.*: Similarly, if a murderer was exiled to the city of refuge and the townsmen like to honor him, he has to say to them: "I am a murderer"; and if they say it does no-t matter, he may accept. The exiled have to pay to the Levites rent for their dwellings. So R. Jehudah. R. Mair, however, said: They have not. If, after the high-priest's death, he returns to his city, he is returned to that office which he occupied before (*e.g.*, head of a college), according to R. Mair. R. Jehudah, however, maintains: He must not occupy the same.

GEMARA: Said R. Kahana: The Tanaim of the Mishna differ concerning the rent in the six cities in question only, for one explains the expression "unto you" to mean for protection only, and the other one explains it "unto all Your necessities." However, on the addition Of 42 cities all agree that they have to pay rent. Said Rabha to him: There cannot be any doubt in the explanation of "unto you," which certainly means to all your necessities, and therefore it is the contrary: they differ concerning the 42 cities; the one holds they were added only for protection, and the other holds they were added on equal terms with the six; but concerning the six themselves all agree that there was no rent.

"*He returns to his office*." The rabbis taught: It reads [Lev. xxv. 41]: "And he shall return unto his own family, and unto the possessions of his father shall he return," *i.e.*, he may return only to his family, but not to the office which his parents occupied. So R. Jehudah. R. Mair, however, said he may return to the offices of his parents, and the same is the case with exile. And this is inferred from the pleonastic words, "shall he return." What does it mean, "the same is with exile"? As the following Boraitha: The murderer shall return to the land of his possession, *i.e.*, he may return only to the land, but not to the office of his parents. So R. Jehuda. R. Mair, however, maintains: He may also occupy the place of his parents, because of the analogy of expression "return," which is mentioned in both places, Ex. xxi. and Numb. xxv.

Footnotes

18:1 Leeser translates "striketh" according to the sense. The text, however, takes it literally.

22:1 In text is not explained the theory of Rabbi and his opponents. Rashi, however, explained

this in one version as we did. He brought also some others in which he doubts.

22:2 The term for talk in Hebrew is "dbar," literally "talk" or "word"; Leeser, however, translates it "case," in accordance with the sense.

23:1 Leeser's translation does not correspond at all.

24:1 Leeser's translation does not correspond at all.

25:1 The analogy of expression used in text to infer the foolishness and sin mentioned, we omitted; it was also impossible to use the translations of Leeser, etc., as the Talmud has here its own way.

31:1 The term in Hebrew is *eretz*, literally earth. Leeser translates land in accordance with the sense.

33:1 This Mishna is concerning the second tithe which must be eaten inside of Jerusalem only.

Next: Chapter III

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CHAPTER III.

WHO IS SUBJECT TO THE PUNISHMENT BY STRIPES.--THE DETAILS OF THE PROCEDURE REGARDING THE EXECUTION THEREOF.--WHAT CIRCUMSTANCES FREE THE CULPRIT THEREFROM.--THE RESPECTIVE DUTIES OF THE THREE JUDGES WHO MUST WITNESS THE EXECUTION.

MISHNA *I*.: To the following stripes apply: He who had intercourse with his own sister, with his sister of his father or his mother, or the sister of his wife, with the wife of his brother or his father's brother, or with a woman while menstruating. (To each of these crimes Korath--shortened life--applies, and according to this Mishna the human court has a right to punish them also with stripes.) The same is the case if a high-priest marries a widow; a common priest--a divorced or her who performed the ceremony of Halitzah; an Israelite--a bastard or a descendant of the Gibeonites; and the same is, if a daughter of an Israelite marries the just-mentioned persons. If a high-priest marries a widow who was previously divorced, he is to be beaten twice, because of two names ("widow" and "divorced"); if, however, a common priest marries a widow who has previously performed the ceremony of Halitzah, he is liable only for the violation of one negative. A high-priest who was unclean and partook of things belonging to the sanctuary or entered the sanctuary while unclean; and he who consumed illegal fat, blood, or meat left overnight from the sacrifice, or *piggul*, [1] or unclean meat, and also of such which was slaughtered and brought outside of the Temple; he who ate leaven on Passover, ate or labored on the Day of Atonement; who compounded oil similar to that of the Temple, or compounded the frankincense of the Temple, or anointed himself with the oil used in the Temple; who ate carcasses or animals preyed by beasts, or reptiles--to all of them stripes apply.

It applies also to him who partook of mixture, of first tithe

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of which the heave-offering was not separated as yet, of second tithe and eatables belonging to the sanctuary which were not redeemed yet. How much has one to partake of the mixture to make him liable? According to R. Simeon, whatsoever; while to the rabbis, not less than the size of an olive. Said R. Simeon to the sages: Do you not admit that if one consumed an ant--minute as it is--he is culpable? And he was answered: Because it is a creature in itself. Rejoined he: One grain of wheat is also complete as to its creation.

GEMARA: The Mishna treats of those crimes to which Korath applies, but not of those under the category of capital punishment. Hence it is in accordance with R. Aqiba of the following Boraitha: Crimes under the category of Korath, as well as under that of capital punishment, are also punished with stripes if they were so warned. So R. Ismael. R. Aqiba, however, maintains: Only that of Korath; because if they repent after the punishment with stripes, the heavenly court forgives them; but if they are under capital punishment the human court cannot forgive them

even though they repent. 1 What is the reason of Ismael's theory? [Deut. xxviii. 59]: "Then will the Lord render peculiar thy plagues," etc. What the peculiarity is, is not stated; however, from [ibid. xxv. 2]: "The judge shall cause him to lie down" (the expression of which has a similarity), we understand that the peculiarity is stripes; and in [ibid. xxviii. 58] it reads: "If thou wilt not observe," etc.; hence the violation of all negative commands is punished by stripes. But if so, let them apply also to the violation transgression of a positive commandment? It reads: "If thou wilt not observe." R. Aqiba's reason is: concerning stripes the expression is "according to the degree of his *fault*," which means for one fault, but not for two faults, to which capital punishment applies. 2

"*Things belonging to the sanctuary*," etc. It is correct, the transgression of entering the sanctuary of which the punishment as well as the warning is stated--viz.: the punishment [Numb. xix. 13]: "Hath defiled the tabernacle of the Lord; and that soul shall be cut off from Israel," and the warning [ibid. v. 3]:

[paragraph continues] "That they defile not their camp"; but concerning eating sanctity, we find the punishment [Lev. vii. 20]: "The flesh . . . his uncleanness upon him . . . shall be cut off." But where is the warning to it? According to Resh Lakish from [ibid. xii. 4]: "Any thing hallowed shall she not touch"; and R. Jehanan said: Bardelah taught: From an analogy of expression "his uncleanness" here, and the same expression is found in the above quotation [Numb. xix.]. As there the punishment and the warning are stated, the same also applies to this case.

There is a Boraitha in accordance with Resh Lakish: "Hallowed shall she not touch" is a warning to the consumer. You say *consumer*, but perhaps it means literally (touching); therefore it reads further on, "into the sanctuary shall she not come," etc. Hence hallowed is compared to the sanctuary. As to the transgression of the sanctuary Korath applies, so also the warning concerning the hallowed must speak of a similar punishment (*i.e.*, consuming). But not of touching, to which Korath does not apply.

Rabba b. b. Hanna in the name of R. Jehanan said: To a negative command which is preceded by a positive one, stripes apply. There were people who questioned R. Johanan whether he said so, and he answered: Nay! Said Rabba: I swear that he said so, and it is also written and taught; "written" [Numb. v. 3]: "Shall ye send out . . . that they defile not their camps"; and "taught" in our Mishna: A defiled person who enters the sanctuary gets stripes. But why did R. Johanan retract his previous statement? Because the case of a seducer was difficult to him--namely, a seducer who had divorced his seduced wife, if he is a common Israelite, remarries her, but is not punished with stripes; if he, however, was a priest (who is forbidden to marry a divorced woman), he gets stripes and does not remarry. Now, as in this case, the negative command: "That he must not divorce her all his life" is succeeded by the positive command: "That he shall marry her," why, then, should not a common Israelite be punished with stripes for divorcing her? Said Rabha: The reason why he does not get stripes is that the positive "He shall remarry her" rests upon him all his life. (This is inferred from the words "all his days," which, if they were not explained that in case he has divorced her he shall remarry her, would he superfluous; with the explanation, however, the command, "He shall remarry her," is

attached to the negative "He shall not divorce her"; and there is a rule that to a negative command which is succeeded by a positive, no stripes apply.) And when Rabbin came from Palestine he said the same in the name of R. Johanan. Said Rabh Papa to Rabha: Why did R. Jehanan say above that he gets stripes? The negative in question is not similar to the negative of "muzzling" (which was said that it is placed there to teach that only to such which is not succeeded by a positive stripes apply)? Rejoined Rabh Papa: Should the negative become weaker because of the succeeding positive? Answered Rabha: According to your theory stripes should apply to each negative which is succeeded by a positive, which is not the case. Said Rabh Papa again: There it is different, as the positive usually comes to remove the negative (*i.e.*, one shall *not* do so, but if he did, *shall* he do so and so). But Rabha's explanation holds good only according to him who holds that the culprit does not get stripes unless he abolishes the succeeding positive command. (Le., the seducer who has divorced his wife may always say: "I will remarry her." Hence the positive is not abolished, and therefore he is not liable. But according to him who holds that only then is he free from stripes when he fulfils the command (*i. e.*, if he comes to the court, which commands him to marry her immediately, and if he does not listen he gets stripes). Hence, you cannot say that this positive rests upon all his life, and consequently it does not modify its preceding negative? Let us see: this objection applies only to Johanan's foregoing theory, and he said to the disciple who has repeated before the Boraitha concerning a positive which succeeds a negative: "Go and teach thus: Only when he has abolished the succeeding one, but not otherwise." R. Simeon b. Lakish, however, differs, and says: He is free from stripes only when he has fulfilled the succeeding one.

What is their point of difference? A doubtful warning--*e.g.*, in the case in question, if he was warned that he shall not divorce her, it was still doubtful whether after divorcing he will not remarry her; hence such a warning is not considered certain. But, nevertheless, according to R. Johanan it suffices, so that he may be punished; but according to Resh Lakish he is not. And both differ in the explanation of R. Jehudah's theory in the following Boraitha: It reads [Ex. xii. 10]: "And ye shall not let anything of it remain until morning; and that which remaineth of it until morning ye shall burn." We see, then,

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that the verse comes to place a positive after a negative for the purpose that if one did leave he shall not be punished, and has only to burn it. Such is the decree of R. Jehudah. R. Johanan explains R. Jehudah's words thus: The reason why he does not get stripes is the succeeding positive, but if it were not he would be punished, although the warning was doubtful, as he could thereafter burn it. Resh Lakish, however, explains it thus: The reason why he does not get stripes is the succeeding, but if it were not he would get stripes, as to a negative command that does not contain manual labor, stripes do apply. But let us see: Resh Lakish cannot deny that such a warning was a doubtful one, and R. Johanan cannot deny that such a negative does not concern manual labor; what, then, is the use of their explanation? Both agree that, if not for the succeeding, stripes would apply; notwithstanding that there were both a doubtful warning and a positive of no manual labor. Resh Lakish shares the opinion of R. Jehudah of another Boraitha (Chulin 82, b.), in which R. Jehudah admits that a doubtful warning is not considered; and R. Johanan holds with R. Jehudah of the following: R. Idi b. Abin in the name of R. Amram and R. Itz'hak, quoting R. Johanan, said: R. Jehudah in the name of R. Jose the Galilean declared that for the violation of all the negatives of the Torah, if there be manual labor implied, the transgressor is punished with stripes, but not if mental, except in the cases of an oath, exchanging, [1] and cursing his neighbor by the Holy name. But if so, then, R. Johudah

contradicts himself? Resh Lakish may say that there are two Tanaim who said in the name of R. Jehudah differently, and R. Jehanan may say that in the latter Boraitha R. Jehudah declared the theory of his master, but his own opinion he declared in the former Boraitha.

There is a Mishna: He who took the mother-bird with her children gets, according to R. Jehudah, stripes, but is not obliged to send away the mother-bird; and according to the sages, he sends away, but is not punished with stripes; as the rule is: for a negative which is conjoined with a positive there is no liability. Said R. Johanan: There is only one more case similar to this. And to the question of R. Elazar, What is it? he rejoined: Go and find out! He did so and found the following: "If a seducer has divorced," etc., v. above, p. 37. But this can be correct only with him who holds that he is released from

stripes after the fulfilment of the positive only. But according to him who holds that stripes do not apply unless the positive is abolished, such can be done only with the former mother-bird by killing her, as then the positive he "shall send her away" is abolished. But how can such be found in the case of the divorce in question; and should you say that he killed her, then he deserves capital punishment; and there is a rule that stripes do not apply to him who is to be executed? Said R. Simi of 'Huznah: "*E.g.*, he accepted betrothal money for her from some one else, hence she becomes the wife of another, and the positive "he shall remarry" is abolished. Said Rabh: Such cannot be considered; as in case she made him her messenger to accept the above, she may ignore the message; and, if he did it without asking her who gave him the right to such that it should be considered? Therefore said R. Simi of Nehardea: If, *e.g.*, he has made a vow publicly that he must not derive any benefit from her (and such a vow cannot be absolved), hence the positive is abolished and he is liable. Are there indeed no more similar cases to those by R. Johanan stated? Is there not robbery to which it reads, "Thou shalt not steal," and the positive "He shall return it," and also concerning a pledge to which the negative is, "Thou shalt not come to pledge," and the positive is "Thou shalt return the pledge at sunset"? And these two cases also can be explained in both ways: Fulfilled the positives or not, abolished the positives or not? With these cases it is different, for he has to pay, and there is a rule: He who pays does not get stripes. But is there not "Peah," the negative of which "thou shalt not cut . . . the corners" and the positive "unto the poor . . . leave" [Lev. xxiii. 22], which also may be explained in both ways as said above? Therefore we must say that R. Jehanan by his statement, There is only one similar case, meant "Peah" and not a seducer; since concerning the latter the Law dictates that even if there were a vow on the mind of the public [1] it can be absolved when such absolution is necessary to a meritorious act; as it happened with a children-teacher who struck too much the children and R. A'ha excommunicated him, Rabbina, however, returned him, because he could not find as good a teacher.

"*Carcasses preyed*," etc. Said R. A'ha: He who neglects nature's duties when called, transgresses the negative "ye shall

not make your souls abominable" [Lev. XX. 25]. And R. Bibi b. Abayi said: He who drinks water from the horn of a barber transgresses the same.

"*Partook of mixture, first tithe*," etc. R. Bibi in the name of Resh Lakish said: They differ only in case he take a grain of it, but as regards flour all agree that the size of an olive is needed., R. Jeremei in the name of same authority, however, said: As they differ in respect of wheat so they do in that of flour too. An objection was raised from our Mishna. R. Simeon said to them: Do you not agree if he ate an ant, etc., and to the answer of the rabbis "because it is a creature" he rejoined, A wheat grain is also complete in its creation, hence we see that they only differ in respect of the grain, but not in that of flour? R. Simeon meant to say thus: According to my opinion it is the same with flour, but to your theory, admit that if he ate a grain of it he shall be culpable, because of its completeness. The rabbis, however, maintain: We cannot compare a grain to a living creature. There is a Boraitha in accordance with R. Jeremei: R. Simeon said concerning stripes: Size does not count; it counts only concerning sacrifices.

MISHNA *II*.: Stripes also apply to the following: To him who partook of the first fruit before the ceremony of reading 1 was performed; of the sacrifices under the category of the most holy outside of the curtains, and of those under the category of a minor grade or of second tithe outside of the surrounding wall; and also to him who breaks a bone in the Paschal Lamb if it was a clean one. However, if he left from a fit one, or broke a bone of an unfit one, stripes do not apply.

To him who takes a mother-bird with her children from her coop according to R. Jehudah stripes apply, but he is not obliged to send the mother away, and according to the sages he must send her away and stripes do not apply, according to the rule: If a positive succeeds a negative, no stripes apply.

GEMARA: Said Rabba b. b. Hana in the name of R. Johanan: Our Mishna is in accordance with R. Aqiba, whose name is omitted, as it is one of the many anonymous Mishnayoth which bear his opinion without mentioning his name. The sages, however, maintain that concerning first fruits, their placing on the Temple is the main thing, but the ceremony of reading

is no obstacle. But why not say that it is in accordance with R. Simeon, to whose opinion, also, most of the Mishnayoth were composed anonymously? This comes to teach that R. Aqiba is in this respect in accordance with R. Simeon. Which R. Simeon? Of the following Boraitha: It reads [Deut. xii. 17]: "And the heave-offering of thy hand," which means the first fruits; said R. Simeon: What does this come to teach us? If only that they must not be eaten outside the surrounding wall, it was not necessary at all, as this could be inferred from tithe, regarding which the law is more lenient, by drawing *a fortiori* conclusion: If one consumes tithe regarding which the law is lenient, outside of the wall, he gets stripes, so much the more when he consumes first fruits, concerning which case the law is more rigorous; therefore we must say that the verse means to include him who had consumed them before the ceremony of reading was performed. And "thy freewill-offering" [ibid., ibid.], means thanks and peace-offerings. R. Simeon, however, said: The verse does not mean them, as it was not necessary to teach that they must not consume outside of the wall, for the same reason that they could be inferred from the leniency in tithe by the same *a fortiori* reasoning. Therefore it means him who consumed of same sacrifices before their blood was sprinkled. And "first born" means literally. Said R. Simeon: If it meant so, it was not necessary either, as this could likewise be inferred by *a fortiori* reasoning from tithe; and if it means: who commanded them before blood-sprinkling, it was also not necessary, as it could be inferred from the above-mentioned sacrifices by *a fortiori*

reasoning, as they are more lenient than the first born. Therefore we must say that it means to include him who consumes a first born even after its blood was sprinkled. "Thy herds or of thy flocks" means sin and transgression-offerings. R. Simeon, however, said: That if it meant them, it would not be necessary, as they could be inferred by *a fortiori* reasoning from tithe; thanks and peace-offerings, and first born, all of which are more lenient than that of sin and transgression. Therefore it means to include him who consumed from the latter even after sprinkling outside of the curtain. "Nor any of thy vows" means burnt-offerings. Said R. Simeon: It would not be necessary, as they could be inferred by *a fortiori* reasoning from all those cases mentioned above, and therefore it means to include him who consumes from a burnt-offering after sprinkling even inside the curtains, that he get stripes. Said Rabha:

[paragraph continues] Every mother should bear a son like R. Simeon; although his theory can be objected to. 1

It was taught: R. Gidel in the name of Rabh said: A stranger who had consumed sin- and transgression-offerings before their blood was sprinkled, is free from any punishment, because it reads [Ex. xxix. 33]: "And they shall eat those things wherewith the atonement was made to consecrate them, and to sanctify them; but a stranger shall not eat thereof, because they are holy." Now as the sprinkling of blood only atones, they can be considered holy only after the sprinkling w performed, but before this act they are not considered as yet holy; so that the negative "one shall not eat because they are holy" does not rest upon the consumer.

R. Elazar said in the name of Hosea: Concerning the first fruit, placing it in the Temple is the main thing, and not the ceremony of reading, as it is not considered the final act. In this case the following Tanaim differ [Deut. xxvi. 10]: "Thou shalt set it down before the Lord," *i.e.*, lift it up (before the Lord in all four directions). But perhaps it means literally, to place it? This is already written in verse (9). So R. Jehudah. R. Eliezer b. Jacob, however, maintains: This means literally (hence, this is the main act which completes the ceremony prescribed to first fruit); lifting up, however, he infers from [ibid., ibid. 4]: "And the priest shall take the basket out of thy hand," *i.e.*, that the priest shall lift it up towards all four directions. His reason is based on the analogy of expression "hand," which is also mentioned concerning peace-offering [Lev. vii. 30]: "His own hands shall bring it." And as there lifting up is needed by both the ripest and the owner of the offering, so also here the hands of both are needed. How so? The priest places his hand under those of the owner, and the two lift it up together.

Rabha b. Ada in the name of R. Itz'hak said: One is culpable for the first fruits immediately after they have seen the face of the Temple; and it is in accordance with the Tana of the following Boraitha: R. Eliezer said: Of the first fruit, a part of which was outside and a part inside, that of outside is considered common in all respects, while that of inside is considered holy in all respects. And R. Shesheth said: Only the placing is the main act of the ceremony and not the reading.

"*Most holy,*" etc. But why the repetition? It has been already stated with regard to second tithe and things of the sanctuary which were not as yet redeemed? Said R. Jose b. Hanina: The second

part of the Mishna treats of a case when both were pure--and the man and the second tithes which were consumed outside of the wall, and the first part speaks of the case when both were defiled, and that he consumed them within the city. And whence do we know that one is culpable because of defilement? From the following Boraitha: R. Simeon said [Deut. xxvi. 14]: "Neither have I removed thereof while unclean," 1 means neither when I was unclean and they were clean, nor *vice versa*. R. Eliezer said: Whence do we know that second tithe which became defiled may be redeemed even within Jerusalem! From [Deut. xiv. 24]: "Not able to carry it," which means also when it was not fit for eating, as the expression for carrying is "sheath" and in [Gen. xliii. 34], a similar expression is used for eatables. R. Bibbi in the name of R. Assi said: From the just-cited verse is to be also inferred that even one step outside the wall one may redeem the second tithe, if it is too heavy for him to carry it further. R. Hanina and R. Hosea, while sitting together propounded the following question: How is it if he was already within the gate of the wall in such a position that he was already inside but his load was outside--may he redeem it at that place or not? A certain old man then taught them in the name of R. Simeon b. Jo'hai: It reads [Deut. xiv. 24]: "Is too far from *thee*," means from the full extent of your capacity (and as he is already within the gate it can, not be considered far any longer, etc., and is not to be redeemed). R. Assi said in the name of R. Jehanan: The culpability for second tithe arises only after it has seen the face of the wall of Jerusalem, and the reason is [ibid. xii. 12]: "But before the Lord thy God must thou eat them," and (17): "Thou mayest not eat within thy gates"; hence, only at that time when the positive "before thy Lord must thou eat them "can be fulfilled, the negative: "Thou mayest not eat," etc., applies, but not otherwise.

MISHNA *III*.: He who makes a baldness in the hair of his head, or rounds it; he who destroys the corners of his beard, or makes incisions in his flesh for his dead, is liable. There is no difference whether he made one incision for five dead bodies or

five incisions for one dead body, as in either case he is liable for five negatives. For rounding his hair he is also liable for two (one for one corner on one side, and another for the other corner on the other side; and for his beard five, for there are five corners. 1 R. Eliezer, however, maintains that if he took off the whole beard at one time he is culpable only for one. The culpability arises only, then, when he took it off with a razor. R. Eliezer, however, maintains that the same is the case if he took it off with snuffers or a scraper (an instrument with which the hairs are removed singly).

GEMARA: The rabbis taught [Lev. xxi. 5]: "They shall not make any baldness," lest one say that if one made several baldnesses in his head he is culpable only for one, therefore it reads, "any baldness" (*i.e.*, culpable for each one). And to what purpose is it written "upon their head"? Because [Deut. xiv. i], "Ye shall not cut yourselves, nor make any baldness between your eyes for the dead." Lest one say that be is culpable only when he did so between the eyes, therefore "their head" to include any place of the head. From here, however, we know that priests only are forbidden to do so, as they are subject to many commands which do not apply to a common Israelite; whence do we know that the same is the case with the latter? From the analogy of expression "baldness" in both verses; as in the first he is culpable for each baldness in the head as for that between the eyes, the same is the case with an Israelite. And as in [Deut. xiv.] it says plainly "for the dead," so also in [Lev.] it means for the dead only.

What should be the size of the bald spot which would make him culpable? The size of a bean

according to R. Jehanan in the name of R. Eliezer b. R. Simeon. R. Huna, however, said: Such a size which could be discerned. R. Jehudah b. 'Habibah said: In this three Tanaim differ. According to one it is the size of a bean, according to the other it is a discernible size, and the third, however, maintains that he is culpable even for two hairs. Some, however, say: Instead of two hairs, it must be of the size of a lentil.

"*He who rounds*," etc. The rabbis taught [Lev. xix. 27]: "Ye shall not cut round the corners of your head" means the end of his head, *i.e.*, who makes his temple as hairless as the

spot back of his cars to the nape of his neck. A disciple taught before R. Hisda: Both are culpable, he who rounds, and the rounded one. To which R. Hisda answered: Should he who eats dates from a sieve be culpable? Your Boraitha is in accordance with R. Jehudah, who holds that to a negative which does not contain manual labor, stripes apply (with whom the Halakha does not prevail). Rabha, however, says: It speaks that he himself has rounded his hair, which case all agree that he is culpable. And R. Ashi said: Even if he only assists the one who rounds his hair.

"*And he who destroys the corners of his beard*." The rabbis taught: "The corners of his beard," means the end of it; and what is meant by the end? The Shibboleth (sheaves).

"*Incisions*," etc. The rabbis taught [Lev. xix. 28]: "For the dead . . . any incision," lest one say that he made such because of the fall of his house or because the ship sank, therefore "for the dead," to teach that he is culpable only if he did so for a dead. And whence do we know that if he made five incisions for one dead he is culpable for each one? From "any incision" which makes him culpable for each of them. R. Jose said: Whence do we know that if he made one incision for five dead he is culpable for five? From the expression "l'Nefesh" [1] (soul) *i.e.*, he is culpable for each soul. But does not the same passage exclude the case when he did so for "his house" or "ship," etc.?

R. Jose holds that "cut" in Deut. iv. and incision is one and the same, and there also reads "for the dead," hence this also may be inferred.

Samuel said: If one made an incision with an instrument he is culpable. An objection was raised from the following: Incision and cutting is one and the same (but incision means with the hand and cutting with an instrument), hence for an incision with an instrument he should not be culpable? Samuel holds in this respect with R. Jose that there is no difference at all.

A disciple taught before R. Jehanan: For dead he is culpable at all courts whether 'by hand or instrument, but if for an idol, by an instrument he is culpable, but not by hand; as it reads [I Kings,. xviii 28]: "And cut themselves after their custom with knives."

"*Culpable only for one*," because he holds that he transgressed only one negative command.

[paragraph continues] "*With a razor*." The rabbis taught [Lev. xxi. 5]:"The corner of their beard shall they not shave off," *i.e.*, with a razor. But lest one say even with scissors he shall be culpable, therefore it reads [ibid. xix.], "thou shalt not destroy." But if so let him be culpable for destroying it even with snuffers or scrapers? therefore the expression "shave off," and destroying by shaving is brought about by a razor.

"*R. Eliezer*," etc. From whatever opinion he start: if he cares for the analogy of expression, then it is with a razor only; and if he does not, let him be culpable even if he did it with scissors? He cares for the analogy, but to his opinion snuffers and scrapers are equivalent to a razor.

MISHNA *IV*.: The culpability for etching-in [Lev. xix. 28] arises only when he has done both, wrote and etched-in with dye or any other indelible thing, but to one of them no culpability attaches. R. Simeon b. Jehudah in the name of R. Simeon said: He is not culpable unless he etched-in the holy name; as the above-cited verse reads, "and any etched-in writing shall you not fix on yourselves: I am the Lord."

GEMARA: Said R. Aha b. Rabha to R. Ashi: Does it mean unless he etch-in the words "I am the Lord"? And he answered, Nay! It is as Bar Kapara taught: "He is not culpable unless he writes the name of an idol, as the words "I am the Lord" mean *I* am the Lord, but not another one.

R. Malkhiya in the name of R. Ada b. Ahaba said: One is forbidden to put ashes upon his wound in the flesh, because it looks like a tattooing. [Said R. Papa: Throughout both Mishna and Boraitha, the name Malkhiya when mentioned is Malkhiyah, but in Halakhas it is Malkhiyoo]. R. Ashi, however, said: It does not matter, as the wound shows there is no tattooing.

MISHNA *V*.: A Nazarite who was drinking wine the whole day, is culpable only for one negative. If, however, he was warned, Do not drink, do not drink! he is culpable for each time he does not listen to. The same is the case if he had defiled himself by touching dead the whole day, he is culpable for one only; but if he was warned, You must not do so! etc., he is culpable for each one. The same is also the case with shaving himself. If he did so the whole day without warning he is culpable for one only, if with warning, for each time warned. A similar case this: If one was dressed with Kelaim, he is culpable for the whole day only once; but if he was told not to dress himself with it, and he undresses and redresses, he is liable for

each time. There is an instance that one may plough only one bed and shall be culpable for eight negatives--viz: If he ploughs with an ox and an ass both of which were from the sanctuary, if there was Kelaim in a vineyard, if that occurs in the Sabbatical year and on a legal holiday, and, finally, if he is a priest or a Nazarite in a legally unclean place. Hanania b. 'Hakhinai said: It can be added to that "who at the same time was dressed with Kelaim." And he was answered: This is not under the category of ploughing. Rejoined he: Does, then, a Nazarite belong to this category?

GEMARA: Said R. Bibi in the name of Rabh Assi: Not only when he undresses and redresses himself entirely, but even when he put his sleeve in and out. And R. Aha b. R. Aika has shown that he puts in the sleeve and puts it out. But R. Ashi maintains that it means the time during which he could put in and out.

"*Ploughing one bed,*" etc. Said R. Yanai: At a meeting there was voted and resolved that he who protects Kelaim is liable to stripes. Said R. Jehanan to him: Is this not explained in our Mishna, which mentions that there was Kelaim in the vineyard? And if one were not culpable for protection what would have the ploughing to do with it? You must, then, say that while ploughing he protects it, and the Mishna makes him culpable. Rejoined R. Yanai: If I had not uncovered for you the broken clay pot, you would surely not have the pearl which was lying under it. Said Resh Lakish to R. Jehanan: Would not such a great man praise your statement? I would say that our Mishna is in accordance with R. Aqiba, who holds that one is liable even for keeping it. Said Ula to R. Na'hman: After it was decided that protecting is the same transgression as sowing, let him also be culpable for sowing on a legal holiday? And he answered: It was left out by the Tana of the Mishna. Rejoined he (Ula): It numbers eight, consequently nothing was left. Said Rabha: The different kinds of labor in one article are considered with respect to Sabbath only, but not to holidays. And Ula said: (I also think) so it is.

MISHNA *VI.*: The number of stripes is forty less one, as it reads [Deut. xxv. 2, 3]: "By a number, forty," *i.e.*, near forty. R. Jehudah, however, said: Forty in full, and the fortieth is between his shoulders. The examination (by the physicians of the court) as to the number of stripes he can receive and remain alive, must be such that can be equally divided by three. If

the decision was that he is able to receive forty, but after receiving a part of them they saw he cannot stand any more, he is free. However, if the decision was, he can stand eighteen only, and after he was stricken they saw he is able to receive more, he is nevertheless free.

GEMARA: The reason of the statement of the Mishna is the expression "number," which is before the word "forty," and is to be interpreted "about" forty; for if it meant forty in full, it would state forty in number. Said Rabha: How foolish are those who arise before the Holy Scrolls, but do not do so before a great man. We see that in the Holy Scrolls it reads forty, and the rabbis came and reduced one.

"*R. Jehudah said,*" etc. What is his reason? Said R. Itz'hak [Zech. xiii. 6]: "What are these wounds between thy hands," etc. The rabbis, however, maintain that this passage speaks of school-children.

"*After he was stricken,*" etc. Is that so? Does not a Boraitha state that if the first decision of the physicians was that he can receive forty and thereafter they decided again that he can not, or the first decision was for eighteen, and the second states that he is able to receive forty, he is free. (Hence we see that even if he was not stricken but only examined, he is free.)

Said R. Shesheth: This presents no difficulty. Our Mishna speaks of the decision rendered on the very same day on which he ought to be beaten, and by acting accordingly it was found that they erred; hence in the first instance he is freed because he cannot stand, and in the second, because he was already disgraced and freed we do not care to disgrace him again. The Boraitha, however, speaks that the examination was several days before, and when the day of punishment came, the decision was changed because of his health.

MISHNA *VII.*: If one commits a sin to which two negatives apply, if the decision was rendered

once for both negatives, he is punished once only, but if for one negative, he is punished again after he has recovered.

GEMARA: Is there not a Boraitha that one must not be appraised for two negatives? Said R. Shesheth: It presents no difficulty. Our Mishna speaks, if he was appraised for forty-one, *i.e.*, for two negatives, and because it cannot be divided into three, their appraisement is annulled, and he receives only thirty-nine for both; and the Boraitha speaks of the case when be was appraised to receive forty-two for two negatives, and as

it can be divided into three, the three over the thirty-nine are counted for the second negative. Hence he is beaten once, and after recovery is to be appraised again and beaten accordingly.

MISHNA *VIII*.: How is the punishment with stripes to be performed? He ties his both hands to the pillar, and the messenger of the court takes hold of his clothes, without care whether they tear or disjoin, until he uncovers the breast. The stone on which the messenger is to stand is placed behind him, upon which he stands with a strap of calf leather compounded of two, which, folded again, constitutes four, with two small stripes attached to it.

The size of its handle was a span, and of the same size was the width of it, and the top of it reaches his belly. He strikes him one-third in front and two-thirds on the back. He is not beaten while standing nor sitting, but while bending; as it reads [Deut. xxv. 2]: "The judge shall cause him to lie down," and the striker strikes him with one hand with all his force. And the reader reads from [ibid. xxviii. 58-59]: "If thou wilt not. . . . Then will the Lord render peculiar thy plagues," etc., to the end of the verse. And if the striker has not finished yet, he begins [ibid. xxix. 8]: "Keep ye therefore," etc., and finishes with [Psalm lxxviii. 38]: "But he, being merciful, forgave the iniquity." And if the act was not finished as yet, he returns to the beginning. If it happens that he dies under the messenger's hand, the latter is free. If, however, he added one stripe which caused death, he is exiled. If while beaten he collapsed and became incontinent of urine or excrement, he is freed. R. Jehudah maintains: A male, when incontinent of feces; and a female, of urine.

GEMARA: What is the reason that he shall be freed if he collapsed, etc.? His having been already disgraced.

R. Shesheth said in the name of R. Eliezer b. Azaria: Whence do we know that the strap must be of calf leather? Because immediately after "forty stripes" it reads, "thou shalt muzzle the ox." (See appendix.)

"*Two small stripes*," etc. In a Boraitha it is written from ass leather, and it is as a certain Galilean preached in the presence of R. Hisda [Isaiah, i. 3]: "The ox knoweth his owner and the ass his master's crib: Israel doth not," etc. The Holy One, blessed be He, said: "He that knoweth the master's crib shall take revenge from him who does not want to know it."

"*One-third in front*," etc. Whence is this deduced? Said

be beaten before his face according to R. Kahana: From "to the degree of his fault," which means for one fault in the front and for two in the back.

"*The striker strikes him with one hand*," etc. The rabbis taught: The court appoints messengers who are weak in force but strong in wisdom. R. Jehudah, however, said: Even *vice versa*. Said Rabha: It seems to me that R. Jehudah is correct, because it reads "not more"; now if the messenger were weak in wisdom he must be warned, but if strong in wisdom, why warning? The rabbis, however, maintain the contrary, that warning is of consequence only to him who is learned to be careful. There is a Boraitha: When he lifts up, he does it with both hands, but strikes with one hand, so that the strokes shall become weaker.

"*And the reader reads*," etc. The rabbis taught: The chief of the judges reads; the second numbers, and the third says, strike! When the stripes are many he prolongs, and when less he shortens. But does not the Mishna state "he returns to the beginning of the passage"? It is better that the reading should be finished with the stripes; but if it was not, he returns. The rabbis taught: It reads [Deut. xxv. 3]: "Too many stripes"; but lest one say that one or two does not matter? Therefore is "not more"--not even one. But if so, to what purpose "too many stripes"? To teach that if it happen so, even the stripes which were given rightly are to be considered too many (in force).

"*Collapsed*," etc. The rabbis taught: A male as well as a female "in feces," but not "in urine." So R. Mair. R. Jehuda said: A male "in feces" and a female "in urine." The sages, however, maintain: There is no difference between male and female, and between feces and urine; at all events the beaten is to be freed. But is there not a Boraitha: R. Jehudah said: Male and female in feces? He meant to say that in such a case all agree, but concerning incontinence of urine there is a difference of opinion.

Samuel said: If after he has been tied, he succeeds to run away from the court, he is free. An objection was raised from the following: Collapsing frees one whether it happen at the first stroke or the second, but if the strap broke he is free only if it happened at the second, but not at the first. Now, why should this not be equivalent to running away, which frees even before the first strike? This is no objection, when he runs away

he could not be beaten (and as he was already disgraced, he is not taken to be disgraced again), but here he is still present.

The rabbis taught: If it was concluded by the examination that he will collapse in case he is beaten, he is to be freed; but if the conclusion is that he will collapse after having been beaten, it does not free him. Furthermore, if it happen that he collapse before he was taken to be beaten, it does not prevent after recovery; because it reads [Deut. xxv. 2, 3]: "And to be beaten . . . and . . . thus rendered vile," but not rendered vile before beaten.

MISHNA *IX*.: All who are liable to Korath, if beaten, are freed from it, as it reads [ibid., ibid. 3]: "Thy brother rendered vile," *i.e.*, as soon as he was rendered vile, he is thy brother. So R. Hananye b. Gamaliel; the same also said: If one loses his soul for one sin, so much the more his

soul should be saved because of one meritorious act! Said R. Simeon: This may be inferred from the very place which treats of Korath [Lev. xviii. 29]: "Even the souls that commit them shall be cut off," and [ibid., ibid. 5]: "Ordinances, which, if a man do, he shall live in them." As the whole portion is of negative commands, it is to be inferred that if one only abstains from committing a crime, he is rewarded as if he acted meritoriously. R. Simeon b. Rabbi said: It reads [Deut. xii. 23]: "Be firm so as not to eat the blood; for the blood is the life." Now, for rejecting blood which is disgusting to one, he is rewarded; from money and women, to which the nature of man is inclined, so much the more should he be rewarded if he separates himself; and not only he, but all his descendants to the end of the generations, may be rewarded. R. Hanania b. Akasiha said: The Holy One, blessed be He, wanted to make Israel blissful and therefore he multiplied to them his commands in the Torah, as it reads [Isaiah, xlii. 21]: "The Lord willed (to do this) for the sake of his righteousness: (therefore) he magnifieth the law, and maketh it honorable."

GEMARA: Said R. Jehanan: The colleagues of R. 'Hananye differ with him (as according to them stripes do not substitute Korath). Said R. Ada b. A'haba in the name of Rabh: The Halakha nevertheless prevails with R. Hananye. Said R, Joseph: Who, then, ascended to heaven, returned, saying that the Halakha prevails with him? Said Abayi to him: According to You, that which was said by R. Jehoshua b. Levi, "three things were done by the human court, and the heavenly court

agreed with it," is also to be questioned: who ascended to heaven and convinced himself that it was so? but such is inferred from the Scripture; well, the same is here, too. What are the three things in question? The following: The reading of the Book of Esther on Purim, greeting with the Holy Name, and placing the tithe belonging to the Levites in the treasury of the sanctuary. The first (Book of Esther) from [Esther, ix. 27]: "The Jews took it upon themselves as a duty and accepted," means, they took upon themselves in their human court, and it was accepted in the heavenly court. "Greeting" from [Ruth, ii. 4]: "And he said unto the reapers, the Lord be with you," and also [Judges, vi. 12]: "The Lord is with thee." To what purpose is the second quotation? Lest one say that Boas did it according to his own opinion and without the admission by heaven, therefore the other quotation which was said by an angel. And concerning tithe from [Malachi, iii. 10]: "Bring ye all the tithes into the storehouse, that there may be provision in my house, and prove me but herewith, saith the Lord of hosts, if I will not open for you the windows of heaven, and pour out for you a blessing, until it be more than enough."

R. Elazar said: At three places the Holy Spirit appeared: At the court of Shem, of the prophet Samuel, and in the court of King Solomon. At the court of Shem [Gen. xxxviii. 26]: "And Judah acknowledged them and said, She hath been more righteous than I." And whence did he know it? Perhaps as he was with her, so was some one else? Therefore a heavenly voice was heard: I have decided that so is it to be. In the court of Samuel [I Samuel, xii. 5]: "And he [1] answered, He is witness." He? *they* ought to be! Hence a heavenly voice was heard, I witness that so it is. And [I Kings, iii. 27]: "The king then answered and said, Give her the living child and do not slay it. she is its mother." And whence do we know it is so; perhaps she nevertheless deceived him? Hence the last words, "she is its mother," were said by a heavenly voice. Said Rabha: If it were inferred from the Scripture only, all of them could be objected to, but this is known by tradition.

R. Simlayi lectured: Six hundred and thirteen commands were said to Moses; three hundred and sixty-five of them negatives, corresponding to the number of days in a year counting according to sunrise; and two hundred and forty-eight positives,

corresponding to the members of a man's body. Said R. Hamnunah: Where is there an allusion thereto in the Scripture? [Deut. xxxiii. 4]: "The Torah which Moses commanded us." The letters of the word Torah number six hundred and eleven (Tav is 400; Vov, 6; Reish, 200, and Hei, 5), and the two first commandments, however, of the ten, we ourselves have heard from Heaven. However, David came and reduced their number to eleven [Psalm xv. 2-5]: "He that walketh uprightly" means Abraham, to whom such an expression was said in [Gen. xvii. 1]: "Worketh righteously" means Aba A'helqiah (see Tainith, p. 66-68). "Speaketh the truth" as, *e.g.*, R. Saphra. "Uttereth no calumny," *i.e.*, Jacob, our father. "That doth no evil to his neighbor," *i.e.*, he who takes care not to compete with his neighbor's business. "No reproach on his fellow man" means him who approaches his relatives. "Despicable is despised" means the king, who carried his father's bones on a bed of ropes. "Honoreth those who fear the Lord" means King Jehoshofath, who used to arise from his throne on seeing a scholar, kissed him, and called him, my father, my master, etc. "That sweareth to his own injury, and changeth not," *i.e.*, as R. Jehanan said: If one says I will fast until I will come home, it is to be considered. "Money for interest," *i.e.*, him who does not accept usury even from an idolator. "Taketh no bribe" means, *e. g.*, R. Ismael b. Jose, who does not accept even his own goods from his gardener for the purpose that he shall try his case. "He that doth these things shall not be moved to eternity." [When R. Gamaliel used to come to this passage, he used to weep, saying: Who performed *all* this shall not be moved, but one of them does not suffice (see Sanhedrin, p. 237).]

Isaiah, then came and reduced them (the 613 commands) to six [xxxiii. 15]: "He that (*a*) walketh in righteousness, (*b*) speaketh uprightly, (*c*) despiseth the gain of oppressions, (*d*) shaketh his hands against taking hold of bribes, (e) stoppeth his ears against hearing of blood, and (f) shutteth his eyes against looking on evil." (*a*) Means Abraham, of whom it reads [Gen. xviii. 19]: "For I know him, that he will command," etc. (*b*) Means him who does not anger his colleague in public. (*c*) Means R. Ishmael b. Elisha. (*d*) R. Ishmael b. Jose. (*e*) R. Eliezar b. Simeon, and (*f*) means as R. Hiya b. Aba said: Who does not look on women washing near the bank of the river. (See last gate, p. 137.)

Michah came and reduced them to three [vi. 8]: "He hath told thee, O man, what is good; and what the Lord doth re quire of thee: (nothing) but to do justice, and to love kindness, and to walk humbly with thy God." "To do justice" means judgment; "love kindness" bestowing of favors; and "walk humbly," providing for burial of the dead and marriage of poor maidens.

Isaiah (the second) again reduced them to two [lvi. 1]: "Thus hath said the Lord, Keep ye justice and do equity."

Amos then came and reduced them to one [v. 4]: "Seek ye for me, and ye shall live."

R. Na'hman b. Itz'hak opposed: Perhaps he means seek for me to perform everything that is

written in the Law? Therefore Habakkuk was the one who reduced them to one [ii. 4]: "The righteous should live with his faith." Said R. Jose b. Hanina: Four decrees Moses has decreed upon Israel, and four prophets came and abolished them. Moses said [Deut. xxxiii. 28]: "And then dwelt Israel in safety, alone," etc. Amos abolished it [vii. 5]: "How should Jacob be able to endure," then immediately in (6) "The Lord bethought . . . this shall not be." Moses said [Deut. xxviii. 65]: "And among these nations shalt thou find no ease." Jeremiah abolished it, saying [xxxi. 2]: "He is going to give rest to Israel." 1 Moses said [Ex. xxxiv. 7]: "Visiting the iniquity of the fathers upon the children." Ezekiel abolished it by saying [xviii. 4]: "The soul which sinneth, that alone shall die." Moses said [Lev. xxvi. 38]: "And ye shall be lost among the nations." Isaiah abolished it by saying [xxvii. 13]: "The great cornet shall be blown," etc. Said Rabh, I am nevertheless afraid of the passage "ye shall be lost among the nations," and of the end of same, "the land of your enemies shall consume you." Marzutrah opposed, relating the following: It happened with Rabban Gamaliel, R. Elazar b. Azariah, R. Jehoshua, and R. Aqiba, who were on the road, and heard the noise of the city of Rome at Patlus, a distance of 120 miles, and they began to weep; but R. Aqiba smiled. And to the question, Why are you smiling, he returned the question, Why do you weep; rejoined they: Those idolators who bow themselves to images and smoke frankincense to the idols are resting in peace, the contrary is with us, that even our holy Temple is burned by fire,

and we should not weep? Rejoined he: For the same reason I am smiling. If such is done to them who act against His will so much the more will be done in the future to them who act in accordance with His will. It happened again that the same were going to Jerusalem, when they arrived to the Mount Zerphim, they tore their garments; and when they approached the Mount of the Temple and saw a fox running from the place where the Holy of Holies had been situated, they began to weep; but R. Aqiba smiled. To their question why he smiled, he answered: It reads [Isaiah, Viii. 2]: "Witnesses, Uriyah the priest, and Zecharyahu," etc. Why is Uriyah conjoined with Zecharyahu? Was not the former at the first Temple and the latter at the second? It was because the passage bases the prophecy of Zecharyahu upon the prophecy of Uriyah. Uriyah said [Micha iii. 12]: "Therefore for your sake shall Zion be ploughed up as a field," etc. Zechariah said [viii. 4]: "Again shall there sit old men and old women in the streets of Jerusalem," etc. Until the prophecy of Uriyah was not fulfilled I feared lest the prophecy of Zechariah will come to be realized but now since I see that Uriyah's prophecy is fulfilled I am sure that Zechariah's prophecy will also be fulfilled in the near future. Upon this version they said to him: Aqiba, thou hast condoled us, thou hast condoled us!

APPENDIX TO PAGE 50.

R. Shesheth said in the name of R. Eliezer b. Azariah: He who disgraces the festivals is regarded as if he worshipped idols, as it reads [Exod. xxxiv. 17]: "Thou shall not make unto thyself any molten gods," and immediately follows the verse "The feast," etc, The same said again in the name of the said authority: He who speaks evil of his neighbor, he who listens to such evil-speaking, finally he who bears false testimony deserves to be thrown to the dogs, as [ibid. xxii. 30] "to the dogs shall ye cast it," is immediately followed by [xxiii. 1] "Ye shall not spread (thisso) false report," which should be read also thassi, *i.e.*, ye shall not excite one against the other.

Footnotes

35:1 *I. e.*, meat of a sacrifice illegally slaughtered.

36:1 The text contains also what Itz'hak said, repeated from Kherithoth,--the proper place.

36:2 The text contains a long discussion about this subject, which is repeated in many places of the Talmud; here, however, this is very complicated and not important, and therefore omitted.

39:1 Lev. xxvii., 10.

40:1 This will be explained in Tract Gittin.

41:1 Deut. xxv, 15.

43:1 The text argues as to how the theory can be objected to by a very complicated process of reasoning, and from things entirely irrelevant to the subject, and therefore omitted.

44:1 Leeser's translation does not correspond.

45:1 For an illustration of the five corners, see Rashi, as we do not deem it necessary to illustrate them for the English reader.

46:1 The term "for dead" is "l'Nefesh," which means for a dead soul.

53:1 Leeser's translation does not correspond.

55:1 Leeser's translation does not correspond.

Errata

page v: '*aelph*'->'*aleph*'

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page 8: 'balloon'->'flying camel'

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page 8: 'Leaser'->'Leeser'

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page 8: ''->'*Rodkinson*:'

---

page 8: ''->'*JBH*: I have redacted this as the much more charming and to the point 'flying camel''

---

page 42: 'sprinking'->'sprinkling'

---

page 9: 'Leaser's'->'Leeser's'

---

page 46: 'not estimony'->'no testimony'

---

page 48: 'happend'->'happened'

---

page 48: 'dicisive'->'decisive'

---

page 53: 'gulity'->'guilty'

---

page 67: 'trangression'->'transgression'

---

page 97: 'specalist'->'specialist'

---

page 100: 'Babaylon'->'Babylon'

---

page 103: 'hiers'->'heirs'

---

page 14: 'hoilday'->'holiday'

---

page 15: 'Beht'->'Beth'

---

page 26: '*V*.'->'*VII*.'

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page v: 'Ominipotent'->'Omnipotent'

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page viii: 'thereform'->'therefrom'

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page viii: 'anbandoned'->'abandoned'

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page 76: 'aid'->'said'

---

page 80: 'intepreted'->'interpreted'

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page 97: 'MSHNA'->'MISHNA'

---

page 110: 'sercet'->'secret'

---

page 123: 'foridden'->'forbidden'

---

page 145: 'prohibts'->'prohibits'

---

page 152: 'Isrealite'->'Israelite'

---

page 10: 'ItI'->'It'

---

page 15: 'anlogy'->'analogy'

---

page 17: 'pendding'->'pending'

---

page 25: 'houshold'->'household'

---

page 26: 'particulary'->'particularly'

---

page 26: 'perod'->'period'

---

page 29: 'has'->''

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SYNOPSIS OF SUBJECTS

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consuming it. I swear that I will not eat, and thereafter eats and drinks, he is guilty but once. I will drink neither wine, oil nor honey, and then drinks, he is guilty for each severally. If he swore not to eat and thereafter ate carcasses or illegal cattle, reptiles and vermin, he is guilty. R. Simeon declares him free. The reason of him who holds that one is liable for an inclusion is that he compares it to an additional prohibition. It is immaterial whether the things sworn off concern himself or others, whether they are or are not of some essential nature. One is guilty only for an oath made with reference to the future, etc. I swear that I know something to testify for you, and it is found hereafter that he knows nothing, etc. There is a rule that, if to something that was included in the general a new law be applied, only by the new one must guide one's self, etc. To exclude compulsion what could illustrate this? As it happened to R. Kahana and R. Assi after the lectures at Rabh's college, etc. Suppose one swear not to eat this bread, and then he is in danger if he does not eat it, how is it, etc.? If one swears to ignore some commandment and does not carry out his oath, etc. If one says I swear not to eat *this* bread, in case I eat the other, etc. Which is false swearing? If one swears that something is different from what it is known by everybody to be. The provisions regarding uttered swearing apply to males, females, to kindred, non-kindred, etc. 27-46

CHAPTER IV.

MISHNA *I*. TO *VI*. The witness-oath applies to men but not to women, to unrelated but not to kindred, etc. If a scholar was aware of a case, but it was a humiliation to him to go to that particular court he may remain at home, etc., concerning civil cases only. The many things inferred from Exod. xxiii. 7. Keep thyself far from a false speech. How does a witness-oath come about? If some one said to two, etc. If there were two parties of witnesses and both denied successively, etc. There is also a case concerning a witness who refuses to testify to the death of a husband, etc. If one of them denies and the other confesses, etc. I adjure you that you come and bear me witness, that I have in the possession of so and so, etc. I adjure you to testify that so and so has spread abroad an evil name on my daughter, etc. We swear that we know nothing for you, while in reality they do know, etc. I adjure you, I impose upon you, I bind you (by oath) so they are guilty, etc. If one writes Aleph Lamed (the first letters from Eloim), etc. It must not be erased, etc. All the divine names found in the Torah in connection with Abraham are holy, etc. Amen embraces oath, acceptance and confidence, etc. Nay means oath and yea means also an oath, etc. R. Kama, while sitting before R. Jehudah, repeated the Mishna in its own language, and he said to him: "Change the language and use it in the third person, 46-65

CHAPTER V.

MISHNA *I*. TO *VI*. The depository oath concerns men and women non-kindred and kindred, those fit to testify and those unfit, etc. What is the law, when one has intentionally made a depository oath in spite of a warning, is he liable to a sin-offering or not? If the depository claims that the

deposit has been stolen from him, swears, but thereafter confesses, etc. If one denies money when there are witnesses, he is subject to an oath, but is free from such if there is a document. How is it if five persons claim the four articles and he says to one of them I swear that thou hast

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CHAPTER I.

RULES AND REGULATIONS CONCERNING OATHS TO WHICH IS ATTACHED THE LIABILITY OF A SIN-OFFERING OR STRIPES.--THE CONDITIONS OF LIABILITY AS DETERMINED BY THE TIME OF REMEMBERING OR FORGETTING THE OATH.--WHICH OATHS ARE OR ARE NOT ATONED FOR BY PRIVATE AND CONGREGATIONAL SACRIFICES AND ALSO BY THE DAY OF ATONEMENT.--ILLUSTRATIONS OF THE TWO KINDS OF OATHS SUBDIVIDED INTO FOUR.

MISHNA *I.*: There are two kinds of oaths which are subdivided into four. The cognition of uncleanness is of two kinds subdivided into four. The carrying in and out on the Sabbath day is of two kinds subdivided into four, and also aspects of leprosy are in kind two and subdivided into four.

If one was originally cognizant of his being unclean, and (after he had consumed of the holy food or entered the sanctuary) presently became aware of this fact anew (that he committed this or that while being unclean), but was not conscious of it during the act, so he is obliged to bring a rich or poor offering. If, however, he had the knowledge at the start but not at the end of the act, so the he-goat, the blood of which is interiorly to be sprinkled on the day of atonement as well as the day itself, will effect a delay of the punishment until he gets to know his transgression, and then he is to bring the above-mentioned offering.

If there was no antecedent knowledge, but he became conscious of it after, his expiation is effected by the he-goat sacrificed exteriorly on the day of atonement as well as that day itself; for it reads: "Except the sin-offering of the atonement," *i.e.*, what this atones for the other one does, too; just as the exterior he-goat propitiates only where there was one knowing, so propitiates the interior one, only where one knowing took

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place. But where there was no knowledge either before or after, the propitiation is effected by the he-goats sacrificed on (the) holidays and new-moon days. So R. Jehudah; R. Simeon, however, says: The he-goats of the holidays atone, but not those of the new-moon days, which propitiate only him who ate something polluted while being himself clean. R. Mair says: All goat sacrifices are equivalent as to propitiating (the) pollution of the holy temple and its holy sacrifice. R. Simeon would say: The he-goats of the new-moon days propitiate for the clean who ate something polluted; those of the holidays, for cases where there was no knowing either before or after; and that of the day of atonement, for cases where there is no antecedent but a

subsequent knowing. And when he was asked: May one of them be sacrificed instead of the other? he answered: Aye! Whereupon they retorted: Since they are not all equivalent as to their capacity of propitiating, how can they substitute one another? To which he replied: They all possess this in common that they propitiate for polluting the holy temple and its offerings. R. Simeon b. Jehudah, however, said in his name: The he-goats of the new-moon days propitiate for a clean one who has eaten defiled food; those of the holidays possess a greater power, as they propitiate for the clean who has eaten defiled, and for the case of polluting where there was neither antecedent nor subsequent knowledge; those of the day of atonement are superior to the others in that they propitiate not only for the clean one who has received defiled food and for the case of neither antecedent nor subsequent knowledge, but also for the case where there is no antecedent but a subsequent knowledge. Hereupon he was questioned: May the one he-goat be offered as substitute for the other? And he answered: Yea. To which the others rejoined: It may be admitted that the goats of the day of atonement be offered on the new-moon days, but how can the reverse take place, *i.e.*, that the goats of the new-moon days propitiate for what they are not capable of doing? And his answer was: They all have this in common that they propitiate defilement of the holy temple and of its holy viands.

For wanton pollution of the holy temple and of its holy offerings the interior he-goat of the day of atonement as well as this day itself atones for all other transgressions of the Law both lenient and rigorous, intentional and unintentional, the foreknown and unforeknown, the positive and negative commandments, those entailing koreth or judicial death-punishment, for

all these the exported goat atones. Herein are equal Israelites, priests, and the anointed high-priest. What difference does, then, exist between Israelite and priest and anointed high-priest? That the blood of the bullock propitiates for the pollution of the sanctuary and of the holy viands by the priests. R. Simeon, however, says: Even as the blood of the goat prepared in the interior propitiates for the Israelites, so does the blood of the bullock for the priest; even as the confession of sins over the kid to be exported propitiates for the Israelite, so does the confession of sins over the bullock propitiate for the priest.

GEMARA: Let us see in accordance with whom is our Mishna's statement. It is not in accordance with R. Ismael and also not with R. Aqiba, as according to the former, one is not liable to a sin-offering, only if the oath concerns the future (this is explained in Chap. III. of this tract), and according to the latter, one is liable only for forgetting that the object is defiled, but not if he forgot that this is the sanctuary? The Mishna can be explained in accordance with both. With R. Ismael, as he may say that the expression of the Mishna, two subdivided into four, means that for some of them one is liable, and for some of them one is not. The same can be said concerning R. Aqiba. But how can R. Aqiba's statement be explained so? Does not the Mishna include leprosy in which there is not a single case for which one is not liable to a sin-offering, consequently all the cases mentioned in the Mishna are of the same kind? We must, therefore, say that it is in accordance with R. Ismael only, and to the question that R. Ismael does not make one liable for the past, it may be answered that he frees him from the liability of a sin-offering only, but not from the punishment of stripes, as he holds that stripes apply even to such a negative command in which there is no manual labor, and this is, as Rabha explained elsewhere (Chap. III.), that such is R. Ismael's opinion. But if so, then R. Johanan's statements would contradict each other--namely, at one place he declared that the Halakha prevails according to an anonymous Mishna (our Mishna, which is anonymous, and is in accordance with R. Ismael),

and elsewhere it was thought if one says: I swear to eat this loaf of bread to-day, the day, however, has passed and he did not eat it, according to both Johanan and Resh Lakish stripes do not apply. However, their reasons are different. The reason of the former is that there is no manual act, and the reason of the latter is that the warning to this transgression

could not be of a certain, but of a doubtful kind (as perhaps he will still keep to his oath), hence, we see that R. Johanan's decision is that there are no stripes to a non-manual act, though contrary to the decision of the Mishna? R. Johanan's above decision is in accordance with his rule, for it is in accordance with another anonymous Mishna, as follows: "I swear that I will not eat this loaf, I swear again that I will not eat it," and thereafter he did eat, he is liable only for the oath first which had made this bread illegal to him. (The second oath, however, is considered but an oath to keep his word according to the law, and such an oath is not subject to punishment.) This is an utterance oath, to whose intentional transgression stripes apply, and to an unintentional, a rich or poor offering. Now, the expression of the Mishna, this is, means that only to such a transgression which is of a past nature stripes apply, but not to a transgression of a future nature, *e.g.*, I will eat, etc., hence this Mishna, which is also anonymous, is in accordance with R. Johanan's opinion.

But let us see; both Mishnaioth are anonymous, why, then, should R. Johanan choose the last one and not the first? According to this question, you also may ask: Why did Rabbi (editor of the Mishna) insert such two contradictory Mishnaioth? You must say, then, that formerly, Rabbi's opinion was that a negative command of non-manual act is under the category of stripes, but after reconsideration he came to the conclusion that it is not, and therefore inserted the last, but did not care to strike out the first.

Let us see; after all, you have explained the Mishna in accordance with R. Ismael and as concerning stripes, but does not the Mishna mention four kinds of leprosy, to all of which stripes by no means apply? Nay; there is a case to which stripes do apply--viz.: when cuts off the leprosy (before the priest saw it), and this is in accordance with R. Abin in the name of R. Elai, who said that wherever the Scripture uses one of these expressions, "Take heed to thyself, lest *ahl*" (the negative particle of the imperative mood) is a negative commandment. But does not the Mishna mention the violation of Sabbath to which also stripes do not apply, for, it is under the category of capital punishment, to which stripes cannot apply? R. Ismael holds that even to such, stripes do apply, and therefore the Mishna is explained in accordance with him.

R. Joseph, however, says: Our Mishna is in accordance with

[paragraph continues] Rabi's own opinion, and he composed it in accordance with different Tanaim, concerning knowing and not knowing, he took R. Ismael's opinion, and concerning oaths he took R. Aqiba's.

Said R. Ashi: I have related this explanation before R. Kahana, and he said to me: Do not say that Rabi inserted the above Mishna in accordance with the above Tanaim, and he himself did not approve of them, for in reality, in this Mishna he explains his own opinion, as we find he did

so in the following: Whence do we know that one is not culpable for a transgression of which he was aware both at the start and at the end, but unaware during the act? From [Lev. v. 2-3]: "Escaped his recollection," two times repeated. So R. Aqiba. Rabbi, however, maintains it to be unnecessary, as from the expression "escaped" it is self-evident that he *was* once aware of it, and further on it reads, "he becometh aware," *i.e.*, twice aware, once at the start and again at the end. But should you ask to what purpose "escaped" is written twice (I say) once to make one liable for the forgetting the defilement, and the second for the forgetting the sanctuary.

(Says the Gemara): From this we find that Rabbi has declared his own opinion concerning known and unknown. Where is such to be found concerning oaths? It is common sense. Why, then, does R. Aqiba make one liable for the transgression of a past oath? Because he considers *extensions* and *limitations* (mentioned in the Scripture), and the same did also Rabbi as we have learned in the following Boraitha. Rabbi said: Our first-born male may be redeemed with everything but documents; the rabbis, however, maintain that slaves and real estate are also excluded (and the reasons are there given thus: Rabbi considers extensions and limitations, and the rabbis consider generals and particulars in the Scripture).

Said Rabina to Amamar: Does indeed Rabbi consider extensions, etc., and not generals, etc.? In the following Boraitha we find the reverse; it reads [Deut. xv. 17]: "Then shalt thou take an awl," but whence do we know that one may do it with a thorn, prick, borer, needle or pencil? Therefore it reads: "Shalt thou take," *i.e.*, everything that is to be taken in hand for this purpose. So R. Jose b. Jehudah. Rabbi, however, maintains that since an awl is of metal, so must every instrument for this purpose be of metal. And to the question, what is the point of their difference, we answered that Rabbi considers *generals* and *particulars* (awl is of metal, etc.), and the R. Jose considers

[paragraph continues] *extensions*, etc., hence, we see that Rabbi considers *generals* and not *extensions*? Yea; in all other cases Rabbi considers *generals*, but here he considers also *extensions* for the reason explained in the following: The disciples of R. Ismael taught [Lev. xi. 9]. In the "water" is mentioned twice; this is not to be taken as a *general* and a *particular*, but as an *extension* and a *limitation* (this paragraph will be explained in the following tracts). But do not the rabbis hold the above theory? Said Rabina: In the west it was said in every place in the Scripture where the expression of two *generals* are to be found near each other, one may put a *particular* between them, and derive the law of *general* and *particular*.

But now that we come to the conclusion that Rabbi considers extensions, etc., there will remain a difficulty concerning oaths; we must, therefore, say that Rabbi inserted in this Mishna the opinion of R. Aqiba, with which he himself does not agree.

The text said: From the expression "escaped" it is self-evident that he was aware. Why is it self-evident? We find elsewhere the same expression, and no awareness is therein implied. Said Abayi: Rabbi holds that elementary knowledge is considered, *i.e.*, the knowledge one learns in school when yet a child (*e.g.*, he learned that he who toucheth an unclean thing becomes defiled). Said R. Papa to him: According to this theory, how can we find a case in which he was unaware before? And he answered: It may be found with him who was captured by heathens while he was still an infant, and was brought up by them. [1]

"*Originally cognisant*." The rabbis taught: Whence do we know that the verse speaks of the defilement of the temple and its holy offerings? This maybe learned from an inference. The Scripture warns: One shall not make himself unclean, and he who does so shall be punished, and is liable to a sin-offering (for unintentional), and both the warning and the punishment speak about the temple and its holiness. The same is the case when it makes him liable to a sin-offering, it is only in case of entering the temple. But perhaps it means heave-offering, to which there is also warning and punishment? Nay; we do not find a transgression which is under the category of capital punishment,

to which the liability of a sin-offering attaches, when done unintentionally. However, such is the case with a special offering; but let him bring a rich and poor offering which is to be brought for utterance or witness oath? It reads [Lev. v. 3]: *Boh*, literally *in it* [1] to exclude all other things. But perhaps it means to exclude the sanctuary to which a rich or poor offering does not suffice, and only a special is needed? Said Rabha: I apply to Rabbi the saying, "He draws water from very deep wells," as we have learned in the following Boraitha. Rabbi said. I read in the Scripture (in concern with a rich or poor offering) a beast; to what purpose, then, is also written a cow? (is it not included in the term beast?) It is for an analogy of expressions. Here it reads, "an unclean cattle," and further on [Ibid. vii. 22] the very same expression, which speaks particularly about the defilement of the holy offerings; hence, as here it speaks of the holy offerings, so does the former expression, too. But this concerns the holy offerings only; whence do we know that the same is the case with the sanctuary itself?

From [ibid. xii. 4]: "Anything hallow shall she not touch, and into the sanctuary," etc.; we see, then, that the sanctuary is compared to its holiness.

The sages of Nahardea said in the name of Rabha: There is mentioned in relation to peace-offerings three times, defilement. And why? One for a general, one for a particular, and one for the expression defilement with regard to a rich or poor offering, but it does not explain the kind of a defilement; and not knowing what it means, we assumed it to mean the defilement of holiness; but now as Rabbi above inferred this from another place, we apply this defilement to the sanctuary itself.

"*Originally cognisant . . . became aware anew*." The rabbis taught [Lev. xvi. 16]: "Shall make an atonement for the holy place because of the uncleanness," etc. In this case there can be three kinds of defilement: by idolatry, licentiousness, and bloodshed, for we find, in regard to idolatry [ibid. xx. 3]: "In order to defile my sanctuary"; concerning licentiousness [ibid. xviii. 30]: "Ye shall not defile yourselves therewith"; finally, concerning bloodshed [Numb. xxxv. 34]: "Ye shall not render unclean." Lest one say that for all these three defilements the he-goat atones, therefore [Lev. xvi. 16]: "*Mitumoth*," literally, from the uncleanness of the children of Israel, but not all of

them; and as we saw elsewhere that the Scripture has separated the defilement of the sanctuary and its holiness from all other defilements, we must say that here, also, it means the sanctuary, etc. So R. Jehudah. R. Simeon, however, maintains that this theory is inferred from the very

same place, as it reads, "he shall make an atonement for the holy place from the uncleanness (*mitumoth*)," consequently it means from the uncleanness of the holy place. But lest one say that for every defilement which happens to be in the sanctuary the he-goat atones, therefore, further on, "because in all their transgressions, in all their sins," it compares intentional transgressions to sin. As to the former, offerings do not apply, so, also, does it not to sins, which are not under the category of offerings (and which of them are under this category? That of which he was aware at the start and at the end, but forgot during the act). And whence do we know that in a case of which he was aware at the start, but not at the end, that the same he-goat makes it pending? From "in all their sin," *i.e.*, all sins which are under the category of a sin-offering.

The master said: There are three kinds of defilement, etc. Let us see how was the case; *e.g.*, idolatry, if intentional, is under capital punishment; if unintentional, then the transgressor is liable to a sin-offering. The same is the case with licentiousness: for intentional, capital punishment, and unintentional, a sin-offering; and the same with bloodshed: intentional, by capital punishment; unintentional is punished with exile. It may be said that in the first two it means that it was done intentionally but without warning; and concerning bloodshed, if committed unintentionally by such a person who cannot be exiled, *e.g.*, a high-priest of whom it is said in tract Sanhedrin that he cannot be exiled.

The master said: The he-goat makes it pending. How is this to be understood? If it does not atone, what is the use of making it pending? Said R. Zera: It means, *i.e.*, if the transgressor dies then it may be considered that if he dies before he becomes aware of it, this sin is not reckoned to him any more. Said Rabha to him: In case he dies, the death itself completes the atonement; it is the he-goat that saves him from chastisement before he becomes aware by making it pending.

"*If he had no antecedent knowledge . . . by the he-goat sacrifice exteriorly*," etc. Let us see; both he-goats are considered equal. Why, then, should the inner he-goat not atone also for

the things the exterior one atones for? And the difference would be that if the exterior happened not to be sacrificed at all, the interior would do also his atoning? It reads [Exod. xxx. 10]: "Upon its horns once," *i.e.*, it atones only one atonement, but not two. Why should not the exterior atone for itself and for the interior also, and the difference would be that a defilement happened during the time between the sacrifice of the interior and that of the exterior? The verse says "once in a year," *i.e.*, once, and not twice in a year. But according to R. Ismael, who said that to such a case offerings apply, what then does the exterior he-goat atone for? For such a case in which there was no knowledge at either start or the end, but does not for such atone the festival and the new-moon goats? He holds with R. Mair, who said that the atonement of all the goats are equivalent, as they atone for defilements in the sanctuary and its holiness, and the equality of the interior and exterior goats lies that both do not atone for other transgressions outside of the sanctuary with its holiness.

"*So R. Jehudah*." Said Jehudah in the name of Samuel: The reason why R. Jehudah of the Mishna so maintains is [Numb. xxviii. 15]: "And one he-goat for a sin-offering unto the Lord,--*i.e.*, for such a sin of which none is aware but the Lord, this he-goat atones.

The schoolmen propounded a question: Does R. Jehudah speak only of such a case which could

never be known, but not such which must come to knowledge at the end (*e.g.*, if there were witnesses who saw him entering the sanctuary while he was defiled, of which they are bound to inform him thereafter) and which is atoned by the exterior he-goat on the day of atonement; or even of such a case which so long as it is not known to him at the present time, is considered that nobody knows of it but the Lord? Come and hear the following: For such a case in which there was no knowledge at the start and the end, and also for such a transgression that finally the transgressor must be informed of, the festival and new-moon he-goats atone; such is the decree of R. Jehudah.

"*But not of the new-moon*." Said R. Elazar in the name of R. Oshia: The reason of R. Simeon's theory is thus [Lev. x. 17]: "And he had given it to you to bear the iniquity," etc., which applies to the new-moon he-goat, and by an analogy of the expression "iniquity," which is also found concerning the golden plate on the forehead of the high-priest [Exod. xxviii. 38],

it may be said that as the latter atones only for bodily defilement, so also the he-goat in question does. And lest one say that as the golden plate of the high-priest atones only for such things which come on the altar, so also should the he-goat in question; it reads here, "the iniquity of the congregation," 1 but not of the things of the altar.

"*R. Meier says: All goat-sacrifices are equivalent*," etc. Said R. Hama b. R. Hanina: The reason of R. Meier's theory is that in some places it is written "the he-goat," and in others "and the he-goat" (the letter *vahve*, prefixed to he-goat, means and), and this intends to signify all the he-goats with regard to their atoning power. But this is correct only where the *vahve* is written, but how is it concerning the day of Pentecost and the day of atonement where the word he-goat is not written with a *vahve*? Therefore said R. Jonah, it reads [Numb. xxix. 39]: "These shall ye prepare unto the Lord on your appointed festivals, "whence all the festivals on which a he-goat is sacrificed are equal to one another. But is not there the he-goat on new-moon, which is not a festival? In reality the new-moon is also called festival, as Aabayi said elsewhere: The month of Thamuz in the year when the temple was destroyed, was a full month of thirty days, as it reads [Lament. i. 15]: "He hath called an assembly (*moëd*)," which *moëd* means literally festival (and the thirtieth day of the month is new-moon). 2

R. Johanan said: R. Mair admits that the interior he-goat does not atone for what all other he-goats do, nor do the latter atone for what it does; it does not atone for what the others do, because it is written "once," which signifies that it atones but for one sin and not for two; on the other hand, they do not atone for what it does, as it reads "once a year," which signifies that such an atonement takes place only once a year. There is a Boraitha in support to this: For the case where there was no knowledge at either start or end, and for that where there was none at the start but at the end, also for that where a clean one has consumed defiled food, the he-goats of the festivals, of the new-moons, and the exterior he-goat of the day of atonement atone; so R. Meier. We see here that he left out the interior he-goat and also what it atones for.

"*R. Simeon used to say: He-goats of the new-moons*," etc. It is correct that the new-moon's he-goat does not atone for what the festival's do, as it reads "a sin," which means one sin, but not

two, but why should not that of the festivals atone for what the new-moon's does? Because of the expression "its," which signifies its iniquity but not that of another. Furthermore, the festival's (goats) do not atone for what that of the day of atonement does, because it reads "once a year," which means such be only once; nor does that of the day of atonement atone for what the festivals' do, because it is written "once," which means it atones once but not twice; and although this is written but concerning the interior he-goat, yet there is another place where it is called the sin-offering of the day of atonement in which the interior is included; and it has been already said above that in this respect the exterior is equalled to the interior. And R. Simeon b. Jehudah, who said that the he-goat of the festivals does atone for what the new-moon's atones, does not hold the extension "it" mentioned above.

Ula said in the name of R. Johanan: Daily offerings which were not necessary for the congregation any more, may be redeemed, although they have no blemish; Rabba sat down and repeated this Halakha. Said R. 'Hisda to him: Who will listen to you and to R. Johanan your master, for, whereto vanished their sanctity? And his answer was: Where, indeed, do you think it went to? Is not there a Mishna (Shekalim, 4, e): The sanctification of the incense on hand was then transferred to money, etc., and there was no question raised as to where the sanctity went to? Whereupon R. 'Hisda rejoined: Incense is incomparable, as it was not sanctified in a holy vessel, but by the money paid. (See Appendix.)

"*For intentional defiling*," etc. Whence is this deduced? From what the rabbis taught [Lev. xvi. 16]:"And he shall make an atonement for the holy place, because of the uncleanness of the children of Israel, and because of their transgressions in all their sins." Transgressions (*P'shaim*) imply intention, as [II Kings, iii. 7]: "King of Moab hath rebelled (*Pasha*) against me," and [ibid. Viii. 22]: "Then did Libnah revolt"; on the other hand, sin implies unintention, as [Lev. iv. 7]: "If any person do sin (*Techtah*) through ignorance."

"*For other transgressions, etc. . . . lenient and rigorous*." Let us see; does not lenient mean positive and negative commandments, while rigorous, such to which *korath* and capital

punishment apply? And again, "known" means intentional, unknown, erroneous; why then the repetition? Said R. Jehudah: It intends to say that for all other transgressions found in the Torah, be they lenient or rigorous, be they committed intentionally or unintentionally and in latter case with knowledge or ignorance thereof, atonement is effected by the he-goat. And lenient are the positive and negative commandments, and the rigorous are those to which Korath and capital punishment apply. But again, how can there be a transgression of a positive commandment? If the transgressor has not repented [Prov. xxi. 27]: "The sacrifice of the wicked is an abomination"; and if he has, why the specific on the day of atonement, when any day is good, as the Boraitha teaches: When one transgresses a positive commandment and repents it, he is atoned for before yet leaving the place. Hereupon said R. Zera: It speaks of no repentance, and our Mishna is in accordance with Rabbi, who holds that the day of atonement atones for each of the transgressions found in the Torah, regardless of antecedent repentance; except him who shakes off the yoke, explains the Torah not according to its real meaning and destroys the covenant in his flesh; as for him, the day of atonement atones, provided he first repented, otherwise it does not. Rabbi bases this, his opinion, on [Numb. xv. 31]: "Because the word of the Lord hath he despised," which means, he who has shaken off the yoke of, and misinterpreted, the Torah, "and His commandments hath he broken," which means, he who has

destroyed the covenant in his flesh [ibid. 30]: "Hicoreth Ticoreth," meaning literally "cut off, shall be cut off," *i.e.*, cut off before, shall be cut off after, the day of atonement; but lest one say the same is the case with him who has repented, it reads "the iniquity is therein," whence it is to infer that only in case the iniquity is upon him (but not after the repentance when the iniquity is gone). The rabbis, however, explain this verse thus: "Cut off" in this world and "shall be cut off" in the world to come; and as to the iniquity, it means if he die upon repenting, the death completes the atonement.

But how can this Mishna be in accordance with Rabbi, when the second part, "There is no difference between the Israelite, priest and anointed high-priest," is only the view of R. Jehudah; hence, the first part should, too, rather be in accordance with the latter? Said R. Joseph: The whole Mishna is the opinion of Rabbi who agrees with R. Jehudah concerning the

latter part only. Said Abayi to him: Does the master mean to say that Rabbi agrees with R. Jehudah, while R. Jehudah does not agree with Rabbi, or he does agree, and that you say the former is only because it is customary that the disciple agrees with his master? And he answered: I am very specific in this expression; Rabbi upholds R. Jehudah, while R. Jehudah does not agree with him with regard to the first part of the Boraitha; as we have learned in the following Boraitha: Lest one say that the day of atonement atones for both repenters and non-repenters, there is an analogy in the following. A sin and trespass offerings atone as well as the day of atonement, and as the former atones for but them who repent, so does also the day of atonement; but lest one say there is a considerable difference between them, as the said offerings atone only for sinning by error, while the day of atonement atones even for an intentional act, whence it might atone also for non-repenters, therefore it reads [Lev. xxiii. 27]: "But . . . it," which excludes non-repenters. Now, this Boraitha is found in Siphrah, and according to tradition all the anonymous Boraithas of Siphrah are in accordance with R. Jehudah. [1]

"*No difference between an Israelite*," etc. Does not the Mishna contradict itself by saying here there is no difference, etc., and immediately hereafter asking what is the difference between, etc.? Said R. Jehudah: It is to be explained thus, all the above-mentioned persons are atoned for by the exported he-goats for all other transgressions without any difference; a difference between person and person arises, however, with regard to the bullock that atones only for the priests in the case of defilement of the temple and its holiness; and this is only in accordance with R. Jehudah of the following Boraitha; it reads [Lev. xvi. 31]: "And he shall make an atonement for the *sanctum sanctissimum*" means the innermost holy chamber; "and for the tabernacle of the congregation" means the whole temple; "and for the altar," literally; "shall he make an atonement" means the courtyards of the temple; "and also for the priests," literally; "and for all the people of the congregation", means Israelite; "shall he make the atonement" means the Levites; hence, they all are equally atoned for by the exported he-goat for all transgressions but that of defilement. Such is the

dictum of R. Jehudah; R. Simeon, however, maintains that as the blood of the interior he-goat atones for the defilement of the temple by the Israelites, so does the blood of the bullock atone for the defilement of the temple by the priests; likewise, as the confession of sins over the exported he-goat atones for all other transgressions by Israelites, so does the confession over the

bullock atone for the priests in all other transgressions. And as to the above deduction that all are equally atoned for, it means that they are equal, in as much as the category of atonement is concerned.

Who is the Tana of the following Boraitha? It reads [ibid. xvi. 15]: "He shall kill the goat of the sin-offering of the people," which means that which does not atone for the priests; but what does atone for them? Aaron's own bullock, because it is assigned to atone for his house also. And lest one say that they should not be atoned for even thereby, as the phrase "of him" is used concerning Aaron's bullock, then the priests who must be atoned for would remain without all atonement, we say it is better they should be atoned for by Aaron's bullock, which, atoning for all the house of Aaron, is *eo facto* no longer "of him" individually, than to be atoned for by the interior he-goat, which does not include any other thing. As to the possible objection that "his house" is meant to exclude other priests, there is a verse [Ps. cxxxv. 19, 20]: "O house of Aaron, bless the Lord; O house of Levi. . . . ye that fear the Lord, bless the Lord," and this includes all the priesthood. There is a Boraitha relating that the disciples of R. Ismael taught: Such is the custom of the divine attribute of justice that the righteous atone for the wicked and not that the wicked atone for another wicked.

Footnotes

8:1 The text repeats here what is already translated in tract Sabbath about carrying on Sabbath which is two divided into four, and also about leprosy, therefore we omit it.

9:1 Leeser's translation does not correspond.

12:1 The text discusses again, why should not the golden plate atone also for that which the he-goat does, and *vice versa*? and as it is almost the same which was said above, we omit it.

12:2 See Taanith, p. 86.

15:1 There is a contradiction in the Boraithas of Siphrah, which will be treated of in Tract Krithoth.

Next: Chapter II

CHAPTER II.

RULES AND REGULATIONS CONCERNING THE COGNITION OF DEFILEMENT; ITS TWO KINDS, SUBDIVIDED INTO FOUR, AND THEIR ILLUSTRATIONS.--THE CEREMONIAL ACCOMPANYING THE CONSECRATION OF THE EXTENSIONS BUILT IN THE COURT-YARD OF THE TEMPLE, AND IN JERUSALEM IN GENERAL.--ILLUSTRATIONS OF POSITIVE COMMANDMENTS THAT DO OR DO NOT ENTAIL LIABILITY.

MISHNA *I.*: The cognition of uncleanness is of two kinds subdivided into four--viz.: when one after having become unclean perceives it and then forgets all about it, knowing, however, that what he eats is holy; or when he was ignorant of the fact that the food is holy, being, however, aware of his uncleanness; or, finally, when both facts having escaped his memory he ate from the holy food without being cognizant thereof, but learning it after he had eaten, he is to bring a rich or poor offering. If he became unclean and knew it, forgot it afterward, but was fully conscious that he was in the sanctuary or he forgot that it was the sanctuary but knew his uncleanness; or, both facts having escaped his cognition, he enters the sanctuary without knowing it to be such and learns this fact only after he has gone out, he is to bring a foregoing offering.

It is immaterial whether the unclean one enters the courtyard (of the temple) or its extension, since extensions are added to both city and courtyard (of the temple) only in the presence of a king, prophet, *Urim* and *Tumim*, and of the grand Sanhedrim consisting of seventy-one, two thanks-offerings and the chorus; the whole court of justice steps forth, followed by the two thanks-offerings and then all Israel; the inner bread is consumed, the outer one is burnt. But whatever has not been constructed in this manner, does not entail guilt upon him who being unclean enters it.

If one having become unclean in the courtyard of the temple forgot it, remembering, however, that he is in the holy temple; or forgot that he is in the temple but was aware of his uncleanness; or, both facts having escaped his cognition, he made a

bow or was lingering there for an interval taken up by the making of a bow, or went out by the longer way, he is guilty; but if by the short way, be is not guilty. This is a positive command concerning the holy temple, for disobeying of which one is not guilty.

And which is the positive command concerning menstruation that entails guilt? If one being in relation with a clean woman is told by her: I have just become unclean, and thereupon immediately interrupts his relation with her, he is guilty, for separation from her affords him as much pleasure as his coming to her. R. Eliezar says: One is guilty for forgetting the cause of his uncleanness to have been a reptile, but is not guilty for forgetting (that he is in) the holy temple.

R. Aquiba says (it reads): If he has become ignorant of being unclean, whence it follows that he is guilty of obliviousness as regards uncleanness but not as regards the holy temple. R. Ismael says: The phrase "it will escape his memory" is repeated twice to declare one guilty in both cases: for forgetting his uncleanness as well as for forgetting the sanctuary.

GEMARA: Said R. Papa to Abayi: It states "two divided into four," whereas it ought to be "into six"--viz.: the cognition of defilement of the holy food, and of the sanctuary, in each case antecedent and subsequent. Answered Abayi: According to your theory there ought to be eight subdivisions, as cognition of defilement may be accompanied with ignorance of holy food and of the sanctuary. Rejoined R. Papa: In reality there are eight; the Mishna, however, does not count the first four, which are not at all found in the Scripture (*i.e.*, the Scripture finds one liable, *e.g.*, for eating illegal fat irrespective of his antecedent cognition or ignorance of its being illegal; he must then bring a sin-offering after becoming aware of the fact, hence, of the preceding cognition there is no mention in the Scripture).

"*It is immaterial . . . enters the courtyard*," etc. Whence is this ceremony attending the extension of courtyards deduced? Said R. Shimi b. Hyye, from [Exod. xxv. 9]: "In accordance with all that I show thee, the pattern of the tabernacle, and the pattern of all the instruments thereof, even so shall ye make it," which last phrase means for the future generations (otherwise this phrase would be superfluous). 1

"*When two thanks-offerings*," etc. There is a Boraitha that

the two thanks-offerings mean their bread and not flesh. Whence is this deduced? Said R. 'Hisda, from [Neh. xii. 31]: "And I have prepared two large thanks-offerings." Now, what signifies the attribute "large"? Shall we assume that it means literally, then it should read bullocks! Or should it indicate merely that of their kind they were the large ones; now, does it make a difference before heaven? Does not a Boraitha state: Concerning a cattle burnt-offering it reads [Lev. i. 13]: "Sweet savor unto the Lord"; the same expression concerns a fowl burnt-offering [ibid., ibid. 17]; likewise concerning a meal offering the same term is used [ibid. ii. 2], which is intended to teach that before heaven all offerings, liberal as well as poor, are equal, provided they are offered to gratify the heavenly Father? It remains, therefore, to assume that the attribute, large, means simply the greater part of the thanks-offerings, *i.e.*, the leaven bread, as there is a Mishna teaching that the thanks-offering was five Jerusalem saahs large, which are equal to six country saahs, making two eiphas each of three saahs, altogether twenty tens, ten of which were leaven and the other ten of matzah. The matzah, however, consisted of three kinds: cakes, wafers, and of what was sodden (hence, the leaven cakes were threefold those of the matzah).

Rami b. 'Hama said: The courtyard was sanctified with the remains of a meal-offering only, in order to make it equal to the City of Jerusalem itself--viz.: as the rule about the things, eatable within the city renders them invalid if carried outside the city, so also with things eatable within the courtyard, they become invalid out side of this yard (and a meal-offering was to be eaten only within the courtyard). Now, lest one say that as the city is to be sanctified with the leaven cakes of the thanks-offering, so also the remains of the meal offering sanctifying the courtyard be of leaven, the answer would be that there can be no meal offering of leaven, since it reads [Lev. vi. 10]: "It shall not be baked leaven, as their portion," etc., which Resh Lakish interprets

to mean that not even a portion thereof be baked leaven; hence, the above supposition is impossible. But again, why not sanctify with the two breads of Pentecost which are leaven? Nay; this cannot be admitted either; because how can this be carried out? Supposing the courtyard to be built before Pentecost, then the breads becoming holy only upon the slaughtering of the two lambs, are not yet capable of sanctifying; furthermore, the sanctification must take place on the day of

completing the building, hence, the sanctification on the holiday is out of question; nor can it be supposed that the temple be finished on the holiday, since there is a rule that the temple must not violate holidays; finally, to leave the two breads for the morrow of the holiday is not feasible, for they would become invalid in being left over night. But why not leave the finishing until sunset, when the lambs are slaughtered and the breads become holy, so that the sanctification could be carried out? There is a tradition that building the temple must not take place in the night time; as Abayi said: We know that the building of the temple must not be completed in the night, from [Numb. ix. 15]: "And on *the day* that tabernacle," etc., hence *on the day* but not on the night.

"*By the chorus*," etc. The rabbis taught: The orchestra of the thanks-offering consisted of violins, fifes, trumpets on every corner as well as on every elevated stone in Jerusalem and used to play [Psalm xxx. 2]: "I will extol thee, O Lord, for thou hast lifted me," etc., and also [ibid., 91]. Some call this latter song *Negaim* (plagues) because of verse [ibid., 10] in which it reads, "Nor shall any plague," etc; others call it *Pegaim*, because of verse [ibid., 7]: "There shall fall at thy side a thousand." They used to sing this song from verse 1 to 10 inclusive, and also the whole of Chap. III. of Psalms.

R. Jehoshua b. Levi used to say all the verses mentioned above before going to bed. But this seems hardly credible, as he himself said somewhere that none should cure one's self with the verses of the Torah. The answer is that protecting and curing are two different things, and he prohibited to say such verses over a wound. [1]

"*Followed by the two thanks-offerings*," etc. Shall we assume that the thanks-offerings follow the court, when we read [Ne'hem. xii. 31, 32]: "Two thanks-offerings . . . after them walked Hosha'yah," etc.? Nay; it means thus: They were all walking, the court being behind the offerings. In what order were the two offerings carried? R. 'Hyye and R. Simeon b. Rabbi differ concerning this: according to one they were one opposite the other, while according to the other they were placed one behind the other. According to the former opinion the one offering that was to be sacrificed on the inner altar was brought near the wall, while according to the latter opinion the one that

was near to the people of the court was sacrificed. R. Johanan, however, said: It was left to the prophet to decide which of the offerings was to be burnt and which to be eaten.

"*But whatever has not been constructed*," etc. It was taught: R. Huna says: All the details were essential in the construction, while R. Na'hman said: Whatever was not constructed with one of

them, etc. R. Huna bases his theory on the fact that the first sanctification sanctified for the future, too, while Ezra's sanctification was but a kind of memorial. On the other hand R. Na'hman holds that the first sanctification was confined only to the present and Ezra sanctified for his time although there were no Urim and Tumim. Rabba objected to R. Na'hman from our Mishna which plainly states, "in this manner," *i.e.*, with all the details specified there; whereupon he answered: Read there "whatever was not constructed with one of them."

Come and hear another objection: Aba Saul said, there were two Bitzin on the olive mountain, an upper and a lower one; the lower one was sanctified strictly in the manner prescribed by the Mishna, while the upper one was sanctified only by the ascendants from the exile, in the absence of both king and Urim and Tumim. The lower one, whose sanctification was complete, common people used to enter and consume there their lenient holy food, but not second tithe; scholars, however, used to consume there both. In the upper one of the incomplete sanctification the common people used to consume the lenient holiness, while the scholars did not partake there of anything. But why did not they sanctify it completely? Because the complete sanctification needs a king, etc., as prescribed by the Mishna, and such were not at that time. But why, then, was it at all considered a part of Jerusalem? Because being a suburb of Jerusalem it was easily accessible (hence, it is obvious that sanctification cannot be complete unless performed in the manner prescribed by the Mishna)? Concerning this matter the Tanaim of the following Boraitha differ. Ismael b. josh said: To what purpose did the rabbis enumerate all the cities surrounded by walls from the time of Jehoshua, b. Nun? Because the ascendants of the exile being placed in these cities, sanctified them; the first sanctification, however, was abolished when the land ceased to be that of Israel. R. Ismael thus holds that the first sanctification was good only for the present, but not for the future, and this would meet with a contradiction in the following. R. Ismael b. Josh said: Were, then, only these cities?

[paragraph continues] Is it not written [Deut. vi. 4, 5]: "Sixty cities . . . all these were fortified cities," why, then, had the sages enumerated them? Because the ascendants of the exile were placed in them; and not only to these cities, but also to all cities which were, according to tradition, surrounded with walls at the time of Jehoshua, apply all the commandments imposed upon such cities; for the first sanctification has sanctified them for the future also; whence it is evident that R. Ismael contradicts himself. The answer is that one of these Boraithas was said not by R. Ismael, but by R. Elazar b. josh, as the following Boraitha states, it reads [Levit. xxv. 30]: "Lo choma," meaning literally no wall; but according to the traditional reading it is Lo-choma, meaning "it has a wall," *i.e.*, though it has no wall now but was walled at the time Israel entered Palestine.

"*In the courtyard and forgot it*," etc. Whence is this deduced? Said R. Elazar [Numb. xix. 20]: "Because the sanctuary of the Lord hath he defiled," and [ibid., 13]: "Hath defiled the tabernacle of the Lord"; now, as there in so necessity of two verses for the inner defilement, one should be applied to the outer one. But are, indeed, the two verses superfluous? Are they not both needed for what we have learned in the following Boraitha in the name of R. Elazar: Why have two verses to mention both sanctuary and tabernacle, was not one sufficient? The answer is: If only tabernacle were mentioned, it could be accounted for by the fact of its being annointed with the holy oil, which was not the case with the temple, and therefore no liability is attached to defilement of latter, on the other hand, if only the holy temple were mentioned, the reason would be that it was sanctified once forever, which was not the case with the tabernacle; hence, the

necessity of both the verses? R. Elazar found difficulty to see the reason for using two names, sanctuary and tabernacle, since elsewhere these two names arc used synonymously; be, therefore, infers therefrom his two foregoing conclusions. His statement, however, that the temple is called tabernacle is correct, from [Lev. xxv. 11]: "And will set my tabernacle (*mishkoni*) among you"; but where is it found that tabernacle is called temple? In [Exod. xxv. 8]: And they shall make me a sanctuary and I will dwell in it and verse 9 says: "I show thee the pattern of the tabernacle."

"*He made a bow or was lingering*," etc. From this it may be said that the bowing must also take a certain time. Said Rabha: This is so only when, while bowing, he turned his face

to the outside, but not if to the inside of the temple; and the Mishna is to be interpreted thus: if he made the bow toward the inside or turned his face toward the outside for a certain interval; and here is an illustration: Suppose he kneels only, then no time is needed; but if he bows, *i.e.*, falls down and stretches his hands and feet, then a certain time must be taken up. And how long is this time interval? R. Itz'hak b. Na'hmeni, with whom was Simeon b. Pazi, according to others *vice versa*, or Simeon b. Na'hmeni, one says, it is so long as would take to say this verse [II Chron. vii. 3]: "And all the children of Israel were looking on as the fire came down, and the glory of the Lord was resting upon the house; and they kneeled down with their faces to the ground upon the pavement, and prostrated themselves, and gave thanks unto the Lord for he is good; because unto everlasting endureth his kindness"; while the other says: Only from "they kneeled" until the end of the verse. The rabbis taught: *Kidah* is bowing to the ground face to the earth, as [I Kings, i. 31]: "Then did Bath-sheba bow," etc.; kneeling is to stand upon the knees, as [ibid. viii. 54]: "From kneeling on his knees"; finally, bowing is prostrating one's self, as [Gen. xxxvii. 10]: "To bow down ourselves to thee to the earth."

"*If by the short way he is not guilty*." Rabha said: On the short way even if he kept on going the whole day the toe of one foot touching the heel of the other, he is free. He, however, propounded a question: If his walk was interrupted every time, must these intervals be added and counted or not? Now, why does not Rabha decide his question by his own doctrine from above? Because above he treats of the case done without interruption. Abayi asked Rabba: If he walked through the long way so quickly, as it takes no longer than by the short way, what then? Is the time essential and then he is free, or is the way essential and then he is liable? He answered: The long way cannot be made shorter by contracting the time of walking it.

R. Oshia said: I would like to say something, but am afraid of my colleagues; if one enters a leprous house backwards, although all his body was already in the house except his nose, he remains clean, as [Lev. xiv. 46]: "And he who goeth into the house," etc., means going in in the ordinary way, but not backwards; now, the reason of my hesitating is that my colleagues may, on the basis of the latter quotation, say that even when all his body, nose, too, is already in the house he is clean.

[paragraph continues] Said Rabba: If the whole body was in, he should not be worse than vessels In such a house, of which it reads [ibid. 36] ."That all shall not be made unclean." There is a Boraitha supporting R. Oshia: On the roofs of the temple no holy of holy food must be

consumed, no lenient holies must be slaughtered there, and he who, while unclean, enters the temple by these roofs is not culpable, as [ibid. xii. 4]: "And into the sanctuary shall she not come" means the coming in in the ordinary way.

"*This is a positive command concerning, the holy temple*," etc. What is the standpoint of the Tana from which he says "this is"? He refers to a statement in the Mishna in Horioth (Mishna, I.): There is no liability attached to a positive and negative commandment, etc., regarding which our Tana says. This is the positive commandment to which liability is not attached; but where, then, is a positive command entailing liability? It is "the having of intercourse with a woman" mentioned in the Mishna.

It was taught: Abayi said in the name of R. Hyya b. Rabh, in this last case the transgressor is liable to twice stripes: one for the intercourse, and one for the separation. So also said Rabha in the name of Samuel b. Shila, quoting R. Huna. Rabba, however, deliberating on this point, said: Let us see how was the case; if it treats of a scholar who had relation with his wife at the time she usually gets her menses, then he is justly culpable for the intercourse as for an unintentional offence, as he thought he will finish before, and for the separation, which act is with him as a scholar an intentional one, he is not liable to stripes (as such an act entails Korath); on the other hand, if it treats of an ignorant, why should he be liable twice? Is this not a case analogous to that where one consumed twice illegal fat the size of an olive in one forgetfulness, when he is culpable only once? And should you say that the transgressor acted so not at the usual time of menstruation, then, if he be a scholar he is not liable at all, since the intercourse was had innocently, while as regards separation it is here, too, an intentional act; if, however, he be an ignorant, he is culpable only once, *i.e.*, for the separation! Said Rabha: It treats of a time near to the menstruation, and of him who is a scholar and is aware that one must not have intercourse at such a time, but not that separation is prohibited (he is culpable twice: for the intercourse, because though aware that he must not have, he may none the less have thought that he will finish it before the menses ensue;

and for the separation, the prohibition of which was unknown to him). Rabha said further: Both the acts we find treated of in Mishnaioth; concerning separation in our Mishna, and concerning the intercourse in Tract Nidah, as follows; If blood be found on his shirt the two are unclean and liable to a sin-offering.

The master says: Immediate separation entails culpability. How then should he behave? Said R. Huna in the name of Rabh: He should support himself on the tips of his fingers until *phallus moretur* and then separate himself.

It was taught: R. Jonathan b. Lequnia asked his brother, R. Simeon, where is the warning against having intercourse with a menstruant woman? In answer he took some dry mud and threw it upon him, saying: Is it not plainly stated in [Lev. xviii. 19]? Whereupon he rejoined: I mean to ask where is the warning against separating one's self from her who gets her menses in the time of intercourse? Said 'Hiskia, from [ibid. xv. 24]: "And if any man should lie with her, and the uncleanness of her separation come upon him," etc., which means even when he separates from her when the menses ensue during the intercourse. But again, here we find only the positive command: "He shall be unclean seven days" [ibid.]; when, then, is the negative command against separating one's self? Said R. Papa: The above-cited verse [ibid. xviii. 19]: "Shalt thou

not approach (*Tikrab*)"means also thou shalt not separate thyself, as [Isa. lxv. 5] uses the word *K'rab'* to mean separating, so does there *tikrab'* mean separate.

The rabbis taught [Lev. v. 31]: "And ye shall separate the children of Israel from their uncleanness," whence you derive the warning that the children of Israel should separate themselves from their wives near the period of menstruation; so R. Jashia. And for how long? Said Rabha: For twelve hours. R. Johanan said in the name of R. Simeon b. Jo'hai: He who does not separate from his wife at the said period, his children even if equal to the sons of Aaron, will die; as after the above-cited verse and verse 33 follows the mention of the death of Aaron's children. R. 'Hyya b. Aha said in the name of R. Johanan: He who does separate himself for that period will be rewarded with male children, as [ibid. xi. 47]: "To distinguish between the clean and unclean," is followed by [ibid. xii. 2]: "If a woman . . . and born a male child." R. Jehoshua b. Levi added: He will be rewarded with sons who will be fit to

decide law questions, as it reads [ibid. x. 10, 11]: "So that ye maybe able to distinguish. . . . to teach." R. Benjamin b. Japheth said in the name of R. Elazar: He who sanctifies himself during the intercourse will be rewarded with male children, as [ibid. xi. 44]: "Ye shall sanctify yourselves," etc., which chapter is followed by verse [ibid. xii. 2].

"*A reptile*," etc. What is the point of their difference? Said 'Hiskia: A reptile and a carcass; according to R. Eliezer he must exactly know the cause of his defilement, whether reptile or carcass, while R. Aqiba maintains that the knowledge, and not the exact cause, of his defilement is necessary. And so also was this point explained by Ula.

The rabbis taught: "If there were two paths one of which was unclean (but it was not certain which one), and one passed through one of them entering, however, the temple after passing through the other path, too, he is liable; if, however, after passing the first path he entered the temple by forgetting and on becoming aware therof he performed the sprinkling and took a legal bath, and then passed the other path and again entered the sanctuary by forgetting, he is liable. R. Simeon, however, declares him free. On the other hand, R. Simeon b. Jehudah holds him, in the name of R. Simeon, free even in the first case." How is this last decision to be understood? In the first case where he passes the *two* paths there is no doubt that be passed an unclean one, how, then, can he be free? Said Rabha: The decision concerns a case where he, having passed both paths, forgets, enters the temple, and thereafter recollects his passing through but one of the paths; and the point of difference here is that the first Tana quotes R. Simeon as holding that partial cognition is considered as the whole, which R. b. Jehudah in his name denies. But why does the Boraitha hold liable him who has performed sprinkling, etc.? Is not here the cognition concerning a *doubtful* case and hence he should not be liable? Said R. Johanan: Here the Tana regards the doubtful cognition as a certain one. Resh Lakish, however, said: This Boraitha is in accordance with R. Ismael, who holds that antecedent cognition is not requisite. [1]

Footnotes

18:1 Rabha's objection thereto is already translated in Sanhedrim.

20:1 See Sanhedrim.

26:1 The further discussion will appear in Tract Kerithoth.

Next: Chapter III

CHAPTER III.

RULES AND REGULATIONS CONCERNING THE OATH-TRANSGRESSION CONSIDERED AS REFERRING TO BOTH PAST AND FUTURE.--THE DETERMINATION OF THE SIZE OR QUANTITY OF THE OBJECT REGARDING WHICH THE OATH IS MADE.--THE WORDING OF THE OATH.--IS OR IS NOT DRINKING INCLUDED IN EATING (TO WHICH THE OATH REFERS) AND *vice versa*.--DOES OR DOES NOT THE REPEATED STATING OF THE OATH ENTAIL A SEPARATE LIABILITY.--TO WHAT ACTS OR WORDS THE OATH RELATES.--OATHS MADE BY COMPULSION.--OATHS CONCERNING THE FULFILLING OR IGNORING OF A COMMANDMENT.

MISHNA *I*.: There are two kinds of oaths subdivided into four--viz.: I swear that I will eat or will not eat; that I did or did not eat. If upon making the oath, I will not eat, he does eat, and be it but a minimum, he is guilty; so R. Aqiba. Whereupon he was questioned: Where do we find a similar case that one be guilty for a minimum, so that this one be declared guilty? He replied: Where do we find that one must bring an offering for mere talk, as this one does talk and brings an offering?

GEMARA: The rabbis taught: "The expression *Mib'ta* of [Numb. xxxvii.] is considered an oath, and also the word Issor is considered such; and what prohibition attaches to this last form of an oath? If you decide that *Issor* is an oath, liability is attached to its transgression." Now, how is this to be understood? Does not the Boraitha state expressly that *Issor* is an oath? Said Abayi: It means to say thus: The expression *Mib'ta* is an oath, and if one says: This object is *Issor* to me as the first, and this third object be to me as the second, it is in such a case that, if it be decided that the making of an oath on a thing by comparing it to the first one *is* an oath, the second one is prohibited (*e.g.*, if one says: I swear not to eat this meat, then pointing to a bread he says: This bread be for me equal to the said meat; and then again: This fish be equal to this bread. In

such a case if swearing by *comparing* one object to another is an oath, each thing is prohibited). 1

But whence do we know that the expression *Mib'ta* is an oath? From [Lev. v. 4]: "Or if any person swear, by pronouncing with his lips (*Leb'ata*); now, it reads [Numb. xxx. 3]: "Or he swear an oath to bind his soul with an Issor (obligation)," hence, *Issor* is *obviously* also an oath? Therefore said Abayi: That Mib'ta is an oath, is inferred from [ibid., ibid. 7]: "Or what she may have uttered (*Mib'ta*), wherewith she hath bound (*Assro*)"; from here we see that "she has bound," not sworn, and it is with *Mib'ta* that she has bound herself. Rabha, however, said: There is no necessity of Abayi's explanation, as swearing by comparing is not considered; and as to the above Boraitha, it may be simply explained, as follows: *Mib'ta* is an oath, *Issor* is also an oath; however, *Issor* is found used between vow and oath, and this is what the Boraitha says: If one expresses *Issor* as a vow, it is a vow, and if as an oath, it is an oath. And where is it found in such connection? [Ibid., ibid. 11]: "And if she had vowed in her husband's house, or had bound

her soul by an obligation (*Issor*) with an oath." And the explanations of Abayi and Rabha are respectively in accordance with their theories elsewhere; as it was taught: If one swears by comparing, it is, according to Abayi, the same as swearing directly with the word oath, while according to Rabha it is not so.

An objection was raised from the following: What is *Issor* mentioned in the Torah? If one says, I take upon myself not to eat meat, not to drink wine just as on the day of the death of my father or of a certain man, *e.g.*, Gedaliuhu b. Achikom, or as on the day when I have seen Jerusalem destroyed, it is an Issor; and Samuel adds: Provided he has previously *vowed* already not to consume these objects on those days. Now, according to this, Abayi's theory is correct, as we see here that one may make a vow by comparing, hence, he may also make an oath by comparing; but Rabha's theory remains open to objection? Nay; Rabha may say that the cited Boraitha should read thus: "What is an *Issor of a vow* mentioned in the Torah"? "If one says," etc.; and to this Samuel makes his addition, by reason of [ibid., ibid. 3]: "If a man vows a vow," which means:

[paragraph continues] He vows on a thing on which he has already vowed. Moreover, Gedaliuh's day is specifically mentioned in the Boraitha in order to teach that, notwithstanding that it is a general fast-day, one's vow is only then a vow if he has previously vowed especially for this day; and again, lest one say, this being a general fast-day a vow referring thereto is not considered at all, consequently such a vow is not even one by comparing, and hence should be wholly disregarded, it comes to teach us that it is not so.

R. Johanan, too, upholds Rabha's theory, as Rabin, on coming from Palestine, said in his name: If one says, *Mib'ta*, I will not eat, or *Issor*, I will not eat, it is considered an oath. However, when R. Dimi came from Palestine, he said in the name of the same authority: The oath for a future, *e.g.*, I will or will not eat, is considered *false*, and the warning against it is in [Lev. xix. 12]: "And ye shall not swear by my name falsely." Furthermore, the oath for the past, *e.g.*, I have or have not eaten, is considered *vain*, and the warning against it is in [Exod. xx. 73] "Thou shalt not take the name of the Lord thy God in vain," and against a vow the warning is found in [Numb. xxx. 3]: "He shall not profane his word."

An objection was raised from the following: Vain (*Shahve*) and false (*Shekker*) are identical. Does not this mean that just as *vain* refers to a past, so does false, too, refer to the post? Why, vain and false are identical in respect of another point, but each of them has its signification as above; as there is a Boraitha: *Zachor*, ye shall remember (in the first ten commandments) and *Shamar*, ye shall observe the Sabbath (in the last ten commandments) were uttered by the Lord in one word, which transcends the power of the human mouth and ear. [1] But what does this Boraitha teach us thereby? The following: just as stripes are applied to a false, so they are also to a vain oath. But is not this self-evident, as both are negatives? Lest one say that it is as R. Papa-said to Abayi (further on), it comes to teach us that the Halakha prevails with Abayi.

When Rabin came, he said in the name of R. Jeremiah that R. Abuhu said in the name of R. Johanan that an oath for the past is a false one, and the warning against it is as cited above; and an oath for the future is merely a transgression of "He shall not profane his word," as above; and a vain oath is when one swears, *e.g.*, that a man is a woman. Said R. Papa: R. Abuhu's

statement was not explicitly stated, but inferred from the following: It was taught, Aidi b. Abin said in the name of Amram that R. Itz'hak said in the name of R. Johanan that R. Jehudah, quoting R. Jose the Galilean said: Stripes apply to all negatives of the Torah implying manual labor, but not to those without manual labor; excepting, however, an oath, an exchange and a curse upon one's neighbor by the holy name, to which three, though not implying manual labor, stripes apply. And whence do we know that it is so concerning an oath? Said R. Johanan in the name of R. Simeon b. Jo'hai, it reads [Exod. xx. 7]: "For the Lord will not hold guiltless," etc., which means only the heavenly court, but the worldly court will make him guiltless by punishing him with stripes.

Said R. Papa to Abayi: But maybe it means that no one can make him guiltless? And he answered: It would be so if it were not predicated of the Lord; but as it is, it can but mean that not the Lord but the earthly court will. All this concerns a vain oath, but whence do we know that the same is the case with a false one? Said R. Johanan, his own opinion: In the cited verse "vain" is mentioned twice, and as the second is not needed for itself, apply it to a false oath. R. Abuhu, however, deliberated as to how should be the case? If one swears, I will not eat and did eat, then there is an act done, hence it is in the category of negatives with manual act; again, if he swears, I will eat but did not eat, it is a case to which stripes do not apply according to both R. Johanan and Resh Lakish? (above p. 25). Upon due deliberation, however, R. Abuhu decided that it means an oath referring to the past, *e.g.*, I swear that I have eaten, and be did not eat, or *vice versa*; and though there is no manual labor here stripes apply, as Rabha said: The Torah has expressly extended the provision of the vain oath to the false one, to teach that just as a vain refers to the past, so also a false oath.

"*And be it a minimum*," etc. The schoolmen questioned: Does R. Aqiba hold with R. Simeon who declares one liable for a minimum with regard to all biblical transgressions? As we have learned in the following: Stripes apply even to a minimum, and the size of an olive is prescribed only concerning an offering. And why does R. Aqiba differ here, when he does not differ in any other places? Is it in order to let you know the power of his opponents, the rabbis, who say that if one swears not to eat even a minimum and did eat such, he is nevertheless

not liable! Or, in all other cases he agrees with the rabbis, while here he differs; because if one swore not to eat a minimum be would certainly be liable if he did eat, hence he is also liable if he swore generally, without mentioning the word minimum? Come and hear. R. Aqiba said: A Nazarite who has soaked his bread in wine and consumed it, is liable provided wine of the size of an olive entered the bread; now, should he bold with R. Simeon, why does he require the size of an olive? And also from the next Mishna, concerning reptiles which the Gemara explains in accordance with R. Aqiba, that a man may impose upon one's self the prohibition of even a minimum, it is inferred that he agrees with the rabbis in all cases.

"*Where do we find*," etc. But is there not a moth, which is but a minimum in size, and yet one is liable for consuming it? It is different with living creatures. Again, is not one liable in the case of the sanctuary? Here also there must be no less than the value of a *Peruta*. But does not he himself say that if one expresses a "minimum" he is liable? The expression raises it to the value

of a creature. But is there not a case regarding earth, where no definite quantity is requisite? And should you say that it is, then solve the following question propounded by Rabha: If one swore that he will not eat, and thereafter ate earth, what quantity thereof makes him liable, by saying that the quantity of an olive is required! Nay; because earth is not eatable, you cannot very well assign to it a definite quantity. But is not such the case with vows? A vow is equivalent to the expressions "minimum" used in an oath.

"*As this one does talk and brings an offering*," etc. But is not such the case with the blasphemer who is liable for mere talk? Here a case is looked for where one imposes upon one's self a prohibition by talk, while the blasphemer sins with his talk. But is not the case of a Nazarite, who brings an offering for mere talk, analogous? Nay; the Nazarite brings the offering, that wine become allowed to him. But does one not impose a prohibition by saying: "This should be sanctified?" We look for a case where one imposes the prohibition only upon one's self, while in this case the prohibition is general. But does not one prohibit a thing to one's self by saying: "This is a vow for me?" (And if he uses the thing unintentionally he must bring an offering.) The Tana of the Mishna holds that to this case an offering does not apply. Said Rabha: They differ only regarding the case where he did not express the word "minimum,"

but if he did, the expression raises it to the value of a creature. He said again: They differ only when he said, "I will not eat," but if he said, I will not taste, all agree that he is liable. And Rabha says this lest one say that with the expression "taste" one intended to mean "eat." Said R. Papa: They differ only concerning vows, while as regards oaths all agree that liability attaches even to a minimum, because by saying "this is a vow for me" he does not mention eating.

MISHNA *II*.: (If one says): I swear that I will not eat, and thereafter eats and drinks, he is guilty but once. But if he says: I swear that I will neither eat nor drink and did both, he is guilty twice. If he says: I swear not to eat and then eats wheat bread, barley bread and rye bread, he is guilty but once; if he swears: I will not eat either wheat bread, barley bread or rye bread and then eats, he is guilty for each one severally. I swear that I will not drink, and thereafter drinks varied beverages, he is guilty but once; I swear I will drink neither wine, oil, nor honey, and then drinks, he is guilty for each severally. I swear not to eat, and then ate things not suitable to eat, and drank something not suitable as a drink, he is free. If he swore not to eat and thereafter ate carcasses or illegal cattle, reptiles and vermin, he is guilty. R. Simeon declares him free. If one said: I swear to abstain from deriving any benefit from my wife if I have eaten to-day, and he did eat carcasses, etc., his wife is prohibited to him for all benefit.

GEMARA: R. Hyya b. Abin said in the name of Samuel: If one swears not to eat and thereafter drank, he is guilty. If you wish, this is mere common sense, since ordinarily a man inviting the other one to have a bite, the two go in and eat *and* drink: or if you wish, it is found in the Scripture that the expression eat includes also drinking--viz.: in [Deut. xiv. 16]: "In cattle, sheep, wine . . . and thou shalt eat these." But perhaps it means there an *aino garum* (a dish in which wine is mixed)? The verse says further *Shechor* [1] (old wine), which means an intoxicating beverage. Neither can it here be spoken of a date of the City of Kehilla, which when eaten intoxicates and regarding which a Boraitha says that one who had eaten it and then entered the sanctuary is culpable, as the word *shechor* here is analogous with the same word used concerning a Nazarite where it surely means only wine for which he is culpable. Said

[paragraph continues] Rabha. This is implied also in our Mishna: If one swears not to eat, and then eats and drinks, he is culpable but once, which signifies that the drinking is included in the eating; for if this were not the case, to what purpose would the express teaching be? Would it be necessary, *e.g.*, for the Tana to teach expressly that the oath regarding eating makes one culpable only for the eating and not for performed labor? Said Abayi to him: According to your doctrine that eating includes drinking, how is the second part of the Mishna "I will neither eat nor drink" to be understood? As eating includes drinking, why is he culpable twice? And he answered: Because of the expression; the addition "nor drink" shows clearly that his "I will neither eat" was not yet in *his mind* including drinking. Said R. Ashi: It seems to me, too, that the teaching of the Mishna implies drinking in eating, hence, "I swear not to *eat* and then ate things not eatable and *drank* things not suitable to drink," which implies that if the things he drank were suitable, he would be liable, hence we see that drinking is included in eating. However, this is hardly evidence, as the Mishna here may mean that he said in his oath both eat and drink.

"*I will not eat either wheat bread . . . he is guilty for each*." But perhaps he intends by mentioning expressly bread merely to exclude other things which to eat he shall be free? If such were the case, he would not repeat the word bread with each kind separately. But again, maybe he uses repeatedly the word bread in order to prevent the belief that he swears with regard to wheat bread not to *eat*, while with regard to the others not to *chew*? If this were his intention, he would say: I will not eat wheat bread, nor barley, nor rye, without repeating bread each time. But if he said so, his oath could be understood to concern a mixture of all these, but not each singly and severally? Then let him say: I will not eat bread of wheat, of barley, or of rye, without repeating *bread*. Hence, the repetition must have been intended to emphasize that he makes an oath for each severally.

"*I will drink neither wine, oil . . . he is guilty*," etc. Here again the question arises, maybe he intends to exclude other beverages, as here the above argumentation cannot be advanced, since the beverages are here specified. Said R. Papa: It speaks of a case where all these liquids were standing before him, so that he could by pointing to them swear not to drink them; why, then, are they specified? To indicate that he makes an

oath for each one. But if so, it could be said that he must not partake only of these before him, but of other wine, etc., he may? Let him then say: I will not drink of these before me nor of their kind in general. Hence, it must be said that the specification is intended to make the oath for each severally. R. Aha b. R. Aika said: The Mishna speaks of one invited by his neighbor to drink with him wine, oil and honey, to which he could answer: I will not drink with you (without repeating wine, oil and honey); hence, his repeating the liquids makes him liable for each one separately.

"*I will not eat and then ate things not eatable*," etc. Does not the Mishna contradict itself? It states that on eating an unsuitable thing he is free, and hereafter it declares him culpable for eating carcass? What are the reasons to account for these two parts respectively? This presents no difficulty. The first part speaks of the case when he says in general: I will not eat; while the second part speaks of the case when he expressly says: I will not eat anything. But even if this be so, why should the oath hold regarding reptiles, where an oath (not to eat such) lies on him

already from the Mount Sinai? Rabh, Samuel and R. Johanan all three said: It speaks of the case when one includes in his oath the permissible with the forbidden--viz.: I will not eat legal and illegal things. Resh Lakish, however, says: A case like that of the Mishna cannot take place, unless he stated plainly not to eat even a half of the prescribed quantity; in which case according to the rabbis, who hold one liable only for the whole quantity, the oath concerns a half-quantity, and according to R. Aqiba, who says that liability attaches even to a minimum, the oath here concerns a half-quantity provided he has not plainly specified anything.

But why does not Resh Lakish agree with R. Johanan? He may say that R. Johanan's theory of inclusion can be applied only to prohibitions in themselves, such as, eating carcasses on the day of atonement, where the carcass is prohibited even if not on the day of atonement, nevertheless the rabbis make him liable also for the day of atonement, because as one is prohibited from eating legal food on that day, he is likewise prohibited from eating carcass, for the prohibition to eat includes legal as well as illegal food; however, where a prohibition is imposed by man upon one's self, no one can make him liable for inclusion. Said Rabha: The reason of him who holds that one is liable for an inclusion is that he compares it to an additional prohibition;

while the reason of him who holds that such is not the case is that an additional prohibition holds good when concerning one and the same piece, but not when concerning separate pieces; *i. e.*, an inclusive prohibition is, *e.g.*, a carcass on the day of atonement, where the day itself adds nothing to the prohibition of the carcass as such, but does add a prohibition upon the man (viz: that be must not eat it on that day); while if, *e.g.*, illegal fat, which is prohibited to eat, but allowed for the altar, remains over night, it is prohibited also for the altar, hence, there is on *it* an *additional* prohibition (for its having remained over night), but this additional prohibition can be only on one and the same piece, but not on separate pieces.

Rabha said further that to him who holds the theory of inclusive prohibition, he who swears not to eat figs and hereafter swears not to eat figs and grapes, is liable for the figs twice; for the second oath resting upon the grapes, rests again upon the figs, too. But is not this self-evident? Lest one say that this theory applies only to prohibitions in themselves, and not to such made by man upon himself, he comes to teach us that there is no difference between the two cases. [1]

MISHNA *III*.: It is immaterial whether the things sworn off concern himself or others; whether they are or are not of some essential nature. *E.g.*, he says: I swear that I will or will not give something to this or that person; that I did or did not give him something; that I will or will not sleep; that I did or did not sleep; that I will or will not throw a stone into the sea; that I did or did not throw it. R. Ismael says: One is guilty only for an oath made with reference to the future, for it is written: To do evil or to do good. Said to him R. Aqiba: According to this view I know but about oaths concerning things that are intrinsically either evil or good, but whence do I learn about those regarding things that entail neither evil nor good doing? Retorted the former: From the addition in the Scripture; to this rejoined the latter: If the Scripture widens the notion in this respect, it does it likewise in the other (case).

GEMARA: The rabbis taught: In some respects vows are more rigorous than oaths, in others oaths are more rigorous than vows. Vows are more rigorous in that their liability attaches even to commandments, *e.g.*: If one says, I vow not to make a

sukkah, and hereafter he makes one, he is liable for transgressing the vow; which is not the case with an oath (as an oath rests upon him from the Mount Sinai). On the other hand, oaths are more rigorous than vows in that their liability attaches also to things not essential, which is not the case with vows.

"*I will or will not give*," etc. What does it mean, "I will give"? If charity to the poor, it is obligatory for him by oath on the Mount Sinai? Nay; it means a present to a rich man.

"*I will or will not sleep*," etc. But has not R. Johanan said that if one swears not to sleep for three days in succession, he gets stripes and is put to sleep immediately (because one cannot keep from sleeping for three days)? This is no difficulty, as in the case of the Mishna no number of days is specified.

"*I will throw a stone*," etc. It was taught: If one said, I swear that so and so has or has not thrown a stone into the sea, according to Rabh he is culpable, as he transgressed a negative; according to Samuel he is not, for such an oath can not be made with reference to the future. Shall we assume that the above differ in the same in which R. Aqiba and R. Ismael differ in our Mishna: R. Ismael said, one is liable only for the future, as it reads: To do evil or to do good; whereupon said R. Aqiba: If it were as you say, the liability would apply but to things that are intrinsically either evil or good; and he answered: From the addition in the Scripture: To every thing uttered with his lips; whereto R. Aqiba rejoined, etc. Whence it would appear that Rabh is in accordance with Aqiba, and Samuel in accordance with R. Ismael? Nay; according to R. Ismael, who frees one for the past even in a case where a future is possible, there can be no doubt that in the case illustrated above, one should be culpable; but where they do differ is concerning the interpretation of R. Aqiba's view. According to Rabh, R. Aqiba holds one liable for transgressing a negative immaterial whether such an oath can or can not apply to a future; while Samuel maintains that R. Aqiba's view applies only to a case where an oath for the future *is* possible, but not to other cases.

Said Abayi: Rabh admits that if one says, I swear that I know something to testify for you, and it is found hereafter that he knows nothing, there is no liability in this case because the negative, I swear that I do not know, etc., is not possible here (as this is not considered an utterance, but belongs to the category of testimony). But regarding the oath, I was or was not aware of testimony in your case, or, I have or have not testified,

[paragraph continues] Rabh and Samuel still differ. (Says the Gemara): According to Samuel's theory it is correct that the law has excluded the witness-oath from the category of uttered oaths, as there is a rule that where there is no future possible, no liability attaches to the past; but according to Rabh who disregards this rule, why were the witness-oaths excluded? Said the rabbis before Abayi: in order to make one liable twice (*i.e.*, if one is fit to testify, knows the case, and nevertheless denied it before the court, he is liable twice, for the witness-oath and for an uttered oath). Said Abayi to them: It is impossible to make one liable twice, as it reads plainly [Lev. v. 4]: "That he hath incurred guilt by *one* [1] of these," which means, he can be punished once but not twice. But, then, to what other purpose have the witness-oaths been excluded,

according to Abayi? To what we have learned in the following: Concerning all oaths it reads "escaped his memory," except the oath of a witness, to make him liable (to a sin-offering) for an intentional oath just as for an unintentional one. Said the rabbis to Abayi: Say, then, that for an intentional he is liable to one, and for an unintentional he should be liable to two, viz.: for a witness and an uttered oath? And he answered: Have I not said that the above-cited verse prevents it from making one liable to two? And as to an intentional, the liability of an uttered oath does not exist there.

Rabha, however, said: The reason why there can be no two liabilities is this: There is a rule that, if to something that was included in the general a new law be applied, only by the new one must guide one's self (*i.e.*, the witness-oath as an oath is included in the general uttered oaths, and when the Scripture makes for it a new special law of liability, you cannot any more apply to it also the liability attached to the uttered oath). But how is it according to Abayi? Does be hold that there is such an oath at all? Has he not declared above that Rabh admits that if one swears: I know testimony for you, etc., there is no liability here, as such oath cannot be made in the negative, whence it would seem that such in the negative does not exist at all? He has retracted his above statement, or, if you wish, one of the above statements was not said by Abayi but by R. Papa.

"*One is guilty only . . . with reference to the future*." The rabbis taught, it reads [Lev. v. 4]: "To do evil, or to do good," whence we infer only those that are in themselves either good or evil; but whence do we know about oaths concerning other things? From [ibid., ibid.]: "Pronouncing with his lips," etc. But all this is concerning the future; whence do we know the same concerning the past? From [ibid., ibid.]: "In *whatsoever* it be"; so R. Aqiba. R. Ismael, however, says: "To do evil, or to do good" means only oaths for the future. Said to him R. Aqiba: If such be the case, we know only about oaths concerning things intrinsically good or evil, but whence do we know about those regarding other things? Retorted the former: From the addition in the Scripture ("whatsoever"), whereupon rejoined R. Aqiba: If the Scripture widens the notion in this respect, it does it likewise in all other respects. Now, is not R. Aqiba's statement perfectly correct? Said R. Johanan: R. Ismael, who was a disciple of R. Ne'hunia b. Hakana, who was in the habit of interpreting the Scripture by generals and particulars, proceeds in the same manner as his master; while R. Aqiba, who was the disciple of Na'hum of Gimzu, whose method of interpretation was extensions and limitations, follows his master's method. And this is as stated in the following Boraitha: "If any person swear" is an extension; "To do evil or good" is a limitation; "In whatsoever it be" is again an extension, and there is a rule that such an extension includes everything, while a limitation is excluding a commandment. This is in accordance with R. Aqiba; while R. Ismael, whose method is the generals and particulars, interprets the verse thus: "If any person," etc., is a general; "To do evil or good" is a particular; "In whatsoever" is again a general, and there is a rule that wherever there is a particular between two generals, the latter must be interpreted in the sense of the particular; now, as the particular here refers expressly to the future, so also everything relates to the future; the generals, however, affect in the same way all other things relating to the future, but not implying either good or evil, while the particular affects things relating to the past, that they be excluded. (Says the Gemara): And why not the reverse? Said R. Itz'hak: They must be similar to the particular (of to do evil, etc.), which is prohibited because of the above-cited [Numb. xxx.]: "He shall not profane his word," excluded the past to which the prohibition is "He shall not lie." R. Itz'hak b. Abin, however, said: This is inferred from the cited verse,

[paragraph continues] "If any person swear by pronouncing," which signifies that the oath was before the act, but not the past where the act was before the oath.

The rabbis taught: "If any person swear," etc., intends to exclude compulsion; "Escaped" to exclude intention; "From his memory" to signify that the oath escaped his memory but not the thing in question; hence, one is culpable only for forgetting the oath, but not for forgetting the object.

The master says: "To exclude compulsion," what could illustrate this? As it happened to R. Kahana and R. Assi after the lectures at Rabh's college had ceased; one would say, I swear that Rabh said so and so, and the other would say, I swear that Rabh said the contrary, and when they came to ask Rabh on the point, he certainly said as one of them; and to the question of the other, Have I sworn false, Rabh answered: You were compelled by your conscience and the verse "Escaped (from) his memory" means the oath but not the object.

This statement was ridiculed in the west. An oath and not the object is to be found, *e.g.,* in: I swear not to eat wheat bread, and thereafter he thinks that he swore to eat, and accordingly eats it, hence, he forgot the oath but not the object; but where do you find a case where the object is forgotten and not the oath? As, *e.g.,* in: I will not eat wheat bread, and thereafter ate it thinking it to be of barley, hence, he has the oath in mind and not the object; but as he forgot the object, is it not as if he forgot the oath? Therefore, decided R. Elazar that it makes no difference what one forgets. R. Joseph opposed: Is it indeed so, that the object cannot be forgotten without the oath? May it not happen that one swear not to eat wheat bread, and then stretch his hand to the basket where there was both barley and wheat bread with the intention to take that of barley, but takes that of wheat, and eats it up in the belief that it is of barley? In this case he had the oath clearly in mind, but he did not recognize the object. Said Abayi to him: But when he brings the offering, why does he bring it, for the bread he has eaten? Surely because of the oath (hence, they were right in the west). R. Joseph, however, insists on his statement for the reason that if he actually recognized that this is wheat bread, he would certainly abstain from it, hence, here is the ignorance of the object.

Rabha questioned R. Na'hman: How is it if he forgot both? And he answered: As soon as he became ignorant of the oath

he is culpable. Rejoined Rabha: Why not the contrary? Here is the ignorance of the object, and hence he should be free? Said R. Ashi: In such a case we have to examine the nature of the case; if he abstained from the object by recollecting the oath, then the ignorance of the oath is the main thing, and he is culpable; but if he abstained by recollecting the object, then the ignorance of the object is the main point, and he is free. Said Rabina to him: I do not see any difference here; if his abstention is caused by the recollection of the oath, is not here also the recollection of the object brought about? And the same may be asked *vice versa*,. hence, there can be no difference here.

Rabha questioned again R. Na'hman: How can an unintentional uttered oath take place for the

past? If he (who swears) is while swearing aware that it is false, then it is intentional; and if he is not aware, then it is a case of compulsion. And he answered: Take the case where he is aware that such an oath is prohibited, but is not aware that the liability of a sin-offering is attached thereto. Is this in accordance with Munbaz, who holds that such an ignorance be considered, and not in accordance with the rabbis, his opponents? Nay; this may even accord with the latter, as they differ with him only in all other cases of the Torah, but not in this case, for it is a novelty, as we do not find anywhere in the Scripture that one should be liable to a sin-offering for a negative except in this case, in which, therefore, the rabbis, too, agree with Munbaz.

Rabina (the elder) questioned Rabha: Suppose one swear not to eat this bread, and then he is in danger if he does not eat it, how is it? In danger! then he is certainly allowed to eat it! Said Rabina: I mean to say that suppose he ate this bread while impelled by hunger and having forgotten his oath not to eat it. And Rabha answered: Concerning this we have learned elsewhere, a sin-offering applies only to such a case where he would abstain from eating if he recollected his oath, but not otherwise; while here, being, as he is, impelled by hunger, he would not abstain, it cannot be considered unintentional. 1

Samuel said: It is not sufficient that one make up his mind, he must pronounce it with his lips, as it reads "By pronouncing with his lips." 2

MISHNA *IV*.: If one swears to ignore some commandment and does not carry out his oath, he is free; if he swears to fulfill a commandment and fails to realize his oath, he is free. It appears on the first glance that he should rather be guilty, as R. Jehudah b. Battina argues thus: Since one is guilty for oaths regarding voluntary acts not provided for from the Mount Sinai, so much the more is it so in the case of oaths regarding commandments, to which he is sworn in from the Mount Sinai. Whereupon he was retorted: If you declare him guilty in voluntary acts where affirmation and negation are both alike indifferent, you can by means do the same in oaths concerning commandments where affirmation and negation are not equivalent; since one is free, if he swears to, but does not, violate a commandment.

GEMARA: The rabbis taught: Lest one say that one who swore to ignore a commandment and did not, should be culpable, it reads, "To do evil or good"; just as to do good unto one's self is a voluntary act, so also an evil act must be voluntary, and this excludes him who swore to ignore a commandment. Furthermore, lest one say that he who swore to fulfill a commandment and did not, should be culpable for the oath, we again compare the good to the evil act: just as latter is voluntary in this case, so must former be voluntary, and this excludes the case of an oath to fulfill a commandment. Again, lest one say that if one swore to do evil unto himself and did not, he should be free, we again compare evil to good; just as the latter means voluntary, so also the former, hence, it includes the case where one swore to do evil to himself, which he was at liberty to do, and he is culpable. Finally, lest one say that the same is the case if he swore to do evil to others and did not, we compare evil to good, which latter is voluntary, while in the case of strangers he is not at liberty to do evil, hence he is free. But whence do we know that he who swore to do good to others and did not, is culpable? From "*or* to do good." What is an evil doing to others? *E.g.*, one says: I will strike so and so, and split his head.

(Says the Gemara): But whence is it known that the above-cited verse treats of a voluntary act,

perhaps it has in view a meritorious act? This cannot be borne in mind, as the two, the evil and the good, must be compared with each other; and as doing good cannot be spoken of concerning the ignoring of a commandment, so also doing evil cannot treat of ignoring a commandment,

hence, this expression of doing evil would be in this respect good, as it does not apply to the ignoring of commandments; on the other hand, the good-doing is compared to the evil-doing: just as the former cannot treat of the fulfilling of a commandment, so also the latter cannot; hence, in this respect the good-doing would be evil (therefore, the expression in question cannot treat of meritorious acts). But in the light of these considerations, this expression cannot treat of voluntary acts, either, where good and evil means to do good and evil unto one's self respectively, hence, here, too, good would in some respects be evil (as, *e.g.*, the oath not to eat a harmful thing) and *vice versa*? [1] Therefore we must say that, because it was needful to the Scripture to use the disjunction "or" in order to indicate doing good to others, it must treat of voluntary acts; since if it treated of commandments, the "or" would not be necessary, as it would be self-evident, for as the doing evil to others is included here, so much the more the doing good! [2]

"*R. Jehudah b. Bathira*," etc. Is not the argument of the rabbis against R. Jehudah b. Bathira correct? He may say thus: Let us see; was it then necessary for the Scripture to add that if one swore to do good to others and did not, he is culpable; is this not self-evident, since one is not culpable for an oath to do evil to others, being as he is not free to do so, he is culpable when he *is free* to do so; and nevertheless the Scripture did add, hence, the same is the case with the oath to fulfill a commandment, where, although it is self-evident that he is culpable in this case because he is not culpable when he swore to ignore a commandment, yet the Scripture adds it. To all which the rabbis might say: These two cases are by no means analogous, as when one swears not to do good to so and so, he is culpable, while if one swears not to fulfill a commandment, and thereafter he does fulfill, he cannot be culpable.

MISHNA *V.*: If one swears, I will not eat this loaf of bread, I swear I will not eat it, I swear I will not eat it, and eats it nevertheless, he is guilty but once. This is an uttered oath for the intentional violation of which one is subject to stripes, and for whose unintentional violation to a poor or rich offering. Vain swearing, if wilfully done, is punished with stripes, but if committed unintentionally, is free from punishment.

GEMARA: To what purpose does the Mishna vary the language? It comes to teach us that only when making the oath in such expressions he is culpable but once; but if he said first: I will not eat it, and then, I will not eat this loaf, he would be culpable twice; as Rabha explains elsewhere that the expression "I will not eat this bread" makes one culpable when he ate of it the size of an olive; but if one says, "I will not eat it," he is not culpable unless he has consumed the whole of it; hence, if the Mishna stated first "I will not eat it," and then "I will not eat this loaf of bread" he would be culpable twice (as here were two *distinct* oaths: the former on the *whole* bread, the latter on the size of an olive; and the latter does not do away with the former, while the former if stated last would do away with the latter).

"*I will not eat it, and eats it none the less*," etc. For what purpose is this repetition, since one oath does not rest upon the other, as we have seen it to be the case with the second one, and it is surely so with the third one, too? It comes to teach us that, though there is no liability, yet the oath is not ignored, and that in case there will be place for it, it may rest; this illustration is as Rabha said: In case he asked a sage to nullify the first oath, the next comes to take its place.

Rabba said: If one says, I swear not to eat *this* bread in case I eat the other, and it happened that he ate the first [1] (1) erroneously and the second intentionally, he is free (2); if *vice versa*, he is culpable (3); furthermore, if he ate both unintentionally, he is free (4); if both intentionally, it depends on the following: if he had eaten the conditional one first and thereafter the one he prohibited to himself, he is liable (5), and if *vice versa* it is under the category of cases concerning which R. Johanan and Resh Lakish differ; according to him who holds that a doubtful

warning is considered, he is culpable (6), while according to the other, who holds that such is not considered, he is free (7). If, however, continues Rabha, he made the two breads dependent on each other--viz.: I will not eat the one if I eat the other. I will not eat the other if I eat this, and thereafter he consumed one intentionally (*i.e.*, he has in mind the oath that he must not eat this in case he eats the other one, but he forgot that he swore the same with regard to the other bread) then he consumed the other one also intentionally (the same as before, but he forgot that he has already consumed the first one), he is free; if, however, he has consumed the first unintentionally (*i.e.*, he forgot that the conditional oath is on *this* bread, though aware of the oath itself and therefore he consumes the second one in the same manner, he is culpable (8); but if he consumed both unintentionally (having forgotten all about the oath), he is free; both intentionally, he is, all agree, culpable for the second one; the first, however, falls into the foregoing category concerning which R. Johanan and Resh Lakish differ. Said R. Mari: there are vows by error and vows by compulsion; how so? If one says: I vow this object if I have eaten or drunk such and such, and then recollects that he did; in like manner if he vows for the future and on forgetting the vow eats or drinks, to such a vow no liability attaches; and there is a Boraitha that just as there are vows by error, there are also oaths by error.

Eipha taught the Tract Sheb'noth at Rabba's college, and Abimi, his brother, asked him: How is it if one swears twice, I have not eaten, I have not eaten, while he did eat? He answered: He is culpable but once; whereupon he said: You are mistaken, since the first oath was already a lie, and the second one is again a lie. He asked further: How is it if one swears not to eat nine and ten (articles), and thereafter he eats ten, without recollecting his oath in between? And he answered: He is culpable for each one severally. Said the other: You are again mistaken, for the oath for the ten does not rest at all, as ten presupposes nine and for the nine he has made a separate oath; but how is it if he swear not to eat ten, and then not to eat nine? Here he is culpable only once. The other rejoined: You are again mistaken, for as soon as he ate nine he broke one oath, and by eating the tenth he breaks the other oath. Said Abayi: In this last case, then, may be a case that Eipha is right --viz.: if one swear not to eat ten, and thereafter not to eat nine; then he ate nine and recollected his transgression, brought

a sin-offering and then consumed the tenth; the tenth is then considered but a half-quantity, and for such one is not liable.

MISHNA *VI*.: Which is false swearing? If one swears that something is different from what it is known by everybody to be, *e.g.*, that a stone column is of gold, that a man is a woman, that a woman is a man; or if he swears to an impossibility--viz.: If I have not seen a camel flying in the air; If I did not see a serpent of the shape of an oil-press; so! . . . If one asks some witnesses: Come to testify for me, and they answer, We swear that we shall not bear you witness; or if someone swears to ignore a commandment, as, *e.g.*, not to make a Sukka, not to take Lulab'be, or not to put on phylacteries; so it is a false swearing punishable with stripes if committed intentionally, and unpunishable if made by error. If he swears, to one and the same loaf of bread, I will not eat it, then, I will not eat it, the former is a vain oath, and the latter an uttered oath; so that by eating it he is liable for uttered swearing; by not eating it he is liable for a vain oath.

GEMARA: Said Ula: Provided it was acknowledged by three persons that this pillar was of stone.

"*If he swore to an impossibility*, "etc. Why does the Mishna use a negative and not a positive expression? Said Abayi: Read it in the positive, if you prefer. Rabha, however, said: It speaks thus: If he says, all the fruit in the world be forbidden to me, if I have not, [1] etc.

"*I will eat, I will not eat*," etc. Let us see: since he is liable for the uttered oath, shall he not be liable for the vain one? He *has* pronounced such and why shall he not be liable? Said R. Jeremiah: Read in the Mishna, he is liable for the uttered oath *also*.

MISHNA *VII*.: The provisions regarding uttered swearing apply to males, females; to kindred, non-kindred; to those legally fit to testify as well as to those unfit; to cases before as well as outside the court. The oath, however, must come forth from his own mouth, and its intentional violation is punished with stripes, and its unintentional with a poor and rich-offering. Vain swearing takes place by men as well as by women; by kindred and non-kindred; by those fit to testify and by those unfit; before and outside the court, and the oath must issue from one's own mouth; its intentional violation is attended with stripes,

while its unintentional is unpunishable. In both cases one is guilty if made to swear by others, thus: If he says, I ate nothing to-day, I put on no phylacteries, and another interposes: I adjure you, to which he answers: Amen, he is guilty.

GEMARA: Said Samuel: He who answers amen after an oath is considered as if he pronounced the oath with his lips, as it reads [Numb. V. 22]: "And the women say amen, amen." Said R. Papa in the name of Rabha: There are a Mishna and a Boraitha which seem to teach the same. The Mishna is the next following (viii.): The witness-oath . . . unless they deny before the court; such is R. Mair's view. Then the illustration in the Boraitha: If one said to the witnesses, Come and testify for me, and they answer: We swear that we know of no testimony for you, or, We do not know any testimony, whereto he says, I adjure you, and they answered: Amen, they are liable when they deny it, immaterial in the presence or absence of the court; so R. Mair. Hence, the Boraitha apparently contradicts the Mishna; however, as we said, the Mishna means that they did not answer amen, while in the Boraitha he did so, hence, the answer, amen, is equivalent to pronouncing with one's lips.

Said Rabina in the name of Rabha: From our own Mishna we may infer the same; as in the first part it requires that he must utter it himself, whence it is to be inferred that not through others, and in its last part it states that in both cases if sworn through another, he is liable; does the last part contradict the first? Nay; the last part means when they answered Amen, while the first part does not mean so. But if so, what comes Samuel to tell us? He comes to teach that the Mishna is particular in its statements concerning an uttered oath--viz.: if made by himself, he must pronounce it with his lips, and if by others, he must also utter with his lips Amen.

Footnotes

28:1 This illustration is taken from 'Hanannel, as Rashi's illustration here is too complicated.

29:1 The continuation of this will be translated in Tract Benedictions.

32:1 *Shechor* is old wine and *Shiccor* from the same stem means intoxicated.

35:1 The discussion following here, being but repeated from its proper place, is here omitted.

37:1 Here the word *l'achath* (to one) is taken by the text literally: one; while further on it is explained to mean 'to anyone'.

40:1 The explanation here is that of Hanannell's second version, Rashi not being clear on the point.

40:2 This statement is objected to by many, but the objections are overthrown; and as all this discussion is both complicated and unimportant, we omit it.

42:1 The commentaries on the point are in great perplexity.

42:2 The discussion here on the disjunction "or" is omitted, for it is already given in Sanhedrin.

43:1 (1) The first, *i.e.* the conditioned *A*, the second, *i.e.* the conditioning one *B*. (2) Because when he eats *A* he forgot all about *B* and the oath has not yet rested upon him, since ***R*** was not yet consumed by him; hence, he is free from both stripes and sin offering. (3) Because while eating *A* he was aware of his oath, and when consuming *B* he forgot the oath; hence he is liable to an offering for breaking an oath by forgetting. (4) Because he had forgotten the oath already when he ate *A* hence there was no oath at all resting upon him. (5) To stripes, since after having consumed *A* he was aware that *B* was forbidden to him, and the warning was a certain one. (6) Because if he was warned with regard to either *A* or *B*, he has broken his oath intentionally. (7) Even when warned while eating *A*, because the liability to stripes is originally attached only to *B*, hence the warning does not effect. (8) Because one of the breads was necessarily consumed intentionally.

45:1 The further development of this discussion will appear in its place in N'dairm.

Next: Chapter IV

CHAPTER IV.

RULES AND REGULATIONS CONCERNING THE WITNESS-OATH: WHO IS OR IS NOT RESPONSIBLE THEREFOR; HOW THE PLACE WHERE SUCH IS MADE (WITHIN OR WITHOUT THE COURT) DETERMINES ITS LIABILITY; IF MADE INTENTIONALLY.--THE LAWS OF ADJURATION.--TWO PARTIES OF WITNESSES CONTRADICTING EACH OTHER.--FOR WHICH OF THE DIVINE NAMES AND ATTRIBUTES (WHEN USED IN AN OATH) ONE IS CULPABLE.

MISHNA *I.*: The witness-oath applies to men but not to women, to unrelated but not to kindred, to legally fit to testify but not to those unfit, as such an oath is given only to those fit to testify in the presence as well as in the absence of the court; provided it comes forth from one's own lips, but if from the mouth of others, they are liable only when they deny it before the court; such is R. Mair's view; the sages, however, maintain: Whether it comes forth from one's own mouth or from that of others, they are not liable unless they deny it before the court. Again, the witnesses are liable for an intentional oath, and for an error *in* the oath made while intentionally testifying, but are not guilty when made in error. And what is their fine for intentional swearing? A poor and rich offering.

GEMARA: Whence is this deduced? From what the rabbis taught, it reads [Deut. xix. 17]: "Then shall the two men, who have the controversy, stand before the Lord," etc.; this means the witnesses; but perhaps it means the contending parties themselves? As it reads: "Who have the controversy," hence, the parties are already indicated, consequently, "the men" indicate the witnesses. And should you like to object to this deduction, then we may refer to the analogy of expression "two" mentioned here, and also found in [ibid. 15]: "Upon the evidence of two," where it *expressly* means witnesses, hence, also here witnesses are meant. [And what would be the objection? Lest one say that because it is not written "and who have the controversy," the whole verse speaks only of the parties, hence, the analogy of expression.]

There is another Boraitha: "The two men shall stand

means the witnesses; but perhaps it means the parties? This cannot be, for do only men and not women come to court? And should you like to object, we may refer you to an analogy of expression; as there "two" means witnesses, so also here [and what would be the objection? Lest one say that it is not customary for a woman to go to court, as it reads [Psalm, xlv. 14]: "Awaiteth the king's daughter in the inner chamber"; wherefore, the analogy of expression].

The rabbis taught: "The two men shall stand" signifies that it is a meritorious act that both parties declare their grievances standing. Said R. Jehudah: I have heard that if the court allows both parties to sit, they may do so, since it is forbidden only that one stand and the other sit; or

that one party be allowed freedom in speaking, and the other he asked to speak briefly.

The rabbis taught, it reads [Lev. xix. 15]: "In righteousness thou shalt judge thy neighbor," which means no preference is to be given to either party, as said above. Another explanation of the just-cited verse is: Try always to judge everybody from his better side. R. Joseph taught: This verse signifies that him who is your equal in wisdom and deeds, you shall try to judge fairly.

It happened that Ula b. Eilai had a case in the court of R. Na'hman, and R. Joseph sent word to R. Na'hman: Ula, our colleague, is equal to us in wisdom and deeds; and R. Na'hman wondered what the purpose of the message was; does he mean: I shall flatter him? After some deliberation he said: He must mean I shall give preference to Ula's case over some other cases, or if in his case the evidence will be equally balanced on the two sides, and the opinion of the judges will be decisive.

Ula said: The point of difference above concerns only the contending parties, while concerning the witnesses all agree that they must stand, as the above-cited verse, "The two men shall stand," signifies; and R. Huna said: The difference concerns only the time of the trial, while at its conclusion the judges, all agree, should sit and the parties stand, as the conclusion is equalled to witnesses and as they are standing according to the above-cited verse, so also must the parties stand.

The wife of R. Huna had once a case before R. Na'hman, and the latter deliberated with himself as to how to proceed. Shall I rise to honor her, then her opponent will remain stupefied, and should I not rise, there is a rule that the wife of a

scholar must be treated in the same manner as the scholar himself. He then helped himself out of the difficulty by instructing his servant, thus: Throw a duckling upon my head as soon as the wife Huna enters, so that I will have to rise anyhow. But did not the master say that at the conclusion of the trial the judges, all agree, are to sit while the parties must stand? (And how could R. Na'hman remain standing when she enters to hear the conclusion)? The answer is: He then sits halfways, as though untying his shoe-laces, and pronounces the verdict.

Rabba b. R. Huna said: If a scholar has a case with one of the common people, the court may invite both to sit down, and if the common man remain standing, it is not necessary to repeat the invitation.

Rabh b. R. Shrabia had a case with an Amharetz (a common) before R. Papa, and the latter invited both to sit down; the messenger of the court, however, came and made the Amharetz to stand up, to which R. Papa said nothing. But why was R. Papa indifferent, could not this stupefy the opposing party? R. Papa thought: I, myself, invited the two to sit, and the act of the messenger the Amharetz may explain as due to the fact that he has not gratified him (the messenger).

Rabba b. Huna said again: If a young scholar has a case with an Amharetz, the former must not

sit down before the judge appears, in order that the Amharetz should not think that the scholar came there to prepare his own case and send it to the judge; provided, however, the scholar was not usually appointed to sit in court for some other purpose, but if he was, he may sit down, as his opponent will think that he is there for a purpose other than the case.

The same said again in the name of the same authority: If a scholar was aware of a case to which he could be a witness, but it was a humiliation to him to go to that particular court where the judge was inferior to him, he may remain at home. Said R. Sheshah b. R. Idi: This we have also learned in a Mishna, if one finds a sack or a basket on the way and it is a humiliation to him to carry it, he may leave it (in spite of the commandment to return a loss to its owner); but all this, he says, concerns civil cases; as to criminal cases, it reads [Prov. xxi. 30]: "There is no wisdom nor understanding, nor counsel against the Lord," which means wherever there is a case of profaning the holy name, no distinction or honor must be given to any rabbi.

R. Yenai was witness to a case where Mar Zutra was one of the contending parties, in the court of Amemar; and latter invited all, parties and witnesses, to sit down. Said R. Ashi to him: Did not Ula say that only concerning the parties there is a difference of opinion, but concerning the witnesses all agree that they must stand? And he answered: This is a positive commandment; and to honor a scholar is also a positive commandment (inferred by R. Aqiba from the particle *Eth*, the sign of the accusations, written in "*Eth* the Lord thy God thou shalt fear," which means to add the scholar) and the latter commandment is to me of greater value.

The rabbis taught, it reads [Exod. xxiii. 7]: "Keep thyself far from a false speech"; this signifies that the judge must not with his speech advocate either party, furthermore that he shall not enter discussion with an ignorant disciple in a case (so that he might not be mislead by the latter); again, that the judge, being aware that the party is a robber and there being only one witness, must not conjoin with the latter, for in this case the robber may be right; nor must this (conjoining) be done by any other person; that, if the judge notices the witnesses to testify falsely, he shall not say to himself: I will decide the case in accordance with their evidence according to the law and the "collar remain on their neck."

From this verse is further to infer: That if a disciple saw his master err in his judgment, he must not say, "I will wait until he issues his verdict and then I will disclose the error, thereby causing the issue of another verdict, which will have to be done with the acknowledgement of my authority" (but must call his attention immediately). That the master shall not tell to his disciple: It is known to all that I will not lie even if offered 100 manas, but there is one who owes me a *mana*, and I have only one witness, it is but right that you appear in court, so that the defendant might think you, too, a witness, and I will thus get my mana, although he does not instruct his disciple to tell a lie, but begs him to stand and say nothing, yet the verse reads, "Keep thyself *far* from false." Furthermore, if the plaintiff claims a mana, he must not claim two, thinking that thereby he will cause the defendant to confess one, which partial confession will make him liable to a biblical oath, so that there will be possible for the plaintiff to include here in the oath also other claims he may have against the defendant; this, too, is prohibited, because "Keep thyself *far* from false." For the same

reason the defendant must not say: Since the plaintiff claims two, and will therefore not confess even the one I owe him in order to avoid the biblical oath in which the plaintiff may include some other claims. From the said verse is further inferred: That, when three persons claim one *mana* from one party, and there are no witnesses, they shall not institute one of themselves as the plaintiff and the other two as witnesses, thereby recovering the *mana* and dividing it among themselves. Again: If two appear before the court,, one richly dressed in a cloak worth 100 *mana*, and the other clad in rags, the court must instruct the former to go and dress like his contestant, or to dress him richly like one's self (this, too, is inferred from the verse, because the contrast between the rich and the poor would stupefy latter and also possibly influence the judge). 1

It reads [Ezek. xviii. 19]:"And did that which is not good in the midst of his people," which according to Rabh means him who conies to court with a power of attorney, and according to Samuel, him who buys a field on which there are several claims.

"*Such an oath . . . only to those fit*," etc. To exclude whom? Said R. Papa: To exclude a king, and R. Aha b. Jacob said: To exclude a gambler. To him who says "a gambler," so much the more a king, and to him who says "a king" a gambler is not excluded, since biblically he is fit, and only the rabbis have declared him unfit.

"*In the presence as well as in the absence of the court*." What is their point of difference? The rabbis said in the presence of R. Papa: The theory "Deduce from it, and again from it," in case one thing is deduced from another (*i.e.*, any further provision connected with *A* may be transferred to *B*) is the theory of R. Mair (as explained further on). The opponents of R. Mair, however, hold the theory of "Deduce from it, the rest, however, leave in its place" (*i.e.*, after having transferred the main provision of *A* to *B*, we are to let *B* retain its own character); thus the case of witnesses is inferred from the case of a deposit; as in a deposit one is liable only when swearing himself, so also in the case of witness; again, as in the former case it is indifferent the presence or absence of the court, so also with witnesses; and this is R. Mair's theory just mentioned.

[paragraph continues] The rabbis, however, who uphold the other theory, argue thus: As in a deposit, he is liable when swearing himself, so also in the case of witnesses; but if one is sworn by others which case can take place only in the presence of the court but not otherwise, we have a case that must retain its own characteristics; and the same is the case when he swears himself, it must be in the presence of the court. Said R. Papa to them: If the rabbis of the Mishna inferred this from the case of a deposit, they would certainly adopt also R. Mair's theory above mentioned; the reason, however, why the rabbis do not adopt it is that they proceed by an inference *a fortiori*--viz.: since one is liable when sworn by others, so much the more he is liable, if he himself swore; and concerning this there is a rule: "It is sufficient that the result derived from inference be equivalent to the law from which it is drawn;" and since the case of being sworn by others must take place only in the court, the same is in the case of swearing himself.

"*Guilty for an intentional oath*," etc. Whence is this deduced? From what the rabbis taught: In all other cases (concerning an offering) it reads "Escaped his recollection," except this case; hence, this teaches that one is liable for an intentional oath, just as for an unintentional.

"*For an error in intentional testifying*," etc. What instance could illustrate this? Said R. Jehudah in the name of Rabh: If one says, I know this oath to be prohibited, but I do not know that the liability therefor is an offering.

"*But they are not liable when made in error*." Shall we assume that this Mishna decides the question discussed above by R. Kahana and R. Assi, concerning the saying of Rabh made in the college? Nay; it was necessary for Rabh to teach them that, since otherwise one might say that the decision of the Mishna. concerns only that case with regard to which the Scripture does not mention "Escaped," etc. (*i.e.*, the case concerning witnesses), but it does not apply to an uttered oath regarding which "Escaped" is mentioned, so that any error entails liability; therefore he came to teach that even in such case there is no liability.

MISHNA *II*.: How does a witness-oath come about? If someone said to two: Come and bear witness for me, and they say, We swear that we know no testimony for you, or they said, We know nothing to testify for you, whereupon he answers, Do you swear, and they say, Amen, they are liable. If he repeated

this five times outside of court, and upon coming before the court they confessed and testified, they are free; but if they deny it also here, they are guilty for each time severally. If, however, he repeated his adjuration five times in presence of the court and they denied, they are liable but once. Said R. Simeon: What is the reason? Because they are not able to retract the previous statement and to testify. If the two denied simultaneously, they both are guilty, but if successively, only he who denied first is guilty, while the second one is free. If one of them denies and the other confesses the truth, the denier is guilty. If there were two parties of witnesses and both denied successively, the two are guilty, since the testimony could have been established by either one.

GEMARA: Said Samuel: If the witnesses saw one running after them and said to him: What are you running for, we swear that we know no testimony for you, they are free, as liability attaches only to the case when they heard him adjuring them.

What news does Samuel come to teach us? Is this not plainly stated in the last part of Mishna V.--viz.: "They must hear it from the mouth of the plaintiff"? Samuel finds it necessary to teach the case where he runs after them, lest one say that running he considered equivalent to direct asking. But even this point is already stated in our Mishna--viz.: "If one *said*," which renders it obvious that if he did *not say* it is not considered? Nay; if not for Samuel's statement, it could be said that the expression of the Mishna is merely usual language; and it seems, indeed, to be no more than that, for the same expression is used in the next chapter concerning the oath of a depositary, and there the "said" can be meant *only said*, as it reads [Lev. v. 21]: "If he lie unto his neighbor," where there can be no difference whether one is asked or not; hence, the expression there is not particular (therefore Samuel teaches that in our Mishna the language is particular).

There is a Boraitha in accordance with Samuel: If they, seeing someone coming after them, exclaimed: What are you following us for, we know no testimony for you, they are free; however, when this took place with regard to a deposit, they are liable.

"*If he repeated this adjuration five times*," etc. Whence is it deduced that liability attaches only to a denial made in the presence of the court, Said Abayi, from [ibid., ibid. 1]: "If he do not tell it, and thus bear iniquity," which implies only

such a place where the telling is effective, so as to make one pay upon it, but not if told in any other place. Said R. Papa to Abayi: According to your theory no oath should be considered if made outside the court! This could not be borne in mind as there is a Boraitha: From the expression [ibid., ibid. 4]: "To anyone," which makes one liable for each oath; now, if an oath made outside the court be not considered, how could one be liable for each, after it has been stated in our Mishna that even for five times he is liable but once, and R. Simeon gave the reason therefor? Infer then therefrom that an oath is considered even when made outside the court, but a denial-only when in the court.

"*If the two denied simultaneously*," etc. But how is it possible to ascertain with precision the simultaneity of their minds? Said R. 'Hisda: It is in accordance with R. Jose the Galilean, who says that it is possible. R. Johanan, however, maintains that this may also be in accordance with the rabbis, who hold that such is not possible, but our Mishna treats of the case where the two denied in an interval of a single word. Said R, Aha of Diphti to Rabina: Let us see; the length of an interval of a single word is estimated as the interval it takes a disciple to greet his master, and here they have to say: We swear that we know no testimony for you, which sentence consists of several words; and he answered: It means that each of the witnesses begins his testimony yet before his preceding witness has completed his.

"*Both denied successively*," etc. Our Mishna is not in accordance with the Tana of the following Boraitha: If one adjured one witness, he is free; R. Elazar b. R. Simeon, however, holds him liable. Now, shall we assume that the point of difference here is that one holds one witness serves only to cause an oath to the other party, and that the other holds that he can also cause the payment of money? But how can you reason thus? Does not Abayi say further on that all agree that only one witness is necessary in the case where the defendant is suspicious regarding an oath? Therefore, it must be said that all agree that one witness can cause only an oath but not payment, and the point of their difference is as follows: One holds that a thing which causes payment is itself considered as money, and according to the other it is not considered such.

What has Abayi said? He said as follows: All agree concerning *one* witness in the case of a suspected wife; likewise all

agree concerning two witnesses in same; and furthermore there is a difference of opinion concerning the same case. All agree concerning the law of one witness, as well as concerning the law regarding the case where the opposing party is suspicious of perjury. All agree concerning one witness in the case of a suspected wife that he is liable in case he was aware of the fact that the woman has sinned and refused to testify, as here the law trusts him to testify [Numb. v. 13]: "And there be no *witness* against her," hence, his refusal makes the husband pay; and all agree concerning witnesses that they are free, if they refused to testify that he warned his

wife against staying alone with so and so; as their testimony would only cause not a direct payment, since apart from their testimony there must be yet another testimony by two witnesses that she has actually stayed with another one. And there is a difference concerning witnesses in such a case; if they were witnesses regarding her staying alone with so and so and they refused to testify; in which case if they did testify, they would only necessitate the drinking by her of the bitter water, when for fear she may confess, and only then the husband would be free from paying her marriage contract; it is regarding this that one holds that a thing causing the payment of money is itself considered as money, and therefore they are liable to pay, while the other does not consider it such, therefore they are free. Furthermore, all agree concerning a case where there is but one witness and one of the parties is suspected of perjury, that the witness is liable; likewise they all agree concerning one witness in a case similar to that, which happened in the court of R. Aha, where one of the parties robbed a piece of metal (Last Gate, p. 93).

(Says the Gemara): Let us see how was the case where one party is suspected of perjury? Who was suspected? If the borrower was so, and the lender says to the witness: If you would testify I should surely get the money, for my opponent is not fit to swear, hence, the oath will return to me so that I would swear and get the money; then the witness could retort: Who is sure that you will swear? Therefore we must say that both the parties were suspected, and the Master said elsewhere that in such a case the oath applies to him who has to swear first, and as he is not fit to swear he must pay.

R. Papa said: There is also a case concerning a witness who refuses to testify to the death of a husband; in one case all agree that he is liable, and in another case all agree that he is

free; the latter is illustrated thus: If he told the fact to the widow, but refused to testify before the court, he is free; because there is a Mishna: If a woman said that her husband is dead, she is trusted and may remarry (hence, his refusal to testify is not harmful to her); while the former case is illustrated: If he refused to tell the fact even to the wife herself. Now, shall we infer from this that he who makes witnesses to swear in a case of real estate, it is considered, and they have to pay (as a marriage contract is collected from real estate only, and there is further on a question concerning this point)? Nay; perhaps in the hands of this woman it was already movable property, in which case she may collect her contract therefrom.

"*If one of them denies and the other confesses,*" etc. To what purpose is this stated? It has been said already above, that even if the second denied after the first he is free, so much the more so if he confessed? It means when both have denied, but one has instantly thereafter retracted and confessed; and it comes to teach us that the confession made in an interval of one word is considered as though no denial was made. But this is correct only according to R. 'Hisda, who has explained our Mishna in accordance with Jose the Galilean; then the first part teaches that exact ascertainment is possible, and the second part teaches that the one-word interval is equivalent to a word. But according to R. Johanan both parts teach the same? It was necessary, as the last case speaks of denial and confession, while the first, only of denial.

"*If there were two parties,*" etc. It is correct that the second party be liable, because it denied after the first had done so (hence, its refusal is a direct harm); but why should the first party be liable, when there is yet a second party who is fit to testify? Said Rabina: It speaks of a case where the witnesses of the second party were related to one another on their wives' lines, and at

that time when the first party denied, the wives of the other party were in the agony of death; and lest one say that in such a condition they are considered dead and hence their husbands are fit to be witnesses and consequently the first party is free, it comes to teach us; that the agony of death is not to be taken into account, as they may yet recover.

MISHNA *III*.: If one says: I adjure you that you come and bear me witness that I have in the possession of so and so a deposit, a loan, a stolen or lost object, to which they reply: We swear that we know no testimony to you, they are guilty

but once. But if their reply be: We swear that we are ignorant of your having in the possession of so and so a deposit, etc., they are guilty for each severally. I adjure you that you testify for me that I have deposited by so and so wheat, barley and rye, to which they answer: We swear that we know no testimony for you, so they are guilty but once. But if their answer be: We swear that we are ignorant of your having deposited by so and so wheat, barley and rye, they are guilty for each one severally. I swear you to witness that so and so owes me damages, half damages, double payment, or four and five-fold payment; that so and so insulted my daughter, seduced my daughter; that my son struck me, that my neighbor wounded me; set fire to my stag on the day of atonement, they are guilty (in case they deny).

GEMARA: The schoolmen propounded a question: How is the law, if one adjure witnesses in a case of fine? This question is not according to R. Elazar b. R. Simeon, who says elsewhere that such witnesses are considered even after the defendant has confessed that he was fined; but is according to the rabbis, who declare the defendant free even when, after his confession, witnesses testified; and it seems that the rabbis of that statement are in accordance with the rabbis of the Mishna said above, that a thing causing money is not itself considered money. Now, shall we say that the refusal of the witnesses is not of direct harm, since the defendant has the choice to confess and then be is free; or, as he has not yet confessed, there is a claim of money and their refusal is of direct harm? Come and bear the statement of our Mishna: "To testify half-damages," which is a fine and nevertheless he is liable. But is there not one who says that even half-damages are according to law and not fine? (Hence, nothing can be inferred from here.) But again, does not the Mishna mention double-amount, which is surely fine? Yea; but the fine here is the *doubling*, while the Mishna finds him liable because in the doubling is included the *amount* stolen; and the same may be the case with four and five-fold. But is not the money which a seducer or insulter has to pay, not a fine, and yet the Mishna treats of it? Maybe the Mishna exacts this as indemnity for the shame and loss of value, and this indemnity is not a fine. But if all in the Mishna is money and not mere fine why should it repeat all these cases? The Mishna comes in its first part to teach us by the way that half-damages are considered money, and in its last part that if

one set fire to a stag on the day of atonement, he is liable to pay, although his act is in the category of *Korath*, which is against R. Neheunia b. Hakana (and all the other things are treated of only on account of this connection).

Come and hear the following: I adjure you to testify that so and so has spread abroad an evil name on my daughter [Deut. xxii. 14], they are liable (if they refuse to do so); but if the man

who has spread the evil name, confessed before the court that he did so falsely, he is free from paying the 100 shekkels (as according to the law he who confesses in a case subject to fine is free), hence, we see that this money is fine and they are liable none the less? It maybe said that this Mishna is in accordance with R. Elazar b. Simeon, quoted above, who holds one liable even when the witnesses testify after his confession. But is not the last part which holds one free if he confessed on his own accord, in accordance with the rabbis? Nay; the whole Mishna is in accordance with R. Elazar, and it means to say that there can be found no case where one be free from payment (of the 100 shekkels) unless there were no witnesses at all and be confessed.

MISHNA *IV*.: If one says: I adjure you to bear me witness that I am a priest, a Levite, not the son of a divorced woman, nor one who has performed *Chalitzah*; that so and so is a priest, a Levite, not the son of an aforesaid woman; that so and so insulted or seduced someone's daughter; that my son wounded me, that my neighbor wounded me or set fire to my stag on Sabbath, they are free.

GEMARA: They are free because his claim concerns a third person; but how is it if he made them to swear that so and so owes a *mana* to someone, they would be liable? And does not the Mishna state that they are not liable unless made to swear by the plaintiff himself? Said Samuel: It means that be has from the latter a power of attorney. But did not the sages of Nahardea say that a judgment is not given on movables? Yea; but this is in case he denies, but if he does not deny, a judgment is given.

The rabbis taught: Whence do we know that the verse [Lev. v. 1], quoted above, speaks of a money-claim only? Said R. Eliezar: From the analogy of expression "or" and "no" found here, and also in the case of a deposit, and as there it treats of a civil case, so also here. But is not the same expression found in [Numb. xxxv.] concerning a murder, *i.e.*, a criminal and not

a civil case? We infer from these expressions, a case which implies an oath, while in that (of Numb.) there is no oath. But again, are not such expressions used in connection with a suspected woman in which case there is an oath, and yet it is not a civil case? There is used in this last case a priest, wherefor we infer but like cases where there is an oath but not a priest. R. Aqiba, however, said: It is inferred from [Lev. v. 5]: "By any one of *these*," which means for some of them he is, while for others he is not, liable. How so? If it was a civil claim, he is liable, but not for something else. R. Jose the Galilean said, it reads [Lev. v. 1]: "And he is a witness, since he hath either seen or knoweth," which signifies such cases where he may be liable by seeing only or by knowing only; how so? I have lent you a *mana* in the presence of such and such witnesses, who may come and testify, this is a case of seeing only; and by knowing only, as in case one claims that so and so has confessed in the presence of such and such witnesses that he owes me a *mana*. R. Simeon said: We infer this from the case of deposit: as there it is only civil, so also here; furthermore we may draw this by an inference *a fortiori*--viz.: a deposit, with regard to which male and female, relatives and unrelated, fit and unfit to testify, are equal, and there is a liability for each oath, be it made in the presence or absence of the court, is nevertheless but a civil case--the case of witnesses where the foregoing classes are not equal and where the liability attaches to but one oath and only when made in the presence of the court, should so much the more be only civil. And lest one say: The case of witnesses is more rigorous, as there is here a liability for an intentional and for being sworn by others which is not the case concerning a deposit, to this there is an analogy of expression: "Sin" found here and also in the case of a

deposit, which justifies the inference that as the latter is civil, so also is the other case.

R. Hamnuna was once in the presence of R. Jehudah, who propounded a question. If one says: I have lent you a *mana* in the presence of so and so and so, and the witnesses saw the parties from the outside without being seen by the defendant, how is the case? Said R. Hamnuna: It depends on the form of the defendant's answer; if he says that such has never occurred, he must be recognized as a liar; but if he says that he did take money but it was his own, then there will be no use in the witnesses' testifying to have seen this! Rejoined R. Jehudah: Your place may be in the college, as you enlighten your master.

There was one claiming: I lent you a *mana* here near this pillar; and the answer was: I have never in my life passed near this pillar. Witnesses, however, came and testified that he once urinated near that pillar; said R. Na'hman: He is then to be regarded a liar. Said Rabha to him: From a thing where one is not particular, his attention may wander away; this may have been the case with this defendant; he paid in that case no attention to the pillar.

R. Simeon said: As in the case of the deposit, etc., this statement was ridiculed in the west. Why? When R. Papa and R. Jehudah b. R. Jehoshua came from college, they said: The people of the west have ridiculed R. Simeon's last statement--viz.: Lest one say that the case of witnesses is more rigorous, etc.; saying: To what purpose did he need this after he had used an analogy of expression? But why should it be ridiculed? Perhaps he had put this point before, but not after, he established the said analogy? 1 Because it was known that the Scripture has made mention of a witness-oath in connection both with an uttered oath, and with the case of defiling the Temple and its holiness in order to indicate that concerning a witness-oath "Escaped his recollection" is not stated (whereas it is stated regarding the others) in order to make one liable to a sin-offering even for such an *intentional* oath.

MISHNA *V*.: If one says: I adjure you to bear me witness that so and so has promised to give me (as a present) 200 zuz, and did not, they are free, as they are guilty only in the case when money is required as a deposit. I adjure you that as soon as you become cognisant of testimony for me, you come and testify for me, they are free, since the oath preceded the act of testifying. When one says while standing in synagogue: I adjure you to bear me witness if you are cognizant thereof, so they are free unless he especially address his challenge to them. When one says to two: I adjure you so and so that, if you are cognisant of testimony in my favor, come and do so, to which they say: We swear that we know nothing for you, while in reality they do know, but only indirectly, or one of them is found to be a relative or an unfit, they are free. If one sends his servant to adjure them; or the defendant says to the witnesses:--

[paragraph continues] I adjure you to testify for him if you know any testimony, they are free, for they must hear it from the mouth of the plaintiff.

GEMARA: The rabbis taught: I adjure you to bear me witness that so and so promised me as a present 100 zuz and did not give them to me, they are free; lest one say that they should be liable, the analogy of expression "sin" used both concerning a deposit and here, teaches that as

in the former the deposit was given, so also in this case.

"*As soon as you become cognisant*," etc. The rabbis taught: Lest one say that in such a case they should be liable, it reads, "If he is a witness, or hath seen or knoweth," which signifies that the act of testifying must precede the oath and not *vice versa*.

"*While standing in synagogue*," etc. Said Samuel: Even if his witnesses were among them. Is this not self-evident? He means to say: Even if he was standing beside them, and lest one say that in such a case it is considered as though he talked directly to them, he comes to teach us that it is not so.

There is a Boraitha in support of Samuel: If one saw a crowd standing, among whom he recognized his witnesses and said: I adjure you to come and testify for me, lest one say that they are liable, it reads, "And he is a witness," which signifies that the witnesses must be directly addressed, which he did not do. If, however, he said: I adjure you all who are standing here, to testify for me, they are liable, as here he addresses the witnesses directly.

"*When one says to two*," etc. The rabbis taught: Lest one say that in such a case they should be liable, it read, "He shall bear his iniquity," which signifies that only then when they are fit to tell (on their own knowledge).

"*If one sends his servant*," etc. The rabbis taught: Lest one say that in such a case they should be liable, therefore the just-cited verse. But how is this to be understood? Said R. Elazar: The word "not" (Hebrew, *Lo*) is spelled here with a redundant *vahve* and *lo* (with a vahve) means him (dativus) which is to be interpreted thus: If he will not tell to him, to the party himself, he bears iniquity; but if he will not tell to a stranger, he is free.

MISHNA *VI.*: If one says: I adjure you, I impose upon you, I bind you (by oath), so they are guilty. If, however, he says: By heaven and earth, they are free; by any of the divine

names, or by some other divine attribute, so they are guilty. Blaspheme applies to them all, according to R. Mair, but not according to the sages. Whoever curses his father or mother by any of the above divine names, is guilty, so holds R. Mair, while the sages declare him free. Whoever curses himself or his neighbor by any of these transgresses a negative command. (If one says to the witness): Smite you God, or: May the Lord God smite you, so is this a biblical swearing. If he says (on your testifying): God smite you not, but bless you, may He bestow but good upon you (and they say: Amen), R. Mair finds them guilty, while the sages declare them free.

GEMARA: "*I adjure you*," etc. How is this to be understood? Said R. Jehudah: Thus, I adjure you with the oath written in the Torah, I impose upon you with the commands of the Torah, I bind you with the bonds of the Torah. Said Abayi to him: According to you, how should be understood the Boraitha of R. Hyya: "For I chain you" they are liable! Do we find "chaining" in the Torah? Therefore, said Abayi, it means to say thus: I adjure you with an oath, I impose upon you with an oath, I bind you with an oath, I chain you with an oath.

"*Adonai*," etc. Shall we assume that *chanun* and *rachum* (mentioned in the Mishna among the names to swear by) are also divine names? If so, then there is a contradiction from the following: There are names that may be erased, and others that must not; the latter are: *Eil, Eloëchu, Eloîm, Eloëchem, Eiëh asher Eieh, Aleph Daleth, Yah, Shadai* and *Zebaoth*; but *Hagodal, Hayibor, Hanora, Haädir, Hachazak, Haämatz, Haäzaz, Chanun, Rachum, Erech-apäim, Rabh-chessed* 1 may be erased; we see thus that *chanun* and *rachum* are not divine names? Said Abayi: The Mishna means to say, I adjure you by him who is all favor, or: all merciful. Said Rabha to him: If so, let him be liable for adjuring one by heaven and earth, as you could explain it to mean: by him to whom heaven and earth belong? This is no comparison; if you say, "by him who is all favor," etc., so as there is none but the Almighty who is such, it certainly means Him, but heaven and earth as separate existences, cannot be explained as belonging.

The rabbis taught, If one writes *Aleph lamed* (the first letters

from Eloîm), or *Yah* from *Jehova*, it must not be erased; but *Shin daleth* from *Shadai*, or *Aleph daleth* from *Adonai*, *Zadik beth* from *Zebaoth*, may be erased. Said R. Jose: The whole word Zebaoth may be erased, for this name applies only to Israel, as it reads [Exod. vii. 4]: "And bring forth my armies (*Zebaothai*), my people, the children of Israel." Said Samuel: The Halakha does not prevail with R. Jose.

The rabbis taught: All the prefixes and suffixes of the divine names may be erased, *e.g.*, in *b'adonai*, *badonai*, *meadonai*, the initial letters (which are prefixes) may be erased; in like manner in *Eloêchu, Eloênu Eloëêm* the last syllables (which are suffixes) may be erased. Anonymous teachers. however, say: They must not be so, for they are already sanctified by the holy name. Said R. Hana: And so the Halakha prevails.

All the divine names found in the Torah in connection with Abraham, are holy, except that of [Gen. xviii. 3]: "And he said, my Lord," which was addressed to an angel. 'Hanina, the nephew of R. Jehoshua, and R. Elazar b. Azaria in the name of Elazar the Madai say that even this name, too, is holy. (Now, what was said in the name of R. Jehudah b. Rabh that hospitality is considered greater than the reception of the glory of the *Shechina*, is in accordance with these two.) Furthermore, all the names found in connection with Lot, are common, except [ibid. xix. 18, 19]: "Oh, not so, my Lord; (*Adonai*) thy servant hath found grace in thy eyes, and thou hast magnified thy kindness," etc., and who but God can save? Again, all names in connection with Nob'oth. 1 are holy, those in connection with Micha [Jud. xvii.] are common. R. Elazar, however, said that the names with Nob'oth are holy, but those with Micha are partly holy and partly common, namely *El* is common and *Yah* is holy, except [ibid., ibid. 31]: "*Eloïm*," which though beginning with *El*, is holy. All the names in connection with the Vale of Benjamin [ibid. xx.] are according to R. Eliezar common, and according to R. Jehoshua they are holy. Said R. Eliezar to him: How can they be holy when He has not fulfilled his promise? Said R. Jehoshua: He has fulfilled His promise, but the people there did not understand what was said to them; a proof to this you find in the fact that after they had comprehended it, they conquered, as it reads [ibid., ibid. 28]: "And Phineahas, the son of Elazar . . . stood," etc. The

name *Shelomah* wherever mentioned in Solomon's Songs is holy [Song, i. 1]: "*Le-Shelomah*" means, to the king to whom peace belongs; except [ibid. vii. 12]: "Thine, O Solomon." According to others [ibid. iii. 7]: "The bed which is Solomon's," is also common. Wherever in Daniel the word king is mentioned, it is common except [Sam. ii. 37]: "Thou, O king, art a king of kings, to whom the God of heaven hath given kingdom, power, and strength, and honor." According to others also [ibid. iv. i6]: "My Lord! . . . for those who hate thee"; for, to whom did Daniel address this? Surely not to Nebuchadnezzar, because by so doing he would curse Israel, who were the haters of the same; hence, he must have addressed it to God. The first Tana, however, maintains that enemies exist only to Israel, but other nations have no enemies.

"*Or by some other attributes*," etc. There is a contradiction [Numb. v. 21]: "The Lord then make thee a curse (*olah*) and an oath"; to what purpose is this repeated, after the beginning of the verse reads: "And the priest shall charge the woman with an oath of imprecation (*olah*)"? Because, it reads [Lev. v. 1]: "The voice of adjuration (*olah*)," where it means an oath, so also here it means an oath; and as there it means "with the holy name," so here, too, it means so. Hence we see that *olah* means an oath, and the Mishna says that "Smite you. God" is an *olah* written in the Torah? Said Abayi: This presents no difficulty, the cited discussion is in accordance with R. Hanina b. Aidi, which our Mishna is in accordance with the rabbis, as we have learned in the following Boraitha. R. Hanina b. Aidi said: As it reads "Swear and not swear, curse and not curse," we must compare curse to swearing; just as an oath means by the holy name, so also not to swear means by the holy name, and the same is with curse and not curse. But let us see; what is the reason of the rabbis' view? If they uphold this analogy, then let them require the unique holy name (*i.e.*, *Jehovah*) to any oath; and if they do not uphold this analogy, whence do they deduce that *olah* means an oath? From the following Boraitha: The expression *olah* means an oath, and it likewise reads in the above-cited verse "And the priest shall charge the woman with an oath of *olah*." But as it reads here "with the oath of *olah*," must we not say that *olah* itself is not an oath? It means to say that the word *olah* comes together with an oath only. And whence do we know that oath alone should be treated as if conjoined with *olah*? From [Lev. v. 1]: "The

voice of an *olah*" (which word voice would be superfluous, as *olah* alone means also an oath), therefore it is to be interpreted thus: He hears either a voice alone (without an *olah*), or an *olah* alone (without an oath).

R. Abuhu said: Whence do we know that *olah* means an oath? From [Ezek. xvii. 13]: "And bound him with an oath (*olah*)"; furthermore, it reads [II Chron. xxxvi. 13]: "Who had made him swear by God." There is a Boraitha: The word *orar* embraces ban (*nidui*), curse (*kelabah*), and oath (*sheb'uah*); ban--from [Jud. v. 23]: "Curse (*orur*) ye Meroz," etc., concerning which Ula said: He placed Meroz under ban with 400 trumpets; curse--from [Deut. xxviii. 13]: "And these shall stand for the sake of the curse (*kelabah*)," and [ibid., ibid. if]: "Cursed (*orur*) be the man"; finally, oath--from [Josh. vi. 26]: "And Joshua adjured . . . saying cursed," etc.; and also from [I Sam. xiv. 24]: "And Saül adjured the people, saying, cursed. "

R. Jose b. Hanina said: *Amen* embraces oath, acceptance, and confidence; oath--from [Numb. V. 22]: "And the woman shall say amen, amen"; acceptance--from [Deut. xxvii. 26]: "Cursed be he that accepteth not this law . . . and all the people shall say, amen"; and confidence--from [Jerem.

xxviii. 6]: "Said Jeremiah the Prophet, amen, may the Lord do so."

R. Elazar said: Nay means an oath, and yea means also an oath. (Says the Gemara): It is correct that Nay means an oath, as it reads [Gen. ix. 15]: "And the waters shall no more (*V'lo*) become a flood," and [Isa. liv. 9]: "As I have *sworn* that the waters of Noah should no more (*V'lo*)"; but whence do we know that yea is an oath? This is merely common sense: if Nay is an oath yea is one, too. Said Rabha: Provided he says each twice; nay, nay, or yea, yea; and this is inferred from the above cited verse [Gen. ix.] where no (*V'lo*) is written twice, and as Nay must be said twice to become an oath, so also yea. 1

"*Curses himself or his neighbor*," etc. Said R. Janai: Concerning this statement, all agree that he transgress thereby a negative commandment; concerning one's self it reads [Deut. iv. 9]: "Only take heed to thyself, and guard thy soul"; and we have seen above that such an expression means a negative commandment; and concerning his neighbor, it reads [Lev. xix. 14]: "Thou shalt not curse the deaf."

"*Smite you God*," etc. R. Kahana, while sitting before R. Jehudah, repeated the Mishna in its own language, and he said to him: Change the language and use it in the third person. It again happened that one of the rabbis while sitting before R. Kahana read [Psalms, lii. 7]: "God will also destroy thee," etc., the whole verse, and R. Kahana said to him: Read it in the third person. And the two cases are cited here, lest one say that in a Mishna it is allowed to change the language but not in the Scripture.

"*God smite you not*," etc. But we know that according to R. Mair's theory we do not infer from a negative rule a positive one; reverse then the order of the names in the Mishna. However, when R. Itz'hak came from Palestine he taught the Mishna as it is. Said R. Joseph: Now that we see that in Palestine, too, the Mishna is taught as by us, the foregoing difficulty must be resolved thus: R. Mair's theory that we are not to infer yeas from nays, concerns only civil cases, but concerning criminal cases he, too, holds that we do. But is not the case of a suspected woman a crime, and R. Tan'hum b. 'Hakhinui said: In this case it reads [Numb. v. 19]: "Then be thou free" to show that if it were not expressly stated we would not infer? Hence, even in criminal cases we do not infer, wherefor we must say that R. Mair's theory applies also to crimes and the order of the names in the Mishna is to be reversed. Rabina opposed from a Mishna that places under the category of capital punishment him who enters the sanctuary while he is intoxicated, and this is inferred only from the Scripture's prohibiting one to enter in such a condition, and R. Mair does not oppose in this case? Therefore we must say that concerning crime he holds his theory, and the difficulty regarding the suspected woman is to be resolved, thus: it is a case where money, *i. e.*, a civil matter, is also concerned--viz.: in connection with her marriage contract.

Footnotes

51:1 There are still more significations imputed to this verse, and they have appeared already in Sanhedrin and Maccoth.

60:1 In the text is also repeated what Rabha b. Aithi said above to contradict R. Simeon, which is followed again by a discussion. But it being very complicated and apparently offering nothing new, we omit the few lines.

62:1 The divine names, from *Eil* till *Zebaoth* inclusive, are known, while those from *Hagodal* till Rabh-*chessed* inclusive, mean in order as follows: The Great, Mighty, Awe-inspiring, Glorious, Strong, Omnipotent, Powerful, Gracious, Merciful, Long. suffering, and Abundant in beneficence.

63:1 I Kings xxi. 3.

65:1 Concerning blasphemy repeated here, see Sanhedrin, Chap. VII., Mish. 8.

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CHAPTER V.

RULES AND REGULATIONS CONCERNING THE DEPOSITORY-OATH: WHO IS OR IS NOT FIT TO TAKE IT; WHERE THE DENIAL OF THE DEPOSIT BY OATH MUST TAKE PLACE; THE CONDITIONS DETERMINING THE LIABILITY TO BE EITHER ONE OR FOR EACH ARTICLE SEPARATELY; IN WHICH RESPECT SUCH OATH IS MORE RIGOROUS THAN THE WITNESS OATH.

MISHNA *I.*: The depository oath concerns men and women, non-kindred and kindred, those fit to testify and those unfit, cases within the court and outside thereof, provided it comes forth from one's own mouth, but if through that of others, he is not liable unless he denies it before the court; such is R. Mair's view, while the sages teach: Regardless of whether it comes from one's own mouth or from that of others, he is guilty so long as he denies it. But one is guilty for willful perjury and willful denial of the deposit when ignorant of the liability; not so, however, if he was mistaken concerning the oath only. And what is the fine attached to a willful oath? A transgression offering in the value of two shekkels. How does the oath concerning deposits take place? When one says: Give me my deposit that I have in your possession, and latter replies thereto: I swear you have nothing with me, or merely You have nothing with me, whereupon the former says: I adjure you, and this answers: Amen, and so he is guilty. If' the plaintiff adjured him five times either before court or outside and be denied it by oath every time, so he is guilty for each time severally. R. Simeon said: The reason is that he had ample possibility to confess the truth. If five people require of him in the same time, saying: Give us the deposit we have in your possession, and he says: I swear ye have nothing with me, so he is guilty but once. But if he says: I swear that thou hast nothing with me, nor thou you, nor thou, so he is guilty for each one severally. R Eliezar says: Provided he make the oath last. R. Simeon says. Provided he accompany each statement with the words I swear.

If one says: Give me the deposit, the loan, the stolen and

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lost, that I have in your possession, he replies: I swear that you have nothing with me, he is guilty but once. If, however, his reply be: I swear that you have nothing with me, either deposit, or loan, or the robbed and lost, so he is guilty for each one severally. The same is the case with wheat, barley, and if he denies all with one oath he is guilty but once, and if he repeated "I swear" with each one, he is liable for each. R. Mair says: Even if he required the things in the singular, the other one is guilty for each one severally. If one says: You have violated or seduced my daughter and he replies: I have done neither the one nor the other, I adjure you whereto he says: Amen, so he is guilty. R. Simeon holds him free, for one does not pay fine on his own confession. To which it was objected: Although upon self-confession one pays no fine, yet he must pay indemnity for shame and loss of value. You have stolen my ox; I have not stolen him; I adjure you, the other one: Amen, so he is guilty. But if the latter says: True, I have stolen your ox, but not slaughtered nor sold him; I adjure you; Amen, so he is free. Your ox has killed mine;

He did not; I adjure you; Amen, so he is guilty. Your ox has killed my slave; He did not; I adjure you; Amen, so he is free. You have bruised me and wounded me; I have neither bruised nor wounded you; I adjure you; Amen, so he is guilty. But if the slave says to his master: You have blown out my eye or tooth, and latter replies: I have done to you neither the one nor the other; I adjure you; Amen, so he is free. This is the general rule: Whenever one has to pay damages on self-confession, he is (in case of perjury) guilty, but whenever he has not to pay on self-confession, he is free.

GEMARA: R. A'hra b. Huna, R. Samuel b. Rabba b. b. 'Hana and R. Itz'hak b. R. Jehudah have been learning the Tract Shebaoth at Rabba's college; and when R. Kahana met them he asked: What is the law when one has intentionally made a depository oath in spite of a warning, is he liable to a sin-offering or not? Shall we assume that, as this law to bring a sin-offering for an intentional oath is novel, there is no difference whether there was warning or not, or this law holds good only when there was no warning, and if there was, he is subject to stripes and not to a sin-offering, or to both? And they answered: This we have learned in our Mishna; the depository oath is more rigorous, as stripes apply to it when intentional, and a trespass-offering for two shekkels when unintentional. Now, as

it states stripes, it must be that he was warned, and no offering is mentioned; and concerning the rigorousness it may be said that one is pleased to bring a sin-offering instead of getting stripes. Said Rabba b. Eithi to them: This is in accordance with R. Simeon, who holds that an intentional depository-oath cannot be atoned for, but according to the rabbis who maintain that it can, he must bring an offering also. Said R. Kahana to them: Leave out the Boraitha cited by you, as I taught it Thus; it makes no difference whether it was intentional or unintentional, he is liable to a trespass-offering for two shekkels; and the rigorousness is that for any other oath he may bring a sin-offering in the value of a δανικος, while here it must be in the value of two shekkels. But then, why did R. Kahana resolve his question from here? Because this may be a case where there was no warning.

According to another version R. Kahana adduced the following Boraitha: No liability attaches to an unintentional oath; and what is the liability of an intentional? A trespass-offering for two shekkels. Does it not mean a case where there was warning? Nay; it may mean one without warning. Come and hear another Boraitha: The comparison with the offering of a Nazarite cannot be drawn here, as a Nazarite who defiles himself gets stripes in addition, while to a depository-oath stripes do not apply; now, since it states that he does get stripes he must have been warned, and nevertheless it states that to a depository-oath stripes do not apply, whence it is to be understood that an offering is required in this case? Nay; it may be said that it means that stripes do not suffice without an offering. But if such be the case, the Nazarite who gets stripes must not bring an offering any more; is it not expressly written that he *is* liable to an offering? His offering is not for his transgression, but for enabling him to continue in his state of a Nazarite in purity.

R. Kahana's question from above was recited before Rabba and he said: From this it may be inferred that, if he was not warned by the witnesses, and they testify, he is nevertheless liable to a sin-offering; but if such a case happens in civil law, his denial would count for nothing, and there are witnesses and he must pay; why then shall he in this case be liable to a sin-offering? (Says the Gemara): From Rabba's question we may conclude that his opinion is that he who

denies a debt in spite of witnesses is not subject to a biblical oath. Said R. 'Hanina to Rabba. The following Boraitha supports your opinion. It

reads [Lev. v. 22]: "And lie concerning it" to exclude the case when he confesses this to one of the brothers or partners, "swear falsely" to exclude the case where there were documents or witnesses. And he answered: If you have in the Boraitha no other support but this, it is no support to me at all, as this Boraitha is to be interpreted thus: If the defendant says, I have borrowed from you but not in the presence of witnesses, or not on any document (hence, the Boraitha has in view not denial but confession); and this interpretation is necessitated by the expression of this Boraitha "To one of the brothers"; because how was the case? If he confessed the half of the amount, then there is a complete denial of the other half; thus we must say that the confession to one of the brothers means that the denial was not concerning the amount, but springing from his assertion that he made the loan of *one* of the brothers only, so that it is but a denial of words, and as the first part of the Boraitha means a denial of words and not of the amount, so also the second part.

Come and hear. It was said above: He is not liable for its unintentional; and what is the liability for an intentional? A trespass-offering, etc. Shall we not assume that it means a case where there were witnesses warning him? Nay, it means that there were no witnesses. Come and hear another objection. If the depository claims that the deposit has been stolen from him, swears, but thereafter confesses, and there are also witnesses to this effect, it depends on the following: if the witnesses come after he has sworn, he must pay double amount and bring a trespass-offering; but if he has confessed before the appearance of the witnesses he has to pay the amount plus one-fifth of it and bring a trespass-offering. (We see then that he is liable to a trespass-offering in any case)? This may be explained also as Rabina stated above--viz.: At the time he takes the oath the wives of the witnesses find themselves in agony, etc. (see above p. 67), but in case of simple witnesses no offering is necessary. Said Rabina to R. Ashi: Come and hear: a depository oath is more rigorous, since for an intentional he is liable to stripes and for an unintentional to a trespass-offering in shekkels; now, stripes presuppose a warning by witnesses, and nevertheless it says that for an unintentional a trespass-offering (which signifies by implication that no offering applies to an intentional)? Said R. Mordachai: Leave alone this Boraitha, as R. Kahana said. This Boraitha *I* taught and it states that a trespass-offering must

be brought, immaterial whether for an intentional or unintentional one. Finally, come and hear the following objection: In the discussion (above, p. 69) concerning an inference *a fortiori* it is stated that there is a difference regarding a Nazarite defiling himself, as he gets stripes, which is not the case with a depository oath; now, a Nazarite does not get stripes unless there were witnesses, and as it says that it is not the case with a depository-oath, it signifies that even if here were witnesses stripes do not apply, but an offering does apply, hence Rabba's statement is objected.

R. Johanan, however, said: If one denies money where there are witnesses, he is subject to an oath but is free from such if there is a document. Said R. Papa: The reason of R. Johanan is that witnesses are subject to death (then the denial would be considered, which is not the case with a document. Said R. Huna b. R. Jehoshua to R. Papa: May it not happen also to a document to be

lost? Therefore, R. Johanan's reason is that to a document real estate is encumbered, and there is no oath concerning the denying of real estate.

It was taught: If one adjures witnesses in a case of real estate, R. Johanan and R. Elazar differ: according to one they are liable, according to the other they are not; now, from what R. Johanan has said above it is to conclude that he is the one who declares them free, and his reason is that advanced by R. Huna b. Jehoshua.

Said R. Jeremiah to R. Abuhu: Shall we assume that R. Johanan and R. Elazar differ in what R. Eliezar and the rabbis differ (First Gate, Mishna VII. p. 270; see Mishna and Gemara), and he who makes him liable agrees with R. Eliezar of that Mishna, while he who frees him agrees with the rabbis? And he answered: Nay; as he who makes him free may say that in such a case even R. Eliezar admits since here concerning a false oath it reads [Lev. v. 22]: "In *any one* of all," but not all, which excludes real estate. Said R. Papa in the name of Rabha: It seems to be so also from our Mishna, which illustrates it by the theft of an ox and not by that of a slave, and this is because a slave is considered real estate to which an offering does not apply.

"*How does the oath concerning deposits take place*," etc. The rabbis taught: "When the oath was made in general, he is liable but for one; but when in particular, he is liable for each severally"; so R. Mair. R. Jehudah, however, said: If he says, I

swear I have it not from thee, and not from thee, and not from thee, he is liable for each one; R. Eliezar, however, maintains that he is liable for each one only then when the words "I swear" were said last; but R. Simeon said that to be liable for each one he must mention "I swear" with each one separately. Said R. Jehudah in the name of Samuel: The general of R. Mair is the particular of R. Jehudah (*i.e.*, "and not from thee, and not from thee," which is considered by R. Mair as a general, R. Jehudah considers a particular), and the general of R. Jehudah (*i.e.*, the same statement but without "and") is the particular of R. Mair. R. Johanan, however, said: Concerning "*and* not from" all agree that it is a particular; where they differ is regarding "not from thee" (without "and"), which is to R. Mair a particular, and to R. Jehudah a general. What then is a general to R. Mair? "I swear that you all have nothing with me." But what is the point they differ in? Samuel bases his view upon the just-cited Boraitha in which R. Jehudah says "and not from thee" is a particular, and this must be taken as an. answer to R. Mair, who maintains that such statement is a general. On the other hand, R. Johanan bases his view upon our Mishna in which R. Mair says that for swearing "you all have nothing with" he is guilty but for one, whence it follows that if he states in his swearing "not from thee, not from thee" he is culpable for each. As to the Boraitha, R. Johanan explains it thus: R. Jehudah, answering R. Mair, says: concerning the phrase "*and not* from thee" I agree with you that it is a particular, but I do not agree with you concerning the phrase "not from thee, not from thee" (without and); to which Samuel cannot agree, as, he thinks, if this were the case R. Jehudah would state only in what he differs. As to the Mishna, Samuel does not agree with R. Johanan, as according to Samuel the phrase "*and* not from thee" is identical with "not from you all." (Here follow objections to the above, from our Mishna, where in all the cases it is stated with a *vahve* (-and) and the answer is: read it without "and." And to the question: Is it possible that all the "ands" are mistakes, it answers that the whole Mishna is in accordance with Rabbi's view in Tract Zebachim, where he plainly says that there is no difference whether the conjunction "and" was said or not.

"*R. Mair says: Even,*" etc. Said R. A'ha b. R. Aika: It means that even if he says wheat in the singular, it none the less means a measure of the same (as we find in [Exod. ix. 32]

the word for wheat in the singular, and it denotes the whole kind of wheat).

"*Give me the wheat,*" etc. Said R. Johanan: The value of a *Peruta* from all of them counts to make him liable for each severally, and R. A'ha and Rabina differ in their explaining this point. According to one he is liable only for three particulars, but not for the oath as such, which is a general; while the other maintains that he is liable for four: for the three particulars, and for the oath as a general. But has not R. Hyya taught that he is liable to fifteen sin-offerings (if he swore to five persons), so that the Tana of the Boraitha counts only the particulars and not the five generals (for, with the generals it would make up 20: 3 x 5 = 15 for the particulars, and five for the oaths in general)? The Tana counts only the particulars, and he does not count the generals, though he holds one liable for a general. But again, there is another Boraitha by the same R. Hyya in which the liability counts twenty? This second Boraitha refers to the previous statement in the Mishna, "Give me the deposit, the loan," etc., which amount to *four* particulars.

Rabha questioned R. Na'hman: How is it if five persons claim the four articles just mentioned, and he says to one of them: I swear that thou hast not with me a deposit, a loan, a robbed, a lost article, and not thou, and not thou, and not thou, and not thou, he is liable with regard to the last four only to one sin-offering (so that all in all he should be liable to eight), or because be said to each one, "*and* not thou," the particulars must be counted in each case, and hence he is liable to twenty? Come and hear what R. Hyya taught above: Twenty sin-offerings; now, if R. Hyya had in view that all particulars were mentioned in the oath, would it be necessary for him to specify the number of the sin-offerings? Hence, he surely has in view a case illustrated by you, and makes one liable for all the particulars.

"*You violated,*" etc. Said R. Hyya b. Aba in the name of R. Johanan: The reason of R. Simeon is that the main claim in this case is fine. Said Rabha: We may illustrate R. Simeon's view as follows: If one says, "Give me the wheat, barley and rye which I have with you," and the answer is, "I swear that you have no wheat with me," and it was found that he really had no wheat, but had barley and rye, he is free, because the oath for the wheat was true; said Abayi to him: This illustration does not answer the purpose, since when swearing about

wheat he did not deny barley and rye. But R. Simeon's view may be illustrated thus: one answers "I swear you have nothing with me," whereupon it was found that he had no wheat, but barley and rye, in which case he is culpable? Therefore, when Rabin came he said in the name of R. Johanan: Their point of difference is that according to R. Simeon the plaintiff demands only the fine, but not the indemnity for the shame and loss of value which is not fine, while according to the sages he demands also the latter. And their respective reasons are explained by R. Papa thus: According to R. Simeon one would not demand an amount that has to be appraised as yet, while the fine is an amount established in the Scripture; on the other hand, the rabbis maintain that, on the contrary, one would not demand a fine, the admission of which by the offender makes him free, while the indemnity for shame, etc. he must pay at all events.

Next: Chapter VI.

CHAPTER VI.

RULES AND REGULATIONS CONCERNING THE CIRCUMSTANCES UNDER WHICH THE COURT GIVES AN OATH TO ONE OF THE CONTESTANTS.--THE NATURE OF THE CLAIM AND OF ITS PARTIAL ADMISSION.--WHICH ADMISSION IS OR IS NOT REGARDED AS CORRESPONDING WITH THE CLAIM.--THE CASES WHERE THE CLAIM IS FOR MOVEABLES AND THE ADMISSION FOR IMMOVABLES, OR *vice versa*.--WHO ARE OR ARE NOT FIT TO ENTER A CLAIM WHICH ENTAILS AN OATH.--THE FORM OF THE OATH AND THE INTRODUCTION THERETO USED BY THE COURT, AS WELL AS THE KIND OF SACRED OBJECT ONE MUST HOLD WHEN TAKING THE OATH.--ARTICLES THE CLAIM TO WHICH ENTAILS NO OATH.--THE CONDITIONS UNDER WHICH EITHER AN OATH MUST BE TAKEN FOR A LOST PLEDGE OR THE VALUE THEREOF MUST BE PAID.

MISHNA *I.*: In the case of an oath before court, the claim must amount to two silver, and the confession, to one peruta; and if the confession is not of the same kind with the claim, he is free. How so? I have with you two silver. You have by me only one peruta; he is free. I have with you two silver and one peruta. You have by me but one peruta; he is liable. I have with you one mana. You have nothing by me; he is free. I have one mana with you. You have by me only fifty dinar; he is liable. My father has a mana with you. You have by me only fifty dinar; he is free, for he is in this case like to him who returns a thing lost. I have with you a mana. Yea. Next day the plaintiff says: Give it to me. I have given it to you already; he is free; but if his answer be: You have nothing by me, he is liable. I have with you a mana. Yea. Give it to me only in presence of witnesses. Next day he requires the money, whereupon the defendant says: I have given it to you already; he is liable, as he was to pay it before witnesses. I have in your possession a litra of gold. Nay; you have by me only a litra of silver; he is free. But if plaintiff says: I have with you a *gold* dinar. Nay; you have by me only a silver dinar, a trecissis, a fundion and a perutah, he is liable, since all the

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mentioned coins are of the same kind. I have in your possession a kur of grain. Nay; you have only a lethech of legume; he is free. I have with you a kur of fruit. Nay; you have by me only a lethech of legume; he is liable, since legume is in the category of fruit. If the claim was wheat and the defendant admits barley, he is free. Raban Gamaliel, however, finds him liable. If one requires from another tankards of oil, and latter admits pitchers, he must, according to Admon, take the oath, since it is a case of partial admission; but the sages say: The confession is not of the same kind with the claim. Said R. Gamaliel: Admon's decision appears to me to be correct. If one requires movables and real estate and the other admits movables but denies real estate or *vice versa*, he is free. If he admits but a part of the real estate he is likewise free; but if he admits but a part of the movables, he is liable, for property that is not subject to loss necessitates the taking of the oath with reference to property that is subject thereto. There is no oath to the claim of a deaf-mute, an imbecile, or a minor; nor is a minor to take an oath, but there is an oath to the claim of a minor or of the sanctuary.

GEMARA: How is an oath given? Said R. Jehudah in the name of Rabh: One is made to swear

with the oath of the Scripture [Gen. xxiv. 3]: "And he will make thee swear by the Lord, the God of heaven." Said Rabina to R. Ashi: Is this in accordance with R. Hanina b. Aidi, who said that the unique holy name is required?" Answered he: Nay; this may be even in accordance with the rabbis, who say that a divine attribute is sufficient, and the difference between the two is that he (who takes the oath) must keep in his hand a holy object; and this is in accordance with Rabha, who said that a judge who gives one the oath in the name of the Lord the God of heaven should be considered as he who erred in what was written plainly in a Mishna, so that the oath must be given again. And R. Papa says that a judge who gives one the oath by making him keep the *Tephilin*, is likewise considered erring, as the object kept must be the holy scrolls. (Says the Gemara): The Halakha prevails with Rabha, as there is no oath made without one's holding some holy object; and not with R. Papa, as after all there was a holy object in the hand of the one who took the oath.

One must stand when taking the oath; a scholar, however, may do it while sitting. Furthermore. the oath must originally

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be performed with the holy scrolls; a scholar, however, may take the oath even originally with *Tephilin*.

The rabbis taught: Also an oath taken by one before the court must be uttered in a language he understands, and the court must say to him the following introduction to the oath: Be aware that the whole world was trembling when the Holy One, blessed be He, spake on the Mount Sinai: "Thou shalt not bear the name of the Lord thy God falsely"; likewise concerning all transgressions mentioned in the Torah it reads: "*Venakkei*" (literally, he will forgive), and concerning a false oath it reads further, "*Lo ienakei*" (literally, he will not forgive); again, for all other transgressions only the sinner himself is punished, while here (in case of oath) the punishment extends also to his family, as it reads [Eccl. v. 5]: "Suffer not thy mouth to cause thy flesh to sin," and by the expression "flesh" one's family is meant, as [Isa. lviii. 7]: "From thy own flesh." Furthermore, for all other transgressions the sinner himself is alone punished, while here the whole world is punished, as [Hosea, iv. 2, 3]: "There is false swearing, etc. . . . therefore shall the land mourn." (But perhaps it means that only when the sinner committed *all* the transgressions mentioned here in Hosea? This cannot be borne in mind, as it reads in [Jerem. xxiii. 10]: "For because of false swearing mourneth the land.") Again, the punishment for all other transgression is, because of the merits of the sinner's forefathers, postponed for some two or three generations, but here he is punished immediately, as it reads [Zech. v. 4]: "I bring it forth, saith the Lord of hosts, and it shall enter into the house of the thief, and in to the house of him that sweareth falsely by my name: and it shall remain in the midst of his house, and shall consume it with its timber and its stones"; "I bring it forth" means immediately; "it shall enter into the house of the thief" means who steal the mind of the people, *e.g.*, he who has no money with his neighbor, claims such and makes latter swear; "into the house of him who sweareth falsely" means literally; "it shall remain in the midst of his house," etc., to learn from this that things indestructible by fire or water are destroyed by false swearing. If after having listened to all this introduction, he says: "I will not take the oath," the court sends him away immediately (that he might not reconsider and take it); but if he says: "I will nevertheless swear," the people present say [Numb. xvi. 26]: "Depart, I pray you, from the tents of these wicked."

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Again, when he is ready to take the oath, the court says again to him: Be aware that the oath which you take is not according to your own mind, but to the mind of the Omnipotent and of the court, as we find by Moses, our master, when he made the Israelites swear, he said: You shall be aware that your oath is not by your own mind, but by that of the Omnipotent, as it reads [Deut. xxix. 13, 14]: "And not with you alone, etc. . . . But with him that is standing here," etc., and it is not meant only those were at the Mount Sinai, but all future generations, and all proselytes who will embrace Judaism in the future; and not only regarding the commandments given on that Mount, but also regarding all commandments that will be established in the future and be they lenient, such as the reading of the Book of Esther, as it reads there [Est. ix. 27]: "The Jews confirmed it as a duty," etc., which means they confirmed a duty imposed upon them in the past.

The text above states "also an oath," etc. Why also? It is an addition to a Mishna in Tract Benedictions--viz.: the following are uttered in any language: The portion said to a suspected woman, the confession on tithe, the reading of *Shema*, the saying of the prayer, of the benediction after meals, the witness-oath, and the oath of a depository. So that the "also" from here comes to add yet the oath given by the court.

The master says: The whole world was trembling, etc. But why? Was it because it was ordained on Sinai? Then, all the ten commandments were given there; and if because it is more rigorous, is it indeed so? Is there not a Mishna: Lenient means positive and negative, except "Thou shalt not bear the holy name," etc.; rigorous are those under the category of capital punishment and *Korath*, and the commandment "Thou shalt not bear," etc. belongs to these (hence, we see that it belongs to the same category with these)? The answer is that to all other transgressions *Venakkei* applies, while here *Lo ienakkei* applies, as above. But does it not read together *Venakkei lo ienakkei*? This is explained by R. Elazar, who said: It is impossible to say *Venakkei* (he will forgive) as it is followed by *lo ienakkei* (he will not forgive), nor is it possible to say "he will not forgive" after it reads "he will forgive," therefore it must mean, he will forgive the repenters, but not those who do not repent. (The master says there) further: For all transgressions, etc., while here (in the case of oath) the punishment extends also to his family. But does it not read [Lev. xx. 5]: "Then I will set

my face against this man and against his family." And there is a Boraitha: R. Simeon says, If he has sinned, what has his family done; to teach that a family, where there is a contractor or a robber, is all considered robbers because it supports him? There *he* is punished with the punishment attached to his transgression, but the family with a lenient one; while here the family suffers the same punishment with the perjuror. As we have learned in the following Boraitha: Rabbi said, to what purpose is it written in the above-cited verse, "I will cut him off," after it reads "I will set my face," etc,? To teach that only *him* I will cut off but not the whole family.

Concerning the punishment of the whole world (mentioned before), does it not read [ibid. xxvi. 37]: "And they shall stumble one over the other," which is explained elsewhere to mean "one because of the sin of the other," as all the children of Israel are mutually responsible one for the other? The reason then is that they could have prevented the sin by protesting, but did not do so. But is not one's family included in the "whole world"? There is a difference in the nature of the punishment--viz.: his family is punished more rigorously than the rest of the world.

The text says: If he says, "I will swear, the people say: Depart," etc. Why are both the parties called wicked? Let only him who swears have this name. It is in accordance with R. Simeon b. Tarfon, who says in the following Boraitha [Exod. xxii. 10]: "Then shall an oath of the Lord be between them both," infer from this that the oath rests upon them both. It states there further on: "Not according to your own mind." To what purpose is this? Because of a case that happened in Rabha's court (where the defendant put up the money claimed from him in a case and, while going to swear, he gave it to the plaintiff to hold, and swore then that he has returned the money, thus convinced that he had made a true oath).

"*I have with you two silver*," etc. According to Rabh the denial must be for two silver; according to Samuel the claim must amount to two silver, while the denial or the confession may be even for one *peruta*. Said Rabha: Our Mishna seems to be in accordance with Rabh, as it states that the claim must amount to two silver and the confession to one *peruta*, but it does not state the denial to be of one *peruta*; the Scripture, however, seems to be in accordance with Samuel, as it reads [ibid. ibid. 6]: "If a man do deliver unto his neighbor money

or vessels to keep," and as "vessels" is used in the plural, so is money (silvers) here in the plural; and as silver is a valuable, so everything that is a valuable; and [ibid. 8]: "Of which he can says this it is" signifies however little it may be, hence, the confession must be to a claim that is no less than two silver.

There is an objection from the following Mishna: I have with you two silver. Nay; you have only one peruta; he is free from an oath. Now, is it not because the denial here is less than of two silver, and it is an objection to Samuel? Nay; it means particularly: He claims two *silver*, and the answer is, *peruta*, which is in *copper*, consequently the confession was not of the same kind with the claim. But if so, how is the second part to be understood--viz.: I have with you two silver and a *peruta*. Nay; you have with me only one *peruta*; he is liable. Now, if the claim was for the *value* of two silver, it is correct that he is liable, for the confession concerned the same kind as the claim; but if it is a claim particular on silver, then the other confessed to what was not claimed, and what this one claimed was not confessed? But is not the objection concerning Samuel, and R. Na'hman said that Samuel holds one liable for confessing one of the articles embraced in the claim; and it seems to be that the Mishna was particular regarding the kind, and not the value, of the metal, as it states in its last part: I have with you a *litra* gold. Nay; you have with me a *litra* silver; he is free. Now, if it is particular with regard to the kind of metal, then it is correct; but if it means the value of the metal, why should he be free, when the value of gold is so many times more than that of the same quantity of silver? Hence, as this last part is indisputably particular with regard to the kind of metal, so also is the first part. But if so, let this be an objection to Rabh? Rabh may say: All the Mishna treats of the value, but in the case of the *litra* gold it is different, as here the main point is the weight; and a support to this view may be found in its concluding part, which states: "I have with you a golden dinar." Nay; you have with me only a silver dinar, a trissis, a pundium and a peruta, he is liable, as they all are coins. Now, if it speaks of value, it is right that he is liable, as the claim was for coins and the confession, too, was for coins; but if it is particular, why should he be liable when he confesses to silver or copper, the claim being for gold? Said R. Elazar: It treats of a claim that is made for coins amounting to the value of a dinar, and this is stated to teach that a peruta is also considered a coin.

And so it seems to be, since it adds that "they all are each a kind of coin." But Rabh reads the Mishna to mean "to them all the law of a coin applies."

Come and hear: "I have with you a gold dinar in gold." Nay; you have with me only a silver dinar; he is liable. Now, we see that only because the claimant added specifically "in gold," the kind of the metal is particular; but if this were not added, the value of the metal would be understood? Said R. Ashi.. Nay; the Boraitha intends to teach that if one says "a gold dinar," it means a dinar in gold.

R. Hyya taught a Boraitha in support of Rabh: I have with you a *sela*. Nay; a *sela* less two silver; he is liable. But if the answer is. A sela less a *maäh* (= 2½ silver), he is free (because the denial was for more than two silver).

Said R. Na'hman b. Itz'hak in the name of Samuel: All that was said hitherto concerns only the claim of the lender and the confession of the borrower, but if there was one witness, the borrower is liable even if the claim amounted only to one peruta; as it reads [Deut. xix. 15]: "There shall not be one witness to any sin or transgression," which signifies that to a transgression one witness shall not be considered, but concerning an oath one witness may be considered; and there is a Boraitha that whereever two witnesses cause the payment of money, one witness causes an oath.

R. Na'hman said again in the name of the same authority: If the claim was for wheat and barley, and the confession was to either one, he is liable. Said R. Itz'hak to him: Thanks, so also said R. Johanan. Was he thanking because someone differed with R. Johanan? Yea., it was Resh Lakish who kept silent when R. Johanan said so, only because he was drinking at that time.

An objection was raised; come and hear: If the claim comprised both personal and real estate, and the confession was to either, he is free; if, however, the confession was regarding but a part of the real estate, he is free; but if to a part of the personal estate, he is liable. We see, then, that only in a case of real estate to which an oath does not apply, he is free; but if the claim were for vessels of two kinds similar to personal and real estate respectively, and he would confess to either kind he would be liable? Nay; he would be free in this case also; and the case of personal and real estate is to teach that, when the confession was only to a part of the personal, he has to swear

even for the real estate, too. But what is there new in this teaching: that one can include in the oath also another claim? This has been already stated in Middle: Gate? Here is the main teaching, while in Middle Gate the point is touched on merely by the! way. R. Hyya b. Aba, however, said in the name of R. Johanan: If the claim was wheat and barley, and the confession was only to either of them, he is free. But has not R. Itz'hak expressed his thanks to one for quoting R. Johanan as saying the very opposite? The Amoraim differ regarding R. Johanan's statement.

R. Aba b. Mamal objected to R. Hyya: If the claim was for an ox, and the confession was for a

lamb or *vice versa*, he is free; but if the claim was for an ox and a lamb, and the confession only for one of them, he is liable? And he answered: This Boraitha is in accordance with Admon; and you shall not take this answer as mere argument, since it is a fact that R. Johanan taught so explicitly.

R. Anan said in the name of Samuel: If one was about to claim wheat and the defendant hastened to confess barley, if it seems to the court that he did so with a view to elude the court, thereby escaping an oath, he is liable; but if only to justify the claim, he is free. He said further in the name of the same authority: If the claim was for two needles, and the confession was to one, he is liable; as for this purpose the Scripture mentions vessels, that they remain what they are. R. Papa said: If the claim was for vessels and a peruta and the confession was for the vessels and the denial for the peruta, he is free; but if *vice versa* he is liable. The one case is in accordance with Rabh, who holds that the denial must be of a claim of two silver, while the other case is in accordance with Samuel, who holds that of the claim comprised two articles and the confession was to but one, he is liable.

"*I have a mana with you*," etc. Said R. Na'hman: He is free from a biblical oath, but he is subject to a rabbinical one. (Here follows a repetition from Middle Gate and also from First Gate concerning the law that he who denies a loan is fit to be a witness, while he who denies a deposit is unfit.) According to others the saying of R. Na'hman concerned the latter part of the Mishna--viz.: I have a mana with you. Yea. And the next day when he refuses it, he says: "I have already given it to you"; he is free, to which R. Na'hman said: He must, however, take a rabbinical oath. To him who teaches this regarding the

first part of the Mishna, is obvious that it belongs also to its latter part; but he who limits this to the latter part reasons thus: In this latter part money was avowedly involved, but in the first it is doubtful.

What is the difference between a biblical and a rabbinical oath? The reversibility of the oath: a biblical oath we do not transfer from one contestant to the other, while a rabbinical we do. And according to Mar b. R. Ashi, who says that a biblical oath is also reversible, what is the difference between the two oaths? The collecting from the property: where there is a biblical oath, the collection may be made from his property, which is not the case with a rabbinical oath if he refuses to take such.

And according to R. Jose who says that a rabbinical oath is also attended with collection, what is the difference between the two? In the case where one of the parties was suspected of an oath: if this was a biblical oath it is transferable to the other party, but if it is a rabbinical oath, which is only an enactment by the sages, it is not transferable, for the transferring is itself but an enactment and we do not impose one enactment upon another.

Now, what is to be done according to the rabbis, the opponents of R. Jose, who hold that in case of a rabbinical oath no collecting from the property takes place? We place him under ban. Said Rabina to R. Ashi: This is like holding one up for his throat till he takes off his clothes (*i.e.*, it is still worse than collecting from his estate, as he remains under ban until he pays)! But what shall be done? Place him under ban for one month, and if he does not come then for absolving he is,

as it is customary, punished according to Rabh's practice, after which punishment he is left alone.

R. Papa said: If one holds a document in his hand and the defendant says: the document is already paid up, he is not trusted and must pay. But if he requires that the plaintiff take an oath that it has not been paid, the court is to give him an oath. Said R. A'ha b. Rabha to R. Ashi: Why should this case be different from a marriage contract where she has to take an oath only when she impairs the contract (*i.e.*, she claims that only one mana has been paid on it)? And he answered: In that case where the document is impaired, and the defendant does not require an oath, the court requires such; in this case, however, the court would tell him to pay and not exact an oath, but execute the requirement of the defendant that the plaintiff take

an oath; and if the plaintiff was a scholar no oath is to be given. Said R. Yemer to R. Ashi: Is a young scholar given the liberty to strip men of their clothes? Say only that if he was a scholar, we do not compel him to swear, so that it should not seem that the court suspects him, and on the other hand if he refuses to swear we do not collect his claim from the defendant.

Again: "*I have a mana with you*." Said R. Jehudah in the name of R. Assi: If one has made a loan in the presence of witnesses, he must also return it in presence of witnesses. And when, he continued, I recited this before Samuel, he told me that the defendant can claim, "I have paid you in the presence of such and such witnesses, who are now away in the sea-countries." An objection was raised from our Mishna: "I have with you a mana. Yea. . . . I have returned it to you," he is free; now, if he required the money in presence of witnesses, it is a case similar to making a loan in the presence of witnesses, and nevertheless he is free, which contradicts R. Assi's statement? R. Assi may say: This is no comparison, as I speak of a case where the plaintiff has never reposed on confidence in the defendant, as he did not trust him without witnesses; but here he trusted him money without witnesses.

R. Joseph taught the same in the name of the above, as follows: If one makes a loan in presence of witnesses, the borrower is not obliged to return it in presence of witnesses, unless he was told not to repay otherwise than in presence of witnesses; and it is to this that Samuel told me: the defendant may none the less claim to have paid the debt in presence of such and such who are now in the sea-countries.

An objection was raised from the following. I have a mana with you. Yea. You shall not return it to me without the presence of witnesses. The next day, on being asked to return the money, he answered: I have returned it, the defendant is liable, for he had to return it as he was told, *i.e.*, in the presence of witnesses; and this contradicts Samuel's statement? Samuel may say that concerning this law Tanaim differ in the following Boraitha: I have given to you my money in presence of witnesses, and you must return it under the same conditions; then the defendant must either pay or adduce evidence that he has paid already; R. Jehudah b. Bathina, however, says: He may claim to have returned the money in presence of witnesses that are now in the sea-countries. R. A'ha (one of the Saburaërs) overthrew all this argument by saying: Whence do we know that

the above Tanaim differ in case he lent him before witnesses, perhaps it means in case of demanding when he says to him: Have I not lent you in presence of witnesses, so that you ought to pay me also in the presence of witnesses; but in case he told him when making the loan that he should return it in presence of witnesses, all agree that he is liable? Said R. Papi in the name of Rabha: The Halakha prevails that he who borrows in the presence of witnesses must pay also in the same manner. R. Papa, however, said in the name of the same authority that be is not obliged to do so, unless he was expressly told not to pay otherwise but in the presence of witnesses; and if the defendant claims to have paid it in the presence of such and such who are now in the sea-countries, he is trusted (Maimanides, however, reads: He is not trusted).

There was one who told his neighbor: When you will pay me my debt, you shall do so in the presence of Rubin and Simon; he, however, has paid it in presence of two other witnesses (and thereafter the plaintiff says that they are false witnesses). Said Abayi: What is the difference, he was told to pay before two witnesses, and so he did? Said Rabha to him: The plaintiff has purposely specified two witnesses by name that the defendant may not be able to say that he paid in presence of some other witnesses!

There was one who said to the borrower: You shall pay me only before two persons who are able to learn Halakhas; he, however, paid him without any witnesses present. It then happened that this money was violently taken away from the plaintiff, and he came to R. Na'hman saying: It is true, I have received. the money not as a return of the loan, but as a deposit, until there will happen two witnesses who learn Halakhas and then he will repay me. Said R. Na'hman to him: As soon as you admit to have taken the money it is a repayment, and if you want the defendant to comply with the stipulation regarding the -witnesses, go and bring the money here in the presence of myself and R. Sheshith, who are learned not only in Halakhas but also, in *Siphra*, *Siphri*, *Tosephtha* and in all the *Gemara*.

In another case one demanded a 100 zuz which he lent to him, to which the defendant answered that such a case has never taken place; the other party, however, brought witnesses that the loan took place, but that it was returned; said Abayi: What is to be done, as the same witnesses who testify that the loan took place, testify also that it has been returned? Said Rabba

to him (follow this rule): If one asserts not to have borrowed, it means he asserts not to have paid (hence, as the statement "that it has never taken place" is false, according to the evidence of these witnesses, we must take his word as though meaning: "I have never paid," which must be taken for granted in spite of all witnesses).

In still another case the plaintiff claimed 100 zuz, and the defendant answered: Have I not paid you in the presence of so and so? And so an so upon being quoted said: They know of no such case; and R. Sheshith was about to say that this defendant must be declared a liar; said Rabha to him: He was not obliged to repay in the presence of witnesses, and therefore he was not heedful enough to know the names of them in whose presence he repaid.

In another case the plaintiff was claiming 600 zuz, and the defendant answered: Have I not repaid this claim with 100 kabs of gall-nut, the value of each kab being six zuz? To which the plaintiff said: Nay; each was worth only four zuz, and brought witnesses to this effect,

demanding the remaining 200 zuz. The defendant, however, said: I have paid you all the same, if not with this said stuff, then I gave you 200 zuz in cash. Rabha decided that the defendant in this case be recognized as a liar. Said Rami b. Hama to him: Have you not said that a thing to which one pays little attention, may easily escape one's memory (why not say that he paid him the 600 zuz but did not remember the price)? Whereupon Rabha answered: A fixed price can never be forgotten.

In another case one demanded 100 zuz on a document, whereto the defendant answered: "Have I not paid you"? Whereupon the plaintiff claimed that this payment was made to meet another claim. According to R. Na'hman the document lost its value, according to R. Papa, it did not. But why should R. Papa's decision here differ from what he decided in the following similar case, where the defendant's answer was: Have you not given me that money to buy oxen for slaughtering, and I returned you that money in the slaughter-house? And where the plaintiff asserts that this was for another debt; in which case R. Papa declared the document invalid? In this case R. Papa thus, decided, because the money was actually taken to buy oxen and then received in that very place where they were slaughtered; in our case, however, the plaintiff may be right in his claim. But how should such a case be ultimately decided? According

to R. Papi the document is valid, and according to R. Sheshith b. R. Aidi it is invalid, and so the Halakha prevails, provided the defendant paid in presence of witnesses and the document was not mentioned at all; but if the payment was made between themselves, the plaintiff may be trusted when he says that it was to cover another debt, because were he willing to tell a lie he would simply deny the payment.

A borrower said to the lender: "You are trusted so long as you will say that I have not paid you"; thereafter he paid him in the presence of witnesses, but the plaintiff continued his claim, saying that this payment was for another debt. Both Abayi and Rabha said that the defendant himself has trusted him, hence, he is to be trusted; R. Papa, however, opposed, saying: The defendant trusted in this case more to the plaintiff than to one's self, but did he trust him more than two witnesses?

In another case the defendant said to the plaintiff: "You are trusted like two so long you say that I have not paid you;" thereafter he paid in the presence of three, and the plaintiff still claimed his debt; in which case R. Papa said: He was trusted as two, whereas here there are three witnesses. R. Huna b. R. Jehoshua, however, opposed, saying that concerning witnesses their number whether two or 100 matters not (according to the biblical law); however, if he said to him: "You are trusted like three," and then paid him in the presence of four, it is different, as the number three was intended here not for witnesses but for the *minds*, and in this respect four minds are more than three.

"*There is no oath to the claim of a deaf-mute*," etc. For [Exod. xxii. 6]: "Unto his neighbors," etc.; and the delivery by a minor is not considered.

"*But there is an oath to the claim of a minor*." But has it not just been said that there is no oath to such? Said Rabh: It means the minor claims that his father has given this or that to the defendant, and it is in accordance with R. Eliezar b. Jacob, who said in the following Boraitha:

There is a case where one has to swear for his own claim--viz.: "Your father had with me a mana, but I paid him a half," then he has to swear for his own claim; the sages, however, say that here he is but returning a lost thing, hence, he is free. And to the question, Does not R. Eilezar agree that the defendant here is returning a lost thing, Rabh said: It treats here of a claim made by a minor after the death of his father. But again, the Mishna states expressly that there is no oath to the claim of minors? Rabh

meant to say: He was as a minor in his father's business, but already of age when putting in the claim. But then how is the expression above "for his own claim" to be understood, as here it is not his claim but that of the plaintiff? It must, therefore, be said that they differ concerning what was said by Rabha (Middle Gate, p. 4) with regard to a biblical oath that "one is not so bold as to deny the whole," etc.: R. Eliezar holds that one is not bold concerning the son (of the deceased) also, and therefore he is not regarded as returning a loss, while the rabbis hold that one is not bold only in face of the party himself, but is so with relation to the son of same, and therefore he is considered as returning a loss.

But how can you explain the Mishna in accordance with R. Eliezar b. Jacob, does not the Mishna state in its first part: If one claims, my father had with you a mana, and the answer is, I have no more than 50 dinar, he is free because he only returns a loss? There it speaks of a case when the heir did not claim: "I am certain," while in the case of our Mishna the minor is supposed to claim that he is certain. Samuel, however, says: Our Mishna's case is when the minor has real estate and one puts in a claim that his father owes him money, in this case even if the plaintiff has a document, he must swear that the minor's father has not paid it; the same is the case with the sanctuary. [1]

MISHNA *II*.: One does not swear to the following: To slaves, written documents, arable lands, and sanctified objects; nor is thereto applied the payment of double amount, or of four and five-fold. The gratuitous bailee need not swear, the bailee on payment need not pay damages. R. Simeon holds that one is obliged to swear to objects of the sanctuary, for whose security he is liable, but not to those for which he is not responsible. R. Mair says: There are things attached to the land and yet not considered land; but the sages do not agree with him therein. How so? I have transferred to you ten vines laden with grapes. Nay; there were only five; and he must swear according to R. Mair, while the sages hold that everything attached to the soil is to be regarded as the land itself.

One swears but to things capable of being measured, weighed, and counted. How so? I have transferred to you a house full of fruit, or, I have handed you a purse full of money. I know

not how much there was, but you are at liberty to take back whatever you left there; he is free; but if plaintiff says: They were reaching the cornice, and the defendant rejoins: Only up to the window, latter is liable.

GEMARA: Whence is this deduced? From [Exod. xxii. 8]: "For all manner of trespass": general, "ox, ass, lamb, raiment"; particulars, "for any manner of lost thing"; again general, and there is a

rule that wherever particulars appear between generals. it must be judged in the sense of the particulars: and as these are movables each having in body a value, so also all other cases must be equal to these; except real estate, which is not movable, slave, who are equalled to real estate, documents which though movable are in body of no value, and finally the sanctuary which is excluded because of the verse "his neighbor."

"*Double-amount, four and five-fold*," etc. The reason here is that the Scripture speaks of four and five-fold, and as in the case of double-amount an oath does not apply; it remains only the case of three and four-fold which is not mentioned in the Scripture.

"*A gratuitous bailee need not swear*." Whence is this deduced? From what the rabbis taught [Exod. xxii. 9]: "If a man deliver unto his neighbor": general, "an ass," etc.; particular, "to keep"; general, and on the basis of the above-mentioned rule the particulars appearing between generals render the whole to be judged in their sense: as the particulars here are movables each having in body a value, etc. (as above).

"*A bailee on pay*." Also this is deduced from the just-cited verse and on the basis of the same rule regarding particulars appearing between generals.

"*R. Mair says: There are things attached*," etc. From this we see that R. Mair does not hold that what is attached to the land is itself considered land. Now, why is here the point of difference illustrated by laden vines, and not by vines as such? Said R. Jose b. Hanina: The Mishna speaks of grapes that were ready for the press. R. Mair holds: As they are ready for pressing they are no longer considered attached to the soil, but as already pressed in which case an oath applies, while the sages do not share this opinion.

"*One swears but to things capable of being measured*," etc. Said Abayi: Provided he says "a house full," etc., but if he says, "*this* house was full," then his claim is definite and recognized. Said Rabha to him: If this were so, why the illustration

in the last part of the Mishna with "cornice" and "window" stated by plaintiff and defendant respectively, and not with it *a* house "and" *this* house"? Therefore, says Rabba, there is no liability of an oath unless the claim concerned a certain measure or weight, and the confession was made also to measure or weight. There is a Boraitha in accordance with Rabba: "I have a kur of grain with you." Nay; you have nothing with me; he is free. "I have with you a big chandelier." Nay; you have only a small one; he is free. However, if he says: "I have with you a kur of grain," and the answer is: Only a lethech; "or a chandelier of ten pounds," and the answer is: One of only five pounds, he is liable. Because the rule underlying this judging is: One is not liable unless the claim was for a certain measure, weight or number, and the confession was to the same effect. Now, what is the addition of the rule for in the Boraitha? To indicate that "this house full" means also a measure. But why is it not a partial confession if he confesses to a small chandelier when the claim is for a big one? Because to the claim as it is, there is here no confession, nor is the claim made for what is confessed (as the big and small chandelier are two different things); but is not the same the case when the claim is for one of ten pounds, and the confession for one of five pounds? Said R. Samuel b. R. Itz'hak: It speaks of a chandelier made of separable pieces, and the confession was to five pounds of the same chandelier; why, then, is

not the same the case with the girdle that may have been of separable pieces? And as this is not so, we must say that it does not speak of pieces in the other case of the chandelier either! Therefore, said R. Aba b. Mama], it speaks of a whole chandelier, but when the claim is for a big and the confession for a small one, then are two wholly different things involved; but if it speaks of the weight, one could by rubbing reduce the weight of such from ten to five pounds, the only object thus remaining the same.

MISHNA *III*.: If one lends to his neighbor on a pledge, and the pledge got lost, whereupon the plaintiff says: I lent you on it a sela, but it was worth only a shekkel; the other party says: No, truly, you lent me a sela. on it, but it was worth a sela, he is free. But if the plaintiff claims: I lent you on it a sela, but it was worth only a shekkel; whereto the other replies: Nay; you did lend me on it a sela, and it was worth three dinar, he is liable. If the debtor says: You lent me on it a sela, while it was worth two selas, whereto the creditor: Nay; I gave

you on it one sela, its value only, he is free. But if the former says: You lent me a sela on it, it was, however, worth two, and latter says: Nay; I lent you thereon a sela, and it was worth only five dinar, he is liable. Who is to take the oath? The depository, as he could meanwhile produce the pledge if the other one were to swear.

GEMARA: The concluding sentence of the Mishna belongs to which part? If to the last, there is a rule that the oath rests with the lender? Said Samuel and also R. Hyya b. Rabh and also R. Johanan, it belongs to the middle part: I lent you a sela and it was worth a shekkel, and the other says it was worth three dinars, in which case the borrower confesses to owe yet one dinar, hence, it is a partial admission to which an oath applies; the rabbis, however, have transferred this oath from the borrower to the lender. 1 And now that R. Ashi has decided that both depositor and depositary must each take an oath, he latter: that he does not have the pledge any more, and the former: that its value amounted to so and so much, the Mishna is to be explained thus: Who is to take the oath first? The depositary, since if the depositor swore first the other could meanwhile reconsider and produce the pledge.

Samuel said: 2 If one lends to his neighbor 1,000 zuz, and pledges for them the handle of a scythe only, if the handle is lost the 1,000 zuz are lost, but if the pledge consisted of such two handles the case is different, as we do not assume that he gave 500 zuz for each handle, but for the whole, and as only one of them was lost the lender loses nothing; R. Na'hman, however, maintains that the same is the case with two, *i.e.*, if one is lost the lender loses 500 zuz, and if both are lost he loses the whole 1,000; but the same is not the case if the pledge consisted of a scythe handle and a piece of metal. The opinion of the sages from Nahardea is that the same is the case with the last mentioned pledge: If either the metal or the handle is lost, 500 zuz are lost, and the loss of both entails the loss of all the 1,000.

An objection was raised from our Mishna--viz.: From the case where defendant says it was worth but three dinar. Why is he liable in this case? Let the depositor say: You have taken it for a sela? The Mishna has in view the case where the depositary

expressly took upon him responsibility for its value only, which is not so in Samuel's case. [1]

Concerning the last mentioned case shall we assume that the following Tanaim differ: If one had made a loan on a pledge and the Sabbathic year entered, the pledge, though worth only the half value of the loan, the year does not release the loan [Deut. xv. 2]; R. Jehudah the Nassi, however, maintains that if the pledge amounted to the value of the whole debt, the year does not release, but if not to this value, the year does release. Now, let us see what does the first Tana mean by his saying "it does not release"? If he means, it does not release the half debt and R. Jehudah comes to teach that it releases even this half, then of what use is a pledge? We must then say that the first Tana means it releases the entire debt, as he agrees with Samuel's theory that as soon as it was accepted for this amount it must be considered only as such, while R. Jehudah differs! Nay; they differ with regard to the worth of the pledge and still R. Jehudah maintains that the entire debt is released, for the pledge which is not worth the amount of the debt he considers as mere memorandum.

Footnotes

88:1 The further discussion on this point appears in its proper places.

91:1 A Talmudic sela was of two shekkels, each shekkel of two dinars; hence 3 dinar = 1½ shekkel.

91:2 This is a repetition from Tract Middle Gate, p. 206, which is reproduced here because R. Na'hman's part is not mentioned there.

92:1 Here follows the discussion from Middle Gate, p. 206:

"*On a pledge*," which paragraph is followed by the statement of R. Itz'hak that a creditor acquires title in a pledge (ibid., p. 207). Also the discussion concerning the question as to whether he who takes care of a found object is considered a gratuitous bailee, or a bailee for hire (ibid., p. 65), all which we deem unnecessary to repeat here

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Next: Chapter VII.

CHAPTER VII.

RULES AND REGULATIONS CONCERNING THE CONDITIONS UNDER WHICH THE OATH IS GIVES TO THE PLAINTIFF OR TO THE DEFENDANT.--REGARDING A SUSPECT OF PERJURY.--THE DIFFERENCE BETWEEN A BIBLICAL AND A RABBINICAL OATH.--IS OR IS NOT A RABBINICAL OATH TRANSFERABLE?--THE OATH OF ORPHANS (PLAINTIFF OR DEFENDANT), PARTNERS, GARDENERS.--THE CASES WHEN THE SABBATHIC YEAR RELEASES ONE FROM AN OATH.

MISHNA *I.*: All those who are subject to a biblical oath swear and do not pay. The following, however, swear in order to receive pay: The employee, the robbed, the bruised, he whose adversary is suspicious of perjury, and the store-keeper on his business book. The employee, how so? Give me my wages which I have with you, and the employer answers. I have given them to you already, and the former claims: I have received nothing; he swears and gets his claim. R. Jehudah, however, says: Unless there be a partial. confession (the oath is not effective)--viz.: the employed says.. Give me my fifty dinar wages you have in your hands, and the employer replies: You received on this account one gold dinar.

How is it with the robbed? If witnesses testify that one entered his house to seize a pledge without permission, now the householder says: You have seized one of my utensils, and he denies, plaintiff swears and takes it. R. Jehudah, however, says: Unless a partial confession takes place there--viz.: You took two utensils, and he answers: I took but one.

How is it with the bruised? If witnesses testify that one entered the premises of so and so unhurt and went out in wounds, now the plaintiff says to the defendant: You bruised my body, and he says: I did not, former swears and receives pay. R. Jehudah says. Unless a partial confession took place --viz.: plaintiff says: You wrought upon me two bruises, and the defendant says: Only one.

How is the adversary suspicious of perjury? As follows: Be

it that he became suspicious while under oath as a witness, or under oath for a deposit, or even for merely vain swearing. If one of them is a gambler in dice, a usurer, a dove hunter, or one who is doing business with the fruit of the Sabbathical year, his adversary swears and obtains his claim. In case, however, both were suspicious, the oath returns to its place; such is R. Jose's opinion; R. Mair holds that they divide.

The store-keeper on his book, how so? Not that he say to somebody: It is stated in my book that you owe me 200 zuz, but that when one says to the store-keeper: Give my son two saah of wheat, or: Give my laborer a sela in money, whereupon the store-keeper claims: So I did give,

and the others say: We have received nothing, the two swear; he swears and gets paid, and they likewise swear and get paid by the employer. Said b. Nanan: How is that? Either party will necessarily be committed to false swearing! But both parties receive their respective claims rather without swearing. If one said to the storekeeper: Give me fruit for one dinar, and he, having given him, says: Give me the dinar, whereupon this replies: I have given it to you already and you put it into the cash-drawer, the purchaser is to swear. If, however, the customer gave the dinar and said: Give me the fruit, and the store-keeper says: I have given them to you already and you brought them over to your house, the store-keeper is to swear. R. Jehudah says: He who has the fruit in his possession has the preference.

If one says to the money-changer: Give me change for a dinar, and he was given it, whereupon the changer says to him: Give the dinar, and he answers: I have given it to you already and you have put it into the cash-drawer, the customer has to swear. But if he gave him the dinar and says: Give me the change, and the other one replies: I have given it to you already and you have put it into your purse, the money-changer has to swear. R. Jehudah says: It is not customary with a moneychanger to give out an issar before he has received his dinar.

As it has been established that a woman who damaged her marriage contract can obtain payment only on oath; that, when a single witness testifies that she was paid, she can receive payment only on oath; that she can get paid from encumbered estates or from the estates of the orphans only on oath; and that when she is to be paid in her husband's absence, she is so only on oath: so likewise should orphans be paid only on oath--viz.: We swear that our father had not willed to us nor told

us, and that we have not found among the documents of our father that this note has been paid. R. Johanan b. Buoka says: Even if the son was born after his father's death, he may swear and collect. R. Simeon b. Gamaliel says: If there are witnesses to the effect that the father said while dying: This note has not been paid, the heir collects without an oath. The following have to swear also in the case when there is no claim: Partners, gardeners, guardians, a woman business-manager, and the son of the house. When one of these parties says: What is your claim against me? and the other one answers: My only desire is that you swear, he must swear. If the partners or gardeners have already divided, they are no longer liable to take an oath. However, if an oath is imposed upon one of them from some other source, all other claims may be included. The Sabbathic year releases from an oath.

GEMARA: "*Swear and do not pay*." Whence is this deduced? From [Exod. xxii. 10]: "An oath of the Lord, . . . the owner of it shall accept this," etc.; which signifies that the oath rests upon him who has to pay.

"*The following, however, swear in order to receive pay*." Why have the rabbis enacted the law that the laborer must swear? (For the answer see Middle Gate, p. 300 f.; par. *But it is correct*.) Said R. Na'hman in the name of Samuel: This law holds good, provided he was hired in presence of witnesses, but if without witnesses, the employer is to be trusted, since if he would he could say that he has never hired him. Said R. Itz'hak to him: Thanks, so also said R. Johanan. (Says the Gemara): From this it appears that Resh Lakish differed with the latter; and why is it not mentioned? Some say: Resh Lakish was drinking at that time, according to others R. Itz'hak was then absent from college. The same was taught also by R. Menashia b. Zebid in

the name of Rabh. Said Rami b. Hama: How fair is this Halakha! Said Rabha to him: I do not see its fairness, since according to its theory the four kinds of bailees to whom a biblical oath applies find no practical illustration, for as any of them may say that such a thing (as claimed by the plaintiff) has never occurred, he may be trusted also in case when asserting that the thing has been robbed; and should you say that the object was deposited with such a bailee in the presence of witnesses, he could still say that he has returned it, and as he would be trusted when claiming that he has returned it ` he may likewise be trusted when he says that it has been robbed;

hence there can be here no case unless the plaintiff took a document on his deposit, as only in this case the bailee cannot assert that he has returned the object, for if he had done so he would have taken back the document. [(Says the Gemara): From Rabha's objection we see that both Rabha and Rami b. Hama hold that if one deposits an article in the presence of witnesses, the depositary is not bound to return it in presence of witnesses, while if deposited on a document the depositary must possess evidence that he has returned the deposit.]

Concerning this Rami b. Hama applied to R. Sheshith [I Sam. xxi. 13]: "And David took these words to his heart"; as R. Sheshith, when meeting Rabba b. Samuel, questioned him: Has the master learned something concerning an employee? And he answered: Yea; an employee, at the time of getting his pay, is to take an oath and then receive his pay. How so? If the employee claims: You hired me and did not pay; while the employer says: I hired you and paid you. However, if the former's claim is: You hired me for two zuz and gave me only one; while the employer says that he hired him only for one, then it is incumbent upon the plaintiff to bring evidence. Now, as in the last case the plaintiff is to bring evidence, it is to be assumed that in the first case there was no evidence required (hence, the above theory of Rabh and Samuel is overthrown). Said R. Na'hman b. Itz'hak (this is no objection at all): It may be that even in the first case there was some evidence, and the evidence in the last case is only required with regard to the collection of the payment from the employer, but concerning the oath the Boraitha did not care to teach.

R. Jeremiah b. Aba said: The college sent a message to Samuel, thus: Let the master teach us as to who is to swear in a case where the specialist says, "You have hired me for two zuz to repair something," while the employer says that he hired him only for one zuz; and Samuel answered: In such a case the employer is to swear and the employee loses the case, for as regards price once fixed people remember it well. But has not Rabba b. Samuel said above that in such a case the burden of proof lies upon the plaintiff, and as here he possesses no evidence he should lose the case even without any oath on the part of the employer? Said R. Na'hman: The above Boraitha is to be interpreted as teaching alternatively, *i.e.*, either the employee is to bring evidence and receive his pay, or the employer is to swear and former loses.

An objection was raised from the following Boraitha: If one has given his garment to a specialist for repair and thereafter they contradict each other concerning the price for labor and services, the law is thus: so long as the article is with the specialist the burden of proof lies on owner; and if it was delivered, the time of payment not yet elapsed, the specialist is to swear and then collect, but if that time has already elapsed, it remains for him as plaintiff to bring evidence. Thus we see that if within the time, the specialist is to swear and collect. Why let the owner

swear and the specialist lose? Said R. Na'hman b. Itz'hak: This Boraitha is in accordance with R. Jehudah, who holds that so long as the oath seems to rest upon the owner (and there is a partial admission on his part) the rabbis' enactment is that the employer shall swear and thereupon collect. But let us see which R. Jehudah is meant here? It can not be the R. Jehudah of our Mishna, as he plainly requires a partial admission; it must, then, be the R. Jehudah of the following Boraitha: So long as the time of payment has not elapsed, it is the employee that swears and collects, but after the expiration of said time it is for the employer to swear. Said R. Jehudah: Provided the employee claims fifty dinar for his work, and the employer claims to have already paid one gold dinar (= 20 silver dinar), or they contradict each other regarding the price; but if the employer claims that he has never hired him, or that he has paid his wages to the last pesuta, the burden of proof rests upon the plaintiff.

R. Sheshith b. R. Aidi, however, opposed thus: Would you say that a contradiction regarding the price is in accordance with R. Jehudah and not with the rabbis; bear in mind that where R. Jehudah is in our Mishna more rigorous (as he demands a partial admission) the rabbis are lenient; should the rabbis be more rigorous in the Boraitha where R. Jehudah is more lenient? But is it possible to explain the Boraitha in accordance with the rabbis, has not Rabba b. Samuel taught, in case of contradiction regarding the price, that the plaintiff is to bring evidence, which teaching could be neither in accordance with the rabbis nor with R. Jehudah? Therefore said Rabha: Their point of difference is as follows: R. Jehudah holds that, concerning a biblical oath which applies to the employer, the rabbis have enacted for the sake of the employee to reverse the oath to the latter, so that he may, upon swearing, collect; but where there is a rabbinical oath (as where there is no partial admission) which is

itself merely an enactment, they do not impose another enactment upon it; the rabbis, however, are of the opinion that the said enactment (that the employee swear) applies also to the case of a rabbinical oath, and as to the contradiction about the price, it may be said that, as a price usually remains in memory, the rabbis leave in this case the oath to the employer.

"*Entered his house to seize*," etc. But perhaps he has not taken any pledge? Has not R. Na'hman said that he who, hatchet in hand, says, "I will go to cut down the tree belonging to so and so," and thereafter the tree is found cut down, we nevertheless do not say that he did cut it down? Hence we see that a man may sometimes merely exaggerate or affect to do something and in reality does not do it; why then not say the same in our case? Read, then, in the Mishna that he actually did seize a pledge. But if so, let the witness testify as to what the pledge was? Said Rabba b. b. 'Hana in the name of R. Johanan: The Mishna speaks of the pledger as claiming that the defendant seized some small utensils which he concealed under his garments (so that the witnesses could not see them, according to Rashi; according to Tasspheth, however, plaintiff claims that the defendant took more than the part the witnesses could see).

R. Jehudah said: If witnesses saw one concealing utensils under his garments when coming out from a house, and he claims that he had bought them, he is not trusted (in case the owner of said house claims that he only loaned them to the defendant), provided the owner of the house was not wont to sell his utensils, but if he was so, the defendant may be trusted; and even in this case he is not trusted if such utensils are not as a rule to be concealed, but if they are so he may, again, be trusted; and even when they are not ordinarily hidden, but the defendant was of such a standing as would not allow him to carry things publicly, it may be assumed that such is his

usage and therefore he may be trusted. All this refers only to a claim of hiring and loaning; if, however, the claim concerns stealing, the plaintiff is not trusted when he makes one a thief who is not suspicious of being such (but the defendant has to swear that he bought them). Furthermore, even in the case where the defendant is not reliable he is not to be trusted only with regard to utensils not used for loan and hire, but in case the utensils are loaned or hired out, he is trusted; as concerning this R. Huna b. Abin once sent a message (see Middle Gate, p. 306 f).

Rabha said: In case one was going to seize the goods of another, even the watchman of the house or his wife is trusted on an oath, and the defendant must pay. Questioned R. Papa: Is a laborer who was doing some work in the house at that time trusted in this case on an oath? This question remains undecided.

R. Yemar said to R. Ashi: If the claim is for a silver goblet, may the defendant be trusted with an oath or not? (and R. Ashi answered: We have to inquire into the position of the man; if he is wealthy or so much respected that people deposit with him valuables of this kind, he is trusted, otherwise he is not trusted).

"*How is it with the bruised*," etc. Said R. Jehudah in the name of Samuel: The oath applies only in such a case when the plaintiff could himself cause a wound, but if it was not possible for him to do so, he recovers his claim without an oath. But why not fear that he may have hurt himself against a wall or a stone? Taught R. Hyya: It speaks of this case, the wound is found on his shoulder or under the arm. But it may have been inflicted by someone other than the defendant? There was nobody else in the house.

"*Even for merely vain swearing*." Why even? It means to say: not only; *i.e.*, not only if suspicious of an oath where denial of money is involved, but also even if suspicious of such where only a denial of words is involved, he is not trusted. But if so, let an uttered oath, too, be taught? The Mishna teaches but oaths which are made falsely, while an uttered oath may be made for the future and may therefore be fulfilled. But again, let it include an uttered oath for the past? In teaching vain swearing it indeed includes all that is equal thereto.

"*A gambler in dice*," etc. To what purpose is this statement? The Mishna classifies first those who are unfit biblically and then also the rabbinically unfit.

"*In case both are suspicious*," etc. Rabha questioned R. Na'hman: How should we read in the Mishna, R. Mair holds, they divide or R. Jose holds so? Answered he: I do not know. How then shall the Halakha prevail? Answered he again: I do not know. However, it was taught that R. Joseph b. Miniumi said in the name of R. Na'hman that R. Jose was the one who said they divide; likewise taught R. Zebid b. Oshia, or R. Zebid in the name of Oshia. And R. Joseph b. Miniumi said that such a case happened in the court of R. Na'hman and the decision was to divide.

"*The oath returns to its place*." To which place? Said R. Ami: According to our masters in

Babylon, it returns to its place, the Mount Sinai; and our masters in Palestine said: It returns to him who was obliged to take it (and as he cannot swear, he must pay). Said R. Papa: "Our masters in Babylon" means Rabh and Samuel--viz.: our Mishna states that orphans shall not pay without an oath, and it was discussed as to what it means: shall we assume that the orphans cannot recover from the borrower unless they take an oath; is this possible, since their father, if alive, could recover without an oath, why should they swear? It must then be explained to mean orphans that have to recover from other orphans; and both Rabh and Samuel said provided the lender died while the borrower was still alive, but if the borrower died first the lender was already obliged to swear in order to recover from the orphans of the borrower the latter's debt, and as a man cannot bequeath an oath to his children the oath returns to the Mount Sinai (*i.e.*, there is no oath here); as to the masters of Palestine, it is R. Aba in the case of a robbed piece of metal mentioned above and tried before him when he decided that as the defendant is obliged to swear but cannot, he must pay. Said Rabha: The Halakha seems to prevail with R. Aba; as it reads [Exod. xx. 10]: "The oath of the Lord be between *them*," etc., but not between their heirs. Now, let us see the nature of the case: if the heirs of the plaintiff claim that their father had a mana with the defendants' father and the others answer: We are aware that he had only fifty dinar, then it is a partial admission; what difference then is there whether the plaintiff himself or his heirs appear in the case? We must then say that the defendant orphans say that they are aware of fifty dinar, but are not aware of the other fifty dinar; now, if you say that such answer if put in by the defendant himself would oblige him to an oath, it is correct that the above-cited verse is needed to free the heirs from an oath; but if the defendant would not have to swear, then what is the verse for? Hence, whoever is obliged to swear but cannot swear (as in the case of the orphans) he must pay, as R. Aba decided in the case before him.

But what do Rabh and Samuel infer from the above-cited verse? What was said above by Simeon b. Tarfon: The verse comes to indicate that the oath rests upon both the contestants.

"*The storekeeper*," etc. There is a Boraitha: Rabbi said, why should these be troubled with an oath? Said R. Hyya to

him: We have learned that both the storekeeper and employees have to swear (the employees that they have not received goods in the value of such and such an amount on account of their employer; and the storekeeper that he has not yet been paid for the goods), and both storekeeper and employees collect from the employer. Has Rabba accepted R. Hyya's theory or not? Come and hear the following: Rabba said that the laborer has to take an oath that he has received nothing from the storekeeper; now, if Rabba had accepted R. Hyya's theory, it would have been stated here that the oath must be taken with reference to the employer. Said Rabha: This Boraitha intends to say thus: the laborer takes an oath with reference to the employer and in the presence of the storekeeper that he (the laborer) has taken nothing from the latter.

It was taught: If there were two parties of witnesses contradicting each other, each party may, according to R. Huna, appear and testify for itself (although either of the parties is surely false, for the court in default of evidence cannot decide which one is true or false). R. 'Hisda, however, maintains that we have nothing to do with false witnesses (and consequently neither party be trusted). Illustration: If there were two cases with two lenders, two borrowers, and two documents, and one witness of each of the two parties of witnesses was signed on the document of the other contestant, R. Huna and R. 'Hisda differ: according to former both the documents

are valid, and according to R. 'Hisda they are both invalid as they are both false. On the other hand, if there was but one lender with two documents against one borrower, all agree that the lender has to suffer; but if there were two lenders with two documents against one borrower, it is a case treated of in our Mishna--(viz.: the employees say they have received nothing and claim their pay from the employer, and the storekeeper asserts to have given goods to the employers and claims his pay also from the employer, in which case the Mishna decides that both the claimants swear and recover from the employer); but what is the law in case there were two borrowers and one lender with two documents signed by the two mutually contradicting parties of witnesses, according to R. Huna? Shall we assume that as there are two borrowers we should regard each of the documents as though it were the right one and collect thereupon the two, or as one of the documents is doubtless false the two should be regarded invalid? This question remains undecided.

"*If he said to the storekeeper: Give me fruit for a dinar*." There is a Boraitha: R. Jehudah said, provided the fruit is lying there in a heap and each of the parties is claiming that it is his, but if the customer has the fruit in his basket and put latter upon his shoulders the burden of proof lies upon the plaintiff.

"*If he says to the money changer*," etc. These two cases are necessary, since if only the former is stated, one might say that because fruit decays the storekeeper was in haste to put it into the basket for his customer before yet receiving the money; therefore he may be trusted; while, this not being the case with money, it is usual not to give the change before receiving the money, hence, the rabbis, too, would agree with R. Jehudah. On the other hand, if only the second case were stated one might say that only for this reason R. Jehudah differs with the rabbis, while concerning fruit he agrees with them, therefore the two cases are necessary.

"*And also the orphans*," etc. (This has been explained above to mean orphans versus orphans, and what Rabh and Samuel have to say on this point is all recapitulated.) This statement was sent to R. Elazar accompanied with the question as to the purpose of this oath, and he answered: The heirs have to take the usual oath of heirs (explained further on), and thereupon to collect the bequest. This statement was then again sent to R. Ami, who said: They do not cease sending questions again and again! If I found something worthy of notice in it, would I not notify you thereof, without waiting for your messages? However, continued he, as this question has reached us already yet we have to say something thereabout viz.: If the lender was already summoned and it was decided that he has to take an oath, and he died in between, so that he was already obliged to swear to the orphans of the borrower, and as one cannot bequeath an oath to one's children, they are free from oath; if, however, he has not yet been summoned, and hence not yet obliged to take an oath, the orphans of the lender have to swear the oath of heirs and thereupon collect the debt.

R. Na'hman opposed: Does the court find one liable to an oath? With the death of the borrower the lender is by law liable to an oath with relation to the heirs; therefore, said he, it depends on whether or no the law, laid down above by Rabh and Samuel, is established; if yes, they are free, if not, they have to take an oath and collect. We see from this that R.

[paragraph continues] Na'hman was in doubt; but has not R. Joseph b. Miniumi said above: that R. Na'hman decided in a similar case that the contestants divide? R. Na'hman's explanation here is in accordance with R. Mair, who holds, the oath returns to its place, but he himself holds with R. Jose: if one upon the death of his wife remarries and then dies, the widow and her heirs have the preference over the heirs of the first wife concerning their respective marriage contracts. We see then that the heirs collect without an oath? It speaks of the case they swore before dying. Come and hear the second part: But his heirs may adjure the widow, her heirs, and all empowered by her. (We see then that as his heirs may give an oath to her heirs, the widow who has not sworn has bequeathed, as it were, to her heirs the power of taking an oath, and this is objecting to Rabh and Samuel?) Said R. Shmaia: The Boraitha here speaks alternatively--viz.: his heirs adjure her if she was a widow, and they adjure her heirs if she was but a divorced woman (his heirs may adjure her though he himself could not have done so, as he gave her a document freeing her from all oaths). R. Nathan b. Hoshia, however, objected from the following: Preference was given to the son over his father, in that the son may collect from the orphans if he holds a document against the borrower, provided he has evidence that his father before dying told him that the document has not yet been paid, and if he has no evidence he has to swear to this effect; on the other hand, his father can under no circumstances collect without an oath; hence, the son may collect without an oath in relation to the defendant orphans, if the borrower died when the lender was still alive? Thus we see that it is in accordance with R. Simeon b. Gamaliel from our Mishna? Said R. Joseph: This Boraitha is in accordance with the school of Shamai, who holds that a document which is to be collected is to be regarded as already collected (as the estate is encumbered to the document), hence: the rule that the son collects upon presenting evidence of his father's statement.

R. Na'hman happened to be in Tura; both R.' Hisda and Raaba b. R. Huna came to visit him, and asked him thus: Let the master conjoin with us in nullifying the statement of Rabh. and Samuel; whereupon he answered: Have I troubled myself to make a journey of so many *parsas* to nullify the statement of these sages! It will suffice if I will agree with you not to add to their statement (*i.e.*, not to deduce therefrom any other cases). (Asks the Gemara): What other cases? *E.g.*, such as were

decided by R. Papa: He who impairs his document (by saying that he collected a part thereof), and thereafter dies, his heirs may take the oath of heirs and collect the money (which oath could not be taken according to Rabh and Samuel).

It once happened that *B*, who had borrowed money of *A* through a surety and on a document, died, *A* being still alive; thereafter *A* also died and his heirs claimed the debt from the surety. R. Papa, before whom the case was tried, was about to say that this is a case included in the decision of R. Na'hman that nothing be added to Rabh and Samuel's ruling, and in this case the heirs are to collect not from the orphans but from the surety. Said R. Huna b. R. Jehoshua to him: Are they indeed collecting from the surety for his debt and not for that of the orphans?

In another case the lender died childless, leaving a brother, and Rami b. Hama was about to say that R. Na'hman's decision includes this case, too. Said Rabha to him: Is there any difference between the heir's saying "my father told me" or "my brother told me"? Said R. Hama: As there is no ultimate decision as to whether the Halakha prevails with Rabh and Samuel or not, we should leave it to the judges; he who decides in accordance with Rabh and Samuel should not be

objected, nor should protest be raised against him who follows R. Elazar's decision as a precedent. Said R. Papa: If such a case happens in our court, we shall not destroy the document, nor collect it, for fear the Halakha may prevail with Rabh and Samuel; however, not destroy it, in order to give the contestant the benefit of doubt and enable him to bring his case in another court.

Once a judge followed in his decision R. Elazar; a young scholar interested in this problem came to the judge and told him that he is able to produce a letter from the west attesting that the Halakha does not prevail with R. Elazar; and the judge said to him: Well, produce the letter and we will then see. The scholar, however, came to complain in the court of R. Hama, and latter answered that it is already decided thus: He who follows R. Elazar's ruling as a precedent cannot be protested against.

"*The following have to swear*," etc. Does the Mishna speak of idiots? It means to say that these persons have to swear if they say they are not certain of the claim.

There is a Boraitha: The son of the house mentioned in the Mishna is not he who frequents the house, but he who is taking

care if the estate: he engages and discharges laborers, buys and sells, etc. And why should such persons take an oath? Because as a rule they allow themselves more than what is due to them. Said R. Joseph b. Miniumi in the name of R. Na'hman: Provided there was a denial made to the claim of two silver, according to the decision of Rabh.

"*If the partners and gardeners*," etc. The schoolmen propounded a question: May one include in a rabbinical oath a claim from another business? Come and hear: If one has borrowed on the eve of the Sabbathic year and at the end of the year he become the partner or gardener of the lender, no inclusion can take place in the partner-oath if he has to take such. Thus we see the reason here to be that he borrowed on the eve of the Sabbathic year as this year released him from the oath also, but in a simple year such an oath may be inclusive? Nay; do not say that in a simple year the oath may be inclusive, but if he becomes a partner or a gardener (of the lender) on the eve of the Sabbathic year and at the end of the same he borrowed money from him, he may in his oath include also the partner-oath from the Sabbathic year; as the second part of the Boraitha states it so plainly, hence, a rabbinical oath is inclusive.

R. Huna said: All the oaths are inclusive except the oath of an employee, as this oath is given merely for the purpose of gratifying the employer. R. 'Hisda said: No oaths are to be made lenient in this respect except the oath of an employee, toward which we have to act leniently. And what is the difference between these two opinions? The requiring by the court: according to R. Huna the court itself may declare the oath inclusive independently of the plaintiff, while according to R. 'Hisda the court has no jurisdiction unless the plaintiff requires so.

"*The Sabbathic year releases*." Whence is this deduced? From [Deut. xv. 2]: "And this is the *verbum* (*debar*) of the release," *i.e.*, it releases even words.

Next: Chapter VIII

CHAPTER VIII.

RULES AND REGULATIONS CONCERNING THE FOUR KINDS OF BAILEES: THE CONDITIONS UNDER WHICH THEY ARE TO PAY OR TO TAKE AN OATH.--WHAT IS AN UTTERED OATH, A VAIN OATH, A FALSE OATH.--CASES ILLUSTRATING THE VARIOUS CLAIMS REGARDING THE FOUR KINDS OF BAILEES.

MISHNA *I*.: There are four kinds of bailees: gratuitous, on hire, borrower, and hirer. The gratuitous bailee swears to every claim; the borrower pays every claim; the paid bailee as well as the hirer swears in case the cattle broke its leg or was seized or died, but both pay when it got lost or stolen. If one asks his gratuitous bailee: Where is my ox? He is dead, while in reality he is only leg-broken, or seized, or stolen, or lost; or he answers: He is leg-broken,, while in fact he is dead, seized or lost; or he answers: He is seized, while he is dead, leg-broken, stolen or lost; or he answers: He is lost, while in fact he is dead, leg-broken, seized or stolen, to which the other rejoins: I adjure you; and the answer is: Amen, he is free. Where is my ox? And the other one answers: I know not what you talk about, while in reality the ox is dead, leg-broken, seized, stolen or lost. I adjure you. Amen, he is free. But if he asks: Where is my ox? Lost. I adjure you. Amen, but witnesses appear to testify that he consumed him, he must pay the full value; if he confesses it of his own will he must pay the value plus one-fifth, and is to bring a trespass-offering. If he asks: Where is my ox? And the answer is: Stolen. I adjure you. Amen, and witnesses appear to testify that he himself stole the ox, he must pay double amount; on self-confession, however, he pays the value plus one-fifth, and brings an offering.

If one says to a man in the street: Where is my ox that you have stolen? And the answer is: I have not stolen, but witnesses testify that he did steal. him, he is to pay double amount; and if he has slaughtered or. sold him, he must pay four and five-fold. However, if, on noticing the approach of witnesses against him, he says: I have stolen him, but not slaughtered or

sold, he is to pay but the principal amount. If one asks the borrower: Where is my ox? And he answers: He died, while in reality he is leg-broken, seized, stolen or lost; or: Leg-broken, while he is dead, seized, stolen or lost; seized, while he is dead, leg-broken, stolen or lost; stolen, while he is dead, leg-broken, seized or lost; Lost, while he is dead, leg-broken, seized or stolen, whereupon the other one says: I adjure you, and the answer is: Amen, he is free. Where is my ox? I know not what you are talking about, while in fact the ox is dead, leg-broken, seized; stolen or lost. I adjure you. Amen, he is liable. If one says to a paid bailee or to a hirer: Where is my ox, and he answers: He is dead, while he is leg-broken or seized; Leg-broken, while he is dead or seized; seized, while he is dead or leg-broken; stolen, when he is lost or seized; lost, while he has been stolen, whereupon former: I adjure you. Amen, he is free. But if the answer be: He is dead, leg-broken or seized, while he has been stolen or lost, former: I adjure you. Amen, he is liable. But if he says: he has been stolen, or: lost, while he is dead, leg-broken or seized; I adjure you. Amen, he is free. This is the rule: Whoever tends to commutate, by his

oath, liability to liability, unliability to unliability, or unliability to liability, is free; but if liability to unliability, he is liable. This is the rule in brief: Whoever takes an oath in order to make his case lenient, is liable; but if *vice versa*, he is free.

GEMARA: Who is the Tana of the four classes of bailees? Said R. Na'hman in the name of Rabba b. Abuhu: It is R. Mair. Said Rabha to him: Is then there a Tana who does not hold so? And the answer was: I mean to say who is the Tana that maintains that the hirer of a thing is under the same rule with a bailee for pay? and this is R. Mair, according to Rabba b. Abuhu. But is there not a Boraitha that R. Mair holds a hirer under the law of a gratuitous bailee, and R. Jehudah is, the one who places him under the law of a paid bailee? Rabba b. Abuhu has reversed in the Mishna the order of the names (by tradition). But after all, according to both R. Mair and R. Jehudah there are but three classes of bailees, why then four in the Mishna? Said R. Na'hman b. Itz'hak, the Mishna means to say: There are four classes of bailees but their laws are three.

"*I know not what you talk about*." Said Rabh: All the expressions "free" used in the Mishna free only from the liability of a trespass-offering, attaching to a depositary, but not from that of a sin-offering, attaching to an uttered oath. Samuel,

however, maintains that it frees them even from the last. mentioned liability.

And what is here the point of difference? Samuel holds that as such an oath can not refer to the future, one is not liable even for the past; while Rabh does not share this opinion. But this their difference has already been pointed out above in connection with the oath made by *A* that *B* threw a stone into the sea, why then again? It was necessary, as in the case of throwing a stone Rabh holds A liable because he takes the oath on his own accord, but here, where the court compels him to swear, one might say that Rabh agrees with Samuel, which would be in accordance with R. Ami, who said elsewhere that one is not liable for an uttered oath when made by the judges, to swear; on the other hand, if only this were stated one could say that only in this case Samuel differs with Rabh, but in the other one he agrees with him.

What is the reason of R. Ami's statement? It is the verse [Lev. v. 4]: "Or any person swear," which means he swears voluntarily.

R. Elazar, however, said with reference to the expression "free" the Mishna uses: all are free from a depositary-oath but are liable for an uttered oath, excepting, however, the following: a borrower answering "I know not what you talk about," the paid bailee who claims stolen or lost, the hirer claiming stolen or lost, in which cases the Mishna makes them liable to depositary-oath, because here a denial of cash money is involved.

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APPENDIX TO PAGE 13.

R. Na'hman b. R. 'Hisda lectured: A fowl burnt-offering must not be bought from the money of the treasury. Said Rabha: This is nonsense! Said R. Na'hman b. Itz'hak to him: Why nonsense? I said it to R. Na'hman b. 'Hisda, in the name of R. Shimi of Nahardea, and the reason is that for the remaining money of the treasury burnt-offerings for the congregation are bought, and there is no fowl-offering for the congregation. In like manner Samuel holds what was said in the name of R. Johanan concerning daily offerings; as R. Jehudah said in his name that all the offerings of the congregation are prepared for what they are intended by the application of the knife to them (and no knife is used to a fowl-offering). So also we have learned

in the following Boraitha: R. Simeon admits concerning a he-goat that was not offered on the festival, that he may be offered on the new-moon or day of atonement, on the feast of Tabernacles, and may as well remain for the next holidays, since originally he was intended as an offering to be brought on the exterior altar.

END OF TRACT SHEBUOTH.

TRACT EDUYOTH (TESTIMONIES).

INTRODUCTION.

THERE is no Gemara to this Tract. However, it forms a part of the section Jurisprudence, and is usually printed with the commentaries of both Maimanides and Rabad.

Although these Mishnaioth are almost each of them repeated in some of the six sections of the Talmud (thus a number of them already translated by us), yet we could not omit them because of the significance they attain in view of the fact that the contents of them all were testified before the Assembly of the sages. The first chapter, however, of this Tract, which was not testified, is significant for its showing (*a*) the cases wherein the sages establish the Halakha without adopting the views of either Shamai or Hillel though expressed by each of them personally; (*b*) wherein the school of Hillel after deliberations abandoned their view to adopt that of the school of Shamai; (*c*) the reasons for the rule that the opinion of an individual is mentioned though the Halakha prevails with the majority; (*d*) where the school of Shamai do not agree with Shamai, their master.

We have translated this Tract almost literally, referring the reader who may be confronted with some difficulties to places where detailed explanations are found, as to explain these here would necessitate a whole volume for itself.

TRACT EDUYOTH (TESTIMONIES).

CHAPTER I.

MISHNA *I*.: Shamai says: For all women suffices their perceiving the menses (to make unclean whatever one of them may happen to touch; but not before this perceiving). Hillel, however, says: The time is to be counted between two consecutive examinations regardless of the length of the interval and be it of many days (and all she touches at that time is unclean). The sages, however, say: The Halakha prevails with neither Shamai nor Hillel; but one day (night included) reduces the interval between the said examinations; on the other hand, the moment of examination reduces the allowance of the day (and night). (However, all agree) that for every woman who has a regular periodic menstruation the perceiving suffices. She who uses sheets to examine herself before and after intercourse, reduces thereby both the time of the previous examination and the above-said day of allowance. 1

MISHNA *II*.: Shamai says: One must separate Chalah (first dough) from one Kab; Hillel says from no less than two, while the sages set the minimum at one and a half Kab, lowering it, however, to five-fourths of a Kab when the measures were increased. R. Jose says: Not exactly five-fourths, but a trifle above.

MISHNA *III*.: Hillel says: One Hin-ful of drawn water renders a legal bath, 2 when poured therein, unfit. (A Hin-ful is not the exact quantity, but is stated here as it is one's duty to use the teacher's language.) Shamai says: Nine Kab, while the sages, disagreeing with either view, uphold the two weavers that came from the gates-of-refuse in Jerusalem and testified in the name of Shemai and Abtalion that three Lugs of drawn

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water render the aforesaid bath unfit, and decided that Halakha to prevail so.

MISHNA *IV*.: Why, then, are the theories of Shamai and Hillel stated at all, if without avail? To teach to posterity that one must not insist upon one's statements, since the distinguished masters of the world did not persist in their views.

MISHNA *V*.: And why is mention made of the opinion of a single person in connection with that of many, when the final decision is invariably with the majority? In order that when a court should happen to approve of some one's opinion it might base its decision thereon, for no court may annul the decision of another court, unless it be superior to latter both in erudition and number. If, however, it be superior only in one respect: in either erudition or number, it cannot annul; as it must be superior in both.

MISHNA *VI*.: Said R. Jehudah: If this be the case, why is mention made of the opinion of an individual in connection with that of the majority to no purpose? In order that if one were to

base his argument on tradition he could be answered that his tradition is in accordance with the opinion of that and that individual.

MISHNA *VII.*: Beth Shamai says: A quarter Kab of the bones of the dead (defiles one in the tent) be it from two or three dead; Beth Hillel says: A quarter Kab from one corpse, from the quarter part of the entire structure, or of the number of bones. Shamai himself says: One bone suffices.

MISHNA *VIII.*: Vetch terumah may, according to Beth Shamai, be soaked and peeled in a state of cleanness, but in that of uncleanness the cattle may be fed on it. Beth Hillel, however, hold that in the former state it may be soaked only, while peeling and feeding may be done in the latter. Beth Shamai says: It must be very dry when given to the cattle; R. Aqiba holds that in a state of uncleanness all actions may be performed on it.

MISHNA *IX.*: If one desires a sela in exchange for copper coin of the second tithe, he must, according to Beth Shamai, exchange the whole coin for a sela, while the Beth Hillel maintain that he may take but one shekkel in silver and the other have in copper coin. [1] (R. Mair says): One must not redeem fruit and silver by other silver, while the sages allow it.

MISHNA *X.*: When one exchanges a sela of second tithe in Jerusalem, he must, according to Beth Shamai exchange the entire sela for copper coin; Beth Hillel hold as above; the experts [1] of the sages say: For three dinar in silver and one dinar coin. R. Aqiba's opinion is: Three dinar in silver and of the fourth one a quarter in coin. R. Tarfon says: Four aspers in silver. Shamai himself says: Let him leave the sela in the store till he gradually consumes its worth in goods.

MISHNA *XI.*: The bride's chair, when stripped of its adornments is declared by the Beth Shamai as subject to defilement, but not so by Beth Hillel. Former holds that even the seat alone of that chair is unclean. Similar are the respective opinions of the Beth Shamai and the Beth Hillel with reference to a chair put into a trough, the former declaring in addition the chair unclean if even only made in a trough. (Will be explained in Tract Kelim.)

MISHNA *XII.*: Following are the cases wherein the Beth Hillel have altered their views in favor of those advanced by the Beth Shamai: The woman who upon coming from the sea-countries asserts that her husband died may, according to the Beth Shamai, remarry or enter a levirat marriage; while the Beth Hillel contended: We heard this as holding good only concerning a woman who comes from the harvest; whereupon the Beth Shamai retorted: It is immaterial whether she comes from the harvest, olive gathering or from a sea-country; and the expression "harvest" as used by the sages in this matter was one of fact; thereupon the Beth Hillel conceded. Furthermore, according to Beth Shamai such woman is allowed to marry and to obtain her marriage contract, which latter right the Beth Hillel denied her, whereupon the Beth Shamai argued: You allow a possible adultery, a rigorous transgression, and prohibit a money matter, a (lenient) misdemeanor? Whereto the B. Hillel rejoined: For we find that the heirs of the deceased cannot enter inheritance upon her statement alone. And Beth Shamai replied: But we are informed directly from her marriage contract, where the husband writes: If you get married to another one you should get what is here devised to you; thereupon the B. Hillel conceded to them.

MISHNA *XIII*.: He who is half slave and half free 2 works,

according to Beth Hillel, one day for his master and one for himself. Hereto objected the Beth Shamai: You amply provide for his master but not for him; he has no right to marry either a slave or a free woman, nor should he remain single, for the world has been created for propagation, as it reads [Isa. xlv. 18]: "Not for naught did he create it; to be inhabited did he form it." Accordingly, for the sake of a better organization of the world his master is compelled to wholly free him, and the slave writes him a note on the half of his value; and the Beth Hillel accepted this opinion.

MISHNA *XIV*.: An earthen vessel when covered protects (against tent-uncleanness) according to Beth Hillel all (it contains), while the Beth Shamai holds that it protects only food, beverages and earthen vessels. Asked Beth Hillel: Why? And they answered: Because it is unclean in the opinion of the Amharetz, and no clean vessel is protective; and B. Hillel's question as to why have you declared it protective of food and beverages, they meet thus: We declare these clean only for the Amharetz, but if you were to declare the vessel as such clean, it would be so in general; hereupon the B. Hillel agreed.

Footnotes

3:1 This Mishna is the first in the I. Chapter of Tract Nidah, and will be translated in the proper place with the Gemara.

3:2 In case same does not yet contain the legally prescribed 40 saah.

6:1 All this receives its explanation in Tract Second-Tithe, section Seeds.

7:1 *I.e.*: Ben Azai, Ben Zoma, 'Hanan the Egyptian, and 'Hanania.

7:2 *I.e.*, he was a slave of two masters, one of whom freed him.

Next: Chapter II

CHAPTER II.

MISHNA *I*.: R. 'Hanina the segan of the priests testified the following four statements--viz.: The priests have never hesitated to burn meat defiled in a secondary degree together with meat defiled in a primary degree, though latter augments the uncleanness of the former; R. Aqiba added: Nor have they ever hesitated to burn oil, that has become unusable through a defiled one though bathed during the day, in a lamp defiled through contact with one who touched a corpse, though the uncleanness of the oil is thereby augmented.

MISHNA *II*.: Furthermore, he said: During all my life I have not seen a hide (of a sacrificed animal found internally injured) brought out to the fireplace. Said R. Aqiba: We learn therefrom that when the first-born cattle on being stripped of its hide is found internally injured, the priests may use its hide. The sages, however, say: "We have not seen" is no evidence, so that the hide must be removed to the fireplace.

MISHNA *III*.: The same R. 'Hanina testified that there was an old man in a little village near Jerusalem, who was lending money to all the villagers, writing himself the notes and having others to sign them; when this case came before the sages, they declared fit proper. From here is to infer that both woman and man may write she her divorce and he the receipt respectively, since the validity of a divorce is effected only by the undersigned thereon.

He finally testified that, when an (unclean) needle was found in the flesh (of a sacrifice), the knife and the hands are clean, but the flesh is uncle-an; but if found in the paunch everything is clean.

MISHNA *IV*.: R. Ismael propounded three things before the sages at Iabnah in the vineyard: (*a*) a cracked egg put upon a colewort of Terumah forms a combination except when put on like a hat; (*b*) an ear of corn left standing in the crop with its point toward the yet unreaped corn, belongs to the landowner provided it be capable of being cut off with the standing corn, otherwise it belongs to the poor (*as forgotten*); (*c*) a small garden

fenced with creeping vine may be sowed (with seeds) if it has enough room, so that the vine-dresser with his basket can stand on all its sides, but not otherwise.

Three things have been propounded in the presence of R. Ismael, and as he did not express himself either for or against, R. Jehoshua b. Mathia interpreted them: (*a*) One who inflicts upon one's self a sore on the Sabbath day is guilty if he did it in order to make a permanent orifice, but is free if his purpose was to remove the pus; (*b*) one is free for hunting a snake on Sabbath in order to escape its bites, but is liable if for medicinal purposes; (*c*) earthen dishes used in cities are clean when in the tent of a corpse, but become unclean when carried by him who is

possessed of a running issue, in which latter case R. Eliezar b. Zadok declares them also clean since their work has not yet been completed.

MISHNA *VI*.: R. Ismael declared three things which R. Aqiba has not agreed in: Garlick, sour grapes, and unripe corn-ears ground (on Friday) before twilight may, according to R. Ismael, be finished after sunset, while R. Aqiba does not allow it.

MISHNA *VII*.: Of the following three statements cited before R. Aqiba the first two were in the name of R. Eliezar, and the third one in that of R. Jehoshua: (*a*) A woman may go out on Sabbath in her gold city-crown; (*b*) hunters after another's doves are unfit as witnesses; (*c*) when a weasel with a worm in its mouth runs over the breads of Terumah and it remains dubious as to whether or not the worm touched the breads they are clean.

MISHNA *VIII*.: R. Aquiba has made statements, of which only the first two found the approval of the sages: (*a*) A sandal of the lime-burners is subject to defilement by the steps of him who has a running issue; (*b*) the remnants of an (unclean) oven are unclean when four hand-widths high, which height was thought before to be only three; (*c*) a chair, from whose seat two consecutive boards have been removed is, according to R. Aqiba only, subject to defilement.

MISHNA *IX*: He (R. Aqiba) was wont to say: The father conditions in his son beauty, force, wealth, wisdom, longevity, and the reward to be bestowed on (his) posterity; and herein lies the end of destiny, as it reads [Is. xli. 4]: "He predetermines from the beginning of fate of the generations to come," and though it reads [Gen. xvi. 13]: "They will enslave them

and torture them for 400 years," yet we read further [ibid. xvi.]: "The fourth generation will return again unto here."

MISHNA *X*: Furthermore, he was saying: There are five things of a twelve months' duration--viz.: the punishment of the generation of the flood, that of job, of the Egyptians, of Gog and Magog in time to come [Ezek. xxxv. 2], and of the wicked in the infernum, for it reads [Isa. xv. 6]: "It will take place (*chodesh bechodsho*) every month," *i.e.*, from the month he died next year the same month renewed. R. Johanan b. Nari says (regarding the last point): It lasts only from Passover till *Azereth*, for it reads [ibid.]: "From one festival to the other."

Next: Chapter III

CHAPTER III.

MISHNA *I*.: All objects that defile within the tent are, according to R. Dohssa b. Horkinoss, clean when they were brought into the house after having been divided in smaller parts; but the sages declare them unclean. How so? If one touches or carries two pieces of a carcass each of the size of half an olive, or touches of a corpse the size of a half an olive (and his body covers such a size) and such a size shelters him, or he covers as much as two halves of an olive, or only of a half an olive but is roofed by such a size, R. Dohssa b. Horkinass declares him clean and the sages declare him unclean. But if he touches the size of half an olive while another thing covers both him and of a corpse the size of half an olive (or he covers such size and another thing covers him and such a size), he is clean (also according to the sages). R. Mair, however, said: Also herein the sages and R. Dohssa differ as above. (They declare) that all combine to render unclean except touching with carrying, and carrying with roofing. This is the rule: What bears one and the same name is index of uncleanness, two different names is one of cleanness. (All the Mishna is explained in third chapter of Tract Oholoth (Tents).

MISHNA *II*.: Food consisting of sundry parts does not, according to R. Dohssa b. Horkinass, combine (to the measure of an egg), while according to the sages it does so. R. Dohssa holds that it is allowed to exchange second tithe for uncoined money, while according to the sages it is not. Finally, he holds that it suffices to bathe one's hands to be allowed to touch the sin-cleansing water, while the sages say that (in this case) with the uncleanness of his hands the entire body is unclean.

MISHNA *III*.: The interior of a melon, as well as the peel strips of a colewort is as terumah allowed to laymen (non-priests), so R. Dohssa, while the sages do not allow it. He further holds that it is only then obligatory to separate the first-cut wool of five shorn sheep when each of them furnishes one and a half mana worth of wool, while in the opinion of the sages

even when the wool of the five sheep is however little. (Is further explained in Tract Chulin, Chapter XI.)

MISHNA *IV*.: According to R. Dohssa, all mats are getting unclean only when touched by a corpse, but according to the sages, also by (mere) pressure. He says further that all woven work remains clean except a girdle, but according to the sages all are subject to defilement, except, however, those of the wool-traders.

MISHNA *V*.: A sling whose handle is embroidered is subject to defilement. But if it is of leather R. Dohass declares it clean, and the sages, unclean. If its finger-hole has been severed from it, it is clean, but also is unclean if only its end is severed.

MISHNA *VI.*: The wife (of a priest) that was in captivity is, according to R. Dohssa, allowed to eat terumah, while the sages say: There is a difference between one captive and another. How so? If she says: I was in captivity, but am clean, she may eat, for the mouth that prohibits also allows, but if her captivity is attested by witnesses and she asserts thereupon to be clean, she is not allowed to eat. (Explained in Tract Kethuboth, Chapter II.)

MISHNA *VII.*: There are four doubtful cases where R. Jehoshua declares the thing unclean and the sages, clean--viz.: (*a*) while the unclean is standing the clean one is passing, or (*b*) *vice versa*; (*c*) when something unclean is in the private ground, while something clean in the public grounds, or (*d*) *vice versa*, in which cases it is doubtful whether or not one touched, roofed, or was moved by, the other. (Tract Taharoth, Chapter II.)

MISHNA *VIII.*: Three things are declared unclean by R. Zadok and clean by the sages--viz.: (*a*) The exchanger's nail; (*b*) the trunk of the bean-grinders, and (*c*) the screw of the stone sun-clock. (Kelim, Chapter XII.)

MISHNA *IX*: Four things are held unclean by R. Gamaliel and clean by the sages: (*a*) The cover of a metallic basket used in households; (*b*) the handle of a (bathing) scraper; (*c*) the unfinished metallic vessels, and (*d*) a board broken in two (equal) parts; in the last-named case, however, if the parts be unequal, the sages concur with R. Gamaliel in that the bigger part is unclean and the smaller, clean. (Ibid., ibid., Mishna VI.)

MISHNA *X*: In the decision of the following three R. Gamaliel is as rigorous as Beth Shamai: It is not allowed: (*a*) to keep warm on a holiday cooked food for Sabbath; (*b*) to put

together the parts of a chandelier on a holiday, and (*c*) to bake (on a holiday) big loaves of bread, but only small ones. He said: During all the time they were baking in my father's house only thin loaves, and he was answered: We can make no conclusion from your father's house, who have always been rigorous to themselves, but lenient to all others, allowing them to bake not only big loaves but even big cakes on coal.

MISHNA *XI.*: In the following three things, however, his decisions are lenient: It is allowed (*a*) to sweep (on holidays) between the bedsteads; (*b*) to put upon coals the fumigation, and (*c)* to roast a prepared kid on the first Easter evening, all which the sages forbid.

MISHNA *XII.*: Three things R. Elazar b. Azaria allows and the sages forbid: (*a*) His cow was allowed to walk out (on Sabbath) with the strap between her horns; (*b*) he allows to curry the cattle on holidays, and (*c*) to grind pepper in hand-mills adapted thereto. R. Jehudah maintains that point sub (*b*) is not allowable, as one could while currying make a sore, but allows to do it with a wooden comb, while the sages forbid both. (The last two Mishnas are explained in Tract Beitzah.)

Next: Chapter IV

CHAPTER IV.

MISHNA *I*.: In the following cases the decisions of Beth Shamai are lenient, and those of Beth Hillel rigorous. An egg laid on a holiday is, according to Beth Shamai, allowed to eat on that day, but is not so according to Beth Hillel. Regarding the removal of leaven (before Passover) Beth Shamai hold it must be of the size of an olive and leavened bread of that of a date, while the Beth Hillel fix the size of each at that of an olive.

MISHNA *II*.: All agree in that a cattle born on a holiday is allowed, but a fowl out of the eggs is not. If one slaughter game or fowl on a holiday he is allowed by Beth Shamai to dig up loose ground (the spade already struck in) and cover the blood, while Beth Hillel do not allow to kill unless there be earth prepared, admitting, however, that after one has killed, he may use with the spade the loose ground, and that ashes from the hearth be regarded as prepared earth.

MISHNA *III*.: The Beth Shamai consider ownerless everything left to the poor, while according to Beth Hillel, only that is ownerless which is abandoned to the rich as well, instance Shmitah. If all the sheaves of a field contain each a Kab and one of them containing four Kab is left, the Beth Shamai do not regard it forgotten, and Beth Hillel do so. (Tract Peah, Chapter VI.)

MISHNA *IV*.: Likewise do not Beth Shamai regard forgotten a sheaf left near a wall, a stag, a bull, or implements; while Beth Hillel do.

MISHNA *V*.: The four-year-old vine is, according to Beth Shamai, not subject to either the additional fifth or destruction, while according to Beth Hillel it is. Furthermore, the former hold that it is subject to both *Peret* and *oilleloth* [Lev. xix. 10], and that the poor are to redeem it themselves; while the latter say it all goes to the winepress.

MISHNA *VI*.: A cask with preserved olives need not have a hole, so Beth Shamai, while. Beth Hillel find it obligatory, admitting, however, that if there had been one, but was stopped

by the dregs, the cask is clean. If one, having besmeared his body with sweet oil, became unclean and then took a legal bath, Beth Shamai declare him clean even when the oil is dripping, but according to Beth Hillel he is not clean, unless there be left on him no more oil than would be necessary to besmear a small organ, which last condition the Beth Shamai require when the oil used before the bath was unclean, while Beth Hillel in this case require that there be only an inconsiderable moisture. Said R Jehudah in the name of Beth Hillel: That there be a moisture sufficient to moist some other thing. (All this will be explained in Tract Taharath.)

MISHNA *VII*.: According to Beth Shamai one dinar or its worth is consideration in the marrying

of a wife; the Beth Hillel set it down at a Perutah or its worth, which is one-eighth of the Italic Saar. The former hold further that one may dismiss his wife on the basis of the old divorce bill, *i. e.*, a divorce after whose consummation he remained yet alone with his wife, while the Beth Hillel say he cannot. Similarly, if a wife who had been divorced, happened to pass a night in the same inn with her (former) husband, she needs no other bill of divorce according to Beth Shamai, but the Beth Hillel say she needs one if she was divorced after they had been wedded, but not after they had been only betrothed to each other, for in the latter case they were not yet intimate with each other.

MISHNA *VIII*.: Beth Shamai allow brothers to enter levirate marriage with their rival-wives (of prohibited kinship degrees), which the Beth Hillel forbid. If they have performed Chalitzah, Beth Shamai declares them unmarriageable to a priest and Beth Hillel allows them. The two schools change their views regarding the case when the wives become widows after they had been taken in levirate marriage. Notwithstanding that the one school prohibits what the other allows, the disciples of the two schools have never refrained from intermarriage with one another. Likewise as regards cleanness and uncleanness where the two hold opposite opinions, they have none the less never hesitated to loan one another objects declared clean by both schools.

MISHNA *IX*.: If of three brothers two are married to two sisters and the third one is single; if, now, one of the married brothers died and the unmarried promises the widow to marry her, whereupon the second of the brothers died, Beth Shamai say: The single brother is to keep his wife and the other one is

to go free as the wife's sister; while Beth Hillel hold that he must dismiss his wife with both divorce and Chalitzah, and his sister-in-law with Chalitzah; as the proverb goes: He is to be pitied for both his wife and his sister-in-law! (Tract Yebamoth, Chapter IV.)

MISHNA *X*.: If one abstain by vow from sexual intercourse with his wife, he is allowed by Beth Shamai to keep the vow for two weeks, by Beth Hillel for but one. A woman who bears a miscarriage on the eve of eighty-on-e days (after the birth of a daughter) Beth Shamai free from an offering, and Beth Hillel hold liable. Beth Shamai say a quadrangular sheet needs no tzitzis, Beth Hillel hold it needs. A basket with figs prepared for Sabbath is, according to Beth Shamai free from the tithe, according to Beth Hillel it is not.

MISHNA *XI*.: If one vowed to remain a Nazarite for some time, and after the expiration of the term comes to the land (of Israel), Beth Shamai hold he must continue in the state of Nazarite for another thirty days, while Beth Hillel make him begin the whole term anew. If two parties of witnesses testify, the one that so and so has vowed to be a Nazarite twice, the other, five times, Beth Shamai declare this testimony invalid as conflicting, and he must not be a Nazarite at all, while Beth Hillel say: Five contains two, hence he must be a Nazarite twice. (Nazir, Chapter III.)

MISHNA *XII*.: The man who finds himself underneath a crevisse does not, according to Beth Shamai, transfer the uncleanness from one side to the other, while Beth Hillel regard the man as hollow, so that his upper side does transfer the uncleanness (as roofing). (Oheloth, Chapter XI.)

Next: Chapter V.

CHAPTER V.

MISHNA *I*.: R. Jehudah attested six cases where the decisions of the Beth Shamai are lenient, and those of Beth Hillel rigorous. The blood of a carcass is, according to the former, clean, but unclean, according to Beth Hillel. The egg of a fowl carcass, if it looks like the ordinary egg sold in market, is allowed by Beth Shamai, but not otherwise, while the Beth Hillel prohibit it in all cases. However, both prohibit the egg of an internally injured, for it was formed in a prohibited stage. The menses of a heathen woman as well as the clean blood of a leprous woman in confinement, Beth Shamai declare clean and Beth Hillel consider it to be like her spittle or urine. The fruit of the Sabbathic year one may enjoy with or without reward, according to Beth Shamai, the Beth Hillel hold that one may eat it and reward somehow the owner. A leather bag is subject to defilement, according to Beth Shamai, if it is bound and fastened, and the Beth Hillel hold so even when it is not bound. (Shebieth, IV.)

MISHNA *II*.: R. Jose quotes also similar decisions of six cases. Beth Shamai allow to serve on the table, but not to eat, poultry together with cheese, while Beth Hillel forbid the one as well as the other. Likewise allow the former to separate Terumah from olives for their oil and for the wine from grapes, and the latter prohibit it. According to Beth Shamai he who sows seeds within four ells in the vineyard has thereby sanctified one row, while according to Beth Hillel, two rows (*i.e.*, the rows in question must not be sown). Flour put into boiling water is, Beth Shamai say, free from Chalah, and the Beth Hillel say it is not. The Beth Shamai allow to use rain-water (running down hill) as a legal bath, the Beth Hillel do not. Finally, Beth Shamai allow a proselyte, who underwent circumcision on the eve of Passover, to immerse himself and then partake in the Passover-offering, while Beth Hillel declare that he who parts with his prepuce is like one returning from the grave.

MISHNA *III*.: R. Ismael cites to the same effect the decisions of the following three cases: The book Ecclesiastæ does

not, according to Beth Shamai, render unclean the hands, while it does so according to Beth Hillel. Sin-cleansing water that has already performed its destination is declared clean by former and unclean by latter. The same divergence of opinion the two schools show with regard to the cleanness and uncleanness of black cumin and its tithe. (Negaim, Mishna III. Chapter V.)

MISHNA *IV*.: R. Elazar quotes two cases to the same effect. The blood of a woman lying-in, who has not bathed (as prescribed) is considered by Beth Shamai as her spittle and urine, while Beth Hillel declare it defiling always, moist or dry. The former agree, however, with the latter view when the woman in question bore in a state of running issue, then the issue defiles immaterial whether dry or moist. (Tract Nidah II., Mishna VI.)

MISHNA *V.*: If of four brothers two who are married to two sisters die, the latter perform Chalitzah but cannot enter the levirate marriage; and if such marriage has been hastily concluded, divorce must follow. R. Eliezar quotes the Beth Shamai as declaring this marriage to remain, and Beth Hillel as requiring divorce.

MISHNA *VI.*: Aqavia b. Mehallalel testified four things, which the sages persuaded him to retract, promising him therefor the chair of presiding justice in Israel, to this he responded: I shall prefer to hear the name fool all my life to becoming a wicked even for one hour before the Omnipresent; but let nobody say "He retracted for the sake of an office!" Here are his rules: He declared unclean the white hair (left from a previous case of leprosy) as well as the yellow blood (of a woman), both which the sages declare clean; he allowed to make use of the faded hair of a blemished first-born cattle slaughtered immediately after the hair has been put into a (wall) niches, while the sages forbid it; finally, he prohibited to give the jealousy-water to a female proselyte or to a freed maid-slave, which the sages allow.

The following episode was thereupon presented to him: A certain Karkmith, a freed maid-slave in Jerusalem, was made to drink the aforesaid water by Shmaia and Ahtalion, to which he replied: They did it only in a "make-believe" way. (They, being themselves proselytes, did it.) And they placed him under ban, and when he died the court stoned his coffin. R. Jehudah remonstrated: That Aqavia b. Mehallalel, who among all Israel on whom the doors of the temple court-yard closed, was unequalled in both erudition and piety, should have been placed

under ban? Impossible! It was Eliezar b. 'Hanoch that was excommunicated for his trifling with the rule concerning hand-cleaning; and when he died the court sent to put a stone on his coffin; whence it may be inferred that the coffin of him who dies while under ban is to be stoned.

MISHNA *VII.*: While on his death-bed he (Aqavia b. Mehallalel) thus spoke to his son: Reject the four rules I have been teaching; I adhered to them because I had received them from a majority, and the others likewise had them from a similar source; we both, therefore, remained true to our traditions; but you have learned them of an individual and then of a majority, now it is more advisable to abandon the opinion of the individual and to follow that of the majority. Then the son's request to commend him to his friends he refused, saying: It is not because I find fault with you, but let your own conduct be your recommendation. (Explained at length in Pessachim. V., Mishna IV.)

Next: Chapter VI

CHAPTER VI.

MISHNA *I*.: R. Jehudah b. Baba attested five cases. Girls underage are made to express their refusal; a woman is allowed to remarry on the testimony of one witness; in Jerusalem a cock that had killed a person was stoned; wine only forty days old was brought upon the altar as a drink-offering; and finally, the daily morning sacrifice was (once) offered at the fourth hour (in the morning).

MISHNA *II*.: R. Jehoshua and R. Nehunia b. Elinathan of the Babylonian village attested that an organ (even if not an olive big) of the dead is defiling, as against R. Eliezar, who asserts that the sages taught thus only in reference to an organ of alive body; and the others rejoined: Is it not an inference *a fortiori*--viz.: since the organ of a live body which latter is clean is, if severed, unclean, so much the more so that of a dead body, which latter is of itself unclean? His answer was: And yet the sages taught so only in respect of an organ of a live body. According to others the answer was this: The uncleanness of the living is more extensive than that of the dead, for the living (who has a running issue) renders all that he lies or sits on capable of defiling man as well as garments, and all that rests above him, by his exhalation capable of defiling food and beverage, all which the dead does not.

MISHNA *III*.: Flesh of the size of an olive severed from an organ dismembered from a living (person) is unclean according to R. Eliezar, but clean according to R. Jehoshua and Nehunia. On the other hand, a bone the size of a barley-corn severed from said organ R. Nehunia declares unclean, and R. Jehoshua with R. Eliezar, clean. R. Eliezar was then asked: What prompts you to vindicate the former decision? He replied: We find that a severed live organ is regarded as a whole corpse; hence, as from a dead severed flesh of the size of an olive is unclean, severed flesh of such size from the living must be unclean, too! I, therefore, base my decision on this analogy. Whereupon it was rejoined: While you justly declare unclean flesh of an olive size severed from a corpse, for a barley-corn-sized bone of a, corpse

is likewise unclean, you commit yourself to a discrepancy in your decision regarding the flesh and the bone of a severed organ of a living body respectively, whereby your analogy is annihilated! Similarly was R. Nehunia asked to base his view, which he did by a like analogy, thus: We find that a severed organ of the living is like an entire corpse and a barley-corn-sized bone of the latter is unclean, whence my decision. Whereupon he was answered: If you justly declare unclean so small a bone severed from a corpse by reason of holding unclean flesh the size of an olive severed from a corpse, you cannot on this basis declare unclean a bone the size of a barley-corn severed from the dismembered organ of a living body, since you hold clean the flesh even of an olive-size severed therefrom!

R. Eliezar was then asked: Why have you divided your views? Declare either both unclean or

both clean? And he, answered: The uncleanness of the flesh is more extensive than that of the bones, because the flesh of carcasses and reptiles is defiling while bones of these are not. Another explanation according to others: An organ that has yet enough of its flesh on causes uncleanness through touching, carrying or sheltering it, and remains yet unclean even if it misses some of its flesh, while if some of its bone is wanting it is clean.

R. Nehunia was asked: Why have you divided your views? Declare either both unclean or both clean? And he answered: The uncleanness of bones is more extensive than that of flesh, for flesh severed from the living body is clean, while the organ, if severed from it in its natural state, is unclean. Another explanation: Flesh the size of an olive defiles by being touched, carried or sheltered, in like manner do bones defile in their majority; if some of the flesh misses it is clean none the less, if some of the majority of the bones lacks it is still unclean by touch and carriage, though not by shelter. Or thus: All the flesh of a corpse is clean when it does not all in all measure the size of an olive, while the greater part of its body or of its bones are unclean even when they do not make up a quarter of a Kab.

R. Jehoshua answered the question as to why he decides in both cases "clean," thus: The analogy between the dead and the living does not hold good, for to the former apply the requisite of majority, quarter-Kab, and spoonful of decomposed stuff, while to the living all this does not apply.

Next: Chapter VII

CHAPTER VII.

MISHNA *I*.: R. Jehoshua and R. Zadok attested that the priest has no claim to the assigned redemption of a first-born donkey that died, as against R. Eliezar, who said: The owner is obliged to indemnify it, as the five sela redemption of the first-born son. The sages, however, maintain that there is here no more obligation of indemnifying than in the case of redemption for the second tithe. (Tract Bechoroth L, Mishna VI.)

MISHNA *II*.: R. Zadok attested that the brine of the prohibited locusts is itself clean. For, the preceding Mishna reads: If unclean locusts have been pressed together with clean ones, they do not render the brine forbidden.

MISHNA *III*.: The same attested further that if flowing water exceeds in quantity the rain-water with which it is mingled, it is proper. Such a case occurred in the capital of Plia and the sages declared it proper.

MISHNA *IV*.: He attested, finally, that flowing water remains proper as such when made to rush through the green peel of a walnut. A case to this effect happened at Ohlia and, when brought before the court in the Hall of hewed stones in the temple, was found proper.

MISHNA *V*.: R. Jehoshua and R. Jakin from Hadar attested that an earthen pitcher with sin-cleansing ashes placed upon a reptile is unclean, while R. Eliezar declares it clean. R. Papies attests that he who, having vowed to be a Nazarite twice, had his hair cut the first time on the thirtieth day, may have his hair cut the second time on the sixtieth day; and if he cut his hair on the fifty-ninth day, he kept sufficiently his vow, since the thirtieth day is counted both ways. (Nazir, Chapter III.)

MISHNA *VI*.: R. Jehoshua and R. Papies attested that the offspring of a peace-offering may be offered as a peace-offering; now, as the sages hold so against R. Eliezar who maintains the opposite, said R. Papies: I attest that we ourselves had a cow of a peace-offering which we ate on Passover, and whose offspring we consumed the next Tabernacle likewise as a peace-offering. (Themura, Chapter III.)

MISHNA *VII*.: The same two attested that the flat boards of the bakers are unclean, as against R. Eliezar, who declared them clean; furthermore that a baking oven cut in parts between which mortar has been put, is subject to defilement, as against R. Eliezar, who finds it clean; that the court of justice has time to declare the year to be a leap-year during the entire month Ador, for formerly the Purim feast was thought to be the time limit for this declaration; finally, that the year may be declared a leap-year on condition. So it once happened that when R. Gamaliel, having gone to ask leave of the Hegemon of Syria, tarried on his way, the year was declared a

leap-year on the condition that R. Gamaliel consent to it on his return, which he did upon returning and the year remained a leap-year. (Kelim, Chapter XV.)

MISHNA *VIII*.: Mena'hem b. Signai attested that the enameled brim of the (metallic) kettle used by the olive-boilers is subject to defilement, but that of the painters is clean, for, formerly the converse was held.

MISHNA *IX*: R. Nehunia b. Gudgada attested that a deaf-mute girl married off (while under age) by her father may receive a divorce; that a minor (orphaned) Israel-girl married to a priest may eat Terumah, and that in case she dies her husband is her heir; furthermore, that the owner of a beam robbed and immured in a palace can claim only its value; finally, that a robbed sin-offering not known to the majority is regarded as atoning for its owner when offered on the altar (in order not to make the altar unclean).

Next: Chapter VIII

CHAPTER VIII.

MISHNA *I*.: R. Jehoshua b. Bathyra attested that the blood of carcasses is clean. R. Simeon b. Bathyra attested that the ashes of the sin-cleansing red cow, if touched even in part by an unclean one, become all unclean; to which R. Aqiba added that he who has bathed for cleansing himself (and hence is not yet wholly clean) renders improper the whole of the holy flour, the frankincense, the incense and the coal on touching them only in part.

MISHNA *II*.: R. Jehudah b. Baba and R. Jehudah the priest attested that an (orphaned) Israel-daughter married under age to a priest is entitled to eat terumah soon after she was led under the canopy, though before cohabitation. R. Jose the priest and R. Zecharia the son of a butcher related the following: It happened that a small girl had been kidnapped by the heathens of Ashkalon; her kinfolks wanted to reject her from the family notwithstanding the assurance of the witnesses that she was not hiding with anybody nor dishonored, and the sages interfered, saying: If you believe her witnesses that she was kidnapped, there is no reason for you not to believe that she was not hiding with anybody nor dishonored; on the other hand, if you distrust the latter part, don't believe the former, either.

MISHNA *III*.: R. Jehoshua and R. Jehudah b. Bathyra attested that the widow of a priest of a doubtful pedigree may yet marry a priest, that such a doubtful family may enquire after the purity or impurity of its members, in order to separate itself from, or to approach them. Thereupon remarked R. Simeon b. Gamaliel: We accept your attestation, but what shall we do now that R. Johanan b. Zakkai has decreed not to call any jury on this point? The priests will surely follow you when a case of separation, but not when such of approaching, is concerned!

MISHNA *IV*.: R. Jose b. Joezer, the man of Zereda, attested that the locust *Ail Kamza* is allowed, that all liquids in the slaughter-house of the temple are not subject to defilement,

and finally that only he is unclean who has surely touched a corpse. He received on this account the name, Jose the allower.

MISHNA *V*.: R. Aqiba attested in the name of Nehemia from Beth D'lee, that the testimony of one witness suffices to allow a woman to remarry. R. Jehoshua attested that regarding bones found in the wood-barn (of the women's courtyard in the temple) which are yet unclean, the sages say: Pick them out singly, bone by bone, and all remains clean.

MISHNA *VI*.: Said R. Eliezar: I heard that when the central hall of the temple was being built, curtains were put up before both the hall and the courtyards, with the difference, however, that in the former the wall was built outside, while in the latter inside, of the curtains. R. Jehoshua said: I heard that it is allowed to offer sacrifices also when there is no temple, that the all-holiest

offerings may be eaten also when there is no curtain; that leniently-holy offerings as well as second tithe may be eaten even if there be no city walls (around Jerusalem), for the first consecration has rendered her (the city) holy for her times as well as for all time to come.

MISHNA *VII.*: R. Jehoshua said: I have it by tradition from R. Johanan b. Zakkai, who heard it in direct line from his teacher, to be a Halakha from Sinai to Moses that Elijah is not coming in the future to declare certain families clean or unclean, to separate or to reconcile them, but to remove those who were reconciled by force, and to bring together those who were segregated by force. A family of the name Bethz'repha was across the Jordan, excluded by a certain Ben Zion with the use of force; another family (of impure blood) was in the same manner accepted by the same Ben Zion. It is to declare cases of this kind clean or unclean, to remove or to accept that Elijah is coming. R. Jehudah says: Only to accept, but not to remove. R. Simeon says: His mission is only to settle certain disputes. The sages, however, say: His advent will have for its purpose not the removing or accepting of the mentioned cases but the establishing of peace in the world, for it is written [Malachi, iii. 23, 24]: "Behold, I send unto you the prophet Elijah. . . . and he shall turn back the heart of the fathers to the children, and the heart of the children to their fathers."

END OF TRACT EDUYOTH AND OF VOLUME XVII.

EXPLANATORY REMARKS.

In our translation we adopted these principles:

1. *Tenan* of the original--We have learned in a Mishna; *Tania*--We have learned in a Boraitha; *Itemar*--It was taught.

2. Questions are indicated by the interrogation point, and are immediately followed by the answers, without being so marked.

3. When in the original there occur two statements separated by the phrase, *Lishna achrena* or *Waïbayith Aema* or *Ikha d'amri* (literally, "otherwise interpreted"), we translate only the second.

4. As the pages of the original are indicated in our new Hebrew edition, it is not deemed necessary to mark them in the English edition, this being only a translation from the latter.

5. Words or passages enclosed in round parentheses denote the explanation rendered by Rashi to the foregoing sentence or word. Square parentheses [ ] contain commentaries by authorities of the last period of construction of the Gemara.

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SYNOPSIS OF SUBJECTS

OF

TRACT ABUDA ZARA (IDOLATRY).

CHAPTER. I.

MISHNA *I*. Three days before the festival of the heathen, it is forbidden to have any business with them. In the future the Lord will take the Holy Scroll in hand, saying, "He who was occupied with it shall appear and receive his reward." The kingdom of Rome will then enter first, etc. After Rome has departed, Persia enters, etc. We have constructed many bridges, conquered many great cities, we were engaged in many wars, all for the sake of Israel to enable them to study the law, etc. "Have we then accepted the Torah, and not fulfilled its commandments?" A Gentile who is occupied with the study of the law is likened to a High-priest, etc. "Lord of the Universe, has then Israel, who has accepted the Torah, observed it?" "Men of ye nations may come and testify that Israel has observed the Torah. Nimrod may testify, etc. There are twelve hours in a day, three hours of which the Lord is occupied with the Torah, etc. There is no smiling by the Lord, since the temple was destroyed. But in the fourth three hours He teaches, etc. There is no Gehenna in the future. But the Lord will take out the sun from its sheath, etc. If not for the fear for government the stronger would swallow the weaker, etc. Concerning the explanation of (Amos, iii. 2) said R. Abuhuh, I will do it in the form of a parable. There was once a creditor of two persons, one a friend and the other an enemy of his. It is advisable for one not to pray singly the additional benediction in the first three hours at the first day of new year. When one performs a meritorious act in this world it precedes him in the world to come. "Three days," etc. Is such a long time needed? is this forbidden because a Jew must not interfere with the idols, or because "Thou shalt not put a stone for the blind"? The prohibition to do business with them refers only to a thing which can be kept in good order until the festival day. It is advisable for one to always arrange the praises of the Omnipotent first, and thereafter to recite the daily eighteen benedictions. The following are the festivals of the heathens: Kalends, Saturnalia, Kratsin, etc. Adam the first, on the first day of his creation, when he saw the sun set, cried: "Woe is to me, the world is to be returned to chaos, etc." Thirty-two battles the Romans fought with the Greeks, etc. Twenty-six years the Romans kept their

promise to Israel, and thereafter they failed. The twenty-six years are not counted. The world will continue for six thousand years, the first two thousand of which were a chaos (Tahu), etc. It happened with Antoninus (the Caesar of Rome), who said to Rabbi, etc. (See the whole legend, pp. 16-18). Unklus b. Klenimus embraced Judaism, and the Caesar sent militia to take him, etc. (See the legend, pp. 18-19). There was still another festival in Rome which occurs once in seventy years, on which they would make a well man ride on a lame man, etc. 1-21

MISHNA *IV*. In a city where the idol is placed, interfering is forbidden inside, but not outside. If, during an idol festival in the city, some stores were there decorated, one must not buy, etc. The following are forbidden to be sold to the heathens; Fir-cones, etc. We have a tradition that the tract Aboda Zara of Abraham the patriarch contained four hundred chapters, etc. Where it is customary to sell small cattle to heathens it is lawful to do so, etc. One must not sell to them bears, lions, and all such things, by which the people can be injured, etc. I walked in the upper market of Ciporas, and I met one of the minim, named Jacob, of the village of Sachania. So taught Josa B. Southyra, etc. (See foot-note, p. 27.) The legend of Eliazer ben Durdaya (28). The leech hath two daughters (crying), "Give, give," *i.e.* minunism--and the government, which are never satisfied, etc. Raba sold an ass to an Israelite who was suspected of selling it to a heathen, etc. He who occupies himself with the Torah, but does not observe bestowing of favors, is similar to him who denies God. The Legend of Eliezer b. Sarta and Chanina b. Tradion when captured by government, p. 29, 30. How Chanina was burned together with the holy scrolls, and what became of his wife and daughter, p. 31, 32. The redeeming of latter by R. Mair (Baal Hanes), p. 33. Happy is he who conquers his evil spirit, as a heroic man, etc. It is advisable to divide one's years into three parts, one-third for the study of Scripture, the second Mishna, and the third Talmud, etc. R. Aqiba when he saw the wife of Tornus Rupers, he laughed and wept, etc. Houses must not be rented to the heathens in Palestine, etc. One must not rent his bath-house to a heathen, but how is it to a Samaritan? etc. 21-40

CHAPTER II.

MISHNA *I*. Cattle must not be placed in the inns of the heathens. (See foot-note, p. 41.) "And the cows went straight forward," etc. What does this expression mean? It reads (Jos. x. 13): "And the sun stood still, written in the book of Yasher." What is the book of Yasher? One must not stay alone even with two women. If an Israelite while on the road, happened to be accompanied by a heathen, etc, One must not confine a heathen because she brought up a person to idolatry, etc. A city in which there is no Jewish physician, but a Samaritan and a heathen, the heathen shall circumcise and not the Samaritan. One may employ their (the heathens') services for curing his personal property, etc. Ben Dama was bitten by a snake, Jacob come to heal him with the name of Jesus, but R. Ismael did not allow. With R. Johanan it is different, as he himself was an established physician. Medicines and other remedies for different sickness by different men and women, on pp. 50-53. The following things of the

heathens are prohibited, and the prohibition extends even to the deriving of any benefit therefrom--viz: wine, vinegar, etc. No benefit is to be derived from the dead. Samuel and Ablat, the latter who was a heathen, were sitting together, and cooked wine was brought for them, etc. To fermenting wine no uncovery applies. One, must not pour water which has been uncovered, in the public streets, and also not water cattle with it. The sages forbid date-beer of the heathens, as a safeguard against inter-marriage. The sick heathens who become swollen, and whom uncovered water does not harm, surely ate reptiles, so that their bodies contain poison which prevent the harming effects of the snake-poison. A heathen pilgrim is prohibited only when on his way to the idol, etc. Enamelled vessels, no matter what color, are permissable. Fish oil made by a heathen specialist is permissable. Why did the sages forbid the cheese of Anugiki? Sweet are to me the words of thy friends (the sages who are explaining the law), more than the essence

of the Torah. Compress your lips, one upon the other, and hasten not to propound question, 41-65

MISHNA *V*. The following are prohibited, but not from deriving benefit from them: Milk, etc. What is the reason for the prohibition of milk? etc. Concerning oil, Daniel has decreed the prohibition according to Rabh, etc. To everything which is not served on the table of noblemen to relish the bread, the prohibition of "cooked by a heathen" does not apply. All that may be eaten in a raw state, may also be eaten when cooked by a heathen. The sea-donkey is allowed, but not the sea-ox; and you remember this by the following mark: the unclean (on earth?) is clean, while the clean is unclean. We are to trust the wife of a scholar as we have trusted her husband. Meat, wine, blue wool that are to be forwarded through a heathen, require each two seals. The following things are allowed to eat, milk milked by a heathen in the presence of an Israelite, honey and honey-cake, etc. Fish entrails as well as fish-rye you may buy only of a specialist, etc. If the vender says, I have pickled the fish and know them to be clean, he is trusted. Praised be the Omnipotent, who puts this world in the hands of guardians! 65-81

CHAPTER III.

MISHNA *I*. TO *VI*. All images are prohibited, for they are worshipped at least once a year. The staff in the hand of the idol. The bird in its hand of the idol. Finally, the sphere is to indicate that it sacrifices itself for the whole globe. If one finds fragments of images, he is allowed to use them, etc. It is taught that a heathen can profane the idol of his fellow heathen as well as his own, while an Israelite cannot profane the idol of a heathen. If one finds vessels with the image of the sun, moon, etc., he must throw them into the salt lake. The human image and that of a nurse are, however, prohibited only when having respectively a measure in the hand and a son in the arms whom she is nursing. One may grind the images and scatter them to the wind, or sink them into the sea, etc. Peroklas, the son of a philosopher, asked once R. Gamaliel at Ako, who was then bathing in the bath of the goddess Aphrodite, etc. R. Gamaliel gave Peroklas an evasive answer; but I (Hama) say it was not evasive, etc., etc,

The mountains and hills worshipped by heathens are allowed to use, but not the things, brought upon them, etc. Wherever you find a high mountain, an elevated hill, a leafy tree, there is surely an idol there. A town or place bearing the name of an idol should be renamed. If stones absolved fortuitously from a mountain rock, that was worshipped, is their use allowed or not? 82-96

MISHNA *VII*. TO *XV*. If a house situated, close by a worship-house of an idol crumbles down, its owner is prohibited from rebuilding it, etc. There are three kinds of houses. There are three kinds of stones. There are three kinds of groves, etc. What is a grove? A tree with an idol under it. R. Simion said: "Any tree that is worshipped. It is not allowed to sit down in the shade of such a tree." Under such a tree is allowed to sow herbs in the winter, but not in summer, etc. To derive any benefit of wood obtained from an idol-grove is prohibited. How is the idol worship of a tree profaned, etc.? 96-103

CHAPTER IV.

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wagon," etc. Jewish wine was once stored up in a house where a heathen and an Israelite lived in the lower and upper floors: respectively, etc, An Israelite and a heathen were once at an inn sitting and drinking wine, etc. In the city of Sumbeditha thieves once intruded into a house, etc. When an army enters a town in time of peace etc. He who sells his wine to a heathen is allowed to use the money, etc. Rabh told the Jewish wine-dealers to have their heathen customers pay in advance, etc. Once an Israelite said to his neighbor: "When I make up my mind to sell this field, I will sell it to you." Later on he sold it to a third party, etc. An Israelite once said to his neighbor: "When I make up mind to sell this field, I will sell it to you for a hundred suz, etc. If the funnel was first used to measure through it into the heathens flask, etc. Devoted wine is prohibited, and renders unallowable even by a minimal quantity. If forbidden wine falls into a reservoir, and simultaneously a pitcher of water, etc. This is the rule: "When the two are of the same kind; a minimal quantity suffices", etc. For how long must the utensils remain glowing in fire, etc. "A knife is cleansed even by grinding it."

Next: Chapter I

TRACT ABUDA ZARA (IDOLATRY).

CHAPTER I.

RULES AND REGULATIONS CONCERNING TRANSACTION OF BUSINESS WITH HEATHENS ON THEIR FESTIVAL DAYS; WHICH FESTIVALS ARE CONSIDERED, AND WHAT REAL ESTATE MAY BE SOLD AND RENTED, AND AT WHAT PLACES.

MISHNA *I*.: Three days before the festivals [1] of the heathens it is forbidden to have any business with them. One must not lend them anything (which can be useful to them) nor borrow such from them. And the same is the case with cash money, even to pay or to receive payment is forbidden. R. Jehuda, however, maintains: To receive payment is allowed, because it is a displeasure to the payers. And he was answered: Although it is *now* a displeasure, it pleases them, in the future.

GEMARA: R. Hanina b. Papa, according to others, R. Simlai, lectured: In the future, the Holy One, blessed be He, will take the Holy Scroll in hand, saying: "He who was occupied with it shall appear and receive his reward." The nations then at once will gather themselves and come motley crowded as it reads [Is. xliii. 9]: "All the people were gathered together." The Holy One, blessed be He, however, tells them: "Do not enter in such confusion, but let each nation with her scribes enter Separately," as it reads further on: "Let the people [2] be assembled." And by the term people kingdoms are meant. [Can there be such a thing as motley before the Holy

[paragraph continues] One, blessed be He? It means they themselves shall not come in confusion, so that they shall understand what will be said to them.] The kingdom of Rome will then enter first on account of its greatness. As concerning it [Dan. vii. 23]: "And will devour all the earth, and will tread it down, and grind it up." And R. Jochanan said: Rome is thereby meant, whose fame is respected throughout the whole world. But whence do we know that the more distinguished come first to judgment? It is as R. Hisda said (Rosh Hashana, p. 13). The Holy One, blessed be He, questioned her: "What was your occupation in the world?" To which she answered: "Lord of the Universe! we have established many markets, we have constructed many bath-houses, we have multiplied in great mass gold and silver, and all this was done for the sake of Israel, to enable *them* to study the Law." The Lord's answer will be: It is foolish of ye to state that all you have done was for the sake of Israel, while in reality it was but for yourselves. The construction of markets was for the purpose of prostitution. The establishment of bath-houses was for your own pleasure, and as to gold and silver, it is mine, as [Hos. ii. 8]: "Mine is the silver, mine," etc. But, are there, then, among ye those who have studied the Law? They went out in despair.

After Rome has departed, Persia enters. Because she is considered second to Rome, as [Dan. vii. 5]: "And behold, there was another, a second beast, like a bear." To which R. Joseph taught:

Thereby, Persia is meant, the people of which are fleshy like bears, eat and drink like bears, are overgrown with hair, and have no rest, like bears. And to the question of the Holy One, "What was your occupation?" They will answer: We have constructed many bridges, conquered many great cities, we were engaged in many wars, all for the sake of Israel to enable them to study the Law. The reply to which will be: "All that was done by you was for your own sake." Bridges, for the collection of duties. Great cities, to establish *angaria*. And as to wars, I have conducted them. As it reads [Ex. xv. 3.]: "The Eternal is the lord of war." But are there among ye those who have studied this Law? And they also went out in despair. [But, why did Persia enter, after seeing that Rome was disappointed? They thought: We may have more chance than Rome, as the latter has destroyed the holy Temple, while we have rebuilt it.] And a similar answer will be given to the other nations. But why should the other

nations enter after seeing the disappointment of the first two? They thought: The first two made slaves of Israel, which was not the case with them. But, if so, why should Rome and Persia be more honored than the other nations? They are distinguished by the permanence of their kingdoms, which will exist until the time of Messia. Finally they will say before Him: Lord of the Universe, didst thou give us the Torah and we did not accept it? But how could they say so? Is it not written [Deut. xxxiii. 2]: "The Lord came from Sinai, and rose up from Sa'ir unto them: he shone forth from Mount Paran." And it also reads [Habak. iii. 3]: "(When) God from Theman came, and the Holy One from Mount Paran." And to the question: What has the Law to do in Sa'ir and Paran? Said R. Jochanan: From this it is inferred that the Lord has presented his Torah to every nation, but it was not accepted until it came to Israel. Therefore, it is supposed that they said to Him: "Have we then accepted the Torah, and not fulfilled its commandments?" [But what answer is this. Could they not be accused because they have not accepted it?] They said thus: Lord of the Universe, hast thou inclined the mountain toward us as thou didst toward the children of Israel? (See Sabbath, p. 167, par. Ex. xix., etc.) To this the answer will come: "Let the former things shew us." [Isaiah xliii. 91 The Holy One, blessed be He, will say to them: "The seven commandments which were *given* to the descendants of Noah, have ye observed them?" And whence do we know that they have not? From that which R. Joseph taught. It reads [Hab. iii. 6]: "He stood forward, and made the earth tremble; he looked, and dispersed nations." What did He see? That the seven commandments accepted by the descendants of Noah, were not observed. And therefore He absolved the nations of them. Absolved. Should then the sinner be benefited? Said Mar b. Rabbina: It means that even should they absolve them, they would not be rewarded. Is that so? Did not R. Mair say: "Whence do we know that even a Gentile who is occupied with the study of the Law, is likened to a high-priest from [Levit. xviii. 5] "Which if a man do, shall live on it," where it does not specify priest, Levite, or Israelite, but states in general if a man, whence it may be inferred that a Gentile, too, who occupies himself with the study of the Law is equal to a high-priest." It means that they will not be rewarded for the observance equally with those who observe in accordance

with the commandments. As R. Hanina said: The reward for him who observes that which he is commanded, is greater than to him who observes same without being commanded. The nations will then exclaim: "Lord of the Universe, has then Israel, who has accepted the Torah, observed it?" And to the answer of the Holy One: "I testify that he did," they exclaim: "Lord of the Universe, is then a father fit to be a witness in the case of his son? Is not Israel called the son of the Eternal [Ex. iv. 22] "My son, my first-born, is Israel." He will then say: "Let heaven and

earth testify that the Torah was observed by Israel." They, however, object in saying that heaven and earth are interested in this case, and therefore are not fit to be witnesses--viz: [Jer. xxxiii. 25]: "If my covenant be not . . . the appointment with heaven and earth, would not be established." 1 And Resh Lakish said: It reads [Gen. i. 31]: "And it was evening, and it was morning," and this justifies the inference that the Lord made a stipulation with all that had been created in the six days to the effect that if Israel will accept the Torah, well and good, but if not I will return all of you to chaos and ruin. Then the Holy One, blessed be He, will say: "Men of ye nations may come and testify that Israel has observed the Torah. Nimrod may testify that Abraham has not worshipped idols. Laban may testify that Jacob was not suspected of robbery. The wife of Potiphar may testify that Joseph was not suspicious of sin. Nebuchadnezzar may testify that Chananyah, Mishaël and Azaryah had not bowed themselves to the image; Darius of Daniel, that he had not abolished prayer; Eliphaz the Themanite, and Bildad the Shuchite, and Zophar the Na'amathite may say of all Israel that they have observed all the Laws." They will then exclaim: "Lord of the Universe, give it to us now, and we will observe it." To which they will be answered: "He who has prepared on the Eve of Sabbath, for the Sabbath, will have what to eat. But he who has not prepared, what then will he have to eat on Sabbath? However, I have one easy, meritorious act, it is the *Sukka*, go and perform it. [Why is it called easy? Because it requires no expense.] Everyone of them will then prepare a *Sukka* on his roof, but as soon as the sun heats it, they abandon it, and go away. But did not Rabha say that he who is afflicted by performing the command of *Sukka*, is free from this obligation? Yea, but not to reject.

[paragraph continues] The Holy One, blessed be He, will then smile upon them. Said R. Itzchak: "There is no smiling with the Holy One, but on that day."

There are others who taught the saying of R. Itzchak in the following connection: R. Jose said: In the future heathens will come to convert themselves with the *Tephilin* on their heads and arms, *tchitches* on their dresses, *mazuzas* on their doors. But, as soon as they will see the war of Gog and Magog, and will question them: "With whom do you want to fight?" Whereto the answer will be: With the Lord and his Messiah [as it reads [Psalm ii. 2]: "Against the Lord and his anointed"], each of the nations will remove the above, and go away; and the Holy One will smile upon them. It is here that R. Itzchak said: There is no smiling with the Lord, but on that day. But did not R. Jehudah say in the name of Rabh: There are twelve hours in a day, three hours of which the Holy One, blessed be He, is occupied with the Torah. The next three hours, He judges the whole world, and seeing that it is liable to be destroyed, He rises from the chair of judgment and sits down on the chair of mercy. The third three hours, He supports the whole world with food, from the very largest creature to the smallest one. And the last three hours, He plays 1 with the *leviathan*, as it reads [Psalm civ. 26]: "Leviathan, whom thou hast made to sport therein." Said R. Nachman b. Itzchak: "With His creatures He smiles, but not upon them." R. Aha said to R. Nachman: There is no smiling by the Holy One, since the Temple was destroyed. As it reads [Is. xlii. i4]. 2 But in the fourth three hours, he teaches the Torah to the school-children. As it reads [ibid. xxviii. 9]: "Whom shall he teach knowledge? And whom shall he give to understand doctrine? (to) those that are weaned from the milk, (to) those that are taken from the breasts." And what does He do in the night-time? If you wish, it may be said that He does the same as in the day-time. And if you wish, it may be said that He rides upon His light cloud and moves in all directions upon 18,000 worlds. As it reads [Psalm lxviii. 18]: "The chariots of God are two myriads; thousands of angels (follow him)." And if you wish, it may be said that He is sitting and

listening to the song of the angels, as [ibid. xlii. 9]: "And in the night his song shall be with me."

R. Jehudah said in the name of Samuel: It reads [Hab. i. 14]: "And (why) makest thou men as the fishes of the sea, as the creeping things, that have no ruler over them?" Why are men compared with fish of the sea? To wit: even as the fish die as soon as they are taken on land, so do men die when they separate themselves from the law of the Torah. Another explanation: as fish die from the strong heat of the sun, so also do men. If you wish it may be said in this world, and this would be in accordance with R. Hanina, who said: "Everything is decreed by heaven, except cold" (see Middle Gate, p. 285). And if you wish it may be said, in the world to come, and this is in accordance with Resh Lakish, who says: There is no *Gehenna* in the future. But the Holy One, blessed be He, will take out the sun from its sheath. The wicked will be punished with its heat, and the upright be cured by it. As it reads [Malachi, iii. 19]: "For, behold, the day is coming, which shall burn as an oven; and all the presumptuous, yea, and all who practice wickedness shall be stubble: and the day that is coming shall see them on fire, . . . who will not leave them root or bough. (20) But there shall rise unto you that fear my name, the sun of righteousness with healing in his wings." Furthermore, the latter will have pleasure and become fat from it, as the end reads, "And ye will go forth, and grown fat as calves of the stall."

There is another explanation, "as fish in the sea," the larger one swallows the smaller, so also is it with men, since if not for the fear for government the stronger would swallow the weaker. And this is what a Mishna states: "Pray for the peace of the government," etc. (See Aboth, p. 72.)

R. Hinna b. Papa propounded a contradiction to the following [Job, xxxvii. 23]: "The Almighty we do not find him out excellent in power." And [Ex. xv. 6]: "Thy right hand, O Lord, is become glorious in power." [1] And also [Psalm cxlvii. 5]: "Great is our Lord, and abundant in power"? This presents no difficulty: At the time of judgment, He does not use his might; but in time of war, He uses it.

Rabha said [Job, XXX. 24]: "But doth not a man stretch out

his hand among *ruins*? or doth one not cry out therefrom when he meeteth his downfall?" So said the Holy One, blessed be He, to Israel. By judging Israel, I do not treat them in the same manner as I do heathens, which is mentioned in [Is. xxi. 32]: "Overthrown, overthrown. . . . I will render it." But I punished them as the picking of a chicken. And according to others: "Even if Israel do but small good deeds, as the picking of chickens in the dunghill, I will combine them into one large sum." Another explanation: "I help them because of their praying to me. And this is what R. Aba said: It reads [Hos. vii. 13]: "Though I desired to redeem them, they yet spoke lies against me." *I.e.*, I thought: I will redeem them by loss of money in this world, for the purpose of rewarding them in the world to come. And they told lies about me. And the same said R. Papa in the name of Rabha: The inferring it from [ibid., ibid. 15].

R. Abuhuh introduced R. Safra to the *minim* (who were appointed by the government to collect duties) as a great man. And they freed him from duty for thirteen years. Once they met him and

asked him to explain the following [Amos, iii. 2]: "Only you have I loved out of all the families of the earth: therefore will I visit upon you all your iniquities." If one is in bad humor, will he let it out on his friend? He kept silent, as he was ignorant of the answer. And they inflicted upon him. R. Abuhuh then met them, to ask for the reason. And they answered: You introduced him as a great man, while he does not even know the explanation of a passage. Rejoined he: "I told you he was a scholar, but did I say that he was a master in the study of the Bible?" And to their question: Why are *you* familiar with it? He answered: "Because we have to discuss with you frequently, we give our attention to it." They say: It is for you, then, to explain the above-mentioned passage. And he answered thus: I will do it in the form of a parable. There was once a creditor of two persons, one a friend, and the other an enemy of his. From his friend, he demands to be paid in small sums, while from his enemy he demands the whole debt at once. (And the same is the case with Israel: He clears them of all their iniquities by small punishments in this world, so that they shall not have to suffer in the world to come.)

The rabbis taught: The Lord becomes angry every day, but only during one instant, which is the fifty-three thousand eight hundred and forty-eighth part in one hour; and there is

no creature in the world who is able to guess this moment, except Bil'am, about whom it reads [Numb. xxiv. 16]: "Knoweth the knowledge of the Most High." Which means that he knew how to guess the second in which the Lord becomes angered. (See Sanhedrin, p. 339.)

R. Joseph said: It is advisable for one not to pray singly the additional benediction in the first three hours at the first day of new year, for, the heavenly judgment takes place at that time, and because of his praying attention may be given to his deeds, and he may get an unfavorable decree. But if so, one should not do it even with the congregation together? With the congregation is different, as the attention is given to their deeds in average. But was it not said above that in the first three hours the Lord is engaged in the Law? Yea, however, by the Torah, in which truth is mentioned [Prov. xxiii. 23]: "Buy the truth," judgment cannot be modified. But concerning judgment, truth is not mentioned, and therefore the Holy One, blessed be He, modifies it.

R. Joshua b. Levi said [Deut. vii. 11]: "Which I command thee *this day*, to do them," means *to do* it to-day, but not to be rewarded for it to-day. He said again: "All the performance of the commandments which Israel observed in this world, will come and testify for them in the world to come." He said again: The crime of the golden calf was committed only to give a chance to the repenter. As it reads [ibid. v. 26]: "Who would grant that this their heart might remain in them to fear me at all times." (Hence, they were not fit to commit a crime.) Similarly said Johanan in the name of R. Simeon b. Jo'hai: David was not fit to commit the crime with Bath Shaba, as concerning him it reads [Psalm, cviii. 22]: "My heart is deeply wounded within me." And also Israel was not fit for the above crime, for the reason said above. And why was it committed? For the benefit of sinners. If it happens to be an individual, it may be said to him: Repent, as the individual David did. And if it happens to be a congregation, they also may be told to repent, as the congregation of the desert did. And this is what R. Samuel b. Nachman in the name of Jonathan said: It reads [II Sam. xxiii. 1]: "And thus saith the man who was raised up on high" (the term in Hebrew for high is *ol*, which means also yoke), and is to be interpreted thus: The man who had raised the yoke of repentance The same said again in the name of the same authority: When one performs a meritorious act in this world, it precedes

him in the world to come. As it reads [Is. lviii. 8]: "And before thee shall go thy righteousness, the glory of the Lord shall be thy reward." And the same is the case with him who commits a crime in this world, that it clings to him and goes before him on the day of judgment. As it reads [Job, vi. 18]. 1

The rabbis taught: Concerning the above-cited verse [Deut. v. 26]: Moses said to Israel: Ye are ungrateful my children, as at the time, the Holy One, blessed be He, said to you: "Who would grant," etc., ye ought to say: Thou, Lord, grant it to us. Your ungratefulness is also marked from [Numb. xxi. 5]: "And our soul loathed this miserable bread." Ye are also children of an ungrateful, as it reads [Gen. iii. 12]: "The woman whom thou gavest to be with me, she gave me of the tree," etc. Moses, however, hinted this to Israel only after the forty years in which he led them in the desert. As in respect of that time it reads [Deut. xxix. 3]: "And yet the Lord gave you not a heart to perceive," etc. Said Rabba: "Infer from this that one cannot know the real mind of his master, until the elapse of forty years."

R. Johanan said in the name of R. B'naha: It reads [Is. xxxii. 20]: "Happy are ye that sow beside all waters, freely sending forth the feet of the ox and the ass." Happy is Israel at the time when he is occupied with the Torah and with bestowing of favors; as his evil spirit is then transferred into his hands, and not *vice versa*. And this is inferred from the just-cited verse, "that sow," which means charity, as [Hos. x. 12]. And "by water" it means the Torah, as in [Is. lv. 1] means the Torah. And "by freely sending forth," etc., is meant, what the disciple of Elijah taught. One should always consider himself in his relation to the laws of the Torah, as an ox to its yoke, and an ass to its load.

"*Three days*," etc. Is such a long time needed? Does not a Mishna state: At four periods in the year, he who sells a cow to his neighbor must notify him thus: I have sold her mother or her daughter to be slaughtered. (It is biblically forbidden to slaughter the mother and her child on one and the same day), and they are: the Eve of the second festival of Tabernacles, the Eve of the first day of Passover, the Eve of Pentecost, and the Eve of New Year. According to R. Jose the Galilean: Also

the Eve of the day of Atonement in Galilee. (Hence, we see that only one day is sufficient.) Where eating is treated of, one day suffices, but where sacrificing is treated of three days are needed. Are, then, three days sufficient for sacrificing? Is there not a rule that thirty days before Passover are needed to study the laws of this festival? Concerning our sacrifices, which even a blemish in the eye-lash makes invalid, thirty days are needed for studying the Law. But concerning the heathens, that only a missing limb of an animal makes it invalid. But not a blemish, three days suffice.

The schoolman propounded a question as to whether or not the statement of the Mishna, "three days," include the festival day also? Come and hear. R. Ismael said: "Three days before and three days after their festivals." Now, should it mean to include the festival day, would, then, R. Ismael count *it* twice, to the first and to the last days? This is no objection, as the number three, mentioned last, may be used merely because of the first. Come and hear the following: R.

Tachlipha b. Abdimi in the name of Samuel said: If their festival occurs in the middle of the week, it is forbidden to do business with them the whole week. Now, if that day were included, one day of the week would be allowed. There is no question, according to R. Ismael, as he certainly excludes that day, but how is it the question is according to the rabbis? Come and hear: The following are the festivals of the heathens: *kalends*, *Saturnalia* and *kratsim*. And R. Hanin b. Rabha said: *Kalends* occurs eight days after the solstice, and the *Saturnalia* eight days before. Now, if the festivals were included, it would be said ten days? Perhaps the Tana counts the whole festival of *kalends* for one day. Said R. Ashi: From the expression of the Mishna, "before," it may be inferred that it means to exclude the day in question. For if not, it would state three days of their festivals, etc. Infer from this that so it is.

The schoolmen propounded a question: Is this forbidden because a Jew must not interfere with the idols, or because of the commandment, "Thou shalt not put a stone for the blind"? And the difference is in whether or not the heathen has his own animal for sacrificing. If because of interfering, it is forbidden, but if because of the latter, it is not, as he has his own. But even if he has his own, the above negative rests upon him, as R. Nathan states in a Boraitha: Whence do we know that one must not serve a goblet of wine to a Nazerite nor a member

of a live animal to a descendant of Noah? from [Levit. xix. 14], "Nor put a stumbling-block before the blind." We see then, that though these two would each take the forbidden even if not offered, nevertheless he who serves therewith commits a transgression, it speaks of a case when the two, giver and receiver, are separated, by *e.g.*, a river, so that if not served he could not take it himself; and the word serve instead of give seems to corroborate this view. The schoolman propounded another question: How is it if he had done business with him in the prohibited days? According to R. Johanan: The benefit which he derived from the business is forbidden, and according to Resh Lakish, it is not. Resh Lakish objected to R. Jochanan from the following: In the festivals of heathens, if one had business with them, the derived benefit is forbidden. We see that thus the festivals, as such are meant, but not the time before. R. Jochanan, however, maintains: That in the expression "festivals" the days before are also meant.

There is a Boraitha in accordance with Resh Lakish: The prohibition to do business with them refers only to a thing which can be kept in good order until the festival day, but not otherwise. And even concerning the former, if it was already done, the benefit is allowed.

R. Zabid taught in a Boraitha of R. Osia: A thing which cannot be kept in good order may be sold to, but not bought from, them. There was a minn who, in his festival, sent a new *dinar* to R. Jehudah the second. Resh Lakish was then at the latter's house, and Jehudah consulted him as to the acceptance of it. If he accepted he would transgress the rule of interfering, while his refusal would cause animosity. Said Resh Lakish to him: Accept, and throw it away in the presence of the donor. To which R. Jehudah rejoined: Then I will cause still more animosity. Rejoined Resh Lakish: I mean that you should throw it in such a manner that he should think it was done unintentionally.

"*To lend them or to borrow*." The prohibition to lend them is correct, because it pleases them. But why is it forbidden to receive payment from them; does it not diminish their property? Said Abai: If it were permitted to receive from them, one would be led also to lend them. Rabha, however, maintains: Both are prohibited only because of interfering.

"*Because it is a displeasure*." Does not R. Jehudah hold the view: That it pleases him in the future. We have heard

him say elsewhere that he upholds such a theory concerning Jewish festivals? Said R. Na'hman b. Itzchak: Leave alone the Halakhas of minor festivals, as they are allowed only upon the basis of "it pleases him in the future, although it is a displeasure to him while performing it." Rabbina, however, maintains: A heathen is always displeased at a payment.. Our Mishna is not in accordance with R. Joshua b. Karcha of the following Boraitha, who said: If the lender had a document, he must not receive payment at that day. But if it was a verbal loan, he may, as it is a rescue. (Here is repeated from the First Gate, 229 par., "R. Jehudah says," to p. 30 next par.) [1]

MISHNA. *II.*: R. Ismael said: Three days before and three days after it is prohibited. The sages, however, say: Before the festivals, but not after them.

GEMARA: What new views do the sages of this Mishna advance. Was same not said by the first Tana of the first Mishna? They differ in what was said by Samuel: "In exile, the prohibition refers to the day of the festival only." The first Tana upholds the theory of Samuel, which the sages of the latter Mishna do not. It may also be said that they differ in that which was said by Na'hum the Modaite. The prohibition is imposed only upon one day before their festival. And in this case, the Tana of the first Mishna does not agree with him, while the sages of the second do. There is a Boraitha which states that as regards the decision of Na'hum the Modaite, it was said: It is better that such should be dropped and not repeated. There is another Boraitha; Na'hum the Modaite said: An old male horse may be sold to them in case of war. And he was also answered: Such may be dropped, etc. And there is another Boraitha: That the same declared a Halakha concerning tithe, seeds and herbs, and was also answered: It may be dropped, etc. Said R. Aha b. Minumi to Abai: Is it right that everything declared by so great a man who comes into our country be annulled by mere exclamation such as above? And he answered: There is one thing of the following Boraitha, on which we act according to his decision--namely, Na'hum the Modaite says: One may pray for his necessities the benediction of, "He listens to prayer." Rejoined R. Aba: Leave alone this Halakha which relies not upon Na'hum the Modaite only,

but upon the discussion of great men in the following Boraitha: R, Eliezar said: One should beg for his necessities first, and thereafter he shall recite the daily benediction. As [Psalms, cii. 1]: "A prayer of the afflicted, when he is overwhelmed, and poureth out before the Lord his complaint." [1] R. Joshua, however, maintains: One has to recite his benediction previously, and thereafter pray for his necessities. As [Psalms, cxlii. 2]: "I poured out my *shicho* before him, I relate before him my trouble." (Hence, the trouble is related after the benediction.)

Let us see: The passages do not correspond with either of them; hence, there must be some other reason. Wherein, then, is their point of difference? In that which was lectured upon by R. Simlai: It is advisable for one to always arrange the praises of the Omnipotent first, and thereafter to recite the daily eighteen benedictions. And this can be inferred from Moses, our master [Deut. iii. 24]: "Thou hast begun to show," etc., and thereafter (25): "Let me go over, I

pray thee." R. Joshua maintains: We may learn it from Moses, but R. Eliezar holds that we cannot compare ourselves to Moses, and must not dare to do like him. The sages, however, maintain differently from both: As according to them, one may pray for his necessities in the benediction of, "He listens to prayer." Said R. Jehudah b. R. Samuel b. Shilath in the name of Rabh: Although it was decided that one may pray for his necessities in the benediction of "listen to prayer," yet if he understands how to express his desire at the end of each benediction (conjoined in the daily eighteen benedictions), he may do so.

MISHNA *III.*: The following are the festivals of the heathens: *Kalends, Saturnalia, kratsin*. The accession of their kings upon the throne, their birthday, and the day of their death. So R. Mair. The sages, however, maintain that only such a death on which burning (dresses) is used, is conjoined with worshipping the idols. But in such on which it is not used, there is no .idolatry. All, however, agree concerning the following days: That of shaving his beard and hair, that in which he lauds, that on which he was released from prison, and that on which is celebrated a marriage of his son that the prohibition concerns only one day, and the only one man engaged in this affair.

GEMARA: The rabbis taught: Adam the first, when he saw

that each day of the week became shortened, cried: Woe is to me, the world becomes dark to me because of my sin, and it seems to be returned to chaos and ruin. And this is my death which was decreed by heaven. He arose and fasted and prayed eight days. Thereafter, when he lived to see the solstice of the month of *Tabit*, when the days become longer, he understood that such is the cycle of the world, and therefore established eight holidays. The next year, he also proclaimed the eight days on which he had fasted as holidays. He has established them to laud heaven; his descendants, however, made them holidays for the idols.

The rabbis taught: Adam the first, on the first day of his creation, when he saw the sun set, cried: Woe is to me, the world is to be returned to chaos, because of my sin, etc. He wept all night, and Eve did the same opposite him. However, when the morning star appeared, he understood that such was the order of the world. He arose and sacrificed an ox, whose horns were like its hoofs.

R. Mathna questioned: Are the small towns under the dominion of Rome and near to the capital, prohibited, at the time Rome celebrates its *kalends*, or not? According to R. Jehoshua b. Levi, the festival *kalandes* is forbidden to everyone. And according to R. Johanan, it is forbidden to interfere with those who worship her only. There is a Boraitha in accordance with R. Johanan as follows: Although it was said that if Rome established a *kalandes*, and all the near cities which are under her dominion supported her, the prohibition of interfering concerns only its worshippers. On *Saturnalia, kratsin*, the day of the throne and the day in which he ascends to reign, only one day before, interfering is prohibited; but not the day after. During the celebration of the son's marriage the interfering is forbidden to this man, and on that day only. Said R. Ashi: The statement of R. Johanan is also hinted at in our Mishna by the expression "and that man," which excludes those who are under his dominion. (Here is repeated from Aboth, p. 94. R. Simeon b. Eliezar said the whole par.; here, however, it is said in the name of R. Ismael. (The Gemara adds): It is therefore decided that if a heathen invites one during thirty days from his son's wedding, the invitation being special to the wedding, or anonymous, it is considered a wedding day, and the interfering is not allowed. At the elapse of thirty days, if the invitation was

specific of the wedding, it is so considered; and

if anonymous, it is not. Until what time is it considered wedding time in the case of a special invitation? Said R. Papa: Twelve months. And previous to the wedding, at what time is to be considered? From the time when they put the barley in the pestle for preparing beer.

"*Kratsin*." What festival is this? Said R. Jehudah in the name of Samuel: It is the day on which Rome has established her kingdom. But is there not a Boraitha: *Kratsin* and the day on which Rome has established her kingdom? (Hence *kratsin* must be something else.) Said R. Joseph: Rome has established her kingdom twice. Once in the days of the Queen Cleopatra and the second time in the day of the Greeks. As R. Dimi told when he came from Palestine: Thirty-two battles the Romans fought with the Greeks, and could not conquer them until they had conjoined the Israelites with them, under the stipulation that if the kings were of one nation, the great officers of the government should be taken from the others. And then the Romans sent a message to the Greeks: Until now we have tried to conquer you by battles, but now we will try to do it by a discussion. We may ask you, if one likes to conjoin a pearl with a diamond, which of them shall be the basis? And they answered: The pearl to the diamond. A diamond and an onyx? The diamond as a basis, was the answer. An onyx and the Holy Scrolls? The onyx to the Holy Scrolls, was the answer. Then they sent to them: "Now, the Holy Scrolls with the Israelites are with us." (And the Greeks were conquered.) Twenty-six years the Romans kept their promise to Israel, and thereafter they failed, and took the Israelites under their dominion. Whence do we know that they were true to their promise twenty-six years? From what was said by R. Ka'hana. When R. Ismael b. Jose was sick, it was sent to him that he should recite a few things which he related in the name of his father. And his answer was this: A hundred and eighty years before the Temple was destroyed, Rome had thrust her dominion upon Israel. Eighty years before the destruction, it was decreed by the sages that the land of the nations outside of Palestine should be subject to defilement. Forty years before, the Sanhedrin were exiled from their place and settled in shops. (Here is repeated from Sanhedrin, p. 121, concerning the establishment of fine.) The text says 180 years, and not more? Does not a Boraitha state in the name of R. Jose the great: Palestine was under the dominion of Persia 430 years; under the Greek, 180

years; the house of the Makabaius reigned 103 years and the house of Herod reigned likewise 103 years. Now, according to this chronology there will be 206 years for the dominion of Rome over Israel. [1] Therefore, we must say that the 26 years in which they were true to their promise are not counted under their dominion. There is a Tosephtha: The disciples of Elijah taught: The world will continue for six thousand years, the first two thousand of which were a chaos (*Tahu*), the second two thousand were of Torah, and the third two thousand are the days of the Messiah, and because of our sins many years of these have elapsed, and still he has not come. [2] Let us see from what time the two thousand of Torah are reckoned. Shall we assume it to be the time when the Torah was given to Israel? Two thousand years have not elapsed as yet since. [3] We must therefore say that it means the time mentioned in [Gen. xii. 5]: "And the persons that they had obtained in Charan." And it is known by tradition that Abraham was then fifty-two years of age. And from his fifty-second year until the Torah was given, 448 years elapsed, and that number will complete the number of 2,000 which were less at the time the Tana taught about the 2,000

years of wisdom. [4]

"*The accession to the throne*." Whose accession? If it means the king's, how should the following Boraitha be understood? "The ascending to the throne, and the day on which they select the king," which seems to be one and the same. We must say therefore, that by accession that of the king's *son* is meant. And the objection that it was not customary in Rome the son should inherit the throne, may be thus meant: That upon the request of the king, they were now to affiliate it to the son. As it happened with Antoninus (the Cæsar of Rome), who said to Rabbi: I would like that Asurius, my son, should reign after me, and also that Tiberius should be free from duty. But I am aware that if I will ask my people to do me one favor, they will, but not two.

[paragraph continues] What have I to do? Rabbi, who did not want to answer his question in words, told a man to mount upon the shoulders of another one, and having given him a dove, said to the other one, tell him who is mounted upon you to let the dove free. From this Antoninus understood that he had to request his people to proclaim his son king after him, and to instruct his son that he should set Tiberius free. Once the same said to Rabbi: The officers of Rome irritate me. (What shall I do?) Rabbi asked him to walk with him in the garden, and began to tear out the large radishes of the beds, planting smaller ones instead, by which Antoninus understood that he intimates the necessity of removing the old officers little by little and not all at once, so as to prevent a rebellion. But why did not Rabbi answer him in words? He was afraid that the officers of Rome would get wind of it and would harm him. The same Caesar had a daughter by the name Girah, and it happened that she sinned. Antoninus then sent to Rabbi white mustard, which is called in Aramaic *gargira* (whence Rabbi understood that something happened with Girah). He sent him in answer a seed by the name of *khusbratha*, the meaning of which in Aramaic is *khus bratha* (remove the daughter). Antoninus again sent him garlic, named in Aramaic *karthi*, from which Rabbi understood that he questioned him: Shall I cut off my child? And in answer he sent him lettuce, which is named *chassa*, which means have mercy with her.

Antoninus used to send to Rabbi frequently pieces of pure gold in leather sacks covered with wheat. And to the objection of Rabbi: I have too much of my own, he exclaimed: Leave them to him who will substitute thee, that he shall spend it to please those who will reign after me. From the house of Antoninus, there was a cave which reached the house of Rabbi, and each time that he went to the house of Rabbi through this cave, he would take with him two slaves. One he used to kill at the gate of Rabbi, and the other when he returned, at his own gate. He, however, told Rabbi that at the time of his visit no one should be found with him. It once happened that he found Hanina b. Hamana with him, and to his question: Did not I say that no one should be found with you during my visit? Rabbi answered: This is not a human being. Said Antoninus to Hanina: Go and call for me the slave who sleeps at the gate.

Hanina, however, found him dead, and he deliberated what to do: shall he go to tell him that he is dead? There is a rule that

one must not answer with degradation; should he leave him and go away? This would be a disgrace to a king. He therefore prayed, and the dead became alive, and he then sent him to his

master. Said Antoninus to Rabbi: I am aware that even the smallest of you is able to bring the dead to life. However, I want that when I come here, I should not find a living soul with you. He used to serve Rabbi in all his needs, and he once questioned him if he would have a share in the world to come. To which Rabbi answered, "yea." Said he: Does it not read [Ab. i. 18]: "And there shall not be anyone remaining of the house of 'Eseau." It means he who acts like 'Eseau. But, it reads [Ezek. xxxii. 29]: "There are Edom, her kings, and all her princes," etc. The answer was, it reads kings, but not all her kings. Princes, but not all of them. So also we have learned in the following: "Her kings, and not all of them, *i.e.*, exclude Antoninus b. Asudius. Her princes and not all of them, excluding K'tiha b. Shalum."

What happened with the latter? There was a Cæsar who disliked the Jews, and he asked the advice of his officers: Should he who has a fibre in his foot cut it off and be at ease, or should he leave it and be afflicted? And the advice of them all was, that he should cut it off and remain at rest. K'tiha, however, who was one of them, objected, saying: First you cannot get rid of all the Jews, as it reads [Zech. ii. 10]: "For as the four winds of the heaven have I spread you abroad, saith the Lord." [1] And secondly, your kingdom will be considered mutilated, and one that kills its own subjects. The king then said: Thy advice is true, but there is a law that he who concurs the king, must be thrown into the furnace. When they took him to be slain, he said: I bequeath all my property to R. Aqiba and his colleagues. A heavenly voice was then heard: K'tiha b. Shalum has a share in the world to come. Rabbi then wept and said: Here we have a man who has bought his world in one moment, while another one has to work for it all his life.

Antoninus served Rabbi; Adarkhan (a Persian Prince) served Rabh. When Antoninus departed, said Rabbi: Our union broke, and the same said Rabh when Adarkhan departed.

Unklus b. Klenimus embraced Judaism, and the Cæsar sent militia to take him. He, however, persuaded them, and they also became proselytes. He then sent other militia, warning

them that they should not converse with him. When they took him and were going, he said to them: I will tell you something; usually the torch-bearer carries the light in front of the litter, the chief *lecticarius* (behind the litter, carries the light) for the *dux*, the *dux* for the *hegemon*, the *hegemon* for the *comes*; but does the comes carry the light before the people? And they answered, No. Said he: The Holy One, blessed be He, carries light before Israel as it reads [Ex. Xiii. 21]: "And the Lord went before them in a pillar of cloud," etc. And they also became proselytes. The Cæsar then sent other ones after him, telling them not to talk to him at all. But when they took him, he saw a *mazuzah* on the doorpost, and said to them: Do you know what this is? They answered: No, but you may tell us. He then said: It is customary with a human king that while he is sitting inside of his palace his servants guard him outside. With the Holy One, blessed be He, it is the contrary. His servants are inside, and He guards them from the outside, as it reads [Psalm cxxi. 8]: "The Lord will guard thy going out and thy coming in," etc. Then these became proselytes, too, and the Cæsar did not send any more after him. It reads [Gen. xxv. 23]: "And the Lord said to her, two nations are in thy womb." Said R. Jehudah in the name of Rabh: This means Antoninus and Rabbi, upon whose tables were not missing lettuces, cucumbers and radishes, summer as well as winter. As the master said: The radishes masticate the food in the stomach, lettuces overturn it, and cucumbers extend the gut. But have not the disciples of Ismael taught that cucumbers are as harmful to the body as swords? This presents no difficulty, as one speaks of large ones, and the other of small ones.

"*The day of death*," etc. From this we see that R. Mair makes no difference between a death, to which burning is, and that to which it is not, used; in both cases as according to him, idols are worshipped there. Hence the burning is not a custom of the Amorites, which the Israelites are prohibited from. And the rabbis who oppose R. Mair hold that it is a custom. Why then do *we* use burning? As there is a Boraitha that one may burn things for the death of kings. Therefore, as to burning, we must say, all agree that it is not considered a custom, but an act of honor. The rabbis, however, hold that worship of idols takes place only in cases where there is burning. While according to R. Mair, it is worship in both cases. Where do we find that burning is used for kings? [Jer. xxxiv. 5]: "In peace

shalt thou die and as burnings were made for thy fathers," etc. And as they burn for kings, so also do they for princes. What they used to burn upon kings? Their beds and all the utensils which were used by the deceased. And it happened on the death of Raban Gamaliel the elder, that Unclus the proselyte burned clothing worth seventy *manas* coined in Zur.

"*The day of shaving his beard*," etc. The schoolman propounded a question: Does the Mishna mean the shaving of his beard and the surrounding of the hair (which they used as a worship for the whole year, and at the end they used to remove for the same purpose) or do they mean the removing of the hair? Come and hear the following: The day of shaving the beard and leaving the hair and also the day of removing it.

R. Jehudah in the name of Samuel said: There was still another festival in Rome which occurs once in seventy years, on which they would make a well man ride on a lame man, dress him in the garments of Adam, and place on his head the scalp of R. Ismael, etc.; on his neck was suspended gold of the weight of four *zuz*. And they cover the markets with it, heralding before him: *sakh quiriphlaster*. [1] The brother of our Lord is a deceiver. (They mean Jacob, the brother of Eseau, who deceived the latter by taking away the blessing of Isaac to himself.) He who saw this now may be rejoiced, as if not to-day, he will not see it any more (because it was once in seventy years), and they would finish with: Woe will be to him at the time the other will arise. But why does not the Tana of our Mishna count this feast? Because he counts only what is usual each year, and not what happens once in seventy.

R. Hanan b. R. 'Hisda or R. Hanan b. Rabha in the name of Rabh said: There are five houses of idols; the house of Beil in Babylon, the house of Nebu in Khursi, of Tharetha in Mapag, Zripha in Askkilon, and Nishra in Arabia. When R. Dimi came, he said: It was added to them the yared of An Bekhi of Ekha of the town of N'dbkah. All these houses were standard, and were worshipped the whole year. So said R. 'Hisda in the name of his father-in-law.

It is said above, that according to Samuel: In exile it is forbidden

only the very day of the festival, not the day before and after. But even on that day did not R. Jehudah allow R. Brona to buy wine and R. Giddle to buy wheat in the festival of the merchants? Such a festival is different, as it is not standard.

MISHNA *IV.*: In a city where the idol is placed, interfering is forbidden inside, but not outside. And if outside, the inside is not forbidden. May one go to the city at that time? If the way leads to the idol only, it is forbidden, but if it leads also to another place, it is not.

GEMARA: What is meant by outside is, *e.g.*, the bazaar of Gaza. Resh Lakish questioned R. Hanina: Is indeed the bazaar of Gaza permitted? And he answered: Did it not happen to you to be in Zur where you could see an Israelite and a Gentile putting their pots upon -one stove, and the sages did not object. The same is the case with the bazaar of Gaza; the sages did not care to forbid this because of these festivals.

"*May one go to the city,*" etc. The rabbis taught: A city in which an idol is placed, one must not enter, nor pass from it into another city. So R. Mair. The sages, however, say: The prohibition lies when the way is specified to that place only, but not otherwise. If a thorn sticks in one's foot at that place where the idol is standing, he must not bend to take it out, because it would seem as bowing to the idol; but if it does not seem so, he may. And the same is the case if one's money scattered near that place. From a spring which runs before the idol, one must not bend to drink for the same reason, unless it does not seem as if bowing to the idol. If an aqueduct is placed in the idol, one must not put his mouth to it, as it would seem like kissing it. However, it is not advisable to put one's mouth to any duct, as one may swallow a leech.

The rabbis taught: One may not drink water from rivers or ponds either with his mouth or with one hand (as he cannot discern anything in it with both hands; however, he can keep the water, and examine it). And if he did so, he would be responsible in case he swallowed a leech, which is dangerous, and this is a support to R. Hanina, who said: That for such an accident it is allowed to violate the Sabbath by warming water; and also R. Ne'hamaia allowed to do same in such a case. And R. Huna b. Jehoshua said: That if such happened, he may drink vinegar until the water is warmed. R. Idi b. Abin said: He who has swallowed a bee, cannot be cured. However, he may drink some strong vinegar, perhaps this will give him time to make his will.

MISHNA V.: If, during an idol festival in the city, some stores were there decorated, one must not buy from these stores, while he may from the others, as such a case happened in the city of Beth Shean, and the sages have so decided.

GEMARA: Said Resh Lakish: The prohibition lies only on those which are decorated with roses and myrtles, because the odor pleases him, but not to those which were decorated with some other fruit. And the reason is [Deut. xiii. 18]: "And there shall not cleave to thy hand aught of the devoted things." Which signifies that it is prohibited only to derive any benefit for himself, but not to benefit others. R. Johanan, however, maintains that the prohibition lies also on those which are decorated with fruit, as such conclusion can be drawn *a fortiori*. If deriving benefit from them is forbidden, so much the more should it be, to benefit them. An objection was raised from the following: R. Nathan said: It is usual in the day of the idol to herald: everyone who will decorate his head and the heads of his animals for the honor of the idol will be freed from duties for such and such a time. What bad then a Jew to do? Should he decorate, then he derives benefit from the idols; should he not, then he benefits them. From this it was said: He who is doing business in the market established for the idol, his property must be destroyed in such a manner that no one should be able to derive any benefit of it. We see, then, that to benefit is also

prohibited, and this contradicts Resh Lakish's above statement. Said R. Mesharshia b. R. Idi: Resh Lakish hold that the rabbis differ with R. Nathan, and the Halakha prevails with the majority, while R. Johanan holds that they do not differ. (Here is repeated from tract Minor Festivals and Abel Rabbathi, which we deem not necessary to translate.)

R. Jacob bought shoes on such a market day, and R. Jeremiah bought bread. Each of them bought from a private man, not from a storekeeper. However, each one thought that his colleague bought from a storekeeper, and rebuked each other because of the statement of Aba b. R. 'Higya b. Aba: That the prohibition to buy lies only from a storekeeper, but not from a private, as a private does not pay any duties. He also said that if R. Johanan were in such a place where they take duties from a private also, he would forbid to buy even from a private. The above-mentioned sages, however, bought their goods from such a private who was not established at that city, and, therefore, they were sure that he does not pay duties,

MISHNA *VI.*: The following are forbidden to be sold to the heathens: Fir-cones, white figs on their stems, frankincense, and a white cock. R. Jehudah, however, said: That a white cock may be sold among other cocks, and if singly, he has to cut off a finger of it, because the heathens do not sacrifice an animal of which an organ is missing. All other things may be sold anonymously, but if they say that they buy it for worshipping, one must not sell. R. Mair, however, forbids to sell them fine date trees, sugar-canes, and a variety of dates.

GEMARA: "*Frankincense,*" said R. Itzchak in the name of Resh Lakish: Only the best frankincense which is used for worshipping, and there is a Boraitha: That from all the things mentioned above, one bundle may be sold; and what is to be considered a bundle? Explained R. Jehudah b. Bathyra: No less than three manas worth. But why not fear perhaps the buyer will sell of it for worshipping? Said Abayi: We are told not to put a stone before the blind, ourselves, but we are not told that we should fear some other one should do same with our stone. (The prohibition is, because one must not assist a sinner, and worshipping idols is a sin even to the heathens.)

"*A white cock*," etc. R. Jonna in the name of R. Zara according to others quoting R. Zebid, said: If the buyer is searching for a cock anonymously, even a white one may be sold to him. But if he asks for a white cock, then such must not be sold. There is an objection from our Mishna. R. Jehudah said: It may be sold among others. Now, let us see the nature of the case. If the buyer ask for a white cock, then certainly it must not be sold even among others; we must then say that he asks for a cock in general, and notwithstanding this, is allowed to sell it among the others, but not singly, even according to R. Jehudah. And according to the first Tana, not even among the others? Said R. Nahman b. Itzhak: The Tanaim of our Mishna speaks of a case when the buyer mentioned a black, red and white one. According to the first Tana, as soon as white is mentioned, it must not be sold even among others, and according to R. Jehudah, it may, on the supposition that as the other colors are not for sacrificing, the white is not either. But if color was not mentioned at all, even according to the first Tana, the white may be sold among other colors. And there is a Boraitha in accordance with R. Na'hman b. Itzchak, as follows: R. Jehudah said: The prohibition is in force only when the buyer says, Sell me this white cock; but if he said, Sell me this

and other colors you have, it is not. And even in the former case, if the buyer has a sick person in his house; or he is preparing a banquet for his son, it is permitted. But does not our Mishna state above: That in such a case *that* man as well as that day *is* prohibited? Said R. Itzchak b. R. Mesharshia: R. Jehudah, by the word banquet means a dancing banquet, on which sacrificing is not used, and not a wedding banquet. R. Ashi propounded a question: If the buyer asks for a blemished white cock (which is not used for sacrificing), may one sell him a good white cock, or is it to be feared that because he knows that an Israelite would not sell him a white cock, he deceives him by asking for a blemished one; and should you decide that such is prohibited? Furthermore, how is the law in case he asks for a white one and, nevertheless, takes also a black and a red one; may one then sell him a white one also, as it is to be supposed that he does not take them for sacrificing; or here, also, it may be feared that he bought the other colors only because he needs the white one? This question remains undecided.

"*R. Mair said*," etc. Said R. 'Hisda to Abimi: We have a tradition that the tract Aboda Zara of Abraham the patriarch contained four hundred chapters. We, however, have only five of them, and even these we do not quite understand. What is the difficulty? R. Mair said: "A fine date tree," from which it is to be understood that a simple one *may* be sold. And there is a Mishna: Nothing must be sold of that which is attached to the ground. Answered Abimi: By a "fine date tree" the fruit of it is meant; and so also said R. Huna: *e.g.*, (*'Hazal nkshba nklas*) the species or variety of dates. When R. Dimi came from Palestine, he said in the name of Hamma b. Joseph: *Quryti* (that which is fit for a drink, made of cariota [cariotum]). Said Abayi to him: We have learned *nklas*, and we do not know what it is, and now you say *quryti*, and we do not know what it is either. Of what use is it, then, to us? And he answered: If you happened to be in Palestine and say *nklas*, no one would understand you, but if you said there *quryti*, they would understand, and show you what it means.

MISHNA *VII*.: In places where it is customary to sell small cattle (sheep, goats, etc.) to heathens, it is lawful to do so, but not in places where this is not customary. Large cattle must not be sold to them at all, nor calves nor foals of asses, either sound or broken-legged. R. Jehudah permits

the sale of the latter, and Ben Bathyra permits the sale of a horse. 1

GEMARA: From this Mishna it seems that it relies only upon a custom, but there is no prohibition, and in the first Mishna of the second chapter, we see that one must not place an animal in the inns of the heathens, etc. Said R. Eleazar: Even at those places where it is forbidden to place the animals in their inns, it is allowed to sell them. As usual the heathen takes care that his animals should riot be uprooted. And so also said R. Tachlipha in the name of Shila b. Abimi, quoting Rabh. As the latter retracted his first statement "that it must not."

"*Large cattle*," etc. R. Ada permitted to sell an ass through a middleman (also an Israelite). R. Huna sold a cow to a heathen. Said R. 'Hisda to him: Why did the master do so? And he answered: Because it seems to me that he bought it for the purpose of slaughtering. And whence do we know that such is permitted? From (Shebüth, v. 8), where the school of Shamai says: One must not sell a ploughing cow on the Sabbathical year. The school of Hillel, however, permits it, because one may buy it for slaughtering.

Said Rabba: What comparison is this? Concerning the Sabbathical year, there is no obligation that cattle shall rest then, while on the Sabbath one is obliged to give his cattle rest. Said Abayi to him. But where do we find that such is forbidden, even when there is an obligation? There is a Tosephta: The school of Hillel permits to sell a ploughing field in the Sabbathic year, because it may be supposed that one buys it to rest this year, but to plough it the next, and one is certainly obliged not to plough his field on the Sabbathic year. R. Ashi opposed: On the contrary, there is a Mishna [Shebüth, v. 6]: "Ploughing vessels must not be sold on the Sabbathic year," and we know of no obligation that one must give rest to his ploughing vessels. And therefore, says he: When there is a supposition that it can be used for another purpose, we may do so, even, when there is an obligation; but when there is no such supposition, it must not be done, even when there is no obligation.

Rabba sold an ass to an Israelite, who was suspected of selling it to a heathen. Said Abayi to him: Why have the masters

done so? And he answered: I sold it to an Israelite. And to Abayi's question: But he will sell it to a heathen, he answered: Does he sell to heathens only, if an Israelite will give him a good price will he not sell it? Abayi then objected to him from the following: In places where it is customary to sell small cattle to Samaritans, one may do so, but not in places where it is not customary; and this is only because they are suspected of selling it to the heathens, as all other reasons advanced were denied. (Hence, we see that one must not sell to a suspected one.) Rabba then ran after him three miles to return him, but failed to overtake him. Said R. Dimi b. Aba: As it is not allowed to sell to a heathen, so it is not allowed to sell to an Israelite either, who is a robber. What does the expression "robber" mean? If he is suspected that in case of an opposition, he would slay, then it is self-evident, for he is worse than a heathen; and if he is not suspected of such, why not sell to him? It speaks of one who is suspected of slaying only, then, when the owner runs after him to persecute. The rabbis taught: Shields must not be sold to those; others, however, taught they may. The reason of those who forbid is, that if they are short in weapons they use the shields instead; and the reason of those who permit is, that if they are short in weapons they run away. Said R. Na'hman in the name of Rabba b. Abuhu: The Halakha prevails with the latter. R. Ada b. Aba said: Lumps of wrought iron must not be sold to them, because they make weapons of it; but if so, should not spades be forbidden, too? Said R. Zabid: It means of Indian iron, which is useful for weapons. And now that we do sell to them is because the Persians are protecting us with their weapons. So said R. Ashi.

MISHNA *VIII*.: One must not sell to them bears, lions, and all such things by which the people can be injured. One must not conjoin himself in building their court houses (from the roofs of which they usually throw the one who is sentenced to death, to be killed), *gradus*, arenas and scaffolds. However, in building monuments and bath-houses, one may. But when they reached that chamber in which their idols should be placed, be must stop.

GEMARA: Rabbina propounded a contradiction. Our Mishna states: That only things which may be injurious to the people, whence it is to be understood that if not injurious, it does not matter, from the following: As one must not sell to them large cattle, so also must he not do with large beasts.

And even in those places where small cattle may be sold, large beasts must not. (We see, then, that even such that are harm. less must not be sold either.) And he explains that our Mishna speaks of a lame lion, and it is in accordance with R. Jehudah, who holds that such may be sold. R. Na'hman opposed: Who can say that the lion is placed under the category of large beasts; perhaps he is placed under the category of small ones. 1

"*Himself in building*." Said Rabba b. b. Hanna in the name of R. Johanan: There were three such palaces: for kings, for bath-houses, and for treasuries. Said Rabba: All of them are permitted.

The rabbis taught: When R. Eleazar was captured by the government, accusing him of being a *min*, he was brought to the *gradus*, and the *hegemon* (chief judge) said to him: A sage like yourself should engage himself in such a valueless thing. And he answered: The judge himself may testify that such is not the case. [The *hegemon* thought that he means him; he, however, meant the heavenly judge.] And he said: Because you trust in me, I swear by *Dimus* (his idol) that you are free from this accusation. When R. Eleazar returned home, his disciples surrounded him to condole him, but he did not accept it. Said R. Aqiba to him: "Rabbi, allow me to say before you one of the things you taught me," and he allowed him. Said he to him: "Rabbi, probably some explanations of the minim pleased you and you have accepted them, and therefore you were suspected and captured." Answered he: "Aqiba, you have reminded me; it happened once that I walked in the upper market of Ciporas, and I met one of the minim, named Jacob, of the village of Zachania and he said to me": It reads [Deut. xxiii. 19]: "Thou shalt not bring the hire of a harlot," etc. May then a retiring room for the high priest be built from such money? And I kept silent. Said he to me: So taught Jeshu. b. Panthyra. 2 It reads [Mich. i. 7]: "For from harlot's wages she gathered them, and for harlot's wages shall they be used again"; hence, money that comes from a dirty place, may be expended

on a dirty place, which explanation pleased me. It is for this that I was suspected and captured. And I confess that I have transgressed [Prov. v. 8]: "Remove far from her thy way, and come not nigh to the door of her house." "Remove from her," means from minunism and "come not nigh" means to government. Others, however, interpret same "remove far" etc. as to mean minunism, and "come not nigh" etc., prostitution, which place, according to R. 'Hisda, is prohibited to approach from a distance of four yards.

Mar. Uqba said: it reads [Ps. xxx. 15]: "The leech hath two daughters (crying) Give, give," *i.e.*, minunism and the government, which are never satisfied, the first of catching men to her belief, and the second, duties. R. 'Hisda in the name of Mar. Uqba said: The *Gehenna* cries, saying, "bring me in the two daughters, who always cry in this world": "Bring in to me, bring in to me." It reads [Prov. ii. 19]: "All that come unto her return not again, and they will not reach the paths of life." If they do not return again, they will certainly not reach the paths of life? It means, therefore, that they who repent and return from minunism, die that they might not return to minunism again. Does one die who repents minunism only and not other sins; is there not a Boraitha: It was said of Elazar b. Durdia who left not out one prostitute. He was once informed that there was a prostitute in one of the sea countries, who received a pocketful of dinars in reward, and he took this amount and passed seven rivers until he reached her. She, however,

caused him to repent. He then placed himself between two mountains saying; "O ye mountains, pray for me," to which they answered: "Instead of praying for thee, we must pray for ourselves" [Is. liv. 10]: For the mountain may depart, and the hills may be removed. He then said: "Heaven and earth, pray for me," and they also answered: "We have to pray for ourselves," as it reads [ibid. li. 6]: "For the heavens shall vanish," etc. The same answer he got from the sun and the moon of which it reads [ibid. xxiv. 23]: "And the moon shall be put to the blush and the sun be made ashamed." A similar answer he got from the stars and planets of which it reads in [ibid. xxxiv. 4]: "And all the host of heaven shall be dissolved." He then exclaimed: "I see that I can rely only upon myself," and having put his head between his knees, he wept until his soul departed. A heavenly voice was then heard, saying, "R. Elazar b. Durdia is prepared for life in the world to come."

[paragraph continues] Rabbi, when he heard this, wept, saying, "there is again one who bought his world in one moment while another one must work for it all his life." And again, it is not enough for those who repent, that they get a share in the world to come, but they are named also rabbis, as the heavenly voice said: Rabbi Eliazar, etc. [hence we see that he who has repented from sin, also died? Because he, Elazar was involved in such, it is similar to minunism].

R. Hanina and R. Jonathan were on the road and they met two thoroughfares, one leading to the gate of an idol and thc other to the gate of the prostitutes. Said one to his colleague: Let us go on that which leads to the idol as the evil spirit of idolators is killed. Answered his colleague: On the contrary, let us go on to that which leads to the prostitute so that we should overrule the evil spirit, and be rewarded. When they arrived to the prostitutes, the latter ran away to their homes. And his colleague asked him: "What was the reason you relied upon--[Prov. ii. 11]: 'Discretion [1] will watch over thee, understanding will keep thee.'"

The rabbis taught: When R. Elazar b. Partha and R. Hanina b. Tradian were captured by the government, said the former to the latter: "Happy are you, that you were captured because of one thing only, and woe is to me that I am captured for five things." Said he: Happy are you who are accused of five things and will be saved, woe is to me who am accused only of one thing shall be sentenced. The reason is, that you were occupied with both the Torah and with bestowing of favors, while I was occupied with the Torah only. This is in accordance with R. Huna who said elsewhere: He who is occupied with the Torah only, is similar to him who denies God. As it reads [II Chron. xv. 3]: "And many days (had elapsed) for Israel, (they being) without the true God." What does the expression "without the true God" mean? He who occupies himself with the Torah, but does not observe bestowing of favors, which is the main point of humanity. Was indeed R. Hanina b. Tradial not occupied in bestowing of favors? Is it not stated further on that he did? Yea, but not so as it was fit for his dignity. Elazar b. Partha was brought before the judges and they asked: "Why are you studying, and stealing? And he answered: If

one is a scholar, he is no warrior (robber) and if a warrior, he is no scholar, and as it is not true that I am a warrior, so is it also untrue that I am a scholar. Why then are you named master? And he answered: "I am the master of embroidering." They brought two coils before him and said to him: "Which is warp and which is woof?" A miracle occurred and a female bee set on the warp while a male bee on the woof and he said: This is a warp and this is a woof. "Why did you not

visit the *Bee abidon* (the house of discussion)?" And he answered: "I am too old, and feared perhaps I would be trodden down under the feet of the crowd." "Has it ever happened that old men should be trodden down in the mentioned house? Again a miracle occurred, and just at that time they were notified that an old man was trodden down in the house in question. "And why then have you freed your slave (which is forbidden)?" This never occurred. One of the crowd, however, arose to testify against him. Elijah then disguised himself as one of the consuls of the government and said to the witness: As in all the other things a miracle occurred, the same would occur also in this case and you would be considered an enemy of his and a liar. The alleged witness, however, did not listen and rose to bear his testimony. Meanwhile, a letter from one of the great officers which was to be sent to the Cæsar was handed to this man as messenger. While he was going, Elijah caught and threw him four hundred *parsas*, so that he did not return any more. Hanina b. Tradian was then brought before them and questioned why he occupied himself with the Torah, and he answered: Because I am so commanded by the Lord my God. The decree was then rendered that he should be burned, his wife killed, and his daughter to be taken to the house of prostitutes. [He to be burned, because he used to express the name Jehovah as it is written (and not Adonai as it is to be read instead), but why did he so? Did not Aba Shaul say (Sanhedrin, p. 265) that he who does so has no share in the world to come? He did so to learn which is allowed privately, but he did it also publicly. His wife to be killed, because she has not prevented his doing so by protesting; from this it is to be inferred that he who feels that his protests would effect and does not protest, is punished therefor. And his daughter to prostitution; because, according to R. Johanan, it happened once that she walked in the presence of the great people of Rome, and they exclaimed: How nice are the steps of this girl!

[paragraph continues] And from that time she took care of her steps to please the spectators.] When all the three went out from the court, they justified the decrees upon them. Hanina said [Deut. xxxii. 4]: "He is the Rock, his work is perfect," etc. His wife said: "The God of truth and without iniquity"; and his daughter said [Jer. xxxii. 19]: "Great in council, and mighty in execution (thou) whose eyes are open over all the ways of the sons of man." Said Rabbi: How great are these upright that to justify their decrees, the three verses of justification came to their mouths, at the time of so great a trouble.

The rabbis taught: When R. Jose b. Kisma became sick, R. Hanina b. Tradian called on him; the former said to him: Hanina, my brother, are you not aware that this nation is reigning by heavenly decree, and notwithstanding that she has destroyed the Temple, burned the palaces, killed the pious and put out of the way all the best of Israel, she is still in force. About you, however, I heard that notwithstanding the decree of the government, you occupy yourself with the Torah publicly, and you bear with you the Holy Scrolls at all time. Hanina then answered: The heavens shall have mercy with us. Exclaimed Jose: I am relating to you reasons, and you say, the heavens shall have mercy. I wonder whether the government will not burn you with the Holy Scrolls on fire? Hanina then said: Rabbi, what will become of me in the world to come? And Jose asked him: Did not some of the meritorious acts come to your hand? And he answered: The money which I prepared to celebrate Purim, I erred, thinking that it was of the charity treasury; I have distributed it to the poor, and thereafter I have not collected from the charity. If so, answered Jose, I wish that my share should be like yours, and my fate similar.

It was said that a few days later R. Jose ben Kisma departed, and all the great men of Rome

were going after his coffin, lamenting him greatly. On their return, they found Hanina b. Tradian studying the Torah publicly with the Holy Scrolls in his bosom; he was enwrapped in the Holy Scrolls and surrounded with branches of trees, which were kindled. And two woollen towels, soaked in water, were placed on his heart that his soul might not depart so quickly, and when his daughter said to him: Father, is it just, what I see done with you? He answered: If I were burned alone, it would be hard for me, but now that I am burned in conjunction with the Holy Scrolls, I am sure that He who will take revenge for the Holy Scrolls

will take revenge for me also. His disciples questioned him: What do you see now? And he answered: I see the letters are flying away from the parchment while they burned. They said to him: Rabbi, open your mouth, so that the fire should catch you, and he answered: It is better that my soul be taken by Him who gave it and not I myself shall cause it an earlier death. The executioner then said to him: Rabbi, if I will increase this fire and will take off the woollen towels from your heart, would you bring me to life in the world to come? To which he answered, Yea. He then asked him to swear, which he did. Immediately he increased the fire, took off the towels, and his soul departed. The executioner himself then jumped into the fire. A heavenly voice was then heard: Hanina and the executioner are prepared for life in the world to come. Rabbi then wept, saying: There is one again who bought his world in one moment, etc.

Bruria, the wife of R. Mair, was a daughter of Hanina b. Tradian, and she said to her husband: It is a disgrace for me that my sister should be in the house of prostitution. He then took with him a τριχαβος full with *dinars*, and said: I will go there, and if she is yet pure, a miracle will occur. He disguised himself as a military rider, visited her, asking her to listen to him. She, however, gives him many reasons, and finally tells him that in this place he will find many who are more beautiful than she. He then convinced himself that she answered the same to everyone, and went to her guardian asking him to accept the money he brought for transferring her to him, saying: The half of the *dinars* will be sufficient to bribe the officers of the government, and the other half will remain for you. And to his question: What should I do when the half will be spent and they will still persecute me? he answered: You will then say, God of Mair, help me, and you will be saved. And whence do I know that so it is? Mair answered: I will convince you immediately. There were dogs who devoured people, and the guard stimulated them upon Mair, and he pronounced God of Mair, answer me, and they kept aloof from him. The guard then delivered to Mair his sister-in-law. Finally, the government got wind of it, and the guardian was brought to the gallows to be hanged, and as soon as he pronounced, God of Mair, help me, he was thrown down uninjured. And to the question, What is it? he related before all what happened. The government then engraved the picture of R. Mair on the gate of Rome,

commanding that he who should see such a face should deliver him to the officers. It happened that he was once seen, and they ran after him; he then ran away to a place of prostitution, and Elijah disguised himself as one of the prostitutes and embraced him. The officers then said that it must be someone else, as Mair would not do so. Thereafter, Mair ran away to Babylon, according to some, because of this occasion, and according to others, because of that which happened to Brura. [1]

(Concerning arenas and circuses) Tanaim differ in the following: An Israelite must not visit

arenas, because they are considered a place of scorners. R. Nathan, however, permits it for two reasons: first, one should be able to save an Israelite if it happened that he was placed there by animosity; and secondly, if it happened that an Israelite should die there, the visitor may then be a witness, so that the widow of the deceased should be allowed to remarry.

The rabbis taught: One must not go to the theatres and circuses, because at those places they gather up money for the idols; so R. Mair. The sages, however, say: In the places where they gather, it is prohibited because of the suspicion of idolatry. And in those where they are not gathering, it is prohibited, because they are considered places of scorners. R. Simeon b. Pazi lectured [Psalm i. 1]: "Happy is the man who walketh not in the council of the wicked, and standeth not in the way of sinners, and sitteth not in the seat of scorners." If he had not walked how could he stand, and if he did not stand how could he sit, and if he did not sit, how could he scorn? It means as follows: That if he had walked, he will finally stand, and if stood, he will finally sit and scorn, and concerning him it is said [Prov. ix. 12]: "But if thou art a scorner, thou alone will have to bear it." Said R. Eliezar: He who scorns brings chastisements upon himself as [IS. xxviii. 22]: "And now be ye no longer scornful, lest your bonds be made strong." And Rabha said to the rabbis (his disciples): I beg you not to scorn so that chastisements shall not come upon ye. And R. Ktina said: Even his food becomes lessened, as it reads [Hos. vii. 5]: "(Because) he joineth his hand with scorners." (Here is repeated about the same matter from Last Gate, p. 30.) R. Simeon b. Pazi lectured again: "Happy is the man who walketh not" to

the theatres and circuses of the heathens, "standeth not in the way of sinners," that is, he who does not stand as a spectator at bestial contests (arranged by the Romans). And "the sitting of scorners" beget contention. And lest one say: As all the above I have not done, I may engage my time in sleeping, therefore, "But whose delight is in the law of the Lord."

R. Samuel b. Na'hman in the name of R. Jonathan said: "Happy is the man who walketh not," etc., means Abraham our father, who was not conjoined with the generation of separation, who were wicked, as [Gen. xi. 3]: "Let us make bricks," etc. "In the way of sinners," etc.--he did not stand with Sodomites of whom it reads [ibid. xiii. 13]: "But the men of I Sodom were wicked and sinners," etc.--"with scorners"--he did not associate himself with the Philistines, who were "scorners," as [Judges xvi. 25]: "Call for Samson that he may make sport of us."

It reads [Psalms, cxii. 1]: "Happy is the man that feareth the Lord." Man, and not woman? Said R. Amram in the name of Rabh: Happy is he who repents when he is still young. And R.. Jehoshua b. Levi said: Happy is he who conquers his evil spirit, as a heroic man; "that greatly delighteth in his commandments." Said R. Eliezar: In his commandments, but not in the reward for them. And this is what a Mishna in Aboth states: Be not like slaves who serve their master because of reward, but as the one who serves him not to receive any reward. "In the law of the Lord is his delight," said Rabh: *i.e.*, one should always study the law to which his heart is inclined. Levi and R. Simeon, the son of Rabbi, were sitting before Rabbi reading one book of the Bible, and after finishing Levi said: Bring us "Proverbs." And R. Simeon said: Bring us "Psalms." He overruled Levi, and "Psalms" was brought. When they came to the verse, "In the law of the Lord is his delight," Rabbi stopped and said: One has to study only what his heart is inclined to. Said Levi to him: Rabbi, with this you have given us permission to stop studying. R. Abdimi b. Hama said: Him who occupies himself with the Torah, the Holy One, blessed be He, grants his desire. Rabha said: At the time one begins to study, the Torah is named the Holy

One's, but after studying, it is considered to be his (the student's); as first it is written the law of the Lord, and thereafter, in his law. And be said again: One shall first study, and thereafter deliberate, as the above-cited verse reads. The same said again: One shall study,

although he forgets; shall study, although he does not understand it well. 1 (Here is repeated from Sanhedrin, p. 369, and from Erubin, p. 126. See there.) It reads [Psalm i. 3]: "And he shall be like a tree replanted by rivulets," etc. Said the disciple of Janai: "Replanted and not planted" signifies that he who receives his knowledge from one master, does not see any blessing in his studies. Said R. 'Hisda to his disciples: I would like to tell you something, but I am afraid you will leave me: He who studies always from one master, does not see any blessing. They then left him and went to the college of Rabba, who, when he heard the above reason, said to them: This is true only concerning reasons and ingenuity; but as for traditions, it is better to learn them from one master, so that they should not be metamorphosed in different versions. Tanhum b. Hanilai said: It is advisable to divide one's years into three parts: one-third for the study of Scripture, the second, Mishna, and the third, Talmud. But does one know how long he has to live? It means, he should do it every day.

"The fruit in its season . . . does not wither," said Rabha: It signifies that if the fruit is given in its season, then its leaves will not wither; but if not, the succeeding verse (4) applies to both the teacher and pupil.

R. Aba in the name of R. Hunna, quoting Rabh, said [Prov. vii. 26]: "For many deadly wounded hath she caused to fall," means a disciple who, though not as yet fit, decides questions; "very numerous were slain by her," means the contrary: he who is fit to do so and does not. And until what age? Till he reaches his fortieth year. But has not Rabha decided questions in his youth? It was because there was no greater scholar than he. Aba b. Ada in the name of Rabh, or b. Aba in the name of R. Hamnuna, quoting Rabh, said: Even the gossip of a scholar is to be studied, as it reads: "And its leaves shall not wither."

R. Joshua b. Levi said: The following is written in the Pentateuch, repeated in the Prophets, and thirdly in the Hagiographa: He who occupies himself with the Torah is prosperous in all his undertakings. In the Pentateuch [Deut. xxix. 8]: "Keep ye therefore the words of this covenant, and do them, that ye may prosper in all that ye do," repeated in Prophets [Jos. i. 8]:

[paragraph continues] "This book of the book shall not depart out of thy mouth; but thou shalt mediate therein day and night, in order that thou mayest observe to do according to all that is written therein; for then shalt thou make thy way prosperous, and then shalt thou have good success." And thirdly in Hagiographa [Psalm i. 2, 3]: "But whose delight is in the law of the Lord, and who doth meditate in his law by day and night. (3) And he shall be like a tree planted by rivulets of water, that yieldeth its fruit in its season, and the leaf of which doth not wither; and all that he may do shall prosper."

R, Alexander heralded: Who wants to live, who wants to live? And a big crowd surrounded him. He then referred them to [ibid. xxxiv. 14-16].

"*Where the idols should be placed*," etc. Said R. Eliezar in the name of R. Johanan: If however, he has built, the reward of it is valid. Is this not self-evident? It is only the preparation for the idol to which both R. Ismael and R. Aqiba agree that they are not forbidden, unless the idol is already worshipped? Said R. Jeremiah: The Mishna means that even if he has made the idol itself, the reward is valued. But this is correct only to him, who holds that when an Israelite made an idol for himself, it is forbidden even before it was worshipped; but of a heathen, it is not, unless worshipped. But to him who holds that the same is the case with the idol of a heathen, what can be said? Said Rabba b. Ula: The Mishna refers to the finishing touch, which completes the idol, and the reason is: what made the idol ready? The last touch, which in itself is not worth the smallest coin (*a perutha*), and therefore it is not forbidden. From this it may be inferred that the Tana holds the obligation to pay a laborer, counts from the beginning till the very end of the labor, and not only after its completion.

MISHNA *IX*.: One must not manufacture ornaments for an idol--*e.g.*, necklaces, nose-bands and rings. R. Eliezar, however, maintains that for reward one may. Nothing must be sold to them while attached to the ground, but after it was cut off, one may. R. Jehudah said: He may also sell with the stipulation to cut it off afterward.

GEMARA: Whence is this deduced? Said R. Jose, from [Deut. Vii. 2]: "Nor favor them," [1] means, he shall not give

him a rest in the land; we have learned similarly in a Boraitha, with the addition that it also means: You shall not give him such which shall make them merciful in the eyes of others. (Here is repeated from Chulin, p. 114 b.) The above statement is a support to that which Rabh said: It is forbidden to say: How nice is this female heathen? An objection was raised. R. Simeon b. Gamalien, being once on the steps of the Temple mountain, happened to see a female heathen who was a great beauty, and he exclaimed: "How great is thy work O Lord!" And it happened also to R. Aqiba that, when he saw the wife of Tornus Rupus, he laughed and wept. Laughed, because he saw that she would become a proselyte, and he would marry her; wept, that such a beauty must be buried under earth? This does not contradict Rabh, as it was only a benediction, which one has to recite by seeing nice creatures. [1] R. Joshua b. Levi said: Modesty is the greatest of them all, as it reads [Is. lxi. 1]: "Hath anointed me to announce good tidings unto the meek," it does not read to announce pious men, but meek; hence modesty is greatest.

"*One must not sell*." The rabbis taught: One may sell them a tree with the stipulation to cut it off, and he cuts it immediately, so R. Jehudah. R. Mair, however, says: Only that which is already cut. The same is the case with hay, and also with flour. According to R. Jehudah, it may be sold to harvest, and according to R. Mair that which is already harvested. It was necessary to learn their points of differing in all the three, as one from the other could not be inferred (we omit the reasons, as of little importance). The schoolman propounded a question.. May one sell them a cow with the stipulation to slaughter it? Shall we assume that the above things R. Jehudah permits, because they are not under the control of the heathen so that he is not able to prolong time? But in the case of a cow which he takes immediately, he may prolong the time a good deal until slaughtering, and this even R. Jehudah will not allow. Come and hear the following: One may sell a cow with the stipulation of slaughtering, and the heathen has to do it immediately. So R. Jehudah, while R. Mair permits only the sale of the slaughtered.

MISHNA *X*: Houses must not be rented to the heathens in Palestine, not to speak of fields. In Syria, however, houses are permitted to be sold, but not fields, and out of Syria houses may be sold and fields rented. So R. Mair. R. Jose, however, said: In Palestine, houses may be rented, but not fields, in Syria houses sold, and fields rented; out of Syria, everything may be sold. However, even in the places where renting is allowed, it must not be for residence, as the idol is brought there, which is against [Deut. Vii. 26]: "And thou shalt not bring an abomination in thy house." A bath-house must not be rented at any place because it is named after the owner, who is an Israelite (and he can be suspected of heating it himself on the Sabbath).

GEMARA: What is meant by the expression "not to speak of fields"; is it because two things would be neglected, resting the fields and tithe from the growth? The same would be with the houses also, resting, and the neglect of a *mazuza*? Said R. Mesharshia: The *mazuza* is not an obligation upon the house, but upon him who lives in it.

"*In Syria houses*," etc. Let us see; why is selling forbidden? Because it is considered as the land of Israel. Why, then, is renting permitted? Renting even in Palestine is only as a safeguard that one should not come to sell; and a safeguard to a safeguard we do not decree. But is not renting fields in Syria also a safeguard to a safeguard, and is nevertheless forbidden? This is not considered a safeguard, as the Tana holds that the land which was taken away by an individual (not by the people of Israel at large) is considered, nevertheless, to be the land of Israel. Hence, against fields upon which two things would be neglected, as said above, the rabbis decreed; but this is not the case with houses.

"*In Syria houses are permitted*," etc. For the just-mentioned reasons. "*R. Jose . . . in Palestine, houses*," etc. Also for the same reason.

"*In Syria houses sold*," etc. It is because he holds that the land which was taken by an individual is not considered the land of Israel, and, therefore, only against fields they decreed for the reasons adduced above, but not against houses.

"*Everything maybe sold*," etc. Because it is far from Palestine, no decree was rendered. Said R. Jehudah in the name of Samuel: The Halakha prevails with R. Jose. Said R. Joseph: Provided it does not make a whole neighborhood of heathens,

[paragraph continues] And there is a Boraitha: That less than three families is not considered a neighborhood.

"*Where renting is allowed*," etc. From this we infer that not in every place renting is allowed. Hence, the unnamed Mishna is according to R. Mair; as according to R. Jose, renting is permitted in every place.

"*Put not a bath-house*," etc. There is a Boraitha: R. Simeon b. Gimalia said: One must not rent his bath-house to a heathen because the bath is named after the owner and the heathen does his

labor on Sabbath and holidays (and people may think that the Israelites themselves do this). But how is it to a Samaritan? It may be rented, although he works on the minor festivals? On minor festivals, we Israelites also are permitted to heat baths. But let us see why it is permitted to rent a field to a heathen, although he does labor on Sabbath? Because people know that the gardener is doing work for himself. Why not say the same concerning a bath-house? It is because usually a field is hired to a gardener, which is not the case with bathhouses. There is another Boraitha: R. Simeon b. Eliezar: One must not rent his field to a Samaritan because it is named after him, and the Samaritan works the field during the minor festivals. But how is it with a heathen? It is allowed, because people know that he does it for himself; why not say the same concerning a Samaritan? R. Simeon b. Eliezar does not consider the reason of a gardener at all, and his reason why it is allowed to a heathen is that if we tell him that be should not work, he will listen to, which is not the case with a Samaritan, who thinks that he knows better than woe do. There were fields of safran in partnership of an Israelite and a heathen; the heathen worked on Sabbath and the Israelite on Sunday, and Rabha has permitted to do so. Rabbina questioned him from the following: "An Israelite and a heathen who have hired a field in partnership, the Israelite must not say to the heathen: You take your share on Sabbath and I on a week day, unless it was so stipulated at the time they started. However, when they come to make their accounts, it is not permitted to the Israelite that he should take his share from the Sabbath labor." Rabha became ashamed; thereafter, however, it was announced that such was stipulated when the partnership was started.

The schoolman propounded a question: How is it if there was no stipulation? Come and hear: "If such a stipulation was made at the time when started, it is allowed"; whence it may

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be inferred, that if there was no stipulation, it is prohibited. But if so, how is the latter part to be understood? "When they come to make the account, the Israelite must not take his share of Sabbath," from which it may be inferred that without an account, he may accept it, although there was no stipulation. In view of this, from this Boraitha nothing can be taken for a support.

Footnotes

1:1 The term for festivals in the Mishna, is "*Aidehen*" and Rabh and Samuel are discussing this term at some length. According to one it is *Aidehen* and means misfortune while to the other it is "*Edihen*," and means "witnesses." It is because the sages of the Mishna hesitate to name the holidays of the idolaters with the term "festivals." We, however, deem it not necessary to translate this discussion, as it is unimportant.

1:2 The term for people here, is *Leum* and by an analogy of expression it is inferred to mean kingdom.

4:1 Leeser's translation does not correspond.

5:1 The term for this word is *sh'hok*, which means both sport and smile, hence the objection.

5:2 The translation of this verse does not correspond at all, it is therefore of no use to quote it.

6:1 Leeser's translation, according to the sense, does not correspond with the Talmud who takes it literally.

9:1 We do not quote the passage, as the translation of it does not at all correspond.

12:1 In text many things on which the Halakha prevails according to R. Jehoshua b. Kar'ha are gathered, though they do not belong to this tract at all; and as all of them are mentioned, each in its proper place, they are omitted here.

13:1 The word complaint is termed by *shicho*, which means "prior" according to the Talmud concerning Isaac in [Gen. xxiv. 63] where the same term is used.

16:1 We do not quite understand how to make out 206 years according to this account. Rashi's explanation does not suffice, and all other commentators keep silent. The Gamara itself was in doubt, concerning this account, as R. Papa said in text. We have, however, omitted it, leaving the whole affair to the historian.

16:2 There are a few lines repeated here from Sanhedrin, p. 303, to which we could not refer because of the continuation in text.

16:3 The reader must not forget that this was said fourteen centuries ago.

16:4 This account remains very complicated, notwithstanding Rashi's attempt to explain it. And as it seems to us unimportant, we have omitted the whole discussion.

18:1 For the explanation, see Taanith, p. 4.

20:1 To the explanation of these peculiar words, we give the following of Jastrow Dictionary: an alleged proclamation made in Rome on the occasion of a sort of secular game, and intended as a satire of Eseau (Rome) on his brother Jacob (Judaism). The interpretations of commentaries (sakh *number* of years predicted for the coming of the Messiah, or sakh *brother*) are unsatisfactory.

25:1 This Mishna is repeated from tract Passover, p. 90. We did not omit because it is a Mishna and because of the discussions of the Gemara here.

27:1 The text discusses here whether an animal in convulsive movement before death is considered alive or dead, which is inserted here not in its proper place, nor is it of importance and therefore omitted.

27:2 In Tosaphta Chulin (ii. 24) it states that Eliazar said: Jacob has related to me things of

minim in the name of Jeshu b. Panthyra, and I was pleased with them. But it is not mentioned what it was, and we are in doubt whether it means the joke in text. This may serve as an answer to the criticism of the "Open court" Vol. 16, pp. 475-477.

29:1 The term for discretion in Hebrew is *me zema* the last word is the term for prostitution and the Talmud explains it as it would be written *men zema* which means from prostitution.

33:1 The text does not say what happened to her. Rashi explains that she committed suicide because of a discussion between her and her husband, who finally conquered her.

35:1 In text it is inferred from (Ps. cxix. 20). However, the translation does not correspond and therefore the quotation is omitted.

36:1 The term for favor in Hebrew is *chanina*. *Chanina* means also rest. Hence the deduction.

37:1 Here is repeated from many tracts, especially from Middle Gate, p. 227, and a whole Mishna front Tract Shekalim vi, which we have omitted. The statement of R. Joshua b. Levi in text belongs to the Mishna Shekalim vi, which states that piety is greater than all other good things.

Next: Chapter II

CHAPTER II.

RULES AND REGULATIONS CONCERNING PLACING OF CATTLE WITH HEATHENS, ACCEPTING CURE FROM THEM, AND CONCERNING THINGS WHICH MAY AND MAY NOT BE BOUGHT FROM THEM.

MISHNA *I*.: Cattle must not be placed in the inns of the heathens because they are suspicious of having sexual intercourse with them. [1] And for the same reason a female must not stay alone with them, because they are suspected of insult; nor should a male stay with them alone, because they are suspected of bloodshed.

GEMARA: There is a contradiction from the following: One may buy from them cattle for sacrificing without fear that it was instrumental in the committing of a crime or that it was separated as a sacrifice to an idol, or that it was itself worshipped. Now it is correct that there is no fear of its being separated or worshipped, for if such were the case, he would not sell it. But why should not be feared its said relation to a crime, and they not suspected? Said R. Ta'hlipha in the name of R. Shila b. Abina, quoting Rabh: With his own cattle, the heathen is not suspected, because of his economy that the cattle should not become uprooted. This, however, can apply only to female cattle; what can be said concerning male cattle? Said R. Kahana: Here, also, the same reason may apply, as the cattle become meagre from such employment. But why must one not place female cattle in the inns which are under the control of females? Said Mar Uqua b. Hama: Because the heathens are wont to visit the wives of their neighbors, and if such visitor happened not to find the hostess, be may substitute the cattle.

[paragraph continues] And to the question of the schoolmen: How is the law with fowls? R. Jehudah in the name of Samuel, quoting R. Hannina, said: I have seen a heathen who bought a goose in the market, sexually intercoursed with it, chopped, roasted and consumed it, and R. Jeremiah of Diphte said that he had witnessed a similar affair by an Arabian.

Rabbina said: There is no contradiction between the Boraitha cited, which does not consider suspicion, and the Mishna which does, as the Mishna speaks of starting, which is forbidden and the Boraitha speaks of a case which was already done, where suspicion is no sufficient basis for forbidding. And whence do we know that such difference is considered? From a Mishna which states that a woman captured by a heathen because of a civil case is allowed to her husband, but not if captured because of a criminal case. We see, then, that although our Mishna forbids a woman to stay alone with a heathen, yet the act having taken place, she is allowed to return (hence there is a difference between starting an act and an act done). But perhaps the reason why she is allowed to her husband when captured because of a civil case, is that the heathen was afraid to touch her lest he lose his money? And such seems to be the case, as the second part states: If because of a criminal case, she is not allowed; and to this discussion nothing is to be

added. R. Pdath said: The difference between our Mishna and the Boraitha is to be explained thus: The former is in accordance with R. Eliezer of a Mishna (par. II. i), and the Boraitha is in accordance with the rabbis thereof, as according to the former, the red cow must not be bought from a heathen; and according to the latter, it may. And the reason is the above suspicion which, according to one, is considered, and according to the other, it is not. But perhaps there is another reason, as Shila explained. The reason of R. Eliezer is, in the following [Numb. xix. 2]: "Speak unto the *children of Israel* that they bring unto thee a completely red cow," which signifies that the children of Israel shall bring, but not other nations? This cannot scarcely be the reason, as the latter part states: "And so has Eliezer invalidated all the sacrifices which were bought from heathens," to which the above reason cannot apply, as concerning them such an expression is not used. But perhaps the rabbis differ with R. Eliezer concerning the red cow only because of its great value, which the heathens would not like to lose; but concerning other sacrifices, would they agree with R. Eliezer? Nay;

in the first place there is a Boraitha: One may buy from them cattle for the purpose of sacrificing, which would be neither in accordance with the rabbis, nor with R. Eliezer; and secondly, it states there plainly: The rabbis have answered to R. Eliezer with [Is. lx. 7]: "All the flocks of Kedar . . . upon my altar." But is, indeed, "suspicion" the reason of R. Eliezer's statement; is there not a Boraitha: The sages then said to R. Eliezer: We know of a case that the red cow was bought from a heathen by the name of Dama or Remetz; and he answered: This is no evidence, as the Israelites had watched over it from the time it was created? R. Eliezer's reason was both--the expression concerning a red cow cited above, and also "suspicion."

R. Ami and R. Itz'hak of Naf'ha were sitting on the balcony at the latter's. One of them began with the last part cited above, "so has R. Eliezer invalidated all the sacrifices," etc., to which the other quoted that which his colleagues answered him, with the above-cited verse, "all the flocks of Kedar," etc., and R. Eliezer rejoined: This is no evidence either, as the nations about whom the cited verse reads will all become proselytes in the future. R. Joseph infers this from [Zeph. iii. 9]: "Yea, then will I change unto the people a pure language, that they may all call on the name of the Lord." And to the opposition of Abayi R. Joseph: Perhaps it means that they will repent from idolatry only? Abayi R. Joseph answered: The verse ends with: "To serve Him with one accord." So taught R. Papa. R. Zebid, however, reverses the order of Abayi R. Joseph, adding that both quoted the verse of Zeph.

It reads [I Sam. vi. 12]: "And the cows went straight forward," 1 etc. What does this expression mean? Said R. Johanan in the name of R. Mair: They sang a song. And R. Zuthra b. Tubiah, in the name of Rabh: They have straightened their faces to look upon the ark, and sang a song. What song was it? R. Johanan in the name of R. Mair [Ex. xv. 1]: "Then sang Moses," etc. And R. Johanan himself said [Is. xii. 4]: "And ye shall say on that day, Give thanks unto the Lord, call on his name," etc. And R. Simeon b. Lakish said [Psalm xcviii. 1, 2]: "Oh sing unto the Lord a new song; for he hath done wonderful things; his right hand and his holy arm have gotten him the victory. (2) The Lord hath made known his salvation, before the eyes of the nations hath he revealed his

[paragraph continues] Righteousness." And R. Elazar said [ibid. xcix. 1]: "The Lord reigneth," etc.

And R. Samuel b. Na'hmani [ibid. xciii. 1]; and R. Itzchak of Naf'ha said: They sang: Sing, sing, thou ark, arise in this great journey thou that art decorated with golden embroidery which is placed in the great palace, adorned with the best ornaments. R. Ashi taught the saying of R. Itz'hak to [Numb. x. 35]: "And it came to pass, when the ark set forward that Moses said," etc. And what did Israel say? The above that R. Itz'hak said: It reads [Jos. x. 13]: "And the sun stood still . . . written in the book of Yashar." What is the book of Yashar? Said R. Hyya b. Aba in the name of R. Johanan: The book in which the birth of Abraham, Isaac and Jacob, who are named Josharim (the upright) is meant, as it reads [Numb. xxiii. 10]: "May my soul die the death of the righteous." And where is the hint to be found there [Gen. xlviii. 19]: "And his seed shall become a multitude of nations." This occurred when Jehoshua "stopped the sun." [Jos. x. 13]: "And the sun stood still in the midst of the heavens, and hastened not to go down about a whole day." How many hours? Said R. Jehoshua b. Levi: Twenty-four; it was running six and stopped six, running six, and stopped six, four times; R. Elazar said: Thirty-six, it ran six and stopped twelve, etc. Samuel b. Na'hmani said: Forty-eight, it ran six and stopped twelve; ran six and stopped twenty-four. According to others, the above differ in the additional hours of that day. There is a Boraitha: As the sun stopped for Joshua, so did it stop for Moses, etc. (See Taanith, p. 52. The rabbis taught the whole paragraph.) An objection was raised from [ibid., ibid. 14]: "And there was no day like that before it or after it"? If you wish, in the time of Moses it stopped for fewer hours, or if you wish, it may be said that in Moses' time there were no hailstones mentioned [ibid., ibid. ii].

It reads [II Sam. i. 18]: "The bow, behold it is written in the book of Yashar." (What does Yashar mean? Said R. 'Hyye b. Aba in the name of R. Johanan: "Genesis" as said above.) And where the allusion? [Gen. xlix. 8]: "Thy hand shall be on the neck of thy enemies." Which is the weapon that needs the hand against the neck? It is the bow. R. Eliezer, however, maintains that the book of Yashar means Deuteronomy. And why is it named Yashar? Because there is written [vi. 18]: "And thou shalt do that which is right (Yashar) and good in the eyes of the Lord." And where is the

allusion? [Xxxiii. 7]: "Let the power of his hands." And which is the weapon to which both hands are needed? The bow. R. Samuel b. Na'hmani said: It is the book of Judges in which [xvii. 6]: "Every man did what seemed right (Yashar) in his eyes. And where is the allusion? [iii. 2]: "To teach them war." And to which weapon, teaching is needed? The bow.

"*A woman must not stay alone*," etc. Let us see how is the case? If it means she must not stay alone with one heathen, is this, then, allowed with an Israelite? Is there not a Mishna: One must not stay alone even with two women? And if it means she should not stay with even three of them, is there a similar case allowed with three licentious Israelites? Is there not a Mishna: A woman may stay with two persons? And Jehuda, in the name of Samuel said: Provided they are righteous men, but, if they were licentious, even if they would be ten, she must not, as it once happened that a woman was alone with ten and was insulted. It means even when his wife is with him. As to Israelite's, his wife guards him, which is not the case with a heathen. But why not say that because they are suspected of bloodshed? Said R. Jeremiah: It speaks of a respectable woman whom they feared to kill. R. Idi, however, maintains that there is no fear of bloodshed, even with any woman, for usually her weapons are upon her (they insult, but do not kill). And what is the difference between the two reasons? If the woman was respected by the government, but not among her colleagues, then, according to R. Jeremiah, there is no fear for

bloodshed, but of insult, and according to R. Idi the same is the case with any woman. And there is a Boraitha in accordance with R. Idi--viz.: A woman, although her weapon is usually with her, must nevertheless not stay alone with heathens, because they are suspected of insult.

"*A male must not stay alone*," etc. The rabbis taught: If an Israelite while on the road, happened to be accompanied by a heathen, he should so manage that the heathen should be on his right hand. Ismael b. R. Johanan b. Broka, however, said: If the heathen was provided with a sword, the Israelite shall manage that he shall be on his right side, and if with a cane, on his left side (so that it shall be easier for the Israelite to protect himself). If they have to ascend or to descend, the Israelite must not be on the bottom and the heathen on the top, but the contrary. Nor shall the Israelite bend himself in the heathen's

presence, for fear the heathen may break his skull. If the heathen question him to what place he goes, he shall make the distance longer as did Jacob our father to Esau the wicked [Gen. xxxiii. 14]: "Until I come unto my Lord to Se'ir." And (17) reads: "And Jacob journeyed to Succoth" (which was much nearer than Se'ir). It happened to the disciples of R. Aqiba while on the road, to meet robbers, who questioned them, Where are you going? And they answered, To Akhau. However, when they reached the City of Khzib they separated. The robbers then questioned them, Whose disciples are you? And they answered, Of R. Akiba. To which the robbers rejoined, Well is to Akiba with his disciples, who are careful not to be afflicted by bad men. R. Mnashi was on the road to the City of Thurtha and he met thieves, who asked him where he was going, and be said, To Pumbadithe. When they reached Thurtha he separated from them. Said they, You must be a disciple of Jehuda the deceiver. To which he rejoined, Do you know him (R. Jehuda) and dare to call him deceiver? I put you under ban. The thieves then engaged in thievery for thirty-two years, but did not succeed, so that they were afterward compelled to come to R. Mnashi asking for a release. One of them, who was a weaver, did not care to come to ask for a release, and was finally devoured by a lion. Come and see the difference between the thieves of Babylon and the robbers of Palestine (the latter had praised the disciples who separated from them, and the former scolded him).

MISHNA *II*.: A daughter of an Israelite must not confine a heathen, because she confines a person to idolatry; however, a heathen may confine an Israelite. The same is the case with nursing, an Israelite must not nurse the child of a heathen, while the latter, being under the control of the former, may do so.

GEMARA: The rabbis taught: One must not confine a heathen because she brought up a person to idolatry, nor must a heathen confine an Israelite, because they are suspected of bloodshed; so R. Mair. The sages, however, say: The latter may, in the presence of others, but not when she is alone in the confinement. R. Mair, however, does not allow this because she may put her hand on the skull of the child and kill it, while the others standing by would not notice it. As it happened, a heathen woman who reproached her colleague of being a Jew--confiner--daughter of a Jew confiner, and she answered: Is it

not sufficient the injury I have done to the Jews by decreasing them, killing their children at the birth, and I shed their blood like water. The rabbis, however, maintained that this counts for

nothing, as she boasted only.

"*An Israelite must not nurse*," etc. The rabbis taught: One must not nurse a child of a heathen, because she brings up a person to idolatry, neither must a heathen woman nurse a Jewish child, because she is suspected of bloodshed; so R. Mair. The sages, however, say the latter might do so in the presence of others, but not when she is alone with the child. R. Mair, however, maintains that even in the presence of others she may smear the breasts with poison and kill the child, while the others present will not notice it. A contradiction was raised from the following: A Jewess may confine a heathen for the reward but not gratuitously? Said R. Joseph: For reward it is permissible, in order to avoid animosities. The rabbis taught: An Israelite may circumcise the child of a heathen for the purpose of proselytism, but not for the purpose of curing, and a heathen must not do so to an Israelite because he is suspected of bloodshed. The sages, however, maintain that the latter may do so in the presence of Israelites, but not when he is alone with the child. Does indeed R. Mair hold that a heathen must not circumcise an Israelite? Is there not a Boraitha: A city in which there is no Jewish physician but a Samaritan and a heathen, the heathen shall circumcise and not the Samaritan; so R. Mair. R. Jehuda, however, maintains the converse, that the Samaritan should have the preference? Reverse the names in the cited Boraitha; but how can you say that Jehuda permits a heathen to do the circumcision? Is there not a Boraitha: R. Jehuda said: Whence do we know that a circumcision which was performed by a heathen is invalid? From [Gen. xvii. 9]: "But thou, for thy part, shalt keep my covenant" (which means thou and not a heathen). Therefore, the names in the above-cited Boraitha are correctly placed and must not be reversed, as it speaks of an established physician, who would not spoil his reputation by doing harm to an Israelite, as R. Dimi, when he came from Palestine, said in the name of R. Johanan: That an established heathen physician may be trusted to do everything for an Israelite. But how can you say that R. Jehuda permits a Samaritan to circumcise an Israelite? Is there not a Boraitha: An Israelite may circumcise a heathen, but a Samaritan must not do so to an Israelite, because he is doing this in the name of his idol

in the Mount Gerism. And R. Jose said to him: Where do we find that circumcision must be done in the name of Heaven, etc. (hence, we see that R. Jehuda does not permit a Samaritan). Therefore we must say that the names of the Boraitha in question are to be reversed, and the contradiction from one statement of R. Jehuda, to the other presents no difficulty, as R. Jehuda, of the contradictory Boraitha means R. Jehuda, the prince, whom we heard stating elsewhere just the same as the Boraitha teaches.

It was taught: Whence do we know that a circumcision made by a heathen is invalid? Daru b. Papa in the name of Rabh said: From the above-cited verse [Gen. xvii. 9], and R. Johanan maintains from [ibid., ibid. 13]. And what is the difference between them? If a woman is commanded to circumcise her child, according to Rabh she is not, and according to R. Johanan she is. But is there one who holds that a woman is not commanded to circumcise, does it not read [Ex. iv., 25]: "Then took Zipporah a sharp instrument," etc.? Well, she has done this through a messenger; or, if you wish, it may be said that she began and Moses himself finished.

MISHNA *III*.: One may employ their (the heathens') services for curing his personal property, but not for curing the body. However, cutting hair by them is prohibited at any place; so R. Mair. The sages, however, maintain: One may do so in a public place, but not when he is alone with him.

GEMARA: What do personal property and body mean? The former is, *e.g.*, his cattle, and body means human being. And this is what R. Jehudah said: No imperfection, not even so much as the mark of bleeding, must be taken from them. Said R. Hisda in the name of Mar Uqba: If, however, the heathen said to him that such and such a medicine is good, and such and such is bad, he may use his advice, since the heathen thinks: as he asks me, so will he ask some other one, and should I give him wrong advice, I would be ridiculed. Rabba, according to others, R. 'Hisda, in the name of R. Johanan said: If there is a doubt as to whether the sick will recover or die, the heathen must not be taken for curing, but if it is certain that he will die, it is allowed. But why let it be feared, perhaps he will foster his death? This is not to be taken in consideration. And whence do we know that so it is? From [II Kings, vii. 9]: "If we say, We will enter into the city, then is the famine in the city, and we will die"; and they did not take into consideration

that should they fall in the hands of the enemy, they would be killed immediately. An objection was raised from the following: One must not interfere with the Minim and must not cure himself by them, even to delay death for but a few hours.

As it happened to ben Dama, the son of Ismael's sister, to be bitten by a snake, Jacob, of the village of Skhania, came to heal him with the name of Jesus, but R. Ismael did not allow. The patient, however, said to him: Ismael, my brother, let him cure me and I will bring you evidence from the Scripture that such is allowed. But ere he finished his soul departed, and R. Ismael exclaimed: Well is to thee, ben Dama, that thy body was pure and thy soul left thee in purity, and thou hast not transgressed the decision of thy colleagues, who say [Eccles. vii]: "Him who breaketh down a fence--a serpent will bite him." With Minismus it is different, as it is attractive and "he may be induced to follow them." But what has ben Dama to say? [Lev. xviii, 5]: "And he shall live with them," but not he shall die with them. R. Ismael, however, maintains that such is allowed only privately, but not in public; as we have learned in the following Boraitha: R. Ismael used to say: Whence do we know that if one is told to worship idols, under the threat of being killed, that he may worship and not be killed? From the above-cited verse--"he shall live," etc. But lest one say that this may be done publicly also, therefore it is written [ibid. xxii. 32]: "And ye shall not profane my holy name." Rabba b. b. Hanna in the name of R. Johanan said: A wound inside the body must not be cured by them. R. Johanan, however, when he suffered from scurvy, went to a matron of Rome for a cure (see Tract Yomah, p. 128, par. "R. Mathiah b. Hersha," the whole story, 229, par. "Whatsoever"). But how did R. Johanan do so? Was it not said that an infliction which is inside the body must not be cured, etc? With a well-known man, like R. Johanan, it is different, as they will fear to barm him. But was not R. Abuhu a well-known man, and Jacob the Minn prepared a medicine for him to place on his shoulder, and if not for R. Ami and R. Assi, who burnt (cauterized) his shoulder to get the poison out, he would have died? Yet with R. Johanan it is different, as he himself was an established physician. But was not R. Abuhu also the same? As the latter was very much respected by the government, and was badly annoying the Minim by his frequent discussions, he (Jacob the Min) made up his

mind to do with him what Samson did [Judges, xvi. 30]: "Let me die with the Philistines."

Samuel said: An open wound (sabre cut) is dangerous, and one may violate the Sabbath for the

purpose of curing it. The remedy to stop the blood is, cress-dishes mixed with vinegar, of which the patient shall partake. R. Saphra said: An enabta (carbuncle?) is a forerunner of the angel of death. How is it cured? Put upon it a rue (plant) with honey, or radishes with strong wine. While these remedies are being prepared, put meanwhile on the sore a white or red grape according as the sore is white or red. Rabba said: A tumor is a sure symptom of inflammation. And what is the remedy against the tumor? Hit upon it with the fingers sixty times, then open it crosswise. If, however, the tumor has a white spot on the top, all this is not necessary, as it is not dangerous then.

R. Jacob suffered from pain in the abdomen, and R. Ami, according to others R. Assi, advised him to take seven red grains usually found in the wash-houses, to put them in the linen collar of an old shirt, which he should bind with a cord made of the hair of a cattle; then he should immerse it in white pitch and burn it, the ashes thereof he should apply to the sore place and relief will ensue. While the preparation of this is going on, he may meanwhile apply the kernels of blackberries. This remedy, however, is effective only in case of external pains; for internal abdominal pains grease the sore place with the molten fat of a goat that has not yet born any offspring, or burn three pumpkin leaves dried in the shade and apply the ashes; also almond-worms or olive-oil and wax may be applied, in summer on linen, in winter on cotton.

R. Abuhu suffered once from an ear-ache, and R. Johanan advised him, according to others he was told in the college, what R. Abayi, too, heard later from his mother, that the loins have been created only for curing ear-ache. In like manner said Rabba: I was told by the physician, Miniumi, that all fluids are injurious to the ear, except the *water from the loins*. Thus, take the kidney of a woolless sheep, cut it crosswise, place it on burning coals and collect the water that begins then to flow from it. This water, when it is neither too cold nor too warm, syringe into the ears. Or one may rub in the cars with the molten fat of a big chafer. The following is another good remedy for ear-ache: Fill the sick ear with olive-oil, then make of wheat-straw seven wicks, and with the hairs of a cattle attach

to them the peel of garlic; kindle these wicks and put them into the olive-oil in the ear, taking, of course, precautions against burning the patient; when one wick has been thus burnt to the end, take the next one, etc., until the pains cease. However, seven ordinary wicks would also do, if dipped in hayseed-oil (?); but in this case one must be heedful of the wind. Here is yet another remedy: Put into the ear dyed unbeaten cotton and, taking heed of the wind, keep the ear over the fire. Also this remedy is recommendable: Take a rush that was cut down one hundred years ago, fill it with mineral salt, burn all this and strew the ashes in the ears. It must also be noted that for secreting cars the remedies must be dry, while for aching ears that do not secrete, moist remedies must be used.

Rabha b. Zutra said in the name of R. Hanina: It is allowed to straighten the ears on Sabbath. Observed R. Samuel b. Jehudah: Provided it is done with the hand and not with medicine. According to others the converse is allowed, *i.e.*, to straighten the ears on Sabbath by means of medicine and not by the hands, for it is to be feared that with the hand one may make a wound.

R. Zutra b. Tubia said in the name of Rabh: He who is in danger of losing an eye is allowed to accept cure on Sabbath. This, however, was understood to be allowed only when the medicine was prepared *before* Sabbath; but to prepare it on Sabbath and carry it through the public

grounds is not allowed. Hereupon said one of the rabbis, named R. Jacob: I have heard it from R. Jehudah that it is allowed under the said circumstances to prepare the medicine on Sabbath and carry it through the public streets. R. Jehudah allowed to cure eye-diseases on Sabbath. Thereupon said R. Samuel b. Jehudah: Who will listen to this R. Jehudah who thus profanes the Sabbath? But it happened that he himself got sore eyes, and he sent to consult the same (R. Jehudah) as to whether or no it is allowed (to cure them on Sabbath)? And the answer came back: Everybody is allowed, but not you (who were so indignant at my decision); was it, you think, my own opinion? Nay; it was the master, Samuel, whose servant got an inflamed eye on Sabbath; she cried the whole day and none paid attention to her, and on the morrow her eye jumped out of its orbit; then said the master, Samuel, in his sermon: It is allowed to cure on Sabbath eye-diseases if there be danger of losing one's eye; and why? Because the optic nerves are dependent on the heart.

What kind of eye-diseases is allowed to cure on Sabbath? Said R. Jehudah: A secreting eye, a wounded eye, an eye covered with blood, and an inflamed eye. In the beginning of the sickness as well as during its becoming better, it is not allowed to apply medicine on Sabbath; nor is it allowed to use on Sabbath such medicine as would tend to sharpen the eye-sight.

R. Jehudah said: The sting of a wasp, the pricking of thorns, if the wounds caused by either are swelling, likewise an eye-disease complicated with fever, are all dangerous. The high temperature in these cases must, therefore, be reduced by the application of radishes, while low temperature is banished by that of sea-radishes; to apply the one for the other entails danger. The sting of a lizard must be cured with warm medicines, while that of a hornet with cold ones; to reverse the medicines, the one for the other, also here entails danger. Likewise are recommendable warm medicines for the pricks of thorns, and cold ones for the chapped skin; to reverse is dangerous.

He who had his blood let should not eat almonds, nor sit near the fire. He who has diseased eyes should not have his blood let, for it is in this condition dangerous. After eating fish one should wait two days before having his blood let; and after bleeding one should not eat fish for two days. Fish on the third day after bleeding is harmful.

The rabbis taught: After bleeding one should not eat milk, cheese, onions, almonds; but if one has carelessly eaten some of these, he should, according to Abaye, drink a little wine mixed with vinegar. But in this case, one must go outside of the city for his natural exigencies, and notably toward the east, in order that the ill odor might not reach the city (being carried off by the east wind).

R. Jehoshua b. Levi said: It is allowed to cure on Sabbath the *onkly*. What is *onkly*? Said R. Aba: It is the *stomachus* of the heart (or the fleshy valve of the heart, called *nibla*). And how is this disease cured? By an ointment prepared. of cumin, soap, mint (fern), wormwood, cedar-blossom and hyssop. All these are to be dissolved in wine, and is good for the heart; your sign is [Psalm, civ. 15]: "*Wine* gladdens the human heart." Against flatulence (mach) use the same, but dissolved in water; your sign is [Gen. i. 3]: "And the wind (*mach*) of the Lord flits over the water." Against pains in the uterus (*kuda*) use the same dissolved in beer, and your sign is [ibid. xxiv. 15]: She had her pitcher (*kuadah*) on her shoulder."

R. Aha b, Rabba prepared of the above herbs a powder of which he dissolved about a handful and drank it. R. Asha used to prepare a powder of each of these herbs and drink a dose from each. Said R. Papa: I had tried all this but without avail, until an Arabian merchant advised me to fill a new pitcher with water, put therein a spoonful of honey, leave, then, all this in the open air over night and drink it next morning; I have done so, and it really helped me.

The sages taught: Six things are good for all diseases, and they are as follows: green colewort, sea-radishes, the water from dry *sisin* (a Syrian plant), the stomach, the uterus (of cattle), and the raw meat of a cow. Other sages add yet small fishes, which possess besides medicinal yet the property of making one fecund and robust. Furthermore, ten things there are that are detrimental to the sick--viz.: meat of an ox, fat, roasted meat, poultry, roasted eggs, almonds, a hair-cut, a bath, cheese, and liver. Others add yet nuts and gourds.

The disciples of R. Ismael taught: Why are gourds called *keshuin* (heavy)? Because they are as harmful and heavy to the human body as daggers.

"*And cutting hair*." The Rabbis taught: An Israelite who cuts his hair by a heathen, may look in the looking-glass (so that the heathen shall be afraid to kill him). An Israelite who cuts the hair of a heathen, when reaching the surrounding of his hair, which is usually for the purpose of worshipping the idol, may drop his work. The master said: An Israelite who cuts his hair by a heathen shall look in the looking-glass. Let us see how is the case: If it was in public then to what purpose is the looking-glass, and if privately, what can the looking-glass help (if the heathen would like to kill him suddenly)? It means privately; but as soon as he has a looking-glass in his work-shop, it seems to be a respectable place, so that there is no fear of killing. R. 'Hana b. Bizna used to cut his hair by a heathen, in the by-streets of N'hardea. At one time he said to him, 'Hana, 'Hana, thou hast a fine neck for the shears. Said he: I may take this as a punishment for not following R. Mair's decision. (Says the Gemara): Did he then follow the decision of the rabbis? The rabbis also permitted in public only, but not privately. He thought that the sideways of Nahardea are considered public, as many people pass there.

MISHNA *IV*.: The following things of the heathens are prohibited, and the prohibition extends even to the deriving of

any benefit therefrom--viz.: wine, vinegar, and pieces of wine extract, and skins in which there are holes opposite the heart. R. Simeon b. Gamaliel adds: Provided the hole is made round, but not if lengthwise. Meat which is entered for the idol is not prohibited, but which comes out of it is prohibited, as it is equivalent to the offerings of the dead. Such is the decree of R. Aqiba. With pilgrims while going for worship one must not interfere, but with those who are coming from, one may.

The bags of the heathens, the pitchers which contain wine of an Israelite, are forbidden to derive any benefit from them. So R. Mair. The sages, however, maintain: They are forbidden, but not to derive benefit. The pressed grapes of which wine was made as well as their kernels are prohibited for any benefit. So R. Mair. The sages, however, forbid only the wet ones, but not the

dry ones. Fish-oil and cheese of the village Aunyiki made by the heathens are, according to R. Mair, prohibited for any benefit, and according to the sages the using is prohibited, but not the benefit. Said R. Jehudah: R. Ismael questioned R. Jehoshua while they were on the road: Why have the sages prohibited the cheese of the heathens, and he answered: Because they use the rennet of a carcass to curdle milk. Said he to him: The rennet of a burnt-offering is more rigorous than of a carcass, and nevertheless a priest, who is not so particular, consumes it while raw. This, however, the sages did not admit, but even they allow no benefit therefrom, although its use, when made, is no transgression. Answered R. Jehoshua: The prohibition was because they curdle their milk with the rennet of the calves, which was sacrificed to the idol. Thereupon rejoined R. Ismael: If such is the case, why was not prohibited all benefit thereof? R. Jehoshua, however, was not prepared to answer him this question, and called his attention to another thing: Ismael, my brother, how do you read ([Solomon's song, 1, 2]) Thy caresses? And he answered: I read thy as masculine. To which Jehoshua answered: It is not so, as further on (3) it reads feminine, and this is evidence that also verse 2d uses thy in the feminine.

GEMARA: Whence is it deduced that wine is prohibited? Said Rabba b. Abuhu from [Deut. xxxii. 38]: "They that ate the fat of their sacrifices, and drank the wine of their drink-offerings," *i.e.*, as from a sacrifice no benefit must be derived, the same is the case with wine. And whence do we know that such is the case with a sacrifice itself? From [Psalm cvi. 28]:

[paragraph continues] "And they joined themselves unto Ba'-al-pe'or, and ate the sacrifice of the dead," hence, as from a dead one no benefit must be derived, so is it with a sacrifice. But whence does it follow that no benefit is to be derived from a dead? From the analogy of expression "there," which is to be found in [Numb. xx. 1]: "And Miriam died there," and in [Deut. xxi. 4]: "And shall break there," hence, as from the latter no benefit must be derived, the same is the case with a dead. But whence do we know that so is the case with the heifer? Said the disciples of R. Janai, in verse 8 of that passage it is mentioned: "Atone for thy people," etc., and from the sacrifices which atone, it is known no benefit must be derived.

"*Wine-vinegar*," etc. Is this not self-evident, that because the wine becomes sour the prohibition no longer holds? Said R. Ashi: It comes to teach that if there was sour vinegar in the hands of the heathens, there is no necessity to seal it with two seals, one on the top of the other as it is necessary for wine; and the reason is that the heathens do not offer vinegar to the idols, nor is the fear, perhaps they will change it, to be taken into consideration, as it is to be supposed that the heathen will not trouble himself to break the seal for this purpose. Said R. Ilai: We have learned elsewhere that cooked wine of the heathens is prohibited, and to the objection that this is self-evident, as the prohibition is not annulled by cooking, R. Ashi said: It means to teach us that our cooked wine seals with one seal, and in the possession of a heathen is valid for the reason stated above.

The rabbis taught: Cooked wine and *aluntith* (oil wine) of the heathens are prohibited; however, an aluntith of an Israelite when in the possession of a heathen is allowed. As we have learned concerning Sabbath the difference between oil-wine and honey wine (see Sabbath, p. 316, par. "One may make honey wine"). Rabba and R. Joseph both said: Wine mixed with water is not affected when it remains uncovered overnight, and to cooked wine, the prohibition of offering-wine does not apply.

The schoolman propounded a question: How is it with cooked wine? Does the uncovering affect it or not? Come and hear: Jacob b. Ibi has testified that the case of uncovering does not apply to cooked wine.

R. Janai b. Ismael once took sick and R. Ismael b. Zirud and the rabbis came to make him a sick-call, and while sitting there they questioned if the case of uncovery applies to cooked wine. Said Ismael b. Zirud to them: Resh Lakish said in the

name of a great man, who is R. Hyye, that to such the case of uncovery does not apply. And to their question as to the validity of this Halakha, R. Janai b. Ismael made a gesture with his hand as if saying, "upon me and my neck."

Samuel and Ablat were sitting together, and cooked wine was brought for them. The latter, who was a heathen, removed his hand in order not to touch the wine and make it unvalid. Said Samuel to him: It was already said that concerning cooked wine no fear of offering is to be entertained.

The servant of R. Hyye had uncovered cooked wine and she came to ask her master, to which he answered, it was decided: to cooked wine no uncovering applies. The servant of Ada b. A'habah had uncovered the mixture of wine and came to ask his master if it is valid, to which he answered: It is decided that the case of uncovering does not apply to mixed wine. Said R. Papa to him: Provided the wine is mixed with much water, but if not, the snake drinks of it, hence such is affected by uncovery. Is that so? It happened with Rabba b. R. Huna, who was on a boat and had wine with him. Once, perceiving a snake coming to partake of it, he said to his servant: Blind the eye of this by making the wine unfit. And he took a little water and put it in the wine; the snake then turned back. The answer is that for raw wine the snake usually risks his life to get it, which he does not do for mixed wine.

But was it not told of R. Janai or Bar Hedia who, while in the City of Akhburi, saw the people there drink mixed wine, the remainder of which they put in a pitcher, covered it with cloth, and put it aside; then they saw a snake putting water into the pitcher until it became full, and then drinking the wine which was coming up to the top of the water (hence you see that a snake drinks out of mixed). The explanation is that it may drink from that which is mixed by itself, but not from that which is mixed by some one else. Said R. Ashi, according to others, Mesharshia: Should one rely upon suppositions in a case which is dangerous? (Therefore there is no difference between mixed and raw wine; neither must be used if it was uncovered, for fear that a snake drank from it.) Said Rabba: The Halakha prevails thus: to mixed wine both uncovering and offering apply, while to cooked wine neither applies.

The servant of R. 'Helkiha b. Tubi had uncovered a *kista* of water and fell asleep nearby; when he came to ask his master if

this water may be used, he answered: The snakes are said to fear a sleeping man, provided it is in the day-time, but not at night. (Said the Gemara): In reality it is not so. The supposition that a

snake fears a sleeping man is not substantiated, and the time makes no difference, whether day or night. Rabh vowed not to drink water at the house of Gentiles, saying: They are not careful to cover the water, but in the house of a widow he drank, saying that although she does not know the Halakha of uncovering, she nevertheless uses it, because she did so while her husband was alive. Samuel, however, used to do the contrary. At a widow's house he would not drink, saying that, as she is without her husband, she usually does not care to cover; while the Gentiles, although not particular in covering, are at least particular in cleanliness, and they cover the water that nothing should fall in and spoil it. According to others Samuel did not drink even from the last. R. Jehoshua b. Levy said: There are three kinds of wine to which the case of uncovering does not apply--viz.: (*a*) wine that is both sweet and bitter; (*b*) that is so strong that it breaks each leather bag, and (*c*) wine that will become sweet when warmed in the sun. Rabha said: To wine which begins to become sour the first three days, both cases of uncovery and offering apply, but if after three days, neither case applies. The sages of Nahardea said that even in the latter case uncovery applies, as it happens sometimes that a snake drinks such.

The rabbis taught: To fermenting wine no uncovery applies; and for how many days is it considered fermented? For three days. Nor does it apply to cress-dish (chopped cress mixed with wine or oil). However, the men of exile consider uncovering also here, provided in the mixture vinegar was not used. To Babylonian Khutha'h it does not apply; however, the men of exile do apply it.

Said R. Menashi: If there are traces of snake bites in it, it must not be used. Hyah b. Ashi in the name of Samuel said: To dripping water uncovering does not apply. Added R. Ashi: Provided the dripping is constant. Samuel said: To the opening of a fig when it is torn off, uncovering does not apply, and this is in accordance with R. Eliezer in the following Boraitha, who says: One may eat grapes and figs at night without fear, as it reads [Psalm cxvi. 6]: "The Lord preserveth the simple." R. Saffra said in the name of R. Jehoshua of Rome: There are three kinds of poison coming from the mouth of the snake:

that of a young one sinks, of a middle-aged, remains in the middle, and of an old one, floats on the top. Shall we assume that the snake becomes weaker as it grows older, in spite of this Boraitha: There are three who become stronger as they grow older--viz: a fish, a snake, and a pig? Yea, their strength is stronger, but the poison is weaker. But to what purpose is the teaching that "from a young one it sinks," etc.? To that we have learned in the following Boraitha: From a barrel which became uncovered, although nine persons drank from it and remained alive, the tenth person must not drink, as it once happened that nine men drank from such and did not die, the tenth, however, drank and died; and R. Jeremiah said: That was because the poison sank and was at the bottom. The same is the case with a melon, which became uncovered; one must not partake of it even if nine persons before him partook of it and were not harmed, as it once happened that nine were not harmed and the tenth, who partook of it, died.

The rabbis taught: One must not pour water which has been uncovered in the public streets, and must not water cattle with it. The rabbis taught: One must not pour uncovered water into public grounds, nor wetten therewith one's own house, nor knead clay, or water one's own or the neighbor's cattle therewith, nor wash his face, hands, or feet therewith. But, have we not learned in another Boraitha that he may water his *own* cattle with it? This means but his cat, as the poison of a snake does not barm a cat, which devours a snake. But if so, why not water with it

the cat of his neighbor? Because it becomes meagre, and his neighbor might want to sell it at that time. His own, however, be may, because in time it recovers and becomes fat again.

R. Assi in the name of R. Johanan, quoting R. Jehudah b. Bathyra, said: There are three kinds of wine which are prohibited:

From that which was sacrificed to the idol, one must derive no benefit, and its size of an olive defiles a rigorous defilement him who touches it. Wine of the heathen in general (about which it is not certain that it was sacrificed) is also forbidden to derive any benefit, and the size of a quarter of a "lug" defiles just as other beverages which do not defile men and vessels by touching. But from the wine which was deposited with a heathen by an Israelite benefit may be derived, but to drink it is forbidden. But is there not a Mishna: Fruit deposited with a heathen are considered as the heathen's, concerning tithe on

the Sabbathical year? It speaks of the case when the heathen has separated a corner for the wine deposited. But if so, why is it forbidden to drink? We are aware of the following: R. Johanan happened to be in the city Prud (the place where Bar Kapahara was residing), and he asked: Is someone aware of the teaching of Bar Kapahara which would be new to me? And R. Tau'hum of the same city taught before him: If one has deposited his wine with a heathen, he may drink it. To which R. Johanan applied [Eccles. xi. 3]: "On the place where the tree falleth, it will remain," *i.e.*, although the sage is dead, his fruit (teaching) remains. Hence we see that even to drink the wine is allowed? Said R. Zera: This presents no difficulty. R. Johanan is in accordance with R. Eliezer, who permits the drinking also (Sabbath, p. 263), while the Boraitha is in accordance with the sages who do not. R. Hiya b. R. Hiya b. Na'hmani in the name of R. Hisda, quoting Rabh, or quoting Zebra, according to others R. Hisda, said: Abba b. Hama told me that Zehri said: The Halakha prevails with R. Elezer. R. Elazar said: Everything which is deposited with a heathen is preserved if it was scaled with two seals, except wine, which is not considered preserved even with two seals. R. Johanan, however, maintains that two seals preserve wine, too. Both, however, are in accordance with the rabbis. One holds that the rabbis differ with R. Elezer in case it only had one seal, and the other holds they differ with him, even regarding two seals. What is meant by a seal within a seal? Said Rabha: If the cork in the opening of a barrel was besmeared with clay and scaled, it is considered a seal within a seal, but not if there was only one of the two.

If there was a basket over the barrel attached to it, it is considered a seal within a seal, but not otherwise.

If one leather bag full of wine was placed in another, mouth downward, it is considered two seals, but not, if mouth upward. However, if the opening was placed inside, and the outer bag was tied and scaled, it is considered a seal within a seal.

It was taught: Why did the sages forbid date-beer of the heathens? Rami b. Hama in the name of R. Itz'hak said: As a safeguard against intermarriage. R. Na'hman, however, said: Because of uncovering. Uncovering what? If the barrel, we, too, do uncover, and if during the process of brewing, we also do the same. It speaks of those places where they used to clear the water before using it for the beer, and at that time they

usually uncovered it. But if so, let, then, old beer be permitted, as there is no fear of poisoning (which would not have let it become old)? The *old* is forbidden as a safeguard, lest one use the *new*.

R. Papa used to stand outside of the store of the heathen and drink his beer; R. Abayi drank it when it was brought to his house, but not elsewhere; and the reason of both was the safeguard against intermarriage. The latter, however, was more particular, and did not wish to at all interfere with the heathens. Samuel b. Bisna happened to be in the City of Marguan (the Israelites of which were suspected of drinking wine of the heathens), and he drank neither wine nor beer, which was brought to him. It is correct that he did not drink wine, because of the suspicion that it was sacrificed, but why not beer? As a safeguard to wine.

Said Rabh: The beer in question is permissible to everyone, but Hyia, my son, must not drink of it, because he is sick, and it may harm him. Said Samuel: All the reptiles have poison, but their poison does not kill, that of a snake excepted.

The same said to Hyia b. Rabh: Come and I will tell you the good things which were said by your father. The sick heathens who become swollen, and whom uncovered water does not harm, surely ate reptiles, so that their bodies contain poison, which prevents the harming effects of the snake poison. R. Joseph said: The beer-vinegar is forbidden, because they mix into it the dregs of wine which was sacrificed. Said R. Ashi: If it was brought from the storehouse, it is permissible, for if it were mixed with dregs it would be spoiled. (See appendix.)

"*The sages did not admit*." There is a contradiction from the following: The wine which was placed in the bags of goatskins by the heathens must not be consumed, but one may derive benefit from it. R. Simeon b. Guda, however, testified before the son of Rabban Gamaliel that his father drank of such, in the City of Akuh, and they (the sages) admitted it? The expression not admitted in the Mishna means the other sages, but his son has admitted. And if you wish, it may be said that to one Tana by the name of Gudah, he has not admitted, but to the Tana Gudeah he has admitted.

"*Skins in which there are holes*." The rabbis taught: What is considered a holed skin? If it is torn opposite the heart, and is round, and if there is a "Kartub" (a small liquid measure equal to 1/64 of a lug) it is prohibited, but not if such was not

found. Said R. Huna: Provided it was not salted, but if salted it may be supposed that the salt has absorbed the blood.

"*R. Simon b. Gamaliel*," etc. Said R. Joseph in the name of R. Jehudah, quoting Samuel: The Halakha prevails with him.

"*Meat entering for the idol*," etc. Who is the Tana that holds thus? Said Hyia b. Abba in the name of R. Johanan: It is not in accordance with R. Elazar, who said elsewhere that in general

the thought of a heathen is directed to his idol.

"*Meat which comes out*," etc. And what is the reason? Because if it was already with the idol, it is impossible that there was no sacrifice. And this is in accordance with R. Jehuda b. Bathyra of the following Boraitha: Whence do we know that a sacrifice to the idol defiles in a tent? From [Psalms, cvi. 28]: "And they joined themselves unto Ba'al-pe'or, and ate the sacrifices of the dead," and as a dead defiles in a tent, so does the same the sacrifice of an idol.

"*With pilgrims*," etc. Said Samuel: A heathen pilgrim is prohibited only when on his way to the idol, because he *goes* to worship the idol, but when here turns there is nothing the matter, as no consideration should be paid to what was done. The reverse is the case with an Israelite. When he goes there, one may interfere in hope to induce him to retract, but when he returns one must not, because as he is enthusiastic he will go again. But is there not a Boraitha to the effect that with an Israelite pilgrim one must not interfere either when he goes or returns? Said R. Ashi: That Boraitha speaks of an apostate Jew, of whom it is sure that he will not retract.

"*Coming from*," etc. Said Resh Lakish: Provided they are not conjoined, but if they are, it is supposed that they will return there.

"*The bags of the heathens*," etc. The rabbis taught: New bags, which are not pitched as yet, are permissible, but those which are pitched are prohibited (if they have absorbed the wine). If, however, the heathen has pitched them and put in wine in the presence of an Israelite, the wine is permissible.

But if the heathen puts the wine in, what is the Israelite's presence good for? Explained R. Papa: The heathen pitched it, and an Israelite put in the wine in the presence of another Israelite. But to what purpose is the other Israelite's presence? Perhaps the Israelite, while busy with pouring in the wine, would not notice that the heathen meanwhile devotes it. R.

[paragraph continues] Zebid, however, said: R. Papa's explanation is not necessary, as it is said before, the heathen that pours in the wine, but the wine loses its identity when mixed with the pitch, just as water does when poured into clay. Said R. Papa: We may infer from R. Zebid's statement that if a heathen puts wine in an Israelite's salt, it is permissible. R. Ashi, however, opposed, saying that there is no comparison, as in the pitch the wine is list, but not in the salt, as the taste of it remains. There was a merchant, Bar Abi, who took away pitchers of R. Itzchak b. Joseph, kept wine in them, and thereafter returned them, and he asked in the college what to do with them? Said R. Jeremiah to him: In such a case R. Ami has decided for practice one shall fill them with water for three days and after the water is poured out he may use them. Said Rabha: He must change the water every day. The schoolmen understand that this was said only concerning our bags, but not if the bags were the heathen's. However, when Rabbin came from Palestine he said that there is no difference between ours and theirs. R. Aha b. Rabha meant to say, in the presence of R. Ashi, that this is only concerning bags and not pitchers. Said R. Ashi to him: There is no difference between bags and pitchers. R. Jehudah the second questioned R. Ami: How is it if he has returned the pitchers to the pottery, and they were burned there. May they be used or not? And he answered: Brine extracts what is absorbed by them, so much the more does fire. So, also, was it taught by R. Johanan, according to others by R. Assi, in the

name of the former: Pitchers of the heathens, which were returned to the pottery, as soon as the pitch falls off from them, are permissible. Said R. Ashi: Don't teach until it falls off, but even when it weakens so as to fall off they are allowed.

If this was done by burning them out simply with pieces of wood R. Aha and Rabbina differ. According to one it is permissible, and according to the other it is not, and the Halakha prevails with the latter. The schoolman propounded a question: How is it to keep beer in the same? R. Na'hman and R. Jehudah prohibit it, and Rabha permits. Rabbina permitted Hyia b. Itzchak to put beer in them. He, however, put wine in them. Nevertheless, Rabinna did not care to forbid him, saying that this occurred only unintentionally, and he would not do it again. R. Itzchak b. Bisna had vessels made of clay and ordure, in which there was once sacrificed wine, and he filled them with water, put them in the sun, and they burst. Said R.

[paragraph continues] Abba to him: You have lost them in vain. True, the rabbis said to fill them with water, but did they say to put them in the sun? R. Yusna said in the name of R. Ami: Vessels of natron, in which there was wine, have no remedy. What is meant by natron vessels? Said R. Jose b. Abin: Vessels made of alum crystal. Rupila took away such pitchers from Pumbedith, kept wine in them, then returned them; and when R. Jehudah was questioned as to what to do with them, he said: He kept wine in them only temporarily, therefore he may rinse them with water and they are allowed. Said R. Evira: The pitchers of red earth which do not absorb much, he may rinse with water, and they are allowed. Said R. Papa: The same is the case with the clay pitchers of Michsi. Clay *buchals* R. Asi prohibits and R. Ashi permits. In case the heathen drank from them the first and second time, all agree that they are forbidden; they differ, however, with regard to the third time (*i.e.*, when the first two times an Israelite drank from them; and the Halakha prevails, that if the heathen drank the first and second times, they are prohibited, but if the third, they are not). Said R. Zebid.: Vessels enamelled with white and black are permissible, but if with green, they are not, because they contain alum crystal. However, if there were splits in them they all are forbidden.

Maremar lectured: Enamelled vessels, no matter of what color, are permissible. But why is wine different from leaven on Passover, concerning which a similar question was propounded to Maremar, and he prohibited them all? Because leaven is usually used hot, while wine is usually used cold. R. Aqiba happened to be in Ginzek, and he was questioned the following: Fasting a couple of hours only, is it considered or not? And he did not know the answer. Pitchers of heathens are allowed or prohibited? Finally, in what garments did Moses worship the seven days before he consecrated Aaron to the high priesthood? And he, not knowing the answers, came with these questions to college. He was told: A fasting of hours is considered, and if one finished his fasting at sunset, he may recite the prayer of fasting. The pitchers of heathens, after they were empty for twelve months, are permissible. Moses has worshipped the seven days in a white gown. R. Kahanah taught: In a white shirt which had no seam.

"*The pressed grapes*," etc. The rabbis taught: The pressed grapes of which wine was made, with their kernel, are forbidden when they are still wet, but not when they are dry. And which

are to be considered wet? Before twelve months has elapsed, and thereafter they are considered

dry. So R. Jehudah in the name of Samuel. It was taught: Rabba b. b. Hanna in the name of R. Johanan said: The prohibition of them extends even to the deriving of any benefit from them, and when they are allowed, they may even be consumed. R. Zebid said: The dregs of wine of the heathens, after twelve months, are allowed. Their enamelled pitchers, after twelve months of non-usage have elapsed, are allowed according to R. Habiba b. Rabha. R. Habiba said: And the same is the case with their thick leather bags. R. Aha b. R. Aika said: The same is also the case with their *pomace* of grapes. And R. Aha b. Rabha said: The same is also the case with their enamelled white and black pitchers.

"*Fish-oil*," etc. The rabbis taught: Fish-oil made by a heathen specialist is permissible. R. Jehudah b. Gamaliel, in the name of R. Hanina his brother, said: The same is the case with *Hillek* (small fish, which have no fins or scales) if they come from a heathen specialist. R. Abimi b. R. Abuhu taught: Fish-oil from a specialist is allowed. He taught it, and he himself explained it thus: The first and the second time when there is considerable fat in it he has to use no wine, so it is allowed, but not in the third time, when wine must be used. There was a boat with fish-oil, which came to the port of Akhu, and R. Aba of the same city appointed a watchman to guard it. Said Rabha to him: Who, then, watched it until now? And he rejoined: Until now? for what purpose was it necessary to watch? surely not for fear perhaps they would put wine in it, as in their place wine costs four-fold as does fish-oil, while here it is the reverse. Said R. Jeremiah to R. Zera: But perhaps while this boat passed the City of Zur, where wine is cheap, they have poured wine in it? And he answered: It would have been a difficulty for this boat to reach Zur, as there are (along the coast from Zur to Akhu) bays formed by protruding rocks and shallow waters caused by melting snows.

"*Cheese of Anuyiki*." Said Resh Lakish: Why did the sages forbid the cheese of Anuyiki? Because most of their calves are slaughtered for the sake of their idols. (Says the Gemara): Why the most, when even if the minority were slaughtered for that purpose, the same would be the case, as R. Mair considers the minority also? The expression "*the most*" was necessary in order to indicate that only a minority are slaughtered not for this purpose, but if it were said "*the minority*,"

then it would be understood that the majority are slaughtered not for this purpose, and as the cattle are also slaughtered not for this purpose, the minority then would be a minority of a minority, to which even R. Mair does not pay any attention. Said R. Simeon b. Elyakim to Resh Lakish: Your reason that the calves are slaughtered for the sake of the idol contradicts your own statement made elsewhere--viz.: that the slaughtering for the sake of the idol is not to be taken into consideration (in opposition to R. Johanan, who says that it is), and he answered: May you in the future be more successful in distinguishing matters. I speak of him who expressly says: I am worshipping the idol with this slaughtering.

"*Calls his attention to another thing*." [Solomon's Song, 1, 2.] What does this passage mean? When R. Dimi came he said thus: The assembly of Israel said before the Holy One, blessed be He: Lord of the Universe, sweet are to me the words of thy friends (the sages who are explaining the law) more than the essence of the Torah. But what was the reason that he called his attention to this passage? Said R. Simeon b. Pazi, according to others, b. Ami: He called his attention to the beginning of this chapter, "He may kiss me," etc., and the meaning was this: Ishmael, my brother, compress your lips, one upon the other, and hasten not to propound questions. But why?

Said Ulah, according to others, R. Samuel b. Aba: This was a new decree, to which the reason could not be given at that time. And what is the reason? Said R. Simeon b. Pazi in the name of R. Joshua b. Levi: It is that perhaps it was uncovered and was poisoned by a snake. If so, why did he not tell him so? This is as Ula said elsewhere. When a new decree was promulgated in the west, they did not give the reason until twelve months had elapsed, for fear there may be one who would not care for such a reason, and would not accept the decree. R. Jeremiah ridiculed this statement, since, according to it, old cheese should be allowed, as R. Hanina said: A dry or an old one is permissible, because poison would not have allowed it to become old or dry. Said R. Hanina: The reason was that there is no cheese in which some skimmed milk does not remain, and this is forbidden, because the heathen mixes all milk with milk of such cattle that is forbidden to eat. Samuel, however, said: Because they curdle the milk with the skin of the rennet of a carcass. But how is it if with the rennet itself, would it be allowed? Did indeed Samuel say so? Is there not

a Mishna: The rennet belonging to a Gentile as well as that of a carcass, is forbidden, and the question: What does a Gentile's rennet mean. Samuel explained: The rennet of those cattle which the heathen has slaughtered is considered as one of a carcass. Hence, the rennet itself is also prohibited? This presents no difficulty, as Samuel's explanation had been made before R. Jehoshua retracted his statement, that the rennet itself is to be considered. And his statement cited above was after the retraction of R. Jehoshua was known, and that Mishna in tract Chulin remained uncorrected.

R. Malchia in the name of R. Aba b. Ahaba said: The reason is that they besmear the top of the cheese with the fat of swine. R. Hisda said: Because they curdle it with vinegar. And R. Na'hman b. Itz'hak said: Because they curdle it with the juice of the trees of "*Orlah*." But, according to R. Hisda and R. Na'hman b. Itz'hak, it should be forbidden to derive any benefit from *them*? This difficulty remains unsolved.

R. Na'hman b. R. Hisda lectured: It reads [Songs of Solomon, 1-3]: "To the smell are thy fragrant oils pleasant," a scholar is equalled to a glass of perfume, which, if uncovered, gives forth a good odor, while it does not if covered. And not only this, but matters the reasons of which were sealed from him, finally become apparent [ibid., ibid.]: "The maidens ("*alomoth*") love thee." Do not read "alomoth" (maidens), but "alumuth" (hidden things). Furthermore, the angel of death becomes his lover, as the word *alomoth* is to be divided into two words, *al*-moveth, which means death. And furthermore, he inherits two worlds: this world, and the world to come, as the same word may be read "*olumuth*," which means "worlds."

MISHNA *V.*: The following things of the heathens are prohibited, but not for deriving benefit from them: Milk which the heathen himself milked not in the presence of an Israelite, their bread and oil. Rabbi in his court, however, permitted the consumption of their oil. Cooked and soaked herbs, in which they usually pour wine, and small salted fish (which is called trith), the brine of fish in which there is no fish, and 'hillek, the brine of 'hilteth, and *sal-condire*--all these are forbidden to eat, but one may derive benefit from them.

GEMARA: What is the reason for the prohibition of milk? If, *e.g.*, that the heathen might substitute for the milk of a cow that of an ass, there is no fear, for from a cow it is white, while

from an ass it is green; and if because he may mix it with above, let him curdle it; and, as the Master said, the milk of an ass cannot be curdled? Yea; this is when he needs it for cheese, but how shall he test it when he needs it as it is? Even then he can test it by taking part thereof for curdling?

This cannot prove, as there is some bad milk of a cow, which cannot be curdled. And if you wish, it can be said that even for cheese curdling is no test that the milk was not contaminated, as the unclean milk remains in the holes of the cheese (as said above).

"*And bread*." Said R. Kahanah in the name of R. Johanan: Bread was not permitted by Rabbi and his court, as it was with oil. But is there one who says that it was? Yea; as R. Dimi, when back from Palestine, related: It once happened that Rabbi went to a field, and a heathen brought him fine bread, the size of a "*saah*," and Rabbi exclaimed: How nice this bread is! Why should the sages forbid it? And by this exclamation the people thought that Rabbi had permitted it. In reality, however, he did not. R. Joseph, according to others, R. Samuel b. Jehudah, said: It was not as R. Dimi related, but it once happened that Rabbi went to a certain place, and seeing that there was a difficulty to obtain Jewish bread for the disciples, he exclaimed, "Is there no baker here!" People thought that he meant a heathen baker, but he probably meant a Jewish one. Said R. 'Helbu: Even if he meant a heathen baker, it is permitted only when there is no Jewish baker, otherwise it is not. And R. Johanan said: Even if he meant a heathen baker, it is permissible only in the field, but not in the city, by reason of the fear of intermarriage. Aiban used to bite and consume heathen bread at the boundaries of the field, and Rabha or R. Na'hman b. Itz'hak told his disciples not to have any conversation with him, because he eats heathen bread.

"*And their oil*." Concerning oil, Rabh said: Daniel has decreed the prohibition, and Samuel said: Because *they* are boiled in forbidden vessels. Said Samuel to Rabh: According to my theory, it is correct that R. Itz'hak b. Samuel b. Martha related about R. Simlayi, who preached in the City of Nezibin, that concerning oil R. Jehudah (Rabbi and his court voted and permitted it). Their reason may have been that the absorbed fat in the vessels which spoils the oil does not affect its validity, and therefore they permitted. But according to your theory that Daniel had so decreed, is it possible that R. Jehudah the

prince, should abolish the decree of Daniel? Is there not a Mishna: A court must not abolish the decree of another, unless it is greater in wisdom and in number? And he answered: You speak of Simlayi the Ludian, such people do not care to observe the decrees of the rabbis. Said Samuel: Then allow me to send this message to him (Simlayi), and Rabh became confused. Thereupon he said: If they have not given proper attention to that which is written concerning Daniel in the Scripture, should we do the same? Does it not read [Daniel, i. 8]: "Nor the wine of his banquets." [1] Hence we see that the Scripture speaks of two banquets, one of wine and one of oil. However, he differs with Samuel in the explanation of "resolved in his heart," as according to him (Rabh) "he resolved in his heart, and decreed same for all Israel." Samuel, however, explains it: He so resolved for himself, but not for Israel. But how can we say that Daniel decreed so, after Bali-Abimi of Nirtah said in the name of Rabh: The decrees, concerning their bread, wine, oil, and their daughters were included in the eighteen decrees (which are mentioned in Tract Sabbath). Now, should you say that Daniel's decree was not accepted until after the

disciples of Hillel and Shamai came, decreed so, and it was then accepted? Then, how is to be understood the testimony that Daniel has thus decreed? Rabh has testified that Daniel's decree was only for the cities where other oils are to be found, but not for the field. And the rabbis mentioned above decreed that the same should be even in the field. But after all, how could Rabbi abolish their decree despite the Mishna cited above: That one court must not abolish the decree of another, etc.? And, secondly, did not Rabba b. b. Hanna say in the name of R. Johanan, that even in cases where one court may change the decree of another, it cannot do so with regard to the above eighteen decrees, as concerning them, even if Elijah with his court should come and abolish them, he must not be heeded? Said R. Mesharshia: The reason is that the decrees in question were spread among the majority of Israel; as to oil, however, its decree was not accepted by the majority of Israel. As so said Samuel b. Aba in the name of R. Johanan: Our masters investigated concerning oil, and found that the prohibition was not accepted by the majority, therefore, adhere to the rule declared

by R. Simeon b. Gamaliel and R. Eliezer b. Zadok, that a court must not enact anything which the majority of the congregation could not possibly follow. 1

R. Jehudah the second leaned upon the shoulder of R. Simlayi when walking in the street, and said: Simlayi, you were not in college yesterday, at the time we permitted oil of the heathens. And he answered: I hope that you will soon permit their bread also. Rejoined R. Jehudah: Then the people would name us the *all-permitting* court, as so they named R. Josh (Tract Idioth Mishna). Then to Simlayi's remark: R. josh has permitted three things, and you, master, have only permitted one, and should you permit one more, it will be only two. Jehudah answered: I have already permitted another thing concerning the validity a divorce attains after twelve months had elapsed before the husband returns; and it happened that before the elapse of such period the man died, and I have permitted the woman to remarry. 2

"*Cooked,*" etc. Whence is this deduced? Said R. Hyia b. Aba in the name of R. Johanan, from [Deut. ii. 28]: "Food shalt thou sell me for money, that I may eat; and water for money shalt thou give me, that I may drink," which means, like water, which does not, since its creation, change by fire, eatables are not changed since their creation, by fire. (But that which was changed is not permissible.) But as there is not mentioned "*fire*" in the Scripture, this is but a decree of the rabbis, and the verse is brought only as a hint to this. R. Samuel b. Itz'hak said in the name of Rabh: To everything which can be consumed raw, the prohibition of cooked by a heathen does not apply. So it was taught in the college of Sura. In the college of Pumbeditha, however, it was taught as follows: R. Samuel b. R. Itz'hak in the name of Rabh said: To everything which is not served on the table of noblemen to relish the bread, the prohibition of "cooked by a heathen" does not apply. And what is the difference between the two versions? Small fish, mushroom and disa (a thickly cooked barley or meal). All these three cannot be consumed raw, but they are not served on the tables of noblemen. Hence, according to the first version, if

prepared by a heathen, must not be consumed, and according to the second, it is permissible.

R. Assi said in the name of Rabh: To small salt fish cooking of a heathen does not apply. Said R. Joseph: If the heathen roasted it, an Israelite may rely upon it for aneb tabshilin. [1] But if he has prepared from this a mush of harsana (a dish of small fish with flour) it is forbidden. Is this not self-evident? Lest one say that the fish is the main thing of this dish, it comes to teach us that the flour is the main thing. R. Johanan said: If a heathen singed the head of an animal, it is permissible to partake of it even from the ear (although the ear is nearly cooked by the singeing). Said Rabbina: From this we may infer that if he threw a tent-pin in the stove (to dry it), and an Israelite has deposited upon it a pumpkin, it may be used. Is this not self-evident? Lest one say that the heathen intended to cook the tent-pin (hence the pumpkin would be cooked by him), he came to teach us that his intention was only to dry and not to cook it. R. Jehudah in the name of Samuel said: If an Israelite placed meat upon live coals and a heathen came and turned it, it is permissible. But let us examine the case. If without turning, it would not be cooked, then it was cooked by the heathen, and must not be permissible; on the other hand, if it would be cooked without turning, then its permission is self-evident. It speaks of the fact that if he did not turn it, it would cook in two hours, but by turning, it was cooked in one hour; and lest one say that the hastening of the cooking be taken into consideration, he teaches us that it is not so.

But did not R. Assi say in the name of R. Johanan that, when the food has been cooked to the extent that Ben Drusai [2] habitually eats it, the heathen may then complete its cooking, but not otherwise, and should not the above-mentioned fried meat be accordingly prohibited? This quotation intends to say as follows: If the meat was put into the pot by the Israelite and then placed upon the fire by a heathen, it is permissible. There is a Boraitha to this effect: The Israelite may put the meat upon the coals and let the heathen do the turning till he returns from the synagogue or college. Similarly, a Jewish woman may place the pot upon the fire and then leave the heathen woman do the skimming till she returns from the synagogue

or bath-house. In these cases there is nothing to fear. The schoolmen propounded a question whether that meat is permissible which was put upon the coals by a heathen and turned about by an Israelite? Said R. Na'hman b. Itz'hak: The answer thereto can be inferred *a fortiori*--viz.: if the completion of the cooking by the heathen's hand is allowed, so much the more is it so, if by the hand of Israelite. It was taught so, too: Rabba b. 'Hana, according to others, R. A'ha b. b. 'Hana, said in the name of R. Johanan: It is only then prohibited when the heathen prepares the food all alone, without the aid of the Israelite. As to bread, Rabbina said: The Halakha, is thus: When the Israelite heats the oven and the heathen places the bread therein, or *vice versa*, or, finally, the heathen does both the things and the Israelite was but fixing a little the fire during the heating, the bread is allowed. However, fish salted by heathens are allowed by 'Hiskia, but prohibited by R. Johanan; and an egg roasted by a heathen Bar Kapara allows, but not R. Johanan. But when R. Dimi came from Palestine, he said that in both fish and egg 'Hiskia and Bar Kapara allow, and R. Johanan does not. R. Hyye Parvah called once on the Exilearch, where he was asked whether it is allowed to eat an egg roasted by a heathen, and he replied that 'Hiskia and Bar Kapara allow it and R. Johanan prohibits it; the rule "The majority rules" is to be followed. Thereupon exhorted R. Zebid: Do not listen to R. Hyye, for Ahayi says that in this case the Halakha prevails according to R. Johanan. The Exilearch's servants became therefore so enraged that they poisoned R. Zebid with a drink of vinegar, from which he died.

The rabbis taught: Kaprises, Kaplututh, Hamtlia, warm water and roasted ears of corn coming

from the heathens are allowed; roasted eggs are prohibited. Oil was allowed by R. Jehudah, the prince, and his court by vote. There is a Boraitha: Hamtlia is called also Peshlia and Shietta. But what, indeed, is it? Rabha b. b. Mana said in the name of R. Johanan: It is now forty years since it was imported from Egypt; he himself said, it is already sixty years. In reality, both concur, for R. Johanan made his statement twenty years ago. The preparation thereof is as follows: Take parsley-seed, glue-seed, juice of fenugreek; keep them all in lukewarm water until the seed coats burst; then fill with water new earthern pots, and, on putting therein some red earth, plant in it the seeds; now go to bathe, and no sooner do you come back than the planted seeds

will have borne their fruit, which is highly refreshing, so that on eating thereof you are cooled up from top to toe. Said R. Ashi: I was told by R. 'Hanina that all this is but a mere fable.

The rabbis taught: If dates of which beer was already once brewed be warmed anew in other vessels, the question arises as to whether these vessels are big or small: if big, the dates in question are prohibited; if small, they are allowed, for in small vessels the heathen surely cooks nothing unclean. What determines the size of vessel? R. Janai said: A vessel is said to be small when through its mouth the swallow is not able to pass. But could not the bird be cut into pieces and then made to pass through the opening of the vessel? Well, the foregoing determination is to be understood as follows: The opening of the vessel must be so small that the head of the said bird could not enter. But is there not a Boraitha: Dates are allowed regardless of the size of the vessel they are in? Yea; nevertheless there is no implicit contradiction here, for he who prohibits the big vessels is of the opinion that if the taste left by the old vessel were even injurious to the food, it is nevertheless prohibited; while the others who allowed it maintain that if the flavor left by the old vessels be favorable to the food, it is prohibited, but if unfavorable, it is allowed; therefore they have also allowed in this case the big vessels of the heathens. R. Sheshith said: A heathen's cooked oil is prohibited. Wondered R. Saphra: Why, there is nothing to fear in this case, for were the heathen to put into the said oil fat he would thereby impart to it an insipid odor; nor can the prohibition be based upon the mere fact that it was cooked by a heathen, as we have learned above: All that may be eaten in a raw state, may also be eaten when cooked by a heathen, and oil is eatable uncooked; as for the absorption by the vessel, it makes the taste of the oil bad, and hence it cannot be prohibited therefor. R. Assi was asked whether dates cooked by a heathen are permissible. Sweet dates, that are eatable when raw, are certainly allowed, but not bitter ones, which are not eatable when raw. The chief point here is: What about dates that are neither sweet nor bitter (and are, in case of necessity, eatable when raw)? And he answered: A distinguished man, Levi, has already prohibited them. Shthithah (a dish prepared from young ears of corn) of a heathen, Rabh allows, the father of Samuel and Levi prohibits. (Says the Gemara): If prepared of wheat or barley flour, all agree that it is al. lowed. A food of peas and vinegar is declared prohibited also by

[paragraph continues] Rabh. Their point of difference concerns solely a food of flour and water, which the father of Samuel and Levi prohibits, fearing that, if this were allowed, people would later eat also foods prepared with vinegar; Rabh, on the other hand, does not entertain this fear. Others word this discussion as follows: Pea flour prepared by the heathen with water is prohibited by Rabh, who fears lest food with vinegar be eaten; only foods prepared of wheat or barley flour are permissible, as for their preparation no vinegar is required. The other party,

however, prohibits also these foods, fearing lest one might then allow oneself also peas prepared with vinegar.

Rabh said: Barsillai sent to David two kinds of this Shthithah, as it reads [II Sam. xvii. 28]: "Bedstead, pans, earthen pots, wheat, barley, flour, ears of corn, beans, lentils, oatmeal." That nowadays we buy of the heathens in the markets of Nahardea these articles in the basketfuls, is a sign that Samuel and Levi's prohibition is disregarded.

"*And pressed preserves into which they habitually put wine*." Its benefit is, according to R. Hiskia, only then allowed when it is not known that there is wine in it. But if it is definitely known that there is wine in it, it is prohibited. Why then do the rabbis allow the use of muries which, we know, all prepare with wine? Because here wine is used merely to destroy the fishlime of the muries, while in the above it is used to render the preserves more palatable. However, R. Johanan said that even when it is known that there is wine in the preserves their benefit is none the less permitted. What difference is there between muries and preserves, that R. Mair prohibits the use of the former, but allows that of the latter? In case of the muries which is taken with bread, one cats the wine contained therein, while in the case of preserves you consume only the preserved fruits, the wine remaining in the vessel.

"*Pressed fish cut in small pieces and Hilac are forbidden*." What is Hilac? R. Na'hman Hanan b. Aba said in the name of Rabh: Hilac is Sulthenuth. This fish, though it has the marks of the clean fish, is prohibited, because it so closely resembles the other unclean fish with which it is drawn out that it becomes impossible to distinguish it.

The rabbis taught: Those fishes which, when young, do not exhibit their signs of clean fish, but grow them later, as is the case with the Sulthenuth and the Epitz, are allowed to eat. Such fishes that show the signs of the clean order when fished

out, but lose them later, such as the Akunas and Apunas, Chotospeteis, Achspeteis and Utanas, are allowed. R. Abuhu heralded at Cæsaria that it is permitted to buy of anybody the fish oil and rye, for it is imported only from Pelusium and Aspamia (Spain), where there are no fishes of the unclean order. Abayi likewise allows to buy of heathens the fish Zachanthra from the river Dahab. Why is this permitted? Presumably because the bed of the river is of such a composition that fish of the unclean order can not live there. Said Rabbina: Now that the two rivers Gusa and Ganda have been united with the Dahab river the Zachanthra is again prohibited (as the former two shelter unclean fish). Abayi said: The sea-donkey is allowed, but not the sea-ox; and you remember this by the following mark: the unclean (on earth?) is clean, while the clean is unclean. R. Ashi said: Separnuna is allowed, Kadeshnuna is not; according to others he said that Kaharnuna is forbidden. R. Aqiba, when in Ginsek, was offered a fish that resembled the Hipusha, which is of the unclean order; he took a basket, put therein the fish, then, upon removing it from the basket, he found scales there, and allowed the fish. R. Ashi applied on a similar occasion in Matduria the following test: he held out the fish, which resembled the unclean Zehrpeha, against the sun-rays, and perceived scales, whereupon he allowed it. He happened to be once in another town, where he was offered a fish similar to the unclean Separnuna, so he had it covered with a white vessel, and, as he discovered scales on the walls of the vessel, allowed the fish. Rabba b. 'Hana came once to Arka Dagma, where he was given the fish Zachanthra; but as he heard the house servants call it Bati, he thought it may be an unclean

fish, and refrained from touching it; in the morning, on examining the fishes, he found among them some of the unclean order, whereupon he applied to himself the verse: "No wrong can come unawares to the righteous" [Prov. xii. 21].

"*And the berries of the Chalthith are forbidden*." This prohibition is based upon the following fact: These berries must be cut off with a knife from which they imbibe what may have penetrated it from some prohibited food, although the master says that if by the withdrawal the food loses in taste, such food is permitted; here, however, the strong sap of the Chalthith berries restore the fat possibly extracted from the knife, hence they are forbidden. R. Levi's slave used to sell Chalthith; upon the death of R. Levi, R. Johanan was asked whether it

was allowed henceforth to buy of the slave the Chalthith, to which he replied: We always repose in the slave the same confidence which we showed his master (we must thus trust also after the death of his master that he will not sell unclean for clean things). R. Huna b. Miniumi, having bought once blue wool for tshitzes from the house of R. Amram the pious who was dead already, betook himself to R. Joseph to ask him whether the use of the said wool is allowed; as he was unable to give a satisfactory answer, R. Huna went away, when he chanced to meet Hanan the tailor, to whom he disclosed his perplexity and the tailor said: How could the poor Joseph know this? I, myself, bought once such blue wool for the same purpose in the house of Rabnah, the brother of R. Hyys b. Aba; it was after the death of Rabnah, so I asked R. Mathna whether or not the use of the wool is allowed, and he knew no answer; I then went to R. Jehudah of Hagruna, and he said: At last you resort to me with a question. So said Samuel: We are to trust the wife of a scholar as we have trusted her husband. Such is the opinion also of the rabbis, who teach that the wife enjoys our confidence on the same basis with her husband, which relation holds good also with regard to master and slave; upon the death of the man his house claims our confidence until sufficient reason appears to call for the withdrawing of it therefrom. The same is the case with a stationery selling blue wool for tzitzes, you may buy here so long as there is no just reason for not buying.

The rabbis taught: The widow or daughter of an Amharez, who is to marry a scholar, likewise the slave of such who is to be sold to a scholar, must take the oral oath that they will observe the commandments and prohibitions of the sages. On the other hand, if the converse is the case, they are each free from this oath, since they are now as trustworthy as ever before; this, however, is but R. Meir's view, while R. Jehuda finds the oath necessary also in this second case. R. Simeon b. Elazar said: I knew a woman who would aid her husband, who was a scholar, to put on his Tephilis; upon his death she married a contractor, [1] whom she would aid in putting on his amulet. Rabh said: Fat, meat, wine, and blue wool for *tzitzes* should when sealed with only one seal, never be forwarded through a heathen; but Chilthith, bread, muries and cheese may be forwarded with one seal. In case of bread, the heathen will surely not replace it,

as this could be easily discovered, the difference between fresh and stale bread, between wheat or barley bread, being too salient, and there is no reason to believe that as there is one seal he will exchange a bread for its equal. But why in the case of cheese Rabh finds one seal sufficient, while for fat, which is not dearer than cheese, he requires *two*? Said R. Kahana: Rabh did not mean fat, but fish cut in pieces and lacking the marks by which they might be discerned from

meat. But if such be the case, they could indeed be taken and exchanged for meat? Rabh considers two sorts of meat: fish-meat and meat proper. Samuel, however, put it thus: Meat, wine, blue wool that are to be forwarded through a heathen, require each two seals; muries, Chilthith and cheese, only one seal; fish is like meat, hence needs no special mention (and bread he does not quote at all, for here is nothing to fear).

The rabbis taught: One should not buy of a tradesman in Syria wine, muries, milk, salcondrit salt, Chilthith, cheese, unless the seller is positively known to be a specialist, otherwise he is suspicious of mixing something forbidden into the said articles. However, if an Israelite is visiting such a tradesman in Syria, he is allowed to eat everything served at the host's table, for in the house nothing forbidden is used there. This corroborates what R. Jehoshua b. Levis said--viz.: An Israelite may accept one of the foregoing articles as a present from a Syrian tradesman, provided he gives it from his household stock, because in the house nothing unclean is used there. What is salcondrit salt mentioned above? R. Jehudah said in the name of Samuel: It is the salt used by all the nobles of Rome. The rabbis taught: Black salcondrit is prohibited, but not the white sort. So R. Meier; R. Jehudah said the contrary: White is forbidden and black is allowed. R. Jehudah b. Gamaliel in the name of R. Hanina b. Gamaliel said: Both the sorts are forbidden. Said Rabba b. b. 'Hana in the name of R. Johanan: He who prohibits the use of the white salt is prompted thereto by the fact that some put into it the *white* parts of the intestines of unclean fish; on the other hand, that some put into the black salt the black parts of unclean fish, is sufficient reason to him who forbids it, while these two facts justify the third party to prohibit the use of both salts. R. Abuhu said in the name of R. Hanina b. Gamaliel: There once lived an old man, a heathen, in our street, and he used to grease with pork-fat this salt which he was selling.

"*Is forbidden*." The word enumerated is calculated to exclude other articles; which, then, are these? According to Hiskia, preserves into which the majority are known to omit wine, is excluded even for benefit; and according to R. Johanan, also muries and cheese from Beth-Unirka. R. Meier's opinion is cited here without the mention of his name.

MISHNA *VI*.: The following things are allowed to eat, too: Milk milked by a heathen in the presence of an Israelite, honey and honey-cake from the beehive. Others think grapes, even when trickling, are not capable of defiling, not even as moisture; preserves into which as a rule wine and vinegar are not entering; pressed fish that is not all cut, fish-brine in which there is a fish, the leaves of Chalthith; soft olives closely packed in a barrel. R. Jose prohibits them if their kernels fall out easily. The locusts are forbidden when coming from the grocer's basket, but are allowed when they come from the pantry; the same is the case with heave-offering.

GEMARA: This Mishna bears out what the rabbis teach elsewhere--viz.: An Israelite sitting near the herd of a heathen who is milking milk, may drink it without any fear that the heathen has adulterated it. How was the case? If there is in the herd no milk-giving animal of the unclean order, it is obvious that the milk is allowed, but if there be one why should the milk be allowed now that the Israelite is unable to see which animal the heathen is milking? The rabbis intend to teach thus: The Israelite must occupy such a position that upon rising he could see the heathen milking, in which case it is allowed, for the heathen will be afraid to mix in unclean milk, as the Israelite might at any moment rise and see what he is doing. The rabbis emphasize this in order to dispel the belief that the milk is forbidden by reason of the Israelite's sitting position; the possibility, they hold, of his rising and observing the heathen's doings renders the milk allowed.

"*The honey is allowed*." This could not possibly be forbidden, as there is not reasonable fear that the heathen will mix in it foreign stuff which would surely spoil the honey. Nor is there any reason to fear that the honey may be cooked, for even if this be the case, the honey is allowed, as the basis of the previously established rule that whatever is eatable in its raw state is allowed also when cooked by a heathen. Finally, there can be no fear that the honey having been possibly kept in forbidden vessels may have absorbed the

vapor imbibed by the latter, since this would spoil the flavor of the honey.

"*Also grapes even when trickling*," etc. This is apparently contradicted by the following: Shamai says, if one gathers grapes for the wine-press, they are, when trickling, subject to defilement to an extent as if water has been poured upon them. Hillel, who was at first inclined to hold the contrary, agreed at last with Shamai's opinion; hence, the moisture is defiling? This is no contradiction; when one puts the grapes into the press it is for the purpose of making wine, and if the grapes are moist, it is readily seen; while here it is a case of eating grapes when one intently looks for dry ones, and when these trickle too, no heed is taken, since they are used for eating and not for making wine.

"*Pressed not all cut*," etc. The rabbis taught: When the head and backbone are whole, it is not all cut; "Fish-brine in which the fish is," means, when there are in the brine one or two worms called Chilbith, it is allowed. Now, if this is allowed with one Chilbith in it, why does the statement read: one or two? In a closed barrel one is sufficient, while in an open one two are required (because it may be supposed that one fell in from some other vessel). It was taught: R. Huna says it is allowed only when its head and backbone are recognizable. R. Na'hman said: Only when either of the two is recognizable. Whereupon R. Uqha b. Hama objected: We know that fish with scales and fins are allowed to eat; now, how is it possible to recognize an allowed fish by its head or backbone? Said Abayi: The fishes here in question are the Arah and Palmuda, which are of the clean order, but whose heads resemble those of the unclean. R. Jehudah said in the name of Ula: R. Huna and R. Na'hman have here in view the fish-brine, and not at all the fish, so that the one says: The fish-lac is allowed when the head of its fish is seen, while the other one maintains that the backbone, too, must be recognized. R. Seia said: I was in the habit of eating fish-brine with bread upon recognizing in it either the head or the backbone of its fish; now that I heard what R. Jehudah says in the name of Ula, I began to eat it only when I recognized both. Said R. Papa: The Halakha prevails: The said fishes are allowed only when both head and backbone are recognizable. To this an objection was raised from the following Thosephtha: Fishes cut in pieces and cooked are allowed in all their parts if the marks of the clean order were found, and be it

only on one part of a piece or on one piece among hundreds. A heathen brought once to market a barrelful of cut fish where a piece was found with marks of the clean order on it, and R. Simeon b. Gamaliel allowed the whole barrelful, which case all but corroborates the foregoing objection. R.]Papa gave then this interpretation: All the pieces of that barrel were equal. But if so, entire statement would appear superfluous? Lest one say it should be feared perhaps another kind of fish happened to be in there, it teaches us that it is not so. A boatful of Zahontha was

once brought to a fish-pond; R. Huna betook himself there to inspect them, and upon perceiving some scales in the boat, he allowed the whole. Rabha, finding it astounding that by reason of a few scales one should allow all the fish, regardless of the possibility that there might be among them fish void of scales, heralded that these fish are forbidden. R. Huna b. Hanina heralded the contrary. Said R. Jeremiah of Diphthi: I was told by R. Papa that R. Huna allowed only the fish-brine and not the fish itself. R. Ashi, however, said: I was told by R. Papa that R. Huna, allowed the fish, too. As to myself, I cannot prohibit the fish after hearing from R. Papa that R. Huna allows them; nor can I allow them, however, after having learned from R. Jehudah in the name of Ula that only such fish are allowable of which both head and backbone are recognized. R. Hinna Hanina b. Aida, while once at the house of R. Ada b. 'Ahbah, said: If a ship-cargo consisting of barrels with fish-brine is brought to Israelites and the Chalbith is found in one of the barrels, they all are allowed if they were open (for it is plausible to assume that there was Chalbith in the other barrels as well, but, they being open, crept out). But if the barrels were tightly covered up, only the one with the Chilbith in it is allowed. Thereupon R. Ada asked him: Whence do you know this? From three men of great erudition: Rabh, Samuel and R. Johanan.

R. Bruna said in the name of Rabh: Fish-entrails as well as fish-rye you may buy only of a specialist. Said Ula to R. Dusthai of Biri: Since Rabh speaks of entrails and rye, it is manifest that also unclean fish have rye, otherwise he would not treat of the two in the same connection. But I am able to prove the contrary from the following: The unclean fish are viviparous, while the clean ones are rye-bearing. Well, was the reply, strike the word rye from Rabh's statement. Hereupon said R. Zera: It is not necessary to strike it out, for the

fact is that unclean fish are also rye-bearing, but so that their offspring is mature in the rye before it is ejected out of the body, while that of the clean fish is brought about by the sand. But why is it requisite that rye be bought only of a specialist now that we have signs whereby to distinguish the clean from the unclean? Have we not learned that the marks which serve to distinguish the clean from the unclean eggs of birds, are also distinctive of clean and unclean eggs of fish? But how is this possible when according to law the signs of fish are the scales and fins? The above is then to be thus understood: When the eggs are elongated, with one end pointed and the other round, it is a mark of clean ones, but if the sides are both pointed or both round, it is of the unclean order. If the yolk of the egg is on the surface and the white in the middle, it is a sign of uncleanness; the converse is a sign of cleanness. If, however, the yolk and white are intermingled, it is a sign that it comes from reptiles, and is therefore unclean. Rabha said that Rabh's view must be thus interpreted: If the fish-rye is entirely squeezed so that the said signs are no longer discernible.

And if there be no specialist, what then? Said R. Jehudah: If the vendor says, I have pickled the fish and know them to be clean, he is trusted. R. Na'hman adds: He must show the sort of fish pickled by him and their entrails. R. Jehudah instructed the waiter Ada: The vendor who says, I have pickled these fish, is to be trusted.

"*The leaves of Chalthith are allowed to eat*." This, being, as it is, self-evident, since these leaves are not cut with a knife, is stated here in order to indicate that such a leaf is allowed even when a bit of the root is on it. If not for this specific statement, it would be plausible to think that a leaf with a piece of root on be forbidden by reason of the apparently rational supposition that the root may have come from some other vessel where it possibly was cut with a knife.

"*Very soft olives*." Although this is likewise self-evident, its statement is none the less necessary in order to prevent the belief that, since the olives are soft, wine may have been put in them to bring about this softness.

R. Jose said: What kind of olives are these? Said R. Jose b. 'Hanina: Olives whose kernels fall out when you merely keep them in your hand, it is thus manifest that the olives were kept in wine in order to make them so soft.

"*The locusts*," etc. The rabbis taught: Locusts, Kaprises,

[paragraph continues] Kapluthuth brought from the store or from the locality where they are prepared, or from a boat, are allowed; but those that are sold by the small tradesmen are forbidden, for they spill wine upon them. The same is the case with apple-cider, which is allowed when coming from the store, but forbidden when bought of the small tradesmen, who mix wine in it.

The rabbis taught: Rabbi suffered once from pains in the stomach, so he asked if one could tell him whether the apple-cider of the heathen is prohibited or not; said R. Ismael b. R. Jose: My father had once suffered likewise from such pains, and having taken some apple-cider seventy years old, bought of heathens, he felt relieved. Said Rabbi: You knew this and let me suffer so long! Thereupon apple-cider was sought for and found by a heathen in the quantity of 300 pitchers seventy years old already; Rabbi drank therefrom and was cured. Whereupon he said: Praised be the Omnipotent who put his world in the hands of the guardians!

"*The same is the case with it*." How is this to be understood? As R. Sheshith said: When a priest is suspected of selling heave-offering under the pretense that it is not terumah, one is prohibited from buying of him whatever he sells; but what he brings from the pantry, or in baskets, or from the place of production, is allowed to buy of him; for here he is afraid to falsify, lest the rabbis, on being informed thereabout, deprive him of everything.

Footnotes

41:1 Voltaire makes rather an exhibit of his ignorance when he mocks the ancient Jews, saying (in his Philos. Diction, vol. ii., p. 102) that they were the only nation given to this offence, since otherwise the prohibition thereof would have been superfluous. This Mishna as well as the following Gemara justifies the conclusion that this offence was rather general and was practiced by non-Jews and even by non-Semites at a period much later than the time when the prohibition of the Scripture was established. The attention of the reader is called to the eye-witnesses reported in the following Gemara.

43:1 The term in Hebrew is *vaysharnha*, and song in Hebrew is *shira*.

68:1 Leeser translates "which he drank"; the Talmud, however, takes it literally. as the term "mishte" in Hebrew means banquet.

69:1 The text here treats of the eighteen decrees mentioned in [Sabbath page 24] which we have omitted. We also call the attention of the reader to the appendix at the end of same tract.

69:2 The text discusses here the three things which Josh b. Joezer testified in the cited Mishna, Idioth, which will be found there in the proper place.

70:1 See Erubin.

70:2 Ben-Drusai, a certain robber who used to eat meat only one-third cooked.

75:1 This is explained in our "History of Amulets, Charms and Talismans." See there.

Next: Chapter III

CHAPTER III.

RULES AND REGULATIONS CONCERNING THE DERIVING OF BENEFIT FROM PROFANED IDOLS AND IMAGES OF HEATHENS AND ISRAELITES.--CONCERNING UTENSILS ON WHICH ARE ENGRAVED THE SUN, THE MOON AND OTHER PLANETS.

MISHNA *I*.: All images are prohibited, for they are worshipped at least once a year, so says R. Mair. The sages, however, say: Only those that have in their hand a staff, a bird or a sphere. R. Simeon b. Gamaliel says: And that has something in its hand.

GEMARA: If it be true that these images are worshipped at least once during the year, why do the rabbis allow their use at all? Said R. Itz'hak b. Joseph in the name of R. Johanan: At the native place of R. Mair the heathens had the custom of worshipping each image once a year, in other places this was not the custom, and as R. Mair lays down his precept on the basis of the minority of cases (in order to exclude misconceptions), he accordingly prohibits the images; while the rabbis who do not follow this principle, allow to derive benefit from them. R. Jehudah, however, said in the name of Samuel: The Mishna here is concerned not with ordinary images, but with such as are wrought to honor kings. Rabba b. b. 'Hana said in the name of Johanan: R. Mair's prohibition concerns images erected in the gates of the place. It was taught, Rabba said: The rabbis allow only the use of city images, as these are but ornaments and not idols, but they prohibit the images of the villages which are worshipped idols.

"*The sages say*," etc. This prohibition is based upon the following reasons: The staff in the hand of the idol is an indication that it submits itself to the whole world. The bird in the hand of the idol indicates that, like the bird, it sacrifices itself for the world. Finally, the sphere is to indicate that it sacrifices itself for the whole globe. Later on the prohibition was extended also to idols with a sword in hand, a crown on the head, or a seal-ring on the finger. Formerly the belief was current

that the sword is no divine emblem, but that of a robber; but it was learned later that an image with a sword symbolizes him who has sacrificed himself for the whole world. As for the crown, it was regarded an insignificant wreath, but later experience showed it to represent a king's diadem. Finally, the seal-ring was always believed to be the token of a slave, but later experience taught that an image with such a ring represents him who resolved to die for the whole world.

MISHNA *II*.: If one finds fragments of images, he is allowed to use them. However, if he finds fragments in form of a hand or a foot, they are prohibited, for such are worshipped.

GEMARA: Samuel said: Even fragments of a worshipped idol are allowed. But does not the

Mishna call for fragments of images? The Mishna appends the prohibition as regards even the hand or foot of an image, wherefor it uses the word image also before; but in fact implies the allowance of fragments of an idol, too. But why should these be prohibited, being, as they are, only fragments, and such are allowed by Samuel? Samuel explains this prohibition of the Mishna thus: If one finds a hand or a foot which he perceives is not broken off an idol, but has the form of objects specially prepared for worship, it is then prohibited, for the heathens erect a kind of altar for such objects, where they put them for worship.

It was taught: R. Johanan prohibits an idol that was broken by itself (*i.e.*, without the coöperation of a human being), while R. Simeon b. Lakish allows it. The former advances the reason that the broken idol was not yet profaned by any one, while according to the latter, the breaking is sufficient profanation, for people would say: How could this idol save others when it cannot save itself? R. Johanan objected to Resh Lakish, it reads [I Sam. v. 4, 5]: "And the head of Dagon and both the palms of his hands were cut off upon the threshold. . . . Therefore do the priests of Dagon . . . not step on the threshold of Dagon," etc. (whence it is obvious that an idol, even when broken by itself, is still held sacred by the heathens!) Hereupon the other replied: This proves nought against my opinion; the heathen, in the cited case, said that the supreme god has abandoned the Dagon, dragged up to the threshold of the temple, and only then he was reconciled, wherefore they regard the threshold as sacred, but not more the Dagon. Then R. Johanan went on to object: The Mishna allows the using of fragments from images, whence it follows that fragments from images but

not from actual idols are allowed; and R. Simeon b. Lakish rejoined: Thus, you must needs infer that only broken images are allowed to the exclusion of whole images that are forbidden, since the Mishna here is not concerned with idols; and this is R. Mair's opinion, quoted without the mention of his name. This admitted, the following may be advanced against R. Johanan's view, remembering that we conclude from the words of R. Mair to those of the rabbis: R. Mair prohibits whole images, but allows fragments therefrom; hence we say: The rabbis prohibit whole idols, but fragments therefrom they, too, allow. Why, then, does R. Johanan forbid idol fragments? Simply because images do not have the same relations as idols and are not, therefore, comparable with them, for as to images it is wholly uncertain whether or not they were worshipped. Assuming, then, that they had been worshipped and we afterward found a broken image, are we not justified in further assuming that some one has broken it purposely, whereby it has been indeed profaned, and thus its use is allowed? On the other hand, regarding real idols, it is certain that they were worshipped; what is uncertain here is whether the found broken idol was of itself broken or by the coöperation of a human being. Now, it is well known that an *uncertainty* cannot negate a *certainty*; and it is on the basis of these considerations that broken images are allowed and broken idols are forbidden. R. Johanan was further arguing: It is taught that a heathen can profane the idol of his fellow heathen as well as his own, while an Israelite cannot profane the idol of a heathen. Why, then, should we not consider an idol profaned by an Israelite as one broken of itself? Said Abayi, The foregoing teaching is to be thus understood: Only then is the idol not profaned, when the Israelite by means of hammer exerted pressure upon its face. But have we not learned that such pressure, even if not attended with breaking, suffices to profane the idol? Well, this is to say that when the heathen does it, but not when an Israelite, who, in order to profane an idol, must break off a piece therefrom. Rabba, however, said: Properly speaking, the idol is profaned when the Israelite presses in its face; however, the rabbis feared, lest the Israelite should preserve such an idol before its face is pressed in by him, and then, upon becoming the possession of an Israelite, it cannot be any

longer profaned. R. Johanan advanced yet another objection: It was taught: When a heathen uses the stones of Markuliss to pave therewith a street or a theatre, an

[paragraph continues] Israelite is allowed to tread upon such pavement; but he is prohibited therefrom if an Israelite paved with these stones. Why should not the stones be regarded like an idol that breaks of itself? This prohibition was promulgated for the same reason indicated above by Rabha. He made a further objection from the following: If a heathen breaks off a piece from an idol for his own use, the idol is thereby profaned and the Israelite is therefore allowed to use it as well as the severed piece. If, however, the heathen did it with a view to embellish the idol, it is not profaned thereby, and is consequently prohibited; the piece, however, is allowed. But if this be done by an Israelite, both idol and piece are forbidden; because this case is considered analogous to that of an idol broken of itself? This prohibition is likewise based upon the foregoing declaration of Rabha.

Then R. Simeon b. Lakish raised the following objection to R. Johanan's opinion: A bird's nest on the top of a tree belonging to the temple is prohibited to derive benefit therefrom, but if one has derived such, no sin-offering is obligatory. However, such a nest when on a tree of a grove is allowed to be pulled down by a pipe and to be made use of; now, as in all probability the birds use for their nests the wood of the tree they inhabit, these nests are allowed, whence it would follow that the use of a self-broken idol is likewise allowed? Nay, not at all: Here, in the case of the bird's nest that is allowed, such nests are spoken of for the building of which it is known with certainty the birds take the materials from other trees and not from the idol grove. R. Abuhu in the name of R. Johanan, however, said: In the Boraitha it is not the nests, but rather the young birds of the nests that are concerned. The young birds are allowed, provided their nest is pulled down by a pipe (since climbing upon the tree, if allowed, may lead also to the using of the forbidden tree itself). Said R. Jacob to R. Jeremiah b. To'hlipha: Let me explain to you the Halakha in question: The birds in the nests of trees belonging to the temple as well as groves, are allowed, for they fly around; but the eggs in these are forbidden, for they, remaining as they do in the place, derive use from the tree; hence, if I take the eggs, I likewise derive some use from the tree indirectly. Said R. Ashi: Young birds unable to fly are subject to the same rule with the eggs.

MISHNA *III*.: If one finds vessels with the image of the sun, moon, or of a dragon on them, he must throw them into the salt lake. R. Simeon b. Gamaliel said: Only when these

vessels are of a distinguished character they are forbidden, while insignificant vessels with such images on are allowed.

GEMARA: This Mishna would lead to the conclusion that the heathens worship only the sun, the moon, and the dragon. However, I am in a position to prove that they worship yet other objects. There is a Thosephtha: If one slaughter an animal in the name of the sea, the rivers, the desert, the sun, the moon, stars, planets, or the name of the archangel Michael, or even in that of the smallest gnat, it is considered an offering to the dead. Abayi solved this difficulty thus: The heathens, it is true, are worshipping many an object, but as regards images they worship only those of the objects mentioned in the Mishna; other images serve but to decorate houses and

towns. R. Sheshith, who was gathering Mishnaioth for explaining them, taught thus: The images of all the planets are allowed, excepting those of the sun and the moon. All statues are allowed, excepting those of a human being. All pictures are allowed, excepting the image of a dragon.

The master said: The images of all the planets are allowed, etc. How is the case? If to make these images, this is expressly prohibited, as it reads [Exod. xx. 23]: "You shall not make beside me"--that is to say, not to make any representations of my servants in heaven. Hence, what is allowed by the master is not the making, but the finding of such images, which is in accord with the Mishna inasmuch as it prohibits only those of the sun and moon. But again, is not the finding of a statue of a person allowed in the Mishna by implication, while he forbids it? Must we not say, then, that it is the making that is concerned here and is in accord with R. Huna b. Jehoshua? Assuming then that the allowance concerns the making, we are confronted with another difficulty: The last statement prohibits the reproduction of a dragon, which is by law allowed; we should then of necessity have to teach that it is the finding that is allowed, which is in accordance with the Mishna, so that of the three statements in the Boraitha the first and third refer to the finding, while the middle one to the making? Thereupon said Abayi that it is so. Rabha, however, asserted that the three statements have all reference to the finding, and as for the statue of a person, he says, the Boraitha is in accordance with the following: R. Jehudah prohibits also found vessels with the image of a nurse or of a serapis on them. The nurse signifies Eva, who was nurse to the whole world; serapis signifies Joseph, who

was a prince and supplied the whole world with bread, thereby appeasing mankind. The human image and that of a nurse are however, prohibited only when having respectively a measure in the hand and a son in the arms whom she is nursing. The rabbis taught: How does the prohibited dragon image look? Said R. Simeon b. Elazar, it has scales between the joints. R. Assi confines these to the neck joints only. Said R. 'Hama b. Chanina: The Halakha prevails with R. Simeon b. Elazar. Rabbah b. b. 'Hama said in the name of R. Jehoshua b. Levi: I was walking with Eliezer Hakaphar the great, when he happened to find a ring with the image of a dragon on it. While standing still before the ring he noticed a heathen boy pass, and spoke not to him; later an adult heathen came passing by, and to him he said: profane this ring (break a piece off it), and as the heathen did not obey, he hit him till he profaned the ring. This incident taught him three things: (1) A heathen may profane his own idol as well as that of a stranger; (2) only he is capable of profaning an idol, who knows the nature of idol and idol worship, and (3) one may compel the heathen to profane an idol. R. Hanina, however, ridiculed this, saying: Was not R. Eliezer aware of the following Boraitha: When one saves something from a lion, a bear, a leopard, or from the hands of burglars, from a river, or picks up what the sea-waves thrust upon the shore, or while crossing a stream, or simply in the street, the theatre, or generally in a place where many people pass, all this, be it what it may, he can consider his own, for the owner having lost his property in this manner or in such a place, has surely abandoned the idea of finding it. In the light of this consideration it is obvious that the heathen owner of the ring, having lost it in the street, has renounced the hope to find it, and thereby profaned it as an idol; why, then, was it according to R. Eliezer necessary to profane it again? Abaye explained it thus: The owner of this ring has, it is true, given up the idea of getting it back as property, but continues to consider it an idol which, if found by a heathen, will be worshipped, and if by an Israelite, he will surely sell it to a heathen; hence the fact of being lost does not Profane the idol, and R. Eliezer was in the right.

"*R. Simeon b. Gamaliel says*," etc. Which objects are the distinguished and which the

insignificant ones? Said Rabh: Vessels that are not made wet are of the former sort; Samuel, however, maintains that vessels used to eat in are of the insignificant,

while those used as ornaments are of the distinguished kind. Yea, it was taught, there is a Boraitha in accordance with Samuel: Distinguished are the vessels found on arm-bands, nose-bands and finger-rings, while of the insignificant sort are, kettles, pans, pitchers, bed-clothes, towels (and the images found thereon are allowed).

MISHNA *IV*.: R. Jose said: One may grind the images and scatter them to the wind, or sink them into the sea. Thereupon it was objected: They might turn into dung, and it reads [Deut. xii. 18]: "And there shall not cleave to thy hand aught of the devoted things."

GEMARA: There is a Boraitha: R. Jose met the objection by quoting [ibid. ix. 21]: "And your work of sin, which ye have made, the calf, I took and burnt it in fire, and stamped it, grinding it very small, until it was as fine as dust: and I cast the dust thereof into the brook that descendeth from the mount." The rabbis, however, rejoined: This does not corroborate your view. Moses cast the dust of the golden calf into the water not to destroy it thus, but in order that he might give this mixed water to the Israelites to drink, thus testing who of them worshipped the calf, in the same manner as the test of the bitter water was applied by the priest to detect whether a woman has committed adultery (conf. Numb. v. 18). This is clearly shown from the following [Exod. xxxii. 20]: ". . . be strewed it upon the water and made the children of Israel drink of it." Thereupon replied R. Jose, quoting as follows [II Chron. xv. 16]: ". . . he removed Ma'chah his mother from being queen, because she had made a scandalous image for the grove, and Assa cut down her scandalous image and had it ground up, and burnt it by the brook Kidron," which passage clearly shows that it is allowed to grind up the idol and scatter it to the wind. In the vale of Kidron, he was answered, there is no vegetation. But have we not learned that the blood of the sacrifices from both the inner and outer altar after uniting in the aqueduct was flowing into the vale of Kidron, where it was being sold as dung for the gardens; when one took some of this blood without paying therefor he was to bring a sin-offering; hence, there were gardens in the vale of Kidron? Yea, but there are there also great expanses void of all vegetation. R. Jose was then further arguing, it reads [II Kings, xviii. 4]: ". . . and stamped in pieces the copper serpent that Moses had made," etc. And it was retorted: This is no corroboration of your view, for it reads

[paragraph continues] [Numb. xxi. 9]: "And the Lord said unto Moses, Make (to) thyself a serpent"; here the word (to) 'thyself' indicates that Moses was to make the serpent of his own metal, whence it follows that when in later times the Israelites began to worship it, the serpent did not become an idol whose use is forbidden, for others' property, even when worshipped, cannot become an idol whose use is prohibited; accordingly, King Hiskia was not obliged to destroy the serpent in question, but had in some way or other to render it impossible to be the object of worship for the Israelites. Rejoined R. Jose, hence [II Sam. v. 21]: "And they left their idols there; but David and his men scattered them"; hence, scattering suffices (and that R. Jose interpreted the word Vaissuom = scattered them--correctly, may be shown yet from R. Joseph's interpretation of [Is. xli. 16]: "Scatter them so that the wind carry them off.") He was again answered: Nor does this quotation bear you out, for it reads [I Chron. xiv. 12]: "And they left

their idols there, and David had them burn with fire." Now that the first-cited verse is from "Samuel, and this one from I Chronicles, the two cannot be understood literally; but the right inference is that word vaissuom means: he picked them up, *i.e.*, he carried them off in order to make use of them. The apparent contradictions of the two quoted verses are explained by R. Huna thus: At first David ordained to burn the idols, since the Israelites could not possibly profane them; but before this order was executed, the heathen, Ithai the Gethite, had come and profaned the idols, whereupon their use became permitted, and therefore David had them carried away. Similarly we find [II Sam. xii. 30]: "And he took the Crown of Malkam from off his head; its weight was a talent of gold and had precious stones, and had it put upon the head of David"; now, how could he make use of the crown of an idol? It was again Ithai the Gethite who, according to R. Na'hman, had first profaned it. But look here, how could David's head carry a crown of a talent? R. Jehudah in the name of Rabh explains this figuratively to mean: The crown was worthy of adorning the head of David. However, R. Jose b. 'Hanina said that the crown was kept in the air by the force of a magnet, and David was sitting beneath it, so that it looked as if he had it on. But R. Elazar said: David actually had the crown on his head, but it was not of a talent weight, as it consisted only of precious stones, its worth amounted to that of a talent in gold.

It reads [Psalm, cxix. 56]: "*This* was accorded to me, because

[paragraph continues] I observed thy commands." What is the word "this" to emphasize here? David wants to point out *this testimonial* he obtained for the said observance. What testimonial? Said R. Jehoshua b. Levi: This is the crown which had the peculiarity to fit only (to) him who possessed the kingdom, and the fitting was on the spot where the Thephelin are carried. [II Kings, xi. 12]: "And he brought forth the King's son, and put the crown upon him, and (gave him) the testimony." The crown is the princely diadem, but what is the "testimony"? Said R. Jehudah in the name of Rabh: This crown was itself testimony in the same time, as it fitted only him to whom the kingdom belonged, *i.e.*, to the house of David.

It reads [I Kings, i. 5]: "And Adoniyah, the son of Chaggith, exalted himself, saying, I shall be king, and he procured himself a chariot and horsemen and fifty men who ran before him." Said R. Jehudah in the name of Rabh: Adoniyah imagined that the crown will fit him, but this was not the case. What kind of distinctive marks had the mentioned forerunners? We were told that their spleens were cut out, and the flesh was removed from their footsoles in order that they might run with greater speed.

MISHNA *V.*: Peroklas, the son of a philosopher, asked once R. Gamaliel at Ako, who was then bathing in the bath of the goddess Aphrodite: Your law prescribes [Deut. xiii. 17]: "Let nothing of the devoted objects cleave to thy hands"; why, then, do you bathe in the bath of Aphrodite? And he answered: Such questions are not answered--at a bathing place. After he had left the bath he said: I am not come into her domain, but it is she that is come into mine; truly, people do not say: The bath is erected to adorn the Aphrodite, but the Aphrodite is to ornate the bath; moreover, you would not agree for any amount of money to appear before your idol when you are naked or urinating. The Aphrodite, however, stands on the channel, and everybody urinates in front of her. The law says their gods, *i.e.*, to say such toward whom one behaves with dignity inspired by something divine; while whatever does not inspire such a behavior, is allowed.

GEMARA: Why did R. Gamaliel at all answer *in the bath*? Has not Rabba b. b. Hana said in the name of R. Johanan: Everywhere but in the bath and toilet it is allowed to speculate upon subjects of the Law? Is it, you think, because be answered him not in the holy tongue? Has not Abayi said that

indifferent matters may be spoken of in the holy tongue and be it in the bath or toilet room, while holy subjects must not be discussed in these places, not even in another tongue (than the holy one)? There is a Boraitha: R. Gamaliel gave, indeed, no answer, until he had left the bath, when he said: In a bathing place one is not to answer. R. 'Hama b. Joseph said in the name of R. Oshia: R. Gamaliel gave Peroklas an evasive answer; but *I* (Hama) say it was not evasive. The evasiveness of the answer apparently consisted in that he said, this (Aphrodite) stands on the channel, and everybody urinates in front of her; thereby R. Gamaliel wanted to prove that the Aphrodite is profaned and he may, therefore, use her, which is not the case; because Rabha said: The front site of the very idol Peor is used as a toilet-room, and yet it is not profaned thereby; consequently, the Aphrodite is not profaned either by the fact of urinating before her. None the less, I am about to prove that R. Gamaliel's answer was, after all, not evasive. The Peor and the Aphrodite are incomparable; the worship of the former consists in *excrementing* before it, while that of Aphrodite was not of this kind, wherefore she is actually profaned thereby. Abayi, however, said: The evasiveness lies in his saying, I am not come into her domain, but she is come into mine, whereby he surely meant that if he came into her domain, she would be prohibited, which is not the case, since we have learned that a garden or a bath-house belonging to an idol, is allowed when offered gratis, but not for pay. Thus R. Gamaliel was allowed to bathe there even if the place belonged to the Aphrodite, hence, the evasiveness of his answer; but I say this was not evasive because assuming that the bath belonged to the Aphrodite, R. Gamaliel could not go in there, for the heathens would have considered it a honor if so distinguished a personage had gone to their bath and be it gratis. R. Simi b. 'Hyye said: The evasiveness in the answer did not consist in what has been here recited, but in what R. Gamaliel said further: It stands on the channel and everybody, etc., whereby he intends to indicate that the Aphrodite is profaned, whereas we have learned that by spitting or urinating before the idol, or by dragging it in the dirt, one does not profane it; but I (Simi) say it was not evasive, as such act as described here one may have committed once when moved perhaps by anger, but then he might become reconciled; while there, in the case of the Aphrodite, this takes place daily and is therefore a real profanation. Rabba b. Ula

said: R. Oshia thought to have found the evasive point in what R. Gamaliel said: People do not say that the bath-house is erected to adorn the Aphrodite, but, etc., whence it would follow that if the reverse were the case, the visiting of the bath would be forbidden, whereas we have learned: When one says, this house or this goblet be devoted to the idol, he said nothing, for only such objects as are actually sacrificed to the idol, are forbidden. Hence, the bath in question would not be prohibited. And I, Rabba, say: R. Gamaliel's answer was after all not evasive, because admitting that the bath-house is not offered as a sacrifice to the idol, it is none the less put up as a decoration for it, and then it would indeed be prohibited.

MISHNA *VI.*: The mountains and hills worshipped by heathens are allowed to use, but not the things brought upon them, for it reads [Deut. Vii. 25]: "Thou shalt not covet the silver or gold

that is on them, so that thou wouldst take it unto thyself." R. Jose the Galilean says, it reads [ibid. xii. 2]: "Their gods on the mountains," but not their mountains as gods; "their gods on the hills," but not their hills as gods. Why, then, is a grove prohibited? Because it is established by the hand of man, and whatever is made by human hand is forbidden. Hereupon said R. Aqiba: I should explain and interpret this statement thus: Wherever you find a high mountain, an elevated hill, a leafy tree, there is surely an idol there.

GEMARA: What is the point of difference between the opinion expressed by the first Tana of the Mishna and that of R. Jose? Said Rami b. 'Hama in the name of Resh Lakish: It concerns the covering of mountains, which the former prohibits by reason of its having been brought up on the mountain, while the latter allows it because, being, as it is, fastened to the mountain, it is to be treated as the mountain itself. R. Sheshith, however, said: Nay; R. Jose, too, prohibits it, and their point of difference is in the following: A tree worshipped after it has been planted and grown to be big, is, according to the first Tana of the Mishna, allowed by reason of its being worshipped after it has taken root on the mountain, while R. Jose prohibits it because it was planted by human hands. This view is shared also by R. Jose b. Jehudah, who says, it reads [Deut. xii. 2]: "Ye shall utterly destroy all the places whereon . . . (they) served their gods, upon the high mountains, and upon the hills, and under every green tree," whence it follows that the gods on the mountains, and not the mountains themselves, are forbidden;

similarly with the hills. Lest the inference be drawn that what is put under the tree is forbidden but not the tree itself, it reads in the next verse: "Their groves ye shall burn with fire," *i.e.*, the tree is likewise prohibited. But why is it stated: "Under every green tree"? This is explained in the sense of R. Aqiba's statement in the Mishna. Now, how does the first Tana of the Mishna, who allows the tree, explain the verse, Their groves, etc.? He understands this to mean such groves that were originally planted for worship, and they are forbidden, but trees not purposely planted for worship are allowed even when worshipped later. On what does R. Jose b. Jehudah base this, his view, if not on the verse "Their groves," etc.? On the following [ibid. vii. 5]: "Their groves ye shall cut down," whence it is obvious that only what is cut down is forbidden, but not the roots, and this can be only with a tree worshipped after it has been planted. Now the question arises, how does the first Tana of the Mishna infer from this last verse? What R. Jehoshua b. Levi said: As the Israelites came into the promised land, they were ordained to cut down all the groves they might find before, and to burn the trees after the conquest of the land bad been completed. Wherefore the one verse speaks of hewing down, and the other of burning, the groves. As R. Joseph reads [ibid. vii. 5]: "Ye shall tear down their altars," and there is here no call for carrying them off, hence they must be left where they are; "Ye shall break their pillars," and no mention is made of carrying them off. But how can R. Joseph say that these objects be left in their places, when it is obligatory to burn all things belonging to the idol? R. Huna said: Prosecute first and then burn. Whence is this order of events known to R. Joseph? From [ibid. xii. 2]: "Abedtbeabdun," the one meaning literally: to destroy, ye shall destroy, hence it is a reference to two successive events. As to the first Tana, he understands this redundancy as calculated to indicate that both idol and all its belongings, the subterranean included, be utterly annihilated. While R. Jose b. Jehudah infers this radical destruction from [ibid. xii. 3]: "And ye shall annihilate their names from the same place." The first Tana, however, explains this as to mean: A town or place bearing the name of an idol should be renamed. Here is a Boraitha to this effect. R. Eliezer says: The verse, Ye shall annihilate their name, etc., means that while annihilating an idol it is obligatory to search also under the ground for its belongings. Said R.

[paragraph continues] Aqiba to him: This obligation is inferred from the foregoing redundancy of "to destroy and you shall destroy," while the last-mentioned verse is to indicate that a town bearing the name of an idol must be renamed. As to the nature of the new name, it must not be indifferent, *i.e.*, neither a honor nor a disgrace to the idol, for it reads [ibid. 7]: "Thou shalt utterly detest it and thou shalt utterly abhor it for it is accursed,". hence, the name must always be either a detest or abhorrence. *E.g.*, if the name was originally Beth Galia, *i.e.*, House of revelation change it to Beth Karia, *i.e.*, House of concealing; Ein Kol, *i.e.*, The all. seeing eye, change to Ein Kotz, *i.e.*, the thorn-eye.

The schoolmen propounded the following doctrine in the presence of R. Sheshith: Mountains and hills worshipped by heathens are allowed, but the worshippers should be executed by sword. Worshipped shrubs and ferns are forbidden and their worshippers are to be executed. Said R. Sheshith: Your doctrine is in accordance with R. Jose b. Jehudah, who said: A tree even if not planted with the purpose of worshipping it, is forbidden if worshipped afterward; in like manner are worshipped ferns and shrubs prohibited, though not destined for worship when planted. But what prompts R. Sheshith to interpret the schoolmens' proposition regarding shrubs and ferns as meaning that these were not planted expressly for worship? Because as they are treated of together, he finds it more natural to say: just as mountains and hills have not been created for worship, in like manner have not the ferns and shrubs been sowed and planted for worship.

It was taught: If stones absolved fortuitously from a mountain rock that was worshipped, is their use allowed or not? Two opinions, one affirmative, the other negative, are held as regards this question, the contending parties being the sons of R. 'Hyye and R. Johanan. However, the affirmative side contends that the stones are treated as the mountain which, if worshipped, is allowed by reason of its not being made by man. The objection that the mountain is immovable while the stone is movable, may be met thus: Worshipped cattle, though movable, is, except for the temple, allowed, for it does not owe its origin to man, hence the same may apply to the stone in question? If you were to dispute the comparison, one of the terms compared being possessed of life while the other one not, it may be answered that the mountain is also a lifeless being, but is allowed; the conclusion returns, for a mountain is not like cattle and *vice versa*;

but their common point is that they are not made by man, hence the inference that all objects not made by man are allowed, and the stones here are of this category.

Asked Rami b. 'Hama: Is it allowed to use the stones of a worshipped mountain for an altar, or it is here a case analogous to that of a worshipped cattle which cannot be offered as sacrifice, though it is allowed to slaughter it and to eat the meat thereof? The two are hardly analogous: the cattle is itself sacrificed, while here the stones are first blasted off, and besides they are not sacrificed as such. Therefore the two cases cannot follow the same rules. Rabha decides the case by an *a fortiori* argument--viz: The law permits to make common use of a prostitute's remuneration, regardless of whether it is of a movable or immovable nature, but it is prohibited to use even the latter for God, as it reads [Deut. xxiii. 88]: "Thou shalt not bring unto the house of the Lord either the reward of a prostitute nor the exchange for a dog"; whence the conclusion: since the movable worshipped object is forbidden even for common use, the more so will an

immovable worshipped object be forbidden for God. Said R. Huna b. R. Jehoshua to Rabha: Since the provision of the Law with reference to the immovable remuneration of the prostitute is not specific, the process of your *a fortiori* argument may rather be reversed, *i.e.*, we may reason from the rigorous to the lenient thus: We know that worshipped movable objects are prohibited even to man, and yet the immovable is allowed for the temple, because it reads: "Their gods on the mountains" to exclude the mountains which are not regarded as gods and which are therefore allowed; consequently, since the prostitute's reward, which is not treated so rigorously as worshipped mountains, is even if movable allowed to man, the more should it be allowed, in its immovable form, for the case of the temple. This, my view, can by no means be objected to from the phrase *into the house* of the foregoing verse, which you might attempt to interpret thus: If one give to the prostitute as her reward a tree or a stone grave, these objects are not to be used for the amelioration of the temple; because the said phrase has a totally different meaning, as is shown from the following Boraitha: "Thou shalt not bring it into the house of thy Lord," whence it follows that it is allowed to purchase for the prostitute's reward a red cow, for such one is not brought into the Lord's house, but was burnt outside the city; so said R. Eliezar, while the sages held: The phrase into the house

teaches that it is prohibited to take the said reward in order to buy for it gold wherewith to decorate the walls of the temple. Rejoined Rabha: As in this case the reasoning may be pursued both from the rigorous to the lenient and from the lenient to the rigorous, we must take account of the established rule to reason from the rigorous to the lenient, and not *vice versa*. Said R. Papa to Rabha: Ye cannot prove the foregoing rule to be inconvertible, as we find a case where it was proposed to reason from the lenient to the rigorous: when the day of preparation to Passover happens to he on a Sabbath and there was one who, having become unclean through contact with a dead body, counts on this Sabbath the last day of his uncleanness, so that, in order to cleanse him, the water of ashes of the red cow must be sprinkled upon him, an act which is not otherwise allowed to perform on Sabbath, R. Eliezer allows the performance of this act in this case in order that the unclean one receive his cleansing, as it was his duty to eat from the Easter lamb. R. Aqiba, however, forbids it. Thus you see that while R. Eliezer reasons from the rigorous to the lenient (compelling thereby the unclean to eat from the Easter lamb), R. Aqiba reasons from the lenient to the rigorous (freeing thereby the unclean from this duty). Hereupon rejoined Rabha: This case is not apt to prove anything; the opinion of neither one is correct; it was R. Eliezer himself who once taught to R. Aqiba that sprinkling of the ashes on Sabbath is forbidden, but he then forgot all about it, so that his disciple, R. Aqiba, attempted to gently remind him in the above controversy; but as he did retract his view, R. Aqiba said to him: All your reasoning cannot convince me, for you told me yourself that the sprinkling on Sabbath is in this case forbidden.

MISHNA *VII.*: If a house situated close by a worship-house of an idol crumbles down, its owner is prohibited from rebuilding it, but he must recede four ells into his property and then build; but if the house and the said worship-place have the wall in common he should count in a half of the thickness of the wall. Stones, wood, and rubbish thereof are defiling as reptiles; for it reads [Deut. vii. 26:] "Thou shalt detest it." R. Aqiba said, it is defiling like a menstruant woman, for it reads [Isa. xxx. 22]: "Thou wilt cast them away like Dovoh (menstruation)," *i.e.*, as a menstruant woman defiles by carrying, so an idol, too.

GEMARA: But if the wall recedes four ells the idol will

thereby become more spacious! Said R. 'Hanina of Sura: This space should be made a toilet-room, or a hedge of thorns be fenced between the idol and the vacant space.

MISHNA *VIII*.: There are three kinds of houses: (i) a house originally built for idol worship is prohibited; (2) if calcimined, repaired or somewhat renewed for idol-worship, then it -is necessary to take off it only the new additions; (3) a house into which an idol was placed but thereafter removed from it, is allowed.

GEMARA: Rabh said: A house that is worshipped is prohibited; whence it is manifest that he shared the opinion that a movable object rendered immovable (like a house that is made up of movable materials) and then worshipped, must be treated as if it were still movable, and is therefore forbidden. And when the Mishna limits the prohibition only to a house originally built for idol-worship, thus allowing by implication a house built without such express purpose, it is because it treats of a house which was immediately upon its completion destined for idol-worship, but has not yet been worshipped, and prohibits it none the less; while Rabh forbids it after it has been worshipped. But if such be the case, the Mishna would have four points to treat of instead of three! The answer is that a house originally destined for idol-worship and a house that was already worshipped are treated of alike, hence the Mishna regards but three laws.

MISHNA *IX*.: There are three kinds of stones: (1) a stone originally hewn for a statue is prohibited; (2) if calcimined and decorated, or otherwise somewhat renewed for idol-worship, then only the new additions must be taken away; (3) if one bad placed an idol upon it but it was afterward removed, it is allowed.

GEMARA: R. Ami said: A calcimined and decorated stone is forbidden only when the lime penetrates it through its crevices. However, since the provisions of the houses precede those of the stones, and a calcimined house is forbidden it would appear natural to prohibit a stone, too, even when the lime has not penetrated it. But the fact is that the house is forbidden also because the lime penetrates its walls; otherwise it would not be forbidden. However, as the Mishna makes no mention of this circumstance, we could suppose thus: When a house once calcimined is afterward again calcimined and only thereafter used for idol-worship, the lime could not penetrate such

a house, and yet it is prohibited; hence, R. Ami's words must be understood as follows: The stone is allowed provided the lime that penetrated its crevices when calcimined has been afterward removed. And if not for this, R. Ami's statement, it would have been plausible to believe that such a stone, the lime having penetrated it, must be treated as one originally hewn for a statue and is therefore forbidden.

MISHNA *X*.: There are three kinds of groves: (1) a tree originally planted for idol-worship is prohibited; (2) if it was clipped and trimmed or somehow otherwise altered for the idol, only the alterations must be removed; (3) a tree under which an idol was put, but thereafter destroyed, is allowed.

GEMARA: Said the disciples of R. Janai: The clipped and trimmed tree spoken of in the Mishna is prohibited only when branches were engrafted thereon, but not when it was merely trimmed. Now that the Mishna makes no mention of this restriction, the foregoing statement must be thus understood: If branches are engrafted in such a tree but then removed, it is allowed; and if not for this statement one could entertain the opinion that a tree in this condition must be treated as one originally planted for idol-worship, and is therefore forbidden.

R. Samuel said: When a worshipped tree sends forth, after being worshipped, new twigs, they, too, are prohibited. R. Elazar objected thereto on the ground that the Mishna prohibits the tree only when clipped and trimmed or somehow otherwise altered, without mentioning aftergrowth. This apparent contradiction (between Samuel and the Mishna) is thus explained: The Mishna gives the opinion of the rabbis, who allow a tree not purposely planted, but afterward used, for worship; the Mishna accordingly allows all that grew on the tree after its being worshipped; while Samuel shares the opinion of R. Jose b. Jehuda, who forbids such a tree unconditionally, and therefore he prohibits its aftergrowth, too. This explanation R. Ashi opposed: Is it at all necessary to assume that Samuel differs with the rabbis? Maybe they, too, hold that the branches growing after the worshipping are forbidden? The point of difference in the respective opinions of the rabbis and R. Jose consists in that the former allow the roots of the worshipped tree on the basis of the verse, "Their groves ye shall cut down," hence, only this is forbidden that can be cut down, but not the roots; while R. Jose prohibits also the roots on the ground of "Their groves ye shall burn with fire"; hence, wholly destroy, root as

well as stem. And lest one say: The rabbis based their opinion upon the verse referred to by R. Jose, who himself made use of the rabbis' verse, whence it would follow that he, thus allowing the roots, too, differs with the rabbis only in respect of the aftergrowth, which he forbids, while they allow it, R. Ashi would meet this objection as follows: This cannot be proven, since R. Jose has never positively cited the verse "Their groves ye shall cut down," the imputation is therefore unfounded; hence, we may say that it is not his opinion. However, the above-quoted verses admit of an explanation in a reversed manner, notably: R. Jose prohibits the roots which the rabbis allow, but as for the branches, newly grown after the worship, the rabbis, too, prohibit them; hence, Samuel is of the same opinion with the rabbis. Also this argument was objected to thus: If such be the case, according to whom is the statement that prohibits the trimmed and clipped tree, thus allowing by implication the aftergrowth? It is not according to the rabbis prohibited, as they prohibit it even if the tree is not trimmed; nor is it in accordance with R. Jose, the author, as he prohibits not only the aftergrowth, but also the roots. (Said R. Ashi): The Mishna can indeed be explained in the sense of either party; for R. Jose forbids the roots of the tree only when they are not cut and trimmed; but as soon as the tree has been clipped and trimmed, it is manifest that the tree was the object of worship, not in its present shape, but only in that appearing after the trimming; this R. Jose forbids, but the roots in such case he, too, declares allowed. Now, in the sense of the rabbis, the Mishna says: "If it was clipped and trimmed," and it was thought that this statement runs contrary to the opinion of the rabbis, who prohibit aftergrowth. But the fact is that the Mishna uses this expression, lest the belief be entertained that the clipping and trimming cause also the roots to be forbidden; hence the expression of the Mishna: "Only the alterations must be removed, all the rest is allowed."

MISHNA *XI.*: What is a grove? A tree with an idol under it. R. Simeon said: Any tree that is worshipped. In Cidon there was once a tree that was worshipped, and a heap was found under it.

R. Simeon said: Search this heap. The heap was searched and an image was found underneath; whereupon he decided: As they worship only the image, we may allow the tree.

GEMARA: The Mishna asks now what is an idol-grove;

have we not learned in the preceding Mishna that there are three sorts of idol-groves? This is true; however, in reference to the first two kinds, all agree, while with regard to the last kind, the other sages differ with R. Simeon, who upholds that it cannot be at all called an idol-grove. What, then, is the criterion whereby to distinguish a tree as an idol-grove? Said Rabh: When priests sitting under a tree abstain from eating its fruit, it must be an idol tree. Samuel said: A date tree is to be regarded an idol when priests who are picking its dates say: "These dates are for the house of Nezraphi"; because they prepare of these dates beer in which they indulge in the said house. Said Amemar: I have heard from the elders of Pumbeditha that the Halakha prevails with Samuel.

MISHNA *XII.*: It is not allowed to sit down in the shade of such a tree; if, however, one chanced to sit there, he is clean. Nor is it allowed to pass under it, and if one did pass he is unclean. If its branches inclined upon the public grounds and one passes under it, he is clean.

GEMARA: "*If one chanced to sit down he is clean.*" Is not this self-evident, since he did not touch the tree? Said Rabba b. b. Hana in the name of R. Johanan: This is merely to state that sitting in the shade of the height of the tree does not defile. Shall we assume that he is allowed to sit down? Nay; it comes to teach us that even if he sat down under the tree itself, he is also clean.

"*Nor is it allowed*," etc. The reason of this uncleanness is this: It is positively to be assumed that under such a tree there are always remnants of idol sacrifices which are, according to R. Jehudah b. Bethira, capable of defiling him who is with them under the same shelter. As in the following Boraitha, R. Jehuda b. Bethira said: We know that idol sacrifices defile whatever is with them under the same shelter, from [Psalm, cvi. 28]: "And they joined themselves unto Ba'al Pe'or, and ate the sacrifices of the dead." Here the sacrifice to the idol is compared to that of the dead; hence, as latter is defiling, so is former.

"*If its branches*," etc. The schoolmen propounded the following question: How should this expression be understood, as meaning he *already* passed, or that all going is allowed? Said R. Iz'hak b. Elazar in the name of 'Hiskia: The latter is intended by the Mishna, while R. Johanan thinks the former meaning is the proper one. These two views may, however, be

reconciled thus: R. Iz'hak has in view the case where there is no other road, hence, necessity allows all going under the tree, while R. Johanan has in view the case where there was yet another one.

In the place where R. Sheshith lived there was such a tree, and whenever he had to pass by it he, being blind, said to his guide: Pass me by as quickly as possible. (Says the Gemara): If there was yet another road he was not allowed there, and if not, he had the right to pass by here. What was,

then, the speeding by necessary? The answer is that there was but this only road, and R. Sheshith, who was a prominent scholar, wanted (on his own account) to pass it as quickly as he could.

MISHNA *XIII*.: Under such a tree is allowed to sow herbs in the winter, but not in summer. Lettuce is not allowed to sow in either winter or summer. R. Jose said: Even herbs must not be sowed in winter either, for their leaves, when falling down, would turn dung for the tree.

GEMARA: The statement of R. Jose makes it manifest that he is of the opinion that two causes of which one is allowed and the other one prohibited do, when working together, bring about a forbidden effect. (In the case before us there are two causes fostering the growth of the herbs: the dung and the soil; former is forbidden, latter allowed; hence, he prohibits the effect.) On the other hand, the rabbis who do not share this opinion allow the herbs. However, in another place (iv. Mishna of this chap.) we find these two contending parties interchange their respective views. It is true, the apparently contradictory tenets of R. Jose may be reconciled thus: He allows where the idols were ground down, as the effect here cannot even become dung, but in the present case the falling leaves surely turn into dung, hence his prohibition. But how should we explain the rabbis' contradiction? It may be explained as R. Mari b. R. Kahana said: "In proportion as the hide rises in price, one loses on the meat." In like manner it can be said here of the herbs: What the dung promotes, the shade of the tree hinders; hence, as there is no use of the leaves, the rabbis allow. Said R. Jehudah in the name of Samuel: The Halakha prevails with R. Jose.

Once a garden was ameliorated with the dung of an idol; R. Amram let interrogate R. Joseph as to how one should behave with regard to the fruit of this garden, and the answer was: R. Jehudah said in the name of Samuel, the Halakha prevails with R. Jose.

MISHNA *XIV*.: To derive any benefit of wood obtained from an idol-grove is prohibited. The stove heated therewith must be destroyed if new yet, but if old already, it must be cooled off. Bread baked therewith is prohibited for any benefit; if it was mingled with other bread, they are all forbidden. R. Eliezar says: The worth of its benefit should be cast into the salt lake. However, the rabbis responded: There is no redemption in case of idol-worship. The same is the case with a loom made of this wood and with the garment wrought therewith. If such a garment was mixed up with other garments and these again with others the benefit of them all is forbidden. R. Eliezar, however, said: Cast their worth into the salt lake, and he was answered: There is no redemption from idol-worship.

GEMARA: The Mishna must lay down both the cases of the benefit of wood, for bread-baking and for garment-making; for if the former case alone were stated, there would be reason to think that R. Eliezar allows the use of the bread only when its worth has been cast into the sea, for as soon as the bread is entered in the oven, the prohibited object, the wood, is, properly speaking, no more, having been consumed by the fire; while in the case of a garment made with the aid of such wood, his prohibition is absolute, since the wood is all the time in existence. On the other hand, if the Mishna treated only the garment-making, there might rise the belief that the garment is forbidden by reason of the perennial existence of its instrument, while bread, where the wood was consumed by the fire, the rabbis agree with him. Hence, the establishment of both the cases. Said R. 'Hisda: I was told by Abba b. R. 'Hisda that Siera said, the Halakha prevails with R.

Eliezar. Said R. Ada b. Ahaba: R. Eliezar, notwithstanding this his doctrine, prohibits the use of the wine in all the barrels if one cask of forbidden wine was mingled among them. R. 'Hisda, however, asserts that this wine, too, is allowed by R. Eliezar, provided its worth has been cast into the sea. It once happened that a cask of forbidden wine was mixed among other casks of allowed wine; whereupon R. 'Hisda was interrogated as to how to behave in. this case, and his answer was to cast four zuz into the river and then we will allow the wine.

MISHNA *XV*.: How is the idol-worship of a tree profaned? If the heathen cuts down from it dry twigs or fresh branches, a staff or a rod., or even if he takes from it only a leaf, it is profaned.

If, however, all this be done in the interest of the tree, it remains forbidden; and if not in its interest, it is allowed.

GEMARA: The question as to how to behave toward the dry twigs and other pieces cut off the tree is discussed by R. Huna and R. Hyya b. Rabh. The one allows and the other forbids the use of these objects. This positive view is borne out also in the following Boraitha: When a heathen trims his idol, the question arises, does he do it in order to use the thus obtained wood, or in order to adorn the idol? If former be the case, both the wood cut down and the idol itself are allowed, while in the latter case the wood is allowed but not the idol. If, however, the trimming was done by an Israelite, all is forbidden, irrespective of the aim in view, because the idol of an Israelite can never be profaned. It was taught: If an idol broke down by itself, what is to be done? Rabh said: Each and every piece of it must be singly and severally profaned before its use is allowed, while Samuel maintains that an idol can be profaned only in its ordinary shape. But how is this to be understood; does not the contrary seem to be the case? Samuel means to say, then, that only an idol that is in its ordinary shape needs be profaned. The point of difference, however, here is concerning an idol not broken by itself but one that is made of small pieces, such that even a layman could put together or take apart. It is of such an idol that Rabh says it is not profaned when out of its joints, because even a layman can restore it, while according to Samuel it is not considered as an idol as soon as it loses its shape.

Next: Chapter IV

CHAPTER IV.

CONCERNING OBJECTS USED FOR IDOLS.--THE MANNER IN WHICH AN IDOL IS PROFANED SO AS TO BE ALLOWED FOR USE.--THE DISCUSSIONS BETWEEN THE ELDERS OF ROME ON THE ONE HAND AND R. LAMALIEL, THE PRINCE, ON THE OTHER.--HOW TO PREPARE WINE IN THE POSSESSION OF A HEATHEN FOR ISRAELITES.

MISHNA *I.*: R. Ismael says: Three stones near one another and beside the Merkules are prohibited; two stones in this position are allowed. The sages;, however, said: Only the stones that are close by it are prohibited, but those that do not appear to be so are allowed.

GEMARA: The opinion of the sages is easily explained, as they hold that the heathens worship also the fragments of their idols, accordingly they prohibit only the stones that are perceptibly near the idol. But R. Ismael's opinion presents some difficulty--viz: If he upholds the view that pieces are also worshipped, he should forbid also two stones; on the other hand, if he believes that the heathens do not worship broken idols, he should consistently allow also three stones near the Merkules! Said R. Itz'hak b. Joseph in the name of R. Johanan: The limit of proximity required in the Mishna is set down at four ells; now, R. Ismael believes that the heathen might make of the three stones a small Merkules beside the big one, but not of two stones; while the sages who do not entertain this belief merely regard these stones as fragments of the Merkules, hence they forbid only those that are visibly belonging to it irrespective of their number.

It once happened that the palace of King Janai was destroyed; thereupon came heathens and erected therein a Merkules; later on others came who did not worship the Merkules, took the stones and paved a street therewith. Some of the sages abstained then from treading upon these stones, while others were passing there; hereupon said R. Johanan: The son of the saints treads on them, should we abstain therefrom?

[paragraph continues] Who was this son? R. Menahem b. Simai, so called because he would refrain from even looking upon the face of a coin. But why, this notwithstanding, were some shunning that street? Because they guided themselves by the opinion of R. Gidel, who said in the name of R. 'Hyya b. Joseph, quoting Rabh: Though the idol is capable of being profaned, yet the idol-sacrifice is not, and this admits of proof from here: "They clung to the Baal Peor and ate sacrifices of the dead idols," where a comparison is drawn between an idol-sacrifice and a corpse, to indicate that just as the latter remains but a corpse, so does the sacrifice remain unalterably an idol-sacrifice. In accordance with this, those sages who regarded these stones as idol-sacrifices, refrained from treading thereon, while the others held that stones cannot be regarded as sacrifices, since only those objects are regarded as sacrifices that were actually offered in the temple, which has never been the case with stones.

R. Joseph b. Aba narrated: Once Rabba b. Jeremiah, when visiting us propounded the following Boraitha: If a heathen takes stones from a Merkules and paves therewith the street, the Israelites are allowed to walk thereon; if, however, an Israelite did it, they are prohibited therefrom. And there is no artisan that could set right this Boraitha. (The difficulty is explained further on.) Said R. Sheshith: I, though not an artisan, will nevertheless attempt to explain it: The intricacy here implied is what R. Gidel said concerning the incapacity of an idol-sacrifice to be profaned, and is removed by reminding what has been shown above--viz: that these stones cannot be considered sacrifices.

R. Na'hman says in the name of Rabba b. Abuhu, quoting Rabh: If the worship of an idol consists in the rapping before it with a cane, and one breaks a cane before the idol in its honor, he is liable; furthermore, if it was yet a new idol never before worshipped, this act is considered a worship and renders the idol forbidden as well as the broken stick which is regarded a sacrifice. If, however, one threw a stick before an idol the worship of which consists in the throwing of sticks, the stick is not forbidden, but the thrower is liable. Thereupon said Rabha to R. Na'hman: The stick broken before the idol resembles the slaughtering in the temple, and is therefore forbidden; why, then, should not the cane thrown before the idol resemble the blood sprinkling in the temple, and be also forbidden? And he answered: Nay; the blood separates into drops through the

sprinkling, while the stick, even when thrown, remains whole. If such be the case, why should, then, rejoined Rabha, stones be prohibited when thrown before the Merkules? Answered R. Na'hman: I myself, knowing no answer to this, inquired of Rabba b. Abuhu, who, likewise ignorant of it, asked R. 'Hyya b. Rabh, who addressed this question to his father, Rabh, and he said: These stones are forbidden because when thrown before the Merkules they enlarge it, thereby themselves becoming idols. Said Rabha: This explanation is plausible if we admit that the idol is prohibited immediately upon its completion, *i.e.*, before it was worshipped; but, as we know, there is yet the other opinion prohibiting it only after it was worshipped. How, then, according to this latter view, can the stone be forbidden? Said R. Na'hman: A stone thrown to Markules is, while being thrown, considered a sacrifice, and, upon falling in heap with the other stones, an idol; wherefor it renders prohibited also the stones lying there from before, for they were worshipped by its being thrown, and the stone itself is forbidden as soon as another was cast upon it in token of honor and worship. Rejoined Rabha: According to this explanation, the last stone would be allowed, inasmuch as it has not yet been worshipped. Said R. Na'hman: When you are only able to recognize the last one, go freely and take it. R. Asha, however, explained the matter thus: Each stone, by the fact of being thrown, is (as it is not worshipped otherwise) itself a sacrifice, and in the same time an idol for the other stone following; hence these stones are all forbidden.

R. Abuhu said in the name of R. Johanan: That one is not liable for slaughtering a blemished animal to an idol is deduced hence [Exod. xx. 20]: "Whoever offers to the gods beside the Lord be excommunicated," whence it follows that liability attaches only to such objects as are fit to be sacrificed to the Lord. Said Rabha: What kind of blemish has R. Abuhu in view? Hardly that of the eyebrows, since an animal with such a defect was accepted by the descendants of Noah for a sacrifice in the temple of the Lord; hence he has in view such animals that lack a limb, and agrees in this respect with R. Eliezar, who said: Whence do we know that the desendants of Noah are prohibited from offering an animal that lacks one of its limbs? From [Gen. vi. 19]:

"And of every living thing, of all flesh, too," etc. Living thing means such living being that wants none of its limbs, for from such animals sacrifices shall be offered in

times to come. Thereto was objected: The expression "living" means to exclude but such animals that have a defect wherewith they cannot survive a full year. (Rejoined R. Eliezar): Such have already been excluded implicitly by the expression [ibid. vii. 3]: "To keep seed alive upon the face of all the earth," since they can neither bear nor produce offspring. But, was retorted, how is it according to those who do not share this opinion as to the reproductive incapacity? To them the word, *ihtoch*, with thee, sufficiently indicates that Noah was ordered to take only animals resembling him in organization, and, *i.e.*, without defects. And for aught we know, Noah may have been himself defective? By no means; the Scripture calls him *tamim*, perfect; and that this attribute does not refer to his conduct is shown by the fact that he is called also *zadik*, upright. But maybe that he was perfect in conduct and upright in his dealings? Nay; this is no convincing argument that Noah may have been defective, for, had he been such, he, following the order, would have surely taken in only animals resembling him. But now that you make use of the *ihtoch* to prove that Noah's animals were of necessity normal, what is the other phrase, To keep seed, etc., good for? This was meant to remind Noah that the animals are not for keeping him company, but for reproducing their species; hence he must not take in old or castrated ones.

R. Elazar said: If one slaughter an animal to Markules, he is liable, notwithstanding that Markules is worshipped by stone-throwing; for it reads [Lev. xvii. 7]: "They shall offer no more their sacrifices unto evil spirits, after which they have gone astray," hence no blood sacrifices even to such "evil spirits" that are worshipped otherwise; as the usual worship is prohibited already in [Deut. xii. 30], "How did these nations serve their gods? even so will I do likewise."

MISHNA *II*.: Money, garments, utensils found on the head of an idol are allowed; vine with grapes on, wreaths of corn ears, wine, oil, fine flour, and whatever is offered upon the altar, is prohibited.

GEMARA: Whence is this deduced? said R. Hyya b. Joseph in the name of R. Oshia: from [Deut. xxix. 16]: "And you saw their abominations, and their idols of wood and stone, silver and gold which they had with them"; and again [ibid. vii. 2 5]: "Thou shalt not covet the silver or gold that is on them." From the two wordings, "with them" and "on them" we conclude

that whatever is found with or on the idol without being an ornament thereof is allowed, but is not, if an ornament. But why not draw the conclusion that, just as all that is with the idol is forbidden, so also is all that is on it, regardless of its being an ornament or not? If such be the case, the "on them" would be superfluous. But why does the Mishna allow money which is then, doubtless, for decorating purposes? Said the disciples of R. Janai: It is allowed only when it is hung in a sack round the neck of the idol, which makes the latter look like a carrier, and this is surely no ornament; furthermore, as to garments, they are allowed only when they lie folded on the head of the idol, which makes it look like a washwoman. Regarding utensils, R. Papa said: It means here that they lie on the head so as to disfigure the idol. R. Assi b. Hyya said: All objects within the curtain of the idol are prohibited, even water and salt; while outside the curtain only

decorating objects are forbidden.

MISHNA *III.*: The use of a garden or bathing-place belonging to an idol is allowed when it is gratis, but is forbidden when it is for remuneration. If they belong to both the idol and some people, their use is allowed unconditionally, whether gratis or for pay. The idol of a heathen is forbidden from the very beginning, while that of an Israelite is not forbidden until after it has been actually worshipped.

GEMARA: "*Their use is allowed unconditionally*," etc. Said Abayi: "For pay" means that the idol-worshipper and not the priest is remunerated, while "gratis" means that neither is getting anything.

"*The idol of a heathen is forbidden from the very beginning*," etc. The Mishna expresses here the opinion of R. Aqiba without, however, mentioning his name. For we have learned, it reads [Deut. xii. 2]: "Ye shall utterly destroy all the places whereon the nations you are about to drive out," etc.; this verse has reference to all the utensils employed by the heathens in their worship. If this be so, one could conclude that even such vessels are forbidden that were begun for idol-worship, but are not yet finished, or such that though finished, have not as yet been brought into the temple of the idol; wherefore it says in the quoted verse "in their worship," whence it follows that only what was employed at the worship is forbidden. It is in view of this that the sages prohibit the idol of a heathen not until after it was worshipped, and that of an Israelite from the

very beginning. So said R. Ismael; R. Aqiba, however, said the very contrary of what the sages maintain--viz: an idol of a heathen is prohibited as soon as prepared, while that of an Israelite only when already worshipped.

The master said: The verse [Deut. xii. 2] has reference only to utensils employed by the heathens in their worship. But does the verse speak of utensils when it speaks of places? The answer is this: The verse in question cannot possibly refer to the places, as it is stated right after: "To their gods on the mountains," whence it was concluded that the gods but not the mountains are forbidden; consequently, neither can here be meant the places, hence it is the *objects* in the places that are meant, and such objects can be no other than the utensils in question. But further above it is said: The sages prohibit the idol of a heathen not until after it was worshipped. How could the sages commit themselves to such an inference from a verse where the vessels, and not at all the idol, are concerned? The answer is that the verse says, "All places where the nations worshipped their gods." Now, as previously explained, "the places" mean the vessels on them, hence, just as the vessels are not prohibited until after they were employed in idol worship, so also the idols are forbidden only after they were worshipped. On the other hand, R. Aqiba, who does not compare the vessels to the idols, may say that the particle *eth* divides the verse into two distinct parts. As to R. Ismael, he explains his position thus: As the idol of a heathen is forbidden only after its being worshipped, it is common sense that that of an Israelite should be forbidden from the very beginning; otherwise what difference would there be between the two? Surely not that the idol of an Israelite be altogether allowed, as it reads [Deut. xxvii. 15]: "Cursed be the man who maketh a carved or molten image," etc.; hence the curse is imposed upon the making of an idol. Well and good, but this verse does not prove as yet that the use of the idol is forbidden! It was answered that it is further expressly stated: "The idol is detestable to

the Lord," hence, prohibited. Now, how does R. Aqiba assert his position? Said Ula, from [ibid. Vii. 25]: "The graven images of their gods ye shall burn with fire," etc., which "images" surely means the likeness of the idol as soon as it is graved. As to R. Ismael, he understands this verse in the sense given to it by R. Joseph, who said: Whence do we know that a heathen may profane his idol? From "The images of their gods," etc.,

which means that the idol is prohibited so long as the heathen treats it as a god, but becomes allowed as soon as he no longer treats it so, *i.e.*, breaks up some piece thereof. On the other hand, R. Aqiba proves that the heathen can profane the idol from the same source used by Samuel--viz. [ibid.]: "Thou shalt not covet the silver or gold that is on them," and ends, "Thou shouldst take it unto thyself"; this apparent contradiction he explains thus: Do not covet before the idol is profaned, but after its profanation you may take it. But again, whence does R. Aqiba know that the idol of an Israelite is not prohibited until after worship? Said R. Jehudah, it reads [ibid. xxvii. 15]: "Cursed be it, and putteth it in a secret place." This phrase, "in secret place," means, pours out before the idol his secret thoughts; hence, R. Aqiba concludes that it is forbidden only after such worship. R. Ismael, on the other hand, explains this phrase in the sense of R. Iz'hak, who says: This phrase teaches us that the idol of an Israelite must be wholly destroyed and put in a secret place; while R. Aqiba endeavors to prove this obligation by what R. 'Hisda said in the name of Rabh [Deut. xvi. 21]: "Thou shalt not plant unto thyself a grove, any tree near the altar of thy Lord," signifies that just as an altar that becomes out of use must be removed out of sight by being buried under ground, so also the groves (that are spoken of here in connection with the altar) must be put in secrecy. R. Ismael, however, infers from this verse what is said by Resh Lakish (Sanhedrin, p. 15, par. Resh Lakish, to the end).

R. Hamnuna questioned: What is the law concerning a vessel that, after a piece had been broken off it, was again made fit for use and then dedicated to idol-worship? Before proceeding to answer this question, one must know to whose idol this vessel was devoted; if to that of a. heathen, both R. Ismael and R. Aqiba consider such vessels as serving vessels, which are forbidden not until after they have actually been used in the worship. Thus, the question must refer to the idol of an Israelite, and, since R. Aqiba, who prohibits the idol of an Israelite only after worship, will doubtless do the same as regards the serving vessel in question, it can be treated only in the light of R. Ismael's opinion, so that it is necessary to know in the first place whether such serving vessels are subject to the same rules as the vessels of a heathen's idol are. If yes, they are forbidden after the use; but if they follow the rules of an Israelite's idol, they are forbidden from the very beginning. But why does

[paragraph continues] R. Hamnuna ask concerning a repaired and not a newly-made vessel? The answer is that his question has, in fact, reference to the problem of old defilement. As the following Mishna (Kelim, xi. 1): "Of metallic vessels the flat and hollowed ones are subject to defilement; if, however, they were defiled and broke they become clean. But if they were again made into vessels, the old defilement returns." Now, R. Hamnuna was in doubt as to whether this Mishna is concerned with biblical defilements only, or also with rabbinical defilements. But if so, why does not R. Hamnuna put his question regarding rabbinical defilements in general? His desire was that his question, embrace also the other point--viz: Does a rabbinical defilement return? And should you decide that it does not, then the question arises: How is the case with

idolatry? Shall we assume that, because of the rigorousness of idolatry, a rabbinical be equivalent to a biblical or not? This question remains undecided.

R. Johanan asked R. Janai: I should like to know whether or no food offered to an idol, if profaned, loses thereby its defilement (which lay therein by reason of its being of the idol)? But why does he ask about food and not about vessels? Because he knew that the remedy for devoted vessels is a legal bath, which abolishes also the defilement. Furthermore, R. Johanan does not ask whether or no an idolized food, if worshipped and then profaned, still defiles; because he knows that a profaned idol is no longer forbidden, hence, its defilement is also abolished. But he put up the foregoing question merely because R. Gidel said somewhere above that all objects sacrificed to idols can never be profaned, so he wants to know now whether R. Gidel's theory applies to the prohibition which is biblical, but not to the defilement which is rabbinical, or to both? Also this question remains undecided.

R. Jose b. Saul asked Rabbi whether the vessels used (in the temple of Egypt) in the house of Chania, are allowed for use also in the temple of Jerusalem? This question suggests that R. Jose shared the opinion of those who say: The temple of Egypt was not considered an idol temple. It was, however, taught that the priests who served in the Chania temple are not allowed to serve in that of Jerusalem, the less so are those who served at idol-worships. He thus wanted to know whether the vessels follow the same rules as the priests; or since the priests are endowed with intelligence they were fined. But the vessels

destitute of intelligence should not be fined, or there is no difference? Hereupon said Rabbi: Yea; they are prohibited and there is a verse from Scripture to corroborate this, but I forgot it. R. Jose thus objected, it reads [II Chron. xxix. 19]: "All the vessels which King Achez had cast aside . . . have we put in order and sanctified." Does not "put in order" mean a legal bath and "sanctify" to bring back to sacredness, whence it is obvious that even such vessels that were used in idol-worship are allowed to be brought into the temple for use, after passing through the legal bath (the more so are allowed the vessels of the Egyptian temple)? Thereupon said Rabbi: The blessing of the Lord upon you: you have recalled to my memory the forgotten verse! "Put in order" means to hide them, and "sanctify" to substitute them by other vessels. Is Rabbi's interpretation supported by the following Mishna (Midath, i. 6): There was a pantry in the temple, where the Maccabees heaped up the stones of the altar defiled by the Greeks; and R. Sheshith said: The Greeks have defiled the altar by their idol-worship, and though these stones are allowed for private use, yet they were not used in the temple. (Similar was the case with the vessels of the Egyptian temple, which were allowed only for private use)? Said R. Papa: From the case of the Maccabees is no support at all, since the stones there were prohibited even for private use, the Maccabees guiding themselves by [Ezek. vii. 21]: "And I will give it up into the hands of the strangers . . . and they shall pollute it"; so that they could not do otherwise, for, in order that the stones be again allowed, they must be first profaned by breaking them, which is not permitted to do, as by law "*whole* stones must be used to build an altar"; nor could the stones be sawed into two (thereby becoming profaned), since the law forbids "to bring iron thereon"; so that as there was no means to profane the said stones, they were of necessity set aside. But why did not the Maccabees have the stones profaned by a heathen and make of them private use? They could not do even this, for as R. Oshia said: The sages wanted once to forbid all use of gold and silver, because the enemy carried off the gold and silver of the temple, it was, namely, feared that the money coined therefrom might reach the Israelites, and by law it is prohibited to

make use of what belongs to the sanctuary. It was, however, objected: How could the sages have conceived such a wish, the gold and silver of Jerusalem forming but an infinitesimal part of those in the whole world, and the smallest can never render

prohibited the greatest part. Abayi explained the words of R. Oshia thus: The sages wanted to forbid not all the gold and silver, but only the gold and silver dinars issued by both the kings Hadrian and Traion, on which the image has become of late undiscernible, and which were surely coined of the gold and silver of the temple. However, when their attention was called to the verse, "And will give it into the hands of strangers, etc., they abandoned the idea, seeing that an object once profaned is allowed for private use. Now, as to the altar, it was a sacred place to bring offerings to God, which is not the case with the gold and silver; hence it is below dignity to use its stones in private.

MISHNA *IV*.: A heathen can profane his idol as well as that of his neighbor. An Israelite cannot profane that of a heathen. The idol once profaned, all that pertains to its service is abolished; on the contrary, if only the pertainings were profaned, they alone are allowed, but not the idol.

GEMARA: Rabbi taught to Simeon his son: A heathen may profane his idol as well as that of his neighbor; said he to him: Master, in your youth you used to teach that a heathen profanes his idol as well as that of an Israelite. (Says the Gemara): Can then an Israelite's idol be profaned? Was it not said above that such can never be profaned? Said R. Hillel b. R. Wells: He spoke then of the case where the heathen owned the idol with the Israelite in partnership. But let us see what was the reason of both his statement in his youth and in his advanced age. In his youth he thought that if an Israelite worships an idol, he does it with the knowledge of the heathen, hence the heathen, when profaning his part, profanes also that of the Israelite; while in his later days he came to the conclusion that the Israelite is worshipping on his own account, hence the heathen profanes only his own part, that of the Israelite remaining unprofaned.

There were others who taught the statement of R. Hillel. as concerning the latter part of our Mishna: An Israelite cannot profane that of a heathen. And to the question, is this not self-understood? Said R. Hillel b. Wells: It refers to a case where an Israelite and a heathen are the joint owners of the idol, in which case the former can profane neither his nor the heathen's part, while the latter may his own part but not that of the Israelite. Others, however, bring this, R. Hillel's explanation, in connection, not with the Mishna, but with the Boraitha following.

[paragraph continues] R. Simeon b. Menasia said: The idol of an Israelite can *never* be profaned; and this "never" R. Hillel b. Wells interpreted to mean that, when an Israelite and a heathen are the joint owners of an idol, the latter, by profaning his own part, does by no means profane the other's part, though it may be assumed here that the Israelite is a partner to the idol only out of complacence to the heathen. And he comes thereby to teach us that an Israelite worships an idol not on the knowledge of the heathen, but on his own.

MISHNA *V*.: How is an idol to be profaned? By cutting off the tip of its ear, the point of the nose, or the ends of the fingers, or by disfiguring its face with a hammer, even if thereby nothing

is broken off. But if he only spat or urinated before it, dragged it about in the dirt, or cast such upon it, it is not profaned. If a heathen sold or pawned his idol it is profaned according to Rabbi, but not according to the sages.

GEMARA: "*Disfiguring its face with a hammer,*" etc. Why should it be profaned when nothing of it was lost thereby? Said R. Zera: Because it has thus been made unrecognizable.

"*But if he only spat,*" etc. Whence is this deduced? Said 'Hiskia, from [Is. viii. 21, 22]: "And when they shall be hungry, they will become enraged and curse their king and their god . . . and they will look unto the earth," etc., which means: Though the heathen curse his king and god and look up to the true God, he will still turn his eye back to the earth to worship his idol.

"*If a heathen sold,*" etc. In respect of this part of the Mishna Zeera in the name of R. Johanan and Jeremiah b. Abba in the name of Rabh expressed thus their respective opinions. The one says: The decision of the sages regards only the case when the heathen sold or pawned the idol to a *heathen* jeweller, but if to a Jewish one all agree that it is profaned; while the other holds that they differ also regarding the latter case. The schoolmen asked: According to the latter view, how should the Mishna be interpreted? Does Rabbi mean here that the idol in question is profaned *only* or *even* when sold or pawned to a Jewish jeweller, but if to a heathen he agrees with the sages? Come and hear. Rabbi said: My view is correct in case the idol is sold to be destroyed, and that of my colleagues, if to be worshipped. But broken and worshipped must have here some specific meaning, for otherwise we should obviously have no two opinions on the subject. And indeed, Rabbi intends

to say: An idol sold to an Israelite who will surely not worship, but *break* it, while the sages speak of an idol sold to a heathen who will surely not break, but *worship* it; hence they differ in both cases? Nay; it may be said that Rabbi's statement means this: My view is accepted by my colleagues, when the idol was sold to be destroyed, as they differ only when sold for worship--to a heathen jeweller.

The rabbis taught: If an idol is pawned by a heathen, or it is buried under the ruins of an old fallen house, or is stolen by burglars, or, finally, is left standing alone by the heathen, who went to the sea-countries, the question arises whether or no the heathen had in mind to come back to it, as such was the case in t e time when Jehoshua had war with the Amorites; if he had, the idol is not profaned. It is obvious that all the four cases must needs be stated. The first case implies that the heathen wants to have the idol back, while in the second, the idol being left under the ruins, the heathen may be thought as renouncing it, whereby it is profaned; hence the second statement. In like manner does the third case imply something different from the contents of the preceding cases: The ruins can possibly be removed, but a burglary is less likely to be returned. Finally, the fourth case teaches us again something new--viz: while in the third case the heathen may yet think that the idol fell into the hands of *heathen* thieves and they will worship it, or even if they be Israelites, they will sell it to heathens, they themselves, having no use of it; in the fourth case he abandons the idol of his own will, since he has not taken it along with him. Hence all the four cases must be taught. Now, the concluding sentence of the Boraitha must be thus understood: If the heathen has his mind to come back as the Amorites did, it is necessary to treat the idol in the same way as it was treated at those times--namely: Not to regard it as profaned, but rather to annihilate it altogether. But did the Amorites ever return? There was nothing of the

kind! The answer is that if he has in mind to return, his idol must be treated as in the war of Jehoshua (though the Amorites have not returned). But if so, why the comparison with Jehoshua's times? The Boraitha intends to teach by the way yet what R. Jehudah said in the name of Rabh: If an Israelite erects a brick to worship it, but does not worship, and a heathen comes and worships it, it is prohibited, notwithstanding the rule that no one can render a thing unallowable that is not his own; here the motive of the Israelite is

determining. How does R. Jehudah substantiate this his opinion? Said R. Elazor: He bases it on the proceedings of the Israelites upon their entering the promised land; for it reads: "Their groves ye shall burn with fire"; here, too, one could then wonder and say: The holy land, having been promised by God to Abraham and his descendants, belonged to the Israelites and not to the Amorites; how, then, could the latter have rendered unallowable these groves that were not their own? If you are ready to assume that these groves had sprung up before the promise, then you must regard them as the idol of a heathen, whose profanation, as we have seen above, suffices! Why then did not the Israelites compel the heathens to profane it and then use it? Why were they ordered to burn it down? In view of all this the verse, "Their groves," etc., must be thus explained: The promised land is indeed regarded the ownership of the Jews, and as Israel, by his worship of the golden calf in the wilderness, exhibited his inclination toward idol-worship, the grove is considered the idol of a Jew, worshipped by heathens only in accord with the Jews, and as such can by no means be profaned, but must be annihilated. And the case here with the brick is perfectly analogous. However, is the conclusion from the golden calf to the grove warranted? The Israelites might have been inclined exclusively toward calf-worship? Nay; they declaimed at that time before the calf: These are your *gods*, O Israel! whereby they must have meant a *variety of gods*, toward which they felt disposed. Finally, that the prohibition was extended to *all* groves and not only to those that were the contemporaries of the calf and which the Israelites repented, is due to the fact that there was no possibility to distinguish between old and newly-planted groves.

MISHNA *VI.*: An idol abandoned by its worshippers in time of peace is allowed, but is forbidden when abandoned in time of war. Altars erected for kings are allowed, for the idol is put on them only when the kings pass.

GEMARA: R. Jeremiah b. Abba said in the name of Rabh: The House Nimrod has the same regulations regarding idols as those abandoned by the owner in time of peace, because, though scattered all the world over as if driven about by war, it had the choice to return home and get its idols, and by not doing so it showed a lack of interest in them, hence they are allowed.

"*Altars erected for kings,*" etc. Are they not, after all, altars of the idol? Said Rabba b. b. 'Hana in the name of R.

[paragraph continues] Johanan: It means to say that the priests prepare the altars for the king, but he takes another road, so that no idols nor offerings come upon these altars. Ula, on his return from Palestine, alighted on one of such altars that was broken; R. Jehudah, on noticing this, asked him why he acted thus after both Rabh and Samuel had forbidden all use of such an altar when broken; and even he who says that broken idols are no longer worshipped and hence are

allowed, does not assert the same with regard to altars, as it would be disgraceful to worship a broken idol, but upon a broken altar an idol may always be put. Hereupon replied Ula: My respect for Rabh and Samuel is so great that I should readily fill my eyes with the ashes of their corpses; none the less I cannot help refuting this opinion, for R. Johanan and Resh Lakish said: An altar upon which idols are habitually placed is, when broken, allowable; furthermore, even he who holds that fragments are worshipped allows such an altar, as he namely says: The broken idol is always, even when broken, worshipfully regarded by the heathen, while no godliness is even imputed to an altar--it is but a mere stand for idols--so that as soon as it is broken, it is set aside without any regard. The, following Boraitha expresses the same view of R. Johanan and Resh Lakish: An altar used as a stand for idols is, when partly broken, allowable; however, an altar used for sacrifices is, when broken, forbidden, until most of its stones fall apart.

Which are the marks distinguishing the altar for sacrifices from that used as a stand? R. Jacob b. Aidi said in the name of R. Johanan: The latter kind consists of but *one* stone, while the former of several stones. 'Hiskia adduces a verse to this effect [Is. xxvii. 27, 9]: "When he maketh all the stones of the altar as limestones, that are beaten in pieces, when there shall notarise again any groves and sun images," *i.e.*, only when they are turned to lime no image is put on them, nor sacrifice, then only is their use allowable.

There is a Boraitha: If one worships one's own animal, it is prohibited from being used as a sacrifice in the temple, but not if it is his neighbor's. There is a contradiction from the following Thosephtha: All cattle is regarded as worshipped, immaterial whether the worship took place by mistake or intention, by compulsion or free will. Now, what other could be the meaning of compulsion than that one forces into his house an animal of a stranger and worships it? Hence, cattle of a stranger is prohibited, too, through worship. Thereupon said

[paragraph continues] Rami b. 'Hamma: The word compulsion means that heathens compelled him to worship his own animal.

R. Zera opposed: Does not the Scripture free a culprit by compulsion? [Deut. xxii. 26]: "And to the damsel ye shall do nothing," etc. Therefore said Rabha: The prohibition of worship was general, but from the expression [Levit. xviii. 5]: "He shall live in them," whence the rabbis infer but not "he shall die in them," compulsion was excluded; however, thereafter it reads again, "He shall not profane my holy name," whence the rabbis infer that even if compelled, which, too, would apparently contradict each other. The explanation is that compulsion imposed privately is excused, but if publicly, one must not yield to it. Said the rabbis to Rabha: There is a Boraitha that supports your opinion: The altars of idols remain prohibited even after the evil decrees of the government have ceased. Rejoined Rabha: If only this, it cannot be a support to my opinion, for there may have been an apostate Jew who worshipped it willingly. Said R. Ashi: Do not say "may have been," as it is *certain* that there was such, and therefore the prohibition remains forever. 'Hiskia, however, said that the above-mentioned forcing of the neighbor's animal to worship means if he pours wine between its horns for the idol, and not worshipped by bowing to it. R. Adda b. Ahaba, however, opposed: Can, then, this be called worship? One can worship an idol, while by pouring wine on the animal for the idol he makes it only for an altar, and a living creature is not forbidden when used in the service to the idol.

Therefore said R. Adda b. Ahaba: 'Hiskia must have meant: When the animal is itself made

some idol and then the wine poured to honor it, it is forbidden, which view coincides with what Ula said in the name of R. Johanan when returning from Palestine: Although strange cattle is rendered forbidden by worship, yet it is prohibited as soon as some act has been performed on its body. Said R. Na'hman: Go tell Ula that R. Huna taught us this, having explained this Halakha long ago in Babylon: An animal resting in the proximity of an idol becomes unallowable, as soon as one cuts through its gullet or windpipe for the sake of the idol, and be it the ownership of another one. Now, upon what can this view be based? The report of the Boraitha concerning the barring of priests, who were compelled to become such of an idol, from services in the Jerusalem temple, contains hardly an analogy of compulsion; because a priest

could flee and thus save himself, while an animal destitute of intelligence could not. Nor can the Mishna, treating of the Maccabees, who set aside the altar-stones upon which the Greeks committed some act to honor an idol, be adduced as a basis, for R. Papa explained it already, saying [Ezek. vii. 22]: "I turn my face from them, that they may pollute my treasure," shows that the temple was profaned by the arrival of the Greeks, and hence was no longer the ownership of God, but considered as that of the Greeks. Thus, the view in question can be based but on this passage [II Chron. xxix. 19]: "And all the vessels which King Achaz had cast aside . . . have we put in order and sanctified"; and the master said that they were hidden and substituted by others, *i.e.*, they were prohibited. Now, these vessels were not the ownership of Ahaz, and hence by his worship he could not possibly profane them; we must thus assume that he committed with them some act of honor to the idols, whereby he rendered them forbidden, and here is applied the same rule in respect of cattle.

R. Dimi, on his return from Palestine, said in the name of R. Johanan: Although the sages taught that, when one bows to uncultivated ground, saying: This be my god, the ground is thereby not forbidden; yet if he dug graves, pits or caves as an idol, the ground is prohibited. R. Samuel b. Jehudah, on his return from Palestine, said in the name of R. Johanan: It is true the sages said that an animal worshipped by others than its proprietor is not forbidden; yet the animal obtained by the idol-worshippers in exchange for an idol is forbidden. Rabin, when back from Palestine, said: Concerning this topic R. Ismael b. R. Jose and the sages have expressed two opinions, but it is not known who said which. The one prohibits an animal exchanged for an idol, but allows the second animal obtained in exchange for the first. The other opinion prohibits the second animal, too, basing itself upon [Deut. Vii. 26]: ". . . lest thou become accursed like it"; hence, it appears that whatever comes from the accursed is *like it*, and is accordingly forbidden.

MISHNA *VII.*: The Jewish elders were asked by the philosophers at Rome: If God is displeased with idol-worship, why does he not destroy the idols? And they replied: If the heathens worshipped but things not needful to the world, he would surely annihilate them; but the fact is that they worship the sun, moon, stars and planets; should then God destroy his world on account of these fools? Then retorted the others:

[paragraph continues] Let God destroy the unnecessary objects and leave the other? that are needed for the preservation of the world. Replied the elders: If he did so, the idol-worshippers would but be confirmed in their belief and say: Here you see that these are gods, for they are indestructible.

GEMARA: The rabbis taught: The philosophers once questioned the elders at Rome: If your God is displeased with idol-worship, why does he not destroy the idols? And they replied: If the heathens worshipped but things not needful to the world, he would surely annihilate them; but they worship the sun, moon, stars and the planets; shall he destroy the world because of the fools? But the Lord allows the world its natural course, and as to these fools who spoil it, they will not escape punishment--in other words, when some one steals wheat and sows it, the seed should not bear fruit by reason of its being stolen; but nay, God lets nature her course, while to the thief will be meted his due. In like manner, adultery is not barren on its own account, but the culprit is not spared. Resh Lakish says something to this effect: The Holy One, blessed be he, says: Not only do the wicked of this earth forfeit my coin, but they force me yet to put my stamp thereon.

A philosopher once asked Raban Gamaliel: Your law says [Deut. iv. 24]: "For the Lord thy God is a consuming fire, yea, a watchful God"; why is it that he is so watchful with regard to the worshipper and not to the idol? Said Raban Gamaliel: I will answer your question by a metaphor: Suppose a king's son names his dog with the father's name and swears, whenever he does, by the life of this dog; the father, once informed about this, will he get angry at his son or at the dog? Naturally enough, at the son. Thereupon said the philosopher: You call the idol dog, which is not feasible, since the idol has loftier gifts. You ask which are these? Why, once a conflagration consumed all our city, and the idol temple remained intact. Answered R. Gamaliel: I shall use again a metaphor: A province once revolted against the king; against whom do you suppose he used his weapons, against the living or against the dead? Naturally enough, against the former. Said the philosopher: You style our gods dogs and dead; well, then, when they really are so worthless why does not God annihilate them altogether? Yea, he would surely do it, was the reply, were they not of objects useful to the preservation of the world, such as are the sun, moon, stars, planets, mountains and

valleys, for it reads [Zeph. i. 2, 3]: "I will remove utterly all things from off the face of the earth, saith the Lord. I will remove man and beast; I will remove the fowls of the heaven, and the fishes of the sea, and the stumbling blocks of the wicked." That is to say: The Lord wonders, shall I do this when the heathens worship man, too? I should have then to destroy the whole universe!

Agrippus, the general of Rome, said to Raban Gamaliel: "The Lord, thy God, is a consuming fire," etc. In our everyday life we find it to be the rule that a potentate is but jealous of his equal, a sage of another sage, a hero of another hero, a rich of another rich; now, then, if God is jealous of an idol, the idol must be of some power! R. Gamaliel explained it to him with the following metaphor: If one who has a wife, takes yet another one, the former will not be jealous unless the new wife be a nothing compared with herself.

An Israelite named Zunan said to R. Aqiba: I know just as well as you do that the idols are nothing, yet I should like to know, how is it that so many cripples are cured by the idols in their temples? Replied R. Aqiba: Listen to the following parable. There lived once in a town a pious man who enjoyed the unlimited confidence of his fellow townsmen so that they would deposit with him money and were it without any witness, with the exception, however, of one who would leave with him nothing without witness. It once happened, however, that this exceptional

man left something in the hands of the other without any security; thereupon said the wife of the latter: Now we shall revenge on that distrustful man his mistrust to us, let us deny that he has a deposit with us; retorted her husband: Because of the short-comings of his understanding shall I put my reputed name on stake? No; this I shall never do! The same is the case with debility, disease and pains visited upon man; they are under oath assigned a certain time, no more, no less, during which to torture a man; it is further predestined by what man or what medicine the disease be eliminated. Now, when its time is off, the afflicted goes to the idol-temple; the disease protests, saying: because the man takes recourse to the idol, I should not abandon him, but as I am bound by oath I should not break it on account of this foolish man; thus the disease leaves him and he believes that it was the work of the idol. R. Johanan explained it from [Deut. xxviii. 59]: "Then will the Lord render peculiar thy plagues . . . and sicknesses

sore and *neemonim*" (literally trustful); sore, for the man suffers therefrom, and trustful, for it never breaks its oath.

Rabha b. R. Itz'hak said to R. Jehudah: There is an idol in our town, and whenever there is drought by us, it comes in dream to the priests, saying: Sacrifice a human being to me and you shall have rain; and this condition fulfilled, it in reality begins to rain. Thereupon said R. Jehudah: You may esteem yourselves fortunate that I am yet among the living, for were I dead, I should not be in a position to communicate to you what Rabh said thereabout--viz.: it reads [ibid. iv. 19]: "And that thou lift not up thy eyes unto the heavens, and thou seest the sun, and the moon and the stars, all the host of heaven, and be misled to bow down to them . . . which Lord thy God hath assigned unto all nations it"; you see from here that God has given some power to some worshipped objects for the purpose of barring their worshippers from the world to come. And this is what Resh Lakish says elsewhere, it reads [Prov. iii. 34]: "If it concern the scornful, he will himself render them a scorn, but unto the lowly lives he gives grace," whence, if one comes to defile himself, the door is opened to him, while when one comes to cleanse himself, he is supported.

MISHNA *VIII*.: It is allowable to buy a wine-press from a heathen even while he takes grapes therefrom and puts them into the heap of grapes. The wine is not considered offered ere it reaches the reservoir, while upon reaching it all that is in it is (provided the heathen touches it) forbidden, the rest is allowed. It is allowed to tread but not to gather the grapes jointly with a heathen. It is forbidden both to tread and to gather with an Israelite who prepares the wine while he is unclean; it is, however, allowed to help him convey empty casks to, and then filled ones back from, the press. It is forbidden to assist a baker, who, in a state of uncleanness, prepares his bread, in kneading or ordering, but one may help him carry the bread to the dealer.

GEMARA: R. Huna said: As soon as the wine trickles from the grapes, the touch of a heathen renders it unallowable. It was objected thereto from the Mishna: "It is allowed to buy a wine-press," etc., whence it is manifest that the wine on beginning to trickle is not forbidden. Whereupon it was rejoined: R. Huna. understands that the press in question is propped up at the bottom, and that an Israelite filled it first with grapes, the heathen having added some not until later. Come and hear another objection! The Mishna goes on to say: . . . while

upon reaching the reservoir all the wine that is in it is forbidden, the rest is allowed, whence, only the wine that flows down is forbidden; said R. Huna, the sages have afterward retracted this Mishna, as in the following Boraitha: The rabbis held originally that it is not allowed to gather grapes jointly with a heathen, for what the latter gathers is unclean and defiles by touch the grapes gathered by the Israelite, which are considered wine. They further warned against contributing toward the conditions defiling the fruit in Palestine, as well as against assisting an Israelite who defies the rules of cleanness, in treading the wine-press, because one must not help a transgressor in his work; while the heathen may be aided, for he is not bound by the rules of clean and unclean. Finally, the wine does not become offered by the sole fact of treading, for R. Huna's opinion on this point has been rejected. However, the sages, as said above, retracted this view, asserting: Assistance to a heathen in treading is forbidden, for the grape-juice is offered wine immediately upon trickling, so that the assisting Israelite would get remunerated for working on what is not allowed; Such is also R. Huna's opinion. Nor is it allowable to gather or tread grapes with an Israelite who defies the rules of cleanness, for every Israelite is obliged to give from his fruit Teruma to the priest, and here the clean grapes are rendered unclean by the others, thus defiling also the Teruma, which is not allowed as to a heathen, it is allowed to gather with him, as he is free from Teruma, and fruits exempted from Teruma may be caused to be defiled even in Palestine.

"*The wine is not considered offered ere*," etc. Concerning tithe, however, there is a Mishna that it is obligatory as soon as the grape-pits swim up, since this is an index of wine. Said Rabha: This presents no difficulty; as regards tithe we have the opinion of R. Aqiba, while the Mishna is in accordance with the other sages; as a Mishna states: In the case of tithe, the index of wine is its flowing into the reservoir. R. Aqiba, however, says: It is the swimming up of the grape-pits. Hereupon it was asked: How should this *swimming up of the pits* be understood? Does it refer to the case when the wine, after filling the reservoir to a certain point, causes the pits to rise to the surface, or to the case when the wine is already in the casks, and during its fermentation the pits come up to the surface? Come and hear the following Boraitha: It is called wine when the pits swim up; accordingly, it is allowed to drink the wine from the

press as well as from the pipe connecting it with the reservoir, whence it is obvious that the first of the two cases is referred to. But has not R. Zebid taught this Boraitha in the name of the disciples of R. Oshia, as follows: It is called wine when poured into the reservoir and when the pits swim up, while R. Aqiba requires its being put yet into the casks; from here it is apparent that the sages as well as R. Aqiba are involved in a contradiction, from which to extricate them is necessary to interpret the former version of the Boraitha in the light of R. Zebid's Boraitha. Now, taking account of the Mishna, we shall have *three* opinions regarding the here-disputed point. The Mishna declares it wine when it reaches the reservoir; the sages when, the wine being therein, the pits swim up; finally, R. Aqiba, not before it is in the casks? The answer is that the Mishna may be so interpreted as to agree with both the other views, since the sages and R. Aqiba differ only in as far as the index of wine for *tithe* is concerned, while the Mishna treats of the index of wine to become offered which is very rigorous. As to Rabha, however, he must rest satisfied with the three opinions as opposed to one another, as he makes no difference between the said cases.

"*What is in it is forbidden, and the rest is allowed*." R. Huna explains this as follows: The rest in the press is allowed only when the cleansing basket through which the wine passes on its way

from the press to the reservoir in order to be cleaned of the husks, is not again emptied into the press. But why should the contents of the basket be forbidden, the heathen having touched only the wine in the reservoir? There can hardly be another reason than that the wine of the upper vessel and flowing into the lower one be considered as a whole, and that the flow thus connects the two wines into one? And yet this question, as to whether or no the flow be a connecting link between the two wines in the above sense, propounded elsewhere, has found no satisfactory answer. And as our foregoing discussion has not been resorted to in this connection, it must not be assumed that the flow is no connecting link, but as R. 'Hyya explains it: When the two vessels are full of wine so that, their mouths being near, the wines touch each other, they are regarded as one wine. Accordingly in our case the reservoir must be so full of wine as to touch the basket, so that when the contents thereof are emptied into the press, what is in the latter also becomes forbidden.

It is related of a boy who in his sixth year was well versed in the Tract Idolatry. Once he was asked whether an Israelite and a heathen may jointly tread a wine-press? His answer was in the affirmative, notwithstanding R. Huna's negative view. And to the objection that the heathen renders the wine forbidden by his touching the grapes, the boy retorted: Have the hands of the heathen wrapped up with cloth, so that he might not touch the grapes with *bare* hands. Finally, upon being further asked that the heathen may touch the grapes with his feet, he replied that touching by foot is not considered.

It once happened that an Israelite and a heathen jointly hired and worked a wine-press in the City of Nahardea; R. Samuel, asked as to how to behave with regard to this wine, hesitated to answer until after three festivals during which the sages were in assembly; for he wanted to first propound this question to them. The question arises, why was he anxious to hear the opinion of the sages? If because he expected to find one of them entertaining the opinion of R. Nathan, then we must say that he wanted to prohibit all benefit of this wine; for it was taught: If the heathen measures out the wine with the hand or foot, Israelites must not drink it, but it may be sold to heathens; while R. Nathan prohibits all benefit of wine measured by hand. But now that R. Nathan makes no reference to the measure by foot, it must be assumed that Samuel was not waiting for his opinion, but he rather expected to find one of the sages in favor of R. Shimon's view, which allows the wine, even to consume, provided it was not touched by the heathen intentionally.

It once happened at Biram that a certain heathen climbed up a palm-tree to get down some branches. On coming down he unwittingly touched with one of the branches a cask of wine. Rabh was asked on the point, and he prohibited Israelites from drinking this wine, allowing, however, its sale to heathens. Thereupon R. Kahana and R. Assi interposed: I-lave you, master, not yourself taught that even a one-day-old child of a heathen renders the wine prohibited when touching it? And in this case there is surely no intention involved! Answered Rabh: I prohibited only to *drink* it, but not to sell it and use the money thereof.

The text says: Rabh holds "that even a one-day-old child of a heathen," etc. R. Shimi b. Hyya advanced the following objection: When one buys slaves from a heathen, has them circumcised but not bathed in the legal bath, the place they tread

on as well as what they spit out, is unclean. Precisely the same is the case with the acquired children of a female slave; but according to others the children are clean. In the case of wine the same rule holds: Adults render it forbidden by touch, but not children. What is an adult? When already familiar with the nature of idol-worship, and is considered a child before that period. We see, then, from this Boraitha, that contrary to Rabh's position, a child does not make the wine unallowable by mere touch? The answer is that the "child" spoken of in this Boraitha is one born of a female slave in the house of an Israelite; as to other children, inclusive of slaves bought of a heathen, Rabh's precept holds good. But here is another question. The Boraitha says: The same is the case with the children of a female slave, which would suggest the inference that there is no difference between a slave bought, or one brought up in the house of an Israelite. The answer is that this phrase refers only to their spittle and the place trodden on by them. However, this explanation is correct according to him who says that these are unclean, but what according to him who declares them clean? He comes to teach us that adult slaves bought, circumcised and then legally bathed, do not make the wine forbidden by touch, just as the children of a female slave. The Boraitha states this in order to exclude the opinion cited by R. Na'hman in the name of R. Samuel to the effect that when an Israelite buys slaves from a heathen, has them circumcised and legally bathed, they none the less render the wine forbidden all the time, till they cease to mention the name of the idol and wholly forget it. And how long is this time? R. Jehoshua b. Levi set the limit of this period at twelve months.

In the town Mechusa a heathen once happened to enter the house of a Jewish wine-seller, who answered his question as to whether he sells wine, in the negative. The heathen, noticing on the table a little wine in a vessel with which the Jew used to serve wine, put his hand right into it, saying: Is not this wine? The host, excited over this misdeed, emptied the vessel back into the cask; so that he had to consult Rabha what to do with the wine? He advised him to sell it to heathens. When R. Huna b. 'Hinna and R. Huna b. R. Na'hman heard of this incident, they said that all benefit of this wine is forbidden. Thereupon, Rabha heralded that the wine may be sold to heathens; while the both Hunas let herald the opposite. Some time after, R. Huna b. R. Na'hman happened to be in Mechusa where

[paragraph continues] Rabha resided; so Rabha instructed his servant not to admit anybody at the time when Huna will be by him, since they, two, will be busied with the settlement of an important dispute. R. Huna, on coming to him, opened, indeed, the foregoing question, and, to his great astonishment, Rabha said that all use of that wine is forbidden. And to the question: Has not the master allowed such a case, he answered: In this particular case it was the wine in the cask that I allowed, but the wine touched by the heathen and poured back into the cask I prohibited, requiring rather that its worth be cast into the sea. It is true, I once allowed also the other wine, but during my sojourn at Pumbedita, Nahmani (Abayi) adduced so many Boraithas and conclusions of other sages against my tenet, that I withdrew my former opinion, and now I prohibit the wine poured back; for among others, Nahmani told me of such a case in Nahardea, and Samuel prohibited the wine; in another case at Tiberia, R. Johanan has likewise forbidden. I attempted to argue: Samuel and R. Johanan may have been led to such stringency by the fact that at those places the population is ignorant, in which case rigorous legislation is commendable; but he replied: Do you think that Mechusa is more enlightened than Nahardea and Tiberia? He also called my attention to the following Thosephtha: It once happened that the excise collectors poured back into the cask the wine left after they had had a drink; one of them drew also some wine with a lever, putting the lever back in the cask, and the sages prohibited

this wine for all benefit.

R. Johanan b. Arza and R. Jose b. Nehorai were once sitting together indulging a little in wine, when a man came in. They told him to pour in for them; but no sooner had he fulfilled their order than they discovered that he was a heathen. Thereupon one of the two said: The wine is absolutely forbidden, while the other asserted that it is even allowable to drink. Said R. Jehoshua b. Levi: Both had their respective opinions well grounded; the former must have reasoned thus: The man knew us to be of the sages, and he could easily notice that we were going to drink wine, which, when ordered by us to pour in, he would, in his thought, render prohibited. While the other one must have reasoned the other way--viz.: The man, knowing us to be of the sages, surely thought that we drank no wine, since otherwise we should not order him, a heathen, to pour in for us, hence the wine is allowed. But, against the latter it may be asked: Did not the heathen see that it was wine? Nay, it

all took place in the evening. Neither could he discern it by *smell*, as it was new wine, which has no smell. That he did not touch it is certain, for the wine was in a bottle; and the shaking of the wine by a heathen is prohibited only when done intentionally, which was not here the case.

R. Assi questioned R. Johanan: Does a heathen render the wine prohibited by pouring water into it? Yea, was the answer; for a Nazarite must be told: Go around, go around, but do not approach the vineyard in order not to yield to temptation and eat from its fruit. R. Jeremiah, when once in Sabatta, noticed that the heathens there are wont to dilute the wine that the Jews drink, and he reminded them of the foregoing warning to a Nazarite. It was taught likewise in the name of R. Johanan, according to others R. Assi, in his name: Wine diluted by a heathen is forbidden by reason of temptation as above.

Resh Lakish was once in Bozrah (a town conquered by the King David in the province of Moab). He saw the Jews there eat fruit without having separated the tithe thereof, and he told them that this is not allowed. He further noticed that the Jews were wont to drink the water consecrated by the heathens, and prohibited it, too. Later he happened to visit R. Johanan to whom he related his observations and prohibitions, and R. Johanan told him: Go right back and allow all you have prohibited, because you mistook Bozrah for Betzer which was conquered by Moses, and where the tithe is thus obligatory; and as to the water there, it is public ownership which, as such, cannot be prohibited at all.

R. Hyya b. Abba made once a journey to Gabla, where he observed that Jewesses were pregnant from heathens, who, though circumcised, were not yet legally bathed. He further saw that the Jews were drinking the wine diluted by the heathens; he also noticed that Jews were eating *Turmus* (fig-bean) cooked by heathens. He, however, did not interfere. When he later reported this to R. Johanan, the latter said: Go right back and have it publicly announced that their children are bastards, the wine is to be regarded *nessech* (idolatrous libation), and the *Turmus* is forbidden like all other things cooked by heathens, because the inhabitants of Galba are uneducated. With reference to the children, R. Johanan expressed the same opinion elsewhere, saying that one is not considered a proselyte unless he is both circumcised and legally bathed, hence the above are still considered heathens; and Rabba b. 'Hana said in the name

of R. Johanan: When a heathen or a slave seduces a Jewish girl, the offspring is regarded as a bastard. The wine he prohibited by reason of temptation as said above, and the *Turmus*, because they are there uneducated, otherwise it would be allowed.

R. Kahana was once asked whether it is allowed to hire a heathen for conveying grapes to the wine-press of an Israelite; hi s answer was in the negative, by reason of the temptation above-mentioned. R. Yemer objected to him from this Tosephtha: The grapes carried by a heathen to the press, be it in a basket or any other vessel, are allowed even when trickling. Said R. Kahana: This is no weighty objection, for here it treats of grapes *already carried*, which I, too, should allow, but not to hire one originally for such work.

Once a citron chanced to fall into a cask of wine; a heathen seeing this, hurried to take it out with his hand, and R. Ashi ordered to hold his arm fast in order to prevent it from moving, then to open the faucet and have the wine flow into another vessel, when it will be allowed for sale. The same R. Ashi said that wine made prohibited by the touch of a heathen is not allowed to be sold to other heathens; the heathen, however, who touched it, may be made to pay for the wine by considering the thing in a manner as if the heathen had spilled or in some other way destroyed the wine, when it would be legitimate to recover the loss. This, his opinion, he corroborates by the following Boraitha: If a heathen renders the wine prohibited by touch, not however, in the presence of an idol, all benefit of it is forbidden. But R. Jehudah b. Baba and R. Jehudah b. Bethira say it is allowed, and on the following grounds: In the first place, because the act was done not in the presence of an idol, and secondly because the Israelite may say to the heathen: The wine is not your ownership, hence you cannot make it forbidden. Now, though we do not agree with the two Jehudahs, the inference is nevertheless justified that the Israelite may make the heathen pay.

It once happened that the bung burst out of the hole of a cask with wine, and a heathen ran by, put his hand upon the bung-hole to stop the escape of the wine. Thereupon said R. Papa: The wine above the bung is forbidden, the rest is allowed. R. Papa was further teaching: The wine of leather bags carried by a heathen who is followed by a supervising Israelite, is allowed if it so fills the bags that it cannot shake at all, but if not so full, it is forbidden. If, however, the wine be in open

pitchers, the converse is the case, because out of a full pitcher the wine may overflow upon the hands of the heathen, and then touch back the wine inside the pitcher, while with the pitcher that is not full this cannot be feared. R. Ashi maintains that even the wine in a leather bag that is not full cannot be made prohibited by shaking, for it is not customary to offer wine by shaking. If the heathen put wood upon the grapes in the press in order to squeeze the wine out by this pressure, R. Papa allows the wine, while R. Ashi, according to others R. Simi b. Ashi, prohibits it; all, however, agree in that the wine is allowed when the wood is pressed down by means of a wheel, for the work is done but by a derivative of his force, but when the heathen exerts the pressure by his feet, only R. Papa allows, while the others forbid the wine.

Once a heathen pressed the wine by means of a wheel, yet R. Jacob from Nahar Pekod declared the wine prohibited. At another time a cask with wine happened to burst, and a heathen was

holding it together until the wine was emptied into another barrel; Raphran b. Papa, according to others R. Huna b. R. Jehoshua, allowed to sell the wine to heathens. It was prohibited to drink it, because the cask burst lengthwise, so that it was necessary to hold it together, but if it had burst crosswise it could have been held together by pressing the upper part; in this case the wine would have been allowed even to drink, because the pressure of a stone could have done the same service.

Once a heathen was found in the press of an Israelite; though there was no wine in it, yet it was moist, and the question came up as to what to do with the press? R. Ashi decided it thus: If the humidity of the press was so great that an object could therein become so moist as to moisten another object, the press must be first rinsed with water and then scrubbed with ashes two times, while by a smaller degree of humidity one rinsing suffices.

MISHNA *IX*: A heathen standing near the wine reservoir renders the wine forbidden, provided he has a lien on it, but not otherwise. When a heathen falls into a wine-reservoir. and is then brought up (dead), or when a heathen measured the wine with a pipe, dragged therewith a hornet out of the wine, or, finally, tapped his hand on the cask against the ebullitions of the fermenting wine--all which cases have actually occurred--the wine should, according to the rabbis, be sold; R. Simeon allows to drink it. If the heathen, while enraged, cast the cask

into the reservoir, as it once happened, the sages allowed the wine.

GEMARA: Said Samuel: The lien spoken of in the Mishna must be had on the wine itself; and R. Ashi proved this by quoting another Mishna, which says: When one works a heathen's wine in accordance with the rules of cleanness (so that he might sell it to Israelites), leaves it then in the premises of the heathen, but under the supervision of an Israelite, and the heathen writes a note to him stating, "I have received of you money," the wine is allowed; if, however, the affair takes place this way: The Israelite attempts to take out the wine and the heathen refuses it until he get the money, which case once occurred at Beth-Shean, the sages declare this wine prohibited, because it is yet the ownership of the heathen. But if the lien had been on the Israelite's property, even the wine included, it does not matter.

"*When a heathen falls*," etc. According to R. Papa this means that the heathen is brought up dead, otherwise all benefit of the wine is forbidden, because the heathen celebrates his escape, and thanks on this account his idol, wherefore the wine is considered offered.

"*When a heathen measured the wine with a pipe, etc., the rabbis allow to sell it, R. Simeon also to drink it*." Said R. Ada b. Ahba: Blessed be the head of R. Simeon who, unlike the rabbis, goes to extremes--viz: If he prohibits, he prohibits to derive all benefit therefrom, and if he allows, he allows it even to drink. Said R. 'Hisda: I was told by Abba b. 'Hannan that so said Zera, that the Halakha prevails with R. Simeon. (Says the Gemara): After all, the Halakha does not prevail with him.

MISHNA *X*.: If an Israelite, who had cleansed the wine of a heathen, left it in the latter's premises, in a house opening into a public ground, in a town where heathens and Jews live, the wine is allowable; but if there live only heathens, the wine is not allowed, unless a Jewish

watchman take care of it. However, the watchman must not continually stay there, but may go and come. R. Simeon b. Elazar says: All heathen premises are of the same account. If one cleanses the wine of a heathen, leaves it in his premises (as above), and the latter writes him a note stating, "I have received money from you," the wine is allowed. But if the case be such that when the Israelite wants to take out the wine the heathen refuses, requiring to be paid first (as it once occurred at Beth-Shean), the sages prohibit the wine.

GEMARA: Why should the Mishna forbid the wine in a town where Jews do not reside, since in any town you find Jews coming there now and then for traffic? Says Samuel: The Mishna has in view but such towns that are provided with walls and gates, so that no one can enter it without special permission, and the heathen is thus in a position to know whether or no there is an Israelite in town. R. Joseph said: It suffices that the wine be so kept in a house that any Israelite could see from his window into the heathen's yard, and the house must not needs be opening into a public place. In like manner it is sufficient that there be in the proximity of the house a little elevation where people are wont to assemble, or that a date-tree be there, since in this case the heathen may fear lest someone should climb up the tree for dates and descry his doings in the same time; but if the top of the tree be cut off, its influence is discussed by R. Acha and Rabina, the one saying that the tree, now that it bears no fruit, exerts no influence upon the heathen, who, thinking that nobody will climb it up now, may break the seal and take out some of the wine; while the other says: People are still now and then climbing upon such tree in order to look for their strayed cattle, and hence it is yet fear-inspiring to the heathen.

The rabbis taught: When an Israelite buys or rents a house in the courtyard of a heathen, where also an Israelite lives, and puts there his wine, it is allowed even if not sealed and locked up. But if the other Israelite lives in the same town only, the wine is allowed only when sealed and locked. However, if a heathen hires Jews to prepare wine for sale to Jews, and this wine remains in the premises of the heathen, a Jew living in the same house where the wine is kept, it is allowed, provided it be sealed and locked by a Jew who should himself have charge of the key and seal. Said R. Johanan to him who cited before him this Boraitha, read the last passage thus: The wine is allowed even when not sealed and locked, provided only an Israelite lives in the same house. If, however, an Israelite lives in the same city but not in the same yard, the wine is forbidden even when sealed and locked; so says R. Meier, while the rabbis say: An Israelite must either sit there and watch, or come there at certain times. The question now arises, to which case the rabbis refer, as there are four cases in the Boraitha? To assume that they refer to the last case would be to assume a redundance, since R. Mair said the same; nor can it be assumed that

they refer to the third case, where the wine, when sealed and locked by a Jew, is allowed; because, as R. Johanan allows it even when not sealed and locked, there would be no reason to account for the exceptional rigor of the rabbis in this case. Hence, it is manifest that they refer to the second case, which allows the wine put up in the house of a heathen, when both there lives a Jew in the same town and also when the wine is sealed and locked; and it is here that the rabbis add the limitation that ail Israelite watch the wine, or come to it at certain times. But what is gained by the last point? When the Jew is to come there only at *certain* times, the heathen will know it and find his time to break the seal and do what he pleases? The answer is this: We must

assume that the Jew is to come there *at times* and not at *certain* times, so that the heathen will know nothing definite.

"*R. Simeon b. Elazar says, all heathen premises*," etc. The schoolmen propounded a question: What does R. Simeon intend with this doctrine, to make the regulations of wine more rigorous or more lenient? R. Jehudah said in the name of Zeira, the latter is the case, while R. Na'hman said in the name of the same authority the former was intended. In order to make R. Jehudah's opinion plausible, it is necessary to insert the following in the Mishna: The same prohibition is imposed upon wine brought into the house of another heathen, because of fear lest the latter should go to the proprietor and say: You are free to come to my house and do with your wine as you please; I will not betray you provided, however, you promise to serve me in the same way in case I will have Jews prepare wine; it is in this connection that R. Simeon b. Elazar said: Are, then, all premises of the same account? We see that if the wine is left in the premises of the proprietor, an Israelite must watch it; if, however, the wine is stored with another heathen, this watch is not requisite, as I do not believe that the heathens would enter such mutual agreements with one another. On the other hand, in order to make R. Na'hman's view of R. Simeon's position plausible, the following wording must be given to the inserted passage: The prohibition is only then in force when the wine is left in the premises of the proprietor with a Jew watching it; but if the wine is left with another heathen, the additional watch is unnecessary, as we do not believe in the mutual agreement of the heathens. To which R. Simeon b. Elazar says: All heathen premises account alike, hence as the

watching by a Jew is there requisite, it is so here, too, for I fear, indeed, that the heathen may enter some mutual understanding. There is a Boraitha in accordance with R. Na'hman: R. Simeon b. Elazar says, all premises of heathens are of the same account, for we fear lest they deceive us.

It once happened that Israelites bought of Parsik, the viceroy, the grapes of a vineyard in order to prepare wine therefrom; they then left the wine with Parsik's gardeners without having paid for it. Hereupon the disciples of Rabha's college wanted to allow the wine on the ground that there cannot possibly be a mutual agreement between the viceroy and his gardeners. Said Rabha to them: just in this case there is much to fear, because if Parsik wants to falsify the wine, he will meet no barrier.

Once a few casks of wine belonging to an Israelite were lying in the street, and a heathen was found standing among them; Rabha, upon being asked what is to be done with the wine, said: If this man is known to be a thief, the wine is allowed, for he will fear to touch the wine in the open street, lest he be suspected of stealing it; but if he is an honest man the wine is forbidden, because of the reasonable fear, maybe he touched it.

Next: Chapter V

CHAPTER V.

RULES AND REGULATIONS CONCERNING WAGES AND LIBATION WINE.--EFFECTS OF SUCH WINE WHEN FALLING ON FRUIT OR MIXING WITH OTHER WINE.--UNDER WHAT CIRCUMSTANCES WINE MAY BE LEFT WITH A HEATHEN.--CONDITIONS UNDER WHICH JEWISH WINE IS SOLD TO HEATHENS.--DETERMINATION OF QUANTITY OF LIBATION WINE MIXED WITH OTHER WINE.-HOW VESSELS OF HEATHEN ARE TO BE ALTERED TO MAKE THEM FIT FOR A JEWISH TABLE.

MISHNA *I*.: The wages of a Jewish laborer hired by a heathen to work with him wine for libation are prohibited. But if he was hired for some other work and was then told: Bring this cask of offered wine from one place to another, the wages are allowed. If a heathen hires of a Jew an ass to carry on it such wine, the reward is forbidden; if, however, he hired it to sit thereon, it is allowed even if he had with him his wine-flask.

GEMARA: The reason why the wages are prohibited is hardly that all the benefit of offered wine is forbidden, because the following speaks against such a reason--viz.: Although *arlah* (the fruit growing on a tree within the first three years after it has been planted) is prohibited, likewise the fruit of a field sowed in a vineyard *kelaim* (variegated seeds); yet if one sells these fruits and with the money thus obtained betroths himself to a girl, she is regarded his legitimate wife. Nor can it be said that the wages follow the same rules with the wine, just as the money obtained from the sale of an idol is subject to the regulations governing the latter; because, as it is known, the money gotten for the fruits growing on the Sabbathic year is subject to the rules of the fruits themselves, and yet we learned that, if one invites the laborer, saying: Take this *dinar* and gather herbs for me to-day, this reward is forbidden; but if the invitation is made thus: Gather for me herbs to-day, the reward is allowed when this case takes place on the Sabbathic year. Hence, wages are allowed after all! Said R. Abuhu in the name of R. Johanan: This is a fine which the sages find necessary to impose upon driver and offered wine. In the case of wine, as said above in the Mishna, and in the case of drivers in the following Boraitha: The reward obtained by drivers for transporting fruits; grown on the Sabbathic year is considered

[paragraph continues] *Sabbathic*. Now, what does this mean: The reward is *Sabbathic*? It cannot possibly mean that the reward is made in fruit of the Sabbathic year, for the proprietor of the fruit would thus meet a debt with fruit which is by law allowed [Levit. xxv. 6]: "For food," but not to traffic with. Neither can this expression be interpreted to mean: The reward is as holy as the fruit of the Sabbathic year, because of the Mishna cited above: If one says: Gather for me fruit to-day, the reward is allowed. Said Abayi: It speaks of a reward paid with the Sabbathic fruit; and as to the difficulty of "food and not for traffic" it can be answered that he gives him the fruit as a present, and not as reward, as we find a similar case in the following Mishna: One must not say to his neighbor: Carry this fruit for me to Jerusalem, of which take a part as your reward; but he may say: Carry it to be eaten in Jerusalem, and there they present each other the

fruit as a present. Rabha, however, said: It means that the reward becomes holy like the Sabbathic fruit itself, and the difficulty that it is allowed to a laborer is not considered, for the rabbis do not care to fine him for such a trifle.

The schoolmen propounded a question: How is it when the heathen hires a Jewish laborer to prepare wine in general? Shall we assume that, since all use of this wine is prohibited just as that of offered wine, the wages are by implication not allowable, or that the wine in general is not so rigorously treated by reason of its differing from the offered wine in that it does not defile an Israelite by touch, while the latter does so, and hence, that the wages in this case be allowed? Come and hear! A heathen once hired a Jewish boatman to convey for him some wine to a certain place and paid him for the labor in wheat. The laborer appeared then before R. 'Hisda asking him what is to be done with the wheat? The answer was: You must burn it and bury the ashes; hence, such wages, too, are prohibited. The disciples of R. Janai were wont to borrow on the Sabbathic year fruit from the poor and to pay them back in fruit the succeeding year. R. Johanan was interrogated as to the legitimacy of this act, and he found it in accord with the law. 1

R. Na'hman, Ula, Abimi b. Papa, and R. Hyya b. Ammi were once sitting together and discussing the following point: If an Israelite is hired to break the casks that contained offered wine

of which some remnant may now flow yet, is he allowed to receive payment for his work or not? The possible reason for a negative answer is that the laborer desirous to get work wishes for the existence of whole casks, and thereby also for that of the prohibited wine left therein; while on the other hand the reason for a positive answer is that he by his labor *destroys* the wine. Thereupon decided R. Na'hman: The laborer may without any scruples break the casks and get paid therefor; in addition to it, he may yet earn the blessing of Heaven! The following Boraitha corroborates R. Nahman's decision: The Israelite is prohibited from assisting a heathen in ploughing a field sowed with *kelaim* (variegated seeds), but he is allowed to weed out various seeds so that only one kind be left, for he thereby diminishes the unallowed.

At some other time the same sages were together discussing the question as to whether or no the use of the money obtained by a heathen from the sale of an idol is all forbidden to an Israelite (just as it is in case the Israelite sells an idol)? Said R. Na'hman: It seems to be allowable, because once there came some heathens to Rabba b. Abuhu and declared themselves willing to embrace Judaism, whereupon he replied: If this is your intention, it is incumbent on you first to sell out all you have, for as soon as you have become Israelites, your wine and idols are prohibited to sell. Whence it follows that they are allowed, even after they become Israelites, to use the money gotten from selling the idols when yet heathens. The others objected to this inference, saying: In this case the intention of becoming an Israelite renders surely their idols profaned. Hereupon R. Na'hman recited the following Boraitha: If a heathen pays his debt to an Israelite in money, which he obtained from the sale of an idol or offered wine, the Israelite is allowed to accept it; if, however, the heathen asks his creditor to wait until after he has sold his idol or offered wine, the Israelite is prohibited to accept the money. Hence, in the former case, the money is allowed. And why is it forbidden in the latter case? Because, said R. Sheshith, the Israelite would then apparently wish for the existence of a prohibited object till it gets sold. But is there not a Mishna that, a proselyte and a heathen having inherited their father, a heathen, the former may say: You take the idols and I the money, you the wine and I the other fruit in

exchange; but as soon as an object enters the control of the proselyte all exchange is forbidden? Now, you see

that, though the proselyte doubtless wishes for the existence of the prohibited objects, the exchange is originally allowed. Said R. Papa: The sages treated exceptionally this case of a proselyte with leniency in order not to encourage his return to heathendom. Yea, there is a Boraitha to this effect: The decision in favor of the proselyte is limited only to the case of inheritance, but does not concern partnership.

The above-mentioned sages happened to be once more together and to discuss the following question: Can a citizen-proselyte, a heathen settled down in the land of Israel, on having taken upon himself not to practise idol-worship only, profane an idol, or only an actual idol-worshipper can do this? R. Na'hman said: In all probability the latter is the case. An objection was raised from the following Tosephtha: An Israelite who found an idol in the market, may, before taking possession thereof, ask a heathen to profane it, but not after he had taken possession of it; and the reason is that the sages have established a rule that a heathen may profane his own idol as well as that of his neighbor immaterial whether he worships it or not. Now let us see what does the last expression "whether he worships or not" mean; if it means a heathen, it is superfluous, as it was already stated that a heathen may profane his neighbor's idol although he has not worshipped it; we must then say that it means a citizen-proselyte, hence the latter can profane? Nay; it may speak only of a heathen, and as to the apparently superfluous expression, it may be said that the first part speaks of the idols of one kind, *e.g.*, both of the kind Peor or Markules, while the last part has in view two different idols, *e.g.*, one of Peor and the other of Markules, and nevertheless the heathen may profane even the one in whose worship he does not believe. Another objection was raised: Who is called a citizen-proselyte? He who took upon himself before three scholars not to practise any idol-worship, so said R. Mair; while the sages define him to be one who binds himself to observe the seven commandments accepted by the descendants of Noah. According to some anonymous teachers, such proselyte is only he who accepts all the commandments of the Torah except eating the meat of carcasses. Such a proselyte may be left alone for some short while in a room where Jewish wine is kept; however, it is not allowable to store such wine in his house even when the majority of the city inhabitants be Israelites. He may be employed as watchman of such wine even where the heathens

make up the majority of the population. His oil is subject to the same regulations. But can oil be prohibited by itself? Nay; reverse the statement and read: Wine is subject to the same regulations with oil; while with regard to all other things this proselyte is on equal terms with the heathen. R. Simeon, however, holds that the wine of such a proselyte is regarded as offered wine. According to others, however, R. Simeon allows the wine even to drink. Now that this Boraitha declares this proselyte on equal terms with the heathen in all other respects, it is indicated that he can profane an idol, which contradicts R. Na'hman's view. Retorted R. Na'hman b. Itz'hak: This equalization refers but to the law regulating both the transferring and renouncing of his ownership (explained in Erubin).

R. Jehudah sent once a present to the heathen Abidrana on one of the heathen feast-days, justifying this his action thus: I know that Abidrana does not worship idols. Said to him R.

Joseph: Your reasoning appears fallacious, because of the above-cited Boraitha that he, a *proselyte*, must take upon himself before three scholars to renounce all idol-worship, which condition is wanting in your case. Rejoined R. Jehudah: This Boraitha intends but to say that this one condition binds the Jewish community to support this proselyte in case he becomes poor. Thereupon the other objected: Has not Rabba b. b. 'Hana said in the name of R. Johanan that a citizen-proselyte who fails to let himself circumcise during twelve months is to be regarded as a heathen heretic? Accordingly, you should not have given a present to Abidrana, who is not circumcised. Answered R. Jehudah: R. Johanan surely meant that a proselyte who fails to keep his promise to be circumcised within twelve months is a heretic.

Once Rabha wanted to give on a heathen feast-day a present to the heathen Bar Sheshach, who he knew was no idol-worshipper. But when he came into his house he saw him sitting in a bath of rosewater, and surrounded by indecent and disgraceful girls. Upon noticing Rabha, the heathen exclaimed: Have you Jews in prospect such pleasures in your paradise? And Rabha answered: Much better than these. Do you really mean, said the other, that there are greater pleasures than this? Retorted Rabha: In the heat of all your voluptuousness you can't help fearing lest the king disturb you and mar your pleasure; while we expect to be free from such fear in paradise! Well, said the heathen, if others do, I, for my part, do not fear

the king. No sooner had he uttered this than a messenger came from the sovereign and said to Bar Sheshach: Go in all haste to the king, as he wants to speak to you! Then Bar Sheshach, addressing himself to Rabha, said: May the eye that wishes to see evil jump out of its orbit; whereupon Rabha said: Amen! And the eye of Bar Sheshach jumped out immediately. R. Papi said: Rabha should have applied this verse in answer to Bar Sheshach--viz. [Ps. xlv. 10]: "Kings' daughters are among those dear to thee: the queen standeth on thy right hand in fine gold of Ophir." R. Na'hman b. Itz'hak would have preferred this verse [Is. lxiv. 4]: "No eye had seen a god beside thee, who could do [the like] for the one that waiteth for him."

"*But if he was hired for some other work*," etc. It is apparent from here that the wages are allowable even when the laborer had been ordered to carry the wine *before* he finished the other work; and yet there is a Tosephtha: When the heathen tells his Jewish laborer, after he has finished his day's work, to carry a cask of offered wine from one place to another, the wages are allowed, but the remuneration for the carrying is not; but if the heathen ordered him to do this sometime during the day's work, the whole pay is forbidden. Hence this apparently contradicts the Mishna? Said Abayi: The Mishna, too, implies the same limitation. Rabha, however, interprets the Mishna to allow the wages even when the carrying was done in the middle of the other work, and meets the apparent contradiction thus: The Tosephtha teaches: When a heathen tells his Jewish laborer: Carry 100 casks from this to that place and I will pay you 100 *perutoth*, and it was then found that ninety-nine of the casks were with oil while one was with offered wine, all the wages are prohibited, for it is the last forbidden cask that completes the claim for wages. The Mishna, however, intends to teach that, when the laborer works per cask, he is allowed to receive the wages and to reject the pay for so many forbidden casks he had to carry. This exposition of the subject coincides with the following Boraitha: A Jewish laborer hired to carry 100 casks among which one was found to contain offered wine is prohibited from all his wages; if, however, he was hired to be paid per each cask, he should cast away the pay for this one prohibited cask, while the other pay is allowed.

"*If a heathen hires of a Jew an ass*," etc. This rule, which is obviously implied in the first statement, is mentioned by the Mishna merely for the sake of its second part--viz.: If, however,

he hired it in order to sit thereon, the reward is allowed even when he had along with him the wine-flask. 1

The father of R. A'ha b. R. Ika, who was a wine-dealer, sold once wine to heathens. He had to bring it over across a river and empty it into their casks, retaining his for his trouble. This subject was brought before Abayi, and he said: What R. A'ha's father is doing is certainly allowed, for the wine is not prohibited unless already in the casks of the heathens.

MISHNA *II*.: If offered wine be poured on grapes, they must only be washed and are allowed. If, however, they were cracked, they are prohibited. Again, when such wine be poured on dates and figs, they are forbidden if the wine impart them a pleasant flavor. Bithus b. Zonan brought once dried figs in a ship, and a cask of offered wine happened to burst, the wine spilling upon the figs, but the sages who were asked on this point declared them allowable. The rule is: A prohibited thing renders another one forbidden if it imparts to it a pleasant flavor, but if not, it is allowed, *e.g.*, vinegar poured over grit.

GEMARA: The decision of the sages in the case of Bithus is apparently in contradiction with the prohibition immediately preceding it. The explanation, however, is that the Mishna is not complete, and must read as follows: If the wine imparts them a good flavor they are forbidden; but when it causes them to become insipid, they are allowed; which latter took place in the case of Bithus.

Once such wine was spilt on a heap of wheat, and Rabha, when asked on the point, allowed to sell the wheat to heathens and to use the money thereof. Rabba b. Levi objected to this decision by reason of the following: When a linen thread is woven into a woollen cloth or *vice versa*, a wool thread into a linen cloth, the Israelite is forbidden to make thereof either a garment or a saddle, or to sell it to heathens; he is allowed to make of it only shrouds for the dead. That these things are not sellable to heathens, can be accounted for only by the assumption that the heathens may thereafter resell them to Israelites who, not knowing that there is a prohibited thread in the doth, will make garments of it. Now, then, we have in the wheat a perfectly analogous case. Rabha, on hearing the objection, ordered the wheat to be first ground, then to bake of its flour bread, which may be sold to heathens, provided no Israelite

notices it, lest he might buy the bread of the heathens. But again, why should not the wheat present the same case as the grapes of the Mishna, which must be only washed in order to be allowed? Because, said R. Papa, the wheat grain has a slit in the middle which makes it similar to *cracked grapes*. Abayi and Rabha are of the same opinion: When old prohibited wine is poured on grapes and they get therefrom an agreeable taste, they are prohibited. But concerning new wine, Abayi prohibits all the grapes as soon as one drop fell on them; while Rabha prohibits them not until after so much wine has fallen upon them as to change perceptibly their taste. Abayi's reason is this: All objects of like taste belong, he believes, to one class, and as soon as a

particle, however small, of the prohibited falls upon an object, and be this very big, it, too, becomes prohibited (so, *e.g.*, a drop of forbidden wine falling into a cask renders the wine therein forbidden), and grapes he regards of the one class with wine. On the other hand, Rabha takes for his basis of classification not the taste but the *name* of the objects, so that homonymous objects will render each other prohibited if 1/60 of the one falls into 59/60 of the other, when a perceptible change in taste may occur, but not if 1/60 falls into 60/60 or more of the other.

In the case when beer-vinegar was intermixed with wine-vinegar, or oaten yeast with wheat yeast, of which in both cases one was allowed and the other forbidden, Abayi prohibits the whole mixture only when the forbidden ingredient tastes perceptibly, while Rabha would prohibit it even when but a drop of the forbidden fell into a whole cask of vinegar; likewise with the yeast Abayi defends his position by his theory: As the ingredients here being of different tastes are not of the same class, the resulting mixture is forbidden only when the prohibited substance is discernible by taste. Rabha, on the other hand, recurs to his name-theory: The vinegars and so the yeasts are homonymous, hence of the *same* class, consequently a drop of the prohibited suffices to render the whole so. Furthermore, Abayi endeavors to justify his name-theory by the following argumentation. We learn: When spices, forbidden with the same prohibition, of the same kind but of three different names, such as, *e.g.*, pepper, white, black and long, or when spices of three different prohibitions but of the same kind and name, all mix in some meal, it is prohibited, for they are counted together. Thereupon said 'Hiskia: This Mishna speaks of spices possessing equal properties so as to sweeten the meal, when they can

be counted together, but not otherwise. Now you see, then, that this, 'Hiskia's explanation, is in the light of my considerations quite plausible, as he guides himself by the taste, while viewed from Rabha's standpoint how can the three spices be counted together now that each has a different name. Hereupon Rabha rejoined: This does not prove your opinion at all, since this Mishna expresses not R. 'Hiskia's view but that of R. Mair of the following Boraitha: R. Jehudah said in the name of R. Mair: When different forbidden things mix with one that is allowed, they may be added to count as one whole, for it reads [Deut. xiv. 3]: "Thou shalt not eat any abomination," etc., *i.e.*, whatever is detestable by the law, is forbidden to eat. Hence, whatever is forbidden, and be it of neither equal name nor taste, can, according to R. Mair, be counted together. Concerning wine into which forbidden vinegar fell in, so that its taste is discernible in that of the wine, all agree that it is prohibited; but if the vinegar is not discernible, the wine is allowed. In the case when prohibited wine mixed in vinegar, Abayi forbids latter even if only one drop fell into it, since the *smell* of the wine is changed when in proximity with the vinegar and it assumes that of the latter, hence, it is as if vinegar fell into vinegar and makes it forbidden even by a drop. Rabha, on the other hand, holds that only then is the vinegar forbidden when the taste of the wine in it is perceptible, otherwise they remain two separate classes even if the *smell* of the wine is changed to that of vinegar. Rabha and Abayi said: A heathen may put his nose to the ventilatory orifice of a cask with wine in order to smell the state of the wine, and be it the wine of an Israelite it is not rendered prohibited thereby. An Israelite, however, is not allowed, according to Abayi, to do the like on the wine of heathens, its smell, like itself, being prohibited; while Rabha allows the smell.

"*The rule is: a prohibited thing renders another one forbidden*," etc. Said R. Jehudah in the name of Samuel: This rule is the prevailing Halakha. Furthermore, the grit spoken of in the Mishna is allowed only when it was hot at the time the forbidden vinegar fell upon it, for since

vinegar imparts a good odor to cold grit, latter is prohibited even if it be boiled after in order to eliminate the good odor. Rabin, on his return from Palestine, said in the name of Rabba b. b. Hana, quoting R. Johanan as interpreting the Mishna in the very same sense. R. Dimi, too, quoted R. Johanan to the same effect, adding

yet that the people of Ciporias are in the habit of preparing on Fridays a meal consisting of cold grit mixed with vinegar and called *shichlaim*. Resh Lakish interprets this point of the Mishna as follows: That the spoiling of taste by a forbidden thing leaves the mixture allowed, intends to teach that even if this bad taste has been subsequently ameliorated by pepper, salt or other spices, the mixture remains allowed.

R. Abuhu says in the name of R. Johanan: A forbidden object dropped into a food and both visible and smellable therein, renders it unallowable to eat; whoever eats it is liable to stripes, provided, however, be ate of the forbidden object the size of an olive and for so long that one could consume in this time a food equivalent in size to four eggs. But if the forbidden object be only tastable and not visible, the food is prohibited, and the consumption thereof is not attended with stripes. On the other hand, if this object heightens the already bad savor of the food, it is allowed. Why does not R. Johanan say: If this object renders the taste of the food insipid, it is allowed? He intends to indicate that the intrinsic bad taste of the food is a condition for its being allowed after the adulteration with a forbidden object, even when its taste is capable of being improved upon by the use of various spices; and this shows that the prevailing Halakha is in accordance with Resh Lakish. R. Kahana said: From this entire discussion it is evident that a forbidden object dropped into a food and rendering it more insipid, leaves it allowed. Hereupon said Abayi: All the participants of this discussion have unambiguously expressed their respective opinions, with the exception of Resh Lakish, who only interprets the Mishna, reserving to himself his own opinion on the point. Now that the Halakha allows the food in question, it is manifest that there were some sages who thought it unallowable; which is, indeed, the case, as we have learned in the following Boraitha: R. Mair prohibits a food or a beverage rendered either more palatable or more insipid by a forbidden object mixed with it, while R. Simeon prohibits it only when rendered more palatable. Said Ula: They differ only in case when the forbidden object renders the food first more palatable, but then insipid; but when it renders it immediately more insipid, all agree that it is allowed. R. 'Haga objected to Ula from the following: If prohibited wine or vinegar poured upon lentils or grits respectively, each renders the food forbidden; R. Simeon, however, allows both by reason of their becoming

thereby more insipid. Now, this former opinion can be only that of R. Mair's, who prohibits it though immediately rendered insipid. Ula answered: A man like 'Haga, who has no notion of what the sages ever say, ventures upon raising objections! The Boraitha adduced by him speaks of cold lentils and cold grits, which become more palatable by the wine or vinegar, but when put on fire they become more insipid, and it is this case that R. Mair forbids. R. Johanan, however, said: It is the case where a forbidden object renders a food more insipid right after mixing with it, that R. Mair prohibits and R. Simeon allows.

It once happened that a mouse was found in a barrel of beer and Rabh prohibited the beer. Whereupon the rabbis said in the presence of R. Sheshith: From this decision of Rabh we see

that he prohibits anything that is rendered more insipid by a forbidden object mixed with it. Said R. Sheshith: Nay; this is far from being the case; this decision is but an exceptional with Rabh. Indeed, a mouse is so detestable a creature that no one would think of eating, and yet the law specifically prohibits it. It is this circumstance that induced Rabh to the above decision. However, R. Simi from Nahardea said: A mouse is by no means so abominable a creature; as a matter of fact, the field-mouse is being served even on princely tables, but in the case of the beer it was a house-mouse, and house-mice are not eaten. Rabha said: The Halakha is that a forbidden object rendering the food more insipid leaves it allowed, and as to Rabh, his reason is not obvious; if he thought the insipidness of no account, the Halakha is against him, or maybe he thought that the mouse contributes toward bettering the taste of the beer!

The schoolmen propounded a question: How is it when a mouse falls into vinegar? Said R. Hillel to R. Ashi: Such an incident occurred in the presence of R. Kahana and he prohibited the vinegar. R. Ashi remarked: This decision of R. Kahana hardly admits of generalization, for the mouse there was already wholly decomposed and he rationally feared lest something of the mouse would be consumed together with the vinegar. Rabina was about to allow the vinegar, provided its bulk was 100 fold that of the mouse, basing this upon the same law regarding Teruma, but R. Tachlipha b. Gisa reminded him to draw rather the comparison with the spices of the Teruma, where a portion of 101 fold is requisite. According to the calculation

of R. Ashi the bulk of the vinegar in order to be allowed must be to that of the mouse in the ratio of fifty to one. R. Samuel b. Aika finds the ratio of sixty to one necessary to declare allowable the beer. This ratio remains as the prevailing Halakha with regard to all contamination by forbidden objects (*e.g.*, when into a pot containing sixty pounds of allowed meat one pound of pork meat is mixed in, the whole mixture is allowed to eat).

MISHNA *III*.: Wine known as being watched is allowed when transported from place to place by a heathen and an Israelite, even if the latter absent himself. However, if he notifies the heathen that he is taking leave, and be it only for as short an interval as to enable one to bore a hole, close it up and have it dried, the wine is forbidden. R. Simeon b. Gamaliel says: This interval must be so long, that he could open the bunghole, close it again and have it dried.

When an Israelite leaves his wine on the wagon or boat of a heathen and himself takes a shorter road, the wine is allowed even if he succeeded to reach first the destination and to have a bath meanwhile. But if he notified the heathen of his leave, and be it for only as short an interval as to enable one to bore a hole, close it, and have it dried, the wine is prohibited. R. Simeon b. Gamaliel says: As long as to open the bunghole, close it and have it dried. When an Israelite admits a heathen into his wine store, the wine is allowed, even if the Israelite is only coming in and out; if, however, he says that he is going to absent himself, and be it only for as short an interval as to enable one to bore a hole, close it and have it dried, the wine is forbidden. R. Simeon b. Gamaliel says: As long as to open the bung, close it again and have it dried.

When an Israelite dines with a heathen at the same table, puts a bottle of wine on the table and another one on the by-table (δελφικος) and goes out, what is on the table is prohibited, what on the by-table is allowed; but if he said to the heathen: You only help yourself to the wine and drink, the bottle on the by-table is forbidden, too. If he leaves open casks they are prohibited; closed ones, they are only then forbidden when the heathen could unbung them, close again and

have them dried.

GEMARA: "*Wine known as being watched,*" etc. This seems to express the same idea of the following Boraitha: When he who accompanies his drivers leaves them to convey the clean objects from one place to another, himself going away from them even a whole mile, the objects remain clean; if, however,

he told them: You go ahead and I shall follow you, the objects are unclean, as soon as he loses sight thereof. R. Itz'hak interpreted this Boraitha to mean in its first half that the owner had first to cleanse both his driver and animals with water.

"*When an Israelite leaves his wine in the wagon,*" etc. These two cases, though seemingly identical, are providing for different points. Indeed, the latter case could not be so generalized as to include the former, for here it may be assumed that the heathen is under the influence of constant fear lest the proprietor come in at any moment, while the condition on the wagon or boat is different. On the other hand, the former case cannot include the other one, for on the wagon there is yet a possibility left for the heathen to fear, lest he be overtaken by surprise and looked after from another direction, while in the store be could presumably lock the door, thus securing himself against surprise and doing what he pleases. Hence, the Mishna states both these cases. Rabba b. b. 'Hana in the name of R. Johanan: The Mishna prohibits the wine only when the bunghole of the cask was closed up with lime, but if with clay, an interval so long as to enable the heathen to open the hole, close it again and let it dry is necessary to prohibit it. Whereupon it was objected: A Boraitha teaches that R. Simeon b. Gamaliel said to the sages: When the heathen broaches the cask and then closes it up again, this is recognizable on the outward as well as on the inner surface of the bung. Now, if the stuff of which the bung is made be clay, R. Simeon's idea is clear, for clay when old becomes brighter in color, wherefor the new in it is easily distinguishable by the color, because the new clay cannot combine with the old one, since the hand cannot reach the inner sides. But if, as you incline to think, the sages speak of a lime bung, the new lime is not recognized, having as it does the same color as the old one. This objection was met thus: R. Simeon b. Gamaliel, ignorant of whether the sages spoke of a lime and a clay bung, was endeavoring to show that even in the case of lime a change produced by breaking is discernible though only on the inward side; so that the sages answered this point, contending that so long as it is not recognizable on the outward, the wine is prohibited, for it is to be feared that the inner side of the bung might perchance become difficult of recognizing, or that it was altogether forgotten to examine it. Said Rabha: It seems that the Halakha prevails with R. Simeon b. Gamaliel, for the end of the Mishna gives his opinion without mentioning

his name. And Rabha did well to remind of this, for otherwise it could be thought that the *whole* of the concluding paragraph (*i.e.*, beginning with R. Simeon till the end) was said by R. Simeon b. Gamaliel. But now that the Halakha here prevails with R. Simeon b. Gamaliel, *i.e.*, that there is no fear lest the heathen should break the cask, and above in Chap. II. it prevails with R. Eliezar, *i.e.*, the cask being well bunged, there is no fear of the heathen's opening it, why are we still refraining from keeping our wine in the house of a heathen? The answer is this: Every cask has a small orifice for ventilation, and it is feared lest the heathen should somehow get at the wine through it.

Rabha said: Though Israelites that come into the house of a heathen prostitute may not resist the sexual impulse, yet the wine which they chance to bring there is allowed, for they will surely prevent the prostitute from touching it. If, however, heathens visit a Jewish prostitute, her wine becomes prohibited, for it is safe to conclude that since she lowers herself so much as to have intercourse with heathens, she will admit them to touch her wine, too.

A heathen once happened to enter the wine-store of an Israelite, where he himself had some wine; he closed the door which had, however, a crevice, and through it he was seen standing among the Israelite's casks. Rabha decided this case thus: Only the casks visible through the crevice are allowed.

Jewish wine was once stored up in a house where a heathen and an Israelite lived in the lower and upper floors respectively. One day the two, alarmed by a sudden noise in the street, went out to see what was the matter; the heathen was then the first to return, and locked the door. In this case Rabha allowed the wine, for, he argued, the heathen may think that the Israelite entered first and might surprise him any minute. In another case where a heathen was found among casks of Jewish wine at an inn, Rabha decided thus: If the heathen is suspicious of being a thief, the wine is allowed, for he will be afraid to touch it; but if this is not the case, the wine is forbidden, for once be approached it he must have touched it.

There was another case where a heathen was found among the casks and Rabha decided it again conditionally--viz.: If the heathen has good reasons to account for his being in the cellar the wine is prohibited, because the fear of being surprised is counterbalanced by the said reasons, and he will surely touch the wine; but if he has no such reasons, the wine is allowed,

because of his fearing to be surprised. An objection was raised from the following: Unguarded Jewish wine in a public inn in which Israelites always come and go, but which happened to be closed so that it became inaccessible to Israelites; or wine left in the inn by an Israelite who requested a heathen from outside to watch it, is in both cases forbidden. In the latter case the heathen has sufficient ground to believe that the Israelite, who of his own accord made him the watchman of the wine, will not return so soon, so that there is ample time to touch the wine; this wine, we see, is indeed forbidden, though the heathen, if taken by surprise, would have no reasons to account for his being near it! Now, Rabha would allow the wine under these conditions. The Boraitha, then, must, therefore, be so interpreted as to mean that the heathen would have reasons for approaching the wine.

An Israelite and a heathen were once at an inn sitting and drinking wine. As the hour of prayer arrived, the Israelite went to pray, leaving the wine where it was. Rabha allowed this wine on the basis of the heathen's fearing to be surprised.

Once an Israelite was with his wine in a boat where a heathen, too, embarked. On hearing the trumpet announcing the approach of Sabbath, the Israelite went on land to enjoy there the Sabbath day. Also in this case Rabha allowed the wine left alone on the boat with the heathen, on the above basis. The possible objection here--viz.: The heathen, knowing that the Israelite will not on Sabbath come back to the boat, will have no fear of being surprised, Rabha meets by

saying that the heathens do not believe the Israelites to keep the Sabbath so strictly, and he corroborates this view by citing the words of the proselyte, Issur, who told him that, when yet a heathen, he was sharing in the general conviction of all other heathens that the Jews merely *pretend* to observe the Sabbath day, because if they actually kept it, there would be found the pocket-books lost in the streets, since the Jews are prohibited from picking them up on Sabbath. However, the proselyte went on: Since he became an Israelite he has learned to know better the law laid down on this point by R. Itz'hak--viz.: When an Israelite finds on Sabbath a pocket-book, he must stop for a while, then move on for a distance less than four ells, stop again, etc., till he reaches his house, where he may leave it, and this is the reason why there are no pocket-books in the streets on the day of Sabbath.

An Israelite once happened to leave his wine in the press. Meanwhile a heathen, who heard the roaring of a lion, ran into the press among the casks of wine for his life. Rabha allowed this wine, because the heathen will surely think that some Israelite, too, may chance to save himself here from the lion, and thus take him by surprise, were he to attempt at touching the wine.

In the city of Pumbeditha thieves once intruded into a house, and it was afterward feared that the casks of wine had been opened by them. As it was not certain whether the thieves were Jews or heathens, the case was brought before Rabha, who allowed the wine on the ground that the majority of thieves in that city are Jews. In a similar case that occurred in Nahardea, Samuel, too, allowed the wine.

A heathen girl was once found among the casks of Jewish wine, holding in her hands wine froth. Rabha allowed the wine, for she might have gotten the froth on the outside of the cask, which, though now no longer noticeable there, might have come out before by chance.

Soldiers once arrived at Nahardea and opened quite a number of Jewish casks. R. Dimi tells of a similar case that occurred in Palestine, and R. Elazar allowed the wine, with no definite reasons, however, to base this decision; he either guided himself by the opinion of R. Eliezar, who holds that a doubt as to whether or no a heathen came near the wine found open is a reason to allow it; or he assumed that the majority of the soldiers were Jews.

A Jewish woman, dealing in wine, once left her keys in charge of a heathen, and the question came up as to whether her wine she has in the tavern is allowed? Said R. Itz'hak in the name of R. Elazar: A similar case was once cited before the sages assembled in college, and they allowed the wine; because entrusting one with the taking care of the key by no means allows him into the room. Abayi said: A like decision is pronounced in the following Boraitha: When one leaves to the care of an ignoramus the keys of his barn where fruit is stored up, the fruit is not defiled, because the keeper of the key is only appointed to watch the key. It is thus obvious that, since in the case of an ignoramus who is ignorant of the rules regarding cleanness the fruit is none the less allowed, the more so in case of the wine. It must, moreover, be concluded from here that the provisions of wine are not so stringent as those of

cleanness. The like was, indeed, taught, as follows: When a Jewish scholar lives in the same

house with an ignoramus, each having his own courtyard separated from the other's by a low partition, so that one can look over into the other one's yard, and the scholar stores up in his yard something capable of being defiled, and goes away, these things are rendered unclean on the assumption that his ignorant neighbor has touched them. But if the scholar's neighbor is a heathen and the former deposited wine in his own yard, this is, according to Rabh, allowed. R. Johanan, however, holds that the former, too, remains clean.

MISHNA *IV.*: When an army enters a town in time of peace, the open wine-casks are forbidden, the closed ones are allowed; but if in time of war, both are allowed, for there is no leisure then to make libations.

GEMARA: This Mishna was contradicted from the following: When a city is conquered by a besieging army, the wives of the priests are prohibited to their husbands. Whence it follows that the soldiers find time for debauchery. Thereupon replied R. Mari that they do not find time for offering wine, but they find it for satisfying their voluptuous inclinations.

MISHNA *V.*: Artisans who are offered by a heathen a cask of offered wine as their remuneration, are allowed to ask of him its worth in money; if, however, the wine has already entered their possession, they are forbidden to ask it.

GEMARA: R. Jehudah said in the name of Rabh: A Jew may say to a heathen, Go and pay for me the government taxes, without becoming liable, even if the heathen gave to the treasury wine instead of money. The following Boraitha was, however, adduced as objecting to this view: A Jew is not allowed to ask a heathen: Go and gratify for me this or that officer. Hereupon Rabh answered: The two cases are incomparable; *I* allow a Jew to pay his taxes through a heathen, while the Boraitha prohibits him from asking the heathen to do such a thing for which doing the Jew is himself responsible.

MISHNA *VI.*: He who sells his wine to a heathen is allowed to use the money, provided he has fixed the price *before* measuring the wine, but if he had first measured out and then determined the price, the money is forbidden.

GEMARA: Amemer said: The law governing the transition of title in an object with the object itself extends to non-Israelites as well; instance the Persians, who are in the habit of sending presents to one another; they can never get back the present

which once reached the possession of the other one, since *ex facto* the title passes to the latter and the present is regarded his ownership. R. Ashi, however, questioned this positive extension of the law, and rejected the adduced instance as not convincing, because the fact that the Persians do not return presents is due merely to the pride they take in not *asking* back whatever they have once given away (but if they were asking it back, it would have to be returned). This view can be further substantiated by the following: Rabh was instructing the Jewish winesellers to take of the heathen the money *before* giving him the wine, and to rather lend him money for which he might buy his wine, than to give him wine on credit, for by the fact of getting the wine he does not yet obtain title therein, hence, he renders it as Jewish wine unallowable for use. This shows convincingly that the law mentioned at the outset is not extended to non-Israelites.

Thereupon it was further argued that Rabh would prohibit the wine only when it has been measured out to the heathen in *his* vessels, which fact, apart from the question of ownership, renders of itself the wine forbidden. But, was again contended, admitting this argument, we can none the less say that the question of ownership *is* concerned here--viz.: The wine becomes unallowable as soon as it reaches the bottom of the heathen's vessel, but it becomes his property as soon as the Israelite *begins* to pour it, *i.e.*, *before* it reaches the bottom of the heathen's vessel and when it is yet allowed, and still Rabh instructs the wineseller to take the money *first*. Whence it may be inferred that the flow is considered a connecting link.

Shall we assume that Rabh. told the Jewish winedealears to have their heathen customers pay in advance, because he holds that the jet between the two vessels unites them so as to be regarded one, wherefore the wine becomes forbidden as soon as the first drop of it touches the heathen's vessel? However, the adduced is not at all evidence that the said law is not extended to the non-Jews, for if the heathen kept the vessel in his hand while the Israelite is pouring Rabh would not prohibit the money, as he prohibits only when the vessel stands on the ground while the pouring is being done. It can, however, be shown that, notwithstanding this, it is evidence against the extension of the said law. For, the wine is the heathen's property as soon as it enters his vessel, and yet it is not forbidden, unless he touches it; and the Israelite would be allowed to take the

money also after, were this law extended to the non-Jews, too. Now that Rabh requires the payment to be made in advance, it is clearly shown that the law is not extended beyond the Jews.

Or shall we assume that Rabh. holds that so long as the object sold is in the vendors' house, though in the purchasers' vessel, it is not regarded as received until after the purchaser takes it into his hand? But this would speak neither for nor against the extension of the law. The fact is that Rabh. requires payment in advance for an entirely different reason, viz.: he fears lest the vessel brought by the heathen to the Israelite have some wine drops on its brim, so that as soon as the wine poured in touches them it gets all prohibited.

If we admit this to be the case, it would seem that Rabh. differs with R. Simeon b. Gamaliel who said: When forbidden wine is entered into allowed one, it is not allowed to drink, but it is allowed to sell it and derive benefit from its money, excepting however the worth of the admixed forbidden wine, which should be cast into the sea. Nay, Rabh. does not differ with, but holds that R. Simeon allows the benefit of the wine only when there was mixed among many casks one of forbidden wine; then all casks may be sold and the worth of the one forbidden should be cast into the sea: but if wine is mixed with wine, also he prohibits all benefit thereof.

The following objection was raised against Amemer: When an Israelite buys of a heathen old silver where he finds an idol, he should, upon receiving title in, and paying money for, the silver, throw the idol into the sea; if, however, he has not yet paid the money for, though already received, the silver, he should return the same, saying: I do not buy it. Now, if the law were extended to non-Jews, how could here the Israelite return the silver already received by him? Said Abayi: This is no objection, as in this case the transaction is made merely by error, the Israelite believing all the time that he receives old silver and not an idol; hence, as he had not in mind to buy an idol, he may return it. But, rejoined Rabha, if you consider this but an erroneous transaction, why should the Israelite cast the idol into the sea, once he has paid the money? Why should he not rather return it also here and disclose the error? The answer is that the Israelite

may, indeed, regard the transaction erroneous, but lest it should appear as if the Israelite is getting money for an idol, the sages prohibited him to return it.

Mar, the elder son of R. 'Hisda, said to R. Ashi: But it is

expressly stated in the Mishna that if one sells his wine to a heathen and has determined the price before he measures out the wine, the money is allowed. Now, if according to your opinion the foregoing law is not extended to non-Israelites, how should we understand this Mishna? Here of necessity the wine would have to be considered the' Jew's property, until after he has received the money; but as the wine becomes prohibited when touched by the heathen, the Jew should not be allowed to take the money therefor? Hence we must say that the law is extended, and the wine (of the Mishna) is regarded property of the heathen as soon as he has received it, so that by touching it he renders prohibited his property, and therefore the Jew is allowed to take the money. Hereupon said R. Ashi. The Mishna may be understood also without your explanation, viz.: He had received the money before the heathen took possession of the wine. But, retorted the other, if so, how is the concluding sentence of the Mishna to be understood, viz.: If he had measured out the wine before he determined the price, the benefit of the money is forbidden? Said R. Ashi: And according to your opinion the wine belongs to the heathen as soon as he has received it, why then is here the money forbidden? You see then that the main point here is the fixing of the price. It is namely the fixing of the price that conditions the passing of the title: if the price was fixed *before* the measuring, the wine is the heathen's and its money is, therefore, allowed; but if *after*, it is not yet the heathen's and its money is forbidden.

Said Rabina to R. Ashi: Come and bear what R. 'Hyya b. Aba said in the name of R. Johanan, if a descendant of Noah steals an object worth even less than a *peruta*, his sentence is death, and the law of returning (the stolen) is not applied here. Now, why is this law not applied here? presumably because the object in question is of so little value that no one will care to require it. Assuming now that the previously discussed law is not extended to non-Israelites, why should a descendant of Noah be subject to capital punishment for stealing from a Jew, when the object is here always to be regarded as remaining the property of the Jew? Hereupon said R. Ashi: It is so indeed, and he is not put to death for the theft, but for his intention to kill the Jew if be attempted to resist. Retorted Rabina: If such be the case, how do you understand the non-applicability in this case of the law of returning? And be answered: As the descendant of Noah causes by said intention a state which he

can neither annul nor reward, the said law is not applicable here. (Says the Gemara): If so, how is to be understood the last part that when his comrade robs from the first thief the stolen object, he is to be put to death; now, according to your opinion, the second robber who has nothing to do here with the Jew, should pot be put to death! Hence it is shown that the law regarding the passing of title in an object (by merely touching it) does extend to non-Israelites.

Once an Israelite said to his neighbor: When I make up my mind to sell this field I will sell it to you. Later on he sold it to a third party. R. Joseph decided that the first one is entitled to the field, provided he gives the same price offered by the other purchaser. Abayi, however, disputed

this decision on the ground that the owner did not fix a price when making the promise to the first party; and, as it is evident from our Mishna, a sale is determined by the fixing of the price, I should like to know if the Mishna concerns itself only with wine because of its being very rigorous, or also with *all* other sales? Come and hear. Aidi b. Abin said: A case similar to that of the fore. going sale of the field was once brought up before R. 'Hisda, and he consulted R. Huna about it. R. Huna decided it from the following Mishna: When one brings to market fruit on animals or men, and a purchaser, asking him to convey this fruit to his house, himself leads the men or animals with the fruit to his house, the fruit is not yet thereby considered his own, and it is immaterial whether the price was determined upon before or after the measuring of the fruit. The two, purchaser and vendor, may yet withdraw. But if the fruit was unloaded and carried into the house, the following conditions are determining: If the price had been fixed before the measuring began, the sale is a sale and neither vendor nor purchaser can withdraw; if, however, the measuring takes place before the fixing of the price, either party may nullify the transaction. It is thus obvious that (the time of) fixing the price is a condition precedent to a valid transaction.

An Israelite once said to his neighbor: When I make up my mind to sell this field, I will sell it to you for a hundred zuz. Sometime later he sold it to another one for 120 zuz, and R. Kahana decided the case in favor of the first party (to whom the owner made the promise). R. Jacob from Naharpakod disputed this decision, contending that the owner, while making his promise, had no desire yet to sell the field; it was only the high

price of 120 that induced him to the sale, while for a hundred zuz he would not sell it yet. And the Halakha prevails with R. Jacob from Naharpakod; *e.g.*, if one offers to sell to his fellowman an article for a price estimated by *three* people and then two of them find the article to be worth 100 zuz and the third estimated it at 120 zuz, the estimate of the two prevails. But if the condition of the offerer was that the price be *determined* by *three* people, all the three must agree in their determination of the price. (The reason of this distinction is that in the former case the three persons who are to estimate constitute a jury, and hence the majority rules, while in the latter case the three are to *determine* the price, which can be done by persons not on the jury, and hence the determination must be unanimous.) However, if the offerer put up the condition that the price of the article be either estimated or determined by *four*, unanimity is a requisite in both the cases (because by leaving the matter to four people the vendor clearly indicates that he does not want a jury, as a jury never consists of four). Again, if the vendor after empowering three men to estimate the article refuses afterward to abide by their estimate, requiring to choose another three men who, he thinks, better understand the value of such articles, R. Papa says: He has the right to do so, while R. Huna b. R. Jehoshua denies him such right on the ground that with such a right the vendor would be enabled to drag the transaction *ad infinitum*. And the Halakha prevails with R. Huna b. R. Jehoshua.

MISHNA *VII.*: If the funnel was first used to measure through it into the heathen's flask and then into that of an Israelite, the wine of the latter is forbidden when there has been left in the funnel a drop or so from the heathen's wine. Furthermore, wine left in the vessel after some of it has been poured into a heathen's vessel, is allowed, but the wine poured out is forbidden.

GEMARA: An objection was raised from the following Mishna: The jet formed by the pouring, the streaming flow and the moisture form no connecting link for either defiling or purification, while a cellar does form a connection for both; and according to R. Huna the let, etc., form also

such a connection with regard to wine.

R. 'Hisda once said to the Jewish wine-dealers: When pouring your wine into the cask of a heathen, you either do it abruptly, bending each time your vessel backward, or do it all at

once--all this in order that the jet may not connect the two vessels. Rabha said to the wine-pourers: Do not allow a heathen to assist you in pouring, for it may happen that a heathen, supporting all alone a vessel, would empty its contents without the aid of the Israelite, and this would render the thus emptied wine forbidden.

An Israelite was once emptying wine from one cask to another by means of a siphon, when a heathen came and touched the siphon. Rabha prohibited the wine in both casks. Hereupon R. Papa, according to others R. Ada b. Mathna, or to still others, Rabina, said to Rabha: Shall we assume that the jet forms a connection, and that on this your decision is based? And the answer was: Nay; this case is of a different nature; the heathen's touching the syphon is equivalent to his touching the cask itself. Mar Zutra b. R. Na'hman said: An Israelite may drink with a heathen from one decanter called *kanishkanin* (having several pipes), provided the former is the first to stop drinking; for if the heathen were the first to stop, the wine left in the pipe would flow back into the decanter and render unallowed the whole wine therein. Rabha b. R. Huna, when at the house of the Exilearch, said the same, and according to others, he himself drank from a kanishkanin.

MISHNA *VIII*.: Devoted wine is prohibited and renders unallowable even by a minimal quantity; the same is the case with devoted wine or water mixed with other wine or water respectively, and be it in a minimal quantity, likewise wine with water or *vice versa*, provided the quantity be such as to impart a flavor to other ingredients. This is the rule: When the two ingredients are of the same kind, a minimal quantity suffices; if, however, they are of various kinds, the imparting of flavor determines.

GEMARA: On his return from Palestine, R. Dimi said in the name of R. Johanan: When an Israelite empties prohibited wine into a reservoir with allowed wine even for as long a time as the entire day, the whole of the wine is allowable, because the allowed wine of the reservoir being every time sixty fold bigger than the first drops of the prohibited wine, keeps the entire wine allowable, *i.e.*, inclusive of the whole prohibited wine emptied into it. Now, how can this view be reconciled with the dictum of the Mishna that a minimal quantity of prohibited wine renders other things forbidden? Not otherwise than by reversing the order of its statement, thus: When

allowed wine is emptied into forbidden one, and be it in a minimal quantity, the former is rendered forbidden. Come and hear another objection: Our Mishna further establishes "the imparting of flavor" as criterion; does it not mean that the forbidden fell into the allowed? Nay; it means *vice versa*. But if the water spoken of in the first part means forbidden water, we must say that the same is the case with the water mentioned in the second part when it falls into the wine, and the "imparting of flavor" is here the criterion? R. Dimi may say that the entire Mishna

speaks of the permissible falling into the forbidden; but in the first it is the water that is the forbidden, and in the second the wine is the forbidden and the water the permissible. R. Itz'hak b. Joseph on returning from Palestine said that R. Dimi's version of R. Johanan's view was faulty, and corrected it thus: When an Israelite empties forbidden wine from a vessel with a narrow mouth into a reservoir with allowed wine, even the whole day long, the forbidden wine is rendered allowable by the wine in the reservoir on the basis of the sixty to one ratio. Whence it is manifest that R. Johanan allows to do this only from a narrow-mouthed vessel, which makes but a very thin jet, but not from a barrel that has a thick flow. Rabin, however, when he came from Palestine, declared this version, too, as inexact, and formulated R. Johanan's opinion as follows: When forbidden wine falls into the said reservoir and simultaneously a pitcher of water also falls in, the allowed wine of the reservoir is not taken account of; only the water must be reckoned in relation to the forbidden wine, and if it be sixty fold the latter, the whole is allowed. R. Samuel b. Jehudah, on coming from Palestine, said that to Rabin's version R. Johanan adds. Provided the water fell in first into the allowed wine in the reservoir, the incoming forbidden wine becomes allowed; if, however, the forbidden wine first fell into the reservoir and then the water, all remains prohibited, because the wine has met with its own kind and asserts itself. According, however, to another opinion, R. Samuel b. Jehudah explains not Rabin's version, but our Mishna, where it says that wine mixed with wine, even in a minimal quantity, renders it prohibited. This, he says, R. Johanan understands as follows: If wine meets wine only, then a minimum renders prohibited; but if a pitcher of water falls also at the same time, the allowed wine is not counted at all, and the water, greater in quantity than the wine, abolishes it. And it

is by far not a matter of indifference whether Samuel's explanation is concerned as relating to the said Mishna or to the foregoing version of Rabin. If it refers to the Mishna, he must be understood to allow the wine regardless of the question whether the water was first added to the allowed wine and then the forbidden wine or *vice versa*. On the other hand, if his explanation applies to Rabin's version, he presumably holds that the water must come first and then the forbidden wine.

It was taught: If forbidden wine falls into a reservoir, and simultaneously a pitcher of water, 'Hiskia prohibits it, provided the forbidden increased the quantity; but if the water increased the quantity, then he allows it. R. Johanan, however, allows also in the case when the quantity was increased by the forbidden. R. Jeremiah asked R. Zera whether the difference of opinion exhibited by 'Hiskia and R. Johanan is the same as that shown by the respective opinions of R. Eliezar and the sages in the following Mishna: In a case when both ordinary and Teruma leaven fell into a dough and neither of the two would of itself cause fermentation, but together they would do so, R. Eliezar guides himself by that which fell in last, while the sages hold that the Teruma leaven does not render prohibited, unless it suffices to cause by itself fermentation, and it is immaterial whether it fell in first or last. Replied R. Zera: How can this be borne in mind? Did not Abayi say that R. Eliezar allows the dough only when the Teruma leaven was put in first, then taken out and the other leaven put in; but if the Teruma leaven remained, the dough is prohibited? 'Hiskia allows the wine even when the forbidden one remains. The difference in the opinions of 'Hiskia and R. Johanan concerns only the consideration (*i.e.*, whether the allowed wine may be considered as non-existent). R. Johanan holds this theory of consideration, while 'Hiskia does not.

The following was taught in support of this: R. Ami, according to others R. Assi, said in the

name of R. Johanan: Suppose two goblets, one containing ordinary, the other Teruma wine, each diluted with water; if now the two wines be mixed into *one* goblet, the ordinary wine is not considered as existing at all, hence, if the water is to the Teruma wine in the ratio of sixty to one, the wine is negligible.

"*This is the rule: When the two are of the same kind, a minimal quantity suffices; if, however, they are of various kinds the imparting of flavor determines*." Rabh and Samuel say that

all objects biblically forbidden, render by minimal quantity prohibited all other objects of the same kind; but if of a different kind, they are made unallowable only when the flavor of the forbidden is perceptibly imparted to them. And this is inferred from the expression of the Mishna "this is the rule," which expression would be superfluous if not for generalizing this biblical prohibition. On the other hand, R. Johanan and Resh Lakish both decide all such cases of biblical prohibition by the rule of "imparting flavor", irrespective of identity or diversity of kinds; and the expression of the Mishna "this is the rule" they explain as including a mixture of grain from which it is not known whether Teruma and tithe were separated.

There are two Boraithas, one held in the sense of Rabh and Samuel, the other in that of R. Johanan and Resh Lakish: (1) All objects biblically forbidden render objects of the same kind prohibited by minimal quantity, objects of another kind by the imparting of flavor. (2) All objects biblically forbidden render *all* other objects prohibited by the imparting of flavor irrespective of kind; the mixture mentioned above and the wine form the only two exceptions: A mixture from which Teruma has not been separated, as well as offered wine, renders objects of the same kind forbidden by minimal quantity; objects of a diverse kind, by imparting flavor. The rigorousness of the wine regulation is readily justified, when we remember that here idol-worship is concerned; but why is it applied also to the mixture? The answer is that as regards the separating of Teruma the same law holds good--viz.: When the owner separates as Teruma but a single grain from a heap of 1,000 measures, it is, according to Samuel, sufficient; hence, when from such a heap of 1,000 measures, from which no Teruma has as yet been separated, a single grain comes to another heap of like magnitude, the latter is rendered prohibited. And there is also a Mishna to the same effect: According to the sages an object renders prohibited other objects by minimal quantity when they are of the same kind, but if they are of various kinds, the imparting of flavor is the deciding factor.

MISHNA *IX*.: The following objects are forbidden and render prohibited by minimal quantity: Offered wine, an idol-image, holed hides, an ox sentenced to be stoned, the heifer destined for breaking off her neck, the fowl sacrifices of the leper, the hair of a Nazarite, the first-born of an ass, meat cooked in milk, the kid exported on the Day of Atonement, and

ordinary cattle slaughtered in the courtyard of the temple. All these objects are themselves forbidden and render prohibited by their minimal quantity.

GEMARA: If the Mishna classifies these objects on the basis of their perceptible number, why does it not include here pieces of a carcass? Or if it enumerates only objects of which all benefit

is forbidden, why does it not include leaven on Passover? Said R. 'Hyya b. Abba, according to others, R. Itz'hak of Naph'ha: The Mishna enumerates here objects that are both perceptible in number and prohibited for all benefit.

"*All these objects*." What does this expression exclude? Objects whose number is a matter of indifference, their benefit, though, being forbidden; or *vice versa*, objects allowed for benefit and perceptible in number; it is such objects that render prohibited not by minimal quantity, but by imparting flavor.

MISHNA *X*.: When offered wine flows down into a reservoir of wine, the benefit of the whole wine is forbidden. R. Simeon b. Gamaliel, however, says: The whole is allowed to be sold to heathens, excepting the worth of the offered wine therein.

GEMARA: Said Rabh: The Halakha prevails with R. Simeon b. Gamaliel only in the case when a cask of devoted wine was mingled among casks of Jewish wine; but when devoted wine is mixed with other wine, the whole is forbidden. Samuel, however, says: The opinion of R. Simeon b. Gamaliel prevails as the Halakha concerning wine also. With Samuel agree Rabba b. b. 'Hana in the name of R. Johanan, R. Samuel b. Nathan in the name of R. Na'hman in the name of Rabha b. Abuhu. R. Na'hman himself, however, said that for practice it should be decided thus: If it is definitely known that the admixed wine was devoted wine, Rabh's procedure is the right one; but if the case is doubtful, Samuel's view is to be followed.

MISHNA *XI*.: A stone wine-press waxed by a heathen must only be washed to remain clean; but if it is of wood, Rabbi says it must only be washed, while the sages say that the wax must be wholly removed. Finally, if it is a clay press it is forbidden even when the wax has been removed.

GEMARA: Rabha interprets the Mishna thus: The washing suffices only when the heathen waxed the press, but if he pressed his own wine therein, the entire wax must be removed. Is not this self-evident from the fact that the Mishna does not mention the pressing? Lest one say that the expression of the

[paragraph continues] Mishna is *not* exclusive of the other case, hence his interpretation. Here is a case to this effect. An Israelite once appeared before R. 'Hyya asking him thus: Send a man with me to investigate whether my wine-press is in legal order, so that I might press my wine therein. Hereupon R. 'Hyya said to Rabh: Go and examine the man's press, but state your opinion in a manner as not to excite any dispute in the college. Upon examining the press, Rabh. found it smooth, and thought it need only be washed. However, further examination revealed to him a fissure in which some wine, though dried up, was noticeable; then he decided that washing is not sufficient, but that the wax must be wholly removed, adding: I now understand the apprehension of my uncle regarding a possible dispute in the college consequent upon my decision; indeed, had I but relied upon my first superficial examination, my decision would have been disputed.

The rabbis taught: A press, a ladle, and an earthen funnel that belong to a heathen and are not waxed Rabbi allows to use, provided they have first received a washing, while the sages prohibit

them. As to the use of earthen wine-pitchers, Rabbi, too, forbids it, for such pitchers are used for a greater length of time, while the foregoing vessels are used but temporarily; but again, if these vessels are of wood or stone they are, after being washed, allowed if not waxed, but if waxed they are forbidden. Now, this last prohibition seems to conflict with the Mishna which declares clean a stone press waxed by a heathen, provided it be washed before using it? The answer is that the press of the Mishna is, though waxed, yet not used by the heathen, while the Boraitha speaks of a press where the heathen pressed wine.

The master says: A press, a ladle and an earthen funnel that belong to a heathen, are allowed to use upon being washed first, while the Mishna prohibits an earthen press even after the wax thereof has been removed? Said Rabha: In the Boraitha it is Rabbi that allows, while the sages forbid here as well as in the Mishna.

Rabha lectured: When an Israelite wishes to use a heathen's wine-press, he must first wash it with boiling water. When Rabha once sent his wine-pitchers to Harpania through a heathen, he put each pitcher-mouth downward into a sack and sealed the latter, thereby effecting a double sealing; for he was of the opinion that the sages prohibit such vessels as used to preserve

wine for a long time, even if they have been but for a short time in the hands of a heathen.

How should the washing prescribed in both Boraitha and Mishna be done? Rabh says, with water; while Rabba b. b. 'Hana says, with ashes--that is to say, the two require the washing to be done with both water and ashes, and differ only as regards the order, Rabh requiring the water first, and Rabba the ashes first; not is their point of difference one of essence, as the former has in view dry vessels and the latter moist ones. The disciples of Rabh at Suro said in his name that the washing is done as follows: To dry vessels apply first water, then ashes, and then again water; to moist vessels, first ashes, and then water. The same disciples said in the name of Samuel: To moist vessel apply in this order: ashes, water, ashes; to dry ones, in this order: water, ashes, water, ashes. The disciples of Rabh at Pumbeditha quoted him as holding the just-cited view of Samuel, and Samuel as requiring this procedure: To moist vessels, ashes, water, ashes, water, *i.e.*, four; to dry vessels, water, ashes, water, ashes, water, *i.e.*, five processes; hence, Rabh and Samuel are of the same opinion, with the only difference that the former does not count the last water, which Samuel does.

R. Abuhu on being once asked how the cover of a heathen's press should be cleaned, answered with the following Boraitha: Wine or oil-presses of an Israelite that have become unclean must be cleaned in the following manner: The sideboard of the press, the press itself and the brooms must be washed with water; the press cover, however, if made of hemp stalks or osier, must be washed according to the directions of Rabh and Samuel; but if it is of reed or thin wood, it must be left unused for a year; R. Simeon b. Gamaliel, however, finds the period between two consecutive press-seasons sufficient, which period is sometimes more sometimes less than a year. Said R. Jose: If the cover is needed for immediate use it should be put in boiling water or passed through the boiler where are roasted the olives from which the oil is pressed. R. Simeon b. Gamaliel said in his name: The cover may be put under the water of a cascade or of a spring. And for how long? For an *Onah*. The same laws which the sages have established with regard to clean and unclean, are also concerning the question of devoted wine.

How long is an Onah? R. Hyya b. Abba said in the name of R. Johanan: An Onah is the length of either a day or a

night. R. Hana b. Sheina, according to others, R. Hana b. Sheina, said in the name of Rabba b. b. 'Hana that R. Johanan makes an Onah equal to the length of a half a day and night. However, according to each version, the Onah equals twelve hours, since the one refers to the equinox and the other to the solstice season.

R. Jehudah says: The bags of the heathens through which the wine is filtered of its dregs, are subject to the following regulations: If they are made of human hair, they must first be washed with water before an Israelite may use them; if of wood, they must pass through water and ashes; finally, if of linen, they must be set aside for twelve months, and if they have knots they must be unravelled. Baskets and beehives used by the heathens in working the wine, are under these rules: If woven of palm-twigs, they should be washed with water before the Israelite uses them; if of reed, the washing should be with water and ashes; linen sieves must be put aside for twelve months, and if they have a knot it must be opened.

What must be done when an ignoramus thrust his hand into the wine-press and touches the grapes and the wine? Of the two sages, Rabbi and R. 'Hyya, one says only the grape touched by him and whatever is immediately adjacent thereto is unclean and must be removed from the press, but not the rest; while the other says: All that the press contains is defiled by his touch. The former opinion seems to conflict with the following Mishna: A reptile found in an oil-mill renders unclean only the place touched by it, but if there be a flowing liquid, all becomes unclean. The answer is that the grapes are on the twigs of the cluster, so that wood intervenes between the place touched and the fluid, and wood is not receptive of uncleanness.

The sages taught to R. Jeremiah, according to others, to his son, that the Halakha prevails with him who says that only the part touched by the Amharetz and its immediate environment are unclean, while all the rest in the press is clean.

MISHNA *XII.*: Utensils bought of a heathen must be cleansed according to usages: if they are customarily immersed in water, they must be cleansed so; if boiled, by boiling; if glowed, by glowing in fire. A spit or a gridiron must be glowed; a knife is cleansed even by grinding it.

GEMARA: There is a Boraitha: The objects mentioned in the Mishna, upon being cleansed in the prescribed manner, must be again immersed in a tank holding forty saäh of water.

Whence is this deduced? Said Rabha, from [Numb. xxxi. 23]: "Everything that cometh into the fire, shall ye make go through the fire, and it shall be clean." The apparently redundant phrase "and it shall be clean" calls for another cleansing, which is the last immersing.

Bar-Kapara taught: The last sentence of the verse is introduced by "yet" in order not to give rise to the belief that the said objects must on the third and seventh day be besprinkled with the

sprinkling water. Moreover, the term *mei nidah* (*i.e.*, the waters where the menstruant woman bathes) is used with a view toward emphasizing the necessity of immersing them not merely in water, but in a tank holding forty saäh thereof. Again, it is also evident that both the sentences, that "it shall be clean," and the next one, "yet it," are necessary: the former alone would merely indicate the necessity of an additional immersing in general (and not in forty saäh); while the other sentence alone would give ground to assume that the rules regulating the said utensils are identical with those providing for the woman's cleansing of her menses, which is, besides the immersing, yet conditioned by the sunset; hence, the former sentence serves to prevent such an assumption. R. Nahman said in the name of Rabba b. Abuhu: New utensils, too, bought of a heathen, must be cleansed, just as vessels passed through fire must none the less be also immersed; whereto, R. Sheshith opposed, saying that according to this opinion scissors bought of a heathen would also need immersing, to which R. Na'hman replied that it is only kitchen utensils that are concerned here. R. Nahman said again in the name of Rabba b. Abuhu: The rule of immersing applies only to utensils bought as it was in Midian, but not to those borrowed of a heathen.

R. Itz'hak b. Joseph happened once to buy of a heathen an earthen vessel and wanted to immerse it, when R. Jacob said to him: I have heard from R. Johanan that only metallic vessels need immersing. R. Ashi said: Vessels of glass, too, must be immersed, for they can, after being broken, be restored to their former state, wherefore they equal those of metal. As to glazed vessels R. A'ha and Rabina express their opinions as follows: One holds that as these vessels are of earth they need not be immersed; while the other maintains that since in glazing lead is used, these vessels are regarded as metallic, and need immersing; and so the Halakha prevails.

The schoolmen propounded a question: Is it allowed to use

without immersion a new vessel received of a heathen as a pledge? Said Mar b. R. Ashi: A heathen once left with my father a silver goblet as a pledge, and he had first immersed and then used it; however, I am not in a position to tell whether my father was of the opinion that a pledge is in general regarded as bought, wherefore immersion thereof is obligatory, or he knew in that particular case that the heathen was not going to redeem the goblet, so that it surely remained his property.

The rabbis taught: New kitchen utensils bought of a heathen need immersion; furthermore, vessels already used by a heathen, but merely for preserving cold articles, such as goblets, small wine-pitchers and glasses, must be first washed with, and then immersed in, water; vessels, however, already used by the heathen to preserve warm food, etc., such as kettles, pans and water-boilers, must first be passed through boiling water and then immersed; finally, vessels used by the heathen only on fire, such as spits and gridirons, must first be glowed and then immersed. In case, however, an Israelite made use of such utensils without having submitted them to the prescribed process of cleansing, all that was kept or prepared in them is, according to one Boraitha, forbidden, and according to another, allowed; the one basing itself upon the opinion that all forbidden objects, even if they make a food when mixed to it insipid, render it prohibited, while the other Boraitha guides itself by the opposite opinion. But, may be asked in this connection, how does he who leaves an object allowable provided the admixed forbidden thing augmented its insipidness, interpret the Scripture's prescribing to the Israelites to cleanse the vessels they acquired through their conquest of the Midianites? Said R. 'Hyya b. R. Huna:

The prescription of Scripture just alluded to concerns only such kitchen utensils in which food was prepared during the very day of the conquest, as they were not capable yet to render other things more insipid. And the Scripture did not allow to leave these vessels for a day or so when they would render food insipid, fearing lest one would be tempted to use them on the very day of the conquest.

R. Amram said to R. Sheshith: The Mishna says that "spits and gridirons must be glowed," whereas we learned with regard to such utensils that if meat of a sacrifice was roasted on them, they must be passed through boiling water before other such meat may be roasted on them? Said R. Sheshith: Amram, my son, the two cases are incomparable: Here the utensils absorb

an allowed object, while the vessels of heathens absorb forbidden things, and can be, therefore, cleansed only by glowing. Rabba, however, finds the two cases comparable, because as soon as the meat of the sacrifice remains on the spit or gridiron for an interval longer than the one prescribed for eating it, its vapor, which is already unallowed, is absorbed by the vessel, therefore "boiling" includes also scouring and rinsing. Hereupon said Abayi: Such cannot be the case, for the scouring and rinsing take place in cold water; while in the case of sacrificed meat the vessels are passed through boiling water; it must then be understood that both the spit and gridiron of the heathen and those used to roast sacrificed meat on must, in order to be used again, first be glowed and then passed through hot water. As to the Mishna, it mentions only glowing, for the passing through boiling water is seen from the Boraitha; in like manner does not the latter mention the glowing which is clearly stated in the Mishna. Rabha, however, finds this explanation incorrect; for, he says, if this were the reason of the omission, either the Mishna or the Boraitha would have to state both methods of cleansing; then in the other one, where only one method is given, the inference as to the second method, too, could be justly made, but as the case is now, the two are not mutually supplementary (but rather exclusive). R. Papa, however, reconciles the two (Mishna and Boraitha) as follows: The utensils of the heathens retain all they absorb, as they are not used daily; while those on which the sacrificed meat is roasted are used continually and are, therefore, not left to cool off and to absorb the vapors. Said R. Ashi: The most plausible explanation is that offered above by R. Sheshith, and as to Rabba's objection there, that the utensils will, when next used, evaporate the previously absorbed vapors that have become forbidden, it can be met thus: The evaporation is considered merely as odor and deserves of no attention.

For how long must the utensils remain glowing in fire? Said R. Mani: Until their surface is peeled off. In cleansing vessels by passing them through boiling water, the water must all cover them, according to R. Huna. But if the vessel is very big? Come and hear: It once happened at R. Akabia's that a big kettle needed cleansing, and be had the kettle brimmed high with dough, so that the water poured into it reached above the kettle; this water was made to boil and the kettle was cleansed therewith. Said Rabba: Who can equal R, Aqabia in wisdom,

so as to invent so ingenious a device! for the brim of the kettle which was unclean only by reason of the forbidden prepared therein and the drops spouting upward, is now cleansed by the drops of the boiling water spouting upward upon the brim.

"*A knife is cleansed even by grinding it*." R. Ukba b. 'Hama said: It means the knife should be ten times stuck into the earth in and out. Added R. Hunab. Jehoshua: It must be earth that has not been yet cultivated. R. Kahana remarked: The knife which is to be thus cleansed must have no hole on its surface. There is a Boraitha in support of this: A knife wholly smooth on its surface may be cleaned by sticking it in the ground ten times. Said R. Huna b. Jehoshua: But then you can eat with it only cold food; and if you want to use it also for warm food, you must first pass it through boiling water. As it once happened that Mar Jehudah and Bati b. Tubi were guests at the table of King Sabur when a citron was served; the king took a piece from it for himself and another piece he tendered to Bati b. Tubi; then he took the knife, stuck it in the ground ten times, cut off another piece, and gave it to Mar Jehudah. Thereupon said Bati b. Tubi: Am I not an Israelite that you thus cleanse the knife for him and not for me? And the king answered: I am convinced of Mar Jehudah's profound piety, but not of yours. According to others, however, the king's answer was this: Recall what you committed last night. (See Rashi's explanation of this last answer.)

Footnotes

136:1 The text treats here of the question as to whether the reward of a harlot is allowed in case she was paid after; which we deem not in place here and therefore omit it.

141:1 For a contradiction to this from a Boraitha, see Middle Gate.

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APPENDIX TO PAGE 60.

"*Pieces of wine extract*." The Mishna speaks of Hadrianic potsherds. What are these potsherds? Said R. Jehudah in the name of Samuel: It is meant thereby the potsherds of the King *Hadrianus*; and R. Dimi on his return from Palestine explained the nature of these potsherds as follows: The Romans were wont to find a plot of virgin soil, which they would work out and plant with grapes; the wine thus obtained they used to pour into new white earthern pitchers and leave it therein until the pitchers would absorb as much of the wine as they could; then the Romans would empty the pitchers of the remaining wine and break them into pieces; which potsherds they used to take along with them on their military expeditions, and whenever they wanted some wine they would pour water on such

potsherds and these would turn the water to wine. R. Jehoshua b. Levi added with reference to this that our best wine is not so good as the third pouring of these potsherds.

It was asked whether it is allowed to fasten with such potsherds the legs of a bedstead, since here the potsherds are wanted not for the wine they contain but for another purpose? Come and hear: R. Eliezar and R. Johanan who were asked on this point, expressed contrary opinions; the one allowing the potsherds for this use and the other forbidding them (which latter opinion prevails as the Halakha).

An objection was raised from the following: Wine poured into pitchers or leather bags of a heathen is forbidden to drink, any other benefit, however, may be derived from it. And Simeon b. Guda said to the son of R. Gamaliel, that even his father, R. Gamaliel. himself, drank at Ako such wine, which story found, however, no belief. R. Simeon b. Gamaliel said in the name of R. Jehoshua b. Kapusai: The leather bags of a heathen are absolutely prohibited, so that even a cover for an ass is not allowed to make of them. Thus you see that here the leather bags are wanted not for the wine they contain, but for making a saddle or so for an ass, and yet they are forbidden? But again, how is then the Boraitha to be understood? Why then are not all vessels, earthen as well, prohibited to sell to, or buy from, a heathen? What difference is there between leather bags and earthen pitchers? Said Rabha: The following was the cause why leather bags were prohibited: it was namely feared that the Israelite might mend his own leather bag with the leather of the heathen's bag.

But how can he who prohibits to derive any benefit from the heathen's leather bag, account for the fact that the selling and buying of pitchers was not forbidden? He may say that as regards pitchers one can easily detect whether there was wine in them; hence, if it is found that such contained no wine, one is allowed to buy them. But as to Hadrianic potsherds, it is certain that they contain wine, hence they are absolutely prohibited.

END OF TRACT ABODA ZARA.

TRACT HORIOTH (DECISIONS).

SYNOPSIS OF SUBJECTS

OF

TRACT HORIOTH (DECISIONS).

CHAPTER I.

CHAPTER II.

CHAPTER III.

another in order of arrangement, etc. Why does the dog know his master, and the cat does not? Why do all reign over the mice? Five objects are conducive to one's forgetting his studies, etc. Five are apt to strengthen one's memory, etc. The following ten objects are cumbrous to one's studies, etc. When the prince enters, all the people present in college rise to their feet, without again taking their seats until he tells them to do so. When the chief justice enters, the people occupying two rows of seats facing the entrance rise, etc. The legend which happened to Raban Simon b. Gamaliel with R. Mair and R. Nathan. How the latter were removed from the college. An erudite scholar and a dialectician, who has the preference? How Abaye rose to be the chief of the College of Sura, 18-29

Next: Chapter I

TRACT HORIOTH (DECISIONS).

CHAPTER I.

MISHNA *I.*: If, after the court had decreed the transgression of one of all the commandments prescribed in the Torah, an individual guided by this decree acted erroneously, either simultaneously with the judges, or after they had acted, or altogether independently, the court not having acted yet at all, he is free, for he followed the decree of the court. If, however, the transgressor was one of the members of the court and knew the decree to be erroneous, or a scholar already qualified to himself decide, he is in any of the aforementioned conditions liable (to bring a sin offering), as he has not based his transgression upon the decree of the court. This is the rule: Whoever relies upon his own judgment is liable, but whoever follows the decision of the court is free.

GEMARA: Samuel said: The court is not liable unless its decree read thus: You are all-owed to practise so and so. R. Dimi of Nahardea, however, said: The phrase "to practice" is not necessary, the statement "you are allowed" being sufficient; which view was, however, objected to by Abaye, R. Aba, and Rabima from Mishnaioth that oppose it and it was accordingly overthrown without any further discussions.

"*An individual . . . acted erroneously*," etc. Said Rabha: This is so only when he acted ac-cording to the decree of the court, but if he ate, e. g., illegal fat in the belief that it was legal, he is liable. This view of the case so certain to Rabha was doubtful to Rami b. Hama, as he propounded the same question and Rabha answered it from the expression "guided by this decree" (the Gemara, however, says) that in this case Rabh R. Johanan differ, viz.: in case the court has decreed that this fat is allowed to use and has consumed illegal fat thinking it legal, according to the former he is free, and according to the latter he is liable. And. R. Papa explained R. Johanan's

reason to be that the transgressor is still considered as having acted in accordance with the decree, as if the court became aware that it has erred it would retract and so would the transgressor abstain from eating, hence R. Johanan's decision. And Rabha said: Rabh admits that the transgressor in question does not complete the majority, because it reads "erroneously," which means that all must err with regard to the same thing but not to different things.

"*Either simultaneously with the judges*," etc. This is stated in order to teach that he is free, not only when he acted simultaneously with, but also when after, the judges had acted.

"*A scholar qualified*," etc. To what purpose are both the conditions stated? Rabha: To teach that

even such a person who is learned but who lacks discriminating power, or *vice versa*, is also culpable. Said Abaye to him: But from the statement of the Mishna, "who is already qualified to decide," obviously follows that he is both learned and strong is discrimination? Answered Rabha: I mean to say that if the Mishna stated not the last phrase, it could be said that in order to make him liable he must possess the two qualifications, hence the Mishna states it to indicate that its first phrase refers to him who possesses even but one qualification.

Again: "*Qualified himself to decide*," etc. Who is meant thereby? Said Rabha, such, *e.g.*, as Simeon b. Azai and Simeon b. Zoma. Said Abaye to him: An act of such great men may be considered intentional; we must, therefore, say that such a case can take place only if he was aware that such is prohibited, but he committed an error by thinking that it is meritorious to follow the decree of sages even when they err.

"*This is the rule*," etc. What does this sentence intend to add? Him who does not care at all to guide himself by the decision of the court. Said R. Jehudah in the name of Samuel: The whole Mishna is in accordance with R. Jehudah (the Jana), but according to the sages one is liable for acting upon the decree of the court as his guidance. Which R. Jehudah is this? From the following Boraitha. It reads [Lev. iv. 27]: "If any person . . . sin through ignorance, by his doing," where there are three extensions, to teach that he is liable by his doing it himself, but if by doing it upon the decree of the court, he is free. And which sages are there spoken of? From *Torath Kohanim*, section i., Leviticus. But let us see, our Mishna as well as that of Torath Kohanim is each taught anonymously;

hence, then, do we know that our Mishna is in accordance with R. Jehudah and the Boraitha with the rabbis, may be the converse is the case? Nay, as of no other have you heard to consider such extensions than of R. Jehudah, who said in the following Boraitha: it reads [ibid. vi. 2]: "This is the law of the burnt-offering," where there are three extensions. However, the Mishna can not be in accordance with R. Jehudah, for the reason that according to him the congregation is liable to bring a bullock in case its majority have sinned erroneously, while according to the sages the *court* must bring it. Therefore, our Mishna must be interpreted to mean that the court has decreed and only the minority has acted thereupon, and the point of their difference is that according to one an individual acting on the basis of the court's decree is free, while according to the other he is liable. R. Papa, however, said: All agree that in such a case the transgressor is free, and their point of difference is that one holds. The court is completing the majority of the congregation, while the other does not hold so.

R. Assi said: In a decision for practising, it is not the majority of the congregation but that of all the population that must be considered, as [I Kings viii, 65], "And Solomon held at that time the feast, and all Israel with him, a great assembly, from the entrance of Chamath unto the river of Egypt, before the Lord our God, seven days and seven days, even fourteen days," now, as it is written, "and all Israel with him," what for, then, yet the description, "great assembly from the entrance of Chamath unto the river of Egypt"? To teach that in such a decision (as to abolish the day of atonement) the population of the whole land is considered the assembly.

R. Jonathan said: If there were one hundred assembled to decide some point, there is no liability (attached to the transgression of the decision) unless the decree was made unanimously, as it reads [Lev. iv. 13]: "And if the whole congregation of Israel sin," which means that all sin by

error, and that the decision be brought about unanimously. Said R. Huna b. R. Ashia: It seems to be so, since with regard to all the laws of the Torah there is a tradition that the majority is equivalent to the whole, and here it reads, "the whole congregation," *i.e.*, it must be the *whole* of the body, so that if there were one hundred their decision must be unanimous.

An objection was raised from our Mishna which states that

he is liable if "he has not based his transgression upon the decree of the court," whence it follows by implication that if another one (not so qualified) acted thus he would be free; why so, since in this the decree was no longer unanimous (as one of the members deviates)? It means here that this one member has also nodded his head affirmatively (while the vote was taken).

R. Mesharshia objected from the following: Our masters have relied upon R. Simeon b. Gamaliel and R. Elazar b. Zadok, who have decided that no decree must be promulgated unless the majority of the congregation is able to comply with it; and R. Ada b. Aba said: Where is there an allusion thereto in the Scripture? [Mal. iii. 9]: "With curse are ye cursed, and yet me do ye rob, O ye entire nation." Now, here is written the entire nation and nevertheless the majority is equivalent to the whole; hence, R. Jonathan's view is wholly overthrown, and the expression in the Scripture (cited above), "the whole congregation" means: if the whole is able to comply with the decree it is considered, but not otherwise.

MISHNA *II.*: If upon issuing the decree the court becomes aware of its being conceived in error and retracts, and meanwhile an individual commits a transgression upon that decree either before or after the court succeeded to bring its atoning offering, he is free according to R. Simeon, while R. Elazar classes it among the doubtful cases. In what sense is it doubtful? He may have stayed at his home, then he is liable; but if he was in the sea countries he is free. Said R. Aqiba: I agree that in the latter case he is rather free than liable. Whereupon Ben Azai asked: What difference is there between the two cases? It consists in that he who stays at home can possibly hear (of the retraction), while to the other one this is impossible.

If the court decided to annihilate a law in its very essence, by saying, *e.g.*, that there is not in the Torah the law of menses, of Sabbath, of idolatry, the members of the court are free (from an offering); but if it decided to abolish only one part of a law retaining in force the other part, they are liable. How so? If it decided, *e.g.*, that, though the law of menses is in the Torah, a man who has sexual relations with a woman in her watching days is free; or, that he who transports something from private to public grounds is free though the law of Sabbath is in the Torah; or, that the Torah truly forbids idol worship, yet he who bows to the idol is free--the court is liable, for it reads

(Lev. iv. 13): "And the thing be hidden," *i.e.*, *something*, but not the whole essence.

GEMARA: Said R. Jehudah in the name of Rabh: R. Simeon used to say that if one acted upon a decision issued by the majority of the congregation, he is free; because a decision discriminates between intentional and unintentional acting, and here the transgressor, guided in his act by the

decision, sins unintentionally (though he acts intentionally), and according to Rabh R. Simeon is consistent with his own theory elsewhere that the bullock for the forgetting by the congregation, and the he-goat for idolatry, are to be brought from the treasury of the temple.

There is a Boraitha. In the case mentioned in the Mishna, R. Mair makes him liable, and R. Simeon holds him free, while R. Elazar finds this case to be doubtful; and in the name of Symachos such was said to be a pending case. Said R. Johanan: They differ concerning a pending-offering. Said R. Zera: R. Elazar's decision is like that regarding the case where one consumes fat doubtful whether it is legal or illegal, and thereafter he became aware that it was doubtful, he is to bring a pending offering; and not only according to him who obliges the *congregation* to bring such an offering, as such an act is known to every one, hence, if the transgressor has acted after the congregation brought its atoning offering, in which case it cannot possibly be said that he in his act guided himself by the court's decree,--but even according to him who obliges the *court* to such an offering, which may be not known to everybody, the transgressor is also liable, since he could find this out upon investigating.

R. Jose b. Abin, according to others b. Zebida, likens Symachos' decision to that regarding the case where one brings his atoning offering at twilight, which makes the atonement doubtful, since if it was yet day he is atoned, but if night he is not, and none the less he is not obliged to bring another offering.

"*Ben Azai asked*," etc. Is not Ben Azai right? The difference between them is the case when the transgressor has just set out on his journey; according to Ben Azai he is liable, while according to R. Aqiba he is free as soon as he starts on his way.

"*If the court decided to annihilate*," etc. Said R. Jehudah, in the name of Samuel: The court is not liable unless it has decided

upon a point which the Sadducees do not admit, but where they do, it is not considered an error, since even a child knows such a point, and the court is accordingly free.

MISHNA *III*.: If while the court was deciding, one of its members who perceived their error drew their attention to it, or if the presiding judge was absent, or one of them was a proselyte, a bastard, a nation, or an aged man who had no children, they are free; on the ground of the following analogy [Lev. iv. 3]: the expression *congregation* is used and [Numb. xxxv. 24] the same expression, it is inferred thus: just as there the expression means a congregational meeting whose members are singly and severally qualified to decide law questions, in the latter case it means the same.

GEMARA: "*The presiding judge*," etc. Whence is this deduced? Said R. Sheshith: It is likewise found in a Boraitha of the disciples of R. Ismael, viz.: Why was it said that if the court decides on a point which the Sadducees admit, it is free? Because this is not considered an error but a fact of ignorance, as the members of the court ought to have learned; the same is the case here where the presiding justice was absent, some one of the members ought to substitute him, and as there was none competent to do so they are ignorants who ought to learn.

"*The expression congregation*," etc. And whence do we know that there they are fit to decide questions? Said R. Na'hman b. Itz'hak: It reads [Ex. xviii. 22]: "With thee," *i.e.*, such as are equal to you.

MISHNA *IV*.: If the court decided in error, causing the whole people to act erroneously, a bullock is to be offered; but if the court decided intentionally (against the law) and the people acted in error, a sheep or goat is to be sacrificed (by each individual transgressor). If, however, the reverse was the case, all are free.

GEMARA: It states: If the court decided unintentionally and the people acted intentionally, they are all free, whence it follows by implication that if the unintentional act was equal to an intentional one, *i.e.*, done independently of the court's decree, one is liable; and what case would illustrate this? *E.g.*, the court decided that fat is legal and one has consumed such in the belief that it is legal, whence could be solved the question propounded above by Rami b. Hama? Nay, it may be said that because in the first part it speaks of an intentional decision

and of subsequent unintentional act, it expresses in the last part the reverse.

MISHNA *V*.: If upon the erroneous decree of the court the whole people, or its majority, acted, a bullock is to be brought; or, in case the decree referred to idol worship, a bullock and a he-goat; so holds R. Mair, while R. Jehudah says: Twelve tribes bring 12 bullocks, and in the case of idol worship yet 12 he-goats in addition. R. Simeon says: 13 bullocks in the one and 13 bullocks plus 13 he-goats in the other case respectively, thus making one bullock with one he-goat to each tribe, and one such pair for the court. If but seven tribes or the majority (of the people) acted upon the decree, the court members must bring a bullock, and in case of idolatry also a he-goat, so holds R. Mair, while according to R. Jehudah, the 7 tribes that sinned should bring 7 bullocks, and the innocent remaining tribes also sacrifice one bullock for the sinners. R. Simeon maintains his foregoing view, reducing the number of the sacrifices from 13 to 8.

If a tribal court caused by its erroneous decision the tribe to act accordingly, only this tribe is liable, while all the others are free, so holds R. Jehudah; the sages, however, maintain that only those are liable who act on the decree of the supreme court, for it reads [Lev. iv. 13]: "If the whole congregation of Israel sin through ignorance," hence not that of a single tribe.

GEMARA: The rabbis taught: If the court was aware that its decision was erroneous, lest one say that it is liable, it reads [Lev. iv. 14]: "The sin becometh known," but not the sinner, "through which they have sinned," *i.e.*, if there were two tribes they bring two bullocks; three, three bullocks, and so forth. But perhaps it means: If two individuals have sinned, they must bring two bullocks, and if three, three, and so on? To this it reads: "The congregation shall offer," *i.e.*, each congregation, as well as the congregation at large, is liable; how so? If there were two tribes, they bring two, and if seven tribes, they bring seven, and all other tribes who have not sinned should also each of them bring a bullock, since, though they have not sinned, they must conjoin themselves to the sinning tribes, as for this purpose it reads "the congregation," to make liable each of them. So R. Jehudah. R. Simeon, however, said: The seven tribes that have sinned bring seven, and the court brings one bullock in addition, for, as here *congregation*

is used and there the same term, hence, just as there the court *with* the congregation is meant, the same is the case here. R. Mair, however, said: If the seven tribes have sinned, the court brings only one bullock, and *all* are free for the same reason, as congregation mentioned above means only the court, the same is the case here. And R. Simeon b. Elazar said, in the name of R. Mair: If six tribes have sinned, and they formed the majority of all Israel, or seven tribes, though not forming the majority of Israel, only one bullock must be brought.

"*If a tribal court*," etc. The school-men propounded a question: If one tribe has sinned, guided by the decree of the supreme court, may the other tribes conjoin with it to bring bullocks or not? Shall we assume that only to seven tribes conjoining takes place, but not to one, which does not form majority, or since it acted upon the decree of the court there is no difference whether one or seven? Come and hear: R. Jehudah said: If one tribe has acted in accordance with *its* court, it *alone* is liable, but if it acted according to the decision of the supreme court, all the other tribes are also liable. Said R. Ashi: It seems to be so also from our Mishna, which states, "only this tribe is liable, while all the others are free"; to what purpose does it add, "while all the others," etc., after it states "only this tribe," etc? To teach us, thus: Only in the case of its own court, but if it is a case of the supreme court, all the others are also liable.

But let us see, whence do both R. Jehudah and R. Simeon deduce that *one* tribe is also called *Kahal*, *i.e.*, congregation (of all Israel)? From [II Chron. xx. 5]: "And Jehoshaphat stood forward in the *Kahal* of Judah and Jerusalem." R. A'ha b. Jacob opposed: Perhaps there it was *Kahal*, because the tribe Benjamin, too, was there, hence more than one tribe? Therefore, says he, it is deduced from [Gen. xlviii. 4]: "And I will make of thee a *Kahal* of people"; now, at that time Benjamin was born, and you infer from here that so said the Merciful One to Jacob: one *Kahal* more is born to you. Said Shba to R. Kahana: But perhaps the Merciful meant, now as Benjamin is born, and you have twelve tribes you are called a *Kahal*? And he answered: Do you mean to say that eleven tribes are not called *Kahal*?

The rabbis taught: If one member of the congregation dies, the liability does not cease, but if one member of the court dies, it does cease. According to what Tana is this Said R, 'Hisda,

in the name of R. Zera, in the name of R. Jeremiah, quoting Rabh: It is in accordance with R. Mair, who said that the court and not the congregation brings the offering; hence, if a member of the court dies, it means one of the partners to the sin-offering died, and in such a case the sin-offering can not be brought.

R. Joseph opposed: Why not say on the same reasoning lines that it is in accordance with R. Simeon, who says that the court with the congregation must bring the offering? Said Abaye to him: We have heard R. Simeon saying elsewhere that a sin-offering of partners is not put to death: If the bullock and he-goat of the day of atonement upon being lost were substituted by others, and thereafter the first were found, they all are put to death (because none of them is fit for the altar); so R. Jehudah. R. Elazar and R. Simeon, however, maintain that they must be kept until they become blemished, as there is a rule that a sin-offering of a congregation is not put to death. Rejoined R. Joseph: You speak of priests, an entirely different case, as they are

themselves called *Kahal* [Lev. xvi. 33]: "For all the priests and for all the people of the *Kahal*." Answered Abaye: According to this they ought to bring a bullock for an erroneous decision by their own court; and should you say that such is the case, then there will be more than twelve tribes! Thereupon said R. A'ha b. Jacob that the tribe of Levi is not called *Kahal* at all, as from the above cited verse [Gen.], it is to be understood that they who inherited landed property in Jerusalem are called a tribe, but not the Levites, who had no such inheritance. But if so there are fewer than twelve tribes? Said Abaye: It reads there [ibid.] that Ephraim and Menashah (the two sons of Joseph) are considered as Rubin and Simion: *i.e.*, as *two* tribes. Said Rabha: Does it not read [ibid., ibid. 6]: "After the name of their brothers shall they be called"? The answer is: They are called after the brothers' name only in respect of inheritance, but not in other respects. But are they not all divided into flag-division? This was only to honor the flags, as the division of the inheritance took place in accordance with the flag-divisions. But are they not divided according to their respective princes? This also was done to honor the princes; as we have learned in the following Boraitha: Solomon has celebrated seven days the dedication of the temple; why did Moses celebrate twelve days the tabernacle? To honor the princes.

Next: Chapter II

CHAPTER II.

MISHNA *I.*: If an anointed priest has erroneously rendered an unlawful decision against himself and acted accordingly by mistake, he must sacrifice a bullock. But if the decision was conceived in error and the act performed intentionally or *vice versa*, he is free; for the decision of an anointed priest with regard to himself is equivalent to a decision of the court for the people.

GEMARA: "*Erroneously . . . acted accordingly by mistake*," Is this not self-evident? Said Ahaye: It speaks of a case where he forgot the reason of his decision, and when he acted he said that he acts in accordance with the decision, lest one say that in such a case it is considered an intentional act, since if he remembered the reason of the decision he would not act, it comes to teach that it is not so.

"*But if the decision . . . in error and the act performed intentionally*," etc. Whence is this deduced? From what the rabbis taught: it reads [Lev. iv., 3] "to bring guiltiness on the people," which seems superfluous in this connection, but comes to teach that he [the priest] is equal to the congregation; a fact that could be inferred without a special verse, *i.e.* the congregation is exempt from the laws governing the individual, and so is the anointed priest; hence, as the congregation is liable but for forgetting and for acting erroneously, the same should be with the anointed priest; or, on the other hand, a prince is exempt from the laws of an individual, and so is an anointed priest: as the former is liable for erroneous acting without forgetting, the same should be with the latter; it thus remains to see to whom is he [the priest] equal as regards his offering: the congregation brings a bullock, but not a pending trespass offering, and the same does the anointed priest bring; hence, as the congregation is liable but for forgetting and erroneous acting, so also is the anointed priest. But why not say: As in case one acts in accordance with the congregation's decree, he is liable, the same should be if one acts according to the decision of the anointed priest? It reads [ibid.]: "For *his* sin, and not for the sin of another." And whence is it deduced that the anointed priest does not bring a pending

trespass offering? From [ibid. v., 18] "concerning his sin of ignorance," which signifies: only for him whose sin and erroneous act are considered equal (*i.e.* where both decision and acting were performed in error), exclude the anointed priest, who is liable but for forgetting and for erroneous acting.

MISHNA *II.*: If he (the said priest) both decided and acted for himself, he brings his atoning sacrifice separately. If, however, he both decided and acted jointly with the congregation, he brings with latter a joint atoning sacrifice. Like the court, that is liable only when it effects a decision partly annulling partly confirming the law, so also the anointed priest, and even if the law in question be one regarding idol worship.

GEMARA: Whence is this deduced? from what the rabbis taught: if he has both decided and acted together with the congregation, lest one say he is to bring a bullock separately, we infer from the case of a prince: as a prince is exempt from the laws governing an individual and so is the anointed priest, too, the same is the case here, viz.: as the prince is to bring a separate offering when he sins separately, but when he sins with the congregation he is atoned for by its offering, the same is the case with the anointed priest; on the other hand, a prince is atoned for together with the congregation on the day of atonement, which is not the case with the anointed priest, and as he (priest) needs a separate offering on the day of atonement, the same should be the case if he has sinned together with the congregation;--against this the afore-cited verse [Lev. iv. 3], which signifies that if he sins separately, he brings a separate offering, and if he sins with the congregation he need not bring a separate offering.

But let us see the nature of the case: if he was the presiding justice, then only *his* decision must be taken into consideration, as the opinion of the rest counts for nothing, and it is obvious that the atonements must be separate; and if he was not presiding, why should he be atoned for separately when his opinion in this case does not count? Said R. Papa: it means that he was equal to the others.

Abaye was about to say that "he sinned separately" means: in a different place; but Rabha said to him: does the difference in place cause the separation? it may be even in one and the same place but concerning different prohibitions, and then it is considered separate sinning.

"*Partly annulling,*" etc. Whence is this deduced? From

what was said in the Chapter I: by forgetting *something* and not the whole, and whence is it deduced that the same is the case with the anointed priest? from what is discussed above: "To bring guiltiness on the people." Finally, whence is deduced that the same is the case concerning idolatry? From what the rabbis taught: lest one say that because concerning idolatry there is a special verse, it should hence be treated differently,--there is an analogy of expression: "From the eyes," found in both cases (idolatry and other sins) to teach that they are equal in all respects.

MISHNA *III.*: The conditions determining the liability of both the courts and the anointed priest are: Their ignorance of the thing during the rendering of the decision, and the subsequent erroneous acting. The same conditions hold in decisions regarding idol worship.

GEMARA: Whence is this deduced? From what the rabbis taught: it reads [Lev. iv. 13] "Through ignorance, and a thing be hidden," whence we see that both ignorance and forgetting are necessary. The deduction of the case of the anointed priest is again as above. As to idolatry, lest one say: it was separately taught, hence it requires different treatment, comes the analogy of expression to teach as above. Thus we see that it does not teach concerning the anointed priest regarding idolatry; whence it may be said that our Mishna is in accordance with Rabbi of the following Boraitha: If the anointed priest has sinned in a case of idolatry, according to Rabbi, he is liable for erroneous acting, and, according to the rabbis, for forgetting; all, however, agree that his offering must be a she-goat and that he is not under the category of those who bring a pending trespass offering, and Rabbi's reason is from [Num. xv. 28]: "And the priest shall make an atonement for the person that hath erred"; "for the person" means the anointed priest; "that

hath erred" means the prince; "in his sinning through ignorance" means according to Rabbi that the sinning of each of the two must be through ignorance, while according to the rabbis this part applies only to him who sins through ignorance, exclude the anointed priest who sins through forgetting; and whence do they deduce that he like any other individual must bring a she-goat? From the above-cited verse [ibid., ibid. 27]: "And if *any* person sin," *i.e.*, any one: common, priest, prince, etc.

And whence is it deduced that he does not bring a pending trespass-offering? From [ibid. v. 18] "for his ignorance," which

can not mean the priest in question who sins by forgetting. On the other hand, according to the rabbis, it intends to exclude the anointed who sins in any case whatsoever not by erroneous acting alone, but when such is accompanied by forgetting.

MISHNA *IV*.: The court is not liable unless the issued decree concerns a command the intentional and unintentional violation of which entail *Korath* and sin-offering respectively; the same is the case with the anointed priest. The same refers to the case of idol worship.

GEMARA: Whence is this deduced? As stated in the following Boraitha: Rabbi said: It reads [Levi. v. 5]: "*Alehu*" [ibid. xviii. 18]: "*Olehu*," as there it is a case of Korath and a sin-offering, the same is the case here. And the deduction that the same applies to the anointed priest is made as above. As to a prince, it is inferred from the analogy of expression [ibid. iv. 22]: "Prohibitions" (*Mitzvoth*), found also [ibid. ibid. 13] concerning the congregation; now, as the latter treats of things the transgression of which is, if intentional under Korath, and if unintentional under sin-offering, the same is the case with a prince; while concerning a common individual it reads [ib. ibid. 27]: "If any person" to infer this last from the previous one.

"*The same refers to the case of idol worship*." Whence is this deduced? From what the rabbis taught: because idolatry is mentioned specially, hence it should be treated differently, so that one be culpable even when the sin is not under the category of Korath, etc., therefore the analogy of expression "from his eyes," as there it is under the category of Korath, so also here.

But this is concerning the congregation; whence do we know this with regard to the anointed priest, prince, individual? From [ibid. ib. 27]: "*Any* person," *i.e.*, *any*: be he priest, prince, etc. But again, all this is correct according to him who holds the analogy of expression Olehu; but to the rabbis who do not hold so, whence is this deduced? From what R. Jehoshua b. Levi taught to his son [Num. xv. 29, 30]: "One law shall be for you, for him that acteth through ignorance. But the person that doth aught with a high hand," etc., this compares all the laws of the Torah to idolatry: as latter is under both Korath and sin-offering, so also all other cases of the same category. But from here you infer only an individual, a ruler, and an anointed priest; whence do we know that the same is the case with the congregation? Infer the first verse [13] from the last [27]. We thus see that according to all, the cited verses [Num. xv. 29, 30] speak of idolatry,

how is it so understood? Said Rabha, according to others, R. Jehoshua b. Levi; according to still

others, Khdi: it reads [ibid. ib. 22]: "and do not observe all these commandments"; now, a negative commandment that is in importance equal to *all* other negatives is, you must say, idolatry.

The disciples of Rabbi infer this from the same verse [22 and 23] "which the Lord hath spoken unto Moses, all that the Lord hath commanded you by the hand of Moses," and a commandment said, in the words of the Holy One, blessed be He, and commanded again by the hand of Moses is of idolatry; as the disciples of R. Ismael taught that the commandment "I am the Lord; thou shalt have no other gods before me," we have heard from the Almighty Himself; and thereafter it was commanded through Moses in many other places.

MISHNA *V.*: The court is not liable for a decree concerning a command or a prohibition with regard to (polluting) the sanctuary. Nor must one bring a pending offering for a doubtful violation of the said command or prohibition. But in case of erroneous teaching and of doubt, each regarding a command or prohibition with reference to a woman in her menses, a bullock and a pending offering are required respectively. The command in the case is: Keep away from a woman in her menses. The prohibition is: Have no sexual intercourse with her.

GEMARA: Whence is it deduced that the congregation is not liable to any offering, while the individual is not liable to a pending offering either? Said R. Itz'hak b. R. Dimi, it reads [Lev. iv. 27]: "and become guilty" concerning a sin and pending offering, and also [ibid., ibid. 13]: "and they become guilty," which signifies: as the guiltiness of an individual is attended with a sin offering established for all, so also the guiltiness of the congregation is attended with such an offering; and as the latter's offering is an established one, so also the pending offering must be brought only for the doubt about a transgression to which an established offering applies, but not about that of the sanctuary to which a rich and poor offering applies.

MISHNA *VI.*: There is no liability when the decree concerns an adjuring challenge to testify, a hastily made vow, the defilement of the temple and its holy objects; the same is the case with the ruler, so R. Jose the Galilean. R. Aqiba, however, says: The ruler is liable in all these cases but the first one, for the king can neither judge nor be judged, neither testify for others nor have others testify for him.

GEMARA: Said Ula: What is the reason of R. Jose the Galilean? [Lev. v. 5] "And it shall be, if he have incurred guilt by any one of these [things], that he shall confess that concerning which he hath sinned," which speaks of all that are treated of in the Mishna, and which signifies that he who may be guilty for one of these may be guilty also for the others, but who is not guilty for one of these is not so for the others either. But perhaps the verse means that if he incur guilt even for one of these? Therefore it must be said that the reason of R. Jose the Galilean is the following Boraitha: R. Jeremian used to say: It reads [ibid., ibid. 7], "And if his means be not sufficient," and then [ibid., ibid. 11], "If he can not afford." All this speaks of persons that can be classed as poor and rich, which is not the case with either priest or ruler, as concerning the latter it reads [ibid., ibid. 22], "of the Lord his God," which signifies him who has for his superior only his God; and concerning the former it reads [ibid. xxi. 10]: "And the priest that is highest among his brethren," meaning that he is highest in beauty, in might, in wisdom and in wealth; and the anonymous teachers say: whence is it deduced that if he [priest] is not rich his people should make him the richest: from same verse: "that is highest among his brethren,"

signifying that his brethren make him highest.

MISHNA *VII.*: As regards all commandments of the Torah, whose intentional and unintentional violations entail respectively Korath and sin offering, a private individual brings offers (in the latter case) a (female) sheep or goat, the ruler, a he-goat; the high priest or the supreme court, a bullock. In matters of idol worship the private individual, ruler and priest bring a she-goat, while the court (that has erroneously decided) a bullock and a he-goat, former as burnt offering, latter as a sin offering. The pending offering (for a doubtful malfeasance) is imposed upon the ruler and private persons, the anointed priest and the court are free therefrom. The trespass offering (for a sure misdeed) is imposed besides the first two also upon the high priest, while the court is exempt therefrom. For challenging by oath to testify, for a hastily made vow, for defiling the temple and the holy objects thereof, the erroneously decreeing court is free; while private individuals, the ruler, the high priest are liable; with the exception, however, that the last one is according to R. Simeon not liable in the said case of defilement. And what is the sacrifice they bring? A poor and rich offering. R. Eliezar says: The ruler brings (for temple defilement) a he-goat.

GEMARA: There is a Boraitha: R. Simeon laid down this rule: In whatever an individual is liable to a pending offering, the ruler is equal to him, while the anointed priest and the court are free; on the other hand, in whatever a trespass offering applies the ruler and the anointed priest are equal, while the court is free, viz.: for a witness-oath, an uttered oath and the defilement of the sanctuary and its holy objects the ruler and the anointed are liable, and the court is free; however, the ruler is not liable for a witness-oath and the anointed for the defilement of the sanctuary, etc.; and in an act where a rich and poor offering applies the ruler is equal, while the anointed and the court are free.

Now, is not the Boraitha involved in a contradiction concerning the liability of the ruler and the priest? Said R. Huna b. R. Jehoshua: this presents no difficulty; as one Tana speaks of poverty, while the other, of extreme poverty, and R. Simeon holds with R. Agiqa concerning extreme poverty when the ruler is free from that offering, but differs with him concerning poverty, in which case he holds the ruler, too, liable.

Next: Chapter III

CHAPTER III.

MISHNA *I.*: An anointed priest who has sinned and thereafter was removed from his office, and a ruler who has sinned and was removed from his dignity, the former brings a bullock and the latter a he-goat. However, if both have sinned after they were removed from their offices, the priest in question brings a bullock and the ex-ruler is considered as a common man.

GEMARA: To what purpose is it needed for the Mishna to state that when he has sinned before the removal from his office he is to bring a bullock, as the same is the case even if he did so after the removal? It was necessary because of the law that a ruler after the removal of his dignity is considered common.

Whence is this deduced? From what the rabbis taught [Lev. iv. 3]: "Shall he bring near for *his* sin," which signifies that he has to bring an offering for his previous sin. While concerning a ruler it reads [ibid. 22]: "If a ruler should sin," which signifies that if he has sinned while he is still a ruler, but not when he becomes common.

MISHNA *II.*: If they were appointed to their respective positions after they had sinned, they are treated as private persons. R. Simeon, however, says: If they become cognizant of their malfeasance before their appointment, they are liable; but if after, they are free. What is meant by ruler? A king, for it is stated [Lev. iv. 22]: "If a prince sins and performs one of the commandments of the Lord his God," etc.; hence, a prince who has above him no one but the Lord his God.

GEMARA: Whence is this deduced? From what the rabbis taught [ibid., ibid. 3]: "If the anointed priest do sin to bring guiltiness," which excludes the transgressions he had committed before he was anointed. This could be deduced by *a fortiori* argument, thus: A ruler who is liable to a sin-offering for an erroneous act is not liable for his acts before he became a ruler. The anointed who is liable for forgetting an erroneous act, so much the less should he be liable for his previous acts. And should you say that with a ruler it is different, as he is not liable

after his removal from office, to a sin-offering for his sin while he was still a ruler, which is not the case with the anointed? To this it reads in the above-cited verse "the anointed has sinned," which signifies only for that sin which he committed while he was already in his office. On the other hand, on *a fortiori* argument could be used to make a ruler liable for his sin before he ascended the throne, if not for the verse cited above concerning him.

The rabbis taught: "A ruler who will sin," lest one say that such is the heavenly decree that he

shall sin, to this it reads, "*If* the anointed will sin," which means if it will happen so, and the same is with the ruler.

The rabbis taught: "A ruler should sin" to exclude him who was sick with leprosy, as it reads [II Kings, xv. 5]: "And the Lord afflicted the king with leprosy, and he was a leper unto the day of his death, and he dwelt in the free-house. 1 And Jotham the king's son," etc. What does it mean, free-house? Was he until that time a servant or a slave? Yea; as it happened with Raban Gamaliel and R. Yehoshua, who were on a boat; the former has prepared bread for food, and the latter prepared bread and fine flour for food. And when the bread of R. Gamaliel was consumed by him he relied upon the fine flour of Yehoshua. And to the question of the former: Were you aware that there will be a delay in the journey, that you took with you so much food, he answered: There is a star which appears once in seventy years that makes the captains of the ships err, and I thought perhaps it will appear now and make us err, I therefore prepared more food. Said Gamaliel: You possess so much wisdom and still you are compelled to go on a ship to make your living. And he rejoined: You are wondering about myself, how would you be surprised if you knew about two disciples of yours who are on the land--viz.: R. Elasar Chasma and Johanan b. Goodgada, who can imagine how many drops of water there are in the sea and nevertheless have no bread to eat and no garment for dress. R. Gamaliel then made up his mind to make them officers in the best places of the congregation, and when he returned home he sent for them, but they did not appear; be sent again for them, and when they came he said to them: Do you think that the appointment to such high offices which I am about to confer on you, will make you rulers? Nay;

slavery I give to you, as it reads [I Kings, xii. 7]: "If thou wilt this day be a servant unto this people," etc.

R. Na'hman b. R. 'Hisda lectured; it reads [Eccl. viii. 14]: "There is a vanity which is done upon the earth, that there are righteous men"; happy are the righteous whose fate is like that of the wicked in the world to come; and woe is to the wicked whose fate is in this world like that of the righteous in the world to come. Said Rabha: May not the righteous be rewarded in both this and the world to come? Therefore, said he, "Happy are the righteous whose fate is like the fate of the wicked in this world, and woe is to the wicked whose fate is like that of the righteous in this world."

R. Papa and R. Huna b. R. Jehoshua came to Rabha and the latter questioned them if they have learned thoroughly such and such tracts of the Talmud, to which they answered: "Yea." And to his question: Have you become a little rich so that you have time to study properly? They rejoined: Yea; as we bought little grounds. He then applied to them the above-cited verse.

Rabha b. b. 'Hana said, in the name of R. Johanan, it reads [Hos. xiv. 10]:"For righteous are the ways of the Lord; and the just shall walk in them; but the transgressors will stumble through them"; whereby Lot and his two daughters are meant. To the latter who intended to do a meritorious act, the verse "the just shall walk in them" is applied, and to him who intended to commit a crime, the last words of the same verse are applied. And whence do we know that he has intended to commit a crime? Was he not compelled to this action? It was taught in the name of R. Jose b. R. 'Huni: Why is the *vav* of the word *bkumah* [Gen. xix. 33] pointed? Because he (Lot) was not aware at the start, but when she got up he became aware of his act. But what could

he do; there was no remedy to what has already passed? He ought to have drunk the second evening.

Rabba lectured [Prov. xviii. 19]: "A brother offended is harder than a strong town"; by this Lot is meant, who separated himself from Abraham. "And quarrels [among brothers] are like the bars of a castle"; it is Lot who made Israel to quarrel with the nation of Amon [Deut. xxiii. 4].

Rabha or R. Itz'hak lectured [Prov. xviii. 1]: "He that separateth himself [from God] seeketh his own desires: at every sound wisdom is he enraged"; by the first part of this verse

[paragraph continues] Lot is meant, who separated himself from Abraham; and by the second half the punishment of Amon and Moab is meant, of whom a Mishna states the prohibitions of mingling with them are forever lasting. Ula said: Tammar sinned, and kings and prophets were her issues. Zimri sinned and tens of thousands of Israel fell. (How great a difference!)

"*What is meant by ruler*," etc. The rabbis taught: It reads "A prince." Lest one say a prince of a tribe as, *e.g.*, Na'hshan b. Aminodob, it reads: the above-cited verse [Lev. iv.] and [Deut. xvii. 19], concerning a king, it reads: "He shall fear the Lord his God"; now, as there no one but his God is his superior, so also here.

Rabbi questioned R. Hyye: I, who am a prince, am I liable to a he-goat? And he answered: There are your rivals in Babylon; Rabha objected to him from the following: Kings of Israel and the kings of the house of David have to bring their offerings separately? And he answered: They were not dependent each upon the other, while we are dependent on those in Babylon.

R. Safra taught the above as follows: Rabbi questioned Hyye: I, *e.g.*, who am a prince, am I liable to a he-goat? And he answered: In Babylon there is a tribe (Shebet), etc. (See Sanhedrin).

MISHNA. *III*.: And who is the anointed priest? He who was consecrated to priesthood by the holy ointment and not merely by the many (8) raiments. However, between these two kinds of priests there exists no other difference except the bullock-sacrifice attending the violations of any of the commandments. Nor is there any difference between the priest in office and the retired priest except the bullock of the day of atonement and the tenth of the *Eifah*. Both are equal as regards the services on the day of atonement, the command to marry a virgin, the prohibition from marrying a widow, from defiling themselves to a dead relative, from wild-growing of the hair, from tearing their garments; finally both effect through their respective deaths the return of the homicide from exile.

GEMARA: The rabbis taught: In the oil for anointing which was made by Moses, they used to soak the roots, so R. Jehudah, etc. (Here it is repeated from Tract Kherithoth, 5 b. to 6 b., and as there is its proper place, we omit it here.)

The rabbis taught: The anointed, and lest one say it means the king, it adds "the priest." And lest one say, that also be who was sanctified by his dress only, therefore "the anointed."

[paragraph continues] But still one may say that it means the priest anointed for the war time, therefore and "the anointed priest," *i.e.*, the distinguished one who has no one anointed over him.

"*There is no difference between the anointed*," etc. Our Mishna is not in accordance with R. Nair, as he holds that he who was sanctified by the eight dresses, has to bring a bullock for the transgression of all the negative commandments which are to be found in the Scripture; while the sages did not agree with him. But how can you say that our Mishna is in accordance with the rabbis? Does not the latter part state, "There is no difference between a priest who is still in his office and one retired, but concerning the bullock of the day of atonement and the tenth of Eipha," all which can be only in accordance with R. Nair, as we have learned in the following: If it happened to the high-priest a thing which makes him temporarily unfit for service, so that he was substituted by another priest, then the former returns to his office and his substitute remains with all the obligations of a high-priest, so R. Nair; R. Jose, however, maintains that the substitute is no more fit either as a high-priest or as a simple one. And he added: It happened to Joseph b. Ailim of Ceporas that something made him temporarily unfit, to serve as high-priest, and another one was substituted, and his brethren the priests did not allow his substitute to be either a high-priest or a common one: a high-priest because of animosity, and a common one because of the rule that one may be raised in sanctification but not lowered; hence, we see that the first part of the Mishna is in accordance with the rabbis, and the second with R. Mair. Said R. 'Hisda: So it is. But R. Jose said: It is in accordance with Rabbi, who edited the Mishna in question in accordance with different Tanaim. Rabha, however, said: It is in accordance with R. Simeon, who holds with R. Mair in one case, but differs with him in the other. (The difference of opinion of the above Tanaim is translated already in Tract Joma.)

The Mishna states: "Except the five things which are said in the portion regarding a high-priest." Whence is this deduced? From what the rabbis taught [Lev. xxi. 10]: "And the priest that is highest among his brethren," means the high. priest. "Upon whose head anointing oil hath been poured," means that who was appointed for the war. "And who hath been consecrated to put on the garments," means that who was sanctified by the garments only; and to all them it says,

[paragraph continues] "Shall not let the hair of his head grow long, and his garments shall he not rend. Neither shall he go in to any dead body," etc. And lest one says that they all may perform the holy service in the first day in which death occurs in his family, it reads, "For the crown of the anointing oil of his God is upon him," which means, upon him but not upon his appointed colleague, *i.e.*, the appointed for the war, and as the latter was separated from the above, one might say that he is also commanded to take a virgin; therefore [ibid. 13]: "And he shall take a wife in her virgin state," *he* and not some other one. However, in the latter case Tanaim differ.

MISHNA *IV.*: The high-priest rends his garment from below; the common priest, from the top. The former, while in mourning, may offer sacrifices but not eat thereof; the latter, if in mourning, must do neither the one nor the other.

Said Rabh: From below means literally he shall tear from the bottom of the garment. Samuel, however, says: From the bottom of the seam, and on top means on the top of the seam. But both must be on the bottom of the collar.

MISHNA *V.*: What is more common precedes the less common; the more holy precedes the less sanctified. If the bullock of the anointed priest and that of the congregation are simultaneously ready as sacrifices, the former precedes the latter in all respects.

GEMARA: Whence is this deduced? Said Abaye [Numb. xxviii. 23]: "Besides the burnt-offering of the morning, which is for a continual burnt-offering, shall ye prepare these." Now, as it reads already the burnt-offering of the morning, why was it necessary to state which is for a continual offering? To teach that what is more common precedes the less. And whence do we know that what is more sanctified precedes the less one? From what was taught by the disciples of R. Ismael: "Thou shallst sanctify him," means to every sanctification he shall begin first, he shall make the benediction first, and he shall be the first to take the best share.

"*The bullock of the anointed*," etc. Whence is this deduced? From [Lev. iv. 21]: "And he shall burn him as he has burned the first bullock." To what purpose was the "first" necessary? To teach that he must make precede the bullock of the congregation in all respects.

The rabbis taught: If the bullock of the anointed priest and that of the congregation were standing, the former precedes the

latter in all respects, because as the anointed one atones and the congregation is atoned, it is but right that be who atones shall precede the atoned one in all respects. And so also it reads [ibid. xvi. 17]: "So shall he make an atonement for himself, and for his household, and for the whole congregation of Israel.

MISHNA *VI.*: The man has the preference over the woman in respect of preservation of life and of returning a loss. The woman has the preference in respect of dressing and of being ransomed from captivity. If two persons of different sex are menaced with being (sexually) disgraced, the man must be protected first.

GEMARA: The rabbis taught: if it happened that he, his master and his father were in captivity (and he was able to redeem one of them), he himself has the preference over the latter, and his master has the preference over his father. His mother, however, has the preference over all. A sage has the preference over a king of Israel, as if a sage dies we have no equal to him, but if a king dies all Israel are fit for the throne. A king has the preference over a high priest, as [I Kings i. 33]: "Take with you the servants of your lord," etc. A high priest has the preference to a prophet, as [ibid. 34]: "And let Zadek the priest with Nathan the prophet," hence the priest precedes the prophet. The priest anointed with the anointed oil precedes him who was sanctified by his garments. The latter precedes the one appointed for the war, and he precedes him who was removed from office on being blemished, and he precedes segan (vice high priest), and he precedes the Amarkhal. (What does Amarkhal mean? said R. 'Hisda: the head officer of the temple.) The last one precedes the treasurer, and he precedes the head of the watching officer. He (the head) precedes the head of the family priest, and the latter precedes a common priest.

MISHNA *VII.*: The following precede one another in order of arrangement: the priest, Levite

(simple), Israelite, bastard, nathin, proselyte, a freed slave; provided, however, they are equally qualified in learning; but if, *e.g.*, the bastard be a learned man in the Law, while the high priest is an ignorant, the preference is on the part of the former.

GEMARA: "*Equally qualified*," etc. Whence is this deduced? Said R. A'ha b. R. 'Hanina, from [Prov. iii. 15], "She is more precious than pearls"; (1 *pninim*), which means from the high priest who enters the *sanctum sanctissimum*.

There is a Boraitha: R. Simeon b. Ia'hai said that it is but right that a free slave have the preference over a proselyte, as *the former was brought* up with us in sanctity, which is not the case with the latter; however, as a slave has been placed in the category of the "cursed" [Genes. ix. 25], a proselyte has the preference.

The disciples of R. Elazar b. Zadok questioned their master: Why is one more anxious to marry a female proselyte than a freed female slave? and he answered as a reason the slave's being in the category of the "cursed," and also because the proselyte is supposed to have kept herself in chastity, which, as a rule, is not the case with the slave.

They further questioned: Why does the dog know his master, and the cat does not? and his answer was: It is certain that he who eats from what is left by a mouse is apt to have a poor memory, so much the more so the cat that himself consumes the mouse. They questioned again: Why do all these animals (*i.e.* dogs, cats, and the like) reign over the mice? and he answered: Because the mice are instinctively mischievous, since, says Rabha, they tear even garments; and R. Papa says: They gnaw through even the handle of a pick-ax.

The rabbis taught the following five objects are conducive to one's forgetting his studies: The eating up of the remnants of the mice's or cat's food, of the heart of a cow, the frequent consuming of olives, the drinking of the water left from one's own washing, and, finally, the bathing of one's feet one kept on the other. According to others add yet this: the putting of one's clothes under one's head while sleeping,

The following five are apt to strengthen one's memory: Bread baked on coals, and particularly the consuming of the coals themselves, soft eggs without salt, the frequent drinking of olive oil, of wine flavored with spices, of water left after its use for a dough. According to others add yet this: to dip the finger in salt and consume the latter. According to others add this: the consuming of wheat bread and particularly of the wheat itself.

This Boraitha furnishes a support to R. Johanan who was wont of saying that as an olive causes one to forget one's studies acquired during a period of 70 years, so the oil thereof calls back to one's memory the studies of such a period.

Concerning the consuming of salt on one's finger, according to Resh Lakish this must be done with one finger; while Tanaim differ: according to R. Jehudah it is with one finger and

not two, according to R. Jose two and not three fingers, and the negative sign of it is *Kuritzah*, *i. e.* taking a fistful of the meal-offering (done always with three fingers).

The following ten objects are cumbrous to one's studies: passing under the rope of a camel and particularly under the camel itself; passing between two camels, between two women, the passing of a woman between two men, passing through the obnoxious odor of a carcass, passing under a bridge where nature was not running for 40 days, the eating of half-baked bread, of meat taken out with the •ω μ ηρατρος (spoon with which the scumming is done), drinking from a well streaming through a cemetery, looking on the face of a corpse. According to others add yet, reading the inscriptions on a tombstone.

The rabbis taught: when the prince enters, all the people present in college rise to their feet, without again taking their seats until he tells them to do so. When the chief justice enters. the people occupying two rows of seats facing the entrance rise and remain standing until he takes his seat. If the sage enters, the occupants of one row rise and remain standing until he takes his place. The children as well as the disciples of the sages, if their help in the studies is needful, are allowed to pass over the heads of the people (seated on the floor), but not when their help is not wanted. The children of such scholars who superintend the congregation, if they comprehend the subjects treated of, may enter, sit down with their faces to their fathers and backs to the people; but if not, they have to sit in the opposite order. R. Elicar b. R. Zadok said that also at a banquet these children may be invited for the sake of their parents. If one of them has to go out for physiological requirements he may return, Said Rabha, this is so only when their fathers are still alive and also present.

Said R. Johanan: This Mishna was taught in the time of R. Simeon b. Gamaliel, when he was the prince, R. Nathan the president, and R. Mair the sage of the college. When R. Simeon would enter, the people rose; likewise when either R. Mair or R. Nathan entered the people would rise; said then the prince: If so, there is no difference between me and the others, whereas I should like that a difference be made; and he accordingly enacted the rules laid down in the Mishna. However, this was carried out in the absence of R. Mair and R. Nathan, so that on the morrow when they came and saw the people behind the 2 rows remaining in their seats, they asked the reason thereof, in

answer to which they were told of the prince's enactment. There. upon said R. Mair to R. Nathan: I am the sage and you are the president, let us enact something in our behalf; let us ask R. Simeon to teach us Tract Uktzin (stalks of fruit), and as we are aware that he is not versed therein, we will say unto him [Psal. cvi. 2] "Who can utter the mighty acts of the Lord?" he "who can publish all his praise!" Thereupon we will depose him and you will take his place and I yours. R. Jacob b. Oarshi (Rabbi's master) overheard this plan and was embarrassed as to how he could prevent R. Simeon's reputation from being marred; he then hid himself in back of R. Simeon's attic and began to study aloud Uktzin over again and again, until R. Simeon has noticed it and the idea struck him that something must have happened in the college, to which Jacob would like to draw his attention; he accordingly was quick enough to take up the study of Uktzin, and, indeed, succeeded in acquiring close familiarity with this Tract. On the morrow he was asked in the college, according to the premeditated plan, to lecture on Uktzin which he did, and after he was through he said to them: If my attention had not been called to this Tract, I

should have been put to public shame by your plan. On his command, then, R. Mair and R. Nathan were removed from the college. They, however, were circulating in writing, questions and objections and throwing them in to the college; to those that could not be resolved in college, they would themselves write the answers and send them again to college. Said R. Jose to the college: The whole Torah is outside and we should remain inside the college? This pressure urged R. Simeon to allow the relegated to return under the penalty, however, that the Halakhas be not proclaimed in their names. Therefore R. Mair's Halakhas were henceforth classed with the anonymous teachers, and R. Nathan's were given as "according to some." It once happened that both had dreams commanding them to reconcile R. Simeon; whereupon R. Nathan did so, while R. Mair said that he does not yield to dreams as they are nonsense. When R. Nathan came to reconcile him, R. Simeon b. Gamaliel said: Because thy father's (official) belt helped the to be president of the court, must we make thee Nasi (prince)?

Rabbi taught to R. Simeon his son: The anonymous teachers say so and so; interrupted him his son; who are they whose water we imbibe and whose names we do not mention? And he answered: They were the men who conspired to destroy your glory and that of your father's house, rejoined he; [Eccl. ix, 6.]

[paragraph continues] "Also their love, and their hatred, and their envy are now already lost," answered the Rabbi paraphrasing. (Psal. ix.): The enemy is lost, but his ruinous deeds are still existing; said R. Simeon: this would be right if the deeds of the rabbis in question remained effective, but they whom you have in view had only an intention, and one that has never been realized. Thereupon Rabbi taught to him again; so and so was said in the name of R. Mair. Said Rabha: Rabbi, though modest in nature, yet refrained from saying I it was said by R. Mair,' but taught it was said *in the name* of R. Mair.

Said R. Johanan: R. Simeon C. Gamaliel and the rabbis differed with regard to the following: according to one the erudite scholar, while according to the other, the dialectician, has the preference. A message concerning this point was sent to the west, and the answer thereto was: the erudite has the preference, since every one is in need of the owner of the stored-up wheat. R. Joseph was the erudite, and Rabha was the dialectician, and though the answer of the west was in favor of the former, he did not accept the position of head of the college for 22 years, until Rabha who accepted this position died. During all this time R. Joseph did not invite to his house even a barber, but was himself going wherever he needed.

Abaye and Rabha, R. Zero and Rabha C. Mathma were sitting together at the time when the presidency of the college was vacant, and they have decided that he who will recite a point that will meet no objection be elected to this office. The sayings of them all were objected, excepting that of Abaye which was not; thereupon Rabha noticing that Abaye was raising his head, said to him: Wa'hmeni, begin your lecture (you are the head of the college).

The schoolmen questioned regarding R. Zera who was a genius and in the habit of raising objections, and Rabha C. Mathma who was slow, careful and considerate in drawing conclusions, which of the two types has the preference. This question remained undecided.

END OF TRACT HORIOTH AND OF THE VOL. XVIII., AND ALSO OF THE WHOLE SECTION

Footnotes

20:1 Leeser's translation does not correspond.

25:1 *Pninim* is homonymous with *Pnim*, which means inside.

The Babylonian Talmud

Translated by
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Tracts Aboth, Derech Eretz-Rabba, Eretz-Zuta, and Baba Kama (First Gate)

Tract Aboth

Tract Derech Eretz--Rabba. (Worldly Affairs).

Tract Derech Eretz-Zuta

Tracts Baba Kama (First Gate)

NEW EDITION

OF THE

BABYLONIAN TALMUD

Original Text, Edited, Corrected, Formulated and Translated into English

BY

MICHAEL L. RODKINSON

SECTION JURISPRUDENCE (DAMAGES)

TRACTS ABOTH (FATHERS OF THE SYNAGOGUE), WITH ABOTH OF R. NATHAN, DERECH ERETZ RABBA, AND ZUTA

Revised by the Rev. Mr. GODFREY (Shajah) TAUBENHAUS Rabbi Cong. Beth Elohim, Brooklyn

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EXPLANATORY REMARKS.

In our translation we adopted these principles:

1. *Tenan* of the original--We have learned in a Mishna; *Tania*--We have learned in a Boraitha; *Itemar*--It was taught.

2. Questions are indicated by the interrogation point, and are immediately followed by the answers, without being so marked.

3. When in the original there occur two statements separated by the phrase, *Lishna achrena* or *Waïbayith Aema* or *Ikha d'amri* (literally, "otherwise interpreted"), we translate only the second.

4. As the pages of the original are indicated in our new Hebrew edition, it is not deemed necessary to mark them in the English edition, this being only a translation from the latter.

5. Words or passages enclosed in round parentheses () denote the explanation rendered by Rashi to the foregoing sentence or word. Square parentheses [] contain commentaries by authorities of the last period of construction of the Gemara.

TO HIS EXCELLENCY

THE WELL-KNOWN PHILANTHROPIST, WHO WARMLY ESPOUSES THE CAUSE OF JUDAISM AND ITS LITERATURE

BARON EDMUND DE ROTHSCHILD

THIS VOLUME IS MOST RESPECTFULLY INSCRIBED BY THE EDITOR AND TRANSLATOR

MICHAEL L. RODKINSON

New York, Purim, 5660
March 15th, 1900

INTRODUCTION TO SECTION JURISPRUDENCE.

WITH the present volume we begin the Section "Damages," also called "Jurisprudence," from the occurrence of discussions on criminal law. This section forms the fourth in the old edition, and comprises the following treatises: "First Gate," "Middle Gate," "Last Gate," "Sanhedrin," "Stripes," "Oaths," "Testimonies," "Idolatry," "Fathers" (or "Ethics of the Fathers of the Synagogue"), and "Decisions."

Notwithstanding the fact that in the old edition of the Talmud "Fathers" stands next to the last tract, we have placed it at the head of the section, relying upon the decision of Sherira Gaon in his letter (Goldberg edition, Mayence, 1872, p. 14) declaring that it is perfectly permissible to change the order of sequence of tracts in the several sections. Therefore, because the treatise entitled "Fathers" deals entirely with the ethics of life, we have deemed it best to give it precedence over the other treatises. Just as in the Pentateuch we find the ten commandments--the basis of all ethical religion--heading the subsequent detailed laws and ordinances, so it seems but fit that the Section "Damages" should be headed by the tract setting forth the main ethical principles, and be continued by the detailed discussions. We are further borne out by the Talmud itself, which reads (First Gate, Chap. III., Mishna 3): "One who wishes to be pious should observe the laws of damages. Rabhina said: 'He should observe the teachings of the Fathers.'" Rabhina's statement should, in our opinion, not be taken literally, but as indicative of the opinion that the decisions contained both in "Fathers" and in "Damages" generally are equivalent.

"Fathers" is one of the few treatises which consists of Mishna only; *i.e.*, has no supplementary Gemara either in the Babylonian or the Palestinian Talmud, although interspersed throughout the contents of the entire Talmud may be found amplifications or comments on some of the sentences of the "Fathers." There is, however, a Tosephtha entitled "Fathers of Rabbi

[paragraph continues] Nathan" which discusses most sentences of the original "Fathers" separately; in fact, begins the discussion of each sentence with the interrogation "How so?" Forming, therefore, a valuable addition to the much-valued literature of the "Fathers," we have considered it our duty to incorporate it in our edition, and we have therefore inserted the said Tosephtha in the place where, in other tracts, we have placed the Gemara.

Owing to the fact that the Tosephtha named above bears the name of Rabbi Nathan of Babylon, one of the most distinguished masters of his generation, but at the same time contains ethics similar to those of the Mishna, as well as lectures and discussions which could not have been compiled by that author and are evidently contributions from scholars of a later period, the historians of modern times, from Zunz in his "Gottesdienstliche Vortraege" to Brill in his

"Jahrbuecher" and Weiss in his "Dor Dor Vedorshov," engage in elaborate speculation as to who was the compiler of the "Fathers of R. Nathan" and at what time it was compiled. The complicated nature of the Tosephtha in question brought to the front a number of commentators and text-revisers, and finally Solomon Tausik and Solomon Shechter made a search of manuscripts, and published new editions of the Tosephtha, with additions from the material found in the manuscripts. The latter, in fact, searched so thoroughly that he found an entirely different version of the Tosephtha, and then published in his edition two separate texts, calling them First Text and Second Text, respectively, with his own corrections, notes, and a long introduction (Vienna, 1887).

True to our methods of translating the Talmud, we have, however, ignored the new versions of "Fathers of Rabbi Nathan," and have merely adapted the old version which forms part of the Talmud, simply adhering to the corrections made by Elias Wilner and the commentaries of Joshua Falk and others contained in the great Wilna (1890) edition of the Talmud. Further, in accordance with our wont we have omitted such of the passages as have already appeared in the preceding tracts of our edition, merely indicating the places where they can be found. Wherever necessary, of course, we have added footnotes, remarks, etc.

Our reasons for not making use of the new versions of the Tosephtha in question are as follows:

In a previous article touching upon the subject, which appeared in our publication "Hakol," we have pointed out that

we cannot give preference to recently discovered manuscripts over those used by the compilers of the Talmud, and for a reason that is perfectly obvious, viz.: If those manuscripts were in existence during the construction period of the Talmud, the compilers, who sifted every manuscript with the utmost care, undoubtedly rejected them as valueless. If, on the other hand, they were at that time not in existence, but were written at a later period, they certainly cannot be used as a medium for correcting the antedating manuscripts.

As for Schechter's revised and corrected texts, we cannot accept them for the reason that he presumes to remark, anent Elias Wilner's corrections, "I do not favor them," or, "They are unnecessary." After careful investigation we have, however, found that almost all the corrections made by Elias Wilner, and adopted by us, are founded directly on Talmudical and Midrashic passages scattered throughout the Talmud, a fact the learned Dr. Schechter no doubt overlooked.

On the other hand, we find that the commentaries published in the above-mentioned Wilna edition and credited to Joshua Falk, Chayim Joseph David Azulayi, and Baruch Frankel Theomim are referred directly to passages of the Talmud in the several treatises. Therefore we have used these well-known authorities in our translation, eliminating merely their lengthy discussions and adductions of proof.

As to the origin of the sayings of the "Fathers of Rabbi Nathan," the period during which they were compiled, and other historical events attending their conception, we refrain from rendering our opinion, even though it has become customary to do this in an introduction, leaving these

matters to the philologists and historians in whose province such discussions properly fall. Our sole reason for the translation is that the said sayings have never before been rendered into any modern language and without them our work would not be complete.

The "Fathers of Rabbi Nathan" contains in the original forty-one chapters. As we render them, however, in the form of a Gemara to the Mishna of "Fathers," we have not numbered the chapters, but merely indicated at the foot of the page to which chapter each paragraph belongs.

Regarding the translation of "Fathers," *i.e.*, the original Mishna in the first five chapters, we have found that the translation of C. Taylor (Cambridge, 1877) is entirely too literal and almost incomprehensible without foot-notes and commentaries.

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On the other hand, the partial translation contained in the Home Prayer Book, compiled in the main by Dr. G. Gottheil and Dr. F. De Sola Mendes, is lucid and in accord with the original text. We have therefore made use of the latter rendition, with slight changes. The part remaining untranslated in the Prayer Book we have adapted from C. Taylor's version, rendering it somewhat more comprehensively. In the rendition of the sixth chapter, which does not really form part of the Mishna but is added by the sages in Mishnaic language, we have followed Taylor, making numerous notes and corrections, in order to make it intelligible to the lay reader.

We have not deemed it necessary to add a commentary to the "Fathers" as we did to Tracts Shekalim and Ebel Rabbathi, because the "Fathers" has been translated into all modern languages and because there is already considerable literature concerning the ethics of Judaism, especially the recent publication by Prof. Dr. M. Lazarus entitled "Ethik des Judenthums" an admirable work, issued at Leipzig (1899), and giving a masterly exposition of the philosophical tendencies of "Fathers." We have also devoted a special chapter to this subject in our forthcoming "History of the Talmud."

We have also thought it well to give in this volume, which treats exclusively of the ethics of Judaism, the two Tracts Derech Eretz (Rabba and Zuta), which contain the essential "rules of conduct of life," as construed by Dr. Mielziner, or Worldly Affairs, as named by us, which latter is the prevailing interpretation among Hebrew readers.

As to the origin of these two tracts, elaborate discussions may be found in Zunz, "Gottesdienstliche Vortraege," pp. 110-112, as well as in "Der Talmud--Tract Derech Erez Sutta Kritisch bearbeitet, übersetzt und erläutert" (Berlin, 1885), by Abr. Tawrogi. For Tawrogi's reasons for not translating Derech Eretz Rabba, see his work; nevertheless, inasmuch as Derech Eretz Rabba has never been translated into any language, a d of Derech Eretz Zuta, while there is a critical translation into German, there is none in English, in order to make this volume, which treats of the ethics of Judaism, complete, we have considered it expedient to translate into English both tracts almost literally, although they are not counted among the thirty-seven treatises proper of the Babylonian Talmud, but only among the minor treatises added to them. We do not, however, deem it necessary to add any commentary, for the reason that the sayings

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are very plain and lucid, and can easily be understood even by those who are not students of the Talmud.

Because of the similarity in language and style of these two treatises and of the so-called Mishnayoth of the sixth chapter of Aboth, they appear in the same large type as the Mishnayoth. Following this treatise will be published the other tracts of this section in the regular sequence of the old edition.

THE EDITOR AND TRANSLATOR.

NEW YORK, *March*, 1900.

Next: Synopsis of Tract Aboth (Fathers of the Synagogue).

SECTION NEZIKIN (JURISPRUDENCE).

SYNOPSIS OF SUBJECTS

OF

TRACT ABOTH (FATHERS OF THE SYNAGOGUE).

[Several requests have been received by the translator that an index should be made to the volumes of the Talmud, as is customary with all modern works. It would be an utter impossibility to give a complete index of everything contained in the Talmud. Were it like other scientific works, which treat each subject separately, this could easily be done; but with the Talmud it is different. On one page many different subjects may be discussed, and again a single subject may occupy several pages. The Talmud, therefore, has never had an index.

After careful examination of the volumes, page by page, it has been decided to make a synopsis, *i.e.*, to give briefly the heads of the discussions and conversations upon each Mishna, indicating the page where the Mishna is to be found, and the Gemara of each one, which serves as a commentary. By this the reader should be able to refer to what he desires to know.

A synopsis is therefore given of every Mishna which discusses a single subject, with its accompanying Gemara--in this volume, the Tosephtha; but when several short Mishnas cover the same subject, a single synopsis is given of the whole, including the Gemara of each one; and where a chapter is short, a synopsis of the whole chapter is made, without dividing it into Mishnas.

This is the best that can be done, and it is hoped that readers will find it satisfactory.]

CHAPTER I.

CHAPTER II.

CHAPTER III.

CHAPTER IV.

CHAPTER V.

thoughts so long as their fate has not yet been sealed. Ten generations were there from Noah to Abraham. For what purpose was it necessary to state this? With ten temptations was Abraham our father tempted. They are as follows, etc. In contrast with these ten temptations the Lord performed ten miracles for his descendants in Egypt. When our fathers stood by the sea, etc. "Arise, and pass through it," etc. With ten temptations did our ancestors tempt God in the wilderness. By means of ten trials the Holy One, blessed be He, tested our forefathers. This sin with which the Israelites were afflicted is enough for that time, etc. Ten names of praise are applied to the Holy One, blessed be He. Ten ignominious names are applied to the idols. There are two sons of the clear oil. This refers to Aaron and Messiah. In the Torah there is written eleven times the word "she" when it ought to be "he." Ten times did the Shekhina descend upon the earth. Ten degrees the Shekhina removed itself from one place to another. A prophet is called by ten different names. There are ten names for the Holy Spirit. Ten are called "living." Ten miracles were wrought for our fathers in Egypt, 103-115

MISHNAS *H* TO *O*. Ten miracles were performed for our forefathers in Jerusalem. Jerusalem never was defiled by leprosy. How Kimchith, the mother of R. Ishmael, saw her two sons as high-priests on the same day. The men of Sodom have no share in the world to come. About Kora'h and his company. "The Lord killeth, and maketh alive; he bringeth down to the grave, and bringeth up," has reference to them. The generation of the desert. "Gather together unto me my pious servants, who make a covenant with me by sacrifice," has reference to them. The ten tribes have no share in the world to come. R. Aqiba, however, said: "As the day is first dark and then lightens up, so also their darkness will be followed by light." The following seven have no share in the world to come, etc. There are three kings and four commoners who have no share in the world to come. Absalom has no share in the world to come. Seven things mark the clod, and seven there are for the sage. There are seven creations of as many grades of importance. Man possesses six qualifications, three of which belong also to the beast, and three to the angels. The evil spirits possess six qualifications, three of which belong to man. There are seven sorts of hypocrites. That which is hidden is only so from human beings, but not from Heaven. There are seven things which, if used moderately, are wholesome to the body, and if in excess are the reverse. With seven things God created the world. Seven attributes are serving before the throne of Grace. There are seven dwelling-places. A wise man does not speak before those who surpass him in wisdom and years; and does not interrupt another in his speech; admits the truth, etc. Seven kinds of punishments come on account of seven cardinal transgressions. About the execution of R. Simeon b. Gamaliel and R. Ishmael b. Elisha the high-priest. Captivity comes upon the world, etc. Five are not to be forgiven. Four kinds of views are held by men concerning property, 115-131.

MISHNAS *P* TO *GG*. There are four kinds of dispositions among men. There are four kinds of pupils. There are four kinds of charity-givers. There are four kinds of visitors of the house of learning. There are four kinds of the disciples of the wise. Love inspired by ulterior motives, etc. Whatsoever gainsaying is for the sake of Heaven will have good results. Whosoever causes many to be righteous, sin prevails not over him. In whomsoever are the following three things, he is a disciple of Abraham, etc, Be courageous as the panther, light-winged as the eagle, swift as the deer, and strong as the lion, One five years old should study Scripture, etc. Turn it and turn it again, for everything can be found therein, 131-133

CHAPTER VI.

MISHNAS *A* TO *R*. Whosoever is busied in Torah for the love thereof merits many things. Every day a Heavenly voice goes forth from Mount Horeb and proclaims as follows, etc. He who learns from his companion one chapter, etc., is bound to do him honor. The path of Torah, etc. Seek not greatness for thyself, and desire not honor. Greater is Torah than the priesthood, and than the kingdom. There are four things which bear good fruit in this world. A meritorious act has both principal and benefit. One who causes many to be righteous, no sin prevails upon him. Regarding dreams, there are four sages, three scholars, three books of the prophets, and three books of the Hagiographa. Every assembly that is for the sake of performing a religious duty remains everlasting. Comeliness, strength, wealth, honor, wisdom, age, hoariness, and sons are becoming to the righteous, etc. If thou shouldst give me all the silver, gold, and goodly stones and pearls that are in the world, I would not dwell but in a place of Torah. Five possessions had the Holy One in this world. Whatsoever the Lord created in this world He created only for His glory. There are three crowns: the crown of Torah, priesthood, and kingdom. Three things were said of charitable men. There are three different kinds among scholars. There are three different kinds of sweat that are beneficial to the body. There are six kinds of tears. There are three advantages in an earthen vessel. There are three advantages in a glass vessel. The money that the Israelites carried away from Egypt returned to Egypt. If you do the least wrong to your companion, it shall be considered by you the greatest wrong, etc. The following articles were hidden, etc., 133-143

Next: Chapter I

TRACT ABOTH.

(*Fathers of the Synagogue--Ethics*.)

CHAPTER I.

MISHNA *A*. Moses received the Law on Sinai and delivered it to Joshua; Joshua in turn handed it down to the Elders (not to the seventy Elders of Moses' time but to the later Elders who have ruled Israel, and each of them delivered it to his successor); from the Elders it descended to the prophets (beginning with Eli and Samuel), and each of them delivered it to his successors until it reached the men of the Great Assembly. The last, named originated three maxims: "Be not hasty in judgment; Bring up many disciples; and, Erect safe guards for the Law."

Tosephhta--Aboth of R. Nathan.

[1]Moses was sanctified in the cloud, and received the Torah from Sinai, as it is written [Ex. xxiv. 16]: "And the glory of the Lord abode upon Mount Sinai," which means on *Moses* (for what purpose?), to purify him; this occurred after the ten commandments had been given. So says R. Jose the Galilean; R. Aqiba, however, says: It is written [ibid.]: "And the cloud covered it six days." This refers to the *mountain*, before the ten commandments had been given, and this is what is written further on [ibid.]: "And he called unto Moses the seventh day out of the cloud" (for what purpose?--only) to confer honor upon him.

Said R. Nathan: Why did Moses stay the entire six days

without communication from the Shekhina? To cleanse his body of all the food and drink it contained, that he might be like angels at the time of his consecration.

Said R. Mathia b. Heresh to him: Rabbi, all this stated above was done only to overawe him, that he might receive the words of the Torah with awe, terror, fear and trembling, as it is written [Ps. ii. "Serve the Lord with fear and rejoice with trembling."

It happened that R. Josiah and R. Mathia b. Heresh were both sitting and studying the Law. R. Josiah then departed to attend to worldly affairs. Said R. Mathia to him: "Rabbi, what dost thou gain by forsaking the words of the living God, and devoting thyself to worldly affairs? Even though thou art my master, and I thy disciple, yet I dare say that it is not right to do so." (Lest one say that R. Josiah did so from jealousy,) it was said: While sitting and studying the Torah they were jealous of each other, but when they parted they were like friends from youth.

Through Moses the Torah was given on Sinai, as it is written [Deut. v. 19]: "And he wrote them on two tables of stone, and he gave them unto me." And also [Lev. xxvi. 46]: "These are the statutes and ordinances and laws, which the Lord made between him and the children of Israel on Mount Sinai, by the hand of Moses." The Law which the Holy One, blessed be He, has given to Israel, was given only in the hand of Moses, as it is written [Ex. xxxi. 17]: "Between me and the children of Israel." So Moses (because of his purification and sanctification) was privileged to be the representative of Israel before the Lord.

Moses offered the ram of consecration and prepared the oil of anointment, and anointed therewith Aaron and his sons during all the seven days of consecration. With the same oil high-priests and kings were afterward anointed, and Elazar burned the (first) red-cow, with the ashes of which the unclean were purified in later generations. Said R. Eliezer: "The oil of anointment was of such importance that it remained even for the later generations, for Aaron and his sons were consecrated with the oil of anointment, as it is written [Ex. xxx. 30]: 'And Aaron and his *sons* shalt thou anoint, and consecrate them to be priests.'" (Hence we see that although Aaron was a high-priest, his sons, nevertheless, stood in need of anointment.)

Joshua received it (the Law) from Moses, as it is written

[paragraph continues] [Numb. xxvii. 20]: "And thou shalt put some of thy greatness upon him, in order that all the congregation of the children of Israel may be obedient." The elders (who lived after Moses) received it from Joshua, as it is written [Judges ii. 7]: "And the people served the Lord all the days of Joshua, and all the days of the elders that lived many days after Joshua, who had seen all the great deeds of the Lord, which he had done for Israel." The judges received it from the elders, as it is written [Ruth, i. 1]: "And it came to pass in the days when the judges judged." 1 The prophets received it from the judges (beginning with Samuel the prophet, who was also a judge), as it is written [Jerem. vii. 25]: "And I sent unto you *all* my servants the prophets, sending them daily in the morning early." Haggai, Zechariah, and Malachi received it from the prophets. The men of the Great Assembly received it from. Haggai, Zechariah, and Malachi, and they said the following three things mentioned in the Mishna:

"*Be deliberate in judgement*." How so? It means a man shall be slow in his judgment, for he who is slow is deliberate, as it is written [Prov. xxv. 1]: "Also these are the proverbs of Solomon, which the men of Hezekiah the king of Judah have collected." They have not collected them,, but they were deliberating upon them before (making them public). Abba Saul, however, said: "Not only were they deliberating over them, but they also explained them."

Formerly it was said: The books of Proverbs, Song of Songs, and Ecclesiastes were hidden, because they are only parables, and do not belong to the Hagiographa; the men of the Great Assembly, however, came and explained them, as it is written [Prov. vii. 7-20]: "And I beheld among the simple ones, I discerned among the youths, a lad void of sense, etc. and, behold, a woman came to meet him with the attire of a harlot and obdurate of heart; she is noisy and ungovernable; in her house her feet never rest; at one time she is in the street, at another in the open places, and near every corner doth she lurk, and she caught hold of him, and kissed him, and with an impudent face she said to him, 'I had bound myself to bring peace-offerings; this day have I paid my vows; therefore I am come forth to meet thee, to seek thy presence

diligently, and I have found

thee. With tapestry coverings have I decked my bed, with embroidered coverlids of the fine linen of Egypt. I have sprinkled my couch with myrrh, aloes, and cinnamon. Come, let us indulge in love until the morning: let us delight ourselves with dalliances. For the man is not in his house, he is gone on a journey a great way off; the bag of money hath he taken with him; by the day of the new-moon festival only will he come home.'" And it is written also in Song of Songs [vii. 12, 13]: "Come, my friend, let us go into the field; let us spend the night in the villages; let us get up early to the vineyards; let us see if the wine have blossomed, whether the young grape have opened (to the view), whether the pomegranate have budded: there will I give my caresses unto thee." And it is written again in Ecclesiastes [xi. 9]: "Rejoice, O young man, in thy childhood; and let thy heart cheer thee in the days of thy youthful vigor, and walk firmly in the ways of thy heart, and in (the direction which) thy eyes see; but know thou, that concerning all these things God will bring thee into judgment." And again in Song of Songs [vii. 10]: "I am my friend's, and toward me is his desire." So we see that the last-mentioned passage of the Song of Songs explains all that was mentioned above; under the term "my friend's" the Lord is understood. Hence (it is sure) that they were not only deliberating, but also explaining them.

According to others the statement "Be deliberate in judgment means to teach that one shall be careful with his words, and also not to have an irascible manner against those who have received his words, for one who is easily provoked by those who have received his words often forgets his (original) words; for so we find with Moses, our master, who had forgotten his (original) words. (See Pesachim, p. 129: "Resh Lakish said," etc.)

And where do we find that Moses was irascible with his hearers? It is written [Numb. xxxi. 14]: "And Moses was wroth. . . . Have you allowed all the females to live?" And it is written [ibid., ibid. 16]: "Behold . . . through the counsel of Bil'am." How so? Infer from this that this was the advice of Bil'am given to Balak: "These people, your enemies, are hungry for food and are thirsty for drink, as they have nothing but manna. Go and put up tents for them, place in them food and drink, and seat in them beautiful women, daughters of nobles, so that the people may turn to Baal Peor." (This will be given in Sanhedrin in detail.)

Now from this we may draw an *a fortiori* conclusion. If

Moses our master, the wisest of the wise and the father of the prophets, at the time he became angry at his listeners forgot his original words, so much the more would we commoners. From this we should learn how necessary it is to be careful and not irascible.

Ben Azai says: Be careful in thy words, that thy hearers shall not err through them.

"*And erect safeguards for the Law*." That means that one shall make a safeguard to his words as the Holy One, blessed be He, has done. Adam the First made one to his; the Torah made one to its words; Moses and job likewise made safeguards to their words, and so also the Prophets and Hagiographers have all made safeguards to their words.

The safeguard that the Holy One, blessed be He, made is this [Deut. xxix. 23]: "Even all the nations will say, wherefore hath the Lord done thus unto this land?" Infer from this that it was known beforehand to Him, by whose one word the universe was created, that the future generations will ask this; therefore he said to Moses: Write the answer for the future generations [ibid., ibid. 24, 25]: "Then shall men say, because they have forsaken the covenant of the Lord, etc., and they went and served other gods and bowed down to them--gods which they knew not, and which he had not assigned unto them."

We see, then, that the Holy One, blessed be He, made these answers, to prevent His people from incurring His wrath by their questions, and that they might live in peace.

Adam the First's safeguard to his words was thus [Gen. ii. 16, 17]: "And the Lord God commanded the man, saying, Of every tree of the garden thou mayest freely eat; but of the tree of the knowledge of good and evil, thou shalt not eat of it; for on the day that thou eatest thereof thou shalt surely die."

We see, then, that Adam did not want to give Eve the exact words he received, but he added [ibid. iii. 3]: "Ye shall not eat of it, neither shall ye touch it, lest ye die," in order that they should take care even not to touch the tree. At that time the wicked serpent said to himself: "As it is impossible for me to make Adam stumble (for he himself received the words from the Lord), I will make Eve stumble." He sat by her and had a long conversation with her. He said to her: "As thou sayest that the Holy One, blessed be He, has forbidden thee to touch it, see that I am touching it and will not die, and the same will

be with thee." And so he did: he arose and shook the tree with his hands and feet till the fruit fell down. [According to others the serpent did not actually touch the tree at all, because as soon as the tree saw the serpent it stopped him and said: "Thou wicked one, do not touch me," as it is written [Ps. xxxvi. 12]: "Let not come against me the foot of pride, and let not the hand of the wicked chase me off." Another explanation of the above passage is, that it has referred to Titus, who beckoned with his hand, and struck the altar, saying: "λυχος! λυχος! (wolf!) thou art a king, and I am a king, come and engage with me in battle. How many oxen were slaughtered upon thee; how many heads of birds were pinched off on thee; how many measures of wine were poured upon thee; how much incense of *spices* was burned upon thee, thou art the one who destroys the whole world," as it is written [Is. xxix. 1]: "Woe to Ariël, to Ariël, the town where David dwelt! Add ye year to year; let the festivals come round in order."]

The serpent said again to her (Eve): "If thou sayest that the Holy One, blessed be He, forbade to eat it, see I eat of it, and do not die, and thou mayest do the same and thou wilt not die." So Eve said to herself, the injunctions of my master are unfounded. [(There is a tradition that) at first Eve called Adam nothing but master.] She then herself ate of the fruit and gave it to Adam, and he too ate, as it is written [Gen. iii. 6]: "And when the woman saw that the tree was good for food, and that, it was pleasant to the eyes," etc.

With ten curses was Eve cursed at that time, as it is written [ibid., ibid. 16]: "Unto the woman he said, I will greatly multiply thy pain and (the suffering of) thy conception; in pain shalt thou

bring forth (children), and for thy husband shall be thy desire, but he shall rule over thee." "I will greatly multiply"--those are the two afflictions of blood that a woman has to suffer: that of her menstruation and that *primæ noctis*. "And thy suffering" means the rearing of children; "and thy conception" means the pain of pregnancy. "In pain shalt thou bring forth children" is to be taken in its literal sense. "And for thy husband shall be thy desire"; infer from this that the woman is longing for her husband during his absence on a journey. She is wrapped like a mourner, separated from all men as if she were in prison and as if she were excommunicated from all mankind. And who caused all this? The words that Adam added: "Ye shall not touch it." From this they deduced the maxims that

if one makes a safeguard to his words (without stating that it is such) he cannot stand by it. Consequently they said that one must not add to what he has heard. Said R. Jose (this is what people say): "It is better to have a wall of ten spans which is solid, than one of a hundred ells which is tottering."

What were the thoughts of the wicked serpent at that time? "I will slay Adam and marry his wife, and I will be king of the whole world, I will walk erect, and will banquet on the best of the land." Then the Holy One, blessed be He, said to him: "Thou hast thought to slay Adam and marry his wife, therefore I will put enmity (between thee and the woman); thou hast thought to be king of the world, therefore be thou cursed among all the cattle; thou hast thought to walk erect, therefore upon thy belly shalt thou go; thou hast thought to banquet on the best of the land, therefore dust shalt thou eat all the days of thy life."

R. Simeon b. Menassia says: "Woe that a great servant was lost to the world, for if the serpent had not been accursed, every one would have had two serpents in his house. He would send one to the West, and the other to the East, and they would bring him diamonds, precious stones and pearls, and all the valuable things of the world, and no creature could stand against them, and furthermore they could be used instead of a camel, ass, and mule in the field, garden," etc.

R. Jehudah b. Bathyra says: "Adam was sitting in the Garden of Eden and the angels served him with roasted meat and chilled wine." When the serpent saw this and observed this honor, he became jealous.

How was Adam created? The first hour his dust was gathered, the second the form was created, the third he became a body, the fourth his members were joined, the fifth the openings were developed, the sixth the soul was put unto him, the seventh he rose to his feet, the eighth Eve was mated to him, the ninth he was brought into the Garden of Eden, the tenth the command was given to him, the eleventh he sinned, the twelfth he was driven out and went away; this is what is written [Ps. xlix. 21]: "*Ve Adam bikor bal yolin*." [1] (Adam, "Bal Yolin"--he shall not stay over night.) [We have learned in Tract Rosh Hashana, p. 55: On the first day which psalm did

they say? "Unto the Lord belongeth the earth with what filleth it" [Ps. xxi. 17]; this was because He created and is still continuing to create, and He is judging the world. On the second day they

said: "Great is the Lord and highly praised, in the city of our God" [ibid. xlviii. 2]; it is because He divided all His creatures and became the one ruler of the universe. On the third they said: "God standeth in the congregation of God, in the midst of judges doth He judge" [ibid. lxxxii. 1]; it is because He then created the sea, the land, and the earth was rolled to its right place, and room was made for His congregation. On the fourth day they said: "O God of vengeance, Lord! O God of vengeance, shine forth" [Ps. xciv. 1]; because then He created the sun, the moon, the stars, and the planets which give light to the world, and the Lord will punish those who worship them. On the fifth they said: "Sing aloud unto God our strength; shout joyfully unto the God of Jacob" [Ps. lxxxi. 2]; because He then created the birds, the fishes, and the great sea monsters, who (the birds) fill the world with song. On the sixth they said: "The Lord reigneth, He is clothed with excellency; the Lord is clothed, He had girded Himself with strength: (therefore) also the world is firmly established, that it cannot be moved." Because then He finished all His work He became exalted and placed Himself on the loftiest point of the world. On the seventh they said: "A psalm or song for the Sabbath day" [ibid. xcii. 1]. A day of entire rest, when there is no eating nor no drinking and no traffick, but the upright sit with their crowns on their heads and are nourished from the glory of the Shekhina, as it is written [Ex. xxiv. 11]: "And they saw (the glory of) God, and did eat and drink," just like the angels.]

Why was Adam created on the last hour of the sixth day? In order that he might immediately partake of the sabbatical meal.

R. Simeon b. Elazar said: Adam can be likened to an Israelite who married a proselyte woman, and he constantly sought to impress upon her mind the following regulations: "My daughter, eat not bread when thy hands are unclean, eat not of fruits which were not tithed, do not violate the Sabbath, do not get into the habit of making vows, and walk not with another man. If thou shouldst violate any of the commands, thou wilt die." Another one, who wished to mislead her, did those very things before her that she had been told were sinful: he ate

bread when his hands were unclean, partook of fruits which were not tithed, violated the Sabbath, etc., and thereby caused this proselyte to think that everything that her husband told her was entirely false, so she violated all his commandments.

R. Simeon b. Johai said: The case of Adam can be likened to one who, when intending to leave his house, took a barrel and put therein a certain number of dates and nuts; then he caught a scorpion and put it in the top of the barrel, be covered it well and put it in a corner, and said to his wife: "My daughter, everything I have in this house is placed at thy disposal, except this barrel, which thou must touch not at all." As soon as her husband went away, she, however, opened the barrel, put her hand into it, and the scorpion bit her. She took sick and went to her bed. When her husband returned, he asked her what the trouble was. She said: "I put my hand in the barrel, and the scorpion bit me, and I am dying." He said to her: "Did I not tell thee before that thou must not touch the barrel?" He became angry, and drove her out of his house. The same happened to Adam when the Holy One, blessed be He, told him: "Of every tree in the garden thou mayest freely eat; but of the tree of the knowledge of good and evil, thou shalt not eat of it; for on the day that thou eatest thereof thou shalt surely die"; but as soon as he did eat he was driven out of the Garden of Eden, and this is what the passage said [Ps. xlix.] (see above).

On the same day on which he was formed, on the very same day his countenance was created;

on the very same day he was made a body, and his members were joined and his openings developed, and on the very same day the soul was put unto him. On the same day he stood upon his feet, and Eve was mated to him. On the same day he pronounced the names of all the creatures, and on the very same day he was placed in the Garden of Eden and received the command (not to eat, etc.), and on the very same day he violated it and was driven out, to comply with what is written [Ps. xlix.] (see above). On the same day they went to bed two, and descended from the bed four. R. Jehudah b. Bathyra, however, says that they descended six (two sons and two daughters). On that day three sentences were pronounced over Adam, as it is written [Gen. iii. 17, 18]: "And unto Adam he said, because thou hast hearkened unto the voice of thy wife, etc., cursed be the ground for thy sake, in pain shalt thou eat of it, etc., and thorns and thistles shall it bring forth to thee, and thou shalt eat the herbs of the

field." As soon as Adam the First heard that the Holy One, blessed be He, said: "And thou shalt eat the herbs of the field," he trembled in his whole body. He said before Him: "Lord of the Universe, shalt I and my cattle eat out of the same trough?" Said the Holy One, blessed be He: "As thou hast trembled, therefore in the sweat of thy face shalt thou eat *bread*" [ibid., ibid. 19].

As Adam was laid under three sentences, likewise was it with Eve. As it is written [ibid., ibid. 16]: "I will greatly multiply thy pain and (the suffering of) thy conception; in pain shalt thou bring forth children." The first few days of menstruation are painful. So also are the first few moments of her sexual intercourse with a man. Also when the woman becomes pregnant, her face loses its beauty and becomes yellow the first three months.

When evening drew near, and Adam, looking toward the west, saw that it was becoming darker and darker, he said: "Woe to me is this, because I have sinned, that the Lord darkens the world upon me!" He did not know that it was the course of nature. In the morning, when he saw it lighted up and the sun risen in the east, he rejoiced greatly. He built an altar and sacrificed on it as a burnt-offering an ox, the horns of which were formed before his hoofs. (Rashi explains this elsewhere as follows: All the creatures of the first days of creation were created in their full-grown sizes, and as the head was formed first the horns thereon preceded the hoofs in point of time. This means to say that Adam sacrificed an ox of the first creation.) As it is written [Ps. lxix. 32]: "And this will please the Lord better than an ox or bullock having horns and cloven hoofs."

(There is a tradition) that the ox of Adam, the steer of Noah, the ram sacrificed by Abraham in place of his son, were all of the first creation, as it is written [Gen. xxii. 13]: "And Abraham lifted up his eyes and saw, and behold, there was a ram *Achar*" (another one, which signifies that it was one differing from the usual ones). At that time (of the sacrifice of the ox, the Holy One, blessed be He, became merciful to him and) three divisions of angels came down with harps, and psalteries, and all musical instruments, and they sang with Adam, as it is written [Ps. xcii. 1-3]: "A psalm song for the Sabbath day. It is a good thing to give thanks to the Lord, etc. To tell in the morning of thy kindness, and of thy faithfulness in the nights." "To tell in the

morning of thy kindness," this means the world to come, which is likened to the morning, as it is written [Lam. iii. 23]: "They are new every morning, great is thy faithfulness"; and [Ps. xcii.]

"And of thy faithfulness in the night" means this world, which is likened to night, as it is written [Is. xxi. 11]: "The doom of Dumah. Unto me one calleth out of Se'ir, Watchman, what of the night? Watchman, what of the night?"

The Holy One, blessed be He, said then: "If I will not punish the serpent, that would be as if I Myself were destroying the world, because it would be said that the one that I set up as king over the entire world has disobeyed My command and ate of the forbidden fruit"; therefore immediately He turned to the serpent and cursed him, as it is written [Gen. iii. 14]: "And the Lord God said unto the serpent," etc. R. Jose said: "If the serpent had not been cursed, the world would have been destroyed immediately afterward."

When God created Adam, He formed him with two countenances, front and back, as it is written [Ps. cxxxix. 5]: "Behind and before hast thou hedged me in, and thou placest upon me thy hand." And the angels came down to serve him, and the Holy One, blessed be He, took him under His wings, as it is written: "And thou placest upon me thy hand."

According to others, from this passage is to be inferred that Adam and the Temple were both created with both hands. This view is supported by the following passages [Ps. cxix. 73]: "Thy *hands* have made me and established me"; and it is also written about the Temple [Ex. xv. 17]: "The sanctuary, O Lord, which thy *hands* have established."

Tosephtha--Aboth of R. Nathan.

1What is the safeguard that the Torah made to its words? It is written [Lev. xviii. 19]: "And a woman in the separation of her uncleanness shalt thou not approach." One might say it is allowed to embrace and kiss her, and converse with her, therefore it is written: "Shalt thou not approach"; test one say it is allowed to sleep with her on one bed when they are both dressed, therefore it is written [Lev. xv. 33]: "And of her that is suffering in her separation," that means during all the

days of her separation she shall be as if under a ban; 1 from this it may be said that a woman who makes herself homely during her separation does it in accordance with the will of the sages, and one that adorns herself during that time incurs the dissatisfaction of the sages.

It happened that a man, although faithfully studying (the Bible), learning (the Mishna), and serving (in the colleges) of the sages, died in the prime of life. His wife used to take his phylacteries 2 and go around and visit all the synagogues and colleges, weeping and crying: "My masters, in the Law it is written [Deut. xxx. 20]: 'For he is thy life and the length of thy days'; now there is my husband, who read and learned much and served the sages, why did he die in the prime of life?" And there was no one that gave her a satisfactory answer. Once she met Elijah the prophet, of blessed memory, and he said to her: "My daughter, wherefore criest thou?" and she made to him the same complaint. He then said to her: "What was his wont with thee in the first days of thy separation?" She answered: "Rabbi, he did not even touch me with his little finger; furthermore, he told me, 'Do not touch anything, that thou mayest not bring it into suspicion.'" "And what was his habit with thee in the last days of thy separation?" he said again. She answered: "Rabbi, I used to eat and drink with him, and to sleep with him fully

dressed on the bed, and his body touched mine, but with no intention of anything else." Elijah then said: "Blessed be the Omnipotent that killed him, because it is written [Lev. xviii. 19]: 'Shalt thou not approach.'"

It is written [ibid., ibid. 6]: "None of you shall approach to any that are near of kin to him." From this it was said one must not stay in a separate room with any woman in a hostelry, though she be his sister or daughter, because of public opinion. For the same reason one must not converse with a woman in the market, not even with his wife. For the same reason a man shall not walk behind a woman, even though she be his wife. This was deduced from the following analogy of expression: It is written in the passage of illegal unions, "Ye shall not approach,"

and here is also written, "Thou shalt not approach," from which it is to be inferred that one shall not approach such things as can cause him to sin (or cause people to talk about him).

There is an ancient saying: Keep thyself apart from the abominable, and from things which are equal to it; and the sages explained it thus: Keep thyself from trivial sin, that it may not lead thee to a grave one. Run to perform a slight meritorious deed, for it will lead thee to the performance of a great one.

It is written [Song of Songs, vii. 3]: "Thy body is like a heap of wheat fenced about with lilies." "Thy body is like a heap of wheat" refers to the assembly of Israel, and "fenced about with lilies" refers to the seventy elders. Another explanation of the words, "Thy body is like a heap of wheat," is that they refer to the lenient religious duties which seem to be of no consequence; "fenced about with lilies," nevertheless when the Israelites perform them they bring them to the world to come. How so? When one is with his wife in his house he can do with her what he pleases even during the separation, as there is nobody to control him or reprove him; but when he refrains from having intercourse with her until she submerge herself, he is doing so only because he is afraid of him who commanded the submerging (in the legal bath); and the same is the case with the first dough, the first wool of shearing (no control can be exercised). Hence such duties, which are as light as lilies, bring the Israelites who perform them to the world to come.

Which is the safeguard that Moses made to his words? It is written [Ex. xix. 10]: "And the Lord said unto Moses, Go unto the people and sanctify them to-day and to-morrow." As Moses the upright regarded it inexpedient to speak to the people in the manner God spake to him, he added one day of his own volition, and said to them [Ex. xix. 15]: "Prepare yourselves for three days." [1] Why did he do so? Because he thought it might happen that one could have seminal intercourse with his wife that day, and so they will receive the Torah when they are unclean; "therefore I will add a third day, that in all the three days they shall refrain from intercourse, in order that

they may be clean when receiving the Torah from Mount Sinai.

This is one of the things that Moses did of his own accord by drawing an *a fortiori* conclusion

(as will be explained farther on), and his act was afterward sanctioned by the Omnipotent. The same was the case with the breaking of the tables, with his leaving the Tabernacle, and with his separation from a woman. How so? He said: "Since relative to the Israelites who were to be sanctified for the time being only, for the purpose of receiving the ten commandments from Mount Sinai, the Holy One, blessed be He, said unto me, 'Go unto the people and sanctify them to-day and to-morrow,' how much more incumbent is it on me to be particular about the cleanliness of my person, as I must be ready for such a divine call every day and every hour, and do not know when He would speak to me by day or by night." And this was exactly in accordance with the will of God. R. Jehudah b. Bathyra, however, said: Moses did not leave his wife before he was told to do so by the Mighty One, as it is written [Numb. xii. 8]: "Mouth to mouth do I speak with him." It means, mouth to mouth have I told him to separate himself from a woman. According to others, it is from the following passage: It is written [Deut. v. 27]: "Go say to them, return ye unto your tents"; and immediately after [ibid., ibid. v. 28]: "But as for thee, remain thou here by me." Therefore he returned and separated himself. This was exactly the meaning of this passage.

The *a fortiori* in the case of the Tabernacle was thus: He said: As for my brother Aaron, who is anointed with the oil of anointment, and clothed in holy garments for service, the Holy One, blessed be He, regarding him said [Lev. xvi. 2]: "Speak unto Aaron thy brother, that he come not at all times into the holy place." Now I who am not chosen for such service, as I am not a priest, how much more reason is there for me to leave the Tabernacle? He did so, and it was in accordance with the will of the Omnipotent.

The *a fortiori* in the case of the tables was thus: It is said when Moses ascended on high to receive the tables [which were written and preserved since the creation of the world, as it is written [Ex. xxxii. 16]: "And the tables were the work of God, and the writing was the writing of God, engraved upon the tables," do not read "Charuth" (engraved), but Cheiruth (free), for every one who is studying the Law is a free man].

[paragraph continues] The angels conspired against Moses, saying: "Lord of the Universe, what is the mortal, that thou rememberest him?" etc. [Ps. viii. 5-9]. They murmured against Moses and said: What is the distinction of one born of woman, that he should come into the council on high? As it is written [Ps. 1xviii. 19]: "Thou didst ascend on high, lead away captives, receive gifts." He nevertheless took the tables and descended with great rejoicing. When he saw the contamination with which they had stained themselves in worshipping the golden calf, he said: If I should give them the tables, I impose upon them a responsibility which might result in capital punishment by divine power, for on the tables is written: "Thou shalt have no other gods before me" [Ex. xx. 3]. He started to return, but the seventy elders saw him and ran after him, and grasped the tables on one end, the other end being still in Moses' hand, and he overpowered them all, as it is written [Deut. xxxiv. 12]: "And in respect to all that mighty hand, and in all the great, terrific deeds which Moses displayed before the eyes of all Israel." He looked at the tables, and saw that they were without writing upon thern. He then said: How shall I give Israel the tables, now that they have no value? I will rather break them. As it is written [Deut. ix. 17]: "And I took hold of the two tables, and cast them out of my two hands, and I broke them." Said R. Jose the Galilean: I will explain this with a parable. A king said to his ambassador: "Go, betroth to me a maiden who is beautiful, chaste, and of pleasing manners." The ambassador went and betrothed such to him. Soon he found that she acted the harlot. The ambassador was in a predicament. "What is to

be done? If I grive her the marriage contract now, I may subject her to capital punishment. No," he said, "I will tear the marriage contract and thereby release her from my master and save her." So Moses the upright said, as stated above: "Rather will I seize and break them (the tables) and save the Israelites by enabling them, in case they should be charged with idolatry, to say: 'Where are the tables? They did not exist at all.'"

R. Jehudah b. Bathyra said: Moses would not have broken the tables had he not been told by the Mighty One to do so, as it is written: "Mouth to mouth do I speak with him"; that means, I told him to break the tables. According to others, that thought is expressed in the following passage [Deut. ix. 16]: "And I looked, and behold, ye had sinned against the Lord." He would not say "I looked," unless he saw the writing of the

tables flying away. Anonymous teachers find the same in the following passage [Deut. x. 5]: "And they have remained there, as the Lord hath commanded me." He would not have said he was commanded unless he had been told to break them. R. Elazar b. Azariah infers it from the following passage [ibid. xxxiv. 12]: "Which Moses displayed before the eye of all Israel"; or, "All that Moses did was by the command of the Lord," as in other cases Moses acted according to the command of God. [R. Aqiba infers it from the following passage: "And I took hold of the two tables." What can a man take hold of? Only what he can destroy (*i.e.*, if he had not been commanded to do so he could not have been able to destroy a thing given by God). R. Meir infers it from the following passage: "Which thou hast broken"; it really means, "which thou didst break rightfully" (see Sabbath, p. 165).]

Also Hezekiah, King of Judah, did four things of his own volition which were in accordance with the will of the Lord (see Pesachim, p. 99 in the Mishna): "And Hezekiah prospered in all his works" [II Chron. xxxii. 30].

What is the safeguard that Job made to his words? (Let us see), it is written [Job i. 1]: "And this man was perfect and upright, and fearing God, and eschewing evil." We learn therefrom that job kept aloof from anything that led to sin, from abomination and from what is equal to it. It may be asked [if it is so, are not the terms "perfect" and "upright" superfluous? (the words "fearing God" and "eschewing evil," are they not sufficient)? Infer from this that the term "perfect" means that he was born circumcised. Adam the first man also came forth circumcised, as it is written [Gen. i. 27]: "And God created man in his image." Also Seth was so born, as it is written [ibid. v. 3]: "And begat a son in his likeness, after his image." Noah, too, was born circumcised, as [ibid. vi. 9] the term "perfect" was used in reference to Noah. Shem was also so born, as it is written [ibid. xiv. 19]: "And Malkizedek, king of Salem." [1] Jacob the patriarch was also so born, as the appellation "perfect" was also applied to him [ibid. xxv. 27]. And Joseph was also so born, as it is written [ibid. xxxvii. 2]: "These are the generations of Jacob: Joseph." It ought to be the generation of Jacob: Reuben (as he was the first-born).

[paragraph continues] Why is it Joseph? Infer from this, that as Jacob was born circumcised, so also was Joseph. And Moses was born circumcised, as it is written [Ex. ii. 2]: "And when she saw him, that he was a goodly child." What good could his mother see in him? Was he then more

beautiful than all mankind? Say, then, he was born circumcised. Also Balaam the wicked was born circumcised, as it is written [Numb. xxiv. 4]: "Thus saith he who heareth the sayings of God." (According to the tradition of the Talmudists, one who is not circumcised could not hear the words of God, and as Balaam was a Gentile, and not circumcised by his parents, and yet he heard the words of God, consequently he must have been born circumcised.) Samuel was also born so, as he is also graced with the appellation *good* [I Sam. ii. 26]. David was also born so, traditionally, as (the support from Ps. xvi. 1 does not imply anything). Also Jeremiah was born circumcised, as it is written [Jer. i. 5]: "Before yet I had formed thee in thy mother's body I knew thee, and before thou wast yet come forth out of the womb I *sanctified* thee." Also Zerubabel was born so, as it is written [Haggai, ii. 23]: "On that day, saith the Lord of hosts, *will I take thee*, O Zerubabel, the son of Shealtiel, *my servant*."] And he (Job) said [Job xxxi. 1]: "A covenant have I made with my eyes: how then should I fix my looks on a virgin?" Infer from this that job was so scrupulous with himself that he did not even look at a virgin. This is to be made an *a fortiori* conclusion--namely, if a virgin whom he could marry himself, or to his son, brother, or relatives was not looked upon by him because he was so rigorous with himself, so much the more did he refrain from looking at a married woman. But what was the reason that Job was so rigorous with himself as regards looking at a virgin? Because he thought, if I look at her to-day (and like her) and to-morrow she marries some one else, I will have looked on (and liked) a married woman.

What safeguard have the prophets made to their words? It is written [Is. xlii. 13]: "The Lord--as a mighty one will he go forth, like a man of war will he arouse his vengeance: he will shout, yea, raise the war-cry." Is then the Lord as one mighty one? Is He not stronger than all the mighty ones of the world put together? The same is in Amos [iii. 8]: "The lion hath roared, who will not fear? the Lord Eternal hath spoken, who will not prophesy?" Is then the voice of the Lord equal to one lion--is it not as of all the lions of the whole world put

together? The same meaning is conveyed by the following passage [Ezek. xliii. 2]: "Behold, the glory of the God of Israel came from the way of the east; and his voice was like a noise of many waters; and the earth gave light from his glory." (Now let us see. We know from a tradition that the words) "like a noise of many waters" mean the angel Gabriel; and by "the earth gave light," etc., is meant the appearance of the Shekhina. Is not here an *a fortiori* conclusion to be drawn? Gabriel, who is only one of the thousands of millions of servants who minister before the Lord, if *his* voice reached from one end of the world to the other, so much the more would that of the King of kings, the Holy One, blessed be He, who has created the universe, who has created the higher and the lower; but the reason why the prophets spake so is, that only such things are mentioned that the eye of a human being can see, and only such things are written that the car of a human being can hear.

What was the safeguard that the Hagiographers made to their words? It is written [Prov. v. 8]: "Remove far from her thy way and come not nigh to the door of her house." "Remove far from her thy way" means heresy against which one is warned. Lest one say, I have confidence in myself and I am sure that it would not influence me, therefore it is written [Ps. ii. 19]: "All that come unto her return not again, and they will not reach the paths of life." [It is written [ibid. ix. 2]: "She hath killed her cattle, she hath mingled her wine; she hath also set in order her table." This refers to the: wicked. When one goes away with them, they give him food and drink, they clothe and cover him, and give him plenty of money; but as soon as he becomes one of them,

each one recognizes what belonged to him and takes it away from him. Concerning them it is written [ibid. vii. 23]: "Till an arrow cleaveth through his liver, as a bird hasteneth into the snare, and knoweth not that it is done to take his life."]

Another explanation to the above passage is this: "Remove far from her thy way" refers to a harlot. When one is warned not to go in this market, and not to enter into that alley, as there is a celebrated and much-spoken-of harlot, and he says, I have confidence in myself even though I go there I would not be seduced by her; nevertheless they must say to him, Go not, for after all thou canst be seduced by her. Did not our sages say: "A man shall not be in the habit of passing by the door of a harlot, for it is written [ibid. vii. 26]: 'For many deadly

wounded hath she caused to fall: yea, very numerous are all those slain by her'"?

What is the safeguard that the sages made to their words? *e.g.*, the reading of Shema (see Berachoth), and so also have the latter sages made a safeguard to their words; and they have multiplied disciples who did the same thing. As to this, however, the schools of Shammai and Hillel differ. The School of Shammai maintain that one shall teach only those who are wise, modest, rich, and come from a good family; the School of Hillel, however, hold that one may teach every one, as there were many transgressors in Israel, and after they had become upright, pious, and righteous men, engaged in the study of the Law, they had the good fortune that from them descended men of uprightness, piety, and righteousness.

Tosephtha--Aboth of R. Nathan.

[1]R. Aqiba said: "Whoever takes a coin from the fund intended for charity to the poor when he is not in need of it, will not die before he will really be in need of assistance." [2] He used to say: One that bandages his eyes or his shoulders, and says: "Give charity to the blind or to the leper," will in the end speak the truth-that is, he will be such. He also said: One that throws his bread on the ground, or scatters his money in his anger, will not die before he will be in actual need of assistance. He said again: One that tears his garments or breaks his vessels in his wrath, will eventually worship idols, for this is the way of the evil thoughts: to-day they urge him to tear his garments, and to-morrow they will advise him to worship idols. And again: One that is desirous that his wife shall die in order to inherit her property, or to marry her sister, or one who is desirous that his brother shall die in order to marry his wife, in the end will be buried by them. Regarding such it is written [Eccl. x. 8]: "He that diggeth a pit will fall into it; and him who breaketh down a fence, a serpent will bite him."

(Here follows a repetition of a Mishna in Baba Kama, which, according to our method, we have omitted.)

[paragraph continues] R. Dostai b. Janai said: Though thou hast chosen and sown in the first quarter, sow also in the second: perhaps a hail might destroy the first, but the second will be preserved; for thou knowest not which will succeed, whether this or that, or both may be preserved, and both of them will be alike good, as it is written [Eccl. xi. 6]: "In the morning sow thy seed, and

in the evening let not thy hand rest." And even though thou hast sown in the first and second quarters, do not neglect to do so also in the third, as it may happen that a blast might destroy the first, but the latter will be preserved, as is said in the passage just mentioned.

R. Ishmael b. R. Jose said: The above passage refers to study, thus: Study the Law in thy old age, even if thou hast studied it in thy youth. Do not say: "I do not want to study when I am aged"; but study it always, because thou knowest not which will succeed. If thou hast studied the Law in years of plenty, do not count it for the years of famine. The study during times of ease does not count for those of distress, because one thing done in distress is better than a hundred in ease, as it is written [ibid.]: "In the morning sow thy seed, and in the evening let not thy hand rest." R. Aqiba also said the same.

R. Meir said: When thou hast studied under one master, say not: "It is enough," but go and study under another; yet do not go to all of them, but only to those who were near to the Law from the start (meaning a scholar from a scholarly house), as it is written [Ps. v. 15]: "Drink water out of thy own cistern, and running water out of thy own well."

It is a duty to study under three masters, such as R. Eliezer, R. Joshua, and R. Aqiba, as it is written [Ps. viii. 34]: "Happy is the man that hearkeneth unto me, waiting day by day at my gates, waiting at the posts of my doors." 1 Because thou canst not know which master's teaching will remain with thee, or perhaps all are good, as may be learned from the above-mentioned passage.

R. Joshua said: "The same passage applies also to this: Marry a woman in thy youth; marry one also (if need be) when you are old; beget children in thy youth, and do so also in thy old age. Do not say, I will not marry again as I have children, but marry and beget more children, as you do not know which of them will be the good."

He used also to say: "If thou hast given a coin to a poor man in the morning, and another one begs of you in the evening, give him also, as thou knowest not whether both will be benefited by thy donation, and whether both are alike deserving, as it is written: "In the morning sow thy seed." 1

It happened that a pious man who used to spend much in charity, while aboard a ship encountered a great storm, and the ship foundered. R. Aqiba saw him go down, and came to testify before the court in order that his wife might marry again. Before the court adjourned, the man came and stood before them. Said R. Aqiba to him: "Did you not sink into the sea?" He answered: "Yea." "And who brought thee out of the sea?" R. Aqiba asked again. He answered: "The charities that I have given have saved me from the sea." "Whence dost thou know this?" He said: "When I went down in the deep, I heard the noise of the waves. It seemed to me that they said to each other: This man has done charity all his days (and they actually threw me on land)." R. Aqiba then arose and said: Blessed be the Lord the God of Israel, who has chosen the words of the Torah and the words of the sages, for they are preserved everlastingly. As it is written [Eccl. xi. 1]: "Cast thy bread upon the face of the waters; for after many days wilt thou find it again." It is written again [Prov. x. 2]: "And charity will deliver from death."

It happened that to Benjamin the upright, who was the treasurer of charities, there came a woman and asked for food. He said: "I assure you that the treasury is empty." She said: "Rabbi, if thou wilt not help me, thou wilt kill a widow and her seven children." He then fed them at his own expense. Years afterward Benjamin the upright fell ill, and he suffered very much on his sick-bed. Said the angels before the Holy One, blessed be He: "Lord of the Universe, Thou hast said: He who preserves one soul of Israel is regarded (by Scripture) as if he preserved an entire world. Benjamin the upright, who has preserved a widow and seven children, (is entitled) so much more to such consideration, yet he is pining on the couch. of a painful disease." They implored the mercy of God in his behalf, and His decree was annulled, and twenty-two years were added to his life.

MISHNA *B*. Simeon the just was one of the remnants of the Great Assembly. His motto was: "The order of the world rests upon three things: on law, on worship, and on bestowal of favors."

Tosephtha--Aboth of R. Nathan.

[1]"*Upon the Torah*." How so? It is written [Hosea, vi. 6]: For piety I desired, and not sacrifice; and the knowledge of God more than burnt-offerings." Infer from this that the burnt-offering is more favored than ordinary sacrifices, because it is all burnt up in the fire, as it is written [Lev. i. 9]: "And the priest shall burn the whole on the altar," and elsewhere [I Sam. vii. 9]: "And Samuel took the sucking lamb and offered it for an entire burnt-offering unto the Lord." Yet the study of the Law is more acceptable in the sight of the Lord than burnt-offerings, because he who is studying the Torah knows the will of the Lord, as it is written [Prov. ii. 5]: "Then wilt thou understand the fear of the Lord, and the knowledge of God wilt thou find." From this it may be inferred that when a sage lectures to the public it is accounted to him in Scripture as if sacrificing fat and blood upon the altar.

Two scholars studying together, when a bride or a bier carrying a corpse passes before them, must observe the following rule: If the bride has all she needs to feel that she is such, and if the dead has all that is needed for decent burial, the students shall not interrupt themselves; but if such be not the case, let them suspend their study and go to add to the joy of the bride and to do honor to the dead. [It happened that a wedding procession passed by while R. Tarphon was studying with his disciples, and he directed that the bride be brought up to his house, and he told his mother and his wife to wash, anoint, and ornament her, and to dance for her until she should reach her groom. According to Elias Wilna.]

It also happened that, while R. Judah b. Ilai was teaching his disciples, a wedding procession, which had not sufficient followers, passed by, and he with his disciples took part in the procession until the bride passed.

It happened again that while the same was engaged in teaching his disciples, a bridal party passed by. He asked: "What is

that and they answered: "A bridal party." He then said: "My sons, arise, evince your interest in

the bride." So we find that the Holy One, blessed be He, bestowed His favor upon a bride, as it is written [Gen. ii. 22]: "And the Lord God *formed* the rib." And in the cities by the sea a bride is called *Beniatha*, "the *formed* one." If He has done so, how much more reason is there for us so to do? Infer from this that the Lord formed Eve and ornamented her like a bride, and brought her to Adam, as it is written [ibid.]: "And brought her unto Adam." Only once has the Lord become a mediator to Adam; henceforward man must procure a mediator for himself, as it is written [ibid., ibid. 23]: "Bone of my bones, and flesh of my flesh." Once only was Eve formed out of Adam; henceforward man betroths the daughter of his fellowman.

"*On service*." How so? As long as the service of the Temple existed, the world was blessed for the sake of its inhabitants, and the rain came down in due season, as it is written [Deut. xi. 13, 14]: "I love the Lord your God, and to serve him . . . that I will send rain for your land in due season." But when the service of the Temple ceased, the inhabitants were not blessed, and the rain did not come down in due time, as it is written [ibid., ibid. 16]: "Take heed to yourselves that your heart be not deceived . . . and he will shut up the heavens that there be no rain." Also Haggai said [ii. 15, 16]: "Direct, I pray you, your heart from this day and upward, before the time that a stone was laid upon a stone in the temple of the Lord: since those days were, when one came to a heap of sheaves of twenty (in number), and there were but ten; when he came to the wine-press to draw off fifty measures out of the vat, and there were but twenty." [Why was it not said of the wine-press also "twenty, and there were but ten," the same as of the wheat? Because the wine-press is a better sign than the wheat. There is a tradition that when the vine is spoiled it is a bad sign for the current year.]

Said the Israelites before the Holy One, blessed be He: "Lord of the Universe, why hast Thou done thus to us?" The Holy Spirit answered: "Ye looked for much, and, lo, it came to be little, . . . because of my house that lieth in ruins, while ye ran every man unto his own house" [Haggai, i. 9]. "If ye will employ yourselves with the service of the Temple, I will bless ye as heretofore," as it is written [ibid. ii. 18, 19]: "Direct, I pray, your heart . . . from the four and

twentieth day of the ninth month, even from the day that the foundation of the Lord's temple was laid. . . . Is the seed yet in the barn? Yea, as yet the wine, and the fig-tree, and the pomegranate, and the olive-tree have not brought forth; (but) from this day will I bless you." Infer from this that there is no service which is favored by the Lord more than the Temple service.

"*Upon bestowal of favors*." How so? It is written [Hosea, vi. 6]: "For kindness I desired, and not sacrifice." Moreover, at the beginning the world was created with kindness, as it is written [Ps. lxxxix. 3]: "To eternity will kindness be built up (*e.g.*, the world is built up with kindness), the heavens--yea, in these wilt thou establish thy faithfulness."

R. Johanan b. Zakkai once went out of Jerusalem, followed by R. Joshua, and seeing the destroyed Temple, R. Joshua said: "Woe to us, that this is destroyed, the only place where the sins of the Israelites were atoned!" R. Johanan corrected him, saying: "My son, do not grieve over it. We have other means of atonement as effective--namely, bestowal of favors, as it is written [Hosea, vi. 6]: 'For kindness I desired, and not sacrifice.' As we find with Daniel, who was occupied in doing good. And what good did he do? He certainly did not sacrifice burnt-offerings and voluntary offerings, as he was in Babylon, and with regard to the place of

sacrifice, it is written [Deut. xii. 13, 14]: 'Take heed to thyself that thou offer not thy burnt-offering in every place which thou mayest see; but in the place which the Lord will choose in one of thy tribes, there shalt thou offer thy burnt-offerings.' What good, then, did he do? He rejoiced with people in their joy, he wept with them in their sorrow, he helped and cheered poor brides, he honored the dead by following them to the last resting-place, he gave material aid to the needy, and prayed three times every day, and his prayers were received with favor, as it is written [Dan. vi. 11]: 'And three times every day he kneeled upon his knees, and prayed, and offered thanks before his God,' etc."

When Vespasian came to destroy Jerusalem, he said to the inhabitants: "Fools, wherefore do ye seek to destroy this city and to burn the Temple? All I want of you is to send me a bow or an arrow--*i.e.*, to acknowledge my dominion over you. I will leave you in peace." They, however, said: "just as we killed the two who came before thee, so will it be with thee." When R. Johanan b. Zakkai heard this, he invited the leaders of

[paragraph continues] Jerusalem to a conference, and said unto them: "My sons, why should you occasion the destruction of the city and insist upon it, as it were, that the Temple be burnt? All the enemy wants is that you send to him a bow or an arrow, and is willing on that condition to depart." But they answered him in the manner they answered Vespasian. The latter had spies within the walls of Jerusalem, and whatever they heard they wrote upon an arrow and threw it outside the wall. In this manner Vespasian learned that R. Johanan b. Zakkai was friendly to Cæsar (and so he really was, and confessed it frankly to the leaders of Jerusalem). When R. Johanan b. Zakkai saw that his efforts during several days in succession to win the leaders for peace proved futile, for the leaders did not listen to him, he sent for his disciples, R. Eliezer and R. Joshua, and said: "My sons, try to take me out of here. Make me a coffin, and I will sleep in it." They did so, and R. Eliezer held the coffin by one end, and R. Joshua held it by the other, and thus carried him at sunset to the gates of Jerusalem. When the gate-keepers asked them whom they had there, they answered: "A corpse; and you know that a corpse cannot remain in Jerusalem over night." They were allowed to go, and they carried him till they came to Vespasian. There they opened the coffin, and he arose and introduced himself to Vespasian, who said: "Since thou art the Rabban Johanan b. Zakkai, I give thee the privilege to ask a favor of me." He answered: "I request nothing but that the city of Jamnia shall be free to me to instruct there my disciples. I will build there a prayer-house, and will perform all the commandments of the Lord." Hereupon Vespasian said: "It is well. Thou mayest go thither, and undisturbed carry out the object of thy desire." R. Johanan b. Zakkai then asked permission to say something to Vespasian. This having been granted, he said: "I can assure you that you will become a king." "How dost thou know it?" He answered: "We have a tradition that the Temple will not be delivered to a common man (in the name of the king), but to the king himself." As it is written [Is. x. 34]: "And he will cut down the thickets of the forest with iron, and the Lebanon shall fall by (means of) a mighty one." [1] It was said that scarcely had a few days elapsed when a messenger came from the city of Rome with the tidings that Cæsar was dead, and the resolution was adopted that Vespasian be his successor.

At the time when Jerusalem was taken, R. Johanan b. Zakkai, with a trembling heart, was sitting and watching as Eli did, as it is written [I Sam. iv, 13]: "Lo, Eli was sitting upon a chair by the

wayside, watching; for his heart was anxious for the ark of God." When he heard that Jerusalem was destroyed and the Temple burnt, he and his disciples tore their garments, wept, cried, lamented, and said: "Open thy doors, O Lebanon!" [Zech. xi. 1]--that is, the Temple; "and the fire shall eat on thy cedars"--that is, the priests of the Temple, who took the keys and threw them up high and said, before the Holy One, blessed be He: "Lord of the Universe, here are the keys which thou hast intrusted us with, as we were no faithful treasurers and we are no longer worthy to do the work of the King and to eat at his table."

Abraham, Isaac, and Jacob, and the twelve tribes all wept, cried, lamented, and said [ibid. 2, 3]: "Wail, fir-tree, for fallen is the cedar; those that were mighty are despoiled," etc. "Wail, fir-tree, for fallen is the cedar"--that is, the Temple; "those that were mighty are despoiled," applies to Abraham, Isaac, Jacob and his twelve sons. "Wail, O ye oaks of Bashan"--that is, Moses, Aaron, and Miriam; "for the impervious forest is come down"--that is, the Holy of Holies; "the noise of the wailing of the shepherds, for wasted is their glory"--that is, David and Solomon his son; "the noise of the roaring of young lions, for wasted is the pride of the Jordan"--that is, Elijah and Elisha.

In three things has the Holy One, blessed be he, made mankind differ one from the other: in voice, behavior, and features. "In voice": for what purpose?, The Holy One, blessed be He, has varied the voices of mankind one from the other, to prevent the generations from adultery; because if it would not be so, when a man would leave his house, some one else might come in (in the night time) and do violence to his wife; but as the voices are different, she could recognize that of her husband.

"In behavior": for what purpose? The Holy One, blessed be He, has varied the behavior of mankind one from another, to prevent jealousy; if not so, mankind would be jealous of each other; therefore the behavior of one is different from that of another. "In features": for what purpose? The Holy One, blessed be He, has varied the features of mankind that the women might recognize their husbands, and the men their wives, otherwise all would be mixed up.

MISHNA *C*. Antigonus of Socho, who received it from Simeon the just, was in the habit of saying: "Be not like slaves who serve their master for the sake of the compensation; be like such servants as labor for their master without reward; and let the fear of Heaven be upon you."

Tosephtha--Aboth of R. Nathan.

1 "*The fear of God shall be upon you, that your reward may be double in the world to come*." Antigonus from Socho had two disciples, who were studying his words. They communicated them to their disciples, and they in turn to theirs, who sought the reason which prompted the sage to make such an utterance. "Wherefore," they asked, "have our ancestors said such a thing? Is it possible that a laborer will work all day, and not expect to be rewarded in the evening?" What if they had known that there is a hereafter, and that there will be a resurrection? They would in that case not have expressed themselves in that manner. The result was, that these disciples deviated from the path of the Torah, and formed two new schools with exclusively worldly tendencies, that of the Sadducees and that of the Baitusees: Sadducces--because the name of the founder of their school was Zadok; and Baitusees--because the name of the founder

of their school was Baitus. They surrounded themselves with pomp and the brilliancy of shining metals, gold and silver, not so much for the delight and pleasure which they derived from those things as to spite the Pharisees, who deprived themselves of enjoyment here, in order to inherit the world to come, which in their opinion was a mere delusion.

MISHNA D. Jose b. Joezer of Zereda and Jose b. Johanan of Jerusalem received from them. Jose b. Joezer used to say: "Let thy house be the meeting place of the wise; sit gladly at their feet, and drink in their words with avidity."

Tosephtha--Aboth of R. Nathan.

2"*Thy house shall be the meeting-place for the wise*." What does this mean? That the house should be for the use of

scholars, their disciples and their disciples, in the sense that one man says to the other: "I shall wait for you at that place." Another explanation of that phrase is this: If a scholar comes to thee for the purpose of being instructed by thee, and thou art able to comply with his wish, do so; if thou art not able to teach him, dismiss him at once. Neither shall he sit before thee on the bed, chair, or bench, but on the floor; and every word that thou utterest he shall receive with awe, terror, fear, and trembling.

"*Sit gladly at their feet*." It means that when a renowned scholar comes to the city you shall not say: "I need him not," but go to him; and do not sit before him on the bed, chair, or bench, but con the floor; and every word that comes from his lips, receive with awe, terror, fear, and trembling, for so our ancestors received the Torah from Mount Sinai. According to another explanation the words: "Sit gladly at their feet," are referred to Rabbi Eliezer, and the words: "Drink their words as a thirsty man drinks water," are referred to Rabbi Aqiba.

For how did R. Aqiba begin his wonderful career? (Was it not in the manner hinted in the above words?) It has been said that when he was forty years old he had not learned yet anything. (At that age, however, he conceived the idea of applying himself to study.) It once happened that, standing at a well, he asked: "Who has made that hollow in the stone?" The people whom he asked answered: "The water which continuously, day after day, falls upon it." They also said (by way of reproach): "O Aqiba, it is strange that thou knowest not the passage in Scripture which reads: 'Water weareth out stones'", [Job, xiv. 19]. Aqiba then drew an *a fortiori* conclusion. He said: "If the soft has so much power over the hard as to bore it (water over stone), how much more power will the Torah, the words of which are as hard as iron, have over my heart, which is flesh and blood?" He at once turned to the study of the Law. He and his son 1 went to a school where children were instructed, and addressed one of the teachers: "Master, teach me Torah." Aqiba and his son took hold of the slate, and the teacher wrote upon it the alphabet, and he quickly learned it; and then wrote it in the reversed order, and learned as fast; then he learned the Book of Leviticus, and proceeded from one book to the other,

until he finished the study of the Bible. He then sat down at the feet of R. Eliezer and R. Joshua,

and said: "Masters, I beg of you to open to me the underlying principal Mishnayoth." As soon as they recited one Halakha to him, he went away; and, contemplating what they had told him, a new realm of thought was open to him. He saw that there must be a reason why this thing was written here; why this thing was written there, and why this thing has been said so and not otherwise, and why it has been said at all. He went back to his masters questioning, and made them rise and deliberate.

Rabbi Simeon b. Elazar said: I shall illustrate this point with the following parable: A stone-cutter who was doing his work in the mountains was once seen standing upon a rocky height, knocking off small pieces thereof. "What art thou doing?" people asked him. His answer was: "I am trying to uproot this mountain and throw it into the Jordan." They laughed at him. He, however, continued his work; knocked off piece after piece, and when he had reduced the mountain to a big rock, he planted himself against it, and pushed and pushed until he had uprooted the rock, and then threw it into the Jordan, saying: "This is not thy place, that one is." So has R. Aqiba done too, with R. Eliezer and R. Joshua (he compelled them to improve and to rectify their method).

Said R. Tarphon to him: Aqiba, to thee applies the following passage [Job, xxviii. 11]: "The various droppings of water he uniteth into streams, and what is hidden he bringeth forth to light." Things which were hidden from mankind, R. Aqiba brought forth to light.

Every day during the entire time of his learning he used to cut a bundle of straw, half of which he would sell for his needs and the other half he used for light. His neighbors murmured, saying: "Aqiba, thou greatly dost annoy us with the smoke; rather sell it to us, and buy oil with the money and study by its light." He answered them: "The straw supplies me with many things: first, it gives me light for studying; secondly, I warm myself by its flame; and, thirdly, I make my bed on it when I go to sleep."

In the world to come, R. Aqiba will be a menace to the poor who have neglected study. [1] When they will be questioned why

they had not studied the Law, and they shall answer because they were poor and had to work for a livelihood, then R. Aqiba will be held up to them as one who was also poor and wearied, and yet did study; and if they should say because of their little children, again R. Aqiba a will be pointed to, who had many sons and daughters, and yet supported them and his wife Rachel. At the age of forty Rabbi Aqiba began his studies, and at the end of thirteen years he lectured in public. It was said that he did not leave this world until he had tables of gold and silver, and also golden step-ladders to ascend to his bed. His wife went out with an ornament of gold which represented Jerusalem "on her head; and when his disciples said to him: Rabbi, thou hast put us to shame by the profuse jewelry thy wife is wearing," he answered: "She has undergone much suffering, great troubles and privations, for the sake of my study."

Not less astonishing is the beginning of the literary career of Rabbi Eliezer. He was twenty-two years old when, for the first time, he felt a desire for study; and when he intimated to his father that his intention was to sit at the feet of R. Johanan b. Zakkai, his father Hyrcanus told him to plough a full Maanah (a piece of land) without eating anything. R. Eliezer got up early in the

morning and did the will of his father, but then left him. It is said that that day was Friday, and that he went in the evening to his father-in-law to eat. Others say that he did not eat at all, that he fasted from the sixth hour of the eve of Sabbath to the sixth hour from the expiration of Sabbath. On the road he saw something which looked to him like food--it is said that it was cow-dung--he picked it up and put it to his mouth. He continued his journey, and finally came to the place where R. Johanan b. Zakkai had his residence and his school. R. Eliezer remained over night at an hostelry in the neighborhood. In the morning he sat at the feet of the great sage, and whose attention he attracted by the offensive odor that came from his mouth. R. Johanan, attributing the bad smell to an empty stomach, said to him: "Hast thou eaten anything today?" R. Eliezer made no answer. Again the master put the same question to him, and again he was silent. His host was sent for, of whom the sage inquired whether Rabbi Eliezer partook of any food at his place. "No, he did not," the host said. "I did not offer him any food, thinking that he might eat with the Rabbi." "And I," the Rabbi said, "did not offer him any food, assuming that he had eaten at your place. But while

we are conversing Eliezer is starving." (Food was given to Eliezer, and then) Rabbi Johanan blessed Eliezer, and said unto him: "As thy offensive odor is the result of privation for the sake of study, may thy name shine forth with the glory of scholarship."

Hyrcanus was angry at his son for the course he had taken, and made up his mind to disgrace and disinherit him. But it came to the ears of R. Johanan what Hyrcanus resolved upon to do. It was the day when R. Johanan was lecturing to the great men in Israel that Hyrcanus meant to punish his disobedient son. And the Rabbi appointed watchmen, and advised them: "Should Hyrcanus come, do not allow him to enter the auditorium." They tried to carry out his instruction. But Hyrcanus managed to push himself through and to reach the seats of Ben Zizith Ha Kesseth, Nakdimon b. Gurion, and Calba Shebua, where he sat down with trembling. It is said that on that occasion R. Johanan threw glances of affection at Eliezer, and requested him to open an argument. Modestly did R. Eliezer attempt to decline the honor, saying that he did not know how to begin. But the master and his disciples prevailed, and Eliezer rose and discussed things in an astounding manner, and every subject he touched upon and elucidated pleased Rabbi Johanan to such an extent that he got up and kissed him on the forehead. But Rabbi Eliezer remarked: "Master, everything I said I have learned from thee." Before adjournment Hyrcanus, Eliezer's father, got up and said: "Masters, I had come here with the intention to disgrace my son Eliezer by disinheriting him; but now, however (after I have seen this), I say that all my properties shall be given to him, and his brother shall get none of them."

(It is mentioned that Hyrcanus took his seat by Zizith Ha Kesseth, etc., and is explained why he was so called; but as it is not completed here, the full explanation is given in Tract Gittin.)

Concerning Nakdimon b. Gurion, it was said that the bedding of his daughter was of the value of twelve thousand golden dinars from the city of Tyre, and a golden dinar of Tyre she used to spend for spicing the cookery for every week. She was a childless widow, and was waiting for her brother-in-law to marry her.

And why was he named Nakdimon? Because the sun hastened for his sake. (See Vol. VIII. of Section Moed, Tract Taanith, pp. 51, 52.)

Why was he called Calba Shebua? Because whoever entered, his house hungry as a dog, left satiated. 1 When Vespasian came to destroy Jerusalem, the zealous fanatics were going to burn all his wealth. Said he to them: "Wherefore are ye, destroying this city, and are going to burn my wealth? Wait until I find out what I have in my house." He found that he had food for twenty-two years, of which at least one meal a day could be had by each inhabitant of Jerusalem. He at once gave orders to thresh, to sift and to grind, to knead and to bake, and prepared food for twenty-two years for every one in Jerusalem, but they paid no attention to him. What did the Jerusalemites do? They brought the wagons, sawed them, and smeared them with clay. They also did more than this: they boiled straw and ate it, and every Israelite who took part in the war was placed on the city walls. Said one: If any one give me five dates, I will go down and bring back five heads of the enemy. He received five dates, and he went down and took five heads of Vespasian's men. When Vespasian observed their excrement, and found there was nothing cereal in it, he said to his army: "If those who eat nothing but straw are still slaughtering so many of you, if they would eat and drink as you do, how many more of you would they have killed?

MISHNA *E*. Jose b. Johanan of Jerusalem was in the habit of saying: "Let thy house be so wide open that the poor may enter it as were they inmates there; and do not hold too much discourse with woman." The sages have cautioned against talking too much with one's own wife. An inference can then be made with regard to talking with the wife of a neighbor. Hence the wise man said The man who does talk overmuch with woman causes evil unto himself, makes himself insusceptive of the words of the Thora, and in the end will be an heir to Gehenna."

Tosephtha--Aboth of R. Nathan.

2 "*Thy house should be wide open*." This means that one's house should be wide open south, east, west, and north, as was

the house of Job, which had four entrances made, so that the poor should not have the trouble of walking around the house looking for the entrance, but should find it whichever way they came without any difficulty.

"*As were they inmates there*" [literally: "The poor shall be of thy household"]. It is not meant that the people of thy house shall be poor, but that the poor shall speak of what they ate and what they drank in thy house as they used to tell what they ate and drank in the house of Job. And when they met one another on the road, and asked, "Whence do you come?" the answer was: "From the house of Job." "Whereto are you going?" "To the house of Job." Job's house was in a measure the house of the poor.

When the great afflictions came upon job, he prayed before the Holy One, blessed be He: "Lord of the Universe, have I not fed the hungry and have I not given drink to the thirsty?" as it is written [Job, xxxi. 17]: "Or if ever I ate my bread alone and the fatherless did not eat thereof." "And have I not clothed the naked?" as it is written [ibid., ibid. 20]: "And if be have not been warmed with the fleece of my sheep." (Nevertheless I am so punished.) The Holy One, blessed

be He, answered him: job, as yet thou hast not reached one-half of the performances of Abraham. Thou sittest and waitest in thy house, and wayfarers enter. The one who is used to wheat-bread gets wheat-bread, one who is used to meat gets meat, one who is used to drink wine gets wine. Not so Abraham. He was in the habit of going out of his house to hunt up wayfarers, whom he brought under his roof, and entertained them in a better manner than they had been accustomed to. He offered wheat-bread, meat, and wine to those who at home lived on coarser food. Moreover, he built booths on the road and supplied them with refreshments, and those who entered ate and drank, and blessed God for it. He was favored by heaven, and all that the heart desired and the mouth asked for was to be found in Abraham's house, as it is written [Gen. xxi. 33]: "And Abraham planted an ••• (orchard) in Beer-Sheba. "(The letters of the word ••• are the initial letters of the words •••••,••••, ••••, eating, drinking, and accompanying. Hence the above statement.)

"*Teach thy household humility*." For if he is humble, the members of his household are also humble, and the consequence then is that if a poor man comes to the door and asks: "Is your

father at home?" they answer: "Yes, sir. Please walk in." As soon as he enters he finds a set table, and eats and drinks, and blesses heaven for the enjoyment afforded him." When, however, one is not humble, and the members of his household are irascible, the outcome then is that if a poor man asks: "Is your father at home?" they answer harshly: "No," and assail the poor man with angry and menacing words.

Others take the words: "Teach the members of thy household humility," to mean this: When a man is humble and the members of his household are also so, the result is that when he has to go away to countries on the other side of the sea, he says: "I thank thee, Lord my God, that my wife is at peace with her neighbors"; and so his mind is tranquil when he is away from home. But when one is not humble and the members of his household are irascible, it follows that when he has to go away to countries on the other side of the sea he has to pray: "May it be Thy will, Lord my God, that my wife shall not quarrel with her neighbors, and my children shall not quarrel among themselves"; his heart is always trembling and his mind is restless until he returns. It has been said: "And prolong not converse with a woman." It means not even with his own wife, much less with the wife of his neighbor; for he who holds much discourse with a woman causes evil to himself, neglects the teaching of the Law, and finally he is doomed to Gehenna.

Another explanation of the above saying is, that when one enters the house of learning and is not treated with the honor due to him, or has a quarrel with his neighbor, he should not inform his wife of what took place, for in informing her he disgraces himself, and so also his neighbor; and his wife, who has heretofore respected him, will now laugh at him. When his neighbor hears of this, he says: Woe to me, words which were strictly between him and me, he revealed to his wife. The consequence of this is that he degrades himself, his wife, and his neighbor.

MISHNA *F*. Joshua b. Pera'hia and Nithai the Arbelite received from them. The former used to say: "Get thee a wise teacher, acquire a comrade, and judge every one by his good qualities (*i.e.*, from his favorable side)."

[1]"Get thee a wise teacher." This means that one should procure a constant teacher of whom he should learn the Scripture, Mishna, Midrash, Halakhoth, and Agadoth. What he has left unexplained in the Scripture, he will finally explain in the Mishna, what is unexplained in the Mishna will be explained in the Halakha, and what is unexplained in the latter will be explained in the Agadah. The consequence of all this is, that one acquires all he desires in his own place and is full of blessings.

R. Meir used to say: One that learns the Torah of one teacher, may be compared to one who has one field, part of which he sowed with wheat and part with barley; in one part he planted olives, and in another fruit-trees. And so this man acquires wealth and blessings. The one, however, who studies under two or three masters is to be compared to one who has many fields: in one he sows wheat, in another barley; in one he plants olives, and in the other fruit-trees. And so this man has to go from place to place in many countries, and has no enjoyment of his wealth.

It is said: "Win a friend." How is a friend won? This is to teach us that a man has to acquire an associate with whom he should eat, drink, read, learn, and sleep; to whom he should reveal his secrets, the secrets of the Torah, and the secrets of every-day life. The good to accrue from such an intimacy is that, if one of them should blunder in the recital of a traditional law or in the division of chapters, or one should declare anything which is unclean as clean, and *vice versa*, and anything which is prohibited as permissible, and *vice versa*, his associate will correct him. How do we know that, if the associate really turns his attention to the mistake and sets him right, both will be rewarded greatly for their good endeavor? We learn it from the biblical passage which reads [Eccl. iv. 9]: "Two are better than one"; that is to say, the efforts of both will be crowned with success.

When three are sitting and studying the Law together, the Holy One, blessed be His name, accounts it to them as if they had formed a league for His praise, as it is written: "He that buildeth in the heavens his palace and established on earth his

tabernacle." From this passage thou art to learn that if three sit and study together it is accounted to them as if they constituted a league to glorify the Holy One, blessed be He.

When two persons are studying the Law together their reward will be received above, as it is written [Mal. iii. 16]: "Then conversed they that fear the Lord one with the other: and the Lord listened and heard it," etc. But what is meant by the words: "They that fear the Lord? That when they have made up their mind to redeem the captives and release the prisoners, and the Holy One, blessed be He, has given them the opportunity to do so, they embrace it at once. What is meant by the words: "And for those who think after his name"? [1] They whose thought of doing the above-mentioned great things never ripens into firm resolution, but are doubtful in the Lord whether they will succeed, and therefore the Lord gives them not the opportunity, and they are lost before doing anything they thought of doing. Also an individual who engages in the study of the Law, his reward is marked in Heaven, as it is written [Lam. iii. 28]: "That he sit in solitude because he hath laid it upon him." This is illustrated by the following anecdote: A man had a little son whom he left alone when he went to attend to some business. The boy, instead of

spending his time in play, took a scroll and spread it upon his knees, and thus he sat and studied. When his father returned and found his son in that commendable position, he joyfully said: "See what my little son has done! Left alone, he took to study of his own accord . Even so the Almighty regards an individual who is absorbed in holy thought. His reward is marked in Heaven.

"*Judge everyone from his favorable side*." It happened that a girl was led in captivity, and two pious men went to redeem her. One of them entered into a house of harlots. When he came out again, he said to his companion: "What were thy suspicions of me (when you saw me enter this house)?" He said: "I thought you went to investigate what sum her ransom would be." He answered: "I assure you that so it was. As thou hast judged me from my favorable side, so may the Lord judge thee in the same manner."

It happened, again, that a maiden was led into captivity, and two pious men went to redeem her. One of them was suspected

as a robber, and was confined in prison, and his wife brought him food and water every day. One day he asked her: "Go to my companion and tell him that I am in prison because I went to redeem the maiden in question, and he who intended to take part in it is doing nothing and pays no attention to her." She rejoined: "Thou art in prison, and thou think about foolish things?" She therefore did not listen to him. He again requested her to go and to notify his companion, and finally she did so. What did this man do? He took gold and silver, and, accompanied by other people, came and released them both. When he was released he said: "Let this maiden sleep with me [1] in bed with her clothes on." In the morning he said: "Let me go and dip (in a legal bath), and let her do the same." They did so. He then said to them: "Of what did ye suspect me when I went to dip myself?" They answered: "We thought that in all the days thou wast in prison thou wert hungry and thirsty, and now, when thou hast seen fresh air, thou hast grown hot and perhaps thou hast become *Keri*." "And what did ye suspect when she was dipped?" They answered: "We thought that in all the time that she was in prison among the idolaters, she was compelled to eat and drink with them, and you therefore ordered her to dip for the purpose of purification." He then rejoined: "I assure you such was the case, and as you have judged me favorably, so may the Lord judge you."

Not only were the upright people of former times themselves very strict and particular, but also their cattle were so. There is a tradition that the camels of Abraham our father never entered a place where there were idols, as it is written [Gen. xxiv. 31]: "While I have cleaned the house, and room for the camels." The first part of this passage relates that he cleared the house from Teraphim; but what is meant by the second part, which seems to be superfluous? Infer from this, that the camels did not enter the abode of Laban the Aramite until all the idols were cleared away.

It happened that the ass of R. Hanina b. Dosa was stolen by robbers. They tied him in the yard, and put straw, barley, and water before him; but he neither ate nor drank. They said then: "If we leave him here, he will die and infect the yard." Therefore they opened the gate and let him out, and he went on rejoicing until he reached the place of R. Hanina b. Dosa.

When the latter's son heard his voice, he said to his father: "Is not the voice of this ass similar to that of ours?" He rejoined: "My son, hasten to open the gate for him, or else he will die of hunger." He did so; he put food and water before him, and he fed and drank. Hence the above saying: "In former times the upright men were pious, so were their cattle."

MISHNA *G*. Nithai the Arbelite was accustomed to say: "Keep aloof from a wicked neighbor, associate not with a sinner, and never consider thyself exempt from God's chastisement."

Tosephtha--Aboth of R. Nathan.

1"*Keep aloof from a wicked neighbor*." This means any bad neighbor in the house, or outside, or in the field. "In the house," because plagues come only in the house of the wicked, as it is written [Prov. v. 22]: "His own iniquities will truly catch the wicked." Infer from this, that the plagues come only for the sins of the wicked. The sins of the wicked have caused the demolition of the wall of the upright. For instance, if leprosy breaks out on the wall of the house of the wicked, which is also the wall of the adjoining house of the upright, the entire wall must be demolished. Hence the wall of the upright is demolished for the sins of the wicked. That is what R. Ishmael, son of R. Johanan b. Brokah, said: "Woe to the wicked, and woe to his neighbors."

With ten trials have our ancestors tried the Holy One, blessed be He, but they were punished only for one of them, which is calumny. They are as follows: One at the sea, one at, the beginning of the manna period and one at the termination of it, one at the first and last appearance of quails, and at Marah, at Rephidim, one at Horeb, one on the occasion of the golden calf, and one when they sent spies. That of the spies was the hardest of all, as it is written [Numb. xiv. 22]: "And (they) have tempted me these ten times, and have not hearkened to my voice." It is also written [ibid., ibid. 37]: "Even those men that had brought up the evil report of the land died by the, plague before the Lord." From this is drawn an *a fortiori* conclusion:

[paragraph continues] If on account of the land, which has no mouth to talk with, no countenance and no shame, the Holy One, blessed be He, punished the spies who made it suffer, how much the more reason is there for the Holy One, blessed be He, to avenge the suffering of one who has been slandered and put to shame by his neighbor.

R. Simeon said: Slanderers are punished with plagues, for we find that Aaron and Miriam, who slandered Moses, were stricken with plagues, as it is written [ibid. xii. 1]: "And Miriam and Aaron spoke against Moses." Why is Miriam mentioned before Aaron? Infer from this, that Miriam made the beginning. (How so?) What she had heard from Zipporah [the wife of Moses] she told to Aaron, and they both spoke against this upright man; therefore plagues came upon them, as it is written [ibid. xii. 9]: "And the anger of the Lord was kindled against *them*, and he went away." For what purpose is it written: "and *he* went away"? To intimate that the anger was removed from Aaron, and placed upon Miriam, because Aaron did not go into such details of the matter as did Miriam; therefore she was punished more. Miriam said: "Although I have not separated myself from my husband, still the Lord has spoken to me." Aaron said: "The word of the Lord came to me, although I have not separated myself from my wife; and also to our

ancestors came the word of the Lord, although they were not separated from their wives; but he (Moses) who is too proud in his mind separated himself from his wife." Furthermore, they judged him not in his presence but in his absence, and by a mere supposition. From this draw an *a fortiori* conclusion: If Miriam, who had spoken against her brother (secretly), and not in his presence, was so severely punished, how much severer must be the punishment of a common person who speaks against his neighbor in his presence and shames him.

[At that time Aaron said to Moses: "Moses, my brother, dost thou think that the leprosy is placed on Miriam's flesh only, it is also on the flesh of our father Amram." This is to be compared to one who takes a live coal in his hand, and even if he keeps on turning it from one place to another, still every place it touches is blistered (and as Miriam is the flesh and blood of our father, the leprosy afflicts also his flesh), as it is written [ibid., ibid. 12]: "Let her not be as a dead-born child." At the same time, Aaron began to appease Moses, saying: "Moses, my brother, have we ever injured anybody in the world?" He

said: "No, you have not." "Now then," he said, "if we have,, not injured anybody else, how could we intend to do an injury to our own brother? But what can we do? Shall, through this error, our brotherly covenant be abolished, and our own sister be lost?" Then Moses made a circle, entered in it, and prayed for his sister and said: "I will not stir from here till she be healed," as it is written [ibid., ibid. 13]: "O God, do thou heal her, I beseech thee." The Holy One, blessed be He, then said to Moses: "If a human king would rebuke her, or her own father would do this to her, would she not be ashamed seven days? Now if I, who am the King of the kings of kings, rebuke her, were it not proper that she should be ashamed fourteen days? Yet for thy sake I will forgive her," as it is written [ibid., ibid. 14]: "If her father had spit in her face," etc.

"But the man Moses was very meek" [ibid., ibid. 3]. Shall we assume that he was meek, but not beautiful and praised? Is it not written [Ex. xl. 19]: "And he spread the tent over the tabernacle"? As the Tabernacle was ten ells in height, so was Moses. Shall we assume that he was as meek as the angels, since it is written [Numb. xii. 3]: "More so than any man"? Consider that man is said, but not angels. Perhaps you think that he would have been considered meek in the former generation. Mark that it is written [ibid.]: "Upon the face of the earth," implying only his own generation. [But what is meant by "he was meek"? . . . There are three kinds of leprous people: moist, dry, and *polypous* (ulcer in the nose), yet Moses was humbler than the afflicted.]

R. Simeon b. Elazar said: Leprosy comes also for the sin of slander, as we find in the case of Gehazi, who slandered his master, and was so punished, as it is written [II Kings, V. 27]: "May then the leprosy of Naaman cleave unto thee . . . and he went out from his presence a leper, (white) as snow."

He also used to say that leprosy came upon those who were haughty, for so we find in the case of Uzziyahu, as it is written [II Chron. xxvi. 16-19]: "His heart was lifted up to his destruction, unfaithful against the Lord his God, and went into the temple of the Lord to burn incense upon the altar of incense. And there went in after him . . . the leprosy even broke out on his forehead." At this time the Temple was split for a distance of twelve square miles, and the priests hurried out. "And he also made haste to go out, because the Lord had afflicted him. And he was a leper until the day of his death, and dwelt

in the leper-house as such; for he was excluded from the house of the Lord, and Jotham his son was over the king's house, (and) judged the people of the land" [ibid. 20, 21].

"*And thou shalt not associate with a sinner*." By this is meant, that one should not attach himself to a bad or wicked man, as we find with King Jehoshaphat, who became attached to Ahab and went up with him to Ramoth-Gilead, and there was a wrath over him from before the Lord. The same was the case when be became a party to King Ahazyahu, with whom he made ships in 'Ezyon-geber, which the Lord broke down, as it is written [II Chron. xx. 37]: "Because thou hast connected thyself with Ahazyahu, the Lord hath broken down thy work. And the ships were wrecked." And so we find with Amnon, who associated with Jonadab, and received from him wicked advice, as it is written [II Sam. xiii. 3]: "But Amnon had a friend whose name was Jonadab, the son of Shim'ah, David's brother; and Jonadab was a very sensible man--sensible in wickedness, as it is written [Jer. iv. 22]: "Wise are they to do evil." According to others, it is meant that one shall not associate with the wicked, even to study the Torah.

"*Do not consider thyself exempt from God's chastisement*." How so? One should always fear in his heart every day lest affliction come on him to-day or to-morrow, for thus it is written about Job [Job, iii. 25]: "What I greatly dreaded," etc. Another explanation of it is: If one sees that he is successful in all that he undertakes, he should not say: "I deserve it all; the Lord gives me food and drink (as interest), and the principal remains for the world to come"; but he shall be afraid and think: "Perhaps I possess but one desert and all the reward for it is given to me in this world, so that I have no claim in the world to come."

MISHNA *H*. Jehudah b. Tobai and Simeon b. Shata'h received from them. The former was wont to say: "Make not thyself as those that predispose the judges, [1] and while the litigants stand before thee let them be in thine eyes as guilty; and when dismissed from before thee let them

be in thine eyes as righteous, because that they have received the verdict upon them."

Simeon b. Shata'h used to say: "Interrogate the witnesses very closely, and be careful with thy words, lest they be put by them on the track of falsehood."

Tosephtha--Aboth of R. Nathan.

[1]"*Make thyself not as those that predispose the judges*." Learn from this, that when entering a college and hearing there a saying or a Halakha, thou shalt not be hasty in answering, but sit and think over the reason why they have said so [and from what sources they derived such judgment; also investigate about which Halakha they were questioned, and also consider the time when it happened]. When two litigants come before thee for judgment, one of whom is poor and the other rich, say not: "How shall I declare the poor innocent, and the rich guilty, or *vice versa*? If I declare one of them guilty, he will become my enemy"; neither say: How shall I take away one's money and give it to the other? for the Torah said [Deut. i. 17]: "Ye shall not

respect persons in judgment."

According to others, for what purpose is the following passage written: "The small as well as the great shall ye hear" [ibid.]? That means that both litigants shall receive the same treatment: one shall not be allowed to sit down while the other is standing, or one shall not be allowed to plead at length while the other shall be directed to be short in his pleading.

Said R. Jehudah: "I have heard say that it is not forbidden to have *both* litigants sit down (at the hearing), but what *is* forbidden is, to allow *one* to sit down while the other *one* is directed to be standing," etc. From the above passage is to be inferred that the treatment must be alike, even if one of the litigants is a great man. The case of a common man shall be as carefully considered as that of a great man. The lawsuit of a very small amount shall receive the attention of a lawsuit of a great sum of money.

He also used to say: Whoever would have told me before I had entered this great position, "Enter," I would have challenged him, and now that I am the incumbent hereof, should anybody dare to tell me to abandon it, I would be of a mind to

throw at his head a kettle of boiling water, for there is a difficulty in the ascent, but when one has reached the top, it is as hard for him to descend. So we find it was with Saul, that when he was told to ascend the throne he hid himself, as it is written [I Sam. X. 22]: "And the Lord said, Behold, be hath hidden himself among the vessels"; but when told to give up the crown, he followed David even to take his life.

Simeon b. Shata'h said: Examine the witnesses very closely, but while thou art so doing, be careful with thy words on account of the deceivers. Thy words may give them the clue to lying.

MISHNA *I*. Shemayah and Abtalion received from them. The former was in the habit of saying: "Love work and hate to attain superiority, and see to it that your name be not known to the government." [1]

Tosephtha--Aboth of R. Nathan.

[2]"*Love work*." How so? That is, one should love work; at all events, he ought not to hate it, for as the Torah was given in a covenant, so was labor, as it is written [Ex. xx. 9, 10]: "Six days shalt thou labor, and do all thy work, but the seventh day is the Sabbath in honor of the Lord thy God."

Said R. Aqiba: There comes a time when one does his work, and thereby escapes death; and on the other band there comes a time when one does no work, and incurs the penalty of death by heaven. How so? One who is idle the whole week and has nothing to eat on the eve of Sabbath, but having in his possession consecrated money misappropriates it for his own use, incurs the penalty of death by heaven; but if he was making repairs in the Temple, and is paid with consecrated money and uses it, he escapes the death penalty.

R. Dostai said: "How can it happen that one who did no work all the six days shall finally be compelled to labor all seven days? Strange as this appears, yet it may happen. For instance, a man who did no work during the week, Friday comes

and he has nothing to eat. He starts to look for work, but is seized by conscription officers, who, holding him by an iron chain, compel him to make up on Sabbath for what he neglected during the six days."

R. Simeon b. Elazar said: Even Adam the First tasted nothing before he performed some work, as it is written [Gen. ii. 15]: "And put him into the garden of Eden, to, till it and to keep it"; and afterward he was commanded: "Of every tree in the garden thou mayest freely eat" [ibid., ibid. 16].

R. Tarphon said: Even the Holy One, blessed be He, rested not His Shekhina in the midst of Israel before some work was performed by them, as them is; written [Ex. xxv. 9]: "And they shall *make* me a sanctuary; and I will dwell in the midst of them."

Rabbi Jehudah b. Bathyra said: What shall one do who is without work? (Let him seek it, and he will find it.) Let him see whether there is no demolition in his Yard or field, and employ himself in that manner, as it is written [ibid. xx. 9]: "Six days shalt thou labor, and do all thy work." Wherefore is it said, "And do all thy work"? R. Tarphon said: One is doomed to death only through idleness. R. Jose the Galilean explained (the saying of R.. Tarphon) thus: If one through idleness stood upon the edge of a roof, castle, or building, or upon the edge of a river and fell down and died, his death was caused through idleness.

R. Nathan said: Moses worked at the Tabernacle without consulting the princes of Israel, who right along thought that at any moment he might solicit their coöperation. When they heard the voice which went throughout the camp proclaiming that the material prepared was sufficient for all the work, they cried: "Woe to us, that we have not participated in the work of the holy Tabernacle." They, therefore, rose and added a great thing of their own accord, as it is written [Ex. xxxv. 27]: And the princes brought the onyx stones."

"*Do not care for superiority*." It means that one must not place the crown merited by him upon his own head, but should let others do it, as it is written [Prov. xxvii. 2]: "Let another man praise thee, and not thy own mouth; a. stranger, and not thy own lips."

R. Aqiba said: One that makes himself superior to the Law is compared to a putrefied carcass which lies in the road, so that every passer-by puts his hand to his; nose and hastens away, as it is written [Prov. xxx. 32]: "If thou hast become

degraded by lifting up thyself, or if thou hast devised evil, put thy hand to thy mouth." Said Ben Azai to him: The sense of this passage seems to be thus: One who degrades himself for the sake of the Law, and eats decayed dates, and dresses in worn-out clothes, and is watching at the door of the sages, the passers-by call him an idiot, but be sure that in the end it will be found that he

is full of knowledge. This is what people say: One who makes himself superior to the Law will finally be put down, and one who lowers himself for the sake of the Law will finally be greatly elevated.

"*And see to it that your name be not known to the government*." One should not have the ambition to be prominent among government officials, otherwise they will become jealous of him, slay him, and confiscate his property. Neither shall one proclaim his neighbor's name to the government; that is, one shall not say: "May the Lord protect so and so, from whose house to-day went out a hundred oxen, a hundred ewes, and a hundred goats," etc., as it may happen that just at that time the officer passes by and hears this and reports it to his chief, and the latter surrounds his house and takes away all he has. As to this, the following passage applies [Prov. xxvii. 14]: "When one saluteth his friend with a loud voice . . . it will be counted a curse to him." According to others, the word Rashuth means not the government but publicity, and the passage is to be construed thus: If one's friends say publicly in the market: "May God protect so and so; to-day he brought into his house many measures of wheat and barley," etc., etc., robbers may hear of it and come in the night, surround the house, and take away all he possesses, and in the morning he has nothing left. Of him it is said in Scripture: "When one saluteth his friend with a loud voice," etc.

Others, again, say that it means the government, and the expression "he shall not announce," etc., means one shall not endeavor to be a solicitor for the governor of the city or his vice, for they rob the money of Israel.

Still another explanation is: One shall not seek any governing power, for although in the beginning it appears very pleasing, in the end he will find it very burdensome.

MISHNA *I*. Abtalion was wont to say: "Ye wise, be guarded in your words; lest you load upon yourselves

the penalty of exile and be exiled to the place of evil waters; and the disciples that come after you may drink and die, and the name of Heaven be profaned."

Tosephtha--Aboth of R. Nathan.

"*Ye wise men, be guarded in your words*." Perhaps they will decide something in your name which will not be according to the teachings of Law, and ye will become liable to the punishment of exile, and be banished to a place where the water is bad. What is meant by "bad water"? It is permissible to say that it has reference to the vices of that place, as it is written [Ps. xvi. 35]: "And they will mingle with the nations and will learn their doings." Some think that it is to be taken literally. Others, however, think that it refers to hard labor.

MISHNA K. Hillel and Shammai received from them. Hillel said: "Be a disciple of Aaron, love peace, pursue peace, love all men too, and bring them nigh unto the Law."

Tosephtha--Aboth of R. Nathan.

1"*Love peace*." How so? One should love to see peace in Israel and peace everywhere, as Aaron loved peace, about whom it is written [Mal. ii. 6]: "The love of truth was in his mouth, and falsehood was not found on his lips; in peace and equity he walked with me, and many did he turn away from iniquity." When Aaron went on the highway and met a wicked man, he bade him peace in the customary form of salutation. The result was that that man reformed. For when he was about to commit a sin, he remembered that Aaron the high-priest saluted him, and would say: "Woe, if I sin, how will I dare to raise my eyes and look Aaron in the face, who was so friendly to me?" and thus he is prevented from sin.

Likewise, when two men quarrelled with each other (and it came to the ears of Aaron), he went to one of them and said: "My son, see what thy neighbor does. He beats his breast, tears his clothes and cries, saying: 'Woe is me! How will I dare to lift up my eyes to look my neighbor in the face? I am

ashamed of myself, for it is I who wronged him.'" Thus Aaron allayed the bitterness of that man's feeling. Then Aaron went to the other man and addressed him in the same style, and likewise pacified his heart. When those two men met, they no longer eyed one another as enemies, but embraced and kissed each other, as friends do. Because of Aaron's peace-making, it is written about him [Numb. xx. 29]: "They wept for Aaron thirty days."

The passages about the mourning of Moses and Aaron are differently written. About Aaron it is written "even *all* the house of Israel," which includes also women; about Moses, however, it is written only, "and the children of Israel," which excludes women. To explain this, there are different opinions. Some say because Moses, who was a true judge and judged justly without favoritism, used to rebuke the sinner and say to him: Thou hast sinned in so and so. Aaron, however, when judging them, judged them truly, but at the same time he did not rebuke them, even when the sinners were males, much less when, they were females. And, secondly, many thousands were named Aaron, after the high-priest. For were it not for Aaron they, would not have been brought to the world at all, as Aaron's special efforts were directed toward making peace between man and Wife, so that if, after that, a child was born to them they named him after their peace-maker.

According to others, the reason why even all the house of Israel wept is because they had seen Moses our master sitting and weeping, and who then would not weep? And they also saw Elazar and Pinechas, who were high-priests, weeping, and who would not weep with them?

Then Moses desired to die the same death that Aaron died. Why so? Because it was said that Moses saw his bier decked out with great pomp and many divisions of angels lamenting over him. And although Moses never expressed that wish, but only thought so in his heart, the Holy One, blessed be He, granted him his desire, as it is written [Deut. xxxii. 50]: "And die in the mount whither thou goest up, and be gathered unto thy people; *as Aaron thy brother died* on Mount Hor." From this is to be inferred that Moses had a desire to die the death of Aaron.

At the time (when Moses was about to die), God said to the angel of death: "Go and bring unto me the soul of Moses." Coming to Moses, he demanded his soul. But Moses censured

the angel of death. He said to him: "Thou art not entitled to be where I am, and thou art asking of me my soul?" and Moses drove him away with degradation. At length the Lord said unto Moses: "Moses, Moses, thou hast lived long enough in this world, as thy share in the world to come has awaited thee ever since creation," as it is written [Ex. xxxiii. 21]: "And the Lord said, Behold, there is a place by me, and thou shalt stand upon the rock." Thereupon the Lord Himself took the soul of Moses and placed it under His throne, as it is written [I Sam. xxv. 29]: "Yet will the soul of my Lord be bound in the bond of life." And He took his soul with a kiss, as it is written [Deut. xxxiv. 5]: "Through the mouth of God." [1]

[Not merely the soul of Moses is placed under His throne, but all the souls of the righteous, as it is written: "Yet will the soul of my Lord be bound in the bond of life." Should one assume that the souls of the wicked are also hidden there, therefore it is written [I Sam. xxv. 29]: "And the soul of thy enemies will he hurl away, as out of the middle of the sling."

For the better understanding of this, let us think of who puts a stone in his sling: although he hurls it from one place to another, he knows not where it will finally land. So are the souls of the wicked: they are wandering and hovering in the world without rest.

After the death of Moses the Lord again commanded the angel of death to bring Him the soul of Moses. He went to the place where he used to be found when alive, but did not find him. He then went to the ocean, and asked whether Moses was there. It answered: Since the day when the Israelites passed through me, I have not seen him. He went to the mountains and hills, and put to them the same question, and they said: Since the day when the Israelites received the Law from Mount Sinai, we have not seen him. So he went to the nether world and place of perdition, and asked them the same question, and they said: We have heard of his name, but have never seen him. Finally, he inquired of the angels, and they said: "God (alone) understandeth her way, and he knoweth her place" [Job, xxviii. 23]. The Lord preserved him for a life in the world to come, and no creature knows where he is, as it is written [Job, xxviii. 20-22]: "But wisdom . . . a report of her." At the same time Joshua was sitting and grieving

because he did not know where his master was, till the Holy One, blessed be He, said to him: Joshua, do not grieve. My servant Moses is dead.]

"*Pursue peace*." How so? One shall be a pursuer of peace in Israel among all kinds of people. If a man remains in his place silent, he cannot be a pursuer of peace. But what shall he do? He should leave his place in search of peace, as it is written [ibid.]: "Seek peace, and pursue it." Which means, seek it in thy place, and if thou canst not find it, pursue it in another.

The Holy One, blessed be He, also made peace in heaven, in that he did not name ten angels Gabriel, Michael, Uriel, or Raphael, as, for instance, many people bear the same name; otherwise, when He would summon one of them, they would all respond, and be jealous of one another. Therefore He gave each one a separate name. When He summons one, only that one comes, and He sends him wherever He desires. They reverence and respect one another, and are meeker than human beings, for when they begin to sing the praises of the Lord, one says to

another: "Begin thou, as thou art greater than I am"; and the other says: "Thou art greater than I am, and therefore begin thou." With human beings, however, it is the reverse. Every one says: "I am greater than thou art." Some say that not individual angels, but divisions of angels, say to each other: "Begin ye, ye are greater than we are," as it is written [Is. vi. 3]: And one called unto the other and said."

"*Love all men too*." That is to say, that one should love all men, and not hate them; for so we find with the men of the "generation of the division," because they loved each other, the Lord was reluctant to destroy them, but only scattered them to all four corners of the world. The men of Sodom, however, because they hated each other, were annihilated by the Lord, both in this and the world to come, as it is written [Gen. xiii. 13]: "But the men of Sodom were wicked and sinners before the Lord exceedingly. "And sinners" implies that they were guilty of illegal unions; "before the Lord" implies that they were guilty of desecration of the Holy name; "and exceedingly," that they sinned wilfully.

"*And bring them nigh unto the Law*." How so? One should try to uplift [1] people and bring them under the wings of

the Shekhina, as our father Abraham did; and not only Abraham, but also Sarah, as it is written [Gen. xii. 5]: "And Abraham took Sarah his wife, and Lot his brother's son, and all their substance that they had acquired, and the persons that they *made* [1] in Charan." Is it possible? Even all mankind combined could not create even a small insect. We must, therefore, say that the Lord considered the people that they brought under the wings of the Shekhina as if they had made them.

As one cannot divide his life with his neighbor in this world, so he cannot divide with him his deserved reward in the world to come, as it is written [Eccl. iv. 1]: "And, behold, there are the tears of the oppressed, and they have no comforter; and from the hand of their oppressors they suffer violence, and they have no comforter." Why is it written "and they have no comforter" twice? To infer that, although there are men who eat (plentily), drink, and are successful with their sons and daughters in this world, they may have nothing in the world to come, and they will have no comforter there. In this world, when something is stolen from one, or a death occurs in one's family, his son, brother, and other relatives come and console him, but this cannot be done in the world to come, as it is written [ibid., ibid. 8]: "Yea, he hath neither son nor brother."

The same is the case with one who has begotten an illegitimate son; for the latter may say to him: "Scoundrel, thou hast lost thyself as well as me." For the bastard may have a thirst for knowledge, and therefore desire to study the Law in Jerusalem together with the other disciples, but cannot do so because, being a bastard, he is prohibited from entering Jerusalem. It happened once that a bastard was not allowed to pass Ashdad, as it is written [Zech. ix. 6]: "And bastards shall dwell in Ashdad, and I will cut off the pride of the Philistines."

MISHNA *L*. He also used to say: "A name made great is a name destroyed; he who increases not, decreases; and he who will not learn from his masters is not worthy to live; and he who uses his knowledge as a tiara perishes."

MISHNA *M*. He also used to say: "If I do not look

to myself, who will do so? But if I look only to myself, what am I? And if not now, when?"

Tosephtha--Aboth of R. Nathan.

"*He used to say: 'If I do not look to myself, who will do so?'*" (That is), if I cannot reach any reward while I am alive, who can reach it for me after my death?

"*And if not now, when*?" (That is), if I can do nothing for myself while I am alive, who can do it for me after my death? So also said Ecclesiastes [ix. 4]: "For a living dog fareth better than a dead lion." By "a living dog" is meant a wicked person who exists in this world, and "than a dead lion" refers to all the righteous, who are highly received in the world to come, including even the patriarchs Abraham, Isaac, and Jacob. The living dog, that is, a wicked man who is still alive, fareth better is accepted by the Holy One, blessed be He, when he repents and becomes virtuous and receives a share in the world to come, while a dead lion cannot add aught to his good deeds after he is dead. The same, used to say: "If thou wilt come to my house," etc. (See Section Moed, Vol. vii.; Succah, pp. 83, 84.)

It happened that Hillel the First, while on a journey, met men carrying wheat. He inquired how much was a saah, and was told two dinars. Afterward he met others, who gave him the price of the same as three dinars. He said: "Did not the first men say it was only two dinars?" They rejoined: "Thou foolish Babylonian, dost thou not know that the reward is according to the trouble?" (They came from a farther distance.) But he said: "Is that your answer to my civil question?" Finally he succeeded in making them gentle and accommodating.

He also used to say four things in the Babylonian dialect:

"*A name made great is a name destroyed*." It means, a man shall not desire to have his name proclaimed to the government, for the reason stated above, p. 45.

"*And he who does not desire to learn from his masters*." It was said that it happened to an inhabitant of Beth Ramah who adopted the customs of the pious, and Rabban Johanan b. Zakkai sent one of his disciples to examine him. He found him occupied in heating oil on a range and then pouring it into peeled grain. On being questioned what he was doing, he answered, I am careful with the heave-offering, to eat it in its

purity, just as if I were a high-priest. Then he asked again: Is this range clean or unclean? He rejoined: Do we then find anywhere in the Torah that a range can be unclean? An oven only is mentioned, as it is written [Lev. xi. 33]: "Whatsoever is in it shall be unclean." Then the disciple again rejoined: The law of the oven applies also to the range, as it is written [ibid., ibid. 35]: "An oven or range shall be broken down, they are unclean." The same added: If such was thy habit,

thou hast never in thy life eaten clean heave-offerings.

"*He who increases not, decreases*." How so? If one has learned one, two, or even three treatises, and has not added anything thereto, he will finally forget even that.

"*And he who serves himself with the tiara perishes*." Any one that uses the name of the Lord, as it is written, which is prohibited, has no share in the world to come.

MISHNA *N*. Shammai was in the habit of saying: "Fix a time for study; promise little, and do much receive every one with friendly countenance."

MISHNA *O*. Rabban Gamaliel said: "Make to thyself a master, and free thyself of doubt, and tithe not much by estimation."

MISHNA *P*. Simeon his son was wont to say: "All the days of my life have been passed among the sages, and I have never found anything better for a man than silence; and the discussion of the law is not of such import as is the practice thereof. He who talks much, cannot avoid sin."

MISHNA *Q*. He also said: "Three things support the world--law, truth, and peace--as it is written [Zechariah, viii. 16]: 'Truth and the judgment of peace, judge ye in your gates.'"

Tosephtha--Aboth of R. Nathan.

[1]"*Fix a time for study*," etc. It means, when one has heard something from a sage in the college, he shall not treat it as something unessential, but as a standard saying to be studied

diligently, and what he learns from the wise he shall teach it to others, as it is written [Deut. v. 1]: "That ye may learn them, and that ye may observe to do them." And also of Ezra it is first written [vii. 10]: "For Ezra had directed his heart to inquire in the law of the Lord, and to do it." And immediately after it is written [ibid.]: "And to teach in Israel statutes and ordinances."

"*Promise little, and do much*." As such is the custom of the righteous, who promise little but do much; the custom of the wicked, however, is to promise much and do nothing. Whence do we know that the upright promise little, and do much? From Abraham our father, who said to the angels: "Ye will eat with me a morsel of bread," as it is written [Gen. xviii. 5]: "And I will fetch a morsel of bread, and comfort ye your heart." But what did he in reality do? He prepared for them three oxen and nine saah of fine meal. And whence do we know that he baked for them nine measures of fine meal? From [ibid. 6]: "And Abraham hastened into the tent unto Sarah and said: Make ready quickly three measures of fine meal." "Three" is literal, "meal" is six, and "fine meal" is nine. And whence is it derived that he roasted for them three oxen? From the following [ibid., ibid. 7]: "And Abraham ran unto the herd," etc. "The herd" means one, "a calf" one, "tender" one. According to others it was four, because the word "good," which is added, is also counted as one. "And gave it unto a young man" [ibid.]. This means Ishmael his son, to accustom him to religious practice.

Also the Holy One, blessed be He, promised little and did much, as it is written [ibid. xv. 13, 14]: "And he said unto Abram, know of a surety that thy seed shall be a stranger in a land which is not theirs, and they will make them serve, and they will afflict them four hundred years. And also that nation whom they shall serve, will I judge; and afterward shall they go out with great substance." He promised him with • and • the numerical value of which is 54. But when the Lord at last avenged Himself on Israel's enemies, He did so with seventy-two letters (contained in verse 34, Deut. xxxiv.): 1 "Or hath a

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god essayed to go to take to himself a nation from the midst of a nation, by proofs, by signs, and by wonders . . . and by great terrors."

Whence is it derived that the wicked promise much and do nothing? From Ephron, who said to Abraham [Gen. xxiii. 15]: "A piece of land worth four hundred shekels of silver, what is that between me and thee?" Nevertheless, in the end he accepted the whole sum of the money, as it is written [ibid., ibid. 16]: "And Abraham understood the meaning of Ephron; and Abraham weighed out to Ephron the silver."

"*Receive every one with friendly countenance*." How so? That means, that even if one presents to his neighbor the most precious things with bad grace, it is accounted to him in Scripture as if he had given nothing; but if one receives his neighbor with a friendly countenance, although he give him nothing, it is accounted to him in Scripture as if he had conferred upon him great favors.

Tosephtha--Aboth of R. Nathan.

1Rabban Johanan b. Zakkai received from Hillel and Shammai. Hillel the First had eighty disciples, thirty of whom were worthy that the Shekhina rest upon them as on Moses, but their generation was not deserving of it. Thirty others were worthy to institute the intercalary years, etc., etc. (Continued in Succah, pp. 36, 37.)

"*He used to say: 'If thou hast accumulated much knowledge, do not boast of it, for it is for that that thou wast created.'*"

There are five disciples of Rabbi Johanan b. Zakkai whom he characterized in the following manner: Eliezer b. Hyrcanus as "a plastered cistern which loseth not a drop"; Joshua b. Hananiah as "a threefold cord that cannot quickly be torn asunder"; Jose the priest as "the most pious in his generation"; Ishmael b. Hananiah as "a garden-bed in the desert which absorbs water"; and Elazar b. Arach he named "as a flowing brook and swelling spring whose waters rise and overflow abroad," as it is written [ibid. v. 16]: "So will thy springs overflow abroad; and in the open streets will be thy rivulets of water.

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"*I consider the judgment of R. Elazar b. Arach*," etc. Happy is the disciple who receives from his master such a testimonial of praise and acknowledgment. When the son of Rabban Johanan b.

Zakkai died, his disciples came to console him. R. Eliezer entered first, sat down before him, and asked his permission to say something. The request having been granted, he said: "Adam the First accepted consolation when his son died. And whence do we find it so? It is written [Gen. iv. 25]: 'And Adam knew his wife *again*' ('again' means after this consolation). Thou also shouldst accept consolation." He rejoined: "Is not my own grief sufficient, that thou must remind me of that of Adam the First?"

Next entered R. Joshua, and also asked for permission to say something, which was granted, who then said: "Job, who had many sons and daughters, all of whom died in one day, yet he accepted consolation. As it is written [Job, i. 21]: 'The Lord gave and the Lord hath taken away; may the name of the Lord be blessed.'" He rejoined: "Is not my own grief sufficient, that thou remindest me of that of Job?"

Next entered R. Jose. He sat down before him and said: "Be it thy wish that I say something." And being encouraged by the sage, he continued: "Aaron had two full-grown sons, and both died on one day, yet he accepted consolation, as it is written [Lev. x. 3]: 'And Aaron held his peace,' which means that he was consoled. Would it not be right that thou shouldst do likewise?" The sage rejoined: "Have I not enough of my own grief? Why do you remind me of the grief of Aaron?"

Then entered R. Simeon, and said: "Rabbi, may I be favored by thee to say a word in thy august presence?" And the sage answered: "Proceed." Then the former said: King David had a son who died, and he received condolence. It well becomes thee to persuade thyself into comfort. As to King David, it is written [II Sam. xii. 24]: 'And David comforted Bathsheba his wife, and he went in unto her, and lay with her; and she bore a son, and called his name Solomon.'" He rejoined: "Is not my own grief sufficient, that you all remind me of the grief of others?"

Finally R. Elazar b. Arach entered, and when the master saw him he said to his servant: "Take a vessel and follow me to the bath-house; the man who is entering now is a great man, and I am sure that I could not withstand his arguments." He entered, sat down before him, and said: "I will entertain thee

by telling a parable: A king had intrusted one of his subjects with a precious article. The man used to exclaim, weeping: 'Woe is me! When will I be relieved of this responsibility?' This, O Rabbi, is thy case. Thy son, who spent his time in sacred study, departed from the world sinless. What a comfort it ought to be to thee that thou hast returned the article intrusted to thy care intact!" Hereupon the sage said: "Elazar, my son, thou hast consoled me as people should console each other."

When they left him, Elazar said: "I will go to Damsith, which is a fine place with excellent waters"; and the other disciples said: "We will go to Jamnia, where there are many scholars, and love the study of Law." He that went to Damsith lost a good deal of his authority, but the names of those who went to Jamnia, the seat of great scholarship, became legion in learned circles.

Tosephtha--Aboth of R. Nathan.

[1]"*Thy fellow's honor must be as dear to thee as thine own*." How so? As one watches over his own honor, so should he guard the honor of his neighbor, and as one is loath to see his own honor assailed, he should be so in regard to the honor of his neighbor.

Another explanation of the above is: When one is possessed of an hundred thousand, and all is taken away from him, he should keep his conscience clear even of the value of a small coin.

"*Do not allow thyself to be easily angered*." That is, one should be as meek as Hillel the Elder, and not as irritable as Shammai the Elder. It is said about Hillel that two men once wagered the sum of four hundred zuz upon his patience; the one who could succeed to provoke his anger was to receive the amount. (See Sabbath, p. 50; the whole legend ending with): "Take care of thy temper. A Hillel is, worthy that twice that amount be lost through him; a Hillel must not get excited."

[2]What was the irascibility of Shammai the Elder? It was

related that once a man came to Shammai and said: "Rabbi, how many Laws have you?" "Two Laws: the written and the oral Law." He answered: "I believe in the written, but not in the oral Law," said the man. But Shammai rebuked him, and drove him away.

The same man came to Hillel and said: "Rabbi, how many Laws were given?" And he told him two--the written and the oral. The man said: "I believe in the written, but not in the oral Law." And Hillel said: "Sit down, my son, and write for me the Aleph-Beth. After he did so, he asked him what the first letter was. "An Aleph," said the man. "It is not an Aleph, but a Beth," said Hillel. And be again asked him: "What is this?" And the man said: "A Beth." "It is not a Beth, but a Gimel," said Hillel. "Whence knowest thou that this is Aleph, the other a Beth, and the third a Gimel? Because it is a tradition of our forefathers, and whereas thou believest in one tradition, believe also in the other."

It happened that a Gentile passing by a synagogue heard a child reading: "And these are the garments which they shall make: a breastplate, and an ephod, and a robe" [Ex. xxviii. 4]. He came to Shammai and said: "Rabbi, to whom belongeth all that honor?" "To the high-priest who serves at the altar," was the answer. The Gentile then said: "Convert me, on the condition that I be made a high-priest." Said Shammai: "Are there no priests in Israel, or have we no high-priests, but that we should raise to this dignity this lowly stranger, who came to us but with his staff and knapsack?" He rebuked him, and drove him away.

He then came to Hillel with the same request, and the latter said: "Sit down, and I will tell thee something. If one is to appear before a human king, is it not demanded of him that he learn how to make his entrance and exit?" "It is so," said the Gentile. Then continued Hillel: "Thou, who art desirous of appearing before the King of kings of kings, how much more necessary for thee to learn how to enter the Holy of Holies, how to trim the lamps, how to approach the altar, how to order the table, and how to prepare the fire on the altar." The man then replied: "What seems right to thee?" So Hillel wrote for him the Aleph-Beth, and he learned it; then he instructed him in Leviticus, and he went on learning till he came to the passage: And the stranger that cometh nigh shall be put to death [Numb. i. 51]. Then he of himself made the following

deduction: If the people of Israel, who are called the children of the Lord, and of whom the Shekhina said [Ex. xix. 6]: "And ye shall be unto me a kingdom of priests, and a holy nation," were so warned by Scripture, should not I, an insignificant stranger who has come merely with his knapsack, take the hint? Thus the stranger became reconciled of his own accord.

He came to Hillel the Elder and said: "All the blessings that are contained in the Torah shall rest upon thy head, for hadst thou been as Shammai the Elder, I would not have become as one of Israel. His irascibility came near causing me to be lost both in this world and the one to come; but the patience of Hillel has brought me to a life in this world and the one to come." It was said that to this proselyte were born two sons: he named one Hillel and the other Gamaliel, and they were called Hillel's proselytes.

"*Repent one day before thy death*." The disciples of R. Eliezer asked him: "How can one know the day of his death, that he may then repent?" He answered: "For that very reason he should make every to-day a day of repentance"; that is, he should be repenting all his life.

R. Jose bar Jehudah said in the name of his father R. Jehudah bar Ilai, who said it in the name of Ilai, quoting R. Eliezer the Great: "Repent one day before thy death, and warm thyself before the light of the wise, but beware of their embers, perchance thou mayest be singed; for their bite is the bite of a fox, and their sting is the sting of a scorpion and *also* their words are as coals of fire."

Footnotes

1:1 Chapter I. of the original.

3:1 The Talmud infers this from the two words *shephot hashophtim*, which literally mean that the judges were judged. Hence, who have judged the judges? The elders.

7:1 The translation of this passage is entirely different. The Talmud, however, interprets this to mean Adam the First, and takes it literally.

11:1 Chapter II. of the original.

12:1 In the ancient times, and even now in some places of the Orient, a woman in her separation must be separated and avoid all communication with anybody during the whole time.

12:2 We have explained it in our "Philac. Ritus," that at that time only great men were allowed to bear phylacteries, and therefore she took them to prove that her husband was one of them.

13:1 Leeser translates "against" the third day, but the Talmud translates it as we give it.

16:1 There is a tradition in the Talmud that Malkizedek is identical with Shem. Salem in Hebrew means also "perfect." Hence the analogy.

19:1 Chapter III. of the original.

19:2 In a Mishna at the end of Tract Pëah it is stated the reverse, viz.: That one who needs charity and refuses to take it will not depart from this world until he will bc in a position to give charity.

20:1 This is inferred from the superfluous letter • and • as gates ••••," is also plural, not less than two, from the added • and • they deduce one more.

21:1 We omitted the narrative of a pious man who was compelled too stay over night in a cemetery, as its proper place is in Berachoth.

22:1 Chapter IV. of the original.

25:1 Elsewhere the Talmud explains that Lebanon means the Temple, and "mighty one" a king.

27:1 Chapter V. of the original.

27:2 Chapter VI. of the original.

28:1 According to this legend, R. Aqiba had a son before he married the daughter, of Calba Shebua, and thus can be explained the question of Tossaphat in Sabbath, old edition 106*b*, beginning with the paragraph, "R. Joshua b. Karcha."

29:1 See Section Moed, Vol. VI., Tract Yomah, p. 49, that it is Hillel who will be a menace to the poor.

32:1 *Calba*, means "dog"; *Shebua*, "satiated."

32:2 Chapter VII. of the original.

35:1 Chapter VIII. of the original.

36:1 The Talmud translates •••• "think after" (doubt), but Leeser translates it "respect."

37:1 He did so in order to prevent others from doing her violence.

38:1 Chapter IX. of the original.

41:1 The Hebrew term is *Kehorkhe Hadaionin*. This translation is according to Rashi. Maimonides explains it as follows: "Do not make thyself as those who instruct the litigants what to plead." The explanation, however, of the ancient sages will be found in the Gemara.

42:1 Chapter X. of the original.

43:1 *I.e.*, do not get into such affairs as will cause the government to investigate about you. The commentators, however, interpret this otherwise.--See Gemara.

43:2 Chapter XI. of the original.

46:1 Chapter XII. of the original.

48:1 •• in Hebrew means "mouth," and the Talmud takes it literally.

49:1 The Hebrew term for this is "Mekapeah," derived from "K'apah," *high* (Bechoroth, 45*b*).

50:1 According to the interpretation of the Talmud, but Leeser translates "obtained."

52:1 Chapter XIII. of the original.

53:1 There are seventy-five letters in the Hebrew text beginning with the word •••• and ending with •••••, the translation of which is "go to take to himself a nation from the midst of a nation, by proofs, by signs, and by wonders, and by war, and by a mighty hand, and by an outstretched arm, and by great terrors." And in Midrash it is explained that one word, ••• of three letters is not counted, for it has reference to p. 54 Egypt. Of the many commentaries upon this difficult and complicated passage this seems to us to be the best, which is according to Isaiah Berlin (Pick).

54:1 Chapter XIV. of the original.

56:1 Chapter XV. of the original.

56:2 This is also stated in Sabbath, p. 51; but because it is here more in detail, we give it again.

Next: Chapter II.

CHAPTER II.

MISHNA *A*. Rabbi (Jehudah the Prince) was in the habit of saying: "In choosing the right path, see that it is one which is honorable to thyself and without offence to others. Be as scrupulous about the lightest command as about the weightiest, for no man knoweth the result of his actions. Weigh the present temporal disadvantages of a dutiful course against the reward of the future, and the present desirable fruits of a sinful deed against the injury to thine immortal soul. In general, consider three things and thou wilt never fall into sin: remember that there is above thee an all-seeing eye, an all-hearing car, and a record of all thine actions."

MISHNA *B*. Rabban Gamaliel, the son of R. Jehudah the Prince, was wont to say: "Beautiful is the study of the Law when conjoined with a worldly avocation, for the efforts demanded by both stifle all inclination to sin. But study which is not associated with some worldly pursuit must eventually cease, and may lead to iniquity. All who occupy themselves with communal affairs should do it in the name of Heaven, for the merit of their fathers sustains them and their righteousness stands forever. And ye yourselves shall have reward reckoned unto you, as if ye had wrought it."

MISHNA *C*. ["Be cautious with those in authority, for they let not a man approach them but for their own purposes; and they appear like friends when it is to their advantage, and stand not by a man in the time of his need.]

MISHNA *D*. He also used to say: "Do His will as if it were thy own, that He may do thy will as if it were His.

Annul thy will before His, that He may annul the will of others before thy will."

MISHNA *E*. Hillel was in the habit of saying: "Do not isolate thyself from the community and its interest. Do not rely upon thy spiritual strength until the day of thy death. Pass not judgment upon thy neighbor until thou hast put thyself in his place. Say not a thing which must not be heard, because eventually it will be heard, Say never, 'Sometime or other, when I enjoy leisure, I will attend to my spiritual advancement'; perhaps thou wilt then never have the leisure."

MISHNA *F*. He also said: "The boor can never fear sin, the ignorant can never be truly pious. Whoso is ashamed to ask will never learn; no irritable man can be a teacher. He whose mind is given to worldly gain will not acquire wisdom. Where a man is needed, endeavor that thou be the man."

MISHNA *G*. Moreover, he saw a skull which floated on the face of the water, and he said to it:

"Because thou drownedst they drowned thee, and in the end they that drowned thee will be drowned." 1

MISHNA *H*. He furthermore said: "The more feasting the more food for worms; the more wealth the more cares; more women, more witchcraft; more maid-servants, more lewdness; more men-servants, more theft. But the more knowledge the more food for life; the

more study the more wisdom; the more reflection the better the counsel; the more charity the more peace. He who earns a good name gains something that can never be taken away. He who has gotten to himself words of Law has gotten to himself the life of the world to come."

MISHNA *I*. Rabban Johanan b. Zakkai received it from Hillel and Shammai. He was wont to say: "If thou hast learned much, do not boast of it, for it is for that that thou wast created."

MISHNA *J*. The above had the following five disciples: R. Eliezer b. Hyrkanos, R. Joshua b. Hananiah, R. Jose the priest, R. Simeon b. Nathaniel, and R. Elazar b. Arach. He used to recount their praises: "Eliezer b. Hyrkanos is a plastered cistern, which loseth not a drop; Joshua b. Hananiah--happy is she that bare him; Jose is pious; Simeon b. Nathaniel is a sin-fearer; Elazar b. Arach is a welling spring."

He used to say: "If all the wise of Israel were in a scale of the balance, and Eliezer b. Hyrkanos in the other scale, he would outweigh them all." Abba Saul, however, said in his name: "If all the wise of Israel were in a scale of the balance and Eliezer b. Hyrkanos with them, and Elazar b. Arach in the other scale, he would outweigh them all."

MISHNA *K*. He (Johanan b. Zakkai) said to their. once: "Go out and find what is the best thing to cultivate." R. Eliezer said: A generous eye; R. Joshua said: A loyal friend; R. Jose said: A good neighbor; R. Simeon thought: Prudence and foresight; R. Elazar said: A good heart. Thereupon the Master said: "I consider R. Elazar b. Arach's judgment the best, for in his all of yours are included."

He said to them again: "Go and find out which is the evil way a man should shun." R. Eliezer said: An evil eye; R. Joshua said: An evil companion; R. Jose said: An evil neighbor; and R. Simeon said; He that borrowed and repayeth not; he that borrows from a man is

the same as if he borroweth from the Omnipotent, as it is written [Ps. xxxvii. 2 1]: "The wicked borroweth and repayeth not, but the righteous is beneficent and giveth.", R. Elazar said: An evil heart. Thereupon the Master said: "I consider R. Elazar b. Arach's judgment the best, for in his all of yours are included."

MISHNA *L*. Each of these disciples had three maxims. R. Eliezer: "Thy fellowman's honor must be as dear to thee as thine own. Do not allow thyself to be easily angered. Repent one day before thy death." (He also said:) "Warm thyself before the light of the wise, but beware of their

embers, perchance thou mayest be singed; for their bite is the bite of a fox, and their sting the sting of a scorpion, and their hiss is that of a fiery-serpent; and all their words are as coals of fire."

MISHNA *M*. R. Joshua: "An envious eye, sinful propensities, and misanthropy drive a man out of the world."

Tosephtha--Aboth of R. Nathan.

1"*An envious eye*," etc. How so? It means one shall look upon the house of his neighbor with the same eye as he looks upon his own; and as one is anxious that there be no bad repute against his wife and children, so should he be anxious in regard to his neighbor's or his children's.

Another explanation of this passage is: One shall not be envious of the erudition of his neighbor. It happened to one who was envious, that his days were shortened, and he departed prematurely from this world in consequence thereof.

"*Sinful propensities*." How so? It is said that the evil propensities are thirteen years older than the good propensities, as they begin to grow with the child in the mother's womb, so that he defiles the Sabbath and commits other transgressions, and there is nothing in his mind to remonstrate with him. But when he is thirteen years old, the good thoughts are born. If he defiles the Sabbath, they tell him: Scoundrel, is it not written [Ex. xxxi. 14]: "Every one that defileth it shall surely be put to death." If he is about to commit adultery, they say to him:

[paragraph continues] Scoundrel, is it not written [Lev. xx. 16]: "Then shall the adulterer be put to death, together with the adulteress." When one becomes excited and is about to commit incest, all the members of his body are willing, for the evil thoughts reign over all the two hundred and forty-eight members; but when he is about to perform a meritorious deed, all his members begin to pain him, for the evil thoughts within him reign over all the two hundred and forty-eight members of his body; and the good thoughts are compared to one who is imprisoned, as it is written [Eccl. iv. 14]: "For out of the prison cometh the one to reign," which refers to the good thoughts.

[There are others who say that it refers to Joseph the upright. This wicked woman (his mistress) used to persecute him with her words. She said: "I will imprison thee." He answered: "The Lord looseneth the prisoners." She said: "I will dig out thy eyes." He answered: "The Lord causeth the blind to see." She said: "I will bend thy stature." He answered: The Lord raiseth up those who are bowed down."

And in reality there is no wonder that Joseph the upright refused to listen to her, as the same happened to R. Zadoq, as it was said: To R. Zadoq, who was great in his generation, while he was in captivity, a certain matron sent a beautiful female slave; but as soon as he noticed her he turned around to the wall, so as not to see her, and absorbed himself with the Torah all night. In the morning she went to complain to her mistress, and said: "Death is preferable to me than to be with this man." The matron sent for him and asked: "Why hast thou not treated this woman as men usually treat women?" He answered: "I could not do otherwise. I belong to a great family

of priests. I have entirely ignored her, so as not to be tempted to have intercourse with her, and add bastards to Israel." When she heard this, she gave orders concerning him, and then dismissed him with great honor. Neither is there any wonder for the refusal of R. Zadoq, as R. Aqiba was greater in his act; and to him happened the following:

R. Aqiba, while at one time in a certain country, was calumniated before the Sultan (and was imprisoned). He sent to him two beautiful women, who were washed, anointed, and adorned as brides. They were hugging him all night, each one inviting him to herself. He, however, repulsed them. They complained before the Sultan, and said: "Death is preferable to us than to be with that man." He sent for him and asked;

[paragraph continues] "Why hast thou not treated these women as men treat even homely women--are they not human beings as thyself? Hath not thy Creator also created them?" He answered: "I could not do otherwise: their odor seemed to me to be that of putrefied carcasses."

And even R. Aqiba is not to be admired for his act, for R. Eliezer the Great exceeded him by the following act: He brought up his own sister's daughter, and for thirteen years slept with her in one bed. When she became of marriageable age, he told her to get married. She, however, replied: "Am I not thy servant? Use me as a slave to wash thy disciples' feet." He again told her: "I am too old. Get married to one suitable to thy age." She answered: "Have I not already told thee I am thy servant, and to use me as a slave to wash thy disciples' feet?" When he heard this, he proposed to her and married her.]

Said R. Reuben b. Aztrobli: How difficult it is for one to avoid the evil propensities which are within him from the minute of his birth! As it is written [Gen. iv. 7]: "Sin lieth at the door." So we see that a young animal is always careful not to approach harmful things, as fire or a well, because it has no evil propensities, while a human child must always be guarded against putting his hand into fire, and other harmful things, because he has a desire to do those things, and this is due to the evil propensities born with him.

Said R. Simeon b. Elazar: "What are the evil thoughts to

be compared to? To a piece of iron which is placed in the fire;

so long as it is there, various vessels can be formed out of it.

The same is the case with evil thoughts: there is no other preventive but the Torah, which is likened to fire. As it is written [Prov. xxv. 21, 22]: "If thy enemy be hungry, give him bread

to eat; and if he be thirsty, give him water to drink; for though thou gatherest coals of fire upon his head, yet will the Lord repay it unto thee." Do not read •••••• ••• (repay unto thee), but •••••••• •••(make thee at peace).

Said R. Jehudah the Prince: To the following parable the evil thoughts can be compared: Two men entered a hostelry, and one of them was arrested for robbery. When asked for an

accomplice he said he had one, although he could easily have denied it, yet he said so in order to implicate also his companion and make him share his own fate. The same applies to

evil thoughts: they are not satisfied with their destruction of the soul, they also destroy the body.

Said R. Simeon b. Johai: From the following is to be deduced that the Israelites will never see Gehenna. The following parable can be applied to this: A king who had a barren field rented it to some persons at a yearly rental of ten measures of wheat. The land was manured, watered, and surrounded with ditches, and generally properly cared for. Still, at the end of the year the lessees paid the king only one measure of wheat instead of ten. When the king asked them for an explanation, they said: "Our lord and king, thou knowest well that the land was barren, and brought thee no revenue at all; now even after so much of our labor invested, it did not produce more than this measure." A similar plea will the Israelites make in the future before the Holy One, blessed be He: "Lord of the Universe! thou knowest how the evil thoughts allure us." As it is written [Ps. ciii. 14]: "For he knoweth our frame" (and on that consideration will be forgiven).

"*And misanthropy*." This means: One should not say: Love the sages, but hate the disciples; or, Love the disciples, and hate the common people; but, Love every one except the infidels, the enticers, the misleaders, and the informers. So also says David [Ps. cxxxix. 21, 22]: "Behold, those that hate thee I ever hate, O Lord! and for those that rise up against thee do I feel loathing. With the utmost hatred do I hate them: enemies are they become unto me."

It is also written [Lev. xix. 18]: "But thou shalt love thy neighbor as thyself: I am the Lord." Because I have created him; and if he practiseth what thy people do thou shalt love him, but not otherwise.

R. Simeon b. Elazar said: The above passage was said as a strict admonition: If thou wilt love him, thou art assured of a good reward; otherwise (remember), I am the judge and I will see to it that thou art punished.

MISHNA *N*. R. Jose: "Thy neighbor's property must be as sacred as thine own. Set thyself to learn the Law, for it is not an heirloom unto thee. Let noble purpose underlie thine every action."

MISHNA O. R. Simeon: "Be careful in reading the

[paragraph continues] Shema, and, in prayer; do not look upon the prayer as an obligatory task, but as a privilege granted by mercy and grace before God, for it is written [Joel, ii. 13]: 'For gracious and merciful is he, long-suffering and of great kindness, and he bethinketh himself of the evil.' Never think thyself too great a sinner to approach Him."

MISHNA *P*. R. Elazar: [1] "Be most zealous in the pursuit of study; be prepared always to answer a scoffer; remember in whose service thou laborest." (He also added:) "Know who is thy Master, that he may be trusted to recompense thee for thy work."

MISHNA *Q*. R. Tarphon was in the habit of saying: "The day is short, the work is great, the workmen are slothful, the reward is rich, and the Master is urgent."

MISHNA *R*. He also said: "It is not incumbent on thee to complete the whole task, but thou art not at liberty therefore to neglect it entirely. If thou hast learned much Law thou wilt be given much reward; and faithful is the Master of thy work, who will pay thee the reward of thy work; and know also that the gift of the recompense of the righteous is for the world to come."

Tosephtha--Aboth of R. Nathan.

2"*Thy neighbor's property must be as sacred as thine*." It means that one should be as careful of his friend's property as he is of his own; and as he is desirous that there shall be no slur cast on his belongings, so shall he desire that there should be none on those of his friend.

Others explain the above thus: When a disciple comes to thee with the request to teach him, if thou art able comply with his request; otherwise, dismiss him at once, and do not accept his money, as it is written [Prov. iii. 28]: "Say not unto thy neighbor, Go, and return, and to-morrow will I give, when thou hast it by thee."

"*Set thyself to learn the Law*." How so? When Moses

our master saw that his sons knew not enough of the Law to be able to succeed him, he wrapped himself up and prayed: Lord of the Universe! designate to me the one who should be at the head of the people, as it is written [Numb. xxvii. 15-17]: "And Moses spake unto the Lord, saying, Let the Lord, the God of the spirits of all flesh, appoint a man over the congregation, who may go out before them, and who may come in before them." Said the Holy One, blessed be He: "Moses, take Joshua, appoint an interpreter for him, and at the head of the great men in Israel let him lecture in thy presence." Thereupon Moses said to Joshua: Joshua! these people which I deliver in your care are not to be regarded as he-goats or sheep, but as kids and lambs; for they have not as yet had experience in the commandments, and therefore cannot be considered as such. As it is written [Songs, i. 8]: "If thou knowest this not, O thou fairest of women! go but forth in the footsteps of the flock, and feed thy kids around the shepherds' dwellings."

Rabban Johanan b. Zakkai once went in the market,, and he noticed a girl picking up barley from under the feet of the cattle of the Arabians. "My daughter, who art thou?" he asked her, but she made no reply. Again he put the same question to her, but again she was silent. Finally she said: "Wait a little." She enveloped herself with her hair, stepped up to him, and said: "Rabbi, I am the daughter of Nakdimon b. Gurion." "And what has become of thy father's money?" he asked her; and she answered. "Rabbi, on him was verified the saying which was proverbial in Jerusalem: 'One who desires to preserve his wealth, should lessen it (spending it in charities; but as my father did not sufficiently spend in charities, it all vanished).'" "And what has become of that of thy father-in-law?" he again interrogated her; and she answered: "Rabbi, through my father also his was lost." Thereupon said Rabban Johanan b. Zakkai to his disciples: "Whenever I used to read the passage: 'If thou knowest this not, O thou fairest of women! go but forth in the footsteps of the flocks,' I could not make out what punishment was contained therein; but after

what I have seen today, I can safely say that the punishment is meant that Israel must be under the domination of the lowest nation of the heathens; and not merely that, but also must lie among the manure of their cattle."

The same girl then asked him: "Rabbi, dost thou recall that thou hast signed thy name to my marriage contract?" He

answered: "I do"; and turning to his disciples, he continued: "Verily, I signed my name to the marriage contract of this girl, which was for a million Tyrian dinars. Her father's family never left their house to enter the Temple, until a woollen cloth was spread for them."

It happened that a girl and her ten maids were captured, and a heathen brought her up in his house. One day he gave her a pitcher and told her to bring him some water. One of her maids got up and took it from her. "Why hast thou done this?" he inquired of her; and she answered: "Master, I swear by thy life that I am one of five hundred maids belonging to her mother." When he heard this, he liberated the girl and her ten maids.

The following happened to another young girl who was captured and brought up in the house of a heathen. One night he had a dream, in which he was commanded to send her away. His wife, however, prevented him from doing so. Again he had a dream, in which he was told that if he would not send away the girl he would die. He did so, but desiring to know what became of her, be followed her. She kept on walking until she became thirsty. She went down to a spring to drink, and placing her hand upon the wall, she was bitten by a snake and died. She floated upon the water until he went down, took her out, and buried her. When he returned home, be said to his wife: "The people to which this girl belonged is punished by no other but their Father in heaven."

"*Let noble purpose underlie their every action*." It means, for the sake of the Torah, as it is written [Prov. iii. 6]: "In all thy ways acknowledge him, and he will make level thy paths."

Said R. Simeon: Be punctual in the reading of Shema, and in prayer; and when thou prayest, let it not be as a conversation, but supplication before the Holy One, blessed be He, as it is written [Jonah, iv. 2]: "That thou art a gracious God, and merciful, long-suffering, and abundant in kindness, and repentant of the evil."

Said R. Elazar (see Mishna, and in addition he said): "Nothing of the Torah shall be forgotten by thee. Know for whom thy exertion is and with whom thou hast made a covenant; and who is thy master, who is surely to be trusted that he will recompense thee for thy work."

Tosephtha--Aboth of R. Nathan.

[1] (As Rabban Johanan b. Zakkai used to recount the praise of his disciples), so was R. Jehudah the Nassi recounted of the following sages: R. Tarphon, R. Aqiba, R. Elazar b. Azariah, R.

Johanan b. Nuri, and R. Jose the Galilean.

He called R. Tarphon "a pile of stones"; others say, "a pile of nuts," which, should one be taken away, the whole pile is stirred and there is a rolling of nuts one upon the other. So it was with R. Tarphon, when a disciple came to him and said. "Teach me," he taught him the Scriptures, Mishna, Midrash, Halakhoth, and Agadoth; and when he left him, he was full of the blessing of the Torah.

He called R. Aqiba "a sealed treasure," and compared him to a workman who, taking his basket, goes outside, and whatever he may chance to find he puts into it. However, when he returns home, he assorts every article. So has R. Aqiba done (when he was studying), and made rules to the Torah to be easily comprehended, as rings are made to vessels to make it easy to take a hold of them.

He called R. Elazar b. Azariah "a huckster's basket," and compared him to a huckster who, taking his basket, goes about the country, and the people come flocking around him inquiring for various articles, and find that he has everything. So it was with R. Elazar b. Azariah, when a disciple came to him, he taught him everything that he desired; and when he left him, he was full of the blessings of the Torah.

He called R. Jose the Galilean "a gatherer of good things with no pride about him," who collected the good manners of all the sages and the Mishnaioth that all the sages have taught.

When R. Jehoshua became of old age, etc. (See Section Moed, Vol. VI., Tract Hagiga, pp. 3 and 4: "It happened that Johanan b. Broka," etc., till paragraph beginning with "It happened once.")

Issi b. Jehudah gave the sages names. To R. Meir he gave the name of "sage and scribe"; to R. Jehudah, "a sage when he desires to be"; to R. Elazar b. Jacob, "a small vessel (not of much knowledge), but very clear"; to R. Jose, "a man of good reasoning in the science of the Law"; to R. Johanan b. Nuri, "a basket of a peddler containing a variety of everything";

to R. Jose the Galilean, "a gatherer of the very best things, with no pride about him"; to R. Simeon b. Gamaliel, "a vault full of the best purple dye"; to R. Simeon, "learns much and forgets little."

When, later on, R. Simeon met Issi b. Jehudah, he asked him: "Why hast thou attacked me before the scholars?" And he answered: "I have said only that thou learnest much and forgettest little, and even that little is of no importance."

Footnotes

60:1 All commentators concur in the opinion that the above Mishna teaches us nothing else but

a lesson of retaliation; namely, that "the Almighty pays measure for measure," or, in other words, that the punishment fits the crime. I am, however, inclined to believe that if the author of the above Mishna had intended to teach us only the said lesson, he could find better and more striking illustrations than "the skull," etc. I am, therefore, of the opinion that a historical fact is underlying the above Mishna. Hillel lived during the time of Herod and witnessed all the atrocities which that tyrant perpetrated on the people, and more especially on the Rabbis. Hillel was also an eye-witness of the foul murder which Herod had committed by having drowned in a bath his brother-in-law, the high-priest Aristobule III. (See Grätz's History, Vol. III., page 203.) The ••••••(skull) of the Mishna does therefore refer to Aristobule, and since Hillel could not openly express his indignation, for fear of the tyrant, he made an indirect allusion to the occurrence.--From the American Israelite, by Rev. Dr. Falk Vedaver.

62:1 Chapter XVI. of the original.

66:1 The text reads "Eliezer," but this must be a misprint, as Elazar was the fifth all the disciples, each of whom had three maxims.

66:2 Chapter XVII. of the original.

69:1 Chapter XVIII. of the original.

Next: Chapter III.

CHAPTER III.

MISHNA *A*. Aqabia b. Mahalallel used to say: "Consider three things, and thou wilt not fall into transgression: know whence thou comest, whither thou art going, and before whom thou art about to give account and reckoning; know whence thou comest--from a fetid drop, and whither thou art going--to worm and maggot; and before whom thou art about to give account and reckoning: before the King of the kings of kings, the Holy One, blessed be He."

Tosephtha--Aboth of R. Nathan.

1"*Said Aqabia b. Mahalallel, whoever takes to his heart the following four things will never sin*": Whence he comes; whither he goes; what will become of him; and who is his judge. Whence he comes? from a dark place! Whither he goes? to a dark place! What will become of him? dust and worms! And who is his judge? the King of the kings of kings, the Holy One, blessed be He!

Said R. Simeon: He comes from a dark place and returns thither; he springs from a fetid drop, from a place which no eye can behold, and finally becomes dust and worms, as it is written [Job, xxv. 6]: "How much less the mortal, the mere worm? and the son of earth, the mere maggot?"

Said R. Elazar b. Jacob: He is a worm while living, and a maggot when dead. What is meant by "a worm while living"? the vermin that infest him; "and a maggot when dead" applies to those that are bred from him after his death.

Said R. Simeon b. Elazar: To what can this be compared? To a king who built a magnificent palace, in which he dwelt, and a tanner's ditch passed in front of its entrance. Whoever

passed by said: "How beautiful and how glorious this palace would have been, if this tanner's ditch had not passed in front of its entrances." So is man. If now, when from his entrails issues forth a rancid stream, he is so proud and haughty, had a stream of sweet-smelling water or oil issued from him, how much the more proud and haughty would he have been.

When R. Eliezer fell ill, his disciples came to visit him. They sat before him and said: "Our master, teach us the best of all the things you taught us." He said: "Be careful of your friend's honor; and when you pray, know before whom you are standing, and through this you will be rewarded with life in the world to come."

MISHNA *B*. R. Haninah, the Segan of the high-priest, said: "Pray always for the welfare of the government; were it not for the fear of it, men would swallow each other alive." R. Haninah b.

Phradyon said: "Two that sit together and do not discuss any portion of the Law, their sitting is considered that of scorners, as it is written [Ps. i. 1]: 'And sitteth not in the seat of scorners'; but two that sit together and are discussing some words of the Law have the Shekhina among them, as it is written [Mal. iii. 16]: 'Then conversed they that feared the Lord one with the other; and the Lord listened and heard it,' etc."

This is as to two. Whence is it deduced of even one who occupies himself with the study of the Law, that the Holy One, blessed be He, fixes his reward? It is written [Sam. iii. 28]: "That he sit in solitude and be silent; because He hath laid it upon him."

Tosephtha--Aboth of R. Nathan.

1Said R. Hananiah the Segan: Whoever takes the words of the Torah to his heart, all thoughts of the sword and hunger, of foolishness and fornication, evil thoughts in general and thoughts of adultery, thoughts of nonsense and thoughts of human cares, are destroyed for him, for so it is written in David's Psalms

[paragraph continues] [xix. 9]: "The precepts of the Lord are upright, rejoicing the heart: the commandment of the Lord is clear, enlightening the eyes. P, But one that does not take to heart the words of the Torah, to him the reverse comes, as Moses wrote in his Deuteronomy [xxviii. 46-48]: "And they shall remain on thee for a sign and for a token, and on thy seed for ever. For the reason that thou didst not serve the Lord thy God with joyfulness, and with gladness of heart, while there was an abundance of all things; therefore, shalt thou serve thy enemies whom the Lord will send out against thee, in hunger, and in thirst, and in nakedness, and in want of everything."

Since it says: "In hunger," what is meant by it? At the time when one has not even a piece of barley-bread, his enemies demand of him wheat bread and fat meat. And what is meant by the words: "And in thirst"? At the time when one has not even a drop of vinegar, or beer, his enemies demand of him the best wine of the land. And what is meant by the words: "And in nakedness"? When one has not even a woollen or linen shirt, his enemies demand of him silken ones, the best of all lands. The words, "And in want of everything," mean that he will be without a light, knife, and table. Others says: Without vinegar and salt. This corresponds with the manner in which people curse when they say: "May there be no vinegar nor salt in thy house!"

He used to say the words: "Look not so at me, because I am somewhat black, because the sun hath looked fiercely at me" [Song of Songs, i. 6], refer to the counsellors of Judah, who relieved themselves of the yoke of the Holy One, blessed be He, and chose a human king to reign over them.

"My mother's children were angry with me" [ibid.] refers to Moses, who slew the Egyptian, as it is written [Ex. ii. 11, 12]: "And it came to pass in those days, when Moses was grown up, that he went out unto his brethren, and looked on their burdensome labors. . . . And he looked this way and that way, and when he saw that there was no one by." What is meant by "and when he saw that there was no one by"? Infer from this, that Moses inquired of the deliberating groups of angels, whether he should slay him (the Egyptian). They told him. to do so, and he did it, not

with a sword, but by a word, as it is written [ibid., ibid. 14]: "Sayest (intendest) thou to kill me, as thou hast killed the Egyptian?" From this can be learned that he killed him by the Holy Name.

Others say that the passage: "My mother's children were angry with me," refers to Moses, who fled to Midian, as it is written [Ex. ii. 15-17]: "And Pharaoh heard this thing, and he sought to slay Moses; but Moses fled from the face of Pharaoh, and tarried in the land of Midian, and he sat down by a well. . . . And the shepherds came and drove them away, but Moses arose and helped them and watered their flocks." Moses constituted himself as judge, and said: "It is usual for the males to draw the water and for the females to water the flocks, and here I see the reverse. There is in this place much perversion."

There are others who say that as long as Moses stood by the well, the water surged and came toward him, but when he left, the water also receded. At the same time, he said: "Woe to me, that I have left my people and come to dwell among heathens."

Another explanation of the above passage is, that it refers to the Israelites who made the golden calf, for although at first they said [Ex. xxiv. 7]: "All that the Lord hath spoken will we do and obey," nevertheless they soon afterward exclaimed: "These are thy gods, O Israel" [Ex. xxxii. 4].

Still others say that the above passage refers to the spies who brought and spread an evil report about the land, and caused that carcasses of Israelites fell in the desert, as it is written [Numb. xiv. 29]: "In this wilderness shall your carcasses fall."

"They appointed me to be keeper of the vineyards" [Song of Songs, i. 6]. Said the Holy One, blessed be He: Who has caused me to shower kindness upon the heathens, but Israel himself? For when the heathens live in prosperity they are pushed, cursed, and persecuted.

Others say that the above passage refers to the Israelites who were exiled in Babylon, and the prophets who were then among them told them to observe the laws of offerings and tithes. They, however, answered: "We were exiled because we refused to observe those laws, and you wish us to observe them now?"

MISHNA *C*. R. Simeon said Three that have eaten at our table, and have not blessed the Lord for His kindness, are as if they have eaten of the sacrifices of the dead, as it is written [Is. xxviii. 8]: 'For all tables are full of

vomit of filthiness, there is no place (clean).' But three that have blessed the Lord when eating at our table, are as if they had eaten of the table of the Omnipotent, as it is written [Ezek. xli. 22]: And he spoke unto me: This is the table that is before the Lord.'"

MISHNA *D*. R. Hanina b. 'Hakhinai used to say: "He who awakens by night, and he who is walking alone on the road and turns aside his heart to idleness, it is his own fault if he incurs trouble for himself."

MISHNA *E*. R. Nehunia b. Haqanah said: "Whoso receives upon him the yoke of the Law (*i.e.*, one who devotes himself wholly to study), the community removes from him the yoke of the government and the yoke of worldly cares; but a student who breaks from him the yoke of the Law, the community lays upon him the yoke of the government and the yoke of worldly cares."

MISHNA *F*. R. 'Halaphtha of the village of Hananiah said: "When ten sit and are occupied in words of Law the Shekhina is among them, as it is written [Ps. lxxxii. 1]: 'God standeth in the *Congregation* of God.' And whence is it proved of even five? It is written [Amos, ix. 6]: 'And hath founded his *bundle* 1 on the earth' (and a bundle is at least of five). And whence even three? It is written [Ps. lxxxii. 1]: 'In the midst of judges doth he judge' (and the number of judges is generally three). And whence even two? It is written [Mal. iii. 16]: 'Then they that favored the Lord spake often one to another.' (The least number of persons who can speak to each other is two.) And whence even one? It is written [Ex. xx. 24 (21)]: 'In every place where I shall permit my name to be mentioned, I will come unto *thee* and will bless *thee*.'"

MISHNA *G*. R. Eliezer of Bartota said: "Render unto God what belongs to Him, for thou and all thou hast are His, as David said [I Chron. xxix. 14]: 'For all things come from thee, and of thine own have we given thee.'"

MISHNA *H*. R. Jacob said: "One who walks by the way and learns, and breaks off his study and says, 'How beautiful is this tree!' and, 'How fine is this furrow field!' is endangering his own life."

MISHNA *I*. R. Dosithai b. R. Janai said in the name of R. Meir: "When a scholar of the sages sits and studies, and subsequently forgets what he studied, Scripture likens him to one who endangers his own life, as it is written [Deut. iv. 9]: 'Only take heed to thyself, and guard thy soul, diligently, that thou do not forget the things which thy eyes have seen and that they depart not from thy heart all the days of thy life,' etc. It might be thought that he is culpable of forgetting even when his study had grown hard to him, therefore it is written [Deut. iv. 19]: 'And they depart not from thy heart all the days of thy life,' from which it is to be inferred that he is not guilty unless he intentionally leads such a life as to forget them.

Tosephtha--Aboth of R. Nathan.

1R. Hanina b. Dosa said: Whomsoever fear of sin precedes, his wisdom prevails, as it is written [Ps. cxi. 10]: The beginning of wisdom is the fear of the Lord."

"*He also used to say: 'Whosesoever deeds exceed,'*" etc., as it is written [Ex. xxiv.]: "We will do and obey." It was asked of R. Johanan b. Zakkai: "What praise is to be applied to one who is wise and sin-fearing? He answered: "A mechanic who has his tools with him." And what praise is to be applied to the one who is only wise, but not sin-fearing?" And he answered: "He is a mechanic who has no tools." He was asked again as to what praise is to be applied to the one who is sin-fearing but lacks wisdom, and he answered: "No mechanic but has tools."

"*R. Elazar b. Azariah said: 'If there is no Law,'*" etc. He used to say: One who is possessed of

good deeds and who has studied much law, to what is he to be compared? unto a tree that is planted by waters, whose branches; are few but whose roots are many, and which can withstand the severest storm, as

it is written [Ps. i. 3]: "And he shall be like a tree planted by rivulets of water," etc. One who lacks good deeds but who has studied law, to what is he to be compared? to a tree planted in the desert whose branches are many and his roots few, which is easily uprooted by any wind, as it is written [Jer. xvii. 6]: "He shall be like a lonely tree in the desert."

"*R. Gamaliel said: 'Set a teacher,'*" etc. A teacher for wisdom and a companion to study with, and be quit of doubt and do not tithe much by estimation.

Simeon his son used to say: All my days I spent among the sages, and I found silence to be the most advisable thing, and that not discussion but practice is the principal thing; and if silence is advisable for intelligent persons, so much the more for fools. Wisdom does not bring to much talk, nor does much talk bring to wisdom; the main thing is practice. Whosoever talks much causes sin, as it is written [Prov. x. 19]: "In a multitude of words transgression cannot be avoided"; and it is also written [ibid. xvii. 28]: "Even a fool, when he keepeth silence, is counted wise." R. Simeon b. Eliezer said: "He who studies the law and is sin-fearing is like a physician who is consulted about a wound and who has his instruments and drugs with him; but one who studies the Law and is not sin-fearing is like a physician who, when consulted about a wound, has the instruments to operate with but has no drugs to heal the wound up."

MISHNA *J*. R. Hanina b. Dosa said: "He in whom fear of sin precedes his wisdom, (may be sure that) his wisdom will endure; and he in whom wisdom precedes his fear of sin, (may be sure that) his wisdom will not endure."

He also used to say: "He whose works are in excess of his wisdom, (it is certain that) his wisdom will endure; and he whose wisdom is in excess of his works, (it is certain that) his wisdom will not endure."

He also said: "He who has earned man's esteem and love, will also receive the favor of Heaven; but he who is not worthy of such esteem, cannot expect to find favor with God."

MISHNA *K*. R. Dosa b. Horkhinas said: "Sleeping away the morning, carousing at noonday, childish trifling,

and the company of the vulgar waste a man's life away.

MISHNA *L*. R. Elazar the Modai said: "He that profanes things sacred and contemns the festivals; he who causes his neighbor to blush in public, and annuls the covenant of Abraham our father, and acts barefacedly against the Torah, [1] even though he is possessed of Torah and good deeds, he has no share in the world to come."

MISHNA *H*. R. Ishmael said: "Be pliant with thy chief (although he is not deserving) and yielding to the impressment, 2 and receive every man with cheerfulness."

MISHNA N. R. Aqiba said: "Mockery and frivolity are the forerunners of immorality. Tradition is the rampart about the Law; tithes (charity) are the rampart of wealth; good resolutions are the preservative of abstinence; and the safeguard of wisdom is--silence."

MISHNA *O*. He used to say: "Beloved is man, that he was created in His image, and, moreover, that he was notified that he was so created, as it is written [Gen. ix. 6]: 'For in the image of God made he man.'"

MISHNA *P*. "Beloved are Israel, that they are called children of God; moreover, that it was made known to them that they are so called, as it is written [Deut. xiv. 1]: 'Ye are the children of the Lord your God.'"

MISHNA *Q*. "Beloved are Israel, that there was given to them a precious article; moreover, that it was made known to them that there was given to them the precious article" [as it is stated elsewhere that with this the world was created, as it is written [Prov. iv. 2]: "For good information do I give you; my teaching must ye not forsake"].

MISHNA *R*. "Everything is foreseen and free-will is given. And the world is judged by grace; and every one

is judged according to the majority of his deeds" (*i.e.*, if one has done more good than evil, he is judged more favorably--Rashi).

MISHNA *S*. He (Aqiba) used to say: "All that we possess is merely a trust, and over all life a net is spread out. The storehouse is open, the proprietor sells on credit; the ledger lies ready and the purchaser's hand makes the entry; whoever wishes may come and borrow, but the collectors are continually going the rounds of the debtors, and obtain payment from them voluntarily or involuntarily; they know whereupon they base their claims, and their court is a tribunal of justice, and everything is prepared for the banquet" (*i.e.*, even the wicked have a share in the world to come--Rashi).

MISHNA *T*. R. Elazar b. Azariah was wont to say: "Without knowledge of religion there can be no true culture, and without true culture there is no knowledge of religion. Where there is no wisdom, there is no fear of God; and without fear of God there is no wisdom. Without learning there can be no counsel, and without counsel there will be lack of learning. Where there is a dearth of bread, culture cannot thrive, and lack of culture causes dearth of bread."

MISHNA *U*. He also used to say: "With what is he to be compared, who can boast of more learning than charitable deeds? With a tree of many branches and but few roots--there comes a storm that uproots and prostrates it, as it is written [Jer. xvii. 6]: 'And he shall be like a lonely tree in the desert, which feeleth not when the good cometh; but abideth in the parched places in the wilderness, in a salty land which cannot be inhabited. 'But what does he resemble, who can

show more deeds than learning? A tree of few branches and many roots: all the storms, and winds may bear down and rage upon it, they cannot move it from its place. As it is written [Jer. xvii. 8]: 'And he shall be like a tree that is planted by the waters, and by a stream spreadeth out its roots, which

feeleth not when heat cometh, but its leaf remaineth green, and in a year of drought it is undisturbed by care, and ceaseth not from yielding fruit.'"

MISHNA *V*. R. Elazar b. 'Hasma said: "'Qinim' 1 and 'Pitteche Niddah' 2 are essentials of Torah; canons of astronomy and geometry are after-courses of wisdom."

Tosephtha--Aboth of R. Nathan.

3"*Sleeping away the morning*." It means: One shall not wilfully sleep till past the hour of reading the Shema, for by so doing he neglects the Law, as it is written [Prov. xxvi. 13]: "As a door turneth upon its hinges, so doth the slothful upon his bed. The slothful saith, There is a leopard in the way: a lion is between the streets."

"*Carousing at noonday*" means: One should not make a practice of drinking wine at midday, for by so doing he is prevented from observing the Law, as it is written [Eccl. x. 16]: "Woe to thee, O land! when thy king is low-minded, and when thy princes eat in the morning." Also: "Happy art thou, O land, when thy king is noble-spirited, and thy princes eat in proper time." When is the proper time? Say, then, in the world to come, as it is written [Is. ix. 22]: "I the Lord will hasten it in its time"; also: "At the proper time shall it be said to Jacob and to Israel," etc. [Numb. xxiii. 23]. Said the Holy One, blessed be He, to Balaam: "*At* the time, but not *in* the time; not *in* your time, but *at* the time when I will redeem Israel."

"*Childish trifling*." By this is meant, that one should not make a practice of talking to his wife, sons, or daughters when he is studying at home; for by so doing he neglects the Torah, as it is written [Josh. i. 8]: "This book of the law shall not depart out of thy mouth; but thou shalt meditate therein, day and night."

"*The company of the vulgar*" means: One should not lounge with idlers in the market, lest he neglect the Torah, as it is written [Ps. i. 1, 2]: "Happy is the man who walketh not in the

counsel of the wicked . . . and sitteth not in the way of scorners; but whose delight is the law of the Lord." Said R. Meir: For what purpose is it said: "And sitteth not in the way of scorners"? Say, then, it refers to the assembly halls of the scoffers, as it is written [ibid. xxvi. 5]: "I have hated the assemblage of evil-doers; and with the wicked will I not sit"; and it is also written [Mal. iii. 19]: "For, behold, the day is coming, which shall burn as an oven, and all the presumptuous, yea, and all who practise wickedness, shall be stubble"; and "presumptuous yea, are scoffers, as it is written [Prov. xxi. 24]: "The presumptuous and proud, scorner is his name."

Once it happened that R. Aqiba, while sitting and teaching his disciples, was reminded of the way he spent his younger days. He said: "I thank thee, Lord my God, that thou hast placed me among the studious, and not among the idlers in the markets."

Footnotes

71:1 Chapter XIX. of the original. The phraseology of these sentences is a little different in the Mishna.

72:1 Chapter XX. of the original.

75:1 Leeser translates it "vault," but the Talmud translates it literally.

76:1 Chapter XXII. of the original.

73:1 This is according to Maimonides; Rashi, however, says it means: one who says that Moses wrote in the Pentateuch ridiculous things, as, for instance, that Thimna was the concubine of Eliphaz [Gen. xxxvi. 12].

73:2 Maimonides explains it otherwise.

80:1 The young doves sacrificed by a woman after confinement.

80:2 The three kinds of blood of menses, which are difficult to be distinguished from each other.

80:3 Chapter XXI. of the original.

Next: Chapter IV.

CHAPTER IV.

MISHNA *A*. Ben Zoma was in the habit of saying: Who is a wise man? He who learns from everybody, as it is written [Ps. cxix. 99]: 'Above all my teachers have I obtained intelligence!' Who is a hero? He who conquers his passions, as it is written [Prov. xvi. 32]: 'One that is slow to anger is better than a hero; and he that ruleth his spirit, than the conqueror of a city.' Who is a rich man? He who is satisfied with his lot, as it is written [Ps. cxxviii. 2]: 'For thou eatest the labor of thy hands: then wilt thou be happy, and it shall be well with thee.' 'Wilt thou be happy' in this world, 'it shall be well with thee' in the world to come. Who is honored? He who honors his fellowmen, as it is written [I Samuel ii. 30]: "For those that honor me will I honor, and those that despise me shall be lightly esteemed.'"

MISHNA *B*. Ben Azai was in the habit of saying: "Hasten to fulfil the commandment of little importance as if it were of much importance, and flee from all manner of sin, for the fulfilment of one precept brings about that of another, and one transgression brings about another; for the reward of virtue is virtue itself, and the reward of sin is sin." He likewise said: "Despise no man, and consider nothing as too far removed to come to pass; for there is no man but hath his day, and no event that may not come."

MISHNA *C*. R. Levitas of Jabneh said: "Be exceedingly lowly of spirit, for the hope of man is the worm." "R. Johanan b. Baroquah said: "Whoso profanes the name of Heaven in secret, they punish him openly.

[paragraph continues] Error, like design, is punishable as to the profanation of His name."

MISHNA *D*. R. Ishmael said: "He that learns in order to teach, they grant him the faculty to learn and to teach; he that learns in order to practise, they grant him the faculty to learn, to teach, to preserve, and to practise."

MISHNA *E*. R. Zadoq was in the habit of saying: "Wear not the law of God as a crown to exalt thyself withal, nor use it as a spade to dig therewith (for wealth)." [And thus was Hillel wont to say: "And he who serves himself with the tiara perishes."] Thus thou art to learn that he who makes use of his learning in the Law to further his own selfish ends loses all merit.

MISHNA *F*. R. Jose said: "Whosoever honors the Torah is himself held in honor, and whosoever dishonors the Torah is himself dishonored with men."

MISHNA *G*. R. Ishmael said: "He that refrains himself from judgment, frees himself from enmity, and rapine, and false swearing; and he that is arrogant in decision is foolish, wicked, and

puffed up in spirit."

MISHNA *H*. He used to say: "Judge not alone, for none may judge alone save One; and say not, 'Accept ye my opinion,' for they are free to choose, and not thou."

MISHNA *I*. R. Jonathan said: "Whosoever fulfils the Law in poverty will at length fulfil it in wealth, and whosoever neglects the Law in wealth will at length neglect it in poverty."

MISHNA *J*. R. Meir said: "Lessen your business, that you have more time for the study of the Law, and be lowly in spirit unto every man; and if thou idlest away thy time without study of the Law, thou wilt have many idlers against thee; and if thou laborest in the Law, He hath much reward to give unto thee."

MISH NA *K*. R. Eliezer b. Jacob said: "He who performs one precept has acquired unto himself one advocate, and he who commits one transgression has gotten

to himself one accuser. Repentance and good deeds are as a shield against punishment."

MISHNA *L*. R. Jehudah the Sandlar said: "Whatsoever congregation is for the sake of Heaven will in the end succeed; and that which is not for a divine purpose will in the end not succeed."

MISHNA *M*. R. Elazar b. Shamna said: "Let the honor of thy disciple be as dear unto thee as the honor of thine associate; and the honor of thine associate as the fear [1] of thy master; and the fear of thy master as the fear of Heaven."

MISHNA *N*. R. Jehudah said: "Be careful in thy study, for error in study counts for an intentional sin."

MISHNA O. R. Simeon was wont to say: "There are three crowns--the crown of the Law, the crown of the priesthood, and the crown of royalty. But the crown of a fair name excelleth them all."

MISHNA *P*. R. Nehorai said: "Betake thyself to a place of Torah, and say not that it will come after thee, because thine associates will confirm it unto thee, and (moreover) lean not unto thine own understanding."

Tosephtha--Aboth of R. Nathan.

[2]"*Who is a wise man? he who learns from everybody*." Who is the most modest? One who is as modest as Moses our master was, as it is written [Numb. xii. 3]: "But the man Moses was very meek." Who is the richest of all? One that is satisfied with his lot, as it is written [Ps. cxxviii. 2]: "When thou eatest the labor of thy hands: (then) wilt thou be happy, and it shall be well with thee." Who is the greatest of all heroes? One that controls his passion, as it is written [Prov. xvi. 32]: "One that is slow to anger is better than a hero; and he that ruleth his spirit, than the

conqueror of a city." And one that

is the ruler of his spirit is considered as if he had conquered a city full of heroes, as it is written [ibid. xxi. 22]: "A wise man scaleth the city of the mighty"; and "mighty" means mighty in the Torah, as it is written [Ps. ciii. 20]: "Mighty in strength, that execute his word." There are others who say that it means the ministering angels, as it is written [ibid.]: "Bless the Lord, ye his angels, mighty in strength," etc. There are still others who say that the greatest hero is he who makes his enemy his friend.

"*Despise no man*." As it is written [Prov. xiii. 13]: "Whoso despiseth the word shall fall in debt to it; but he that feareth the commandment will be rewarded."

He also used to say: "One who is taught the Law while young is like unto a heifer which was tamed while yet small, as it is written [Hosea, x. 11]: "And Ephraim is as a well-taught heifer that loved to tread out the corn." The one who is taught the Torah in his old age, however, is like a cow which was tamed when already old, as it is written [ibid. iv. 16]: "For like an untamable cow is Israel disobedient."

He also used to say: "He that is taught the Torah in his youth is similar to a woman who kneads her dough with warm water, and one that is taught the Torah in his old age is similar to a woman who kneads her dough with cold water."

[1]R. Eliezer b. Jacob said: "One that is taught the Law when young is similar to a screed which was written on new paper, and one who is taught the Law when old is similar to a screed which was written on old paper."

R. Simeon b. Gamaliel adds to the above the following: "One that is taught the Law when young is similar to a young man who marries a young woman; they are suited to and desire each other. One that is taught in his old age, however, is similar to an old man who marries a young woman: she is suitable to him, but not he to her. She desires him, but he avoids her, as it is written [Ps. cxxvii. 4]: "Like arrows in the hand of a mighty man, so are the children of youth"; and immediately after it is written [ibid., ibid. 5]: "Happy is the man that hath his quiver filled with them."

One that learns and forgets is similar to a woman who bears children but buries them, as it is written [Hosea, ix. 12]: "But though they were to bring up their children, yet would I bereave

them, that there should be no man." Do not read ••••••• (would I bereave them), but ••••••• (would I forget them). As it is written [Deut. xi. 18]: "Therefore shall ye lay up these my words in your heart," etc., *i.e.*, the words of the Torah shall be distinguished from each other, and at same time shall be marked upon thee side by side, as it is written [Prov. vii. 3]: "Bind them around thy fingers; write them upon the table of thy heart" (*i.e.*, as the fingers are separate from each other and still side by side of each other), and it is also written [ibid. vi. 21]: "Bind them upon thy heart continually, tie them about thy throat."

MISHNA *Q*. R. Janai said: "Neither the security of the wicked nor the afflictions of the righteous are within the grasp of our understanding."

MISHNA *R*. R. Mathia b. 'Heresh was in the habit of saying: "Be beforehand in saluting every man! Be the lion's tail rather than the fox's head!"

MISHNA *S*. R. Jacob said: "This world is, as it were, the antechamber of the world hereafter; therefore, prepare thyself in the antechamber, that thou mayest be admitted into the banqueting hall!"

MISHNA *T*. He used to say: "Better is one hour of repentance and good deeds in this world than all the life of the world to come, though one hour of refreshment of spirit in the world to come is better than all the life in this world."

MISHNA *U*. R. Simeon b. Elazar said: "Do not seek to appease thy friend in the hour of his passion, and do not seek to console him in the hour when his dead is laid out before him; and do not interrogate him in the hour of his vow, and strive not to see him in the hour of his disgrace."

MISHNA *V*. Samuel the Little used always to repeat the following passage [Prov. xxiv. 17, 18]: "At the fall of thy enemy do not rejoice, and at his stumbling let not thy heart be glad, lest the Lord see it, and it be

displeasing in his eyes, and he turn away from him his wrath.'"

MISHNA *W*. Elisha b. Abuyah said: "He who learns as a lad, to what is he like? To ink written on fresh paper. And he who learns when old, to what is he like? To ink written on blotted paper.

MISHNA *X*. R. Jose b. Jehudah, the villager of Babylon, [1] said: "Whom does he resemble, who learns from the young? Him who eats unripe grapes and drinks the wine fresh from the wine-press! But whom does he resemble, who learns from old men? Him who eats ripe grapes and drinks old wine!"

MISHNA *Y*. Rabbi was in the habit of saying: "Look not upon the pitcher, but upon what it contains. Many a new pitcher is full of old wine, and many an old one does not even hold new wine."

MISHNA *Z*. Rabbi Eliezer the Kapar said, "Envy, sensuality, and ambition destroy life."

MISHNA *AA*. He likewise said: "Those born unto the world are destined to die; the dead to live on again; and those who enter the eternal life, to be judged. Therefore let it be recognized, understood, and remembered, that He the Almighty, the Creator, Architect, He is the counsellor, He the judge, He the witness, He the accuser. He is always ready to give judgment; blessed be He! for, before Him there is no injustice, no oversight, no regard for rank, no bribery. Know that

all will appear in the account! Accept not the assurance of thy passions, that the grave will be a place of refuge for thee. For without thy consent wert thou created, wert born into the world without thy choice; thou art now living without thine own volition, without thine approval thou wilt have to die; so likewise without thy consent thou wilt have to render account before the Supreme King, the Holy One, blessed be He!"

Tosephtha--Aboth of R. Nathan.

1Said Elisha b. Abuyah: "A virtuous man who has studied the Law diligently is similar to one who builds a foundation of stones and a superstructure of bricks; though they be inundated, yet they cannot be moved. One who is not virtuous, in spite of having studied the Law, is similar to one who lays stones on a brick foundation: the smallest freshet will overturn the building."

He used to say: "The former is also similar to lime which is spread upon stones, even heavy rain cannot melt it; and the latter is similar to lime which is spread on bricks, the lightest shower will melt it."

He also used to say: "The former is also similar to a cup which has a ψηφος (a four-cornered polished stone), even when it is turned over, still some of its contents remain; but the latter is similar to a cup without a ψηφος, as soon as it is turned over, everything in it is spilled.

He used to say: "The former is also similar to a horse which has a complete harness; and the latter is similar to a horse which lacks a bridle: the man who mounts him is soon thrown off."

He also used to say: One who is taught when young, absorbs the words of the Torah in his blood, and he can utter them explicitly, but the reverse is with one who is taught when old. There is also a proverb to this effect: "If thou hast not desired them in thy youth, how wilt thou reach them in thy old age?"

He also used to say: "The words of the Torah are as hard to purchase as golden vessels, and as easy to lose as glassware, as it is written [Job, xxviii. 17]: 'She cannot be estimated after gold and glass.'" He brings together gold with glass, as golden vessels when broken can be repaired; but glassware when broken cannot be repaired, unless melted and formed again. And what does it mean: "And not in exchange for her (can) vessels of refined gold (be taken)"? [ibid.]. That the countenance of him who occupies himself with the words of the Torah, and observes them, shines as refined gold; but the countenance of him who occupies himself with them, and does not observe them, becomes dark as glass does.

He also used to say: "It is possible for a man to study the Law continuously for twenty years and forget it in the course of

two years." How so? If he has not gone over what he had learned for six months, he will pronounce the unclean clean, or *vice versa*. If he has neglected to go over his studies for twelve

months, he will confuse the sayings of the sages; in eighteen months, he will forget the beginning of the Tracts; and in twenty-four, even that of the chapters; and finally will have to be silent altogether. Of him said Solomon [Prov. xxiv. 30, 31]: "By the field of a slothful man I once passed along, and by the vineyard of a man void of sense: and, lo, it was all grown over with thorns, nettles had covered its surface, and its stone wall was broken down." And when the wall of a vineyard falls, the entire vineyard is soon destroyed.

He also used to say: "One who causes his friend to perform a meritorious deed, it is as if be himself had done it." This can be compared to a human king who caught a bird and gave it to one of his servants, saying: "If thou wilt be careful of this bird, I will reward thee; otherwise, I will take thy life for its." So also has the Holy One, blessed be He, said to the Israelites: "The words of the Torah which I gave to you, if you will observe them I will reward you; otherwise, I will take your lives for them," as it is written [Deut. iv. 9]: "For it is not a vain word for you; on the contrary, it is your life."

Tosephtha--Aboth of R. Nathan.

[1]Ben Azai said: "If the mind is tranquil because of acquired wisdom, it is a good sign; [2] but if made restless by acquired wisdom, it is a bad sign. If the mind is tranquil on account of faith in the Creator, it is a good sign; but if the mind is restless on account of believing in the Creator, it is a bad sign. If one has the sympathies of the sages at the hour of his death, it is a good sign for him; if he has not, it is a bad sign for him. When dying, if his face is turned upward, or he looks straight in the faces of the persons around him, or if his countenance shines, it is a good sign for him. The reverse is unfavorable."

When R. Johanan b. Zakkai was dying, he raised his voice

in weeping. Said his disciples to him: "Master, thou art as a high pillar, the light of the world, a strong hammer--wherefore criest thou?" He answered: "Am I going before a human king? Such a one is angry at me, it can be only for this world; if he imprisons or slays me, it is only for this world. Moreover, I might appease him with words or bribe him with money. But I am going before the King of kings of kings, the Holy One, blessed be He: if He should be angry at me, it includes both worlds, and whom I cannot appease with words or bribe with money. Besides, there are two ways before me: one leads to the garden of Eden and the other to Gehenna, and I do not know whether I will be condemned to Gehenna, or I will enter the Garden of Eden, as it is written [Ps. xxii. 30]: 'Before him shall bend the knee all that are going down into the dust,' etc.

It is also written [Ex. xxx. 23]: "And then will I take away my hand"; also [Ezek. ii. 10]: "And he spread it out before me, and it was written within and without," etc. "Within" means this world; "without" means the world to come. Others say: "Within" means the sufferings of the righteous, and the welfare of the wicked in this world; and "without" refers to the reward of the upright, and the expiation of the wicked in the world to come.

"And there were written therein lamentations, and dirges, and woe" [ibid.]. "Lamentations" refers to the expiation of the wicked in this world, as it is written [ibid. xxxii. 16]: "This is the

lamentation wherewith they shall lament for her; the daughters of the nations shall lament for her." "*Dirge*" [1] refers to the reward of the upright in the world to come, as it is written [Ps. xcii. 4]: "Upon a ten-stringed instrument, and upon the psaltery; and with the sweet sound [1] of the harp." "*And woe*" refers to the expiation of the wicked in the world to come, as it is written [Ezek. vii. 26]: "Mishap shall come upon mishap, and report shall be spread upon report."

Before he (Rabban Johanan b. Zakkai) died, he said: "Clean the house of all defilement, and put in a chair for Hezekiah, King of Judah."

He used to say: "Whoever dies with a sound mind, or when yet able to talk, or while conversing about the Law, or while

doing something meritorious, or in a state of gladness, or while laughing, it is a good omen for him; if otherwise, it is a bad omen. If one die on the eve of Sabbath, or at the close of the Day of Atonement, it is a good omen for him; but if at the close of the Sabbath or on the eve of the Day of Atonement, it is a bad omen."

There is a tradition that when R. Eliezer fell ill, it was on the eve of a Sabbath. When R. Aqiba and his comrades visited him, he was sleeping in his chamber; so they stayed in the dining-room. When Hyrcanus his son entered to remove his phylacteries, he was prevented from doing so by his father, who began to cry. He left the chamber, and said to the sages: "My masters, methinks that my father is not clear in his mind." R. Eliezer, however, overheard him, and rejoined: "My son, it is not I who am not clear in my mind, but thou. For thou hast neglected the lighting of the lamps, for which thou art liable to a death penalty by the hand of heaven, and hast instead occupied thyself with the removal of my phylacteries, for which thou art guilty only because of *Shbuth*." When the sages heard that his mind was clear, they sat down at a distance of four ells [1] from his bedside. They inquired of him as to cleanness and uncleanness of many subjects among them; also an amulet or torn phylacteries, are they subject to defilement or not? He answered: "They are. Dip them as they are, and be careful about them, for they form part of the great Halakhoth which were told to Moses on Sinai." And they kept on asking him concerning cleansing, defilement, and the legal baths, saying: Rabbi, What is this? and, What is that? and he answered accordingly--clean, or unclean.

Then R. Eliezer said to the sages: "I wonder whether the scholars of this generation will be punished with death by the hand of heaven?" They inquired: "Rabbi, why so?" And he rejoined: "Because they have not served me."

Later on he said to Aqiba b. Joseph: "Aqiba, why hast thou not served me?" He answered: "Rabbi, I had not the opportunity." And he rejoined: "I wonder whether thou wilt die a natural death." There are others who say that he did not rejoin anything.

When R. Eliezer spoke thus to his disciples, his blood froze within him. Said R. Aqiba: "Rabbi, what will my death be?"

[paragraph continues] He answered: "Aqiba, thine will be the hardest of all!" Thereupon the latter sat down before him, and said: "Rabbi, now teach me." And he taught him three hundred Halakhoth concerning a bright spot (in the skin of one's flesh). At the same time he raised his two arms, and laid them on his breast, saying: "Woe to me! that my two arms, which are like two holy scrolls, must leave this world. If all the seas were ink, and all the reeds were pens, and all mankind were writers, they could not write down everything I have learned and repeated, and what I heard while serving the sages in the college, and I have not left out of the Torah even as much as a drop of the sea. Moreover, I learn three hundred Halakhoth in the verse, 'Thou shalt not suffer a witch to live' [Ex. xxii. 17] [there are others who say three thousand Halakhoth], and nobody ever asked me about them, except Aqiba b. Joseph; for he said to me once: 'Rabbi, teach me how melons are planted, and how they are pulled out.' I said one thing, and the entire field became covered with melons, He then said: 'Rabbi, thou hast taught me their planting; teach me also how they are pulled out.' And I said one thing, and all the melons were gathered together in a heap."

R. Elazar b. Azariah inquired of him as to cleanness and uncleanness of many subjects, and he answered: "It is clean," or "unclean," accordingly, correctly; and when answering of one thing that it was clean, his soul left him while saying "clean." Whereupon R. Elazar b. Azariah rent his garments, and, weeping, went out and told the sages: "My masters, come and see R. Eliezer, who is clean for the world to come, because his soul left him while saying 'clean.'"

After the Sabbath, R. Aqiba came and found his coffin while being borne from Cesarius to Luda; he immediately rent his garments, and tore his hair till the blood flowed and dropped to the ground. He wept and cried: "Woe to me! Rabbi, because thou hast died. Woe to me! my master, because thou hast left the whole generation as an orphan." When standing in line he said: "'My father, my father, the chariot of Israel and its horsemen' [II Kings, ii. 12], there are many foreign coins which no money-changer can change besides you (*i.e.*, I have many hard questions of law which cannot be solved by any one besides you)."

1"*Ben Azai said: 'Hasten to,'*" etc. He used to say: If

thou hast performed a meritorious deed, and art not sorry for it, it will draw many meritorious deeds in its train; but if one transgresses, and is not sorry for it, it will draw many sins in its train. For one meritorious deed draws another, and one transgression draws another in its train, as the reward for a meritorious deed is the performance of another, and the punishment for a transgression is a transgression."

He also used to say: "Set something apart for charity, before you are compelled to do so by others, so that you get the reward of both the charity and the setting it apart, and not that the reward for the latter shall go to the one who compelled you to do it."

He also used to say: "Lower thy seat two or three rows, from the place you intend to occupy. For it is better thou shalt be told to ascend than to descend, as it is written [Prov. xxv. 7]: 'For better it is that it be said unto thee, Come up higher, than that thou shouldst be put lower in the presence of the prince.'"

There are three persons whose life is not worth living: one who must eat at the table of others; one who lives in an attic; and one whose wife dominates over him. There are others who say: One who suffers in his body.

He used to say: "It is easier to rule the whole world than to associate and discuss with hypocrites."

Tosephtha--Aboth of R. Nathan.

[1]R. Aqiba said: "The safeguard for honor is refraining from laughter; the safeguard for wisdom is silence; the safeguard for vows is abstinence; that for cleanness is holiness; and that for meekness is the fear of sin."

He used to say: Do not mingle with the scoffers, for thou mayest learn their doings; do not eat with an ignorant priest, for thou runnest the risk of desecration. Be not free with vows, lest thou wilt trespass upon oaths; do not get into the habit of dining sumptuously, for this may bring thee to eat the bread of charity; do not come to a doubt (upon slight evidence), and it will prevent thy coming to a certainty (upon scant proof); and do not go to a foreign country, for thou mayest be compelled to follow the ways of idolaters. So also said David [I Sam. xxvi. 19]:

[paragraph continues] "Because they have driven me out this day so that I cannot attach myself on the inheritance of the Lord, saying, Go, serve other gods." Canst thou for a moment think that King David was an idolater? He only meant to infer that he who leaves Palestine and goes to a foreign country is considered as if he were an idolater.

He also used to say: "Whoever is buried in other countries, it is as if he were buried in Babylon; whoever is buried in Babylon, it is as if he were buried in Palestine; whoever is buried in Palestine, it is as if he were buried under the altar, because the whole (soil) of Palestine is fit for an altar; and whoever is buried under the altar, it is as if he were buried under the throne of glory, as it is written [Jer. xvii. 12]: 'A throne of glory, exalted from the beginning, is the place of our sanctuary.'"

He used to say: "The ignorant can never be truly pious."

He also used to say: "Why do disciples die while young? Not because they are adulterers, or robbers, but because they interrupt their studies, and occupy themselves in idle conversation, and also because they do not begin again where they stopped."

R. Simeon b. Elazar said: "The Israelites who live outside of Palestine are unconsciously worshipping idols. How so? And idolater gives a feast in honor of his son, and he invites all the Jews of the place, and although they eat and drink of their own, and their own servants wait on them, yet it is considered as if they had eaten the sacrifices of the dead, as it is written [Ex. xxxiv. 15]: 'Any one call thee, and thou eat of his sacrifice.'"

"*And contemns festivals*." R. Aqiba said: "Whoever marries a woman not suitable to him

transgresses five negative commandments; for 'thou shalt not avenge,' 'nor bear any grudge' [Lev. xix. 18]; for 'thou shalt not hate thy brother in thy heart' [ibid., ibid. 17]; for 'thou shalt love thy neighbor as thyself' [ibid., ibid. 18]; and [Lev. xxv. 36] 'that thy brother may live with thee': as he hates her, he desires her death, consequently he abolishes the commandment of the multiplication of mankind."

He also used to say: "Whoever eats unhealthy food transgresses thrice: he despises himself, as well as the food, and pronounces a benediction upon unwholesome things."

R. Jehudah b. Ilai said: "When one dies and leaves a son, who did not care to learn the Torah from him, and he goes and

learns it from others, his only desire is to be flattered (and as the father was too proud to flatter, therefore be did not have the merit of teaching his son)."

R. Elazar the Kapar said: "Do not be as the lintel, which no hand can reach; neither as the upper cross-beam, on which the engravings are defaced; and not as the middle threshold, at which sometimes the feet strike; but as the lowest one, on which every one steps, and which, when in the end the entire building is demolished, is still left in its place."

Tosephtha--Aboth of R. Nathan.

[1]R. Jose said: Whoever venerates the Torah is himself honored by the people, as it is written [I Sam. ii. 30]: "For those that honor me will I honor, and those that despise me shall be lightly esteemed." "*Those that honor me*" refers to Pharaoh, King of Egypt, who honored the One who said, "Let there be the world," and went out at the head of his court; and when his servant remarked that kings usually went in the rear of' their court, he answered: Am I then going before a human king? I am going before the King of kings of kings, the Holy One, blessed be He. Therefore the Holy One, blessed be He, also honored him and meted out his retribution Himself, as it is written [Habakkuk, iii. 15]: "Thou didst pass along over the sea with thy horses."

R. Joshua b. Kar'hah said: "Pharaoh rode into the sea on a stallion, as it is written [Ex. xv. 19]: 'For the horse of Pharaoh went in,' etc.; but when his retribution came, it was done with a horse and chariot, as it is written [Habakkuk, iii. 15]: 'Thou didst pass along over the sea with thy horses,'" etc.

"*Those that despise me shall be lightly esteemed*," refers to Sennacherib, who despised the One who said, "Let there be the world"; therefore be was despised by the Holy One, blessed be He, as it is written [Is. xxxvii. 24, 25]: "Through thy servants hast thou . . . till besieged places." Therefore the Lord punished him through an angel, who shaved his head and beard, and he returned to his kingdom shamefacedly.

"*R. Ishmael the son of R. Johanan b. Broka said: 'Whoever learns for the purpose of teaching,'*" etc. He used to say:

[paragraph continues] "Though thou hast not undertaken to accomplish the entire Law, yet thou art not free to neglect it altogether; and the more one occupies himself with it, the more reward he accumulates."

"*R. Eliezer b. Hisma said*," etc. R. Johanan b. Nuri, however, said: "The Halakhoth, the purification, and the law of menstruation and Qinim are the essentials of the Torah."

He used to say: "The support of the wise, the institution of courts and their maintenance, bring much good to the world."

R. Johanan b. Dehabai said: "Whoever says this Halakha is not seemly, forfeits his share in the world to come."

He used to say: "Do not keep away from a precept which has no limit, or from a labor which has no end. This can be compared to one who was hired to take water from the sea and spill it on the land. When, seeing that the sea does not decrease and the land is not submerged, he becomes disgusted and refuses to continue the work, he is to be told as follows: 'You ignoramus! Why should you become disgusted? Continue your work, and get your pay of a golden dinar every day.'"

"*R. Eliezer b. Shamua said: 'Let the honor of thy disciple,'*" etc. Whence do we know that one shall be as particular regarding the honor of his disciple as regarding that of his colleague? From Moses our Master, who said to Joshua: "Choose for us men" [Ex. xvii. 9]. He did not say *choose for me*, but *for us*. Infer from this that he regarded him as his equal, although he was master and Joshua the disciple. And whence do we know that one should be as particular regarding the honor of his colleague as regarding that of his master? It is written [Numb. xii. 11]: "Then said Aaron unto Moses, Alas, my lord." Was not (Moses) his younger brother? Infer from this that he regarded him as if he were his master. And whence do we know that one should be as particular in regard of the honor of his master as regarding that of Heaven? As it is written [ibid. xi. 28]: "And Joshua the son of Nun, the servant of Moses from his youth, answered and said, My lord Moses, forbid them," We see that Joshua equalled Moses to the Shekhina.

At first they used to say: There is grain in Judea, straw in Galilee, and chaff on the other side of the Jordan; afterward they changed it to: There is no grain in Judea; there is no straw in Galilee, but chaff; and on the other side of the Jordan there is neither.

Tosephtha--Aboth of R. Nathan.

[1]R. Nathan said: "There is no love such as the love of the Torah; there is no wisdom such as the wisdom of manners; there is no beauty such as the beauty of Jerusalem; there are no riches such as the riches of Modea; there is no strength such as the strength of Persia; there is no adultery such as the adultery of the Arabians; there is no haughtiness such as the haughtiness of Elam; there is no hypocrisy such as the hypocrisy of Babylon, as it is written [Zech. v. 11]: 'And he said unto me, To build for it a house in the land of Shinar'; and there is no witchcraft such as the

witchcraft of Egypt."

R. Simeon b. Elazar said: "A sage living in Palestine is praiseworthy. When he leaves it for a foreign country, his wisdom diminishes; and although his wisdom diminishes, still he has preference to a sage who never lived in Palestine. This can be compared to metal of Nadai which is brought to the countries of the sea: although depreciated in its original value, it is nevertheless more valuable than all other iron of the world."

Rabban Simeon b. Gamaliel said: "Whoever maintains peace in his own household, it is considered as if he maintains it among every one in Israel; and whoso causes envy and contention in his household, it is considered as if he had done so among every one in Israel; for every one is king in his own house, as it is written [Esther, i. 22]: 'That every man should bear rule in his own house.'"

Rabban Gamaliel said: "The following four regulations of the Romans annihilated the subjugated nations: the unlimited taxes, the high license on bath-houses, and theatres, and grain tithe."

He used to say: "The words of the Torah are as difficult to acquire as silken garments, and are lost as easily as linen ones. Nonsense and foolish things are easily acquired, but are hard to lose as a sack is; for sometimes one buys a sack in the market for a sela, and uses it for four or five years."

R. Jehudah the Prince said: "Whoever indulges in the pleasures of this world, the pleasures of the next are withheld from him; but one who does not, will not forego them there."

He also used to say: "The upright who fare badly in this world can be compared to a cook who prepares a feast for himself:

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although it had cost him much trouble, still he has done it for himself. The wicked, however, who fare badly in this world, are as the cook who prepared a feast for others: although it had cost him much trouble, nevertheless he has done nothing for himself, but for others."

He further used to say: "All those things which are done in private shall be done as if they were done publicly."

"*Hillel said: 'Do not isolate thyself from the community.'*" He also used to say: "One who eats much, merely increases his excrement, and who (adds flesh to his body) multiplies worms and moths; but whoever increases his good deeds, secures bodily rest."

R. Elazar b. Shamua said: "The disciples are divided into three classes: Hewn stones, corner-stones, and a polished stone. A disciple who has studied Midrash, and only knows how to answer the question of the scholar appertaining to Midrash, and answers in that is compared to a hewn stone which has only one surface; one who has studied Midrash as well as Halakhoth, and he is able to answer a scholar in both, is like a corner-stone which has two surfaces; and one

who has acquired a knowledge in Midrash, Halakhoth, Agadoth, and Tosephthas, and is enabled to answer in all four branches, is like a polished stone which has four surfaces, one on each of its four sides."

R. Jehudah b. Ilai said: "Whoever constitutes the Torah as the chief good, and considers worldly affairs as a secondary thing, will attain importance in the world. If, however, he does the contrary, he will become insignificant in the world. This can be compared to a regiment which has to go between two roads, one of fire and the other of snow. If it keeps near that of fire, it will be scorched; and if near that of snow, it will freeze. It is therefore best to go in the middle, and it will thus be guarded from heat and cold."

Tosephtha--Aboth of R. Nathan.

[1]"R. Simeon b. Elazar (in the name of R. Meir) said: '*Conciliate not thy friend in the hour of his anger*,'" etc. He used to say: "If some of thy neighbors praise, and others reprimand thee, love the latter and hate the former; for the latter are

bringing thee to a life in the world to come, and the others are withdrawing thee from it."

He also used to say: "Wherever a righteous man goes his heart goes along; if he stands still, his heart does so also."

He further used to say: "One who applies himself to the study of the Law is assisted in his application. However, if he neglects it, he is further prevented from it by such as a lion, wolf, tiger, hyena, and snake; or soldiers or robbers surround and punish him, as it is written [Ps. lviii. 12]: 'Verily, there is a God that judgeth in the earth.'"

Abba Saul (b. Nanes) said: "The scholars are divided into four classes: One studies, but does not teach others; a second teaches others, but does not study himself; a third one both studies for himself and teaches others; and a fourth neither studies himself nor teaches others. The first class learn a chapter, or two or three, study them repeatedly until they know them by heart, but do not teach them to others; the second learn an entire section two or three times, teach it to others, but not having studied it repeatedly forget it; the third learn one, or two, or even three, entire sections, teach them to others, and study them themselves, and therefore do not forget them; and the fourth class are those who have learned an entire section two or three times, but have not taught it to others, neither have they studied it themselves, and thus they forget it."

R. Hanania b. Jacob said: "One who keeps awake at night studying the Law, it is a good omen for him; however, if he spends the night only in conversation, it is a bad omen for him."

R. Jacob b. Hananiah said: "One who is awake by night, but does not study, it were better for him not to have been born."

R. Elazar the Kapar said: "If one honor his friend for pecuniary considerations, he will in the end be dismissed in disgrace; but if he scorns him for a meritorious purpose, in the end he will

be dismissed honorably. Whence is the former deduced? From the case of Balaam the wicked, who honored Balak for a mercenary purpose, as it is written [Numb. xxii. 18]: "And Balaam answered and said unto the servants of Balak: If Balak would give me his house full of silver and gold." And whence do we know that he was dismissed in disgrace? As it is written [ibid. xxiv. 11]: "And now flee thou to thy place . . . but, lo, the Lord hath kept them back from honor." Whence is the latter case derived? From that of Moses our master, who

scorned Pharaoh for a meritorious purpose, as it is written [Ex. xi. 8]: "And all these thy servants shall *come down* unto me, and bow themselves down unto me, saying." Was, then, Pharaoh standing upon the roof, and Moses on the ground? Say, then, that Moses said to Pharaoh: "Even all thy servants who bow before thee on thy altar will come down and entreat me, but I will not listen to them." And whence do we know that he was dismissed honorably? It is written [ibid. xii. 3 1]: "And he called for Moses and Aaron by night."

They answered: "Are we, then, thieves, that we shall go out in the night?" Wait till the Holy One, blessed be He, will bring us seven pillars of honors, and accompanied 'by them we will go forth joyfully and openly, as it is written [Numb. xxxiii. 3]: "On the morrow after the passover-sacrifice the children of Israel went out with a high hand."

On account of the four different means of forgiveness, R. Mathia b. Heresh went to visit R. Ishmael b. Elazar the Kapar in Ladakia. He interrogated him: "Hast thou heard the four different means of forgiveness on which R. Ishmael used to lecture?" He rejoined: "I have heard they are three, but repentance must be to every one of them." It is written [Jer. iii. 22]: "Return, ye backsliding children, I will heal your backslidings." And again [Lev. xvi. 30]: "For on that day shall (the high-priest) make an atonement for you to cleanse you." Also [Ps. lxxxix. 33]: "Then will I visit with the rod their transgressions, and with plagues their iniquity." And also [Is. xxii. 14]: "Surely this iniquity shall not be forgiven unto you until ye die." How can these four contradictory passages be explained? Thus: If one has violated a positive precept, and has repented, he is forgiven immediately--to this case the first passage is applied. If one has violated a negative precept and has repented, the repentance is suspended until the Day of Atonement, when he is forgiven--to this the second passage is applied. If one has committed a sin for which he is liable to Kareth, or death by the court, and has repented, the repentance and the Day of Atonement are suspended until he is cleared by sufferings--to this case the third passage is applied. However, one who has profaned the name of heaven has not the power to repent, and no sufferings clear him, and the Day of Atonement does not atone for him; but repentance and sufferings are suspended, and only death absolves him--to him is applied the last passage.

Issi b. Jehudah said: "Wherefore do scholars die before their time? Not because they commit adultery or robbery, only because they condemn themselves."

R. Itz'hak b. Pin'has said: "Whoever is versed in Midrash, but not in Halakha, has not tasted of wisdom; and he who is the opposite, has not tasted of the fear of sin."

He used to say: "One who is versed in Midrash, but not in Halakha, is like unto a strong man,

but who is unarmed; one who is the opposite is like an armed weakling. One, however, who is versed in both is like unto a man who is both strong and armed."

He further used to say: "Be careful in greeting thy neighbors. Do not enter a house of strife, neither strive to see it. Be among thy colleagues, and be thou a head to a fox rather than a tail to a lion."

Tosephtha--Aboth of R. Nathan.

1"*R. Nathan b. Joseph said:* 2 *'He who neglects the words of the Law on account of his riches, he will finally do so on account of poverty; but he who observes the Law even when he is poor, he will finally do so when rich.'*" He used to say: "The consoling of the mourners, the visiting of the sick, and the bestowing of favors bring much good to the world."

R. Meir said: "One who transgresses one precept doubtfully, it is considered as if he had done it in certainty. How so? One commits a sin and has cognition of it, he brings a sin-offering of the value of a sela, or the tenth part of an ephah of the value of a *Dupondius*. However, if he is in doubt whether he sinned or not, he must bring a trespass-offering of the value of two selaim. (So is the Law.) Now, let us see. It is certain that goodness of heaven exceeds considerably heavenly chastisement, is there not room to draw an *a fortiori* conclusion that if chastisement, which is less than goodness, still if one is in doubt whether he did or did not sin, heaven requires him to bring a trespass-offering to pacify his conscience and to be rewarded for bringing the offering, so much the more in case of goodness of heaven which exceeds chastisement, that heaven rewards him in case of doubt as if it were sure that he did it."

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R. Nathan b. Joseph said: There is a case where one transgresses ignorantly, and nevertheless it is considered as if he had done it wantonly. How so? If one has killed a person unawares, and escapes to a city of refuge, and the avenger of the blood find him before he reach the city of refuge and kill him, he is free. However, if one killed a person wantonly, and the avenger of the blood kills him (before the court has pronounced sentence, not heeding the warning of witnesses), it is equal to ordinary murder, although the avenger thought that he might do so as a relative of the murdered person, and he may be killed for the crime. Now let us see: Which is in excess, goodness or chastisement of heaven? Surely the former. Now, if chastisement, which is less, if one commits a sin erroneously, still in such a case, it is considered as if done intentionally, so much the more so in case of goodness which is in excess.

R. Aqiba said: "One who connects himself with transgressors, although he has not done as they did, he is nevertheless punished as they are. However, if he connects himself with the performers of the precepts, although he has not taken part in the performance, he nevertheless is rewarded as they are. How so? When two persons give their testimony that some one has killed a person, and it is found that their testimony is collusive, they are sentenced to death; and as they are brought to the stoning place, somebody comes running up, saying: 'I know something about these witnesses'; and when his testimony is also found to be collusive, he, too, is sentenced to death; and when he is brought to the stoning place, he wails: 'Woe to me! had I not come with them, I would not have been sentenced.' Hence the same *a fortiori* conclusion stated before must be drawn. If one connects himself with transgressors and it is so, much the more

one will be rewarded if he connects himself with performers of precepts."

R. Simeon said: "The punishment of the liar is that even when he tells the truth he is not believed, as we find with the sons of Jacob, who at first lied to their father, and he believed them, as it is written [Gen. xxxvii. 31]: 'And they took Joseph's coat, and killed a he-goat'; also [ibid., ibid. 33]: 'And he recognized it, and said: It is my son's coat.' In the end, however, when they spoke the truth, he did not believe them, as it is written [ibid. XIV. 26]: 'But his heart remained cold, for he believed them not'; and [ibid.]: 'And they told him, saying: Joseph is yet alive, and he believed them not.'" There are others who

say: "The holy spirit which had left Jacob our father during the absence of Joseph returned to him at that time, as it is written [ibid., ibid. 27]: 'The spirit of Jacob their father revived.'"

Tosephtha--Aboth of R. Nathan.

1R. A'hai b. Joshiah said: "One who buys grain from the market is compared to an infant whose mother died, and which, although nursed by many other nurses, is never satiated. One who buys bread from the market, is comparable to one for whom a grave was dug for interment. One who eats of his own is like an infant reared at the breasts of his mother."

He used to say: "One who eats of his own, his mind is tranquil; but if he eats of that belonging to his father, mother, or his children, and especially of that belonging to strangers, his mind can never be tranquil."

Footnotes

84:1 Rashi explains it: The honor of a disciple can be as dear to one as one's self, because the honor of the disciple is one's own glory, which cannot be so in case of a neighbor; and therefore the Torah equals it to the FEAR of one's master, which includes honor also.

84:2 Chapter XXIII. of the original.

85:1 This is added here to R. Eliezer b. Jacob. In the Mishna, however, this statement is ascribed to R. Elisha b. Abuyah.

87:1 The most of the Tanaim came from Palestine, and when there was one from Babylon he was pointed out.

88:1 Chapter XXIV. of the original.

89:1 Chapter XXIV. of the original.

89:2 The explanation at length of this saying is to be found at p. 50 Of our "Eben Harosha." See also the letter of the late Professor Steinthal printed in our "Schulchan Aruch und seine Beziehungen, etc," in which he fully agrees with us. See also Section Moed, Vol. VI., Tract Hagiga, p. 32, foot-note, concerning Ben Azai.

90:1 "Sweet sound" in Hebrew is ••••• "dirge" is •••. The Talmud plays upon the similarity of the two words.

91:1 As he was at that time excommunicated.

92:1 See Chapter IV., Mishna *B.*

93:1 Chapter XXVI. of the original.

95:1 Chapter XXVII. of the original.

97:1 Chapter XXVIII. of the original.

98:1 Chapter XXIX. of the original.

101:1 Chapter xxx. of the original.

101:2 In the Mishna, however, this saying is ascribed to R. Jonathan.

103:1 Chapter XXXI. of the original.

Next: Chapter V.

CHAPTER V.

MISHNA *A*. By ten sayings the world was created; and why so? Could it not have been created by one saying? But it was that vengeance might be taken on the wicked, who destroy the world that was created by ten sayings; and to give a goodly reward to the righteous, who maintain the world that was created by ten sayings.

Tosephtha--Aboth of R. Nathan.

"*By ten sayings the world was created*." For what purpose is this stated? To teach that if one carries out a precept, or observes one Sabbath, or preserves a soul, it is considered as if he had preserved the entire world, which was created with ten sayings. But he who transgresses once, or violates one Sabbath, or destroys one soul, is considered like unto one who has destroyed the entire world, which was created with ten sayings. And so we find with Cain, who killed his brother Abel, as it is written [Gen. iv. 10]: "The voice of thy brother's blood (in plural)." He shed only the blood of one person--why is the plural used? Infer from this that the blood of the decedent's children, grandchildren, and all the descendants which were destined to be descended from him, were all crying before the Holy One, blessed be He.

R. Nehemiah said: "Whence is it deduced that a single person is equal to the whole creation? It is written [ibid. v. 1]: 'This is the book of the generations of Adam.' And before that it is written [ibid. ii. 4]: 'These are the generations of the heavens and of the earth when they were created.' We see that with reference to the creation of man almost the same wording is used as with reference to the creation of heaven and earth, which goes to show that one is as much as the other. Likewise may be inferred from this, that the Holy One, blessed be He, showed him (Adam) all the generation which were to spring from him, as if they were standing and playing before him." There

are others who say that the righteous only were shown to him, as it is written [Is. iv. 3]: "Every one that is written down into life in Jerusalem.

R. Joshua b. Kar'hah said: "It is written [Ps. cxxxix. 16]: 'My undeveloped substance did thy eyes see, and in thy book,' etc. Infer from this that the Holy One, blessed be He, showed unto Adam all succeeding generations, together with their preachers, directors, leaders, prophets, heroes, criminals, and their pious. In this or that generation, such and such a king will reign; in another, a certain sage will exist, etc."

R. Eliezer the son of R. Jose the Galilean said: "Nine hundred and seventy-four generations before the creation of the world, the Torah was already written and reposing in the lap of the Lord, and sung praises together with the angels, as it is written [Ps. viii. 8, 9]: 'Then was I near

him as a nursling; and I was day by day (his) delight, playing before him at all times; playing in the world, his earth.' They have compared this to one who desired to engrave many subjects on a piece of wood, and as it was not of sufficient size, he was in despair. What could he do? Let him engrave upon the earth, where he has enough space. So also did the Holy One, blessed be He, whose great name shall be praised for ever and evermore, when He in His wisdom and understanding created the entire world. He created the heavens and the earth in the upper and lower regions, and created in man all that he created in his world: the world contains forests, so also does man, viz., his hair; the world contains evil beasts, so does man, viz., lice; there are thorns in the world, so also are they in man--his ears; there is odor, so also in man--his nose; light--man's sight; evil-smelling liquids, so also in man--the excretion of the nose; salty water, so also in man--tears; rivers, so also in man--his urine; castles, so also in man--his lips; gates, so also in man--his teeth; sweet water, so also in man--his saliva; stars, so also in man--his cheeks; towers, so also in man--his neck; cathedrals, so also in man--his arms; nails, so also in man--his fingers; a king, so also in man--his head; advisers, so also in man--his kidneys; millstones, so also in man--his stomach; regulations, so also in man--his spleen; manure, so also in man--his belly; pits, so also in man--his navel; spring-water, so also in man--his blood; trees, so also in man--his bones; hills, so also in man--his ashes; a mortar and pestle, so also in man--his knees; horses, so also in man--his legs; hills and valleys, so also in man--when

standing he is like a hill and when lying he is like a valley Hence all that which the Holy One, blessed be He, created in His world, He also created in man."

MISHNA *B*. Ten generations were there from Adam to Noah, to show how great was His long-suffering; for all the generations were provoking him, till He brought the deluge upon them.

Tosephtha--Aboth of R. Nathan.

1"*Ten generations were there from Adam to Noah*." For what purpose was this stated? To teach that all these generations persisted in provoking the Lord, nevertheless He did not bring the flood on the world, for the sake of the upright and pious. There are others who say: As long as Methuselah lived, the flood descended not upon the world; and it was even suspended for seven days after his demise; as it is written [Gen. vii. 10]: "And it came to pass, after the seven days." What seven days? The period of mourning for the upright, who prevented the retribution.

Another explanation is: The above passage teaches that the Holy One, blessed be He, granted them an additional respite, after the original one hundred and twenty years, of seven days, in which time to repent.

Still another explanation is, that the Lord changed the order of the world for seven days, causing the sun to rise in the west and to set in the east, so that perchance they would notice it, become frightened, and repent; however, it had no effect.

Still another explanation is, that the Lord spread His table before them during seven days, and gave them an inkling of what there was in the world to come, so they might reflect and say: Woe to us, for all this good which is lost to us, and for the destruction of our offspring, as it is written [ibid. vi. 12]: And God looked upon the earth, and, behold, it was corrupt.

R. Elazar b. Parta said: "It is written [ibid., ibid. 3]: 'My spirit shall not always strive for the sake of man.' It means that the Lord said: 'I will not judge them until I will double their rewards,' as it is written [Job, xxi. 13]: 'They wear out

their days in happiness; and in a moment they go down to the nether world.'

R. Jose the Galilean said: "It is written: 'My spirit shall not always strive.' It means that the Lord said: 'I will not equal the evil thoughts to the good thoughts so long as their fate has not yet been sealed.' After that, however, both are equal in transgression."

He used to say: "The evil spirit is removed from the upright and the good spirit predominates, as it is written [Ps. cix. 22]: 'And my heart is deeply wounded within me.' From the wicked, however, the good thoughts are removed and evil thoughts are given them instead, as it is written [ibid. xxxvi. 2]: 'Saith vice itself to the wicked, So I feel it within my heart, that he should have no dread of God before his eyes.' To people of mediocrity both are given: the one who is nearer to the good thoughts is ruled by them, and one who is nearer to the evil thoughts is ruled by them, as it is written [ibid. cix. 31]: 'For he ever standeth at the right hand of the needy, to save him from those that judge his soul.'"

R. Simeon b. Elazar said It is written [Gen. vi. 3]: 'My spirit shall not strive,' etc. This means the Lord said: 'I will not judge them before I have rewarded the upright.' This is only as to this world; but as to the world to come, it is written [ibid. cxlvi. 46]: 'When his spirit goeth forth, he returneth to his (native) earth.'"

R. Aqiba said, of the same verse: "The Lord said: 'They have not reflected that they are flesh and blood.' On the contrary, they were haughty, and said unto God: 'Depart from us'" [Job, xxi. 14].

R. Meir said, of the same verse: "This means that the Holy One, blessed be He, said: 'This generation said: God does not judge, there is no judge in the world; God has left it.'"

Rabbi said, of the same verse: "This means that the Holy One, blessed be He, said: 'They have not instituted a Sanhedrin on earth, therefore will I institute for them a Sanhedrin on high.'"

MISHNA *C*. Ten generations were there from Noah to Abraham, to show how great was His long-suffering; for all the generations were provoking Him till Abraham our father came, and received the reward of them all.

Tosephtha-Aboth of R. Nathan.

[1]"Ten generations," etc. For what purpose was it necessary to state this? To teach that all these generations have provoked Him, and there was not one who walked in the way of the Holy One, blessed be He, till Abraham our father, as it is written [Gen. xxvi. 5]: "Because that Abraham

obeyed my voice . . . and my laws." Are there then two Laws? Infer from this that the Lord provided Abraham with two reins, which, like two sages, made him understand, advised him and taught him all night, as it is written [Ps. xvi. 7]: "I will bless the Lord, who hath given me counsel: also in the night season my reins admonish me." And not only that, but Abraham our father was wont to practise charity first and justice afterward, as it is written [Gen. xviii. 19]: "For I know him, that he will command," etc. When two disputants came before him, and, one of them complained that the other owed him a manah, Abraham was wont to deposit a manah of his own with one of them, and then said: Make your complaints. When he found that one really owed the other, he said to the one with whom he deposited the manah: "Give it to thy neighbor"; and if neither owed the other, he said: "Divide it between yourselves, and depart in peace." However, David the king practised justice first and charity after, as it is written [II Samuel, viii. 15]: "And David did what was just and right unto all his people." When two disputants came to him, and one of them claimed that the other owed him a manah, he told them to make their complaints, and after finding one of them liable, he used to give the other the manah; otherwise, he said: "Divide your claims, and depart in peace."

MISHNA *D*. With ten temptations was Abraham our, father tempted, and he withstood them all, to show how great was the love of Abraham our father.

Tosephtha--Aboth of R. Nathan.

"*With ten temptations*," etc. They are as follows: two at "get thee out of thy country"; two with his two sons; two

with his two wives; one with the kings; one at "*the* pieces"; one at Ur of the Chaldees; and one at the circumcision. Wherefore so many? For the reason that when Abraham our father will claim his reward, the angels shall say: More than us, even more than all of us, is he worthy to receive his rewards, as it is written [Eccl. ix. 7]: "Go, eat with joy thy bread, and drink with a merry heart thy wine."

In comparison to these ten temptations, the Holy One, blessed be He, performed ten miracles for his descendants in Egypt, and also brought ten plagues (on the Egyptians); and performed ten miracles for the Israelites at the sea, and brought ten plagues on the Egyptians at the sea. The Egyptians roared at them with their voices, so also did the Lord roar at them at the sea, as it is written [Job, xxxvii. 5]: "God thundereth with his marvellous voice." The Egyptians came to the sea with bows and arrows, so also did the Lord appear, as it is written [Habakkuk, iii. 9]: "Laid quite bare is thy bow"; also [Ps. xviii. 15]: "And he sent out his arrows, and scattered them." The Egyptians came to the sea armed with swords, so also did the Lord, as it is written [ibid.]: "And he shot forth lightnings, and discomfited them"--lightning means sword, as it is written [Ezek. xxi. 14, 15]: "The sword, the sword is sharpened, and also polished: in order to make a thorough slaughter it is sharpened, in order that it may glitter [1] is it polished." [1] The Egyptians came armed with spears, so also did the Lord, as it is written [Habakkuk, iii. 11]: "At the shining of the flaming glitter of thy spear." The Egyptians were proud of their shield and buckler; so was the Lord, as it is written [Ps. xxxv. 2]: "Take hold of shield and buckler, and rise up for my help." The Egyptians came with sling-stones, but the Lord with hailstones, as it is written [Ps. xviii. 13]: "From the brightness before him his thick clouds passed away (with) hail-stones and coals of fire."

When our fathers stood by the sea, Moses said to them: "Arise and pass through it!" and they rejoined: "We will not pass, till we see the sea become chips, chips." [2] Whereupon Moses struck the sea with his staff, and it was converted into chips, as it is written [Habakkuk, iii. 14]: "Thou didst strike through with his own spears the chiefs of his villages." Again

Moses said to them: "Arise and pass through it," and they rejoined: "We will not pass till the sea becomes a valley." Moses struck the sea again, and it became a valley, as it is written [Ps. lviii. 13]: "He divided the sea, and caused them to pass through"; also [Is. lxiii. 14]: "As a beast goeth down into the valley." Moses again urged them to pass through the sea, and they answered: "We will not, till it becomes separated into parts"; as it is written [Ps. cxxxvi. 13]: "To him who divided the Red Sea into parts." When urged again, they said: "We will not pass till the bottom becomes loamy." Whereupon Moses struck the sea with his staff, and the bottom became loamy, as it is written [Habakkuk, iii. 15]: "But (thou) didst pass along over the sea with thy horses, over the piled-up billows [1] of great waters." Again they refused to pass through, until the bottom of the sea should become a desert; and Moses caused it to be so, as it is written [Ps. cvi. 9]: "And he led them through the depths, as through the wilderness." They refused again until the sea became converted into small particles, and Moses caused it to be so, as it is written [ibid. lxxiv. 13]: "It was thou that didst divide by thy strength the sea." They again refused until it should become rocky, and Moses caused it to be so, as it is written [ibid.]: "Thou brokest in pieces the heads of the crocodiles on the water," and that can be broken on rocks only. They again refused until the sea should become dry land, and Moses made it so, as it is written [ibid. lxvi. 6]: "He changed the sea into dry land"; also [Ex. xv. 19]: "But the children of Israel went on dry ground through the midst of the sea." They refused again until the waters became as walls, and Moses made them so, as it is written [Ex. xiv. 22]: "And the waters were a wall unto them, on their right hand, and on their left." They still refused till there should be bottles, and Moses complied again, as it is written [ibid. xv. 8]: "The flood stood upright as a wall." [2] And the infants were drinking oil and honey out of these bottles, as it is written [Deut. xxxii. 13]: "And he made him to suck honey out of the rock," etc. There are others who say: "Living water issued out of the sea, when they were between the walls, and they drank of it, as the sea water is salty; for it is stated "the flood," and that means sweet water, as it is written [Songs, iv. 15]: "A well of living waters,

and flowing down from Lebanon." The clouds of glory were above their heads, to protect them from the sun.

R. Eliezer said: "The deep was arched over their heads, while passing through the sea, to save them from pain." The former and the latter both say: The upper and the lower waters overthrew the Egyptians, as it is written [Ex. xiv. 27]: "And the Lord overthrew the Egyptians in the midst of the sea."

MISHNA *F*. With ten temptations did our ancestors tempt God in the wilderness, as it is written [Numb. xxv. 22]: "And have tempted me these ten times, and have not hearkened to my voice."

[1]"*By means of ten trials the Holy One, blessed be He, tested our forefathers*," and they were found wanting in all of them. They are as follows: In the wilderness, in the plain, opposite Suph, between Paran and Thophel and Laban and Chazeroth and Di-zahab. "In the wilderness" they made the golden calf, as it is written [Ex. xxxii. 8]: "They have made themselves a molten calf." "In the plain" they quarrelled with Moses on account of water, as it is written [ibid. xvii. 3]: "And the people thirsted there for water." "Opposite Suph"--their rebellion at the Red Sea. There are others who say: This has reference to Michah's graven image. "Between Paran"--where the incident of the spies occurred [Numb. xiii. 3]: "And Moses sent them out from the wilderness of Paran." "And Thophel" refers to the nonsense (slander) [2] they talked of the manna. "And Laban"--this is the dissension of Korah. "And Chazeroth"--near which place the incident of the quails occurred. All these are seven, and somewhere else it is written [Deut. ix. 22]: "And at Thah'erah, and at Massah, and at Kibroth-hat-thavah." (Making altogether ten.) What does Di-zahab refer to? Aaron said to them: "Ye have enough of the sin of the gold which ye brought for the calf."

R. Eliezer b. Jacob said: "This sin with which the Israelites were afflicted, is enough for that time till the resurrection of the dead."

Ten names of praise are applied to the Holy One, blessed be He: "Adonai," "Jah," "Eloim," "Eloah," "Eloechu," "Eloechem," "El," "Eheh-ascher-Eheh," "Shadai," "Zebaoth." Said R. Jose: "I do not agree as to the name "Zebaoth," for it is written [Deut. xx. 9]: "That they shall appoint captains for the *armies*," the Hebrew term for "army" being "Zebaoth." (These being *proper* names of God, we have not translated them.)

Ten ignominious names are applied to the idols. They are as follows: Abominations, idols, molten images, graven images, false gods, groves, sun-images, Atzabim, Aven, images.

Two signs (the inverted letter Nun) are placed in the Torah at a small section, viz.: "And it came to pass, when the ark set forward," etc. [Numb. x. 35, 36]. Said Rabban Simeon b. Gamaliel: "It would have been advisable to remove this section and put it in another place. Something like this we find elsewhere [Judges, xviii. 20]: 'And Jonathan, the son of Gershom, the son of Menasseh,' was he the son of Menasseh, and not the son of Moses? But because his deeds were not like those of his father Moses, therefore he is traced to Menasseh."

Likewise we find [Zech. iv. 14]: "These are the two sons of the clear oil, that stand by the Lord of the whole earth." This refers to Aaron and the Messiah, and we do not know who is more beloved; but, as it is written [Ps. cx. 4]: "The Lord hath sworn, and will not repent of it, thou shalt be a priest for ever." It is to be inferred from this that the latter is more beloved.

It is said [Ps. lxxx. 14]: "The boar out of the forest doth gnaw at it." Is it not written *out of the river*? [1] The difference in the two words implies this: As long as Israel act contrary to the will of the Omnipotent, the idolaters are likened to them as a boar out of the forest, which kills the people, damages the cattle, and is an affliction to mankind. However, when the Israelites act according to the will of the Omnipotent, the idolaters are likened unto them, as the boar out of

the river (hippopotamus), which does not kill people, nor injures any creatures. Many words of the Torah are dotted. They are as follows: "May the Lord judge between me and *thee*" [Gen. xvi. 5].

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[paragraph continues] The second Yod is dotted in the word "ubenecha," which hints that she (Sarah) applied it to Hagar. Others say she meant those who caused quarrelling between her and him. "And they said unto *him*, Where is Sarah thy wife?" [ibid. xviii. 9]. The Aleph, Yod, and Vav are dotted to imply that, although they knew where she was, still they inquired after her. "And he perceived not when she lay down, nor when she *arose*" [ibid. xix. 33]. The second Vav is dotted, to imply that he perceived only when the younger arose. "And Esau ran to meet him, and embraced him, and fell on his neck and *kissed him*" [ibid. xxxiii. 4]. All the letters of the word "vayishokehu" are dotted, to signify that he was not sincere. R. Simeon b. Elazar said: "It implies, on the contrary, that this kissing was sincere, but all his other acts were insincere." "And his brothers went to feed his father's *flocks* in Shechem" [ibid. xxxvii. 12]. There are dots on the word "eth," to imply that they did not go to feed the flocks, but to eat, drink, and commit follies. "All that were numbered of the Levites, whom Moses numbered *with Aaron*" [Numb. iii. 39]. The entire word is dotted, to imply that Aaron was not included in the number. "Or be on *a distant* journey" [ibid. ix. 10]. The Heh in the word "rechokah" is dotted, to imply that it does not really mean a distant journey, only that he was prohibited from passing the threshold of the outer court (of the Temple). "And we have laid waste (all) up to Naphach, *which* reacheth unto Medeba" [ibid. xxi. 30]. The Resh in the word "asher" is dotted, to imply that only the idolaters laid waste the countries. Concerning the first day of Tabernacles, it is written [ibid. xxix. 15]: "And a *tenth part each*." The Vav of the word "eissoron" is dotted, to imply that there should be only one-tenth part. And, lastly: "The secret things belong unto the Lord out God; but those things which are publicly known belong *to us* and to *our children for* ever" [Deut. xxix. 30]. The entire two first words and the Ayin of the third are dotted, to imply that Ezra said: If Elijah will come and question me why I have written thus, will answer: 'I have already dotted them.' However, if he will say: 'Thou hast written well,' I will erase the dots."

In the Torah there is written eleven times the word ••• (which means "she"), when it ought to be ••• (he). (See Massorah.)

Ten times did the Shekhina descend upon the earth. Once in the Garden of Eden, as it is written [Gen. iii. 8]: "And they

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heard the voice of the Lord God walking in the garden." Once in the generation of the (builders of) the tower, as it is written [ibid. xi. 5]: "And the Lord came down to see the city and the tower." Once in Sodom, as it is written [ibid. xviii. 21]: "And I will go down now, and see if they have done according to the cry against them." Once in Egypt, as it is written [Ex. iii. 8]: "And I am come down to deliver it out of the hand of the Egyptians." Once at the sea, as it is written [Ps. xviii. 10]: "And he bent the heavens, and came down." Once at Sinai, as it is written [Ex. xix. 20]: "And the Lord came down upon Mount Sinai." Once at the Temple, as it is written [Ezek. xliv. 2]: "This gate shall remain locked, it shall not be opened . . . because the Lord, the God of Israel, hath entered in by it." Once at the pillar of cloud, as it is written [Numb. xi. 25]: "And the Lord came down in a cloud." And once when it will come down in the days of Gog

and Magog, as it is written [Zech. xiv. 4]: "And his feet will stand on that day upon the Mount of Olives."

Ten degrees the Shekhina removed itself from one place to another: From the cover to the cherub, as it is written [II Samuel, xxii. ii]: "And he rode upon a cherub, and flew along"; from the cherub to the threshold, as it is written [Ezek. ix. 3]: "And the glory of the God of Israel ascended up from the cherub whereupon it had been, to the threshold of the house"; from the threshold to the two cherubim, as it is written [ibid. x. 18]: "And the glory of the Lord went forth from off the threshold of the house, and halted over the cherubim"; from the cherubim to the roof, as it is written [Prov. xxi. 9]: "It is better to dwell in a corner of a roof"; from the roof to the wall of the outer court, as it is written [Amos, vii. 7]: "And, behold, the Lord was standing upon a wall (made) by a plumbline"; from the wall of the outer court to the altar, as it is written [ibid. ix. 1]: "I saw the Lord standing upon the altar"; from the altar to the city, as it is written [Micah, vi. 9]: "The voice of the Lord calleth unto the city"; from the city to the mount, as it is written [Ezek. xi. 23]: "And the glory of the Lord ascended from the midst of the city, and halted upon the mount," etc.; from the mount to the desert, as it is written [Prov. xxi. 19]: "It is better to dwell in a desert land"; and once when it ascended on high, as it is written [Hosea, v. 15]: "I will go (hence, and) return to my place."

A prophet is called by ten different names. They are as

follows: Ambassador, faithful, servant, messenger, seer, watchman, man of scrutiny, dreamer, prophet, man of God.

There are ten names for the Holy Spirit, namely: Proverb, metaphor, riddle, word, saying, calling, commandment, prophecy, sacred speech, and vision.

Joy has ten different expressions: Gladness, joy, rejoicing, joyfulness, pleasure, relish, satisfaction, complacency, delight, cheer.

Ten are called "living": The Holy One, blessed be He, as it is written [Jer. x. 10]: "But the Lord God is the truth: he is the living God"; the Torah, as it is written [Prov. iii. 18]: "A tree of life is she to those that lay hold on her: and every one that firmly graspeth her will be made happy"; Israel, as it is written [Deut. iv. 41: "But ye that cleave unto the Lord your God are alive, every one of you, this day"; good deeds, as it is written [Prov. xi. 30]: "The fruit of the righteous is of the tree of life"; the Garden of Eden, as it is written [Ps. cxvi. 9]: "I will walk before the Lord in the lands of life"; the tree, as it is written [Gen. ii. 9]: "And the tree of life in the midst of the garden"; Palestine, as it is written [Ezek. xxvi. 20]: "But I will bestow glory in the land of life"; charitable deeds, as it is written [Prov. Xii. 28]: "On the path of righteousness there is life"; the wise, as it is written [ibid. xiii. 14]: "The instruction of the wise is a source of life"; light, as it is written [Job, xxxiii. 30]: "In the light of life."

MISHNA *E*. Ten miracles were wrought for our fathers in Egypt, and ten by the sea.

MISHNA *G*. Ten miracles were wrought in the Sanctuary: No woman miscarried from the scent of the holy meat, and the holy meat never stank; and a fly was not seen in the slaughter-house;

and an uncleanness befell not the high-priest on the Day of Atonement; and a defect was not found in the sheep, nor in the two loaves, nor in the shew-bread; and rains did not extinguish the fire of the fuel heaped upon the altar, and wind prevailed not against the pillar of smoke; they stood serried, and bowed down at ease; and serpent and scorpion harmed not in Jerusalem, and a man never said to his fellow, "The place is too strait for me to lodge in Jerusalem,"

MISHNA *H*. Ten things were created at twilight of the eve of Sabbath: the mouth of the earth and the mouth of the well, and the mouth of the ass, and the bow, and the manna, and the rod, and the Shomir worm, and the character and the writing, and the tables. And some say the evil spirits also; and the sepulchre of Moses, and the ram of Abraham our father; and some say the first tongs with which subsequently other tongs were made.

Tosephtha--Aboth of R. Nathan.

[1]Ten miracles were performed for our forefathers in Jerusalem: The holy meat was never spoiled; no woman miscarried from the scent of the holy meat; no one was ever injured; no accident ever happened to any one; no one ever stumbled; no conflagration ever occurred; no rain was ever there; no man ever said: "I could find no oven wherein to roast the paschal lamb"; no man ever said. "I could find no bed wherein to sleep"; no man ever said to another: "I could find no quarters in which to pass the night."

Jerusalem never was defiled by leprosy, nor condemned as a misled city; no ledges, galleries, or channels could be built on the public streets, because they would form a tent for uncleanness; a corpse could not be left there over night, nor human bones be carried through the streets, and no stranger was permitted to settle within its walls. No graves could be maintained there except those of the house of David and the prophetess Huldah, which existed since the days of the early prophets. It was said that there was a grotto which caused the uncleanness to run into the brook Kidron. No plants must be planted there, and no gardens or parks might be laid out there, except gardens of roses, which existed there since the days of the early prophets. No geese nor hens might be bred there, much less swine; no dung might remain there, because of defilement. A stubborn and rebellious son is not judged there, such is the decree of R. Nathan, for it is written [Deut. xxi. 19]: "Then shall his father and his mother lay hold on him, and bring him out unto the elders of his city, and unto the gate of his place but as they are not his city and place, he cannot be judged. Houses cannot

be sold there together with the ground on which they stand. No house can remain as a permanent possession after a twelve-month. No rent may be taken for houses, but it may be for beds and mattresses. Said R. Jehudah: "It is not allowed to take rent even for that." What did they do with the skins of the holocaust? They were given to the lodging-house keepers. R. Simeon b. Gamaliel said: "The innkeepers were in the inside and the lodging-house keepers on the outside. The innkeepers used to buy sheep, having nice wool, for four to five selahs, and sell them to the Jerusalemites, and made big profits on them."

One verse says: "In one of thy tribes" [Deut. xii. 14]; and another says: "Out of all your

tribes" [ibid., ibid. 5]. The first relates to the tribes of Judah and Benjamin, and the second to Jerusalem, which belongs to all Israel. What belonged to Judah? The Temple Mount, the chambers, and the outer courts; and to Benjamin belonged the Temple, the porch, and the Holy of Holies, and a triangle extended into the part of Judah in which the altar was built. Benjamin was favored, and became the host of the Mightiness, as it is written [ibid. xxxiii. 12]: "And between his shoulders will he dwell."

Said R. Jehudah: At the time when it became known that the Temple would be built on the boundaries of Judah and Benjamin, they had improved and separated the suburb of Jericho. And who ate its products all these years? The children of the Kenite, the father-in-law of Moses, as it is written [Numb. x. 32]: "It shall be, that the same goodness which the Lord may do unto us will we do unto thee." However, when the Temple was built, they vacated. And whence do we know that they were sustained by charity? They said: "When the Lord will reveal His Shekhina, He will reward Jethro and his children, as it is written [ibid., ibid. 29]: For the Lord hath spoken (to bring) good upon Israel." Said R. Simeon: They were prominent men and were proprietors of houses, fields, and vineyards. However, because of the work of the Lord they left everything and went away, as it is written [I Chron. iv. 23]: "There were the potters, and those that dwelt in plantations," etc. They dwelt with the king in his work. And where did they then go? To Jabez, to study the Torah, and thus have become a people of the Omnipotent. Jabez was a very good and righteous man: he was a truthful man and pious, and occupied himself with the study of the Law; therefore the pious went to a pious.

"*Ten miracles were wrought*, etc.; *and an uncleanness befell*

not the high-priest on the Day of Atonement"--except R. Ishmael b. Kimchith, who went out to converse with a certain dignitary, and some saliva dropped out of his mouth on his garments; and his brother entered and officiated as high-priest in his stead, and their mother had the satisfaction of seeing her two sons as high-priests on the same day.

The sages saw her, and said to her: "What piety hast thou practised?" And she rejoined: "The ceilings of my house never saw my hair."

"*No woman miscarried*." It never happened that there was anything left of the holy meat; and when they ate too much of it, they drank the waters of Shiloach, which assisted digestion.

"*And a defect was not found*," etc. Broken earthen vessels were sunk in the ground.

"*And wind prevailed not*," etc. And when the pillar of smoke went up from the sacrificial altar, the smoke went up straight as a staff until it reached the clouds; but the pillar of the incense went up from the golden altar in the direction of the Holy of Holies.

"*They stood serried and bowed down*," etc. When the Israelites came up to kneel before their Father in Heaven, it was so that they were compact and no one could put his finger between them, but when kneeling every one had ample space. The greatest wonder of all was, that even when a hundred people entered at once there was no need for the inspectors of the synagogue to proclaim: "Make room for your brother!" (Some think that) the greatest wonder of all was, that

when all stood up in prayer they were compact and no one could put his finger between them, but when they bowed there was a space of a man's height between them.

Said Rabban Simeon b. Gamaliel: Jerusalem is destined that all the nations and kingdoms should be gathered together in it, as it is written [Jer. iii. 17]: "And all the nations shall be gathered unto it, to the name of the Lord"; and further: "Let the waters be gathered together" [Gen. i. 9]. As "the gathering together" there means that all the waters of creation shall be in one place, so also "the gathering together" here means that all the nations and kingdoms shall be assembled in it.

Tosephtha--Aboth of R. Nathan.

1"*The men of Sodom*"--have no share in the world to come, and they are not judged, as it is written [Gen. xiii. 13]: "But the men of Sodom were wicked and sinners before the Lord exceedingly." "Wicked"--one with another; "sinners"--in consanguinity; "before the Lord"--inasmuch as they desecrated the name of God; "exceedingly"--they did all that intentionally. And it is written [Ps. i. 5]: "Therefore shall the wicked not be able to stand in the judgment, nor sinners in the congregation of the righteous." The first part of the passage relates to the generation of the flood, and the second to the men of Sodom. R. Nehemiah said: "Even in the congregation of the wicked they are not included, as it is written [ibid. civ. 35]: 'May the sinners cease from off the earth, and the wicked be no more.'"

Small children of the wicked have no share in the world to come, and are not judged, as it is written [Mal. iii. 19]: "For, behold, the day is coming which shall burn as an oven . . . who will not leave them root or bough." Such is the dictum of R. Eliezer. R. Joshua, however, said: They are included, and the words, "who will not leave them root or bough," refer to their own bodies, as it is written [Dan. iv. ii]: "He called with might, and thus he said: Hew down the tree and lop off its branches, strip off its leaves and scatter its fruit"; and further [ibid. 12]: "Nevertheless leave the body of its roots in the earth, but (bound) with fetters of iron and copper." As in both passages roots are mentioned, and as the roots mentioned there refer to the trunk of the tree, so the roots here refer to the body of man. If so, what do the words, "who will not leave them root or bough," imply? That no reward shall be found on which they could depend.

Others say: "They are included, and to them refers what is written [Is. xliv. 5]: "This one will say, I belong to the Lord; and the other will call himself by the name of Jacob; and the other will inscribe himself with his hand unto the Lord, and surname himself by the name of Israel." "This one will say, I belong to the Lord," refers to the perfectly righteous; "and the other will call himself by the name of Jacob" refers to the small children of the wicked; "and the other will inscribe himself

with his hand unto the Lord" refers to the wicked who left off their wickedness, turned back, and repented; and, "and surname himself by the name of Jacob" refers to proselytes.

Korah and his company have no share in the world to come, and are not judged, as it is written [Numb. xvi. 33]: "And the earth closed over them, and they disappeared from the midst of the

congregation." Such is the decision of R. Eliezer. R. Joshua, however, said: "They are included, and the words, 'The Lord killeth, and maketh alive: he bringeth down to the grave, and bringeth up' [I Samuel, ii. 6], have reference to them, because here is mentioned the grave, as it is written [Numb. xvi. 33]: 'And they went down, they and all they that appertained to them, alive into the pit.' 1 Also there it is mentioned. in both cases the bringing up from the grave is included." Said R. Eliezer to him: "If so, how are we to understand, 'And the earth closed over them and they disappeared from the midst of the congregation'?" He answered: "We are to understand that they disappeared from the midst of the congregation, but not from the world to come."

The generation of the desert have no share in the world to come, and are not judged, as it is written [ibid. xiv. 35]: "In this wilderness shall they be spent, and therein shall they die"; and further [Ps. xcv. ii]: "So that I sware in my wrath that they should not enter into my rest." Such is the dictum of R. Eliezer. R. Joshua, however, said: "They are included, and the words, 'Gather together unto me my pious servants, who make a covenant with me by sacrifice' [Ps. l. 5], have reference to them." Said R. Eliezer to him: "If so, how dost thou explain the words, 'so that I sware in my wrath'?" He answered that this had reference to the spies, and all equally wicked of that generation. "But," continued R. Joshua, "I am anxious to know how thou dost apply the words: 'Gather together.'" "I apply them," said the other, "to Moses, Aaron, the pious of the generation, and the tribe of Levi." R. Jose the Galilean said: "They are not included, for it is written [Numb. xiv. 35]: 'In this wilderness shall they be spent, and therein shall they die'; and further [Deut. xxi. 4]: 'And they shall break there the neck of the heifer in the valley.' As the word 'there' mentioned here means that it shall die and not be moved from its place, so also the 'there' mentioned in that

passage means that they shall die and not be moved from their places." An objection was raised, namely: Is in that passage the word "there" mentioned in connection with the wicked only, and not with the upright? Is it not said [Gen. xlix. 31]: "*There* they buried Abraham and Sarah his wife"; and further [ibid. 5]: "In my grave, which I have dug for me in the land of Canaan, *there* shalt thou bury me"; and also [Numb. xx. 1]: "And Miriam died *there* and was buried *there*"; and further [ibid. xxxiii. 38]: "And Aaron the priest went up . . . and died *there*"; and further [Deut. xxxiv. 5]: "And Moses the servant of the Lord died there in the land of Moab, according to the order of the Lord"? Said Rabban Gamaliel: It is written [Deut. xi. 21]: "In order that your days may be multiplied, and the days of your children in the land which the Lord sware unto your fathers to give unto them." It refers to the resurrection, when the parents and the children both will enjoy the same longevity. R. Jose the Galilean sides with R. Eliezer, and R. Gamaliel sides with R. Joshua.

The ten tribes have no share in the world to come, and are not judged, as it is written [Deut. xxix. 27]: "And the Lord plucked them out of their land . . . and he cast them into another land, as it is this day." Said R. Simeon b. Jacob: "As the day in which they have rebelled will never return, even so will they not return." R. Aqiba, however, said: "As the day is first dark and then lightens up, so also their darkness will be followed by light."

The following seven have no share in the world to come: A scribe, a teacher of little children, even the best of physicians, the city judge, the store-keeper, the beadle, and the butcher.

There are three kings and four commoners who have no share in the world to come. The three

kings are: Jeroboam, Achab, and Menasseh; the, four commoners are: Balaam, Doeg, Achitophel, and Gechazi. Said R. Jehudah: Menasseh has already repented, as it is written [II Chron. xxxiii. 13]: "And he prayed unto him, and he permitted himself to be entreated by him . . . and brought him back to Jerusalem, unto his kingdom." They argued against him thus: "Had the verse stated merely, 'and brought him back to Jerusalem,' we would then agree with thee, but since it is added, 'unto his kingdom,' it can be said that He returned him to His kingdom, but not to a life in the world to come."

Said R. Meir: "Absalom has no share in the world to come."

[paragraph continues] Said R. Simeon b. Elazar: "Achaz, Achaziah, and all the kings of Israel who were wicked have no share in the world to come." Said R. Johnan b. Nuri: "Also one who pronounces the Name as it is written has no share in the world to come."

He used to say: "One who scans the Song of Songs (like a secular poem), and one who cannot speak above whispering or has turned yellow in consequence of a wound or recites (in ridicule) the passage, 'I will put none of those diseases upon them,' etc. [Gen. xv. 26], has no share in the world to come." And the sages say: Every disciple who has studied, and then abandons his studies, has no share in the world to come, as it is written [Numb. xv. 31]: "Because the word of the Lord hath he despised"; and further [Jer. ii. 5]: "What fault did your fathers find in me, that they went away far from me?"

R. Meir said: "Whoever does not visit the college which is in his city has no share in the world to come"; and R. Aqiba said: "Also those who do not serve the sages."

MISHNA *I*. Seven things mark the clod, [1] and seven there are for the sage. The wise man does not speak before those who surpass him in wisdom and years; he does not interrupt another in his speech, he is not hasty in answering; he does not ask questions rashly; asks with propriety and to the point; speaks first upon the matter first in order, and last upon last; when he does not understand the matter under discussion, he confesses, "I do not understand it"; and admits it when he has been convinced. The opposite of these things mark the clod.

Tosephtha--Aboth of R. Nathan.

[2]There are seven creations of as many grades of importance. The sky is very important; but more important are the stars, because they light up the world. Of a higher grade than the stars are the trees, because they produce fruit, and the stars do not. More significant than the trees are the pernicious winds, because they move hither and thither, and the trees do not. Greater than the pernicious winds is the beast, for the beast is

active and eats, which the former cannot do. Of a higher kind of development is man; for man is intellectual, and the beast is not. More excellent than man are the ministering angels; for they are able to traverse from one end of the world to another, which man cannot do.

Man possesses six qualifications three of which belong also to the beast, and three to the angels: Man eats and drinks, multiplies, and excretes just like a beast; but he is endowed with intellect, walks erect, and speaks in the holy language, just as the angels do.

The evil spirits (Shedim; Deut. xxxii. 17) possess six qualifications three of which belong to man, and three to the angels; namely, they eat and drink, multiply, and die as men do; but they have wings, a knowledge of the future, and traverse from one end of the world to another, just as the angels do. 1 There are others who say: They also can assume any shape and form they like, and see but are not seen.

The rabbis taught: 2 There are seven sorts of hypocrites (who try to show themselves as if they were of the true Pharisees), and they are: Shichmi; Niqpi; Qoosai; Medukhia; "What more is my duty, and I will do it?"; Pharisee of love; and Pharisee of fear.

Shichmi--i.e., who acts like Shechem (Gen. xxxiv.), (who allowed himself to be circumcised, not to please God but for his own benefit). *Niqpi--i.e.*, one who walks tiptoe (so that he strikes his feet against stones or other obstacles in the way), in order to show his meekness and thereby attract attention. *Qoosai--i.e.*, one who shows himself as walking with his eyes shut in order not to look upon women, and strikes his head against a wall and bleeds. Such is the interpretation of R. Nahman b. Itz'hak. *Medukhia--i.e.*, who so bends his body while walking that he resembles a pestle. Such is the interpretation of Rabba b. Shila. "*What more is my duty*," etc. Why is this hypocrisy? It means that he is boasting of having done every possible good thing, and challenges that he shall be told what more there is to be done and he will do it. "*Pharisee of love*," etc. Abayi and Rabha both said to the scholar who repeated

this: "Do not place love and fear with the hypocrites, as R. Jehudah said in the name of Rabh: 'Always shall one occupy himself with Torah and merits even not for the sake of Heaven, for once he makes it his custom to do so he will finally come to do it for the sake of Heaven.'"

Said R. Nahman b. Itz'hak: "That which is hidden (in one's heart) is only so from human beings, but not from Heaven; and even visible hypocrisy can only be punished by the Upper Court." Said Janai the king to his wife: "Do not fear of the Pharisees, neither of those who claim to be their opponents; but do fear of the colored ones (who put on false colors), who in reality act like Zimri (Numb. xxv.), and demand the reward of Phinehas."

There are seven things which, if used moderately, are wholesome to the body, and if in excess, are the reverse: Wine, work, sleep, wealth, travel, warm water, and the letting of blood.

With seven things God created the world. They are as follows: Wisdom, understanding, knowledge, strength, might, kindness, and mercy. And as He has created the world with seven things, so also has He created seven ancestors--three fathers and four mothers.

Seven attributes are serving before the Throne of Grace, viz.: Faithful, Righteous, Justice, Kind, Merciful, Truth, Peace, as it is written [Hosea, ii. 21, 22]: "And I will betroth thee unto me for ever: yea, I will betroth thee in righteousness, and in justice, and in loving-kindness, and in

mercy. And I will betroth thee unto me in faithfulness; and thou shalt know the Lord"; and further [Ps. lxxxv. 11]: "Kindness and truth are encountered together; righteousness and peace kiss each other." And what signifies, "and thou shalt know the Lord"? Any one who is possessed of these attributes has a knowledge of the wisdom of the Omnipotent.

There are seven dwelling-places: The high, the low, the atmosphere, and the four winds. Said R. Meir: There are seven heavens: Curtain, firmament, welkin, dwelling-house, habitation, settled place, nebulæ. Accordingly the earth has seven names: Land, earth, realm, dry land, globe, and nether world. Why is it so named? Because it is seasoned with every thing. Others say, because it destroys all.

"*A wise man does not speak before those who surpass him in wisdom and years*." This refers to Moses, as it is written [Ex. iv. 30]: "And Aaron spoke all the words which the Lord had

spoken unto Moses, and he did the signs before the eyes of the people." Now, then, who of the two was competent to speak? Naturally, Moses; for he had the message direct from God, and Aaron only heard it from Moses. But Moses considered that it was not seemly to speak in the presence of his elder brother; he therefore conferred upon Aaron the honor of being speaker.

"*Does not interrupt*," etc.--refers to Aaron, as it is written [Lev. x. 19]: "And Aaron spoke unto Moses: Behold, this day have they offered their sin-offering, and their burnt-offering," etc. He was silent till Moses ceased speaking, and did not even say to Moses to be brief in his utterances. There are others who say that Aaron took him aside and said: "My brother Moses, tithes, which are less important than any other offering, a mourner (before the burial of the dead) is prohibited from eating them; a sin-offering, which is of great importance, so much the more should it be forbidden to him." And Moses at once admitted that he was right, as it is written [ibid. 20]: "And when Moses heard this, it was pleasing in his eyes," and in the eyes of the Mightiness.

"And he was angry with Elazar and Ithamar the sons of Aaron" [ibid. 16]. Learn from this that when one teaches his disciples he usually keeps his eyes on the great one, and when he is angry, he turns his anger to the one who is least: for he was angry even with Aaron.

Aaron was older than Moses, and the Lord is greater than Aaron, and why did He not speak to Aaron? Because his other sons did not prevent Nadab and Abihu from committing a sin.

We find with Abraham our father, when he was praying for the men of Sodom, the Holy One, blessed be He, said: "If I find in Sodom fifty righteous within the city, then will I spare the whole place for their sake" [Gen. xviii. 26]. The One who said: "There shall be the world," very well knew that there were not in Sodom even four or five righteous, only He waited till Abraham finished, and then answered him, as it is written [ibid. 33]: "And the Lord went away when he had finished speaking with Abraham; and Abraham returned unto his place."

"*He is not hasty in answering*"--refers to Elihu the son of Barachel the Buzite, as it is written [Job, xxxii. 7]: "I had said, Days shall speak." Infer from this that they were sitting silently before Job. When he rose, they also arose; when he sat down, they did likewise; when he ate or

drank, they did as he did, until Job asked their permission to speak, as it is writ

ten [ibid. iii. 1-3]: "And after this time job opened his mouth, and cursed his day. . . . Let that day whereon I was born perish, and the night when it was said, There hath been a male child conceived." The night when my mother came to my father and told him that she was pregnant shall perish. And whence do we know that they did not all speak at once? As it is written [ibid. 2]: "And Job commenced, and said"; and, "Then answered Eliphaz the Themanite, and said" [ibid. iv. 1]; and, "Then answered Bildad the Shuchite, and said" [ibid. viii. 1]; and, "Then answered Zophar the Naamathite, and said" [ibid. xi. 1]; and, "And Elihu the son of Barachel the Buzite commenced, and said" [ibid. xxxii. 6]. Scripture has enumerated them one by one for the purpose of informing all who come into the world that the wise does not speak before one who is greater than he.

"*And does not interrupt another in his speech; asks with propriety*"--refers to Jehudah, as it is written [Gen. xliii. 9]: "I will be surety for him."

"*Asks unwarranted*"--refers to Reuben, as it is written [ibid. xlii. 37]: "And Reuben said unto his father, thus: Two of my sons shalt thou slay."

"*Speaks first upon the matter which is first in order,*"--etc. refers to Jacob. Others say to Rebecca, and still others say to the men of Haran.

"*And says: 'I have not heard it,' when he actually did not hear*"--refers to Moses, as it is written [Numb. ix. 7, 8]: "And these men said unto him . . . and Moses said unto them, Wait ye, and I will hear what the Lord," etc.

"*Admits the truth*"--also refers to Moses, as it is written [Lev. x. 20]: "And when Moses heard this, it was pleasing in his eyes." Also the Holy One, blessed be He, confessed to the truth, as it is written [Numb. xxvii. 7]: "The daughters of Zelophchad speak rightly."

MISHNA *J*. Seven kinds of punishments come on account of seven cardinal transgressions. When some men tithe, and some do not tithe, dearth comes from drought; some of them are hungry, and some of them are satiated. When they have not tithed at all, a dearth comes from tumult and from drought. And when they have not separated the first dough, a deadly dearth comes.

MISHNA *K*. Pestilence comes unto the world for the capital crimes mentioned in the Torah, which are not to be brought before the tribunal, [1] and for the seventh-year fruits.

MISHNA *L*. The sword comes upon the world for suppression or perversion of judgment, and also for false interpretation of the Law.

MISHNA *M*. Noisome beasts come into the world for vain swearing, and for profanation of the

Name. Captivity comes upon the world for idolatry, for incest and for shedding of blood, and for not observing the Sabbatical year.

MISHNA *N*. At four seasons the pestilence waxes: in the fourth year, in the Sabbatical year; at the ending of the latter, and at the ending of the Feast in every year--in the fourth, on account of the poor's tithe in the third; in the seventh, on account of the poor's tithe in the sixth; and at the ending of the seventh, on account of the fruit of the Sabbatical year; and at the ending of the feast in every year, on account of the largesses of the poor.

Tosephtha--Aboth of R. Nathan.

[2]"*Seven kinds of chastisements*," etc. Said R. Jose: Because of the sin of the first dough, there is no blessing in the fruit, and the people are delivered into the hands of their enemies, as it is written [Lev. xxvi. 16]: "And ye shall sow in vain your seed; for your enemies shall eat it." For the sin of offerings and tithes the heavens withheld the rain and dew, as it is written [Job, xxiv. 19]: "Drought and heat speedily consume the snow waters," etc.

A plague comes to the world because of the sin of gleanings, forgotten sheaves, the corners and the tithes for the poor.

It happened that a woman who was the neighbor of a landowner sent her two children to glean in his field, but he did not

let them. In their absence their mother wished that they return home, thinking they might bring something to eat; and they, too, wished to return home, thinking that their mother might have something to give them to eat. Coming home empty-handed and finding nothing at home to eat, the disappointment and the sorrow all around were so great that all three died in one day. Said the Lord: Ye took away their lives, I also will take away your lives, as it is written [Prov. xxii. 22, 23]: "Rob not the poor, because he is poor, neither crush the afflicted in the gate; for the Lord will plead their cause, and despoil the life of those that despoil them."

"*The sword comes upon the world,*" etc. When R. Simeon b. Gamaliel and R. Ishmael b. Elisha the high-priest were seized and condemned to die, and the former was wondering and saying: "Woe to us, that we are to be slain as intentional violators of the Sabbath, idolaters, uncoverers of consanguinity, or blood-shedders." Said the latter to him: "Dost thou desire that I shall say something before thee?" And he answered: "Say!" Whereupon he said: "Mayhap when thou wert dining poor people came to thy door, but were forbidden to enter by the doorkeeper?" And R. Simeon answered: "By heaven, this was not done. On the contrary, watchmen were placed at my door: when they saw the poor approaching, they brought them to my table and were given food and drink, and they blessed heaven." "Perhaps when thou wert sitting at the Temple mount and lecturing, and all the multitudes of Israel were sitting before thee, thou hadst become haughty for a moment?" "No, my brother Ishmael, I have never done that; but man should be prepared for affliction (without any reason whatever)."

They then beseeched the executioner in the following manner: One said: "I am a priest, the son of a high-priest. Kill me first, and spare me the pain of seeing my colleague die." And the other

said: "I am a prince, the son of a prince. Kill me first, and spare me the pain of seeing my colleague die." And he advised them to cast lots. They did so, and it fell on Rabban Simeon b. Gamaliel. Whereupon the executioner took the sword and cut off his head. R. Ishmael held it to his bosom, and wept and cried: "The holy mouth, the truthful mouth, a mouth whence issued precious stones, diamonds, and pearls, who has hidden thee in the dust, and who has filled thy tongue with dust and ashes? Thou art meant in the prophetic exclamation

[paragraph continues] [Zech. xiii. 7]: 'Awake, O sword, against my shepherd, and against the man whom I have associated with me.'" Scarcely had he finished when also his head was struck off. To them Scripture refers when it is said [Ex. xxii. 23]: "My wrath shall wax hot, and I will slay you with the sword; and your wives shall be widows, and your children fatherless." As the men are slain, is it not self-evident that the women become widows? (Why, then, does Scripture say: "And your wives shall be widows"?) To convey the idea that they were and were not widows; *i. e.*, there was no evidence that the men were killed, as it happened in Bythar, where not a soul escaped to give evidence of any man's death, and consequently the women could not marry again. "And the children shall become fatherless" means that they could not inherit the property of their father, for the same reason.

"*Captivity comes upon the world*," etc. Because of idolatry, as it is written [Lev. xxvi. 30]: "And I will destroy your high places and [ibid. 33]: "And you will I scatter among the nations and further [Deut. iv. 25]: "When thou begettest children," etc.; and [ibid. 27]: "And the Lord will scatter you among the nations"; and [ibid. 28]: "And ye will serve their gods, the work of man's hands." The Holy One, blessed be He, said: "As you are desirous of being idolatrous, I will exile you to a place where idolatry prevails."

For not observing the Sabbatical year. Whence do we know this? It is written [Lev. xxvi. 34]: "Then shall the land satisfy its Sabbaths," etc. Said the Holy One, blessed be He: "Because ye do not observe the Sabbatical year, the land itself will observe it; and the number of months that ye fail to observe it, the land itself will observe it." For that reason it is written [ibid.]: "Then shall the land satisfy its Sabbaths, all the days of its desolation."

Tosephtha--Aboth of R. Nathan.

[1]Five are not to be forgiven: The one who sins relying that he will repent, and repents and sins again (and thus he sins too much and repents too much); the one who sins relying upon the forgiveness of the day of atonement; and the one who instigates others to sin; and the one who is guilty of profaning the Holy

[paragraph continues] Name. And were it not for the sins of mankind, the keys to the mysteries would have been intrusted to man, and he would know by what means earth and heaven were created and also what there is above. R. Aqiba used to say: "Everything is foreseen and unconcealed, and everything is according to one's understanding." He also used to say that everything was given as a pledge, and a net is spread out for all living, etc. The repentance of the wicked delays the execution of their judgment; their verdict, however, remains sealed until

they make restitution. The quietness of the wicked (without having remorse) ends badly. Superiority buries its claimers.

A man arrives into this world naked and leaves it in the same state, and it is desirable that the leaving should be as (sinless) as the coming. For profaning the Holy Name there is no repentance pending, and the Day of Atonement does not forgive. Repentance forgives till the day of death, and that day wipes out (all sin). The wicked are paid (in this world) and the upright are given credit (that is to say, the wicked that have studied the Law without performing what is written therein and otherwise have done nothing good, and those upright that have studied the Law with a good intention and have done no evil--these and those are given a small portion of what they earned), and the greater part is counted to them for the future.

R. Elazar b. Zadoq says: The upright in this world can be compared with a tree whose trunk grows on a clean spot, while one of its branches extends over an unclean spot, of which people say: Cut off the branch, and the whole tree will be on a clean spot. The wicked ones can be compared with a tree standing on an unclean spot and extending its branches to a clean spot, in which case, if the branches would be cut off, the whole tree would stand on an unclean spot.

Six different names were applied to the lion: Arjah, Cphir, Lobhi, Laish, Sha'hal, Sha'haz. Six names were applied to the serpent; viz., Na'hash, Soroph, Tanin, Ziphoni, Epheh, Achshubh. Six names were applied to Solomon; namely, Solomon, Jedidiah, Koeleth, Ben Iokoh, Ogur, L'muel.

MISHNA *O*. Four kinds of views are held by men concerning property. He who says: "What belongs to me shall continue to be mine, and thou shalt keep thine own," holds the common view. Some consider this the view of

the men of Sodom. [1] "Mine shall be thine, and thine shall be mine," thus say the ignorant. "Mine shall be thine, and thou shalt also keep thine own," thus says the magnanimous. "Thine shall be mine, and mine shall continue to be mine," are the words of the godless.

MISHNA *P*. There are four kinds of dispositions among men. Some are easily enraged, but as quickly soothed--there the fault is neutralized by the merit. Some are slow to anger, but are calmed only with difficulty--there the merit is counterbalanced by the fault. One is slow to anger and easily pacified--he is of a gentle disposition. Another is easily irritated and hard to soothe--he is a wicked man.

MISHNA *Q*. There are four kinds of pupils: one understands readily but forgets soon--there the advantage is swallowed by the failing; another grasps but slowly, and seldom forgets--there the failing is outweighed by the talent; a third understands readily and is slow to forget--his is a good portion; a fourth understands slowly and forgets quickly--his is a poor endowment.

MISHNA *R*. There are four kinds of charity-givers: He who gives but does not care that others should give--his eye is evil towards others (*i.e.*, the charity-giver shall not have the pleasure of doing charity and the poor shall be deprived of it); he who makes others give, but does not give himself, does not make the best use of his own; he who gives, and makes others give, is pious; but he who neither gives nor suffers others to give is a cruel man.

MISHNA *S*. There are four kinds of visitors of the house of learning: he that goes and does not practise (*i.e.*, he accepts the lessons without any examination or study of them), the reward of going only remains with him; he that practises (*i.e.*, he who studies at home) and does not go, the reward of practice remains with him; he

that does both is pious; he that enrols among the college visitors, but neither goes nor practises, is wicked.

MISHNA *T*. There are four kinds of the disciples of the wise: sponge, funnel, strainer, and sieve; sponge--sucking up all things; funnel--allowing all that is received in the one end to flow out at the other; strainer--letting the wine run through and retaining the dregs; sieve--blowing off the bran and keeping the flour.

MISHNA *U*. Love, inspired by ulterior motives, dies out when those motives disappear; but love without such motives never fades.

MISHNA *V*. What love is that which is inspired by ulterior motives? *E.g.* the love of Amnon and Thamar. And what love is without such motives? *E.g.*, the love of David and Jonathan.

MISHNA *W*. Whatsoever gainsaying is for the sake of Heaven will have good results, and that which is not for the sake of Heaven will not have the desired result.

MISHNA *X*. What gainsaying is that which is for the sake of Heaven? *E.g.*, the gainsaying of Hillel and Shammai. And that which is not for the sake of Heaven? *E.g.*, the gainsaying of Korah and his followers.

MISHNA *Y*. Whosoever causes many to be righteous, sin prevails not over him; and whosoever causes many to sin, they grant him not the faculty to repent.

MISHNA *Z*. Moses, who was righteous and caused many to become righteous, the righteousness of the many was therefore laid upon him, as it is written [Deut. xxxiii. 21]: "He executed the justice of the Lord, and his judgment with Israel."

Jeroboam, who on the contrary sinned and caused many to sin, the sin of the many, therefore, was laid upon him, as it is written [I Kings xiv. 16]: "For the sake of the sins of Jeroboam, who did sin, and who induced Israel to sin."

MISHNA *AA*. In whomsoever are the following three things, he is a disciple of Abraham, and in whomsoever are the contrary three things, he is a disciple of Balaam.

MISHNA *BB*. He who possesses a good eye, a modest spirit, and a humble mind is to be

counted the disciple of Abraham our father; an evil eye, a haughty spirit, and a bombastic mind is to be counted the disciple of Balaam. And what difference is there between the disciples of Abraham and those of Balaam? The disciples of Balaam go down to Gehenna, as it is written [Ps. lv. 24]: "But thou, O God, thou wilt bring them down into the pit of destruction: let not the men of blood and deceit live out half their days; but I will indeed trust in thee." But the disciples of Abraham derive benefit in this world and inherit the world to come, as it is written [Prov. viii. 21]: "That I may cause those that love me to inherit a lasting possession; and their treasures will I fill."

MISHNA *CC*. Jehudah b. Tema was in the habit of saying: "Be courageous as the panther, light-winged as the eagle, swift as the deer, and strong as the lion, to execute the will of thy Heavenly Father."

MISHNA *DD*. He used to say: "Gehenna will be the place for the bold of face, and the Garden of Eden will be that for the shamefaced."

MISHNA *EE*. He used to say: "One five years old should study Scripture; ten years--Mishna; thirteen years--should practise the commandments; fifteen years old--should study Gemara; eighteen years old--the bridal; at twenty--pursuits; at thirty--strength; at forty--discernment; at fifty--counsel; at sixty--age; at seventy--hoariness; at eighty--power; at ninety--decrepitude; at one hundred--it is as though he were dead and gone and had ceased from the world."

MISHNA *FF*. Ben Bag-Bag said: "Turn it, and turn it again (the Torah), for everything can be found therein. Study it, get old and gray with it, and never depart from it; for there is no better gauge of a moral life than--the Torah."

MISHNA *GG*. Ben He-He said: "The reward is commensurate with the affliction."

Footnotes

106:1 Chapter XXXII. of the original.

108:1 Chapter XXXIII. of the original.

109:1 The Hebrew term for both "glitter" and "lightning" is •••.

109:2 The text reads "nekabim," and the verse quoted begins with "nakab-tha" hence the supposition.

110:1 {! 0x3c < !}<{! 0x55 U !}U{! 0x3e > !}>••{! 0x3c < !}<{! 0x2f / !}/{! 0x55 U !}U{! 0x3e > !}>• means both "loam" and "billows."

110:2 •• is 'wall," ••• is "bottle," The Talmud plays on the similarity of the two words.

111:1 Chapter XXXIV. of the original.

111:2 ••• in Hebrew means also "nonsense."

112:1 ••• in Hebrew means a "river" and ••• means a "forest"; in the verse quoted the latter word is used, but the Massorah says that the middle letter is suspended above the line, and the Talmud maintains that this shows that originally the first-mentioned word was used, but subsequently the middle letter was changed and the change indicated by the suspension.

116:1 Chapter XXXV. of the original.

119:1 Chapter XXXVI. of the original.

120:1 The Hebrew term for both "grave" and "pit" is *sheol*, hence the analogy.

122:1 According to Maimonides.

122:2 Chapter XXXVII. of the original.

123:1 See Section Moed, Vol. VI., Hagiga, 37. The repetition here is because of this addition.

123:2 Here is a statement which is repeated in Tract Sota, 22*b*, under the heading: "The rabbis taught." As there it is more comprehensible, we prefer to give it here in that form.

127:1 According to Rashi, it means when the Jewish tribunal ceased its existence during the last years of the Second Temple; and according to other commentaries it means Kareth and heavenly death, with which the earthly tribunals had nothing to do.

127:2 Chapter XXXVIII. of the original.

129:1 Chapter XXXIX. of the original.

131:1 *i.e.*, "I do not wish to derive benefit from others, and no one shall derive benefit from me." This was the method of the Sodomites.

Next: Chapter VI.

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CHAPTER VI.

[Wise men have taught in the Mishna tongue. Blessed is He that made choice of them and their Mishna.]

MISHNA *A*. R. Meir said: "Whosoever is busied in Torah for the love thereof merits many things; and not. only so, but he is worth the whole world, as he is called friend, beloved, loves the Omnipotent and mankind; pleases the Omnipotent and mankind. And it clothes him with meekness and fear, and fits him to become righteous, pious, upright, and faithful; and removes him from sin, and brings him toward the side of merit. And they derive from him the benefit of good counsel, and sound wisdom, understanding, and strength, as it is written [Prov. viii. 14]: 'Mine are counsel and sound wisdom: I am understanding; mine is might.' And it gives him kingdom and dominion, and faculty of judgment. And they reveal to him secrets of Torah; and he is made, as it were, a spring that ceases not and as a river that flows on increasing. And he becomes modest and long-suffering, and forgiving of insult, and it magnifies him and exalts him over all things."

MISHNA B. Said R. Jehoshua b. Levi: "Every day a Heavenly voice goes forth from Mount Horeb, and proclaims as follows: 'Woe to the creatures for contempt of the Law, for whosoever does not occupy himself in the, Law is called "blameworthy,"' as it is written [Prov. xi. 22]: 'As a golden ring in a swine's snout, so is a hand some woman that hath thrown off discretion'; and it is also written [Ex. xxxii. 16]: 'And the tables were the work of God, and the writing, was the writing of God, engraved (*charuth*) upon the tables.' Do not read *charuth*, graven,

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but *cheruth*, freedom, for there is no free man but him who is occupied in the study of the Law; as whosoever is occupied in such study, behold he exalts himself, as it is written [Numb. xxi. 19]: 'And from Mattanah to Nachaliël; and from Nachaliël to Barmoth.'"

MISHNA *C*. He who learns from his companion one chapter, or one Halakha, or one verse, or one word, or even one letter is bound to do him honor, for thus we find with David, King of Israel, who learned from Achitophel two things only, and nevertheless he named him his master, his guide, and his acquaintance, as it is written [Ps. lv. 14]: "But it is thou, a man my equal, my guide, and my acquaintance." And is there not an *a fortiori* conclusion to be drawn from this, that as David, King of Israel, who learned from Achitophel two things only, called him his master, his guide, and his acquaintance, he who learns from his companion one chapter, or one Halakha, or one verse, or even one letter is so much the more bound to do him honor? And honor is nothing but the Torah, as it is written [Prov. iii. 35]: "The wise shall inherit glory"; and also [ibid. xxviii. 10]: "But the men of integrity will inherit what is good"; and good is nothing but the Torah, as it is written [ibid. iv. 2]: "For good information do I give you, my teaching (Torah) must ye not forsake."

MISHNA *D*. This is the path of Torah: A morsel with salt shalt thou eat. Thou shalt drink also water by measure (Ezek. v. 11) and shalt sleep upon the ground, and live a life of painfulness, and in Torah shalt thou labor. If thou doest thus, "happy shalt thou be and it shall be well with thee" [Ps. cxxviii. 2]. "Happy shalt thou be" in this world, and "it shall be well with thee" in the world to come.

MISHNA *E*. Seek not greatness for thyself, and desire not honor. Practise more than thou learnest, and lust not for the table of kings, for thy table is greater than theirs, and thy crown greater than their crown, and faithful is

thy taskmaster, who will pay thee the wage of thy work.

MISHNA *F*. Greater is Torah than the priesthood, and than the kingdom; for the kingdom is acquired by thirty degrees, and the priesthood by twenty-four, and the Torah is acquired by forty-eight. And these are they: by learning, by a listening ear, by orderly speech, by discernment of heart, by reverence, by fear, by meekness, by cheerfulness, by purity, by attendance upon the wise, by discussion with associates, by argumentation of disciples, by sedateness, by Scripture, by Mishna, by moderation of business, limitation of worldly things, by temperance in pleasure, by little sleep, by lessening converse, by reducing merriment, by long-suffering, by a good heart, by faith in the wise, by acceptance of chastisements; he that knows his place, and that rejoices in his portion, and that makes a face to his words, and does not claim merit to himself: he is loved, loves God, loves all creatures, loves righteousness, loves uprightness, loves reproofs, and retires from honor, and does not puff up his heart on account of his learning, and does not rejoice because he is privileged to give decision, bears the yoke with his associates, and inclines him to the scale of Merit, and grounds him upon the truth and upon peace, and concentrates his mind in study, asks and answers, hears and adds thereto; he that learns in order to teach, and learns in order to practise; that makes his master wiser, and that considers what he has heard, and tells a thing in the name of him that said it. Lo, thou hast learned that whosoever tells a thing in the name of him that said it brings redemption to the world, as it is written [Esther, ii. 22]: "And Esther said it to the king in the name of Mordecai."

Tosephtha--Aboth of R. Nathan.

[1]There are four things which bear good fruit in this world, and yield greater benefits for the world to come, if man observes

them. They are honoring of parents, conferring favors, reconciliation of adversaries, and, above all, the study of the Law. There are four things for which one who is guilty of them is punished both in this and in the world to come; namely, idolatry, incest, shedding of blood, and, above all, slander.

A meritorious act has both principal and benefit, as it is written [Is. iii. 10]: "Say ye to the righteous, that be hath done well; for the *fruit* of their doings shall they eat." A transgression has principal but no benefit, as it is written [ibid. 11]: "Woe unto the wicked . . . for the *recompense*

of his hands," etc. According to others, transgressors have benefit, as it is written [Prov. i. 31]: "Therefore shall they eat of the fruit of their own way," etc.

"*One who causes many to be righteous, no sin prevails upon him*." In order that he might not go to Gehenna, while his disciples will enjoy the world to come, as it is written [Ps. xvi. 10]: "For thou wilt not abandon my soul to the grave." On the other hand, "*One who causes others to sin is never afforded the faculty to repent*"--also for the reason that the reverse of the above shall not be the case, as it is written [Prov. xxviii. 17]: "A man oppressed by the load of having shed human blood will flee even to the pit."

One who says, "I will sin and then do repentance," is not afforded the opportunity to repent; "I will sin, and the Day of Atonement will atone for it," or, "I will sin, and the day of death will wipe it out"--it does not do so.

R. Elazar b. Jose says: "One who has sinned and repented, and thenceforward seeks to perfect himself, does not move from his place until he is forgiven; and one who says that he will sin and repent thereafter, he is forgiven only up to three times, and no more."

"*There are four characters among men*," etc. There are four characters among disciples: one who desires to teach and that others shall do likewise, he is of a good disposition; if he desires to teach, but does not like to see others do the same thing, he is of bad disposition. That others shall teach, and not he--this is medium. According to others, this is the character of Sodom (as the Sodomites did not want any one to derive any benefit from them). If, however, he wishes that neither he nor others shall teach, he is decidedly wicked.

There are four characters among those who sit in the house of learning. One who becomes friendly (with the sages who

study there) and studies with them has a share (with the sages); one who befriends himself but does not study with them has no share; one who estranges himself (from the sages) but studies himself has a share; and the one who both estranges himself and does not study has no share.

One who propounds questions and gives their answers has a share (in the world to come); one who only questions has none; one who sits and keeps silent has a share. One who befriends himself in order that he might listen and learn has a share; if he befriends himself in order that others might say that he befriends himself and sits before a wise man, he has none. If he sits at a distance in order to accord honor to one who is superior to him, he has a share; if, however, the reason is that others might say that he does not need that sage, he has none. One that propounds questions and gives their answers in order that others might say that he propounds questions and gives their answers and serves the scholars, has no share; if, however, he does so in order really to learn something, he has. If he sits silent in order to listen and learn, be has a share; if, however, the purpose is that others might say that he does so, he has none.

"*There are four different characters among students*," etc. One resembles a sponge: as a sponge absorbs all liquids, so does that kind of student absorb all that he studies: Scripture, Mishnah, Midrash, Halakhoth, and Agadoth. One is like a sieve: as a sieve passes through the fine flour

and retains the coarse particles, so an intelligent student retains what is good in the study and leaves out what is not. One is like a funnel: as it lets in the liquid through one opening and lets it out through the other, so is it with the unintelligent student--what enters his one ear goes out through the other, until all is gone. The fourth student is like a wine-strainer which lets the wine pass through and absorbs the dregs: so also the wicked student forgets the good teachings and retains the bad ones.

R. Eliezer b. Jacob named the last one a horn (which lets in the liquids at one end and lets them out at the other). How so? For instance, a child who is given a pearl, he will drop the latter when given a slice of bread; and when given a potsherd he will drop the bread, and finally he has nothing but the potsherd.

As to disciples, R. Gamaliel the elder compares them to the following four kinds of fish: an unclean, a clean fish, a fish found

in the Jordan, and one found in the Ocean. By an unclean fish is meant a disciple of poor intellect, who, notwithstanding his study of Scripture, Mishna, Halakhoth, and Agadoth, still remains poor-minded. By a clean fish is meant a disciple of rich intellect, who studies Scripture, Mishna, Halakhoth, and Agadoth, and develops his mind. By a fish from the Jordan is meant a scholar who has studied all the mentioned subjects, but has not acquired the faculty of answering questions put to him. And by a fish found in the Ocean is meant a scholar who studied all the above subjects and has the ability of answering the questions put to him.

With regard to sight, it may be said that there are four different misfortunes: those that see and are visible, *e.g.*, the wolf, the lion, the leopard, the bear, the hyena, the serpent, robbers, and soldiers (who in time of war commit robbery); those that are visible but do not see, *e.g.*, the sword, the arrow, the spear, the knife, the stick, the lance; those that see but are not visible, *e.g.*, the plague of an evil spirit; and those that neither see nor are visible, *e.g.*, the plague of stomach trouble.

There are four sages: One who sees R. Johanan b. Nuri in his dream may hope to be fearful of sin; R. Elazar b. Azariah--he may hope for riches and greatness; R. Ishmael--he may hope for wisdom; R. Aqiba--he may fear being chastised.

There are other three scholars (regarding dreams): One who sees Ben Azai may hope to be one of the pious; Ben Zoma--he may hope for knowledge; Elisha b. Abuyah--may fear being chastised.

(The same is the case) with the following three books of the prophets: Kings--he may hope for riches, greatness; Isaiah--satisfaction; and Jeremiah--chastisement.

(The same is the case) with the following books of the Hagiographa: Psalms--he may hope to be modest; Proverbs--he may hope for wisdom; and Job--he may fear being chastised.

There are also three things regarding the righteous and the wicked ones (which will be explained

in Tract Sanhedrin).

"*Every gainsaying*," etc. Every assembly that is for the sake of performing a religious duty remains everlasting; *e.g.*, the Great Assembly. And every assembly which is not for such purpose will finally cease; *e.g.*, the assembly for division [Gen. xi.].

MISHNA *G*. Great is Torah, that gives life to those who practise it in this world and in the world to come, as

it is written [Prov. iv. 22]: "For they are life unto every one of those that find them, and to all his body a healing." And it is also written [ibid. iii. 8]: "It will be healing to thy body, and marrow to thy bones." And it is again written [ibid., ibid. 18]: "A tree of life is she to those who lay hold on her, and every one that firmly graspeth her will be made happy." And again [ibid. i. 9]: "For a wreath of grace are they unto thy head, and chains for thy throat." And again [ibid. iv. 9]: "She will give to thy head a wreath of grace; a crown of ornament will she deliver to thee." And again [ibid. iii. 16]: "Length of days is in her right hand; in her left are riches and honor." And again [ibid. iii. 2]: "For length of days, and years of life, and peace, will they increase unto thee."

MISHNA *H*. R. Simeon b. Menassia said in the name of R. Simeon b. Jo'hai: "Comeliness, and strength, and wealth, and honor, and wisdom, and age, and hoariness, and sons are becoming to the righteous, and becoming to the world, as it is written [Prov. xvi. 31]: 'An ornamental crown is the hoary head, on the way of righteousness can it be found.' And it is also written [ibid. XX. 29]: 'The ornament of young men is their strength; and the glory of old men is a hoary head'; and again [ibid. xvii. 6]: 'The crown of old men is children's children; and the ornament of children are their fathers'; and again [Is. xxiv. 23]; 'And the moon shall be put to the blush, and the sun be made ashamed; for the Lord of Hosts will reign on Mount Zion, and in Jerusalem, and before his ancients in glory.'"

S. Simeon b. Menassia said: "Those seven qualities which the wise have reckoned to the righteous were all of them confirmed in Rabbi and his sons."

MISHNA *I*. R. Jose b. Qisma said: "Once I was walking by the way and there met a man, and he gave me 'Peace!' and I returned him 'Peace!' He said to me: 'Rabbi, from what place art thou?' I said to him: 'From a great city of wise men and scribes am I.' He said to

me: 'Rabbi, should you like to dwell with us in our place? I will give thee a thousand thousand dinars of gold, and goodly stones, and pearls.' I said to him: I If thou shouldest give me all the silver, gold, and goodly stones, and pearls that are in the world, I would not dwell but in a place of Torah, as it is written in the Book of Psalms by the hand of David, King of Israel [Ps. cxix. 72]: "Better is unto me the law of thy mouth than thousands of gold and silver." Moreover, in the hour of a man's decease, not silver, not gold, nor goodly stones and pearls, accompany the man, but Torah and good words alone, as it is written [Prov. vi. 22]: "When thou walkest it shall lead thee, when thou liest down it shall watch over thee; when thou art awake it shall converse with thee." "When thou walkest it shall lead thee" in this world; "when thou liest down it shall

watch over thee" in the grave; "when thou art awake it shall converse with thee" in the world to come; and it is also written [Haggai ii. 8]: "Mine is the silver, and mine is the gold, saith the Lord of Hosts.'"

Five possessions had the Holy One, blessed be He, in this world, and these are they: Torah, one possession; Heaven and earth, one possession; Abraham, one possession; Israel, one possession; the Sanctuary, one possession. Torah, whence? As it is written [Prov. viii. 22]: "The Lord created 1 me as the beginning of his way; the first of his works from the commencement." Heaven and earth, whence? As it is written [Is. lxvi. 2] "The heaven is my throne, and the earth is my footstool where is there a house that ye can build unto me? and where is the place of my rest?" And it is also written [Ps. civ. 24]: "How manifold are thy works, O Lord! in wisdom hast thou made them all; the earth is full of thy riches." 1 Abraham, whence? It is written [Gen. xiv. 19]: "And he blessed him, and said, Blessed be Abram

of the most high God, the possessor of heaven and earth." Israel, whence? As it is written [Ex. xv. 16]: "Till thy people pass over, O Lord, till this people pass over which thou hast purchased." And it is also written [Ps. xvi. 3]: "In the saints who are on the earth, and in the excellent--in them is all my delight." The Sanctuary, whence? As it is written [Ex. xv. 7]: "The sanctuary, O Lord, which thy hands have established." And it is also written [Ps. lxxviii, 54]: "And he brought them to his holy territory, even to this mount, which his right hand had acquired." 1

Whatsoever the Holy One, blessed be He, created in this world, He created not but for his glory, as it is written [Ps. xliii. 7]: "Every one that is called by my name, and whom I have created for my glory; whom I have formed; yea, whom I have made." And it is also written [Ex. xv. 18]: "The Lord will reign for ever and ever."

R. Hanania b. Aqashia said: "The Holy One, blessed be He, was pleased to give merit to Israel, therefore he multiplied unto them Torah and precepts, as it is written [Is. xlii. 21]: 'The Lord willed to do this for the sake of his righteousness; therefore he magnifieth the law and maketh it honorable.'"

Tosephtha--Aboth of R. Nathan.

2R. Simeon said there are three crowns: the crown of Torah, that of priesthood, and that of kingdom; the crown of a good name, however, is above all. Concerning the crown of priesthood: If one would offer all the gold and silver in the world for it, he could not acquire it, as it was only for Aaron and his children [Numb. xxv. 13].

The same is the case with the crown of kingdom, which cannot be gotten for all the gold and silver in the world, as it was only for David, as it is written [Ezek. xxxvii. 24]: "My servant David will be the prince for ever." But with the crown of Torah

it is different; every one who wants to possess it, he may come and take it, as it is written [Is. Iv. 1]: "Every one of ye that thirsteth, come ye to the water" (meaning the Torah). Occupy thyself with the words of the Torah, and do not occupy thyself with idle things.

It happened to R. Elazar b. Simeon, etc. 1

Three things were said of charitable men: he who gives charity may be blessed, but if he gives it in the form of a loan is still better; but he, however, who gives one money to do business with, with the understanding that he shall pay him half of the profits, is above all.

There are three different kinds among scholars; one who is able to ask questions and to answer them is a wise one; one who is only able to ask questions but not to answer them is inferior to him; but he who is able neither to ask nor to answer questions is not to be considered at all.

There are three different kinds of sweat that are beneficial to the body: the sweat following a sickness; the sweat produced by a bath; the sweat of labor. The sweat following a sickness is healing, but the sweat produced by a bath has no equal.

There are six kinds of tears: three of them are good and three are bad. Those produced by weeping, smoke, and in the toilet are bad (see Sabbath, p. 355). Those produced by spices, laughing, and by sharp fruit are good.

There are three advantages in an earthen vessel: it absorbs, does not exude, and gives no bad smell to the thing that is in it.

There are three advantages in a glass vessel: it does neither absorb nor exude, and it exposes to view what is therein contained; and keeps warm in a warm temperature, and cold in a cold temperature.

The money that the Israelites carried away from Egypt returned to Egypt, as it is written [Ex. xii. 36]: "And they emptied out Egypt"; and it is also written [Gen. xlvii. 14]: "And Joseph gathered up all the money," etc.; and it is written [I Kings, xiv. 25, 26]: "And it came to pass in the fifth year," etc.

The heavenly writing on the tables returned to its origin (see Pesachim, 178).

"*R. Jehuda b. Thema said,*" etc. He used also to say: Love Heaven, love all the commandments. If you do the least wrong

to your companion, it shall be considered by you the greatest wrong; but if you have done him good, though it have been a great deal, you shall consider it little. On the contrary, if your companion has done you the least good, you shall consider it much; and if he has done you a great wrong, consider it little. Be as a tight leather-bag that has no opening to let in the wind. Be prepared to receive affliction, and be forgiving to those who oppress you.

The following articles were made and were hidden: The first tabernacle, and the vessels therein contained; the ark, the broken tables and the receptacle of the manna, the staff, the bottle of the oil of anointment; the staff of Aaron, its buds and blossoms; the garments of the first priests and the garments of the anointed priest. But the mortar of the house of Abtinas, the table, the candelabra of the Temple, the curtain, the golden plate, are still in Rome.

All that the Holy One, blessed be He, created in His world was so created only for His glory, as it is written [Is. xliii. 7]: "Every one that is called by my name, and whom I have created for my glory, whom I have formed-yea, whom I have made"; and it is also written [Ex. xv. 18]: "The Lord will reign for ever and ever."

R. Hananiah b. Akashia said: The Holy One, blessed be He, desired to reward Israel in the world to come, and therefore He magnified the Law for them and gave them a great number of merits, as it is written [Is. xlii. 21]: "The Lord willed to do this for the sake of his righteousness; therefore he magnifieth the law, and maketh it honorable."

END OF TRACT ABOTH AND OF ABOTH OF R. NATHAN.

Footnotes

136:1 Chapter XL. of the original.

141:1 The Hebrew terms for these are derived from the verb •••, which the Talmud translates literally, "to possess," "to acquire."

142:1 The Hebrew terms for these are derived from the verb •••, which the Talmud translates literally, "to possess," "to acquire."

142:2 Chapter XLI. of the original.

143:1 See Section Festivals, Vol. VIII., Tract Taanith, pp. 52-53, the legend at length.

SYNOPSIS OF SUBJECTS 1

OF

TRACT DERECH ERETZ-RABBA AND ZUTA RABBA.

CHAPTER II.

OF the Sadducees, common informers, the wicked, the hypocrites, the heretics, the Scripture says, etc. Of the terrifying, the overbearing, the haughty, the barefaced, and of those who develop only their muscular strength, the Scripture says, etc. Of evil-thinkers, story-tellers, tale-bearers, smooth-tongued persons, the Scripture says, etc. Who assaults his neighbor in private, and who insults him in public, etc. Who forestalls fruit, raises the prices, diminishes the measure, accepts payment in large-sized shekels only, and who lives on usury, The following leave no inheritance to their children, etc. The conceited, the slanderers, and those who indulge in obscene language, who are wise in their own eyes, etc. Who lets his young son marry an older woman, and who marries off his daughter to an old man, and who bestows favors upon those who are unworthy, etc. Who betrays his partner, does not return a lost thing to its rightful owner, loans money to another in order to get possession of his house and field, and who lives immorally with his wife, and maliciously slanders his wife, etc. Who are wronged and do not wrong, who consider themselves contemptible, and who overcome their passion, etc. Who loves his wife as himself, honors her more than himself, who leads his children on the right path, and who marries off his son in due time, etc. Who loves his neighbor, loans even a small amount to a poor man, etc. Who truthfully repent, who receive the repentant into their midst, who judge rightfully, reprove truthfully, propagate purity, are pure of heart, are merciful, distribute charity, exert themselves in the study of the Law. Search for an opportunity to do good, pursue righteousness, etc. On account of the following four things an eclipse of the sun occurs, etc. On account of the following four things an eclipse of both the sun and the moon occurs, etc. On account of the following four

things the estates of the citizens are destroyed, etc. Do not fret thyself to be equal to the evil-doers. There is no sitting above, neither is there eating, etc., 1-6

CHAPTERS III. TO VI.

ONE who bears in mind the following four things, etc., will never sin. Think of a big palace in the centre of which the vat of a tanner is placed. If a man allows his lips to pass only respectable words. Be careful, each of you, in honoring your neighbor. Be always pleasant at your entering

and at your leaving. The angels, Abraham, and Lot. It is customary that, when entering, the master of the house enter first and the guest after him; the reverse when leaving. Never shall a man enter the house of his neighbor without permission. The philosopher, Rabban Gamaliel, and his comrades. Always consider strangers as burglars, and at the same time honor them as if each of them were R. Gamaliel himself. One who enters his neighbor's house shall do what he is told by the host (provided it is legitimate). The legend about Simon b. Antiptaris, his guests, and R. Jehoshua. A man shall never be angry at his meals. Always shall a man try to agree with the majority of the people. Hillel the Elder, his wife, and the poor man. One shall not begin to eat the heads, but the leaves, of garlic or onions, 6-12

CHAPTERS VII. TO IX.

WHEN two are sitting at the table, the elder one commences to eat first and the younger one after him. One shall not eat before the fourth hour. One who enters a house shall not ask for food, but shall wait until he is invited. One should not offer presents to his neighbor, knowing that he would not accept them. When one who does not intend to buy is in the market, he should not ask for the prices, for he misleads the sellers. One should not use a slice of bread to cover therewith a dish. Five things said Rabbi in regard to bread. One who comes to the table to take his meal shall not take his portion and give it to the waiter. Guests must not give anything to the son of the host, etc., 12-15

CHAPTERS X. AND XI.

ONE who enters the bath-house may say, etc. How should one conduct himself before bathing? One who is not careful is an ass's equal; one who eats in the market is a dog's equal. One must not spit in the presence of his neighbor, even in a bath-house. One shall not greet his neighbor when he is washing himself. He who walks the road. A common informer is considered a murderer. He who hates his neighbor without cause is also considered such. One who sets a definite time for the redemption of Israel through Messiah will have no share in the world to come, 16-19

ZUTA.

CHAPTERS I. TO IV.

WHAT are the qualities of sages? Their thought concerning this world. If you have sustained a loss of your property, remember that job, etc. When you hear others insult you, do not answer them. Love the Law; love all creatures and respect them. Love doubtfulness. Keep aloof from everything that. may bring to sin. Keep aloof from grumbling. Seven patriarchs are resting in glory. Let all thy ways be for the sake of Heaven. Do not discuss in the presence of one who is greater than you in wisdom. Accept the words of Law, even when you are in affliction. Be afraid of a light sin. Do not say, "I will flatter this man," etc. If thou hast done much good to some one, consider it as very little. If others have done thee much wrong, etc. Do not hate the one who reproves thee. Let it be thy habit to say, "I do not know," The commencement of making vows is

the door to foolishness. Fifteen customs are ascribed to the sages. Be as the lower threshhold, upon which all persons tread. The society of scholars is always agreeable. What should one study more--Scripture, Mishnayoth, or Talmud? No pay shall be exacted for teaching. Do not complain of your being less wise than another. Do not complain that another one is beautiful and you are ugly. Let. your ears not listen to vain talk. Be not afraid of the court of justice on earth. If you perform all the commandments with joy, etc. All that is said above is a warning to you, 25-27

CHAPTERS V. TO IX

A SCHOLAR must not eat standing, etc., etc. By four things the scholar is recognized, etc. The beauty of wisdom is modesty. The beauty of noble performance is secrecy. Four things are derogatory to scholars, etc. When entering, the greater shall be first, etc. For saying benediction, the greater is first. The first step to sin is in one's thoughts. A scholar must be careful in his eating, drinking, washing, anointing, etc. After peace but not after war. Rather follow behind a lion than behind a woman. Who respects the sages?, etc. Keep aloof from anger. Love the poor in order that your children shall not come to poverty, etc. If you keep your mouth from slander, you will spend all the days of life in peace. When you see your neighbor has become poor, do not refuse to help him. If you lower yourself, the Lord will lift you up. This world resembles the eyeball of a Man, etc., 27-31

THE CHAPTER ON PEACE.

ALTHOUGH evil decrees are enacted, one after another, against Israel, still they endure forever. Seek peace at the place where you are, and if you do

not find it, seek it in other places. All manner of lying is prohibited, except it be to make peace between one and his neighbor. Great is peace, in that the covenant of the priests was made with peace. When the Messiah shall come to Israel, he will begin with peace. Great is peace, in that all the benedictions and prayers conclude with peace. He who loves peace runs after peace, offers peace, and answers peace, the Holy One, etc., 31-33

Footnotes

xvii:1 Redactors note: for technical reasons, the Synopsis of Subjects for this volume has been moved from its original location in volume one. The page numbers (from volume I) have been retained, hence the gap in page numbers.

Next: Chapter II.

TRACT DERECH ERETZ--RABBA. (WORLDLY AFFAIRS.)

CHAPTER II. 1

THE Sadducees, the common informers, the wicked, the hypocrites, the heretics, of them the Scripture says [Job, xiii. 16]: "For a hypocrite cannot come before him"; the terrifying, the overbearing, the haughty, the barefaced, those who develop only their muscular strength, of them the Scripture says [Psalms, xxxvii. 17]: "For the ovens of the wicked shall be broken; but the upholder of the righteous is the Lord." Evil-thinkers, story-tellers, talebearers, smooth-tongued persons, of them the Scripture says [ibid. xxxv. 5]: "May their way be dark and slippery, and may the angel of the Lord pursue them." Those who assault their neighbor in private and those who insult him in public, those who trifle with majorities, and those who cause quarrels, they will become as Korah and his society, of whom the Scripture says [Numb. xvi. 33]: "And the earth closed over them, and they disappeared from the midst of the congregation." Those who forestall fruit, those who raise the prices, those who diminish the measure, those who accept payment in large-sized shekels, and those who live on usury, of them the Scripture says [Amos, viii. 7]: "Sworn hath the Lord by the excellency of Jacob. Surely I will not forget to eternity all their works."

The following leave no inheritance to their children,

and if they do leave to their children, nothing of it comes to their grandchildren: viz., those who play at dice, and those who raise tender cattle (in Palestine); those who do business with the money obtained from the fruit of the Sabbatical year, and those who pay with coins (of doubtful genuineness) coming from the sea-countries, and a priest and a Levite who obtained advances on their shares (of heave-offering and tithes), and those who disgrace the Holy Name, of them the Scripture says [Ps. ix. 18]: "The wicked shall return into hell, all the nations that are forgetful of God." And of them it is also written [Eccles. i. 15]: "What is crooked cannot be made straight." Those who motion with their hands, stamp their feet, walk on their toes (to show pride), of them the Scripture says [Ps. xxxvi. 12]: "Let not come against me the foot of pride, and let not the hand of the wicked chase me off." The conceited, the slanderers, those who indulge in obscene language, those who are wise in their own eyes, of them the Scripture says [Mal. iii. 19]: "For, behold, the day is coming which shall burn as an oven," etc,

One who lets his young son marry an older woman, and one who marries off his daughter to an old man, and one who bestows favors upon those who are unworthy, concerning such Scripture says [Deut. xxix. 19]: "The Lord will not pardon him." The collectors, the war-instigators, the publicans, of them Scripture says [Ezek. xxvii. 27]: "Thy wealth and thy warehouses, thy

commerce, thy mariners and thy pilots, thy caulkers and the conductors of thy commerce, and all thy men of war that were in thee, and in all thy assemblage which was in the midst of thee, fell into the heart of the seas on the day of thy downfall." One who betrays his partner, one who does not return a thing found to its rightful owner, one who loans money to another in order to get possession of his house or fields in case of non-payment, and one who lives immorally with his wife, and one who maliciously

slanders his wife in order to divorce her, of them the Scripture says [Jer. xvii. 10]: "I the Lord search the heart, probe the veins."

Those who are wronged and do not wrong, etc. [see Yomah, p. 33, l. 9]; those who consider themselves contemptible and despicable, those who overcome their passion, and are altogether modest, of them the Scripture says [Is. xlix. 8]: "Thus hath said the Lord, In the time of favor have I answered thee, and on the day of salvation have I helped thee, and I will preserve thee, and I will appoint thee as a people of my covenant to raise up the land, to divide out desolate heritages." Trustworthy men, those who keep other people's secrets, those who gladly return articles intrusted to their care, and found things to their rightful owners, of them Scripture says [Ps. ci. 6]: "My eyes shall be upon the faithful of the land, that they may abide with me." One who loves his wife as himself, who honors her more than himself, and one who leads his children on the right path, and one who marries off his son in due time to prevent him from sin, of them it is written [Job, v. 24]: "And thou shalt know that there is peace in thy tent; and thou wilt look over thy habitation, and shalt miss nothing. And thou shalt know that thy seed is numerous, and thy offspring as the herbage of the earth."

One who loves his neighbors and is friendly to his relatives, and one who marries off his sister's daughter, and one who loans even a small amount to a poor man in his need, [1] of them the Scripture says [Is. lviii. 9]: "Then shalt thou call, and the Lord will answer."

One who executes his trust rightfully, [2] those who truthfully repent, and those who receive the repentant into their midst and instruct them so that they shall not

return to their former sins, of them it is written [ibid. 8] Then shall break forth as the morning-dawn thy light.

Those who judge rightfully, those who reprove truthfully, those who propagate purity, and those who are pure of heart, of them it is written [Ps. lxxiii. 1]: "Truly, God is good to Israel, to such as are pure of heart." Those who sigh, weep, and in their lamentations are hopeful of the redemption of Jerusalem, of them it is written [Is. lxi. 3]: "To grant unto the mourners of Zion, to give unto them ornament in the place of ashes." Those who are merciful, feed the hungry, quench the thirst of the thirsty, clothe the naked, and distribute charity, of them the Scripture says [ibid. iii. 10]: "Say ye to the righteous that he hath done well." The poor, the bashful, and those who are humble in spirit, and those who are submissive to youth, and those who carry out their promises, of them the Scripture says [Job, xxii. 23]: "And if thou decree a thing, it will be fulfilled unto thee, and upon thy ways the light will shine." Those who exert themselves in the

study of the Law, and study it for the purpose of observing it, and those who search for the opportunity to do good, and those who frequent the temples, of them the Scripture says [Prov. viii. 24]: "Happy is the man that hearkeneth unto me, watching day by day at my gates, waiting at the posts of my doors." Those who pursue righteousness, and seek peace for their nation, and those who participate in the affliction of the community, and those who stand by the community in case of distress, of them the Scripture says [Nahum, i. 7]: "The Lord is good, a stronghold on the day of distress."

On account of the following four things an eclipse of the sun occurs (see Succah, p. 40): When the head of a college (Ab Beth Din) died and was not properly lamented; when a betrothed damsel cried for help (Deut. xxii. 23-28) in town and no one offered help; male sodomy; and the shedding of the blood of two brothers at one and the same time (there is no explanation of this

in any of the commentaries, and it seems to us that there happened something like that in the author's time which is unknown to us).

On account of the following four things the eclipse of both the sun and the moon occurs: Those who write defamatory reports about others, giving false testimony, raising tender cattle, and destroying fruit-bearing trees. On account of the following four things the personal property of citizens is seized by the government: For keeping paid notes (with the intention to demand another payment), for the practice of usury, for not exercising one's power to prevent sin when he could do so, for subscribing publicly to charity and not paying the subscription.

On account of the following four things the estates of the citizen are destroyed: For robbing or withholding the wages of a wage-earner [Lev. xix. 13]; for removing the yoke from one's own neck and placing it upon the neck of another, and for haughtiness above all.

R. Dusthai b. R. Jehudah said: Do provoke the wicked (see Megilla, p. 13), as it is written [Prov. xxviii. 41: "They that forsake the law praise the wicked, but such as observe the law *contend* with them"; but lest one say, is it not written [Ps. xxxvii. 1]: "*Do not* fret thyself because of the evil-doers, neither be thou envious against the workers of iniquity"? say to him that this is the answer of him whose heart-beating prevents him from doing so (because of this passage), but the true interpretation of this passage is thus: "Do not fret thyself *to be* equal to the evil-doers, neither be thou envious to be like them of the workers of iniquity."

There is no sitting above (in heaven), neither is there eating, drinking, sleep, multiplication, animosity, hatred, provocation, envy, nor stubbornness, weariness nor delay, and that is what David the King of Israel said [ibid. xviii. 12]: "He made darkness his hiding-place" (*i.e.*, it is dark and hidden to all mortals). To what end did David

say this? To none other than to praise of the Holy One, blessed be He, who is "Yah," rules on high, whose unity is one, whose name is one, and who rests in three hundred and ninety heavens, and on each His name and mode of pronunciation are marked; and in each of them there are servants, seraphim, *ophanim* (wheels, Ezek. I.), cherubim, *galgalim*, and a throne of

glory; and there is no wonder at that, for even as a mortal king has many palaces for the seasons of the year, so much the more the Everlasting, since all is His. And when Israel are doing His will, He rests in the seventh heaven, named Araboth, and does not keep distant from His world, as it is written [Numb. vii. 89]: "From between the two cherubim: and thus he spake unto him." When offended He ascends to the highest heaven, and all cries and weeping are not listened to, and fasts are ordered, and they roll themselves in ashes, cover themselves with sacks, and shed tears (and all in vain, until He has mercy upon them).

Footnotes

1:1 Chapter I. belongs to Tract Kedushin, and will be added to that tract.

3:1 Some say it means when the lender himself is in need, and it seems to us that it is the correct meaning.

3:2 The text reads "Hamnadin," which means "those who put under the ban," but the commentators came to the conclusion that this is an error. We have translated it according to Elias Wilna.

Next: Chapter III.

CHAPTER III.

BEN AZAI said: One who bears in mind the following four things, and never loses sight of them, will never sin namely, whence he came, and whither he goes, who is his judge, and what will become of him. Whence he came?,--from a place of darkness; and whither he goes?--to darkness. Whence he came?--from a dirty place; whither he goes?--to make unclean every one who will touch him. Whence he came?--from a fetid secretion, and from a place which is invisible to a human being; whither he goes?---to sheol and Gehenna, to be, burned in fire. And who is his Judge? Remember that his Judge is not of flesh and blood, but the Lord of all the creation, blessed be He, before whom there is no, iniquity, no oblivion, no consideration of person, no, bribery. And what will become of him?--worms and

maggot, as it is written [Job, xxv. 6]: "How much less the mortal, the mere worm? and the son of earth, the mere maggot?" R. Simeon said: A human being has worms in his body when alive--*i.e.*, lice, and he is converted into a maggot after his death.

R. Eliezer b. Jacob said: Think of a big palace in the centre of which the vat of a tanner is placed: so is a handsome and respected man who lets an unbecoming word pass his lips. If a human being would issue from his body perfume (instead of excrement), how would he pride himself against all other creatures? (So, if this man allows his lips to pass only respectable words, he can pride himself.) When R. Eliezer was about to depart, his disciples paid him a visit and requested him to teach them only one more thing. And he said unto them: Go, and be careful, each of you, in honoring your neighbor; and when you are praying, remember before whom you stand and pray, and for the observation of these you will have a share in the world to come.

CHAPTER IV.

BE always pleasant at your entering and at your leaving. Lessen your worldly business in order to study the law. It happened with R. Simeon b. Elazar, etc. (See Taanith, pp. 52 and 53, for the whole legend repeated here.) How shall one honor his master? (See Yomah, p. 52.) And so also we find with the three angels Gabriel, Michael, and Raphael, who came to Abraham our father. Gabriel's errand was to destroy Sodom and Gomorrah; Raphael's was to heal Abraham; and Michael's, to inform Sarah. And when Abraham saw the angels, the Shekhina came and stood above him, and he addressed the angels, saying: "My masters, wait awhile, until I take leave of the Shekhina, for you also must respect her," as it is written [Gen. xviii. 3]: "And

p. 8

he said, My Lord, if now I have found favor in thy eyes, pass not away, I pray thee, from thy servant." And after Abraham took leave of the Shekhina he returned, and bowed to them and brought them under the tree, as it is written [ibid. 4]: "Let a little water, etc., be fetched, and wash, etc."; And then he said [ibid., ibid.]: "I will fetch a morsel of bread." Lot, however, said [ibid. xix. 2]: "And tarry all night, and (then) wash your feet?" Some of the anonymous teachers observe that in this very point Lot showed his prudence. He reasoned: If the Sodomites will see them after they have washed their faces, hands, and feet (*i.e.*, I give them shelter overnight), they will kill me, my wife, and my daughters; but let the Sodomites see them with the dust on their feet, they will then think that they have just arrived.

He who accompanies his master ought not to depart from him without permission. When two disciples go or sit together (they need not ask for permission from each other), they are both equal.

It is customary that when entering, the master of the house enters first and the guest after him, and when leaving the house the guest leaves first and the master after him. And he who departs from his comrade, whether his comrade is greater than he or he is greater than his,,, comrade, he must inform him of his leaving. And every one may learn this from the Lord, who said to Abraham, "I leave you," as it is written [Gen. xviii. 33]: "And the Lord went away when he had finished speaking with Abraham; and Abraham returned unto his place" (from the wording, "and the Lord went away," it is inferred that He informed him).

Next: Chapter V.

CHAPTER V.

NEVER shall a man enter the house of his neighbor without permission, and this conduct may be learned,

from the Holy One, blessed be He, who stood at the gate of the garden, and called to Adam [Gen. iii. 9]: "And the Lord God called unto the man, and said unto him, Where art thou?" It happened with the four elders Rabban Gamaliel, R. Jehoshua, R. Elazar b. Azariah, and R. Aqiba, who went to the interior cities of Rome, in one of which there lived a friend of theirs, a philosopher--R. Jehoshua asked Rabban Gamaliel if he would like to go and see their friend the philosopher, and he answered he would not. On the next morning, however, he asked him again, and he said he would. They then went, and R. Jehoshua knocked at the door of the philosopher, and at once the philosopher concluded that this must be the manner of a wise man. When he knocked again, the philosopher arose and washed his face, hands, and feet. When he knocked the third time, the philosopher opened the door, and saw that the sages of Israel were coming from both sides of the street; namely, Rabban Gamaliel being in. the centre, R. Jehoshua and R. Elazar b. Azariah to his right, and R. Aqiba to his left, and the philosopher was somewhat puzzled as to the manner of saluting them. He said within himself: "Whom of the sages shall I greet first? If I should greet R. Gamaliel first, I might thereby offend the other sages; and if I should address my greeting to all of them (without naming the head of them), I will offend R. Gamaliel." He therefore concluded to address them thus: "Peace to you, sages of Israel, and to R. Gamaliel first."

Always consider strangers as burglars, and at the same time honor them as if each of them were R. Gamaliel himself. It happened to R. Jehoshua that a man called at his house, and he gave him to eat and drink, and took him up to the roof to sleep there, and then removed the step-ladder leading to the roof. The man was a thief, and arose by night, and took things of value that Rabbi Jehoshua had on the roof and packed them up in his garment, and in the attempt to descend and carry off

the booty he fell down and almost broke his neck. When R. Jehoshua came in the morning and found him in that condition, he said to him: "You ignoramus, is this the way people like you do?" He answered: "Rabbi, I did not suspect that persons of your station would remove the ladder." And he rejoined: "Did you not notice yesterday that I was cautious about you?" From that time on R. Jehoshua proclaimed that always should strangers be considered as burglars, and still one should honor them as he would R. Gamaliel.

CHAPTER VI.

ONE who enters his neighbor's house shall do what he is told by the host (provided it is legitimate). And it happened that guests came to the house of Simeon b. Antiptaris, and he invited them to eat and drink, and they vowed by the Torah that they would not do so. Nevertheless, they afterwards ate and drank; but when they were about to depart, he punished them with stripes. When this came to the ears of R. Johanan b. Zakkai and the sages, they became angry, and said, "Who will go and inform him of our displeasure?" Said R. Jehoshua: "I will go and investigate." When he came there he found him on the threshold of his house, and he greeted him, saying: "Peace to you, master"; and he answered, "Peace to you, my master and teacher." Then Rabbi Jehoshua said: "I need shelter." And he answered: "Take it here in peace." They then occupied themselves with the study of the Law until evening. In the morning he told him: "Rabbi, I would like to take a bath." And he rejoined: "Do as you please." R. Jehoshua, however, was afraid that he would beat him. When he returned from the bath, they ate and drank. When he desired to leave, he said: "Who will accompany me?" And the host said: "I will." R. Jehoshua then thought

to himself: "What information can I give to the sages who sent me here?" He then looked backward, and when he asked him: "Rabbi, what are you looking for?" he answered: "I would like to question you about one thing. Why did you beat others who came to your house with stripes, and you did not do so to me?" He rejoined: "You are my master. You are a great sage, and of course your manners are refined. The other men, however, that came to me, I told to eat and drink, and they vowed by the Torah that they would not, and afterwards they disregarded their vow; and I have heard from the sages that one who vows by the Torah and disregards his vows is to be punished with forty stripes." He then answered: "Be thou blessed by Heaven, that thou hast done so. I swear by thy life that he who thus conducts himself deserves that thou give him forty stripes in thy name, and another forty in the name of the sages who sent me to investigate thy method." R. Jehoshua then came back and informed the sages of what he had discovered in Simeon Antiptaris.

A man shall never be angry at his meals. It happened with Hillel the First that he invited a man to a meal. In the meantime a poor man came and stood at his door, and said to his wife: "I am to marry to-day, and I have nothing in my house." His wife then took the meal she had prepared for the house, and gave it to him. She then kneaded a new dough, and cooked other dishes, and served them before her husband and the guest. Hillel said then to her: "My child, what is the reason of the delay?" And she related to him what happened. He then remarked: "My daughter, I have also judged you from the favorable side, because it is known to me that all that you do is for the sake of Heaven."

Corner-tithe for the poor is not set aside in the cooking-pot, but in the dish. It happened with R. Jehoshua, etc. (See Erubin, pp. 120, 121, for the whole legend repeated here.)

Always shall a man try to agree with the majority of the people (this is explained in Khethuboth, p. 16*b*, and will be translated there). For the first meal-benediction, the hard part and not the soft part of the bread is to be used. Never shall a man hold a slice of bread of the size of an egg and bite from it, and one who does so is called a glutton; and one shall not drain his cup of wine at a draught (see Pesachim, p. 171), and if he does so he is considered a glutton. But how shall he do? If he does it in two draughts, it is respectable; if in three. it is considered putting on airs.

One shall not begin to eat the heads, but the leaves of garlic or onions. If he does so, he also is called a glutton. One shall not drink two cups of wine before the after-meal benediction (and subsequently pronounce the benediction without a goblet, but he shall leave one goblet for the benediction. The commentaries explained this otherwise, the reason being that there should be no "pairs"--see Betzah, p. 49--but we cannot agree with them); if he do so, he can be taken for a glutton.

Next: Chapter VII.

CHAPTER VII.

WHEN two are sitting at the table, the elder one commences to eat first and the younger one after him; and if the younger commences first, he is a glutton. It happened that R. Aqiba prepared a meal for his disciples consisting of two dishes of meat, one half-roasted and the other one well cooked. The half-roasted was served first; the most sensible of them took the whole piece into his one hand and with his other hand he tried to break off some part of it, but could not, and he placed it back and ate bread alone. One of them, who was less sensible, took the whole piece and bit off a piece. Said R. Aqiba to him: "Not so, my son. Put thy foot on it in the dish, and then you will probably succeed better." Finally, the

well-cooked meat was served, and they ate and were satisfied. Then said R. Aqiba to them: "My children, I did all that to see whether you had refined manners."

One shall not eat before the fourth hour, neither shall he take a bath prior to that hour. Hot water in large quantities is injurious to one's body, but in small ones is beneficial. The same is the case with wine. Three things are equal one to the other: wisdom, fear of God, and modesty. One shall not rejoice among those who are weeping, neither shall he weep among those who rejoice; he shall not be awake among those who are asleep, nor shall he sleep among those who are awake; he shall not be standing among those who are seated, nor shall he be seated among those who are standing. This is the rule: One shall not have different manners from those of his friends and of people in general among whom he is.

CHAPTER VIII.

ONE who enters a house shall not ask for food, but shall wait until invited. When the goblet is filled, he shall drink it slowly. What is meant by slowly? If it is a cold beverage--in four draughts; if a warm beverage--in three. Said R. Jehudah: This applies to the goblets of Galilee, but as regards the goblets of Judah, which were larger, he may drink it as slow as he pleases. One must not say to his friend: "Come and eat with me, as I did with you," for it gives the impression that he wants to repay with interest. In Jerusalem, however, they invited each other in turn. One shall not send to his friend a barrel of wine with oil on the top thereof, because a serious accident may result from it. It actually happened that one invited his friends to his son's wedding, and when going down to his cellar to get wine, he noticed that the barrel had oil (on the top, and thinking that it

was all filled with oil) he hanged himself for shame, and died. Hence the above warning is given.

One should not say to his neighbor, "Take oil from that jug and anoint thyself," knowing that it is empty (even when knowing that the man has no habit of anointing himself), because he puts the man under obligation to him for nothing. The same holds good of food: one should not ask his neighbor to take a meal with him when he knows that he would not do so. One should also not offer presents to his neighbor, knowing that he would not accept them, for the same reason. One should not serve his neighbor with new wine, telling him that it is old wine, because it is equivalent to robbery (if he takes money from him, and even if he does not take money from him he deceives him). For the same reason, when one serves wine to ass-drivers, he shall not say: "Take it away from this one (whom he does not like), and give it to the other one." When one is in the grain-market and has no intention of buying, he should not ask for the prices, for he misleads the sellers.

CHAPTER IX.

ONE should not use a slice of bread to cover therewith a dish. One should not wipe the dish with a piece of bread and lay it on the table, for he disturbs the mind of his neighbor. For the same reason, one shall not bite off a piece of bread and place the remainder in the dish intended for another person. One should also not drink from a goblet and give the balance to another one to drink, for it may cause danger to life. It happened that R. Aqiba stopped at the inn of a certain person, who offered him a goblet, first tasting its contents, and R. Aqiba told him to drink the whole of it. He offered him another one, first having tasted it. R. Aqiba told him to drink it all, until Ben Azai said to him: "How long

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wilt thou continue doing so?" It again happened that R. Aqiba was lodging with a certain person, and he placed a piece of bread underneath the dish to support it, and R. Aqiba took hold of it and swallowed it. Said the man to R. Aqiba: "Rabbi, had you no other bread to eat than that piece with which I supported the dish?" And he answered: "First, I thought that you could burn yourself with lukewarm water (*i.e.*, you will understand a slight hint). Now I see that you cannot burn yourself even with boiling water." One shall also not empty his cup and then place it on the table, but he shall keep it in his hand until taken away by the waiter.

Five things said Rabbi in regard to bread, namely: Raw meat must not be placed on bread, nor shall a cup or dish be placed on bread, nor shall bread be used to support a dish, nor shall it be thrown from place to place; nor shall one sit at the table when others are eating, for he disturbs their appetite. One who comes to the table to take his meal shall not take his portion and give it to the waiter, for the reason that some unforeseen thing may happen during the meal (and his portion may be needed); but he shall place it in front of him until the end of the meal, and then give it to him. Guests must not give anything to the son of the host, nor to his servant or messenger, without the permission of the host. It happened once with a man who invited three guests in years of famine, that he served them three eggs. The son of the host then came and stood in front of them, and the first guest took his portion and gave it to him, and so did the second and third. When the host returned, and found his son holding one in his mouth and one in each hand, he raised him full height and struck him to the ground, and he died. The mother, hearing of what happened when standing on the roof, was so shocked that she fell down dead. When the father heard this, he also threw himself from the roof, and died. Then R. Elazar said: "Three human beings were killed on account of this."

CHAPTER X.

ONE who enters the bath-house may say: "Let it be thy will, God my Lord, that thou cause me to come in and go out in peace, that thou cause me to return to my place in peace, and save me from this and from similar peril in the world to come."

How should one conduct himself before bathing? Thus: He shall first remove his shoes, take off his hat, remove his overcoat, take off his girdle, then take off his shirt, and after all the drawers. After bathing, when a towel is brought to him, he first wipes his head and then the other parts of his body. When the oil is brought to him, he shall first anoint his head and then other members of his body, and then he shall put on first his drawers, then his shirt, the girdle, then he shall wrap himself in his mantle, and then he shall put on his hat, and then his shoes. And if he has his son, his slave, or bondsman, they shall do it for him. Always shall the right shoe be put on first, and then the left one; and when taking off the shoes, the left one shall be taken off first. One who enters a bath-house must not fatigue himself, nor excite himself, but let him be in every respect careful. Said R. Simeon b. Gamaliel: "One who is not careful is an ass's equal; one who eats in the market is a dog's equal"; and according to others, he is ineligible to be a witness. In the toilet-room the one who enters must not hurry the one who is sitting there, and the same is in a bath-house. One shall not bring oil into a bath-house in a glass vessel (for it may break and cause injury). One must not spit in the presence of his neighbor, even in a bath-house. The law relating to a bathhouse and toilet may be discussed in the respective places, but other things must not be discussed, not alone in the bathing-room but in the dressing-room, and even

when the majority of the persons were dressed as well, because when even a few are undressed all are considered undressed. One shall not greet his neighbor when he is washing himself; and if he does so, the other may answer him that it is a bath-house. According to others, he may answer the greeting, and there is nothing in it. One should not put his foot in a bath-tub when another one is sitting in it, for it is a disgrace for the one bathing.

CHAPTER XI.

HE who walks the road, etc. (See the whole Boraitha in Yomah, pages 27, 28, paragraph: "We have learned according to R. Shila"). One who, soon after returning from the road, takes a bath, gets intoxicated, sleeps on the bare floor, and indulges *in congressu feminæ,* his blood is on his head (it is equivalent to suicide). 1 He who sells his books, or his daughter, etc. (See Megilla, p. 73.) R. Itzhak says: "A common informer is considered a murderer, as it is written [Lev. xix. 16]: 'Thou shalt not go up and down as a tale-bearer among thy people.'" R. Eliezer said: "He who hates his neighbor without cause is also considered such, as it is written [Deut. xix. ii]: 'But if any man be an enemy to his neighbor,' etc. (*i.e.*, if he is so, he is capable of doing what is further written in the verse)." Ben Azai says: "He who hates his wife is also considered such, as it is written [ibid. xxii. 13 and 14] (*i.e.*, if he hates her he will finally lay an accusation against her, etc., and he will hire witnesses to accuse her with a view to take her life)." R. Jose says: "One who sets a definite time for the redemption of Israel through Messiah will have no share in the world to come. And the same applies to one who hates the scholars and their disciples. The same applies to a

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false prophet and a slanderer." R. Meir says: "One who has a house of learning in his town, and is able to go there but does not do so, is not worthy of living, as it is written [Numb. xv. 31]: 'Because the word of the Lord hath he despised;' etc." Haughtiness is equivalent to idolatry, as it is written [Deut. vii. 26]: "And thou shalt not bring an abomination with thy house;" and it is also written [Prov. xvi. 5]: "An abomination of the Lord is every one that is proud of heart." Since the abomination mentioned in Deuteronomy is idolatry, and the same expression is used in Proverbs, hence we learn that haughtiness is equivalent to idolatry. 1

Footnotes

17:1 Here the Boraitha continues to enumerate things dangerous to life and health which seem to us unimportant in our age, and therefore we omit them.

18:1 Here follows the benediction before retiring, etc., which will be explained in the proper tract.

TRACT DERECH ERETZ-ZUTA.

CHAPTER I.

THE qualities of the sages are: Modesty, meekness, eagerness, courage, bearing wrongs done to them, and being endeared to every one; submission to the members of their household, fear of sin, and judging every one according to his deeds.

Their thought concerning this world is: All that is in this world is of no importance to me, for this world is not mine. They are occupied in teaching others, and no one can see in their teaching anything wrong. Their questions are to the point and their answers are according to the Law.

One shall always be like an air-bag which is open to receive the air, and as a deep excavation which preserves the water therein contained, and as a glazed jug that preserves the wine therein; as a sponge that absorbs everything. Be as the lower threshold that all tread upon, and as a nail in the wall that is within the reach of every one to hang his clothes on.

If you have sustained a loss of your property, remember that job lost his property, children, and health. Be careful about all that you see with your eyes, for the principal deception is by the eye. Be careful with your teeth (with your meals), that you should not eat too much. Do not discuss with the Sadducees, that you shall not fall into the Gehenna. When you hear others insult you, do not answer them. If people are praising you for having done a great thing, you shall nevertheless consider it of no importance.

[paragraph continues] An ordinary man shall be considered to your eyes great, if you have insulted him, until you shall have asked him to forgive you. This passage may also be so rendered: If others say something bad about thee, though it be of a serious nature, treat it as insignificant. But, on the other hand, if thou say something bad about others, though it be insignificant, thou shouldst regard it as serious and have no rest until thou beg pardon. Your behavior shall not be bad, for this is no praise for the Torah (which you possess, but let your behavior be good, for this is a praise for the Torah).

Love the Law, and respect it; love all creatures, and respect them. Subject your will to the will of others, as was done by Leah for Rachel and by David for Saul. But ignore your will, and even the will of others, for the will of Heaven, as we find by Jacob that he did not kiss Joseph (because he was engaged in prayer). Love doubtfulness (*i.e.*, everything shall be doubtful to you until you convince yourself of it), and hate the expression: "And what of it?" (*i.e.*, even of the most unimportant things you should not express yourself thus). Keep aloof from everything that

may bring to sin, and from the abominable, and from what is equal to it, that you should not be suspected by others of transgression. Do not slander your neighbor, because he who does so has no remedy. Keep aloof from grumbling, for by grumbling you may come to growl at others, and it will be added to your transgressions. With seven patriarchs covenants were made, and they are: Abraham, Isaac, Jacob, Moses, Aaron, Pinchas, and David--Abraham [Gen. xv. 18], Isaac [ibid. xvii. 21], Jacob [Lev. xxvi. 421, Moses [Ex. xxxiv. 271, Aaron [Numb. xviii. 19], Pinchas [ibid. xxv. 12], David [Ps. lxxxix. 41. Seven patriarchs are resting in glory, and worm and maggot do not affect their earthly remains, and they are: Abraham, Isaac, Jacob, Moses, Aaron, Amram their father, and, according to others, also David, as it is written [ibid. xvi. 9]: "Therefore is rejoiced my heart,

and my spirit is glad; also my flesh shall rest in safety." Nine entered the Garden of Eden when they were still alive, and they are: Enoch (Chanoch) the son of Jared, Elijah Messiah, Eliezer the bondsman of Abraham, Hirom the king of Zor, Ebed-melech the Cushi [Jer. xxxviii. 7], and Jabetz the son of R. Jehudah the Prince, Bothiah the daughter of Pharaoh and Serech the daughter of Ascher, and, according to others, also R. Jehoshua b. Levi.

Next: Chapter II.

CHAPTER II.

LET all thy ways be for the sake of Heaven. Love Heaven, and fear it. Tremble at, and at the same time rejoice Over, all commandments. Sit before the elders, and let thy cars be attentive to their words. Incline thine ears to the words of thy comrade. Be not hasty in answering, and consider everything from the right point, and answer to the first question first, and to the last, last; and always confess the truth. Do not discuss in the presence of one who is greater than you in wisdom. If somebody wants to teach you something, do not say that you have heard it already. If you are questioned on the most unimportant matter, and you do not know it, be not ashamed to say, "I do not know." If somebody taught you something and you did not listen to it, be not ashamed to say, "Repeat it again"; and say not that you have not listened to it, but that you did not understand it. Do everything for the sake of the Creator, and talk of thy deeds in the same sense (according to Elias Wilna). Do not make thy merits as a crown to be glorified by it, and not as a hatchet to cleave with it, nor a spade to dig with it. Accept the words of Law, even when you are in affliction. Do not seek to wrong him who wronged you. Let thy accounts always be correct, and thy conduct excellent. Keep thy promise. Love the Law, righteousness, rebukes, straightforwardness.

[paragraph continues] Do not run after honor. Be not proud when rendering a decision: Consider that all of which thou art possessed to-day may not be thine to-morrow; and if thou art not certain, as to property already in thy possession, that it will remain with thee, what is the use of thy striving to possess what belongs to others? Remember what the prophet says [Habakkuk, ii. 6]: "Woe to him that increaseth what is not his! for how long? and to him that loadeth himself with a burden of guilt!" Let it be thy habit to finish everything in a good manner. Let thy tongue be always soft. Be a good merchant, pay well, and strive always to do good. Be afraid of a light sin, for this may bring you to a grave sin. Respect all kind of men. Do not say, I will flatter this man, that he may give me food; that man, to give me beverages; that man, to cover me: for it is better that thou shouldst bear thine own shame than to be ashamed of others who will do so unto thee. Take care that thy teeth shall not shame thee, and thou shalt not be disgraced by thy mouth, and not cursed by thy tongue, and not put to shame by thy lips. Take care that thou shouldst not need to bow to some one on account of thine own words. If thou wishest to become attached to thy neighbor through bonds of love, always consider what good thou art able to do unto him. If it be thy wish to be kept away from sin, always look to the result of it. If thou art craving for merits, consider carefully their details. If thou hast done much good to some one consider it as very little; and thou must also not say that thou hast done it from what belongs to thee, because there is One who has done that unto thee, and thou art obliged to thank Heaven for it. If, however, some one has done thee some good, consider it as if he has done much. Do not say that Heaven has done good to me because of my good deeds; on the contrary, be afraid that it was done unto thee because of thine unworthy deeds [Deut. vii. 10]: "And repayeth those that hate him to their face, to destroy them." If,

however, thou hast done any wrong, consider it much, and say: "Woe is me that I have sinned," or, "Woe is me that I was the cause of the wrong." If others have done thee much wrong, it shall be considered in thine eyes as little, and say: "This is only a part of the retribution that I deserve."

CHAPTER III.

DELIBERATE before a word passes thy lips, and be thoughtful how thou shouldst act in worldly affairs. See always that thy steps shall be rewarded. justify the judgment that was imposed upon thee and free thyself from anger. judge favorably thy neighbor, and see that thy verdict shall not make him guilty (if his guilt is not fully established). Be content with thy share, and adorn thyself with the little thou dost possess. Do not hate the one who reproves thee. Thy share wilt be blessed forever if thine eye will always be: good, and thy soul always satisfied. Let it be thy habit to say, "I do not know" (of a thing that thou art doubtful about), for thou mayest be caught lying. If thou neglect one command, thou wilt finally be negligent of other commandments. The same is if thou hast overlooked the words of the Law willingly: finally thou wilt be overlooked, willingly or unwillingly. If thou hast taken away others' property, thine will be taken away.

The commencement of making vows is the door to foolishness. Frivolity with women is the beginning of adultery. If thou hast guaranteed for some one, remember that it must be paid by thyself. If thou hast borrowed money, know that thou hast borrowed it to be repaid in time. If thou hast loaned money to somebody, be prepared to have difficulty in collecting it. Remember the time thou hast to repay, and settle thy accounts.

The following fifteen customs are ascribed to the sages: He is pleasant in entering, and so also when leaving; is

prudent in his fear for Heaven; versed in wisdom; wise in his ways, has a good conception, a retentive memory, is clear in his answers, questions to the point, and answers according to the Law; he learns something new from every chapter taught to him; he is going to the wise; he learns for the purpose of teaching it and performing it.

Be as the lower threshold, upon which all persons tread, and still it lasts even when the whole building is demolished.

Next: Chapter IV.

CHAPTER IV.

SCHOLARS always are agreeable in society, but not so ordinary people. He who occupies himself only with study of the Scripture pursues the right course, yet the sages do not think so; with Mishnayoth, it is a course to be rewarded; but he who occupies himself with the study of the Talmud pursues a course than which there is no better. Still, it is advisable that one shall occupy himself with the study of Mishnayoth more than with that of the Talmud. Do not exact pay for thy teaching. Moreover, take no compensation whatever for it, for the Omnipotent has given His teaching to thee gratuitously; for the one who asks for reward destroys the whole world (because there are many who cannot afford to pay and will remain ignorant). And do not say: "I have no money to live on, and therefore I must take reward for my teaching." Remember all money is the Lord's, as it is written [Haggai, ii. 8]: "Mine is the silver, and mine is the gold, saith the Lord of hosts" (and He will supply you with money).

If you have done charity, be sure that you will be favored with money; and if it has been your good lot to acquire money, do charity with it so long as it is in your power. Give it to those who need it in this world, in order that you may get the world to come; for if you do not use it for charitable purposes, it will disappear suddenly,

as it is written [Prov. xxiii. 5]: "When thou lettest merely thy eyes fly over it, it is no more." Do not complain of your being less wise than another, for you have not served (the sages) as much as he did. Neither shall you complain that the other one is rich and you are not, for it is not every man who is favored with two tables (of this and of the world to come). Do not complain that another one is beautiful and you are ugly, for at the time of death a man becomes a carcass; moreover, a carcass of any animal may be sold or presented to somebody, while no one cares even to look at a human carcass. Do not say: "That man is righteous, while I am not"; for both of you will have to account. Do not say: "That man is powerful, while I am weak"; for there is no power aside from the Torah, as it is written [Ps. ciii. 20]: "Bless the Lord, ye his angels, mighty in strength, that execute his word, hearkening unto the voice of his word." Bear always in mind the following: Know whence you come, whither you go, and before whom you will have to render an account, and do not turn your eyes on money which is not yours; for they close the gates of heaven against. prayer. Let your ears not listen to vain talk, for they are most likely to get burned. Do not slander, for the mouth will be first on the day of judgment to give account. Be not possessed of slander or other bad things, or of robbery, for all the members of thy body will testify against thee on the day of judgment. Let thy feet not hasten thee to evil-doing, because it is likely that the angel of death will get there sooner, and wait for thee. Be not afraid of the court of justice on earth, where only witnesses may be bought, but fear the Court above, because thou art certain that there will be witnesses who will testify against thee. And not only this, but your own deeds proclaim thy accusation from time to time.

If you have performed all my commandments with joy, my attendants will come to meet you, and even I my

self will say to you: "Let thy coming be in peace." Your eyes that never looked at property not belonging to you shall have light in darkness, as it is written [Is. lviii. 10]: "Then shall shine forth in the darkness thy light, and thy obscurity be as the noonday." Your ears that have not listened to vain talk shall hear of peace in the world to come, as it is written [ibid. xxx. 21]: "And thy ears shall hear the world behind thee, saying, This is the way, walk ye in it, when ye turn to the right hand, and when ye turn to the left." Your mouth that has not slandered will be coveted by those who were used to slander. Your mouth that has studied the Torah will be a blessing to those who wish to be blessed. Your hands that have kept away from robbery, what can do unto you those who do injustice? Your hands that you have not withdrawn from doing charity, what can do to you those mighty men? Your feet that have not carried you to sin, what can the angel of death do unto you?

All that is said above is a warning to you, and you may do as you please, but do not say that you were not warned.

Next: Chapter V.

CHAPTER V.

A SCHOLAR must not eat standingly, nor lick his fingers, nor yawn in presence of others. Talk little, laugh little, sleep little, indulge little in pleasure, say little "yea" and little "nay." One has always to know with whom he is sitting, near whom he is standing, with whom he is eating, with whom he is conversing, for whom he signs contracts and notes of debt. By four things the scholar is recognized: his pocket, his goblet, his anger, and his dress; and, some say, even his talk. The beauty of the Law is wisdom; the beauty of wisdom is modesty; the beauty of modesty is the fear of Heaven; the beauty of the fear of Heaven is noble performance; the beauty

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of noble performance is secrecy (*i.e.*, not publicly, for the purpose of being praised). One shall not be awake, etc. (see above).

CHAPTER VI.

FOUR things are derogatory to scholars: to walk alone in the dark (and arouse suspicion); to be perfumed; to be the last in entering a prayer-house, and to hold much discourse at a meeting of dunces.

When entering, the greater shall be first; when leaving, the smaller shall be first. When ascending steps, the greater shall be first; when descending, the smaller shall be the first. At a public meeting, the greater shall have the preference. When entering a prison, the smaller shall do so first. For saying benedictions, the greater is first. The one entering the house must always greet first the one who is in the house. One must not lean at meals (as was the custom in the Orient) when a greater man than he is at the table. One shall not drink in public unless he turns away his face from the bystanders. The first step to sin is in one's thoughts, the second is scorn, the third is haughtiness, the fourth is cruelty, the fifth is idleness, the sixth is causeless hatred, and the seventh is an evil eye; and these were meant by Solomon [Prov. xxvi. 25]: "For there are seven abominations in his heart."

CHAPTER VII.

SEVEN things mark the clod, etc. (See Aboth, Chap. V., Mishna *J*.) A scholar must be careful in his eating, drinking, washing, anointing, in wearing the sandals, in his walking, dressing, in the use of his voice, in the act of spitting, and also with all his good deeds. As a bride, who so long as she is in her father's house pursues

privacy and modesty, and when she is given away in marriage announces publicly, saying: "All those who can come to testify against me, let them come and do so," so a scholar must pursue privacy in his deeds but publicity in his ways; namely, he must run after truth but not after falsehood, after honesty but not after robbery, after modesty but not after haughtiness, after peace but not after war, after the advice of the old but not after that of the young. He shall rather follow behind a lion than behind a woman.

Who respects the sages? he who gives food, drink, dress, shoes, goes out to meet and accompanies when leaving, without distinction between rabbi or disciple. And who shows them disrespect? he who occupies the seat of his master even during his absence, or substitutes him (without permission) in lecturing, or contradicts him.

CHAPTER IX. [1]

R. Eliezer the Kapar said: Keep aloof from anger, for by being angry at others you will add to your transgression. Love your admonisher, for by doing so you, will add wisdom to your ability; and rather shun the one who honors you, that your wisdom be not lessened. Love the prayer-house, in order that you shall be rewarded daily; and the house of learning, in order that your children shall come to study. Love the poor, in order that your children shall not come to poverty. Love modesty, that you may enjoy longevity; love the pious, in order that you may be saved from the black angel. Be careful in the reading of Shema, and prayer in general, in order that you be saved from Gehenna. Your house shall be wide open, in order that you shall never lack food.' Be careful that the doors of your house shall not be closed when you take your meals, that you may not be punished

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therefor with poverty. Be careful about the honor of your wife. Be glad of your chastisement, for this probably saves you from Gehenna. Be joyful at your table when the hungry derive benefit from it, in order that you enjoy longevity and have a share in the world to come. Be also joyful when giving charity from your house, in order that you may pacify the anger of death, as it is written [Prov. xxi. 14]: "A gift in secret pacifieth anger, and a bribe in the bosom, strong fury." If you have troubled your feet for the poor or for the sake of a merit, the following passages may be applied to you [Deut. xxviii . 6]: "Blessed shalt thou be at thy coming in, and blessed shalt thou be at thy coming out." If you keep your mouth from slander, you will spend all the days of life in peace. One who is audacious towards one who is greater than he will finally be punished with a plague. If you run to do honor to a sage, you will be rewarded with enviable children; and for running to do honor to the poor, you will be rewarded with sons of learning and a law-abiding record in Israel. Dost thou see a sage die, do not turn away from him until after burial, that thou, too, mayest receive respect and attention when it will be thy time to die. When you see your neighbor has be come poor and his power is on the decline, do not refuse to help him, as it is written [Eccl. viii. 5]: "Whoso keepeth the commandment will experience no evil thing." If you have loaned him something when he was in need, the following passage will be fulfilled on you [Is. lviii. 9]: "Then shalt thou call, and the Lord will answer." If you lower yourself, the Lord will lift you up; but if you assume superiority over your fellowmen, the Lord will lower you. If others quarrel with thee, whether in a house of learning or at an ordinary meeting-place, do not leave until peace is restored, and they shall praise thee in thy absence as Pinchas b. Elazar. Great is peace, that even when it reigns among idolaters nothing can be done to them, as it is written [Hosea, iv. 17]: "Ephraim

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is *bound* (bound together) to idols; let him alone." But if they quarrel among themselves, it is said of them [ibid. X. 2]: "Their heart is divided; now shall they bear their guilt." Hence that house in which there is strife will be destroyed, and the sages say that even a prayer-house in which there is strife will be demolished. The same is it with two chiefs of the court who live in one town and quarrel with each other, they will finally die. Abba Saul said: Strife between

courts is a destruction of the world. Abba Issi b. Johanan said in the name of Samuel the Little: This world resembles the eyeball of a man. The white is the ocean that surrounds the whole land; the black is the world; the circle in the black is Jerusalem, and the image (the pupil) in the circle is the Temple, which will be rebuilt in the near future. Amen.

Footnotes

28:1 Chapters VIII. and X. are a repetition of what was stated in other places.

Next: The Chapter on Peace

THE CHAPTER ON PEACE. [1]

R. Jehoshua b. Levi said: Great is peace, for it is as the leaven to dough. If the Holy One had not given peace to the world, sword and beast would devour up the whole world, as it is written [Lev. xxvi. 6]: "And I will give peace in the land."

It is written [Eccl. i. 4]: "One generation passeth away, and another generation cometh, but the earth endureth for ever." King Solomon meant to say thus: Although one generation passes away and another one comes, one kingdom disappears and another one appears; and although evil decrees one after another are enacted against Israel, still they endure forever. The Lord does not abandon them, and they are never abandoned. They are never annihilated, neither do they decrease, as it is written [Mal. iii. 6]: "For I the Lord have not changed: and ye sons of Jacob, ye have not ceased to be" (*i.e.*, as I

have never changed and will never change, so ye sons of Jacob have never ceased and will never cease to be). But [Deut. iv. 4]: "Ye that did cleave unto the Lord your God are alive, every one of you, this day." R. Jehoshua said: Great is peace, for at the time Israel arose and said [Exod. xxiv. 7]: "All that the Lord hath spoken will we do and obey," the Holy One was pleased to give unto them His Torah and blessed them with peace, as it is written [Ps. xxix. 11]: "The Lord will bless his people with peace." Hezekiah said: Great is peace, for at every commandment in the Torah it is written "if," as, for instance, Exod. xxiii. 4, "If thou meet," etc., which means, *if* such a thing occurs to you, you must do the commandment; but concerning peace, it is different, there it is written [Ps. xxxiv. 15]: "Seek peace, and pursue it," which means, seek peace at the place where you are, and if you do not find it, seek it in other places. Great is peace: about all the journeys of Israel it is written, "And *they* removed . . . and . . . encamped," which means they removed in strife and encamped in strife, but when they came to Sinai there was no more strife, and *they* encamped in peace, as it is written [Exod. xix. 2]: "And Israel encamped opposite the Mount" (*i.e.*, *all* Israel were united). The Holy One, blessed be He, then said: "Because Israel hates discord and loves peace, and all are united, this is a favorable time that I should give them my Torah." Adoniah the son of David was killed because he was quarrelsome, and it is permitted to support the accusation of a quarrelsome man, as Nathan the prophet did when Bath-Sheba accused Adoniah [I Kings, i. 14]: "I myself will come in after thee, and confirm thy words." And Rabbi said: All manner of lying is prohibited, except it be to make peace between one and his neighbor. Bar Kappara said: Great is Peace, as among the angels there is no animosity, no jealousy, no hatred, no commanding, no quarrelling, because the Holy One, blessed be He, has made peace among them,

as it is written [Job, xxv. 2]: "Dominion and dread are with him: he maketh peace in his high places." "Dominion" is the angel Michael and "Dread" is Gabriel, one of whom is of fire and the other one of water, and still they do not oppose each other, for the Holy One, blessed be He, has made peace between them.

R. Jehoshua said: Great is peace, in that the covenant of the priests was made with peace, as it is written [Numb. xxv. 12]: "I give unto him my covenant of peace." The name of the Holy One, blessed be He, is also "peace" (Shalom), as it is written [Judges, vi. 24]: "And called it Adonay-shalom." R. Jose the Galilean said: The name of the Messiah is also "peace" (Shalom), as it is written [Is. ix. 5]: "The prince of peace." Said R. Jehoshua: Israel is also called "peace," as it is written [Zech. viii. 12]: "For the seed shall be undisturbed, the vine shall give its fruit," which is to be interpreted thus: "The vine will give its fruit to the seed of peace" (Israel). R. Jose the Galilean said: When the Messiah shall come to Israel, he will begin with peace, as it is written [Is. lii. 7]: "How beautiful upon the mountains are the feet of the messenger of good tidings, that publisheth peace, that announceth tidings of happiness, that publisheth salvation, that saith unto Zion, Thy God reigneth." He also said: Great is peace, because even wars are waged for the sake of peace, as it is written [Deut. xx. 10]: "When thou comest nigh unto a city to make war against it, then summon it with the word of peace." R. Jehoshua said: In the future the Holy One, blessed be He, will uphold the righteous with peace, as it is written [Is. xxvi. 3]: "The confiding mind wilt thou keep in perfect peace; because he trusteth in thee." Again he said: Great is peace, because it accompanies the living as well as the dead--the living, as it is written [Exod. iv. 18]: "And Jethro said to Moses, Go in peace"; the dead, as it is written [Gen. xv. 15]: "But thou shalt come to thy fathers in peace,"

[paragraph continues] R. Jehoshua of Sachnin said in the name of R. Levi: Great is peace, in that all the benedictions and prayers conclude with "peace." The reading of Shema we conclude with "peace," "and spread the tent of thy peace"; the blessing of the priests concludes with peace, "and give thee peace"; and the eighteen benedictions conclude: "Blessed be thou, master of peace."

Said R. Jehoshua b. Levi: The Holy One, blessed be He, said to Israel, You have caused me to destroy my house and to exile my children, now pray for peace and I will forgive you, as it is written [Ps. cxxii. 6]: "Pray ye for the peace of Jerusalem." Therefore he who loves peace, runs after peace, offers peace, and answers peace, the Holy One, blessed be He, will make him inherit the life of this world and the life of the world to come, as it is written [Ps. xxxvii. 11]: "But the meek shall inherit the land, and shall delight themselves because of the abundance of peace."

END OF TRACT DERECH ERETZ--RABBA AND ZUTA.

Footnotes

30:1 This chapter is considered a separate treatise. See Zunz and other bibliographers.

Next: Advertisement at end of Volume

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TRACTS BABA KAMA (FIRST GATE

EXPLANATORY REMARKS.

In our translation we adopted these principles:

1. *Tenan* of the original--We have learned in a Mishna; *Tania*--We have learned in a Boraitha; *Itemar*--It was taught.

2. Questions are indicated by the interrogation point, and are immediately followed by the answers, without being so marked.

3. When in the original there occur two statements separated by the phrase, *Lishna achrena* or *Waïbayith Aema* or *Ikha d'amri* (literally, "otherwise interpreted"), we translate only the second.

4. As the pages of the original are indicated in our new Hebrew edition, it is not deemed necessary to mark them in the English edition, this being only a translation from the latter.

5. Words or passages enclosed in round parentheses () denote the explanation rendered by Rashi to the foregoing sentence or word. Square parentheses [] contain commentaries by authorities of the last period of construction of the Gemara.

BY MICHAEL L. RODKINSON.

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Next: Introduction to the Three Gates of Section Jurisprudence

INTRODUCTION TO THE THREE GATES OF SECTION JURISPRUDENCE.

THE three tracts *Baba Kama*, *Metzia*, and *Bathra* (the First, Second, and Third Gates) are unique in the whole Talmud in this respect, that they bear no name indicating the contents, as is the case with all other tracts of the Talmud, and we do not find in any commentary any explanation or discussion of the fact. It may be because the reason is very simple, namely, that these three tracts are the only ones which treat purely of civil law, for even in cases of larceny only the civil side (as the actual damage, and the fine for causing it) is treated of (if there is here and there mentioned some criminal liability, it is only incidentally as a citation in course of the discussion); and as the cases are very numerous and varying in character, no appropriate title could be found to indicate the contents of each tract. Indeed, so numerous are they that we may safely say there is no civil case which can possibly arise between man and man that is not treated of in these tracts. The other tracts of this section, which are enumerated in our introduction to Volume I. (IX.), treat each of a separate and distinct subject and not of purely civil law.

For those especially interested in comparative jurisprudence we give below two articles by prominent publicists, which illustrate only two of the many important principles scattered all over the Talmud.

The first, "The Talmud," by I. D'Israeli, is an extract from "Curiosities of Literature," and is as follows:

In the order of *damages* containing rules how to tax the damages done by man or beast or other casualties their distinctions are as nice as their cases are numerous. What beasts are innocent and what convict. By the one they mean creatures not naturally used to do mischief in any particular way, and by the other, those that naturally or by a vicious habit are mischievous that way. The tooth of a beast is convict, when it is proved to eat its usual food, the property of another man, and full restitution must be made; but if a beast that is used to eat fruit and herbs, gnaws clothes or damages tools, which are not its usual food, the owner of the beast shall pay but half the

damage when committed on the property of the injured person but if the injury is committed on the property of the person who does the damage, he is free, because the beast gnawed what was not its usual food. And thus, if the beast of A gnaws or tears the clothes of B in B's house or grounds, A shall pay half the damages, but if B's clothes are injured in A's grounds by A's beast, A is free, for what had B to do to put his clothes in A's grounds? They made such subtile distinctions, as when an ox gores a man or beast, the law inquired into the habits of the beast; whether it was an ox that used to gore, or an ox that was not used to gore.

However acute these niceties sometimes were, they were often ridiculous. No beast could be *convicted* of being vicious till evidence was given that he had done mischief three successive days; but if he leaves off those vicious tricks for three days more, he is innocent again. An ox may be convict of goring an ox and not a man, or of goring a man and not an ox; nay, of goring on the Sabbath and not on a working day. Their aim was to make the punishment depend on the proofs of the design of the beast that did the injury, but this attempt evidently led them to distinctions much too subtile and obscure. Thus some rabbins say that the morning prayer of the *Shem'ah* must be read at the time they can distinguish *blue* from *white*; but another, more indulgent, insists it may be when we can distinguish *blue* from *green*! which latter colors are so near akin as to require a stronger light. With the same remarkable acuteness in distinguishing things is their law respecting not touching fire on the Sabbath. Among those which are specified in this constitution, the rabbins allow the minister to look over young children by lamp-light but he shall not read himself. The minister is forbidden to read by lamp-light, lest he should trim his lamp; but he may direct the children where they should read, because that is quickly done, and there would be no danger of trimming his lamp in their presence, or suffering any of them to do it in his. All these regulations, which some may conceive as minute and frivolous, show a great intimacy with the human heart, and a spirit of profound observation which had been capable of achieving great purposes.

The owner of an innocent beast only pays half the costs for the mischief incurred. Man is always convict and for all mischief he does he must pay full costs. However, there are casual damages--as when a man pours water accidentally on another man; or makes a thorn-hedge which annoys his neighbour; or falling down, and another by stumbling on him incur I harm: how such compensations are to be made. He that has a vessel of another's in his keeping, and removes it, but in the removal breaks it, must swear to his own integrity; *i.e.*, that he had no design to break it. All offensive or noisy trades were to be carried on at a certain distance from a town. Where there is an estate, the sons inherit, and the daughters are maintained, but if there is not enough for all, the daughters are maintained and the sons must get their living as they can, or even beg. The contrary to this excellent ordination has been observed in Europe.

The second, of which a literal translation follows, was written in Hebrew by Dr. D. H. Farbstein, a counsellor-at-law in Zurich,

Switzerland, in the "Hashana" (Year-book) for 1900, under the title "One Cannot Grant that Which is not in Existence."

There is no law which has not its reason. Every legal principle is the result of a certain economic and political condition; it is the product of a certain epoch, aiming to benefit the political and economic life of that historic epoch.

The legal principle that one cannot grant that which is not yet in existence had its origin in the Hebrew nation and was the product of a certain epoch, and we shall endeavor here to explain the motives which prompted the development of this legal precept.

This principle existed also in the laws of other Semitic nations in general, and in the Mahometan laws in particular. It was, however, unknown to the Roman law, as according to the Roman law one could grant that which was not yet in existence, and the sale of an article which existed only in expectation was valid, and even the mere expectation could form the subject matter of a purchase or sale.

The reason of this difference between the Semitic laws in general, and the Jewish laws in particular, and the Roman laws on this point lies, in my judgment, in the prohibition of taking usury.

"Thy money shalt thou not give him upon usury, nor lend him thy victuals for increase" [Lev. xxv. 37] is one of the principal Mosaic laws. And as it is prohibited to give money upon usury, so also is it prohibited to raise the price; as, for instance, if the price of an article is such and such in cash, it is prohibited to raise the price of such article if sold on credit for a certain time, for it is nothing but indirect usury.

This law was necessary as long as it was prohibited to give money upon usury; in our own times, however, when industry and commerce have developed so much, it is very usual to buy and sell things which exist only in expectation. In the time of the Talmudists the one who sold that which was not in existence was not an ordinary merchant, but only one who needed money. For instance, a farmer needed money. He applied to the money-lender for a loan. The money-lender was willing to make the loan, but was kept back by the prohibition to give money on usury. In order to evade this prohibition he bought of the farmer the future products of his farm, paying him only a very low price. The difference between the actual value of the products and the price paid by the lender is nothing but indirect usury.

Similar methods are practised even now in those countries where usury is prohibited by the law of the land. The Talmudists, in order to prevent such and similar evasions of the prohibition to take usury, have established the principle that no one can grant that which is not yet in existence; for the same reason, they also prohibited the fixing of a price upon future products before the market price is established. They were, at the same time, careful in stating that one cannot *grant*, and not that one cannot *buy*, affording thereby protection to the grantor only that he may rescind the sale if he elects to do so.

We see, then, that the rule that "one cannot grant," etc., was established with the end in view of preventing any evasion of the prohibition to take usury.

In those days commerce was not so developed as it is in our days, nor was money of such established currency as it is now. Nowadays one invests money in merchandise and then sells the merchandise and realizes his money with a profit, which was not so in those days; and for that reason the taking of usury was prohibited, for money could bring no economic benefit to its owner.

But although it was prohibited to grant that which was not yet in existence, still it was allowed to grant that which would bring benefit in the future--as, for instance, to lease land for cultivation-for the substance producing the benefit is in existence.

This distinction between interest (compensation for the use of money) and rent (compensation for the use of an article producing benefit) was drawn also by the Catholic theologians of the middle ages, who also prohibited the taking of usury, but permitted the receipt of rent.

We, however, cannot fully agree with Dr. Farbstein, for the following reasons:

(*a*) The principal things concerning which this rule was made were marriage and inheritance. If one marries a woman upon the condition that she should become a proselyte, the marriage is null and void, because it is on condition of something which was not yet in existence. The same is the case as regards inheritance-one cannot say to a woman: "I will leave my estate to the children you may bear." In both these cases, usury cannot be the reason.

(*b*) The rule that a man cannot grant that which is not yet in existence is not an established one by all the sages, for there were many of the most popular--as R. Eliezer b. Jacob, R. Meir, and

R. Juhudah the Prince--who held that one might grant that which is not yet in existence (see Kiddushin, 62 *b*, at the end), and certainly all of those sages were aware of the prohibition of usury.

It seems to us, therefore, that the sages who hold that such a thing cannot be sold is because they considered speculative transactions as robbery, so that they prohibited all kinds of gaming existing at that time; and the one who participated in such games was disqualified as a witness, because he was considered a robber. We find, however, in this volume, p. 198, that a woman may sell the benefit of her marriage contract, although it looks like speculation; for she may die during the life-time of her husband, and her husband will inherit from her. But even this is discussed, and seems to be an enactment of some sages for the benefit of the woman. (See text.)

Next: Synopsis of Subjects of Tract Baba Kama (The First Gate)

SYNOPSIS OF SUBJECTS

OF

TRACT BABA KAMA (THE FIRST GATE). [1]

CHAPTER I.

MISHNA *I*. There are four principal cases of tort, etc. One thing is common to all. They are all likely to do damage and must be guarded against. The case of doing damage by digging up gravel. The different explanations of the word "mabeh" by Rabh and Samuel (foot-note). There are thirteen principal tort-feasors. The depository, [2] etc. There are twenty-four principal tort-feasors. What are the derivatives of all those principals? Why are the four principals, ox, excavation, mabeh, and fire, enumerated separately in the Scripture? From what and what kind of property must damage be collected? When the standard is taken, is it taken of one's own lands or of those of the public in general? In order not to close the door to borrowers, the sages have enacted that creditors should be paid out of the medium estates. If one conveys his estates to one or several persons, from whom and from what estates shall the creditors collect the money due them? In case one does a meritorious thing he shall do it up to one-third, 1-16

MISHNAS *II*. TO *V*. In all that I am charged with taking care of I have prepared the damage. There is a more rigorous rule in case of the ox than in the cases of the pit and the fire, and *vice versa*. How so? If one left his ox in charge of five persons, and one of them left intentionally and the ox caused damage, what is the law? No appraisement is made for a thief or robber. If one hypothecates his slave or his ox and thereafter sells him. There is a difference between movable and immovable real estate. Slaves are considered movable real estate. During the killing, the bringing of the suit, and the making of the award there shall be one and the same owner. There are five cases which are considered non-vicious and

five which are considered vicious. The tooth is considered vicious to consume, etc. What is a Bardalis? What is meant by "best estates"? The meaning of the verse Is. xxxii. 20, 16-29

CHAPTER II.

MISHNAS *I* TO *III*. What tendency makes the foot to be considered vicious? Cocks that were flying from one place to another, and broke vessels with their wings. Cocks that were hopping on dough or on fruit, and made the same dirty, or that were flying and the wind produced by their wings damaged vessels, or that were pecking at a rope from which a water-pail was

suspended, and, severing the rope, broke the water-pail--what is the law? The distinction between primary and secondary force. A dog that snatched and carried off a cake from the burning coals, and with the burning coal that stuck in the cake set fire to the barn, etc. There can be viciousness in case of "gravel in the usual way." If an animal was walking in a place where it was impossible not to kick up gravel, and she kicked, and by so doing kicked up gravel and caused damage; or if an animal caused damage by shaking the tail--what is the law? What tendency makes the tooth to be considered vicious? It happened that an ass consumed a loaf of bread contained in a basket and chewed up the basket, etc. If an animal was standing on private ground and an article was rolling toward the private ground, etc. About one who takes up his dwelling in the court of his neighbor without the latter's knowledge. One who rents a house from Reuben must pay the rent to Simeon, etc. If one uses an unoccupied house of another for storing wood and straw, etc., what is the law? A certain person erected a palace on the ruins belonging to orphans, etc. A dog or a goat that jumps down from the top of a roof and breaks vessels liable for the whole damage. If, however, they fall down, there is no liability. Is one's fire considered one's arrow or one's property? There is no liability for damages done by fire to concealed articles. How can such a case be found in the biblical law? The mouth of an animal (consuming something on the premises of the plaintiff), is it considered as if yet in the court of the plaintiff? There were certain goats belonging to the family of Tarbu that were doing damage to the property of R. Joseph,

MISHNAS *IV*. TO *VI*. What ox is considered non-vicious and what vicious? One that has been warned for three days. The three days in question, are they such as to make the ox vicious, or do they also involve the owner? For one who sets his neighbor's dog on a third person, what is the law? An ox that gored, pushed, bit, lay down on, or kicked while on public ground pays half. The *a fortiori* argument regarding the half-payment of the horn. An ox that steps with his foot on a child lying on the premises of the plaintiff, what is the law in regard to the payment of atonement money? A human being is considered always vicious. One who carries a stone in his lap without being aware of it, and while getting up from his seat drops it, as regards damages he is liable. One who drops a vessel from the top of a roof upon the ground which has been covered with

pillows, and if another person remove them before the dropping of the vessel, etc., what is the law? Is a slave considered one's body, and an ox one's property?

CHAPTER III.

MISHNAS *I*. TO *V*. If one place a jug on public ground and another person stumble over it and break it, what is the law? One who kicks another with his knee is fined three selas; with the foot, five; with the fist, thirteen; what is the fine if one strike his neighbor with the handle or the iron of the hoe? A jug that broke on public ground and its contents caused a person to slip and fall, or one to be injured by its fragments, what is the law? About one who renounces ownership to his articles that cause damage. One who empties water into public ground, or one who builds his fence of thorns; or a fence that falls into public ground, and some persons were injured thereby, he is liable. The former pious men used to bury their thorns and broken glass in their fields three spans below the surface. All those who obstruct a public thoroughfare by placing chattels therein and cause damage are liable. If one carrying a barrel followed one carrying a beam, and the barrel was broken by the beam, what is the law? Potters and glaziers that walked one following

the other, and one stumbled and fell, etc. If they all fell because of the first one, the first is liable for the damage of all of them, 57-69

MISHNAS *VI*. TO *XIII*. Two that walked on public ground, one running and the other one walking, etc., what is the law? One who chopped wood on public ground and caused damage on private ground, etc. One who enters a carpenter's shop without permission, and was struck on his face by a flying splinter. About employees who came to demand their wages from their employer and were gored by his ox or bitten by his dog. About two non-vicious oxen that wounded each other.

The difference in the explanation of the verse Exod. xxi. 35. About a non-vicious ox that has done damage and was sold, consecrated, slaughtered, or presented to somebody. About an ox of the value of two hundred selas that gored another ox of equal value and the carcass was of no value what ever. There are cases when one is liable for the acts of his ox and is free if they are his own acts, and *vice versa*. How so? The rule is that the burden of proof is upon the plaintiff. If one claims that he is positive, while the other one is not positive, what is the law? 6981

CHAPTER IV.

MISHNAS *I*. TO *IV*. An ox that gores four or five oxen one after another, the last of them must be paid from the body of the goring ox, if he was yet considered non-vicious. About an ox that is vicious towards his own species, but not towards other species, or towards human beings, etc. There is a case where an ox became vicious -in alternate order." About an ox

belonging to an Israelite that gored an ox belonging to the sanctuary (see footnote). An ox of a sound person that gored an ox belonging to a deaf-mute, idiot, or minor, there is a liability. If the reverse was the case there is none. There is a difference of opinion of the Tanaim as to whether a guardian is appointed in order to collect from the body of the ox. Guardians pay from the best estates, but do not pay the atonement money. About one who borrows an ox with the understanding that he was non-vicious and it was found out that he was vicious, 82-93

MISHNAS *V*. TO *IX*. An ox that killed a man by goring him, if he was a vicious one, the atonement money is to be paid, but not when he was a non-vicious one. How can there be found a vicious ox in regard to man? If one confers, saying, "My ox has killed a certain person," or "his ox," he has to pay on his own testimony. If one's fire has done damage without intention, is there a liability or not? About an ox that was rubbing against a wall, whereby the wall fell upon a human being and killed him. About an ox belonging to a woman, to orphans, or their guardian, etc., that killed a man. About an ox that was sentenced to be put to death and his owner consecrated him. About an ox delivered to a gratuitous bailee or a borrower, etc. About an ox which was properly locked up, but yet broke out and did damage. Whence is it deduced that one must not raise a noxious dog in his house, nor maintain a defective ladder? 93-105

CHAPTER V.

MISHNAS *I*. TO *VI*. About an ox that gored a cow and the new-born calf was found dead at her

side. The cow and her offspring are not separately appraised. A potter that placed his pottery in the court of another, or one who led his ox into the court of another without permission, what is the law? When he assured the safety of the ox, did it only extend to himself or also to all cattle? About a woman that entered a house to bake, and the house-owner's goat, having consumed the dough, became feverish and died. About one who enters a court without permission and injures the court. owner, or the latter is injured through him. About one who said: "Lead in your ox and take care of him," and he did damage or was injured. About an ox which intended to gore another ox, and injured a woman and caused her to miscarry. To whom must the compensation for the miscarriage be paid, to the woman or to her husband? Does the increase in the valuation also belong to the husband? About an Israelite's pledge which is in the hands of a proselyte, and the latter dies without heirs. About one who digs a pit on private ground and opens it into public ground, or *vice versa*. One who digs and opens a well and delivers it over to the community is free. About one who digs a pit on public ground and an ox or an ass falls into it. Are the vapors therein contained, or is the shock received by the animal, the cause of death when falling into a pit? 106-120

MISHNAS *VII*. TO *IX*. When a pit belongs to two partners, and one of them passes by and does not cover it, and so also does the second, the latter only is liable. About a pit which was ten spans deep and which was completed

by another one to be twenty, and still by another one to be thirty spans deep. Each span of water equals two of dry ground. If one dig a pit ten spans deep and another widen it toward one direction only, what is the law? One who sells his house, the title passes with the delivery of the keys. If he sells a flock of cattle, title passes with the delivery of the Mashkhukhith (the forerunning goat kept at the head of the flock as a leader). If he covered the pit sufficiently to withstand oxen but not camels, and .camels came along and made the cover shaky and then oxen fell therein, what is the law? What about the *germon* of damage? About one who places a stone on the edge of the opening of a pit, and an ox stumbles over the stone and falls into the pit. About an ox and a man who together push some other into a pit. There is no difference between an ox and another animal as regards falling into a pit, to have been kept distant from Mount Sinai, payment of double, restitution of lost property, unloading, muzzling, Kilayim, and Sabbath. Nor is there any difference between the above-mentioned and a beast or bird. Why in the first commandments is it not written "that it maybe well with thee," while in the second commandments it is? 120-130

CHAPTER VI.

MISHNAS *I*. TO *III*. If one drive his sheep into a sheep-cot and properly bolt the gate, but still they manage to come out and do damage, he is free. There are four things for which one who does them cannot be held responsible before an earthly tribunal, although he will be punished for them by the Divine court. Is armed robbery, when not committed publicly, still considered theft as regards the payment of double? For frightening away a lion from one's neighbor's field the law awards no compensation. How does it pay what it damaged? About one who came before the Exilarch and complained of another who destroyed one of his trees. One who destroys a young date-tree, what amount of damage must he pay? There was a case, and Rabh acted in accordance with R. Meir; but in his lectures, however, he declared that the Halakha prevails in accordance with R. Simeon b. Gamaliel (see foot-note). About one who puts up a

CHAPTER VII.

Rabbi, the Prince of Pales tine, objected to the use of the Syriac language, and insisted that only the Holy and the Greek languages should be used in Palestine. R. Jose objected to the use of the Aramean language in Babylon, and insisted that the Holy and the Persian languages should be used. No dogs shall be kept unless on a chain. In the towns adjoining the frontier they must be kept on a chain only in the day time, 174-181

CHAPTER VIII.

MISHNAS *I*. AND *II*. The four items of damage: pain, healing, loss of time, and disgrace. How so? It happened that an ox lacerated the arm

of a child, and the case came before Rabha, etc. When the damage is paid for, how should the pain be appraised separately? Healing. If pus collected by reason of the wound, and the wound broke out again, etc. The sages say that healing and loss of time go together. If the defendant should say, "I will cure you myself, the plaintiff may object," etc. Shall we assume that the appraisement for the deafness is sufficient, or each of the injuries must be appraised separately? (See foot-note.) If one strikes another and makes him temporarily unfit to labor, what is the law? Disgrace--all those who sustain injury are looked upon as if they were independent men, etc. One who causes disgrace to a nude, blind, or sleeping person is liable. If one causes shame to a sleeping person who subsequently dies while asleep, what is the law? Is the reason because of the hurting of his own feelings, or because of the feelings of his family? Is a blind person required to per form all the commandments? and what R. Joseph, who was blind, said of that, 182-193

MISHNAS *III*. TO *V*. The law is more rigorous in regard to a man than in regard to an ox, etc. One who assaults his father or mother, but does not bruise them, and one who wounds another on the Day of Atonement, are liable to pay all the items of damage. To whom belongs the compensation received by one's minor daughter for a wound? About an investment for a minor and the nature thereof, Is a slave considered a "brother"? The Halakha prevails that the benefit in case of a woman who sells her right in the marriage contract belongs to herself; and if she bought estates therewith, her husband has nothing even in their income. If one blow into the ear of another, he pays one sela for the disgrace he caused him. What if one strikes another with the palm or with the back of his hand on the cheek? This is the rule: Rank and station of the parties are taken into consideration. May a witness be a judge in the same case? A non-vicious ox that killed a man and also caused damage to another, must his owner pay for the damage, besides the payment of the atonement money? All that was said concerning disgrace is only for the civil court, as to how much the plaintiff should receive, but there can be no satisfaction for the injury to the feelings, for which, if he would even offer all the best rams of the world, they would not atone, unless he prays the plaintiff for forgiveness. The origin of a series of sayings by the rabbis as well as by ordinary people. If one says to another, "Break my pitcher," etc. A money-pouch containing charity funds was sent to Pumbeditha, and R. Joseph deposited it with a certain man who did not take good care of it and it was stolen from him, and R. Joseph held him responsible. What Abayi said to him about it, 193-210

Footnotes

ix:1 See introduction to Synopsis in Tract Aboth, Vol. I. (IX.), p. xi.

ix:2 Farther on we use the term "gratuitous bailee," as being more comprehensive.

Next: Chapter I.

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TRACT BABA KAMA (THE FIRST GATE).

CHAPTER I.

THE FOUR PRINCIPAL TORT-FEASORS; THE DIFFERENT MODES OF RESTITUTION; THE VICIOUS AND NON-VICIOUS ANIMALS; THE APPRAISEMENT BEFORE THE COURT.

MISHNA *I*: There are four principal causes of tort (expressly mentioned in the Scripture): the ox; the (uncovered) excavation; the mabeh (the pasture of one's cattle in another's field); and the fire. The measure of the damages done by the ox is different from that of the damages done by the mabeh, and *vice versa*; and that of both, which are animated beings, is not like that of the damages caused by the fire, which is not animated. And the measure of damages caused by the three last mentioned, which are movable, is different from that of the damages caused by the (uncovered) excavation, which is stationary. One thing, however, is common to all, and that is, that they are all likely to do damage, which must be guarded against, and if damage is done, the one responsible for it must make good from his best estates.

GEMARA: If the Mishna states that there are "principals there must be derivatives. Are those derivatives as their principals or not? Said R. Papa: "Some of them are and some of them are not?" (as explained further on). The rabbis taught: "It was said of the ox that he has three principals, the horn, the tooth, and the foot. Of the horn the rabbis taught: It is written [Ex. xxi. 28]: "If an ox *gore*," and goring is only with the horn, as it is written [Deut. xxxiii. 17]: "And his horns are like the horns of reem; with them shall he push (gore)," etc. What is the derivative of the horn? Hurting, biting,

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lying upon, [1] and kicking; (because they are usually done intentionally, as goring). Why is "goring" called a principal? Because it is written [Ex. xxi. 28]: "If an ox gore?" Let also hurting be a principal, because it is written [ibid., ibid. 35]. "And if a man's ox *hurt*." That hurting means goring, as we have learned in the following Boraitha: "It starts out with hurting, and it ends with goring, to teach thee that the hurting mentioned here means goring." Why does the Scripture in case of a man use the term "gore," while in the case of an animal it uses the term "hurt"? For a man, who is fortunate, [2] (who is guarded by his planet) "gore" is used (because it is certain that the ox gored him intentionally with all his might to harm him), but of an animal, which is not fortunate, "hurt" is used, and by the way it teaches us that an ox which is vicious toward a human being is considered vicious toward an animal, which case is not so in the reverse. But is then "biting" not the derivative of the "tooth"? Nay, the tooth usually derives benefit by doing the damage (consuming), which is not the case with biting. Are not lying upon and kicking the derivatives of the foot (because it cannot be done without bending of the feet)? Nay, damage by the foot is of frequent occurrence (because whenever the animal walks and

there is something in the way it damages it), which is not the case with the above. But to what does R. Papa refer in stating that the derivatives are not like their principals? Shall we assume that he refers to those just stated? This cannot be, for they are all of the same nature, as stated above, and the owner must guard against it, and he must pay the damage. We must therefore say that there is no difference between the principal and derivatives of the horn, and R. Papa's statement refers to the derivative of the foot, in case of doing damage by digging up gravel with the foot, in which case only one-half of the amount of the damage must be paid, and which is Sinaic (*i.e.*, the restitution is for actual damage and not as a fine, which is always the case whenever one-half damage is paid). But why is this case called a derivative of the foot? (only one-half of the damage is paid, while in the case Of the principal the whole must be paid). It is a derivative in respect that (by the same tradition that if the damage-doing animal

is not of sufficient value to pay the amount of the damage) the balance must be paid from the best of one's estates, which is only so in case of damage by the foot. Is the latter part of this then certain? Did not Rabha further on (page 33) propound a question wherefrom the damages shall be collected? (This does not matter.) Rabha was not certain about it, but R. Papa was. Why, then, is it called a derivative of the foot, even according to Rabha's theory, who was not certain about it? To equal it to the foot in that respect, that it is not liable if the damage was done on public ground (as damages done by the foot are not paid unless done on the ground belonging to the party damaged).

"*And, mabeh,*" etc., "*and fire,*" etc. What is meant by mabeh [1]"? Said Rabh: "It means a man"; Samuel, however, said it means the tooth (of the ox). Why does Rabh not explain it as Samuel? Because when the Mishna states "ox," it means everything with which an ox can do damage (consequently "mabeh" must be something else). And what is the reason of Samuel? Is Rabh's opinion, then, not correct? The Mishna states ox. Said Rabh: "It states 'ox' for the damage done by the foot, and 'mabeh' for that done by the tooth, and it must be explained as follows: The law of damages done by the foot, which is of frequent occurrence, cannot be applied to that of the tooth, which is not of frequent occurrence; on the other hand, the law of damage done by the tooth, which usually benefits thereby, cannot be applied to that of the foot, which derives no benefit."

But what is the matter with the horn? Why is it left out? This is included in the statement, "And if they do damage, the one responsible," etc. Why is it not mentioned expressly?

[paragraph continues] The Mishna states only cases of those which are considered vicious from the very beginning (and must pay the full amount of damage, as tooth and foot, etc.), but not cases of those which are not considered vicious from the beginning (as the horn, which pays the full amount of damages only on the third time of doing damage). Why does Samuel not concur with Rabh? He maintains that it cannot mean a "man," because this latter is enumerated in a subsequent Mishna: "A vicious ox, and an ox doing damage on the estate of the party suffering the damage, and the man." Why is "man" not mentioned in the first part of the Mishna? Our Mishna treats only of injuries done by one's property, but not of injuries done by one's person. Now as to Rabh, is then the "man" not enumerated in the subsequent Mishna? (Why, then, state it also in our Mishna?) Rabh may say: "It is mentioned in the later Mishna only because other

vicious ones are mentioned therein, and according to him (who says that 'mabeh' means a man) the statement in the Mishna, 'the law of damages,' etc., must be explained thus: "The law of damages of an ox differs from that of a man in that the former pays 'atoning money,' while the latter does not (if a vicious ox kill a man by goring he pays atoning money, therefore if only the law of the ox would be stated, that of the man could not be deduced therefrom, because if a man kill another man unintentionally he is banished; if intentionally he suffers the death penalty, and pays no atoning money); and the law of a man differs from that of an ox in that the former is liable (in case of personal injuries caused to another man, in addition to the payment of actual damages) to four things (explained further on), which is not the case with the ox; the one thing common to both is that they are likely to do damage, and one is charged with taking care of them." [Is it then usual for an ox to do harm? It means a vicious one. But is it then usual for a man to do harm? Yea, when asleep. How is it to be understood? It is usual for a man when asleep to contract and stretch out his limbs, and all that is then in his way he damages.] But is not the man charged with his own care of himself? This can be explained as R. Abbuhu said elsewhere to one Tana: "Read, 'The man is charged with his own care of himself'"; so also is it to be read in our Mishna (and the statement in the Mishna that one is charged with taking care of them refers to the others mentioned).

R. Oshiyah taught: There are thirteen principal tort-feasors:

the depositary; the one loaning for use; the bailee for hire; the bailor for hire; the actual damage sustained through the personal injury; the expense incurred in curing the injury; the earnings lost through such injury and the shame suffered (this will be explained in Chapter VIII.), and those four principals mentioned in our Mishna, which make thirteen. (The depositary is liable for arbitrary damage; the one loaning for use is liable even for an accident; and the bailee for hire and the bailor for hire are responsible even for theft and loss, and, manifestly, for arbitrary damage; actual damage means that if one inflicts an injury on another person he must pay the difference in value of the person injured; the pain suffered, *i.e.*, so much as one whose arm, for instance, was to be amputated by an instrument would pay to be relieved by a drug from such pain as amputation would cause; all the others are explained further on in this volume.) Why did the Tana of our Mishna not state those nine? It is correct according to Samuel, because the Mishna treats only of injuries done by one's property, and not of injuries by one's person, but according to Rabh (who says that "mabeh" means a man, and so injuries by one's person are treated of) why does he not state them? The Mishna treating of "a man" means to include all damages done by a man. And according to R. Oshiyah, are they not included in the "man" stated in the Mishna? There are two kinds of damages done by man, viz., those done by him to another man (which constitute a crime), and those done by him to an ox (in which case the liability is restricted to civil damages only). If so, why not state the same thing in regard to an ox? Let him state a case where an ox injured a man, and a case where he injured another ox. What question is this? As to a man there is a difference between the injury done to a man and that done to an ox, for in the former he is liable for the four things, and in the latter case he pays only actual damages (and therefore both are stated); but in the case of an ox, what difference is there between the injury done by him to a man and that done by him to an ox? In both cases he pays only actual damages.

R. Hyya taught: "There are twenty-four principal tort-feasors, viz., those who pay double [see Ex. xxii. 4]; those who pay four or five [ibid. xxi. 37]; the thief (who confesses his guilt, in

which case he pays only the actual value) and the robber (who is also a principal because he is mentioned in the Scripture [Lev. V. 23]; the collusive witness; the one who commits rape (is a

principal because mentioned in Deut. xxii. 29); the seducer [mentioned in Ex. xxii. 16]; the slanderer [Deut. xxii. 19]; the one who defiles heave-offering; the mingler (one who mingles together heave-offering with ordinary food); the one who brings a drink-offering (to the idols); (the three latter are not mentioned in the Scripture, but still they are principals for they pay pecuniary damage, and the latter is stated in the Scripture); and these with those thirteen mentioned above make twenty-four.

But why does R. Oshiyah not enumerate these mentioned here? He enumerates only those who pay actual damages, but not those who pay in form of a fine. If so, why does he not enumerate the thief and the robber who pay actual damages (as explained above)? He does so, for he states the depositary and the one loaning for use (in the case of the depositary it very often occurs that he sets up as a defence that it was stolen from him, and we have learned elsewhere that if one sets up a defence of theft or robbery he is responsible as a thief and robber). And as to R. Hyya, does it not state the depositary and the one loaning for use? He states separately property which came *lawfully* into his possession (as in the case of the depositary, etc.), and property which came *unlawfully* into his possession (as the thief).

It is correct according to the Tana of our Mishna, who states "principals" because there are also derivatives (which were enumerated above), but according to R. Hyya and R. Oshiyah if they state "principals" there must be derivatives; what are they? Said R. Abbuhu: They are all as principals in that respect that the damage must be paid from the best estates. What is the reason? It is deduced by an analogy of expression; in all those cases either the word "for" or "give" or "pay" or "money" is written. (Where it is written "for" we deduce it by analogy from the "for" stated as to the vicious ox, as there it is from the best estates (which in turn is deduced from the tooth and foot); so also it is here, if "give" or "pay" is written we deduce it from the ox that gored a slave where these words are written; if "money" is written we deduce it from the pit where the same word is written; and in all those cases it is paid from the best estates.)

"*The law of the damage done by an ox is not like that*," etc. For what purpose does he mention this here at all? Said R. Zbid in the name of Rabha: "He means to say with that, that no question should be raised why the Scripture does not state

one of the tort-feasors and leave the others to be deduced (by way of analogy) therefrom, for one cannot be deduced from the other (as it is stated above; Rabh according to his theory and Samuel according to his).

"*And that of both which are animated*," etc. For what purpose does the Tana mention this? Said R. Mesharshia in the name of Rabha: "He means to say that it should not be questioned why the Scripture does not state two of the tort-feasors (the ox and the mabeh), and fire would be deduced from these two; for this one cannot be deduced from those two (for the one is not like the others, etc., as stated in the Mishna). Said Rabha: "If any one of these should be mentioned

with the 'pit,' all others could be deduced from those two by reason of having something common to all (as *e.g.*, if he would state the pit and the horn, the tooth could be deduced thus: the pit, the nature of which is not to move and do damage, must pay; the more so the tooth, the nature of which is to do so; and if you should say the pit is made from the very beginning to do damage, which is not so with the tooth, I will cite you the horn (which is not made so); and if you will say that the horn does the damage intentionally, I will cite you the pit and the conclusion will return (the former argument will be reinstated); the one thing common to all is that it is their nature to do damage, and one is charged with taking care of them, etc. I will also bring in the tooth. In such a way I would also deduce the foot, if the pit and the horn should be stated; and if it should be objected that the pit is from the beginning made to do damage, which is not so with the foot, the horn would be cited; and if it should be objected to on the ground that the horn does damage intentionally, the pit would be cited. And so forth as to all, with the exception of the horn, for the objection might be raised that they are all considered vicious from the beginning (which is not so with the horn). For what purpose, then, did the Scripture enumerate all of them? To teach their different peculiarities; viz., the horn--to distinguish between a vicious and a non-vicious one; the tooth and foot--to exempt them from liability if the damage was done on public ground (for it is written, Ex. xxii. 4, "and they feed in *another* man's field," but not on public ground); the pit--to exempt it from liability if vessels fell into it (and were damaged); the man--to make him liable to pay for the four things (which is not so in the case of the others); fire--to exempt it from liability if it consumed concealed articles (as

[paragraph continues] *e.g.*, if articles were concealed in a stack of grain, in which case the liability is only for the grain, but not for the articles).

"*The one thing, common to them all*," etc. What does this mean to include? (As from the statement it seems to include all other things the nature of which is to do damage, and one is charged with taking care of them, what other such things can there be?) Said Rabhina: "It means to include that which we have learned in the following Mishna: 'If notice be given to one to remove (within a certain time usually given by a Beth Din) a wall, or to cut a certain tree, (and he failing so to do within such time) they fall, he is liable.'" How is the case? If he renounced his ownership of them, then according to both Rabh and Samuel it is like the case of the pit; as a pit because it does often damage one must take care of it, so also is the case here. 1 If he has not renounced ownership, then, according to Samuel who says that they are all deduced from the pit, are they the same as the pit? Nay, the case is that he has renounced ownership, but lest one say that they are not like the pit which is originally made to do damage, which is not the case with the above things (the building of a wall or the planting of a tree), then the case of the ox proves that; and lest one say that the ox is different because of its usual way of doing damage with its feet, then again the case of the pit may prove and so the conclusion will return (and the original argument is reinstated).

"*To pay the damages*." The rabbis taught: It is written [Ex. xxii. 4]: "With the best of his own field, and with the best of his own vineyard shall he make restitution." That means the best field and the best vineyard of the plaintiff (*e.g.*, if A's ox grazed upon a parcel of land belonging to B, the best land of B is taken as a standard, and A must pay an amount of damages equal to the difference in value of such a parcel of land before and after having been grazed upon). Such is the dictum of R. Ishmael; R. Aqiba, however, said: "The passage intends to state only that damages are collected from the best estates of the defendant (*i.e.*, the parcel of land of the

plaintiff is appraised, and if the defendant wishes to pay in land he must do so with land of his own best estates), and so much the more in case of damages to consecrated articles. Is it possible that according

to R. Ishmael restitution must be made with the best land even if land of an inferior quality be damaged? Said R. A'ha bar Jacob: "The case treated of here is that the best land of the plaintiff was of the same quality as the worst land of the defendant, and they differ on this point. R. Ishmael holds that the land of the plaintiff is taken as a standard, and the passage stating that he shall pay from the best estates, means from the best estates of the plaintiff, and R. Aqiba holds that that of the defendant is taken as a standard for best."

What is the reason of R. Ishmael's statement? The word "field" is written below (with the best of his own *field*) and also above (and they feed in another man's *field*) (ibid., ibid.); as above it has reference to the land of the plaintiff, so also in the statement below (and the passage is to be expounded thus: When the defendant has land which equals the best of the plaintiff's, he must pay out of such land the amount of the damage). And R. Aqiba? He may say, it is written: "With the best of his own fields, etc., he shall make restitution." That means not that of the plaintiff (and no deduction by analogy is admissible when the statement is so plain). R. Ishmael, however, may say: In this case we must derive the benefit of both the analogy of expression and the passages; the analogy of expression as I have explained, and the benefit from the passage I derive for explaining that it refers to a case where the defendant has both best and worst land, and the plaintiff has only best land, and the worst land of the defendant is inferior to the best of the plaintiff, in which case he cannot say to the plaintiff, collect your damages from my worst (because the passage gives the benefit to the plaintiff to be paid from the best), and therefore. he must make restitution from his own *best* estates.

Abayi propounded the contradiction of the following passages to Rabha: It is written [ibid., ibid.]: "With the *best* of his own fields," etc., which means from the best estates only and with nothing else, and we have learned in another Boraitha: "It is written [Ex. xxi. 34]: 'And to return money (make restitution)'; means this to include *equivalents of money, even bran?*" (Rabha answered): This presents no difficulty. When he returns of his own will he may give even bran, but if through the court he pays from the best estates. Said Ula, the son of R. Ilai: "The wording of the passage seems to lead to the same

conclusion, for it is written 'shall he make restitution,' which signifies *involuntarily*." Said Abayi to him: "Is it then written 'restitution shall be made'?" (which would mean involuntarily). It is written "*he shall* make," etc., which can also mean voluntarily. When R. Papa and R. Huna, the son of R. Jehoshua, returned from the college they explained the above passage as follows: "Anything (of personal property) is considered as the best of estates, for if he cannot sell it (at a reasonable price) at one place, he can take it to another place (and therefore if he makes restitution with personal property he may do so even with bran); except (if he makes restitution with) land, he must do so only with the best estates in order to enable him to procure a buyer."

R. Samuel bar Abba of Akkrunia propounded the following question to R. Abba: When the standard (as to which are the best and which are the worst lands) is taken, is it taken of those

lands of his own, or of those of the public in general? (*i.e.*, has the defendant to make restitution out of his *own* best estates, and if his worst lands are as good as the best of the public in general, must he nevertheless pay out of his *own* best, or if his worst lands are as good as those of the public in general, may he make restitution out of his worst lands?--for they are as good as those of the public in general). According to R. Ishmael this is no question, for he says that those of the defendant are taken as a standard (and therefore if his worst are as good as those of the plaintiff he pays out of his worst estates), but the question is only according to R. Aqiba, who holds that those of the defendant are to be taken as a standard. How is it? Shall we assume that the passage "the best of his own fields" means to exclude the lands of the plaintiff, or it means to exclude the lands of the public in general? And he answered him: The Scripture states expressly "of his *own* land," and you ask whether the land of the public in general is taken as a standard? R. Samuel objected: We have learned (in case there are to be collected a woman's claim under her marriage contract [Kethubah], damages, and other debts): If one has only good lands, all the claims are collected from the good lands; if he has only medium lands, all are collected from those lands; if only poor-quality lands, all are collected from those lands; if he has all the three, damages are collected from the good; ordinary creditors collect from the medium; the Kethubah is collected from the poor-quality lands; if he has good and medium land only,

damages are collected from the good; ordinary debts and the claim of his wife are collected from the medium lands; if he has medium and poor-quality lands only, damages and ordinary debts from the medium and the wife's claim from the poor-quality lands; if he has only good and poor land, damages from the good and the other two from the poor-quality land. Now, we see that the middle part of this Boraitha states "that if he had medium and poor land, damages and ordinary debts are collected from the medium and the other two from the poor land," and if it is as you say, that his own lands are taken as a standard, let the medium he has be considered the best (as they are *his* best), and the creditors shall be referred to the poor lands? Therefore said Rabhina: They differ as to the statement of Ula. For Ula said: "According to the Scripture the creditors are paid out of the poorest, for it is written [Deut. xxiv. 11]: 'In the street shalt thou stand, and the man to whom thou dost lend shall bring out unto thee the pledge into the street.' Now if it depends on the will of the debtor, he usually brings out the poorest article he possesses as a pledge; but why have the sages enacted that creditors shall be paid out of the medium? In order not to close the door to the borrowers." The one master holds of Ula's enactment, the other one does not (but adheres strictly to the meaning of the passage).

The rabbis taught: "(One who had to pay damages, ordinary debts, and the wife's claim), if he convey all his estates (the good, medium, and poor) to one person, or to three different persons at the same time, they pass to the grantees subject to the same liabilities as if in the hands of the grantors (*i.e.*, the one who bought the good pays off the damages, the one who bought the medium pays off the creditors, etc.). If at different times, all are paid from the estate sold last (for the buyers of the prior estates may each say: When I bought my land there were other lands from which to pay). If this estate is not sufficient, the last but one is resorted to; if still insufficient, the last but two is resorted to." How is the case, if he conveyed to one person? Shall we assume that he conveyed them by one deed, then surely they pass subject to the original liability, for even if he sold them to three persons, in which case one must have priority, you say that they pass subject to such liabilities, still more so if he sold to one? (what was the necessity of stating it?) Therefore we must say that it means that they were conveyed one after another (on three different days), and

why does he state three? To teach that although each one of them may say: "I left room enough for payment," the same thing may be said even if sold to one. He will say on each parcel of land: When I bought this parcel of land there were other parcels out of which to pay. The case here is that the good lands were the last to be sold (in which case it is more advantageous for him to let them collect according to their rights than to advance the argument that he left room for payment). So also said R. Shesheth. If so, shall they all collect of the good lands? (for at the time the first two estates were sold all the liability shifted over to the best lands). The grantee may tell them: "If you will be quiet and collect according to your original rights well and good, but if not I will return the deed for the sale of the poor land to the grantor (and then the liability will shift over to those lands, for no claims are collected from conveyed lands when there are free lands), and all of you will have to collect your claims from the poor land."

It is certain that when the grantee conveyed the medium and the poor lands, and left the best for himself, that they all collected their claims from the best lands, for those were the only ones which remained, and the others were no more in his possession so that he could refer to them saying, "I do not care for the enactment of the sages (for my benefit)" but in case he conveyed the good land and left for himself the medium and the poor, how is it? (shall the claims be collected from the second grantee because he took his lands subject to the liability? and from the first grantee they cannot collect, for he can say he accepts the enactment of the sages, and the good estates which were at the time of the first conveyance free were subject to the liability for payment of the claims?). Abayi intended to decide that all collect from the best estates. Said Rabha to him: "Did not the first grantee convey to the second grantee all his rights and interests he may have in them? And now, if they would come to the first grantee, they could collect from the medium lands only, and although at the time the medium and poor lands were conveyed the good ones were still free, he could say, "I do not want to avail myself of the enactment of the sages"; so also the second grantee can tell them: "Collect your claims from the medium and poor lands," for when the second grantee bought the estates he did so with the intention to acquire all the rights and interest the first grantee had at the time. R. Huna, however, said: (The above passages, one mentioning "money" and the other "the

best estates," do not contradict each other), it means either money or best estates. [1]

R. Assi, however, said: "Money is as good as land." For what purpose is this statement? If for the purpose that it is considered the "best" (*i.e.*, although he has good land he may pay in money), then it is the same that R. Huna stated, and it would be sufficient to say "and so also said R. Assi" Shall we assume that it is for the purpose of teaching as in the case of two brothers who have divided up land between themselves, and subsequently a creditor (of their father) comes and levies upon the share of one of them (that the other may pay his share of contribution either in land or in money)? Did not R. Assi already state this case? For it was taught: "Two brothers partitioned their estates and subsequently a creditor came and levied upon the share of one of them; Rabh said the partition is thereby annulled (and a new partition must take place of the lands which remained), because he holds that brothers in such a case are as heirs. Samuel, however, said that it is valid, because he holds it is as an ordinary sale and as one who buys without a responsibility. R. Assi says he (the other brother) must pay his share of one-fourth in land and one-fourth in money, for he was in doubt whether they are considered as heirs, and he

must contribute his share in land and not in money, or as an ordinary sale with responsibility, and he must pay to him what he lost, but in money, and therefore he must pay one-fourth in money and one-fourth in land), therefore he must pay one-fourth in land and one-fourth in money. But what is meant by the statement "it is as good as land"? that it is considered "best"? then it is again the same statement made by R. Huna? Say: "And so also said R. Assi."

R. Zera in the name of R. Huna said: In case one does a meritorious thing he shall do it up to one-third. What does this mean? Shall we assume that it means up to one-third of his own property? If so, then if he has occasion to perform three meritorious things he must spend his whole property? Said R. Zera: It means up to one-third in endeavoring to adorn the meritorious thing (*e.g.*, if there are two scrolls of Law, and one is more expensive than the other, he shall spend one-third more to buy the more expensive one). R. Assi questioned:

[paragraph continues] Does it mean one-third of the cheaper one, or does it mean one-third should be added? This question remains unanswered. In the West it was said in the name of R. Zera: Up to one-third he shall spend from his own (without expectation to be rewarded in this world), thenceforward from the Holy One's, blessed be He (*i.e.*, that part will be repaid to him in this world).

MISHNA *II*.: (The following is the rule:) In all that which I am charged with taking care of I have prepared the damage (*i.e.*, if damage was done it is considered that I was instrumental in doing it). If I prepare only a part of the damage I am responsible nevertheless for the whole, as if I prepared the whole. And only as to property which cannot be desecrated (but for that which is desecrated there is no responsibility), or property of persons governed by laws adopted by their community, 1 or such that has an owner, and at any place (the damage was done), except if done on the ground exclusively belonging to the defendant, or on that belonging to both together, the defendant and the plaintiff. If damage was done, the defendant must complete the payment of the damages with the best of his estates.

GEMARA: The rabbis taught: "In all that which I am charged with taking care of," etc. How so? If one intrusts a deaf man, a fool, or a minor with the charge over a pit, or an ox, and they cause damage he must pay for such damage, which is not so in case of fire (explained further on). What case is treated of here? when the ox was kept on a rope, or the pit was covered, equivalent to which in case of fire is as if it were live coals; and if you should ask why there should be a difference (between the former and the latter), (it may be said) in the case of the ox he is likely to get loosened, and in the case of a pit the cover is likely to slip off (and therefore the owner should have that in mind and bestow better care), but in the case of coal it is the reverse, for it is likely to get more and more extinguished. But according to R. Johanan, who said (elsewhere) that if one intrusts even a flame (to those stated above) he is also free (and consequently the statement above, "which is not so in case of fire," must be explained as meaning a flame), and in such a case the equivalent thereof here would be a loosened ox and an uncovered pit. Why should there be a

difference? There (in case of fire) the deaf man has so closely connected himself with the fire (*i.*

e., if he would not move it, it would remain stationary), that it is considered that he himself has done the damage (this is according to Rashi's second explanation, and it is stated elsewhere that if a deaf man, etc., do damage there is no liability), but here it is not so (for the ox or the pit did the damage without the aid of those mentioned).

The rabbis taught: There is a more rigorous rule in the case of the ox than in the cases of the pit and the fire, and *vice versa*. (How so?) The rigorousness of the rule in case of the ox is that he (the owner) pays the atoning money (when the ox kills a free man, and 30 shekels if a slave) which is not so in the case of the pit and fire. The rigorousness of the rule in the cases of the pit and the fire is that the pit is originally made to do damage, and the fire is considered "noxious from the beginning," which is not so in case of the ox. There is a more rigorous rule in the case of fire than in the case of the pit, and *vice versa*. The rigorousness of the rule in case of the pit, which is made originally to do damage, lies in that one is responsible if he intrusted it to a deaf man, minor, or fool, which is not so in case of fire, and the more rigorousness is in the case of fire, which has in its nature to move and to do damage, and is considered noxious in that it consumes everything whether fit or unfit for it, which is not so in the case of the pit. Let him also teach that the case of the ox is more rigorous because he is liable for damages to vessels (by breaking them intentionally either with the horn or with the foot), which is not so with the pit. The Tana enumerates some and leaves out others. Is then anything else left out that also *this* is left out? Yea, the case of concealed articles (*e.g.*, if an ox has kicked upon a sack containing vessels, or an ox carrying a sack containing vessels fell into a pit and the vessels broke, the owner is responsible for the vessels, which is not so in case of fire).

"*If I have prepared a part of the damage*," etc. The rabbis taught: "How so? If one dug a pit nine spans deep and another one came and completed it to be ten spans deep, the latter is responsible (whether the ox falling into it was killed or only injured). Shall we assume that this is not according to Rabbi (who said further on that for damages both are liable)? Said R. Papa: The case is that the ox that fell in was killed (in which case Rabbi also agrees that the one who dug the last span must pay). R. Zera opposed: Is this the only case--is it not

the same if one left his ox in charge of five persons, and one of them left intentionally and the ox caused damage--is the, one who left responsible? And R. Shesheth also opposed, saying that there is another case when one added fuel to a burning fire, and the latter caused damage; the last one is responsible, and R. Papa himself opposed, saying there is also another case of the following Boraitha when five persons sit on a bench, and it does not break, and another one comes and sits down and it breaks, the last one is responsible (for the whole damage); and he himself explained it as it had been, Papa bar Abba (who was a heavy-weight man). Now, let us then see; in all those three cases how is it to be understood? If without the last one no damage would have been caused, then is it self-evident that he is responsible? And if even without him damage would have been caused, then what has he done that makes him liable? (and therefore these illustrations cannot be cited, because in the, case of the pit the one who dug it nine spans can say to the other: If you had not dug the tenth span the animal would not have been killed (as there is a tradition that a pit less than ten spans deep cannot kill), but only injured, and I would have had to pay only for the injury, but not for the whole animal). But finally how is this Boraitha, after all, to be explained? (for the former two cases which are not Boraithas we do not care). It can be said that if he would not have sat down it would have not broken before the lapse of two hours, and he hastened it to break in one hour, in which case the first five can say to the

last one: "If not for you, we would have remained sitting a little longer, and would have left (and the bench would not have broken)." But why should he not reverse the argument and say: "If you were not with me on the bench, it would not have broken at all?" The case is that it broke while he was leaning on them. What is the difference? Lest one should say that, as he caused the damage only by his strength (leaning) and not by sitting down, he should not be liable, he comes to teach us that one's strength is equivalent to one's weight of body.

"*I am responsible to pay the whole damage*." It does not state "I am responsible for the damage," but "I am responsible to complete the compensation for the damage"; this is a support to what was taught by the rabbis: "The completion of the compensation for the damage." This is to teach that the plaintiff must trouble himself with the disposal of the carcass.

[paragraph continues] Whence do we deduce it? Said R. Ami: It is written [Lev. xxiv. 21]: "And he that killeth a beast shall make restitution for it" (yeshalmenah). Do not read "yeshalmenah," but read "yashlimenah," he shall complete her (*i.e.*, the plaintiff shall take the final trouble of disposing of it by sale and the defendant shall pay the balance of the damage). Hezkyah says, it can be deduced from the following passage [Ex. xxi. 34]: "And the dead beast shall be his," which signifies it shall be that of the plaintiff. So it was explained by the disciples of Hezkyah. "Thou sayest it belongs to the plaintiff perhaps the passage means that it belongs to the defendant? It was said: "It was not so." What does that mean? Said Abayi: If thou shouldst think that the carcass belongs to the defendant, it should have been written "an ox for an ox" [ibid., ibid.], and no more (and I would know that the defendant can have the carcass); why the addition of the above passage? Infer here from that the passage means that it shall remain the plaintiff's. Said R. Kahana to Rabh: Is that so, that without the addition of that passage it could be thought that it belongs to the defendant? Where is the common sense? Since if he (the defendant) has a number of carcasses he may give them to the other party (in payment of the damages), for the master said above: It is written [ibid.] "He shall '*return*'; that includes equivalents of money, and even bran." The more so the carcass in question, which is his own? This statement (as to who has to trouble himself with the disposal of the carcass) was necessary as to the loss in value of the carcass (*i.e.*, that from the time the animal was killed its owner is charged with its disposal, and if through his negligence it was not disposed of, and there resulted a loss in value, that loss is charged to the plaintiff).

Shall we assume that the Tanaim of the following Boraitha differ as to this case? It is written [ibid. xxii. 12]: "If it be torn in pieces let him bring it in evidence that it happened so by accident, and he will not be liable" (for a bailee for hire is not responsible for accident). Abba Saul, however, says it means he shall bring the carcass into court (to be appraised). May we not suppose that they differ thus (for we cannot suppose that they differ in case it was done by accident, for even Abba Saul must concede that a bailee for hire is not responsible in such a case, but they probably differ in a case where the bailee *is* liable): One holds that the loss in value is chargeable to the plaintiff, and the other holds that it is chargeable to the defendant?

Nay, both agree that it is chargeable to the plaintiff, but they differ as to the trouble of transportation of the carcass.

As we have learned in the following Boraitha: The anonymous teachers say: Whence do we deduce that the owner of the pit has to bring up the killed ox from the pit (at his expense)? It is written [ibid. xxi. 34]: "He shall make restitution in money unto the owner thereof; and the dead" (*i.e.*, he must give also the carcass, which cannot be done unless brought up from the pit). Said Abayi to Rabha: "How is this case of transportation of the carcass? Shall we assume that when in the pit it is worth one Zuz and when on the brink thereof it is worth four? Then this trouble is for his own benefit? Why the passages?" He answered him: "The case is that it is in either case not worth more than one Zuz" (and even then he must bring it up). But can there ever happen such a case? Yea, as people usually say: "A beam in the forest is worth one Zuz, and the same, although, in the city, is also only of same value."

Samuel said: "(It is the custom of the courts that) no appraisement is made for a thief or robber (*i.e.*, if one stole an article, etc., and the same was broken, he does not return the broken parts and pay the difference in value, but must return good articles), but only in case of damages. And I, however, add also the borrower, and Aba (Rabh) agrees with me."

It was taught: Ula said in the name of R. Elazar: An appraisement is made for a thief and a robber. R. Papi, however, said: No appraisement is made. And the Halakha prevails that no appraisement is made for a thief and robber; but for a borrower, however, it may be made, according to R. Kahana and R. Assi. Ula said again in the name of R. Elazar: "A firstborn (of a man) which was killed by an animal within the thirty days need not be redeemed." So also has Rami bar Hama taught: Because it is written [Numb. xviii. 15] "thou shalt redeem" one might think that this were so even if it were killed within the thirty days; therefore it is written [ibid., ibid.] "nevertheless" 1 to distinguish (that in case it was killed it need not).

The same said again in the name of the same authority: "Of brothers who have divided up (their estates of inheritance), that wearing apparel which they have on is appraised, but that which their sons and daughters have on is not appraised, because

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they have no case in court, and therefore we do not trouble them to come." Said R. Papa: "Sometimes, however, even what they have on is also not appraised; this may be the case if the eldest brother was the manager of the estates, and he was dressed in better clothes for business purposes."

The same said again in the name of the same authority: The Halakha prevails that debts are collected from slaves (because they are considered as real property). Said R. Na'hman to Ula: Did R. Elazar say so even when the slaves fall inheritance to orphans? Nay, only from him. From him? Would you say even from the only garment he has on? The case here is that he has hypothecated the slave, as Rabha said: "If one hypothecates his slave and thereafter sells him, the creditors nevertheless replevy the slave. If he has, however, hypothecated his ox, and thereafter sold him, the creditor cannot replevy him. Why so? Because when a slave is hypothecated people talk about it, and therefore the vendee is charged with notice, which is not the case with an ox." After R. Na'hman left, Ula said to those present: "So said R. Elazar: 'Even from the orphans (for a slave is as real estate).'" Said R. Na'hman (when he heard of this): "Ula avoided me (to state that in my presence, for fear I would cut him off with numerous objections)." Such a case happened in Nahardea and her judges collected a debt (from the slaves which fell an inheritance to orphans). In Pumbeditha such a case happened, and R. Hana bar

Bizna collected it. Said R. Na'hman to them: "Go and return it, and if not I will collect it from your property." Said Rabha to R. Na'hman: "Ula, R. Elazar, the judges of Nahardea, and R. Hana bar Bizna are all your opponents; according to whom then is your decision?" He answered: "I know a Boraitha, which was taught by Abimi: "A premonition (πρεοβολη) is effective as to land, but not as to slaves; personal property passes with land (if personal property is sold with land, and only the land is taken possession of, the personal property also passes), but not with slaves." (Hence we see that slaves are considered personal property.) Shall we assume that the Tanaim of the following Boraithas differ as to this case: If one sold slaves and land, and the vendee took possession of the slaves, the land does not pass. The same is the case if *vice versa*. Land and personal property, if the vendee took possession of the land, the personal property passes, but not *vice versa*. Slaves and personal property do not pass, unless the vendee takes possession

of both of them, as one does not pass with the other. In another Boraitha it was taught that if one takes possession of the slaves the personal property sold therewith passes. Shall we not assume that they differ in this: One holds that slaves are considered real, and the other holds that they are personal property? Said R. Ika, the son of R. Ami: "Nay, all agree that a slave is personal property, and that Boraitha which states that it does not pass is correct, and that Boraitha that states that it does pass, treats of a case where the clothes which are on the body of the slave were sold." [And even when so, what of it? Is this then not considered a moving court, and with a moving court (personal property) does not pass? And if you should say that he was then not moving, did not Rabha say (Baba Metzia, Chap. I.) that if it does not pass when moving, it does not do so also when standing or sitting?] The Halakha prevails that it passes only when the slave is tied and cannot move.

But have we not learned in another Boraitha that if he takes possession of the land the slaves also pass? There is the case that the slaves are standing upon it. Would you say that the Boraitha which states that they do not pass means that they do not stand upon it? This would be correct according to the one who says that slaves are considered personal property, and therefore if they stand upon it they do, and if not they do not pass; but according to the one who says that slaves are as real property, why is it necessary that they should stand upon it? Did not Samuel say that if one convey to another ten different parcels of land located in as many different states, the taking possession of one of them acquires title to all? (Says the Gemara: What a question is this?) Even according to the opinion of him who says that slaves are considered personal estates, why is it needed that they should stand upon it? Have we not the tradition that if personal property be sold with real property, the former need not be upon the latter when possession is taken of the latter? What answer can you give to this, that there is a difference between personal estates that *are* movable and those that *are not*? Say the same thing here: There is a difference between movable and immovable real estate. Slaves are considered movable real estate, the body of the earth is one wherever it is (consequently all his lands are attached to each other).

"*Property which cannot be desecrated*," etc. R. Abba said: "An ox intended to be sacrificed as a peace-offering, which has

done damage, the (half) damage is paid out of his meat, but not out of those pieces prepared for

the altar." Is that not self-evident, for those pieces are for the Lord? It means to teach that the value of the half of these pieces is not collected from the other half of the flesh (*e.g.*, a non-vicious ox consecrated for a peace-offering, of the value of two hundred Zuz when slaughtered, that has killed another ox of the same value when alive, in which case according to law he must pay the damage out of half of his body. Now the pieces being burnt the value of the half body is diminished, nevertheless the amount diminished cannot be collected from the other half of the body). According to whom is this? According to the rabbis, (who hold in case one ox has pushed another ox into a pit) that only the owner of the ox has to pay, but not the owner of the pit (although it is not sufficient); then this is self-evident. If it is according to R. Nathan, who in the above case holds that the owner of the pit must complete it, why should in this case the parts sacrificed be exempt? This can be according to both R. Nathan and the rabbis; according to the rabbis, because we might say that the rabbis held so only where there are two distinct elements (the ox and the pit), but in this case where there is only one body, the plaintiff may say: I will collect my damage from any part I wish. And according to R. Nathan: In that case the owner of the ox may say to the owner of the pit: I found the ox in thy pit; whatever I cannot collect from that party, I will collect from thee. But in the case herein can he then say the flesh has done the damage, but not those pieces in question? (Hence the statement.)

"*And that property that has owners*." What does this mean to exclude? We have learned in a Boraitha, this means to exclude ownerless property. How is the case? If our ox gore an ownerless ox, who claims damages? If the reverse is the case, let him go and take the ox? The case is that (after he has done the damage) he was appropriated by some one. Rabhina said: "This means to exclude the case where he first did the damage, and then was consecrated by his owner, or declared ownerless (by driving him out)." So also we have learned in a Boraitha: "Further than that said R. Jehudah: Even if he damaged and then was consecrated, or his owner declared him ownerless he is exempt, as it is written [Ex. xxi. 29], 'and warning have been given to his owner, and he killeth a man or a woman,' etc., which signifies that during the killing, the bringing

of the suit and the making of the award there shall be one and the same owner."

"*Except on the property of the defendant*." For he can say to him: What has your ox to do on my premises?

"*And on the property of both the defendant and the plaintiff*." Said R. Hisda in the name of Abimi: In a partnership court one partner is liable to the other partner for damages done by the tooth and foot, and our Mishna is to be explained thus: "Except on property exclusively belonging to the defendant, where he is free, but on premises belonging to both the defendant and the plaintiff, if damage is done, the one doing it is liable." R. Elazar, however, makes them free and explains the Mishna that there is no liability for foot and tooth when it belongs to the plaintiff or to both the defendant and the plaintiff, and what is stated further on of one's liability refers to damage done by the horn, because partnership property is for that purpose considered a public ground. It is right according to Samuel (*ante*, p. 5), but according to Rabh, who says that the expression "ox" in the Mishna includes everything in relation thereto, what does this mean to include? It means to include that which the rabbis taught: "If damage is done the defendant is responsible." This means to include the depositary, the loan for use, the loan for hire, and the bailor for hire; if an animal has done damage on their ground, a non-vicious ox pays half and a

vicious ox pays the full amount of damages. If the enclosure wall in good condition broke in in the night time, or it was broken in by burglars and (the animal) went out and has done damage, there is no liability." How was the case? Shall we assume that the ox of the bailor for hire has injured the ox of the bailee, let the bailor say to the bailee: If he should damage some stranger's property you would have to pay (because you are charged with taking care of him); why should I pay you when he has injured your ox? And if the reverse were the case (and still it is said that only one-half is paid), let the owner say to the bailee: If he were injured by an ox of a third person would you not have to pay me the full amount of damage? (because in the case of a loan for use he is liable for damages occurring by accident), now when *your own* ox has caused the injury you want to pay me only one-half? The case is that the ox of the bailor has injured the ox of the bailee, and the objection just stated can be explained that the bailee has agreed to take care that the ox shall not *be injured*, but not that he shall *do no injury to others*.

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If so, how will be explained the later part which states that if the wall was broken in in the night-time, or the same was broken in by burglars, and the animal went out and did damage, he is free, from which is to be inferred that if in the daytime there is liability. Why should it be so? Did he then warrant against his injury to others? The Boraitha meant thus: If he has warranted against his injury to others he is liable only in the daytime, but not if in the night-time or by accident. Is that so? Has not R. Joseph taught: "In a partnership court and an inn, one is liable for damages done by the tooth and the foot?" Is this not contrary to the statement of R. Elazar? R. Elazar might answer: Do not the Boraithas themselves contradict each other? Have we not learned in another Boraitha: R. Simeon b. Elazar laid down four rules in regard to damages: "If done on ground exclusively belonging to the plaintiff and not to the defendant, the liability is for the whole (even if done by the horn and in case of a non-vicious animal); if *vice versa* there is no liability at all; if on ground belonging to both, as *e.g.* a partnership courtyard or valley, there is no liability for the foot and tooth, but for goring, pushing, biting, lying upon, and kicking, a non-vicious pays one-half and a vicious pays the whole. If on ground belonging to neither of them, as, for instance, a courtyard belonging to neither of them, there is a liability for the tooth and foot; for goring and biting, pushing and lying upon and kicking, a non-vicious ox pays one-half and a vicious pays the whole damage." Hence, we see that it is stated that in a partnership courtyard or a valley there is no liability for the tooth and the foot, and hence do the two Boraithas contradict each other. That one (which says there is no liability) treats of a courtyard which is held in partnership for both storing fruit and keeping oxen (in which case it is considered a partnership courtyard as to both the foot and the horn), and therefore in case of the tooth he is free, and in case of the horn he pays half, as it is equal to public ground; and that Boraitha taught by R. Joseph treats of a court held in partnership only as to fruit, but not as to oxen, in which case as to the tooth it is considered the exclusive ground of the plaintiff. It seems to be so also from the difference used in the wording of the Boraithas. In one case things similar to an inn (which is not used for oxen), and in the other-those similar to a valley (where generally oxen are pastured) are stated. Infer herefrom. R. Zera opposed: If there was a partnership for fruit, can it be called *another man's* field,

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as required by Ex. xxii. 4? Said Abayi to him: "So long as it is not partnership as to oxen *it is* considered *another man's* field."

MISHNA *III*.: Damages are assessed in money, and are collected from what has a value of money; and it must be done before the court, and only on testimony of witnesses who are freemen, and they must be members of a community who have adopted a set of laws for their government; and women are on the same footing with men as to damages; both the defendant and the plaintiff must contribute (sometimes) toward the payment of the damages. (The whole Mishna will be explained further on in the Gemara.)

GEMARA: What is the meaning of "assessing in money"? Said R. Jehudah: It means the assessment shall be made by the Beth Din in money only, and this is explained in the following Tosephtha which the rabbis taught: "If a cow has damaged a garment (on the ground belonging to the owner thereof), and subsequently the garment of same owner lying on public ground was trod upon by the cow, and was damaged, it is not said, because each party is entitled to damage from the other, that both shall be relieved from paying each other at all, but the damages in each case are separately assessed, and the excess paid to the party due."

"*They are collected only from what is valued in money*." The rabbis taught: The expression in the Mishna "what is valued in money" teaches that the Beth Din is not obliged to collect damages unless from real estates, but if the party entitled to be paid, however, has anticipated and has seized upon personal property the Beth Din may collect his claim from that property. How is it so inferred from the Mishna? Said R. Ashi: The expression "which is valued in money" means to say but real money itself, and all those things (personal property, slaves, evidences of debt, etc.) are considered money itself. R. Jehudah bar Hinna propounded the following contradiction to R. Huna, the son of R. Jehoshua: It states "what is valued in money"; this teaches that the Beth Din is not obliged to collect unless from real estates; and another Boraitha states: It is written [Ex. xxi. 34]: "(he shall give) unto the owner," which includes even equivalents of money, and even bran? (Hence a contradiction?) The case treated of here is that if they are to be collected from orphans' estates, for damages due from their deceased father, in which case they are to be collected from realty

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only. If it is from orphans, what does the last part state-that if the party has seized personal property the Beth Din may collect therefrom? The case is as Rabha said in the name of R. Na'hman elsewhere, that he made the seizure during the lifetime of the father, so also is the case here.

"*On testimony of witnesses*." This is to exclude the case when one admits his guilt, and thereafter witnesses appear, so that he is no more liable to pay a fine. This is correct according to the one who holds that if one admits his guilt and thereafter witnesses appear that he is no more liable to fine, but according to the one who says that in such a case he is, what does the statement in the Mishna mean to exclude? It is needed in regard to the latter part, which states that the witnesses must be freemen, to exclude slaves.

"*And the women are on the same footing*," etc. Wherefrom is this deduced? In the schools of Hezkiah and R. Jose the Galilean it was taught: It is written [ibid. xxi. 28]: "If an ox gore a man *or a woman*"; this signifies that the Scripture made equal a woman and a man in respect to all crimes which are mentioned in the Scripture.

It was taught: The one-half damage paid (in case of a non-vicious ox); R. Papa said damages, because he is of the opinion that usually oxen require particular care and according to the law he would have to pay the whole damage, but as that happened only once the Scripture had pity with him and remitted one-half, and R. Huna the son of R. Jehoshua holds that it is a fine, because he is of the opinion that oxen usually are considered guarded and according to the law he would have to pay nothing at all, but the Scripture nevertheless fined him in order that he should take particular care. An objection was raised, based upon the Mishna. Both the plaintiff and the defendant sometimes contribute toward the payment of the damage. It is right according to the one who says that the half damages paid is considered damage; therefore sometimes the plaintiff must also contribute (*i.e.*, he takes less than he suffered), but if according to the one who holds that it is a fine, then he takes what he is not entitled to, how can you say that he is contributing? This statement is only in regard to loss in value of the carcass. But this was already stated in the first Mishna, as explained above, "to complete the damage." Infer that the owners are charged with the disposal of the corpse? This need be stated twice, once in case of a vicious and once in case of a

non-vicious animal; and it would not suffice to state it only once; for if it should be stated only in case of a non-vicious animal it would be argued that it is so because of that fact that he was not vicious, but in case of a vicious animal I would say it is not so; and if it would be stated only in case of a vicious animal, it could be said that it is so because the full amount of damage is paid, but in the case of a non-vicious animal it is not so, hence the necessity of stating it twice.

(An objection was made.) Come and hear: "The following is the rule: All those who pay more than actual (punitive) damage (*e.g.*, in case of killing a slave where thirty shekels are to be paid) do not pay so on their own admission (but it must be proved by other evidence). Is it not to be inferred herefrom that in case of paying less (than actual damages), one does pay so on his own admission? Nay, this means in case where the whole damage is paid. But how is it in case of paying less--is the same the case? Then why should it state, the rule is that all those who pay *more*," etc.; why not state, the rule is that all those who pay damages not according to the actual amount of damage done," which would make it clear as to those who pay more as well as to those who pay less? This objection remains, and the Halakha, however, prevails that the half damage is a fine. Can there be a settled Halakha in spite of an objection? Yea, for what is the reason of raising the objection, because it does not teach, "as much as they have damaged"? It could not state so because there is the half damage in case of raking up gravel, which is Mosaic that it is damage and not fine. Now, when the conclusion arrived at is that the half damage is a fine, when a dog consumes a sheep or a cat consumes a hen, it is unusual (and therefore considered the derivative of the horn and pays only one-half damage); such a damage is not collected in Babylon, where fines are not collected. But this is so only where those killed were big ones, but in case they were small ones it is usual, and it is to be collected in Babylon also; but if the plaintiff has seized upon the property belonging to the defendant (even in the former case), we do not compel him to surrender it, and also if he says: "Fix me a time to go to Palestine," his request maybe granted. And if he does not go he is put under the ban. In either case we place him under the ban until the tort-feasors are removed, as stated further on (end Chapter IV.), in the name of R. Nathan.

MISHNA *IV.*: There are five cases which are considered

non-vicious and five which are considered vicious. A domestic animal is considered non-vicious to gore, to push, to bite, to lie upon, or to kick; the tooth (of an animal) is considered vicious to consume that which is fit for it; the foot is considered vicious to break everything on its way while walking; the vicious ox; the ox doing damage on the estates belonging to the plaintiff exclusively; and a man. The wolf, the lion, the bear, the leopard, and the *bardalis* and the serpent are considered vicious. R. Elazar says: When they are domesticated they are not, with the exception of the serpent, which is under all circumstances vicious.

GEMARA: From the teaching of the Mishna that "the tooth is considered vicious to consume," it must be inferred that the case is when the damage was done on the ground belonging to the plaintiff, and it is nevertheless taught "the animal is not vicious," which means not to pay the whole, but to pay half, and this is according to the rabbis, who say that the horn doing damage on the estate of the plaintiff is considered unusual, and pays only one-half of the damage; then according to whom would be the latter part? "The vicious ox and the ox doing damage on the estate of the plaintiff and the man," which means that they pay the whole damage, according to R. Tarphon, who says that the horn, although it is unusual for it to do damage on the premises of the plaintiff, still pays the whole. Then the first part of the Mishna will be according to the rabbis, and the latter part according to R. Tarphon? Yea, so it is, as Samuel said to R. Jehudah: Genius, do not trouble yourself about the explanation of our Mishna, and follow my theory that the first part is in accordance with the rabbis and the latter part is in accordance with R. Tarphon. R. Elazar in the name of Rabh, however, said that both parts are according to R. Tarphon, but the first part treats of a court that was separated for fruit only to one of the parties, and for oxen for both of them, and in such a case concerning "tooth" it is considered the premises of the plaintiff only, and concerning "horn" it is considered public ground.

Said R. Kahana: I have explained this Halakha to R. Zbid of Nahardea, and he rejoined: How can both parts of the Mishna be in accordance with R. Tarphon? Did not the Mishna state, "the tooth is vicious to consume what is *fit* for it," which signifies that it is vicious only as to what is fit for it, but not as to what is *unfit* (as then it is like the horn and pays only half), and R. Tarphon says plainly that even the horn pays the whole on the premises of the plaintiff?

Therefore said Rabhina: "The Mishna is not completed, and ought to read as follows: There are five cases which are considered non-vicious until they are declared to be vicious; the tooth, the foot, however, are considered vicious from the very beginning, and this is called the vicious ox; as to the ox doing damage on the estate of the plaintiff, the rabbis and R. Tarphon differ; and there are other vicious animals similar to those: the wolf, the lion, the bear, the bardalis, the leopard, and the serpent." So also we have learned plainly in a Boraitha.

"*And not to lie upon*." Said R. Eliezer: "It is so only when it lies on large vessels, but if on small ones it is usual, and it comes under the law applying to the foot."

"*The wolf, the lion, etc., and the bardalis*." What is a bardalis? Said R. Jehudah: It is a Nephrasa. What is a Nephrasa? Said R. Joseph: It is an Apa (Hyena). [1] Samuel said if a lion on public ground had caught an animal and ate it up alive there is no liability, for it is his usual way to do

so, and therefore it is as if an ox had consumed fruit or herbs in public ground; but if he had first killed it and then ate it up he is liable, for it is not usual, and it comes under the law applying to the horn.

MISHNA *V.*: There is no difference between a vicious and a non-vicious animal, only that a non-vicious pays one-half of the damage, and only from the (money realized from the sale of the) body of the animal having done the damage; and a vicious animal pays the whole damage and from the best estates.

GEMARA: What is meant by "best estates"? said R. Elazar: It means, the highest of his own estates; and so it is said [II Chron. xxxii. 33]: "And Hezekiah slept with his fathers, and they buried him in the *best place* of the sepulchres," etc., and R. Elazar said, "best" means among the "highest of his own family"--that is, David and Solomon."

It is written [ibid. xvi. 14]: "And they buried him in his sepulchres, which he had dug for himself in the city of David, and they laid him in the couch which was filled with sweet odors and divers kinds of spices," etc. "And all Jehudah and the inhabitants of Jerusalem showed him honor at his death" [ibid. xxxii. 33]. Infer from this that his disciples were placed on his

grave to study the law. R. Nathan and the sages differ as to how long it continued; one says it lasted three, the others say seven, and still others say it lasted thirty days.

The rabbis taught (referring to the passage just quoted) that it means the thirty-six thousand people who preceded the coffin of Hezekiah, the king of Judah, all their shoulders bared. So said R. Jehudah. Said R. Ne'hemiah to him: "Was not the same thing done upon the death of Ahab?" The great honor consisted in that the Holy Scrolls were placed on his coffin, and it was announced, "*That* one resting in the coffin has performed all that is written in *these* Scrolls." But do we not do the same thing at present? At present we only take the Scrolls out, but we do not place them on the bier, and if you wish you may say that at present we even place them on the bier, but do not say "that he performed," etc. Said Rabba bar bar Hana: I was once walking along with R. Johanan, and he said that at present we say even "he performed," etc., but we do not say "he taught" (that which is written in the Scrolls, which was said at the funeral of Hezekiah). But did not the master say: "The study of the Law is great because it causes action"? Hence we see that action has preference over study, and why was it said of Hezekiah that he "taught"? This presents no difficulty. Over learning, action has a preference; teaching, however, has preference over action.

R. Johanan in the name of R. Simeon b. Johai said: "It is written [Isa. xxxii. 20]: 'Happy are ye that sow beside all waters, freely sending forth the feet of the ox and the ass.'" It means that those who occupy themselves with the study of the Law and those bestowing favors on others will be rewarded with the inheritance of two tribes, as it is written [ibid., ibid.]: "Happy are ye that sow," and "sowing" means nothing else than charity, as it is written [Hosea x. 12]: "Sow then for yourselves after righteousness, that you may reap (the fruit) of kindness"; and by "water" is meant the Law, as it is written [Isa. Iv. 1]: "Ho, every one of ye that thirsteth, come ye to the water" (*i.e.*, the Torah); "is rewarded with the inheritance," etc., means he overcomes his enemies as the tribe of Joseph, as it is written [Deut. xxxiii. 17]: "With them shall he push

nations together to the ends of the earth," and he acquires understanding as the tribe of Issachar, as it is written [I Chron. xii. 32]: "And of the children of Issachar, those who had *understanding* of the times to know what Israel ought to do."

Footnotes

2:1 Spoiling vessels thereby.

2:2 According to the other explanation of Rashi it is because a human being is provident, *i.e.* careful, and it is not easy to kill him unless by penetrating his body with the horns with great force.

3:1 Modern scholars come to the conclusion that originally the Mishna read •••••• which means one who started a fire, instead of ••••• which latter word cannot be found either in the Scripture or in the Mishna elsewhere, and that this latter word originates from an error on the part of the transcriber in writing an • instead of ••. And it seems to us that this view of the scholars is correct, for we find in one Tosephtha plainly the word "Hamabir" instead of "Hamabeh." We may add to this that Rabh's explanation, "It means a man," shows also that "Hamabir" is the correct word. We have therefore omitted all the citations of the passages to explain the meaning of the word "Hamabeh," as they are too far-fetched and were probably added by the expounders of Rabh's statement. Abraham Krochmal, however, maintains that in the first Mishnayoth it was used "Hamabir," but Rabbi, the editor of his Mishnayoth, wrote "Hamabeh," for the reason that this word has two meanings which can be applied to foot and tooth. (See his Notes on the Talmud, Lemberg, 1831, page 260.)

8:1 This is no contradiction of what was stated above, that a pit does not do damage often, for it means that it does not do so as often as the foot, which treads on everything in its way.

13:1 The reason why this was not stated till now is that there should be no interruption in the discussion of R. Ishmael and R. Aqiba.

14:1 This seems to be the true meaning of the expression "Bene Brith," and not, as some thought, that it means Israelites. See our introduction to this edition in our "History of the Talmud."

18:1 According to Leeser's translation.

28:1 There is a long discussion in the Talmudical dictionaries as to the correct meaning of bardalis, which is mentioned in several places in the Talmud and seems to have different meanings; we translate it "hyena" according to Mr. Sheinhack in his "Hamashbir."

Next: Chapter II.

CHAPTER II.

RULES REGULATING THE PRINCIPLE OF VICIOUSNESS AND NON-VICIOUSNESS IN THE FOUR PRINCIPAL TORT-FEASORS ENUMERATED IN THE FIRST MISHNA.

MISHNA *I.*: What tendency makes the foot to be considered vicious? 1 That of breaking (everything in its way) while walking. An animal has a tendency to cause breakage while walking in her 2 usual way. If, however, she were kicking (which is not her habit to do, and therefore considered a derivative of the horn), or there were gravel being kicked up from under her feet (which is sometimes her habit to do) and vessels were broken, one-half of the damage is paid. (In the case of gravel it is so by tradition; and the case is that it was done on the premises of the plaintiff.) If she stepped on a vessel and broke it, and the fragments thereof fell on another vessel and broke it, for the first vessel the full amount of the damage is paid (for it is the damage of the foot), but for the second vessel only one-half is paid (for it is the same as that of "gravel"). Cocks have a tendency to walk in their usual way and cause breakage. If, however, something was attached to their feet, or they were

hopping and they broke vessels, only one-half is paid (the reason is explained further on in the Gemara).

GEMARA: Said Rabhina to Rabha: (Let us see.) Does not the term "foot" in the Mishna mean the foot of the animal; and does not the term "animal" mean its foot? Why, then, the change of the terms in the Mishna? He answered: Our Mishna begins with "foot," because the same term was used in a previous Mishna (page 27), (but the proper term is "animal").

The rabbis taught: An animal has a tendency to walk in her usual way and cause breakage. How so? An animal that entered upon the premises of the plaintiff and caused damage with her body, or with her hair while walking, or with the saddle which she had on, or with the freight she was loaded with, or with the halter placed in her mouth, or with the bell suspended from her neck; and an ass with his load the whole must be paid. Summachus says: In the case of gravel and in that of a swine raking in rubbish, if damage was done the whole must be paid. "Damage was done?" Is this not self-evident? Read therefore: If he *hurled it* and thereby did damage, the whole must be paid. "Gravel?" Where is this here mentioned? The Boraitha is not complete, and ought to read thus: In case of gravel, although it is in their nature to kick up, still half only is paid; and the same is the case if damage was done by a swine that was raking in rubbish and *hurled* some of it. Summachus, however, says: Gravel and swine pay the whole damage.

The rabbis taught: Cocks that were flying from one place to another, and broke vessels with their wings, pay the whole; if, however, the damage was caused by the wind produced by the wings, only half is paid (for whatever is not done directly by the body, but only by the force

produced by the body, is considered to be on the same level with "gravel," and pays half). Summachus, however, holds that the whole must be paid.

Another Boraitha states: Cocks that were hopping on dough, or on fruit, and made the same dirty or punctured them, the whole damage must be paid. If they throw on them dust or gravel, half is paid. Summachus, however, holds that the whole must be paid.

Still another Boraitha teaches: If a cock were flying from one place to another, and the wind produced by the wings damaged vessels, only half must be paid. So we see that the above anonymous Boraitha is according to the Rabbis. Said Rabha: On the contrary, the last Boraitha is correct according to Summachus

[paragraph continues] (who opposes that it was a tradition that "gravel" pays only half) and says that the whole must be paid, because he holds that one's force is on the same level with one's body (and therefore damage done by the wind, caused by the wings, is equivalent to damages-done by the wings themselves), but according to the rabbis, if it is considered as done by the body, then the whole must be paid; if it is not considered as done by the body, nothing is to be paid. Subsequently Rabha himself explained: It is undisputed that one's force is equivalent to one's body, but the force (wind) being unusual, it is considered as "gravel," for which there is a tradition that only half is paid.

Rabha said again: All that which in case of one having a running issue is considered a sufficient contact to make the article unclean, in case of damages pays the whole; and all that which in case of one having a running issue is not sufficient contact to make unclean, pays in case of damages half; and he means to teach us the case of the wagon carrying one having a running issue (*i.e.*, as in case of a wagon carrying one having a running issue which passes over vessels the latter become unclean, but if only "gravel" is kicked up from under the wagon and falls upon vessels the latter do not become unclean; so also in case of damages, in the first instance the whole, and in the latter instance only half is paid). There is a Boraitha supporting Rabha: "An animal has a tendency," etc. (as stated above, page 31), with the addition that a wagon carrying a person pays the whole damage.

The rabbis taught: "Cocks that were nibbling at a rope from which a water-pail was suspended, and severing the rope broke the water-pail, pay the whole." Rabha propounded a question: If an animal stepped on a vessel which did not break at once, but only rolled away for some distance and then broke, what is the law? Do we follow the origin and consider it to have been broken by the body (and the whole is paid), or do we follow the place where the breakage took place, and it is the same as in the case of "gravel" (and only half should be paid)? Come and hear: Hopping is not to be considered vicious; according to others, however, it may. Is it possible that damage done by hopping shall not be considered vicious (is it not in the nature of the cocks to do so)? Must it not be assumed that while hopping the vessel rolled away and then broke, and they differ on the following: One holds we trace the damage to the origin, and one holds that we consider only the place where the

damage occurred? (Hence we see that in this case there exists a difference of opinion.) Perhaps (all agree that we consider only the place where the damage occurred, but) this is in accordance with Summachus, who holds that even "gravel" pays the whole. If so, how would you explain the latter part: "If a fragment flew off and fell on another vessel and the latter broke, for the first vessel the whole, but for the second only half must be paid?" Now if it be according to Summachus, does he then hold to the theory of half damage? And if you should say that he distinguishes between primary and secondary force (in case of the rolling of the water-pail it was primary force, but in that of the vessel damaged by the fragments of the pail it was secondary force), let the question of R. Ashi as to whether or not Summachus distinguishes between primary and secondary force be solved from this, that it is not on the same level with primary force? We must, therefore, say that the above Boraitha is according to the rabbis. Infer from this that we trace the damage to its origin.

R. Bibi bar Abayi, however, said: In the case of the above water-pail the latter was rolling by the continuous original action of the cock (even in the moment of breaking).

Rabha questioned: The one-half damage paid in case of "gravel," is it paid out of the body of the tort-feasor, for we do not find anywhere that half damage is paid from the best estate; or is it paid from the best estate, for we find nowhere that damage done by usual means shall be paid out of the body of the tort-feasor? Come and hear: "A dog that snatched and carried off a cake from the burning coals on which it was being baked to a barn, and there consumed the cake, and with the burning coal that stuck in the cake set fire to the barn, must pay for the cake the whole, and for the barn only one-half." Is the reason for that not because the damage of consuming the cake is that (directly) of the tooth, and the damage to the barn is only indirectly (remote), as in "gravel," and we have (nevertheless) learned in a Tosephtha in regard to this latter that the half damage is paid out of the body? (Hence that it is paid out of the body?) But, on the other hand, can it enter the mind that the reason for the liability in this case is because it is the usual case of "gravel," according to R. Elazar of the Boraitha, even if he concurs with Summachus that "gravel" pays the whole damage? Do we find anywhere that such is paid out of the body? We must, therefore, say that in the usual case of

[paragraph continues] "gravel" the damage is paid out of the body, but the case in the above Mishna is that the coal was handled not in the usual way, and R. Elazar holds in this respect with R. Tarphon, who said (page 50) that where damage was done by the horn in an unusual way on the premises of the plaintiff, the whole damage must be paid. In reality, however, it is not so. For what is the reason of the assertion that it is, according to R. Tarphon, because of the whole damage? We can say that R. Elazar holds, according to Summachus, that "gravel" pays the whole, and he agrees also with R. Jehudah, who says further on that the non-vicious element (even in case of viciousness) remains intact, and therefore when it is stated here that it is to be paid out of the body, it refers to that element (and in case of non-viciousness it is always paid out of the body).

Said R. Sama, the son of R. Ashi, to Rabhina [1]: (Even according to this theory) you can explain R. Jehudah's statement only in case of a non-vicious animal that became vicious, but how can you explain his statement when the animal is considered vicious from the beginning, as in the case of "gravel in the unusual way"?

We must, therefore, say (if you wish to explain that it is "gravel in the usual way") that R. Elazar held that the whole damage must be paid, according to him, only when it became vicious by doing so thrice, and they differ in the following: One, holds that the theory of viciousness does not apply to gravel, and one holds that it does. If it should be so, then why did Rabha question whether there can be viciousness in case of "gravel in the usual way" (*i.e.*, as when we say that the first time one-half damage is paid, as in the case of the horn, so also it becomes vicious by being done thrice, as the horn), or viciousness cannot apply here, (for as it is a derivative of the foot (because it is natural) it is considered vicious from the beginning, and still pays only one-half damages); according to the rabbis, it certainly is not, and according to R. Elazar it is? Rabha might answer: My doubt whether the theory of viciousness applies to gravel is according to the rabbis, who differ with Summachus; in our case, however, both the rabbis and R. Elazar

agree with Summachus, and the reason why the rabbis hold that only half is paid, is because the cause was in the unusual way (in which case it is a derivative of the horn), and it does not become vicious, and the point of their difference is the same as that of the rabbis and R. Tarphon. We have heard R. Tarphon say only as to the whole damage, but have we ever heard him say that it must be paid out of the body? Yea, it is sufficient that the result derived from an inference be equivalent to the law from which it is drawn, and as this is a derivative of the horn, it cannot pay more than the principal or in another manner. But we know that R. Tarphon does not hold to the rule just stated? (There is no difficulty.) He does not hold to that rule only in cases where the rule of *a fortiori* is applicable (as explained further on, page 51), but where this rule is not applicable he *does* hold to the former rule.

R. Ashi questioned: According to the rabbis, who differ from Summachus and hold that in "gravel in the usual way" only one-half is paid, does the "unusual way" in gravel (as, for instance, if done by kicking up gravel) change it to the payment of one-fourth of the damage (*i.e.*, as the "usual way" is considered vicious, does the "unusual" way make it non-vicious to pay one-half of the amount paid in case of viciousness)? Can this not be solved from Rabha's question, whether there is or there is not viciousness in the case of gravel, from which it is to be inferred that it does *not* change it (for if it *does* change it to one-fourth, then in case of viciousness it would pay only half, how can Rabha doubt whether viciousness in this case pays the whole--does viciousness, then, pay more than double the amount of non-viciousness)? We can explain that Rabha was doubtful in both rules (both as to change and viciousness). If you will assert that in case of gravel the rule of change does not apply, can we apply to this case the rule of viciousness? This question remains unanswered.

"*If she were kicking*," etc. R. Abba bar Mamal questioned R. Ami, and according to others R. Hyya bar Abba: If she (the animal) were walking in a place where it was impossible for her not to kick up gravel, and she kicked, and by so doing kicked up gravel and caused damage, what is the law? Shall we say that because it was impossible for her not to do it, it is, although done by kicking, considered the usual way (and pays half), or we do not consider it so, because still it was done by kicking? This question remains unanswered.

R. Jeremiah questioned R. Zera: If she were walking on public ground and gravel being kicked up from under her feet caused damage, what is the law? Is this a derivative of "horn" (because

gravel pays half), and she must pay even if it was on public ground, or gravel is the derivative of "foot" (because it is done with the foot), and there is no liability if done on public ground? He answered him: Common-sense dictates that it is a derivative of the "foot." (He asked again:) If she were walking on public ground and kicked up gravel which fell on private ground causing damage, what is the law? He answered: If there is no starting, shall there be a resting (*i.e.*, the starting being on public ground, where there is no liability, shall the resting-place of the gravel be taken into consideration)? The questioner objected: Have we not learned elsewhere: If she were walking on the road and kicked up gravel, whether on public or on private ground, there is a liability. Shall we not assume that it means that both the kicking up of the gravel and the damage were done on public ground? (Now if kicking up gravel is compared with the "horn," therefore there is a liability, as in the latter case; but if it is a derivative of the "foot," why should there be a liability?) (He answered:) Nay, it means that the kicking was on public, but the damage was done on private ground. But did you not argue, "If there is no starting, shall there be a resting?" He answered: I retract my argument.

R. Jehudah the second and R. Oshiyah were sitting on the porch of R. Jehudah's house, and a question was asked: If she has done damage by shaking her tail, what is the law? (Is it considered to be in her habit to do so, and there is no liability, or not?) Said the other: Is there any duty on the owner to hold her by the tail when leading her? If so, why not apply the same argument to the horn, shall the owner hold him (the, ox) by the horn when leading him? What comparison is this? In the latter it is not in his nature to do so, but in the former it is (and therefore it is a derivative of the "foot"). If it is in her? nature to do so, then what is the question for? The question was only in case it was extraordinary shaking. (This question remains.)

"*Cocks have a tendency*," etc. Said R. Huna: The statement that he pays only half and no more relates only to a case where the article got attached of itself; but if a human being attached it, the one who did so is liable to the whole damage,

[paragraph continues] (for it is considered a "pit"). "If it got attached of itself," who is liable? If we assume that the owner of the article attached is liable, how was the case? If he kept the article with good care, then it was only an accident; if he did not, then it was wilful, and the full damage must be paid. We must, therefore, say that the owner of the *cock* is liable.

Why does he not pay the whole damage? Because it is written [Ex. xxi. 33]: "If a man dig a pit," which means to limit it to a human being only, and exclude the case of an ox digging a pit (in this case the article attached is considered "a pit" which the cock created), let the same argument apply even to the half damage, and let us say: "If a *man* dig a pit, but not if an *ox* dig a pit" (and let there be no liability at all). We must, therefore, say that our Mishna treats of a case where the cock has done the damage by hurling the article for some distance (in which case it is "kicking up gravel," and only half damage is paid), and the statement of R. Huna applies to the following case: "Of an ownerless article, R. Huna says if it got attached of itself there is no liability at all; but if it was attached by a human being, the one who attached it is liable." On what principle is he liable (for, after all, it does not resemble a "pit" in all respects, because a "pit" is stationary, while here it was removed from the place where it was tied on)? Said R. Huna bar Munoa'h: He is liable on the principle of a "movable pit," which is made so either by human beings or by animals (*e.g.*, if one places a stone in the public highway which, while lying in that place, did not cause any damage; and another person or an animal removed it from that to another place

and damage was caused there, the latter is liable).

MISHNA *II*.: What tendency makes the tooth to be considered vicious? That of eating what is fit for it. An animal has a tendency to consume fruit and vegetables; if she, however, chewed up a garment or vessels, only half damage is paid. This is said only if on the premises of the plaintiff, but on public ground there is no liability. But if she derived any benefit therefrom, the value of such benefit is paid. How so? If she consumed from the middle of the public highway, the value of the benefit is paid; if from the sideways of the highway only, the amount of the damage is paid; if from the *front* of a store, the value of the benefit; if from *within* the store, only the value of damage is paid. (This Mishna is explained further on.)

GEMARA: The rabbis taught: The tooth has a tendency

to consume what is fit for it. How so? For an animal that entered the court of the plaintiff and consumed food that is fit for her or drank liquids that are fit for her, the whole damage must be paid. The same is when a beast entered the court of the plaintiff and killed an animal, or consumed meat, the whole damage must be paid.

For a cow, however, that consumed barley and an ass that consumed beets, or a dog that was licking oil or a swine that devoured meat, the whole damage must be paid (although it is not their usual food). Said R. Papa: Now that you lay down the rule that an article consumed which constitutes the food of the consumer only in case of unusual necessity is considered food; for a cat that devoured dates and an ass that consumed fish, the whole must be paid. It happened that an ass consumed a loaf of bread contained in a basket and chewed up the basket, and R. Jehudah decreed that the whole be paid for the bread and half for the basket (because the former is in his habit to eat and the latter not). Why so? Is it not in his habit to chew also the basket while eating the bread? The case was that he first consumed the bread and then chewed up the basket. Is then bread the usual food of cattle? Have we not learned: "If she consumed bread, meat, or cooked food, half is paid"? Shall we not assume that it treats of cattle? Nay, it means a beast. If so, then it is in its habit to eat meat? The case is that the meat was roasted. It can be explained also that the meat was raw, but that the animal was a deer. And if you wish to explain it that it treats of cattle, then the case was that the food was placed on the table (which is unusual for cattle to eat from). It happened that a goat, noticing beets on the top of a barrel, climbed up and consumed the beets and broke the barrel, and Rabha ordered to pay the whole for both. Why so? Because: as it is in her habit to consume beets, so it is also her habit to climb up the barrel. Ilpha said: An animal being on public, ground, that extended her neck and consumed some article from the back of another animal, is liable. Why so? Because the back of the other animal is considered as the plaintiff's premises. Shall we assume that he shall be supported by the following Boraitha: "When his basket was placed on his back and an animal extending her neck reached the food therein and consumed it, it is to be paid for"? Nay, the case is as Rabha said, that! it was reached by the animal jumping at it, so also was the case here, viz., by jumping. Where was Rabha's explanation taught?

[paragraph continues] On the following statement of R. Oshiyah: An animal on public ground, if she has consumed while walking there is no liability, but if she has done so while standing in one

place there is a liability. (And it was questioned): Why is this so? Is it not usual for an animal also to stand in the public highway? Said Rabha: R. Oshiyah meant to say if the animal jumped. R. Zera propounded a question: If it was rolling, what is the law? To what case has R. Zera reference? If the animal was standing on private ground and the article was rolling toward the private ground. 1 (Do we follow the place where it was consumed, and there is no liability, or do we follow the place wherefrom it was removed, and there *is* a liability?)

Come and hear: "R. Hyya taught: A bundle of food being placed partly within and partly without (private premises), if the animal consumed that portion placed within, there is, and if that portion placed without, there is no liability." Shall we not assume that it was rolled in (*i.e.*, that the whole was consumed, and it was rolled wholly in or wholly out, respectively; hence, that we follow the place of consumption)? Nay, R. Hyya taught so only in long-leafed grass (in which case every leaf is partly within and partly without the premises, and as soon as one end is touched the other goes after it, and therefore we follow the place of consumption, but not so in case of grain).

"*If she chewed up a garment*," etc. To what part in the Mishna has this reference? Said Rabh: To all parts. Why so? If one does an unusual thing (as in this case the placing of a garment in public ground), and another does an unusual act to that thing (as in this case the chewing up of the garment by the animal), there is no liability. Samuel, however, says this was taught only of fruit and vegetables, but for garments and vessels there is a liability. Resh Lakish, however, concurs with Rabh (because he adheres to his theory further on, Chap. III., Mishna 6.)

"*If she derived benefit*," etc. How much? Rabba said the value of hay. Rabha said the value of cheap barley. There is a Boraitha in accordance with Rabba, namely: "R. Simeon b. Jo'hi says: Only the value of hay or straw is paid, and no more." There is another Boraitha in accordance with Rabha, namely: "If she derived benefit, she pays as much as the value of the benefit. How so? If she consumed a kabh or two, not the

full value is paid, but only so much as one requires to feed his animal on food fit for her, although he is not in the habit of using such food. Therefore (as the fitness of the food is taken into consideration) if she consumed wheat or other food injurious to her, there is no liability (if on public ground)."

R. Hisda said to Rami bar Hama: I regret that you were not in our neighborhood the other evening when very acute questions were asked of us. What were they? Thus: One who takes up his dwelling in the court of his neighbor without the latter's knowledge, must he, or must he not, pay rent? How was the case? If the court was not to be let, and the dweller was such that he did not need to rent any (*e.g.*, if he had a dwelling of his own, or could get one without paying rent), then the one derives no benefit and the other suffers no loss? And if the court was to be let and the dweller needed a dwelling-place, then one does derive benefit and the other suffers loss (and why should no rent be paid)? The case was where the court was not to be let, but the dweller needed one. How is it? Can the dweller say to the court-owner: "What loss have I caused you?" Or can the court-owner say to the dweller: "It does not matter, for you derived benefit at any rate"? And he answered him: For this there is a Mishna. Where is that Mishna? He said to him: If you will render me some services, I will tell you where it is. He took off his coat and rolled it together for him. He then said: It is the above Mishna which states that if any benefit was

derived the value thereof must be paid. Said Rabha: How secure and careless does the man feel that knows that the Lord helps him. (See Yomah, page 31, a similar saying in the name of R. Huna.) He accepted the Mishna as a case similar to the one above, when in reality the facts of the Mishna are different from those of the case above, as in the case stated in the Mishna one derives benefit and the other suffers damage, while in his case one derives benefit and the other does not suffer any loss.

[What could Rami bar Hama say to that? Generally, one who places fruit on public ground renounces ownership of it (and therefore there is no loss).]

Come and hear: R. Jehudah said also that one who occupies his neighbor's court without the latter's knowledge must pay rent. Infer from this that in case one derives benefit, although the other suffers no loss, there is a liability? Nay, there it is different; it treats of a new house, the walls of which become soiled

from use (and this is considered a loss to the owner). (Finally) this question was sent to the school of R. Ami, and he answered: What has he done, what loss has he suffered, or what damage has he caused? Said R. Hyya bar Abba: Nay, we have still to consider this matter (as the soiling may be considered a damage). Afterward they sent to him (to R. Hyya b. Abba) for his decision in this matter, and he said: They continue sending me this question; if I could find any reason to decide this, would I not have answered?

(In reference to above question) it was taught: R. Kahana said in the name of R. Johanan: He need not pay any rent. R. Abbubu said in the name of the said authority that he need pay rent.

R. Abba bar Zabda sent a message to Mari bar Mar to ask R. Huna for his decision in the above matter. In the meantime R. Huna departed life. Said Rabba, his son: So said my father and teacher in the name of Rabh: He need not pay. (He also said): One who rents a house from Reuben must pay the rent to Simeon. How does Simeon come in here? He meant thus: If the house, in which he was living there at the time, was sold to Simeon, the rent must be paid to Simeon (although Simeon had no knowledge that he was occupying the house). Could, then, R. Huna say two things which contradict each other? There is no contradiction, because in the latter case the occupant intended to pay for its use. The very same case was taught by R. Hyya bar Abin in the name of Rabh, and according to others in the name of R. Huna. R. S'horah said in the name of R. Huna, quoting Rabh: One who dwells in the house of his neighbor (which was unoccupied and located in an unsettled district) without the owner's knowledge need not pay any rent, because the non-occupation causes damage, as it is written [Is. x xiv. 12]: "And in ruins is beaten the gate" (*i.e.*, if unoccupied the gate becomes ruined, and therefore the owner of the house derives benefit from the occupation). Said Mar bar R. Ashi: I once saw such a house which was damaged and looked as if gored by an ox. R. Joseph assigned another reason, viz., a house which is inhabited lasts longer (for the inhabitants make all the repairs necessary). What is the difference between these two reasons? There is a difference when the house is used for storing wood and straw. 1

A certain person erected a palace on the ruins belonging to orphans, and R. Na'hman collected the rent (for the use of the ruins) from the palace. Should we assume that R. Na'hman holds that one who dwells in the house of his neighbor without the knowledge of the owner must pay rent? In this case the ruins were previously occupied by ancients who used to pay a nominal rent to the orphans, and R. Na'hman ordered Carmines to go and compensate the orphans, which order was disregarded by him, and therefore R. Na'hman collected it from the palace.

"*How does she pay for the benefit*," etc. Said Rabh: This was taught only when she turned around her head (from the public highway to the sideway), but in a case where one leaves a portion of his own ground open to the public highway (and an animal enters upon it while walking on the public ground and consumes fruit stored there) there is no liability. Samuel, however, says: Even in the latter case there is a liability. Shall we assume that they differ as (to the liability of a) pit located on one's own ground (where the owner renounced his ownership of the ground, but not of the pit)? Rabh holds that (the owner of the pit) is liable (and in this case in question the fruit is considered a "pit," and the ground being ownerless, it is considered public ground, and therefore he ought not to have done so, and for that reason there is no responsibility for consuming it). Samuel holds that for the pit in question there is no liability (consequently he was allowed to place his fruit there, and therefore the consumer is liable). Nay, Rabh may answer, I hold in case of a "pit on one's own ground" that there is no liability; but why is here the consumer liable? Because the owner of the animal can say: You cannot have so much privilege as to place your fruit in the immediate neighborhood of public ground and hold my ox to liability. And the same is the case with Samuel, who may say: In case of a "pit on one's own ground," I hold that there is a liability, but here, if even it would be right (for the owner of the animal) to say that the ox could not be aware of the pit (and therefore if he should be damaged the owner of the pit would be liable), the case is different, because

the fruit was exposed to view and the ox could not escape noticing it (and therefore if the ox should be injured the owner of the fruit would not be liable; the owner of the ox, however, is liable for the fruit consumed by his ox, because he derived benefit from another's property). Shall we assume that in the above case (turning the head) the Tanaim of the following Boraitha differ: "If an animal consumed from the middle of the highway, the value of the benefit derived is to be paid; if from the sideways, the value of the damage is to be paid. Such is the dictum of R. Meir and R. Jehudah; R. Jose and R. Elazar, however, hold that it is not her usual habit to consume, but only to walk (on the sideway, and therefore there is a liability). Now, shall we assume that R. Jose concurs with the first Tana, but they differ only as to "turning the head," viz.: The first Tana holds that in that case she also pays only the value of the benefit, and R. Jose holds that she pays the value of the damage done (and hence that the Tanaim differ)? Nay, it may be said that all agree, that in case of "turning the head" it is either according to Rabh or according to Samuel, but they differ here as to feeding in *another* man's field [Ex. xxii. 4]: "And he lets his beasts enter, and they feed in *another* man's field."

One holds that it means to exclude *public* ground (and therefore if she consumed from the middle of the street there is no liability), and one holds it means to exclude the ground of the defendant. "The ground of the defendant?" (Why should there be any liability?) Let the defendant say to the plaintiff: What right had you to place your fruit upon my ground? We must therefore say that they differ in cases stated by Ilpha and R. Oshiyah (see *supra*, page 38) (R. Meir holds, if in the middle of the highway only the value of the benefit is to be paid in both the

case stated by Ilpha and that stated by R. Oshiyah. And R. Joseph maintains that it is not her usual habit, etc.,

and holds to Ilpha and R. Oshiyah.)

MISHNA *III*.: A dog or a goat that jump down from the top of a roof and break vessels pay the whole damage; for they are vicious (as to jumping, and it speaks of a case on the premises of the plaintiff). A dog that snatched a cake (from the coal on which it was baked) and carried it to a barn and there consumed the cake and (with the burning coal stuck in the cake) set fire to the barn, the whole for the cake, but only one-half damage for the barn is to be paid (as explained further on in the Gemara).

GEMARA: The Mishna states a case of jumping, because in case of *falling* down there is no liability; we see then that the Tana holds that where the beginning of an act is wilful (in this case, allowing the goat or dog to be on the top of the roof), but the end is only by accident (the falling down, which he could not anticipate), there is no liability. We have so also learned in a Boraitha: "A dog or goat that jump down from a roof and break vessels pay the whole damage; if, however, they *fell* down there is no liability." The rabbis taught: "A dog or a goat that jump up from below, there is no liability; if, however, they jump down from above there is. A human being or a cock, however, that jump are liable in either case."

"*A dog that snatched*," etc. It was taught: R. Johanan said: One's fire is considered one's arrow (*i. e.*, one who allows a fire started by him to spread and do damage is liable on the same principle as one who shoots from a bow when the arrow does damage). Resh Lakish, however, said: The liability is because the fire is considered one's property. There is a contradiction from our Mishna: "A dog that snatched a cake," etc. It would be right according to the one who holds that one's fire is considered one's arrow, for in this case it is the dog's arrow (and the dog is the person's property); but according to the one who holds that it is because the fire is considered one's property, in this case it is the property of the owner of the dog. Resh Lakish may say: The case was that he flung it, in which case he is liable for the cake to the full amount; for the place on which the coal fell to one-half (for it is unusual); and for the barn he is not liable at all (for the liability for one's fire is because it is his property, and in this case it is not). And R. Johanan may explain that he placed (the cake and the burning coal) in the usual way, and therefore for the cake and the place where the coal lay he is liable to the full amount, but for the barn he is liable only to one-half. Said Rabha: There are both a biblical passage and a Boraitha in support of R. Johanan, viz., a biblical passage, for it is written [Ex. xxii. 5]: "If a fire *break* out"; "break" means if it does so of itself, and still "he that kindled the fire shall surely make restitution" [ibid.]. Hence we see that one's fire is considered one's arrow. A Boraitha: As we have learned: "The passage starts out with damages done by one's *property* (the above-quoted passage, which means 'break' out of *itself*) without the aid of some person, and ends with the damages done by one's *own person*: 'He that kindled,' etc. [ibid., ibid.],

to teach that the liability for one's fire is because it is considered his arrow."

Rabha said again: It was first a difficulty to Abayi: It is known that there is no liability for damages done by fire to concealed articles; how can such a case be found in the biblical law, according to those who hold that fire is considered one's arrow? Afterward he himself tried to explain it thus, that the case is where a fire started in one court and the fence of the court fell in, not by reason of the fire (but by some other reason), and on account of this the fire spread to another court and caused damage, in which case the "arrow" ceased to be such at the boundary of the first court (for at the time the fire was started it was unable to spread outside of the court, before the falling in of the fence).

If so, then the same thing may be said also in case of unconcealed articles? We must, therefore, say that the one who holds that the liability is because it is his arrow, holds that it is so because the same is also his property, and that in this case he had sufficient time to repair the fence (before the fire spread) but did not do so; and although not liable for starting the fire he is liable for allowing it to spread, in which case it is the same as if he had kept his ox in a stall without locking the door. If it should be so, that the one who holds that the liability for one's fire is because it is his arrow holds also of the other theory, that it is considered his property (and if not liable for one reason is liable for the other reason), then what is the difference between R. Johanan and Resh Lakish? The difference is as to the liability for the four things (see above, page 6). (According to the one who holds that it is because it is his arrow also, there is a liability; and according to the one who holds that it is because it is his property, there is none.)

"*For the cake*," etc., "*pays*," etc. Who is liable--the owner of the dog? Why should also the owner of the coal not be liable? (For according to both R. Johanan and Resh Lakish the liability is because it is his property, and according to R. Johanan, who holds that half must be paid for the barn, the owner of the coal pays the other half; and according to Resh Lakish, who holds that there is no liability at all for the barn, let the owner of the coal be liable for the whole?) The case is that the owner of the coal took good care of it. If so, how could the dog get hold of it? The case is that the dog dug under the door and in such a way gained access. Said Mari, the son of

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R. Kahana: From the fact that the owner of the dog must pay the whole damages is to be inferred that ordinary doors are considered unsecured in regard to dogs (and it must not be considered unusual so as to pay only half).

Let us see: The Mishna states that the dog has consumed the cake, etc. Consumed where? If not on the premises of the owner of the cake, why must it be paid? This is not "in *another* man's field" [Ex. xxii. 4] (which means on the premises of the plaintiff). We must, therefore, say that it was at the barn of the cake-owner. (From the fact that he must pay for the cake) then infer that the mouth of an animal (consuming something on the premises of the plaintiff) is considered as it is yet in the court of the plaintiff. (As the case stated in the Mishna was that the dog kept it in his mouth from the time he picked it up until he reached the barn, and it was not considered that it was on the premises of the defendant, although the dog was his property,) for if it would be considered as the premises of the defendant, he could say to the plaintiff: Your bread was all the time in the mouth of my dog, which is my property, and there it was consumed; why, then, shall I pay? We say infer, because a question was actually raised as to this. And there could no such question arise if it were certain that the mouth of the animal is considered the premises of the defendant; and besides, there could arise no case in which there would be a liability for damage by the tooth, as in order to consume it it must necessarily be taken into the mouth. Said Mari, the

son of R. Kahana: If there could be no direct case of "tooth," there could arise a case which is its derivative, as, for instance, when the animal was rubbing against the wall for her own benefit and thereby did damage, or she rolled over fruits for her own benefit, and made them dirty (which cases are derivatives of the "tooth"). Mar Zutra opposed: But is it then not written in the Bible that there must be complete destruction [I Kings xiv. 10]: "Sweeps away the dung till there be *nothing* left"? Which is not the case here (as the wall or the fruit is still in existence). Said Rabhina: It can be explained that by rubbing against the wall she obliterated *completely* the engravings thereon; (and in case of the fruit), said R. Ashi, that by rolling over the fruits she sank them into the mud (so that they could not be removed).

There were certain goats belonging to the family of Tarbu that were doing damage to the property of R. Joseph, and he said to

[paragraph continues] Abayi: Go and tell their owners to keep them in safety. The latter answered him: If I do so they will tell me that you should put up a fence on your ground. [If one must put up a fence upon his premises in order to prevent consumption of, or otherwise damaging, his fruit, how can there: be a case of liability for damage by the "tooth," for which the Scripture makes it plainly liable? That may be in case she dug under the fence or the fence fell in in the night-time (if there was no opportunity of repairing it).] Announced R. Joseph, and according to others Rabba: It shall be known to all those who are ascending to Palestine and to all those who are descending to Babylon that if those goats that are kept for slaughter during the market days do damage, their owners shall be warned twice or three times. If they listen well and good, if not the goats are to be brought to the slaughter-house, even before the arrival of the market days, and the owners are to be paid their market value of that day.

MISHNA *IV*.: What is considered a non-vicious and what is considered a vicious one? A vicious ox is one that has been warned three days. A non-vicious one is one that abstains (from goring) for three days. Such is the dictum of R. Jehudah. R. Meir, however, said a vicious ox is one that had been warned thrice, and a non-vicious one is one that, when children pat him on the back, does not gore them.

GEMARA: What is R. Jehudah's reason? Said Abayi: It is written [Ex. xxi. 36]: "In time past" (in the original: "*Mi*-tmol, Shilshom"). It could have been written "tmol" (yesterday), and then would have counted only once, but it is written "*Mi*-tmol" (since yesterday), therefore it signifies twice; when "shilshom" is added it signifies thrice, and then follows, "and his owner hath not kept him in" [ibid.], which means that viciousness begins upon goring the *fourth* time (for the third time, however, only half is paid). Rabha, however, is not so particular about the addition of "mi" to "tmol," and therefore this word signifies only once, and the word "shilshom" signifies twice, hence "and his owner," etc., means the *third* time, when the ox becomes vicious, and he pays the whole damage.

And what is the reason of R. Meir's theory? This is explained in the following Boraitha.: R.. Meir said: (Draw an *a fortiori* conclusion): If he gored at "long intervals (only once a day), he is considered vicious on the third time; so much the more if he had gored thrice in one day he must be considered

vicious. They rejoined: There is no conclusion *a fortiori* to be drawn here, as there is a similarity in the case of a woman who has a running issue, who is unclean for seven days only when she notices the disease three days in succession once a day, but if she notices it three times or more in one day she has to wait only one day. He said again. (From this nothing can be inferred) as the verse made this case an exceptional one by the words "*And this*," etc. [Lev. xv. 3], which signify that it is so only in this case, and no others can be compared to it, for we see that in this case the verse made it, in case of a man, depend upon the number of times of noticing of the issue, while in the case of a woman, it made it dependent upon the number of days.

The rabbis taught: What ox is considered vicious? One that has been warned for three days; and a non-vicious one is one that is patted by children and does not gore; such is the dictum of R. Jose. R. Simeon, however, holds that a vicious ox is such as has been warned thrice (even in one day), and the statement as to the three days is only as to abstaining (that is, if after having been warned three times he abstains for three days from goring, then he is again considered non-vicious). Said R. Na'hman in the name of R. Ada bar Ahba: The Halakha prevails as stated by R. Jehudah in regard to a vicious ox, and according to R. Meir in regard to a non-vicious ox, for the reason that R. Jose agrees with them. Said Rabha to R. Na'hman: Let the master say that the Halakha prevails according to R. Meir in regard to a vicious ox, and according to R. Jehudah in regard to a non-vicious ox, for the reason that R. Simeon agrees with them in both. He rejoined: I concur with R. Jose, for he has always his valid reasons.

The schoolmen propounded a question: The three days in question, are they as to make the ox vicious; but the owner may be liable for a vicious one in one day; or are those three days also as to the owner? In what case can there be a difference? If there appear three different sets of witnesses in one day (and testify as to three gorings in three days), if those three days are as to the ox, then he becomes vicious; but if they are as to the liability of the owner, then the latter can say all the three sets appear only now (and the Scripture requires that they shall appear in three days).

Come and hear: "An ox does not become vicious until testimony is given in the presence of both his owner and the court. If in the presence of only one of them, he does not become

vicious until it is in the presence of both. If two witnesses testified as to the first goring, two as to the second goring, and two as to the third (each goring being at a different place, time, and man), we have then three sets of witnesses, but still all the three sets are considered one as to be proved in collusion. If one set is found collusive there is still the testimony of the other two sets, and neither the owner is liable to pay for a vicious one nor are his witnesses liable (to pay the other half for viciousness). The same is if also the second set proved collusive. If, however, all the three sets prove collusive, they are all considered as one set, and all of them are to pay the one-half for viciousness, and that is meant by the passage [Deut. xix. 19]: Then shall ye do unto him, as he had purposed to do unto his brother," etc. Now let us see. If the three days are as to the ox (but the owner may become liable if testimony be given to him thrice in one day), it is correct that the witnesses are liable only when all the three sets proved collusive (for it may be that the one who was injured brought all the witnesses to testify to the three gorings, and each set knew of the other and to what they were to testify, and therefore they cannot say that they intended to make him pay only one-half); but if you should say that the three days are as to the

owner also, why should the first set of witnesses (if proved collusive) be liable? Let them say that they did not know that others would come in two or three days later to testify as to make him vicious. Said R. Ashi: When I read this Halakha before R. Kahana, he said to me: Even if the three days are explained to be in regard to the ox only, would it then be correct, for (if even the first set cannot argue that they had no knowledge of the testimony to be given by the others, for they knew that on their own testimony he could not be made vicious) the last set can say: How should we have known that all these witnesses before the court were going to testify as to this case; we intended to testify so as to make him pay only one-half? We must, therefore, say (that if the three days refer to the ox) one set of witnesses gave the other a hint as to what they were going to testify. R. Ashi said: The case is that they all come together and therefore are supposed to know of the testimony of one another. Rabhina said: It may be that the witnesses knew the owner, but did not know the ox (and therefore by coming to testify they meant to make the ox vicious and must have known that there was already testimony given). If they do not know the ox,

how can they make him vicious? They testify and warn the owner that there is a "goring" ox among his cattle, and therefore that he should take care of *all* his cattle.

The schoolmen propounded the following question: For one who sets his neighbor's dog on a third person, what is the law? The first one is surely not liable (for he was only instrumental in the injury), but the owner of the dog, is he or is he not liable? Can he say: What did I do in this matter? Or can we tell him: Having known that your dog is capable of being set on, you should not keep him? Said R. Zera: Come and hear. It is stated in our Mishna: What is considered a non-vicious ox? One who when patted by children does not gore them, but if he does gore he is liable (although it was caused by the patting of the children). Said Abayi: Is this, then, so stated in the Mishna? Perhaps the Mishna meant that if he did gore he is no more considered entirely non-vicious, but that he is not liable for *that* goring. This question remains undecided. Rabha said: If you should say that one who sets on his neighbor's dog is liable, it would follow that, if in such a case the dog turned on the one who sets him on and bit him, the owner is not liable. Why so? As stated above, page 39, that one who does an unusual thing, etc., which is the same in this case. The man was wrong in setting on the dog, and the dog should not bite him. Said R. Papa to Rabha: It was taught in the name of Resh Lakish in accordance with your theory in the case of two cows (see *post*, page 70). Rejoined Rabha: I in such a case hold him to liability, for the reason that we can say to him: You had permission to step upon me, but had you then also permission to kick me?

MISHNA *V*.: "An ox that did damage on the premises belonging to the plaintiff," stated in Chapter I., Mishna IV.; how so? If he gored, pushed, bit, lay down on, or kicked while on public ground, he pays half; if while on the premises of the plaintiff, R. Tarphon holds the whole; the rabbis, however, say one-half. Said R. Tarphon to them: (Are we then not to draw an *a fortiori* conclusion.) In a case in which the law is lenient with the "tooth" and "foot" on public ground, making them not liable, it decrees rigorously if the same happened on the premises of the plaintiff, namely, that the whole must be paid; in a case where it decrees rigorously that the "horn" on public ground must pay half, is it not a logical inference that we ought to strictly adjudge the same, if on the premises of the plaintiff,

liable for the whole? They said to him: It is sufficient that the result derived from the inference be equivalent to the law from which it is drawn, viz., as if on public ground only half, so also if on the premises of the plaintiff. He rejoined: I also do not infer "horn" from "horn," but I infer horn from "foot," and I reason thus: if in cases in which the "tooth" and "foot" were dealt with leniently if on public ground, the "horn" was dealt with rigorously, is it not a logical conclusion that the latter shall be rigorously dealt with in cases where the former were also so dealt with? They rejoined again: It is nevertheless sufficient that the result derived from the inference be equivalent to the law from which it is drawn.

GEMARA: Did R. Tarphon ignore the theory of "It is sufficient," etc.? Is, then, this rule not a biblical one? As we have learned in the following Boraitha: "An *a fortiori* conclusion must be considered biblical. Where is it to be found in the Bible? It is written [Numb. xii. 14]: 'And the Lord said unto Moses, if her father had spit in her face would she not be ashamed seven days?' So much the more if it is toward the Shekhina, it must be fourteen days? But there is a rule that it is sufficient that the result derived from the inference be equivalent to the law from which it is drawn." (Hence we see that the rule of "It is sufficient" is also biblical.) R. Tarphon does not hold to that rule only where an *a fortiori* argument can refute that inference, but where there is no such refutation he does, viz., in the Bible the seven days of the Shekhina are NOT written; only by an *a fortiori* argument we set it to be fourteen days, and therefore, by the rule above stated, we equal it to the father's case, but in our case the half damage is written in the Bible and applies also to the premises of the plaintiff, and by an *a fortiori* argument we only add another half to it. Now if you should apply the rule above stated, then the *a fortiori* argument would be refuted entirely by it. The rabbis, however, maintain that the seven days in case of the Shekhina ARE written in the Bible, viz. [ibid., ibid.]: "Let her be shut up seven days." R. Tarphon, however, may say that that is the very verse which indicates the application of the rule of "It is sufficient," etc. And whence do the rabbis deduce the application of this rule? There is another passage for that, viz. [ibid. 15]: "And Miriam was shut up." R. Tarphon, however, may say that that other verse is necessary to indicate that the rule of "it is sufficient," etc., is applicable in ordinary cases

also, as one might say that it is applicable to this case only because of the honor of Moses; hence the passage.

Let the "tooth" and "foot" be liable (if they do damage) on public ground by the following *a fortiori* argument: The horn (doing damage) on the premises of the plaintiff pays only half, still the same is the case even on public ground; the "tooth" and "foot," which pay the whole if on the premises of the plaintiff, is it not logical that they should be liable on public ground? Therefore the Scripture reads plainly [Ex. xxii. 4]: "And they feed in another man's field," which signifies private, but not public ground. Do we then say that the whole must be paid (as the tooth, to which this passage has reference), we say that one-half should be paid? There is another passage [Ex. xxi. 35]: "And divide *his* money," which signifies *his* money (of the horn), but not the money in other cases (*i.e.*, in other cases the whole must be paid).

Let the "tooth" and "foot" be liable only to one-half if on the premises of the plaintiff by the following *a fortiori* argument: The horn which is liable on public ground pays only half on the premises of the plaintiff; the "tooth" and "foot," which have no liability at all on public ground,

should they not so much the more pay only half on the premises of the plaintiff? To this the Scripture reads [ibid. xxii. 4], "make restitution," which means a *satisfactory* payment (the whole).

Now let the horn on public ground not be liable at all by the following *a fortiori* argument: The "tooth" and "foot," which pay the whole on the premises of the plaintiff are not liable on public ground; the horn, which pays only half on the premises of the plaintiff, should it not so much the more be entirely free on public ground? Said R. Johanan: The Scripture added [ibid. xxi, 35]: "They shall divide" (which is superfluous, as it was already stated before that his money shall be divided), to signify that it is also liable on public ground.

Let a man (that kills another wilfully, but without warning, in which case he is neither to suffer the death penalty nor to be banished) pay a sum of money in atonement by the following *a fortiori* argument: An ox which is not liable to the payment of the four certain things (mentioned above, page 6) must nevertheless pay a sum of money in atonement; for a man who is liable to the payment of the above four things, is it not logical that he should be liable to the payment of a sum of money in atonement? To this the Scripture reads [ibid. 30], "whatever

may be laid upon *him*," which means upon *him only* (the ox), but not upon a man.

Now let the ox be liable to the payment of the four things by the following *a fortiori* argument: A man who is not liable to the payment of money in atonement is nevertheless liable to the payment of the four things; for an ox, which is liable to the payment of atonement money, is it not logical that he should pay the four things? To this the Scripture reads [Lev. xxiv. 19]: "And if a *man*, etc., in his neighbor," which does not mean an *ox*, etc.

The schoolmen propounded the following question: An ox that steps with his foot on a child lying on the premises of the plaintiff, what is the law in regard to the payment of the atonement money? Shall we say that it should be equal to the case of the horn, as when the horn gores twice or thrice it is considered its habit and pays atonement money, the same shall be applied to the foot, as it is always its habit to step? On the other hand, can it be said that there is no similarity to the horn because the horn gores with the intention to do damage, which cannot be said of a foot which steps without such intention? Come and hear: One who leads his ox into one's court without the owner's permission and the ox gore the owner to death, the ox is to be stoned and his owner, whether in case of viciousness or non-viciousness, must pay the full sum of atonement. Such is the dictum of R. Tarphon. Now let us see: Whence does R. Tarphon infer that in case of non-viciousness the full sum of atonement money must be paid? Is it not because he holds with R. Jose the Galilean, who says (Text, 486) that a non-vicious ox pays half atonement money on public ground, and he (R. Tarphon) draws an *a fortiori* conclusion from the "foot" (viz., the tooth and foot, which are not liable at all on public ground, "pay the full amount of atonement money on premises belonging to the plaintiff, and the horn, which pays, according to R. Jose the Galilean, half atonement money on public ground, so much the more should be paid the full atonement money on premises belonging to the plaintiff). Hence we see that the case of atonement money applies also to the foot. Said R. A'ha of Diphthi to Rabhina: Common-sense also dictates so. For if one should think that it does not apply to the foot, and the Tana (R. Tarphon) deduces it only from the *injuries* caused by the foot (but not from the killing) (viz., if the foot, which on public ground is not liable for damages, pays the

full damage if on premises of the plaintiff, the horn, which pays on public ground half atonement money, according to R. Jose the Galilean, is it not logical that on premises belonging to the plaintiff it should pay the full sum of atonement money?) It could be refuted and said: As far as the damage of the foot is concerned, it is its habit (to damage all things lying in its way when walking), but it is not so as to killing. Infer from this that the case of atonement money applies to the case of the foot also, and R. Tarphon has drawn his *a fortiori* conclusion from this case. And so it is.

MISHNA *VI*.: A human being is considered always vicious, whether he acts intentionally or unintentionally, when awake and also when asleep. If one blind the eye of his neighbor, or break his vessels, he pays the whole damage.

GEMARA: The Mishna teaches if one blind the eye of his neighbor that, as in the case of breaking one's vessels, only damage is paid for, but not the four things; so also in the former case only for the damage, but not the four things, is to be paid (when done unintentionally). Whence is that deduced (that the damage is paid for even when unintentionally)? Said Hyzkiah, and so also was it taught by his disciples: The passage says [Ex. xxi. 25] "wound for wound" (which is superfluous, for it is stated [Lev. xxiv. 19]: "And if a man cause a bodily defect"), to make one liable for unintentional as for intentional damage, and for an accidental as for a deliberate act. But do we not need this passage to make one liable for the pain (which is one of the four things explained above) where damages are paid? If so, let the passage say "wound for wound," why then "wound *instead* 1 of a wound"? Infer from this both.

Rabba said: One who carries a stone in his lap without being aware of it, and while getting up from his seat drops it, as regards damages he is liable (for there is no difference whether it was intentional or not), but as regards the four things he is not; regarding the Sabbath the Scripture prohibits only intentional work; as to banishment (if a human being was killed thereby), he is not liable; as to his liability to a slave (if it fell on a slave and blinded him), R. Simeon b. Gamaliel and the rabbis differ (as to whether he must manumit him or not [Ex. xxi. 26]). If in the above case he was at first aware of the presence of the stone,

but subsequently forgot it, as to damages he is liable, as to the four things he is not (for the fact that he forgot it cannot be considered wilfulness); as to banishment he is liable, as regards Sabbath he is not; as regards a slave, R. Simeon b. Gamaliel and the rabbis differ. If he intended to throw the stone two (ells) distant and threw it four, as to damages he is liable; as to the four things he is not; as regards Sabbath, intention is necessary; as to banishment, the Scripture said [ibid. xxi. 13]: "And if he *did not lie in wait*," excepting this case under discussion; as regards a slave, R. Simeon b. Gamaliel and the rabbis differ. If he intended to throw four (ells) and threw it eight (ells) distant, as to damages he is, as to the four things he is not liable; as regards Sabbath he is free unless he said: Let it fall wherever it may; as regards banishment the above-quoted passage means to except such a case as to his liability to a slave. R. Simeon b. Gamaliel and the rabbis also differ. 1

Rabba said again of one who drops his own vessel from the top of a roof, and before it reaches the ground another person strikes it with his cane and breaks it, the latter person is not liable, for it is considered that he broke a broken vessel.

The same said again: One who drops a vessel from the top of a roof upon the ground which has been covered with pillows, and another person removes them before the dropping of the vessel (without the knowledge of the person who drops it) and the vessel was broken, there is no liability on the part of the person who drops it, for at the time he dropped it he thought it could not break, nor was the person who removed the pillows liable, because he was only the remote and not the proximate cause of the damage.

The same said again: If one drop a child from the top of a roof, and before it reaches the ground another person cut it with his sword, this is similar to the case of the following Boraitha, in which R. Jehudah b. Bathyra and the rabbis differ: If one was assaulted by ten different persons, no matter whether at once or at different times, and was killed, none of them has to suffer capital punishment, as according to the Scripture it must be known who was the cause of the death. R. Jehudah b.

Bathyra, however, holds, in case the assault was made by one after the other, that the last one is guilty, for he hastened his death (and this rule can be applied to the above case of the child).

If (in the case of the child) a vicious ox killed it with his horns before it reached the ground, this is similar to the case of the Boraitha (post, pages 90 and 91) in which R. Ishmael, the son of R. Johanan b. Broka, and the rabbis differ.

The same also said: One who falls from the top of a roof by an extraordinary wind and does damage, or falls on a woman and causes her shame, is liable for the damage, but not to the four things. If, however, it happen by an ordinary wind and causes damage or disgrace to a woman by falling on her, he is liable for all the four things except for the disgrace.

Lastly Rabba said: One who causes the death of another by placing live coals upon his (bare) breast has no liability (for the deceased could remove them); if he placed the coals upon another one's clothes and they were burned he is liable (because the moment the live coal was placed on the clothes the latter were at once damaged).

[Said Rabha: Both these cases are explained in Mishnayoth. The first one in Tract Sanhedrin, Mishna II., and the second in this tract, Chapter VIII., Mishna 5.] He, however, propounded the following question: If one placed a live coal upon the breast of his neighbor's slave, is the slave considered in such case as his own body (and there is no liability, for the slave should remove it), or is he considered only his property (and he is liable)? And if one should say that a slave is considered the body of his master, what is an ox under such circumstances considered? He subsequently solved it himself. A slave is considered one's body, and an ox is considered one's property (and there is liability in the latter case, for the ox cannot remove it).

Footnotes

30:1 See Gemara.

30:2 We are compelled to use in our translation of this section for male and female animals the same terms used when speaking of human beings, for the following reasons: (*a*) The Bible translators use the same terms when speaking of animals, either of common or distinct gender, *e. g.*, see Leeser's translation (which we follow in the translation of the Talmud), Numb. xxii. 25, Exod. xxii. 5, as regards, "ass," which is of common gender, also ibid., Exod. xxi. 29, Numb. xix. 3, as regards a distinct gender; and so in many, many other places. Now, as the Mishna and the Gemara following use the word "animal" here in the feminine (probably for the reason that in those times of domestic animals the female was usually permitted to walk the highway without one directing her, which was not so with an ox, which was usually hitched to a wagon and in charge of a driver whose duty it was to take care that the ox did not step on articles lying in the way), and as "it" is usually used for the neutre gender, we could not very well use this term. (We follow strictly this rule as regards gender in all other places, to correspond with the original.)

(*b*) If we used "it" and "its" instead of the above terms, it would be very hard for the reader to comprehend the true sense of the discussions.

34:1 The Rabhina mentioned here is Rabhina Zuta, a nephew of the first Rabhina, who is mentioned in Kethuboth 100*b*; for Rabhina, who was a disciple of Rabha and colleague of R. Ashi, died long before in the time of R. Sama, the son of R. Ashi. See Doroth Harishonim, Presburg, 1897.

39:1 According to Maimonides and others.

41:1 Rashi explains this that the owner of the house used it for storing wood and straw, and the tenant lived in the same place used for such storage; and then as to "ruin," there is none, for it is being used; but as to repairs, the owner would not see p. 42 what repairs are necessary, as he does not live there; consequently, in such a case, according to R. Joseph, he need not pay, and according to R. S'horah he need pay. We, however, would say, that the Gemara means that it was used for storing wood and straw by the stranger, and, on the contrary, according to Rabh, he need not pay, for the house is no more vacant; and according to R. Joseph he need pay, because he will not care to make repairs. We leave the choice to the reader.

54:1 The literal translation of the text reads "a wound *instead* (ta'hath) a wound."

55:1 In the last two cases there is only a difference as regards Sabbath. In the first case, even if he said, "Let it fall wherever it may," there is also no liability, for the Scripture requires that it should be intentional work, and in the first case the distance is so small that there can be no question as to his intention to do work.--Rashi.

Next: Chapter III.

CHAPTER III.

RULES CONCERNING PLACING VESSELS ON PUBLIC GROUND. INJURIES CAUSED BY PEDESTRIANS TO EACH OTHER WITH THEIR LOADS. THE VICIOUS AND NON-VICIOUS OXEN--IF THEY HAVE DONE INJURY TO EACH OTHER OR TO HUMAN BEINGS, ETC.

MISHNA *I*.: If one places a jug on a public ground and another person stumbles over it and breaks it, the latter is not liable; if he is injured, the owner of the barrel is liable for the damage.

GEMARA: The Mishna starts out with "jug" and ends with "barrel," and it is the same way in several subsequent Mishnas. Said R. Papa: Jug and barrel are one and the same thing (as to the cases cited). (If so) for what purpose did the Mishna change the terms? For business transactions (*e.g.*, if one sells barrels he may deliver jugs, and *vice versa*). How is the case? Shall we assume in the case of a certain locality where these terms are decidedly distinct, then jug is one thing and barrel another? It is only in the case where most of the people use those terms distinctly and separately, but there is also a small portion who use them interchangeably, in which case I would say that the majority is to be followed; hence the statement that in money matters the majority is not to be followed (but the burden of proof is on the plaintiff).

"*And another person*," etc. Why is he not liable--must he then not look out? Said the disciples of Rabh in his name: The Mishna speaks of a case where he filled up the whole thoroughfare with barrels. Samuel said: When it is done in darkness. R. Johanan, however, said: The Mishna may be explained in that he placed the jug in a corner (where it could not be noticed). Said R. Papi: Our Mishna cannot be explained unless according to Samuel's or R. Johanan's interpretation, but not according to Rabh, because if it should be according to Rabh's interpretation he would not be liable if even he should break the barrel intentionally, as he had no passage way. (The Gemara, however, says that it can be explained also according

to Rabh's interpretation, as R. Zbid in the name of Rabha explains it further on.) Said R. Aba to R. Ashi: In the West it was said in the name of Ula that the reason for the statement of the Mishna is that pedestrians are not in the habit of looking around.

Such a case happened in Nahardea, and Samuel held him liable. In Pumbeditha--and Rabba held him liable. It is correct of Samuel, for he follows his theory; but Rabba, shall we assume that he concurs with Samuel? Said R. Papa: It was in a corner of an oil-mill (and it was customary with those who came to the mill to place their vessels outside when waiting for their turn to enter the mill), and because it was customary to place there the vessels the pedestrian had to take care not to break them. R. Hisda sent the following message to R. Na'hman: "It was said (it is the custom of the judges to fine) one who kicks the other with his knees three (selas); one who kicks the

other with the foot, five; one who strikes the other with his fist, thirteen--what is the fine if one strikes his neighbor with the handle of a hoe or with the iron of the hoe?" He returned the following answer: "Hisda, Hisda, you are collecting fines in Babylon; state to me the facts in the case." He then sent him the following facts: There was a partnership water-basin out of which each of the partners irrigated his land every second day. Once one was irrigating his land from the basin when it was not his turn, and when the other one asked him why he did so and the former did not heed him, he struck him with the handle of the hoe. Said he (R. Na'hman) to him (R. Hisda): He would have been justified if he had even struck him a hundred blows, for even according to the one who holds that a man ought not to take the law into his own hands, in cases of loss one may do so, for when one is in the right he need not trouble himself (to go to court). And R. Na'hman says this, according to his theory which was taught elsewhere, that a man may take the law into his own hands even not in case of loss. According to R. Jehudah, however, this is permitted only in case of loss. R. Kahana objected: There is a Tosephtha: "Ben Bag Bag says: Do not enter the courtyard of thy neighbor secretly to take what belongs to you, for fear that he may look upon you as upon a thief, but do so publicly, and tell him that you take your own (in contradiction to R. Jehudah, who holds that one must not take the law into his own hands)." R. Jehudah rejoined: Your support, Ben Bag Bag, is an individual,

and the majority differ with him. R. Janai, however, explained that "take it publicly" means to do so with the *aid of the law*.

Come and hear: If an ox mount another to kill him, and the owner of the latter come along and pull out his own ox, and the former drop on the ground and is killed, he is not liable. Shall we not assume that this is in the case of a vicious ox, in which case there is no loss (for if he had not acted thus, and his ox should have been killed, he would have been paid in full; hence even where there is no loss one may take the law into his own hands)? Nay, it is in case of a non-vicious ox where there is loss (for if he should have waited to be paid by law, he would have received only one half). If so, how is the latter part of the Boraitha: "If, however, he pushed down the ox that mounted, and the ox was killed, he is liable." Now, if it is in case of a non-vicious ox, why should he be liable (there is loss, and he acted according to law)? Because he should have pulled out his own ox and not pushed the other so as to kill him.

Come and hear: "For one who obstructs the court of another by placing there jugs of wine and oil, the owner of the court may break the jugs while going in and out of the court." (Hence we see that one may do so although there is no loss?) Said R. Na'hman bar Itzhak: It means that he may break them while going out to go to court and also when coming in to get his documentary evidence (in case such is necessary; *e.g.*, when there is a dispute as to the ownership of the courtyard).

Come and hear the statement of our Mishna: "One who places a jug," etc., "he is not liable." The reason being that he stumbled over it, but if he broke it without stumbling over he is liable. (Hence we see that even when there is loss [for Rabh explained, above, this to be when the whole thoroughfare has been filled with jugs] no person is allowed to take the law into his own hand.) Said R. Zbid, in the name of Rabha: Nay, the same is the case even if he broke it intentionally, but the reason why he mentioned stumbling is because he had to state in the latter part that if he was injured the owner of the barrel is liable, in which case stumbling is essential, for if otherwise he himself caused his own injury; he mentioned that also in the first part.

Come and hear: "It is written [Deut. xxv. 12]: 'Then shalt thou cut off her hand'; this means that a fine of money shall be imposed upon her." May we not assume that this is only when she could not save herself otherwise? (Hence one may

take the law into his own hands?) Nay, that means when she could do otherwise. Then how is the case when she could not--is she free? If so, instead of the Boraitha stating in the latter part: It is written [ibid. 11]: "If she putteth forth *her* hand," this signifies to exclude the messenger of the court, if he has done a similar thing he is free (from paying for disgrace), let the Boraitha teach that there is a difference also in *her* own act; viz., the case is when she could save herself otherwise, but if she could not she is free? The Boraitha maintains thus: The case is when she could save herself otherwise, but if she could not, her hand is to be considered as a messenger of the court and she is free.

Come and hear: "One who set aside the due corner-tithe at one corner of his field and the poor came and took their due share at another corner, both are considered corner-tithe." Now if you should say that one may take the law into his own hands, let the owner prevent them from taking at another corner by force? Said Rabha: The expression that "both are corner-tithe" means only that both are free from tithe (given to the Levites), as we have learned in the following Boraitha: "One who renounced his ownership to his vineyard and then hastened in the morning and plucked the fruit himself, he must observe *peret* [Lev. xix. 10], *gleanings* [Deut. xxiv. 21], *peah* [Lev. xix. 9], and *forgotten heaves* [Deut. xxiv. 19], but he is free, however, from the Levites' tithe.

MISHNA *II*.: A jug (filled with water) that broke on public ground and its contents cause a person to slip and fall, or one is injured by its fragments, he (the carrier of the jug) is liable. R. Jehudah, however, says, if he break it intentionally he is, otherwise he is not.

GEMARA: Said R. Jehudah in the name of Rabh: It was taught only if he soil his clothes with the contents of the jug, but if he damage his person there is no liability, for the public ground (which has no particular owner) causes his damage. When I stated this before Samuel he said to me: Let us see; as to the liability for damage caused by one's stone, knife, or load (placed on public ground), we deduced it from the "pit" on, public ground, as explained *post*, page 111 (in which the Scripture reads "ox" and "ass"), and in all of them I read "an *ox*, but not a human being"; "an *ass*, but not vessels," and only as far as death is concerned (as the Scripture in this case speaks of death); as to damage, however, if to person there is, but if to

property there is no liability on the part of the one who placed them there. (Hence Samuel's theory is the reverse of that of Rabh.) What has Rabh to say to this? This (that we deduce all that from "pit") is only where he had renounced his ownership from them (as such is the case with the pit on public ground), but if he had not it is still his property (and we deduce his liability from the "ox"). R. Oshyiah objected: (There is a Boraitha:) It is written [Ex. xxi. 33]: "And an ox or an ass fall therein," and we say an *ox*, but not a human being; an *ass*, but not vessels; and from this it was said that if an ox or an ass laden with vessels fell into the pit and they were

broken, he is liable only for the injuries to the animal, but not for the damage to the vessels. Similar to this is his stone, knife, and load placed on public ground that cause damage. Therefore if one break his glass vessels by striking them against the stone so placed, he is liable. Now the first part of the Boraitha would be in contradiction to Rabh, who holds him liable for the vessels also, and the latter part (which treats of breaking glass vessels by striking them against the stone) would contradict Samuel? [Why would this be a contradiction only to those two? Do, then, those two parts of the Boraitha itself not contradict each other? Say, then, that Rabh would explain the Boraitha in accordance with his theory that he renounce ownership, and Samuel according to his theory stated above.]

Now, when we come to the conclusion that one's stone, knife, or load is equal to one's "pit," according to R. Jehudah, who holds that there is a liability for damages done to vessels by falling into a pit, if one strike his bottle against a stone he is liable. Said R. Elazar: Thou shouldst not think that he is liable only when both the stumbling and the breaking were caused by the stone, and not if only the breaking was caused by the stone, as in reality he is liable even in such case, as we concur with R. Nathan's theory (which is explained on page 120).

"*If intentionally*," etc. What means intentionally? Said Rabba, when he intended to lower them down from his shoulders (and while doing so they struck against the wall, he is liable, for his carelessness is considered a deliberate act). Said Abayi to him: Should we infer from this that R. Meir (who is very rigorous) holds that one is liable even if the jug dissolve of itself (although it is an accident)? He answered: Yea, R. Meir holds one liable if even only the handle remained in his hand. Why so? Is this not an accident, and being such, the Scripture frees

him from liability, as it is written [Deut. xxii. 26]: "But unto the damsel shalt thou not do anything"? And if you should say that this is only as regards capital punishment, but as regards damages one is liable, have we not learned in a Boraitha: "If his jug break and he fail to remove the fragments, or if his camel fall and he fail to raise it, R. Meir holds him liable for the damage they cause; the sages, however, hold that he is free from human justice and is liable only to heavenly justice; and the sages concede to R. Meir, where one places his stone, knife, or load on the top of a roof, and they are blown down by an ordinary wind and do damage, that he is liable; on the other hand, R. Meir concedes to the rabbis that, where one places jugs on the roof in order that they should dry, and they are blown down by an extraordinary wind and do damage, he is free" (because it is an accident; hence even according to R. Meir damages by an accidental act are excusable)? Therefore said Abayi: They differ (in our Mishna) in two cases: during the falling and after the vessels rested upon the ground; one holds that for stumbling while falling he is liable for carelessness, and the other one holds that it is an accident. And they also differ after the resting of the vessels, in case he renounce his ownership to the articles which caused the damage; one holds him liable even in such a case, and the other one holds him free. And wherefrom is such a theory? From the fact that the Mishna mentions two cases, viz.: "If he slipped on account of the water, *or* he was injured by the fragments," which is practically one and the same thing, we must say then that it means either when he slipped on account of the water while falling or that he stumbled over the fragments after they rested. But how is it with the above Boraitha, can you apply also to it the same interpretation? This would be correct regarding the jug containing water, but how can we find the above two cases in regard to the camel, as you cannot hold one liable for the stumbling of his animal, even in a case where one is held liable for his own stumbling; and if there should be a liability it should be only in one case,

namely, if he renounced his ownership to the carcass? Said R. A'ha: It can be explained that the camel stumbled by reason of the overflow of a river. How is the case? If there was another way, then he is surely liable; if there was no other way, is it not accident? Therefore it must be explained thus: that he himself stumble first and the camel stumble over him, in which case his stumbling is considered

carelessness. But (according to R. Jehudah, who requires intention in our Mishna in case one renounce ownership from his articles which caused damage) what intention can there be so that he should be held liable? Said R. Joseph, and so also said R. Ashi: If his intention was that he should regain ownership of the fragments. R. Elazar also holds that they differ even during the falling and concurs with Abayi's theory stated above.

R. Johanan, however, said that they differ only as to after they rested, and he comes to teach us that only in this particular case the rabbis freed him from liability if he renounced his ownership to the articles which caused the damage because it was accidental (but where there is no accident he is liable for renouncing his ownership).

It was taught: "One who renounces ownership to his articles that cause damage, R. Johanan and R. Elazar: one holds him liable and the other holds him free." Shall we assume that the one who holds him liable is in accordance with R. Meir and the other one is in accordance with the rabbis? Nay, as to R. Meir, all agree (that he is liable); they only differ as to the rabbis: the one who holds him free concurs with the rabbis, while the one who holds him liable may say: I say that even the rabbis who held him free do so only in the case of an accident, as stated above, but in other cases they also held him liable. There is ground for the supposition that it is R. Elazar who holds one liable. (See Pesachim, page 8, line 22, "Two things," etc.) Have we not heard from him concerning the following Mishna (above, page 30, end): "One who stirs up manure," etc., that it is so only in case he had an intention to claim it is his own, but otherwise he is not; hence we see that Elazar holds that if one renounce ownership to his articles which caused damage he is exempt. Said R. Adda bar Ahba: The case here is that he restored it to its original position. Said Rabbina: The case as explained by R. Adda bar Ahba is similar to one who finds an uncovered pit and he covers it and then again removes the cover (in which case he is not liable, for it is considered as if he never had anything to do with it). Said Mar Zutra, the son of R. Mari, to Rabbina: I fail to see any similarity. In the case of the pit the former act (the uncovered pit) is still as it was, while in the case of manure the act of the first one is no more in existence (because the place it first occupied is now vacant). If it has any similarity to a pit it is in case one find

an uncovered pit and stuff it up, and then again dig it out, in which case the former act disappears entirely and is wholly his work (and therefore he is liable). Therefore said R. Ashi that the case of manure was that he stirred it up less than three spans (and therefore it is considered no stirring up at all [because of *Lavud*; see Sabbath, page 12], and whereas he had no intention of exercising any act of ownership, it cannot be considered his property, and if we cannot hold him liable as being his property, we can also not hold him liable for digging a pit). And why does R. Elazar force himself to explain it where he stirred it up below three, and the reason is only because he intended it as an act of claiming ownership, but not otherwise; let him

explain it that it was above three, and although there was no intention of claiming ownership he is nevertheless liable? (Because he holds that one who renounces ownership to the articles which cause damage is liable.) Said Rabha: He did so because of the phraseology of the Mishna, viz.; Why "stirred" up--why not "lifted" up? Hence that "stirring" means below three spans.

Now when we come to the conclusion that it is R. Elazar who holds him liable, then it is R. Johanan who holds him free. Does then R. Johanan really hold so? Did he not say elsewhere that the Halakha prevails as an anonymous Mishna, and there is such a Mishna: "One who digs a pit on public ground and an ox or an ass falls into it and is killed, he is liable"? We must, therefore, say that R. Johanan holds that he is liable. Now, on the other hand, if R. Johanan holds that he is liable, then R. Elazar holds that he is not; but has not R. Elazar said in the name of R. Ishmael (Pesachim, page 8, "Two Things," etc., hence, that he holds that he is liable? These present no difficulty. What is stated here is his own, and that in Pesachim, is his teacher's opinion.

MISHNA *III*: One who empties water into public ground and causes injuries thereby, he is liable for the injuries. One who hides away a thorn or glass, or one who builds his fence of thorns, or a fence that falls in into public ground and some persons were injured thereby, he is liable for the damage.

GEMARA: Said Rabh: It was taught only if his vessels were soiled, etc. (see page 60). Said R. Huna to Rabh: If this should be considered even his mud (he ought to be liable)? Rejoined Rabh: Do you understand that the water was not absorbed? I mean when it *was* absorbed, and yet he injured himself

by the collected earth, and therefore there is no liability, for he should have been careful.

[Why did Rabh repeat his statement here? He said that already in connection with the preceding Mishna.] This was necessary: Once as to the sunny season and once as to the rainy season, and it is in accordance with the following Boraitha: "Although it is permitted during the rainy season to empty refuse-pipes and clean excavations, still it is not permitted to do so during the sunny season; and even in the rainy season, although they do it with permission, they are liable for the damage they cause."

"*One who hides away*," etc. Said R. Johanan: It was taught only in case it is jutting out, but if it is pressed in he is free. Why is he not liable even when it is pressed in? Said R. A'ha, the son of R. Ika: For the reason that it is not the custom of man to rub against the wall. The rabbis taught: One who hides away his thorns or glass in the wall of his neighbor, and the owner of the wall comes along and pulls down the wall and the thorns or glass falls into the public ground and does damage, the one who hid them away is responsible. Said R. Johanan: This is the case where the wall was in bad condition, but where the wall was in good condition the owner of the wall only is liable. Said Rabhina: It is to be inferred from this that if one covers his well with the pail of another, and the owner of the latter comes along and carries away his pail, the former is liable (if some accident occurs). Is this not self-evident? Lest one say that because the owner of the wall did not know who hid the thorns and could not inform him to remove them, therefore he is free; but in case of the well, as the owner of the pail knows him, he should have informed him that he took away the pail, and therefore the owner of the well should be free--he comes to teach

us that there is no difference.

The rabbis taught: The former pious men used to bury their thorns and broken glass in their fields three spans below the surface in order that they should not interfere with the plough. R. Shesheth used to burn them. Rabha used to throw them into the (river) Chiddekel. Said R. Jehudah: One who wishes to be pious should observe the laws of damages. Rabhina said: He should observe the teachings of the fathers (which were enumerated in the first tract of this section).

MISHNA *IV.*: One who places straw or hay on public ground in order to convert them into manure, and some pedestrian

sustains injury through them, he is liable; and the one who takes possession of them first is entitled to them. R. Simeon b. Gamaliel says: All those who obstruct a public thoroughfare by placing chattels therein and cause damage are liable; and the one who takes possession of them first is entitled to them. One who stirs up manure on public ground and a pedestrian sustains injury thereby is liable.

GEMARA: Shall we assume that our Mishna is not according to R. Jehudah of the following Boraitha: "R. Jehudah says: During the season of conveying manure one may remove his manure to the public highway and collect it there for thirty days in order that it should be trodden by man and animal, for on this condition did Joshua distribute the land"? It can be explained that R. Jehudah concedes that nevertheless he is liable for the damage.

(There is an objection.) Come and hear: "All those of whom it was said that they may obstruct the public highway, if they do damage they are liable; according to R. Jehudah, however, they are not." Said R. Na'hman: Our Mishna treats of the season when the manure is not conveyed, and it is according to R. Jehudah. R. Ashi, however, says: Our Mishna states "straw" and "hay" (which means before they were converted into manure, and the reason is) because they are slippery.

"*The one who takes possession of them*," etc. Rabh said: This applies to both the original substance as well as to its improvement. Zëira, however, holds that it applies to the improvement only. What is the point of their difference? Rabh holds that the original substance is also to be confiscated (as a fine) because of the improvement, and Zëira holds that only the improvement is to be confiscated. There is an objection from the clause of our Mishna: "One who stirs up manure," etc., and does not mention that the one who takes possession of it first is entitled to it. (Hence it contradicts Rabh.) Said R. Na'hman bar Itzhak: You quote a contradiction (to Rabh) from the subject of manure. In cases where there can be an improvement (*e.g.*, straw) the original substance was also subjected to the rule as a fine, but where there can be no improvement (*e.g.*, manure) there is no fine at all.

The Schoolmen propounded a question: According to the one who holds that the original substance is to be fined because of the improvement, is it to be fined at once or only after the improvement has taken place? This can be inferred from the fact

that it was attempted to contradict Rabh from "manure(which does not improve; hence that he is to be fined at once). What answer is this "Did not the Schoolmen propound their question after they heard of R. Na'hman's answer, and nevertheless they were doubtful? Shall we assume that in this case the Tanaim of the following Boraitha differ? "One who removes his straw and hay to a public highway to convert it into manure, and a pedestrian sustains injuries, he is liable, and the one who takes possession of them first acquires title to them, and if one takes them it is considered robbery. Rabban Simeon b. Gamaliel, however, holds that all those who obstruct a public highway and cause damage thereby are liable to pay the damage, and the one who lays his hand upon the articles of obstruction first acquires title to them, and it is not considered robbery." Let us see. How is this Boraitha to be understood? It reads that the one who lays his hand on the articles of obstruction first acquires title to them, and immediately thereafter it states that the one who takes them is guilty of robbery. It must, therefore, be explained thus: "One who lays," etc., acquires title to the improvement, but the original substance is prohibited as robbery, and R. Simeon b. Gamaliel, however, says the same is the case also with the original substance. According to Zëira surely the Tanaim differ in this case, but according to Rabh do they also differ? Rabh may say that all agree that the fine applies to the original substance on account of the improvement, but in what they differ here is, whether this Halakha should be put into practice or not. As it was taught: "R. Huna said in the name of Rabh: The Halakha is so, but it is not applied in actual practice. R. Adda bar Ahbah, however, holds that it is applied in practice." But this is not so, for R. Huna once declared peeled baley (placed by one on public ground to dry it) ownerless, R. Adda bar Ahbah did the same with date-husk. It was correct for R. Adda bar Ahbah, as he followed his theory (stated above), but shall we assume that R. Huna retracted from his statement above? Nay, in this case the owners were warned (several times).

MISHNA *V.*: Two potters (each carrying pottery) that walked, one following the other, and the first stumbled and fell, and the second stumbled over the first and also fell, the first one is liable for the damages of the second.

GEMARA: Said R. Johanan: It is not to be said that our Mishna is only according to R. Meir, who holds that stumbling

is considered wilful and therefore he is liable, but even according to the Rabbis who hold that it is an accident and he is free. Here, however, the case is different for he had to get up (at once) and he had not done so. R. Na'hman bar Itzhak, however, holds that if he even could not get up he is liable, because he had at least to give warning to the other, which he had not done. R. Johanan, however, denies this theory, for if he could not get up he could also not give warning (because of his excitement).

There is an objection from the following Mishna: "If one carrying a barrel followed one carrying a beam, and the barrel was broken by the beam, he is free, but if it broke because the carriers of the beam stopped, he *is* liable." Is it not to be assumed that he stopped in order to place the beam on the other shoulder, which is usually done, and still it is said that he is liable, because he should give warning? Nay, he stopped to rest. But how is it in the former case, is he free? Then the Boraitha should state that it is only when he stopped to rest, but if to place it on the other shoulder he is free. Why then does it state in the latter part that he is free only if he told him to

stop with the barrel? With this he comes to teach us that, although he stopped to rest, if he called to him to stop he is free.

Come and hear: "Potters and glaziers that walked, one following the other, and the first one stumbled and fell, and the second one stumbled over him and the third over the second one, then the first is liable for the damage of the second and the second is responsible to the third. If, however, they all fell on account of the first one, he is responsible for the damage of all; but if they warned each other they are not responsible." Is this not so even if they could not get up? Nay, they could get up, and it comes to teach us that even in such a case when they warned each other they are free.

Said Rabha (in explanation of the above Boraitha): "The first one is liable to the second one for both injuries to the person and to property. The second, however, is liable to the third one for personal injuries only." [How is this to be understood?] If stumbling is considered a wilful act, let the second one also be liable; if, on the other hand, stumbling is considered an accident, then let the first one also be free. The first one is considered wilful as it is equal to a "pit on public ground," in which case the digger is liable for both injuries to the person

and to property; the second, however, who is considered as if he himself has fallen into the pit (because of the stumbling of the first) can be liable only for personal injuries because he did not get up in time, but not for damages to property, as he can say that he did not dig the pit.

The Master said: If they all fell because of the first one, the first is liable for the damage of all of them. How was the case? R. Papa said: He obstructed the way (crosswise) like a carcass (which obstructs the whole way). R. Zbid, however, said: If such should be the case the first one would not be liable for the damages of the third, who should be careful, seeing that the second one stumbled over the obstruction of the whole thoroughfare; therefore he maintains that the first one fell diagonally and did not obstruct the whole thoroughfare, and the third one in his intention to walk on the unobstructed portion of the thoroughfare did not see the stumbling of the second and stumbled over him. 1

MISHNA *VI.*: If one was coming from one side of the street carrying a barrel, and the other one was coming from the other side carrying a beam, and the barrel was broken by the beam, there is no liability, as both had the right to go each his way (and the carrier of the barrel should be careful not to collide with the beam). The same is the case when the carrier of the barrel followed the carrier of the beam. If, however, the carrier of the beam stopped (without any reason), and the carrier of the barrel while walking broke it by striking against the beam, he is liable; if the carrier of the barrel was told to stop by the carrier of the beam he is free. If the carrier of the barrel was preceding, and the carrier of the beam was behind him and broke his barrel by colliding with the beam (although unintentionally), he is liable (because of carelessness); if the barrel carrier stopped, he is free; but if he told him to stop and the beam carrier did not heed him, he is liable. The same is the case with one carrying fire and the other hemp.

GEMARA: Rabba bar Nathan questioned R. Huna: When one injures his wife by having intercourse with her, how is the law: is he free because he has done it with permission, or is he

nevertheless liable because he had to look out for her health? And he answered: This we have learned in our Mishna: "He is free, as both had the right to go each his way." Said Rabha to the latter: Is there not to be drawn an *a fortiori* conclusion from a wood [Deut. xix. 5] in which case both had permission to enter, and nevertheless when one was injured or killed, it is considered that the defendant entered the plaintiff's premises, and he is responsible or guilty; so much the more here it must be considered that he entered upon her premises and injured her? [But did not the Mishna state that each of them had permission to go his way? There is no similarity. In the case of the Mishna both had equal permission, and each of them did the same thing the other did, but here only he acted but she did nothing. Is that so? Did not the Scripture say plainly [Lev. xviii. 29]: "Even the souls that *commit* them shall be cut off"? Hence we see that the Scripture considers the female also as acting. There both of them derive pleasure and therefore are punished, but here the act is only his.] Resh Lakish said: If there were two cows on public ground, one of which was lying and the other one walking, and the latter kicked the former, she is not liable; if, however, the reverse was the case she is liable. (This was explained above, page 50.)

MISHNA *VII*.: Two that were on public ground, one running and the other one walking (ordinarily), or both of them running, and they injured each other, both are free.

GEMARA: Our Mishna is not according to Issi b. Jehudah of the following Boraitha: "Issi b. Jehudah says: The one who was running is liable, for it is uncommon. He, however, con. cedes that if it was on the eve of Sabbath in twilight, that he is not liable, for he is permitted at that time to run (and therefore it is considered common)." Said R. Johanan: So the Halakha prevails. But has not R. Johanan said elsewhere that the Halakha prevails according to an anonymous Mishna, and our Mishna (which is anonymous) states not so? The case in our Mishna is to be explained in that it speaks of the twilight on the eve of Sabbath, from the fact that it states, "or they were both running they are free." Then without the above explanation it would be superfluous after the statement that if even only one was running, etc., for it is self-evident that if both were running that so much the more they ought to be free; therefore the Mishna must be considered as incomplete, and should read thus: If one was running and the other one was walking, there is no

liability, when the case was in the twilight of the eve of Sabbath; on a week day, however, the one running is liable; if both were running they are free, even on a week day.

The Master said: "And Issi concedes that if it was in the twilight of the eve of Sabbath he is free, for he did so with permission." What is the permission? It is according to R. Hanina, who used to say: Come with us to meet the bridal queen. And according to others, "to meet the Sabbath bridal queen." R. Janai used to get up, enwrap himself and say: Come bride, come bride! (Hence it is a merit to run at twilight on the eve of Sabbath to meet the Sabbath.)

MISHNA *VIII*.: One who chopped wood on public ground and caused damage on private ground, or *vice versa*; or on his own private ground, and has done damage on another's private ground, he is in either of those cases liable.

GEMARA: And all the three cases were necessary to be mentioned, for if the Mishna should state the case of one who chopped wood on his own private ground, and did damage on public ground only, one might say that the liability is because on a public thoroughfare there are usually many passers-by; but if *vice versa* there is no liability because on private premises there are not many people. And if it should state the case of public to private ground only, one might say that the liability is because he had no right to chop wood there, and as he did that without permission he is liable, but from private to public ground, where he had a right to do so, there is no liability even if it caused damage on public ground. And if it should state these two cases only, still one might say that in one case he is liable, for he has done it without permission, and in the other case because there are many persons, but from one private ground to another, where usually not many people are, and each owner is permitted to do such a thing on his own premises, there is no liability, therefore it was necessary to mention all. The rabbis taught: "One who enters a carpenter's shop without permission, and was struck on his face by a flying splinter and died, there is no liability. But if he entered with permission the carpenter is guilty." Guilty of what? Said R. Jose b. Hanina: It means the liability to pay the four certain things, but he is free from banishment, for it is not equal to the case of a forest, which is considered the ground of every one who enters it, but in this case he entered his neighbor's estate. Said Rabha: Is not the following *a fortiori* conclusion to be drawn here: A

forest, where each one enters by his own will (without the permission of the other), still it is considered as if he entered by the request of the other, and he is to be banished in case he kills one unintentionally); in the case at bar, where he decidedly enters by the request of the other, shall he not so much the more be banished? Therefore we must explain the Boraitha thus: He is free from banishment means that this alone would not be sufficient, and the reason of R. Jose b. Hanina is that it is such an act of negligence that almost amounts to an intentional act (for he should look out).

An objection was raised from the following: "One who throws a stone into a public ground and kills some one, he is to be banished." Is *this* not such a negligent act as almost amounts to an intentional act, for he had to have in mind that on public ground people come and go, and still it says that he must be banished. Said R. Samuel bar Itzhak. The case is that he was tearing down his wall and threw the material into rubbish in the daytime. What was the nature of this rubbish? Was it such rubbish as people are likely to be about, then it is intentional? If not, then is it an accident? Said R. Papa: The case is that it was rubbish that people do their necessities thereon in the night-time, but not in the daytime, but still it may happen that some might do so in the daytime; it cannot be considered an intentional act, for it is uncommon to do so in the daytime, and, on the other hand, it is also not an accident, for it may happen.

R. Papa in the name of Rabha explained that R. Jose b. Hanina's statement has reference to the first part only, viz.: "One who enters a carpenter's shop without permission, and was struck in the face by a flying splinter and died, the carpenter is free." Said R. Jose b. Hanina: He is liable to pay the four things, but he is free from banishment (and the difference is thus): That he who explains that it refers to the latter part of the above Boraitha, so much the more as to the first part; but according to R. Papa, he who explains that it refers only to the first part, in the latter part where be entered by request he is to be banished. Is that so? Have we not learned in the following Boraitha: "One who enters a blacksmith's shop and was struck by an escaping spark

and died, there is no liability, even if he entered with permission"? The case here is that it was the blacksmith's apprentice. Assuming that it is so, may he be killed? It was that his employer insisted that he

should leave the shop, and he did not do so. Supposing it so, may he be killed? The employer thought that he did leave. If so, then any person would come under the same rule. In the former case the apprentice usually obeys his employer (and therefore the blacksmith assumed that he left when being told to do so), but in the case of a stranger the blacksmith should look around and see whether the stranger did leave or not.

R. Zbid in the name of Rabha supported the above statement by the expression of the verse, viz. [Deut. xix. 5]: "It (the iron) found," 1 but not when be *makes* himself found to the iron. From this R. Eliezer b. Jacob said: One who drops out of his hand a stone, and another one puts out his head and is injured by it, he is free. Said R. Jose b. Hanina: He is not to be banished, but he must pay the four things.

He who applies the explanation of R. Jose to the last case self-evidently holds that it also applies to the former case, and he who applies the explanation to the former case, in the last case may say that he is wholly free.

The Rabbis taught: Employees who came to demand their wages from their employer, and were gored by his ox or bitten by his dog, to death, he is free. Anonymous teachers, however, hold that employees have the right to demand their wages from their employer (and therefore he is guilty). How is the case? If the employer usually comes to town, what reason have the anonymous teachers for their assertion? If, on the other hand, he can be found only in the house, what is the reason of the first Tana? It is in a case where he is not certain, and the employee when knocking on the door or gate is told "In"; one holds that "in" means "come in" (and therefore they had the right to enter), and the other one holds that "in" means "stay where you are (and I will come out to you)." There is a support to the latter construction of "in" from the following Boraitha: "An employee that entered to demand his wages from his employer, and he was gored by his ox or was bitten by his dog, he is not guilty although he entered with permission." Why so? We must say that it means that when knocking on the door or gate he was told "in," and he meant that he had permission to enter, but in reality "in" meant only "stay where you are (and I will come out to you)."

MISHNA *IX*.: Two non-vicious oxen that wounded each

other: the one who is hurt the most is to be paid one-half of the amount of the value of difference of the injuries. If both are vicious the *full* amount of difference of the injuries is to be paid. If one is non-vicious and the other vicious: if the vicious one injured the non-vicious more than he himself was injured he pays the full amount of the difference, if the reverse is the case only one-half is paid. So also if two men wound each other, the one who hurt the most must pay the full amount of the difference.

A man who hurt a vicious ox and was also hurt by the ox, or when the reverse was the case, the full amount of difference is to be paid. If the case was with a non-vicious ox the man pays the full amount and the ox pays the half. R. Aqiba, however, says: Even if the ox was non-vicious, the full amount is to be paid.

GEMARA: The rabbis taught: It is written [Ex. xxi. 31]: "According to this judgment shall be done unto him." That means that as the judgment when two oxen gore each other, so also shall it be when an ox gores a man. As in the former case a non-vicious ox pays one-half and a vicious one the full amount; the same is the case if it gored a human being. R. Aqiba, however, says: "According to *this* judgment" means that the judgment just mentioned applies to man, but not to the preceding case. Shall we assume that it must be paid from the best estates? Therefore it is written [ibid., ibid.]: "Shall be done unto *him*," which means that he pays only from the body of the ox, but not from the best estates.

MISHNA *X*.: An ox of the value of one hundred selas that gored another one of the value of two hundred, and the carcass was worthless, the plaintiff takes the ox (*i.e.*, one-half of the damage).

GEMARA: Our Mishna is in accordance with R. Aqiba of the following Boraitha (which treats of the same case, and teaches): "The ox shall be appraised in court, and if he is worth one-half of the killed one the plaintiff may take him." Such is the dictum of R. Ishmael; R. Aqiba, however, holds that the plaintiff takes the ox without any appraisement. On what point do they differ? R. Ishmael holds that the plaintiff becomes a creditor, and his demand is money, and it must be assessed by the court, and R. Aqiba holds that the plaintiff becomes a partner to the defendant, and they differ as to the explanation of the following passage [Ex. xxi. 35]: "Then they shall sell the live ox and divide his money, and the dead ox also

they shall divide." R. Ishmael explains that it means that this shall be done by the court, and R. Aqiba maintains that the passage makes the parties partners, if both oxen were of equal value; if, however, the goring ox was worth half he belongs -it once to the plaintiff. What is still the difference? When the plaintiff has consecrated him (according to R. Aqiba he is sacred, and according to R. Ishmael he is not until awarded to the plaintiff by the court). Rabha questioned R. Na'hman: If the defendant sold the ox, how is it, according to R. Ishmael, who holds him to be a creditor, is the sale valid? Or perhaps because the ox becomes subject to the appraisement of the court it is not valid? He answered: The sale is not valid. But have we not learned in a Boraitha that it *is* valid? He may recover him. If it is so, what is the validity of the sale? In case the vendee used him in the meantime in ploughing he need not pay for it. Then infer from this that if a borrower sells his personal property the Beth Din can recover it for the benefit of the lender. Nay, from this case in which the Scripture made the ox hypothecary nothing can be inferred.

R. Ta'hlipha, of Palestine, taught in the presence of R. Abuhu: If he sold him it is invalid, but if he consecrated him it is valid. Who sold him? The defendant, and all agree that the sale is not valid, because even according to R. Ishmael be is still subject to the appraisement in court, and if he consecrated him all agree that he is sacred, because even according to R. Aqiba, who holds that he belongs to the plaintiff without any appraisement, a sacred thing is different by reason of the statement of R. Abuhu, who said that it was so decreed for fear that it might be said that consecrated things become ordinary without being redeemed.

The rabbis taught: "A non-vicious ox that has done damage, if he was sold, consecrated, slaughtered, or presented to somebody, the act is valid if it was done before the rendition of judgment; if, however, either of these things were done after rendition of judgment, it is null and void. If the creditors levied upon the ox, whether the damage was done before or after the recognition of the court of the debt the levy is void, for the damages in case of a non-vicious ox are paid from his body only. In case of a vicious ox all the above acts of his owner are valid without regard whether it was done before or after rendition of judgment, and even the levy of creditors is valid regardless of whether the damage was done before or after

recognition, for the reason that damages in case of a vicious ox are paid from the best estates only.

The Master said: "If sold it is valid, as far as the non-payment for the ploughing he has done; if it was consecrated it is valid for the reason stated by R. Abuhu; and if slaughtered or presented to somebody the act is valid." It would be correct as to presenting, because it means as far as the value of ploughing is concerned, but in case he was slaughtered, why should not the damage be collected from the value of his meat? Have we not learned in a Boraitha: "It is written: 'The *live*.'" Whence do we know that if even it was slaughtered? Therefore it is written: "And they shall sell the ox," which means in whatever state he is? Said R. Shizbi: This (that the act is valid) was necessary only as to the reduction in value on account of being slaughtered (*i.e.*, the owner of the ox need not pay the amount of such reduction).

The rabbis taught: "An ox of the value of two hundred zuz that gored another ox of the same value, and injured him to the extent of fifty, and the injured ox then improved and became of the value of four hundred, although it is possible that if not for the injury he would have improved still more, and would have become of the value of eight hundred, still he pays him only as at the time of the injury (one-half of fifty zuz); if, however, the injured ox became lean and decreased in value, he pays him according to the value at the time of the trial. If the ox who caused the injury improved, he pays him as at the time of the injury; if he decreased in value, as at the time of the trial. On account of what was that leanness of the plaintiff's ox? If it was on account of work done with him by the plaintiff, let the defendant say, Why should I suffer for the decrease in value caused by you? Said R. Ashi: The case is that the leanness was caused by the blow, in which case the plaintiff can say the horn of your ox is still impressed (in my ox) and this caused leanness.

MISHNA *XI*.: An ox of the value of two hundred that gored another ox of equal value and the carcass was of no value whatever. R. Meir holds that of such a case it is written [Ex. xxi. 35]: "Then shall they sell the live ox and divide his money." Said R. Jehudah to him: So the Halakha prevails in reference to the passage cited by you, but how is the last part of this passage [ibid., ibid.]: "And the dead one shall they also divide"? This can apply to a case where the carcass of the ox

(which ox was of the same value as the goring ox) is still worth fifty Zuz, in which case each

takes one-half of the live and one-half of the dead ox.

GEMARA: The rabbis taught: "An ox of the value of two hundred zuz that gored an ox of equal value and the carcass was worth fifty, each one takes one-half of the live and one-half of the dead ox, and this is the case of the ox intended by the Scripture." Such is the dictum of R. Jehudah. R. Meir, however, holds this is not the ox intended by the Scripture, but it is where it is as stated in the beginning of the Mishna, and the provision of the passage that "also the dead ox shall they divide" is carried out by appraising how much the carcass is worth less than when the ox was alive, and one-half of that difference (seventy-five zuz) is paid to the plaintiff from the live ox together with the carcass. If it is so, then, according to both, if the carcass is worth fifty each of them gets one hundred and twenty-five, as even according to R. Jehudah, who divides both oxen between them, the share is only one hundred and twenty-five, what is the difference between them? Said R. Johanan: The difference is as to the increase in value of the carcass (since the time of the injury). R. Meir holds that it belongs wholly to the plaintiff, and R. Jehudah holds that they are considered partners, and each takes one-half. And this was because there presented itself a difficulty to R. Jehudah: If you say that the Scripture sympathized with the defendant and meant that he should share in the improvement (of the carcass), would you say in case of an ox worth five selas (twenty zuz) that gored an ox worth one hundred and the carcass is worth fifty zuz, that they also must divide equally the live and the dead ox (and so the defendant will still profit in that, because the one-half carcass is worth twenty-five zuz, and half of the live is worth ten zuz, which makes thirty-five zuz, while the value of the defendant's ox was only twenty zuz), and where do we find such a case wherein the defendant should still profit? And furthermore, is it not written plainly [ibid. 36]: "He shall surely pay," which signifies that the defendant *pays*, but should not profit. [For what purpose is this additional passage adduced? Lest one say that he pays only where the plaintiff does actually suffer damages, but where he does not, as, for instance, an ox worth five selas that gored an ox of equal value, and the carcass was worth six selas (by increase in price, in which case the plaintiff profits), in such a case the defendant may profit, therefore this

passage is adduced to show that the defendant should always pay but never profit.] Said R. A'ha bar Ta'hlipha to Rabh: If it is so, then according to R. Jehudah, who insists upon the division of both, we find instances according to him that a non-vicious ox pays more than one-half, and the Scripture provides expressly [ibid. 351: "Then shall they sell the live ox and divide his money" (*e.g.*, when an ox worth fifty gored one worth forty, and the carcass was worth twenty, then the damage amounts to twenty, and if the plaintiff take one-half of the live ox which is twenty-five, and one-half of the carcass which is ten, he would receive altogether thirty-five, which is more than one-half of the damage). Nay, R. Jehudah also holds of the rule that the difference should be divided and deducted from the live one. Whence does he deduce it? From [ibid., ibid.]: "And the dead ox also they shall divide." But does not R. Jehudah deduce from this passage that each takes one-half of the dead and one-half of the live one? The passage could read: "And the dead ox they shall divide." Why "and the dead ox *also*"? To infer both.

MISHNA *XII.*: There are cases when one is liable for the acts of his ox and is free if they are his own acts, and *vice versa*. How so? If one's ox cause disgrace the owner is free, 1 but if he himself did so he is liable. If his ox blinded the eye of his slave or knocked out his teeth the owner is not liable (*i.e.*, the slave is not to be manumitted), but if he himself did it he is. If his ox wounded one of his parents he is liable, but if he himself had done so he is free; and the same is

the case when his ox set fire to a barn on Sabbath he is liable, while if he himself did so he is free, for in both last cases he is guilty of a capital crime.

GEMARA: R. Abbuhu taught in the presence of R. Johanan: All those whose acts are of a destructive nature are not liable (as regards the observation of the Sabbath), except those who wound and set fire. Said R. Johanan to him: Go and teach this outside of the college (*i.e.*, such a statement is not to be respected by the college), as those two mentioned are no exceptions (and are also of destructive nature); they can only constitute exceptions in case of the wounding (of an animal when he needed the blood) for his dog, 2 and in case of fire when he needed

the ashes (*i.e.*, when the act was done with an intention to derive benefit from the things acted upon).

There is an objection from our Mishna: "An ox that set fire to a barn," etc. And as the Mishna equals the owner to his ox, is it not to assume that as the ox had no need of the fire so also had the owner none, and still it is stated that he is free (civilly) because he is guilty of a capital crime (hence we see that setting fire on Sabbath is an exception)? Nay, the equality is in the reverse; that is, as the owner did it with some purpose, so also did the ox. How is this possible of an ox? Said R. Avia: It may be explained that it was an intelligent ox that had an itch on his back, and he started the fire in order to roll in the ashes. But whence do we know that this was his intention? From the fact that he really did roll in the ashes. Are there such intelligent oxen? Yea, there are, as there was an ox that belonged to R. Papa, who when he once suffered from toothache removed the cover from the beer barrel and drank from the beer to be cured.

Said the rabbis to R. Papa: How can you say that the equality is that the ox imitated the owner? Does not the Mishna state that if his ox cause disgrace he is free, but not if he himself: now can an ox have such intelligence as to intend to disgrace? Yea, for instance, when he intended to do damage (but caused only disgrace), in which case the Master said elsewhere, if he intended to do damage but caused only disgrace, he is liable.

MISHNA *XIII*.: An ox that ran after another ox, and the latter was injured, the plaintiff claims that the ox injured him while the defendant claims that it was not so, but that the injury was caused by rubbing against a stone: the rule is that the burden of proof is upon the plaintiff. If two oxen having different owners were running after a third, each of the defendants claiming that the other one's ox caused the injury, both of them are free; if the two oxen belonged to one person both are liable (as explained further on); if one ox was a big one and the other a small one, the plaintiff claims that the big one caused the injury while the defendant claims that the small one caused it (the difference being that the big one is of sufficient value to pay the half damage while the small one is not); or if one was non-vicious and the other vicious, the plaintiff claiming that the vicious one did the injury, and the defendant claiming that the non-vicious did it, the burden of proof is upon the

plaintiff. If the defendant's oxen were two, one a big one and the other a small one, and so also were the plaintiff's oxen, the plaintiff claims that the big one injured his big ox and the small one

injured the small ox, and the defendant claims that the reverse was the case (so as to reduce his payments); or when one was a non-vicious and the other one a vicious one, the plaintiff claims that the vicious one injured the big one and the non-vicious the small one, while the defendant claims that it was not so, but that the non-vicious injured the big one and the vicious the small one, the burden of proof is upon the plaintiff.

GEMARA: Said R. Hyya bar Abba: This statement (in the Mishna, that the plaintiff has the burden of proof) shows that Summachus' companions differ with him, for Summachus holds (*post*, page 106) that money, the ownership of which is doubtful, must be divided among its claimants. Said R. Abba bar Mamel to R. Hyya bar Abba: Does then Summachus hold so even if both of them claim to be positive in their statements? He answered: Yea. And whence do we know that our Mishna also speaks that both claim to be positive in their statements? Because it teaches plainly: One party says: *Your* ox; and the other party says (positively): *Not so*. R. Papa opposed: According to your explanation that both claim to be positive in their statements, the last part must naturally also treat of such a case; then how is it to be understood: If one was a big one and one was a small one, etc., the plaintiff has the burden of proof; how would be the law if he does not prove: he takes according to the statement of the defendant? Would this not be in contradiction to Rabba bar Nathan, who says that where one party claims to have sold another party wheat, and the other party admits to have bought of him barley, that the latter is free (and according to the above rule the seller would be entitled to recover for barley)? We must, therefore, say that the case is when one claims that he is positive, while the other one is not positive. Let us see who claims that he is positive. Shall we assume that the plaintiff claims that he is positive and the defendant does not, then there will still be a contradiction to Rabba bar Nathan. We must, therefore, say that the plaintiff does not claim that he is positive while the defendant does so (and therefore he claims his damages from both, and if he does not prove his assertion he recovers only according to the defendant's statement). Now as the latter part speaks of a case where the plaintiff was uncertain and the defendant was certain, the

same must be the case in the first part of the Mishna, and even Summachus holds to his theory, because if not it was not necessary for the Mishna to teach this case. Nay, in the latter part of the Mishna the plaintiff is not positive and the defendant is positive, and in the first part the reverse is the case.

But after this explanation the first part and last part treat of different cases; then could you not explain that the first part speaks where both were positive (and only then Summachus says that the money should be divided), and the last part treats where one is positive and the other is not (in which case Summachus does not oppose). It can be said: Certainty and uncertainty in the first part, and uncertainty and certainty in the other part is still one and the same case, but if both assert certainty in one case and certainty and uncertainty in the other case, there are two different things, and if the Mishna should mean so it would state so plainly.

"*Both are liable*." Said Rabha, of Pharsika, to R. Ashi: Infer from this that if non-vicious oxen cause damage the plaintiff may collect his damages from any one of them. Nay, the case in the Mishna is that both oxen were vicious. Said R. A'ha the elder to R. Ashi: If the case were that they were vicious, why is it stated that *both* are liable? It ought to be "*he*" (the man) is liable, meaning the owner (as the damage is paid from the best estates). We must, therefore, say that the case is that they were non-vicious, and it is according to R. Aqiba, who holds that they (the

parties) are considered partners, and the reason here is that both oxen are on hand, in which case he cannot shift the responsibility upon the missing ox, but where one of them is missing the defendant may say to the plaintiff: Prove that *this* ox has done the injury, and I will pay you.

Footnotes

69:1 The text reads, "as the cane of a blind one," and Rashi explains it, that when feeling the way with his cane, the blind man places it wherever it happens, longwise or crosswise. The above explanation, however, which is more lucid, is according to Tosphath.

73:1 The Hebrew term [Deutr. xix. 5] being ••••, literally "it found."

78:1 As explained above, p. 53, from the verse Levit. xxiv. 19.

78:2 According to the commentary of R. Hananel.

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CHAPTER IV.

RULES IN REGARD TO OXEN REPEATEDLY GORING OTHER OXEN AND HUMAN BEINGS. OXEN OF ORPHANS AND GUARDIANS AND WHAT IS CONSIDERED "GUARDED."

MISHNA *I.*: An ox that gores four or five oxen one after another, the last of them must be paid from the body of the goring ox (if he was yet considered non-vicious., *e.g.*, when the goring was not in succession 1), and from the balance of the half body the last but one must be paid, and if there was still a balance left the last but two must be paid, so that the later the more privileged. Such is the dictum of R. Meir. R. Simeon, however, says that if an ox of the value of two hundred zuz gores an ox of the same value, and the carcass is worth nothing, each one takes one hundred; if he again gores another of the value of two hundred, the last one takes one hundred zuz, and the former takes fifty, and fifty zuz remain for the owner of the goring ox; if he again gores a third one of the same value, the last one takes one hundred, the last but one takes fifty zuz, and the first as well as the owner takes each a golden dinar (twenty-five silver dinars).

GEMARA: According to whom is our Mishna? It is certainly not according to R. Ishmael, who holds that the plaintiffs are considered creditors, for if it be so, then not the last, but the first would be more privileged, for he was prior to the last one in point of time. Neither can it be in accordance with R. Aqiba, who holds that in case of a non-vicious ox the plaintiff and the defendant are considered copartners, for then if there is a balance left from the body of the ox after the goring of the last one, the same would have to be divided equally among all the plaintiffs previous to the last one, and the decree of the Mishna is that the last but one must be paid, etc. Said Rabha:

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[paragraph continues] The Mishna can be explained in accordance with R. Ishmael, and the difficulty that it is stated that *the later*, the more privileged, which ought to be *the first* (according to R. Ishmael), is to be explained thus: that the plaintiff levied upon the ox, and in such a case the plaintiff becomes responsible for the damage done by the ox while under his control, as he is then considered a bailee for hire as regards damages (and so was the case with all others). But if such was the case, then why is it stated that if there is a balance left it goes to the last but one? It ought to go to the owner of the ox (for all the gorings subsequent to the first one were made while the ox was not under his control). Said Rabhina: The statement in question means that if after the last one was paid from the body of the ox, there still remained a balance, the same must be paid over to the preceding one. 1 And so when Rabhin came from Palestine he said in the name of R. Johanan that the Mishna is to be explained in the same sense that Rabha did; that is, that the Mishna treats only about the negligence of the plaintiffs who took the ox under their control and neglected to sufficiently guard him as was their duty to do.

Now, when the Mishna is explained to be in accordance with R. Ishmael, how is it about the last part: "R. Simeon said, etc., . . . the first as well as the owner take each a golden dinar"? This is certainly in accordance with R. Aqiba's opinion that the goring ox becomes the common property of a copartnership. Then the Mishna would be in accordance with

two different opinions, viz., the first part according to R. Ishmael and the last part in accordance with R. Aqiba. The Schoolmen said: Yea, so it is, for Samuel said to R. Jehudah (concerning this Mishna): "Genius, leave alone the explanation of the Mishna and agree with me that the first part is according to R. Ishmael and the last part according to R. Aqiba." [1]

MISHNA *II*.: An ox that is vicious towards his own species, but not towards other species, or towards human beings but not towards animals, or towards young cattle, but not towards full-grown cattle, the whole damage is to be paid to those towards which he is vicious and half to those towards which he is not vicious. The disciples asked R. Jehudah what the law was when an ox was vicious on Sabbath days, but was non-vicious on week days. He answered: The same is the case also here. He pays the whole for damage done on the Sabbath days, and half for that done on week days. When is such an ox restored to non-viciousness? If he refrained from doing damage for three Sabbath days in succession.

GEMARA: It was taught: R. Zbid said: The Mishna teaches "*and not vicious*," which means that as to other species it was certain that he was not vicious, but if it is not certain he is to be considered vicious towards all. R. Papa, however, said: The Mishna teaches "he is not vicious," which means that an ox that is vicious towards his species is not considered vicious towards others. The reason for their difference of opinion is the following: The former lays more stress on the last part of the Mishna, which teaches that when he is vicious towards young cattle he is not considered vicious towards full-grown cattle, and this could be correct only in accordance with his interpretation that it is *certain* that he was not vicious, but according to the explanation that he is considered non-vicious this statement is entirely superfluous, as it was already stated that he is not considered vicious even to young cattle if it is not certain, and it is self-evident that so much the less towards full-grown cattle. The latter attaches more importance to the first part of the Mishna, which teaches that if vicious towards human beings he is not considered so towards cattle, and this could be correct only if it is explained that if it is uncertain that he is vicious to cattle he is also considered non-vicious; then the

statement of the Mishna is necessary to teach us that, although he is vicious towards human beings, he is still not considered so towards cattle, but if you should explain that he is considered vicious, even when it is uncertain, then this statement is entirely superfluous, as it was already stated that he is considered vicious even from cattle to cattle, and it is self-evident that so much the more so when he is vicious toward human beings.

Said R. Ashi: The last part of the Mishna could support R. Zbid only. Come and hear: "The disciples questioned R. Jehudah what the law was, etc., . . . and he answered, etc. . . ." Now, if the Mishna is to be explained according to R. Zbid, that when not certain he is considered vicious, both the question and the answer are correct (*i.e.*, they questioned him, when he was

certain for Sabbath days and not certain for week days, how was the law); but if you will explain the Mishna otherwise (*i.e.*, as R. Papa) what was their question? The Mishna states plainly that he is not vicious. Did they intend to teach R. Jehudah and not to question him? And, secondly, was it then an answer of the latter? He only repeated what they said? Said R. Janai: R. Zbid's opinion is supported even from the first part of the Mishna, which states: "The whole is paid to those toward whom he is vicious, and half is paid to those toward whom he is not." This statement can be correct only when he is certain to be non-vicious; then it is correct that the Mishna explains its former statement: To those toward whom he is vicious he must pay so much, and to those, etc., but if the Mishna means to state that one vicious toward human beings *is not* vicious toward cattle, to what purpose is the latter statement? Is it, then, not known how much a vicious ox and how much a non-vicious pays? If, however, an ox gored another ox, an ass, and a camel, he must be considered vicious toward all species of cattle even according to the theory of R. Papa (as these three species make it certain that he is vicious).

The Rabbis taught: There is a case where an ox may become vicious "in alternate order," namely, if he meets an ox and gores him, and subsequently he meets another ox and does not, the third however he meets he again gores, when meeting the fourth one, though, he does not, but when meeting the fifth one he does; and again the sixth he does not. There is another case where an ox may become vicious "in alternate order" towards all species, namely, if he meets an ox and gores him, and subsequently

an ass and does not, a horse and does, a camel and does not, a mule and does, a wild-ass and does not gore him.

The Schoolmen propounded a question: How is it if he gores three oxen in succession and subsequently one ass and one camel: shall we count the third ox together with the former two, and should he be considered vicious toward oxen only but not toward other species of cattle, or shall we count the last ox with the ass and camel, so that he gored three times in succession three different species of cattle, and he is then considered vicious toward all species of cattle? This question remains unanswered. [1]

Rabha said: "If an ox gored three times, each time upon hearing the blowing of a horn, he is considered vicious when hearing the sound of a horn." Is this not self-evident? Lest one assume that the first time is not to be counted because he became frightened, he comes to teach us that it is counted.

MISHNA *III.*: An ox belonging to an Israelite that gored an ox belonging to the sanctuary, or of the sanctuary that gored one of a commoner, there is no liability, for it is written [Ex. xxi. 31]: "The ox of *another*" (man), but not of sanctuary. [2]

GEMARA: This Mishna is not in accordance with R. Simeon b. Menassia of the following Boraitha: "An ox of a commoner that gored an ox of the sanctuary, or *vice versa*, is free, for it is written: 'The ox of *another*,' but not of the sanctuary. R. Simeon b. Menassia, however, says that an ox of the sanctuary that gored an ox of a commoner is free, but an ox of a commoner that gored an ox of the sanctuary, whether vicious or not, the whole damage must be paid." Let us see what the reason is of R. Simeon's opinion. If R. Simeon interpreted the word "*another man*"

literally, why, then, should the commoner's ox be liable when he gores an ox of the sanctuary (the sanctuary cannot be called another man)? And if he interpreted the word not literally, why should an ox of the sanctuary be free when be gored a commoner's ox? And if one might say that although be interpreted the word literally, he nevertheless makes the

commoner pay on the ground of the following *a fortiori* conclusion: When one commoner's ox gores a similar ox he must pay; so much the more if a commoner's ox gores one belonging to the sanctuary, and then his statement that even if he was non-vicious the whole damage must be paid would not be correct, as there is a rule that it is sufficient that an inference should be equal to the law from which it is derived (and under no circumstances more rigorous); why then must he pay the whole damage if it is based only on this *a fortiori* conclusion? Said Resh Lakish: In reality in all cases the whole damage must be paid; the verse, however, making an exception of goring and stating that half only is to be paid, added at the same time the word

••••(which means, literally, "his comrade"), with the intention to exclude all those cases where it cannot be considered of his comrade, *e.g.*, of the sanctuary; and the correctness of this statement may be proved from the fact that when the verse speaks of a vicious ox the above word "Re-ehu" is not mentioned.

When the daughter of R. Samuel bar Jehudah died, one of the Rabbis said to Ula: Let us go and console him. He said to them: What have I to do with the consolation of a Babylonian, for it may turn into a blasphemy, as they are in the habit of saying in such cases, "What can be done?" (against the will of God), which means that if something could be done against His will they would, and this is certainly a blasphemy. He then went alone, and his consolation was as follows: It is written [Deut. ii. 9]: "And the Lord said unto me, Do not attack the Moabites, nor contend with them in battle." Could it, then, ever enter Moses' mind to engage in war without the consent of the Lord? But Moses drew an *a fortiori* conclusion for himself, thus: If of the Midianites who only came to help the Moabites the Scripture reads [Numb. xxv. 17]: "Attack the Midianites, and smite them," the Moabites themselves so much the more? The Holy One, blessed be He, then said: "Thy conclusion was so because thou couldst not imagine what I bear in my mind. Two good doves I have to bring forth from them; namely, Ruth the Moabite and Naomi the Amonite." Now is there not an *a fortiori* conclusion to be drawn? If for two good doves the Holy One, blessed be He, has saved two great nations and has not destroyed them, so much the more would He have saved the life of the master's daughter if she would be righteous and something good would have to come forth from her.

MISHNA *IV.*: An ox of a sound person that gored an ox belonging to a deaf mute, idiot, or minor, there is a liability. If the reverse was the case, there is none. An ox of the three last-named persons that gores, the court should appoint a guardian and the witnesses should testify in the presence of the guardian. If in the meantime the deaf mute is cured, the idiot becomes of sound mind, or the minor becomes of age, the ox is restored to his non-viciousness. Such is the dictum of R. Meir. R. Jose, however, says that he remains in the same position. An ox of the stadium (*i.e.*, the place where oxen are trained for fighting) is not liable to be killed when killing even a human being, for it is written: "If an ox *gore*," which means of his own inclination, but not when he is trained to do so.

GEMARA: Does, then, the Mishna not contradict itself? First it states that if an ox of the three named persons that gores an ox of a sound person, there is no liability, from which it may be inferred that no guardian is to be appointed when the ox is non-vicious to enable the plaintiffs to collect from his body, and immediately after it states that an ox of those three persons that gores, the court should appoint a guardian and witnesses should testify before him, from which it may be inferred that a guardian is appointed for the purpose of enabling to collect from his body? Says Rabha: This is to be interpreted thus: If they were known to be goring oxen the court appoints a guardian, and the witnesses are examined in the presence of the guardian and the ox is declared vicious, so that if he subsequently gores again the damage is collected from the best estates. From whose best estates? R. Johanan said: From those of the orphans. [1] R. Jose b. Hanina said: From those of the guardian.

Did R. Johanan, indeed, say so? Did not R. Jehudah say in the name of R. Assi that the estate of orphans must not be touched (until the orphans reach majority, even when there is a written obligation of their deceased father to be paid), unless interest would grow on the obligation (*e.g.*, when the deceased borrowed money from a Gentile). R. Johanan, however, says also when the widow's marriage contract is to be paid, because she must be paid out of the estate a sum of money for her subsistence so long as her marriage contract remains uncollected. Hence we see that only for the purpose of supporting the widow, or where there is interest growing, R. Johanan permits to collect

from orphans' estates, but not otherwise. Reverse the statement in our case, that R. Johanan holds from the estate of the guardian, and R. Jose b. Hanina said from those of the orphans. Said Rabha: Because there is a contradiction between the statements in the name of R. Johanan, you make R. Jose err. R. Jose b. Hanina was a judge, and he always dived to the bottom of the law. Therefore the statement in our case is not to be reversed, but the reason why R. Johanan states in our case that it shall be collected from the estates of the orphans, is because there is no other way, as if it should be collected from the estates of the guardian nobody would consent to become one. And the reason for Jose b. Hanina's statement that it shall be collected from the guardian's estates is because the guardian will be able to collect what he has paid from the orphans' estates when they reach majority.

There is a difference of opinion of the Tanaim as to whether a guardian is appointed in order to collect from the body of the ox in the following Boraitha: "An ox who has gored and his owner subsequently became a deaf mute, an idiot, or went to the sea countries, Jehudah b. Nekussa in the name of Summachus holds that he must be considered non-vicious until the evidence of viciousness was given in the presence of his owner; the sages, however, hold that a guardian is appointed and the evidence is given in his presence. Should it happen that the deaf mute became cured, the idiot of sound mind, or the owner has returned home, Jehudah b. Nekussa in the name of Summachus says that the ox is restored to his non-viciousness, and remains so until the evidence is given in presence of the owner, and R. Jose says that he remains in the same position he was in." Now let us see what Summachus does mean by his first statement that he must be considered non-vicious, etc. Shall we assume that the ox was still non-vicious; *i.e.*, he had not gored thrice? Then how shall his second statement be explained, that he is *restored* to his non-viciousness, which means that he was already vicious? We must then say that the statement that he is considered non-vicious means that it is considered that he had not gored at all, hence no

guardian is to be appointed to collect from his body, and the sages say that there is one appointed. This is the explanation of the first part of the above Boraitha. In the last part of the Boraitha they differ on another point; that is, if the change of control also changes his state (*i.e.*, whether the change from the control of the guardian to

that of the owners changes also his viciousness to non-viciousness)? Summachus holds that it does, and R. Jose holds that it does not.

The rabbis taught: "An ox of a deaf mute, idiot, or minor that gored, according to R. Jacob, the half damages must be paid." How was the case? If it was a non-vicious ox it is self-evident that only half is to be paid, as the same is the case with an ox of a sound man, and if R. Jacob means that only half is paid even if he was vicious, let us see under what circumstances it may be said so. If the necessary care was taken of him then even the half should not be paid (for it is plainly written [Ex. xxi. 29], "and he hath *not* kept him in," but here in this case he had kept him in), and if the necessary care was not taken of him why should not the whole damage be paid (as according to R. Jacob there is no difference who owns the ox)? Said Rabha: This can be explained that it was a vicious ox, and care was taken of him, but not so much as was necessary to prevent him from coming into contact with other oxen; and the reason of R. Jacob's opinion is because he holds in accordance with R. Jehudah, who says that the state of non-viciousness continues until he is declared vicious, and he also agrees with him in that imperfect care is sufficient also for a vicious one, and he agrees also with the Rabbis that a guardian is to be appointed to collect from the body of the ox. Said Abayi to Rabha: But do not R. Jacob and R. Jehudah differ from each other in their opinions? Have we not learned in the following Boraitha that the ox in question R. Jehudah holds him liable, and R. Jacob holds that he must pay half? Said Rabbah b. Ula: R. Jacob only explains the liability to which R. Jehudah holds him, but does not differ with him. Rabhina, however, says that they do differ, but the case was that there was a change of control; that is, that the deaf mute was cured, etc. R. Jehudah holds that he remains in the same position he was in (and therefore he pays the whole), and R. Jacob says that the change of control changes also his status.

The rabbis taught: "Guardians pay from the best estates, but do not pay the atonement money" (see Ex. xxi. 30). Who is the Tana who holds that the money (which is to be paid according to the verse mentioned) is in atonement, and orphans need not have atonement, for they are not of age? Said R. Hisda: It is R. Ishmael, the son of R. Johanan b. Broka, of the following Boraitha: "It is written [ibid., ibid., ibid.]: 'And he

shall give the ransom of his life'; that is, the value of the deceased. R. Ishmael, the son of R. Johanan b. Broka, however, says it means the value of the defendant." Shall we not assume that the point of difference is, that the Rabbis hold that the beginning of that verse means the value of the deceased in money as damages, but not in atonement, and R. Ishmael holds that it is in atonement? Said R. Papa: Nay, all agree that it is in atonement, but their point of difference is: The Rabbis hold that the appraisement must be of the person who was killed (because his value is to be paid), and R. Ishmael holds that the appraisement must be of the person of the defendant, because it is written [ibid.]: "And he shall pay the ransom of *his* life." And the Rabbis? Yea, it is true that it states "*his* life," which means that his life is atoned for, but the

amount to be paid for such atonement is the value of the deceased.

Rabha once declared before R. Na'hman that R. A'ha b. Jacob was a great man, and R. Na'hman said to him: When he comes to visit you bring him to me. When he had done so, said R. Na'hman to R. A'ha: Question something of me; and he put him the following question: "An ox belonging to two copartners (who has killed a man), how shall the atonement money be paid? If each copartner should pay the full amount then there would be two atonements, and the verse reads one; and if we should say that each of them shall give only half, then each pays only *half*, while the verse states that 'there shall be laid on *him* a sum of money,' which means the whole sum, and not the half." While R. Na'hman was sitting and deliberating over the case, he put to him another question, as to whether the property of the one who has to Pay atonement is levied upon, as such is the case with one who owes sin and trespass-offerings (this will be explained in Tract Eruchin). And R. Na'hman said to him: Leave alone this question. I am still sorrowful that I could not answer the first question at once.

The rabbis taught: "One who borrows an ox with the understanding that he was non-vicious, and it was found out that he was vicious (and while being under the control of the borrower he gored again), the owner pays one-half and the borrower the other half. When, however, he became vicious while being under the control of the borrower, and he has returned him to the owner (and he gored once more), the owner must pay half and the borrower is free." Let us see: The Master said that in case he was borrowed with the, understanding of

being non-vicious, and was found vicious, each pays one-half. Why shall the borrower pay anything? Let him say to the owner, I have borrowed an ox, but not a lion. Said Rabh: The case was that it was known to the borrower that he was a goring ox. But still, he can say that he was understood to be non-vicious, and he turned out to be vicious, why shall I pay half? Because the owner may answer him: What difference does it make to you in this case, if even he would be non-vicious? As soon as he has gored while being under your control you would have to pay half; the same is now, you pay only half. But still there is a difference, for a non-vicious ox pays from his body, while a vicious one from the best estates. The owner may say: Even in this case there is no difference to you, for you would have to pay for the other half of the ox to me in money. Now let us see (the second part of the Boraitha): "When he became vicious while under the control of the borrower, etc., the borrower is free;" hence we see that the change of control changes his status, and from the first part it is to be inferred that it does not change the status, as the whole damage is to be paid if he gored while under the control of the borrower. Said R. Johanan: Break [1] this Boraitha: the Tana who taught the first part did not teach the last one. Rabba, however, says: The Boraitha cannot be broken, as in the first part it is declared that change of control does not change the status, the same must be the case with the second part. The reason, however, for its decision is because the owner can say as regards the viciousness of the ox, which occurred while under the control of the borrower: The latter did not take care of him as he was not his, and therefore I do not consider him vicious at all. R. Papa, however, says: As in the last part of the Boraitha the control does change the status, so also is it in the first part, but the reason why there the whole amount is to be paid is because the ox always bears the name of his owner, even while under the control of the borrower, and therefore the change of control is not to be considered.

"*The ox of the stadium,*" etc. The Schoolmen propounded a question: Is the ox in question fit for

the altar or not? Rabh said he is, for he was goring by compulsion, and Samuel said he is not, for at any rate a transgression was committed with him. There is a Boraitha supporting Rabh, which states

plainly that the ox of a stadium is not guilty of death, and is fit for the altar.

MISHNA *V.*: An ox that killed a man by goring him, if it was a vicious one, the atonement money is to be paid, but not when he was a non-vicious one. Both of them, however, must be killed. The same is the case when he gored a minor male or female. If he gored a male or a female slave he must pay thirty selas, without regard whether their value was one thousand zuz or only one dinar.

GEMARA: If a non-vicious ox killing a man must be killed, how can there be found a vicious ox in regard to man? Said Rabba: The case was that he was running after three men, two of whom escaped, and the court determined from the circumstances that if he would have caught those two he would have killed them. R. Ashi, however, holds that such determination is of no value, but the case was that he gored two, injuring but not killing them at once, and then gored a third one to death, when the first two also died, and therefore he is considered vicious as to the third to pay the atonement money. R. Zbid, however, says: By "vicious one" is meant simply that he has killed three animals, and an ox that is considered vicious as to animals is considered so also as to human beings. 1

"*Both of them*," etc. The rabbis taught: "From [Ex. xxi. 28]: 'Then shall the ox be surely stoned'; is it not self-evident that he became a carcass, and a carcass must not be eaten, why then does the verse add 'and his flesh shall not be eaten'?" The verse comes to teach that if he was slaughtered after judgment was rendered the flesh must not be eaten. This is the prohibition of eating it, but whence is it deduced that no benefit must be derived from it? Therefore it is written [ibid., ibid.]: "But the owner of the ox shall be quit," which means he shall be quit from any benefit. Such is the explanation of Simeon b. Zoma. But whence do we know that the words, "his flesh shall not be eaten," mean when he was slaughtered after judgment was rendered; perhaps it means after he was stoned, and the words "shall not be eaten" are to be explained that he shall not derive any benefit, but if he was slaughtered the flesh may be eaten also? The prohibition to eat it is inferred from

[paragraph continues] "surely stoned," and if the verse "his flesh shall not be eaten" would mean to prohibit any benefit, it should have stated "shall not be derived any benefit," or "he shall not be eaten." Why the addition "his flesh" to indicate that if he was turned by slaughtering into food, as other meat, it is also prohibited?

The rabbis taught: It is written [ibid. 28]: "But the owner of the ox shall be quit." Said R. Eliezer: He is quit from paying the half of atonement money. (One might say as a non-vicious pays half damage in case of goring an animal, the same is the case when he first gores a man.) Said R. Aqiba to him: Is this not self-evident? The half payment is collected from his body, and here when the ox is stoned its owner may certainly say: "Bring it into court and collect from it."

Said R. Eliezer to him: Do you consider me as common as not to know such a case? I speak of an ox that is not guilty of death; for instance, if he killed a man in the presence of one witness, or in the presence of his owner only (in which case the ox cannot be killed, but one might say that nevertheless the half atonement money must be paid). [You say in the presence of his owner, which means that the owner admits that it was so, then it would be equal to one who confesses of being liable to pay a fine, and the law is that he who confesses of being liable to fine is free? R. Eliezer holds that this money is in atonement and not a fine.]

In another Boraitha we have learned: Said R. Eliezer: "Aqiba, do you consider me so common as to speak of an ox which is to be killed? I speak about an ox who intended to kill an animal but killed a human being, or who intended to kill a non-viable child and killed a viable one." Which of these two statements has R. Eliezer made to R. Aqiba first? R. Kahana in the name of Rabha said the one just mentioned was made first. R. Tibiumi in the name of the same authority said that the first statement was made first. The statement of the former is to be compared to a fisher who catches fishes in the sea; if he finds big fish he takes them, and if afterward he finds small ones he takes them also (although the second statement is much straighter evidence than the first one, he nevertheless made also the other statement), and R. Tibiumi's statement is to be compared to a fisher who keeps the small fish if he catch them first, but catching afterward big fish he abandons the small ones and keeps the big ones. (So was the case with R. Eliezer. He tried to give him evidence from the first statement, but as this

was easily objectionable he tried to find stronger evidence and gave it to him.)

We have learned in another Boraitha: "But the owner of the ox shall be quit." R. Jose the Galilean said that means that be is quit from paying the value of *children* (if she was pregnant). Said R. Aqiba to him (Is it necessary to have a separate verse for this)? Is it not written [Ex. xxi. 22]: "If men strike, and hurt a woman with child," etc., from which is to be inferred that only in case of human beings there is a liability for hurting children, but not in case of oxen? (Says the Gemara): Is not R. Aqiba correct? Said R. Ula, the son of R. Idi: Another verse is necessary for the following reason: From the verse just mentioned one might say men, but not oxen that are equal to men. That means, as men are considered always vicious, so vicious oxen are free from liability for hurting children, but non-vicious oxen should be liable. Therefore comes the other verse, "The owner of the ox shall be quit," to teach that even in such a case there is no liability. Said Rabha: Shall the native remain on earth and the stranger be lifted up to the highest heaven? [1] (*i.e.*, how can it enter the mind that a vicious ox shall be free and a non-vicious shall be liable?) Therefore said R. Ada b. A'hba: (This verse alone would not be sufficient, for) in case of men they are liable for the children only when they intended to strike each other and struck the woman, but if they intended to strike the woman herself there is no money liability because they are guilty of a capital crime; but in case of oxen one might say that even when they intended to strike the woman herself their owner shall be punished also to pay for the children, therefore the expression "shall be quit" indicates that it is not so. And so was it taught plainly in a Boraitha which R. Hagi brought when he came from the south, as R. Ada b. A'hba explained it.

We learned in still another Boraitha: R. Aqiba said: "But the owner of the ox shall be quit," means from the payment for a slave (in case he was killed by the ox). But why should not R. Aqiba say to himself, as he said above to R. Eliezer, page 143: "Bring it into court and collect from it," as the ox must be stoned? Said Rabha: The verse is nevertheless needed for the

following reason: One might say: Because there is more rigorousness; about a bondman than about a freeman, as for a bondman thirty shekels are paid even if he was worth only one

shekel, and in case of a freeman his actual value only is paid, therefore it might be said that the payment for the bondman must be from the best estates; hence the verse to make him quit.

There is a Boraitha in support of Rabha, as follows: "The owner of the ox shall be quit." Said R. Aqiba: Quit from payment for the bondman: but why is a verse needed for that, is it not common sense? He is liable for a bondman and is liable for a freeman: as in the liability for a freeman you made a distinction between a non-vicious ox and a vicious one, is it not common sense that there shall also be made the same distinction in the liability for a bondman. And in addition to that we may draw the following *a fortiori* conclusion: A freeman for whom there is a liability for his full value, and nevertheless there is a distinction between a vicious and non-vicious ox, a bondman for whom only thirty selas are paid (although he may have been worth one hundred or more), so much the more that there ought to be a distinction between a vicious and non-vicious one (why, then, is the verse needed)? There is more rigorousness about a bondman than about a freeman, for in case of the latter, if he was worth one sela he pays that much--that is, only the actual value--but in case of a bondman thirty selas are paid if even he was worth one sela, and therefore one might say that whether vicious or non-vicious the full amount must be paid, hence the verse that he shall be quit.

The rabbis taught: It is written [ibid., ibid. 29]: "And he killeth a man or a woman." Said R. Aqiba: What does the verse mean to teach us by the expression "a man or a woman," if it is only to teach that a woman is equal to a man? This was already stated in the preceding verse: "If an ox gore a man or a woman." This verse is to make a woman equal to a man in this respect, that as the damages for the killed man must be paid to his heirs, so also in the case of a woman it is paid to her heirs. But does R. Aqiba hold that her husband does not inherit from her? Have we not learned in the following Boraitha: "It is written [Numb. xxvii. 11]: 'And he shall inherit it'? From this is to be inferred that the husband inherits from his wife." So said R. Aqiba. Said Resh Lakish: R. Aqiba meant the atonement money, which payment is made only after her death, and thus it is only considered inchoate and the husband does not inherit such a share in her inchoate as he does in her existing estates. But what is the reason that it is collected only after

her death? Perhaps it is to be collected as soon as the court came to the conviction that she must die from the injuries. Therefore it reads [ibid., ibid. 29, 30]: "And he killeth a man or a woman, the ox shall be stoned, and his owner also should of right be put to death. But there shall be laid on him a sum of money in atonement." From which is to be inferred that the money is paid only when "his owner shall of right be put to death," which cannot be when she is still alive. But did not R. Aqiba say that even in cases of damage her husband does not inherit from her? Have we not learned in a Boraitha: "If one struck a woman and caused her to abort he must pay for the damage and pain to herself, and the value of the children to the husband; if her husband is dead he pays to *his* heirs; if the woman is dead he pays to *her* heirs. If she was a bondwoman and became free, or she was a proselyte, the one who has to make the payment need not pay, for he himself acquires title to the payment, as these classes of persons have no legal heirs." Hence we see that even for the damage and pain the payment must be made to her heirs and not to the

husband. Said Rabba: The case was that she was a divorced woman; and so also said R. Na'hman: If the case was with a divorced woman, why should she not take a share of the money paid for the children? Said R. Papa: The Scripture has awarded the money for the children to their father, even if they were begotten illegally, as it is written [Ex. xxi. 22]: "As the husband of the woman lay upon him."

Resh Lakish said: An ox that killed a bondman unintentionally is free from the payment of the thirty shekels, as it is written [ibid., ibid. 32]: "Thirty shekels shall be given to his master, and the ox shall be stoned," from which it is to infer that only when the ox is to be stoned the money is to be paid, but not otherwise. Said Rabba: The same is the case as regards atonement money in case the ox killed a freeman unintentionally, for it is written [ibid.]: "The ox shall be stoned, and his owner also should of right be put to death, but there shall be laid on him a sum of money in atonement," from which is to be inferred that only when the ox is stoned, etc., the atonement money is to be paid, but not otherwise. Abayi objected: We have learned: "(If one confess, saying) my ox has killed a certain person, or his ox, he has to pay on his own testimony." Does it not mean atonement money also? Nay, it means the money for damages. If it is so, why does the latter part state.

"My ox has killed the slave of a certain man; be is not compelled to pay on his own testimony"? Now if this is not the fine but damages, why should he not pay? Said Rabba to him: I could answer you that the first part treats of damages and the latter of fine, but I do not like to give you a *far-fetched* answer. Both parts treat of damages, but in the first instance the atonement money is paid upon his own testimony under the following circumstances: That witnesses came and testified that his ox killed a man, but were unable to testify whether he was vicious or non-vicious, and the owner admits that he was vicious, in such a case he has to pay the atonement money on his own testimony, but where there are no witnesses he pays only the damage, but not the atonement money. And in the case of a slave, if witnesses come and testify that the ox killed the slave, but they are unable to testify whether he was vicious or not, and the owner admits that he was vicious, he has not to pay the fine upon his own testimony, and where there are no witnesses he need not pay even the damages. R. Samuel b. Itzhak objected: We have learned: "The same liability one has for a freeman he also has for a bondman, either as to atonement money or as to the death penalty." Is there then any atonement money in case of a bondman? We must therefore say that it means damages; hence we see that one pays damages even on his own testimony. Some say that he himself answered this objection, and others say that Rabba said to him: This Boraitha is to be explained thus: In every case where one is liable to pay atonement money--for instance, a freeman--when done with intention and there is testimony of witnesses, he is liable under the same circumstances to pay a fine of thirty shekels in the case of a slave, and in case he is liable for damages only--as, for instance, when witnesses testify that he has done it without intention--in case of a slave under the same circumstances he pays only damages, but no fine; but if he himself admits, although in case of a freeman he has to pay damages, in case of a slave under such circumstances he is free. Rabha questioned Rabba: If one's fire has done damage without intention is there a liability or not? Shall we assume that it is only in case of an ox where, when intentionally he pays atonement money, when unintentionally he pays damage, but in the case of fire, where there is no atonement money at all (as, if intentionally, he is guilty of a capital crime), if it was unintentionally he shall not pay damages, or the atonement money is not to be taken into consideration, and the damages

must be paid at any rate; as we do not know of any reason why fire should be distinguished from an ox when done unintentionally, as both are his property? This remains unanswered. When R. Dimi came from Palestine he said in the name of R. Johanan thus: It could be written: "Shall be laid on him a sum of money in atonement." Why is the word "if" 1 added? To teach that the atonement money shall be paid when done unintentionally as well as if done intentionally. Said Abayi to him: According to your theory, why should we not say the same of a bondman, where it is also written [ibid. 31] "if," even when done unintentionally; and if you should say that so it really is, why then said Resh Lakish that if an ox killed a slave unintentionally he is free from the thirty shekels? He answered: What contradiction do you adduce? They are two different persons, and differ in their opinions. When Rabhin came from Palestine he said that R. Johanan has declared plainly that the same is the case with a slave when killed, even unintentionally, and that he deduced it from the word "if," as explained above.

"*A male or female minor*." The rabbis taught: It is written [ibid. 3 1]: "If he gore a son or gore a daughter;" that is, to make one liable for little children as for grown persons. But is this not common-sense? There is a liability of a human being for a human being, and the same liability is of an ox for a human being; as in the former there is no difference as to whether young or old, so also in the latter case, and this can be inferred also by the following *a fortiori* conclusion: In the case of human beings, in which the murderer is guilty only when he is a grown-up person, but not a child, for it is written plainly "*man*" (and a child is not called "man"); in the case of an ox, in which there is no difference as to whether it is old or young (as the Scripture calls him ox from the very same day he was born, Lev. xxii. 27), so much the more that he shall be guilty for children as well as for grown persons. Why, then, is a verse needed? Nay (as to all that was said above could be objected thus): In the case of human beings there is a liability for the four certain things, which is not the case with an ox, and one might say, as in the case of an ox, there is no liability for the four things; so also should there be a distinction between children

and grown persons; hence the above passage. From this passage we deduce only as to a vicious ox; whence do we know that as to a non-vicious one? This is common-sense: As there is a liability for a grown man or woman, and the same liability is for children, and as to grown persons no distinction is made between a vicious and non-vicious ox, the same is the case with children. This can also be inferred by *a fortiori* conclusion: Grown persons, who are responsible for their acts, if they were killed by an ox there is no distinction made between a vicious and non-vicious one; so much the less in case of children, who are not responsible for their acts, that no distinction is to be made whether the ox was vicious or not. Is it not against the rule to draw an *a fortiori* conclusion from a rigorous one to a lenient one to make the lenient rigorous? (It is deduced that no distinction is made between a vicious and non-vicious ox in regard to grown persons from the case of the children, and the verse, "If he gore a son," etc., speaks of a vicious ox; now you compare again the case of children to the case of grown persons, to say that as there is no distinction, so is none here, consequently you draw from the rigorous one, *i.e.*, grown persons, which is based only upon common-sense, to the case of children, where the Scripture says plainly that the ox must be vicious, and consequently lenient, as it can be said that only a vicious and not a non-vicious is meant, to make a non-vicious also liable.) And still we can say that the case of children is more lenient, for children are free from observance of the Law, which is not the case with grown man; therefore it is written: "If he gore a son, or gore a daughter," the repetition of "gore" being superfluous, to teach us that there is no distinction between a vicious

and non-vicious ox, between injured and killed, and in all cases it must be paid.

MISHNA *VI*.: An ox that was rubbing against a wall whereby the wall fell upon a human being and killed him; if the ox intended to kill an animal and killed a man, or a non-viable child and killed a viable one, he is free.

GEMARA: Said Samuel: He is free from death, but he is liable to pay the atonement money. Rabh, however, says that he is free from both. But why shall atonement money be paid? Is he then not non-vicious? (Is it not said that he was rubbing against the wall, in which case he is surely non-vicious, at least in this case?) As Rabha explained this (*post*, page 112), that it was vicious in this respect as to fall into pits, so also here that

it was vicious in rubbing against the wall. But if so, then he must be put to death. It would be correct in the case of Rabha's explanation cited concerning a pit, because he noticed therein vegetables, and intending to eat of them he fell in, but in this case here what can be said? He was rubbing against the wall to derive benefit. How do we know that? From the fact that he continued rubbing even after the falling of the wall. But then is this the proximate cause? Is it not the remote cause, as digging up gravel? Said R. Mari, the son of R. Kahana: The case was that the wall was little by little removed by his rubbing until the very moment it fell, and therefore it was the proximate cause, but still there was no intention to kill.

There is a Boraitha which is a support to Samuel and an objection to Rabh, namely: "There are cases in which the ox is put to death and the owner pays atonement money, and there are other cases in which atonement money is paid, but the ox is not put to death, and still others in which the ox is put to death, but no atonement money is paid, and finally such cases in which there is no liability to either. How so? If there are both viciousness and intention, both atonement money is paid and the ox is killed. If viciousness without intention is present, atonement money only; non-viciousness but intentional, the ox is put to death, but no atonement money. Non-viciousness without intention, no liability at all. But if, however, he has done damage unintentionally R. Jehudah holds him liable and R. Simeon holds him free." What is the reason of R. Jehudah's decision? He compares it to atonement money: as the latter is to be paid if unintentional, so also in damages; and R. Simeon compares it to the killing of the ox: as the ox is not to be killed if it was unintentional, so also is the case with damages.

"*If the ox intended to kill an animal*," etc. But how is the case if it intended to kill one man and killed another, is there a liability? If so, then this Mishna will not be in accordance with R. Simeon of the following Boraitha, in which he says "that even if he intended to kill one man and killed another he is also free." And his reason is because it is written [Ex. xxi. 29]: "The ox shall be stoned, and its owner," etc. The killing of the ox is equal to the death of its owner: as the owner cannot be put to death unless he killed *this* man intentionally, so also the ox is not killed unless it killed *this* man intentionally. But whence do we deduce that it is so in case of murder? Because

it is plainly written [Deut. xix. 11]: "And he lie in *wait for him*, and rise up against him," etc.,

which indicates that he must have the intention for the man he killed.

MISHNA *VII*.: An ox belonging to a woman, to orphans, or their guardian, or an ownerless ox, or an ox belonging to the sanctuary, or the ox of a proselyte who died without heirs, all those (if they kill a man) are put to death. R. Jehudah, however, holds that an ownerless ox, or that belonging to the sanctuary or to the proselyte in question are not put to death, for the reason that they have no owners.

GEMARA: The rabbis taught: "The word 'ox' is repeated seven times in the chapter of the Scripture treating of the goring of a man by an ox, which repetition means to include all those kinds of oxen stated in the Mishna. R. Jehudah, however, says that notwithstanding these repetitions, an ownerless ox, or one belonging to the sanctuary or to a proselyte are not put to death, because they have no owners. Said R. Huna: R. Jehudah makes him free even if he was consecrated or declared ownerless after the goring. Whence this theory? Because it is repeated in R. Jehudah's statement, "an ox that is ownerless *or* one belonging to a proselyte," etc., are they not both equally ownerless? Hence for the purpose stated. And so it is plainly stated in the following Boraitha: Furthermore, R. Jehudah said: Even if it was consecrated or made ownerless after goring, they are also free, as it is written [Ex. xxi. 29]: "And warning had been given to his owner," etc., which means that it is put to death then only when during the bringing to the court, the judgment, and its execution its owner is still in existence.

MISHNA *VIII*.: An ox that was sentenced to be put to death and his owner consecrated him, he is not consecrated. If his owner slaughtered him, his meat is prohibited. If, however, this was done before the completion of the sentence, he is consecrated, and if slaughtered his meat may be used.

If one delivered his ox to a gratuitous bailee or borrower, to a bailee for hire, to a hirer, all those substitute the owner as to responsibility for damage: a vicious one pays the whole, and a non-vicious one the half.

GEMARA: The rabbis taught: "An ox that killed a man; if before sentence he was sold or consecrated the act is valid, if slaughtered his meat may be used. If the bailee returned him to his owner the act is valid. If, however, all those enumerated

were done after sentence, neither of those acts is valid. R. Jacob, however, said that as regards the bailee the act is valid even if after sentence, and the point of their difference is thus: Whether the ox may be sentenced in its absence from before the court. The rabbis hold that the sentence must be pronounced in the presence of the ox. Now the owner may say to the bailee: If you would have returned him to me before sentence, I would have driven him away into the swamp (so that he could not be brought before the court), and R. Jacob, however, holds that as the sentence may be pronounced in his absence, there is no difference. What is the reason for the rabbis' theory? The verse quoted above, "The ox shall be stoned, and his owner," etc., from which is to infer that the ox is in this respect equal to his owner, as his owner could not be sentenced to death in his absence, the same is the case with the ox. R. Jacob, however, objected and said: The owner is different, because he could argue before the court, but for what purpose is the presence of the ox necessary in the court?

"*If he delivered him to a bailee*," etc. The rabbis taught: The following four substitute the owner: The gratuitous bailee, the borrower, the bailee for hire, and the hirer. If the ox under the control of the above killed a man while being non-vicious, .he must be put to death, and no atonement money is paid; if while being vicious, also atonement money is paid; and all of them with the exception of gratuitous bailee must pay the value of the ox to its owner. Let us see how was the case. If they guarded him as required, let all of them be free; if they have not guarded him as required, let even the gratuitous bailee also pay? The case was that they have not sufficiently guarded him. For the gratuitous bailee it is considered sufficient, and therefore he is free, but for all others it is not sufficient (because a greater degree of care is required of them). Let us see, according to whom is this Boraitha? If according to R. Meir, who says that a hirer is equal to a gratuitous bailee: "Why did not the Boraitha add to the gratuitous bailee also the hirer? And if it is according to R. Jehudah, who says that a hirer is equal to a bailee for hire, why did not the Boraitha add to the gratuitous bailee also that all of them in the case of a vicious ox are free from atonement money" (as R. Jehudah holds that even slight care is sufficient for the above substitutes)? Said R. Huna b. Hinua: The Boraitha is in accordance with R. Eliezer, who says that there is no guard for a vicious ox unless the knife, and he

also holds according to R. Jehudah, who says that the hirer is equal to a bailee for hire. Abayi, however, says that the Boraitha is in accordance with R. Meir, and it is as Rabbah b. Abuhu changed the statement of the rabbis as follows: One who hires an ox, how shall he pay? R. Meir says, as a bailee for hire, and R. Jehudah says, as a gratuitous bailee.

R. Elazar said: One who delivered his ox to a gratuitous bailee, and the ox did damage, the bailee is liable, but if he was injured he is free. Let us see how the case was. If the bailee agreed to guard him against injury, then let him be responsible if even he was *injured*, and even he did not let him be free even if he *did* damage. Said Rabha: The case was that he *did* take the responsibility, but he knew at the time that he was a goring ox, and common-sense dictates that his intention was to guard him against goring as it was his habit, but it could not enter his mind that he will be gored by others.

MISHNA *IX*.: If its owner properly tied him and locked him up, and still he broke out and did damage, be it a vicious or a non-vicious one there is a liability. Such is the dictum of R. Meir. R. Jehudah, however, holds that a non-vicious is liable, and a vicious is not, for it is written [Ex. xxi. 29]: "And he hath not kept him in," but here he had. R. Eliezer, however, says there is no guard for a vicious ox except the knife.

GEMARA: We have learned in a Boraitha: R. Eliezer b. Jacob said: "Whether vicious or non-vicious, if they were slightly guarded (from negligence) he is free from the *whole* damage." The reason for this is because he is in accordance with R. Jehudah, who said above that slight care is sufficient for a vicious ox, and he holds that even a non-vicious ox must also be guarded from the analogy of expression "gore." As in the case of a vicious one it is plainly written, "He hath not kept him in," so also it is in case of a non-vicious.

R. Ada b. A'hba said: R. Jehudah made him free (in our Mishna) from viciousness, but not from *non*-viciousness (*i.e.*, he must still pay half).

Rabh said: If he was vicious to gore with the right horn he is not considered vicious as to the left horn. According to whom is Rabh's saying? (The saying of Rabh is certainly not regarding the payment, as it is certain that even when he was vicious toward human beings he is not considered vicious toward an animal, and it is therefore self-evident that if it was known to be vicious with his right horn, no claim can be made that the

whole must be paid if he gored the first time with the left horn. Rabh's saying therefore must be interpreted to have reference to "taking care.") If it is in accordance with R. Meir even a non-vicious one must be taken good care of? And if according to R. Jehudah, who holds that only slight care is sufficient, then why is it necessary to make the distinction between viciousness and non-viciousness, as to goring with left and right horns: there is a distinction also in the very case of the right horn, viz., if no care at all was taken of him then the viciousness prevails, but if any care at all was taken of him, only the non-viciousness prevails and the viciousness is gone? It can be said that he is in accordance with R. Jehudah, but he does not hold of the theory of R. Ada b. A'hba. And Rabh's saying is to be explained thus: To find in one and the same ox both viciousness and non-viciousness, it can be only when he was vicious to gore with the right and not with the left horn; but if he was vicious as to both horns, then the element of non-viciousness can no more be found in him (*i.e.*, if no care at all was taken of him he is vicious in all respects, but if any care at all was taken the viciousness is gone and the non-viciousness remains).

"*R. Eliezer says for a vicious ox*," etc. Said Abayi: The reason for R. Eliezer's saying is as we have learned in the following Boraitha: R. Nathan said: Whence do we deduce that one must not raise a noxious dog in his house, nor maintain a defective ladder? For it is written [Deut. xxii. 8]: "That thou bring not blood upon thy house."

Footnotes

82:1 Rashi explains this as follows: After the first goring he saw another ox and did not gore and after the second goring he saw two or three other oxen and did not gore them, and so after the third and fourth gorings in which case he is not considered vicious even in alternate order, as explained further on in the text.

83:1 This is very complicated, and the commentaries differ as to the explanation and illustration thereof. Rashi maintains that if the value of the fifth one was only fifty zuz, the carcass being of no value, he collects from the body of the goring ox his full half of twenty-five zuz, and turns over the balance to the fourth one, whose ox was of the value of one hundred zuz, who collects nevertheless only twenty-five zuz, for the reason that the twenty-five zuz collected by the fifth one are deducted from his half damage, because the ox was then under his control, and the balance is turned over to the third one, applying the same rule; one full half value of the ox, however, belongs to the owner, as the ox was not under his control since the first goring. Hananel's illustration of this rule, however, is in reverse order: The first one whose ox was of the same value of the goring ox, who had to collect one hundred zuz out of the body of the goring ox, loses fifty if the goring ox gores another of the value of one hundred while under his control, and so the second pays to the third the one half of the damage done to him, so that only

the last one takes his full half damage, as the ox was not under his control. Tosphath remarks that in such cases it can happen that the third and fourth should collect nothing, and even the filth one may not be able to collect his full half. See the objection of Samuel Eidlis (Marsha) to these remarks of Tosphath and the answer of Sabbati Kohen in his commentary on the Schulchan Aruch, §401, and their illustrations.

84:1 Here is an omission which will be supplied in the eighth chapter of this tract, as there is the proper place for it.

86:1 Here follow several similar questions, all remaining unanswered, and they are of no importance.

86:2 For the first time in our translation we omit here a statement of the Mishna regarding the goring of an ox belonging to an idolater, for it seems to us that it was inserted here not by the editors of the Mishna; the evidence for this we have set forth in a long article in Hebrew in the monthly "Ner Hamarabi." We will probably explain this to our English readers in an appendix to the "third gate" of this section.

88:1 *I.e.*, those three named in the Mishna.

92:1 This form of expression is often used in the Talmud.

93:1 In the Gemara this last sentence is put as a question, and there are many answers to it which we deem of no importance to be translated. The law, however, prevails as we have translated in our text.

91:1 See explanation of this expression in Tract Erubin, p. 16, footnote.

90:1 The text reads "Im," which literally means "if"; Leeser, however, translates it "but," according to the sense of the verse.

Next: Chapter V.

CHAPTER V.

RULES CONCERNING A GORING OX; EXCAVATIONS ON PUBLIC AND PRIVATE PREMISES; EXCAVATIONS MADE BY PARTNERS, ETC.

MISHNA *I.*: Should an ox gore a cow and the new-born calf be found dead at her side, and it be not known whether she gave birth to it before the goring or by reason of the goring, the owner of the ox pays half the damage for the cow and one-fourth for the calf. So also should a cow gore an ox and her new-born calf be found alive at her side, and it be not known whether she gave birth before the goring or by reason of the goring, the owner of the cow pays half the damage from the body of the cow and one-fourth from that of the calf.

GEMARA: Said R. Jehudah in the name of Samuel: This is the dictum of Summachus, who holds that money about which there is a doubt as to whom it rightly belongs, must be divided. But the sages said: There is a principal rule--the burden of proof is upon the plaintiff. [For what purpose is the statement that there is a principal rule? It was necessary that, even when the plaintiff claimed positively while the defendant only said that he was doubtful about it (in which case one might say that there need be no proof at all), this rule apply.] The same we have also learned in the following Boraitha (the exact statement of the Mishna with the addition): This is the dictum of Summachus, but the sages say that the burden of proof is upon the plaintiff.

Said R. Samuel b. Na'hmani: Whence is this rule deduced? From [Ex. xxiv. 14]: "Whoever may have any cause to be decided, let him come unto them." That means, he shall produce proof before them. R. Ashi opposed: Why is a verse necessary? Is it not common-sense that one who feels pain goes to a physician? We must therefore say that this verse applies to the saying of R. Na'hman in the name of Rabba b. Abbuhu: Whence is it deduced that in case of a claim and counterclaim the claim must first be passed upon and judgment awarded and executed, and then the counterclaim must be proved (as at this

stage the former defendant is now the plaintiff)? From the above-quoted passage, which means that the plaintiff who has the cause to be decided shall be heard first. The sages of Nahardea, however, said that in some cases it might happen that the counterclaim must be passed upon first, and that is in case the judgment, if awarded against the defendant, would have to be collected from the latter's real estate; for if the judgment were allowed to be collected before the counterclaim was proved, the estate would sell much cheaper than if he should prove his counterclaim and sell his estate at a proper price.

"*So also should a cow gore an ox*," etc. Half *and* a quarter of the damage! Why three-quarters--he has to pay only half? Said Rabha: The Mishna meant to say thus, If the cow is there, one-half of the damage is collected from the body of the cow; but if she cannot be found, one-quarter is

collected from the body of the calf, and the reason is because it is doubtful whether the calf was with its mother at the time of the goring or not; but if we should be certain that it was, half would be collected from the body of the calf.

This decision of Rabha is in accordance with his theory elsewhere as to a cow that has done damage--the same may be collected from its offspring, because the latter is considered a part of her own body. A hen that has done damage--the latter cannot be collected from her eggs, for the reason that they are completely separated from the hen and it does not care any more for them.

Rabha said again (in the first instance, when the ox gored the cow): The cow and her offspring are not separately appraised, but both of them together (*i.e.*, the value of the cow before giving birth and that after she gave birth, and not the value of the cow separately and that of the calf separately); for otherwise it would work too much harm to the defendant. The same is the case if one cut off the hand of his neighbor's slave or if one damage his neighbor's field (that is, in each of those cases the value prior to doing the damage and that after doing the damage is ascertained, and thus the damage is appraised, and not by appraising separately the damaged part and the main body). Said R. A'ha the son of Rabha to R. Ashi: If in reality the law is so, what do we care for the defendant? let him suffer. Why, then, did Rabha protect him? Because the defendant might say: "I caused injury to a gravid cow, and therefore the appraisement must also be made of such a cow."

it is certain, if the cow belonged to one person and the calf to another, that for the reduction of the fatness it must be paid to the owner of the cow; but for the depreciation on account of the reduction in fulness, to whom is this to be paid? (*I.e.*, if while the cow was gravid the owner of the cow sold the calf to be born to another person, and through the injury the cow miscarried, and by reason thereof the cow became reduced both in fatness and in fulness (figure), both of which are elements making up the value of a cow; now, for the reduction in fatness the owner of the cow must be paid, for the calf has not contributed to it; but for the depreciation on account of the decrease in the fulness, shall the owner of the calf be paid? for the calf gave her that fulness, or both the cow and the calf contributed to it, and the value of this damage must be divided.) R. Papa says it is paid to the owner of the cow only. R. A'ha the son of R. Iki says that it must be divided, and so the Halakha prevails.

MISHNA *II.*: A potter that placed his pottery in the court of another without his permission, and the court-owner's cattle broke them, there is no liability. If the cattle were injured thereby, the potter is liable. If, however, he placed them there with permission, the court-owner is liable. The same is the case with one who placed his fruit in another's courtyard and it was consumed by an animal of the court-owner. Should one lead his ox into the court of another without permission and it be gored by the ox of the court-owner, or be bitten by his dog, there is no liability. If, however, the ox in question gored the court-owner's ox, or it fell into the well and spoiled the water, he is liable. If the court-owner's father or son was in the well (at the time, and was killed), he must pay atonement money. If, however, he led it there with permission, the court-owner is liable. Rabbi, however, says that in all these cases the court-owner is not liable unless he expressly undertook to take care of the ox.

GEMARA: Is the reason for the statement in the first part of the Mishna only because he placed them without permission, but if with permission the potter would not be liable for injuries to the

animals of the court-owner, and we do not say that it is implied that the potter has assumed the care of the animals, and this can be only in accordance with Rabbi, who holds that wherever it is not expressly assumed there is no implied assumption to take care? Now, the latter part, which states: "If he placed them there with permission the court-owner is liable," is

certainly in accordance with the rabbis, who hold that there is an implied assumption even when nothing was expressly mentioned; and in the last part Rabbi declared that in all cases he is not liable unless the court-owner expressly assumed the care; hence the first and last parts will be in accordance with Rabbi, and the middle part in accordance with the rabbis? Said R. Zera: Separate the clauses, and say that the one who taught this part did not teach the other. Rabha, however, says: The whole Mishna can be explained to be in accordance with the rabbis, and that the case was that he entered with permission and the court-owner assured the safety of the pottery (and the potter assumed nothing), in which case he is responsible if even the wind should break them.

"*If he placed his fruit*," etc. Said Rabh: The case is only if she slipped on account of them; but if she consumed them (and by reason thereof died) there is no liability, for she was not compelled to eat them.

Come and hear: "One who led his ox into another's courtyard, and it consumed wheat which caused it diarrhœa and it died, there is no liability. If, however, he led it in with permission, the court-owner is liable." Why not argue here the same way, and say that it was not compelled to eat? Said Rabh: "You wish to contradict a case *with* permission by a case *without* permission? In the former event he assured the safety of the ox, and therefore he is liable if even the ox should choke himself."

The schoolmen propounded the following question: "When he assured the safety of the ox, did it only extend to himself (*i.e.*, to protect the ox against the injury by his own animals), or also to all cattle?" Come and hear: "R. Jehudah b. Simeon taught in Section Damages, of the school of Qarna: If one placed his fruit in the courtyard of another without permission and an ox came from some other place and consumed it, he is free; if, however, *with* permission, he is liable. Who is liable and who is free--is it not the court-owner?" (Hence we see that he must guard him also against injury by others?) Nay, it may be said that it has reference to the owner of the ox. If so, what difference is there whether it was with or without permission? There is: If with permission, it is to be considered the premises of the plaintiff, in which case the tooth is liable (for as soon as the court-owner allowed him to enter he thereby assigned him room in his court); but without permission,

it cannot be considered that he consumed it "in *another* man's field," which is required in the case of the tooth, and therefore there can be no liability.

Come and hear: "If one lead his ox into a courtyard without permission and an ox come from another place and gore it, he is free; if, however, *with* permission, he is liable." Who is free and who is liable--is it not the court-owner? Nay, it is the owner of the ox. If so, what difference is

there whether with or without permission? The Boraitha is in accordance with R. Tarphon, who says that there is an extra rule as to the horn if on the premises of the plaintiff, in which case he pays the whole. Now, if with permission, it is considered the premises of the plaintiff (for the reason stated above) and he pays the whole damage; but if without permission, it is equal to the case of the horn on public ground, in which case only half is paid.

It happened that a woman entered a house to bake, and the house-owner's goat having consumed the dough, became feverish and died. Rabha then made the woman pay for the goat. Shall we assume that he differs with Rabh, who said that it was not compelled to consume it? What comparison is this? There it was without permission, and therefore the safety was not assured; but here it was with permission, and therefore the safety of the goat was assured by the woman (for the reason stated further on, that in baking by a woman modesty is required, as she has to bare her arms and the owner of the house cannot stay in the room; it is therefore considered that he has assigned the whole room to the woman, and therefore she is responsible for the damage done to the house-owner). And why is this different from the following case: If a woman enter another's premises to grind her wheat without permission and the house-owner's animal consume the wheat, there is no liability. If, however, the animal was injured thereby, the woman is liable. The reason then is because it was without permission, but if with permission she would be free? There is a difference: In case of grinding wheat, where no modesty is required and the owner could be present, the care of the animal devolves upon him; but in case of baking modesty is required (as stated above).

"*If one lead his ox into a courtyard*," etc. Rabha said: One who leads his ox into a courtyard without permission, and the ox digs an excavation in the courtyard, the owner of the ox is liable for the damage caused to the court, and the court-owner

is liable for the damages caused by the excavation (if he renounced ownership), although the Master said elsewhere, on the strength of the passage [Ex. xxi. 33]: "If a *man* dig a pit," a *man*, and not an *ox*; for here in this case he had to fill up the pit (before renouncing ownership), and by not so doing it is considered as if he dug it.

Rabha said again: "One who leads his ox into a court without the permission of its owner, and it injures the owner, or the latter is injured through it, he is liable. If, however, it lie down (and by doing so breaks vessels, or while being in such a position the court-owner stumbles over it and is injured), there is none." Does, then, the lying down relieve him from liability? Said R. Papa: Rabha means, not that the ox itself lay down, but that it lay down (voided) excrement and thereby soiled the vessels of the court-owner, in which case the excrement is considered a pit; and we do not find that there is a liability for damage to vessels by a pit. This would be correct according to Samuel, who holds that any obstacle is considered a pit; but as to Rabh, who holds that it is not considered a pit, unless ownership is renounced, what can be said? Generally from dung ownership is renounced.

Rabha said again: If one enter a court without permission and injure the court-owner, or the latter be injured through him (by jostling against him), he is liable; if the court-owner injure him, he is free. Said R. Papa: "This was said only in case the court-owner has not noticed him; but if he has, he is liable." What is the reason? Because he can say to him: "You have the right only to drive him out, but not to injure him." And each follows his own theory, for Rabha, and

according to others R. Papa, said: If both of them were there with permission (*e.g.*, on a public highway), or both of them without permission, if one injure the other (by striking with the hand, although unintentionally), both are liable (for as to damages there is no difference whether with or without intention); but if one was injured through the other (as by jostling), they are free. The reason, then, is because both of them were either with or without permission; but if one was with and the other one without permission, the one who was with permission is free and the other is liable.

"If he fall into the pit and spoil the water," etc. Said Rabha: This was taught only when it was spoiled through the body (*e.g.*, when the body was soiled); but if it was so because

of the (putrefied) smell, he is free. And the reason is, because the carcass is only the *germon* (origin) of the smell, and for *germon* there is no liability.

"*If his father, his son*," etc. Why so? Is he not a non-vicious one? Said Ula: It is in accordance with R. Jose the Galilean, who holds, with R. Tarphon, that the horn on the premises of the plaintiff pays the whole damage, so also here he pays the whole sum of atonement money, and for that reason he teaches, "if his father," etc., to indicate that it was the premises of the plaintiff.

"*If he lead him in with permission*," etc. It was taught: "Rabh said: The Halakha prevails according to the first Tana, while Samuel holds that the Halakha prevails according to Rabbi."

The rabbis taught: "If he said: 'Lead in your ox and take care of him,' if he did damage, he is liable; if he was injured, there is no liability. If he, however, said: 'Lead in your ox and I will take care of him,' the reverse is the case." Is there not a difficulty in the explanation of the Boraitha? First it states, if he told him to lead in the ox and to take care of him he is liable if he did damage, etc.--then the reason is because he told him expressly to take care of him; but if nothing was said as to care, the reverse would be the case, for the reason that, when nothing is mentioned, the court-owner impliedly assumes the care. How, then, should the last part: "If he, however, told him: 'Lead in your ox and *I* will take care of him,' etc., be explained? Is it not to infer that the reason was because he expressly said that he would take care of him, but if nothing was said as to care, the owner of the ox is liable and the court-owner is free, for the reason that under such circumstances the court-owner does not assume the care, which is according to Rabbi, who holds that the court-owner is not liable unless he expressly assumes the care, and so the first part would be according to the rabbis and the last part according to Rabbi? Said Rabha: The whole Mishna can be explained to be in accordance with the rabbis, thus: Because it states in the first part "and *you* take care of him," it states also in the last part, "and *I* will take care of him." R. Papa said: The whole Mishna may be explained in accordance with Rabbi, but that he holds with R. Tarphon, who says that the horn on the premises of the plaintiff pays the whole, and therefore if he tell him, "*You* take care," the court-owner has not assigned him any room, and thus

it is to be considered as the horn on the premises of the plaintiff, which pays the whole; but if he keep silent, it is considered that he has assigned him room in the court, and thereby the court

becomes a partnership, and under such circumstances only half is paid.

MISHNA *III*.: If an ox intend to gore another ox, and injure a woman and cause her to miscarry, the owner of the ox is free from paying for the child. If, however, a man intend to hurt another man, and hurt a woman and cause her to miscarry, he must pay for the child. How is this payment made? The woman is appraised as to the difference in her value (as a slave) before and after she gave birth. Said R. Simeon b. Gamaliel: If so, then her value increases after giving birth. We must therefore say that the worth of the infant is appraised and its value is paid to her husband if she has one, or to his heirs if she has no husband. If she was a manumitted slave or a proselyte, there is no liability.

GEMARA: The reason is only because it intended to gore another ox, but if it originally intended to gore the woman he is liable for the infant. Shall we assume that this is a contradiction to R. Ada bar A'hba, who said elsewhere that even in such a case there is no liability? Nay, R. Ada b. A'hba may answer that, even according to our Mishna, there is no liability even if it intended to gore the woman. But why does the Mishna say that it intended to gore another ox? Because in the last part it states a case where a *man* intended to injure another one, in which it is essential, for so states the Scripture; therefore the same expression was used.

"*How is this payment to be made*," etc. The value of the infant? It ought to read "the increased valuation *caused* by the infant"? (for so does the Mishna state, that the woman is "appraised," etc.). It really means: "How does he pay the value of the infant and the increased valuation *caused by* the infant? The woman is appraised," etc.

"*Said R. Simeon b. Gamaliel*," etc. What does he mean? Said Rabha: He means thus: Is, then, the value of a woman during pregnancy higher than after she gives birth-is not the reverse the fact? We must therefore say "that the worth of the infant," etc., and so also we have learned in a Boraitha elsewhere. Rabha, however, says: He means thus: Does, then, the increase in value of the woman belong wholly to the husband, and she has no share in the increase of value caused even

by her infant? The infant is appraised and its value paid to the husband, and the money for the increase in valuation is divided between the husband and the wife. We have so also learned plainly in a Boraitha, with the addition that each item must be separately appraised: the pain, the damage; the value of the infant, however, must be paid to the husband only, but the increase in valuation caused by it must be divided. If so, then the two statements of R. Simeon b. Gamaliel contradict each other? This presents no difficulty. The one case is that of a first-birth, and the other is not.

And the rabbis, who hold that the increase in valuation also belongs to the husband, what is their reason? As we have learned in the following Boraitha: From the Scripture, which reads [Ex. xxi. 22]: "And her children depart from her," do I not know that she was with child? Why does it state, "a woman with child"? To tell thee that the increase in value caused by pregnancy belongs to the husband. R. Simeon b. Gamaliel, however, applies the passage quoted to the following Boraitha: R. Eliezer b. Jacob said: He is not liable unless he struck her over the womb. And R. Papa explained the above statement of R. Eliezer b. Jacob, that he does not mean the womb

only, but any part of the body except the arm or foot.

"*If she was a bondwoman,*" etc., "*or a proselyte woman,*" etc. Said Rabba: This is to be explained that he wounded her before her husband died, in which case the deceased acquired title to the money to be paid, and upon his death the same is inherited by the defendant, in whose possession the money still is (and so is the law as regards the property of a proselyte who died without leaving heirs); but if he wounded her after the death of her husband, the money is to be paid to her. Said R. Hisda: "Who is the author of this statement? Are, then, children as packages of money, that their ownership may pass from one to another? Where there is a husband alive the Scripture made an exception, in that the money to be paid should belong to him; but where there is none, no payment at all is to be made." Regarding this statement the Tanaim of the following Boraitha differ: "An Israelite's daughter that was married to a proselyte and she has conceived by him, and some one wounded her, if during the lifetime of the proselyte, the value of the infant goes to him; if after his decease, one Boraitha states that the defendant must pay to the mother and another Boraitha states that he is free."

According to Rabba's theory there is no doubt that the Tanaim differ, but according to R. Hisda's theory, in accordance with whom will be the Boraitha which states that he must pay? It is in accordance with Rabban Simeon b. Gamaliel, who said that the mother gets one-half of the money to be paid even when her husband is alive, and the whole if he is dead.

R. Iba the elder propounded the following question to R. Na'hman: One who took possession of the documents of a proselyte (which he held against the lands of an Israelite), what is the law? Shall we assume, of one who receives mortgages on estates, that his main intention is to take possession of the lands, and whereas of the latter the proselyte has as yet not taken possession, the one who took possession of the documents has acquired no title, because these documents are not considered property, or is it considered that the proselyte's intention was also as to the documents (and so they *are* his property)? He said to him: Answer me, my Master, could the intention of the proselyte be to wrap up a bottle in them? He answered: Yea, it may have been also for that very purpose.

Rabba said: "If an Israelite's pledge is in the hands of a proselyte and the latter dies, and another Israelite comes and takes possession of it, he may be deprived of the possession (by the owner of the pledged article). Why so? Because as soon as the proselyte died the lien on the pledge became null and void. If, however, a proselyte's pledge is held by an Israelite and the proselyte dies, and another Israelite takes possession of it, the pledgee has his lien on the pledge to the extent of his debt and the other one acquires title as to the balance. Why should not the pledgee's premises (on which the pledge is located) acquire the title for its owner? Did not R. Jose b. Hanima say that one's premises acquire title for their owner even without his knowledge? It may be explained that he was not there, and therefore when the owner is there, and he wishes he himself could acquire title, his premises can also do so for him; but where there is no owner to acquire title himself, his premises cannot do so for him. And so the Halakha prevails.

MISHNA IV.: One who digs a pit on private ground and opens it into public ground, or *vice versa*, or on private ground and opens it into the private ground of another person, is liable.

GEMARA: The rabbis taught: One who digs a pit on private premises and opens it into public premises is liable; and this is the kind of a pit that was meant by the Scripture. Such

is the dictum of R. Ishmael. R. Aqiba says: The pit mentioned in the Scripture is where one renounced ownership to his premises (on which there was a pit), but did not renounce it to the pit. Said Rabba: As to a pit on public ground, all agree that there is a liability, but as to one on one's own premises, R. Aqiba holds that even in such a case there is a liability, for it is written [Ex. xxi. 34]: "The owner of the pit"; that means that the Scripture meant a pit that has an owner, while R. Ishmael holds that it means the one to whom the cause of the injury previously belonged. But what does R. Aqiba mean by his saying, "That is the pit meant by the Scripture"? Thus: Why should this case be free from payment? Is this not the very case with which the Scripture began as regards payment? 1 R. Joseph, however, says, that as to a pit on private premises all agree that there is a liability, for the reason stated by R. Aqiba; they only differ as to a pit on public ground. R. Ishmael holds that one is also liable in such a case, thus: It is written [ibid., ibid. 33]: "And if a man open a pit, or if a man dig a pit"; now, if for the opening one is liable, so much the more is he for the digging? We must therefore say that the liability came to him because of the digging and opening only (*i.e.*, that neither the premises nor the pit is his, as being on public ground). R. Aqiba, however, may explain it thus: Both statements are necessary, for if the Scripture should state only as to the opening, one might say that only in case of opening it is sufficient to cover it, but in case of digging it is not, unless he stuff it up; and if the Scripture should state only the digging one might say that only in such a case it must be covered, for he has done some substantial act; but in case of opening only there is no need even to cover it, for no substantial act was done. Hence the necessity of both verses. And what does R. Ishmael mean by his statement, "This is the pit," etc.? He means that this is the pit with which the passage began as to damages.

There is an objection from the following: One who digs a pit on public ground and opens it into private ground is free, although it is not permitted to do so, for the reason that no excavation must be made under public ground. One who digs

a round, oval, or obtuse-angle-shaped pit on private ground and opens it into public ground is liable. And one who digs pits on private premises adjoining public ground, as, for instance, those who dig pits to lay foundations for buildings, is free. R. Jose b. Jehudah, however, makes him liable, unless he put up a partition ten spans high, or unless the pit was at least four spans distant from the pathway for man and beast. Now the first Tana holds him free, because it was for laying foundations; but otherwise he would also hold him liable? (Hence there is a liability for a pit on one's own premises?) According to whose theory is the statement of the first Tana? It would be correct according to Rabba, for it could be explained that the first part is according to R. Ishmael and the last part according to R. Aqiba; but according to R. Joseph, the last part is in accordance with all and the first part in accordance with none? R. Joseph may say that the whole Boraitha is in accordance with all, but the first part treats of a case where he renounced ownership neither to the premises nor to the pit (and although he must not do so, nevertheless there is no liability). Said R. Ashi: Now that we arrive at the conclusion that according to R. Joseph's theory the Boraitha is in accordance with all, the same may be explained also according to Rabba's theory that the whole Boraitha is in accordance with R. Ishmael; but the reason why,

according to your inference, there would be a liability, if it is not for laying a foundation, is because he extended the excavation under the public ground (and therefore, if not for laying foundations, it should be considered digging on public ground).

The rabbis taught: One who digs and opens a well and delivers it over to the community is free (if any accident happened). Otherwise he is liable. And so also was the custom of Nehunia the pit-digger, to dig and open wells and deliver them over to the community. And when the rabbis heard of it, they said: "He is acting in accordance with the Halakha."

The rabbis taught: It happened to the daughter of the very same Nehunia, that she fell into a large well. They came and informed R. Hanina b. Dosa of it. During the first hour he said to them: "Go in peace"; and so also during the second. At the third (when there was fear that she might have died), he said that she was out already and saved. When the girl was asked who saved her, she said that a ram passed by led by an old man (the ram of Isaac led by Abraham), who saved

her. When R. Hanina b. Dosa was asked whether he knew of her safety by prophecy, he said: I am no prophet, nor am I the son of a prophet, but I thought to myself, "Can it be that the children of that upright man (Nehunia, who was digging wells to enable the pilgrims to drink water from them) shall die by the very thing he was taking so much pains to prepare for the welfare of Israel?" Said R. A'ha: Notwithstanding this, his son died of thirst. The reason is, that the Holy One, blessed be He, is particular with the upright around Him, even on a hairbreadth, as it is written [Ps. l. 3]: "And round him there rageth a mighty storm" 1 (and there must have been some sin committed by Nehunia for which he was punished). R. Nehunia says: From the following passage [ibid. lxix. 8]: "God is *greatly* terrific in the secret council of the holy ones, and fear-inspiring overall that are about him." R. Hanina said: One who says that the Holy One, blessed be He, is liberal (to forgive every one his sins), his life may be disposed of liberally (for he encourages people to sin), as it is written [Deut. xxxiii. 4]: "He is the Rock, his work is *perfect*; for all his ways are just." R. Hana, and according to others R. Samuel b. Na'hmani, says: It is written [Ex. xxxiv. 6], "Long-suffering" in the plural, and not in the singular, to signify that He is long-suffering towards the upright and also towards the wicked.

The rabbis taught: One shall not remove stones from his own premises to public ground. It happened once that one did so, and a pious one passing by at the time and seeing him do that said to him: "Thou ignoramus, why dost thou remove stones from premises not belonging to thee to thy own premises?" He laughed at him. Some time later he was compelled to sell his lands, and while walking on the public highway in front of his former lands he stumbled over the stones he once piled up. He then exclaimed: "I see now that the pious one was right in his saying!"

MISHNA V.: One who digs a pit on public ground and an ox or an ass falls into it (and is killed), he is liable. It matters not as to the shape of the pit, whether round, oval, or a cavern, rectangular or acute-angular, in all cases he is liable. If this is so, then why is it written "pit" [•••]? To infer from this that as a round pit in order to be sufficient to cause death must

be no less than ten spans deep, so also all other forms must be at least ten spans deep. If they were of less depth, however, there is no liability for death; but for injuries there is.

GEMARA: Rabh said: The pit for which the Scripture made one liable is because of the vapors (therein contained), but not because of the shock (the animal receives). From this may be inferred that Rabh holds that the vapors kill the ox for which the digger of the pit is liable; if the ox should be killed not by the vapors, but by the shock received at the bottom of the pit, there should be no liability, because the ground is considered ownerless. Samuel, however, holds because of the vapors, and so much the more because of the shock; and if one might say that the Scripture meant only as to the shock and not as to the vapors, and therefore if it should be proved that the death was caused by the vapors and not by the shock there should be no liability, it would be incorrect, for the Scripture is testifying that the digger of a pit is liable, and even if the pit were filled with wool sponges, On what point do they differ (for according to both, if the ox was killed he must be paid for)? The difference is in case he formed a hill (ten spans high) on public ground (from which the ox fell down and was killed): according to Rabh he is not liable, while according to Samuel he is. What is the reason of Rabh's opinion? The passage states [Ex. xxi. 33], "*Fall* into it," which signifies that there must be the usual way of falling (into an excavation, and face downward), but according to Samuel "fall" means in any manner.

There is an objection from our Mishna: If so, then for what purpose is written "pit," etc.? Now, it would be correct according to Samuel, for the "so also," etc., would include also a hill on public ground; but according to Rabh, what does this include? It includes rectangular and acute-angular pits. But are these not expressly stated therein? They are first stated, and then it is explained whence they are deduced; and it was necessary to enumerate all the forms of a pit, to teach that in each of them there are sufficient vapors to kill, if they are ten spans deep. It happened that an ox fell into a lake from which the neighboring lands used to be irrigated, and its owner slaughtered it. R. Na'hman nevertheless declared him *trepha* (illegal, because, according to his theory, the limbs of the ox were broken by the fall). The same, however, declared that if the owner would spend only one kabh of flour in going around and asking the law in his case, he would learn that if the animal

under such circumstances should be alive twenty-four hours after the fall it could be held fit for eating, and he would not lose his ox, which is worth many kabhim of flour. From this we see that R. Na'hman holds that an animal may be killed from shock in a pit less than ten spans deep.

Rabha objected to R. Na'hman from our Mishna: "If they were less than ten spans deep and an ox or an ass fell into them and was killed, there is no liability." Is not the reason because there is no shock? Nay, because there are no vapors. If so, then why is it stated further: "If he be injured, he is liable." Why so--there are no vapors? He answered: "There are no vapors sufficient to kill, but sufficient to injure."

He again objected from the following Boraitha: It is written [Deut. xxii. 8]: "If any one were to fall *from* there"--this signifies that it means only *from* there, but not there*into*. How so? If the level of the public highway were ten spans higher than the roof of the house, so that some one might fall from the highway to the roof, there is no liability (because there was no obligation to make a battlement); if, however, the highway were ten spans lower than the roof, there is a

liability (for a battlement has to be made). Now then, if shock in an excavation less than ten spans deep also kills, why state *ten*? He answered: "This case is different, for it states 'house,' and less than ten cannot be called a 'house.'"

MISHNA *VI.*: When a pit belongs to two partners, and one of them passes by and does not cover it, and so also does the second, the latter only is liable.

GEMARA: Let us see. How can there be a pit of two partners on public ground? This case could be if we should say that the Halakha prevails in accordance with R. Aqiba, who holds one liable for a pit even if it be on his own premises, and partnership in the pit would be possible if both partners dig a pit on their premises and subsequently renounce their ownership to the premises but not to the pit; but if the Halakha prevails according to him who says that if one dig a pit on his own premises there is no liability, how is it possible on the one hand that there should be liability for the same pit on public ground, and on the other hand how can there be a partnership pit on the public ground? Shall we assume that both of them together hired an agent to dig the pit for them? Is there not a rule that there can be no agent to commit a transgression, for the agent ought not to commit any transgression if even he was hired to

do so? Consequently the partners could not be responsible for the acts of the agent. If we assume that the partnership consisted in that each of them dug five spans deep, then there can be no partnership, for the act of the first one can be taken into account according to Rabbi's theory only as to injuries; but even according to him as to death, and according to the rabbis' theory as to both injuries and death, it cannot be counted. How, then, can there be a partnership in a pit? Said R. Johanan: It is possible if both of them together removed a lump of earth from it which completed it to make it ten spans deep.

Where are the theories of Rabbi and his colleagues, mentioned above, stated? In the following Boraitha: "If one dig a pit nine spans deep and another one complete it to make it ten deep, the latter one is liable. Rabbi, however, says: The latter one only is liable in case of death, and both are liable in case of injuries."

What is the reason of the rabbis' theory? It is written [ibid., ibid. 33]: "And if a *man* dig a pit," which signifies that it must be by *one* only. Rabbi, however, explains this passage to mean that it must be dug by a *man* and not by an ox.

The rabbis taught: "If one dig a pit ten spans deep and another one complete it to make it twenty, and still another one make it thirty deep, all of them are liable." There is a contradiction from what we have learned in the following: "If one dig a pit ten spans deep and another one plaster and lime it (and thereby makes it narrow and increases its vapors), the last one is liable." Shall we not assume that the one case (where all are liable) is according to Rabbi and the other is according to his colleagues?

Said R. Zbid: "Both may be explained to be according to Rabbi only, thus: The case where all are liable is correct, as stated, and the case where only the last one is liable is where there were originally in it not sufficient vapors even to injure, and the other one by his acts produced so much vapors as to be sufficient both to injure and kill."

Rabha said: "If one place a stone at the edge of a pit which is less than ten spans deep and thereby complete its walls to measure ten spans, whether he is responsible or not would raise the same difference of opinion as between Rabbi and his colleagues stated above." Is this not self-evident? One might say that if one dig one span more in the *bottom*, and by doing so he increase the vapors to be sufficient to kill, he is liable,

because the vapors produced by him killed the animal; but if he raise the walls at the top (by placing the stone), by which he did not increase the vapors, as they were there already, one might say that he was not liable, because the animal was not killed by the vapors produced by him--he comes to teach us that there is no difference.

Rabba bar bar Hana in the name of Samuel bar Martha said: A pit eight spans deep, two of which are filled with water, there is a liability. Why so? Each span of water equals two of dry ground. The schoolmen propounded a question: If the pit was nine spans deep and only one span of them was filled with water, what is the law--shall we say that as there is only a little water there are no vapors in it, or shall we say that as it is nine spans deep the vapors of the water complete it to make it ten? Again, if the pit was seven spans deep, three of which were filled with water, what is the law--shall we say that as there is much water in it there are vapors, or because it is not sufficiently deep there are none? This remains unanswered.

R. Shizbi questioned Rabba: "If one dig a pit ten spans deep and another widen it (toward one direction only), what is the law?" He answered: "Then he diminished the vapors!" The former rejoined: "But he increased the possibility of being injured?" Rabba made no answer. Said R. Ashi: "A case of this kind must be examined. If he fell in through the side which was widened, then he surely increased the possibility of falling in, and he is responsible; if, however, he fell in through the other side, then he diminished the vapors, and he is not."

It was taught: "A pit the depth of which is of the same dimensions as its width, Rabba and R. Joseph, both in the name of Rabba bar bar Hana quoting R. Mani, differ as to the decision of those quoted: One holds that there are always vapors (sufficient to kill) therein unless the width exceeds its depth, and one holds that there are no vapors therein unless the depth exceeds its width."

"*If one passed by and did not cover it*." From what time on is he free? (That we say that the other one was charged with covering it, for the case undoubtedly is that the first one not only passed by but also used the pit; because if not so, then the first one ought to be liable as well, as it was negligence also on his part not to cover it.) As to this the following Tanaim differs: "One is drawing water from a well and another comes telling him to let him draw water, as soon as he lets him do so,

the liability of the first ceases. R. Eliezer b. Jacob, however, says that the liability ceases from the moment he delivered him the cover of the well. On what point do they differ? R. Eliezer b. Jacob holds that the theory of choice 1 applies to such a case, and each drew water from his own

part (and therefore the second is not considered to have borrowed from the first his share, so as to be charged with the care of the whole, and for that reason both are liable in case of damages; but if he accepted the cover, he thereby became charged with the care of the whole), and the rabbis hold that the theory of choice does not apply to such a case. R. Elazar said: One who sells his well, title passes with the delivery of the cover. How was the case? If he sold it for money, let the title pass by the payment of the money; if by occupancy, let the title pass by this act? The case was by occupancy, which requires that he should expressly tell him, "go and occupy and acquire title"; and if he delivered the cover to him, it is considered as if he told him so.

R. Jehoshua b. Levi said: One who sells his house, the title passes with the delivery of the keys (as it is the same as the delivery of the cover of the pit).

Resh Lakish in the name of, R. Janai said: "One who sells a flock of cattle, title passes with the delivery of the Mashkhukhith (the drawing-rope). How was the case? If he drew them (removed them from one place to another), let title pass by this act? If by delivery, let title pass by doing this? The case was that he drew them, which requires that the vendor shall tell the vendee expressly, "Draw them and acquire title," and as soon as he delivered the Mashkhukhith it is considered as if he told the vendee expressly, "Draw, and acquire title to them." What is meant by Mashkhukhith? It means the bell. R. Jacob said: "It means the forerunning goat kept at the head of the flock as leader, as a certain Galilean lectured in the presence of R. Hisda: When the shepherd gets angry at his flock, he blinds the leading-goat at the head of the flock (so that the leader falls and with him all the flock)."

MISHNA *VII*.: If the first one covered it, but when the second one passed by he found it uncovered and did not cover it, the latter is liable. If the owner of a pit properly cover it, and still an ox or an ass fall into it and is killed, there is no liability. If however, he do not properly cover it, he is liable.

[paragraph continues] If an ox fall forward, face downward, into a pit by reason of the noise caused by the digging, there is a liability; if, however, it fall backward, there is none. If an ox or an ass with its housings fall into it and the housings be damaged, there is a liability for the animal but not for the housings. If there fall therein an ox, deaf, raging, or young, there is a liability (explained further on). If a boy or a girl, a male or a female slave, fall in, there is none.

GEMARA: Until what time is the first one free? Said Rabh: Until he again knows of his own knowledge that the pit is uncovered. Samuel, however, says: Until he is informed, even if he has not seen it himself. R. Johanan says: Time must be allowed him until he could be informed and could hire workmen to cut wood and cover it.

"*If he cover it properly*," etc. If he covered it properly, how could the animal fall in? Said R. Itz'hak bar bar Hana: The case was, that the cover became rotten from the inside (and could not be noticed).

The schoolmen propounded the following question: "If he covered it sufficiently to withstand oxen but not camels, and camels came along and made the cover shaky and then oxen fell therein, what is the law? Let us see. How was the case? If camels are usual there, then certainly

the act is wilful; if they are not, then it is only an accident? The question is only where camels come there at times. Shall we say that, because camels do come there, it is considered wilful, for he should have had it in mind, or do we say that because at that time they were not there it might be considered an accident?" According to others the schoolmen did not question as to such a case; for there is no doubt that, as long as they came at times, he should have had it in mind, but what they did question was this: If he covered it sufficiently to withstand oxen but not camels, and the latter are usual there and the cover became rotten from within, what is the law? Do we say that *because* it is considered wilful as to camels it is so also as to allowing it to rot, or that the theory of *because* does not apply here? Come and hear: "An ox that was deaf, raging, young, or blind, or an ox that walked in the night-time, he is liable; if, however, the ox was sound and it was in the day-time, he is free." Now, why should it be so? Why not say *because* it is considered wilful as to an unsound ox it is also considered so as to a sound one? Infer from this that the theory of *because* does not apply to such cases,

"*If it fell in forward*," etc. Said Rabh: By "forward" is meant that it fell on his face, and by "backward" that it struck the back of its head against the bottom of the pit. And both of them have reference to the pit. [And this is in accordance with his theory that the Scripture made one liable in case of a pit only because of the vapors, but not because of the shock.] Samuel, however, says: "In case of a pit there is no difference whether it fall forward or backward, but he is liable." [For he follows his theory as to the vapors, and so much the more because of the shock.] But how is the case possible that when it fall backward from the sound of the digging he shall be free? As, for instance, when it stumbles over the pit and falls backward and strikes outside of the pit. Samuel objected to Rabh from the following Boraitha: "As regards a pit, whether it fall backward or forward, he is liable?" This objection remains.

R. Hisda said: Rabh admits in case of a pit on one's own premises that he is liable, because the owner of the ox may say, "You are liable either way; for whether he died from the vapors or from the shock, it was yours." Rabha, however, says: The case in the above Boraitha, which states that he is liable if even the ox fall backward, was that he turned over; that is, he first fell face downward, but before. he reached the ground he turned over and fell on his back, and therefore it is the vapors that he inhaled while falling face downward that kill him. R. Joseph says: The Boraitha in question does not mean to say that the owner of the pit is liable, but, on the contrary, that the owner of the ox is liable, and it treats of a case where the ox did damage to a well, namely, by (entering a courtyard without permission, the owner of which renounced ownership neither to the courtyard nor to the well, and) falling into the well, spoiling the water therein contained; in which case he is liable, no matter which way it fell. R. Hanina taught in support of Rabh: It is written: "And fall"--that means that the falling should be in the usual manner, face downward. From this it was said that if he fell face forward into a pit from the sound of the digging there is a liability; if backward from the same cause, there is none.

The Master said: "If he fall face downward from the sound of the digging, there is a liability." Why so? Was this not caused by the one who was doing the digging? (In this case it is assumed that the owner has hired another person to do the digging, and the latter is only the *germon* (medium), and there

is no liability for being the *germon*?) Said R. Simi b. Ashi: It is in accordance with R. Nathan, who said that the damage must be paid by the owner of the place where it was done, for the reason that the digger cannot be liable, because he is only the *germon* of the damage, as we have learned in the following Boraitha: "An ox that pushed another ox into a pit, the owner of the ox, and not the owner of the pit, is liable. R. Nathan, however, said that each one of them pays half (for both have their share in it)." But have we not learned in another Boraitha: "R. Nathan said: The pit-owner pays three-fourths and the owner of the ox one-fourth"? This presents no difficulty: One case treats of a vicious and the other of a non-vicious ox. But what does he hold in case of a non-vicious ox? If he holds that each one has done the *whole* damage, let each one pay half? And if, on the other hand, he holds that each one has done *half* the damage (and therefore the owner of the ox pays as for a non-vicious one one-fourth, which is half of the damage he did), only three-fourths are paid and one-fourth is suffered by the plaintiff? Said Rabha: R. Nathan was a judge, and he dived into the very depth of the Halakha. He holds that each has done only half the damage; but as to the objection raised that the owner of the ox should pay only one-fourth, it may be said that the owner of the killed ox may say to the owner of the pit: "I found my ox in your pit and you killed him; therefore, whatever I can realize from the owner of the ox who pushed mine in I will, and the balance you will have to pay."

Rabha said: "One who places a stone on the edge of the opening of a pit and an ox stumbles over the stone and falls into the pit," as to this question the difference of the rabbis and R. Nathan comes in (according to the rabbis the one who placed the stone is liable, for he caused the fall, and he cannot be considered as the *germon*, for the placing of a stone in itself is considered the same as a pit; and according to R. Nathan both are liable, for both contributed). Is this not self-evident? Lest one say: In that case the pit-owner may say to the owner of the ox, "Were it not for my pit your ox would have (instead of pushing him in) killed him"; but here, in this case, the one who placed the stone may say to the pit-owner, "Were it not for your pit, what harm would my stone have done him? Had he stumbled over, he would have gotten up at once?" It therefore teaches that he may, however, say to him, "Were it not for your stone, he would not have fallen into the pit."

Rabha said: An ox and a man who together push some other into a pit (so that the ox, the man, and the pit have all contributed), as regards damages all are liable; as regards the four things and the value of the infant (if it should be the case), the man is liable and the others are free; as to payment of atonement money and the thirty shekels for a slave, the ox is liable and the others are free; as regards damage to vessels and an ox that became desecrated and was redeemed, the man and the owner of the ox are liable, and the owner of the pit is free. Why is the owner of the pit free in this latter case of a redeemed ox? Because it is written [Ex. xxi. 36]: "And the dead shall belong to him," which means in a case where the dead can belong to him, excepting this case (for although it was redeemed the carcass cannot be sold but must be buried).

"*If an ox fall in*," etc. Our Mishna is not in accordance with R. Jehudah of the following Boraitha: "R. Jehudah makes one liable for damages to vessels caused by a pit." What is the reason for the rabbis' theory? It is written [ibid.]: "And an ox or an ass fall therein," which signifies an ox but not a man, an ass but not vessels. R. Jehudah, however, holds that the "or" means to add also vessels. Now, according to R. Jehudah, who admits that the word "ox" means to exclude man, what does the word "ass" mean to exclude? Therefore said Rabha: The necessity of stating "ass" as regards a pit according to R. Jehudah, and "lamb" as regards a lost

thing according to all, is really difficult to explain.

"*If an ox, deaf*," etc. What does this mean? Shall we assume that the ox *belongs* to a deaf person, etc., but if he belongs to a sound person there is no liability? How is that possible? Said R. Johanan: It means that the *ox* was deaf, etc. But if he was sound, there is no liability? Said Rabha: "Yea, an ox that is deaf, etc., but if he was sound there is no liability, because a sound ox is capable of taking care of himself. The following Boraitha is plainly in support of the above: If there fall therein a deaf, raging, young, or blind ox, or an ox walking in the night-time, there is a liability. If it was a sound one, however, and in the day-time, there is no liability.

MISHNA *VIII.*: There is no difference between an ox and another animal as regards falling into a pit; to have been kept distant from Mount Sinai [Ex. xiii.] as to payment of double, to restitution of lost property; as regards unloading; muzzling, kilayim [of species], and as regards Sabbath. Neither is there

any difference between the above-mentioned and a beast or bird. If so, why does the Scripture mention "ox or ass"? Because the verse speaks of what is usual.

GEMARA: Concerning falling into a pit, it reads [Ex. xxi. 34]: "In money unto the *owner* thereof," which signifies any animal that has an owner. Concerning Mount Sinai, it reads [ibid. xix. 13]: "Whether it be *animal* 1 or man, it shall not live," which includes also beasts; and the word "whether" includes also birds. Concerning payment of double, it reads [ibid. xxii. 8]: "For *all* manner of trespass," which signifies that every manner of trespass (wilfulness and even as regards inanimate subjects). Concerning restitution of a lost thing, it reads [Deut. xxii. 3]: "Every lost thing of thy brother's." Concerning unloading, we deduce it from the analogy of expression of "ass" used here, and in regard to Sabbath [Deut. v. 14] (as concerning the latter, other animals are also included, so also here). Concerning muzzling [Deut. xxv. 4], we deduce it from the analogy of the term "ox" used here, and concerning Sabbath [ibid.]. Concerning kilayim, if it relates to that of ploughing, we deduce it from the analogy of the term "ox" in the manner just stated; if it relates to that of coupling of animals, it is deduced from the analogy of the word "any of thy cattle" used here, and concerning Sabbath. And whence do we know that it is so as to Sabbath itself? From the following Boraitha: R. Jose says in the name of R. Ishmael: At the first commandments it is written [Ex. xx. 10]: "Thy man-servant, nor thy maid-servant, nor thy cattle"; and at the second commandments it is written [Deut. v. 14]: "Nor thy *ox*, nor thy *ass*, nor any of thy cattle." Why were they expressly stated? Are, then, the ox and the ass not included in it cattle"? To tell thee that, as the terms "ox" and "ass" mentioned here include beasts and birds, to put them on the same footing, so also, wherever these two terms are mentioned, they include beasts and birds. But perhaps the statement in the first commandments should be taken as *general* and that of the last commandments as *particular*, and as there is a rule that the *general* includes nothing but the *particular*, this means to say that only ox and ass are meant, and nothing else? Nay, it states, at the last commandments, also "*all* 2 of thy cattle," and the word

[paragraph continues] "all" adds all other beasts. Is it really so, that wherever "all" is written it adds

something? Is not the same word used at tithing, and still it is construed to be a case of *general* and *particular*? (See Erubim, p. 64.) We may say that "all" is sometimes also a *general*, but in this particular instance it must be explained only as to add; for it would have been sufficient to state only "and cattle," as it does in the first commandments, and still it states, "and *all* cattle," to infer that it plainly means to add.

Now, having come to the conclusion that this "all" means to add, why was it necessary to state "cattle" in the first and "ox" and "ass" in the last commandments? It can be explained that these particular expressions were mentioned for the purpose of deducing muzzling, unloading, and kilayim by the analogy of expression stated above. If also (that as regards kilayim it is deduced from Sabbath), let even a man be prohibited from drawing a wagon together with an animal, as he is also prohibited as regards Sabbath? Why, then, have we learned in the following Mishna: "A man is permitted with all of them to plough and draw"? Said R. Papa: One of the inhabitants of Papanai knew the reason for that, and that was R. A'ha bar Jacob, who explained it thus: It is written [ibid. 14]: "In order that thy man-servant and thy maid-servant may rest as well as thou"--that means that they are compared to them only as regards rest, but not as regards any other thing.

R. Hanina b. Egil asked R. Hyya b. Aba: Why in the first commandments is it not written "that it may be well with thee," and in the second commandments it is so written [Deut. v. 16]? He rejoined: "Instead of asking me for the reason, you had better ask me whether it is so written at all; for I did not notice it. You had better go to R. Tan'hum b. Hanilai, who used to frequent R. Joshua b. Levi, who was well versed in Agadah." He went there and got the answer from R. Tan'hum. From R. Joshua b. Levi I heard nothing about it, but so told me Samuel b. Na'hum the brother of R. Aha b. Hanina's mother [according to others, the father of the same]: The reason is because the first commandments (contained on the tables) were destined to be broken. And if so, what of it? Said R. Ashi: If this had been written thereon and subsequently (the tables) had been broken, Heaven save! "good" would have ceased from Israel.

R. Jehushua said: One who sees the letter "*Teth*" in his

dream, it is a good omen for him. Why so? Because the first time this letter is used in the Scripture is in the word "*Tobh*" (good) in the verse [Gen. i. 4]: "And God saw the light, that it was good (tobh)."

"*And so also a beast*," etc. Said Resh Lakish: In this Mishna Rabh teaches us that a cock and a peacock and a pheasant are considered kilayim with each other. Is this not self-evident? Said R. Habiba: Because they are usually raised together, one might say that they are one species. Hence this statement.

Samuel said: The ordinary goose and the wild goose are considered kilayim. Rabha b. R. Hanan opposed. Why so? If because the one has a long beak and the other a short one, then let a Persian and an Arabian camel also be kilayim, because the one has a thick and the other a thin neck? Therefore said Abayi: The reason is because the one has his testicles on the outside, while the other has them inside. R. Papa said: The one hatches one egg at a time, while the other hatches many at a time.

Footnotes

116:1 Rashi explains that of the pit mentioned as regards payment it is plainly written, "the *owner* of the pit shall pay"; of a pit, however, on public ground the Scripture begins with, "If one *open* a pit"--and the Mishna treats of one that *dug* a pit. Hence R. Aqiba's statement.

118:1 The Hebrew term is "Nisarah," and the Talmud explains it to mean a "hair," from the Hebrew word "saar" (a hair).

123:1 See Erubin, pages 80-82.

128:1 Leeser translates "beast."

128:2 The Talmud translates the Hebrew term literally, "all," while Leeser translates it "any."

Next: Chapter VI.

CHAPTER VI.

REGULATIONS CONCERNING THE GUARDING OF ANIMALS AGAINST DOING DAMAGE. CONCERNING THE STARTING OF FIRE; IF IT PASSES OVER A WALL. FOR WHAT DISTANCES PASSED BY A FIRE IF THE ONE WHO STARTED IT LIABLE?

MISHNA *I.*: If one drive his sheep into a sheep-cot and properly bolt the gate, but still they manage to come out and do damage, he is free. If he do not properly bolt the gate, he is liable. If they break out in the night time, or robbers break in the gate, and the sheep come out and cause damage, he is free. If the robbers lead them out, they are responsible for the damage. If one exposes his cattle to the sun, or he places them in the custody of a deaf-mute, a fool, or a minor, and they break away and do damage, he is liable; if, however, he places them with a (professional) shepherd, the latter substitutes him (as regards liability for damages). If the cattle fall into a garden and consume something, the value of the benefit they derive is to be paid. If, however, they enter the garden in the usual way, the value of the damage is paid. How is the value of the damage to be ascertained? It is appraised how much a measure of the land required for planting a saah was worth before and how much it is worth after. R. Simeon says: If they consume ripe fruit, the value of ripe fruit is paid; if they consume one saah, the value of one; if two, the value of two is paid.

GEMARA: The rabbis taught: When is it called properly and when not properly bolted? If the gate is bolted so as to withstand an ordinary wind, it is called "properly"; if not, it is called "improperly." Said R. Mani b. Patish: Who is the Tana who holds that slight care is sufficient for a vicious one? It is R. Jehudah of the following Mishna (*supra*, page 104): If his owner secured him with the rope and properly locked him up, and still he came out and did damage, whether he was non-vicious or he was vicious, there is a liability. Such is the dictum of R. Meir. R. Jehudah, however, says: For a non-vicious

there is, but for a vicious one there is no liability; as it is written [Ex. xxi. 36]: "And his owner had *not* kept him in," but here he had. R. Elazar, however, said: "There is no other care for a vicious one than the knife." It can be said that the Mishna is in accordance with R. Meir also, but the tooth and foot are different, for the Scripture required only slight care with them, as R. Elazar, and according to others a Boraitha taught: "There are four things regarding which the Scripture diminished the amount of care, and they are the pit, the fire, the tooth, and the foot: The pit, as it is written [ibid., ibid. 33]: "And if a man open a pit, or if a man dig a pit, and do not cover it"; but if he had only covered it (without placing a layer of earth on it), it is sufficient. Fire, as it is written [ibid. xxii. 5]: "He that *kindled* the fire shall surely make restitution," which signifies that it must be done *purposely*. The tooth and foot, as it is written [ibid., ibid. 4]: "And he *let* his beasts enter, and they fed in another man's field," which signifies an intentional act, but not otherwise. Said Rabba: From our Mishna it is also to be inferred (that the reason is

because the Scripture diminished the amount of care), for it states *sheep* instead of *ox* (although sheep require less care), of which it treats throughout. We must say, then, that this is because the Law requires only slight care, and therefore the Mishna mentioned only sheep, which usually do damage only with the tooth and foot, and not with the horn, and also for the reason that the tooth and foot are considered vicious from the beginning, which is not the case with the horn. Infer from all this that slight care only is required.

We have learned in a Boraitha: "R. Jehoshua said: There are four things (for which) one who does them cannot be held responsible before an earthly tribunal, although he will be punished for them by the Divine court, and they are: he who breaks the fence of the stall where his neighbor's cattle are kept (only when the fence was shaky); he who bends his neighbor's growing crop in the direction of fire (only during the prevalence of an unusual wind); he who hires a false witness (only for the benefit of his neighbor); and he who suppresses his own testimony and thereby deprives his neighbor from its benefit (only if he was the sole witness). But if the circumstances are different, he is liable also to an earthly tribunal.

R. Ashi said: The case of bending one's crop in the direction of the fire may be explained that he spread blankets over

the crop, and thereby made it "hidden articles," for which there is no liability for the one who starts the fire (as explained elsewhere).

But are there not other cases in which one is liable only to heavenly justice? Yea, there are, but those just stated had to be enumerated here, for one might say that in these cases there should be no liability even to the Divine court. Thus, in the first case, because it had to be abolished anyhow; in the second, because by an unusual wind it would have caught fire without that and (according to R. Ashi it is also necessary to mention this case, lest one say he may argue that he spread the blankets over it in order to protect it against the fire); in the third, because the witness had not to listen to the one who hired him, as it was prohibited by the Law; and in the last case, because who could guarantee that if he should not have testified the other would have admitted his liability? And lest one say that in such cases there is no liability, even to the Divine court, hence the statement.

"*If he expose them to the sun*," etc. Said Rabba: And this is so even if they undermined (the fence and did damage); lest one say that in such a case the damage was done through accident, he comes to teach us that even this is considered wilful. Why so? Because the plaintiff may say to the defendant: Did you not know that when exposing them to the sun they would do all they could to break out?

"*If the robbers lead them out*," etc. Is this not self-evident, for by this act they place them under their own control as regards everything? The case was that they only stood before them on each side (so as to leave only the way leading to the standing crop open). And this is in accordance with Rabba, who said in the name of R. Mathua, quoting Rabh: One who leads another one's animal to, and places it in, one's barn (and it does damage), is liable. "Places?" Is this not self-evident? We must say, then, that it means that he stood before them (as explained above). Said Abayi to R. Joseph: You explained to us the above saying of Rabh, that the case was that he

struck it (driving it on), so also was the case here with the robbers, that they did not lead them out, but only struck them with a cane (and this action is considered equivalent to leading them out with the hand).

"*If he deliver them to a shepherd*," etc. From the fact that it states that he delivered them to a *shepherd*, and it does not

state that "he delivered them to another," it is to be inferred that the shepherd in turn delivered them to his assistant, for such is the custom of a shepherd; but if he delivered them to a layman the shepherd is not liable. Shall we assume that this will be a support to Rabha, who said elsewhere: "A bailee who intrusts his bailment to another bailee is liable?" Nay, perhaps the statement here is because it is customary so to do, but such is the law, even if it was delivered to a layman.

It was taught: A bailee of a lost article, Rabba says that he is considered a gratuitous bailee for he derives no benefit from such bailment; R. Joseph, however, says that because the Scripture imposed this duty upon him, against his will, he is considered a bailee for hire.

R. Joseph objected to Rabba from the following Boraitha: If he returned the lost article in a place where its owner were likely to see it, he is absolved from any obligation to further trouble himself with it; and if it was stolen or lost, he is responsible. Does this not mean if it was stolen or lost while under his control (and still he is liable; hence he is considered a bailee for hire)? Nay, it means from the place to which he returned it. But does it not state that he need not trouble with it any more? He answered him: The case was that he returned it in the noon-time, and it teaches two cases, thus: If he returned it in the morning, when it could be noticed by its owner, who usually passes by that place, he need no more trouble himself with it; if, however, he did so in the noon-time, when the owner does not usually pass by, and it was stolen or lost, he is responsible. He again objected from the following: "He is always liable until he return it to the control of the owner." Does that not mean if even he placed it in his house, hence we see that he is considered a bailee for hire? He answered him: I admit that in case of animated beings more care is required, for they are used to walk away.

Rabba then objected to R. Joseph's statement from a Boraitha which teaches: It is written [Deut. xxii. 1]: "Bring them back." "Bring them" means to the owner's house; "back" means to his garden or to the owner's ruined (vacant) house. We must say, then, that in the last two places the returned property is not guarded; because if it is, then what difference is there between these two places and the house? Now then, if he is considered a bailee for hire, why is he not liable for it at the last two places? And R. Joseph answered: The Boraitha

speaks of a case where the property was guarded, and the difference between those places and the house is that in the former case the owner is not notified, and it comes to teach us that the knowledge of the owner is not required, as R. Elazar states in Baba Metzia, p. 31*a*.

Said Abayi to R. Joseph: Do you yourself not admit that he is considered a gratuitous bailee?

Did not R. Hyya b. Aba say in the name of R. Johanan that, regarding found property, if the finder claims that it was stolen from him (and it was found out that it was not so), he pays double (as it is written [Ex. xxii. 7, 8]: "If the thief be not found . . . or for any manner of lost thing"); and if he would be considered a bailee for hire, why should he pay double (by his own claim he admits that he has to pay the value of the bailment)? He answered: The case was that he claimed to have been robbed by armed robbers (*i.e.*, an accident, in which case he is free). He objected again: If so, then it is robbery, and not theft? R. Joseph rejoined: I say that even armed robbery, when committed not publicly, is still considered theft, and he must pay, according to Scripture, double. Abayi objected again: (It was stated elsewhere in regard to the comparison between a gratuitous bailee and a bailee for hire, as follows:) "Nay, a gratuitous bailee pays double and a bailee for hire does not." Now, if armed robbers pay also double, like ordinary thieves, there can also be a case of a bailee for hire who should pay double, as, for instance, when he claims that he was robbed by armed robbers (and it was found out to be not so)? He rejoined: It means thus: Nay, there can be no comparison between a gratuitous bailee who pays double, whatever his claim may be, and a bailee for hire who pays double only when he claims to have been robbed by armed robbers. He still objected from the following Boraitha: It is written [Ex. xxii. 9]: "And it die, or be hurt"; from this we know only as to death or hurt. Wherefrom do we know also as to theft or loss? This is to be drawn by an *a fortiori* conclusion, thus: A bailee for hire who is not liable for death or hurt is still liable for theft or loss, a borrower who is liable for death or hurt ought so much the more to be liable for theft or loss. And this *a fortiori* conclusion is irrefutable. Now, if armed robbers are considered ordinary thieves, why is it irrefutable-can it then not be refuted thus: There is an exception with a bailee for hire who pays double when he claims that he was robbed by armed robbers? He rejoined: The Tana of this

[paragraph continues] Boraitha holds that even to pay only the actual value without an oath is better than to pay double under oath (and therefore the *a fortiori* conclusion cannot be refuted). (The explanation of this statement will be found in Baba Metzia, where this case is treated at length.)

"*If it fall into a garden*," etc. Said Rabh: The case was that it struck upon the growing crop, and the benefit derived for which payment must be made is that it was prevented from striking hard upon the ground. But how is the case if it consumed some plants, does it not pay? Shall we say that Rabh is in accordance with his theory (above, page 109) "that the animal ought not to have eaten"? What comparison is this? When did Rabh say this? Only when the animal was injured by the fruit which it consumed and the owner of the animal claims payment for such injuries, in such a case the owner of the fruit can say that the animal ought not to have eaten; but when the animal *did injury to the owner of the fruit* by consuming it, did Rabh then say that it must not be paid? But what, then, did Rabh mean by his statement above? Rabh means to state a case of "not only"; viz., Not only that he pays where it consumed, but even when it fell on the crop and consumed nothing it must pay, for the benefit it derived in being prevented from striking hard upon the ground, and lest the owner of the animal say that this was only his duty, similar to frightening away a lion from his neighbor's field, for which the Law awards no compensation, it comes to teach us that payment must be made for the benefit. But why is this really not to be compared to frightening away a lion from one's neighbor's field? Because in such cases one does not incur any expense, but here he has actual loss.

In what manner did it fall? R. Kahana said that it slipped out by reason of the urine it let. Rabha,

however, said that it was pushed in by another animal. According to the latter, so much the more if it happened by reason of her own urine; but according to the former, only in such a case; but when pushed in by another animal it is considered wilful, and the value of the damage is paid, for he (the owner of the field) can say to the owner of the animal. "You should have seen to it that the animals could have passed one by one, without being pushed in." Said R. Kahana: The case is only if it damaged one plant-bed (that it pays the benefit that it derived); but if it went from one plant-bed to another, consuming the plants, it

pays the full value. R. Johanan, however, says that even in such a case, and even if it continued doing so the whole day, only the value of the benefit derived is paid (because when once it was already there it could not keep away from consuming), until the owner has noticed that the animal left the field and then returned again. Said R. Papa: It must not be said that the owner of the animal must have notice of both the leaving and the returning, it is sufficient if he only had notice of the leaving and did not care to keep it from returning, because the owner of the field may say to the owner of the animal: "You should have known that, so long as it knew the way, it would go there at the earliest opportunity, and you should have taken care of it."

"*How does it pay what it damaged*," etc. Whence is this deduced? Said R. Mathua: It is written [Ex. xxii. 4]: "And they feed in another man's field"--this teaches us that the appraisement is made with the *other* field (which was not damaged). But is this passage not necessary, to exclude public ground? If so, then the Scripture ought to read, "and they feed another man's field." Why *in* another man's field? Hence to infer both.

How is the appraisement made? Said R. Jose b. Hanina: One saah in sixty (*i.e.*, the Mishna means not only sixty times the portion damaged, but thus: To the measure of land sufficient for planting a saah of grain, on which the damage was done, are added fifty-nine measures of such dimensions, and appraisement is then made as to the value of such a lot of land if sold as one lot of land; then the value of a measure sufficient for the planting of one saah is apportioned, and then is ascertained the difference in price of such saah on account of such damage. The reason is, that no undue advantage should be taken of the defendant; for a small plot of land is comparatively higher in price than a plot of sixty times its size, because a poor man can also afford to buy it and there are more purchasers). R. Janai, however, says: One Tirkav in sixty (thirty saah, and not sixty saah, in order not to take undue advantage of the plaintiff, as for plots of sixty saah buyers are not so numerous, because for a man of moderate means it is too much and for a rich man it is too small a plot). But Hezkiah says: The appraisement is made only by one in sixty times the quantity damaged. An objection was raised from the following: "If she consumed a kabh or two, one must not say that their

value must be paid, but it is assumed as if it were a small plant-bed and is thus appraised." Is it not to be presumed that this plant-bed is appraised separately and for itself? Nay, it means in sixty times its size.

The rabbis taught: "The appraisement is not one kabh in sixty kabh, for it increases its value; neither one kur in sixty kurs, for it unreasonably reduces its value." What does this mean? Said R. Huna b. Menoa'h in the name of R. Aha the son of R. Ika, it means thus: A measure of a kabh

is not appraised separately, for the plaintiff may unduly benefit by it; nor a kabh as relative to a kur, for the plaintiff may unduly be injured by it (for the damage may not be so well noticed), but every unit is appraised at sixty times its value (for the reason stated above).

It happened that one came before the Exilarch and complained of one who destroyed one of his trees. Said the Exilarch to the defendant: "I know of my own knowledge that the tree was one of a group of three trees which was worth one hundred zuz. You will therefore pay him one-third of this amount." The complainant refused to accept this decision, saying: Before the Exilarch, who applies the Persian law, what have I to do? and he went before R. Na'hman, who assessed the damage by appraising the destroyed tree as relative to a group of sixty trees. Said Rabha to him: The rule of sixty was held when damage was done by one's *property* (without the intention of its owner), and you wish to apply the same rule to this case, where the person himself has done the damage intentionally? Said Abayi to Rabha: Why do you think that in case of damage done by one's own person this rule should not apply, because "sixty" is not mentioned in the following Boraitha: "One who destroys the young grapes of his neighbor's vineyard, the damage is assessed by appraising the value of the vineyard before and after the destruction"? But have we not learned in another Boraitha, similar to this as regards damage by one's property, viz.: If the animal destroyed a bough, R. Jose said, the assessors of fines in Jerusalem say that a bough one year old is worth two silver dinars; two years old--four. If it consumed hay, R. Jose the Galilean says that the damage is assessed by appraising the value of what remained. The sages, however, hold that the value of the land before and after the consumption of the hay is appraised (and the difference in value is the damage). If it consumed grapes in the budding stage,

R. Jehoshua says that they are considered as if ready to be plucked, the rabbis, however, apply the former rule. R. Simeon b. Jehudah says in the name of R. Simeon: This was said only when the grapes or figs were still in sprouts; but if they were already developed to the size of a white bean, they are considered as ready to be plucked? Now then, as to the sages, although they do not mention the rule of sixty, still we know from elsewhere that such is their theory, and therefore it does not state it here expressly. Interpret the above Boraitha in the same manner. The Master said: R. Simeon b. Jehudah said, etc. This was said only when the grapes and figs were still in sprouts, from which it is to be inferred that if they were in the budding stage they are considered as ready to be plucked. How should the latter part be explained: "If it consumed figs or grapes when already of the size of a white bean, they are considered as ready to be plucked"--from which it is to be inferred that if in the budding stage it is appraised as to how much it was worth before and how much after? Said Rabhina: Add, and teach together thus: "This is in a case where it consumed grapes and figs in the sprouting stage; but if in the budding stage or when they were already of the size of a white bean, they are considered as ready to be plucked." If this is so, is it not the same as what R. Jehoshua said? The difference is as to the deduction from the amount of damage of the value of the increased sap (of the tree by reason of the destroyed fruit, which benefits the remaining fruit). But it is not known who is the one who holds him liable. Abayi, however, says: It is very well known, because the Tana who takes into consideration the increase of sap is R. Simeon b. Jehudah, who holds something similar in Khethuboth, p. 39*a*.

R. Papa and R. Huna the son of R. Jehoshua used to appraise the tree together with a small portion of the ground on which it was growing. The Halakha, however, prevails in accordance with R. Papa and R. Huna the son of R. Jehoshua as regards Aramean trees and in accordance

with the Exilarch as regards Persian trees (because they are expensive).

Eliezer the Little once put on black shoes and stood in the market-place of Nahardea. When the officers of the Exilarch asked him for the reason, he answered that it was because he was lamenting the fall of Jerusalem.

They said to him: "Are you such a great man as to be worthy of lamenting the fall of Jerusalem?" And thinking

that he was doing that in search of notoriety, they placed him under arrest. He, however, protested and said: "I am a great man." When asked to prove it, he said: "Either you ask me some difficult question, or I will ask one of you." They said to him: "You ask the question." He asked thus: "One who destroys a young date-tree (on which the dates are not yet ripe), what amount of damages must he pay?" They answered: "He pays the value of the tree." "But there are already dates on it?" They rejoined: "Then let him also pay the value of the dates." "But did he, then, take the dates with him; he only destroyed the tree?" he argued. "Well, let us then hear what you have to say to that." He answered: "The damage is appraised as to one in sixty." They said to him: "But who agrees with you in that?" He answered: "Samuel is still alive and his college is in full bloom." When they inquired of Samuel and verified that he agreed with him, they liberated him.

"*R. Simeon says: If it consumed ripe fruit*," etc. Why so? Was it not said above that [Ex. xxii. 4]: "And they feed in another man's field" teaches that it should be appraised together with the ground? This is so only when the ground is needed, but in this case (*ripe* fruit), where they no longer need the ground, it must be appraised separately and paid in full. Said R. Huna b. Hyya in the name of R. Jeremiah b. Aba: There was a case, and Rabh acted in accordance with R. Meir; but in his lectures, however, he declared that the Halakha prevails in accordance with R. Simeon b. Gamaliel. He acted in accordance with R. Meir of the following Boraitha: If he (the husband) transferred some of his estates to one, and his wife did not sign the release of her dower (the amount stated in her marriage contract), and then he transferred other estates to another and she did sign, she lost her dower. Such is the dictum of R. Meir. (And she cannot say: I did this favor to my husband and signed the release as to the second estates because I lose nothing thereby, as I take my dower in the first estates, from which I have not released my right.) And he lectured that the Halakha prevails in accordance with R. Simeon b. Gamaliel of our Mishna, that if the fruit was ripe it must be appraised separately. [1]

MISHNA *II*.: One who puts up a stack of grain on another's land without permission, and the land-owner's animal consumed some of the grain, he is free. If the animal was injured thereby, the one who put up the stack is liable. If, however, it was done with permission, the land-owner is liable.

GEMARA: Said R. Papa: It treats here of a case where there was a watchman who told him, "Go and put up your stack," which is construed to mean, "Go, put up your stack, and I will take care of it."

MISHNA *III*.: One who started a fire through the medium of a deaf-mute, idiot, or minor, he is free from responsibility to an earthly tribunal, but he is liable to the Divine court. If, however, he started the fire through the medium of a sound person, the latter is liable. If one brought fire and the other wood, he that brought the wood is liable. But if the wood was brought first by one, and subsequently another brought the fire, he who brought the fire is liable. If one came and blew at the fire and kindled it, the one who did so is liable. If, however, it was kindled by the wind, all are free.

GEMARA: Said Resh Lakish in the name of Hezkiah: He is not liable to earthly tribunals only if he delivered to the per. sons mentioned in the Mishna a burning coal and they blew at it; but if he handed them a flame, he who handed it to them is liable. Why so? Because it is his own act that caused the fire. R. Johanan, however, says that even in such a case he is free. Why so? Because it was the deaf-mute's tongs (medium) that caused it. And the court cannot hold him liable unless he handed them both fire and fuel, for in such a case surely his intention was to cause it.

"*If the wind kindled it, all are free*." The rabbis taught: "If he was blowing at the fire and so also was at the same time the wind--if his blowing, independently of the wind, was sufficient to kindle the fire he is liable; if not, he is free. Why so--let it be as if he was winnowing and the wind helped him, in

which case he is liable? Said R. Ashi: This was said only as regards Sabbath, where the Scripture requires intentional work (and of course he is satisfied with the help afforded him by the wind and thus it is intentional); but here he is the mere cause (*germon*), and there is no liability as regards damages for being a mere *germon*.

MISHNA *IV*.: If one start a fire and it consume wood, stones, or earth, he is liable; for it is written [Ex. xxii. 5]: "If a fire break out, and meet with thorns, so that stacks of corn, or the standing corn of the field, be consumed thereby, he that kindled the fire shall surely make restitution."

GEMARA: Said Rabha: All those various things were necessary to be enumerated in the Scripture, for one could not be deduced from the other by comparison. Thus, if it mentioned thorns only, it could be assumed that only in such a case there is a liability, because they are destined to be burnt and one does not take proper care, and therefore it is considered gross negligence; but in case of stacks, which are not so and usually one takes proper care of them, it would be considered an accident, for which there is no liability; again, if it mentioned stacks only, it could be assumed that there is a liability, because the damage is great; but in case of thorns, where the damage is little, one might say that there is no liability. But for what purpose is "standing corn" mentioned? To teach that as standing corn is exposed to view, so everything is exposed to view (to exclude that which was concealed from view). [But according to R. Jehudah, who holds that there is a liability also for such things, what does the case just mentioned teach? It comes to include all that is in a standing position, as trees and animals.] "Field"--to include the case where the fire singed the surface of fallow ground or of stones. But let the Scripture mention only "field," and it would include all the others? If so, one might say that it applies only to the *products* of the field (but not to the ground itself), hence it teaches us

that (by stating "standing corn" expressly and "field," to include the ground itself).

R. Simeon b. Na'hmani said in the name of R. Johanan: No chastisement comes upon the world unless there are wicked ones in existence, as it is written [ibid., ibid.]: "If a fire break out and meet with thorns." When does a fire break out--when there are *thorns* prepared for it? Its first victims, however, are the upright, as it is written [ibid., ibid.]: "So that stacks of

corn *be* consumed"--not it *shall* consume, to signify that the stacks of corn (the upright) are consumed *first*.

R. Joseph taught: It is written [Ex. xii. 22]: "And none of you shall go out from the door of his house until the morning?" Infer from this that as soon as permission is given to the executioner he makes no distinction between upright and wicked; and furthermore, he picks out his first victims from among the upright, as it is written [Ezek. xxi. 8]: "And I will cut off from thee the righteous *and* the wicked." R. Joseph cried, saying: If they are liable to so much misfortune, what good is there in being upright? Said Abayi: It is of great good to them, as it is written [Isa. lvii. 1]: "*Before* the evil the righteous is taken away" (*i.e.*, that he shall not see the evil that will come in the future).

The rabbis taught: When pestilence is raging in town, stay in-doors, as it is written [Ex. xii. 22]: "And none of you shall go out from the door of his house until the morning"; and it is also written [Isa. xxvi. 20]: "Go, my people, enter thou into thy chambers, and shut thy door behind thee"; and again it is written [Deut. xxxii. 25]: "Without shall the sword destroy, and terror within the chambers." Why the citation of the two additional passages? Lest one say that it is so only as to nighttime but not as to day-time, hence the passage in Isaiah, which means at any time; and lest one say that this is so only where there is no terror within the house, but when there is it could be assumed that it were more advisable to go out and associate with others, hence the last-quoted verse in Deuteronomy, to teach that although within the house terror reigns, yet without it is still worse, as "without the sword shall destroy." Rabha in times of fury used to keep the windows shut, for it is written [Jer. ix. 20]: "For death is come up through our *windows*."

The rabbis taught: If there is a famine in town, do not spare your feet and leave town, as it is written [Gen. xii. 10]: "And there arose a famine in the land: and Abram *went down* into Egypt to sojourn there." And it is also written [II Kings, vii. 4]: "If we say, We will enter into the city, then is the famine in the city; and we shall die there." For what purpose is the quotation of the additional passage? Lest one say that it is so only where there is no risk of life, but where there is it is not so, hence the quotation, which is followed by [ibid., ibid.]: "If they let us live, we shall live; and if they kill us, we shall but die."

The rabbis taught again: "When there is a pestilence in town, a person shall not walk in the middle of the road; for so long as the Angel of Death has received his permission to rage, he does so high-handed. On the contrary, when peace reigns, one must not walk on the sideways; for so long as he has not the permission, he hides himself away."

R. Ami and R. Assi were sitting before R. Itz'hak Nap'ha. One was asking him to say some Halakha, and the other to say some Agadah. When he began to say a Halakha he was interrupted by one, and when an Agadah he was interrupted by the other. He then said: I will tell you a parable: It is like unto a man who has two wives-an old one and a young one. The young one picks his gray hair and the old one his black hair. The result is that he becomes bald-headed. I will tell you, however, now something which will be to the satisfaction of both of you: (*Agadah*)--It is written [Ex. xxii. 5]: "If a fire *break* out and meet with thorns"--that means, if it should break out of *itself*--"he that kindled the fire shall surely make restitution." Said the Holy One, blessed be He, "I shall surely make restitution for the fire I kindled in Zion," as it is written [Lam. iv. 11]: "He kindled a fire in Zion, which had devoured her foundations"; and, "I shall also build it up again by fire," as it is written [Zech. ii. 9]: "But I--I will be unto her . . . a wall of fire round about, and for glory will I be in the midst of her." (*Halakha*)--Why does the verse begin with the damage by one's property (if a fire break out) and end with damages done by one's person (*he* that kindled the fire)? To teach thee that one is liable for his fire on the same principle as liability for one's arrow.

MISHNA V.: If the fire passed over a fence four ells high, or through a public highway or a river, there is no liability.

GEMARA: But have we not learned in a Boraitha, as regards a fence of such height, that there is a liability? Said R. Papa: The Tana of our Mishna counts regressively, viz.: For six, five, and down to (and including) four ells there is no liability; while the Tana of the Boraitha counts progressively, viz.: For two, three, up to (but not including) four, there is a liability. (Hence for four ells, according to both, there is no liability.) Said Rabha: The rule that for four ells there is no liability applies also to a field filled with thorns (which makes it very inflammable). Said R. Papa: The four ells begin to count from the edge of the thorns upwards.

Rabh said: Our Mishna treats of a case where the fire was rising upwards, but if it was creeping (and consuming whatever was in its way, and therefore if it even crossed a public highway, there is a liability) there is a liability even up to a hundred ells. Samuel, however, says the reverse: Our Mishna treats where the fire was creeping; but if it was rising upwards, any dimensions are sufficient to relieve from liability. The following Boraitha is in support of Rabh: This (that if it crossed a public highway there is no liability) was said only if the fire was rising; but if it was creeping and fuel was within reach, even a hundred miles, there is a liability. If it crossed a river or a pool eighteen ells wide, there is no liability.

"*A public highway*." Who is the Tana who holds so? Said Rabha: It is R. Eliezer, who says in the following Boraitha: If it was sixteen ells, as wide as a public highway, there is no liability.

"*Or a river*." Rabh said: It means a full-sized river. Samuel, however, said: It means a lake (from which the neighboring fields are irrigated). According to Rabh, it is so even if the river dried up (for so that it be wide enough, it is considered as a public highway), but according to Samuel there must be water in the lake.

MISHNA *VI.*: If one start a fire on his own premises, how far must the fire pass (in order to subject him to liability)? R. Eliezer b. Azariah said: It is looked upon as if it were in the centre

of a space of land sufficient for planting a kur of grain (and if it pass out of such distance, he is liable). R. Eliezer says: Over sixteen ells, as wide as a public highway. R. Aqiba says: Over fifty ells. R. Simeon, however, says: It is written [Ex. xxii. 5]: "He that kindled the fire shall surely make restitution"--that means that he must make restitution for all that was burnt through the fire he started.

GEMARA: Does, then, R. Simeon not hold of distances in regard to fire? (*i.e.*, that a fire must not be built unless it is a certain distance from other objects). Have we not learned in the following Mishna (Baba Bathra, Ch. II., M. 2): R. Simeon says: These distances were said only for the purpose that if they were observed, and still damage was done, there is no liability (hence we see that he holds of distances?). Said R. Na'hman in the name of Rabba b. Abuah: R. Simeon's statement ill the Mishna, that one must pay for what was burnt through his fire means that the fire was made by the one who started it of such height in

that it could pass the different distances stated, respectively. R. Joseph in the name of R. Jehudah, quoting Samuel, said: The Halakha prevails in accordance with R. Simeon, and so also said R. Na'hman in the name of the same authority.

MISHNA *VII.*: If one cause his neighbor's stack of grain to burn down, and there be vessels therein which also are burnt, R. Jehudah says that he must pay also for the vessels. The rabbis, however, hold that he pays only for a stack of wheat or barley, as the case may be, of such dimensions. If a bound kid were therein and a slave was standing near by and both were burnt, he must pay for the kid (but not for the slave, as he should have escaped); if, however, a bound slave were therein and a kid was standing near by and both were burnt, he is free (from damages, because he is guilty of murder). And the sages concede to R. Jehudah that, if one set fire to another's house (or palace), he pays for all that was therein contained, for it is customary with people to keep their property in the house.

GEMARA: R. Kahana said: The rabbis and R. Jehudah differ only in case he started the fire on his own and it communicated to another's premises, in which case R. Jehudah holds one liable for the damage done by fire to concealed articles, and the rabbis do not, but if he started the fire on another's premises, they all agree that he pays for all that was contained therein. Said Rabha to him: If so, why does the Mishna state further on that "the rabbis concede," etc.--let it distinguish in that very statement, and say that the case is so only if he started the fire on his own premises, but if on another's they all agree that he must pay for all that was contained therein? Therefore said Rabha: They differ in both; viz., if he started the fire on his own premises and it communicated to another's. R. Jehudah holds him liable for concealed articles and the rabbis hold him free; and also in the other case, R. Jehudah holds that he must pay for all that was concealed therein, even if it were αρναχις (a belt made with pockets to place money therein). The rabbis, however, hold that he is liable only for such articles as are usually kept there, as a threshing-board or an ox-bow, but not for such articles as it is not customary to keep there.

The rabbis taught: If one cause a stack of grain belonging to another to burn down, and there be vessels therein which also are burnt, R. Jehudah says that he pays for all that was contained therein. The rabbis, however, hold that he pays only for a stack of wheat or barley, and the vessels are considered as

if their space was occupied with grain. This is so only when he started the fire on his own premises and it communicated to another's; but if he started it originally on another's premises, he pays for all that was therein. And R. Jehudah concedes to the rabbis that, if one permit his neighbor to place a stack of grain on his premises and the other did so and concealed some articles therein (and the owner of the premises cause a fire to burn them) he pays only for the grain; if he permitted him a stack of wheat and he placed there a stack of barley, or *vice versa*, or of wheat and he covered it with barley, or of barley and he covered it with wheat, that he pays only the value of barley.

Rabha said: If one give a golden dinar to a woman and say to her: "Take care of it, for it is a silver dinar," and she damage it, she pays for a golden dinar; for he may say to her: "What right had you to damage it?" If, however, it was lost because of her negligence, she pays only for a silver dinar; for she can say to him: "I obliged myself to take care of a silver dinar only, but not of a golden one." Said R. Mordecai to R. Ashi: Ye learned this in the name of Rabha, while we derived it from the above Boraitha, which states that, if one allowed him to place a stack of wheat and he covered it with barley, or *vice versa*, he pays only the value of barley; hence we see that he may say to him that he obliged himself to take care of barley only. So also here. She may say, "I obliged myself to take care of a silver dinar, but not of a golden dinar." Rabh said: I heard something in regard to R. Jehudah of our Mishna, and I cannot recollect what it was. Said Samuel: Does (Aba) not recollect what was said in regard to R. Jehudah's theory that one is liable for concealed articles? That he must make oath as to the value, as enacted in case of a bailee who claims that he was robbed.

It happened that one kicked the money-pouch of his neighbor into the river. The owner came and claimed that such and such articles were therein. When it came before R. Ashi, he was deliberating as to what was the law in such cases. Said Rabhina to R. A'ha the son of Rabha, according to others R. A'ha the son of Rabha to R. Ashi: Is this not stated in our Mishna: "And the sages concede to R. Jehudah that if one," etc., "because it is customary with people," etc.? He answered: If he had claimed that he had money therein it would be so, but here he claims that he had therein pearls; and the

question is, is it customary with people to keep pearls in a money-pouch? This remains unanswered.

Said R. Jemar to R. Ashi: If one claimed that he kept a silver cup in his house, what is the law? He answered: It must be investigated whether he is a man of such standing that he has silver cups, or whether he is a person whom others trust and deposit with him such article. Then he makes oath, and he is paid; if not, he is not believed, and no oath is given him.

R. Ada the son of R. Avia questioned R. Ashi: What difference is there between a robber and one who uses violence? He answered: He who uses violence pays the value (to the owner who gives up the articles under duress) while a robber does not. He rejoined: If he pays the value, why is it called violence--has not R. Huna said: If even one were threatened with hanging in

order to compel him to sell his property, the sale is valid? This presents no difficulty. R. Huna said so only when he finally consented, and said plainly, "I am willing to sell it"; but if he never voluntarily consented it is considered violence, even if the value of the article was received by him.

MISHNA *VIII.*: If a spark escape from under the blacksmith's hammer and do damage, there is a liability. A camel that was walking on a public highway laden with flax, and the flax pressed into a store and caught fire from the storekeeper's lit candle and set fire to the house, the driver of the camel is liable. If, however, the candle was placed outside the store, the store-keeper is liable. R. Jehudah says: If it was a Hanuka lamp, there is no liability.

GEMARA: Said Rabhina in the name of Rabha: From the statement of R. Jehudah it is to be inferred that there is a merit in placing the Hanuka lamp within ten spans (above the ground); for if it should be assumed to be above ten, why should R. Jehudah say that there is no liability--let him say that the store-keeper should have placed it above the camel and its rider? Hence as stated: Nay, it may be said that it might be placed even above them; but as an answer to the claim that he should have placed it above the camel and its rider, he may say that when one is occupied in the performance of a merit the rabbis do not put him to so much trouble.

Footnotes

140:1 No commentary explains for what purpose this statement is made here and what the marriage contract has to do with the appraisement of fruit, or why R. Huna finds it necessary to declare that there is a contradiction in Rabh's decision between his action in practice and the above lecture. It seems to us that this is to be explained p. 141 thus: The opposition to R. Simeon b. Gamaliel in our Mishna is anonymous, and there is a rule that the author of all the anonymous Mishnas is R. Meir; and R. Meir's decree regarding the marriage contract agrees with the decision in our Mishna, as his theory as regards the marriage contract is that, although the two estates are separate, still they are considered one, because they belong to one owner; and according to this theory, although the fruit is ripe and no more needs the ground, it can nevertheless not be appraised separate from the ground, because they belong to one owner, and the verse quoted applies. Hence the contradiction. The statement of R. Huna is the only one of its kind in the whole Talmud.

Next: Chapter VII.

CHAPTER VII.

RULES AND REGULATIONS CONCERNING THE PAYMENT OF DOUBLE, AND FOUR AND FIVE COLLUSIVE WITNESSES; THE RAISING OF YOUNG CATTLE IN PALESTINE, ETC.

MISHNA. *I*: The payment of double (in cases of larceny) is more rigorous than the payment of four and five fold; for the former is applicable to animate as well as to inanimate beings, while the latter is applicable to an ox and a sheep alone, as it is written [Ex. xxi. 37]: "If a man steal an ox or a sheep, and kill it or sell it," etc.

The one who steals a stolen article from a thief does not pay double, neither does he pay four or five fold if he afterward slaughtered or sold it.

GEMARA: It does not state that the payment of double is applicable to a thief as well as to one who claims that the bailment was stolen from him, and the payment of four and five fold is applicable to a thief only. Shall we assume from this that this is a support to R. Hyya b. Aba, who said in the name of R. Johanan: One who avails himself, as regards a bailment, of the claim that it was stolen from him, pays double; if he slaughtered or sold it, he pays four and five fold? Does, then, the Mishna state, "there is no difference," etc., "and *only* in this case," etc.? It states only "is more rigorous" and mentioned only one, and did not care to enumerate all.

"*For the payment of four*," etc. Whence is this deduced? From the following Boraitha: The rabbis taught: It is written [Ex. xxii. 6]: "For all manner of trespass"--this is a *general term*; "for ox, for ass, for lamb, for raiment"--this is a *particular term*; "or for any manner of lost thing"--which is again a *general term*. It is, then, a general, particular, and again a general term, in which case it is construed to be limited to the particular term; and as the particular term states expressly a movable subject, the substance of which is counted as money (a value is put on it), so also the others mean only movable subjects the substances of which are counted as money,

excluding land, which is not movable; slaves, who are likened to land; also documents, which, although movable, their substance is not counted for money; as well as consecrated articles, because the Scripture reads "his *neighbor's*." (The further discussion which follows here belongs to Mishna VI., Chapter IX. of this volume, and is to be found there.)

R. Ilaa said: If he stole a lamb and while in his possession it grew into a ram, or a calf and it grew into an ox, this is considered a (material) change while in his possession and he acquires title to it; and if he subsequently slaughtered or sold it, it is considered his own (and he is not liable to the payment of four and five fold). R. Hanina objected to him from the following: If he stole a lamb and it grew into a ram, or a calf and it grew into an ox, he is still liable to the

payment of double, and four and five fold, and the payment may be made in such cattle as they were at the time when the theft was committed. Now, if he acquired title by the change, why should he pay--did he not slaughter or sell his own? He answered: But what is your opinion--that the change does not acquire title? why, should he pay as at the time the theft was committed--why not their present value? He answered: Because he may say: "Did I then steal of you an ox? I stole of you a calf!" He rejoined: May the Merciful save us from such opinions! He retorted: On the contrary, may the Merciful save us from such opinions as yours.

R. Zera opposed: Let title be acquired (if not by the change in the body of the stolen subject) by the change in its name? Said Rabha: There was no change of name, for a calf one day old is already called "ox," as it is written [Lev. xxii. 27]: "When an *ox* or a sheep or a goat is *born*," etc., and so also a ram, as it is written [Gen. xxxi. 38]: "And the rams of thy flock have I not eaten." Did Jacob then mean to say that only, rams he did not eat, but lambs he did? Infer from this that a lamb one day old is already termed *ram*. But, in any event, is this not an objection to R. Ilaa? Said R. Shesheth: The, above Boraitha is in accordance with the school of Shammai, who hold that the change does not affect the title of the owner, as we have learned in the following Boraitha: If one give to a harlot as her hire wheat and she grind it into fine flour, or olives and she press them into oil, or grapes and she press them into wine--one Boraitha teaches that it is prohibited (to be used for an offering under Deut. xxiii. 19), and another Boraitha teaches

that it is permitted; and R. Joseph said that Gorion of Asphark explained the above, that those who prohibited their use are of the school of Shammai and those who permitted their use are of the school of Hillel. What is the reason of the Beth Shammai? Because it is written [ibid., ibid.]: "For *both* (••) of them," which means to include also their changed forms; and the Beth Hillel are not very particular about the word "both," and hold that it means only their original but not their changed form.

Now, let us see: The point of difference (between R. Ilaa and R. Hanina) is that one holds that the change does, while the other holds that it does not acquire title; but as to the payment, both agree that the original value must be paid, as further on the Boraitha teaches: He pays double, four or five fold, as at the time the theft was committed. Shall we assume that from this there is an objection to Rabh, who said above that where the principal only is paid the original value at the time the theft was committed is paid, but double, four and five fold, is paid as at the time of the *trial*? Said Rabha: If he makes restitution in specie, he returns lambs; but if he pays money, he pays their present value.

Rabba said: That a change acquires title is both written and taught: *Written* [Lev. v. 23]: "And he shall restore the robbed article [1] that he hath taken violently away." Why did the Scripture mention "that he hath taken violently away"? (is it not understood from the words "*robbed* article"?)--to teach that if it is still in the same state as at the time it was stolen it must be returned in specie; if not, money only shall be paid. *Taught*: if one robbed wood and made it into vessels, wool and made it into garments, he pays as at the time of the theft. "If he had not succeeded in giving it to him (to the priest, the first shorn wool) until he died he is free." Hence we see that change acquires title.

Resignation of hope (when an article was robbed or lost and its owner resigned his hope to

regain it), the rabbis said that it does acquire title for the robber. But we do not know whether they mean that it is so biblically, or rabbinically only. It may be said that it is biblically, because it may be equal to one who found an article of which its owner resigned his hope to regain it immediately after it was lost and before it reached the hands of the finder; and the same can be said of the robber that, when

the robbed one resigned his hope of regaining it immediately after he was robbed, the robber subsequently acquired title. On the other hand, it cannot be equalled to a lost article, for when it reached the finder he took it permissively, while the robber, when he took the article, committed a sin. Therefore biblically he never acquired title; but rabbinically it was enacted that he should acquire title for the benefit of those who might wish to repent (that they might be able to return its value). R. Joseph, however, says that resignation of hope does not acquire title even rabbinically (and the stolen article must be returned in specie), and he objected to Rabba from the following: If he stole leaven and kept it over Passover, he may say to the owner, "Yours is before you as it was" (although the owner can no more derive benefit from it, still the damage is not visible). Now, in this case it is certain that the owner has resigned his hope of regaining it, as it is of no value at all for him even if returned; and if this acquires title, why may he say to him, "Yours is before you"--did not the thief acquire title as soon as hope was resigned? And if he desires to repent, he ought to pay the full value in money? He answered: What I mean is, in a case where the one resigned his hope and the other desired to acquire title to it; but in your case, although the owner resigned his hope, the thief did not want to acquire title, as also to him it was of no value.

Rabha said: The discussion whether change in name or action, or resignation of hope, does or does not acquire title remained unexplained for twenty-two years, until R. Joseph became the president of the college, and explained that the change of name is equivalent to change in act, which surely acquires title, as the reason for both is the same. For instance, change in act--if he made vessels out of stolen wood, there is no more wood, but vessels, and at the same time the name was also changed; consequently the acquisition of title comes from both the change in act and in name. The same theory can apply to a thing where the change in act was slight, scarcely noticed; as, for instance, if he trimmed a hide into a horse-blanket, in which case the principal thing is the change in name; for before it was known as a hide, while now it is known as a horse-blanket, and title is acquired.

But is there not a case of a robbed beam which was built into a house--a case very similar to the above, and in which the principal change was in name; because before it was known as

beam and after as a roof, and nevertheless, if not for the rabbinical enactment for the benefit of those who might wish to repent, biblically he had to take apart the building and return the beam in specie? Answered R. Joseph: In this case there was no change in name, as it was called a beam even after being built into the house (as all the beams together are called a roof, but each one separately still retains the name beam; and we so find it in a Boraitha elsewhere).

R. Zera says: Even if the beam in question does no more retain its original name when built into

the roof, it would still not be considered a change; for as soon as the building is taken apart the original name "beam" is used again, while in the case of the hide, as soon as it was changed into a horse-blanket, it will never be called "hide" again.

R. Hisda in the name of R. Jonathan said: Whence is it deduced that a change does not acquire title? It is written [Lev. V. 23]: "And he shall return the stolen article," which means in specie under all circumstances. But is it not also written "that he hath taken violently away" (which may be explained to include the value thereof)? This verse is needed to deduce from it that he pays an additional fifth part for his own theft, but not for that of his father (as will be explained in Chapter IX.).

Ula said: Whence is it deduced that resignation of hope to regain property does not acquire title? It is written [Mal. i. 13]: "And ye brought what was robbed, and the lame, and the sick"--that means that "what was robbed" is equal to the lame in this respect, that as the lame cannot be remedied neither can robbery, no matter whether before or after resignation of hope. Rabha deduced this from the expression [Lev. i. 3] "*his* offering," which means but not what was robbed. If before resignation of hope, it is self-evident--why, then, the verse? We must therefore say that it means even after resignation. Infer from this that resignation of hope does not acquire title.

"*And the payment of four*," etc. Why so? Let it be deduced by an analogy of expression of the word "ox" mentioned here and "ox" mentioned in regard to observation of Sabbath; as there "ox" includes beasts and birds, so also here? Said Rabha: The verse says here [Ex. xxi. 37]: "An ox or a sheep twice, to teach it of only those two, but no others.

"*The one who steals*," etc. Rabh said: This was taught only before resignation of hope; but if after that the first thief

acquired title, and the second thief must pay him double. Said R. Shesheth: "I would say that Rabh said this while he was napping, for we have learned: R. Aqiba said: Why did the Scripture say that if he slaughtered and sold it he must pay four and five fold? Because the sin was deeply rooted in him (and he acquired title to it by his acts). Now, let us see. When? If before resignation, what deep-rooting is there? (he has not acquired title and his acts helped nothing, as no one holds that title is acquired before resignation of hope). We must therefore say that it was after resignation. Now then, if resignation acquires title, why should he pay four and five fold--did he not kill or sell his own? It may be explained as Rabha said (that he must pay four and five fold even before resignation of hope, and the reason is) because he repeated his sin.

(An objection was raised.) Come and hear: It is written [Ex. xxi. 37]: "And kill it, or sell it"; as if killed it can no more return to life, so also in case of sale it must be such that it should not return again. When? If before resignation, it does return? We must therefore say that it relates to after resignation. Now, if resignation acquires title, why should he pay four and five fold--was it not his own when he slaughtered or sold it? It is as R. Na'hman said elsewhere, that even before resignation of hope, if the thief hired it out to a third party for thirty days, although the thief had no title to it, still his act of hiring was valid. So also can our case be explained.

It was taught: One who sells before resignation of hope to regain it, R. Na'hman says that he is liable to pay four fold because he sold it; and the Scripture holds him liable to pay whether before or after resignation. R. Shesheth says that he is free, because it cannot be called sale when the sale is invalid; and therefore his acts were of no effect, and the liability is only where his acts are of effect, as in case of slaughtering. So also was R. Elazar's opinion, that it means after resignation of hope. As R. Elazar said: It must be declared that resignation of hope to regain stolen property comes generally immediately after the occurrence of the theft (and if the thief sold it, his act is valid, because there were both resignation of hope and change of control); and this theory is supported by the Scripture, which holds the thief liable to the payment of four and five fold without fear that the owner might have not resigned his hope; and this is only because generally hope is resigned immediately after the occurrence of the theft. But perhaps the Scripture means even

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before resignation of hope? This would not be correct, for sale and slaughtering are written together; and as in case of slaughtering his acts are accomplished and cannot be undone, so also in case of sale. But perhaps this is so when we know for certain that he has resigned his hope? This also would not be correct, for the same reason that sale and slaughtering are written together; and as in case of slaughtering there is no difference whether before or after resignation of hope, so also is the case with sale. Said R. Johanan to him: The case of kidnapping [Ex. xxi. 16], in which there is surely no resignation of hope, for no one gives up hope in such cases, and still the Scripture makes him guilty, can prove that the Scripture does not require any resignation of hope. [From this we see that R. Johanan holds that he is liable before resignation of hope.] But what is the law after resignation of hope? (Does he agree with Rabh's opinion stated above?) Nay, he holds him liable whether before or after resignation of hope. Resh Lakish, however, holds him liable only before resignation of hope but not after that; for after resignation he acquired title, and if he killed or sold it he did so to his own.

R. Johanan said: A stolen thing of which the owners have not resigned hope to regain it cannot be consecrated. By the owner thereof, because it is not under his control; and by the thief, because he has no title thereto. Did, indeed, R. Johanan say so? did not R. Johanan say that the Halakha always prevails according to an anonymous Mishna, and there is a Mishna [Second Tithe, Chap. V., M. 1]: A vineyard in the fourth year of its planting (the fruit of which must first be redeemed before using it) used to be marked with clods (of earth), and this was a sign that benefit might be derived from it after being redeemed, as benefit may be derived from earth. In the third year of its planting, however, in which the fruit must be destroyed without deriving any benefit at all from it, it used to be marked with fragments of broken clay vessels, for a sign that as from such fragments no benefit can be had, so also none must be had from the fruit. Graves used to be marked with limestone (to warn passers-by not to step on them lest they become unclean), which is white, for a sign that therein were interred (human) bones, which are also white; and the limestone was dissolved and spread upon the graves, to be more visible. R. Simeon b. Gamaliel, however, said that the vineyards used to be marked in the Sabbatical year only, because the fruit was

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considered ownerless, and therefore warning had to be given not to use it (because of the third and fourth years); but in other years, when the fruit must not be used without the permission of

the owner, it was not marked, but, on the contrary, let the wicked thief eat of it, and suffer the consequences.

The pious man, however, used to place money in the vineyard, declaring: "All that is plucked and gathered of this fruit shall be redeemed by this money." (Hence we see that although not under his control, still it is redeemed--how, then, can R. Johanan say that neither can consecrate a stolen thing?) But lest one say that the above statement regarding the pious one is not anonymous, but is the continuation of the statement of R. Simeon b. Gamaliel (even then R. Johanan would contradict himself), as Rabba bar bar Hana said in his name, that wherever the teachings of R. Simeon b. Gamaliel are mentioned in our Mishnayoth the Halakha prevails according to him, except in three cases? (which are enumerated in Sanhedrin), it may be said: Do not read, The pious man used to place money in the vineyard, declaring, 'All that was plucked,' etc., but read, 'All that *will* be plucked,' etc. (*i.e.*, that the money was placed when the fruit was still attached to the trees, and as in the Sabbatical year all fruit is ownerless, the one who plucks and gathers it becomes its owner and at the same time the money placed there redeems it)." But, after all, could, then, R. Johanan say so--did he not say elsewhere that the declaration of the pious ones and of R. Dosa were of one and the same theory, and in the declaration of R. Dosa it is plainly stated "that *was* plucked," as we have learned in the following Boraitha: R. Jehudah said: In the morning the owner of the ground gets up and says, "All that the poor will pluck and gather to-day is hereby declared ownerless." R. Dosa said: The declaration is made toward evening, and thus: "All that the poor *have* plucked and gathered is hereby declared to have been ownerless"? Change the names in the Boraitha, and read instead of R. Dosa R. Jehudah, and instead of R. Jehudah R. Dosa. Why do you declare that Boraitha incorrect--better correct the statement of R. Johanan and place R. Johanan instead of R. Dosa? It may be said that the names in the Boraitha must be changed in any event, for from this Boraitha is to be inferred that R. Jehudah holds to the theory of choice, [1] and it is known from his statements elsewhere

that he does not hold this theory. But, after all, why do you change the names in the Boraitha--because it would be a contradiction between one statement of R. Jehudah and another one? There would be the same contradiction between one statement of R. Johanan and another, as it is known that also R. Johanan does not hold to the theory of choice [and if we should make his declaration read, "that what the poor *will* gather," it would show that R. Johanan does hold to the theory of choice (as the declaration is made previous to the gathering of the fruit, and whatever had been gathered by the poor had been chosen previously in his mind)]. As R. Assi said in the name of R. Johanan: "Brothers that have partitioned among themselves estates that they inherited, they are considered as vendees, and the estates return in the jubilee year" (and we do not say that the part which came to him by partition was chosen previously to be his part of the inheritance, which, according to the biblical law, does not return; hence he does not hold to the theory of choice?). Therefore R. Johanan's statement above remains unchanged, but his statement that stolen property cannot be consecrated, etc., is based upon our Mishna (*supra*, page 149), which states, "The one who steals a stolen article from a thief does not pay double" (which is anonymous). And why so? It would be correct that he should not pay to the thief, for it is written [Ex. xxii. 6]: "And it be stolen out of the *man's house*," but not of the house of the *thief*. But why should he not pay it to the *owner* of the property? We must say, then, that to the thief he does not pay because it was not his, and not to the owner because it was not under his control; and this is the very statement of R. Johanan. But still, why should he adopt

this anonymous Mishna and ignore the *other*--why not adopt the anonymous Mishna which treats of the pious ones? Because for this statement support can be found in the Scripture [Lev. xxvii. 14]: "And if a man sanctify his house as holy unto the Lord," from which is to be deduced that as "his house" is under his own control, so also other things which are under his own control (but not otherwise).

Abayi said: If it should not be said in the name of R. Johanan that "the pious" and R. Dosa are of the same theory, I would say that the pious ones hold to the theory of R. Dosa, but R. Dosa does not hold to the theory of the pious ones, viz.: The pious ones hold to the theory of R. Dosa because they arrived at their decision to make such declaration by drawing

the following *a fortiori* conclusion: A thief who has committed a sin, the rabbis made an enactment for him not to pay double (to enable him to repent and to make restitution); so much the more an enactment must be made for the poor (to prevent them from sin). R. Dosa, however, does not concur with them, for according to him the rabbis made their enactment for the poor only and not for the thief (and the law that the thief must not pay double to the first thief is not an enactment of the rabbis but a biblical law). Said Rabha: Were it not for the above statement of R. Johanan that the pious ones and R. Dosa, etc., I would say that under "the pious ones" R. Meir is meant, because did not R. Meir say elsewhere that second tithe is consecrated property, and nevertheless as regards its redemption the Law considers it as if it were under the owner's control? [1]

The sages of Nahardea said: No writ of replevin of personal property is granted by the court, the bailee of which denied its possession before the court. This is so when the bailee denied its possession, for it would look as if the court issued a writ the execution of which was not certain; but when he admitted possession but not ownership by the plaintiff, a writ might be issued. The same said also: A writ of replevin which does not contain the following direction: "Investigate, take possession, and retain it for yourself," is invalid; for the bailee can say to him, "The property is not assigned to you, and you are not the proper party plaintiff." Said Abayi: If the direction is contained, but it states only as to part of it, the bailee cannot say that he is not the proper party plaintiff; for if part is assigned to him by the court, he has authority to replevy the whole. Said Ameimar: If the writ did not contain the above direction, and nevertheless he took possession of it, the court cannot compel him to return it. (Rashi explains that according to other commentators it means that if the messenger of the court who executed the writ of replevin has kept the property for himself for a debt due him from one of the parties to the litigation, the court cannot compel him to give it up. Rashi approves of this explanation, saying that he found it in the Decisions of the Gaonim.) R. Ashi, however, says that the court has the right to compel him to return it, because when

the court appointed one to execute its mandates it was upon the written condition that he should obey all the orders of the court; consequently he is only a messenger of the court and he has no right to keep it for himself. And so also the Halakha prevails.

MISHNA *II*.: If two witnesses testify that one stole (an ox or a sheep), and either the same or

other witnesses testify that he slaughtered or sold the same, he must pay four and five fold. If one stole the same and sold it on the Sabbath, or he stole and sold it for idolatry; or he stole and slaughtered it on the Day of Atonement; or he stole from his father and slaughtered and sold it, and thereafter his father died; or he stole and slaughtered it and then consecrated it-in all those cases he pays four and five fold. The same is the case if he stole and slaughtered it in order to use it as a medicine, or to feed his dogs therewith; or he slaughtered it and it was found unfit for eating (*trepha*); or he slaughtered it in the Temple court without consecrating it as an offering. R. Simeon, however, makes him free in the two last-named cases.

GEMARA: "*If he stole and sold it on the Sabbath*," etc. But have we not learned elsewhere that in such a case he is free? Said Rami b. Hama: The Boraitha which says that he is free from the payment of four and five fold treats of a case where the thief sold the stolen property to the owner of a garden and received in payment figs which the thief himself plucked on Sabbath (and thus incurred the penalty of capital punishment, and there is a rule that where there is capital punishment there can be no mention of civil liability). But it may be said that such must not be considered a sale. For if, for instance, the owner of the garden should claim before the court that he has not received from the thief the value of the figs, we would not make him liable to pay for the figs as he has committed a crime, and the above maxim applies also here; consequently there was no sale.

Said Rabha: Even in a case where the court would not entertain the plaintiff's complaint, the sale would still be called a sale as regards the same required by Scripture. As, for instance, the law prohibits the hire of a harlot, even if she was his own mother (and he promised her a sheep as her hire). Now, if she would sue him before a court for failing to pay her the hire, would the court then direct him to pay it--and nevertheless if he had given her the sheep it would be called "harlot's hire" and its use would be

prohibited? The same is the case here: although as regards the enforcement of payment of the claim the court would not interfere, still, because he transferred it to him in this manner the sale is valid.

"*If he stole and sold it on the Day of Atonement*," etc. Why so? It is true that there is no capital punishment; but is he not liable to punishment by stripes--and there is a rule that he who is punished by stripes is free from payment? It may be said that it is according to R. Meir, who holds that stripes do not absolve from civil liability. If so, then let him also be liable if he slaughtered it on the Sabbath. And lest one say that R. Meir holds only that stripes do not free from payment but capital punishment does, have we not learned in the following Boraitha: If he stole and slaughtered it on the Sabbath . . . (although he incurs the death penalty) he pays four and five: such is the dictum of R. Meir. The rabbis, however, make him free? Said the schoolmen: Leave the Boraitha alone, as it was taught in regard to the same: R. Abin, R. Ilaa, and the whole society said in the name of R. Johanan that the Boraitha treats of a case where he slaughtered it through an agent. But is there, then, a case where one commits a transgression and another is liable for it (have we not a rule that there is no agent to commit a sin)? Said Rabha: The case here is different, for the verse reads [Ex. xxi. 37]: "And kill it or sell it." As in case of sale there must be another person (to buy it), so also in case of slaughtering, when it was slaughtered by another under his direction. The school of R. Ishmael inferred this from the additional word "or"; the school of Hezkiah inferred it from the word "for" used in that verse.

Mar Zutra opposed: Is there, then, a case where one, if he did it himself, would not be liable, but if he did it though a messenger he would be liable? Said R. Ashi to him: There the reason is not because he is not liable, but because he is guilty of a capital punishment, and the above rule applies. Now, when you say that the above Boraitha treats of a case where he slaughtered it through a messenger, why do the rabbis make him free of four and five fold? The schoolmen explained that by the "rabbis" mentioned in the Boraitha in question is meant R. Simeon, who holds that slaughtering which is not legal is not called slaughtering in accordance with the requirements of the Scripture.

"*If he stole from his father*, "etc. Rabha questioned R. Nahman:

[paragraph continues] If he stole an ox belonging to two partners and slaughtered him, and then he confessed to one of the partners, what is the law? Shall we say that the Scripture [Ex. xxi. 37] meant five *whole* oxen, but not *half* oxen (for every partner has a right only to one-half of each ox), or shall we say that in "five oxen" the halves arc included? He answered him: The Scripture reads "five (whole) oxen," and not *half* oxen. He objected: It states further: "If he stole from his father and slaughtered or sold it, and thereafter his father died (and the thief became one of the heirs), he pays four or five." Now, when he is one of the heirs, is this not equal to the case where he confessed to one partner (and this makes him free entirely for the above reason--"an ox" and not "a half ox"; and the same ought to be here, because he is an heir, and the payment of a "whole" ox does no longer hold)? He answered him: The case here was that his father before he died laid already the matter before the court. But how is it if he had not laid the matter before the court--does he not pay? If so, why should it state in the latter part, "If he stole from his father and he died, and thereafter he slaughtered or sold it, he does not pay"? Let the Tana distinguish in the very first case, thus: This was said only where the deceased laid the matter before the court; but if he had not yet done so, he does not pay? He rejoined: It is really so; but because it states in the first part, "If he stole from his father and slaughtered it, and thereafter the father died," it also states in the latter part, "If he stole from his father, who soon died, and thereafter he slaughtered or sold it." On the next morning R. Nahman said to Rabha: (I have reconsidered the matter, have changed my mind, and came to the conclusion thus:) In the expression "five oxen" halves are included, and what I told you last night was said without careful deliberation. But what difference is there between the first and the last part (why does the latter part make him free)? He answered: The Scripture reads, "*and* killed it," which means that as the stealing was in transgression, so also ought to be the killing, as is the case in the first part. In the latter part, however, the killing was no more in transgression, as it belonged to him.

"*One who slaughtered*," etc., "*and it was found unfit*," etc. Said R. Simeon in the name of R. Levi the elder: It is considered slaughtered only when the act is fully accomplished. R. Johanan, however, says: It is so considered from the very beginning. Said R. Habibi of Husnahah to R. Ashi: Shall we assume that R. Johanan holds that the prohibition to use meat

of cattle slaughtered in the Temple court, which was not consecrated as an offering, is not biblical? (See Kiddushin, p. 58.) For if it is biblical, as soon as the act of slaughtering began it became a forbidden thing from which no benefit must be derived, and the remainder of the act

was carried out on what belonged no more to the owner-why then is he liable to pay four and five fold? Said R. A'ha the son of Rabha to him: The liability is incurred from the very beginning of the act. Said R. Ashi: This is no answer, for it reads "and kill it," which means the fully accomplished act, which would not be so in this case. But then the above question remains? He rejoined: So said R. Gamda in the name of Rabha: The liability is incurred in case he cut part of the trachea and gullet outside, and the remainder of same inside the Temple court (in which case there is the fully accomplished act before it became a prohibited thing).

MISHNA III.: If two witnesses testify that one stole an animal, and those very same witnesses testify that he had thereafter slaughtered or sold it, and subsequently those witnesses are proved collusive, the collusive witnesses must pay the full liability of four and five fold. If two witnesses testify that he stole it and other two testify that he slaughtered or sold it, and both sets of witnesses are proved collusive, the first set pays the double and the second set pays the balance of the five. If the second set is found collusive, the thief pays for two and the collusive witnesses for three. If only one of the second set is proved collusive, the whole testimony of the second set is invalidated. If one of the first set was found collusive, the whole testimony in the case was invalidated; for if there is no theft, there can be no (liability for) slaughtering or selling.

GEMARA: It was taught: A collusive witness--Abayi said that he is considered such from the date on which he gave the collusive testimony (and all the testimony he gave since then is incompetent); for as soon as he gave the collusive testimony he was considered wicked, and it is written [Ex. xxiii. 1]: "Put not . . . wicked to be a witness." Rabha says that he is considered such only from the date on which he was proved collusive; for a collusive witness is an exception in the law, for they are two against two. Why, then, give more veracity to the latter two than to the former? Therefore the law applying to a collusive witness begins only from the date on which he was proved such. According to others, Rabha agrees with Abayi that he is considered collusive from the date on which the testimony

was given; but in case they have in the meantime signed their names to a bill of sale, Rabha does not hold the conveyance invalid, in order that the grantee should suffer no damage. In which case can there be a difference in those two versions? In case two witnesses proved the collusiveness of one and two others proved the collusiveness of the other, or that their testimony was made incompetent by other witnesses testifying that they were robbers: according to the first version the reason of Rabha is because it is an exception. Here there is no exception, because there are four against two; consequently Rabha would agree with Abayi that all their testimony given in the meantime is invalid. According to the others, who say that the reason is that the grantee shall suffer no damages by invalidating the conveyance, there is no difference whether there were two or four. R. Jeremiah of Diphthi said: There happened a case and R. Papa acted in accordance with Rabha. R. Ashi, however, said that the Halakha prevails according to Abayi. There is a rule that always the Halakha prevails according to Rabha when he differs with Abayi, except in the six cases, the case at bar being one of them.

There is an objection from our Mishna, which states: "If two witnesses testified that he stole an animal, etc., they pay the full liability." Shall we not assume that they at one time testified as to the theft and at another time as to the slaughtering, and then they were first proved collusive as to the theft and subsequently as to the slaughtering? Now then, if they were considered collusive from the date on which they gave the collusive testimony, as soon as they were proved collusive

as to the theft, it was established that their testimony as to the slaughtering was incompetent, and why should they pay for the testimony of the slaughtering? It may be explained that the case was that they were proved collusive as to the slaughtering first. But still, when they were subsequently proved collusive as to the theft it was established that they were incompetent, and why should they pay for their testimony of slaughtering? The Halakha prevails that the Mishna treats of a case where their testimony was given at one and the same time, and subsequently they were proved collusive.

Rabha said: Witnesses that testified that one has committed murder and the court found the accused guilty on their testimony, and two other witnesses subsequently denied the testimony, and still another set of two witnesses testified that the first two

were with them at another place at the alleged time of the murder (*alibi*), which testimony makes them collusive (according to Scripture), they must suffer the death penalty, for denial is the beginning of collusion which is subsequently proved by the last witnesses. And he said again: My theory is based upon the following Boraitha: "If two witnesses testify that a certain person blinded his slave's eye and thereafter knocked out one of his teeth, and they also testify that the owner of the slave admitted it, and subsequently the witnesses are found collusive, they must pay to the slave the value of the eye." Now, how is the case? Shall we assume that it was as stated without any other set of witnesses to deny the former testimony, and the slave was manumitted on their testimony, then the expression ought to be "and they pay to *him* (instead of 'to the slave,' for he was already manumitted) the value of his eye, and to his master the value of an uninjured slave"? Another proof is that the case is that there was no denial--that they also testify that the owner admitted it, for what purpose it this? We must therefore say that another set of two witnesses testify that he knocked out one of his teeth first, and then blinded his eye, in which case the owner must pay him the value of the eye; then came a third set of witnesses and testified that he *first* blinded his eye and *then* knocked out his tooth, in which case the owner must pay him only the value of the tooth, because there is a contradiction between the first and the middle sets, and the statement that the owner admitted it means that he is more satisfied with their testimony, as he has to pay only the value of a tooth, and the statement that they were found collusive has reference to the middle set, and nevertheless it is stated that they must pay the slave the value of the eye, hence that denial is the beginning of collusion. (For if it is not, why should the law of collusion apply to them after their testimony became incompetent?) Said Abayi: Nay, not as you say, that because if there would be three sets of witnesses, as soon as the middle one was denied by the first one the third set could not make it collusive. The case, however, was that the set which became afterwards collusive is the first set, and your proof from the fact that the Boraitha does not state that the collusive set has to pay to the master can be explained thus: The second set did not deny the fact, but only reversed the order, *i.e.*, they say to the first set, "On that day on which you claim that the master had blinded his eye," etc., "you were with us and you could not witness the crime; but we did witness on another day that the master first

knocked out his tooth and then blinded his eye." And therefore the Boraitha does not state that they must pay the value of the slave, etc., because the slave becomes free even on their testimony; and I take this from the last part of the same Boraitha: "We testify that a certain

person knocked out his slave's tooth and blinded his eye, and this is just as the slave says, and thereafter they were proved collusive, they pay the value of the eye to the owner." Now, how was the case? If the second set does not admit any wounding at all, then the first set must pay to the owner the value of the whole slave. It is therefore apparent that all admit that he wounded him, but that they reverse the order of the wounding, and thus prove them collusive. Now, as the last part treats of a case where they became collusive through the reversal, the first part must also treat of a similar case. (Says the Gemara:) After all, let us see how the case was: If the second set testify that it happened on a later date, then the first must still pay the full value of the slave, because on the day on which they testify it happened the slave had not to be manumitted? We must therefore say that the second set testify that it happened on an earlier date. But still, even in such a case, if the slave had not summoned him to court before the testimony of the first was given, they must still pay the full value of the slave; for before their testimony the owner was not subject to liability (to manumit the slave)? It must therefore be said that the case was after judgment was given.

R. Zera opposed: Whence do we know that money must be paid? Perhaps when he only blinded his eye he is manumitted because of that, if when he only knocked out one of his teeth he is manumitted because of that, and when he did both-blinded his eye and knocked out one of his teeth-he is also only manumitted and no money is paid. Said Abayi: As to your question, the verse reads, "for the sake of his tooth," which does not mean for the sake of his tooth *and* eye; and also "for the sake of his eye," which does not mean for the sake of his eye *and* tooth.

Regarding witnesses whose testimony was first denied and then proved collusive (as to which Abayi and Rabha differ above), R. Johanan and R. Elazar also differ: One holds that they are put to death, the other holds that they are not. It may be inferred that the one who holds that they are not put to death is R. Elazar, for he said elsewhere that witnesses whose testimony was only denied (but not proved collusive), in a case in which human life was involved, have to stiffer the penalty of

stripes. Now, if we should assume that R. Elazar is the one who holds that they have to suffer the death penalty if proved collusive, why should they be punished with stripes in case their testimony was only denied? is it not a "negative process" that entails the death penalty by the court, and in such cases no stripes are administered? We must therefore say that it is R. Elazar who holds in the above Boraitha that they have not to suffer the death penalty.

"They are punished with stripes." Why so? Are they not two against two? Why should more credence be given to the one set than to the other? Said Abayi: The case is that the supposed murdered person appeared in court alive.

MISHNA *IV*.: If two witnesses testify that he stole it, and one witness, or he himself, testifies that he slaughtered or sold it, he pays only two, but not four and five fold. If he stole and slaughtered it on Sabbath, or sold it for purposes of idolatry; if he stole it from his father and this latter died, and subsequently he slaughtered or sold it; if he stole and consecrated it, and thereafter slaughtered or sold it--in all those cases he pays only double and not four and five fold. R. Simeon says: If one stole consecrated cattle for which the one who consecrated them is responsible, and slaughtered them, he must pay four and five fold; if, however, it is that for which he is not responsible, the thief is free.

GEMARA: The Mishna states, "If one witness," etc. Is this not self-evident? It may be said that it means to teach us that when he himself admits that he slaughtered, it is equal to the case where one witness testifies; as in the latter case, if thereafter another witness conies and testifies to the same thing, their testimony is taken together to make up the requisite number of witnesses, so also in this case the testimony of another witness is added to his own, in opposition to what R. Huna said in the name of Rabh, that one who admits to the court that he has incurred the liability to pay a fine and thereafter witnesses appear, he is free. R. Hisda objected to R. Huna's statement from the following: It happened that R. Gamaliel blinded the eye of his slave Tabi and he was very glad of the occurrence. When he met R. Jehoshua, he said to him: Do not you know yet that my slave Tabi is manumitted because I blinded his eye? Said R. Jehoshua to him: Your statement does not make him free, for he has no witnesses. Hence we infer from R. Jehoshua's answer that if there appear witnesses after an admission of the

incurrence of the liability to pay a fine, the latter must be paid? He answered him: The case of R. Gamaliel is different, for he had not admitted it before the court. But was, then, R. Jehoshua not the president of the court? Yea, but it was not during the session of the court, but only as to a private person. But have we not learned in another Boraitha that what R. Jehoshua said to him was: This is nothing, for you yourself admitted it (from which is to be inferred that even if witnesses appear thereafter he is also free)? And is it not also to be assumed that the reason for the different statements of the Boraithas is: The Tana who says that he told him, "because he has no witnesses," holds that if witnesses should appear after the admission the slave would be liberated, and the Tana who says that R. Jehoshua told him, "because you already admitted," means to say that after admission the testimony of witnesses is of no avail? Nay, all agree that witnesses who appear after an admission count nothing; but the point of difference is this: The one who says, "because he has no witnesses," means that it was not before the court, and the one who says, "because you already admitted," means that he had done so before the court.

It was taught: "One who admits that he has incurred the liability of a fine and thereafter witnesses appear, Rabh says that he is free. Samuel, however, says that he must pay." Said Rabha for Ahilai: The reason of Rabh's theory is because in the verse [Ex. xxii. 31 the word "found" is repeated twice, which means that if it should be "found" by testimony of witnesses, he should be "found" (liable to pay the fine) by the court, excluding the case of self-incrimination. But is this not deduced from the verse [ibid., ibid. 8]: "And he whom the *judges* may condemn"? We must therefore say that the first-quoted verse means to exclude the case where one admits his liability to pay a fine and thereafter witnesses appear.

What does Samuel deduce from this verse? He deduces that the thief himself must pay double, as it was taught in the school of Hezkiah that the double payment applies only when he himself stole it, but not where he claims that it was stolen from him. Rabh objected to Samuel from the following: If on seeing that witnesses were coming the thief admits the theft, but denies the slaughtering, etc,, he pays only the principal. (Hence we see that if he admits before witnesses appear he is free from the payment of double, which is a fine?) He answered him: The case is, that the witnesses withdrew and did not appear. But since it

states in the last part: "R. Elazar b. R. Simeon said: Let witnesses come and testify (after he admitted, so that the fine should be paid)," it is to be inferred that the Tana of the first part holds that he is not liable (although the witnesses came and testify?) Said Samuel: The very same R. Elazar b. Simeon quoted by you, who holds as I do, is the basis of my theory.

According to Samuel, surely Tanaim differ (and the Tana of the first part cannot be explained to be in accordance with him); but according to Rabh is it to be assumed that he explains Elazar's statement to be in accordance with him, namely: Elazar's statement was only where he admits for fear of witnesses; but where the admission is made without such fear, even he would concede that he is free? (Yea, so it is.) Said R. Hamnuna: It seems that Rabh's theory is applicable to the following case: If one confesses to theft and thereafter witnesses testify to the same, he is free from fine, for by his confession he made himself liable to pay the principal; but when he first denies, and after witnesses testify that he committed the theft he confesses to both the theft and the slaughtering, he is liable to pay four and five fold, for he sought to free himself entirely. Said Rabha to him: By your statement you caused grief to all the elders of the college: Did not R. Gamaliel by his confession, "I have blinded the eye of my slave," make himself free from fine, and still R. Huna, who was objected to from this fact by R. Hisda, did not give the reason stated by you (and R. Huna was an actual disciple of Rabh? hence, your statement is not correct)? (Notwithstanding the objection of Rabha, it was taught by R. Hyya b. Aba in the name of R. Johanan exactly as stated by R. Hamnuna.)

Said R. Ashi: From both our Mishna and the above-quoted Boraitha it is also to be inferred that R. Johanan's statement is correct, viz.: The Mishna, viz.: "If two witnesses testify that he committed the theft," etc. Why should it not better state: "If one witness or he himself testifies that he stole and slaughtered it, he pays only the principal" (for all what the Mishna means to teach us is that one's own confession frees him from the payment of fine; and if it should state as just mentioned, it would also include the payment of four and five fold)? We must therefore say that the Mishna comes to teach that only in case he did not make himself liable even for the payment of the principal, as e. g. that witnesses testify to the theft, and he only confessed, or one witness testifies to the slaughtering, etc., then only may it be said that his confession is equivalent to the testimony of one

witness; so that if another witness should come thereafter and testify, his testimony would be added to that of the first witness and he would be liable; so also if after he confessed one witness appears, his testimony should be added to the confession, and he should be liable to pay four and five fold; but when he first confesses to both the theft and the slaughtering, or only one witness testifies thereto, in which case he makes himself liable to the payment of the principal, if even thereafter another witness comes, his testimony is not to be added to the confession, and he has to pay only the principal.

The Boraitha, viz.: "If one seeing witnesses coming confesses to the theft, but denies the slaughtering," etc. Why does the Boraitha state as it does? Let it state, " . . . and he admits that he stole it, *or* that he slaughtered and sold it, he pays the principal only"? (And we would infer from this that also when he even admits only the slaughtering, in which case he seeks to be entirely free, it is nevertheless considered an admission to make him liable for the principal?) We must therefore say that it means to teach us that only when he confess to the theft which makes him liable to the payment of the principal he is free (from fine), but when he does not

confess to the theft, but the same is proved by witnesses and thereafter he admits that he slaughtered and sold it, and subsequently the same is also proved by wit. nesses, in which case he did not make himself liable even to the payment of the principal, he is liable (also to pay fine). Hence, we see that the admission of having slaughtered it (not coupled with the confession to the theft) is not considered an admission at all? Nay, it may be said that it means to teach us this very thing, viz.. Because he confessed to the theft, although he did not admit that he slaughtered or sold it, and thereafter witnesses testify that he slaughtered and sold it, he is nevertheless free from four and five, for the Scripture reads, "four or five," but not "four or three" (and here, when he confesses to the theft, he is liable to the payment of the principal only, and if we should make him liable for the slaughtering, etc., he would have to pay two more for a sheep or three more for an ox, so that it would be "three or four," but not "four or five").

"*If he stole and consecrated it, and thereafter slaughtered or sold it*," etc. This would be correct in case of slaughtering, for at the time of the slaughtering it was already consecrated property and not that of the owner, But why should he not be liable for the consecration itself--is this not considered a transfer from one

owner to another, and what difference is there whether he sold it to a human being or to the sanctuary? Nay, there is a difference: In the first case its name is changed, for before the sale he is the ox of Reuben and after the sale he is the ox of Simeon, while when he consecrated him he still continues to be known as "*Reuben's* consecrated ox."

"*R. Simeon says*," etc. Now, when R. Simeon holds that there is no difference whether he is sold to another person or sold to the Sanctuary, then the reverse should be the conclusion: If his responsibility still continues after the consecration, he should be free, because it is still under his control; and if his responsibility ceases upon the consecration he should be liable, for by the act of the consecration he placed it under the control of the Sanctuary; and according to him, it is the same as if he sold it to a commoner? R. Simeon's statement has reference to the following Boraitha: "It may be said that the payment of four and five fold applies neither to one who steals stolen property from a thief, nor to one who steals consecrated property from the house of him who consecrated it, because it is written [Ex. xx. 6]: 'And it be stolen out of the *man's* house,' which means but not out of the house of the Sanctuary." [1] R. Simeon says: If he is responsible for the consecrated property, he is liable, for the reason that it is still under his control, and the verse, "be stolen out of the *man's* house," is still to be applied, but not when it is not under his control. Rabha questioned: If one makes a vow to bring a burnt-offering and sets aside an ox for such offering, and thereafter the ox is stolen, may the thief make restitution by returning a sheep, according to the rabbis, or a dove or a pigeon, according to R. Elazar b. Azariah, as we have learned in the following Mishna: "If one say, 'I oblige myself to bring a burnt-offering,' he may bring a sheep; R. Elazar b. Azariah, however, says that he may bring a dove or a pigeon." Now, how is the law in our case: Shall we assume that the thief may say, "You obliged yourself to bring a burnt-offering, and here it is," or the owner may say, "My wish is to do this merit in the best manner possible"? After he questioned, he himself answered: The restitution of the thief is acceptable according to the rabbis if it is a sheep, and according to R. Elazar b. Azariah if it is a fowl. R. A'ha the son of R. Iqa taught that the above

saying of, Rabha was not questioned and answered as stated above, but was originally said so by him.

MISHNA *V.*: If the thief sells all but one-hundredth part of it, or he is a co-owner of it, or he slaughters it illegally so that it becomes a carrion, or he lacerates it (from the nostrils to the heart), or he tears the trachea and gullet, he pays only double, but not four and five fold.

GEMARA: What is meant by one-hundredth part of it? Said Rabh: It means of the meat which is made permissible for use by the legal slaughtering of the animal. Levi, however, holds even of the wool which is to be shorn. So also was taught plainly in a Boraitha. But according to whom, then, is Rabh's statement? According to R. Simeon b. Elazar of the following Boraitha, who said: "If he sells all but one of its fore or hind legs, he does not pay four and five fold; if, however, he sells all but its horns or its wool, he does pay four and five fold." On what point do they differ? The first Tana holds that "and kill it or sell it" [Ex. xxi. 37] means, as in case of slaughtering, it must be the whole, so also in case of sale. R. Simeon b. Elazar, however, holds that the fore and hind legs, which require legal slaughtering, if he excluded them from the sale, it is considered a sufficient remainder, and he is free from payment of four and five fold; but the horns and wool, which require no slaughtering, are not considered a sufficient remainder.

The rabbis taught: "One who steals an animal one leg of which is missing, or which is lame or blind, or one who steals an animal belonging to a co-partnership, is liable. But partners that steal together are free." But have we not learned in another Boraitha that partners are liable? Said R. Na'hman: This presents no difficulty: The first Boraitha treats of a case where one partner stole of his co-partner (and therefore it is not considered a sale of the whole, for he himself is entitled to halo, and the other Boraitha treats of a case where one partner steals from a third party. Rabha objected to R. Na'hman: "Lest it be assumed that a partner who steals from his co-partner, or two partners that steal together (from a third party), should be liable, therefore it is written [ibid]. 'And kill it,' which means the *whole* of it, which cannot be the case here?" Therefore said R. Na'hman: This presents no difficulty: The Boraitha which states that he is liable means a case where he slaughters it with the knowledge of his co-partner (in which case he is considered the agent of the other partner, and the act is that of both partners),

and the Boraitha which states that he is free means a case where he slaughters it without the knowledge of his co-partner (in which case it is considered that he slaughters the part stolen by his co-partner, which he did without permission, and it was said above that if one slaughters the animal stolen by another one is free from four and five fold; for his own half, however, he cannot be liable, for it is not considered the slaughtering of the whole).

The Rabbis taught: "If he steals it and gives it to another party who slaughters, sells, or consecrates it; or he steals and sells it to another party on credit, or exchanged it, or makes a present of it, or gives it to his creditor in payment of a loan made to him, or he gives it to his creditor in payment for merchandise sold to him on credit, or makes it a bridal-gift--in all those cases he pays four and five fold." What new thing does this mean to teach us? The first part, which states the case where he gives it to another who slaughters it, means to teach us that in this particular case he is liable for the act of his agent, although in other cases one who appoints a messenger to commit a transgression is not liable for the act of the messenger (see above, p. 120, and the latter part, which states that he consecrates it, means to teach us that there is no

difference whether he sells it to an ordinary person or to the Sanctuary.)

MISHNA *VI*.: (The liability to the fine of four and five fold applies only where the thief slaughters it after he acquired title to it, or he slaughters it outside of the owner's premises, namely:) If he steals it within the premises of the owner and slaughters or sells it outside of it, or he steals it outside of the owner's premises and slaughters or sells it within the premises, or the stealing, slaughtering, and sale are outside of the owner's premises, he pays four and five fold. If, however, the stealing, slaughtering, and sale are within the owner's premises, he is free.

If while the thief is leading the animal out it dies, still within the premises of the owner, he is free. If he lifts it up or leads it out of the premises, and it dies, he is liable. If he redeems his first-born son with it, or he gives it to his creditor, or to a gratuitous bailee or to a borrower to do work with it, or to a bailee for hire, or to a hirer, and the other person is drawing it forth and it dies while still on the premises of the owner, he is free. If, however, he lifts it up or he leads it out of the premises and it dies, he is liable.

GEMARA. Ameimar questioned: Was it enacted that a

bailee should not be liable unless he should first draw (see above) the bailment, or not? Said R. Imar to him: Come and hear the statement of our Mishna: "If he redeems his first-born son with it, or he gives it to his creditor, etc., he is free." Does this not mean that the bailee drew it? Infer from this that there is such an enactment. We have so also learned in the following Boraitha: "R. Elazar said: As it was enacted that a buyer has to acquire title by drawing the article he buys, so also was it enacted that the bailee should draw the bailment when he takes it under his control." So also we have learned in a Boraitha with the addition: "And as title to real property can be acquired by money, conveyance, and occupancy (*hazaka*), so also title to rents can be acquired by those three." What kind of rents? Shall we assume rent of personal property--can, then, personal property be rented by a conveyance? Must it not be drawn? Said R. Hisda: Rent of real property is meant.

R. Elazar said: If it was noticed that the thief was hiding himself in the forest (for the purpose of stealing an animal) and he slaughters or sells it therein, he pays four and five fold. Why so--he had not drawn it? Said R. Hisda: The case was that he drove it on with a stick. But if he did it so openly that it could be noticed, then he is a robber (and not a thief, and according to the Scripture he is free from the payment of four and five fold)? Nay, because he tried to hide himself, he is considered a thief. Under what circumstances, then, can he be considered a robber? Said R. Abbahu: As, for instance, Benayahu the son of Yehoyada, of whom it is written [II Samuel, xxxiii. 21]: "And he snatched the spear out of the Egyptian's hand and slew him with his own spear." R. Johanan says: As, for instance, the men of Shechem, of whom it is written [Judges, ix. 25]: "And the men of Shechem set persons to lie in wait for him on the top of the mountains, and they robbed all that passed by them on that way."

The disciples questioned R. Johanan b. Zakkai: Why did the Scripture treat more rigorously with the thief than with the robber? He answered them: Because the robber put the honor of his Creator at least on the same level with that of His servant, while the thief did not do so, but, on the contrary, considered the eye and car of Heaven as if it would not see and hear; as it is written

[Is. xxix. 15]: "Woe unto those that seek to hide deeply their counsel from the Lord, so that their works may be in the dark, and they say, Who seeth us?" etc.; and it is also written [Ps. xliv. 7]: "And they say, The Lord will not see, and the God

of Jacob will not take notice of it"; and it is also written [Ezek. ix. 9]: "For they have said, The Lord hath forsaken the land and the Lord seeth not."

R. Meir said: The following parable was related in the name of R. Gamaliel: To what is the above equal? To two persons who lived in one and the same town. One made a feast and invited all the inhabitants of the town, but not the princes; the other one made a feast and invited neither the inhabitants nor the princes. Whose punishment ought to be severer? Surely that of the first one.

The same said again: Ponder over the greatness of labor: In case of stealing an ox which he prevented from laboring, the thief pays five; in case of a sheep which does not perform any work, he pays only four. R. Johanan b. Zakkai said: Ponder over the greatness of the honor of creatures. For an ox who walks with his feet, he pays five; but for a sheep, for which he had to humiliate himself by carrying it on his shoulders, he pays only four.

MISHNA *VII.*: No tender cattle must be raised in Palestine, but they may be raised in Syria and in the deserts of Palestine. No cocks or hens must be raised in Jerusalem (even by laymen), because of the voluntary offerings (the meat of which may be eaten in any part of the city, and as the habit of the named fowls is to peck with their beaks in the rubbish, they may peck into a dead reptile and then peck in the meat of the offerings). In all other parts of Palestine priests only must not raise them, as they use leave-offerings for their meals, and they must be very careful about cleanliness. Swine must not be raised by Jews at any place. One shall keep no dog unless on a chain, and no noose is to be laid out for trapping pigeons unless fifty riss distant from inhabited places.

GEMARA: The rabbis taught: "No tender cattle must be raised in Palestine but in its forests; in Syria, however, even in the inhabited places, and, of course, in all other places." Another Boraitha states: No tender cattle must be raised in Palestine but in the deserts of Judea, and in those of the village of Achu; and although no tender cattle must be raised, still large cattle may, for no restrictions are made for the community unless most of the people can observe them. Tender cattle may, but large cattle may not be imported from other countries. And although they must not be raised, still they may be kept during the thirty days immediately preceding a feast day, or the celebration of the wedding of one's children. But this shall not be construed to mean

that they may be kept for thirty days, and that if some cattle were bought less than thirty days before the feast day that one may continue keeping them after the feast day until the expiration of the thirty days, but that as soon as the feast day is over he must not keep them any longer. The butcher, however, may buy and slaughter them at once, or keep them (until the market day), provided that the cattle he bought last shall not be kept after the market-day to complete the thirty days.

The disciples once questioned R. Gamaliel, whether it was permitted to raise tender cattle, and he answered: "Yea." But have we not learned in our Mishna that it is not? It must be said, therefore, that they questioned him whether it was permitted to keep them, and he answered them: "Yea, provided they are kept locked in the house, so that they shall not go out and pasture with the flock."

The rabbis taught: It happened that a pious person was suffering from a severe cough, and the physicians declared that he could not be cured unless by drinking every morning fresh-drawn milk which was still warm. He obtained a goat, which he tied to the leg of his bed, and drew her milk every morning. Once his colleagues came to visit him, and on seeing the goat tied to the leg of the bed they turned back, saying: There are armed robbers in the house of this man (for the habit of a goat is to stray upon other's fields), and shall we visit him? They sat down and examined into his conduct, and found no other transgression in him except that one. The pious one himself before he died said: I know that there can be no other transgression found in me except the one of the goat, that I disregarded the prohibition of my colleagues.

R. Ishmael said: My father's family was of the citizens of upper Galilea, and why was that locality destroyed? Because they pastured their young cattle in the forests and tried civil cases by one judge; and although their forests were near their houses (in the immediate neighborhood, and they were pasturing their cattle in their own forests), still, a small-sized field was between those forests (which belonged to strangers), and they used to pass their cattle over that field.

The rabbis taught: "A shepherd (who raises tender cattle) that repented, we do not compel him to sell out all his cattle at once, but he may do so by degrees. So also is the case with a proselyte who inherited dogs and swine; we do not compel him to sell out all at once. So, also, one who made a vow to buy a

house or marry a woman in Palestine; we do not compel him to do so until he finds one fit for him. It happened once with a woman whom her son used to annoy, that she swore that she would marry the first one who would propose to her, and unsuitable persons came forward with propositions. When this came before the sages, they declared that her intention was only for a suitable person.

As it was said that no tender cattle must be raised (in Palestine), so also was it said that no tender beasts should be raised. R. Ishmael, however, said that hunters' dogs, cats, monkeys, and weasels might be raised, for they are kept for the purpose of keeping the house clean. R. Jehudah said in the name of Rabh: We follow in Babylon the practice prevailing in Palestine regarding tender cattle. Said R. Ada b. Ahba to R. Huna: But do not you raise tender cattle? He answered: Mine are taken care of by Haubah my wife. According to others, R. Huna said: We follow in Babylon the practice prevailing in Palestine regarding tender cattle since Rabh settled in Babylon (whom many followed from Palestine and who bought or rented all the land in Babylon). Rabh, Samuel, and R. Assi happened to meet at a circumcision feast, and according to others at a redemption feast. Rabh declined to enter the house before Samuel, and Samuel declined to enter before R. Assi, and the latter in his turn refused to enter before Rabh. It was then decided that Samuel should wait until Rabh and R. Assi had entered. (But why did Rabh refuse to enter before Samuel, he was surely greater than Samuel?) Rabh simply paid this

courtesy to Samuel on account of his cursing him (see Sabbath, pp. 221-222). While they were so discussing a cat came and bit off the arm of the child, after which Rabh lectured that it is permitted to kill a cat and prohibited to keep it and that there can be no robbery in respect to it, and that if a cat gets lost no one need return it to its owner. If it is permitted to kill it, is it not self evident that it is prohibited to keep it? Lest one say that there is no prohibition to kill it but it may also be kept, hence the statement. Again, if it says that there can be no robbery in respect to it, why, then, the statement that it need not be returned to its owner if lost? Said Rabhina: It means even as far as its skin is concerned. An objection was raised from our Mishna: "R. Simeon b. Elazar said: Dogs, cats, etc."? This presents no difficulty. A black one may, but a white one may not. But in the case of Rabh, was it not a black one? It was a black descending from a white one.

R. A'ha b. Papa said in the name of R. Hanina b. Papa [1] the following three things: (*a*) In case of a plague of the itch a fast day with the blowing of the horn may be ordered on the Sabbath; (*b*) if the door of success is closed to one, it will not open soon; and (*c*) if one buy a house in Palestine, the deed may be written and executed even on Sabbath. What does the statement, "if the door of success," etc., mean? Said Mar Zutra: The granting of a diploma for a rabbi [2]. R. Ashi said: It means that when one falls into misfortune he cannot soon recover. "If one buy, etc., the deed, etc., on Sabbath." Does it really mean that the Sabbath may be violated in such a case? Nay, it means as Rabha said, that a Gentile may be told to do it, although in ordinary cases the rabbis prohibited it on account of Sabbath-rest; still, in this particular case they did not. R. Samuel b. Na'hmani said in the name of R. Jonathan: One who buys a town in Palestine is compelled also to buy a tract of land around it to make it accessible from all four sides, in order to promote settlement in Palestine.

The rabbis taught: "Upon the following ten conditions did Joshua divide the land to the settlers: (*a*) That one may pasture his cattle in the forest of another; (*b*) he may gather wood upon another's field; (*c*) grass may be gathered on another's field at any place, except that of the carob-bean; (*d*) a branch may be cut off a tree at any place, except of an olive tree; (*e*) the townspeople may use the water of springs even newly opened by strangers; (*f*) nets may be spread in the Tiberian waters by every one for fishing purposes, provided he does not stake them so as to interfere with navigation; (*g*) one may evacuate behind a fence even of a field of saffron; (*h*) one may walk the cross way (opened on a field) until the second quarter of the season; (*i*) one may walk the side road when the main road is cloddy; (*j*) one who lost his way in a vineyard might raise and lower the tree branches in trying to find it; and, lastly, (*k*) a stranger who dies in a field should be interred in the place where he dies (see Erubin, p. 38)." Are there only ten, are there not eleven enumerated? The condition that one may walk the cross-walks was not made by Joshua but by Solomon, as we have learned in the

following Boraitha: When all the fruit is gathered in from the field and the owner still permits no one to enter his field, do not people murmur and say: What benefit does that man derive from it and what injury would the people cause him by crossing his field? Of him the verse says: When you can afford to be good, do not cause people to call you bad. Is there, then, such a verse to be found in Scripture? There is a verse similar to it, viz. [Proverbs, iii. 27]: "Withhold not a benefit from him who is deserving it, when it is in the power of thy hand to do it."

But are there no more than those enumerated? Is there not another one, of which R. Jehudah speaks in the following Boraitha: "R. Jehudah says: During the manuring season, etc., for on this condition did Joshua, etc. (supra, p. 66)?" Again, there are those enumerated in the following Boraitha: R. Ishmael the son of R. Johanan b. Broka says: The court declared the following conditions to have been made by Joshua when he distributed the land among Israel: (*a*) That one may enter his neighbor's orchard to cut off a tree branch and use it in saving his bee-hive, paying the owner of the orchard the value thereof; (*b*) one shall empty his vessel containing wine and save therewith his neighbor's honey (if one carrying wine and one carrying honey met together and the vessel containing the honey broke), and receive from him the value of the wine; (*c*) one shall unload his wood and load on his neighbor's hemp (under circumstances similar to those stated above), and get from him the value of his wood? The Boraitha enumerated only those which were declared to have been so unanimously, but not those that were stated by individuals without being supported by their colleagues.

But did not R. Abin upon his return (from Palestine) say in the name of R. Johanan that one more condition was made by Joshua, namely, that whether it be a tree branching over into a neighboring field or one standing near the boundary, he may bring the first-fruit to Jerusalem and read the scriptural passages [Deut. xxvi. 51; and if the above-enumerated ten conditions were a Boraitha, R. Johanan, who was (not a Tana but only) an Amora, would not contradict it? Therefore it must be said that the phrase, "The rabbis taught. Ten conditions," mentioned above does not mean that it was a Boraitha (as it usually indicates), but that it was taught by R. Jehoshua b. Levi (who was also an Amora, and R. Johanan may differ with him). R. Gebiah of the city of Khthil taught so plainly: R. Tanhum and R.

[paragraph continues] Brice said in the name of the certain elder who was R. Jehoshua b. Levi, that ten conditions did Joshua make with the settlers.

Ten enactments were enacted by Ezra, viz.: (*a*) That portions of the Scripture should be read at the Saturday afternoon prayer; (*b*) on Mondays and Thursdays; (*c*) the court should be open on Mondays and Thursdays; (*d*) clothes should be washed on Thursdays (for the honor of the Sabbath); (*e*) garlic should be eaten on the eve of Sabbath; (*f*) a woman should do her baking early in the morning (so as to have fresh bread for the poor who should ask for it); (*g*) a woman should wear underwear; (*h*) a woman should comb her hair before immersing (in the legal bath); (*i*) vendors should travel from town to town and peddle their wares unmolested. He also enacted immersion (in a legal bath) for those who see Keri (wet-dreams). Ten things were said of the city of Jerusalem (when it was the capital of Palestine): (*a*) Real property should always be redeemed by the seller; (*b*) if a slain person is found in the neighborhood of Jerusalem, the ceremony of the heifer [Deut. xxi.] should not be performed; (*c*) it should never be declared a condemned town [Deut. xiii. 14]; (*d*) the laws of plagues [Levi. xiv. 35] should not apply to the houses of Jerusalem; (*e*) no beams should be permitted to protrude, nor any corner boards (Erubin, p. 40); (*f*) no dumping places for rubbish should be permitted therein; (*g*) no potter's kiln should be permitted to be constructed therein; (*h*) no gardens or orchards should be permitted there except those of roses, that existed since the time of the first prophets; (*i*) no hens or cocks should be raised; and (*j*) no dead body should remain over-night in the city (but should be carried out of the city).

"*No swine is permitted to be raised at any place*." The rabbis taught: "During the civil war of the Maccabees, Hurkanoth was within and Aristobulos was without the city wall, and every day those within lowered by means of a chair a basket full of dinars from the top of the wall to those outside, and the latter sent them up cattle for the daily sacrifices. Among the outsiders was an old man who was learned in Greek science, and he said to them: So long as your enemies continue to perform the holy service you will not subdue them. On the next day, when the basket of dinars was lowered, they sent them up a swine. When the swine reached the centre of the wall he fastened his feet in the wall, and Palestine trembled for a distance of four hundred square parsa. At that time it was declared that cursed be he who raised swine and cursed be he who taught his sons Greek

science. Of that time it was taught (Tract Mena'hoth, p. 64*b*) that the omer was brought from the gardens of Zriphin and the two loaves from the valley of Ein Sokher."

But is, then, the study of Greek science prohibited--have we not learned in the following Boraitha: "Rabbi said: In Palestine there is no use for the Syriac language, which is not clear, when there are the Holy language (pure Hebrew) and the Greek language, both of which are very clear; and R. Jose said: In Babylon there is no use for the Aramean language, for there are the Holy language and the Persian language"? It maybe said: Greek language is one thing and Greek *science* is another. But is, then, the study of Greek science prohibited--has not R. Jehudah said in the name of Samuel: So said R. Simeon b. Gamaliel: It is written [Lam. iii. 5 I]: "My eye affected my soul because of all the daughters of my city. There were a thousand young men in my father's house, five hundred of whom studied Scripture and five hundred *Greek science*, and of all of them only two remained--I here and my nephew in Assia"? R. Gamaliel's house was an exception, for its proximity to the government, as is stated in a Boraitha: "He who cuts his hair χο μ η imitates the ways of the Amorites, which are prohibited [Lev. xviii. 3]. Abtulmus bar Reuben, however, was permitted to do so, for he had stood near the government. The house of R. Gamaliel was permitted to study Greek science for the same reason."

"*No dog shall be kept*," etc. The rabbis taught: No one shall raise a dog unless he is kept on a chain, or unless in a town adjoining the frontier, in which he is permitted to keep him without a chain only in the night-time. There is a Boraitha: R. Eliezer the great said: The raising of dogs is equivalent to the raising of swine. For what purpose is this equivalence? That the curse said of him who raises swine should apply also to him.

R. Joseph b. Maniumi said in the name of R. Na'hman: Babylon [Nahardea] is considered a city located at the frontier.

R. Dosthai of Biri lectured: It is written [Numb. x. 36]: "And when it rested, he said, Return, O Lord, among the myriads of the thousands of Israel." Infer from this that the Shekhina does not rest on Israel unless they number two myriads two thousand. If it should happen that this number should be one less and there should be a pregnant woman whose child when born would complete it, and a dog should bark and cause the woman to miscarry, it would appear that he caused the Shekhina to withdraw from Israel.

It happened with a woman that entered a house to bake there, etc. (See Sabbath, p. 124).

"*No nets are spread*," etc. But do we go as far as that? Have we not learned in the following Mishna: "Dove-cots may be located at a distance of fifty ells from a town"? Said Abayi: They fly for a much longer distance, but as to pecking up food they do so only within fifty ells. But do they fly only thirty ris? 1 Have we not learned in the following Boraitha that nets should not be spread out in the neighborhood of inhabited places, even at a distance of one hundred mil? R. Joseph said that "inhabited" means where vineyards are laid out, Rabba said that it means where dove-cots are kept. If so, let him say that it must not be done for the doves themselves, in order that they should not be caught in? If you wish, it can be answered that the doves are ownerless; and if you wish, it can be answered that he himself is the owner of the doves.

Footnotes

151:1 Leeser does not translate this word literally.

156:1 This is explained in Section Moed.

158:1 R. Meir's statement and the full discussion of it will be found translated in the forthcoming tracts at the proper place.

170:1 Because it now belongs to the Sanctuary and not to him who consecrated it, it is considered as if it would be stolen from the house of the Sanctuary.

177:1 Papa had many children, and the Gemara is not certain who of them was the author of this statement.

177:2 There were many sages who were worthy of this honor, but circumstances prevented them from getting the diploma. The well-known Samuel was one of them, (See Vol. XI., Tract Baba Metzia.)

181:1 Seven and a half ris equalled one Palestinian mile.

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CHAPTER VIII.

THE FIVE ITEMS OF PAYMENT IN CASE OF INJURY TO A HUMAN BEING, INDEPENDENTLY OF THE CRIMINAL LIABILITY. THE LIABILITY FOR ASSAULT WHEN NO INJURY IS SUSTAINED.

MISHNA *I.*: One who wounds his neighbor is liable to pay the following five things, viz.: damage, pain, healing, loss of time, and disgrace. "Damage."--If he blinds one's eye, cuts off his hand, or breaks his leg, the injured person is considered as if he were a slave sold in the market, and he is appraised at his former and his present value. "Pain."--If he burns him with a spit or with a nail, if even only on the nail (of his hand or foot), where it produces no wound, it is appraised how much a man his equal would take to suffer such pain. "Healing."--If he caused him bodily injury, he must heal him; if pus collected by reason of the wound, he must cause him to be healed; if, however, not by reason of the wound, he is free. If the wound heals up and breaks out again, even several times, he must cause it to be healed; if, however, it once heals up thoroughly, he is no more obliged to heal it. "Loss of time."--The injured person is considered as if be were a watchman of a pumpkin field, as he was already paid the value of his hand or foot. The disgrace is appraised with consideration of the station and rank of the one who causes as well as of the one who suffers it.

GEMARA: Why so? Perhaps it is to be taken literally, for the Scripture reads [Ex. xxi. 24]: "Eye for eye"? This cannot enter the mind, as we have learned in the following Boraitha: Lest one say, if he blinds one's eye or cuts off one's hand, that the same should be done unto him, therefore it is written [Lev. xxiv. 21]: "And he that killeth a beast shall make restitution *for it*; and he that killeth a man," etc. As in case of a beast only the value is paid, so also in case of a man. And lest one say, Does not the Scripture read [Numb. xxxv. 31]: "Moreover, ye shall take no redemption for the person of a murderer, who is guilty of death"? you may say that from this, very verse it may be inferred that no redemption money is to be

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taken for a *murderer*, but redemption money is to be taken for one who destroys such members of the body as cannot grow on again.

We have learned in a Boraitha: R. Simeon b. Johi said: "Eye for eye" means its value. You say, its value. Perhaps it means literally? Nay, for what should be done when a blind man blinds another, etc.--how should be fulfilled the commandment "eye for eye"? And lest one say that such a case is an exception, therefore the Scripture reads [Lev. xxiv. 22]: "One manner of judicial law shall ye have"; from which is to be inferred that it means a law which can be applied alike to all human cases.

In the school of R. Ishmael it was taught: The Scripture reads [ibid., ibid. 20]: "So should it be

given [1] unto him"; and by "given" is meant a thing which is given from hand to hand. If so, how are the preceding words in the same verse to be explained? "In the manner he should give a bodily defect," etc. (hence the word "give" is used also for such a thing as is not given from hand to hand)? It may be explained thus: The school of R. Ishmael deduce it from a superfluous verse, thus: Let us see. It reads already in the preceding verse [ibid. 19]: "And if a man cause a bodily defect in his neighbor; as he hath done, so shall it be done unto him." Why, then, the repetition in verse 20? To indicate that it means money. But still the above-stated objection as to the use of the word "give" in the beginning of the verse remains? Because at the end of the verse the Scripture desired to use a term from which it should be deduced that it means *money*. It used the same expression also here.

The school of R. Hyya deduce it from the following: The Scripture reads [Deut. xix. 21]: "Hand for hand" [2]--that means something that can be passed from hand to hand, *i.e.*, money.

It happened that an ass bit off a child's arm. When the case came before R. Papa b. Samuel he said: Go and appraise the sum to be paid for the four items. Said Rabha to him: But we have learned that *five* items are appraised? He answered: I mean in addition to the actual damage. Said Abayi: But this was an ass, and an ass pays actual damage only? He then said: Go and appraise his actual damage. But he must be appraised as if he were a slave? He answered: Go and appraise him as such. Said the child's father: I do not want to submit to such an indignity. He was told: This money belongs to the child (and you cannot deprive him of that). The father then answered: When he shall grow up, I will rather pay him of my own.

It happened that an ox lacerated the arm of a child, and the case came before Rabha. He said: Go and appraise the actual damage as if he were a slave. His disciple said to him: Are not you, master, the one who said that all appraisements which are made as of a slave are not to be collected in Babylon? He answered: The appraisement may be made, so that in case he should subsequently seize some property of the defendant he will not be compelled to return it. And Rabha in this decision follows his theory elsewhere: "Damages of an ox caused to him by another ox, or damages of an ox caused by a man, are to be collected in Babylon, but damages of a man caused to him by another man, or by an ox, are not to be collected in Babylon." Why arc the latter damages not collected? Because it states [Ex. xxii. 8]: "Before the judges," etc., and in Babylon the majority of the judges are not ordained, is it not the same with damages caused by one ox to another, etc.--for they are all mentioned together in the Scripture, where the word "Eloim" is written, which means ordained judges? Rabha speaks of a case when it was caused by the tooth or foot, which are considered vicious from the beginning, and such damage is at any rate to be collected in Babylon.

"*Pain--if he burned him,*" etc. Who is the Tana who holds that pain without damage must be paid for? Said Rabha: It is Ben Azai of the following Boraitha: Rabbi said: "Burning" is mentioned in the Scripture first. Ben Azai said: "Bruise" is

mentioned first. (How is it possible that they should differ as to which is written first and which last, when the verse [Ex. xxi. 25] reads plainly "burning" first and "bruise" last?) The point on

which they differ is whether "burning" without producing a bruise is considered pain which is to be paid for: Rabbi says that the word "burning" could be explained to mean without a bruise, and the word "bruise" mentioned last is only to explain that burning without a bruise is not to be considered. Ben Azai, however, maintains that "burning" means with a bruise; and because "bruise" is repeated again, it may be inferred that when it happened that the burning was without a bruise it is also considered pain which must be paid for. R. Papa opposed: On the contrary, common sense would dictate that Rabha's statement, "Burning is mentioned first," means to say that because usually burning is accompanied with a bruise it is also considered pain and must be paid for; and Ben Azai's statement that bruise is mentioned first means to say that "bruise" is the main point, as burning without a bruise is not considered at all. It may also be explained that both agree that the word "burning" means with or without a bruise, and the point of their difference is: Given a general and a particular which do not follow one after the other (*e.g.*, in the verse in question, where the words "wound for wound" intervene between them), Rabbi holds to the rule "that a general includes nothing but what is stated in the particular" does not apply to such a case, while Ben Azai holds that it does. And lest one say: If "burning" includes also a bruise, why, then, the repetition? Say that the word "bruise" means to increase the payment.

"*It is appraised how much one would*," etc. When the damage is paid for, how should the pain be appraised separately? Said the father of Samuel: It should be appraised how much one would pay to have his arm, which by the decree of the government must be amputated, severed by a drug [1] instead of a sword. If so, it ought to state "give" instead of "take"? Said R. Huna b. R. Juhoshua: It means that the plaintiff shall take from the defendant what such a man would give.

"*'Healing.'--If he caused him bodily injury*," etc. The rabbis taught: If pus collected by reason of the wound and the wound broke out again, he must heal him; and he must also pay for the loss of his time until he shall be healed again. If, however, not

by reason of the wound, he is free from both. R. Jehudah said: Even if it was by reason of the wound, he must cure him only, but not pay again for the loss of time.

The sages, however, say that the healing and the loss of time go together: When he must pay for one, he must also pay for the other, but not for one without the other. What is the point of their difference? Said Rabba: I found the disciples of the college sitting and declaring that the rabbis and R. Jehudah differed as to whether a wound might be bandaged or not (i. e., whether the injured person is permitted to increase the expense of healing by bandaging up his wound and thereby causing high temperature, which produces pus). The rabbis hold that it may be bandaged at the expense of the defendant as regards both healing and loss of time. R. Jehudah, however, holds that it may not be done. But if he does so, for healing, which is plainly written in the Scripture (*thoroughly* healed), he must pay; but for loss of time, for which there is no additional word in the Scripture, he must not pay. Said I to them: If we should come to the conclusion that a wound may not be bandaged, even healing would not have to be paid for. We must therefore say that all agree that a wound may be bandaged; but they differ, if bandaged too much (and this caused high temperature and produced pus), as to who must suffer the increased expense. R. Jehudah holds: That as one must not bandage a wound more than necessary, he is only obliged to pay for healing, because the Scripture insists on it by the repetition of the word "healing"; but regarding the loss of time, about which there is no repetition in the Scripture, he has not to pay

for it. The first Tana, however (of the above-mentioned Boraitha), holds that because he must pay for the increased healing, for the reason stated above, he must also pay for the increase in loss of time, which is equal to healing in all respects.

(Let us see:) According to the rabbis, who hold that he who is liable for loss of time is also liable for the expense of feeling, and he who is not liable for loss of time is not liable for the expense of healing, wherefore the repetition of the word "healing" in the verse? 1 It is needed for what the following Boraitha states: "R. Ishmael said: It is written [Ex. xxi. 19]: *Thoroughly healed*," from which is to be inferred that a physician is permitted to heal (although the affliction came from Providence).

The rabbis taught: Whence do we know that if pus collected by reason of the wound and the wound broke out again he must heal him, and also pay for the loss of time? From [ibid., ibid.]: "Only he shall pay for his loss of time, and shall cause him to be thoroughly healed." Lest one say that it is so also if the pus collected not by reason of the wound, therefore it reads only. R. Jose b. Jehudah said: The above word "only" excludes the case when it collected even by reason of the wound.

The Master said: "Lest one say," etc. If not by reason of the wound, why was there a verse needed? The expression in the Boraitha "not by reason," etc., may be explained as stated in the following Boraitha: If he disobeyed the prescription of the physician and ate honey or other saccharine substances, which are injurious to a wound, and a cancer formed, shall he also be liable to heal him? Therefore it is written *only*.

If the defendant should say, "I will cure you myself," the plaintiff may object, saying: "I fear you as a lion lying in wait." And if the defendant should say, "I will get you my relative, a physician, who will cure you for nothing," he may say: "A physician who cures for nothing is worth nothing." And if he should offer to get a physician who lives at a distance from the plaintiff, the latter may object, saying: "One may get blind before seeing him." And also, conversely, if the plaintiff should demand money to heal himself, the defendant may answer: "You may not comply with the directions of the physician, and thus defer the time of the healing." And if the plaintiff should demand from the defendant to agree upon a fixed sum, the defendant may also object, saying: "You may take the money and not cure yourself, and people will call me 'a vicious ox.'"

It was taught above: "And all those are paid where actual damage is paid." Whence do we deduce this? Said R. Zbid in the name of Rabha: The Scripture reads [Ex. xxi. 25]: "Wound for wound," which means that pain is to be paid for where actual damage is paid. But is this verse not necessary to make an unintentional act equal to an intentional one, and an accidental one equal to a voluntary act? If so, let the Scripture read "wound *by* wound"--why "wound *instead* of a wound"? (See supra, p. 54.) To infer both. R. Papa, however, said in the name of the same: There is a repetition as to healing [ibid., 19], to add healing where actual damage is paid. But can there be a case where one should be liable for all the four things where no actual damage was done? Yea, Pain--as is stated in the Mishna:

[paragraph continues] "If he burned him with a spit or a nail," etc. Healing--as, for instance, when he had a slight wound and it was healing up, and from the medicines applied the skin turned white, and other medicines had to be applied to restore the natural color. Loss of time--when he must be confined to the house. Disgrace--when he spat in his face.

"*Loss of time,*" etc. The rabbis taught: "Loss of time. He is considered as if he were a watchman of a pumpkin field; and lest one say that no justice is done in such a case, for should he be cured he could still do some kind of manual work, or serve as a messenger and get better compensation? There is no injustice, because he has already received the value of his limb."

Rabba said: If one cut off another's hand he pays him the value thereof; and as regards loss of time, it is appraised as if he were a watchman of a pumpkin field. If one breaks another's leg, he pays the value thereof; and as regards loss of time, it is appraised as if he were a doorkeeper. If one blinds another's eye, he pays him the value thereof, and the loss of time is appraised as if he were a miller. If, however, he makes him deaf, he pays the value of his whole body, for he is not fit for any work.

Rabba questioned: In case one cut off another's hand, broke his foot, blinded his eye, at intervals, and each injury was not appraised separately when it occurred, and finally he made him deaf, how shall the appraisement be made? Shall we assume that the appraisement for the deafness will be sufficient, as he has to pay him for the whole body, or each of the injuries must be appraised separately, and the difference would be that he would receive compensation for the pain and the disgrace of each injury separately? I do not question as regards actual damage, healing, and loss of time, for each of which he has not to receive separately, as he receives now compensation for the whole body as if killed, but for the pain and disgrace suffered with each injury? Another question: How is it if each injury was appraised, but the money was not yet collected? Shall we assume that because it was appraised separately each must be paid; or, because he has not yet paid and now he has to pay for the whole body that all the previous appraisements are included therein? Both questions remain undecided. 1

Rabba questioned: If one strikes another and makes him temporarily unfit to labor, as, for instance, when he strikes him on the hand and it gets swollen, which will pass over, shall we assume that because he will recover he need pay him nothing, or perhaps for the time during which he is incapable to work he must pay? Come and hear: "One who strikes his father or mother, but makes no bruise, and one who wounds his neighbor on the Day of Atonement, is liable to all the five things." Does the first part of this Boraitha not mean a case like the one questioned by you; *i.e.*, that he struck them on the hand, which will soon pass over, and still it states that he must pay all? Nay, it may be explained that he caused him deafness, but makes no bruise. But did not Rabba say that one who causes deafness to his parents is to suffer the death penalty, for deafness is impossible without a bruise, which is a drop of blood that falls into the car? Therefore the Boraitha must be explained that he shaved off his hair. His hair? It will surely grow on again, and this is Rabh's question (as there is no difference whether the hand will recover or the hair will grow on again?) It can be explained that the Boraitha meant that he applied a depilatory which prevents the hair from growing on again. Pain--because the depilatory entered the grooves (of his head) and caused him pain. Healing--because the pain must be allayed by medicine. Loss of time--as for instance when he was a professional buffoon

who shows different grimaces and gesticulations, and he is prevented from doing so on account of that. Disgrace--there can be no greater disgrace than to be without hair.

And this matter, in which Rabba was doubtful, was certain to Abayi in one way and to Rabha in the opposite way, as it was taught: If he strikes him on his hand, which gets swollen, Abayi says he must pay both the value of his hand in his trade during the time of his sickness and also the loss of time in such labor as he could do without the hand. Rabha, however, says he is paid only what he loses every day by not working. It was taught: One who cuts off the arm of his neighbor's Hebrew servant; Abayi says he pays the value of the arm to the servant and for the loss of time to his master. Rabha, however, says: The whole must be paid to the servant, who should buy therewith land, the usufruct of which should belong to the master. It is certain that where the injury is wholly to the slave, *e.g.*, where he split his car or his nostrils (which does not prevent him from work), that all that he gets belongs to him; but where the injury is of such

nature that he cannot do any work, the difference between Abayi and Rabha concerning the loss of time remains.

"*Disgrace*," etc. Our Mishna is in accordance with R. Simeon of the following Boraitha only: "All those who sustain injury are looked upon as if they were independent men that became poor, as all Israelites are the children of Abraham, Isaac, and Jacob. Such is the dictum of R. Meir. R. Jehudah says: It is according to his rank and station. R. Simeon, however, says: The rich ones are looked upon as if they were independent men who became poor; the poor ones, as if they were the very poorest class." Hence our Mishna, which states that it is according to the station of the party, is not in accordance with R. Meir, who makes no difference, nor according to R. Jehudah, who says further on that a blind person gets nothing for being disgraced, but according to R. Simeon only (who considers rank and station).

According to whom is the following Boraitha: "The rabbis taught: If he intended to disgrace a small one and disgraced a big one, he pays the big one the amount he would have to pay the small one. If he intended to disgrace a slave and he disgraced a freeman, he pays to the freeman the amount he would have to pay to the slave"? It seems to be in accordance with neither of the Tanaim mentioned above. [At the first glance, the Boraitha is to be explained that "small one" means one who is poor in estate, and "big one" means one who is rich in estate, and therefore it is not in accordance with R. Meir, to whom all are equal, nor according to R. Jehudah's theory, who holds no disgrace is paid for to slaves, and, finally, not according to R. Simeon, who holds that no disgrace is paid for unless it was caused to him who was intended. Why so? Because R. Simeon equals it to murder, of which it is written [Deut. xix. ii]: "And he lie in wait for *him*," etc.; and we find also, as regards disgrace [ibid. xxv. 11]: "And *putteth forth her* hand" (which means intentionally), hence in both intention is required.] It may be explained even in accordance with R. Meir, and the terms "small" and "big" should be taken literally: a grown person and a minor. But is, then, a minor paid for disgrace? Yea, as R. Papa said elsewhere, if the minor is of such understanding that he feels ashamed when one says to him, "Be ashamed of yourself," disgrace is paid for to him.

MISHNA *II*.: One who causes disgrace to a nude, blind, or sleeping person is liable; if, however, one causes disgrace when

asleep, he is free. If one falls down from a roof and causes damage and disgrace, he is liable for the damage but not for the disgrace, as the latter requires intention.

GEMARA: The rabbis taught: "If he disgrace a nude person, he is liable; but still, the disgrace caused to a nude person is not equal to that caused to a dressed one. If he disgrace him in a bath-house, he is liable; but still, such disgrace is not equal to that caused to one in the market." The Master said: "If he causes disgrace to a nude person," etc. If he walks nude in the street--is, then, such a person capable of being ashamed? Said R. Papa: As for instance when a wind rolled up his clothes somewhat, and the defendant rolled them up more and thereby caused him shame. "In a bath-house." Is, then, a bath-house a place for claiming for disgrace? Said R. Papa: It means that he caused him shame while on the banks of a river.

R. Aba b. Mamel questioned: If one causes shame to a sleeping person who subsequently dies while asleep, what is the law (as to the payment for shame)? On what point is the question? Said R. Zbid: It is thus: Is shame paid for, for hurting one's feelings, and here, when he dies while sleeping, his feelings are not hurt, or it is only a fine for the indignity of one in the presence of others, and here was such indignity? Come and hear: "R. Meir says: A deaf-mute, and a minor, disgrace is paid for to them, but not to an insane person." Now, then, if it is a fine for the indignity, it is correct that a minor be also paid, but if for hurting the feelings, has a minor, then, feelings of shame? But even if it is for indignity, why should an insane person not be paid for? Insane? is there any greater shame than this?

R. Papa says: The point of the question is thus: Is the reason because of the hurting of his own feelings--here, when he dies when sleeping, there was none--or because of the feelings of the family? Come and hear, etc. (the Boraitha just quoted). Now, then, if for the sake of the family it is correct that it states also a minor, and if for his own, is, then, a minor capable of feeling shame? But even if it is because of his family, it is not correct that an insane person shall not be paid for? There is no greater shame for a family than the insanity of one of its members. Be this as it may, let it be inferred that the reason is because of his family; for if because of his own feelings, the minor stands in the way? Said R. Papa: A minor is sometimes paid for shame if he is of such understanding that he feels ashamed when one says to him: "Be ashamed of yourself!"

[paragraph continues] We have also so learned plainly in a Boraitha: "Rabbi says: A deaf-mute has, an insane person has not, but a minor sometimes has and sometimes has not, feelings of shame, as explained above."

"*One who disgraces a blind one*," etc. Our Mishna is not in accordance with R. Jehudah of the following Boraitha, who says: "A blind person has no feelings of shame; so also he used to free him from banishment, stripes, and death punishment by the court." What is the reason of R. Jehudah's theory? He deduces it from the analogy of expression "the eye," which is used in speaking of disgracing a person and also in speaking of collusive witnesses: as in the case of collusive witnesses blind persons are excluded (for if they cannot see they cannot testify). And regarding banishment, as it is stated in the following Boraitha: It is written [Numb. xxxv. 23]: "Without seeing him" (which is to be explained that *here* he has not seen, but he is capable of

seeing), which excludes a blind person (who can never see). Such is the dictum of R. Jehudah. R. Meir says: (On the contrary,) it includes a blind person. What is the reason of R. Jehudah? It is written [Deut. xix. 5]: "And he that goeth into the forest with his neighbor to hew wood." Should we assume that this includes even a blind one? Therefore the Scripture says, "without seeing him," to exclude him. And R .Meir? (He may explain it thus:) The Scripture reads "without seeing him," to exclude something, and it is written [ibid., ibid. 4], "without knowledge," which also means to exclude something; and there is a rule that where there is one exclusion after another it means to include. Hence it includes the blind. R. Jehudah, however, maintains that "without knowledge" means to exclude the one who does it intentionally (who is guilty of a crime). "From death by the court." It is deduced by analogy of the expression "murderer" used here and in case of banishment. (In case of one killing a person the expression "murderer" is used [Numb. xxxv. 31], and so also in case of banishment.) "From stripes." It is deduced by the analogy of the expression "Rosha" [ibid. xxv.] (the wicked, the guilty one) used here, and in case of death by the court [Numb. xxxv. 31].

We have learned in another Boraitha: "R. Jehudah says: A blind person has no sense of shame. He also relieved him from the performance of all the commandments contained in the Scripture." Said R. Shesheth b. R. Idi: What is the reason of

his statement? It is written [Deut. vi. 1]: "And this is the commandment, with the statutes and the ordinances"--from which is to be inferred that only those who can be ordained as judges have the obligation of observing the commandments, but not those who cannot be ordained (and as a blind person cannot be ordained a judge, he is exempt).

R. Joseph said: First I used to say: If there should come one and tell me that the Halakha prevails according to R. Jehudah, who says that a blind person is exempt from the performance of commandments, I shall make a feast for the rabbis, because I, who am under no obligation to do so, still do perform them; but since I heard of what R. Hanina said, that there is more reward for him who performs a commandment which he has an obligation to than for him who performs it without such obligation, I changed my mind, and I say that I shall make a feast if one should come and tell me that the Halakha does not prevail according to R. Jehudah; for if I am required to perform the commandment, the reward will be greater.

MISHNA *III*.: The law is more rigorous in regard to a man than in regard to an ox in this respect, that a man pays the five certain items, and also the value of the aborted children, while an ox pays only for actual damage and is free also from paying for the aborted children. One who assaults his father or mother, but does not bruise them, and one who wounds another on the Day of Atonement, is liable to pay all the above items. One who wounds a Hebrew servant is liable to pay all, but for loss of time when he is his own. One who wounds a heathen slave of another is liable to pay all. R. Jehudah says: There is no disgrace to slaves. A deaf-mute, an insane person, and a minor, one who meets with them is in a bad position, for the one who wounds them is liable, while if they do so to others they are free. The same is the case with a slave and a (married) woman, with the difference that they must pay when they become independent; namely, when the woman is divorced and the slave is liberated. If one, however, assaults his father or mother and bruises them, or, on the Sabbath, any person, he is free from payment of the above-enumerated items, for he is guilty of a capital punishment. One who wounds his own heathen slave is free from everything.

GEMARA: R. Elazar questioned Rabh: One who wounds the minor daughter of another, to whom is the compensation to be paid? Shall we assume that as the Scripture granted the

income of a minor daughter to her father, the same is the case with the compensation for a wound inflicted upon her, for her value is diminished thereby; or perhaps the Scripture granted him only the income so far as she is under his control; for instance, if he wanted to marry her to one afflicted with scabies he could do so, but as to wounding, if he himself wanted to wound her he must not do so; hence it is an income which is not under his control, and therefore he does not acquire title to it? He answered: The Scripture granted him only the income first stated.

He objected to him from our Mishna: "But for the loss of time when he is his own?" (Hence we see that the loss of time is considered; and as the income from the labor of a minor daughter belongs to her father, he shall at least collect for the loss of time?) Said Abayi: Rabh concedes, as far as this is concerned, that her father gets it up to the age when she becomes *vigorous*. He objected again from the following: "One who wounds his grown son, he pays him at once; if he wounds his minor son, he makes an investment with the money he has to pay; if he wounds his minor daughter, he is free; and not only he, but even if others have done so to her, the father gets the payment?" He answered: This also has reference to loss of time only.

There is a contradiction to the above statement that in case of a grown son he pays him at once, from the following: One who wounds another's children--if they are grown persons, he pays them at once; if they are minors, he makes an investment with the money due; if his own children, he is free? This presents no difficulty: The one case treats of where he provides their board, and the other case treats of where he does not. Now, let us see: You interpret the first Boraitha that it treats of where he does not provide their board; then the last part of same: "If one wounds his minor daughter, he is free, and if others do so to her the payment belongs to him," also treats of where he does not provide her with board--why, then, should the payment belong to him? must she not pay for her board? As Rabha b. R. Ula explained elsewhere that it refers to that part which is in excess of what she needs for her board, so also is it to be explained here, that it relates to the excess. If so, then the second Boraitha treats of where the father does provide their board--why should they get the payment? does it not belong to the father? It maybe said that one is particular only

about money of his own pocket, but about an income that comes from the outside one is not particular.

But is, then, a found article not an outside income, and still one is particular about it? An outside income which comes without any pain to the body, one is particular about; but an income which comes by reason of a wound, where she suffers bodily pain, is different. But does not the Boraitha state that if others wounded her they must pay to her father? It may be said that, as the Boraitha was interpreted that the children were not on his board, it is to show that the man is so penurious that he does not even provide board for his children, and such a man is certainly particular even about such an income; but in our case, where it is explained that they are on his board, it may be assumed that he is not particular about such an income.

What kind of investment (mentioned in the above Boraitha) should he make? R. Hisda said: He should buy with the money the Holy Scrolls. Rabba b. R. Huna said: (An article which brings benefit, *e.g.*) a date-tree, the benefit of the fruit of which should belong to the minor.

And Resh Lakish is also of the opinion that the Scripture granted to the father only the benefit derived from the labor of a minor daughter. R. Johanan, however, says: Even the money gotten for a scratch. A scratch? How can this enter the mind? Even R. Elazar questioned only in case of a wound, because her value was reduced; but in case of a scratch, which does not reduce her value, he did not question at all? Said R. Jose b. Hanina: The case is that the scratch was on the face, and in such a case it causes a reduction in her value.

"*A heathen slave*," etc. What is the reason of R. Jehudah's theory? Because it is written [Deut. xxv. 11]: "When men strive together, one with his *brother*," 1 which signifies one with whom there can be a fraternity, excluding a slave. The rabbis, however, maintain that the word "brother" can also mean a slave, as there is a fraternity with a slave, because he is obliged to perform many commandments which an Israelite is obliged to perform. Now then, according to R. Jehudah, who is particular about the word "brother" mentioned in the Scripture, let witnesses who were found collusive in their testimony against a slave (to convict him of a crime punishable by death) not be

put to death, for it is written [ibid. xix. 19]: "Then shall ye do unto him as he had purposed to do unto his brother"? Said Rabba in the name of R. Shesheth: The verse reads [ibid., ibid.]: "And thou shalt put away the evil from the midst of thee," which means under any circumstances.

Now, according to the rabbis, who maintain that a slave is also considered a "brother," let a slave be qualified to become a king? According to such a theory the same question could be put as regards a proselyte (who according to all is named brother, and nevertheless he is not qualified)? But both are excluded by the following verse [ibid. xvii. 15]: "From the midst of thy brethren shalt thou set a king over thee," which signifies from the best qualified of your brethren. The question can, however, be put thus: Let, according to the rabbis, a slave be eligible as a witness, for it is written [ibid. xix. 18]: "He had testified a falsehood against his brother"? Said Ula: Even as regards witnesses he must be excluded by the following *a fortiori* argument, thus: An Israelitish woman is not eligible as a witness--a slave, who is not an Israelite and cannot even intermarry with an Israelitish woman, is it not logical that be should not be eligible as a witness? And if you should say that a slave has the preference, for he is circumcised, which is not the case with a woman, the case of a minor can prove it, who is circumcised, and still he is ineligible as a witness; and if you should say that a minor has no obligation of performing commandments, while a slave has, the case of the woman can be cited who has such obligation and still she is ineligible as a witness, and the former argument will be reinstated; from which it is to be seen that in some respects one has preference and in others the other has preference. In one thing, however, they are all equal, in that they are not fit to perform all the commandments to which an Israelite is subject and they are eligible as witnesses; the same is the case with a slave, who is not fit to perform all the commandments and is also eligible as a witness.

"*A deaf-mute,*" etc. The mother of R. Samuel b. Aba of Hagrunia married R. Aba, and she

transferred her estates to her son R. Samuel. When she died, he went before R. Jeremiah b. Aba and he installed him in the possession of the estates. His stepfather went and told this to R. Hoshiya, who in his turn told it to R. Jehudah, and the latter said to him: So said Samuel: A woman who sells her estates to some one with a condition that her husband shall have the fruition of same during

his lifetime, and thereafter she dies, her husband can recover the estates from the buyer (for he inherits from his wife, and because he had the usufruct of the estates he is considered as if he were the first buyer). When this was stated before R. Jeremiah, he said: I, however, know of a Mishna (Third Gate, Chap. VIII.) which states: "One who transfers his estates to his son, after his decease . . . If the son sell them, the buyer has nothing in them until the father dies." We see, then, that if the father die the buyer acquires title in them, and even in case the son dies when the father is still alive, in which case they never came into the possession of the son. As R. Simeon b. Lakish said, there is no difference whether the son dies during the lifetime of the father or the father dies during the lifetime of the son, in both of which cases they never came into the possession of the son, the buyer nevertheless acquires title. [1]

When the answer of R. Jeremiah was repeated before R. Jehudah, he said: So said Samuel: This is not equal to the case of our Mishna. Why so? Said Abayi: On account of the enactment of Usha, which is in accordance with Samuel's statement. (See Khethuboth, p. 20.) Said R. Idi b. Abin: We have so also learned in the following Boraitha: If witnesses say: "We testify that that person divorced his wife and paid her the amount of her marriage contract," and it was found that she was still with him, and cohabited with him, and those witnesses were found collusive, they must not pay the full amount of the marriage contract (because she may die before her husband and nothing will be collected, but it must be appraised how much she would get in cash now if she should transfer her right in the marriage contract, so that if she should die before her husband the buyer would lose), but only the benefit of the same; and if she dies, her husband inherits also this from her. Now then, if the enactment of Usha should be of no effect, why should her husband inherit the amount of her marriage contract--let her be able to sell her right in the marriage contract and collect the full amount of it? Said Abayi: What comparison is this: If the enactment was made regarding a woman's estate which she sells reserving the benefit, should the same enactment apply to guaranteed estates?

Said Abayi: As we have come to speak about benefit, let

us say something regarding it: The above-mentioned benefit belongs to the wife; for if it should belong to the husband, let the collusive witnesses say to her: What loss did you sustain--if you had sold them, the benefit would anyhow have belonged not to you, but to your husband? Said R. Shalman: It does not matter: This benefit, although it would go to the husband, would be a benefit for her, as it would be used to increase the luxury of the household.

Rabha said: The Halakha prevails that the benefit in case of a woman who sells her right in the marriage contract belongs to herself; and if she bought estates therewith, her husband has nothing even in their income. Why so? The rabbis enacted that he should have the direct income

of his wife's estates belonging to her before marriage, but not the income of her estates which she acquired after her marriage in which her husband has no share (*e.g.*, estates bought with the money paid her for disgrace caused to her, etc.). When R. Papa and R. Huna returned from Rabh's college, they questioned: On account of the enactment made in Usha, it was taught of a slave and a woman, one who meets with them is in a bad position, etc. Now, if the enactment of Usha should be of no effect, why should the compensation for her wound be paid to her husband, let it be paid to her and let her buy estates the usufruct of which shall belong to her husband? (What question is this?) Even according to the theory that the enactment of Usha is of effect and she cannot sell the right in her marriage contract absolutely, let her sell, however, her estates of which her husband has the fruition for any benefit she could derive and pay to him whom she wounded? We must then say that she does not possess any. The same is the case here.

MISHNA *IV*.: If one blow 1 into the car of another, he pays one sela (as a fine for the disgrace he caused him). R. Jehudah, however, in the name of R. Jose the Galilean says, one manah. If he strike him with the palm of his hand on the cheek, he pays two hundred zuz; if, however, with the back of his hand, he pays four hundred. If he pull or cut his ear, or pull his hair, or spit in such a manner that the spittle fall on him, or strip him of his garment, or he bare the head of a woman in the market, four hundred zuz is to be paid. This is the rule:

[paragraph continues] Rank and station of the parties are taken into consideration. R. Aqiba, however, says: Even the poorest of Israel must be considered as if they were independent men who had lost their estates, for they are the descendants of Abraham, Isaac, and Jacob. And it happened that one bared the head of a woman in the market, and when the case came before R. Aqiba he imposed a fine of four hundred zuz. Said the defendant to him: "Grant me time for payment," and he did so. The defendant then watched her when she was standing at the gate of her courtyard, and broke her pitcher containing oil of the value of one issar: she bared her head, dipped her hand in the oil, and rubbed it into her hair in the presence of witnesses. The defendant then brought the witnesses before R. Aqiba and said: Rabbi, do you command me to pay this woman four hundred zuz? R. Aqiba answered: Your pleading is of no avail, for one who wounds himself, although it is considered a crime, he does not pay a fine, but if others wound him he must be paid. The same is the case with one who cuts off his plants; although it is unlawful, still he pays nothing, but if others do so (to the same property) it must be paid for.

GEMARA: The schoolmen propounded a question: The manah stated in the Mishna, does it mean a manah of the city of Zur, 1 which contains one hundred zuz, or does it mean the manah of the country, which is one-eighth part of it? Come and hear: "It happened that a man blew into the ear of another and the case came before R. Jehudah the Second, and he said: I saw you doing it, and I hold with R. Jose the Galilean; and there are also other witnesses who saw you doing it, therefore go and pay him a manah of the city of Zur." 2There was a man who did so to his neighbor, and when the case came before R. Tubiah b. Mathna he sent a message to R. Jose, questioning him whether the sela mentioned in the Mishna meant a sela of Zur or one of the country, which is only of the value of one-half of a zuz, and he answered: This is to be inferred from the end of Mishna I., Chap. IV., where it states "the first two a golden dinar"; and if the Mishna treated of a sela of the country, it would state one more case, viz.: "If the ox still gore another ox worth two hundred zuz, the owner of the ox and the owner

of the first ox that was injured take each twelve dinars and one sela." Said R. Tubiah: Should the Tana enumerate all the possible cases as a peddler does his wares? How was the case decided? It was decided from the statement of Rabh, which R. Jehudah said in his name, that all the moneys mentioned in the Scripture mean those of Zur, and those mentioned by the rabbis mean those of the country. (Hence one-half of a zuz.) Said the plaintiff: As I have to get only one-half of a zuz, let it be for the poor, as I do not want it. Thereafter he said again: Give it to me and I will use it for improving my health. Said R. Joseph to him: The poor have already acquired title to it, and although they were not here, we the treasurers of charities are considered the hand of the poor.

Hanan the Bisha (the bad) blew into the ear of another. When the case came before R. Huna, he said: Go and pay him one-half of a zuz. Hanan had in his possession a bad zuz that he could not pass, and he tendered it to the plaintiff, asking for one-half zuz change. When he refused, he blew in his ear again, and paid him the whole zuz.

(It is said above, "I saw you doing it.") May a witness be a judge in the same case? Have we not learned in a Boraitha: If the Sanhedrin saw one murdering another, they shall be divided; viz., some of them shall appear as witnesses and the others shall perform the function of judges. Such is the dictum of R. Tarphon. R. Aqiba, however, said: As they are all witnesses, none of them can perform the function of judges? Did R. Aqiba indeed say so? Have we not learned in another Boraitha: It is written [Ex. xxi. 18]: "And if men strive together, and one smite the other with a stone, or with the fist." Said Simeon the Timani: As in the case of the fist it must be investigated whether the blow of the fist was of such violence as to make him ill, confined to his bed, the same is the case with the stone; but if the stone was lost from the hand of the witnesses, no judgment can be granted. Said R. Aqiba to him: "Did he strike him in the presence of the court, so that they could testify how much, for what, and at what place he struck him; and secondly, in case one pushes his neighbor from the top of the roof of a house or palace and he dies, are, then, the court obliged to go and investigate if the height was such as to kill a man, or shall the house or palace be brought before the Beth Din? And if you should say, 'Yea,' how should be the case if in the meantime the palace were destroyed--shall we

wait until it be rebuilt of the same height, so that it can be measured? Therefore we must assume that as in the case of the fist (which is always there) it depends upon the testimony of the witnesses whether the blow was of such violence, etc., the same is the case with the stone, except where the stone was lost before the witnesses have seen it." We see, then, that R. Aqiba said that the court can testify how the striking was, hence that a witness can act as judge? He said it only to R. Simeon: According to your theory, should the court, etc., but he himself does not allow a witness to be a judge under any circumstances.

The rabbis taught: "A non-vicious ox who killed a man and has also caused damages to another, he must be tried for the crime but not for the damages (because a non-vicious ox pays for damages from his body, and in this case his body is to be stoned); a vicious one, however, who did the same is tried first for the damages and subsequently for the crime. If, however, he was sentenced to death first, he cannot be tried again for the damages." What is the reason? Why shall he not be tried again for the damages. (In such a case the payment is to be made from the estates of the owner?) Said Rabha: I found the disciples of the college sitting and discussing about this case, and they came to the conclusion that the Boraitha is in accordance with R.

Simeon the Timani's theory, that in all cases the appraisement of the court is necessary also concerning damages; and in our case, as it was already decided that the ox must be killed, the execution must not be postponed for the purpose of appraisement. Said I to them: The Boraitha can be explained also in accordance with R. Aqiba, namely, that the case was that the owner of the ox ran away (and he cannot be tried when he is not present). If so, even if the ox was not first tried for the crime, can a civil case be tried in the absence of the parties? The case was that he ran away after the witnesses testified in his presence. But if he ran away, from whom shall the payment be collected? If he was not yet tried for the crime, the appraisement of the damages can be made and the ox may be hired to do work with him until the compensation for the hire equals the amount of the payment, and subsequently he shall be tried for the crime. If so, let also a non-vicious ox be tried for the damages and then hired until the hire shall equal the amount of damages, and thereafter he shall be tried for the crime? Said R. Mari bar Kahana: From the fact that it does not state so,

it may be inferred that the hire paid for an ox is not considered as its body, but as the estates of the owner.

The schoolmen propounded a question: Is investigation (before appraisement) necessary in case of damages, or not? Shall we assume that only in case of a crime it must be investigated whether the blow was enough to kill, but in case of damages he must pay at any rate, or there is no difference and investigation must be had? Come and hear: It is stated above (p. 118), "As a pit of ten spans depth, which is capable of killing, so also other things, etc. If, however, it was less deep, he is liable only for damages but not for killing." Is it not to be assumed that it means from the bottom to the top--namely, ten spans deep is for killing, less than ten is for damages? Hence we see that investigation is not necessary, as it must be paid even if it was only two or three spans? Nay, it means from the top to the bottom--namely from one up, but not including ten, is investigated for damages, but it must be investigated how many spans deep are necessary for such damage (but if it was ten or more, then we follow the tradition that from ten up it kills).

Come and hear: Concerning the five certain things it must be investigated, appraised, and collected at once, including healing and loss of time, which are also previously appraised as how long it will take before he will be cured. If, however, it was not so--for instance, during that time he grew worse, or, on the contrary, he was cured in a shorter time, it does not matter, and the appraisement remains the same. Infer from this that there is appraisement in damages. (From this the question of the above schoolmen cannot be decided yet, as) they were not in doubt that appraisement was necessary of the time needed for the injured person to be cured, etc., but they still doubted if the article which caused the damage must be investigated whether it was capable of causing such damage or not. Come and hear the decision of Simeon the Timani stated above, from which is to be inferred that investigation is necessary also for damages. And so it is.

The Master said: If he was examined, and it was concluded that the healing must take a certain time, and he was healed before the time, he gets nevertheless the full amount. This will be a support to Rabha, who said that he who is examined, and it is concluded that his sickness will continue the whole day, and he becomes cured in half a day, so that the other half day he is doing some work, he is nevertheless paid for the full day, as it

is considered that his sickness was shortened by the mercy of Heaven.

"*If he spat in such a manner,*" etc. Said R. Papa: On those parts of his body which were not covered, but not if the spittle fell on his garments. But let it be considered as if he caused him shame by words? In the West it was said in the name of R. Jose b. Abin that from the above explanation of the Mishna by R. Papa is to be inferred that if one disgraces another by mere words he is free.

"*Rank and station,*" etc. The schoolmen propounded a question: The statement of the first Tana, shall it be construed leniently or rigorously? Leniently, if he was a poor person he must not be paid so much as if he were a rich one, or rigorously, that if he was of higher station he is paid more for the disgrace caused him? Come and hear R. Aqiba's statement in the same Mishna, that even the poorest man must be considered as an independent man, etc., from which it is seen that the first Tana meant leniently. And so it is.

"*It happened that one bared,*" etc. Do we, then, allow time for payment in such a case? Did not R. Hanina say that in cases of wounding no time is given? Yea. We do not allow time in cases of pecuniary damage, but in cases of disgrace, where there is no pecuniary damage, time is allowed.

"*He watched her when she was standing,*" etc. But the Boraitha states that R. Aqiba said to him: You dived into deep waters and brought up a fragment of a clay vessel: one may wound himself, but if others wound him they must pay (and in our Mishna it states that a man must not do so)? Said Rabha: This presents no difficulty. The Boraitha speaks of a wound which is not allowed, while the Mishna speaks of disgrace, which one is allowed to cause to himself.

But the Mishna speaks of disgrace only, and still R. Aqiba said, "Although he is not allowed," etc.? R. Aqiba meant to say thus: It is not only in case of disgrace, which one may do to himself, and still if caused by another he is responsible; but even in case of wounding, in which he is not allowed to do it to himself, and after he himself did it others came and caused him other wounds, they are nevertheless responsible.

"One who cut off his plants," etc. Rabba bar bar Hana taught in the presence of Rabh: "If the plaintiff says, 'You killed my ox,' or, 'You cut off my plants,' and the defendant answer, 'You ordered me to do so,' he is free." Said Rabh to

him: If so, you would not leave life to the people-must he then be believed that he was ordered to do so? Rabba bar bar Hana answered: Then ignore it. Said Rabh to him: Why should you not explain your Boraitha that it treats of an ox which was sentenced to be killed, or of a tree which the court ordered to be cut off? He rejoined: If so, then what is the complaint of the plaintiff? The complaint is thus: I wanted to do this commandment myself, as we have learned in the following Boraitha: It is written [Lev. xvii. 13]: "Then shall he pour out the flood thereof, and cover it up," etc. This means that the covering up must be done by the one who pours it out (if he desires to do so); and it happened of one who slaughtered a fowl and another anticipated him and covered its blood with dust, that R. Gamaliel made him pay ten golden zuz. (Hence one has the right to complain for a meritorious deed which he was prevented from doing.)

Rabh said: A tree that contains a kabh of fruit is prohibited to be cut off. Said Rabbina: If, however, the tree be worth more in wood, it may be done. We have learned so also in the following Boraitha. It is written [Deut. xx. 20]: "Only those trees of which thou knowest"--that means, a tree which bears fruit; "that they are not fruit-trees" [1]--that means, a wild tree. Now as, according to this explanation, every tree which is needed may be cut off, why, then, the words "that they are not fruit-trees"? To teach that if there are both wild trees and fruit-trees, the wild trees have the preference to be cut off. But lest one say that even when the fruit-tree is worth more in being used for a beam in a building than for its fruit, the wild tree must be cut off first, therefore it is written "only."

The gardener of Samuel brought him dates in which Samuel tasted a taste of wine, and to the question why it was so the gardener answered that the dates were growing in the vineyard, and Samuel said: If they absorb so much sap of the vines, uproot them and bring me their roots to-morrow.

R. Hisda, when he noticed young date-trees in his vineyard, told the gardener to uproot them, saying: Vines are valuable and date-trees may be bought from their income, while date-trees

are only of slight value, and from their income vines cannot be bought.

MISHNA *V.*: All that which is said regarding payment for disgrace is only for the satisfaction of the pecuniary damage, but the hurt feelings of the disgraced are not forgiven, unless he prays and secures forgiveness from the plaintiff, as it is written [Gen. xx. 7]: "And now restore the man's wife," etc. And whence is it deduced that if the defendant does not forgive he is considered cruel? From [ibid., ibid. 17]: "And Abraham prayed unto God, and God healed Abimelech," etc. If one says to another: "Blind my eye, cut off my hand, break my foot," he (the defendant) is liable, even if he told him so on the condition that he should be free. If he told him: "Tear my garment, break my pitcher," he is liable. If, however, he told him so on the condition that he should be free, he is so. If one says to another to do such damage to a third person, even on condition that he should be free, the defendant is liable whether it be personal injuries or injuries to property.

GEMARA: The rabbis taught: All that which was said concerning disgrace is only for the civil court, as to how much the plaintiff should receive, but there can be no satisfaction for the injury to the feelings, for which, if he would even offer all the best rams of the world, they would not atone for it, unless he prays the plaintiff for forgiveness, as the verse quoted in the Mishna reads farther on: "For he is a prophet, and he will pray for thee." For he is a prophet! Must, then, only a prophet's wife be restored, and not that of an ordinary person? Said R. Simeon b. Na'hmani in the name of R. Jonathan: Read thus: Restore the man's wife; (and) because he is a prophet, he will pray for thee-which means that another's wife must be restored. And your claim [ibid., ibid. 4 and 5]: "Lord, wilt thou then slay also a righteous nation? Said he not unto me, She is my sister?" etc., is of no avail; for if a stranger comes to a city, he is usually questioned only what he would eat or drink, but not who is his wife or relatives, as your habit is; and because he was a prophet and he knew what you were going to ask him, therefore he and Sarah were compelled to say so. Infer from this that one is punished even when he commits a crime through ignorance,

because he ought to learn and know.

It is written [ibid., ibid. 18]: "Every womb." Said the disciple of R. Janai, even the hen of Abimelech's household did

not lay its eggs. Said Rabha to Rabba bar Mari: 1 Whence is the following saying of the rabbis deduced: He who prays in behalf of his neighbor for a certain thing which he himself needs, he is answered first? He answered: From the following verse [Job, xlii. 10]. "And the Lord brought back the captivity of job, when he prayed in behalf of his friends." He said to him: You deduce it from this, and I deduce it from the following verse [Gen. xx. 17]: "And Abraham prayed unto God, and God healed Abimelech, and his wife, and his maid-servants," etc.; and immediately thereafter it is written [ibid. xxi. 1]: "And the Lord visited Sarah as he had said," etc., which means, as Abraham prayed in behalf of Abimelech.

Said Rabha to Rabba bar Mari: Whence do we deduce the following people's saying: With the thorn the rose is also beaten? He answered: From the following verse [Jer. ii. 29]: "Wherefore will ye contend with me? *all* of you have transgressed against me, saith the Lord." ("All," although there were some who were righteous, as the prophets, etc.) Said he to him: You deduce it from this verse, and I deduce it from the following [Ex. xvi. 28]: "How long refuse *ye* to keep my commandments," etc. "ye" includes Moses and Aaron also).

The same said again to the same: It is written [Gen. xlvii. 2]: "And he took some of his brothers, five men." Who were the five? He answered: So said R. Johanan: Those whose names were mentioned twice in the benediction of Moses [Deut. xliii.] (Zebulun, Gad, Dan, Asher, and Naphtali). But is not Jehudah's name also mentioned twice? Jehudah's name was mentioned twice for another purpose (explained in Tract Makkoth, 10). He questioned him again: What is the origin of the following people's saying: "One misfortune follows the other"? He answered: In the following Mishna: "The rich bring the first-fruit in golden or silver baskets (and take the baskets back), while the poor bring it in willow baskets, and the baskets remain with the fruit for the priests." He said to him: You find it in the Mishna, and I find it in the Scripture [Lev. xiii. 45]: "And

the leper. . . . Unclean, unclean, shall he call out." (Hence, it is not enough that he is afflicted, he must himself call it out.)

He said again: Where is the origin for the rabbis' saying: Arise early in the morning and eat something, in the summer because of the heat and in the winter because of the cold; and people say: Sixty men were running after one who used to eat early in the morning, and could not overtake him? In the verse [Is. xlix. 10]: "They shall not be hungry nor thirsty, and neither heat nor sun shall smite them." Said he: I, however, find the origin in the following [Ex. xxiii. 25]: "And ye shall serve the Lord," which means the reading of Shema and prayer; "And he will bless thy bread, and thy water," which means the bread and salt and the pitcher of water one takes immediately thereafter; [and then he may be sure that] "I will remove sickness from the midst of thee."

He said again: What is the origin of the rabbis' saying: If your neighbor calls you "ass," put on a saddle (*i.e.*, do not answer him)? He answered: In [Gen. xvi. 8]: "And he said, Hagar, Sarah's *maid*. . . . And she said, From the face of my *mistress*."

He said again: And wherefrom is the people's saying: "When talking to a stranger, tell him first of all the position you are in"? He answered: From [ibid. xxiv. 34]: "And he said, I am Abraham's *servant*." And wherefrom is the people's saying: A duck while it keeps its head down, its eyes still look at a distance? He answered: From [I Samuel, xxv. 31]: "And when the Lord will do good unto my lord, then do thou remember thy handmaid." (While praying to save her life, she hinted that he should marry her.)

And wherefrom. the following people's saying: For the wine furnished by the host to his guests thanks are due; the main thanks, however, receives the man who takes care of serving the same in a nice manner? He answered: From [Numb. xxvii. 19j: "And thou shalt lay thy hand upon him"; and also [Deut. xxxiv. 9]: "And Joshua the son of Nun was full of the spirit of wisdom; for Moses had laid his hands upon him, etc." (Hence we see that the whole credit is given to Moses.) And wherefrom the following people's saying: A tree bearing bad fruit usually keeps company with trees which do not bear fruit at all? He answered: This is written in the Pentateuch, repeated in the Prophets, mentioned a third time in the Hagiographa, also learned in a Mishna

and taught in a Boraitha: *Pentateuch* [Gen. xxviii. 9]: "And Esau went unto Ishmael." *Prophets* [Judges, xi. 3]: "And then gathered themselves to Yiphthach idle men, and they went out with him." *Hagiographa* [Ben Sira, xiii.]: "Every fowl associates with its kind and man with his equal." *Mishna*: "All that is attached to an unclean article is unclean and all that is attached to a clean article is clean." *Boraitha*: "R. Eliezer said: Not in vain did the cuckoo go to the crow, because it is of its kind." He said again: And wherefrom the following saying: If you advise your neighbor and he does not heed your advice, press him to the wall and let him suffer? He answered: From [Ezek. xxiv. 13]: "Because I endeavored to cleanse thee, and thou wouldst not be clean, thou shalt not be cleansed from thy uncleanness any more." And wherefrom the following saying: Do not spit in the well from which you drank water? He answered: From [Deut. xxiii. 8]: "Thou shalt not abhor an Edomite; for he is thy brother; thou shalt not abhor an Egyptian; because thou wast a stranger in his land." And wherefrom the following saying: If you will help me to lift the burden, I will carry it; and if not, I will not touch it? He answered: From [Judges, iv. 8]: "If thou wilt go with me, then will I go; but if thou wilt not go with me, I will not go." And wherefrom the following: When we were young we were considered as men, and now when we are old we are considered as children? He answered: It is first written [Ex. xiii. 21]: "And the *Lord* went before them . . . and by night in a pillar of fire, to give light to them"; and thereafter [ibid., xxiii. 20]: "Behold I send an *angel* before thee, to keep you on the way." And wherefrom the following: If you keep in touch with oil, your hands will become oily? He answered: From [Gen. xiii. 5]: "And Lot also, who went with Abram, had flocks, and herds, and tents." R. Hanan said: Whoso calls down divine judgment on his neighbor is punished first, etc. (See Rosh Hashana, p. 22. There, however, it is said in the name of R. Abin.) R. Itz'hux added to this: Woe to him who cries for such, more than to him upon whom the judgment is called down. We have so also learned in the following Boraitha: "Both are punished (by the Divine Court), but the one who calls down the judgment is punished first." The same said again: Do not hold light the curse of a common man, etc. (See Vol. VIII., Tract Megila, p. 38.) R. Abahu said: It is

better for one to be of the persecuted than of the persecutors as there are no more persecuted birds than doves and

pigeons, and the Scripture made them fit for the altar. "Blind my eye," etc. Said R. Assi 1 to Rabba: Why in the first part the condition that he should be free is of no effect, and in the second part it is? He answered: Because no one will ever forgive for the loss of the principal members of his body. Said he to him: Does, then, a man easily forgive for pain-and nevertheless a Boraitha states: "If one say to another, 'strike me,' or 'wound me, upon condition that you should not be liable for it,' and if he does so, he is free? Rabba remained silent. Thereafter he said to him: Do you know how to explain this? He said: So said R. Shesheth: The reason is for the indignity caused to his family. It was taught: R. Oshiya said: For the reason just mentioned; and Rabha said: Because one does not forgive for the loss of the principal members of his body. R. Johanan, however, said: One may forgive for all that was done to him; and our Mishna, which makes him liable, although it was on the condition that he should be free, is because there is sometimes a "nay" which means "yea" and a "yea" which means "nay" (explained in the following Boraitha). We have learned also in the following Boraitha: If one says to another, "Strike me," or "wound me," and the other asks, "On condition that I should be free?" and he answered "Yea!"(*i.e.*, if so, you would like to do so)? Hence this "yea" means "nay." "Tear my garment," and he says, "And thereafter I should pay for it?" And he answers, "Nay." which means "Yea, you may do so." 2

"*Break my pitcher*," etc. There is a contradiction from the following Boraitha: It is written [Ex. xxii. 6]: "If a man . . . to keep," etc., for preservation; but not when he says to him keep it for destruction or for charity. (Hence we see that if he told him to keep it for destruction, although he did not say on the condition of being free, he is nevertheless free?) Said R. Huna: This presents no difficulty: The Boraitha speaks of when it was delivered to the bailee for, and he accepted it for,

destruction--then certainly he is free; and the Mishna speaks of when he told him to break the pitcher when the same was yet in the hands of the owner. Said Rabba to him: The words "to keep" in the Scripture mean certainly that it was delivered to the bailee; and nevertheless, if thereafter he told him to destroy it, without making the condition to be free, he is liable, unless he told him to keep it for destruction at the time of the delivery? Therefore said Rabba: Both cases treat of destruction after the delivery; but the Mishna speaks of when he told him to destroy it after he received it for safe-keeping, and the Boraitha speaks of when he told him at the time of the delivery to keep it for destruction.

There was an •ρν•χ•σ of charity which was sent to Pumbeditha, and R. Joseph deposited it with a certain man who did not take good care of it, and it was stolen from him. R. Joseph held him responsible. Said Abayi to him: Did not the Boraitha state, to keep it for preservation, but not for charity? He answered: The poor of Pumbeditha receive each a fixed sum from charity, so that this money belonged to them, and they can be the claimants thereof (and the reason why the Boraitha holds the bailee free, if it was given to him to keep it for charity, is because where the poor do not receive fixed sums at certain periods they cannot claim a certain fixed amount, and

there. fore it is considered that there are no claimants).

END OF VOLUME II. (X).

[NOTE.--The last two chapters of The First Gate will be printed in the succeeding volume.]

Footnotes

183:1 The verse reads: "Yithain . . . Kain yinothen," of which the literal translation is "should give . . . so should be given and the Talmud takes it as it is, and infers from this that the expression "give" means money, which is given from hand to hand. The preceding verse (19), however, reads: "Osso . . . Yeosseh," the literal translation of which is, "did . . should be done." Leeser translates in both instances "done," according to the sense.

183:2 The Gemara continues with similar questions: Is it not written, "foot for foot"; and similar answers, "There is a superfluous verse," etc., are given. It also proceeds to cite other schools and individuals who deduce it from other Scriptural sources, with a lengthy discussion, and finally arrives at the same conclusion, that this law must not be understood literally. We have omitted all this, as all the explanations are as complicated as the one translated in the text. And it seems to us p. 184 that all those who participated in this discussion well knew that at the time the Thora was given the law was literal in its meaning, as it was also at that time among other nations; but with the change of time it was positively necessary to change this law, and if it could not be deduced from the Scripture it would not be accepted.

185:1 It probably means the use of a drug as an anodyne or anæsthetic during the amputation.

186:1 The word "healing" is repeated in the text. Leeser translates it "thoroughly healed"; literally, it would be, "concerning healing he should be healed."

188:1 The codifiers of the Halakhoth, as the Alphasi, Maimonides, etc., have decided in accordance with the rule that all undecided questions found in the Talmud must be decided rigorously; *i.e.*, that in both of the above cases the defendant pays for each injury separately and then for the whole body.

195:1 The text reads "Ish v'ochiv," which literally means "a man and his brother." Leeser, however, translates it according to the sense, "one with the other."

197:1 Here follows a discussion as to whether the usufruct is equivalent to the principal, which is omitted here, but will be translated in its proper place.

198:1 According to others, it means "boxing the ear." We, however, have translated it in accordance with our method, after the second interpretation of Rashi.

199:1 One manah of Zur is 25 selas, each sela containing four zuz. A country manah is one-eighth of a manah of Zur, and also contains 25 selas, so that a country sela is one-half of a zuz.

199:2 From here to end of paragraph is transferred from Chap. IV., Text, 36*b*.

204:1 The Talmud divides this verse into two parts, which in reality reads well as it is, and Rashi tried to explain it that because there are a few superfluous words it ought to read "only a tree that bears no fruit," why, then, the words, "which thou knowest"? And this is the reason why the Talmud infers from this that even a fruit-tree may be cut off when needed.

206:1 The following series of questions is placed here because of the verse quoted, "and Abraham prayed unto God," etc., from which Rabba bar Mari delivered his statements in the text differing from Rabha; and at the same time he mentions here all other statements which each of them deduces from different verses, and casually also others. They wanted also to find the origin of even the ordinary adages of the people in the Holy Writ, on account of what is stated elsewhere in the Talmud, that there is nothing in the world for which there can be found no hint in the Scripture. (See vol. viii., Tract Taanith, p. 9.)

209:1 This name is correct, according to Alphasi, as the name mentioned in the text would be incompatible with the time in which R. Assi b. Hama lived.

209:2 R. Johanan explains that our Mishna speaks of when there was a question and an answer between the plaintiff and the defendant, and it was not clear whether it meant yea or nay; the Boraitha, however, speaks of when the plaintiff made the condition that the defendant should be free without any question by the other. This is Rashi's explanation. The text, however, of R. Johanan's saying mentioned above seems to us to be very simple: It must be investigated how the condition is to be understood--whether it is in the absolute affirmative form or in the form of a question.

The Babylonian Talmud

Translated by
MICHAEL L. RODKINSON

Book 10 (Vols. I and II)

1918

The History of the Talmud

Volume I. Volume II.

Volume I: History of the Talmud

Volume II: Historical and Literary Introduction to the New Edition of the Talmud

THE HISTORY OF THE TALMUD

from the Time of Its Formation, about 200 B. C., up to the Present Time

DIVIDED INTO TWO VOLUMES

VOLUME I.--ITS DEVELOPMENT AND THE PERSECUTIONS SINCE ITS BIRTH UP TO DATE, INCLUDING ALL RELIGIOUS DISPUTES AND BRIEF BIOGRAPHIES OF THE SEPARATED SECTS

VOLUME II.--THE HISTORICAL AND LITERARY INTRODUCTION TO THE NEW EDITION: ETHICS, METHOD, WITH ILLUSTRATIONS CRITICISM, ETC.

BY

MICHAEL L. RODKINSON

Volume I. (XIX.)

BOSTON

THE TALMUD SOCIETY

1918

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TO HIM
WHO IS A LIBERAL DONOR TO ALL PHILANTHROPIC INSTITUTIONS

A FRIEND OF ISRAEL'S PUREST IDEALS, LITERATURE
AND RELIGION

ADOLPH LEWISOHN, ESQ.

THIS BOOK IS MOST RESPECTFULLY DEDICATED BY THE AUTHOR

MICHAEL L. RODKINSON

NEW YORK, IN MONTH ELUL, SEPTEMBER 1ST. 1903

Next: Preface

PREFACE.

THE ancient authors used to begin the prefaces to their works with the proverb "*Sepher be Lo Hakdamha kegnph be Lo nechamaha*," which means "A book without a preface is similar to a body without a soul"; and, indeed, this proverb remains forever true. At the time we began our translation of the Talmud, we were aware that to the study of it a clear preface which should explain its nature and the character of the sages mentioned in it was necessary, as without it there would be great difficulty for students in catching the real meaning, and in some places the reader would be confused, not being aware of its history and of the names mentioned--who these were and when they existed.

With this in mind, we had already prepared the present work in 1897, when only a few volumes of our translation had been issued. Although we gave a brief general introduction to the first volume of the translation, and also some prefaces and introductions in the succeeding volumes, they do not suffice for the student who desires to have a clear idea of all that he is studying.

However, the translation has taken up so much of our time that it has hitherto been impossible for us to look up everything pertinent to our purpose that has been written and to submit it in presentable form. Now, after the completion, with the Divine help of the two large sections, containing twenty-seven tracts, and in response to many inquiries from the reading public for some explanations, we find that now is the time to put forth this work; and, instead of adding two more volumes to the translation of the Talmud in the current year, we have decided to furnish the two volumes which form our "History of the Talmud."

It may be inferred that what was written several years ago has had to be thoroughly revised and corrected, according to the literature which has appeared since that time. There is an

old witticism, "*Koshe Atika Me Chadtha*"; *i.e.*, "It is more difficult to correct an old thing than to write a new one"; and, as a matter of fact, it has taken a great deal of time to make the necessary changes and corrections in what we had written. As a natural consequence, the work is enlarged, and many chapters have been added since the issue of our prospectus. All this concerns the first volume of this work, as it relates to the history of the Talmud only, as to which there has been little new information. True there have been some new dissertations on the Talmud in Germany, but they do not add much to our knowledge concerning it, and may therefore be ignored.

The second volume, however, we have had to recast and rewrite. In this labor the wonderful work of that western light which was recently extinguished--we mean the Rev. Dr. Mielziner--"Introduction to the Talmud," which has reached a second edition and has been so favorably received by all students of both continents, was of great service to us. As Dr. Mielziner's work contains essentially all that concerns the Talmud itself, we resolved to take it

as a text for our historical introduction, adding and abating as we deemed necessary. We have done so, also, with the second part, "The Ethics of the Talmud," which he arranged so admirably. Here, also, we have added whatever, according to our knowledge, there was left for us to bring to the attention of the reader.

Now, the work being finished, we regard it as a suitable preface to our translation and one which will enlighten the understanding of the reader in many places. At the same time, it seems to us to be interesting to the general reader who has neither time nor inclination for the study of the Talmud.

This is all we need say in the preface, referring the reader for more details to our introduction, which follows.

THE AUTHOR.

NEW YORK, *September*, 1903.

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INTRODUCTION.

The persecutors of the Talmud during the period ranging from the first century B.C., when it began to take form, to the present day, have varied in their character, objects and actions. In one respect, however, they all agreed, namely, in their general wish to destroy its existence. Careful consideration of its many vicissitudes certainly justifies the assertion that the Talmud is one of the wonders of the world. During the twenty centuries of its existence not one of them has passed without great and powerful enemies vying with each other and exhausting every effort to destroy it; still it survived in its entirety, and not only has the power of its foes failed to destroy even a single line, but it has not even been able materially to weaken its influence for any length of time. It still dominates the minds of a whole people, who venerate its contents as divine truth, and countless numbers have sacrificed their lives and their possessions to save it from perishing.

A review of its persecutors, before going into their history would not be amiss. They are the Seleucidae, in the time of Antiochus Epiphanes, the Roman Emperor Nero, Domitian, Hadrian, etc., the Samaritans, the Sadducees, Boethuseans, the followers of Jesus, and all the sects opposed to the Pharisees.

Before the development of the Talmud had been completed, when hardly a single section had been arranged systematically and written down, it having been known merely as oral teaching in the mouths of the sages, and reconsidered and analyzed constantly by their disciples in the colleges, it was violently attacked. But no sooner had the Talmud been completed in Babylonia, and the Saburites had put their seal upon it, so to speak, deciding that nothing was to be added to or subtracted from, when Justinian decreed practically its death; that is to say, what amounted to the same thing, capital punishment to all those who were occupied in its study (550). Then followed the Karaites, in the days of the Gaonim, who seriously threatened

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its existence. Time and time again they triumphed over Talmudic Rabbis and were near making an end of the Talmud and of them. The Rabbis next encountered the Popes. From the time of Pope Innocent III., the Talmud was burned at the stake in nearly every century from the 11th to the 18th, in Italy, France, Germany, Spain, and many other countries, and in the 18th, also in Poland by the Frankists, by Bishop Dembovski, where copies were dragged through the streets of the city, tied to horses' tails and then delivered to the executioner to be burned at the stake in Kamenetz, Lemberg, Brody and elsewhere. In most places, before it was resolved what was to be done with Talmud, the Israelites were forced to dispute with its enemies, and had to pay heavy fines for arriving late to the dispute, as well as for being vanquished in argument, the judges, being their enemies. Still what has been the result? The Talmud exists to-day, and not one letter in it is missing. It is true, the persecutions against it are not yet at an end; accusations

and calumnies by its enemies, under the new name of anti-Semites, are still directed against it, while the government of Russia legislates against and restricts the rights of the nation which adheres to the Talmud. No modern persecutions, however, can seriously endanger its existence, and it would appear that the Talmud will also survive them and continue as long as the sky spans the earth.

A desire to know all that has befallen the Talmud and all its vicissitudes since its inception would require the reading of all the scattered passages in countless volumes which have been compiled in various ages, languages, and countries. Its history, however, has never yet been written by a single author. Treaties on the Talmud itself, or on certain subjects contained therein, have briefly related part of its history, each according to the subject and the aim of its theme. Such are the works of Zunz and Grätz, the one dealing with rabbinical literature, and the other writing concerning the history of the Jews. Similarly the historians of the world, relating in detail the occurrences of every century, have briefly made mention of what happened to the Talmud in each century. Even in the year there appeared a pamphlet entitled "Anklager und Vertheidiger des Talmud" (accusers and defenders), by Dr. B. Kurrein, of Frankfort-on-the-Main, apparently giving the entire history of

the Talmud from its origin to the present time, but it contains only dates (and not even these in full) and not occurrences. No mention is made of Karaites, who persecuted it in the times of the Gaonim, or of the Frankists of the 18th century, of its fate during the 15th century; the Pfefferkorn and Reuchlin episode is mentioned only in part, and by no means satisfactory to the reader curious about the details, not to speak of the Rohling-Bloch, at the end of the 19th century. It is, indeed, a matter of astonishment that hundreds of books have been written about the Talmud by exponents of all sects and in all ages, to say nothing of the extensive modern literature dealing with the Talmud in whole or in part, amounting to thousands of volumes--in particular a work, "Dikduke Sophrim," published in the last century, containing only the dates and publishers' names of the various editions of the Talmud, in seventeen large volumes, with a comparison of all words and letters of the different editions and manuscripts, and this only of two-thirds of the Talmud--the fate of the Talmud, the charges brought against it, the repeated persecutions, the burning at the stake, have not been recorded in a separate work, as though unworthy of notice. It has been thus left for us to supply the deficiency. For we, who have taken upon ourselves the difficult task of editing the old Talmud, to punctuate it in conformity with works in other languages, to systematize and arrange it for a new edition, and to translate it into a modern language, deem it our duty to collect into one book all the records of the vicissitudes of the Talmud in a systematic manner, at the same time stating the causes of many occurrences.

It is quite true, that in many places we have been constrained to be brief where a more ample account would not have been out of place, but it must be borne in mind that to expatiate on every incident would lead to the writing of a volume equal in bulk to the Talmud itself, perhaps even larger, and time would not permit such an undertaking. In one respect, however, we will do our duty; we will arrange all the events chronologically, and we have taken pains to denote the time and place of different events and likewise to name the persecutors of the Talmud. We trust this volume will meet with a favorable reception from the readers, for our work was done conscientiously, and to the utmost of our talents. To save space, we have not on every

occasion mentioned the authorities from whom we derived our facts, but only when we had to refer the reader for details to other books we gave the name and page of the book. We may state, however, that the sources on which we have drawn are all the books which speak of this subject, viz.: the Talmud itself, the books of the Gaonim, and those written on this topic in the Middle Ages, as well as the extensive literature relating to it of the last century, from Zunz, Jost, Herzfeld, Graetz, etc., to the pamphlet we have mentioned. At the conclusion of the book the reader will find an explanation of the method employed in the new edition and translation of the Talmud, and at the same time a full introduction. We made it as lucid as possible, and also endeavored to reply to some criticisms that have appeared in various periodicals since the new publication had first appeared.

MICHAEL L. RODKINSON.

NEW YORK, *AUGUST*, 1903.

Next: Chapter I: Origin of the Talmud

THE HISTORY OF THE TALMUD.

CHAPTER I.

THE ORIGIN OF THE NAME "TALMUD"--THE SAMARITANS--ANTIOCHUS EPIPHANES--THE SADDUCEES.

The name "written law" was given to the Pentateuch, Prophets and Hagiographa, and that of "oral law" to all the teachings of the "sages" consisting of comments on the text of the Bible. The word Torah alone was applied to the entire Bible, the term "Talmud" was reserved for the oral law, though the meaning of these two words is identical; namely, "teaching" or "study." Still, because it is written *Velimdo* (Deut. xxxi, 19), and *teach it* the children of Israel (put it in their mouths; that is to say that the teacher's duty was to explain and comment on the laws and ordinances until the children understood them thoroughly and were conversant with them by heart)--the name "Talmud" was applied to what was styled by a long phrase "Oral Law" (Torah-she b'al-Peh). This word designated all the commentaries of the sages on the Scriptures which the Pharisees had begun to interpret figuratively.

Figurative interpretation was inaugurated in the days of the Great Assembly when its members resolved to keep themselves distinct from the Samaritans, their inveterate enemies, who adhered to the literal interpretation of the text, which, in the opinion of the Pharisees, was falsified by them. This study, however, commenced to make progress at the time of the Sanhedrin, or from that of the Macedonian conquest of Judea, when the term "Great Assembly" was changed to the Greek "Sanhedrin." It spread into every college where were assembled sages entrusted with the guidance of congregations, with instruction of the Law, of ordinances relating to clean and unclean, to property,

to crimes. All sages who interpreted the biblical passages figuratively, unlike the Samaritans, were called "Pharisees." The Samaritans of course persecuted those Pharisees (see App. No. 1), objected to their interpretation, and did them great injury whenever they had the power. At last, Janai, Hyrcanus the First, overcame them, burned their temple, devastated their city, and compelled them by force of arms to conduct themselves according to the doctrines of the Pharisees, though he himself in his latter years became a Sadducee.

Until the time of Antiochus Epiphanes, before which period all the high priests since the erection of the second temple had been of the family of Zadok, King David's high priest (see App. 2), and the priests had been also among the sages of the Pharisees and no disputes arose between them as to the interpretation of the law. From the time of Antiochus, however, when the high priesthood passed from the descendants of Zadok to other families, finally coming into the possession of the Maccabees, who were not descendants of the house of Zadok, began to differ

from the Pharisees in the interpretation of the Torah, and to explain the texts on the basis of oral tradition. They founded a distinct sect, styled "Sadducees" (after Zadok), and the dispute with the Pharisees and their teaching, *i.e.* with the Talmud, was begun. They persecuted the Pharisees to the utmost; being mostly men of wealth and rank, and in their hearts leaning toward the Hellenes, who then held sway in Palestine, they joined the Samaritans, the foes of the Jews, whose aim was to eradicate the study of Judaism. Thus united, they gave their aid to Antiochus Epiphanes, who was anyhow the enemy of the Jews, and who decreed on the pain of capital punishment that the Pharisees should discontinue their studies, that circumcision should be performed in a manner other than that prescribed by the Pharisees (see App. No. 3); that the Sabbath should not be observed according to the interpretation of the Sabbath law by the Pharisees, etc. The obvious intention was to destroy the Talmud together with Pharisees who adhered to it. These persecutions against the Talmud ended usually in favor of the Sadducees until the time of Simon ben Shetah, and the above mentioned Janai, Hyrcanus I. (Johanan the High Priest). Then the Pharisees triumphed over their foes, and the oral law was the absorbing subject of the Sanhedrin, under the

leadership of Joshuah b. Prachia, Simon b. Shetah and Jehudah b. Tabai. The Talmud was then studied in all colleges of Palestine, Egypt and wherever Jews lived. Owing to the enmity of the Samaritans and the opposition of the Sadducees, many laws and regulations were added to the Talmud of the Pharisees. From that time the Pharisees began to restrict their interpretations so as to make them agree with the deep though literal meaning of the texts, employing therein much sophistry. They counted all the letters of the Torah, and if they found a word or letter not absolutely necessary to the understanding of the text, they said it was placed there only to add to or subtract from the meaning. But at that period the Mishna was not a separate and distinct thing from the Talmud, though many ancient Mishnas already existed in writing, but without a separate title. The Pharisees studied the ancient Mishnayoth, added (see App. No. 4) to them, and explained the biblical texts. All this was entitled Oral Law, or, shortly, "Talmud."

Next: Chapter II: Development of the Talmud in the First Century

CHAPTER II.

THE DEVELOPMENT OF THE TALMUD DURING THE LAST CENTURY OF THE SECOND TEMPLE'S EXISTENCE (*i.e.* THE FIRST A.C.) SHEMAIA--ABTALIAN--HILLEL--SHAMMAI--THE PRINCES (NASIS) OF ISRAEL--R. JOHANAN B. ZAKKAI--SANHEDRIN OF JAMNIA--THE JEWISH CHRISTIANS.

After the triumph of Simon b. Shetah over the Sadducees, when he had finally cleared the Sanhedrin of them, and only the Pharisees remained there, the development of the Talmud progressed rapidly, for the number of the sages, the adherents, reverers, sanctifiers of the Talmud, increased greatly in the colleges of the Ashkaloth (Duumviri) who succeeded to ben Shetah: Shemaia and Abtalian, and, after them, Hillel and Shammai. And although at that time new enemies arose, in the Boethuseans, Essenes, and many other sects who were opposed to its particular doctrines, yet those had not the power to check its progress or to weaken its influence--not only on all Israelites, wherever they dwelt, but also on many Gentiles: for at that time we see that prominent persons of other nations (App. No. 5) come to the chief men of Israel and express their wish to

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adopt Judaism. Hillel the Elder received them with open arms. Helen the Queen, and her son, Isotis, also accepted the creed of the Talmud. All this was due to the fact that its morality came at this time to be before the world. The Polytheists began to perceive the great difference between the teaching of their priests in the names of the gods, and the Torah as explained by its sages. From all places of the world came persons to learn the doctrines and the morality of the Talmud. This period of good fortune, however, was only of short duration, as the time of the destruction of the Temple was nigh, and with it the victims of the sword and of hunger were many. Among these were the great sages who bore the banner of the Talmud, and their wisdom died with them. The Sanhedrin had been forced, while the Temple was still in existence, to transfer their meeting places from the "marble hall" to the "shops." Rabban Gamaliel the Elder, the son of Hillel the Prince (Nasi) was persecuted by them, and his son Simeon was slain, together with many sages. Thus, if R. Johanan b. Zakkai had not, risking his life, petitioned Vespasian to spare the Sanhedrin, who had been compelled during the tumults at Jerusalem to move with their college to Jamnia, there would have remained no vestige of the Talmud, since most of those who cherished it had passed away by the sword, by hunger and by the plague. Besides, the disciples of Jesus (see App. No. 6), who then believed in his Messiahship, but not in his divinity, began secretly to undermine the Talmud, which laid more stress on external ceremonies than they deemed necessary, and endeavored with all their might to weaken its influence among the populace, but R. Jehanan b. Zakkai and the Sanhedrin in Jamnia, with Rabban Gamaliel, the son of the slain Simeon, at their head, restored the Talmud to its prestige, and took pains to raise up others in the places of the murdered sages.

Thus the study of the Talmud flourished after the destruction of the Temple, although beset with great difficulties and desperate struggles. All his days, R. Johanan b. Zakkai was obliged to dispute with Sadducees and Bathueians and, no doubt, with the Messiahists also; for although

these last were Pharisees, they differed in many points from the teaching of the Talmud after their master, Jesus, had broken with the Pharisees

and their doctrines in public. So R. Johanan b. Zakkai was obliged to introduce many reforms; and Rabban Gamaliel of Jamnia, notwithstanding his office of Nasi, and his lofty bearing towards his colleagues and adversaries, was compelled to go many times to Rome to ask for mercy for his college and the Pharisaic sages. And this first Nasi, after the Temple's destruction, also had to witness the evil consequences of quarrels in the midst of his own nation, added to the calamities from without.

As the interpretations of every letter and vowel point of the written law had multiplied, and liberty had been given to every learned man to construe biblical texts at his pleasure, the differences of opinion multiplied, and the disciples of Shammai and Hillel, whose master's characters differed to the utmost, split into two factions and studied in separate colleges. Thus the teaching of the Talmud was differently interpreted by two parties, and what the one permitted, the other forbade. This circumstance was of more danger to the Talmud than any external foe, for when there is no internal union, the whole fabric will go to pieces, and its influence will, of course, diminish. Therefore the sages of Jamnia, with R. Gamaliel at their head, strove not only to decide the law according to the school of Hillel, but also to decree that the words of Shammai's school in the place of Hillel's had no value at all. And what a world of difficulty the sages had to surmount before they succeeded! .R. Simeon ben Gamaliel rightly says "If we proceeded to record all the troubles and calamities we had endured, time would not suffice."

But in the long run they did succeed in widening and increasing the sphere of influence of the Talmud, for both the internal dissensions and external opposition only tended to sink more deeply into the hearts of the people its doctrines (Halakhas), legends (Hagadas) and morals. At the end of the first century it was to them a substitute for their destroyed Temple; it was their stronghold, their entertainment by day and by night. It was only when they were occupied with it that they forgot all the calamities past and present; it was the sole bond which kept together the scattered colonies of Israelites, which strengthened them to bear the yoke of the Romans, to hope for brighter days, to be patient unto the end.

Next: Chapter III: Persecution of the Talmud from the destruction of the Temple to the Third Century

CHAPTER III.

THE DESTRUCTION OF THE TEMPLE--THE FALL OF BETHEL--THE MASSACRE OF THE SAGES OF THE TALMUD, TILL THE WRITING OF THE MISHNA IN THE BEGINNING OF THE THIRD CENTURY.

The Temple had been destroyed; Rabban Gamaliel and many of his colleagues were dead; the family of the Nasi extirpated, excepting only his son R. Simeon, who succeeded to his father as Nasi and established a college at Usha; and new persecutions, awful in their extent, were directed against those who were engaged in the compilation of the Talmud. The sages, the chief men of Israel, were slaughtered without pity by Trajan and his successors through the entire period of fifty-two years from the destruction of the Temple to the fall of Bethel. Some of these founders of the Talmud who forfeited their lives for its sake are known to us only by their names: R. Ishmael, Simeon b. Azai, Papus b. Jehudah, Yishbab the Scribe, Huzpeth the Dragoman (interpreter), Jehudah the Baker, Hananiah b. Tradion and Aqiba; the last, the main pillar of the Talmud, and who contributed much to its diffusion and completion, died with joy at being enabled to sacrifice his life for it.

One of the causes of the great revolt against the Romans at this time was the prohibition by the Roman government of the study of the Torah, wherein alone the Jews found comfort, since only in their houses of learning could they enjoy complete peace and freedom. But as the death penalty had been decreed against all who occupied themselves with religious study and observed its precepts, and as this prohibition deprived them of their only source of consolation, they rebelled, led by Bar Kochba. R. Aqiba was the first to become his adherent, who journeyed from town to town, inciting the Israelites to rebel, and bringing them the message that a saviour of Israel had arisen in Bar Kochba, the Messiah. It is not surprising, therefore, that Hadrian, when he had ascended to the throne, was not content barely with the massacre of the sages of the Talmud, but was intent also on the destruction of the Talmud itself. Unable to find a pretext for killing all the sages who kept it tip, he decreed that if any of the old rabbis Should

qualify a young rabbi for Israel, both should be put to death, and the place in which such took place should be destroyed, believing that with the death of the elder generation the Talmud would be forgotten and Israel would blend with the nations and its memory be obliterated; because he very well knew that as long as the Talmud existed there was little hope for the assimilation of the Jews with other nations. This decree, however, was not executed, and his murderous plan was further frustrated by R. Jehudah b. Baba, who, forewarned of the decree and comprehending its consequences, betook himself to a place between two great mountains between Usha and Shprehem and licensed six of the older men of R. Aqiba's disciples to be rabbis (*i.e.*, teachers of the Talmud): R. Meir, R. Jehudah b. Elai, R. Jose b. Halaphta, R. Simeon b. Jochai, R. Eleazar b. Shemua, and R. Nehemiah. Having done this, and feeling sure that as long as these men lived the Talmud would be kept alive, he thus addressed them: "Fly, my sons,

and hide from the wrath of the enemy. I alone will remain, and will offer my body to satiate their vengeance." And in fact the Romans pierced his body with three hundred iron lances, so that it resembled a sieve; but the newly consecrated rabbis were saved, and with them the Talmud. (See Sanhedrin, p. 30.)

Thus the efforts of Hadrian met with no success, so that at last he said to himself: "Great is the sheep that stands among seventy wolves." He saw the Talmud still existing, bringing to naught his plan for converting the Jews, uniting Israel into one people, and establishing it still more firmly as a national and a religious whole. For the six rabbis named above very soon became the soul of Talmudic study; some of them were with R. Simeon, the Nasi, in Shprehem, and others founded colleges of their own. Through them the Talmud regained its former power and influence, and one of them, R. Ilai, became the chief teacher of R. Jehudah the Nasi, the compiler of the Mishna.

The translation of the Bible (written law) into Greek also contributed very much to the popularization of the Talmud. As long as the Torah was in the sacred language only (for the Aramaic version of the time of Ezra had been concealed or destroyed as early as the time of Rabban Gamaliel the Elder, the son of Simeon who had been slain, or probably even during the

life of the latter), 1 all Jewish sects and foreign scholars interpreted it in their own way. But a wise Greek, a convert of Judaism, Aquila the Proselyte, who received the doctrines of the Talmud from the disciples of R. Johanan b. Zakkai and also from R. Aqiba, translated the Bible into Greek. This version was not acceptable to the Jewish believers in Jesus (Messianists)--who must already at that period have constituted a large sect--because their construction of many passages in the Messianic spirit was flatly disregarded by the new translation; nor to the Romans, because all expressions seeming to imply the materiality of the Deity were translated in a figurative sense--as for example, "the hand of the Lord"; "the glory of the Lord," which the statue-worshipping Romans could not endure with equanimity, and further because by this translation the nature and doctrines of the Talmud became known to many nations, who found no evil in it. In our opinion the version of Aquila was the sole cause of the despatch of censors from Rome to revise the Talmud, and these censors avowed that its teaching was true. Be it as it may, in studying the history of the Talmud during the first three centuries the reader is easily convinced of the great courage and patience of the sages of the Talmud, For no year of that period passed without trouble from its external as well as from its internal foes, as R. Simeon b. Gamaliel, the Nasi of Jamnia, himself testifies. (See above, p. 9.) For even after the death of Hadrian it enjoyed but a short respite, for Antoninus Pius renewed the decree of Hadrian, and only with much trouble and at great risk of his life did the Nasi succeed in inducing R. Simeon b. Jochai and R. Josi to go with him to Rome to petition the Cæsar to repeal the decree, which, according to the tradition of the Talmud, they effected only through the intervention of "Ben Temalion" (a demon, according to some; a man, according to others). And yet, in spite of this, during this very period, the Talmud became so popular that every town wherein Jews had their habitation possessed also a house of learning for the study of the Talmud; so that everywhere it bloomed and flourished, and bore the fruit of the Mishna, as we shall see in the next chapter.

Footnotes

12:1 See our "Pentateuch, its Languages and Characters," pp. 16-17.

Next: Chapter IV: Development of the Talmud in the Third Century

CHAPTER IV.

THE THIRD CENTURY--THE ARRANGEMENT OF THE MISHNAS--THE TALMUDIC COLLEGES OF PALESTINE AND BABYLONIA.

The sages, the commentators of the Talmud, differed in opinion as to the epoch when the Talmud began to be written down. The scholars of Spain, and their colleagues and disciples, said that it had been recorded from notes possessed since schools had begun in Israel, a long time before R. Jehudah the Nasi. The scholars of France, among them "Rashi," however, declared that not a line was written till the completion of the Talmud, before which its study had been oral. Each school adduced proofs in behalf of its assertion. Modem scholars have made a compromise between these various versions, by asserting that during the first centuries the commentators of the Talmud in the beginning had taken notes of their studies, and later had written them out in a permanent form. It would seem that as the persecutions had at their commencement been very severe, and the sages (see App. No. 7) felt that their lives were in peril, they decided to write its teaching in secret and to conceal it from its foes. No sooner had the Pharisees granted permission for this (for till then it was absolutely forbidden to put in writing oral law) than the number of manuscripts became very great; and when R. Jehudah the Nasi came to occupy the seat of his father and had been confirmed in authority (since he enjoyed the friendship of one Antonius, who was in power at Rome), he discovered that from the multitude of the trees the forest could not be seen; that is, from the multitude of the Mishnas the people had lost sight of the Talmud. He therefore resolved to compile, selecting out of all the written and the unwritten law, clear Mishnayoth, and to systematize them.

Indeed, the period was very favorable to this undertaking, for the Talmud enjoyed a respite from persecutors external and internal. The Jewish followers of the Messiah, Jesus, began at this time to gradually blend with the foreigners who adopted the new creed; hence their influence on their brethren who persisted in the old faith was weakened. Still he met with many obstacles. The chief one was the division of opinion among the students of the Talmud themselves. For although his grandfather,

Rabban Gamaliel the Elder, had succeeded in fixing the law in accordance with Hillel's school, and declared, with the consent of many of the sages of the Talmud, the school of Shammai of no validity when at variance with Hillel's, still the decree was weakened, when later he was deposed for a short time from his office of Nasi, and in his college were assembled four hundred students more, of diverse opinions. In view of this, and it was decided again that individual opinions, even those of the minority, should be considered, the differences between the students and the sages of his college were renewed with greater vigor. This state of things continued till the time of 'Rabbi, and in order that his Mishnayoth might be accepted he was compelled to give due weight to all the varying opinions, slighting none, even of those who were in direct contravention of the decision.

The second difficulty was in selecting, from among the mass of incongruous doctrines and laws--many of which had become obsolete, and others found to be unnecessary or impracticable--those which were both practicable and of direct application (for a tradition relates that Rabbi found six hundred sections of Mishnayoth; and even if we admit that this number is greatly exaggerated, still if even one hundred existed, it was no light task to reduce them to six).

The third difficulty was that as the subject had been studied in divers places, differing in dialect or language, all the Mishnayoth had to be made uniform in their dialect. Added to all this, he was forced to clear the Mishnayoth from the insertions incorporated into it by the Messianists; for being many and considerable persons, and in close alliance with their colleagues the Pharisees during two centuries, they could not have failed to introduce into the Mishnayoth their own peculiar opinion and beliefs, many such passages, indeed, being found in the Gemara.

Reason compels us to admit, at least, that there were passages in the Mishnayoth concerning Jesus and his teachings; for how is it possible that an occurrence which holds so important a place in the history of Israel, and which has spread its influence among the nations for centuries, should not be even hinted at in the Mishnayoth? We must, therefore, conclude that Rabbi thought it well to clear the Mishnayoth of any reference

to the occurrence itself, as well as to the adherents of the new faith. In this he acted wisely, for he knew beforehand that the Mishnayoth would be the foundation upon which Judaism and the Talmud should be built, and that the interpretations of it would be many, each interpreter following the bias of his mind. Therefore it was deemed best by him to avoid all mention of the new event, to treat it as though it had no existence. Nothing can withstand a strong will. When once he had resolved to carry out his project at any cost, all difficulties vanished. He went from college to college, in cities far and near, in places where the great masters taught and learned; and though they "surrounded him as cocks of Beth Bukia," he was not shaken in his resolution, and with the help of his many friends and sympathizers he was finally enabled to arrange in order six sections of Mishnayoth, condensed from hundreds. Each section is given up to a general subject, and is subdivided into tracts dealing with matters which come naturally within the scope of the section, The tracts are further divided into chapters.

The subjects of the sections and the tracts are as follows:

1. *The Section of Seeds*.--The general subject of this section is the law relating to vegetables, heave offerings, tithes, the sabbatical year, Kilaim, etc.; and at the head of this section he placed the tract on benedictions which man owes to his Maker every morning, beginning with those of the evening, which commences the day according to the Jewish custom.

2. *The Section of Festivals*.--This treats of the Sabbath holidays (to each holiday being devoted a separate tract), and incidentally also of the duty of taxes before the holidays, and of mourning during the festivals. (See App. No. 8.)

3. *The Section of Women*.--This deals with laws having reference to women, marriage, divorce, in separate tracts, and thereto are added laws concerning vows and Nazarites, as women's vows

are dependent on the decision of their fathers and husbands, and Nazarites depend on women, who may legally consecrate the child previous to its birth, as for example, Hannah and the mother of Samson.

4. *The Section of Damages*.--This section treats of laws of Property, of the judges, of the penalties which the court may Prescribe, and is divided into the tracts "Sanhedrin," "Penalties"

[paragraph continues] (Makkoth), etc.; but as the first part treats only of damages and their prevention, it is divided simply into three parts without distinct titles: but as first, second and third Geths, and as it treats of damages for which men are responsible, a tract on morals has been added--"Abboth." (Sections "Festivals and Jurisprudence" have been already translated into English by us in eighteen volumes; the synopsis of which will be here appendixed.)

5. *The Section of Sacred Things* (sacrifices), divided into tracts on sacrifices (Zebachim) firstlings (Bekhoroth), and by the way also Chulin; it treats of slaughtering, and examination of the slaughtered animal used for profane purposes.

6. *The Section of Purifications* (Tohoroth).--This deals with the subject of defilements and purifications in general, and has for special topics the defilement of vessels (Kelim), of plagues (Nega'im), of tents (Aholoth), etc., and a tract relating to a Nidah (menstruated woman).

Thus he arranged all the laws relating to the Hebrew religion and to civil matters, and called his entire work Mishnayoth (Mishna), *i.e.* meaning "teaching" to distinguish it from "Torah" and "Talmud," and probably because it is written (Deut. vi. 7) V'shinantam--"and thou shalt teach them diligently to thy children"--in the original version (Mishna Tohroh), which signifies really to explain and comment upon it. Thus the Mishna is an explanation of and a comment upon the Pentateuch (see footnote for a different explanation, in the introduction to "Sabbath"), and teaches men how to conduct themselves in relation to their fellow-men, and incites them to all good and praiseworthy (actions).

In the short introduction to "Sabbath" (vi.-vii.) we have already described briefly the character of the Mishnayoth which Rabbi arranged, and how he succeeded in imparting to it the sanctity of the Pentateuch itself, so that nothing is to be added to them, and what was done later after Rabbi's death, is not the place to expatiate on this subject; we may, however, state briefly that as soon as the Mishnayoth was completed, colleges were founded in Palestine and Babylonia to explain the meaning of the Mishnayoth and develop their laws to their ultimate consequences. After Rabbi's death, when Boraithoth and Tosepththeth were discovered which did not form part of his

compilation and which in many places contradicted the Mishnayoth, these colleges busied themselves in reconciling them with the Mishnayoth and with each other. They accounted for contradictions in Baraithoth by saying that one spoke of a case under same circumstances, while another meant a like case under different circumstances. So they explained the differences in the Mishnayoth themselves, often dividing a Mishna, whose parts seemed to contradict each other,

and giving as explanation of the contradictions that the first part was according to one tana, but the latter part according to another. These discussions and comments on the Mishna they called "Gemara," which also signifies "teaching" in Aramaic, which was the spoken language of the sages of the Gemara (see in the above-mentioned introduction for a different reason), and to the combined Mishnayoth and Gemara they gave the old name, "Talmud".

Next: Chapter V: The Two Talmuds

CHAPTER V.

THE TALMUD OF JERUSALEM, THE TALMUD OF BABYLONIA, THE CHARACTER OF THEIR HALAKHA AND HAGADA, THE DATES OF THEIR COMPLETION AND THEIR SYSTEMATIZATION.

The sages of the Gemara, called Amaraim, and the commentators of Mishnayoth were of different characters. Some were intent only on diligently collecting Mishnayoth and Baraithoth, wherever found, to compare them with each other, to correct their reading in conformity with Rabbi's Mishnayoth, and to separate the wheat from the chaff, *i.e.* to decide which Boraithoth was valid and which was not worthy of consideration (Boraithoth which were not studied in the colleges of R. Hyya and R. Ushia were not considered). On the other hand, there were others who devoted themselves to ingenious construction of the Mishnayoth and the Boraithoth itself, without adducing proofs from elsewhere. (See App. No. 9.) This consisted in scrupulously examining the letters in the Mishna, to eliminate or to amplify it where they judged necessary, to trace laws to their origin and to discover what tana agreed with this Mishna and what differed from it, whether the same tana contradicted himself at different places, and whether it was incompatible

to explain them in various ways, and the like. In the language of the Gemara they are distinguished by different titles. Those who studied the Mishnayoth were styled "Sinai, the master of the wheat," and the dialecticians "the uprooters of mountains" or "acute men"; and although the preference was given to the former, as it was said, "all must resort to the master of the wheat," yet the study of the Babylonian Talmudists being based on scholasticism, their acuteness is evinced in their so harmonizing the contradictions and disagreements, that they appear to point to the same meaning.

Not only did they interpret the Boraithas at variance with the Mishnayoth, but when even one of the great Amoraim appeared to differ from the Mishna they so distorted the latter that it should seem to agree with the Amora. A similar difference existed among the authors of the Hagada; some gave to biblical texts a new reading remote from the plain meaning, interpreting them in strange and marvellous ways, and basing on them legends of natural impossibilities, while some adhered closely to the literal meaning of texts, without adorning them with exaggerations. Though in the Palestinian and the Syrian, as well as in the Babylonian colleges, there were many scholars who assisted each other in their studies and comments on the Mishnayoth, the Palestinian differed from those of Babylon in this respect, that in the former the chief labor consisted in the collection of Halakhas, without profound researches into the deeper meanings and implications, even in the study of the mere Mishnayoth, all of which was totally unlike the manner of study in the Babylonian schools. Indeed, the Palestinians were inferior to the Babylonians in scholastic profundity and ingenuity, and but few of them distinguished themselves therein, except R. Johanan, R. Simeon b. Lakish, and several others of that period. Therefore, in the schools of Palestine, scholasticism was esteemed of little value, and in them the study of Halakhas fell into decay, so that finally the Hagada came to occupy the principal

place, the Halakhas holding a subordinate position. In addition to this, they found themselves compelled to give their attention to the biblical texts, as the Messianists, who had grown in numbers, construed these texts favorably to Christianity, and challenged the Jews to dispute with them. Therefore, the sages found themselves obliged to give the preference

to the study of the Scriptures and Hagada. As at that time the impression was general that the most important element in the study of the Torah is ingenious reasoning on Halakha, it is not surprising that the Babylonian Talmud came to be received as the important and essential part of the Oral Law, while that of Palestine held a subordinate position.

It is difficult to describe accurately and clearly the mode of thinking and ways of reasoning of the Talmud, which in truth is known only to one who has made it the study of his life. It is easier, however, to give a picture of the Talmudists' views and notions. as gathered from the Hagada. In this respect the Hagada of the Palestinian Talmud is superior to that of Babylon, as it had its birth in Palestine, and was borrowed thence by the Babylonians.

Many books of Hagada had existed in Palestine, whose contents were incorporated later in various Midrashim, and some also in the Talmud, and even at that period there was a difference of opinion as to their value. Some valued them, and some despised them. The Hagadas consist of two elements: first, the external garment of the thought, the tradition, and secondly, the internal idea, allegorically shadowed forth, which constitutes literary value. The latter can be divided into three kinds: "P'shat," the interpretation of the meaning of biblical words; "Drash," a free untrammelled interpretation of the scriptural texts; "Sod," the deep mystic, religious meanings construed from the texts. By these three kinds of construction of Scripture, all subjects, topics and times are embraced and discussed. The Hagada, with its mystic and veiled religious wisdom, has exercised a great influence in the Oriental and heathen world, which has borrowed from it many precious gems of profound religious thought having Palestine for their birthplace. And indeed we find that the multitude of legends based on the Bible which have been current in, and reverenced by, the Mohammedan world for twelve hundred years, delighting both sages and the unlearned, are to be found in the Talmudic Hagada. Whether entire or only in the leading idea, their identity is recognizable. Many also of the legends of the Middle Ages to be found in the works of Dante, or those of Boccaccio, Cervantes, and Milton, are taken, consciously or unconsciously, from their original source, the Talmudic Hagada.

[paragraph continues] The Fathers of the Christian church have likewise drawn on it, as Basilius of Cappadocia, Hieronymus, Chrysostomus, and many others who construed passages in the Bible in accordance with the Hagada. The moral code contained in the Hagada, teaches man how to conduct himself toward all men and in all situations of life. We shall deal with this moral law in a future chapter on the Ethics of the Talmud.

The two Talmuds contain, then, Halakhas, Hagadas, references to all branches of science known in those days, but without any system or order. Many times a Hagada is interpolated in the middle of a Halakha, and again in like manner a digression on a scientific subject extraneous to the Halakha is inserted in it. The compiler of the Talmud, whether from careless method or from the great labor involved, could introduce no order. In this respect there is little difference

between the two Talmuds; nor is there much difference in the sources whence each drew its material. Sayings from the Talmud of Palestine are quoted in that of Babylonia, sometimes under the name of their author or their citer in Babylonia; other passages are stated to emanate from the "West." "In the West (Palestine) it was said." In the Talmud Palestinian, similarly (*vide* I. H Weiss, Vol. III., 127, etc.), the Babylonian authority is often given; *e.g.*, "*There* they learn" or "say." It is clear however that when the Babylonian Talmud was compiled that of Palestine was unknown to its compilers, although, according to the opinion of many, the Talmud of Palestine was arranged by R. Johanan and concluded by R. Jose bar Bun about one hundred years before the Babylonian; others, however, affirm that the Talmud of Palestine was concluded only in the eighth century or even as late as the ninth (in the time of Anan, the founder of the Karaite sect), and adduce evidence in substantiation. We may assume, as a compromise, both assertions to be true; the greater part had indeed been arranged and systematized in the time of Hillel, the last of the Nasis in the West, but it was not employed to any extent in the colleges remaining in Palestine and Syria, because the Babylonian Talmud had spread until it reached the West. But in the time of the Karaites many things were added to the Talmud of Palestine (to oppose the doctrines of the Karaites, as the small tract on Tephilin and the like, which that sect repudiated) by those who wished their

words to be held as of equal sacredness with the Talmud, as was then customary. (We shall speak of this further on.) The bulk of the Palestine Talmud, after all the additions, is much less than that of the Babylonian, albeit it contains Gemara on two additional tracts (thirty-nine instead of thirty-seven, as will be explained) and fragmentary chapters of other tracts. This is owing to the fact that the discussion of the Mishnayoth is not so elaborate, and there is less of scholastics. We have already stated that its quality, as regards the Halakhas, is also inferior. It was not as popular as that of Babylonia, therefore fewer copies were made of it than of the latter. For this reason, since its conclusion its opponents have been less numerous, though it was very much persecuted at the time when it was studied in the colleges. The government rulers persecuted Israel and its Torah, since the death of Rabhi, and the persecutions did not stop until the death of Hillel, the last of his descendants, with whom the office of Nasi ceased to exist (360). This was alone one of the causes why the Talmud of Palestine spread less widely than its younger brother of Babylonia. The lot of the Talmud in Babylonia was better, since from the time of the death of Rabbi (223) till Mar b. R. Rah Ashi, one of the last of the Amoraim (500), it was not persecuted by the Persian rulers. For about a hundred years, the heads of the Exile were diligent in their studies, uniting thereunto its political power. If it sometimes happened that some kings were ill-disposed to the Jews, still they did not interfere with their studies. [1] For this reason the study of the Talmud flourished in the colleges of Sura, Nahardea and Pumbeditha, and the number of its students was counted by thousands. (The Talmud counts the auditors of Abba Arikha's [Rabb's] lectures as 12,000.) And so the Talmud became a vast sea, and its waves rose with might. R. Ashi (355-427) saw, therefore, that the time had come for revising, systematizing and concluding it, when he came to restore the college of Sura (Matha Mekhasia), which had fallen into decay on the death of Rabh.

About this R. Ashi it was said (Sanhedrin, p. 108) that from the time of Rabbi to his time there is not to be found a man who was unique in the possession of wisdom, riches and glory. He

was in favor with King Izgadar II., rich and long-lived. Therefore, he undertook in the course of one year to systematize two tracts. Whether he arranged them in the order in which they are found in the Mishnayoth, or differently, or whether he revised and improved them, is not known to us; but this, at least, is clear, that some tracts he revised twice, and the second time in a manner opposite to the first. [1] Be this as it may, it is also certain that the Talmud which we possess is not that which came from R. Ashi's hands, since additions by seven heads of the colleges who succeeded him in Sura, and by their colleagues, Meremar, Idi bar Abin, Nabman bar Huna, Tabyomi (Mar b. R. Ashi) his son, Rabba Tosphoah, Rabina bar Huna, Rabbana Jose, who presided together 125 years, are mentioned in the Talmud, none of which are found in R. Ashi's edition. Perhaps they also made eliminations in his edition though they did not attain the learning and religious wisdom of R. Ashi, except his son, Tabyomi. The latter filled the place of his father in learning and wisdom, though not in his breadth of view, for in his time reigned King Peros, the son of Izgadar III., who persecuted the Jews, the Talmud, and those who cherished it. Therefore, even if we suppose that his son Mar was diligent in arranging and revising the Talmud, as traces of his insertions and corrections are found in it, yet he did not succeed in completing it, owing to the persecutions of the government, especially as he did not occupy his office long, and thus the Talmud has remained uncorrected. But as the sages became aware that the times were changing, the number of learned men diminishing, they began to fear lest in the course of time, passages would multiply in the Talmud which would rather detract from than add to its value; therefore they concluded it, and decreed that thenceforth nothing should be added to it. They also ordered that the sages should no more be called "Amoraim." (signifying commentators of the Mishna), but Saburaim (*i.e.*, explainers of the Talmud to the people). Thus the Talmud was concluded in the age of Rabbana Jose (about 525), without further revision or rearranging. In reality, however, these sages achieved almost nothing; for, despite their decree, the Soburites (as also many of its enemies) as well as the Gaonim, and the

rabbis succeeding them, added to and eliminated from it and altered in many places its version, as 1. H. Weiss has proved beyond dispute and also we ourselves in our book "L'baker Mishpat" and in the journal "Hakol" many times, as will be mentioned further on. (See App. No. 10.)

Footnotes

21:1 See Getzow, "Al Naharoth Babel."

22:1 Vide "Last Gate," 356b.

Next: Chapter IV: The Sixth Century: Persian and Byzantine Persecution of the Talmud

CHAPTER VI.

THE PERSECUTIONS OF THE TALMUD IN THE PERSIAN AND BYZANTINE EMPIRES IN THE SIXTH CENTURY AFTER THE CLOSE OF THE TALMUD.

In the reign of Kobad (Cabades) in Persia, a fanatic reformer named Mazdak desired to introduce the doctrine of the community of property and wives, thus modifying the Zoroastrian creed. (501). The king became an adherent of the new doctrine and decreed its acceptance by the people. The lower classes eagerly availed themselves of the license thus granted. To this communism, the Jews, led by Mar Zutra II., son of R. Huna, the young exilarch, offered an armed resistance. The occasion of the revolt was the murder of Mar Isaac, president of one of the colleges. It is related that they established an independent Jewish state, having for king the Prince of Captivity, with Machuza as the capital. At last, after seven years, Mar Zutra and his grandfather, Mar Chanina, were taken prisoners, executed, and their bodies nailed to the cross on the bridge of Machuza (about 520). On account of the ensuing persecutions the office of Exilarch remained for some time in abeyance. The colleges were closed, as the teachers were compelled to conceal themselves, and Abuna and Giza, two of the most, eminent, fled. When peace was restored after Kobad's death, the college at Sura, received Giza as president, and that at Pumbeditha, Semuna. A third name of eminence survives, that of Rabbi or Rab (near Nahardea), of whom little is known. Men of religious mind of the period devoted themselves to the study of the Talmud, the love for which persecution had but increased, which satisfied religious zeal and promoted tranquillity of mind, and the knowledge of which raised its possessor to positions of honor and trust.

The original development of the Talmud had at that period

ceased. Giza and Semuna conceived the desire to fix the laws for practical use, casting aside theoretical speculation, for it was necessary that there be no doubts or wavering. Their activity in this work was but a continuation of that which had begun at the close of the Talmud. The labors of the presidents of the colleges were confined to this task and to assembling, as of old, the disciples in Adar (March) and Ellul (September) and instructing them by lectures, and to assigning themes for private study. To fix the laws, the arguments *pro* and *con* needed to be weighed; therefore they were called Sabureans (Saburai). Many points of practice in the ritual, the civil law, and the marriage code were settled at this period.

Giza and Semuna gave chief attention to committing the Talmud to writing, making use of oral traditions and of notes made to aid the memory by various individuals. All legends were incorporated, and the obscure passages elucidated by their additions, for everything emanating from the Amoraim was thought important. In this form it has reached us. The vowel points to the Bible were also invented at this time, according to Graetz.

"The names of the immediate successors of Giza and Semuna have not been preserved either by

chronicles or tradition"--forgotten in the persecution visited on the colleges during this century by both Christian and Zoroastrian churches.

Hormisdas IV., Chosroes Nushirvan's son, was unlike his father. Led by the Magi, who strove to check the approaching dissolution of their religion by persecution of the adherents of other faiths, he vented his wrath upon the Jews and Christians of his empire. The Talmudical colleges at Sura and Pumbeditha were closed, and again many teachers fled (about 581) this time to Firuzshabar, where, under an Arabian governor, they were less exposed to espionage. New colleges arose there, among which that of Mari was eminent, and there they continued their Talmudic labors. A general, Babram Tshubin, who had experienced the ingratitude of the king, usurped the Persian throne. In this he was assisted by the Jews with money and men, and in return granted them many favors and concessions. As a result, the colleges of Sura and Pumbeditha were reopened; Chanan of Iskia returned from Firuzshabar to Pumbeditha, and restored the college there; it is also probable

that the president of Sura, which was of far greater repute, was elected at that time, though his name is not mentioned in the chronicles.

With Babram's fall the vengeance of the lawful heir to the throne, prince Chosru, was visited on the Jews. With the aid of the Byzantine emperor, Mauritius, and the loyal portion of the Persian people, he defeated the usurper, putting to the sword also the greater part of the Jewish population of Machuza, and probably of other cities as well.

Next: Chapter VII: The Eight Century: the Persecution of the Talmud by the Karaites

CHAPTER VII.

THE EIGHTH CENTURY. THE DOMINION OF THE GAONIM. THE OPPOSITION OF THE KARAITES. THE ESTABLISHMENT OF A SECT OF THAT NAME.

The Pharisees had been victorious over the Sadducees and the other sects opposed to the Oral Law, but had not annihilated them entirely; since only because these latter could not withstand them, they kept silence and were discontented in their hearts, As the Talmud gained strength and became more severe in its decrees against the Sadducees and Samaritans, so that in the end the Kuthim were declared as idolaters in all respects, then their indignation burned and they awaited a favorable time for revenge. In the time of the dominance of the Gaonim, who carried out the Talmud in practice, the measure became full, and Anan, the nephew of the Gaon at Sura, when he was not elected as Gaon, for the reason of his liberal ideas and his opposition to the Talmud, established the Karaite sect.

Those who hold that the Karaites were a new sect founded by Anan (760 C.E.), are mistaken, for a small sect under the name of Karaites, or adherents of the Text, had existed already in the days of the Talmud, where they are mentioned in many places, as "adherents of the Text," or once "the Karaites add" (Pesachim, 117a in text; in our edition, Vol. V., p. 145). Doubtless the remainder of the Sadducees assumed this name, having lost political influence since they had been vanquished, and the word "Sadducees" being hated by the people. Therefore the remains of the sect called themselves "Karaites," *i.e.*

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those who occupy themselves with the text of Scripture, and endeavor to understand its real meaning. Owing to their. small numbers, or to the lack of a great man to head them, this, sect kept secret its hatred of the Talmud, though it existed so long as to outlive even the close of the latter, and the Talmudic sages paid no attention to them. Finally, however, chance gave them a man fit to be their leader, who publicly opposed the Talmud so that all its enemies made one league against it, and they were at first a great power; and in the course of 700 years they did not cease to persecute the Talmud and almost destroyed it; finally, however, they lost their influence which they never regained, and to-day are decayed so that small numbers only live in Austria, Crimea, and many other places in Russia, numbering in all to-day no more than 4,000 or 5,000 souls altogether.

This man was Anan ben David, nephew of the exilarch Solomon, in Bagdad, who had died childless. Anan expected to be elected as his successor, but his younger brother was chosen instead, and he was rejected because of his liberal ideas and want of sympathy with the Talmud. Then he publicly began to make war on the Talmud and Talmudists, and became the head of all its opponents and ill-wishers. He made his headquarters at Jerusalem, after having been, it seems, obliged to leave Babylonia. There he assumed the title of exilarch, and around him were assembled a great multitude who made, war on the Oral Law, its scholars, and in particular on the two colleges of Sura and Pumbeditha.

By his general precept, "Search well in the Scriptures," he declared as naught the whole Oral Law. And wishing to find favor in the eyes of the Caliphs, who fixed the dates of their festivals by observation of the new moon, he also renewed this custom, once in force among the Jews while the Temple had existed, repealing thus the calculation of R. Adda received among all Talmudists. He openly said to the Caliph Almanzur that the Jews had been guilty of persecuting Jesus and opposing Mahomet, though (said he) both these men did much to drive idolatry out of existence, and cannot be attacked without guilt. Of the first he said that he had been a holy man who did not want to appear as a prophet, or a god, but only desired to reform the faith which the Pharisees had perverted. Of the second

he said that be really was a prophet for the Arabs, only he does not believe that the Law (of Moses) is repealed by Mahommedanism.

His first work was to separate himself from the Jews by fixing the date of Pentecost to be fifty days after the first Sabbath after Passover, as the Sadducees fixed it formerly. The dates of New Year and the Day of Atonement, Passover and the Feast of Booths were determined by watching for the new moon, which did not agree with the Jewish dates. As in the leap year one month is added to the year, he allowed, in case of need, to begin Passover when barley is ripe in the fields. The Phylacteries (not a grave ceremony among the Jews, at any rate), the four species of the Lulab and the semi-holiday Hanuka (Dedication), he abolished. On the other hand he made the observation of Sabbath more burdensome, so that the lighting of candles was prohibited on the eve of Sabbath, even by a non-Jew, also the leaving of one's house during Sabbath when most neighbors are not Jews, *i.e.* Karaites; the dietary laws he also made stricter, so as to prohibit his adherents eating in company with Jews for the latter are not careful enough and oftentimes eat with Gentiles.

Soon Anan saw that if every one were left to interpret the Biblical text according to his own mind, etc., his sect would be split, and not endure (as actually was the case in the course of time, as will be explained further on), and that a fixed commentary is needed at least for those passages which can by no means be interpreted literally. *Therefore he claimed many great authorities, long deceased, as Karaites, and declared that R. Jehuda b. Tabai*, the colleague of Simeon b. Shetah, etc. Shamai the elder, the colleague of Hillel the Elder, and other such, were some of the founders of their sect, and he ascribed to them some interpretations of passages which he claimed to have received by tradition from them. "Abandon the Talmud and Mishna," he said to his followers, "and I will make you a Talmud of my own, according to the traditions I have." Though in reality he took the rules of the Mishna as basis, yet he said that as far as details are concerned he is as wise as the sages of the Mishna, or more so, and can construe the Biblical texts by his own intellect.

His hatred of the Talmud became so great that he said that if he could have swallowed the Talmud, he would cast himself

into a lime-kiln, that it might be burned with him and leave no vestige of its existence. Thus the people of Israel separated itself then into two hostile hosts. The Talmudists declared the Karaites

not to be Jews, and forbade to give them any holy ceremony to perform, while the Karaites said of the followers of the rabbis that they are Jewish sinners, and it is sinful to intermarry with them. The city of Jerusalem witnessed for the third time a splitting of Israel into parties.

Of Anan's writing we know nothing, although according to the Karaites he wrote some comments on the Bible and prayers. From the compositions imputed by them to him, we can see that only the love of resistance and victory absorbed him; how great his learning was we can not judge, as in general his biography is unknown to us, but it is known that he was not given, to philosophy, nor ingenious in interpreting Scripture. One good effect we can ascribe to him, that, owing to his opposition, the Talmudic rabbis were also forced to pay more attention to the Scriptures, and make researches and learn the niceties of the Hebrew language, so that Anan and his sect were the prime cause of all the compositions on grammar, Massorah and vowel points, and even poetic compositions that the Talmudists gave birth to in the course of time.

After Anan's death Saul, his son, succeeded him as exilarch of the Karaites, but Anan's disciples separated from him, as they did not agree with him about some ceremonies, according to Saul's interpretation of biblical passages. They became a distinct sect calling themselves Ananites; so it also happened after the death of Saul, who was succeeded by Josiah, his son. And so almost every age sprang a new Karaite sect with a name of its own, each interpreting Scripture in its own way. Some of them will be mentioned presently, It is self-evident that an attempt to get at the profound meaning of the Scriptures was the business of every such sect; through their activity the knowledge of Hebrew grammar, of Massorah, the vowel-points and punctuation marks, was diffused; theological philosophizing was also not strange to some Karaites, as they had to explain such words as God's "hand," "eye," "finger," which they were unwilling to take literally and materialize God, just as the other Jews. Thus gradually a large literature sprang among the Karaites, not inferior, taken as a whole, to the Talmud itself in bulk.

At all events, the Talmud was menaced by a much greater danger from these internal enemies than from its external foes. For the latter did not attack the Talmud itself, except so far as it was an obstacle in their way, but their main and avowed object was to convert the *Jews* to another religion, or even merely to fill their own pockets with Jewish gold, given to avert the persecution instigated for that very purpose. The Talmud was then attacked only incidentally, not for its sake, while the main object was something else.

But the Karaites made it their great aim to drive the Talmud itself out of existence, to direct their arrows against it for its own sake, and endeavored to bring about, that the Jews should become Christians, or Mussulmans, or join any sect whatever, the Karaites did not care which, provided that the Jews should forsake the hateful Talmud, and its Halakhas and Hagadas should get lost. Therefore the struggle with them was very great, especially as they pretended that their traditions were based on the great authorities of the remnants of the nation.

As their doctrines, however, were not fixed, and as almost every age the Karaites were split into diverse sects, therefore they could not resist or make headway against the Talmud, whose strength is, to those who rightly understand it, that it has never purposed to make fixed rules, to last for all ages; deliberation and reasoning concerning the Halakhas according to the circumstances, is the principle of the Talmud; and the saying of the Talmud, "even when they say to you of *right* that it is *left*, and of *left* that it is *right*, thou shalt not swerve from the

commandment," shows the opinion of the Talmud, that the practice of the ceremonies and precepts is dependent on the time, place and other circumstances. With this power the Talmud combatted all its enemies, and was victorious.

The controversies between the Jews and the Karaites are recorded in many books, Karaite and Talmudistic, from the age of R. Saadia the Gaon, and his opponent Sahal ben Matzliah to the present time. In them can also be found the history of their alternate triumphs. But this is not our task here: we will remark only that from the days of R. Saadiah the Gaon, when the Rabbis had begun to have polemics with them, can be seen the deep mark the Karaite literature left on the Rabbinical

one. Philosophy was from that time used in conjunction with the Torah; many Gaonim followed R. Saadiah's method of harmonizing the Torah and the philosophy of that time, that they should seem as mutual enemies. So the Karaites charged such men with infidelity, but others were themselves compelled to imitate them, and called in the aid of philosophy, of the divinity, to interpret the texts of the Holy Scriptures.

The effect of the Karaites on the Talmudist Rabbis is made evident also in this: that since their time the rabbis also began to write down fixed Halakhas taken from the Talmud, that the readers should not otherwise by error adopt the Karaite rules, made by the Karaite leaders, which they might mistake for the rules of the Talmud itself, since they could not know the whole Talmud by heart. They composed, therefore, the "Halakhoth G'doloth" (Great Halakhas), "Sh'iltoth'derab A'bai" (Queries of R. Ahai), for the sake of the students, who could not themselves wade through the whole Talmud. But thereby they opposed the spirit and object of the Talmud itself, that the Halakhas should be matter for discussion, and modified in accordance with the requirements of the time and place. As soon as the Gaonim had permitted to propound decisions of the Halakhas, and to fix them, those Gaonim, who succeeded them, were compelled to teach that these decisions of the former Gaonim, even though given without proofs, are holy for the people, as if giver, from Mount Sinai. This circumstance added fuel to the quarrel of the Karaites, and gave them new points of attack. The hope of some great men of the nation to reconcile the Jews with the Karaites became naught, for although the Karaites quarrelled among themselves, and split into rival sects, yet they all equally hated the Talmud, reviled it, and insulted it, styling the two colleges, at Sura and Pumbeditha, "the two harlots" spoken of in Ezekiel, who (claimed they) referred to these colleges in his prophecy.

According to Makrizi there were among the Karaites ten sects, differing from each other in their opinions, practice and festivals; they had no permanence, some rose, some fell, and in the tenth century only five large sects were found, named:

1. Jod'anim or Jodganim.

2. Makrites or Magrites.

3. Akhbarites.

4. Abn Amronites or Tiflisites.

5. Balbekites.

The reader will find in the books of Jost, Grätz, Fürst, Geiger, and in Hebrew, in "Bequoreth L'toldoth Hakaraim" an account of the particulars about which the various sects of the Karaites differed, and also the names of their leaders. We do not think it necessary to give these details in this place. We will mention for illustration the latest sect, which wished to fix the day of Atonement only on a Saturday every year, because it is said "Sabbath Sabbathan," which means a Sabbath of rest (Lev. xxiii. 32), and they translate "a Sabbath of Sabbaths," and the first day of Passover on Thursday. Thus each Karaite sect celebrated the Biblical festivals on different days, for each sect construed the texts in the Pentateuch by preference without being able to come to an agreement. Thus also in respect of the observation of Sabbath: for some Karaites, their houses were during the Sabbath their prisons, where they did sit in darkness, and which they could not leave when their neighbors happened not to be Karaites like themselves. In this we see the power of the Talmud, that even those who were inimical to it or hostile to a large portion of it, Halakhas never had different opinions concerning the festivals and other such things, important to one particular nation; for they could not deny its general tradition.

The effects of Karaism are also traceable in some religious practices, which had not been usual among the people of ancient times. Thus Phylacteries, which it had not been customary to use, in spite of the literal interpretation of the Talmud of the passage "and thou shalt bind them for a sign upon thy hand, and they shall be as frontlets between thine eyes," (Deut. vi. 8); perhaps for the reason that Hillel had said: "Leave Israel alone; if they are not prophets, they are children of prophets," (Pesachim); for after all, the arguments of the Talmud in favor of the literalness of that passage, the people felt that it was only a figurative expression; and the Talmud itself prohibited the use of phylacteries to the people, permitting it only to confirmed scholars. But when the Karaites interpreted the passage figuratively, the Gaonim permitted the use of Tephilin to the people also, to show their difference from the Karaites.

The opposition of the Karaites effected also that the

[paragraph continues] Gaonim should declare that the Hagada of the Talmud is not obligatory to believe for any man; and that it is not to be taken literally, but as allegorical. "Leave to every one the right to hold what opinions he chooseth about the Hagada of the Talmud" says R. Samuel b. Hopni, father-in-law to Hai Gaon, to ward off the attacks of the Karaites and opponents of the Talmud generally, who made it responsible for many Hagadic things cautioned in it. And indeed we see that the collections of Halakhas from the Talmud, as Rab Alphasi and his colleagues inserted but little of the Hagada, as if to show that the Hagadas are not minded. Though in truth the Hagadas of the Talmud relating to morality are the main element of the Talmud, mostly require no change, addition, or subtraction, even in our age. While on the other hand, the absence of the ethics of the Talmudic Hagada is painfully felt in Karaite literature to the present day. In points of morality their opinions are as various as concerning the Halakhas, in the course of time issued from the Karaite ascetics who abstained from meat and wine, left their homes, dwelt in deserts, and mourned over the destruction of Jerusalem. The Karaites styled them "the sixty heroes who are around Solomon's bed," for there were sixty in number,

and called them the great teachers, for they had been taught by them that it is not legal to eat meat in exile, since a text says one should not slaughter outside the camp. In contrast with these, from among the Karaites came also Hiri Hakalhi or Habalki who, owing to his opposition to the Talmud, denied also Moses' Torah, providence, creation, etc., so that the Karaites repulsed him also. There were among them also some who believed in a material God, eating something of the sacrifices, and enjoying the agreeable flavor of them. Such was the destiny of those who rejected tradition, and relied on their own intellect.

The issue was that, though among the Karaites were also great men and great sects--and many times they triumphed over the Talmudists for centuries--the following peculiarities made them a sect secluded from the whole world (especially from the Rabbis, who were to them as if unclean); their scrupulousness about cleanliness and uncleanliness, their separation from anybody who was not a Karaite Jew, so as not to take from him bread and other articles of the bakery, and so as not

to eat anything that had been touched by a non-Jew (some prohibited even meat fit for a sacrifice). Gradually their numbers diminished, so that now they number only about four thousand souls in the world, and even these few differ among themselves in their usages and festivals. To this day the Karaites in Egypt and the East remain in the dark during the eve of Sabbath; the dates of their festivals are not alike every year, and by their attacks on the Talmud they not only failed to weaken its influence or diminish the number of its adherents, but brought about its increased influence and accepted holiness. Though the Rabbis kept apart from them, and said to those who wished to make peace between them, "the Karaites (or *torn pieces*, *Kraim Kra'im*), never became joined," still they did not forbear to borrow from them what seemed to them good, adopting the Massorah and vowel points of Ben Asher, who was one of them.

About the Judaized Chazars, of their time, the Karaites say that they had the Karaite form of Judaism, but modern scholars contradict this. They say that the Chazars were Talmudic Jews and A. B. Gottlober has written admirably about this subject. His argument seems to savor of the truth. But there is no doubt, that among the Jewish tribes of Arabia, and those of the Judaized Arabian kingdom, there were Talmudic Jews who rendered many services to the Jews of the Byzantine empire; but as these matters do not pertain to our subject, we will not speak further of them, and conclude hereby the present chapter. (See App. at the end of this volume.)

Next: Chapter VIII: Islam and Its Influence on the Talmud

CHAPTER VIII.

ISLAM AND ITS INFLUENCE ON THE TALMUD.

In 622, the Hebrew religion gave birth to a second daughter, Mohammedanism--founded by Mahomet of Mecca among the tribes of Arabia, who had lived unprogressive for ages in the large peninsula between the Red Sea and the Persian Gulf, keeping by the usages received from their ancestors traditionally. Hundreds of years had passed without making any impression on the development of this people, until Mahommed arose, and in the space of twenty years subdued with the

sword and by the tongue the whole great land of Arabia. And like a stream of mighty waters the Arabs burst from their bonds, animated by a spirit of war, and fired by religious zeal, tore away from the Byzantine empire the whole of Syria and Egypt, and conquered also Persia, extended their empire to India and Caucasus, on the one band, and to Western Africa, on the other, spreading, at last, over Spain and Southern Italy to the heart of Christendom, preaching Islam, and bearing the banner of their prophet wherever they stepped.

For the second time, after an interval of six hundred years, Judaism witnessed a new faith born, all whose choice portions, all whose good and beauty, were taken from the storehouse of the Talmudic Hagada. When Mahomet arose to say that through Gabriel, the angel, the Lord had destined him to confirm the truth of the Divine revelation previously to Abraham, Isaac and Jacob, Moses and the rest of the saints who had been on earth, he borrowed only the foundation of his idea from the Hagada of the Talmud. Likewise he borrowed many sayings, traditions, and historic legends from the same source, and these materials served him as the foundation of the principles he prescribed for the guidance of his people. All the Hebrew plants succeeded speedily on the Arabian soil, as if they had been native.

Islam grew in power and soon made progress, political and ecclesiastical, for new forces joined it. It reared a new civilization on the ruins of the heathen culture of Syria. During the first century of its existence it likewise exercised an influence on the scholars of the Talmud. As the Greek spirit had formerly been wedded to the Jewish spirit, so now the Arabian was wedded to it. It might have supplanted Jewish thought altogether had not the many sages, adherents of the Talmud, written excellent books in Arabic, extolling the Talmud, its system and its spirit.

When the Jewish tribes of Arabia, some of these powerful and independent, had refused to believe in the inspiration of the new prophet, Islam arose on its parent Judaism, as Christianity had done before; persecutions, massacres, blood and fire and exile were visited on the adherents of the Talmud. As long as Mahomet had entertained the hope of gaining Jews for converts, his treatment of them was favorable and

he enjoined in the Koran not to be inimical to adorers of one God. He even wanted to make the date of the fast of Rhamadan on the tenth of Tishri (the Day of Atonement), as well as to make Jerusalem the centre of the pilgrims instead of Mecca. Perceiving, however, that notwithstanding all this, Islam gained few Jewish converts, he turned the enemy of the Jews and became wroth against them ("The Vision of the Cow"; a chapter in the Koran) and persecuted them with fury and bloodthirstiness as infidels. But at his death his hatred and intolerance died with him, the Jews found peace and protection under the Caliphs, and the Gaonim could establish their colleges. When Spain was added in 711 by the General Torick Aben Zara, bright days ensued for the Jews; they were able to devote themselves to spiritual activity undisturbed, also to take a large part in the culture of science which flourished in Spain. Great offices and high posts were given to Talmudic Jews; councillors, authors of law articles, court physicians and ministers were taken from among them. Together with their civic prosperity their spiritual activity made progress, and they made great contributions to Judaism, and benefited their co-religionists. Rarely were they visited by storms, as in Granada, in 1603, and at Cordova, in 1157, and then they suffered only as citizens.

In Egypt, Syria, Fez and Morocco, wherever Islam dominated, Jewish communities flourished. In contrast to this, the study of the Torah decayed in the East, and from Babylonia it changed its place to Spain.

The prosperity and the power of the Jews called forth envy and opposition, resulting in the desertion of some Jews to Islam; and this spirit of opposition was kindled yet more by false Messiahs arising frequently, as Shiraini in 720 and Abu Eiei in 1464, in the reign of the Caliph Merian, who opposed themselves to the Talmud with all their might (the last abolished also divorce). In spite of all that, the Talmud was honored as before. For the Gaonim and the two colleges at Sura and Pumbeditha were as beacons to all the exiled Jews till the second half of the tenth century. Only a singular accident, which happened about 960, put an end to this unlimited and undivided dominion of Babylonia over the Jewish minds. Four scholars had left Sura with the purpose of collecting money

among their European brethern, for the benefit of encouraging a more assiduous study of the Talmud at the college of Sura; the vessel being captured by an Arab pirate, the four sages were sold as slaves. One, R. Shemariah b. El'hanan was then brought to Alexandria; there the Jewish community ransomed him, and appointed him as supervisor of religion and teacher of the Talmud in Cairo. The second, R. Hushiel, was sold into slavery at the African coast, and brought to Kairuban. The third, R. Moses b. Enoch was ransomed from his owners after many hardships, at Cordova, where the community chose him as Rabbi. The name of the fourth has not transpired. It is possible that he reached France. The four men, not having attained their object of collecting money for Sura, and its college having been closed seven hundred years after its foundation, brought to an end the spiritual dominion of Babylonia over the Jewish mind and scattered the seeds of Talmudic study throughout all lands.

The college of Pumbeditha, though it continued to exist for some period after that of Sura, spreading the light of the Torah among all the exiled, sank from its preëminent rank, gradually, till its existence came to an end (about 1040). With it was extinguished the light of the Gaonim. From that time the centre of religious activity for the Jews was in Europe. The Talmud had its

home in Spain, whence it spread to other countries, as will be seen in the coming chapters.

Next: Chapter IX: The Period of Greatest Diffusion of Talmudic Study

CHAPTER IX

THE VICTORY OF KARAISM OVER THE SPIRITUAL DOMINION OF THE TALMUD AND THE MIND OF THE JEWISH NATION--THE LAST GAONIM AT SURA AND PUMBEDITHA--THE CENTRE OF TALMUDIC STUDY TRANSFERRED FROM MESOPOTAMIA TO SPAIN--THE SCHOLARS OF KAIRUBAN--THE PERIOD OF THE GREATEST DIFFUSION OF TALMUDIC STUDY.

Though Rabbinism came out victorious from the struggle with Karaism, it can not be denied that in one respect the latter triumphed. The unlimited dominion which the Talmudic spirit of the colleges of Sura and Pumbeditha had at that time on the minds of the nation of Israel in general in all places of

their abode--this spiritual dominion waned greatly. The glory of these colleges irresistibly declined, in spite of all efforts to the contrary, even of a supreme man like Saadiah the Gaon. The spirit of investigation and free thought at Bagdad induced the disciples, to whom the religious teachings of their master Saadiah gave the example, to engage in the study of philosophy, grammar and the interpretations of the text of the Scripture, and to abandon the hard and exhausting studies of Sura. A slight cause, the voyage of the four scholars mentioned above to Europe, sufficed to hasten the end of this college, which did not exist long after the death of R. Saadiah the Gaon, so that it was closed forever after centuries of its existence.

The college at Pumbeditha continued some time longer; it put forth its last efforts, before the lights of its Gaonim and Exilarchs were extinguished, before the glory and religious and spiritual pre-eminence of Babylon departed from there to honor Spain; and as the light of a candle blazes up before it is extinguished, so there shone on the Babylonian horizon three Gaonim, Sherira b. Hanina, Hai his son, and Samuel b. Hophni the father-in-law of the latter (960-1038). The activity of these men in the field of Talmudic literature persists and exercise their influence yet.

R. Sherira placed the Talmudic studies too much above all other studies, whereas in the college at Sura, in accordance with the spirit of Saadiah the Gaon, the sciences also stood in the first rank of studies and a critical spirit reigned in studying Scripture and in commenting on the Talmud. At Pumbeditha the Talmud was the only dish offered to the students, the only subject of the curriculum. R. Sherira was the first who fearlessly taught and said: "The utterances of the Gaonim require no demonstration; whoso rebels against their decisions, rebels against God and betrays His Torah." His book "Megilath Stharim." (Scroll of Mysteries), which was undoubtedly written in this autocratic spirit, is lost. But, on the other band, he has bequeathed to us a fragment which enlightens us at present, being the chief basis of all Jewish literary and theological history. This is the letter he sent to the congregation of Kairuban, termed "R. Sherira's Epistle," which treats of the history of the Talmud and of the Gaonim and is the key to the otherwise mysterious history of that epoch. From this letter only can

we take the essential information for arranging the history from the close of the Talmud to his time. Without this document many and important periods, from the time of the Maccabees to those of the Gaonim, over a thousand years, would remain to us obscure and unknown. The epistle is wonderfully accurate in respect to chronology, and is free from any bias. Only by means of it, and of other compositions of this class, as the Megilath Taanith (Scroll of Fasts), Seder Olam (Order of the World), the Sedar Tanaim and Amoraim, together with the remnants of information of R. Nathan bar Izhak the Babylonian (956) concerning the colleges at Sura and Pumbeditha, and the methods of study at their time, can the modem scholar compile the known histories, so very necessary to the understanding of the Talmud and its literature.

R. Hai, his son, was indeed more inclined towards the sciences than his father. He was proficient in Arabic learning. Nor was he averse to philosophic studies. He opposed himself with all his might against speculation about the hypothesis of religion. In theological and Talmudical knowledge, R. Hai surpassed all his colleagues and stood alone in his age. From Northern Africa and Spain, whither sparks of Talmudic literary activity had just penetrated and kindled, came to him questions in great number. He replied to them in Arabic or in Hebrew; the spirit of reconciliation between philosophy and theology is in all his answers. His list of Hebrew roots, commentaries on the Mishna, and compositions examining Scriptures exist mostly no longer, and only fragments of Talmudic jurisprudence, as laws of buying and selling, of oaths, etc., which he attempted to methodize in verse are preserved. So also is ascribed to him a didactic poem entitled "Musar Haschel" (Morality of Reason) very excellent in its thoughts, matter, and intention (purpose, aim, conception), albeit we can not extole the style or the poetic form. At all events this R. Hai, the last of the Gaonim is the first of all Talmudic scholars even at this day, and his words are oracular for all commentators and all those who decide Halakhas according to the Talmud.

His father-in-law, Samuel b. Hophni, held of the same opinions as he, but was more free in his criticism of the Scriptures than all his colleagues. Of his many works only fragments (which originally written in Arabic, we have in the

Hebrew garb) of his commentaries to the Scriptures remain. But his compositions about Halakhas and essentials of religion are all lost, and only their names survive. The fundamental principle of this thinker was: "Things opposed to human common sense should not be admitted." He combated violently also the Karaites and was attacked desperately, as they mocked and scoffed at him and even wrote satiric Hebrew poems about him.

Those three were the last of those remaining at these colleges, and at their death the sources of wisdom in Babylonia were stopped off. After the decease of ben Hophni (about 1034) the college at Sura was abolished, and two years after the death of R. Hai (1640) the college of Pumbeditha was closed. The wisdom of Israel removed to North Africa (Kairuban) and Spain and bore fair fruit there.

The city Kairuban had a great reputation. In an antique commentary, imputed to a disciple of R. Saadiah the Gaon, this city is mentioned as "the city of great sages." As is known, one of the

four above-mentioned rabbis, R. Hushiel, who with his colleagues had been voyaging to collect money for the college of Sura, was cast thither. All four introduced mental activity in all places they visited. R. Hananel, the son of R. Hushiel, succeeded to his position (in 1050) and surpassed his father in wisdom and in energy. He bequeathed to us fragments of commentaries on Scriptures and the Talmud, which were of great help to the study in the conditions at that time, when Talmudic activity was diffused among Jews. He and his contemporary, Nisim b. Jacob, who also resided in Kairuban, renewed the youth of the Palestinian Talmud, which had been neglected. Especially did the latter contribute to bring about this. He also issued the book "Maphteah" (Key) for several tracts of the Babylonian Talmud and in it he cast light on many difficult passages in the Palestinian Talmud by comparing the two Talmuds.

R. Hananel also wrote a commentary on the Talmud, which was published in separate parts. Therein he explains the subject and meaning of the words in Hebrew, and draws a parallel between the Babylonian and Palestinian Talmud. He wrote also a book containing abstracts arranged in Talmudic order of the Halakhas, concerning service and pecuniary matters.

A careful examination of the books of the two men will show that they were in unison with their opinions with Saadiah the Gaon, and diffused his teaching and ideas among the Jews. Friendship existed between these two men and Hai and the learned men of Spain, as is seen from their large correspondence. There is also a third one of the sages of Kairuban, who contributed to the study of the Talmud, he is Hephetz b. Jatzbiah, held in great esteem by his contemporaries, and upon whom all titles of honor that great men receive were bestowed. Of his works nothing is known except the name "Sepher Hephetz" (the book of Hephetz or Desirable book) which he wrote as a commentary to the "books of duties."

The sages of Kairuban witnessed the end of the two colleges and the extinction of the Gaonim, but also the flourishing of Jewish literature in Spain, whither it had been spread from Northern Africa. After the decease of these learned men the glory of Kairuban became also extinct, and Jewish intellectual activity left the East and emigrated to the West.

An examination of the literary period after the death of the Gaonim shows that it surpassed by far the preceding period. Whereas, in the time of the Exilarchs and the Gaonim, only the Talmud had been the subject chiefly studied and only to it had contributions been made which helped to perpetuate the spirit of Judaism. Now, when Jewish learning removed to Spain and Southern France, it blossomed and became split into many branches, to each of which many good books were contributed. On the study of the Scriptures shone forth the light of free criticism; the studies of Masorah reached perfection; grammar and linguistic researches came to the front rank; the Talmud and Midrash, long ago concluded, were subjected to the analysis of commentaries and abridged into systematic abstracts. The basis of the philosophic conception of the Jewish faith was laid; and religious and ritual poems succeeded, when treated by the sublimely inspired Spanish poets. A broader and deeper comprehension of the Talmud was also the result of the intellectual awakening. It is true that the cause of this intellectual activity were the Arabs, while the polemics with the Karaites enhanced it, and made it penetrate through the wall of Judaism; but, taken up by the Jews, it made progress and continued to do so even when both Arabs and Karaites had abandoned knowledge

altogether. This spiritual awakening caused even the remotest branch of Israelite stock, from which almost all life had fled, to bloom up and to awake to new life. Even the small community of Samaritans, whose existence had been quite forgotten, came to life and took part in the Jewish culture. The book of "Joshua" of the Samaritans, the "Reminiscences of Abul-Pathah" (a historical treatise of these events), the Samaritan version of the Pentateuch, and the Arabic version of the Scriptures by Abu-Laid appeared at this time. Also fragments of ritual composition there are a few left of many, but their value is small and they are not as ancient as had been at first thought. On the new Jewish literature the Samaritan sect never made any impression; but the intellectual movement of the Jews involved also the remnant of the Samaritans and aroused it from its slumber. But in the time of the Gaonim, when the bearers of the banner of the Talmud ranked themselves to battle with the Karaites, they did not condescend to notice the Samaritans.

When we say that this period surpassed the former, we are far from disparaging the great Gaonim, and from thinking them men inferior to their successors. In truth, these men were only dwarfs who stood on the shoulders of giants for had they not stood on the shoulders of those giants they could not have investigated deeply all those subjects to which in time of the Gaonim no attention had been paid. For, in spite of the precept of Sherira, above mentioned, "that the utterances of the Gaonim require no demonstration," they did not cease to give proofs, reasons, and to advance arguments in their replies to questioners. Only by means of thorough and deep research in the Talmud, by comparing and by reasoning, did the Gaonim bring the ideas of their time in accordance with the ancient Halakhas, thus increasing the practical importance of tradition and giving to the Torah a living interest. The Spanish and French scholars took up their work and carried it on, extending it to all branches of science. Then literature, therefore, attained its highest development, so that this period has been termed the "golden age of Jewish learning." The replies of the Gaonim only were the basis of their superstructure, reared when intellectual activity had removed from the banks of the Euphrates to the banks of the Tagus and the Rhine.

Their explanations of Halakha were of two kinds; either those induced by the bare love of knowledge, or answers which had to be given to question arising from practical exigencies, which occasioned the analysis of the Halakhas and the investigation whether the spirit of the Halakhas held good only at their time or applied to other times also.

Five compilations of this kind, termed "Replies of the Gaonim," exist in the Jewish literature, which have been compiled from the beginning of the seventh to the eleventh centuries. The first of the authors of those replies was the Gaon Hananai and the last Hai the Gaon. This literature of the Gaonim's replies is a large field for scientific researches in literary history in general, of historic events, and of intellectual progress. In all their replies and decisions we see that their aim is knowledge, not authoritativeness as is usual in the case of priests or even of Gaonim. For their decision they gave reasons and advanced arguments, and also forbade no learned or ingenious man to object to them.

This spirit of employing reason found in this literature of Replies still continues. By it the present is linked with the past and the future with the present. These replies touch almost all branches of thought as well as all practical questions, viz.: the value of the Agada in Talmudic literature; the value of the studies of the mysteries; opinions on philosophy, on the rights due to

sciences, answers to questions about chronology and calculations of time. History, geography, and mathematics in some of their replies are also discussed. There are also answers with reasons to questions about Laws of Marriage, Gentiles, Proselytes, Testaments, Mourning, Sermons, Divorce. They also explain to those who question them different passages in Mishna and Talmud-questions even without any practical aim-only to increase and advance the Torah by the discussions made in the house of learning.

Next: Chapter X: The Spanish Writers on the Talmud

CHAPTER X.

THE SPANISH WRITERS. A BRIEF SURVEY OF THEIR WRITINGS RELATING TO THE TALMUD.

Although the aim of this, our work, is to give a history of the Talmud alone, not of the whole Jewish literature of that period (to which is devoted a work by Dr. Karpeles and others), we can not, however, skip over the writers of Spain and France of that time, who extended the literature according to the fundamental principles of the Talmud, and shine in history, the admiration of succeeding generations. We will not, however, speak at length of their work or examine it minutely, but merely mention the names; only those whose main work was elevated to Talmudic subjects we except from this rule of brevity, and shall speak about their work as far as is necessary for the purpose of this work.

The first of the distinguished men of Spain, whom the Babylonians honored with the title of "Resh Kalah" (synonymous with "Head of College"), was R. Hisdai b. Itzhak Ebn Spurt (915-970), who was counsellor and physician to the Caliph Abdul Rahman III., and he was the one who helped his co-religionists to rise from their degradation. Besides his diligence in other sciences, as the translation of the botanical books of Disscroridus, the Greek, for his sovereign, the Caliph, he carried on a correspondence with the Gaonim. of the colleges of Sura and Pumbeditha, and through them succeeded in bringing scholars and books to his own country, and to found a college for Talmudical studies. He wrote the well known letter to the king of the Chosars, in which his love for his co-religionists and his Zeal for their welfare are manifested. Menahem b. S'ruk and Duns b. Labrat, the grammarians known through their polemics about the roots and the grammar of the Hebrew language, were invited by R. Hisdai to come to popularize the study of Hebrew. Jehud b. David Chilveg, Isaac b. Kapron and Isaac Giktalia were the disciples of Menahem, and Jehudah b. Shesheth was the disciple of Dun. These men by their controversies about the grammar carried it further and perfected the study. Jonah Ebn Ganah (1000-1050) surpassed even those,

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for he composed seven books about grammar in Arabic and Hebrew which are preserved to the present time.

Samuel Hanagid (and the Nasi Ebn Nagdilah, 993-1055) was a patron of Jewish learning in Spain, as Ebn Spurt had been before him. He was the author of twenty-two books, but not even one of them survives completely. Even from his great book "Introduction to the Talmud" only a small portion is preserved, but this testifies to the greatness of his knowledge and the acuteness of his intellect. With all his adherence to the traditions and to the cardinal principles of the Talmud, he did not exclude the use of common sense and human judgment. He says: "Every comment in the Talmud on passages of Scriptures other than commandments we have to admit only so far as seems to be rational, but as for the rest, it is not authoritative." From this we see that in his ideas about the Hagadah of the Talmud, he went a step in advance of the Gaonim,

Saadiah, and Hai. His poems and prayers in his works "Ben Thilim" and "Ben Mishle" are based on the tradition of the Talmud. But of his "Ben Koheleth" nothing was preserved by us. He was held in great esteem by the contemporary learned men. Many wrote poems in his praise, among them is the "Orphan" (Jethoma), by R. Joseph b. Hisdai. The poets at that time used to say, "In the days of R. Hisdai, the Nasi, they began to twitter (in poetry) and in the days of Samuel the Nagid, they lifted their voice." (See App. No. 11.)

He was succeeded by the lofty poet Solomon b. Gabirol, 1012-1070. (We need not here dwell on his biography and work, as Messrs. Senor Sachs and Salomon Munk wrote whole books about him.) In his time, Jekuthiel Ebn Hassau, who was high in the court of King Jahia Ibu Mundhir at Saragossa, was also a patron of all Jewish learning, especially of ben Gabirol. The latter's poem, "Kether Malchuth" (Crown of Royalty), was very favorably received by all who bore the banners of the Talmudic and Kabbaldic studies, and also by Christian priests, so that it was translated into Latin by the priest Dominicus Gondizallo (1150) and also into Hebrew by him, with the assistance of Johannis Abudalu (an apostate Jew). The fact that his name "Ebn Gabirol" was altered to Abizatrol or Abizabran has been illuminated by Salomon Munk.

Bahayi b. Joseph Ebn Pekira, judge in Saragossa, his contemporary, is the author of the wonderful book "The Duty of Hearts" (Chobath Halbaboth) in Arabic, which has been translated by Samuel Ebn Tabun into Hebrew, and accepted as a guide in life by Israel everywhere they were found. (It has been translated also into German by Herr Baumgarten of Vienna.) This teacher Behayi absorbed himself wholly in the Talmud and gave it the preference to Arabic or Grecian philosophy. His object in this, his wonderful work, is the following: to conciliate morals with commandments and the duties of the heart with those of the other members of the body. The duty of the heart is purity of thought, that of the other members to carry out the commandments. (See App. No. 12.)

Five sages bearing the name Isaac lived at that time, viz.: 1. Isaac b. Reuben of Barcelona (1043), great in knowledge of the Talmud and an expert at translating. He translated the decisions of R. Hai Gaon, about buying and selling, from Arabic to Hebrew. 2. Isaac b. Jehudah Ebn Giath (1089), who composed prayers and ritual poems considered remarkable at that time. 3. Isaac b. Moses Sochni, who emigrated from Spain to the East, where he was qualified as Gaon and became the successor of R. Hai. Only his fame survives, his writings, however, are all lost. 4. Isaac b. Baruch Abudaly (1035-1094), who was a sage and astrologer to Caliph Al Mahmed. The latter made him Nasi over the Israelite communities in his domain, Seville. He wrote a commentary to difficult Halakhas in his book "Kupath Haruchim" (Book of Spices), which, however, he did not complete. 5. The greatest of all, Isaac b. Jacob Alphassi (1013-1103), who came from North Africa to Lucina (Alisa) and there founded a college for the study of the Talmud, in which he surpassed all his colleagues in Spain. Alphassi was the first to abridge the Talmud, compiling only the necessary Halakhas, transcribed textually. Sometimes he appended his opinions, and by this work is immortalized among all Israel in exile. In times of misfortune, when it was difficult to procure the Talmud, students occupied themselves with his work, called after him "Alphassi," to which they wrote many commentaries. His decisions, called "Questions and Replies of Hariph," have been accepted for all times. It is true that he wrote in Arabic and that it was translated into Hebrew. He also wrote

three great Halakhas with an extensive commentary in Arabic, which was also translated into Hebrew, as well as 320 of his decisions above mentioned. (One was recently published with a new translation from the Arabic.)

The spirit of deep research, distinguishing this Spanish period, is also found in his works. The most difficult subjects in the Talmud and all intricate questions he explains easily. He strove in his books to smooth the contradictions between the Torah and Wisdom, reconciling them. His decisions extend over all provinces of the Torah in all questions concerning law and judgment; to all laws, both written and traditional laws, his reasons, based upon sound logic, were stated in a concise and ingenious manner. In the same way, he also explains the Hagada, to bring it in conformity with reason. He, Alphassi, did not devote himself to theological philosophy and criticism of the Scriptures, like his contemporaries, but to Talmudical studies, thus giving an example to those thinkers not to presume to give their religion a philosophic garb. At his death, all Jewish scholars, wheresoever found, lamented him. R. Jehudah Halevi, whose muse began then to shine, mourned for him thus:

> Mountains on the day of Sinai for thee quaked,
> For angels of the Lord met thee
> And inscribed the Torah on the tablets of thy heart.
> The glorious crown was placed around thee.
> The wise had not power to stand
> If they did not from thee wisdom beg.

Moses b. Samuel Ebn Giktali and Jehudah Ebn Bilan (1070) were free thinkers in his age and his opponents, but many of those scholars who explained the Talmud by simple logic were his disciples. Among these was also Isaac b. Baruch Albalia, mentioned above. The greatest of his disciples, however, was Joseph Ebn Migash b. Mair (1076-1141), who succeeded to his position in his college and inherited his greatness in Talmudic wisdom. His new contributions to Talmudic study, called by him "Megilath Setharim" (The Revelation of Hidden Scrolls) and the queries and answers collected into one book under the title of "Questions and Replies of Ebn Migash," bear testimony to his ingenuity, loftiness of spirit and gentleness. (These books were reprinted the second time by us in 1870, in Warsaw,

with our preface and some remarks, but even this edition is already nearly out and scattered.) Most of his answers and questions were written in Arabic and translated later into Hebrew; only his explanations were written in Hebrew and in the Talmudic idiom. Particularly wondrous is his manner of examining all sides of a subject, so that not one possibility remains unconsidered.

As Ebn Migash was the greatest Rabbi after the death of his master, Alphassi, questions were addressed to him from all sides, and he, always following his disposition, answered them according to his inclinations, leniently. Let us cite one of his answers as an example:

A question was addressed to him by one who had vowed to abstain from meat and wine till he shall have reached the Holy Land, and found the project too difficult to carry out, but could find no ground for repenting. Ebn Migash found for him a ground for repentance, that, while he vowed he undoubtedly was ignorant of a saying in the Talmud: Whoever afflicts himself is

guilty against a life.

Many were the disciples who trod in Ebn Migash's footsteps and carried on their activity in his spirit. Among these was his son who succeeded him also in his college. Of his contemporaries, who distinguished themselves as philosophers or poets, it is proper to mention Rabbi Joseph Ebn Zadok of Cordova (1070-1149), author of "Olam Katan" (Microcosm), a religious philosophy in which he is of the opinion (see App. No. 11) that man must know himself in order to attain to the knowledge of Divinity. The rabbi who was his predecessor at Cordova, Joseph b. Jacob Ebn Sahl (1103), was a poet and ritual author. (See App. No. 12.) In the north of Spain were also then found scholars and poets; Abraham b. Hyya, a minister in a Mahometan ruler's court, was a great astronomer and mathematician, who wrote four books on astronomy, three of which were printed, viz.: "The Form of the Earth" (T'urath Hoaretz), "The Book of Leap-Years" (Sepher Haibur), of the third, only the latter part, treating of mathematics, optics, and astronomy was printed. Next to him is Jehudah b. Barzilar, author of the book "Hoetim." (The Times).

We have reached to the three great poets, who enjoy a world-wide renown, Moses b. Ezra, Abraham b. Meir Ebn Ezra,

and Jehudah Halevi, all of whom were bearers of the banner of the Talmud, and contributed to diffusing its ideas and morals among the nation. We think it, however, superfluous to expatiate on them, as they are well-known to every cultured person, and, as many books have been written about them at different epochs, we cannot refrain, however, from giving briefly their biographies, as far as they bear on no subject of this work.

The dates of the birth and death of the first of these, Moses b. Ezra, are unknown to us: it is known only to us that he lived later than ben Gabirol. His opinions in his poems and other works vacillate. He composed ritual poems and lamentations, which have a place in the prayer-books of the Spanish Jews; also the "Arugath Habossem" (Bed of Spices), on theological philosophy, and the "Sepher Hassichoth V'hazichronoth" (Book of Discourses and Reminiscences), about the poems of ben Gabirol and his character.

The second, Abraham Ebn Ezra, was one of the most wonderful phenomena of his age. His commentaries on the Bible, his poems and ritual poems, are known to everyone; but the contemporary scholars found it impossible to know his real opinions, nor can modern scholars fathom them.

The third, Jehudah Halevi, the father of poets, before whom none lived equal to him, and who knows whether after him any one like him will live. Besides inspiring with a very exalted national spirit every reader of his poems and lamentations, he powerfully defended the Talmud in his book the "Chosar," where the eloquent defender of the Talmud is represented by the disputant arguing with the King of the Chosars, and which to the present time is a shining example of compositions of this kind. (A lengthy account the reader can find in the works of Karpeles.)

After them is distinguished Abraham b. David Halevi (Ebn Daud) who died as a martyr (1180). He defended the Talmud in his book "Emuna Rama" (Exalted Faith) and in his great work

"Hakabala" (The Tradition), in which he powerfully argues against all the deniers of tradition, and shows them in the wrong; supporting his logical arguments by historical facts, proving the continuance of tradition from the time of Moses to that time. In his polemics against the Karaites, he is so irritated that he styles them "dumb dogs."

With Moses b. Maiman, the Spaniard, called by all "Maimonides" or "Rambam" (1135-1204), the Spanish period concludes. With him died the mental activity in Spain, after having flourished there for three centuries. About this great man we have nothing to add to what the historians who have preceded us have written about his life, and disputed about his opinions. (The reader desiring minute information is referred to the *Life of the Rambam*, "Taldoth Horambam," by I. H. Weiss, and also Karpeles' work.) But we do not think it superfluous to remark on two points, viz.: 1. That the opinions of Maimonides are found too differ in the three different periods of his life: thus, in his commentary on the Mishnayoth, they are not the same as in his work "Yad Hachazaka," nor are they similar to that of his last work, "More Nebuchim," which he wrote in the evening of his life. For in all of them we see a development of his ideas according to the increase of his studies and knowledge; it is not true as some affirm that there is no change in his opinions. We have made it evident, long ago, in our book "Phylacterien-Ritus," that his decisions in his "Yad Hachazaka" or "Mishna Torah," do not accord with those in his commentary on the Mishnayoth; and, it is needless to say, that his statements in the "More" are at variance with things said in all his former works. And in truth, this is the case with all great thinkers, that they can not remain at a stand still from their youth to their old age, and to this we may apply [job, xxxii. 7]. "Multitude of years shall make wisdom known."

2. That Maimonides has omitted all references in the Talmud which treats of witchcraft, demons, interpretation of dreams, etc., not only because they were considered by him as vain superstitions and follies, for this reason alone he would not have ventured to omit them, in spite of the Talmud, for he left all that is found in the Talmud of Halakhas and moral Hagadas, even with which he himself could not agree; but his motive was, that, in his opinion, they had originally not been found in the Talmud, and that only the later men inserted them, according to their own ideas, for whatever purpose it might have been. (I. H. Weiss has insinuated this long ago, and it seems that the probability tends that way.)

So also, about the apology advanced by many for the words

of Maimonides at the head of his work "Mishna Torah," that he had chosen this title, because if a man first read the Pentateuch, and then this work, he will know the entire Oral Law, and need read no intermediate book--that by these words he did not mean that his work should be a substitute for the Talmud, etc., etc.; we do not think this apology needful, even if he meant this. For as Maimonides had observed that much had been superadded to the Talmud, also things opposed to his general opinions--no wonder if he wished to prevent those who could not distinguish between the good and the evil, from. reading the spurious passages, to which they would attach as great importance as to the Talmud itself. After he had sifted it, and arranged all that is found in that sea, the Talmud, in fourteen volumes, of his "Mishna Torah," there is no pre-emption or oddity in these words, whereby he merely sought the real good of the students.

To enumerate in detail all his books, writings, epistles, polemics and apologies, we think superfluous here; as all biographical and critical facts have already been given in detail in the above-mentioned works. We will only remark, that after all the great things which Maimonides had done and accomplished, he did not attain his object. As the study of the. Talmud did not cease in any of the colleges, and, on the contrary, they who desired to criticize Maimonides, brought the rabbis to study yet more profoundly and attentively the Talmud, and to add new commentaries, decisions of Halakhas, etc., etc.

Next: Chapter XI: Talmudic Scholars of Germany and Northern France

CHAPTER XI.

THE SCHOLARS OF GERMANY AND OF NORTHERN FRANCE, AND WHAT THEY CONTRIBUTED TO THE STUDIES OF THE TALMUD.

At the time, when Talmudic study flourished in Spain, and made progress, and diffused itself in all corners of the earth, shone "the luminary of the exile" in Germany, who constructed a strong fortress around the Talmud, in his great wisdom--which was accepted in all places of the exiled as though canonical, and which not only contributed to strengthen the Talmud, but also to prevent all its adherents from *perishing*. Like Rabban Johanan b. Zakkai formerly, when he saw that

the end of Jewish civic independence approached, founded by his wisdom a Jewish spiritual kingdom, which nothing could ruin, and by saving from the jaws of that lion, Vespasian, Yanmia and its sages, saved the existence of the Jewish people itself; so did Gershon b. Jehudah who came from Carraibe to Mayence, where his great teacher Jehudah b. Meir resided. This most important task he found to be his prohibition, which he made in the name of the Talmud, and at once all Israel (in Europe) hailed this luminary, and accepted without protests or hesitation, his prohibition, and made it a permanent law.

He saw and understood that the Jews scattered among Christian nations, among whom divorce is prohibited and polygamy regarded as a sin, will not exist long, if they persist to permit themselves these things, according to their laws, and, as he had not the power to forbid what was permitted in the Torah expressly, he strove to remove the causes leading to divorce; and thereby he made his co-religionists so far like the Christians that they should be able to live side by side.

He decreed, on pain of excommunication, and without revocation or qualification, that polygamy be prohibited to every Israelite (see App. No. 13), and only monogamy should be legal, and as long as the first wife lives, it is prohibited to add to her another, in the capacity of wife or concubine. Thereby, the main cause for divorce was also removed, but he did not content himself with this decree alone, but added thereto a decree opposed to the Pentateuch, that divorce cannot take place without the assent of the divorced wife, if the man and his wife should find it impossible to live together, then only if the woman is also willing, the husband can divorce her. Whereas, till then, the woman was dependent on the will of her husband, for good or for ill. It is superfluous for us to expatiate on the consequences of these two decrees, or rather reforms of how much utility they have been to social life and the feeble sex; as every thinking man can understand this.

Added to these prohibitions, he permitted Jewish apostates, who are penitent, to return to their faith, and also prohibited, on pain of excommunication, to open a strange man's letter and read it, without the assent of the person to whom it is addressed.

His energy, great wisdom, and deep observation of his

nation's life, and strong wish to ensure its existence, we can see from these reforms, which we do not find made by any rabbis of his predecessors; and he was justly called, afterwards, "The Luminary of the Exile," as he illuminated in truth the eyes of all Israelites and gave to them a new life. He composed commentaries on several tracts of the Talmud, which became distinguished in his age, and the commentator on the Torah, Rashi (whom we are going to mention) borrowed from him much.

R. Machir, his brother (1030), was also a Talmudic scholar and the author of a Talmudic dictionary. Several ritual poets were also found in Germany and Northern France, as Meshulam bar Kleinmus, R. Simeon, b. Isaac, b. Abun of Mayence, who lamented the miseries of their paytonim in ritual poems and prayers for mercy (Sli'choth), but their work in the study of the Torah was small; and only in Metz and Mayence in Germany, and Rheims, Loiret, in Northern France and Narbonne, Montpellier and Beziers in Southern France were many scholars, whose active occupation was mental activity in the field of the Talmud. (The college of Talmud in Narbonne was erected by R. Machir, who had arrived from Babylonia to France; and in the second half of the eleventh century came from this college R. Moses Hadarshon, known as the commentator on some tracts in the Talmud, and some books of Scripture; and later generations drew much on his wisdom, and made many quotations from him. All or most of his writings are collected in one work entitled "Breshith Rabthi." R. Joseph Tob Alm (Baufils, of Lemans), who has edited and systematized many subjects and speculations of the Talmud, a list of the Tanaim and Amoraim, and the answers of the Gaonim, and R. Elijah the Elder, both men of that age, were esteemed as poets, but did not approach those of Spain.

What is worthy of notice, considering the various countries at that age, is that whereas the scholars of Spain (see App. No. 14) exerted their great powers and displayed their knowledge in collecting Halakhas of the Talmud, the scholars of Germany devoted themselves wholly to collecting Hagadas and Midrashim, so that various compilers rose. Of the distinguished compilers of Midrash are: R. Moses of Narbonne, R. Jehudah of Toulouse, R. Simeon, author of "Yalkut

[paragraph continues] Simoni," where he compiled words of wisdom, morals and Hogada, from fifty various ancient works and arranged them according to the portions of the Pentateuch. This Yalkut is a comprehensive reference book for Agadic lore, and drove out of the field the Agadic compilation "Lekach Tob," or "Psigtha Zutrha" by R. Tobiah b. Eliezer, his contemporary, who lived in Greece (Byzantium) at that time.

We will skip over a number of lecturers and Pashtanim for want of space, and we will come to our great teacher, through whom only we are enabled to comprehend the Talmud, and to read it and study it, namely: R. Soloman b. Isaac of Trayes, called (by using the initials) "Rashi" (1040-1105). He was the first who gave a complete piece of work in his commentary on the Talmud. He is one of the most wonderful phenomena given by Nature, perhaps once in thousand years; his advantage over Maimonides, his peer, is in the fact that he met with general acceptation in the whole world, and no one presumes to study the Talmud without him. The influence he has

on Jewish students has met with no opposition or discontent. The generations subsequent to Rashi, styled him "Parshandatha" (a proper name in Scripture), that is, "Explainer of the Law." Justly was he called thus; in truth no man arose after him with such ability to shed light on the intricacies of the law or on obscure passages in Scripture.

His comprehensive intellect embraced that mighty and eternal structure, the whole vast province of the theological literature of Israel. By his commentaries he has introduced common sense into the study of the vastest and profoundest subjects. The study of the tracts lacking his commentary, although many different other men have attempted to supply the deficiency, gives us many pains and much trouble, till we come to understand the real meaning. As what Rashi elucidates in a few words, or sometimes even by one word added to the text before us, has to be commented upon by others in many laborious lines to make the student understand the simple meaning of the Talmud.

The life of Rashi has been written by many scholars, who have discussed at length his commentaries, legal decisions, and ritual poetry. The latest, A. H. Weiss, in the periodical "Beth Talmud" and in separate pamphlets. We think it therefore

superfluous to repeat them, as this is not our task here. We have to remark, however, on several points relating to the Talmud here, on which those scholars have left something for us to add: An examination of Rashi's commentaries on the Talmud, on the Bible, and legal decisions in his "Hapardes," and so also his ritual poems, will show that they differ in their nature totally. In his commentary on the Talmud, which general criticism places above his other writings, we see that he is very cautious to decide any Halakha, and to draw from the statements of the Talmud definite conclusions as to a law or custom. We do not remember in his whole commentary on the Talmud, any place where he should decide "that such a Halakha prevails," or even, "so was the custom in his days," as we find on many occasions in the commentaries of his disciples "Tosphath," and we have long ago shown in our work about Phylacteries (p. 24), that he has interpreted an obscure passage in the Talmud in contradiction to the custom and Halakha accepted among the Gaonim, because, according to his method, it is the plain meaning of the passage (see there, p. 30). Everywhere he bewares of *dialectics*, and of contradictions between some passages of the Talmud and others, but he explained the subject of the passage according to its simple meaning in its own place. In case of Agadoth he also was careful to give only an explanation of the words, literally without any remark or opinion of his own, even hinted. This is his custom in his whole commentary on the Talmud. Where he found the text corrupted, he corrected it according to his opinion, and in accordance to his profound knowledge of the Talmud, of its style and language; and, if necessary, removed the old version, not fearing additions or eliminations, provided the real meaning of the Talmud he comprehended, without resorting to forced and far-fetched reasoning.

His commentary on the Bible, however, is different, as mostly he construes according to the Halakha; *i.e.*, as the sages had explained the biblical passages in the Talmud and Midrashim, without regard to the fact that the literal meaning of the biblical texts often does not bear out these constructions. Often he was not averse to interpret the text according to the Talmudic interpretation, even when its meaning is manifestly contrary thereto by all the rules of language. His

object in this is unknown to us, and it can only be conjectured that he did not like that his commentary should be at variance with the Talmudic interpretations and conclusions, which correctness and justice he forces himself in his commentary on the Talmud to make manifest.

Not so in his decisions; he endeavors always to interpret the laws leniently (mildly), and is averse to rigor. There he also avoids dialectics, tries not to attain his object by strange and eccentric reasonings, but is only intent on finding the real deep meaning of the law, and to interpret it as mildly as it is in his power. It is true, that most of his decisions are written by his disciples, and we cannot find there that clearness of language and wonderful felicity of expression which he displays in his two above-mentioned commentaries. The Replies of the Gaonim and their works served to him also as a guide, but he did not tread in their footsteps blindfold, but he sifted their statements and construed them ingeniously into accordance with his own opinion; this we witness in his book Pardes, [1] which has been accepted as a great authority for all Poskim deciders of the law subsequent to him.

We do not possess his commentary on all the tracts of the Talmud, for of three tracts we know with certitude that the commentaries are not his; and in the case of other tracts, criticism is doubtful whether they are from his pen. And it may be that they got lost in the course of time, either because he did not compose his comments on the Talmud in the natural order, but in the order in which they were studied in the great college at the head of which he was, and whither pupils flocked from all places of the earth, after the decease of the celebrated scholars of Lorraine; or perhaps he left this world before he had completed his commentary on the whole Talmud, as he did not complete the commentary on the Bible, for those on the books of Chronicles, Ezra, and Nehemiah, and a part of the commentary on the books of Ezekiel and Job have not issued from his pen, though they bear no name, for they are easily distinguishable from his version in their style and by their nature.

What Rashi had done to the Talmud, his disciples have

done to his commentary, which they have surrounded by comments and remarks on the margins, sometimes to make plainer his meaning, and sometimes they also made additions to amplify his statements by Agadas and Halakhas, and in the course of time they crept into his own commentary and were interpolated into the words of Rashi, but to separate them from his own words it is very difficult, even for the lancet of sharp criticism.

Modem criticism has rightly thought that Rashi (Isaacides) began his labor of the commentary on the Talmud, which was composed gradually, by the lectures which he delivered to the students. After this he turned to the Midrash, and from it passed to the books of Scripture. And as soon as his commentary was heard among the living, an echo sounded in the camp of Israel that if not Isaacides who laid his hand upon it to investigate and to commentate it, it would remain almost neglected as its brother, the Palestinian Talmud. No wonder, therefore, that after a short time, some fifty commentaries on the commentary of Rashi sprung up, which examine nicely every word and syllable that has proceeded from him; and the last, Kabbalist, R. Samson, of Astropol, was not incorrect when he said in his book, "Likute Shoshanim." ["Collections of

Roses"], that every drop of ink that has come forth from Rashi's pen it is needful to sit seven days and to examine with one's whole attention.

Thus while Alphassi illuminated Spain by his elucidations of the Halakhas, another sun, Rashi, rose also in France to shed yet more light, to comment on the Talmud, its Halakhas and Agadas. And the latter had more success, in so far that his commentary was accepted in all the world (among Christian scholars also, as has avowed Nicholas de Lyra, some two hundred years after Rashi's decease, that to the right understanding of the words and simple meaning of the texts, Rashi's commentary has led him) by universal assent. And therein also is France superior to Spain, that though the latter has been studying diligently Torah, even from the ancient times, while the colleges at Sura and Pumbeditha existed yet, and after their fall, assumed pre-eminence in the usages and literature of Israel, their scholars could never agree, and were forever disputing. But in France, since Rashi's commentary

began to shine, no voice dissented from the universal approval, and those who sometimes were at variance with him, did not withhold the great honors which were justly due to him, and endeavored to reconcile their own opinions with his. For two hundred years continuously, after Rashi's decease, his disciples were diligent at the holy work of spreading the study of the Talmud and a correct understanding of the great work of their master. They called their labors only "Additions" (Tosphoth), *i.e.*, their thoughts which suggested themselves to them to add to his commentary, and to explain it.

Footnotes

55:1 It was also reprinted by us at Warsau, 1870, with our preface and a few notes.

Next: Chapter XII: The Doctors of France; Authors of the Tosphoth

CHAPTER XII.

THE DOCTORS OF FRANCE. AUTHORS OF THE TOSPHOTH.

Through the Tosphoth which were begun by Rashi's own descendants as his two sons-in-law, Meir b. Samuel and Jehudah bar Nathan and the sons of the first Samuel and Jacob Tam, the activity of the scholars of France and Germany assumed great proportions and was exalted, so that all Israel in the Middle Ages accepted them unanimously, and in the course of time the numbers of their disciples and the pupils of their disciples increased. So that more than two hundred great Talmudists are known to the historian, but whom it is needless to enumerate here, except a few which we deem necessary for our work.

His grandson, R. Samuel b. Meir, or Rashbam (1085-1158), did not content himself with the commentary of his grandfather on the Bible, as well as on the Talmud, and tried his strength to explain them after his own method, that is, according to their deep literal meaning, and leaving ingenious but forced constructions to dialecticians, even when the literal interpretation will thus be in direct contradiction to the Halakha (see App. No. 15) however, without any opposition to the traditions expressed. He only added in his commentary "according to the deep literal meaning," but leaves one to think that even the traditional interpretation about the Halakha can find place. To the Hagada, however, which tries to interpret biblical texts according to its legends, he opposes with all the strength of his intellect, and makes manifest their contradiction,

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so as to demolish the Hagada to the foundation, In his commentary on the Talmud, however, he is given to lengthy reasonings and dialectics and also endeavors to arrive at decisions of Halakhas, which his grandfather took care to avoid. Whoever sees critically, Rashi's commentary on Tract Baba Bathra up to 29b, and from there onwards, Rashbam's commentary which is its substitute from that place onwards, will be astonished at the great difference between them, if but at the relative quantities of Rashi's comments and Rashbam's.

From his commentaries and compositions we see that he had much knowledge of diverse languages, and of the manners and customs of nations and their modes of life, and gave human reasons for many commandments of the Pentateuch. In Northern France his commentaries were accepted in the colleges and it became their main authority.

But his younger brother, Jacob, styled "Rabenu Tam," devoted his whole mind to studies of the Talmud chiefly, and he became the center of the authors of the Tosphoth, to him flocked men with questions from all ends of the earth, to whom he was as an oracle. justly we may entitle him the Pillar of the Talmud. He went to the depths of the sea of the Talmud, and made it his first task to reconcile apparent contradictions therein. He likewise mended many corrupted texts in the Talmud, though of him it has been said that he decreed on the pain of excommunication not to amend any text in the Talmud, and in many places he disagrees with his grandfather. Aside from this he did not at one's own conjecture, neglect commentaries on Scriptures and

grammatical studies, and decided in favor of Menachem b. Sruk against Duns b. Labrat in his book "Hahakhraoth" (Reconciliations); he also tried his ability for poetry. As his biography has been written by the learned A. H. Weiss in a separate book, it is unnecessary to expatiate on it.

Here is the place to remark that in late generations the second pair of phylacteries which pietists put on after the prayer, have been styled after him on account of two or three words which he wrote in his commentary on an obscure passage in Tract Mena'hoth in opposition to Rashi's commentary, on account of a hair-splitting discussion in the language of the Gemara, though he had never the intention to decide so the

Halakha, as his grandfather Rashi had also not intended in his commentary on the Halakha, still those phylacteries are called after him. In truth neither the one nor the other was used yet as phylacteries, as testifies the greatest among the authors of Tosphoth, R. Isaac the Elder (as this is explained in one book on Phylacteries).

Among the faithful disciples whom Pashi had in the college at Troy it is proper to mention R. Joseph b. Simeon Kara who was revealed to us recently by modem criticism; and R. Joseph Bchor Shor who was a disciple of Rabenu Tam, and composed a commentary on the Pentateuch in the spirit of that of Rashbam. The other commentators on Scripture among the authors of the Tosphath and their disciples, however, as the author of "Hagan" (The Garden) a commentary on the Pentateuch, which is to be found in two different versions, and some more commentaries by R. Hezekiah b. Manoah, R. Isaac Halevi, R. Jehuda b. R. Eliezer, R. Jacob d'Illesques, do not cling to the principle of literal interpretation, but of Drash and Mysticism. Rashi's commentary was, however, their model. The chiefs of the authors of Tosphoth in the period of from 1167 till 1300 were: R. Isaac b. Samuel, called R. Isaac the Elder, from Dampirere, the nephew of Jacob Tam, his son Elchanan, Eliezer b. Samuel ("Ram") of Metz, author of "Sepher Yereim" (Book of the God-Fearing), Isaac b. Abraham, Junior (Ritzba), his brother, Simsan of Chanz (Rashba), his great labors are called Tosphoth of Chanz, Jehudah b. Isaac from Paris, called Sirlian, Ephraim b. Isaac from Reugspurk, and Nathan Official, who will be mentioned by us further in a separate chapter. Among the latest of the authors of the Tosphoth, however, we may name the Rabbi Moses of Caucy, author of "Smag" who is also mentioned in Tosphoth thrice (Berakhoth, 14b, 43a, Aboda Zarah, 13a), and R. Jacob of Courbel to whom have been attributed the questions and answers *from Heaven*, and we doubt whether Isaac of Vienna author of the well-known book "Or Zarua" (Diffused Light), who also lived at that time, has also been mentioned in Tosphoth (see our work on *Phylacteries*, p. 140), by the name of R. Isaac--simply, as not every time when the name R. Isaac--barely is mentioned in Tosphoth, R. Isaac the Elder is meant.

This last, R. Moses of Caucy, contributed much to restore the study of the Talmud to its former splendor in his days, when in Spain it was almost stopped, and along with it many ceremonies, as phylacteries, Mezuzoth and Tzitzith, which were not seen in his time in any part of Spain or other countries. Owing to the oppression of the other religions by the dominant religion, the Israelites began to blend with the nations, and thousands of them embraced ostensibly the dominant religion, and some even conscientiously, having despaired of the former hope of Israel, Moses of Coucy therefore devoted himself to his work and travelled from city to city, and

from land to land, to encourage Israel in the study of the Talmudic literature, and restore the activity, and he is the first who required help for his aim from gentiles, his friends, though not co-religionists, and that his works should find acceptance he backed them by dreams and natural phenomena that took place at the time, which he warned the people that they were signs from heaven, and also by astrology, to arouse the people to return to the study of the Talmud and its commandments. As he testified himself in his book which he wrote in his later days (1288), "*Sepher Mitzvoth Gadol*" (Positive Commandments) whose title is abbreviated "Smag." After writing the sermons in exile, he concludes: "After the year 4995 after creation (1235), an event took place from heaven to chastize. And in the year 1236 I was in Spain *preaching* to and reproving them, God strengthened my arms by Jews *and Gentiles*' dreams, and visions of the stars and extended his mercy to me, and the earth trembled [1] and there was general terror, great repentances were made, and thousands as well as myriads accepted the sacred ceremonies of Tephilin, Mezuzoth, and Tzitzith. So I was afterwards in other countries, and they were accepted in all places, and I was asked for a commentary on these commandments in brief." Not only in France and Spain were such books written about the practical ceremonies in the spirit of the Talmud, but also in Germany, R. Baruch of Germisa composed "Sepher Hatrumah" and R. Isaac from Vienna, his book "Diffused Light" (Or Zarua) which all treat of ceremonies and Halakhas after the rules of the Talmud, which those sages saw

a great necessity to renew and arouse the nation to observe them, after the Halakahs of Alfasi and Maimonides had become already too ancient in their tone, and the violent persecutions then directed against the Talmud diminished the number of the students. It would seem that at that time was composed also the small book "Questions and Answers from Heaven" in the name of R. Jacob of Corbel who was known as a holy man, to show to the people that its hope was not yet at end, that in heaven all wards of the Talmud are venerated, and so are all sages who occupy themselves with it, as seen from the contents of the questions and answers given from heaven especially in case of R. Isaac Alfasi, about whom from heaven it was answered: "Not in an old man is wisdom, nor in schoolboys counsel, but my covenant I shall fulfil with Isaac," and this may be a kind of basis for the programme made by Shem Tobb, Joseph Falkira (1264), that diligent study of Alfasi may substitute the study of the Talmud.

Footnotes

60:1 See our "Phylacterien," page 85, concerning the trembling of the earth, mentioned here.

Next: Chapter XIII: Religious Disputes of All Periods

CHAPTER XIII.

RELIGIOUS DISPUTES OF ALL PERIODS.

From the earliest recorded times there have been disputes between men on faith and religion. When, in pagan countries, the idols had become great in number and each man considered his own the right one, he strove to convert his fellows to his own opinion, whether through benevolence or from wrath that the idol of his neighbor should be considered greater than his own. Traces of such disputes are found in the Prophets. To the Jewish people was probably due the increase in the violence and frequency of such disputes, since its mission was always the annihilation of idol-worship. Being monotheistic, it could not live at peace with any gods besides its own. No historical importance can be attached to such disputes among and with the heathen, because the number of idols was often as large as that of the worshippers. But when Christianity, whose great aim was to convert all humanity and to extinguish all theologies, began to spread over and to dominate the world, the matter of religious disputes assumed a new and baleful aspect, for persecutions and trials were mercilessly inflicted on

all who opposed it, whether those who took an active part in the controversies or those who refused to enter into them.

In recording the history of the Talmud and of its persecutions we cannot pass over the disputes concerning it from the time of its birth, and continuing throughout its troubled history in succeeding ages. A minute history of all these controversies, however, their dates, the names of the disputants, the topics of the disputes, as well as the consequences to the Talmud, would require a volume twice the bulk of the Talmud itself. We will therefore content ourselves with devoting to it a separate chapter, mentioning only the greater historical controversies and giving a résumé of the subject matter of the disputes as we deem them of value to our readers.

Already in the first century we have seen that the disputes between the Jewish Christians and their brethren who did not believe in Jesus' Messiahship were many. In the Talmud are given the names of many sages and Amoraims who were compelled to enter upon disputations with their Christian brethern. [1] But in the second and third centuries, houses for disputations (see App. No. 10) had already been established, as well in Palestine as in Babylonia, and doubtless also in many other places where Jews dwelt. Those known to us by name are the house of Abidan, the house of Abiani, and that of Nitzraphi. The Talmud relates that the Jews were forced to come hither, or to furnish sufficient explanation for not so doing.

We have no record of the results of these disputes, but in the sixth century we see Priscus, a Jewish officer of King Eilprich, forced to a controversy. When ordered to embrace Christianity he naïvely replied "that he could not believe that, to save sinners, God was compelled to enter into marital relations with a woman, and finally, in order to redeem the world, underwent the death-agony, when at his command were hosts of angels not needed in heaven." For this he was

imprisoned. Henceforward in almost every century of the Christian era there arose fanatics who forced the Jews into controversy. In the seventh century these disputes were used as weapons against the Jews of Spain in documents issued by Isidorie, Bishop of Seville. These and other writings against the Jews,

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added to the verbal disputes, finally resulted in the ninth century, during the reign of Charles the Bald, in invectives promulgated by the Bishop of Amulo, denouncing the Jewish creed as "superstition" and inciting all Christians to their duty in eradicating the error from the minds of the Jews, to force them to accept the Gospel in place of their belief in the two Messiahs, one a descendant of David and the other a descendant of Joseph. It is remarkable that in these documents the bishop complains that the Jews, by their eloquent sermons and lectures, made more impression on their hearers than did the preaching of the Christians, as he was convinced by personal experience. And, indeed, in this he was not mistaken; for where the Jews' lot was ameliorated, as in the reign of Louis the Saint--who, as well as his wife, Judith, honored the Jews, so much so as to change for their sake the fair-day from Saturday to Sunday--many Christians came to the synagogues to hear the Rabbis and the scholars among them read with pleasure the writings of Philo and Flavius instead of the Gospel, and likewise learned from Jewish scholars the interpretation of Scripture, as Rhabanus Maurus of Fulda avows in his commentary on the Bible.

The Jews in Arabia also were forced to dispute with the Mussulmans, who assured them that the teaching of the Talmud had its day and Islam was even then usurping its place. When Basilius, the Macedonian ascended the throne of Byzantium he summoned learned Jews to argue with Christian priests, who strove to convince them that Jesus had become the center of the law and prophets. But these disputes are insignificant compared with those of the last four centuries of the Middle Ages; during this period the number of Jewish apostates increased, who challenged their brethern of the old faith to arguments. Massacre and pillage were the results of these disputes, the invitation to which was, briefly, as follows: "If ye be willing and obey, the good of the land shall ye eat; but if ye refuse and rebel, by the sword shall ye be devoured." And, as if no loophole should exist through which the Jews, might evade persecution, if a Christian were converted to the Jewish faith and mocked his former religion the Jews were held responsible and punished. Thus in the ninth century the priest Boda accepted Judaism and ridiculed

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the Christians, going even so far as to beg the Mohammedan rulers in Spain to permit residence in that country only to Jews and Mussulmans, and not to Christians. Coystan Becelelonus in 1005, in the reign of Henry II., wrote a pamphlet in which he addressed his former co-religionists thus: "Fools read the prophet Malachai, who says in God's name, 'I am God, without change.' How then can you believe that the Divinity underwent any change?" The culmination of all this was a renewed outburst of wrath and persecution directed against the Jews.

The Christians did not consider the fact that he who exchanges his religion for another, from any motive whatever, by so doing is held in enmity by his former co-religionists and his affirmations esteemed of no value. They declared that the spirit of Satan had seduced the Jewish proselytes, while at the same time they gave credit to all the calumnies uttered by the Christianized Jews and granted them power to compel the Jews to enter into dispute with them. For this alleged

guilt of Satan they punished the Jews with restriction of rights, confiscation of property, or total exile. An instance is recorded of the conversion in London in 1275, during the reign of Henry II., of the great Dominican preacher Robert de Redinge to Judaism, who adopted the name of Haggai. The Christianized Jews of France and Spain were also the cause of great trouble to the Jews in those countries during the Middle Ages, though Christianity had been the dominant religion but for a short period.

Of the more prominent controversies of that time may be mentioned that of Rabbi Nathan Haupniel, one of the writers of the commentaries called "Tosphoth" (Taanith IX., the Tosphoth beginning at "Aser T'aser"), known among Gentiles as Nathan Official, the colleague of Rabenu Tam and perfect under the Archbishop of Cens, with this same archbishop, and, near the close of the twelfth century, with Pope Alexander and the king himself. At this epoch the status of the Jews of France was one of peace and prosperity, and R. Nathan and his colleague, Rabenu Tam, were honored at court. The bishop attempted to prove by the passage, "Let us make man in our image," that the Trinity is meant, since the plural is used. R. Nathan's answer was: "Before replying to this, I

desire to ask of you a question in law concerning myself. You are aware that I loan no money at interest (this he mentioned because the Jews were then charged with usury). I gave to a friend a sum of money with which to purchase merchandise, and in the profits arising from which I was to share. He transported the goods to Paris, but finding that their market price had greatly diminished, he threw all into the Seine without consulting with me. I am therefore of opinion that I may demand of him to return to me the whole sum; for by what right did he inflict on me a financial loss without first asking my consent?" The bishop replied: "You may without doubt; and according to my opinion you are entitled to additional compensation besides, since how dared he destroy your property?" "If that is so," answered R. Nathan, "you will of course grant that God is at least as just as men, and if, according to you, he had created men with the assistance of the other two Persons of the Trinity, how comes it that he declares, 'I will destroy man whom I have created from the face of the earth?' [Gen. vi. 7], without first consulting the other Persons of the Trinity? They also were entitled to a part in disposing of man." On another occasion, being asked why the Jews were obstinate in refusing to worship Mary, the mother of God, R. Nathan replied: "Tell me, you who are so learned, whether the question never occurred to you: how was it possible that the idea of worshipping the golden calf entered the Jews' minds after they had been witnesses, shortly before, of all the signs and wonders of the Eternal, and the thunders and lightnings on Mount Sinai?" The bishop replied: "True; whenever I read this passage it seems a great problem to me." "But I am not in the least surprised," answered R. Nathan, with hidden irony. "The Jews saw that the gold when thrown into the fire was made into a calf, and they doubted not that the Holy Ghost had clothed itself in this precious metal; but you who affirm that the Holy Ghost became incarnate in a woman must needs remember that when God wished to give to the Israelites the Decalogue he warned them: 'For three days you shall not approach a woman' [Ex. xix. 15]. How, then, can the Jews believe, after this, that when He desired to endow Israel with a new testament, He should himself approach a woman?" Replies of this kind were numerous from R. Nathan, as well as

from his sons Joseph and Asher. Thus it is also told of R. Joseph Bchor Shor that to the

question, "Why did God choose to appear to Moses in a thorn?" ("bush" in the incorrect version), he replied, "Because from it no image can be made, nor can it be used to form a cross."

These disputes, however, did not bring about the terrible calamities which usually followed those in the Middle Ages, Judith, the Queen of Louis the Saint, protected the Jews and their studies, preventing the priests from taking vengeance for such ironical expressions as those given above. When Bishop Bodo perceived that his aims were not furthered by the disputes, he prohibited altogether such controversies with the hated Jews. A few decades passed, and not only was this prohibition ignored, but the Jews were again constrained to dispute in the presence of Louis IX. and his wife, and the chief civil and ecclesiastical dignitaries, the latter representing Pope Gregory IX. It fell to the lot of the four rabbis, R. Jechiel of Paris, the disciple of Jehudah the Pious; R. Moses of Coucy, the famed travelling lecturer; R. Jehudah b. David of Melon, and R. Solomon b. Samuel, to dispute with the apostate Donin, who took the name of Nicolus. This man while yet a Jew had evinced a tendency, as it appeared to the rabbis, to rebel against Judaism, and therefore they had excommunicated him. In revenge, he went to Rome in 1239, and charged that the Talmud contained sacrilegious sayings as to Jesus Christ and his mother, and so distorted the Scriptures by its interpretations and comments that thereby the Deity was blasphemed. He further charged that it gave license to illegally deprive Gentiles of their property and granted permission to deceive them. The sum of his libel, which contained thirty-five points, was that the Talmud was the enemy of Christian truth and the sole cause of the refusal of the Jews to recognize the divinity of Jesus.

It will be in place here, before further consideration of the character and consequences of this and many other disputes in which Jewish apostates were the accusers and disputants, to speak of the Jews of the Middle Ages, what they were, and, having in view only the truth, to expose their faults. For by their great intolerance, and their conduct towards all who entertained opinions of the least liberality, differing ever so

slightly from their own, they brought down upon themselves, as it were by their own hands, terrible calamities. There was at that period, as is well known, a division of opinion among the Rabbis themselves concerning the books of Maimonides. Many Rabbis excommunicated him after his death, and even defaced his epitaph; and the intolerant R. Solomon of Montpelliers, with his colleagues and disciples, resorted to the Flagellants and Dominicans for aid, saying: "Behold, there are among us heretics and infidels, for they were seduced by Moses ben Maimon of Egypt. You who clear your community of heretics, clear ours too" (Karpeles, P. 346). They assented -gladly, and the books of Maimonides were burned at the stake in Paris and Montpelliers. From the conduct of these fanatics towards that lion of Israel (they themselves avowed that he was infinitely superior to them in science and learning) we can conceive their terrible vengeance against an ordinary man or scholar when he ventured to express opinions in any degree at variance with their own, or to transgress the Sabbath by carrying a handkerchief or drinking of Gentile wine, which in their opinion is against the law. Who, then, could resist their terrible weapon of excommunication, which they used for the purpose of making a man a ravenous wolf whom every human being fled from and shunned as though plague-smitten? Many who drank of that bitter cup were driven to the grave, and many others went mad. But woe to the excommunicators if the excommunicated afterward received baptism from the Dominicans I Then the vengeance of those who had been banished was fearful; like serpents they stung their former brethern, and caused misfortunes to thousands of souls who became as

sheep for the slaughter.

Thus on the 24th of July, 1240, the complete Talmud was brought by Donin to the royal palace, and R. Jechiel, who, because of the fact that he had disputed with many priests, had been elected head of the disputants, was asked by him, in the presence of the king and the whole assembly, whether he believed in *all* that was written in all these books, now more than four hundred years old. To this R. Jechiel replied, addressing the king: "Our Talmud is not four hundred years old, but more than fifteen hundred, and this alone suffices to prove that the controversy concerning what is *said* in it is superfluous;

for up to this time there have been Jewish apostates and many learned Christian priests who were conversant with its contents and found no evil in them. "Hieronymus," continued the Rabbi, "known to all as a wise and devout Christian writer, who was familiar with Jewish literature, much better than this apostate sinner, would doubtless have sought the destruction of the Talmud, if he had found therein such terrible things as this apostate alleges. Therefore I feel sure that this liar, who seeks our lives, will never attain his object; he may indeed deprive us of our lives, but not of our Torah, dear to us as the pupil of our eye. If you vent on us here in France all your anger, still will the Talmud be found in Spain, Greece, Babylon, Media and Mesopotamia, in possession of the Jews of these countries, and there you cannot reach to destroy it." The king was not satisfied with this, but bade R. Jechiel give a direct answer to Donin. To this the rabbi answered that the moral and legal doctrines of the Talmud were held sacred, but that full credence need not be given to the Hagada, which should not be taken too literally, since it is for the most part allegorical. The Ramban gave expression to a like opinion, but it would be superfluous to quote him entire. To the other accusations of Donin, that the Talmud terms the followers of Jesus Christ "Minim" (infidels), that it condemns Jesus, that it allows ill-usage of people of other nationalities, etc., he replied: "In the Talmud there is no mention of Jesus (Jesu) Christ, but only of another Jesus (Jeshua) who was a disciple of R. Joshua b. Prachia, who lived two hundred years before Christ; that the term 'Minim' in the Talmud includes all who deny the Oral Law; that it grants equality before the civil law to all men, idolators included, and commands visitation of sick idolators, support of their poor, and interment of their dead even in Jewish cemeteries. He also proved that according to the Talmud, the Christians are not included among idolators, since the prohibition as to sharing in divine power is directed only to Israel and has not been enjoined on other people; and, moreover, since the Christians abhor idolators, they cannot themselves be counted among them. There is no distinction drawn between them and Jews by the criminal laws of all civilized lands," as well as in the Talmud. (See App. No. 15.)

Thus two days passed in disputing with R. Jechiel, whose replies were written down by a disciple and collected later in a book, "Joseph Ham'qane" (The Zealot). On the third day, R. Jehudah b. David, having been prohibited from holding intercourse with R. Jechiel the first two days, was called to the dispute, and when his assertions were found to agree with those of R. Jechiel, the controversy came to an end.

The second dispute which must be noted is that started by the apostate Pablo Christiani, in July, 1263, with the rabbis of Spain. This was the reverse of the previous dispute, in that the first

charged the Talmud with despising Jesus and Christians, while this dispute endeavored to prove from the Talmud itself the Messiahship of Jesus; Pablo claiming that the book contained many such passages. Rabbi Moses ben Nachmani (Ramban) was selected as disputant. This controversy also took place in the royal palace in Barcelona, and lasted four days. The principal topics for discussion were: Whether the Messiah had already appeared or was still expected; whether he would appear as a warrior, to restore the kingdom of the Jews, or as God's son, as Jesus. The passage, "the sceptre shall not depart from Judah until Shiloh come" (which the Jews also understand as referring to a Messiah), Pablo adduced as proof that after the destruction of the Temple and the fall of the Jewish kingdom it must of necessity be considered that the Messiah had arrived. Again, the Talmud itself says, "The Messiah was born when the Temple was destroyed," and "Elijah said to R. Joshua the son of Levi, The Messiah sits at the gates of Rome, among the sick," etc.

Thereupon Nachmani addressed the king. "Know," said he, "we possess three different books; before every other, the Bible, in which we implicitly believe; then the Talmud, which we hold sacred as an indispensable commentary on the biblical laws; but the third book, which we call Midrash, comprises mere sermons or speeches, which are listened to by the Jews but which exercise no authority over them. "The Hagada," he continued, "is, as its name indicates, a mere collection of legends, fiction, a creation of fancy, communicated by one person to another, but not held by the Jews as dogma, and which I myself do not believe." Then turning to Pablo, "I will reply directly to you as to the question at issue. If the Talmud, as

you assert, regards the founder of your church as the true Messiah, why have not the Talmudists believed in him? Why did they not avow him, as you, Pablo, have done? For five hundred years have men been at work on the Talmud, and none had been convinced or induced to enter the church. Where," he asked further, "is it to be found in the Bible or the Talmud that the Messiah will suffer at the hands of men? On the contrary, it is said of him, "He will reign from sea to sea," "Dwellers of the desert will kneel before him" and "nations will adore him," which certainly was not the case with your Messiah, who, by the way, was born long before the destruction of the Temple of Jerusalem, and therefore the Talmudic passage can have no reference to him. Rome had not your alleged Messiah to thank for its greatness; on the contrary, its power and dominion gradually declined after his advent, and since the birth of your religion a new creed, the world-dominating Islam, has arisen. Further, were the omens and prophecies of the Messianic time fulfilled? Of this the prophets predicted 'that homicidal war will cease, a universal peace reign in the world; the swords will be beaten ploughshares, the spears into pruning hooks, and the harmless animal will graze by the side of the wild one;' that 'no injustice will occur, a moral elevation will ennoble men, God's spirit will enlighten all peoples, and a universal purified knowledge will be introduced.' But since your Messiah appeared, numberless wars have disturbed mankind, justice, morality, and brotherly love have not yet become the ruling principles of the world, your religious truths have not satisfied the adherents of Islam, and one God does not as yet reign on earth. If you make of your Messiah a God, then we cannot believe at all in him. The Messiah must be, according to the prophets, a man 'out of the stem of Jesse'; he must be sprung a child born of ordinary parents, not a son of God need he be. Nay, the passage in the Talmud which you bring forward as favoring the Messiahship of Jesus, 'that Messiah sits on God's right, and Abraham on his left,' shows him not to be a God, else could not the Talmud say directly after this 'that Abraham's countenance darkened on account of the favor shown the Messiah.' Were he God's son, surely Abraham would have known him as Divinity and have yielded to him, with no feeling of jealousy, the first place. The language of

the Talmud is peculiar, and by its assertion that the Messiah was born with the Temple's destruction must be understood the revival among the Jews, through this barbarity and injustice, of the hope of a Messiah. They assuredly do not accept him as Messiah who saw the light of day fully a hundred years before this event, and who, in spite of his sufferings, brought to the world neither salvation nor redemption. And how stands it with your assumption that your Messiah redeemed the world from original sin? The penalties decreed for that sin still exist. Women still suffer pain in childbirth; in the sweat of the brow must the ground be ploughed, and Death still thins the hosts of the living-evils which, according to your construction of the Bible, result only from original sin. As to the passage quoted by you from the Bible, this is its significance: 'The sceptre shall not depart from Judah eternally'--*ad* being equivalent to *load* (forever). The clear meaning of this is that Judah's dependence, if he be condemned to it, will not last forever, for the Messiah will come and restore to him his independence; simply, that he *will* appear, but is not yet come. For the rest," continued Nachmani, "I do not long for the Messiah. With us it is accounted as of greater merit if we, living in foreign lands, among strange people, and under the protection of the king, worship our God, than if we, as free masters, adhere to the law in our own land." Pablo was no match to Nachmani and his striking proofs. The next Sunday, King Jacob I. of Aragon appeared with Peñaforte in the synagogue. The general of the Dominicans resumed the dispute, and sought to prove the Trinity by the simile of wine, which also contains a trinity in it, color, flavor and odor, and yet is one thing. Nachmani, however, refuted him, and demonstrated that to accept this argument would be to assume also a fifth person in God. Peñaforte became perplexed and replied that the Trinity is so deep a mystery that the angels are unable to comprehend it. When Nachmani had asked the modest question, "Why, then, should men raise themselves above the angels to dispute about and to hold fast to so deep a mystery?" The king dismissed him with rich presents, adding these strange words: "I have never yet heard a wrong cause so masterfully defended." Nevertheless, Nachmani was banished, He, did not, as contemporary

ecclesiastical chronicles affirm, flee in deep shame, but was expatriated through the intrigues of the clergy, and emigrated to Palestine, which, in his opinion, should be a Mecca for every Jew, and arrived there shortly after Jerusalem had been reduced to ashes by the Mongols. There he continued his labors in behalf of Judaism and compiled his commentary on the Bible. To his disciples whom he left behind it is related that he said, on their asking of him a sign of the day of his death, that his mother's grave stone would be rent in twain.

After seeing, however, that the dispute led to no satisfactory results, and that Nachmani and other Jews were not convinced by the argument of "no salvation outside the church," Peñaforte changed his tactics and impeached the Talmud before Pope Clement IV., claiming that it abused and blasphemed the founder of the church. The Pope appointed a committee to examine the matter, and on their adverse report the obnoxious passages were stricken out, the erasing stylus was drawn through the pages of the Talmud by ignorant Dominicans, and for the first time it was subjected to the judgement of a censor. What a sad concurrence of historic events! Twenty years later the writings of Maimonides were again consigned to the stake at Acco through the efforts of the Kabbalistic fanatic Solomon Petit; in Tiberia the tombstone of Moses b. Maimon, the greatest thinker to whom Judaism had given birth in a thousand years, was shamefully

dishonored and its epitaph replaced by the words; "Here rests an excommunicated heretic."

Of far more importance were the attacks on Judaism and the Talmud in the dispute which took place at Tortosa, in, Aragon, in 1413, under the supervision of Pope Benedict XIII., and which required no less than sixty-eight sessions. Long before this time the Jews had held polemics with Christian scholars, and the Jewish literature in defense of the faith which had been current in the thirteenth century, and which included also attacks on Christian dogma, was now in full bloom. Raymond Martin, a Dominican Hebraist and one of the censors of the Talmud appointed by the Pope, who treated the Talmud with comparative leniency, wrote against Judaism two hostile books under the titles "Religious Dagger" (Dagger of Faith) and "Scourge for the Jews," wherein arguments in

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favor of Christianity were adduced both from Scripture and from rabbinical writings. These books were imposing not less from their powerful logic than from their exhibition of profound scholarship, and the renowned Talmudist, R. Solomon b. Adereth, was called to refute them. The apostate Abner Alfonso Burgensis, a polemic of more danger to Judaism, at the commencement of the fourteenth century, wrote a number of controversial works against his former religion, to whom Isaac Pulgar replied with a trenchant satirical poem as well as an argumentative work. In 1375, Moses Kohen de Tordesillas disputed in the church at Avilla with the renegade John of Valladolid, and soon after this proselytizing cardinal Pedro de Cuna challenged Shem Teb b. Isaac Shoprat to a public religious discussion. The latter published in 1380, a comprehensive defensive work, "Eben Bochan," and also translated the Gospels into Hebrew to enable his co-religionists to arm themselves from the Christian arsenal; they subsequently found themselves obliged to use these weapons only too often. In 1391 occurred the first great persecution of the Jews in Spain, during which many, to escape the sword, embraced Christianity. Whereas the greater part of those who were forced into conversion usually returned to the fold of Judaism, some of these new Christians were, conversely, possessed by a great zeal for proselytizing, as, for example, the physician Astruc Raimuch, and particularly the former rabbi, Paul Burgensis, the latter of whom was a source of much mischief to his people. The satirical poet, Solomon Bonfed, the ingenious thinker Chasdai Crescas, the physician and philosopher, Profiat Duran, indited convincing replies to the attacks of these apostates. But in the foremost rank of these polemic writings stands the circular letter of Joshua Lorqui, which he addressed in an apparently submissive tone to his former teacher, Paul Burgensis, wherein, along with keen attacks on Christian dogma, he tells Burgensis that as a thinking and learned man he could not have accepted Christianity through conviction. When one reads this letter he must hold it almost a psychological impossibility that the man who adopted such an attitude towards Christianity should in later years have gone over to the Christian church and become a scourge to his co-religionists of the Jewish faith; and yet this Joshua Corqui was, with scarcely a doubt, identical

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with him who later assumed the name of Geronimo, Santa Fe, and came forward to impeach Judaism and the Talmud at the dispute in Tortosa.

Benedict XIII., one of the three popes who were then striving for dominion, had a particular interest in this dispute. This pope had been deposed at the Council of Pisa as a heretic and

perjurer, and had been excommunicated; in Spain, however, he was recognized as pope, and from that place he set in motion his plans to make himself universally recognized. If he could succeed in breaking the obstinacy of the Jews and effecting finally their conversion as a people, it would be a great triumph for the church, and for himself personally. From these motives he willingly permitted King Fernando of Aragon to invite Jewish rabbis and scholars to a theological discussion at Tortosa. Sixteen of the most prominent appeared at that memorable dispute, which lasted, with many interruptions, from February, 1413, till November, 1414. The apostate Geronimo, the physician-in-ordinary-of the pope, had arranged previously the following programme for the controversy. First he desired to prove from the Talmud that the Messiah must already have arrived. Should this argument be ineffectual, however, then a war to the death was to be declared against the Talmud, which sustains the Jews in their unbelief. When the Jewish notables appeared in the session hall on the first day, the thousand there assembled, presided over by the pope (who was pompously arrayed and seated on an elevated throne), made upon them an overwhelming impression. The pope himself opened the session with an address, wherein he laid emphasis on the fact that the question now was not as to the truth of Judaism or Christianity; Judaism *once* had been true, but was replaced by the later revelation. The discussion must turn only on the point whether, according to the Talmud, Jesus is the promised Messiah or not. Thereupon, Geronimo delivered a lengthy speech, which he concluded with the text, "If ye be willing and obey, ye shall eat the good of the land; but if ye refuse and rebel, ye shall be devoured by the sword." In his reply, Don Vidal Benvenisti placed the apostate's wickedness in its true light, inasmuch as he had threatened with the sword before any proof for or against had been brought. In the subsequent sessions, Geronimo cited passages, more or less familiar,

from the Talmud and Midrash, to prove to the unbelievers that the Talmud itself, when rightly understood, attested Jesus' Messiahship. But as the representatives of the Jews explained these passages according to their real meaning, and at the expiration of sixty-two sessions evinced not the slightest inclination to be converted, Geronimo, at the pope's bidding, came forth as impeacher of the Talmud, asserting that it contained blasphemies and abominations of all kinds and must therefore be unconditionally condemned. To prove this, he wickedly or ignorantly perverted many passages. The Halakha teaches, for example, in relation to the verse in Exodus xxi. 15, "He that smiteth his father or his mother shall be put to death," that he only is guilty of death who wounds his parent by beating; from this Geronimo inferred that the Talmud allows the beating of parents. The Halakha also teaches in reference to blasphemy that "only he who blasphemes God by his name of four letters (Jehovah) is guilty of death," and from this Geronimo concluded that the Talmud permits blasphemy. Geronimo was also the first to affirm that the Jews may break oaths, in conformity to the prayer "Kol-Nidre." Every one at all familiar with this prayer knows that it is for forgiveness for the non-fulfillment of vows and oaths, taken *unconsciously* or broken through *forgetfulness*, and is but an argument in favor of the Talmud's scrupulousness in this matter. The Jewish delegates defended themselves, it is true, with skill against these accusations, but were finally so hard pressed that they divided into two parties. Most declared that the passages of the Hagada brought forward by Geronimo had no authority; whereas Don Vidal Benvenisti and the religious philosopher Joseph Albo declared that the Hagada was held by them as of full authority, but must not be construed literally and then judged. At all events, the pope did not succeed in causing even one of the delegates to waver or in effecting the hoped-for general conversion of the Jews. Driven to anger at his failure, he dismissed them in a very unfriendly manner, and soon thereafter issued a bull in which he interdicted the reading or study of the Talmud by the Jews, and ordered that search be made for

copies of the book and they be then destroyed. He also directed that in Spain the Jews should live separately from the Christians, fill no official station,

practice no trade, nor devote themselves to medicine. Fortunately the hostility of the pope had no effect. The Council of Costnitz deposed him; his former protectors, King Fernando and Emperor Sigismund, renounced his cause, and the fanatic Flagellator and preacher, Vincent Ferrer, preached openly "that such a man as this pope deserved to be persecuted to the utmost and to be killed by any good Christian." Filled with rage at the issue of the dispute, Geronimo published later a voluminous book against the Talmud, and the apostate Paul Burgensis, who was elevated to the bishopric, composed in his eightieth year, a work hostile to Jews and Judaism. To these and similar attacks the Jews were free as yet to reply without restriction. Answers were published by Joseph Albo, Vidal ibn Lobi, and Joseph ibn Shemtob, defending their own creed and winging arrows at Christian dogmas also. Several decades later the Jews of Spain were attacked not with the pen, but with the fist, not with spiritual weapons, but with physical force, and met with bloody persecutions till finally, in the total exile of 1492, the proud Spanish Jews were compelled to empty the cup of misery to the dregs.

Footnotes

62:1 R. Aqiba with R. Gamaliel, Joshua b. Hanania, Ishmael, Abuhu, and many others.

Next: Chapter XIV: The Talmud in the Sixteenth and Seventeenth Centuries

CHAPTER XIV.

REUCHLIN, PFEFFERKORN, AND THE TALMUD IN THE SIXTEENTH AND SEVENTEENTH CENTURIES.

Joseph or John Pfefferkorn was a German Jew, who lived in the beginning of the sixteenth century. He was ignorant of worldly knowledge, and had but a very limited acquaintance with Jewish literature. He became a Roman Catholic to escape the penalty for a theft. The Dominican monks of Cologne, subordinate to Hochsträter, the judge of the Inquisition, received him into their community with great honor. Hochsträter was a great fanatic and the enemy of every one who bore the name of Jew. His colleagues were Arnold Tangersky and Arthurin Gracia. This latter had committed to a Jewish apostate, Victor Karbensky (1504 A.C.), the task of writing a pamphlet against Judaism. In this pamphlet the author brings various accusations against the Jewish people, the responsibility for which he places on the Talmud. He recounts fabulous

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charges of Jewish persecution of apostates, and complains that even the poorest and most criminal and hardened Jews subject themselves to all manner of hardships rather than embrace Christianity. The pamphlet concludes with these words: "All this is due to the Talmud, which is the source of all evil, and which the Jews hold in greater reverence than the ten commandments of God." The Dominican monks found that this pamphlet failed of due effect, and asked Pfefferkorn if he could write a better one. He wrote the "Warnungsspiegel" (The Mirror of Warning), wherein he pretended to be a friend of the Jewish people, and, for their own good, desired to introduce Christianity among them. He urged them to convince the Christian world that the Jews do not need Christian blood for their religious rites. He also tried to induce his Christian brethren not to persecute the Jews unto destruction; for, he said, the Jews are also, in a way, human beings. Along with these pretences of friendliness he evinces in the pamphlet the desire (and in this he was seconded by the Dominican monks) to take the Talmud by force from the Jews. "The causes which hinder the Jews from becoming Christians," said Pfefferkorn, "are three: first, usury; second, because they are not compelled to attend Christian churches to hear the sermons; and third, because they honor the Talmud." Therefore he appealed to his co-religionists and the rulers to remove the first two causes; as to the third, he advised the government to take the Talmud from the Jews and burn it. But even this pamphlet was not wholly successful, because the rulers and the people understood that depriving the Jews of the Talmud would inure to the benefit, financially, of the Dominicans; for these latter, being the judges of the Inquisition, possessed the power of declaring the books harmless and of returning them to the Jews for a consideration. Therefore Pfefferkorn hastened to issue another pamphlet, in which he used harsher expressions, and tried to convince the people that the hatred of the Jews for Christianity was due solely to their religious books. He issued also a third pamphlet, on Jewish history, in which he contradicted what he had written in his first pamphlet. He said plainly that every Jew considers it a good deed to kill, or at least to mock, a Christian; therefore he deemed it the duty of all true Christians to expel the Jews from all Christian lands;

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even if the law should forbid such a deed, they need not heed or obey it in this respect. "It is the duty of the people," he said, "to ask permission of the rulers to take from the Jews all their books except the Bible," as well as all the pledges of Christians to be found in Jewish hands; also, that Jewish children should be taken away from their parents and educated in the Catholic religion. He concluded his work thus: "Who afflicts the Jews is doing the will of God, and who seeks their benefit will incur damnation."

Although the religious hatred of the times of the Crusades was then far from extinguished, Pfefferkorn's books did not find favor with the rulers, as the Jews were their chief treasurers, from whom they at all times exacted enormous taxes. Therefore they did not desire to drive them from their territories; and to compel them to embrace Christianity did not suit them either, as most of the Christians disliked Jewish apostates and looked upon them disdainfully since they well knew that in most instances they did not accept Christianity through belief in the religion, but from more worldly reasons. In addition to this, all the Jews of Germany, as also the physicians of the rulers, who were for the greater part Jews, did all in their power to prevent Pfefferkorn's advice from being carried into execution. Many Christians, too, asserted that they were convinced that Pfefferkorn was bad at heart, a flatterer, and that his sole object was to enrich himself at the expense of the Jews. Therefore Pfefferkorn wrote a fourth pamphlet, in which he reiterated all he had written previously, and declared that the only way to be rid of the Jews was either to expel or enslave them; the first thing to be done was to collect all the copies of the Talmud found among the Jews and to burn them. Arthurin Gracia, who was the Censor of Art, revised and corrected Pfefferkorn's works and rendered them into Latin and German, and sent them to all the rulers of the period. Besides this, the Dominicans addressed themselves to the sister of the Emperor Maximilian, Princess Kunigunde, who was a nun in a Dominican convent at Munich. They begged her to intercede with the Emperor in behalf of Pfefferkorn. They eulogized Pfefferkorn, telling her of his knowledge of Jewish life and of his good character, and urged her to confide in him. Finally they persuaded her to give a

copy of his pamphlet to the emperor, who was then at war in Italy with the Venetians. As a result of all this, Pfefferkorn at once set out for Italy, and succeeded in obtaining from the emperor a decree that all the Jews of Germany should yield up their books to him (Pfefferkorn), to be revised by him; if he should find in them anything relating to Christianity, it should be destroyed. In this task he was granted the power to call to his assistance, in each city, a priest and two of the civic rulers. The Jews were warned under severe penalty not to resist the royal command.

Pfefferkorn and his party of inquisitors first visited Magdeburg, for in that city dwelt rabbis who were renowned throughout the Jewish world; and although they resorted to every device to prevent the surrender of their literary treasures--even the Bible, the removal of which was not included in the royal mandate, was also taken away--every Jew was compelled to surrender his entire store of religious books.

But many Gentile scholars, to whom Pfefferkorn's conduct did not appeal, assisted the Jews by testifying before the emperor that Pfefferkorn was ignorant on many subjects, and that he wrongfully deprived the Jews of books containing no allusions to Christianity; besides, they referred, in their request to the emperor, to the privileges accorded to the Jews, by previous

emperors and popes, of worshiping in their own way. The Elector of Mayence, Archbishop Uriel, enraged at Pfefferkorn's action (we cannot learn why), summoned him to the city of Aschaffenburg, and informed him that the emperor's decree was in opposition to the law of the land, as it made him prosecutor, witness, judge, and executor in one; therefore, the Jews or the people, in disregarding the decree, would be guilty of no crime against the law. He counselled him, in fine, to ask the emperor to alter the mandate to conform with law. Pfefferkorn agreed to do so, and the Dominicans of Cologne advised him to find a prominent Gentile who would actively interest himself in the matter. This man they found in Reuchlin, at that time very popular and respected all over the world. The Dominicans told Pfefferkorn to get a letter from Reuchlin to the emperor, before going again to see the latter.

John Reuchlin, of Paszheim (1455-1522), had a great

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reputation as a scholar; in addition he had a benevolent heart. He devoted himself especially to the study of Hebrew, in which his interest was enhanced by Count Pick de Marsundella, who opened up to him the study of Kabbala, *i.e.*, Jewish mysticism. Even this did not satisfy his desire to be master of Hebrew. He formed the acquaintance of Jacob Laanson, a Jewish physician at the Court of Frederick III., from whom he acquired a further knowledge of the language; at this court he came in contact with many Jewish scholars, and attained to such skill in the study that he afterwards wrote a book wherein he praised Hebrew as the best of all languages. He claimed in this work that the dogmas and rites of false religions were due to the ignorance of Hebrew, and to the misconception of the meaning of significant Hebrew terms. As for the Kabbala, he ranked this study with any other branch of learning, and stated that he himself was far from understanding thoroughly its sublime mysteries, for a complete knowledge of which even a lifetime would scarce suffice. Afterwards, when he became the Ambassador of the Elector Palatine to the Court of Pope Alexander VI., he became acquainted with the physician Obadiah Eipminah, the renowned commentator on the Mishna; and it was interesting to see the celebrated German scholar, whose discourses in Italian were greatly admired by the Italians themselves, stooping to ask a Jew to be his teacher of Hebrew literature. It was always his habit, when he came in contact with learned Jews, to obtain some useful knowledge from them.

Nevertheless, Reuchlin was not entirely free from prejudice against those of the Jewish faith. In a letter to a knight who desired to convert the Jews of his dominions to Christianity, he wrote that the whole trouble with the Jews was they were disbelievers, who did not care for Christ and his apostles, and that they held in general contempt all Christians; although it is true that later he repented of having written this letter, as will be seen further on.

The Dominicans relied on Reuchlin, knowing that the words of one so thoroughly acquainted with Hebrew literature would be respected by all the rulers of Germany. But Reuchlin declined to take an active part in the matter, although he commended the project of destroying all books written against Christianity. He also called Pfefferkorn's attention to the

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injustice of the emperor's decree, and told him it was doubtful whether it could be executed.

Despite his not securing the wished-for testimony, Pfefferkorn succeeded in persuading the emperor to ignore the petitions of the Jews and their defenders, and to give him the power to deprive the Jews of their books, in a new decree, while harshly reproving them for failing to strictly obey the first. This time the emperor commissioned Archbishop Uriel to carry out the decree. He also ordered him to seek, and to follow the advice of the German universities of Cologne, Mayence, Erfurt and Heidelberg, and also to take counsel with Reuchlin, Victor Karbensky and Hochsträter (although the latter was totally ignorant of Hebrew). Uriel commanded the director of the University of Mayence, Herman Hess, to visit all the cities of Germany, and to remove all the Jewish books. Hess did so. He travelled through Germany accompanied by Pfefferkorn; and in Frankfort alone fifteen hundred manuscripts were taken away (printed books were as yet rare). They did the same in Worms, Lorch, Birgin, Lamuven, Mayence and Dertz. Pfefferkorn said that the Jews, to save their literary treasures, offered to enrich him, but he claimed he did not care to sell his soul and therefore did his duty.

The Jews on the other hand, did not cease in their efforts to prevent their despoliation. They secured testimonials from the more prominent among the Gentiles, and sent a committee to the emperor to petition him to prevent these attacks on their religion. They adduced proofs to show that their books contained nothing against Christian communities. They brought forward the privileges granted to them by former emperors and popes, enabling them to worship their God without the interference of the Church or State. These facts so favorably impressed the emperor that he commanded that all the books should be returned to their owners. The joy of the Jews on learning of this decree cannot be described, since thereby not only were they granted possession of their books, but a peaceful residence in Catholic countries was accorded them.

This joy, however, was only momentary, as both the Dominicans and Pfefferkorn still continued their malevolent activity. To add to the misfortune of the Jews, an event befell

which the Dominicans were not slow to utilize as a weapon in their warfare against the faithful, with the aid of which they hoped finally to bring about the latter's destruction. Sacred vessels were stolen from a Christian church by a Gentile, who was arrested and who thereupon confessed that he had sold them to the Jews. As a result, all Jews were severely persecuted by the Bishop of Brandenburg. At the same time, or somewhat later, the Jews were accused of having killed a Christian child in the performance of their religious rites, and at the command of the same bishop the accused Jews were removed to Berlin, and thirty-eight of them were burned at the stake after suffering tortures on the rack.

These events the Dominicans made use of to arouse the fanaticism of the people of Germany. They addressed themselves to the emperor's sister, Kunigunde, to whom they painted these occurrences in the blackest colors, at the same time extolling Pfefferkorn as a converted Jew conversant with Jewish customs and manners. They stated that the Talmud contains the evil teachings which had become rooted in the hearts of the Jews. They represented to her the danger to Catholicism in the latest command of the emperor, and placed all their hopes in her keeping, as she was the only one who could save Catholicism from injury. At the same time they strove to find favor in the eyes of the people who protested against this persecution. A new pamphlet was prepared, in Pfefferkorn's name, which was dedicated to the Emperor Maximilian, praising him for his zeal for the Catholic religion. This pamphlet, after complaining that the Christians do

not give full weight to the activity of the Jews against Catholicism, and charging that the whole fault lay with the Talmud, since its teachings prevented the Jews from embracing Christianity and permitted usury, affirmed that the one thing necessary was that the emperor should deprive the Jews of his books, and that it was the duty of all good Christians to help him in this matter, furthermore, that this cause met the approval of the emperor's sister, the nun Kunigunde. It further stated that all Christians who defended Jews should be treated as heretics, and Jewish apostates who did the same should be presumed to have taken up Christianity, not from belief in the Holy Trinity, but for baser reasons. The Princess Kunigunde actually interceded

for them, and, presenting herself before the emperor, she begged him on her knees to grant the request of the Dominicans. The emperor again ordered Archbishop Uriel to hasten to seek the advice of the above-mentioned German universities, and especially to get the opinion of Reuchlin, Karbensky and Hochsträter, and transmit the same to him (the emperor), so that he might be prepared to judge whether or not the Talmud should be destroyed.

Reuchlin did not hasten to give his answer, and when, after three months his answer was composed, and delivered to the emperor, it was found to be unfavorable to Pfefferkorn. In this answer he divided Jewish literature into six classes, exclusive of the Bible, as follows: (1) poetry, fable and satire; (2) commentaries; (3) sermons, songs and prayers; (4) philosophy and science; (5) the Talmud, and (6) Kabbala. "In the first class," said Reuchlin, "are to be found books which deny or criticize the Christian religion;" but he could name but two of them of his own knowledge, and these were the pamphlet of Lipman (of the existence of which we have no records) and the life of Jesus. He declared, however, that the Rabbis themselves prohibit the possession of them by Jews and threaten severe penalties upon any one venturing to read them. "It is self-evident," he stated, "that this class of books must be destroyed without scruple."

With regard to the second class, he affirmed that they not only contain nothing harmful to Christianity, but, on the contrary, they are of great value in the interpretation of the Scriptures. Many Gentile scholars, could not, in many cases, fathom the depths of meaning of the Bible, because of insufficient knowledge of Hebrew. "It is true," he said, "that scholars had been heard to declare, we do not care for the Jewish commentaries, as we have a sufficient number by Christians." He compared these same to a person wearing a light garment in cold weather, since the basis for right understanding of the Scriptures is the knowledge of the original language wherein they were written.

"As for books of the third class, it would be an injustice to deprive the Jews of them, because they had received from emperors and popes the privilege of unmolested worship.

"Regarding the fourth class," he said, "they stand on an

equal footing with books of the same class in Latin, Greek or German. But of the Talmud I must own that it is to me a sealed book, and it is evident that those who pass judgment upon it have as little knowledge of it as I. They have no idea of its nature; or of its, history; nevertheless they talk as if they knew and understood clearly all that it contains. I can only compare such people

to those who would venture to criticise algebra while they are totally ignorant of the rudiments of arithmetic. The fear is expressed that the Talmud might injure Christianity; this is absurd for nothing can withstand the proofs in its favor that are found in the Bible. If the Talmud really were as bad as they affirm, then our ancestors, who were much more religious than we, would long ago have put an end to its existence." He declared that the testimony of Pfefferkorn and Schwartz. against it, being inspired by unworthy motives, should not be given consideration. "Moreover, if we would but study the Talmud we would not destroy it, but rather encourage the Jews to hold it in still greater reverence and study it the more assiduously, for as a consequence there would be copies not alone in Germany, but also in Italy and Turkey, where many colleges for its study exist. To what purpose is the burning of a few copies of the Talmud, if you are unable to annihilate it entirely? Besides, by such action we should commit a breach of faith for we would thus abrogate the privileges granted to them by former emperors and popes."

Regarding the sixth class, he praised the Kabbala in the highest terms, and cited Count Picko de Mirandella, who, he says, induced Pope Sixtus VI. to study it; the latter discovered in it so much in support of Christianity that he translated Kabbalistic books into Latin. Reuchlin concluded that to deprive the Israelites of their books could only be likened to a duke challenging a knight to combat and then taking away his weapons. He advised the German rulers who were desirous of having the Jews embrace Christianity, to establish in all the German universities for a period of ten years, chairs for the study of the Hebrew language; then the students having a thorough knowledge of the language, could convince the Jews, by proofs from their own Bible, of the truths of Christianity. Returning again to the apostates (he plainly referred to Pfefferkorn, though he did not name him), he said: "Of what value

is advice given by people who abandon Judaism through jealousy, animosity, fear of persecution, penury, revenge, ambition, love of pleasure, or even through mere recklessness? Such individuals bear the name of Christians, but in heart they are not Christians. I know of some whose faith in both religions, Christianity and Judaism, is weak, and who, if their schemes were brought to naught, would become disciples of Mohammedanism. The Jews have been citizens of Germany for three centuries and should be protected by the law, It would be ridiculous to adjudge them heretics, for they were not born Christians, but have been Jews from a time antecedent to the birth of Christianity.

However, the answer of the German universities was different. The theological faculty of Mayence replied that not only were the Talmud and all rabbinical books full of falsehoods and heresies, as Christian scholars testify (the faculty themselves confessed that they were ignorant of the Talmud and Hebrew), but that the Hebrew Bible also was not altogether free from error on points of Christian doctrine. The faculty deemed it advisable, therefore, that the books be revised by Christian scholars, and if anything be found contrary to Christian belief it should be burned.

The University of Erfurt counselled in like manner, but the Faculty of Heidelberg advised the emperor to select a committee from the faculties of all the universities of Germany to judge the Talmud and all Jewish literature, and let their decision be final.

Reuchlin sent his answer under seal to Archbishop Uriel, but by some means not recorded its contents became known to Pfefferkorn before it reached the emperor. When he and the

Dominicans had perused it they were greatly perturbed. They were aware of the esteem in which Reuchlin was held by the emperor, and the weight his answer would be given to by the latter, and resolved to do something to weaken the effect of this answer on the emperor and the public. (In their haste to forestall Reuchlin they did not consider the risk to themselves in making public his answer before it reached the emperor.) A pamphlet was issued under the title of "Handspiegel," in Pfefferkorn's name, couched in flowing sentences, giving prominence to all the weak points in Reuchlin's answer, charging

him with ignorance, abusing him and ridiculing his theory and misrepresenting it to the common people. The pamphlet stated that Reuchlin himself understood nothing of the Hebrew language, and that his book on Hebrew grammar was written by other hands; therefore, they asked, how can such a man counsel the emperor in matters of which he himself is ignorant? It stated, further, that Reuchlin's declaration that the Jews must be protected by the law proves the utter absurdity of his whole answer, and that it may be justly suspected he did not do this for nothing. To add force to their contention, they published a letter which Reuchlin himself had written to a knight five years before, and called upon Reuchlin to deny his statement in this letter that the Jews slander Christianity; his refusal to do so would indicate a desire to wantonly mislead the emperor and all good Christians. It said, moreover, that the fact of Reuchlin's renown among the Jews alone showed that he had fallen a victim to their wiles. At the end of the pamphlet, Pfefferkorn charged Reuchlin with having accepted money from the Jews, and blamed him for defending them, since it was his duty to regard them only as heretics. He also charged Reuchlin with countenancing usury (nothing about this was mentioned in Reuchlin's answer).

As Reuchlin was well known and much respected in Germany, this pamphlet made a commotion, and the people evinced a desire to read it, to learn of what Reuchlin was accused, As it was written in the popular jargon, many went on fair days to Frankfort-on-the-Main to purchase the pamphlet from Pfefferkorn. Reuchlin himself was astonished at Pfefferkorn's impertinence, and annoyed at the imputation on his honor; he therefore complained to the emperor. The latter, angry at the action of Pfefferkorn, promised Reuchlin that he would entrust the task of the revision of the Jewish books to the Bishop of Augsburg; but the emperor being at that time deeply occupied with matters of state, this affair was for the moment forgotten. Meanwhile a second fair was held at Frankfort, and Pfefferkorn hoped to distribute the remaining pamphlets among the people. As soon as this point in the contest was reached, Reuchlin resolved, since the quarrel had from a religious become a personal one, to uphold his wounded honor. He wrote a work entitled "Augenspiegel," in

which he complained that a Jewish apostate should endeavor to destroy the Talmud. He told the public how Pfefferkorn had come to him, asking his co-operation, and how by despicable means he became aware of the contents of his answer to the emperor, so as to be able to heap more calumnies upon him. He charged that there were thirty-four lies in Pfefferkorn's pamphlet. He said, further, that he had not lost hope of facing Pfefferkorn in court, and that the latter had merited the sentence of death for inciting the people against the Jews. He declared the charge that he had received money from the Jews, a false one, adducing many proofs to show that the Dominicans and Pfefferkorn merely intended to stain his name. He further proved that he himself had written the Hebrew grammar. To the main accusation, that he had learned Hebrew

from a Jew, he replied that Christianity did not forbid Christians from having dealings with, or learning from, Jews, especially as this was often productive of good in the conversion of the Jews.

Now, instead of Pfefferkorn's pamphlet, Reuchlin's was distributed at the fair, and was sold in large quantities to the people. The Jews it is fair to believe, greedily bought the work and did their utmost to spread it among the people. A preacher named Peter Mayer, of Frankfort-on-the-Main, while reading Reuchlin's pamphlet in the presence of Pfefferkorn, exclaimed that it ought to be burned at the stake; and, with the sanction of the Archbishop of Mayence, he prohibited its sale. But the priests of Mayence, all friendly to Reuchlin, at their convocation begged the archbishop to recall the prohibition and he consented. In a short time all Germany was in possession of copies of the work, and Reuchlin received many congratulatory letters. However, the strife was not yet over. His enemies did everything they could to overthrow Reuchlin. Paul Mayer, after his attempt to suppress the sale had proved futile, announced that Pfefferkorn would lecture on Reuchlin's books in the Catholic Church during the coming holidays. As Pfefferkorn was a married man, and not a priest, and therefore unable to preach from the pulpit, he lectured in the hall of the church in the popular jargon, holding a cross in his hand. The burden of his lecture was that the Jews should be persecuted unless they accepted Christianity. It was the first time in the

history of the church that a Jew had stood in the corridor of a church with a cross in his hand and preached against the Jews.

The monks meanwhile gave Reuchlin's work to Arnold Tangersky for revision, and he naturally, being himself a Dominican, denounced it as heretical. The Dominican, Ulrich of Sternheim, wrote a letter to Reuchlin, in which, speaking as a friend, he says: "The scholars of Cologne are not yet united in their opinion as to what should be done with your work. Some of them maintain that it should be burned; others say the author should be punished; and still others are stronger in condemnation of it." This letter did not fail of its purpose. Reuchlin understood full well that if the Dominicans openly declared against him, he would be in great peril, since at that time their power was supreme and they were feared even by the emperor himself. The Pope, Alexander VI., himself exercising a power to which kings themselves were subject, declared he would offend a rule sooner than the humblest Dominican. Reuchlin hastened, therefore, to indite, in Latin, a letter to Tangersky, the reviser of the book, in which he modified his previous statements. He said he judged the Talmud, not as a theologian, but as a layman, and he could not know, when writing his book, that the scholars of Cologne, would disagree with him. He also stated that he had not intended to cast blame on any one in his pamphlet, and besought Tangersky to show him his errors in the "Augenspiegel" and not condemn him before doing so. He wrote a letter of a different tenor to his teacher, Koln. In this he ventured to blame the head of the Dominicans, Hochsträter, whom he charged with having written the pamphlet under Pfefferkorn's name, and he begged him to explain his words to the faculty, so that they would see the truth and not blame him (Reuchlin) unjustly. The response to this letter to Koln was not sent to Reuchlin for a long time. The Dominicans obviously sought, by delaying it, to furnish him a pretext for committing an overt act. He finally received together two letters, one from the Cologne students and the other from Koln. The faculty scolded him for interfering in a quarrel which did not concern him, and at the same time preventing the emperor from performing a meritorious act in suppressing the Jewish books. This fact, they claimed and his writing the

"Augenspiegel," went far to confirm the

suspicion that he inclined to Judaism, and therefore it was their duty to punish him severely. They could not, however, refuse the request of Arnold Tangersky and of Koln to defer punishment until he was given opportunity to write a second pamphlet, retracting all his words in defence of the Talmud and in blame of Pfefferkorn.

Koln wrote him that he should feel grateful to him for inducing the faculty to withhold his sentence and for pacifying the Dominicans. At the same time, he reminded him of the danger which hovered over him, and advised him to hasten and repair his error by another pamphlet, contradicting all his previous statements. As to Reuchlin's accusation that the pamphlet "Handspiegel" was from the pen of Hochsträter he maintained complete silence.

Reuchlin at once answered his enemies in two letters. He thanked them for their intercession in his behalf, but claimed that as a married man (even twice married) he could not be longer counted among theologians, and therefore knew very little of the teachings of faith. He also cited proofs showing that he was not a friend of Judaism or the Jews. Nevertheless he refused to contradict the statements contained in his first pamphlet; on the contrary, he reiterated them, but asserted his willingness to write a commentary on his "Augenspiegel," explaining any ambiguous passages therein. He again urged them to point to him the passages because of which they accused him of heresy, saying that only then could he either defend his assertions or confess that he was in error and revoke them. The Dominicans, seeing that correspondence was of no avail, commanded him, first, to stop the circulation of his pamphlet; secondly, to contradict all he had previously said; thirdly, to restore the lustre of his name by showing himself a good Christian and a persecutor of the Jews and their literature. If he should refuse to do this, he must stand trial before the judges of the Inquisition. Koln also wrote him again, saying that but for this (Koln's) pleading, Reuchlin's pamphlet would long before have been burned and himself brought before the Inquisition; therefore he again urged him to respect the command of the faculty, as, should he fail to accede to their order, he could do nothing more for him.

Reuchlin, seeing that further argument was useless resolved

firmly to take up the gage of battle, happen what may. First of all, he replied that he could not stop the circulation of his work, since it was no longer his, but was the property of the publisher. He could only write a commentary as an explanation of doubtful passages. To his supposed friend Koln, he wrote that if the latter had indeed prevented his work from being burned, the faculty should feel grateful to him (Koln) for restraining them from doing wrong, but that he himself entertained no feelings of gratitude for it. He told him he did not fear a contest with the Dominicans, as he had many defenders, men of prominence and power in Germany, and if the matter were attended with any danger it was to his enemies. It was easy, he said, to begin a fight, but much more difficult to gain a victory. He could not understand why his enemies failed to consider how the people would judge them if they took the part of a Jewish apostate against a born Christian and a firm believer in Christianity. He was certain that Pfefferkorn, if thereby he could derive any benefit, would become an apostate even to Mohammedanism or any other

religion. To think that Pfefferkorn should preach against the law of the land and calumniate him! The Dominicans, he continued, to seek to accuse him of trivialities, and close their eyes to the many great sins of the apostate. He also said that *poets* and writers of history would stamp with shame the entire faculty, and would make of him (Reuchlin) a martyr for the truth.

Reuchlin kept his promise of writing a commentary to his "Augenspiegel," but it had the effect of adding fuel to the fire. The Dominicans were more than ever enraged, and Tangersky wrote a pamphlet which he dedicated to the emperor, and which contained the following concerning Reuchlin's interference in religious matters which are above his understanding:

In his pamphlet one can see that he favors the Jews, and in keeping with this he has written sentences which border closely on heresies. "The work concludes by saying that it is undoubtedly necessary to put the Talmud to the stake. This pamphlet effected what the author had intended. The emperor, who had hitherto defended Reuchlin, now turned against him, and on his arrival at Cologne he commanded that Reuchlin's pamphlet and commentary should not be circulated. The

Elector of Mayence, acting in conjunction with the Archbishop of Cologne, displayed this order on the churches, and threatened the public with excommunication if they did not return Reuchlin's pamphlet to the churches, But even this failed of the desired effect, for Reuchlin's friends were too numerous, greater even in number than those of the Dominicans; the people had but small liking for the latter, and they especially despised the head of the order, Hochsträter. Therefore Pfefferkorn issued a new pamphlet, entitled "Brandspiegel," wherein Reuchlin was accused and debased. Therein he was styled a man who had forsaken the church, and whose hands were sullied with Jewish bribes. As for the Jews Pfefferkorn stated that they ought to be persecuted without pity, and incited the people to plunder them and devote the spoils to convents and hospitals. This was Pfefferkorn's last pamphlet, from this time he ceased to take part in the fight. Reuchlin, under a pseudonym, wrote another pamphlet, "The Defender." In this he says: "If any one asserts that Reuchlin did not, in the Jewish controversy, conduct himself as a true and upright Christian, he utters a falsehood." He attacks all the Cologne scholars, especially Arthur Gracia and Jacob Hochsträter. "Why," he asks, "do they make such an uproar and hold themselves up as greater authorities than other scholars of German universities?" And to the emperor he says: "Permit, your majesty, the Dominicans to judge the Jews by the Inquisition, that will fill their pockets with the gold and silver of the Jews. That is what they want; obtaining it, they will then leave me unmolested." To Arnold Tangersky, who accused him of protecting the Jews, he says: "It is true I am the protector of the Jews. I protect them against false accusations. I know that my assertion that they are citizens of Germany and entitled to the protection of the law, as other citizens are, will excite their enemies; but I say and repeat again, the Jews are our brothers--brothers to Arnold, brothers to the Dominicans, brothers to all the theologians, and the fathers of the Church long ago made alike declaration." To the assertion of the Dominicans that he contradicts what he had written in his former letter, he replies that it is true he had been prejudiced against the Jews until he was convinced of his error. The calumny that Jewish prayers MAINTAIN that all Catholic rulers should be put to death he

refutes by quoting a Mishna: "Thou shalt pray for the peace of the kingdom wherever thou abidest."

This pamphlet was sent to the emperor, who received it favorably, and, owing to the complex questions involved, his mind wavered in the course he should pursue. First he assured Reuchlin of protection against the attacks of the Dominicans. Then his father-confessor, an enemy to Reuchlin, spoke in favor of the Dominicans, and the emperor again prohibited the circulation of Reuchlin's work. Finally he commanded both parties to cease their strife. Even this command failed of its purpose. The imperial decree was unheeded by the Dominicans, and the head of the Inquisition, Hochsträter, summoned Reuchlin to appear within six days before the judges of Mayence to defend himself against the charges of heresy and of defending the Jews. This summons was couched in language unprecedented in its insolence. Reuchlin did not appear at the trial, but sent a deputy. Hochsträter opened the court. He was both prosecutor and judge, and was certain that the trial would result in the success of his scheme against Reuchlin, and would cover the latter with ignominy, more especially as he had received favorable opinions from the German universities that had been ordered to afford counsel. The University of Loewen had replied that the pamphlet should be burned, that of Cologne, that besides its misleading nature, it showed decided leanings to heresy; the University of Erfurt gave answer of like import. Those of Heidelberg and Mayence alone did not respond. Hochsträter therefore felt sufficiently supported and certain of winning the trial. He recited a long list of grave accusations against Reuchlin, and gave it to his colleagues of the court, calling upon them to adjudge the defendant guilty and order his pamphlet to be burned. Reuchlin's deputy protested that Hochsträter had no right to be persecutor and judge in one; the less so as he was known to be Reuchlin's bitterest enemy. Seeing, however, that protest was of no avail, he left the court, Hochsträter, hesitating to sentence, contrary to public opinion, one who was not present, posted notices on church doors, requiring Reuchlin's deputy and all who had an interest in him, to appear before the court. He also ordered the public, on the pain of excommunication, to return the copies of the "Augenspiegel" to the judges of the

Inquisition. The Dominicans triumphed that day and Reuchlin's defeat was seemingly close at hand. But this triumph was only of brief duration. The people of the better class of the city openly murmured against Hochsträter's proclamation and even the archbishop's colleagues advised that the trial be delayed for a short period, since Reuchlin or his deputies had not undergone examination.

The trial was therefore postponed for two weeks, Hochsträter thinking that Reuchlin would be ashamed to appear in person as a defendant, and feeling certain that at the expiration of two weeks he could be adjudged guilty by default. But Reuchlin did appear in person with the counsellor of the Duke of Württemberg, and that of the Duke of Mayence. The "Kapital" endeavored to make peace between the two parties, but in vain. The inquisitor Hochsträter refused to listen to overtures of peace, and ordered the judges to do their duty. They obeyed and began to write down their judgment, when suddenly a rider appeared with a letter in his hand from Archbishop Uriel. He passed through the crowd and straight to the judges, who were much astonished and anxious to know the contents of the letter. It was read aloud to the assembled people, and was to the effect that Archbishop Uriel commanded the postponement of the trial for one month, and if this command were disobeyed he would declare it a mistrial and dissolve the court. The Dominicans, defeated, left the court amidst the laughter of the people. There was

much rejoicing among the Jews, as upon this trial depended their fate; but Reuchlin was not content with the mere postponement of the trial, knowing that the Dominicans would persecute him until they conquered. He determined, therefore, to leave his fate to the decision of Pope Leo X. But, learning that the Dominicans would bribe the advisers of the pope and persuade him to order the trial to be held in Cologne, he wrote a letter in Hebrew to the pope's physician, Bangett Delakes, beseeching his influence to prevent this. Leo, involved just then in grave secular matters--religious questions, for the time being, having no place in his councils--and seeing his quarrel likely to spread over Europe, directed the bishops of Speyer and Worms to end the contest by issuing a decision which should be respected by both parties. These bishops

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appointed a committee to investigate and report on the matter. The committee, though in awe of the Dominicans, conducted their investigation deliberately, and at the end of a year pronounced the pamphlet "Augenspiegel" free from any heresy, and Reuchlin to have no leanings towards Judaism or the Jews. They therefore permitted its circulation and ordered Hochsträter, on the pain of confinement in a monastery, to pay to Reuchlin 300 gulden as the costs of the trial, and threatened him with excommunication if he disobeyed the order.

Hochsträter then appealed to the pope for an impartial trial, hoping that by a liberal use of the wealth of the Dominicans, since Reuchlin was poor, the latter would suffer defeat. He also sent Reuchlin's "Augenspiegel" to the University of Paris, esteemed the greatest university of the time, urging it to condemn the pamphlet. He appealed also to all of Reuchlin's opponents and all who were zealous for the welfare of the Catholic Church to unite against him. Reuchlin's friends were not idle. Realizing the evil exerted by the Dominicans throughout the world, they, together with a body of Catholics called "Humanists" who sought the reformation of the Church, united under Reuchlin's flag and termed themselves "Reuchlinists." The opposing party adopted the name "Arnoldists." These were the two parties that occupied the public mind before Luther began the Reformation.

Many scholars of young Germany went over to Reuchlin's side, particularly Hermann von Busche, Croates Rinbianes, and the young and sagacious Ulrich von Hutten; also many of the rulers, among whom were Duke Ulrich of Württemberg and all his family, Count Halfenstein of Augsburg, Count von Guernor of Patriz, Welsen, Pirkameier, Neitiger, as well as many Italian priests, notably the General of the Augustinians, Eggodia de Viterba, who loved the Hebrew literature and was at that time engaged in translating the "Zohar." Viterba said in his letter to Reuchlin: "You have saved the books which have spread light all over the world for centuries, and if they were lost, darkness would ensue. And in supporting you, we shield not you but religion; and not the Talmud, but the community of Christ."

The strife spread all over Germany, and there was scarcely a city in which were not to be found either Reuchlinists or

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Arnoldists--the former, for the preservation of the "Augenspiegel" and the Talmud; the latter, for the destruction of both. The contest became each day more intense, and although the victory was with Reuchlin, he was still anxious as to Hochsträter's appeal to Rome, since the latter had great influence there. His friends therefore advised him to publish all the letters he had received from

all parts of Germany and Italy, to convince the pope of the character of the man the Dominicans were persecuting. Among these letters was one from the Emperor Frederick praising Reuchlin in glowing terms and testifying that he was held in honor and respect by the father of the pope, Lorenzo de Medici.

These efforts of Reuchlin and his friends brought about the appointment by the people of Cardinal Gremama, a lover of rabbinical literature and Kabbala, as investigator and judge of the quarrel. The Cardinal summoned Reuchlin and Hochsträter to appear in Rome, and as Reuchlin was very old, he was allowed to send a deputy. Hochsträter, however, appeared in person with all his wealth. This did not, however, disturb Reuchlin, as he had many friends at Rome. Even the Emperor Maximilian interceded for him with the pope. Among his other defenders was the emperor's secretary, Wurke, Duke Ulrich of Württemberg and the Elector of Saxony, Frederick the Wise (later the chief supporter of Luther). Many bishops also defended him, notably those of Strassburg, of Constanz, of Speyer, and numerous other churchmen. Hochsträter spent large sums of money to procure the appointment of Cardinal Bemardine de Santa as assistant to the judge, but, through the influence of the Reuchlinists, Cardinal Pietro Ankenotini de Sant' Isemblia was selected by the pope for this office. The pope's committee forbade any discussion of the matter until the sentence of the judges of Rome was announced. But the Dominicans heeded neither this command nor public opinion, and, in order to influence the pope, they even threatened, should Reuchlin be victor at the trial, to secede from the church and unite with the Hussites of Bohemia. They also, in defiance of the prohibition of discussion, placed hope in the University of Paris, for at that period France and Germany were in conflict in secular matters, it naturally befell that on religious questions also their views were diametrically opposed.

[paragraph continues] So the University of Paris, though in heart and conscience in full accord with Reuchlin, nevertheless, for purely worldly reasons, felt compelled to render an unfavorable opinion of him and of his works, stating that the "Augenspiegel" contained heresy and should be burned, and that its author should be compelled to make full retraction. The Dominicans hastened to published this reply from Paris in a pamphlet entitled "Glocke" (bell), in the name of Pfefferkorn, although for this action Hochsträter was indicted by the Fiscal of the Emperor. The emperor's sister, Kunigunde, again kept Hochsträter from imprisonment. The Dominicans employed every means to delay the trial, so as to increase Reuchlin's expenses, thinking that, since he could not afford the necessary expense attached to it, he would forego trial. Reuchlin's friends represented to the public Hochsträter's evil designs, and at the same time appeared a collection of letters "From the Benighted People." The first volume, written in a satirical style, professed to be from the pen of Krate Rubian of Leipzig, and contained confessions by Dominican monks of their evil deeds since the existence of the Order. These letters were quickly spread throughout the entire west of Europe despite the protests of the Dominicans, which protests, indeed, only furthered their circulation. Hochsträter, fearing lest the trial would end in Reuchlin's favor, demanded that it be given to an international council, since the matter concerned the entire Catholic Church. The pope, who was, as it were, placed between two fires, the German Emperor and rulers, on the one hand, and the King of France and the heir-apparent of Germany (who sided with the Dominicans), on the other, resolved to place it before the Council of the Lateran and all Europe.

Two years passed; the strife had not yet ended, and Reuchlin became sad at heart. He feared that his friends would fall away from him, seeing no immediate prospects of the close of the quarrel;

he also feared, as he was advanced in years, lest he should die before its settlement, and the Dominicans win the battle, while his name would become a reproach. These fears were unfounded, as his friends did not weaken in their support of his cause. Finally, on the 2d of July, 1516, the result of the trial was announced at a session of the council, signed by Bishop Gregory Bengiani, as follows: The pamphlet,

"Augenspiegel," contained no heresy. The error, in such an assumption, rested with the Paris University, and the other faculties in agreement with it. The Bishop of Malta added that the judge of the Inquisition, Hochsträter, who considered himself one of the main pillars of religion, ought to be indicted. Under Bengiani's signature were written those of the other cardinals, except that of the Dominican Cardinal, Sylvester Priervis. As the pope himself had not yet acknowledged or sanctioned the sentence, Hochsträter did not despair, and, with the aid of his friends, he begged the pope to delay the execution of the sentence for an indefinite period, hoping to bring, at a future time, the trial before another council and obtain a decision in his favor. The pope commanded the parties to terminate their quarrelings and cease all discussion of the matter, under the impression that a command from him would put an end to it. He was mistaken; the strife grew in intensity and spread over Germany. Both factions were more than ever determined to continue.

When Hochsträter returned from Rome his life was in danger from the Reuchlinists, and only by the efforts of Reuchlin himself was bloodshed prevented. The Dominicans lost all favor with the public. This did not, however, prevent the Dominican, Peter Mayer, from lecturing in all the great churches against Reuchlin and his party, and abusing him in the vilest language. Finally, roused to violence by his words, the Dominicans slew some of the Reuchlinists. This resulted in a rupture between the pope and the Dominicans. But when the second volume of "The Benighted" letters appeared, wherein the Dominicans were painted in the blackest colors, they begged the pope to shield them from the wrath of the people. This time he listened to them, and prohibited the circulation of the pamphlet. This command was unheeded, as the light of knowledge was beginning to spread over the world, and the satire was read by many priests and monks of other orders than the Dominicans; and, at the same time, the Humanists distributed pamphlets and circulars against the Dominicans.

After no long interval, a second edition of "The Benighted" letters appeared, to the joy of the Reuchlinists. The Dominican leaders saw now that there was a rupture in the Catholic

Church, and announced to the pope that the people ridiculed their teachings and would not obey the doctrines of Catholicism. This time they told the truth. Hitherto, sufficient credit had not been accorded public opinion by the rulers, although the influence wielded by Luther was almost wholly due to it, and he acknowledged that the controversy between these two great parties had paved the way for the Reformation. After Maximilian's death, the strife became still more intense, and the topics most often heard were those of the Talmud, Reuchlin, Luther, and the Reformation. At the meeting of the electors of Germany, to choose an emperor, they all sanctioned Reuchlin's actions. Ulrich von Hutten persuaded the knight, Franz von Eickingen, to separate himself from the Catholic Church and join Reuchlin and Luther. This knight and his companion, Dalkery, with many other friends of Reuchlin, demanded that Hochsträter pay the

sum of 111 gulden to Reuchlin to defray the costs of the trial at Speyer, and also give bonds not to further molest Reuchlin. The Dominicans were fully aware that this command must be obeyed, unlike that of the emperor or the pope, which they would have unhesitatingly disobeyed. They were compelled to pay the above sum, but as the treasury of the government was empty, the sum did not go to Reuchlin, but to the government. Hochsträter was deposed from his post of judge of the Inquisition, and a committee of monks requested the pope to do all in his power to end the strife, and allow Reuchlin to live in peace, since he was a great scholar and a firm believer in Christianity. The Talmud attained new prestige, since henceforth the pope looked upon it with favor, and even persuaded Daniel Bamberg, of Antwerp, a famous printer, to issue a complete edition for the first time in its history. And, so, in the year 1520, the Babylonian Talmud appeared, with all the commentaries, in twelve volumes, and from this all later editions have been copied. Reuchlin in his last years was compelled, like Luther, to leave his home and seek an abiding place where he could live in peace. Later, when Luther sent delegates to the prominent rulers of Germany, the pope was forced to adopt the suggestion of the Dominicans and excommunicate Luther, and at the same time prohibit Reuchlin's works. But both the excommunication and prohibition were publicly burned by Luther

on the 10th of December, 1520. From this time on, Luther threw off the chains of the pope, and inaugurated the Reformation. Again, and for the last time, Pfefferkorn appeared with a new pamphlet against Reuchlin, but it received no countenance; on the contrary, he was abused by all factions; and his suggestion to expel the Jews from Frankfort was denounced by all alike. After this event, nothing more was heard of him. As soon as the Reformation was established, Reuchlin was called to take the chair of Hebrew in the University of Tübingen, where be taught many students. He died in 1522, to the great grief of his admirers. Reuchlin was generally credited by the Reformers with being one of the initiators of the Reformation.

Next: Chapter XV. Polemics with Muslims and Frankists

CHAPTER XV.

POLEMICS WITH MUSSULMANS AND THE DISPUTES WITH THE FRANKISTS

The Jews were not exempt from disputes with scholars of Islam also during the first years of the latter's history, but these disputes differed from those with the Christians in that they did not involve the Jews in calamities. In addition to the oral disputes, many controversial books appeared between the ninth and the sixteenth centuries, among which were the books of Saadiah the Gaon against the Karaites, which the Karaites answered, not with arguments, but with scoffing. A great quantity of books were issued by the Karaites in which they ridiculed the Rabbis, in particular Saadiah the Gaon, who exposed their weaknesses. Like service was performed by the book of Samuel ben Chaphni Hakohen, entitled "To Exalt the Value of Theological Studies," against whom the Karaite Samuel ben Jehudah Eben Agia wrote a pamphlet under the title "Strenuous Denial." R. Jehudah Halevi's "Hakusri" and Maimonides' controversial letters also had for their aim the strengthening of the foundations of the creed.

But the strife raged with the greatest intensity in Spain in the middle of the twelfth century. First appeared the book on "Sepher Habrith" by R. Joseph Kimchi. Following this came controversial works by R. Jacob b. Reuben, R. Moses b.

[paragraph continues] Tikun, and R. Moses b. Solomon, of Saliri, the title of the latter's book being "A Word of Faith," in which he records disputes with Christians; by R. Jechiel b. Joseph, of Paris, R. Nathan, of Upsala, R. Joseph, and R. Meir b. Simeon, in his book "The Battle of Merit," in which are related his disputes with the Archbishop of Narbonne; and by R. Mordecai b. Tehosaph in his book, "The Strengthener of Faith," written against the Christian, Paul Christianus, who had held many controversies with Ramban and others.

In reply to the book of Abner of Burgos, who adopted the name of Alphonse of Valladolid, and who wrote much that was hostile to Judaism, appeared works by R. Isaac Ebn Palkara, as well as by R. Joseph Shalom, under the title of "A Reply to Alfonso's Writings." How great a degree of tolerance the Jews manifested in this controversy may be seen from what Moses of Narbonne wrote of Abner, his former friend--namely, that he was intelligent and virtuous, but dispairing; unable to endure the calamities heaped upon the Jewish people; not content with the peace to his soul, but seeking also worldly happiness; and, reading in the stars that the Jews destiny was to suffer and bear trials, he fell into the error of thinking that they would never again be strong as a nation, and counselled them as he himself had done, to accept Christianity, not submit to their fate. R. Moses de Torsilla, also wrote a book entitled "Aid to Faith" (1374), consisting of seventeen chapters, in the form of a dialogue between professors of the two religions. In all these books it is declared that the Hagadas of the Talmud are not authoritative but are to be regarded barely as fiction, and as devoid of any sacredness. In Germany also appeared in defense of Judaism the work "Book of Victory" (Sepher Nitzachon), by the excellent writer, R. Lipman of Muelhausen, which appears to have made so deep an impression that the Bishop of

Brandenburg, Stephen Batekei, felt it necessary to reply to it.

Lastly may be mentioned the two disputes which took place between the Rabbis and the Frankists in 1756-1757, at the command of Bishops Dembovsky and Micholsky, in Kamenitz, Podolsk and Lemberg, cities of Poland. These terminated the disputes which the Jews were compelled to hold with their opponents in the presence of the people and dignitaries. They

were distinguished by the fact that the Frankists impeached the authority of the Talmud on the strength of the Midrash of R. Simeon b. Jochai, termed "Zohar," which they considered sacred, while they regarded the Talmud as profane. These disputes were further distinguished by the circumstance that the founder of the Hasidismus, R. Israel baal Shem Tob, was elected as the chief disputant to represent the Rabbis, forced to dispute with the Frankists in Micholsky's presence. The Frankists were an offshoot of the sect of the false Messiah, Shabattai Zvi, who produced a storm throughout the whole world in the year 1654. One Jacob Frank, a Polish Jew, accepted Islamism at Salonica, where he joined the sect of Shabattai Zvi, who were seeming Mohammedans and were called Dauma. In 1754 he arrived in Poland and set to work, with the assistance of two Rabbis, Moses and Nachman, who accompanied him, to revive the creed of Shabattai Zvi. The followers of Shabattai Zvi, who still remained in Poland, received him with open arms, and entered upon an open propagation of the mischievous teachings. The Jews thereupon informed the ecclesiastical authorities of the country of their activity, which so alarmed them that they hastened to the Bishop and asserted their belief in the Trinity, and that they were not Talmudic Jews, but followers of the Zohar--"Zoharites." They petitioned Bishop Dembovsky of Kamenitz to force the Jews to dispute with them and thus afford them opportunity to prove that the only true belief is in one God in three persons, incarnate in the flesh, and the teaching of the Talmud all vanity, etc., a rehabilitation of all the old slanderous charges. The Bishop ordered the dispute to begin in May, 1754; and the Jews, not appearing at the appointed time, incurred a heavy fine therefor. In June of that year there assembled at Kamenitz thirty Rabbis, from whom were chosen as disputants R. Leib Meziboz, R. Bar Jozelovitz, R. Mendel Satanow, and R. Joseph Kremenetz; and about the same number of Frankists, headed by Leib Krim of Nadvarna, Soloman Shur of Rahatin and Nachman of Bushk. The pleading of the Rabbis that in the Zohar and in all the books of Israel there is no hint of a Trinity, which was purely an invention of the Frankists themselves, was of no avail, for Dembovsky decided against the Jews and fined them 5,000 gold guldens, to be paid to the Frankists, and also directed the

Jews to dispute with the latter whenever called upon; one hundred and fifty gold guldens were likewise to be paid by the Jews for the repair of the Christian Cathedral at Kamenitz. All copies of the Talmud were to be burned, although the Jews appealed to the King, August III., against this decree of Dembovsky, claiming that they possessed the right, accorded to them by previous rulers, to print the Talmud; and although they were sustained in this contention by many princes of the kingdom, yet, owing to the political and religious turmoil then existing throughout the kingdom, the king or his minister, could give no heed to the matter, and the Jews were forced to submit to the decree of the bishop. Shortly thereafter, however, Dembovsky died a sudden death (the result of an injury received, it is related, from a fire which consumed the Talmud), and was succeeded by Labinsky, who showed no favor to the Frankists. The Jews, with the help of the

government officials and an expenditure of money, effected the expulsion of the Frankists from their residence near Kamenitz, for being neither Jews nor Christians, and they suffered persecutions. They were compelled to shave part of their heads and half of their beard; insults and indignities were heaped upon them, and many fled to Turkey. But even there they found no rest; they were relentlessly persecuted, and Elisha Ratin, one of their leaders, was beaten to death. They therefore betook themselves to the frontiers between Poland and Turkey, in constant peril of their lives from the people of both nations. When their condition became unbearable, they turned again to the king, and begged him to restore to them the freedom granted by Dembovsky. In this they succeeded; the king permitted them in May, 1757, to settle undisturbed in the province of Podalia. And thus they returned to Poland, in poverty and rags. In this state of degradation Frank advised them, in order to better their condition, to embrace Christianity. They therefore, in January, 1758, sent a petition to the Bishop Labinsky by six of their leaders, asking that they be received into the Catholic Church and be granted permission to dispute with the Talmudic Jews, who drink the blood of Christian infants, etc. Labinsky replied that it was not in his power to improve their material condition; their acceptance of Christianity could affect only their spiritual welfare. They again addressed themselves to the king, in May

of the same year, but their petition was not answered. Labinsky suddenly resigned his office and Micholsky was chosen his successor. The latter exhibited a great zeal for proselyting, and the Frankists hastened to present their petition to him, requesting permission, before being baptized, to dispute again with the Jews. Perhaps, they urged, they might succeed in convincing the Jews of their great error and madness and in inducing them to accept Christianity too. Micholsky acceded to this request, and ordered the Jewish Rabbis to assemble at Lemberg on a day appointed by him.

At the time set for the dispute there came in sorrow to Lemberg, forty of the chief Rabbis of Poland, at their head Israel Besht of Mezibuz, and chose as disputants three of them--Besht, the Rabbi of the district, Haim Rapoport, and R. Bär Jozelovitz. The disputants for the Frankists were Frank himself, Leib Krim, and Solomon Shur.

The dispute lasted three days, beginning June 23, 1758, and the hopes of the Frankists for a victory were shattered. Though Micholsky and many Polish nobles sided with them, they failed to prove that the Zohar contained anything that favored their religion. The judges, even, utterly disagreed with the distortions to which they subjected the passages of the Zohar and Kabbalistic books. The Jewish Rabbis departed in peace, without being fined, and the petition of their adversaries, that a district in Poland be set apart for their dwelling, was refused, and they were invited to receive baptism. Thus ended favorably for the Jews the last of these peculiar disputes. The Jews made efforts to induce the Frankists to become Christians as soon as possible, that there might in future be no relationship, between them. In this they succeeded, and since that time, between the Frankists, as Christians, and the Jews there has been nothing in common in either religious or secular matters.

Next: Chapter XVI: Persecution during the Seventeenth Century

CHAPTER XVI.

THE PERSECUTIONS OF THE SEVENTEENTH CENTURY, THE HEAD OF WHOM WAS JOHANN ANDREAS EISENMENGER.

The victory of Reuchlin, and the establishment of the Reformation by Luther, in the sixteenth century, did not stop the persecution of the Talmud. It was ever renewed by men of rank in the different countries. The most dangerous of them was Johann Andreas Eisenmenger, who spent almost all his lifetime in the destruction of the Talmud and its standard-bearers; and it seems miraculous that he did not succeed.

Eisenmenger was born in 1654, at Manheim. In 1666 he came to Heidelberg where he found grace in the eyes of Prince Carl Ludwig, who was pleased with Eisenmenger's determination to learn the Hebrew language. Prince Carl Ludwig sent him, at his own expense, to travel in different countries to become accomplished in the study of Oriental languages. But when Eisenmenger was about to visit Palestine, the prince died (1680), and he established himself in the City of Amsterdam, where he lived for some time in friendly relations with the Hebrew scholars and with Rabbi David Lida of that city.

At the end of the same year it happened that three Gentiles circumcised themselves and embraced the Jewish faith. This, according to Eisenmenger's own confession, angered him almost to death. And this occurrence made him determine to write a voluminous book on the "wickedness" of the Talmud, in order (he said) to save Christianity from danger.

He worked hard and successfully for nineteen years; translated into German from 193 different Hebrew books, and a considerable number of pages from various Tracts of the Talmud itself.

This book, which he named "Endecktes Judenthum" (Unveiled Judaism), containing two volumes of more than a thousand pages each, he gave in the year 1700 to the printers of Frankfort-on-the-Main.

The Jews of that city got wind of it, and being afraid that this book would cause a renewal of massacres of Jews, such as took place in the cities of Franken and Bamberg in 1699, where

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houses and other Jewish property were destroyed by the mob, appealed to Sampson Wertheimer, who was then the banker of Emperor Leopold, that he should point out to the emperor the dangers which such a book would lead to.

Remembering that after the destruction of Jewish property, the mob, in the above-mentioned

places, turned to the palaces of the noblemen, the Emperor commanded the Governor of Frankfort to stop the printing of the book, and to conceal all that was printed of the same, until a careful examination of the book by Gentile and Jewish Hebrew scholars would be made.

In spite of the assistance of many prominent men in the German Empire, who petitioned the emperor to release the books, he retained his decision and paid no attention even to the special personal letter from the King of Prussia in behalf of Eisenmenger. When Eisenmenger died in 1704, his books had not yet been redeemed from their captivity; and only in 1711 did Frederick I, King of Prussia, republish the book at his own expense, from a copy which was in the hands of Eisenmenger's heirs, donating all the copies to them. It would take too much space to relate the proceedings of Eisenmenger himself, and those of his heirs against the Jews of Frankfort, and the various decisions of the courts from the time of Leopold to that of the Empress Maria Theresa. We do not deem it necessary to recount them, since they are in no way related to the subject of the persecution of the Talmud. [1]

We have only to say that in the eleven years since the book was given to the press in Frankfort, until the circulation was permitted in Königsberg, its influence was weakened, so that it did not cause very much harm at that time.

Thereafter, however, many anti-Semites made use of the material gathered in this book, quoting it as being directly from the Talmud without mentioning Eisenmenger; probably because of his notoriety as an enemy of the Jews.

Concerning the book itself, we would refer the reader to Professor Franz Delizeh's book, "Rohling's Talmudjude," sixth edition, 1881, and many other criticisms of Eisenmenger's

work by Gentile Hebrew scholars, such as Professor Strack of Berlin and others.

We have refrained from stating our own criticism of the misinterpretation of the quotations from the Talmud, chiefly because we do not deem it necessary to study Eisenmenger's book for criticism. As for the explanation of the Talmud, we do not need to use him as our guide; and also in order to avoid apparent partiality; since we are ourselves the bearers of the Talmud's banner. (See App., No. 16.)

Footnotes

105:1 The details are given in Graetz's ("History of the Jews"), Hamelitz, 1888, by David Kahan.

Next: Chapter XVII: Attacks on the Talmud in the Nineteenth Century

CHAPTER XVII.

THE POLEMICS AND THE ATTACKS UPON THE TALMUD IN THE NINETEENTH CENTURY.

The nineteenth century was the jubilee of the Talmud's 2,000 years since its beginning, and the twelfth century since its conclusion, in which it overcome all attacks directed against it and remained safe, not only bodily but spiritually. This did not prevent the anti-Semites from renewing the persecutions and the accusations of it with increased energy.

Although the accusations were not brought to a public dispute, and to the intervention of the government, still the polemics in books and pamphlets were greatly increased by different persons in different countries. We do not desire to linger on these books, as their discussion would take up too much time and space, still we cannot refrain from mentioning them briefly, as they pertain to the history of the Talmud.

In 1848, A. Büchner, a teacher in Warsaw, printed a book, "Der Talmud in Seine Nichtigkeit," and according to Strack, Jacob Kittseer also printed a volume called "Inhalt des Talmuds und seine Autoritat," etc, both in the German language. The contents of these two books were mainly attacks upon attacks, and accusations upon accusations, rained down upon the Talmud in general and its followers in particular.

At the same time a missionary, McCaul, printed a book in the English language, entitled "The Old Paths," and S. Hoga, an apostate and also a missionary, translated it into Hebrew. The latter edition was distributed gratis and in tens of thousands

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among the Hebrews. We cannot deny that it was somewhat effective, as it caused many Jews to embrace Christianity.

At about the same time Isaac bär Levinson of Kremenetz, named the Russian Mendelssohn, wrote a book, entitled "Teuda b'Israel," in which he collected all the savings of the Talmud relating to the following topics, (*a*) that every Jew is obliged to learn the language of his country; (*b*) to engage in scientific pursuits; (*c*) that he must learn some trade and occupy himself, if possible, with agriculture, and (*d*) that be must be patriotic to his country, and must respect the laws of his country just as much as the laws of the "Torah," etc., etc. This book was so excellent that the eye of Nicholas I., Emperor of Russia, was attracted to it and he assisted Levinson both morally and financially. Finally he presented him with 3,000 roubles to enable him to publish his later works, "Zerubbabel," in which he proved the falsehood of the misinterpretations of McCaul in every respect, "Beth Jehuda," and "Efes Damin" (no blood), written against the blood accusation. His books were so effective that as a result McCaul's books were almost ignored.

The later affair in Alexander II.'s reign, however, we intend to elaborate on more fully, as at that time it created a great stir in Russia.

In 1876 a Roman Catholic priest, Lyotostansky by name, who embraced Greek Catholicism, published a book in the Russian language which he entitled, "Upotreblayut li Jewreay christansky Krov?" (Do the Jews need Christian blood for religious purposes?)

This book, which contains about 300 pages, was dedicated to Alexander III., then Crown Prince of Russia. He accepted the dedication with thanks to the author.

Lyotostansky, desiring to have the thanks of the Crown Prince publicly made known, printed posters announcing the Crown Prince's thanks for the dedication, and set them up everywhere, even on the railroad cars.

The dailies and periodicals in Russia also announced the works favorably owing to the fact that the book found favor in the eyes of his highness, the Crown Prince. The contents of the book are chiefly attacks upon the Talmud, accusing it of being the source of all the bad customs of the Jews, etc.

A meeting of the prominent Jews was then called and resolutions were passed as follows:

First, that Lyotostansky's attacks upon the Talmud itself should be silently ignored, for a debate on this subject in Russia would do the Jews more harm than good.

Second, to republish and distribute the voluminous book of Prof. Chwolson, who was a Christian, which defends the Talmud in general, and conclusively proves, both theoretically and practically, that the blood accusation is a trumped-up affair, and that all investigations in many countries have shown that no instance occurred in which the Jews used Christian blood.

Third, to republish the "Ukase" (decree) of Nicholas I., which declared that no blood accusation for religious purposes should be directed against the Jews as a people, and that if it should happen that a Jew be accused of murdering a Christian, he should be tried as an individual merely.

As is well known, there are people who endeavor to benefit themselves from all current calamities, and to announce themselves as leaders without considering that from such actions the calamity or affliction may become still greater.

At that time there were two such men, one in Russia and one in Austria, who desiring to make themselves popular, endeavored to place themselves in the front ranks of the defenders of Judaism for their own benefit.

In Russia there was Alexander Zederbaum, publisher of the periodical "Hamelitz" in St. Petersburg, a man of little knowledge, and who was never fitted for a public debate. He

challenged Lyotostansky to a public debate, which, however, the latter declined to accept.

The real leaders of Israel, like the well known S. I. Fünn of Wilna and Perez Smolensky, editor of the "Hashachar" in Vienna, and others, were angry because of Zederbaum's challenge, believing that such a challenge had caused an extremely unfavorable impression upon the Russian people, especially as the newspapers declared that Lyotostansky's declination was due to the fact that the alleged leader of the Russian Jews was an ignoramus.

The very learned Lazar Zweifel, teacher of the Rabbinical Seminary in Zhitomir, who, besides publishing a great book in

Hebrew, entitled "The Defender," against Lyotostansky's book, appealed in our periodical "Hakol," Vol. I. No's 27 to 31, to his co-religionists in Russia that they should appoint a committee to petition the Czar, Alexander II., to forbid all polemics about the blood accusation in newspapers, books or pamphlets, for such incitations always do harm to the government itself.

However, Zweifel's appeal was a voice in the desert, as the attempts upon the life of the Czar, in which, to our sorrow, some of our race took part at that time, made it impossible to bother the Czar with such petitions.

We may say, however, that even in this case the Talmud itself was saved, and the government did not stop the publication and circulation of it in Russia and even the study of it in the Jewish schools and institutions. Even in the curriculums of the institutes for Hebrew teachers, established by the government, some tracts of the Talmud were inserted.

Alas, we cannot say that the blood accusation by Lyotostansky had no effect; as in 1882, there were massacres in many cities where Jews dwelt. Although these were secretly instigated by the government itself from a political standpoint, the provoking of the mob was on the basis of the blood accusation. [1]

Next: Chapter XVIII. The Affair of Rohling-Bloch

CHAPTER XVIII.

THE AFFAIR OF ROHLING-BLOCH.

Dr. August Rohling, professor in Prague, wrote a pamphlet, the "Talmudjude," sixth edition, 1877, in the German language, the previous editions of which were translated into many languages, in which he painted the Talmud itself and all past Talmudical laws in very black colors. The material in all Rohling's writings (which are named in the previously

mentioned introduction of Strack, page 95) were taken from Eisenmenger, and from other men hired by him, as will be seen further on. Although the above pamphlet was received with great joy by the enemies of the Jews, who quoted him as a great authority, nevertheless, it would have been nothing more than a mere piece of literary work which could create no harm to the Jews had not something unusual occurred which put a different aspect to the affair.

Joseph Samuel Bloch who was at that time a Rabbi in a small town of "Florisdorf," and who was anxious to get a name for himself, considered all Rohling's work as a means of attaining his desire. He understood that if he should challenge Rohling to a debate and should accuse him of perjury and falsehood, and thus compel Rohling to sue him for libel and insult, this would give him a great name and the Jewish congregations of Austria, and especially of Vienna, would be compelled to defend Bloch with all their power, for the case would not be Bloch *vs*. Rohling, but the Talmud *vs*. Rohling.

Notwithstanding that at this time the Israelite congregation of Vienna was full of great men and scholars like the famous Dr. Jellinek, Chief Rabbi Güdemann, etc., etc., who deemed it better to pay no attention at all to Rohling's work, considering it as a mere literary piece of work, and the criticism of which they thought better to leave to Gentile Hebrew scholars such as Delitzsch, Strack, etc., who had already criticized Rohlings works. Bloch wrote an article in a weekly paper attacking Rohling most furiously and reviling him terribly with every possible epithet, including the charge of perjury.

Bloch's desire was then realized, for Rohling not being able to remain silent, secured the services of the very great lawyer, Robert Pattai, M.P., and brought suit against Bloch for libel.

The Israelite congregation of Vienna, although they were very much incensed at Bloch for his deed, nevertheless felt themselves compelled to secure a lawyer of equal ability to Pattai for the defense of Bloch, the result of which will be seen further on.

Circumstances helped Rohling to find an apostate Jew named Ahron Briman, pseudonym Dr. Justus, who wrote a book for him named, "Judenspiegel," composed of 100 passages

alleged to be found in the Jewish code, "Schulchan Aruch," according to the ordinances of the Talmud against Christianity, and asserted that the whole Talmud consists of such passages.

This book naturally created a tremendously unfavorable impression upon the whole Christian world, and several papers that were anti-Semitically inclined announced the *contents* of the book. One of these papers was "Die Merkur," in the City of Munster, which quoted many passages of the book and at the same time inserting a glaring editorial against the Jews. The District Attorney finding this article to be an incitation against a race, brought suit against the editor of the paper. This trial occurred December, 1883, and in order that the reader may have some idea of the proceedings, we translate in our Appendix some pages of our German work, "Der Schulchan Aruch und seine Beziehungen zu den Juden und Nicht juden." (See Appendix, No. 20.)

To illustrate who the person Ahron Briman the assistant of Rohling was, we have only to translate a few lines written by us about him in our "Hakol," No. 191, page 117, March 19, 1885: [1] "Anti-Semitism was stricken very hard this year. All their leaders are taken one by one to the prison, and they will have to give an account for their deeds to the judges. With the imprisonment of Briman, Rohling's sources were revealed and annulled, as his right hand, Briman, or Dr. Brimanus, or Justus, all of which names are identical, is now behind the bars, and the newspapers are now recounting his sins one by one.

We, however, say that he and all his literature are not worthy of such an honor. There is no doctor, nor learned man, no distinguished being, no Satan, but a simple, ordinary swindler, who endeavors by everything that comes to his hand to deceive the people. He (according to his biography which is published in the dailies of this week) has made a study of the Talmud and the Schulchan Aruch only that they might serve as his business schemes. He was a student in the college of Hildesheimer, where it was easy to imbibe

[paragraph continues] sanctification and really become sanctified in the city of Hague. To be still more purified he washed himself in the holy waters of Protestantism. Seeing, however, that this act would not bring him much fruit, for to be a "Pfarrer" (minister) one must labor diligently, and this he would not do, he set all this deed aside at one stroke and swerved over to the Catholic faith.

And then he followed his nature to catch in his net some young girls, who had confidence in him, and going further in this way the attention of the police was called to this, who put a stop to him.

For whom then such a fuss? We are neither a prophet nor the son of a prophet, but nevertheless we recognized his character from his so-called literature even as far back as 1883. As the following are our words in our pamphlet "Kritischer Ueberblick uber den Judenspiegelprozess in Munster," December, 1884, page 8, footnote 11, (when we were not aware who the author was): "If such would be written by a Jew he would be named criminal, deceiver, misanthrope, etc." True, that when we wrote this, we did not know that he was a Jew, and now we see that he was.

For this, however, we have only to be grateful to him because he left the Jewish fight before he wrote his hateful "Judenspiegel," and also before he gave his miserable material to Rohling. This, because the anti-Semites can. no longer blame the Jews on account of this person as they brought him over to become their ally.

But what became of the suit of Rohling against Bloch? We have to give the full credit to Dr. Kopp who forced Rohling to withdraw his complaint seeing that according to the testimony of his co-religionist scholars he could not win his case. And this may be seen from the book which Kopp has published in Leipzig, 1886, second edition. (See criticism of it in Strack, page 95.) We, however, deem it necessary to give the details of this book, in order to defend the Talmud, as this will throw light upon all past and present accusations against the Talmud. As we have done this in our Hebrew monthly "Morgenblitze," Vienna, 1886, we have only to translate here a part of our review to the book of Kopp named "Zur Judenfrage nach den Akten des Prozesses Rohling-Bloch

von Dr. Joseph Kopp Hofgerichtsadovkat Zu Wien," Leipzig, 1886:

"Many books are lying before us for review or for announcement. However, the book named above is unique in every respect. It cannot be criticised either way, and the same is true of the author of this book as he himself does not give his own opinion concerning the subject matter of the book. Nevertheless, we may fully say that it is a scientific book in every respect.

"The author of this book is a Gentile, a prominent member of the bar in Vienna, and, according to his own testimony, he knows neither the Hebrew language nor the talmudic and post-talmudic literature at all. Notwithstanding this, the book, as a whole, sanctifies the Talmud and all post-talmudical literature.

It can not be taken as a defender of the Talmud because of arguments, as the whole book contains merely facts which can never be denied and which prove clearly that the Talmud and its banner-bearers are clear of every accusation and of every suspicion concerning the love of man, be he who he may, even according to the present laws and established etiquette."

The above facts were not given by the author himself, but by two well-known Gentile Hebrew scholars, upon whom the Supreme Court of Vienna threw the burden of translating four hundred passages and quotations. These the Jew-haters have used as a sample of the wretchedness of the Jewish literature. The chief aim of the Jew-haters was to belittle the Talmud, which is the pillar of the Jewish race.

The author of this work, whom the Israelite congregation of Vienna choose to defend Bloch in the case of Rohling-Bloch, has done his work well. He gathered all the quotations quoted by Rohling in his writings from both the Talmud itself as well as from post-talmudical literature, those which were written in the Hebrew language and also in other languages, by converted Jews who reached then the dignity of Catholic priests. All these quotations he divided into two groups, (*a*) the quotations in Hebrew he brought before the Supreme Court, who appointed Gentile Hebrew scholars to translate them correctly under oath, into the German

language; (*b*) the quotations in the living languages he examined himself. However, when he found a quotation in another language besides German he submitted it to the sworn interpreter of the Supreme Court for translation. Then, when both the translations of the quotations by the Jew-haters and the translations of the same by those who were appointed by the Court appeared before the court, it was revealed that the alleged quotations of Rohling were not quotations of the Talmud at all, but merely falsehoods. And thus was it proved that every line written by Rohling in his "Talmudjude," "Antichrist and Das Ende der Welt," "The Catechism des 19 Jahrhundert fur Juden und Protestanten" (in which he praises the Spanish Inquisition, declaring it holy to the Lord and to the Catholic Church), "Das Salomonische Spruchbuch," "Meine Antworten an die Rabbiner," "Die Polemik und die Menschenopfer des Rabbinismus," and also in his letter to Ghetza Anhadi of June 19, 1883, were all fabrications which never existed since the creation of the world.

"If such a falsehood would not be revealed by the learned Christians under oath it would be impossible to believe that a man whose dignity came from a professorship of a university should act so. The contents of this book are as follows: All quotations which were translated by the experts as well as those which Rohling himself falsely quoted, [1] Dr. Kopp arranged them thus, preface, instruction, the story proceeding the trial, the proceedings of the trial, the conclusion derived from the true testimony which was obtained from non-Jews; *i.e.*, the Bishop of Leon Agobardus, Paul Medriki, Rabbi Maldava, Rabbi Mendel, August Fabius, Gerhard Tickson, Franz Delitzsch and August Wunsche.

"After sub-dividing the answers of the above scholars in two parts, (*a*) those which are mentioned in the Talmud, etc., in general, and (*b*) where it speaks of the subjects in particular, and this he again sub-divided into nine groups; *i.e.*, (1) about injuring of Gentile property, (2) harming their lives, (3) partiality in cases where Christians come before Jewish

judges, (4) the application of animals' and beasts' names to Christians by Jews, (5) about the oath of the Jews, (6) about Jewish witnesses, (7) the Jews against the Christians in the laws of slaughtering cattle, (8) about the flattering and deceiving practised by Jews: divided into two paragraphs, (*a*) the non-responsibility of the Jews (see Appendix No. 19), (*b*) about the infallibility of the Rabbis concerning the blood accusation, and (9) the conclusion of the author himself. All these comprise 196 royal octavo pages.

"It is self-evident that such a book is above criticism, for, as we said before, the book contains only facts, viz: (1) the translations under oath of the well-known Christian scholars, and (2) the falsehood of Rohling's quotations translated into German when compared with the text, and this is all the more evident when it is known that Rohling, after seeing all these facts, not only withdrew his complaint but pardoned even the most rigorous accusation of perjury which Bloch accused him of in the past, saying that he was always ready to swear falsely at any time if only it would cause harm to the Jews."

Footnotes

109:1 In all probability the discussion in this chapter will seem very brief and almost inadequate, but the reason for this is that most of the details of this chapter are related at length in our weekly "Hakol" of 1877. Then, again, the entire matter is not so interesting or so important to warrant giving it more space here. Of far more interest is the works of Professor Rohlings and their results to which we shall give considerable space in our next chapter, especially as we ourselves were greatly taken up with this affair and were compelled by the circumstances to write four books bout this affair, three in Hebrew and one in German.

111:1 At the time he was imprisoned for many crimes and the dailies wrote continuously about this in long articles.

113:1 The author Kopp points out also many quotations quoted by Rohling from books which never existed.

Next: Chapter XIX: Exilarchs, Talmud at the Stake and Its Development at the Present Time

CHAPTER XIX.

EXILARCHS; THE TALMUD AT THE STAKE AND ITS DEVELOPMENT AT THE PRESENT TIME.

Since the colleges were open in Palestine and Babylon, after the destruction of the Temple, there were two kinds of rulers: the Palestinian were called princes (Nassies), and the Babylonian were called Exilarchs (Rashee Hagula). The former are well known to the students, as every one of them is mentioned in the Talmud, and their biographical sketches are written in many books by modern historians, also in our historical and literary introduction to our new edition.

The Exilarchs, however, who are seldom mentioned in the Talmud, are almost forgotten by the historians. Notwithstanding that the duration of their reign is about 450 years, no arrangement of their names and times is to be found in their history.

It is true that some of their names are mentioned in Seder

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[paragraph continues] Ualam Zuta," "Machzor Witree" and "Yuchssin," but it is so confused that no order can be found out.

We have to be grateful to the learned Abraham Krochmal, who first took up this matter, and wrote an excellent long article of seventy-three pages in his "Scholein zum babylonischen Talmud."

His suggestions, however, though of a great genius, are scholastical and were criticised by many in periodicals and pamphlets. Finally Felix Lazarus, in the "Jahrbücher" of N. Brill, issued a separate pamphlet about this subject, the result of which the reader will find in a list further on.

And as many of the Exilarchs were the heads of the colleges in Sura, Pumbeditha and Nehardea and took a great part in the development of the Talmud, they must not be omitted from the History of the Talmud.

LIST OF EXILARCHS. 1

Nahum Johanan Shepot	140-170
Huna I	170-210
Uqba I	210-240
Huna H., his son	240-260
Nathan I. b'Huna	260-270
Nehemiah I	270-313
Mar Uqba II	313-337
Huna III., his brother	337-350
Aba Mari, his son	350-370
Nathan II	370-400
Chanan, son of Aba Mari.	400-415
Huna IV	415-442
Mar Zutra I., son of Chanan	442-455
Chanan II	455-460

Huna V., son of Zutra	465-475
Huna VI., son of Chanan	484-508
Mar Zutra II. (Achunai)	508-520
Huna Mar Chanan	520-560
Kafnai	560-580
Chanini	580-590
Bostanai	-660

With the conclusion of the first volume of this work at the beginning of the twentieth century, we would invite the reader to take only a glance over the past of the Talmud, in which he will see that in almost every century and place of the different countries in Europe, the Talmud was condemned to the stake. By a glance over the present time, however, he will see that not only was the Talmud not destroyed, but was so saved that not even a single letter of it is missing; and now it is flourishing to such a degree as cannot be found in its past history, as will be seen further on.

The details of all the persecutions of the Talmud were given in the preceding chapters. Here we give a list of the places and dates in which it was at the stake, as well as the names of the persecutors.

THE TALMUD AT THE STAKE.

Time.	*Place*.	*Persecutor*.
1244	Paris	King Louis IX

1244	Rome	Innocent IV.
1248	Paris	Cardinal Legate Odo
1299	Paris	Philip the Fair
1309	Paris	Philip the Fair
1319	Toulouse	Lous

1322.--Burned in Rome by order of Pope John XXII., and accompanied by robbery and murder of the Jews by the mob.

1553.--Rome: Pope Julius III.--Similar burnings by the same order took place in *Barcelona*, *Venice*, *Romagna*, *Urbino* and *Pesaro*.

Here three wagons full of books were burned; but first they were carried through the streets of the city, while royal officers proclaimed publicly that their condemnation was due to the insults to Christianity which they contained. (See also note, vol. ii. p. 52.)

1554.--Burned by hundreds and thousands in *Ancona*, *Ferrara*, *Mantua*, *Padua*, *Candia* and *Ravenna*.

1558.--Rome: Cardinal Ghislieri.

1559.--Rome: Sextus Sinensis.

1557.--Poland: Talmud burned because of the charge made against the Jews that they used the blood of Christian children in their ceremonies. This occurred during the Frankist disturbances.

Such was the past of the Talmud which we hope will never be repeated. Now a glance at the end of the last century and the beginning of this one.

The colleges for the study of the Talmud are increasing almost in every place where Israel dwells, especially in this country where millions are gathered for the funds of the two great colleges, the Hebrew Union College of Cincinnati and the Jewish Theological Seminary of America in New York, in which the chief study is the Talmud and its post-talmudical literature. The heads of these colleges are of the most learned scholars of their time, who are very careful in selecting the professors and instructors for these institutions of learning. We were honored to be present at some lectures which the late great Talmudist, Professor Mielziner, delivered before the senior class in Cincinnati, from which we derived great pleasure and, we may also say that in some instances they were to a degree instructive to us in our task of translating the Talmud.

What concerns the theological seminary in our own city, in which we were not permitted (see App. No. 20) to hear the lectures on the Talmud, we are also in the full belief that it will do much for the study and development of the Talmud in this and in future generations. We use the statement of the Talmud, "One may be certain that a master will not leave out from his hand a thing imperfect," and as the dean of this faculty is not only a learned man but also an experienced teacher, there is great hope that he will do all in his power to select instructors and perfect lecturers for this institution.

There are also in our city houses of learning (Jeshibath) for the study of the Talmud in the lower East Side, where many young men are studying the Talmud every day.

We are also glad to notice that among Gentiles the study

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of the Talmud is more or less spreading, as we have the experience that a great number of Gentiles and almost all the theological seminaries and public libraries subscribed to the Talmud, and also many queries concerning it frequently came to us from Gentiles. This all shows that the study of the Talmud among Gentiles is not very rare.

The Jewish Encyclopædia (see App. 21) which is in progress now is also a great help to the study and development of the Talmud, as all the treatises of the Talmud are and will be separately named, with many particulars which will cause many readers to study the Talmud itself.

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Footnotes

116:1 We are unable to give their biographical sketches in a clear way, as in many instances we agree with Krochmal, whose arrangement is much different from Lazarus's list and the discussion would take up too much space, which we cannot spare. We have only to say that many of the Exilarchs were only holding their offices, but were not so learned as to take part in the colleges. They were appointed by inheritance and according to the excellence of their morality. All of them were descendants of David's kingdom, direct from Solomon. The Princes of Palestine, who were also descendants of the same kingdom, were only from their mother's side descended from Shepetiah b' Abital.

Next: Appendix A.

APPENDIX A.

No. 1. In the history of the "Oral Law," Part I., by I. H. Weiss, the reader will find an account of the deeds of the Samaritans in detail, though only a few instances are dealt with.

No. 2. We may refer the reader to the book, "Maamar Haishuth," by Holdheim, Berlin, who explains the belief of the Sadducees, and their opposition to the Pharisees.

No. 3. We agree with those who say that the tearing of the skin at the performance of circumcision was discovered since the Israelites had begun to undo circumcision; at the time when the theatres were opened by Nero, and the Jews who had to go naked there to wrestle with the beasts, were ashamed to be distinguished by this peculiarity. For this purpose the tearing of the skin was devised. (See Tract Sabbath, p. 307, in the Mishna: "One who was circumcised without having had the skin torn open is considered uncircumcised.") To this there is neither any source in the Scriptures nor any tradition mentioned in the Gemara. Some scholars don't agree with us. (See the letter of A. Bernstein in Tract Roshhoshonah, in the first edition). We, however, base our opinion on the fact that we doubt whether Antiochus Epiphanes would have prohibited a circumcision, customary then among the neighboring nations; and therefore it seems to us that he prohibited only the tearing of the skin which had been ordained by the Pharisees.

No. 4. See our brief introduction in Tract Sabbath. Our opinion is that some written Mishnayoth had been in existence long before. Also *Jellinek's Kuntres Haklalim*, Note 4, for the opinion of the French and Spanish scholars about it. Also I. H. Weiss and our "Hakol," Vol. VI., p. 11.

The London Athenæum, VI., 808, has cited our statement in the general brief introduction, p. 15: "Most of the Mishnayoth date from a very early period, and originated with the students of the Jewish Academies which existed since the days of Jehoshaphat, King of Judah [2 Chron. xxii., 9]: 'And they thought in Judah, and with them was the book of the law of the Lord, and they moved about through all the cities of Judah and taught the people,'" as ridiculous. This, however, does not terrify us, as notes of commentaries on the text of the Scriptures, the whole or in part, have

been found in the hands of students from the time colleges had, been founded; and this opinion of ours has met with approval from many contemporary scholars.

No. 5. See our "Hakol," Vol. VI., in which we state that the Gentiles who desired to embrace Judaism, asking Hillel to convert them, were men of rank, for a common man would not dare to make such a stipulation as to be a high priest in Israel.

No. 6. The belief in the divinity of Jesus became acute at a much, later period, when the

heathens accepted this fight according to all modem scholars. [1]

No. 7. (See App. No. 4.) We shall also come to this matter in our later notes.

No. 8. In our translation we have added the Tract Ebel Rabbathi, or Sema'Hoth, as the law of mourning was taken from this, tract. We have, therefore, added it to the tract "Minor Festivals," which also treats of mourning on the festival days. What concerns the beginning of "Section of Seeds" with the tract "Benedictions,", see I. H. Weiss for another reason which does not seem probable, to us.

The names of all the treatises of the tracts of each section, and, of their chapters in detail, the reader will find in books written, for this purpose by Strack, Mielziner, and also in the encyclopædias, especially in the Jewish Encyclopædia. [2] We deem it not necessary to name them here as we give at the end of Vol II. the synopsis of each tract, translated and published up to date.

No. 9. Details will be given in the second volume of this book in the introduction to our new edition.

No. 10. In our book mentioned, we also show additions made by the opponents of the Talmud for the purpose of degrading it. For examples, see Vol. II., Part III. [1]

No. 11. We shall come to this matter in the second volume of this book, in the chapter devoted to the Ethics of the Talmud.

No. 12. Almost all ritual poets composed after the Talmudic Hagada. Sometimes comments will be found, by a critical eye, there on the Hagada or even Halakha, as the ritual poems relating to Passover, contain almost all the laws of Passover.

No. 13. His decree was only for the German, French and Polish Jews, and extended only until the end of the five thousandth years after creation. However, the above-named Jews accepted his decree as extending indefinitely. In Syria and in Palestine, however, where his decree was not accepted, some of the Portuguese Jews, known there as Franks, marry two wives even at the present time in such cases when the first wife is barren.

No. 14. See "Measseph Nidachim," Vol. X., by A. E. Harkavy, where he proves that in Spain had existed houses of learning from ancient times and that the Gaonim of Babylonia had relations with them; and in many places they tried to follow their customs. (See there).

No. 15. As to what were these places, and who the disputants,

whether only Messianists or also Persians and idolaters, the opinions of modern scholars differ.

To us it seems that the Messianists possessed only the house of Abidan, and the Persians and Magians that of Nitzraphi. Rabh refused absolutely to dispute with the first, but was forced to do so with the latter, perhaps by his proximity to the government. Of the house of Abiani scholars say it was composed of Messianists.

No. 16. As his interpretation of the text, "it shall be a sign unto thee upon thy hand, and for a memorial between thy eyes," that it is a figure of speech, it shall be memored as if written on thy hand, as, "set me as a seal upon thy breast," [Song of Solomon, vii. 6]: "between thy eyes," as an ornament which it is customary to put on the brow, and there is no mention of the use of Phylacteriens in his whole commentary, though the Talmud based the custom of Phylacteriens only on these texts. We have spoken already of this in our work on Phylacteriens.

No. 17. In the excellent work, "Kritische Geschichte der Talmud Übersetzungen," by Dr. Erich Bischof, we read, p. 67: Trotzdem heute der frühr überschätzte Eisenmenger allzusehr unterschätzt wird, weil er noch nicht den historisch--Kritischen Blick unserer Tage besass lässt sich doch gegen seine--Übersetzunger der genanten [1] Stellen nichts Erhebliches mit Fug einwenden sie sind vielmehr fast stets richtig, etc.

We may say that though we respect very much the above-mentioned work as one whose opinions in general are correct, we would like to call the attention of the learned author to the following facts:

(*a*) Notwithstanding the fact that in a period of eight centuries over a thousand persons of varying opinions were engaged in the compiling of the Talmud, in the edition lying before us there is not to be found any designation as to time, and in many places, even the author of that saying is not mentioned, Eisenmenger gives the sentence, calling it literal translation, as if it were said by one person at a given time. It is self-evident, however, that such literal translation changes the meaning entirely.

(*b*) An opinion of an individual concerning Gentiles, he quotes it in the name of the Talmud, in spite that this saying is immediately opposed by the Gemara.

(*c*) He erred even in the literal translation, *e.g.*, "*Margela be Pume de Abye*," this paragraph is translated by us in third part of Vol. II. of this book. He translates, "A pearl was in the mouth of A."; while the literal translation of the word Margela is, "It was used," *i.e.*, Abye "used" to repeat this saying very often. At

another place he asks why should the "Talmud" be called great, while the word "Talmud" in that sentence means "teaching," *i.e.*, the teaching is greater than action; for teaching causes action. And we wonder how Dr. Bischoff can say of such, "it is rather correct."

No. 18. Concerning the pamphlets and books against the Talmud, written by apostate Jews, see Strack, page 95.

No. 19. Rohling declares that the Rabbis had concluded that all the sins of a Jew, be it against

heaven or against man, are forgiven him if he only remains a Jew. He also declares that every Rabbi considers himself infallible concerning the laws of non-Jewish blood.

The conclusion o our review of this book seems to us of interest to the reader, and therefore we translate it here: "The Lord hath made all things for himself: yea, even the wicked for the day of evil" [Proverbs, xvi. 4]. If we will look with an open eye into the history of Israel, we shall find that at all times, when characterless men arose to accuse and oppress Jews because of jealousy or animosity (except in cases where a man fights for his livelihood, which is natural), their opponents who fought them openly were equal to them in every respect. As the poet says, "Also unto thee, O Lord belongeth mercy for thou renderest to every man according to his *deeds*" [Ps. lxiv. 131. If these words should be explained according to their literal meaning the question would arise why *mercy* if to every one is rendered according to his deeds. Therefore it is to be explained thus: "mercy belongeth to thee that thou repayest the wicked man for his evil deeds by one who is equal in *deeds* to him."

Similarly did it happen in the time of the judges when Sisera oppressed the Jews terribly, providence transferred him to a prostitute, Jael, who rebelled against her husband and also against her lover (Sisera), who thought to be saved, being between her knees, and was slain by her [Judges, v. 27].

Haman, the Agagi whom Harbonah had assisted in creating the gallows to hang Mordecai, was transferred to Harbonah's hands and was hanged by him who was equally devoid of character. Hadrian who decreed that the Jews should not circumcise their children under the penalty of capital punishment, and Simon b. 'Yohaie who was going to Rome to petition the Caesar to abolish this decree, the miracle occurred through Ben Tmalion (a devil). Notwithstanding that Simon wept saying, "To the servant of my grandfather (Hagar), when she was in need, an angel appeared three times [Genesis, xvi. 7-12], and to me who am troubled with the needs of all Israel, an angel did not appear, even one time, but

only a devil" [Me-ila, 17, b], it did not help him, for who of the angels would lower himself to appear before such a low person who desires to oppress humanity without any reason but merely on account of their religion.

In reality it is revealed before Him, who said a Word and the World was created, that a man of delicate nature would dislike to come in contact with men of doubtful character, and would not fight with a dirty man; as there is a rule that he who fights bodily with a dirty man must become dirty himself. Therefore the Lord has created the wicked and characterless men for the purposes of such an evil day that he should conquer his opponent, who is equal to him in every respect.

Our sages seem to be aware of this, as we find that when a dispute was needed on subjects concerning Israel, they selected a common man (see Sanhedrin, page 270), and similarly to this, we have seen last year when the measure of the renowned Stoecker's deeds were full, his comrade, Greenberg, who exchanged his needle for a scribe's pen, and when driven out from the Socialists in Berlin, became a comrade of Stoecker, and finally his secretary, and later sold him with all his writings for ten German *thalers*, so that it became known who the Preacher of the Royal Court was, and a case identical to that of Rohling-Bloch, that he (Rohling) fell into the

hands of a equally characterless man, Bloch, [1] whom God had created for this dark day, as said above that from all the great Jewish men of Vienna, not one of them humiliated himself to enter into a fight with Rohling. However, if there is need for a miracle to occur, it matters little from whence it comes, and after all, we have to praise Bloch that he was the cause for the appearance of such a book, just as the prophetess Deborah praised the prostitute *Jael* [judges, v. .24]: "Blessed shall she be of the women of the *tent*."

No. 20. The following is a translation of a few pages of the beginning of our pamphlet, "Der Schulchan Aruch und seine Beziehungen zu den Juden und Nichtjuden." "On the 10th of December, 1883, a trial came before the 'Landesgerichte,' at Münster, which created a great commotion in all Germany" . . . viz., "one of the anti-Semites, named Dr. Justus, published a pamphlet in Paderborn under the name 'Judenspiegel' containing 100 law paragraphs of the 'Schulchan Aruch,' concerning the treatment of 'Akum,' abbreviation of three words, 'Obde Kochabim Umazoleth,' literally, 'worshipper of stars and planets.' However, the author, Justus, put the word 'Christians' instead of 'Akum' in every

place in the text. The editor of 'The Merkin' in Münster quoted many passages of this pamphlet with a glaring editorial, and the district-attorney, who considered such as an incitation against a race, made him responsible for this. The 'Landesgerichte' appointed two experts, one a Jew, Dr. Treu, a Hebrew teacher in the 'royal gymnasium,' and a Gentile, Dr. Ecker, an instructor in Semitic languages." [1]

Dr. Ecker Privatdocent at the royal academy of this place declares, that having devoted the last ten years exclusively to the study of Semitica, he is in a position to express an opinion. He then goes on to say:

"In the first place, I feel it my duty to point out that I can in no way agree with the conclusions arrived at by my esteemed colleague, Treu, and that concerning the essential point I entertain a conviction the very opposite of his. Three questions are here concerned which I am to answer:

(1) Is the 'Schulchan Aruch' vested with legal sanction?

(2) Does the word 'Akum' mean also Christians?

(3) Are the quotations of Dr. Justus in agreement with the original text."

As his answer to the first question treats about the "Schulchan Aruch" only, and also whether the Jews at *that* time are to be named Schulchan Aruch Jews or Talmud Jews, we omit it as it does not belong to the purpose of our history. We begin therefore with the second point.

"As to the second point, whether the word Akum comprises also Christians, I do not see how this can be denied. It is my firm conviction that Akum is nothing less nor more than non-Jews. And I believe that the Christians too belong to this class. Thus a law book that has appeared in the middle of the sixteenth century in *Krakau* should contain laws regulating the behavior of Jews (1) towards Jews, (2) toward planet-worshippers who live hundreds of miles away? This is indeed ridiculous. Gentlemen, allow me to draw a comparison. Suppose, here in Munster, a Jew would conceive a notion to sit down and write a

new law book in which there are but two classes of laws, how the Jews should behave toward Jews and toward--well, for my part let him call them what be may, it means after all non-Jews; suppose further that the prescribed behavior toward non-Jews is very rude and inhuman, and the author is held responsible for so treating the Christians, the learned Jew says: Ye Christians of Munster are not at all included in the class of non-Jews, which class has reference to the--Hottentots!

"Now, gentlemen, it is just as ridiculous to assert that in the sixteenth century there have appeared laws in Krakau regulating the behavior of Jews toward planet

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worshippers, and the Christians are nowhere mentioned. And, gentlemen, since this point has received no emphasis on the part of my esteemed colleague, it is important to call attention to it! If Akum does not comprise Christians, then laws against Christians are wholly missing. In the 'Shulchan Aruch' there are mentioned only Jews and Akum; we Christians are surely not Jews, hence we are *beyond all doubt confused in the term Akum*.

"I repeat once more, Akum is congruent with non-Jews. The Rabbis them. selves prove this. I have in my possession a recent Wilna edition of the 'Shulchan Aruch,' in which not infrequently the word Akum of the older editions is substituted by *Eno Ichudi*, *i.e.* non-Jew. The fear for the censor prompted many to an alteration, but in this case it has rather been an unhappy one, since the publishers themselves say that Akum is synonymous with non-Jew."

We are in a position to meet also this issue of the Herr Expert. The term non-Jews is by no means generic for the term Christian. In order to fully perceive the truth of this statement, it remains for the learned doctor to merely cross the channel over to England. This great world dominating nation consists in its overwhelming majority of pious and strict Christians. They sacrifice millions for the propagation of the Christian creed, and the evangelic writings all over the world. However, they call themselves with self-gratification, "The genuine Jews, sons of *The New Union*." They pretend to be the descendants of the enigmatically vanished ten tribes of Israel, and to still be Jews, body and soul. Very often you find on their worship places and educational institutions inscriptions in both English and Hebrew. Here you read in strikingly large letters: "*Chapel of the Jews-Christians*," "*Jewish-Nazaric School*." In the cosmopolis London the most influential princes and the highest state officers call themselves with self-consciousness, "*Jew-Christians*." What then is the decisive trait that makes the Christian a non-Jew? Furthermore, the theologically educated Expert can hardly be believed to be ignorant of the fact that the first adherents of Christianity in its *statu nascendi* had preserved the name Jews for a long period, had remained piously obedient to the customs, precepts and tenets of the Jews, and had in their outward apparel distinguished themselves in nothing from their former brethren in creed. Notwithstanding their sincere devotion to the new movement, they still called themselves, "*devout sons of Israel*"; only few were they who assumed an outspoken antagonistic position with regard to the customary Rabbinic or Pharisaic ordinances, and were on this account stigmatized by the Talmud as "Min," "Apikores." Now, has non-Jews always been identical with Christian? Aside from this the first edition of the "Schulchan Aruch" was printed in Adrianople (Turkey), where the most inhabitants were Mussulmans.

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Such falsifications of the text in more recent editions have perplexed me to some extent, when I investigated the laws of Justus. The fourth law reads: 'When a Jew is met by an Akum (Christian) with a

cross in his hand, the Jew is strictly prohibited from bowing his head.' However, in my Wilna edition I find instead of Akum the word *adam*, *i.e.* man. I then compared a new Stettin edition, and there I even find: 'When an *obed kochabim* (star worshipper) with *abodath kochabim* (idol) in hand meet,' whence nothing could, of course, be proved. Only in an older edition I have found the original: 'When an Akum meets you with a *sheti vaereb* (*i.e.* woof and warp = *cross*).' And, gentlemen, this proof is incontrovertible. It is known to everybody that *no heathen reveres the cross*. Akum here *must* mean a Christian."

One moment, profound Herr Dr. Ecker, the case appears after all to be very far from being so manifest and ultimately settled. During their existence, extending over thousands of years, the Jews had experienced among the various nations many a thing of which many a sage can not even dream and which seems unknown also to Dr. Ecker, the theologian, who bears even the title Doctor. As there is in general *nothing new under the sun*, the consecration of the cross in Christianity was not a wholly new creation. In the Brahman religion the cross had enjoyed great esteem some six centuries B.C. The Hindu symbolized therein the space relations of the universe. According to accounts relating to those times, the Fakirs would stand motionless, their hands stretched crosswise, for days or, as some would have it, even for weeks until the nails on their fingers would grow to be inches long. By thus blunting their bodily sensibility they endeavored to give palpable expression to the negation of man's earthly existence. The commentary to Eben Ezra, *mekor chaim*, gives in the book *Margalioth* an account of this custom. Accordingly, it is by no means so incredible nor could have been so infrequent that a Jew should have met a heathen with a cross. The assumption is therefore plausible that the Talmud had in view such heathens. However, we admit that this is merely an hypothesis, and that Shulchan Aruch was no more familiar with Indian mythology than Dr. Ecker appears to be. We aim solely at showing that it is possible for one impelled by judophobic purposes to carry on the study of Semitica for ten years, and yet exhibit drastic ignorance here and there--all diluted eloquence and vain presumptions notwithstanding--and that it is altogether ill-becoming to venture upon expressing a competent opinion on Jewish laws that have arisen in ancient times. It is of this that we wanted to remind Herr Dr. Ecker and his anti-Semitic commilitants.

"In conclusion one more proof that will of necessity convince everybody. We all know that the Jews do not eat meat unless it has been slaughtered by a Jew. Meat slaughtered by Christians is not 'kosher,' and yet the 'Shulchan Aruch' says that meat slaughtered by an Akum is not kosher; hence Akum means also the Christian."

Patience, Herr Dr. Ecker. Also this your far-fetched remark deserves an answer, and such that will remove the scales off your eyes. How indeed is it possible that a theologian who has been exploring Jewish literature for ten years should exhibit such salient gaps? The most ignorant Jew could beat you in this point. Who does not know that only a trained slaughterer examined and supplied with a diploma is allowed to slaughter? Any other Jew, and he that the most enlightened and distinguished among the Rabbis themselves, is not entitled to slaughter, and were he to do it the meat of this animal would be unallowable and regarded as though the animal had been torn to pieces by a beast of prey, and is therefore "*Terefa*," (torn.) And upon this case Dr. Ecker bases his deduction that Akum is absolutely a Christian, for the cattle slaughtered by an Akum is not kosher? How ridiculous! Is it kosher if slaughtered by a Jew not in possession of the right to slaughter?

"Now comes the important third question: Are the laws of Dr. Justus really contained in the 'Shulchan

Aruch'? Herr Colleague Treu has made the utterance that many a point of these laws is not contained in the 'Shulchan Aruch.' Particular stress was apparently laid on this remark. The case is not set down with precision I compared all the laws with the original text and reached the following result should simply sign my name under all these 100 laws from A to Z, you require of me. In their main substance they are correctly contained in the 'Shulchan Aruch,' but the foundations of some single laws are borrowed by the author somewhere else; on the whole, however, well grounded. I admit, and this is natural enough, that the laws are *poignantly* formulated, and in some cases in a manner which I should not approve of. We read, *e.g.*, in law 79: 'The Jew is allowed to eat unclean in case of a dangerous sickness . . . however, he is not allowed even in this case to use for his cure something that belongs (in the opinion of the Jews) to the most-unclean, viz., to a Christian Church.' As already observed, no mention is made of Christians, and also here in the text it reads 'idol worship.' Of course Christian Church too belongs here. Thus, the case is not untrue, yet in its formulation the law sounds sharper and Dr. Justus should have left the text also unaltered and added Christian Church' in parentheses."

Truly, we are at a loss to find the proper expression that might appropriately characterize this expert deposition of a theologically educated priest. Let us in the first place inquire somewhat more closely into the law in question, which in its formulation is in neither the Talmud nor the Shulchan Aruch. In the former we read: "If a man is seized with bulimy he may be fed with unclean food, till his eyes become clear" (Yoma, 125) . Here no mention is made of either Akum or idol worship. In the Shulchan Aruch the same law is worded as follows: It is allowed to give the dangerously sick *prohibited* food to eat (Orach Chaim, 6 18, 9). Here again the word unclean has been eliminated. Still another passage

treating of the same subject reads: "For curing purposes all is allowed to be used but the wood of an Ashera, Astrate, that what was in Phœnician an unchaste phallus-idol." We read further in the same place: "With all things it is permitted to cure one's self except by means of idolatry, adultery and shedding of blood." (Pesachim, 36.) The word Tumah = unclean is not met here at all. In the Shulchan Aruch this law is restated as follows: "It is not allowed to seek convalescence in the name of idols" (Yoreh dea, 155.) Neither is here the word Tumah to be found. It thus remains an enigma where Dr. Justus may have borrowed the expression "*the most unclean*," which is to Dr. Ecker of course synonymous with the *Christian Church*, since the word is not at all used in the original text in connection with *this* law! But we must do justice to Dr. Ecker; he possesses a highly cunning method of polemizing; he displays admirable dexterity in securing for his comrade Dr. Justus an open back-door. Yes, indeed, Dr. Ecker is master of his art, he leaves far behind that so-called "Jewish method of polemizing," which has been according to the "Germania" revealed in this action. Herr Dr. Ecker makes notably the statement that Dr. Justus has taken his law from the Shulchan Aruch, their interpretations, however, he has borrowed from *somewhere* else. This open admission manifests the intention of false conception. Dr. Justus has namely borrowed that marked, or to use the language of Dr. Ecker, "*poignant*" expression from a place that has absolutely nothing in common with the law in question. Aboda Zara, *i.e.* idol worship, is termed in the Talmud the father of uncleanness: Abh hatumah, which defiles by touch (Sabbath, Aboda Zara.) Now Dr. Justus resorts to the following stratagem; he renders Abh hathmah with "the most unclean," substitutes Aboda Zara, idol worship, by "Christian Church," then he fabricates a law under the label of the Shulchan Aruch which has never had any thing of the kind, and in the name of this firm sends it out into the wide world. Dr. Ecker, it is true, finds that such method of procedure is "poignant," but on the whole correct and to the point. What may criticism say on such an escapade? If a Jew had the mishap of venturing upon such a shaky ground, the whole stock of degrading names, such as rogue, rascal, impostor, misanthrope, etc., would not suffice to stigmatize so shameless a forger. Indeed

it requires very little originality and still less sagacity or witchcraft to pick out phrases from places that stand in no relation to one another, and compile them with a view of criminating whomever it may be. Dr. Justus has done such a work, and a Catholic priest, a custodian of the church

who should adhere to truth, right and peace, has the impudence to assert that this work is in substance *correct*, though *poignant* because "Christian Church" should have been enclosed in parentheses; as if then the falsehood would turn to truth! Can a theologian bear such false testimony, a priest who declares himself to be well versed in the Hebrew and hence competent to pass judgment on Rabbinical literature?

Let us now examine somewhat more closely the Hebrew concept, "*Tumah*," In default of a corresponding similarly expressive German word, one is of necessity prompted to render it with "unclean." In reality, however, the Biblical and Rabbinical "Tumah," is *toto cælo* different from the current notion unclean. The German "unclean" is synonymous with the dirt and filth, which is in no way the case with Tumah. According to the Mosaic law, a human corpse is the very origin, the progenitor of all Tumah, "*Abhi aboth hatumah*." In Dr. Ecker's German this could be styled "the most unclean." The tent, the room that shelters a corpse, with all the utensils therein, is permeated with the fluid of *Tumah*, uncleanness. Whoever lingers, sits or sleeps there, whoever touches the corpse, is infected with the *Tumah* and becomes in turn "Abh hatumah," the father of uncleanness, and he who touches the Abh hatumah is called "*Rishon lettimah*," the first of uncleanness; he is prohibited for seven days from entering the sanctuary or from approaching the altar. He imparts *Tumah* to him who may happen to touch him. It is here absolutely immaterial whether the corpse was, when alive, sheltering the divine spirit of Moses, of the crowned bard of the unparalleled psalm songster David, or of one of the lowliest in the Jewish nation. The assertion that the corpse of Moses, David, etc., is the most unclean would be a sure symptom of insanity. Are the two words Tumah and unclean congruent? The religious law of *Tumah* is laid down in the Torah without foundation at all, and belongs to those laws concerning which we venture to speculate, yet are unable to warrant their validity. Now, the Rabbis, eager to keep the Jews from following idolatry of those times, to prevent all contact therewith, were therefore teaching: "An idol defiles by touch; it is not allowed even for curing purposes." However, it was not the material part of the idol that was prohibited, such as the wood, the stone, the dust (for the use of all this was allowed in case of danger), but the prohibition is to be conceived of in the following sense. If one were to whisper in the ear of a dangerously sick person: "I will in your behalf invoke the help of this or that idol," as such was really the case with Ben Dama, the nephew of

R. Ismael (Aboda Zara, 27), it is such a medicinal use of the idol that one is energetically warned against. Supposing now that the emblems of Christianity too are actually subsumed under the category of idols, which is by no means the case, supposing further that it is prohibited to seek recovery by their help, even then there would be no way of justifying a rationally thinking person in his attempting to refer such a prohibition to the Christian Church, or to go further yet, and assert that the latter is in the mind of the Jews *unclean*, or, according to Dr. Ecker, altogether *the most unclean*.

As an illustration of how the Rabbinical school used to term *Tumah*, we quote an eloquent account of the Mishnah [Iodaim, 4]: "The Sadducees were once deriding their antagonists, the Pharisees, as follows: 'How amazingly absurd is your procedure in establishing laws! the writings of Homer are not defiling while the sacred books of the Bible should be subject of defiling; is it not the height of absurdity?' Hereupon replied R. Johanan b. Zakai: You could adduce against us yet other analogous but more drastic facts; the bones of an ass are not defiling while those of the high-priest Johann Hyrcan do defile! How would you solve this paradox?" Whereupon the Sadducees answered: "This is obvious. The position one holds when alive is in direct ratio with the uncleanness after death; the more revered and beloved one was when alive, the more defiling is his corpse." Now you see, said R. Johanan b. Zakai, this speaks as well as for us, I could turn the very same weapons unto ye! the profane writings of Homer--that are not our favorite--are indifferent to us, they do not defile; the sacred books which we revere and love are subjects of defiling the hands that touch them!

Now, if according to Dr. Ecker's and Justus's literary artifice, the Christian Church too belongs "*of course*," to the *most unclean*, is it not possible in the rabbinical sense to construe on the contrary a consecration, a proof of superior esteem for the church? Ye gentlemen Doctors, where is your wisdom?

Artifices of this kind can be brought about only by a Dr. Justus, who, impregnated with malice and Jew-hatred, misuses ink and paper to openly and scornfully defy the truth. And a consecrated priest, an academic teacher, stamps his approval upon his tricky work and in a sacred place where justice is being administered, whither he, credited agreeably to his sect and position, was summoned to conscientiously elucidate the truth, where he might have been made to confirm under oath the veracity of his conviction! Verily, Dr. Ecker has badly sinned, not only against the Jewish people, but also against Christian Germany! Is then in our age the Hebrew literature a book sealed with seven seals? Are not there in Germany

also Christian savants who could detect this arbitrary procedure, who could trace to its source such a groundless absurdity? Would that he may perceive the opinion of the Christian professors, Delitzsch, Cassel, etc., expressed with reference to his expert opinion, he would see then whether they regard his depositions as actually impartial, or as of a wholly different nature, he would learn whether they agree with him in that the Christian Church too belongs *of course* to the most unclean! This is, honorable priest of the church, your impartiality, such is it prima facie!

"I should like yet to touch here upon the point which was thought to be important when Herr Colleague Treu has pointed out that he has nowhere read in the 'Shulchan Aruch' that Christians are worse than dogs. To be sure, it is manifest that a law book is not the place to state that the Christians are worse than dogs; but it is perverse to infer from here that Dr. Justus has falsified the text. This sentence was namely brought forth as a foundation of law 31, where note 3 remarks, however, that it is borrowed from the renowned exegete Rashi."

We do not know the passage attributed to Rashi. However, places of this nature are not rare in the Talmud. Let us quote such a passage. The question was discussed, for whom it is allowed to prepare food on a holiday; in this connection it reads: "What causes you to exclude the Akum. from, and to introduce the dogs into, the law? The dogs depend on you in their food and rearing,

therefore I treat of them in the law, but the Akum. I exclude, for no one is obliged to take care of him," (Betza, 21b). Rashi has surely commented on such a place in the Talmud, and Dr. Justus was dexterous enough to forge thereof a poisoned arrow and to direct it as best it suits his instincts. But is here even a particle of insinuating contempt and depreciation of *an Akum* or a Christian? In the foregoing quotation the question is discussed as to the preparing of food on such holidays that do not coincide with the Sabbath, which preparing is allowed only for such persons and animals that depend on others in their food. We refer yet the reader to our next observation.

"Another point was contended against by Herr Treu, in law 17, which treats of the case that the Jews pray when the plague rages in their midst, but not when the plague is among animals. Here it reads further: 'But they do (pray) when the plague is among *swine*, as their intestines resembles those of man, *likewise* when the plague is among Akum (Christians).' I agree with Herr Treu that in lieu of 'likewise' should be 'the more so,' and therewith the law loses its poignancy, but it looks suspicious all the same that in one and the same line the *Akum are coupled together with swine*."

The Herr Privatdocent of the royal academy displayed masterly skill to excite his audience, and to unbridle the passions of hatred. Verily, also we must make an extraordinary effort to control our

agitated mind. The reasons, however, lie by no means in the affected depreciation of the human dignity in general, or of that of the Akum in particular, no matter who is meant thereby as ascertained by the Expert, but in the boundless ignorance of this theological doctor, which is truly astonishing, nay startling. And yet he asserts to have been studying Semitica for ten years! David, the King of Israel, was considered by the older Rabbis, the highest unattainable authority, the ideal of the Jewish people. As far as rank and merits are concerned, they put him above the Patriarchs Moses and Joshua, each of whom, they tell us, had his hands stained in one way or other, wherefore none of them was honored with saying the benediction over the goblet. David, however, was found wholly stainless, the goblet was predestined for him, and only he was allowed to grasp it and praise therewith the Omnipotent! This legend is to be found in Talmud (Pesachim, 119). But the very same so highly revered David is somewhere else coupled together with dogs, and, in defiance of all shame and discretion, treated even worse than a dog--in the sense of Justus and Ecker. It is namely recorded: David died, and his son and successor to the throne, Solomon, had his messenger ask in the college as follows: "The remains of my royal father are exposed to the scorching sun rays, the dogs of my father's household are hungry and menace them, may I in view of all this touch on the day of Sabbath the remains, and have them sheltered?" Hereupon came the answer: "First of all satisfy the hunger of the dogs by having a carcass cut to them; thereafter put upon your father's corpse a loaf of bread or a child, then you may have it removed into the shade." Contemplating this, Solomon made in his later years the utterance: "Truly the living dog is better than the dead lion." Thus reads the legend in the Talmud (Sabbath, 32). And more yet; of their own people the sages say: "Three are insolent, Israel among the nations, the dog among the animals, the cock among the birds" (Betza, 25). Who would assert that in these passages David and Israel are depreciated? This elementary point should not have escaped the consciousness of a theologian trained in the Hebrew and Rabbinical literature, viz., that expressions of this kind were current among the law teachers of those days, without, however, any intention on their part to either elevate or degrade any one! Again, we read in the Talmud (Pesach, 112): "The rabbis taught, there are three who hate one another: the dogs, the cocks, and the sages." Others add yet the rival women, still others also the teachers at

the Babylonian academies. Well, Dr. Ecker, what would you say to this point? Could the sages find no better company than the dogs, cocks and rivals? And

again, are the Evangelists more moderate in their language? Does not Matthew also call the nations *dogs and swine*? (Mat., 6, 7). Where then is here room for indignation? The patriarch Jacob on his death-bed blesses his sons who surround him. Their characteristic merits and defects he designates by animal forms which they resemble. Jehudah he calls a young lion, Naftali a bitch, Issachar an ass, Dan a serpent, Benjamin, his youngest favorite, a rending wolf. Moses, too, calls in his farewell blessing the tribe of Joseph, "a first-born ox." Should these two reverend old men have had the malicious intention, at the most serious moment when they were preparing to part with life, to revile and insult? Here is a point for Herr Dr. Ecker to meditate on! [1]

No. 21. As we are lacking in time we requested the dean of this faculty to send us a copy of the curriculum with an admission card, so that we might arrive at the exact hour appointed for some lectures on the Talmud and on theology which we saw announced in the programme; to which we received the following letter:

THE JEWISH THEOLOGICAL SEMINARY OF AMERICA.

NEW YORK, *January* 5, 1903.

Dear Sir.--Your letter of the 21st ult. is just before me. I have not yet been able to send you a copy of the curriculum, which I shall be very glad to do when it is printed. Whilst a weekly curriculum

has been adopted for the year, some of its provisions are still under advisement, and I have not deemed it wise to put it in print.

I have not at the moment any copy of the hours of the lectures either, nor do I really think it would be profitable for you to attend an occasional lecture, as you suggest. You realize, too, that the classes must necessarily consist of young men, that practically every hour involves a certain amount of recitation, and that the students will feel awkward, or necessarily ill at ease, in the presence of some one older than themselves.

Yours very truly,

S. SCHECHTER,

President of the Faculty.

Michael L. Rodkinson, Esq.,

No. 22. The Jewish Encyclopædia is undoubtedly a monumental work and most eminent scholars in both continents are taking part in it, and there a great many scientific articles which are instructive to the students and also many laymen are pleased by reading a great deal of articles in every branch. (True, that some articles though scientific would be better if omitted in the encyclopædia. We refer to Dr. P. Mendus' message to the Union Orthodox congregations which took place recently.) However, because it is a monumental work, we cannot restrain ourselves from remarking that the editors should be more careful in their revision of the articles. In Appendix No. 8, we show that the bibliographies are not complete and now we will remark that the editors are not careful in their biographies.

There is a short biographical sketch in Vol. I., p. 16, of Aaron Ha-Levi Ben Moses of Staroselye, who was our mother's father. In the *American Hebrew*, June 28, 1901, we have already remarked that his family name was Hurwitz, which he received from his ancestor, the famous Ishiah Halevi Hurivitz, known by the name Shelaw, the author of "Snee Luchoth Habrith," and this was omitted.

We have then overlooked that his main and wonderful work, "Sharee Haychud ve Haemuna" (Gates of the Unity (of God) and its Creed) is not mentioned. This great work has surprised not only the Cabbalists and Chasidim, but also the Maskilim like Sneier Zachs and Lazar Zwefel. The former mentioned it in his well-known "Hathchia" thus: "and the wonderful work by Aaron Hurivitz" and so also the latter in his "Solom Al Israel," who speaks of it enthusiastically and at length. Remarkable it is that in the bibliography of the sketch is mentioned Rodkinson's "Toldath

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[paragraph continues] Amude Hachabad" and in this book his family name as well as the above-mentioned work with more particulars are to be found. By this we see that the editor of this subject did not care to look up the bibliography at least to make it correct. He should at least have seen Fünns' "Kneset Israel," in which the name and the books are mentioned.

All this concerns the incorrect biography. Should we count the omissions of the names of very great men, even only of Aaron and Abraham of all classes, who ought to be mentioned in the encyclopædia, who played a great rôle in Israel, it would take too much space and time. A glance into our *Biographie sämmtlicher Rabbiner der Gouvernments Vollhynien, Podolien, Ukraine, Gross- Klein-Polen und Galizien von Jahre* 1695 *bis* 1876 (Konigsberg 1876), pp. 30-34, will convince the reader of this.

Footnotes

122:1 What concerns Ben Zakkai, according to Heilprin, in his "Seder Hadoroth," and other authorities, Johanan b. Zakkai died 72 years A. C., that is, about forty years after the death of Jesus, at which time the followers of the latter had already begun to dispute with their Jewish colleagues. We also find a disciple of Johanan b. Zakkai whom he very much respected, very friendly to, and pleased with, Jacob of the village Sachnon, who was one of the first disciples of

Jesus. Hence our conjecture.

122:2 Speaking of the encyclopædias, we are sorry to say that in spite of the advertising of their completeness, with all additional information in every branch up to the time of publication, one can not rely upon them. It seems to us that they omit the mention of books of great interest. According to our knowledge, books the subject of which is interesting to most students, not to speak of whether they are well done or not, ought to be mentioned and, if necessary, with a remark about the quality of the books. Now take the "Century Encyclopedia-Dictionary and Atlas," which is advertised as the best of its kind and which is published in New York City, and if we look under the subject "Talmud," the fourteen or fifteen volumes of the *first* English translation of the "Talmud" by Michael L. Rodkinson, published in the, same city, are not to be found, although about 175 daily papers and periodicals, here and abroad, noticed and reviewed the publication. The same is the case with Appleton's new encyclopædia under the same title "Talmud." Here also Rodkinson's translation is not mentioned, though some small tracts which were translated into German are mentioned. Still more remarkable is it, that the reviser of this article p. 123 on the "Talmud" was Dr. Richard Gottheil, who is one of the editors of the Jewish Encyclopædia, and who himself wrote a criticism in "The Bookman" in 1897 upon this translation. What concerns the Jewish Encyclopædia, which is devoted only to matters relating to the Jews, one is still more astonished on examining its bibliographies. On pages 390 and 394 of vol. ii., etc., etc., the contents of Tracts Baba Batra Metzia and Kama are explained. In the bibliography of this article are neither mentioned the excellent translation into French by 1. M. Rabbinowicz nor the translation into English by Michael L. Rodkinson. The same is the case with vol. iv., Page 526, etc., concerning the tracts "Derekh-Erez Rabba" and "Zuta," for in the bibliography there is not mentioned its translation in vol. i. (ix.) into English by the same M. L. Rodkinson, together with Abot de Rabbi Nathan, which is mentioned in the first volume, page 82. Here the bibliography reads: "An English version is given by M. L. Rodkinson in his translation of the Babylonian Talmud, I. (IX.), New York, 1900." We cannot find any excuse for such a sin of the bibliographer unless we ascribe it to the carelessness of the editors, for even if the authors of the articles were ignorant of it, in spite of the fact that this translation is to be found in almost all the libraries of the cities and countries, still the editors ought not to have been so.

123:1 To the critics who will try to find fault with us because of the article by Prof. Schechter in the *Westminster Review* of January and April, we will say that in spite of the respect which we feel for the article and the author, we do not agree with it on many points. Therefore, without any controversies, we state here what seems reasonable to us, leaving it to the reader to judge.

124:1 He quotes namely, the places of the Talmud which were translated by him.

126:1 In our pamphlet "Barquai," Vienna, 1886, all Bloch's proceedings as well as his character are related.

121:1 The testimonies of Dr. Treu, who was a Jew, we do not deem necessary to translate, especially as they may be understood from the answers of Dr. Ecker. However, the latter's testimony and our replies we translate literally for the purpose of enlightening such passages which are to be found in the Talmud.

136:1 We are convinced that many, yes, *very* many, offensive passages in the Talmud are

traceable to the Jews-Christians among the Rabbis. For a long time theme Jews-Christians remained in close relations with their Jewish brethren, refrained from ostentatiously manifesting their belief in the messianism of Jesus; however, in their innermost selves they entertained and nourished a more and more unfolding rancor against the teachings as well as against the authority of the law teachers, who would by means of all imaginable contrivances interfere with their clandestine plans to carry on propaganda for their idea. Jacob from Kefar Sekania and Jacob Minaah (Megila, 23) are mentioned as such, and there must have been many of this class. It is to these Jews-Christians that we attribute the authorship of some of the above-cited sentences that sound in a measure defamatory to the Rabbis. In like manner the foregoing David legend may have originated in these circles. Indeed, David was far from being stainless; he himself was conscious of it and expressed it in a penitential psalm to which we refer (Psalm 51). But as the pretended ancestor of Jesus the adherents of the latter surrounded him with dazzling though undeserved glory. (We, in our new edition of the Talmud have omitted both legends concerning David, as we are certain they are not to be ascribed to the Rabbis of the Talmud; see also our edition [Betza, 491 footnotes. We have omitted the whole saying but Maelits, for the same reason.) In this, our pamphlet, from page 35 on, we explain all the passages where *Akum* is mentioned and what it signifies, not by suppositions but by facts, and as it is written in the German language, we may refer the reader, who would like to know this, to them.

Next: Appendix B

APPENDIX B.

CRITICISM TO CHAPTER VII (KARAITES). THE BELIEF OF SADDUCEES, KARAITES, AND OF THE REFORMED JEWS.

DR. MICHAEL L. RODKINSON.

Sir:--Having read your article about the "The Karaites" in *The American Hebrew* (23-24), though in general I have found therein likely and probable things, I cannot forbear from calling your attention to several points on which, in my opinion, it behooves not a man like you to take a partial view, while presenting to the readers a historic account. It is the duty of every fair writer of history to give an account of the facts without any personal bias, and where there is a difference of opinion, without sufficient evidence for demonstrating the truth of any, then it is the duty of the historian to state as much, and if he is able to decide between them, he should give his opinion also; if not, he shall leave the task of deciding to some of the readers who might be able, perhaps, to do so. But you have not done so.

You have written (p. 685) that when Anan saw, etc., and have ignored, or are unaware of, what the head of our poets, R. Jehudah Halevi, wrote in his "Cuzari," III., 65, that in the time of Jehudah b. Tabi and Simon b. Shetah Karaism commenced an account of what happened between the Sages and the King Janæus, etc., see carefully that passage, you will find there that R. Jehudah Halevi admits that the doctrine of the Karaites is an ancient one. And you ought to mention this fact.

So also I do not agree with you in what you say, that at present are found only 4--5,000 Karaites in the world. For, in my opinion, the Reformers in Europe and America must be regarded as Karaites, as they decided at their Congress at that they do not consider the Talmud as authoritative, and that only the Pentateuch is the basis of their doctrines. If it is so, then they are evidently also Karaites. And if in some ceremonies they differ from the contemporary Karaites, for this reason cannot separate them from them. You yourself enumerate sects among the distinguished from each other in their ceremonies, and yet they all avow the to be Karaites.

This is what I have wanted to remark, and if you are conscientious, you will modify this, not to mislead the future generations who will read your history, and thereby you will insure yourself against critics, who condemn a whole book when they find in it one thing which is not quite right.

Your obedient servant,

ISAAC LEVI SHALIT.

Answer.

With many thanks for your ingenious remarks, and for your love of truth and eagerness to save me from unfair critics, I state at your desire what I have to say in reply, and what I have omitted in the article itself, viz.:

First--let it be known that I am not writing the history of the Karaites, but that of the Talmud, and mention those who have contributed to its extension and diffusion, as well as those who persecuted it, from the time it had begun to develop till to-day. For this purpose it does not matter whether Karaites were an old or a new sect, from the time of Anan, as all admit that they persecuted the Talmud to the utmost. And I, who have been, obliged to give briefly the history of the Karaites for the reason that they persecuted the Talmud, used as authorities the latest historians who have treated this subject, as Pinsker, Graetz, Fürst, Geiger and Gottlober, who have all decided that it was an invention of Anan himself. But out of respect to truth, I am bound to tell you that I was not unaware of, nor did I conceal, what is written about the Karaite sect in the "Cuzari." For of this has the head of the reformed rabbis, the learned scholar Holdheim, written long ago, in his book "Maamar Haishuth," as much as it is worth, and philosophized about the assertions in the "Chasar," but he also found that be had been mistaken in this (or that he was compelled to write this, for reasons unknown to us at the present day; I myself say, he wrote thus because in his days the Chasars were reported to also be Karaites, and he who made his book in the form of a controversy between a Karaite and Rabbi did not want to charge it with being a new sect, but admitting one point, namely, that it is an old sect, he still urged that there is no foundation for it). And to make you, and those who entertain the same opinion, to cease to think that the reformers of the present time are "Karaites," and also that the readers may know what the Karaites plead; that the Karaite sect has been from the time of Moses, who was himself a Karaite, and the Rabbinical innovation dates from Jeroboam b. Nebat, we have only to quote from the above-mentioned book of Holdheim, p. 117, etc., and also what he wrote to refute their assertions, p. 122, and also what we will find to remark on his words.

[1]It is known that according to the opinion of the Karaites themselves in their books, their belief and their tradition is identical with the Pentateuch. Together with the body of the Pentateuch, the Lord communicated to Moses an oral comment, and he communicated to his contemporaries, who transmitted it to the succeeding generations till the death of Solomon. When the people was split into two parties, one adhered to Rehoboam, and the other followed Jeroboam, who sinned and led his party into sin. The Karaites named their traditions the inherited yoke and burden, and according to them there was during all that time only one Torah for the whole people, as one God, and the text and its interpretation were inseparable and sprung from the same source, the father of the Karaites being Moses himself, the trusted pastor who carried all his people on his shoulders. As Jeroboam was one of those who had received the tradition transmitted from age to age as above-mentioned, and one of the men of the Great Sanhedrin, fearing that the royal power should be recovered by David's dynasty, he invented strange and spurious interpretations of the Torah to replace the good ones and true ones which the Sanhedrin had by tradition. He presented it to the people, whom he misled, and brought to evil. The nation believed him, followed in his footsteps, exchanged most commandments of the Torah for others, subtracted, added, at their pleasure. Since then Israel was divided into two sects, and the Torah became two rival and hostile Torahs. Judea kept the law according to the ancient custom received from Moses without any change, addition or subtraction, Karaism. being the modern continuation thereof. Israel, on the other hand, observed the laws according to the new manner, with alterations, additions and subtractions invented by Jeroboam, and Rabbinism is its continuation; later false prophets rose in Israel, and, claiming divine inspiration, misguided them, and even some of Judea, etc. But Judea, nevertheless, continued to be the seat of the Mosaic tradition, as the majority adhering most to the truth. However, as the Temple was demolished, most prophets, priests, Levites and Sanhedrin were slain, while those left alive were mostly of the

sinners. Therefore at the restoration of the second Temple, even while there still were prophets, who are called the "good figs," there were two sects and two separate Torahs. After the cessation of prophetic inspiration this split grew and widened. The party holding by the truth said the Torah was only that one written by Moses and given to Israel; the party believing in the falsehood said there were two Torahs,

written and oral, invented by Jeroboam and the false prophets, and which they also referred to Moses, who received it (according to them) from the Lord. Thus it continued till the time of Matthew, the Hasmonean (Maccabee), when Antiochus the Wicked, wishing to suppress altogether the Jewish lore, in which time of calamities all great sages of the Sanhedrin who had the true tradition of the comment and the Torah were all murdered, and the tradition till then transmitted, was now severed, and the greater part of the comment and the Torah was lost and forgotten, only an infinitesimal fraction being left. This fact took place in the year 3560 after creation.

As Matthew triumphed, and peace was restored in the land, the men of intellect sat down to learn the Torah and understand it with the aid of their reason. But owing to its great depth, they could not comprehend it, and many diverse opinions existed. Thus the differences between sects, Karaite as well as Rabbinical, arose, and persist to these days.

The quarrel between the two sects grew in violence till the time of the king and high-priest Janeus was reached, and something happened between the sages and him, as is well known, so that be massacred all the sages in his anger, and none remained except one great man of each sect, Jehudah b. Tabai, who held the truth, and Simeon b. Shetah, drawn after the false doctrine of Jeroboam b. Nebat and the false prophets. The king, wishing to kill both, Jehudah b. Tabai hid in Jerusalem, and Simeon b. Shetah was the queen's brother, who facilitated his escape to Egypt, where he stayed three years; being there, he learned from the Israelite sages found there since the destruction of the first Temple, and the days of Jeremiah, all the strange comments invented by Jeroboam and the false prophets. Simeon b. Shetah added thereto some of his own, and built there a great temple and sacrificed there, though it was not the chosen place; and after his return to Jerusalem he wanted to be a great lord in Israel, and taught, therefore, the people what he had acquired in Egypt, as the oral law communicated to Moses, and transmitted by him; and, because he was the king's brother-in-law and had much influence at the court, his false doctrines became popular among Israel, who received the false Torah instead of the true one.

After that Israel was divided into two parties, and the quarrel commenced also in the Sanhedrin, the heads of the nation, and heirs and teachers of the Torah. One sect went after R. Jehudah b. Tabai and was called Sadducees (Zadikim) (Upright), from the phrase "hearken unto me, ye that pursue righteousness" (Zadik)

[paragraph continues] [Is. li., i.], and their justice is everlasting justice, and their Torah is truth; Karaism is a continuation thereof. The second sect followed Simeon b. Shetah, and were called Pharisees (Parushim), separatists, for separating themselves from the old faith of Israel. This state of things continued from 3650 after creation, from the time of Jehudah b. Tabai, till the

ruin of the second Temple, year 3828. At that epoch, the majority of the Sadducees were slain, but the Pharisees mostly survived, for which there were two causes: first, because those of the Sadducaic party were the political and warlike men, while the Pharisees were humble and were students; secondly, because the Sadducees were stricter in observing the duties, and their conduct was of much holiness and purity, and had seen that if they were to be exiled, being an unclean earth, and without water for removing the uncleanness, they could not keep the law as it ought to be; therefore they were martyrs, choosing to be murdered rather than live, and all were killed for the sanctification of the Lord. Put the Pharisees who were not strict, and were not afraid of the ruin of the Temple or exile, and chose life rather than death, and went out to Titus, the Wicked, and, surrendering, were all left alive. Therefore, after the ruin of the Temple the Pharisees rose in power, whereas the Sadducees declined. Thus it continued till R. Jehudah the Nassi, the editor of the Mishna. He collected all comments, good and bad, true and false, ancient and recent, all together; he wrote them down in a book without making distinctions between the sacred and profane, unclean and clean; he decided and declared that they are all Sinaic. This occurred in 3945.

After the conclusion of the Mishna, rose up those who composed the Palestinian and Babylonian Talmuds, and from that time on the quarrel grew in force, and the hate, rivalry and jealousy grew between the two sects, the Sadducees and Pharisees. For the Sadducees held the true Torah, written by Moses our teacher, and those few true comments that have been left from many; but the Pharisees abandoned the written Torah and ignored it as of subordinate importance, and clung to the oral law, that is, the Mishna and the Talmud, making it the thing of the first importance, saying that tradition will be victorious. They said every one who studies the written law has fulfilled only partially his obligations, but every one who studies Mishna or Talmud he has completely discharged his obligations; every one who trangresses the written law is culpable of stripes, who transgresses the words of the sages is guilty of capital punishment, and that one should not object even if they say to you of the right that it is the left, and of the left that it is the right and similar erroneous teachings. Thus it continued to be till

the time of Anan the Nassi, the Holy and the Saint, the son of David the Nassi, in the year 4400 after the creation. Anan [1] lived in Babylonia and was of the Sadducees, and for his great wisdom Israel, Sadducees as well as Pharisees, chose him as Nassi, as the head of Beth Din and Exilarch. After his instalment as Nassi and head of Beth Din by the sanction of the Arabian monarch, and the will of all Israel, he became zealous for God and his Torah, and wished to restore it to its primitive purity; he commenced to plead against the oral law, *i.e.*, the Mishna, and deny and declare it as nought. When the Pharisaic sect perceived all this, they rose upon him and devised stratagems to kill him. But out of fear of the king, they did not lay their hands on him, but denounced him to the king that he had rebelled against the law of the government, but the king pitied him and saved him from them, and so he was left alive. When Anan perceived that the Pharisees did not want to return to the truth, he was disgusted with being a Nassi, left his house and possessions in Babylonia, and departed with his sons and disciples to Jerusalem, the Sacred City. He built there a synagogue, "The Temple of God," to pray and to weep morning, noon and evening; and perceiving that the Pharisees were increasing, and that the Sadducees decreased, and fearing lest the true Torah be forgotten entirely, and lest the Sadducees be absorbed in time by the Pharisees, he commanded his disciples, friends and acquaintances, to keep themselves apart from the sect of the Pharisees wholly and with the utmost possible strictness. He forbade them to eat *their* foods, for *they* are not careful about all kinds of uncleanness, and eat carcasses and tallow prohibited by the Torah. So also he forbade them to intermarry with them, because

they had trespassed the barriers of consanguinity. And Anan interpreted the Torah and commandments according to the true comment, as he had received it from his fathers and masters by tradition, who belonged to the sect of Sadducees, continuing from the oldest times; and as the whole Sadducean doctrine is founded on the text of the Holy Scriptures, Pentateuch, Prophets and Hagiographas, therefore Anan the Nassi called the Sadducean sect "Karaites," (Karaim), that is, who are *called* and go in their simplicity. (Ba'ale Mikre): and as the whole object of the Pharisees was to pursue high positions and *lordliness*, and also because they are *many* in comparison with the

few Karaites, he called them "Rabbanim," (lords, many), that is, the adherents of the Mishna and Talmud. . . .

This is the opinion of the Karaites themselves about their history, and that every one who wishes to know and understand all the errors of the Rabbis (according to them), should see the Book of God's Wars, ("Sepher Milhamoth Adonai"), by Salman b. Jerucham I and the Admonitory letter ("Igereth Hatochachath"), by Sahal Hakohen, and "Eshkol Hakopher," by Jehudah Hadasi Haabel (the Mourner), he called himself thus for mourning, and "Apiryon Asah," and "L'hem Sheorim," by R. Solomon the Turk, also the "Asara Maamaroth," of Elijah the Jerusalemite, and the "Amuna Omen" by Abraham b. Joshua the Jerusalemite, all which books are written to refute the false Rabbinical laws; and of the Rabbinical sages after Anan they say that when they saw that the plain and just truth is evidently on the side of the Sadducees, they invented about them calumnies, that they were Sadducees, and Bithusiaus followers of Zaduk and Bithus, the infidels, and their glory they confounded with shame by conscious falsehood for whereas they had been called Tzadikim from ancient times, they altered their name to Tzadukim (Sadducees, Zadukim), followers of Tsaduk, etc., etc."

. . . [1]Here we have given to the reader what we have briefly quoted so far as needful for our purpose, and to spare much of our own discussion by citing the words of another. From "Orah Tzadikim" treating of the split between the Karaites and Rabbis, written by the scholarly rabbi, Sim'ha Isaac of Lutzki in 550. And we, desiring to call the attention of scholars and thinkers to the affirmations of the Karaites themselves about their ancient history, both their charges against us and their justifications of themselves, have abridged their statements, for it is our duty to hear what they say for themselves, and try to separate the truths from the falsehoods as impartial judges, not as advocates.

And, before all, I say, the man is dreaming who speaks that the difference between the Karaites and Rabbis began in the time of Rehoboam; the son of Solomon, and of Jeroboam, the son of Nebat, when Israel revolted against David's dynasty. And if the Rabbi, were to make such a senseless assertion, that the rebels against David's dynasty were the same that the Karaites are, beyond doubt the Karaites would say that they pervert the words of the living God and deny what is written in the Prophets, that Jeroboam led a away the people from the worship of the true God who had protected

them from the times of Egypt till then, to serve golden calves which he had made, and made a

festival in a wrong month which he invented that the people should not go to celebrate the holidays at Jerusalem, and the royalty not be restored to David's house. The Karaites state here a strange fiction, which is ridiculed by every one who has any knowledge of books.

Besides that, any one who has eyes to see, ears to hear, and a palate to taste, that which is written in the Scriptures, is aware that during all the time of the prophets till the exile of Israel and Judea from their land and captivity in the land of their enemies, the quarrel between the parties was not about the interpretation of the Torah, or about the reasons of the commandments, but about the Torah itself, between those who knew it and those who did not know it, between the worshippers of the true God and the idolators. The prophets of the true God, and the best element of the people who followed them, have served God and loved him, and were his true servants, adhered to him and observed his commandments and his law. But the king and the common people devoted themselves to drink, to idolatry, adultery, and other uncleanness of the other nations of their time.

And truly, the author of the "Orach Zadikim," as well as the writers whom he quotes, have not adhered to the truth but indulged in falsehoods, by fixing the beginning of this quarrel at a time which it was impossible to have begun. And if the author and his co-religionists fully believe that the present Pentateuch was known to and in the possession of the names in the days of David and Solomon, Rehoboam and Jeroboam, and that, together with the written Torah and its commentaries,--it was in the possession of the Sanhedrin and the members of the great and small Beth Din of those days, as the same belief was entertained by the Pharisees from the written Torah and its commentaries, we will not plead with them to question or reflect upon this belief, and state from the investigations of the modern as well as the ancient critics, that the Pentateuch was at that time of recent date and no one knew of it because it had been written only in the days of Solomon, and no one had seen it,--for it would be unfair to refute a warranted belief on one hand by a total denial on the other. But we will argue from the standpoint of the Karaites themselves, who adhere to the text and deny the commentaries which are conflicting with the ordinary interpretation of the Scripture. For they themselves have interpreted the Scripture wrongly, and ascribed to it a meaning which has never been intended, by stating that the quarrel between Israel and Judea,

or between Jeroboam and Rehoboam, has caused a quarrel, in no way or manner resembling it, between the Karaites and the Rabbis regarding the interpretation of the Scripture. This is one of those falsehoods which have absolutely no foundation whatever, and are shunned by those who are able to distinguish between truth and falsehood.

The statement that the difference between the Karaites and Rabbis dates from the time the difference between Jehudah b. Tabai and Simeon b. Shetah broke out, etc., is nothing but a net spread out by the Karaites to catch therein the people of Israel, etc. But it is up to date not known who is the author of this statement and who circulated it among the Karaites that they might make it the foundation of their structure, which foundation, if demolished, would cause the ruin of the whole structure.

There is no doubt in our mind that the Karaites have borrowed this statement from the Pharisees when endeavoring to separate from the Sadducees, whom they also considered as infidels, and to erect a new edifice for themselves, for the Pharisees also consider Simeon b. Shetah to have

restored the Torah to her old .glory, as they state in the mentioned Boraitha: "The world was embarrassed until Simeon b. Shetah appeared and restored the Torah to her former state." And here they found an opportunity to use the Pharisees' arguments against them. The Pharisees say that after the massacre of the sages and those learned in the traditional law by Johanan Hyrcanus, the oral law was forgotten in Israel till Simeon b. Shetah came and restored it. By oral law is meant that traditional comment on the Torah as it was afterward written down and concluded by R. Jehudah-the Nasi and his successors in the Mishna and Talmud against which the Karaites protest. Now, the difference between restoration and innovation is insignificant, and what the Pharisees and Rabbis term restoration the Karaites name innovation, and maintain that Simeon b. Shetah made a new law, that is the oral law which was unknown previously, and had not descended to them from their forefathers: and from this new law a new quarrel sprung forth among those who believed in tradition, which quarrel has no connection whatever with the old controversy between the disciples of Sadduk and Bithus, the infidels, and the Josees, the believers, on whom all Israel leant.

As for the statement of the Karaites above mentioned that their belief dates from the time of the second Temple, etc., and that only Anan brought it to light again, after it had disappeared, the same was very ably criticised by the scholarly rabbi, S. J. Rapaport

[paragraph continues] ("Kerem Hemed," p. 200), by laying out his own plan for the investigation of the causes of the Karaite history; he says, namely: "The activity of Anan was not isolated in its kind, but it war, only a link in the chain of the history of the nations of those days. For there existed religious differences among the Arabians, some holding only the Koran and what Mahomet communicated to his son-in-law Eli, and who are known as the Shitin; while some held the traditions communicated by Mahomet, his wife and son-in-law, his sons, and many disciples, who are known as the Shonin."

And it seems that this religious quarrel has, to our shame, infected the Jews; Anan and Saul, his sons, tried to establish a new sect in Israel similar to the Shitin, for they thought that the Arabian high officers would assist them, for they would be at one with them in taking for the basis of their belief only what is written in the text, and to deny tradition. And how many times have religious movements, similar to those, taken place among the nations among which we live, even in our own times.

Having thus laid before the reader the views of the Karaites themselves, *i.e.*, of those later Karaites who endeavored to justify Anan for his complete separation from the Rabbanism, although Anan himself was very far from doing so, as can easily be seen by every one who has some sense of his own, from the statement of Anan: "And I will prepare you a Mishna and Talmud myself," (*vide supra*, 27), and also some of the opinions of the scholars Holdheim and Rapaport, we wish to submit our own opinion in regard to this matter.

In our judgment they all erred in making the following two assertions, viz: that the Sadducees did not believe in retribution in the world to come; and that the Talmudists had no knowledge of a sect naming itself, or which was named by others, Karaites. The error in making these assertions caused them to draw farfetched inferences and to write a number of articles, which will not stand any proper criticism. For Holdheim, in refuting upon the assertion of the Karaites that their sect was founded in the days of Jehudah b. Tobai, fixes their origin at a much prior

date, by stating that the Sadducees and Karaites are one and the same sect, and that the latter name was adopted by them at a later date, but at the time of the Talmud they were known by the former name, and that accounts for not finding the name Karaites in the Talmud, (see at length, ibid., p. 25), basing his assertions on Maimonidus and Abraham b. David of Paskira. Some of these assertions may be found in Rapaport, although he tries to reconcile

both sides. And because the Karaites differed from the Sadducees in that the latter did not believe in resurrection, and, according to him, also not in retribution after death, Holdheim asserts that the Karaites, who are the same as the Sadducees, have adopted that belief only at a later date, when that belief has already been adopted by all other nations and religions.

And coming to such conclusion he justifies the Sadducees and their views, and gives them preference over the Rabbanism and *their* views, which constitutes almost the whole subject of his book. But we will prove his error, and therefore most of his assertions will prove of no value, and the Talmudists and their views and teachings will remain true and everlasting.

But before attempting to explain ourselves in more detail we feel it our duty to say a few words in regard to Resurrection, which is the basis of the whole contention between the scholars above mentioned and the sects themselves.

The first Mishna in Chapt. Halek (Sanhedrin) reads: "The following have no share in the world to come: the one who says the Resurrection does not originate from the Pentateuch," which is explained by Rashi as follows: "*i.e.*, he who does not believe in the inferences drawn later on in the German that resurrection originates from the Bible; and even if he does believe in resurrection, but says that it does not originate from the Pentateuch, he is an infidel, for if he does not believe in its origin from the Bible what do we care for him or his belief? Wherefrom does he know that so it is? He is, therefore, a perfect infidel." And although some doubt whether these quoted words came from the pen of Rashi, because it was not Rashi's way to enter into lengthy explanations, still all concede that it expresses the true meaning of the Mishna.

Now, if we will take the true intent of the Talmudists, that although one believes in resurrection he is an infidel, if he does not believe that its origin is from the Pentateuch, we will at once conceive that when the latter belief began to circulate among all nations and among the masses of Israel to such an extent that, it was considered an essential element of the belief in God, and that any religion which did not consider it one of its dogmas, was not worthy of being ranked as a religion at all, the Talmudists endeavored to prove the origin of this belief from the Pentateuch and that other nations and religions borrowed it from *that* source, in order to refute those who asserted that its origin was in the New Testament and, therefore, the latter was the principal religion and the former ceased to exist.

We will now take up another Mishna in Tract Berachoth, P. 54*a*: "Since the Sadducees have perversely taught that there is only one state of existence, it was ordained that it shall be pronounced: 'From Eternity to Eternity,'" which Rashi explains, *i.e.*, "that they denied resurrection." Rashi again diverts the Mishna from its plain meaning, that the Sadducees did not

admit the existence of the world to come, *i.e.*, retribution after the soul separates from the body, and limited their disbelief to resurrection only; (and that the meaning of "perversely taught" means that they perverted from their own opinions and taught the masses that belief).

It is self-evident that the perversion of the Sadducees consisted, according to Rashi, only in denying the inferences drawn to establish the origin of resurrection in the Pentateuch. But from the dispute of the Sadducees with the founder of the Christian religion, or with his disciples, and from the derisive question, "whom of them a widow of seven brothers will marry after resurrection," which is quoted in the work of Azariah Di Rossi, we can easily see that the Sadducees did not believe in resurrection *at all*.

If we will examine carefully the interpretations of the Talmudists in desiring to find a hint for resurrection in the Pentateuch, and that they did not infer it from the plain statement (Deutr. xxxli. 39): "*I alone kill and I make alive*; I wound and I heal," which, on every occasion they explained to mean "as the healing follows the wound, so also does life follow death" (see Ben Ezra), but resorted to far-fetched interpretations instead, we will clearly see that the Talmudists did not wish to state that resurrection is *expressly* stated in the Pentateuch, for in such case they would, of necessity, have to admit that this belief was known and circulating at the time the Pentateuch was given. They only wanted to find some slight reference to it in the Pentateuch, and were of the opinion that the belief in resurrection was known only to a limited number of select men, but not to the masses, from whom it was kept secret, for fear that they might as well believe in "familiar spirits" and "wizards ("Ob and Yaduni"), or in "inquiring of the dead." But only after this belief has been borrowed from the neighboring nations and has been adopted by the masses, the Talmudists found it necessary to find some source for it in the Pentateuch in order to strengthen the latter, although not explicitly stated therein.

It follows from all this that at the time the Mosaic Law was proclaimed, that belief was not only not obligatory, but on the contrary every effort was made to keep it from the masses, and,

therefore, no promises were made as to resurrection, but only as to longevity and tranquillity during life-time.

When, however, the founder of Christianity made this belief one of its dogmas and minimized the Old Testament, the Talmudists made it obligatory to believe that its source is in the Pentateuch. And the Sadducees who rejected this belief at all were considered as disbelievers.

But we find nowhere that the Sadducees ever denied the immortality of the soul or that they ever denied the belief in retribution after death, for according to all opinions the Sadducees were not the disciples of Autigonus of Socho, Zaduck and Bithus, who, according to a statement in Aboth d'Rabbi Nathan, rejected the belief in retribution. The name Sadducees, as we have said in the beginning of this article, had its origin from Zaduck the high priest of David, according to Geiger's opinion. Or, perhaps, Holdheim's opinion is the correct one, viz.: that in the beginning they were surnamed "Zadikim," as Simon the high priest was surnamed the "Zadik."

Neither do we find anywhere that the Sadducees repulsed the statement of the Talmudists, to wit: "In order that thy days may be prolonged" (Deutr. v. 16), that means in the world to come

which is prolonged (endless), and as the simple proof, if one say to his son: "go up on the roof and examine the bird's nest, and take the young ones, and send away the mother, in both of which (sending away the mother and honoring the father) longevity is the promised compensation in the Pentateuch; and the son in doing so fell and was killed; how can the promise be fulfilled? We must, therefore, say that the promised longevity has reference to life after death." Nor is it anywhere found that the Sadducees refuted the statement of the Talmudists: "That person shall be cut off" (Numb. xv. 31); that it means, he should be cut off from this world as well as from the world to come."

The assertion of those who consider themselves competent to make it, that there is no basis in the Pentateuch for the immortality of the soul, is not correct, for besides the many plain passages indicating. that, the same can also be established from the necessity of the marrying the widow of the deceased childless brother, for if the soul is mortal what is the benefit of "raising up the deceased's name?" So, also, greatly err those who, from this very passage, draw a contrary conclusion, *i.e.*, by asserting that because the soul dies together with the body the Pentateuch commanded that decedent's name be raised up if he die childless, for if the soul dies as does the body, why all that trouble of marrying

the widow, or the ceremony of the "Chalitza," and spitting out before the one who refuses to marry the widow of his deceased childless brother, as commanded by the Pentateuch? If the soul derives no benefit therefrom, why all that? There is no honor in all that either for the dead or for the living, and it is very well known that this custom of raising up the name of the deceased on his estates was known and observed in ancient times, and the family that did not observe this custom incurred disrespect.

Thus far as to the Pentateuch, but as regards the prophets or Hygiogropha only a blind man can fail to find in them retribution and immortality of the soul after death. The whole book of Isaiah is full of that, and it says plainly (Isa. lvi. 4-5): "For thus saith the Lord concerning the eunuchs (those who die childless) I will indeed give unto them, in my house and within my walls, a place and a name better than sons and daughters, an eternal name--they shall not be cut off." And not to mention about the early and the later Hygiogropha (Ps., xvi. 10): "Thou will not abandon my soul to the grave," and also (ibid. xxvii. 13): "Unless I had believed to see the goodness of the Lord in the Land of life." And it is also explicitly stated, (ibid. xxv. 13): "His *soul* shall abide in happiness; and his *descendants* shall inherit the land." Now, how can it enter the mind that the Sadducees, who, according to Holdheim, are the Karaites, whose only endeavor was to give the whole Scripture, not only the Pentateuch, the illiteral meaning of the words will deviate from the literal meaning, and explain all those passages as referring only to this earthly life? We can also see from the fact that the Sadducees were more strict as to purification than the Pharisees in going as far as saying that profane writings (the book of Homer) make the hands unclean, to such an extent that if they touch Terumah the latter must not be eaten; that they believed in immortality of the soul, which they considered to such an extent clean that they will not tolerate the least uncleanliness in a sacred thing. And how much did the Sadducees sacrifice themselves in order to prevent the enemy from defiling the sanctuary? How much did they sacrifice themselves for the sake of the Holy name (•••••••• {Hebrew *QYDWShHShM*}), which no one who does not believe in immortality would do? But Holdheim seems to advance a strange assertion, viz., that the Sadducees believed in immortality of the soul and nevertheless denied retribution, which we can by no means understand, because what is the benefit of immortality if

there is no retribution? If all are equal and alike after death, the righteous and the wicked, the wise and the fool? (The philosophy of Aristotle concedes

at least that the soul of the righteous unite with the (•••••••• {Hebrew *ShKLHPW!L*}) after death, but according to Holdheim there is absolutely no preference to the human soul over that of the animal). It is true that we heard some few years ago (in 1885) in Leipsic, at a meeting of spiritualists, in company of the late Dr. Mandelkern, a professor, state in his lecture that the spirit of a certain man who, during his lifetime was one of the easy-minded, rested upon his shoulders for about two weeks, and that he was then of the same disposition as before death, and from this he drew the conclusion that the soul remains the same after death, in the spiritual world, as during the lifetime, but we hardly believe Holdheim ever entertained this belief, which is contrary to common sense, and still more, he endeavors to make his beloved Sadducees entertain such belief.

Dr. Geiger's opinion that the whole contention between the Sadducees and Pharisees was originally over political affairs, the former struggling to have the control over such affairs, because of their descent from prominent families, and the latter not desiring to submit, and from this the contention extended to civil and religious matters; the Pharisees being extremely faithful to their traditions saw in everything the Sadducees differed from them, a denial in tradition;--seems to be more correct, as being also supported by history. The same theory is followed by I. H. Weiss in his work "Dor Dor V'dorshow," who proves conclusively that the Pharisees always laid down their decisions in direct opposition to that of the Sadducees in order to prevent the masses from joining the ranks of the latter. In fact, we see that the differences between the two sects, mentioned in the Talmud, were as to minor things which have very little to do with religious dogmas. We also have proved at the end of Tract Sabbath of our new edition, from page 381 on, that all the eighteen precautionary measures adopted by the Pharisees at the attic of Hananiah, were directed against the priests who mostly belonged to the Sadducees.

We do not mean to rebuke the Pharisees for having acted thus, for they did so of necessity, because the Sadducees endeavored to transplant Hellenism into the Hebrew religion in such a manner that it should not be noticed, and in order to guard against this they opposed the decisions of the Sadducees even when the latter were not contrary to thee true teachings of the Torah, for (Ps. cxix. 126): "It is time to act for the Lord: they have broken thy law."

It is very probable that because the belief in resurrection was so deeply rooted among the masses, because it is very natural that cue should desire to meet again his relatives alive after they

had once died, and the Sadducees have opposed this belief and ridiculed it, the Pharisees assigned so much importance to it and endeavored to find some source for it in the Scripture, in order to prevent the names from adhering to the teachings of the Sadducees and thereby preventing the transplanting of Hellenism into the Hebrew faith, although in the very beginning of its development this belief was kept secret from the masses.

The result of what has been stated is that the Sadducees as well as the Pharisees, have expounded the Scripture according to tradition and have believed in the immortality of the soul and retribution after death. And the animosity of those two sects grew from the desire of each of them to have the control over political affairs. Therefore, when the Pharisees in the end gained the overhand, the first thing for Simeon b. Shetah to do was to remove the Sadducees from the Sanhedrin, in which he was very successful. But after the quarrel was carried on for several centuries, and almost during the whole time of the existence of the second Temple, and during that time more than once the danger was imminent that the teachings of the Pharisees should be swallowed up by Hellenism, and especially so during the time of Johanan the high priest and king, during whose reign the Pharisees were executed by the hundreds, and many emigrated to Egypt and Babylonia, the animosity and hatred assumed such proportions that the name "Sadducee" alone was contemptible. Still more, when after the Pharisees had already been successful they were compelled to have public debates with them in religious matters, for their teachings have been deeply rooted among the masses and could not easily be rooted out.

This animosity assumed still greater proportions when Christianity began to develop; for the latter has confirmed many of the teachings of the Sadducees, although not directly still indirectly, and has opposed those of the Pharisees, although they did not differ to a considerable extent from the latter in religious matters and principles, the masses adhering to the teachings of the Pharisees, have greatly despised the Sadducees, and considered them infidels and disbelievers in retribution and immortality of the soul, and in the appearing of a personal Messiah from the houses of David and Joseph, which belief has been circulating among the masses during the last days of existence of the second Temple, and they endeavored, with all their might, to obliterate their teachings. Those few Sadducees who lived after the destruction of the second Temple gathered up all the courage they could and entered into public debates with R. Johanan b. Zakkai,

[paragraph continues] R. Jose, etc., but seeing that their hope was forlorn, and that they would not be able to rise again, they gave up the battle publicly, although they did not renounce their beliefs, or abandon their hatred, and tried to continue the same against the teachings of the Pharisees secretly. At least, during the second century we hear nothing of them publicly.

Now we will stop for a moment to see who the Karaite sect was. There is no doubt that there existed a sect by this name in the days of the Talmudists, for they are mentioned several times in the Talmud under the name "Adherers to the Scripture," (••••••• {Hebrew *KNYMQK?*}), and in one place it is plainly stated "the Karaites added" (Pesachim, p. 117; our edition, p. 246, see foot note 3). Neither is there any doubt that they were not favored by the Talmudists, as we find in many places in the Talmud remarks reflecting on them, as *f.i.*: "They who occupy themselves with the study of Scripture are not to be blamed, but, on the other hand, not to be praised" (Baba Metzia, 79), and in Hagiga, it states plainly; Rabh said: "If a man goes out from the study of the Mishna to read the verses of the Bible, this man can have no more peace." And there is no doubt that many similar remarks found in the Talmud have reference to this sect. But we can not, with exactness, fix the time when and to what extent this sect openly declared against the teachings of the Talmudists. However, we do not hesitate for one moment to state that during all that time this sect has brooded an intense hatred to every Israelite who has not followed them, although at times they were compelled to conceal their hatred.

One penetrating glance into the history of the Samaritans and into that of the Karaites; one penetrating glance into the literature of the former and into that of the latter; the curses pronounced by both of those sects against the followers of the Rabbanism; the beliefs and principles common to the religion of both (although differing slightly ceremonially), will suffice to induce one to agree with us that the Karaites, whose sect was established in the days of Anan, and a few of whom are living in our own time, have not only borrowed from the Samaritans their teachings, but that the Karaites are the former Samaritans and that even up to date they have changed slightly only in their outward appearance and in name, but not intrinsically.

From the whole sect we will pick out only Anan, who descended from the family of the Exilarch, who came from the house of David (and perhaps was his mother or grandmother of Samaritan descent), and who, from jealously having scorned and despised

the traditional teachings, had gathered the remainder of the Samaritans, who had long ago changed their name and tendency, had become their chief to fight their battles and to separate completely from the house of Israel, for he could afford doing so, being a descendant from a prominent family. But we do not in the least intimate that Anan founded a new sect with new principles.

This, our present view, is not unfounded, but is based on historical facts, for we do not find anywhere in history any such intense, unchangeable, everlasting and unfounded hatred as that of the Samaritans and Karaites toward the house of Israel.

Whenever we find in history that any ill-feelings or hatred existed between two nations it is easy to find the reason for such feelings or hatred; it was either the craving for subjugation of foreign countries, or the desire to reign supreme over others, or, in very ancient times also the desire to prove the supremacy of one nation's idols over those of the other, and many other reasons, which provoked one nation to go to war with another and to take vengeance of one another. But we find no such reason for the hatred of the Samaritans toward the house of Israel, yet when the latter returned from Babylonia and intended to build the Temple, no plausible reason can be found for the endeavoring of the Samaritans to mislead the Israelites whenever they tried to establish the new moon. (See Rosh Hashana, Chap. II., our Hebrew edition, p. 25; English, p. 38.) Neither can there be assigned a reason for the custom of the Samaritans to pronounce curses over Ezra the Scribe, at the time of the opening of the ark of scrolls every Sabbath, which prevails up to date. (See our "The Pentateuch, its Character," etc., as well as for many other things which the reader may find in the Talmud and Apokrypha, and in Graetz's History of the Jews, which, if quoted here would occupy a full volume.) In a word, there can be found no substantial reason or ground for these things, except that they blindly hated the house of Israel. Neither do we find any reason for the slandering and reviling by the Karaites of the Rabbanism in general, and of Rabh Saadiah Gaon in particular, nor for all the false accusations and malicious charges and denunciations against the Rabbanism. contained in the extensive literature of the Karaites.

History shows us that nations who hated each other to the extreme have in course of time laid the weapons aside and made up. History records numerous instances, that sects between whom differences existed, and which even reached such a degree that they resulted in actual fight, have in course of time become reconciled and associated with each other, and intermarried, and the

former

hatred and quarrels were wholly forgotten. We will not cite as an example the Beth Shammai and the Beth Hillel, who, although widely differing from each other in their opinions, still intermarried, as found in the Talmud; but even the Sadducees and the Pharisees, did they there decline to eat and drink with each other, or intermarry? We do not find that anywhere. 1 The Samaritans, however, and Karaites are singular instances in this respect in history. Although most of them have already intermingled with other nations, not a single instance can be pointed out that they have intermarried with an Israelite or have partaken of his food or drink.

The toleration of the Pharisees and of their teachings is well known. The disciples of the Beth Hillel have done all that lay in their power to bring them into the house of Israel: they credited them in regard to purification; they permitted them to be counted in the number of three for the benediction over the meal (••••• {Hebrew *ZYTWN*}) and in the number of ten for prayer in the prayer house (•••• •••• {Hebrew *MNYN !ShRH*}) and in fact, wanted to consider them as Israelites for all purposes, but their animosity and trickery increased to such an extent that they could no more be tolerated, and therefore, the leaders of Israel were compelled to regard them in all respects as idolators, and prohibited their bread, wine, and oil. Exactly the same thing happened with the Karaites whom the Rabbanism endeavored, with all their might, to draw near them and debate with them, until they convinced themselves that their hatred toward Israel is so great that they said "•••••• ••••• •••••• •••• {Hebrew *MT?HYN L!WLM HQR!YM ?YNN*}"(the rents will never be sewed together), "the Karaites will never make up with us," and they are up to date regarded as idolators.

We know well that we are too brief in this article and that we ought to adduce at length all the facts to prove that all that the Samaritans and Karaites have done unto Israel was not to derive any benefit therefrom, or with a view of subduing them, for they

well knew that this was an impossibility, but only out of blind hatred deeply rooted in them, which descends from generation to generation. We know this very well, but we can not enter here into such details, as it would exceed the limits of an article, and would comprise a whole book in itself. We, therefore, rely upon the intelligence and knowledge of the reader that be will know where to find those if needed.

Even in our own times, when the Karaites number only a few thousands, which accounts for their enjoying equal rights with the natives, since Emperor Nicholas of Russia, they make no secret of their hatred toward Israel. When the anti-Jewish disorders broke out in Russia some few years ago, and many of our co-religionists were exiled from the Middle States of the Russian Empire, the latter have petitioned the Russian Government to be permitted to embrace Karaitism. The Minister of the Interior has expressed his willingness to grant their petition if the Karaites will consent to receive them into their midst, and directed an inquiry to this effect to their Hacham in *Odessa*, but the latter answered that there is no desire on the part of the Karaites to receive the Jews as their co-religionists.

These facts need hardly any comment; they speak for themselves. In fact, during all the long period since the year 760, it has not as yet happened that even a few individual Karaites should intermarry with our co-religionists, or should in any way associate with us. (Even in business affairs they do it only with great reluctance and very seldom.) Is there any stronger proof necessary of this race-hatred? No other race or nation, no matter how great their hatred may be, will ever decline to receive into their midst a Jew, if he only wishes to gain their faith, and will never refuse to associate with him; and the masses, as well as the intelligent classes, have always been favorably inclined toward the Jews. But this hatred of the Karaites has no equal among other nations in any generation.

As the Samaritans have forged and falsified the Pentateuch, as is now well established, so also did the Karaites forge and falsify the Talmud. And we hereby reproach the writers of the history of the Karaites, who without much deliberations wrote; For Saadiah the Gaon, when king, unable to assign any good reason for a statement found in the Talmud (Jerushalmi), that the Beth Shammai have killed some of the Beth Hillel, and *vice versa*, has denied the existence of such a statement at all; and Sahl, the son of Matzliah, his opponent, in order to prove to the world the delinquency of R. Saadiah, has descended from Palestine to Babylonia with the

Jerusalem Talmud in his hand! And they did not conceive that Sahl himself has forged the manuscript of the Talmud by writing in this statement, and he was not the first one to do so, but was probably preceded by others, as we have remarked in the introduction to our edition of Rosh Hoshana. In fact, we are surprised at those who are handling the Karaite literature that they have not perceived it. Why should more evidence be given to Sahl the forger, than to Rabh Saadiah, who states positively that such a statement did not exist in the Talmud? Why should we not believe R. Saadiah that in his manuscript such a statement was not in existence? (To our regret this statement was added to, and remains in the Talmud through the fault of the printers.) Especially so that even now in our own days the Karaites continue to forge and falsify, as proved by many modern scholars at the head of which is Abraham Harkawy, by exposing the falsifications of Abraham Firkowitz, the Karaite Hacham, in all his writings.

The result of all that stated is that from the similarity of action, in all details, of the Karaites and Samaritans we can logically arrive at the conclusion that the Karaites were doing nothing new, but only stepping in the shoes of their ancestors, the Samaritans, who they were, only under a different name, and being so they never descended from Israel. And all that Anan did was to gather the scattered Samaritans and encourage them to continue their fight against Israel, which has been hitherto conducted by them secretly, openly and publicly and with more vigor and animosity.

And if we will examine with a critical eye the literature of the Karaites we will easily see that they are none others than the Samaritans. And in vain has Dr. Holdheim held up as a striking proof the "laws of divorce," saying that such were the opinions of the Sadducees, and that the Karaites who were none else but the Sadducees clung to their old laws. No divorce was granted under the teaching of the Samaritans, unless on the ground of adultery. And as to this also the Talmud bears testimony in stating (as quoted above), "The Beth Shammai are as the Kuthaiz, *i. e.*, the Beth Shammai who prohibited a divorce unless on the ground of adultery, agree with the Samaritans who taught the same thing, and so also are the laws of the Karaites (even in regard to this has Dr. Holdheim blamed the teachings of the Pharisees without any foundation, for

formerly even the Pharisees did not allow a divorce unless on the above-stated grounds, and all the leniency as to divorce which was afterwards decreed by the Beth Hillel, of whom R. Aqiba was one, was only introduced because the exigencies of the time required it, for it was at the time the New Testament

began to gain strength and become popular, which declared every one who married a divorced woman to be an adulterer; as proved by I. H. Weiss in his work, and all other laws of the Karaites"). The strict observance of the Sabbath, etc., is nothing else but the laws of the Samaritans, and the slight difference in the ceremonies of these two sects is only because the former lived much later than the latter, and had to struggle with other sects who were their superiors, and to submit to them, and therefore many ceremonies were forgotten altogether. As to principles and dogmas, we have never heard that the Samaritans have ever rejected the belief in resurrection or in the world to come. On the contrary, as the belief in resurrection has circulated among all nations, and as the Samaritans have produced no great and learned men, and being widely separated from Israel, it is very natural that they did believe in resurrection as did their descendants the Karaites.

Another proof can be adduced that the Karaites are the descendants of the Samaritans; namely, that the Karaites mourn much more over the destruction of the Temple (and some of their Hachams have even adapted the name "Mourner" or "Mourners"), than we do, because, as the Samaritans they mourn over the loss of their temple on the Mount Gerisim which was destroyed by Janai, and continue to curse him up to date in their prayers.

We could adduce numerous other proofs taken from both the extensive literature of the Karaites and the inextensive literature of the Samaritans, to show that we did not in the least exaggerate our opinion as to the origin of the Karaites, but this article has taken up much more space than we expected and we are unable to give them here to the reader.

Before closing this article we find it our duty to answer the gentleman who put the question to us: "What are the reformers of our times, if not Karaites?"

A careful examination of the literature of the reformers in Europe, as Holdheim, Geiger, Ritter, etc.; of the prayer books of the reformers in this country, and of the sermons of their preachers all over the world, we will at once recognize in them the early Sadducees, with all their particularities. They (generally, not considering here and there an exception) believe in immortality of the soul, in retribution after death and in many Talmudical traditions, as can be shown by the fact that they observe the holidays as established by the Talmudists; but they do not believe in resurrection, neither in the coming of a personal Messiah, and do not recognize the Talmud as final authority in all matters; and self-understood those rules and regulations established subsequent to the

close of the Talmud but in its spirit, the same thing did the former Sadducees.

But as our present reformers are descendants of the Pharisees, and the Sadducees being no more

in existence, therefore they also have in many things adopted a new form, and recognize the teachings of the Pharisees (as for instance the observance of the sixth day of Sivan as Pentecost) as indisputable laws. But we can by no means accuse the reformers in not believing in tradition generally, as we cannot well accuse of that the former Sadducees. (Even those reformers who have changed the Sabbath, for even this can be explained in accordance with the general rule of the Talmud which sanctifies the seventh day, but not the Sabbath itself, and for this reason the Talmud decreed that in case one forgets which day is the Sabbath, he shall count six days and observe the seventh as Sabbath, see our article in the Deborah, 1894.) Should the reader put the question to us whether the reformers are not to be charged with transplanting Christianity into Judaism, and whether there is no danger that in course of time Christianity will swallow up Judaism altogether, as the Unitarism of our own days, as such danger has already threatened Judaism during the early Sadducees, we will say that this question requires a deliberate answer, and cannot be answered by "yes" or "no" offhand.

We can only state that we have devoted much of our attention to this question, and with a penetrating eye have followed the work of the reformers of the School of Holdheim, Ritter and their companions, in Berlin, of the school of Isaac Wise in Cincinnati, and of the teaching of Emil G. Hirch in Chicago, and having collected considerable data of their past, and having bestowed much deliberation upon their future, we consider ourselves competent to give our opinion about Otis matter. In fact we have prepared a long article dealing specially with the following questions: (1) Does the Hebrew religion require any reforms? (2) If it does, what are they and on what basis can we introduce them? (3) What are the re. reforms introduced by the conservative reformers, and what are those of the radical reformers? (4) What benefit resulted from these reforms in general and in particular? (5) The result of the reforms of Cincinnati and of those of Hirch, and (6) What is the meaning of the name "Orthodox," and to whom shall it be applied? This article we are willing to submit to the readers (after accomplishing our task of the translation) if desired.

END OF VOLUME I.

Footnotes

140:1 Translated almost verbatim from Mamar Haishuth.

143:1 It is well known that the Karaites make Anan's life date 100 years earlier than in reality, *i. e.*, 4400. But S. L. Rapoport, in his "Kerem Chemed," p. 203, has explained and proved their mistake, from the testimony of Sherira the Gaon, and the "Book of Tradition," by Abraham b. David, that Anan rose in the age of Jehuda the Gaon, who was a Gaon from 4516 to 4529 1/2.

144:1 Page 122, Holdheim's opinion.

156:1 An example may be given of the last century when a new sect (*Chasidim*) established themselves. The greatest authority, at least in Russia and Poland, Eliah Wilna, called the "Wilner Gaon" in conjunction with all the Rabbis, excommunicated the whole sect, prohibited their eatings and beverages and intermarriage with them. Moreover he allowed any one to

denounce the new sect, and their rabbis were imprisoned by the government. But what was the end? Nothing at all. All the excommunications, prohibitions, prosecutions, etc., were abolished, without even the result of a meeting, and as soon as the quarrel was over, not one of either party hesitated to mingle with the opposite sect. All are called Israel, all are Israelites, and at the present time nobody gives any attention to all that happened then.

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PART I.

HISTORICAL AND LITERARY INTRODUCTION TO THE NEW EDITION OF THE TALMUD.

CHAPTER I.

THE COMBINATION OF THE GEMARA, THE SOPHRIM, AND THE ESHCALATH.

Voluminous books were written about the text of the Mishna and Talmud in almost every language, besides valuable articles by very scholarly men in different books and periodicals. In the bibliography the reader will find all modern works arranged with various references to subjects. We shall only point out the special books on this subject, viz., "Darkhe Hamishnah," (The Ways of the Mishna), by Zachariah Frankel, "The Introduction to the Mishna," by Jacob Brill, 1876, "The Tradition of the Oral Law," by H. Weiss, and "Toldat Hamishnah," (History of the Mishna), by Haim Oppenheim, all in Hebrew; "Jahrbücher," by Dr. N. Brill, Frankfort, A. M., "Real Encyclopædie," by J. Hamburger, "Die Lehrer der Mishna," by M. Braunschweiger, and Graetz's "History of the Jews," all in German. Finally three special introductions were written (1) "Einleitung in den Talmud," Leipzig, 1894, second edition, by Dr. Herman Strack, in German; (2) "Introduction to the Talmud," 1891 and 1894, second edition, by Dr. M. Mielziner, in English, and (3) "Introduction to the Mishna," in the Russian language, by N. Perferkowitz. [1] In these introductions are mentioned also the different translations of the Mishnayoth and Talmud in all the languages up to the time these works were written. Finally, Dr. Erick Bischoff wrote a special book named "Kritische Geschichte der Talmud-Überzetzungen aller Zeiten und Zungen," Frankfort,

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a. M., 1899. All the above mentioned introductions explain the terms of the text of the Mishna and Talmud, their abbreviations and the method of both Talmuds, to enable those who desire to study the text in the original. We, however, who wish to give an introduction to our English translation of the Talmud, deem it not necessary to trouble the English reader with the explanations of the text, and shall give only what pertains to our new edition.

We have already mentioned in our brief introduction to *Sabbath* that the Talmud, in general, is composed of *Mishna* and *Gemara*. In this introduction, however, we shall give all the particulars pointed out by Strack and Mielziner which we deem of interest to the English reader. As a text we took Mielziner's "Introduction," which is an excellent work, omitting what seems to us not necessary for the reader, supplying it with necessary remarks and additions.

The Talmud is a combination of *Mishna* and *Gemara*, the latter is a collection of *Mishnayoth*, *Tosephtas*, *Mechilta*, *Siphra*, *Siphre* and *Boraithas*, all of these, interpreted and discussed by the Amoraim, Salboraim, and also Gaonim at a later period. "The Mishna is the authorized codification of the oral or unwritten law, which on the basis of the written law contained in Pentateuch, developed during the second Temple, and down to the end of the second century of the common era." The author of which was R. Jehuda, the prince named "Rabbi" (flourishing toward the end of the second century), taking the unfinished work of R. Akiba and R. Meir as basis. 1

(2.)

"The word Tosephta means Addition, Supplement, and, as indicated by this name, the work is intended to complete deficiencies of the Mishna. 2 It is divided into Masechtoth, generally corresponding to those of the Mishna, but differing

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from them in the arrangement of their subject, and in the division of their Perakim. The latter are not subdivided into paragraphs. There are in all sixty Masechtoth and 452 Perakim. The Tosephta contains mainly the remnants of the earlier compilations of the Halacha made by R. Akiba, R. Meir, R. Nehemia, and others not adopted in the Mishna, and, besides additions made after R. Jehuda Hanasi's death by his disciples, R. Chiya, R. Oshaya, Bar Kappara and others. But we find in that work also many sayings and decisions of later Amoraim of the Babylonian and Palestinian schools. In its present shape it belongs to the fifth or sixth century." 1

(3.)

"The Mechilta, the Siphra and the Siphre have this in common, that they treat of the oral law not according to well arranged subjects, as is the case with the Mishna and the Tosephta, but rather in the form of a running commentary and discussion on the biblical passages from which the law is deduced or on which it is based.

"The Siphra, also called Torath Cohanin, is a collection of traditional interpretations of the whole book of Leviticus, introduced by an exposition of R. Ishmael's thirteen hermeneutic rules."

(4.)

"The Siphre, or, as its fuller title reads, the books of the school of Rab, comprises the traditional interpretations of the book of Numbers, beginning with Chapter V., and of the whole book of Deuteronomy. The author of the Siphre on Numbers was evidently not the same as the author of that on the last book of the Pentateuch. The style of the former, being more argumentative and discursive, often resembles

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that of the Siphra, while Siphre on Deuteronomy is generally brief, bearing more resemblance to

the Mechilta." The author of it is said to be R. Simeon b. Johai.

Besides the Tosephta, the Mechilta, the Siphra and the Siphre just described, other collections of a similar character existed during the Talmudical period. In the course of time they perished, but many hundred fragmentary passages thereof are quoted in all parts of the Palestinian and Babylonian Gemara. Such a passage quoted from those lost collections as well as from the Tosephta, Mechilta, Siphra and Siphre was termed *Boraitha*, or *Mathnitha Boraitha*, meaning *extraneous* Mishna. This term was used in order to distinguish those passages from passages in *our Mishna*, that is, the authorized Mishna of R. Jehuda Hanasi, compared with which they had but a subordinate value. The Baraithoth are often found to be conflicting with each other or with the authorized Mishna, and in this case the Gemara usually displays great ingenuity and subtility in the attempt to reconcile them. In some instances, however, one or the other Boraitha is declared to be spurious. [1]

The authorities mentioned in the Mishna and Boraitha [2] as having transmitted and developed the oral law belong to three different periods; namely: (1) The period of Sopherim. (Scribes); (2) The period of Zugoth; (3) The period of Tanaim.

(*a*) Sopherim or Scribes were the learned men who succeeded Ezra during a period of about two hundred years. To them many institutions and extensions of the Mosaic law are ascribed. The Sopherim. are also called collectively "the men of the Great Assembly (Synod)." According to tradition, this Synod consisted of 120 members, but we have no record of their names with the exception of *Ezra*, its founder, and of *Simon the Upright* (*Just*), (the high priest Simon I., between 310-292, or his grandson Simon II., between 220-202 B.C.), who is said to have been one of the last members of the Great Assembly.

Antigonos of Socho, a disciple of Simon the Just, was the connecting link between this and the following period.

(*b*) The word *Eshcalath* (*Zugoth*), meaning the pairs (duumviri), is the appellation of the leading teachers from Jose ben Joezer till Hillel, of whom always two, at the same time, stood at the head of the Sanhedrin, one as president (Nasi), and the other as vice-president (Ab beth din).

The succession of these Zugoth was:

(1) *Jose ben Joezer* and *Jose ben Jochanan*, flourishing at the time of the Maccabean wars of independence.

(2) *Joshua b. Perachia* and *Nitai of Arbela*, flourishing at the time of John Hyrcan.

(3) *Juda b. Tabai* and *Simon b. Shetach*, flourishing at the time of Alexander Janai and Queen Salome.

(4) *Shemaiah* and *Abtalion*, flourishing at the time of Hyrcan II.

(5) Hillel and Shamai, flourishing at the time of King Herod.

(*c*) With the disciples of Hillel and Shamai begins the period of Tanaim, which lasted about 210 years (from 10 to 220 Ch. Era). With the beginning of this period the title Rabbi (teacher) for the ordained teachers, and the title Rabban (our teacher) for the president of the Sanhedrin came in use.

In the Mishna, the term Tana, meaning a teacher of the oral law, does not yet occur. Those teachers are there signified by generally adding the title of *Rabbi* to their names, or by calling them collectively the Sages, while the authorities of the preceding period are occasionally designated "the former elders." It is first in the Gemara that the term *Tana* is applied to a teacher mentioned in the Mishna and Boraitha, in contradistinction to the *Amoraim*, expounders of the Mishna, as the teachers after R. Jehuda Hanasi are called. (In Babylonian Talmud: in Palestinian, however, the Amoraim are also called Rabbis.)

The period of the Tanaim is generally divided into five or six minor sections or generations. The purpose of this division is to show which teachers developed their principal activity contemporaneously, though the actual lifetime of some of them extended to more than one generation.

The following chronological tables contain the names only of the more prominent [1] teachers of each generation. Every table is followed by short biographical sketches of the teachers mentioned therein. [2]

Footnotes

1:1 This work, which is the first of its kind in the Russian language, is also worthy to be considered.

2:1 The meaning of the word Mishna is already explained by us in the first volume of this work, as well as its division into sections.

In Mielziner's "Introduction," pp. 18-21, the reader will find all the details about Mechilta Siphra and Siphre and Boraitha, which we deem it not necessary to repeat as they are not of importance to the reader.

2:2 See also our brief general introduction, vol. i., p. xvii.

3:1 The Tosephta is usually printed as an appendix to Alphasi's compendium of the Talmud. In the Vienna edition of the Babylonian Talmud (1860-72) the Masechtoth of the Tosephta are appended to the corresponding Masechtoth of the Talmud. A separate revised edition of the

whole Tosephta was published by Dr. Zuckermandel (Pasewalk and Treves, 1877-82). Dr. Adolph Schwartz is publishing a new edition of the Tosephta, with notes and text corrections, of which the first volume is out, Wilna, 1891. Critical researches on the Tosephta are foul) din Frankel's "Darke Hamishna," pp. 304-307, and in I. H. Weiss's "Dor Dor," etc., II., pp. 217-225; also in I. H. Duenner's "Wesen und Ursprung der Tosephta," Amsterdam, 1874.

4:1 Some critical researches on the Boraitha are found in Frankel's "Darke Hamishna," pp. 311-313, and in I. H. Weiss's "Dor Dor," II., pp. 239-244.

4:2 We do not find the *Zugoth* to be mentioned in the Boraitha. However, we do not cancel it as it is so written by Mielziner.

Next: Chapter II: The Generations of the Tanaim

CHAPTER II.

THE GENERATIONS OF THE TANAIM.

FIRST GENERATION.

The principal Tanaim of the first generation, which lasted about seventy years, from 10 to 80, Ch. Era, 3 are: (1) The School of Shamai and the School of Hillel; (2) Akabia ben Mahalalel; (3) Rabban Gamaliel the Elder; (4) Rabbi Chanina, Chief of the Priests; (5) R. Simon ben Gamaliel; (6) R. Jochanan ben Zakkai. (Strack adds to this first generation [10-90] the judges), (7) Admon, and (8) Hannan; (9) Nachum the Madaith; (10) Eliezer b. Jacob I; (11) Haninah b. Dosa; (12) Nechunyah b. Hakanah; and (13) Zadock.

Mielziner counts Adman, Hannan and Nachum of Madaith at the end of this paragraph, not numbering them among the first generation, so also he did with some others in the succeeding generations.

Characteristics and Biographical Sketches.

1. *The School of Shamai* and the *School of Hillel* were. founded by the disciples of the great teachers whose names they bear. Following the principles of their masters, 1 they differed widely in their opinions on many legal questions; the School of Shamai, in general, taking a rigorous, and the School of Hillel a more lenient view of the question. In their frequent controversies the School of Shamai, having been founded already during the lifetime of Hillel, is always mentioned first. Of individual teachers belonging to either of these two schools only a very few are occasionally mentioned by name. Both schools existed during the whole period of the first generation, and the antagonism of their followers extended even to the middle of the subsequent generation.

2. *Akabia ben Mahalalel*. Of this teacher who flourished shortly after Hillel only a few opinions and traditions are recorded. According to what is related of him in Mishna Eduyoth, V., 6, 7, he was a noble character with unyielding principles.

3. *Rabban Gamaliel the Elder*. He was a son of R. Simon, and grandson of Hillel, whom he succeeded in the office of Nasi. Many important ordinances (••••• {Hebrew *TQNWT*}) of the Rabbinical law are ascribed to him. He died eighteen years before the destruction of Jerusalem. The epithet "the Elder" generally added to his name, is to distinguish him from his grandson Gamaliel of Jabne, who flourished in the following generation.

4. *Rabbi Chanina, Chief of the Priests*, or the proxy of the high-priest. He, as well as "the court of Priests," is incidentally mentioned in the Mishna in connection with laws concerning the

sacrifices and the Temple service.

5. *R. Simon ben Gamaliel*. He was the son and successor of Rabban Gamaliel the Elder, and was executed by the Romans in the time of the destruction of Jerusalem. Belonging to the School of Hillel, his individual opinions in questions of law are but rarely recorded in the Mishna. He must not be

confounded with his grandson who had the same name and belonged to the fourth generation of Tanaim.

6. *R. Jochanan b. Zakkai*. This distinguished teacher was one of the youngest disciples of Hillel, occupied a high position already before the destruction of Jerusalem, and afterwards became the founder and head of the celebrated academy of Jabne (Jamnia).

SECOND GENERATION.

This generation lasted about forty years, from 80 to 120. The principal Tanaim belonging to it are:

(1) Rabban Gamaliel II., (of Jabne); (2) Rabbi Zadok., (3) R. Dosa (b. Harchinas); (4) R. Eliezer b. Jacob; [1] (5) R. Eliezer (b. Hyrkanos); (6) R. Joshua (b. Chanania); (7) R. Elazar b. Azaria; (8) Elasar b. Arach; [2] (9) R. Juda b. Bathyra. (According to Strack), (10) Papias; (11) Alazar b. Zadock; (12) Samuel the Little; (13) Nachum of Gimzu; (14) Ben Paturi; (15) Jose the Priest; (16) Elazar of Modium.

We refrain from giving the sketches of those who were added by Strack and others, as they would take up too much space. The reader who is interested in them can easily find them in the reference books pointed out by Strack, who gives to each of them the sources in the German language from which he draws.

Characteristics and Biographical Sketches.

1. *Rabban Gamaliel II*. He was a grandson of Gamaliel the Elder; after the death of R. Johanan b. Zakkai he became president of the academy of Jabne, and like his ancestors, he bore the title Nasi (Prince); with the Romans, Patriarch, In order to distinguish him from his grandfather, he received the surname *Gamaliel of Jabne*, or the Second.

2. R. Zadok. Of him it is related that he, in anticipation of the destruction of the Temple, fasted for forty successive

years. He then removed to Jabne where he as well as his son, R. Eliezar b. Zadok, belonged to the distinguished teachers.

3. *R. Dosa b. Harchinas* belonged to the school of Hillel, and removed with R. Jochanan b. Zakkai from Jerusalem to Jabne, where he reached a very old age. He stood in such high esteem that his most distinguished colleagues appealed to his opinion in doubtful cases.

4. *R. Eliezer b. Jacob* was head of a school, and in possession of traditions concerning the structure and interior arrangements of the Temple. He is also mentioned with commendation as to his method of instruction, which was "concise and clear." There was also another Tana by a similar name who flourished in the fourth generation.

5. *R. Eliezer b. Hyrkanos*, in the Mishna called simply R. Eliezer, was one of the most distinguished disciples of R. Jochanan b. Zakkai, who characterized him as "the lime-cemented cistern that does not lose a drop." He was a faithful conservator of handed-down decisions and opposed to their slightest modification and to any new deductions to be made therefrom. His school was in Lydda, in South Judea. Though formerly a disciple of the Hillelites, he inclined to the views of the Shamaites and consequently came in conflict with his colleagues. Being persistent in his opinion, and conforming to it even in practice, he was excommunicated by his own brother-in-law, the patriarch Gamaliel II.

6. *R. Joshua b. Chanania*, in general called simply R. Joshua, was likewise one of the favored disciples of R. Jochanan b. Zakkai. Shortly before the destruction of the Temple he left Jerusalem with his teacher, after whose death he founded a separate school in *Bekiin*. As member of the Sanhedrin in Jabne, he participated conspicuously in its deliberations and debates. His discussions were mostly with *R. Eliezer*, to whose unyielding conservatism he formed a striking contrast, as he represented the more rational and conciliatory element of that generation, and combined with great learning the amiable virtues of gentleness, modesty and placability which characterized the Hillelites. As he, on several occasions, was humiliated by the Nasi Gamaliel II., with whom he differed on some questions, the members of the Sanhedrin resented this insult of their esteemed colleague by deposing the offender from his

dignity and electing another president. It was only through the interference of the appeased R. Joshua that R. Gamaliel, who apologized for his conduct, was again restored to his office.

7. *R. Elazar b. Azaria* descended from a noble family whose pedigree was traced up to Ezra the Scribe. Already while a young man, he enjoyed such a reputation for his great learning that he was made president of the academy at Jabne in place of the deposed R. Gamaliel. When the latter was reinstated, R. Elazar was appointed as vice-president. His controversies were mostly with R. Joshua, R. Tarphon, R. Ishmael and R. Akiba. On account of the noble virtues which he combined with his great learning he was compared to "a vessel filled with aromatic spices," and R. Joshua said of him: "a generation having a man like R. Elazar b. Azaria, is not orphaned."

8. *Elazar b. Arach*, of whom it is said (Aboth, p. 61), "If all the wise of Israel were in a scale of the balance and Eliezer b. Hyrkanos with them, and Elazar b. Arach in the other scale, he would outweigh them all."

9. *R. Juda b. Bathyra* had a school in *Nisibis* (in Assyria), already at the time when the Temple of Jerusalem was still in existence. He was probably a descendant of the family Bene Bathyra,

who were leaders of the Sanhedrin under King Herod, and who resigned that office in favor of Hillel. Several other Tanaim had the same family name, as R. Joshua b. Bathyra, R. Simon b. Bathyra and one called simply Ben Bathyra.

THIRD GENERATION.

Several Teachers of the third generation, which lasted from the year 120 till about 139 (130-160, Strack), flourished already in the preceding one. The principal teachers are:

(1) R. Tarphon; (2) R. Ishmael; (3) R. Aqiba; (4) R. Jochanan b. Nuri; (5) R. Jose the Galilean; (6) R. Simon b. Nanos; (7) R. Juda b. Baba; (8) R. Jochanan b. Broka. Strack counts all the above-mentioned in the second generation, with the addition of, (9) Papus b. Jehuda; (10) Elazar b. Chasma; (11) Jose of Damascus; (12) Hananya b. Trodyan; (13) Jos b. Kisma; (14) Elazar b. Parta; (15) Simeon b. Azai; (16) Simeon b. Zoma; (17) Elisha b. Abuyah; (18) Chaninah b. Gamaliel; (19) Chaninah b. Antigonos; (20) Elazar of Bartutha;

[paragraph continues] (21) Simeon of Taimon; (22) Chananiah, the son of Jechosua's brother; (23) Jehuda b. Buthyra; (24) Matyah b. Cheris; [1] (25) Chittkah; (26) Simeon the Shakmone; (27) Chananiah b. Chakniel.

Characteristics and Biographical Sketches.

1. *R. Tarphon*, or Tryphon, of Lydda. He is said to have been inclined to the views of the School of Shamai. On account of his great learning he was called "the teacher of Israel"; besides, he was praised for his great charitable works. His legal discussions were mostly with his colleague R. Akiba.

2. *R. Ishmael* (b. Elisha) was probably a grandson of the high-priest Ishmael b. Elisha who was condemned to death by Titus, together with the patriarch Simon b, Gamaliel I. When still a boy, he was made a captive and brought to Rome, where R. Joshua who happened to come there on a mission, redeemed him at a high ransom and brought him back to Palestine. R. Nechunia b. Hakana is mentioned as one of his principal teachers. When grown to manhood, he became a member of the Sanhedrin and was highly revered by his colleagues. He is named among those who emigrated with the Sanhedrin from *Jabne* to *Usha*. His residence was in South Judea in a place called Kephar Aziz. His academical controversies were mostly with R. Akiba, to whose artificial methods of interpreting the law he was strongly opposed, on the principle that the Torah, being composed in the usual language of man, must be interpreted in a plain and rational way. As guiding rules of interpretation he accepted only the seven logical rules which had been laid down by Hillel, which he, however, by some modifications and subdivisions, enlarged to thirteen. A separate school which he founded was continued after his death by his disciples and was known by the name of "Be R. Ishmael." Of the book *Mechilta* which is ascribed to R. Ishmael.

3. *R. Aqiba* (b. Joseph) was the most prominent among the Tanaim. He is said to have descended from a proselyte family, and to have been altogether illiterate up to the age of his manhood.

Filled with the desire to acquire the knowledge

of the law, he entered a school and attended the lectures of the distinguished teachers of that time, especially of R. Eliezer b. Hyrkanos, R. Joshua b. Chanania, and of Nachum of Gimzu. Subsequently he founded a school in B'ne Brak, near Jabne, and became a member of the Sanhedrin in the last-mentioned city. Through his keen intellect, his vast learning and his energetic activity he wielded a great influence in developing and diffusing the traditional law. He arranged the accumulated material of that law in a proper system and methodical order, and enriched its substance with many valuable deductions of his own. His methodical arrangement and division of that material was completed by his disciple R. Meir, and later on became the groundwork of the Mishna compiled by R. Jehuda Hanasi. Besides, he introduced a new method of interpreting the Scriptures, which enabled him to find a biblical basis for almost every provision of the oral law. This ingenious method was admired by his contemporaries, and notwithstanding the opposition of some of his colleagues, generally adopted in addition to the thirteen hermeneutic rules of R. I Ishmael. R. Akiba's legal opinions are very frequently recorded in all parts of the Mishna and in the kindred works. His academical discussions are mostly with his former teachers, R. Eliezer, R. Joshua, and with his colleagues, R. Tarphon, R. Jochanan b. Nuri, R. Jose the Galilean and others.

R. Akiba died a martyr to religion and patriotism. Having been a stout supporter of the cause of Bar Cochba, he was cruelly executed by the Romans for publicly teaching the Law, contrary to the edict of the emperor Hadrian. (See Aboth, p. 2 8.)

4. *R. Jochanan b. Nuri* was a colleague of R. Akiba, with whom he frequently differed on questions of the law. In his youth he seems to have been a disciple of R. Gamaliel II., for whose memory he always retained a warm veneration. He presided over a college in Beth Shearim, a place near Sepphoris in Galilee.

5. *R. Jose the Galilean* was a very distinguished teacher. Of his youth and education nothing is known. At his first appearance in the Sanhedrin of Jabne, he participated in a debate with R. Tarphon and With R. Akiba, and displayed such great learning and sagacity that he attracted general

attention. From this debate his reputation as a teacher was established. He was an authority especially in the laws concerning the sacrifices and the Temple service. His discussions were mostly with R. Akiba, R. Tarphon, and R. Elazar b. Azariah. Of his domestic life it is related that he had the bad fortune of having an ill-tempered wife, who treated him so meanly that he was compelled to divorce her, but learning that she in her second marriage lived in great misery, he generously provided her and her husband with all the necessaries of life. One of his sons, R. Eleazar b. R. Jose the Galilean, became a distinguished teacher in the following generation and established the thirty-two hermeneutic rules of the Hagada.

6. *R. Simon b. Nanos*, also called simply Ben Nanos, was a great authority especially in the civil law, so that R. Ishmael recommended to all law students to attend the lectures of this profound

teacher. His legal controversies were mostly with R. Ishmael and R. Akiba.

7. *R. Judah b. Baba*, who on account of his piety was called the Chasid, is noteworthy not only as a distinguished teacher, but also as a martyr to Judaism. Contrary to the Hadrianic edict which, under extreme penalty, prohibited the ordination of teachers, he ordained seven [1] disciples of R. Akiba as Rabbis, and for this act was stabbed to death by the Roman soldiers.

8. *R. Jochanan b. Broka* was an authority especially in the civil law. Also his son R. Ishmael was a distinguished teacher who flourished in the following generation.

FOURTH GENERATION.

This generation extended from the death of R. Akiba to the death of the patriarch R. Simon b. Gamaliel IL, from the year 139 to about 165. Almost all leading teachers of this generation belong to the latter disciples of R. Akiba.

(1) R. Meir; (2) R. Jehuda (ben Ilai); (3) R. Jose (ben Chalafta); (4) R. Simon (b. Jochai); (5) R. Elazar (b. Shamua); (6) R. Jochanan the Sandelar; (7) R. Elazar b. Jacob; (8) R. Nehemia; (9) R. Joshua b. Korcha; (10) R. Simon b. Gamaliel. Strack counts all of them in the third generation, and adds, (11) Elazar b. Jose the Galilean; (12)

Ishmael b. Jochanan b. Beroka; (13) Abba Schaul; (14) Chananiah b. Akiba; (15) Chananiah b. Akashya; (16) Jose b. Akabyah; (17) Issi b. Jehuda; (18) Nehuraye; (19) Abba Jos b. Dusthai.

Characteristics and Biographical Sketches.

1. *R. Meir*, the most prominent among the numerous disciples of R. Akiba, was a native of Asia Minor and gained a subsistence as a skilful copyist of sacred Scripture. At first, be entered the academy of R. Akiba, but finding himself not sufficiently prepared to grasp the lectures of this great teacher, he attended, for some time, the school of R. Ishmael, where he acquired an extensive knowledge of the law. Returning then to R. Akiba and becoming his constant and favored disciple, be developed great dialectical powers, R. Akiba soon recognized his worth and preferred him to other disciples by ordaining him at an early date. This ordination was later renewed by R. Judah b. Baba. On account of the Hadrianic persecutions, R. Meir had to flee from Judea, but after the repeal of those edicts, he returned and joined his colleagues in reëstablishing the Sanhedrin in the city of Usha, in Galilee. His academy was in Emmaus, near Tiberias, and for a time also in Ardiscus, near Damascus, where a large circle of disciples gathered around him. Under the patriarch R. Simon b. Gamaliel II., he occupied the dignity of a *Chacham* (advising Sage), in which office he was charged with the duty of preparing the subjects to be discussed in the Sanhedrin. A conflict which arose between him and the patriarch seems to have induced him to leave Palestine and return to his native country, Asia Minor, where he died. R. Meir's legal opinions are mentioned almost in every Masechta of the Mishna and Boraitha. His greatest merit was that he continued the labors of R. Akiba in arranging the rich material of the oral law according to subjects, and in this way prepared the great Mishna compilation of R. Judah Hanasi. Besides being one of the most distinguished teachers of the law, he was also a very popular lecturer (Hagadist), who used to illustrate his lectures by

interesting fables and parables. Of his domestic life it is known that he was married to Beruria, the learned daughter of the

celebrated teacher and martyr R. Chananiah b. Teradyon. The pious resignation which he and his noble wife exhibited at the sudden death of their two promising sons has been immortalized by a popular legend in the Midrash.

2. *R. Jehuda b. Ilai* is generally called in the Mishna simply R. Jehuda. After having received instruction in the law from his father, who had been a disciple of R. Eliezer b. Hyrkanos, be attended the lectures of R. Tarphon, and became then one of the distinguished disciples of R. Akiba. On account of his great eloquence he is called, "The first among the speakers." Also his piety, modesty and prudence are highly praised. He gained a modest subsistence by a mechanical trade, in accordance with his favored maxims: "Labor honors man," and "He who does not teach his son a trade, teaches him, as it were, robbery." Having been one of the seven disciples who after the death of R. Akiba were ordained by R. Juda b. Baba contrary to the Hadrianic edict, he had to flee. After three years he returned with his colleagues to Usha and became one of the prominent members of the resuscitated Sanhedrin. The patriarch R. Simon ben Gamaliel honored him greatly, and appointed him as one of his advisers. As expounder of the law he was a great authority, and is very often quoted in all parts of the Mishna and Boraitha. His legal opinions generally prevail, when differing from those of his colleagues R. Meir and R. Simon. To him is also ascribed the authorship of the essential part of the Siphra. The Hagada of the Talmud records many of his beautiful sayings, which characterize him not only as a noble-hearted teacher, but also as a sound and clearheaded interpreter of Scriptures. He, for instance, denied the literal meaning of the resurrection of the dead bones spoken of in Ezekiel, ch. XXXVII., but declared it to be merely a poetical figure for Israel's rejuvenation. (Sanhedrin, p. 278.)

R. Jehuda had two learned sons who flourished as teachers in the following generation.

3. *R. Jose b. Chalafta*, in the Mishna called simply R. Jose, was from *Sepphoris*, where already his learned father had established a school. Though by trade a tanner, be became one of the most distinguished teachers of his time. He was a disciple of R. Akiba and of R. Tarphon. Like his colleagues he was ordained by R. Juda b. Baba, and on this account had

to flee to the south of Palestine, whence he later on returned with them to Usha. For having kept silent when in his presence R. Simon made a slighting remark against the Roman government, he was banished to Asia Minor. When permitted to return, he settled in his native city, Sepphoris, where he died at an advanced age. Besides being a great authority in the law, whose opinions prevail against those of his colleagues R. Meir, R. Jehuda and R. Simon, he was an historian to whom the authorship of the chronological book *Seder Olam* is ascribed.

4. *R. Simon b. Jochai* from Galilee, in the Mishna called simply R. Simon, was likewise one of the most distinguished disciples of R. Akiba, whose lectures he attended during thirteen years. "Be satisfied that I and thy creator know thy powers," were the words with which this teacher

comforted him, when he felt somewhat slighted on account of a certain preference given to his younger colleague R. Meir. He shared the fate of his colleagues in being compelled to flee after ordination. Afterwards, he joined them at the new seat of the Sanhedrin in Usha. On a certain occasion he gave vent to his bitter feeling against the Romans, which was reported to the Roman governor, who condemned him to death. He, however, escaped this fate by concealing himself in a cave, where he is said to have remained for several years, together with his son, engaged in the study of the law, and subsisting on the fruit of the carob-trees which abounded there in the neighborhood. In the meantime political affairs had taken a favorable turn, so that he had no longer to fear any persecution; he left his hiding place and reopened his academy at *Tekoa*, in Galilee, where a circle of disciples gathered around him. He survived all his colleagues, and in his old age was delegated to Rome, where he succeeded in obtaining from the emperor (Marcus Aurelius) the repeal of some edicts against the Jewish religion.

In the interpretation of the law, R. Simon departed from the method of his teacher R. Akiba, as he inclined to the view of R. Ishmael that "the Torah speaks the common language of man," and consequently regarded logical reasoning as the proper starting point for legal deductions, instead of pleonastic words, syllables and letters. In accordance with this sound principle, he tried to investigate the evident motive of different biblical laws, and to make conclusions therefrom for their

proper application. In regard to treating and arranging the oral law, however, he followed the method of R. Akiba in subsuming various provisions under guiding rules and principles. R. Simon is regarded as the author of the *Siphre*, though that work in its present shape shows many additions by the hands of later authorities. [1]

5. *R. Elazar b. Shamua*, in the Mishna simply R. Elazar, was among those of R. Akiba's disciples who in consequence of the Hadrian edicts went to the South, whence he went to Nisibis. He does not, however, appear to have joined his colleagues when they gathered again at Usha. He is regarded as a great authority in the law. The place of his academy is not known, but it is stated that his, school was always overcrowded by disciples eager to hear his learned lectures. Among his disciples was also the later patriarch R. Jehuda. On a journey, he visited his former colleague R. Meir at Ardiscos, in Asia Minor, and with him had discussions on important questions of the law, which are recorded in the Mishna and Boraitha.

6. *R. Jochanan the Sandelar* had this surname probably from his trade in sandals. Born in Alexandria in Egypt, he came to Palestine to attend the lectures of R. Akiba, and was so faithful a disciple that he visited this teacher even in prison, in order to receive instruction from him. His legal opinions are occasionally recorded in the Mishna as well as in the Tosephta and Boraitha.

7. *R. Elazar* (or Eliezer) *b. Jacob* was a disciple of R. Akiba and later a member of the Sanhedrin in Usha. This teacher must not be confounded with a former teacher by that name who flourished in the second generation.

8. *R. Nechemia* belonged to the last disciples of R. Akiba and was an authority especially in the sacrificial law, and in laws concerning levitical purification. His controversies are mostly with R. Juda b. Ilai. He is said to have compiled a Mishna collection which was embodied in the

Tosephta.

9. *R. Joshua b. Korcha* is supposed by some to have been a son of R. Akiba, who, on one occasion, is called by such a surname

(meaning the bald head); but this supposition is very improbable, for it would be strange that the son of so illustrious a man should not rather have been called by his father's proper name, and that he should never have alluded to his celebrated parent or to any of his teachings. 1

R. Joshua b. K. belonged to the authorities of this generation, though only a few of his opinions are recorded in the Mishna.

10. *R. Simon b. Gamaliel* was the son and successor of the patriarch Gamaliel II. of Jabne. In his youth, he witnessed the fall of Bethar, and escaped the threatened arrest by flight. After the death of the emperor Hadrian, he returned to Jabne where he, in connection with some teachers, reopened an academy, and assumed the hereditary dignity of a patriarch. As the returning disciples of R. Akiba, who were the leading teachers of that generation, preferred Usha as the seat of the new Sanhedrin, R. Simon was obliged to transfer his academy to that city, and appointed R. Nathan as Ab Beth-din (vice-president), and R. Meir as Chacham (advising sage, or speaker). Both of these officers had to retire however, when found planning his deposal on account of some marks of distinction introduced in order to raise the patriarchal dignity. He did not enjoy the privilege of his predecessors to be titled Rabban (our teacher), but like the other teachers, he was simply called Rabbi (my teacher), 2 probably because many of his contemporaries were superior to him in learning. Still, his legal opinions, which are frequently quoted in the Mishna and Boraitha, give evidence that he was a man of considerable learning and of sound and clear judgment as well as of noble principles. He introduced several legal provisions for the protection of the rights of women and slaves, and for the general welfare of the community. All his opinions expressed in the Mishna, with the exception of only three cases, are regarded by later teachers as authoritative (Halakha). His discussions recorded in the Mishna and Boraitha are mostly

held with his celebrated son, R. Jehuda Hanasi. R. Simon b. Gamaliel appears to have been acquainted also with the Greek language and sciences.

Apart from the great circle of teachers mentioned above, the disciples of R. Ishmael b. Elisha formed a school in the extreme South of Judea (Darom), where they continued the methods of their teacher. Of this separate school, called *Debe R. Ishmael*, only two members are mentioned by name: *R. Josiah* and *R. Jonathan*.

FIFTH GENERATION.

This generation extends from the death of R. Simon b. Gamaliel II., to the death of R. Jehuda Hanasi (from 165 to about 200).

The following are the most prominent teachers of this generation:

(1) R. Nathan (the Babylonian); (2) Symmachos; (3) R. Jehuda, Hanasi (the Patriarch), called simply Rabbi; (4) R. Jose b. Juda; (5) R. Elazar b. Simon; (6) R. Simon b. Elazar. Strack places these in the fourth generation and adds (7) Dustayi b. Janai; (8) Simeon b. Jehuda, of the village Akum; (9) Achia b. Joashai; (10) Jacob; (11) Itzchok; (12) Eliezar b. Simeon b. Johai; (13) Pinchas b. Jaier; (14) Ischmael b. Jos; (15) Menachem b. Jos (b. Chialaphta); (16) Jehudah b. Lakish; (17) Elazar Charkaper; (18) Abba Elazar b. Gamla; (19) Simon b. Jos b. Lecunia; (20) Simon b. Menascha; (21) Jehudah b. Tamah.

The junior sages of the fifth generation Strack quotes thus: (1) Hyye Rabbi (the Great); (2) Eliezer b. Kappara; (3) Simeon b. 'Halafta; (4) Lewi b. Sissi; (5) Simai.

Both Mielziner and Strack do not count Simon Shezurri, one of the great Tanaim. who belongs to the third generation, and who is mentioned in the Mishna several times, and of whom it is said (Menachoth, 30 b), "Everywhere the name of Simeon Shezurri is mentioned, the Halakha prevails in accordance with him." We would also count Wradimus b. R. Jose though according to some he was identical with Menachem, and who was one of the greatest Tanaim in the time of Rabbi. (See I. H. Weiss, p. 06.) [See Appendix No. I.] His father,

R. Jose, quotes him as the author of a Halakha (Tosephtha, Baba Metzia).

Characteristics and Biographical Sketches.

1. *R. Nathan* was the son of one of the exilarchs in Babylon, and probably received his education in his native country. For some unknown reasons he emigrated to Judea, and on account of his great learning he was appointed by the patriarch, R. Simon b. Gamaliel, to the dignity of Ab-Beth-din (chief justice or vice-president), in the Sanhedrin of Usha. He had to retire from this office because of his and R. Meir's dissension with the patriarch, but was soon reinstated and became reconciled with the Synhedrial president, who held him in high esteem. Also the suceeding patriarch, R. Jehuda, with whom he had many discussions on questions of the law, speaks of him; with great respect. R. Nathan was not only an authority in the rabbinical law, especially in jurisprudence, but appears also to have been well versed in mathematics, astronomy and other sciences. To him is ascribed the authorship of Aboth, de R. Nathan, which is a kind of Tosephta to Pirke Aboth.

2. *Symmachos* was a prominent disciple of R. Meir and, distinguished for his great dialectical powers. After the death of his teacher, he as well as other disciples of R. Meir were excluded from the academy of R. Jehuda Hanasi, as they were charged with indulging in sophistical disputations in order to display their dialectical sagacity, instead of seeking after truth. Nevertheless the Mishna as well as the Tosephta makes mention of the opinions of Symmachos. His renown lay in the rabbinical jurisprudence, in which he laid down certain principles often referred to in the Talmud.

3. *R. Jehuda* (*Juda*) *Hanasi*, by way of eminence simply called Rabbi, was a son of the patriarch

R. Simon b. Gamaliel II., and is said to have been born on the same day when R. Akiba was executed. His principal teachers were R. Simon b. Jochai and R. Elazar b. Shamua, under whose guidance his intellectual capacity and splendid talents early developed. Besides his immense knowledge of the whole range of the traditional law, he had a liberal education in secular branches and was especially acquainted with the Greek language, which he

preferred to the Syriac, the popular language of Palestine at that time. After the death of his father he succeeded him in the dignity of patriarch, and became the chief authority, eclipsing all other teachers of that generation. Though blessed with great riches, he preferred to live in a simple style and applied his wealth to the maintenance of his numerous pupils and to charitable works. The seat of his academy was first at Beth-Shearim, afterward at Sepphoris, and also at Tiberias. Among his most distinguished disciples were: R. Chiya; (Simon) bar Kappara; Levi bar Sissi; R. Abba Areca, later called Rab; Mar Samuel, and many others. He is said to have been in a friendly relation with one of the Roman emperors, either Marcus Aurelius, or more probably, Lucius Verus Antoninus. By virtue of his authority R. Jehuda abolished several customs and ceremonies which, though sanctified by age, had become impracticable through the change of times and circumstances. His most meritorious work, by which be erected for himself a monument of enduring fame, was the completion of the Mishna compilation which henceforth became the authoritative code of the traditional law and superseded all similar compilations made by former teachers.

4. *R. Jose ben Juda* (b. Ilai) belonged to the great teachers of that generation and was a friend of R. Jehuda Hanasi. His legal opinions are frequently recorded in the Mishna as well as in the Tosephta.

5. *R. Elazar b. Simon* (b. Jochai) was a disciple of R. Simon b. Gamaliel and of R. Joshua b. Korcha. Although an authority in the rabbinical law to whom even the patriarch sometimes yielded, he incurred the severest censure of his colleagues for having, on a certain occasion, lent his assistance to the Romans in prosecuting some Jewish freebooters.

6. *R. Simon b. Elazar* (probably E. b. Shamua), was a disciple of R. Meir, whose opinions he often quotes. He established several important principles, especially in the civil law.

SIXTH GENERATION.

To this generation belong the younger contemporaries and disciples of R. Juda Hanasi. They are not mentioned in the Mishna, but in the Tosephta and Boraitha, and are therefore

termed semi-Tanaim, who form a connecting link between the period of Tanaim and that of the Amoraim. Their names are:

(1) Plimo; (2) Ise b. Juda; (3) R. Elazar b. Jose; (4) R. Ishmael bar Jose; (5) R. Juda b. Lakish; (6) R. Chiya; (7) R. Acha; (8) R. Abba (Areca).

There is no sixth generation according to Strack, and all who are mentioned here he includes in the fifth generation. We have to remark that all the eight mentioned above by Mielziner, as they formed the last generation of the Tanaim, are also named Amoraim; and therefore we find stated in many places in the Talmud where one of the above-mentioned is in conflict with a Mishna or a Boraitha: "He is a Tana, and has the right to differ with the authorities of the Mishna or the Boraitha."

The most prominent among these semi-Tanaim were R. Chiya and R. Abba (Areca).

1. *R. Chiya* (bar Abba) the elder, which epithet is to distinguish him from a later Amora by the same name, was a Babylonian who came at an already advanced age to Palestine, where he became the most distinguished disciple and friend of R. Jehuda Hanasi. He and his disciple R. Oshaya (or Hoshaya) are regarded as the principal authors or compilers of the Tosephta.

2. *R. Abba* (Areca) a nephew of R. Chiya, was likewise a Babylonian, and a disciple of R. Jehuda Hanasi, after whose death he returned to his native country, where, under the historical name of Rab, he became the principal Amora. (See the following chapter.)

Of other distinguished teachers flourishing in this generation and in the beginning of the period of the Amoraim, we have to mention especially *R. Janai* (the elder), and *R. Jonathan* (the elder). The former lived in Sepphoris and was one of the teachers of R. Jochanan bar Naphacha, the greatest among the Palestinian Amoraim.

Footnotes

6:1 We do not understand very well what the learned Doctor Mielziner means by the word *prominent*, as it seems that the Tanaim whom he omitted were not less prominent than those whom he mentioned. On the contrary, some of them were even more prominent. We are sorry that our work was delayed until after the departure of the learned doctor, who was our friend and whose loss we greatly lament, so that we cannot ask him the reason as we always meant to do. (See our remarks further on.)

6:2 Fuller characteristics of the lives and teachings of the principal Tanaim are given in the following works:

Graetz, "History of the Jews," Vol. IV.

Z. Frankel, "Darke Hamishna."

I. H. Weiss, Zur Geschichte der juedischen Tradition," Vols. I. and II.

Jacob Bruell, "Mebo Hamishna," Vol. I.

J. Hamburger, "Real Encyclopaedie," Vol. II. "Die Talmudischen Artikel." M. Braunschweiger, "Die Lehrer der Mishnah."

H. Strack, "Einleitung in den Talmud."

N. Perferkowitz, Talmud, Part I.

6:3 This comparatively great length of the first generation is easily explained by the circumstance that it refers to the duration of the prevailing Schools of Shamai and Hillel, and not, as in the subsequent generations, to that of the activity of a single leading teacher.

7:1 Shamai and Hillel themselves differ in three questions only. (See Eduyoth, p. 5.) Their schools, however, differ in 316 Halakhas.

8:1 Strack counts him and Zadok among the first generation.

8:2 We have added him as his omission by Mielziner can be attributed only to forgetfulness as his preceeding sages were also disciples of R. Johanan b. Zakkai, and for the same reason we have added Papus, who was a contemporary of R. Aqiba and of whom the Talmud speaks highly.

11:1 22, 23 and 24 were out of Palestine.

13:1 We are aware only of six mentioned in vol. i., p. 11.

17:1 The Cabbalists ascribe to him the compiling of the Zohar, which was revealed by Moses d' Leon. The Talmud also speaks of him as the one to whom miracles occurred frequently.

118:1 That R. Akiba had a son by the name of R. Joshua is stated in a Boraitha; but the identity of this son with R. Joshua b. Korcha is conclusively disproved by the Tosaphist Rabenu Tam in his remarks on Sabbath 150a, and B. Bathra 113a.

118:2 There are, however, some passages in the Mishna and Gemara in which he is called Rabban.

Next: Chapter III: The Amoraim or Expounders of the Mishna

CHAPTER III.

THE AMORAIM OR EXPOUNDERS OF THE MISHNA.

As the Mishna compilation of R. Jehuda Hanasi became the authoritative code of the oral Law, the activity of the

teachers was principally devoted to expounding this code. This was done as well in the academies of *Tiberias*, *Sepphoris*, *Cæsarea* in Palestine, as in those of *Nahardea*, *Sura*, and later of *Pumbaditha* and some other seats of learning in Babylonia. The main object of the lectures and discussions in those academies was to interpret the often very brief and concise expression of the Mishna, to investigate its reasons and sources, to reconcile seeming contradictions, to compare its canons with those of the Boraithoth, and to apply its decisions and established principles to new cases not yet provided for. The teachers who were engaged in this work, which finally became embodied in the Gemara, are called *Amoraim*, meaning speakers, interpreters, expounders. [1] They were not as independent in their legal opinions and decisions as their predecessors, the Tanaim and semi-Tanaim, as they had not the authority to contradict Halakhoth and principles accepted in the Mishna or Boraitha. The Palestinian Amoraim, having generally been ordained by the Nasi, had the title of *Rabbi*, while the Babylonian teachers of that period had only the title of *Rab* or of *Mar*.

The period of Amoraim extends from the death of R. Jehuda Hanasi to the compilation of the Babylonian Talmud; that is, from the beginning of the third to the end of the fifth century. This period has been divided by some into six, by others into seven, minor periods or generations, which are determined by the beginning and the end of the activity of the most prominent teachers flourishing during that time.

The number of Amoraim who are mentioned in the Talmud amounts to several hundreds. The most distinguished among them, especially those who presided over the great academies,

are contained in the following chronological tables, of the six generations of Amoraim. [1]

THE FIRST GENERATION OF AMORAIM.

A. Palestinian (219-279).

1. R. Chanina bar Chama.
2. R. Jochanan (bar Napacha).
3. R. Simon ben Lakish (Resh Lakish).
4. R. Joshua ben Levi.

B. Babylonian (219-257).

1. Abba Areca, called simply Rab.
2. (Mar) Samuel.

Strack adds to the first generation of the Palestinian, (5) Hama b. Biza; (6) Janai; (7) Jehuda; and (8) Hiskiah sons of Hyye; (9) Bnya or Bnaah; (10) Pdaya or Jehuda b. Pdaya; (11) Hoshia b. Hanninah b. Biza, named Rabbh the Great; (12) Jose b. Zimra; (13) Simon b. Yehozodak.

To the Babylonian Amoraim he adds, (3) Shila; (4) Abba b. Abba (father of Mar Samuel); (5) Kama [2]; (6) Mar Uqba (the Exilarch).

All the Palestinian Amoraim named here are very often mentioned in the Babylonian Talmud, and as their biographical sketches are interesting we could not omit them.

Biographical Sketches.

A. PALESTINIAN AMORAIM.

During this generation R. Gamaliel III. and R. Judah II. were successively the patriarchs.

1. *R. Chanina bar Chama* (born about 180, died 260), was a disciple of R. Jehuda Hanasi, whose son and successor, R. Gamaliel III., bestowed on him the title of

Rabbi. He then presided over his own academy in Sepphoris and stood in high regard on account of his learning, modesty and piety. As

teacher he was very conservative, transmitting that only which he had received by tradition, without ever allowing himself an independent decision. Of his prominent contemporaries are: *R. Ephes*, who reopened a school at Lydda, in South Judea; *Levi b. Sissi* (called simply Levi), who, though not presiding over an academy, was a distinguished teacher, and later emigrated to Babylonia; further *Chizkia*, who was a son of R. Chiya the Elder, and whose teachings are frequently quoted in the Talmud. This Chizkia, who had not the title of Rabbi, must not be mistaken for R. Chizkia, who belonged to the third generation.

2. *R. Jochanan bar Napacha*, in general called simply R. Jochanan (born about 199, died 279), was in his early youth a disciple of R. Jehuda Hanasi, later of R. Oshaya in Cæsarea, also of R. Janai, and especially of R. Chanina b. Chama. He then founded his own academy in Tiberias, which henceforth became the principal seat of learning in the Holy Land. By his great mental powers he excelled all his contemporaries, and is regarded the chief Amora of Palestine. In expounding the Mishna he introduced an analytical method, and laid down certain rules for the final decision in such cases in which the Tanaim expressed opposite opinions. His legal teachings, ethical aphorisms, and exegetical remarks, transmitted by his numerous disciples, form the principal elements of the Gemara. He is supposed to have laid the foundation of the Palestinian Talmud, though, in its present shape, this work can not have been compiled before at least one century after R. Jochanan's death. [1]

3. *R. Simon b. Lakish*, whose name is generally abbreviated to Resh Lakish, was a man who combined great physical strength with a noble heart and a powerful mind. It is said that in his youth he was compelled by circumstances to gain his livelihood as a gladiator or soldier, until making the acquaintance of R. Jochanan, who gained him for the study of the law and gave him his sister in marriage. Having developed

extraordinary mental and dialectical powers, he became R. Jochanan's most distinguished friend and colleague. In the interpretation of the Mishna and in legal questions they differed, however, very often, and their numerous controversies are reported in the Babylonian Talmud as well as in the Palestinian. Also is his Hagadic teachings, Resh Lakish was original and advanced some very rational views.

4. *R. Joshua b. Levi* (ben Sissi) presided over an academy in Lydda. He is regarded as a great authority in the law, and his decisions prevail even in cases where his celebrated contemporaries, R. Jochanan and Resh Lakish differ from him. Though himself a prolific Hagadist, he disapproved of the vagaries of the Hagada, and objected to their being written down in books. The circumstance that, on a certain occasion, his prayer for rain proved to be efficient, probably gave rise to the mystic legends with which the fancy of later generations tried to illustrate his great piety.

To other celebrities flourishing in this generation belongs R. *Simlai* of Lydda, who later settled in Nahardea. He was reputed less as teacher of the Halakha than for his ingenious and lucid method of treating the Hagada.

B. BABYLONIAN AMORAIM.

1. *Abba Areca* (or Aricha) was the real name of the chief Babylonian Amora, who, by way of eminence, is generally called *Rab* (the Teacher). He was born about 175 and died 247. As an orphaned youth he went to his uncle, the celebrated R. Chiya in Palestine, to finish his studies in the academy of R. Jehuda Hanasi. The mental abilities which he displayed soon attracted general attention. After the death of R. Jehuda, Abba returned to his native country, and in the year 219 founded the academy in Sura, where 1,200 pupils flocked around him from all parts of Babylonia. His authority was recognized even by the most celebrated teachers in Palestine. Being regarded as one of the semi-Tanaim, he ventured in some instances even to dispute some opinions accepted in the Mishna, a privilege otherwise not accorded to any of the Amoraim. Most of his decisions, especially in ritual questions, obtained legal sanction, but in the civil law his

friend Samuel in Nahardea was his superior. Over one hundred of his numerous disciples, who transmitted his teachings and decisions to later generations, are mentioned in the Talmud by their names.

2. *Samuel*, or Mar Samuel, was born about 180 in Nahardea, died there 257. His father, Abba bar Abba, and Levi b. Sissi were his first teachers. Like Rab he went to Palestine and became a disciple of Rabbi Jehuda Hanasi, from whom, however, he could not obtain the ordination. After his return to Nahardea, he succeeded R. Shela in the dignity of president of the academy (Resh-Sidra) in that city. Besides the law, he cultivated the sciences of medicine and astronomy. As Amora he developed especially the rabbinical jurisprudence, in which he was regarded as the greatest authority. [1] Among other important principles established by him is that of "*Dina d'malchutha Dina*," that is, the civil law of the government is as valid for the Jews as their own law. The most friendly and brotherly relation prevailed between Samuel and Rab, although they often differed in questions of the law. After Rab's death (247), his disciples recognized Samuel as the highest religious authority of Babylonia. He died about ten years later, leaving behind numerous disciples, several of whom became the leading teachers in the following generation.

A distinguished contemporary of Samuel was *Mar Uqba*, at first head of the court in Kafri, and later Exilarch in Nahardea.

THE SECOND GENERATION OF AMORAIM.

A. Palestinian (279-320).

B. Babylonian (257-320).

1. R. Elazar b. Pedath.
2. R. Arne.
3. R. Assi.
4. R. Chiya bar Abba.
5, Simon bar Abba.
6. R. Abbuhu.
7. R. Zera (Zeira).

1. Rab Huna.
2. Rab Juda, bar Jecheskel.
3. Rab Chisda (or Chasda).
4. Rab Shesheth.
5. Rab Nachman b. Jacob.

To the second generation of the Palestinian, Strack adds, (8) Jehudah the Second (son of Gamalia III.), (Johanan and

Simon b. Lakish Strack refers to the second generation); (9) Hilfa or Ilfa; (10) Alexanderi; (11) Khana; (12) Chia bar Joseph; (13) Jos b. Chaninah; (14) Abba b. Zabdah, and (15) Simlaie.

To the Babylonian Strack adds, (6) Ktinah; (7) Adda b. Ahba; (8) Rabba b. Abuhu, and (9) Mathna.

Remarks and Biographical Sketches.

A. PALESTINIAN AMORAIM.

The patriarchate during this generation was successively in the hands of R. Gamaliel IV., and R. Judah III.

1. *R. Elazar ben Pedath*, generally called simply R. Elazar, like the Tana R. Elazar (ben Shamua), for whom he must not be mistaken, was a native of Babylonia, and a disciple and later an associate of R. Jochanan, whom he survived. He, enjoyed great authority and is very often quoted in the Talmud.

2. and 3. *R. Ame* and *R. Assi* were likewise Babylonians, and distinguished disciples of R. Jochanan. After the death of R. Elazar they became the heads of the declining academy in Tiberias. They had the title only of "Judges, or the Aaronites of the Holy Land," and subordinated themselves to the growing authority of the teachers in Babylonia. Rabbi Assi is not to be confounded with his contemporary the Babylonian Amora Rab Assi, who was a colleague of Rab Saphra and a disciple of Rab in Sura. [1]

4. and 5. *R. Chiya bar Abba* and *Simon bar Abba* were probably brothers. They had emigrated from Babylonia and became disciples of R. Jochanan. Both were distinguished teachers, but very poor. In questions of the law they were inclined to rigorous views.

6. *R. Abbahu* of Cæsarea, disciple of R. Jochanan, friend and colleague of R. Ame and R. Assi, was a man of great wealth and of a liberal education. He had a thorough knowledge of the Greek language, and favored Greek culture. Being held in high esteem by the Roman authorities, he had great political, influence. He seems to have had frequent controversies with the teachers of Christianity in Cæsarea. Besides being a

prominent teacher whose legal opinions are quoted in all parts of the Palestinian and Babylonian Talmud, he was a very popular lecturer.

7. *R. Zeira* (or Zera), was a Babylonian and a disciple of Rab Juda bar Jecheskel, but dissatisfied with the hair-splitting method prevailing in the academies of his native country, he emigrated to Palestine where he attended the lectures of R. Elazar b. Pedath in Tiberias, and tried, in vain, to unlearn his former method of study. Having been ordained as Rabbi, he became one of the authorities in Palestine, together with R. Ame, R. Assi and R. Abbuhu.

B. BABYLONIAN AMORAIM.

1. *Rab Huna* (born 212, died 297) was a disciple of Rab, whom, after Mar Samuel's death, he succeeded as president of the academy in Sura. In this office he was active for forty years. He employed fifteen assistants to repeat and explain his lectures to his 800 disciples. Highly revered for his great learning and his noble character, he enjoyed an undisputed authority to which even the Palestinian teachers R. Ame and R. Assi voluntarily subordinated themselves.

2. *Rab Juda bar Jecheskel*, generally called simply R. Juda (or Jehuda), was a disciple of Rab, and also of Samuel. The latter teacher, whose peculiar method he adopted and developed, used to characterize him by the epithet, "the acute." He founded the academy in Pumbaditha, but after R. Huna's death he was chosen as his successor (Resh Methibta), at Sura, where after two years (299), he died at an advanced age.

3. *Rab Chisda* (or Chasda) belonged to the younger disciples of Rab, after whose death he attended also the lectures of R. Huna. But from the latter teacher he soon separated on account of a misunderstanding between them, and established a school of his own. At the same time, he was one of the Judges in Sura. After Rab Juda's death, R. Chisda, though already above eighty years old, became head of the academy in Sura, and remained in this office for about ten years.

4. *Rab Shesheth*, a disciple of Rab and Samuel, was member of the court in Nahardea. After the destruction of that city he went to Mechuza; later he settled in Silhi, where he founded

an academy. Being blind, he had to rely upon his powerful memory. He was R. Chisda's opponent in the Halakha, and disapproved of the hair-splitting dialectical method which had come in vogue among the followers of Rab Juda in Pumbaditha.

5. *Rab Nachman b. Jacob*, called simply Rab Nachman, was a prominent disciple of Mar Samuel. By his father-in-law, the exilarch Abba bar Abuha, he was appointed chief justice in Nahardea. After Mar Samuel's death, he succeeded him as rector of the academy in that city. When two years later (259), the city of Nahardea was destroyed, R. Nachman settled in Shechan-Zib. He is regarded as a great authority especially in the rabbinical jurisprudence, in which he established many important principles. Among others, he originated the rabbinical oath, that is, the purging oath imposed in a law suit on claims even in cases of general denial on the part of the defendant.

Of other teachers belonging to this generation, who, though not standing at the head of the leading academies, are often quoted in the Talmud, the following must be noted:

(*a*) *Rabba bar bar Chana*, who was a Babylonian and son of Abba bar Chana. After having attended the academy of R. Jochanan in Palestine, he returned to his native country, where he frequently reported the opinions of his great teacher. He is also noted for the many allegorical narratives ascribed to him in the Talmud.

(*b*) *Ulla* (b. Ishmael), was a Palestinian who frequently travelled to Babylonia, where he finally settled and died. Although without the title of Rabbi or Rab, he was regarded as a distinguished teacher whose opinions and reports are often mentioned.

THE THIRD GENERATION OF AMORAIM.

A. Palestinian (320-359).	B. Babylonian (320-375).

1. R. Jeremiah.

2. R. Jonah.

3. R. Jose.

1. Rabba bar Huna.

2. Rabba bar Nachmani.

3. Rab Joseph (bar Chiya).

4. Abaye.

5. Rabha.

6. Rab Nachman bar Isaac.

7. Rab Papa.

To the Palestinian, Strack adds, (4) Samuel b. Nachman (in the Babylonian he is mentioned as Nachmani); (5) Itzhak the second (his contemporary in Babylonia is Nachman b. Jacob); (6) Lewi; (7) Abuhu; (8) Ami; (9) Assi; (10) Hyya b. Abba II. (Elazar b. Pedath he quotes in the third generation); (11) Simeon b. Abba; (12) Simur (also Zera is mentioned among the second generation); (13) Samuel b. Itzhak; (14) Hilla or Illeh; (15) Zrika; (16) Hoshia the second; (17) Chananiah (the colleague of the Rabbinat) [1]; (18) Janai b. Ishmael; (19) Joshua; (20) Ban b. Mamal (in Babylonia named Abba b. Mamal); (21) Jacob b. Ide; (22) Itzhak b. Nachma; (23) Maysha; (24) Bibe; (Haggi and Jeremiah Strack quotes as belonging also to the fourth generation).

To the Babylonian, Strack adds, (8) Chisda; (9) Hamnuna; (10) Shesheth; (11) Nachma b. Jacob; (12) Rabba b. b. Hanna; (13) Ulla b. Ishmael; (14) Rabba b. Nachmene, and (1) Joseph b. Hiah.

Remarks and Biographical Sketches.

A. PALESTINIAN AMORAIM.

The patriarch of this period was Hillel II., who introduced the fixed Jewish calendar.

In consequence of the persecutions and the banishment of several religious teachers under the emperors Constantine and Constantius, the Palestinian academies entirely decayed. The only teachers of any prominence are the following:

1. *R. Jeremiah* was a Babylonian and disciple of R. Zeira, whom he followed to Palestine. In his younger days, when still in his native country, he indulged in propounding puzzling questions of trifling casuistry, by which he probably intended to ridicule the subtile method prevailing among some of the contemporary teachers, and on this account he was expelled from the academy. In the Holy Land he was more appreciated, and, after the death of R. Abbahu and R. Zeira, was acknowledged as the only authority in that country.

2. *R. Jonah* was a disciple of R. Ila (Hila) and of R. Jeremiah.

His opinions are frequently quoted, especially in the Palestinian Talmud.

3. *R. Jose* (bar Zabda), colleague of R. Jonah, was one of the last rabbinical authorities in Palestine.

It is probable that the compilation of the Palestinian Talmud was accomplished about that time, though it cannot be stated by whom.

B. BABYLONIAN AMORAIM.

1. *Rabba* (or Rab Abba) *bar Huna* was not, as erroneously supposed by some, the son of the exilarch Huna Mari, but of Rab Huna, the disciple and successor of Rab. After the death of R. Chisda (309), he succeeded him in the dignity of president of the academy in Sura. Under his presidency, lasting thirteen years, this academy was eclipsed by that of Pumbaditha, and after his death it remained deserted for about fifty years until Rab Ashe restored it to its former glory.

2. *Rabba bar Nachmani*, in the Talmud called simply Rabba was born 270, and died 330. He was a disciple of Rab Huna, Rab Juda and Rab Chisda, and displayed from his youth great dialectical powers on account of which he was characterized as "the uprooter of mountains." Selected as head of the academy of Pumbaditha, he attracted large crowds of hearers by his ingenious method of teaching. In his lectures which commented on all parts of the Mishna, he investigated the reason of the laws and made therefrom logical deductions. Besides, he tried to reconcile seeming differences between the Mishna, the Baraithoth, and the traditional teachings of later authorities. He also liked to propound puzzling problems of the law, in order to test and sharpen the mental powers of his disciples. A charge having been made against him by the Persian government that many of his numerous hearers attended his lectures in order to evade the poll-tax, he fled from Pumbaditha and died in solitude.

3. *Rab Joseph* (bar Chiya) was a disciple of Rab Juda and Rab Shesheth, and succeeded his friend Rabba in the dignity of president of the academy in Pumbadita, after having once before been elected for this office, which he declined in favor of Rabba. On account of his thorough knowledge of the sources

of the Law, to which be attached more importance than to ingenious deductions, he was called Sinai. Besides being a great authority in the rabbinical law, he devoted himself to the Targum of the Bible, especially of the prophetical books. In his old age he became blind. He died in the year 333, after having presided over the academy of Pumbaditha only for three years.

4. *Abaye*, surnamed Nachmani (b. 280, d. 338) was a son of Kaylil and a pupil of his uncle Rabba bar Nachmani, and of Rab Joseph. He was highly esteemed not only for his profound knowledge of the law and his mastership in Talmudical dialectics, but also for his integrity and gentleness. After Rab Joseph's death he was selected as head of the academy in Pumbaditha, but tinder his administration, which lasted about five years, the number of hearers in that academy decreased considerably, as his more talented colleague *Raba* had founded a new academy in Machuza which attracted greater crowds of pupils. Under these two Amoraim the dialectical method of the Babylonian teachers reached the highest development. Their discussions, which mostly concern some very nice distinctions in the interpretation of the Mishna, in order to reconcile conflicting passages, fill the pages of the Talmud. [1] In their differences concerning more practical questions, the opinion of Raba generally prevails, so that later authorities pointed out only six cases in which the decision of Abaye was to be adopted against that of his rival.

5. *Raba* was the son of Joseph b. Chama in Machuza. He was born 299, and died 352. In his youth he attended the lectures of Rab Nachman and of R. Chisda. Later, he and Abaye were fellow-students in the academy of Rabba bar Nachmani. Here he developed his dialectical powers, by which he soon surpassed all his contemporaries. He opened an academy in Machuza which attracted a great number of students. After Abaye's death this academy supplanted that in Pumbaditha and during Raba's lifetime became almost the only seat of learning in Babylonia. His controversies with his contemporaries, especially with his rival colleague, Abaye, are very

numerous. Wherever an opinion of Abaye is recorded in the Talmud, it is almost always followed by the contrary view and' argument of Raba.

6. *Rab Nachman b. Isaac* was a disciple of Rab Nachman (b. Jacob), and afterward an officer as Resh Calla in the academy of Raba. After the death of the latter he was made president of the academy in Pumbaditha, which now resumed its former rank. In this capacity he remained only four years (352-356), and left no remarkable traces of his activity. Still, less significant was the activity of his successor, *R. Chama* from Nahardea, who held the office for twenty-one years (356-377).

7. *Rab Papa* (bar Chanan), a disciple of Abaye and Raba, founded a new school in Nares, in the vicinity of Sura, over, which he presided for nineteen years (354-375). He adopted the dialectical method of his former teachers without possessing their ingenuity and their independence, and consequently did not give satisfaction to those of his hearers who had formerly attended the lectures of Raba. One of his peculiarities was that he frequently refers to popular proverbs people say. [1]

THE FOURTH GENERATION OF BABYLONIAN AMORAIM.

(375-427).

A. Sura.	B. Pumbaditha.	C. Nahardea.
1. Rab Ashe.	1. Rab Zebid.	Amemar.
	2. Rab Dime.	
	3. Rafram.	
	4. Rab Kahana.	
	5. Mar Zutra.	

To the fourth generation Strack adds, (1) Jeremiah (who though a Babylonian native, emigrated to Palestine, and was counted among the Palestinian); (2) Haggi; (3) Juda the third (Nassi), son of Gamaliel the fourth; (4) Jona; (5) Josa the second (colleague of Jona); (6) Pinchas (who also emigrated from Babylonia); (7) Judan; (8) Chelbo; (9) Hisda; (10) Chinna; (11) Tabbi; (12) Juda b. Pazi, from Lydda, and

(13) Jehoshua of Siknin. Concerning the fourth generation of Babylonian, he counts also Abbaye and Rabba, and adds to the list of Mielziner, Rabba b. Mari, Rabbi b. Ulla, and Rabha b. Shilla. Strack does not distinguish between the colleges of Sura, Pumbaditha and Nahardea.

Remarks and Biographical Sketches.

A. *Rab Ashe* (son of Simai bar Ashe) was, at the age of twenty, made president of the reopened academy of Sura, after the death of Rab Papa, and held this office for fifty-two years. Under his presidency, this academy, which had been deserted since the time of Rabba bar Huna, regained its former glory with which Rab had invested it. Combining the profundity of knowledge which formerly prevailed in this academy with the dialectic methods developed in that of Pumbaditha, be was generally recognized as the ruling authority, so that his contemporaries called him by the distinguishing title of *Rabbana* (our teacher). Invested with this great authority, Rab Ashe was enabled to assume the task of sifting, arranging and compiling the immense material of traditions, commentaries and discussions on the Mishna, which, during the two preceding centuries, had accumulated in the Babylonian academies. In the compilation and revision of this gigantic work, which is embodied in the Gemara, he was occupied for over half a century, and still he did not complete it entirely, but this was done, after his death, by his disciples and successors.

B. During the long period of Rab Ashe's activity at the academy in Sura, the following teachers presided successively over the academy in Pumbaditha:

1 *Rab Zebid* (b. Oshaya), who succeeded Rab Chama and held the office for eight years (377-385).

2. *Rab Dime* (b. Chinena) from Nahardea, presiding only for three years (385-388).

3. *Rafram bar Papa* the elder, in his youth a disciple of Raba, succeeded R. Dime (388-394).

4. *Rab Kahana* (b. Tachlifa), likewise a disciple of Raba, was one of the former teachers of R. Ashe. In an already advanced age, he was made president of the academy of Pumbaditha, and died in the year 411. This Rab Cabana must

not be mistaken for two other teachers of the same name, one of whom had been a distinguished disciple of Rab, and the other (Rab, Cahana b. Manyome), a disciple of Rab Juda b. Jecheskel.

5. *Mar Zutra*, who, according to some historians, succeeded Rab Cahana as rector of the school in Pumbaditha (411-414), is probably identical with Mar Zutra b. Mare, who shortly afterwards held the high office as Exilarch. In the rectorship of Pumbaditha he was succeeded by *Rab Acha bar Raba* (414-419), and the latter by *Rab Gebiha* (419-433).

C. *Amemar*, a friend of Rab Ashe, was a distinguished judge and teacher in Nahardea. When his former teacher Rab Dime became president of the academy in Pumbaditha, he succeeded him in the rectorship of that of Nahardea, from 390 to about 422. With him this once so celebrated seat of learning passed out of existence.

THE FIFTH GENERATION OF BABYLONIAN AMORAIM (427-468).

A. Sura.	B. Pumbaditha.
1. Mar Jemar (Maremar).	1. Rafram II.
2. Rab Ide bar Abin.	2. Rechumai.
3. Mar bar Rab Ashe.	3. Rab Sama b. Rabba.
4. Rab Acha of Difte.	

To the fifth generation of Palestinian Strack adds, (1) Abba b. Kohen; (2) Abba Mare; (3) Mattanjah; (4) Mana the second b. Jona; (5) Chananiah the second; (6) Jos b. Bune; (7) Jona of Bozrae; (8) Tanhum, and (9) Chiah b. Adda the second.

To the Babylonian fifth generation he counts, (1) Nachman b. Itzhak; (2) Papa; (3) Huna b. Johusua.

Remarks and Biographical Sketches.

A. 1. Mar Jemar (contracted to Maremar), who enjoyed high esteem with the leading teachers of his time, succeeded his colleague and friend, Rab Ashe, in the presidency of the academy in Sura, but held this office only for about five years, (427-432).

2. *Rab Ide* (or Ada) *bar Abin*, became, after Mar Jemar's death, president of the academy at Sura, and held this office

for about twenty years (432-452). He as well as his predecessor continued the compilation of the Talmud which Rab Ashe had commenced.

3. *Mar bar Rab Ashe*, whose surname was Tabyome, and who, for some unknown reasons, had been passed over in the election of a successor to his father, was finally made president of the academy in Sura, and filled this office for thirteen years, (455-468.). In his frequent discussions with contemporary authorities, he exhibits independence of opinion and great faculties of mind.

4. *Rab Acha of Difte*, a prominent teacher, was on the point of being elected as head of the academy of Sura, but was finally defeated by Mar bar Rab Ashe, who aspired to that office which his father had so gloriously filled for more than half a century.

B. The academy of Pumbaditha, which had lost its earlier influence, had during this generation successively three presidents, of whose activity very little is known, namely:

1. *Rafram II.*, who succeeded Rab Gebihah, from 433 to 443.

2. *Rab Rechumai*, from 443-456.

3. *Rab Sama b. Rabba*, from 456-471.

Toward the end of this generation, the activity of both academies was almost paralyzed by the terrible persecutions which the Persian King Firuz instituted against the Jews and their religion.

THE SIXTH AND LAST GENERATION OF BABYLONIAN AMORAIM (468-500).

A. Sura.	B. Pumbaditha.
1. Rabba Thospia (or Tosfaah).	Rab Jose.
2. Rabina.	

To the sixth generation of Palestinian Strack adds, (1) Samuel b. Jose b. Bune, and to the Babylonian, (1) Ashi; (2) Rabban bar Thachlifa; (3) Mar b. Rabbina; (4) Mar Zutra. Meremar and Tospha he counts to the seventh generation, whilst Mielziner counts them to the sixth. [1]

Footnotes

23:1 In a more restricted meaning the term *Amora* (from ••• {Hebrew *?MR*}, to say, to speak) signifies the same as *Methurgeman* (the interpreter), that is, the officer in the academies who, standing at the side of the lecturer or presiding teacher, had to announce loudly and explain to the large assembly what the teacher just expressed briefly and in a low voice.

The term *Tana*, which generally applies only to the teachers mentioned in the Mishna and Boraitha, is in the period of Amoraim sometimes used also to signify one whose special business it was to recite the memorized Boraithoth to the expounding teachers. In this sense the term is to be understood in the phrase: A Tana (teacher) repeated a Boraitha (or taught same) before so and so, etc.

24:1 Some scholars count the semi-Tanaim as the first generation, and have consequently seven instead of six generations. The period of Palestinian Amoraim being much shorter than that of the Babylonian, ends with the third generation of the latter. Frankel in his introduction to the Palestinian Talmud, treating especially of the Palestinian Amoraim, divides them also into six generations.

24:2 Who was appointed by Mar Samuel to examine Rab. (Will be translated in Tract Kethubath.)

25:1 As to further characteristics of this and the other prominent Amoraim, the following works may be consulted: Graetz, "History of the Jews," Vol. IV.; Z. Frankel, "Mebo"; I. H. Weiss, "Dor Dor," Vol. III.; I. Hamburger, "Real Encyclopädie," Vol. II. Besides, J. Fürst, "Kultur und Literaturgeschichte der Juden in Asien," which treats especially of the Babylonian academics and teachers during the period of the Amoraim.

27:1 Mar Samuel made also a compilation of Boraithoth, which is quoted in the Talmud by the phrase "the disciples of Samuel."

29:1 See Tosephoth Chullin, 19a.

31:1 There are eight Tanaim and twenty-three Amoraim named Chananiah. We do not remember who was called so as Strack did.

33:1 The often very subtile argumentations of these two teachers became so proverbial that the phrase "the critical questions of Abaye and Raba" is used in the Talmud as a signification of acute discussions and minute investigations.

34:1 This Rab Papa must not be mistaken for an elder teacher by the same name, who had ten sons, all well versed in the law, one of whom, Rafram, became head of the academy of Pumbaditha in the following generation. Neither is Rab Papa identified with Rab Papi, a distinguished lawyer who flourished in a former generation.

37:1 We refrain from giving our own opinion on the differences between the generations of Strack and those of Mielziner; for the reason, we confess, that we do not understand why only those named here should be mentioned among the different generations, whilst each of them has so many contemporaries named by Halpern in his special collection of Tanaim and Amoraim, which takes up a great part in Halakha p. 38 as well as in Hagada in both Talmuds and Medrashim. I. H. Weiss's method is to give the particulars of those who have much contributed to the development of the oral law; but nevertheless he mentioned many of the great men without particulars. Should we say that Mielziner has adopted his method while Strack did not, it would also not be correct. There are many whom Weiss speaks of lengthily whilst Mielziner does not mention them at all and *vice versa*. The modern scholars like Bacher, and others, took the trouble to write particulars of each one mentioned by Strack although even they omitted many who are mentioned by Halpern, and therefore we hesitate to give our own opinion on this matter.

Next: Chapter IV: The Classification of Halakha and Hagada in the Contents of the Gemara.

CHAPTER IV.

THE CLASSIFICATION OF HALAKHA AND HAGADA IN THE CONTENTS OF THE GEMARA.

The collection of the commentaries and discussions of the Amoraim on the Mishna is termed *Gemara*. (See our Brief Introd., Vol. I., of our Edition.) Besides being a discursive commentary on the Mishna, the Gemara contains a vast amount of more or less valuable material which does not always have any close connection with the Mishna text, as legal reports, historical and biographical information, religious and ethical maxims and homiletical remarks.

The whole subject-matter embodied in the Gemara is generally classified into *Halakha* and *Hagada*.

To *Halakha* [1] belongs that which has bearing upon the law; hence all expositions, discussions and reports which have the object of explaining, establishing and determining legal principles and provisions. The principal branches of the Halakha are indicated by the names of the six sections of the Mishna, named in Chap. IV. of this work.

The *Hagada* [2] comprises everything not having the character of Halakha; hence all historical records, all legends and parables, all doctrinal and ethical teachings and all free and unrestrained interpretations of Scripture.

According to its different contents and character, the Hagada may be divided into:

1. *Exegetical* Hagada, giving plain or homiletical and allegorical explanations of biblical passages.

2 . *Dogmatical* Hagada, treating of God's attributes and providence, of creation, of revelation, of reward and punishment, of future life, of Messianic time, etc.

3. *Ethical* Hagada, containing aphorisms, maxims, proverbs, fables, sayings, intended to teach and illustrate certain moral duties.

4. *Historical* Hagada, reporting traditions and legends concerning the lives of biblical and post-biblical persons or concerning national and general history.

5. *Mystical* Hagada, referring to Cabala, angelology, demonology, astrology, magical cures,

interpretation of dreams, etc.

6. *Miscellaneous* Hagada, containing ancedotes, observations, practical advice, and occasional references to various branches of ancient knowledge and sciences.

Hagadic passages are often, by the way, interspersed among matters of Halakha, as a kind of diversion and recreation after the mental exertion of a tiresome investigation or a minute discussion on a dry legal subject. Sometimes, however, the Hagada appears in larger groups, outweighing the Halakha matter with which it is loosely connected.

Concerning the Palestinian Talmud, its Halakhas and Hagadas, see Chap. V. of this volume. However, as an appendix we add that which was written by Mielziner about this matter.

There are two compilations of the Gemara, which differ from each other in language as well as in contents; the one made in Palestine is called *Jerushalmi*, the Jerusalem Gemara or Talmud; the other, originating in Babylonia, is called *Babli*, the Babylonian Gemara or Talmud.

COMPILATION OF JERUSHALMI, THE PALESTINIAN TALMUD.

As no academy existed in Jerusalem after the destruction of the second Temple, the customary appellation *Jerusalem* Talmud is rather a misnomer. More correct is the appellation the Palestinian Talmud, or the Gemara of the teachers of the West.

Maimonides in the introduction to his Mishna commentary ascribes the authorship of the Palestinian Talmud to the celebrated teacher R. Jochanan, who flourished in the third century. This statement, if literally taken, cannot be correct, since so many of the teachers quoted in that Talmud are known to have flourished more than a hundred years after R. Jochanan. This celebrated Amora may, at the utmost, have given the first impulse to such a collection of commentaries and discussions on the Mishna, which was continued and completed by his successors in the academy of Tiberias. In its present shape the work is supposed to belong to the fourth or fifth century. Some modern scholars assign its final compilation even to a still later period; namely, after the close of the Babylonian Talmud. [1]

The Palestinian Gemara, as before us, extends only over thirty-nine of the sixty-three Masechtoth contained in the Mishna, namely all Masechtoth of Seder Zeraim, Seder Moed, Nashim and Nezikin, with the exception of Eduyoth and Aboth. But it has none of the Masechtoth belonging to Seder Kodashim, and of those belonging to Seder Teharoth it treats only of Masecheth Nidda. (See Chap. V., p. 44.)

Some of its Masechtoth are defective; thus the last four Perakim of Sabbath and the last Perek of Maccoth are wanting. Of the ten Perakim belonging to Masecheth Nidda it has only the first three Perakim and a few lines of the fourth.

There are some indications that elder commentators were acquainted with portions of the Palestinian Gemara which are now missing, and it is very probable that that Gemara originally

extended to all or, at least, to most of the Masechtoth of the Mishna. The loss of the missing Masechtoth and portions thereof may be explained partly by the many persecutions which interrupted the activity of the Palestinian academies, partly by the circumstance that the Palestinian Gemara did not command that general attention and veneration which was bestowed on the Babylonian Gemara.

COMPILATION OF BABLI, THE BABYLONIAN TALMUD.

The compilation of the Babylonian Talmud is generally ascribed to Rab Ashe, who for more than fifty years (375-427), officiated as head of the academy in Sura. It is stated that it took him about thirty years to collect, sift and arrange the immense material of this gigantic work. During the remaining second half of his activity he revised once more the whole work and made in it many corrections. 1

But Rab Ashe did not succeed in finishing the gigantic work. It was continued and completed by his disciples and successors, especially by the last Amoraim, Rabina II., who from 488 to 499 presided over the academy in Sura, and R. Jose, the school-head of Pumbaditha. Some additions were made by the Saboraim, and even by some still later hands.

The Gemara of the Babylonian Talmud covers only thirty-seven Masechtoth (tracts) of the Mishna, namely:

Of Zeraim only one, Berachoth, omitting the remaining ten Masechtoth;

Of Moed eleven, omitting only Shekalim, which in our Talmud editions is replaced by the Palestinian Gemara; 2

Of Nashim all of the seven Masechtoth belonging to that division;

Of Nezikim eight, omitting Eduyoth and Aboth; 3

Of Kodashim nine, omitting Middoth and Kinnim. In Thamid only chapters I., II. and IV. are provided with Gemara, but not chapters III., V., VI. and VII.

Of Teharoth only Nidda, omitting eleven Masechtoth.

There being no traces of the Gemara. missing to twenty-six Masechtoth, it is very probable that this part of the Gemara has never been compiled, though those; Masechtoth have undoubtedly also been discussed by the Babylonian Amoraim, as is evident from frequent references to them in the Gemara on the other Masechtoth. The neglect of compiling these discussions may be explained by the circumstance that those Masechtoth mostly treat of laws which had no practical application outside of Palestine. This is especially the case with the Masechtoth of Zeraim,

except Berachoth, and those of Teharoth, except Nidda. It was different with the Masechtoth belonging to Kodashim which, though treating of the sacrificial laws, are fully discussed in the Babylonian Talmud, as it was a prevailing opinion of the Rabbis that the merit of being engaged with the study of those laws was tantamount to the actual performance of the sacrificial rites. (See Talm. Menachoth, 110a.) 1

The absence of Gemara on the Masechtoth Eduyoth and Aboth is easily accounted for by the very nature of their contents, which admitted of no discussions.

THE TWO GEMARAS COMPARED WITH EACH OTHER 2

The Palestinian and the Babylonian Gemaras differ from each other in language and style as well as in material, and in the method of treating the same, also in arrangement.

As regards the language, the Palestinian Gemara is composed in the West Aramaic dialect which prevailed in Palestine at the time of the Amoraim.

The language of the Babylonian Gemara is a peculiar idiom, being a mixture of Hebrew and East Aramaic, with an occasional sprinkling of Persian words. Quotations from Mishna and Boraitha, and sayings of the elder Amoraim are given in the original, that is, the New Hebrew (Mishnic) language, while forms of judicial and notary documents and popular legends of later origin are often given in the Aramaic idiom.

Although the Palestinian Gemara extends to two more Masechtoth than the Babylonian, its total material amounts only to about one third of the latter. Its discussions are generally very brief and condensed, and do not exhibit that dialectic acumen for which the Babylonian Gemara is noted. The Hagada in the Palestinian Gemara includes more reliable and valuable historical records and references, and is, on the whole, more rational and sober, though less attractive than the Babylonian Hagada, which generally appeals more to the heart and imagination. But the latter, on many occasions, indulges too much in gross exaggerations, and its popular sayings, especially those evidently interpolated by later hands, have often an admixture of superstitious views borrowed from the Persian surroundings.

The arrangement of the material in the two Talmuds differs in this, that in the Babylonian, the Gemara is attached to the single paragraphs of the Mishna, while in the Palestinian all paragraphs (the retermed Halakhoth), belonging to one Perek of the Mishna, are generally placed together at the head of each chapter. The comments and discussions of the Gemara referring to the successive paragraphs are then marked by the headings, Halakha 1, Halakha 2, and so on.

The two Gemara collections make no direct mention of each other as literary works. But the names and opinions of the Palestinian authorities are very often quoted in the Babylonian Gemara; and in a similar way, though not to the same extent, the Palestinian Gemara mentions the views of the Babylonian authorities. This exchange of opinions was effected by the numerous teachers who are known to have emigrated or frequently travelled from the one country to the other,

The study of the Babylonian Talmud, having been transplanted from its native soil to North Africa, and the European countries (especially Spain, France, Germany and Poland), was there most sedulously and religiously cultivated in the Jewish communities, and gave rise to an immense Rabbinical literature. The Palestinian Talmud never enjoyed such general veneration and attention. Eminent Rabbis alone were thoroughly conversant with its contents, and referred to it in their writings. It is only in modern times that Jewish scholars have come to devote more attention to this Talmud, for the purpose of historical and literary investigations.

Footnotes

38:1 *Halakha* means custom, usage, practice; then, an *adopted rule*, a *traditional law*. In a more extended meaning, the term applies to matters bearing upon that law.

38:2 *Hagada* or *Haggada* means that which is related, a tale, a saying, an individual utterance which claims no binding authority. Regarding this term, see W. Bacher's learned and exhaustive article, "The Origin of the Word Hagada (Agada)," in the *Jewish Quarterly Review* (London), Vol. IV., pp. 406-429. As to fuller particulars concerning Halakha and Hagada, see Zunz's "G. Vortraege," pp. 57-61 and 83 sq.; also Hamburger's "Real Encyclopädie," H., the articles Halacha and Agada, also above, Vol. I., Chap. V.

40:1 Critical researches on this subject are found in Geiger's "Jued. Zeitschrift I. Wissenschaft," 1870; Z. Frankel's "Mebo," p. 46 sq., and in Wiesner's "Gibeath Jeruschalaim" (Vienna, 1872).

I. H. Weiss ("Dor Dor," III., p. 114 sq.) regards R. Jose (bar Zabda), who was a colleague of R. Jonah and one of the last authorities in Palestine, as the very compiler of the Pal. Talmud which in the following generation was completed by R. Jose bar Bun (Abun).

41:1 See ibid., Vol. I., p. 21.

Those scholars who maintain that the Mishna was not written down by R. Jehuda Hanasi, but that he merely arranged it orally (see Chap. IV., p. 17), maintain the same in regard to Rab Ashe's compilation of the Gemara, without being able to state when and by whom it was actually committed to writing. Against this opinion it has been properly argued that it must be regarded as absolutely impossible for a work so voluminous, so variegated in contents and so full of minute and intricate discussions, as the Talmud, to have been orally arranged and fixed, and accurately transmitted from generation to generation. On the strength of this argument and of some indications found in the Talmud, Z. Frankel (in his "Mebo," p. 47) even regards it as very probable that Rab Ashe in compiling the Gemara made use of some minor compilations which existed before him, and of some written records and memoranda containing short abstracts of the academical discussions in the preceding generations. Collecting and arranging these records, he partly enlarged them by fuller explanations, partly left them just as he found

them. Some traces of such memoranda, made probably by R. Ashe's predecessors, are still found in numerous passages of the Talmud.

41:2 In our new edition in Vol. VIII., we supplied a new brief commentary by Rodkinson.

41:3 We have placed Aboth de Rabbi Nathan under the Mishna instead of the missing Gemara Jurisprudence, Vol. I. (IX.).

42:1 This reason appears doubtful to us as, according to the sages, the study of the Torah, no matter of which of its branches, is esteemed higher than sacrifices and they also were not very much in favor of sacrifices at large, just as little as the old prophets. Apart from this we find there lengthy discussions about things which have never and could never have existed. We therefore think that the Gemara was composed of all the Mishnayoths, and those which are missing were simply lost in the course of time. Secondly, discussions to subjects of every Mishna are scattered in the Talmud, but were not collected, and, indeed, a Rabbi of Ishbitza in Poland, Gershon Henich Lener, took the trouble to gather the Gemara belonging to the section *Purification* and publish them in a very voluminous book, in 1836, with the approbation of most of the Russian and Polish rabbis. (See particulars of this in our Phylacterian Retus, p. 122.)

42:2 About this subject we have spoken in the first volume of this work. However, we will not omit what was said by Mielziner concerning this matter, as it is very reasonable.

Next: Chapter V: Apocryphal Appendices to the Talmud and Commentaries.

CHAPTER V.

APOCRYPHAL APPENDICES TO THE TALMUD AND COMMENTARIES.

Besides the Masechtoth contained in the Mishna and the two Gemaras, there are several Masechtoth composed in the form of the Mishna and Tosephta, that treat of ethical, ritual, and liturgical precepts. They stand in the same relation to the Talmud as the Apocrypha to the canonical books of the Bible. When and by whom they were composed cannot be ascertained. Of these apocryphal treatises, the following are appended to our editions of the Talmud:

1. *Aboth d'Rabbi Nathan,* 1 divided into forty-one chapters and a kind of Tosephta to the Mishnic treatise "Pirke Aboth," the ethical sentences of which are here considerably enlarged and illustrated by numerous narratives. In its present shape, it belongs to the post-Talmudic period, though some elements of a Boraitha of R. Nathan (who was a Tana belonging to the fourth generation) may have been embodied therein. 2

2. *Sopherim* (the Scribes), containing, in twenty-one chapters, rules for the writing of the scrolls of the Pentateuch, and,

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of the book of Esther; also Masoretic rules, and liturgical rules for the service on Sabbath, Feast and Fast days. R. Asher already expressed (in his Hilchoth Sepher Thora) the opinion that this Masecheth Sopherim belongs to the period of the Gaonim. 1

3. *Ebel Rabbathi* (the large treatise on Mourning), 2 euphemistically called *Semachoth* (Joys), is divided into fourteen chapters, and treats, as indicated by the title, of rules and customs concerning burial and mourning. It is not identical with a treatise under the same title, quoted already in the Talmud (Moed Katon, 24a, 26a; Kethuboth, 28a), but seems to be rather a reproduction of the same with later additions. 3

4. *Callah* (the bride, the woman recently married). This minor Masechta, being likewise a reproduction of a Masechta by that name, mentioned already in the Talmud (Sabbath, 114a; Taanith, 10b; Kiddushin, 49b; Jer. Berachoth, II., 5), treats in one chapter of the duties of chastity in marriage, and in general.

5. *Derech Eretz* 4(the conduct of life), divided into eleven chapters, the first of which treats of prohibited marriages, and the remaining chapters, of ethical, social and religious teachings. References to a treatise by that name are made already in the Talmud (B. Berachoth, 22a, and Jer. Sabbath, VI., 2).

6. *Derech Eretz Zuta* (the conduct of life, minor treatise), containing ten chapters, replete with

rules and maxims of wisdom. [5]

7. *Perek Ha-shalom* (chapter on Peace) consists, as already indicated by the title, only of one chapter, treating of the importance of peacefulness.

Remark: Besides these apocryphal treatises appended to

our editions of the Talmud under the general title of "Minor Treatises," there are seven lesser Masechtoth which were published by Raphael Kirchheim from an ancient manuscript. (Frankfort on the Main, 1851.)

COMMENTARIES.

The Necessity for such Commentaries.

The Talmud offers to its students great difficulties, partly on account of the peculiar idiom in which it is written, and which is intermixed with so numerous, often very mutilated, foreign words; partly on account of the extreme brevity and succinctness of its style, the frequent use of technical terms and phrases, and mere allusions to matters discussed elsewhere; partly also on account of the circumstance that, in consequence of elliptical expressions, and in the absence of all punctuation marks, question and answer, in the most intricate discussions, are sometimes so closely interwoven that it is not easy to discern at once where the one ends and the other begins. To meet all these difficulties, which are often very perplexing, numerous commentaries have been written by distinguished Rabbis. Some of the commentaries extend to the whole Talmud, or a great portion thereof; others exclusively to the Mishna, or some of its sections.

Up to date new commentaries upon commentaries appear, so that in the last edition printed in Vilna, more than a hundred additional commentaries are given (an illustration of which we give at the end of this chapter). We therefore do not care to point them out. Moreover they all are commentaries to the text which do not belong to our new edition. However, the commentaries exclusively on the Mishna we deem to be interesting for some readers and therefore do not omit them.

Commentaries Exclusively on the Mishna.

1. The first to write a commentary on the whole Mishna was *Moses Maimonides* (XII. century). He commenced it in the twenty-third year of his age, in Spain, and finished it in his thirtieth year, in Egypt. This commentary was written in Arabic, manuscripts of which are to be found in the Bodleian Library

at Oxford, and in some other libraries. From the Arabic it was translated into Hebrew by several scholars, flourishing in the XIII. century; namely, Seder Zeraim, by Jehuda Charizi; Seder Moed, by Joseph Ibn Alfual; Seder Nashim, by Jacob Achsai (or Abbasi [1]); Seder Nezikin, by

Solomon b. Joseph, with the exception of Perek Chelek in Sanhedrin and Masecheth Aboth, including the ethical treatise Sh'mone Perakim, introducing the latter, which were translated by Samuel Ibn Tibbon; Seder Kodashim, by Nathanel Ibn Almuli; the translator of Seder Teharoth is not known. These translations are appended to all Talmud editions, after each Masechta, under the heading of Commentary of Maimonides.

The characteristic feature of this commentary of Maimonides consists in this, that it follows the analytical method, laying down at the beginning of each section the principles and general views of the subject, and thereby throwing light upon the particulars to be explained, while Rashi in his Talmud commentary adopted the synthetical method, commencing with the explanation of the particulars, and thereby leading to a clear understanding of the whole of the subject-matter.

2. Several distinguished Rabbis wrote commentaries on single sections of the Mishna, especially on those Masechtoth to which no Babylonian Gemara (and hence no Rashi) exists. Of these commentaries the following are found in our Talmud editions:

(*a*) *Rashi's Commentary* on all Masechtoth of Seder Zeraim, except Berachoth, and all Masechtoth of Seder Teharoth, except Nidda, by *R. Simson* of *Sens* (XII. century), the celebrated Tosaphist.

(*b*) *Asheri's Commentary* on the same Masechtoth, by *R. Asher b. Yechiel* (XIII. century), the author of the epitome of the Talmud which is appended to all Masechtoth.

(*c*) *Rashi's Commentary* on Masecheth Middoth, by *R. Shemaya*, who is supposed to have been a disciple of Rashi.

(*d*) *Rabad's Commentary* on Masecheth Eduyoth, by R. Abraham b. David (XII. century), the celebrated author of critical annotations on Maimonides' Talmudical code.

(*e*) Commentary on the Masechtoth Kinnim and Tamid by an anonymous author.

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3. *R. Obadya of Bertinoro* in Italy, and Rabbi in Jerusalem (d. in the year 1510), wrote a very lucid commentary on the whole Mishna, which accompanies the text in most of our separate Mishna editions. He follows the analytic method of Rashi, and adds to each paragraph of the Mishna the result of the discussion of the Gemara.

4. *Additions of Yom Tob*. Additional comments by *Yom Tob Lipman Heller*, Rabbi of Prague and Cracow (XVII. century). These comments, likewise extending to all parts of the Mishna, and accompanying its text on the opposite side of Bartinoro's commentary in most of our Mishna editions, contain every valuable explanations and critical remarks.

5. Of shorter commentaries to be found only in some special editions of the Mishna text the following may be mentioned:

(a) *Tree of Life*, by *Jacob Chagiz*, Rabbi in Jerusalem (XVII. century), the author of a

Talmudical terminology, *Techilath Chochma*.

6. *Full Spoon of Delight*, by Senior Phoebus (XVIII. century). This commentary is an abstract of Bertinoro's and Yom Tob Lipman Heller's commentaries.

(b) *Spoon of Delight*, by *Isaac Ibn Gabbai* in Leghorn (XVII. century), is generally based on the commentaries of Rashi and Maimonides. 1

"*Tefereth Israel*" to all Mishnayoth, by Israel Liphschitz, a very reasonable commentary.

Footnotes

44:1 In our new edition it is translated in Vol. I. (IX.) and divided into paragraphs to each Mishna of Aboth.

44:2 Compare Zunz, "Gottesd. Vortraege," p. 108, sq.--Solomon Taussig published in his "Neve Sholom" (Munich, 1872), from a manuscript of the Library in Munich, a recension of the Aboth d'Rabbi Nathan which differs considerably from that printed in our Talmud editions. The latest edition of Aboth d. R. N. in two recensions from MSS. with critical annotations was published by S. Schechter (Vienna, 1887).

45:1 See Zunz, GD. V., p. 95, sq. The latest separate edition of Masecheth Sopherim from a MS. and with a German commentary was published by Joel Mueller (Leipsic, 1878).

45:2 Translated by us in Vol. VIII. with a brief commentary by Rodkinson.

45:3 See Zunz, G. V., p. 90, and N. Brüll "Die Talm. Tractate Uber Trauer um Verstorbene" (Jahrbücher für Jüd. Geschichte und Literatur, L, Frankfurt a. M.), p. 1-57. M. Klotz published "Der Talm. Tractat Ebel Rabbathi nach Handschriften bearbeitet, überzetzt und mit Anmerkungen versehen," Frankf. on the Main, 1892.

45:4 Also these three are translated in Vol. I. (IX.) of our new edition.

45:5 On both of these Masechtoth Derech Eretz, see Zunz, GD. V., pp. 110-112. See also Abr. Tawrogi, "Der Talm. Tractat Derech Erez Sutta Kritisch bearbeitet, übersetzt und erläutert" (Berlin, 1835).

47:1 See Graetz, "Geschichte d. J.", Vol. VII. p. 302.

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Plate facing page 48: Contents of the Talmud in Hebrew (*142,377 bytes*)

ואלה התוספות החדשות שהוספנו בהש"ס הזה:

יש מהן שנוספו על כל המסכתות והש"ס ויש שלא באו רק על איזה מסכתות:

אלה מהם נדפסו בפנים הש"ס או על גליון הדף:

א) מסכת כלה רבתי — השלמה — סדורה בפרקים ובנוסחאות ישרות יתר על הנדפסת בכל ספרי הש"ס. (מועתק מכ"י רבינו אברהם בר נתן הירחי ז"ל בעל המנהיג... עם מנחת רחה ותולדות הקהלות, והיא נלקטה ע"פ כ"י מספרים בית נתן).

ב) מסכתות קטנות נוספות: מסכתות ספר תורה, תפילין, מזוזה, וציצית, (הועתק מכ"י ונדפסו בספר כנזת הגר"א).

ג) חלופי גרסאות בש"ס ע"פ נוסחאות ישנות.

ד) נוסחאות ישנות ונוסחת הבבלי במסכת שקלים.

ה) נוסחת הירושלמי במסכת הוריות.

ו) נוסחאות כתבי יד במסכת סופרים.

ז) נוסחא חדתא לפס' גרים מספר מראית העין להחיד"א ז"ל עם פירושו עליה מספרו הנזכר.

ח) פירוש רב האי גאון ז"ל, לפמשניות סדר טהרות.

ט) — רב נסים (גאון) בר יעקב ז"ל (תלמיד רב האי גאון ורבותיו של הרי"ף), למסכת ברכות, שבת, ועירובין (ונקרא בשם מפתח מנעולי התלמוד).

י) [כ"י] — רבינו חננאל בר חושיאל ז"ל (ג"כ מרבותיו של הרי"ף), לרוב הש"ס.

יא) [כ"י] — רבינו גרשום בר יהודה מאור הגולה ז"ל (בנוס דפוס' הדש"ן) לפס' תענית ובבא בתרא ולכל סדר קדשים מלבד זבחים.

יב) — רש"י למסכת אבות, ע"פ נוסחאות שונות.

יג) — הרשב"ם העיקרי לפס' ב"ב דף פ"ז, פ"ח, פ"ט, קל"ל קל"א. שלא נדפס רק ברפוס פיזרו בשנת רע"א ובכל שאר הדפוסים נדפס במקומו פי' אחר בשמו בש"ס בהערה לפי' הרשב"ם ברף פ"ט סוף ע"א.

יד) פי' רבינו זרחיה הלוי ז"ל (בעל המאור) לפס' קנים.

טו) — רבינו אברהם בר דוד ז"ל (בעל הראב"ד) למסכת קנים ותמיד.

טז) [כ"י] תוספות ר"י הזקן ז"ל, לפס' קדושין (עד ...

(לפס' חולין ...) בנוסח כ"י של תלמידו הג"ם ישלמה בר ישעיה ... ז"ל (כ"ג פי' מלוכת כלמה של חכמות ...).

לג) חכמת שלמה (מהרש"ל) לפרק חלק, אשר נשמט מכל ספרי הש"ס, גם נדפס רק בס' ח"י תוצאה א' בשנת ...

לד) [כ"י] חדושי מהרש"ל על הרא"ש לפס' שבת עירובין וגיטין.

לה) פירש"י ותוס' ... הרא"ש, הגהות ונוספו בב הרבה ע"פ הנדפס בראשו בשנת ... על ידי בעל התוי"ט.

לו) [כ"י] הגהות הב"ח לחולין מהרא"ש.

לז) הגהות ס' תמת ישרים, על אדר"נ וכל מסכתות קטנות.

לח) הגהות ס' ברכת הזבח וס' צאן קדשים לסדר קדשים.

לט) תפארת שמואל, הגהות על מהרש"א להג"ם אהרן שמואל קאידנובר ז"ל (מהרש"ק) (בעמח"ס ברכת הזבח) (מלבד הגהותיו על גפ"ת שבאו בתוך המסכתות).

ס) [כ"י] פסקי תוספות למס' מגילה שלא נדפסו עד כה בכל ספרי הש"ס ואנחנו מצאנום בפסקי תוס' כ"י ישן על קלף.

סא) [כ"י] נוסחאות ישנות בפסקי תוס' שנמצאו בכ"י ישן נושן על קלף.

סב) פי' קרבן העדה לפס' שקלים, להג"ם דוד ז"ל אבד"ק דעסויא.

סג) פי' הג"ם חיים יוסף דוד אזולאי ז"ל (החיד"א) לאדר"נ ולמסכתות קטנות.

סד) [כ"י] הוספות להגהות הגר"א ז"ל. וביותר בסדר זרעים ומסכת שקלים, מגמם כ"ק.

סה) הגהות הגר"א למשניות סדר טהרות (מלבד באורו שנזכר לקמן שנדפס בסוף).

סו) מים טהורים הגהות למסכת כלים להג"ם יהודה ליב הלוי עדיל ז"ל מ"ס מסלאנים (בעמח"ס לפוקי יהודה).

סז) הגהות והקונים בפי' הרא"ש לפס' קנים מס' יעיר קנו.

סח) ספר תקלין חדתין על מס' שקלים מתלמוד ירושלמי, מהג"ם ישראל בהר"ש ז"ל מ"ם רשקלאב (תלמידו של הגר"א), עם הגהות הגר"א ז"ל למסכת הוריא.

סט) [כ"י] נמוקי הגרי"ב הגהות על מהרש"א להג"ם יהודה בכרך ז"ל אבד"ק ... (מלבד חדושיו על גפ"ת

נט) [כ"י] חדושים והגהות מהג"ם יעקב עמדין (היעב"ץ) ז"ל (תמנם כ"ק מגלון תכ"ם בגו).

ע) [כ"י] חדושים מהג"ם גדליה ליפשיץ ז"ל, על איזה מסכתות מבה"ק, ומספרו רגל ישרה לאדר"נ ומס"ק.

עא) חדושים מבנו הג"ם ישראל ליפשיץ ז"ל בעמח"ס תפארת ישראל על משניות.

עב) [כ"י] חדושים מהג"ם צבי הירש ברלין ז"ל (בנו לבעל מכל צני ...).

עג) חדושים מהג"ם משה סופר ז"ל אבד"ק פרעסבורג (בעמח"ס חתם סופר וכו').

עד) שדה צופים על הרא"ש להג"ם בצלאל רנשבורג ז"ל (בעמח"ס הורה גבר).

עה) חדושים מהג"ם זאב וואלף הלוי מבאסקוויץ ז"ל (בעמח"ס סדר משנה).

עו) חדושים מהג"ם ברוך פרענקיל תאומים ז"ל (בעמח"ס ברוך טעם וכו').

עז) [כ"י] חדושים מהג"ם יעקב צבי יאליש ז"ל (בעמח"ס מלא הרועים וכו').

עח) [כ"י] הגהות לפס' שבועות מהג"ם ליב ברלין ומהג"ם נח חיים צבי ז"ל (בעמח"ס מעין החכמה).

עט) (כ"י) מצפה איתן להג"ם אברהם ז"ל ... (בעמח"ס מגלל ... וכו'). (גם ... על כל הש"ס ...).

פ) [כ"י] חדושים מהג"ם שלמה איגר ז"ל, למסכתות שלא נדפסו עוד עליהן (מלבד ...).

פא) חדושים מהג"ם צבי הירש חיות ז"ל אבד"ק זאלקווא (בעמח"ס מהר"ץ וכו').

פב) [כ"י] קרני ראם להג"ם אהרן משה טויבש ז"ל אבד"ק יאסי (בעמח"ס ...), כולל הערות על מהרש"א וחדושי גפ"ת (... על כמה מסכתות שנדפסו כלפנו).

פג) [כ"י] הגהות בנו הג"ם שמואל שמעלקא טויבש ז"ל אבד"ק יאסי.

פד) ארון צבי הגהות על הגהות אשר"י מהג"ם יהודה צבי

קדשים סדר וכתים.

יב) — רש"י למסכת אבות, ע"פ נוסחאות שונות.

יג) — הרשב"ם העקרי למס' ב"ב דף פ"ז, פ"ח, פ"ט, קל"ל, קל"א. שלא נדפס רק בדפוס פיזרו בשנת רע"א ובכל שאר הדפוסים נדפס בטעות פי' אחר בשמו כמ"ש בהערה לפי' הרשב"ם בדף פ"ט סוף ע"א.

יד) פי' רבינו זרחיה הלוי ז"ל (בעל המאור) למס' קנים.

טו) —רבינו אברהם בר דוד ז"ל (הראב"ד בעל ההשגות) למסכת קנים ותמיד.

טז) (כ"י) תוספות ר"י הזקן ז"ל, למס' קדושין (עד "המקדש" [illegible] חכמי הספרים, לכל נראה כי [illegible], כי בכמה מקומות מובא כבן ספר התרומה [illegible] של ר"י הזקן).

יז) פי' רבינו שמשון משאנץ (משאנצא) ז"ל, למס' עדיות לתשלום מסכת בכורים, ולפרק אנדרוגינוס. ועליו גלוה גם פי' הרמ"ע מפאנו ז"ל.

יח) (כ"י) תוספות הר"ש משאנץ הנ"ל, למס' סוטה.

יט) (כ"י) תוספות ישנים למסכת יבמות.

כ) (כ"י) פי' ריב"ן השלם למס' נזיר. הפירוש שנדפס בש"ס למס' נזיר ויחסוהו לרש"י, הוא באמת לרבינו יהודה בר נתן ז"ל (בנוסחא מתוך כ"י שנמצא) אולם הנדפס משובש מאד, גם חסר ממנו הרבה, ועתה נמצא פירושו השלם בכ"י קדמון ומדויק והתוספות והשנוים שמצאנו בו נדפסו בצד הפירוש הנ"ל הנדפס בשם רש"י ונקראו בשם נוסחת הריב"ן.

כא) [כ"י] פי' רבינו יצחק בר מלכי צדק מסיפונטו ז"ל, למשניות סדר זרעים.

כב) [כ"י] פי' רבינו יהודה בר בנימין הרופא ז"ל ממשפחת הענוים (רבו של בעל שבלי הלקט), למס' שקלים.

כג) [כ"י] פי' רבינו מאיר (מהר"ם) מרוטנבורג ז"ל, למס' נגעים ואהלות.

כד) קיצור פירושי מהר"ם מרוטנבורג לסדר טהרות, שהביאם הרא"ש, מלבד למס' נגעים ואהלות שהדפסנוהו ע"פ כ"י הנ"ל.

כה) פי' רבינו יונה החסיד מגירונדא ז"ל, למס' אבות.

כו) [כ"י] תוספות רי"ד מאת רבינו ישעיה די טראני (ר' ישעיה הראשון ז"ל) למס' כתובות ולמס' גיטין.

כז) [כ"י] תוס' הר' מקמאי למס' יבמות, והוא נכדו של רבינו משלם ז"ל. [illegible] חדושי יבמות להר מקמאי ז"ל, מזכיר להרב אביו לשבח, הוא היה בזמן הראב"ד, [illegible].

כח) [כ"י] פי' הרא"ש ז"ל למסכת נזיר, שהיה בכ"י ישן בעקר הספרים של הרחיד"א ז"ל (והחיד"א ז"ל [illegible] כ"י קדש).

כט) תוס' הרא"ש ז"ל למס' הוריות (ע"פ הנדפס [illegible]).

ל) פירוש הרא"ש למסכת קנים תמיד ומדות.

לא) [כ"י] תוספי הרא"ש ז"ל, למסכת נדה.

לב) [כ"י] שיטה מקובצת לרבינו בצלאל אשכנזי ז"ל, קבוצת הגהות וחדושי הראשונים ז"ל לכל סדר קדשים (חסר רק ממס' חולין) ובהרבה מקומות מביא פי' רש"י האמתי שנמצא

מה) הגהות הגר"א למשניות סדר טהרות (מלבד באורו שנזכר לקמן שנדפס בסוף).

מו) מים טהורים הגהות למסכת כלים להג"ם יהודה ליב הלוי עדיל ז"ל מ"ם מסלאנים (בעמ"ס [illegible]).

מז) הגהות והקונים בפי' הרא"ש למס' קנים מס' יעיר קנו.

מח) ספר הקלין חדתין על מס' שקלים מתלמוד ירושלמי, מהג"ם ישראל בהר"ש ז"ל מ"ם רשקאב (תלמידו של הגר"א), עם הגהות הגר"א ז"ל למסכת הנ"א.

מט) [כ"י] נמוקי הגרי"ב הגהות על מהרש"א להג"ם יהודה בכרך ז"ל אבד"ק [illegible] (מלבד חדושיו על גפ"ת שבאו בסוף המסכתות).

נ) ספר בנין יהושע על אבות דרבי נתן, מאת הרב יהושע פאלק ב"ר יצחק אייזיק פאלק ז"ל.

נא) ספר נחלת יעקב למסכתות קטנות, מאת הרב יעקב (יאקב) ב"ר ברוך ניימבורג ז"ל.

נב) עין משפט, מסורת הש"ס, גליון הש"ס וציון ירושלים כלם למס' שקלים, מאת בעלי מפרשי הים ז"ל.

נג) הגהות על פי' הרשב"ם והר"ש לסדר זרעים מהג"ם שמואל פריינד ז"ל מדייני פראג (בעמ"ס [illegible]). ונדפסו על הגליון בצדם מבלי הוכחה שם מתוכן.

נד) [כ"י] לב חכמים למסכת שבועות.

ואלה יבואו על הש"ס בסוף המסכת:

נה) [כ"י] פירוש קדמון למס' מגילה, הובא בשיטה מקובצת כ"י בשם "פירוש לא נודע למי".

נו) אור זרוע הקצר על מסכת יבמות, להג"ם חיים מנואשטט בן הריא"ז ז"ל בעהמ"ס אור זרוע (ונדפס [illegible] על גליון [illegible]).

נז) ספר מהדורא בתרא למהרש"א, עם חדושי הלכות ואגדות מהתנו הג"ם משה בר יצחק בר בנגם ז"ל אבד"ק לובלין.

נח) חכמת מנוח, חדושים מהג"ם מנוח הענדיל ז"ל (נכדו של המהרש"ל).

נט) מים חיים, חדושים מהג"ם יחזקיה די סילוא ז"ל (בעמ"ס פרי חדש).

ס) כללי התלמוד, להג"ם חיים בנבנשתי ז"ל (מחבר כנה"ג ושיורי כנה"ג).

סא) [כ"י] הגהות ישנות למס' נדה שנכתבו בכ"י מספרי ישן על גליון המסכת דפוס ויניציאה שנת רפ"ז.

סב) [כ"י] חדושי הג"ם משה ב"ר אברהם ז"ל אבד"ק הוראדנא (בעמ"ס תפלה למשה).

סג) הגהות הג"ם נתן בורניל ז"ל, לסדר קדשים ומס' הוריות (בעמ"ס חק נתן).

סד) [כ"י] באור הגר"א ז"ל למס' ערכין ונקרא יד אליהו.

סה) [כ"י] הגהות חדשות מהגר"א ז"ל למס' תמורה, מלבד אלה שנדפסו על הדף מכ"י.

סו) [כ"י] באור הגר"א למשניות סדר טהרות (מלבד אהלות) אשר קבל ממנו תלמידו הג"ם [illegible] ז"ל משקלאב ונעתק ע"י הרה"ל ז"ל, וחלק גדול ממנו בלי חדש, שלא נמצא בא"ר.

פ) [כ"י] חדושים מהג"ם שלמה איגר ז"ל, למסכתות שלא נדפסו עוד עליהן (מלבד כל הנ"ל).

פא) חדושים מהג"ם צבי הירש חיות ז"ל אבד"ק זאלקווא (בעמ"ס מהר"ץ וכו').

פב) [כ"י] קרני ראם להג"ם אהרן משה טויבש ז"ל אבד"ק יאסי (בעמ"ס [illegible]), כולל הערות על מהרש"א וחדושי גפ"ת ([illegible]).

פג) [כ"י] הגהות גם הג"ם שמואל שמעלקא טויבש ז"ל אבד"ק יאסי.

פד) ארץ צבי הגהות על הגהות אשר"י מהג"ם יהודה צבי ז"ל (בעמ"ס [illegible] מנחת יהודה).

פה) [כ"י] שער הלקוטות הגהות מהג"ם יששכר ז"ל (בעמ"ס פתחי שערים).

פו) [כ"י] חדושי הרד"ל מהג"ם דוד לוריא ז"ל מביחאוו ישן (בעל ההגהות של מדרש רבה ופרד"א וכו').

פז) [כ"י] הוספות לחדושי והגהות הרש"ש, וחדושים מבנו הג"ם מתתיהו שטראשון ז"ל מווילנא.

פח) [כ"י] חדושים מהג"ם יוסף חנינא ליפא מיזליש ז"ל (בעמ"ס שו"ת [illegible]).

פט) [כ"י] הגהות למסכת נזיר מהג"ם אשר הכהן ז"ל אבד"ק שרשב (בעמ"ס ברכת ראש).

צ) [כ"י] חדושים מהג"ם שמחה ז"ל אבד"ק [illegible] (נכד של הג"ם צבי הירש ז"ל).

צא) [כ"י] מלאכת יום טוב מהג"ם יום טוב ליפמאן ז"ל אבד"ק קאפולי (בעמ"ס קדושת יום טוב וכו').

צב) [כ"י] בן אריה מהג"ם זאב בן אריה ז"ל אבד"ק [illegible].

צג) חדושים מהג"ם אליהו גוטמאכר ז"ל אבד"ק גריידיץ (בעמ"ס [illegible]).

צד) [כ"י] חדושים מהג"ם יצחק אייזיק חבר ז"ל אבד"ק [illegible] (בעמ"ס [illegible]).

צה) [כ"י] חדושים מהג"ם נחמיה בירך הלוי ז"ל מרובראווונא (בעמ"ס [illegible]).

צו) [כ"י] מראה כהן להג"ם בצלאל הכהן ז"ל מו"ץ פ"ק ווילנא (בעמ"ס ראשית בכורים).

צז) [כ"י] חדושים מהג"ם אלעזר משה הלוי הורוויץ שליט"א אבד"ק פינסק.

צח) [כ"י] פורת יוסף להג"ם יוסף שליט"א מו"ץ פ"ק ווילנא.

צט) הגהות אמרות טהורות על פי' הר"ש והרא"ש לכל סדר טהרות להג"ם שמואל פריינד ז"ל הנ"ל.

ק) [כ"י] חשק שלמה להג"ם שלמה הכהן שליט"א מו"ץ פ"ק ווילנא.

קא) [כ"י] יפה עינים להג"ם אריה ליב יעלין שליט"א אבד"ק בילסק (בעמ"ס קול אריה וכו'). כולל מ"מ לתלמוד ירושלמי, למדרשים, ילקוט, ספרא, ספרי ומכילתא [illegible], עם הגהות וחדושים בחלופי גרסאות והשנוים שבין תלמוד בבלי לירושלמי. (ובתוך ההגהות [illegible] למס' ברכות ושבת להג"ם ליב ברלין ז"ל [illegible]).

קב) [כ"י] המפתחים כולל באור מלות הלועזיות שבפרש"י, תוספות,


ועל כל אלה נוספה בו הגהה כפולה ומכופלת מדויקת ומזוקקת שבעתים

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CHAPTER VI.

EPITOMES, CODIFICATIONS, MANUSCRIPTS AND PRINTED EDITIONS OF THE TALMUD.

INTRODUCTORY.

Since the Babylonian Talmud was considered by most of the Jewish communities in all countries as the source of the rabbinical law by which to regulate the religious life, it is but natural that already at a comparatively early period attempts were made to furnish abstracts of the same for practical purposes.

[paragraph continues] This was done partly by epitomes or compendiums which, retaining the general arrangement and divisions of the Talmud, bring its matter into a narrower compass by omitting its Hagadic and unnecessary passages, and abridging the legal discussions; and partly by codes in which the results of the discussed legal matter is presented in a more systematic order. The first attempts in this direction were made by R. Jehudai Gaon of Sura (VIII. century), in his book *Halachoth Ketuoth* (Abridged Halakhoth), and by R. Simon of Kahira (--IX. century) in his *Halachoth Gedoloth*. 'Both of these two works, which afterwards coalesced into one work, still extant under the latter title, were, however, eclipsed by later master works of other celebrated Rabbinical authorities.

A. EPITOMES.

The principal epitomes or compendiums of the Talmud are by the following authors:

1. *R. Isaac Alfasi* (after the initials, called "Rif," born in 1013 near the city of Fez in Africa, died in 1103 as Rabbi at Lucena in Spain) wrote an excellent compendium, which he called "Halakhoth," but which is usually called by the name of its author, Alpassy. In this compendium he retains the general arrangement, the language and style of the Talmud, but omits, besides the Hagada, all parts and passages which concern laws that had become obsolete since the destruction of the Temple. Besides, he condensed the lengthy discussions, and added his own decision in cases not clearly decided in the Talmud.

REMARK.--Alfasi's compendium comprises in print three large folio volumes in which the text is accompanied by Rashi's Talmud commentary, and besides by numerous commentaries, annotations and glosses, especially those by R. Nissim b. Reuben (••• {Hebrew *RYyN*}); by R. Zerachia Halevi (Maor); by R. Mordecai b. Hillel; by R. Joseph Chabiba (Nimuke Joseph), and by some other distinguished Rabbis.

2. *R. Asher b. Jechiel*, a German Rabbi, later in Toledo, Spain, where he died in 1327, wrote a

compendium after the pattern of that of Alfasi and embodied in the same also the opinions of later authorities. This compendium is appended in our Talmud editions to each Masechta, under the title of the author, Rabbennu Asher.

R. Jacob, the celebrated son of this author, added to that compendium an abstract of the decisions contained in the same, The Extract of Asher's Decisions.

B. CODES.

1. *Mishne Torah*, "Repetition of the Law," by R. Moses Maimonides, flourishing in the XII. century. This is the most comprehensive and systematically arranged Code of all the Laws scattered through the two Talmuds, or resulting from the discussions in the same. Occasionally also the opinions of the post-Talmudic authorities, the Gaonim, are added.

This gigantic work, written throughout in Mishnic Hebrew in a very lucid and attractive style, is divided into *fourteen* books; hence its additional name, Sepher Ha-yad (having the numerical value of 14), and by way of distinction, it was later called "Yad Hachazaka," The Strong Hand. Every book is, according to the various subjects treated therein, divided into Halakhoth, the special names of which are given at the head of each of those fourteen books. The Halakhoth are again subdivided into chapters (Perakim), and these into paragraphs.

2. *Sephar Mitzvath Godol* (abbreviated S. M. G.), the great Law book, by the Tosaphist R. Moses of Coucy, in France (XIII. century). This work arranges the Talmudical law according to the 613 precepts which the Rabbis found to be contained in the Pentateuch, and is divided into 248 positive and 365 negative commandments.

REMARK--A similar work, but on a smaller scale, is "Sephar Mitzvath Gaton," also called "Amude Golah," by R. Isaac b. Joseph, of Corbeil (d. 1280).

3. *Turim* (the Rows of Laws), by R. Jacob, son of that celebrated R. Asher b. Jechiel who was mentioned above. The work is divided into four parts, called: *Tur Orach Chayim*, treating of Liturgical Laws; *Tur Yore Dea*, treating of the Ritual Laws; *Tur Eben Ha-ezer*, on the Marriage Laws, and *Tur Choshen Mishpat*, on the Civil Laws. Each of these four books is subdivided according to subjects under appropriate headings, and into chapters, called Simanim. This code differs from that of Maimonides in so far as it is restricted to such laws only which were still in use outside of Palestine, and as it embodies also rules and customs which were established after the

close of the Talmud. Besides, it is not written in that uniform and pure language, and in that lucid style, by which the work of Maimonides is characterized.

4. *Shulchan Aruch* (The Prepared Table), by *R. Joseph Karo* (XVI. century), the same author who wrote the commentaries on the codes of Maimonides and of R. Jacob b. Asher. Taking the

last-mentioned code (Turim) and his own commentary on the same as basis, and retaining its division into four parts as well as that into subjects and chapters, he subdivided each chapter (Siman), into paragraphs, and so remodelled its contents as to give it the proper shape and style of a law book. This Shulchan Aruch, together with the numerous annotations added to it by the contemporary R. Moses Isserles, was up to our time regarded by all rabbinical Jews as the authoritative code by which all questions of the religious life were decided.

Constant reference to the four Codes mentioned above are made in the marginal glosses which are found on every page of the Talmud, under the heading of "*En Mishpat, Ner Mitzwuah*." It is the object of these glosses to show, at every instance when a law is quoted or discussed in the Talmud, where the final decision of that law is to be found in the various codes. The authorship of these marginal glosses is ascribed to R. Joshua Boas Baruch (XVI. century). The same scholar wrote also the glosses headed *Torah Or* which are found in the space between the Talmud text and Rashi's commentary, and which indicate the books and chapters of the biblical passages quoted in the Talmud, besides the very important glosses in the margins of the pages, beaded *Massoreth Ha-shas*, which give references to parallel passages in the Talmud. The last mentioned glosses were later increased with critical notes by Isaiah Berlin (Pik), Rabbi in Breslau (d. 1799).

C. COLLECTIONS OF THE HAGADIC PORTIONS OF THE TALMUD.

While the above-mentioned Compendiums and Codes are restricted to abstracting only the legal matter (Halakha) of the Talmud, *R. Jacob ibn Chabib*, flourishing at the beginning of the sixteenth century, collected all the Hagadic passages, especially of the Babylonian Talmud. This very popular collection, which is usually printed with various commentaries,

has the title of *En Jacob*; in some editions it is also called *En Israel*.

R. Samuel Jafe, flourishing in the latter part of that century, made a similar collection of the Hagadic passages Palestinian Talmud, with an extensive commentary under the title of *Y'phe Mareh* (Vienna, 1590, and Berlin, 1725-26). An abridged edition with a short commentary was published under the title of *Benyan Jerusalem* (Lemberg, 1860).

D. MANUSCRIPTS.

In consequence of the terrible persecutions of the Jews during the middle ages, and the destruction of their libraries, so often connected therewith, and especially in consequence of the vandalism repeatedly perpetrated by the Church against the Talmud, [1] only a very limited number of manuscripts of the same have come down to our time. Codices of single *Sedarim* (sections) and *Masechloth* (tracts or treatises) are to be found in various libraries of Europe, especially in the Vatican Library of Rome, and in the libraries of Parma, Leyden, Paris, Oxford, Cambridge, Munich, Berlin and Hamburg. The only known complete manuscript of the Babylonian Talmud, written in the year 1369, is in possession of the Royal Library of Munich A fragment of Talmud Pesachim, of the ninth or tenth century, is preserved in the University Library of Cambridge, and was edited with an autotype facsimile, by W. H. Lowe, Cambridge, 1879.

The Columbia College in the city of New York lately acquired a collection of manuscripts containing the treatises *Pesachim*, *Moed Katon*, *Megilla*, and *Zebachim* of the Babylonian Talmud. These manuscripts came from Southern Arabia, and date from the year 1548. [2]

Manuscripts of the *Mishna* or of single Sedarim thereof, some of which dating from the thirteenth century are preserved in the libraries of Parma, of Berlin, of Hamburg, of Oxford, and of Cambridge. That of the last-mentioned library was edited by W. H. Lowe: "The Mishna on which the Palestinian Talmud Rests," etc., Cambridge, 1883.

Of the *Palestinian Talmud* the only manuscript, of considerable extent, is preserved in the Library of Leyden. See S. M. Schiller-Szinessy, "Description of the Leyden MS. of the Palestinian Talmud," Cambridge, 1878. Fragments of the Palestinian Talmud are also to be found in some other libraries, especially in those of Oxford and Parma.

Fuller information concerning MSS. of the Talmud is given in F. Lebrecht's "Handschriften und erste Ausgaben des Babyl. Talmud," Berlin, 1862. See also M. Steinschneider's "Hebraische Bibliographic," Berlin, 1862 and 1863.

E. THE TALMUD IN PRINT.

a. The Mishna Editions.

Already as early as the year 1492, the first edition of the Mishna, together with the commentary of Maimonides, appeared in Naples. It was followed by several editions of Venice (1546-50, and 1606), of Riva di Trento (1559), and of Mantua (1559-63). In the last-mentioned editions the commentary of Obadia di Bertinoro is added. The editions which have since appeared are very numerous. Those which appeared since the seventeenth century are generally accompanied, besides Bertinoro's commentary, by Lipman Heller's or some other shorter commentaries.

b. The Babylonian Talmud.

The first complete edition of the Babylonian Talmud was published by Daniel Bomberg in twelve folio volumes, Venice, 1520-23. Besides the text, it contains the commentary of Rashi, the Tosephoth, the Piske-Tosephoth, the compendium of Asheri, and the Mishna commentary of Maimonides. This original edition served as model for all editions which subsequently

appeared at Venice, Basel, Cracow, Lublin, Amsterdam, Frankfort-on-the-Oder, Berlin, Frankfort-on-the-Main, Sulzbach, Dyhernfurt, Prague, Warsaw, Lemberg, and recently at Vienna and Wilna. The later editions were greatly, improved by the addition of valuable literary and critical marginal notes and appendices by learned rabbis. But the Basel and most of the subsequent editions, down almost to the present time, have been much mutilated by the official censors of the press, who expunged from the Talmud all those passages which, in their opinion,

seemed to reflect upon Christianity, and, besides, changed expressions, especially names of nations and of sects, which they suspected as having reference to Christians.

The Amsterdam editions, especially the first (T644-48), escaped those mutilations at the hand of the censors, and are on this account considered very valuable. Most of the passages which have elsewhere been eliminated or altered by the censors have been extracted from the Amsterdam edition, and published in separate small books. Of these the following two may be mentioned: "Collected Omissions" and "The Omissions," Koenigsberg, 1860. [1]

A critical review of the complete editions of the Babylonian Talmud and of the very numerous editions of single Masechtoth since the year 1484, was published by Raphael Rabbinovicz, in his Hebrew pamphlet, Munich, 1877. [2]

The same author also collected and published very rich and important material for a critical edition of the Babylonian Talmud from the above-mentioned manuscript in the Royal Library of Munich and other manuscripts, as well as from early prints of single Masechtoth in various libraries. The title of this very extensive work, written in Hebrew, is *Dikduke Sopherim*, with the Latin title: *Variae lectiones in Mishnam et in Talmud Babylonicum*, etc., Munich 1868-86. The fifteen volumes in octavo which have appeared of this valuable work comprise only three and a half Sedarim of the six Sedarim of

the Talmud. It is to be regretted that in consequence of the death of the learned author the completion of this important work has been suspended.

c. The Palestinian Talmud.

Of the Palestinian Talmud (Jerushalmi) only four complete editions appeared:

1. The first edition, published by Daniel Bomberg, Venice, 1523-24, in one folio volume, without any commentary.

2. The *Cracow* edition, 1609, with a short commentary on the margin.

3. The *Krotoshin* edition, 1866, with a commentary like that in the Cracow edition, but added to it are marginal notes, containing references to parallel passages in the Babylonian Talmud, and corrections of text readings.

4. The *Shitomir* edition, 1860-67, in several folio volumes, with various commentaries.

Besides these four complete editions, several parts have been published with commentaries.

Footnotes

48:1 The commentaries of the Palestinian Talmud we omit, but not the Epitomes, etc., which seem to us of interest for the reader.

52:1 It is stated that at the notorious *auto-da-fe* of the Talmud, held in the year 1249, at Paris, twenty-four cart-loads of Talmud tomes were consigned to the flames. Similar destructions of the Talmud were executed by the order of Pope Julius III., in first at Rome, then at Bologna and Venice, and in the following year the year 1553, in Ancona and other cities. Among the 12,000 tomes of the Talmud that were burned at Cremona, in the year 1559 (see Graetz's "Geschichte d. Juden," X., p. 382), were undoubtedly also numerous manuscripts, though most of them may have been printed copies.

52:2 See Max L. Margolis's "The Columbia College MS. of Meghilla Examined," New York, 1892.

54:1 In our "Schulchan Aruch und Seine Beziehungen, etc.," mentioned in our appendix about the Münster process, we give a clear explanation about all the corrections by the censor which does not fully agree with this remark. Concerning these omissions, see our "Concluding Words" to Vols. XVII. and XVIII.

54:2 This instructive pamphlet is also reprinted as an appendix to Vol. VIII. Of Dikduke Sopherim.

Next: Chapter VII: Translations of the Talmud

CHAPTER VII.

TRANSLATIONS OF THE TALMUD

A. THE MISHNA.

English Translations.

W. Walton. Translation of the treatises Sabbath and Erubin, London, 1718.

D. A. de Sola and *M. I. Raphall*. Eighteen treatises from the Mishna translated. London, 1843.

Joseph Barclay published under the title "The Talmud" a translation of eighteen treatises of the Mishna with annotations. London, 1878.

C. Taylor. Sayings of the Jewish Fathers (the treatise Aboth). Cambridge, 1877.

REMARK.--The treatise "Aboth" has been translated into almost all of the European languages.

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B. THE BABYLONIAN TALMUD.

To translate the Mishna is a comparatively easy task. Its generally plain and uniform language and style of expression, and its compendious character could easily enough be rendered into another language, especially when accompanied by some explanatory notes. But it is quite different with the Gemara, especially the Babylonian. There are, of course, also passages in the Gemara which offer no great difficulties to a translator who is sufficiently familiar with the idiom in which the original is composed. We refer to the historical, legendary and homiletical portions (Hagadas), which the compilers have interspersed in every treatise. The main part of the Gemara, however, which is essentially of an argumentative character, giving minute reports of discussions and debates on the law, this part, so rich in dialectical subtilities, and so full of technicalities and elliptical expressions, offers to the translator almost insurmountable difficulties.

English Translations.

A. W. Streane. Translation of the treatise *Chagiga*. Cambridge, 1891.

Michael L. Rodkinson: Babylonian Talmud--Section Moed (Festivals). Complete, consisting of the following volumes: Vol. I., [1] Tract Sabbath (first ten chapters); Vol. H., Tract Sabbath (continued), fourteen chapters; Vol. III., Tract Erubin (Mingling); Vol. IV., Tracts Skekalim

(Duties), and Rosh Hashana (Hebrew Calendar); Vol. V., Tract Pesachim (Passover); Vol. VI., Tracts Yomah (Day of Atonement), and Hagiga (Holocaust); Vol. VII., Tracts Betzah (Feast), Succah (Tabernacles), and Moed Katan (Minor Festivals); Vol. VIII., Tracts Taanith (Fasts), Megilla (Book of Esther), and Ebel Rabbathi (Great Mourning).

Section Jurisprudence: Vol. I., Ethics of Judaism, (Tracts Aboth, Aboth of R. Nathan, Derech Eretz, Rabba and Zutta); Vol. H., Bab Kama (First Gate, eight chapters); Vol. III., Baba Metziah (Middle Gate), five chapters, and the last two of

[paragraph continues] Baba Kama; Vol. IV., the last five chapters of Baba Metziah; Vol. V.-VI., Baba Bathra (Last Gate, five chapters in each); Vol. VII.-VIII., Sanhedrin; Vol. IX., Maccath, Shebuoth, and Eduyoth; Vol. X., Abuda Zara and Horioth, New York, 1896-1903. [1]

C. THE PALESTINIAN TALMUD.

a. Latin Translation.

Blasius Ugolinus, published in volumes XVII.-XXX. of his Thesaurus antiquitatum sacrarum. (Venice, 1755-65), the following treatises in Latin: Pesachim (vol. XVII.); Shekalim, Yoma, Succah, Rosh Hashanah, Taanith, Megilla, Chagiga, Betza, Moed Katan (vol. XVIII.); Maaseroth, Maaser Sheni, Challah, Orlah, Biccurim (vol. XX.); Sanhedrin, Maccoth (Vol. XXV.); Kiddushin, Sota, Kethuboth (vol. XXX.).

b. German Translations.

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Footnotes

56:1 Of Vol. I. and IV. a second revised and enlarged edition was published.

57:1 See "Kritische Geschichte der Talmud Übersetzung" by Bischof, p. 62. In this book all the translations from both Talmuds in *all languages* and all tracts or parts of them, with criticisms, are mentioned. The English translations are given here for the English reader.

Next: Chapter VIII: Bibliography of Modern Works and Monographs on Talmudic Subjects

CHAPTER VIII.

BIBLIOGRAPHY OF MODERN WORKS AND MONOGRAPHS ON TALMUDIC SUBJECTS.

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Next: Chapter IX. Why Should Christians Feel Interested in the Talmud?

CHAPTER IX.

WHY SHOULD CHRISTIANS FEEL INTERESTED IN THE TALMUD? 1

Christian theology and Jewish theology having really followed two parallel paths, the history of either cannot be understood without the history of the other. Numberless material details of the gospels find, moreover, their commentary in the Talmud. . . The distinction of epochs is here very important, the compilation of the Talmud extending from the year 200 to the year 500 nearly.--*Renan's "Life of Jesus," Introduction*.

Is the literature that Jesus was familiar with in his early years yet in existence in the world? Is it possible for us to get at it? Can we ourselves review the ideas, the statements, the modes of reasoning and thinking, on moral and religious subjects, which were current in his time, and must have been revolved by him during those silent thirty years when he was pondering his future mission? To such inquiries the learned class of Jewish rabbis answer by holding up the Talmud. Here, say they, is the source from whence Jesus of Nazareth drew the teachings which enabled him to revolutionize the world; and the question becomes, therefore, an interesting one to every Christian, What is the Talmud? . . .

The Talmud, then, is the written form of that which, in the time of Jesus, was called the Traditions of the Elders, and to which he makes frequent allusions. What sort of book is it?

The answer is at first sight discouraging to flesh and spirit. The Talmud appears to view in form of fourteen heavy folio volumes, of thick, solid Hebrew and Aramaic consonants, without a vowel to be seen from the first word of the first volume

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to the last word of the last. Such is the Jewish Talmud, including both the Jerusalem and the Babylonian. Who can read it? It can be read, for it has been read . . .

The Talmud is the great repository of the mental products of a most vigorous and vivid race of thinkers, through long ages of degradation, persecution, oppression, and sorrow; and, as such, few human works are more worthy of, or will better repay, the student of human nature . . .

What light it may shed on the words of Jesus and Paul to know the modes of thought which were such a perfect world in their time! When Paul speaks of his studies at the feet of Gamaliel, one of the principal authors of the Talmud, of his profiting in the matters of law above many of his equals, we see him, an ardent young enthusiast, on the way to become an accomplished rabbi, perhaps even a Nasi, in some future day, and we understand what he means when he says, "But what things were gain tome, these I counted loss to Christ." It was a whole education and a whole life's work that he threw at the feet of his new Master.

Looking at the Talmud in contrast with any other ancient sacred writings extant in the world, except the Bible, we must be struck with its immense superiority . . .

I desire, in conclusion, to express my obligations to the ponderous erudition of the two older standard authors on this subject . . .

The writings of Dukes, an author of our own day, are especially rich in regard to Rabbinic proverbs and apologues; and in one of his prefaces he expresses the hope that they may be of some use even to that rather numerous body of Christians who give little other evidence of being Christians at all, except that of hating the Jews.--*Atlantic Monthly*, Vol. 21, p. 673, sq.

The science of our day owes to itself the duty of studying the Talmud impartially. It will judge worthy of its attention this monument of a religion and a civilization whose influence has not been void in the world, and whatever its absolute value may be adjudged to be, science will understand it, and study its formation and development. It will demand of the, Talmud instruction, or, at least, information, almost as varied as the subjects coming within the compass of science. The historian will address himself to it for light upon the history of the

[paragraph continues] earliest centuries of the Christian era, and of the centuries immediately preceding it, and though not seeking in it precise data, which it cannot furnish, he will be sure to find a faithful picture of the beliefs and ideas of the Jewish nation on its moral and spiritual life. The naturalist will ask of it numerous questions concerning the sciences, physical, natural, or medical. Has it ever occurred to any one to compile, if not the fauna, at least the flora of the Talmud; that is, of the Palestine and Babylonia contemporary with the Empire? It were easy with it as a basis to furnish a second edition of Pliny's *Natural History*, certainly as valuable as the first. The lawyer will question it on the history of its jurisprudence, will investigate whether, how, and by what intermediaries Roman law and Persian customs influenced it, and it will be a curious study to compare the results that two different civilizations, directed by opposite principles, have reached in the *jus civile* and the *jus Talmudicum*, The mythologist will dive into its legends, and, by a nice application of the comparative method, determine the history of Midrashic mythology. The philologist will devote himself to the language--that abrupt, rough language by means of which the Talmud seems to please itself in heaping up obscurities of form over those of the thought, and he will be sure to make more than one happy find. For, says the author of the *History of the Semitic Languages*, "the lexical spoliation and grammatic analysis of the Talmudic language, according to the methods of modem philology, remain to be made . . . That language fills a hiatus in the history of Semitic idioms.

Finally, the philosopher will demand of the Talmud the explanation of Judaism and the history of Jewish institutions, and as the Talmudic books offer the completest expression thereof, and as he has at hand all the component elements, a scrupulous analysis will give him the law of the development of the Jewish religion.--*Darmesteter*, "The Talmud," p. 96.

Here we have an attempt-and the attempt is praiseworthy--to put the Talmud, or the substance of it, into *plain English*, and for this the Christian reader, if not the learned rabbi, must be grateful to the translator.--Independent, April 7, 1899.

Published in the second prospectus issued by the New Talmud Publishing Co., adding to them some remarks of Mielziner's

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address to the senior class of the Union Hebrew College at Cincinnati, some years ago:

"To impress you the more with the necessity of the Talmudic studies for a clear conception of Judaism and its history, I could also quote the opinions of many of our greatest scholars, but shall confine myself only to a quotation from the writings of two of our most renowned scholars whom none will suspect of having been biased by a too great predilection for the Talmud; one is the late Dr. Geiger, and the other our great historian, the late Dr. Jost.

"*Geiger* (*Das Judenthum und seine Geschichte*, I., p. 15 5) in speaking of the Talmud and the rabbinical literature, says:

"'Gigantic works, productions of gloomy and brighter periods are here before us, monuments of thought and intellectual labor; they excite our admiration. I do not indorse every word of the Talmud, nor every idea expressed by the teachers in the time of the Middle Ages, but I would not miss a tittle thereof. They contain an acumen and power of thought which fill us with reverence for the spirit that animated our ancestors, a fulness of sound sense, salutary maxim-s-a freshness of opinion often bursts upon us that even to this day exercises its enlivening and inspiring effect.'

"*Jost* in his *Geschichte des Judenthum's und seiner Secten*, II., 202, characterizes the Talmud by the following masterly words:

"'The Talmud is a great mine, in which are imbedded all varieties of metals and ores. Here may be found all kinds of valuables, the finest gold and rarest gems, as also the merest dross. Much has been unearthed that has realized countless profit to the world. The great spiritual work whose outcome has been apparent in the advancement of religion has shown that the Talmud is not only of incalculable value in the pursuit of wisdom, but that it has a self-evident significance for all times, which can not be shown by any mere extracts from its pages, and that it can not be disregarded on the plea of its antiquity as valueless in the knowledge of the Jewish religion. Indeed it is and must remain the chief source of this knowledge, and particularly of the historical development of the Jewish religion. More than this, it is the abode of that spirit which has inspired that religion, these many centuries, that spirit from

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which even those who sought to counteract it could not escape. It is and will remain a labyrinth with deep shafts and openings, in which isolated spirits toil with tireless activity, a labyrinth which offers rich rewards to those who enter impelled by the desire to gain, not without hidden dangers to those who venture wantonly into its mazes and absorb its deadly vapors. Religion has created this work, not indeed to give utterance in an unsatisfactory way to the great questions of Deity and Nature, Mortality and Eternity, and not to carry on controversies upon the proper formulation of articles of faith, but to give expression to a religion of deed, a religion designed to accompany man from the first steps in his education until he reaches the grave, and beyond it;

a guide by which his desires and actions are to be regulated at every moment, by which all his movements are to be guarded, that takes care even of his food and drink, of his pleasures and pains, of his mirth and sorrow, and seeks to elevate him, at all times, to an enunciation of the purest faith.

"'It is thus that this spirit, which breathes from the Talmud, enters into the nation's inmost life. It offers repeated recitals of the various modes of thinking, practising, believing, of the true and false representations, of hopes and longings, of knowledge and error, of the great lessons of fate, of undertakings and their consequences, of utterances and their effects, of persons and their talents and inaptitudes, of words and examples, of customs, both in matters of public worship and private life; in short, of all the happenings, past or contemporary, in the time which the Talmud comprises, *i.e.*, a period of nearly one thousand years, excluding the Bible times.

"'Hence, also, its great value to antiquarians in the frequent allusions to facts, opinions and statements, to modes of expression and grammatical construction, to peculiarities of every kind, which at the same time afford a view of the development of mankind, such as no other work of the past gives.

"'To treat the Talmud with scorn because of its oddness, on account of much that it contains that does not conform to our maturer modes of thinking, because of its evident errors and misconceptions--errors from ignorance or errors in copying--to throw it overboard, as it were, as useless ballast, would be

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to insult all history, to deprive it of one of its strongest limbs, to dismember it.

"'To dam up its channels by taking away the Talmud, would be to close the access to the head waters and living sources of the Jewish religion, and thus leave her again in a desert land, after the tables of the law have already called forth a world of life and activity. It would be turning one's back, as it were, denying and disregarding one's own. There is a historical justification for the sharply defined modes of worship and religious forms that have their embodiment in set words and in fixed deeds. For this we must look to the Talmud. Judaism is rooted in the Talmud and would be tossed about in mid-air if torn from its soil, or require a new planting and a new growth.'

"In conclusion, my young friends, let me say this:

"If our College had no other purpose than to graduate common Sabbath school teachers who should be able to occasionally deliver popular though superficial lectures, the study of the Talmud, as well as that of our rabbinical and philosophical literature, might have been stricken from the course of your studies. But our College has a higher aim and object. Its object is to educate future guides and leaders of our congregations, to educate banner-bearers of Judaism, representatives and cultivators of Jewish knowledge and literature.

"You can never expect to answer this purpose without a thorough knowledge of, and familiarity with, that vast literature that offers us the means to follow and understand the religious formation, the growth and the entire course of development of Judaism from its beginning to the

present time."

Footnotes

70:1 Many learned men, as is well known to any student, have in each century since the close of the Talmud written about the necessity of Talmudic studies, even for non-Jews. We have, nevertheless selected for quotation some statements of modern scholars of this century, to the effect that the study of the Talmud is highly useful to Christian theologians.

Next: Chapter X: Opinions on the Value of the Talmud by Gentiles and Modern Jewish Scholars

CHAPTER X.

OPINIONS ON THE VALUE OF THE TALMUD BY GENTILES AND MODERN JEWISH SCHOLARS.

No literary monument of antiquity has ever been subject to so different and opposite views and opinions, as the Talmud. Its strict followers generally looked upon it as the very embodiment of wisdom and sagacity, and as a work whose authority was second only to that of the Bible. In the non-Jewish literature it was often decried as "one of the most repulsive

books that exist," as "a confused medley of perverted logic, absurd subtilities, foolish tales and fables, and full of profanity, superstition, and even obscenity," or at the most, as "an immense heap of rubbish at the bottom of which some stray pearls of Eastern wisdom are hidden."

It is certain that any of those who thus assumed to pass a condemning judgment upon the gigantic work of the Talmud never read nor were able to read a single page of the same in the original, but were prompted by religious prejudice and antagonism, or they based their verdict merely on those disconnected and often distorted passages which Eisenmenger and his consorts and followers picked out from the Talmud for hostile purposes.

Christian scholars who had a deeper insight into the Talmudical literature, without being blinded by religious prejudices, expressed themselves quite differently on the character and the merits of that work, as may be seen from the following few quotations.

Johann Buxtorf, in the preface to his Lexicon Chald. et Talmudicum, says: "The Talmud contains many legal, medical, physical, ethical, political, astronomical, and other excellent documents of sciences, which admirably commend the history I of that nation and time; it contains also luminous decisions of antiquity; excellent sayings; deep thoughts, full of grace and sense; and numerous expressions which make the reader not only better, but also more wise and learned, and which, like unto flashing jewels, grace the Hebrew speech not less than all those Greek and Roman phrases adorn their languages."

Other favorable opinions expressed by Christian scholars of the sixteenth to eighteenth centuries are collected in Karl Fischer's "Gutmeinung über den Talmud der Hebräer." Vienna, 1883.

Of such scholars as belong to our time, the following may be quoted here:

The late Professor Delitzsch in his "*Jüdisches Handwerkerleben zur Zeit Jesu*," says:

"Those who have not in some degree accomplished the extremely difficult task of reading this work for themselves, will hardly be able to form a clear idea of this polynomical colossus. It is

an immense speaking-hall, in which thousands and tens of

thousand of voices, of at least five centuries, are heard to commingle. A law, as we all know from experience, can never be so precisely formulated that there does not remain room for various interpretations; and question upon question constantly arises as to the application of it to the endless multiplicity of the existing relations of life. just imagine about ten thousand decrees concerning Jewish life classified according to the spheres of life, and in addition to these, about five hundred scribes and lawyers, mostly from Palestine and Babylon, taking up one after another of these decrees as the topic of examination and debate, and, discussing with hair-splitting acuteness every shade of meaning and practical application; and imagine, further, that the fine-spun thread of this interpretation of decrees is frequently lost in digressions, and that, after having traversed long distances of such desert-sand, you find, here and there, an oasis, consisting of sayings and accounts of more general interest. Then you may have some slight idea of this vast, and of its kind, unique, juridic codex, compared with whose compass all the law-books of other nations are but Lilliputians, and beside whose variegated, buzzing market din, they represent but quiet study-chambers."

7. Alexander, in his book on *The Jews; their Past, Present and Future* (London, 1870), says:

"The Talmud, as it now stands, is almost the whole literature of the Jews during a thousand years. Commentator followed upon commentator, till at last the whole became an immense bulk; the original Babylonian Talmud alone consists of 2,947 folio pages. Out of such literature it is easy to make quotations which may throw an odium over the whole. But fancy if the production of a thousand years of English literature, say, from the "History" of the Venerable Bede to Milton's "Paradise Lost," were thrown together into a number of uniform folios, and judged in like manner; if because some superstitious monks wrote silly "Lives of Saints," therefore the works of John Bunyan should also be considered worthless. The absurdity is too obvious to require another word from me, Such, however, is the continual treatment the Talmud receives both at the hand. of its friends and of its enemies. Both will find it easy to quote in behalf of their preconceived notions, but the earnest student will rather try to weigh the matter impartially,

retain the good he can find even in the Talmud, and reject what will not stand the test of God's word."

The impartial view of the Talmud taken by modern Jewish scholars may be seen from the following opinion expressed by the late *Professor Graetz* in his "History of the Jews" (vol. IV., 309 sq.).

The Talmud must not be considered as an ordinary literary work consisting of twelve folios; it bears not the least internal resemblance to a single literary production; but forms a world of its own which must be judged according to its own laws. It is, therefore, extremely difficult to furnish a specific sketch of the Talmud, seeing that a familiar standard or analogy is wanting. And however thoroughly a man of consummate talent may have penetrated its spirit and become conversant with its peculiarities, he would scarcely succeed in such a task, It may, in some

respects, be compared with the Patristic literature, which sprang up simultaneously. But on closer inspection, this comparison will also fail. . . .

"The Talmud has at different times been variously judged on the most heterogeneous assumptions, it has been condemned and consigned to the flames; simply because it was presented in its unfavorable aspect without taking into consideration its actual merits. It cannot be denied that the Babylonian Talmud labors under some defects, like any other mental product, which pursues a single course with inexorable consistency and undeviating dogmatism. These defects may be classified under four heads: the Talmud contains some unessential and trival subjects, which it treats with much importance and a serious air; it has adopted from its Persian surroundings superstitious practices and views, which presuppose the agency of intermediate spiritual beings, witchcraft, exorcising formulas, magical cures and interpretations of dreams and, hence, are in conflict with the spirit of Judaism; it further contains several uncharitable utterances and provisions against members of other nations and creeds; lastly it favors a bad interpretation of Scripture, absurd, forced and frequently false commentations. For these faults the whole Talmud has been held responsible and been denounced as a work devoted to trifles, as a source of immorality and trickery, without taking into consideration that it is not a work of a single author who must be responsible

for every word, and if it be so, then the whole Jewish people was its author. Over six centuries are crystallized in the Talmud with animated distinctness, in their peculiar costumes, modes of speech and of thought, so to say a literary Herculaneum and Pompeii, not weakened by artistic imitation, which transfers a colossal picture to the narrow limits of a miniature.

It is, therefore, no wonder, if in this world sublime and mean, great and small, serious and ridiculous, Jewish and heathen elements, the altar and the ashes, are found in motley mixture. Those odious dicta of which Jew-haters have taken hold were in most cases nothing else but the utterances of a momentary indignation, to which an individual had given vent and which were preserved and embodied in the Talmud by over-zealous disciples, who were unwilling to omit a single expression of the revered ancients. But these utterances are richly counterbalanced by the maxims of benevolence and philanthropy towards every man, regardless of creed and nationality, which are also preserved in the Talmud. As counterpoise to the rank superstition, there are found therein sharp warnings against superstitious, heathen practices (Darke Emori), to which subject a whole section, under the name of *Perek Emorai*, is devoted. [1]

"The Babylonian Talmud is especially characterized and distinguished from the Palestinian, by high-soaring contemplations, a keen understanding, and flashes of thought which fitfully dart through the mental horizon. An incalculable store of ideas and incentives to thinking is treasured in the Talmud, but not in the form of finished themes that may be appropriated in a semi-somnolent state, but with the fresh coloring of their inception. The Babylonian Talmud leads into the laboratory of thought, and its ideas may be traced from their embryonic motion up to a giddy height, whither they at times soar into the region of the incomprehensible. For this reason it became, more than the Jerusalemean, the national property, the vital breath, the soul of the Jewish people."

Footnotes

79:1 Sabbath, 66a; Toseptha, Ch. VII., VIII.

Next: Part II; Chapter I: Talmudical Ethics

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PART II.

ETHICS OF THE TALMUD.

CHAPTER I.

TALMUDICAL ETHICS.

"Ethics is the flower and fruit on the tree of religion. The ultimate aim of religion is to ennoble man's inner and outer life, so that he may love and do that only which is right and good. This is a biblical teaching which is emphatically repeated in almost every book of Sacred Scriptures. Let me only refer to the sublime word of the prophet Micah: 'He hath showed thee, O man, what is good, and what doth the Lord require of thee, but to do justice and to love kindness and to walk humbly with thy God?' (Micah vi., 8.)

"As far as concerns the Bible, its ethical teachings are generally known. Translated into all languages of the world, that holy book is accessible to every one and whoever reads it with open eyes and with an unbiased mind will admit that it teaches the highest principles of morality, principles which have not been surpassed and superseded by any ethical system of ancient or modem philosophy.

"But how about the Talmud, that immense literary work whose authority was long esteemed second to that of the Bible? What are the ethical teachings of the Talmud?

"Although mainly engaged with discussions of the Law, as developed on the basis of the Bible during Israel's second commonwealth down to the sixth century of the Christian era, the Talmud devotes also much attention to ethical subjects. Not only are one treatise of the Mishna (*Pirke Aboth*) and some Boraithoth (as *Aboth d'R. Nathan* and *Derech Eretz*) almost exclusively occupied with ethical teachings, but such teachings are also very abundantly contained in the Hagadic (homiletical)

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passages which are so frequently interspersed in the legal discussions throughout all parts of the Talmud. [1]

"It must be borne in mind that the Talmudical literature embraces a period of about eight centuries, and that the numerous teachers whose ethical views and utterances are recorded in that vast literature, rank differently in regard to mind and authority. At the side of the great luminaries, we find also lesser ones. At the side of utterances of great, clear-sighted and broad-

minded masters with lofty ideas, we meet also with utterances of peculiar views which never obtained authority. Not every ethical remark or opinion quoted in that literature can, therefore, be regarded as an index of the standard of Talmudical ethics, but such opinions only can be so regarded which are expressed with authority and which are in harmony with the general spirit that pervades the Talmudic literature.

"Another point to be observed is the circumstance that the Talmud does not treat of ethics in a coherent, philosophical system. The Talmudic sages made no claim of being philosophers; they were public teachers, expounders of the Law, popular lecturers. As such, they did not care for a methodically arranged system. All they wanted was to spread among the people ethical teachings in single, concise, pithy, pointed sentences, well adapted to impress the minds and hearts, or in parables or legends illustrating certain moral duties and virtues. And this, their method, fully answered its purpose. Their ethical teachings did actually reach the Jewish masses, and influenced their conduct of life, while among the Greeks, the ethical theories and systems remained a matter that concerned the philosophers only, without exercising any educating influence upon the masses at large.

"Furthermore, it must be remembered that the Talmudical ethics is largely based on the ethics of the Bible. The sacred treasure of biblical truth and wisdom was in the minds and hearts of the Rabbis. This treasury they tried to enrich by their own wisdom and observation. Here they develop a principle contained in a scriptural passage, and give it a wider

scope and a larger application to life's various conditions. There they crystallize great moral ideas into a pithy, impressive maxim as a guide for human conduct. Here they give to a jewel of biblical ethics a new lustre by setting it in the gold of their own wisdom. There again they combine single pearls of biblical wisdom to a graceful ornament for human life."--*M. Mielziner*.

There are many books written upon the ethics of the Talmud which are enumerated in the bibliography. The most excellent of these is the philosophical book of Professor Lazarus, "Ethik des Judenthums," in German, Frankfort o. M., 1898, the first volume of which is translated into English by the Jewish Publication Society. The second volume of this work, we have heard, is ready for or already in print. [1]

However, to enable the reader, to get an idea of the Talmud Ethics, without troubling him with the various books in different languages, an extract which was made by Mielziner shall be given in this book, whose selections are so excellent that practically we have nothing to add. We, however, would call the attention of the reader to a book written by us in our periodical *Hacol*, Vol. VI., Vienna, 1885 (translated into German but not yet published), in which the subject of love of mankind is explained in two parallels, that of the Talmud and that in which we have drawn a parallel between the conceptions of both Talmud and Evangelium as to the moral content of the principle of Love. An extract of this explanation we should like to give here:

The commandment in the Old Testament (Leviticus xix., 17): "Love thy neighbor as thyself," the Talmud interprets in a negative sense by the words of Hillel, the elder, thus: "That which thou likest not being done unto thyself do not unto thy neighbor," and this rule the Talmud adopts in all the ways of charity, and in all affairs in which man comes in contact with

his fellow-man; *e.g.*, based upon this biblical commandment it is forbidden to betroth a woman before seeing her, for he may dislike her thereafter, and as one does not wish to be disliked himself, he must not cause another to be disliked. And so in all connections with one's neighbor, it is forbidden to do him any harm whatsoever, because one dislikes that he himself should be harmed. Also concerning the duties of charity, numerous special commandments are to be found in the Old Testament. The Talmud explains most of them negatively, viz.: "Thou shalt not leave thy neighbor to suffer any pain whatsoever, but thou shalt prevent it by supplying him with whatsoever thou canst afford." However, the rich man is not obliged to divide his money or property with the poor, nor to supply him with luxuries if the poor man had not been used to them before he became poor. (More details will be found in each subject mentioned further on.) Hence this obligation which is proper and in accordance with common sense, can be fulfilled by every one without any difficulty. The Evangelist, however, interprets the passage (Levit. xix., 17) in a positive sense (Matt. vii., 12): "Therefore all things *whatsoever* ye would that men should do to you, do ye even so to them, for this is the Law and the prophets." After a deep consideration, it is almost impossible for one to entirely fulfil this commandment. According to this, one must divide his money and property with those not possessing such. "Whatsoever ye would that men should do to you!" Who then would not want to be rich and to live luxuriously; to ride instead of going on foot, to be dressed in the best garments according to the latest style, etc.? Hence if one would like to live up to the words of the Evangelist, he must see that the life of his poor neighbor should be made exactly equal to his own life, which certainly can never and was never accomplished. The same is with the command in Luke vi., 2 9: "And unto him that smiteth thee on the one cheek offer also the other," which was never and will never be fulfilled, as this is against the nature of mankind, especially when one is in wrath whilst being beaten. Therefore nothing of this kind is to be found in the Talmud. On the contrary the Talmud says: "He who raises his hand to strike his neighbor is already considered wicked even before he has smitten him." The above-mentioned book quotes this

parallel in every affair in which human beings come in contact with each other. It is remarkable that in the explanation of Deut. vi., 4, "Thou shalt love the Lord, thy God, etc.," the Talmud also does not interpret this literally, thinking that it is impossible to impose upon the heart to love, especially Him whom one has never seen, and of whom one has not even a correct idea. Therefore they interpreted this passage thus, "The name of the Lord shall be loved through thy treatment of thy fellow-men, viz. "thy commerce with men should be just and peaceful; thy 'yes' should be firm and thy 'no' unvariable; so that it should be proclaimed: 'Hail the man who follows the Law of the Lord, which is Love thy fellow-men! Therefore let us and our children also study this magnificent Law.' The result evidently is that the name of the Lord is glorified through thee ------"

All the ethics of the Talmud are thus set up with a view to make their observance possible in all their particulars, which is not the case with the teaching of the Evangelist.

Finally, we beg to quote the beginning of the first chapter of the above-mentioned book.--Abyye used to say: "One should be always keen in the fear of God; use meek talk, prevent wrath, bestow thy greeting upon every one in the market, even if he be a stranger. This will cause you to be loved by Heaven and liked by thy fellow-men." It was said about R. Yohanan b. Zakkai,

that it never happened that he should have been greeted first (for he was it who greeted every one first, as soon as he perceived him). 1

Footnotes

81:1 Also the Midrash, a post-Talmudic collection of extracts from popular lectures of the ancient teachers on biblical texts, contains an abundance of ethical teachings and maxims advanced by the sages of the Talmud, which must likewise be taken into consideration when speaking of Talmudical Ethics.

82:1 We cannot restrain ourselves from expressing our great sorrow over the death of this great man which occurred this year. He was our friend and patron, and many days and weeks we had been fortunate to spend in his company, when, in 1883, we had the pleasure to read before him the several thousand quotations from the Talmud, which we had prepared for his work, "Ethik des Judenthums," at his request. We certainly do not know how many of them he has made use of. However, he wrote us a few years ago that our name and service would be mentioned in the second volume of his book. To our great sorrow he departed before the second volume was published.

Next: Chapter II: Ethical Teachings of the Talmud

CHAPTER II.

Let us now try to give a few outlines of the ethical teachings of the Talmud. In the first place, concerning

MAN AS A MORAL BEING.

In accordance with the teaching of the Bible, the rabbis duly emphasize man's dignity as a being created in the likeness

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of God. By this likeness of God they understand the spiritual being within us, that is endowed with intellectual and moral capacities. The higher desires and inspirations which spring from this spiritual being in man, are called *Yetzer tob*, the good inclination; but the lower appetites and desires which rise from our physical nature and which we share with the animal creation, are termed *Yetzer ha-ra*, the inclination to evil. Not that these sensuous desires are absolutely evil; for they, too, have been implanted in man for good purposes. Without them man could not exist, he would not cultivate and populate this earth, or, as a Talmudical. legend runs: Once, some over-pious people wanted to pray to God that they might be able to destroy the *Yetzer ha-ra*, but a warning voice was heard, saying. "Beware, lest you destroy this world!" Evil are those lower desires only in that they, if unrestrained, easily mislead man to live contrary to the demands and aspirations of his divine nature. Hence the constant struggle in man between the two inclinations. He who submits his evil inclination to the control of his higher aims and desires is virtuous and righteous. "The righteous are governed by the *Yetzer tob*, but the wicked by the *Yetzer ha-ra*. The righteous have their desires in their power, but the wicked are in the power of their desires."

FREE-WILL.

Man's free-will is emphasized in the following sentences: "Everything is ordained by God's providence, but freedom of choice is given to man." "Everything is foreordained by heaven, except the fear of heaven," or, as another sage puts it: Whether man be strong or weak, richer poor, wise or foolish depends mostly on circumstances that surround him from the time of his birth, but whether man be good or bad, righteous or wicked, depends upon his own free-will.

GOD'S WILL, THE GROUND OF MAN'S DUTIES.

The ground of our duties, as presented to us by the Talmudical as well as the biblical teachings, is that it is the will of God. His will is the supreme rule of our being. "Do His will as thy own will, submit thy will to His will." "Be bold as a

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leopard, light as an eagle, swift as a roe, and strong as a lion, to do the will of thy Father, who is in heaven."

MAN ACCOUNTABLE TO GOD FOR HIS CONDUCT.

Of man's responsibility for the conduct of his life, we are forcibly reminded by numerous sentences, as: "Consider three things, and thou wilt never fall into sin; remember that there is above thee an all-seeing eye, an all-hearing ear, and a record of all thy actions." And again, "Consider three things, and thou wilt never sin; remember whence thou comest, whither thou goest, and before whom thou wilt have to render account for thy doings."

HIGHER MOTIVES IN PERFORMING OUR DUTIES.

Although happiness here and hereafter is promised as reward for fulfilment, and punishment threatened for neglect of duty, still we are reminded not to be guided by the consideration of reward and punishment, but rather by love and obedience to God, and by love to that which is good and noble. "Be not like servants, who serve their master for the sake of reward." "Whatever thou doest, let it be done in the name of heaven" (that is, for its own sake).

DUTY OF SELF-PRESERVATION AND SELF-CULTIVATION.

As a leading rule of the duties of *self-preservation* and *self-cultivation*, and, at the same time, as a warning against selfishness, we have Hillel's sentence: "If I do not care for myself, who will do it for me? and if I care only for myself, what am I?"

The duty of *acquiring knowledge*, especially knowledge of the Divine Law (Torah), which gives us a clearer insight in God's will to man, is most emphatically enjoined in numerous sentences: "Without knowledge there is no true morality and piety." "Be eager to acquire knowledge, it does not come to thee by inheritance." "The more knowledge, the wore spiritual life." "If thou hast acquired knowledge, what dost thou lack? but if thou lackest knowledge, what hast thou acquired?"

[paragraph continues] But we are also reminded that even the highest knowledge is of no value, as long as it does not influence our moral life. "The ultimate end of all knowledge and wisdom is man's inner purification and the performance of good and noble deeds." "He whose knowledge is great without influencing his moral life is compared to a tree that has many branches, but few and weak roots; a storm cometh and overturneth it."

LABOR.

Next to the duty of acquiring knowledge, that of *industrious labor* and *useful activity* is strongly enjoined. It is well known that among the ancient nations in general manual labor was regarded as degrading the free citizen. Even the greatest philosophers of antiquity, Plato and Aristotle, could not free, themselves of this deprecating view of labor. How different was the view of the

Talmudic sages in this respect! They say: "Love labor, and hate to be a lord." "Great is the dignity of labor; it honors man." "Beautiful is the intellectual occupation, if combined with some practical work." "He who doles not teach his son a handicraft trade, neglects his parental duty." "He who lives on the toil of his hands is greater than he who indulges in idle piety."

In accordance with these teachings, some of the most prominent sages of the Talmud are known to have made their living by various kinds of handicraft and trade.

CARDINAL DUTIES IN RELATION TO FELLOW-MEN.

Regarding man's relation to fellow-men, the rabbis consider *justice*, *truthfulness*, *peaceableness* and *charity* as cardinal duties. They say, "The world (human society) rests on three things--on justice, on truth and on peace."

JUSTICE.

The principle of *justice* in the moral sense is expressed in the following rules: "Thy neighbor's property must be as sacred to thee as thine own." "Thy neighbor's honor must be as dear to thee as thine own." Hereto belongs also the golden

rule of Hillel: "Whatever would be hateful to thee, do not to thy neighbor."

TRUTH AND TRUTHFULNESS.

The sacredness of *truth* and *truthfulness* is expressed in the sentence: "Truth is the signet of God, the Most Holy." "Let thy yea be in truth, and thy nay be in truth." "Truth lasts forever, but falsehood must vanish."

Admonitions concerning *faithfulness* and *fidelity* to given promises are: "Promise little and do much." "To be faithless to a given promise is as sinful as idolatry." "To break a verbal engagement, though legally not binding, is a moral wrong." Of the numerous warnings against any kind of deceit, the following may be mentioned: "It is sinful to deceive any man, be he even a heathen." "Deception in words is as great a sin as deception in money matters." When, says the Talmud, the immortal soul will be called to account before the divine tribunal, the first question will be, "Hast thou been honest and faithful in all thy dealings with thy fellow-men?"

PEACEFULNESS.

Peace and harmony in domestic life and social intercourse as well as in public affairs are considered by the Talmudic sages as the first condition of human welfare and happiness, or as they express it: "Peace is the vessel in which all God's blessings are presented to us and preserved by us." "Be a disciple of Aaron, loving peace, and pursuing peace." To make peace between those in disharmony is regarded as one of the most meritorious works that secure happiness and bliss here and hereafter.

As virtues leading to peace, those of *mildness* and *meekness*, of *gentleness* and *placidity* are highly praised and recommended. "Be not easily moved to anger." "Be humble to thy superior, affable to thy inferior, and meet every man with friendliness." "He who is slow to anger, and easily pacified, is truly pious and virtuous." "Man, be ever soft and pliant like a reed, and not hard and unbending like the cedar." "Those who, when offended, do not give offence, when hearing slighting remarks, do not retaliate--they are the friends of God, they shall shine forth like the sun in its glory."

CHARITY.

The last of the principal duties to fellow-men is *charity*, which begins where justice leaves off. Professor Steinthal, in his work on General Ethics, remarks that among the cardinal virtues of the ancient philosophers we look in vain for the idea of *love* and *charity*, whereas in the teachings of the Bible, we generally find the idea of love, mercy and charity closely connected with that of justice. And we may add, as in the Bible so also in the Talmud, where charity is considered as the highest degree in the scale of duties and virtues. It is one of the main pillars on which the welfare of the human world rests.

The duty of *charity* (Gemilath Chesed) extends farther than to mere *almsgiving* (Tzedaka). "Almsgiving is practised by means of money, but charity also by personal services and by words of advice, sympathy and encouragement. Almsgiving is a duty towards the poor only, but charity towards the rich as well as the poor, nay, even towards the dead (by taking care of their decent burial)."

By works of charity man proves to be a true image of God, whose attributes are love, kindness and mercy. "He who turns away from works of love and charity turns away from God." "The works of charity have more value than sacrifices; they are equal to the performance of all religious duties."

Concerning the proper way of practising this virtue, the Talmud has many beautiful sentences, as: "The merit of charitable works is in proportion to the love with which they are practised." "Blessed is he who gives from his substance to the poor, twice blessed he who accompanies his gift with kind, comforting words." "The noblest of all charities is enabling the poor to earn a livelihood." He who is unable to give much shall not withold his little mite, for "as a garment is made up of single threads, so every single gift contributes to accomplish a great work of charity."

DUTIES CONCERNING SPECIAL RELATIONS.

Besides these principal duties in relation to fellow-men in general, the Talmud treats also very elaborately of duties concerning the various relations of life. Not intending to enter

here into all details, we shall restrict ourselves to some of its ethical teachings in reference to the domestic relations, and regarding the relation to the country and the community.

THE CONJUGAL RELATION.

"First build a house and plant a vineyard (*i.e.*, provide for the means of the household), and then take a wife." "Let youth and old age not be joined in marriage, lest the purity and peace of domestic life be disturbed." "A man's home means his wife." "Let a man be careful to honor his wife, for he owes to her alone all the blessings of his house." "If thy wife is small, bend down to her, to take counsel from her." "Who is rich? He who has a noble wife." "A man should be careful lest he afflict his wife, for God counts her tears." "If in anger the one hand removed thy wife or thy child, let the other hand again bring them back to thy heart." "He who loves his wife as his own self, and honors her more than himself, and he who educates his children in the right way, to him applies the divine promise: Thou shalt know that there is peace in thy tent." "Tears are shed on God's altar for the one who forsakes the wife of his youth." "He who divorces his wife, is hated before God."

PARENTS AND CHILDREN.

"Parental love should be impartial, one child must not be preferred to the other." "It is a father's duty not only to provide for his minor children, but also to take care of their instruction, and to teach his son a trade and whatever is necessary for his future welfare." "The honor and reverence due to parents are equal to the honor and reverence due to God." "Where children honor their parents, there God dwells, there He is honored."

COUNTRY AND COMMUNITY.

Regarding duties to the country and the community, the Rabbis teach: "The law of the country is as sacred and binding as God's law." "Pray for the welfare of the government; without respect for the government, men would swallow each

other." "Do not isolate thyself from the community and its interests." "It is sinful to deceive the government regarding taxes and duties." "Do not aspire for public offices; but where there are no men, try thou to be the man." "Those who work for the community shall do it without selfishness, but with the pure intention to promote its welfare."

GENERAL CHARACTERISTICS.'

To these short outlines of Talmudical ethics let us add only a few general remarks. Being essentially a development of the sublime ethical principles and teachings of the Bible, the Talmudical ethics retains the general characteristics of that origin.

It teaches nothing that is against human nature, nothing that is incompatible with the existence and welfare of human society. It is free from the extreme excess and austerity to which the lofty ideas of religion and morality were carried by the theories and practices of some sects inside and outside of Judaism.

Nay, many Talmudical maxims and sayings are evidently directed against such austerities and extravagances. Thus they warn against the monastic idea of obtaining closer communion with God by fleeing from human society and by seclusion from temporal concerns of life: "Do not separate thyself from society." "Man's thoughts and ways shall always be in contact and sympathy with fellow-men." "No one shall depart from the general customs and manners." "Better is he who lives on the toil of his hand, than he who indulges in idle piety."

They strongly discountenance the idea of *celibacy*, which the Essenes, and later, some orders of the Church regarded as a superior state of perfection. The rabbis say: "He who lives without a wife is no perfect man." "To be unmarried is to live without joy, without blessing, without kindness, without religion and without peace." "As soon as man marries, his sins decrease."

While, on the one hand, they warn against too much indulgence in pleasures and in the gratification of bodily appetites and against the insatiable pursuit of earthly goods and riches,

as well as against the inordinate desire of honor and power en the other hand, they strongly disapprove of the ascetic mortification of the body and abstinence from enjoyment, and the cynic contempt of all luxuries that beautify life. They say: "God's commandments are intended to enhance the value and enjoyment of life, but not to mar it and make it gloomy." "If thou hast the means, enjoy life's innocent pleasures." "He who denies himself the use of wine is a sinner." "No one is permitted to afflict himself by unnecessary fasting." "The pious fool, the hypocrite, and the pharisaic flagellant are destroyers of human society." "That which beautifies life and gives it vigor and strength, just as riches and honor, is suitable to the pious, and agreeable to the world at large."

Finally, one more remark: The Talmud has often been accused of being illiberal, as if teaching its duties only for Jews towards fellow-believers, but not also towards fellow-men in general. This charge is entirely unfounded. It is true, and quite natural, that in regard to the *ritual* and *ceremonial* law and practice, a distinction between Jew and Gentile was made. It is also true that we occasionally meet in the Talmud with an uncharitable utterance against the heathen world. But it must be remembered in what state of moral corruption and degradation their heathen surroundings were, at that time. And this, too, must be remembered, that such utterances are only made by individuals who gave vent to their indignation in view of the cruel persecutions whose victims they were. As regards *moral* teachings, the Talmud is as broad as humanity. It teaches duties of man to man without distinction of creed and race. In most of the ethical maxims, the terms *Adam* and *Beriyot*, "man," "fellow-men," are emphatically used; as: "Do not despise any man." "Judge every man from his favorable side." "Seek peace, and love fellow-men." "He who is pleasing to fellow-men is also pleasing to God." "The right way for man to choose is to do that which is honorable in his own eyes (*i.e.*, approved by his conscience) and at the same time honorable in the eyes of his fellow-men." In some instances, the Talmud expressly reminds that the duties of justice, veracity, peacefulness and charity are to be fulfilled towards the heathen as well as to the Israelites; as, "It is sinful to deceive any man, be he even a heathen." It is our duty to

relieve the poor and needy, to visit the sick and bury the dead without distinction of creed and race."

"Thou shalt love thy neighbor as thyself" (Lev. xix., 18), this is, said R. Akiba, the all-embracing principle of the divine law. But *Ben Azai* said, there is another passage in Scriptures still more embracing; it is the passage (Gen. v., 2): "This is the book of the generations of man; in the day that God created man, he made him in the likeness of God." That sage meant to say, this passage is more embracing, since it clearly tells us who is our neighbor; not, as it might be misunderstood, our friend only, not our fellow-citizen only, not our co-religionist only, but since we all descend from a common ancestor, since all are created in the image and likeness of God, every man, every human being is our brother, our neighbor whom we shall love as ourselves.

The liberal spirit of Talmudic ethics is most strikingly evidenced in the sentence: "The pious and virtuous of all nations participate in the eternal bliss," which teaches that man's salvation depends not on the acceptance of certain articles of belief, nor on certain ceremonial observances, but on that which is the ultimate aim of religion namely, *Morality*, purity of heart and holiness of life.

Footnotes

84:1 This paragraph is said by Abyye in pure Bible-Hebrew, which was not the language used by him in every-day talk. We infer from this and also from the expression "*he used to say*," that he only quoted a traditional proverb which was established ever since the oral law had been started.

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PART III.

METHOD.

The Method of our Translation into English of our Revised Text in the "New Edition."

After having submitted the text of the Talmud to a thorough review, and carried out the corrections thus found necessary, we have come down to the conclusion that the translation of the Talmud into English in this corrected form would be although not one of the easiest, but a possible task. 1 Thus we made up our mind to start this task, having considered as our leading principle to carry it out in a manner that should facilitate the understanding of the Talmud to such English readers as are not conversant with the Hebrew text. Therefore we did not care to give the discussions of the Mishnas, Tosephtas and Boraithas which the Gemara quotes for the purpose of a contradiction, objection, or comparison with a distinguishing expression, as we thought it is immaterial for the English reader. The method of the Gemara, however, is to distinguish the expressions for the purpose of letting the reader know whether the quotation is from a Mishna, Tosephta, or Boraitha, or was only said by the Amoraim, the expounders of the Mishna, viz.: (1) *Tenan*, for the quotation of a Mishna; (2) *Tania*, for the quotation of a Tosephta or a Boraitha; (3) *Itemar*, for the quotation of that which was said by the Amoraim. Therefore in the first volume of our editions, for all the quotations we have used only one expression, "we have learned," or "it was taught." However, after we were criticised for this, we also adopted a method of distinguishing the quotations, which is printed in the Explanatory Remarks to each volume; namely: Remark 1. For a quotation from the Mishna, "we have learned in a Mishna," for a Tosephta or a

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Boraitha, "we have learned in a Tosephta or a Boraitha," and for the sayings of the Amoraim, "it was taught." Thus have we also corrected in the second edition of the first and the fourth volumes: Remark 2. To save space we did not adopt the method of the German translators who usually write question and answer to each paragraph where such is to be found; we have indicated the question by an interrogation point, and immediately follows the answer without being so marked. Coming to the third explanatory remark, in which we say that we translate only the second, we have to give here this explanation at length, as this treats about omissions from the text in the translation.

In our *Hakol*, vol. VI., No. 298, 1885, in which we announced that we desire to revise and correct the Talmud so as to make its translation possible into a living language, we gave some examples of the omissions necessary in Halakha and Hagada for this purpose. And we dare say that the examples were favorably received by eminent students of the Talmud. As an answer to another criticism in a Hebrew monthly in New York, *Ner Hamarobe*, we wrote a long article in the same about our method of the omissions in Halakha, claiming that in reality we *omit nothing*

of importance of the whole text, in the shape given out by its compilers, and only that which we were certain to have been added by the dislikers of the Talmud for the purpose of degrading it we do omit. We cannot very well translate the whole article here for lack of space and time. We will therefore limit ourselves to pointing out the omissions of Halakha and Hagada with one or two examples: (1) Omitting repetitions, *e.g.*, in Tract Kethuboth 72b, there is a Mishna, "if one betroths a woman with the stipulation that she is not subject to any vows," and the whole Mishna with its Gemara is repeated in Tract Kedushin 58, without any change, and the Gemara to this Mishnayoth questions why the repetition? To which the same answer, "it was learned by the way," is repeated in both tracts. In our edition the Mishna will appear only once, in Tract Kedushin, and it is self-evident that the question and the answer of the Gemara falls off. However, the continuation which is if importance comes in the proper place. This is concerning the Mishnayoth. The discussions in the Gemara are repeated

sometimes from one to fifteen times, some of them without any change at all, and some with change of little or no importance. In our edition we give the discussion only once, in its proper place. True, it is a great difficulty to go over all the repetitions, to mark the changes wherever they are, and to consider the matter thoroughly as to which is the most proper place for them. However, we did not spare time and careful study. And according to our ability we left it at the place which seemed to us to be proper and cancelling all other repetitions. [1] (2) There is a custom in the text when it brings a statement from an Amora (very seldom also from a Tana) which is in conflict with a Mishna or a Boraitha, and trying to reconcile them by a long discussion, and after it comes to the conclusion that such a reconciliation is impossible, it concludes that "if such was taught it must be so and so," contrary to the first statement. We in our edition translate only the conclusion, omitting the whole discussion, which partly or wholly is to be found elsewhere. (Examples of this are given in our above-mentioned article, and as they are very numerous, we cannot give them here). (3) Where there are two versions in the text under the term *Lishma achrena* (another version), or *Ika d'amri* (some say), or *Waibayith Aema* (if you wish, we may say), and the second is contrary or entirely different from the first, we mostly give the second only. However, we are very careful in omitting such. (See our concluding words in Vol. XVII., page 8), and as to the last phrase, *Waibayith Aema*, which in many places is said twice or thrice, the reader will find all of them translated in our translation, under the term, "if you wish it may be said so, and if you wish, it may be said so." (4) The reader will find in our edition foot-notes stating, "transferred from tract so and so," in Halakha as well as in Hagada. We do so when the subject treated is inserted in a place where it is disconnected with the preceding and following statement; however, there is a special discussion about the same subject in another tract. (Concerning Hagada we did so in Tract Sanhedrin, transferring Hagadas which have

no connection in the preceding chapters, to the last (eleventh) chapter which is all Hagada. This is done for the purpose of preventing confusion in the reader's mind, which, while engaged in one subject, is abruptly confronted with a strange subject. (5) In a very few places we combine two Mishnayoths which are united in the editions of the separate Mishnayoths, but are divided in the Gemara into two or three (see Nedarim 32b and 33a), to which the Gemara questions "in accordance with what Tana the statement of this Mishna is given," and answers "in accordance with so and so," and the same it does with the divided Mishna with the same question and

answer. (6) In places where the Gemara discusses in a long paragraph, "how was the case? Shall we assume so, then such a statement would be in the way, and if we assume so, another statement of so and so would be in the way," etc. The conclusion, however, is explained clearly and nicely. In such cases we often translate the conclusion only, omitting the discussion, which seems to us to be inserted only for the purpose of sharpening the mind. (However, we are very careful with such omissions, and if we see in them something of importance, we do not omit them.) To this point, may be added then that all the discussions usual in the Gemara why the Tana or the Amora *A* does not say like *B*, and why *B* does not say like *C*, and *C* like *D*, and then why *D* does not say like *C*, *B*, and *A*, etc. After then when the reason is given why *A* does not say like *B*, and *B* like *C*, it is again asked why should *A* not adopt the reason of *B*, etc., etc. We then give only the questions and answers of the first category, viz., why does not *A* agree with *B* and *C*, and *B* and *C* with *A*. We omit, however, the second category of the questions and answers for not adopting the reasons, which in many places occupy a whole column and after reading it, we do not find anything new or important, but simply repetitions after repetitions which confuse the mind of the reader without doing any good. (7) Questions which remain undecided and many of them are not at all practical but only imaginary, and very peculiar too, [1] we omit. Many of such questions were ascribed to the Amora Jeremiah, of whom Rabha said that, "When he was in Babylonia he never understood what the Rabbis said."

[paragraph continues] When he (Jeremiah) came to Palestine he expressed himself concerning the Babylonian scholars thus: "The Babylonians who are dwelling in a dark land are proclaiming dark Halakhath." It is the same to us if Jeremiah questioned the above-mentioned questions at the time he did not understand the Rabbis, or, as I. H. Weiss said, that he intended with such questions to ridicule the Rabbis, for at any rate such questions must not be placed in our edition. We have good reason to say that all such questions were inserted in the name of Jeremiah or other Amoraim, by the dislikers of the Talmud, who were to be found. from its very beginning, for the purpose of ridiculing it. We cannot agree with Weiss that Jeremiah himself put such questions, as for a similar question: "If it happened that one has put one foot into the Sabbath limit, and the other foot was still out of it, may he enter or not?" he was immediately driven out from the college. Hence, since the other questions ascribed to him are much worse in every respect than the one just mentioned, is it possible that he would be listened to and such inserted as undecided questions? We would also state that the above statement of the dark Halakhath by the Babylonian sages was also put in his mouth by the same people, as we cannot believe that such a great Amora like Jeremiah should throw stones in the valley from which he drank his water.

Finally, we will give one example concerning Hagadas, in Tract Zebachin, pp. 113a, in the discussion whether the flood was in Palestine or not, basing their statements upon Ecclesiastes, "there is no new thing under the sun," *i.e.*, no new creatures were created after the seven days of creation, and as there are to be found some creatures which, according to their size, could not enter into the ark of Noah, and we see their existence, it must be concluded that the flood which had destroyed all the creatures did not take place in Palestine, in which such creatures are to be found. The opponents of this say that the flood was in Palestine also, and of all kinds of the existing creatures, there were some in the ark. And when the last were objected to by the existence of *r'em* (wild-ox), which, according to Rabba b. b. Hannah, the size of its offspring of one day was equal to forty miles, hence it could not in any way be entered in the ark, the answer comes that its snout only was in the ark, and the rest of the body was swimming in the water.

Now we would ask any reader if it is possible that such a thing should be said by any sage of the Talmud, and especially by *Resh Lakish*, who was one of the greatest Amoraim of Palestine. As this Hagada was discussed in connection with a Halakha it must not by any means be taken as allegorical. It is therefore more than certain that one who desired to make the Talmud ridiculous put in the mouths of Jochanan and Resh Lakish the discussion about the r'em with such a ridiculous answer. Hence in our translation it must be omitted. There is another one which was put as a question: "May the high priest marry a pregnant virgin?" and to the question "how can a virgin be pregnant?" the answer comes that "perhaps she became pregnant in a bath where preceding her was a man who had left there his seed." [1] We do not believe that any one with common sense, and without partiality, can be found who would deny that such things were inserted by the Talmud haters only for the purpose of ridiculing the Talmud. It is self-evident then that in our edition such and numerous similar legends do not find place.

Concerning the translation itself, we translate almost literally but not slavishly. In those places where the text of the Gemara can be understood only with the aid of Rashi's commentary, we reproduce the sense without marking "Rashi." However, in those places where Rashi adds something to make the text better understood, we put Rashi's commentary in parentheses. See fifth remark on the copyrighting; but passages inserted from the Gemara itself we put in brackets. Those passages, however, which are not explained by Rashi or which we found the explanation more detailed in other commentaries, we translate according to the latter's, stating in the respective foot-note that it is according to so and so. Our only desire was to enable the English student, even laymen, to understand the sense without difficulty, in which, according to I. M. Wise in his review of Volume VIII., we have succeeded. We may state also that, though we have strictly followed our method, yet we were compelled in some places to deviate from the same. It was also impossible for us to arrange our new edition in accordance with the old edition;

based upon the decision of Sherira Gaon that it is immaterial in what order the tracts should be brought, as the Gemara itself states that the consecutive order of the Mishna is not always to be taken seriously. However, each tract is numbered from page 1, so that if the reader prefers binding the tracts according to the former order he may do so. There are, however, many more points concerning our method which we omit for lack of space and time, especially since the method is fully traced in its main features.

Footnotes

94:1 See letter of Dr. M. Jastrow in the prospectus of our work, on page 10.

96:1 In our edition, if such an omission comes from that which was already printed, we mark it in parentheses or in a foot-note: "repeated from tract or from volume so and so, page so and so," which could not do with the text which was not as yet translated.

97:1 E.g., •••••••• ••••••••••• {Hebrew *N̲PLM̲NHN̲N̲ WTQ!LBYBM̲TW*}, the translation of which we do not care to give.

99:1 It seems to us that such were inserted by one against the belief that the Virgin Mary had borne Jesus.

Next: Plate facing page 100: Page of the Talmud in Hebrew

Previous Next

Plate facing page 100: Page of the Talmud in Hebrew (*125,827 bytes*)

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אמר רבא סימנין דאורייתא דכתיב (דברים כב) והיה עמך עד דרוש אחיך אותו וכי תעלה על דעתך שיתננו קודם שידרשנו אלא דרשהו אם רמאי הוא או אינו רמאי לאו בסימנין ש"מ אמר רבא אם תימצי לומר סימנין דאורייתא

[redacted]

סימנין וסימנין יניח סימנין ועדים ינתן לבעל העדים סימנין וסימנין ועד אחד עד אחד כמאן דליתיה דמי ויניח עידי אריגה ועידי נפילה תנתן לעידי נפילה דאמרינן זביני זבנה ומאיניש אחרינא נפל מידת ארכו ומידת רחבו תנתן למידת ארכו דמידת רחבו שעורי קא משער לה כד מכסי לה מרה וקאי ומידת ארכו לא משתער לה מידת ארכו ומידת רחבו ומידת גמיו ינתן למידת ארכו ורחבו מידת ארכו ומידת רחבו ומידת משקלותיו ינתן למידת משקלותיו הוא אומר סימני הגט והיא אומרת סימני הגט ינתן לה במאי אילימא במידת

כל ט"ו יום וי"ל דכי לא סליקי
מיירא ואין הולך בלילה גם
כל היום אינו הולך לפי שלא
ימצא מלון בערב :
אכן

אחד כמאן דליתיה דמי וניגא עידי אריגה ועידי נפילה ט תנתן לעידי נפילה דאמרינן זביני זבנה ומאיניש אדרינא נפל מידת ארכו ומידת רחבו י תנתן למידת ארכו דמידת רחבו שעורי קא משער לה כד מכסי לה מרה וקאי ומידת ארכו לא משתער לה מידת ארכו ומידת רחבו ומידת גמיו י ינתן למידת ארכו ורחבו מידת ארכו ומידת רחבו ומידת משקלותיו ח ינתן למידת משקלותיו הוא אומר סימני הגט והיא אומרת סימני הגט ט ינתן לה במאי אילימא במידת ארכו ורחבו דלמא בהדי דנקיט ליה חזיתיה אלא נקב יש בו בצד אות פלוני הוא אומר סימני החוט והיא אומרת סימני החוט כ ינתן לה במאי אילימא בחיורא ובסומקא ודלמא בהדי דנקיט ליה חזיתיה אלא במידת ארכו הוא אומר בחפיסה והיא אומרת בחפיסה ינתן לו מאי טעמא מידע ידעה דכל מה דאית ליה בחפיסה הוא דמנח ליה : **מתני'** ועד מתי חייב להכריז עד כדי שידעו בו שכיניו דברי רבי מאיר רבי יהודה אומר ל שלש רגלים ואחר הרגל האחרון ז' ימים כדי שילך לביתו שלשה ויחזור שלשה ויכריז יום אחד : **גמ'** תנא שכיני אבידה מאי שביני אבידה אילימא שכינים דבעל אבידה אי ידע ליה ליזול וליהדריה ניהליה אלא שכיני מקום שנמצאת בו אבידה : רבי יהודה אומר כו' : ורמינהי * מ בג' במרחשון שואלין את הגשמים ר"ג אומר בז' בו (שהוא) ט"ו יום אחר החג כדי שיגיע אחרון שבא"י לנהר פרת אמר רב יוסף לא קשיא כאן במקדש ראשון כאן במקדש שני במקדש ראשון דנפישי ישראל טובא דכתיב בהו (מלכים א ד) יהודה וישראל רבים כחול אשר על הים לרוב בעינן כולי האי במקדש שני דלא נפישי ישראל טובא דכתיב בהו (עזרא ב) כל הקהל כאחד ד' ריבוא אלפים שלש מאות וששים לא בעינן כולי האי אמר ליה אביי והא כתיב (נחמיה ז) וישבו הכהנים והלוים וגו' (עזרא ב) והמשוררים והשוערים וכל ישראל בעריהם וכיון דהכי הוא איפכא מסתברא מקדש ראשון דנפישי ישראל טובא דמצות עלמא ומשתכחי שיירתא דאזלי בין בימטא ובין בלילא לא בעינן כולי האי וסגיא בתלתא יומא מקדש שני דלא נפישי ישראל טובא ולא מצות עלמא ולא משתכחי שיירתא * דאזלי בין בימטא ובין בלילא בעינן כולי האי רבא אמר ל"ש במקדש ראשון ול"ש במקדש שני לא הטריחו רבנן באבדה יותר מדאי אמר רבינא ש"מ ב כי מכריז גלימא מכריז דאי ס"ד אבידתא מכריז בעינן למטפי ליה חד יומא לעיוני במאניה אלא ש"מ גלימא מכריז ש"מ רבא אמר אפילו תימא אבידתא מכריז לא הטריחו רבנן באבידה יותר מדאי ת"ר ג רגל ראשון אומר רגל ראשון דגל שני אומר רגל שני רגל שלישי אומר סתם ואמאי לימא רגל שלישי דלא אתי לאחלופי

בשני שני גמי אתיא

טלית היא : מידת ארכו ורחבו ומידת גמיו · זה אומר כך ארכה וכך רחבה וזה אומר ארכה ורחבה כך וכך אמות בין הכל אבל אינו יודע כמה באורך וכמה ברוחב : גמיו · גלם יוונית עבויה כמין ד' שלנו לבכי קרי אורך ורוחב יחד גמיו : הוא אומר סימני הגט · ואומר ממני נפל שנמלכתי שלא ליתן : והיא אומרת סימני הגט · וממני נפל שנתנו לי ונגרשתי : ינתן לה · שהוא נתנו ויודע סימניו אבל היא אם לא נתנו לה מהיכן ידעה : סימני החוט · שהגט קשור בו : בחפיסה · מנחא אותו : **מתני'** שכיניו · מפ' בגמ' : כדי שילך · כל אחד לביתו : שלשה · משישמע ההכרזה וידע אם אבד לו כלום ואם יבין שאבד יחזור שלשה : * ויכריז יום אחד · אני אבדתי ואלו סימנים ובגמרא פריך דבשלשה ימים אין שהות לחזור לסוף א"י : **גמ'** שכיני מקום · שנמצא בו אבידה שמא שלהן היא : כדי שיגיע כו' · ולא ידאיקהו בגשמים דאלמא כולי האי מיגין ומתעיתין מגו שלשה : והכתיב וישבו כל ישראל בעריהם · ואע"ג דסורתא הוו בכל עריהן היו מפוזרים וים רחוקים מירושלים כבתחילה : ס"ג וכיון דהכי הוא איפכא מסתברא : דמצוי עלמא · צוות יש לו טובים הרבים :

שמע מינה · מדלא יהבי ליה רבנן שהות אלא הליכה וחזרה : גלימא מכריז · זה שמצאה מכריז שם חפץ טלית מצאתי ולכך לא הוצרכו ליתן שהות יום אחד לעיין בכליו מה אבד שהאדם יודע כמה טליתות יש לו וכשבא לביתו בודק אם ימצאנה ואין צריך שהות : דאי ס"ד אבידתא מכריז · ואינו מזכיר שם החפץ ליתנו ליה לכל חד וחד אלתי טפי יומא לעיוני במאניה אם כל כליו בידו ושלוגמא היא בכא לקמן : לא הטריחו · זה שיכא בוהא ויתר מו' ימים : רגל ראשון · שהוא מכריז : אומר · בהכרזתו זהו רגל ראשון שלא להטריח את המאבד לחזור ובשלה רגל

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באבידה יותר מדאי ת"ר רגל ראשון אומר רגל ראשון רגל שני אומר רגל שני רגל שלישי אומר סתם ואמאי לימא רגל שלישי דלא אתי לאחלופי בשני שני נמי אתיא

למוקים מילו גלים כבתחילה: ה"ג וכיון דהכי הוא איפכא מסתברא: דמלים עלמא · גוות יש לו עוכים כפנים:

שמע מינה · מדלא יהבי ליה רבנן שהות אלא כליכה וחזרה: גלימא מכריז · זה שמצאה מכריז בה חפץ טלית מצאתי ולכך לא הוצרכו ליתן שהות יום אחד לעיין בכליו מה אבד שהאדם יודע כמה טליתות יש לו ובכסות כביתו לודק אם ימצאנה ואין צריך שהות: דאי ס"ד אבידתא מכריז · ואינו מזכיר שם החפץ ליתבו ליה לכל חד וחד אלתי טפי יומא לעיוני במאניה אם כל כליו בידו ופלוגתא היא בבא לקמן: לא הטריחו · זה שיבא בוהא יותר מן' ימים: רגל ראשון · שהוא מכריז: אומר · בכרוזו זהו רגל ראשון שלא לבטריה את האובד לחזור ובשיבא רגל שני יעלה לרגל ויתן סימנים: שלישי אומר סתם · אבידה מצאתי ואינו אומר איזה רגל הוא לנהלתה כדי שלא יטעה האובד על רגל הבא ויבין שזהו רגל כאהרין: אסי

Next: Part IV: Criticism

PART IV.

CRITICISM.

In our table of contents to this history announced in the prospectus issued in 1897, we have inserted "A Reply to some Criticism." This would be in place if this history had been published at the time when the criticism was still new. Now, however, after the lapse of six years, during which new proper criticism has not appeared, a reply to what is almost forgotten would be out of place. We, however, cannot restrain ourselves to say a few words about criticism in general, and about our edition in special. In our opinion, true criticism must drive only to the point, *i.e.*, the critic has to show the author his mistakes and errors in such and such point, page or paragraph, based upon undoubted or uncontradictory evidence, or common sense, taking care, however, to avoid partiality and personality. Otherwise it is not criticism but attack. In our introduction to Vol. VII., we expressed our anxiety to face a *true* criticism, which has not appeared thus far as aught we know. As what concerns the criticism which appeared after the issue of the first volume, the same may be classified in three categories:

(*a*) Personality against the reviser of the first volume or against ourself. (*b*) Opposition on the part of those who disliked for some reason the idea of the Talmud being translated in any living language, no matter which; and (*c*) the views expressed by ignoramuses in all that concerns the Talmud and its study. It seems to us that a discussion would not persuade either of the three categories, as they indulged only in attacks lacking real evidence, nay, even a basis of probability on which they might have rested; *e.g.*, there were some who claimed that our edition is not scientifically arranged, our omissions mutilating the whole text at large; but these did not care to give any example, which might have served them as evidence.

Now, concerning the scientific point of view, we hold that no translation of the Talmud could answer the requirements of a scientific work, as the Talmud itself is nothing but a chaotic mass lacking any scientific order, and should a translator follow scientific tracks, the result of his work would be a treatise on, but not a translation of, the Talmud. And, as what regards the so-called mutilations, since no example was given, we cannot enter any discussion as to them. Our method was already clearly explained in a lengthy article in Hebrew, out of which it might have appeared that our method consists in these very mutilations, and if after that anybody accuses us of mutilating the text we have nothing to say but let him try to invent a better method.

However, regarding the criticism of the spelling of some ancient names, which we were not very careful about, and also as to the distinguishing of the quotations from divers Mishnas, Boraithas, etc., we have gratefully admitted its truth and accordingly corrected in the succeeding volumes as well as in the second edition of the first volume, as it can be seen in our answer to these criticisms in the American Hebrew, July 29, 1896, which the critic himself admitted thereafter

that it was a gentlemanly answer, though it could not induce him to deny his policy. And what concerns other criticisms of the above categories we may conscientiously say that they were not worthy of any consideration whatsoever, as their basis was the very criticism of this prominent scholar, who encouraged them to attack, to scold, and to make use of any expression which is fit to disqualify the work at large in the eyes of its supporters. [1] As an evidence to this latter statement we

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beg to quote the editorial of *The American Israelite*, September 19, 1901.

"The complaint voiced through the Jewish press that Rodkinson's translation of the Talmud is not receiving the support which its merits deserve is very much in the nature of self-accusation. The truth is that the great undertaking has never been able to overcome the onslaught originally made upon it. Recognizing its great value, the late editor of this paper gave to the work from its initial conception his earnest encouragement and support, which, instead of being seconded by the Jewish press and rabbinate, was met by a torrent of abuse and misrepresentation. Now that his foresight has been justified, and the former detractors of the work complain that Jewish support is lacking, they have a chance to contemplate their own doings. If the example set by the late editor of this paper had been emulated instead of neglected and derided, there would not now be occasion to charge the Jewish public with want of appreciation.

"It was not among Jews alone that the insensate opposition to Dr. Rodkinson's difficult project was met with. As is perfectly natural, the non-Jewish press depended largely upon Jewish sources for their information in regard to the work, and therefore reflected the unfavorable opinions expressed by supposed Jewish authorities. As soon as unbiased reviewers were

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made aware of its merits, they changed their unfavorable attitude, but it was too late to overcome the prejudice created by the first impression. *To-day the non-Jewish press recognizes that it was misled into antagonizing the work, and speaks of it as a most important contribution to the world's stock of knowledge*, but it certainly must be disheartening to its editor and his publishers to convince possible purchasers that the authorities upon which they depend for information have experienced a change of heart. It is an old story, that with one moment's start a lie will not be overtaken by its refutation in a thousand years. It is impossible to wholly right the wrong, but at least amends can be made by those who through ignorance or malice misrepresented Dr. Rodkinson's great undertaking, and it is not by taking a fling at the Jews that this is to be accomplished. It is safe to classify the Jews as average human beings, who are neither better nor worse than the rest of mankind, and taking them as such, the proportion among them who encourage Jewish letters will not be found to fall below what can rightly be expected. This statement, however, does not include the Jews who have been blessed with superabundant riches, for the members of that class have not in this country given to Jewish literature the same support so common among the men of wealth who enable the literature of Christianity to be spread broadcast over the world."

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Footnotes

102:1 To our great sorrow we must confess that they have succeeded in harming us both materially and morally. The material harm was that, as an immediate result of their attacks, an enormous amount of financial support had been refused to us. The moral harm they caused us was that, being at loss of the necessary funds, we could not submit our work to competent men for revising, and so the whole gigantic labor of issuing all which has been printed so far was carried out only through our own endeavors, to which no assistance, moral or material, was given us an the part of anybody. And with all our modesty we may say that, had we not been so energetic and strong-minded, our attackers would have succeeded in destroying the whole plan and annihilating the publication of our work. A great authority and most influential man in this city, seeing our struggles and troubles after we had already issued several volumes, offered us $6,000 as financial aid for the duration of three years, so as to complete the translation in this period and to submit to him afterwards the whole manuscript, for which he was willing to take the trouble upon himself to find a publisher who would undertake to publish it upon the plan of royalty. The above amount he calculated to obtain of three philanthropists, two Gentiles and one Hebrew. We, however, having conjectured who the Hebrew philanthropist might be, told him that if he meant Mr. ------, he was mistaken, for he is already influenced by the critics and therefore would not support this work. In fact, it was so, and the professor was reduced to drop the whole plan.

This case was not the only one, There was another professor who promised to subscribe for twenty sets of our work for the purpose of distributing them among his friends. It was again the critic that prevented him from doing so.

The Jewish Publication Society of America, whose aim it is to help authors in issuing their works, and who are constantly doing so, have not assisted us with a single cent, in spite of the fact that all the above-mentioned critics but one had not only retracted from and moderated their first statements, but afterwards wrote favorably about our translation in different periodicals and private letters, as can be seen from the Press comments, which will be placed on the last pages of this work.

One cannot imagine our struggles and troubles at each issue of the volumes, and it is only our ideal that the edition of the Talmud should be completed which spurs us to continue, We rely upon the divine help, that it will not cease to grant us further on the assistance which it has lent us to the completion of the two large sections issued by us.

Next: Appendix to Chapter II.

APPENDIX TO CHAPTER II., page 24

We have to repeat again that we do not see any reason why the more prominent sages should not be mentioned. To quote all of those omitted, both of Tanaim and Amoraim, with the sources where they are taken from would take a whole volume and we also would not like to devise an entirely new arrangement contrary to Strack, Mielziner and others whose authority we respect. However, we cannot refrain from calling the attention of students to the fact that after a good deal of deliberation and search we cannot find any reason why the most prominent sages should not be placed among the founders of the Talmud.

Take, for instance, Abtulmus, who is mentioned in Tract Erubin, Chapter III., Mishna 4, who, according to R. Jose, testified in the name of five elders, etc., and who is also mentioned several times in the Gemara and is not identical with Abtalyon who was in an earlier time. Take also Baba b'Buta who, was in the time of Herod the Great, and who was a disciple of Shamai and cannot be counted of his school as he was of those who were troubling themselves to establish the Halakha in accordance with the school of Hillel. and whom the Talmud put up as an example of morality. (See Weiss "Geschichte der jüdichen Tradition," Vol. I., p. 168.}

We also do not find among them Elazai b. Arach, whom we have added, the distinguished one of the five disciples of R. Johanan b. Zakkai, and also no mention of b. Bag Bag, b. Haij Haij, b. Buchre, and Papus b. Jehudah. The contemporaries of these were Johanan b. Zakkai, Jehudah b. Bathyra, etc., etc., all of whom are mentioned in the Mishnayoth as great authorities, who according to our opinion ought to be placed among the Tanaim, founders of the Mishna.

There is mentioned by Strack and Perferkowitz (the latter counts Elasur b. Arach and Simon Shezur), Ben Patturo or Ben Pature, who is to be found only once in the whole Talmud, namely in Baba Metzia, p. 149. Let us quote his statement: "If two were on the road (in the desert), and one of them has a pitcher of water which is sufficient for one only until he may reach an inhabited place, but if both would use it both would die before reaching a village, and Ben Patturo lectured that in such a case it

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is better that both should drink and die than that one should witness the death of his comrade." This teaching seems to us to be of the Essenes as it is not in accordance with the Talmudical spirit, and as his own name is not known (there are many who were named after their fathers only as Ben Dama, b' Bathyra, b' Azai, but their own name however is known) we are inclined to say that he lived at a much earlier time and it should read *Ben Pantira*, who was in his youth a disciple of Jehoshua b' Prachyah [1] and it would not be surprising that his lecture was stated in his name as so it was done with Elisha b' Abbuyah in Tract Aboth, Chapter IV., notwithstanding that thereafter he separated himself from his colleagues and was named *Acher*.

Footnotes

106:1 *i.e.*, Jesu b. Joseph Pantira, who is usually so mentioned in Tosephta (Chulin, v. 22), and in the Palestinian Talmud several times. In some places Jesu b. Pantira, and in other places Jesu Pantira and also Ben Pantira. Concerning Jehoshua b. Panchia, who was his teacher, according to the Talmud, we are inclined to say there were two Jehoshuas rather than to claim that there were two Jesuses.

Next: Part V. The Arrangement of the Six Sections in Their Sixty Tracts

PART V.

THE ARRANGEMENT OF THE SIX SECTIONS IN THEIR SIXTY TRACTS.

Section Zeraim (Plants) contains eleven tractates, viz.: Berachoth (Benediction), supplied with Gemara, both Palestinian and Babylonian, Peah (Corner tithe), Dmai (Uncertain), Khilayim (Mixtures), Shebüt (Sabbatical year), Therumoth (Heave offering), Maasheroth (Tithes), Maaser Sheni (Second tithes), Chala (Dough), Orla (Fruit trees during the first three years), and Biccurim (First fruit), all of which are not supplied with Babylonian Gemara. The laws of all of them concern Palestine at that time the Temple was in existence.

Section Nashim (Women) contains seven tracts, viz.: Yebamoth (Levirate marriage), Khethuboth (Marriage contracts), Nedarim. (Vows), Nazir (Nazarite), Sota (Suspicious women), Gittin (Divorces), Kiddushin (Betrothals).

Section Kodashim (Holiness), eleven tracts: Zebachim (Sacrifices), Menachoth (Meal-offering), Chulin (Profane things), Bechoroth (First born), Arachin (Estimations), Themura (Exchange), Kherithoth (Excisions), Me-ila (Trespass), Thamid (Daily offerings), Middoth (Measurements) and Kinnim (Birds' nests). All the above tracts, besides Chulin, treat about sacrifices, offerings used at the time of the Temple. Chulin, however, speaks of the laws of slaughtering and of the meats that may be used.

Section Tcharoth (Purification), twelve tracts, viz.: Khelim (Vessels), Ohaloth (Tents), Nego-im (Leprosy), Parah (Heifer), Teharoth (Purification), Mikvaoth (Wells), Nidda (Menstruous), Mach-shirim (Preparations), Zabim (Running issues), Tebul-Yom (Legal-day bath), Yadayim (Hands), and Uktzin (Stalks of fruit); to all of them, except Nidda, there is no Gemara, for the reason stated above (Vol. II., p. 42). The tract Nidda, however, treats about women menstruous and all the laws of sexual intercourse.

Section Moed (Festivals), twelve tracts (in our Edition 13), and Section Nezikin (Jurisprudence), ten tracts (in our Edition 13), which are already published in the English language. We give, for the benefit of readers, the following synopsis:

Note by redactor: Since the synopses which follow are simply duplicates of the material at the front of each the separate volumes they have been omitted from this e-text.